

ABERDEENSHIRE COUNCIL

LOCAL REVIEW BODY

WOODHILL HOUSE, ABERDEEN, FRIDAY 29 SEPTEMBER, 2017

Present: Councillors F C P Hood (Chair), R Cassie, I Davidson (substituting for Cllr P K Johnston), J Hutchison, J Ingram and A Ross.

Apologies: Councillor P K Johnston

Officers: Planning Adviser (Mark Myles), Senior Solicitor – Governance (Peter Robertson) and Senior Committee Officer (Frances Brown).

1. APPOINTMENT OF INTERIM CHAIR TO THE LOCAL REVIEW BODY

The Committee Officer welcomed members to the meeting and explained that Aberdeenshire Council, at its meeting of 28 September 2017, had duly appointed a permanent Chair and Vice Chair to the Local Review Body.

The Local Review Body **noted** that Councillor F C P Hood had been appointed as Chair and Councillor P K Johnston as Vice Chair to the Local Review Body.

2. DECLARATION OF MEMBERS' INTERESTS

In respect of declaration of members' interests as required by the Code of Conduct for members, Councillor Cassie declared an interest in LRB 389 as the application site was within his ward and as such intimated that he would withdraw from proceedings when that review was being considered.

3. PUBLIC SECTOR EQUALITY DUTY

In making decisions on the following items of business, the Committee **agreed**, in terms of Section 149 of the Equality Act, 2010:-

- (1) To have due regard to the need to:-
 - (a) eliminate discrimination, harassment and victimisation;
 - (b) advance equality of opportunity between those who share a protected characteristic and persons who do not share it; and
 - (c) foster good relations between those who share a protected characteristic and persons who do not share it
- (2) Where an Equality Impact Assessment was provided, to consider its contents and take those into account when reaching their decision.

4. MINUTE OF THE LOCAL REVIEW BODY MEETING OF 25 AUGUST, 2017

The Local Review Body had before them and **approved** as a correct record, the Minute of the Local Review Body meeting of 25 August, 2017 and this was duly signed in public.

5. SPREADSHEET HIGHLIGHTING RELEVANT POLICIES FOR EACH REVIEW

The Local Review Body had before them and **noted** a spreadsheet which listed the policies which would be referred to in consideration of each of the reviews presented before them, as contained within the Aberdeenshire Local Development Plan (2017).

NEW REVIEWS

6. LRB 386 – NOTICE OF REVIEW AGAINST REFUSAL OF FULL PLANNING PERMISSION FOR ERECTION OF DWELLINGHOUSE AND STORAGE BUILDING AND RELOCATION OF MANEGE AT SITE AT WOODEND HILL, KEMNAY, ABERDEENSHIRE, AB51 5PR – REFERENCE: APP/2017/0470

Local Review Body: Councillors F C P Hood (Chair), R Cassie, I Davidson, J Hutchison, J Ingram and A Ross.

There had been submitted a Notice of Review and supporting documents by the agent, which sought a review of the Appointed Officer's decision to Refuse Full Planning Permission for the Erection of a Dwellinghouse and Storage Building and the Relocation of a Manege at a site at Woodend Hill, Kemnay, Aberdeenshire, AB51 5PR – Reference: APP/2017/0470.

The Planning Adviser introduced the Notice of Review and advised the Local Review Body that in terms of review procedure, the applicant had requested a site inspection and a review of the documents as presented before them. The Planning Adviser then provided the Local Review Body with the background to the applicant's case, along with a series of slides and photomontages of the site and surrounding area.

The Planning Adviser ended his presentation by reporting that no valid representations had been received during the consultation period.

Further to consultations undertaken, it was reported that Environmental Health had no objection to the proposal as the applicant had indicated that they would be connecting to an existing public water supply, however, if at any time that was no longer possible, they had indicated that the if a private water connection were sought then the applicant would have to submit a new application; Roads Development had no objection to the proposed development on the grounds that the applicant would be using the existing private access road and visibility concerns onto the B993 would be improved; Developer Obligations had highlighted the requirement for the payment of developer obligations through a financial contribution towards affordable housing for expenditure in the catchment area of Kemnay Academy and towards secondary education and the applicant had confirmed their intention to comply with that requirement; Scottish Water and SSE had not responded during the consultation period and SGN had lodged a formal objection to the proposed development and had suggested that a detailed consultation should be undertaken regarding the proximity of the development to the pipeline and consider any necessary measures which may be required to safeguard the security of the pipeline if the application were approved.

The Local Review Body then considered the Appointed Officer's reasons for refusal, namely:-

- (1) The proposed dwellinghouse does not comply with any of the criteria of Policy 3 Development in the Countryside, and related SG RD1: Housing and Business Development in the Countryside, of the adopted Aberdeenshire Local Development Plan, 2012. This was specifically due to the proposed need case provided in support of the application relating to the keeping, breeding and selling of horses which was not considered to be an agricultural or primary industry which the policy allows for. For the same reasons, the proposal would not comply with Policy R2: Housing and

Business Development Elsewhere in the Countryside of the proposed Aberdeenshire Local Development Plan, 2017.

- (2) The proposed dwellinghouse does not comply with Policy 8: Layout, Siting and Design and LSD 9: Hazardous development of the adopted Aberdeenshire Local Development Plan, 2012. This is due to it not being demonstrated that the proposal would not present a significant hazard to the public due to its proximity to a high pressure gas transmission pipeline. For the same reason, the proposal would not comply with Policy P4: Hazardous and Potentially Polluting Development and Contaminated Land of the Proposed Aberdeenshire Local Development Plan, 2017.

The Local Review Body considered that the relevant policies as contained within the Local Development Plan (2017) were:

- Policy P1 – Layout, siting and design;
- Policy R1 – Special Rural Areas;
- Policy R2 – Housing and business development elsewhere in the countryside;
- Policy P4 – Hazardous and potentially polluting developments and contaminated land;
- Policy C1 – Using resources in buildings;
- Policy RD1 – Providing suitable services; and
- Policy RD2 – Developer Obligations.

Other material considerations were Aberdeenshire Council Planning Advice 6/2012: Implementation of Policy SG LSD2: Layout, Siting and Design of New Development and Aberdeenshire Council Planning Advice 1/2016: Housing and Business Development in the Countryside and Greenbelt.

The Chair then asked the Local Review Body to consider whether there was now sufficient information before them in order for members to consider the review without further procedure. The Local Review Body were in agreement that they had sufficient information before them and proceeded to determine the Notice of Review.

The Local Review Body agreed that the main determining issues for the Notice of Review as presented before them was whether the proposal was in accordance with the policy criteria that would normally apply to the erection of new development in the countryside.

Before proceeding, the Local Review Body sought clarification from the Planning Adviser on the definition of a 'primary industry' as detailed in the glossary of the Aberdeenshire Local Development Plan, 2017 (page 650). The Planning Adviser advised the Local Review Body that the definition referred to sections A and B of the UK Standards of Industrial Classification of Economic Activities and that the definition did include the keeping, breeding and selling of horses as a primary industry.

During discussion of the Appointed Officer's Reason 1 for refusal, the Local Review Body took cognisance of the Labour Requirement Report which had stated that there were currently 25 horses on site; there was a need for round-the-clock surveillance throughout the year during foaling; and the labour required for crops totalling approximately 18ha would result in a labour unit requirement of 6.22. Having considered that information, the Local Review Body were in general agreement that the stated need could be accepted, and due to the nature of the business which it was also agreed was agricultural in nature (as defined by the adopted Aberdeenshire Local Development Plan, 2017), the Local Review Body considered that the provision of a house under the terms of Policies RD1 and RD2 could be accepted.

During discussion of Reason 2 for refusal which had been based on the potential for a hazard to be created due to the proximity of the development to a high pressure gas pipeline, the Local Review Body noted that the decision notice was dated 21st April 2017, however, the Report of Handling would have been prepared by the Appointed Officer at least 7 days prior to that date. The Report of Handling therefore predated receipt of the further consultation response from Scottish Gas Network to the council dated 19th April 2017 which had confirmed the withdrawal of their objection. The Local Review Body also noted from the agenda papers that the Health & Safety Executive had not raised any objections to the proposals. The Local Review Body therefore agreed that there was no basis for refusing planning permission under the terms of Policy P4 of the Aberdeenshire Local Development Plan 2017.

Following general agreement to uphold the Notice of Review, the Local Review Body then considered conditions and made reference to the agent's supporting statement which had highlighted a change to developer contributions towards affordable housing where developments consist of 4 or more houses in the newly adopted Aberdeenshire Local Development Plan, 2017. As such it was agreed that in accordance with Policy RD2: Developer Contributions that the applicant should pay developer obligation contribution towards secondary education.

Further discussion on conditions then ensued and the Local Review Body were in general agreement that there should be a general conditions included in the grant of Full Planning Permission and a requirement that the existing residential caravan to be removed from the site within 1 month of occupation of the dwellinghouse. The Local Review Body requested that the Planning Adviser draught conditions for the granted planning consent and then should be circulated to all members for approval prior to the Review Decision Notice being issued to the applicant.

After due consideration, the Local Review Body (LRB) **agreed** to UPHOLD the Notice of Review and reverse the decision reviewed by it and GRANT Full Planning Permission, subject conditions which should include:-

- (1) A requirement that the applicant must remove the existing residential caravan on site within 1 month of the occupation of the new dwellinghouse;
- (2) A requirement that the applicant should pay the developer obligations payment as per the agreement with the Developer Obligations Officer of 3 March, 2017;
- (3) Planning conditions which should include (1) and (2) above which should be circulated to the Local Review Body for consideration and approval, prior to the final Review Decision Notice being issued.

7. LRB 387 – NOTICE OF REVIEW AGAINST REFUSAL OF FULL PLANNING PERMISSION FOR ERECTION OF 4 ENERCON E70 2.3MW WIND TURBINES WITHOUT COMPLIANCE WITH CONDITION 14 (EXTENSION TO INTERVAL BETWEEN MONITORING PERIODS) OF APPROVED PLANNING PERMISSION REFERENCE: APP/2011/1024 AT LAND AT OVERSIDE AND GREENWELLHEADS FARM, CRIMOND, FRASERBURGH, AB42 3HJ – REFERENCE: APP/2017/1071

Local Review Body: Councillors F C P Hood (Chair), R Cassie, I Davidson, J Hutchison, J Ingram and A Ross.

There had been submitted a Notice of Review and supporting documents by the agent, which sought a review of the Appointed Officer's decision to Refuse Full Planning Permission for the Erection of an Enercon E70 2.3mW Wind Turbines without Compliance with Condition 14 (Extension to Interval between Monitoring Periods) of Approved Planning Permission

Reference: APP/2011/1024 at Land at Oversight and Greenwellheads Farms, Crimond, Fraserburgh, AB42 3HJ – Reference: APP/2017/1071.

The Planning Adviser introduced the Notice of Review and advised the Local Review Body that in terms of review procedure, the applicant had requested one or more hearing sessions and a review of the documents as presented before them. The Planning Adviser then provided the Local Review Body with the background to the applicant's case, along with a series of slides and photomontages of the site and surrounding area.

The Planning Adviser then made reference to the applicant's statement that they did not accept the response by Environmental Health Service and took the view that the current two year monitoring period would be considered as excessive due to:

- The sites compliance with all noise monitoring that has been undertaken to date, in accordance with the planning conditions;
- Noise levels are within acceptable limits at all nearby receptors;
- There have been no complaints regarding noise from the wind turbines;
- The Enercon turbines installed on site have no gearbox and therefore do not suffer from the issue of noise increasing with gearbox wear;
- Condition 14 states that the monitoring frequency should be reviewed by the planning authority and they wish the merits of their application to be fully considered;
- Altering the frequency of ongoing monitoring to a more manageable five year period avoids unnecessary downtime of the turbines, while still ensuring the amenity of nearby residents is protected.

The Planning Adviser ended his presentation by reporting that no valid representations had been received during the consultation period.

Further to consultations undertaken, it was reported that Environmental Health had objected to the proposal as no additional noise information had been submitted by the applicant and monitoring would still be required every two years. It was however noted that the service had indicated that if the applicant was able to provide a more robust compliance report which could be deemed as satisfactory, then the service may give consideration to reducing the monitoring frequency in the future. It was recognised that advances in post completion monitoring over the last two years had improved, however, the service would still require a more robust compliance reports than the one previously submitted in 2015.

The Local Review Body then considered the Appointed Officer's reasons for refusal, namely:-

- (1) Altering Condition 154 of APP/2011/1024 was not in line with relevant policy of the Aberdeenshire Local Development Plan, 2017.

The Local Review Body considered that the relevant policies as contained within the Local Development Plan (2017) were:

- Policy C2: Renewable Energy

The Chair then asked the Local Review Body to consider whether there was now sufficient information before them in order for members to consider the review without further procedure. The Local Review Body were in agreement that they had sufficient information before them and proceeded to determine the Notice of Review.

The Local Review Body agreed that the main determining issues for the Notice of Review as presented before them was whether sufficient additional noise information had been provided to allow consideration to be given to reducing the monitoring frequency in the future.

During discussion, the Local Review Body took cognisance of the noise compliance report which had been submitted in 2015 and which had indicated that the turbines were operating within the acceptable noise limits and there had been no noise complaints regarding the development.

While the Local Review Body did acknowledge the case that had been set out by appellant, they also fully acknowledged the reservations set out by Environmental Health Service and agreed that until such time as additional information regarding noise had been submitted then it would in their view be necessary to continue with at least another biennial report so as to assess whether changing to a 5 year monitoring period would be permissible.

The Local Review Body made reference to the Environmental Health response (as presented on page 356 of the agenda papers) which had suggested that if a future monitoring report was presented which was more robust then that may allow them to consider a reduction in monitoring frequency in the future, however, greater detail would be required in any subsequent report when compared to the report that had been submitted 2015.

Accordingly, the LRB therefore agreed that insufficient evidence had been provided to show that the proposed amendment to the condition 14 would not impact on the amenity of residential properties. The proposal therefore currently fails to comply with policy C2 as set out in the Aberdeenshire Local Development Plan, 2017.

After due consideration, the Local Review body **agreed** to DISMISS the Notice of Review and Uphold the Appointed Officer's decision to Refuse Full Planning Permission for compliance with Condition 14 (Extension to Interval Between Monitoring Periods) for Granted Planning Application APP/2011/1024.

8. LRB 388 – NOTICE OF REVIEW AGAINST REFUSAL OF FULL PLANNING PERMISSION FOR DEMOLITION OF EXISTING GARAGE AND ERECTION OF DETACHED DOUBLE GARAGE AT CHERRY BOUNCE, 52 NEWTONHILL ROAD, NEWTONHILL, ABERDEENSHIRE, AB39 3PX – REFERENCE: APP/2017/0419

Local Review Body: Councillors F C P Hood (Chair), R Cassie, I Davidson, J Hutchison, J Ingram and A Ross.

There had been submitted a Notice of Review and supporting documents by the agent, which sought a review of the Appointed Officer's decision to Refuse Full Planning Permission for the Demolition of Existing Garage and Erection of Detached Double Garage at Cherry Bounce, 52 Newtonhill Road, Newtonhill, Aberdeenshire, AB39 3PX – Reference: APP/2017/0419.

The Planning Adviser introduced the Notice of Review and advised the Local Review Body that in terms of review procedure, the applicant had requested a site inspection and a review of the documents as presented before them. The Planning Adviser then provided the Local Review Body with the background to the applicant's case, along with a series of slides and photomontages of the site and surrounding area.

The Planning Adviser ended his presentation by reporting that 3 valid representations had been received (2 in support and 1 objection) and material issues raised within those letters were:-

Objections

- The proposal is contrary to the recommendations and approved plans of previously approved (APP/2016/0419); i.e., attic floor removed and pitch of the roof of the original plan reduced in line with planning service recommendation,
- Concern with the overshadowing owing to the height of the garage,
- Concern with overlooking into the garden of 6 St Ternan's Road, Newtonhill.

In support

- The scale and the character would conform to the existing property,
- The proposal would not overlook or take away the privacy of No.50,
- The proposal is a replacement garage.

It was then reported that no consultations had been undertaken.

The Local Review Body then considered the Appointed Officer's reasons for refusal, namely:-

- (1) By virtue of its overall height, design and location, the proposed garage would have an overbearing and overshadowing impact on neighbouring properties at No.6 St Ternan's Road and 50 Newtonhill Road. This would result in an unacceptable loss of amenity for the residents of these neighbouring properties. The proposal would therefore fail to comply with the requirements of Policy P1 Layout, Siting and Design and Policy P3: Infill and Householder Development within Settlements (including home and work proposals) as contained within the Aberdeenshire Local Development Plan, 2017.

The Local Review Body considered that the relevant policies as contained within the Local Development Plan (2017) were:

- Policy P1: Layout, Siting and Design; and
- Policy P3: Infill and Householder Development within Settlements (including home and work proposals).

Other material considerations were Aberdeenshire Local Development Plan, 2012 policies, namely Policy 8: Layout, Siting and Design of New Development and SG LSD2: Layout, Siting and Design of New Development.

The Chair then asked the Local Review Body to consider whether there was now sufficient information before them in order for members to consider the review without further procedure. The Local Review Body were in agreement that they had sufficient information before them and proceeded to determine the Notice of Review.

The Local Review Body agreed that the main determining issues for the Notice of Review as presented before them was whether the proposals would have a detrimental impact on neighbouring properties resulting in an unacceptable loss of amenity.

Before entering into discussion on the merits of the Notice of Review, the Local Review Body sought clarification on the height of the proposed double garage which the Planning Adviser confirmed as being 5.8 metres to the ridge height and also the height of the previously approved double garage which was confirmed as 4.1 metres to the ridge height.

During discussion, the Local Review Body acknowledged that the proposal before them was effectively seeking permission for the same development that had originally been proposed

as part of the previous planning application prior to it being amended and the roof pitch being lowered in height.

While the Local Review Body acknowledged the aspiration of the applicant to accommodate a home working studio at the first floor level above the ground floor garage level, they were unanimous in their view that they had concerns that the proposal would not only have the potential to overshadow neighbouring properties and gardens, but that the overall height, scale and location of the double garage would all combine to result in an unacceptable loss of amenity to the adjoining neighbouring properties at No.6 St Ternan's Road and No.50 Newtonhill Road. The proposal would therefore fail to comply with Policy P1 and P3 of the Aberdeenshire Local Development Plan, 2017.

After due consideration, the Local Review body **agreed** to DISMISS the Notice of Review and Uphold the Appointed Officer's decision to Refuse Full Planning Permission for the reasons provided in the decision notice issued on 2 May, 2017.

9. LRB 389 – NOTICE OF REVIEW AGAINST CONDITIONS IMPOSED ON FULL PLANNING PERMISSION FOR ERECTION OF 1 WIND TURBINE (HUB HEIGHT, 23.4 METRES) TOTAL HEIGHT 33.471 METRES AT LOGIEFAIR, GAMRIE, BANFF, ABERDEENSHIRE, AB45 3HS – REFERENCE: APP/2016/2448

Local Review Body: Councillors F C P Hood (Chair), I Davidson, J Hutchison, J Ingram and A Ross.

There had been submitted a Notice of Review and supporting documents by the agent, which sought a review of the Appointed Officer's Conditions Imposed on Grant Full Planning Permission for the Erection of 1 Wind Turbine (Hub Height, 23.4 Metres) Total Height 33.471 Metres at Logiefair, Gamrie, Banff, Aberdeenshire, AB45 3HS – Reference: APP/2016/2448.

The Planning Adviser introduced the Notice of Review and advised the Local Review Body that in terms of review procedure, the applicant had requested a review of the documents as presented before them. The Planning Adviser then provided the Local Review Body with the background to the applicant's case, along with a series of slides and photomontages of the site and surrounding area.

The Planning Adviser then informed the Local Review Body that as the Notice of Review was seeking a review of specific conditions applied to a granted planning consent which the applicant felt were unreasonable for a small scale wind turbine, the Local Review Body must take into consideration whether the planning conditions imposed were (1) necessary; (2) relevant to planning and; (3) to the development to be permitted; (4) enforceable; (5) precise and (6) reasonable in all other aspects.

It was reported that the Planning and Legal Adviser had been made aware that the agent had met with the Environmental Health Service the previous day to discuss whether the wind turbine would be classified as a small scale or large scale wind turbine and it was understood that those discussions may result in a modification of the conditions but further clarification on that matter would be required.

The Planning Adviser ended his presentation by reporting that no valid representations had been received during the consultation period.

Further to consultations undertaken, it was reported that Aberdeen International Airport and Atkins had no objection to the proposal; Ministry of Defence (Defence Infrastructure Organisation) had no objection to the proposal, however, they had requested that they be kept informed when construction starts and ends, the maximum height of construction equipment

and the latitude and longitude of the turbine should permission be granted; NERL Safeguarding had confirmed that the proposal would not conflict with safeguarding criteria; Ofcom had identified no operators who have links in the immediate vicinity and the Joint Radio Company had no objection to the application; Environmental Health had no objection to the proposal subject to conditions relating to noise emission from the turbine and Roads Development had no objection.

It was reported that two further representations were received in response to the Notice of Review from Atkins and the Ministry of Defence (Defence Infrastructure Organisation) which reiterated the comments made in their original submissions.

The Local Review Body then considered the Appointed Officer's reasons for refusal, namely the conditions imposed, in particular the conditions imposed for which the appellant was now seeking a review :-

- (6) No works shall commence with the development hereby approved unless the developer has provided to the planning authority written details of the guarantee or other financial provision that is proposed to be put in place to cover all site restoration and aftercare liabilities at the end of the period for this permission. The developer shall also provide an independent confirmation by a chartered surveyor (whose appointment for this task has been approved by the planning authority) that the amount of the guarantee or financial provision so proposed is sufficient to meet the full estimated costs of dismantling, removal, disposal, site restoration, remediation aftercare liabilities and incidental work as well as associated professional costs. No works shall commence on site unless the proposed guarantee is satisfactory and the developer has confirmed in writing to the planning authority that the guarantee has been put in place. The guarantee or other financial provision must:
- (a) Be granted in favour of the Council as planning authority;
 - (b) Be from a bank or other institution which is of sound financial standing and capable of fulfilling the obligations under the guarantee;
 - (c) Either contain indexation provisions so that the specified amount of the guarantee shall be increased on each anniversary of the date of this permission by the same percentage increase in the General Index of Retail Prices (All items) exclusive of mortgage interest published by or on behalf of HM Government between the date of this permission and such relevant anniversary or be reviewable to ensure that the specified amount of the guarantee always covers the value of the site restoration and aftercare liabilities;
 - (d) Come into effect on or before the date of commencement of development, and expire no earlier than 12 months after the end of the aftercare period.

In the event that the guarantee becomes invalid for any reason, no operations shall be carried out in connection with the development hereby approved unless a replacement guarantee, completed in accordance with the terms of this condition has been submitted to and approved in writing by the planning authority.

Reason: To ensure financial security for the cost of the site reinstatement to the satisfaction of the planning authority is in place to provide that the redundant wind turbine and ancillary equipment is removed from the site, in the interests of the visual amenity of the area and environmental protection.

- (10) The rating level of noise immissions from the wind turbine forming the development (including the application of any tonal penalty) shall not exceed the values for the relevant integer wind speed set out in, or derived from, the table attached to this condition at any dwelling which is lawfully existing or has planning permission at the

date of this permission. Where the level in the table exceeds the lower fixed limit (35dB LA90, 10 min. for daytime and quiet daytime hours, and 38dB LA90, 10 min for night hours) and also exceeds the measured background noise level, LA90, 10 min by 5dB or more, the permitted level will be the lower fixed limit or the background noise level plus 5dB, whichever is the greater. The turbine shall be designed to permit individually controlled operation or shut down at specified wind speeds and directions in order to facilitate compliance with noise criteria and:

- (a) The development shall not be commissioned unless the developer has submitted a list of independent consultants who may undertake compliance measurements in accordance with this condition and has received written approval from the planning authority of that list. Amendments to the list of approved consultants shall be made only with the prior written approval of the planning authority.
- (b) The development shall not be commissioned unless details regarding the tonality assessment carried out on the turbine and a copy of the standard detailing the assessment method have been submitted to an approved in writing by the planning authority. Where the tone level above audibility is 2dB or greater than a tonal penalty in accordance with figure 16 in the document "The Assessment and Rating of Noise from Wind Farms" (ETSU-R-7) shall be applied to the permitted noise levels set out in this condition.
- (c) The developer shall continuously log power production, wind speed and wind direction. These data shall be retained for a period of not less than 24 months and shall include the average wind speed in metres per second for each 10 minute period. The measuring periods shall be set to commence on the hour and in 10 min increments thereafter. The wind speed shall be standardised to 10m height. The developer shall provide this information to the planning authority in an electronic spreadsheet (Microsoft Excel or other suitable format agreed with the planning authority) within 21 days of receipt in writing of a request to do so.
- (d) The developer shall employ an independent consultant approved by the planning authority to measure, at the developer's own expense, the level of noise emissions from the wind turbines within the first year of the operation of the turbines and every two years thereafter. The biennial noise emissions monitoring shall continue for the working life of the turbine unless the planning authority determines in writing that the period between noise monitoring surveys can be extended or that continued routine monitoring is no longer required. The development shall not be commissioned unless the procedure for measuring the noise emissions for the first year of operation has been approved in writing by the planning authority. Thereafter, all subsequent measurement procedures shall be agreed in writing with the planning authority prior to the commencement of each biennial monitoring survey. The developer shall provide a report detailing the results of the monitoring survey to the planning authority within 3 months of completion of the monitoring survey. Unless otherwise agreed in writing by the planning authority the turbine shall be switched off during part of the monitoring period to permit reliable background noise level data to be determined at the range of wind speeds from 4m/s to 12 m/s.
- (e) Within 21 days from receipt of a written request from the planning authority following a complaint to it from an occupant of a dwelling alleging noise disturbance at that dwelling, the developer shall, at their expense, employ an independent consultant approved by the planning authority to investigate the cause of the complaint. The investigation shall include measurement of the level of noise immissions from the wind turbine and measurement and analysis of amplitude

modulation effects and any tonal component at the complainant's property. The written request from the planning authority shall set out the dates, times and locations to which the complaint relates and any identified atmospheric conditions, including wind direction, and include a statement as to whether, in the opinion of the planning authority, the noise giving rise to the complaint contains or is likely to contain a tonal component and/or amplitude modulation effects. Where the property to which a complaint is related is not listed in Table 1 attached to this condition. The developer shall agree in writing with the planning authority the noise limits from those listed in the table that shall be adopted at the complainant's property for compliance checking purposes. The proposed noise limits shall be those limits specified for a listed location which is likely to experience the most similar background noise environment to that experienced at the complainant's property. The chosen noise limits for the complainant's property shall be submitted to and approved in writing by the planning authority before the noise immissions assessment is carried out.

- (f) The assessment of the rating level of noise immissions shall be undertaken in accordance with an assessment protocol that shall previously have been submitted to and approved in writing by the planning authority. The protocol shall include the proposed measurement location where measurements for compliance checking purposes shall be undertaken, where noise giving rise to the complaint contains, or is likely to contain amplitude modulation effects and/or tonal component, and also the range of meteorological and operation conditions (which shall include the range of wind speeds, wind directions, power generation and times of day) to determine the assessment of rating level of noise immissions. The proposed range of conditions shall be those which prevailed during times when the complainant alleges there was disturbance due to noise, having regard to the written request of the planning authority under paragraph (e), and such others as the independent consultant considers likely to result in a breach of the noise limits.
- (g) Within 3 months of the date of the written request of the planning authority made under paragraph (e), the developer shall provide to the planning authority the independent consultant's assessment of the rating level of noise immissions. Certificates of calibration of the instrumentation used to undertake the measurements shall be submitted to the planning authority with the independent consultant's assessment of the rating level of noise immissions.

The Local Review Body considered that the relevant policies as contained within the Local Development Plan (2017) were:

- Policy P1: Layout, Siting and Design
- Policy E1: Natural Heritage
- Policy E2: Landscape
- Policy HE1: Protecting Historic Buildings, Sites and Monuments
- Policy HE2: Protecting Historic and Cultural Areas
- Policy C2: Renewable Energy
- Policy RD1: Providing Suitable Services

Other material considerations were Strategic Landscape Capacity Assessment for Wind Energy in Aberdeenshire and APP/2012/0266 Erection of 1 No. Wind Turbine (Hub Height 32.4m) Total Height 46.9m (Approved 07/12/2012) which was not implemented and permission had lapsed.

The Chair then asked the Local Review Body to consider whether there was now sufficient information before them in order for members to consider the review without further procedure.

During discussion the Local Review Body agreed that they did not feel they had enough information to determine the Notice of Review, taking into account the ongoing discussions between the applicant and the Planning Service regarding the scale of the development and the model conditions which would be applied to a large/small scale wind turbine developments.

When considering Condition 6 and 10, the Local Review Body asked the Planning Adviser a number of questions relating to whether the wind turbine would be considered as a small scale or large scale wind turbine taking into account the Aberdeenshire Planning Advice 2/2014 – Wind Turbines – Assessing Noise from Wind Turbine Developments.

The Planning Adviser noted that the planning advice would suggest that a small turbine would be considered to be a wind turbine of 50kW or less with a rotor diameter of 16m and the application before them was under 50 kW but it had a rotor diameter of 18.9m.

Further questions related to whether model condition (6) would only apply to large wind turbines and the Planning Adviser noted that there were no set guidelines on the application of that model condition, however, there was a general assumption that condition (6) would only apply to small scale turbines and turbines over 30 metres would require a restoration bond.

The Local Review Body took cognisance of the Scottish Government Circulate 4/1998 – The Use of Conditions in Planning Permissions which attaches great importance for the control and regulation of developments which does not place unreasonable or unjustified burdens on applicants. The Local Review Body were in agreement that the application of conditions would come down to whether it was reasonable, fair and practicable to enable the development to proceed.

The Local Review Body agreed that as there was some dubiety regarding whether the wind turbine would be considered as 'small' or 'large' that it would be helpful to get some advice from the Environmental Health Service and the Planning Service on the application of those Standard Conditions.

After due consideration, the Local Review Body **agreed** to DEFER consideration of the Notice of Review, to allow them to follow further procedure by way of:

- (1) To ask the Environmental Health Service to determine whether the wind turbine would be considered as 'small' or 'large' and as such whether it would be reasonable to remove Condition 10 and in doing so, suggest an alternative condition to replace Condition 10.
- (2) To ask the Planning Service to consider the application of Standard Condition 6 and confirm how this is applied across the authority taking into account similar sized wind turbine developments.