



LOCAL REVIEW BODY

LOCAL REVIEW BODY SITE VISITS AND MEETING

FRIDAY 26 JANUARY, 2018, at 10.00 A.M. AND THEN 11.00 A.M.

Your attendance is requested at LOCAL REVIEW BODY SITE INSPECTIONS to be undertaken on FRIDAY 26 JANUARY, 2018 starting at **10.00 a.m.**

Members/Officers are requested to meet at Kirkton House, Skene, Westhill, AB32 6XT for **LRB 396**, to undertake an "unaccompanied" site inspection to the application site and surrounding area.

An itinerary for the day is attached.

The site inspection will be followed by a formal meeting of the LOCAL REVIEW BODY to be held in Woodhill House, Westburn Road, Aberdeen, AB16 5GB at 11.00 a.m.

8 January 2018

Director of Business Services

To: Councillors F C P Hood (Chair), I Davidson, J Hutchison, J Ingram and A Ross

Contact Person:-

Frances Brown

Tel:- 01467 532862

Email: Frances.brown@aberdeenshire.gov.uk

B U S I N E S S

1. Sederunt, Declaration of Members' Interests
2. Public Sector Equality Duty
3. **LRB 396** – Notice of Review Against Refusal Full Planning Permission for Conversion of Care Home to Form 17 Residential Flats at Kirkton House, Skene, Westhill, Aberdeenshire, AB32 6XT – Reference: APP/2016/2830

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

- (i) Additional Information Requested from the Roads Service on the ownership and maintenance of the existing footpath
(Pages 5-7)
- (ii) Agent's Response to Additional Information Requested 2017
(Pages 8-10)

Members/Officers are reminded that they should bring the agenda papers which were issued to them for the Local Review Body meeting of 24 November, 2017 where this Notice of Review was initially considered.

PUBLIC SECTOR EQUALITY DUTY – GUIDANCE FOR MEMBERS

What is the duty?

In making decisions on the attached reports, Members are reminded of their legal duty under section 149 of the Equality Act 2010 to have due regard to the need to:-

- (i) eliminate discrimination, harassment and victimisation;
- (ii) advance equality of opportunity between those who share a protected characteristic and persons who do not share it; and
- (iii) foster good relations between those who share a protected characteristic and persons who do not share it.

The “protected characteristics” under the legislation are: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; and (in relation to point (i) above only) marriage and civil partnership.

How can Members discharge the duty?

To ‘have due regard’ means that in making decisions, Members must consciously consider the need to do the three things set out above. This requires a conscious approach and state of mind. The duty must influence the final decision.

However, it is not a duty to achieve a particular result (e.g. to eliminate unlawful racial discrimination or to promote good relations between persons of different racial groups). It is a duty to have due regard to the need to achieve these goals.

How much regard is ‘due’ will depend upon the circumstances and in particular on the relevance of the needs to the decision in question. The greater the relevance and potential impact that a decision may have on people with protected characteristics, the higher the regard required by the duty.

What does this mean for Committee/Full Council decisions?

Members are directed to the section in reports headed ‘Equalities, Staffing and Financial Implications’. This will indicate whether or not an Equality Impact Assessment (EIA) has been carried out as part of the development of the proposals and, if so, what the outcome of that assessment is.

An EIA will be appended to a report where it is likely that the action recommended in the report could have a differential impact (either positive or negative) upon people from different protected groups. The report author will have assessed whether or not an EIA is required. If one is not required, the report author will explain why that is.

Where an EIA is provided, Members should consider its contents and take those into account when reaching their decision. Members should also be satisfied that the assessment is sufficiently robust and that they have enough of an understanding of the issues to be able to discharge their legal duty satisfactorily.

For more detailed guidance please refer to the following link:-
http://www.equalityhumanrights.com/uploaded_files/EqualityAct/psed_technical_guidance_scotland.doc

ITINERARY

Site Visits – FRIDAY 26 JANUARY, 2018

- 10.00 Members/Officers to meet at the application site, at Kirkton House, Skene, Westhill, AB32 6XT
- 10.00 – 10.30 **LRB 396** – Members/Officer to undertake “unaccompanied” site inspections to the application site and surrounding area.
- 10.30 – 11.00 Travel to Meeting Venue, Woodhill House, Westburn Road, Aberdeen, AB16 5GB
- 11.00 Convene Formal Meeting to determine LRB 396

RE: LRB 396 - Notice of Review - APP/2016/2830 - Request for Additional Information

11 December 2017

10:40

Subject	RE: LRB 396 - Notice of Review - APP/2016/2830 - Request for Additional Information
From	Martin Ingram
To	Frances Brown; Mark Myles
Sent	30 November 2017 11:33

Hello Frances,

Short of undertaking an ownership search via the Registers of Scotland I don't think we could take this any further. I think the response below would be sufficient.

Kind regards

Martin

Martin Ingram
Senior Solicitor (Advice & Governance)
Legal & Governance
Corporate Services
Aberdeenshire Council
Woodhill House
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As part of our continuing commitment to improving the service we offer, Legal & Governance would appreciate feedback on the service you receive from us. Please help us by clicking on the following link and answering the questions on the survey

form. <https://www.surveymonkey.com/s/LGCustomerSurvey>

From: Frances Brown

Sent: 28 November 2017 19:54

To: Mark Myles <mark.myles@aberdeenshire.gov.uk>; Martin Ingram <martin.ingram@aberdeenshire.gov.uk>

Subject: FW: LRB 396 - Notice of Review - APP/2016/2830 - Request for Additional Information

Hello both,

I have received a response back from the Roads Service for LRB 396, see below.

Do you know if there is anyone else I could contact regarding ownership of the land or do you think this response will be sufficient.

Kind regards

Frances

Frances Brown / Committee Officer
Business Services / Legal & Governance
Aberdeenshire Council / Woodhill House
Westburn Road / Aberdeen / AB16 5GB

Tel: 01467 532862 (internal 7612862)

Mobile: 07766361714

Email: frances.brown@aberdeenshire.gov.uk

Local Review Body Email: localreviewbodysubmissions@aberdeenshire.gov.uk

Website: <http://www.aberdeenshire.gov.uk/>

<https://twitter.com/aberdeenshire>

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From: Graeme Steel

Sent: 28 November 2017 12:13

To: Frances Brown <frances.brown@aberdeenshire.gov.uk>; Arceli Jones

<arceli.jones@aberdeenshire.gov.uk>; Esther McDonald <esther.mcdonald@aberdeenshire.gov.uk>

Subject: RE: LRB 396 - Notice of Review - APP/2016/2830 - Request for Additional Information

Good Afternoon Frances

In response to the queries raised,

I am unable to confirm the ownership of the land in question however, Aberdeenshire have control over and maintain all of the grass verging between the boundary wall and edge of carriageway in the section between Mason Lodge and the access to Kirkton House/Pitcairn Lodge.

For further clarification, the existing footway from Westhill/Elrick terminates at Mason Lodge. There is currently no constructed footpath extending towards Kirkton House instead, the existing grass verge is utilised by pedestrians.

Is the above information sufficient for your purposes or do you require a more formal response.

Regards

Graeme Steel I.Eng AMICE
Principal Engineer
Roads Development (Garioch and Formartine)

Infrastructure Services
Gordon House
Blackhall Road
Inverurie
AB51 3WA

Telephone : 01467 537568

From: Frances Brown

Sent: 27 November 2017 11:57

To: Graeme Steel <graeme.steel@aberdeenshire.gov.uk>; Arceli Jones <arceli.jones@aberdeenshire.gov.uk>; Esther McDonald <esther.mcdonald@aberdeenshire.gov.uk>

Subject: LRB 396 - Notice of Review - APP/2016/2830 - Request for Additional Information

Dear Roads Development,

Please find attached a letter, sent on behalf of the Local Review Body, which seeks additional information for this Notice of Review in advance of a site visit taking place.

I would appreciate if you could consider the questions asked and let me know if you can answer these questions.

Kind regards

Frances

Frances Brown / Committee Officer
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Westburn Road / Aberdeen / AB16 5GB

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Website: <http://www.aberdeenshire.gov.uk/>

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Frances Brown
Business Services
Woodhill House
Westburn Road
Aberdeen
AB16 5GB

27th December 2017

Project: Kirkton House Conversion Path Appeal
Ref: LRB 396 FB/fb

Dear Frances Brown

The Local Review Body met on the 24th November to consider our submission for review. The Local Review Body made a request for additional information from the Roads Department 1. Who owns the proposed land for the footpath 2. Who is currently responsible and maintains it.

- 1.0 1. In response to who owns the proposed land for the footpath the roads department have advised that they do not know who owns the land but they have control over it. Obviously we are disappointed with this response given that the LRB had requested this information and awarded additional time to investigate further. Given that my Client does not own the land and ownership is not known then a condition cannot be imposed ' If the land is outside that site, a condition requiring the carrying out of the works on land cannot be imposed unless the authority are satisfied that the applicant has sufficient control over the land to enable those works to be carried out' Circular 4/1998 Annex A The Use of Conditions in Planning Permissions Section 36.
- 1.1 2. The Roads Department have confirmed that they 'have control over the land' and that they maintain this therefor they have the capacity to carry out the proposed works



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2.0 To reiterate our reasoning for appeal are as follows:-

2.1 Cost

The site has particular challenges in relation to the construction cost of the listed building element and therefore weight requires to be given to the support for the retention and re-use of this. The alternative is likely to be the deterioration of the building. The costs of providing a 900m² path will further stretch the projects deliverability. Local Authorities should consider each site individually taking into account site issues and strategic priorities which in this case should be the retention of Kirkton House.

2.2 Connectivity

Kirkton House forms part of the settlement of Kirkton of Skene and therefore connectivity should be reinstated to support local amenities and provide safe passage to the local school. My client is in full support of path upgrades which will strengthen the link between Kirkton House and Kirkton of Skene. Upgrades to the existing path between Kirkton House and Elrick cannot be attributed to residents of Kirkton House, instead this path is currently utilized by people who do not reside at Kirkton House. The Kirkton House development should not be seen as an opportunity to create a path network for residents out with Kirkton House. The provision of two means of connectivity is an overburden on the development.

2.3 Necessity

Kirkton House when in operation as a Care Home would have had significantly more vehicular/pedestrian movements than the proposed development. My Client is supportive of upgrades (access road/path to Kirkton of Skene) that will provide safe access for residents. In accordance with circular 4/1998 and the six test for conditions The proposed path is not necessary for this development.



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2.4 Conclusion

The planning application approved is for the conversion of a listed building which will provide a new lease of life and safeguard a piece of Aberdeenshire built heritage for years to come. There is an existing currently managed path that if required can be upgraded by ACC/others. Given the complexity of the listed building conversion, associated works and size of development it is unreasonable for my client to absorb these costs.

Yours Sincerely

Kerr Byers

Partner

Dab architecture llp