

## ABERDEENSHIRE COUNCIL

### LOCAL REVIEW BODY

STEWART'S HALL, HUNTLY, FRIDAY 17 NOVEMBER, 2017

**Present:** Councillors P K Johnston (Chair), R Cassie, F C P Hood, J Hutchison, J Ingram and A Ross

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

#### 1. DECLARATION OF MEMBERS' INTERESTS

In respect of declaration of members' interests as required by the Code of Conduct for members no declarations of members' interests were intimated.

#### 2. 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.

#### RECONVENED REVIEWS

#### **3. LRB 382 – NOTICE OF REVIEW AGAINST REFUSAL OF FULL PLANNING PERMISSION FOR ERECTION OF 1 WIND TURBINE (HUB HEIGHT, 55.5M, 79.6M TO BLADE TIP) SUBSTATION AND ASSOCIATED INFRASTRUCTURE AT LAND AT CRIMOND CAMP, CRIMOND, FRASERBURGH – REFERENCE: APP/2016/3254**

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

Reference was made to the Minute of the Local Review Body meeting of 25 August, 2017 (Item 8), where the Local Review Body agreed to defer consideration of the Notice of Review to allow them to follow further procedure, namely:-

- (1) To seek additional information from Aberdeenshire Council Environmental Health Service, asking them to consider the historical noise survey provided by the applicant, (dated 2012), and to request that they confirm whether updated information would be required when considering noise limits and as part of that response to include an assessment of shadow flicker which may have a detrimental impact on the amenity of the surrounding properties;

- (2) To request that the Aberdeenshire Council Planning Service provide a visual diagram which plots the location of all existing, consented and constructed wind turbines in the surrounding area to the proposed development; and
- (3) To undertake an 'unaccompanied' site inspection to the application site and surrounding area. Date to be arranged after all information requested has been sourced and all parties have been afforded the opportunity to comment on that additional information.

It was reported that the site inspection had taken place earlier that morning (17 November, 2017) and that the additional information sought had been circulated as Page 6 -14 of the agenda papers, with the agent's response to that information presented on Pages 16 -28 of the agenda papers.

The Local Review Body then resumed consideration of the Notice of Review which sought a review of the Appointed Officer's decision to Refuse Full Planning Permission for the Erection of 1 Wind Turbine (Hub Height, 55.5m, 79.6m to Blade Tip) Substation and Associated Infrastructure at Land at Crimond Camp, Crimond, Fraserburgh – Reference: APP/2016/3254.

The Planning Adviser introduced the Notice of Review and provided the Local Review Body with an overview of the application as presented at the initial meeting of 25 August, 2017 and a recap of the Appointed Officer's reasons for refusal, namely:-

- (1) The proposal is contrary to Policy 3 Development in the Countryside and SG Rural Development 2: Wind farms and medium to large wind turbines as the proposal has failed to demonstrate that it would not significantly impede or compromise the safe and effective use of any defence assets (including radar or air traffic control systems of the Ministry of Defence). An objection has been received from the Ministry of Defence that the turbine will be 16.1km from, detectable by, and will cause unacceptable interference to the AD radar at RAF Buchan.
- (2) The proposal is contrary to Policy 3 Development in the countryside and SG Rural Development 2: Wind farms and medium to large wind turbines as the proposal has failed to demonstrate that the proposal would not have a significant adverse impact on the amenity of adjacent dwellings by virtue of the noise impact. The applicant has been unable to demonstrate that the noise impact from the proposed development is capable of meeting appropriately derived noise limits at all significant noise sensitive receptors, including North Mosstown, Moss-side and the settlement development boundary. Furthermore, it is considered that the development is unlikely to comply with background derived noise limits at Moss-side. If approved, the proposal would impact on the settlement development boundary and affect the delivery of proposed developments, including residential development adjacent the Reisk, creating a cordon sanitaire. The proposal is therefore also considered contrary to Policy 8 Layout, siting and design of new development and SG LSD2: Layout, siting and design of new development.
- (3) The proposal is contrary to Policy 3 Development in the countryside and SG Rural Development 2: Wind farms and medium to large wind turbines as it is considered that the turbine, in conjunction with consented turbine applications, would result in an adverse cumulative impact to the detriment of the character and appearance of the local landscape. It would appear discordant with those turbines which have already been approved. Furthermore, the proximity of the turbine to the settlement of Crimond, as defined in the Local Development, the adjacent tree belt and the A90 are such, that it is considered that the turbine would appear as an overwhelming and dominant

structure in its own right. The proposal is therefore also considered contrary to Policy 12 Landscape conservation and SG Landscape 1: Landscape character.

- (4) The proposal is contrary to Policy 3 Development in the countryside and SG Rural Development 2: Wind farms and medium to large wind turbines as the proposal will not be set back from the public road by a minimum of 79.6 metres, which is considered to adversely affect public safety, also contrary to Scottish Government best practice advice.
- (5) The proposed turbine fails to demonstrate that it would not have an adverse impact on neighbouring properties by way of shadow flicker, contrary to Policy 3 Development in the countryside and SG Rural Development 2: Wind farms and medium to large wind turbines, Council Planning Advice, and Scottish Government Best Practice.
- (6) Submitted plans and details conflict which unfortunately raises concerns over accuracy:
  - (a) Lack of information on details of the proposed sub-station, which prevents the Planning Authority from considering the visual impact;
  - (b) The site plans appear to be inaccurate, and it is unclear exactly where the turbine is proposed as the foundation base is not clearly shown;
  - (c) Conflicts between the site plans and the submitted supporting statement, such as the set back from the public road; and
  - (d) The visualisations contain some inaccuracies.

The submitted application raises concerns over the exact positioning of the proposed wind turbine to be clearly established.

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 RD1: Providing Suitable Services;
- Policy C2: Renewable Energy;
- Policy HE1: Protecting Historic Buildings, Sites and Monuments; and
- Policy HE2: Protecting Historic and Cultural Areas.

Other material considerations were Scottish Planning Policy; Aberdeen City and Shire Strategic Development Plan 2014; Planning Advice 1//2014: Strategic Landscape Capacity Assessment for Wind Energy in Aberdeenshire, March 2014; Planning Advice 2/2014: Wind Turbines – Assessing Noise from Wind Turbine Developments, February 2015; 2/2012: Wind Turbines – Distance and Noise Calculations; 2/2005: Use of Wind Energy in Aberdeenshire Guidance for Assessing Wind Energy Developments; Scottish Government – Onshore Wind Turbines; SEPA – Standing Advice for Small Scale Wind Farms below 10mw not subject to formal Environmental Impact Assessment; and SNH – Assessing the impact of Small Scale Wind Energy Proposals on the Natural Heritage (2012).

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 general policy presumption in favour of renewable

energy development was outweighed by potential adverse impacts on safety, amenity and cumulative visual impact.

During discussion the Local Review Body were in agreement that the site inspection had been extremely beneficial as it had enabled them to gain a greater appreciation of the potential impacts that may arise from the proposed wind turbine development; to consider the setting within the wider landscape; the relationship to existing and consented wind turbine developments in the surrounding area and the relationship of the site and proximity to the nearest residential properties and also the settlement of Crimond.

The Local Review Body gave consideration to each of the reasons for refusal and also the applicant's case and supporting documents as contained within the Notice of Review, all of which had been summarised by the Planning Adviser during his presentation.

When considering the first reason for refusal which related to the outstanding objection submitted by the Ministry Of Defence (MOD) in respect of the potential interference to the radar at RAF Buchan, the Local Review Body agreed that if all other matters could be addressed or suitably conditioned, then the council's normal approach when dealing with that type of objection would be to allow the applicant/agent a period of 6 months to negotiate a resolution directly with the MOD.

When considering the proposed turbines location, position and the height and the relationship and proximity to neighbouring properties; the nearby village of Crimond and the A90, and notwithstanding the lack of any apparent local objection to the proposal, the Local Review Body agreed that the proposal would in their view result in an adverse cumulative impact, which would be detrimental to the character and appearance of the landscape and would appear discordant with other already built and approved wind turbines. The Local Review Body were minded that the turbine would appear as an overwhelming and dominant structure in its own right and would therefore be contrary to Policy C2: Renewable Energy of the Aberdeenshire Local Development Plan 2017.

When considering all of the representations which had been submitted in response to the proposed development, the Local Review Body agreed that the applicant/agent had not in their view demonstrated that matters relating to potential noise impacts and shadow flicker had been addressed and as such they were minded that the development would have a significant adverse impact on the amenity of nearby dwellings and therefore the proposal would be deemed to be contrary to Policies C2: Renewable Energy and P1: Layout, Siting and Design of the Aberdeenshire Local Development Plan 2017.

When considering the siting of the turbine and its proximity to the public road, the Local Review Body acknowledged that the agent had submitted a revised plan as part of their Notice of Review which would suggest that the turbine would be located 83.7 metres from the road. However, the Local Review Body also took cognisance of the updated site plan as presented on page 72 of the agenda pack, which would suggest that the turbine would be located closer to the road than that shown on the originally refused drawing (page 110). Having taken that information into account, the Local Review Body were in agreement that proposal would, in their view, adversely affect public safety which would be contrary to Policy C2: Renewable Energy of the Aberdeenshire Local Development Plan 2017.

Finally, while the Local Review Body acknowledged that matters raised regarding certain other conflicts and inaccuracies within the submitted plans could either be resolved through the submission of amended or revised plans or by conditions on any approval, the overall consensus was to dismiss the Notice of Review and as such it was agreed that this should also be included as a reason for refusal.

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 contained in the Decision Notice dated 29 March, 2017, subject to the planning policy references being amended to reflect those contained within the Aberdeenshire Local Development Plan 2017.

**4. LRB 383 – NOTICE OF REVIEW AGAINST REFUSAL OF PLANNING PERMISSION IN PRINCIPLE FOR FORMATION OF BUSINESS PARK TO INCLUDE CLASS 2 (FINANCIAL, PROFESSIONAL AND OTHER SERVICES) AND CLASS 4 (BUSINESS) USES AT THE WARD, HUNTLY, ABERDEENSHIRE – REFERENCE: APP/2017/0783**

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

Reference was made to the Minute of the Local Review Body meeting of 25 August, 2017 (Item 9), where the Local Review Body agreed to defer consideration of the Notice of Review to allow them to follow further procedure, namely:-

- (1) To accept the submission of a late statement by the applicant/agent and to consult with all parties on that submission;
- (2) To request that the Planning Service provide details of Planning Application APP/2015/2892 (Decision Notice, Report and Handling and Site Plans);
- (3) To undertake an unaccompanied site inspection to the application site (date to be arranged after the additional information had been submitted and all parties had been afforded the opportunity to comment on that information).

It was reported that the site inspection had taken place earlier that morning (17 November, 2017) and the additional information sought had been circulated as Pages 34 – 54 of the agenda papers, and the agent had responded to that information as presented on Pages 55 - 59 of the agenda papers.

The Local Review Body then resumed consideration of the Notice of Review which sought a review of the Appointed Officer's decision to Refuse Planning Permission in Principle for Formation of Business Park to Include Class 2 (Financial, Professional and Other Services) and Class 4 (Business) Uses at the Ward, Huntly, Aberdeenshire – Reference: APP/2017/0783.

The Planning Adviser introduced the Notice of Review and provided the Local Review Body with an overview of the application as presented at the initial meeting of 25 August, 2017 and a recap of the Appointed Officer's reasons for refusal, namely:-

- (1) A proposal of this nature could significantly prejudice the ability of the newly adopted Local Development Plan to be delivered; the proposal could impact on the ability of safeguarded and allocated sites in the Huntly Settlement Statement to come forward and fulfil their potential, as set out by the strategic approach to allocating appropriate sites set out in the Aberdeen City and Shire Strategic Development Plan through its identification of the Strategic Growth Corridor.
- (2) The proposed business park, covering a 1.93Ha site with potential to employ a relatively high number of employees, far exceeds the policy definition of small scale development, and notwithstanding the excessive development proposed, the proposal fails to comply with any of the acceptance criteria set out in Policy R2 Housing and

employment development elsewhere in the countryside of the Aberdeenshire Local Development Plan 2017.

- (3) The proposed business park, would be located in the countryside outwith a designation town centre thus contravening the requirement of Policy B2 Town Centres and office development of the Aberdeenshire Local Development Plan 2017, which directs uses which a lot of people will visit, including office developments, to defined town centres.
- (4) A drainage impact assessment has not been provided and therefore it has not been adequately demonstrated that the site can be satisfactorily drained in relation to foul and surface water, and the proposal therefore has not demonstrated compliance with Policy RD1 Providing suitable services 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 B2: Town Centres and Office Development;
- Policy R2: Housing and Employment Development Elsewhere in the Countryside;
- Policy P1: Layout, siting and design;
- Policy E2: Landscape;
- Policy RD1: Providing Suitable Services; and
- Policy RD2: Developers Obligations

Other material considerations were the 2016 Employment Land Audit which identifies a plentiful supply of established employment land in the strategic growth corridor.

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 principle of business development could be considered to be acceptable on that site.

Before proceeding to the discussion, the Planning Adviser, in response to questions raised, provided clarification on the history of the previous planning permission covering part of the site. The Planning Adviser reported that approval had been based on the fact that the development was classified as small scale, employing less than 5 people and had been supported under the rural employment policy that had been set out in the previous Aberdeenshire Local Development Plan 2012. In addition, the commercial wood logging shed located to the south east of the site, (outwith the applicant's ownership), which had been identified during the site inspection, had been approved on the same basis under planning application APP/2014/4118.

During discussion, the Local Review Body took cognisance of the fact that the site had not been subject of a development bid during the development plan review process. When taking into account the land located immediately to the north west, west and south west which had been allocated in the Aberdeenshire Local Development Plan 2017 for business development and taking into account that separate business developments which had already been approved and implemented to the north west corner of the site and immediately adjacent to the south east corner of the site, they took the view that it was very clear that employment land use potential would complement the existing uses already established in the area.

The Local Review Body then acknowledged that the site was recognised as being in a prominent location adjacent to the A96 and A97 and as such would be able to support development on an identified strategic growth corridor as set out in the Strategic Development Plan.

The Local Review Body acknowledged that the proposals were contrary to the stated policies of the Aberdeenshire Local Development Plan 2017, however, they took the view that the public benefits for employment potential at the site; on a strategic growth corridor; where the particular circumstances of the site and the relationship to adjacent business development, as well as the particular layout of the site, was in their view sufficient to warrant a departure from Policy B2 and R2 of the Aberdeenshire Local Development Plan 2017.

While the Local Review Body were in general agreement to uphold the Notice of Review, alternative views were expressed on whether the proposal should be allowed for both Class 2 and Class 4 uses or whether it should be restricted solely to Class 4 use.

Those who supported Class 2 use only were minded that as the proposal had not been subject to the Local Development Plan process, and the case had not been fully made to allow for Class 2 use at this site, then a condition should be applied restricting the approval to Class 4 uses only.

Those who supported the use of Class 2 and Class 4 were minded that if the proposal was being accepted as a departure from the Aberdeenshire Local Development Plan 2017 then it should be for both Class 2 and Class 4 uses to ensure maximum flexibility for employment generation and to support indigenous businesses.

Thereafter, Councillor Ross, seconded by Councillor Ingram, moved to include Class 2, (Town Centres and Office Development) and Class 4, (Industrial/Business Development) in the Reasons for Granted Planning Permission.

Councillor Johnston, seconded by Councillor Cassie, moved as an amendment to restrict permission to Class 4 (Industrial/Business) use only.

The members of the Local Review Body then voted:-

For the motion (4) Councillors Hood, Hutchison, Ingram and Ross

For the amendment (2) Councillors Cassie and Johnston

The motion was carried and the Local Review Body agreed to include Class 2 and Class 4 use in the granted planning consent.

After due consideration, the Local Review Body agreed to UPHOLD the Notice of Review and Reverse the Decision reviewed by it and GRANT Planning Permission in Principle, subject to Reason 3 being amended to include Class 2 and Class 4 use and appropriate conditions which should include layout design and landscaping.

**5. LRB 384 – NOTICE OF REVIEW AGAINST REFUSAL OF PLANNING PERMISSION IN PRINCIPLE FOR ERECTION OF 4 DWELLINGHOUSES, DISTRICT BIOMASS BUILDING AND ASSOCIATED INFRASTRUCTURE AT LAND AT THE WARD, HUNTLY, ABERDEENSHIRE – REFERENCE: APP/2017/0784**

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

Reference was made to the Minute of the Local Review Body meeting of 25 August, 2017 (Item 10), where the Local Review Body agreed to defer consideration of the Notice of Review to allow them to follow further procedure, namely:-

- (1) To request that the Planning Service provide a site plan route for the electricity pylons which run through the application site;
- (2) To request that the Planning Service provide a history of the 8 houses to the South of the application site and indicate whether there are any other applications/pre application discussions on the adjacent site which may take up the 20% addition to a cohesive group;
- (3) To ask the Planning Service provide the planning policy position for developments which would be sited within close proximity to electricity pylons; and
- (4) To ask the Planning Service to provide the planning policy position on houses which would gain access to their properties through an industrial site.

It was reported that the site inspection had taken place earlier that morning (17 November, 2017) and the additional information sought had been circulated as Pages 60 – 67 of the agenda papers, and the agent had responded to that information as presented on Pages 68 – 72 of the agenda papers.

The Local Review Body then resumed consideration of the Notice of Review which sought a review of the Appointed Officer's decision to Refuse Planning Permission in Principle for Erection of 4 Dwellinghouses, District Biomass Building and Associated Infrastructure at Land at the Ward, Huntly, Aberdeenshire – Reference: APP/2017/0784.

The Planning Adviser introduced the Notice of Review and provided the Local Review Body with an overview of the application as presented at the initial meeting of 25 August, 2017 and a recap of the Appointed Officer's reasons for refusal, namely:-

- (1) The proposed housing is not considered to be an appropriate addition to an existing cohesive group. The proposed dwellings would exceed the additional 20%/2 house limit on the growth of a cohesive group during the plan period. The proposal does not present any other opportunity for residential development outlined within relevant policy, and is therefore contrary to Policy R2 Housing and employment development elsewhere in the countryside of the Aberdeenshire Local Development Plan (2017).
- (2) In terms of appropriateness of the site for housing, notwithstanding the principal policy consideration under reason for refusal 1, the Planning Service have concerns about the potential amenity that could be offered to dwellings at this location due to existing, allocated and proposed uses of industrial nature, on adjacent land. The housing would therefore not present a safe and pleasant atmosphere that encourages activity and privacy, providing security and protecting amenity, and therefore fails to comply with



Policy P1 Layout, Siting and Design 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 R2: Housing and Employment Development Elsewhere in the Countryside;
- Policy P1: Layout, siting and design;
- Policy E2: Landscape;
- Policy RD1: Providing Suitable Services; and
- Policy RD2: Developers Obligations

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, the Rural Housing Market Area (RHMA) what would normally apply to the erection of new development in the countryside.

The Local Review Body noted that the site lies close to, but outwith, the Huntly settlement boundary and as such they agreed that the proposal would relate to development in the countryside. The Local Review Body highlighted that it was clear from the applicant's submission; the Appointed Officer's Report of Handling and from the information gathered from the site inspection that the only category that the proposal could be assessed against would be whether the proposal was considered to be an appropriate addition to an existing cluster or group of at least 5 houses under the terms of Policy R2.

During discussion, the Local Review Body highlighted that the Aberdeenshire Local Development Plan outlined that no more than an additional 20% growth of the cluster, up to a maximum of 2 new homes, can be permitted under Policy R2 during the plan period. It was noted that an existing cluster of 8 properties were located to the south, but were served from a different access road and in any event the policy would only allow for the development of 1 additional home as part of the cluster within this plan period. The Local Review Body unanimously agreed that the proposal to erect 4 houses did not comply with Policy R2 of the Aberdeenshire Local Development Plan 2017.

The Local Review Body then noted the position and location of the overhead electricity power line that crossed the proposed application site and agreed that while there was no specific policy guidance on building dwellinghouses near overhead power lines, they took the view that it was not good practice to locate residential properties in such close proximity to that type of infrastructure.

When also considering the other surrounding land uses, it was noted that the proposed housing would be sited in close proximity to a business park as well as industrial and business units on other allocated sites to the west. The Local Review Body highlighted that as the area was predominantly industrial/business in character and by virtue of the location of the existing and proposed uses around the site, the proposed dwellings would not be able to provide an appropriate level of amenity and privacy for future residents which they agreed that it would be contrary to Policy P1 Layout, Siting and Design 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 Planning Permission in Principle for the reasons contained in the Decision Notice dated 30 May, 2017.

Councillor Presiding over meeting

FERGUS HODS

Print Name

Signature

26/01/2018

Date