

ABERDEENSHIRE COUNCIL

LOCAL REVIEW BODY

WOODHILL HOUSE, ABERDEEN, FRIDAY 26 JANUARY, 2018

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

Apologies: Councillor P K Johnston

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

OPENING COMMENTS BY THE CHAIR

The Chair, in advance of the start of the meeting, advised that as he had not taken part in Agenda Item 7 (LRB 396), Councillor Cassie would act as Chair for that particular item and he would withdraw from proceedings when that review was being determined.

1. 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 and Councillor Hutchison declared an interest in LRB 402 and LRB 404 as the application sites were within their wards. Councillor Cassie and Councillor Hutchison both intimated that they would withdraw from proceedings when those reviews were being considered.

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.

3. MINUTE OF THE LOCAL REVIEW BODY MEETING OF 17 NOVEMBER, 2017

The Local Review Body had before them and **approved** as a correct record, the Minute of the Local Review Body meeting of 17 November, 2017 and this was duly signed in public.

4. MINUTE OF THE LOCAL REVIEW BODY MEETING OF 24 NOVEMBER, 2017

The Local Review Body had before them and **approved** as a correct record, the Minute of the Local Review Body meeting of 24 November, 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).

RECONVENED REVIEWS

6. LRB 389 – NOTICE OF REVIEW AGAINST REFUSAL OF 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

Reference was made to the Minute of the Local Review Body meeting of 29 September, 2017 (Item 9), where the Local Review Body agreed to defer consideration of the Notice of Review to allow them to follow further procedure by way of:-

- (1) Asking 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) Asking 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.

The Local Review Body acknowledged that the Planning Service had submitted a response to both questions as presented on Pages 31-34 of the agenda pack, and that response had confirmed that the planning service were content that the wind turbine would be classified as 'small scale' in terms of noise, and as such, they had conceded to the removal of Condition 6 (the requirement for a decommissioning bond), and Condition 10 should be amended and replaced with Condition 11.

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 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 provided the Local Review Body with an overview of the application as presented at the initial meeting of 29 September, 2017 and a recap of the conditions placed on the granted planning consent by the Appointed Officer, namely:-

- (6) No works in connection with the development hereby approved shall commence 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 of 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 written confirmation has been given by the planning authority that 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, 10min. for daytime and quiet daytime hours, and 38dB LA90, 10min for night hours) and also exceeds the measured background noise level, LA90, 10min by 5dB or more, the permitted level will be the lower fixed limit or the background noise level plus 5 dB, 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 and 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-97) 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 minute 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 12m/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, whether noise giving rise to the complaint contains or is likely to contain amplitude modulation effects and/or a tonal component, and also the range of meteorological and operational 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.

Note: for all properties not specified above the predicted noise from the turbine will be calculated using the propagation model in ISO 9613-Part 2 incorporating the recommendations contained in the Institute of Acoustics Good Practice Guide dated May 2013. *The applicant has made a claim of financial interest at the property Logiefair and limits are set based on the occupants having a financial interest in the wind turbine development. For the avoidance of doubt a "financial interest" is defined as owning the land on which the turbines are to be sited, leasing the land on a long (greater than 20 year) lease, or being a shareholder or owner of the development company. Where property is owned by someone with a financial interest in the development, but is leased to a third party on a lease longer than 1 year, the occupiers of the property do not have any legal interest in the site and may be protected against amenity intrusions. In this instance the applicable noise limits will be based on the predicted noise from the turbine, calculated using the propagation model in ISO 9613-Part 2 incorporating the recommendations contained in the Institute of Acoustics Good Practice Guide dated May 2013.

Reason: To ensure that noise limits are not exceeded and to enable prompt investigation of complaints in order to protect nearby residents from undue noise and disturbance from the development.

The Local Review Body agreed that the relevant policies as contained within the Aberdeenshire 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; and
- Policy RD1: Providing suitable services.

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 related to the requirement to safeguard visual amenity and the landscape character of the area, and the amenity of nearby residents, and whether those requirements could legitimately be sought by the existing conditions of planning permission when taking into account the six “tests” contained within Circulate 4/1998 – Use of Conditions in Planning Permissions.

During discussion the Local Review Body acknowledged the additional information received from the Planning Service which related to the decommissioning bond (condition no.6).

The Local Review Body then acknowledged the additional information which had been submitted by the applicant in October 2017, regarding the likely budget for the restoration of the site at Logiefair, and having reviewed that information, in addition to the small-scale nature of the turbine, it was noted that the decommissioning costs for a single turbine at that location would be considered to be relatively modest in terms of the likely economic benefit of the overall project.

It was noted that the methods and machinery involved would mean that decommissioning would be achievable by the owner or operator of the land and in the event that this was not undertaken, that it could be controlled by Condition 11 of the permission which had stated *‘In the event that the wind turbine failed to produce electricity supplied to a local grid for a continuous period of 6 months then, unless such cessation is due to the turbine being under repair or replacement, the turbine shall be deemed to have ceased to be required and the turbine and all ancillary equipment shall be dismantled and removed from the site and the site fully restored in accordance with the approved restoration scheme’*. This would allow enforcement action to be taken, if necessary and Condition 1 would require details of the restoration scheme referred to in Condition 11, prior to the commencement of any works in relation to the permission. Having taken all of that information into account, the Local Review Body were minded that condition No.6 was unnecessary and unreasonable, and as such should be removed from the planning permission.

When considering the wording of condition No.10, and in response to number of questions raised by the Local Review Body, the Planning Adviser confirmed that the current wording of the condition would be the same as the standard condition used for larger scale wind turbines. In addition, it was noted, that the current wording of condition no.10 was not exactly the same as was set out in the Environmental Health consultation response of 8 March 2017 and it did not include the details of ‘Table 1 wind speeds’ even though the condition does refer to such a table.

The Local Review Body acknowledged that following the provision of information to the Environmental Health Section, by the applicant, dated 27th September 2017, which included

the 'Microgeneration Certification Scheme: MC S006 – Product Certification Scheme Requirements: Small Wind Turbines' and other technical information, it was agreed with the Environmental Health Section that the turbine could be classified as small-scale. The Local Review Body noted, that in light of that information, the Planning Service were now content that the turbine can be classified as 'small-scale' in terms of noise and would concede the removal of Condition 10 and the replacement with alternative wording.

The revised wording for condition no.10 that had been discussed between the Planning Service, Environmental Health and the agent was therefore agreed as now being acceptable by the Local Review Body.

After due consideration, the Local Review Body **agreed** to uphold the Notice of Review and vary the decision reviewed by it, thereby removing Condition 6 (the requirement for a decommissioning bond) and to amend Condition 10 (noise ratings and monitoring) on Planning Permission APP/2016/2448.

7. LRB 396 – NOTICE OF REVIEW AGAINST CONDITION NO.6 IMPOSED ON GRANTED PLANNING CONSENT FOR 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: Councillors R Cassie (Chair), J Hutchison, A Ross and I Sutherland

Reference was made to the Minute of the Local Review Body meeting of 24 November, 2017 (Item 6), where 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 seek additional information from the Roads Service on the ownership of the footpath and who is currently responsible for maintaining the existing footpath; and
- (2) To undertake an unaccompanied site inspection to the application site and surrounding area. The site inspection would take place on Friday 26 January, 2017 in advance of the next formal meeting of the Local Review Body.

The Local Review Body acknowledged that the Roads Service had submitted a response to as presented on Pages 36-39 of the agenda pack, and that response had confirmed that the service were unable to confirm the ownership of the land in question, however, they did confirm that Aberdeenshire had control over, and maintain all of the grass verging between the boundary wall and edge of the carriageway in the section between Mason Lodge and the access to Kirkton House/Pitcairn Lodge.

It was reported that the applicant/agent had responded to that information as presented on Page 40-42 of the agenda papers and they had concluded that the planning application approved, was for the conversion of a listed building which would provide a new lease of life and safeguard a piece of Aberdeenshire heritage for years to come and it would be unreasonable, given the complexity of the listed building conversion and associated works for the applicant to absorb the costs of the footpath.

It was noted that the site inspection had taken place in advance of the formal meeting and the Local Review Body then resumed consideration of the Notice of Review, which sought a review of the Appointed Officer's decision to Against Condition 6, Imposed on Granted Planning Consent for Full Planning Permission for Conversion of a Care Hoe to Form 17 Residential Flats at Kirkton House, Skene, Westhill, AB32 6XT – Reference: APP/2016/2830.

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 24 November, 2017 and a recap of the conditions placed on the granted planning consent by the Appointed Officer, namely:-

The Local Review Body then considered Condition 6 which was imposed by the Appointed Officer, namely:-

- (6) Prior to occupancy of the development, the country style footpath must be provided to the approved specification between the existing access to the development and the footpath termination point at Mason Lodge as per drawing number 146_P_007 dated Sept 16. Once provided, the footpath access shall thereafter be permanently retained as such.

Reason: To ensure the provision and retention of a means of access to an adequate standard in the interests of road safety.

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

- Policy R1: Special Rural Areas
- Policy R2: Housing Employment and Development Elsewhere in the Countryside
- Policy P1: Layout, Siting and Design
- Policy HE1: Protecting Historic Buildings, Sites and Monuments
- Policy C1: Using Resources in Buildings
- Policy RD1: Providing Suitable Services

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 issue for the Notice of Review as presented before them related to the requirement to upgrade a means of pedestrian access to an adequate standard and whether this requirement can legitimately be sought by the existing condition of the planning permission, bearing in mind the six 'tests' contained in Circular 4/1998 – Use of Conditions in Planning Permissions.

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 acknowledged that their earlier site inspection had been extremely useful, as it had made them really appreciate that the length of the proposed footpath required (approximately 425-450 metres) was similar in distance to the length of the existing access road from the A944 to Kirkton House where improvements, widening and additional passing places were being provided as part of the planning permission and within the red line application site boundary.

During discussion the Local Review Body noted the comments submitted by the Roads Service as part of their consultation response and also by the Appointed Officer statement within the Report of Handling which made reference to the delivery and need for a country

style footpath. The Local Review Body considered the key points made by the agent in respect of their Notice of Review concerning the viability of the development and the costs of providing the 425- 450 metre country style path as being extremely prohibitive. In addition, the Local Review Body accepted that the proposed path would be positioned out with the extent of the client's legal title (red line application site boundary) and that it was also out with the extent of the other 'retained land' (blue line boundary).

The Local Review Body then made reference to the information received from the Roads Service as part of their response dated 28th November 2017, which had confirmed that they maintain the grass verge between the boundary wall and the edge of the carriageway but that they were unable to confirm the ownership of the land over the proposed route of the country style path.

Having noted the applicant/agent's statements about the costs associated with providing, and then the future ongoing maintenance of the proposed country style footpath, the Local Review Body agreed that as the route of the footpath had not been included within the planning application site boundary. The Local Review Body also acknowledged that it was also clear that the applicant had no control or ownership over the route of the land in question, and that the provision of the path had not been secured as part of the developer contributions in the Section 75 Agreement with the respective landowners agreement, then the existing condition would not be enforceable.

Having taken all of the information presented before them, into consideration, the Local Review Body, agreed that condition no. 6 would fail to satisfy the tests as set out in Circular 4/1998 - Use of Conditions in Planning Permissions and as such they were minded that it should be removed from the planning permission.

After due consideration, the Local Review Body **agreed** uphold the Notice of Review, thereby varying the decision reviewed by it, which would remove Condition 6 (requirement for a Countryside Footpath) from Planning Permission APP/2016/2830.

NEW REVIEWS

8. LRB 400 – NOTICE OF REVIEW AGAINST REFUSAL OF PLANNING PERMISSION IN PRINCIPLE FOR ERECTION OF DWELLINGHOUSE AT SITE WEST OF HOSPITAL WOODS, AUCHTERLESS, TURRIFF – REFERENCE: APP/2017/1612

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

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 Planning Permission in Principle for the Erection of a Dwellinghouse at the Site West of Hospital Woods, Auchterless, Turriff – Reference: APP/2017/1612.

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 and no further procedure. 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 2 valid representations had been received which objected to the proposed development and the material issues raised within those letters of were road safety concerns regarding access.

Further to consultations undertaken, it was reported that Developer Obligations had been contacted and had responded to advise that the local schools were currently operation within capacity and no contributions would be required; Contaminated Land had no objections to the proposal; Roads Development had no objection to the proposal, subject to conditions and Scottish Water had no objection to the proposal.

The Local Review Body then considered Condition 6 which was imposed by the Appointed Officer, namely:-

- (1) The proposed development is contrary to Policy R2 Housing and Employment Development elsewhere in the countryside, as contained in the Aberdeenshire Local Development Plan 2017, as the proposed dwellinghouse fails to meet the criteria set out in the policy, in that:
 - a) It was not of a type that would be permissible in the green belt;
 - b) It did not contribute to the growth of a settlement identified in Appendix 4;
 - c) It was not associated with the retirement succession of a viable farm holding;
 - d) It was not for the refurbishment or replacement of an existing or disused building, or remediation of redundant brownfield land opportunities;
 - e) It was not an employment development proposal; and
 - f) It was not an appropriate addition to a cluster or group of at least 5 houses.
- (2) The proposal fails to comply with Policy RD1 Providing suitable services of the Aberdeenshire Local Development Plan 2017, in that the proposal had not demonstrated that the proposed dwelling would be satisfactorily serviced in terms of foul and surface water drainage.

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

- Policy R2: Housing an Employment Development elsewhere in the Countryside;
- Policy P1: Layout, Siting and Design ;
- Policy P4: Hazardous and Potentially Polluting Developments and Contaminated Land;
- Policy E2: Landscape;
- Policy C1: Using Resources in Buildings;
- Policy RD1: Providing Suitable Services;
- Policy RD2: Developer's Obligations

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, and whether suitable services could be provided for the dwellinghouse.

The Local Review Body took cognisance of the case put forward by the agent, which had suggested that the proposed development would in their view be an appropriate addition to an existing cluster of at least 5 dwellings as the site was situated between three existing houses to the east (Alvidale, Fairview and Upper Old Mill Croft) and three houses to the west (Beech Lodge, Roseacre and Leanin Tree). The agent had taken the view that the proposed dwellinghouse could be considered as infill development within an existing established pattern shared amongst the existing dwellings creating a new cohesive group. The agent had also suggested that the position of the site would not be considered to be intrusive on the landscape and it would not encroach on the privacy of the adjacent properties. The agent had referred to a recent approval by the Formartine Area Committee, for planning permission in principle on

a site adjacent to Beech Lodge (Ref: APP/2017/1841) located to the west, further reinforcing their argument of a cohesive grouping.

The Local Review Body then noted that the application site had no trace of any existing buildings; the applicant had not submitted any evidence to support the case for a viable farm succession unit; there were no places of employment within the immediate vicinity which would require worker's accommodation and the area was not listed as an Appendix 4 settlement. The application site lies within the Rural Housing Market Area (RHMA) and therefore the Local Review Body considered that the key policy test for the application was whether the proposal could satisfy the cohesive groups/cluster category of Policy R2.

During discussion the Local Review Body were minded that it was clear from the Applicant's submission and the assessment contained within the Appointed Officers Report of Handling that the two existing groups of 3 houses (located to the east and west of the site) were two quite separate groups and therefore would not constitute a group of at least 5 houses. The Local Review Body acknowledged that while Policy R2 would allow for an appropriate addition to a cluster or group of at least 5 houses, it would not allow for an addition to two groupings of 3 separate houses to then create a cohesive grouping. The Local Review Body highlighted that there was a considerable distance and spatial separation between the property boundaries to the east and to the west and as such, that further emphasised that the development proposal was attempting to join two distinct groupings together and therefore did not meet the terms of Policy R2.

When considering reason 2 for refusal, the Local Review Body then made reference to the information provided by the applicant in the form of a foul water drainage certificate for matters relating to drainage and surface water drainage and agreed that the 2nd reason for refusal could be addressed by way of a condition on any granted planning consent.

After due consideration, the Local Review Body **agreed** to DISMISS in part, the determination reviewed by it, and refuses Planning Permission in Principle in accordance with the Appointed Officer's first reason for refusal as set out in the Decision Notice dated 15 August, 2017.

9. LRB 401 – NOTICE OF REVIEW AGAINST REFUSAL OF FULL PLANNING PERMISSION FOR ERECTION OF 210 DWELLINGHOUSES WITH ASSOCIATED INFRASTRUCTURE (CHANGE OF HOUSE TYPE TO PLOT 176 TO PLANNING PERMISSION REF: APP/2016/0720) – REFERENCE: APP/2017/1400

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

There had been submitted a Notice of Review and supporting documents by the applicant, which sought a review of the Appointed Officer's decision to Refuse Full Planning Permission for Erection of 210 Dwellinghouses with Associated Infrastructure (Change of House Type Plot 176 to Planning Permission (Change of House Type Plot 176 to Planning Permission Ref: APP/2016/0720) – Reference: APP/2017/1400.

The Planning Adviser introduced the Notice of Review and advised the Local Review Body that in terms of review procedure, the applicant had requested further written submissions, one or more hearing sessions, 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.

The Local Review Body asked a number of questions in respect of the location of other plots within the wider development and the status of certain undetermined applications including a further application for a change of house type on plot 176 (APP/2018/0107) which had been registered by the council on 18 January 2018.

Further to consultations undertaken, it was reported that Developer Obligations had been consulted, but did not provide a response and Roads Development had responded, and had confirmed that they had no objections to the proposal.
Reasons for Refusal.

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

- (1) The proposal is contrary to Policy P1 Layout, Siting and Design contained within the Aberdeenshire Local Development Plan 2017 and the Wester Clerkhill, Peterhead Masterplan Report agreed January, 2013. The proposed amended house type would have an adverse impact on the streetscape and design features of the overall development. By introducing architectural features no longer considered appropriate, the design has regressed to a style typical of previous development in the area. The proposed house is not of an improved design, therefore is contrary to the agreed Masterplan which seeks design progression for this site.

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

- H1: Housing Land
- H2: Affordable Housing
- P1: Layout, Siting and Design
- P2: Open Space and Access to New Development
- C1: Using Resources in Buildings
- RD1: Providing Suitable Services
- RD2: Developers Obligations
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Any Other material policies were the Wester Clerkhill, Peterhead Masterplan Report dated January 2013.

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, and whether suitable services could be provided for the dwellinghouse.

The Local Review Body agreed that the main determining issue for the Notice of Review as presented before them was whether the proposed amended house type design was considered to be acceptable in terms of meeting high standards of design.

During discussion the Local Review Body acknowledged the applicant's submission, which had stated that the proposed changes being sought to the house type for that particular plot could not be considered in isolation as the applicant was minded that it was also reasonable and material to the application to take into account the history of the wider site. The applicant had suggested that the Appointed Officer had refused to acknowledge that dwellings of a similar design did exist in phases 1-4 of the development, instead insisting that the provision

of a hipped roof to Plot 176 was the introduction of a new design rather than a recurring design feature.

Having considered all of the information presented before them, the Local Review Body agreed unanimously that the introduction of a hipped roof design for one plot in isolation to surrounding plots did not provide as good a quality of design feature as the straight gable features that were already evident on the adjacent approved and partially completed houses. The proposed hipped roof design was not considered to positively contribute to the creation of place, or the visual appeal of the area, but would be obviously different from the surrounding development, contrary to Policy P1 of the Aberdeenshire Local Development Plan 2017 and contrary to the vision that had been set out in the agreed masterplan for the site.

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 13 October, 2017.

10. LRB 402 – NOTICE OF REVIEW AGAINST CONDITIONS (1-3) ATTACHED TO GRANT OF FULL PLANNING PERMISSION FOR PART RETROSPECTIVE CHANGE OF USE FROM WORKSHOP/OFFICE (CLASS 4) TO TANNING SALON (CLASS 2) AT WORKSHOP TO REAR OF 135 HIGH STREET, LAURENCEKIRK, AB30 1BN – REFERENCE: APP/2017/1362

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

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 attach conditions 1-3 on the Grant of Full Planning Permission for Part Retrospective Change of Use from Workshop/Office (Class 4) to Tanning Salon (Class 2) at Workshop to Rear of 135 High Street, Laurencekirk, AB30 1BN – Reference: APP/2017/1362.

The Planning Adviser then highlighted that the agent had also requested a review of the informatives (3 & 4) which were attached to the planning permission which the agent had suggested should be removed. The Local Review Body were advised that under the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013 there was no formal mechanism to appeal against informatives and as such there was no remit for the Local Review Body to consider that part of the review submission.

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 and no further procedure. 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 summarised the agent's case as set out in their Notice of Review, which argued that the conditions and informatives related to the car park and access points which had already been approved under planning application APP/2007/3662 and that application had not expired as the development to which it relates had been started in 2012.

The Local Review Body then considered conditions 1-3 placed on the granted planning consent by the Appointed Officer's reasons for refusal, namely:-

- (1) That within 3 months of the date of this permission the parking area has been provided and surfaced in accordance with the details shown on Drawing No 073- 201 Rev G. Once provided, all parking and turning areas shall thereafter be permanently retained as such.

Reason: To ensure the timely completion of the parking area to an adequate standard to prevent the carriage of loose driveway material on to the public road in the interests of road safety.

- (2) The development hereby approved shall be carried out in strict accordance with the details included in the Arboricultural Method Statement dated 21st August by Scottish Arboricultural Services as submitted and agreed as part of the planning application.

Reason: In the interests of protecting the biodiversity of the environment.

- (3) Evidence of supervision and compliance with the requirements of the Arboricultural Method statement in the form of a report from a suitably qualified Arborist should be submitted to, and approved in writing by the Planning Authority on completion of the surfacing.

Reason: In the interests of protecting the biodiversity of the environment

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

The Local Review Body agreed that the main determining issues for the Notice of Review as presented before them related to ensuring that car parking and road safety requirements, along with the protection of the existing trees and biodiversity were met and whether those requirements could legitimately be sought by the conditions of the planning permission, when taking into account the six 'tests' contained within Circular 4/1998 – Use of Conditions in Planning Permissions.

The Local Review Body took cognisance of the case put forward by the applicant, which had stated that Application APP/2017/1362 was for a change of use, and as such they were minded that imposing conditions and informatives on an application which was already been approved (without conditions) would seem unreasonable. The applicant had also requested that the title of the application be re-instated to the original description as the Planning Service had altered the title of the application to be "part retrospective" as the applicant's contractor had begun to re-instate the planning approved access and the applicant highlighted that they did not start trading as a tanning salon until the permissions were in place therefore "part retrospective" was considered to be incorrect.

The Local Review Body also noted that the agent's submission which had highlighted that the overall handling of the application was in their view unnecessarily delayed due to confusion within the planning department as to what was required and necessary for a change of use application to be approved. The agent had highlighted that requests by the planning department for tree surveys; copies of title deeds; drawing revisions; construction method statements and arboricultural method statements were unnecessary, created unnecessary extra expenses for the applicant and delayed the opening of the applicant's business.

The Local Review Body then considered the contents of the Appointed Officer's Report of Handling which contained the reasons behind the imposition of the 3 conditions. The Local Review Body noted that the red line application site boundary wrapped around the whole site and included the protected trees and the Tree Preservation Order which had been updated

since the time of the original planning approval under APP/2007/3662. As the proposal was seeking a change of use, the council's Environment Team had sought an Arboriculturalist Construction Method Statement as part of the planning application process in order to assess the suitability of the proposals in accordance with the up to date planning policy position as set out in Aberdeenshire Local Development Plan 2017 and also in accordance with the Planning Advice 12/2015 – Protecting Trees Guidance.

Having considered all of the information before them, the Local Review Body were unanimous in their view that planning conditions were used by the Planning Service as a tool to make an unacceptable developments acceptable. When considering the case as presented before them, the Local Review Body were minded that the conditions were justified and necessary and related to the approved drawing and accepted Arboricultural Method Statement. The Local Review Body acknowledged that without the application of conditions, the Appointed Officer would not have been able to grant planning permission in the first place and the application would have been refused.

In conclusion, the Local Review Body agreed that conditions 1-3 inclusive, satisfied the tests set out in Circular 4/1998 and they would ensure that the relevant road safety interests, and the protection of the existing trees and biodiversity are properly safeguarded and accordingly are required to ensure that the proposed development complies with Policies P3 and PR1 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 that Conditions 1-3 should remain on Full Planning Permission for APP/2017/1362.

11. LRB 403 – NOTICE OF REVIEW AGAINST REFUSAL OF PLANNING PERMISSION IN PRINCIPLE FOR ERECTION OF DWELLINGHOUSE AT LAND AT ARDMACHRON, MEMSIE, FRASERBURGH – REFERENCE: APP/2017/1875

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

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 Planning Permission in Principle for the Erection of a Dwellinghouse at Land at ARdmachron, Memsie, Fraserburgh – Reference: APP/2017/1875.

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 and no further procedure. 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 1 valid representation had been received which objected to the proposed development and the material issues raised within that submission was that the development would have further impact on the existing, poorly maintained private single track used by many farm vehicles and the existing houses at Ardmachron and this was further reinforced by an additional submission in response to the Notice of Review, which reiterated those concerns and which stated that nothing had changed since the original planning application was determined.

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

- (1) The proposed development is contrary to Policy R2: Housing and Employment Development Elsewhere in the Countryside, as contained in the adopted Aberdeenshire Local Development Plan 2017, as the proposed dwellinghouse fails to meet the criteria set out in policy, in that:
- a) It is not of a type that would be permissible in the green belt;
 - b) It does not contribute to the organic growth of a settlement identified in Appendix 4;
 - c) It is not associated with the retirement succession of a viable farm holding;
 - d) It is not for the refurbishment or replacement of an existing or disused building , or remediation of redundant brownfield land opportunities;
 - e) It is not a small scale employment proposal;
 - f) It is not an appropriate additional to an existing cluster or group of at least five houses.
- (2) Insufficient information concerning the proposed private means of waste foul water drainage has been provided to allow for the consideration of the adequacy of the proposed developments support infrastructure. There is therefore insufficient information to demonstrate compliance with Policy RD1: Providing Suitable Services, of the adopted Aberdeenshire Local Development Plan, 2017.

Further to consultations undertaken, it was reported that Developer Obligations had confirmed that no contributions would be required; Contaminated Land had confirmed that there was no indication of any past use which might have caused contamination on the site; Roads Development had no objection to the proposal, subject to conditions; Rathen, Memsie and Cortes Community Council had objected to the proposed development due to existing access arrangements as they were minded that the road was inadequate for the existing houses and water supplies would be adversely affected; and Scottish Water had noted that there was sufficient capacity at the Forehill 1965 Water Treatment Works to serve the development but that such capacity cannot be reserved and connection to a public water supply would be assessed by that service if planning permission was granted.

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

- Policy R2: House and Employment Development Elsewhere in the Countryside
- Policy P1: Layout, Siting and Design
- Policy P4: Hazardous and Potentially Polluting Developments and Contaminated Land
- Policy C1: Using Resources in Buildings
- Policy RD1: Providing Suitable Services
- Policy RD2: Developer's Obligations

The Local Review Body agreed that the main determining issues for the Notice of Review as presented before them was whether the principle of the proposed development was considered to meet with any of the criteria set out in the development in the countryside policy, and whether sufficient information had been provided to show that the proposal can be suitably serviced. When considering the relevant criteria it was noted that the site was located within the Rural Housing Market Area (RHMA) and as such support could be given to proposals if that development was an appropriate addition in scale and character to an existing cohesive group of at least 5 houses.

During discussion the Local Review Body noted that it was clear from the Applicant's submission and the assessment contained within the Appointed Officer's Report of Handling that there were only 3 existing properties located to the north west/ west of the site and that the ongoing steading conversion (APP/2007/4377) would provide a 4th house, however, that additional development would still fail to meet the required number of 5 properties in order for any proposal to be able to constitute a small scale addition to an existing cluster or grouping under the terms of Policy R2.

The Local Review Body then considered the other criteria of Policy R2 and agreed with the Appointed Officer's assessment as contained within the Report of Handling which highlighted that the only way the proposal could be deemed acceptable in principle would be if there was an economic need justification demonstrated by the applicant. The Local Review Body noted that a request for such information had been requested by the Appointed Officer, however, no such information had been brought forward by the applicant or agent. Having taken that information into account, the Local Review Body were in agreement that the principle of the development could not be supported as it would fail to comply with any of the qualifying criteria specified in Policy R2 of the Aberdeenshire Local Development Plan 2017.

The Local Review Body also agreed with the Appointed Officer's conclusions in respect of insufficient information having been provided to demonstrate that the proposal can be serviced by an adequate means of foul water drainage arrangements. Accordingly, the Local Review Body considered that the proposal failed to demonstrate compliance with Policy RD1 of 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 within Section 11 of the Report of Handling (Page 632 of the agenda papers).

12. LRB 404 – NOTICE OF REVIEW AGAINST REFUSAL OF FULL PLANNING PERMISSOIN FOR CHANGE OF USE FROM WOODLAND TO DOMESTIC GARDEN GROUND AND ERECTION OF BOUNDARY FENCE AT 16 BRIDGHEAD VIEW, INVERBERVIE, DD10 0PB – REFERENCE: APP/2017/2020

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

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 Full Planning Permission for Change of Use from Woodland to Domestic Garden Ground and Erection of Boundary Fence at 16 Bridghead View, Inverbervie, DD10 0PB - Reference: APP/2017/2020.

The Planning Adviser introduced the Notice of Review and advised the Local Review Body that in terms of review procedure, the applicant had requested further written submissions; one or more hearing sessions; 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 1 valid representation had been received which objected to the proposed development and the material issues raised within that submission were:-

- The original fences were in place to provide security and privacy

- Other properties may try to extend their gardens and one has already had an application refused.

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

- (1) The change of use and erection of fencing results in damage to the inherent value of the existing protected tree shelter belt. The proposed development is not considered to respect the character of the tree belt and would set a precedent for the further incremental erosion of this important landscape feature. Therefore, the proposal does not comply with the relevant provisions of Policy E2: Landscape and associated Supplementary Guidance 9: Special Landscape Areas of the Aberdeenshire Local Development Plan 2017.
- (2) The development, if approved, would result in the potential loss and damage to trees that form part of an existing important tree shelter belt. No justification has been provided to demonstrate a significant public benefit that would outweigh the potential loss of trees. Therefore, the proposal fails to comply with Policy PR1: Protecting Important Resources of the Aberdeenshire Local Development Plan 2017.
- (3) The development, if approved, would adversely affect an existing public access route by limiting the width of the woodland strip through which it passes and increasing the need for maintenance of new and existing planting to retain access. As such, it would fail to comply with Policy P2: Open Space and Access in New Development of the Aberdeenshire Local Development Plan 2017.

Further to consultations undertaken, it was reported that the Environment Team had commented that they had noted the landscape report, however, there was still an issue with enclosing shelter belt woodland with fencing and setting a precedent for sub-dividing woodland to separate gardens with associated garden furniture. As such they reiterated comments from a previous application which noted that Scottish Planning Policy and the Aberdeenshire Local Development Plan 2017 favours retaining trees in the long established tree belt in Inverbervie. NESBReC had also reported that the site lies within an area of integrated habitat, comprising grassland, agriculture, broadleaved woodland and built up areas with gardens.

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

- PR1: Protecting Important Resources
- E2: Landscape
- P2: Open Spaces and Access to New Development

The Local Review Body agreed that the main determining issues for the Notice of Review as presented before them was whether the change of public open space to private garden ground, and the potential loss of strategic landscaping on the edge of the settlement would have a detrimental impact on the layout of the existing development and the wider landscape.

During discussion the Local Review Body acknowledged the argument put forward by the applicant/agent which had suggested that the public footpath route and space surrounding it would not be altered in any way and as such the development would not result in damage to the value of the woodland strip and therefore the proposal would in their view be in compliance Policy E2. The applicant/agent had also suggested that the development would not set a precedent as the applicant currently owns that strip of tree belt and public footpath and had intimated that they would be agreeable to not part with any further land, so that type of development would not be able to take place elsewhere within the woodland belt. In addition,

the applicant/agent had submitted a landscaping plan which would alleviate any concerns and allowed for the retention and maintenance of existing trees and new planting to help screen the boundary fence from any potential visual intrusion. The applicants were also content to paint the fence green if required and the public open space element of the tree belt will still be safe, welcoming, distinctive, well connected and accessible to all as per Policy P2.

The Local Review Body then considered the previous history of applications and also the enforcement issues and related timescales arising from this development and having considered all of the information presented before them, the Local Review Body were minded that whilst the extended garden ground was of benefit to the applicant, it would not in their view provide any wider public benefit to mitigate the loss of the woodland belt and in terms of the wider landscape, the whole area was designated as a protected landscape feature.

The Local Review Body then acknowledged the applicant's commitment to retain land ownership if approved, however, they took the view that the change of use of the land would set a precedent for similar development within the landscape buffer which could contribute towards a wider loss of trees and adversely impact on the character of that landscape feature.

The Local Review Body were unanimous in their view that the proposal would lead to the fragmentation and reduction in width of the tree belt, with the potential loss of trees which form a significant and important landscape buffer that help to define the edge of the settlement and contribute to the wider landscape character of the area.

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 within the decision notice issued by the Planning Service dated 27 September, 2017.

**13. LRB 405 – NOTICE OF REVIEW AGAINST REFUSAL OF PLANNING PERMISSION
IN PRINCIPLE FOR ERECTION OF DWELLINGHOUSE AT LAND AT DRAMBEEL
LODGE, DURRIS, BANCHORY, AB31 6EB – REFERENCE: APP/2017/1948**

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

The Committee Officer advised the Local Review Body that due to ill health, the applicant had requested that consideration of the Notice of Review be deferred, to allow the applicant to be in attendance when the Notice of Review was being determined.

Having considered that request, and in terms of natural justice, the Local Review Body agreed that the Notice of Review would be presented to the formal meeting scheduled to take place on Friday 23 March, 2018.

The Local Review Body considered whether any additional information may be required in the interim and having considered that option, agreed that they had sufficient information to allow them to proceed to determine the Notice of Review at a future date.

After due consideration, the Local Review Body **agreed** to defer consideration of the Notice of Review to the next formal meeting which was scheduled to take place on Friday 23 March, 2018.