

ABERDEENSHIRE COUNCIL

LOCAL REVIEW BODY

WOODHILL HOUSE, ABERDEEN, FRIDAY 25 MAY, 2018

Present: Councillors F C P Hood (Chair), R Cassie, J Hutchison, P Gibb (Substituting for Cllr A Ross), P K Johnston (Vice-Chair), A McKelvie and I Sutherland.

Apologies: Councillor A Ross.

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

1. DECLARATION OF MEMBERS' INTERESTS

The Chair asked Members if they had any interests to declare in terms of the Councillors' Code of Conduct.

Councillor Hood declared an interest in Agenda Item 5, (LRB 414) as the applicant was a friend and the application site was within his ward, and Agenda Item 7, (LRB 418) as the application site was within his ward, and he advised that he would withdraw from proceedings when both reviews were being considered.

Councillor Johnston, as Vice-Chair would Chair the meeting for each of those items.

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 27 APRIL, 2018

The Local Review Body had before them and **approved** as a correct record, the Minute of the Local Review Body meeting of 27 April 2018, subject to one amendment. Item 6 (1), Page 8, the first sentence "wold" should be replaced with "would". The minute was then was duly signed in public.

4. 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 REVIEW

5. LRB 414 – FULL PLANNING PERMISSION FOR CHANGE OF USE OF AGRICULTURAL SHEDS TO STORAGE AND DISTRIBUTION (USE CLASS 6) WITH ASSOCIATED CAR PARKING AND EXTERNAL STORAGE AREA: NON COMPLIANCE OF CONDITION 1 (PERMISSION FOR A LIMITED PERIOD OF 5 YEARS FROM THE DATE OF THIS APPROVAL) OF DECISION BY ABERDEENSHIRE LOCAL REVIEW BODY, REF: LRB 361 G/APP/2016/1924 AT BIRKHILL, FOWLERSHILL, DYCE, AB21 7AQ – REFERENCE: APP/2017/2671

Local Review Body: Councillors P K Johnston (Chair), R Cassie, J Hutchison, P Gibb and I Sutherland.

Reference was made to the Minute of the Local Review Body meeting of 27 April, 2018 (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 requesting sight of all of the paperwork related to a previous Local Review Body Decision, which was granted with conditions, namely:- LRB 361, Planning Ref: APP/2016/1924 which was determined by the Local Review Body at their meeting of 27 January, 2017.

The Local Review Body noted that all of the documents requested, relating to LRB 361 which had been considered by the previous Local Review Body, along with the draft extract minute of 27 January, 2017 and the final Review Decision Notice had been presented on pages 12-121 of the agenda pack.

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 change of Use of Agricultural Sheds to Storage and Distribution (Use Class 6) with Associated Car Parking and External Storage Area: Non Compliance of Condition 1 (Permission for a Limited Period of 5 Years from the Date of that Approval) of Decision by Aberdeenshire Local Review Body, Ref: LRB 361 G/APP/2016/1924 at Birkhill, Fowlershill, Dyce, AB21 7AQ – Reference: APP/2017/2671.

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 27 April, 2018 and a recap of the Appointed Officer's reasons for refusal, namely:-

- (1) The continued use of this planning condition would not limit the opportunity for a business to relocate to this site. The retention of the condition would allow the Planning Service to consider the amenity impacts once the occupation has commenced and the new use has been in operation for some time. Without this knowledge, the Planning Service considers it necessary to apply a precautionary approach to the removal of the condition in line with Policy P4 (Hazardous and potentially polluting developments and contaminated land). The Planning Service is of the opinion that the attached condition is reasonable, necessary and precise and therefore that this application should be refused.

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

- Policy P1: Layout, siting and design; and
- Policy P4: Hazardous and potentially polluting developments and contaminated land.

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 was whether the control over the temporary change of use and ongoing monitoring of potential amenity issues, could legitimately be controlled by the condition of the planning permission, bearing in mind advice contained within Circular 4/1998 – Use of Conditions in Planning Permissions.

The Local Review Body raised a number of questions relating to the previous application (LRB 361) and the reasoning behind the granting of the temporary consent. The Planning Adviser made reference to the additional information circulated on Pages 12-121 of the agenda pack, which had included the decision notice and also to the minutes from the January 2017 meeting. The Planning Adviser advised the Local Review Body that when reaching their decision, the previous Local Review Body had acknowledged that the proposed change of use would be contrary to the greenbelt policy and they were not convinced that the site could not be used for agricultural/horticultural use at some point in the future. However, they had taken a balanced view that an approval for a temporary period with conditions, that also prevented the intensification of use on the site, and controls over external storage, hours of operation and limits on the use of commercial vehicles, provided an appropriate reason to depart from the normal greenbelt policy control requirements.

During discussion, opposing views were expressed.

One member of the Local Review Body, having considered the case set out by the agent, took the view that the principle of the development had already been established, and he was minded that imposing the condition was unreasonable and onerous as it would limit the opportunity for a business to locate to that site by only being able to agree to a limited length of lease. He also believed that there was no real prospect of the site ever returning to poultry farming, and in terms of the site size, it would not appear to be viable for any future agricultural use. Reference was also made to application (APP/2017/2670) to remove condition no. 3 (no external storage) that had been submitted at the same time as the current application and which had since been approved by the Planning Service and it was considered that this further altered the characteristics and long term use of the site.

The remaining members of the Local Review Body did not support the removal of the condition as they acknowledged that the previous Local Review Body decision (LRB 361) had been taken following a very lengthy discussion and debate. They agreed that the site was still located within the greenbelt, as it was at the time of the original Local Review Body decision, and while the Local Development Plan and the specific Policy references had altered following the adoption of the Aberdeenshire Local Development Plan 2017, the main thrust of the greenbelt policy, as set out in Policy R1 would still prevent a permanent change of use of non-vernacular vacant agricultural buildings in that location. It was acknowledged that the previous Local Review Body did not wish to ignore the policy but limiting the approval on the basis of a temporary change of use to Class 6 was also clearly based on specific proposals that had

been put forward in that application at that time. The buildings were also not going to be altered and could be returned to agricultural use in the future.

Councillor Hutchison moved as a motion to uphold the Notice of Review, and reverse the decision reviewed by it and remove condition No.1 from Full Planning Permission for APP/2016/1924 (LRB 361). As there was no seconder for the motion, the motion fell and in terms of the Council's Standing Order 5.2.4, Councillor Hutchison requested that his motion, which was not seconded, be recorded in the minute.

The majority view, held by the Local Review Body, supported the Planning Officer's decision that Condition 1 should remain, as the buildings were located in a rural setting; they were suited to agricultural use; and given the proximity to neighbouring residential properties it could be seen why the previous Local Review Body deemed it to be appropriate to give the proposed Class 6 use a trial period to see what (if any) impacts would materialise within the 5 year period. The Local Review Body therefore agreed that it was necessary to continue to apply a precautionary approach in line with Policy P4 of the Aberdeenshire Local Development Plan 2017 which seeks to refuse development if there is a risk that it could cause significant pollution, create a significant nuisance, or present an unacceptable danger to the public or the environment.

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 and retain Condition 1 on the granted planning consent for LRB 361, Ref: APP/2016/1924, for the reasons contained in the Decision Notice dated 9 February, 2018.

NEW REVIEWS

6. LRB 415 - FULL PLANNING PERMISSION FOR CHANGE OF USE OF PUBLIC OPEN SPACE TO GARDEN GROUND, ALTERATIONS TO DWELLINGHOUSE AND ERECTION OF DOUBLE GARAGE/STORE AT HILLTOP GARDENS, WESTHILL, AB32 6PN – REFERENCE: APP/2017/2765

Local Review Body: Councillors F C P Hood (Chair), R Cassie, J Hutchison, P K Johnston, P Gibb 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 Full Planning Permission for the Change of Use of Public Open Space to Garden Ground, Alterations to a Dwellinghouse and the Erection of a Double Garage/Store at Hilltop Gardens, Westhill, Aberdeenshire, AB32 6PN – Reference: APP/2017/2765.

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

The Planning Adviser ended his presentation by reporting that 1 valid representation had been received which was in support of the proposed development, as they were minded that as a neighbour, the development proposal would not result in loss of amenity.

It was reported that one further letter was also received which inferred support for the development, on the grounds that the application was largely due to land ownership and land maintenance factors assert that the area of land is owned and maintained by the applicant

and as such they consider that the land could not be considered as “open space” and under control of the Local Authority.

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

- (1) The proposed development is contrary to policy requirements seeking to protect important resources such as public open space and prevent development that impacts on the character and amenity of the area. As such, the proposal is considered contrary to Policy PR1: Protecting important resources and Policy P3: Infill and householder developments within settlements (including home and work proposals) 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 P3: Infill and householder developments within settlements (including home and work proposals);
- Policy PR1: Protecting important resources; and
- Policy P1: Layout, siting and design.

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

During discussion, raised a number of questions relating to the proposed area of land and whether it would be considered to be “open space” or “public open space” and asked the planning adviser to explain the difference. The Planning Adviser reported that public open space would be identified within the Local Development Plan or original planning permission drawings. For the case as presented before them, the developers had identified other areas of “public open space” within the whole development, however, the area of land as presented before them was not included, and it would appear that it had always been part of the ownership of the applicant’s plot of land, but, with the appearance of “private open space”.

The Local Review Body highlighted that the definitions of “open space” and “public open space” were not clear as there were many areas of land within Aberdeenshire which were not owned or controlled by the Council. Clarification was required on whether an individual could confer ownership of a “public open space”. The Planning Adviser reported that an established area of open space would have no permitted development rights for any other use. The argument would be if an area of land was in the curtilage of the applicant’s property, they would have permitted development rights, however, if it was an area of open space, would that apply.

Further discussion then ensued relating to the definition of ‘curtilage’ and when applying that definition, what was the curtilage of the applicant’s property. The Legal Adviser reported that there was no legal definition for curtilage, however, the applicant’s solicitor had referred to case law as presented on page 136 of the agenda papers (Section 6.26). It was reported that in Sinclair-Lockhart, the Court held that *“the ground which is used for the comfortable enjoyment of a house or other building may be regarded in law as being within the curtilage of that house or building and thereby an integral part of the same, although it has not been marked off or enclosed in any way. It is enough that it serves the purposes of the house or building in some necessary or reasonably useful way”*.

The Local Review Body then referred to section 6.24 of the applicant’s supporting statement which had highlighted that Circular 1/2012 provided guidance on householder permitted development and provides advice on front and rear curtilages. Section 3.11 of that circular

stated that “*once the principal elevation had been identified, the front and rear curtilages could be defined. The front curtilage is all the land forward of the principal elevation and the rear elevation is the remainder of the curtilage of the original dwellinghouse and this may not reflect any physical division, like fences, that may exist.*”

The Planning Adviser noted that the decision on the curtilage and whether the ground would be identified as “public open space” was a decision for the Local Review Body to determine and they would be required to decide whether the area of land would provide ‘direct’ or ‘indirect’ benefits to the community.

Following lengthy discussion, the Local Review Body were minded that they did require further information before they could determine the Notice of Review, namely:-

- (i) to seek clarification from the planning service on how they had identified the area of ground as “public open space” and how had they come to that conclusion;
- (ii) to seek clarification from the planning service on whether the error contained within the Report of Handling (page 668) which referred to a planning application from 1995, rather than the original planning application from 1982 had influenced their decision of what was identified as public open space at that time; and
- (iii) to undertake an “unaccompanied” site inspection to the application site and surrounding area to allow the Local Review Body to get a real appreciation of the curtilage of the property; whether development on the public open space would have a negative impact on the amenity of surrounding properties; and to consider other sites where housing may have claimed areas of open space as part of their curtilage.

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

- (1) Seeking information from the Planning Service on how they identified the area of land as “public open space” and how did they come to that conclusion;
- (2) Seeking information from the Planning Service on the error in the Report of Handling, Section 2, where the Appointed Officer had referred to an historic planning permission from 1982, and the Local Review Body sought clarity on whether the decision had been influenced using incorrect information; and
- (3) to undertake and “unaccompanied” site inspection, to the application site. To be arranged once all additional information requested had been received and all parties had been afforded the opportunity to comment on that information.

7. LRB 418 - FULL PLANNING PERMISSION FOR ERECTION OF TEMPORARY BUILDING (RETROSPECTIVE) AT BOGHEAD FARMHOUSE, KINTORE, ABERDEENSHIRE – REFERENCE: APP/2017/2523

Local Review Body: Councillors P K Johnston (Chair), R Cassie, J Hutchison, P Gibb, A McKelvie 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 Full Planning Permission for the Erection of a Temporary Building (Retrospective) at Boghead Farmhouse, Kintore, Aberdeenshire – Reference: APP/2017/2523.

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 no valid representations had been received during the consultation period, and no consultations were undertaken.

Following his presentation, the Planning Adviser answered a number of questions from the Local Review Body in respect of the land ownership of the site and the surroundings.

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

- (1) The hairdressing salon is outwith a defined town centre or any identified settlement. It has not been demonstrated that a sequential approach has been executed for site selection and no information has been submitted that gives a justification or locational requirement for the salon. The proposed development therefore does not comply with Policy B2: Town Centres and office development of the Aberdeenshire Local Development Plan 2017.
- (2) It is not considered that the building is worthy of retention, nor that it should be redeveloped and the Class 1 retail use is not considered to be an appropriate use in a rural location. The proposal therefore does not comply with Policy R2 Housing and employment development elsewhere in the countryside of the Aberdeenshire Local Development Plan 2017.
- (3) The prefabricated modular unit is located in a prominent roadside location and is a temporary building of a poor quality. It is not desirable to grant Full Planning Permission to a building intended for temporary use and the Hairdressing Salon is considered to be incompatible with existing farm uses and incongruous to the wider rural vernacular. The proposal therefore does not accord 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 B2 Town centres and office development;
- Policy R2 Housing and employment development elsewhere in the countryside;
- Policy P1 Layout, siting and design; 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 issue for the Notice of Review as presented before them was whether the principle of the proposed development was in accordance with the policy criteria that would normally apply to the erection of that type and form of built development and that use within that rural location.

The Local Review Body took cognisance of the agent's supporting statement, which had argued that the proposal would be appropriate, as there was evidence of other similar salons

within rural settings and the small-scale nature of the proposal would mean that it would not have a negative impact on existing town centres or employment land. The agent had also suggested that if required, the building could be re-clad to improve the external appearance and the salon had proven to be viable business with adequate on-site parking so the business would not interfere or impact on the A96.

Having considered all of the information as presented before them, the Local Review Body were unanimous in their view, that the Appointed Officer had clearly set out the reasons why the proposal was deemed to be unacceptable within the Report of Handling.

The Local Review Body were in agreement that the proposal did not lie within a designated town centre or identified settlement, and while it was acknowledged that the proposal was a small scale development, it was not considered to be an appropriate use within in the countryside and there was no locational requirement for a hairdressing salon use to be located in the countryside. The sequential approach to site selection had not been demonstrated and the proposal was not considered to comply with Policy B2 of Aberdeenshire Local Development Plan 2017.

The Local Review Body highlighted that the salon occupies an existing prefabricated modular unit that had originally been granted temporary permission until August 2016 for use as a farm shop (APP/2011/2523). The Local Review Body agreed that given the construction of the building, and the expired temporary consent, they did not consider that the building would be worthy of retention in that location and there would be no merit in redeveloping a temporary building that was redundant for its originally approved purpose or could it justify a new permanent structure and as such the proposal would not comply with Policy R2 of the Aberdeenshire Local Development Plan, 2017.

The Local Review Body then agreed that as the modular unit was in a prominent roadside location, and was considered to be a building of poor quality which was only ever intended to be used as a temporary farm shop, it was incompatible with existing farm uses and incongruous to the wider rural area and contrary to the layout, siting and design criteria set out under Policy P1 of the Aberdeenshire Local Development Plan, 2017.

After due consideration, the Local Review Body **agreed**, to DISMISS the Notice of Review and Uphold the Appointed Officer's Decision to Refuse Full Planning Permission, for the reasons contained in the Decision Notice dated 27 December, 2017.