



## INFRASTRUCTURE SERVICES COMMITTEE – 23 AUGUST 2018

Reference No: **BB/APP/2017/2942**

### **Full Planning Permission for Extraction of Soil and Stone (Retrospective) at Westside of Forglen, Forglen, Turriff**

**Applicant: Neil Murray Housebuilders Ltd**  
**Agent: Cobban Architecture Ltd**

Grid Ref:	E: 368527 N: 853263
Ward No. and Name:	W01 Banff & District
Application Type:	Full Planning Permission
Representations:	19
Consultations:	7
Relevant Proposals Map	Aberdeenshire Local Development Plan 2017
Designations:	Countryside, Rural Housing Market Area
Complies with Development Plan:	No
Main Recommendation:	Refuse

#### **1. Reason for Report**

- 1.1 The Committee is able to consider and take a decision on this item in terms of the Scheme of Governance, Part 1 – Standing Orders, Standing Order 5.5, as a referral was requested by one third or more Members of the Banff & Buchan Area Committee present and voting on this matter at its meeting of 12 June 2018, which Members voted against the decision reached and made their request for referral at the time the decision was reached, and the decision was on a planning application at Area Committee (which should be referred to the Policy Committee responsible for planning).
- 1.2 The Head of Finance and Monitoring Officer within Business Services have been consulted in the preparation of this Report, had no comments to make and are satisfied that the Report complies with the Scheme of Governance and relevant legislation.

#### **2. Principal Planning Issues (Summary)**

- 2.1 The principal planning issue in relation to this proposal is the acceptability of the development in terms of both Policy R3: Minerals and Hill Tracks, and Policy RD1: Providing Suitable Services.
- 2.2 The development is deemed to be a departure from Policy R3: Minerals and Hill Tracks, of the Aberdeenshire Local Development Plan 2017, due to the

adverse negative impact the development will have upon the local roads network. It is also considered contrary to Policy RD1: Providing Suitable Services, of the Aberdeenshire Local Development Plan 2017, as the proposed development cannot provide the mitigation required in order to address concerns of the impact of development upon local roads infrastructure.

2.3 A full discussion of the proposed development is contained in the Banff and Buchan Area Committee Report for their meeting of 12 June 2018, which is attached to this document as **Appendix 2**.

2.4 Following the Banff & Buchan Area Committee an update note has been prepared to provide clarification in relation to the access mitigation required. This note is attached as **Appendix 4**.

### **3. Representations (Summary)**

3.1 A total of 19 valid representations (0 supporting/19 objecting) have been received as defined in the Scheme of Governance.

3.2 Copies of the letters are available for inspection in the Members' Support Unit.

### **4. Area Committee Decision (Summary)**

4.1 At their meeting on 12 June 2018, the Banff and Buchan Area Committee resumed consideration of the application. It was resolved to approve the application, against the recommendation of the Planning Service. However, prior to a decision being ratified, Councillor Findlater entered his dissent in terms of Paragraph 5.2.6 of Part 1 of the Scheme of Governance. Thereafter, in terms of Section 5.5 of Part 1 of the Scheme of Governance, and at the request of more than one third of members present and voting, the application requires to now be referred to the Infrastructure Services Committee for final determination.

An extract of the draft Minute (at time of writing) from Banff & Buchan Area Committee on 12 June 2018 is provided as **Appendix 3**.

4.2 The following documents are attached as appendices to this report:

- **Appendix 1A:** Location Plan
- **Appendix 1B:** Site Layout Plan
- **Appendix 2:** Copy of the Banff and Buchan Area Committee Report of 12 June 2018
- **Appendix 3:** Extract of Draft Minute of the Banff and Buchan Area Committee meeting of 12 June 2018
- **Appendix 4:** Briefing Note – access mitigation requirements

### **5. Implications and Risk**

5.1 An Equality Impact Assessment is not required because it does not have a differential impact on any of the protected characteristics.

5.2 There are no staffing and financial implications.

5.3 There are no risks identified in respect of this matter in terms of the Corporate and Directorate Risk Registers as the Committee is considering the application as the Planning Authority in a quasi-judicial role and must determine the application on its own merits in accordance with the Development Plan unless material considerations justify a departure.

## **6. Officer Recommendation**

### **6.1 REFUSE Full Planning Permission for planning application reference APP/2017/2942 for the following reasons:-**

- 1) The application is contrary to Policy R3: Minerals and Hill Tracks, of the Aberdeenshire Local Development Plan 2017, due to the adverse negative impact the development will have upon the local roads network.
- 2) The application is contrary to Policy RD1: Providing Suitable Services, of the Aberdeenshire Local Development Plan 2017, as the proposed development cannot provide the mitigation required in order to address concerns of the impact of development upon local roads infrastructure.

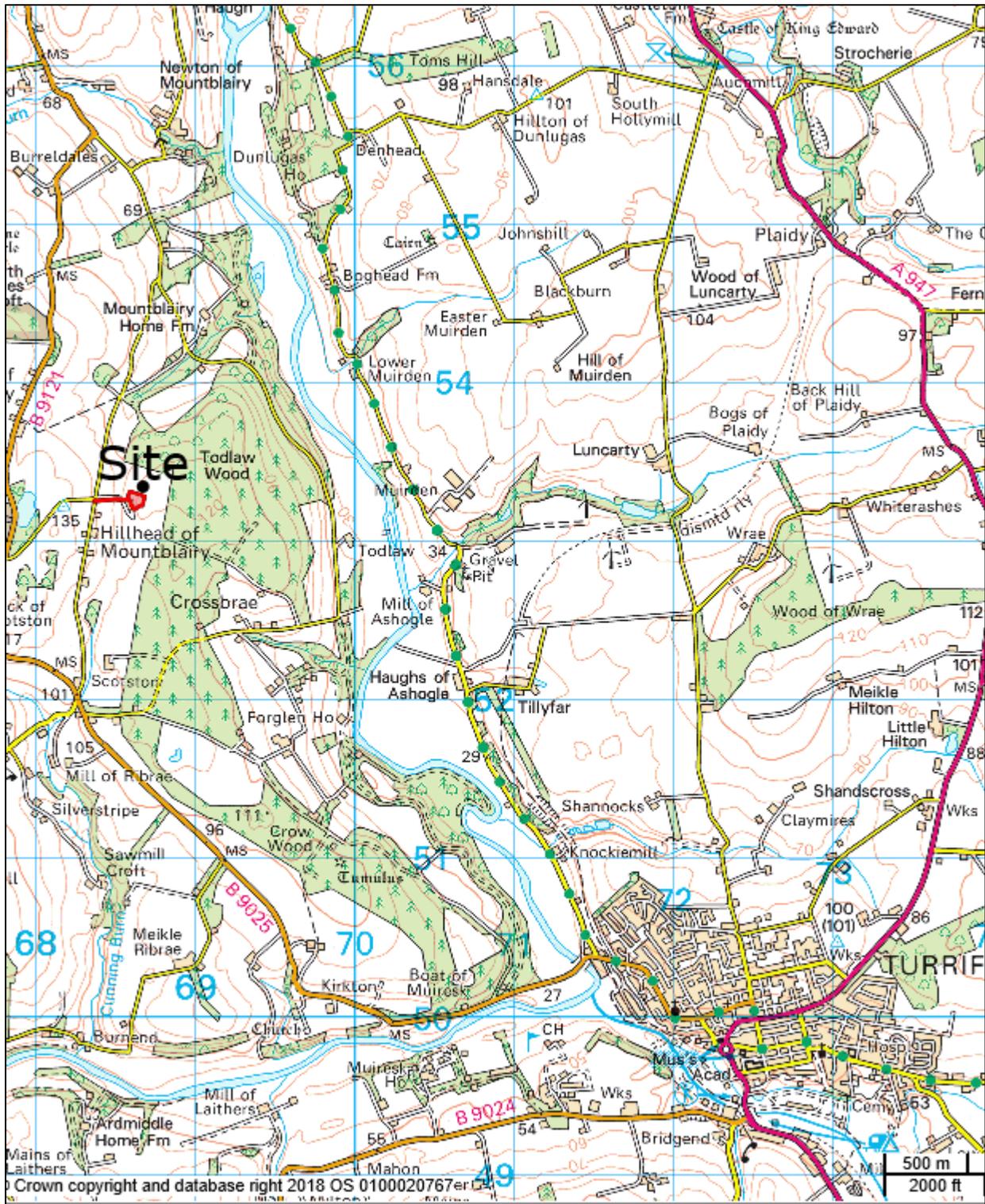
### **6.2 Should the Infrastructure Services Committee wish to GRANT Full Planning Permission it is recommended that authority should be delegated to the Head of Planning and Building Standards subject to:**

- a) **The applicant entering into a Section 75 legal agreement with the Council to secure a restoration bond to cover the total value of land restoration and to be used for purposes of appropriate site restoration and aftercare; and**
- b) **Conditions to cover the following matters:-**
  1. Temporary consent for a period of 5 years;
  2. Roads and access;
  3. Operating hours;
  4. Noise levels and permitted activities on site;
  5. Dust control measures;
  6. Submission of site specific management plan;
  7. Submission of restoration and aftercare plan;
  8. Restriction on lowering of existing quarry floor level.

**Stephen Archer**  
**Director of Infrastructure Services**  
Author of Report: Stuart Newlands  
06/07/2018



APPENDIX 1A



APPENDIX 1B



APPENDIX 2



**Report To Banff & Buchan Area Committee – 12 June 2018**

Reference No: APP/2017/2942

**Full Planning Permission for Extraction of Soil and Stone (Retrospective) at Westside of Forglen, Forglen, Turriff, AB53 4JT**

**Applicant:** Neil Murray Housebuilders Ltd  
**Agent:** Cobban Architecture Ltd

**Grid Ref:** E: 368527 N: 853263  
**Ward No. and Name:** W01 – Banff & District  
**Application Type:** Full Planning Permission  
**Representations:** 19  
**Consultations:** 7  
**Relevant Proposals Map:** Aberdeenshire Local Development Plan 2017  
**Designations:** Countryside, Rural Housing Market Area  
**Complies with Development Plans:** No  
**Main Recommendation:** Refuse



**NOT TO SCALE**

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## **1. Reason for Report**

- 1.1 The Committee is able to consider and take a decision on this item in terms of Section B.9.1 of Part 2A List of Committee Powers and Section C.3.1g of Part 2C Planning Delegations of the Scheme of Governance as there is an unresolved objection from a consultee.
- 1.2 The Head of Finance and Monitoring Officer within Business Services have been consulted in the preparation of this report and had no comments to make and are satisfied that the report complies with the Scheme of Governance and relevant legislation.

## **2. Background and Proposal**

- 2.1 This application seeks Full Planning Permission for the retrospective extraction of soil and stone, in addition to proposed future extraction, at Westside of Forglen, Hillhead of Mountblairy, found in a rural setting 5.2 km east of Aberchirder and 4km north west of Turriff. It is located immediately to the east of the unclassified U11 road, and just over 1km to the north of the B9025 Aberchirder to Turriff road. A location plan is attached as Appendix 1 to this report.
- 2.2 The applicants are seeking consent for a period of 5 years to complete works which are found upon former agricultural land and adjacent to an existing builder's yard used by the applicant's business. A site layout plan is attached as Appendix 2. Permission for the builder's yard was granted retrospectively under the cover of APP/2012/2091. The applicant estimates that approximately 1500 tonnes of material had been extracted from the site at the time of this application being made in January 2018 with a further 2000 tonnes to be extracted over the coming 5 year period.
- 2.3 This application has been received in response to an investigation being carried out by the Council's Planning Enforcement Team which dates back to 2015 relating to unauthorised quarrying operations which have been continuing on site in the interim since 2014 but had ceased by the time planning staff made their site visit with respect to assessing this application in February 2018.
- 2.4 There is only one dwellinghouse within the immediate vicinity of the application site in addition to several workshop buildings which are all under the ownership of the applicant. Beyond this, the nearest residential properties are found to the west and south west, the closest of these being Hillhead, 250 metres to the south west.
- 2.5 The site is found within the Forglen designed landscape designation and approximately 150 metres to the west of Todlaw Wood Ancient Woodland. A small burn is located approximately 80 metres to the west of the main area of quarrying operations.

## 2.6 Site History:

### *On Site*

- APP/2012/2091 - Change of Use of Land and Buildings from Agricultural to Builders Yard and Workshop (Retrospective) – Approved 14/11/2012

### *To the South West*

- APP/2012/2091 - Change of Use of Land and Buildings from Agricultural to Builders Yard and Workshop (Retrospective) – Approved 14/11/2012

## 2.7 Supporting Information includes:

- Noise report by Vibrock, February 2018
- Dust Management Plan by Vibrock, February 2018
- Supporting statement, November 2017

## 3. Representations

3.1 A total of 19 valid representations (19 objecting/0 supporting) have been received as defined in the Scheme of Delegation. This does not include multiple representations from the same household which equate to 23 letters in total. All issues raised have been considered. The letters raise the following material issues:

- Breach of enforcement notices on site;
- Vehicle movements in excess of what applicant is indicating/is permitted;
- Local road network unsuitable for this development due to physical constraints, no pavements or passing places etc;
- Impact damage to local road network and potential road safety issues due to size and frequency of vehicles in connection with site operations;
- Noise, dust and vibration pollution impacts of the development;
- Impact on local habitats (badgers);
- Landscape impact of development;
- Impact upon the local water environment;
- The development will affect a reported right of way.

## 4. Consultations

4.1 **Infrastructure Services (Environmental Health)** confirm they do not object to this application subject to appropriate conditions.

4.2 **Infrastructure Services (Natural Heritage)** was informally consulted on the application owing to comments from objectors about impact on badgers and a

claimed Right of Way across the site. It is acknowledged that badgers will likely be present in the area and may forage across the site and surrounding farmland, but the potential for setts is extremely poor due to soil depth. It is also confirmed that there is no recorded Right of Way across the site.

- 4.3 **Infrastructure Services (Roads Development)** have objected to this application on the basis that the existing road network is not suitable for the size, type and volume of the vehicles required in connection with the operations of the proposed/existing development. They note that it would be impossible for the developers to provide the required mitigation, in the form of passing places, in order to overcome such concerns due to ownership constraints.
- 4.4 **Alvah and Forglan Community Council** have objected to this application on several grounds. The main issues being the amount of vehicle movements generated by the development and resultant impact upon the existing inadequate local road network, in addition to noise, environmental and landscape impact of the development.
- 4.5 **Historic Environment Scotland** have not objected to this application.
- 4.6 **SEPA** do not object to this application subject to appropriate conditions being applied with regards to securing a site management plan, provision of settlement lagoons to avert impact on the local water environment as well as restoration works post extraction.
- 4.7 **SNH** have no comment to make on this application.

## 5. Relevant Planning Policies

### 5.1 Scottish Planning Policy

The aim of the Scottish Planning Policies is to ensure that development and changes in land use occur in suitable locations and are sustainable. The planning system must also provide protection from inappropriate development. Its primary objectives are:

- to set the land use framework for promoting sustainable economic development;
- to encourage and support regeneration; and
- to maintain and enhance the quality of the natural heritage and built environment.

Development and conservation are not mutually exclusive objectives; the aim is to resolve conflicts between the objectives set out above and to manage change. Planning policies and decisions should not prevent or inhibit development unless there are sound reasons for doing so. The planning system guides the future development and use of land in cities, towns and rural areas in the long term public interest. The goal is a prosperous and

socially just Scotland with a strong economy, homes, jobs and a good living environment for everyone.

## 5.2 Aberdeen City and Shire Strategic Development Plan 2014

The purpose of this Plan is to set a clear direction for the future development of the North East. It promotes a spatial strategy. All parts of the Strategic Development Plan area will fall within either a strategic growth area or a local growth and diversification area. Some areas are also identified as regeneration priority areas. There are also general objectives identified. In summary, these cover promoting economic growth; promoting sustainable economic development which will reduce carbon dioxide production, adapt to the effects of climate change and limit the amount of non-renewable resources used; encouraging population growth; maintaining and improving the region's built, natural and cultural assets; promoting sustainable communities; and improving accessibility in developments.

## 5.3 Aberdeenshire Local Development Plan 2017

Policy R3: Minerals and Hill Tracks  
Policy P1: Layout, Siting and Design  
Policy P4: Hazardous and Potentially Polluting Developments and Contaminated Land  
Policy E1: Natural Heritage  
Policy E2: Landscape  
Policy HE2: Protecting Historic and Cultural Areas  
Policy RD1: Providing Suitable Services

## 5.4 Other Material Considerations

Planning Advice Note 50: Controlling the environmental effects of surface mineral workings

The Management of Extractive Waste (Scotland) Regulations 2010

## 6. **Discussion**

6.1 This application seeks Full Planning Permission for the retrospective extraction of soil and stone, in addition to proposed future extraction from a site at Westside of Forglen, Hillhead of Mountblairy. The key planning issues are the principle of development, potential impact upon residential amenity, transportation and roads, landscape impact and other environmental impacts.

### Principle of Development

6.2 Policy R3: Minerals and Hill Tracks is the most applicable policy of the Aberdeenshire Local Development Plan to assess whether the proposed development is acceptable in principle. This policy generally only allows minerals development if, amongst other requirements, sufficient information is

provided to enable the full likely effects of the development to be assessed, together with proposals for appropriate control, mitigation and monitoring.

- 6.3 The policy identifies several key issues and their related policies within the Local Development Plan which must be considered and taken into account as part of the determination of this application. These will be discussed in greater detail in the following paragraphs.
- 6.4 It should be noted that due to the size of the site (approximately 0.88 hectares) this is considered to be a relatively small scale operation in the context of typical minerals development and ultimately not considered to be of an industrial scale. Therefore, on this basis, the level of information required to assess this particular development is not as substantial as that which would be required for typical minerals operations which Policy R3 is designed to target.
- 6.5 The agent has, however, provided a supporting statement which provides additional information relating to the development which has allowed the Planning Service and applicable consultees to make an appropriate assessment in proportion to the scale of the proposal.
- 6.6 The applicants have agreed in the case of approval that they will enter into a legal agreement with the council which will secure the remediation of the site upon completion of material to be extracted.

#### Residential Amenity

- 6.7 Infrastructure Services (Environmental Health) have been consulted in order to examine the application from a noise, dust and vibration impact perspective. Having initially requested further information in the form of an independent noise and dust assessment, which was then submitted by the applicant, the consultee confirms they have no objection to the development subject to conditions. The conditions requested by the consultee restrict operating hours and certain processes on site (such as screening, crushing and blasting) as well as prescribing noise emission levels which should be adhered to, otherwise formal action and subsequent remediation may be required.

#### Transportation and Roads

- 6.8 Infrastructure Services (Roads Development) have provided comments with regards to the likely impact of the development on the existing road network, particularly the unclassified road which forms the primary means of access to and from the site. They have indicated that concerns remain regarding the ability of the existing road network to adequately accommodate the size, type and volume of the vehicles required in connection with the operations of the proposed/existing development.
- 6.9 Furthermore, the consultee notes that in order to provide satisfactory mitigation for the impact of the development upon the local road network,

laybys and passing places would have to be installed. However, as this cannot currently be provided due to the applicant not owning all required areas of land nor having any guarantee of ever gaining the applicable permissions to develop on the land which would be required to deliver the mitigation, the consultee has advised they object to the application on the grounds of road safety.

#### Landscape Impact

- 6.10 The site is found on the periphery, but still within, the Forglan designed landscape. Historic Environment Scotland were therefore consulted on this basis and confirmed that they do not object to the application due to the particular circumstances of the site, namely its siting and the potentially temporary nature of any consent, which will ultimately avoid a permanent and unacceptable impact upon the Forglan designed landscape.
- 6.11 Due to the works being retrospective at the time of consideration the visual impact of the development can be easily assessed in the context of the wider landscape. When comparing works already undertaken to those still proposed for the site, taking into account topography and the scale of works proposed, it is the view of this Service that the proposed additional works will not cause an adverse cumulative visual impact to the point of being deemed unacceptable.

#### Environmental Impacts

- 6.12 SEPA have been consulted with regards to both the quarry operations on site and potential impact upon the surrounding environment. They have responded confirming they do not object to the application subject to conditions regarding the submission of a site management plan and restoration plan in addition to a restriction ensuring that the quarry floor is not lowered beyond existing levels unless otherwise agreed with the Planning Service in consultation with the consultee.
- 6.13 It should be noted that since receiving this response the agent has updated the submitted site plan showing the location of the required settlement pond within the site boundary. Further details would be included as part of the required site management plan, which would be secured through planning condition in the event of approval.
- 6.14 SNH were consulted in respect of the nearby ancient woodland found to the east of the site. Having assessed the application they confirm they have no comments to make at this time regarding the existing/proposed development.
- 6.15 Infrastructure Services (Environment) were also consulted due to concerns raised regarding the potential impact of the development upon habitats, particularly badgers. Despite acknowledging the potential for foraging in the immediate vicinity, having examined the extensive photos which were taken by officers as part of their site visit, the consultee remains confident that the development both existing and proposed poses no gross threat to badgers or their habitat. The same consultee has also provided clarification that there are

no confirmed rights of way in the vicinity of the site which would be directly affected by the proposed development.

### Conclusion

- 6.16 Although it is the view of this Service that many points set out within Policy R3 have or can be addressed through information submitted and/or mitigating planning conditions and potential legal agreement, due to the objection from Roads Development raising matters which cannot be addressed within the confines of this submission, the application is hereby recommended for refusal in accordance with Policy R3: Minerals and Hill Tracks, and Policy RD1: Providing Suitable Services.

## **7. Area Implications**

- 7.1 In the specific circumstances of this application there is no direct connection with the currently specified objectives and identified actions of the Local Community Plan.

## **8. Implications and Risk**

- 8.1 An Equalities Impact Assessment is not required because the proposed development is not considered to give rise to any differential impacts on those with protected characteristics.
- 8.2 There are no staffing and financial implications.
- 8.3 There are no risks identified in respect of this matter in terms of the Corporate and Directorate Risk Registers as the Committee is considering the application as the Planning Authority in a quasi-judicial role and must determine the application on its own merits in accordance with the Development Plan unless material considerations justify a departure.

## **9. Sustainability Implications**

- 9.1 No separate consideration of the current proposal's degree of sustainability is required as the concept is implicit to and wholly integral with the planning process against the policies of which it has been measured.

## **10. Departures, Notifications and Referrals**

### 10.1 Strategic Development Plan Departures

None

### 10.2 Local Development Plan Departures

Policy R3: Minerals and Hill Tracks  
Policy RD1: Providing Suitable Services.

- 10.3 The application is a departure from the valid Local Development Plan or Strategic Development Plan and has been advertised as such. Any representations received have been circulated as part of the agenda and taken into account in recommending a decision. The period for receiving representations has expired.
- 10.4 The application does not fall within any of the categories contained in the Schedule of the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009 and the application is not required to be notified to the Scottish Ministers prior to determination.
- 10.5 The application would not have to be referred to Infrastructure Services Committee in the event of the Area Committee wishing to grant permission for the application.

## **11. Recommendation**

### **11.1 REFUSE for the following reasons:-**

1. The application is contrary to Policy R3: Minerals and Hill Tracks, of the Aberdeenshire Local Development Plan 2017, due to the adverse negative impact the development will have upon the local roads network.
2. The application is contrary to Policy RD1: Providing Suitable Services, of the Aberdeenshire Local Development Plan 2017, as the proposed development cannot provide the mitigation required in order to address concerns of the impact of development upon local roads infrastructure

#### **For noting:-**

Part 2C (Planning Delegations) states at Section C.3.2b for Local Development, that following consultation with the Chair and Vice-Chair of the determining Committee, the Head of Planning and Building Standards can refuse planning applications for which Section 75 Agreements are not completed or Developer Obligations are not paid within four months from the date of the Committee at which the application is determined. Local Ward Members shall be notified of any such refusal.

Please note that this power may be exercised in respect of the application which is the subject of this report if the application is approved by the Committee.

**Stephen Archer**  
**Director of Infrastructure Services**  
**Author of Report: Stuart Newlands**  
**Report Date: 25 May 2018**

### APPENDIX 3

#### Extract of Draft Minute of the Banff and Buchan Area Committee Meeting of 12<sup>th</sup> June 2018

19A REFERENCE NO APP/2017/2942

#### FULL PLANNING PERMISSION FOR EXTRACTION OF SOIL AND STONE (RETROSPECTIVE) AT WESTSIDE OF FORGLEN, FORGLEN, TURRIFF, AB53 4JT

**Applicant:** Neil Murray Housebuilders Ltd  
**Agent:** Cobban Architecture Ltd

A report dated 10 May 2018 from the Director of Infrastructure Services had been circulated seeking determination of the above planning application by the Area Committee. The Committee heard the following speakers in respect of the application.

Supporting:

Ms Kimberly Murray, applicant

Objecting:

Mr John Burns (representing Alvah and Forglen Community Council)

Mr Geraint Hughes (representing Mr William Paterson, Mr James Paterson, Mr Stewart Adams and Mr Callum Adams)

Ms Caroline Orpe

Ms Carolyn Cox

Thereafter, Councillor Findlater, seconded by Councillor Roy **moved** that the application be refused for the following reasons:

1. The application is contrary to Policy R3: Minerals and Hill Tracks, of the Aberdeenshire Local Development Plan 2017, due to the adverse negative impact the development will have upon the local roads network.
2. The application is contrary to Policy RD1: Providing Suitable Services, of the Aberdeenshire Local Development Plan 2017, as the proposed development cannot provide the mitigation required in order to address concerns of the impact of development upon local roads infrastructure.

**As an amendment** Councillor Cox, seconded by Councillor Partridge **moved** that the application be delegated to the Head of Planning and Building Standards to approve on appropriate conditions. The reasons for approval of the application were that the proposed development complied with many of the Local Development Plan policies, there were no objections to the land use, there were no accidents recorded on the road, there were no restrictions on the existing planning consent outwith the agreed hours and conditions, there was no proof of noise other than that associated with the use of a builder's yard, refusing the application would initiate the use of contractors and thus increase the use of vehicles on the road.

Members of the Committee voted:

For the motion	3	Councillors Findlater, Kille and Roy
For the amendment	6	Councillors Buchan, Cassie, Cox, Mair, Partridge and Reynolds

The Chairman **declared the amendment carried** in the following terms:

that the application be delegated to the Head of Planning and Building Standards to approve on appropriate conditions.

Thereafter, Councillor Findlater **moved** that the application be referred to the Infrastructure Services Committee for final decision. In terms of Paragraph 5.5.2 (f) of the Standing Orders and with more than one third (three) members of the Committee present and voting in agreement, the application was referred to the Infrastructure Services Committee for final decision.

In terms of Paragraph 5.2.6 of the Standing Orders, Councillor Cox **entered his dissent** in relation to the referral to the Infrastructure Services Committee.

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## **APPENDIX 4**

### **APP/2017/2942 Westside of Forglen Quarry**

#### **Briefing Note**

Following consideration of the application by the Banff & Buchan Area Committee on 12th June 2018, further consultation has taken place with Roads Development colleagues with regard to the minor public road between the application site and the B9025 Aberchirder-Turriff road, and the improvements to this that would be required in order to meet Council requirements in terms of road safety. As already noted, the carriageway (including the verges) is very narrow, and opportunities for vehicles to pass are very limited. Roads Development have stated that inter-visible passing places and/or carriageway widening would be required in order to meet the Council's standards, and it is reiterated that this cannot be achieved within the limits of the current carriageway. It would therefore be dependent on forming passing places or road widening on land outwith the control of either the Council or the applicant.

Further discussion has also taken place with the applicant's agent to ascertain whether the applicant could reach agreement with third party landowners, or secure title to the additional land required in order to carry out the necessary improvements. The agent has confirmed that this is not considered possible, and highlighted again the limited number of vehicle movements involved and a number of laybys fronting newer residential properties along the stretch of roadway concerned.

The Planning Service would conclude by noting that, following further consultation with both Roads Development and the agent for the application, there is no change to the recommendation that the application be refused. It is further stressed that the laybys in front of the residential properties are in fact in the ownership of the properties concerned and do not form part of the public carriageway. The owners of same could therefore legitimately bar other vehicles from using them, and there may be legal and/or cost implications resulting from any damage caused.