

APPEAL DECISION (LRB)
Appeal Reference
LRB 422
Planning Reference
APP/2018/0313
Planning Proposal
Siting of Modular Unit (6.1m x 2.44m) on Existing Concrete Base
Summary of Decision
<p>Appeal allowed and agreed to removal of Condition 2.</p> <p>Main issue related to the need for the existing colour of the modular unit to be altered and whether this requirement was reasonable.</p> <p>Reporter expressed surprise and disappointment that matter had not been resolved during the planning application process. However, noted that email correspondence from the applicant prior to determination had originally agreed to alter the colour of the unit and that the applicant was therefore not forced into this as had been suggested in their Notice of Review statement.</p> <p>The LRB agreed that to paint modular unit any colour, other than the current shade of off white, would instead make the unit more obvious and it would not be in keeping with the other adjacent buildings. The current colour blends in very well and matches the colour of the two existing semi-detached cottages.</p> <p>The LRB unanimously agreed that given the circumstances of the site and its location and setting in the rural landscape, as well as considering the existing colour of the adjacent buildings, then it would be unreasonable to enforce such a condition as a modular unit is not considered to conflict with the requirements of Policy P1 (Layout, siting and design) of the ALDP.</p>
Policy Issues
The LRB members unanimously agreed that the modular unit is not considered to conflict with the requirements of Policy P1 (Layout, siting and design) of the ALDP.
Additional Points
N/A
Actions
Note Decision



Aberdeenshire Council Local Review Body

Reference LRB 422 APP/2018/0313

Review Decision Notice

Decision by Aberdeenshire Council Local Review Body (LRB)

- Site address: 1 Whinburn Cottages, Fergie, Huntly, AB54 6EE.
- Application for review by Mrs Elizabeth Watt against the decision by an Appointed Officer.
- Application reference APP/2018/0313 for full planning permission for siting of modular unit (6.1m x 2.44m) on existing concrete base granted conditional approval by decision notice dated 19 April 2018.
- Application drawings: Location Plan @ 1/1250 scale and Site Plan @ 1/500 scale.
- No site inspection took place.

Date of Decision: 11 September, 2018

Decision

The Local Review Body (LRB) agrees to vary the decision reviewed by it, thereby removing Condition No. 2 on Planning Permission APP/2018/0313, as defined in paragraph 4.0 below.

1.0 Preliminary

- 1.1 This Notice constitutes the formal decision notice of the Local Review Body as required by the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013.
- 1.2 The LRB reviewed the determination of the above application for planning permission at its meeting held on 31 August 2018. The LRB was attended by Councillors F C P Hood (Chair), R Cassie, J Hutchison, P K Johnston, A Ross and I Sutherland.
- 1.3 The LRB was shown projected plans and photographs by the Planning Adviser. These showed the application site and its relationship to the surroundings.
- 1.4 The LRB agreed that there was sufficient information before it to consider the Notice of Review and that no further information or site inspection was necessary in this case.

2.0 Proposal

- 2.1 The Notice of Review specifically seeks the removal of Condition No. 2 attached to the grant of Full Planning Permission dated 19 April 2018, namely: -

'(2) Notwithstanding the details submitted, prior to the first use of the building hereby approved details of its external colour shall be submitted to and approved in writing by the Planning Authority. Details shall be in the form of a RAL colour or sample chart. Prior to the first use of the building it shall be completed and finished in accordance with the approved plans and details, including application of the approved colour.

Reason: In the interests of visual amenity, to ensure that the external appearance of the building is appropriate within the setting to ensure that the building appears recessive within the landscape.'

- 2.2 The above condition had been included as one of two conditions that were attached to the grant of Full Planning Permission for the siting of the modular unit. Condition No. 1 (which was not subject to the Notice of Review) requires the approved modular unit should only be used for purposes incidental to the enjoyment of the dwellinghouse.
- 2.3 The site is located approximately 7 miles to the south west of Turriff and is located off a side road off the B9024 Turriff to Fergie road. The property is a traditional semi-detached single storey cottage forming the western most property. Immediately to the north west of the house there is an existing timber single garage with access and car parking to the rear (north). There is a garden to the front (South) with trees beyond, whilst to the west there is a small area of grass, farm track and trees beyond. To the rear (north) there are open fields bound by established been trees. The modular unit has recently been installed on the site and is being used as a home office. It measures 6.1m x 2.4m x 2.96m and is a light grey/off white colour. The unit has one door and two windows.
- 2.4 The planning application had attracted no letters of representation.

3.0 Reasoning

- 3.1 The determining issue in this review relates to the need for the existing colour of the modular unit to be altered and whether this requirement was reasonable, bearing in mind the six 'tests' contained in Circular 4/1998 – Use of Conditions in Planning Permissions.
- 3.2 The LRB agreed that the Appointed Officer had identified the relevant Aberdeenshire Local Development Plan 2017 (ALDP) policies and these were as follows:

Policy R2: Housing and employment development elsewhere in the countryside; and

Policy P1: Layout, siting and design.

- 3.3 The LRB acknowledged that their consideration of the Notice of Review related solely to Condition No.2 that had been applied to the planning permission (2018/0313). The LRB members expressed surprise and disappointment that this matter had not been resolved during the planning application process and that the matter had now reached the LRB.
- 3.4 The LRB noted from the copy email correspondence that prior to the determination of the planning application the applicant had originally agreed to the request from the Appointed Officer to alter the colour of the unit. The applicant was therefore not being forced into this as had been suggested in their Notice of Review statement. That said from the information and photographs available, the LRB agreed that it was quite clear to them that to paint the modular unit any colour, other than the current shade of off white, would instead make the unit more obvious and it would not be in keeping with the other adjacent buildings. The current colour blends in very well and matches the colour of the two existing semi-detached cottages.
- 3.5 The LRB agreed that the application of external cladding or possibly even some planting/landscaping may have been a better option to disguise the unit rather than the painting of the unit.
- 3.6 In any event the LRB unanimously agreed that given the circumstances of the site and its location and setting in the rural landscape, as well as considering the existing colour of the adjacent buildings, then it would be unreasonable to enforce such a condition as the modular unit is not considered to conflict with the requirements of Policy P1 (Layout, siting and design) of the ALDP. The LRB members therefore agreed that in this case the condition could be removed.

4.0 Decision

In the circumstances, the LRB agreed to:-

- (1) Remove condition no.2 from Full Planning Permission 2018/0313.

Informatives

1. The length of this permission: This planning permission will lapse on the expiration of a period of three years from the date of the decision notice, unless the development is begun within that period. (see section 58 (1) of the Town & Country Planning (Scotland) Act 1997 (as amended).
2. Notice of the start of development: The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start the development. Failure to do so is a breach of planning control and could result in the planning authority taking enforcement action. [See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)]. Such notification shall contain the information set out in the 'Notification of Initiation of Development' Notice as appended.
3. Notice of the completion of the development: As soon as possible after the development is finished, the person who completed the development must write to the planning authority to confirm that the development has been completed. [See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended)]. Such notification shall contain the information set out in the 'Notification of Completion of Development' Notice as appended.
4. For the avoidance of doubt, it should be noted that the remaining planning condition (no.1) attached to planning permission APP/2018/0313 dated 19 April 2018, continues to remain in force.

Karen Wiles
Head of Legal and Governance

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

Notification to be sent to applicant on determination by the planning authority of an application following a review conducted under section 43A(8)

Notice Under Regulation 21 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013.

1. If the applicant is aggrieved by the decision of the planning authority to refuse permission or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.

2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.



NOTICE OF REQUIREMENT FOR NOTICES

Notification of Initiation of Development

The person who intends to implement the development must inform the Planning Authority of the date they intend to start work on the development as soon as it is practicable using the enclosed Notice of Initiation of Development. This Notice must be submitted before starting work. Failure to do so would be a breach of planning control under Section 123(1) of the Town and Country Planning Act 1997 and the Planning Authority may take enforcement action.

The Permission may contain pre-conditions that require specific matters to be approved before development can commence. This means that a lawful commencement of the approved development cannot be made until the particular requirements of the condition(s) have been met. The person who intends to start development must ensure that all conditions are properly complied with. If you are in any doubt about the meaning or implications of any of the conditions you should contact the Planning Authority or seek professional advice. If you do not comply fully with the conditions the Planning Authority may serve a Breach of Condition notice on you or take enforcement action and you may be prosecuted or fined. Please note, there is no right of appeal against a Breach of Condition Notice.

Notification of Completion of Development

The person who completes the development must, as soon as practicable after doing so, give notice of completion to the Planning Authority using the enclosed Notice of Completion.

Display of Notice While Development is Carried Out

The person who carries out the development must, for the duration of the development, display a sign or signs in the form set out in the enclosed Note in a prominent place at or in the vicinity of the site of the development. The sign/s must be printed on durable material and be readily visible to the public. Carrying out development without displaying a notice in accordance with these requirements constitutes a breach of planning control under Section 123(1) of the Town and Country Planning Act 1997 and the Planning Authority may take enforcement action.

PLEASE NOTE – THE ABOVE REQUIREMENTS ARE IN ADDITION TO ANY SIMILAR REQUIREMENTS UNDER THE BUILDING REGULATIONS OR ANY OTHER LEGISLATION



**NOTIFICATION OF INITIATION OF DEVELOPMENT
TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997, SECTION 27A(1)**

**PLANNING APPLICATION REFERENCE NUMBER: APP/2018/0313
Full planning permission for siting of modular unit (6.1m x 2.44m) on existing
concrete base at
1 Whinburn Cottages, Forgue, Huntly, AB54 6EE
Dated: 11 September, 2018**

I hereby confirm that the above development is expected to commence on:

Date:

The person intending to carry out the development is:

Name:

Address:

.....

.....

Postcode:

Telephone no:

**Please delete as appropriate*

**The above person is the owner of the land to which the development relates*

**The landowner is (if different from the person above):*

Name:

Address:

.....

.....

Postcode:



The person appointed to oversee the carrying out of the development is (if applicable):

Name:

Address:

.....

.....

Postcode:

Telephone no:

Signed Date

On Behalf of

Please return this form, duly completed to:

Head of Service (Planning and Building Standards)
Aberdeenshire Council
Viewmount
Arduathie Road
Stonehaven
AB39 2DQ

IMPORTANT:

1. Failure to submit this Notice before commencement of development would be a breach of planning control under Section 123(1) of the Town and Country Planning Act 1997 and the Planning Authority may take enforcement action.



**NOTIFICATION OF COMPLETION OF DEVELOPMENT
TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997, SECTION 27B(1)**

**PLANNING APPLICATION REFERENCE NUMBER: APP/2018/0313
Full planning permission for siting of modular unit (6.1m x 2.44m) on existing
concrete base at
1 Whinburn Cottages, Forgue, Huntly, AB54 6EE**

Dated: 11 September, 2018

I hereby confirm that the above development was completed on:

Date:

The person who completed the development is:

Name:

Address:

.....

.....

Postcode:

Telephone no:

Signed Date

On Behalf of

Please return this form, duly completed to:

Head of Service (Planning and Building Standards)
Aberdeenshire Council
Viewmount
Arduathie Road
Stonehaven
AB39 2DQ