

## ABERDEENSHIRE COUNCIL

### LOCAL REVIEW BODY

WOODHILL HOUSE, ABERDEEN, FRIDAY 25 JANUARY, 2019

**Present:** Councillors F Hood (Chair), R Cassie, J Hutchison, P Johnston, A Ross and I Sutherland.

**Officers:** Senior Planners (LRB 432 - Alan Davidson, LRB 433 – Stuart Murison and LRB 434 – Bruce Strachan), Senior Solicitor (Peter Robertson) and Committee Officer (Frances Brown).

#### 1. DECLARATION OF MEMBERS' INTERESTS.

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

#### 2. PUBLIC SECTOR EQUALITY DUTY.

In making decisions on the following items of business, the Committee **agreed**, in terms of Section 149 of the Equality Act, 2010:-

- (1) To have due regard to the need to:-
  - (a) eliminate discrimination, harassment and victimisation;
  - (b) advance equality of opportunity between those who share a protected characteristic and persons who do not share it; and
  - (c) foster good relations between those who share a protected characteristic and persons who do not share it
- (2) Where an Equality Impact Assessment was provided, to consider its contents and take those into account when reaching their decision.

#### OPENING REMARKS BY THE CHAIR

The Chair, on behalf of members', welcomed the Senior Planning Officers, in attendance, to their first meeting, as Planning Advisers to the Local Review Body.

#### 3. MINUTE OF THE LOCAL REVIEW BODY MEETING OF 30 NOVEMBER, 2018.

The Local Review Body had before them and **approved** as a correct record, the Minute of the Local Review Body meeting of 30 November 2018, and the minute 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).

#### NEW REVIEWS

**5. LRB 432 – NOTICE OF REVIEW AGAINST REFUSAL OF PLANNING PERMISSION IN PRINCIPLE FOR ERECTION OF DWELLINGHOUSE AT SITE AT AQUAHORTHIES 50M WEST OF COSY NEUK, BURNHERVIE, INVERURIE, ABERDEENSHIRE – REFERENCE: APP/2018/1443.**

Local Review Body: Councillors F Hood (Chair), R Cassie, J Hutchison, P Johnston, 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 a Site at Aquahorthies, 50m West of Cosy Neuk, Burnhervie, Inverurie, Aberdeenshire – Reference: APP/2018/1443.

The Planning Adviser introduced the Notice of Review and advised the Local Review Body that in terms of review procedure, the applicants 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 10 valid representations had been received during the consultation period, (9 in support and 1 objection) and the material issues raised within those representations were:-

In Support

- Improve the visual amenity of the area; and
- The proposed development would not adversely impact on the amenity of privacy of neighbouring residents.

Objection

- The siting of the proposed house; and
- Flooding.

One further representation was submitted in response to the Notice of Review (as presented on page 76-77 of the agenda pack), and the comments made within that representation reiterated the comments previously made, and which supported the Planning Officer's reasons for refusal of the application.

Further to consultations undertaken, it was reported that Developer Obligations had confirmed that Developer Obligations had been agreed for secondary education; Contaminated Land had commented that historically, there had been a building on site that was likely to have been associated with farming activities and as such they had recommended that an informative be attached to any permission granted; Environment Built Heritage had stated that the application site did not appear to be situated in close proximity to the main entrance to Aquahorthies and although the landscape was included on the local inventory, there was a degree of separation and they had advised that they would neither object to or support the application; Environment Natural Heritage had stated that the site was marked as long established of plantation origin on the Scottish Natural Heritage Ancient Woodland Inventory and a tree survey would be required to meet BS5837 and a baseline archaeological survey should be carried out to access the biodiversity value of the woodland on the site and identify any protected species issues; Flood Risk and Coast Protection had stated that the site was adjacent to the SEPA 1 in 200 year indicative functional floodplain and a cross section through the site has been provided was able to show that much of the site lies well above that. Flood Risk and Coastal Protection

had also commented that as the application was for planning permission in principle, the proposed development was not available and as such, they would recommend that a condition be applied to any permission granted to ensure that the proposed building would be sited above the functional floodplain. The survey carried out appeared to be above a local datum and that required to be updated to ordnance datum before a condition could be applied and they would therefore recommend refusal on the grounds of flood risk. Roads Development had stated that the existing access road was adequate to accommodate the proposed development and they had no objection to the application, subject to the relevant conditions being applied; SEPA had no objection to the proposed development and Scottish Water had no objection to the application as they had confirmed that there was currently sufficient capacity at Invercarnie Water Treatment works to service the proposed development.

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 of the Aberdeenshire Local Development Plan 2017, as the proposed dwellinghouse fails to meet the criteria set out in the 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 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; and
  - f) It is not an appropriate addition to a cluster or group of at least 5 houses.
- (2) The applicant has failed to provide sufficient information to demonstrate that the development would have an impact on the existing trees located within the site and which have been identified as being part of long established woodland of plantation origin on the SNH Ancient Woodland Inventory. It is therefore not possible to make a full assessment of the implications of the development with regard to the impact upon the site and surrounding area with regard to Policy PR1 Protecting important resources of the Aberdeenshire Local Development Plan 2017.
- (3) The applicant has failed to provide sufficient information to demonstrate that the development would have no impact on any protected species currently located within the site. It is therefore not possible to make a full assessment of the implications of the development with regard to the impact upon the site and surrounding area with regard to Policy E1 Natural heritage of the Aberdeenshire Local Development Plan 2017.
- (4) The application is deficient in information in respect of drainage information as requested under Regulation 24 of the Town and Country Planning (Development Management Procedures) (Scotland) Regulations. It is therefore not possible to make a full assessment of the implications of the development with regard to the impact upon the site and surrounding area with regard to Policy RD1 Providing suitable services of the Aberdeenshire Local Development Plan 2017.
- (5) The applicant has failed to provide sufficient information to demonstrate that the development would have no impact on the functional floodplain, which lies adjacent to the site. It is therefore not possible to make a full assessment of the implications of the development with regard to the impact upon the site and surrounding area with regard to Policy C4 Flooding of the Aberdeenshire Local Development Plan 2017.

The Local Review Body considered that the relevant policies as contained within the Local Development Plan (2017) were: Policy R2: Housing and Employment Development Elsewhere in the Countryside; Policy P1: Layout, Siting and Design; Policy E1: Natural Heritage; Policy E2: Landscape; Policy C1: Using Resources in Buildings; Policy C4: Flooding; Policy RD1: Providing Suitable Services and Policy RD2: Developers Obligations.

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

In response to questions raised, the Planning Adviser confirmed that that application site was within the Aberdeen Housing Market Area (AHMA) and as such the application of the cluster policy (under Policy R2) would not apply; there was no physical evidence of previous development (upstanding walls, foundations or anything exposed on the site) and as such the site was in his view entirely naturalised and at some stage ancient woodland formed part of the design landscape for the former house, however, there had not been a house there for over 100 years.

The Local Review Body were in agreement that they had sufficient information before them and proceeded to determine the Notice of Review.

The Local Review Body agreed that the main determining issues for the Notice of Review as presented before them was whether the proposal was in accordance with the policy criteria that would normally apply to the erection of new development in the countryside.

During discussion, the Local Review Body were unanimous in their view that the application site would be considered as 'naturalised' and not 'brownfield' as there had not been a gatelodge there for over 100 years and there was no evidence of any exposed hardstanding which could have a use.

The Local Review Body noted that there were limited circumstances where support could be given to housing in the countryside within the AHMA and as the site was within the Rural Housing Market Area (RHMA) the proposal would not qualify as a cluster/group under Policy R2 which could allow for the refurbishment, replacement or extension of existing buildings or the remediation of brownfield land.

The Local Review Body took cognisance of support for the proposed development which could fit in well to a cluster of houses, however, having considered the policy criteria contained within Policy R2, Housing and Employment Development Elsewhere in the Countryside they agreed that there was nothing material within the applicant's submission which could warrant a departure from that policy.

The Local Review Body acknowledged that Policy E1: Natural heritage, RD1: Providing Suitable Services; C4: Flooding and PR1 Protecting important resources of the Aberdeenshire Local Development Plan 2017 has also not been addressed by the applicant due to lack of information submitted in support of the application or the Notice of Review and as such they supported the Appointed Officers decision.

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 with the decision notice dated 3 September, 2018.

**6. LRB 433 – NOTICE OF REVIEW AGAINST REFUSAL OF FULL PLANNING PERMISSION FOR REPLACEMENT WINDOWS AND DOOR AT 5 OLD HALL BUILDINGS, CHARLESTOWN ROAD, ABOYNE, AB34 5EJ – REFERENCE: APP/2018/1316.**

Local Review Body: Councillors F Hood (Chair), R Cassie, J Hutchison, P Johnston, 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 Replacement Windows and Door at 5 Old Hall Buildings, Charlestown Road, Aboyne, AB34 5EJ – Reference: APP/2018/1316.

The Planning Adviser introduced the Notice of Review and advised the Local Review Body that in terms of review procedure, the main determining issue for the review as presented before them was whether the case could be competently determined, having considered new information which had come to light.

The Local Review Body were advised that there were inaccuracies contained within the submitted plans as originally accepted and assessed by the Planning and Building Standards Service. Those inaccuracies related to the existing and proposed north elevation drawings, which showed a window and door present on that elevation. The Planning Adviser highlighted the discrepancy between those drawings and the actual situation which had been identified during a visit to the application site, whereby the north elevation was a blank wall with no such openings. The Planning Adviser presented a site photo to emphasise that point.

The Planning Adviser highlighted that as the erroneous plans had come to light, the Local Review Body must determine how best to proceed, as that information was material to their decision making. The Local Review Body were advised that the options available to them included deferring the Notice of Review to allow Officers to request amended drawings, which must then be circulated to the Planning and Building Standards Service and consultees for comment; or to dismiss the Notice of Review and to partly uphold the Appointed Officer's decision to Refuse Full Planning Permission on the grounds that they could not review a decision which had been based on inaccurate drawings which did not match the planning proposal.

During discussion some consideration was given to both options, however the general consensus by the Local Review Body, having taken advice, was to agree that in terms of correct process, it would be safer to dismiss the Notice of Review and to advise the applicant that they should submit a fresh planning application, with the correct drawings, to allow the Planning and Building Standards Service to consider that application afresh.

The Local Review Body did not discuss the planning issues associated with the principle of replacement windows to the property.

After due consideration, the Local Review Body **agreed** to dismiss the Notice of Review and partly uphold the Appointed Officer's decision to Refuse Full Planning Permission, on the grounds that they did not consider that it was a review that they could properly determine, as the original planning application had been determined using erroneous plans which did not match the development proposal.

The Local Review Body suggested that the applicant should submit a fresh application to the Planning and Building Standards Service, ensuring that the correct plans were provided in support of the proposed development.

**7. LRB 434 – NOTICE OF REVIEW AGAINST REFUSAL OF FULL PLANNING PERMISSION FOR CHANGE OF USE FROM BUSINESS (CLASS 4) TO FLAT (SUI GENERIS) AT 5 MUIRSKIE GRANGE, BANCHORY, ABERDEENSHIRE, AB31 6EB – REFERENCE: APP/2018/2093.**

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

There had been submitted, a Notice of Review, and supporting documents by the agent, which sought a review of Full Planning Permission for the Change of Use from Business (Class 4) to Flat (Sui Generis) at 5 Muirskie Grange, Banchory, Aberdeenshire, AB31 6EB – Reference: APP/2018/2093.

The Planning Adviser introduced the Notice of Review and advised the Local Review Body that in terms of review procedure, the applicants had requested a site inspection to the application site and surrounding area 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 3 valid representations had been received during the consultation period, which were opposed to the proposed development and the material issues raised within those representations were:-

- Overlooking;
- Site plan inaccurate;
- Safety implications for pedestrians;
- Insufficient parking;
- Drainage capacity insufficient for residential use;
- Not in keeping with pattern of development – more suited to urban location.

It was reported that 3 further representations had been received during the consultation period for the Notice of Review from those who were opposed to the proposed development and they had reiterated the comments made in the original submissions (pages 184-188 of the agenda pack). The applicant/agent had responded to those submissions and that response was acknowledged by the Local Review Body (pages 190-191 of the agenda pack).

Further to consultations undertaken, it was reported that Developers Obligations had confirmed that the development would not trigger the requirements for Developer Obligations or Affordable Housing policies, therefore no contributions would be required; Roads Development had commented that there was adequate existing access in place for the proposal and sufficient parking provision and the Health and Safety Executive had confirmed that they do not advise on safety grounds, against the granting of planning permission.

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

- (1) The proposal was considered out of character with the surrounding area and pattern of development, detrimentally impacting on the amenity value of the neighbouring properties, and creating little amenity for future occupiers. As such, it fails to comply with the principles of Policy P1: Layout, Siting and Design of the Aberdeenshire Local Development Plan, 2017 in respect of the ability to be safe and pleasant, whilst protecting amenity, and the creation of a welcoming environment.

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 and Employment Development Elsewhere in the Countryside; Policy P1: Layout, Siting and Design; Policy RD1: Providing Suitable Services and Policy RD2: Developers' Obligations.

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

In response to questions raised, the Planning Adviser confirmed that the principle of the proposal was not disputed, and marketing had been undertaken by the applicant, however, the primary concerns in terms of key planning issues were how the proposed residential use would sit with the existing pattern of development; the lack of amenity for new residents and the impact on the privacy and amenity of neighbours.

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 proposal was in accordance with the policy criteria for layout, siting and design of new development.

The Local Review Body took cognisance of the applicant's Notice of Review which had argued that proposal would not have any impact on the amenity of existing properties; only minor changes were being proposed and as such Policy P1 was not in their view relevant and the property would be marketed for affordable country living. In addition, under Policy R2 the development should be deemed acceptable and matters raised at the pre-application stage had been addressed. Finally, it had been highlighted that the property was unsellable for commercial use; was surplus to requirements and may fall into disrepair; for all those reasons approval of change of use should be considered.

During discussion, opposing views were expressed.

One member of the Local Review Body was minded to support the proposed development on the grounds it was unreasonable to refuse as development would not be out of character with the pattern of development as there were a lot of examples of small flats and houses which could be found in close proximity to large dwellinghouses in Aberdeenshire; a drawing showing potential for overlooking had demonstrated that it would not be an issue and there was adequate parking and space for a bin store to the rear of the property. It was suggested that any planning permission should be subject to conditions being attached to ensure that a suitable plan would be submitted to the Planning and Building Standards Service for an external bin store and obscure glass would be required for the windows.

The Planning Adviser advised the Local Review Body that there was no scope for bins to be stored to the rear of the building, however, they could be stored on the paved area at the south side of the building. With regards to the issue of the drawing showing the potential for overlooking, it was noted that it had been considered by the Appointed Officer, however, they had not been persuaded that privacy and amenity, particularly to the former farmhouse to the north-west, could be protected.

Those who did not support the proposed development voiced concerns about the impact on the privacy and amenity, particularly with regard to overlooking. It was highlighted that while the reason for refusal did not directly reference overlooking that could be inferred from 'amenity', which had a broad interpretation, however, reference was made to Policy P1 which

also mentions “privacy” which could be added to the reason for refusal if members wished to clarify that point.

Following consensus, the majority view held supported the Appointed Officer’s conclusion, that the proposal would fail to comply with all 6 tests outlined within Policy P1 and elements of the policies objectives, with specific reference to the detrimental impact on the amenity of neighbours. To strengthen the reason within the decision notice, the word ‘privacy’ should be inserted before “the amenity of neighbouring properties”.

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 issued on 26 October, 2018, subject to the addition of the word ‘privacy’ before amenity value of the neighbouring properties in the first sentence .