

ABERDEENSHIRE COUNCIL

LOCAL REVIEW BODY

WOODHILL HOUSE, ABERDEEN, FRIDAY 26 JULY, 2019

Present: Councillors P Johnston (Chair), R Cassie, J Hutchison and I Sutherland.

Apologies: Councillors F Hood and A Ross.

Officers: Planning Advisers to the Local Review Body, (Senior Planner, James Wheeler for LRB 448 and 461), (Senior Planner, Gregor Spence for LRB 459 and 460), Legal Adviser to the Local Review Body, (Senior Solicitor, Peter Robertson) and Committee Officer, (Frances Brown).

OPENING REMARKS BY THE CHAIR

Councillor Johnston, as Vice-Chair noted that Councillor Hood had submitted his apologies due to personal commitments and in his absence he would Chair the meeting.

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 Cassie declared an interest in Agenda Item 6 (LRB 448) and Agenda Item 9 (LRB 461) by virtue of the application sites being within his ward. Having applied the objective test, he concluded that he would withdraw from proceedings when both reviews were being determined.

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 20 JUNE, 2019

The Local Review Body had before them and **approved** as a correct record, the Minute of the Local Review Body meeting of 20 June 2019, and the minute was duly signed in public.

4. MINUTE OF THE LOCAL REVIEW BODY MEETING OF 28 JUNE, 2019

The Local Review Body had before them and **approved** as a correct record, the Minute of the Local Review Body meeting of 28 June 2019, and the minute was duly signed in public.

5. SPREADSHEET HIGHLIGHTING RELEVANT POLICIES FOR EACH REVIEW

The Local Review Body had before them and **noted** a spreadsheet which listed the policies which would be referred to in consideration of each of the reviews presented before them, as contained within the Aberdeenshire Local Development Plan (2017).

RECONVENED REVIEWS

6. LRB 448 – NOTICE OF REVIEW AGAINST REFUSAL OF FULL PLANNING PERMISSION FOR ERECTION OF A DWELLINGHOUSE AT PLOT 43, MELROSE CRESCENT, MACDUFF, ABERDEENSHIRE – REFERENCE: APP/2018/2170

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

Reference was made to the Minute of the Local Review Body meeting of 26 April, 2019 (Item 8), where the Local Review Body agreed to defer consideration of the Notice of Review, to allow them to follow further procedure, by way of seeking additional information, namely:-

- (i) A detailed planning history of the built out area for the Springfield and Melrose Developments (from the Planning Service);
- (ii) Clarification on the ownership/maintenance/design of the Playpark (from the Planning Service);
- (iii) Confirmation of whether the playpark is protected, and are there any planning policy issues which the Local Review Body need to consider (from the Planning Service);
- (iv) Are the developers for the Springfield and Melrose developments bound by any legal agreements which would require them to deliver a secondary access (from the Planning Service);
- (v) The nature of the Roads Service objection, taking into account application APP/2013/2327 had been approved, without a condition which would require Springfield Properties to provide a secondary access (Roads Development);
- (vi) Is there a requirement for an emergency vehicle access point through the site of the proposed dwellinghouse (Scottish Fire & Rescue Service);
- (vii) Confirmation of the ownership that the whole site, including the play park within the red line are in the ownership of the applicant (The Applicant);
- (viii) Confirmation that the Planning Service that evidence of the ownership of the land is their understanding of ownership (Planning Service on receipt of applicant's evidence); and
- (ix) An unaccompanied site inspection.

The Local Review Body noted that all of the information requested from the planning service and Historic Environment Scotland, had been circulated as presented on pages 5-35 of the agenda pack and the site inspection to the application site had taken place, in advance of the formal meeting.

The Local Review Body then resumed consideration of the Notice of Review, which sought a review of the Appointed Officer's decision to Refusal of Full Planning Permission for Erection

of a Dwellinghouse at Plot 43, Melrose Crescent, Macduff, Aberdeenshire - Reference: APP/2018/2170.

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 26 April, 2019 and a recap of the Appointed Officer's reasons for refusal, namely:-

- (1) The proposed development is contrary to Policy P3: Infill and Householder Developments within Settlements (Including Home and Work Proposals). As contained in the Aberdeenshire Local Development Plan 2017, in that the development of the site would result in the loss of a proposed access road link to the detriment of an in prejudice to the delivery of accessibility measures required to serve the neighbouring housing development in the interests of road safety.

The Local Review Body considered that the relevant policies as contained within the Local Development Plan (2017) were: Policy 1: Layout, Siting and Design; Policy P3: Infill and Householder Developments within Settlements (Including Home and Work Proposals); Policy C1: Using Resources in Buildings; 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 a questions raised, the Planning Adviser confirmed:-

- (1) The playpark was not specifically protected within the settlement, however, Policy RD1 and P3 would protect the amenity and character of the area and loss of open space from inappropriate infill development.
- (2) The Scottish Fire and Rescue Service had stated that additional access could be provided with a minimum width of 3.5 metres of grassed or permanent hard standing to allow emergency vehicles access to the developments, however, he was not sure if they had submitted that information based on the approved plans.
- (3) The Planning Service could not enforce a secondary access on land that was in the ownership of a third party.
- (4) The original outline planning consent was material in their decision making, even though access could not be implemented, as Scottish Planning Policy and the Local Development Plan aims to provide well connected places as part of the planning rationale.

During discussion, the Local Review Body made reference to Scottish Fire and Rescue Service response and agreed that there was still some ambiguity surrounding the content of their submission as it was not clear if it was founded upon the approved plans or whether it was founded upon erecting a dwellinghouse on an area of land which had previously been identified as providing access/connectivity between Ewen Place and Melrose Crescent.

The Local Review Body requested that further clarification should be sought from the Scottish Fire and Rescue Service to confirm that in the event that a through access was not provided between Ewen Place and Melrose Crescent that the status quo would be an acceptable, as the existing situation would still provide an acceptable degree of access, without an emergency access requirement between Ewen Place and Melrose Crescent.

Further discussion then ensued with regards to whether, the provision of a pedestrian access, through a small section of the adjacent play area, (which was in the ownership of the applicant) and the constructed road, could be undertaken under the Council's role as a Roads Authority.

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 seeking additional information; namely:-

- (1) To ask for clarification from the Scottish Fire and Rescue Service that the comments provided were on the basis that in the event that a through access was NOT provided between Ewen Place and Melrose Crescent (i.e., status quo is retained) that the existing situation still provides an acceptable degree of access without any emergency access requirement between Ewen Place and Melrose Crescent.
- (2) To ask the Roads Service whether there was potential for the provision of a pedestrian access (through the adjacent play area) between Melrose Crescent and Ewen Place by taking a small section between the corner of the play park and the constructed road to be undertaken under the Council's role as a Roads Authority.

NEW REVIEWS

7. LRB 459 – NOTICE OF REVIEW AGAINST REFUSAL OF FULL PLANNING PERMISSION FOR ERECTION OF DWELLINGHOUSE AND GARAGE AT KELLY CROFT, TARVES, ABERDEENSHIRE, AB41 7ND – REFERENCE: APP/2018/2854

Local Review Body: Councillors P Johnston (Chair), R Cassie, J Hutchison 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 Erection of a Dwellinghouse and Garage at Kelly Croft, Tarves, Aberdeenshire, AB41 7ND – Reference: APP/2018/2854.

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 no valid representations or had been received during the consultation period, prior to determination.

Further to consultations undertaken, it was reported that Developer Obligations had stated that it had agreed developer obligations with the agent/applicant for Secondary Education contributions towards an extension to Meldrum Academy to increase capacity and Contaminated Land, Roads Development and Scottish Water had all confirmed that they did not object to the proposed development.

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

- (1) Whilst the building may historically have been used for agricultural purposes, it is evidently now only used as a domestic store/garage and is not considered redundant for this use. The proposal is not compliant with Policy R2 Housing and employment development elsewhere in the countryside 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 E2: Landscape; Policy RD1: Providing Suitable Services; Policy RD2: Developers Obligations and Policy C1: Using Resources in Buildings.

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 a question raised, the Planning Adviser confirmed:-

- (1) The proposed new dwellinghouse would not be sited on the footprint of the existing Byre, however, it would be located to the north of the site, within the curtilage of the existing dwellinghouse.
- (2) There was no specific guidance on the subdivision of feus within the current Local Development Plan 2017, however, there was more detail on that within the previous Local Development Plan 2012.
- (3) Specific reference to disused/redundant garages was contained with the Local Development Plan 2017, however, the logical view would be that a garage next to a house would be considered to be ancillary to that dwellinghouse and therefore its use would never cease unless the house was no longer there.

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 the principle of development and whether the design and layout of the proposed dwellinghouse would be appropriate for the area; the extent to which the proposal would impact on the character and amenity of the area and whether the site could be adequately serviced.

During discussion, opposing views were expressed.

One member of the Local Review Body was minded that the decision would come down to the interpretation of Policy R2 as the proposed development was compliant with all other policies and he took the view that it came down to whether the proposal would involve the refurbishment or replacement, on the same site, of an existing house or disused building. Having considered the Notice of Review and supporting statement, along with the photomontages presented, he was minded that the proposed development would comply with Policy R2 as the former byre was in his view disused and redundant for its original use/purpose.

The remaining members of the Local Review Body were minded that it did come down to the interpretation of Policy R2 and whether the former byre was used as a store/garage for the existing domestic dwellinghouse. Those members agreed that Policy R2 would allow for the remediation of redundant brownfield land opportunities, however, ancillary buildings to an existing dwellinghouse could not be considered as redundant as long as the dwellinghouse was still there. Those members agreed that any departure from Policy R2 could result in an unacceptable precedent being set for similar developments in the area.

Councillor Cassie, moved to uphold the Notice of Review and GRANT Full Planning Permission, on the grounds that the proposal would be replacement, on the same site, of a disused building.

Councillor Johnston, seconded by Councillor Hutchison, moved, as an amendment, to DISMISS the Notice of Review, and uphold the Appointed Officer's decision to Refuse Full Planning Permission as the proposal would not comply with Policy R2 as it was for the replacement of a store/garage, which was ancillary to the existing dwellinghouse, and therefore could not be considered to be redundant for its original purpose. If approved, it could set an undesirable precedent for further similar developments within the area.

As the proposed motion was not seconded, Councillor Cassie requested, as provided in Standing Order 5.2.4, that the terms of his motion be recorded in the minute.

After due consideration, the Local Review Body **agreed**, by a majority 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 4 March 2019, and if approved, could set an undesirable precedent for further similar developments within the area.

8. LRB 460 – NOTICE OF REVIEW AGAINST REFUSAL OF FULL PLANNING PERMISSION FOR ERECTION OF DWELLINGHOUSE AT LAND ADJACENT TO SLAINS LODGE, COLLIESTON, ELLON – REFERENCE: APP/2018/2921.

Local Review Body: Councillors, P Johnston (Chair), R Cassie, J Hutchison 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 Dwellinghouse at Land Adjacent to Slains Lodge, Collieston, Ellon – Reference: APP/2018/2921.

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 which included additional drainage information which was not available at the time the application was made, but which relates to one of the reasons for refusal and a site inspection to the application site. 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 17 valid representations had been received during the consultation period, which had intimated their objection for the proposed development and the material issues raised within those representations were:-

- Coastal slippage problem at the seal cliff;
- Increase water run-off;
- Concerns about the private drainage system;
- The road is private, extra traffic will lead to increased maintenance;
- Design and size of house in keeping with the village;
- Loss of residential amenity;
- Outwith the village boundary;
- Greenfield site; and
- The development would have an adverse impact on the nature reserve.

It was reported that six further representations had been submitted, in response to the Notice of Review (as presented on pages 645-651 of the agenda pack), and those submissions reiterated their objection to the proposed development.

It was further reported that the applicant/agent had responded to the six representations received, addressing each of the points raised (as presented on pages 652-658 of the agenda pack).

Further to consultations undertaken, it was reported that Developer Obligations had confirmed that no contributions would be required; Contaminated Land had confirmed that there was no indication of any past use which may have caused contamination of the site; Environmental Health had confirmed that they had no objection to the proposal and Environment – Natural Heritage had stated that the track along the NW boundary had been designed as a core path with the Aberdeenshire Core Paths Plan, and it also recorded as a claimed right of way, however, it was not within the application boundary and also provides access to another property, therefore, it did not appear that the proposal would adversely affect continued public access along the route. They also confirmed that a walkover ecological survey had been carried out and a report submitted. There were no habitats of ecological value and no evidence of any protected species present on the site. Given the proximity of the site to the existing settlement at Collieston, the proposal would not have a significant additional adverse impact upon the statutory designations at Forvie, or the Buchan Ness to Collieston Special Protection Area. Flood Risk and Coastal Protection had noted that there was to be a partial soakaway for surface water, however the infiltration test had failed and they therefore requested that attenuation was provided instead and that the discharge was controlled to the Greenfield runoff rate and details of that would be required. With regard to the field drainage and coastal slippage, those remain a private issue and were not in the remit of Aberdeenshire Council; Roads Development had commented that the development take access via a private road, not maintained by the Roads Authority and any increase in the usage would increase liability on those responsible for maintaining the private road. Scottish Water had no objection and had stated that there was currently sufficient capacity in the Forehill Water Treatment works and the Collieston Waste Water Treatment Works.

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

- (1) The development is contrary to Policy R1 Special rural areas contained in the Aberdeenshire Local Development Plan 2017. Within coastal zones, development must require a coastal location, and the social and economic benefit must outweigh any adverse environmental impact or involve the redevelopment of an existing building or within the curtilage of an existing building. The application site is entirely greenfield land with no evidence of previous development existing on site. The Planning Service does not consider that the proposed new house requires a coastal location and that the social and economic benefits of a house in this location are incidental to the applicant not the wider community.
- (2) The development is contrary to Policy RD1 Providing suitable services contained within the Aberdeenshire Local Development Plan 2017. The applicant has not justified that a connection to the public sewer cannot be achieved on this site, located on the edge of an existing settlement. Furthermore, the drainage report submitted with this application stated that the infiltration tests for the disposal of surface water failed. Therefore, the application has not demonstrated that the surface water can be suitably disposed of without having an adverse impact on the public health and safety.

The Local Review Body considered that the relevant policies as contained within the Local Development Plan (2017) were: Policy R1: Special Rural Areas; Policy P1: Layout, Siting and

Design; Policy E1: Natural Heritage; Policy E2: Landscape; Policy C1: Using Resources in Buildings; 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 a question raised, the Planning Adviser confirmed:-

- (1) He was not aware that a pre application enquiry had taken place. If it had, the Appointed Officer would have referred to that in the Report of Handling.
- (2) He was not aware that any development bids had been received from developers and landowners for sites in Collieston for inclusion in the 2022 Local Development Plan.

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 the principle of development, and the impact the proposed development may have on the character of the surrounding area.

During discussion, the Local Review Body considered the first reason for refusal and were unanimous in their view that the Appointed Officer had applied the correct policies and there was nothing material contained with the Notice of Review or supporting statement as submitted by the applicant which could warrant a departure from Policy R1: Special Rural Areas. The Local Review Body were minded the proposed new dwellinghouse would not require a coastal location and the social and economic benefits of a new dwellinghouse in that location were benefit the applicant but not the wider community.

When considering the second reason for refusal, the Local Review Body acknowledged that the applicant had raised new matters within their Notice of Review which had justified connection to the public sewer, however, drainage for the disposal of surface water had not been adequately addressed.

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 8 March 2019.

9. LRB 461 – NOTICE OF REVIEW AGAINST REFUSAL OF PLANNING PERMISSION IN PRINCIPLE FOR ERECTION OF DWELLINGHOUSE AT GROUND AT FERNIE BRAE, GARDENSTOWN, ABERDEENSHIRE – REFERENCE: APP/2019/0528

Local Review Body: Councillors P Johnston (Chair), J Hutchison 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 Ground at Fernie Brae, Gardenstown, Aberdeenshire – Reference: APP/2019/0528.

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 a site inspection. 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 during the consultation period, which had intimated their objection to the proposed development and the material issues raised within that representation were:-

- Development is beyond the boundary of Gardenstown, which is defined by Fernie Brae;
- Impact of development upon residential amenity by means of overlooking and overshadowing;
- Additional traffic pressure on already narrow and awkward road / junction; and
- Road safety concerns.

Further to consultations undertaken, it was reported that Developer Obligations had confirmed that the proposal would not engage developer contributions, and as such no contribution would be required; Roads Development had objected to the application due to a lack of information and given the topography of the site and the surrounding area, they had stated that they would require further details regarding the provision of surface water drainage; Scottish Water had confirmed that there was sufficient capacity within the local water the public drainage system to adequately accommodate the new development.

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

- (1) The application is contrary to Policy R1: Special rural areas of the Aberdeenshire Local Development Plan 2017 as the development does not involve the replacement of an existing building within the curtilage of an existing building whilst it has not been demonstrated that the development requires a coastal location nor has the potential social or economic benefits of the development been provided.
- (2) The application is contrary to Policy P1: Layout, siting and design of the Aberdeenshire Local Development Plan 2017 as the development would negatively impact upon the amenity of existing residential properties in the vicinity of the site by means of overlooking and overshadowing.
- (3) The application is contrary to Policy E2: Landscape of the Aberdeenshire Local Development Plan 2017 as the development would negatively impact upon the character of the area which has been designated as a Special Landscape Area.
- (4) The application is contrary to Policy RD1: Providing suitable services of the Aberdeenshire Local Development Plan 2017 as the application does not provide adequate information regarding the treatment of surface water drainage whilst it has not been confirmed that the development can be adequately serviced in terms of foul drainage.

The Local Review Body considered that the relevant policies as contained within the Local Development Plan (2017) were: Policy R1: Special Rural Areas; Policy P1: Layout, Siting and Design; Policy E2: Landscape; 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 a question raised, the Planning Adviser confirmed:-

- (1) That he believed there was room within the settlement for infill development.
- (2) That the pre application enquiry for the development of the site for three dwellinghouses had been deemed acceptable by the Appointed Officer as small scale growth of a settlement within 200 metres of the defined settlement boundary, however, the proposal as submitted was for one dwellinghouse within a coastal location.
- (3) That Policy R1: Special Rural Areas states that housing opportunities would be significantly restricted in the coastal zone to reflect the special nature of those areas and the development must require a coastal location with the social and economic benefits outweighing any adverse environmental impact, or it should be for the redevelopment of an existing building, or within the curtilage of an existing building.

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 the principle of development, for the erection of a dwellinghouse on an undeveloped site, located on the outside of an existing settlement and within the Coastal Zone.

During discussion, the Local Review Body when considering each of the reasons for refusal were unanimous in their view that the Appointed Officer had applied the correct policies when determining the application.

The Local Review Body placed little weight on the pre application enquiry as the proposal would not comply with Policy R1 as the development would not contribute to the organic growth of a settlement and the new dwellinghouse did not require a coastal location.

The Local Review Body acknowledged that the proposal was for one dwellinghouse, which would be sited on an elevated position and in terms of the siting would in their view have a detrimental impact on the special landscape area and the amenity of existing residential properties due to overshadowing.

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 in the Decision Notice issued on 3 May 2019.