

**ABERDEENSHIRE COUNCIL****WOODHILL HOUSE, ABERDEEN, 27 JUNE 2019**

**Present:** Councillors K Adam, W Agnew, D Aitchison, A Allan, P Argyle, N Baillie, D Beagrie, L Berry, A Bews, R Bruce, A Buchan, C Buchan, M Buchan, S Calder, G Carr, R Cassie, J Cox, I Davidson, S Dickinson, A Duncan, E Durno, A Evison, M Ewenson, A Fakley, M Findlater, M Ford, A Forsyth, P Gibb, J Gifford, V Harper, A Hassan, F Hood, W Howatson, J Hutchison, M Ingleby, J Ingram, P Johnston, A Kloppert, A Kille, J Latham, S Leslie, D Lonchay, R McKail, A McKelvie, D Mair, I Mollison, G Owen, G Petrie, C Pike, G Reid, G Reynolds, M Roy, A Simpson, H Smith, N Smith, S Smith, A Stirling, I Sutherland, I Taylor, R Thomson, B Topping, A Wallace, L Wilson, R Withey and J Whyte.

**Apologies:** Councillors G Blackett, H Partridge, D Robertson, A Ross and I Walker.

**Officers:** Chief Executive, Director of Business Services, Director of Education and Children's Services, Director of Infrastructure Services, Partnership Manager (I Ramsay - Health and Social Care Partnership), Head of Planning and Building Standards, Head of Finance, Head of Legal and Governance and Principal Committee Services Officer.

**CHAIR**

Councillor W Howatson, Provost of the Council, presided.

**ANNOUNCEMENTS**

Prior to consideration of the business of the meeting, the Provost paid tribute to Mr Roger Goodyear, former deputy Lord Lieutenant for Banffshire, who recently passed away and advised that he would be writing to his family to express condolences on behalf of the Council.

The Provost also advised that a number of residents from the North East of Scotland had been honoured in the Queen's Birthday Honours List and congratulated David Graham Hutchinson (OBE), Jennifer Anne Gow (MBE), Angus Maitland Pelham Burn (MBE), Lorna Clyne (BEM), Eileen Joyce Lindsay (BEM) and the Tolbooth Museum in Stonehaven, awarded the Queen's Award for Voluntary Services.

Finally, the Provost congratulated all nominees and winners at the recent Inspiring Aberdeenshire event, celebrating the achievements of individuals and communities who make Aberdeenshire a truly special and unique place.

**1. DECLARATION OF MEMBERS' INTERESTS**

The Provost asked members if they had any interests to declare in terms of the Councillors' Code of Conduct and the following declarations were intimated:-

- (i) Item 4 – Councillor Ford on the basis that he had previously given procedural advice to the applicant and, in addition, had previously been a work colleague of the SEPA representative (Mr Mackay) and having applied the objective test concluded that he had no interest to declare and would remain in the meeting;
- (ii) Item 4 – Councillor Howatson having previously been a board member of SEPA and having applied the objective test concluded that he had no interest to declare and would remain in the meeting; and

- (iii) Item 11 – Councillor Sutherland by virtue of being a Town Centre Business Manager benefitting from Academy trade and would leave the meeting and not take part in the determination thereof.

## 2. PUBLIC SECTOR EQUALITY DUTY

In making decisions on the following items of business, the Council **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 MEETING OF ABERDEENSHIRE COUNCIL OF 25 APRIL, 2019

The Minute of Meeting of Aberdeenshire Council of 25 April, 2019, had been circulated, was **approved** as a correct record, and thereafter signed by the Chair.

## 4. PLANNING APPLICATIONS

**(1) APP/2018/3027 - CHANGE OF USE OF AGRICULTURAL LAND TO FORM 9 STANCE CARAVAN PARK TOURING GYPSY/TRAVELLERS SITE, FORMATION OF ROAD AND ERECTION OF BOUNDARY FENCING, WALLS, GATES, PUMP STATION AND AMENITY BLOCKS (PART RETROSPECTIVE) LAND SOUTH WEST OF ESKVIEW FARM, ST CYRUS, MONTROSE**

**(2) APP/2018/3028 - RETROSPECTIVE CHANGE OF USE OF AGRICULTURAL LAND TO FORM 10 STANCE PRIVATE PERMANENT CARAVAN PARK, FORMATION OF ROAD, ERECTION OF BOUNDARY FENCING, WALLS, GATES AND EDUCATION FACILITY LAND SOUTH WEST OF ESKVIEW FARM, ST CYRUS, MONTROSE**

With reference to the Minute of Meeting of the Kincardine and Mearns Area Committee of 21 May, 2019 (Item 5), a report dated 30 May, 2019, by the Director of Infrastructure Services had been circulated requesting consideration of two applications for development at Land to South West of Eskview Farm, St Cyrus, Montrose for (1) change of use of agricultural land to form 9 stance caravan park touring gypsy/travellers site, formation of road and erection of boundary fencing, walls, gates, pump station and amenity blocks (part retrospective) (Planning Application No. APP/2018/3027); and (2) retrospective change of use of agricultural land to form 10 stance private permanent caravan park, formation of road, erection of boundary fencing, walls, gates and education facility (Planning Application No. APP/2018/3028).

The report explained that both planning applications were, in the professional opinion of the Director of Infrastructure Services, following consultation with the Chief Executive and the leaders of the political groups on the Council (and any representative of the Independents, including Non-Aligned Independents), of regional significance and had been referred to Full Council under the provisions of the Scheme of Governance at Section A.11.1 of Part 2A of the List of Committee Powers and Section C.3.1a of Part 2C Planning Delegations which reserved authority to Full Council to determine planning applications in such circumstances. The report further explained that the two applications covered adjoining sites and that the issues raised

included both Aberdeenshire wide and local considerations, and in light of the proposals being significantly linked, it was proposed that they should be considered together.

The Head of Planning and Building Standards introduced the report making reference to the planning history on the adjoining sites. He highlighted key considerations including changes to site boundaries; number of stances proposed including maximum capacity; the potential flood risk; layout, siting and design proposals including landscaping; access and visibility arrangements; drainage and water provision; amenity and storage block provision; impact on nearby watercourse and residential properties; and new pumping station and general surfacing arrangements. In conclusion, he advised that the applications were recommended for refusal for the reasons detailed in the report. It was noted that, if approval was given and because of the objection from SEPA, under legislation the applications would be required to be notified to the Scottish Government before any approval decision could be issued.

The Provost advised that requests to address the Council had been received from the applicants' agent, the Scottish Environment Protection Agency (SEPA) and objectors, and the Council agreed to hear from speakers prior to determination of the applications.

Mr J Mackay (Planning Unit Manager), accompanied by Ms C Pritchett (Senior Planning Officer), on behalf of SEPA addressed the Council and outlined the organisation's, in principle, objections to the applications on the grounds of flood risk to people and property. He explained that the development conflicted with National Policy on Flooding and Local Development Plan policy C4 – Flooding, that SEPA did not lodge objections lightly and that this was done very rarely. He stated that the submitted Flood Risk Assessment by the applicant confirmed that the site was at significant flood risk and all parties involved agreed that the site and access to the site were at risk of flooding. It was acknowledged that a flood risk contingency plan had been developed with SEPA input but this did not reduce the risk of flooding on the site. He explained that the national planning policy approach to flood risk was to avoid risk for new development rather than add to the cumulative risk and public expense in attempting to manage it. He made reference to previous flood events in the locality of the application site and the substantial risk to people and property. He then responded to questions from Members on the robustness of bunds, substantial risk to life, availability of national data on loss of life as a result of flooding, SEPA's role in responding to planning application consultations, the effectiveness of resilience plans, depth of water anticipated as a result of flood risk, testing of evacuation procedures and involvement of local people in resilience activities, flood warning mechanisms, SEPA's direct engagement with the applicant, additional risk associated with caravans, height of the local water table, drainage proposals and associated potential for land contamination.

Mr I Walton then addressed the Council in support of the applications, accompanied by Ms E Farquharson Black. In terms of the flood risk assessment, he explained that the applicant accepted that the sites were partially at risk of flooding. He stated that the applicant had gone to considerable lengths and expense in producing a detailed hydraulic model, calibrated against recent flood events including Storm Frank (2015), the results of which had been included in the flood risk assessment submitted including maximum flood depths and estimate of flood flows. Reference was made to alternative views on the flood flow estimates submitted which he considered had now been proven to have been over estimated by the applicant. He advised that a flood emergency contingency plan was in place and a test evacuation of the application site had been completed the previous week within 18 minutes and outlined measures in place should evacuation procedures not be followed by any residents. He also outlined foul drainage proposals and, in conclusion, urged the Council to approve the applications. Mr Walton then responded to questions from Members on substantial risk to life, the feasibility and difficulties of identifying an alternative site for the development as opposed to managing and mitigating flood risk on the application site, procedures in place to provide flood evacuation guidance to temporary residents and alert those off site to flood risk, issue of culverting, ground level calculations used, robustness of bunds, coastal zone development,

resilience measures in place in 2015 and how residents resistant to leaving site could be managed, effectiveness of mitigation plans in place for similar developments elsewhere and level of risk on site.

Mr Jones, then addressed the Council in objection to the applications on behalf of Mrs Kathleen Smith. He explained the original layout of the site, previous flood events and drainage arrangements. He made reference to unauthorised development which had the effect of displacing water to surrounding areas as highlighted in the planning officer's report and to SEPA's comments on the loss of the flood plain and lack of compensatory storage for flood water and the impact this had on neighbouring landowners and residents. He stated that Storm Frank had realised their worst fears with flooding experienced from both sides of their property and highlighted feedback from emergency services circulated with the committee papers following the event. He refuted the applicant's claim that the applications were materially different and, in conclusion, highlighted the Authority's duty of care to all residents and the potential risk to people and property should the applications be approved and urged the Council to refuse the applications. Mr Jones then responded to questions from Members on the impact of flooding on local access routes and the number of instances of flooding in recent years.

Members then discussed the level of flood risk on the application site, potential risk to people and property, mitigation and resilience measures proposed, layout, siting and design proposals, water supply provision and requirement for identification of sites for travelling people.

Thereafter, Councillor Wilson moved, seconded by Councillor Wallace, subject to formal Notification to the Scottish Government, that Council delegate authority to the Head of Planning and Building Standards to GRANT both applications subject to appropriate conditions including a Section 75 agreement relating to healthcare contributions where required.

The reason for the decision being the overriding need for touring and permanent halting sites for travellers in Aberdeenshire, and the Council's duties in terms of Section 149 of the Equality Act, 2010, to advance equality of opportunity between those who share a protected characteristic and persons who do not share it, and to foster good relations between those who share a protected characteristic and persons who do not share it.

As an amendment, Councillor Agnew moved, seconded by Councillor Hutchison, that the Council refuse the applications as recommended by Officers' for the reasons detailed in the report.

Members of the Council voted:-

for the motion

(46)

Councillors Adam, Aitchison, Allan, Baillie, Beagrie, Berry, Bews, M Buchan, Calder, Cassie, Cox, Davidson, Dickinson, Duncan, Durno, Evison, Ewenson, Findlater, Ford, Forsyth, Harper, Hassan, Ingram, Johnston, Kloppert, Kille, Latham, Leslie, Lonchay, Mair, McKelvie, Owen, Petrie, Pike, Reid, Simpson, H Smith, Stirling, N Smith, S Smith, Thomson, Taylor, Wallace, Whyte, Wilson and Withey.

- |                   |      |                                                                                                                                                             |
|-------------------|------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| for the amendment | (17) | Councillors Agnew, Argyle, Bruce, C Buchan, Carr, Fakley, Gibb, Gifford, Howatson, Hood, Hutchison, Ingleby, McKail, Mollison, Roy, Topping and Sutherland. |
| declined to vote  | (1)  | Councillor A Buchan.                                                                                                                                        |

The **motion** was carried and the Council **agreed**:

**Planning Application No. APP/2018/3027**

- (1) subject to formal Notification to the Scottish Government, to delegate authority to the Head of Planning and Building Standards to GRANT Full Planning Permission, subject to appropriate conditions; and
- (2) the reason for the decision being the overriding need for touring and permanent halting sites for travellers in Aberdeenshire, and the Council's duties in terms of Section 149 of the Equality Act, 2010, to advance equality of opportunity between those who share a protected characteristic and persons who do not share it, and to foster good relations between those who share a protected characteristic and persons who do not share it.

**Planning Application No. APP/2018/3028**

- (1) subject to formal Notification to the Scottish Government, to delegate authority to the Head of Planning and Building Standards to GRANT Retrospective Full Planning Permission, subject to appropriate conditions including a Section 75 agreement on healthcare contributions; and
- (2) the reason for the decision being the overriding need for touring and permanent halting sites for travellers in Aberdeenshire, and the Council's duties in terms of Section 149 of the Equality Act, 2010, to advance equality of opportunity between those who share a protected characteristic and persons who do not share it, and to foster good relations between those who share a protected characteristic and persons who do not share it.

**5. FINANCIAL YEAR END POSITION 2018/2019**

A report by the Director of Business Services had been circulated (1) setting out the financial position of the Council's revenue budget as at 31 March, 2019, shown in detail in Appendix 1 of the report, (2) proposing a number of virements within the budget as detailed in Appendix 3 of the report, and (3) detailing the balances of the General Fund, HRA and other Statutory and Usable Reserves. The report requested that the Council consider proposals for (a) funding an additional contribution to the Integration Joint Board of £1,837,000 from the Council's General Fund Balance; and (b) the planned sequence of using and then reinstating reserves to ensure correct financial governance as set out in paragraph 2.12 in the report.

The Head of Finance introduced the report and advised that the Council's unaudited accounts were complete and would be considered by the Audit Committee at its next meeting; on action taken to reduce the Council's forecast over budget position; on major variances relating to expenditure funded from borrowing, capital financing charges and the revenue support grant; on action taken to manage the over budget position of the Integration Joint Board and proposals for allocation of additional funding in that respect; and on the agreed Reserves strategy and proposed use.

Following discussion, the Council **agreed**:

- (1) to note the financial year end position for 2018/19 set out in Appendix 1 in the report;
- (2) to approve the virements set out in Appendix 3 in the report;
- (3) to note the balances of the Council Reserves as set out in Appendix 4 in the report;
- (4) to approve the payment of £1,837,000 to the Aberdeenshire Integration Joint Board (IJB) from the Council's General Fund Balance;
- (5) to approve the use of reserves as set out in paragraph 2.12 of the report; and
- (6) that a Members briefing note being issued to provide further details of funding capitalised and removed from revenue expenditure.

#### **6. NON HOUSING REVENUE ACCOUNT (HRA) CAPITAL BUDGET 2018/2019 FINAL OUTTURN REPORT**

The Council had before it a joint report dated 11 June, 2019 by the Directors of Business Services and Infrastructure Services (1) setting out the financial position of the Council's non Housing Revenue Account (HRA) capital budget for 2018/2019, (2) highlighting the variance between budgeted and forecast expenditure, (3) detailing the position for each Strategic Priority, and (4) reporting on the effect of the proposed changes on the 2019/20 budget in terms of expenditure, financing and borrowing.

Having heard from the Head of Finance, the Council **agreed**:

- (1) the unaudited outturn position for 2018/19 referred to at paragraph 2.1, giving totals for expenditure and income of £84,999,000 and £34,017,000 respectively; and
- (2) the proposed changes to the capital budget for 2019/20 as referred to at paragraph 2.6 in the report.

#### **7. HOUSING REVENUE ACCOUNT (HRA) REVENUE AND CAPITAL FINANCIAL OUTTURN 2018/2019**

There had been circulated a report dated 11 June, 2019 by the Director of Infrastructure Services seeking comments on the Housing Revenue Account (HRA) revenue and capital financial outturn position for 2018/2019. The report explained that the draft accounts for the year ended 31 March 2019 would be considered by the Audit Committee on 4 July, 2019 with the final audited accounts reported to Council in September 2019. The final outturn for the year to 31 March 2019 was showing a breakeven position for the revenue account and an over budget position for capital of £3.360 million, as detailed in Appendix 1 of the report. The Council agreed to **note** the unaudited HRA revenue and capital financial outturn for 2018/19.

#### **8. APPOINTMENTS TO OUTSIDE BODIES, STATUTORY BODIES AND PARTNERSHIPS**

With reference to the Minute of Meeting of the Council of 7 March, 2019 (Item 7), there was circulated a report dated 6 June, 2019 by the Director of Business Services seeking agreement on future arrangements for the appointment of members to all partnership groups, statutory bodies and outside bodies, as detailed in Appendix 1, in line with the proportionality agreed by Full Council.

The Council **agreed** that any further changes to named appointments to the Groups detailed in Appendix 1 of the report during the current Council term be made by the political groups in line with the proportionality previously agreed by the Council.

## 9. NOMINATIONS TO OUTSIDE BODIES

With reference to the Minute of Meeting of the Council of 18 May, 2017 (Item 8) there had been circulated a report dated 29 May, 2019 by the Director of Business Services seeking consideration of (1) two new requests from the Torphins Path Group Scottish Charitable Incorporated Organisation (SCIO) and Ury Riverside Park SCIO, for the nomination of a Council member to each of those bodies in an observer capacity; (2) a request from the Outdoor Access Trust for Scotland, previously Cairngorm Outdoor Access Trust for Scotland, for the nomination of a Council member in a decision making capacity; and (3) future arrangements for Area and Policy Committee appointment of replacement or substitute nominations on a temporary or permanent basis to outside bodies, based on their respective remits, where Full Council has approved Council representation on such bodies.

The Council **agreed**:

- (1) that the Council be represented on the Torphins Path Group SCIO, Ury Riverside Park SCIO outside and the Outdoor Access Trust for Scotland as detailed in Appendix 1 of the report;
- (2) to delegate authority to Infrastructure Services Committee, Garioch Area Committee and Marr Area Committee to nominate Members to the outside bodies as detailed in Appendix 1; and
- (3) to delegate authority to the Area and Policy Committees, based on their respective remits, to make substitute and replacement nominations on a temporary and permanent basis to outside bodies that already have agreed Council representation.

## 10. SCHEME OF GOVERNANCE – CHANGES TO PART 2A – LIST OF COMMITTEE POWERS

With reference to the Minute of Meeting of the Procedures Committee of 24 May, 2019 (Item 10) there had been circulated a report dated 12 June, 2019 by the Director of Business Services proposing an addition to the General Provisions at Part 2A of the List of Committee Powers in the Scheme of Governance to allow a different committee to reconsider a matter where an earlier decision had been appealed successfully and overturned. The proposed new provision would allow the Monitoring Officer or her nominee to refer the matter to an appropriate Committee or Council following consultation with Group Leaders. The report explained that a live planning matter had presented the Council with the very issue that the new General Provision had been created to deal with and, for that reason, it was proposed that the new provision be put in place with effect from 28 June, 2019.

The Council **approved** the addition to the General Provisions in Part 2A, List of Committee Powers in the Scheme of Governance, as detailed in Appendix 1 to the report, effective from 28 June, 2019.

## 11. PETERHEAD COMMUNITY CAMPUS

A report by the Director of Education and Children's Services had been circulated seeking agreement on the preferred site for the Peterhead Community Campus. The report explained (1) that Officers were in discussion with the Scottish Futures Trust on funding for the project and that a decision was required regarding the preferred site; (2) that an allocation of £71million had been made in respect of the project in the Capital Plan; (3) that the Community Campus project formed part of a Peterhead Masterplan to consider the requirements of the

town, as a whole, and provide a holistic approach to service requirements; (4) project progress to date including site investigation; (5) the national position in terms of the Learning Estates Strategy approved by CoSLA in April 2019; (6) the outcome of recent engagement across the Peterhead network; and (7) next steps for the project.

Having heard from the Director of Education and Children's Services, the Council **agreed** to:

- (1) acknowledge that the development of a Community Campus in Peterhead had already been agreed by the Council as detailed in paragraph 2.4 of the report;
- (2) the preferred site of Kinmundy for the Community Campus;
- (3) note that the project is a key aspect of the Peterhead Masterplan, and implementation would be aligned with available funding;
- (4) note that the Director of Education and Children's Services will undertake further engagement with parents and stakeholders, particularly Dales Park, Meethill and Anna Ritchie Schools;
- (5) note that the Director of Education and Children's Services will undertake further engagement with Culture and Sport Stakeholders;
- (6) note that further up-date reports, inclusive of a full business case and including a full impact assessment and Gateway 1 report, will be provided; and
- (7) reaffirm its commitment to the delivery of both the Peterhead Community Campus and the Peterhead Masterplan.