

<b>Local Review Body Decision Notice</b>
<b>Appeal Reference:</b> LRB 485
<b>Planning Reference:</b> APP/2019/1716
<b>Planning Proposal:</b> Erection of 6 Dwellinghouses (Enabling Development) (Amended House Types and Site Access Road to Planning Permission Reference APP/2015/3833 and APP/2015/3843)
<b>Address:</b> Site at South East of Elrick House Estate, Newmachar
<b>Summary of Decision:</b> <p>The LRB agrees to uphold the Notice of Review and amend the decision reviewed by it and remove Condition 7 and Condition 15 in the Appointed Officer's decision and GRANT Full Planning Permission subject to the conditions specified in Section 4 of the Review Decision Notice.</p> <p>The permission subject to this Review is tied by virtue of a S75 agreement which covers the financial and timing requirements in respect of enabling the restoration of those buildings. The site has planning history and 6 houses had previously been approved through two separate applications, APP/2015/3833 and APP/2015/3843, albeit with a different layout and design to that now approved under APP/2019/1716. The permission was granted subject to a total of 18 conditions. The applicant sought to challenge the provision of Condition 7 which related to a proposed footpath link, and Condition 15 which relates to the need to connect to the public mains water network once it becomes available.</p> <p>With the exception of one member, who considered the Review should be dismissed and the original Conditions 7 and 15 retained, the LRB concluded that Condition 7 did not meet the tests for a planning condition, as set out in Circular 4/1998, in that it was not reasonable and it did not reasonably relate to impacts of the development as proposed under this application. In respect of Condition 15, the LRB considered it unreasonable to apply the condition given the level of uncertainty of the timing and location of the upgrade, that the private drainage arrangement complied with Policy RD1, and that once installed, there was little merit in removing the foul drainage infrastructure, and it would likely be difficult to enforce the condition in the event a connection was provided in the future.</p> <p>The LRB agreed to amend the decision of the Appointed Officer and remove Condition 7 and Condition 15 on the grounds that these two conditions were considered to be unreasonable and unenforceable, and the proposal accorded with the provisions of the Aberdeenshire Local Development Plan 2017 and, GRANT Full Planning Permission subject to the remaining sixteen conditions.</p>

**Policy Issues:**

Policy P1: Layout, siting and design  
Policy RD1: Providing suitable services.

**Additional Points:** None

**Actions:** None

**Note Decision**

Remove Condition 7 and 15 and approve full planning permission

**Policy implications / lessons:** None

## **Aberdeenshire Council Local Review Body**

**Reference LRB 485 APP/2019/1716**

### **Review Decision Notice**

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Decision by Aberdeenshire Council Local Review Body (LRB)

- Site address: Site at South-east Of Elrick House Estate, Newmachar, AB21 7PY
- Application reference APP/2019/1716 for Full Planning Permission for the Erection of 6 Dwellinghouses (Enabling Development) (Amended House Types and Site Access Road to Planning Permission Reference APP/2015/3833 and APP/2015/3843) approved by Decision Notice dated 04 Dec 2019.
- Application drawings: Map, Ownership Plan, Site Sections (091 204 C), Floor Plans and Elevations (091 201 C), Floor Plans and Elevations (091 202 C), Site Plan (091 203 D)
- No site inspection took place

Date of Decision: 2 September 2020

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### **Decision**

The Local Review Body (LRB) agrees, to uphold the Notice of Review and amend the decision reviewed by it and remove Condition 7 and Condition 15 in the Appointed Officer's decision and GRANT of Full Planning Permission subject to the conditions specified 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 29 May 2020. The LRB was attended by Councillors R Cassie (Chair), A McKelvie, J Hutchinson, A Ross and J Ingram.
- 1.3 The LRB was shown projected plans and photographs by the Planning Adviser. Those showed the application site and its relationship to the surroundings.

## 2.0 Proposal

- 2.1 Planning application reference APP/2019/1716, granted Full Planning Permission for a total of six detached residential dwellings and their associated infrastructure, which collectively, alongside other approved development, formed a package of enabling development relating to the restoration of various buildings at Elrick House. The permission subject to this Review is tied by virtue of a S75 agreement which covers the financial and timing requirements in respect of enabling the restoration of those buildings. The permission was granted subject to a total of 18 conditions. The applicant sought to challenge the provision of Condition 7 and 15 of the permission.
- 2.2 Elrick House and gardens is located some 600m south of the settlement of Newmachar. The application site forms the larger part of a rectangular agricultural field which is located to the south east of Elrick House and its gardens and over 800m from Newmachar. There are existing mature trees along the northern site boundary which line the existing access track to Elrick House. Open fields lie to the west and south of the site. In terms of the servicing of the site, the B979 Public Road lies to the east of the site and provides the means of vehicular access to the approved dwellings. Foul drainage would be provided via individual private soakaways for each plot. The foul drainage was subject to the provisions of Condition 15.
- 2.3 Condition 7 states: *'No works in connection with this permission hereby approved shall take place unless an Access Plan detailing both the internal and external path network connecting to Newmachar along with signboard interpretation has been submitted to and approved in writing by the Planning Authority. The agreed Access Plan scheme shall provide details of the siting, composition and surfacing of the path network together with appropriate management proposals for the care and maintenance of paths following their implementation. The development shall be carried out in accordance with the agreed Access Plan in accordance with the timing as agreed by the enabling works programme which is subject of the Section 75 associated with this application.'*
- 2.4 The reason for the condition is stated as: *'In order to preserve the character and visual amenity of the area and to ensure that the public benefit derived from the enabling works is carried out in accordance with an agreed enabling works programme.'* In relation to this condition, previous indicative plans submitted as part of application APP/2015/3843 had shown a potential link along the side of the minor public road which connects Elrick House with Newmachar. The condition had been applied to application APP/2015/3843 and the other applications for enabling development across the estate. The applicant's Notice of Review contested the condition, considering it unreasonable and stating that the land required to deliver the footpath connection was outwith the control of the applicant.

- 2.5 Condition 15 relates to the need to connect to the public mains water network once it becomes available. Condition 15 states: *'That subject to confirmation from Scottish Water regarding provision of a public waste water system available on the west side of the A947 and within 300m of the application site boundary, each dwellinghouse in the development hereby approved shall connect into this system within a period of 6 months from the date that connection is available.'*
- 2.6 The reason for the condition states: *'To protect people and the environment from the impact of waste water and ensure the development of the public sewerage network.'* The applicant's Notice of Review contests the condition stating that the imposition of the condition is not reasonable given the uncertainty of the timing of the infrastructure upgrade, would require third party land and would potentially place a significant burden on owners of the houses which would prejudice the ability of the developer to sell the development thereby limiting the potential to deliver the enabling development.
- 2.7 A number of consultations were carried out as part of the application. Of relevance to this Review were the responses received from:
- Roads Development
  - SEPA
  - Flood Risk and Coastal Protection
  - Scottish Water
- 2.8 A further response to the Notice of Review was received from Roads Development.
- 2.9 The documents submitted as part of the planning application relevant to the Review were:
- Planning Supporting Statement
  - A ground assessment and drainage recommendation report
- 2.10 The site has planning history and 6 houses had previously been approved through two separate applications, APP/2015/3833 and APP/2015/3843, albeit with a different layout and design to that now approved under APP/2019/1716.
- 2.11 The site lies within the Aberdeen Housing Market Area of the Countryside but has no other specific land use planning designations.

### **3.0 Reasoning**

- 3.1 The main determining issues for the Review were whether planning permission should be granted with the removal of Conditions 7 and/or Condition 15 of the current planning permission as determined by the Appointed Officer. The Review therefore focused on the policy basis and requirement for each

condition and whether each condition met the tests for a planning condition, as set out in the Scottish Government Planning Circular 4/1998.

- 3.2 The LRB agreed that the Appointed Officer had, as part of the wider consideration of the planning application, identified the relevant Aberdeenshire Local Development Plan 2017 (ALDP) policies relevant to this Review, and these were as follows:  
  
Policy P1: Layout, siting and design;  
Policy RD1: Providing Suitable Services.
- 3.3 The LRB gave consideration as to whether a site inspection, a hearing or further information would be helpful but agreed they had sufficient information before them to proceed to determine the Notice of Review.
- 3.4 In response to questions raised, the Planning Adviser confirmed that in respect of Condition 7, part of the land required to deliver the footpath connection was outside the direct control of the applicant and, as confirmed by Roads Development, there was insufficient room to provide a suitable standard of footway within the road verge. The footpath provision was not contained within the S75 agreement. The Planning Adviser confirmed that Policy P1 provided a requirement for development to be well connected whilst Policy RD1 introduces requirements for safe and convenient access to new developments.
- 3.5 With respect to questions regarding Condition 15, the Planning Adviser confirmed that the ground conditions, as set out in the supporting Ground Assessment, were suitable for private drainage treatment systems. The site was not subject to any identified groundwater constraints, or within a specific area identified by SEPA as being of concern with regards to the proliferation of private foul drainage infrastructure. SEPA's concerns related to the number of systems proposed and the general presumption in favour of public connections. Policy RD1 provided the general presumption of connecting to mains infrastructure where available and SEPA had requested the condition in anticipation of an upgraded connection to the west of the A947. The Planning Adviser stated that there was no certainty around the timing of any upgrade which would need to be undertaken by Scottish Water, or whether any such upgrade would definitively be within 300m of the proposed site.
- 3.6 The LRB gave consideration to the case set out by the applicant regarding Condition 7 and the additional response provided by Roads Development following the submission of the Notice of Review. Whilst the LRB acknowledged the desirability of providing improved pedestrian connectivity between the development and Newmachar, the LRB discussed whether the condition, which required an extensive section of footpath and crossed third party land, was reasonable in respect of the tests for a condition and whether it reasonably related to the development as proposed under this application.
- 3.7 The LRB then gave consideration to the case set out by the applicant with regard to Condition 15 and the consultation response received from SEPA, Scottish Water and the Councils Flood Risk and Coastal Protection Officer. The

LRB considered the uncertainty of the provision of an upgrade to the mains foul drainage network in the area as highlighted by the Scottish Water response. The LRB also considered the suitability of the existing proposed private drainage solution, as noted in the Councils Flood Risk and Coastal Protection Officer's response, and to that effect whether the application would accord with Policy RD1 without the need to apply the condition.

- 3.7 With the exception of one member, who considered the Review should be dismissed and the original Conditions 7 and 15 retained, the LRB concluded that Condition 7 did not meet the tests for a planning condition, as set out in Circular 4/1998, in that it was not reasonable and it did not reasonably relate to impacts of the development as proposed under this application. In respect of Condition 15, the LRB considered it unreasonable to apply the condition given the level of uncertainty of the timing and location of the upgrade, that the private drainage arrangement complied with Policy RD1, and that once installed, there was little merit in removing the foul drainage infrastructure, and it would likely be difficult to enforce the condition in the event a connection was provided in the future.
- 3.8 After due consideration, the LRB agreed to amend the decision of the Appointed Officer and remove Condition 7 and Condition 15 on the grounds that these two conditions were considered to be unreasonable and unenforceable, and the proposal accorded with the provisions of the Aberdeenshire Local Development Plan 2017 and, GRANT Full Planning Permission subject to the remaining sixteen conditions set out in paragraph 4.0 below.

#### **4. Conditions**

- (1) No development shall commence unless a tree protection plan which shall comply with BS5837:2012 Trees in Relation to Design, Demolition and Construction has been submitted which covers the following:
- the position of the tree protection fencing
  - clarification of areas where no dig methodology will be required
  - a method statement providing details of the no dig methodology and how it will be implemented on site

No development shall commence unless the tree protective fencing has been erected on site in accordance with the agreed details and the agreed tree protection method statement shall be implemented on site in accordance with the agreed details.

Reason: In order to ensure adequate protection for the trees on this historically important site both prior to and during the construction of development, in the interests of the retaining these significant landscape features and in the interest of visual amenity.

- (2) Prior to commencement of development, a lay-by measuring 8.0m x 2.5m with 45° splays to be formed on frontage of the site and the proposed vehicular

access to be taken via this. Construction shall be to a standard appropriate to the location and must be agreed in advance with Roads Development.

Reason: To enable drivers of vehicles using the access to have a clear view of other road users and pedestrians in the interests of road safety.

- (3) No development in connection with the permission hereby granted shall commence and the access hereby approved shall not be brought into use unless visibility of 2.4 metres by 120 metres to be formed on the north and 2.4 metres by 215 metres on the south side of the junction of the vehicular access with the public road has been provided in accordance with the Council's Standards for Road Construction Consent and Adoption. The visibility splays shall be physically formed on the ground and any existing fences, walls, hedges or other means of enclosure or obstructions within the splays shall be removed and relocated outwith the splays in accordance with the approved plans. Once formed, the visibility splays shall be permanently retained thereafter and no visual obstruction of any kind shall be permitted within the visibility splays so formed.

Reason: To enable drivers of vehicles using the access to have a clear view of other road users and pedestrians in the interests of road safety.

- (4) That no development shall commence unless details of the proposed design of the refuse bin uplift store has been submitted for the approval in writing by the planning authority. The bin uplift store shall be of an appropriate design given the sensitive setting of the development, shall be constructed (behind any visibility splay) so as to be accessible for bin uplift and shall be secure enough to prevent empty bins from being wind blown. No dwellinghouse hereby approved shall be occupied unless the agreed bin uplift store has been implemented in full on site to the satisfaction of the planning authority.

Reason: To prevent empty refuse bins from being windblown in the interest of road safety and amenity.

- (5) Prior to the commencement of development, a sample and / or details / specification and colour of the proposed external finishes of the development shall be submitted to and approved in writing by the Planning Authority.

For the avoidance of doubt, roofs shall be finished in natural slate, all windows and doors shall be timber and shall be painted in a colour that is agreed with the Planning Authority as being reflective of the Elrick Estate.

The development shall be carried out in complete accordance with the approved details.

Reason: In the interests of the appearance of the development and the visual amenities of the area, to ensure that the external finishing materials are appropriate to the character of estate and the adjacent Listed Building.

(6) That no works in connection with the development hereby approved shall take place unless a scheme of hard and soft landscaping works has been submitted to and approved in writing by the Planning Authority. Details of the scheme shall include:

- Existing landscape features and vegetation to be retained.
- The location of new trees/shrubs/hedges/grassed areas/water features.
- A schedule of planting to comprise species, plant sizes and proposed numbers and density.
- The location, design and materials of all hard landscaping works including walls, fences and gates.
- An indication of existing trees, shrubs and hedges to be removed.
- A programme for the completion and subsequent maintenance of the proposed landscaping.

All soft and hard landscaping proposals shall be carried out in accordance with the approved scheme and shall be completed during the planting season immediately following the commencement of the development or such other date as may be agreed in writing with the Planning Authority. Any planting which, within a period of 5 years from the completion of the development, in the opinion of the Planning Authority is dying, being severely damaged or becoming seriously diseased, shall be replaced by plants of similar size and species to those originally required to be planted.

In addition, prior to the commencement of the implementation of the approved scheme, detailed proposals for a programme for the long term management and maintenance of all the approved landscaped and open space areas within the development shall be submitted for the further written approval of the Planning Authority. Thereafter, all management and maintenance of the landscaped and open space areas shall be implemented, in perpetuity, in accordance with the approved programme.

Reason: To ensure the implementation of a satisfactory scheme of landscaping which will help to integrate the proposed development into the local landscape in the interests of the visual amenity of the area and to ensure that the landscaping is managed and maintained in perpetuity.

(7) No development shall commence unless the applicant demonstrates by the submission of a report by a suitably qualified professional that the field drainage system at this location is fully effective during times of heavy rainfall. The findings contained within the report shall be submitted for the approval in writing by the planning authority. Should any improvement works be identified within the report, these shall be implemented in accordance with the agreed details and thereafter maintained by the applicant or his successor(s) in perpetuity.

Reason: In the interests of ensuring that the field drainage system is operational and will not result in flooding on the site or the adjacent public road.

(8) The vehicular access and driveways hereby approved shall not be brought into use unless they have been provided and surfaced in accordance with the details

shown on the approved plans. The first 5 metres of the access measured from the edge of the road or back of the footway shall be fully paved and shall have a maximum gradient not exceeding 1:20. The access shall be internally drained and formed in such a way to prevent any flow of surface water either onto or from the public road. Once provided the access and driveway shall thereafter be permanently retained as such.

Reason: To ensure the timely completion of the access and driveway to an adequate standard; to prevent the carriage of loose driveway material on to the public road and to ensure the retention of adequate off-street parking facilities, all in the interests of road safety.

- (9) Prior to occupancy of development, Off Street parking for 18 cars, surfaced in hard standing materials shall be provided within the site.

Reason: In order to ensure that the development is served by an appropriate standard of access and associated servicing in the interests of road safety.

- (10) Prior to occupancy of development, a suitable vehicle turning area, measuring not less than 7.6m x 7.6m, must be formed within the site to enable all vehicle movements onto or from the public road to be carried out in a forward gear.

Reason: In order to ensure that the development is served by an appropriate standard of access and associated servicing in the interests of road safety.

- (11) That the development shall be connected into the public mains water system and no dwellinghouse hereby approved shall be occupied unless it is connected to and fully operational within the public systems.

Reason: To ensure the implementation of adequate potable water to serve the proposed development in the interests of amenity.

- (12) That the proposed surface water drainage system shall be carried out in accordance with the approved plans and no dwellinghouse hereby approved shall be occupied unless the approved drainage system has been implemented in this form, unless otherwise agreed in writing with the Planning Authority. Following provision of the drainage system it shall thereafter be maintained by the developers or their successors in accordance with the approved maintenance scheme.

Reason: In order to ensure that adequate drainage facilities are provided, and maintained, in the interests of the amenity of the area.

- (13) That the proposed foul water drainage system shall be carried out in accordance with the Drainage Recommendation Report dated December 2015 and the approved plans and the dwellinghouses; shall not be occupied unless the approved drainage system has been implemented in this form, unless otherwise agreed in writing with the Planning Authority. Following provision of the drainage system it shall thereafter be maintained by the developers or their successors in accordance with the approved maintenance scheme.

Reason: In order to ensure that adequate drainage facilities are provided, and maintained, in the interests of the amenity of the area.

- (14) No individual dwellinghouse hereby approved shall be erected unless an Energy Statement applicable to that dwellinghouse has been submitted to and approved in writing by the planning authority. The Energy Statement shall include the following items:

- a) Full details of the proposed energy efficiency measures and/or renewable technologies to be incorporated into the development;
- b) Calculations using the SAP or SBEM methods, which demonstrate that the reduction in carbon dioxide emissions rates for the development, arising from the measures proposed, will enable the development to comply with Policy C1 of the Aberdeenshire Local Development Plan 2017.

The development shall not be occupied unless it has been constructed in full accordance with the approved details in the Energy Statement. The carbon reduction measures shall be retained in place and fully operational thereafter.

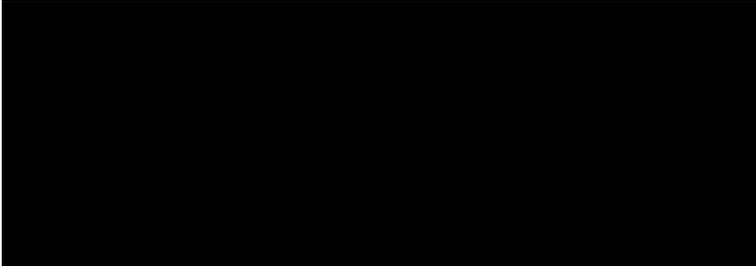
Reason: To ensure this development complies with the on-site carbon reductions required in Scottish Planning Policy and Policy C1 of the Aberdeenshire Local Development Plan 2017.

- (15) That notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 or any order amending, revoking or re-enacting that Order, no development shall be carried out within the curtilage of any dwellinghouse hereby approved under the terms of Class 3 of Schedule 1 to that Order (other than works permitted by Class 3C) and the dwellinghouses shall not be enlarged, improved or altered in any way under the terms of Classes 1 or 2 of Schedule 1 to that Order without an express grant of planning permission from the Planning Authority.

Reason: In the interests of the character and appearance of the development.

- (16) Noise level due to the operation of the air source heat pump when measured at 1 m from any window, door or other ventilation opening serving any adjacent property shall not exceed 38 dB LAeq (1 hour).

Reason: To ensure that noise from the development does not result in undue loss of amenity for surrounding properties.



Alistair Stobie, Legal Service Manager  
**pp Karen Wiles**  
**Head of Legal and Governance**