

3. Minute of the Local Review Body Meeting of 30 October 2020.

ABERDEENSHIRE COUNCIL

LOCAL REVIEW BODY

SKYPE MEETING, FRIDAY, 30 OCTOBER, 2020

Present: Councillors R Johnston (Chair), P Gibb, J Hutchison, J Ingram and A McKelvie.

Apologies: Councillor R Cassie.

Officers: Senior Planners (Bruce Strachan for LRB 501) and (Gregor Spence for LRB 502), Legal Adviser to the Local Review Body, (Senior Solicitor, Peter Robertson) and Committee Officer (Frances Brown).

The Chair noted the recent resignation of Councillor Hood from his position as Chair to the Local Review Body and the Local Review Body representative from the Garioch Area Committee. The Chair, on behalf of the Local Review Body expressed their enormous thanks to Councillor Hood for the contribution he had made to the work of the Local Review Body over the years, acknowledging the vast amount of knowledge he had gained in planning matters and recognising that his presence would be sorely missed.

It was noted that a report would be presented to a future meeting of the Garioch Area Committee, seeking nominations for his replacement.

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 Johnston declared an interest in Agenda Item 6, (LRB 501) as the application site was within his ward. Councillor Johnston concluded that he would withdraw from proceedings when that review was being determined.

Councillor Ingram declared an interest in Agenda Item 7, (LRB 502) as the application site was within his ward. Councillor Ingram concluded that he would withdraw from proceedings when that review was 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

3. MINUTE OF THE LOCAL REVIEW BODY MEETING OF 25 SEPTEMBER, 2020

The Local Review Body had before them and **approved** as a correct record, the Minute of the Local Review Body meeting of 25 September, 2020. As the meeting was being held remotely, it was **noted** the Chair would sign the minute at an appropriate time, in the future, when social distancing measures had been relaxed.

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).

Having declared an interest for the next item of business, Agenda Item 6 (LRB 501), the Chair sought nominations for an acting Chair, to chair the meeting for the next review.

Councillor Johnston, seconded by Councillor Hutchison, nominated Councillor McKelvie. As no other nominations were received, Councillor McKelvie was duly appointed to the Chair for LRB 501.

NEW REVIEWS

5. LRB 501 – NOTICE OF REVIEW, AGAINST REFUSAL OF FULL PLANNING PERMISSION FOR ERECTION OF 3 DWELLINGHOUSES AT LAND AT CAIRNFEHEL, UDNY, ELLON, ABERDEENSHIRE, AB41 6ST – REFERENCE: APP/2020/0493.

Local Review Body: Councillors A McKelvie (Chair), J Ingram, P Gibb and J Hutchison.

There had been circulated, 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 3 Dwellinghouses at Land at Cairnfehel, Udney, Ellon, Aberdeenshire, AB41 6ST – Reference: APP/2020/0493.

The Planning Adviser introduced the Notice of Review and advised the Local Review Body that in terms of review procedure the applicant 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 photographs of the site and surrounding area.

The Planning Adviser ended his presentation by reporting that no valid representations had been received during the consultation period, prior to determination.

Further to consultations undertaken, it was reported that Developer Obligations had stated that contributions had been agreed towards an extension to Meldrum

Academy and a 3G sports pitch at the Academy, contributions towards a community hub in Pitmedden, contributions towards reconfiguration work at Haddo Medical Practice and contributions towards Household Waste and Recycling at Laurencekirk; Archaeology had noted that the application would affect a farm steading dated to the 19th century (and later) and a Level 1 Standing Buildings Survey would be sought by a Planning Condition if approved; Contaminated Land had stated that it was not aware of any specific activities at the site which may have resulted in contamination and no information would be required in support of the proposal, however a formal note was recommended, to advise the applicant that should ground contamination be discovered, the Planning Authority should be notified immediately; Natural Heritage had stated that four small bat roosts of common pipistrelles had been found and therefore a bat licence would be required for the demolition of the small building (building A in the submitted bat survey). The bat survey and its findings meet Scottish Natural Heritage's conditions for the likely granting of a licence and an informative would be required; Flood Risk and Coastal Protection had stated that having reviewed the proposals it would note that the pond had now been infilled as part of a previous application and they no comment to make regarding flood risk; Roads Development had stated that they did not object to the application subject to conditions being applied; the Health and Safety Executive had stated that they did not object to the application on safety grounds; the National Grid had not responded during the consultation period and Scottish Water had no objection to the application as there was currently sufficient water capacity in the Turriff Water Treatment Works and there was no public Scottish Water, Waste Water infrastructure within the vicinity of the proposed development.

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

- (1) Policy R2 Housing and employment development elsewhere in the countryside allows for either the replacement, on the same site, of a disused building or the remediation of redundant brownfield land opportunities with small scale development. For housing 'small scale' is defined as up to three units. The applicant had demonstrated that the buildings to be replaced are redundant for use, however two dwellinghouses had already been approved within this plan period at the wider redundant site and consequently the proposal for three dwellinghouses exceeds the limit to growth allowed by policy. The application fails to meet the terms of Policy R2 and the planning authority considers that the application was for a development that was not in accordance with 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 P1: Layout, siting and design; Policy P4: Hazardous and potentially polluting developments and contaminated land; Policy R2: Housing and employment development elsewhere in the countryside; Policy E1 Natural Heritage; Policy E2 Landscape; Policy C1 Using resources in buildings; Policy C4 Flooding; Policy RD1 Providing suitable services and Policy RD2 Developer's obligations.

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

In response to questions raised, the Planning Adviser and the Legal Adviser confirmed:-

- (1) It would be up to the Local Review Body to determine how much material weight they would put on the emerging Local Development Plan 2020, however, they should bear in mind that the proposed Local Development Plan was still subject to public examination before it would be finally adopted, therefore while it was the settled view of the Council, the policies contained within that plan could change as the examination process had not yet been completed and the plan had not been formally been adopted.
- (2) The Planning Service had not sought a response from the Environmental Health Service during the consultation period for the application, so it was not clear if they had any concerns about the proximity of more housing adjacent to the existing farm buildings.
- (3) The site was within the Aberdeen Housing Market Area.

The Local Review Body agreed that they had enough information before them and proceeded to determine the Notice of Review. A site visit or hearing was considered, but it was determined that neither were required.

The Local Review Body noted that the main determining issues for the Notice of Review, as presented before them, was the principle of development, regarding interpretation of the countryside policy and the definition of 'small-scale' development. In addition, the status of the Proposed Local Development Plan 2020 and the applications cited as setting a precedent were relevant

During discussion, the Local Review Body were unanimous in their view that while they were mindful of the policies contained within the emerging Proposed Local Development Plan, there was limited materiality when considering the review before them as significant weight could not be put on the policies contained within that plan as they could change during public examination before the final plan was fully adopted. While they acknowledged that it looked like a quality development, they looked at the site as a whole and concerns were expressed with regards to the cumulative impact of granting a further three dwellinghouses at the farm, in addition to the two already previously granted. The Local Review Body concluded that the application would in their view, represent an over-development of the site and that there was only capacity for one additional new dwellinghouse at Cairnfechel Farm. Therefore, the principle of the development could not be supported as it failed to comply with Policy R2: Housing and employment development elsewhere in the countryside of the Aberdeenshire Local Development Plan 2017.

After due consideration, the Local Review Body **agreed**, to Dismiss the Notice of Review and to Uphold the Appointed Officer's Decision to Refuse Full Planning Permission, for the reasons contained in the decision notice issued on 25 May 2020.

6. LRB 502 – NOTICE OF REVIEW, AGAINST REFUSAL OF FULL PLANNING PERMISSION FOR ERECTION OF 1 WIND TURBINE (HUB HEIGHT 50M, 76M TO BLADE TIP), SUBSTATION, ASSOCIATED INFRASTRUCTURE AND WILDLIFE POND AT LAND AT HOWFORD, STRICHEN, ABERDEENSHIRE, AB43 6RD – REFERENCE: APP/2016/2825.

Local Review Body: Councillors P Johnston (Chair), P Gibb, J Hutchison and A McKelvie.

There had been circulated, 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 1 Wind Turbine (Hub Height, 50m, 76m to Blade Tip), Substation, Associated Infrastructure and Wildlife Pond at Land at Howford, Strichen, Aberdeenshire, AB43 6RD – Reference: APP/2016/2825.

The Planning Adviser introduced the Notice of Review and advised the Local Review Body that in terms of review procedure the applicant had requested further written submissions, one or more hearing sessions, a site inspection 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 photographs of the site and surrounding area.

The Planning Adviser ended her presentation by reporting that one valid representation had been received during the consultation period, which provided a neutral comment, namely, a request that the cumulative noise impact of the proposal in respect of the operational wind turbine located at Clayfords Farm be taken into consideration.

Further to consultations undertaken, it was reported that the Archaeology Service noted the prominent position in the landscape and the proximity to three known archaeological sites and a high potential for previously unrecorded archaeology to survive in that area. As such they advised that should the application be approved, a condition relating to ground breaking works should be implemented.

Built Heritage had advised that the proposed turbine would compromise views to the Strichen Conservation Area and further undermine the historic setting of Howford Old Farmhouse. The proposed wind turbine would sit immediately south east of the Strichen Conservation Area and could be potentially visible from certain locations within the Conservation Area especially in and around Hillview. It would be difficult to substantiate whether the structure would have a significant impact on how the 18th century planned settlement was appreciated and experienced from within the town. Nevertheless, the predicted cumulative photomontage view shown in Viewpoint 13 would suggest that the turbine will undeniably form an unfavourable backdrop and dominant the skyline when travelling east along the B9093. That image would also appear to show that the turbine will form an unfavourable backdrop to the historic settlement and diminish the existing visual prominence of the spires of both the town hall and the parish church. The greatest impact on any specific historic asset would potentially be the setting of Howford Old Farmhouse which sits immediately west of the development site. It could be argued that the historic setting of this listed building had already been somewhat eroded by the replacement

farmhouse and associated modern agricultural sheds. However, the scale and close proximity of the turbine would undoubtedly further undermine how the early 19th century property is experienced and appreciated in its rural location.

The proposed wind turbine would have a detrimental impact on views to and beyond the Strichen Conservation Area and a number of historic assets deemed to be of cultural importance. A development proposal that conflicts with the guidance of Policies HE1 and HE2 of the Aberdeenshire Local Development Plan 2017.

Environment – Natural Heritage had advised that no protected species or ecologically valuable habitats would be affected by the proposed turbine and the wildlife pond will contribute to the biodiversity value of the local area.

Environmental Health had initially objected to the proposed development, however, following further assessment of the Arcus Report and a Noise Impact Assessment for the selected turbine model the DW52, they had advised that they no objection subject to conditions and financial involvement for the property Howford Farm has not been deemed acceptable and is therefore not afforded any higher noise limit.

Roads Development has no objection subject to conditions and they stated that work would be required to be carried out to the verge and fence line to achieve the required visibility.

Aberdeen International Airport had initially submitted a holding objection to the proposal until it undertook further assessments relating to an aerodrome safeguarding perspective. Following further consultation with the applicant, Aberdeen International Airport had advised that the proposed development had been examined from an aerodrome safeguarding perspective and could conflict with safeguarding criteria unless any planning permission granted was subject to conditions as specified in its correspondence. The specified conditions related to the submission and approval of a Primary Radar Mitigation Scheme relating to the prevention of the impairment of the performance of aerodrome navigation aids and air traffic control services at Aberdeen Airport; and the turbine being erected, constructed, commissioned and operated in accordance with the approved Primary Radar Mitigation Scheme.

Atkins Global had originally objected to the proposal, as they considered that the proposal would not comply with the exclusion sound, however, upon further information received from the agent, they advised they would remove their objection to the proposal, as it 'cleared' with respect to radio link infrastructure in relation to UHF Radio Scanning Telemetry.

Civil Aviation Authority had provided a response detailing that it was the Planning Service's responsibility to assess the application.

Historic Environment Scotland had stated that it had considered the historic environment interests and the proposal had the potential to affect Strichen Town House, a Category A listed building. They further noted that the Council's own conservation service should be consulted, for matters including unscheduled archaeology and Category B and C listed buildings, concluding that it

had no further comments to make.

The Joint Radio Company had initially objected however following further communication, received 19 October 2017, it stated that its previous objection no longer stands.

The Ministry of Defence (MOD) had advised that a technical mitigation proposal had been submitted directly to the MOD on behalf of the applicant and following assessment, the MOD had concluded that it was insufficient in technical detail. The MOD advised that it would not agree to the use of a suspensive planning condition and it also highlighted a comparable. The MOD objected to a turbine in another location in Scotland, which despite officer recommendation to refuse, a committee granted the application. The MOD was concerned that the committee did not give due consideration to its Air Defence objection and launched a Judicial Review, which was successful. It was noted that similar applications had been called into Scottish Ministers where legislation would allow it.

The National Air Traffic Service had advised that they had initially objected due to the predicted impact on the Allanshill Radar in which it was advised that the terrain screening available would not adequately attenuate the signal and likely to cause false primary plots to be generated. In its updated response dated 26 May 2017, it advised that NATS (En-Route) PLC had objected to the proposed development as they believed that the development would cause an adverse impact to the Allanshill and associated air traffic operations of NATS without suitable mitigation. An agreement has been entered into between NATS (En-Route) PLC, NATS (Services) Limited and Fraserburgh Development Trust dated 22/05/2017 for the design and implementation of an identified and defined mitigation solution in relation to the development that will be completed under agreement. NATS (En Route) PLC is therefore prepared to withdraw its objection to the proposed development.

It was further reported that Nature Scot and Historic Environment Scotland had been consulted as part of the review process and both had indicated that they had no objection to the wind turbine development and the Ministry of Defence had also responded, maintaining their original objection. The applicant had provided a response to their maintained objection, stating that they believed that the impact on the radar system at Buchan would be minimal and could easily be mitigated against and the application should be granted with conditions to address the MOD concerns.

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

- (1) The Planning Authority considers that the application is for a development that is not in accordance with the Aberdeenshire Local Development Plan 2017. The principle of the proposed development is contrary to the Aberdeenshire Local Development Plan 2017, in particular Policy C2 Renewable energy, as the site is within "An Area of Significant Protection" as it lies within 2km of Strichen, located some 340 metres South East of the settlement boundary.
- (2) The proposed development, in particular the wind turbine, due to its scale and cumulative impact would, if granted, have a significant detrimental visual

impact upon the landscape and the nearby Settlement Boundary of Strichen, contrary to the Aberdeenshire Local Development Plan 2017, in particular Policy P1 Layout, siting and design, Policy E2 Landscape, and C2 Renewable energy.

- (3) The proposed development, in particular the wind turbine, would if granted have a detrimental impact on the setting and character of the Strichen Outstanding Conservation Area and nearby Listed Buildings, due to its scale and colour, contrary to the Aberdeenshire Local Development Plan 2017, in particular Policy HE1 Protecting historic buildings, sites, and monuments and Policy HE2 Protecting historic and cultural areas, and in conflict with Historic Environment Policy for Scotland April 2019.
- (4) The application has failed to demonstrate that the proposed development, in particular the wind turbine, would not cause an adverse impact on residential amenity due to shadow flicker on Howford Farmhouse (the occupied dwellinghouse) and furthermore that it would not stymie development of the allocated OP1 site for residential development, contrary to the Aberdeenshire Local Development Plan 2017, in particular Policy P1 Layout, siting and design, and P4 Hazardous and potentially polluting developments and contaminated land.
- (5) The proposed development has failed to demonstrate that it will not cause an unacceptable level of interference with local Air Defence Radars at RAF Buchan, contrary to the Aberdeenshire Local Development Plan 2017, in particular Policy C2 Renewable Energy and P4 Hazardous and potentially polluting developments and contaminated land.

The Local Review Body considered that the relevant policies as contained within the Local Development Plan (2017) were: Policy P1: Layout siting and design; Policy P4: Hazardous and potentially polluting developments and contaminated land; Policy E1: Natural heritage; Policy E2: Landscape; Policy HE1: Protecting historic buildings, sites and monuments; Policy HE2: Protecting historic and cultural areas; Policy C2: Renewable energy and Policy RD1: Providing suitable services.

Other material considerations were Aberdeenshire Council Planning Advice Landscape Character Advice for Small Scale Development; Aberdeenshire Council Planning Advice Strategic Landscape Capacity Assessment for Wind Turbine Energy in Aberdeenshire, March 2014; Scottish Government, Onshore Wind Policy Statement, December 2017 and Scottish Government, Planning advice relating to onshore wind turbines, as updated 28 May 2014.

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

In response to questions raised, the Planning Adviser confirmed:-

- (1) That no letters of objection had been received from householders within the area. As previously stated, there was just one neutral comment, not an objection, which asked that the cumulative noise impact be taken into consideration in relation to an operational wind turbine sited at Clayford's Farm.
- (2) The Ministry of Defence (MOD) had confirmed that they would maintain their original objection to the development, on the grounds that the development would be detectable and would cause unacceptable interference to the Air Defence Radar located at RRH Buchan. They had stated that Insufficient technical detail had been provided in the technical mitigation proposal provided by the applicant and the MOD had indicated that they would require a full technical assessment to be submitted through their appointed expert to allow them to undertake a full technical and operational assessment. The applicant had indicated that they would be reluctant to do that currently as it would be at significant cost to the them and the only way they could consider doing that would be if there was some indication that there would be support for the application.
- (3) If all other matters could be resolved, excluding the technical matter of 'blanking' it would be up to the Local Review Body to determine how they wished to proceed. The Local Review Body may wish to consider deferring consideration of the Notice of Review, to allow the applicant to submit an acceptable technical mitigation proposal to the MOD to allow them to make a full technical assessment before bringing that information back to the Local Review Body for determination.
- (4) As the farmhouse was owned by the landowner, who had an interest in the development, it would be up to the Local Review Body to determine, how much material weight they would put on the impact of shadow flicker and the development of an OP1 site. It would be general practice to condition any consent for a wind turbine application in relation to shadow flicker and mitigating any impact, however, a full assessment had not been undertaken so it would be up to the applicant to determine whether any mitigation may impact the viability of the proposed development.

The Local Review Body noted that the main determining issues for the Notice of Review as presented before them was the principle of the development; landscape and visual impact; aviation communication and infrastructure; built and cultural heritage; amenity and ecology.

During discussion, the Local Review Body were in agreement that they did not have enough information before them to determine the Notice of Review. When considering the information that they would require, the Local Review Body acknowledged that the applicant had, within their supporting statement, requested a site inspection on several occasions. Having considered that request and the additional information they would require, the Local Review Body sought further information by way of:

- (1) An unaccompanied site inspection to the application site and surrounding area, to gain a real appreciation of the impact that the wind turbine may have on the landscape; visual impact; the cumulative impact on the nearby settlement of Strichen and the conservation area and the impact on residential amenity.
- (2) Requesting that the applicant provide an updated map, which would plot all the wind turbines in the area.
- (3) Requesting that Ministry of Defence provide clarification on whether they believe there may be a technical solution available when considering the matter of blanking.
- (4) Requesting that the Ministry of Defence provide the outcome of a judicial review (which was successful) where another Council had given consent for a wind turbine application, with the use of suspensive conditions to satisfy the outstanding MOD objections. If they could not provide that document, a copy of the citation number would be sought, to allow the Legal Adviser to the Local Review Body to source that document.

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:

- (1) Organising an unaccompanied site inspection to the application site and surrounding area. The date to be agreed at a time when it was safe to do so.
- (2) To request that the applicant/agent provide an updated map, which would plot all the wind turbines in the area;
- (3) To request that the Ministry of Defence provide further information on their outstanding objection; further clarification on the issue of blanking from a technical perspective and whether they were able to confirm whether a technical solution may be available; and
- (4) To request that the Ministry of Defence provide a copy of the case citation or the citation reference for a judicial review, relating to a review which the another Council had given consent to a Wind Turbine application, with the use of suspensive conditions to satisfy the Ministry of Defences, outstanding objection.