

<b>APPEAL DECISION (LRB)</b>
<b>Appeal Reference</b>
LRB 505
<b>Planning Reference</b>
APP/2020/1118
<b>Planning Proposal</b>
Full planning permission for the erection of a dwellinghouse and installation of an air source heat pump and erection of garage
<b>Summary of Decision</b>
<p>The Local Review Body (LRB) agrees with the determination and refuses Full Planning Permission.</p> <p>In 2013 planning permission was granted for the erection of a dwellinghouse and garage on the site. The application was recommended for refusal by the Planning Service as the principle of development failed to meet policy. This recommendation was overturned by Kincardine and Mearns Area Committee and subsequently permission was granted. In 2015, an application for a change of house type was submitted, this application was recommended for approval by the Planning Service as the 2013 permission was still live and the principle of development was not re-assessed.</p> <p>APP/2020/1118 proposed a dwelling on the site, albeit a change to the original design in 2013 and 2015, and these consents were considered to have lapsed. Since the determination of the 2013 application, the Local Development Plan has been updated, however, the policy regarding redundant brownfield opportunities remains unchanged. The applicant claimed that historically there was a structure on site but had been removed. During the determination of the application, any past buildings had been completely destroyed and no longer existed on site. Policy states that previously developed land must be identified on the basis of its current condition, sufficient evidence of previous development must be apparent on inspection. Historic use, unless physically evident will not be taken into consideration, the site has substantial growth throughout, with no evidence of any structure. It is therefore considered to have been reinstated and not 'previously used' for the purposes of the policy and is considered to have become naturalised, failing to meet the definition of a brownfield land opportunity.</p> <p>Members who were minded to uphold the notice of review considered that the principle of development and land use had previously been established, however those who were minded to support the Appointed Officers decision considered that the Local Development Plan had been updated since the previous approvals on the site and it was clear that there was no evidence of buildings on site and the site has become naturalised. Following the</p>

division, there was a vote and the LRB agreed by a majority to uphold the Appointed Officers decision to refuse full planning permission.

**Policy Issues**

None.

**Additional Points**

Notwithstanding the decision by the LRB, the site has been subject to a separate application for a Certificate of Lawful Use (CLU) APP/2020/2396. An application for a CLU or development is effectively a question from the applicant to the Planning Service as to whether a particular use or development would be lawful.

Evidence was submitted to the Planning Service that a material start had been made to APP/2013/2851. The applicant claimed that prior to the expiry of APP/2013/2851, a material start had been made on site on the basis of 4 activities (erection of fence, formation of access, connection to existing water supply and tracking and installation of electrical duct). However, the only element with sufficient evidence and to be considered a lawful start under Section 27 (4) of the Town and Country Planning (Scotland) Act 1997, were connections made to the site. There are historic water supplies to the site, in 2015 the materials for a modern water connection were purchased connecting to the original pipe, and a contractor was employed who made the connection. This was supported through an invoice dated May 2015 from Grant Plumbing and Heating. Additionally, the tracking and installation of the electrical duct was undertaken, also during 2015. This is considered to fall under point d) of Section 27, where the laying of underground main or pipe is sufficient to constitute a material operation.

Subsequently, this is sufficient to establish the intentions to construct the dwellinghouse and change the use of the land and was considered lawful under Section 150 of the Town and Country Planning (Scotland) Act 1997. The certificate of lawful use for development was issued on the 5<sup>th</sup> February 2021.

**Actions**

None

**Note Decision**

Refuse Full Planning Permission

**Other**

None

## **Aberdeenshire Council Local Review Body**

**Reference LRB 505 APP/2020/1118**

### **Review Decision Notice**

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Decision by Aberdeenshire Council Local Review Body (LRB)

- Site address: Land to North of Hillview, Crathes, Banchory
- Application for review by Inspired Design & Development Ltd on behalf of Mr Robert Clark against the decision by an Appointed Officer.
- Application reference APP/2020/1118 for Full Planning Permission for the Erection of a Dwellinghouse and Installation of an Air Source Heat Pump and Erection of a Garage refused by Decision Notice dated 20 August 2020.
- Application drawings: Reference Numbers: P01 Version B Plans & Elevations; P02 Version A Site Sections.
- No site inspection took place.

Date of Decision: 2 February 2021

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### **Decision**

The Local Review Body (LRB) agrees with the determination reviewed by it and refuses Full Planning Permission in accordance with the Appointed Officer's decision as set out 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 18 December 2020. The LRB was attended by Councillors R Johnston (Chair), P Gibb, J Hutchison, J Ingram and A McKelvie.
- 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 The application site is situated immediately north of Hillview, on land formerly identified as garden ground to Hillview. The site is bounded by beech hedging with post and wire fencing to the front (east), a timber fence between Hillview to the south, a row of trees to the west and established woodland to the north. The site is characterised by overgrown grassland, with gorse / whin scrub on the northern boundary and there is a single tree located in the south east of the plot. The land slopes downward towards the north and west. The site lies within land identified in the Forestry Commission for Scotland 2017 National Forest Inventory and land immediately west of the boundary, based on Ordnance Survey mapped information is an overgrown forestry track that leads down to the B9077. The forestry track is segregated from the agricultural land further west by a fast-flowing burn running down to the River Dee, some 280 metres north of the site. The land lies within the River Dee Special Landscape Area as set out in the Aberdeenshire Local Development Plan 2017. The site lies within the Aberdeen Housing Market Area.
- 2.2 The application is to develop a one and a half storey dwelling with a footprint of approximately 140sqm. From the front and east-facing aspect, the dwelling is of traditional proportions, with dormer windows clad in timber on the first floor. On the western aspect a gable protrudes as a full height glazed feature and overlooks the garden ground at the rear. External building finishes are tiled roof, rendered walls, uPVC doors and windows with vertical timber cladding on the entrance porch and dormer cheeks. A detached double garage is proposed to the north of the dwelling with a new access formed, taking access from the north-east of the plot.
- 2.3 Private drainage arrangements are proposed within the site and connection to the public water supply is proposed.
- 2.3 The documents submitted as part of the planning application were:
- Reference Number: P01 Version B Plans & Elevations;
  - Reference Number: P02 Version A Site Sections.
- 2.4 One representation received in response to the application for Review queried some of the information presented by the applicant and they commented on their perspective since moving to the property in 2015. One such comment related to the accuracy of the site boundary. Regarding other matters raised through consultation responses, should the LRB wish to support the application for Review standard conditions would be attached to any permission that might be granted. This would include a condition to control noise emissions from proposed Air Source Heat Pump, raised by Environmental Health.
- 2.5 In terms of relevant planning history, the site had two earlier planning permissions relating to the erection of a dwellinghouse. The first followed submission of Application APP/2013/2851 which was granted Full Planning Permission on 16 December 2013. The existing use identified within this application was garden ground. The permission included a pre-condition for a

drainage certificate to be provided. The second application for Full Planning Permission was granted on 24 August 2015 when the 2013 consent remained live. This application reference APP/2015/2091 was to seek approval for a change in house design to that previously approved and following a further information request by the Planning Authority a drainage certificate was provided by the applicant. The consideration of the application did not include a review of the principle of the development based on the up to date Local Development Plan, adopted in 2017 as the earlier planning permission remained live, but the further permission did include a new pre-condition reflecting policy changes in the 2017 Plan. This planning permission lapsed 3 years from the decision notice date of the 24 August 2015. Application APP/2020/1118 was validated on 11 June 2020 and identified the existing use as domestic garden ground and stated that no work had started on site.

### **3.0 Reasoning**

- 3.1 The main determining issues for the Review were whether the principle of development was consistent with the policies of the Local Development Plan 2017 and the materiality of the site's planning history and current condition. The key policy consideration was whether the proposal met the criteria of acceptable development as set out in Policy R2 of the current 2017 Local Development Plan. Any proposal, based on Policy R2, would need to: be appropriate for the Greenbelt; or involve the refurbishment or replacement of an existing house or disused building; or involve remediation of redundant brownfield land opportunity. Further, the Glossary to the 2017 Plan specifically excludes garden ground from being considered as brownfield land. A further consideration was what weight should be given to the site's planning history, a lapsed planning permission of almost two years, and whether that would support the setting aside the Policy R2 of the current Local Development Plan 2017, along with consideration of the condition of the site at the time of the 2020 application.
- 3.2 The LRB agreed that the Appointed Officer had identified the relevant Aberdeenshire Local Development Plan 2017 (ALDP) policies and these were as follows:
- Policy R2: Housing and employment development elsewhere in the countryside;  
Policy P1: Layout, siting and design;  
Policy E2: Landscape;  
Policy RD1: Providing suitable services; and  
Policy RD2: Developers' obligations.
- 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:

- (1) There were no rights of way affecting the proposed site.
  - (2) Developer contributions had been concluded with the 2013 application APP/2013/2851, therefore, no further obligations would be required for the site.
  - (3) Boundary treatments had not been included in the 2013 or 2015 applications and any boundary disputes arising would not be an issue for the Planning Service, although there was a reasonable expectation that all information submitted with a planning application would be accurate. Any concerns relating to disputes on boundaries would be a private legal matter.
  - (4) As part of the Appointed Officer's determination of the proposal, no tree survey had been sought from the applicant. If the Local Review Body were minded to grant the proposal, any impact on the trees could be mitigated by way of the application of conditions.
- 3.5 The LRB gave consideration to the case set out by the applicant regarding the previous planning permissions granted, and the view of the applicant regarding site condition and planning status of the land.
- 3.6 During discussion, the LRB considered the planning history of the site, the time which had elapsed since the last planning permission had been granted and took into account that the current application had been considered against the up to date policy position within the current Local Development Plan 2017. Also considered was what weight might be given to those earlier decisions allowing policy in the 2017 Local Development Plan to be set aside. During discussions opposing views were expressed.
- 3.7 Those who were minded to support the Appointed Officer's decision to Refuse Full Planning Permission considered that while the history of development at the site had seen two previous applications being granted in 2013 and 2015 (applications APP/2013/2851 and APP/2015/2091) they had been determined using the policy criteria contained within the previous Local Development Plan 2012. The interpretation of the policies contained within that Plan and what could be considered as 'brownfield sites' was different when considering the current position with the existing Local Development Plan 2017 for which the application as presented before them should be determined. Those members concluded that the Appointed Officer had, in their view, determined correctly, that the site could not be considered as suitable for the re-development of a brownfield site as it was clear that there was no evidence of buildings on site and the site had become naturalised since the 2013 application had been approved. When determining an application 'de novo' those members determined that they had to consider the information as presented to them, and having acknowledged that both the 2013 and 2015 applications were now extant there was nothing material contained within the Notice of Review or supporting statement to justify overturning the Appointed Officer's decision.

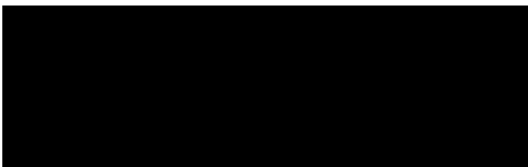
- 3.8 Those who were minded to uphold the Notice of Review considered that the principle of development had previously been established as part of the 2013 and 2015 applications, (although now extant) and as such, there was, in their view material weight which should be afforded to the application to overturn the Appointed Officer's decision as land use had already been established.

When considering the consultation response from Environmental Health along with other representations received, the LRB agreed that should they be minded to allow the Review and approve planning permission then conditions would have to be attached, to manage noise emissions from the air source heat pump, and any other outstanding issues raised could also be satisfied by conditions.

- 3.9 Following a division, there was a vote, and the Local Review Body agreed, by a majority, to Uphold the Appointed Officer's decision to Refuse Full Planning Permission.
- 3.10 After due consideration, and in the absence of any other over-riding material considerations, the LRB agreed to UPHOLD the Appointed Officer's decision to REFUSE Full Planning Permission, for the reasons contained in the Decision Notice dated 20 August 2020 and set out in paragraph 4.0 below.

#### **4.0 Reasons for refusal**

- (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 proposed development is not considered to be the remediation of a redundant brownfield land opportunity due to the naturalised nature of the site and contrary to Policy R2 Housing and Employment Development Elsewhere in the Countryside of the Aberdeenshire Local Development Plan 2017.



**Karen Wiles**  
**Head of Service (Legal and People)**

## **TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997**

### **Notification to be sent to applicant on determination by the planning authority of an application following a review conducted under section 43A(8)**

#### **Notice Under Regulation 22 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013.**

1. If the applicant is aggrieved by the decision of the planning authority to refuse permission or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.
  
2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.