

3. Minute of Meeting of the Local Review Body of 25 June 2021.

# ABERDEENSHIRE COUNCIL

## LOCAL REVIEW BODY

### SKYPE MEETING, FRIDAY, 25 JUNE, 2021

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

**Apologies:** Councillor A McKelvie.

**Officers:** Legal Adviser to the Local Review Body (Senior Planner, James Wheater for LRB 512, 521 and 523); Planning Adviser to the Local Review Body, (Senior Planner, Sheena Lamont for LRB 522), Legal Adviser to the Local Review Body (Senior Solicitor, Fiona Stewart) and Committee Officer (Frances Brown).

#### 1. DECLARATION OF MEMBERS' INTERESTS.

The Chair asked members' if they had any interests to declare in terms of the Councillors' Code of Conduct.

- (1) Councillor Cassie declared an interest in Agenda Item 5 (LRB 512), by virtue of having not taken part in that item when it had previously been considered at the Local Review Body meeting of 26 March 2021. Councillor Cassie concluded that he would withdraw from proceedings when that review was being determined.
- (2) Councillor Johnston declared an interested in Agenda Item 7 (LRB 522), by virtue of the application site being within his ward. Councillor Johnston 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 28 MAY, 2021

The Local Review Body had before them and **approved** as a correct record, the Minute of the Local Review Body meeting of 28 May, 2021. 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).

## RECONVENED REVIEWS

### 5. LRB 512 – NOTICE OF REVIEW AGAINST REFUSAL OF FULL PLANNING PERMISSION FOR ERECTION OF DWELLINGHOUSE (CHANGE OF HOUSE TYPE TO PLANNING PERMISSION APP/2019/1716) AT SITE AT SOUTH EAST OF ELRICK HOUSE ESTATE, NEWMACHAR, ABERDEENSHIRE – REFERENCE: APP/2020/1659.

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

With reference to the Minute of the Local Review Body meeting of 26 March 2021 (Item 5), where the Local Review Body had agreed to defer consideration of the Notice of Review, to allow them to follow further procedure, by way of seeking additional information, namely:

- (1) To **request** that the Planning Service consider the plot layout and site layout for the 2019 and 2020 applications and to comment on the discrepancies identified by the Planning Adviser to the Local Review Body, considering access, positioning and the layout of the site;
- (2) To **request** that the Planning service consider and comment on whether the 2019 application would in their view be deliverable, if the 2020 application were approved; and
- (3) To **provide** the additional information requested from the Planning Service to the landowner, the applicant, and any potential owners of the other 5 dwellinghouses to allow them to also consider the discrepancies identified and provide to any comment for consideration.

There had been circulated, the additional information requested by the Local Review Body, as presented on Pages 15 and 16 of the agenda papers, and the application/agent's and landowners' response to that additional information as presented on Pages 18 to 22 of the agenda papers.

The Local Review Body then resumed consideration of the Notice of Review, which sought a review of the Appointed Officer's decision to Refuse Full Planning Permission for the Erection of a Dwellinghouse (Change of House Type, to Planning Permission APP/2019/1659) at the Site South East of Elrick House Estate, Newmachar, Aberdeenshire – Reference: APP/2020/1659.

The Planning Adviser introduced the Notice of Review and provided the Local Review Body with an overview of the application as presented at the initial meeting of 26 March 2021, and a recap of 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 pattern of fenestration and design detailing on the proposed dwellinghouse results in a fragmented and cluttered appearance which would be incongruous with the other houses previously granted and set an undesirable precedent for erosion of a single, coherent design for the scheme with a resulting negative impact on the appearance of the development overall and the character of the immediate area. The proposal is considered to be contrary to Policy P1: Layout, siting, and design of the Aberdeenshire Local Development Plan 2017.
- (2) 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 would have an adverse visual impact on the setting of the listed building to the north of the site and would not comply with Policy HE1: Protecting historic buildings, sites, and monuments of the Aberdeenshire Local Development Plan 2017.

The Local Review Body considered that the relevant policies as contained within the Local Development Plan 2017 were: P1: Layout, siting, and design; Policy HE1: Protecting historic buildings, sites, and monuments; Policy H3: Helping to reuse listed buildings at risk; Policy C1: Using resources in buildings; Policy C4: Flooding Policy RD1: Providing suitable services and Policy RD2: Developers' obligations.

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

In response to questions raised, the Planning Adviser confirmed:

- (1) It was difficult to fully consider the Review against the layout approved under APP/2019/1716, however he did state that it was clear from that application that the intention of the design statement was to form an informal u shape and the fenestration pattern and detailing to be relatively contemporary within single pane glazing. Given the indication by the Planning Service that they had intended to grant Full Planning Permission for the new application APP/2021/0986, the Planning Adviser stated that they had confirmed an acceptance of the layout and design of APP/2021/0986 and members could

therefore give that layout and design greater material weight in their decision making.

- (2) Despite some minor changes to the layout and design of the proposal APP/2021/0986, it was largely similar in format and design to what had been previously envisaged but inaccurately represented through the application APP/2019/1716.
- (3) The differences between the designs which mainly resulted in the detailed fenestration pattern, differences in the use of linings and claddings and the changes to the garage and parking arrangements.

The Local Review Body then 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 considered the case set out by the applicant as set out in the Notice of Review and the further response received from the applicant following the provision of further information. It was noted that the applicant had considered, in their view, that the changes were relatively minor and did not conflict with Policy P1, nor would it impact adversely on the Listed Building as their proposed design had been made to enhance the appearance and functionality of the property and as a result reduced impacts such as overlooking between properties which were apparent on the approved and proposed designs for the wider development.

During discussion, the Local Review Body debated the merits of the design of the proposed dwellinghouse as it related to the design ethos of the site and the application APP/2021/0986, which had been able to demonstrate a design and layout which was considered acceptable to the Planning Service in relation to the relevant Policies P1: Layout, siting, and design and of Policy HE1: Protecting historic buildings, sites, and monuments.

Having considered all the information before them, and the additional information received, the Local Review Body were unanimous in their view that despite the inaccuracies which were inherent in the approval of APP/2019/1716, there was a consistency of design between that proposed application and APP/2021/0986. The Local Review Body determined that in light of that, and the Appointed Officer's consideration of the review application, it could equally apply to an assessment of the design against that was intended to be approved under APP/2021/0986. As such, the Local Review Body supported the Appointed Officer's decision to Refuse Full Planning Permission, on the grounds that the detailed design of the proposed development would negatively impact on the wider design quality of the site and the setting of the listed building.

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 dated 9 November 2020.

## **NEW REVIEWS**

**6. LRB 521 – NOTICE OF REVIEW AGAINST REFUSAL OF FULL PLANNING PERMISSION FOR ERECTION OF DWELLINGHOUSE AND GARAGE AT LAND TO EAST OF MAINS OF CORSINDAE, SAUCHEN, ABERDEENSHIRE – REFERENCE: APP/2020/1089.**

Local Review Body: Councillors J Hutchison (Chair), R Cassie, P Gibb, J Ingram, and P Johnston.

There was 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 a Dwellinghouse and Garage, at Land to East of Mains of Corsindae, Sauchen, Aberdeenshire – Reference: APP/2020/1089.

The Planning Adviser introduced the Notice of Review and advised the Local Review Body that in terms of review procedure, the agent 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 by interested parties during the consultation period, prior to determination.

Further to consultations undertaken it was reported that Developer Obligations had confirmed that Midmar Primary School and Alford Academy were currently operating within capacity and the proposed development would not engage with Developer Obligations; Contaminated Land had confirmed that there was no indication of any past use which might have caused contamination on the site; Environmental Health did not object to the proposed development, subject to conditions relating to noise from the proposed air source heat pump and to ensure that the dwelling could connect to a public water supply; Roads Development had commented that they would require further detailing on the proposed site layout plan to show the visibility splays and bin stores and the proposal would be acceptable subject to standard conditions and informatives being attached to any permission granted; and Scottish Water had no objection to the application and had confirmed that there may be capacity at the Invercannie Waste Water Treatment works and the applicant should complete a Pre-Development Enquiry Form.

It was reported that Cluny, Midmar and Monymusk Community Council had objected to the application based on the principle of development, as there was a presumption against housing in the application area. They detailed that the Mains of Corsindae farm already had four houses located within it and they asserted that the proposal would constitute greenfield development outwith the Corsindae farm cluster. Further comments were also submitted by the Community Council which stated that in addition to the farming enterprise at Corsindae the applicants run a successful contracting business which included winter road maintenance such as snow clearing and gritting.

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 dwelling does not comply with Policy R2 Housing and Employment Development elsewhere in the Countryside. The proposal and supporting information fail to demonstrate that the dwelling is necessary to facilitate farm succession or provide accommodation for an essential worker under Policy R1 Special Rural Areas, and it does not comply with any other criteria contained within the rural housing policies of the Aberdeenshire Local Development Plan 2017.

The Local Review Body considered that the relevant policies, as contained within the Local Development Plan 2017 were: Policy R1: Special Rural Areas; Policy R2: Housing and Employment Development elsewhere in the Countryside; Policy P1: Layout, siting, and design; Policy P4: Hazardous and potentially polluting developments and contaminated land; Policy C1: Using resources in buildings; Policy RD1 Providing suitable services and Policy RD2 Developers' obligations.

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

In response to questions raised, the Planning Adviser confirmed:

- (1) The planning history of the farm, in particular the dwelling known as Fairview approved under APP/2015/3313.
- (2) Fairview had only been constructed in 2017, with specific reasons for permitting that development, and it would be reasonable for the Local Review to consider that information as a material when determining the review and to consider how much weight they wished to place on that information when reaching their decision.
- (3) The applicant had alluded to the circumstances surrounding the property which was no longer available to the farm business as the family member occupying the property was no longer actively involved in the farm business and the Local Review Body should consider whether the information provided was sufficient for them to discount that property from further consideration.
- (4) No further planning advice existed in terms of farm succession other than the policy wording, which limited a proposal to a single house and a viable succession, and it was not evident if the policy had considered the possibility for multiple successors.
- (5) Policy R1 related to the need for an essential worker and the Local Review Body should, when considering the farm operations, and the handling of livestock whether there was a need for a worker to be onsite to carry out

those operations and whether it had been reasonably demonstrated that an onsite presence was essential for the operation of that business.

The Local Review Body considered that they did have enough information before them and proceeded to determine the Notice of Review.

The Local Review Body considered that the main determining issues for the Review, as presented before them, was whether the proposed development could be considered in the context of the two key policy aspects considered by the Appointed Officer and the applicant in their Notice of Review. Those were, (1) whether the proposal, (which involved a retirement home for the existing farmer in order to allow a second successor to the business to reside on site), could be considered favourably under Policy R2: Housing and Employment Development elsewhere in the Countryside which would allow for a dwelling in support of a retiring farmer as part of a viable farm succession and (2) whether the proposal could be considered in more general terms, in the context of the need for an agricultural worker under the terms of Policy R1: Special Rural Areas.

During discussion the Local Review Body considered the property known as Fairview, which was occupied by a family member who was no longer involved in the farming operation and determined that they would not give that matter significant weight in their decision making.

The Local Review Body then considered whether it was reasonable for two people to succeed the existing farmer, and concluded that whilst it may be reasonable for more than one person to succeed a farm business, where more than one successor was involved in that business, the key aspect of the review was whether it could be considered as essential, under the terms of Policy R1 for more than one active worker to be located on site following the retirement of the present farmer.

Further discussion then ensued as to whether the proposal would comply with Policy R1 and whether the 1.6 labour unit requirement for livestock management and animal husbandry could justify the need for a further residential unit within the farm holding. The Local Review Body concluded that it had, in their view, been demonstrated that a second onsite worker was essential, and would be required for the effective running of the agricultural operation as it related to animal welfare for which there was a requirement to be located on the farm and the proposal could therefore be supported in respect of the terms of Policy R1 as they related to accommodation for essential workers.

After due consideration, the Local Review Body **agreed** to uphold the Notice of Review and reverse the Appointed Officers decision and GRANT Full Planning Permission, subject to conditions.

**7. LRB 522 – NOTICE OF REVIEW AGAINST REFUSAL OF FULL PLANNING PERMISSION FOR ERECTION OF DWELLINGHOUSE AT SITE NORTH OF CHAPLEHOUSES, OLD MELDRUM – REFERENCE: APP/2020/2373.**

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

There was 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 a Dwellinghouse at a Site North of Chaplehouses, Oldmeldrum – Reference: APP/2020/2373.

The Planning Adviser introduced the Notice of Review and advised the Local Review Body that in terms of review procedure, the agent had requested a site inspection of the land to which the review relates, to see previous development on site 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 no valid representations had been received by interested parties during the consultation period, prior to determination.

Further to consultations undertaken, it was reported that Developer Obligations had confirmed that developer obligations have been agreed with contributions being sought towards an extension to Meldrum Academy to create additional capacity; Contaminated Land had confirmed that there was no indication of any past use which might have caused contamination; Roads Development had not objected to the application subject to conditions regarding access, parking, visibility splays and the installation of a bin store; Scottish Water had no objection to the proposal, however, had noted that they were not unable to confirm capacity within the Turriff Water Treatment Works and there was no Scottish Water, or wastewater infrastructure within the vicinity of the proposal.

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 site is considered to be a Greenfield site and contains no buildings or evidence of being previously development that would support the view that the site is a brownfield opportunity site. No other opportunities exist for a dwelling under Policy R2 and Policy R1 and the proposal is therefore contrary to Policy R2 Housing and employment development elsewhere in the countryside and Policy R1 Special rural areas of the Aberdeenshire Local Development Plan 2017.

The Local Review Body considered that the relevant policies, as contained within the Local Development Plan 2017 were: Policy R2: Housing and employment development elsewhere in the countryside; Policy P1: Layout, siting and design; Policy E2: Landscape; Policy C1: Using resources in buildings; Policy RD1: Providing suitable services and Policy RD2: Developers' obligations.

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

In response to questions raised, the Planning Adviser confirmed:

- (1) That the land immediately north of the earlier poultry sheds had previously been under permanent pasture and part of the field but it was no longer used for that purpose, the fence has been moved some distance from the building.
- (2) The 2015 Planning Application had identified an open storage area associated with the Commercial Garage and identified land immediately north of the buildings and it was assumed that that was the reason why the fence had been moved.
- (3) While there were no longer motor vehicles being stored on the land, motor vehicles had previously been clearly visible on that land in earlier photographs.

The Local Review Body considered that they did have enough information before them and proceeded to determine the Notice of Review.

The Local Review Body considered that the main determining issues for the Review, as presented before them, was whether the proposal would meet the policy criteria for Policy R2: Housing and employment development elsewhere in the countryside.

During discussion the Local Review Body considered the Notice of Review as set out by the applicant, regarding whether the site was greenfield or brownfield along with other matters raised in their supporting statement.

Having taken all the information before them into consideration, the Local Review Body were unanimous in their view that the application site would, in their view, was a greenfield site as it was very clear that the land was completely naturalised. As such they would support the Appointed Officer's view that the proposal did not meet the policy criteria as set out in Policy R2: Housing and employment development elsewhere in the countryside.

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 dated 12 April 2021.

**8. LRB 523 – NOTICE OF REVIEW AGAINST REFUSAL OF FULL PLANNING PERMISSION FOR SITING OF HOT FOOD TRAILER AT 10 WHINHILL TERRACE, BANFF, ABERDEENSHIRE, AB45 1ET – REFERENCE: APP/2020/1333.**

Local Review Body: Councillors J Hutchison (Chair), R Cassie, P Gibb, J Ingram and P Johnston.

There was 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 Siting of Hot Food Trailer at 10 Whinhill Terrace, Banff, Aberdeenshire, AB45 1ET – Reference: APP/2020/1333.

The Planning Adviser introduced the Notice of Review and advised the Local Review Body that in terms of review procedure, the agent had requested a site inspection of the land to which the review relates, to see previous development on site 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 his presentation by reporting that 22 valid representations (18 objections and 4 in support) had been received by interested parties during the consultation period, prior to determination of the application and the material issues raised within those submissions were:

#### In support

- The development creates new jobs and benefits the local community;
- There is car parking near the site, and on-street parking have all been used up;
- Food smell does not harm anyone and is not a concern;
- There would be no increased noise due to the trailer; and
- Seagulls are not an issue to other food outlets.

#### Objections

- The development is inappropriate in a residential area;
- The site is on the local bus route and close to two schools. The development would cause congestion on the narrow road and would be detrimental to road safety;
- Concerns over increased traffic and lack of on-street parking in the area;
- Concerns over increased noise and constant food odours;
- Concerns over food waste, litter, seagull problems in the neighbourhood due to the development.

It was further reported that four further representations had been received, in response to the Notice of Review and those submissions reiterated their original objections to the proposal as presented on Pages 441-450 of the agenda papers.

The applicant/agent had responded to the additional submissions in detail as presented on Pages 452-458 of the agenda papers.

Further to consultations undertaken, it was reported that Environmental Health had no objection to the proposal subject to conditions, which should include a condition for details of an odour control system to be installed which should be submitted for approval before the operation, as the proposed hot food van may introduce a potential source of odour and noise adjacent to residential properties and the residential properties amenity may be detrimentally affected and the Road Development had confirmed that they had no objection to the application.

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

- (1) The proposal fails to comply with Policy P3 Infill and householder developments within settlements (including home and work proposals) as contained within the Aberdeenshire Local Development Plan 2017, in that the proposed siting of a hot food trailer and operation of a takeaway business would change the overall character of the property's use as a single dwelling and would introduce a commercial use incompatible with the existing residential uses in the vicinity and erode the character and amenity of the surrounding area.

The Local Review Body considered that the relevant policies, as contained within the Local Development Plan 2017 were: Policy P3: Infill and householder developments within settlements (including home and work proposals); Policy P1: Layout, siting, and design; Policy P4: Hazardous and potentially polluting developments and contaminated land and Policy RD1: Providing suitable services.

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

In response to questions raised, the Planning Adviser confirmed:

- (1) It would not be appropriate for a background noise survey to be conditioned as part of any permission granted as it was not clear as to whether the levels stipulated by Environmental Health at that site could be met. A survey would normally be requested prior to determination of an application.
- (2) Consideration should be given to the general use of the site by customers and whether that would be compatible with its established character and amenity.

The Local Review Body considered that they did have enough information before them and proceeded to determine the Notice of Review.

The Local Review Body considered that the main determining issues for the Review, as presented before them was whether the proposed development, being for a hot food takeaway to be located in a residential area, was compatible with Policy P3: Infill and householder developments within settlements (including home and work proposals) which allowed for development within the settlement provided that such development respected the scale, density and character of its surroundings and did not erode the character or amenity of the surrounding area.

During discussion the Local Review Body considered the Notice of Review and supporting statement as set out by the applicant, which indicated that, in their view, the application should be supported under Policy P3 (Infill and Householder Developments within Settlements – including Home and Work Proposals) on the grounds that the proposed developments design would respect the character of the surrounding area; there would be sufficient on-site parking provided to address road

safety concerns; odour and noise could be managed on site and there was a general demand for that type of facility in that area.

The Local Review Body considered whether the operation of the hot food takeaway would be in keeping with the character and the general amenity of the area and determined that it was clear that the area was residential and there was little in the way of existing commercial operations and the area offered a relatively high level of residential amenity. The Local Review Body supported the Appointed Officer's view that the operation of the proposed hot food takeaway would not be in keeping with the existing character of the area and would be of detriment to the established amenity of the area and would be contrary to Policy P3: Infill and householder developments within settlements (including home and work proposals).

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 reason contained in the Decision Notice dated 11 March 2021.

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