

FORMARTINE AREA COMMITTEE

TUESDAY 31 AUGUST 2021

Present: Councillors I Davidson (Chair), A Duncan, A Forsyth, J Gifford, A Hassan, P Johnston, A Kloppert, L McAllister, G Owen, S Powell, A Stirling, and I Taylor.

Officers:- E Brown (Formartine Area Manager); P McCallum (Roads Development Manager, Transportation); P Whalley, (Early Years Estates Manager, Education Development); I Daniels, (Principal Roads Engineer, Roads, Landscape Services, and Waste); F Stewart, (Senior Solicitor); A Ramsay, (Senior Planner); L Gravener (Strategic Policy Lead, Customer and Digital Services); L Dingwall, (Planner); and J McRobbie (Area Committee Officer),

Prior to the commencement of the formal business, the Chair, on behalf of the Committee, welcomed Councillor Sheila Powell, the new Member for the Mid-Formartine Ward, to the Committee.

1. DECLARATION OF MEMBERS' INTERESTS

The Chair asked Members if they had any interests to declare in terms of the Councillor's Code of Conduct.

In respect of Item 7, Area Committee Budget Funding Applications, Application a, Balmedie Leisure Centre Association, Councillor Hassan declared an interest as the Council-appointed representative on the Centre's Management Committee. Having applied the objective test, he indicated that he would take no part in the discussion and leave the meeting during consideration of the item.

In respect of Item 7, Area Committee Budget Funding Applications, Application d, Turriff Local Charity (TLC), Councillor Duncan reported that as his wife was on the TLC Committee, he, having applied the objective test, would not participate in the discussion of this application but would not leave the meeting.

2A. RESOLUTION - EQUALITIES

The Committee **agreed**, in terms of Section 149 of the Equality Act, 2010:-

1. to have regard to the need to:-
 - (i) eliminate discrimination, harassment, and victimisation;
 - (ii) advance equality of opportunity between those who share a protected characteristic and persons who do not share it; and
 - (iii) foster good relations between those who share a protected characteristic and persons who do not share it; and

2. where an Equalities Impact Assessment or Integrated Impact Assessment was submitted, to consider these.

2B. RESOLUTION - EXEMPT INFORMATION

The Committee **agreed**, that under Sections 50A (4) and (5) of the Local Government (Scotland) Act 1973, as amended, the public and media representatives be excluded from the meeting for Item 9 of the business on account of the likely disclosure of exempt information of the class described in the relevant Paragraph of Part 1 of Schedule 7A of the Act.

Item No.	Paragraph No.
9	8

3. MINUTE OF MEETING OF 29 JUNE 2021

There had been circulated and was **approved** as a correct record, the Minute of Meeting of 29 June 2021.

4. PLANNING APPLICATIONS FOR DETERMINATION

The following applications were considered along with valid representations received, and requests to be heard, and were dealt with as recorded in the Appendix to this Minute.

Reference	Description	Decision
A. APP/2021/0120	Full Planning Permission for Erection of Dwellinghouse Land Adjoining Tulloford Mill, Oldmeldrum	Refuse
B. APP/2021/0311	Full Planning Permission for Erection of Factory and Office Accommodation, Land to The North East of Kinknockie Farm, Udny, Ellon	Refuse
C. APP/2021/0505	Full Planning Permission for Erection of Dwellinghouse, Land to the South East of Den of Keithfield, Tarves, Ellon	Delegated Grant

5. PROPOSED PROHIBITION OF DRIVING AT LITTERTY BRIDGE – OUTCOME OF STATUTORY CONSULTATIONS

There had been circulated a report dated 10 August, 2021 by the Director of Infrastructure Services, requesting Members' consideration of an objection received

in respect of proposals to make a prohibition of driving order at North Litterty Bridge and determine whether to proceed with the making of the order.

The Committee heard from the Principal Roads Engineer, (Roads, Landscape Services, and Waste) of the scheduled plans to replace North Litterty Bridge in the current year, and of its current shared status with four other bridges in Banff & Buchan, all of which were under temporary prohibition orders which could not be extended any further.

The Committee, having considered the objection received during the consultation period, and noting that any Order made could be revoked at any appropriate time, **agreed** to approve the making of The Aberdeenshire Council (U17s at Burn of Litterty at North Litterty Bridge) (Prohibition of Driving) Order 2021.

6. EQUALITIES OUTCOME REPORT

With reference to the Minutes of Meeting of Aberdeenshire Council of 27 April, 2017, (Item 6) and 29 September, 2019 (Item 11), there had been circulated a report dated 26 July, 2021 by the Director of Business Services requesting Members' consideration of (a) the progress made towards meeting the Public Sector Equality Duty and (b) the new Equality Outcomes planned for the next four years.

Having heard further from the Strategic Policy Lead, Customer and Digital Services, of the history, consultation process, and updates on progress, with the Equalities Outcome Report to be submitted to Council on 23 September, 2021, the Committee **agreed:-**

- (1) to welcome the progress made to meeting the Public Sector Equality Duty, as detailed in Appendix 1 to the report;
- (2) to commend the progress made towards achieving the Equity Outcomes for 2017- 2021, as detailed in Appendix 1 to the report;
- (3) to approve for their interests the Equality Outcomes 2021- 2025 as detailed in paragraph 4.6.6. of the report;
- (4) to note that the report would be considered at Council on 23 September, 2021; and
- (5) to commend the report as a comprehensive and interesting read, thanking officers for their efforts in embedding equalities.

7. AREA COMMITTEE BUDGET 2021-2022 – APPLICATIONS FOR FUNDING

At this point of the meeting, Councillor Hassan, having declared an interest in the first application to be considered, withdrew from the meeting, returning for consideration of applications (b), (c), and (d).

With reference to the Minute of Meeting of 27 April, 2021, (Item 9), there had been circulated a report dated 11 August, 2021 by the Director of Business Services, detailing applications for funding which had been received (a) from Balmedie Leisure Centre Association (SCIO) towards an accessible, inclusive play area as a

community outside space; (b) from Ellon Rotary Club, towards the creation of a picnic and activity garden area at the Ellon Resource Centre; (c) from EPIC (Ellon Parks Improvement Committee), for works to remove the existing swings at Auchterellon Play Park and replace them with an accessible swing in a different location within the park; and (d) from Turriff Local Charity (TLC), towards the purchase of display equipment, materials, and tools to enhance a charity shop to generate monies for disbursement to local groups and organisations.

Having heard further from the Area Manager that all applications were competent and could be accepted within the balance of funding available, there was discussion of the merits of the projects. Having noted that EPIC had still outstanding applications for other funding streams, which may reduce the amount required to meet the project costs, the Committee **agreed:-**

- (1) to approve an award of £5,000, to the Balmedie Leisure Centre Association toward the creation of the accessible, inclusive play area;
- (2) to approve an award of £1,000, to Ellon Rotary Club, towards the creation of a picnic and activity area at Ellon Resource Centre;
- (3) to approve an award of up to £6,987 to EPIC, being the balance required to allow the project to be completed, when all other funding had been confirmed, towards the installation of an accessible swing at Auchterellon Play Park, with the confirmed finances to be received by the end of December, 2021 at the latest, in order that the project may be completed, and funds claimed by the end of the financial year; and
- (4) to approve an award of £317.20 to TLC for the purchase of display equipment, materials, and tools for their Charity Shop.

Arising out of consideration of the above, the Committee further **agreed** to recommend to TLC consideration of seeking Revolve accreditation, through Zero Waste Scotland, for their work in up- and re-cycling goods.

8. STATEMENT OF OUTSTANDING BUSINESS

There had been circulated and was **noted** a report dated 9 August, 2021 by the Area Manager updating on matters which had previously been discussed by the Committee but remained to be resolved.

9. SUPPLEMENTARY DIRECTORATE PROCUREMENT PLAN – PROCUREMENT APPROVAL

With reference to the Minute of Meeting of 9 February, 2021 (Item 10), there had been circulated a report dated 11 August, 2021 by the Director of Education and Children's Services, requesting Members' consideration of a Supplementary Procurement Plan, for works to enhance facilities at the Community Resource Hub at Ellon Primary School.

Having heard from the Early Years Estates Manager of the details of the project, the Committee **agreed:-**

- (1) to approve the Supplementary Procurement Plan, noting that the work would be added to the Directorate Procurement Plan approved by Committee on 9 February, 2021 (Item 10); and
- (2) to not reserve approval of the Procurement Approval Form.

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APPENDIX

4A. APP/2021/0120 - Full Planning Permission for Erection of Dwellinghouse, Land Adjoining Tulloford Mill, Oldmeldrum

Prior to hearing the Senior Planner, the Chair advised that a request to speak had been received from Mr Simpson, Agent, on behalf of the applicant. The Committee **agreed** to hear Mr Simpson.

There had been circulated a report dated 26 July, 2021, by the Director of Infrastructure Services, requesting Members' consideration of an application for Full Planning Permission for the Erection of a Dwellinghouse, on land adjoining Tulloford Mill, Oldmeldrum.

The Committee heard from the Senior Planner of the content of the letters of support, and how the principle of development on the site could be supported, in terms of policy, had it not been for the inability to ensure that an appropriate visibility splay could be provided to the existing access.

Questions were asked of the record of previous accidents on the road; the number of houses already on the site and Roads comments on those applications; consideration of alternative accesses; and potential mitigations which might be considered. The Committee heard from the Roads Development Manager that, although a 60mph road, the calculations for visibility splay had been assessed as for a 30mph, in recognition that the practical speed driven would average under 40mph. Despite this, due to a wall and hedge, the junction remained very blind.

The Committee heard from Mr Simpson of the existing properties on site, served by the same access road with its visibility issues, and his contention that to add a single house to the 2 already using the road would only increase traffic movements by 33%, which Tarves Community Council had considered as minimal in their support for the development; the issues of the maintenance of the mature beech hedges and trees and the wish not to have them destroyed, but visibility already enhanced by way of a large convex traffic mirror, albeit not approved by the Roads Service; of suggested signage which might be installed to alert drivers to the compromised junction visibility; of the current driving practice necessitated on the road, a single track with no official passing places; and the potential for warning signs to be painted on the road, as happened at the community at neighbouring Tulliford, in its 30mph area.

Questions were asked of Mr Simpson, as the architect of the entire site, and a resident, of 29 years, of Tulloford Mill, of the planning history; of the completion date of the last building approved; and which houses used the access road.

It was confirmed that no traffic issues had been raised when the applications for the two existing houses on the site had been approved. Neither had there been any accidents recorded, since the last building had been completed in the mid to late 1990s. Only Tulloford Mill and the farm house used the access road as Tulloford Rise had its own separate access to the west of the Mill.

The Committee heard from the Principal Roads Engineer that “slow” road markings were applied on occasion where a series of bends required traffic to slow down; of recent accidents on the road, although not in the location of the application site and attributable to wet weather, so irrelevant to this application; and that the visibility splay may not have been an issue in the 1990s compared to now, with three additional decades of growth.

Members asked the senior planner whether signage could be considered under Developer Obligations and were advised that this would not be appropriate and that even with an additional house, the site would not qualify for speed limits to be established.

After discussion, Councillor Gifford moved, seconded by Councillor Hassan, that the application be refused on the grounds as detailed in the Officers’ report.

Councillor Johnston moved as an amendment, seconded by Councillor Powell, that the approval of the application be delegated to officers, subject to standard conditions being imposed.

On a division, there voted:

For the Motion	8	Councillors Davidson, Forsyth, Gifford, Hassan, Kloppert, Owen, Stirling, and Taylor.
For the Amendment	4	Councillors Duncan, Johnston, McAllister, and Powell.

The Motion was therefore carried, and the Committee **agreed REFUSE** Full Planning Permission for the following reason that the Planning Authority considers that the application is for a development that is not in accordance with the Aberdeenshire Local Development Plan 2017, in so far as the required visibility splay, where the private access meets the public road, cannot be achieved due to an existing wall and hedge that the applicant cannot remove or amend. As such, the access onto the public road is not safe for the development proposed and therefore does not meet the standards of Aberdeenshire Council’s Roads Development department and is thus contrary to Policy RD1 Providing suitable services.

4B. APP/2021/0311 - Full Planning Permission for Erection of Factory and Office Accommodation, Land to the North East of Kinknockie Farm, Udney, Ellon

Prior to hearing from planning officers, the Chair advised that there had been two requests to speak: from Mrs Tierney of Lippe’s Architects on behalf of the applicant, and from Mrs Stewart, of Brodies, on behalf of an objector, who would also be present to answer any technical questions. The Committee **agreed** to hear Mrs Tierney and Mrs Stewart.

There had been circulated a report dated 1 August, 2021 by the Director of Infrastructure Services, requesting Members’ consideration of an application for Full Planning Permission for the Erection of a Factory and Office Accommodation on land to the North East of Kinknockie Farm, Udney, Ellon, recommended as a Departure from the Local Development Plan.

The Committee heard from the Planner details of the application, the areas where it might be considered not to comply with policy, of the grounds of objection received, and the material consideration which in the view of the Service, supported a Departure from the Local Development Plan, including the sequential test of alternative sites for the proposed development. It was clarified that the site was not green belt but was green field, and not a brown field site, that mitigations had been developed to counter industrial noises in a rural location, and the suggested merits in departing from Transportation Policy P1, and RD1 to allow a location adjacent to an existing anaerobic digester, intended to supply energy to the factory.

Questions were asked on whether the energy generated would support vehicle needs in addition to providing electricity for the buildings on site; conditions which would be proposed to safeguard the provision of public water, where no connection currently existed on the proposed site; the availability of other sites identified in the Local Development Plan for industrial uses, and the status of this site, not identified as a bid site in the Local Development Plan process; the timeline for the proposed development of a new access road, which related to a linked application, not currently before the Committee for consideration and which had not yet been determined by planners; and drainage proposals.

Thereafter, Mrs Tierney spoke on behalf of the applicant, Norframe, explaining that whilst company's representative, Mr Davidson, would not be part of the submission, he would assist in the answering of any questions.

Norframe had been established, and had grown, as a crucial supplier of kits to Cairnrowan Homes, delivering high quality housing in the region, a company of which her client was also a director. Both operations required a location in Formartine, and Norframe's temporary premises were unsustainable, requiring the swift delivery of a viable option. Her client's main driver was to find a site powered by green energy, to provide a new use for renewable energy, and Kinknockie Farm provided an anaerobic digester of capacity with a grid connection for back up, and future-proofed in terms of possible expansion. Other locations, zoned for industrial use in the Local Development Plan, had been considered and dismissed for a variety of reasons, from not producing sufficient energy, already being used, issues with ownership of access roads, being too close to housing schemes, or being of prohibitive cost. Other sites were still to be developed or expanded, but Norframe's need for a site was immediate.

Although the site was not included in the Local Development Plan and Mrs Tierney acknowledged that decisions should be made in reference to this, there were other material considerations in terms of Section 25 of the Town and Country Planning (Scotland) Act. Her client had been proactive in seeking to address the technical and other matters raised by the consultation process: in response to the road concerns, a new road access from the north would be established; the required parking spaces and electric generation points were to be provided; measures were proposed to mitigate any noise to an acceptable level; the proposed site had been assessed and determined not to be prime agricultural land; and sustainable benefits included the Green Travel Plan, designed for employees but also to be offered to local residents.

The Kinknockie site was adjacent to the Energetica Corridor, which aimed to establish a world-class development cluster to help and attract business and talent to the area, and, Mrs Tierney suggested, met 5 of the six Energetica criteria. Whilst it might not be innovative or experimental, the proposed development would provide economic, social, and environmental sustainability.

Her applicant wanted to join other companies in expanding the North East's green credentials; the proposal would produce new jobs, essential in the context of post-Covid economic development; the scheme was designed to fit into the landscape and was close to the main Peterhead to Aberdeen Growth corridor; and the development would use sustainable energy.

The support from Planners for the application, despite not meeting the Local Development Plan requirements and breaching several policies, Mrs Tierney suggested, spoke volumes, and demonstrated a flexible approach to sustainable developments, as recommended by national policy.

Questions were asked for clarification on the non-tonal reversing alarms for vehicle movements on site, the use of PVC curtains at building entrances and restricted operational hours; whether use of the staff bus or electric cars would be compulsory for staff or a positive addition to a range of travel choices; encouraging greener options; and gas to electric engine costs.

The Committee next heard from Mrs Stewart of Brodies, on behalf of an objector, Enerfield, whose representative, Mr Booth, who was present to assist, if required, on matters of technical detail. A planning application, recommended for approval despite four areas of departure from the Local Development Plan, breaching Energetica supplementary guidance, and contrary to the recommendations of transportation officers, should have a strong presumption against granting permission. It was felt that insufficient material considerations had been included by the Planning Service to justify the recommended approval in these circumstances.

In her view, there were two legal points which needed to be addressed. The first was the inextricable linking of the application to a second application for a new access road. She suggested that the land for this should have been included in the application site, taking it over 2 hectares, and would have therefore required pre-application consultation. By allowing the development to be split in two, Mrs Stewart contended that the Council was facilitating circumvention of its statutory requirements. Secondly, following a complaint by her client about publication of information perceived by him to be confidential, this had been removed from the planning report circulated, however Mrs Stewart highlighted that this information had been referred to in the applicant's presentation. Mrs Stewart then referred to a letter which had been submitted by her firm to the Planning Service which stated that the information was factually incorrect, but it was not known by her client if this had been shared with the Committee.

Mrs Stewart then went on to highlight three planning issues she considered to be relevant: In terms of planning policy, there were four breaches, and also of the protection of prime agricultural land. She also highlighted that it failed to meet all the criteria in Energetica Supplementary Guidance.

On the applicant's contention that no suitable allocated employment land was available, Mrs Stewart explained that there were 39.7 hectares of allocated employment land in Formartine, with a further 40.5 hectares of strategic reserve land. She queried whether this availability had been investigated by the Planning Service: for example, there had been no approach to her client regarding the site at West Pitmillan.

On the justification for departure, Mrs Stewart stated that there appeared to be two justifications for an approval. The reason given for the choice of site was that the location needed to be connected to a green energy source, but her client's site had an anaerobic digester which had capacity, five times greater than that proposed for the Kinknockie site. She stated that it was available and ready for upgrades and connections whenever needed. All the required infrastructure had been provided and a heavy investment had been made by her client at his site, having followed the Development Plan led system, having submitted bid sites as part of the process. If the key were to direct the right development to the right place, Mrs Stewart stated that West Pitmillan had been recognised by the Council as the right place and her client had made the right investment on that basis.

Secondly, she stated that jobs would still be provided at existing allocated sites: this was only relevant to the handful of additional jobs which might be created at the Kinknockie AD plant.

Finally, on the issue of roads safety and sustainability of the location, Mrs Stewart explained that the proposed access to the site was still via the B900, a busy road, already used heavily for agricultural traffic, and served by a public bus service. She highlighted that the Transport Assessment did not support the four articulated lorry movements projected by the applicant, and the proposed 80 car parking spaces, she suggested, identified the potential to increase traffic movements on an already busy, B Class road, on which there were a number of accidents each year. She further highlighted that Roads officers had objected to the site as not close to existing transport services or well-connected to promote Active Travel : there was no footpath, no bus stop, and no accessibility other than by private car. Mrs Stewart suggested this would undo any climate change benefits of using a sustainable energy plant, by encouraging the use of private cars, as employees could not be compelled to use the bus or EVs. The removal of over an acre of trees as part of the construction of any new access would also impact on climate change benefits.

In conclusion, Mrs Stewart felt that the Planning Service had failed to provide material considerations of sufficient weight to justify approving the development, contrary to so many breaches of planning policy. Permitting the application would undermine the Council's plan-led approach development and make it hard to resist development across the countryside which used some form of green energy. It would also deter landowners and developers, such as her client, from investing in allocated development land. The application should be rejected as contrary to the Council's development plan policies.

Questions were asked about the availability of a back-up supply at Pitmillan and the specific plant available there; and land availability at Pitmillan, with existing outline planning permission for industrial buildings of classes 4, 5, and 6.

After discussion, Councillor Owen moved, seconded by Councillor Gifford, that the application be refused as contrary to the Local Development Plan site allocations; in breach of Policies B4 Special development areas, R2 Housing and employment development elsewhere in the countryside, P1 Layout siting and design, and RD1 Providing suitable services; and other concerns, including transportation matters, as detailed in the report.

Councillor Johnston moved as an amendment, seconded by Councillor Forsyth that the application be referred to the Infrastructure Services Committee as a Departure from the Local Development Plan, for the reasons, and with the conditions as detailed in the report.

On a division, there voted:

For the Motion	6	Councillors Davidson, Hassan, Owen, Powell, Stirling, and Taylor.
For the Amendment	5	Councillors Duncan, Forsyth, Johnston, Kloppert, and McAllister.
Absent from the Division	1	Councillor Gifford.

The Motion was therefore carried, and the Committee **agreed** to Refuse Full Planning Permission as the application was contrary to the Local Development Plan site allocations; in breach of Policies B4 Special development areas, R2 Housing and employment development elsewhere in the countryside, P1 Layout siting and design, and RD1 Providing suitable services; and other concerns, including transportation matters, as detailed in the report.

4C. APP/2021/0505 - Full Planning Permission for Erection of Dwellinghouse, Land to the South East of Den of Keithfield, Tarves, Ellon

Prior to hearing planning officers on the application, the Chair advised that a request to speak had been received from Mrs Tierney, of Lippe's Architects, on behalf of the applicant. The Committee **agreed** to hear Mrs Tierney.

There had been circulated a report dated 6 August, 2021, by the Director of Infrastructure Services, requesting Members' consideration of an application for Full Planning Permission for the Erection of a Dwellinghouse, on land to the south east of Den of Keithfield, Tarves, Ellon.

The Committee heard from the Senior Planner of the determination that the application was not for the remediation of brownfield land as the site had been naturalised, and so, although the proposal was acceptable in terms of drainage, impact on the landscape, access, and flooding, the application failed to comply with Policy R2 Housing and employment elsewhere in the countryside. Previous grants of planning permission, for the same development, which had expired could not be taken as justification for the current application.

The Committee heard from Mrs Tierney of the site's planning permission history. In 2013 the same site and layout was approved for holiday accommodation, with the building on site demolished to provide access; and in 2017 permission again granted, with the site confirmed as brownfield by planners. In 2020, a senior planner had again confirmed the brownfield status, but her client's clear intention to implement the

planning approval had fallen victim to Covid as its permission would otherwise have been extended. The change in stance by planners in recommending the application for refusal, on the basis that the site was not brownfield but had been naturalised, was unacceptable, and she suggested that the application should be approved, as planners clearly had no other issues with the proposal.

Questions were asked about drainage, mains water connections; and the potential to treat the timbers with UV light to assist in maintaining their appearance when weathered, as suggested by the Community Council.

After discussion, the Committee **agreed** to delegate the Grant of Full Planning Permission, subject to appropriate conditions, on the basis that although the site had naturalised, the principle of the development had been established due to the planning history of the site, therefore it was an acceptable departure from Policy R2 Housing and employment development elsewhere in the countryside

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