

## ABERDEENSHIRE COUNCIL

### LOCAL REVIEW BODY

#### VIRTUAL MEETING, FRIDAY, 29 JULY, 2022

**Present:** Councillors D Lonchay (Chair), P Johnston (Vice-Chair), J Goodhall and C Victor.

**Apologies:** Councillor S Adams and C Simpson.

**Officers:** Planning Adviser to the Local Review Body (Senior Planner, James Wheater), Legal Adviser to the Local Review Body (Solicitor, Amanda de Candia) and Senior Committee Officer (Frances Brown).

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

In respect of declaration of members' interests as required by the Code of Conduct for members, no declarations of members' interests were intimated.

#### 2. PUBLIC SECTOR EQUALITY DUTY.

In making decisions on the following items of business, the Local Review Body **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.
- (2) where an Integrated Impact Assessment was provided, to consider its contents and take those into account when reaching their decision.

#### 3. MINUTE OF THE LOCAL REVIEW BODY MEETING OF 24 JUNE, 2022

The Local Review Body had before them and **approved** as a correct record, the Minute of the Local Review Body meeting of 24 June, 2022. As the meeting had been held virtually, it was **noted** the Chair would sign the minute at an appropriate time, in the future.

#### **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, as contained within the Aberdeenshire Local Development Plan (2017).

The Local Review Body also had before them, and **noted**, a spreadsheet which listed the policies which would be referred to, in consideration of each of the reviews presented, as contained within the proposed Aberdeenshire Local Development Plan (2020).

Before proceeding to consider each of the reviews, the Planning Adviser noted that in addition to the matters raised within the papers, the current Aberdeenshire Local Development Plan 2017 was now beyond the five-year lifetime of the plan. When a development plan was more than five years old Scottish Planning Policy (SPP) states that there is a presumption in favour of development which contributes to Sustainable Development. The Local Review Body should keep this consideration in mind.

That presumption would be a significant material consideration; however, it did not mean that planning permission must be granted just because the plan was technically out of date. The Council's Local Development Plan remained a key document for assessing the acceptability of a planning application, as it was considered to accord with the principles and policies of Scottish Planning Policy. The position regarding the Development Plan did however introduce the need for the Local Review Body to specifically consider that presumption and consider whether any application subject to review before them could be considered to contribute to sustainable development.

#### **NEW REVIEWS**

##### **5. LRB 552 – NOTICE OF REVIEW AGAINST REFUSAL OF PLANNING PERMISSION IN PRINCIPLE FOR ERECTION OF DWELLINGHOUSE AT LAND TO THE SOUTH WEST OF NETHER AUQHADLIE, AUCHNAGATT, ELLON, AB41 8UW – REFERENCE: APP/2021/2061.**

Local Review Body: Councillors D Lonchay (Chair), J Goodhall, P Johnston, and C Victor.

The Local Review Body had before them, a Notice of Review and supporting documents, submitted by the agent, which sought a review of the Appointed Officer's decision to Refuse Planning Permission in Principle for the Erection of a Dwellinghouse at Land to the South West of Nether Auqhadlie, Auchnagatt, Ellon, AB41 8UW – Reference: APP/2021/2061.

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 a site inspection, to allow members to appreciate the nature of the applicant's operation, the relationship between the

application site and operational buildings. 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 noted that in addition to the Notice of Review, the agent had also submitted a number of additional documents, provided by the applicant, in support of their Notice of Review, which included:

- a Labour Assessment by SAC Consulting.
- a Business Case; and
- an updated Justification Statement including a Sequential Assessment and further supporting information.

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

Further to consultation undertaken, it was reported that:

- Developer Obligations had advised that Arnage Primary School and Ellon were currently operating within capacity and the proposed development would not engage the Developer Obligations and Affordable Housing policies or associated supplementary guidance of the Aberdeenshire Local Development Plan 2017. As such, no contributions would be required.
- Contaminated Land initially had requested further details on past uses of the site, to assess whether contamination linked to agricultural activities may be present. Having received satisfactory information, the service had determined that there was no indication of any past uses which may have caused contamination and as such the service has no objection to the proposed development.
- Environmental Health had no objection to the proposed development, subject to the provision of full details of the proposed private water supply, including quantity and quality tests with any future detailed planning application.
- Roads Development had not objected to the proposal, subject to standard conditions. The applicant had been advised to include the following as part of any future application but was not limited to (1) details of the lay-by adjacent to the public road (min 8m x 2.5m with 45-degree splats) with the vehicular access taken from this, first 5m surfaced in bituminous material, (2) bin store (to the rear of any visibility splay) and (3) parking spaces for the buildings(s).

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 proposed development is contrary to Policy R2 Housing and employment development elsewhere in the countryside. The application is not for the retirement succession of a viable farm holding, because the site is not a farm and the applicant has failed to demonstrate that the proposed site is the most

appropriate option, and alternative suitable accommodation for workers has not been identified and qualified.

- (2) The proposed development is contrary to Policy R2 Housing and employment development elsewhere in the countryside. The application is not a dwellinghouse for a worker of a primary industry, because the New Ark is not a primary industry, and cannot be supported as a departure because there is an absence of sufficient supporting information and material planning considerations to justify it.
- (3) The proposed development is contrary to Policy P1 Layout, siting, and design. It will have a negative impact on the visual amenity of the site and character of the surrounding area, due to the development of a greenfield site which has no visual connectivity to nearby developments.
- (4) The proposed development is contrary to Policy E2 Landscape, in that it will erode the landscape character of the area, by developing an undulating and exposed greenfield site which has no discernible landscape characteristics.

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 RD1: Providing suitable services and Policy C1: Using resources in buildings.

The Local Review Body considered that the relevant policies, as contained within the proposed Local Development Plan 2020 were: Policy C4: Flooding; Policy E2: Landscaping; Policy P1: Layout, Siting and Design; Policy R2: Development Proposals Elsewhere in the Countryside and Policy RD1: Providing Suitable Services.

As part of their consideration of the review, the Local Review Body noted that as the 5-year plan period associated with the Aberdeenshire Local Development Plan 2017 had now ended they must consider whether the proposal constituted development which contributed to sustainable development. If so, there would be a presumption in favour of such development unless any adverse impacts arising from the proposal that were significant and demonstrable would indicate against a grant of planning permission.

Whilst the Planning Adviser reiterated that the principles of Scottish Planning Policy had been incorporated within the Local Development Plan, and therefore still embodied those principles, he noted that it would be incumbent on the Local Review Body to consider whether the proposal could contribute to sustainable development as part of their consideration of the review.

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) In his professional opinion, and notwithstanding the planning history related to a separate appeal decision, the proposal was difficult to align with that of a primary industry. Irrespective of that decision, the charitable enterprise which the dwellinghouse would support was one that required a rural location.
- (2) The primary policy matter which should be considered was whether the proposal complied with Policy R2 as it related to the criteria related to essential workers and farm succession.
- (3) The Local Review Body should note that decisions should be made in accordance with the Local Development Plan unless material conditions indicate otherwise.

The Local Review Body agreed that they did have enough information before them and proceeded to determine the 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 to meet the criteria set out in Policy R2: Housing and employment development elsewhere in the countryside, in respect of the criteria relating to accommodation for essential workers employed in a primary industry and the relevant criteria which permitted a dwelling in respect of farm succession.

The Local Review Body took cognisance of the Appointed Officers view that the proposal did not accord with Policy R2, as the proposal was not for a worker in a primary industry, nor a succession of a farm and insufficient evidence had been provided to justify the proposal as a departure. The Local Review Body also considered the additional information submitted by the Applicant, and their argument that the house was required to allow for sufficient accommodation for workers essential to the operation of the charity and in terms of the long-term succession of the charity and they considered that that could reasonably be met in terms of Policy R2.

Secondary to those issues the Local Review Body also considered third and fourth reasons for refusal which related to the potential impact of the proposed dwellinghouse, located on the site proposed, would have on the character of the area and the wider landscape.

During discussion, the Local Review Body considered the matters raised within the Applicant's Notice of Review and the reasons for refusal as set out in the Decision Notice.

While the Local Review Body agreed that the proposal did not neatly fit within the allowances of Policy R2, and the linked Policy R1: Special Rural Areas, they were minded to agree with the Applicant that the nature of the charity was one which was similar in character to those allowing both essential worker's accommodation and farm succession and they concluded that sufficient information had now been provided to justify the need for the accommodation at the site.

When considering the matters raised in respect of layout, siting and design and landscape impact, the Local Review Body were minded that the site was sufficiently close to the existing hub of activity at the site to be considered as acceptable in respect of Policy P1: Layout, Siting and Design and based on the information provided and the photographic evidence, they concluded that the proposal would not be entirely out of keeping with the landscape character exhibited by the area, particularly if a suitable condition could be utilised to ensure appropriate landscaping to integrate the proposal into the wider landscape and therefore accord with Policy E2: Landscape.

Having taken further advice regarding the use of conditions, the Local Review Body concluded that the proposed development would contribute to sustainable development and there were no significant adverse impacts that would result from the proposed development provided that suitable conditions could be applied.

Suitable conditions were proposed in respect of Matters Specified in Conditions and appropriate stage conditions to ensure the design, energy efficiency, landscaping, access, and servicing for the proposal.

After due consideration, the Local Review Body **agreed** to reverse the Appointed Officer's decision and GRANT Planning Permission in Principle on the grounds that the proposal would be an acceptable departure from Policy R2: Housing and employment development elsewhere in the countryside of the Aberdeenshire Local Development Plan 2017 and those technical matters could be dealt with by way of conditions.

**6. LRB 553 – NOTICE OF REVIEW AGAINST REFUSAL OF APPLICATION UNDER SECTION 42 FOR ERECTION OF 2 HOLIDAY CHALETs, STORE AND OIL TANK WITHOUT COMPLIANCE WITH CONDITIONS 4 AND 5 (OCCUPANCY) OF PLANNING PERMISSION REFERENCE S030271P AT BIRCH LODGE AND WILLOW COTTAGE, INCHMARLO, BANCHORY, ABERDEENSHIRE, AB31 4BT – REFERENCE: APP/2021/2829.**

Local Review Body: Councillors P Johnston (Chair), J Goodhall, and C Victor.

The Local Review Body had before them, a Notice of Review and supporting documents, submitted by the applicant, which sought a review of the Appointed Officer's decision to Refuse an Application under Section 42, for the Erection of 2 Holiday Chalets, Store and Oil Tank, Without Compliance with Conditions 4 and 5 (Occupancy) of Planning Permission, Reference S030271P, at Birch Lodge and Willow Cottage, Inchmarlo, Banchory, Aberdeenshire, AB31 4BT – Reference: APP/2021/2829.

The Planning Adviser introduced the Notice of Review and advised the Local Review Body that in terms of review procedure, the applicant had requested (1) further written submissions (the proposed developments surrounding the lodge and the removal of Inchmarlo Villa's conditions); (2) one or more hearing sessions; (3) a site inspection and (4) 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 no valid representations had been received during the consultation period for the application, prior to determination.

Further to consultation undertaken, it was reported that Developer Obligations had confirmed that the proposed development does not trigger the Developer Obligations and Affordable Housing policies or associated supplementary planning guidance of the Aberdeenshire Local Development Plan 2017 and no contributions would be required.

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. Insufficient evidence has been provided to justify the removal of conditions, which in turn would result in two permanently occupiable dwellings in the countryside, both in terms of marketing of the properties to be sold for continued short-term letting accommodation and information that demonstrates that the existing holiday chalets are no longer viable in their current form. Subsequently, the proposal fails to comply with Policy B3 Tourist facilities and Policy R2 Housing and employment development elsewhere in the countryside.

The Local Review Body then noted each of the conditions:

#### Condition 4

The proposed building shall only be used as a holiday accommodation and shall not be used by a tenant, lessee, owner, or occupier as their only or principle dwellinghouse. No single period of occupation shall exceed 1 month. Occupation shall be restricted to use by persons requiring to stay in the area for recreational or vocational purposes and not for reason of work, business, retirement, or study.

Reason: In order to define the permission and ensure that the structure shall be used solely for holiday use only because a dwellinghouse at this location would be contrary to established policies and guidance.

#### Condition 5

The proposed development shall be an integral part of Inchmarlo Home Farm Business in perpetuity and shall not be disposed of or leased separately from the farm business unless otherwise agreed in writing by the Planning Authority.

Reason: To retain overall control of the development which is approved as an element of an established rural business.

The Local Review Body considered that the relevant policies, as contained within the Local Development Plan 2017 were: Policy B3: Tourist facilities; Policy R2: Housing

and employment development elsewhere in the countryside; Policy P1: Layout, siting, and design; Policy RD1: Providing suitable services and Policy RD2: Developers' obligations

The Local Review Body considered that the relevant policies, as contained within the proposed Local Development Plan 2020 were: Policy B3: Tourist Facilities; Policy P1: Layout, Siting and Design; Policy R2: Development Proposals Elsewhere in the Countryside; Policy RD1: Providing Suitable Services and Policy RD2: Developer Obligations.

As part of their consideration of the review, the Local Review Body noted that as the 5-year plan period associated with the Aberdeenshire Local Development Plan 2017 had now ended they must consider whether the proposal constituted development which contributed to sustainable development. If so, there would be a presumption in favour of such development unless any adverse impacts arising from the proposal that were significant and demonstrable would indicate against a grant of planning permission.

Whilst the Planning Adviser reiterated that the principles of Scottish Planning Policy had been incorporated within the Local Development Plan, and therefore still embodied those principles, he noted that it would be incumbent on the Local Review Body to consider whether the proposal could contribute to sustainable development as part of their consideration of the review.

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) If the proposed development were to be granted, it would be good practice to identify the boundaries between Birch Lodge and Willow Cottage for permitted development rights, and that information could be requested from the applicant.
- (2) Circular 4/1998 sets out the use of conditions which can be applied, which states that they should be necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise, and reasonable in all other respects.
- (3) APP/2021/2047 relates back to a previous permission granted in 2011 and the basis of that development was for enabling tourist development with open market housing and that permission was granted as a departure from policy.
- (4) The septic tank would have been covered through the original permission as both properties were being used for residential purposes, and while used for short-term letting, the amount of people using them would be the same in terms of drainage capacity.

- (5) Scottish Planning Policy aims away from occupancy conditions, however, it is common practice to apply those where an application was for tourist accommodation, and it would in his professional opinion be reasonable to apply those conditions.

Having considered all the information before them, and the response to questions raised, the Local Review Body determined that they did not have enough information before them to determine the application.

During discussion, the Local Review Body considered the proposed change of use for the accommodation and the reasonableness of the existing conditions, taking account of the planning history for the development and also the enabling development which surrounds the application site to support tourist accommodation by way of a hotel.

The Local Review Body agreed that the Appointed Officer had identified the correct policies, however, they questioned the reasonableness of placing an old condition on the applicant's holiday accommodation, taking cognisance of the enabling development which surrounds the site and whether the change of use would in their view be reasonable.

The Local Review Body acknowledged that a Section 42 application would allow for modifications or additions, however it would be prudent to get revised plan before they made their final decision.

The Local Review Body requested that the applicant should provide an updated site plan, which would identify the respective boundaries for Birch Lodge and Willow Cottage and any shared driveways to show how both units.

After due consideration, the Local Review Body **agreed** to DEFER consideration of the Notice of Review, to allow them to follow further procedure, to seek additional information from the applicant.

**7. LRB 554 – NOTICE OF REVIEW AGAINST REFUSAL OF FULL PLANNING PERMISSION FOR CHANGE OF USE AND EXTENSION FROM BUSINESS (CLASS 4) TO DWELLINGHOUSE (CLASS 9) AT MUIRSKIE GRANGE, DURRIS, BANCHORY, AB31 6EB – REFERENCE: APP/2021/2863.**

Local Review Body: Councillors P Johnston (Chair), J Goodhall, and C Victor.

The Local Review Body had before them, a Notice of Review and supporting documents, submitted by the agent, which would sought a review, of the Appointed Officer's decision to Refuse Full Planning Permission for the Change of Use and Extension from Business (Class 4) to Dwellinghouse (Class 9) at Muirskie Grange, Durris, Banchory, AB31 6EB – Reference: APP/2021/2863.

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 the Local Review Body, and a site inspection to the application site, to allow members to gain an appreciation of the site context and

when considering the applicant's view that the development would have no impact on the character of the area within which it was located. 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 four valid representations, (objections), had been received during the consultation period for the application, prior to determination by the Appointed Officer, and the issues raised within those submissions were:

- Viewing angles shown on drawing 18-240/05 C (Potential Overlooking Diagram) are correct.
- Overdevelopment of the plot, out of character with the wider development and impact on neighbouring amenity.
- Proposal impacts on access and egress for neighbouring properties, causing a safety hazard.
- Insufficient parking provision.
- Impact on sunlight to existing properties.
- The dwelling would have no usable private garden ground.
- Noise and fumes from ground floor garages which are out with the ownership of the applicants; and
- Concerns regarding drainage capacity and surface water flooding during periods of heavy rain.

It was reported that two further representations had been submitted in response to the Notice of Review, as presented on 640-644 of the agenda papers, and those submissions reiterated their original objections to the planning application.

It was further reported that the applicant/agent had responded to the further representations submitted and noted that they did not raise any new matters which required comment and they stated that there was no reason not to approve the application for the reasons contained in the Notice of Review.

Further to consultation undertaken, it was reported that:

- Developer Obligations have confirmed that Lairhillock Primary School and Mackie Academy are currently operating within capacity and the proposal does not trigger the Developer Obligations and Affordable Housing policies. Therefore, no contributions are required.
- Roads Development has commented that details should be shown on the plans of the parking associated with the building and the required numbers following the alterations, the turning provision and bin store location. Subsequently, they object due to insufficient information.

Health and Safety Executive have confirmed that they do not advise, on safety grounds, against the granting of planning permission.

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 change of use and extension remains to be considered at odds with the pattern of development and character of the area. It does not form the functions expected of a residential dwelling located in the countryside and by virtue of this, the proposal fails to comply with 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. Insufficient information has been submitted to allow Roads Development to consider whether sufficient parking provision can be provided and turning can be safely achieved within the site, thus the proposal fails to comply with Policy RD1 Providing suitable services 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 RD1: Providing suitable services; and Policy RD2: Developers' obligations.

The Local Review Body considered that the relevant policies, as contained within the proposed Local Development Plan 2020 were: Policy B3: Tourist Facilities; Policy P1: Layout, Siting and Design; Policy R2: Development Proposals Elsewhere in the Countryside; Policy RD1: Providing Suitable Services and Policy RD2: Developer Obligations.

As part of their consideration of the review, the Local Review Body noted that as the 5-year plan period associated with the Aberdeenshire Local Development Plan 2017 had now ended they must consider whether the proposal constituted development which contributed to sustainable development. If so, there would be a presumption in favour of such development unless any adverse impacts arising from the proposal that were significant and demonstrable would indicate against a grant of planning permission.

Whilst the Planning Adviser reiterated that the principles of Scottish Planning Policy had been incorporated within the Local Development Plan, and therefore still embodied those principles, he noted that it would be incumbent on the Local Review Body to consider whether the proposal could contribute to sustainable development as part of their consideration of the review.

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.

During discussion, the Local Review Body considered that some of the main areas of concern were parking provision, the use of the garages, turning circles, manoeuvring and whether that would all work, for the proposed development. The Local Review Body considered that a swept path analysis may assist them in determining whether the applicant would be able to address those concerns.

Another area of concern was amenity issues, regarding overlooking, privacy and protecting the amenity of neighbouring properties. The Local Review Body determined that it would be helpful if they could seek comment from the Planning Service in consideration of whether those issues could be addressed by installing Velux windows in one, or all the windows.

Having considered all the information before them, the Local Review Body determined that they did not have enough information before them to determine the application.

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 seeking additional information from:

- (1) The Planning Service who would be asked to comment on whether the amenity and privacy issues could, in their view, be addressed if obscure glass were used on any, or all, of the Velux windows.
- (2) The Applicant should be asked to provide a swept path analysis, to demonstrate that parking and turning arrangements would be effective.
- (3) The Roads Service should be asked to comment on the swept path analysis.
- (4) Interested parties, who made representations to the Notice of Review, should be asked to make comment on the additional information requested.