

APPEAL DECISION (LRB)
Appeal Reference: LRB
LRB 546
Planning Reference:
APP/2021/2733
Planning Proposal:
Planning Permission in Principle for Erection of Dwellinghouse
Summary of Decision
<p>The development involved the proposed replacement of a partly ruinous bothy with a new dwellinghouse on a different site. The bothy was located within a tree belt which extended around an existing dwellinghouse (Milltown House) to the north, east and west. The proposed site of the new dwellinghouse was in an undeveloped field, on the opposite side of the tree belt to the west.</p> <p>The main considerations were whether the principle of development could be established given the proposed dwelling was not on the same site as the building to be demolished, and whether the removal of the bothy was acceptable in the context of Policy HE1 given it was noted in the Historic Environment Record for 'Milltown of Drumwhindle'. A further consideration was whether there was adequate information to establish whether a dwellinghouse could be served by the proposed private water supply.</p> <p>The LRB were unanimous in their view that it would be detrimental to lose the building given it was of historic value, noting that the relevant policy considerations sought to retain such building and features wherever possible. It was of the view that the removal of a building of historic value as a means of justifying a new dwellinghouse would not be a sustainable form of development. The LRB also concluded that the siting of the dwelling was clearly distinct and separate from the curtilage of Milltown House.</p> <p>Ultimately the LRB opted to uphold the appointed officer's decision to refuse planning permission in principle for the same reasons outlined within the report of handling.</p>
Policy Issues
<p>Policy R2 Housing and employment development elsewhere in the countryside Policy HE1 Protecting historic buildings, sites, and monuments Policy RD1 Providing suitable services</p>

Additional Points
N/A
Actions
None
Note Decision

Aberdeenshire Council Local Review Body

Reference LRB 546 APP/2021/2733

Review Decision Notice

Decision by Aberdeenshire Council Local Review Body (LRB)

- Site address: Milltown of Drumwhindle, Ellon, Aberdeenshire, AB41 8QD
- Application for review by Mark Hadfield on behalf of Mrs Vicki Moore against the decision by an Appointed Officer
- Application reference APP/2021/2733 for Planning Permission in Principle for Erection of Dwellinghouse
- Application drawings:
 - Reference Number: 834-SK(90)001 Version A Proposed Site and Location Plans

Date of Decision: 24 August 2022

Decision

The Local Review Body (LRB) agrees with the determination reviewed by it and refuses Planning Permission in Principle 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 a meeting held on 29 April 2022. The LRB was attended by Councillors J Hutchison (Chair), R Cassie, P Gibb, P Johnston and A McKelvie.
- 1.3 At the start of the meeting of the LRB the Planning Adviser had 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 is more than five years old Scottish Planning Policy (SPP) states that there is a presumption in favour of development which

contributes to Sustainable Development. That presumption was a significant material consideration, but 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 SPP. The position regarding the Development Plan did, however, introduce the need for the LRB to specifically consider the presumption and consider whether any application subject to the review could be considered to be contributing to sustainable development.

- 1.4 The LRB was shown plans and photographs by the Planning Adviser. These showed the application site and its relationship to the surrounding area. The Planning Adviser provided a summary of the application and the relevant information pertinent to the review.

2.0 Proposal

- 2.1 The application was for Planning Permission in Principle for the erection of a dwellinghouse that was proposed in a rural location known as Milltown of Drumwhindle. Milton of Drumwhindle formed a small collection of four dwellings located around 5km to the north east of Ellon. The application proposed replacing a former building (known as the bothy) with a replacement house located on an alternative part of the land owned by the applicant. The bothy was a small building of stone construction with a metal roof covered in thatch that was located just to the north east of the residential dwelling of Milltown House. The building was in a partly ruinous state of repair and was located within a tree belt which ran around the property of Milltown House to its north, east and west. To the west beyond that tree belt lay a field in which the house was proposed to be sited.
- 2.2 The field on which the dwellinghouse was to be sited was bound by the public minor road to the west, open fields to the north and the private access track, from which access was proposed to be taken to serve the house. As the proposal was in principle there were no specific details proposed for the dwellinghouse however it was intended to connect the proposed dwellinghouse to a private water supply and utilise private foul and surface water drainage infrastructure to serve the proposed development.
- 2.3 There had been no third-party representations to the proposal, although there had been several consultation responses received as part of the application process:
 - Aberdeenshire Council's Business Services (Developer Obligations) had responded to confirm no developer contributions were required in this case.
 - Aberdeenshire Council's Roads Development Service had requested that the applicant confirm the visibility splay and bin storage arrangements for the proposal but had not objected to the application.

- Aberdeenshire Council's Contaminated Land Service advised there was no identification of former uses that may have caused contamination and therefore had no further comment on the application.
- Aberdeenshire Council's Environmental Health Service had a holding objection in respect of the need for the applicant to provide full details of the private water supply proposed for the development.

2.4 Additional information had been submitted with the application and this constituted:

- Design and Access Statement – RJM Architectural Design submitted.
- Site Investigation & Drainage Report – RJM Architectural Design (Ref: Project 834) submitted.

2.5 The site had not been subject to any relevant previous planning history although there had been several applications made in the wider area. Those applications largely related to the dwellings located to the east of the site.

2.6 The site was not specifically allocated in the Aberdeenshire Local Development Plan 2017 but lay within the Aberdeen Housing Market Area as identified in that plan. The bothy and the area surrounding it was identified as being part of a Historic Environment Record (ref NJ93NW0099) of local importance which formed part of a farmstead that was identified on historic mapping.

3.0 Reasoning

3.1 The main determining issues for the review was whether the proposed development met the criteria set out in Policy R2: Housing and employment development elsewhere in the countryside in respect of the replacement of a building with a dwelling located in a different part of the land owned by the applicant. An important consideration in establishing that matter was whether by virtue of the need to remove that building, which was considered to be part of the built heritage of the local area, the proposal would be unacceptable in the context of Policy HE1 which sought to protect features of built heritage importance. A secondary matter arising was in relation to the level of detail required in respect of servicing the proposal with reference to the proposed Private Water Supply.

3.2 The LRB agreed that the Appointed Officer had identified the relevant Aberdeenshire Local Development Plan 2017 (ALDP) policies, and those were as follows:

Policy R2: Housing and employment development elsewhere in the countryside

Policy P1: Layout, siting, and design

Policy E2: Landscape

Policy HE1: Protecting historic buildings, sites, and monuments

Policy PR1: Protecting important resources

Policy C1: Using resources in buildings
Policy RD1: Providing suitable services
Policy RD2: Developers' obligations

- 3.3 As part of their consideration of the review the LRB further noted that as the 5-year plan period associated with the Aberdeenshire Local Development Plan 2017 had now ended the LRB must also consider whether the proposal constituted development which contributed to sustainable development. If so, there was 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.
- 3.4 Whilst the Planning Adviser reiterated that the principles of Scottish Planning Policy had been incorporated within the Local Development Plan and therefore was still considered to embody these principles, it was incumbent on members to consider whether the proposal could contribute to sustainable development as part of their consideration of the review.
- 3.5 The LRB then considered whether there was sufficient information before them to consider the review without further procedure. The LRB determined that they did have enough information and proceeded to determine the review.
- 3.6 The LRB discussed the matter raised within the applicant's Notice of Review in respect of the value of the building to be replaced and whether the proposed development could reasonably be considered to be on the same site as the proposal.
- 3.7 The LRB noted that there was no policy imperative requiring that a building be replaced by a dwelling but were unanimous in their view that it would be detrimental to lose the building given it was of historic value, noting that the relevant policy considerations sought to retain such buildings and features wherever possible. The LRB considered the building could have been restored for an alternative use other than a stand-alone dwelling. The LRB considered the location of the replacement dwelling and concluded that the siting of the dwelling in a parcel of land that was clearly distinct and separate from the curtilage of Milltown House. As a result of this, the proposal did not comply with any of the criteria under Policy R2 Housing and employment development in the countryside that would have permitted a dwelling.
- 3.8 The LRB had, throughout their discussion, debated whether the proposal could be considered to contribute to sustainable development. Whilst members had different interpretations of whether a house on the site proposed could, in general terms, contribute to sustainable development, they were unanimous in their view that the proposal, which would require the removal of a building of historic value in order to achieve that objective, was not a sustainable form of development.
- 3.9 The LRB considered that the proposal would not be development which would contribute to sustainable development and that, on all counts, they agreed with the terms of the refusal as set out by the Appointed Officer. One Member of the

LRB noted that there would be further outstanding matters in respect of confirming the details that the Roads Development Service had sought in the event they were to consider granting planning permission however did not move to add this as a formal reason to refuse the application.

- 3.10 After due consideration, the Local Review Body **agreed**, by consensus, 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 February 2022 and with reference to the Local Review Body's determination that the proposed development would not contribute to sustainable development.

4.0 Reasons for refusal

The planning authority considers that the application is for a development that is not in accordance with the Aberdeenshire Local Development Plan 2017 and, after taking into account all relevant policy and material considerations cannot be considered to be development that meets the principles set out in Scottish Planning Policy in respect of sustainable development. The proposal would not contribute to sustainable development and there are no other circumstances which would warrant a departure from the policy position.

01. The principle of development cannot be established for a dwellinghouse on the site as the replacement dwellinghouse would not be located on the same site as the existing bothy. It would involve the development on Greenfield land that is not within the vicinity of the bothy, and it would result in the creation of a significantly sized residential plot that would not be in keeping with the scale or character of development in the surrounding area. The development would not otherwise meet any of the other criteria of Policy R2 Housing and employment development elsewhere in the countryside.
02. The proposal conflicts with Policy HE1 Protecting historic buildings, sites, and monuments, on the basis that it would have a detrimental impact on a site identified within the Historic Environment Record at Milltown of Drumwhindle. The bothy to be demolished appears on the 1st Edition Ordnance Survey Maps and would have been part of the original farmstead, and there are no social or economic public benefits that would override the loss of the structure to build a house on an unrelated Greenfield site.

03. The proposal conflicts with Policy RD1 Providing suitable services, on the basis that the proposal fails to demonstrate that the dwellinghouse could be adequately served by a private water supply. There is no information on the source, quantity of supply or quality of the supply, therefore the Planning Service is unable to conclude that it would be able to serve the proposed property.



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.