

APPEAL DECISION (LRB)
Appeal Reference: LRB
LRB 551
Planning Reference:
APP/2021/1978
Planning Proposal:
Full Planning Permission for Erection of Storage Shed for Vintage Vehicles
Summary of Decision
<p>The LRB concluded, having considered the planning history of the site, that the proposed development would be an intensification of the existing use of the wider site, and as such complied with Policy R2 though the linked Policy R1 which allows for extensions of existing uses and, by association, intensification of existing uses. The LRB also found that the proposal was small scale and would not likely cause any other planning concerns.</p> <p>To address the lack of information on surface water drainage, the LRB concluded a negative suspensive condition could be applied to seek full details and certification given it is to connect to an existing system.</p> <p>Ultimately the LRB opted to reverse the decision and grant full planning permission subject to a condition requiring full surface water details.</p>
Policy Issues
<p>Policy R2 Housing and employment development elsewhere in the Countryside Policy E2 Landscape Policy P1 Layout, siting, and design Policy P4 Hazardous and potentially polluting developments and contaminated land Policy RD1 Providing suitable services</p>
Additional Points
None
Actions
Note Decision
Other
N/A

Aberdeenshire Council Local Review Body

Reference LRB 551 APP/2021/1978

Review Decision Notice

Decision by Aberdeenshire Council Local Review Body (LRB)

- Site address: Unit 1A, Middlemuir Croft, Whitecairns, Aberdeenshire, AB23 8XP.
- Application for review by Mr Stephen Wright on behalf of Mr William Findlay against the decision by an Appointed Officer.
- Application reference: APP/2021/1978 - Full Planning Permission for Erection of Storage Shed for Vintage Vehicles refused by Decision Notice dated 29 March 2022.
- Application drawings:
 - Reference Number: 00104 Proposed Site Plan & Sections
 - Reference Number: 00101 Site Location Plan
 - Reference Number: 00102 Block Plan
 - Reference Number: 00103 Shed Plan & Elevations
 - Reference Number: 2605 - 000 Topographical Survey
- No site inspection took place

Date of Decision: 24 August 2022

Decision

The Local Review Body (LRB) agrees to uphold the Notice of Review and reverse the decision reviewed by it and GRANT Full Planning Permission subject to the conditions specified 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 24 June 2022. The LRB was attended by Councillors D Lonchay (Chair), S Adams, I Davidson, J Goodhall, and C Victor.

- 1.3 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.
- 1.4 As part of his presentation, and in covering the relevant material planning considerations raised by the review, the Planning Adviser noted that in addition to the matters raised by the papers, the current Aberdeenshire Local Development Plan 2017 was now beyond the five-year lifetime of the plan.
- 1.5 The Planning Adviser advised as follows: 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 contribute to sustainable development.

2.0 Proposal

- 2.1 The application was for Full Planning Permission for the erection of a storage building on land known by the Applicant as Unit 1A, which was located within a wider site containing a number of units. The Applicant had confirmed that the building would be used for storage purpose for vehicles which were used on a commercial basis. At the time of the application a number of the units were vacant whilst others appeared to be in intermittent use for storage. Those plots, along with the depot currently occupied by Simpsons Coaches, was known as Middlemuir Croft. Middlemuir Croft was located within a rural area around 5.5km north of Pitmedden.
- 2.2 A number of residential properties including residential property of Middlemuir Croft itself lay to the north of the wider site. The wider site was bounded by woodland to the west and a landscaping bund with mature tree planting to the south beyond which lay open fields. Access to all of the units within Middlemuir Croft, including Unit 1A was provided via a private road which ran immediately to the north of the bund and made connection with minor public road to the west of the site.
- 2.3 Unit 1A was located to the extreme south west of the wider site and was approximately 900 square metres in extent and, in common with other adjacent units, was surrounded by a 2.5 metre security chain linked fence. A landscape bund extended to the south east of the site. The ground, common with the other adjacent units, was finished with hardcore and at the time of the application had weeds and grass growing through that hardcore on parts of the site.

- 2.4 The building to be erected under the application was proposed in the north western part of Unit 1A and was to be a small steel industrial style building with two roller shutter doors providing vehicular access and an additional pedestrian access all on the eastern elevation of the building. The building would be 12 metres in length by 8 metres in width with a height to its apex of 4 metres and would be finished with a Goosewing grey cladding the external walls with matching roller doors. The roof would be Merlin grey and incorporate clear skylights for natural light. Rainwater goods will be Posco Merlin Grey uPVC.
- 2.5 The existing access road located on the site was proposed to be used for vehicular access. The Applicant had confirmed that a sustainable urban drainage system would be utilised for surface water but had not been confirmed via the provision of further information at the time of the application. The Notice of Review provided further clarification that it was intended to connect the proposal to the existing surface water drain located at the site and to which a connection had been agreed with the owner.
- 2.6 The site was identified as being within the Aberdeen Housing Market Area part of the wider Aberdeenshire Countryside as identified in the Aberdeenshire Local Development Plan 2017 but carried no other land use planning designations.
- 2.7 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 Roads Development Service no comment to make on the proposal
 - Aberdeenshire Council's Contaminated Land Service had advised that an informative be placed on any grant of planning permission informing the applicant of actions to be taken should contamination be found on the site
 - Aberdeenshire Council's Flood Risk and Coastal Protection Team, following the receipt of further information regarding construction materials, had no comment to make on the proposal
 - Aberdeenshire Council's Environmental Health Service had no objections to the proposal
 - Scottish Water had no objection but confirmed that whilst a water supply may be available a Pre-Development Enquiry would need to be made by the developer.
- 2.8 There was relevant planning history relating to the site and the adjacent area at Middlemuir Croft dating back to the 1970's, 1980's and 1990's. Permission for the erection of a dwelling, steading and machinery servicing depot had been approved under G/75/1564 on part of the wider site by Gordon District Council whilst a further permission had been granted under G/76/362 for a cattle court and plant machinery depot the following year. Several years later under G/82/1143 an application was granted for a significant extension of land titled '*Extension of hardstanding area for storage of plant and drainage material, change of use of steading and store and alterations to access*'. That application

included a condition requiring a bund and landscaping on the southern boundary of the site. That bund and landscaping largely concurred with the bund and landscaping on site. A further planning permission had been granted for the eastern most part of the wider Middlemuir Croft site under C99/4372/01 for 'the extension of the industrial storage yard'.

- 2.9 In his presentation the Planning Adviser had noted the comments made by the Appointed Officer that the area covered by Unit 1A did not appear to benefit from planning permission nor that the use of the wider site was for Storage and Distribution. The Planning Adviser advised the LRB that it was his view that the plans approved for the previous applications seemed to indicate that the northern part of Unit 1A had been included within the permission granted under G/82/1143 dating from 1982 however it appeared from historic plans that the site had likely been extended slightly to the south without the benefit of express planning permission at some time in the past. That part of the site appeared to have, at one time, formed part of a track running to the south of the site. More recent aerial photography suggested that the site had been in its present form since the early 2000's. The Planning Adviser noted that the title of the 1982 planning permission included storage as a fundamental part of the description but that that planning permission granted under G/82/1143 pre- dated the latest Use Class Order.

3.0 Reasoning

- 3.1 The main determining issues for the Review was whether the proposed development could be considered to contribute to sustainable development and whether it met the criteria set out in Policy R2: Housing and employment development elsewhere in the countryside in respect of the use of the building for a storage use.
- 3.2 As the site was not specifically identified within the Local Development Plan as an allocated employment site, Policy R2 limited development opportunities for employment uses such as that proposed under the application to proposals for the extension of an existing use or building or the remediation of brownfield sites. As such the consideration was whether the site could be considered to be for the extension (or otherwise an intensification of) an existing use of the site or wider site, and secondly whether the site could be considered brownfield land.
- 3.3 In addition to the principle of the erection of the building on the site the LRB required to consider the second reason for refusal which related to whether the proposal could be adequately serviced with regard to surface water drainage and whether the information provided by the applicant was sufficient to meet the policy requirements set out in Policies RD1: Providing Suitable Services.
- 3.4 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 E2: Landscape

Policy P1: Layout, siting, and design

Policy P4: Hazardous and potentially polluting developments and contaminated land

Policy RD1: Providing suitable services

- 3.5 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.
- 3.6 Whilst the Planning Adviser reiterated that the principles of Scottish Planning Policy had been incorporated within the Local Development Plan and therefore it was still to be considered to embody those principles, it was incumbent on members to consider whether the proposal could contribute to sustainable development as part of their consideration of the Review.
- 3.7 In response to questions, the Planning Adviser confirmed that:
- In his professional opinion at least part of the site and the adjacent sites benefitted from a planning permission which allowed for the storage of materials. That constituted a Class 6 Storage and Distribution Use. There were no specific conditions restricting the storage of materials to plant or drainage equipment. Whilst the LRB could choose to restrict a development to a specific use, even within a use class, it would need sufficient planning justification to do so.
 - Although the plans associated with the previous permissions were not conclusive it would appear that part of the site to the south of the building's location did not appear to benefit from express planning permission. Notwithstanding, based on the information available, the site as presented appeared to have been in use for a considerable period of time and certainly beyond the 10-year period where such a change of use would be subject to control via the Planning Enforcement regime and therefore likely to be sufficient to establish a lawful use.
 - Whilst a matter for the LRB to consider, the Planning Adviser was of the opinion that for a site to become abandoned usually required an intention to abandon that use as well as significant evidence that the site no longer functioned for that use. The presence of some vegetation growing through the hardcore did not necessarily mean the site was abandoned or had reverted to green field land.
 - The reason that the glossary definition of brownfield did not include land that was, or could be, used for storage was that such land would be extremely difficult to be considered redundant for such uses.
 - It would be open to the LRB to seek further information regarding the planning history of the site.

- From the Planning Adviser's own site visit it did appear that a connection point to an existing surface water drainage system could be provided on site however, normally, further details of the drainage proposal including certification or confirmation from a suitably qualified person would be required as part of the proposal.
 - Permitted development rights did allow for a change to the use of floorspace from Class 5 to Class 6 subject to a size limit of 235sqm but that this was limited to floorspace.
- 3.8 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.
- 3.9 The LRB discussed the matter raised within the Applicant's Notice of Review and the reasons for refusal set out in the Decision Notice and elaborated upon in the Appointed Officer's Report of Handling. The LRB noted that Policy R2 allowed for extensions of existing uses and, by association, intensification of existing uses by way of the terms of the linked policy R1: Special Rural Areas. Based on the information provided and the photographic evidence the LRB concluded that the proposal would be an intensification of the existing use of the wider site, that use being evident from the use for the wider area and the site.
- 3.10 The LRB recognised that policy R2: Housing and employment development elsewhere in the countryside allowed for such development and that the proposal was small scale and unlikely to cause any other planning concerns other than those noted in the Appointed Officer's second reason for refusal.
- 3.11 Turning to the detailed matters raised in the Appointed Officer's Decision Notice, the LRB were of the view that the Applicant had not provided sufficient detail in respect of the drainage proposal. In considering whether a condition could be applied, the LRB noted that the proposal was for a connection to an existing system. The LRB concluded that a negative suspensive condition that required full details and certification that the existing drainage system could accommodate the run off from the building should be applied in order to ensure that the development accorded with the provisions of Policy RD1: Providing Suitable Services of the Aberdeenshire Local Development Plan 2017.
- 3.12 After due consideration, the LRB concluded that the proposed development would contribute to sustainable development and there were no significant adverse impacts that would result from the proposed development subject to the use. The LRB unanimously considered the proposal to be in accordance with the provisions of Policy R2: Housing and employment development elsewhere in the countryside of the Aberdeenshire Local Development Plan 2017 and those technical matters could, in this case, be dealt with by condition. The LRB resolved to reverse the decision of the Appointed Officer and GRANT Full Planning Permission for the reasons set out above and subject to the condition set out in paragraph 4.0 below.

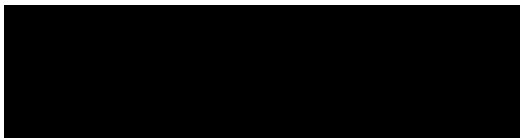
4.0 Reasons for approval

The application is for a development that represents an intensification of an existing use and is therefore in accordance with Policy R2 Housing and employment development in the Countryside of the Aberdeenshire Local Development Plan 2017 and taking into account all relevant policy and material considerations, the development would contribute to sustainable development. In assessing the proposed development there were no adverse impacts which would significantly and demonstrably outweigh the benefits of the proposal that could not be dealt with by way of condition.

Conditions

1. Prior to the commencement of development, full details of the proposed connection with the proposed surface water drainage system including certification by a suitably qualified person that the system is suitable for the additional surface water proposed and details of maintenance of the system shall be provided to the Planning Service for its prior written approval. The building hereby approved shall not be brought into use unless the surface water drainage system has been provided and connected to the building in accordance with the approved details. The foul surface water drainage systems shall be permanently retained thereafter in accordance with the approved maintenance scheme.

Reason: To ensure that a satisfactory solution to the sustainable drainage of surface is provided in accordance with the requirement of the Aberdeenshire Local Development Plan 2017.



Karen Wiles
Head of Service (Legal and People)

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

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

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

1. If the applicant is aggrieved by the decision of the planning authority to refuse permission or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.
2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.
3. This site has a history of potentially contaminative use. The applicant is advised that should any contamination of the ground be discovered during development the Planning Authority shall be notified immediately. The extent and nature of the contamination should be investigated and a suitable scheme for the mitigation of any risks arising from the contamination should be agreed and implemented to the satisfaction of the Planning Authority. The responsibility for ensuring the safe development of the site rests with the developer.
4. For avoidance of doubt the building hereby approved has been approved as a Class 6 use as described within the Town and Country Planning (Use Classes) (Scotland) Order 1997 as amended.

NOTICE OF REQUIREMENT FOR NOTICES AND INFORMATIVES

Notification of Initiation of Development

The person who intends to implement the development must inform the Planning Authority of the date they intend to start work on the development as soon as it is practicable using the enclosed Notice of Initiation of Development. This Notice must be submitted before starting work. Failure to do so would be a breach of planning control under Section 123(1) of the Town and Country Planning Act 1997 and the Planning Authority may take enforcement action.

The Permission may contain pre-conditions that require specific matters to be approved before development can commence. This means that a lawful commencement of the approved development cannot be made until the requirements of the condition(s) have been met. The person who intends to start development must ensure that all conditions are properly complied with. If you are in any doubt about the meaning or implications of any of the conditions, you should contact the Planning Authority or seek professional advice. If you do not comply fully with the conditions the Planning Authority may serve a Breach of Condition notice on you or take enforcement action and you may be prosecuted or fined. Please note, there is no right of appeal against a Breach of Condition Notice.

Notification of Completion of Development

The person who completes the development must, as soon as practicable after doing so, give notice of completion to the Planning Authority using the enclosed Notice of Completion.

Display of Notice While Development is Carried Out

The person who carries out the development must, for the duration of the development, display a sign or signs in the form set out in the enclosed Note in a prominent place at or in the vicinity of the site of the development. The sign/s must be printed on durable material and be readily visible to the public. Carrying out development without displaying a notice in accordance with these requirements constitutes a breach of planning control under Section 123(1) of the Town and Country Planning Act 1997 and the Planning Authority may take enforcement action.

Contaminated Land

The applicant is advised that should any contamination of the ground be discovered during development the Planning Authority shall be notified immediately. The extent and nature of the contamination shall be investigated and a suitable scheme for the mitigation of any risks arising from the contamination should be agreed and implemented to the satisfaction of the Planning Authority. The responsibility for ensuring the safe development of the site rests with the developer.

PLEASE NOTE – THE ABOVE REQUIREMENTS ARE IN ADDITION TO ANY SIMILAR REQUIREMENTS UNDER THE BUILDING REGULATIONS OR ANY OTHER LEGISLATION

**NOTIFICATION OF INITIATION OF DEVELOPMENT
TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997, SECTION 27A (1)**

**PLANNING APPLICATION REFERENCE NUMBER: APP/2021/1978
Unit 1A, Middlemuir Croft, Whitecairns, Aberdeenshire AB21 10SW
Dated: 24 August 2022**

I hereby confirm that the above development is expected to commence on:

Date:

The person intending to carry out the development is:

Name:

Address:

.....

.....

Postcode:

Telephone no:

*Please delete as appropriate

*The above person is the owner of the land to which the development relates

*The landowner is (if different from the person above):

Name:

Address:

.....

.....

Postcode:

The person appointed to oversee the carrying out of the development is (if applicable):

Name:

Address:

.....

.....

Postcode:

Telephone no:

Signed	Date
On Behalf of			

Please return this form, duly completed to:

Head of Service (Planning and Economy)
Aberdeenshire Council
Viewmount
Arduthie Road
Stonehaven
AB39 2DQ

IMPORTANT:

**NOTIFICATION OF COMPLETION OF DEVELOPMENT
TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997, SECTION 27B(1)**

**PLANNING APPLICATION REFERENCE NUMBER: APP/2021/1978
Unit 1A, Middlemuircroft, Whitecairns, Aberdeenshire AB21 10SW
Dated: 24 August 2022**

I hereby confirm that the above development was completed on:

Date:

The person who completed the development is:

Name:

Address:

.....

.....

.....

Postcode:

Telephone no:

Signed Date

On Behalf of

Please return this form, duly completed to:

Head of Planning and Economy
Aberdeenshire Council
Viewmount
Arduthie Road
Stonehaven
AB39 2DQ