

APPEAL DECISION (LRB)
Appeal Reference: LRB
LRB 552
Planning Reference:
APP/2021/2061
Planning Proposal:
Planning Permission in Principle for the Erection of a Dwellinghouse
Summary of Decision
<p>Appeal against refusal of Planning Permission in Principle. The Local Review Body (LRB) agreed to uphold the Notice of Review and reverse the decision reviewed by it and GRANT Planning permission in Principle subject to conditions.</p> <p>The LRB agreed that whilst the proposal does not fit within the allowances of Policy R2, the nature of the charity is similar in character to proposals for essential workers' accommodation and farm succession. The LRB found there was sufficient justification for the need for the accommodation on site. As such, the proposal was found to be an acceptable departure from Policy R2.</p> <p>The LRB found that the site is sufficiently close to the existing hub of activity and would not be out of keeping with the landscape character, particularly if a condition could be applied to ensure appropriate landscaping to integrate the development into the wider landscape. The LRB agreed that the proposal is acceptable under Policy P1 and Policy E2.</p> <p>Overall, the LRB concluded that the development would contribute to sustainable development and suitable conditions (including Matters Specified in Conditions, design, energy efficiency, landscaping, access and servicing) would mitigate any adverse impacts. The proposal was found to be an acceptable departure from Policy R2, in that it is essential to allow for the proper running of a charitable enterprise that is appropriate to the countryside. The LRB agreed to reverse the decision of the Appointed Officer and GRANT Planning Permission in Principle, subject to conditions.</p>
Policy Issues
<p>Policy R2 Housing and employment development elsewhere in the countryside Policy P1 Layout, siting and design Policy E2 Landscape</p>

Additional Points
None
Actions
Note Decision
Other
N/A

Aberdeenshire Council Local Review Body

Reference LRB 552 APP/2021/2061

Review Decision Notice

Decision by Aberdeenshire Council Local Review Body (LRB)

- Site address: Land to the South West of Nether Auquhadlie, Auchnagatt, Ellon, AB41 9UW.
- Application for review by Aurora Planning Limited on behalf of Mr and Mrs K Marley against the decision by an Appointed Officer.
- Application reference: APP/2021/2061 for Planning Permission in Principle for the Erection of a Dwellinghouse refused by Decision Notice dated 09 March 2022
- Application drawings:
 - Reference Number: 21074 –P1 Version 3 - Site Plans
- No site inspection took place.

Date of Decision: 24 August 2022

Decision

The Local Review Body (LRB) agree to uphold the Notice of Review and reverse the decision reviewed by it and GRANT Planning Permission in Principle 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 29 July 2022. The LRB was attended by Councillors D Lonchay (Chair), J Goodhall, P Johnston, and C Victor.
- 1.3 The LRB was shown plans and photographs by the Planning Adviser. Those 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 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.
- 1.5 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. 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.
- 1.6 In addition to the above the Proposed Aberdeenshire Local Development Plan 2020 had now been returned from examination and, whilst it remained to be formally adopted, was now a significant material consideration in decision making.

2.0 Proposal

- 2.1 The application was for Planning Permission in Principle for the erection of a dwellinghouse to be located on land which formed part of a land holding associated with the North East Wildlife Animal Rescue Centre or 'NEW ARC'. The land contained an existing dwellinghouse and adjacent Animal Rescue Centre which consisted of a reception area and animal hospital as well as a large number of pens and outbuildings utilised for holding animals whilst at the centre. The existing buildings were located to the east of the holding and on top of a small hill.
- 2.2 The proposed dwellinghouse was to be sited on the western side of the wider land holding and within a 0.4 hectare paddock that formed the application site. The application was made in principle and therefore only indicative details of the proposed dwelling had been provided. It was proposed to access the dwelling via the existing access track which led past the site to the NEW ARC. A new connection to an existing private water supply was proposed to be utilised for a potable water supply. Private foul and surface water drainage infrastructure was proposed at the site.
- 2.3 It was proposed that the dwelling would be occupied by the current owners of the NEW ARC to facilitate long term succession planning for the charity and to ensure its ongoing work and continuity in the care of animals and that sufficient labour accommodation was available on site for the necessary operation of the centre.
- 2.4 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.

- 2.5 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 had no objection to the development subject to conditions relating to access and servicing.
 - Aberdeenshire Council's Contaminated Land Service had no objection to the development.
 - Aberdeenshire Council's Environmental Health Service had no objections to the proposal subject to conditions relating to the private water supply; and
 - Aberdeenshire Council's Business Services Developer Obligations Officer noted that the proposal would not generate a requirement for Developer Obligations.
- 2.6 There was planning history relating to the wider site although this related to the expansion and provision of outbuildings to be used in connection with the NEW ARC. There was no planning history on the site of the proposed dwelling. The applicant had however referred to a similar application at another location and associated appeal history.
- 2.7 The application had been subject to the following supporting information: -
- Drainage Report by Ferguson Geotechnical dated 9 August 2021
 - Private Water Supply Flow Test dated 2 September 2021
 - Justification statement, Baxter design Company received 2 September 2021
 - Justification Statement, Applicant received 20 January 2022
- 2.8 In his presentation the Planning Adviser had noted that in addition to the Notice of Review there were a large number of additional documents provided by the applicant as part of the Notice of Review including;
- Labour Assessment by SAC Consulting.
 - Business Case; and
 - Updated Justification Statement including a Sequential Assessment and further supporting information.
- 2.9 This highlighted additional information that had been requested at the time of the application that there was a substantial labour requirement for the NEW ARC equating to over 4 full-time employees, a long-term business handover was required for the charity to be viable in the long term and siting the house closer to the centre would have implications in respect of disturbance to the work of the centre and would introduce practical bio security problems.

3.0 Reasoning

- 3.1 The main determining issue for the Review 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 LRB required to consider the Appointed Officers view that the proposal did not accord with Policy R2 in that 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 LRB were also required to consider the additional information submitted by the applicant and the arguments made by the applicant that the house was required in order 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 that this reasonably met the terms of Policy R2.
- 3.2 Secondary to these issues were the Appointed Officer's third and fourth reasons for refusal which related to the potential impact a proposed dwelling located on the site proposed would have on the character of the area and the wider landscape.
- 3.3 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
- 3.4 The LRB noted the relevant policies identified in respect of the Proposed Aberdeenshire Local Development Plan 2020 had also been identified and were not substantially different from those contained within the current Local Development Plan. 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 that 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.
- 3.5 In response to questions, the Planning Adviser confirmed that:
- 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 nonetheless required a rural location.

- The primary policy matter was whether the proposals complied with Policy R2 as it related to the criteria related to essential workers and farm succession.
- Members should note that decisions should be made in accordance with the Local Development Plan unless material conditions indicate otherwise.

- 3.6 The LRB then considered whether there was sufficient information before them to consider the review without further procedure. The LRB determined that it did have sufficient information and proceeded to determine the review.
- 3.7 The LRB discussed the matter raised within the Applicant's Notice of Review and the reasons for refusal set out in the Decision Notice. The LRB agreed with the Appointed Officer that the proposal did not neatly fit within the allowances of Policy R2 noting the terms of the linked policy R1: Special Rural Areas. Notwithstanding those matters, the LRB 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 workers' accommodation and farm succession and sufficient information had now been provided to justify the need for the accommodation at the site.
- 3.8 With regard to the matters raised in respect of layout, siting and design and landscape impact, the LRB concluded that the site was sufficiently close to the existing hub of activity at the site to be acceptable in respect of Policy P1 Layout, Siting and Design. Based on the information provided and the photographic evidence, the LRB were minded to conclude 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.
- 3.9 After due consideration, and after taking further advice regarding the use of conditions, 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 provided that suitable conditions 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 of the proposal.
- 3.0 The LRB unanimously considered 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 that technical matters could be dealt with by condition. The LRB resolved to reverse the decision of the Appointed Officer and GRANT Planning Permission in Principle for the reasons set out above and subject to the conditions all as set out in paragraph 4.0 below.

4.0 Reasons for approval

The application is for a development that is considered essential to allow for the proper running of a charitable enterprise that is considered appropriate to the countryside. The proposal is therefore considered to be an acceptable departure from Policy R2 Housing and employment development in the countryside of the Aberdeenshire Local Development Plan 2017. 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. Details of the specified matters listed below shall be submitted for consideration by the Planning Authority, in accordance with the timescales and other limitations in Section 59 of the Town and Country Planning (Scotland) Act 1997 (as amended). No development shall begin on the site unless all of the details listed in this condition have been submitted to and approved in writing by the Planning Authority. The development shall be carried out in complete accordance with the details approved in relation to this condition.

Specified matters:

- (a) Full details of the layout, siting, and design of the proposed development.
- (b) Full details of the external appearance and finishing materials of the proposed development.
- (c) A detailed levels survey of the site and cross sections showing proposed finished ground and floor levels relative to existing ground levels and a fixed datum point.
- (d) Full details of the proposed means of disposal of foul and surface water from the development.
- (e) Full details of the proposed private water supply connection.
- (f) Full details of the proposed access to the development including:
 - details of the surfacing of the access with the public road (at least 5m).
 - provision of a layby at the junction with the public road and storage details.
 - provision of a vehicle turning area and parking spaces in accordance with the Councils Parking Standards.

- (g) A landscaping scheme including proposed landscape features and any boundary treatments to assist in the integration of the proposal into the landscape and associated implementation and management programme.

Reason: Permission for the development has been granted in principle only and subsequent approval is required for these matters in accordance with section 59 of the Town and Country Planning (Scotland) Act 1997 (as amended).

- 2) The dwellinghouse hereby approved shall not be erected unless an Energy Statement applicable to that dwellinghouse has been submitted to and approved in writing by the Planning Authority. The Energy Statement shall include the following items:
 - (a) Full details of the proposed energy efficiency measures and/or renewable technologies to be incorporated into the development.
 - (b) Calculations using the SAP or SBEM methods, which demonstrate that the reduction in carbon dioxide emissions rates for the development, arising from the measures proposed, will enable the development to comply with the Local Development Plan Policy C1 regarding the aim, where feasible, of achieving a gold sustainability label under section 7 of the building standards technical handbook.

The development shall not be occupied unless it has been constructed in full accordance with the approved details in the Energy Statement. The carbon reduction measures shall be retained in place and fully operational thereafter.

Reason: to ensure this development complies with the on-site carbon reductions required in Scottish Planning Policy and local development plan policy C1 regarding, among other things, carbon-dioxide emissions.

- 3) The dwellinghouse hereby approved shall not be occupied unless the proposed connection to the private water supply and the associated required water treatment measures have been provided and connected to the building in accordance with the approved details agreed under Condition 1. The water supply shall be permanently retained thereafter in accordance with the approved details.

Reason: To ensure that a satisfactory solution to the potable water supply is provided in accordance with the requirement of the Aberdeenshire Local Development Plan 2017.

- 4) The dwellinghouse hereby approved shall not be occupied unless the proposed access parking and bin storage arrangements agreed under Condition 1 have been provided in accordance with details approved details. Once provided, the parking shall thereafter be permanently retained as such.

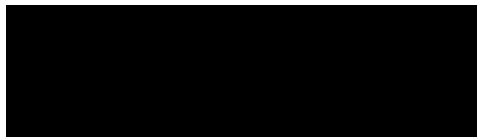
Reason: To ensure the timely completion of the access to an adequate standard to prevent the carriage of loose driveway material on to the public road in the interests of road safety.

- 5) The dwellinghouse approved shall not be occupied unless the surface water drainage system has been provided and connected to the dwellinghouse in accordance with the approved details agreed under Condition 1. 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 water is provided in accordance with the requirement of the Aberdeenshire Local Development Plan 2017.

- 6) All soft and hard landscaping proposals shall be carried out in accordance with the approved planting scheme and management programme approved in respect of Condition 1. Any planting which, within a period of 5 years from the completion of the development, in the opinion of the Planning Authority is dying, being severely damaged or becoming seriously diseased, shall be replaced by plants of similar size and species to those originally required to be planted. Once provided, all hard landscaping works shall thereafter be permanently retained.

Reason: To ensure the implementation and management of a satisfactory scheme of landscaping which will help to integrate the proposed development into the local landscape in the interests of the visual amenity of the area.



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.

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.

Planning Permission in Principle

(1) Application for approval of all matters specified in conditions to a grant of Planning Permission in Principle must be made before whichever is the latest of the following dates:

(a) The expiration of three years beginning with the date of the planning permission in principle; or,

(b) The expiration of 6 months from the date on which an earlier application (Matters Specified in Condition) for the requisite approval was refused or dismissed following an appeal or review.

In relation to any matter under part (b) above, only one application for approval of matters specified in conditions may be made after the expiration of the

planning permission in principle.

The development hereby granted shall be begun before the expiration of two years from the final approval of the matters specified in conditions or, in the case of approval on different dates, the final approval of the last such matters to be approved.

Road Excavation Permit

An application for a Road Excavation Permit must be submitted to Infrastructure Services, Area Roads Office at least 15 days prior to the commencement of any excavation works within the boundaries of the public road. Applicants should note that failure to obtain a Permit is an offence in terms of s56 of the Roads (Scotland) Act 1984. Note: The Public Road may incorporate - Carriageway, Verge, Cycleway/ Footway and Visibility Envelopes.

Further details and application forms may be obtained by emailing the relevant Area Roads Office (see below) or on the council's website (<http://www.aberdeenshire.gov.uk/roads-and-travel/roads/residential-streets/application-forms/>):

Banff & Buchan - banffandbuchan.roads@aberdeenshire.gov.uk

Buchan - buchan.roads@aberdeenshire.gov.uk

Formartine - formartine.roads@aberdeenshire.gov.uk

Garioch - garioch.roads@aberdeenshire.gov.uk

Kincardine & Mearns - kincardineandmearns.roads@aberdeenshire.gov.uk

Marr - marr.roads@aberdeenshire.gov.uk

Surface Water Drainage

Adequate provision shall be made for internal surface water drainage to ensure that surface water does not run from the site onto the public road or vice versa.

Statutory Undertaker's Plant

Adequate precautions shall be taken to protect any Statutory Undertaker's plant which may be affected by the works/development.

Developer's Expense

The proposed vehicular access onto the public road shall be formed at the Developer's expense and must be constructed in accordance with the council's specification.

Ditch Suitably Piped

Any existing public roadside ditch crossing the proposed access/ lay-by to be piped, with minimum 225mm dia pipe (incl. headwalls, if specified). Pipes to have a 150mm concrete surround. Detailed specification must be fully agreed before installation with

Infrastructure Services, Area Roads Office Engineers when obtaining road excavation permit.

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/2021/2061
Land to the South West of Nether Auquhadlie, Auchnagatt, Ellon, AB41 9UW**

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/2021/2061
Land to the South West of Nether Auquhadlie, Auchnagatt, Ellon, AB41 9UW**

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