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| APPEAL DECISION (LRB) |
| Appeal Reference LRB 434 APP/2018/2093 |
| Planning Reference APP/2018/2093 |
| Planning Proposal Change of Use from Business (Class 4) to Flat (Sui Generis) |
| Summary of Decision <p>The Local Review Body (LRB) agrees with the determination and refuses Full Planning Permission.</p> <p>The proposal was for the change of use of part of an existing building. The principle of the proposal was not disputed, the main determining issues in this review was how the proposed residential use sat with the existing pattern of development, the lack of amenity for new residents and the impact on the privacy and amenity of neighbours.</p> <p>The LRB voiced concerns about the impact on privacy and amenity, particularly with regard to overlooking. The LRB unanimously agreed that the proposal failed to comply with all 6 tests outlined within Policy P1, with specific reference to the detrimental impact on the amenity of neighbours. They requested that, to strengthen the reason within the decision notice, the word 'privacy' should be included.</p> <p>The LRB resolved to uphold the decision of the Appointed Officer to Refuse Full Planning Permission, with the addition of the word 'privacy' before amenity value of the neighbouring properties. The proposal is considered out of character with the surrounding area and pattern of development. It fails to comply with the principles of Policy P1 Layout, siting and design of the Aberdeenshire Local Development Plan 2017.</p> |
| Policy Issues None |
| Additional Points None |
| Actions None |
| Note Decision Refuse Full Planning Permission |
| Other None |

Aberdeenshire Council Local Review Body

Reference LRB 434 APP/2018/2093

Review Decision Notice

Decision by Aberdeenshire Council Local Review Body (LRB)

- Site address: 5 Muirskie Grange, Durris, Banchory, Aberdeenshire
- Application for review by Mr Duncan Mackay c/o Kevin Groundwater against the decision by an Appointed Officer
- Application reference APP/2018/2093 for Full Planning Permission (FPP) for the change of use from Business (Class 4) to Flat (sui generis) refused by decision notice dated 26 October 2018.
- Application drawings: Location Plan (18-240/01 Revision A), Site Plan (18-240/02 Revision B), Existing Office (18-240/03 Revision A), Proposed Dwelling (18-240/04 Revision A) and Potential Overlooking Diagram (18-240/02).
- No site inspection took place.

Date of Decision: 14 February, 2019

Decision

The Local Review Body (LRB) agrees with the determination reviewed by it and Refuses Full Planning Permission 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 its meeting held on 25 January 2019. The LRB was attended by Councillors F C P Hood (Chair), R Cassie, J Hutchison, P K Johnston, A Ross and I Sutherland.
- 1.3 The LRB was shown projected plans and photographs by the Planning Adviser. These showed the application site and its relationship to the surroundings.

2.0 Proposal

- 2.1 Full Planning Permission is sought for a change of use of an existing building (part of) from business (Class 4) to a residential flat (sui generis) at Muirskie Grange, Durris.
- 2.2 The existing building is part of a grouping comprising the former farmhouse (altered and extended for residential use) and the steading (altered and converted for residential use) which is approximately 2.2km west of the B979 towards Woodlands of Durris. The building is of traditional construction and includes two garages on the ground floor that are in separate ownership and do not form part of the application.
- 2.3 Minimal changes would be required to the external appearance of the building, with an existing door changed to a window, a new window at ground floor level and a new rooflight on the south elevation. A small area adjacent to the two parking spaces is available for use of the flat, but no separate private garden ground would be provided.
- 2.4 A Supporting Statement was submitted with the application, and that provided the background to the use of the building by the applicant and the reason for why a change had been sought, along with comments on matters raised by the Planning and Building Standards Service at the pre-application stage. A further statement had been submitted in support of the Notice of Review which sought to address the reason for refusal.
- 2.5 Three valid representations had been received. Those representations raised issues such as overlooking and loss of privacy, insufficient parking, the safety of pedestrians, drainage capacity and contrast with pattern of existing development. Further comments had been submitted at the review stage, and those reiterated some of the original comments as well as marketing and information about offers that have allegedly been made by a neighbour to purchase the property.
- 2.6 There are no issues or concerns raised by the consultation responses received.

3.0 Reasoning

- 3.1 The main determining issue in this review was whether the proposal was in accordance with the policy criteria for layout, siting and design of new development.
- 3.2 The LRB agreed that the Appointed Officer had identified the relevant Aberdeenshire Local Development Plan 2017 (ADLP) policies (page 12 of the agenda papers) and these were as follows:

Policy R1 Special Rural Areas;

R2 Housing and employment development in the countryside;

Policy P1 Layout, Siting and Design;

Policy RD1 Providing suitable services; and

Policy RD2 Developer's obligations.

- 3.3 The LRB gave consideration as to whether a site inspection, a hearing or further information would be helpful, but they agreed that they had sufficient information before them to proceed to determine the Notice of Review.
- 3.4 Consideration was given by the LRB to the key planning issues identified in Section 11 of the Report of Handling (RoH). During his presentation to the LRB and in response to questions the Planning Adviser confirmed that the principle of the proposal was not disputed, and marketing had been undertaken. The primary concerns were how the proposed residential use sat with the existing pattern of development, the lack of amenity for new residents and the impact on the privacy and amenity of neighbours.
- 3.5 The applicant's case as set out in the Notice of Review was that the proposal would not have any impact on the amenity of existing properties, only minor changes had been proposed so Policy P1 was not in their view relevant and the property would be marketed for affordable country living. In addition, under Policy R2 the development should be deemed acceptable and matters raised at the pre-application stage have been addressed. Finally, it had been highlighted that the property was unsellable for commercial use, was surplus to requirements and may fall into disrepair; for all those reasons approval of change of use should be considered.
- 3.6 One member of the LRB considered that the view of the Planning and Building Standards Service relating to the pattern of development was unreasonable as there were plenty examples of small flats and houses which could be found in close proximity to large dwellinghouses. The drawing showing potential for overlooking demonstrated this was not an issue, parking was available and there was space for bins to be stored at the rear of the property. As a result, he was minded to support the proposal, subject to planning conditions being attached to any planning permission to ensure that a suitable plan would be submitted to the Planning & Building Standards Service for an external bin store and obscure glass would be used on the windows
- 3.7 The Planning Adviser highlighted that there was no scope for bins to be stored to the rear of the building, but they could be stored on the paved area at the south side of the building. However, he advised that the overlooking drawing did not appear to have persuaded the Planning &

Building Standards Service that privacy and amenity, particularly to the former farmhouse to the north-west, could be protected.

- 3.8 Other members of the LRB voiced concerns about the impact on privacy and amenity, particularly with regard to overlooking. It was noted that the reason for refusal did not directly reference overlooking and the Planning Adviser indicated this may be inferred from amenity, which has a broad interpretation. However, Policy P1 also mentions "privacy" which could be added to the reason for if the LRB wished to clarify this point.
- 3.9 The LRB unanimously agreed with the Appointed Officer's conclusion, that the proposal would fail to comply with all 6 tests outlined within Policy P1 and elements of the policies objectives, with specific reference to the detrimental impact on the amenity of neighbours. To strengthen the reason within the decision notice, the word 'privacy' should be inserted before "the amenity of neighbouring properties".
- 3.10 In the circumstances, and in the absence of any other over-riding material considerations, the LRB resolved to uphold the decision of the Appointed Officer to Refuse Full Planning Permission for the reasons contained in the decision notice dated 26 October, 2018 with the addition of the word "privacy" before amenity value of the neighbouring properties...

4.0 Reason for refusal

- (1) The proposal is considered out of character with the surrounding area and pattern of development, detrimentally impacting on the privacy and amenity value of the neighbouring properties, and creating little amenity for future occupiers. As such, it fails to comply with the principles of Policy P1 Layout, siting and design of the Aberdeenshire Local Development Plan 2017 in respect of the ability to be safe and pleasant, whilst protecting amenity, and the creation of a welcoming environment.



Karen Wiles
Head of Legal and Governance

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.