

LOCAL REVIEW BODY OF ABERDEEN CITY COUNCIL

ABERDEEN, 25 September 2014. Minute of Meeting of the LOCAL REVIEW BODY OF ABERDEEN CITY COUNCIL. Present:- Councillor Milne, Chairperson; and Councillors Cameron and Donnelly.

The agenda and reports associated with this minute can be found at:-
<http://committees.aberdeencity.gov.uk/ieListDocuments.aspx?CId=284&MId=2951&Ver=4>

THE ENDRIG, AUCHLEA FARM, KINGSWELLS - 131646

1. The Local Review Body of Aberdeen City Council met this day to review the decision taken by an appointed officer under the Council's Scheme of Delegation to refuse the request for removal of Condition No. 1 and Condition No. 4 of the conditional planning permission for The Endrig, Auchlea Farm, Kingswells (ref 92/0424).

Councillor Milne, as Chairperson, gave a brief outline of the business to be undertaken. He indicated that the Local Review Body would be addressed by the Assistant Clerk, Mrs Dunsmuir, as regards the procedure to be followed and also, thereafter, by Mr Kristian Smith, who would be acting as the Planning Adviser to the Body in the case under consideration this day.

The Chairperson stated that although the Planning Adviser was employed by the planning authority he had not been involved in any way with the consideration or determination of the application under review and was present to provide factual information and guidance to the Body only. He emphasised that the officer would not be asked to express any view on the proposed application.

The Local Review Body was then addressed by the Assistant Clerk as regards the procedure to be followed, at which time reference was made to the procedure note circulated with the papers calling the meeting and to certain more general aspects relating to the procedure.

Mr Smith explained that the application which was the subject of the review was for the removal of Condition No. 1 and Condition No. 4 of the conditional planning permission granted at The Endrig, Auchlea Farm, Kingswells. Mr Smith explained that he had checked the submitted Notice of Review and found it to be valid and submitted within the relevant timeframes. He added that the applicant had asked that the LRB request further written submissions to be made.

Mr Smith explained that the application related to the conditional planning consent granted in April 1992 for the erection of a dwellinghouse and integral garage within the site located directly to the north of the agricultural buildings and farmhouse associated with Auchlea Farm. Conditions applied at the time had included limiting the occupation of the dwelling to a person solely or mainly employed in agriculture on Auchlea Farm (Condition No. 1) and prohibiting the sale of the dwellinghouse separately from Auchlea

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Farm (Condition No. 4). Condition 1 stated “that the occupation of the dwelling shall be limited to a person solely or mainly employed in the locality (i.e. Auchlea Farm) in agriculture as defined in Section 275 of the Town and Country Planning (Scotland) Act 1972 – in order to safeguard the amenity of this Green Belt location.” Condition 4 stated “that the dwellinghouse hereby approved shall at no time be sold off or separated in any manner from the farm known as Auchlea without the prior approval of the planning authority – in order to preserve the amenity of this Green Belt location.”

In relation to the proposals Mr Smith explained that the application sought the removal of both conditions, to allow the applicant’s grandson to purchase the property. Mr Smith advised that the case officer had considered that the removal of Condition 4 would be deemed acceptable, but had felt that the removal of Condition 1 would be contrary to Scottish Planning Policy (SPP) and Policy NE2 (Green Belt) of the Aberdeen Local Development Plan, as well as being contrary to advice provided by the Chief Planner in 2011. The supporting statements from the agent advised that lenders had been approached in relation to securing finance for the property at Endrig, and had indicated that they would not be willing to provide a mortgage to purchase the property if Condition 1 was to remain in place. The supporting statement also argued a different interpretation of the correspondence issued by the Chief Planner in November 2011 to all Heads of Planning in relation to occupancy conditions.

In relation to documents which the members of the Body should consider, Mr Smith outlined that all the following documents were accessible via web links, and available as set out in the papers:-

Development Plan – Aberdeen Local Development Plan (2012); NE2 – that no development will be permitted in the green belt for purposes other than those essential for agriculture, woodland and forestry, recreational uses compatible with an agricultural or natural setting, mineral extraction or restoration or landscape renewal. Proposals for development associated with existing activities in the green belt would be permitted but only if all of the following criteria were met:-

- The development was within the boundary of the existing activity;
- The development was small scale;
- The intensity of activity was not significantly increased; and
- Any proposed built construction was ancillary to what existed.

Also of relevancy as a material consideration was the letter issued by the Chief Planner in November 2011 which sought to clarify the Scottish Government’s view on the use of conditions or planning obligations to restrict occupancy of new rural housing. The letter stated that a number of issues had arisen with the use of occupancy restrictions, some of which had been exacerbated by the economic situation at that time. The letter advised that some people had found it difficult to obtain a mortgage; others to sell the house or have the restriction lifted when they were forced by necessity to move, noting that the use of occupancy restrictions introduced an additional level of complexity in the process of gaining planning permission for a new house. The letter stated that the

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Scottish Government believed that occupancy restrictions were rarely appropriate and so should generally be avoided, however in areas, including green belts, where there was a danger of suburbanisation of the countryside or an unsustainable growth in long distance car-based commuting, there was a sound case for a more restrictive approach.

In relation to consultations, Mr Smith explained that no consultees had raised any objections and no letters of objection or support had been received.

Mr Smith further explained that it was also important to point out that within the Statement of Reasons, submitted with the notice of review, the applicant indicated that they felt that the proposal complied with planning policy and should therefore be approved, providing detailed evidence as to why this was the case. The supporting statement referred to paragraph 81 of Scottish Planning Policy which confirmed that occupancy conditions should be avoided. The supporting statement also argued that the application was not contrary to the requirements of Policy NE2 – Green Belt. The agent noted that Policy NE2 confirmed that development related to agriculture was permissible, and the statement argued that in light of the fact that the occupants of The Endrig would continue to be employed in that sector, they did not consider that the proposal would result in any conflict with NE2. The statement added that the policy did not contain any specific reference to the use of occupancy conditions, and the removal of Condition No 4 would therefore not conflict with any requirements in that regard.

The supporting statement also referred to the Chief Planner's letter of November 2011 in relation to Occupancy Restrictions and Rural Housing and argued that the over-riding message contained in the letter was that Scottish Planning Policy did not promote the use of occupancy restrictions.

Mr Smith explained that the planning authority had considered that whilst Condition 4 could be removed, Condition 1 remained necessary, as it ensured occupancy of the house was tied to someone employed in agriculture at Auchlea Farm.

He advised that for information the stated reason for refusal of planning permission was as follows:

Whilst the removal of Condition 4 of planning permission 92/0424 would be deemed acceptable in this instance, the proposed removal of Condition 1 which related to occupancy was contrary to Scottish Planning Policy (SPP) and Policy NE2 (Green Belt) of the Aberdeen Local Development Plan, and would appear contrary to advice provided by the Chief Planner in 2011. SPP and Policy NE2 sought to protect the integrity of green belts and to prevent their cumulative erosion. In this instance, if it were not for the original requirements of the farm business, the dwellinghouse which was the subject of the application would not have complied with green belt planning policy and would ultimately have been refused. Current policy sought to safeguard against unsustainable development and suburbanisation of the green belt area and the removal of Condition 1 would undermine such policies. It is judged that Condition 1 continued to meet the test

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set out in Circular 4/1998. Taking all of the above into consideration, the proposal to delete Condition 1 was deemed unacceptable in planning policy terms.

The Local Review Body then asked a number of questions of Mr Smith.

At this point, the Local Review Body considered whether they had sufficient information before them to proceed to determine the review.

The Local Review Body thereupon agreed that the review under consideration should be determined without further procedure. The members of the Local Review Body therefore agreed that further written representations were not required, as members felt they had enough information before them.

Members had a lengthy discussion about the possibility of granting approval for the removal of the conditions, subject to the application of a Section 75 agreement, and whether this would be possible to agree without further information in relation to the advice from any financial lenders who had been approached by the applicant. Members also discussed the differing interpretation by the Planning Authority and the agent of the guidance from the Chief Planner.

At this juncture, the Convener asked members if they were content to agree with the view of the case officer that Condition 4 could be removed, and Councillors Cameron and Donnelly concurred that this would be acceptable.

Members then proceeded to discuss the restriction on the occupancy of the property and whether or not there were sufficient controls in place with the removal of Condition 1 to stop any development in the green belt, or whether the Condition should be retained. Members noted that no new development was proposed with the removal of Condition 1 and that if the property was to be sold off in future, any development would require a planning application which would include the history of the site, and the Conditions which had been imposed. Members also noted that planning guidance was clear that conditions should only be imposed in exceptional circumstances.

Therefore, the Local Review Body agreed unanimously to over-turn the decision of the planning authority, and agree to the removal of Condition 1 and Condition 4.

In coming to their decision, the Local Review Body had regard to the provisions of the Development Plan as required by Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 (as amended) which required that where, in making any determination under the planning acts, regard was to be had to the provisions of the development plan and that determination should be made in accordance with the plan, so far as material to the application, unless material considerations indicated otherwise.

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More specifically, the reasons in which the Local Review Body based this decision were as follows:-

The Local Review Body agreed to the removal of Condition No 1 (that the occupation of the dwelling shall be limited to a person solely or mainly employed in the locality (i.e. Auchlea Farm) in agriculture as defined in Section 275 of the Town and Country Planning (Scotland) Act 1972, in order to safeguard the amenity of this Green Belt location) and Condition No 4 (that the dwellinghouse hereby approved shall at no time be sold off or separated in any manner from the farm known as Auchlea without the prior approval of the planning authority, in order to preserve the amenity of this Green Belt location) as no new development was proposed on site, and it was felt that there were sufficient other controls in place to prevent development of the Green Belt location at a future date, therefore the application was not considered to be against Policy NE2 (Green Belt).

ARGYLE HOUSE, SCHOOL ROAD, CULTS - 140369

2. The Local Review Body of Aberdeen City Council met this day to review the decision taken by an appointed officer under the Council's Scheme of Delegation to refuse planning permission for the demolition of an existing outbuilding and the erection of a replacement building to create a residential annex at Argyle House, 2 School Road, Cults (amendment to P130235).

The LRB then heard from Mr Tommy Hart, who explained that he had checked the submitted Notice of Review and found it to be valid and submitted within the relevant timeframes. He added however that the notice of review referred to planning refusals 130235 and 140369. Mr Hart explained that 130235 had been determined in June 2013, and therefore it was not valid for the LRB to consider that application. Mr Hart added that 140369 was a similar application to 130235 but with some amendments, however the Council position throughout both applications was that the proposal was not acceptable in terms of design, massing and materials. There was also a concern in relation to the demolition of the existing granite building, as the application did not propose to re-use the granite. Mr Hart explained that the Council also had expressed concerns about the vehicular access to the site.

He advised that the applicant had asked that the LRB undertake a site inspection and request further written submissions and a hearing session. Mr Hart further advised that the notice of review stated that it had been requested as a result of the refusal of the application by the appointed officer, and because the appointed officer had failed to determine the application within the period allowed for determination. Mr Hart explained that the application had been received on 14 March 2014 and had been determined by the appointed officer on 12 May 2014, which was within the allowed period.

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Mr Hart advised that the application related to the site at Argyle House, 2 School Road, Cults. Planning permission was sought to demolish the existing outbuilding and to erect a replacement building which would create a residential annex. The current building was of traditional construction with granite walls and a natural slate roof. The submitted plans for the replacement building showed a double garage, bedroom, storage and shower on the ground floor; and two bedrooms, a bathroom and open living / dining / kitchen area on the first floor.

In relation to documents which the members of the Body should consider, Mr Hart outlined that all the following documents were accessible via web links, and available as set out in the papers:-

Development Plan – Aberdeen Local Development Plan (2012); D1 – Architecture and Placemaking: to ensure that high standards of design were achieved through a number of considerations, including context, to ensure that the setting of the proposed development and its design was acceptable; D2 – Design and Amenity: the outline of a number of considerations which should be taken into account when assessing a planning application in the interests of amenity considerations, mainly relating to residential, including privacy; residential development should have a public face to a street and a private face to an enclosed garden or court; and sitting out areas for residents (gardens); D4 – Aberdeen’s Granite Heritage – to encourage the retention of granite buildings even if not listed or in a conservation area. Conversion and adaptation of redundant granite buildings would be favoured. Where a large or locally significant granite building that was not listed or in a conservation area was demolished, the Council expected the original granite to be used on the principle elevations of the replacement building. The Council would seek to retain coach houses and other large granite built outbuildings adjoining rear lanes in conservation areas and conversion to appropriate new uses would be encouraged; H1 - Residential Areas: within existing residential areas, proposals for new residential developments and householder developments would be approved in principle, if they did not constitute over-development; did not have an unacceptable impact on the character or amenity of the surrounding area; and complied with supplementary guidance contained in the Householder Development Guidance; T2 – Managing the Transport Impact of Development: new developments would have to demonstrate that sufficient measures had been taken to minimise the traffic generated. Maximum car parking standards were set out in the Supplementary Guidance on Transport and Accessibility; R6 – Waste Management Requirements for New Developments: there should be sufficient space for the storage of residual, recyclable and compostable wastes, which should accord with the Supplementary Guidance on Waste Management; and R7 – Low and Zero Carbon Buildings: all new buildings in meeting building regulation energy requirements must install low and zero-carbon generating technology to reduce the predicted carbon dioxide emissions at a level as cited in the Supplementary Guidance on Low and Zero Carbon buildings.

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The above Supplementary Guidance was relevant, as well as the Supplementary Guidance on the Sub-division and Redevelopment of Residential Curtilages, particularly:-

Paragraph 7.1 – The provision of pedestrian and vehicular access to both the existing and the new dwelling is essential. In every case there should be safe and convenient pedestrian and vehicular access from the dwelling to the public road and pavement; and

Paragraph 7.3 – Vehicular access from the public street must provide safe sightlines for pedestrians and the driver of the vehicle.

In relation to consultations, Mr Hart explained that the roads projects team had objected to the proposal for road safety reasons due to inadequate visibility splays. One letter of representation objecting to the proposal had also been received, raising concerns about access to the site and alleged damage to School Road as a result of work carried out at Argyle House.

Mr Hart further explained that it was also important to point out that within the Statement of Reasons, submitted with the notice of review, the applicant indicated that:

- (1) As part of a previous planning application (ref 111489), it had been suggested by the local authority that if the proposed access to the site was moved 15 metres west along South Drive, that this would be acceptable. This had not been followed up at that time as this would have involved a major reconstruction of the property's garden. As part of the discussions for the application under consideration (140369), the applicant had provided evidence of previous discussions with the authority;
- (2) The applicant felt that the planning officer had not been willing to compromise on the design and access requirements, despite the evidence provided as listed at (1) above;
- (3) The applicant felt that the application had not been dealt with in a fair or professional manner, and also felt that it was unacceptable for the application to have taken three months to be dealt with.
- (4) The applicant stated that no offer of a pre-application consultation had been offered by the authority.

Mr Hart explained that the planning authority had considered that the principle of residential development on the site was acceptable as the site was within an area identified as residential within the Aberdeen Local Development Plan. The application followed an earlier application which had been refused planning permission. The authority stated that pre-planning advice had been offered, but none was sought by the agent. The authority considered that the replacement building was inappropriate in design terms and the use of rendered walls. The authority also had a concern in relation to the overall scale and mass of the design and therefore considered it contrary to Aberdeen Local Development Plan Policies D1 and H1. It was further considered that, taken as an independent house, the application did not provide sufficient amenity area and therefore was contrary to Policy H1 and the Supplementary Guidance on the

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subdivision and redevelopment of residential curtilages. However, taking the building as an annex, the authority did not consider that the proposal would give rise to amenity concerns, although it was suggested that a condition or legal agreement could be considered which would ensure that the building would not be sold off or leased separately from Argyle House. The authority also considered that the loss of granite with the demolition of the existing building was unacceptable. There were further concerns about road safety and the lack of visibility splays.

He advised that for information the stated reason for refusal of planning permission was as follows:

- (1) The proposed development was considered unacceptable in terms of its design by virtue of its scale, mass and external materials, particularly on its public elevation onto the lane, which failed to pay respect to its setting. The proposal was therefore contrary to Scottish Planning Policy which sought high quality design; and the following policies contained within the Aberdeen Local Development Plan – D1 (Architecture and Placemaking) which sought high standards of design to ensure that the setting of the proposed development and its design was acceptable; and H1 (Residential Areas) as the proposed new development would result in having an unacceptable impact on the character of the surrounding area;
- (2) The proposed non-use of granite within the replacement building was considered contrary to planning policy D4 (Aberdeen's Granite Heritage) of the Aberdeen Local Development Plan. The existing building was granite and was considered locally significant. Its loss would erode a traditional building which policies sought to retain. Whilst in principle there was no over-riding objection to a suitably designed building, it was considered that it should incorporate granite on the northern most public elevation, to appear in-keeping within the streetscene, and to comply with planning policy D4.
- (3) The proposed development would constitute a road safety and pedestrian safety hazard by virtue of the creation of a new access without the requisite visibility splays. The proposal was therefore contrary to Scottish Planning Policy and Planning Policies H1 (Residential Areas) and T2 (Managing the Transport Impact of Development) of the Aberdeen Local Development Plan. Furthermore, it was contrary to the Supplementary Guidance on the sub-division and redevelopment of residential curtilages which required a safe and convenient pedestrian and vehicular access from the dwelling to the public road and pavement and, that the vehicular access from the public street must provide safe sightlines for pedestrians and the driver of the vehicle.

The Local Review Body then asked a number of questions of Mr Hart in relation to the plans and the documents submitted.

The Local Review Body discussed the information in front of them and thereupon agreed that in their opinion there was not enough information to proceed to determine

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the review this day and that in order to be in an informed position, it was agreed that a site visit be arranged.

Members asked the Assistant Clerk to make the necessary arrangements for the site visit as per the legislation and guidelines governing Local Review Body meetings.

The Local Review Body resolved:-

to defer consideration of the application and agreed to hold a site visit to be arranged for a date suitable for all members and all interested parties, as per the legislation and guidelines governing meetings of Local Review Bodies.

- RAMSAY MILNE, Chairperson