

LOCAL REVIEW BODY OF ABERDEEN CITY COUNCIL

ABERDEEN, 30 August 2016. Minute of Meeting of the LOCAL REVIEW BODY OF ABERDEEN CITY COUNCIL. Present:- Councillor Milne, Chairperson; and Councillors Lawrence and Jean Morrison MBE.

The agenda and reports associated with this minute can be found at:-
<http://committees.aberdeencity.gov.uk/ieListDocuments.aspx?CId=284&MI d=4419&Ver=4>

PRIME FOUR, KINGWELLS BUSINESS PARK, OFF A944, KINGSWELLS - 152002

1. The Local Review Body (LRB) of Aberdeen City Council met on this day to review the decision taken by an appointed officer under the Council's Scheme of Delegation to refuse the request for planning permission for the proposed erection of a 25m tall lattice tower at Prime Four, Kingwells Business Park, off A944, Kingwells.

Councillor Milne as Chairperson gave a brief outline of the business to be undertaken. He indicated that the LRB would be addressed by the Assistant Clerk, Mr Mark Masson as regards the procedure to be followed and also, thereafter, by Mr Nicholas Lawrence 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 Mr Masson, Assistant Clerk in regards to 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.

In relation to the application, the LRB had before it (1) a delegated report by Mr Ross McMahon, Planning Trainee, dated 28 April 2016; (2) the decision notice dated 28 April 2016; (3) links to the plans showing the proposal; (4) links to the planning policies referred to in the delegated report; and (5) the Notice of Review submitted by the applicant's agent along with an accompanying statement.

The LRB was then addressed by Mr Lawrence who advised that the Notice of Review pertains to the decision of Aberdeen City Council under Delegated Powers of the 28 April 2016 to refuse planning permission for a mobile communications tower adopting a lattice form some 25.00 meters in height to support:-

- 3 antenna;
- 3 remote radio units; and
- 2 dish antenna each measuring 300mm in diameter.

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The submission also provided for three ground level cabinets all set within a 2.10 metre high fence to the north of the A944, and to the west of the C89C (Kingswells) within the north most section of the 'Prime Four' Business Park that is currently under construction.

Mr Lawrence made reference to the Notice of Review submitted by the applicant's agents, which noted that:-

- The Council failed to give any consideration to extensive pre-application discussions through processing agreement meetings;
- The Council failed to give sufficient weight to national policies and in particular
- policies on the provision of digital communications and the request of Statoil for enhanced mobile coverage;
- The Council over-stated the visual impact and had limited regard to mitigation
- provided by overhead pylons; and
- The Council incorrectly applied the No build Zone as contained within the Kingswells development Framework and Master Plan.

Mr Lawrence explained that it was recognised that the Scottish Government sees processing agreements as a productive way of addressing significant and large scale developments. However, processing agreements were no more than a management tool and the fact that parties have entered into such an agreement was set out in the Circular 3 of 2013 on Development Management Procedures (updated 10.09.2015) *does not guarantee a grant of planning permission* (paragraph 6.4 of the Circular). The Circular goes on to add in the next sentence that: *Associated planning applications will be considered on their merits and against the terms of the development plan and other material considerations*. He advised that with regard to proposition that the local planning authority failed to give any consideration to discussions - this is fallacious. The documents submitted by the appellants in Appendices 2 and 4 show that from March 2015 through to April of this year the local planning authority in response to discussions with the Applicants / Representatives expressed concern of the impact of a cellular tower upon the landscape and the consumption dyke. Indeed, the e-mail trail set out in Appendix 4 demonstrates that the local planning authority did entertain and consider dialogue from the Applicant and not as indicated in the review papers.

Mr Lawrence indicated that in terms of engagement, following communications with the Case Officer the appellants sought a view on another design of tower of a lesser height (22.5 m), albeit in the same location, that evidences the appellant's recognition that the existing scheme would cause harm and not conform to those policies set within the Officers Report of Handling. Aside from the above the Appellant under the heading of *Background to the Review* at pages 35 and 36 of the bundle quote views of Officers (21.04.2015 – 11.01.2016 – 17.03.2016). As the LRB is aware the views expressed by Officers are not binding upon the Local Planning Authority. The decision of the Council either at Committee or under delegated powers is the determining view. Mr Lawrence intimated that the Appellant is of the view that as the site is shown on an approved drawing such action of itself establishes the acceptance by the Council of a tower on the site. However, the application to which the drawing is linked only sought approval

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of those matters associated with landscaping, access, together with vehicular and cycle parking from the in principle application and not a cellular tower. This is only a possible location for a mast and not as cited paragraph 6.9 of the appellants that officers:- *Agreed the mast location during early 2015 and also when agreeing the subsequent amendments to the plans which are now integral to the wider planning consent.* The purification of conditions did not, nor could not seek approval for the tower or its siting, this would fall under the guise on a planning application as witnessed by the matter before the LRB today.

In terms of National Policies and Digital Infrastructure, Mr Lawrence indicated that the Report of Handling addressed both national policy guidance together with development plan policies. On the particular matter of digital infrastructure the Report of Handling considers the SPP and concludes that the proposed mast is considered in principle, subject to location, to be acceptable in terms of SPP – ‘*A Connected Place*’, as well as the requirements of the Opportunity Site designation. With regard to what weight that should be attributed to the SPP and the other policies this was for decision-taker to come to a position on behalf of the Council. There is no reason to believe that the insufficient weight was given to national policies or on the provision of digital infrastructure within the report or decision-taking process. He advised that where there is a divergence of opinion between applicants and the decision of the Council, there will always be a view that the determining authority failed to give sufficient weight to their argument. He intimated that on the matter of Statoil’s request for enhanced cellular coverage – it was not for the planning system to protect or promote private interests. However, as noted above, the planning authority did consider the position of enhanced mobile coverage for the area, regardless of the occupier/s of the business park.

In relation to Visual Impact, Mr Lawrence indicated that the appellants are of the view that the Council over-stated the visual impact of the proposed development and had limited regard to the mitigation afforded by the overhead pylons. The Report of Handling considers all relevant policies to inform the recommendation and in this regard the Case Officer followed the position in respect of the SPP; whereas the appellant’s review paper is devoid of reference to these paragraphs of the SPP. The Assessor notes and confirms the point of the appellants that the SPP is a material consideration in the decision-taking process that carries significant weight. However, there is more than one outcome in the SPP as quoted by the appellants and this includes “helping to protect and enhance our natural and cultural assets” – And no one outcome takes precedent over another. Indeed, NPF should respect natural and cultural assets. On the matter of the pylons there are part of national infrastructure and were in place prior to the Business Park being granted planning permission and were taken into account when the masterplan was developed and formed part of the framework against which forthcoming applications would be assessed as was undertaken by the Case Officer in the Report of Handling. Indeed, the temporary structure provided a reference point to assess impact and acceptance of impact by appellants in supplementary application not supported by visual assessment.

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In relation to the No Build Zone, Mr Lawrence indicated that the review notice stated that the Council incorrectly applied the No build Zone as contained within the Kingswells development Framework and Master Plan. He advised that the fact that a comment was made by an officer and the minutes were silent on this matter does not mean that the Committee or the Council acquiesced to that position. Indeed, the matter is covered in the report of Handling and in the e-mail to Agent – intention of the no build zone in respect of all development that could have an adverse impact upon the visual setting of the dyke. The Archaeological assessment part of the master plan is a material consideration in considering development this aspect of the business park – identifies development within 100 m of the dyke as having sever magnitude of visual impact on the setting of the dyke (90 metres from the dyke). Alternative locations were to be fully explored.

Members were then given the opportunity to ask the Planning Adviser any questions on the application. In response to various questions, Mr Lawrence advised that Historic Scotland did not submit any comments regarding the application, and indicated that there was no evidence in relation to connectivity issues.

At this juncture, the Chairperson asked if members were happy to proceed with determining the application. Members felt that they had sufficient information in order to reach a decision and did not require a site visit.

Following discussion of the application, all three Members agreed that the proposal failed to comply with SPP – ‘Valuing the Historic Environment’, PAN 62 – ‘Historic Environment’, SHEP, the associated HES Managing Change guidance – ‘Setting’ and therefore Policy D5 (Built Environment), in addition to Policy D1 (Architecture and Placemaking) and D6 (Landscape) of the adopted Aberdeen Local Development Plan. The Local Review Body therefore agreed unanimously to **uphold** the decision of the appointed officer and **refuse** the application.

In coming to their decision, the LRB 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.

More specifically, the reasons in which the LRB based this decision were as follows:-

While the proposed mast complies with Policy LR1 (Land Release Policy), it fails to comply with SPP – ‘Valuing the Historic Environment’, PAN 62 – ‘Historic Environment’, SHEP, the associated HES Managing Change guidance – ‘Setting’ and therefore Policy D5 (Built Environment), in addition to Policy D1 (Architecture and Placemaking) and D6 (Landscape) of the adopted Aberdeen Local Development Plan. Furthermore, the proposal would be at odds with the general aspirations of the Prime Four Development Framework Supplementary Guidance and the measures therein that seek to protect the setting of the Kingswells Consumption Dyke. The proposal would have a detrimental impact

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on the visual character and amenity of the surrounding area and would have a significant detrimental impact on the setting of an adjacent category B Listed Building and Scheduled Ancient Monument. On the basis of the above, and following on from the evaluation under policy and guidance, it is considered that there are no material planning considerations – including the Proposed Aberdeen Local Development Plan – that are of sufficient weight to warrant approval of the application. Full regard has been given to all matters raised in representations, but neither do they outweigh the policy position as detailed above, nor do they justify approval of the application.

Members indicated that they did not wish to frustrate provision of cellular communication equipment at the site, but it was dependent upon the location and form of the proposed development and were keen for officers to meet with the applicants and/or their representatives.

OLDTOWN FARM, STATION ROAD SOUTH - ERECTION OF FARM WORKERS DWELLINGHOUSE - 160258

2. The Local Review Body (LRB) then considered the second request for a review to evaluate the decision taken by an appointed officer under the Council's Scheme of Delegation to refuse the request for planning permission for the erection of a farm worker's dwelling house at Oldtown Farm, Station Road South, Peterculter.

The Chairperson advised that the LRB would now be addressed by Ms Lucy Greene and stated that although the Planning Adviser was employed by the planning authority she 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.

In relation to the application, the Local Review Body had before it (1) a delegated report by Ms Dineke Brasier, Planning Officer, dated 26 April, 2016; (2) the decision notice dated 5 May, 2016; (3) links to the plans showing the proposal; (4) links to the planning policies referred to in the delegated report; and (5) the Notice of Review submitted by the applicant's agent along with an accompanying statement.

The LRB was then addressed by Ms Greene who provided information on the location of the farm and advised that the application site consisted of part of a field and is grassed, to the south are the farm buildings, the farm house, agricultural buildings, and steading converted into two houses and a house in the former bothy.

In relation to planning history, Ms Greene referred to the officer's report and advised that there had been a number of applications at the farm. Most recently, there was a refusal of planning permission for a house in the same location in 2015, which was appealed to the LRB, however the appeal was dismissed.

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In relation to the proposal, Ms Greene indicated that the application was for PPIP and only the red line of the site was provided along with a statement and a labour requirement report. The application was refused for the reasons outlined in full within the decision notice and can be summarised as follows:-

It's not accepted that requirement for an additional dwelling on site is essential to the running of the farm, given the proximity of Peterculter. The proposal would therefore be contrary to green belt policy and the second reason relates to the precedent that would be set which could result in a proliferation of additional housing in the green belt.

In terms of consultations, there were no objections. The Community Council did not object to the application subject to a condition that tied the house to be occupied by an agricultural worker and that the building be finished in stone.

Ms Greene advised that the Community Council submitted a representation to the LRB which stated that it supported the rigorous application of green belt policy. The applicant's agent provided a response.

Ms Greene then outlined the relevant policies as follows:-

Scottish Planning Policy – this outlined the purpose of the green belt, for:-

- directing development to the most appropriate locations and supporting regeneration;
- protecting and enhancing the character, landscape setting and identity of the settlement; and
- protecting and providing access to open space.

Scottish Planning Policy directs that Local Development Plans should describe suitable types of development:-

LDP Green Belt policy NE2

This contains a presumption against development, except in certain limited circumstances, these include where development is essential for agriculture. There are some relevant points to consider and the applicant submitted a supporting statement with the planning application. This is referred to in the planning officer's report.

Ms Greene indicated that there was a Labour requirement report to accompany the application, which noted that there are 235 ewes and gimmers and these lamb for a period of six weeks starting at the end of February.

Ms Greene advised that the report explained that at least 1.42 labour units are required to run the farm and indicated that one person could not cope during busy periods. It was concluded that at least two workers are required for five months of the year, whilst more than one worker is required for eight months of the year. The report states that one person should live on the farm for animal welfare and security reasons.

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Ms Greene intimated that the applicant contends that one house at the farm is not adequate for the day to day running of the farm and that a second house was needed. Ms Greene advised members that they may wish to also consider the proximity of houses within a settlement and whether the agricultural need is justified in this case. She explained that it is for members to review the officer's report and the statement of support from the applicant to assess the merits on each side.

Ms Greene advised that a further point to note was that it is not the advised practice to attach occupancy conditions to such applications, due to the difficulty in resisting future applications to have those conditions removed. Furthermore, other than the indicative drawing in the applicant's submission, there are no design details under consideration, therefore, it is only the principle of a house on this site that is under consideration.

Members were then given the opportunity to ask the Planning Adviser any questions on the application. In response to a question, Ms Greene advised that there were non-farm worker residents in other houses within the area.

At this juncture, the Chairperson asked if members were happy to proceed with determining the application. Members felt that they had sufficient information in order to reach a decision and did not require a site visit.

Following discussion of the application, all three Members agreed that the proposal had not satisfactorily demonstrated that the proposed dwelling is essential for the running of Oldtown Farm and undermines the principles of controlling development and preventing the construction of additional housing in the Green Belt, leading to the erosion of the character of such areas. This is contrary to the requirements of policy NE2 (Green Belt) of the Aberdeen Local Development Plan and policy NE2 (Green Belt) of the Proposed Local Development Plan. The Local Review Body therefore agreed unanimously to **uphold** the decision of the appointed officer and **refuse** the application.

In coming to their decision, the LRB 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.

More specifically, the reasons in which the LRB based this decision were as follows:-

1. The proposal has not satisfactorily demonstrated that the proposed dwelling is essential for the running of Oldtown Farm. Even though it is demonstrated that for part of the year there is sufficient work to support more than one worker on the farm, it is not demonstrated that it is essential that this second worker resides on the Oldtown Farm complex, especially given the proximity of the nearest residential settlement, Peterculter, to the site. The proposal would therefore undermine the principles of controlling development and preventing the construction of additional housing in the Green Belt, leading to the erosion of the character of such areas. This is contrary to the requirements of policy NE2

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(Green Belt) of the Aberdeen Local Development Plan and policy NE2 (Green Belt) of the Proposed Local Development Plan.

2. The proposal would set an undesirable precedent for applications of a similar nature which would result in the proliferation of additional housing in the Green Belt, which would result in the erosion of the character and appearance of the Green Belt, and the landscape setting of the city.

- **COUNCILLOR RAMSAY MILNE, Convener**

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