

LOCAL REVIEW BODY OF ABERDEEN CITY COUNCIL

ABERDEEN, 29 November 2018. Minute of Meeting of the LOCAL REVIEW BODY OF ABERDEEN CITY COUNCIL. Present:- Councillor Boulton, Chairperson; and Councillors Donnelly, the Depute Provost and Macdonald.

The agenda and reports associated with this minute can be found at:-
<https://committees.aberdeencity.gov.uk/ieListDocuments.aspx?CId=284&MId=6615>

FORMER PUBLIC CONVENIENCE ADJACENT TO DYCE CHURCH HALL, VICTORIA STREET - ERECTION OF CAFE WITH HOT FOOD TAKE AWAY AND FLAT ABOVE INCLUDING CAR PARKING AND ASSOCIATED WORKS - 180522

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 erection of a cafe with hot food take away and flat above including car parking and associated works at a former Public Convenience, adjacent to Dyce Church Hall, Victoria Street, Dyce, Aberdeen, Planning Reference 180522/DPP.

Councillor Boulton as Chairperson gave a brief outline of the business to be undertaken. She indicated that the LRB would be addressed by the Assistant Clerk, Mr Mark Masson with regards to the procedure to be followed and also, thereafter, by Mr Matthew Easton 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. She 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 regard 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 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; (2) the planning application dated 3 April 2018; (3) the decision notice dated 29 June 2018 (4) links to the plans showing the proposal and planning policies referred to in the delegated report; and (5) the Notice of Review submitted by the applicant along with a supporting statement with further information relating to the application.

The LRB was then addressed by Mr Easton who advised that the submitted Notice of Review was found to be valid and submitted within the relevant timeframes.

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Mr Easton described the site advising that it was located on the west side of Victoria Street in Dyce, between its junctions with Gladstone Place and Don Place and was a cleared site which a public toilet block once occupied. The site was bound to the south by Dyce Parish Church, to the north and west by an area of car parking and to the east by Victoria Street, with residential properties beyond. Further to the west, there was an area of urban green space, beyond which was the Aberdeen to Inverness railway line, and beyond that the eastern boundary of Aberdeen International Airport.

In terms of the proposal, Mr Easton advised that the application was for a two-storey building featuring a ground floor unit which would be a café, restaurant and/or hot food takeaway. On the upper storey would be a one-bedroom flat with an external balcony to the rear. There would be a new vehicle access created along with a seven-space car park and hard and soft landscaping.

Mr Easton advised that in considering the application the planning case officer found that due to the location within the airport noise contours, the principle of residential development in this location could not be supported due to the inability to create an adequate residential environment as a result of the proximity of Aberdeen International Airport. Sitting alongside this and directly related was the desire to safeguard the future operation of the airport by avoiding any potential noise complaints in the future, therefore the proposal was not considered to comply with Policy B4 on Aberdeen Airport nor Policy T5 on noise.

He indicated that the café element of the development was found to be acceptable, subject to several conditions. It was also accepted that the development would result in an improvement to the visual amenity of the area through the removal of a vacant site, however, it was considered that this could be achieved through the provision of a non-residential development which did not have the same noise sensitivities.

He explained that on that basis of the residential element not being acceptable, it was considered that the proposal did not accord with the provisions of the development plan, and that there were no material planning considerations that were of sufficient weight to warrant approval contrary to the provisions of the plan.

In terms of the appellants case, Mr Easton advised that the applicants appeal statement provided three main grounds of appeal, which were as follows:-

- (1) In 2011, when the Council as landowner of the site was advertising it for sale, it was described as a residential site, which led the applicant to purchasing it.

Mr Easton explained that, it must however be understood that the Council's role as previous landowner of the site was separate from its role as planning authority. Notwithstanding, the sales particulars in-fact described the site as being within 'an area zoned as residential' rather than saying residential use was acceptable in all circumstances and advised that interested parties should contact the planning service for further advice.

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Mr Easton intimated that the applicant did make contact and was advised that what was proposed was not acceptable, therefore, any misapprehension that the applicant had about what may or not be acceptable at the site was not a material planning consideration and could not be considered in determining the application.

- (2) The second ground of appeal was that approval would allow a vacant site to be brought back into productive use which would be of benefit to the community. The accessible location within Dyce was highlighted, as was the lack of food and drink use within Dyce, which this development would seek to address.
- (3) Finally, it was contended that there were many properties in the 55 to 60dB noise contour, several of which had been approved over the past few years. It was also suggested that the Council's Technical Advice Note relating to Aberdeen International Airport was not part of the current Local Development Plan and therefore based on out of date information and was of lesser weight.

Mr Easton indicated that in that regard, the technical advice note was in fact part of the current local development plan and contained information on airport noise contours and the Council's approach to residential development in such areas. The noise contours it contains had since been superseded, however the most current ones, dating from 2016, were the ones considered as part of the appointed officers assessment of the application.

In terms of consultations, Mr Easton outlined the following:-

- The Councils Roads, Waste and Flooding Teams had no concerns with the proposal;
- The Environmental Health Team did not object but noted the potential adverse impact on the occupants of the proposed flat from aircraft noise and from the café below. They advised that a noise assessment should be carried out to quantify the impacts and identify necessary mitigation;
- The airport did not object in relation to technical safeguarding or aircraft safety; and
- Dyce and Stoneywood Community Council supported the application as it would remove a vacant site and provide a new facility for the area.

Mr Easton advised that nine representations had been received, of which, three objected and six were in support.

He indicated that the matters raised by objectors were that this part of Victoria Street was very busy and congested, exacerbated by the proposed development and that there was difficulty in entering and exiting Gladstone Place which was a road safety for vehicles and pedestrians. It was also considered that Dyce was already well served by food and drink uses.

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He intimated that those in support considered that the use would provide a much needed asset for Dyce.

Mr Easton advised that the Notice of Review stated that the applicant had raised no new matters that were not before the appointed officer and in the applicant's opinion, the review could be undertaken based on the information submitted.

The Chairperson and Councillors Donnelly and Macdonald all indicated in turn that they each had enough information before them and therefore agreed that a site visit was not required and that the review under consideration should be determined without further procedure.

Mr Easton then outlined the relevant policy considerations, making reference to the following:-

- The application site was within a residential area where Policy H1 applied and where the principle of residential development was accepted if it did not constitute overdevelopment, did not have an unacceptable impact on the character and amenity of the area, did not result in the loss of open space and complied with supplementary guidance;
- The policy also dealt with non-residential uses in such areas, in this case the café element. Such uses would be refused unless they were considered complementary to residential use; or it could be demonstrated that the use would cause no conflict with, or any nuisance to, the enjoyment of residential amenity;
- In terms of noise, the residential use would be considered as a use sensitive to noise, whereas the café element would not. Over and above the residential land use zoning, Policy T5 on Noise stated that housing would not normally be permitted close to existing noisy uses without suitable mitigation measures in place to reduce the impact of noise;
- Policy B4 on Aberdeen Airport addressed aircraft noise specifically and indicated that applications for residential development in areas where aircraft noise levels were in excess of 57 decibels, as identified on the airport noise contour map would be refused, due to the inability to create an appropriate level of residential amenity, and the need to safeguard the future operation of Aberdeen International Airport;
- In this case the site sat between the 57 and 60dB contour (60 being the louder value) on the most recently published noise contour maps from 2016. The 57dB contour was significant as it was the point which community annoyance became significant in relation to noise exposure. According to World Health Organisation guidelines, to protect the majority of people from being moderately annoyed during the daytime, the sound level in outdoor living spaces should not exceed 50dB. Where sound levels were above 55dB, which was the case here, the majority of people would be seriously annoyed;
- The forecast noise contours for the year 2020 showed noise increasing and the site sitting between the 60dB and 63dB contour, representing a louder noise environment that current contours show;

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- By the year 2040 the forecast contours had reduced from the 2020 forecast, with the site again sitting between the 57 and 60dB contour;
- Mr Easton advised that the Council's Environmental Health team had highlighted that both noise from the airport and from the café were potential issues for the flat. They had indicated that a noise assessment would be the appropriate way to determine internal and external anticipated noise levels and whether any mitigation was possible to reduce noise to acceptable levels. A noise assessment did not form part of the application and therefore members would need to decide on whether the matter of noise could be fully considered before coming to a decision;
- The potential for cooking odours from the building had also been raised as an issue by Environmental Health, although this would normally be addressed via a condition requiring a scheme of extraction to be provided;
- Policy D2 on Landscape required that residents of flats should have access to sitting-out areas, provided by balconies, private gardens, terraces or communal gardens. In this case a balcony was provided so it should be considered whether it was acceptable in terms of its size and the context;
- Policy D1 on quality placemaking required all development to ensure high standards of design. The layout scale, design of the building and how it integrated into the surrounding area should be considered. As a general principle, new development should not borrow amenity from, or prejudice the development of, adjacent land or adversely affect existing development in terms of privacy, overlooking, daylighting or sunlighting;
- Policy T2 (Transport and Accessibility) and T3 (Sustainable and Active Travel) required developments to demonstrate that sufficient measures had been taken to minimise traffic generated and to maximise opportunities for sustainable and active travel. In this case advice from the Road Development Management Team should be taken into account in terms of access arrangements and cycle and car parking;
- Waste storage arrangements were dealt with through Policy R6 and advice from the waste team should be taken into account in this regard;
- Policy R7 required that all new buildings must meet at least 20% of the building regulations carbon dioxide emissions reduction target applicable at the time of the application through the installation of low and zero carbon generating technology and for water saving measures to be implemented. This would normally be dealt with by a condition.

Mr Easton intimated that in determining the appeal, members should also take into consideration any material considerations they feel were relevant to the application that would point to either overturning the original decision or dismissing the review. In addition to the relevant policies from the development plan, the representations from the public and community council would need to be taken into account.

A further material consideration was that a similar application (161789/DPP) for café and flat had been refused by delegated powers at the site in February 2017. A different

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layout was proposed, and the flat did not have a balcony. The application was refused for the same reasons as this one in terms of noise and the safeguarding of airport operations, but additionally on overdevelopment and the lack of any outdoor space for residents.

Mr Easton indicated that should members wish to overturn the decision of the appointed officer, consideration should be given to any conditions which would be appropriate in order to make the proposal acceptable. However, all conditions must meet the six tests set out by Scottish Government policy.

Mr Easton intimated that should members wish to overturn the decision then he would advise on conditions following deliberation of the review:-

- Submission of a noise assessment;
- Submission of specific materials to be used;
- Submission of scheme of local extract ventilation;
- Submission of detailed landscaping scheme;
- Implementation of car parking;
- Implementation of cycle parking;
- Implementation of waste storage area;
- Low and Zero Carbon; and
- Water Efficiency.

Members asked Mr Easton a number of questions, particularly relating to Policy B4 (Airport Noise).

Members agreed unanimously that the proposal was acceptable and therefore the Local Review Body's decision was to overturn the decision of the appointed officer and approve the application conditionally.

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.

More specifically, the reasons on which the Local Review Body based this decision are as follows –

The application site was currently derelict and the proposed development would bring it back into economic use, providing a new facility for the community. Notwithstanding the provisions of Policy B4 (Aberdeen Airport), with quieter aircraft and the airport being at its busiest during the day, rather than at night, it was considered that a suitable level of internal amenity could be achieved through the submission of a noise assessment specifying mitigation measures to bring noise to an acceptable level in accordance with Policy T5 (Noise). It was

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not anticipated that the level of external noise would be unreasonable given the amount of time people would use outdoor space. The site was easily accessible by public transport, walking, and cycling. Sufficient parking would be provided and the AWPR was anticipated to help with traffic levels in the area, all in accordance with Policies T2 (Managing the Transport Impact of Development) and T3 (Sustainable and Active Travel). Several technical and design matters can be subject of condition in order to comply with Policies D1 (Quality Placemaking by Design), D2 (Landscape), R6 (Waste Management Requirements for New Development) and R7 (Low and Zero Carbon Buildings, and Water Efficiency).

CONDITIONS**(1) NOISE ASSESSMENT**

No development shall take place unless a noise impact assessment (NIA) has been submitted to and approved in writing by the planning authority. The NIA shall evaluate noise on the flat element of the proposal and shall be carried out in accordance with a methodology agreed with the Environmental Health Service. It is expected that the NIA considers –

- the impact from all aircraft noise on the proposed residential property to establish the type and level of insulation / controls required to meet World Health Organisation and BS8233 standards;
- be in accordance with Planning Advice Note (PAN) 1/2011 Planning and Noise and its accompanying Technical Advice Note;
- identify and assess the impact of likely sources of noise associated with the proposed café development on the proposed flat. Noise from plant and equipment associated with the café should not exceed WHO / BS8233 standards and NR25 night and NR35 day in habitable rooms and bedrooms of the proposed flat;
- detail the noise mitigation measures to reduce noise from the likely noise sources to an acceptable level to reasonably protect the amenity of the occupants of the existing neighbouring residences.

Thereafter the flat shall not be occupied unless the relevant mitigation measures have been implemented.

Reason - to protect residents of the development from road and aircraft noise.

(2) DRAINAGE

No development shall take place unless a scheme of all surface and foul drainage works designed to meet the requirements of Sustainable Urban Drainage Systems has been submitted to and approved in writing by the planning authority. Thereafter no part of the development shall be occupied

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unless the drainage scheme has been installed in complete accordance with the said scheme

Reason - in order to safeguard water qualities and to ensure that the development can be adequately drained.

(3) LOCAL EXTRACT VENTILATION SCHEME

No development shall take place unless a scheme of local extract ventilation (LEV) to remove food odours and fumes associated with the class 3 food and drink / hot food takeaway use has been submitted to and approved in writing by the planning authority. The scheme must ensure an appropriate assessment, in accordance with relevant guidance is carried out by a competent person. The purpose of this assessment is to establish the necessary air extraction flow rate based on the activities and equipment, the necessary specification of the LEV equipment and mitigation measures required to effectively; filter, neutralise, extract and disperse cooking fumes produced by the activities to be undertaken. This report must fully demonstrate the minimum design specification of the LEV equipment and odour/fume control measures and their effectiveness.

Thereafter the class 3 food and drink / hot food takeaway use shall not become operational unless the scheme has been implemented.

Reason - to protect residents of the development from cooking odours.

(4) EXTERNAL FINISHING MATERIALS

No development shall take place unless a scheme of all external finishing materials has been submitted to and approved in writing by the planning authority. Thereafter the building shall not be occupied unless it has been finished in accordance with the approved details.

Reason - to maintain the visual appearance of the area.

(5) LANDSCAPING

No development shall take place unless a scheme of hard and soft landscaping has been submitted to and approved in writing by the planning authority. The scheme shall include indications of all existing trees and landscaped areas on the land, and details of any to be retained, together with measures for their protection in the course of development, and the proposed areas of hard landscaping, areas of tree/shrub planting including details of numbers, densities, locations, species, sizes and stage of maturity at planting.

All hard landscaping shall be carried out in accordance with the approved scheme and shall be completed prior to occupation of the building.

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All soft landscaping shall be carried out in accordance with the approved scheme and shall be completed during the planting season immediately following the commencement of the development or such other date as may be agreed in writing with the Planning Authority. Any planting which, within a period of five 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.

Reason - in order to integrate the development into the surrounding area.

(6) PARKING

The development hereby approved shall not be occupied unless the car and cycle parking areas and access road has been constructed, drained, laid-out and demarcated in accordance with drawing Ken Mathison drawing 2085/002C of the plans hereby approved or such other drawing as may subsequently be submitted and approved in writing by the planning authority. Such areas shall not thereafter be used for any other purpose other than the purpose of the parking ancillary to the development and use thereby granted approval.

Reason - in the interests of public safety and the free flow of traffic.

(7) WASTE STORAGE

The development hereby approved shall not be occupied unless the waste storage areas have been constructed, drained, laid-out and demarcated in accordance with drawing Ken Mathison drawing 2085/002C of the plans hereby approved or such other drawing as may subsequently be submitted and approved in writing by the planning authority. Such areas shall not thereafter be used for any other purpose other than the purpose of the storing waste containers ancillary to the development and use thereby granted approval.

Reason - in the interest of public health.

(8) LOW AND ZERO CARBON BUILDINGS

The building hereby approved shall not be occupied unless a scheme detailing compliance with the Council's 'Low and Zero Carbon Buildings' supplementary guidance has been submitted to and approved in writing by the planning authority, and any recommended measures specified within that scheme for the reduction of carbon emissions have been implemented in full.

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Reason - to ensure that this development complies with requirements for reductions in carbon emissions specified in the City Council's relevant published Supplementary Guidance document, 'Low and Zero Carbon Buildings'.

(9) WATER EFFICIENCY

No development shall take place unless a scheme of water efficiency for the care home has been submitted to and approved in writing by the planning authority. The statement should take into account the advice provided in CIRIA publication C723 (Water sensitive urban design in the UK) and specify the measures proposed to incorporate water saving technology into the development so as to achieve gold standard for water use efficiency in domestic buildings and BREEAM Level 5 for commercial developments as appropriate. Thereafter the care home shall be occupied unless the approved measures have been implemented in the construction of the development.

Reason - in order to reduce pressure on water abstraction from the River Dee and the impact on water infrastructure.

- **COUNCILLOR MARIE BOULTON, Convener.**

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