

The Highland Council

Minutes of Meeting of the **Planning Review Body** held in **Council Headquarters, Glenurquhart Road, Inverness** on Wednesday, 1 February 2023 at 2pm.

Present:

Mrs I Campbell (remote)

Mr D Fraser

Mr R Gale

Mr B Lobban

Mr T Maclennan (Chair, except item 5.1)

Mr D Millar (Chair for item 5.1, not present for items 6.3 and 6.4)

Mr P Oldham

Mrs M Paterson

In Attendance:

Mr B Strachan, Independent Planning Adviser to the Planning Review Body

Mrs K Lyons, Principal Solicitor/Clerk

Ms F MacBain, Senior Committee Officer

Preliminaries

The Chair confirmed that the meeting would be webcast and gave a short briefing on the Council's webcasting procedure and protocol.

1. Apologies for Absence

There were none.

2. Declarations of Interest

Item 5.1: Mr T Maclennan

3. Minutes of Previous Meeting

There had been circulated and was **APPROVED** Minutes of the Meeting held on 22 November 2022.

4. Criteria for Determination of Notices of Review

The Clerk confirmed that, for all subsequent items on the agenda, Members had contained in their SharePoint all of the information supplied by all parties to the Notice of Review – namely everything submitted at the planning application stage and the Notice of Review stage from the applicant and interested parties together with the case officer's report on handling and the decision notice that had been issued. When new information had been identified and responded to by the case officer, that information had also been included in SharePoint.

Members were reminded that when determining each planning application subject to a Notice of Review, they were to give full consideration of the planning application afresh (also known as the "de novo" approach) in accordance with the advice contained in the letter from the Chief Planner dated 29 July 2011. The Clerk confirmed that this meant that, in each Notice of Review case, the Review Body needed to assess the planning application

against the development plan and decide whether it accorded with or was contrary to the development plan. Following this assessment, the Review Body then required to consider all material considerations relevant to the application and decide whether these added to or outweighed their assessment of the application against the development plan. In carrying out this assessment, all documents lodged by the applicant and interested parties needed to be considered by the Review Body – all material planning considerations required to be taken into account; considerations that were not material planning considerations must not be taken into account.

The Clerk also confirmed that Google Earth and Street view could be used during the meeting in order to inform Members of the site location. Members were reminded of the potential limitations of using these systems in that images may have been captured a number of years ago and may not reflect the current position on the ground. All the Notices of Review were competent.

5. Notice of Review Previously Considered

5.1 Erection of house (Planning Application ref: 21/02484/FUL) on Land 50M NW Of Seaview, Lochyside, Fort William for Mr & Mrs E Donnelly 22/00041/RBREF

Declaration of Interest: Mr T MacLennan declared an interest in this item on the grounds that he was related to the applicants and left for the remainder of the item. Mr D Millar, Vice Chair, took the Chair for this item.

It was open to Mrs I Campbell, Mr D Fraser, Mr B Lobban, Mr D Millar, Mrs M Paterson to participate in this continued item.

There had been circulated Notice of Review 22/00041/RBREF for the erection of house (Planning Application ref: 21/02484/FUL) on Land 50M NW Of Seaview, Lochyside, Fort William for Mr & Mrs E Donnelly.

Preliminaries

This Notice of Review had been deferred from the November meeting in order to obtain the following information from the parties identified:

1. (i) Clarification on the route and land take required for the proposed Caol Link Road/respond to the plan on page 13 of the applicant's review statement showing the indicative land take in the vicinity of the application site (the Council's IEE Service - Infrastructure, Roads, Transport Planning, Planning) and (ii) the status and implications of building on the route of the proposed Caol Link Road (the Council's Development Plans Team, Transport Planning)
2. Consult with the Ward 21 Members to obtain their views on the proposed Caol Link Road (Ward 21 Members)
3. Update on flood risk at the application site in light of the Flood Prevention Scheme currently being constructed (the Council's Flood Risk Management Team and SEPA)
4. Following conclusion of point 3, submission of sectional drawings (NW to SE and NE to SW) extending to land outside the application site and including existing and proposed ground levels and finished floor levels to a fixed datum point. An updated site plan showing areas of slope within the application site would also be useful. Care should be taken to avoid any development above existing ground level within the visibility splay at the Glenmallie Road junction looking southeast (Applicant).

The information received was reported back to the Review Body and, having **NOTED** the Clerk's confirmation that this was a valid and competent Notice of Review, and her advice with regard to the way the Review should be determined (item 4 above refers), Members were provided with a refresher presentation by the Independent Planning Adviser during which he reminded Members that the following principal planning issues should apply in relation to the application:

1. The proposal lies within an area safeguarded as an option for a future Caol Link Road; is there any justification to depart from WestPlan?
2. With reference to consultee comments, is the stated flood risk acceptable, or can it be made acceptable?

In response to questions, the Independent Planning Adviser clarified that:-

- plans for a Caol Link Road would remain in the WestPlan, adopted in 2019, until it was reviewed, but the case for this route was weakening as time passed and although it remained aspirational, it was the informal view of local Members that this route was unlikely to be the preferred option;
- at the current time, SEPA did not have a statutory requirement to consider climate change within their calculations. However, once National Planning Framework 4 has been adopted, SEPA will have to take climate change into consideration in a similar manner to the Council;
- there was concern in relation to access and egress to the proposed property in the event of a significant flooding event; and
- a balance was required between the higher floor level proposed by the Council and the resultant increased visual impact.

Thereafter, the Review Body **AGREED** that its requirement for information had been satisfied by the Notice of Review documentation contained in Members' SharePoint (including the responses to the Procedure Notice issued following the last meeting of the Review Body) and the Google Earth/Streetview presentation.

Debate

The application had been deferred to obtain the opinion of local Members on the proposed link road route, which was detailed in the papers. It was felt the development would be afforded the same level of protection as other properties by the Caol and Lochyside Flood Protection Scheme, which was underway. The design of the proposed house was considered sensitive, appropriate and accorded with policy.

Decision

The Review Body agreed to **UPHOLD** the Notice of Review and grant planning permission subject to conditions (to include building the new house to the levels indicated by SEPA) to be drafted by the Independent Planning Adviser and agreed by the Vice Chair (Cllr Millar).

Reasons given in support of upholding the Notice of Review:

- the PRB was satisfied that there was enough information to suggest that a Caol Link Road would not be required as shown in the LDP and that the case for it weakened over time. It was also clear that there were alternative routes should funding be found for that project;

- the Coal & Lochside Flood Protection Scheme, which was well to the way to completion, aimed to provide appropriate protection to existing housing and would provide a similar level of protection to the proposed development; and
- that the finished floor level combined with the scale and massing of the proposed house was not considered to result in an incongruous and intrusive development. On the contrary, members were satisfied that the development demonstrated sensitive siting and high-quality design in keeping with local character and accords with Policy 28 (Sustainable Design) of the Highland-wide Local Development Plan 2012.

6. New Notices of Review to be Determined

6.1 Formation of access and access track (in retrospect), (Planning Application Ref: 22/01101/FUL) on land 50M North Of Fir Chlis, Daviot, Inverness for Mr & Mrs N Wallace 22/00045/RBREF

There had been circulated Notice of Review 22/00045/RBREF for the formation of access and access track (in retrospect) (Planning Application ref: 22/01101/FUL) on land 50M North of Fir Chlis, Daviot, Inverness for Mr & Mrs N Wallace.

Preliminaries

Having **NOTED** the Clerk's confirmation that this was a valid and competent Notice of Review, and her advice with regard to the way the Review should be determined (item 4 above refers), the Review Body discussed whether its requirement for information had been satisfied by the Notice of Review documentation contained in Members' SharePoint, no further procedures having been requested by the applicant.

Members requested sight of Google Earth and Streetview to inform their understanding of the application site. The Independent Planning Adviser provided this, during which he advised that the following principal planning issues should apply in relation to the application:-

1. Is the access insensitive and inappropriately sited leading to an unacceptable impact on the character of the wider Daviot area and therefore contrary to Policy 28 of the HWLDP?
2. Does the planning history, or other material considerations, justify upholding the review?

In response to questions, the Independent Planning Adviser confirmed that although the access track was along the edge of the field, it was on rising ground leading away from the road and was considered by the Planning Service to be an intrusion into the landscape. The access road had been granted planning permission in principle but not detailed permission, which was required.

Debate

Members, while disapproving of detailed planning permission not having been obtained, considered that this had been an error on the part of the applicant, and that the track did not cause an unacceptable impact.

Decision

The Review Body agreed to **UPHOLD** the Notice of Review and grant planning permission subject to conditions to be drafted by the Independent Planning Adviser and agreed by the Chair (Cllr Maclennan).

Reasons given in support of upholding the Notice of Review:

Members were not satisfied with the case officer's conclusion that the proposal did not comply with Policy 28 of the Highland wide Local Development Plan. There were similar accesses in the vicinity of the application site – including that opposite to Craggiemore - and therefore members could not conclude that the track did not respect the character and amenity of the area. While it was a long track, the principle of it was supported by the Council's South Planning Applications Committee in December 2020 when it approved the application for a new dwellinghouse. It appeared likely that a dwellinghouse would follow on from the applicant's investment in the track and, while it was always disappointing to have to deal with retrospective applications, the planning history of this site did support its approval.

6.2 Erection of house and garage (Planning Application Ref: 21/03559/FUL) on land 45M SW of Dunelm, Wester Urray, Muir Of Ord for Mr R Kotschujew 22/00049/RBREF

There had been circulated Notice of Review 22/00049/RBREF for the Erection of house and garage (Planning Application ref: 21/03559/FUL) on land 45M SW of Dunelm, Wester Urray, Muir of Ord for Mr R Kotschujew.

Preliminaries

Having **NOTED** the Clerk's confirmation that this was a valid and competent Notice of Review, and her advice with regard to the way the Review should be determined (item 4 above refers), the Review Body discussed whether its requirement for information had been satisfied by the Notice of Review documentation contained in Members' SharePoint, no further procedures having been requested by the applicant.

Members requested sight of Google Earth and Streetview to inform their understanding of the application site. The Independent Planning Adviser provided this, during which he advised that the following principal planning issues should apply in relation to the application:-

1. No dispute that an operational need for a house has been demonstrated. However, there are other properties at Wester Urray and other sites within the landholding which may be preferable.
2. If it is accepted that none of the other available housing or sites should be pursued, is the application site appropriate as an expansion of the existing group?

In response to questions, the Independent Planning Adviser confirmed that:

- the land in question would be challenging to farm given its corner location;
- the house to the west of the site was sufficiently far away that the proposed house could not be considered a continuation of a linear housing development;
- the Operational Needs Assessment indicated the need for up to three labour units for the farm and, while the need for housing was not disputed, the location of the proposed house was;
- agricultural sheds did not require the same level of scrutiny from a planning perspective as a domestic dwelling; and
- it was understood that the shed proposed to be build adjacent to the application site was not to be used for intensive farming purposes but rather for storage and general use.

Debate

Members considered that a house in this position did not meet the requirements of the Highland-wide Local Development Plan in that this site did not constitute an expansion of an existing housing group, and that other sites had not been adequately considered.

Decision:

The Review Body agreed to **DISMISS** the Notice of Review and refuse planning permission for the reasons stated by the case officer as follows:

- The proposal was contrary to the provisions of Policy 35 (Highland-wide Local Development Plan) and to the associated adopted Rural Housing Supplementary Guidance, in that:
 - the chosen site constituted inappropriate ribbon development into an otherwise undeveloped agricultural field, with no existing features to provide a sense of rounding off or containment;
 - there were existing houses at Wester Urray which were linked to the farm holding, and the applicant had failed to demonstrate why these could not be utilised in preference to building a new house; and
 - furthermore, the availability of an alternative site that was more compliant with the requirements of Policy 35 has not been fully explored by the application.

6.3 Erection of house (Planning Application ref: 22/01494/FUL) on land 70M SW of The Log Cabin, Agneshill North, Balblair, Dingwall for Ms Sally Ann Jackson 22/00050/RBREF

There had been circulated Notice of Review 22/00050/RBREF for the erection of house (Planning Application ref: 22/01494/FUL) on land 70M SW of The Log Cabin, Agneshill North, Balblair, Dingwall for Ms Sally Ann Jackson.

Preliminaries

Having **NOTED** the Clerk's confirmation that this was a valid and competent Notice of Review, and her advice with regard to the way the Review should be determined (item 4 above refers), the Review Body discussed whether its requirement for information had been satisfied by the Notice of Review documentation contained in Members' SharePoint, no further procedures having been requested by the applicant.

Members requested sight of Google Earth and Streetview to inform their understanding of the application site. The Independent Planning Adviser provided this, during which he advised that the following principal planning issues should apply in relation to the application:-

1. Does the existing mobile home provide sufficient justification for a replacement dwellinghouse under Policy 35 of the HWLDP and SG Rural Housing, or does any other policy criteria apply?
2. Does the planning history, or other material considerations, justify upholding the review?

In response to questions, the Independent Planning Adviser confirmed that:

- the Planning Service recognised that the existing structure had been the applicant's full-time home for more than ten years, and had granted her permission to reside there in

perpetuity, however this did not give the applicant the right to replace the caravan with a permanent dwelling house;

- while the dictionary defined a dwelling as ‘a building used or constructed wholly or principally for habitation,’ the Planning Service made a distinction between a permanent house and a temporary caravan, which did not have foundations and could be removed from a site with relative ease; and
- if Members were minded to uphold the appeal, a condition could be imposed to ensure the removal of the caravan from the site 3-6 months (or such period as was considered appropriate) after construction of the house.

Members referred to information they had received from the applicant via email, which had not been submitted as part of the formal review process administration, and the Clerk suggested this information should be disregarded as it had not been made available to all parties through the formal process.

Debate

Members felt the current structure could be considered a dwelling, noted that the applicant had lived there for over ten years, and considered the replacement of the caravan with a permanent house to be a positive change, as long as the caravan was removed after an appropriate amount of time after construction of the new house.

Decision

The Review Body agreed to **UPHOLD** the Notice of Review and grant planning permission subject to conditions (including a condition to remove the caravan within 6 months of a completion or temporary occupation certificate having been issued in respect of the new house) to be drafted by the Independent Planning Adviser and agreed by the Chair (Cllr Maclennan).

Reasons given in support of upholding the Notice of Review:

Members took on board the reasons for refusal namely that the chalet / mobile home on site could not reasonably be considered as a ‘dwelling’ for the purposes of planning assessment. However, were of the view that it was clear that the chalet/ mobile home was being used as a dwelling by the applicant. As the new dwelling was proposed to replace the existing chalet /mobile home, there would be no increase in the number of buildings. Members felt that, on this basis and recognising that the applicant was working the land, the application could be supported as a minor departure from policy.

6.4 Erection of house (Planning Application ref:20/03586/FUL) on land 80M West Of Creag Darach, Glenborrodale, Acharacle for Mr & Mrs Gill & Martin Calver 22/00051/RBREF

There had been circulated Notice of Review 22/00051/RBREF for the erection of house (Planning Application ref: 20/03586/FUL) on land 80M West Of Creag Darach, Glenborrodale, Acharacle for Mr & Mrs Gill & Martin Calver.

Preliminaries

Having **NOTED** the Clerk’s confirmation that this was a valid and competent Notice of Review, and her advice with regard to the way the Review should be determined (item 4 above refers), the Review Body discussed whether its requirement for information had been satisfied by the

Notice of Review documentation contained in Members' SharePoint, no further procedures having been requested by the applicant.

Members requested sight of Google Earth and Streetview to inform their understanding of the application site. The Independent Planning Adviser provided this, during which he advised that the following principal planning issues should apply in relation to the application:-

1. Principle of a dwellinghouse is acceptable, but is located within woodland listed in the Ancient Woodland Inventory (AWI).
2. Is the direct (and possibly indirect) impact on trees and woodland from the proposed dwellinghouse, access and drainage acceptable?
3. Or, is there any public benefit which would outweigh presumption in favour of protecting this woodland resource?

In response to questions, the Independent Planning Adviser confirmed that:

- the planning officer had attended the site in person but the forestry officer had not;
- the trees had no formal protection other than being protected by the policy presumption against the destruction of ancient woodland;
- the two alternative sites for a house were summarised and the applicants' reasons against these were explained, with one being subject to frost and drainage issues, and the other likely to be required for the expansion of the nursery;
- if permission was granted, it would be subject to the private water supply being tested by Environmental Health for quality and quantity. However, the use of the private water supply would be a civil matter between the applicants and the owner of the water supply;
- landowners were entitled to fell 5 cubic metres of timber per quarter of woodland; and
- conditions could be imposed covering tree removal and a robust construction method statement.

Debate

The Chair spoke in favour of upholding the appeal, citing his knowledge of the work undertaken by the applicants to preserve the woodlands, although he did not know the applicants personally. Some Members cited the importance of supporting businesses in economically fragile areas, and pointed out the plans for compensatory tree planting. Other Members felt the additional planting would not adequately compensate the loss of ancient woodland and that there were alternative sites that had not been given adequate consideration.

Motion by Cllr Oldham, seconded by Cllr Lobban, to dismiss the Notice of Review for the reasons stated by the case officer in the report of handling.

Amendment by Cllr Maclennan, seconded by Cllr Paterson, to uphold the Notice of Review and grant planning permission subject to conditions to be drafted by the Independent Planning Adviser to the Planning Review Body. Reasons given in support of the motion:

The application comes down to whether more weight should be attributed to the wish of the applicants to build a home within the woodland or the impact on the trees of doing so. Mindful that development that does not respect its location will have environmental impacts and if we, as decision makers are not careful, the resource that makes a location so special is eventually lost. That said, I am also conscious of the planning history of the applicant's landholding and their link to this woodland. I am mindful of the policies quoted, Policy 51 and

52 of the Highland-wide Local Development Plan and the link to Policy 36, I understand that this development does not have policy support.

1. Although the house and new driveway spur would result in the loss of at least 23 trees and a significant number of other trees may be indirectly affected, I do not consider this to be an unacceptable impact on trees in the Ancient Woodland. I am of the opinion that development elsewhere in the woodland has demonstrated that it can be accommodated satisfactorily.

2. Although the development would result in an open clearing and access corridor through woodland, I am mindful of the planning history of the applicant's landholding I think that this development can be accommodated.

On a vote being taken, the outcome was as follows:

Motion: 4 (Cllrs Fraser, Gale, Lobban, Oldham)

Amendment: 3 (Cllrs Campbell, Maclennan, Paterson)

The **MOTION** was carried by 4 votes to 3.

Decision

The Review body agreed to **DISMISS** the Notice of Review for the reasons stated by the case officer as follows:

1. The house and new driveway spur would result in the loss of at least 23 trees, and thereby the development would have an unacceptable impact on trees in the Ancient Woodland. A significant number of additional trees, mostly oaks, would be indirectly adversely affected by the development.

The development does not demonstrate significant protection to existing trees and woodland and there would be inadequate separation distances between the proposed house, drainage arrangements and soakaways, the access spur, and trees. The development would thereby not accord with policy 51 of the Highland wide Local Development Plan 2012 and the Trees Development and Woodland Supplementary Guidance, Jan 2013.

2. The development would result in an open clearing and access corridor through woodland with a high degree of nativeness and naturalness, which is part of a western acidic oak woodland, listed on the Ancient Woodland Inventory. There is no necessity to develop this particular site and therefore there is no public benefit which would outweigh the policy presumption in favour of protecting this woodland resource. The proposal would be contrary to policy 52 of the Highland wide Local Development Plan 2012 and the Trees Development and Woodland Supplementary Guidance January 2013, together with Scottish Planning Policy.

The meeting ended at 4.35pm.