

The Highland Council

Minutes of Meeting of the **Planning Review Body** held in the **Council Headquarters, Glenurquhart Road, Inverness** on Wednesday, 8 November 2023 at 10.30am.

Present:

Mrs I Campbell (remote)
Mr D Fraser
Mr R Gale
Mr B Lobban
Mr T Maclennan (Chair)
Mr D Millar
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
Ms A Macrae, 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 no apologies for absence.

2. Declarations of Interest

There were no declarations of interest.

3. Minutes of Previous Meeting

There had been circulated and **APPROVED** the Minutes of the Meeting held on 20 September 2023.

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 – including the recently adopted National Planning Framework 4 – 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 Extensions to Cartbarn and Smiddy, Roshven, (Planning Application ref: 22/03145/FUL) at The Cart Barn, Glenuig, Lochailort for Mr Tim Palmer 23/00014/RBREF

The Review Body **NOTED** the applicant's decision to withdraw the Notice of Review.

6. New Notices of Review to be Determined

6.1 Erection of hut and composting toilet, (Planning Application ref:23/03088/FUL) on Land 530M SE of An Sabhal Fada, Bunloit, Drumnadrochit for Mr Douglas Pyott 23/00027/RBCON

There had been circulated Notice of Review 23/00027/RBCON for erection of hut and composting toilet, (Planning Application ref:23/03088/FUL) on land 530M SE of An Sabhal Fada, Bunloit, Drumnadrochit for Mr Douglas Pyott

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 key planning issues applied in relation to the application:-

- Planning permission had been granted, so the primary consideration is condition 2, although the proposal can be considered afresh;
- Does condition 2 meet the tests as required by Circular 4/1998?;
- Is there any issue with consistency or precedent.

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

- the Review Body had the flexibility to vary condition 2 in the original decision notice;

- it was a condition of planning permission that the hut could not be used as a dwellinghouse;
- the timescales by which it would be prudent for the applicant to renew the planning permission. It was likely there would be latitude in terms of any immediate enforcement action if the permission lapsed;
- in the event the hut was to be used for holiday accommodation then an application for change of use would be required and it would be subject to the short term let legislation;
- it was open to interpretation whether the definition of a hut in NPF4 included the mezzanine area shown in the drawings; and
- on the basis of the construction and materials used, the Planning Service had considered the building to be a temporary structure and therefore condition 2 had been applied to the permission.

Thereafter, the Review Body **AGREED** that its requirement for information had been satisfied by the Notice of Review documentation contained in Members' SharePoint and the Google Earth/Streetview presentation.

Debate

Following discussion, Mr D Fraser seconded by Mrs M Paterson **moved** to uphold the Notice of Review and grant planning permission subject to amending "on 31.08.2028" to "on 31.11.2033" in condition 2 of the original decision notice on the grounds that the 5 year period originally granted was considered to be too short for the building proposed and therefore failed the test of reasonableness.

As an **amendment**, Mr R Gale seconded by Mr D Millar moved to uphold the Notice of review and grant planning permission subject to the removal of condition 2 from the original decision notice on the grounds that condition 2 is neither necessary nor reasonable for the building proposed.

On a vote being taken, there were **4** votes for the **motion**, **4** for the **amendment** and no abstentions, the votes having being cast as follows:

Motion: Mr D Fraser, Mr T Maclennan, Mr P Oldham, Mrs M Paterson.

Amendment: Mrs I Campbell, Mr R Gale, Mr B Lobban, Mr D Millar

On there being an equality of votes, the Chair cast his second and determining vote in favour of the **motion** which became the finding of the meeting.

Decision

The Review Body **AGREED** to **UPHOLD** the Notice of Review and grant planning permission subject to amending "on 31.08.2028" to "on 30.11.2033" in condition 2 of the original decision notice on the grounds that the 5 year period originally granted was considered to be too short for the building proposed and therefore failed the test of reasonableness.

6.2 Erection of house with garage/workshop, (Planning Application ref:23/00028/FUL) on land 300M North East of, Mill Of Mey, Scarfskerry for Mr Alan Gray 23/00028/RBCON

There had been circulated Notice of Review 23/00028/RBCON for the erection of house with garage/workshop, (Planning Application ref:23/00028/FUL) on land 300M North East of, Mill Of Mey, Scarfskerry for Mr Alan Gray

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 key planning issues applied in relation to the application:-

- Planning permission has been granted, so the primary considerations are conditions 6&7, although the proposal can be considered afresh;
- Do the conditions meet the tests as required by Circular 4/1998?.

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

- monitoring compliance with planning conditions has a resource implication. Alleged breaches may be reported to the Service for further investigation;
- the Enforcement Team had not been aware of any breach of conditions in respect of House 2. It would be possible for enforcement action to be pursued if an investigation proved there had been a breach of conditions;
- having spoken to the Roads Officer, his understanding was that the reasons for the imposition of conditions 6 and 7 was to require the junctions to be upgraded to allow vehicles to pass safely;
- the parties who were benefiting from planning permission in this location could potentially share the cost of upgrading the junctions, no arrangements having made for contributions towards the cost of the works;
- planning and building standards are separate regulatory regimes; and
- it appeared that there were services located on the land on the road verge required to upgrade the junction. The applicant had indicated that the cost of the works to divert the services would be onerous. Such costs were not a material consideration in relation to the application.

The Review Body **AGREED** that its requirement for information had been satisfied by the Notice of Review documentation contained in Members' SharePoint and the Google Earth/Streetview presentation.

Debate and Decision

Following discussion, the Review Body **AGREED** to **UPHOLD** the Notice of Review and grant planning permission subject to the removal of conditions 6 and 7 of the original decision notice. The conditions were considered to be unnecessary as there was

considered to be low traffic levels and good visibility at both junctions allowing vehicles to pass safely.

Thereafter, Members raised concerns about the monitoring of conditions attached to planning permissions and enforcement of alleged breaches and requested that the Clerk follow up with Planning Service & Building Standards the link between planning and building warrant regimes, in particular:

- when an application for building warrant is received, is the Planning Service notified and are pre-commencement conditions checked for compliance?
- prior to issuing a completion certificate, is the Planning Service notified and are prior to occupation conditions checked for compliance?

The Review Body **AGREED** that the findings be reported back to the Members of the Planning Review Body.

6.3 Erection of extension to house, (Planning Application ref:23/01931/FUL) at 8 Firth View, Dingwall for Mr And Mrs Chris Hart 23/00030/RBREF

There had been circulated Notice of Review 23/00030/RBREF for the erection of extension to house, (Planning Application ref:23/01931/FUL) at 8 Firth View, Dingwall for Mr And Mrs Chris Hart.

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, a site inspection 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 key planning issues applied in relation to the application:-

- the proposed ground floor extension is not the issue;
- the area of debate concerns the first floor dormer;
- is the position and design appropriate as an addition to the house and within the street; and
- if not, are there any material considerations that would justify a departure from the development plan.

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

- the Council's guidance for extensions to the front elevation of properties included that dormers should not dominate the roof;
- through Streetview the types of extensions and dormer windows on other properties in the neighbourhood; and
- in response to concerns expressed by the Planning Service, the applicants had made changes to the original application but had indicated they did not wish to make any further design changes as it would compromise how they intended to use the additional space.

Thereafter, the Review Body **AGREED** that its requirement for information had been satisfied by the Notice of Review documentation contained in Members' SharePoint and the Google Earth/Streetview presentation, and were of the view that a site inspection was not required.

Debate

Following discussion, Mr P Oldham seconded by Mr D Millar **moved** to uphold the Notice of Review and grant planning permission subject to conditions to be drafted by the Independent Planning Adviser to the PRB.

Reasons in support of the motion: there was agreement with the case officer's conclusion that the ground floor extension was acceptable. As regards the proposed dormer, having considered the design of the houses in the vicinity of No 8, both as originally built and subsequently extended, the design of the proposed dormer was considered to be of high quality, would be in keeping with the local character and would not have a negative impact on the streetscape and residential area. Therefore, the application was not considered to be contrary to Policy 14 of NPF4 or contrary to Policies 28, 29 and 34 of the HwLDP.

As an **amendment**, Mr T Maclennan seconded by Mr B Lobban moved to dismiss the Notice of Review and refuse planning permission for the reasons indicated in the case officer's Report of Handling.

On a vote being taken, there were **5** votes for the **motion**, **3** for the **amendment** and no abstentions, and the **motion** was therefore carried, the votes having been cast as follows:

Motion: Mrs I Campbell, Mr D Fraser, Mr D Millar, Mr P Oldham, Mrs M Paterson

Amendment: Mr R Gale, Mr B Lobban, Mr T Maclennan

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 to the PRB.

Reasons in support of the motion: there was agreement with the case officer's conclusion that the ground floor extension was acceptable. As regards the proposed dormer, having considered the design of the houses in the vicinity of No 8, both as originally built and subsequently extended, the design of the proposed dormer was considered to be of high quality, would be in keeping with the local character and would not have a negative impact on the streetscape and residential area. Therefore, the application was not considered to be contrary to Policy 14 of NPF4 or contrary to Policies 28, 29 and 34 of the HwLDP..

6.4 Change of use from post office (Class 1A) to residential (Class 9), (Planning Application ref:23/01906/FUL) at 125 High Street, Wick for Mr Kevin Milkins 23/00034/RBREF

There had been circulated Notice of Review 23/00034/RBREF for the change of use from post office (Class 1A) to residential (Class 9), (Planning Application ref:23/01906/FUL) at 125 High Street, Wick for Mr Kevin Milkins.

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 key planning issues applied in relation to the application:-

- the application site lies within the defined town centre of Wick;
- the lack of marketing is the fundamental point of non-compliance with development plan policies; and
- are there any material considerations that would justify a departure from the development plan.

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

- the submitted drawings showed that the traditional shop frontage would be retained as part of the development;
- if the notice of review was upheld then it may be appropriate to add a condition that removed permitted development rights so that planning permission would be required if the applicants wished to change the frontage by reverting back to the original design;
- the building was located in the town centre as defined in the local development plan;
- there were policies in NPF4 and the local development plan that stated that a change of use could take place subject to it being demonstrated that no other parties were interested in the premises by marketing the premises for a period of 12 months at a reasonable cost; and
- there was no clear definition of what a marketing strategy should look like. The local development plan advised that it should be marketed for its existing use at a reasonable price or rent.

Thereafter, the Review Body **AGREED** that its requirement for information had been satisfied by the Notice of Review documentation contained in Members' SharePoint and the Google Earth/Streetview presentation.

Debate and Decision

Following discussion, 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 to the Planning Review Body and agreed by Mr R Gale as proposer of the unopposed motion.

Reasons: While acknowledging that the applicant has not complied with the marketing requirements of Policy 1 of the Caithness & Sutherland Local Development Plan, unlike other town centres in the CAS Plan area, there are multiple vacant retail units in Wick town centre available to accommodate future retail use. Due to its location, this is the least likely of the existing vacant units to be re-used for retail purposes. Support for this proposed development would secure the return a vacant unit into beneficial use.

The meeting ended at 1.05pm.