

MINUTE

A&B - Public

Planning Committee

Council Chamber, Town Hall, Lerwick

Monday 17 February 2020 at 2pm

Present:

M Bell	C Hughson
M Lyall	A Manson
D Sandison	C Smith
G Smith	

Apologies:

E Macdonald	D Simpson
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In Attendance (Officers):

I McDiarmid, Executive Manager – Planning
J Holden, Team Leader – Development Management
A Melkevik, Planning Officer
D Robertson, Team Leader – Environmental Health
L Halcrow, Animal Health Scheme Research Officer, Environmental Health Service
P Sutherland, Solicitor
L Adamson, Committee Officer

Also in Attendance:

S Coutts, SIC (Item1)
T Smith, SIC (Item 1)

Chair

In the absence of the Chair, Ms Manson, Vice-Chair, presided.

Circular

The circular calling the meeting was held as read.

Declarations of Interest

None

01/20 Minutes

The Committee confirmed the minutes of the meeting held on 16 December 2019 on the motion of Mr Bell, seconded by Ms Sandison.

Local Review under Section 43A of the Town and Country Planning (Scotland) Act 1997 (as amended) to be considered by the Planning Committee sitting as Local Review Body:

The Chair advised that the Planning Committee will be sitting as the Local Review Body (LRB) for the two reports on the agenda, and will follow the guidance as provided in Section 4 of the covering report.

Before commencing, the Chair advised that the LRB would be given the opportunity to decide if a site visit would be required to determine the applications. If so, the Hearings will be

adjourned and reconvened at a later date. It also has to be agreed if a site visit would be unaccompanied or accompanied.

The Chair then advised on the procedures that would be followed for the Hearings where the Planning Officer who handled the case will make a presentation on matters to be considered. Persons entitled to make representations will be given the opportunity to address the Hearing, followed by the applicant/agent, and all will be restricted to a time limit of five minutes. Should Members of the LRB have questions, where possible these should be posed at the end of each presentation, and when questions are completed, Members will debate the proceedings and make a decision. She added that cross examination will not be permitted unless the LRB considers it necessary.

The Chair also advised that the decision of the LRB is full and final. Should the appellant be aggrieved by the decision, the only recourse is to the Court of Session in respect of the handling by the LRB.

02/20 **Local Review Ref: 2019/181/PPF - LR36 - Erect new dwellinghouse with air-source heat pump, Cott, Weisdale, Shetland ((E) 438082 (N) 1149947)**

The LRB considered a report by the Team Leader - Development Management to review the case on an application for planning permission for a local development where an officer (the appointed person) had failed to give the applicant notice of their decision or determination within the period allowed, under the Planning Scheme of Delegations in terms of Sections 43A(8) to (16) of the Town and Country Planning Scotland Act 1997 (as amended) [Record Appendix 1].

In response to a question from the Chair, the LRB agreed that a site visit was not required.

The Chair invited the Team Leader – Development Management to give a presentation to the LRB.

The Team Leader – Development Management gave a presentation which illustrated the following:

- Location Plan
- Proposed Site Plan
- Views from North of the proposed development site
- View of neighbouring wind turbine
- View of proposed development site
- View of wind turbine from proposed dwellinghouse location
- Financial involvement letter

The Team Leader – Development Management then advised the LRB on the following: *“The proposed development is the construction of a dwellinghouse with air-source heat pump and a new access track to both access the dwellinghouse and an existing agricultural shed at Cott, Weisdale.*

The submitted location plan gives a clear indication of the proposed development site’s location in the Weisdale area. The proposed dwellinghouse site is classed as undeveloped land within an existing settlement. Whilst the site is not designated within the plan it is not isolated, and development on it would fit in with the pattern of development on the Cott Road.

The submitted site plan shows the proposed location of the dwellinghouse and the position of an existing wind turbine to the east of the site, shown by the red 'A' in a circle, and the position of a consented smaller turbine shown by the red 'B' in a circle. The existing wind turbine (erected under Planning Permission 2011/251/PPF), which is connected to the adjacent property known as Moars Park, is the key issue for the proposed development and affects the suitability of the site for this specific development.

Planning Advice Note 1/2011: Planning and Noise promotes the principles of good acoustic design and a sensitive approach to the location of new development. It promotes the appropriate location of new potentially noisy developments, and a pragmatic approach to the location of new development in the vicinity of existing noise generating uses, to ensure quality of life is not unreasonably affected and that new development continues to support sustainable economic growth. The Planning Advice Note goes on to state that developments which are likely to generate a significant level of noise do not generally make good neighbours with noise sensitive land uses such as housing, and more detailed assessments may be required for, amongst a number, not only proposals that are likely to generate significant noise, but also for noise sensitive properties which may affect existing noise sources. The Planning Advice Note confirms that since local authorities are legally obliged to investigate complaints of noise, and have powers to take action against nuisance, in relation to new development it is preferable for anticipated noise impacts to be addressed at the outset through design and use of mitigation measures.

The "Agent of Change" principle has now been implemented under the Planning (Scotland) Act 2019. It relates to applications for planning permission for "noise-sensitive developments", where residents are likely to be affected by significant noise from existing activity in the vicinity. Where this is the case the planning authority must take particular account of whether the new development includes sufficient measures to "mitigate, minimise or manage" the effect of noise between the development and any existing cultural venues or facilities, dwellings or businesses in the vicinity. The planning authority also may not place conditions on the planning permission that would impose additional costs on any existing "noise source" for acoustic design measures to address noise issues.

Albeit this statutory requirement only applies to applications made on or after 20 December 2019 it is the case that Scottish Government policy already expects planning authorities to give consideration to the Agent of Change principle when determining applications. Before the requirement became law, whilst confirming the intention to include explicit policy guidance in the next National Planning Framework (which will include Scottish Planning Policy), the Chief Planner advised "In planning decisions, it is normal to take into account both the potential impact of the new development on existing nearby uses, and also the potential impact of those existing uses on the new development. That approach should be taken in considering whether a proposed development is acceptable, or what steps would be required to make it acceptable."

The Planning Service is therefore satisfied that it is relevant that anticipated noise impacts for the proposed dwellinghouse, which is regarded as a noise sensitive development, be addressed in order to ensure the existing wind turbine does not give rise to adverse effects or unreasonably affect the quality of life (amenity) of its occupants, which is why Environmental Health were consulted on the proposed development.

On 6 September 2019 Environmental Health advised that the existing 5kw wind turbine that connects to Moars Park (which is one of two that were granted permission – the other being a smaller 1 kw wind turbine on an 8 metre mast) is 56 metres from the proposed amenity boundary of the proposed dwellinghouse and that “Using the ‘The Small Wind Turbine Noise Procedure for Shetland’ the predicted noise level at the amenity boundary is 44dB. This is 10dB above the daytime background noise level of 33.6dB and 14dB above the night-time noise level of 29.6dB.” Based on these calculations, Environmental Health objected to the proposed development.

The photograph “Views from North of the proposed development site” shows the position of the existing 5kw wind turbine, and the position of the proposed dwellinghouse, the amenity boundary of which was applied for would be this side of the agricultural shed that can be seen, and extend down towards the voe to a position top left of the ridgeline to the green painted dwellinghouse which is Moars Park.

The three photographs show the existing wind turbine, the proposed dwellinghouse site with its existing agricultural shed, and the view of the existing wind turbine (circled red) from the edge of the proposed dwellinghouse’s footprint.

On 30 September 2019 the agent highlighted the applicants’ intentions to become financially involved in the existing wind turbine. This followed on from advice that Environmental Health provided that when a property has a financial involvement with a wind turbine the permissible noise limits are increased to 45dB, which could result in the proposed development falling within the acceptable noise limit. The applicants submitted a document signed by the owners of the existing wind turbine to confirm that the applicants have a financial involvement in the turbine. However, based on a past Judicial Review Case (Joicey, R (on the application of) v Northumberland County Council, 7 Nov, 2014), it was considered that the submitted signed document regarding the financial involvement relating to the application was not sufficient, and further information was required. The applicant however did not wish to provide any information regarding their financial involvement in the wind turbine. Therefore, this means of enabling the development to proceed could not be pursued any further.

On 14 October 2019, the applicants submitted a document raising a number of issues regarding the assessment of the planning application (refer to pages 18 & 19 of Delegated Report of Handling). Environmental Health were consulted on receipt of this statement to provide clarity on the main issues raised by the applicant. Environmental Health concluded that no matter what method was used to measure the noise levels from the wind turbine, they would object to the proposed development due to the likelihood of a statutory nuisance being caused by the existing wind turbine.

The Planning Service organised a meeting with Environmental Health on 5 November 2019 as part of a pragmatic approach to finding a sustainable and acceptable solution to resolve the issue. In this particular case it was considered that the potential solution might be to offset the noise impact from the existing wind turbine if the applicants were themselves to apply for a microgenerator turbine of their own, and this was to remain operational until the wind turbines authorised by Planning Permission 2011/251/PPF

on the neighbouring land at Moars Park cease to be operational and that development has been completed. Environmental Health considered this possibility and advised that if the applicants were to have a microgenerator turbine installed it would be sufficient reason to allow the development to benefit from the increase of the permissible noise limits to 45dB. However, before the agent for the application was able to be advised of this finding the applicants lodged their Appeal against non-determination of the application in the period allowed, and as a result a decision must now be made by the Local Review Body as to whether or not permission will be granted.”

The Team Leader – Development Management outlined the Key Issues, namely:

- Noise impacts from proposed new build houses, which are regarded as noise sensitive development
- The application does not comply with Shetland Local Development Plan 2014 Policy GP2 – New development should not have an adverse effect on existing uses.

The Team Leader – Development Management went on to advise the LRB: *“The determining factor is the noise emitted by the neighbouring existing wind turbine. It is relevant for the Council to address anticipated noise impacts for proposed new build houses, which are regarded as “noise sensitive development”, in order to ensure that existing wind turbines do not give rise to adverse effects, and that the quality of life (amenity) of occupiers of new build houses is not unreasonably affected by an existing turbine’s noise.*

The introduction of the “Agent of Change” principle into legislation may lead to changes in the way this consideration is undertaken and recorded, but not the practice of seeking to ensure that anticipated noise impacts are addressed at the outset through design and use of mitigation measures where possible. Although planning authorities are not obliged to follow their previous decisions on applications where similar issues have arisen, consistency in decision making is desirable.

The development does not comply with Shetland Local Development Plan (2014) Policy GP2 as the construction of the dwellinghouse as proposed it has been identified would have a significant adverse effect on an existing use, namely the existing wind turbine, which in future could result in the wind turbine needing to be removed from the neighbouring property at Moars Park.

Therefore, the recommendation would be to refuse this application.”

The Team Leader – Development Management advised that additional late representations had been received. He said that while previously, in accordance with advice received, the LRB would not generally accept representations received after the statutory timescale. He said that it was however at the LRB’s discretion to either refuse or accept these representations. After hearing the Team Leader – Development Management summarise the content of the letters of support from Tingwall Whiteness and Weisdale Community Council, and from Mr and Mrs Ross-Smith, occupants of the neighbouring property, the Chair confirmed for the letters of support to be circulated to the Members of the LRB (Copies attached: Letter from Tingwall, Whiteness and Weisdale Community Council (Appendix 1A); Letter from Mr and Mrs Ross-Smith (Appendix 1B).

In referring to the late representations circulated to the LRB, Mr Sandison advised that while he was an ex-officio member of the Tingwall, Whiteness and Weisdale Community Council he had not been in attendance at the meeting when the decision was taken to submit the letter of support. In that regard, Mr Sandison confirmed that he would continue to take part in the consideration of this application. Mrs Lyall advised on the same terms as Mr Sandison, and would continue to take part.

(The LRB were given time to read the late responses in full).

The Chair then welcomed questions from Members of the LRB to the Team Leader – Development Management.

Mr Bell commented that he assumed that the owners of the wind turbine, Mr and Mrs Ross-Smith could have objected to the development on the basis that the Planning Service had recommended refusal, and if they had concerns that there could be complaints about the noise from their turbine. In that regard, Mr Bell questioned whether weight could not have been given to the fact that Mr and Mrs Ross-Smith had not submitted an objection. The Team Leader – Development Management said that it was not possible to tell at what stage Mr and Mrs Ross-Smith may have become aware of the proposed development, however he said that they would have been aware at the time the applicant's financial involvement had been confirmed in the wind turbine. The Team Leader – Development Management added that neither the permission for the turbine is personal to Mr and Mrs Ross-Smith, nor has granting a personal permission in respect of the proposed house been raised, and personalities involved whose views are being expressed could change.

Mr Bell advised that he had some sympathy that the applicant had been asked to confirm their financial involvement in the wind turbine to mitigate concerns. He said that on request, the applicants had submitted information which confirmed their financial involvement in the turbine, but the applicants had then been told that further information was required to prove they had a substantial financial involvement in the turbine. Mr Bell said that the former case referred to during the presentation, was in fact an English case law, and in that regard he questioned whether it would be binding in Scottish Law. The Solicitor advised that where the provisions of planning legislation were the same in England as in Scotland, English case law, though not strictly binding, was usually regarded as strongly persuasive.

Mr G Smith referred to the chronology of the consultation process, and noted that the comments from Environmental Health on 17 July 2019 had made no mention of the wind turbine. Environmental Health had been consulted again on 22 August, and responded the following day referring then to the adjacent wind turbine. Mr G Smith questioned therefore what had occurred in the period between consultations to prompt Environmental Health for further comments. The Team Leader – Development Management advised that the application had been for a new property and an air-source heat pump, and during officers assessment of the application the presence of the wind turbine had been identified. At that time it was noted that the initial advice from Environmental Health did not refer to the wind turbine, and a check was made that their submission had taken into account the wind turbine. In responding to a comment from Mr G Smith that any concerns regarding the presence of the wind turbine did not appear to be at the fore front, the Team Leader acknowledged that a safeguarding check had been missed by Business Support within the Planning Service, who carry out validation checks and initial consultations, and at that stage no initial consultation in respect of the presence of the wind turbine had been undertaken.

In response to a request for clarity on the noise levels from different sized wind turbines, the Team Leader – Development Management advised that generally speaking the noise generated would be relative to the size and type of wind turbine, however other issues such as quality of noise and characteristics also had to be taken into account. The Team Leader – Development Management said that the guidance referred to by the applicant, ETSU-R-97, which had been devised with Wind Turbine industry input, was more relevant to developments of large scale wind turbines. He advised that there is no distinct guidance to advise the Local Authority to consider and assess smaller domestic sized wind turbines, and that is why Council guidance was produced. The Team Leader – Development Management advised that officers from Environmental Health were in attendance to answer any technical questions.

Ms Hughson commented that the recommendation from Environmental Health had therefore been made on guidance, rather than Policy. The Team Leader – Development Management confirmed that the Council does not have small wind farms as part of Policy. He advised that the procedure used is part of a toolkit to make sure applications are assessed in terms of the Local Development Plan (LDP) and was a document published by the Environmental Health Service and it is not in itself Supplementary Guidance adopted by the Council. He said that it is standard practice in the process of arriving at planning policies to refer to standards that stakeholders to the development process require, but not to repeat these in the planning policies themselves. This allows for other stakeholders changes to be taken into account and does not require every single update they make to have to be accounted for by a change in planning policy. The Team Leader – Development Management advised that Policy documents are framed around a 5 year timescale, and other public documents are not included, but we have requirements under the Planning Acts to have regard to impacts a development could have and so need to take advice. In responding to a further question, the Team Leader – Development Management confirmed that the Small Wind Turbine Noise Procedure did not form part of the LDP.

In referring to the wind information provided at the end of the report, Mrs Lyall highlighted that on more than 95% of the days of the year the noise would be carried away from the proposed development site, and that in only a few days of the year the wind would be lighter. The wind is more in the North Easterly direction in the winter, when people are very unlikely to be sitting out enjoying the amenity of their garden, and she said it is therefore unlikely there would be impact from the noise of the turbine. The Team Leader – Development Management advised that the characteristic of the site can have a bearing, and he acknowledged that the greater proportion of the time the proposed house site would not experience wind from the direction of the wind turbine. The Team Leader – Development Management suggested that questions relating to noise levels from the turbine should be directed to the Animal Health Scheme and Research Officer, Environmental Health (AHSRO, EH). The AHSRO, EH explained that even if the wind was from the opposite direction, noise would still be experienced from the turbine. The applicants would still get the full noise impact from the turbine anywhere from the centre position facing the site to 90 degrees in either direction. The noise level would only reduce by 2dB in the opposite direction and by up to 10dB when the turbine is facing directly opposite the site. In this case, the predicted noise level is 10dB and 14dB above the noise threshold, so the effect is not relevant. The AHSRO, EH said that wind speeds are considered in prevailing background noise assessments by plotting the background noise levels in dB against wind speed in metres per second.

Mr C Smith referred to the request to the applicant for proof of financial involvement in the wind turbine, which had said had been provided, however that confirmation of

involvement had not been considered sufficient. In that regard, Mr C Smith questioned what other information had been required of the applicants in order for the application to move forward. The Team Leader – Development Management advised that the information sought was to enable the Planning Service to get a picture on whether the applicants benefit was substantial enough, and from the letter provided, at face value, that could be one pound. The Team Leader – Development Management said that in his view, that was not a substantial financial benefit. The Team Leader – Development Management said that the additional information would be on the income generated by the turbine and what proportion was being offered to the applicant. In responding, Mr C Smith questioned when proof of financial benefit became part of a planning decision, and said that he found it very difficult to ask for private information to determine a planning application. The Team Leader – Development Management advised that there was a tool available to the Planning Service, as set down in ETSU-R-97, that allows for a higher noise limit to be deemed acceptable for properties with occupants that have financial involvement. He said however that it was the applicants' right not to provide further detail, so the Planning Service then tried to find another means to resolve the issue, and were therefore being proactive.

Mrs Lyall commented that had the proposed house been adjacent to a road, airport or quarry that level of noise would be higher than that permissible for small wind turbines. The Team Leader – Development Management acknowledged the different methods, standards and frequency to measure noise from these noise sources that exist.

In response to a comment regarding the noise from the air source heat pump, the Team Leader – Development Management said that from a planning perspective, the air source heat pump was to be sited immediately outside the house against a wall, so more noise would be going away. The AHSRO, EH, advised that air source heat pumps are assessed on different standards, and allows 42 dB limit. He went on to advise that it would be a similar situation if there was a financial involvement in anything, if you hear the noise it would be a different association than with someone else's property so that is why under permitted development there are increased limits as the association with the noise would be positive, rather than negative.

The Chairperson then invited the applicant to address the LRB. Mr N Moncrieff, read from a prepared paper, as follows:

"I will start with Paragraph 33 of the Scottish Planning Policy - important today because the local development plan is over 5 years old and also lacks relevant policy.

"Where relevant policies in a development plan are out-of-date or the plan does not contain policies relevant to the proposal, then the presumption in favour of development, that contributes to sustainable development, will be a significant material consideration. Decision makers should also take into account any adverse impacts which would significantly and demonstrably outweigh the benefits when accessed against the wider policies in the SPP. The same principle should be applied where a development plan is more than five years old."

The officer claims our proposal doesn't comply with a part of policy GP2 stating; "construction of the dwellinghouse, as proposed, would have a significant adverse effect on an existing use, namely the wind turbine."

Firstly, perhaps most importantly, our neighbours, don't share that concern, because it can't be demonstrated it would have any effect on the existing use, and when we go

on to read the rest of GP2 it shows that our proposal, is consistent with National Planning Policy and, it does not compromise acceptable health and safety standards or levels, which makes their conclusion even more tenuous.

This whole premise falls apart, if the report doesn't assure you, that an enforceable noise complaint is inevitable, otherwise there is no substance to any of it, but we've spent hundreds of hours, and thousands of pounds telling them there's nothing to complain about and they can't reliably show any of us, any different.

The report also worries about precedent, but they must be the only ones who think, the current situation is the best option, because there is no policy, and they have been very careful not to mention that and what they called "policy" throughout our application, has no statutory status whatsoever, it was produced and put straight to use as de facto policy without any consultation or scrutiny and without any proper approval. So when they say it has been, consistently applied since its creation, what they mean is, they have consistently operated outside of policy, and relied upon not being challenged on it.

so really, these reports only serve to clarify a few things which are not capable of supporting a refusal.

The first, is the reports pessimistic prediction, based on events we've never seen before in Shetland and certainly not supported by any policy. The second, are these ill-advised, indefensible adventures into de facto policy making, and anything that resulted from it. Notwithstanding that when the turbine was approved there was already permission for a house on the site.

And that decision was made using the last real policy that actually had Council approval, if its either the policy used until 2015 or no policy at all, both options, bring us back full circle, to the turbines decision notice, and the 100 meter safe distance specified in it, which nobody can dispute.

If the turbine was suitable then, then a house is suitable now, because nothing has changed and the presumption has to be in favour of our development, because we're not trying to do something unreasonable, we're trying to build our long term home, where we've already lived for 10 years.

And we hope you decide in our favour. Thank you for your time".

The Chairperson welcomed questions from Members of the LRB to Mr Moncrieff, the applicant.

In response to a question from Mrs Hughson, Mr Moncrieff advised that they have never had any problems with the noise from the wind turbine. In response to a question from Mr Bell, Mr Moncrieff advised that the nearest distance from their current property to the new property would be 60-70 metres.

In referring to page 161 of the papers, Mr Bell noted the potential solution put forward by Environmental Health and the Planning Service, which he said bizarrely would involve the applicant building a turbine. Mr Bell sought Mr Moncrieff's opinion to that proposal. Mr Moncrieff said that they would be receptive of that proposal if that was the only way to get their house built, but he questioned the rationale for the solution to noise being more noise.

There were no further questions to Mr Moncrieff, and the Chairperson thanked Mr Moncrieff for the information provided.

During the discussion, Mr C Smith commented that he had found the application to be an interesting read, and that the applicant has been very reasonable and understandable as the goal posts have changed so often. Mr C Smith advised on his concern at the requirement for the applicant to prove financial benefit, when he did not see that financial benefit was relevant in the consideration of planning applications. Mr C Smith referred to the aim to encourage people to live in the country and support their community, but in this case the recommendation is for refusal of the new house due to a small wind turbine. He referred to the efforts of the applicant to assure the Planning Service and the Council, but then the goal posts keep changing. He also said that the Planning Service failed to meet the determination date on two occasions, and he referred again to the need to encourage young people to stay in their district to support the community and the economy. Mr C Smith moved that the LRB approve the application, on the grounds advised.

The Executive Manager – Planning said that in terms of material planning consideration and financial matters trying to get across whether a higher noise level from the wind turbine as experienced at the proposed house is acceptable or not was part of Environmental Health's assessment. The Executive Manager – Planning said that if any Member of the LRB is not happy with the way things have proceeded on the application there was the complaints procedure. The Executive Manager - Planning said that Members of the LRB need to make sure that the decision on the application is made on material planning considerations, rather than to agree or disagree on how the case has been handled.

Mr C Smith said that his motion stood, and Mrs Hughson seconded Mr C Smith's motion.

Mrs Hughson said that she had every sympathy with the young couple involved. Mrs Hughson commented that while she understood Planning Policy, she was not sure on guidance. She said that the neighbours are very supportive, and the Community Council are very supportive, Mrs Hughson referred to Mr C Smith's comments to try to encourage people to stay in their localities and build their home. Mrs Hughson said that Mr and Mrs Moncrieff have stayed in the area for 10 years previously and going on to build a new house shows their commitment to the area.

Mr Bell referred to the comments from Environmental Health in terms of noise from the turbine and to the effect the applicant having a financial involvement in the wind turbine would have on their perception of the noise. He said that while he understood that logic, that would only hold for the current applicants. He said that should the applicants sell their property there would be no guarantee the new owner would have any financial involvement, and that was where the logic falls down. Mr Bell acknowledged however that he could not speak on behalf of future owners of the property. Mr Bell confirmed that he supported the motion.

Mr Bell said that in general terms, for this one item, there had been approximately 320 pages to read, and there had been a lot of duplication with much being in reverse chronological order. In that regard, he said that there must be a better way to present the information, and suggested reports include a statement of facts, advice, and guidance on legalities. The Chair commented also on the amount of repetition in the papers. In responding, the Executive Manager – Planning advised the LRB that much of the information included is what is specified in regulations, however he undertook to

review the presentation of reports with the Council's Legal Service. The Chair said that a simple timeline of processes would be much easier to follow.

Mr G Smith said that he supported Mr C Smith's motion, however he acknowledged there was work to do to ensure that a proposal that is made is acceptable. Mr G Smith said that Environmental Health had followed guidance but that had not led to a common sense outcome. Mr G Smith said that he also supported the suggestion for the simplification of reports as in their current format reports can be difficult to understand, and he commented that all involved want to make the best decisions for all concerned.

In terms of granting the application, the Chair said that the LRB are content that the applicant and the owner of the wind turbine have entered into an agreement, that there is a financial agreement, however no one has been party to that detail. The noise levels and decibels are borderline, and that a small wind turbine next door is not obtrusive on the applicants property.

The Executive Manager – Planning said that, if Members wish, there were the conditions that would usually apply to planning applications of this nature, and therefore the LRB could grant the application, with conditional approval.

Mr G Smith commented that the reference made to financial considerations was not a planning consideration, and should therefore not be included as a justification of granting the application. The Chair said that the Planning Service have no problem with the application, but it is Environmental Health that had the problem. She said that the issue is with ever increasing regulations, and that planning regulations are all linked to Environmental Health and SEPA, which is a constantly changing landscape so when applications are made, applicants are not aware of legislation, and a deepening quagmire of conditions that have to be met. The Executive Manager – Planning advised that the LDP allows planning officers to assess applications; information is received from a number of sources, and while Environmental Health work with guidance, it is not planning guidance.

The Executive Manager – Planning said that there was the option for the LRB to adjourn for five minutes to enable advice to be taken from officers on the exact wording of their decision. Mrs Hughson however questioned what the issue was with the motion as it stands. She said that the guidance followed by Environmental Health was not Policy and the guidance is outwith the LDP. Mr Bell said also that financial involvement could set a precedent in the future, and therefore he would be more comfortable that financial involvement should not form part of the justification. Mr Sandison suggested that the LRB take up the suggestion of an adjournment. The Chair agreed to adjourn the meeting, for the Chair to get advice on the wording of the decision.

(The meeting adjourned at 3pm)

(The meeting reconvened at 3.10pm)

Present:

M Bell
M Lyall

C Hughson
A Manson

D Sandison
G Smith

C Smith

In Attendance (Officers):

I McDiarmid, Executive Manager – Planning
J Holden, Team Leader – Development Management
A Melkivik, Planning Officer
D Robertson, Team Leader – Environmental Health
L Halcrow, Animal Health Scheme Research Officer, Environmental Health Service
P Sutherland, Solicitor
L Adamson, Committee Officer

The Chair advised that the Members of the LRB were all convinced that any noise level from the wind turbine would be minimal, and that having taken advice during the adjournment, and in agreement with Mr C Smith, Ms Manson moved that the application be granted on those grounds, with the normal terms and conditions set by the Planning Service. Mrs Hughson seconded.

Decision

The Committee reviewed the case on an application for planning permission for a local development where an officer (the appointed person) had failed to give notice of their decision or determination within the period allowed, under the Planning Scheme of Delegations in terms of Sections 43A(8) to (16) of the Town and Country Planning Scotland Act 1997 (as amended), and in so doing agreed to APPROVE the application, subject to the normal terms and conditions set by the Planning Service.

03/20 **Local Review Ref: 2019/203/PPF - LR37 - Proposed extension to rear of the dwelling, and conversion of existing garage to form utility and snug: 5 Fogralea, Lerwick, Shetland, ZE1 0SE**

The LRB considered a report by the Team Leader - Development Management to review the decision on an application for planning permission for a local development that has been taken by an officer (the appointed person) under the Planning Scheme of Delegations in terms of Sections 43A(8) to (16) of the Town and Country Planning Scotland Act 1997 (as amended) [Record Appendix 2].

The Chair invited the Planning Officer to give a presentation to the Local Review Body (LRB).

The Planning Officer gave a presentation, which illustrated the following:

- Location Plan
- Key Issues
- Proposed Site Plan
- Proposed Elevations
- Views of Existing Dwellinghouse

The Planning Officer then advised the LRB on the following: *“No. 5 Fogralea is located to the west of Clickimin Loch, on the right hand side of the road as you are travelling up the hill on Fogralea. The house as it stands is a bungalow with a grey tiled roof and pale pebble dash external walls.*

The site plan shows how the extension is to be located to the rear of the existing dwellinghouse and has a square floor plan. The two storey extension proposed is to project from the rear of the existing dwelling which is single storey in height. The proposal extends 1.49m above the ridgeline of the existing property. The extension's design is a rectangular cuboid in shape, being taller than it is wide, has a flat roof and is to be clad with board timber.

GP3 All Development: Layout and Design, states that: All new development should be sited and designed to respect the character and local distinctiveness of the site and its surroundings.

So what is the character of this area? This is a residential area of Lerwick characterised by similar height properties with similar design principles and materials.

The Planning Service considered that due to the height and mass of the extension proposed, a large block like shape will project above the existing ridge line of the existing dwellinghouse. The flat roof gives the design a towering appearance which is not subservient to the existing dwellinghouse. Due to the topography of the area, which slopes upwards to the west, the extension will have a prominence in views from dwellings and the road to the west of the application site towards the Clickimin Broch. It is proposed that the extension shall be clad with vertical board timber which is to be painted/stained. The existing dwellinghouse has black and white coloured pebble dashing and so the difference in materials will further add to the stark contrast between the existing dwellinghouse and the proposed extension. Whilst the materials could be changed the design and mass of the extension would remain unacceptable in its surroundings. A single storey extension of this design may be more acceptable however, that would decrease the floor space created significantly.

SuDS had not been shown as part of the development. The agent provided evidence that Scottish Water would accept surface water into the existing drain. The Shetland Local Development Plan policy WD3 requires SuDS and whilst this may be an acceptable departure from policy it still requires advertising as part of the planning process.

The proposed extension was considered not to be in accordance with policy. This is because of SLDP Policy GP3 in that the design of the proposed extension does not harmonise with its surroundings due to its design, mass and proposed material finishes."

The Chair thanked the Planning Officer for the presentation, and welcomed questions from Members of the LRB.

Mr Sandison enquired whether there had been any pre-application discussion on the design of the proposed extension and on whether the application was likely to be approved. The Planning Officer advised that there had been no official pre-application advice recorded on the planning service system.

There were no further questions, and the Chair invited the applicant or representative of the applicant to address the LRB.

Mr M Dennis, Richard Gibson Architects, advised that he would represent the applicant. Mr Dennis said that to his knowledge there had been no pre-application discussion between the applicant and the Planning Service. During his address, Mr Dennis advised that a previous application for an extension with a pitch roof had been

approved in 2005. He said that this application was for a flat roof to the extension which would have less mass than the pitch roof. He advised that it had not proved viable for the applicant to build the extension relevant to the previous application, and therefore an alternative design had been made. He said that the applicant could have considered a pitch roof for the subsequent application, but that would have more overshadowing than the flat roof proposed.

Mr Bell referred to the comments in the report that the extension does not blend in, nor is in character with the surrounding area. In responding, Mr Dennis acknowledged that the extension was like a box, but he advised that various options had been looked at for the extension, and this one was found to be the best. He said that the height of the proposed extension was not as high as that of the previous application, but the extension would still be higher than the main property. Mr C Smith enquired whether consideration had been given to reduce the height of the extension to marry in with the ridge of the main property. Mr Dennis advised that both applications had been designed to have a ground floor staircase up to the new link, and the height of the extension was at a minimum with a flat roof.

Mr G Smith referred to the Planning Officer's recommendation for refusal relating to the external materials, mass of the extension, etc. and he questioned whether any consideration had been given to use different materials to make the extension more in keeping with the area. Mr Dennis said that he had not been involved himself, but the design and montage of finishes was felt to be a softer approach.

Mr Bell referred to the other issue with the drainage. Mr Dennis advised that when there was found to be an objection around drainage, discussions had taken place with Scottish Water who were happy for a connection to be made to the existing system and no additional connection was needed. That information had been forwarded to the Planning Service.

Mrs Lyall said that in her opinion building the extension on the back of the property was the best option, and the extension would be sheltered by the trees, and she did not find the extension would be disrespectful to the area. These were slightly dated bungalows, to be brought into the 21st century. She said that the applicants would have a much more pleasant living space, and the extension would make the property much more comfortable to live in.

In response to a question from Mrs Hughson, it was confirmed that no neighbours had objected to the proposed extension.

Mr Sandison said that from the information and drawings provided, his first reaction had been that the extension would be out of character with the area, and he said on that basis, he supported the recommendation of officers. Mr Sandison moved that the application be refused. Mr Bell seconded.

Mr G Smith said that he always found the character of an area to be a difficult concept to be definitive about, as character does and can need to change in time. In that regard, he said he did have sympathy for the applicant, to make the best use of the property they have. He said the extension was on the back of their property and would be reasonably well protected from the public's view. Mr G Smith said that the previous application, where the ridge of the roof had been higher, had been granted permission, however he acknowledged that extension may have been more in character, having a pitched roof. Mr G Smith questioned the visual attractiveness of the extension, but he acknowledged that was also subjective. Mr G Smith moved, as

an amendment, that the application be approved with the normal planning conditions. Mrs Lyall seconded.

After summing up, voting took place by a show of hands, and the result was as follows:

Amendment (Mr G Smith)	4
Motion (Mr D Sandison)	2

Decision

The Committee reviewed the decision on an application for planning permission for a local development that has been taken by an officer (the appointed person) under the Planning Scheme of Delegations in terms of Sections 43A(8) to (16) of the Town and Country Planning Scotland Act 1997 (as amended), and in so doing agreed to uphold the appeal, and approve the application, with the normal planning conditions.

The meeting concluded at 3.35pm.

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Chair