

FPRB Reference: 21/374

## Review Decision Notice

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Decision by Fife Planning Review Body (the FPRB)

- Site Address: 41 Learmonth Place, St. Andrews, Fife KY16 8XF
- Application for review by Mrs Maureen Penman against the decision by an appointed officer of Fife Council
- Application 21/02318/FULL for Full Planning Permission for Installation of air source heat pump (amendment to 19/02448/FULL)
- Application Drawings:  
01 - Location Plan, 02 - Proposed Site Plan, 03 - Site Survey, 04 - Supporting Statement, 05 - Details, 06 - Photographs, 07 - Noise Report,
- No Site Inspection took place.

Date of Decision Notice: 11th May, 2023

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### Decision

The FPRB reverses the determination reviewed by them and approves Planning Permission for the reason(s) outlined below in section 4.0.

#### 1.0 Preliminary

- 1.1 This Notice constitutes the formal decision notice of the Local Review Body as required by the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013.
- 1.2 The above application for Planning Permission was considered by the FPRB at its meeting on 24th April, 2023. The Review Body for this Notice of Review was attended by Councillors David Barratt, Fiona Corps, Lynn Mowatt and Alycia Hayes.

#### 2.0 Proposal

- 2.1 The proposed development relates to a recently installed air source heat pump (ASHP) located within the curtilage of a replacement dwellinghouse (constructed between November 2019 – 2022) at 41 Learmonth Place in St. Andrews. The replacement dwellinghouse relates to Planning Permission 19/02448/FULL and is situated within a modern well-established residential area of St. Andrews. There are no historic designations associated with the dwellinghouse, or within the immediate area. The dwellinghouse is enclosed by Learmonth Place to the north-east, existing housing to the south-east and north-west and by parkland to the south-west.
- 2.2 This proposed development seeks retrospective planning approval for the ASHP installation. The ASHP installation was completed on 22 March 2021.

- 2.3 Planning Permission 19/02448/FULL shows that the ASHP was originally to be placed on the replacement dwelling's south-east elevation and was to be a Mitsubishi Heat Pump. Fife Council's Environmental Health (Public Protection) team also advised that noise levels associated with the proposed ASHP should comply with the following noise condition:

*"The total noise from all plant, machinery or equipment shall be such that any associated noise complies with NR 25 in bedrooms, during the night; and NR 30 during the day in all habitable rooms, when measured within any relevant noise sensitive property, with windows open for ventilation."*

AND

*"For the avoidance of doubt, day-time shall be 0700-2300hrs and night-time shall be 2300- 0700hrs."*

- 2.4 The 19/02448/FULL approval was conditioned on this basis. However, and without any prior consent from Fife Council, the ASHP was installed in a different location, within an outbuilding located within the south-western corner of the rear garden and the specification model of the ASHP was also changed. Furthermore, the applicant had produced no evidence to satisfactorily discharge the 19/02448/FULL noise condition.

### **3.0 Reasoning**

- 3.1 The determining issues in this review were matters relating to previous objections, residential amenity (noise), low carbon and design and visual impact.
- 3.2 The FPRB considered the terms of the Development Plan which comprises the Adopted National Planning Framework 4 (2023) ("NPF4") and the Adopted FIFEplan Local Development Plan (2017) ("FIFEplan"). The FPRB also considered the provisions of Making Fife's Places Supplementary Guidance (2018) (including Appendices), Low Carbon Fife Supplementary Guidance (2019), PAN 1/2011-Planning and Noise, Fife Council's Planning Customer Guidelines on Home Extensions (including conservatories and garages), Fife Council's Planning Customer Guidelines on Daylight and Sunlight (2018), Fife Council's Planning Customer Guidelines on Garden Ground (2016), Fife Council's Planning Customer Guidelines on Air Source Heat Pump Guidance - Planning Permission and Certificate of Lawfulness, BRE 's Site Layout Planning for Daylight and Sunlight (2022), MCS Planning Standards for Permitted Development of Wind Turbines and Air Source Heat Pumps on Domestic Premises ("MCS Standards"), and The General Permitted Development (Scotland) Order 1992 as amended.
- 3.3 Firstly, the FPRB noted the previous objection and multiple submissions to the FPRB from the adjacent neighbour and considered these against the requirements of the various matters presented below.
- 3.4 In this regard, the FPRB initially reviewed residential amenity impacts of the proposal on the surrounding area, cognisant of NPF4 Policy 14 (Design, Quality and Place) and Policy 16 (Quality Homes) which seek to protect the amenity of the local area and avoid detrimental amenity impacts on neighbouring properties and Policies 1 (Development Principles) and 10 (Amenity) of FIFEplan which includes criteria requiring development proposals to demonstrate that there would be no significant detrimental impacts on residential amenity. They also considered National Guidance

PAN 1/2011 Planning and Noise to consider best practice acoustic design and mitigation in addressing proposals that generate noise and the relevance of the MCS Planning Standards for permitted development ASHP proposals.

- 3.5 Giving consideration to the distance between the ASHP and the nearest third-party residential windows to the west, the FPRB considered the potential noise impacts to the adjacent residential occupier.
- 3.6 The FPRB noted that detailed documentation had been submitted by the Objector (and adjacent neighbour) with respect to noise. They then considered whether the proposal would comply with relevant best practice noise guidance and industry standards that seek to ensure that a suitable level of amenity would be achieved to any sensitive neighbouring uses, including residential. In the first instance, the FPRB noted the relevance of the MCS Planning Standards for ASHP which generally apply to permitted development proposals ASHPs. They noted that this document identified various criteria for ASHP installers to comply with which avoids the need to obtain planning permission, subject to a series of caveats. In addition to noting the Objector's detailed submissions in relation to noise, the FPRB also considered the appellant's noise report (prepared by WSP). They noted that this report suggested that the MCS Planning Standards were overly simplistic in assessing all ASHP proposals and that the MCS Planning Standards had been created to assist MCS installers undertaking typical ASHP installations. They then considered the WSP report, which suggested that various MCS assumptions should be updated based on applied acoustic theory/assessment to provide a more accurate representation of potential noise impacts. This included updating matters relating to 'directivity' of noise – and whether noise would reflect off a surface area, or not, and whether this noise would then be channelled towards any certain sensitive receptors. The FPRB then considered the WSP report alongside a noise report prepared by an independent third-party acoustic consultant (Atkins) commissioned by the LRB Planning Advisor. The Atkins report outlined that the proposal could meet the MCS Planning Standards based on the appellant's noise report (prepared by WSP).
- 3.7 The FPRB noted the above and agreed with the appellant's position on this matter, however, as the WSP report was based on a desktop review, a condition would be required to provide on-site noise measurements at the ASHP source (i.e. adjacent to it) to confirm that predicted noise levels within the WSP report would be achieved. The specific wording of this condition was delegated to the Head of Planning and Head of Legal Services but the FPRB agreed to the principle that if these levels were not achieved, suitable mitigation would be required to achieve the predicted or suitable levels agreed with the Planning Authority to demonstrate potential compliance with the Council's noise requirements (i.e. NR25/30) using predicted at-source measurements. As the ASHP had already been installed, it was suggested that this survey be completed and submitted for approval to the Planning Authority within 6 weeks of any decision being issued and mitigation installed, if required, and noise levels re-surveyed to demonstrate compliance thereafter.
- 3.8 The FPRB then turned to the assessment of noise standards and, in particular, whether the Council's noise requirements could be met. They noted the concerns from the objector about various flaws in the appellant's assessment of this issue. In this regard, the FPRB then acknowledged requirements from the Council's Public Protection team for noise generating proposals. Specifically, that such proposals required to achieve compliance with an industry standard called the 'Noise Rating' standard (NR 25 and NR30) within any nearby residential properties, with lower

(quieter) ratings requiring in bedrooms during the night time period. In this regard, the FPRB considered extensive concerns raised by the objector regarding the predicted noise assessment undertaken by the appellant in considering whether the NR 25 and NR30 requirements had been met. They also noted the WSP report, which suggested potential compliance, and an updated consultation response from the Public Protection team which was received via a standard consultation on the LRB case. Updating their position from their previous response, the Public Protection team advised that the proposal could accord with the Council's noise requirements (NR 25 and NR30) and therefore could comply with the noise condition on the previous planning permission. Accordingly, after considering this issue and noting the comments from the Public Protection team regarding potential compliance with the above requirements, the FPRB resolved that the proposal would not result in unacceptable noise impacts to the nearby residents, including the property to the west, subject to a condition requiring compliance with the NR25 and NR30 noise standards on any issued planning permission. As such, the FPRB reversed the decision of the Appointed Officer on this matter. They therefore concluded that the proposal would comply with NPF4 Policy 14 (Design, Quality and Place) and Policy 16 (Quality Homes), FIFEplan Policies 1 (Development Principles) and 10 (Amenity) and the aforementioned guidance on noise with respect solely to potential impact on residential amenity.

- 3.9 The FPRB also considered that there would be no unacceptable impact on garden ground to accommodate the future needs of residents nor any issues on daylight or sunlight to adjacent occupiers. The FPRB therefore concluded that the proposal would be acceptable in terms of residential amenity and, in particular, noise, complying with NPF4 Policies 14 (Design Quality and Place) and 16 (Quality Homes) and Policies 1 (Development Principles) and 10 (Amenity) of the Adopted FIFEplan with respect to this matter. They therefore agreed with the Appointed Officer's assessment on this issue.
- 3.10 The FPRB then considered whether the proposal supported the transition to a low carbon economy assessing the proposal against NPF4 Policies 1 (Climate and Nature Crises), 2 (Climate Mitigation and Adaption), FIFEplan Policies 1 (Development Principles) and 11 (Low Carbon Fife) and Fife Council's Low Carbon Fife Supplementary Guidance. For proposals of this nature, the key determining factor in this assessment relates to the nature of the low/zero carbon technologies to create suitable transition towards a reduction in carbon emissions. In this instance, the FPRB considered the provision of an ASHP in lieu of potential fossil fuel based energy generation (i.e. gas boiler), the proposal would seek to address low carbon sustainably principles. The FPRB therefore concluded that the proposal would be acceptable in terms of carbon reduction and sustainability, complying with relevant objectives within NPF4 Policies 1 (Climate and Nature Crises) and 2 (Climate Mitigation and Adaption) and 2 and FIFEplan Policies 1 (Development Principles) and 11 (Low Carbo Fife) and the above Supplementary Guidance with respect to this matter. They therefore agreed with the Appointed Officer's assessment on this issue.
- 3.11 Turning to the next issue, the FPRB assessed the design & visual impact on the proposal within the surrounding context. They considered that the location, height design and finish of the ASHP would be acceptable and created a relatively minor addition to the existing built form associated with the wider replacement house. They contended that its small-scale nature and containment within a modest outbuilding (that itself falls within the permitted development criteria) would result in a reasonable built form outcome along the rear elevation. They considered that provision of the

ASPH and its accompanying metal grill would be compatible with rear boundary treatments in this location - which contain varied materials and external finishes including brick, render and timber slatted fencing. They also considered that it would result in a reasonable outlook for users of the adjacent park and public open space. The FPRB thus concluded that the proposal would comply with NPF4 Policy 14 (Design, Quality and Place), NPF4 Policy 16 (Quality Homes) FIFEplan Policies 1 (Development Principles) and Policy 10 (Amenity) with respect solely to design and visual impact. They therefore agreed with the Appointed Officer's assessment on this issue.

- 3.12 Overall, The FPRB concluded that the development would not result in any unacceptable noise issues to nearby residents subject to conditions requiring the measurement of predicted noise levels at the ASHP source (and, if required, suitable mitigation to demonstrate acceptable potential noise levels at sensitive properties) and that noise levels within any nearby residential properties complied with the Council's noise requirements (i.e. NR25 and NR30). They considered that the proposal would also seek to address wider low carbon energy objectives to reduce fossil fuel use and carbon dioxide emissions. They therefore considered that the proposal complied with NPF4 Policies 1 (Climate and Nature Crises), 2 (Climate Mitigation and Adaption), (14 (Design, Quality and Place) and 16 (Quality Homes), FIFEplan Policies 1 (Development Principles), Policy 10 (Amenity) and Policy 11 (Low Carbon Fife). They therefore resolved that the proposal complied with the Development Plan. The FPRB did not consider there to be any other matters for consideration or any material considerations which would outweigh the Development Plan position. The FPRB therefore decided that the application should be approved and reversed the Appointed Officer's recommendation subject to the conditions presented above and to reference policies within the recently adopted National Planning Policy 4, which was adopted by the Scottish Government after the Appointed Officer had issued their original decision.

#### **4.0 Decision**

- 4.1 The FPRB reverses the decision of the Appointed Officer and approves planning permission subject to the following conditions and reasons:

1. Within six weeks of the decision being issued, an 'at-source' noise survey at the Air Source Heat Pump shall be undertaken and submitted to Fife Council for approval to demonstrate compliance with the predicted sound pressure levels at this source and the predicted sound pressure levels 1m from the first-floor façade of the adjacent residential property to the west. Alternatively, if these levels are exceeded, suitable mitigation shall be agreed in writing and thereafter installed with noise levels re-tested to demonstrate compliance with this or suitable alternative noise levels agreed by Public Protection. Thereafter, the development shall be carried out in accordance with these approved details unless otherwise agreed in writing with Planning Authority in consultation with Protective Services.

**Reason:** In the interests of residential amenity; to confirm the on-site noise levels at the source and to ensure that adjacent residential dwellings are not subjected to adverse noise from the air source heat pump and that NR 25 and NR30 noise levels could be met based on predicted and at-source noise levels.

2. The total noise from all plant, machinery or equipment shall be such that any associated noise complies with NR 25 in bedrooms, during the night; and NR 30 during the day in all habitable rooms, when measured within any relevant noise sensitive property, with windows open for ventilation. For the avoidance of doubt, day time shall be 0700-2300hrs and night time shall be 2300-0700hrs.

**Reason:** In the interests of residential amenity; to ensure adjacent residential dwellings are not subjected to adverse noise from the air source heat pump.

## Advisory notes

1. The length of the permission: This planning permission will lapse on the expiration of a period of three years from the date of this decision notice, unless the development has been started within that period (See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).
2. Notice of the start of development: The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).
3. Notice of the completion of the development: As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended))

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Proper Officer

# **NOTICE TO ACCOMPANY REFUSAL ETC. TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997**

*Notification to be sent to applicant on refusal of planning permission or  
on the grant of permission subject to conditions*

## **NOTICE TO ACCOMPANY REFUSAL ETC. TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997**

*Notification to be sent to applicant on determination by the planning authority of an  
application following a review conducted under section 43A(8).*

1. If the applicant is aggrieved by the decision of the planning authority -
  - (a) to refuse permission for the proposed development;
  - (b) to refuse approval, consent or agreement required by a condition imposed on a grant of planning permission; or
  - (c) to grant permission or approval, consent or agreement subject to conditions,

the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.

2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.