## Aberdeenshire COUNCIL



Viewmount Arduthie Road Stonehaven AB39 2DQ Tel: 01467534333 Email: planningonline@aberdeenshire.gov.uk
Applications cannot be validated until all the necessary documentation has been submitted and the required fee has been paid.
Thank you for completing this application form:
ONLINE REFERENCE 100115259-003
The online reference is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the planning Authority about this application.

## Applicant or Agent Details

Are you an applicant or an agent? * (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application)

## Agent Details

Please enter Agent details

| Company/Organisation:Ref. Number: | Inspired Design \& Development Ltd |  |  |
| :---: | :---: | :---: | :---: |
|  |  | You must enter a Building Name or Number, or both: * |  |
| First Name: * | Gary | Building Name: |  |
| Last Name: * | Black | Building Number: | 27 |
| Telephone Number: * | 01569764183 | Address 1 <br> (Street): * | Evan Street |
| Extension Number: |  | Address 2: |  |
| Mobile Number: |  | Town/City: * | Stonehaven |
| Fax Number: |  | Country: * | Scotland |
|  |  | Postcode: * | AB39 2EQ |

Email Address: *
iddapplications@gmail.com

Is the applicant an individual or an organisation/corporate entity? *
【 IndividualOrganisation/Corporate entity

## Applicant Details

| Please enter Applicant details |  | You must enter a Building Name or Number, or both: * |  |
| :---: | :---: | :---: | :---: |
| Title: | Mrs |  |  |
| Other Title: |  | Building Name: | 9 |
| First Name: * | Linda | Building Number: |  |
| Last Name: * | Pirie | Address 1 <br> (Street): * | Hume Square |
| Company/Organisation |  | Address 2: | Chapelton of Elsick |
| Telephone Number: * |  | Town/City: * | Stonehaven |
| Extension Number: |  | Country: * | United Kingdom |
| Mobile Number: |  | Postcode: * | AB39 8AN |
| Fax Number: |  |  |  |
| Email Address: * |  |  |  |

Site Address Details

| Planning Authority: |
| :--- |
| Full postal address of the site (including postcode where available): |
| Address 1: |
| Address 2: |
| Address 3: |
| Address 4: |
| Address 5: |
| Town/City/Settlement: |
| Post Code: |
| Northing |
| Please identify/describe the location of the site or sites |

## Description of Proposal

Please provide a description of your proposal to which your review relates. The description should be the same as given in the application form, or as amended with the agreement of the planning authority: *
(Max 500 characters)
Full Planning Permission for Erection of Children's Day Care Nursery (Class 10 Non-Residential Institutions), Erection of Children's Workshop, Formation of Wildlife Pond and Erection of Dwellinghouse (Renewal of Planning Permission
APP/2018/1279) at Land Adjacent to Rothnick Croft, Netherley, Stonehaven, AB39 3QU

## Type of Application

What type of application did you submit to the planning authority? *Application for planning permission (including householder application but excluding application to work minerals).Application for planning permission in principle.Further application.Application for approval of matters specified in conditions.

What does your review relate to? *
囚
Refusal Notice.Grant of permission with Conditions imposed.No decision reached within the prescribed period (two months after validation date or any agreed extension) - deemed refusal.

## Statement of reasons for seeking review

You must state in full, why you are a seeking a review of the planning authority's decision (or failure to make a decision). Your statement must set out all matters you consider require to be taken into account in determining your review. If necessary this can be provided as a separate document in the 'Supporting Documents' section: * (Max 500 characters)

Note: you are unlikely to have a further opportunity to add to your statement of appeal at a later date, so it is essential that you produce all of the information you want the decision-maker to take into account.

You should not however raise any new matter which was not before the planning authority at the time it decided your application (or at the time expiry of the period of determination), unless you can demonstrate that the new matter could not have been raised before that time or that it not being raised before that time is a consequence of exceptional circumstances.

See supporting statement

Have you raised any matters which were not before the appointed officer at the time the $\square$ Yes $X$ No Determination on your application was made? *

If yes, you should explain in the box below, why you are raising the new matter, why it was not raised with the appointed officer before your application was determined and why you consider it should be considered in your review: * (Max 500 characters)


Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review and intend to rely on in support of your review. You can attach these documents electronically later in the process: * (Max 500 characters)

193-2017 LRB Cover Letter Solicitor Letter P01 P02 P03 P04 P05 P06v1 P07v1 P08 P09 P11v2 P12

## Application Details

Please provide the application reference no. given to you by your planning authority for your previous application.

## APP/2022/1845

| What date was the application submitted to the planning authority? * | $25 / 08 / 2022$ |
| :--- | :--- |
| What date was the decision issued by the planning authority? * | $09 / 11 / 2023$ |

## Review Procedure

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Can this review continue to a conclusion, in your opinion, based on a review of the relevant information provided by yourself and other parties only, without any further procedures? For example, written submission, hearing session, site inspection. *

$$
\triangle \text { Yes } \square \text { No }
$$

In the event that the Local Review Body appointed to consider your application decides to inspect the site, in your opinion:
Can the site be clearly seen from a road or public land? *
$\boxtimes_{\text {Yes }} \square_{\text {No }}$
Is it possible for the site to be accessed safely and without barriers to entry? *
$\boxtimes_{\text {Yes }}$No

## Checklist - Application for Notice of Review

Please complete the following checklist to make sure you have provided all the necessary information in support of your appeal. Failure to submit all this information may result in your appeal being deemed invalid.

Have you provided the name and address of the applicant?. *
Have you provided the date and reference number of the application which is the subject of this review? *

If you are the agent, acting on behalf of the applicant, have you provided details of your name and address and indicated whether any notice or correspondence required in connection with the review should be sent to you or the applicant? *
Have you provided a statement setting out your reasons for requiring a review and by what
 procedure (or combination of procedures) you wish the review to be conducted? *

Note: You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. You may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.
Please attach a copy of all documents, material and evidence which you intend to rely on (e.g. plans and Drawings) which are now the subject of this review *

Note: Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice (if any) from the earlier consent.

## Declare - Notice of Review

I/We the applicant/agent certify that this is an application for review on the grounds stated.
Declaration Name: Mr Gary Black

Declaration Date: 05/02/2024

## Proposal Details

Proposal Name
Proposal Description
associated dwelling house.
Address
Local Authority
Application Online Reference

100115259
Erection of Rothnick Nature Kindergarten and Aberdeenshire Council
100115259-003

## Application Status

| Form | complete |
| :--- | :--- |
| Main Details | complete |
| Checklist | complete |
| Declaration | complete |
| Supporting Documentation | complete |
| Email Notification | complete |

## Attachment Details

Notice of Review System A4
LRB Cover Letter
Attached A4
Solicitor Letter
Attached A4
P01
P02
Attached A1
Attached A1
P03
Attached A1
P04
Attached A1
P05
Attached A1
P06v1
Attached A1
P07v1
Attached A1
P08
Attached A1

## P09

Attached A1
P11v2
Attached A1
P12
Notice_of_Review-2.pdf
Attached A1
Attached A0
Application_Summary.pdf Attached A0
Notice of Review-003.xml Attached A0

Design Studio,<br>27 Evan Street,<br>Stonehaven,<br>AB39 2EQ<br>Telephone: 01569764183<br>Mobile: 07896991328<br>Email: mail@idd-Itd.co.uk<br>Web: www.idd-ltd.co.uk<br>Date: 19th December 2023

APP/2022/1845 Full Planning Permission for Erection of Children's Day Care Nursery (Class 10 Non-Residential Institutions), Erection of Children's Workshop, Formation of Wildlife Pond and Erection of Dwellinghouse (Renewal of Planning Permission APP/2018/1279) at Land Adjacent to Rothnick Croft, Netherley, Stonehaven, AB39 3QU

Dear Sirs,
On behalf of our Client, Mrs Linda Pirie (herein referred to as "the Applicant"), we write to notify the planning authority that the applicant requires them to review the case under Section 43A of the Town and Country Planning (Scotland) Act 1997.

Application APP/2022/1845 was submitted on $25^{\text {th }}$ August 2022 for the renewal of the previously approved planning application APP/2018/1279. Both applications were for the erection of a children's nursery facility, including an outdoor learning environment which would includes animals, a wildlife pond and the erection of a dwelling, intended for the manager of the nursery.

The original application was approved, after a committee decision the $6{ }^{\text {th }}$ February 2019 as the proposed rural site was considered acceptable for a rural nursery setting, whilst the nursery would offer social and economical benefits in the form of employment opportunity and the dwelling was important for animal husbandry reasons.

## Reason for Decision

The proposal is considered acceptable as national policy changes regarding day care, early years, is a material consideration to be taken into account when assessing against policies in the Local Development Plan and a rural nursery is needed to be situated in a rural setting and the proposed site was considered to be suitable. Nursery provision would offer local employment opportunities for parents of the children attending nursey and also staff within the nursery and having a member of staff living on-site was seen as important to care for the small animals. Therefore, the proposal is considered acceptable.

Figure 1 - Extract from Decision Notice dated 6th February 2019

Immediately upon the planning permission being approved the aggrieved neighbour interfered with the drains by excavating them. Beforehand, the drains had been fully operational and there had not been any flooding issues. Aberdeenshire Council flood team and SEPA both attended site prior to neighbours actions and witnessed the drains in full operation. However, since the actions of the neighbour, the drains have been blocked and the applicant has been denied access to inspect and repair the drains, as is their legal right. For this reason, the applicant has never been able to enact the original planning approval APP/2018/1279.

Application APP/2022/1845 was for the renewal of the permission and did not propose to alter it's details. Prior to submitting this application, the process for renewal was discussed with a senior planner who advised that it was a simple process and a case of submitting the previously approved plans; there were no concerns raised at this time.

The reason the renewal is required is due to an ongoing civil dispute between the Applicant, who owns the land, and the neighbour, who owns the adjacent land which the drainage solution would discharge via. The discharge arrangements are no different to the existing discharge arrangements in place and a servitude right exists for the applicant to access the drainage pipe running through the land. Despite this, a civil dispute occurred between the neighbouring land owner and the applicant, which has delayed the discharge of APP/2018/1279 Condition 1 and a start on site.

## Reasons for Refusal

The new application (APP/2022/1845) was refused for three reasons:

1. The application is considered by the Planning Authority to not comply with the Development Plan. The proposed nursery (Class 10 Use) is not well related to the population or in a town centre location, with no sequential justification provided for the siting and the location proposed is remote and not sustainably accessible by foot/cycle/public transport resulting in reliance upon the private car, being detrimental to the overarching sustainability targets and tackling the climate crisis, contrary to Policies 1 Tackling the climate and nature crisis, 2 Climate mitigation and adaptation, 13 Sustainable transport, 15 Local Living and 20 minute neighbourhoods and 29 Rural development of National Planning Framework 4, and Policies B1 Town Centre Development, R2 Development Proposals Elsewhere in the Countryside, P1 Layout, Siting and Design, P6 Community Facilities and Public Amenities and RD1 Providing Suitable Services of the Aberdeenshire Local Development Plan 2023.
2. The proposed dwelling is not on a previously developed brownfield site and is not associated with a primary industry or viable rural business, and does not comply with Policy 17 Rural homes and 29 Rural development of National Planning Framework 4, or Policy R2 Development Proposals Elsewhere in the Countryside of the Aberdeenshire Local Development Plan 2023.
3. Insufficient information has been provided to demonstrate a functional and deliverable drainage solution to serve the proposed development, resulting in concerns relating to the potential risk of surface water flooding to others and a failure to adequately manage all rain and surface water through a deliverable sustainable urban drainage system that is within the full control of the applicant, contrary to Policy 22 Flood risk and water management of National Planning Framework 4 and Policy C4 Flooding and RD1 Providing Suitable Services of the Aberdeenshire Local Development Plan 2023

Below we have outlined our response to each of the reasons for refusal and the ground on which the applicant requires the Planning Authority to review the case.

## Reason 1

The original decision, made by committee members, was to approve the application as it's rural location was necessary for a rural nursery which can offer outdoor learning experiences involving rural activities such as animal husbandry and wildlife projects. The applicant sees no reason why this original decision does not still stand under the current Local Development Plan as there has not ben a material change in policy wording nor it's objectives. Furthermore, they feel that as the application is for a renewal and extension to the original application, the original committee decision should be taken into account.

In addition, the need for an outdoor, rural environment, is even more important now given the Scottish Governments current guidance requires outdoor learning experiences to be prioritised as part of their Nurseries Improvement Planning process. Learning in an outdoor environment as it can improve children's well-being and development, creating more resilient individuals, more successful learners, more confident individuals, and more effective and sustainable contributors.

Space to Grow Guidance:
https://hub.careinspectorate.com/how-we-support-improvement/care-inspectorate-programmes-and-publications/space-to-grow/

Out to Play Practical Guidance: https://www.gov.scot/publications/out-play-practical-guidance-creating-outdoor-play experiences-children/

Learning for Sustainability (Page 24 of the following document) https://www.gov.scot/binaries/content/documents/govscot/publications/strategy plan/2023/06/target-2030-movement-people-planet-prosperity/documents/target-2030-movement-people-planet-prosperity-scotlands-learning-sustainability-action-plan-2023-2030/target-2030-movement-people-planet-prosperity-scotlands-learning-sustainability-action-plan-2023-2030/govscot\%3Adocument/target-2030-movement-people-planet-prosperity-scotlands-learning-sustainability-action-plan-2023-2030.pdf

These documents are pertinent to high quality Early Learning and Childcare (ELC), including outdoor learning, being key to the future prosperity and sustainability. They highlight outdoor learning as a key objective and the aims of this development aligns with this national transition.

The nursery will operate in such a way that the rural environment, the animals on site and the wildlife in the area will be central in the students learning. This is a learning experience which cannot be delivered in busy town centre locations where neighbouring land uses and users could have a detrimental impact. Learning outdoors, will emphasise the natural environment and lead to adults who can positively contribute to conservation of our rural areas and wildlife.

Furthermore, The Croft Nurseries Ltd are also SQA approved training providers, one of very few in Aberdeenshire, delivering Early Learning and Childcare qualifications up to the equivalent of HND level to their workforce. This feeds into the Early Learning and Childcare sector which is currently struggling to have sufficient ELC qualified workers. Training their own staff is hugely beneficial to themselves, the community and the ELC sector. Additionally, Croft Nurseries Ltd are 1 of only 2 SQA approved centres in the UK who are approved to deliver the SQA Forest Kindergarten qualification.

Therefore, it should be considered that by supporting a rural nursery, the Planning Authority are positively contributing to tackling the global climate and nature crisis, in line with the aims of Policy 1 of NPF4, whilst being consistent with previous Planning Permissions. Additionally, that their support would be of great benefit to local economies and communities in the way of employment and training associated with the Forest Kindergarten.

## Reason 2

The previous decision approved the new dwelling as the nurseries plans for animal care required a person on site for the purposes of animal husbandry. Forest Kindergarten learning is a fully outdoor experience which immerses students in the environment and introduces them to animals and wildlife. The introduction to animals is key to students learning experience, ensuring they become diligent and effective rural contributors, more capable of sustainable impact on the environment.

Therefore, animal care is essential to ensure the wellbeing of the animals and the delivery of the business plan. It is not possible to offer round the clock husbandry to animals whilst off-site, therefore it is essential that a managers dwelling is on site.

There has not been a material change in policy wording or intent with the introduction of the new local development plan, therefore the essential nature of the dwelling should be accounted for, as it was by the original committee decision and their decision renewed.

## Reason 3

As has previously been discussed, there is a legal dispute which is preventing the original application being enacted. Interference of the drain, by the neighbour, has impacted the drains function despite it being witnessed to be fully operational prior to such interference. The applicant is denied access, as is the legal right, to maintain and repair the drain.

Nevertheless, the original decision included a condition 1:
"No works in connection with the development hereby approved shall commence unless suitable evidence has been submitted and agreed in writing by the Planning Authority to demonstrate that the existing pipe infrastructure system, located within the field to the north of the application site, is functioning without fault. For the avoidance of doubt, evidence should be provided in the form of a CCTV survey or other method agreed in writing with the Planning Authority. If it is demonstrated to the satisfaction of the Planning Authority that the existing system is functioning, the connection from the new development shall be carried out in accordance with approved drawing no. P11 Rev 02 and the Surface Water Disposal report by S.A. McGregor dated 03 September 2018. If faults within the existing system are encountered, the pipe section must be made good or replaced, and evidence submitted to demonstrate that the infrastructure is working correctly before receiving the new connection as part of the proposed development"

There has been no reasonable justification given why this condition cannot be applied to the renewed permission.

The applicant is seeking, via legal means, access to the pipe which their title indicates they have a right to. They await a date for the court case to be heard, however, in the meantime access is being denied by the land-owner. As such, they have as yet been unable to discharge condition 1 fully, however intend to comply with the condition fully.

Nevertheless, the presence of a civil dispute is out with the Planning Authorities scope of interest and should not impact their decision. This is confirmed in APP/2023/1331

Installation of Gates and Fences, 15 Urie Crescent Stonehaven Aberdeenshire AB39 2DY where the committee report which reads:
"These are civil and/or legal matters that are not a material planning consideration. For clarity the role of the Planning Authority is only to determine whether the principle of development is permissible. It is the responsibility of the applicant to obtain any relevant permission required regarding ownership or rights of access. The granting of planning consent, whilst allowing the principle of the development to take place, would not alter any established right of access".

Therefore, in this case the matter of right of access for drainage infrastructure is irrelevant to this planning application as the planning authority should be determining if the principle of the development is permissible. The renewing of planning permission in this case would not alter any established right of access.

Given the above responses to each of the three reasons for refusal, we feel that there are reasonable grounds to believe that the application, as a renewal of APP/2018/1279, should be considered on the same merits as the original application taking into account the committee's recommendations at the time. Furthermore, that as the recent guidance issued by the Scottish minister's places high importance on outdoor learning environments, identifying their ability to positively impact on the development and success of our children, should be taken into account when assessing how the proposals could have a significant, positive social and environmental impact and help tackle the global climate and nature crisis. Lastly, the applicant believes that civil/legal matters pertaining to rights of access are not material planning considerations, as recent application determinations have evidenced.

The applicant thanks the Local Review Body for their consideration of the proposals and would like to invite them to site, to discuss the development and business plans and to see for themselves how the proposals could have a positive impact.

Should any further information be required in this regard, please do feel free to get in touch with us, on 01569764183.

Yours sincerely


## Ally Steel BSC (Hons) MRICS AaPS

## Operations Director

For and on behalf of Inspired Design \& Development Ltd

## Regulated by RICS

ACD (Section 6 - Energy) for Domestic Buildings BRE1-D-00897

Architectural Services - Building Surveying
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Retrofit Assessor - Retrofit Coordinator
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Building Standards Approved Certifier $\square$
The Scottish Government

# Blackadders 

## CONFIDENTIAL: ADDRESSEE ONLY

To whom it may concern

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Dear Sirs

## Our client: Mr George Pirie and Mrs Linda Pirie Planning reference APP/2022/1845 <br> Permission for Erection of Children's Day Care Nursery etc at Land Adjacent To Rothnick Croft, Netherley, Stonehaven, Aberdeenshire, AB39 3QU

We act for George and Linda Pirie. We are writing this letter in response to the recent refusal of the extension of the previously granted planning permission and our clients application for review.

Mr and Mrs Pirie are the owners of Rothnick Croft and the adjoining land upon which the proposed nursery and other structures are to be built. The field neighbouring the property is owned by Forbes Homes Ltd. This field is downhill from both Rothnick Croft and the neighbouring property. In terms of their title deeds Rothnick Croft has rights of drainage and rights to use of the tile drain situated in this field as well as a right of access for inspection and maintenance of same.

In 2019 Forbes Homes Ltd raised court proceedings against our clients seeking to interdict them from, amongst other things, making use of the tile drain. Forbes Homes contests that our clients have the right to drainage and maintains the proposed development will increase the flow through the drain. This court action is defended as it is our client's position that they have all of the required legal rights to drainage and further the tile drain has sufficient capacity as evidenced by engineering reports. Unfortunately, a combination of covid and the requirement to involve a number of experts means this court action has still not reached a conclusion. The ongoing action has resulted in our clients being unable to commence the development resulting in the expiry of the previous grant of planning permission.

It is noted that refusal of planning may have been influenced by various letters of objection which make reference to flooding in the adjacent field. It is our client's position that the tile drain from Rothnick Croft across the field has, when in full working order, more than
sufficient capacity to drain water from both Rothnick Croft and the proposed nursery development (supported by expert engineering opinion). Prior to 2018 and other than an incident in summer 2017 when the drain was temporarily blocked by a large stone, there were no issues with flooding in the field. In or about September 2018 work was carried out in the field which appears to have compromised the field drain. Since this time flooding has occurred. Unfortunately, our clients attempts to exercise their title rights to inspect and repair the tile drain, which would remove the flooding issue, have been unsuccessful as requests for access for this purpose have not met with a positive response. A further request for access by contractors was made in December 2023 but has not yet been responded to. In the event that access is prevented litigation on this point may be required.

We trust the above information is of assistance.

Yours faithfully


## Nicola Brown

## Director

Blackadders LLP












| IDate | Desciption | IDate | Dosciption |  |
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