



## MORAY LOCAL REVIEW BODY

### DECISION NOTICE

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Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR162
  - Application for review by Mr & Mrs Burnett, c/o Mr I. Sutherland McCook, 1 Architects Ltd against the decision of an Appointed Officer of The Moray Council
  - Planning Application 16/00555/APP for proposed caretaker's house at Covesea Links Golf Course, Hopeman Road, Lossiemouth
  - Unaccompanied site inspection carried out by the MLRB on Friday 19 August 2015
  - Date of decision notice: 05 September 2016
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#### **Decision**

The MLRB agreed to dismiss the request for review and uphold the original decision of the Appointed Officer to refuse the above noted application.

#### **1. Preliminary**

- 1.1 This Notice constitutes the formal decision of the MLRB 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 MLRB at the meeting held on Thursday 25 August 2016.
- 1.3 The MLRB was attended by Councillors C. Tuke (Chair), G. Coull (Deputy Chair), G. Cowie and R. Shepherd.

#### **2. MLRB Consideration of Request for Review**

- 2.1 A request was submitted by the Applicant seeking a review of the decision of the Appointed Officer, in terms of the Scheme of Delegation, to refuse an application for proposed caretaker's house at Covesea Links Golf Course, Hopeman Road, Lossiemouth.
- 2.2 There was submitted a 'Summary of Information' report setting out the reasons for refusal, together with documents considered or prepared by the

Appointed Officer in respect of the planning application and the Notice of Review, Grounds for Review and supporting documents submitted by the Applicant.

- 2.3 The MLRB agreed that it had sufficient information to determine the request for review.
- 2.4 With regard to the unaccompanied site inspection carried out on 19 August 2016, Mrs Gordon, as Planning Adviser to this review, advised that Members of the MLRB were shown the site where the proposed development would take place.
- 2.5 The Planning Adviser advised the MLRB that the application had been refused on the grounds that the proposal was contrary to Policy E8: Coastal Protection Zone of the Moray Local Development Plan (MLDP) 2015. She noted that none of the exceptions provided for within the Coastal Protection Zone apply and the development would introduce a form of development that would be out of harmony on the sensitive coastal area involved.
- 2.6 Referring to the Applicant's Grounds for Review, the Planning Adviser advised that the Applicant had stated their belief that the rigid interpretation of Policy E8 was not producing a well-balanced outcome. They acknowledged that the site does not strictly meet the requirements of having an existing residential use but stated that it does have a previous residential use evidenced by the historic photographs submitted with the planning application. The Applicant advised that the previous house sat right on the foreshore and part of the walls still remain but noted that there was no operational sense in recreating a house in that location as it was far removed from the site entrances and therefore unable to monitor security. They stated that the site was also likely to be deemed to be at risk of coastal flooding and detract from the amenity of the beach area.
- 2.7 The Applicant stated that there was an inherent contradiction between theoretical policy objectives and the practical situation on the ground. Advising that there have been three fires on the site and the location is a target for thieves, the Applicant stated that an on-site presence is a deterrent to potential crimes and that it does not make sense to invest in rebuilding the café/clubhouse without someone on site as CCTV was not adequate in this location.
- 2.8 Councillor Coull, having had the opportunity to visit the site and consider the Applicant's Grounds for Review, stated that he believed the proposal complied with Policy E8 as there was an existing use on the site, albeit in a different location. He moved that that the review be upheld and planning permission be granted in respect of Planning Application 16/00555/APP.
- 2.9 The Chair stated that he sympathised with the Applicant but did not believe the proposal complied with E8 as the existing building was a small fishing bothy and not a dwellinghouse. He noted that the Applicant had not stated why CCTV was not an option to address the security concerns. Accordingly, he moved that the review be dismissed and the Appointed Officer's decision be upheld to refuse planning permission in respect of Planning Application 16/00555/APP.

2.10 Councillor Shepherd stated that he was of the same opinion as the Chair and seconded his amendment.

2.11 Councillor Cowie stated that he was of the same opinion as Councillor Coull and seconded his motion.

2.12 On a division, there voted:-

For the Motion (2): Councillors Coull and Cowie.

For the Amendment (2): Councillors Tuke and Shepherd.

Abstentions (0)

2.13 There being an equality of votes, in terms of Standing Order, the Chair exercised his casting vote in favour of the Amendment.

2.14 Accordingly, the Amendment became the finding of the MLRB and it agreed to dismiss the review and uphold the Appointed Officer's decision to refuse planning permission in respect of Planning Application 16/00555/APP.

**Paul Nevin**  
**Senior Solicitor (Property & Contracts)**  
**Legal Adviser to the MLRB**

## 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)**

#### **Notice Under Regulation 22 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013**

1. If the Applicant is aggrieved by the decision of the Planning Authority to refuse permission or approval required by a condition in respect of the proposed development, or to grant permission or approval 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.