



## MORAY LOCAL REVIEW BODY

### DECISION NOTICE

---

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR166
  - Application for review by Mr R. Shand, c/o Mr M. Hilton, HHL Scotland against the decision of an Appointed Officer of The Moray Council
  - Planning Application 16/00492/APP to erect extension at 10 Church Place, Findhorn
  - Unaccompanied site inspection carried out by the MLRB on 27 September 2016
  - Date of decision notice: 24 October 2016
- 

### 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 29 September 2016.
- 1.3 The MLRB was attended by Councillors C. Tuke (Chair), G. Cowie, M. McConachie, K. Reid 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 to erect an extension at 10 Church Place, Findhorn.
- 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 27 September 2016, Mr Henderson, as Planning Adviser to this review, advised that Members of the MLRB were shown the site where the proposed development would take place and provided with a summary of the reasons for refusal and the Applicant's Grounds for Review. The Planning Adviser also advised Members that, within the Applicant's response to further representations, as set out on page 63 of the report, there is a factual inaccuracy in the plan provided that shows the front elevation and the shadow effect. He noted that the plan shows that the proposed extension as 800mm from the boundary with the adjacent property, however, the elevation and block plan in the original application shows it as being approximately 200mm from the boundary. He advised that, as such, should the MLRB be minded to uphold the review, the original plan on page 8 of the report, showing the property being 200mm from the boundary, will be approved.
- 2.5 The Planning Adviser advised the MLRB that the application had been refused on the grounds that the proposal is contrary to Policy H4: *Housing Alterations and Extensions* and IMP1: *Developer Requirements* of the adopted Moray Local Development Plan 2015 where, by reason of the location and design (including size and depth of projection), the extension would be an intrusive form of development which would have an adverse effect upon and detract from the character, amenity and appearance of the existing property and the surrounding area.
- 2.6 Referring to the Applicant's Grounds for Review, the Planning Adviser advised that the Applicant had stated their belief that the proposal matches the existing property with a pitched roof and matching render and has been designed to ensure that no windows will look onto the adjoining property, thereby ensuring that no privacy and/or amenity issues are created as a result of the development. Noting that the Appointed Officer's concerns relate to no other property in the location having a built front extension, the Applicant stated that this should not be a reason for refusing the planning application. They advised that there are numerous example of front extensions around Moray, including ones found in the Findhorn Conservation Area, and given the configuration of the living space within the house, extending into the front garden is the only option.
- 2.7 The Applicant stated that the proposed extension will not harm the character of the area and advised that the current boundary treatment between the property and neighbouring property is a hedge that extends to over 6 foot. They noted that the hedge's replacement with a single storey low pitched extension will result in no greater loss of sunlight.
- 2.8 The Chair queried whether the MLRB could be confident that the 800mm in the plan within the Applicant's response to further representations was an error and not an amendment to the Applicant's plans. The Planning Adviser advised that there was no evidence to suggest the 800mm was anything but an error and that the Applicant had made no reference to any amendments.

- 2.9 Councillor Reid, having had the opportunity to visit the site and consider the Applicant's Grounds for Review, stated that she was of the same opinion as the Appointed Officer and believed that the proposal would have an adverse impact on the neighbouring property and character of the area. Accordingly, she moved that the review be dismissed and the Appointed Officer's decision be upheld to refuse planning permission in respect of Planning Application 16/00492/APP.
- 2.10 The Chair noted that whilst light was a material consideration, there was no legal requirement for a setback distance from the boundary and any access required would be dealt with through agreement with the neighbour.
- 2.11 Referring to the shadow effect plan shown on page 63 of the report, Councillor Cowie stated that the impact would be far greater on the neighbouring property if the distance was 200mm and not 800mm as shown. In response, the Chair stated his belief that the shadow effect would reach the main diagonal of the window and that, due to the property being north-western facing, it would only receive late evening sunlight in any case.
- 2.12 Councillor Shepherd stated that he was of the same opinion as Councillor Reid and seconded her motion.
- 2.13 The Chair advised that he did not believe there would be any problems with light and that the proposal was in keeping with surrounding properties, therefore complying with Policies H4 and IMP1. Accordingly, he moved that the review be upheld and planning permission be granted in respect of Planning Application 16/00492/APP subject to standard and consultee conditions. This was seconded by Councillor McConachie.
- 2.14 Councillor Cowie stated that he was of the same opinion as Councillors Reid and Shepherd.
- 2.15 In response to comments regarding daylight and sunlight, Mrs Gordon, Planning Officer (Planning & Development) referred the MLRB to the Appointed Officer's Report of Handling, on page 21 of the report, which addressed the impact and how it was considered in the overall planning application.
- 2.16 On the invitation of the Chair to summarise her motion, Councillor Reid stated that she was of the opinion that the proposal was intrusive and not in keeping with the surrounding area.
- 2.17 Summarising his amendment, the Chair advised that this was a difficult case to consider but believed the loss of light was not unacceptable.
- 2.18 On a division, there voted:-
- For the Motion (3):- Councillors Reid, Shepherd and Cowie
- For the Amendment (2):- Councillors Tuke and McConachie
- Abstentions (0)

- 2.19 Noting an error by the Clerk in announcing the outcome of the vote, the Chair confirmed that the motion was carried and the MLRB agreed to dismiss Case LR166 and uphold the Appointed Officer's decision to refuse planning permission in respect of Planning Application 16/00492/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.