



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR204
 - Application for review by 1 Architects Ltd, c/o Mr Paul Adams, Wright Johnston & Mackenzie against the decision of an Appointed Officer of Moray Council
 - Planning Application 17/01521/PPP for the erection of 2no dwellinghouses at Seapark House, Kinloss, Forres, Moray, IV36 3TT
 - Unaccompanied site inspection carried out by the MLRB on 23 April 2018
 - Date of decision notice: 9 May 2018
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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 in principle was considered by the MLRB at the meeting held on 26 April 2018.
- 1.3 The MLRB was attended by Councillors D Gatt (Chair), M Macrae (Depute Chair, D Bremner, G Cowie and M McLean.

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 on the grounds that the proposal is contrary to policies BE2, E5, IMP1 and EP7 of the Moray Local Development Plan 2015 for the following reasons:
 - (i) The addition of 2 dwellings and associated infrastructure within the walled garden would lead to a build-up of residential development that would

detract from the setting of the category B listed building and be contrary to Policy BE2.

(ii) The proposal would cause loss of, and impact upon, the 'green space' environment designation, ENV2 with no justification provided to support the proposal in relation to the relevant criteria identified in Policy E5 and therefore the proposal will detract from the character and appearance of the designation and surrounding area.

(iii) The proposal is also deemed to be contrary to policy EP7 Control of Development in Flood Risk Areas due to lack of information in respect of flood risk.

(iv) By introducing built development into a natural greenspace, the proposal is considered to be contrary to Policy IMP1 Developer Requirements as the scale, density and character of the proposal is not appropriate to the surrounding area.

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 With regard to the accompanied site inspection carried out on 23 April 2018, the Chair stated that all members of the MLRB with the exception of Councillor Ross, were shown the site where the proposed development would take place and had before them papers which set out both the reasons for refusal and the Applicants grounds for review.

2.4 In response to a question from the Chair as to whether the Legal and Planning Advisers had any preliminary matters to raise, both the Planning and Legal Advisers advised that they had nothing to raise at this time.

2.5 The Chair then asked the MLRB if they had sufficient information to determine the request for review. In response, the MLRB unanimously agreed that it had sufficient information.

2.6 Councillor Bremner, having had the opportunity to visit the site and consider the Applicant's grounds for review disagreed with the view of the Appointed Officer in that, in his opinion, the proposed development complied with policy BE2 as the development would enhance the listed building. In relation to policy ENV2 and E5, the green space referred to was, in his opinion, an enclosed area and not open space and included an area over the wall which was a former scrap yard and therefore could not be considered as green space or amenity ground. With regard to policy EP7 which referred to flood risk, he noted that SEPA had no objection to the development therefore that mitigated that ground of refusal. Finally in relation to policy IMP1, he was of the view that the development was not being introduced to green space as in his opinion the green space referred to was an abandoned garden.

2.7 In response, the Planning Adviser advised that, in terms of policy BE2 and enabling development, the applicant had not detailed any financial information within his submitted documentation as to how the proposal would enable

development of the listed building. In relation to policies ENV2 and E5, these relate to private garden and grounds and therefore it is down to interpretation as to whether the ground in question had any public benefit. The Planning Adviser confirmed that SEPA has raised no objection in terms of flood risk however indicated that the development was close to a medium flood risk area. In terms of policy IMP1 this policy relates green space as well as open space however this again was open to the Committee's interpretation.

- 2.8 Councillor Macrae, having had the opportunity to visit the site and consider the Applicant's grounds for review agreed with the decision of the Appointed Officer in that the proposal is contrary to policies BE2, E5, IMP1 and EP7 of the Moray Local Development Plan 2015 for the detailed reasons given by the Appointed Officer and moved that the appeal be refused on those grounds. This was seconded by Councillor M McLean.
- 2.9 Councillor Bremner moved as an amendment that the appeal be upheld and planning permission in principle granted as per his reasons stated earlier in the meeting. He further noted that the site had been occupied since the 15th century and suggested that the garden and orchard probably would not have changed significantly in that time and queried whether a survey of the orchard could be carried out to see if it contained any unusual fruit.
- 2.10 In response to a query from the Chair as to who would fund this survey, Councillor Bremner stated that the Applicant would be asked to carry out and fund the survey.
- 2.11 Councillor Cowie being of the same mind as Councillor Bremner, agreed to second his amendment.
- 2.12 The Legal Adviser, in noting Councillor Bremner's earlier comments in relation to policy BE2 in that the proposal would enable development and how the indicative drawings in relation to the dwellings would not detract from the character of the listed building, sought clarification as to whether Councillor Bremner was moving approval of the application as enabling development, given the Planning Adviser's earlier advice highlighting that the applicant had given no financial detail within his submission as to how the proposal would enable development.
- 2.13 In response, Councillor Bremner stated that it was his understanding that enabling development was a key consideration, not the only consideration however was content to move approval of the planning permission in principle based on the Applicant's indicative design of the proposed development.
- 2.14 On a division there voted:

For the motion (3): Councillors Macrae, M McLean and Gatt

For the amendment (2): Councillors Bremner and Cowie

Abstentions (0): Nil

2.15 Accordingly, the motion became the finding of the MLRB and it was agreed to dismiss Case LR204 and uphold the original decision of the Appointed Officer to refuse planning permission in respect of planning application 17/01521/PPP.

Mrs Aileen Scott
Legal Services Manager (Property and 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.