



## MORAY LOCAL REVIEW BODY

### DECISION NOTICE

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Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR212
  - Application for review by Mrs Tracy Ritchie against the decision of an Appointed Officer of Moray Council
  - Planning Application 18/00542/APP to operate childminding business from a dwelling at 6 Holyrood Drive, Elgin IV30 8TP
  - An Unaccompanied site inspection was carried out by the MLRB on 23 October 2018
  - Date of decision notice: 19 December 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 was considered by the MLRB on the following occasions:- 25 October and 29 November 2018.
- 1.3 On 25 October 2018, the MLRB was attended by Councillors Patience (Chair), Alexander, Bremner, Coy, Gatt and Ross and on 29 November 2018 Councillors Bremner (Depute Chair), Alexander, Coy and Ross were in attendance.

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

### **25 October 2018**

- 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 PP1, IMP1, T5 and T2 of the Moray Local Development Plan 2015 for the following reasons:

1. The employing of two assistants and caring for up to 9 children will result in a significant intensification of use of this house, which, in turn, would result in an unreasonable level impact on the residential amenity of the surrounding neighbouring properties, at odds with the requirements of policies PP1 and IMP1.
  2. The proposal does not incorporate adequate on-site vehicular parking facilities to meet the Moray Council Parking Standards and is contrary to Policy T5, and as a result would also be likely to lead to an undesirable increase in on-street parking to the detriment of road safety.
- 2.2 A Summary of Information report set 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 unaccompanied site inspection carried out on 23 October 2018, the Chair stated that all members of the Moray Local Review Body (MLRB) present, 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 Applicant's 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 Legal and Planning 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 Patience, having had the opportunity to visit the site and consider the Applicant's grounds for review, sought clarification as to how the calculation had been made that had resulted in the Report of Handling stating that there would be 22 additional traffic movements as a result of the Applicant's proposal.
- 2.7 In response, the Planning Adviser advised that she presumed the calculation had been made taking into consideration the increase in cared for children to 9 and an additional member of staff.

- 2.8 Councillor Alexander suggested that the calculation was made taking into consideration that there was be a drop off and pick up for 9 children added to the arrival and departure of 2 assistants which would total 22 traffic movements.
- 2.9 Councillor Patience queried whether there was an error in the Report of Handling in that it should read "total number of traffic movements" and not "additional traffic movements" as printed.
- 2.10 The Legal Adviser advised that if the MLRB were unsure as to whether the figure detailed within the Report of Handling was the total number of traffic movements or additional traffic movements as a result of the proposal then the case should be deferred to request clarity from Transportation in this regard.
- 2.11 Councillor Gatt, having had the opportunity to visit the site and consider the Applicant's grounds for review, also raised a query in relation to the number of assistants that the Applicant intended to employ as the paperwork from the Appointed Officer made reference to 2 assistants and the Applicant only made reference to one.
- 2.12 In light of the queries raised at the meeting, the Chair sought the agreement of the MLRB to defer the case until the next meeting of the MLRB once clarification has been received as to how the additional traffic movement calculation was made, specifically whether these were additional to the current number of vehicle movements or the total number of vehicle movements generated by the business and how many assistants would be employed by the Applicant as there are references to 2 assistants in some paperwork and only one in others. This was unanimously agreed.
- 2.13 Thereafter the MLRB agreed to defer Case LR212 for further clarification as to how the additional traffic movement calculation was made, specifically whether these were additional to the current number of vehicle movements or the total number of vehicle movements generated by the business and how many assistants would be employed by the Applicant as there are references to 2 assistants in some paperwork and only one in others.

### **29 November 2018**

- 2.14 Under reference to paragraph 4 of the Minute of the Meeting of the Moray Local Review Body (MLRB) dated 25 October 2018, the MLRB continued to consider a request from 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 PP1, IMP1, T5 and T2 of the Moray Local Development Plan 2015 for the following reasons:

1. The employing of two assistants and caring for up to 9 children will result in a significant intensification of use of this house, which, in turn, would result in an unreasonable level impact on the residential amenity of the surrounding neighbouring properties, at odds with requirements of policies PP1 and IMP1.
  2. The proposal does not incorporate adequate on-site vehicular parking facilities to meet the Moray Council Parking Standards and is contrary to Policy T5, and as a result would also be likely to lead to an undesirable increase in on-street parking to the detriment of road safety.
- 2.15 A Summary of Information report set 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.
- 2.16 The Chair stated that Case LR212 had been deferred for clarification with regard to how the traffic movement calculation had been made and how many assistants would be employed by the Applicant and that this information could be found at Appendix 5.
- 2.17 Having had this further information, the Chair 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.
- 2.18 In response to a question from the Chair as to whether the Legal and Planning Advisers had any preliminary matters to raise, the Legal Adviser advised that she had nothing to raise at this time. The Planning Adviser advised that, with regard to the further clarification that had been requested, the Applicant had advised that she would be employing 1 assistant and that, when calculating vehicle movements, the application for the child-minding business had been considered as a whole which was based on 9 children and 2 assistants. It was noted that the earlier reference to employing 2 assistants had been from the Applicant during consideration of the application.
- 2.19 The Planning Adviser further advised that the application had not been refused as a result of the traffic movements but was refused on the basis that there was inadequate parking provision. She advised that Parking Standards stipulate that a 3 bedroom property requires 2 parking spaces and, as the Applicant had converted her garage, currently the property only had one parking space. At the time of application to convert her garage, the Applicant was advised that she would need to create a further parking space however at the time of determining the application that was the subject of the review, the proposal was deficient in terms of the car parking standards.
- 2.20 Councillor Alexander, having had the opportunity to visit the site and consider the Applicant's grounds for review and further information provided, stated that, although he was aware of the need for child care facilities in Moray, he was of the opinion that the Council's policies detailed within the Moray Local Development Plan 2015 should be adhered to, for consistency in determining similar applications.

- 2.21 Councillor Ross, having had the opportunity to visit the site and consider the Applicant's grounds for review was of the same view as Councillor Alexander and moved that the appeal be refused as the proposal was contrary to policies PP1, IMP1, T5 and T2 of the Moray Local Development Plan 2015 in terms of having an unreasonable level impact on the residential amenity and lack of adequate on-site vehicular parking. This was seconded by Councillor Coy.
- 2.22 There being no-one otherwise minded, the MLRB agreed to dismiss Case LR212 and uphold the decision of the Appointed Officer to refuse planning permission in respect of Planning Application 18/00659/APP as the proposal was contrary to policies PP1, IMP1, T5 and T2 of the Moray Local Development Plan 2015.

**Mrs A 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.