



## MORAY LOCAL REVIEW BODY

### DECISION NOTICE

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Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR217
  - Application for review by Mr C Jamieson, c/o Mr Duncan MacCallum, Wittets Architects against the decision of an Appointed Officer of Moray Council
  - Planning Application 18/00795/APP – Erect new rendered blockwork garage and install patio door in house at Bundon, Findhorn, Forres, IV36 3TE
  - Unaccompanied site inspection carried out by the MLRB on 13 December 2018
  - Date of decision notice: 18 March 2019
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### Decision

The MLRB agreed to uphold the request for review and grant planning permission/planning permission in principle, subject to the conditions appended to this decision notice.

#### 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:- 20 December 2018 and at a Hearing on 28 February 2019.
- 1.3 On 20 December 2018, the MLRB was attended by Councillors David Bremner (Depute Chair), George Alexander, Paula Coy, Donald Gatt and Derek Ross
- 1.4 On 28 February 2019, Councillors Amy Taylor (Chair), George Alexander, David Bremner, Paula Coy, Donald Gatt and Derek Ross were in attendance.

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

**20 December 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:
- 2.2 The proposal is contrary to the adopted Moray Local Development Plan 2015 policies EP7 and IMP1 on flood risk grounds where the proposal would lie entirely within the medium likelihood (0.5% annual probability or 1 in 200 years) flood extent of the SEPA Flood Maps. The proposed garage would therefore be at medium to high risk of coastal flooding in a location that would increase flood risk to surrounding properties.
- 2.3 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.
- 2.4 With regard to the unaccompanied site inspection carried out on 13 December 2018, the Chair stated that all present members of the Moray Local Review Body (MLRB) 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.
- 2.5 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.
- 2.6 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.
- 2.7 Councillor Alexander, in noting that the planning application sought approval for the installation of french-doors in addition to a garage, sought clarification from the Planning Adviser as to whether the Applicant would be able to install the french-doors should the MLRB refuse the appeal to erect a garage.
- 2.8 In response, the Planning Adviser advised that the Report of Handling completed by the Appointed Officer stated that a separate letter would be issued to the Applicant confirming that the french-doors do not require planning permission.
- 2.9 Councillor Alexander stated that following the site visit, he had asked that the Flood Alleviation Team explain what the perceived impact would be to 1 hectare of land should there be a flood that rises to 1 metre taking into consideration the displacement caused by only the walls of the garage if the water flows into the garage, and also the perceived impact should the entire footprint of the garage cause the water displacement.
- 2.10 In response, the Planning Adviser confirmed that the Flood Alleviation Team had advised that if the water was displaced by the garage walls only, the impact would be flooding of 0.57mm over 1 hectare of land however if the

water was displaced by the whole garage there would be 7.14 mm of flooding over 1 hectare.

- 2.11 Councillor Alexander accepted that, technically, you should not build on a flood plain, however was of the opinion that the chances of the area in question flooding to 1 metre were very low and, even if flooding did occur, the effect would be minimal and therefore moved that the appeal be upheld and planning permission granted.
- 2.12 Councillor Coy was minded to agree with Councillor Alexander however was unsure what impact the development might have on other properties in the area. She was also concerned that if the MLRB upheld this appeal, it may set a precedent for future applications and on this basis was of the view that she did not have enough information to determine the application.
- 2.13 The Legal Adviser advised that if the MLRB required further technical information in relation to flood detail, the Case should be referred to a Hearing where the Applicant and Flood Alleviation Team could be present to answer any technical questions the MLRB may have.
- 2.14 Councillor Ross shared Councillor Coy's concern in that approval of the application would set a precedent and moved that the case be referred to a Hearing so that technical questions may be asked of the Applicant and the Flood Alleviation Team. This was seconded by Councillor Coy.
- 2.15 On hearing the motion from Councillor Ross, Councillor Alexander agreed to withdraw his motion to uphold the appeal and grant planning permission.
- 2.16 There being no-one otherwise minded, the MLRB agreed to refer Case LR217 to a Hearing to which the Applicant and Flood Alleviation Team should be invited to answer any technical questions which may be asked by the MLRB in relation to specific flood detail.

## **28 February 2019**

- 2.17 Under reference to paragraph 5 of the Minute of the Meeting of the Moray Local Review body (MLRB) dated 20 December 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:
  - 2.18 The proposal is contrary to the adopted Moray Local Development Plan (MLDP) 2015 policies EP7 and IMP1 on flood risk grounds where the proposal would lie entirely within the medium likelihood (0.5% annual probability or 1 in 200 years) flood extent of the SEPA Flood Maps. The proposed garage would therefore be at medium to high risk of coastal flooding in a location that would increase flood risk to surrounding properties.
  - 2.19 The Chair stated that, at the meeting of the MLRB on 20 December 2018, it was agreed to defer consideration of Case LR217 to a Hearing in terms of Regulation 13 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013. This was to allow the opportunity to consider any technical questions which may be asked by the MLRB in relation to specific flood detail regarding water displacement as a result of the development and the perceived impact to neighbouring properties.

- 2.20 With regard to the unaccompanied site inspection carried out on 13 December 2018, the Chair stated that all members of the MLRB present, with the exception of herself, were shown the site where the proposed development would take place and that, although she was not present at the site visit on 13 December 2018, she had visited the site on 18 December 2018. The Chair then outlined the Summary of Information report which set out both the reasons for refusal and the Applicant's grounds for review including the procedure which was to be adopted for the Hearing, and statements from the Applicant and Flood Risk Management Team.
- 2.21 The Chair welcomed the Applicant, Mr Colin Jamieson and Mr Will Burnish, Senior Engineer from the Flood Risk Management Team (FRMT) to the meeting.
- 2.22 The Chair then invited the Applicant, Mr Jamieson, to address the MLRB, specifically in relation to the matter identified at its recent meeting on 20 December 2018.
- 2.23 Mr Jamieson addressed the MLRB and confirmed that his proposal was for an ancillary building on a brown field site. He stated that there was no blanket ban on development on the flood plain and that policy EP7 of the MLDP 2015 and Paragraph 255 of the Scottish Planning Policy (SPP) allow building on the flood plain providing certain conditions are met and that, in his opinion, his proposed garage meets those conditions. With reference to the SEPA Flood Risk and Land Use Vulnerability Guidance, Mr Jamieson was of the view that his proposal would be classed as low risk and suitable for development as it was a garage which would be resilient to flooding and situated in a built up area. He acknowledged the concerns of the FRMT in that the proposal would contravene paragraph 255 of the SPP as the site would be affecting the flood plain however stated that the unmitigated impact of the proposal is 0.16 mm. He further advised that, to mitigate against this impact, he would commit to remove at least 2.4 m<sup>3</sup> from his adjacent garden ground, which is also in the flood plain. With regard to the concerns of the FRMT in relation to a potential request for a change of use at a later date, he assured the MLRB that he had no intention to apply for a change of use and would be willing to accept the proposed condition and informative from the FRMT, should that be acceptable to MLRB.
- 2.24 Mr Jamieson then responded to questions from the MLRB.
- 2.25 Thereafter, the Chair invited Mr Burnish from the FRMT to address the MLRB, specifically in relation to the matter identified by the MLRB at its recent meeting.
- 2.26 Mr Burnish addressed the MLRB and advised that the FRMT's fundamental issue is that, should this application be approved, there would be a risk of incremental development of the flood plain. They were also concerned that the owner could, at a later date, apply for a change of use to a residential development. Mr Burnish acknowledged that the loss of flood plain was small however he was concerned that approving this application may set a precedent for future applications. In order to mitigate this, Mr Burnish suggested that, if the MLRB were minded to grant planning permission, a condition be attached to the planning permission stating that the development can never be changed to a residential property and an

informative be added to reflect that Moray Council would not protect the garage property from flooding in the future, given that it had been built on a flood plain.

- 2.27 Mr Burnish then responded to questions from the MLRB.
- 2.28 On the invitation of the Chair, Mr Jamieson summarised his presentation reiterating the key aspects of his submission, as detailed above. Mr Burnish, declined the invitation to summarise.
- 2.29 In response to a question from the Chair as to whether the Legal and Planning Advisers had any matters they wished to raise, both the Legal and Planning Advisers advised that they had nothing to raise at this time.
- 2.30 On hearing the presentations from Mr Jamieson and Mr Burnish, Councillor Bremner moved that the Committee uphold the appeal and grant planning permission in respect of planning application 18/00795/APP subject to the condition recommended by the FRMT stating that the development can never be changed to a residential property and an informative to reflect that Moray Council would not protect the garage property from flooding in the future, given that it had been built on a flood plain.
- 2.31 In response, the Legal Adviser sought clarification from Councillor Bremner as to whether he was moving approval of the application as he was of the opinion that the development was an acceptable departure from policy EP7 of the MLDP 2015, given the design confirmed by the Applicant and the recommended condition and informative from the FRMT.
- 2.32 Councillor Bremner confirmed that the Legal Adviser's interpretation was correct.
- 2.33 Councillor Gatt stated that he wished to second Councillor Bremner's motion as he was of the opinion that there was very little risk of the development flooding and was of the view that the development complied with policy EP7 of the MLDP 2015. With regard to policy IMP1, Councillor Gatt was of the view that, again the proposal complied with policy IMP1 given that the Applicant had stated that the proposal would be designed in such a manner so that it would be allowed to flood.
- 2.34 The Legal Adviser pointed out that Councillor Bremner's motion differed from Councillor Gatt's in that Councillor Bremner had moved to grant planning permission subject to the additional condition and informative proposed by the FRMT, as he was of the view that the proposal was an acceptable departure from policy EP7 of the MLDP 2015 given the design of the proposal, whereas Councillor Gatt was of the view that the proposal complied with policies EP7 and IMP1 of the MLDP 2015 and therefore advised that Councillor Gatt could not second Councillor Bremner's motion on those terms.
- 2.35 Councillor Alexander, being of the same mind as Councillor Bremner agreed to second his motion however asked that a condition be added to ensure that the Applicant carried out his commitment to remove at least 2.4 m<sup>3</sup> from his adjacent garden to mitigate against any impact his proposal may have.

- 2.36 In response, the Planning Adviser advised that this would not be an appropriate condition to add as the garden ground did not form part of the application site.
- 2.37 Having considered the advice from the Legal Adviser and given that Councillor Alexander was willing to second the terms of Councillor Bremner's motion, Councillor Gatt agreed to withdraw his motion.
- 2.38 For clarity, the Legal Adviser advised that it was her understanding that Councillor Bremner had moved that the MLRB uphold the appeal in respect of Case LR217 to grant planning permission in respect of planning application 18/00795/APP subject to a recommended condition from FRMT stating that the development can never be changed to a residential property and an informative to reflect that Moray Council would not protect the garage property from flooding in the future, given that it had been built on a flood plain. This was seconded by Councillor Alexander on the understanding that his additional condition in relation to ensuring that the Applicant remove garden ground to mitigate against any impact his proposal may have was not appropriate given that the garden ground did not form part of the application site.
- 2.39 There being no-one otherwise minded, the MLRB agreed to uphold the appeal in respect of Case LR217 and grant planning permission in respect of planning application 18/00795/APP subject to a condition stating that the development can never be changed to a residential property and an informative to reflect that Moray Council would not protect the garage property from flooding in the future, given that it had been built on a flood plain.

**Mrs Aileen Scott**  
**Legal Services Manager**  
**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.





## **IMPORTANT NOTES ABOUT THIS DECISION**

### **DURATION OF THIS PERMISSION**

In accordance with Section 58 (i) of the Town and Country Planning (Scotland) Act 1997 as amended, the development to which this permission relates must be begun not later than the expiration of 3 years beginning with the date on which this permission is granted.

If the development has not commenced within this period then this permission shall lapse unless there is a specific condition attached to this permission which varies the stated timescale.

### **COMMENCEMENT AND COMPLETION OF THE DEVELOPMENT**

The following are statutory requirements of the Town & Country Planning (Scotland) Act 1997, as amended. Failure to meet their respective terms represents a breach of planning control and may result in formal enforcement action. Copies of the notices referred to below are attached to this permission for your use.

#### **NOTIFICATION OF INITIATION OF DEVELOPMENT**

S.27A of the 1997 Act, as amended requires that any person who has been granted planning permission (including planning permission in principle) and intends to start development must, as soon as practicable after deciding the date they will start work on the development, give notice to the planning authority of that date. This ensures that the planning authority is aware that the development is underway and can follow up on any suspensive conditions attached to the permission. Therefore, prior to any work commencing on site, the applicant/developer must complete and submit to Moray Council, as planning authority, the attached Notification of Initiation of Development.

#### **NOTIFICATION OF COMPLETION OF DEVELOPMENT**

S.27B of the 1997 Act, as amended requires that any person who completes a development for which planning permission (including planning permission in principle) has been given must, as soon as practicable after doing so, give notice of completion to the planning authority. This will ensure that the planning authority is aware that the development is complete and can follow up any planning conditions. Therefore, on completion of the development or as soon as practicable after doing so, the applicant/developer must complete and submit to Moray Council, as planning authority the attached Notification of Completion of Development.

#### **NOTIFICATION OF COMPLETION OF PHASED DEVELOPMENT**

Under S.27B(2) of the 1997 Act, as amended where permission is granted for phased development, the permission is subject to a condition (see Schedule of Conditions above) requiring the applicant/developer as soon as practicable after each phase to give notice of that completion to the planning authority. This will allow the planning authority to be aware that particular phase(s) of the development is/are complete.

When the last phase is completed the applicant/developer must also complete and submit a Notification of Completion of Development.



## THE MORAY COUNCIL

### NOTIFICATION OF INITIATION OF DEVELOPMENT

Section 27A Town and Country Planning (Scotland) Act 1997

Application Number

Date Decision Issued  
Location and Description of  
Development

**Please note that all suspensive conditions must be discharged prior to commencement of development**

<b>Date works are to Commence</b>	
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**Name, Address and contact details of developer**

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**The Full name and Address and contact details of the landowner, if a different person**

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**Where an agent is appointed, their full name and contact details**

.....  
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Signed

Name (Print)

Date

.....  
.....  
.....

**Please complete and return this form to:**

**The Moray Council, Development Management Manager, Council Offices, High Street, Elgin, Moray IV30 6UG**

**OR**

**E-mail: [development.control@moray.gov.uk](mailto:development.control@moray.gov.uk)**



**THE MORAY COUNCIL**

**NOTIFICATION OF COMPLETION OF DEVELOPMENT**

Section 27A Town and Country Planning (Scotland) Act 1997

Application Number

Date Decision Issued  
Location and Description of  
Development

<b>Date of completion of works</b>	
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**Name, Address and contact details of developer**

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**The Full name and Address and contact details of the landowner, if a different person**

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**Where an agent is appointed, their full name and contact details**

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Signed

Name (Print)

Date

.....  
.....  
.....

**Please complete and return this form to:**

**The Moray Council, Development Management Manager, Council Offices, High Street, Elgin, Moray IV30 6UG**

**E-mail: [development.control@moray.gov.uk](mailto:development.control@moray.gov.uk)**