



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR218
 - Application for review by Mr Arron Field and Ms Claire Millar against the decision of an Appointed Officer of Moray Council
 - Planning Application 18/01207/APP – Erect extension at 13 Bishops Court, Lossiemouth, IV31 6TL
 - Unaccompanied site inspection carried out by the MLRB on 24 January 2019
 - Date of decision notice: 22 April 2019
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Decision

The MLRB agreed to uphold the request for review and grant planning permission, subject to the conditions appended to this decision notice. Attention is also drawn to the informative notes which follow the conditions.

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:- [Dates of meeting].
- 1.3 On all dates, the MLRB was attended by Councillors Taylor (Chair), Alexander, Bremner, Coy, Gatt, McLean and Ross.

2. MLRB Consideration of Request for Review

31 January 2019

- 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 Moray Local Development Plan 2015 policies IMP1 and H4 for the following reasons:-

The proposed two storey side extension of the form and size submitted, positioned immediately to the south of neighbouring housing (in this case 11 Bishops Court) would represent an inappropriate form of development for this location which would be detrimental to the amenity of neighbouring occupiers.

The proposed extension would cause an unacceptable loss of daylight and sunlight, and an increased sense of enclosure/overbearing impact to the garden of this adjacent property, by reason its bulk, height and close proximity to the site (side) boundary. It would therefore cause a material loss of residential amenity, contrary to policies IMP1 and H4.

- 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 in addition to 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 24 January 2019, 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.
- 2.4 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 Bremner, having had the opportunity to visit the site and consider the Applicant's grounds for review noted the Appointed Officer's comments in relation to policy H4 in terms of badly designed extensions and alterations however stated that he was of the view that the design of the extension was acceptable.
- 2.7 Councillor Gatt, also having had the opportunity to visit the site and consider the Applicant's grounds for review agreed with Councillor Bremner and also noted that the Appointed Officer's Report of Handling stated that the proposal would cause an unacceptable loss of daylight and sunlight, and an increased sense of enclosure/overbearing impact to the garden of the adjacent property. On reviewing the paperwork provided, Councillor Gatt stated that he could not find any report detailing the amount of sunlight that currently falls on the neighbouring property compared with the expected loss of sunlight once the extension is built to support this claim.
- 2.8 In response to Councillor Bremner's statement, the Planning Adviser advised that the proposal had not been refused on its design but due to the detrimental impact it would have on neighbouring occupiers in terms of the loss of sunlight/daylight due to the scale of the proposed extension. With regard to the sunlight/daylight assessment raised by Councillor Gatt, the Planning Adviser advised that a detailed assessment of sunlight and daylight had been carried out however was not included in the papers submitted by Development Management.

- 2.9 Given this further information from the Planning Adviser, Councillor Gatt moved that consideration of Case LR218 be deferred until the next possible meeting of the MLRB so that further information could be provided from Development Management in respect of the sunlight/daylight assessment that was undertaken by the Appointed Officer at the time of determination. This was seconded by Councillor Ross.
- 2.10 Councillor Bremner, on hearing the advice from the Planning Adviser in terms of the proposed design not being the reason the application had been refused, queried why policy H4 had been cited as a reason for refusal.
- 2.11 In response, the Planning Adviser advised that policy H4 was the overriding policy in terms of extensions which also takes into consideration the size and scale of the proposal which was deemed to be inappropriate.
- 2.12 Councillor Bremner, being of a different view from the Appointed Officer in terms of policy H4, moved that the Appeal be upheld and planning permission granted as he was of the opinion that policy H4 did not apply to the proposal.
- 2.13 The Legal Adviser, on hearing Councillor Bremner's motion to approve the planning application, advised that Councillor Bremner would require to provide further reasons if he was minded to overturn the decision of the Appointed Officer as the application had been refused in terms of the scale of the proposal and the unacceptable loss of daylight and sunlight on the neighbouring property.
- 2.14 On hearing the advice from the Legal Adviser, Councillor Bremner agreed to withdraw his motion so that the sunlight/daylight assessment could be provided to the Committee.
- 2.15 There being no-one otherwise minded, the MLRB agreed to defer Case LR218 to the next possible meeting of the MLRB, so that further information could be provided from Development Management in respect of the sunlight/daylight assessment that was undertaken by the Appointed Officer at the time of determination.

28 March 2019

- 2.16 Under reference to paragraph 4 of the Minute of the Meeting of the Moray Local Review Body (MLRB) dated 29 January 2019, 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 Moray Local Development Plan 2015 policies IMP1 and H4 for the following reasons:-

The proposed two storey side extension of the form and size submitted, positioned immediately to the south of neighbouring housing (in this case 11 Bishops Court) would represent an inappropriate form of development for this location which would be detrimental to the amenity of neighbouring occupiers.

The proposed extension would cause an unacceptable loss of daylight and sunlight, and an increased sense of enclosure/overbearing impact to the garden of this adjacent property, by reason its bulk, height and close proximity

to the site (side) boundary. It would therefore cause a material loss of residential amenity, contrary to policies IMP1 and H4.

- 2.17 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, in addition to the Notice of Review, Grounds for Review and supporting documents submitted by the Applicant.
- 2.18 The Chair stated that Case 218 was deferred at the meeting of the MLRB on 29 January 2019 to request further information from Development Management in respect of the sunlight/daylight assessment that was undertaken by the Appointed Officer at the time of determination, that was not included in the paperwork submitted by Development Management.
- 2.19 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.
- 2.20 Councillor Gatt, having visited the site and considered the Applicant's grounds for review was concerned that it appeared the sunlight/daylight assessment was not completed at the time of determination as the Applicant had provided details of an email exchange between the Appointed Officer and the Applicant where the Applicant had requested a copy of the sunlight/daylight assessment however the Appointed Officer had replied stating that the sunlight/daylight assessment was not something that was recorded as such therefore no specifics could be provided. Councillor Gatt raised further concern that the MLDP 2015 policies which formed the reason for refusal, namely H4 and IMP1 did not make any reference to loss of daylight or sunlight therefore, in his opinion, the application adhered to MLDP 2015 policies.
- 2.21 In response, the Planning Adviser advised that the Report of Handling stated that a detailed site assessment had been undertaken and that whilst the sunlight/daylight assessment was not included with the original paperwork issued to the MLRB, this had been raised with Development Management who had advised that these would be included in future and assured the MLRB that the assessment had been completed however not formally recorded. She further advised that policy IMP1 ensured that any new development was appropriate to the amenity of the surrounding area and the Appointed Officer was of a view that the development would have a detrimental impact to the amenity of adjoining property.
- 2.22 Councillor Alexander, having visited the site and considered the Applicant's grounds for review was of the view that the definition of daylight and sunlight were different and that the proposal would not result in any loss of daylight to the property on a cloudy day and that, on a sunny day, the loss of sunlight was very little. He further stated that, in his opinion, the Appointed Officer's reasons for refusal were subjective and he did not agree that the proposal was inappropriate for the location given that there were similar extensions in the area. He also did not believe that the proposal would be detrimental to the amenity or be overbearing to the adjacent garden therefore moved that the MLRB agree to uphold the appeal and grant planning permission in respect of Planning Application 18/01207/APP. This was seconded by Councillor Gatt.

2.23 There being no-one otherwise minded, the MLRB agreed to uphold the appeal and grant planning permission in respect of Planning Application 18/01207/APP subject to standard conditions.

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 NOTE

YOU ARE OBLIGED TO COMPLY WITH THESE CONDITIONS AND NOTES

SCHEDULE OF CONDITIONS

By this Notice, Moray Council has **GRANTED PLANNING PERMISSION** for this proposal subject to conditions as appropriate to ensure implementation of the proposal under the Town & Country Planning (Scotland) Act 1997, as amended. **It is important that these conditions are adhered to and failure to comply may result in enforcement action being taken.**

CONDITION(S)

Permission is granted subject to the following conditions: -

1. Two car parking spaces shall be retained within the site throughout the lifetime of the development, unless otherwise agreed in writing with the Council as Planning Authority.

Reason: To ensure the permanent availability of the level of parking necessary for residents/visitors/others in the interests of an acceptable development and road safety.

2. Notwithstanding the submitted details the width of the vehicular access shall be 5.0m and have a maximum gradient of 1:20 measured for the first 5.0m from the edge of the public carriageway. The part of the access over the public footway shall be to The Moray Council specification and surfaced with bituminous macadam. Drop kerbs shall be provided across the extended access to The Moray Council specification.

Reason: To ensure acceptable infrastructure at the development access

3. No water shall be permitted to drain or loose material be carried onto the public footway/carriageway.

Reason: To ensure the safety and free flow of traffic on the public road and access to the site by minimising the road safety impact from extraneous material and surface water in the vicinity of the access.

ADDITIONAL NOTES FOR INFORMATION OF THE APPLICANT

The following notes are provided for your information, including comments received from consultees:-

The Development Management and Building Standards Manager have the following comments:

A Building Warrant will be required.

Transportation Development has the following comments:

An existing street lighting column will require to be relocated a short distance to the south, the cost of which shall be borne by the developer. The developer must contact the Roads Authority Street Lighting Section at Ashgrove Depot, Elgin – Tel (01343) 557300, Ext 7327 to discuss the proposals.

Planning consent does not carry with it the right to carry out works within the public road boundary.

Before starting any work on the existing public road the applicant is obliged to apply for a road opening permit in accordance with Section 56 of the Roads (Scotland) Act 1984. This includes any temporary access joining with the public road. Advice on these matters can be obtained by emailing roadspermits@moray.gov.uk

Public utility apparatus may be affected by this proposal. Contact the appropriate utility service in respect of any necessary utility service alterations which have to be carried out at the expense of the developer.

No building materials/scaffolding/builder's skip shall obstruct the public road (including footpaths) without permission from the Roads Authority.

The applicant shall free and relieve the Roads Authority from any claims arising out of their operations on the road or extension to the road.

LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT

The following plans and drawings form part of the decision:-

| Reference | Version | Title |
|-----------|---------|-------------------------|
| 2 | | Elevations |
| 3 | | Ground floor plan |
| 4 | | First floor plan |
| 11 | Rev A | Location and block plan |
| | | |
| | | |
| | | |

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

| | |
|-----------------------------------|--|
| Date works are to Commence | |
|-----------------------------------|--|

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

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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



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

| | |
|------------------------------------|--|
| Date of completion of works | |
|------------------------------------|--|

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

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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