



## MORAY LOCAL REVIEW BODY

### DECISION NOTICE

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Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR220
  - Application for review by Mr Ian Jenkins c/o Mr Colin Keir, Plans Plus against the decision of an Appointed Officer of Moray Council
  - Planning Application 18/01323/APP – Erect new garage at Kimberlee, Rothes, Moray, AB38 7AW
  - Unaccompanied site inspection carried out by the MLRB on 25 March 2019
  - Date of decision notice: 21 May 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.

#### **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:- 28 March 2019 and 25 April 2019.
- 1.3 On 28 March 2019, the MLRB was attended by Councillors Alexander, Bremner, Coy, Gatt, Ray McLean, Ross and Taylor. On 25 April 2019, Councillors Alexander, Bremner, Coy Gatt, Ross and Taylor were in attendance.

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

##### **28 March 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 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 flooding and in a location that would contribute toward increased flood risk to surrounding properties via displacement of flood plain capacity.

- 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 25 March 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, the Planning Advisers advised that they had nothing to raise. The Legal Adviser advised that, on the Notice of Review, the Applicant had indicated that he would be willing to enter into a Section 75 agreement which would ensure that the Applicant would not build an already consented fourth house if planning permission could be granted to build the proposed garage in the preferred location. This was information that was not before the Appointed Officer at the time of determination therefore, in terms of Regulation 17 of the Town and Country Planning (Schemes of Delegation and Local Review Procedures) (Scotland) Regulations 2013, the Appointed Officer and Interested Parties should be given the opportunity to comment on this information.
- 2.5 The Chair asked the Committee if they agreed with the view of the Legal Adviser that reference to a proposed Section 75 agreement in the Applicant's Notice of Review constituted new evidence as if so, the case would require to be deferred to allow the Appointed Officer and Interested Parties the opportunity to comment on the new evidence.
- 2.6 In response, the MLRB unanimously agreed that reference to a proposed Section 75 agreement in the Applicant's Notice of Review constituted new evidence therefore Case 220 was deferred to allow the Appointed Officer and Interested Parties the opportunity to comment on the new evidence.

## **25 April 2019**

- 2.7 Under reference to paragraph 5 of the Minute of the Moray Local Review Body dated 28 March 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 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 flooding and in a location that would contribute toward increased flood risk to surrounding properties via displacement of flood plain capacity.

- 2.8 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.
- 2.9 The Chair stated that at the meeting of the MLRB on 28 March 2019, the MLRB noted the Applicant's willingness to enter into a Section 75 agreement which would ensure that the Applicant would not build an already consented fourth house if planning permission could be granted to build the proposed garage in the preferred location and agreed that this constituted new evidence in terms of Regulation 17 of the Regulations. As a result, Case 220 was deferred to allow Development Management and Interested Parties the opportunity to comment on the new evidence.
- 2.10 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.
- 2.11 With regard to the unaccompanied site visit which had taken place on 25 March 2019 and the further comment from Development Management and the Flood Risk Management Team, the Chair asked the MLRB if it had sufficient information to determine the request for review. In response, the MLRB unanimously agreed that it had sufficient information.
- 2.12 Councillor Alexander, having had the opportunity to visit the site and consider the Applicant's grounds for review, noted that the Flood Risk Management Team still objected to the proposal despite the Applicant's offer of a Section 75 agreement yet Development Management was willing to accept the Applicant's offer of a Section 75 agreement therefore sought clarification in this regard.
- 2.13 In response, the Legal Adviser advised that Development Management had not changed their position however had suggested that, if the MLRB were minded to grant planning permission, a condition be added to the consent instead of a Section 75 agreement which would achieve the same result.
- 2.14 Councillor Alexander was of the view that the water displacement from a garage would be considerably less than that of a house, and sought confirmation that, if permission was granted to build the garage, it was certain that a fourth house would never be built on the site.
- 2.15 In response, the Planning Adviser confirmed that that was what the Applicant had proposed and what the condition suggested by Development Management would achieve.
- 2.16 Councillor Bremner, noting that there was already planning permission for the fourth house, sought clarification as to whether the current planning permission would be revoked if planning permission was granted for the garage.
- 2.17 In response, the Planning Adviser advised that planning permission could not be revoked as development had already commenced on the site as services had been installed however the suggested condition from Development

Management would stop further development.

2.18 The Legal Adviser further advised that the Applicant had stated that the Section 75 agreement would ensure that the house would not be built within his lifetime whereas the condition suggested by Development Management stated that the fourth house would not be built at all.

2.19 Councillor Bremner, having visited the site, considered the Applicant's grounds for review and the further information from Development Management and the Flood Risk Management Team moved that the appeal be upheld and planning permission granted in respect of planning application 18/01323/APP subject to the suggested condition from Development Management which would ensure that the fourth house would never be built, as in his opinion, this condition addressed the concerns of the Flood Risk Management Team making approval of the application an acceptable departure from policies EP7 and IMP1 on flood risk grounds. This was seconded by Councillor Coy.

2.20 Councillor Gatt, having visited the site and considered the Applicant's grounds for review agreed with the original decision of the Appointed Officer and moved that the appeal be refused and the original decision of the Appointed Officer upheld. This was seconded by Councillor Ross.

2.21 On a division there voted:

For the Motion (4): Councillors Bremner, Coy, Alexander and Taylor

For the Amendment (2): Councillors Gatt and Ross

Abstentions (0): Nil

2.22 Accordingly the Motion became the finding of the MLRB and it was agreed to grant planning permission in respect of Planning Application 18/01323/APP.

2.23 The Planning Adviser further advised that there had been 2 location plans submitted by the Applicant detailing 2 different locations where the garage would be situated and suggested that a further condition be added to the consent asking that clarification be provided from Development Management in relation to the proposed location of the garage on the site and that this be specified in the Decision Notice. This was agreed.

2.24 Thereafter, the MLRB agreed to grant planning permission in respect of Planning Application 18/01323/APP subject to the following conditions:

- i. The garage hereby approved shall not be developed in conjunction with the dwelling approved upon the same site under planning application reference 13/02202/APP approved on 22 January 2014. As the dwelling approved 13/02202/APP was subsequently lawfully commenced in the form of services laid, but where no house was subsequently constructed, the garage subject of this planning approval can only be developed if no further construction works in relation to the dwelling approved under 13/02202/APP takes place. There shall be no dwelling developed upon the site, other than the parent property known as Kimberlee.

Reason: in order to limit the number of buildings erected within the flood

plain, and to avoid any ambiguity regarding the implementation of building within this area.

- ii. Clarification be provided from Development Management in relation to the proposed location of the garage on the site and that this be specified in the Decision Notice.

**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: -

- i. The garage hereby approved shall not be developed in conjunction with the dwelling approved upon the same site under planning application reference 13/02202/APP approved on 22 January 2014. As the dwelling approved 13/02202/APP was subsequently lawfully commenced in the form of services laid, but where no house was subsequently constructed, the garage subject of this planning approval can only be developed if no further construction works in relation to the dwelling approved under 13/02202/APP takes place. There shall be no dwelling developed upon the site, other than the parent property known as Kimberlee.

Reason: in order to limit the number of buildings erected within the flood plain, and to avoid any ambiguity regarding the implementation of building within this area.

- ii. The permission hereby approved shall relate in terms of the approved building position and finished floor level (67.06m AOD) to the approved levels drawing submitted to Moray Council on the 8 November 2018. The design of the garage shall be in accordance with the elevations, sections and floor plan as shown on drawing entitled Project number 17-67A submitted on the 9 October 2018. The building position shall not be as shown in the site plan contained within 17-67A submitted on the 9 October 2018.

Reason- To avoid any ambiguity of the position of the garage hereby approved.

- iii. The building hereby approved shall be used solely for purposes incidental to the enjoyment of the existing house known as Kimberlee, and for no other purpose or use.

Reason - In order to enable the Planning Authority to retain effective control over future development within the application site so that it is carefully managed and does not result in over-development or an adverse impact on the amenity of the area.

## **ADDITIONAL NOTES FOR INFORMATION OF THE APPLICANT**

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

## **LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT**

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

Reference	Version	Title
17-67 A		Elevations floor plan site and location plan
		Levels for garage



## **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

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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](mailto:development.control@moray.gov.uk)**