



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR225
 - Application for review by Ms Beverley A'Court, Innesmhor 148A, Findhorn, Forres, IV36 3YL against the decision of an Appointed Officer of Moray Council
 - Planning Application 18/01568/APP to Erect Dwellinghouse at Plot 1, Innesmhor, Findhorn, Forres, Moray, IV36 3YL
 - Unaccompanied site inspection carried out by the MLRB on 23 August 2019
 - Date of decision notice: 15 October 2019
-

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:- 29 August 2019 and 26 September 2019.
- 1.3 On 29 August 2019, the MLRB was attended by Councillors Taylor (Chair), Alexander, Gatt and R McLean. On 26 September 2019 Councillors Taylor (Chair), Alexander, Bremner, Coy and Gatt were in attendance.

2. MLRB Consideration of Request for Review

29 August 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 policies H3 and

IMP1 of the Moray Local Development Plan (MLDP) 2015 for the following reasons:

The proposal falls below the minimum site area criteria of 400sqm (excluding access) as required by policy H3 for new house plots formed through subdivision, and is considered to be too small to adequately accommodate the proposed development in this location without adversely impacting the character and amenity of the surrounding area. Although the current proposed house is modest, the limited size of the plot would mean that it would lead to cramped development that would fail to reflect the density of development in the immediate vicinity, which is characterised by larger dwellings in more spacious plots. This deviation from the density of development in this part of Findhorn would be detrimental to the character and amenity of the surrounding area and contrary to policies H3 and IMP1, and on this basis the application is recommended for refusal.

- 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 of Review and supporting documents submitted by the Applicant.
- 2.3 With regard to the unaccompanied site inspection carried out on 23 August 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 Adviser advised that it had been brought to her attention that the Applicant had not confirmed their willingness to pay developer obligations for the proposed development to comply with policy IMP3 (Developer Obligations) of the MLDP 2015. Therefore, if members were minded to approve the development, confirmation would have to be received from the Applicant that they were willing to pay the developer obligations and if not then the case would have to be reconsidered by the MLRB in terms of compliance with policy IMP3 of the MLDP 2015.
- 2.5 The Legal Adviser further advised that, on completion of the Notice of Review form, the Appellant had advised that she had included information that was not considered by the Appointed Officer at the time of the original decision as she had addressed the reasons for refusal and highlighted some aspects of local context in the hope that a more inclusive, longer term, social-ecological view will prevail in the decision. The Legal Adviser advised that this constitutes new evidence in terms of Regulation 17 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013 and if the MLRB was minded to consider the additional information relevant and take it into consideration when determining the application, then, in terms of fairness, the Appointed Officer should have the opportunity to provide written submissions on this additional information by means of a further procedure such as written submissions or a hearing. However if the MLRB was of the view that the detailed information was not relevant in planning terms then it should specify that this additional information is not being considered when determining the

application which could leave the decision open to challenge if it was deemed, on appeal, that the additional information is relevant in planning terms.

- 2.6 Councillor Alexander, having visited the site and considered the Applicant's grounds for review and the additional advice from the Planning and Legal Advisers in terms of the developer obligations and additional information contained within the Applicant's Notice of Review, moved that the case be deferred to allow the Appointed Officer the opportunity to respond to the additional information contained within the Applicant's Notice of Review and to seek clarification from the Applicant as to whether she is willing to pay the developer obligations. Councillor Alexander also stated that a further site visit should be arranged prior to determination to allow those Members of the MLRB who had not been able to attend the original site visit, the opportunity to view the site.
- 2.7 There being no-one otherwise minded, the MLRB agreed:
- i. to defer case LR225 to allow the Appointed Officer the opportunity to comment on the additional information contained within the Applicant's Notice of Review which constitutes new evidence in terms of Regulation 17 of the Regulations;
 - ii. that a further site visit be arranged to allow those Members of the MLRB who had been unable to attend the original site visit the opportunity to view the site;
 - iii. that clarification be sought as to whether the Applicant is willing to pay the developer obligations in order to comply with policy IMP3 of the MLDP 2015.

26 September 2019

- 2.8 Under reference to paragraph 4 of the Minute of the Moray Local Review Body (MLRB) dated 29 August 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 policies H3 and IMP1 of the Moray Local Development Plan (MLDP) 2015 for the following reasons:

The proposal falls below the minimum site area criteria of 400sqm (excluding access) as required by policy H3 for new house plots formed through subdivision, and is considered to be too small to adequately accommodate the proposed development in this location without adversely impacting the character and amenity of the surrounding area. Although the current proposed house is modest, the limited size of the plot would mean that it would lead to cramped development that would fail to reflect the density of development in the immediate vicinity, which is characterised by larger dwellings in more spacious plots. This deviation from the density of development in this part of Findhorn would be detrimental to the character and amenity of the surrounding area and contrary to policies H3 and IMP1, and on this basis the application is recommended for refusal.

- 2.9 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.

- 2.10 The Chair stated that Case LR225 was deferred at the meeting of the MLRB on 29 August 2019 as it was agreed that the Applicant had raised new matters within their Notice of Review and supporting documentation which were not before the Appointed Officer at the time of the application which constituted new evidence in terms of Regulation 17 of the Regulations. In accordance with the Regulations, the Appointed Officer was given the opportunity to make representations on the new evidence as set out in Appendix 5 of the report.
- 2.11 With regard to the unaccompanied site inspection carried out on 23 August 2019, the Chair stated that all present members of the MLRB, with the exception of Councillor Bremner, 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. Councillor Bremner further stated that he had visited the site on his own in order to familiarise himself with the location.
- 2.12 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 he had nothing to raise at this time. The Planning Adviser advised that the Developer Obligations Officer had confirmed that the Applicant was willing to pay the developer obligations for the proposed development to comply with policy IMP3 (Developer Obligations) of the MLDP 2015, should the MLRB decide to grant planning permission.
- 2.13 Having been provided with a response from the Appointed Officer in terms of the new evidence, 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.
- 2.14 Councillor Alexander, having visited the site and considered the Applicant's grounds for review was of the view that the plot size was too small for the development in terms of policy H3 of the MLDP 2015 and moved that the MLRB refuse the appeal and uphold the original decision of the Appointed Officer to refuse Planning Application 18/01568/APP as it is contrary to policies H3 (Sub-division for House Plots) and IMP1 (Developer Requirements) of the MLDP 2015.
- 2.15 There being no-one otherwise minded the MLRB agreed to dismiss Case LR225 and uphold the original decision of the Appointed Officer to refuse Planning Application 18/01568/APP as the proposal is contrary to policies H3 (Sub-division for House Plots) and IMP1 (Developer Requirements) of the MLDP 2015.

pp Mr Sean Hoath
Senior Solicitor
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.