



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR230
 - Application for review by Mr and Mrs A Campbell c/o Mr C Mackay, CM Design against the decision of an Appointed Officer of Moray Council
 - Planning Application 19/00309/PPP – Erect Replacement Dwellinghouse at Hillview, Garmouth Road, Lhanbryde, IV30 8PD
 - Unaccompanied site inspection carried out by the MLRB on 25 October 2019
 - Date of decision notice: 13 December 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. 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 in principle was considered by the MLRB at the meeting held on 31 October 2019.
- 1.3 The MLRB was attended by Councillors Taylor (Chair), Bremner, Coy, Gatt, R McLean and Ross.

2. MLRB Consideration of Request for Review

- 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:
 1. The proposal is contrary to policies H1 and IMP1 in the Moray Local Development Plan (MLDP) 2015 for the following reasons: the site is of insufficient size to provide for a house with adequate levels of amenity which avoids an intrusive impact on neighbouring houses. It is also

considered that any reasonably sized house on the site would result in cramped, over development of the site which would be to the detriment to the character of the area and residential amenity and as such the proposal is contrary to the provisions of the MLDP 2015.

2. By virtue of reliance for off street parking and turning to take access onto a narrow confined lane with poor access onto Walker Crescent, close to its junction with Garmouth Road the additional traffic would result in a detrimental impact to the amenity of the locality and to other users of the lane. The existing lane is therefore inadequate to receive additional traffic and would not meet the requirements of Policy T2 which requires an access to be appropriate to the needs of the development.
 3. There is currently insufficient information to assess the proposals against the requirements of Policies EP5 and IMP1 and associated Supplementary Guidance Flood Risk and Drainage Impact Assessments for New Development on the basis that site drainage cannot be confirmed as compliant with the above policies in terms of the provision of surface water disposal and treatment from the site.
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- 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 October 2019, the Chair stated that she, along with Councillors Gatt and R McLean were shown the site where the proposed development would take place. Councillors Coy and Bremner stated that they were unavailable for the scheduled site visit however had visited the site on their own. Councillor Ross stated that he had not visited the site however was of the view that there was adequate information within the report to determine the 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 asked the Moray Local Review Body (MLRB) if it had sufficient information to determine the request for review. In response, Councillor Gatt stated that he had noted when studying the planning history of the site that the Report of Handling stated that 2 previous planning applications had been submitted in relation to the site however a 3rd planning application was also mentioned in the narrative within the Report of Handling and a 4th application was detailed on the public planning portal which did not feature in the report before the MLRB and sought clarification in this regard.
 - 2.6 In response Miss Webster, Planning Adviser advised that the 3rd and 4th planning applications queried by Councillor Gatt had been withdrawn which was why they were not listed within the planning site history, as only planning applications that had been determined would be listed in this section.
 - 2.7 Following this clarification, the MLRB unanimously agreed that it had sufficient information to determine the case.

- 2.8 Councillor Gatt was of the view that the appeal should be upheld as, had the house not been demolished, there would be no issues with access as the house would still be standing. He further stated that the planning history had revealed that there had been planning applications withdrawn in relation to access and parking concerns however the Transportation Service had made no objection to the current planning application as it could not comment on access to the development as the road and driveway are private un-adopted roads out with the control of the Roads Authority therefore, in his opinion, the proposal complied with policy T2 (Provision of Access) of the MLDP 2015. Councillor Gatt stated that he was of the view that the proposal also complies with policies H1 (Housing Land) and IMP1 (Developer Requirements) of the MLDP 2015 as it is a redevelopment within an established settlement, the floor area of the new building is smaller than the previous building, there is adequate space to accommodate 2 vehicles and the proposed dwelling appears to be no higher than adjoining buildings. In terms of policy EP5 (Surface Water Drainage), Councillor Gatt stated that there must have been drainage in the previously demolished house therefore was of the view that the facilities should be already present and may just require to be upgraded and queried whether the MLRB could grant planning permission subject to a suspensive condition to address the flood risk and drainage impact concerns.
- 2.9 In response, Mr Henderson, Planning Adviser advised that, even if the original house had not been demolished, the planning application would still need to comply with the current planning policies within the MLDP 2015. In relation to access, he acknowledged that the Transportation Service did not object to the application and could only comment on onsite parking and not access as the road is a private, un-adopted road and therefore not within the remit of the Transportation Manager. Mr Henderson further advised against the use of a suspensive condition as there is a risk that the Planning Authority could approve a planning application that cannot be implemented in line with policy.
- 2.10 On considering the advice from the Planning Adviser, Councillor Gatt remained of the view that the proposed development complied with policies H1, IMP1 and T2 of the MLDP 2015 and also was of the opinion that a suspensive condition could be added to the planning permission as failure to adhere to the condition would nullify the planning permission. Councillor Gatt therefore moved that the MLRB uphold the appeal and grant planning permission in relation to planning application 19/00309/PPP subject to a suspensive condition to be agreed by the Flood Risk Management Team in order to comply with policies EP5, IMP1 and associated Supplementary Guidance Flood Risk and Drainage Impact Assessments for New Development.
- 2.11 Councillor Bremner stated that he had sympathy for this appeal given that there was previously a house on the site which had been demolished and, given the proposal is for a smaller footprint, agreed to second Councillor Gatt's motion.
- 2.12 Councillor Coy was of the view that the planning application should be determined on its own merits in accordance with the current policies within the MLDP 2015 and moved that the MLRB agree to uphold the decision of the Appointed Officer and refuse planning permission in respect of planning application 19/00309/PPP as it is contrary to policies H1, IMP1, T2 and EP5 of

the MLDP 2015. This was seconded by Councillor Ross.

2.13 On a division there voted:

For the Motion (4): Councillors Gatt, Bremner, R McLean and Taylor

For the Amendment (2): Councillors Coy and Ross

Abstentions (0): Nil

2.14 Accordingly, the motion became the finding of the MLRB and it was agreed to uphold Case LR230 and grant planning permission in respect of Planning Application 19/00309/PPP subject to a suspensive condition to be agreed by the Flood Risk Management Team in order to comply with policies EP5, IMP1 and associated Supplementary Guidance Flood Risk and Drainage Impact Assessments for New Development.

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.

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. The approval hereby granted is for planning permission in principle and prior to the commencement of the development approval of matters specified in conditions, including the siting, design and external appearance of the building(s) the means of access thereto and the landscaping of the site shall be obtained from the Council, as Planning Authority.

Reason - In order to ensure that the matters specified can be fully considered prior to the commencement of development.

2. The grant of planning permission in principle hereby granted for the proposed development shall be carried out only in accordance with detailed drawings which shall previously have been submitted to and approved by the Council, as Planning Authority. These drawings shall show the matters specified in conditions numbered 3-7 below.

Reason - As the approval is granted for planning permission in principle only and in order that detailed consideration can be given to the matters specified.

3. Plans, sections and elevations of all buildings proposed with details of the type and colour of all external materials and finishes shall be submitted in accordance with condition no. 2 above.

Reason - As the approval is granted for planning permission in principle only and in order that detailed consideration can be given to the matters specified.

4. The proposed layout of the site showing the exact position of the site boundaries, the position of all buildings, the means of access, areas for vehicle parking and the arrangements for the disposal of foul and surface water, including a drainage statement in accordance with the requirements of the "Supplementary Guidance on Flood Risk and Drainage Impact Assessment for New Developments" - www.moray.gov.uk/downloads/file124411.PDF shall be submitted in accordance with condition no. 2 above.

Reason - As the approval is granted for planning permission in principle only and in order that detailed consideration can be given to the matters specified.

5. Details of the exact extent, type and finish of all other works including walls, fences and other means of enclosure and screening shall be submitted in accordance with condition no. 2 above.

Reason - As the approval is granted for planning permission in principle only and in order that detailed consideration can be given to the matters specified.

6. Sections through the site showing the development on its finished levels in relation to existing levels shall be submitted in accordance with condition no. 2 above.

Reason - As the approval is granted for planning permission in principle only and in order that detailed consideration can be given to the matters specified.

7. Landscaping proposals showing any existing trees/hedges/shrubs to be retained or removed together with details of the type, position and number of all planting to be undertaken and details of all surfacing materials shall be submitted in accordance with condition no. 2 above.

Reason - As the approval is granted for planning permission in principle only and in order that detailed consideration can be given to the matters specified.

8. As part of part of the requirements of Conditions 2-7:

- a) The design of the dwelling shall closely follow the design, form and scale proposed by the indicative design shown on drawing number "180002.CAMPBELL.02PP A" submitted as part of application 19/00309/PPP.
- b) The design and materials of the dwellinghouse shall include the following requirements:-
 - (i) the design of the dwelling shall not exceed one and a half storey construction with any upper floor accommodation located wholly or substantially with the roof space.
 - (ii) Uniform external finishes and materials including slate or dark "slate effect" roof tiles;
 - (iv) A vertical emphasis and uniformity to all windows and doors;
- c) All parking and turning arrangements shall include the requirements of Conditions 9-11 below.

Reason - In order to ensure that the development harmonises with the appearance and character of the surrounding properties and area, and to ensure an acceptable form of development in terms parking provision in conjunction with the proposed development.

9. Parking Provision shall be as follows:

- Two car parking spaces for a dwelling with three bedrooms or less; or
- Three car parking spaces for a dwelling with four bedrooms or more.

The car parking spaces shall be provided within the site prior to the occupation or completion of the dwellinghouse, whichever is the sooner. The parking spaces shall thereafter be retained 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.

10. A turning area shall be provided within the curtilage of the site to enable vehicles to enter and exit in a forward gear.

Reason: To ensure the provision for vehicles to enter/exit in a forward gear in the interests of road safety.

11. Unless otherwise agreed in writing with the Council as Planning Authority, no vehicle shall take access onto or from the site directly via Garmouth Road

Reason - In the interests of road safety

INFORMATIVES

THE DEVELOPMENT MANAGEMENT & BUILDING STANDARDS MANAGER has commented that:-

A Building Warrant will be required for the proposals. Should you require further assistance please do not hesitate to contact Building Standards, Environmental Services Department, Council Office, High Street, ELGIN IV30 1BX or by telephoning 01343 563243.

THE TRANSPORTATION MANAGER, DIRECT SERVICES has commented that:-

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 roadspemits@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 be responsible for ensuring that surface/ground water does not run from the public road into his property.

LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT

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

Reference	Version	Title
180002.CAMPBELL.02PP		Elevations floor plans and location plan
180002.CAMPBELL.01PP C		Existing and proposed site 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	
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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

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	
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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