



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR231
 - Application for review by Mrs Ray McGaan, c/o Mr Scott Cameron, Cameron Architectural Design Ltd against the decision of an Appointed Officer of Moray Council
 - Planning Application 19/00452/APP for the erection of a detached dwelling at Kahiwi Wood in relation to management of woodland
 - Unaccompanied site inspection carried out by the MLRB on 26 November 2019
 - Date of decision notice: 14 January 2020
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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 at the meeting held on 28 November 2019.
- 1.3 The MLRB was attended by Councillors Taylor (Chair), Alexander, Bremner, Gatt 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:

The proposal is contrary to the provisions of the adopted Moray Local Development Plan (MLDP) 2015 (Policies E4, ER2, H7 and IMP1) and, as a material consideration, the associated Supplementary Planning Guidance "Trees and Development" because:

The application would result in the unacceptable change in land use from woodland to residential use causing the loss of woodland resource in this existing woodland location which is part of the National Forest Inventory. The proposal is therefore contrary to the provisions of Policies E4 Trees and Development, ER2 Development in Woodlands, H7 Housing in the Countryside, IMP1 Development Requirements and associated Supplementary Guidance Trees and Development.

- 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 26 November 2019, the Chair stated that members and planning officers present 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 Moray Local Review Body (MLRB) if it had sufficient information to determine the request for review. In response, Councillor Alexander made reference to the Applicant's original planning application where it was noted that the Applicant had made a pre-application enquiry which had generated a letter and email and queried why this was not included in the case paperwork.
- 2.6 In response, Ms Webster, Planning Adviser advised that pre-application advice is treated as confidential material and does not form part of the case paperwork. She further advised that Applicants who seek pre-application advice are given this on the understanding that this advice does not guarantee an approved planning application.
- 2.7 Following this advice, the MLRB unanimously agreed that it had sufficient information to determine the case.
- 2.8 Councillor Bremner, having visited the site and considered the Applicant's grounds for review, noted that one of the reasons for refusal was that the application is contrary to policy ER2 Development in Woodlands as the development would result in the loss of woodlands, however when attending the site visit, he had observed that there were no trees in the area where the dwelling was proposed and therefore queried why this policy could be used as a reason for refusal. Councillor Bremner further noted that the purpose of the development was to maintain the woodland and that the Applicant had a Management Plan to do this and queried whether a Section 75 agreement could be used to ensure that the development is always used for forestry.
- 2.9 In response, Mr Henderson, Planning Adviser advised that the reason for refusal was because the proposal required a change in use of the land from woodland to residential as the proposal was for a dwelling house. He acknowledged that the Applicant had a Management Plan in place to maintain the woodland however, as the proposal was for a dwelling house, it still

required to comply with policies within the MLDP 2015 and this proposal had failed to comply with policies E4, ER2, H7 and IMP1 of the MLDP 2015.

- 2.10 In terms of the use of a Section 75 agreement to ensure that the property is always used for forestry, Mr Hoath, Legal Adviser advised that he would have to look into this matter further. Ms Webster, Planning adviser further advised that conditions and legal agreements have to meet 6 tests to make sure that they are enforceable and reasonable and that the Planning Authority advise against tying houses to specific land use as this is difficult to enforce.
- 2.11 Councillor Alexander, having viewed the site and considered the Applicant's grounds for review agreed with the decision of the Appointed Officer and moved that the MLRB refuse the appeal as the proposal is contrary to policies E4 (Trees and Development), ER2 (Development in Woodlands), H7 (Housing in the Countryside) and IMP1 (Development Requirements) of the MLDP 2015 and associated Supplementary Guidance Trees and Development. This was seconded by Councillor Ross.
- 2.12 There being no-one otherwise minded, the MLRB agreed to dismiss Case LR231 and uphold the original decision of the Appointed Officer to refuse Planning Application 19/00452/APP as the proposal is contrary to policies E4 (Trees and Development), ER2 (Development in Woodlands), H7 (Housing in the Countryside) and IMP1 (Development Requirements) of the MLDP 2015 and associated Supplementary Guidance Trees and 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.