



## MORAY LOCAL REVIEW BODY

### DECISION NOTICE

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Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR306
  - Application for review by Mr & Mrs Ralph, c/o Mr Craig Mackay, CM Design against the decision of an Appointed Officer of Moray Council
  - Planning Application 24/01055/APP for Proposed dwellinghouse within garden ground of 33 Golf Crescent, Hopeman, Elgin, Moray.
  - Unaccompanied site inspection carried out by the MLRB on 15 January 2025
  - Date of decision notice: 29 January 2025
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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 16 January 2025.
- 1.3 The MLRB was attended by Councillors Macrae (Chair), Dunbar (Depute), Cameron, Harris, McBain and Van der Horn.

#### 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 planning permission on the grounds that:

The proposal is contrary to the provisions of NPF Policies 14, 16 & 4, and MLDP Policies DP1, part f & Policy EP3 part b) of the Development Plan because:

The proposed sub divide site lacks its own active roadside frontage and can only be access via an access drive to be created through the parent property's garden. These characteristics are symptomatic of backland development, leading to the inappropriate subdivision of garden ground to form an additional building plot. It is further noted that the presence of an additional dwelling at this existing cul-de-sac location is considered to increase the density of housing development to the extent that the proposal is considered to be detrimental to the pleasant character and appearance of the site and the surrounding area. The proposal would therefore be detrimental to the character of the site and its surrounds which is part of the Burghead to Lossiemouth Coast Special Landscape Area which requires high quality siting characteristics for all development. The proposal would therefore be contrary to Policies NPF 14, 16 & 4, and MLDP Policies DP1, part f & Policy EP3 part b) of the Development Plan.

- 2.2 The Summary of Information report set out the reasons for refusal, including the documents considered or prepared by the Appointed Officer regarding the planning Application. It also included the Notice of Review, Grounds for Review and supporting documents submitted by the Applicant.
- 2.3 In response to a question from the Chair as to whether the Legal or Planning Advisers had any preliminary matters to raise, the Planning Adviser stated that, after concerns were raised about the site levels during the site visit, the proposed levels of the new property would match those of the existing property. The Legal Adviser had nothing to raise at this time.
- 2.4 The Chair then asked the Moray Local Review Body (MLRB) if it had sufficient information to determine the request for review. In response, the MLRB unanimously agreed that it had sufficient information to determine the case.
- 2.5 Councillor Cameron, having considered the case in detail and attended the site visit, moved that the MLRB refuse the appeal and uphold the original decision of the Appointed Officer to refuse planning permission in respect of Planning Application 24/01055/APP as the proposal is contrary to the provisions of NPF Policies 14, 16 and 4, and, MLDP Policies DP1, part f & Policy EP3 part b) of the Development Plan. Councillor Harris seconded this.
- 2.6 Councillor McBain, having considered the case in detail and attended the site visit, stated that in his opinion the proposal complies with NPF policies 4, 14 and 16. He was of the opinion that it was not a departure from policy as the proposed new build would conform to the character of the existing properties.
- 2.7 The Legal Adviser asked Councillor McBain to comment on the other policies used in the decision process as he had only mentioned NPF.
- 2.8 Councillor McBain stated that he was of the opinion that NPF 4 policies took precedence over MLDP policies and further stated that the site visit had been instrumental in him making his decision.

2.9 The Acting Principal Planning Officer advised that if there was conflict between a local development plan and NPF, the latter of the two would take precedence, in this case NPF. He further advised that the reasoning given by Councillor McBain extended to the view that the application also complied with MLDP Policy DP1.

2.10 Councillor McBain's amendment was seconded by the Chair.

2.11 On a division there voted:

For the Motion (3)	Councillors Cameron, Harris, and Dunbar
For the Amendment (2)	Councillors McBain and Macrae
Abstentions (1)	Councillor Van der Horn

2.12 Accordingly, the Motion became the finding of the meeting and the MLRB agreed to uphold the original decision of the Appointed Officer and to refuse planning permission in respect of Planning Application 24/01055/APP as the proposal contrary to the provisions of NPF Policies 14, 16 & 4, and, MLDP Policies DP1, part f & Policy EP3 part b) of the Development Plan

**Mr S 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.