



MORAY COUNCIL LOCAL REVIEW BODY

Review Decision Notice

Decision by Moray Local Review Body (the MLRB)

- Request for Review reference : Case 017
- Site address: Braehead Quarry, Keith
- Application for review by Mr & Mrs K Cowie against the decision by an Appointed Officer of Moray Council.
- Application 08/02487/FUL : Full planning permission to renovate and reuse the remains of an existing Lime Kiln to create a dwellinghouse.
- Unaccompanied site inspection carried out by the MLRB on Friday 8 October 2010.

Date of Decision Notice: 22 December 2010

Decision

The MLRB upheld the decision of the Appointed Officer to refuse full planning permission but on one ground only namely that the application is contrary to Policy EP9 of the Moray Local Plan 2008.

This permission does not carry with it any necessary consent or approval to the proposed development under the Building (Scotland) Act 1959 as amended or other enactments.

1.0 Preliminary

- 1.1 This Notice constitutes the formal decision notice of the Moray Local Review Body (MLRB) as required by the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008.
- 1.2 The above application for full planning permission was considered by the MLRB at meetings on 22 September, 21 October and 18 November 2010. The Review Body was attended at all three meetings by Councillors D Ross (Chair), J Hogg and J MacKay.

2.0 Proposal

- 2.1 This is an application for full planning permission to renovate and reuse the remains of an existing Lime Kiln to create a dwellinghouse at Braehead Quarry Keith.

3.0 MLRB Consideration of request for review

- 3.1 The request for review was first considered by the MLRB on 22 September 2010 and prior to considering the request the Legal Adviser referred members of the MLRB to the third reason for refusal relating to the absence of a contaminated land assessment and advised the meeting that this would only become a live issue if the MLRB were to be satisfied that the other grounds for refusal had not been met. Were the MLRB so minded it had been submitted that the contaminated land issue could be addressed by either making it a condition of consent or by following the 'Minded to Approve' procedure, subject to the submission of a satisfactory contaminated land assessment which would then enable the Contaminated Land Team to frame robust conditions. She intimated that she had concerns regarding both these suggested options and would address this issue should the need arise following the MLRB's consideration of the request for review, and particularly the first two grounds for refusal.
- 3.2 In regard to the issue of a contaminated land assessment the Chairman referred to the advice from the Council's Contaminated Land Officer, set out on page 57 of the case papers, in regard to PAN 33 which intimates that the potential risk from contamination should be clarified before consent is issued. He also referred to the potential cost implications for the applicant and sought clarification of these issues.
- 3.3 The Legal Adviser referred members to the applicant's grounds for review which intimated that tests had been carried out only on adjoining land but not on the actual application site, and this had been a conscious decision by the applicant given the potential cost implications of the testing and in the knowledge that there were other reasons for refusing the application. The Contaminated Land Team had indicated at page 59 of the case papers that were the MLRB minded to grant the application after consideration of the first two grounds for refusal, there were two options: (i) the remediation could be addressed through conditions or (ii) the MLRB could follow the 'Minded to Grant' route subject to the submission of a satisfactory contaminated land assessment which would then allow robust conditions to be framed. The first option was not favoured by the Contaminated Land Team because they felt that robust conditions could not be framed without an assessment to show what type of remediation was needed. Also, they pointed out that a grant without an assessment was contrary to the Council's Contaminated Land Policy. As regards option (ii) whilst this was the option supported by the Council's Contaminated Land Officer the MLRB's Legal Adviser expressed the view that, in her opinion, were the MLRB to follow this option, this would be contrary to the policy objectives which underlay the 2008 Regulations as this information was not before the Appointed Officer at the time the planning application was considered and that would mean that the supporting evidence would not truly be being reviewed as intended. Although there was provision for the admission of new evidence in terms of Section 43B (1)(a) of the Town & Country Planning (Scotland) Act 1997, as amended, the Legal Adviser also

advised that as it was accepted by the applicant that the only reason for not submitting the contaminated land assessment was based purely on financial reasons then the tests set out in Section 43B relative to the submission of new evidence could not, in her opinion, be met on any view and therefore it would inappropriate for the MLRB to consider a 'Minded to Approve' route.

- 3.4 The MLRB accepted the Legal Adviser's advice regarding the options for consideration of the case and clarification was sought as to whether or not it would be possible for the MLRB to consider and came to a conclusion on the request for review before requiring the applicant to incur any unnecessary expense in requiring the submission of a contaminated land assessment.
- 3.5 The Legal Adviser advised that that were the MLRB so minded it could proceed to consider all the reasons for refusal and following consideration, were the MLRB to determine that the other reasons for refusal were without substance, it could refuse the request for review only on the grounds of the absence of the submission of a satisfactory contaminated land assessment and it would be for the applicant, in light of the MLRB's decision, to consider submitting a fresh application which could include the required contaminated land assessment as the applicant might feel by that stage that the costs associated with this were less affected by the risk of refusal.
- 3.6 The MLRB accepted the Legal Adviser's advice and following discussion agreed, by a two to one majority, that there was insufficient information in order to proceed to determine the request for review and agreed that an unaccompanied site inspection be undertaken, the purpose of which being to view the site in the context of Policies H7, H8, E10, EP9 and IMPI of the Moray Local Plan 2008. The MLRB requested that the Planning Adviser attend the unaccompanied site inspection.
- 3.7 The MLRB also sought guidance in regard to the definition of a building given the differing view, in regard to this case, between the Appointed Officer and the applicant. The Planning Adviser confirmed that whilst buildings are conventionally known as having four walls and a roof, planning officers within Moray Council Planning Section did not have a clear definition, in planning terms, to apply to an application and it was agreed that it be remitted to the Legal Adviser to research current case law and guidance on this issue and report thereon to the next meeting of the MLRB. It was also agreed that the definition applied by the Appointed Officer in the determination of the application also be ascertained for the next meeting.
- 3.8 The unaccompanied site inspection was carried out on Friday 8 October and, on arrival, given the issues relative to the case, the Planning Adviser advised the members of the MLRB, prior to entering onto the site, on the key aspects they should observe on site, in particular whether the remains on the site could be considered a building given the relevance of policy E10 of the Moray Local Plan 2008 (MLP) and the level of remains on site so as to determine whether they qualify under level 2 of Policy H7 of the MLP and if not the application would then require to be considered as a new build under Policy H8 of the MLP.

- 3.9 At the meeting of the MLRB on 21 October 2010 there was submitted a 'Summary of Information' report detailing the outcome of the MLRB's previous consideration of the request for review and included details of the definition of a building applied by the Appointed Officer in his consideration and determination of the application. There were appended to the report as appendices 1, 2 & 3 respectively an extract from the Minute of the MLRB dated 22 September 2010, a supplementary note by the Legal Adviser on the outcome of the research into current case law and guidance relating to the definition of a building and additional information on the Council's draft Supplementary Planning Guidance (SPG) on Housing in the Countryside which is now a material consideration in the consideration and determination of planning applications.
- 3.10 The Chairman enquired if members consider that they now had sufficient information in order to proceed to determine the request for review. Councillor Hogg intimated that whilst he was clear about the site, the extent of the supposed building and the further advice contained in the appendices to the case papers he would still wish to have the opportunity to give further consideration to the definition of a building in the context of Policy E10 and wished to hear oral evidence from both the Appointed Officer and the Applicant. For these reasons Councillor Hogg moved that the request for review be referred to a Hearing in accordance with Schedule 1 of the Town & Country Planning (Scheme of Delegation & Local Review Procedure) (Scotland) Regulations 2008 (the Regulations).
- 3.11 There being no-one otherwise minded the MLRB agreed to refer the request for review to a Hearing and, in terms of Schedule 1, 1 (1) of the Regulations, an invitation to be heard be extended to the applicant, the Appointed Officer and any other person or body who have made representations on the specified matters to be discussed at the Hearing. In terms of Schedule 1, 1 (2) of the Regulations the MLRB agreed that the specified matters to be considered at the Hearing would be consideration of the application in terms of Policies E10, H7, H8 and IMP1 of the MLP, with particular reference to the definition of a building in the context of Policy E10 of the MLP. It was also agreed that interested parties who submitted representations on matters other than the specified matters to be considered at the Hearing, such as contaminated land issues, would be notified of the Hearing albeit they would not be invited to be heard at the Hearing. It was also noted that the issue relating to the requirement to submit a contaminated land assessment would be considered by the MLRB following determination of the specified matters at the Hearing.
- 3.12 At the Hearing Session on 18 November 2010 Mr M Hilton, Chartered Town Planning Consultant, CM Design, addressed the MLRB, on behalf of the applicants Mr & Mrs K Cowie, on the specified matters.
- He advised the meeting that whilst the appellant has always accepted that the site lies within the Keith Countryside Around Town designation (CAT) he was of the view that the proposed development is a rehabilitation and limited extension of an existing building, which is one of the permitted exceptions to the policy. In support of this Mr Hilton advised that:-
1. The building had been on the site for a number of years and was shown on a 1905 map for the area;

2. The building retained two definable walls, there having been no need for a rear wall as the building was built into the back of a slope;
3. There had been a roof but it had partially collapsed and the remnants were then removed for safety reasons;
4. The structure met at least level 2 of policy H7, but was better classed as falling between levels 2 and 4 due to the remains of the front and gable walls still being present on site.

Mr Hilton referred to the Report of Handling in which the Appointed Officer expressed the view that the application could not be considered against this aspect of the policy as the existing lime kiln is not a building as it was not free standing with 4 walls, and a conventional roof. This definition of a building was, in the opinion of Mr Hilton, the creation of the Appointed Officer and is not backed up by The Town & Country Planning Act which defines a building as 'any structure or erection, and any part of a building, as so defined, but does not include plant or machinery in a building.' He also referred the meeting to the dictionary definition which states that a building is 'a structure that has a roof and walls and stands more or less permanently in one place'. Mr Hilton was of the opinion that the lime kiln would and still does clearly conform to both of these definitions and therefore would contend that it should be considered as a building in terms of policy E10 of the MLP.

In regard to the relevance of Policy H8 of the MLP Mr Milton advised the meeting that if a proposal does not meet the requirements of Policy H7, it would fall to be determined against policy H8 which allows for new houses on the proviso that they utilise existing landscape features to blend the house into the location. He was of the view however that, in this case, as the applicant considers that the remains extend to between levels 2 – 4 of Policy H7 of the MLP the siting considerations of policy H8 are irrelevant.

The main strand of Policy IMP1 of the MLP is to ensure that developments are appropriate for their environments. As this proposal involves the reuse of an existing building and would be primarily hidden from view by the front of the kiln, Mr Hilton advised the meeting that the applicant believes that the proposal satisfies the criteria of this policy.

Thereafter Mr Hilton responded to questions in regard to his interpretation of rehabilitation, limited extension and the use of an embankment as the other side and gable of the structure. Mr Hilton advised the meeting that in his opinion the rehabilitation of a building did not relate to putting it back to its original purpose but was more to do with the reuse of the building irrespective of whether the use was changed eg rehabilitating a factory and turning it into office accommodation or residential use. His reference to limited extension related to the proposed development which is much smaller than the original building, which although not evident on site originally had 4 walls and a roof. He advised that he still considered the structure to amount to a building within his definition despite the fact that part of the new structure would be formed by the topography of the site as there had been internal walls constructed within that, these internal walls having long since fallen in.

- 3.13 Mr N MacPherson, Moray Council's Appointed Officer, in respect of this planning application, referred the MLRB to Development Management Procedures 4/2009 Annex A which required Development Plan policies to be interpreted carefully, looking at the aims and objectives of the plan as well as the detailed wording of the policies. Within this context, he advised the meeting that the objective of Policy E10 of the MLP is to preserve the distinction between the town and the surrounding countryside by restricting development within the CAT. The policy does however allow for development within the CAT but only where by virtue of the presence of a 'building' its impact upon the character of the CAT will be minimised. For the purposes of this policy, and in the context of the aims and objectives outlined, Mr MacPherson was of the view that a 'building' would be free standing with 4 walls and a conventional roof. He also advised that variations such as the wing of a steading may be acceptable so long as that presence gave a visual context that the development could be compared to clearly. Mr MacPherson also advised the meeting that the other permitted forms of development infer the policy relates to conventional buildings capable of habitation rather than structures such as lime kilns and relates to 'existing buildings' and not remains or partial buildings as would be the case here.

He was of the opinion that it was clearly not the intent of the CAT policy to allow new houses to be erected in place of any man-made structure such as lime kilns, redundant railway bridges or even substantial retaining walls.

Given the nature of the ruins Mr MacPherson was of the view that it is difficult to compare them to the thresholds defined for replacement policy H7 of the MLP as the kiln is not a conventional building. However, the ruins would probably be compared to level 3 of the diagram although these ruins are not being replaced or re-used as the policy requires. The ruins are not an integral part of the proposed house as they merely abut the proposed new structure so the extent to which they remain is of limited relevance.

In regard to the relevance of Policy H8 of the MLP Mr McPherson advised the meeting that where proposals fail to meet the requirements of Policy H7 of the MLP they are to be considered under Policy H8 and as the proposed house is essentially free standing it was assessed as a new house lying outwith any settlement boundary of a town or rural community.

In regard to the relevance of Sections a) & b) of Policy IMP1 of the MLP section a) requires development to be appropriate to the character of the surrounding area and by virtue of the case already made for limiting new housing development with the CAT designation to preserve the open rural character immediately outwith towns, the proposal would be at odds with this aspect of IMP1. Whilst, in terms of section b), it is acknowledged that the house would be neither prominent nor obtrusive and therefore integrates into the landscape, it would still be visible and have a presence making it contrary to section a) of the policy.

Thereafter Mr MacPherson responded to questions from the MLRB in regard to the definition of a building as defined in the MLP. He advised the meeting that in the absence of any specific definition in the policy he had taken the intent of the policy into consideration which, in his opinion, was clearly aimed at specific buildings such as steadings or derelict cottages rather than a structure such as an old railway bridge becoming the site for a house.

- 3.14 On the conclusion of the presentations and the respective summaries by the Appointed Officer and the Applicant's representative, in which they reiterated the key aspects of their submissions the Planning Adviser confirmed that the statements made by the speakers mirrored their Hearing Session statements, submitted in terms of Schedule 1, 4 of The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008 (the Regulations), and also advised the MLRB that when it came to consider the request for review, in light of the information contained within the case papers and the presentations at the Hearing Session, of the need to consider and come to a conclusion on each of the specified matters separately.
- 3.15 Prior to the conclusion of the Hearing session the Legal Adviser sought the permission of the Chair to refer the meeting to the final paragraph in Appendix 3 of Summary of Information Report submitted to the MLRB on 21 October 2010 in regard to 'Additional Information on the Council's Draft Supplementary Planning Guidance (SPG) on Housing in the Countryside. The information implied that the Legal adviser had given advice to the MLRB on a new evidence submission in respect of this case and this was not accurate. It should have referred to previous advice given by the Legal Adviser in a previous case and the Legal Adviser invited the Chair to consider using his discretion in order to clarify with both the Applicant's representative and the Appointed Officer that neither would have wished to follow the written submissions procedure given that neither had made reference to the SPG in their presentations to the Hearing Session. The Chairman referred to the reasons for the Hearing Session, which were quite specific and did not consider the issue raised as being relevant to the Hearing Session and refused to exercise his discretion on this basis and declared the Hearing Session concluded.
- 3.16 On the conclusion of the Hearing Session the MLRP re-convened in ordinary session and resumed consideration of the request for review and the members of the MLRB agreed that they now had sufficient information and agreed to proceed to determine the request for review taking each of the specified matters separately. The meeting also noted that the issue relating to the requirement to submit a contaminated land assessment would only be considered by the MLRB were the MLRB to agree that the proposed development complied with Policies E10 and H7 and Sections a) & b) of Policy IMP1 of the MLP.
- 3.17 In regard the first of the specified matters Councillor MacKay stated that, in his opinion, the remains of the lime kiln constituted a building. Councillor Hogg referred to the definition of a building provided by the Legal Adviser which refers to the definition set out in Section 277 on the Town & Country Planning (Scotland) Act 1997(the Act) and sought clarification as the weight the MLRB should give to this definition in the absence of a definition in the MLP and individual member's views on the definition of a building. The Legal Adviser advised the meeting that as the Act was the overriding planning legislation then members should give significant weight to the definition set out in Section 277 of the Act. In regard to the absence of a definition within the MLP the Legal Adviser advised the meeting that the MLRB would require taking into account documentation furnished with the case papers on the intent of the policies when referring to a building.

The Planning Adviser also referred the MLRB to Policy E10 of the MLP which although designed to restrict development with CAT areas does allow for exceptions which relates to buildings which still have a substantial visual impact and any new development of the building(s) would only have a minor impact on what existed. The main aim of the policy is to avoid development sprawl into the countryside and preserve the distinction between the town and the built up area and therefore it was critical to the request for review for the MLRB to first determine whether or not in its' opinion the remains of the lime kiln constituted a building.

- 3.18 In response to a question in regard to what definition the Appointed Officer would have taken into account in the consideration of the planning application the meeting noted that as well as the policies within MLP the Appointed Officer would also have taken into consideration any other planning guidance including that contained in the Act.
- 3.19 Councillor Hogg expressed the view that, based on the definition set out in Section 277 of the Act and the absence of a clear definition in the MLP, the lime kiln was, in his opinion, a building and, in the context of Policy H7 of the MLP, the lime kiln exceeds level 3 but not quite up to level 4.
- 3.20 Councillor Ross expressed the view that as well as taking into account the definition set out in Section 277 of the Act the intent of Policy E10 of the MLP also required to be taken into account and was of the opinion that the Appointed Officer had taken the correct approach in that the structure which is being replaced is not a building which can be used as one of the exceptions set out in Policy E10 of the MLP. He was also of the view that whilst the contemporary design of the proposed dwellinghouse had a place it was not within a CAT designated area and intimated that taking everything he has seen, read and heard on the issue he was of the opinion that the remains of the lime kiln were not significant for him to accept that it constituted a building in terms of Policy E10 of the MLP. For these reasons Councillor Ross moved that the MLRB agree that the lime kiln is not considered as a building in terms of Policy E10 on the MLP.
- 3.21 Councillor Hogg, in referring to his earlier statement regarding the definition of a building, also made reference to the exceptions referred to in Policy E10 of the MLP which does not define a building. He also referred, in his opinion, to some of the most tenuous examples of existing buildings within a CAT designated area which have been granted planning consent which were far less of a structure than the remains of the lime kiln and sought legal advice in regard to the definition of a building.
- 3.22 The Legal Adviser advised the meeting that other than the advice set out in Appendix 2 of the Summary of Information report submitted to the MLRB on 21 October 2010 there was no case law on the definition of a building in the context of Policy E10 of the MLP and referred Councillor Hogg to the definition set out in Section 277 of the Act and members of the MLRB would require to take this into consideration and also the wider context in which Policy E10 of the MLP has to be interpreted.

- 3.23 Councillor MacKay confirmed that he was of the opinion that the remains of the lime kiln constituted a building in the context of policy E10 of the MLP and whilst he had some concerns regarding the design of the new dwellinghouse if it complied with Local Plan policies he would be prepared to accept it, in this instance.

In regard to the design of the proposed dwellinghouse the meeting noted that as this was not referred to in the reasons for refusal the MLRB can be satisfied that the design of the dwellinghouse complied with MLP policies.

- 3.23 The Planning Adviser also advised the MLRB that planning legislation makes it clear that all planning decisions must be taken in accordance with the Development Plan unless there was a material consideration(s) to justify departing from the Plan and therefore the MLRB must consider the application in the context of Policy E10 of the MLP and the material consideration required to be taken into account is what the definition of a building is in terms of Section 277 of the Act. The Planning Adviser also advised that the intent of Policy E10 of the MLP is to restrict development within CAT designated areas and it is a matter for the MLRB to decide if the existing remains of the lime kiln can be interpreted as a building as defined by Section 277 of the Act and if the proposed development can be considered as one of the exceptions set out in Policy E10 of the MLP.

- 3.24 Councillor Hogg expressed his concern that there was no reference in Policy E10 of the MLP to the definition of a building or even a cross reference to the definition set out in Section 277 of the Act.

- 3.25 Councillor Ross intimated that he was still of the view that the intent of Policy E10 of the MLP was to stop developments such as that currently under consideration because it is the replacement/reuse of a structure or remains of a wall and not the replacement/reuse of a building. For these reasons Councillor Ross moved that the application is contrary to Policy E10 of the MLP and therefore the Appointed Officer's reasons for refusal should be upheld and the request for review be refused.

- 3.26 Councillor Hogg intimated that given the definition of a building set out in Section 277 of the Act and there is no definition of a building contained within Policy E10 of the MLP he was of the opinion that the remains of the lime kiln constituted a building in the context of Policy E10 and therefore substantial compliance with Policies E10 and H7 of the MLP as set out in points (i) & (ii) of the specified matters. Councillor MacKay intimated his agreement with this view.

- 3.27 Accordingly the MLRB agreed by a two to one majority that the application complied with Policy E10 and Section a) & b) of Policy H7 of the MLP and as such Policy H8 had no relevance.

- 3.28 The MLRB then proceed to consider the relevance of Sections a) & b) of Policy IMP1 of the MLP

- 3.29 Councillor MacKay again expressed his concern if regard to the design of the proposed dwellinghouse and the affect this might have on the character of the area. However in noting that design was not given as a reason for refusal, that exceptions to design requirements can be justified on the basis of innovative designs that respond to the setting of the house and that the proposed design was considered to be innovative Councillor MacKay intimated that, in his opinion, the proposed development complied with Sections a) & b) of Policy IMP1 of the MLP. Councillor Hogg concurred was also of the view that the proposed development complied with Sections a) & b) of Policy IMP1.
- 3.30 Councillor Ross intimated that he did not consider it to be a suitable site within the CAT designation and whilst accepting that it was an innovative design it was in the wrong location. For these reasons he moved that the proposed development did not comply with Sections a) & b) of Policy IMP1 of the MLP.
- 3.31 By a majority of two to one the MLRB agreed that the proposed development complied with Sections a) & b) of Policy IMP1. The MLRB then proceed to consider the fourth reason for refusal relating to the omission of a contaminated land assessment.
- 3.32 The Legal Adviser referred to and read out paragraphs 3, 4 & 5 of Branch c) (i) of the Minute of the meeting of the MLRB on 22 September 2010 which concluded that as it was accepted by the applicant that the only reason for not submitting the contaminated land assessment was based purely on financial reasons then the tests set out in Section 43B of the Town & Country Planning (Scotland) Act 1997, as amended, relative to the submission of new evidence could not, in her opinion, be met on any view and therefore it would inappropriate for the MLRB to consider a 'Minded to Approve' route, subject to the submission of satisfactory contaminated land assessment. It was also noted that whilst the MLRB accepted the Legal Adviser's advice regarding the options for consideration of the case no decision was taken regarding this issue.
- 3.32 The MLRB proceeded to consider the options set out in the Legal Adviser's advice to the MLRB on 22 September 2010 during which it was noted that it was not considered appropriate for the MLRB to consider approving the application subject to the submission of a satisfactory contaminated land assessment as to do so would mean that the MLRB was not conducting a review but in essence accepting a partially new application at the review stage without the legal basis to do so and contrary to the Regulations. It was also noted that were the MLRB to approve the application, at this stage, that decision would be open to Challenge by the objector to the application given that their objection specifically related to soil disturbance and the possibility of contamination of nearby water supplies.
- 3.33 The Chairman sought clarification on the issue of were the MLRB to refuse the request for review solely on the omission of a contaminated land assessment, the application complying with Policies E10, H7 and IMP1of the MLP, and a future application, for the same proposal, being submitted it would only be considered on the contaminated land issue given the decision of this MLRB.

- 3.34 The Legal Adviser reiterated her previous advice to the MLRB that were the MLRB so minded it could proceed to consider all the reasons for refusal and following consideration, were the MLRB to determine that the other reasons for refusal were without substance, it could refuse the request for review only on the grounds of the absence of the submission of a satisfactory contaminated land assessment and it would be for the applicant, in light of the MLRB's decision, to consider submitting a fresh application which would include the required contaminated land assessment as the applicant might feel by that stage that the costs associated with this were less affected by the risk of refusal. On receipt of an application it would be for the Appointed Officer to consider the application in terms of the MLP policies and taking into consideration the MLRB decision as this would be considered a material consideration. Were the Appointed Officer to subsequently refuse the application the applicant could submit a request for review which would be considered by a MLRB consisting of different members who would require taking into account the decision of this MLRB and whilst not setting a precedent it would be considered as a substantial material consideration.
- 3.35 The Chairman referred the MLRB to the guidance set out in PAN 33 'Development of Contaminated Land' as revised in 2000 which states that before permission is given there is a need to assess the potential risks from contamination, on the basis of the proposed future use and circumstances before permission is given. In light of this guidance the Chairman was of the view that the MLRB is not in a position to approve the application and moved that the application for review be refused solely on the grounds of being contrary to Policy EP9 of the MLP given the omission of a contaminated land assessment.
- 3.36 There being no-one otherwise minded the motion became the finding of the meeting and the MLRB agreed that the request for review be partially upheld in that it is the decision of the MLRB that the application complies with policies E10, H7 and IMP1 of the MLP. The MLRB also agreed that as the application does not comply with policy EP9 of the MLP the MLRB agreed that the request for review be refused on the grounds that the application is contrary to policy EP9 of the Moray Local Plan 2008 on the grounds that a contaminated land assessment had not been satisfactorily concluded so as to determine whether the site would be appropriate for the use applied for and therefore, the nature, extent and potential impacts of any contamination and subsequent remediation method statement (if necessary) cannot be determined or agreed upon at this time.

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Rhona Gunn
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 21 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008.

- 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.