



MORAY COUNCIL LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR117
 - Site address: Site to South-East of Orchard House, Spey Street, Garmouth.
 - Application for review by Mr Cyril Smith, Future Plans Ltd against the decision of an Appointed Officer of The Moray Council.
 - Planning Application 14/01773/APP to erect single storey dwelling, formation of access driveway and associated landscaping works.
 - Unaccompanied site inspection carried out by the MLRB on 24 April 2015.
 - Date of decision notice: 20 May 2015
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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 2008.
- 1.2 The above application for planning permission was considered by the MLRB at the meeting held on 30 April 2015.
- 1.3 The Review Body was attended by Councillors C. Tuke (Chair), G. Coull (Deputy Chair), J. Allan and K. Reid.

2. Proposal

- 2.1 This is an application for planning permission to erect single storey dwelling, formation of access driveway and associated landscaping works at Site to South-East of Orchard House, Spey Street, Garmouth.

3. MLRB Consideration of Request for Review

- 3.1 There was submitted a 'Summary of Information' report setting out the reasons for refusal, together with copies of the Report of Handling, Notice of Review, Grounds for Review and supporting documents.
- 3.2 The MLRB agreed that it had sufficient information to determine the request for review.
- 3.3 With regard to the unaccompanied site inspection carried out on 24 April 2015, Mrs E. Gordon, Planning Adviser, advised that Members were shown the site where the proposed development would take place.
- 3.4 The Planning Adviser advised the MLRB that the application had been refused on the grounds that it does not comply with Moray Local Plan 2008 Policies H3, EP5, EP7, EP10 and IMP1 or policies contained in Scottish Planning Policy (SPP) relating to flood risk. She advised that the Appointed Officer believed that the proposed amphibious house design does not comply with Policies EP7, H3 and SPP, which stipulate that new development should be located away from functional floodplains and areas of medium to high flood risk in which the site lies. Noting that the development does not comply with Policies EP7, H3 and IMP1 in that the site would be at significant risk of flooding, she advised that the site is at a medium to high risk of flooding and is known to flood on a regular basis and, as there is no flood alleviation measures in place - under construction or planned - the application is contrary to the requirements of EP7, H3 and SPP.
- 3.5 Referring to Policy EP7, the Planning Adviser advised that insufficient information had been submitted to demonstrate that the development will not materially increase the possibility of flooding elsewhere. She noted that the site was presently undeveloped and therefore not considered suitable for additional development as the proposed development and location is not considered essential for operational reasons.
- 3.6 The Planning Adviser advised that the development was contrary to Policies EP5, EP10, H3 and IMP1 in that insufficient information had been submitted to demonstrate that the dwelling can be adequately served in terms of foul and surface water drainage and that drainage systems would not result in greater flood risk to neighbouring properties.
- 3.7 Referring to the Applicant's Grounds for Review, the Planning Adviser advised that the Applicant had stated their belief that the proposal satisfied all policy constraints with the exception of one, which was addressed by an innovative design solution. They noted that there are no protocols for the approval of amphibious buildings and that this is a legislative void that requires Council and Government support.
- 3.8 The Applicant stated their belief that Scottish Environmental Protection Agency (SEPA) Officials can appreciate the benefits of amphibious structures but are not comfortable stepping beyond the prescribed embargos on flood plain developments. They advised that allowing no development on all or any flood susceptible locations would knock out development in many villages,

towns, city centres and conservation areas that do not have flood prevention schemes.

- 3.9 Stating that the amphibious housing offers a responsive and responsible solution, the Applicant noted that the ever increasing flooding problems could be addressed incrementally, building by building as amphibious buildings have infinite flood clearance characteristics.
- 3.10 Referring to the Moray Local Plan 2008, the Applicant noted that Garmouth was assured the preparation of a flood management scheme and advised that this has not yet materialised and causes a problem for SEPA who are unable to approve any development applications. The Applicant stated, in their opinion, that legislation was drafted when there was not the awareness of amphibious buildings and as such this link between logic and legislation is all that prevents the project from proceeding as all other technical issues have been resolved.
- 3.11 The Applicant stated that considerable pre-application negotiation was undertaken and all 6 reasons for refusal are over-burdened by inaccurate perceptions about local fluvial flooding and contemporary mitigation solutions. Expressing their belief that Reasons 1 and 2 are founded upon inaccurate SEPA mapping, they advised that Reasons 3, 4, 5 & 6 are erroneous for the reasons set out in the Grounds for Review.
- 3.12 Councillor Coull, having had the opportunity to visit the site and consider the Applicant's Grounds for Review, stated that he was of the same opinion as the Appointed Officer and moved that the appeal be dismissed and the Appointed Officer's decision be upheld to refuse the application.
- 3.13 Councillor Allan stated he was of the same opinion as Councillor Coull and seconded his motion.
- 3.14 Councillor Reid stated she was of the same opinion as Councillors Coull and Allan and expressed her belief that there were too many risk in relation to flooding.
- 3.15 As an amendment, the Chair stated that he was of the opinion that the proposal complied with Policies H3, EP5, EP7, EP10 and IMP1 in that adequate provisions had been made to address flood related issues, namely the amphibious design of the house. Accordingly, he moved that the appeal be upheld and planning permission granted. There being no seconder, the motion fell.
- 3.16 There being no one otherwise minded, the MLRB agreed to dismiss the appeal and uphold the Appointed Officer's decision to refuse planning permission.

Paul Nevin
Senior Solicitor (Property and Contracts)
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.