

# **MORAY COUNCIL**

## **Minute of Meeting of the Moray Local Review Body**

**Thursday, 29 October 2020**

**remote locations via video-conference,**

### **PRESENT**

Councillor George Alexander, Councillor David Bremner, Councillor Gordon Cowie, Councillor Donald Gatt, Councillor Ray McLean, Councillor Laura Powell, Councillor Derek Ross, Councillor Amy Taylor

### **APOLOGIES**

Councillor Paula Coy

### **IN ATTENDANCE**

Ms Webster, Principal Planning Officer (Strategic Planning and Development) and Mr Henderson, Planning Officer as Planning Advisers, Mr Hoath, Senior Solicitor as Legal Adviser and Mrs Rowan, Committee Services Officer as Clerk to the Moray Local Review Body.

#### **1 Chair**

Councillor Bremner, being Depute Chair of the Moray Local Review Body, chaired the meeting.

#### **2 Declaration of Group Decisions and Members Interests**

In terms of Standing Order 20 and the Councillor's Code of Conduct, Councillor Gatt declared an interest in Item 5 Case LR243 as he has had several meetings with the Applicant in relation to his application. Councillor Powell also declared an interest in Item 5 LR243 as the Applicant is a personal friend of the family. Both advised that they would take no part in the consideration of this case.

There were no other declarations from Group Leaders or Spokespersons in regard to any prior decisions taken on how Members will vote on any item on the agenda or any declarations of Members interests in respect of any item on the agenda.

#### **3 Site Visits**

Under reference to paragraphs 4, 5 and 6 of the Minute of the meeting of the Moray Local Review Body (MLRB) dated 24 September 2020, the Legal Adviser made reference to the fact that each case had been deferred for further photographs of the site to provide the MLRB with further photographic information due to the temporary suspension of MLRB site visits as a result of the ongoing COVID 19 pandemic.

The Legal Adviser advised that Officers had met to consider this situation further and provide a suitable alternative to avoid continued deferral of cases. To that end, the Legal Adviser asked the MLRB to consider asking an independent member of the Planning Service to visit each site ahead of each meeting to take photographs. These photographs would then be uploaded on to CMIS as additional information, along with the Agenda however would not form part of the formal case.

Councillor Gatt suggested that each photograph be clearly marked with the name of the site and the direction the photograph is being taken. Officers agreed to this request.

Councillors Ross and Cowie asked that they receive paper copies of the photographs as they did not have the facility to view photographs on screen as well as take part in a video-conferenced meeting. In response, the Clerk agreed to arrange this.

Thereafter, the MLRB agreed that, during the temporary suspension of site visits as a result of the ongoing COVID 19 pandemic:

- i. an independent member of the Planning Service would visit each site ahead of each meeting of the MLRB to take photographs and that these photographs be uploaded on to CMIS as additional information, along with the Agenda;
- ii. that Councillors Ross and Cowie receive paper copies of the photographs.

#### **4 Minute of Meeting dated 24 September 2020**

The minute of the meeting of the Moray Local Review Body dated 24 September 2020 was submitted and approved.

#### **5 LR239 - Ward 7 - Elgin City South**

##### **Planning Application 20/00165/APP – Erect 800 mm fence on top of existing boundary wall at 1 Longwood Walk, Elgin**

Under reference to paragraph 4 of the minute of the meeting of the Moray Local Review Body (MLRB) dated 24 September 2020, the MLRB continued to consider a request from 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 the adopted Moray Local Development Plan (MLDP) 2015 (Policies PP3, H4, IMP1 and T2) and should be refused for the following reasons:

- The fence is not of an appropriate scale for the existing site or surrounding area and therefore is contrary to policies H4 and IMP1.
- The fence would remove an existing public frontage to the dwellinghouse and therefore is not in accordance with the requirements of policy PP3.

- The fence would give rise to a reduction in inter-visibility between pedestrians, cyclists and vehicles which could give rise to issues regarding road safety and therefore is contrary to policies T2 and IMP1.

The Chair stated that, at the meeting of the MLRB on 24 September 2020, the MLRB agreed to defer case LR239 allow an independent person from the Planning Service to visit the site to obtain further photographs.

In response to a question from the Chair as to whether the Legal and Planning Advisers had any preliminary matters to raise, Mr Henderson, Planning Adviser advised that the planning application had originally been assessed against policies within the MLDP 2015 however, now that the new MLDP 2020 had been formally adopted, the relevant planning policies are now DP1 (Development Principles) and PP1 (Placemaking).

The Chair then asked the 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.

Councillor Alexander, having considered the case in detail and the further photographs of the site agreed with the original decision of the Appointed Officer in that the fence was not a suitable development as it would cause an obstruction to pedestrians and cyclists using the pathway. Councillors Ross, Gatt and Cowie were of the same view as Councillor Alexander.

Councillor R McLean stated that he had asked the Planning Service ahead of the meeting whether the same rules would apply should the development be a hedge and noted that a hedge was not considered to be a development however accepted that the MLRB were being asked to determine the planning application before them, which was for a fence.

Having listened to the debate, the Chair moved that the MLRB dismiss Case LR239 and uphold the original decision of the Appointed Officer to refuse planning permission in respect of Planning Application 20/00165/APP as it is contrary the provisions of the Moray Local Development Plan (MLDP) 2015 (Policies PP3, H4, IMP1 and T2) and policies DP1 (Development Principles) and PP1 (Placemaking) of the newly adopted MLDP 2020.

There being no-one otherwise minded, the MLRB agreed to dismiss Case LR239 and uphold the original decision of the Appointed Officer to refuse planning permission in respect of Planning Application 20/00165/APP as it is contrary the provisions of the Moray Local Development Plan (MLDP) 2015 (Policies PP3, H4, IMP1 and T2) and policies DP1 (Development Principles) and PP1 (Placemaking) of the newly adopted MLDP 2020.

## **6 LR243 - Ward 2 - Keith and Cullen**

Councillors Gatt and Powell, having declared an interest in this item, took no part in its consideration.

Under reference to paragraph 5 of the minute of the meeting of the Moray Local Review Body (MLRB) dated 24 September 2020, the MLRB continued to consider a request from 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 proposed café is contrary to Moray Local Development Plan (MLDP) 2020 policies DP6 and Portknockie OPP1 and Moray Local Development Plan 2015 policies ED4 and Portknockie I1 for the following reasons:-

- i. The proposal would introduce an incompatible use into an established business area and would create conflict with other existing uses.
- ii. The proposal fails to provide for a comprehensive scheme of improvement across the whole site and as such would fail to provide a development that would enhance the visual appearance of the site or the quality of the built environment.

The Chair stated that, at the meeting of the MLRB on 24 September 2020, the MLRB agreed to defer case LR243 to allow an independent person from the Planning Service to visit the site to take further photographs for the MLRB to consider.

In response to a question from the Chair as to whether the Legal and Planning Advisers had any preliminary matters to raise, Ms Webster, Planning Adviser advised that since the original planning application had been determined, the MLDP 2020 plan had been formally adopted however the decision notice referenced both the MLDP 2015 plan and the MLDP 2020 plan, as the new plan carried significant weight at the time of determination. Ms Webster further pointed out an error on page 69 of the papers where the word "shed" should read "café". This was noted.

Councillor Ross, having considered the case in detail along with the further photographs provided, was of the view that the site in question was very run down and in need of development and that the proposal would enhance the area and provide further economic benefit to Portknockie.

In response, Ms Webster advised that, in order to comply with planning policy, the site on the whole would require to be redeveloped and not just the area that the application related to.

Councillor Cowie agreed with Councillor Ross and struggled to see how the site could be developed as a whole if each part was owned by different people. He further stated that it was not possible for the Applicant to comprehensively develop the whole site as he does not own it all however, in his opinion, the proposal would enhance the site and would therefore be an acceptable departure to policy.

In response, Ms Webster advised that the policy is clear and that, when the site was submitted as a bid at the time of the Main Issues Report in 2019, it was on the understanding that all the land owners were in agreement that the site should be developed as a whole and on that basis the site was reallocated to an opportunity site to allow a mix of uses in that area.

Councillor Ross remained of the view that the site in question was very run down and in need of development and that the proposal would enhance the area and provide further economic benefit to Portknockie. Furthermore, Councillor Ross was of the view that the use was compatible with existing uses rather than incompatible and so complied with policy, particularly as existing users of the site appeared to welcome the development. Councillor Ross therefore moved that the MLRB uphold the appeal and grant planning permission in respect of Planning Application

19/01659/APP as in his view the proposal complied with policies OPP1 and DP6 (Mixed Use and Opportunity Sites) of the MLDP 2020. This was seconded by Councillor Cowie.

There being no-one otherwise minded, the MLRB agreed to uphold the appeal and grant planning permission in respect of Planning Application 19/01659/APP subject to standard conditions and reasons.

## **7 LR244 - Ward 5 - Heldon and Laich**

Councillors Gatt and Powell re-joined the debate at this juncture.

Under reference to paragraph 6 of the Minute of the meeting of the Moray Local Review Body (MLRB) dated 24 September 2020, the MLRB continued to consider a request from the Applicant seeking a review of the decision of the Appointed Officer to refuse planning permission on the grounds that:

The proposed shed is contrary to Moray Local Development Plan (MLDP) (Modified Plan) 2020 policy DP1 (i) a) & e) and MLDP 2015 policy IMP1 for the following reasons:-

- i. The proposed shed on raised garden ground in a restricted site would be of an inappropriate scale due to its combined height, width and depth. As such this would result in a development that would be out of character with its immediate surroundings, and would have an overbearing and detrimental impact as it removed the majority of the remaining rear garden ground.
- ii. The proposed shed contains windows on both side elevations which would face directly onto the neighbouring properties to the immediate east and west of the site. These windows are located at head height and would therefore give a direct view into the neighbouring property gardens giving rise to an unacceptable loss of privacy and overbearing loss of amenity to neighbours and would also be contrary to the requirements of policy DP1 i) e), and IMP1.

The Chair stated that, at the meeting of the MLRB on 24 September 2020, the MLRB agreed to defer case LR244 to allow an independent person from the Planning Service to take further photographs of the site specifically from the windows facing east into the neighbouring property and photos looking onto the other neighbouring property and to request that the Applicant provide further information in relation to finished floor levels and existing ground levels, in addition to the height of the windows from the finished floor level.

In response to a question from the Chair as to whether the Legal or Planning Advisers had any preliminary matters to raise, Mr Henderson, Planning Adviser advised that, at the time of determination, the Planning Application had been considered against both the MLDP 2015 and the MLDP 2020 although the MLDP 2020 was formally adopted in July 2020.

Having received the further photographs of the site and information from the Applicant, the Chair then asked the 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.

The Chair, having considered the case in detail, agreed with the original decision of the Appointed Officer in that the development is inappropriate in terms of size and moved that the MLRB dismiss case LR244 and uphold the original decision of the Appointed Officer to refuse planning permission in respect of Planning Application 20/00614/APP as it is contrary to the MLDP 2020 policy DP1 (Development Principles) (i) a) & e) and MLDP 2015 policy IMP1.

There being no-one otherwise minded, the MLRB agreed to dismiss case LR244 and uphold the original decision of the Appointed Officer to refuse planning permission in respect of Planning Application 20/00614/APP as it is contrary to the MLDP 2020 policy DP1 (Development Principles) (i) a) & e) and MLDP 2015 policy IMP1.

## **8 New Cases**

The Legal Adviser advised that Agenda Items 5) LR240 (Planning Application 20/00195/PPP), 6) LR241 (Planning Application 20/00311/APP) and 7) LR242 (Planning Application 20/00355/PPP) had been determined in accordance with the Moray Local Development Plan (MLDP) 2015 however the Applicant had made brief mention of the new MLDP 2020 in all 3 cases. As the new MLDP 2020 was adopted on 27 July 2020, the Legal adviser advised that the MLRB should determine the planning applications in accordance with the MLDP 2020. As the Appointed Officer had determined the planning applications in accordance with the MLDP 2015, the Legal Adviser advised that the MLRB defer cases LR240, LR241 and LR242 to allow the Appointed Officer the opportunity to determine the planning applications in accordance with the MLDP 2020 and in turn, the Applicant should be allowed to comment on the Appointed Officers findings. Once this has taken place, all 3 cases will come back to a future meeting of the MLRB for consideration. This was agreed.

Accordingly, the MLRB agreed to defer cases LR240 (Planning Application 20/00195/PPP), LR241 (Planning Application 20/00311/APP) and LR242 (Planning Application 20/00355/PPP) to allow the Appointed Officer the opportunity to determine the planning applications in accordance with the policies in the new MLDP 2020, and thereafter, allow the Applicant to make further representation on the Appointed Officers findings, with all 3 cases coming back to a future meeting of the MLRB for consideration.