

MORAY COUNCIL

Minute of Meeting of the Moray Local Review Body

Tuesday, 27 September 2022

Council Chambers, Council Office, High Street, Elgin, IV30 1BX

PRESENT

Councillor Neil Cameron, Councillor Amber Dunbar, Councillor Juli Harris, Councillor Sandy Keith, Councillor Marc Macrae, Councillor Paul McBain, Councillor Derek Ross, Councillor Sonya Warren

IN ATTENDANCE

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

1 Chair

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

2 Statement from the Chair

The Chair stated that issues had been raised in the press in relation to a recent Moray Local Review Body (MLRB) decision and that, following discussion with Legal Services, he wanted to reiterate the function of the MLRB and the role that Councillors play.

The MLRB is a review body tasked with reviewing delegated decisions made by Planning Officers where the Applicant is not in agreement with the decision made, or conditions imposed, and asks for such a review. The role of Councillors on the MLRB is not to seek to criticise or undermine decisions made by Officers or rubber stamp the decision made.

The role of the MLRB is to undertake a review, taking into account the information that was before the Planning Officer and their report on the application, and the issue raised by the Applicant in their Notice of Review.

Planning legislation states that planning decisions should be made in accordance with the development plan unless material considerations justify a different decision. The development plan is obviously the main document to have regard to however if the MLRB consider that there are relevant material considerations to justify departing from policy then a decision can be made on that basis. The duty on the MLRB is to clearly state what such issues are and why they are sufficiently important to set the policy aside in the circumstances.

Consistent departures from the plan can be considered to undermine the plan itself and raise issues about the integrity of the process however if the MLRB, as the final decision makers in an appeal situation, feel a departure is justified, that is a reasonable decision for them to make provided the reasons for doing so are well set out and able to be understood.

Councillor Warren thanked the Chair for this clarity and sought assurance that the decision made in relation to the case in question was legal as some of her constituents had questioned the legality of the decision.

In response, the Chair confirmed that the decision of the MLRB was indeed legal and stated that he would be happy to reassure any member of the public in this regard.

Councillor Ross thanked the Chair for his statement stating that the role of Elected Members on the MLRB was a difficult one however reassured members of the public that decisions made were not political in nature and that cases were always considered on their own merits whilst exercising fair judgement.

3 Declaration of Group Decisions and Members Interests

In terms of Standing Order 20 and the Councillor's Code of Conduct, there were no declarations from Group Leaders or Spokespersons in regard to any prior decision taken on how Members will vote on any item on the agenda.

Councillor Dunbar declared an interest in Item 4 - Case LR278 and stated that she would leave the meeting and not take any part in the consideration of this item. There were no other declarations of Members interests in respect of the items on the agenda.

4 Minute of meeting dated 18 August 2022

The Minute of the meeting dated 18 August 2022 was submitted and approved.

5 LR278 - Ward 4 - Fochabers and Lhanbryde

Councillor Dunbar, having declared an interest in this item, left the meeting at this juncture and took no part in the debate.

Planning Application 22/00542/PPP – Proposed dwelling-house and detached garage at site adjacent to 1-5 South Darkland, Lhanbryde, Elgin

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 policies DP4 Part d) ii), DP1(i) and EP4 for the following reasons:

1. The proposal site falls within the Pressurised and Sensitive Area identified by Policy DP4 Part d) ii), in which no new house sites will be permitted due to the detrimental landscape and visual impacts associated with high levels of rural

housing build up in these areas. The proposed house in this location is contrary to Policy DP4 and DP1(i). The proposed new dwellinghouse will have an adverse impact on the character and appearance of the surrounding area given that the site lacks the required immediate (on the boundary of the site) backdrop of existing landform, trees and buildings to provide acceptable enclosure.

2. The proposed introduction of a further house in this location alongside existing housing is considered to constitute an unacceptable cumulative build-up of housing which will negatively impact the landscape character of this area.
3. The site falls within the Countryside Around Towns Area identified by Policy EP4, in which no new rural housing will be permitted unless the proposal involves the rehabilitation, conversion, limited extension, replacement; or change of use of existing buildings or for the purpose of agriculture, forestry or low intensity recreational or tourism; or is designated as long term housing allocation released for development. The proposals do not fall within any of the above criteria and will result in development sprawl into the countryside affecting the special character of this area.

A Summary of Information Report set out the reasons for refusal, together with the 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.

In response to a question from the Chair as to whether the Legal or Planning Advisers had any preliminary matters to raise, both the Legal and Planning Advisers advised that they had nothing to raise at this time.

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.

Councillor Ross, having considered the Case in detail, stated that he agreed with the original decision of the Appointed Officer in that Planning Application 22/00542/PPP should be refused for the reasons stated in the report.

There being no-one otherwise minded, the MLRB unanimously agreed to refuse the appeal and uphold the original decision of the Appointed Officer to refuse planning permission in respect of Planning Application 22/00542/PPP as it is contrary to policies DP4 (Rural Housing) Part d) ii), DP1 (Development Principles) (i) and EP4 (Countryside Around Towns) of the Moray Local Development Plan (MLDP) 2020.

Councillor Dunbar re-joined the meeting at this juncture.

6 LR280 - Ward 6 - Elgin City North

Planning Application 22/00400/APP – Increase number of children approved under ref 21/00400/APP from 9 to 15 at Child Minding Business at 36 Smith Drive, Elgin, Moray, IV30 4NE

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 requirements of policy DP1 (I) (a & e), because:

- The site is within a quiet residential area and the scale of the proposal would result in a level of activity in relation to the arrival and departure of children and staff and activity throughout the day that is not in keeping with the character of the area.
- There would be an adverse impact on the privacy of neighbouring properties as a result of the increase in the arrivals and departures of children and staff and increased noise and activity throughout the day.

A Summary of Information Report set out the reasons for refusal, together with the 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.

In response to a question from the Chair as to whether the Legal or Planning Advisers had any preliminary matters to raise, both the Legal and Planning Advisers advised that they had nothing to raise at this time.

The Chair then asked the Moray Local Review Body (MLRB) if it had sufficient information to determine the request for review. In response, Councillor Warren asked when site visits would be resuming for MLRB cases as she was of the view that a site visit would have been beneficial for this case.

In response, Mr Hoath, Legal Adviser advised that the cases on the agenda had been rescheduled from a previously arranged meeting and that additional photographs of the site had been uploaded to the Council's Committee Management and Information System (CMIS) along with the agenda in line with the agreed arrangement due to the temporary suspension of site visits as a result of the Covid 19 pandemic. He further stated that the restriction on site visits had since been lifted and that these would be arranged for all cases going forward.

After considering the response from Mr Hoath, Councillor Warren confirmed, along with the other Members of the MLRB, that there was sufficient information to determine the case.

Councillor McBain, having considered the case in detail and also driven around the site of the proposal, was of the view that increasing the number of children at the already established child minding business from 9 to 15 largely complied with policy but in the event there may be considered to be a departure from policy DP1 (Development Principles) he was of the view that this was slight and acceptable. He noted however that there was nothing in the paperwork to confirm whether there would be 15 children at the property at any one time and sought clarification in this regard.

In response, Mrs Gordon, Planning Adviser advised that it would be unreasonable to attach a condition to the planning consent stipulating times when children could be dropped off and when children could be present.

Having considered the advice from Mrs Gordon, Councillor McBain remained of the view that the proposal was an acceptable departure from policy DP1 (Development Principles) of the Moray Local Development Plan (MLDP) 2020 in terms of a) character and e) adverse impact on neighbouring properties and moved that the MLRB uphold the appeal and grant planning permission in respect of Planning Application 22/00400/APP.

Councillor Dunbar noted that the child minding business had already been granted previous planning permission for up to 9 children in 2021 and was found to comply with policy DP1 at that time and agreed to second Councillor McBain's motion.

Councillor Keith noted that this was an established business with no proposed change to footpaths or vehicle access and that the character of the house would not change. He further noted that there is an existing pick up and drop off policy with many children walking to and from the property. In terms of being contrary to the character of the neighbourhood, Councillor Keith highlighted that planning permission had already been granted for up to 9 children in 2021 and that, in his opinion, increasing this to 15 children would not result in an overbearing loss of amenity for neighbouring properties.

Councillor Warren stated that there was no indication that there would be 15 children on the premises at any one time and that usually the number of children within a child minding setting varied throughout the day. In terms of the safety of children, Councillor Warren stated that the Care Inspectorate would ensure that measures were in place to keep the children safe. Councillor Warren also noted that there had been no objections to the proposal.

In response, Mrs Gordon, Planning Adviser advised that providing planning permission would give the Applicant consent to have 15 children present at any time and that a proposal could still be considered to be detrimental to an area even though there were no objections.

Councillor Harris, having considered the case in detail, was concerned about the increase in children to 15 in terms of noise levels and child safety as the proposal was within a residential area. She stated that neighbouring residents would rely on the Council to apply planning policy when determining planning applications to protect their living environment and moved, as an amendment, that the MLRB uphold the original decision of the Appointed Officer to refuse planning permission in relation to Planning Application 22/00400/APP on the basis that it is contrary to policy DP1 (Development Principles) of the MLDP 2020 in terms of a) character and e) adverse impact on neighbouring properties.

Councillor Ross seconded Councillor Harris' amendment stating that a child minding business for 15 children was more akin to a small nursery and not suitable for a residential area.

On a division there voted:

For the Motion (5):	Councillors McBain, Dunbar, Keith, Macrae and Warren
For the Amendment (3):	Councillors Harris, Ross and Cameron
Abstentions (0):	Nil

Accordingly, the Motion became the finding of the MLRB and it was agreed to grant planning permission in respect of Planning Application 22/00400/APP as it is an acceptable departure from policy DP1 (Development Principles) of the MLDP 2020 in terms of a) character and e) adverse impact on neighbouring properties.

Following the meeting, it was noted that clarification had not been sought from the MLRB as to whether any conditions should be attached to the planning consent. Following consultation with the Chair, Depute Chair, Legal and Planning Advisers, it was agreed that a report would be brought to the next meeting of the Moray Local Review Body to clarify this prior to a decision notice being issued.