

MORAY COUNCIL

Minute of Meeting of the Moray Local Review Body

Thursday, 25 June 2020

Remote Locations via Video Conference,

PRESENT

Councillor George Alexander, Councillor David Bremner, Councillor Paula Coy, Councillor Donald Gatt, Councillor Laura Powell, Councillor Derek Ross, Councillor Amy Taylor

APOLOGIES

Councillor Gordon Cowie, Councillor Ray McLean

IN ATTENDANCE

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

1 Chair

Councillor Taylor, being 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, there were no 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 Minute of Meeting dated 27 February 2020

The minute of the meeting of the Moray Local Review Body dated 27 February 2020 was submitted and approved.

4 LR236 - Ward 8 - Forbes

Planning Application 19/01031/APP – Erection of new dwellinghouse and change of use from agricultural land to domestic at a site adjacent to Woodside Farm, Kinloss

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 proposed house would be sited immediately outwith the settlement boundary of Kinloss, and would degrade the distinction between Kinloss and its surrounding countryside. On this basis, the proposal is contrary to policies E9 (Settlement Boundaries), H7 (Housing in the Countryside) and IMP1 (Developer Requirements) of the Moray Local Development Plan (MLDP) 2015.

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 and Planning Advisers had any preliminary matters to raise, Mr Hoath, Legal Adviser advised that he had nothing to raise at this time. Ms Webster, Planning Adviser advised that on 3 June 2020, the Moray Council Emergency Cabinet resolved to use the Modified MLDP 2020 as a material consideration in the determination of planning applications from the 15 June 2020 until its adoption anticipated in late July when it will replace the current adopted MLDP 2015. Ms Webster further clarified that, whilst applications continue to be assessed against MLDP 2015, the Modified MLDP 2020 should be taken into account in decisions made after 15 June 2020 which included this meeting of the Moray Local Review Body (MLRB) and therefore policies PP3 (Infrastructure and Services), DP1 (Development Principles), DP2 (Housing), DP4 (Rural Housing), EP2 (Biodiversity) and EP6 (Settlement Boundaries) of the Modified MLDP 2020 should be taken into consideration.

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.

Having considered the case in detail, Councillor Gatt queried why the Planning Service did not consider moving the boundary at the time when the MLDP 2020 was being prepared given that the site is adjacent to site R3 which has designation for 25 houses.

In response, Ms Webster, Planning Adviser advised that when the boundary was reviewed for the MLDP 2020 it was considered an appropriate boundary for Kinloss. Mrs Scott, Legal Adviser further added that Elected Members and the Applicant had the opportunity to ask for the boundary to be moved when the MLDP 2020 was issued for consultation.

Having considered the advice from the Planning and Legal Advisers, Councillor Gatt was of the view that the Planning Service may have chosen to keep the original boundary for a reason and moved that the MLRB defer consideration of case LR236 for further information from the Planning Service in this regard. This was seconded by Councillor Ross.

Councillor Coy was of the view that the Appointed Officer had applied the planning policies correctly and moved that the MLRB uphold the original decision of the Appointed Officer as the application is contrary to policies E9 (Settlement Boundaries), H7 (Housing in the Countryside) and IMP1 (Developer Requirements) of the Moray Local Development Plan 2015. This was seconded by Councillor Taylor.

Councillor Bremner agreed that the Appointed Officer had determined the application correctly according to the policies within the MLDP 2015 however was of the view that the site would not have much use for anything other than a family house plot and moved that the appeal be upheld and planning permission granted as he considered the proposal to be an acceptable departure from policies E9 (Settlement Boundaries), H7 (Housing in the Countryside) and IMP1 (Developer Requirements) of the MLDP 2020. This was seconded by Councillor Alexander.

In terms of Standing Order 62(c), there being more than one amendment proposed against the motion, the Clerk advised that the motion proposed by Councillor Gatt to defer consideration of the case should be taken against an amendment proposed by another Councillor to consider the case at today's meeting.

Having considered the advice from the Clerk, Councillor Alexander moved, as an amendment, that the MLRB determine the case at today's meeting. This was seconded by Councillor Bremner.

On a division there voted:

For the Motion (2): Councillors Gatt and Ross

For the Amendment (5): Councillors Alexander, Bremner, Coy, Powell and Taylor

Abstentions (0): Nil

Accordingly, the Amendment became the finding of the meeting and the MLRB agreed to consider Case LR236 at today's meeting.

The Clerk confirmed that, in accordance with Standing Order 62 (c), Councillor Coy's amendment to refuse the appeal would now be the motion and this would be taken against Councillor Bremner's amendment to uphold the appeal.

On a division there voted:

For the Motion (3): Councillors Coy, Taylor and Powell

For the Amendment (3) Councillors Bremner, Alexander and Ross

Abstentions (1): Councillor Gatt

Their being an equality of votes, and in terms of Standing Order 63 (e), the Chair cast her casting vote in favour of the Motion and the MLRB agreed to dismiss Case LR236 and uphold the original decision of the Appointed Officer to refuse planning permission in respect of Planning Application 19/01031/APP as it is contrary to policies E9 (Settlement Boundaries), H7 (Housing in the Countryside) and IMP1 (Developer Requirements) of the MLDP 2015. The new policies PP3 (Infrastructure and Services), DP1 (Development Principles), DP2 (Housing), DP4 (Rural Housing), EP2 (Biodiversity) and EP6 (Settlement Boundaries) of the Modified MLDP 2020 constituted material considerations with significant weight however the MLRB, having considered the provisions of the new policies, found there were no considerations within those policies to justify the MLRB departing from the original decision as the provisions of the new policies largely accorded with the original policies which formed the basis of the original decision.

Planning Application 19/01606/APP – Install new thermal panels and external wall opening at 71 Findhorn, Moray, IV36 3YF

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 grant planning permission subject to the following condition:

- i. The glazing in both the door and window shall be obscure glazed with glass of obscuration level 4 of the range of glass manufactured by Pilkington plc at the date of this permission or an equivalent manufacturer agreed in writing by this council (as Planning Authority). Glazing of that obscuration level shall be retained in those windows for the lifetime of the development hereby approved.

Reason: To avoid overlooking of the adjacent property in the interest of residential amenity.

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 and Planning Advisers had any preliminary matters to raise, Mr Henderson, Planning Adviser advised that on 3 June 2020, the Moray Council Emergency Cabinet agreed that all parts of the Moray Local Development Plan (MLDP) 2020 as modified will be a material planning consideration for development management purposes as of 15 June 2020. The application was originally assessed against the policies in the MLDP 2015 however the MLRB may wish to take into account policies DP1 Development Principles and EP9 Conservation Areas of the MLDP 2020 when considering the application.

Mr Hoath, Legal Adviser advised that the Applicant had requested a site visit on his Notice of Review application which was not carried out due to a decision of the Moray Council Emergency Cabinet on 21 May 2020 to temporarily suspend the requirement to carry out site visits due to the COVID-19 pandemic. He further advised that the Applicant had stated that he had included no new information with his Notice of Review application however had included photographs which had not been before the Appointed Officer at the time of determination. The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013 state that no new information should be raised that was not before the Appointed Officer unless the information could not have been raised before or is a consequence of exceptional circumstance. Mr Hoath advised that the Clerk had contacted the Applicant who had stated that there was nothing new about the information as the photographs were examples of other windows in the area and were put forward to support the request for review. The Applicant further stated that he would have included the photographs with his original planning application if he thought there was a chance that his application would be approved subject to the condition detailed above. Mr Hoath advised that, should the MLRB want to consider

the photographs and arrange some form of site visit, then a further procedure should be considered.

On considering the advice from the Legal Adviser, the Chair moved that the MLRB defer consideration of Case LR237 to allow an independent person from the Planning Service to visit the site to obtain either a video or photographs of the site for the MLRB to consider and also allow the Appointed Officer to consider and comment on the photographs submitted by the Applicant with his Notice of Review Application. This was seconded by Councillor Ross.

Councillor Gatt was of the view that Members had enough information before them to determine the case and moved that the MLRB proceed to determine the case. This was seconded by Councillor Alexander.

On a division there voted:

For the Motion (4): Councillors Taylor, Ross, Bremner and Coy

For the Amendment (3): Councillors Gatt, Alexander and Powell

Abstentions (0): Nil

Accordingly the motion became the finding of the meeting and the MLRB agreed to defer case LR237 to allow an independent person from the Planning Service to visit the site to obtain either a video or photographs of the site for the MLRB to consider and also allow the Appointed Officer to consider and comment on the photographs submitted by the Applicant with his Notice of Review Application.

6 LR238 - Ward 3 - Buckie

Planning Application 19/01239/APP – Erect New Dwelling House at Site adjacent to Arradoul House, Arradoul House, Arradoul, Buckie, AV56 5BB

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 development would result in the loss of part of an amenity land designation, an established wooded area around 'Arradoul House' which has been specifically protected under the terms of Policy E5 of the MLDP 2015 and the related Arradoul Settlement Statement designated to maintain the visual amenity of this part of the village and forms part of the setting of Arradoul House. The introduction of the proposed dwelling (and all associated development) on the application site between 'Arradoul House' and the neighbouring property, 'The Beeches' would consolidate built form in this locality and lead to removal of trees, eroding the existing pleasant and attractive wooded character of the amenity land designation and is contrary to Policies E5, H5, H3 and IMP1 of the Moray Local Development Plan (MLDP) 2015 and the Related Rural Groupings Supplementary Guidance.

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 and Planning Advisers had any preliminary matters to raise, Mr Henderson, Planning Adviser advised that on the 3 June 2020, Moray Council Emergency Cabinet agreed that all parts of the MLDP 2020 as modified will be a material planning consideration for development management purposes as of 15 June 2020. The application was originally assessed against the policies in the MLDP 2015 however the Moray Local Review Body (MLRB) may also wish to consider the application whilst taking account of the relevant policies in the modified MLDP 2020 which are DP1 (Development Principles), DP4 (Rural Housing), EP5 (Open Space), EP7 (Forestry, Woodlands and Trees), DP2 (Affordable Housing), EP2 (Biodiversity) and PP3 (Infrastructure and Services).

Mr Hoath, Legal Adviser advised that the Applicant had requested a site visit in his Notice of Review which was not carried out due to a decision of the Moray Council Emergency Cabinet on 21 May 2020 to temporarily suspend the requirement to carry out site visits due to the COVID-19 pandemic and that, if the MLRB was of the view that a site visit was required, then it should consider deferring the case for a further procedure.

Councillor Alexander was of the view that there was enough information before members to determine the case and moved that the MLRB proceed to determine the case. This was unanimously agreed.

Councillor Ross, having considered the information within the case agreed with the decision of the Appointed Officer and moved that the MLRB dismiss the appeal and uphold the original decision of the Appointed Officer to refuse planning permission in respect of Planning Application 19/01239/APP as it is contrary to policies E5 (Open Spaces), H5 (Development within Rural Groupings), H3 (Subdivision for House Plots) and IMP1 (Developer Requirements) of the Moray Local Development Plan 2015 and the Related Rural Groupings Supplementary Guidance and also policies DP1 (Development Principles), DP4 (Rural Housing), EP5 (Open Space), EP7 (Forestry, Woodlands and Trees), DP2 (Affordable Housing), EP2 (Biodiversity) and PP3 (Infrastructure and Services) in the modified MLDP 2020.

There being no-one otherwise minded, the MLRB unanimously agreed to dismiss the appeal and uphold the original decision of the Appointed Officer to refuse planning permission in respect of Planning Application 19/01239/APP as it is contrary to policies E5 (Open Spaces), H5 (Development within Rural Groupings), H3 (Subdivision for House Plots) and IMP1 (Developer Requirements) of the Moray Local Development Plan 2015 and the Related Rural Groupings Supplementary Guidance. The new policies DP1 (Development Principles), DP4 (Rural Housing), EP5 (Open Space), EP7 (Forestry, Woodlands and Trees), DP2 (Affordable Housing), EP2 (Biodiversity) and PP3 (Infrastructure and Services) in the modified MLDP 2020 constituted material considerations with significant weight however the MLRB having considered the provisions of the new policies found there were no considerations within those policies to justify the MLRB departing from the original decision as the provisions of the new policies largely accorded with the original policies which formed the basis of the original decision.

