

# MORAY COUNCIL

## Minute of Meeting of the Moray Local Review Body

Thursday, 29 August 2019

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

### **PRESENT**

Councillor George Alexander, Councillor Donald Gatt, Councillor Ray McLean, Councillor Amy Taylor

### **APOLOGIES**

Councillor David Bremner, Councillor Paula Coy, Councillor Derek Ross

### **IN ATTENDANCE**

The Senior Planning Officer (Development Planning and Facilitation) 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 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 June 2019**

The Minute of the Meeting of the Moray Local Review Body dated 27 June 2019 was submitted and approved.

#### **4 LR225 - Ward 8 - Forres**

**Planning Application 18/01568/APP – Plot 1, Innesmhor, Findhorn, Forres, Moray, IV36 3YL**

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 an application on the grounds that the proposal is contrary to policies H3 and IMP1 of the Moray Local Development Plan (MLDP) 2015 for the following reasons:

The proposal falls below the minimum site area criteria of 400sqm (excluding access) as required by policy H3 for new house plots formed through subdivision, and is considered to be too small to adequately accommodate the proposed development in this location without adversely impacting the character and amenity of the surrounding area. Although the current proposed house is modest, the limited size of the plot would mean that it would lead to cramped development that would fail to reflect the density of development in the immediate vicinity, which is characterised by larger dwellings in more spacious plots. This deviation from the density of development in this part of Findhorn would be detrimental to the character and amenity of the surrounding area and contrary to policies H3 and IMP1, and on this basis the application is recommended for refusal.

A Summary of Information Report set out the reasons for refusal, together with documents considered or prepared by the Appointed Officer in respect of the planning application, in addition to the Notice of Review, Grounds of Review and supporting documents submitted by the Applicant.

With regard to the unaccompanied site inspection carried out on 23 August 2019, the Chair stated that all present members of the Moray Local Review Body (MLRB) were shown the site where the proposed development would take place and had before them papers which set out both the reasons for refusal and the Applicant's grounds for review.

In response to a question from the Chair as to whether the Legal and Planning Advisers had any preliminary matters to raise, the Planning Adviser advised that it had been brought to her attention that the Applicant had not confirmed their willingness to pay developer obligations for the proposed development to comply with policy IMP3 (Developer Obligations) of the MLDP 2015. Therefore, if members were minded to approve the development, confirmation would have to be received from the Applicant that they were willing to pay the developer obligations and if not then the case would have to be reconsidered by the MLRB in terms of compliance with policy IMP3 of the MLDP 2015.

The Legal Adviser further advised that, on completion of the Notice of Review form, the Appellant had advised that she had included information that was not considered by the Appointed Officer at the time of the original decision as she had addressed the reasons for refusal and highlighted some aspects of local context in the hope that a more inclusive, longer term, social-ecological view will prevail in the decision. The Legal Adviser advised that this constitutes new evidence in terms of Regulation 17 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013 and if the MLRB was minded to consider the additional information relevant and take it into consideration when determining the application, then, in terms of fairness, the Appointed Officer should have the opportunity to provide written submissions on this additional information by means of a further procedure such as written submissions or a hearing. However if the MLRB was of the view that the detailed information was not relevant in planning terms then it should specify that this additional information is not being considered when determining the application which could leave the decision open to challenge if it was deemed, on appeal, that the additional information is relevant in planning terms.

Councillor Alexander, having visited the site and considered the Applicant's grounds for review and the additional advice from the Planning and Legal Advisers in terms of the developer obligations and additional information contained within the

Applicant's Notice of Review, moved that the case be deferred to allow the Appointed Officer the opportunity to respond to the additional information contained within the Applicant's Notice of Review and to seek clarification from the Applicant as to whether she is willing to pay the developer obligations. Councillor Alexander also stated that a further site visit should be arranged prior to determination to allow those Members of the MLRB who had not been able to attend the original site visit, the opportunity to view the site.

There being no-one otherwise minded, the MLRB agreed:

- i. to defer case LR226 to allow the Appointed Officer the opportunity to comment on the additional information contained within the Applicant's Notice of Review which constitutes new evidence in terms of Regulation 17 of the Regulations;
- ii. that a further site visit be arrange to allow those Members of the MLRB who had been unable to attend the original site visit the opportunity to view the site;
- iii. that clarification be sought as to whether the Applicant is willing to pay the developer obligations in order to comply with policy IMP3 of the MLDP 2015.

## **5 LR226 - Ward 6 - Elgin City North**

### **Planning Application 19/00173/APP – Change of use of amenity land to garden ground and erect summer house/work room and shed at 65 Marleon Field, 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 an application on the grounds that:

The proposal is contrary to the provisions of the Moray Local Development Plan 2015 because the introduction of a business use to which there would be visiting members of the public is considered to result in an adverse impact on the amenity of neighbouring properties in the surrounding residential area, contrary to policy IMP1.

The proposal also fails to comply with the requirements of the Proposed Moray Local Development Plan 2020 (policy DP1).

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

With regard to the unaccompanied site inspection carried out on 23 August 2019, the Chair stated that all present members of the Moray Local Review Body (MLRB) were shown the site where the proposed development would take place and had before them papers which set out both the reasons for refusal and the Applicant's grounds for review.

In response to a question from the Chair as to whether the Legal and 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 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.

Councillor Alexander, having had the opportunity to visit the site and consider the Applicant's grounds for review moved that the MLRB refuse the appeal and uphold the original decision of the Appointed Officer to refuse Planning Application 19/00173/APP as it is contrary to policy IMP1 (developer requirements) of the MLDP 2015.

There being no-one otherwise minded, the MLRB agreed to dismiss Case LR226 and uphold the original decision of the Appointed Officer to refuse Planning Application 19/00173/APP as the proposal is contrary to policy IMP1 of the MLDP 2015 and also the requirements of policy DP1 (Development Principles) of the proposed MLDP 2020.

## **6 LR227 - Ward 1 - Speyside Glenlivet**

### **Planning Application 19/00318/APP – Erection of dwellinghouse and garage at The Maltings, Adjacent to Cairnvoie Farm, Archiestown**

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 an application on the grounds that:

The proposal is contrary to the provisions of the Moray Local Development Plan (MLDP) 2015 because the proposal would contribute to an inappropriate build-up of development that would be detrimental to the rural character of the surrounding area, contrary to policies H7 (Housing in the Countryside) and IMP1 (Developer Requirements), as well as the Supplementary Guidance on Housing in the Countryside.

This is further supported by the Moray Local Development Plan supplementary Guidance Note on Landscape and Visual Impacts of Cumulative Build-Up of Houses in the Countryside, whereby the site is located in an area where a build-up of housing (built and consented) is considered to have an adverse impact on the character of the surrounding rural area. The development of a house on this site would further exacerbate this.

Whilst limited weighting is given to it, the proposal is also contrary to the Proposed Moray Local Development Plan 2020 (policies DP1 (Developer Requirements) and DP4 (Rural Housing)).

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

With regard to the unaccompanied site inspection carried out on 23 August 2019, the Chair stated that all present members of the Moray Local Review Body (MLRB) were shown the site where the proposed development would take place and had before them papers which set out both the reasons for refusal and the Applicant's grounds for review.

In response to a question from the Chair as to whether the Legal or Planning Advisers had any preliminary matters to raise, the Planning Adviser advised that she had nothing to raise at this time. The Legal Adviser advised that the Applicant had submitted a letter in support of her appeal which had included additional information which was not before the Appointed Officer at the time of consideration. He advised that the majority of the information contained within the supporting letter was not relevant in planning terms however it did mention that, although the proposal was for development in a "hot spot" area with restricted development which neither the Applicant nor Agent were aware of at the time of application, the Applicant stated that they had gone to great expense and taken a lot of time to ensure that the proposed house is in keeping with the countryside area. With this in mind, the Legal Adviser advised that the MLRB should decide whether to include the supporting letter when considering the application, in which case, in terms of Regulation 17 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013, the Appointed Officer should be afforded the opportunity to comment on the additional information. He further advised that the MLRB may also choose to consider the application discounting the letter of support from the Applicant if it is of the view that the letter is not relevant in planning terms.

Councillor Gatt was of the view that the supporting letter from the Applicant should be discounted as it was background information relating to the Applicant's motives for the application and so was not relevant to the planning decision and further, the MLDP 2015 and supplementary guidance is widely available to all members of the public when considering development. There being no-one otherwise minded, the MLRB agreed to discount the supporting letter and went on to consider the planning application without further process being necessary.

The Chair 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.

Councillor Gatt, having had the opportunity to visit the site and consider the Applicant's grounds for review moved that the MLRB refuse the appeal and uphold the original decision of the Appointed Officer to refuse Planning Application 19/00318/APP as the proposal is contrary to policies H7 (Housing in the Countryside) and IMP1 (Developer Requirements), as well as the Supplementary Guidance on Housing in the Countryside, MLDP supplementary Guidance Note on Landscape and Visual Impacts of Cumulative Build-Up of Houses in the Countryside and policies DP1 (Developer Requirements) and DP4 (Rural Housing) of the proposed MLDP 2020.

There being no-one otherwise minded, the MLRB agreed to dismiss Case 227 and uphold the original decision of the Appointed Officer to refuse Planning Application 19/00318/APP as the proposal is contrary to policies H7 (Housing in the Countryside) and IMP1 (Developer Requirements), as well as the Supplementary Guidance on Housing in the Countryside, MLDP supplementary Guidance Note on Landscape and Visual Impacts of Cumulative Build-Up of Houses in the Countryside and policies DP1 (Developer Requirements) and DP4 (Rural Housing) of the proposed MLDP 2020.