

# MORAY COUNCIL

## Minute of Meeting of the Moray Local Review Body

Thursday, 15 February 2024

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

### **PRESENT**

Councillor Amber Dunbar, Councillor Juli Harris, Councillor Sandy Keith, Councillor Marc Macrae, Councillor Paul McBain, Councillor Sonya Warren

### **APOLOGIES**

Councillor Neil Cameron, Councillor Draeyk van der Horn

### **IN ATTENDANCE**

Mrs MacDonald, Senior Planning Officer and Mr Miller, Senior Planning Officer as Planning Advisers, Legal Services Manager as Legal Adviser 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 Declaration of Group Decisions and Members Interests**

In terms of Standing Order 21 and 23 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 18 January 2024**

The Minute of the meeting dated 18 January 2024 was submitted and approved.

#### **4 LR297 - Ward 8 - Forres**

**Planning Application 23/00976/APP – Convert the Old Stable Bar to 3 holiday lets at Seaview Caravan Park, Findhorn Road, 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 proposal is contrary to policies 1, 2, 10 and 22 of the National Planning Framework (NPF) 4 and EP12 of the Moray Local Development Plan (MLDP) 2020 for the following reasons:-

- The proposal is located on a site that is at risk of coastal flooding as identified via the future SEPA flood maps and the redevelopment of this site from a bar to holiday accommodation where people are sleeping overnight is an increase in land use vulnerability as there is an increase to people from coastal flood risk therefore is contrary to NPF policies 10, 22 and MLDP policy EP12.
- The proposed development has no safe access and egress from the development in a flood event due to the public road used to access the site also being at flood risk therefore is it unacceptable under NPF policy 22.
- The proposal does not adapt to the future impacts of climate change (coastal flooding) therefore it is contrary to NPF policies 1 and 2.

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, Mrs Scott, Legal Adviser advised that she had nothing to raise at this time.

Mrs MacDonald, Planning Adviser advised that there is an extant objection from SEPA on this application and, should the Moray Local Review Body (MLRB) be minded to uphold the appeal and grant planning permission, it would have to be referred for consideration by the Scottish Ministers. This was noted.

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 McBain, having visited the site and considered the case in detail, moved that the MLRB uphold the appeal and grant planning permission in respect of Planning Application 23/00976/APP as, in his opinion, the proposal was an acceptable departure from NPF4 policies 1 (Tackling the Climate), 2 (Climate mitigation and adaptation), 10 (Coastal Development) and 22 (Flood Risk) and policy EP12 (Management and Enhancement Water) of the MLDP 2020 as the road would act as a flood barrier and stop the caravan park flooding. He further noted that the proposal was to convert a derelict building that had been empty for many years and welcomed the proposal to bring it back into use. This was seconded by Councillor Dunbar.

Mrs Scott, Legal Adviser reiterated that, if the MLRB was minded to uphold the appeal that it could not grant planning permission as the case would have to be referred to the Scottish Ministers for consideration given the extant SEPA objection so any motion to uphold the appeal and grant planning permission would be subject to consideration by the Scottish Ministers. This was noted.

Councillor Harris raised concern in relation to climate change and the impact this is having on coastal areas and stated that she was of the understanding that the

possibility of flooding was a medium risk 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 23/00976/APP. This was seconded by Councillor Warren.

Mrs MacDonald, Planning Adviser advised that, should the MLRB be minded to grant planning permission then there would usually be a condition to ensure that the use is for a holiday let and further advised that the Transportation Service had recommended a condition in relation to turning and parking at the development.

In response, Councillors McBain and Dunbar agreed to include these conditions in their motion.

On a division there voted:

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

There being an equality of votes and in terms of Standing Order 66(c), the Chair cast his casting vote in favour of the motion and the Committee agreed to refer the application to the Scottish Ministers stating that the MLRB are minded to uphold the appeal and grant planning permission in respect of Planning Application 23/00976/APP as the proposal is considered to be an acceptable departure from NPF4 policies 1 (Tackling the Climate), 2 (Climate mitigation and adaptation), 10 (Coastal Development) and 22 (Flood Risk) and policy EP12 (Management and Enhancement Water) of the MLDP 2020, as the road would act as a flood barrier and stop the caravan park flooding and the proposal would bring a derelict building that had been empty for many years back into use, subject to the following conditions and reasons:

1. The units hereby approved shall be used for holiday/short term letting purposes only and shall not be used as the sole or main place of residence of any occupant; a holiday being defined as a stay of one or more nights by a person or persons away from that person or persons sole or main place of residence unless otherwise agreed with this Council as Planning Authority and shall not be occupied by the same person or persons for more than 4 months in any calendar year( Any such period shall not run consecutively to such a period in any successive or preceding year).

Reason: In the interests of amenity and in order to ensure that the unit is used for the purpose applied and upon which its planning merits have been assessed.

2. Parking shall be the following:

- 3 car parking spaces retained for the old schoolhouse
- 2 car parking spaces for each new apartment
- 3 car parking spaces retained for the existing site reception

The parking spaces shall be demarked on site in accordance with submitted drawing reference "0621.2417.05B" and made available for use prior to the

first occupation of the first apartment, and thereafter be retained within the site throughout the lifetime of the development unless otherwise agreed in writing with the Council as Planning Authority.

Reason: To ensure the permanent availability of the level of parking necessary for residents/visitors/others in the interests of an acceptable development and road safety.

3. A turning area shall be retained within the curtilage of the site to enable vehicles to enter and exit in a forward gear.

Reason: To ensure the provision for vehicles to enter/exit in a forward gear in the interests of the safety and free flow of traffic on the public road.

## **5 LR298 - Ward 4 - Fochabers Lhanbryde**

### **Planning Application 23/01062/APP – Change of use of open land to private garden at 2 Duke Street, Portgordon, Buckie, Moray**

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 change of use of an area of Open Space to domestic garden ground is contrary to the Moray Local Development Plan (MLDP) 2020 and National Planning Framework 4 for the following reasons:

1. The proposals would result in the loss of an area of identified as Open Space under ENV5 within the Moray Local Development Plan (MLDP) 2020 which would fail to comply with MLDP 2020 Policies DP1 and EP5.
2. The ENV5 Green Corridor forms part of the old railway/cycle path corridor which contributes to the setting and character of Portgordon and helps to connect the cycle path into the village centre. The location also provides amenity to the village hall opposite. Whilst the site makes up a small part of the green corridor, piecemeal erosion can negatively impact on the quality and character of the ENV and the role it plays in the setting of Portgordon and wider green networks and therefore the proposals would also fail to comply with NPF4 Policy 20 as the overall integrity of the green network would be fragmented.
3. The Tree Survey Report has not been updated to show the location of the rerouted footpath which would now go between the trees and an Arboricultural Method Statement has not been submitted which would set out how construction will minimise impacts on tree roots. As a result, MLDP 2020 Policy EP7 has not been complied with as additional information is required to confirm that the trees would be safeguarded from the impact of the construction of the path.

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, Mr Miller, Planning Adviser advised that he had nothing to raise at this time.

Mrs Scott, Legal Adviser advised that the Applicant had emailed the members of the Moray Local Review Body (MLRB) outwith the statutory time period and that the MLRB had been advised to disregard the email and Applicant had been made aware of this. This was noted.

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 moved that the MLRB uphold the appeal and grant planning permission in respect of Planning Application 23/01062/APP as, in his opinion, the proposal is an acceptable departure from MLDP policies DP1 (Development Principles), EP5 (Open Space), EP7 (Forestry Woodland and Trees) and NPF4 policy 20 (blue and green infrastructure) as the proposal is to use the land as a garden which would maintain the green space and is in keeping with the current designation of the land, subject to a condition to extend the current footpath adjacent to Duke Street to meet the new footpath.

In response, Mr Miller advised that, should the MLRB agree to uphold the appeal and grant planning permission, a suspensive condition could be added to ensure that the current footpath is extended to meet the new footpath in accordance with details to be agreed with the Transportation Service. He further advised that the Transportation Service had recommended 3 conditions, should planning permission be granted, and sought clarification whether the Chair's motion would include the 3 recommendations from Transportation.

The Chair agreed to include the recommendations from Transportation in his motion.

Councillor Harris queried whether there could be an assurance that, should the MLRB uphold the appeal and grant planning permission, the land be solely used as garden ground and not for an extension to the property.

In response, Mr Miller, Planning Adviser advised that, if the MLRB were minded to grant planning permission, then a condition could be added to revoke permitted development rights to ensure no structures are erected, including extension(s) to the house, that may erode the visual appearance of the extended garden area.

The Chair stated that he was content to include a condition in his motion to revoke permitted development rights to ensure the land is used as garden ground, in addition to the 3 recommended from the Transportation Service and the suspensive condition in relation to the extension of the footpath completed to an acceptable standard for future adoption by the Council for maintenance and asked if there was anyone otherwise minded.

There being no-one otherwise minded, the MLRB agreed to grant planning permission in respect of Planning Application 23/01062/APP as an acceptable departure from MLDP 2020 policies DP1 (Development Principles) and EP5 (Open Space) on the basis the visual appearance of the extended garden ground would not erode the function of the open space designation ENV5. Subsequently, the proposal is an acceptable departure from NPF4 policy 20 (blue and green

infrastructure). The proposal is also in compliance with policy EP7 (Forestry Woodland and Trees) in that the proposal will not adversely impact on the integrity of the two trees adjacent to the site. This is subject to the following conditions and reasons:

1. The development to which this permission relates must be begun not later than the expiration of 3 years beginning with the date on which the permission is granted.

Reason: The time limit condition is imposed in order to comply with the requirements of section 58 of the Town and Country Planning (Scotland) Act 1997 as amended.

2. No development shall commence until a drawing (scale 1:500) has been submitted to and approved in writing by the Council, as Planning Authority in consultation with the Roads Authority showing the provision of a re-located private 1.2m wide (whin dust) footpath diverted around the proposed new site boundary, along with the provision of new 1.2m wide public footway along the southern edge of the U109L Duke Street, thereby extending the existing public footway to connect with the northern end of the re-located private footpath (approximate distance of 13m); and thereafter the new public footway and private footpath shall be constructed in accordance with the approved details prior to the erection of the new site boundary.

Reason: To ensure acceptable development in the interests of road safety.

3. New boundary walls/fences fronting onto Duke Street shall be set back from the edge of the public carriageway at a minimum distance of 2.0m.

Reason: To ensure acceptable development in the interests of road safety.

4. The opening path of the new access gate shall be fully contained within the site and not encroach onto the public verge.

Reason: To ensure acceptable development that does not create any hazard to road users in the interests of road safety.

5. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended, revoked or re-enacted; with or without modification), the erection of any outbuilding, structures, creation of hardstanding for parking of vehicles or extension to the property of 2 Duke Street, Portgordon, AB56 5RH shall not be permitted in the site hereby approved to be incorporated into the curtilage of said property without the consent of the Council, as Planning Authority.

Reason: In the interests of the character and appearance of the surrounding area.