



MORAY LOCAL REVIEW BODY

20 APRIL 2023

SUMMARY OF INFORMATION FOR CASE No LR287

Planning Application 22/01423/APP – Change of use from amenity to garden ground with erection of 1.8m timber fence at 10 Linksvie Road, Mosstodloch

Ward 4 – Fochabers Lhanbryde

The proposed development departs from the Moray Local Development Plan 2020 Policy EP5 Open Space and Mosstodloch designation ENV6 Natural/Semi-Natural Greenspace which require ENV designations in settlement statements to be retained as open space and where the proposal does not constitute one of the policy exemptions to the retention of open space. The ENV designation has been reinforced by the Mosstodloch Settlement Statement, superseding the previous erosion of the designation from past consents. The proposal is therefore unacceptable.

Documents considered or prepared by the Appointed Officer in respect of the above planning application are attached as **Appendix 1**.

The Notice of the Review, Grounds for Review and any supporting documents submitted by the Applicant are attached as **Appendix 2**.

No further representations were received.

At the meeting of the Moray Local Review Body (MLRB) on 16 February 2023, the MLRB noted that National Planning Framework 4 (NPF4) had been adopted by the Council on Monday 13 February 2023 and that all planning applications determined beyond this date would have to take NPF4 into consideration, as this is now part of the MLDP 2020. The MLRB asked for further information from the Appointed Officer, Interested Parties and the Applicant in light of NPF 4.

The Appointed Officer's response is attached as **Appendix 3**. There was no response from any of the Interested Parties.

The Applicant's response to the Appointed Officer's comments are attached at **Appendix 4**.



**Location plan for Planning Application Reference Number :
22/01423/APP**





APPENDIX 1

DOCUMENTS CONSIDERED OR PREPARED BY THE APPOINTED OFFICER



The Moray Council Council Office High Street Elgin IV30 1BX Tel: 0300 1234561 Email: development.control@moray.gov.uk

Applications cannot be validated until all the necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 100596173-001

The online reference is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the planning Authority about this application.

Type of Application

What is this application for? Please select one of the following: *

- ☐ Application for planning permission (including changes of use and surface mineral working).
- ☐ Application for planning permission in principle.
- ☐ Further application, (including renewal of planning permission, modification, variation or removal of a planning condition etc)
- ☐ Application for Approval of Matters specified in conditions.

Description of Proposal

Please describe the proposal including any change of use: * (Max 500 characters)

Change of use from amenity to private garden for an area of land totalling 360 metres squared to the rear of 10 Linksfield Road. Solely to extend the current garden area. Erection of 1.8 traditional slatted timber fence around new boundary to enclose proposed new extended garden space off from public.

Is this a temporary permission? * ☐ Yes ☒ No

If a change of use is to be included in the proposal has it already taken place?
(Answer 'No' if there is no change of use.) * ☐ Yes ☒ No

Has the work already been started and/or completed? *

☒ No ☐ Yes – Started ☐ Yes - Completed

Applicant or Agent Details

Are you an applicant or an agent? * (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application)

☒ Applicant ☐ Agent

Applicant Details

Please enter Applicant details

Title:	<input type="text" value="Mrs"/>	You must enter a Building Name or Number, or both: *
Other Title:	<input type="text"/>	Building Name: <input type="text"/>
First Name: *	<input type="text" value="Carrie"/>	Building Number: <input type="text" value="10"/>
Last Name: *	<input type="text" value="Cuthill"/>	Address 1 (Street): * <input type="text" value="Linksfield Road"/>
Company/Organisation	<input type="text"/>	Address 2: <input type="text"/>
Telephone Number: *	<input type="text" value=""/>	Town/City: * <input type="text" value="Mosstodloch"/>
Extension Number:	<input type="text"/>	Country: * <input type="text" value="Scotland"/>
Mobile Number:	<input type="text"/>	Postcode: * <input type="text" value="IV32 7LB"/>
Fax Number:	<input type="text"/>	
Email Address: *	<input type="text" value=""/>	

Site Address Details

Planning Authority:	<input type="text" value="Moray Council"/>
Full postal address of the site (including postcode where available):	
Address 1:	<input type="text" value="10 LINKSFIELD ROAD"/>
Address 2:	<input type="text" value="MOSSTODLOCH"/>
Address 3:	<input type="text"/>
Address 4:	<input type="text"/>
Address 5:	<input type="text"/>
Town/City/Settlement:	<input type="text" value="FOCHABERS"/>
Post Code:	<input type="text" value="IV32 7LB"/>

Please identify/describe the location of the site or sites

Northing	<input type="text" value="860203"/>	Easting	<input type="text" value="332360"/>
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Pre-Application Discussion

Have you discussed your proposal with the planning authority? *

☒ Yes ☐ No

Pre-Application Discussion Details Cont.

In what format was the feedback given? *

☐ Meeting ☒ Telephone ☐ Letter ☐ Email

Please provide a description of the feedback you were given and the name of the officer who provided this feedback. If a processing agreement [note 1] is currently in place or if you are currently discussing a processing agreement with the planning authority, please provide details of this. (This will help the authority to deal with this application more efficiently.) * (max 500 characters)

Spoke with Duty Planning Officer on 22/8/22 at 13:25 via telephone - gentleman but didn't catch his name. Confirmed change of use application would be needed and that he knew others had been granted planning permission for the same thing in the past and did not foresee any issues.

Title:

Other title:

First Name:

Last Name:

Correspondence Reference Number:

Date (dd/mm/yyyy):

In what format was the feedback given? *

☐ Meeting ☒ Telephone ☐ Letter ☐ Email

Please provide a description of the feedback you were given and the name of the officer who provided this feedback. If a processing agreement [note 1] is currently in place or if you are currently discussing a processing agreement with the planning authority, please provide details of this. (This will help the authority to deal with this application more efficiently.) * (max 500 characters)

Informed that a departure from policy would be required as the land is currently designated as ENV in LDP. Homeowners along Linksfield and Pinewood Road have been granted permission for the same land use change and a precedence has been set for an acceptable departure from policy. Also confirmed what the application fee would be.

Title:

Mr

Other title:

First Name:

Iain

Last Name:

Drummond

Correspondence Reference Number:

N/A

Date (dd/mm/yyyy):

25/08/2022

Note 1. A Processing agreement involves setting out the key stages involved in determining a planning application, identifying what information is required and from whom and setting timescales for the delivery of various stages of the process.

Site Area

Please state the site area:

360.00

Please state the measurement type used:

☐ Hectares (ha) ☒ Square Metres (sq.m)

Existing Use

Please describe the current or most recent use: * (Max 500 characters)

Amenity land currently owned by Crown Estate Scotland. Unused land currently grown over with gorse bushes.

Access and Parking

Are you proposing a new altered vehicle access to or from a public road? *

≤ Yes **T** No

If Yes please describe and show on your drawings the position of any existing. Altered or new access points, highlighting the changes you propose to make. You should also show existing footpaths and note if there will be any impact on these.

Are you proposing any change to public paths, public rights of way or affecting any public right of access? *

≤ Yes **T** No

If Yes please show on your drawings the position of any affected areas highlighting the changes you propose to make, including arrangements for continuing or alternative public access.

How many vehicle parking spaces (garaging and open parking) currently exist on the application Site?

0

How many vehicle parking spaces (garaging and open parking) do you propose on the site (i.e. the Total of existing and any new spaces or a reduced number of spaces)? *

0

Please show on your drawings the position of existing and proposed parking spaces and identify if these are for the use of particular types of vehicles (e.g. parking for disabled people, coaches, HGV vehicles, cycles spaces).

Water Supply and Drainage Arrangements

Will your proposal require new or altered water supply or drainage arrangements? *

≤ Yes **T** No

Do your proposals make provision for sustainable drainage of surface water?? *
(e.g. SUDS arrangements) *

≤ Yes **T** No

Note:-

Please include details of SUDS arrangements on your plans

Selecting 'No' to the above question means that you could be in breach of Environmental legislation.

Are you proposing to connect to the public water supply network? *

≤ Yes

≤ No, using a private water supply

T No connection required

If No, using a private water supply, please show on plans the supply and all works needed to provide it (on or off site).

Assessment of Flood Risk

Is the site within an area of known risk of flooding? *

≤ Yes **T** No ≤ Don't Know

If the site is within an area of known risk of flooding you may need to submit a Flood Risk Assessment before your application can be determined. You may wish to contact your Planning Authority or SEPA for advice on what information may be required.

Do you think your proposal may increase the flood risk elsewhere? *

≤ Yes **T** No ≤ Don't Know

Trees

Are there any trees on or adjacent to the application site? *

≤ Yes T No

If Yes, please mark on your drawings any trees, known protected trees and their canopy spread close to the proposal site and indicate if any are to be cut back or felled.

Waste Storage and Collection

Do the plans incorporate areas to store and aid the collection of waste (including recycling)? *

≤ Yes T No

If Yes or No, please provide further details: * (Max 500 characters)

Solely extending garden area - no waste is being generated or stored on the land.

Residential Units Including Conversion

Does your proposal include new or additional houses and/or flats? *

≤ Yes T No

All Types of Non Housing Development – Proposed New Floorspace

Does your proposal alter or create non-residential floorspace? *

≤ Yes T No

Schedule 3 Development

Does the proposal involve a form of development listed in Schedule 3 of the Town and Country Planning (Development Management Procedure (Scotland) Regulations 2013? *

≤ Yes ≤ No T Don't Know

If yes, your proposal will additionally have to be advertised in a newspaper circulating in the area of the development. Your planning authority will do this on your behalf but will charge you a fee. Please check the planning authority's website for advice on the additional fee and add this to your planning fee.

If you are unsure whether your proposal involves a form of development listed in Schedule 3, please check the Help Text and Guidance notes before contacting your planning authority.

Planning Service Employee/Elected Member Interest

Is the applicant, or the applicant's spouse/partner, either a member of staff within the planning service or an elected member of the planning authority? *

≤ Yes T No

Certificates and Notices

CERTIFICATE AND NOTICE UNDER REGULATION 15 – TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (SCOTLAND) REGULATION 2013

One Certificate must be completed and submitted along with the application form. This is most usually Certificate A, Form 1, Certificate B, Certificate C or Certificate E.

Are you/the applicant the sole owner of ALL the land? *

≤ Yes T No

Is any of the land part of an agricultural holding? *

≤ Yes T No

Are you able to identify and give appropriate notice to ALL the other owners? *

T Yes ≤ No

Certificate Required

The following Land Ownership Certificate is required to complete this section of the proposal:

Certificate B

Land Ownership Certificate

Certificate and Notice under Regulation 15 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

I hereby certify that

(1) - No person other than myself/the applicant was an owner [Note 4] of any part of the land to which the application relates at the beginning of the period of 21 days ending with the date of the accompanying application;

or –

(1) - I have/The Applicant has served notice on every person other than myself/the applicant who, at the beginning of the period of 21 days ending with the date of the accompanying application was owner [Note 4] of any part of the land to which the application relates.

Name:

Address:

Crown Estate ScotlandCrown Estate Scotland, Quatermile 2, 2nd Floor, 2, 2 Lister Square, Edinburgh, EH3 9GL

Date of Service of Notice: *

23/09/2022

(2) - None of the land to which the application relates constitutes or forms part of an agricultural holding;

or –

(2) - The land or part of the land to which the application relates constitutes or forms part of an agricultural holding and I have/the applicant has served notice on every person other than myself/himself who, at the beginning of the period of 21 days ending with the date of the accompanying application was an agricultural tenant. These persons are:

Name:

Address:

Date of Service of Notice: *

Signed: Mrs Carrie Cuthill

On behalf of:

Date: 29/09/2022

☐ Please tick here to certify this Certificate. *

Checklist – Application for Planning Permission

Town and Country Planning (Scotland) Act 1997

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

Please take a few moments to complete the following checklist in order to ensure that you have provided all the necessary information in support of your application. Failure to submit sufficient information with your application may result in your application being deemed invalid. The planning authority will not start processing your application until it is valid.

a) If this is a further application where there is a variation of conditions attached to a previous consent, have you provided a statement to that effect? *

☐ Yes ☐ No ☐ Not applicable to this application

b) If this is an application for planning permission or planning permission in principle where there is a crown interest in the land, have you provided a statement to that effect? *

☐ Yes ☐ No ☐ Not applicable to this application

c) If this is an application for planning permission, planning permission in principle or a further application and the application is for development belonging to the categories of national or major development (other than one under Section 42 of the planning Act), have you provided a Pre-Application Consultation Report? *

☐ Yes ☐ No ☐ Not applicable to this application

Town and Country Planning (Scotland) Act 1997

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

d) If this is an application for planning permission and the application relates to development belonging to the categories of national or major developments and you do not benefit from exemption under Regulation 13 of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, have you provided a Design and Access Statement? *

☐ Yes ☐ No ☐ Not applicable to this application

e) If this is an application for planning permission and relates to development belonging to the category of local developments (subject to regulation 13. (2) and (3) of the Development Management Procedure (Scotland) Regulations 2013) have you provided a Design Statement? *

☐ Yes ☐ No ☐ Not applicable to this application

f) If your application relates to installation of an antenna to be employed in an electronic communication network, have you provided an ICNIRP Declaration? *

☐ Yes ☐ No ☐ Not applicable to this application

g) If this is an application for planning permission, planning permission in principle, an application for approval of matters specified in conditions or an application for mineral development, have you provided any other plans or drawings as necessary:

☐ Site Layout Plan or Block plan.

☐ Elevations.

☐ Floor plans.

☐ Cross sections.

☐ Roof plan.

☐ Master Plan/Framework Plan.

☐ Landscape plan.

☐ Photographs and/or photomontages.

☐ Other.

If Other, please specify: * (Max 500 characters)

Provide copies of the following documents if applicable:

A copy of an Environmental Statement. *	≤	Yes	T	N/A
A Design Statement or Design and Access Statement. *	≤	Yes	T	N/A
A Flood Risk Assessment. *	≤	Yes	T	N/A
A Drainage Impact Assessment (including proposals for Sustainable Drainage Systems). *	≤	Yes	T	N/A
Drainage/SUDS layout. *	≤	Yes	T	N/A
A Transport Assessment or Travel Plan	≤	Yes	T	N/A
Contaminated Land Assessment. *	≤	Yes	T	N/A
Habitat Survey. *	≤	Yes	T	N/A
A Processing Agreement. *	≤	Yes	T	N/A

Other Statements (please specify). (Max 500 characters)

Declare – For Application to Planning Authority

I, the applicant/agent certify that this is an application to the planning authority as described in this form. The accompanying Plans/drawings and additional information are provided as a part of this application.

Declaration Name: Mrs Carrie Cuthill

Declaration Date: 01/10/2022

Payment Details

Online payment: 003977

Payment date: 01/10/2022 17:48:33

Created: 01/10/2022 17:48

1. Do not scale drawing.
All dimensions and levels
to be verified on site by
Contractor.
2. Any discrepancies to be
reported to the designer.

Revisions:



CP Plans
2 Balvenie Park
Elgin
IV30 8AJ

Tel: 07467 231872
cpplanselgin@gmail.com

Job Title

New rear boundary fence
at 10 Linksfield Road
Mosstodloch
IV32 7LB

Drawing Title

Fence & gate plan

Drawing Number

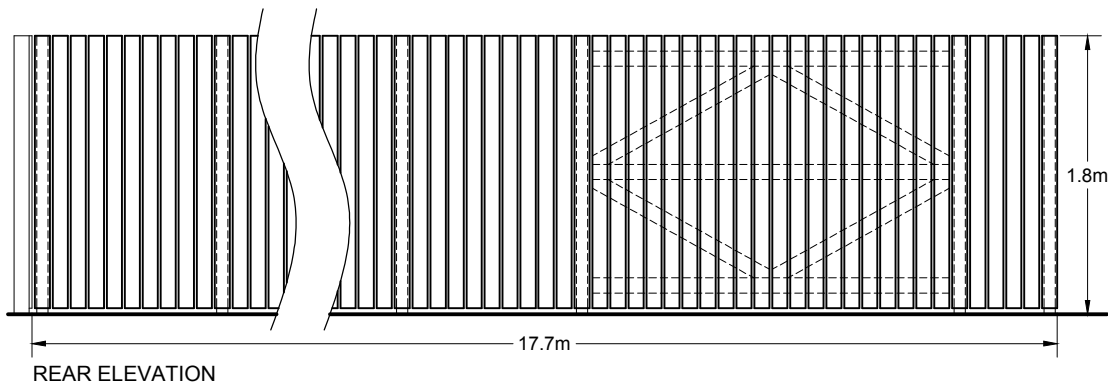
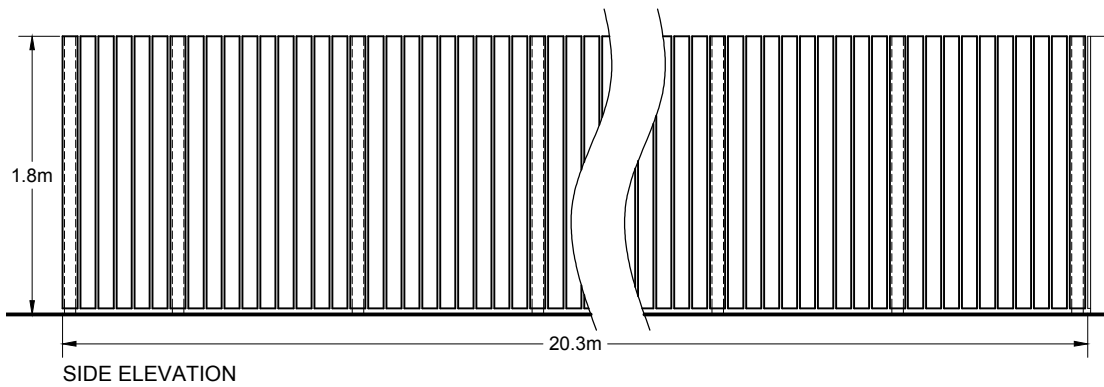
PL-01

Scale	Date	Rev
1:200	Oct 22	

Drawing by CP

1. Do not scale drawing. All dimensions and levels to be verified on site by Contractor.
2. Any discrepancies to be reported to the designer.

Revisions:



CP Plans
2 Balvenie Park
Elgin
IV30 8AJ

Tel: 07467 231872
cpplanselgin@gmail.com

Job Title

New rear boundary fence
at 10 Linksfield Road
Mosstodloch
IV32 7LB

Drawing Title

Fence elevations

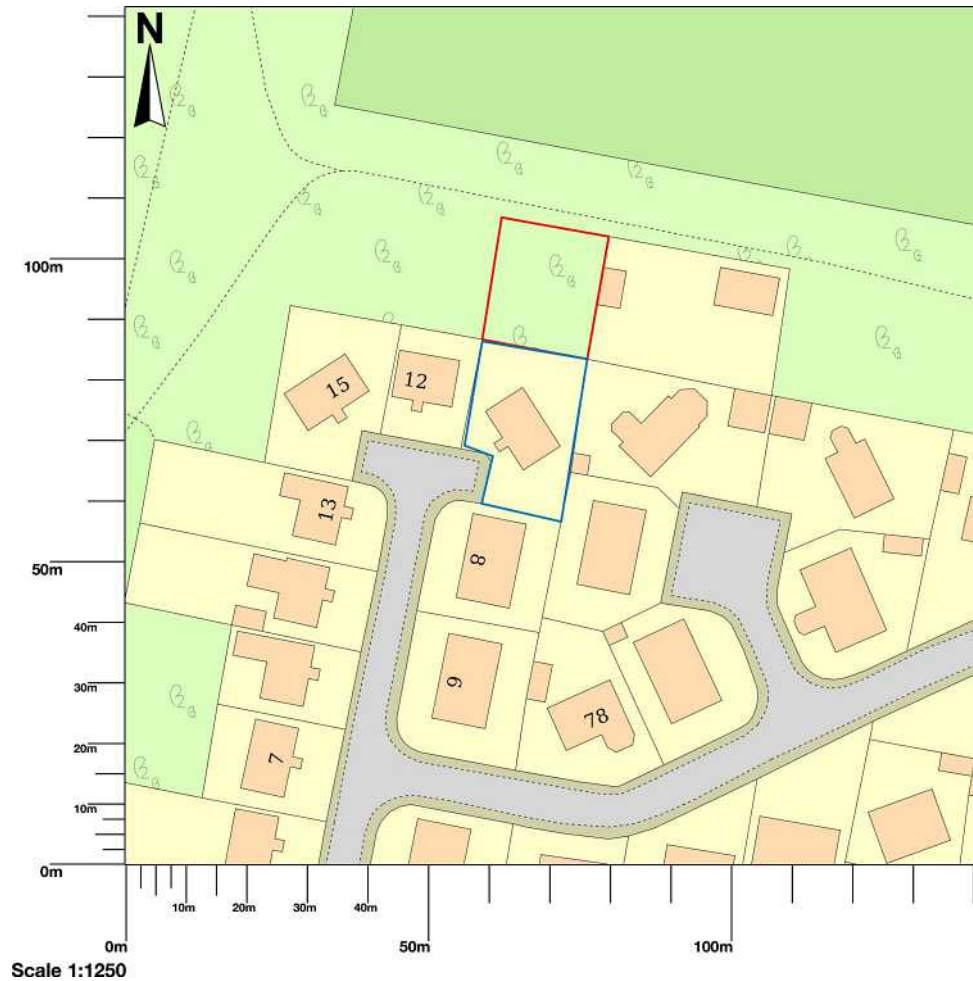
Drawing Number

PL-02

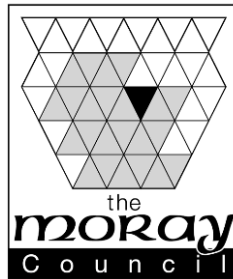
Scale	Date	Rev
1:50	Oct 22	

Drawing by CP

10 Linksfield Road, Mosstodloch, Fochabers, IV32 7LB



Map area bounded by: 332294,860131 332436,860273. Produced on 08 September 2022 from the OS National Geographic Database. Reproduction in whole or part is prohibited without the prior permission of Ordnance Survey. © Crown copyright 2022. Supplied by UKPlanningMaps.com a licensed OS partner (100054135). Unique plan reference: p2c/uk/847419/1145235



MORAY COUNCIL LOCAL REVIEW BODY

Review Decision Notice

Decision by Moray Local Review Body (the MLRB)

- Request for Review reference : Case 031
- Site address: 72 Pinewood Road, Mosstodloch
- Application for review by Mr Iain MacLeod against the decision by an Appointed Officer of Moray Council.
- Application 10/01928/APP : Retrospective change of use of waste ground to garden ground.
- Unaccompanied site inspection carried out by the MLRB on Monday 25 July 2011.
- Date of Decision Notice: August 2011

Decision

The MLRB agreed to uphold the request for review and grant retrospective planning permission for the change of use of waste ground to garden ground.

1.0 Preliminary

- 1.1 This Notice constitutes the formal decision notice of the Moray Local Review Body (MLRB) as required by the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008.
- 1.2 The above application for full planning permission was considered by the MLRB at meetings on 26 May and 28 July 2011. The Review Body was attended at both meetings by Councillors B Jarvis (Chairman), L Creswell & G Leadbitter.

2.0 Proposal

- 2.1 This is an application for retrospective planning permission for the change of use from waste ground to garden ground at 72 Pinewood Road, Mosstodloch.

MLRB Consideration of request for review

- 3.1 At the meeting of the MLRB on 26 May 2011 there was submitted a Summary of Information report setting out the reasons for refusal together with a copy of the Report of Handling, a copy of the Notice of Review and a copy of the Grounds for Review and supporting documents
- 3.2 Following consideration of the case papers the MLRB agreed that it did not have sufficient information in order to proceed to determine the request for review and agreed that an unaccompanied site inspection be undertaken, the purpose of which being to view the site in the context of Policies E4, ENV6, ENV10 and IMPI of the Moray Local Plan 2008. The MLRB also requested that the Planning Adviser attend the unaccompanied site inspection.
- 3.3 Councillor Leadbitter referred to the reference in the Report of Handling to seven properties having extended their garden ground/curtilage into the amenity strip and requested that clarification be sought from the Appointed Officer in regard to the locations of these properties and the current position regarding enforcement proceedings which may be ongoing. He also referred to a reference in the appellant's grounds for review in regard to 'advice received at the time was to fence off the purchased piece of ground' and requested that the appellant be requested to clarify from whom this advice had been obtained, for instance the Appellant's own legal adviser, or an officer of the Council. The MLRB agreed that the information requested by Councillor Leadbitter be obtained through the 'Written Submission' procedures set out in Regulation 15 of the Town & Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008 and the responses thereto submitted to the next meeting of the MLRB following expiry of the written submission procedure timescales and the unaccompanied site inspection.
- 3.4 At the meeting of the MLRB on 28 July 2011 there was submitted a 'Summary of Information' report detailing the outcome of the MLRB's previous consideration of the request for review and advising the unaccompanied site inspection was carried out on Monday 25 July 2011. There were also appended to the report as Appendices 1& 2 respectively a response from the Appointed Officer to the written submission request and one from the appellant.
- 3.5 In regard to the unaccompanied site inspection the Planning Adviser advised the meeting that on arrival at the site he reminded members of the MLRB of the reasons for refusal and the appellant's grounds for review. Members then viewed the site under review and accessed the track to the rear of the property and proceeded along the track to the west to see other examples where enclosure for additional garden ground had taken place.
- 3.6 The MLRB agreed that it had sufficient information and proceeded to determine the request for review.
- 3.7 Councillor Jarvis sought clarification in regard to the reasoning for establishing a 'buffer zone' between the housing development and agricultural land. The Planning Adviser advised the meeting that the reason was in order to provide separation between the agricultural land to the north and the settlement of Mosstodloch and provides a distinction between the two and the amenity value of it.

- 3.8 Thereafter Councillor Jarvis expressed the view, having considered all aspects of the case and having the opportunity to visit the site, that rather than being detrimental to the concept of the area being an informal recreational open space or having a significant and detrimental impact on the amenity of the area the enclosed additional garden ground was a significant improvement to the area and for these reasons the request for review should be upheld and retrospective consent granted. Councillor Creswell supported Councillor Jarvis's views and added that, in her opinion, the enclosed additional garden ground enhanced the area rather than having a detrimental impact as implied in the grounds for refusal.
- 3.9 Councillor Leadbitter intimated that there were no objections to the proposal from the community and expressed the view that given several parcels of amenity land had been acquired by householders for additional garden ground it would be very difficult to develop the amenity zone in a planned manner. He also expressed the view that it was clear from the site inspection that the amenity on the north side of the core path is much more sympathetic than the amenity to the south side of the core path bordering the houses, which can be described as scrub land. He was also of the view that the core path is clearly defined and the enclosed additional areas of garden ground do not encroach onto the path. Councillor Leadbitter also referred to Policies E4, ENV6 & ENV10 and was of the opinion that whilst the enclosure of the additional garden ground does not outweigh the value of the open space its conversion into garden ground in this case provides a greater degree of amenity and enhances the area. He was also of the view that the provision of additional garden ground was, in effect, an improvement to the landscaped setting as opposed to what previously existed. It was in his opinion the areas to the north and west of the core path that require to be protected. For these reasons Councillor Leadbitter was also of the view that the request for review should be upheld and retrospective consent granted for the change of use to garden ground.
- 3.10 Thereafter the MLRB agreed that the views expressed by the MLRB members were a material consideration of such weight to justify departing from policy and agreed that the request for review and be granted and retrospective planning consent be granted as an acceptable departure from the Moray Local Plan 2008, subject to standard conditions.

.....

Rhona Gunn
Legal Adviser to the MLRB

CONDITIONS

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 this permission is granted.
2. Unless otherwise agreed with the Council, as Planning Authority, the development hereby approved shall be carried out strictly in accordance with the approved plans and conditions.

REASONS

1. The time limit condition is imposed in order to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006.
2. In order to ensure that there are no unauthorised departures from the approved plans which could adversely affect the development or character and amenity of the surrounding properties and area

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

Notification to be sent to applicant on determination by the planning authority of an application following a review conducted under section 43A(8)

Notice Under Regulation 21 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008.

- 1 If the applicant is aggrieved by the decision of the planning authority to refuse permission or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.
- 2 If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.







Consultee Comments for Planning Application 22/01423/APP

Application Summary

Application Number: 22/01423/APP

Address: 10 Linksfield Road Mosstodloch Fochabers Moray IV32 7LB

Proposal: Change of use from amenity to garden ground and erect a 1.8m high timber fence at

Case Officer: Dominic Batty

Consultee Details

Name: Mr CL Consultations

Address: Environmental Health, Council Offices, High Street Elgin, Moray IV30 1BX

Email: Not Available

On Behalf Of: Contaminated Land

Comments

Approved unconditionally by Adrian Muscutt (21.10.2022)

REPORT OF HANDLING

Ref No:	22/01423/APP	Officer:	Dominic Batty
Proposal Description/ Address	Change of use from amenity to garden ground and erect a 1.8m high timber fence at 10 Linksfield Road Mosstodloch Fochabers Moray		
Date:	09.12.2022	Typist Initials:	LMC

RECOMMENDATION

Approve, without or with condition(s) listed below		N
Refuse, subject to reason(s) listed below		Y
Legal Agreement required e.g. S,75		N
Notification to Scottish Ministers/Historic Scotland		N
Hearing requirements	Departure	N
	Pre-determination	N

CONSULTATIONS

Consultee	Date Returned	Summary of Response
Contaminated Land	25/10/22	No objection

DEVELOPMENT PLAN POLICY

Policies	Dep	Any Comments (or refer to Observations below)
PP3 Infrastructure and Services	N	
EP2 Biodiversity	N	
EP5 Open Space	Y	
EP7 Forestry Woodland and Trees	N	

REPRESENTATIONS

Representations Received		NO
Total number of representations received		
Names/Addresses of parties submitting representations		
Summary and Assessment of main issues raised by representations		
Issue:		
Comments (PO):		

OBSERVATIONS – ASSESSMENT OF PROPOSAL

Legislation

Section 25 of the 1997 Act as amended requires applications to be determined in accordance with the development plan i.e. the adopted Moray Local Development Plan 2020 (MLDP2020) unless material considerations indicate otherwise. The main planning issues are considered below:

Site

The site is located to the rear of the property at 10 Linksfield Road. The site is bound by a public footpath to the rear. There is a neighbouring site to the east.

Under the MLDP2020 Mosstodloch Settlement Statement, the site is designated ENV6 Natural/Semi-Natural Greenspace.

Proposal

This application seeks consent for a change of use from public amenity to private garden ground and to erect a 1.8m high timber fence surrounding the site. The proposed fence would have a perimeter of 38m. A 2.4m wide double gate would be included on the north elevation.

Policy Assessment

Open Space (EP5)

The Site is designated ENV6 Natural/Semi-Natural Greenspace under the Mosstodloch Settlement Statement. Under the MLDP2020 Policy EP5 Open Space, development which would result in a change of use of a site identified under the ENV designation in settlement statements to anything other than open space will be refused. Neighbouring properties previously eroded this ENV6 designation with similar developments under previous Local Development Plans but the designation has since been reinforced by the Mosstodloch Settlement Statement, which has mapped around these previous infringements into the ENV area. The MLDP2020 takes primacy over any older policy document and Policy EP5 must be followed in this decision.

Within policy EP5 Open Space there are several exceptions identified that might permit development within ENV designations. These are where essential community infrastructure is required to deliver the key objectives of the Council and its Community Planning Partners. The proposal for private garden ground does not constitute one of the exemptions referred to, and therefore must be refused.

The designation acknowledges the existing incursions as can be seen in the Settlement Statement map but still seeks to prohibit further incursions as specifically stated. On this basis, the proposed development deviates from the MLDP2020 Policy EP5 Open Space.

Decision

Refusal of development.

OTHER MATERIAL CONSIDERATIONS TAKEN INTO ACCOUNT

None

HISTORY

Reference No.	Description			
99/00020/AGR	Erect general purpose building at Viewfield Mosstodloch Fochabers Moray			
	Decision	Permitted	Date Of Decision	28/01/99

ADVERT		
Advert Fee paid?	Yes	
Local Newspaper	Reason for Advert	Date of expiry
Northern Scot	No Premises	17/11/22
PINS	No Premises	17/11/22

DEVELOPER CONTRIBUTIONS (PGU)	
Status	None Sought

DOCUMENTS, ASSESSMENTS etc. * <i>* Includes Environmental Statement, Appropriate Assessment, Design Statement, Design and Access Statement, RIA, TA, NIA, FRA etc</i>		
Supporting information submitted with application?		NO
Summary of main issues raised in each statement/assessment/report		
Document Name:		
Main Issues:		

S.75 AGREEMENT		
Application subject to S.75 Agreement		NO
Summary of terms of agreement:		
Location where terms or summary of terms can be inspected:		

DIRECTION(S) MADE BY SCOTTISH MINISTERS (under DMR2008 Regs)			
Section 30	Relating to EIA		NO
Section 31	Requiring planning authority to provide information and restrict grant of planning permission		NO
Section 32	Requiring planning authority to consider the imposition of planning conditions		NO
Summary of Direction(s)			



**MORAY COUNCIL
TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997,
as amended**

REFUSAL OF PLANNING PERMISSION

**[Fochabers Lhanbryde]
Application for Planning Permission**

TO



With reference to your application for planning permission under the above mentioned Act, the Council in exercise of their powers under the said Act, have decided to **REFUSE** your application for the following development:-

Change of use from amenity to garden ground and erect a 1.8m high timber fence at 10 Linksfield Road Mosstodloch Fochabers Moray

and for the reason(s) set out in the attached schedule.

Date of Notice: **13 December 2022**



HEAD OF ECONOMIC GROWTH AND DEVELOPMENT

Economy, Environment and Finance
Moray Council
Council Office
High Street
ELGIN
Moray
IV30 1BX

IMPORTANT
YOUR ATTENTION IS DRAWN TO THE REASONS and NOTES BELOW

SCHEDULE OF REASON(S) FOR REFUSAL

By this Notice, Moray Council has REFUSED this proposal. The Council's reason(s) for this decision are as follows: -

The proposed development departs from the Moray Local Development Plan 2020 Policy EP5 Open Space and Mosstodloch designation ENV6 Natural/Semi-Natural Greenspace which require ENV designations in settlement statements to be retained as open space and where the proposal does not constitute one of the policy exemptions to the retention of open space. The ENV designation has been reinforced by the Mosstodloch Settlement Statement, superseding the previous erosion of the designation from past consents. The proposal is therefore unacceptable.

LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT

The following plans and drawings form part of the decision:-

Reference	Version	Title
PL-01		Fence and gate location
PL-02		Fence elevations
		Location plan

NOTICE OF APPEAL
TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

If the applicant is aggrieved by the decision to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the planning authority to review the case under section 43A of the Town and Country Planning (Scotland) Act 1997 within three months from the date of this notice. The notice of review should be addressed to The Clerk, Moray Council Local Review Body, Legal and Committee Services, Council Offices, High Street, Elgin IV30 1BX. This form is also available and can be submitted online or downloaded from www.eplanning.scotland.gov.uk

If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.



APPENDIX 2

NOTICE OF REVIEW, GROUNDS FOR REVIEW & SUPPORTING DOCUMENTS



The Moray Council Council Office High Street Elgin IV30 1BX Tel: 0300 1234561 Email: development.control@moray.gov.uk

Applications cannot be validated until all the necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 100615615-001

The online reference is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the planning Authority about this application.

Applicant or Agent Details

Are you an applicant or an agent? * (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application)

☒ Applicant ☐ Agent

Applicant Details

Please enter Applicant details

Title:

Mrs

You must enter a Building Name or Number, or both: *

Other Title:

Building Name:

First Name: *

Carrie

Building Number:

10

Last Name: *

Cuthill

Address 1
(Street): *

Linksfield Road

Company/Organisation

Address 2:

Telephone Number: *

Town/City: *

Mosstodloch

Extension Number:

Country: *

Scotland

Mobile Number:

Postcode: *

IV327LB

Fax Number:

Email Address: *

Site Address Details

Planning Authority:

Moray Council

Full postal address of the site (including postcode where available):

Address 1:

10 LINKSFIELD ROAD

Address 2:

MOSSTODLOCH

Address 3:

Address 4:

Address 5:

Town/City/Settlement:

FOCHABERS

Post Code:

IV32 7LB

Please identify/describe the location of the site or sites

Northing

860203

Easting

332360

Description of Proposal

Please provide a description of your proposal to which your review relates. The description should be the same as given in the application form, or as amended with the agreement of the planning authority: *
(Max 500 characters)

Change of use from amenity to garden ground with erection of 1.8m timber fence.

Type of Application

What type of application did you submit to the planning authority? *



Application for planning permission (including householder application but excluding application to work minerals).



Application for planning permission in principle.



Further application.



Application for approval of matters specified in conditions.

What does your review relate to? *

- ☒ Refusal Notice.
- ☐ Grant of permission with Conditions imposed.
- ☐ No decision reached within the prescribed period (two months after validation date or any agreed extension) – deemed refusal.

Statement of reasons for seeking review

You must state in full, why you are seeking a review of the planning authority's decision (or failure to make a decision). Your statement must set out all matters you consider require to be taken into account in determining your review. If necessary this can be provided as a separate document in the 'Supporting Documents' section: * (Max 500 characters)

Note: you are unlikely to have a further opportunity to add to your statement of appeal at a later date, so it is essential that you produce all of the information you want the decision-maker to take into account.

You should not however raise any new matter which was not before the planning authority at the time it decided your application (or at the time expiry of the period of determination), unless you can demonstrate that the new matter could not have been raised before that time or that it not being raised before that time is a consequence of exceptional circumstances.

Please refer to uploaded document "22-01423-APP_LRB_Statement" in Supporting Documents section.

Have you raised any matters which were not before the appointed officer at the time the Determination on your application was made? *

☐ Yes ☒ No

If yes, you should explain in the box below, why you are raising the new matter, why it was not raised with the appointed officer before your application was determined and why you consider it should be considered in your review: * (Max 500 characters)

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review and intend to rely on in support of your review. You can attach these documents electronically later in the process: * (Max 500 characters)

22-01423-APP_LRB_Statement, Appendix_1_10-01928-APP_LRB_Decision, Drawing PL_01 Plan, Drawing PL-02_Fence Elevations, Location Plan, Photographs within LRB Statement (and more on request).

Application Details

Please provide the application reference no. given to you by your planning authority for your previous application.

22/01423/APP

What date was the application submitted to the planning authority? *

17/10/2022

What date was the decision issued by the planning authority? *

13/12/2022

Review Procedure

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Can this review continue to a conclusion, in your opinion, based on a review of the relevant information provided by yourself and other parties only, without any further procedures? For example, written submission, hearing session, site inspection. *

☐ Yes ☒ No

Please indicate what procedure (or combination of procedures) you think is most appropriate for the handling of your review. You may select more than one option if you wish the review to be a combination of procedures.

Please select a further procedure *

By means of inspection of the land to which the review relates

Please explain in detail in your own words why this further procedure is required and the matters set out in your statement of appeal it will deal with? (Max 500 characters)

I would respectfully invite the Members' to consider carrying out a site inspection along the rear of both Pinewood and Linksfield Road in order to see this specific area of land in question and how it relates to the maintenance of the core path, open space and amenity of dog walkers etc, as mentioned within appeal statement.

In the event that the Local Review Body appointed to consider your application decides to inspect the site, in your opinion:

Can the site be clearly seen from a road or public land? *

☒ Yes ☐ No

Is it possible for the site to be accessed safely and without barriers to entry? *

☒ Yes ☐ No

Checklist – Application for Notice of Review

Please complete the following checklist to make sure you have provided all the necessary information in support of your appeal. Failure to submit all this information may result in your appeal being deemed invalid.

Have you provided the name and address of the applicant?. *

☒ Yes ☐ No

Have you provided the date and reference number of the application which is the subject of this review? *

☒ Yes ☐ No

If you are the agent, acting on behalf of the applicant, have you provided details of your name and address and indicated whether any notice or correspondence required in connection with the review should be sent to you or the applicant? *

☐ Yes ☐ No ☒ N/A

Have you provided a statement setting out your reasons for requiring a review and by what procedure (or combination of procedures) you wish the review to be conducted? *

☒ Yes ☐ No

Note: You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. You may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

Please attach a copy of all documents, material and evidence which you intend to rely on (e.g. plans and Drawings) which are now the subject of this review *

☒ Yes ☐ No

Note: Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice (if any) from the earlier consent.

Declare – Notice of Review

I/We the applicant/agent certify that this is an application for review on the grounds stated.

Declaration Name: Mrs Carrie Cuthill

Declaration Date: 09/03/2023

Appellant's Supporting Statement to Moray Council Local Review Body

Appeal of decision for refusal 22/01423/APP by The Cuthill Family

Background

A Notice of Request for Review under Section 43(a)8 of the Town and Country Planning (Scotland) Act 1997 (as amended) and the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013 has been submitted to Moray Council on 9th March 2023. This Supporting Statement has been prepared to aid Members' consideration of the review.

Planning application 22/01423/APP was submitted on 3rd October 2022 and a decision of refusal made under delegated powers was issued on 13th December 2022.

The proposal is for "change of use from amenity to garden ground and erect a 1.8m high timber fence" to the rear of existing residential property at 10 Linksfield Road, Mosstodloch.

The single reason for refusal provided within the case officer's report of handling is a departure to Local Development Plan (MLDP2020) Policy 'EP5 Open Space'.



The Site

The Site is located to the rear, north, of the existing garden ground at 10 Linksfield Road. The land here is designated ENV6 Natural/Semi-Natural Greenspace, under the Mosstodloch Settlement Statement.

Notwithstanding this designation in the MLDP2020, in reality the land is, at best, amenity space used primarily by dogwalkers to access the woods near the properties at Linksfield Road.

Presently, and as evidenced by the photographs enclosed with this submission, the area is dominated by gorse bushes, over 10 feet tall in some places. The vegetation is not regularly maintained and homeowners will typically clear areas to the rear of their own property.

This area was once owned by a developer, Strathdee Properties, with the intention of delivering housing development. Over the past 20+ years there has been no meaningful intervention with the land, resulting in its current state. It is open space in the sense that there is no development upon it, therefore its value may be overstated with its designated status as such in MLDP2020.

The land which is subject of the planning application is presently under ownership of Crown Estate, who have agreed to sell the land to allow for the change of use and ensure it is utilised by residents and maintained to its full potential.

A site visit along the path to the rear of the application site demonstrates that this proposal for change of use is not uncharacteristic of similar activity by a number of neighbouring properties in the area. An invitation is extended to Members of the Local Review Body to undertake a site visit to demonstrate the merits of the appeal. Photographs are enclosed, overleaf, to illustrate points of relevance. Further photographs can be supplied on request.



*Top: View of path, rear of Linksfield Rd, showing existing extended properties.
 Below Left: An example of where one homeowner has cleared vegetation at their property.
 Below Right: View showing rear of the application site with overgrown vegetation with neighbour's fence of extended garden (approval 10/01928/APP).*



Policy Context

The officer's report cites the only reason for refusal being that, citing Policy EP5 Open Space, *development which would result in a change of use of a site identified under the ENV designation in settlement statements to anything other than open space will be refused.*

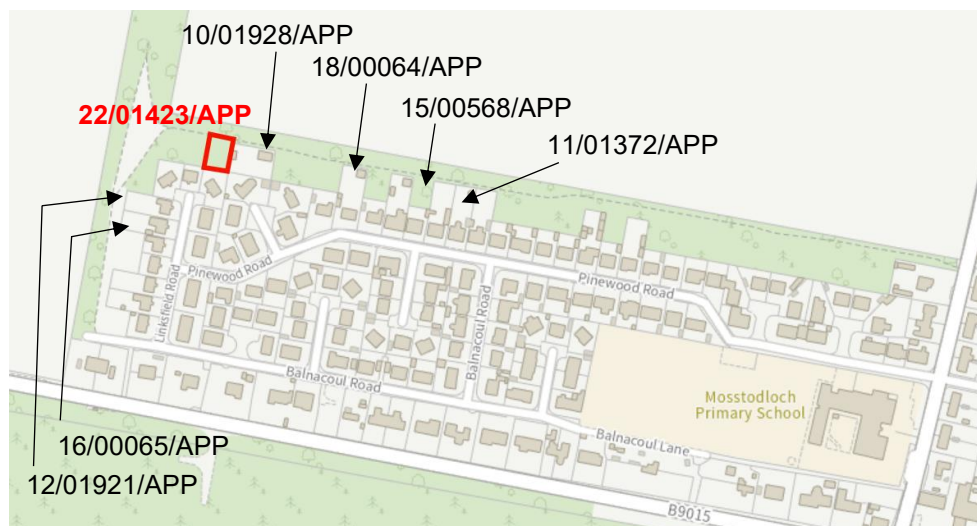
There is no 'development' proposed in this case, however it is considered that the proposed change of use to garden ground is unacceptable.

There is acknowledgement in the case officer's report that *neighbouring properties previously eroded this ENV6 designation with similar developments under previous Local Development Plans but the designation has since been reinforced by the Mosstodloch Settlement Statement, which has mapped around these previous infringements into the ENV area.*

It appears that Moray Council have introduced this land designation in the adopted MLDP2020 in response to a number of similar 'changes of use' that have occurred here over the years. The strip of amenity land to the rear of properties along Pinewood Road/ Linksfield Road has been demonstrably altered.

Planning History

The case officer's report of handling references "*neighbouring properties previously eroded this ENV6 designation with similar developments*". At least six other cases in the immediate area have been found.



The majority, if not all, of these examples sought planning consent retrospectively. The current application may be the only application which sought consent from the planning authority prior to undertaking works.

Despite the retrospective nature of these examples, the planning authority has supported the change of use to garden ground a number of times. The latest example being in March 2018 and described as 'totally compliant' with the adopted Local Development Plan of the time. The only circumstance that has changed is the policy nuance of the current adopted Plan.

Whilst this Appeal to the Local Review Body cannot attempt to amend the Council's adopted position in MLDP2020, it is suggested that a review into the extents of this designation is carried out as part of the next Plan to take into account the reality of what is on the ground.

Material Consideration

The case officer's report of handling states that *"the MLDP2020 takes primacy over any older policy document and Policy EP5 must be followed in this decision"*. This may be the case, however Section 25 of the Town and Country Planning (Scotland) Act 1997 (as amended) states that:

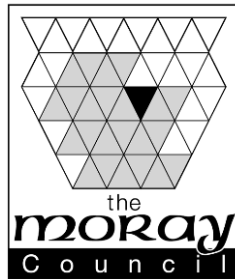
*"Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination is, **unless material considerations indicate otherwise**, to be made in accordance with that plan"*.

In this case the previous planning decisions made by Moray Council are important material considerations, and it is respectfully requested that Members of the Local Review Body determine that the proposal represents an acceptable departure to the MLDP2020.

Particular reference is made to the reporting of the Moray Local Review Body consideration of 10/01928/APP at 72 Pinewood Road (Appendix 1). The circumstances are comparable. Members at that time determined that the change of use would not be detrimental to the area but would in fact enhance it. It was also noted by one Member that the land to the south of the path is described as "scrub land" (implying low value). Members agreed that the views expressed were a material consideration of such weight to justify departing from policy and agreed that the request for review be upheld and consent granted as an acceptable departure, subject to standard conditions.

Summary

- The proposal which is subject of this appeal is a change of use from amenity ground to garden ground.
- The appellant understands deeply the importance of protecting areas of open space and respects the purpose of planning policies in doing so, as someone who has dedicated their own career to environmental protection.
- However, there is a detailed planning history and very clear precedent set by Moray Council in awarding this change of use to other properties (usually retrospectively) in the immediate area of Linksfield Road and Pinewood Road. MLDP2020 has applied a designation upon the land which is unduly restrictive upon the specific area at the rear of these properties.
- The change of use, if allowed, will result in no impact upon the accessibility of the public footpath, the overall amenity of the area will be maintained, and in becoming garden ground, will still retain a level of 'open space'.
- An inspection of the site and surrounding area is welcomed to assist the Local Review Body in its careful consideration of this appeal. It is respectfully requested that the appeal be upheld by Members citing that material considerations outweigh the development plan.



MORAY COUNCIL LOCAL REVIEW BODY

Review Decision Notice

Decision by Moray Local Review Body (the MLRB)

- Request for Review reference : Case 031
- Site address: 72 Pinewood Road, Mosstodloch
- Application for review by Mr Iain MacLeod against the decision by an Appointed Officer of Moray Council.
- Application 10/01928/APP : Retrospective change of use of waste ground to garden ground.
- Unaccompanied site inspection carried out by the MLRB on Monday 25 July 2011.
- Date of Decision Notice: August 2011

Decision

The MLRB agreed to uphold the request for review and grant retrospective planning permission for the change of use of waste ground to garden ground.

1.0 Preliminary

- 1.1 This Notice constitutes the formal decision notice of the Moray Local Review Body (MLRB) as required by the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008.
- 1.2 The above application for full planning permission was considered by the MLRB at meetings on 26 May and 28 July 2011. The Review Body was attended at both meetings by Councillors B Jarvis (Chairman), L Creswell & G Leadbitter.

2.0 Proposal

- 2.1 This is an application for retrospective planning permission for the change of use from waste ground to garden ground at 72 Pinewood Road, Mosstodloch.

MLRB Consideration of request for review

- 3.1 At the meeting of the MLRB on 26 May 2011 there was submitted a Summary of Information report setting out the reasons for refusal together with a copy of the Report of Handling, a copy of the Notice of Review and a copy of the Grounds for Review and supporting documents
- 3.2 Following consideration of the case papers the MLRB agreed that it did not have sufficient information in order to proceed to determine the request for review and agreed that an unaccompanied site inspection be undertaken, the purpose of which being to view the site in the context of Policies E4, ENV6, ENV10 and IMPI of the Moray Local Plan 2008. The MLRB also requested that the Planning Adviser attend the unaccompanied site inspection.
- 3.3 Councillor Leadbitter referred to the reference in the Report of Handling to seven properties having extended their garden ground/curtilage into the amenity strip and requested that clarification be sought from the Appointed Officer in regard to the locations of these properties and the current position regarding enforcement proceedings which may be ongoing. He also referred to a reference in the appellant's grounds for review in regard to 'advice received at the time was to fence off the purchased piece of ground' and requested that the appellant be requested to clarify from whom this advice had been obtained, for instance the Appellant's own legal adviser, or an officer of the Council. The MLRB agreed that the information requested by Councillor Leadbitter be obtained through the 'Written Submission' procedures set out in Regulation 15 of the Town & Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008 and the responses thereto submitted to the next meeting of the MLRB following expiry of the written submission procedure timescales and the unaccompanied site inspection.
- 3.4 At the meeting of the MLRB on 28 July 2011 there was submitted a 'Summary of Information' report detailing the outcome of the MLRB's previous consideration of the request for review and advising the unaccompanied site inspection was carried out on Monday 25 July 2011. There were also appended to the report as Appendices 1& 2 respectively a response from the Appointed Officer to the written submission request and one from the appellant.
- 3.5 In regard to the unaccompanied site inspection the Planning Adviser advised the meeting that on arrival at the site he reminded members of the MLRB of the reasons for refusal and the appellant's grounds for review. Members then viewed the site under review and accessed the track to the rear of the property and proceeded along the track to the west to see other examples where enclosure for additional garden ground had taken place.
- 3.6 The MLRB agreed that it had sufficient information and proceeded to determine the request for review.
- 3.7 Councillor Jarvis sought clarification in regard to the reasoning for establishing a 'buffer zone' between the housing development and agricultural land. The Planning Adviser advised the meeting that the reason was in order to provide separation between the agricultural land to the north and the settlement of Mosstodloch and provides a distinction between the two and the amenity value of it.

- 3.8 Thereafter Councillor Jarvis expressed the view, having considered all aspects of the case and having the opportunity to visit the site, that rather than being detrimental to the concept of the area being an informal recreational open space or having a significant and detrimental impact on the amenity of the area the enclosed additional garden ground was a significant improvement to the area and for these reasons the request for review should be upheld and retrospective consent granted. Councillor Creswell supported Councillor Jarvis's views and added that, in her opinion, the enclosed additional garden ground enhanced the area rather than having a detrimental impact as implied in the grounds for refusal.
- 3.9 Councillor Leadbitter intimated that there were no objections to the proposal from the community and expressed the view that given several parcels of amenity land had been acquired by householders for additional garden ground it would be very difficult to develop the amenity zone in a planned manner. He also expressed the view that it was clear from the site inspection that the amenity on the north side of the core path is much more sympathetic than the amenity to the south side of the core path bordering the houses, which can be described as scrub land. He was also of the view that the core path is clearly defined and the enclosed additional areas of garden ground do not encroach onto the path. Councillor Leadbitter also referred to Policies E4, ENV6 & ENV10 and was of the opinion that whilst the enclosure of the additional garden ground does not outweigh the value of the open space its conversion into garden ground in this case provides a greater degree of amenity and enhances the area. He was also of the view that the provision of additional garden ground was, in effect, an improvement to the landscaped setting as opposed to what previously existed. It was in his opinion the areas to the north and west of the core path that require to be protected. For these reasons Councillor Leadbitter was also of the view that the request for review should be upheld and retrospective consent granted for the change of use to garden ground.
- 3.10 Thereafter the MLRB agreed that the views expressed by the MLRB members were a material consideration of such weight to justify departing from policy and agreed that the request for review and be granted and retrospective planning consent be granted as an acceptable departure from the Moray Local Plan 2008, subject to standard conditions.

.....

Rhona Gunn
Legal Adviser to the MLRB

CONDITIONS

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 this permission is granted.
2. Unless otherwise agreed with the Council, as Planning Authority, the development hereby approved shall be carried out strictly in accordance with the approved plans and conditions.

REASONS

1. The time limit condition is imposed in order to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006.
2. In order to ensure that there are no unauthorised departures from the approved plans which could adversely affect the development or character and amenity of the surrounding properties and area

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

Notification to be sent to applicant on determination by the planning authority of an application following a review conducted under section 43A(8)

Notice Under Regulation 21 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008.

- 1 If the applicant is aggrieved by the decision of the planning authority to refuse permission or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.
- 2 If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.

1. Do not scale drawing.
All dimensions and levels
to be verified on site by
Contractor.
2. Any discrepancies to be
reported to the designer.

Revisions:



CP Plans
2 Balvenie Park
Elgin
IV30 8AJ

Tel: 07467 231872
cpplanselgin@gmail.com

Job Title

New rear boundary fence
at 10 Linksfield Road
Mosstodloch
IV32 7LB

Drawing Title

Fence & gate plan

Drawing Number

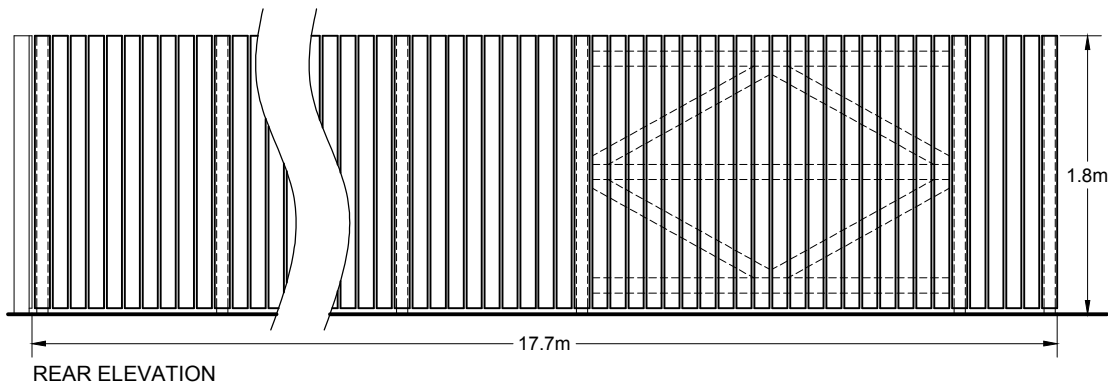
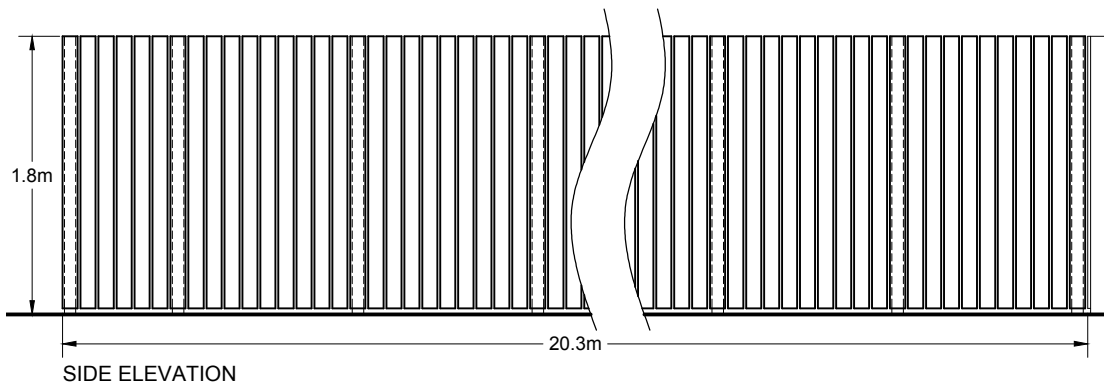
PL-01

Scale	Date	Rev
1:200	Oct 22	

Drawing by CP

1. Do not scale drawing. All dimensions and levels to be verified on site by Contractor.
2. Any discrepancies to be reported to the designer.

Revisions:



CP Plans
2 Balvenie Park
Elgin
IV30 8AJ

Tel: 07467 231872
cpplanselgin@gmail.com

Job Title

New rear boundary fence
at 10 Linksfield Road
Mosstodloch
IV32 7LB

Drawing Title

Fence elevations

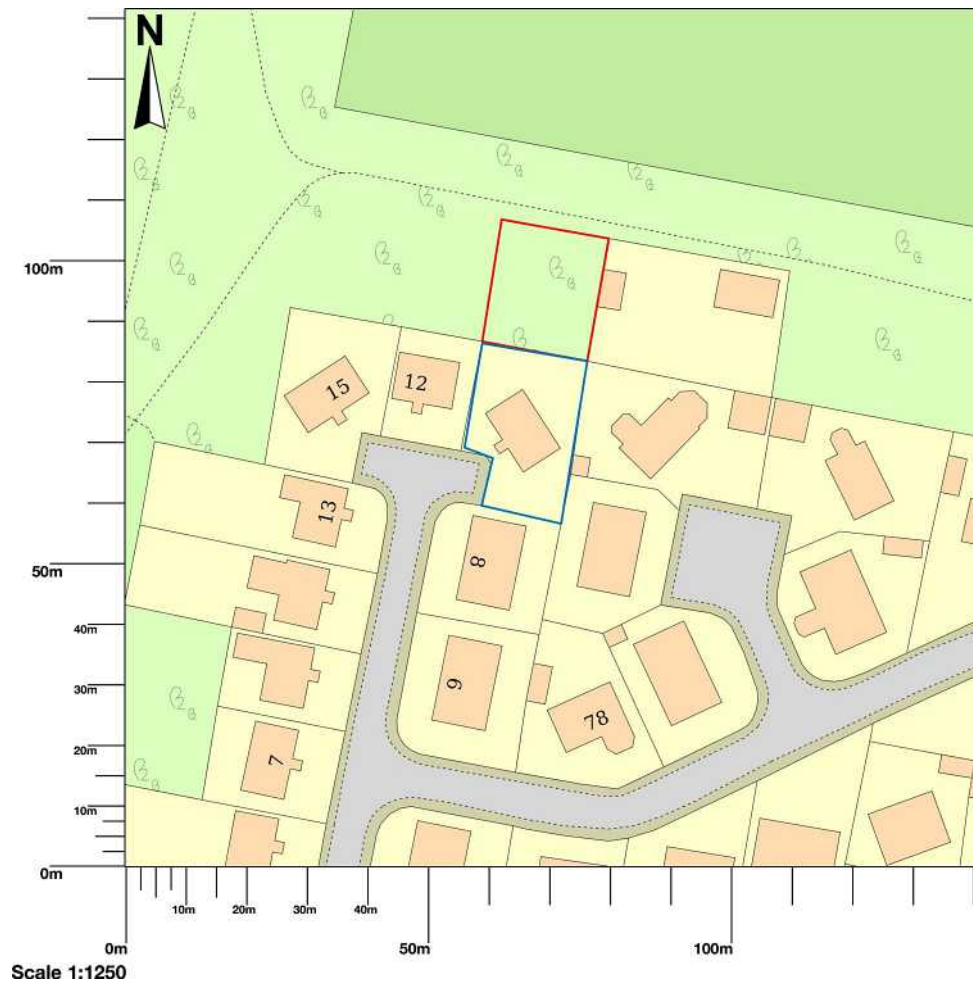
Drawing Number

PL-02

Scale	Date	Rev
1:50	Oct 22	

Drawing by CP

10 Linksfield Road, Mosstodloch, Fochabers, IV32 7LB



Map area bounded by: 332294,860131 332436,860273. Produced on 08 September 2022 from the OS National Geographic Database. Reproduction in whole or part is prohibited without the prior permission of Ordnance Survey. © Crown copyright 2022. Supplied by UKPlanningMaps.com a licensed OS partner (100054135). Unique plan reference: p2c/uk/847419/1145235



APPENDIX 3

APPOINTED OFFICER AND INTERESTED PARTIES RESPONSES TO NPF4

From: Dominic Batty
Sent: 24 March 2023 13:52
To: Lissa Rowan
Cc: Beverly Smith; Committee Services
Subject: FW: 22/01423/APP - 10 Linksfield Road Mosstodloch

Good afternoon,

In light of NPF4, the newly implemented policies must be considered in regards to the proposed change of use at 10 Linksfield Road, Mosstodloch. In particular, the policies relevant to this application are: 3. Biodiversity; 14. Design, quality and place; and 20. Blue and green infrastructure.

Policy 3 requires proposals for local developments to conserve, restore, and enhance biodiversity. It is noted that there is a high level of vegetation on the site which would provide biodiversity benefits to the area and the proposed change of use would, as noted within the Appellant's Supporting Statement to the Moray Council Local Review Body, 'clear areas to the rear of [the homeowner's] property' resulting in a loss of biodiversity, deviating from the requirements of NPF4 Policy 3 Biodiversity. This policy further supports the protection of ENV designations within the local development plan.

Policy 14 requires proposals to be consistent with the six qualities of successful places. This policy explicitly states that proposals that are detrimental to the amenity of the surrounding area or are inconsistent with the six qualities of successful places will not be supported under NPF4. These qualities are further detailed in Annex D. Quality 1 Healthy requires proposals to be designed for healthy and active lifestyles, part of which is provided by access to nature and greenspace. Quality 2 Pleasant requires proposals to be designed for connecting with nature including natural landscape, biodiversity and eco-systems, and integrating green infrastructure. Quality 5 Sustainable requires proposals to be designed for climate resilience and nature recovery including incorporating green infrastructure and integrating nature positive biodiversity solutions. This application seeks to remove the public access to nature and greenspace and green infrastructure, which also acts as amenity ground, and would lead to a loss of vegetation that provides and enhances biodiversity and eco-systems, deviating from the requirements of NPF4 Policy 14 Design, quality and place.

Policy 20 states that development proposals that result in fragmentation or net loss of existing green infrastructure will only be supported where it can be demonstrated that the proposal would not result in or exacerbate a deficit in green infrastructure provision. The area of open space under this ENV6 designation has already seen a net loss following the permitting of similar developments prior to the adoption of the Moray Local Development Plan 2020 which reinforced the open space designation through the Mosstodloch Settlement Statement and this application would result in the exacerbation of the deficit that the latest iteration of the local development plan aims to prevent through this ENV6 designation. As such, the proposal would deviate from the requirements of NPF4 Policy 20 Blue and green infrastructure.

Relevance should also be given to Policy 15 Local living and 20 minute neighbourhoods which requires the provision of local access to green spaces and high quality walking networks. The site is adjacent to a Core Path and the proposal would degrade the quality of its setting as well as the provision of green space, deviating from the requirements of this policy. Having (and preserving) naturalised green spaces next to housing also enhances local living.

Further relevance should be given to the NPF4 Spatial Strategy and Local Living Spatial Principle which support easy access to greenspace.

Kind regards,

Dominic Batty | Planning Officer | Economic Growth and Development

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APPENDIX 4

APPLICANT'S RESPONSE TO NPF4

Appellant's Supplementary Supporting Statement to Moray Council Local Review Body

Appeal of decision for refusal 22/01423/APP by The Cuthill Family

Supporting Information: National Planning Framework 4 2023

Comments

The significance of the recently adopted National Planning Framework 4 2023 (NPF4) is recognised. NPF4 now forms part of the statutory development plan and is relevant to the determination of planning applications by local authorities.

This supplementary statement has been prepared to accompany the Appellant's Supporting Statement to the Local Review Body. Responses are provided to the Case Officer's comments of 24 March 2023, in relation to NPF4 policies.

The importance of national planning policy is acknowledged when considering planning applications. However, the policy justification which the Case Officer has set out in supporting their refusal of this proposed change of use is challenged, especially when considering the reality of the case being presented to the Local Review Body.

The Case Officer has cited the following NPF4 policies to support the refusal: Policy 3: Biodiversity, Policy 14: Design, Quality and Place, Policy 15: Local Living, and Policy 20: Blue and Green Infrastructure. Each of these will be considered briefly in turn.

Policy 3: Biodiversity

The Case Officer has cited the first part of Policy 3 part (b) which applies to local development types. The relevance of Policy 3 to this proposed change of use is debatable. The second part of that policy goes on to state: "*Applications for individual householder development, or [national/major development], are excluded from this requirement*".

Notwithstanding, the Case Officer claims that the existing vegetation currently present at the application site would offer biodiversity benefits that would result in an unacceptable loss from the proposed change of use. The Case Officer has described the site as being "a high level of vegetation", with no supporting evidence of the alleged biodiversity benefits. Put simply, this area has become overgrown due to a lack of maintenance. There is no diversity present and the general area, including the application site, is littered and unkempt. The Case Officer has not offered a balanced consideration of the potential biodiversity benefits of the proposed garden space, which could, by comparison, have the potential for greater benefits.

Policy 14: Design, Quality and Place

The Case Officer cites the six qualities of successful places, detailed in Annex D of NPF4, and incorrectly states that the proposed change of use will “remove public access to nature and greenspace and green infrastructure...”. It is clear that the site boundary does not encroach on the public right of way to the rear of the properties at Linksfield Road; the proposed site boundary is a continuation of the properties’ curtilage lines along this path. The Case Officer’s statement that this proposed change of use is contrary to national planning policy due to an impact upon the public’s access to nature - as a result of the removal of a small section of overgrown vegetation and erection of a fence - is highly overstated.

Each of the relevant ‘qualities’ identified by the case officer from this policy (Healthy, Pleasant, Sustainable) could be equally inverted in **support** of the proposed change of use. Removal of overgrown, unkempt vegetation along this path would contribute to a more attractive, safer, walking route less prone to litter and neglect, thereby potentially encouraging people to walk here.

The Case Officer has cited part (b) of Policy 14, whereas part (a) states that: “*Development proposals will be designed to improve the quality of an area whether in urban or rural locations and regardless of scale*”. Whilst there is no physical development proposed, it can be argued that the proposed change of use to garden ground will contribute toward the improved quality and attractiveness of this area to the rear of Linksfield Road by removing this overgrown vegetation.

Policy 15: Local Living

The Case Officer explains that the proposed change of use will result in the degradation of the quality of the setting of the Core Path. Again, this is simply not true. The change of use of this section of land will not impact upon the walking route to the rear of Linksfield Road. As explained for the other policies, the value of this section of overgrown vegetation has been overstated and does not reflect the reality of the area. A site visit by the Local Review Body is welcomed in order to demonstrate this.

Policy 20: Blue and Green Infrastructure

The Case Officer explains that the proposed change of use will result in the fragmentation or net loss of green infrastructure. It is our view that the removal of bushes to the rear of the existing curtilage, in order to extend that curtilage, will have negligible impact upon the quantity and quality of green infrastructure available to the public in this area.

As set out in the Appellant’s Supporting Statement, this area under the ENV6 designation has been subject of planning approvals and absence of environmental protection for a number of years, resulting in the incremental (and often retrospective) changes of use to garden space. The policy designation of this area in MLDP 2020 does need to be reviewed in the next Plan; the strip between the curtilage line and the path simply does not merit such a designation, unlike the path itself and the amenity area northward.

Concluding Statement

NPF4, and its statutory status in terms of Section 25 of the Town and Country Planning (Scotland) Act 1997 (as amended), is acknowledged. However, the relevance of such strategic policy statements to planning applications such as this is uncertain.

National planning policy plays an important role in creating high-quality places, and places where communities want to live and can be proud of. Each of the policies highlighted by the Case Officer could therefore be utilised in order to **support** the proposed change of use.

With reference to the Appellant's Supporting Statement for consideration by the Local Review Body, careful consideration of material considerations is encouraged and that these sufficiently demonstrate that the proposed change of use can be upheld. Particular reference was made to the reporting of the Moray Local Review Body consideration of 10/01928/APP at 72 Pinewood Road (Appendix 1 of the Appellant's Supporting Statement) and the comparable circumstances to the current Appeal before the Local Review Body.