

MORAY COUNCIL

Minute of Meeting of the Moray Local Review Body

Thursday, 28 March 2019

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

PRESENT

Councillor George Alexander, Councillor David Bremner, Councillor Paula Coy, Councillor Donald Gatt, Councillor Ray McLean, Councillor Derek Ross, Councillor Amy Taylor

APOLOGIES

IN ATTENDANCE

Also in attendance at the above meeting were:

The Senior Planning Officer (Development Planning and Facilitation) and Mrs E Gordon, Planning Officer as Planning Advisers, Legal Services Manager as Legal Adviser and Mrs L Rowan, Committee Services Officer as Clerk to the Moray Local Review Body.

1 Chair

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

2 Declaration of Group Decisions and Members Interests

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

3 Minutes

The Minutes of the Meetings of the Moray Local Review Body dated 28 February 2019 AM and PM were submitted and approved.

4 LR218 - Ward 5 - Heldon & Laich

Planning Application 18/01207/APP – Erect extension at 13 Bishops Court,
Lossiemouth, IV31 6TL

Under reference to paragraph 4 of the Minute of the Meeting of the Moray Local Review Body (MLRB) dated 29 January 2019, the MLRB continued to consider a

request from the Applicant seeking a review of the decision of the Appointed Officer, in terms of the Scheme of Delegation, to refuse an application on the grounds that the proposal is contrary to Moray Local Development Plan 2015 policies IMP1 and H4 for the following reasons:-

The proposed two storey side extension of the form and size submitted, positioned immediately to the south of neighbouring housing (in this case 11 Bishops Court) would represent an inappropriate form of development for this location which would be detrimental to the amenity of neighbouring occupiers.

The proposed extension would cause an unacceptable loss of daylight and sunlight, and an increased sense of enclosure/overbearing impact to the garden of this adjacent property, by reason its bulk, height and close proximity to the site (side) boundary. It would therefore cause a material loss of residential amenity, contrary to policies IMP1 and H4.

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

The Chair stated that Case 218 was deferred at the meeting of the MLRB on 29 January 2019 to request further information from Development Management in respect of the sunlight/daylight assessment that was undertaken by the Appointed Officer at the time of determination, that was not included in the paperwork submitted by Development Management.

Having had this further information, the Chair asked the MLRB if they had sufficient information to determine the request for review. In response, the MLRB unanimously agreed that it had sufficient information.

Councillor Gatt, having visited the site and considered the Applicant's grounds for review was concerned that it appeared the sunlight/daylight assessment was not completed at the time of determination as the Applicant had provided details of an email exchange between the Appointed Officer and the Applicant where the Applicant had requested a copy of the sunlight/daylight assessment however the Appointed Officer had replied stating that the sunlight/daylight assessment was not something that was recorded as such therefore no specifics could be provided. Councillor Gatt raised further concern that the MLDP 2015 policies which formed the reason for refusal, namely H4 and IMP1 did not make any reference to loss of daylight or sunlight therefore, in his opinion, the application adhered to MLDP 2015 policies.

In response, the Planning Adviser advised that the Report of Handling stated that a detailed site assessment had been undertaken and that whilst the sunlight/daylight assessment was not included with the original paperwork issued to the MLRB, this had been raised with Development Management who had advised that these would be included in future and assured the MLRB that the assessment had been completed however not formally recorded. She further advised that policy IMP1 ensured that any new development was appropriate to the amenity of the surrounding area and the Appointed Officer was of a view that the development would have a detrimental impact to the amenity of adjoining property.

Councillor Alexander, having visited the site and considered the Applicant's grounds for review was of the view that the definition of daylight and sunlight were different

and that the proposal would not result in any loss of daylight to the property on a cloudy day and that, on a sunny day, the loss of sunlight was very little. He further stated that, in his opinion, the Appointed Officer's reasons for refusal were subjective and he did not agree that the proposal was inappropriate for the location given that there were similar extensions in the area. He also did not believe that the proposal would be detrimental to the amenity or be overbearing to the adjacent garden therefore moved that the MLRB agree to uphold the appeal and grant planning permission in respect of Planning Application 18/01207/APP. This was seconded by Councillor Gatt.

There being no-one otherwise minded, the MLRB agreed to uphold the appeal and grant planning permission in respect of Planning Application 18/01207/APP subject to standard conditions.

5 LR220 - Ward 1 - Speyside Glenlivet

Planning Application 18/01323/APP – Erect new garage at Kimberlee, Rothies, Moray, AB38 7AW

A request was submitted by the Applicant seeking a review of the decision of the Appointed Officer, in terms of the Scheme of Delegation, to refuse an application on the grounds that:

The proposal is contrary to the adopted Moray Local Development Plan 2015 policies EP7 and IMP1 on flood risk grounds where the proposal would lie entirely within the medium likelihood (0.5% annual probability or 1 in 200 years) flood extent of the SEPA Flood Maps. The proposed garage would therefore be at medium to high risk of flooding and in a location that would contribute toward increased flood risk to surrounding properties via displacement of flood plain capacity.

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

With regard to the unaccompanied site inspection carried out on 25 March 2019, the Chair stated that all present members of the Moray Local Review Body (MLRB), were shown the site where the proposed development would take place and had before them papers which set out both the reasons for refusal and the Applicant's grounds for review.

In response to a question from the Chair as to whether the Legal and Planning Advisers had any preliminary matters to raise, the Planning Advisers advised that they had nothing to raise. The Legal Adviser advised that, on the Notice of Review, the Applicant had indicated that he would be willing to enter into a Section 75 agreement which would ensure that the Applicant would not build an already consented fourth house if planning permission could be granted to build the proposed garage in the preferred location. This was information that was not before the Appointed Officer at the time of determination therefore, in terms of Regulation 17 of the Town and Country Planning (Schemes of Delegation and Local Review Procedures) (Scotland) Regulations 2013, the Appointed Officer and Interested Parties should be given the opportunity to comment on this information.

The Chair asked the Committee if they agreed with the view of the Legal Adviser that reference to a proposed Section 75 agreement in the Applicant's Notice of

Review constituted new evidence as if so, the case would require to be deferred to allow the Appointed Officer and Interested Parties the opportunity to comment on the new evidence.

In response, the MLRB unanimously agreed that reference to a proposed Section 75 agreement in the Applicant's Notice of Review constituted new evidence therefore Case 220 was deferred to allow the Appointed Officer and Interested Parties the opportunity to comment on the new evidence.

6 LR221 - Ward 5 - Heldon & Laich

Planning Application 18/00862/APP – Erect dwelling house and associated works at a site at Kirkton Cottage, Alves, 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 an application on the grounds that:

The proposal is contrary to Policies PP1, H7 and IMP1 of the adopted Moray Local Development Plan 2015 and, as a material consideration, the associated Supplementary Guidance: Housing in the Countryside, whereby

- i. individually, the proposal would not integrate sensitively with the surrounding area where, given the open setting of the site on part of an agricultural field, any resultant dwelling thereon would appear as an obtrusive and conspicuous form of development and, in addition, the site lacks sufficient backdrop, screening and enclosure to mitigate the impact of the development and assist in it's integration sensitively into the surrounding landscape; and
- ii. cumulatively, the introduction of an additional dwelling would contribute to the further build-up of development in the locality and thereby, it would detract from, and be detrimental to, the character, appearance and amenity of the surrounding rural area within which it is located.

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

With regard to the unaccompanied site inspection carried out on 25 March 2019, the Chair stated that all present members of the Moray Local Review Body (MLRB) were shown the site where the proposed development would take place and had before them papers which set out both the reasons for refusal and the Applicant's grounds for review.

In response to a question from the Chair as to whether the Legal or Planning Advisers had any preliminary matters to raise, the Legal Adviser advised that she had nothing to raise. The Planning Adviser advised that the consultation response from Transportation was not included in the papers therefore the case should be deferred to the next meeting of the MLRB to give members the opportunity to review the consultation response from Transportation. This was unanimously agreed.

Accordingly, the MLRB agreed to defer Case LR221 until the next meeting of the MLRB scheduled for 25 April 2019 to give members the opportunity to review the consultation response from Transportation.