

# MORAY COUNCIL

## Minute of Meeting of the Moray Local Review Body

Thursday, 20 April 2023

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

### **PRESENT**

Councillor Neil Cameron, Councillor Amber Dunbar, Councillor Juli Harris, Councillor Sandy Keith, Councillor Marc Macrae, Councillor Paul McBain, Councillor Derek Ross, Councillor Draeyk Van Der Horn, Councillor Sonya Warren

### **IN ATTENDANCE**

Mrs L MacDonald, Senior Planning Officer Mr A Miller, Senior Planning Officer and Miss K Donnachie, Planning Officer as Planning Advisers, Mr S Hoath, Senior Solicitor and Mrs J Smith, Solicitor as Legal Advisers and Mrs L Rowan, Committee Services Officer as Clerk to the Committee.

#### **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 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.

For transparency, in relation to Item 6, Case LR285, Councillor Warren stated that in the previous Council term, local Buckie Ward Members had been consulted on the sale of this land and that the Applicant is also a member of the Findochty Community Council however she stated that this would not influence her judgement when determining this application.

Councillor Warren further noted that Item 4, Case LR283 was not in Buckie and that the Case should state that the proposal is in the Fochabers Lhanbryde Ward.

#### **3 Minute of Meeting dated 16 February 2023**

The Minute of the meeting dated 16 February 2023 was submitted and approved.

#### **4 Order of Business**

The Chair sought the agreement of the Moray Local Review Body to vary the order business and take the cases in the following order, Item 4 Case LR283, Item 6

LR285, Item 5 LR284, Item 7 LR286 and Item 8 LR 287, to allow Officers to be present for the relevant items of business. This was agreed.

## **5 Case LR283 - Ward 4 – Fochabers Lhanbryde**

### **Planning Application 22/00164/PPP – Erect a dwellinghouse on site at Broadly by Buckie**

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

The development would result in an intensification of use of the access junction onto the public road, where there is presently restricted visibility and which would be likely to give rise to conditions detrimental to the road safety of road users contrary to Moray Local Development Plan (MLDP) policy DP1 (Development Principles) section (ii) - 'Transportation', part 'a)' (safe entry and exit).

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, both the Legal and Planning Advisers advised that they had nothing to raise at this time.

The Chair then asked the Moray Local Review Body (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 Dunbar, having visited the site and considered the Case in detail, moved that the MLRB uphold the appeal and grant planning permission in principle in relation to Planning Application 22/00164/PPP with a condition to resolve any issues in relation to land ownership and the visibility splay prior to start of any development. This was seconded by Councillor Warren.

In response, the Legal Adviser pointed out that the reason for refusal was that the proposal did not comply with policy DP1 (Development Principles) of the MLDP 2020 in terms of safe entry to and from the site and sought clarification as to whether Councillor Dunbar was of the view that the proposal complied with Policy DP1 or was an acceptable departure from Policy DP1.

Councillor Dunbar stated that it was her understanding that if the issues of land ownership and visibility splay were rectified, then the proposal would comply with policy.

Mrs MacDonald, Planning Adviser confirmed that the Appointed Officer was of the view that these issues could not be adequately controlled by condition, however it was up to the MLRB to decide whether these issues could be controlled by condition. Mrs MacDonald further stated that approval of this application was subject to a legal agreement in terms of developer obligations and that the Transportation Service had recommended that access to and from the development should be from at least 15 metres down the private track rather than the public road

and that EV charging would also be required and sought the agreement of the MLRB to add these conditions and also any standard conditions and informatives if minded to approve the planning application..

In response, Councillor Dunbar agreed to add these conditions to her motion for approval.

Councillor Harris sought clarification as to whether there would be any condition in relation to the height of fencing or vegetation at the visibility splay.

In response, Mrs MacDonald stated that the visibility splay condition would limit the height of fencing or vegetation to no more than 0.6 metre.

There being no-one otherwise minded, the MLRB unanimously agreed to uphold the appeal and grant planning permission in principle in relation to Planning Application 22/00164/PPP subject to:

- (i) the inclusion of conditions to address the issues of land ownership and visibility splay with fencing/vegetation no more than a height of 0.6 metre;
- (ii) the completion of a legal agreement in terms of developer obligations;
- (iii) a condition to ensure that access to and from the development should be from at least 15 metres down the private track rather than the public road;
- (iv) a condition to ensure the provision of EV charging; and
- (v) any other standard conditions and informatives.

## **6 Case LR285 - Ward 3 - Buckie**

### **Planning Application 22/00327/APP – Change of use of amenity land to garden ground at Rockside, 8 Jubilee Terrace, Findochty, Buckie**

Under reference to paragraph 4 of the Minute of the meeting of the Moray Local Review Body (MLRB) dated 16 February 2023, 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 would be contrary to policies EP9, EP3, EP6 and DP1 of the Moray Local Development Plan (MLDP) 2020 for the following reasons:

- 1 This proposed change of use would result in the loss of a portion of distinctive grassland, which acts as an attractive transition between the built up area of the village and the beach beyond and also acts as a useful amenity area and as such its loss would have an adverse impact on the amenity, character and appearance of the conservation area in which it lies and the qualities of the wider Special Landscape Area.
- 2 The proposed site straddles the settlement boundary, with the majority of the site lying out with the settlement boundary, where policy EP6 precludes any development immediately out with the settlement boundary and in this instance, given the adverse impacts on the character and amenity of the area which would result from the development, there is not considered to be

any material planning considerations which would merit departing from policy.

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, the Legal Adviser advised that he had nothing to raise at this time.

Mrs MacDonald, Planning Adviser advised that the Case included 2 copies of the plan, one being the original plan and another called "Revision A" and that Members should consider "Revision A", as this was the plan that was refused. This was noted.

Councillor Warren stated that local Ward Members had been consulted on the sale of land referred to in this proposal and sought guidance from the Legal Adviser as to whether she should declare a full interest in this case and take no part in the consideration of this item.

In response, the Legal Adviser advised that it is up to each member to decide whether they can fairly consider each application based on the information provided within the case.

In response, Councillor Warren stated that local Ward Members had been provided with 3 options in relation to the sale of this land and that they had settled on one option therefore declared a full interest in this item, left the meeting at this juncture and took no further part in the consideration of this item.

Councillor Cameron, having visited the site and considered the case in detail, agreed with the original decision of the Appointed Officer stating that permitting the development would erode public land and moved that the MLRB refuse the appeal and uphold the original decision of the Appointed Officer to refuse Planning Application 22/00327/APP as the proposal does not comply with policies EP9 (Conservation Areas), EP3 (Special Landscape Areas and Landscape Character), EP6 (Settlement Boundaries) and DP1 (Development Principles) of the MLDP 2020. This was seconded by Councillor Harris.

There being no-one otherwise minded, the MLRB agreed to refuse the appeal and uphold the original decision of the Appointed Officer to refuse Planning Application 22/00327/APP as the proposal does not comply with policies EP9 (Conservation Areas), EP3 (Special Landscape Areas and Landscape Character), EP6 (Settlement Boundaries) and DP1 (Development Principles) of the MLDP 2020.

Councillor Warren re-joined the meeting at this juncture.

## **7 Case LR284 - Ward 4 - Fochabers Lhanbryde**

**Planning Application 22/01066/APP – Alter and extend dwellinghouse at 35 Gordon Street, Portgordon, Buckie**

Under reference to paragraph 4 of the Minute of the meeting of the Moray Local Review Body (MLRB) dated 16 February 2023, 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 alterations and extension are contrary to Moray Local Development Plan 2020 policy DP1(i)(a) for the following reasons:

- 1 The proposed rear dormers are considered unacceptable as they are of an irregular shape which is not keeping with the form and character of the existing traditional property and surrounding area.
- 2 The proposed first floor extension incorporates an irregular roof shape giving the appearance of a two storey flat roof extension which creates unnecessary bulk and is incongruous with the main parent property.

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, the Planning Adviser advised that she had nothing to raise at this time.

The Chair then asked the Moray Local Review Body (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 Van Der Horn, having considered the case in detail, moved that the appeal be upheld and planning permission granted in respect of Planning Application 22/01066/APP. He acknowledged concerns in relation to the view of the proposal from the west however stated that this could be mitigated with a condition asking that more planting be provided. In terms of the design of the proposal, Councillor Van Der Horn was of the view that the modern design was acceptable and added to architectural diversity. He further noted the support of the local Portgordon Community Trust. With regard to some concerns of the proposal being viewed as a block, Councillor Van Der Horn suggested that new drawings could be submitted to mitigate against those concerns.

Councillor Cameron agreed with Councillor Van Der Horn's comments and seconded his motion.

Mr Hoath, Legal Adviser reminded the MLRB of the reasons for refusal set out in the Summary of Information report and sought clarification from Councillor Van Der Horn as to whether the policy complies with, or is an acceptable departure from, policy DP1 (Development Principles) (i)(a). He further noted Councillor Van Der Horn's comments in relation to increased planting and new drawings and asked if these were to be addressed by means of condition.

In response, Councillor Van Der Horn stated that this proposal would be an acceptable departure from policy as there are already examples of similar extensions in the area with a condition to add additional planting to mitigate against the impact from the view from the west. Councillor Van Der Horn went on to retract his previous comments in relation to additional drawings. Councillor Cameron

confirmed that, after considering Councillor Van Der Horn's further comments, he still wished to second his motion.

Miss Donnachie, Planning Adviser advised that, should the MLRB be minded to uphold the appeal and grant planning permission, a condition could be added in relation to the increased landscaping requiring that a landscape plan be provided in addition to standard conditions and informatives. She further sought clarification from Councillor Van Der Horn as to whether he considered the proposal to be a departure from policy DP1(i)(a) or whether he was of the view the proposal complied with policy.

In response, Councillor Van Der Horn stated that in some way the proposal is a departure as the proposal has an impact however complied as it would not adversely affect the character of the street, and on the whole was of the view that the proposal complied with policy DP1(i)(a).

Councillor Ross, having visited the site and considered the case in detail agreed with the original decision of the Appointed Officer to refuse the application as it is contrary to policy DP1(i)(a) and moved as an amendment, that the MLRB agree to refuse the appeal and uphold the original decision of the Appointed Officer to refuse Planning Application 22/01066/APP as it is contrary to policy DP1 (Development Principles) (i)(a) of the MLDP 2020. This was seconded by Councillor Warren.

On a division there voted:

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|------------------------|--|
| For the Motion (6):    | Councillors Van Der Horn, Cameron, Dunbar, Harris, Macrae and McBain |
| For the Amendment (3): | Councillors Ross, Warren and Keith                                   |
| Abstentions (0):       | Nil  |

Accordingly, the Motion became the finding of the Meeting and the MLRB agreed to uphold the appeal and grant planning permission in respect of Planning Application 22/01066/APP as the proposal complies with policy DP1 (Development Principles) (i)(a) of the MLDP 2020 with the inclusion of a condition for the provision of increased landscaping including a landscape plan, as well as standard conditions and informatives.

## **8 Case LR286 - Ward 5 - Heldon and Laich**

### **Planning Application 22/01594/APP – Proposed erection of garage/storage shed and partial change of use from Farm Land to Garden Ground at The Forecourt, Cummingston**

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:

- 1 The proposals is contrary to Moray Local Development Plan Policies 2020 EP6 and the Cummingston Settlement Text as the proposal would introduce a large building at the edge of the village on land that is immediately outwith the existing settlement boundary resulting in additional linear roadside development along the B9040 and increasing the potential for coalescence

with surrounding settlements.

- 2 The proposals is contrary to Moray Local Development Plan Policies 2020 DP1 (i) (a) and EP3 as the development fails to reflect the traditional settlement character in terms of siting and design as the siting of a building of this size in this prominent location would not reflect the character of this part of the village.

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 he had nothing to raise at this time.

Mr Miller, Planning Adviser advised that Members on the site visit had noted that some works had already commenced on the site and that, whilst some of these works did not require planning permission, some of the works do need planning permission including the change of use of agricultural land to garden ground, which is subject to the planning application. However he reminded the Moray Local Review Body (MLRB) that the planning application should be considered based on the information considered by the Appointed Officer at the time of determination and no weight should be given to the partly retrospective nature of this review. 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.

During discussion, the MLRB raised concern in relation to the size of the proposal which is not in keeping with the character of the surrounding area and unanimously agreed to uphold the original decision of the Appointed Officer to refuse planning permission in respect of Planning Application 22/01594/APP as the proposal is contrary to policy EP6 (Settlement Boundaries), DP1 (Development Principles) (i) (a) and EP3 (Special Landscape Areas and Landscape Character) of the MLDP 2020.

## **9 Case LR287 - Ward 4 - Fochabers Lhanbryde**

### **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**

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 development departs from the Moray Local Development Plan (MLDP) 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.

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, both the Legal and Planning Advisers advised that they had nothing to raise at this time.

The Chair then asked the Moray Local Review Body (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 Ross, having visited the site and considered the case in detail, moved that the MLRB refuse the appeal and uphold the original decision of the Appointed Officer to refuse planning permission in respect of Planning Application 22/01423/APP as the proposal is contrary to Policy EP5 (Open Space) of the MLDP 2020 and the Mosstodloch designation ENV6 (Natural/Semi-Natural Greenspace).

There being no-one otherwise minded, the MLRB agreed to refuse the appeal and uphold the original decision of the Appointed Officer to refuse planning permission in respect of Planning Application 22/01423/APP as the proposal is contrary to Policy EP5 (Open Space) of the MLDP 2020 and the Mosstodloch designation ENV6 (Natural/Semi-Natural Greenspace).