

MORAY COUNCIL

Minute of Meeting of the Moray Local Review Body

Thursday, 31 October 2019

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

PRESENT

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

APOLOGIES

Councillor George Alexander

IN ATTENDANCE

Principal Planning Officer (Strategic Planning and Development) and Mr Henderson, Planning Officer as Planning Advisers, Mr Hoath, Senior Solicitor as Legal Adviser and Mrs Rowan, Committee Services Officer as Clerk to the Moray Local Review Body.

1 Chair

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

2 Declaration of Group Decisions and Members Interests

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

3 Minute of Meeting dated 26 September 2019

The Minute of the Meeting of the Moray Local Review Body dated 26 September 2019 was submitted and approved.

4 LR230 - Ward 4 - Fochabers Lhanbryde

Planning Application 19/00309/PPP – Erect Replacement Dwellinghouse at Hillview, Garmouth Road, Lhanbryde, IV30 8PD

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:

- i. The proposal is contrary to policies H1 and IMP1 in the Moray Local Development Plan (MLDP) 2015 for the following reasons: the site is of insufficient size to provide for a house with adequate levels of amenity which avoids an intrusive impact on neighbouring houses. It is also considered that any reasonably sized house on the site would result in cramped, over development of the site which would be to the detriment to the character of the area and residential amenity and as such the proposal is contrary to the provisions of the MLDP 2015.
- ii. By virtue of reliance for off street parking and turning to take access onto a narrow confined lane with poor access onto Walker Crescent, close to its junction with Garmouth Road the additional traffic would result in a detrimental impact to the amenity of the locality and to other users of the lane. The existing lane is therefore inadequate to receive additional traffic and would not meet the requirements of Policy T2 which requires an access to be appropriate to the needs of the development.
- iii. There is currently insufficient information to assess the proposals against the requirements of Policies EP5 and IMP1 and associated Supplementary Guidance Flood Risk and Drainage Impact Assessments for New Development on the basis that site drainage cannot be confirmed as compliant with the above policies in terms of the provision of surface water disposal and treatment from the site.

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 October 2019, the Chair stated that she, along with Councillors Gatt and R McLean were shown the site where the proposed development would take place. Councillors Coy and Bremner stated that they were unavailable for the scheduled site visit however had visited the site on their own. Councillor Ross stated that he had not visited the site however was of the view that there was adequate information within the report to determine the review.

In response to a question from the Chair as to whether the Legal and Planning Advisers had any preliminary matters to raise, both the Legal and Planning Advisers advised that they had nothing to raise at this time.

The Chair asked the Moray Local Review Body (MLRB) if it had sufficient information to determine the request for review. In response, Councillor Gatt stated that he had noted when studying the planning history of the site that the Report of Handling stated that 2 previous planning applications had been submitted in relation to the site however a 3rd planning application was also mentioned in the narrative within the Report of Handling and a 4th application was detailed on the public planning portal which did not feature in the report before the MLRB and sought clarification in this regard.

In response Miss Webster, Planning Adviser advised that the 3rd and 4th planning applications queried by Councillor Gatt had been withdrawn which was why they

were not listed within the planning site history, as only planning applications that had been determined would be listed in this section.

Following this clarification, the MLRB unanimously agreed that it had sufficient information to determine the case.

Councillor Gatt was of the view that the appeal should be upheld as, had the house not been demolished, there would be no issues with access as the house would still be standing. He further stated that the planning history had revealed that there had been planning applications withdrawn in relation to access and parking concerns however the Transportation Service had made no objection to the current planning application as it could not comment on access to the development as the road and driveway are private un-adopted roads out with the control of the Roads Authority therefore, in his opinion, the proposal complied with policy T2 (Provision of Access) of the MLDP 2015. Councillor Gatt stated that he was of the view that the proposal also complies with policies H1 (Housing Land) and IMP1 (Developer Requirements) of the MLDP 2015 as it is a redevelopment within an established settlement, the floor area of the new building is smaller than the previous building, there is adequate space to accommodate 2 vehicles and the proposed dwelling appears to be no higher than adjoining buildings. In terms of policy EP5 (Surface Water Drainage), Councillor Gatt stated that there must have been drainage in the previously demolished house therefore was of the view that the facilities should be already present and may just require to be upgraded and queried whether the MLRB could grant planning permission subject to a suspensive condition to address the flood risk and drainage impact concerns.

In response, Mr Henderson, Planning Adviser advised that, even if the original house had not been demolished, the planning application would still need to comply with the current planning policies within the MLDP 2015. In relation to access, he acknowledged that the Transportation Service did not object to the application and could only comment on onsite parking and not access as the road is a private, un-adopted road and therefore not within the remit of the Transportation Manager. Mr Henderson further advised against the use of a suspensive condition as there is a risk that the Planning Authority could approve a planning application that cannot be implemented in line with policy.

On considering the advice from the Planning Adviser, Councillor Gatt remained of the view that the proposed development complied with policies H1, IMP1 and T2 of the MLDP 2015 and also was of the opinion that a suspensive condition could be added to the planning permission as failure to adhere to the condition would nullify the planning permission. Councillor Gatt therefore moved that the MLRB uphold the appeal and grant planning permission in relation to planning application 19/00309/PPP subject to a suspensive condition to be agreed by the Flood Risk Management Team in order to comply with policies EP5, IMP1 and associated Supplementary Guidance Flood Risk and Drainage Impact Assessments for New Development.

Councillor Bremner stated that he had sympathy for this appeal given that there was previously a house on the site which had been demolished and, given the proposal is for a smaller footprint, agreed to second Councillor Gatt's motion.

Councillor Coy was of the view that the planning application should be determined on its own merits in accordance with the current policies within the MLDP 2015 and moved that the MLRB agree to uphold the decision of the Appointed Officer and refuse planning permission in respect of planning application 19/00309/PPP as it is

contrary to policies H1, IMP1, T2 and EP5 of the MLDP 2015. This was seconded by Councillor Ross.

On a division there voted:

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| For the Motion (4): | Councillors Gatt, Bremner, R McLean and Taylor |
| For the Amendment (2): | Councillors Coy and Ross |
| Abstentions (0): | Nil |

Accordingly, the motion became the finding of the MLRB and it was agreed to uphold Case LR230 and grant planning permission in respect of Planning Application 19/00309/PPP subject to a suspensive condition to be agreed by the Flood Risk Management Team in order to comply with policies EP5, IMP1 and associated Supplementary Guidance Flood Risk and Drainage Impact Assessments for New Development.