

MORAY COUNCIL

Minute of Meeting of the Moray Local Review Body

Thursday, 26 August 2021

Various Locations via Video-Conference

PRESENT

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

IN ATTENDANCE

Ms Webster, Principal Planning Officer (Strategic Planning and Development) and Mrs Gordon, Planning Officer as Planning Advisers, Legal Services Manager and Mr Hoath, Senior Solicitor as Legal Advisers 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, Councillor Alexander declared an interest in Item 7 Case LR260 and took no part in the determination of this case.

There were no other declarations from Group Leaders or Spokespersons in regard to any prior decision taken on how Members will vote on any item on the agenda or any declarations in respect of any item on the agenda.

3 Minute of Meeting dated 27 May 2021

The Minute of the meeting of the Moray Local Review Body dated 29 April 2021 was submitted and approved.

4 LR258 - Ward 5 - Heldon and Laich

Planning Application 21/00044/PPP - Proposed subdivision of garden ground to form building plot at 33 Golf Crescent, Hopeman

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

The proposal is contrary to the provisions of the Moray Local Development Plan (MLDP) 2020 because: The proposed dwelling is to be positioned to the side of the parent property and set significantly further back into the plot than is the established pattern at this location. The site lacks its own roadside frontage and can only be access via an access drive to be created through the parent property's garden. These characteristics are symptomatic of backland development, leading to the inappropriate subdivision of garden ground to form an additional building plot. It is further noted that the presence of an additional dwelling at the existing cul de sac location is considered to increase the density of housing development to the extent that the proposal is considered to be detrimental to the character and appearance of the area. On this basis, the proposal is considered to be contrary to the terms Policies DP1 (i), part f and Policy EP3 part b).

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 Gatt, having considered the case in detail, referred to the map detailing the surrounding plots and was of the view that the area is well proportioned therefore 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 21/00044/PPP as the proposal is contrary to policies DP1 (i), part f (Development Principles - Design) and Policy EP3 part b) (Special Landscape Areas and Landscape Character) of the MLDP 2020. This was seconded by Councillor Ross.

Councillor Bremner, having considered the case in detail, was of the view that, given the Housing in the Countryside policy discourages housing development in the countryside, the Council should try to allow development in existing settlements. He stated that the proposal would bring the plot in line with other plots in the area therefore moved, as an amendment, that the MLRB uphold the appeal and grant planning permission in respect of Planning Application 21/00044/PPP as, in his view, the proposal complies with policy DP1 (i) f) (Development Principles - Design) as he does not consider the proposal to be back land development and, in his opinion, the siting and design of the proposal complies with policy EP3 b) (Special Landscape Areas and Landscape Character). This was seconded by Councillor Coy.

On a division there voted:

For the Motion (5):	Councillors Gatt, Ross, Alexander, R McLean and Powell
For the Amendment (4):	Councillors Bremner, Coy, Cowie and Taylor
Abstentions (0):	Nil

Accordingly, the Motion became the finding of the meeting and the MLRB agreed to refuse the appeal and uphold the original decision of Appointed Officer to refuse planning permission in respect of Planning Application 21/00044/PPP as the proposal is contrary to the terms of policies DP1 (i), part f (Development Principles - Design) and Policy EP3 part b) (Special Landscape Areas and Landscape Character) of the MLDP 2020.

5 LR261 - Ward 5 - Heldon and Laich

Planning Application 20/00474/APP – Demolish existing service station and garage and erect retail unit, light industrial unit and 2no blocks of residential flats at Hopeman Service Station, Forsyth Street, Hopeman, Elgin

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 PP1, PP3, DP1, DP5, DP7, EP3, EP12 and Hopeman I1 Designation of the Moray Local Development Plan (MLDP) 2020 for the following reasons:

1. The proposal would introduce non-compliant uses (flats and retail) onto the Hopeman I1 site which is protected for business uses. There is no need for additional housing land in Hopeman as there are two housing sites identified in the Local Development Plan and no shortfall in the effective housing land supply. The proposed uses would lead to a loss of employment land within the village resulting in the loss of effective employment land from Hopeman and jeopardising the future development of the rest of the Hopeman I1 designation contrary to policy DP5 and Hopeman I1.
2. The application has failed to demonstrate that the proposed retail unit will not adversely impact on the distinctive character or vitality and viability of Hopeman contrary to policy DP7.
3. The design of the proposed retail unit and in particular the lack of a strong road frontage is not considered to be of sufficiently high design standard to fit with the distinctive character of Hopeman or create a strong sense of place. The proposal would be detrimental to the Burghead to Lossiemouth Special Landscape Area and contrary to policies DP1 (i) (a), PP1 (i) and EP3.
4. The application has failed to demonstrate satisfactory arrangements in relation to access for vehicles or pedestrians, access visibility, access to public transport, suitable crossing to the site or adequate servicing arrangements for any part of the development giving rise to conditions that would be detrimental to road safety contrary to policies PP3 (a) (iii) and DP1 (ii) (a & c).
5. The application has failed to demonstrate that drainage from the proposed retail service bay can be dealt with in an acceptable manner contrary to policies DP1 and EP12.
6. The application has failed to provide parking bays of sufficient size or number to comply with Moray Council parking standards contrary to policy DP1 (ii) (e).

7. The application has failed to provide adequate provision of Electric Vehicle Charging contrary to policy PP3 (a) (iv).

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.

Mr Hoath, Legal Adviser advised that, although there was a significant amount of paperwork associated with this case, a lot of it was repetition and that Members should concentrate on planning policy reasons when considering the planning application. He further advised that the Applicant had requested a hearing procedure and that Members should decide whether they consider there is enough information within the papers provided to make a decision or whether a hearing is necessary to provide further information. This was noted.

Councillor Gatt was of the view that, as there was considerable information provided in the papers and a number of representations received in relation to the proposal, Members would benefit from a site visit to provide some context to the proposed development.

In response, the Legal Services Manager advised that the Council had made a decision to temporarily suspend site visits associated with cases considered by the Moray Local Review Body (MLRB) due to the ongoing Covid-19 pandemic and that, although restrictions are easing, this decision has yet to be reversed therefore a site visit would not be appropriate.

In light of this response, Councillor Gatt stated that he would take no further part in the determination of this case.

The Chair stated that she would be willing to consider a hearing however sought the opinion from the MLRB as to whether it felt there was sufficient information to determine the request for review.

In response, the remaining members of the MLRB, agreed that it had sufficient information to determine the case.

Councillor Alexander, having considered the case in detail, was of the view that a supermarket on the edge of the village would be detrimental to the character and vitality of the village and 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 20/00474/APP as it is contrary to policies PP1 (Placemaking), PP3 (Infrastructure and Services), DP1 (Development Principles), DP5 (Business and Industry), DP7 (Retail/Town Centres), EP3 (Special Landscape Areas and Landscape Character), EP12 (Management and Enhancement of the Water Environment) and Hopeman I1 Designation of the MLDP 2020. This was seconded by Councillor Ross.

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 20/00474/APP as it is contrary to policies PP1 (Placemaking), PP3 (Infrastructure and Services), DP1 (Development Principles), DP5 (Business and Industry), DP7 (Retail/Town Centres) , EP3 (Special Landscape Areas and Landscape Character), EP12 (Management and Enhancement of the Water Environment) and Hopeman I1 Designation of the MLDP 2020.

6 LR259 - Ward 8 - Forres

Planning Application 20/01658/APP – Erect 1.25 Storey Dwelling House and Detached Timber Garage at Site South-West of Sourbank Farm, Rafford, Forres

Councillor Alexander, having declared an interest in this item, took no part in the decision.

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 is contrary to Policy DP4: Rural Housing and DP1: Development Principles of the Moray Local Development Plan (MLDP) 2020 for the following reasons:

1. The introduction of a new house in the identified pressurised and sensitive location would have a detrimental landscape and visual impact as well as negatively impacting on the character and appearance of this rural area.
2. There is not an acceptable level of enclosure and containment for a new house.
3. Together with other development in the immediate vicinity it would have the effect of detrimentally altering the rural character of the area contributing an unacceptable build-up of housing.
4. It will contribute to a sequential visual effect of cumulative build-up of new housing experienced when travelling along roads in the vicinity of the site in terms of its siting, particularly in relation to existing new houses in the area
5. There is no policy exception to allow new housing in Pressurised and Sensitive areas on the basis of agricultural need and the supporting information provided is not considered sufficient to outweigh the Local Development Plan policies.

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 Gatt noted that the Applicant had highlighted that Moray Council does not appear to have a policy to support the provision of farm accommodation for farm workers when other Local Authorities do. He stated that the Applicant had provided evidence to support how the proposal would comply with policy DP1 (Development Principles) and moved that the MLRB uphold the appeal and grant planning permission in respect of Planning Application 20/01658/APP as it complies with policy DP1 (Development Principles) and is an acceptable departure from policy DP4 (Rural Housing).

In response to Councillor Gatt's comment regarding a lack of policy in relation to the provision of accommodation for farm workers, Ms Webster, Planning Adviser advised that policy DP4 does not have any exemptions that would allow for the provision of agricultural accommodation in the MLDP 2020 and, when consulted on the original planning application, the Strategic Planning and Development Service had stated that, over the last decade and more, justification of new housing on the basis of agricultural need has not been an issue in Moray and doesn't feature within the current policy. She further stated that occupancy conditions are not enforceable.

In terms of the Appointed Officer's reason for refusal, Mr Hoath sought valid planning reasons from Councillor Gatt as to why he believes this proposal is an acceptable departure to policy.

Councillor Gatt stated that, in his opinion, he agreed with the points stated in the Applicant's Notice of Review which detailed why the proposal complied with policy DP1 (Development Principles) and that the proposal is an acceptable departure from policy DP4 (Rural Housing) as the Council has a lack of policy to account for proposals such as this where individuals required to be onsite to facilitate animal husbandry. He further stated that the Council should be encouraging the correct type of development in the countryside and that this proposal would support the rural economy in Moray.

Councillor Bremner stated that policy PP2 (Sustainable Economic Growth) supported proposals that contribute to sustainable economic growth and acknowledged that there was clearly a locational need for the proposal providing all perceived impacts could be mitigated against and agreed to second Councillor Gatt's motion.

Councillor Coy was of the view that she could not support the proposal and moved that the MLRB dismiss the appeal and uphold the original decision of the Appointed Officer to refuse planning permission in respect of Planning Application 20/01658/APP as it is contrary to policy DP1 (Development Principles) and DP4 (Rural Housing) of the MLDP 2020. This was seconded by Councillor Cowie.

On a division there voted:

For the Motion (3):	Councillors Gatt, Bremner and R McLean
For the Amendment (5):	Councillors Coy, Cowie, Powell, Ross and Taylor
Abstentions (1):	Councillor Alexander

Accordingly, the Amendment became the finding of the meeting and the MLRB agreed to dismiss the appeal and uphold the original decision of the Appointed Officer to refuse planning permission in respect of Planning Application 20/01658/APP as it is contrary to policy DP1 (Development Principles) and DP4 (Rural Housing) of the MLDP 2020.

7 LR260 - Ward 8 - Forres

Planning Application 21/00272/APP – Change of use and alterations to boat-shed to provide a hut for occasional overnight stays at site adjacent to 212A Findhorn, Moray

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

The proposal is contrary to the requirements of policies DP1 (l)(a & e), DP8 and EP3 of the Moray Local Development Plan (MLDP) 2020 because:

- The site at 84m² is not of a scale that reflects the existing pattern of residential development in the immediate vicinity and is therefore unsuitable for residential development of any kind;
- The relationship between the shed and the neighbouring house is such that use of the site even for non-permanent residential use would adversely impact on the amenity of neighbouring properties;
- There would be an adverse impact on the privacy of neighbouring properties as a result of overlooking from the proposed opening on the western elevation which is in close proximity to the site boundary and
- The proposal fails to reflect the traditional settlement pattern of the immediate vicinity and therefore would erode the traditional settlement character of the Culbin to Burghead Coast Special Landscape Character.

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.

Mr Hoath, Legal Adviser advised that the Applicant had indicated that he wished to provide further written submissions however on reviewing the paperwork, all information appeared to be included and it was presumed that the Applicant was asking that the Moray Local Review Body (MLRB) make a decision based on all the information provided as he was of the view that the Appointed Officer had not taken account of some of the information. 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 enough information to determine the case.

The Chair, having considered the case in detail, agreed with the original decision of the Appointed Officer and 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 21/00272/APP as the proposal is contrary to the requirements of policies DP1 (I)(a & e) (Development Principles - Design), DP8 (Tourism Facilities and Accommodation) and EP3 (Special Landscape Areas and Landscape Character) of the MLDP 2020. This was seconded by Councillor Coy.

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 21/00272/APP as the proposal is contrary to the requirements of policies DP1 (I)(a & e) (Development Principles - Design), DP8 (Tourism Facilities and Accommodation) and EP3 (Special Landscape Areas and Landscape Character) of the MLDP 2020.