

MORAY COUNCIL

Minute of Meeting of the Moray Local Review Body

Thursday, 25 April 2019

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

PRESENT

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

APOLOGIES

Councillor Ray McLean

IN ATTENDANCE

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 Minute of Meeting dated 28 March 2019

The Minute of the Meeting of the Moray Local Review Body dated 28 March 2019 was submitted and approved.

4 LR220 - Ward 1 - Speyside Glenlivet

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

Under reference to paragraph 5 of the Minute of the Moray Local Review Body dated 28 March 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 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.

The Chair stated that at the meeting of the MLRB on 28 March 2019, the MLRB noted the Applicant's willingness 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 and agreed that this constituted new evidence in terms of Regulation 17 of the Regulations. As a result, Case 220 was deferred to allow Development Management and Interested Parties the opportunity to comment on the new evidence.

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.

With regard to the unaccompanied site visit which had taken place on 25 March 2019 and the further comment from Development Management and the Flood Risk Management Team, the Chair 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.

Councillor Alexander, having had the opportunity to visit the site and consider the Applicant's grounds for review, noted that the Flood Risk Management Team still objected to the proposal despite the Applicant's offer of a Section 75 agreement yet Development Management was willing to accept the Applicant's offer of a Section 75 agreement therefore sought clarification in this regard.

In response, the Legal Adviser advised that Development Management had not changed their position however had suggested that, if the MLRB were minded to grant planning permission, a condition be added to the consent instead of a Section 75 agreement which would achieve the same result.

Councillor Alexander was of the view that the water displacement from a garage would be considerably less than that of a house, and sought confirmation that, if permission was granted to build the garage, it was certain that a fourth house would never be built on the site.

In response, the Planning Adviser confirmed that that was what the Applicant had proposed and what the condition suggested by Development Management would achieve.

Councillor Bremner, noting that there was already planning permission for the fourth house, sought clarification as to whether the current planning permission would be revoked if planning permission was granted for the garage.

In response, the Planning Adviser advised that planning permission could not be revoked as development had already commenced on the site as services had been installed however the suggested condition from Development Management would stop further development.

The Legal Adviser further advised that the Applicant had stated that the Section 75 agreement would ensure that the house would not be built within his lifetime whereas the condition suggested by Development Management stated that the fourth house would not be built at all.

Councillor Bremner, having visited the site, considered the Applicant's grounds for review and the further information from Development Management and the Flood Risk Management Team moved that the appeal be upheld and planning permission granted in respect of planning application 18/01323/APP subject to the suggested condition from Development Management which would ensure that the fourth house would never be built, as in his opinion, this condition addressed the concerns of the Flood Risk Management Team making approval of the application an acceptable departure from policies EP7 and IMP1 on flood risk grounds. This was seconded by Councillor Coy.

Councillor Gatt, having visited the site and considered the Applicant's grounds for review agreed with the original decision of the Appointed Officer and moved that the appeal be refused and the original decision of the Appointed Officer upheld. This was seconded by Councillor Ross.

On a division there voted:

For the Motion (4): Councillors Bremner, Coy, Alexander and Taylor

For the Amendment (2): Councillors Gatt and Ross

Abstentions (0): Nil

Accordingly the Motion became the finding of the MLRB and it was agreed to grant planning permission in respect of Planning Application 18/01323/APP.

The Planning Adviser further advised that there had been 2 location plans submitted by the Applicant detailing 2 different locations where the garage would be situated and suggested that a further condition be added to the consent asking that clarification be provided from Development Management in relation to the proposed location of the garage on the site and that this be specified in the Decision Notice. This was agreed.

Thereafter, the MLRB agreed to grant planning permission in respect of Planning Application 18/01323/APP subject to the following conditions:

- i. The garage hereby approved shall not be developed in conjunction with the dwelling approved upon the same site under planning application reference 13/02202/APP approved on 22 January 2014. As the dwelling approved 13/02202/APP was subsequently lawfully commenced in the form of services laid, but where no house was subsequently constructed, the garage subject of this planning approval can only be developed if no further construction works in relation to the dwelling approved under 13/02202/APP takes place. There

shall be no dwelling developed upon the site, other than the parent property known as Kimberlee.

Reason: in order to limit the number of buildings erected within the flood plain, and to avoid any ambiguity regarding the implementation of building within this area.

- ii. Clarification be provided from Development Management in relation to the proposed location of the garage on the site and that this be specified in the Decision Notice.

5 LR221 - Ward 5 - Heldon & Laich

Planning Application 18/00862/APP – Erect dwelling house and associated works at a site at Kirkton Cottage, Alves, Moray

Under reference to paragraph 6 of the Minute of the Moray Local Review Body dated 28 March 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 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 its 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 member 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.

The Chair further stated that at the meeting of the MLRB on 28 March 2019, it had been noted that the consultation response from Transportation was not included in

the papers therefore Case 221 had been deferred until the next meeting of the MLRB to give members the opportunity to review the consultation response from Transportation.

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

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

The Chair, having had the opportunity to visit the site and consider the Applicant's grounds for review moved that the appeal be refused and the original decision of the Appointed Officer upheld.

There being no-one otherwise minded, the MLRB agreed to dismiss Case 221 and uphold the original decision of the Appointed Officer to refused Planning Application 18/00862/APP as 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.