

MORAY COUNCIL

Minute of Meeting of the Moray Local Review Body

Thursday, 17 November 2022

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

PRESENT

Councillor Neil Cameron, Councillor Juli Harris, Councillor Sandy Keith, Councillor Marc Macrae, Councillor Paul McBain, Councillor Derek Ross, Councillor Sonya Warren

APOLOGIES

Councillor Amber Dunbar

IN ATTENDANCE

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

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 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 27 September 2022

The Minute of the meeting dated 27 September 2022 was submitted and approved.

4 Notice of Review - Planning Application 22/00400/APP

Under reference to paragraph 6 of the Minute of the meeting of the Moray Local Review Body (MLRB) dated 27 September 2022, a report by the Depute Chief Executive (Economy, Environment and Finance) sought clarification from the MLRB in relation to a decision taken regarding a Notice of Review application in respect of Planning Application 22/00400/APP.

During his introduction, Mr Hoath, Legal Adviser apologised to the MLRB and the Appellant for having to seek this clarification in relation to any conditions the MLRB may have wished to attach to the planning permission in terms of operating hours, as this should have been clarified at the last meeting of the MLRB.

Councillor McBain stated that, when the proposal was discussed at the previous meeting of the MLRB on 27 September 2022, he was of the understanding that the application would be restricted in this way and that the childminding business would operate between the hours of 7:30 am and 6:00 pm. The other members of the MLRB agreed that this was their understanding also.

The Chair stated that the Appointed Officer had proposed that the planning permission include the following condition in relation to opening hours and standard conditions and informatives from the Transportation Service as follows and sought the agreement of the MLRB to attach this to the decision notice as it should have been added to accurately reflect the original decision:

The business shall operate between 0730 hours and 1800 hours Monday - Friday only and at no other times except where agreed in writing with the planning authority in consultation with the environmental health authority when it can be demonstrated to the satisfaction of the planning authority in consultation with the environmental health authority that there is an exceptional requirement for operation outwith the permitted opening hours.

Reason: In order to ensure that the operation of the business does not detrimentally impact neighbouring amenity.

This is in addition to the Transportation condition and informatives:

The existing car parking shall be retained, with all existing parking spaces made available for use by staff, residents and customers throughout the lifetime of the development, unless otherwise agreed in writing with the Council as Planning Authority.

Reason: To ensure the permanent availability of the level of parking necessary for residents/staff/visitors/others in the interests of an acceptable development and road safety.

Informatives:

Planning consent does not carry with it the right to carry out works within the public road boundary.

No building materials/scaffolding/builder's skip shall obstruct the public road (including footpaths) without permission from the Roads Authority.

This was unanimously agreed.

Thereafter, the MLRB agreed to apply the following conditions and informatives to the recently granted planning permission in respect of Planning Application 22/00400/APP:

The business shall operate between 0730 hours and 1800 hours Monday - Friday only and at no other times except where agreed in writing with the planning authority in consultation with the environmental health authority when it can be

demonstrated to the satisfaction of the planning authority in consultation with the environmental health authority that there is an exceptional requirement for operation outwith the permitted opening hours.

Reason: In order to ensure that the operation of the business does not detrimentally impact neighbouring amenity.

This is in addition to the Transportation condition and informatives:

The existing car parking shall be retained, with all existing parking spaces made available for use by staff, residents and customers throughout the lifetime of the development, unless otherwise agreed in writing with the Council as Planning Authority.

Reason: To ensure the permanent availability of the level of parking necessary for residents/staff/visitors/others in the interests of an acceptable development and road safety.

Informatives:

Planning consent does not carry with it the right to carry out works within the public road boundary.

No building materials/scaffolding/builder's skip shall obstruct the public road (including footpaths) without permission from the Roads Authority.

5 LR277 - Ward 4 - Fochabers and Lhanbryde

Planning Application 21/01664/PPP – Erect dwellinghouse on site at Stratton Wood, Fochabers

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 for a new house on this site would not comply with the siting requirements of policies DP1 (Development Principles) and DP4 (Rural Housing) and would result in the permanent loss of woodland which is unacceptable in terms of policy EP7 (Forestry Woodlands and Trees) and refusal is recommended.

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 raised at this time.

The Legal Adviser advised that the Applicant had provided new information with his Notice of Review application in the form of additional photographs of the site, information in respect of fly tipping in the area and further information relating to compensatory planting of woodland. The Legal Adviser sought clarification from the MLRB as to whether it wished to consider this information, in which case

consideration should be given as to whether a further procedure should be carried out in the spirit of fairness, to allow the Appointed Officer to comment on this new information which would result in the case being deferred until the next meeting of the MLRB.

In response, Councillor Warren stated that, having been on the site visit and having read the paperwork, she was of the view that she had enough information to make an informed decision. The other Members of the MLRB agreed with her.

Councillor Harris, having considered the case in detail raised concern in relation to the impact on wildlife, flora and fauna should the development go ahead and stated that she 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 as the proposal is contrary to policies DP1 (Development Principles) , DP4 (Rural Housing) and EP7 (Forestry, Woodlands and Trees) of the Moray Local Development Plan (MLDP) 2020. This was seconded by Councillor Warren.

Councillor McBain, having considered the case in detail and having visited the site in question, was of the view that the proposal complied with policy EP7 (Forestry, Woodlands and Trees) as no tree is being felled in order for the development to take place. With regard to policy DP4 (Rural Housing), Councillor McBain was of the view that the proposal complied with this policy as the house would be surrounded by trees on 3 sides therefore would have no impact to neighbouring properties. In relation to policy DP1 (Development Principles), Councillor McBain stated that, in his opinion, the proposed design and scale of the house fits within the conditions of this policy. Councillor McBain further stated that he was very familiar with the site having grown up in the area and stated that it was never woodland and was often used for fly tipping and, in his opinion, the proposed development would be an improvement to the area. Taking this into consideration, Councillor McBain moved that the MLRB uphold the appeal and grant planning permission in respect of Planning Application 21/01664/PPP as, in his opinion, the proposal complied with policies DP1 (Development Principles) , DP4 (Rural Housing) and EP7 (Forestry, Woodlands and Trees) of the MLDP 2020. This was seconded by Councillor Macrae.

In response, Ms Webster, Planning Adviser advised that the definition of woodland did not just apply to trees but included the ground, vegetation and soil. She further advised that the fact that the area had been used for fly tipping in the past should not be used as a material consideration when considering the planning application.

On a division there voted:

For the Motion (5):	Councillors Harris, Warren, Cameron, Keith and Ross
For the Amendment (2):	Councillors McBain and Macrae
Abstentions (0):	Nil

Accordingly, the Motion became the finding of the Meeting and the MLRB and it was agreed to refuse the appeal and uphold the original decision of the Appointed Officer as the proposal is contrary to policies DP1 (Development Principles) , DP4 (Rural Housing) and EP7 (Forestry, Woodlands and Trees) of the MLDP 2020.

Planning Application 22/00215/APP – Erect dwelling house on land adjacent to Easter Covesea Cottage, Duffus, 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:

1. The application proposes a new dwellinghouse on a site within an identified pressurised and sensitive area where no new housing will be permitted due to the landscape and visual impacts associated with buildup and is therefore contrary to policy DP4 - Rural Housing.
2. A new house on this site would detract from the rural landscape character of the wider area as the site would not contain sufficient backdrop and containment and would create ribbon development with the neighbouring plot (with extant permission for a new house) contrary to the siting criteria as set by Policy DP4 Rural Housing as well as DP1 Development Principles.
3. The site is located within the Burghead to Lossiemouth SLA the proposal for a house plot would not fall within any of the development categories permitted under EP3 for a rural location within the SLA and no new housing is permitted in the open countryside in this SLA therefore the proposal would be contrary to policy EP3 - Special Landscape Areas.

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 Cameron, having considered the case in detail, stated that the reasons for refusal were clear and that the development should not be permitted. This was unanimously agreed by the other members of the MLRB.

The MLRB therefore agreed to refuse the appeal and uphold the original decision of the Appointed Officer to refuse planning permission in respect of Planning Application 22/00215/APP as the proposal is contrary to policies DP4 (Rural Housing), DP1 (Development Principles) and EP3 (Special Landscape Areas) of the Moray Local Development Plan (MLDP) 2020.