

MORAY COUNCIL

Minute of Special Meeting of the Moray Local Review Body

Thursday, 28 February 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.

ALSO PRESENT BY INVITATION

Mr C Jamieson, Applicant and Mr W Burnish, Senior Engineer (Flood Risk Management Team).

1 Chair

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

2 Declaration of Group Decisions and Members Interests

In terms of Standing Order 20 and the Councillors' 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 Hearing Session in respect of Case LR217 - Ward 8 - Forres

Planning Application 18/00795/APP – Erect new rendered blockwork garage and install patio door in house at Bundon, Findhorn, Forres, IV36 3TE

Under reference to paragraph 5 of the Minute of the Meeting of the Moray Local Review body (MLRB) dated 20 December 2018, 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 (MLDP) 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 coastal flooding in a location that would increase flood risk to surrounding properties.

The Chair stated that, at the meeting of the MLRB on 20 December 2018, it was agreed to defer consideration of Case LR217 to a Hearing in terms of Regulation 13 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013. This was to allow the opportunity to consider any technical questions which may be asked by the MLRB in relation to specific flood detail regarding water displacement as a result of the development and the perceived impact to neighbouring properties.

With regard to the unaccompanied site inspection carried out on 13 December 2018, the Chair stated that all members of the MLRB present, with the exception of herself, were shown the site where the proposed development would take place and that, although she was not present at the site visit on 13 December 2018, she had visited the site on 18 December 2018. The Chair then outlined the Summary of Information report which set out both the reasons for refusal and the Applicant's grounds for review including the procedure which was to be adopted for the Hearing, and statements from the Applicant and Flood Risk Management Team.

The Chair welcomed the Applicant, Mr Colin Jamieson and Mr Will Burnish, Senior Engineer from the Flood Risk Management Team (FRMT) to the meeting.

The Chair then invited the Applicant, Mr Jamieson, to address the MLRB, specifically in relation to the matter identified at its recent meeting on 20 December 2018.

Mr Jamieson addressed the MLRB and confirmed that his proposal was for an ancillary building on a brown field site. He stated that there was no blanket ban on development on the flood plain and that policy EP7 of the MLDP 2015 and Paragraph 255 of the Scottish Planning Policy (SPP) allow building on the flood plain providing certain conditions are met and that, in his opinion, his proposed garage meets those conditions. With reference to the SEPA Flood Risk and Land Use Vulnerability Guidance, Mr Jamieson was of the view that his proposal would be classed as low risk and suitable for development as it was a garage which would be resilient to flooding and situated in a built up area. He acknowledged the concerns of the FRMT in that the proposal would contravene paragraph 255 of the SPP as the site would be affecting the flood plain however stated that the unmitigated impact of the proposal is 0.16 mm. He further advised that, to mitigate against this impact, he would commit to remove at least 2.4 m³ from his adjacent garden ground, which is also in the flood plain. With regard to the concerns of the FRMT in relation to a potential request for a change of use at a later date, he assured the MLRB that he had no intention to apply for a change of use and would be willing to accept the proposed condition and informative from the FRMT, should that be acceptable to MLRB.

Mr Jamieson then responded to questions from the MLRB.

Thereafter, the Chair invited Mr Burnish from the FRMT to address the MLRB, specifically in relation to the matter identified by the MLRB at its recent meeting.

Mr Burnish addressed the MLRB and advised that the FRMT's fundamental issue is that, should this application be approved, there would be a risk of incremental

development of the flood plain. They were also concerned that the owner could, at a later date, apply for a change of use to a residential development. Mr Burnish acknowledged that the loss of flood plain was small however he was concerned that approving this application may set a precedent for future applications. In order to mitigate this, Mr Burnish suggested that, if the MLRB were minded to grant planning permission, a condition be attached to the planning permission stating that the development can never be changed to a residential property and an informative be added to reflect that Moray Council would not protect the garage property from flooding in the future, given that it had been built on a flood plain.

Mr Burnish then responded to questions from the MLRB.

On the invitation of the Chair, Mr Jamieson summarised his presentation reiterating the key aspects of his submission, as detailed above. Mr Burnish, declined the invitation to summarise.

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

On hearing the presentations from Mr Jamieson and Mr Burnish, Councillor Bremner moved that the Committee uphold the appeal and grant planning permission in respect of planning application 18/00795/APP subject to the condition recommended by the FRMT stating that the development can never be changed to a residential property and an informative to reflect that Moray Council would not protect the garage property from flooding in the future, given that it had been built on a flood plain.

In response, the Legal Adviser sought clarification from Councillor Bremner as to whether he was moving approval of the application as he was of the opinion that the development was an acceptable departure from policy EP7 of the MLDP 2015, given the design confirmed by the Applicant and the recommended condition and informative from the FRMT.

Councillor Bremner confirmed that the Legal Adviser's interpretation was correct.

Councillor Gatt stated that he wished to second Councillor Bremner's motion as he was of the opinion that there was very little risk of the development flooding and was of the view that the development complied with policy EP7 of the MLDP 2015. With regard to policy IMP1, Councillor Gatt was of the view that, again the proposal complied with policy IMP1 given that the Applicant had stated that the proposal would be designed in such a manner so that it would be allowed to flood.

The Legal Adviser pointed out that Councillor Bremner's motion differed from Councillor Gatt's in that Councillor Bremner had moved to grant planning permission subject to the additional condition and informative proposed by the FRMT, as he was of the view that the proposal was an acceptable departure from policy EP7 of the MLDP 2015 given the design of the proposal, whereas Councillor Gatt was of the view that the proposal complied with policies EP7 and IMP1 of the MLDP 2015 and therefore advised that Councillor Gatt could not second Councillor Bremner's motion on those terms.

Councillor Alexander, being of the same mind as Councillor Bremner agreed to second his motion however asked that a condition be added to ensure that the Applicant carried out his commitment to remove at least 2.4 m³ from his adjacent garden to mitigate against any impact his proposal may have.

In response, the Planning Adviser advised that this would not be an appropriate

condition to add as the garden ground did not form part of the application site.

Having considered the advice from the Legal Adviser and given that Councillor Alexander was willing to second the terms of Councillor Bremner's motion, Councillor Gatt agreed to withdraw his motion.

For clarity, the Legal Adviser advised that it was her understanding that Councillor Bremner had moved that the MLRB uphold the appeal in respect of Case LR217 to grant planning permission in respect of planning application 18/00795/APP subject to a recommended condition from FRMT stating that the development can never be changed to a residential property and an informative to reflect that Moray Council would not protect the garage property from flooding in the future, given that it had been built on a flood plain. This was seconded by Councillor Alexander on the understanding that his additional condition in relation to ensuring that the Applicant remove garden ground to mitigate against any impact his proposal may have was not appropriate given that the garden ground did not form part of the application site.

There being no-one otherwise minded, the MLRB agreed to uphold the appeal in respect of Case LR217 and grant planning permission in respect of planning application 18/00795/APP subject to a condition stating that the development can never be changed to a residential property and an informative to reflect that Moray Council would not protect the garage property from flooding in the future, given that it had been built on a flood plain.