



## MORAY LOCAL REVIEW BODY

### DECISION NOTICE

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Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR144
  - Site address: Site at Rear of St Andrews School, Lhanbryde
  - Application for review by Innes Trading Company, c/o Mr Findlay McPherson, Savills against the decision of an Appointed Officer of The Moray Council
  - Planning Application 15/01656/PPP for replacement of existing building to form two dwellings
  - Unaccompanied site inspection carried out by the MLRB on 24 March 2016
  - Date of decision notice: 21 June 2016
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#### Decision

The MLRB agreed to dismiss the request for review and uphold the original decision of the Appointed Officer to refuse the above noted application.

#### 1. Preliminary

- 1.1 This Notice constitutes the formal decision of the MLRB as required by the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013.
- 1.2 The above application for planning permission was considered by the MLRB at the meeting held on 26 May 2016.
- 1.3 The MLRB was attended by Councillors C. Tuke (Chair), G. Cowie, K. Reid and R. Shepherd.

#### 2. MLRB Consideration of Request for Review

- 2.1 Councillor Reid, having not taken part in the site visit for this Review, took no part in the relevant discussion or decision.
- 2.2 Under reference to paragraph 3(a) of the minute of this Body dated 31 March 2016, 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 for the replacement of existing building to form two dwellings on site at rear of St Andrews School, Lhanbryde.

- 2.3 There was submitted a 'Summary of Information' report setting out the reasons for refusal, together with copies of the Report of Handling, Notice of Review, Grounds for Review and supporting documents.
- 2.4 As requested by the MLRB at its meeting on 31 March 2016, a response from Mrs D. Anderson, Senior Engineer (Transport Development) was provided as Appendix 4 to the report clarifying Transportation's further representation in respect of the required visibility splay for the application subject to review.
- 2.5 The MLRB agreed that it had sufficient information to determine the request for review.
- 2.6 With regard to the unaccompanied site inspection carried out on 24 March 2016, Mrs Gordon, Planning Adviser advised that Members were shown the site where the proposed development would take place.
- 2.7 The Planning Adviser advised the MLRB that the application had been refused on the grounds that the proposal was contrary to the provisions and policies of the Moray Local Development Plan (MLDP) 2015 and associated supplementary planning guidance regarding housing in the countryside whereby the replacement of the existing building, including its nature and form, would not be considered eligible with the terms of Policy H6: Re-use & Replacement of Existing Buildings in the Countryside. She noted that, when regarded as a new building in the countryside, the proposal is contrary to Policy H7: New Housing in the Open Countryside in terms of resulting in unacceptable build up and outward expansion of residential development in the vicinity of the former St Andrews School detracting from the character and setting of the existing grouping.
- 2.8 As the proposed location/siting of the dwelling is unacceptable, the Planning Adviser noted that the proposal would also be contrary to Policy IMP1: Developer Requirements and that the proposed new building would not be of a form permissible within the terms of Policy E10: Countryside Around Towns (CAT), resulting in the development being deemed as unacceptable and detracting from the special character of the Elgin CAT.
- 2.9 The Planning Adviser advised that the development would be contrary to Policies T2: Provision of Access and IMP1 as it would involve the formation of a new access onto the B9013 Lossiemouth –Sherrifston Road where visibility is severely restricted by adjacent hedging/trees obstructions and the proposal/use of the access would likely give rise to conditions detrimental to the road safety of other road users.
- 2.10 Referring to the Applicant's Grounds for Review, the Planning Adviser advised that the Applicant had stated that the building to be replaced previously formed part of the school as classrooms and was built as a permanent building with foundations. The Applicant noted that the school buildings are all now redundant and have not been used in several years and stated that the two dwellings adjacent to the site replaced existing school buildings.
- 2.11 Stating that the dwelling proposed is to replace an existing large scale building with layout and landscape features in a manner that reflects the character of the existing cluster, the Applicant advised that this informal cluster of buildings derives their juxtaposition from the way neighbouring properties are located

relative to each other minimising the impact on the landscape. The Applicant stated their belief that the proposed dwelling reflects the existing settlement pattern. Advising that the proposal involves the removal of an existing hedge to the south of the access point in order to maintain the visibility splay, thus improving visibility for the adjacent access roads and enhancing safety of road users.

- 2.12 Referring to Mrs D. Anderson, Senior Engineer (Transportation)'s response to the request for further information, the Planning Adviser noted that, as the number of dwellings has now been reduced to a single dwelling, the visibility splay requirements of the 'x' distance can be reduced from 4.5m to 2.4m. Mrs Anderson advised that the hedge continues to obstruct the required visibility for the new proposed access and, beyond the site to the north west, the boundary fence of the adjacent property is close to the edge of the carriageway. She further advised that the visibility splay is obstructed by vegetation and mature trees within the grounds of the adjacent property, whilst the visibility to the north east is also restricted by vegetation outwith the road verge of the inside bend of the opposite side of the road. Mrs Anderson stated that the visibility splay shown in the planning application submission does not show the correct area for the visibility splay.
- 2.13 In response to the further information, the Applicant stated that the hedge under their control will be completely removed. Referring to the photograph provided by Transportation on page 45, the Applicant noted that it shows the visibility required to the front of the low wall but advised that the view of the mature trees does not reflect the actual view from the proposed access.
- 2.14 Councillor Cowie, having had the opportunity to visit the site and consider the Applicant's Grounds for Review, stated that he was minded to agree with the Appointed Officer and moved that the review be dismissed and the Appointed Officer's decision be upheld to refuse planning permission in respect of Planning Application 15/01656/PPP.
- 2.15 Councillor Shepherd stated he was of the same opinion as Councillor Cowie and seconded his motion.
- 2.16 The Chair, whilst remaining unconvinced that the proposal does not comply with Policy H7, stated that he was of the same opinion of Councillors Cowie and Shepherd.
- 2.17 There being no one otherwise minded, the MLRB agreed to dismiss the review and uphold the Appointed Officer's decision to refuse planning permission in respect of Planning Application 15/01656/PPP.

**Paul Nevin**  
**Senior Solicitor (Property & Contracts)**  
**Legal Adviser to the MLRB**

## TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

### **Notification to be sent to Applicant on determination by the Planning Authority of an application following a review conducted under Section 43A(8)**

#### **Notice Under Regulation 22 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013**

1. If the Applicant is aggrieved by the decision of the Planning Authority to refuse permission or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the Applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.
  
2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the Planning Authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.