



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR188
 - Application for review by Mr Asher against the decision of an Appointed Officer of Moray Council
 - Planning Application 17/00590/APP for the proposed erection of a bungalow within garden ground at Rosemount, 5 Mayne Road, Elgin, IV30 1NY
 - Unaccompanied site inspections were carried out by the MLRB on 23 October 2017 and 22 January 2018
 - Date of decision notice: 9 February 2018
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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 on the following occasions:- 26 October 2017, 30 November 2017 and 25 January 2018.
- 1.3 On 26 October 2017, the MLRB was attended by Councillors D Bremner, C Feaver, D Gatt, M Macrae, A Patience and D Ross. On 30 November 2017, Councillors D Bremner, D Gatt, M Macrae, M McLean, A Patience and D Ross were in attendance. On 25 January 2018, Councillors D Bremner, G Cowie, D Gatt, M Macrae, M McLean and D Ross were present.

2. MLRB Consideration of Request for Review

26 October 2017

- 2.1 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 an

application on the grounds that the proposal would be contrary to policy T2 in the Moray Local Development Plan (MLDP) 2015.

- 2.2 There was submitted a 'Summary of Information' report setting out the reasons for refusal, together with documents considered or prepared by the Appointed Officer in respect of the planning application and the Notice of Review, Grounds for Review and supporting documents submitted by the Applicant.
- 2.3 With regard to the unaccompanied site inspection carried out on 23 October 2017, the Chair stated that Members of the Moray Local Review Body (MLRB) were shown the site where the proposed development would take place and had before them papers setting out both the reasons for refusal and the Applicant's grounds for review.
- 2.4 The Chair asked if there were any preliminary matters which the Planning or Legal Adviser wished to raise. In response, both the Planning and Legal Advisers confirmed that they had no preliminary matters that they wished to raise.
- 2.5 The Chair then asked the Committee if they had sufficient information to determine the request for review. In response, the Committee unanimously agreed that they had enough information.
- 2.6 Councillor Bremner, having had the opportunity to visit the site and consider the Applicant's grounds for review, stated that he agreed with the view of Transportation in relation to the suggested access from Mayne Road however was of the view that the proposal was not contrary to policy T2 of the MLDP as policy T2 made no reference to parking and queried whether policy T5 was more appropriate. He also stated that he was of the opinion that the domestic urban environment should not be designed around traffic.
- 2.7 In response, the Chair stated that policy T2 states that the development should provide safe entry and exit from the development for all road users however he was minded to defer the review to obtain further information from Transportation in relation to conditions that may be imposed for a safe access to South Street.
- 2.8 Mr Henderson, Planning Adviser advised that policy T2 was used to provide a safe entry and exit to the development and appropriate mitigation and modification to existing transport networks to support the new development. He further advised that, if the Board were minded to uphold the appeal, then deferring to a future meeting of the MLRB would be beneficial as this would allow Transportation to comment on safe access and the loss of the on street parking.
- 2.9 Councillor Gatt, having had the opportunity to visit the site and consider the Applicant's grounds for review, moved that the appeal be rejected and that the decision of the Appointed Officer to refuse the application be upheld. This was seconded by Councillor Feaver.
- 2.10 As an amendment, the Chair moved that the review be deferred to allow further information to be obtained from Transportation in relation to any necessary conditions that might be imposed with regard to the formation of safe access to the development on South Street and whether compensatory parking is

required as a result of the loss of on street parking. This was seconded by Councillor Patience.

2.11 On a division there voted:

For the Motion (2): Councillors Gatt and Feaver

For the Amendment (4): Councillors Macrae, Patience, Bremner and Ross

Abstentions (0): None

2.12 Accordingly, the amendment became the finding of the MLRB and it was agreed to defer consideration of the review to allow further information to be obtained from Transportation in relation to any necessary conditions that might be imposed on the formation of safe access to the development on South Street and whether compensatory parking is required as a result of the loss of on street parking.

30 November 2017

2.13 Councillor M McLean, having not taken part in the site visit for this Review, took no part in the relevant discussion or decision.

2.14 Under reference to paragraph 3(a) of the minute of this Body dated 26 October 2017, the Moray Local Review Body (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 would be contrary to Policy T2 in the Moray Local Development Plan (MLDP) 2015.

2.15 There was submitted a 'Summary of Information' report setting out the reasons for refusal, together with documents considered or prepared by the Appointed Officer in respect of the planning application and the Notice of Review, Grounds for Review and supporting documents submitted by the Applicant.

2.16 As requested by the MLRB on 26 October 2017, further information had been received from Transportation in relation to whether any necessary conditions should be imposed on the formation of safe access to the development on South Street and whether compensatory parking was required as a result of the loss of on street parking and this information was detailed in Appendix 5 to the report.

2.17 The Applicant was given the opportunity to respond to this additional information from Transportation and this response was outlined in Appendix 6 to the report.

2.18 The MLRB agreed that it had sufficient information to determine the request for review.

2.19 Councillor Macrae, having taken the opportunity to review the further information received from Transportation and the Applicant's response to this further information moved that the decision of the Appointed Officer to refuse the application be upheld on the grounds that the loss of on street parking would lead to an undesirable increase in indiscriminate parking behaviour,

giving rise to conditions detrimental to the safety of road users. This was seconded by Councillor Gatt.

- 2.20 Councillor Patience, having taken the opportunity to review the further information received from Transportation and the Applicant's response to this further information moved as an amendment that the application be approved as she was of the opinion that the Elgin Transport Strategy, which was in the process of being prepared, should deal with the issue of residential street parking by encouraging use of car parks and that this application should not be refused on the grounds that there would be a loss of on street parking. This was seconded by Councillor Bremner.
- 2.21 The Legal Adviser advised that, should the Body be minded to grant planning permission, consideration should be given to the visibility splay line to the west which was third party land and there was no evidence to suggest that the applicant had control of the splay line. He further advised that if the MLRB were minded to approve the application they would have to do so with a suspensive condition in relation to the visibility splay which may not be able to be adhered to by the Applicant as it encroaches into third party ground. The Chair further pointed out that Transportation had stated in their statement that the third party land owner had not had the opportunity to comment on whether or not they would be willing to enter into any agreement with the Applicant for the provision of the required visibility splay.
- 2.22 Councillor Ross, having considered the advice given by the Legal Adviser moved that the review be deferred to allow further information to be obtained from the Applicant in relation to his ability to provide the required visibility splay given that this would encroach into land that was owned by a third party. This was seconded by Councillor Bremner.
- 2.23 The Chair and Councillor Patience, having considered the advice given by the Legal Adviser agreed, in conjunction with their seconders, to withdraw their motions and, there being no-one otherwise minded, the MLRB agreed to defer the review to allow further information to be obtained from the Applicant in relation to his ability to provide the required visibility splay.

25 January 2018

- 2.24 Under reference to paragraph 3 of the Minute of the Meeting of the Moray Local Review Body (MLRB) dated 30 November 2017, 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 would be contrary to Policy T2 in the Moray Local Development Plan (MLDP) 2015.
- 2.25 There was submitted a Summary of Information report setting out the reasons for refusal, together with documents considered or prepared by the Appointed Officer in respect of the planning application and the Notice of Review, Grounds for Review and supporting documents submitted by the Applicant.
- 2.26 With regard to the unaccompanied site inspection carried out on 22 January 2018, the Chair stated that Members of the 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 Applicants grounds for review,

including the further information that had been requested by the MLRB on 26 October 2017 from Transportation and the further information that had been requested by the MLRB on 30 November 2017 from the Applicant in relation to his ability to provide the required visibility splay.

2.27 The Chair asked if there were any preliminary matters which the Planning or Legal Adviser wished to raise. In response, both the Planning and Legal Advisers confirmed that they had no preliminary matters that they wished to raise.

2.28 The Chair then asked the MLRB if they had sufficient information to determine the request for review. In response, the MRLB agreed that it had sufficient information.

2.29 The Chair drew the MLRB's attention to a typo on page 58 of the report and advised that it should read inconsistency instead of consistency. This was noted.

2.30 Councillor Ross, having had the opportunity to visit the site on 2 occasions and review the further information provided by the Applicant, moved that the appeal be upheld and planning permission granted subject to the condition that the external wall be reduced in height to provide the required visibility splay as, in his opinion, the proposed development complied with Policy T2 in that there was adequate parking on South Street. This was seconded by Councillor Bremner.

2.31 Councillor Macrae, having had the opportunity to visit the site for a second time and review the additional information received from the Applicant, moved that the appeal be dismissed and the decision of the Appointed Officer upheld on the grounds that the proposal is contrary to policy T2. This was seconded by Councillor Maria McLean.

2.32 On a division there voted:

For the motion (2): Councillors Ross and Bremner

For the amendment (3): Councillors Macrae, M McLean and Gatt

Abstention (1): Councillor Cowie

2.33 Accordingly, the amendment became the finding of the MLRB and it was agreed to dismiss Case LR188 and uphold the decision of the Appointed Officer to refuse planning permission in respect of planning application 17/00590/APP.

Paul Nevin
Senior Solicitor (Property and 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.