



## MORAY LOCAL REVIEW BODY

### DECISION NOTICE

---

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR235
  - Application for review by Mr Michael Crawford c/o Mr Paul Walber, All Design (Scotland) Ltd against the decision of an Appointed Officer of Moray Council
  - Planning Application 19/01018/APP – Replacement windows to front and side elevation and new front door at 19 Reidhaven Street, Buckie
  - Unaccompanied site inspection carried out by the MLRB on 20 February 2020
  - Date of decision notice: 15 April 2020
- 

### Decision

The MLRB agreed to uphold the request for review and grant planning permission/planning permission in respect of Planning Application 19/01018/APP.

#### 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 27 February 2020.
- 1.3 The MLRB was attended by Councillors Taylor (Chair), Bremner (Depute Chair), Alexander, Coy, Gatt, R McLean and Ross.

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

- 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 is contrary to the provisions of the adopted Moray Local Development Plan (MLDP) 2015 (Policies BE3, H4 and IMP1) and should be refused for the following reasons:

- The proposal is contrary to Policy BE3 as the use of modern UPVC units would fail to preserve or enhance the character of the building or conservation area.

- The proposed replacement windows would introduce a visually intrusive feature into the historic streetscape. The design and material finish of the proposed replacement windows and door is unsympathetic and by being prominent would fail to preserve or enhance the conservation area.
- 2.2 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.
  - 2.3 With regard to the unaccompanied site inspection carried out on 20 February 2020, the Chair stated that members in attendance at the official site visit 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.
  - 2.4 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.
  - 2.5 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.
  - 2.6 Councillor Gatt, having visited the site and considered the Applicant's grounds for review noted that the Applicant had replaced brown UPVC windows with white UPVC windows. He acknowledged these may not have been the original features which the policy and guidance was trying to protect but was the reality of the situation here. He further noted that the neighbouring property and indeed many other properties within the Portknockie Conservation Area have UPVC windows therefore was of the view that the Moray Council Replacement Windows and Doors Guidance is not enforceable and it would be unreasonable, disproportionate and against natural justice to refuse planning permission. He therefore moved that the MLRB uphold the appeal on the grounds that, in reality, the Applicant had replaced "like for like" as the policy required and grant planning permission in respect of Planning Application 19/01018/APP. This was seconded by Councillor Ross.
  - 2.7 Councillor Alexander, having visited the site and considered the Applicant's grounds for review acknowledged the policies that the Council has in place to protect conservation areas and, as the Council has already taken enforcement action against people who have installed UPVC windows in conservation areas moved that the MLRB refuse the appeal as the proposal is contrary to policies BE3 (Conservation Areas), H4 (House Alterations and Extensions) and IMP1 (Developer Requirements) of the MLDP 2015. This was seconded by Councillor R McLean.
  - 2.8 On a division there voted:
 

For the Motion (4):	Councillors Gatt, Ross, Bremner and Coy
For the Amendment (3):	Councillors Alexander, R McLean and Taylor
Abstentions (0):	Nil

2.9 Accordingly, the Motion became the finding of the meeting and the MLRB agreed to uphold the appeal and grant planning permission in respect of Planning Application 19/01018/APP as it was considered to be an acceptable departure from policy as the Applicant had, in reality, replaced “like for like” and it would be unreasonable, disproportionate and against natural justice to refuse planning permission.



**Mr Sean Hoath**  
**Senior Solicitor**  
**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.



## **IMPORTANT NOTES ABOUT THIS DECISION**

### **DURATION OF THIS PERMISSION**

In accordance with Section 58 (i) of the Town and Country Planning (Scotland) Act 1997 as amended, the development to which this permission relates must be begun not later than the expiration of 3 years beginning with the date on which this permission is granted.

If the development has not commenced within this period then this permission shall lapse unless there is a specific condition attached to this permission which varies the stated timescale.

### **COMMENCEMENT AND COMPLETION OF THE DEVELOPMENT**

The following are statutory requirements of the Town & Country Planning (Scotland) Act 1997, as amended. Failure to meet their respective terms represents a breach of planning control and may result in formal enforcement action. Copies of the notices referred to below are attached to this permission for your use.

#### **NOTIFICATION OF INITIATION OF DEVELOPMENT**

S.27A of the 1997 Act, as amended requires that any person who has been granted planning permission (including planning permission in principle) and intends to start development must, as soon as practicable after deciding the date they will start work on the development, give notice to the planning authority of that date. This ensures that the planning authority is aware that the development is underway and can follow up on any suspensive conditions attached to the permission. Therefore, prior to any work commencing on site, the applicant/developer must complete and submit to Moray Council, as planning authority, the attached Notification of Initiation of Development.

#### **NOTIFICATION OF COMPLETION OF DEVELOPMENT**

S.27B of the 1997 Act, as amended requires that any person who completes a development for which planning permission (including planning permission in principle) has been given must, as soon as practicable after doing so, give notice of completion to the planning authority. This will ensure that the planning authority is aware that the development is complete and can follow up any planning conditions. Therefore, on completion of the development or as soon as practicable after doing so, the applicant/developer must complete and submit to Moray Council, as planning authority the attached Notification of Completion of Development.

#### **NOTIFICATION OF COMPLETION OF PHASED DEVELOPMENT**

Under S.27B(2) of the 1997 Act, as amended where permission is granted for phased development, the permission is subject to a condition (see Schedule of Conditions above) requiring the applicant/developer as soon as practicable after each phase to give notice of that completion to the planning authority. This will allow the planning authority to be aware that particular phase(s) of the development is/are complete.

When the last phase is completed the applicant/developer must also complete and submit a Notification of Completion of Development.



## THE MORAY COUNCIL

### NOTIFICATION OF INITIATION OF DEVELOPMENT

Section 27A Town and Country Planning (Scotland) Act 1997

Application Number

Date Decision Issued  
Location and Description of  
Development

**Please note that all suspensive conditions must be discharged prior to commencement of development**

<b>Date works are to Commence</b>	
-----------------------------------	--

**Name, Address and contact details of developer**

.....  
.....  
.....

**The Full name and Address and contact details of the landowner, if a different person**

.....  
.....  
.....

**Where an agent is appointed, their full name and contact details**

.....  
.....  
.....

Signed

Name (Print)

Date

.....  
.....  
.....

**Please complete and return this form to:**

**The Moray Council, Development Management Manager, Council Offices, High Street, Elgin, Moray IV30 6UG**

**OR**

**E-mail: [development.control@moray.gov.uk](mailto:development.control@moray.gov.uk)**



# THE MORAY COUNCIL

## NOTIFICATION OF COMPLETION OF DEVELOPMENT

Section 27A Town and Country Planning (Scotland) Act 1997

Application Number

Date Decision Issued  
Location and Description of  
Development

<b>Date of completion of works</b>	
------------------------------------	--

**Name, Address and contact details of developer**

.....  
.....  
.....

**The Full name and Address and contact details of the landowner, if a different person**

.....  
.....  
.....

**Where an agent is appointed, their full name and contact details**

.....  
.....  
.....

Signed

Name (Print)

Date

.....  
.....  
.....

**Please complete and return this form to:**

**The Moray Council, Development Management Manager, Council Offices, High Street, Elgin, Moray IV30 6UG**

**E-mail: [development.control@moray.gov.uk](mailto:development.control@moray.gov.uk)**