



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR234
 - Application for review by Mr and Mrs Michael and Marie Murray against the decision of an Appointed Officer of Moray Council
 - Planning Application 19/01014/APP – Install new windows, internal alterations and laundry wing replacement at Archiestown Hotel, The Square, Archiestown, Aberlour, Moray, AB38 7QL
 - Unaccompanied site inspection carried out by the MLRB on 20 February 2020
 - Date of decision notice: 24 July 2020
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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:- 27 February and 25 June 2020.
- 1.3 On 27 February 2020, the MLRB was attended by Councillors Taylor (Chair), Bremner (Depute Chair), Alexander, Coy, Gatt, R McLean and Ross. On 25 June 2020, Councillors Taylor (Chair), Bremner (Depute Chair), Alexander, Cowie, Coy, Gatt, Powell and Ross were in attendance.

2. MLRB Consideration of Request for Review

27 February 2020

- 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 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 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 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, the Planning Adviser advised that he had nothing to raise at this time.
- 2.5 The Legal Adviser advised that on the Notice of Review Application Form, the Applicant had requested a hearing session. Furthermore, the Applicant had indicated that there was information within the Notice of Review that was not before the Appointed Officer at the time of determination including photographs that had been submitted after the Notice of Review had been received. On this basis, the Legal Adviser asked the Moray Local Review Body (MLRB) to consider the Applicant's request for a hearing session and also whether they wished to consider the new information, in which case a further procedure would have to be undertaken to allow the Appointed Officer the opportunity to comment on the new information.
- 2.6 Following consideration, the MLRB unanimously agreed to defer Case LR234 to a Hearing where the Applicant will be allowed the opportunity to present his case and the Appointed Officer will be allowed the opportunity to comment on the new information contained within the Applicant's Notice of Review and expand on the reasons for refusal.

25 June 2020

- 2.7 Under reference to paragraph 6 of the Minute of the Meeting of the Moray Local Review body (MLRB) dated 27 February 2020, 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 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 is unsympathetic and by being prominent would fail to preserve or enhance the conservation area.

- 2.8 The Chair stated that, at the meeting of the MLRB on 27 February 2020, the MLRB unanimously agreed to defer Case LR234 to a Hearing where the Applicant will be allowed the opportunity to present his case and the Appointed Officer will be allowed the opportunity to comment on the new information contained within the Applicant's Notice of Review and expand on the reasons for refusal.
- 2.9 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.
- 2.10 The Chair welcomed the Applicant, Mr Michael Murray, Mrs Smith, Development Management and Building Standards Manager and Mr Craig Wilson, Planning Officer from Development Management to the meeting.
- 2.11 At the invitation of the Chair, Mrs Scott, Legal Adviser advised that, prior to the meeting, a document had been issued to all parties which set out relevant policies within the MLDP 2020 in respect of Planning Application 19/01014/APP. This had resulted in an email exchange with the Applicant who was concerned that this document appeared to be introducing new information the day before the hearing. Nevertheless, the Applicant was not requesting a continuation of the hearing to a later date. Mrs Scott had explained to the Applicant that there had been a change in position as the MLDP 2020 had been going through a statutory process and unfortunately the paperwork had only been issued the day before the hearing due to staffing issues resulting from the COVID-19 pandemic. Mrs Scott acknowledged that, had the hearing taken place when originally arranged, the policies within the MLDP 2020 would not have been so relevant however the MLRB has to have regard to relevant policies at the time of making its decision and that is why the policies in the MLDP 2020 had been issued to all parties.
- 2.12 Ms Webster, Planning Adviser further confirmed that on 3 June 2020, the Moray Council Emergency Cabinet resolved to use the Modified MLDP 2020 as a material consideration in the determination of planning applications from 15 June 2020 until its adoption, which is anticipated to be in late July 2020, when it will replace the current adopted MLDP 2015. Ms Webster explained that, whilst applications continue to be assessed against the MLDP 2015, the Modified MLDP 2020 needs to be taken into account in decisions made after 15 June 2020 which included this LRB hearing and confirmed that the relevant policies within the MLDP 2020 are EP9 (Conservation Areas) and DP1

(Development Principles).

- 2.13 The Chair then invited the Applicant, Mr Murray, to address the MLRB, specifically in relation to the matter identified at its recent meeting on 27 February 2020.
- 2.14 Mr Murray outlined the basis of his appeal which was detailed in pages 47-74 of the agenda pack. He stated that the hotel had had no investment during the previous 10 years, was very run down and did not contribute to the character of the surrounding area. The existing windows were rotten and could not be repaired therefore a quote to replace the existing windows using timber material was obtained however this was in the region of around £4000 per window which made the project non-viable. A quote for UPVC sash and case windows was obtained from a local family run business with 40 years experience supplying organisations such as the Council and NHS. This quote was lower and more economical and the windows came with a 25 year guarantee. The Applicant went on to point out that many houses in the Archiestown Square had already replaced original wooden windows with UPVC and that, in the village itself, windows were predominantly UPVC which, in his opinion, set a clear precedent that he had every right to rely on in terms of fairness and natural justice. The Applicant made reference to the document that had been issued to all parties the day before which was dated 17 June 2020 regarding a decision taken on 3 June 2020 and, whilst he accepted that this delay was due to staffing issues surrounding the COVID-19 pandemic, highlighted that the original date for the hearing was 7 April 2020 therefore the document would not have been available at that time.
- 2.15 Mr Murray then responded to questions from the MLRB including a question from Councillor Bremner as to whether Mr Murray had sought any guidance from the Planning Service or other outside agency prior to installing the UPVC windows in the hotel.
- 2.16 In response, Mr Murray advised that he had not sought guidance from the Council however had received advice from an outside agency which he had paid for.
- 2.17 The Chair then invited Mr Wilson from Development Management to address the MLRB, specifically in relation to the matter identified by the MLRB at its recent meeting.
- 2.18 Mr Wilson advised that the original timber windows had been removed from the Archiestown Hotel without planning permission. He advised that Development Management offer a free pre-application service however this had not been taken up by the Applicant. Mr Wilson advised that, had the Applicant sought advice from the Planning Service, they may have been able to offer advice in ways that the original windows could have been repaired or, if this was not possible, recommended suitable replacement windows which complied with policy from local companies. Mr Wilson further advised that each planning application is assessed on its individual merits and noted that the Applicant had included 10 photographs of UPVC windows in a village with more than 100 houses. He advised that there are 15 houses in Archiestown Square with the majority of the front elevation of these houses featuring timber window frames which formed the basis of the decision that was made. The planning application was not supported by an economic case nor did it make any case for precedent however it still would have been determined in terms

of planning policy and the case remains that replacement windows should have been timber in order to preserve the character of the conservation area.

- 2.19 Mr Wilson then responded to questions from the MLRB.
- 2.20 On the invitation of the Chair, Mr Murray summarised his case reiterating the key aspects of his submission, as detailed above. Mr Wilson, declined the invitation to summarise.
- 2.21 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.
- 2.22 Councillor Gatt, having considered the case and listened to the views of the Applicant and the Planning Officer was of the opinion that policy H4 (Housing Alterations and Extensions) should not apply to this development as it is a hotel; he could not find any relevance to policy IMP 1 (Developer Requirements); and as Policy BE3 (Conservation Areas) states that UPVC and metal windows would not "normally" be accepted, this alluded that, in certain circumstances, UPVC or metal window may sometimes be permitted, depending on the circumstances. This was supported by Historic Environment Scotland guidance which stated that, whilst uPVC is rarely acceptable, it was acceptable to replace windows with the same design, form, fixings and materials and in that sense, uPVC was already present on the Hotel and in the area. Councillor Gatt noted that it was also difficult to find the Windows Guidance on the Council's website as it does not appear with other planning supplementary guidance. Councillor Gatt further acknowledged that the Applicant had went to great lengths to ensure that the UPVC windows were sympathetic to the style of windows in the Conservation Area and also recognised the economic benefit the hotel would bring to Moray in terms of tourism and employment. Councillor Gatt particularly noted that sustainable economic growth had been specifically set out by the Council as a relevant material consideration. Taking all of the above into consideration, and having regard to natural justice, Councillor Gatt moved that the MLRB uphold the appeal and grant planning permission in respect of planning application 19/01014/APP as the economic benefits of the proposal merit an acceptable departure from policy BE3 (Conservation Areas) of the MLDP 2015 and that policies H4 (Housing Alterations and Extensions) and IMP1 (Developer Requirements) do not apply to this development. This was seconded by Councillor Ross.
- 2.23 Councillor Bremner acknowledged the unfortunate position of the Applicant however was of the view that the MLRB could not disregard adopted planning policies because the Applicant was given wrong advice from an outside agency and it was clear to him that the original decision had been made precisely in line with policies. It was unfortunate that the Applicant had gone ahead after apparently being given incorrect advice by an outside agency but not relevant to the planning issues. He acknowledged the economic benefits for Moray should the development go ahead however was of the view that it would be unfair to other people in Moray in similar circumstances who have had enforcement action taken against them. Taking the above into consideration, Councillor Bremner moved that the MLRB dismiss the appeal and uphold the original decision of the Appointed Officer to refuse planning permission in respect of Planning Application 19/01014/APP as it is contrary to policies BE3 (Conservation Areas), H4 (House Alterations and Extension)

and IMP1 (Developer Requirements) of the MLDP 2015. This was seconded by Councillor Cowie.

2.24 On a division there voted:

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

2.25 Their being an equality of votes, and in terms of Standing Order 63 (e), the Chair cast her casting vote in favour of the Amendment and the MLRB agreed to dismiss the appeal and uphold the original decision of the Appointed Officer to refuse planning permission in respect of Planning Application 19/01014/APP as it is contrary to policies BE3 (Conservation Areas), H4 (House Alterations and Extension) and IMP1 (Developer Requirements) of the MLDP 2015. The new policies EP9 (Conservation Areas) and DP1 (Development Principles) of the Modified MLDP 2020 constituted material considerations with significant weight however the MLRB having considered the provisions of the new policies found there were no considerations within those policies to justify the MLRB departing from the original decision as the provisions of the new policies largely accorded with the original policies which formed the basis of the original decision.

Mr S 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.