



## MORAY LOCAL REVIEW BODY

### DECISION NOTICE

---

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR236
  - Application for review by Mr and Mrs Rhind, c/o John Wink Design against the decision of an Appointed Officer of Moray Council
  - Planning Application 19/01031/APP – Erection of new dwellinghouse and change of use from agricultural land to domestic at a site adjacent to Woodside Farm, Kinloss
  - There was no unaccompanied site inspection carried out by the MLRB due to the COVID-19 pandemic
  - Date of decision notice: 24 July 2020
- 

#### **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 25 June 2020.
- 1.3 The MLRB was attended by Councillors Taylor (Chair), Bremner (Depute Chair), Alexander, Coy, Gatt, Powell 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 planning permission on the grounds that:

The proposed house would be sited immediately outwith the settlement boundary of Kinloss, and would degrade the distinction between Kinloss and its surrounding countryside. On this basis, the proposal is contrary to policies E9 (Settlement Boundaries), H7 (Housing in the Countryside) and IMP1

(Developer Requirements) of the Moray Local Development Plan (MLDP) 2015.

- 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 In response to a question from the Chair as to whether the Legal and Planning Advisers had any preliminary matters to raise, Mr Hoath, Legal Adviser advised that he had nothing to raise at this time. Ms Webster, Planning Adviser advised 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 the 15 June 2020 until its adoption anticipated in late July when it will replace the current adopted MLDP 2015. Ms Webster further clarified that, whilst applications continue to be assessed against MLDP 2015, the Modified MLDP 2020 should be taken into account in decisions made after 15 June 2020 which included this meeting of the Moray Local Review Body (MLRB) and therefore policies PP3 (Infrastructure and Services), DP1 (Development Principles), DP2 (Housing), DP4 (Rural Housing), EP2 (Biodiversity) and EP6 (Settlement Boundaries) of the Modified MLDP 2020 should be taken into consideration.
- 2.4 The Chair then asked the 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.
- 2.5 Having considered the case in detail, Councillor Gatt queried why the Planning Service did not consider moving the boundary at the time when the MLDP 2020 was being prepared given that the site is adjacent to site R3 which has designation for 25 houses.
- 2.6 In response, Ms Webster, Planning Adviser advised that when the boundary was reviewed for the MLDP 2020 it was considered an appropriate boundary for Kinloss. Mrs Scott, Legal Adviser further added that Elected Members and the Applicant had the opportunity to ask for the boundary to be moved when the MLDP 2020 was issued for consultation.
- 2.7 Having considered the advice from the Planning and Legal Advisers, Councillor Gatt was of the view that the Planning Service may have chosen to keep the original boundary for a reason and moved that the MLRB defer consideration of case LR236 for further information from the Planning Service in this regard. This was seconded by Councillor Ross.
- 2.8 Councillor Coy was of the view that the Appointed Officer had applied the planning policies correctly and moved that the MLRB uphold the original decision of the Appointed Officer as the application is contrary to policies E9 (Settlement Boundaries), H7 (Housing in the Countryside) and IMP1 (Developer Requirements) of the Moray Local Development Plan 2015. This was seconded by Councillor Taylor.
- 2.9 Councillor Bremner agreed that the Appointed Officer had determined the application correctly according to the policies within the MLDP 2015 however was of the view that the site would not have much use for anything other than

a family house plot and moved that the appeal be upheld and planning permission granted as he considered the proposal to be an acceptable departure from policies E9 (Settlement Boundaries), H7 (Housing in the Countryside) and IMP1 (Developer Requirements) of the MLDP 2020. This was seconded by Councillor Alexander.

- 2.10 In terms of Standing Order 62(c), there being more than one amendment proposed against the motion, the Clerk advised that the motion proposed by Councillor Gatt to defer consideration of the case should be taken against an amendment proposed by another Councillor to consider the case at today's meeting.
- 2.11 Having considered the advice from the Clerk, Councillor Alexander moved, as an amendment, that the MLRB determine the case at today's meeting. This was seconded by Councillor Bremner.
- 2.12 On a division there voted:
- For the Motion (2): Councillors Gatt and Ross
- For the Amendment (5): Councillors Alexander, Bremner, Coy, Powell and Taylor
- Abstentions (0): Nil
- 2.13 Accordingly, the Amendment became the finding of the meeting and the MLRB agreed to consider Case LR236 at today's meeting.
- 2.14 The Clerk confirmed that, in accordance with Standing Order 62 (c), Councillor Coy's amendment to refuse the appeal would now be the motion and this would be taken against Councillor Bremner's amendment to uphold the appeal.
- 2.15 On a division there voted:
- For the Motion (3): Councillors Coy, Taylor and Powell
- For the Amendment (3) Councillors Bremner, Alexander and Ross
- Abstentions (1): Councillor Gatt
- 2.16 Their being an equality of votes, and in terms of Standing Order 63 (e), the Chair cast her casting vote in favour of the Motion and the MLRB agreed to dismiss Case LR236 and uphold the original decision of the Appointed Officer to refuse planning permission in respect of Planning Application 19/01031/APP as it is contrary to policies E9 (Settlement Boundaries), H7 (Housing in the Countryside) and IMP1 (Developer Requirements) of the MLDP 2015. The new policies PP3 (Infrastructure and Services), DP1 (Development Principles), DP2 (Housing), DP4 (Rural Housing), EP2 (Biodiversity) and EP6 (Settlement Boundaries) 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.