



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR238
 - Application for review by Mr William Benson, c/o Colin Keir, Plans Plus against the decision of an Appointed Officer of Moray Council
 - Planning Application 19/01239/APP – Erect New Dwelling House at Site adjacent to Arradoul House, Arradoul House, Arradoul, Buckie, AV56 5BB
 - There was no unaccompanied site inspection carried out by the MLRB due to the COVID-19 pandemic
 - 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 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 development would result in the loss of part of an amenity land designation, an established wooded area around 'Arradoul House' which has been specifically protected under the terms of Policy E5 of the MLDP 2015 and the related Arradoul Settlement Statement designated to maintain the visual amenity of this part of the village and forms part of the setting of Arradoul House. The introduction of the proposed dwelling (and all

associated development) on the application site between 'Arradoul House' and the neighbouring property, 'The Beeches' would consolidate built form in this locality and lead to removal of trees, eroding the existing pleasant and attractive wooded character of the amenity land designation and is contrary to Policies E5, H5, H3 and IMP1 of the Moray Local Development Plan (MLDP) 2015 and the Related Rural Groupings Supplementary Guidance.

- 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 Henderson, Planning Adviser advised that on the 3 June 2020, Moray Council Emergency Cabinet agreed that all parts of the MLDP 2020 as modified will be a material planning consideration for development management purposes as of 15 June 2020. The application was originally assessed against the policies in the MLDP 2015 however the Moray Local Review Body (MLRB) may also wish to consider the application whilst taking account of the relevant policies in the modified MLDP 2020 which are DP1 (Development Principles), DP4 (Rural Housing), EP5 (Open Space), EP7 (Forestry, Woodlands and Trees), DP2 (Affordable Housing), EP2 (Biodiversity) and PP3 (Infrastructure and Services).
- 2.4 Mr Hoath, Legal Adviser advised that the Applicant had requested a site visit in his Notice of Review which was not carried out due to a decision of the Moray Council Emergency Cabinet on 21 May 2020 to temporarily suspend the requirement to carry out site visits due to the COVID-19 pandemic and that, if the MLRB was of the view that a site visit was required, then it should consider deferring the case for a further procedure.
- 2.5 Councillor Alexander was of the view that there was enough information before members to determine the case and moved that the MLRB proceed to determine the case. This was unanimously agreed.
- 2.6 Councillor Ross, having considered the information within the case agreed with the decision of the Appointed Officer and 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 19/01239/APP as it is contrary to policies E5 (Open Spaces), H5 (Development within Rural Groupings), H3 (Subdivision for House Plots) and IMP1 (Developer Requirements) of the Moray Local Development Plan 2015 and the Related Rural Groupings Supplementary Guidance and also policies DP1 (Development Principles), DP4 (Rural Housing), EP5 (Open Space), EP7 (Forestry, Woodlands and Trees), DP2 (Affordable Housing), EP2 (Biodiversity) and PP3 (Infrastructure and Services) in the modified MLDP 2020.
- 2.7 There being no-one otherwise minded, the MLRB unanimously agreed to dismiss the appeal and uphold the original decision of the Appointed Officer to refuse planning permission in respect of Planning Application 19/01239/APP as it is contrary to policies E5 (Open Spaces), H5 (Development within Rural Groupings), H3 (Subdivision for House Plots) and IMP1 (Developer Requirements) of the Moray Local Development Plan 2015

and the Related Rural Groupings Supplementary Guidance. The new policies DP1 (Development Principles), DP4 (Rural Housing), EP5 (Open Space), EP7 (Forestry, Woodlands and Trees), DP2 (Affordable Housing), EP2 (Biodiversity) and PP3 (Infrastructure and Services) in 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.