



## MORAY LOCAL REVIEW BODY

### DECISION NOTICE

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Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR237
  - Application for review by Mr Martin Lusty against the decision of an Appointed Officer of Moray Council
  - Planning Application 19/01606/APP – Install new thermal panels and external wall opening at 71 Findhorn, Moray, IV36 3YF
  - Date of decision notice: 14 September 2020
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#### **Decision**

The MLRB agreed to uphold the request for review and grant planning permission.

#### **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:- 25 June 2020 and 27 August 2020.
- 1.3 On 25 June 2020, the MLRB was attended by Councillors Alexander, Bremner, Coy, Gatt, Powell, Ross and Taylor. On 27 August 2020, Councillors Alexander, Bremner, Cowie, Coy, Gatt, R McLean, Powell, Ross and Taylor were in attendance.

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

##### **25 June 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 grant planning permission subject to the following condition:

1. The glazing in both the door and window shall be obscure glazed with glass of obscuration level 4 of the range of glass manufactured by Pilkington plc at the date of this permission or an equivalent manufacturer agreed in writing by this council (as Planning Authority). Glazing of that obscuration level shall be retained in those windows for the lifetime of the development hereby approved.

Reason: To avoid overlooking of the adjacent property in the interest of residential amenity.

- 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 3 June 2020, the Moray Council Emergency Cabinet agreed that all parts of the Moray Local Development Plan (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 MLRB may wish to take into account policies DP1 Development Principles and EP9 Conservation Areas of the MLDP 2020 when considering the application.
- 2.4 Mr Hoath, Legal Adviser advised that the Applicant had requested a site visit on his Notice of Review application 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. He further advised that the Applicant had stated that he had included no new information with his Notice of Review application however had included photographs which had not been before the Appointed Officer at the time of determination. The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013 state that no new information should be raised that was not before the Appointed Officer unless the information could not have been raised before or is a consequence of exceptional circumstance. Mr Hoath advised that the Clerk had contacted the Applicant who had stated that there was nothing new about the information as the photographs were examples of other windows in the area and were put forward to support the request for review. The Applicant further stated that he would have included the photographs with his original planning application if he thought there was a chance that his application would be approved subject to the condition detailed above. Mr Hoath advised that, should the MLRB want to consider the photographs and arrange some form of site visit, then a further procedure should be considered.
- 2.5 On considering the advice from the Legal Adviser, the Chair moved that the MLRB defer consideration of Case LR237 to allow an independent person from the Planning Service to visit the site to obtain either a video or photographs of the site for the MLRB to consider and also allow the Appointed Officer to consider and comment on the photographs submitted by the Applicant with his Notice of Review Application. This was seconded by Councillor Ross.

- 2.6 Councillor Gatt was of the view that Members had enough information before them to determine the case and moved that the MLRB proceed to determine the case. This was seconded by Councillor Alexander.
- 2.7 On a division there voted:
- For the Motion (4): Councillors Taylor, Ross, Bremner and Coy
- For the Amendment (3): Councillors Gatt, Alexander and Powell
- Abstentions (0): Nil
- 2.8 Accordingly the motion became the finding of the meeting and the MLRB agreed to defer case LR237 to allow an independent person from the Planning Service to visit the site to obtain either a video or photographs of the site for the MLRB to consider and also allow the Appointed Officer to consider and comment on the photographs submitted by the Applicant with his Notice of Review Application.

### **27 August 2020**

- 2.9 Under reference to paragraph 5 of the Minute of the Meeting of the Moray Local Review Body (MLRB) dated 25 June 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 grant planning permission subject to the following condition:
- i. The glazing in both the door and window shall be obscure glazed with glass of obscuration level 4 of the range of glass manufactured by Pilkington plc at the date of this permission or an equivalent manufacturer agreed in writing by this council (as Planning Authority). Glazing of that obscuration level shall be retained in those windows for the lifetime of the development hereby approved.
- Reason: To avoid overlooking of the adjacent property in the interest of residential amenity.
- 2.10 The Chair stated that, at the meeting of the MLRB on 25 June 2020, the MLRB agreed to defer case LR237 to allow an independent person from the Planning Service to visit the site to obtain either a video or photographs of the site for the MLRB to consider and also allow the Appointed Officer to consider and comment on the photographs submitted by the Applicant with his Notice of Review Application.
- 2.11 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 the planning application had originally been assessed against policies within the Moray Local Development Plan (MLDP) 2015 however, now that the new MLDP 2020 had been formally adopted, the relevant planning policies are now DP1 (Development Principles) and EP9 (Conservation Areas).

- 2.12 Mr Hoath, Legal Adviser also advised that any decision made by the MLRB would need to relate to the new policies within the MLDP 2020.
- 2.13 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.
- 2.14 Councillor Gatt, having considered the case in detail, noted that the Applicant was being asked to use obscure glass in his new window to prevent overlooking the adjacent property however noted that the adjacent property had a window that overlooked the Applicant's property and queried whether that window was obscure glazed.
- 2.15 In response, Mr Henderson, Planning Adviser advised that the photographs provided showed that the adjacent property did have a window that looks onto the Applicant's property and that it was not obscure glazed.
- 2.16 Councillor Bremner noted that the Applicant was replacing an existing window with clear glass with a slightly larger window and was of the view that the Applicant should not have to use obscure glass.
- 2.17 Councillor Alexander noted that the Applicant already had an upstairs window with clear glass that overlooked the adjacent property therefore was of the view there was no justification for obscure glass in the new window.
- 2.18 Councillor Powell noted the close proximity of houses which is typical of small fishing villages such as Findhorn which resulted in overlooking on each adjacent property.
- 2.19 Councillor Coy was also of the view that it was unfair to ask one neighbour to use obscure glazing in their window when the other neighbour had windows that had clear glass.
- 2.20 On hearing the debate, the Legal Adviser advised that should the MLRB be minded to uphold the appeal, it should take into consideration the relevant policies within the MLDP 2020. The Planning Adviser then confirmed the relevant part of policy DP1 being (i)(e) proposals must not adversely impact upon neighbouring properties in terms of privacy, daylight or overbearing loss of amenity. This did not substantially differ from the wording of the original MLDP 2015 so the basis for determination had not changed.
- 2.21 The Chair, on listening to the debate and on hearing the advice from the Legal Adviser moved that the MLRB uphold the appeal and remove the condition which stated that the window should be obscure glazed as she was of the view that the proposal did not impact neighbouring properties by the window not having obscure glass therefore complied with policy DP1 and that there was no reference to obscure glass in policy EP9. This was seconded by Councillor Bremner.
- 2.22 There being no-one otherwise minded, the MLRB agreed to uphold the appeal and remove the following condition from the already consented Planning Application 19/01606/APP:
  - i. The glazing in both the door and window shall be obscure glazed with glass of obscuration level 4 of the range of glass manufactured by

Pilkington plc at the date of this permission or an equivalent manufacturer agreed in writing by this council (as Planning Authority). Glazing of that obscuration level shall be retained in those windows for the lifetime of the development hereby approved.

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

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

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

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Signed

Name (Print)

Date

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

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

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

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Signed

Name (Print)

Date

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**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)**