



## MORAY LOCAL REVIEW BODY

### DECISION NOTICE

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Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR239
  - Application for review by Mr Dawid Stasiak against the decision of an Appointed Officer of Moray Council
  - Planning Application 20/00165/APP - Erect 800 mm fence on top of existing boundary wall
  - Date of decision notice: 23 November 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:- 24 September 2020 and 29 October 2020.
- 1.3 On 24 September 2020, the MLRB was attended by Councillors Bremner (Depute Chair), Alexander, Cowie, Gatt, Powell, Ross and Taylor. On 29 October 2020, Councillors Bremner (Depute Chair), Alexander, Cowie, Gatt, R McLean, Powell, Ross and Taylor were in attendance.

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

##### **24 September 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 planning permission on the grounds that:

The proposal is contrary to the provisions of the adopted Moray Local Development Plan (MLDP) 2015 (Policies PP3, H4, IMP1 and T2) and should be refused for the following reasons:

- The fence is not of an appropriate scale for the existing site or surrounding area and therefore is contrary to policies H4 and IMP1.
- The fence would remove an existing public frontage to the dwellinghouse and therefore is not in accordance with the requirements of policy PP3.
- The fence would give rise to a reduction in inter-visibility between pedestrians, cyclists and vehicles which could give rise to issues regarding road safety and therefore is contrary to policies T2 and IMP1. 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.

2.2 In response to a question from the Chair as to whether the Legal or Planning Advisers had any preliminary matters to raise, Mr Hoath advised that the Applicant had indicated on his Notice of Review application that he would like a site inspection, a hearing and further written submissions therefore asked the Moray Local Review Body (MLRB) to consider the Applicant's request for a further procedure.

2.3 Mr Henderson, Planning Adviser advised that the original planning application had been determined in accordance with the MLDP 2015 however as the MLDP 2020 had been adopted in July 2020, the application should now be determined in accordance with the new MLDP 2020. The relevant policies are DP1 (Development Principles) and PP1 (Placemaking) however the wording of these policies does not differ greatly from the original wording in the MLDP 2015.

2.4 Councillor Ross, having considered the case in detail, was of the view that it was unfair to determine the planning application given that the MLRB had not conducted a site visit, especially as the Applicant had requested one. Whilst he appreciated that site visits had been temporarily suspended due to the COVID-19 pandemic, he moved that the MLRB defer case LR239 to allow an independent person from the Planning Service to visit the site to obtain further photographs so that the MLRB can make an informed decision.

2.5 There being no-one otherwise minded, the MLRB agreed to defer case LR239 to allow an independent person from the Planning Service to visit the site to obtain further photographs.

## **29 October 2020**

2.6 Under reference to paragraph 4 of the minute of the meeting of the Moray Local Review Body (MLRB) dated 24 September 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 planning permission on the grounds that:

The proposal is contrary to the provisions of the adopted Moray Local Development Plan (MLDP) 2015 (Policies PP3, H4, IMP1 and T2) and should be refused for the following reasons:

- The fence is not of an appropriate scale for the existing site or surrounding area and therefore is contrary to policies H4 and IMP1.
- The fence would remove an existing public frontage to the dwellinghouse and therefore is not in accordance with the requirements of policy PP3.
- The fence would give rise to a reduction in inter-visibility between pedestrians, cyclists and vehicles which could give rise to issues regarding road safety and therefore is contrary to policies T2 and IMP1.

- 2.7 The Chair stated that, at the meeting of the MLRB on 24 September 2020, the MLRB agreed to defer case LR239 allow an independent person from the Planning Service to visit the site to obtain further photographs.
- 2.8 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 MLDP 2015 however, now that the new MLDP 2020 had been formally adopted, the relevant planning policies are now DP1 (Development Principles) and PP1 (Placemaking).
- 2.9 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.
- 2.10 Councillor Alexander, having considered the case in detail and the further photographs of the site agreed with the original decision of the Appointed Officer in that the fence was not a suitable development as it would cause an obstruction to pedestrians and cyclists using the pathway. Councillors Ross, Gatt and Cowie were of the same view as Councillor Alexander.
- 2.11 Councillor R McLean stated that he had asked the Planning Service ahead of the meeting whether the same rules would apply should the development be a hedge and noted that a hedge was not considered to be a development however accepted that the MLRB were being asked to determine the planning application before them, which was for a fence.
- 2.12 Having listened to the debate, the Chair moved that the MLRB dismiss Case LR239 and uphold the original decision of the Appointed Officer to refuse planning permission in respect of Planning Application 20/00165/APP as it is contrary the provisions of the Moray Local Development Plan (MLDP) 2015 (Policies PP3, H4, IMP1 and T2) and policies DP1 (Development Principles) and PP1 (Placemaking) of the newly adopted MLDP 2020.
- 2.13 There being no-one otherwise minded, the MLRB agreed to dismiss Case LR239 and uphold the original decision of the Appointed Officer to refuse

planning permission in respect of Planning Application 20/00165/APP as it is contrary the provisions of the Moray Local Development Plan (MLDP) 2015 (Policies PP3, H4, IMP1 and T2) and policies DP1 (Development Principles) and PP1 (Placemaking) of the newly adopted MLDP 2020.

**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.