



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR244
 - Application for review by Mr Gordon Wood against the decision of an Appointed Officer of Moray Council
 - Planning Application 20/00614/APP – Retrospective application to erect a shed for business/office use at Shiva, 20 Shore Street, Lossiemouth, Moray
 - 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 proposed shed is contrary to Moray Local Development Plan (MLDP) (Modified Plan) 2020 policy DP1 (i) a) & e) and MLDP 2015 policy IMP1 for the following reasons:-

- i. The proposed shed on raised garden ground in a restricted site would be of an inappropriate scale due to its combined height, width and depth. As such this would result in a development that would be out of character with its immediate surroundings, and would have an overbearing and detrimental impact as it removed the majority of the remaining rear garden ground.
 - ii. The proposed shed contains windows on both side elevations which would face directly onto the neighbouring properties to the immediate east and west of the site. These windows are located at head height and would therefore give a direct view into the neighbouring property gardens giving rise to an unacceptable loss of privacy and overbearing loss of amenity to neighbours and would also be contrary to the requirements of policy DP1 i) e), and IMP1.
- 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, at the time of determination, the Planning Application had been considered against both the MLDP 2015 and the MLDP 2020 although the MLDP 2020 was formally adopted in July 2020.
 - 2.4 The Legal Adviser advised that, on completion of his Notice of Review application, the Applicant had requested a hearing however no site visit was requested and asked the Moray Local Review Body (MLRB) to consider what further procedure, if any, they wished to request.
 - 2.5 Councillor Ross, having considered the request for review thoroughly, moved that the MLRB defer consideration of this case 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.
 - 2.6 Councillor Gatt agreed with Councillor Ross however asked that the further pictures include the view from the windows facing east into the neighbouring property and photos looking onto the other neighbouring property.
 - 2.7 Ms Webster, Planning Adviser advised that it would be beneficial to ask the Applicant to provide further information in relation to finished floor levels and existing ground levels, in addition to the height of the windows from the finished floor level, as the garden was sloped. This was agreed.
 - 2.8 Councillor Taylor agreed with the points made by Councillors Ross and Gatt however moved that a hearing also be held as the Applicant had requested such. On failing to find a seconder, Councillor Taylor's motion fell.

- 2.9 There being no-one otherwise minded, the MLRB agreed to defer case LR244 to allow an independent person from the Planning Service to take further photographs of the site specifically from the windows facing east into the neighbouring property and photos looking onto the other neighbouring property and to request that the Applicant provide further information in relation to finished floor levels and existing ground levels, in addition to the height of the windows from the finished floor level.

29 October 2020

- 2.10 Under reference to paragraph 6 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 to refuse planning permission on the grounds that:

The proposed shed is contrary to Moray Local Development Plan (MLDP) (Modified Plan) 2020 policy DP1 (i) a) & e) and MLDP 2015 policy IMP1 for the following reasons:-

- i. The proposed shed on raised garden ground in a restricted site would be of an inappropriate scale due to its combined height, width and depth. As such this would result in a development that would be out of character with its immediate surroundings, and would have an overbearing and detrimental impact as it removed the majority of the remaining rear garden ground.
 - ii. The proposed shed contains windows on both side elevations which would face directly onto the neighbouring properties to the immediate east and west of the site. These windows are located at head height and would therefore give a direct view into the neighbouring property gardens giving rise to an unacceptable loss of privacy and overbearing loss of amenity to neighbours and would also be contrary to the requirements of policy DP1 i) e), and IMP1.
- 2.11 The Chair stated that, at the meeting of the MLRB on 24 September 2020, the MLRB agreed to defer case LR244 to allow an independent person from the Planning Service to take further photographs of the site specifically from the windows facing east into the neighbouring property and photos looking onto the other neighbouring property and to request that the Applicant provide further information in relation to finished floor levels and existing ground levels, in addition to the height of the windows from the finished floor level.
- 2.12 In response to a question from the Chair as to whether the Legal or Planning Advisers had any preliminary matters to raise, Mr Henderson, Planning Adviser advised that, at the time of determination, the Planning Application had been considered against both the MLDP 2015 and the MLDP 2020 although the MLDP 2020 was formally adopted in July 2020.
- 2.13 Having received the further photographs of the site and information from the Applicant, 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 The Chair, having considered the case in detail, agreed with the original decision of the Appointed Officer in that the development is inappropriate in terms of size and moved that the MLRB dismiss case LR244 and uphold the original decision of the Appointed Officer to refuse planning permission in respect of Planning Application 20/00614/APP as it is contrary to the MLDP 2020 policy DP1 (Development Principles) (i) a) & e) and MLDP 2015 policy IMP1.
- 2.15 There being no-one otherwise minded, the MLRB agreed to dismiss case LR244 and uphold the original decision of the Appointed Officer to refuse planning permission in respect of Planning Application 20/00614/APP as it is contrary to the MLDP 2020 policy DP1 (Development Principles) (i) a) & e) and MLDP 2015 policy IMP1.

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.