



## MORAY LOCAL REVIEW BODY

### DECISION NOTICE

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Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR247
  - Application for review by Mr C Smith against the decision of an Appointed Officer of Moray Council
  - Planning Application 20/00636/PPP New House and Garage on a site to the north of Barnyard Studios, Upper Garmouth, Fochabers
  - Date of decision notice: 6 January 2021
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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 in principle was considered by the MLRB at the meeting held on 17 December 2020.
- 1.3 The MLRB was attended by Councillors Councillors Alexander, Bremner, Cowie, Coy, Gatt, Powell, Ross and Taylor.

#### 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 proposal would be contrary to the Garmouth ENV6 designation and associated policies PP1, DP1, DP2 and EP5 of the Moray Local Development Plan (MLDP) 2020, on the basis that these policies aim to protect and preserve the characteristics of ENV areas and policy EP5 specifically excludes residential development from ENV designations.

- 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, both the Legal and Planning Advisers advised that they had nothing to raise at this time.
- 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 Councillor Gatt, having considered the case in detail, noted that the Applicant had carried out a significant amount of work on the land which had led to its ENV designation. He further noted that the Applicant had given land to the local community therefore moved that the MLRB uphold the appeal and grant planning permission in respect of Planning Application 20/00636/PPP as the proposal would be an acceptable departure from policies PP1, DP1, DP2 and EP5 associated to the Garmouth ENV6 designation as, in his opinion, the land constituted semi-natural green space as it had been enhanced by the Applicant. On failing to find a seconder, his motion fell.
- 2.6 Thereafter, the MLRB agreed to dismiss the appeal and uphold the original decision of the Appointed Officer to refuse planning permission in respect of Planning Application 20/00636/PPP as it is contrary to the Garmouth ENV6 designation and associated policies PP1 (Placemaking), DP1 (Development Principles), DP2 (Housing) and EP5 (Open Space) of the MLDP 2020.

**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.

