



## MORAY LOCAL REVIEW BODY

### DECISION NOTICE

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Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR250
  - Application for review by Mr S Waterson c/o Ms Cynthia McKay, Wittets Ltd against the decision of an Appointed Officer of Moray Council
  - Planning Application 20/01059/APP – Retain installed uPVC windows at Craigmhor, 67 St Leonards Road, Forres
  - Date of decision notice: 16 April 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 was considered by the MLRB at the meeting held on 25 February 2021.
- 1.3 The MLRB was attended by Councillors Taylor, Bremner, Alexander, Cowie, Coy, Gatt, R McLean, Powell and Ross.

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

- 2.1 Councillor Taylor, having declared an interest in this item, took no part in the determination of this case and handed the role of Chair over to Councillor Bremner, as agreed by the Moray Local Review Body (MLRB) earlier in the meeting.
- 2.2 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 application fails to comply with the following policies (Moray Local Development Plan Policies EP9 & DP1) and should be refused for the following reasons:

- The proposal is contrary to Policy EP9 Conservation Areas as the removal of original timber windows and replacement with modern UPVC units located on the principal elevations would fail to preserve or enhance the character of the building or conservation area.
- By introducing modern UPVC windows into the conservation area, the proposal is considered to be contrary to Policy DP1 Development Principles as the appearance and material finish of the windows is not appropriate to the established traditional character of the surrounding area.

2.3 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.

2.4 In response to a question from the Chair as to whether the Legal or Planning Advisers had any preliminary matters to raise, the Legal Adviser advised that he had nothing to raise at this time.

2.5 Mrs Gordon, Planning Adviser advised that the comment from the Reporter on the windows found on the Appeal Decision Notice on page 195 of the agenda is not a material consideration and that it is the decision on the enforcement notice that holds weight, and not the Reporters comments in respect of the windows. This was noted.

2.6 The Chair then asked the Moray Local Review Body (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.

2.7 Councillor Gatt, having considered the case in detail, noted that there were many houses within the conservation area with modern uPVC windows and acknowledged that the Applicant had went to great lengths to ensure that the replacement windows maintained the established traditional character of the surrounding area. He further stated that he was of the view that the Council's guidance on windows in conservation areas is unenforceable due to the volume of houses that already have uPVC windows in conservation areas and that it would be unreasonable, disproportionate and against natural justice to refuse this appeal. Taking this into consideration, Councillor Gatt moved that the MLRB uphold the appeal and grant planning permission in respect of Planning Application 20/01059/APP as an acceptable departure from policies EP9 (Conservation Areas) and DP1 (Development Principles) of the MLDP 2020 for the reasons previously stated. This was seconded by Councillor R McLean.

2.8 In response, Ms Webster, Planning Adviser advised that the MLDP 2020 was recently approved and that the policy and guidance on windows in conservation areas is enforceable and enforcement action has and does take place where development has been undertaken that does not accord with the policy or has been unauthorised.

- 2.9 Councillor Coy disagreed with Councillor Gatt and stated that the Council should adhere to the policies agreed within the MLDP 2020 and moved as an amendment that the MLRB dismiss the appeal and refuse planning permission in respect of Planning Application 20/01059/APP as the proposal is contrary to policies EP9 (Conservation Areas) and DP1 (Development Principals) of the MLDP 2020. This was seconded by Councillor Alexander.
- 2.10 Councillor Gatt made further reference to the advice given by the Planning Adviser at the start of the meeting in relation to the comment from the Reporter and how it was not a material consideration to the case and stated that he had read the Applicant's appeal to the Scottish Ministers and, although not contained within the supporting documents provided by the Applicant, he was of the view that there was important information contained within the appeal that would help the MLRB come to a decision and asked the Legal Adviser if there was a way in which the MLRB could view the information contained within the Applicant's appeal to the Scottish Ministers.
- 2.11 In response, the Legal Services Manager confirmed that the comment from the Reporter on the windows found on the Appeal Decision Notice is not a material consideration and advised that the Applicant had submitted a new planning application which had been subsequently refused. She explained that the Applicant had then submitted an appeal against the decision of the Appointed Officer to refuse the new planning application and had included supporting information however had chosen not to include the information in the Appeal to the Scottish Ministers referred to by Councillor Gatt and that, should the MLRB wish to consider this information, then it would have to defer the Case for a further procedure.
- 2.12 On hearing the advice from the Legal Services Manager, Councillor Gatt stated that he would progress with his original motion.
- 2.13 On a division there voted:
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|------------------------|---|
| For the Motion: (4)    | Councillors Gatt, R McLean, Powell and Ross   |
| For the Amendment: (4) | Councillors Coy, Alexander, Bremner and Cowie |
| Abstentions: (0)       | Nil   |
- 2.14 There being an equality of votes, and in terms of Standing Order 63 (e), the Chair cast his casting vote in favour of the Amendment and 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 20/01059/APP as it is contrary to policies EP9 (Conservation Areas) and DP1 (Development Principals) of the 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.