



## MORAY LOCAL REVIEW BODY

### DECISION NOTICE

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Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR264
  - Application for review by Mrs Elma Noble, c/o Mr Ian Holmes, IH Designs (Moray) against the decision of an Appointed Officer of Moray Council
  - Planning Application 21/00593/APP for Replacement windows at Sunny Bank, Victoria Road, Forres
  - Date of decision notice: 22 December 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 on the following occasions:- 30 September 2021 and 28 October 2021.
- 1.3 On all dates, the MLRB was attended by Councillors Taylor, Bremner, Cowie, Coy, Gatt, R McLean, Nicol and Powell.

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

##### **30 September 2021**

- 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 development is contrary to Policy DP1: Development Principles and Policy EP9: Conservation Areas of the adopted Moray Local

Development Plan 2020 and, as a material consideration, associated Replacement Windows and Doors Guidance for the following reasons:

- the removal of original timber sash and case windows and replacement with non-traditional UPVC units located on principal elevations and elevations on a public view would fail to preserve or enhance the established traditional character and appearance of Forres Outstanding Conservation Area;
- the proposed finishes are considered to adversely affect the character and appearance of Forres Outstanding Conservation Area, are not appropriate to the surrounding area, and do not respect the architectural authenticity of the building and the character of Forres Outstanding Conservation Area.

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 or Planning Advisers had any preliminary matters to raise, Mr Henderson, Planning Adviser advised the Moray Local Review Body (MLRB) of a mistake in the Report of Handling where reference to the south elevation should read north and reference to the north elevation should read south, and confirmed that if you were to stand facing the building, you would be facing the south elevation which was the principle elevation. This was noted.

2.4 The Legal Adviser advised that the Applicant had included additional information with his Notice of Review application in the form of details of neighbouring properties with UPVC windows and that the Applicant had stated that the Appointed Officer had been made aware of these properties verbally during the application process however this information had not formed part of the application paperwork. The Legal Adviser advised that, should the MLRB wish to consider this information, then in terms fairness, the MLRB should decide whether it wished a further procedure to allow the Appointed Officer to comment on the additional information.

2.5 The Chair stated that it would be useful to consider the additional information and moved that the MLRB defer Case LR264 to a future meeting of the MLRB to allow the Appointed Officer the opportunity to comment on the additional information.

2.6 There being no-one otherwise minded, the MLRB agreed to defer Case LR264 to a future meeting of the MLRB to allow the Appointed Officer the opportunity to comment on the additional information.

## **28 October 2021**

2.7 Under reference to paragraph 6 of the Minute of the meeting of the Moray Local Review Body (MLRB) dated 30 September 2021, 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 development is contrary to Policy DP1: Development Principles and Policy EP9: Conservation Areas of the adopted Moray Local Development Plan (MLDP) 2020 and, as a material consideration, associated Replacement Windows and Doors Guidance for the following reasons:

- the removal of original timber sash and case windows and replacement with non-traditional UPVC units located on principal elevations and elevations on a public view would fail to preserve or enhance the established traditional character and appearance of Forres Outstanding Conservation Area; and
- the proposed finishes are considered to adversely affect the character and appearance of Forres Outstanding Conservation Area, are not appropriate to the surrounding area, and do not respect the architectural authenticity of the building and the character of Forres Outstanding Conservation Area.

- 2.8 The Chair stated that, at the meeting of the MLRB on 30 September 2021, the MLRB agreed to defer Case LR264 to a future meeting of the MLRB to allow the Appointed Officer the opportunity to comment on additional information included with the Applicant's Notice of Review application and that the additional information submitted by the Applicant was available at Appendix 3 and the Appointed Officer's response to the additional information was detailed at Appendix 4 of the case.
- 2.9 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 the MLRB of a mistake in the Report of Handling where reference to the south elevation should read north and reference to the north elevation should read south, and confirmed that if you were to stand facing the building, you would be facing the south elevation which was the principal elevation. This was noted.
- 2.10 The Legal Adviser advised that he had no preliminary matters to raise at this time.
- 2.11 Councillor Gatt, having considered the case in detail, was of the view that the proposal complied with policy DP1 (Development Principles) of the MLDP 2020 as, in his opinion, there was nothing relevant in this policy that would prohibit the proposal. With regard to policy EP9 (Conservation Areas), Councillor Gatt highlighted that this policy stated that contemporary designs and materials can be acceptable and have a positive effect on the conservation area and that with regard to replacement doors and windows, the policy states that UPVC doors and windows may be acceptable if they are of an appropriate traditional style and not on a principal elevation or an elevation on public view. Whilst Councillor Gatt accepted that the proposal included the replacement of windows on the principal elevation of the building, he pointed out that the Council's guidance on replacement windows and doors stated that the form of windows and doors in the immediate surroundings of the building would be taken into consideration and that traditional UPVC windows would be permissible providing there is no damage to the character or appearance of the conservation area. Councillor Gatt noted that the building was part of a semi-detached building with the adjacent property having a sun lounge with UPVC windows on the front of the building. Furthermore, the building on the other side of the building in

question had installed UPVC windows, similar to those proposed by the Applicant and that there were many other buildings in the conservation area that had UPVC windows. Taking the above into consideration, Councillor Gatt moved that the MLRB uphold the appeal and grant planning permission in respect of Planning Application 21/00593/APP as in his view it complied with all policies within the MLDP 2020. This was seconded by Councillor R McLean.

2.12 In response, Mr Henderson, Planning Adviser advised that, in terms of MLDP 2020 policy DP1, the proposal was considered to be out of character to the conservation area. With regard to MLDP 2020 policy EP9, Mr Henderson advised that contemporary materials may be used however should be sensitive to the conservation area however there was specific guidance when considering windows and doors which states that windows and doors on principal elevations should be made from traditional materials. Mr Henderson further pointed out that the other half of the semi-detached property mentioned by Councillor Gatt received planning permission for the sun lounge in 1998 and would have been considered against an earlier version of the MLDP.

2.13 Councillor Coy agreed with the original decision of the Appointed Officer and moved, as an amendment, that the MLRB dismiss the appeal and refuse planning permission in relation to Planning Application 21/00593/APP as the proposed development is contrary to Policies DP1 (Development Principles) and EP9 (Conservation Areas) of the adopted MLDP 2020 and, as a material consideration, associated Replacement Windows and Doors Guidance. This was seconded by Councillor Bremner.

2.14 On a division there voted:

For the Motion (3):	Councillors Gatt, R McLean and Powell
For the Amendment (4):	Councillors Coy, Bremner, Nicol and Taylor
Abstentions (1):	Councillor Cowie

2.15 Accordingly, the Amendment became the finding of the MLRB and it was agreed to dismiss the appeal and refuse planning permission in relation to Planning Application 21/00593/APP as the proposed development is contrary to Policies DP1 (Development Principles) and EP9 (Conservation Areas) of the adopted MLDP 2020 and, as a material consideration, associated Replacement Windows and Doors Guidance.

**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.