



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR265
 - Application for review by Mr Andrew Kemp against the decision of an Appointed Officer of Moray Council
 - Planning Application 21/01250/PPP – Erect dwelling house with detached garage at Florries Field, Damhead, Rafford
 - Date of decision notice: 19 January 2022
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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 16 December 2021.
- 1.3 The MLRB was attended by Councillors Taylor (Chair), Bremner (Depute Chair), Cowie, Gatt, R McLean, Nicol, Powell and Ross.

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 for a new dwelling house on this site would be contrary to Moray Local Development Plan (MLDP) 2020 policy DP1 for the following reason:-

The existing U107E/B9011 junction serving the site is considered to be inadequate to serve the proposed development, by reason of its restricted visibility and width. The proposal if permitted, would result in an intensification of use of the constrained junction and be likely to give rise to conditions detrimental to the road safety of road users contrary to MLDP policy DP1

'Development Principles' section (ii)- 'Transportation', part 'c)' (safe access to and from the road network).

- 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, the Planning Adviser advised that she had nothing to raise at this time. The Legal Adviser advised that the Applicant had raised concerns regarding a representation from a Neighbour that he was not aware of until the agenda had been published and asked that an email trail confirming this be circulated to the Moray Local Review Body (MLRB). The MLRB noted the email trail that had been circulated ahead of the meeting.
- 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 Bremner, having considered the case in detail, noted that the application had been refused because the junction was inadequate in terms of policy DP1 (Development Principles) however planning application 21/00512/APP submitted by the Council to improve the junction did not receive any objections from Transportation and had subsequently been approved with the junction being brought up to an adequate standard. Councillor Bremner sought clarification as to why Transportation had objected to one application and not the other.
- 2.6 In response, the Planning Adviser advised that planning application 21/00512/APP was to replace the existing fence to improve visibility however that was not taking into account an additional dwelling. If another house was to be erected, then the fence would need to be set back further to improve visibility and the junction widened to accommodate 2 cars.
- 2.7 Councillor Ross was of the view that the application should be determined on its own merit and raised concern with regard to road safety as it was difficult to see oncoming traffic when turning left at the junction.
- 2.8 Councillor Bremner acknowledged the response from the Planning Adviser however noted that the Applicant had provided a photograph of 2 vehicles passing in the junction. He remained of the view that the junction complied with policy DP1 (Development Principles) and moved that the MLRB uphold the appeal and grant planning permission in respect of Planning Application 21/01250/APP. On failing to find a seconder, Councillor Bremner's motion fell.
- 2.9 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 21/01250/APP as the application fails to comply with policy DP1 (Development Principles) 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.