



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR266
 - Application for review by Mr H Fox c/o Mr N Grant, Grant & Geoghegan against the decision of an Appointed Officer of Moray Council
 - Planning Application 21/00517/APP – Erect dwelling house and garage at Site Adjacent to the Wood of Coneloch, Birnie, Elgin
 - Date of decision notice: 15 February 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 was considered by the MLRB at the meeting held on 27 January 2022.
- 1.3 The MLRB was attended by Councillor Taylor (Chair), Bremner, Cowie, Gatt, A McLean, 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 proposed house fails to comply with policy DP4 – Rural Housing of the Moray Local Development Plan 2020 because its height at 7.5 metres exceeds the maximum height specified in policy DP4's design criteria, requiring rural houses to be no more than 6.75 metres in height.

- 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, 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 Moray Local Review Body (MLRB) unanimously agreed that it had sufficient information to determine the case.
- 2.5 Councillor Gatt sought confirmation from the Planning Adviser that the Applicant currently had planning permission for a building 4.1 metres taller than the proposal in question.
- 2.6 In response, Mr Henderson, Planning Adviser advised that in 2012, planning permission was granted for a new house and that the development was commenced in 2015 therefore this planning application is currently live however stated that this planning application had been considered against a previous Moray Local Development Plan.
- 2.7 Councillor Gatt stated that the difference in height between the proposal and the maximum height specified in policy DP4's design criteria of 6.75 metres is 0.75 metres and moved that the MLRB uphold the appeal and grant planning permission in respect of Planning Application 21/00517/APP as in his opinion, the proposal is an acceptable departure from policy DP4 (Rural Housing) as the Applicant currently has planning permission for a proposal significantly higher than what is currently being proposed. This was seconded by Councillor R McLean.
- 2.8 Councillor A McLean moved as an amendment that the MLRB uphold the original decision of the Appointed Officer to refuse planning permission as the proposed house fails to comply with policy DP4 (Rural Housing) of the MLDP 2020 as its height, at 7.5 metres, exceeds the maximum height of 6.75 metres specified in policy. This was seconded by Councillor Ross.
- 2.9 On a division there voted:

For the Motion (3):	Councillors Gatt, R McLean and Powell
For the Amendment (6):	Councillors A McLean, Ross, Bremner, Cowie, Nicol, Taylor
Abstentions (0):	Nil

- 2.10 Accordingly, the Amendment became the finding of the Meeting and the MLRB agreed to refuse planning permission in respect of Planning Application 21/00517/APP as the proposed house fails to comply with policy DP4 (Rural Housing) of the MLDP 2020 as its height, at 7.5 metres, exceeds the maximum height of 6.75 metres specified in policy.

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.