



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR270
 - Application for review by Mr Blair Tulloch, Tulloch of Cummingston against the decision of an Appointed Officer of Moray Council
 - Planning Application 21/00168/APP – Proposed erection of dwelling-house and attached garage at Plot 3 Easter Coltfeld, Alves, Elgin
 - Date of decision notice: 9 March 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 24 February 2022.
- 1.3 The MLRB was attended by Councillors Bremner, Cowie, Gatt, A McLean, R McLean, 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:
- 2.2 The proposal would be contrary to policies DP1, DP4 and EP14 of the Moray Local Development Plan (MLDP) 2020 for the following reasons:
 1. The site lies within a Pressurised and Sensitive Area and as such policy DP4 outlines that no new housing will be permitted within these areas on the basis that further housing would exacerbate the build-up of housing

which has already negatively impacted on the character of the countryside in this area.

2. The applicants have not provided a Noise Impact Assessment in support of the application and as such have failed to demonstrate that the occupants of the proposed house would not be subject to harmful noise pollution as a result of aircraft utilising RAF Kinloss.
- 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, both the Legal and Planning Advisers advised that they had nothing to raise at this time.
- 2.5 The Chair then asked the Moray Local Review Body (MLRB) if it had sufficient information to determine the request for review.
- 2.6 In response, Councillor Gatt questioned the validity of the information provided in the case as one of the reasons for refusal was that the Applicant had not provided a Noise Impact Assessment in support of the application to demonstrate that occupants of the proposed house would not be subject to harmful noise pollution as a result of aircraft utilising former RAF Kinloss. Councillor Gatt stated that a Notice to Airmen U0094/22 states that the air traffic zone around Kinloss has been withdrawn therefore Kinloss is no longer an airfield.
- 2.7 Mr Henderson, Planning Adviser advised that, in relation to noise contours, the Appointed Officer had referenced a Committee Report from 2014 in the Report of Handling which stated that even if an airfield is inactive, the MOD retains the right to reactivate the airfield if required therefore a noise impact assessment would still be necessary.
- 2.8 The Legal Adviser further advised that the difference between former Kinloss airfield and other airfields mentioned by Councillor Gatt which are no longer in use, is that Kinloss runways can still be used if needed as that is what the policy states and should be adhered to.
- 2.9 Councillor Gatt further stated that when viewing Kinloss airfield on google maps, there are large white crosses painted on the runway which indicates that no aircraft should land there and queried whether consideration of this application should be deferred so that Officers can look into this further.
- 2.10 The Legal Adviser advised that the MOD had asked that the noise contours remain within our policy and this stands until the MOD change their position.
- 2.11 Following consideration, the MLRB unanimously agreed to dismiss the appeal and uphold the original decision of the Appointed Officer to refuse planning permission in respect of Planning Application 21/00168/APP as the proposal is contrary to policies DP1 (Development Principles), DP4 (Rural Housing) and EP14 (Pollution, Contamination and Hazards) of the MLDP 2020.

Mrs Aileen Scott
Legal Services Manager
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.