



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR273
 - Application for review by Mr Arnold Pirie, c/o Mr James Cairns, Plans For U against the decision of an Appointed Officer of Moray Council
 - Planning Application 21/01784/APP – Enlarge window and form new window at 17 Harbour Place, Portknockie, Buckie, Moray
 - Date of decision notice: 21 July 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 16 June 2022.
- 1.3 The MLRB was attended by Councillors Macrae (Chair), Dunbar (Depute), Cameron, Harris, Keith, McBain, McLennan, Ross and Warren.

2. MLRB Consideration of Request for Review

- 2.1 Councillor Warren left the meeting during consideration of this item and took no part in the decision, having realised that she had an interest.
- 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 proposal is contrary to the Moray Local Development Plan (MLDP) 2020: Policy EP9 Conservation Areas and related Replacement Windows and Doors Guidance, Policy EP3 part b Special Landscape Character, and Policy DP1

Development Principles because: The proposed UPVC windows which would be located on a prominent public gable are not considered to preserve or enhance the traditional character or appearance of the Conservation Area. The presence of additional UPVC units on this prominent public gable would further erode the traditional sense of place of the Portknockie Outstanding Conservation Area. The proposal therefore fails to comply with current policy requirements, the application is therefore refused.

- 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. In response, the MLRB unanimously agreed that it had sufficient information to determine the case.
- 2.6 During discussion, the MLRB sought clarification from the Planning Advisers in terms of Policy EP9 Conservation Areas and related Replacement Windows and Doors Guidance, specifically in relation to a statement in the guidance that states that consideration should be given to surrounding properties when determining the application therefore, as many surrounding properties already had UPVC windows, should this not be taken into consideration and also, what windows are acceptable when replacing those in a conservation area. It was further queried whether the other nearby properties with UPVC windows had been granted planning permission.
- 2.7 In response, Mr Henderson, Planning Adviser advised that Policy EP9 is clear in that it states that UPVC windows should not be permitted on a principal or public view and as the windows in question were on a prominent public gable, the policy had been applied correctly. With regard to suitable windows to replace those in a conservation area, Mr Henderson advised that replacement windows should be of the same traditional design and material. In relation to the query as to whether the other neighbouring properties had planning permission for their UPVC windows, Mr Henderson stated that this information was not known however should not be considered when making a determination on this case as each application should be considered on its own merits in accordance with the paperwork supplied and in conjunction with the policies in the adopted MLDP 2020.
- 2.8 Councillor Ross was of the view that, in terms of fairness, planning permission should be granted as he could see from the photographs of the surrounding area, which had been provided instead of a site visit, that there were many properties with UPVC windows nearby and that it was clear that Policy EP9 had not been observed in this conservation area. He further stated that UPVC windows are more efficient and as the Council has climate change as one of its priorities then this is a relevant material consideration to depart from policy EP9. Councillor Ross therefore moved that the MLRB uphold the appeal and grant planning permission in relation to Planning Application 21/01784/APP as an acceptable departure from policy EP9 (Conservation Areas) in terms of UPVC windows being more efficient which is in line with the Council's Climate

Change Strategy and also in terms of fairness as this policy had not been observed in this conservation area.

- 2.9 The Chair seconded Councillor Ross' motion and agreed with his points in relation to fairness, UPVC windows being more efficient than wooden and further stated that UPVC windows are safer than wooden in terms of fire safety and also more durable given that the property is next to the sea. The Chair also stated that, in relation to policies EP3 (Special Landscape Character) and DP1 (Development Principles) he was of the view that the proposal is in accordance with these policies.
- 2.10 In response, Ms Webster, Planning Adviser advised that efficiency and maintenance are not relevant material considerations when determining planning application.
- 2.11 Councillor Cameron agreed that decisions should be fair however should also be in line with policies in the adopted MLDP 2020 and moved that the MLRB uphold the original decision of the Appointed Officer and refuse planning permission in relation to Planning Application 21/01784/APP as it fails to comply with policies EP9 (Conservation Areas) and related Replacement Windows and Doors Guidance, EP3 part b Special Landscape Character and DP1 Development Principles of the MLDP 2020. This was seconded by Councillor Keith.
- 2.12 On a division there voted:

For the Motion (3):	Councillors Ross, Macrae and Dunbar
For the Amendment (5):	Councillors Cameron, Keith, Harris, McBain and McLennan
Abstentions (0):	Nil

- 2.13 Accordingly, the Amendment became the finding of the MLRB and it agreed to uphold the original decision of the Appointed Officer and refuse planning permission in relation to Planning Application 21/01784/APP as it fails to comply with policies EP9 (Conservation Areas) and related Replacement Windows and Doors Guidance, EP3 part b Special Landscape Character and 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.

