



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR274
 - Application for review by Mr Stephen Birtwistle against the decision of an Appointed Officer of Moray Council
 - Planning Application 22/00140/APP – Replace modern windows that have failed for other modern windows at 6 Burnside Street, Findochty
 - Date of decision notice: 30 August 2022
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Decision

The MLRB agreed to uphold the request for review and grant planning permission/planning permission in principle, subject to the conditions appended to this decision notice. Attention is also drawn to the informative notes which follow the conditions.

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 18 August 2022.
- 1.3 The MLRB was attended by Councillors Macrae, Dunbar, Cameron, Harris, Keith, McBain, Ross and Warren.

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 development is contrary to Policy DP1: Development Principles, Policy EP10: Listed Buildings 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:

1. The use of non-traditional materials such as UPVC is not acceptable for use on listed buildings and the proposed UPVC windows do not preserve the character and special historic interest of the listed building.
 2. The use of UPVC windows would not be in compliance with Historic Environment Scotland advice on alterations to listed buildings (Managing Change in the Historic Environment - Windows) nor with the Moray Council's Replacement Windows and Doors Guidance which is clear that the use of non-traditional materials such as UPVC will not be acceptable in listed buildings.
 3. The proposed development would not preserve and enhance the character and appearance of Findochty 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, both the Legal and Planning Advisers advised that they had nothing to raise at this time.
- 2.4 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.
- 2.5 During discussion, Councillor Ross stated that it was clear that the windows in the property needed replaced. He noted that there was already a lot of houses in the conservation area that had UPVC windows. He also noted the climate emergency and the cost of living crisis. In all the circumstances he moved that the MLRB uphold the appeal and grant planning permission in respect of Planning Application 22/00140/APP as an acceptable departure to policies DP1 (Development Principles), Policy EP10 (Listed Buildings) 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, stating that, in his view, it was unfair to impose this financial burden on the Applicant. This was seconded by Councillor Warren.
- 2.6 Councillor McBain agreed with Councillor Ross in that it was clear that the windows needed to be replaced and noted that the existing windows were aluminium and not wood and was of the view that UPVC windows would be more in keeping with the character of the area than aluminium.
- 2.7 Councillor Keith stated that the subject of replacing windows in conservation areas and on listed buildings with UPVC is regularly debated however the Council has adopted the policies within the MLDP 2020 therefore should uphold them. He therefore moved, as an amendment, that the MLRB uphold the original decision of the Appointed Officer and refuse planning permission in respect of Planning Application 22/00140/APP as the application is contrary to policies DP1 (Development Principles), Policy EP10 (Listed Buildings) and Policy EP9 (Conservation Areas) of the adopted Moray MLDP 2020 and, as a

material consideration, associated Replacement Windows and Doors Guidance. This was seconded by Councillor Cameron.

2.8 On a division there voted:

For the Motion (5):	Councillors Ross, Warren, Dunbar, Macrae and McBain
For the Amendment (2):	Councillors Keith and Cameron
Abstention (1):	Councillor Harris

2.9 Accordingly, the Motion became the finding of the MLRB and it was agreed to uphold the appeal and grant planning permission in respect of Planning Application 22/00140/APP as an acceptable departure to policies DP1 (Development Principles), Policy EP10 (Listed Buildings) 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.

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.

IMPORTANT NOTE

YOU ARE OBLIGED TO COMPLY WITH THESE CONDITIONS AND NOTES

SCHEDULE OF CONDITIONS

By this Notice, Moray Council has **GRANTED PLANNING PERMISSION** for this proposal subject to conditions as appropriate to ensure implementation of the proposal under the Town & Country Planning (Scotland) Act 1997, as amended. **It is important that these conditions are adhered to and failure to comply may result in enforcement action being taken.**

CONDITION(S)

Permission is granted subject to the following conditions: -

ADDITIONAL NOTES FOR INFORMATION OF THE APPLICANT

The following notes are provided for your information, including comments received from consultees:-

THE DEVELOPMENT MANAGEMENT & BUILDING STANDARDS MANAGER has commented that:-

- The developer should note as this is a listed building Listed Building Consent is require to change the windows. An appeal is currently pending with the Directorate of Planning and Environmental Appeals on the refusal by Moray Council of application 22/00139/LBC which sought such consent

LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT

The following plans and drawings form part of the decision:-

Reference	Version	Title
001		Proposed elevation
002		Proposed elevation
003		Proposed elevation
004		Proposed elevations
		Location plan
		Specification notes

IMPORTANT NOTES ABOUT THIS DECISION

DURATION OF THIS PERMISSION

In accordance with Section 58 (i) of the Town and Country Planning (Scotland) Act 1997 as amended, the development to which this permission relates must be begun not later than the expiration of 3 years beginning with the date on which this permission is granted.

If the development has not commenced within this period then this permission shall lapse unless there is a specific condition attached to this permission which varies the stated timescale.

COMMENCEMENT AND COMPLETION OF THE DEVELOPMENT

The following are statutory requirements of the Town & Country Planning (Scotland) Act 1997, as amended. Failure to meet their respective terms represents a breach of planning control and may result in formal enforcement action. Copies of the notices referred to below are attached to this permission for your use.

NOTIFICATION OF INITIATION OF DEVELOPMENT

S.27A of the 1997 Act, as amended requires that any person who has been granted planning permission (including planning permission in principle) and intends to start development must, as soon as practicable after deciding the date they will start work on the development, give notice to the planning authority of that date. This ensures that the planning authority is aware that the development is underway and can follow up on any suspensive conditions attached to the permission. Therefore, prior to any work commencing on site, the applicant/developer must complete and submit to Moray Council, as planning authority, the attached Notification of Initiation of Development.

NOTIFICATION OF COMPLETION OF DEVELOPMENT

S.27B of the 1997 Act, as amended requires that any person who completes a development for which planning permission (including planning permission in principle) has been given must, as soon as practicable after doing so, give notice of completion to the planning authority. This will ensure that the planning authority is aware that the development is complete and can follow up any planning conditions. Therefore, on completion of the development or as soon as practicable after doing so, the applicant/developer must complete and submit to Moray Council, as planning authority the attached Notification of Completion of Development.

NOTIFICATION OF COMPLETION OF PHASED DEVELOPMENT

Under S.27B(2) of the 1997 Act, as amended where permission is granted for phased development, the permission is subject to a condition (see Schedule of Conditions above) requiring the applicant/developer as soon as practicable after each phase to give notice of that completion to the planning authority. This will allow the planning authority to be aware that particular phase(s) of the development is/are complete.

When the last phase is completed the applicant/developer must also complete and submit a Notification of Completion of Development.



THE MORAY COUNCIL

NOTIFICATION OF INITIATION OF DEVELOPMENT

Section 27A Town and Country Planning (Scotland) Act 1997

Application Number

Date Decision Issued

Location and Description of
Development

**Please note that all suspensive conditions must be discharged prior to
commencement of development**

Date works are to Commence	
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Name, Address and contact details of developer

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**The Full name and Address and contact details of the landowner, if a
different person**

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Where an agent is appointed, their full name and contact details

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Signed

Name (Print)

Date

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Please complete and return this form to:

**The Moray Council, Development Management Manager, Council Offices, High
Street, Elgin, Moray IV30 6UG**

OR

E-mail: development.control@moray.gov.uk



THE MORAY COUNCIL

NOTIFICATION OF COMPLETION OF DEVELOPMENT

Section 27A Town and Country Planning (Scotland) Act 1997

Application Number

Date Decision Issued
Location and Description of
Development

Date of completion of works	
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Name, Address and contact details of developer

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The Full name and Address and contact details of the landowner, if a different person

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Where an agent is appointed, their full name and contact details

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Signed

Name (Print)

Date

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Please complete and return this form to:

The Moray Council, Development Management Manager, Council Offices, High Street, Elgin, Moray IV30 6UG

E-mail: development.control@moray.gov.uk