



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR277
 - Application for review by Mr and Mrs Hancox c/o Mr John Wink, John Wink Design against the decision of an Appointed Officer of Moray Council
 - Planning Application 21/01664/PPP – Erect dwellinghouse on site at Stratton Wood, Fochabers
 - Unaccompanied site inspection carried out by the MLRB on 10 November 2022
 - Date of decision notice: 6 December 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 17 November 2022.
- 1.3 The MLRB was attended by Councillors Macrae, 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 proposal for a new house on this site would not comply with the siting requirements of policies DP1 (Development Principles) and DP4 (Rural Housing) and would result in the permanent loss of woodland which is

unacceptable in terms of policy EP7 (Forestry Woodlands and Trees) and refusal is recommended.

- 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 raised at this time.
- 2.4 The Legal Adviser advised that the Applicant had provided new information with his Notice of Review application in the form of additional photographs of the site, information in respect of fly tipping in the area and further information relating to compensatory planting of woodland. The Legal Adviser sought clarification from the MLRB as to whether it wished to consider this information, in which case consideration should be given as to whether a further procedure should be carried out in the spirit of fairness, to allow the Appointed Officer to comment on this new information which would result in the case being deferred until the next meeting of the MLRB.
- 2.5 In response, Councillor Warren stated that, having been on the site visit and having read the paperwork, she was of the view that she had enough information to make an informed decision. The other Members of the MLRB agreed with her.
- 2.6 Councillor Harris, having considered the case in detail raised concern in relation to the impact on wildlife, flora and fauna should the development go ahead and stated that she agreed with the original decision of the Appointed Officer and moved that the MLRB refuse the appeal and uphold the original decision of the Appointed Officer as the proposal is contrary to policies DP1 (Development Principles) , DP4 (Rural Housing) and EP7 (Forestry, Woodlands and Trees) of the Moray Local Development Plan (MLDP) 2020. This was seconded by Councillor Warren.
- 2.7 Councillor McBain, having considered the case in detail and having visited the site in question, was of the view that the proposal complied with policy EP7 (Forestry, Woodlands and Trees) as no tree is being felled in order for the development to take place. With regard to policy DP4 (Rural Housing), Councillor McBain was of the view that the proposal complied with this policy as the house would be surrounded by trees on 3 sides therefore would have no impact to neighbouring properties. In relation to policy DP1 (Development Principles), Councillor McBain stated that, in his opinion, the proposed design and scale of the house fits within the conditions of this policy. Councillor McBain further stated that he was very familiar with the site having grown up in the area and stated that it was never woodland and was often used for fly tipping and, in his opinion, the proposed development would be an improvement to the area. Taking this into consideration, Councillor McBain moved that the MLRB uphold the appeal and grant planning permission in respect of Planning Application 21/01664/PPP as, in his opinion, the proposal complied with policies DP1 (Development Principles) , DP4 (Rural Housing) and EP7 (Forestry, Woodlands and Trees) of the MLDP 2020. This was seconded by Councillor Macrae.

2.8 In response, Ms Webster, Planning Adviser advised that the definition of woodland did not just apply to trees but included the ground, vegetation and soil. She further advised that the fact that the area had been used for fly tipping in the past should not be used as a material consideration when considering the planning application.

2.9 On a division there voted:

For the Motion (5):	Councillors Harris, Warren, Cameron, Keith and Ross
For the Amendment (2):	Councillors McBain and Macrae
Abstentions (0):	Nil

2.10 Accordingly, the Motion became the finding of the Meeting and the MLRB and it was agreed to refuse the appeal and uphold the original decision of the Appointed Officer as the proposal is contrary to policies DP1 (Development Principles) , DP4 (Rural Housing) and EP7 (Forestry, Woodlands and Trees) 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.

