

POR.NOR.001

## SUPPORTING DOCUMENT 001

F.A.O

Clerk to:

The Moray Council Local Review Body

Economic Growth & Development  
The Moray Council  
High Street  
Elgin  
IV30 1BX

Tuesday 20th December 2022

Dear Sir / Madam

### **NOTICE OF REVIEW      22/01066/APP 35 Gordon Street, Portgordon AB56 5QR**

Further to the Moray Council determination **REFUSAL of 22/01066/APP** for the application to 'alter and extend 35 Gordon Street, Portgordon, Buckie, Moray AB56 5QR' we submit this 'Notice of Review' [NOR].

We request that The Moray Council review the decision made by the officer Ms F Olsen for this 'local development' case under section 43 [A] [17] of the Town and Country Planning [Scotland] Act 1997, this is within three months from the date of the Refusal of Planning Permission notice **30.09.22**.

### **001 Grounds for Review - appeal statement**

We include with this NOR the following Supporting Documents:

- 002** - Supporting Document - Appeal statement local precedents.
- 003** - Supporting Documents - Original Application - design docs., contextual information, heritage statement & Design & Access Statement [DAS].
- 004** - Supporting Documents Original application - officer dialogue/letters POR.001 & 002.
- 005** - Supporting Document - email of support from Chair of Portgordon Community Trust.

*\*\*Note all Moray correspondence/policy/determinations notes/quotations are shown in blue italic\*\**

## **001.1.0 Request for review against Refusal Notice**

The request for Review is made against the determination refusal statement by The Moray Council:

*The Council's reason(s) for this decision are as follows:*

*The proposed alterations and extension are contrary to Moray Local Development Plan 2020 policy DP1(i)(a) for the following reasons:*

*1 - The proposed rear dormers are considered unacceptable as they are of an irregular shape which is not keeping with the form and character of the existing traditional property and surrounding area.*

*2 - The proposed first floor extension incorporates an irregular roof shape giving the appearance of a two storey flat roof extension which creates unnecessary bulk and is incongruous with the main parent property.*

## **001.1.1 Application proposal intent**

The application **22/01066/APP** was made in the mitigation of The Moray Council Policy proposals embodying [see Supporting Document 003 DAS]:

- refurbishment of a property that stood empty for 3 years.
- creation of multi generational living, with only a very small increase in actual footprint providing for ground floor living space, reduced mobility living/sleeping area [page 11].
- High environmental build methodology in light of the Moray Council's stated 'Climate Emergency' [page 13-15] & [see policy J below para 001.3].
- a subordinate proposal in relation to the host dwelling.
- a clear delineation of old [host dwelling] and new subordinate proposal.

These are all mitigating factors that are embodied in The Moray Council planning policy and have to be considered in the overall balance of a determination.

This has not happened.

## **001.1.2 Review parameters**

This request for this review focuses on the issue of the refusal not being wholly supported by DP1 policy & the fact there are instances locally of DP1 policy being **interpreted differently** to support other similar situations with approvals of other recent applications:

- the fact that irregular shapes [refusal para 1 above] are found historically all over Portgordon and the Moray district, that irregular and asymmetrical buildings are typical of prevailing vernacular style and that there is distinct evidence of irregular and asymmetrical buildings approved by The Moray Council planning determination process over recent years under the same planning policy regime negates the refusal experienced with this application [ see Supplementary Document 002 ].
- the fact that the extension cannot under current policy be judged on 'irregular shape' [asymmetry] as there is no prescriptive policy that rules against asymmetry.
- the fact that the proposal does '**not look like a flat roof**' and that there is no prescriptive policy that rules against flat roofing.
- the fact that the proposal in context is not bulky, at Pre App **21/01027/PEHOU** the scope, volume and massing of the proposal was accepted - only a pitched roof to the 'dormer' was required [ see officer comment 001.3.0 para 3 below ].
- the 'subjective view that the asymmetry and the perceived bulk' is over ruled by the precedents of The Moray Council Planning determinations in favour of similar and more extensive examples on other recent applications [ see Supplementary Document 002 ].
- the fact that the refusal reasons given actually differ from the wording of DP1.

**The applicant** Ms Lambert wishes to stress and has asked us to state:

- *'I believe that the officers have not paid attention to the detail in the application, they have not properly looked at the submission which places the design fully in context and it is a well rounded application that understands Portgordon and its heritage and it's obvious that they [officers] are contradicting themselves'.*
- *'the process was very frustrating as we had embodied the changes requested at the PRE APP, to then be blocked by a Planning Department 'U' turn at the application stage'.*
- *'it appears that there is no consistency in the relation to this determination and recently passed applications'.*

## **001.2 Review context**

We request review of the refusal in the context of the original application **22/01066/APP**, and the processing by Moray Council's department of Economic Growth & Development officers.

In context with the Pre App submission **21/01027/PEHOU** and the guidance offered by Moray Planning Officers, showing an explicit 'U' turn at **22/01066/APP** against the advice and supporting statements offered by Planning Officers.

The interpretation of the **Policy DP1 [I] [a]** with regard to Moray Council's Planning's determination of this and other applications within the Moray region, since the adoption of

the 'Moray Local Development Plan 2020 [MLDP], the policy for determination of all Planning Applications in Moray.

We show here that there are inconsistencies and unaligned personal 'subjective' decisions being made by officers, which have no legal bearing for this determination of this application under **Policy DP1 [I] [a]** and that there is a rewording of the intent within the refusal notice from the explicit intent of DP1 [ para 001.3.2 below ].

**The test to the application proposal is if it CAUSES HARM to the INTENT of DP1 [I] [a] - we have demonstrated with the application that NO HARM would be caused and there is no departure from any prescriptive intent of any adopted policy, we extend here our reasons for the request for review.**

### **001.3.0 Application process of determination**

During the processing of the application by The Moray Council, despite the intent to refuse the application, there was very little time spent by Moray Planning to engage with the applicant and offer meaningful guidance - repeatedly officers without recourse to policy, expected a design change to suit their own internal sensibilities - from our phone log:

- 3 minute telephone conversation Fiona Olsen, Case Officer 07.09.22, when the only guidance given was to alter the scheme, even though we discussed that there was no policy to support a proposed refusal.
- 2 minute telephone conversation Lisa MacDonald, Senior Planner 09.09.22, when it was actually put to us that the concern was more the dormer window not the proposed extension to the bathroom at two stories [now deemed to be bulky], the officer stated [to quote] that 'the mix of styles was irrelevant', the distinct 'form of the rear extension was agreeable', the 'form of the Pre App was preferable' and 'the modern form was good' - they felt as a department they should have offered 'better communication'. We stated that as we were clear that there was no prescriptive policy that could warrant refusal, we would await a determination, a refusal notice has to be supported by a written report supporting against policy the reasons for refusal - as we were receiving no dialogue to explain a refusal in policy terms.
- 2 minute telephone conversation from Lisa MacDonald in response to our letter POR.P.003.22 [ Supporting Document 004 ], she stated 'not sure where we go now', as we'd presented evidence of support from the PRE APP, the options we could build under Permitted Development [PD] which were bulkier and more intrusive to neighbours than the application [ Supporting Document 004 POR.P.003 page 5 ]. Despite our conversation 09.09.22 the officer expected us to make changes, even when we'd explained that we'd been broadly supported by the officer at the PRE APP and the applicant didn't wish to compromise the design on the grounds of subjective views not supported by adopted policy.
- 2 minute conversation with Beverley Smith HoP 23.09.22 brief conversation that repeated the department line of wanting change, we explained as there was still no guidance as to why the application was to be refused, we'd await the Refusal Notice and officers report, HoP stated 'we don't want refusal', we stated 'neither do we' but why should we change a scheme on subjective grounds, for a scheme supported at PRE APP, when there is no prescriptive policy to warrant a refusal of the application, when it is clear that the scope of the application goes above

and beyond what is normally presented by a householder to extend and modernise a property' [see para 001.1.1 above and Supporting Document 003 the DAS ].

### **001.3.1 Application interpretation**

The Officer Ms Olsen contacted us via email 22.08.2022, following her site visit, she accepted the overall intent of the application but offered the 'subjective opinion' with regard to the style of the proposals:

*Dormer windows – I do not feel that these relate to the character of the existing property or surrounding area. The response my colleague Shona gave to the 'pre-application' was that we would look for a sloped roof to be added on the box dormers originally shown. I would ask you to consider this design option instead for the dormers.*

We bring the Review Panel's attention to the response from the the PRE APP by her colleague:

*In terms of the policy wording it is **ultimately box dormers which are not permissible under the terms of the policy, and could be addressed by deploying a shallow downward pitch to the single box dormer window.***

[ see Supporting Doc 4 letter NMD POR.P.003 page 4 showing the box dormer ]

We had **incorporated a sloping roof** to the dormer window, there is nothing prescriptive in DP1 that demands symmetry, it only prescribes:

*MLDP 2020 Vol 1 page 35 DP1 para [g] 'Pitched roofs will be preferred to flat roofs and box dormers are not acceptable'*

[ see Supporting Doc 4 letter NMD POP.P.001 page 8-9 ]

### **001.3.2 Application mitigating policy**

We note that the MLDP PP1 requires:

*PP1 (i) Character and Identity - Create places that are distinctive **to prevent homogenous 'anywhere' development***

PP1 refers to distinctiveness, architectural identity, detailing and materials - to create successful healthy places that encompass distinctive urban form.

We are conscious with this proposal, it's important not to have a slavish default to quasi traditional safety net of architecture, we need to be creative and foster a 21st C forms that relate to modern living and can be 'different' whilst relating in style and form to the vernacular context - though nothing we propose here is challenging or offensive or would cause harm [ see Supporting Document 003 DAS pages 9-10 ] of various traditional, his-

toric and vernacular forms that are asymmetrical, contemporary or irregular, the application is our interpretation of traditional forms within a contemporary idiom.

The proposal shows 'what is new' and how it contrasts with the existing, giving an architectural dialogue of sub-urban development over time in contrast with the host dwelling.

In relation to the intent of DP1, it is important to stress that this proposal **causes no harm**.

The Local Plan DP1 states that:

*“Development Principles - will be applied reasonably taking into account the **nature and scale of a proposal and individual circumstances**”*

This is key to determination of applications, there is nothing unreasonable about the application proposal, it embodies environmental, heritage and contextual relationships.

It causes no harm and it does comply with policy. Para 001.1 above and **the refusal statement** says: ‘

*not keeping with the form and character of the existing traditional property and surrounding area’*

**DP1 actually reads:**

*a) The **scale, density and character must be appropriate to the surrounding area and create a sense of place***

This is quite different, the intent of DP1 is ‘**appropriate character**’, Portgordon has character through a diversity of styles, scales and densities. Our proposal embodies the intent of DP1 and in its setting and context it is not **inappropriate**.

The proposal cannot be seen from neighbouring properties, it cannot be seen from the public domain, it is screened from the coastal trail by the earth bunding and garden planting from the south and is wholly below the roof from the north Gordon Street views. [ Supporting Document 004 letter POR.P.003 pages 2-3 & letter POR.P.001 page 4 ]

Supporting Document 003 of the original application design information POR.P.008 shows that the west side views from No. 33 are screened by the existing single storey area and that the view from No. 37 to the east is screened by the proposed pitched roof.

### **001.1.3 Policy interpretation**

Bulk and scale of the proposal is not the issue here, it is the officers interpretation of ‘**appropriate character**’, we gave examples of the varied character around Portgordon and the varied style, forms and shapes, massing and structures found up and down the Moray coast.

Supporting document 003 the DAS pages 9-10 and supporting document 004 pages 10-11 and Supporting Document 002 illustrate where we have collated various recent approvals of schemes that show the **diversity of character** and where officers have recently supported proposals that **meet their interpretation of policy** or proposals that create **diversity of character**, examples that show over archingly a demonstration that

'form and character' in Portgordon and Moray is not a narrow prescriptive style, particularly in the areas to the rear and behind property where many shapes are ad-hoc, giving Portgordon its own and varied style, as typically found around Moray.

The proposal maybe different, though it is 'not inappropriate'. **A sense of place is created by individuality and unique style, not sameness.**

Moray Planning cannot say that these proposals for 35 Gordon Street are 'not in keeping' to Moray, they maybe different in some respects but **the character they present is not harmful** to Moray - the differences in Moray are its character. The policy DP1 requires 'appropriate' design, not that it has to mimic design.

We have demonstrated that we are creating a sensitive, yet distinctive proposal that relates to the scale, setting and traditional coastal area - that **fosters as required by policy DP1 a 'sense of place' and we are clear that for the applicant we need to provide a nearness to need.**

### **001.3.4 Policy mitigating the application**

We have created a proposal that mitigates Moray Policy:

*d) Demonstrate how the development will **conserve and enhance the natural and built environment and cultural heritage resources**, retain original land contours and integrate into the landscape.*

And does not:

*e) Proposals must not adversely impact upon neighbouring properties in terms of privacy, daylight or overbearing loss of amenity.*

And embodies the need for:

*h) Existing stone walls on buildings and boundaries must be retained. Alterations and extensions must be compatible with the character of the existing building in terms of design, form, choice of materials and positioning and meet all other relevant criteria of this policy.*

*j) All developments must be designed so as to ensure that all new buildings avoid a specified and rising proportion of the projected greenhouse gas emissions from their use (calculated on the basis of the approved design and plans for the specific development) **through the installation and operation of low and zero-carbon generating technologies.***

The 2020 Moray Settlement Statement for Portgordon proposes:

- *Development Strategy / Placemaking Objectives*
- *Protect the character of the existing settlement*
- *Provide support for proposals to re-use the harbour*
- *To promote interest and encourage housing development on designated sites - Development proposals in the Special Landscape Areas must reflect the traditional settlement character in terms of siting and design and respect the special qualities of the designation.*



### 001.3.5 Determination inaccuracies

The Officer Ms Olsen's contact email during the Planning Application determination period, 22.08.2022 also stated:

*Two storey extension – Again I do not feel that the design, shape and character of this extension relates to the main property. I also feel there is wasted space internally with a the roof void. Could a traditional gable extension provide the required accommodation over two floors whilst also maintaining the appropriate ceiling height? Although from the west the roof would appear pitched, from the east the extension appears box-like and I am not keen to support this.*

This was the guidance dialogue offered during the determination process of the application, it **varies from the REFUSAL NOTICE**.

Also See 001.2.5 below, where the officer approves a dormer window that looks like a box dormer [ Supporting Document 002 page 5].

The email statement chooses to offer design advice which is irrelevant, as the officer does not understand or is not qualified to offer guidance on the methods of construction, build costs, existing structure or to dictate the amount of usable space in what she assumes is the height and volume of the existing roof space [ see Supporting document 004 NMD POR.P.001 letter pages 3-4].

The officer surmises that the scheme offers wasted space, **the officer has not been inside the house**, where ceiling heights are lower than standard doorways and the sloping roof presents a tent like interior.

The proposal, through design skill, balancing many factors, offers supremely usable space and maximises available volume, with presumed 'dead' space within roof pitches intended for storage - this is dangerous territory for the officer and will be dismissed here as ill advised comment - the key here is their interpretation of **'what does it look like' and the fact they find it different**, don't like it and want to rule against it - officers have to be careful not to stray into areas that are **not mitigated by Planning Policy or their departmental remit**.

The officer suggests that the scheme from 'the west is pitched' - we think they mean the east?

Then states 'from the east appears box like' - we think they mean the west?

**We question the officers clear understanding of the context and the information submitted** - the roof extensions are not visible from any neighbours as the flat roof of the existing store on the western boundary screens the views to the roof from No. 33 and the pitched roof proposal screens views from No. 37.

We question whether the officer has spent the time to understand the application, whether the time has been spent to analyse the overall intent in the detailed breadth of the context of the application submission.

The applicant has asked us if we feel that the submission has been truly understood and read properly - we do not feel that the application has been fully assessed against all aspects of the intent, the detail of the presentation of the submission [ Supporting Document 003 ] and how that is supported by policy - officers offered in telephone conversation no mitigating policy to warrant a refusal [ para 001.3.0 ].



It is clear that there is an inconsistency with determination, the same officer approves [ see Supporting Document 002 page 5 ] a scheme against policy DP1 intent **21/00343/APP**, where a flat roofed dormer is approved, that is clearly visible from the public domain, creating a major '**bulky**' change to a roof scape in a manner similar to this application - it feels like our client, the applicant is being penalised for presenting a proposal that is 'different' while still appropriate and officers from a personal point of view **DON'T LIKE IT** so they refuse the application.

Another officer approves an extensive flat roof dormer in Cullen 21/00350/LBC, on a Listed Building in A Conservation Area wholly contradicting DP1 [ Supporting Document 002 pages 2-3 ] and an extensive very bulky square 'box like' extension to a house on the highly visible harbour front in Findochty 21/01657/APP [ Supporting Document 002 page 4 ]

The **REFUSAL of 22/01066/APP** determination states:

*2 - The proposed first floor extension incorporates an irregular roof shape giving the appearance of a two storey flat roof extension which creates unnecessary bulk and is incongruous with the main parent property.*

This comment about bulk is a departure from the dialogue given during the determination process, see the statement below from the officer, it is also a departure from the officers Pre App response advice where it was stated:

*The contemporary design proposed is recognised and understood, however, reference is drawn to part g of the policy which highlights that pitched roofs will be preferred to flat roofs and box dormers are not acceptable. In light of this parts of the design could be reconsidered, albeit it is recognised that the flat roof on to the adjoining property serves to limit the height of that part of the development and incorporates a living/green roof which could bring bio diversity benefits. It is also acknowledged that flat roofs are already present at the property. **In terms of the policy wording it is ultimately box dormers which are not permissible under the terms of the policy**, and could be addressed by deploying a shallow downward pitch to the single box dormer window*

There is no PRE APP guidance telling the applicant that there is 'unnecessary bulk' that is incongruous to the main parent property' - the mass and shape of the scheme has not changed, only to introduce as requested **pitched roofing** to the dormer - and over the roof extension that **reduces** the height and square 'bulk'.

The Pre App officer offered, that other than the 'dormer' needing pitched roof no other part of the scheme would be refused as '**ultimately box dormers are not permissible under the terms of the policy**', so now with the Full Planning Application to use DP1 to refuse the application is spurious and questionable, when before Moray Planning were previously in support of the application intent.

To introduce in the REFUSAL NOTICE a 'reinterpretation' of DP1 calls in the legality of the Moray Council determination process through a subjective reinterpretation of policy to suit an officers personal position regarding style.

### 001.3.6 Supporting Moray precedents

We note other applications over the last two years since the adoption of the MLDP 2020 and previous applications under the auspices of the older H4 policy - policies that had the same intent.

These approvals, often in Conservation Areas, part of historic or Listed buildings have been granted, using the same DP1 policy determinations of schemes that are 'different, modern, contemporary of varying scale and style are deemed to have been acceptable.

The **DP1 or previous H4** policy is interpreted to support the applications. The officers reports say that like this application the proposals were **SUBORDINATE** or although different gave a **CLEAR DELINEATION OF OLD & NEW**, allowing the proposals to be clearly distinguishable as the evolution of the host dwelling/buildings:

- The approval on the edge of Portgordon for an extensive extension to the **Category B Listed Icehouse** with a cafe and living space 13/01730/PPP as a two storey building with an alien form in relation to the icehouse, a proposal that blocks open views to the sea from neighbours and is highly visible in the SLA [ Supporting Document 002 page 6 ] totally contradicts the refusal in this instance, whilst the 2013 policies were superseded by the 2020 MLDP the policy intent is accepted to be unchanged.
- Supporting document 002 page 7 illustrates the recent approval of a large extension to a Portgordon Cottage in a highly visible situation, in a form that is larger footprint and in a form higher than the host dwelling presenting a two storey dwelling space - deemed to be acceptable under DP1.
- Supporting document 002 page 8 illustrates the approval of an extension of two storey height on the boundary dwarfing neighbours with a modern symmetrical MONO pitch roof, flat roof link and a box dormer - a style that is alien to the host dwelling, towering over the existing house as it is higher than existing eaves and roof ridges.

This precedent was ignored when presented to officers during the determination, this is a neighbouring approval in the same row of properties on Gordon Street with a more imposing design than No. 35 [ Supporting Document 004 letter POR.P. 001 page 6 ].

- In the Cullen Seatown Conservation Area approval 09/00783/FUL - yes, an older 2009 remodelling - adjacent to and opposite category C listed property is the 'modernist' interpretation of the Moray vernacular, a different style and form to the immediate locality and context but a scheme that offers and gives '*scale, density and character [that] must be appropriate to the surrounding area and create a sense of place*' to the heritage setting [ Supporting Document 002 page 9 ].
- Also in Cullen in the Conservation Area of the Seatown is approval 15/02162/APP, the addition of a modernist box structure, higher than the eaves of the host dwelling a category C listed dwelling house, a structure that is providing a 1st floor terrace that overlooks neighbours and private space, a modern structure that is highly visible in the public domain of the Conservation Area [ Supporting Document 002 page 10 ].

We view all these examples as complementary to the quality of diversity in Moray and commend that we are doing no different with the intent at No.35 Gordon Street.

These **policies cannot be reinterpreted to suit the refusal** of this application, when in other instances with the same interventions in terms of modern style and scale where on other schemes approvals have been given - the application for Planning Approval is a

legal process and not open to interpretation to suit personal or subjective architectural taste by officers.

Supporting Document 002 **PRECEDENTS** give various examples where similar situations of bold development proposals have been approved in much more prominent Conservation, Heritage or within Listed buildings, that have a much greater impact in terms of scale and bulk on the host dwelling and the setting than this application which is hidden and small in scale.

We have annotated Supporting Document 002 in **green** the context and relevance of the approvals.

Though it has to be realised that all these approvals have **not caused harm** and have contributed to the context and character of the setting and Moray.

#### **001.4 Conclusion**

We request that the Moray Review Panel uphold our review and support an approval of the proposals on the grounds that:

- the design of the alterations and extension are not contextually inappropriate
- asymmetrical form or irregular [different] shape is not outlawed in Moray

The applicant thanks the Moray Review Panel for their time and attention with this review request.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Nick Midgley', with a stylized flourish at the end.

**Nick Midgley** BA Hons Dip Arch Oxford

**NMD**

cc applicant Ms Claire Lambert