



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR284
 - Application for review by Ms Claire Lambert, c/o Mr Nick Midgley, Nick Midgley Design against the decision of an Appointed Officer of Moray Council
 - Planning Application 22/01066/APP – Alter and extend dwellinghouse at 35 Gordon Street, Portgordon, Buckie
 - Unaccompanied site inspection carried out by the MLRB on 14 February 2023
 - Date of decision notice 30 May 2023
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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 on the following occasions:- 16 February 2023 and 20 April 2023.
- 1.3 On all dates, the MLRB was attended by Councillors Macrae (Chair), Dunbar (Depute Chair), Cameron, Harris, Keith, McBain, Ross, Van Der Horn and Warren.

2. MLRB Consideration of Request for Review

16 February 2023

- 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 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.
- 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 raise at this time.
- 2.4 The Legal Adviser advised that National Planning Framework 4 (NPF4) had been introduced by the Scottish Government and formally adopted by the Council on Monday 13 February 2023 and now forms part of the Moray Local Development Plan (MLDP) 2020 and all planning applications determined after the date of 13 February 2023 should take NPF4 into consideration. He advised that there are 3 requests for review going through the Local Review Body (LRB) process, 2 of which were on the agenda for consideration today and another due to be heard at the next meeting of the Moray Local Review Body (MLRB). He confirmed that none of these applications had been assessed by the Appointed Officer against NPF4 and acknowledged that, although NPF4 may not change the decision of the Appointed Officer, for fairness and completeness, the Appointed Officer, Interested Parties and the Applicant should be asked to comment on the planning application in light of NPF4. In terms of the LRB procedure, the Legal Adviser advised that, before considering any planning application, the MLRB should consider whether there is adequate information within the case to determine the planning application however in light of the newly adopted NPF4, for fairness and completeness, he recommended that the 2 cases due to be considered at the meeting today be deferred to allow the Appointed Officer, Interested Parties and the Applicant the opportunity to comment on the planning application, taking NPF4 into consideration where relevant. The Legal Adviser further advised that, should the MLRB agree with his recommendation, that comments would be sought from the Appointed Officer, Interested Parties and the Applicant for all future Notice of Review applications received that have not been considered against NPF4 ahead of the case being considered by the MLRB to avoid further deferral of cases.
- 2.5 Having considered the advice from the Legal Adviser, the Chair moved that the MLRB defer Cases LR284 and LR285 to allow the Appointed Officer, Interested Parties and the Applicant the opportunity to comment on the

planning application, taking NPF4 into consideration where relevant. This was seconded by Councillor Warren.

- 2.6 There being no-one otherwise minded, the MLRB agreed to defer Cases LR284 and LR285 to allow the Appointed Officer, Interested Parties and the Applicant the opportunity to comment on the planning application, taking NPF4 into consideration where relevant.

20 April 2023

- 2.7 Under reference to paragraph 4 of the Minute of the meeting of the Moray Local Review Body (MLRB) dated 16 February 2023, 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 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.
- 2.8 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.
- 2.9 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 raise at this time.
- 2.10 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.
- 2.11 Councillor Van Der Horn, having considered the case in detail, moved that the appeal be upheld and planning permission granted in respect of Planning Application 22/01066/APP. He acknowledged concerns in relation to the view of the proposal from the west however stated that this could be mitigated with a condition asking that more planting be provided. In terms of the design of the proposal, Councillor Van Der Horn was of the view that the modern design was acceptable and added to architectural diversity. He further noted the support of the local Portgordon Community Trust. With regard to some concerns of the proposal being viewed as a block, Councillor Van Der Horn suggested that new drawings could be submitted to mitigate against those concerns.
- 2.12 Councillor Cameron agreed with Councillor Van Der Horn's comments and seconded his motion.

- 2.13 Mr Hoath, Legal Adviser reminded the MLRB of the reasons for refusal set out in the Summary of Information report and sought clarification from Councillor Van Der Horn as to whether the policy complies with, or is an acceptable departure from, policy DP1 (Development Principles) (i)(a). He further noted Councillor Van Der Horn's comments in relation to increased planting and new drawings and asked if these were to be addressed by means of condition.
- 2.14 In response, Councillor Van Der Horn stated that this proposal would be an acceptable departure from policy as there are already examples of similar extensions in the area with a condition to add additional planting to mitigate against the impact from the view from the west. Councillor Van Der Horn went on to retract his previous comments in relation to additional drawings. Councillor Cameron confirmed that, after considering Councillor Van Der Horn's further comments, he still wished to second his motion.
- 2.15 Miss Donnachie, Planning Adviser advised that, should the MLRB be minded to uphold the appeal and grant planning permission, a condition could be added in relation to the increased landscaping requiring that a landscape plan be provided in addition to standard conditions and informatives. She further sought clarification from Councillor Van Der Horn as to whether he considered the proposal to be a departure from policy DP1(i)(a) or whether he was of the view the proposal complied with policy.
- 2.16 In response, Councillor Van Der Horn stated that in some way the proposal is a departure as the proposal has an impact however complied as it would not adversely affect the character of the street, and on the whole was of the view that the proposal complied with policy DP1(i)(a).
- 2.17 Councillor Ross, having visited the site and considered the case in detail agreed with the original decision of the Appointed Officer to refuse the application as it is contrary to policy DP1(i)(a) and moved as an amendment, that the MLRB agree to refuse the appeal and uphold the original decision of the Appointed Officer to refuse Planning Application 22/01066/APP as it is contrary to policy DP1 (Development Principles) (i)(a) of the MLDP 2020. This was seconded by Councillor Warren.

On a division there voted:

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|------------------------|--|
| For the Motion (6): | Councillors Van Der Horn, Cameron, Dunbar, Harris, Macrae and McBain |
| For the Amendment (3): | Councillors Ross, Warren and Keith |
| Abstentions (0): | Nil |

- 2.18 Accordingly, the Motion became the finding of the Meeting and the MLRB agreed to uphold the appeal and grant planning permission in respect of Planning Application 22/01066/APP as the proposal complies with policy DP1 (Development Principles) (i)(a) of the MLDP 2020 with the inclusion of a condition for the provision of increased landscaping including a landscape plan, as well as standard conditions and informatives.

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: -

1. The development to which this permission relates must be begun not later than the expiration of 3 years beginning with the date on which the permission is granted.

Reason: The time limit condition is imposed in order to comply with the requirements of section 58 of the Town and Country Planning (Scotland) Act 1997 as amended.

2. No development shall commence on site until a detailed landscape plan has been submitted to and approved in writing by the Council as Planning Authority. This plan shall include details of species, planting distance and size of all planting and reflect the requirement for planting along the western site boundary

Reason: to ensure that the development enhances the natural and built environment and does not adversely impact upon neighbouring properties.

3. All planting, seeding or turfing forming part of the approved landscape plan shall be carried out in the first planting and seeding season following the occupation of the development or the completion of the building works, whichever is the sooner. Any planting which (within a period of 5 years from the planting) dies, is removed or becomes seriously damaged or diseased shall be replaced in the following planting season with others of similar size, number and species unless this Council (as Planning Authority) gives written consent to any variation of this planning condition.

Reason - In order to ensure that the approved landscaping works are timeously carried out and properly maintained in a manner which will ensure that that the development enhances the environment

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:-

- 1 A Building Warrant will be required for the proposals. Should you require further assistance please contact the Building Standards Duty Officer between 2pm and 4pm or telephone on 03001234561. No appointment is necessary.

Alternatively e-mail buildingstandards@moray.gov.uk

- 2 Please note that if there is any evidence of bats during work then work should stop and Nature Scot contacted immediately for advice as bats are a European Protected Species

The TRANSPORTATION MANAGER has commented that

- Planning consent does not carry with it the right to carry out works within the public road boundary.
- It should be highlighted that an informal agreement is in place between the property owners within this localised area, to park only on the northern side of Gordon Street
- Public utility apparatus may be affected by this proposal. Contact the appropriate utility service in respect of any necessary utility service alterations which have to be carried out at the expense of the developer.
- No building materials/scaffolding/builder's skip shall obstruct the public road (including footpaths) without permission from the Roads Authority.

LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT

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

| Reference | Version | Title |
|-----------|---------|--------------------------------------|
| POR.P.007 | | Proposed south elevation and section |
| POR.P.027 | | Existing and proposed roo plan |
| | | Block Plan |
| POR.P.009 | | Proposed elevation |
| POR.P.010 | | Proposed east elevation |
| POR.P.006 | | Proposed first floor plan |
| POR.P.012 | | Proposed elevation |
| POR.P.008 | | Proposed south elevation |
| POR.P.005 | | Proposed ground floor plan |
| POR.P.011 | | Proposed west elevation and section |
| POR.P.014 | | Perspective view from south east |
| | | Location plan |
| POR.P.004 | | Site plan |

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 | |
|---------------------------------------|--|

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 | |
|------------------------------------|--|

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