



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR288
 - Application for review by Mr Michael Barron against the decision of an Appointed Officer of Moray Council
 - Planning Application 22/01451/APP – Retrospective permission for boundary fence at 94 Springfield Road, Elgin
 - Unaccompanied site inspection carried out by the MLRB on 14 June 2023
 - Date of decision notice: 3 July 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 retrospective planning permission was considered by the MLRB at the meeting held on 15 June 2023.
- 1.3 The MLRB was attended by Councillors Macrae (Chair), Dunbar (Depute), Cameron, Harris, Keith, McBain, Ross Van Der Horn 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:

1. The high level boundary fence is out of keeping with the established open aspect character of the existing site and neighbouring housing and would therefore fail to comply with Policy DP1 (i) (a).
 2. The high level fencing would partially enclose an area of open space to the rear of the property which requires natural surveillance in order to reduce crime and would therefore fail to comply with policy PP1 (ii).
- 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 Councillor Keith, having considered the case in detail, was of the view that, in relation to policy DP1, the fence was not out of keeping with the established open space character of the area and, in relation to policy PP1, stated that there was plenty natural surveillance at 3 out of 4 sides of the property and moved that the MLRB uphold the appeal and grant planning permission in respect of Planning Application 22/01451/APP as in his opinion, the proposal complied with policies DP1 (i) a) (Development Principles) and PP1 (ii) (Placemaking) of the Moray Local Development Plan (MLDP) including the suggested condition from the Transportation Service asking that the sections of the existing high fence be set back/reduced in height in accordance with the submitted drawing number 1 Revision A, within 3 months of the date of the decision notice. This was seconded by Councillor Ross.
 - 2.6 Councillor Van Der Horn moved that the MLRB dismiss the appeal and uphold the original decision of the Appointed Officer to refuse planning permission in respect of Planning Application 22/01451/APP as, in his opinion, the fence was considerably higher than the hedges/walls/fencing in other surrounding properties and that by creating a higher fence the street would be less visible from the property and hinder natural surveillance. This was seconded by Councillor Warren.
 - 2.7 On a division there voted:

For the Motion (5):	Councillor Keith, Ross, Dunbar, Macrae and McBain
For the Amendment (3):	Councillors Van Der Horn, Warren and Harris
Abstentions (1):	Councillor Cameron

- 2.8 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 22/01451/APP as the proposal complies with policies

DP1 (i) a) (Development Principles) and PP1 (ii) (Placemaking) of the MLDP 2020 including the suggested condition from the Transportation Service asking that the sections of the existing high fence be set back/reduced in height in accordance with the submitted drawing number 1 Revision A, within 3 months of the date of the decision notice.

Mrs Aileen Scott
Legal Services Manager
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. Within three months of the date of this decision notice the sections of the existing high boundary fence shall be set back/ reduced in height in accordance with submitted drawing number 1 Revision A.

Reason: To ensure acceptable development in the interests of road safety.

ADDITIONAL NOTES FOR INFORMATION OF THE APPLICANT

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

LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT

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

Reference	Version	Title
		Location Plan
		Elevations

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:

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