



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR291
 - Application for review by Mr Peter Ford c/o Colin Keir against the decision of an Appointed Officer of Moray Council
 - Planning Application 21/01545/APP - Change of use of bakery to restaurant and hot food takeaway with flat above and 2 no low cost housing units to the rear 9 New Street, Rothes.
 - Unaccompanied site inspection carried out by the MLRB on 13 September 2023
 - Date of decision notice: 19/09/2023
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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 14 September 2023.
- 1.3 The MLRB was attended by Councillors Macrae (Chair), Cameron, Harris, Keith, McBain, 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:

The proposal is contrary to the development plan (i.e. National Planning Framework 4 and the Moray Local Development Plan 2020) because the site is at risk of fluvial flooding from the nearby Broad Burn, as identified via SEPA flood maps and noted in the Flood Risk assessment that accompanied this application. The site is offered a degree of protection from flooding via the

Roths Flood Alleviation Scheme however during a 1 in 200 year event along with an allowance for climate change, flood water is likely to overtop the flood defences. The site is therefore at risk of flooding and a safe and flood free route to and from a secure place that is connected to ground above the design flood level and/or wider area. On this basis the proposal therefore fails to comply with the following development plan policies:

- NPF4 Policy 22 – Flood Risk and Water Management
- MLDP Policy EP12 – Management and Enhancement of the Water Environment
- NPF4 Policy 1 – Tackling the Climate and Nature Crises
- NPF4 Policy 2 – Climate Mitigation and Adaption

- 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 and Planning Advisers had any preliminary matters to raise, the Planning Adviser advised that she had nothing to raise at this time.
- 2.4 Mr Hoath, Legal Adviser, advised Members that there was a requirement to notify the Scottish Government if they intended to grant the application. There is an unresolved objection from SEPA who are a statutory consultee. He further advised that, if the LRB were so minded, it could only be a proposal to grant not full permission and full planning reasons would need to be stated for the proposal. The case would then be carried over to the next meeting in November. The MLRB would only be able to proceed after all of the documents have been provided to and reviewed by the Scottish Government.
- 2.5 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.
- 2.6 Councillor Van der Horn moved that the original decision made by the planning officer should be upheld given the response from SEPA. This was seconded by Councillor Harris, who had attended the site visit and knows the location.
- 2.7 Councillor Harris was also of the opinion that the proposal does not comply with NPF4 guidelines for transport.
- 2.8 In response the Planning Adviser advised that the Transportation Manager did not object to the original planning application as the bakery would already have attracted traffic and that the change to a take away would not increase this.
- 2.9 Councillor McBain moved an amendment that the review be granted and the original decision be overturned. He went to the site visit and was of the opinion that the risk of flood was not as great as had been stated. He sought clarification as to whether NPF4 was in place at the time of application.
- 2.10 The Planning Adviser advised that the application was valid before NPF4 but after its adoption all applications had to be assessed against it. SEPA had

submitted an objection before NPF4 and then revised their position to include the NPF4 guidance.

- 2.11 The Legal Adviser reminded Members that if they were looking to propose to grant the application they needed to set out how it complies with the policies.
- 2.12 Councillor McBain was of the opinion that the Moray Local Development Plan (MLDP) EP12 should not apply as it uses the same footprint so there would be the same water dispersal.
- 2.13 Councillor Macrae agreed and seconded Councillor McBain's proposal to grant. Councillor Macrae was satisfied that flood defences put in place by Moray Council were sufficient mitigation of the risk of flooding to allow development to take place.
- 2.14 In response the Planning Adviser advised that the application was a departure from EP12 and NPF4 22 as the site will flood and confirmed that SEPA had no issue with the takeaway but has issues with the flat and proposed houses.
- 2.15 Councillor Harris sought clarification as to whether the application could be split into two separate applications.
- 2.16 In response the Planning Adviser advised that it was up to the applicant to decide how to apply and that the LRB could not say that they would agree one part and not another.
- 2.17 The Planning Adviser further added that if Members were looking to proposed to grant the application then they should look at what conditions, if any, they would want to add.
- 2.18 Councillor Macrae stated that he would be happy for a full construction plan to be part of the conditions alongside biodiversity, tying the flat to the business, building materials, road issues, opening hours and noise issues. Councillor McBain agreed with this and that authority to draft the proposed conditions would be delegated to the planning officer.
- 2.19 The Planning Adviser stated that she could provide a list of conditions for Members if required.
- 2.20 On a division there voted:

Motion (4)	Councillors Van der Horn, Harris, Cameron and Keith
Amendment (2)	Councillors McBain and Macrae
Abstention (1)	Councillor Warren
- 2.21 Accordingly the motion became the finding of the meeting and the MLRB agreed to uphold original decision of the Appointed Officer to refuse Planning Application 21/01545/APP as the proposal does not comply with the Moray Local Development Plan Policy EP12 - Management and Enhancement of the Water Environment, National Planning Framework 4 Policy 1 - Tackling the Climate and Nature Crises, National Planning Framework 4 Policy 2 - Climate Mitigation and Adaption, and National Planning Framework4 Policy 22 - Flood Risk and Water Management.

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.