



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR296
 - Application for review by Mr and Mrs Craig and Andrea Robertson c/o Jane Shepherd, The Town Planner Ltd against the decision of an Appointed Officer of Moray Council
 - Planning Application 23/01024/APP – Retrospective consent to erect a 4.5m height flagpole in the grounds of Alba, 195 Findhorn, Forres
 - Unaccompanied site inspection carried out by the MLRB on 17 January 2024
 - Date of decision notice: 1 February 2024
-

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 at the meeting held on 18 January 2024.
- 1.3 The MLRB was attended by Councillors Macrae (Chair), Dunbar (Depute), 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:
- 2.2 The proposal is contrary to policies 4, 7 and 14 of the National Planning Framework (NPF) and policies PP1, DP1, EP3 and EP9 of the Moray Local

Development Plan (MLDP) 2020 and the associated Findhorn Conservation Area Character Appraisal for the following reasons:-

1. The proposal, which is highly visible in this prominent location would introduce a visually intrusive development into the historic streetscape adding to existing visual clutter at the entrance of the Findhorn Conservation Area. The proposal therefore would fail to preserve and/or enhance the established character of the Conservation Area due to its prominent location and inappropriate size, and would be contrary to policies 7, 14, PP1, DP1 and EP9.
 2. The proposed development does not adopt the highest standards of design due to its inappropriate size in this prominent location. It therefore would erode the traditional settlement character of the Culbin to Burghead Coast Special Landscape Character, and would fail to accord with the requirement of policies 4, 7, 14, PP1, DP1, EP3 and EP9.
- 2.3 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.
- 2.4 In response to a question from the Chair as to whether the Legal or Planning Advisers had any preliminary matters to raise, Mr Hoath, Legal Adviser advised that a query had been raised in relation to previous planning consent that had been given on the site and that it had been implied that the flagpole should have automatically received consent with this previous consent. He advised that the legal view is that this permission cannot be claimed in this way and was irrelevant to the case before the Moray Local Review Body (MLRB) and that the remit of the MLRB was to determine the review application in its own merits in accordance with the information provided in the agenda pack.
- 2.5 Mrs MacDonald, Planning Adviser further confirmed that the application for planning permission was in relation to the flagpole and not the flag itself and pointed out that the Agent had stated in his case that the Appointed Officer had misstated legislation in terms of Conservation Areas however clarified that the Officer had stated the Council Policy which is to preserve and enhance the character or appearance of the Conservation Area, not statutory requirement which is to preserve or enhance the character or appearance of the Conservation Area. This was noted.
- 2.6 The Chair then asked the 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.
- 2.7 Councillor McBain, having visited the site and considered the case in detail was of the view that the presence of the flagpole is not contrary to policies 4 (Natural Places), 7 (Historic Assets and Places) and 14 (Design, Quality and Place) of the National Planning Framework 4 (NPF4) or policies PP1 (Placemaking), DP1 (Development Principles), EP3 (Special Landscape Areas and Landscape Character) and EP9 (Conservation Areas) of the Moray Local Development Plan (MLDP) 2020 as, in his opinion, there was no adverse impact to the surrounding area, the flagpole itself was of good quality and he was of the view it enhanced the character of the area and moved that

the MLRB uphold the appeal and grant planning permission in relation to Planning Application 23/01024/APP, for these reasons. This was seconded by Councillor Warren.

2.8 Councillor van der Horn, having visited the site and considered the case in detail, noted that the flagpole was situated in a very prominent position at the entrance to Findhorn and that, should it be granted planning permission, any flag could be flown there. He acknowledged that the Community Council had objected to the application and stated that the views of the Community should be considered. He further noted various road traffic signage at that particular part of Findhorn and stated that the presence of a flag on a flagpole could distract from the other signage. For these reasons, Councillor van der Horn moved that the MLRB uphold the original decision of the Appointed Officer and refuse planning permission in respect of Planning Application 23/01024/APP as the proposal is contrary to policies 4 (Natural Places), 7 (Historic Assets and Places) and 14 (Design, Quality and Place) of the National Planning Framework 4 (NPF4) and policies PP1 (Placemaking), DP1 (Development Principles), EP3 (Special Landscape Areas and Landscape Character) and EP9 (Conservation Areas) of the Moray Local Development Plan (MLDP) 2020. This was seconded by Councillor Macrae.

2.9 On a division there voted:

For the Motion (4):	Councillors McBain, Warren, Dunbar and Harris
For the Amendment (3):	Councillors van der Horn, Macrae and Keith
Abstentions (0):	Nil

2.10 Accordingly, the Motion became the finding of the Meeting and the MLRB agreed to uphold the appeal and grant planning permission in relation to Planning Application 23/01024/APP as the proposal complies with policies 4 (Natural Places), 7 (Historic Assets and Places) and 14 (Design, Quality and Place) of the National Planning Framework 4 (NPF4) and policies PP1 (Placemaking), DP1 (Development Principles), EP3 (Special Landscape Areas and Landscape Character) and EP9 (Conservation Areas) of the Moray Local Development Plan (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.

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: -

None

ADDITIONAL NOTES FOR INFORMATION OF THE APPLICANT

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

None

LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT

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

Reference	Version	Title
L_23_P_02		Block Plan
L_23_P_03		Elevations
L_23_P_01		Location 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

.....
.....
.....

**The Full name and Address and contact details of the landowner, if a
different person**

.....
.....
.....

Where an agent is appointed, their full name and contact details

.....
.....
.....

Signed

Name (Print)

Date

.....
.....
.....

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

.....
.....
.....

The Full name and Address and contact details of the landowner, if a different person

.....
.....
.....

Where an agent is appointed, their full name and contact details

.....
.....
.....

Signed

Name (Print)

Date

.....
.....
.....

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