



## MORAY LOCAL REVIEW BODY

### DECISION NOTICE

---

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR298
  - Application for review by Mrs Audrey Murray against the decision of an Appointed Officer of Moray Council
  - Planning Application 23/01062/APP – Change of use of open land to private garden at 2 Duke Street, Portgordon, Buckie, Moray
  - Unaccompanied site inspection carried out by the MLRB on 14 February 2024
  - Date of decision notice: 20 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 15 February 2024.
- 1.3 The MLRB was attended by Councillors Macrae (Chair), Dunbar (Depute), Harris, Keith, McBain 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 proposed change of use of an area of Open Space to domestic garden ground is contrary to the Moray Local Development Plan (MLDP) 2020 and National Planning Framework 4 for the following reasons:
1. The proposals would result in the loss of an area of identified as Open Space under ENV5 within the Moray Local Development Plan (MLDP) 2020 which would fail to comply with MLDP 2020 Policies DP1 and EP5.
  2. The ENV5 Green Corridor forms part of the old railway/cycle path corridor which contributes to the setting and character of Portgordon and helps to connect the cycle path into the village centre. The location also provides amenity to the village hall opposite. Whilst the site makes up a small part of the green corridor, piecemeal erosion can negatively impact on the quality and character of the ENV and the role it plays in the setting of Portgordon and wider green networks and therefore the proposals would also fail to comply with NPF4 Policy 20 as the overall integrity of the green network would be fragmented.
  3. The Tree Survey Report has not been updated to show the location of the rerouted footpath which would now go between the trees and an Arboricultural Method Statement has not been submitted which would set out how construction will minimise impacts on tree roots. As a result, MLDP 2020 Policy EP7 has not been complied with as additional information is required to confirm that the trees would be safeguarded from the impact of the construction of the path.
- 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 Miller, Planning Adviser advised that he had nothing to raise at this time.
- 2.5 Mrs Scott, Legal Adviser advised that the Applicant had emailed the members of the Moray Local Review Body (MLRB) outwith the statutory time period and that the MLRB had been advised to disregard the email and Applicant had been made aware of this. 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 The Chair, having considered the Case in detail moved that the MLRB uphold the appeal and grant planning permission in respect of Planning Application 23/01062/APP as, in his opinion, the proposal is an acceptable departure from MLDP policies DP1 (Development Principles), EP5 (Open Space), EP7 (Forestry Woodland and Trees) and NPF4 policy 20 (blue and green infrastructure) as the proposal is to use the land as a garden which would maintain the green space and is in keeping with the current designation of the land, subject to a condition to extend the current footpath adjacent to Duke Street to meet the new footpath.

- 2.8 In response, Mr Miller advised that, should the MLRB agree to uphold the appeal and grant planning permission, a suspensive condition could be added to ensure that the current footpath is extended to meet the new footpath in accordance with details to be agreed with the Transportation Service. He further advised that the Transportation Service had recommended 3 conditions, should planning permission be granted, and sought clarification whether the Chair's motion would include the 3 recommendations from Transportation.
- 2.9 The Chair agreed to include the recommendations from Transportation in his motion.
- 2.10 Councillor Harris queried whether there could be an assurance that, should the MLRB uphold the appeal and grant planning permission, the land be solely used as garden ground and not for an extension to the property.
- 2.11 In response, Mr Miller, Planning Adviser advised that, if the MLRB were minded to grant planning permission, then a condition could be added to revoke permitted development rights to ensure no structures are erected, including extension(s) to the house, that may erode the visual appearance of the extended garden area.
- 2.12 The Chair stated that he was content to include a condition in his motion to revoke permitted development rights to ensure the land is used as garden ground, in addition to the 3 recommended from the Transportation Service and the suspensive condition in relation to the extension of the footpath completed to an acceptable standard for future adoption by the Council for maintenance and asked if there was anyone otherwise minded.
- 2.13 There being no-one otherwise minded, the MLRB agreed to grant planning permission in respect of Planning Application 23/01062/APP as an acceptable departure from MLDP 2020 policies DP1 (Development Principles) and EP5 (Open Space) on the basis the visual appearance of the extended garden ground would not erode the function of the open space designation ENV5. Subsequently, the proposal is an acceptable departure from NPF4 policy 20 (blue and green infrastructure). The proposal is also in compliance with policy EP7 (Forestry Woodland and Trees) in that the proposal will not adversely impact on the integrity of the two trees adjacent to the site. This is subject to the following conditions and reasons:

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 until a drawing (scale 1:500) has been submitted to and approved in writing by the Council, as Planning Authority in consultation with the Roads Authority showing the provision of a re-located private 1.2m wide (whin dust) footpath diverted around the proposed new site boundary, along with the provision of new 1.2m wide public footway along the southern edge of the U109L Duke Street, thereby

extending the existing public footway to connect with the northern end of the re-located private footpath (approximate distance of 13m); and thereafter the new public footway and private footpath shall be constructed in accordance with the approved details prior to the erection of the new site boundary.

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

3. New boundary walls/fences fronting onto Duke Street shall be set back from the edge of the public carriageway at a minimum distance of 2.0m.

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

4. The opening path of the new access gate shall be fully contained within the site and not encroach onto the public verge.

Reason: To ensure acceptable development that does not create any hazard to road users in the interests of road safety.

5. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended, revoked or re-enacted; with or without modification), the erection of any outbuilding, structures, creation of hardstanding for parking of vehicles or extension to the property of 2 Duke Street, Portgordon, AB56 5RH shall not be permitted in the site hereby approved to be incorporated into the curtilage of said property without the consent of the Council, as Planning Authority.

Reason: In the interests of the character and appearance of the surrounding area.

**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. 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 until a drawing (scale 1:500) has been submitted to and approved in writing by the Council, as Planning Authority in consultation with the Roads Authority showing the provision of a re-located private 1.2m wide (whin dust) footpath diverted around the proposed new site boundary, along with the provision of new 1.2m wide public footway along the southern edge of the U109L Duke Street, thereby extending the existing public footway to connect with the northern end of the re-located private footpath (approximate distance of 13m); and thereafter the new public footway and private footpath shall be constructed in accordance with the approved details prior to the erection of the new site boundary.

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

3. New boundary walls/fences fronting onto Duke Street shall be set back from the edge of the public carriageway at a minimum distance of 2.0m.

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

4. The opening path of the new access gate shall be fully contained within the site and not encroach onto the public verge.

Reason: To ensure acceptable development that does not create any hazard to road users in the interests of road safety.

5. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended, revoked or re-enacted; with or without modification), the erection of any outbuilding, structures, creation of hardstanding for parking of vehicles or extension to the property of 2 Duke Street, Portgordon, AB56 5RH shall not be permitted in the site hereby approved to be incorporated into the curtilage of said property without the consent of the Council, as Planning Authority.

Reason: In the interests of the character and appearance of the surrounding area.

## **ADDITIONAL NOTES FOR INFORMATION OF THE APPLICANT**

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

Planning consent does not carry with it the right to carry out works within the public road boundary.

Before commencing development the applicant is obliged to apply for Construction Consent in accordance with Section 21 of the Roads (Scotland) Act 1984 for new roads (new footway). The applicant will be required to provide technical information, including drawings and drainage calculations. Advice on this matter can be obtained from the Moray Council web site or by emailing [constructionconsent@moray.gov.uk](mailto:constructionconsent@moray.gov.uk)

Before starting any work on the existing public road the applicant is obliged to apply for a road opening permit in accordance with Section 56 of the Roads (Scotland) Act 1984. This includes any temporary access joining with the public road. Advice on these matters can be obtained by emailing [roadspermits@moray.gov.uk](mailto:roadspermits@moray.gov.uk)

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.

The applicant shall free and relieve the Roads Authority from any claims arising out of their operations on the road or extension to the road.

## **LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT**

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

Reference	Version	Title
		Location Plan
		Elevations
		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**

<b>Date works are to Commence</b>	
-----------------------------------	--

**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](mailto: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

<b>Date of completion of works</b>	
------------------------------------	--

**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](mailto:development.control@moray.gov.uk)**