



MORAY COUNCIL LOCAL REVIEW BODY

Review Decision Notice

Decision by Moray Local Review Body (the MLRB)

- Request for Review reference : Case 043
- Site address: Castle Inn, 29 Caroline Street, Forres.
- Application for review by Mr Graham Forbes against the decision by an Appointed Officer of Moray Council.
- Application 10/02046/APP: Full Planning Permission for the demolition of an existing building and erect flatted development (8 units) and associated infrastructure works at the Castle Inn, 29 Caroline Street, Forres
- Unaccompanied site inspection carried out by the MLRB on Monday 19 March 2012
- Date of Decision Notice: 30 April 2012

Decision

The MLRB agreed to dismiss the request for review and uphold the decision of the Appointed Officer to refuse full planning permission.

1.0 Preliminary

- 1.1 This Notice constitutes the formal decision notice of the Moray Local Review Body (MLRB) as required by the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008.
- 1.2 The above application for full planning permission was considered by the MLRB at a meeting on 23 February and 22 March 2012. The Review Body was attended at both meetings by Councillors D Ross (Chair), J Mackay & R Shepherd.

2.0 Proposal

- 2.1 This is an application to demolish an existing building and erect a flatted development and associated infrastructure works at the Castle Inn, 29 Caroline Street, Forres.

MLRB Consideration of request for review

- 3.1 At the meeting of the MLRB on 23 February 2012 there was submitted a 'Summary of Information' report by the Clerk to the MLRB setting out the reasons for refusal together with a copy of the Report of Handling and a copy of the Notice of Review & supporting documents.
- 3.2 Prior to the MLRB considering the request for review the Planning Adviser advised the meeting that there were some unusual circumstances pertaining to this particular case which he considered should be brought to the MLRB's attention. The meeting noted the Castle Inn is a Listed Building and whilst Historic Scotland was consulted on an application for Listed Building Consent in respect of the demolition of the building they were not consulted in respect of the planning application, on which the request for review is based, and therefore were not considered as an 'Interested Party', as defined in The Town & Country Planning (Schemes of Delegation and Local Review Procedure)(Scotland) Regulations 2008 (the Regulations). As a result Historic Scotland is not aware of the request for review or grounds for review.
- 3.3 The Planning Adviser also advised that whilst there is a reference to consultations with Historic Scotland in the Report of Handling this is due to internal procedures for processing twin applications for Listed Building and Planning Consents and one Report of Handling is produced covering both applications. The Legal Adviser advised the meeting that should the MLRB determine, after due consideration of the case papers, that it would wish to obtain the views of Historic Scotland on the grounds for review the appropriate method would be through the 'Written Submissions' procedure set out in Regulation 15 of the Regulations.
- 3.3 Prior to proceeding the Chairman sought clarification in regard to a reference in the response to notification of the review on behalf of the Council's Transportation Manager to the inclusion of new evidence in the applicant's grounds for review (Appendix 3 to the Summary of Information report). The Planning Adviser referred the MLRB to the subsequent response from the Applicant (Appendix 4 to the Summary of Information report) which advises that the information referred to in the submission on behalf of the Transportation Manager as 'new evidence' was in fact included in the pre-application consultation undertaken by the applicant and submitted to the Council on 6 November 2009 and in the detailed response to the Historic Scotland consultation dated 5 July 2011. Whether this information was subsequently passed to the Transportation Manager is an internal administrative issue and he was satisfied that there is no issue of the submission of new evidence relating to this request for review.
- 3.4 Following consideration of the case papers the MLRB agreed that it did not have sufficient information in order to proceed to determine the request for review and agreed to seek the views of Historic Scotland through the 'Written Submissions' procedure set out in Regulation 15 of the Regulations on the grounds for review. The MLRB also agreed that an unaccompanied site inspection be undertaken, the purpose of which being to view the site in the context of Policies 2(f) of the Moray Structure Plan and policies BE2, BE3, H3, T5 & IMP1 of the Moray Local Plan 2008 (MLP 2008). It was also agreed that the Planning Adviser attend the unaccompanied site inspection.

- 3.5 At the subsequent meeting of the MLRB on 23 March 2012 there was submitted a 'Summary of Information' report detailing the outcome of the MLRB's previous consideration of the request for review and advising that the unaccompanied site inspection was undertaken on Monday 19 March 2012.
- 3.6 Prior to the MLRB continuing consideration of the request for review, the Clerk to the MLRB drew the MLRB's attention to an issue relating to the request through the written submissions procedure for Historic Scotland's views on the grounds for review. As requested a notice was served on Historic Scotland on 29 February 2012 requesting a response by 14 March 2012. Unfortunately, the response was not received until the 15 March 2012 and in accordance with previous practice the Clerk contacted the interested parties and the applicant's agent, as they also would have received a copy of the response from Historic Scotland, requesting two things (a) did they propose to respond to the response from Historic Scotland and (b) would they have any objections to the MLRB taking the late response from Historic into consideration. He advised that, to date, the applicant's agent and several of the interested parties had intimated that they did not propose to respond to Historic Scotland's response and would have no objection to the MLRB taking Historic Scotland's response into consideration. In light of this information the Clerk invited the MLRB to consider whether or not to take the late response from Historic Scotland into consideration.
- 3.6 The Chair of the MLRB proposed that the late submission from Historic Scotland be taken into consideration and this was agreed. A copy of the late submission from Historic Scotland's was tabled at the meeting and members given the opportunity to read the content.
- 3.7 The MLRB noted that Historic Scotland had intimated that it has no formal locus in the design of a building that replaces a listed building and therefore would not comment on the merits of the design and confirmed that the Council had acted correctly in not consulting Historic Scotland for its views on this application. In the response Historic Scotland also advised that in respect of a replacement building it had reminded the planning authority that the legislation directs it to make the desirability of preserving or enhancing the character and appearance of the conservation area a primary consideration when appraising planning applications of this type.
- 3.8 Thereafter, in regard to the unaccompanied site inspection the Planning Adviser advised the meeting that on arrival at the site he had reminded members of the MLRB about the twin aspects of the proposal, being, listed building consent for the demolition and planning consent for the rebuild and replacement for the building. He further advised that the appeal against the demolition aspect would have to go to Scottish Ministers and was not an aspect that the MLRB could adjudicate on. The MLRB would only be concerned with the rebuilding aspect of the proposal. He also reminded the MLRB of the situation which had been spelled out in the comments from Historic Scotland. He outlined the reasons for refusal, which were insufficient justification for the demolition of the property, the quality of replacement in terms of construction and design and the fact that there was insufficient parking to meet the parking standards. He further explained the proposals from the plans and which elevations fronted on to which streets and the proposed car parking arrangements.

- 3.9 The MLRB agreed that it now had sufficient information and proceeded to determine the request for review.
- 3.10 Councillor Mackay expressed the view that, having considered all the information in respect of the review and, having had the opportunity to visit the site of the application, in his opinion there was insufficient parking and agreed with the decision of the Appointed Officer. For this reason Councillor Mackay moved that the request for review be refused and the original decision of the Appointed Officer to refuse the application be upheld on the grounds that the proposed development was contrary to the policies of the approved Moray Structure Plan (Policy 2f) and the Moray Local plan Policies BE2, BE3, H3, T5 and IMP1.
- 3.11 In seconding the motion Councillor Ross expressed the view that he agreed with the Appointed Officers' comments, as detailed in the Report of Handling, and in particular the concerns relating to policy T5 in respect of insufficient car parking which at the moment fell short by 8 parking spaces. He also expressed the view that given a sustained campaign through the Community Council he understood the applicant's views and whilst there was clearly a need for this type of proposal the parking issues were, in his opinion, quite significant for this proposal and for that reason he would agree with the decision of the Appointed Officer and that the request for review be refused.
- 3.12 There being no-one otherwise minded the motion became the finding of the meeting and the MLRB unanimously agreed that the request for review be refused and the original decision of the Appointed Officer to refuse the application be upheld on the grounds the application is contrary to the policies of the approved Moray Structure Plan (Policy 2(f)) and the Moray Local Plan (Policy BE2, BE3, H3, T5 & IMP1) for the following reasons:
- (i) The Castle Inn is a listed building of significant local importance and is a focus for the community in relation to the history and heritage of the area. A case has not been presented that convincingly justifies its demolition. The proposed replacement building is also not of comparable quality in terms of construction and design. This would be to the detriment of the conservation area and the wider locality.
 - (ii) To approve this demolition with little or no justification other than redevelopment costs, without due consideration of alternative uses, would set a precedent for the demolition of other listed buildings in other locations in Moray in similar circumstances. The Council are committed in its policies to protecting listed buildings and to seeking new alternative uses.
 - (iii) Transportation considers that only 5 parking spaces could be provided within the parking area. The proposed development would have a shortfall of 8 parking spaces.

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Sean Hoath
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 21 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008.

- 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.