

## MORAY COUNCIL LOCAL REVIEW BODY

### Review Decision Notice

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#### Decision by Moray Local Review Body (the MLRB)

- Request for Review reference: Case 071
- Site address: 11 North Blantyre Street, Findochty, Buckie
- Application for review by Mr and Mrs Bollons against the decision by an Appointed Officer of the Moray Council
- Application 09/01920/APP: Demolition of a lean to at rear of and to build a conservatory at 11 North Blantyre Street, Findochty, Buckie
- Unaccompanied site inspection carried out by the MLRB on Wednesday 27 February 2013
- Date of Decision Notice: 23 April 2013

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#### Decision

The MLRB agreed to uphold the request for review and grant planning permission only and refer the Listed Building Consent to the Development Control Manager to seek a solution.

#### 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 case was considered at the meeting of the MLRB on 28 February 2013.
- 1.3 The Review Body was attended by Councillors C Tuke (Chair), B Jarvis, and L Creswell and R Shepherd.

#### 2.0 Proposal

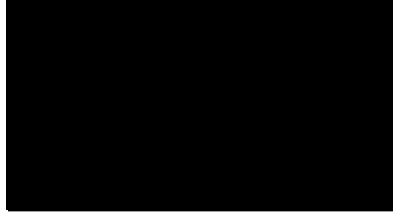
- 2.1 This is a retrospective application for planning permission to demolition an existing lean to extension to the rear of number 11 North Blantyre, Street, Findochty, Buckie and to replace it with a conservatory.

### **3.0 MLRB Consideration of request for review**

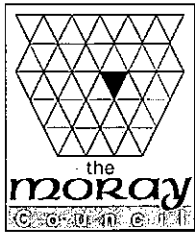
- 3.1 At the meeting of the MLRB on 28 February 2013 there was submitted a 'Summary of Information' report by the Clerk to the MLRB setting out the reasons for refusal together with a copy of the Report of Handling and a copy of the Notice of Review & supporting documents.
- 3.2 In regard to the unaccompanied site inspection carried out on Wednesday 27 February 2013 the Planning Adviser advised the meeting that on arrival at the site members were shown the conservatory and viewed the materials used. The extension to a nearby property using traditional materials referred to in the appellant's grounds for review was also looked at.
- 3.3 In terms of the reasons for refusal the application has been refused on the basis that installing a UPVC conservatory would have a detrimental impact on the character and appearance of the listed building. It would not preserve and enhance the special character of the conservation area. Furthermore, if the use of non traditional materials i.e. UPVC is permitted in or on a listed building the result will be a deterioration of wider built heritage and put at risk the future of conservation areas and listed buildings in it.
- 3.4 In the grounds for review the appellant had provided background to the reasoning for the construction of the conservatory which they had accepted was not a material consideration.
- 3.5 The grounds for review then went on to state the following the removal and replacement of the conservatory was carried out due to concern for the safety of the structure, as it had become detached from the main property. The new conservatory is therefore more appropriate than the previous one and the only objection was to the UPVC material. There is no current policy that categorically forbids the use of UPVC within conservation areas. Furthermore, it was contended that the conservatory does preserve and enhance the area. In terms of preserving the character, the small scale hidden nature of the conservatory poses an insignificant impact and in terms of enhancing the existing structure this is a vast improvement on the former structure and does enhance the area. It was also pointed out that a number of extensions and material alterations have occurred on several nearby listed buildings and it was difficult to distinguish the use of UPVC over timber from the distances available.
- 3.6 In response to a question from Councillor Tuke regarding the conservation area and listed building status the Planning Adviser clarified that there were two separate processes for Planning Permission and Listed Building Consent. The Planning Officer has determined both the Planning Permission and Listed Building Consent, however the appellant has only appealed against the planning permission consent. In terms of the Listed Building Consent the time period for appealing to the Scottish Ministers has now lapsed. In terms of any enforcement action to be taken she clarified that there was no time limit after which the development would be deemed acceptable and no action taken.

- 3.7 Councillor Tuke clarified that he had specifically asked that question as in non listed building consent a further course of action could be taken and letters issued to that fact can be given, however this was not the case with listed building consent. He further clarified that there had been no correspondence between the Agent and the Planning Department.
- 3.8 Prior to consideration, Councillor Jarvis sought clarification that if members were minded to approve what would the processes be for the family for the other permissions.
- 3.9 The Legal Adviser stated that members should decide the case on the facts. To consider the consequences of their decision may be seen as causing prejudice to the quasi-judicial function of the Committee by way of prejudging the application.
- 3.10 The Chair clarified that members had to make a decision on the planning policy and not the subsequent actions thereafter.
- 3.11 The MLRB agreed that it had sufficient information to determine the request for review.
- 3.12 Councillor Tuke, seconded by Councillor Jarvis having visited the site expressed the view that as there was no policy on UPVC being used although there was a preference for traditional materials to be used, the application was of a hidden nature, it would not have a major detrimental impact on the area and there were similar adjacent properties with UPVC installations, not particularly in the way of conservatories but in particular doors and windows - one conservatory brought to the MLRB's attention had no UPVC and was of a more traditional nature, however there were those elements in other areas. So given the fact that it is relatively well hidden and sensitively designed for these reasons he moved that the review be upheld and that this would be without prejudice to any further applications in the area and would not set a precedent.
- 3.13 The Planning Officer clarified that in terms of precedent that should another application be received for a conservatory in UPVC immediately adjacent to that property it would have to be considered as a material consideration as the MLRB had already granted consent for one albeit that was due to the exceptional circumstance of the applicant's case.
- 3.14 Councillor Tuke stated that this case was brought forward by the applicant on the information he was given in good faith, however due to the erroneous information supplied to him by his agent this makes this an exceptional case.
- 3.15 The Planning Adviser clarified that in terms of the enforcement issue if the application is granted consent that will still leave the outstanding issue of Listed Building Consent which has been refused. This would have to be referred back to Development Management where the applicant would possibly be invited to submit a further Listed Building Consent application on the basis that they would have planning permission approval. However, this is not a solution for the applicant as there is still the Listed Building Consent process to go through and she also pointed out that the Council could be involved in any necessary enforcement action should Listed Building Consent not be granted.

- 3.16 The Chair clarified that due to the complexity of this case there would have been no easy solution either way due to the outstanding Listed Building Consent.
- 3.17 Thereafter, the Local Review Body unanimously agreed to uphold the review and to refer the Listed Building Consent to the Development Control Manager to seek a solution.



**Paul Nevin**  
**Legal Adviser to the MLRB**



**DEVELOPMENT MANAGEMENT**

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Your Reference:  
Our reference: 09/01921/LBC CW/NW

23rd April 2013

Dear Sir(s)/Madam

**09/01921/LBC**

**Listed building consent to demolish lean-to at rear and build conservatory at 11 North Blantyre Street Findochty Buckie Moray**

**09/01920/APP**

**Demolish lean-to at rear and build conservatory at 11 North Blantyre Street Findochty**

I refer to the above in which planning permission was recently granted via appeal by the Moray Council Local Review Body (LRB).

The appeal decision relates solely to the planning application and does not constitute approval for the listed building consent application. Our understanding is that you have not appealed the listed building consent decision to the relevant body, Scottish Ministers, and that the period to do so has now lapsed. If you were to make a further application to Moray Council for listed building consent and it was again refused you would have a further opportunity to appeal the decision to the Scottish Ministers.

Hope this is of assistance

Please note that information associated with the application will be published on the Council's website at <http://public.moray.gov.uk/eplanning>.

If you have included an email address in your letter, the Council would prefer to forward any further communications about the proposal using that address, unless you indicate otherwise.

Yours faithfully



**Craig Wilson**  
Planning Officer

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Head of Development Services - Jim Grant  
Corporate Director: Environmental Services - Richard Hartland

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.