



MORAY COUNCIL LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case 109
 - Site address: Land to Rear of 7 King Street, Elgin
 - Application for review by Mr and Mrs Sim against the decision of an Appointed Officer of The Moray Council.
 - Planning Application 14/01004/PPP to erect dwelling house and associated works
 - Unaccompanied site inspection carried out by the MLRB on 22 September 2014
 - Date of decision notice: 30 September 2014
-

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 2008.
- 1.2 The above application for planning permission was considered by the MLRB at the meeting held on 25 September 2014.
- 1.3 The Review Body was attended by Councillors C. Tuke (Chair), J. Mackay and R. Shepherd.

2. Proposal

- 2.1 This is an application for planning permission to erect dwelling house and associated works on Land to Rear of 7 King Street, Elgin.

3. MLRB Consideration of Request for Review

- 3.1 There was submitted a 'Summary of Information' report setting out the reasons for refusal, together with a copy of the Report of Handling and a copy of the Notice of Review and supporting documents.
- 3.2 The MLRB agreed that it had sufficient information to determine the request for review.
- 3.3 With regard to the unaccompanied site inspection carried out on 22 September 2014, the Planning Adviser advised that Members were shown the site where the proposed development would take place as well as some examples of backland development within the vicinity that were highlighted by the Appellant in their Grounds for Review.
- 3.4 With regard to the reason for refusal, the Planning Adviser advised that the application had been refused as it was found to be contrary to Policies H3, H4 and IMP 1 of the Moray Local Plan in that the proposed dwelling house would be located to the rear of 7 King Street, resulting in a backland site as there is no frontage to the site; that the proposal, with the access included, results in more than 50% of the original plot being used; and that the proposal would also adversely impact on the surrounding environment and would result in overdevelopment of the area.
- 3.5 Referring to the Appellant's Grounds for Review, the Planning Adviser advised that the Appellant states that the access would be a shared facility and therefore is not considered as part of the proposed plot's size. She also advised that they note planning permission was granted previously for the site in 1980 and the Appellant considered the MLRB should take this into account. Stating that the MLRB had previously approved similar proposals and therefore setting a precedent, the Planning Officer advised that the Appellant had stated that the proposal would not have an adverse affect on adjacent properties in terms of over-looking and over-shadowing.
- 3.6 Councillor Mackay, having had the opportunity to visit the site and consider the Appellant's Grounds for Review, stated that he was supportive of the Appointed Officer's findings in that Policies H3, H4 and IMP1 had not been met. Thereafter, he moved that the appeal be dismissed and the Appointed Officer's decision be upheld to refuse the application.
- 3.7 In response, Councillor Shepherd stated that he was of the same mind as Councillor Mackay and seconded his motion as he also was of the opinion that the proposed development did not comply with Policies H3, H4 and IMP1 of the Moray Local Plan.
- 3.8 The Chair advised that he believed the proposed development did comply with Policies H3 and IMP1 in that there would not be a detrimental impact on the surrounding area due to the high density of housing. Referring to page 25 of the papers and the Appellant's referral to a previous decision of the MLRB,

he queried whether Circular 4/2009, which made reference to potential for backland development to be deemed a compliant with Policy H4, was still extant. In response, the Planning Adviser stated that it was her belief that Circular 4/2009 was still in use.

- 3.9 Thereafter, the Chair expressed support of Councillor Mackay's motion.
- 3.10 There being no one otherwise minded, the MLRB agreed to dismiss the appeal and uphold the Appointed Officer's decision to refuse planning permission.

Alasdair McEachan
Legal Services Manager (Property and Contracts)
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.