

APPEAL DECISION (LRB)
Appeal Reference
LRB 452 APP/2018/2846
Planning Reference
APP/2018/2846
Planning Proposal
Full Planning Permission for Erection of Summerhouse with Roof Terrace (Retrospective)
Summary of Decision
<p>The Local Review Body (LRB) agrees with the determination reviewed by it and refuses Full Planning Permission in accordance with the Appointed Officer's decision.</p> <p>The main determining issue for the review was the acceptability of the roof terrace of the summerhouse, and whether it results in any visual or amenity impacts.</p> <p>The LRB undertook an accompanied site visit on 31 May 2019. The Planning Adviser stated that the height of the summerhouse, without the roof terrace element, would be Permitted Development under Class 3A of The Town and Country Planning (General Permitted Development) (Scotland) Order 1992 as amended, however the height currently exceeds permitted development Class 3D.</p> <p>Overall, the LRB concluded that the roof terrace did adversely affect the amenity of the neighbours to the north and south owing to the height of the terrace, and agreed to refuse Full Planning Permission.</p>
Policy Issues
None
Additional Points
N/A
Actions
None
Note Decision
Refuse Full Planning Permission

Aberdeenshire Council Local Review Body

Reference LRB 452 APP/2018/2846

Review Decision Notice

Decision by Aberdeenshire Council Local Review Body (LRB)

- Site address: Caledonia, Monaltrie Avenue, Ballater, Aberdeenshire, AB35 5RX;
- Application for review by Mr William Murdoch against the decision by an Appointed Officer;
- Application reference APP/2018/2846 for Full Planning Permission (retrospective) for the erection of a summerhouse with roof terrace refused by decision notice dated 31 January 2019;
- Application drawing reference: Site Plan; Location Plan; Floor Plan; North Elevation; East and West Elevations; House Floor Plan; South Elevation; Site Plan.
- An accompanied site inspection took place on 31 May 2019.

Date of Decision: 28 June 2019

Decision

The Local Review Body (LRB) agrees with the determination reviewed by it and refuses Full Planning Permission in accordance with the Appointed Officer's decision.

1.0 Preliminary

- 1.1 This Notice constitutes the formal decision notice of the Local Review Body as required by the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013.
- 1.2 The LRB initially reviewed the determination of the above application for planning permission at its meeting held on 26 April 2019. A site visit was held on 31 May and was followed by a meeting of the LRB. The LRB was attended by Councillors P Johnston (Chair), J Hutchison, A Ross, and I Sutherland.
- 1.3 The LRB was shown projected plans and photographs by the Planning Adviser. Those showed the application site and visuals of the development and the surrounding area.

2.0 Proposal

- 2.1 The application site is located in a row of large detached properties of similar size and varying styles towards the northern edge of the Ballater settlement within the Cairngorms National Park. The property is a large bungalow which is sited to the centre of a large plot, with a detached double garage to its front. It is bound to the south by an existing property and low fencing, to the north by a replacement property under construction and close boarded timber fencing and to the east by close boarded timber fencing with public playing fields beyond it.
- 2.2 The summerhouse has been erected in the garden area to the rear of the property. It is finished with vertical larch cladding and large glazed openings on the east and west elevations and patio doors on the south elevation. An external staircase on the north elevation leads to the roof terrace above the summerhouse, which features 1m high glass balustrades and wooden handrail. The total height of the structure, including the roof terrace handrails, is approximately 3.7m. Without the roof terrace, the height of the summerhouse measures approximately 2.7m.

3.0 Reasoning

- 3.1 The main determining issue in this Review was the acceptability of the roof terrace and whether it results in any visual or amenity impacts.
- 3.2 The LRB agreed that the Appointed Officer had identified the relevant Cairngorms National Park Local Development Plan 2015 policies and they were as follows:
- Policy 1: New Housing Development
Part 7: Alterations to Existing Houses
- Policy 3: Sustainable Design
Part 1: Design Statements
Part 4: Alterations to the Existing Building Stock
- 3.3 The agent had requested that the Review be undertaken by means of a site inspection of the land to which the Review relates, and one or more hearing sessions. The LRB undertook an accompanied site visit on the morning of the LRB meeting, 31 May 2019. The LRB members were in agreement that they had sufficient information before them and proceeded to determine the Notice of Review.
- 3.4 The Planning Adviser stated that the height of the summerhouse, without the roof terrace element, would be Permitted Development (PD) under Class 3A of The Town and Country Planning (General Permitted Development) (Scotland) Order 1992 as amended (GPD0). However, the inclusion of the roof terrace would not be permissible as

PD under Class 3D of the GPDO as its overall height exceeds that allowed under this Class, and so the acceptability of the roof terrace was the main consideration.

- 3.5 The Planning Adviser continued to state that the Appointed Officer considered that the height and distance from the roof terrace and the neighbours to the north and south had adverse amenity impacts from overlooking into private rear garden ground. This is noted in the Appointed Officer's Report of Handling to be contrary to Policy 3, Part 1 of the Cairngorms National Park Authority Local Development Plan 2015.
- 3.6 During the discussion, the LRB noted that the house to the north, which is currently under construction, does not have a garden area as it is not occupied. The Planning Adviser provided clarification that the property under construction is a replacement for a previous dwellinghouse which did have a domestic garden area.
- 3.7 The LRB noted that there was mutual overlooking to the south, owing to the low fence height and partial post and wire boundary. However, it was concluded that the roof terrace did adversely affect the amenity of neighbours to the north and south owing to the height of the terrace.

4.0 Reason for Refusal

- (1) The proposal results in an adverse loss of privacy to neighbouring properties and an unacceptable negative amenity impact due to direct overlooking from the development which fails to comply with Policy 3: Sustainable Design of the Cairngorms National Park Local Development Plan 2015.

Karen Wiles
Head of Legal and Governance

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.