



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR133
 - Site address: Birnie Side, Wardend, Birnie
 - Application for review by Mr G. Strathdee, c/o Mr S. Reid, Strathdee Properties Ltd against the decision of an Appointed Officer of The Moray Council.
 - Planning Application 15/00373/APP to erect dwellinghouse with detached garage
 - Unaccompanied site inspection carried out by the MLRB on 23 October 2015
 - Date of decision notice: 23 November 2015
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Decision

The MLRB agreed to uphold the request for review and grant planning permission, 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 29 October 2015.
- 1.3 The MLRB was attended by Councillors C. Tuke (Chair), G. Coull (Deputy Chair), J. Allan, G. Cowie and M. McConachie.

2. Proposal

- 2.1 This is an application for planning permission to erect dwellinghouse with detached garage at Birnie Side, Wardend, Birnie.

3. MLRB Consideration of Request for Review

- 3.1 The MLRB considered a request from the Applicant seeking a review of the decision of the Appointed Officer, in terms of the Scheme of Delegation, to

refuse an application to erect dwellinghouse with detached garage at Birnie Side, Wardend, Birnie.

- 3.2 There was submitted a 'Summary of Information' report setting out the reasons for refusal, together with copies of the Report of Handling, Notice of Review, Grounds for Review and supporting documents.
- 3.3 The MLRB agreed that it had sufficient information to determine the request for review.
- 3.4 With regard to the unaccompanied site inspection carried out on 23 October 2015, Mr K. Henderson, Planning Adviser advised that Members were shown the site where the proposed development would take place.
- 3.5 The Planning Adviser advised the MLRB that the application had been refused on the grounds that the proposal would be contrary to Policies H8 and IMP1 of the Moray Local Plan 2008 and Supplementary Guidance 'Housing in the Countryside' (January 2012) in that the introduction of a further house plot into this locality would result in an unacceptable cumulative build-up of housing that would be detrimental to the rural character of the area.
- 3.6 Stating that whilst currently screened by trees, the Planning Adviser advised that the Appointed Officer had deemed that the cumulative impact of these proposals would alter the appearance of the area through associated activity i.e. increased traffic movements; refuse bin collection etc which in turn would erode its rural character and ,given these factors, the proposal is considered to constitute an inappropriately located which fails to satisfy the siting criteria of Policies H8 and IMP1 and associated Supplementary Guidance 'Housing in the Countryside.'
- 3.7 Referring to the Moray Local Development Plan 2015, the Planning Adviser noted that the Housing the Countryside Policy had changed from H8 to H7 and that whilst there had been slight changes to the wording, with build-up now becoming a policy criteria, the overriding principles of this policy which this application was assessed against had remained the same. He also advised of the introduction of new Policies ER2 'Development in Woodlands' and Policy E4 'Trees' and which may be deemed relevant for this review as they related to the loss of woodland and requirement of compensatory planting.
- 3.8 Referring to the Applicant's Grounds for Review, the Planning Adviser advised that the Applicant had stated their belief that the proposal complies with Policies H8 and IMP1, and Supplementary Guidance, on the basis that the plot is located adjacent to two previous planning consents and the entire curtilage of these three dwellings would have mature tree coverage to the south and west and are located over 200m from any other development, encouraging a feeling of seclusion.
- 3.9 The Applicant stated that the design of the dwellinghouse has been approved in rural locations throughout Moray and sits adjacent to two other consents. They advised that together these three consents are located over 200m from any other development and that this density and spacing will not be overly excessive with another dwelling consented in this locale. Stating that the proposal will be integrated into the landscape as it will be set into existing

woodland, the Applicant advised that 25% of the plot will be covered with foliage to soften the development.

- 3.10 Advising that a wide access track exists at the moment, which will be extended if consent is given, the Applicant stated that it was unlikely that another dwelling will noticeably increase the flow of traffic or cause any problems. They advised that the house design is of a low-impact, rural style which is considered well-designed and has previously been approved at other country locations throughout Moray and that there is a demand and need for rural accommodation within a short commuting distance of Elgin and the proposal will help the local economy to retain skills and jobs in the area.
- 3.11 Councillor Coull, having had the opportunity to visit the site and consider the Applicant's Grounds for Review, stated that, whilst the proposal would form a small cluster with the approved planning consents that exist in the area, he believed that the proposal complied with Policy on the grounds that the development would integrate sensitively with the surrounding area. Accordingly, he moved that the review be upheld and planning permission be granted.
- 3.12 In response to a query from the Chair regarding conditions, Councillor Coull moved that planning permission be granted subject to standard conditions.
- 3.13 The Planning Adviser advised that, under Policies ER2 and ER4 of the Moray Local Development Plan 2015, there was now a requirement to include a condition regarding compensatory planting for trees on site that require to be removed. Councillor Coull agreed to amend his motion accordingly to include a condition regarding compensatory planting.
- 3.14 Councillor Cowie stated that should planning permission be granted he would like a condition included that the first 10m of access from the public road be surfaced (tarmacked) prior to commencement of development. Councillor Coull agreed to amend his motion accordingly to include Councillor Cowie's suggested condition.
- 3.15 There being no one otherwise minded, the MLRB agreed to uphold the review and grant planning permission in respect of Planning Application 15/00373/APP, subject to standard conditions and additional conditions in respect of compensatory planting and that the first 10m of access from the public road be surfaced (tarmacked) prior to commencement of development.

Aileen Scott
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 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, The 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. Prior to any development works commencing:-
 - (i) a detailed drawing (scale 1:500 or 1:1000 which shall also include details to demonstrate control of the land) showing the visibility splay 4.5 metres by 120 metres and a schedule of maintenance for the splay area shall be submitted to and approved by the Council, as Planning Authority in consultation with the Roads Authority;
 - (ii) the visibility splay shall be provided in accordance with the approved drawing prior to any works commencing (except for those works associated with the provision of the visibility splay); and
 - (iii) thereafter the visibility splay shall be maintained at all times free from any obstruction exceeding 0.6 metres above the level of the carriageway in accordance with the agreed schedule of maintenance.

Reason: To enable drivers of vehicles entering or exiting the site to have a clear view so that they can undertake the manoeuvre safely and with the minimum interference to the safety and free flow of traffic on the public road.

2. Prior to the commencement of development details shall be submitted for the approval in writing of the Planning Authority, in consultation with the Roads Authority, to ensure no water or loose material shall be permitted to drain or be carried onto the public footpath/carriageway for the life time of the development.

Reason: To ensure acceptable infrastructure at the development access through the provision of details currently lacking.

3. The width of the vehicular access shall be as existing and have a maximum gradient of 1:20 measured for the first 5.0m from the edge of the public carriageway. The first 10m of the access track, measured from the edge of the public road, shall be constructed to The Moray Council specification and surfaced with bituminous macadam.

Reason: To ensure acceptable infrastructure at the development access.

4. Three car parking spaces shall be provided within the site prior to the occupation or completion of the dwellinghouse, whichever is the sooner. The parking spaces shall thereafter be retained throughout the lifetime of the development, unless otherwise agreed in writing with the Council as Planning Authority.

Reason: To ensure an acceptable development in terms of parking provision and amenity of the area.

5. A turning area shall be provided within the curtilage of the site to enable vehicles to enter and exit in a forward gear.

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

6. Effective point of entry UV treatment and pre-filtration shall be fitted before occupation of the dwelling.

Reason: To ensure a wholesome supply of water.

ADDITIONAL NOTES FOR INFORMATION OF THE APPLICANT

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

THE TRANSPORTATION MANAGER has commented that:-

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

Before starting any work on the existing public road, the Applicant is obliged to apply for a road opening permit in accordance with Section 85 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

Visibility splays relate to the visibility available to a driver at or approaching a junction in both directions. It is related to the driver's eye height, object height above the road, distance back from the main road known as the 'X' distance and a distance along the main road known as the 'Y' distance. The Y distance is related either to the design speed of the road and a corresponding 'stopping sight distance' or in some circumstances may be based on observed '85th percentile vehicle speeds'. Advice on this matter can be obtained by emailing transport.develop@moray.gov.uk and reference to the following pages on the Council web site

Transportation Service Requirements for Small Developments in the Countryside
Full document <http://www.moray.gov.uk/downloads/file79761.pdf>
Checklist <http://www.moray.gov.uk/downloads/file68812.pdf>

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

MANAGER (DEVELOPMENT MANAGEMENT) has commented that:-

It is noted that your planning application proposes a septic tank and soakaway/infiltration drainage system and the suitability of the ground condition to accommodate, this will be dealt with as part of your Building Warrant application. Full details of a ground assessment, trial pit investigations and percolation test results, from a suitably qualified person as contained within the Council's List of Approved Certifiers, will be required prior to obtaining a Building Warrant

An application for a Building Warrant and compliance with the Building Regulations are entirely separate from Planning procedures. Furthermore, the granting of Planning Consent does not guarantee approval of a Building Warrant.

If you have not already done so and you may wish to satisfy yourself about the adequacy of ground conditions separately at this stage, if so I recommend that you contact the Building Standards Section directly at Environmental Services, The Moray Council, Council Offices, High Street, Elgin, IV30 1BX, telephone (01343) 563243.

Please note that any proposed discharges to land or the water environment will require authorisation from SEPA under the Water Environment (Controlled Activities) (Scotland) Regulations 2011. For further details refer to SEPA website http://www.sepa.org.uk/water/water_regulation/regimes.aspx

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 the 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 the 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

Planning Application Reference No:

Date issued:

I hereby give notice that works as detailed under the above planning application will commence on:

Signed: Date:

THE FOLLOWING INFORMATION MUST BE PROVIDED:

1. Name and address of person carrying out the development:

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2. The full name and address of the landowner, if a different person:

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3. Where a site agent is appointed, their full name and contact details:

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4. The date of issue and reference number of the grant of planning permission:

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Please return this form, duly completed to: - The Moray Council
Development Management
Development Services
Environmental Services Department
Council Office
High Street
Elgin IV30 1BX

Or email to: - development.control@moray.gov.uk

IMPORTANT

It is important that the Environmental Services Department is advised when you propose to start work as failure to do so may result in enforcement action be taken.

Please complete and return this form.

THE MORAY COUNCIL

NOTIFICATION OF COMPLETION OF DEVELOPMENT

Section 27B Town and Country Planning (Scotland) Act 1997

Planning Application Reference No:

Date issued:

I hereby give notice that works as detailed under the above planning application will be completed on:

Signed: Date:

Please return this form, duly completed to: - The Moray Council
Development Management
Development Services
Environmental Services Department
Council Office
High Street
Elgin IV30 1BX

Or email to: - development.control@moray.gov.uk

IMPORTANT

It is important that the Environmental Services Department is advised when the development has been completed as failure to do so may result in enforcement action be taken.

Please complete and return this form.