



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR134
 - Site address: Upper Maggieknockter, Craigellachie
 - Application for review by Mrs D. Strathdee, c/o Mr S. Reid, Strathdee Properties Ltd against the decision of an Appointed Officer of The Moray Council.
 - Planning Application 15/00793/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 Upper Maggieknockater, Craigellachie.

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 Upper Maggieknockater, Craigellachie.

- 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 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 was contrary to Policy 1(e) of the Moray Structure Plan 2007 and Policies H8 and IMP1 of the Moray Local Plan 2008, and as a material consideration, the associated Supplementary Guidance 'Housing in the Countryside' where, because of its siting/location, the proposal, when considered in conjunction with the existing/proposed development in the locality (including four recent planning permissions granted at Balnacoul), would result in an additional cumulative build-up of development which would detract from the amenity, appearance and character of existing development in the surrounding area.
- 3.6 Referring to the Moray Local Development Plan 2015, the Planning Adviser advised that Policy H7, formally H8 in the Moray Local Plan 2008, contains additional criteria regarding build-up of developments but noted that the overriding principles of the policy had remained the same.
- 3.7 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 supplementary guidance) and IMP1 on the grounds that the site is located adjacent to four consented house plots to the north east side, which combined would form a small random cluster of dwellings. They noted that there are a number of existing houses and consented plots nearby which sit alone or in clusters. Stating that the dwelling would be entirely consistent with the settlement pattern in the area and would not detract from the existing buildings or their surrounding area, the Applicant advised that the dwelling will not be overly prominent and will have a tree lined backdrop to integrate it into the landscape.
- 3.8 Advising that the site is defined and bounded by at least 50% of existing boundaries and that the design of the house meets the requirements of Policy H8, the Applicant stated that there is a high demand and need for rural accommodation in Moray and it is important to meet this demand to retain skills and jobs in the area as well as helping the local economy.
- 3.9 Councillor Coull, having had the opportunity to visit the site and consider the Applicant's Grounds for Review, advised that he was of the same opinion as the Appointed Officer, stating that the proposal contributes to a linear development. Accordingly, he moved that the review be dismissed and the Appointed Officer's decision be upheld to refuse the application. There being no seconder, Councillor Coull's motion fell.

- 3.10 The Chair stated that he believed that the proposal complied with Policy 1(e) of the Moray Structure Plan 2007 and Policies H8 and IMP1 of the Moray Local Plan 2008 on the grounds that it would not constitute a linear development and would have a tree line backdrop. Accordingly, he moved that the review be upheld and planning permission be granted, subject to standard conditions and that the first 10m of access from the public road be surfaced (tarmacked) prior to commencement of development. This was seconded by Councillor McConachie.
- 3.11 There being no one otherwise minded, the MLRB agreed to to uphold the review and grant planning permission in respect of Planning Application 15/00793/APP, subject to standard conditions and an additional condition 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. No development shall commence until the exact roof finish of the house hereby approved has been agreed in writing with the Planning Authority. Thereafter development shall not proceed except in accordance with the approved details. For the avoidance of doubt the roof shall be finished in natural slate or a flat slate-like concrete tile dark grey or black in colour.

Reason - In order to ensure that the development harmonises with the appearance and character of the surrounding properties and area

2. No development shall commence until details of a scheme of hard and soft landscaping works have been submitted to, and approved in writing by, the Planning Authority. Details of the scheme shall include:
 - (i) A plan showing existing landscaping features and vegetation to be retained;
 - (ii) The location and design, including materials, of any existing or proposed walls, fences and gates; and
 - (iii) All soft landscaping and planting works, including plans and schedules showing the location, species and size of each individual tree and/or shrub and planting densities. For the avoidance of doubt at least 25% of the site shall be planted with native species trees at least 1.5m in height.

Landscaping works shall be carried out in accordance with the approved scheme. All planting, seeding or turfing as may be comprised in the approved details shall be carried out in the first planting and seeding seasons following the commencement of development, unless otherwise stated in the approved scheme

Any trees or plants which within a period of five years from the completion of the development die, for whatever reason are removed or damaged shall be replaced in the next planting season with others of the same size and species.

Reason - In order to ensure that a high standard of landscaping is achieved, appropriate to the location of the site

3. No development shall commence until:-
 - (i) a detailed drawing (scale 1:500 or 1:1000 which shall also include details to demonstrate control of the land) showing a visibility splay 2.4 metres

- by 70 metres has been provided in both directions at the access onto the public road;
- (ii) no development (except that associated with the formation of the approved visibility splay) shall commence until the visibility splay has been provided in accordance with the approved drawing; and
 - (iii) thereafter the visibility splay shall be maintained at all times free from any obstruction exceeding 0.26 metres above the level of the adjacent carriageway.

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.

4. No development shall commence until the access has been formed to the following standards:-
- (i) The width of the vehicular access shall be a minimum of 3.0m and have a maximum gradient of 1:20 measured for the first 5.0m from the edge of the public carriageway; and
 - (ii) 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.

5. The house hereby approved shall not be occupied until an access lay-by 8.0m long by 2.5m wide with 30 degrees splayed ends has been provided at the edge of the public road to allow visiting service vehicles to park clear of the public road. The vehicular access should lead off the lay-by. The house hereby approved shall not be occupied until the lay-by has been constructed in accordance with The Moray Council specification and surfaced with bituminous macadam.

Reason - To enable visiting service vehicles to park clear of the public road in the interests of road safety.

6. Any existing ditch, watercourse or drain under the site access shall be piped using a suitable diameter of pipe(300mm minimum), approved in writing by the Planning Authority in consultation with the Roads Maintenance Manager The pipe shall be laid to a self-cleansing gradient and connected to an outfall.

Reason - To ensure the construction of an acceptable access in the interests of road safety and effective drainage infrastructure

7. No water shall be permitted to drain or loose material be carried onto the public footway/carriageway.

Reason - To ensure the safety and free flow of traffic on the public road and access to the site by minimising the road safety impact from extraneous material and surface water in the vicinity of the new access.

8. The house hereby approved shall not be occupied until three car parking spaces have been provided within the site prior to the occupation. The parking

spaces shall thereafter be retained for this purpose throughout the lifetime of the development.

Reason - To ensure the permanent availability of the level of parking necessary for residents/visitors/others in the interests of an acceptable development and road safety.

9. The house hereby approved shall not be occupied until a turning area to enable vehicles to enter and exit in a forward gear has been provided within the curtilage of the site.

Reason - To ensure the provision for vehicles to enter/exit in a forward gear in the interests of the safety and free flow of traffic on the public road.

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 Permission 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

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.

If required, street furniture will need to be repositioned at the expense of the developer. In addition any existing roadside ditch may require a pipe or culvert. Advice on these matters can be obtained by emailing road.maint@moray.gov.uk

No building materials/scaffolding/builder's skip shall obstruct the public road (including footpaths) without permission from the Roads Authority.

The Applicant shall be responsible for ensuring that surface/ground water does not run from the public road into his property.

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

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>

The developer should note that any further development by this access will require a visibility splay with an 'x' distance of 4.5 metres and 'y' distances of 120 metres to the south-west of the access onto the public road and 90 metres to the north-east of the access.

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.