



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR130
 - Site address: Upper Ardoch Side, Ardoch Farm, Mulben
 - Application for review by Mr Gavin Strathdee, c/o Mr Stewart Reid, Strathdee Properties Ltd against the decision of an Appointed Officer of The Moray Council.
 - Planning Application 15/00608/APP for the erection of dwellinghouse with integral garage
 - Accompanied site inspection carried out by the MLRB on 20 November 2015
 - Date of decision notice: 17 December 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 26 November 2015
- 1.3 The MLRB was attended by Councillors C. Tuke (Chair), G. Cowie, M. McConachie and K. Reid.

2. Proposal

- 2.1 This is an application for planning permission for the erection of dwellinghouse with integral garage at Upper Ardoch Side, Ardoch Farm, Craigellachie.

3. MLRB Consideration of Request for Review

- 3.1 Councillor McConachie, having not taken part in the site visit for this Review, took no part in the relevant discussion or decision.

- 3.2 Under reference to paragraph 5(b) of the minute of this Body dated 29 October 2015, the Moray Local Review Body (MLRB) continued to consider 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 for the erection of dwellinghouse with integral garage at Upper Ardoch Side, Ardoch Farm, Mulben.
- 3.3 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.
- 3.4 The MLRB agreed that it had sufficient information to determine the request for review.
- 3.5 With regard to the accompanied site inspection carried out on 20 November 2015 in the presence of the Applicant, Ms Webster, Planning Adviser advised that Members were shown the site where the proposed development would take place.
- 3.6 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 approved Moray Structure Plan 2007, Policies H8 and IMP1 of the adopted Moray Local Plan 2008 and Supplementary Planning Guidance 'Housing in the Countryside' (January 2012). She stated that the prevailing rural housing pattern within this part of the countryside is characterised by single and small clusters of housing dispersed along the corridor/valley to the east of Ben Aigen and that in the case of the current application, two house plots have been approved immediately to the east and west of the current site with a further 7 plots within 600m of the proposed site. She advised that the introduction of the proposed house plot into this locality would result in an unacceptable cumulative build-up of housing that would be detrimental to the rural character of this area.
- 3.7 Referring to the Moray Local Development Plan 2015, the Planning Adviser noted that Policy H8 was now H7 and, along with Policy IMP1, contain updated criteria along similar lines and reinforce objective for new development to reflect traditional settlement pattern and integrate sensitively into the landscape. She advised that Policy H7 also includes additional criteria which states that development does not contribute to a build-up of development where the number of houses has the effect of changing the rural character of the area and was cross-referenced to Policy ER2 'Development in Woodlands'. She stated that these policies stipulate that development will be only be supported where it is demonstrated that the loss would not result in unacceptable adverse effects on the amenity, landscape, biodiversity, economic or recreational value of the woodland or prejudice the management of the woodland, and this loss is clearly outweighed by the social or economic benefits of national, regional and local importance, and if a programme of compensatory planting is agreed with the Planning Authority.
- 3.8 Referring to the Applicant's Grounds for Review, the Planning Adviser advised that the Applicant had stated that the proposal will not result in an unacceptable cumulative build-up of housing as it will not cause any feeling of detriment to the rural character of the area as it is hidden from view. They advised that a small cluster of houses would be formed by consenting the proposed house with the entire curtilage of all three houses having a mature

tree growth surround. Stating that a 10m buffer strip is proposed between this proposal and Ardoch Rise, encouraging a feeling of seclusion within a rural setting, the Applicant stated that the proposal will feel 'integrated' into the landscape because it is set into existing woodland and would not be overtly prominent. The Applicant advised that the low-impact, rural style design fully complies with the design criteria of Policy H8 (now H7) and that there is a high demand for rural accommodation within commuting distance of Moray's towns.

- 3.9 Councillor Cowie queried whether the Applicant had agreed to carry out the required adjustments to the site's entrance prior to commencement of the development. In response, the Planning Adviser advised that there was no clear evidence of an agreement however if the MLRB were minded to uphold the review then this could be conditioned.
- 3.10 The Chair, having had the opportunity to visit the site and consider the Applicant's Grounds for Review, 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 and 'Housing in the Countryside' Supplementary Guidance (January 2012) on the grounds that the development would continue the pattern of single and small clusters of housing, that the proposal would not be overtly prominent and, as such, would not detract from the character of the area.
- 3.11 Accordingly, he moved that the review be upheld and planning permission be granted, subject to conditions he would set if he were to find a seconder to his motion.
- 3.12 Councillor Cowie stated he was of the same opinion as the Chair and seconded his motion.
- 3.13 The Chair stated that his proposed conditions would be standard conditions; that junction improvements to the A95 be completed prior to commencement to the satisfaction of Transport Scotland; compensatory planting and that the proposed 10m buffer of trees be maintained in perpetuity or as long as health/lifespan of trees allow. Councillor Cowie agreed to the proposed conditions.
- 3.14 There being no one otherwise minded, the MLRB agreed to uphold the review and grant planning permission in respect of Planning Application 15/00608/APP, subject to standard conditions and additional conditions:-
- (i) that junction improvements to the A95 be completed prior to commencement to the satisfaction of Transport Scotland;
 - (ii) in respect of compensatory planting; and
 - (iii) that the proposed 10m buffer of trees be maintained in perpetuity or as long as health/lifespan of trees allow.

Paul Nevin
Senior Solicitor (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. 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.

2. The existing access shall join the trunk road at a improved junction which shall be constructed by the Applicant to a standard as described in the Department of Transport Advice Note TA 41/95 (Vehicular Access to All-Purpose Trunk Roads) (as amended in Scotland) complying with Layout 3 (the layout will be similar to layout 8). The junction shall be constructed in accordance with details that shall be submitted and approved by the Planning Authority, after consultation with the Roads Authority, before any part of the development is commenced.

Reason: To ensure that the standard of access layout complies with the current standards and that the safety of the traffic on the trunk road is not diminished.

3. The visibility splays shall be provided and maintained on each side of the improved access to the satisfaction of the local Planning Authority. These splays are the triangles of ground bounded on 2 sides by the first 4.5 metres of the centreline of the access driveway (the set back dimension) and the nearside trunk road carriageway measured 215 metres (the y dimension) in both directions from the intersection of the access with the trunk road. In a vertical plane, nothing shall obscure visibility measured from a driver's eye height of between 1.05 metres and 2.00 metres positioned at the set back dimension to an object height of between 0.26 metres and 1.05 metres anywhere along the y dimension.

Reason: To ensure that drivers of vehicles leaving the site are enabled to see and be seen by vehicles on the trunk road carriageway and join the traffic stream safely.

4. The gradient of the access road shall not exceed 1 in 40 metres for a distance of 10 metres from the nearside edge of the trunk road carriageway, and the first 10 metres shall be surfaced in a bituminous surface.

Reason: To ensure that the standard of access layout complies with the current standards and that the safety of the traffic on the trunk road is not diminished.

5. A Service Bay shall be provided adjacent to the trunk road the bay should incorporate a secure refuse bin storage area the details of which shall be submitted for the approval of the Planning Authority, after consultation with the Roads Authority.

Reason: To ensure that the service vehicles may park clear of the trunk road and facilities are provided to ensure refuse bins are secured and do not cause a potential hazard to the safe and free flow of traffic on the trunk road.

6. No development shall commence until details have been submitted to the Council, as planning authority, regarding details of a woodland planting scheme (the Replanting Scheme) within Moray to compensate, in this case, the removal of 0.3175ha of existing woodland from the site in order to accommodate the development. The Replanting Scheme details shall:-

- (a) include the specifications for:-
 - (i) on-site replanting;
 - (ii) off-site compensatory planting;
 - (iii) tree maintenance and protection to established planting (including Deer Management); and
- (b) comply with the requirements set out in the UK Forestry Standard (Forestry Commissions, 2011. ISBN 978-0-85538-830-0) and the guidelines to which it refers and include:-
 - (i) details of the location of the area to be planted;
 - (ii) details of land owners and occupiers of the land to be planted;
 - (iii) the nature, design and specification of the proposed woodland to be planted;
 - (iv) details of all necessary consents for the Replanting Scheme and timescales within which each shall be obtained;
 - (v) the phasing and associated timescales for implementing the Replanting Scheme;
 - (vi) proposals for the maintenance and establishment of the Replanting Scheme, including annual checks; protection from predation; replacement planting; fencing; ground preparation; and drainage, etc.

Thereafter, the development shall be implemented in accordance with the approved Replanting Scheme details, including the phasing and timescales as set out therein.

Reason: Details of the matter specified are lacking from the submission and to ensure an acceptable form of development where replacement or compensatory planting is provided where the development results in a loss of woodland.

7. Unless otherwise agreed in writing with the Planning Authority, a 10m wide strip of trees shall be maintained along the entire length of the south eastern boundary of the site, throughout the lifetime of the development.

Reason: In order to maintain a wooded buffer between the approved house and neighbouring house.

ADDITIONAL NOTES FOR INFORMATION OF THE APPLICANT

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

Transport Scotland have commented that:-

The Applicant should be informed that the granting of planning consent does not carry with it the right to carry out works within the trunk round boundary and that permission must be granted by Transport Scotland Trunk Road and Bus Operations. Any works required and contact details are provided on Transport Scotland's response to the Planning Authority and is available on the Council's planning portal.

Trunk road modification works shall, in all respects, comply with the Design Manual for Roads and Bridges and the Specification for Highway Works published by HMSO. The developer shall issue a certificate to that effect, signed by the design organisation.

Trunk road modifications shall, in all respects, be designed and constructed to arrangements that comply with the Disability Discrimination Act: Good Practice Guide for Roads published by Transport Scotland. The developer shall provide written confirmation of this, signed by the design organisation.

The road works the subject of the above conditions will require Road Safety Audit as specified by the Design Manual for Roads and Bridges.

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.