



## MORAY LOCAL REVIEW BODY

### DECISION NOTICE

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Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR135
  - Site address: Site Adjacent to Wellhead Croft, Clochan, Buckie
  - Application for review by The Crown Estate, c/o Savills Incorporating Smiths Gore against the decision of an Appointed Officer of The Moray Council.
  - Planning Application 15/00743/APP to erect dwellinghouse
  - Unaccompanied site inspection carried out by the MLRB on 23 October 2015
  - Date of decision notice: 17 December 2015
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#### 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 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 to erect dwellinghouse on Site Adjacent to Wellhead Croft, Clochan, Buckie.

#### 3. MLRB Consideration of Request for Review

- 3.1 Councillor Reid, 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(f) 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 to erect dwellinghouse on site adjacent to Wellhead Croft, Clochan, Buckie.

- 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 As requested by the MLRB at its meeting on 29 October 2015, evidence from the Applicant of the land owners of the ground required for visibility splays to the east and west of the site subject to review was provided as Appendix 3 to the report.
- 3.5 The MLRB agreed that it had sufficient information to determine the request for review.
- 3.6 Mr Henderson, Planning Adviser advised the MLRB that the application had been refused on the grounds that the proposal was contrary to Policies T2 and IMP1 of the Moray Local Plan 2008 where the proposed development, if permitted, would involve the formation of a new vehicular access onto C17E Wellheads Road where visibility is restricted by the adjacent hedges/trees/fences which are located on third party land and would be likely to give rise to conditions detrimental to the road safety of road users.
- 3.7 Referring to the Applicant's Grounds for Review, the Planning Adviser advised that the Applicant had stated that the visibility splay to the east of the site crosses land maintained and under ownership of the Applicant and that the hedges/trees would be maintained by the Applicant to maintain the visibility splay in this direction as the proposed access has been positioned closer to this boundary. Advising that the visibility splay to the west is very good and provides visibility along the road verge, the Applicant had stated that the existing passing place immediately across the proposed site access also increases the road width and will ultimately result in slower moving vehicles at this section of road due to the need to allow vehicles to pass.
- 3.8 Noting that the geometry of the road provides greater visibility to the west (approx. 240m) as the road bends south west past the cottages of Woodside Cottage and Ordiga, the Applicant advised that this allows anyone using the proposed access to see a greater distance than the 120m requested by the Council. The Applicant stated that the third party property owners of Wellheads Croft and Cottage will have a requirement to maintain their own visibility as to not cause conditions detrimental to the road safety of road users.
- 3.9 Councillor McConachie moved that, given the response to the request for further information from the Applicant, the review be upheld and planning permission granted on the grounds that he believed visibility splays could now be achieved.
- 3.10 Councillor Cowie queried whether the Council's Transportation department were satisfied that visibility splays could now be achieved. In response, the Planning Adviser advised that there was no evidence of agreement with the land owner to the west of the site and Transportation's position had not changed.

- 3.11 Accordingly, Councillor Cowie moved that the review be dismissed and the Appointed Officer's decision be upheld to refuse the planning application.
- 3.12 The Chair stated he was of the same opinion as Councillor Cowie and seconded his amendment.
- 3.13 Councillor McConachie stated that it was the law of the land that hedges on a main road must be maintained below a certain height and sought legal advice. In response, the Legal Adviser stated that the Council had various powers to enforce road safety but there was no duty to do so in this case and that there was no clear agreement or evidence between the Applicant and the land owner to the west of the site.
- 3.14 There being no seconder, Councillor McConachie's motion fell.
- 3.15 Thereafter, the MLRB agreed to dismiss the review and uphold the Appointed Officer's decision to refuse the planning application.

**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.