



## MORAY LOCAL REVIEW BODY

### DECISION NOTICE

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Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR139
  - Site address: Site 600M North of Mayne Farm, Elgin
  - Application for review by Miss Hilary Anderson, c/o Mr Stuart Morrison, Grant & Geoghegan against the decision of an Appointed Officer of The Moray Council
  - Planning Application 15/01330/APP to erect dwellinghouse with garage
  - Unaccompanied site inspection carried out by the MLRB on 21 January 2016
  - Date of decision notice: 25 February 2016
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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 28 January 2016.
- 1.3 The MLRB was attended by Councillors C. Tuke (Chair), G. Coull (Deputy Chair), G. Cowie, M. McConachie and R. Shepherd.

#### **2. Proposal**

- 2.1 This is an application for planning permission to erect dwellinghouse with garage on Site 600M North of Mayne Farm, Elgin.

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

- 3.1 The Moray Local Review Body (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 a dwellinghouse with garage on site 600m North of Mayne Farm, Elgin.

- 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 21 January 2016, the Head of Development Services, Planning Adviser, advised that Members of the MLRB 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 by the Appointed Officer on the grounds that the proposal was contrary to Policies PP3, H1, R12 Elgin Knockmasting Wood, T2, E2, E5, ER2, EP7, IMP1 and IMP2 of the Moray Local Development Plan and considered to be premature and had failed to demonstrate that it will not prejudice the development of the remainder of the designated site.
- 3.6 Stating that the proposal is not supported by the necessary supporting information including a masterplan, a comprehensive layout, drainage proposals, landscaping proposals, tree protection measures and access details to ensure that the overall site is not developed in a piecemeal way, the Planning Adviser noted that the affordable/accessible housing provision, open space and other developer contributions would be prejudiced as the final number/amount that was required as part of any future scheme would be at a reduced level.
- 3.7 Referring to the Elgin R12 site, the Planning Adviser stated that the site is constrained by road improvement schemes TSP3, TSP21, TSP22, TSP23 and TSP24, as identified in the Moray Local Development Plan (MLDP) 2015 and development of this site should not go ahead until these improvements have been completed. He advised that the proposal is not supported by information to demonstrate the development incorporates the principles of good placemaking nor is the proposal supported by a Transport Assessment, which is required by Policy Elgin R12 Knockmasting Wood to ensure that all infrastructure and servicing proposals for the R12 site are acceptable.
- 3.8 The Planning Adviser advised that the proposal is not supported by a Flood Risk Assessment which is required by Policy Elgin R12 Knockmasting Wood to identify the extent of flood risk to the site and surrounding area, solutions and to ensure that the development does not exacerbate the existing flood situation. He also advised that the proposal is not supported by a Habitats Assessment, required by Policy Elgin R12 Knockmasting Wood to ensure that the development does not adversely affect a habitat or species of importance.
- 3.9 Stating that the proposed access is unacceptable and is contrary to Policies T2, E10 and IMP1, the Planning Adviser advised that the proposal, if permitted, would involve the formation of a new vehicular access onto the U90E Bilbohall Road where visibility is severely restricted by the adjacent embankment and vertical alignment of the road and would likely give rise to conditions detrimental to the safety of road users. He noted that the proposed access track would encroach on the Elgin Countryside Around Towns (CAT), as identified in the MLDP 2015, and would result in an erosion of the distinction between countryside and identified limits of the settlement to the detriment of the rural character of the area.

- 3.10 Referring to the Applicant's Grounds for Review, the Planning Adviser advised that the Applicant had stated their belief that the proposed development is in conformity with the development plan and that the application has not been considered on its own individual merits.
- 3.11 The Planning Adviser noted the Applicant states that the proposal broadly complies with the settlement statement in that it does not prejudice the full consideration of matters relating to the R12 designation. He advised that the departure is based on a perceived unacceptable impact on local infrastructure, for which there is a sound justification for when 85 houses are being assessed, but not in relation to a proposal for a single house.
- 3.12 Stating the Applicant's belief that the development is in accordance with the R12 designation, with the exception of detailed information relating to the entire site, the Planning Adviser advised that the Applicant contends that the submission of this detailed information is not necessary to enable the proposed development and the rest of the R12 site to be delivered and the omission of this information does not in itself lead to the application being wholly contrary to the development plan.
- 3.13 Referring to the reason for refusal relating to Policy E10, the Planning Adviser notes that the Applicant states that the installation of an access at the edge of the CAT cannot reasonably blur the distinction between the countryside and the built up area. They advised that the proposal is located within the settlement boundary on brownfield land, where there is a general presumption in favour of development, and that the site benefits from a substantial backdrop of topography and mature planting and would nestle into the site immediately.
- 3.14 Councillor Coull, having had the opportunity to visit the site and consider the Applicant's Grounds for Review, moved that the review be dismissed and the Appointed Officer's decision be upheld to refuse the planning application.
- 3.15 Councillor Cowie stated he was of the same opinion as Councillor Coull and seconded his motion.
- 3.16 The Chair stated that this was the most non-compliant application he had encountered and agreed with Councillor Coull's motion.
- 3.17 There being no one otherwise minded, the MLRB agreed to dismiss the review and uphold the Appointed Officer's decision to refuse planning permission in respect of Planning Application 15/01330/APP.

**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.