



## MORAY LOCAL REVIEW BODY

### DECISION NOTICE

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Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR140
  - Site address: Site at Nether Tomlea, Archiestown
  - Application for review by Mr B. Doran, c/o CM Design against the decision of an Appointed Officer of The Moray Council
  - Planning Application 15/01263/APP for new house
  - 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 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 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 for new house on Site at Nether Tomlea, Archiestown.

#### 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 for a new house on Site at Nether Tomlea, Archiestown.

- 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, Mrs E. Gordon, 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 on the grounds that the proposal was contrary to Policies H7 and IMP1 of the Moray Local Development Plan 2015 and the associated Supplementary Planning Guidance 'Housing in the Countryside' in that the siting and location of the proposed dwellinghouse, which when considered alongside the other approved developments within the locality, would result in a cumulative build-up of housing development which would be detrimental to the amenity, appearance and character of the surrounding area.
- 3.6 Referring to the Applicant's Grounds for Review, the Planning Adviser advised that the Applicant had stated that proposal remains in the same general location as previously granted and that cumulative build up is the only reason for refusal. The Applicant stated that there has been no net increase in development in the vicinity, since the original consent expired in 2014. The Planning Adviser advised that the Applicant believed that the development would have no impact on the immediate or wider locale and does not tip the balance of what could be considered cumulative build up. The Applicant further noted that the scale of development in the area during the initial approval was greater than it is at present.
- 3.7 The Planning Adviser advised that the Applicant had stated that there has been a reduction in approved development since the approval in 2011, due to other expired consents, and any new consents granted since 2011 are mitigated by expiry of other approvals. The Applicant considered that the traditional settlement pattern in the vicinity of the application site has already become sufficiently diverse to allow support of the proposal.
- 3.8 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 Policies H7 and IMP1 of the Moray Local Development Plan 2015 on the grounds that the proposal would create a natural cluster of dwellings and would not be detrimental to the amenity, appearance and character of the surrounding area, subject to standard conditions and that the first 10m of access from the public road be constructed to The Moray Council specification and surfaced with bituminous macadam.
- 3.9 Councillor Coull stated he was of the same opinion as the Chair and seconded his motion.
- 3.10 There being no one otherwise minded, the MLRB agreed to uphold the review and grant planning permission in respect of Planning Application 15/01263APP, subject to standard conditions and that the first 10m of access from the public road be constructed to The Moray Council specification and surfaced with bituminous

macadam.

**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. 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 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 access

2. 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 160 metres, with all boundaries set back to a position behind the required visibility splay, 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; and
  - (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.

3. 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 the permanent availability of the level of parking necessary for residents/visitors/others in the interests of an acceptable development.

## **ADDITIONAL NOTES FOR INFORMATION OF THE APPLICANT**

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

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](mailto: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](mailto: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 applicants shall free and relieve the Roads Authority from any claims arising out of his operations on the road or extension to the road.

No retaining structures or embankments shall be constructed along the edge of the road, whether retaining the public road or ground adjoining the public road without prior consultation and agreement of the Roads Authority.

## **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:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_

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](mailto: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](mailto: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.**