



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR157
 - Application for review by Mr Chris Greenwood, c/o Mr Matthew Hilton, HHL Scotland against the decision of an Appointed Officer of The Moray Council
 - Planning Application 16/00199/APP to erect dwellinghouse and associated works on Site Approximately 200M East of Lea Rig, Mosstowie, Elgin
 - Unaccompanied site inspection carried out by the MLRB on Tuesday 17 May 2016
 - Date of decision notice: 05 September 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 on the following occasions:- 26 May 2016, 30 June 2016 and 25 August 2016.
- 1.3 On 26 May 2016, the MLRB was attended by Councillors C. Tuke (Chair), G. Cowie, K. Reid and R. Shepherd. On 30 June 2016, Councillors C. Tuke (Chair), G. Cowie and R. Shepherd were in attendance and on 25 August 2016, Councillors C. Tuke (Chair), G. Coull (Deputy Chair), G. Cowie and R. Shepherd were in attendance.

2. MLRB Consideration of Request for Review

26 May 2016

- 2.1 A request was submitted by 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 and associated works on site approximately 200m east of Lea Rig, Mosstowie, Elgin.

- 2.2 There was submitted a 'Summary of Information' report setting out the reasons for refusal, together with documents considered or prepared by the Appointed Officer in respect of the planning application and the Notice of Review, Grounds for Review and supporting documents submitted by the Applicant.
- 2.3 The MLRB agreed that it had sufficient information to determine the request for review.
- 2.4 With regard to the unaccompanied site inspection carried out on 17 May 2016, Mrs Gordon, Planning Adviser advised that Members were shown the site where the proposed development would take place.
- 2.5 The Planning Adviser advised the MLRB that the application had been refused on the grounds that the proposal was contrary to Policies H7: New Housing in the Open Countryside and IMP1: Developer Requirements of the Moray Local Development Plan (MLDP) 2015 and associated Supplementary Guidance 'Housing in the Countryside' on the grounds that the proposal lacks the sufficient natural backdrop required to integrate sensitively within the surrounding landform. She noted that the resultant development occupying a prominent roadside position within this open setting, with no discernible backdrop, would represent unacceptable obtrusive development and would detract from the rural character of this part of the countryside.
- 2.6 Referring to the Applicant's Grounds for Review, the Planning Adviser advised that the Applicant had stated that the proposed site does have a discernible natural backdrop, contrary to the reason for refusal, and advised that immediately behind the site to the south land rises with a large wooded area topping the hill crest. They stated that the proposed siting is not on a skyline, artificially elevated ground or in a central area of a field. The Applicant advised that the roof ridge height is similar to that of the adjacent Lea Rig and, considering this against the natural backdrop, stated their opinion that the proposal would not be highly visible in the landscape and is therefore not obtrusive.
- 2.7 Referring to page 3 of the Housing in the Countryside Supplementary Guidance, the Applicant noted that a photograph has been included that appears to show a comparable siting for a dwelling which is being constructed. They stated their presumption that the photograph has been included to provide visual guidance to a suitable house in the open countryside and advised that clear similarities can be drawn between this photograph and proposal.
- 2.8 The Applicant, referring to page 15 of the Supplementary Guidance, noted that it is stated that development located next to a main route will be prominent in the landscape by virtue of its high visibility to a significant number of people. They stated that the road serving the proposed site is lightly trafficked and the visual impact upon passing traffic will be negligible. The Applicant advised that planting is proposed to assist the development to integrate into the landscape.
- 2.9 Councillor Cowie queried whether it was possible to apply a condition that the

proposed dwelling be pushed backwards in line with Lea Rig. In response, the Planning Adviser advised that a suspensive condition could be applied however the MLRB would have to stipulate a specific distance from the edge of the road.

- 2.10 The Chair sought further clarification as he was led to believe that the MLRB were required to consider the review as proposed within the papers and queried whether the MLRB could defer to negotiate with the Applicant.
- 2.11 The MLRB agreed to take a short adjournment to seek further legal and planning advice on the matter.
- 2.12 On resumption, Councillor Cowie suggested that if it was possible to move the proposed dwelling back from the road, and introduce a service lay-by, then he believed that it may comply with policies but needed further advice.
- 2.13 In response, the Chair – expressing concern that the MLRB would then be changing the application – moved that the MLRB defer consideration of the review and seek further information from Development Management on a feasible set back distance for the dwelling from the road. Councillor Cowie seconded his motion.
- 2.14 There being no one otherwise minded, the MLRB agreed to defer consideration of the review and seek further information from Development Management on a feasible set back distance for the dwelling from the road.

30 June 2016

- 2.15 Under reference to paragraph 4(c) of the minute of this Body dated 26 May 2016, the 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 a dwellinghouse and associated works on site approximately 200m east of Lea Rig, Mosstowie, Elgin.
- 2.16 There was submitted a 'Summary of Information' report setting out the reasons for refusal, together with documents considered or prepared by the Appointed Officer in respect of the planning application and the Notice of Review, Grounds for Review and supporting documents submitted by the Applicant.
- 2.17 The MLRB agreed that it had sufficient information to determine the request for review.
- 2.18 As requested by the MLRB at its meeting on 26 May 2016, a response from Mrs B. Smith, Manager (Development Management) to the MLRB requested for further information on moving the plot within the site of the application subject to review was provided as Appendix 3. The Applicant's response to Development Management's further information was provided as Appendix 4.
- 2.19 As a preliminary matter, the Legal Adviser advised that the Applicant, within their response to Development Management's further information, had included an amended plan which was not before the Appointed Officer during the determination of the planning application subject to review and could therefore be deemed as new evidence by the MLRB. He stated that the MLRB were required to determine whether the information constituted new

evidence and, if so, whether it was a material consideration. He further advised that should the MLRB agree that the information was new evidence which was a material consideration, then the MLRB would be prohibited from determining the review at that meeting and would require to request representations from relevant parties, in this case the Applicant and Development Management.

- 2.20 In response, Councillor Cowie moved that new and material evidence had been introduced and that the MLRB request representations from relevant parties in accordance with the Regulations. This was seconded by Councillor Shepherd.
- 2.21 In response to a comment by the Chair, the Legal Adviser advised that the Regulations state representations must be requested from relevant parties, in this case the Applicant and Development Management, and did not stipulate any other parties such as statutory consultees, as suggested by the Chair.
- 2.22 There being no one otherwise minded, the MLRB agreed:-
- (i) that new and material evidence had been introduced by the Applicant within their response dated 6 June 2016 to Development Management's further information; and
 - (ii) to defer consideration of Case LR157 and request representations from relevant parties, namely the Applicant and Development Management, on the new and material evidence.

25 August 2016

- 2.23 Councillor Coull, having not taken part in the site visit for this review, took no part in the relevant discussion or decision.
- 2.24 Under reference to paragraph 3 of the minute of this Body dated 30 June 2016, the 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 a dwellinghouse and associated works on site approximately 200m East of Lea Rig at Mosstowie, Elgin.
- 2.25 There was submitted a 'Summary of Information' report setting out the reasons for refusal, together with documents considered or prepared by the Appointed Officer in respect of the planning application and the Notice of Review, Grounds for Review and supporting documents submitted by the Applicant.
- 2.26 The MLRB agreed that it had sufficient information to determine the request for review.
- 2.27 As requested by the MLRB at its meeting on 30 June 2016, Development Management and the Applicant's response to the new and material evidence introduced by the Applicant within their response, dated 6 June 2016, to Development Management's further information was provided as Appendix 5.
- 2.28 Councillor Cowie, having had the opportunity to visit the site and consider the Applicant's Grounds for Review, stated that the proposed relocation of the property within the site addressed concerns he had raised previously

regarding prominence and that the proposal now complied with Policy H7 and IMP1. Accordingly, he moved that the review be upheld and planning permission be granted in respect of Planning Application 16/00199/APP.

- 2.29 Councillor Shepherd stated that he was of the same opinion as Councillor Cowie and seconded his motion.
- 2.30 The Chair moved that planning permission be granted subject to standard and consultee conditions.
- 2.31 In response, Mrs Gordon, as Planning Adviser to this review, recommended that the MLRB make specific reference to the Site Plan ref: HHL 13047.P09B which showed the proposed re-location of the property within the site.
- 2.32 Councillors Cowie and Shepherd agreed to amend their motion accordingly to reflect the comments from the Chair and the Planning Adviser.
- 2.33 There being no one otherwise minded, the MLRB agreed to uphold the review and grant planning permission in respect of Planning Application 16/00199/APP, subject to standard and consultee conditions and that the location of the property within the site be as per Site Plan ref HHL 13047.P09B.

Paul Nevin
Senior Solicitor (Property & 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/c carriageway for the life time of the development.

Reason:- To ensure acceptable infrastructure at the development access through the provision of details currently lacking and 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.

2. Prior to any development works commencing:-
 - (i) a detailed drawing (scale 1:500) showing the location and design of a passing place on the U105E Garrowslack Road (to the Moray Council standards and specification), shall be submitted to and approved in writing by the Council, as Planning Authority, in consultation with the Roads Authority; and
 - (ii) thereafter, the passing place shall be constructed in accordance with the approved drawing prior to any development works commencing (except for those works associated with the provision of the passing place).

Reason:- To enable drivers of vehicles to have adequate forward visibility to see approaching traffic and for two vehicles to safely pass each other ensuring the safety and free flow of traffic on the public road.

3. Notwithstanding the submitted details, prior to any development works commencing:-
 - (i) a detailed drawing (scale 1:500 which shall also include details to demonstrate control of the land) showing the visibility splay 2.4 metres by 92 metres to the east and 2.4 metres by 97 metres to the west, with all boundaries set back to a position behind the required visibility splay and all ground levels lowered to that of the public carriageway, 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.

4. 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. The first 5m 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. An access lay-by 8.0m by 2.5m wide with 30 degrees splayed ends shall be 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 lay-by must be 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. 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 and road safety.

7. A turning area shall be provided within the curtilage of the site to enable vehicles to enter and exit in a forward gear.

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.

8. That all planting, seeding or turfing forming part of the approved landscape scheme shall be carried out in the first planting and seeding seasons following the occupation of the dwellinghouse; or the completion of the building works, whichever is the sooner. Any trees or plants which (within a period of 5 years from the planting) die, are removed or become seriously damaged or diseased shall be replaced in the following planting season with others of similar size, number and species unless this Council (as Planning Authority) gives written consent to any variation of this planning condition.

Reason:- In order to ensure that the approved landscaping works are timeously carried out and properly maintained in a manner which will not adversely affect the development or amenity and character of the area.

ADDITIONAL NOTES FOR INFORMATION OF THE APPLICANT

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

The Transportation Manager advises:-

Planning consent does not carry with it the right to carry out works within the public road boundary.

Before commencing development, the Applicant is obliged to apply for Construction Consent in accordance with Section 21 of the Roads (Scotland) Act 1984 for new roads (passing place). The Applicant will be required to provide technical information, including drawings and drainage calculations. Advice on this matter can be obtained from The Moray Council web site or by emailing road.maint@moray.gov.uk

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 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.

The Developer must contact the Roads Authority Roads Maintenance Manager (West) at Ashgrove Depot, Elgin – Tel (01343) 557300, Ext 7349 to discuss the proposals.

The formation of the required visibility splay will involve the removal of trees/vegetation, setting back of boundaries and the lowering of ground levels.

The Manager (Development Management) advises:-

It is noted that your planning application proposes a septic tank and soakaway/infiltration drainage system and the suitability of the ground condition to accommodate, this will be dealt with as part of your Building Warrant application.

Full details of a ground assessment, trial pit investigations and percolation test results, from a suitably qualified person as contained within the Council's List of Approved Certifiers, will be required prior to obtaining a Building Warrant.

An application for a Building Warrant and compliance with the Building Regulations are entirely separate from Planning procedures. Furthermore, the granting of Planning Consent does not guarantee approval of a Building Warrant.

If you have not already done so and you may wish to satisfy yourself about the adequacy of ground conditions separately at this stage, if so I recommend that you contact the Building Standards Section directly at Environmental Services, The Moray Council, Council Offices, High Street, Elgin, IV30 1BX, telephone (01343) 563243.

Please note that any proposed discharges to land or the water environment will require authorisation from SEPA under the Water Environment (Controlled Activities) (Scotland) Regulations 2011. For further details refer to SEPA website http://www.sepa.org.uk/water/water_regulation/regimes.aspx.

LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT

The following plans and drawings form part of the decision:-

Reference	Version	Title
HHL 13047.P08		Elevations and Floor Plans
HHL 13047.P04		Garage Elevations and Floor Plans
HHL 13047.P07	B	Visibility Splay
HHL 13047.P09 (Superseded by HHL 13047.P09	A B)	Site and Location Plan

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.