



## MORAY LOCAL REVIEW BODY

### DECISION NOTICE

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Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR169
  - Application for review by Dr and Mrs Harrington, c/o Mr Colin Keir, Plans Plus against the decision of an Appointed Officer of Moray Council
  - Planning Application 16/00931/APP to erect dwellinghouse with integral garage and detached domestic garage at Plot 5, Enzie Station, Clochan, Buckie
  - Unaccompanied site inspection carried out by the MLRB on 18 November 2016
  - Date of decision notice: 27 February 2017
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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:- 24 November 2016 and 26 January 2017
- 1.3 On 24 November 2016, the MLRB was attended by Councillors C. Tuke (Chair), G. Cowie, and R. Shepherd. On 26 January 2017, Councillors C. Tuke (Chair), G. Coull (Deputy Chair), G. Cowie and R. Shepherd were in attendance.

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

##### 24 November 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 a

planning application to erect a dwellinghouse with integral garage and detached domestic garage at Plot 5, Enzie Station, Clochan, Buckie.

- 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 18 November 2016, the Senior Planning Officer (Planning & Development), as Planning Adviser to this review, advised that Members of the MLRB were shown the site where the proposed development would take place and provided with a summary of the reasons for refusal and the Applicant's Grounds for Review.
- 2.5 The Planning Adviser advised the MLRB that the application had been refused on the grounds that the proposal was contrary to the provisions of Policies H7 *New Housing in the Open Countryside*, E9 *Settlement Boundaries* and IMP1 *Developer Requirements* of the Moray Local Development Plan 2015. She advised that the proposal, because of its siting/location, would result in an additional dwelling contributing to an unacceptable build-up of housing detrimentally changing the rural character of the area. She also noted that the proximity of the build-up of housing at Enzie Station, within close proximity to the designated Rural Grouping of Clochan, would further compromise its defined boundaries and distinct separation from the surrounding open countryside.
- 2.6 Referring to the Applicant's Grounds for Review, the Planning Adviser advised that the Applicant had stated that the site was a spacious grouping of houses to which a fourth house is being added. Advising that, at present, there are 3 relatively new houses grouped together with quite spacious areas between them, the Applicant noted that the Old Station House to the north is isolated from these buildings and the proposed house by considerable tree coverage.
- 2.7 Stating their opinion that the number of houses that constitute a group is arbitrary and open to interpretation, the Applicant advised that they believed the Moray Local Development Plan 2015 does not state what constitutes an unacceptable build-up of housing in the countryside. The Applicant noted that various groups of 4 to 5 houses within Moray demonstrated that a precedent has been set for groupings of this size.
- 2.8 The Applicant advised that the proposed house would not compromise the distinct separation between the Rural Grouping of Clochan and surrounding open countryside as the proposed house is located further away than the existing properties within the grouping from the boundary of Clochan. They also noted that, due to the topography of the ground, the houses cannot be seen from Clochan or from the vantage point of the proposed site and stated that there are developments closer to settlement boundaries than that proposed.
- 2.9 Referring to Policy H7, the Applicant stated their belief that the proposal complies with policy in terms of plot size, backdrop and design and that the

site was a brownfield site due to being an old railway siding. They advised that the development will bring benefits for the community by way of additional passing places on a rural road.

- 2.10 Councillor Cowie, having had the opportunity to visit the site and consider the Applicant's Grounds for Review, expressed concerns regarding the impact on drainage and potential flood risks. Citing the flooding incident on 20 July 2016 raised by Mr Milne in Appendix 3 of the report, he sought further information on the proposals.
- 2.11 In response, the Chair and the Planning Adviser noted that there was no information from SEPA or the Council's Flood Risk Management department but advised that, within the Appointed Officer's Report for Handling, the Appointed Officer had stated that the proposals were acceptable in terms of Policies EP5 *Surface Water Drainage: Sustainable Urban Drainage Systems (SUDS)*, EP7 *Control of Development in Flood Risk Areas* and EP10 *Foul Drainage*.
- 2.12 Councillor Cowie moved that the MLRB defer consideration of the review and request further information from SEPA and Moray Council's Flood Risk Management Team on the impact of the development on drainage and flood risk to Clochan.
- 2.13 Councillor Shepherd stated that he was of the same opinion as Councillor Cowie and seconded his motion.
- 2.14 There being no one otherwise minded, the MLRB agreed to defer consideration of the review and request further information from SEPA and Moray Council's Flood Risk Management Team on the impact of the development on drainage and flood risk to Clochan.

## **26 January 2017**

- 2.15 Councillor Coull, having not taken part in the site visit nor any of the previous discussions of the case, took no part in the relevant discussion or decision.
- 2.16 Under reference to paragraph 4(a) of the minute of the meeting of the MLRB dated 24 November 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 dwellinghouse with integral garage and detached domestic garage at Plot 5, Enzie Station, Clochan, Buckie.
- 2.17 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.
- 2.18 The MLRB agreed that it had sufficient information to determine the request for review.
- 2.19 As requested by the MLRB at its meeting on 24 November 2016, SEPA and Moray Council's Flood Risk Management Team response to the MLRB's request for further information on the impact of the development on drainage

and flood risk to Clochan were provided as Appendix 4 of the report.

- 2.20 Councillor Cowie, having had the opportunity to visit the site and consider the Applicant's Grounds for Review, advised that he was satisfied with the proposed development following the responses to the request for further information. Accordingly, he moved that the review be upheld and planning permission be granted in respect of Planning Application 16/00931/APP, subject to a condition to mitigate any flooding risk.
- 2.21 The Chair advised that he believed that the proposal complied with Policies H7 and IMP1 on the basis that the proposed development did not have a detrimental impact on the surrounding area due to its secluded siting and that Policy E9 did not apply due to the adequate distance from the boundary of Clochan. As a result, the Chair seconded Councillor Cowie's motion subject to the inclusion of standard and consultee conditions and a condition that a suitable drainage design is submitted and agreed by the Moray Flood Risk Management Team.
- 2.22 Councillor Cowie agreed to amend his motion to reflect the Chair's comments on policy and conditions.
- 2.23 There being no one otherwise minded, the MLRB agreed to uphold Case LR169 and grant planning permission in respect of Planning Application 16/00931/APP, subject to standard and consultee conditions and that a suitable drainage design is submitted and agreed by the Moray Flood Risk Management Team.



**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, 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 any development works commencing:-
  - (i) a detailed drawing (scale 1:500) showing the location and design of a passing place on the section of the C17E located between the site access and the junction with the B9016 Keith-Buckie Road (to 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.

2. 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.

3. No development shall commence until the following information has been submitted to, and approved in writing by, the Council as Planning Authority, in consultation with the Moray Flood Risk Management Section:-
  - (i) SUDS scheme (including a phasing plan for implementation of the development in relation to SUDS arrangements); and
  - (ii) Construction phase surface water management plan.

Thereafter, the development shall be implemented in accordance with these approved details.

**Reason:** To ensure that surface water from the development is dealt with in a sustainable manner that avoids flooding and pollution.

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

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

ENVIRONMENTAL HEALTH (CONTAMINATED LAND) have commented that:-

Your property has been identified from the 1905 Ordnance Survey map as being on the site of former railway land, including siding. A contamination site investigation was performed in 2008. However, soil sampling coverage of this plot was limited and the report is not in accordance with current guidance. It is the responsibility of the developer to ensure safe development. You should consider carrying out further sampling and assessment prior to proceeding with the proposed works. Should contamination be identified you should contact the Environmental Health section immediately (tel 01343 563345 or email to [contaminated.land@moray.gov.uk](mailto:contaminated.land@moray.gov.uk)) to agree a course of action.

THE TRANSPORTATION SERVICE have commented that:-

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 (for the 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 [transport.develop@moray.gov.uk](mailto:transport.develop@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 [roadspemits@moray.gov.uk](mailto:roadspemits@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.

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.

## **LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT**

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

Reference	Version	Title
1~4		Ground Floor Plan
2~4		First Floor Plan and Sections
3~4		Elevations Site and Location Plan
4~4		Garage Details

## **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 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 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.

**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: - 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.**

**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: - Moray Council  
Development Management  
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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.**