



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR176
 - Application for review by Mr Robin Falconer, c/o Plans Plus, Main Street Offices, Urquhart against the decision of an Appointed Officer of Moray Council
 - Planning Application 16/01539/PPP for Site at Sweethillocks, Duffus
 - Unaccompanied site inspection carried out by the MLRB on 20 February 2017
 - Date of decision notice: 7 March 2017
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Decision

The MLRB agreed to uphold the request for review and grant planning permission in principle, 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 in principle was considered by the MLRB at the meeting held on 23 February 2017.
- 1.3 The MLRB was attended by Councillors C. Tuke (Chair), G. Cowie and M. McConachie.

2. MLRB Consideration of Request for Review

- 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 a dwellinghouse on Site at Sweethillocks, Duffus.
- 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 Chair sought clarification due to the changes in operations at RAF Lossiemouth as to whether officers would be able to work with the MoD to

provide updated noise assessments and contour maps. In response the Legal Adviser advised that as recently as December 2016 the MoD had confirmed that the noise assessments and contour maps agreed at the Environmental Services Committee on 7 March 2007 (para 8 of the Minute refers) were still valid however the MoD recognised that noise still had to be assessed in respect of Typhoon planes.

- 2.4 Thereafter, the MLRB agreed that it had sufficient information to determine the request for review.
- 2.5 With regard to the unaccompanied site inspection carried out on 20 February 2017 Mrs MacDougall, 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.
- 2.6 She advised the MLRB that the application had been refused on the grounds that the proposal was contrary to Policies EP8 *Pollution* and IMP1 *Developer Requirements* of the Moray Local Development Plan (MLDP) 2015. She further advised the proposed residential development is situated within the MoD's RAF Lossiemouth noise contour band of 72 dBA.
- 2.7 In accordance with the Environmental Services Committee report of 7 March 2007, she noted that applications in this band require to be refused. She further advised that excessively high noise from aircraft at this location would impact significantly on the internal and external amenity of the development, contrary to Policies EP8 and IMP1 and the Scottish Government Planning Advice Note 1/2011: Planning and Noise (PAN 1).
- 2.8 Referring to the Applicant's Grounds for Review, the Planning Adviser advised that the Applicant had stated that they live in Lossiemouth and therefore know about aircraft noise but still want to locate to this site. They further advised that if the proposal complies with other policies, and they are no worse off with aircraft noise, then there should be scope to approve the application. They stated their opinion that as noise contour bands were agreed 10 years ago and insulation of modern housing had increased; this along with triple glazing and existing tree cover meant that the plot would be quieter than Lossiemouth.
- 2.9 The Applicant cited 2 examples of similar locations that had previously been approved. Referencing St Michael Kirk Lodge, Gordonstoun, which was 200m from the proposal site, they stated there had been no mention of noise contours in the report of handling for that application and noted that it is on open land rather than protected by woodland like the proposal site. With reference to Site R1 Sunbank, Lossiemouth, which had approval for 278 houses, the Applicant noted that it was also on open ground with no buffer zone of trees. In their opinion, they advised that this site will have more severe noise concerns than the plot under appeal. They stated that although the appeal site is in category D noise contour band of 72 dBA, part of site R1 is in this category with the majority of the 278 houses in category C noise contour band 69 dBA.
- 2.10 The Applicant further queried if the noise levels would be any worse with super insulation and triple glazing to where the Applicant currently lives on

Clifton Road, Lossiemouth. In their opinion, they stated that there is no great difference between noise rating of category C and D and with the buffer zone of trees and the use of good quality insulation and triple glazing the house at Sweethillocks will have less air craft noise than the units proposed on Site R1.

- 2.11 Questioning the validity of using the information from 2007, the Applicant noted that different air craft now use the base which may negate the noise contour results completely. They further stated that if people want to live at this site then this should override the protection that has been set up.
- 2.12 In response to a query from the Chair, the Planning Adviser advised that the application at St Michael Kirk Lodge was for ancillary accommodation to an existing dwelling and therefore, as this was not a new dwelling, there had been no reference made to the noise contours.
- 2.13 Councillor McConachie, in referring to St Michael Kirk Lodge, stated he was of the opinion that if that application had been acceptable externally then there was an anomaly with the proposed site. In response, the Planning Adviser advised this was due to the policy referring to new buildings whereas St Michael Kirk Lodge was for an extension to an existing building.
- 2.14 The Chair stated he was in agreement with Councillor McConachie in that Policy EP8 referred to noise pollutants and not noise that is already present as it refers to the creation of pollution. The Chair further stated that as the Applicant had provided a letter advising they were accepting of the level of noise then this was a material consideration. In response, the Legal Adviser advised that the MLRB was entitled to decide what is a material consideration but also advised the argument was subjective as this would not protect future users of the building. He further advised that if the MLRB were minded to uphold the review then they would have to put sufficient weight on any material consideration to allow them to go against the Committee decision of 7 March 2007 which agreed that nothing was to be built within the noise contour band of 72 dBA.
- 2.15 Councillor Cowie stated that insulation had improved since 2007 and sought clarification whether it would be possible to put conditions on what could be done to mitigate noise levels. In response, the Chair advised that the Committee decision of 2007 had stated no mitigation would reasonably resolve the noise issue. He further advised that PAN 1 stated that a pragmatic approach should be taken in respect of new developments and, in agreeing with Councillor Cowie, noted that the Applicant was willing to accept the noise levels.
- 2.16 Thereafter, Councillor McConachie stated that as this was for planning permission in principle then conditions could be dealt with at the detailed planning application stage.
- 2.17 The Chair sought clarification as to whether the conditions advised by Transportation and any compensatory tree planting would have to be confirmed at this stage or if this could be left until the detailed planning application stage. In response, the Planning Adviser advised any conditions being imposed would be required at this stage.
- 2.18 The Legal Adviser reiterated that it was Council policy that housing development within the noise contour band of 72 dBA be refused and that the

MLRB had to decide if the Applicant's acceptance of the risk in respect of noise was sufficient to overturn policy.

- 2.19 Councillor McConachie sought clarification as to whether any of the houses to be built on Site R1 were within the noise contour band of 72 dBA. In response the Planning Adviser advised that a large proportion of the site was within the noise contour band of 69 dBA to 72 dBA and that the site went to the boundary of the noise contour band of 72 dBA. She further advised there are additional requirements for insulation and glazing for houses within the lower contour.
- 2.20 Thereafter, the Chair stated he was of the impression that the three Members in attendance were in agreement that the proposal was an acceptable departure from Policies EP8 and IMP1 as the spirit of the policy is to protect the amenity of residents and the proposed house owner had stated they were willing to accept the loss of amenity. He also stated he was of the opinion that the proposal complies with PAN 1, as a pragmatic approach would be adopted. Accordingly, having had the opportunity to visit the site and consider the Applicant's Grounds for Review, the Chair moved that the review be upheld and planning permission in principle be granted in respect of Planning Application 16/01539/PPP, subject to standard/consultee conditions, compensatory planting to cover all tree felling and that permission would state the site was within the noise contour band of 72 dBA.
- 2.21 Councillors Cowie and McConachie stated they were of the same opinion as the Chair.
- 2.22 Councillor Cowie sought clarification on the requirement to build a passing place and at what stage this should be done. In response, the Legal Adviser advised that a condition from Transportation was that the passing place be constructed prior to any other building works being started.
- 2.23 Thereafter, Councillor Cowie asked that a further condition be added that the first 15m of the roadway be surfaced prior to building works starting. The Chair agreed to amend his motion accordingly.
- 2.24 There being no one otherwise minded, the MLRB agreed to uphold the review and grant planning permission in principle in respect of Planning Application 16/01539/PPP, subject to the following conditions:
- (i) standard and consultees;
 - (ii) compensatory planting for all trees felled;
 - (iii) the first 15m of the access road to be constructed to Moray Council specification and surfaced with bituminous macadam prior to the start of building works; and
 - (iv) that the decision notice state the site falls within the noise contour band of 72 dBA.



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. The approval hereby granted is for planning permission in principle and prior to the commencement of the development approval of matters specified in conditions, including the siting, design and external appearance of the building(s) the means of access thereto and the landscaping of the site shall be obtained from the Council, as Planning Authority.
2. The grant of planning permission in principle hereby granted for the proposed development shall be carried out only in accordance with detailed drawings which shall previously have been submitted to and approved by the Council, as Planning Authority. These drawings shall show the matters specified in conditions numbered 3 - 8; below.
3. Plans, sections and elevations of all buildings proposed with details of the type and colour of all external materials and finishes shall be submitted in accordance with condition no. 2; above.
4. The proposed layout of the site showing the exact position of the site boundaries, the position of all buildings, the means of access, areas for vehicle parking and the arrangements for the disposal of foul and surface water (i.e. a SUDS system or equivalent) shall be submitted in accordance with condition no. 2; above.
5. Details of the exact extent, type and finish of all other works including walls, fences and other means of enclosure and screening shall be submitted in accordance with condition no. 2; above.
6. Sections through the site showing the development on its finished levels in relation to existing levels shall be submitted in accordance with condition no. 2; above.
7. Landscaping proposals showing any existing trees/hedges/shrubs to be retained or removed together with details of the type, position and number of all planting to be undertaken and details of all surfacing materials shall be submitted in accordance with condition no. 2; above.
8. The design and materials of the dwellinghouse and landscaping proposals shall comply with the following requirements:-
 - (i) A roof pitch of between 40-55 degrees;
 - (ii) A gable width of no more than 2.5 times the height of the wall from ground to eaves level;

- (iii) Uniform external finishes and materials including slate or dark "slate effect" roof tiles;
- (iv) A vertical emphasis and uniformity to all windows;
- (v) Proposals must be accompanied by a plan showing 25% of the plot area to be planted with native species trees, at least 1.5m in height;
- (vi) Where there is an established character, or style, of boundary demarcation in the locality (e.g. beech hedges, dry stone dykes) new boundaries must be sympathetic.

9. 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 U38E Covesea Road between the site and the junction with the B9040 Lossiemouth – Burghead 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.

10. 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 2.4 metres by 215 metres in both directions, showing boundary fences/hedges 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 leaving the site to have a clear view over a length of road sufficient to allow safe exit, in the interests of road safety for the proposed development and other road users.

11. Parking provision shall be as follows:

- (i) 2 spaces for a dwelling with three bedrooms or less; or
- (ii) 3 spaces for a dwelling with four bedrooms or more; and
- (iii) the 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.

12. 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.

13. No water shall be permitted to drain or loose material be carried onto the public footway/carriageway.

Reason: To ensure acceptable development that does not create any hazard to road users in the interests of road safety.

14. Prior to any development works commencing the 15m 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 is provided at the development access.

15. All windows with the dwellinghouse, the design of which is to be subject of a detailed application/application for matters specified in conditions shall be fitted with triple glazing.

Reason: To protect the amenity of future occupants of the development hereby approved against noise disturbance.

16. No development shall commence until details have been submitted to and approved in writing by the Council as Planning Authority, regarding details of a woodland planting scheme (the Replanting Scheme) within Moray to compensate, in this case, for the removal of any existing woodland from the site in order to accommodate the development. The Replanting Scheme details shall:

- a) include the specifications for
 - (i) on-site replanting;
 - (ii) off-site compensatory planting;
 - (iii) tree maintenance and protection to established planting (including Deer Management); and
- b) comply with the requirements set out in the UK Forestry Standard (Forestry Commissions, 2011. ISBN 978-0-85538-830-0) and the guidelines to which it refers and include
 - (i) details of the location of the area to be planted;
 - (ii) details of land owners and occupiers of the land to be planted;
 - (iii) the nature, design and specification of the proposed woodland to be planted;
 - (iv) details of all necessary consents for the Replanting Scheme and timescales within which each shall be obtained;
 - (v) the phasing and associated timescales for implementing the Replanting Scheme;
 - (vi) proposals for the maintenance and establishment of the Replanting Scheme, including annual checks; protection from predation;

replacement planting; fencing; ground preparation; and drainage, etc.

Thereafter, the development shall be implemented in accordance with the approved Replanting Scheme details, including the phasing and timescales as set out therein.

Reason: Details of the matter specified are lacking from the submission and to ensure an acceptable form of development where replacement or compensatory planting is provided where the development results in a loss of woodland

ADDITIONAL NOTES FOR INFORMATION OF THE APPLICANT

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

THE MANAGER (DEVELOPMENT MANAGEMENT) has commented that:-

During construction work the applicant and/or the developer should remain vigilant for signs of bats, if they come across any bats or any signs of bats, all work in that area must cease immediately and Scottish Natural Heritage must be contacted for further advice.

It should be noted that as bats are a European Protected Species, as listed in the Conservation (Natural Habitats &c.) Regulations 1994 it is illegal to:

- Deliberately kill, injure, disturb or capture/take European Protected Species of animal
- Damage or destroy the breeding sites or resting places of such animals.

Furthermore, where it is proposed to carry out works that will affect a European Protected Species or their shelter/breeding places, whether or not they are present, a licence is required from the appropriate licensing authority.

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.

THE TRANSPORTATION MANAGER, DIRECT SERVICES has 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.

The applicant will be required to provide technical information, including drawings and drainage calculations (Passing Place). Advice on this matter can be obtained from the Moray Council web site or by emailing 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 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.

No building materials/scaffolding/builder's skip shall obstruct the public road (including footpaths) without permission from the Roads Authority.

The applicant shall free and relieve the Roads Authority from any claims arising out of their operations on the road or extension to the road.

The provision of the visibility splay will require the removal of vegetation and to the south will require the removal of a section of the existing mature hedge. Any new hedge planted must be set back a minimum distance of 3.0m to the rear of the required visibility splay.

LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT

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

Reference	Version	Title
16/38		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 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

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
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.