



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR178
 - Application for review by Mr and Mrs M. Davies against the decision of an Appointed Officer of Moray Council
 - Planning Application 16/01820/APP to erect dwellinghouse on Plot Adjacent to Eastwood, Calcots, Elgin
 - Unaccompanied site inspection carried out by the MLRB on Monday 27 March 2017
 - Date of decision notice: 17 April 2017
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Decision

The MLRB agreed to dismiss the request for review and uphold the original decision of the Appointed Officer to refuse the above noted application.

1. Preliminary

- 1.1 This Notice constitutes the formal decision of the MLRB as required by the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013.
- 1.2 The above application for planning permission was considered by the MLRB at the meeting held on Thursday 30 March 2017.
- 1.3 The MLRB was attended by Councillors C. Tuke (Chair), G. Coull (Deputy Chair), G. Cowie, M. McConachie and R. Shepherd.

2. MLRB Consideration of Request for Review

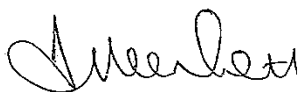
- 2.1 A request was submitted by the Applicant seeking a review of the decision of the Appointed Officer, in terms of the Scheme of Delegation, to refuse a planning application to erect dwellinghouse on plot adjacent to Eastwood, Calcots, Elgin.
- 2.2 There was submitted a 'Summary of Information' report 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 27 March 2017, Mrs R. MacDougall, Planning Officer (Development Planning & Facilitation), 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 Policies T2 *Provision of Access* and IMP1 *Developer Requirements* of the Moray Local Development Plan 2015 as the proposed development would result in an intensification of use an existing access where the visibility is restricted by the adjacent building, fences and trees and would be likely to give rise to conditions detrimental to the road safety of road users contrary to the provisions of Policies T2 and IMP1.
- 2.6 Referring to the Applicant's Grounds for Review, the Planning Adviser advised that the Applicant referred to Case LR168 where the MLRB dismissed the case and upheld the "Appointed Officer's decision to refuse planning permission in respect of Planning Application 16/01139/APP, on the grounds that the proposal was contrary to Policy H7 only." The Applicant noted that the MLRB had decided there was sufficient evidence to support there would be no intensification of traffic. They stated that an amended and acceptable building design has been submitted which had been accepted by the Appointed Officer, however the Transportation Team had objected on the transportation elements.
- 2.7 Stating that there is a history of safety at the existing access and that there will be a reduction in traffic in comparison to previous years, the Applicant advised that they had previously moved the existing driveway from the north side of Eastwood to the south side to avoid traffic entering and leaving on the corner and thereby making it safer. They noted that this access has been designed and constructed in accordance with Moray Council's specification and issued with a completion certificate.
- 2.8 The Applicant advised that the drive would, at the most, accommodate 2 extra cars leaving in the morning and returning in the evening which, given the history and previous use of the access, would be a massive reduction. They noted that previous uses included five drivers occupying Eastwood, off-site parking for 14 members of staff, use over a two year period by heavy vehicles during renovation and landscaping work and use by Moray Council in 2014 during resurfacing work on the B9103 with vehicles entering and leaving on an hourly basis. The Applicant stated that since 2009, there has never been an incident and that traffic will never be as heightened as it has been. Noting that the stopping distance at 60mph according to DVLA is 73m and the visibility at the access exceeds this, the Applicant stated that most vehicles will be slower due to nearby corner.
- 2.9 The Chair, referring to pages 13 and 14 of the report, noted that the

Developer Obligations Report had been redacted and it was not possible to tell what the value of the requested obligations was. In response, the Clerk and Legal Adviser advised that this was normal procedure for consideration by a committee as the financial aspect of the obligations was not relevant to their determination of an application.

- 2.10 Councillor Coull, having had the opportunity to visit the site and consider the Applicant's Grounds for Review, advised that his position on the transport element had not changed since the consideration of Case LR168. He stated his belief that there would be limited, if any, intensification of the use of the access and therefore the proposal complied with Policies T2 and IMP1. Accordingly, he moved that the review be upheld and planning permission be granted in respect of Planning Application 16/01820/APP, subject to standard/consultee conditions, following payment of developer obligations or registration of a Section 75 agreement.
- 2.11 As an amendment, Councillor Cowie noted that nothing had been done to improve the access and moved that the review be dismissed and the Appointed Officer's decision be upheld to refuse planning permission in respect of Planning Application 16/01820/APP.
- 2.12 Councillor Shepherd stated that he was of the same opinion as Councillor Cowie and seconded his amendment.
- 2.13 Councillor McConachie stated that he was of the same opinion as Councillor Coull and seconded his motion.
- 2.14 The Chair stated that he was of the same opinion as Councillors Cowie and Shepherd.
- 2.15 On a division, there voted:-
- For the Motion (2):- Councillors Coull and McConachie.
- For the Amendment (3):- Councillors Cowie, Shepherd and Tuke.
- Abstentions (0)
- 2.16 Accordingly, the amendment became the finding of the MLRB and it agreed to dismiss Case LR178 and uphold the Appointed Officer's decision to refuse planning permission in respect of Planning Application 16/01820/APP.



Aileen Scott
Legal Services Manager (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.