



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR184
 - Application for review by Mrs Sandra Duncan, c/o Mr Matthew Hilton, HHL Scotland against the decision of an Appointed Officer of Moray Council
 - Planning Application 17/00358/PPP – Erect dwellinghouse and garage on site east of Westbank Farmhouse, Roseisle, Elgin
 - Unaccompanied site inspection carried out by the MLRB on 28 August 2017
 - Date of decision notice: 19 September 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 31 August 2017.
- 1.3 The MLRB was attended by Councillors W Wilson (Chair), C Feaver (Depute Chair), D Bremner, D Gatt, M Macrae and A Patience.

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 on 5 May 2017 on the grounds that the proposal is contrary to the provisions of the adopted Moray Local Development Plan 2015 (Policies H7 and IMP1).
- 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 Moray Local Review Body (MLRB) agreed that it had sufficient information to determine the request for review.
- 2.4 With regard to the accompanied site inspection carried out on 28 August 2017, the Chair stated that Members of the MLRB were shown the site where the proposed development would take place and had before them papers setting out both the grounds for refusal and the grounds for review.
- 2.5 The Chair, having had the opportunity to visit the site and consider the Applicant's grounds for review moved that the review be upheld and planning permission granted.
- 2.6 Councillor Macrae, having had the opportunity to visit the site and consider the Applicant's grounds for review seconded the Chair's motion and stated that, in his opinion and in terms of policies H7 and IMP1, the proposed design of the dwelling house would not detract from the area.
- 2.7 Councillor Bremner, having had the opportunity to visit the site and consider the Applicant's grounds for review, agreed with the view of the Appointed Officer and moved as an amendment that the review be dismissed and the Appointed Officer's decision be upheld to refuse planning permission in respect of planning application 17/00358/PPP. This was seconded by Councillor Feaver.
- 2.8 On a division there voted:
- For the motion (3): Councillors Wilson, Macrae and Patience
- For the amendment (2): Councillors Bremner and Feaver
- Abstention (1): Councillor Gatt
- 2.9 Accordingly, the motion became the finding of the MLRB and it was agreed to uphold Case LR184 and grant planning permission in respect of planning application 17/00358/PPP subject to standard/consultee conditions.

Mr Paul Nevin
Senior Solicitor
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.

Reason - In order to ensure that the matters specified can be fully considered prior to the commencement of development.

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.

Reason - As the approval is granted for planning permission in principle only and in order that detailed consideration can be given to the matters specified.

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.

Reason - As the approval is granted for planning permission in principle only and in order that detailed consideration can be given to the matters specified.

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.

Reason - As the approval is granted for planning permission in principle only and in order that detailed consideration can be given to the matters specified.

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.

Reason - As the approval is granted for planning permission in principle only and in order that detailed consideration can be given to the matters specified.

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.

Reason - As the approval is granted for planning permission in principle only and in order that detailed consideration can be given to the matters specified.

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.

Reason - As the approval is granted for planning permission in principle only and in order that detailed consideration can be given to the matters specified.

8. As part of part of the requirements of Conditions 2-7:

a) The dwelling shall not exceed one and a half storey construction with any upper floor accommodation located wholly or substantially with the roof space and served by dormers and/or roof light arrangements;

b) The design and materials of the dwellinghouse and landscaping proposals shall include 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 and doors;

(v) Proposals must be accompanied by a landscaping plan showing 25% of the plot area to be planted with native species trees, at least 1.5m in height;

(vi) The boundary demarcation for the site shall reflect the established character or style (e.g. beech hedges, dry stone dykes or equivalent) in The locality; and

c) All access (including visibility splays), parking and turning arrangements shall include the requirements of Conditions 9-14 below.

Reason - In order to ensure that the development harmonises with the appearance and character of the surrounding properties and area, and to ensure an acceptable form of development in terms of road safety and parking provision in conjunction with the proposed development.

9. Notwithstanding the submitted details 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 160 metres in both directions, showing boundary walls/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.

10. 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 new access.

11. The width of the vehicular access shall be minimum 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.

12. Parking provision shall be as follows:

- 2 spaces for a dwelling with three bedrooms or less; or
- 3 spaces for a dwelling with four bedrooms or more.

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.

13. An access lay-by 8.0m long 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. Access gates should be located at a position set back a minimum distance of 8.0m from the edge of the public road.

Reason: To enable visiting service vehicles to park clear of the public road in the interests of road safety.

14. 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

15. No boundary fences, hedges, walls or any other obstruction whatsoever over 1.0m in height and fronting onto the public road shall be within 2.4m of the edge of the carriageway.

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.

16. New boundary walls/fences shall be set back from the edge of the public carriageway at a minimum distance of 2.0m, and to a position behind the required visibility splays.

Reason: To ensure acceptable development in the interests of road safety.

ADDITIONAL NOTES FOR INFORMATION OF THE APPLICANT

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

The Transportation Manager, 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 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 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.

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 their property.

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

The formation of the required visibility splay will involve the removal of vegetation, setting back of boundary fences and the lowering of ground levels.

LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT

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

Reference	Version	Title
1		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.