



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR251
 - Application for review by Mr W Miller c/o Grant and Geoghegan against the decision of an Appointed Officer of Moray Council
 - Planning Application 20/00879/PPP – Erect Dwellinghouse on site adjacent to Birkenband Cottage, Birnie, Moray
 - Date of decision notice: 7 April 2021
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Decision

The MLRB agreed to uphold the request for review and grant planning permission/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 25 February 2021.
- 1.3 The MLRB was attended by Councillors Taylor, Bremner, Alexander, Cowie, Coy, Gatt, R McLean, Powell and Ross.

2. MLRB Consideration of Request for Review

- 2.1 The Chair advised the Committee of an error in the agenda which stated that this development was in Ward 6 Elgin City North when it should read Ward 4 Fochabers Lhanbryde. This was noted.
- 2.2 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 planning permission on the grounds that:

The proposed extension is contrary to Moray Local Development Plan 2020 for the following reasons:

- i. The application proposes a new dwellinghouse on a site which would result in ribbon development, by joining up two other existing plots which would be contrary to the traditional dispersed settlement pattern in this area, contrary to policies DP1 - Development Principles and DP4 - Rural Housing.
- ii. The addition of a new dwellinghouse on this site would contribute to unacceptable build-up of new housing which would detract from the rural landscape character of the area, contrary to policies DP1 – Development Principles and DP4 - Rural Housing.

2.3 A Summary of Information Report set out the reasons for refusal, together with the documents considered or prepared by the Appointed Officer in respect of the planning application, in addition to the Notice of Review, Grounds for Review and supporting documents submitted by the Applicant.

2.4 In response to a question from the Chair as to whether the Legal or Planning Advisers had any preliminary matters to raise, both the Legal and Planning Advisers advised that they had nothing to raise at this time.

2.5 The Chair then asked the Moray Local Review Body (MLRB) if it had sufficient information to determine the request for review. In response, the MLRB unanimously agreed that it had sufficient information to determine the case.

2.6 Councillor Ross, having considered the case in detail, was of the view that this was an unacceptable build up of new housing in this area and moved that the MLRB refuse the appeal and uphold the original decision of the Appointed Officer to refuse Planning Application 20/00879/PPP as it is contrary to policies DP1 - Development Principles and DP4 - Rural Housing of the MLDP 2020. This was seconded by Councillor Alexander.

2.7 Councillor R McLean, having considered the case in detail, was of the view that the development would not constitute ribbon development as the properties were not in a straight line, were large plots that were not close together and could not be seen from the road due to the topography of the land and moved that the MLRB uphold the appeal and grant planning permission in respect of Planning Application 20/00879/PPP as, in his opinion, the proposal complied with policies DP1 - Development Principles and DP4 - Rural Housing of the MLDP 2020. This was seconded by Councillor Bremner who also noted that the development was outwith the pressurised area.

2.8 On a division there voted:

For the motion (3): Councillors Ross, Alexander and Taylor

For the Amendment (6): Councillors R McLean, Bremner, Cowie, Coy, Gatt and Powell

Abstention (0): Nil

2.9 Accordingly, the amendment became the finding of the MLRB and it was agreed to uphold the appeal and grant planning permission in respect of Planning Application 20/00879/PPP as the proposal complies with policies DP1 - Development Principles and DP4 - Rural Housing of the MLDP 2020.

Mr S Hoath
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.**

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 6.75m in height (measured from the corresponding ground level of the building) and 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 35-50 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 all roofing shall be finished in natural slate or an alternative profiled cladding.
 - (iv) A vertical emphasis and uniformity to all windows and doors;
 - (v) Proposals must be accompanied by a landscaping plan showing 15% of the plot area to be planted with native tree species, at least 1.5m in height;
 - (vi) The boundary demarcation for the site must post and wire fencing, low natural stone walls or native hedgerow; and
- c) All access (including visibility splays), parking and turning arrangements shall include the requirements of Conditions 10-14 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. No development shall commence until full details including drawings and calculations of the proposed drainage arrangements have been submitted to and agreed in writing by the planning authority in consultation with Moray Flood Risk Management. Thereafter the agreed details shall be implemented in full prior to the first occupation of the dwellinghouse hereby approved. For the avoidance of doubt all the drainage arrangements shall be in accordance with the submitted report 'Site Investigation and Drainage Assessment' (dated 23 March 2020).

Reason - To ensure that the site is adequately drained

10. No development shall commence until a detailed drawing (scale 1:500 or 1:1000 which shall also include details to demonstrate control of the land) showing the visibility splay 4.5 metres by 215 metres with all boundaries set back to a position behind the required visibility splays and a schedule of maintenance for the splay area has been submitted to and approved by the Council, as Planning Authority in consultation with the Roads Authority; and thereafter 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 thereafter the visibility splay shall be maintained at all times free from any obstruction exceeding 0.26 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 through the provision of details currently lacking.

11. No development shall commence until a detailed drawing (scale 1:200 or 1:500 which shall also include details to demonstrate control of the land) showing the works required to provide a forward visibility splay from the south of 215 metres and a schedule of maintenance for the splay area has been submitted to and approved by the Council, as Planning Authority in consultation with the Roads Authority; and thereafter the forward 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 thereafter the forward visibility splay shall be maintained at all times free from any obstruction exceeding 0.26 metres above the level of the carriageway in accordance with the agreed schedule of maintenance.

Reason - To enable acceptable vehicular access to the development in the interests of road safety through the provision of details currently lacking.

12. No development shall commence until a detailed drawing (scale 1:200) has been submitted to and approved in writing by the Council, as Planning Authority in consultation with the Roads Authority showing the provision of 2 car parking spaces for a dwelling with three bedrooms or less, or 3 spaces for a dwelling with four bedrooms or more; and identifying the location where a future Electric Vehicle (EV) fast charging unit is to be connected to an appropriate electricity supply (minimum output 7kw and with a minimum of one parking space accessible to and located within 5 metres of the future charger unit); including details (written proposals and/or plans) to confirm the provision of the necessary cabling, ducting, and consumer units capable of supporting the future fast charging unit. Thereafter the car parking spaces and EV fast charger cabling and ducting shall be provided in accordance with the approved drawing prior to the first occupation of the dwelling house and 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 and the provision of infrastructure to support the use of low carbon transport.

13. The dwelling house hereby approved shall not be occupied until the vehicular access has been constructed to the Moray Council specification and surfaced with bituminous macadam for a minimum of the first 10m of the access track, measured from the edge of the public carriageway. The width of the access shall be 5.5m for the first 15 metres measured from the edge of the public road and have a maximum gradient of 1:20 measured for the first 5.0m from the edge of the public carriageway.

Reason - To ensure acceptable infrastructure at the development access.

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

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 access.

15. 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.

16. No trees shall be removed without prior written consent of the Council, as Planning Authority.

Reason - In order to ensure that the existing trees are retained as they add interest and character to the site and will contribute to the appearance of the development approved herewith.

ADDITIONAL NOTES FOR INFORMATION OF THE APPLICANT

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

THE TRANSPORTATION MANAGER, DIRECT SERVICES has commented that:-

The formation of the required visibility splay will involve the removal of gorse and vegetation and the lowering of the bank/verge on the opposite side of the carriageway.

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

Before starting any work on the existing public road (including works to lower the verge/bank) the applicant is obliged to apply for a road opening permit in accordance with Section 56 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

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.



THE MORAY COUNCIL

NOTIFICATION OF INITIATION OF DEVELOPMENT

Section 27A Town and Country Planning (Scotland) Act 1997

Application Number

Date Decision Issued

Location and Description of
Development

**Please note that all suspensive conditions must be discharged prior to
commencement of development**

Date works are to Commence	
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Name, Address and contact details of developer

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**The Full name and Address and contact details of the landowner, if a
different person**

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Where an agent is appointed, their full name and contact details

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Signed

Name (Print)

Date

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Please complete and return this form to:

**The Moray Council, Development Management Manager, Council Offices, High
Street, Elgin, Moray IV30 6UG**

OR

E-mail: development.control@moray.gov.uk



THE MORAY COUNCIL

NOTIFICATION OF COMPLETION OF DEVELOPMENT

Section 27A Town and Country Planning (Scotland) Act 1997

Application Number

Date Decision Issued
Location and Description of
Development

Date of completion of works	
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Name, Address and contact details of developer

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The Full name and Address and contact details of the landowner, if a different person

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Where an agent is appointed, their full name and contact details

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Signed

Name (Print)

Date

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Please complete and return this form to:

The Moray Council, Development Management Manager, Council Offices, High Street, Elgin, Moray IV30 6UG

E-mail: development.control@moray.gov.uk