



## MORAY LOCAL REVIEW BODY

### DECISION NOTICE

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Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR254
  - Application for review by Mr Mark Sievewright c/o Mr Stewart Reid, S Reid Design against the decision of an Appointed Officer of Moray Council
  - Planning Application 20/01349/APP – Proposed dwellinghouse with integrated garage at Mulben View, Mulben
  - Date of decision notice: 3 June 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 was considered by the MLRB on the following occasions:- 25 March 2021 and 29 April 2021.
- 1.3 On 25 March 2021, the MLRB was attended by Councillors Bremner, Cowie, Coy, Gatt, R McLean, Powell, Ross and Taylor. On 29 April 2021, Councillors Alexander, Bremner, Coy, Gatt, R McLean, Powell, Ross and Taylor were in attendance.

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

##### **25 March 2021**

- 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 planning permission on the grounds that:

The development is contrary to Policy DP4: Rural Housing and DP1: Development Principles of the Moray Local Development Plan (MLDP) 2020 for the following reasons:

- i. It would not fit with the local landscape character of the area and would not be integrated into the surrounding landscape which is characterised by dispersed rural properties with wooded features/setting.
- ii. There is not an acceptable level of enclosure, containment and backdrop for a new house.
- iii. It would detrimentally alter the rural character of the area by creating the beginnings of ribbon development beside an existing house on a site lacking sufficient visual containment in a prominent location adjacent to a main A class trunk road.

2.2 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.

2.3 In response to a question from the Chair as to whether the Legal or Planning Advisers had any preliminary matters to raise, the Planning Adviser advised that he had nothing to raise at this time. The Legal Adviser advised that the Applicant had included a letter of support from Health and Social Care Moray which he would like the Moray Local Review Body (MLRB) to consider however, if the MLRB wished to take the letter of support into consideration, then it should consider whether any further procedure would be required including deferring the case to allow the Appointed Officer the opportunity to comment on the letter of support.

2.4 The Chair sought the agreement of the MLRB to consider the new information and in the meantime defer the case until a future meeting of the MLRB to allow the Appointed Officer the opportunity to comment on the letter of support from Health and Social Care Moray. This was unanimously agreed.

## **29 April 2021**

2.5 Under reference to paragraph 5 of the Minute of the meeting of the Moray Local Review Body (MLRB) dated 25 March 2021, the MLRB continued to consider a request from the Applicant seeking a review of the decision of the Appointed Officer to refuse planning application on the grounds that:

The development is contrary to Policy DP4: Rural Housing and DP1: Development Principles of the Moray Local Development Plan (MLDP) 2020 for the following reasons:

- i. It would not fit with the local landscape character of the area and would not be integrated into the surrounding landscape which is characterised by dispersed rural properties with wooded features/setting.
- ii. There is not an acceptable level of enclosure, containment and backdrop for a new house.

- iii. It would detrimentally alter the rural character of the area by creating the beginnings of ribbon development beside an existing house on a site lacking sufficient visual containment in a prominent location adjacent to a main A class trunk road.
- 2.6 The Chair stated that, at the meeting of the MLRB on 25 March 2021, she had proposed that the MLRB consider new information included in the Applicant's paperwork ie a letter of support from Health and Social Care Moray and defer the case until a future meeting to allow the Appointed Officer the opportunity to comment on the letter of support which was subsequently unanimously agreed. The letter of support from Health and Social Care Moray was included within Appendix 2 and the response to the supporting letter was set out at Appendix 3 of the paperwork.
- 2.7 In response to a question from the Chair as to whether the Legal or Planning Advisers had any preliminary matters to raise, the Planning Adviser advised of a typo within the Report of Handling which stated that the trunk road was the A98 when it should read the A95. This was noted. The Legal Adviser advised that he had circulated a document in relation Equalities Duties to members of the MLRB ahead of the meeting as a reminder of the general equalities duties on decision making bodies, rather than specific legal advice about this case.
- 2.8 Having received the letter of support from Health and Social Care Moray and the further comment from the Appointed Officer on the letter, the Chair then asked the 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.
- 2.9 Councillor Gatt, having considered the case in detail, stated that he was of the view that the proposal complied with policy DP4 as it was in the open countryside and that, having researched the term ribbon development, he was of the view that the proposal did not constitute ribbon development as it was not in line with the existing property and was approximately 275 feet from the roadside. With regard to the reason for refusal in terms of an unacceptable level of enclosure and containment, Councillor Gatt was of the view that this could be addressed by adding a suitable condition to the consent and moved that the MLRB agreed to uphold the appeal and grant planning permission in respect of Planning Application 20/01349/APP in these terms.
- 2.10 Councillor Bremner agreed with the points raised by Councillor Gatt and seconded his motion. Councillor Bremner further stated that the MLRB's equalities duties were a material consideration and so the specific requirements of the applicant could be considered when determining this planning application. He further stated that, in terms of improving the level of enclosure and containment, wording of the condition should be delegated to Officers so that the planting complies with the requirements of the MLDP 2020.
- 2.11 The Clerk sought clarification from Councillor Gatt as to whether he was prepared to accept Councillor Bremner's comments in relation to equalities as a material consideration in determining the planning application into his motion. In response Councillor Gatt agreed to accept all of Councillor Bremner's comments into his motion.

- 2.12 Councillor Alexander noted the points raised by Councillors Gatt and Bremner, in terms of the family's need for suitable housing however stated that adaptations could be made to their existing house. He raised concern in relation to the MLRB overturning the decision of the Appointed Officer by stating that the proposal complied with policy DP4 and that 2 houses did not constitute ribbon development as he was of the view that this could set a precedent for future similar proposals and therefore moved that the MLRB dismiss the appeal and uphold the original decision of the Appointed Officer to refuse planning permission in respect of Planning Application 20/01349/APP. On failing to find a seconder, his motion fell.
- 2.13 There being no-one otherwise minded, the MLRB agreed to uphold the appeal and grant planning permission in respect of Planning Application 20/01349/APP as it complies with policy DP4 (Rural Housing) and DP1 (Development Principles) and does not constitute ribbon development, subject to a suitable condition in relation to improving the level of enclosure and containment, the wording of which to be delegated to the Appointed Officer, so that the planting complies with the requirements of the MLDP 2020.

**Mr Sean 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. No development shall commence until a detailed landscape scheme has been submitted to and approved in writing by the Council as Planning Authority. This scheme shall include details of the species, planting distances and sizes of all planting and shall reflect the following requirements:
  - 15 % of the site to be planted
  - All planting to be of native species and comprise whips and feathered trees of at least 1.5 metres in height planted at a density of 1 per 4 square metres
  - Further planting (in addition to the 15 % policy requirement) to be carried out along the southern and western boundaries of the site
  - Boundary enclosures to comprise post and wire fencing and/or hedging or planting of native species
  - All planting to be implemented in accordance with the approved landscape scheme in the first planting season following occupation or completion of the house whichever is the sooner and maintained thereafter with any trees which (within a period of 5 years from the planting) die, are removed or become seriously damaged or diseased to be replaced in the following planting season with others of similar size, number and species unless otherwise agreed in writing with the Council as Planning Authority

Reason: to ensure that the development integrates into the surrounding landscape, that an acceptable level of enclosure, containment and backdrop for the new house is delivered and to ensure that the approved landscaping works are timeously carried out and properly maintained

2. No development works shall commence on the dwelling house 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 confirming the provision of, or location where, a future Electric Vehicle (EV) charging unit is to be connected to an appropriate electricity supply, including details (written proposals and/ or plans) to confirm the provision of the necessary cabling, ducting, and consumer units capable of supporting the future charging unit; and thereafter the EV charging infrastructure shall be provided in accordance with the approved drawing and details prior to the first occupation of the dwelling house.

Reason: In the interests of an acceptable form of development and the provision of infrastructure to support the use of low carbon transport, through the provision of details currently lacking

3. The house hereby approved shall not be occupied until the proposed means of access to the trunk road has been constructed generally in accordance with

drawing SIEV/TRACK01 dated November 2020 and details of the completed access construction have been approved by the Planning Authority, after consultation with Transport Scotland, as the Trunk Roads Authority.

Reason: To ensure that the standard of access layout complies with the current standards, that the safety of the traffic on the trunk road is not diminished, and to ensure that drivers of vehicles leaving the site are enabled to see and be seen by vehicles on the trunk road carriageway and join the traffic stream safely

4. The house hereby approved shall not be occupied until visibility splays have been provided and maintained thereafter on each side of the access generally in accordance with drawing SIEV/TRACK01 dated November 2020. These splays are the triangles of ground bounded on 2 sides by the first 4.5 metres of the centreline of the access driveway (the set-back dimension) and the nearside trunk road carriageway measured 215 metres (the y dimension) in both directions from the intersection of the access with the trunk road. In a vertical plane, nothing shall obscure visibility measured from a driver's eye height of between 1.05 metres and 2.00 metres positioned at the set back dimension to an object height of between 0.26 metres and 1.05 metres anywhere along the y dimension

Reason: To ensure that the access is wide enough to allow vehicles to enter and exit the access at the same time without conflict and to ensure that drivers of vehicles leaving the site are enabled to see and be seen by vehicles on the trunk road carriageway and join the traffic stream safely

5. Three car parking spaces shall be provided within the site prior to the occupation or completion of the dwelling house, 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.

6. A turning area shall be provided (and retained thereafter) within the curtilage of the site to enable vehicles to enter and exit in a forward gear prior to the occupation or completion of the dwelling house, whichever is the sooner.

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

7. The development hereby approved shall not be occupied until the drainage arrangements are completed in accordance with the approved plans and the approved Drainage Report dated 6 October 2020.

Reason: to ensure that the development is satisfactorily serviced

8. Unless otherwise agreed with this Council as Planning Authority the finishes of the roof shall comprise either natural slate or grey profiled sheeting. All other external finishes shall be completed in accordance with the approved plans unless otherwise agreed with this Council as Planning Authority

Reason: to ensure that the development fits with the local landscape character and integrates into the landscape

## **INFORMATIVES**

**THE DEVELOPMENT MANAGEMENT & BUILDING STANDARDS MANAGER** has commented that:-

- The developer should note that the consent of SEPA will be required for any discharge of surface and foul waters to a watercourse- more information on SEPA website
- The developer should note the contents of the attached comments from Scottish Water regarding their requirements and consents for connection to their supplies.

**MORAY COUNCIL TRANSPORTATION MANAGER** has commented that:

- The provision of Electric Vehicle (EV) chargers and/or associated infrastructure shall be provided in accordance with Moray Council guidelines. Cabling between charging units and parking spaces must not cross or obstruct the public road including footways. Infrastructure provided to enable EV charging must be retained for this purpose for the lifetime of the development unless otherwise agreed in writing by the Planning Authority.
- Planning consent does not carry with it the right to carry out works within the public road boundary.
- 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
- The applicant shall be responsible for ensuring that surface/ground water does not run from the road into their property.

**TRANSPORT SCOTLAND** has commented that:

- The applicant should note that the granting of planning consent does not carry with it the right to carry out works within the trunk road boundary and that permission must be granted by Transport Scotland Roads Directorate. Where any works are required on the trunk road, contact details are provided on Transport Scotland's response to the planning authority which is available on the Council's planning portal
- Trunk road modification works shall, in all respects, comply with the Design Manual for Roads and Bridges and the Specification for Highway Works published by HMSO. The developer shall issue a certificate to that effect, signed by the design organisation
- Trunk road modifications shall, in all respects, be designed and constructed to arrangements that comply with the Disability Discrimination Act: Good Practice Guide for Roads published by Transport Scotland. The developer shall provide written confirmation of this, signed by the design organisation.

## **PLANS AND DOCUMENTS TO BE APPROVED**

SIEV/PLO1 – Site Plan

SIEV/PLO2 – Ground floor plan and NW elevations

SIEV/PLO3 – Elevations

SIEV/LOC.P- Location Plan

SIEV/TRACK 01 Track Improvement Drawing

Drainage Report dated 6 October 2020.



## **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**

<b>Date works are to Commence</b>	
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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](mailto: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

<b>Date of completion of works</b>	
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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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.....  
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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](mailto:development.control@moray.gov.uk)**