



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR262
 - Application for review by Mr Mark Stevenson, c/o Mr George Hadden, Architectural Agent against the decision of an Appointed Officer of Moray Council
 - Planning Application 20/00075/APP – Change of use of garden ground to form operators lorry and trailer parking space at Morven View, Clochan, Buckie
 - Date of decision notice: 14 December 2021
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Decision

The MLRB agreed to uphold the request for review and grant planning permission, 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 at the meeting held on 30 September 2021.
- 1.3 The MLRB was attended by Councillors Bremner, Cowie, Coy, Gatt, R McLean, Nicol, Powell and Taylor.

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 planning permission on the grounds that:

The proposal is against the provisions of the Moray Local Development Plan (MLDP) 2020 because:

1. The proposed change of use of garden ground to HGV Operating Centre (for one HGV and one trailer) in the grounds of this existing modern rural residential property would result in large industrial vehicle(s) being accommodated in the grounds of a domestic property in the countryside, a use which is not ordinarily associated with domestic property or the rural environment. This means that the proposed use is considered to be an inappropriate, non-confirming use which is not in keeping with the existing rural area. On this basis, the proposal fails to comply the requisite requirements of Policies DP5 and DP1.
 2. This proposal would result in an intensification of use of the single track roads serving the site, by large articulated vehicle and would be likely to result in approaching vehicles having to undertake potentially unsafe reversing manoeuvres out of the path of the oncoming Heavy Goods Vehicle, as well as resulting in damage to the carriageway/verge due to vehicle verge overrunning. Due to the length of the overall route which has limited passing opportunities, it is considered that the proposal cannot be adequately mitigated against, and additionally that any agreed route could not be enforceable even with mitigation works provided. Transportation considers that this proposal, if permitted, would be likely to result in conditions detrimental to the road safety of road users contrary to MLDP policies DP1 (Development Principles) section (ii) Transportation, part a).
- 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, both the Legal and Planning Advisers advised that they had nothing to raise at this time.
 - 2.4 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.
 - 2.5 Councillor Gatt, having considered the case in detail, stated that he was minded to uphold the appeal and grant planning permission in respect of Planning Application 20/00075/APP. He noted that in 2017 planning permission was granted for Planning Application 17/01017/APP for a change of use of agricultural land to garden ground and erection of a domestic storage shed which had received no objection from Transportation at that time and highlighted the statement from the Applicant which stated that the Applicant was already permitted to haul his 2 JCBs by hired transport therefore the road would already be used by HGVs whether he was driving the vehicle or not. Councillor Gatt acknowledged that the 2017 planning application had been determined using the MLDP 2015, however stated that the relevant policy T2 in the MLDP 2015 and DP1 ii) in MLDP 2020, were very similar. He further noted that the HGV lorry in question was the same size as the lorries used by the Council for refuse collection and recycling which already use the road in question. Councillor Gatt therefore moved that the MLRB uphold the appeal and grant planning permission in respect of Planning Application 20/00075/APP as, in his view the proposal complies with policies DP1 (Development Principles) and DP5 (Business and Industry) as the large

building already has planning permission and has been erected. Furthermore, Cllr Gatt stated that, in his opinion the proposal complies with policy DP1 (Development Principles) ii) (Transportation) as the policy is broadly similar to policy T2 in the MLDP 2015 which received no objection from Transportation during consultation on Planning Application 17/01017/APP. This was seconded by Councillor R McLean.

2.6 In response to Councillor Gatt's comments regarding the size of the domestic storage shed that was already present on the site, Ms Webster, Planning Adviser clarified that the MLRB were being asked to determine Planning Application 20/00075/APP which was for a change of use of garden ground to form operators lorry and trailer parking space and was not for a change of use of the building on the garden ground. This was noted.

2.7 Councillor Coy agreed with the original decision of the Appointed Officer and moved that the MLRB refuse the appeal and uphold the original decision of the Appointed Officer to refuse Planning Permission in respect of Planning Application 20/00075/APP as the proposal fails to comply with policies DP5 (Business and Industry), DP1 (Development Principles) and DP1 ii) (transportation). This was seconded by Councillor Bremner.

2.8 On a division there voted:

For the Motion (5):	Councillors Gatt, R McLean, Cowie, Powell and Taylor
For the Amendment (3):	Councillors Coy, Bremner and Nicol
Abstentions (0):	Nil

2.9 Accordingly, the Motion became the finding of the Meeting and the MLRB agreed to grant planning permission in respect of Planning Application 20/00075/APP as the proposal complies with policies DP5 (Business and Industry), DP1 (Development Principles) and DP1 ii) (transportation).

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.**

CONDITION(S)

Permission is granted subject to the following conditions: -

Prior to commencement of operations the existing access shall be upgraded to 5.5 metres in width 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 5.0 metres from the edge of the public carriageway. The first 15 metres of the access track, measured from the edge of the public road, shall be constructed to the Moray Council specification and surfaced with hot rolled asphalt. The access radii shall be a minimum of 10.0 metres and kerbed using 255 x 125mm splayed precast concrete kerbs to the Moray Council specification. The U71aL Berrybauds Road shall be surfaced with hot rolled asphalt, over its entire width, starting at a position 5 metres to the south of the access radii and ending at a position 25 metres to the north of the centreline of the access. A road opening permit must be obtained from the Roads Authority before carrying out this work.

Reason: To ensure acceptable infrastructure at the development access

ADDITIONAL NOTES FOR INFORMATION OF THE APPLICANT

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

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 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

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

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