



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR283
 - Application for review by Ms Rosemary Reeve against the decision of an Appointed Officer of Moray Council
 - Planning Application 22/00164/PPP – Erect a dwellinghouse on site at Broadly by Buckie
 - Unaccompanied site inspection carried out by the MLRB on 18 April 2023
 - Date of decision notice: 21 June 2023
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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 20 April 2023.
- 1.3 The MLRB was attended by Councillors Macrae (Chair), Dunbar (Depute), Cameron, Harris, Keith, McBain, Ross, Van Der Horn and Warren.

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 development would result in an intensification of use of the access junction onto the public road, where there is presently restricted visibility and which would be likely to give rise to conditions detrimental to the road safety

of road users contrary to Moray Local Development Plan (MLDP) policy DP1 (Development Principles) section (ii) - 'Transportation', part 'a)' (safe entry and exit).

- 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 Dunbar, having visited the site and considered the Case in detail, moved that the MLRB uphold the appeal and grant planning permission in principle in relation to Planning Application 22/00164/PPP with a condition to resolve any issues in relation to land ownership and the visibility splay prior to start of any development. This was seconded by Councillor Warren.
- 2.6 In response, the Legal Adviser pointed out that the reason for refusal was that the proposal did not comply with policy DP1 (Development Principles) of the MLDP 2020 in terms of safe entry to and from the site and sought clarification as to whether Councillor Dunbar was of the view that the proposal complied with Policy DP1 or was an acceptable departure from Policy DP1.
- 2.7 Councillor Dunbar stated that it was her understanding that if the issues of land ownership and visibility splay were rectified, then the proposal would comply with policy.
- 2.8 Mrs MacDonald, Planning Adviser confirmed that the Appointed Officer was of the view that these issues could not be adequately controlled by condition, however it was up to the MLRB to decide whether these issues could be controlled by condition. Mrs MacDonald further stated that approval of this application was subject to a legal agreement in terms of developer obligations and that the Transportation Service had recommended that access to and from the development should be from at least 15 metres down the private track rather than the public road and that EV charging would also be required and sought the agreement of the MLRB to add these conditions and also any standard conditions and informatives if minded to approve the planning application..
- 2.9 In response, Councillor Dunbar agreed to add these conditions to her motion for approval.
- 2.10 Councillor Harris sought clarification as to whether there would be any condition in relation to the height of fencing or vegetation at the visibility splay.
- 2.11 In response, Mrs MacDonald stated that the visibility splay condition would limit the height of fencing or vegetation to no more than 0.6 metre.

- 2.12 There being no-one otherwise minded, the MLRB unanimously agreed to uphold the appeal and grant planning permission in principle in relation to Planning Application 22/00164/PPP subject to:
- (i) the inclusion of conditions to address the issues of land ownership and visibility splay with fencing/vegetation no more than a height of 0.6 metre;
 - (ii) the completion of a legal agreement in terms of developer obligations;
 - (iii) a condition to ensure that access to and from the development should be from at least 15 metres down the private track rather than the public road;
 - (iv) a condition to ensure the provision of EV charging; and
 - (v) any other standard conditions and informatives.

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: -

1. In accordance with Section 59 of the Town and Country Planning (Scotland) Act 1997 as amended:
 - (a) That in the case of any matter specified in conditions attached to the planning permission in principle, application for approval of matters specified in conditions must be made before:-
 - (i) that expiration of 3 years from the date of the grant of planning permission in principle; or
 - (ii) the expiration of 6 months from the date on which an earlier application for such approval for the same matters was refused; or
 - (iii) the expiration of 6 months from the date on which an appeal against such refusal was dismissed; whichever is the latest, and
 - (b) That the development to which the permission relates must be begun not later than whichever is the later of the following dates:-
 - (i) the expiration of 3 years from the date of the grant of planning permission in principle; or
 - (ii) the expiration of 2 years from the final approval of the matters specified in conditions or in the case of approval on different dates the final approval of the last such matter to be approved.

If an application for approval of matters specified in conditions has not been made or the development has not begun within the specified dates this planning permission in principle shall lapse unless there is a specific condition attached to this permission which varies the stated timescales.

Reason: The time limit condition is in accordance with section 59 of the Town and Country Planning (Scotland) Act 1997 as amended.

2. 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.

3. 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 4-9 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.

4. 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. 3 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. 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 shall be submitted in accordance with condition no. 3 above.

Reason: To ensure that surface water drainage is provided timeously and complies with the principles of SuDS; in order to protect the water environment.

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. 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. 3 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. Sections through the site showing the development on its finished levels in relation to existing levels shall be submitted in accordance with condition no. 3 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. 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. 3 above. For the avoidance of doubt proposals must be accompanied by a plan showing 15% of the plot area to be planted with native species trees, at least 1.5m in height;

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.

9. As part of part of the requirements of Conditions 3-8, the design and materials of the dwellinghouse and landscaping proposals shall comply with the following requirements:-

- (a) A roof pitch of between 40-55 degrees;

- (b) A gable width of no more than 2.5 times the height of the wall from ground to eaves level;
- (c) Uniform external finishes and materials including natural slate or alternative profiled cladding
- (d) A vertical emphasis and uniformity to all windows;
- (e) Proposals must be accompanied by a plan showing 15% of the plot area to be planted with native species trees, at least 1.5m in height;
- (f) Where there is an established character, or style, of boundary demarcation in the locality (e.g. beech hedges, dry stone dykes) new boundaries must be sympathetic.
- (g) The house shall be limited to a maximum of height of 1 ½ storeys (i.e. with upper floor accommodation contained almost entirely within the roof space) with an overall height of no more than 6.75m
- (h) All access (including visibility splays), parking and turning arrangements shall include the requirements of Conditions 10-16 below. For the avoidance of doubt access shall to the plot shall be taken via the track running to the west of the site and there shall be no direct access from the site on the public road. The access to the house hereby approved shall be located a minimum of 15m from the junction of the shared private access track onto the public carriageway.

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

10. No development shall commence until a visibility splay *2.4m x 70m is provided in both directions at the access onto the public road free from any obstruction greater than 0.6m in height, with all boundaries setback to a position behind the required visibility has been provided* thereafter the visibility splay shall be maintained at all times free from any obstruction exceeding 0.6 metres

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.

11. A minimum of the first 5.0m of the access shall be to The Moray Council specification and surfaced with bituminous macadam across its full existing width.

Reason: To ensure acceptable infrastructure at the development access.

12. No development works shall commence on the dwelling house hereby approved 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 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.

13. Parking provision shall be as follows:

- 2 spaces for a dwelling with two or three bedrooms; 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 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.

14. 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.

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 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 new access.

17. All drainage proposals shall be in accordance with the submitted document Site Investigation and Drainage Assessment Broadley by GMC Surveys.

Reason: To ensure that surface water drainage is provided timeously and complies with the principles of SuDS; in order to protect the water environment.

ADDITIONAL NOTES FOR INFORMATION OF THE APPLICANT

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

LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT

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

Reference	Version	Title
BNF5563		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.



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