



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR295
 - Application for review by Mr R Morrison, c/o S Reid Design against the decision of an Appointed Officer of Moray Council
 - Planning Application 23/00423/PPP – Erect dwelling house and detached garage on site at Boharm Neuk, Boharm, Craigellachie.
 - Unaccompanied site inspection carried out by the MLRB on 9 November 2023
 - Date of decision notice: 5 December 2023
-

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 16 December 2023.
- 1.3 The MLRB was attended by Councillors Macrae (Chair), Dunbar (Depute Chair), 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 in principle on the grounds that:

The development is contrary to Moray Local Development Plan 2020 Policies DP4: Rural Housing and DP1: Development Principles and to National Planning Framework Policy 17 Rural Homes for the following reasons:

1. The proposed development does not fit into the local landscape character in that the new house will be set far back from, and above, the public road out of character with the prevailing original development pattern in the area with the visual impacts of this exacerbated by the relationship to live planning consents for new house sites in the immediate area.
 2. The proposed development, together with the number of live planning consents for new house sites in the immediate area, will contribute to an unacceptable build-up of housing and detrimentally alter the rural character of the area, creating unacceptable visual and landscape impacts.
 3. The proposed development is contrary to Moray Local Development Plan Policy DP4 Rural Housing and its associated Policy Guidance on Cumulative Build Up as, together with other live planning consents for new houses sites in the immediate area, it will result in new houses overwhelming the presence of older buildings such that new houses are the predominant components of the landscape with the original settlement pattern difficult to perceive; the incidence and inter-visibility of new houses will become a major characteristic of the landscape; there will be a prominence of new houses from key viewpoints such as the public road; and there will be sequential visual effects of cumulative build-up of new housing experienced when travelling along roads in the vicinity of the site.
- 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 and Planning Advisers had any preliminary matters to raise, the Mr Hoath, Legal Adviser advised that he had nothing to raise at this time.
- 2.4 Mrs MacDonald, Planning Adviser advised that developer obligations had been sought in relation to the proposed development and, should the Moray Local Review Body (MLRB) be minded to uphold the appeal and grant planning permission in principle, this would be subject to the payment of developer obligations, which, if not paid, would have to come back to the MLRB for consideration. This was noted.
- 2.5 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.
- 2.6 Councillor Ross, having considered the case in detail, noted the planning consents that had already been issued and the number of houses already built in the surrounding area, which, in his opinion, had already resulted in cumulative impact of development in that area. He was also of the view that the buildings referred to by the Appointed Officer as "older" were modern in appearance. He stated that the location of the proposal was discrete in that it was off the main road and would not create an unacceptable visual impact. Taking all of this into consideration, Councillor Ross moved that the MLRB uphold the appeal and grant planning permission in principle in relation to Planning Application 23/00423/PPP as it complies with Policies DP4 (Rural

Housing) and DP1 (Development Principles) of the MLDP 2020 and Policy 17 (Rural Homes) of the NPF4. This was seconded by Councillor McBain.

2.7 Councillor Harris, having visited the site and considered the case in detail, agreed with the original decision of the Appointed Officer and moved, as an amendment, that the MLRB uphold the original decision of the Appointment Officer to refuse planning permission in principle in relating to Planning Application 23/00423/PPP as it does not comply with Policies DP4 (Rural Housing) and DP1 (Development Principles) of the MLDP 2020 and Policy 17 (Rural Homes) of the NPF4. This was seconded by Councillor Van Der Horn.

2.8 On a division there voted:

For the Motion (5):	Councillors Ross, McBain, Dunbar, Keith and Macrae
For the Amendment (4):	Councillors Harris, Van Der Horn, Cameron and Warren
Abstentions (0):	Nil

2.9 Accordingly, the Motion became the finding of the Meeting and the MLRB agreed to uphold the appeal and grant planning permission in principle in relation to Planning Application 23/00423/PPP as it complies with Policies DP4 (Rural Housing) and DP1 (Development Principles) of the MLDP 2020 and Policy 17 (Rural Homes) of the NPF4 subject to the payment of developer obligations, which, if not paid, would have to come back to the MLRB for consideration

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.

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: 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. Tree and Landscaping proposals must be in full accordance with the Arboricultural Report (Wakely Tree Surgeons) and provide full details of all onsite landscaping to provide for an additional 15% tree coverage on the site beyond the existing trees identified for retention in the tree survey with details of the type, position and number of all planting to be undertaken and details of all surfacing materials 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.

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 retention of existing trees and an additional 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 limit of 6.75m

(h) All access (including visibility splays), parking and turning arrangements shall include the requirements of Conditions 10-20 below.

Reason: In order to ensure that development harmonises with the appearance and character of the surrounding area 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:

- 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 120 metres in both directions, 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
- ii) 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
- 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.

11. No development shall commence until a detailed drawing (scale 1:500) showing the location and design of a passing place on the section of the U60H Belnagarrow - Oldtown Road (to the Moray Council standards and specification), has been submitted to and approved in writing by the Council, as Planning Authority in consultation with the Roads Authority; and thereafter the passing place shall be constructed in accordance with the approved drawing prior to any development works commencing (except for those works associated with the provision of the passing place).

Reason: To enable drivers of vehicles to have adequate forward visibility to see approaching traffic and for two vehicles to safely pass each other ensuring the safety and free flow of traffic on the public road.

12. No development works shall commence on the dwelling house 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 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. No development shall commence until details have been submitted for the approval in writing of the Planning Authority, in consultation with the Roads Authority, for provision of a bin store to safely contain recycling bins. The bin store should be located in close proximity to the site access onto the public road but out with the required visibility splays; and thereafter the bin store shall be constructed in accordance with the approved details prior to the first occupation of the dwelling house.

To ensure acceptable development that does not create any hazard to road users in the interests of road safety through the provision of details currently lacking.

14. 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 first occupation of the dwelling house. 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.

15. Prior to the first occupation of the dwelling house, the first 10m of the access track, measured from the edge of the public carriageway, shall be constructed to the Moray Council specification and surfaced with bituminous macadam. The width of the vehicular access shall be minimum 3.5 metres, 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.

16. Prior to the first occupation of the dwelling house, 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. 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.

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

17. Any existing ditch, watercourse or drain under the site access shall be piped using a suitable diameter of pipe, agreed with the Roads Maintenance Manager (300mm minimum). The pipe shall be laid to a self-cleansing gradient and connected to an outfall.

Reason: To ensure the construction of an acceptable access in the interests of road safety and effective drainage infrastructure.

18. 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.

19. 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.

20. Boundary walls/fences shall be set back from the edge of the public carriageway at a distance of as existing.

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 formation of the required visibility splay will involve the cutting back/ removal of gorse, small trees and vegetation, and may require minor regrading works to the verge.

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

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. Guidance on Electric Vehicle (EV) Charging requirements can be found at: <http://www.moray.gov.uk/downloads/file134860.pdf>

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. (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 constructionconsent@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 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.

No building materials/scaffolding/builder's skip shall obstruct the public road (including footpaths) without permission from the Roads Authority.

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.

LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT

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

Reference	Version	Title
		Location Plan
		Site Plan
		Block 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.

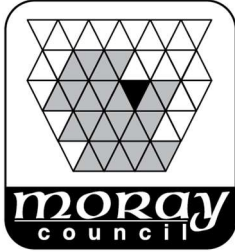
NOTIFICATION OF COMPLETION OF DEVELOPMENT

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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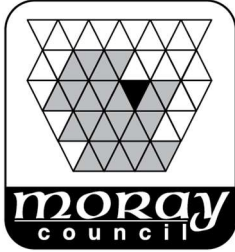
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Please complete and return this form to:

**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