



MORAY COUNCIL LOCAL REVIEW BODY

Review Decision Notice

Decision by Moray Local Review Body (the MLRB)

- Request for Review reference : Case 019
- Site address: Tomnaglien Cottage, Ballindalloch
- Application for review by The Trustees of the Ballindalloch Trust against the decision by an Appointed Officer of Moray Council.
- Application 08/01369/FUL : Full planning permission to demolish the remains of an existing cottage and replace it with a traditionally designed one and a half storey dwellinghouse.

Date of Decision Notice: 24 December 2010

Decision

The MLRB reverses the decision of the Appointed Officer and grants Full Planning Permission, subject to the conditions appended to this decision notice. Attention is also drawn to the informative notes which follow the conditions.

This permission does not carry with it any necessary consent or approval to the proposed development under the Building (Scotland) Act 1959 as amended or other enactments.

1.0 Preliminary

- 1.1 This Notice constitutes the formal decision notice of the Moray Local Review Body (MLRB) as required by the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008.
- 1.2 The above application for full planning permission was considered by the MLRB at meetings on 22 September and 16 December 2010. The Review Body was attended at both meetings by Councillors D Ross (Chair), J Hogg and J MacKay.

2.0 Proposal

- 2.1 This is an application for full planning permission to demolish the remains of an existing cottage and replace it with a traditionally designed one and a half storey dwellinghouse at Tomnaglien Cottage, Ballindalloch, Moray.

3.0 MLRB Consideration of request for review

- 3.1 At the meeting of the MLRB on 22 September 2010 there was submitted a 'Summary of Information' report setting out the reasons for refusal, a copy of the Report of Handling, a copy of the Notice of Review, a copy of the Grounds for Review and supporting documents, copies of further representations from Interested Parties following statutory notification of the request for review and the applicant's response to the further representations.
- 3.2 Prior to considering the request for review the Legal Adviser to the MLRB advised the MLRB that the applicants had intimated on the Notice of Review form that they have raised an issue which was not before the Appointed Officer at the time of the determination of the planning application. This related to providing an amended visibility splay to the north of the southern junction, to meet the requirements of Policy T2 of the Moray Local Plan 2008, which, in their opinion they could not have submitted before as they were unaware that there was an issue with the visibility splay. She also advised the meeting that that were the MLRB minded to consider this particular issue then this should be undertaken through the Written Submissions procedure, set out in Regulation 15 of the Town & Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008, and the applicant requested to clarify, by means of a written narrative and scale plans, the manner in which they propose the 4.5m setback/215m visibility splay to the north of the southern junction could be provided and clarify why they consider that they meet the test for the submission of new evidence as set out in Section 43B (1) of the Town & Country Planning (Scotland) Act 1997, as amended. The submission would then be circulated to all relevant Interested Parties, in terms of Regulation 15, for their observations on the proposal and whether or not they believe that the applicant meets the test for the submission of new evidence.
- 3.3 The Planning Adviser advised that the only reason for refusal related to access and road safety issues relating to a trunk road and as Transport Scotland (Trunk Roads Authority) was one of the Interested Parties then were they to continue with their objection and the MLRB, following consideration of the Notice of Review, agreed to uphold the request and grant planning consent, the decision would require to be notified to Scottish Ministers, in terms the Town & Country Planning (Notification of Applications)(Scotland) Direction 2009. The Scottish Ministers would then have 28 days in which to decide whether or not to call-in the MLRB's decision for consideration.

- 3.4 The Chairman referred to correspondence he and other Councillors had received from the applicant's agent which, having read the content he had passed to the Clerk to the MLRB to respond. Whilst noting that the Clerk's response intimated that the issues raised in the letter related to internal planning procedures and consultations with a statutory consultee and were not issues for consideration by the MLRB, the Chairman sought clarification as to how the MLRB should treat this information given that the application was refused on the recommendation of the Trunk Roads Authority which had intimated earlier in the consideration of the application that it had no objection to the proposal. The Legal Adviser advised that this issue would be canvassed through the new evidence procedures set out in the Regulations, which would include consultation with the Trunk Roads Authority, as an Interested Party, on the proposed amended visibility splay.
- 3.5 Councillor Hogg sought clarification as to the powers of a Local Review Body in the determination of a Request for Review where there is an outstanding objection from a government agency and it was noted that whilst the decision of a Local Review Body is final, except for the right of an applicant to question the validity of a decision through the Court of Session within 6 weeks of a decision, Scottish Ministers retain the right, in terms of in terms Section 46(1) of the Town & Country Planning (Scotland) Act 1997, to call-in a Local Review Body decision which seeks to overrule a Scottish Government Agency objection.
- 3.6 Following consideration of the case papers the MLRB agreed that there was insufficient information in order to proceed to determine the request for review and agreed that:-
- (i) an unaccompanied site inspection be undertaken, the purpose of which being to view the site in the context of Policy T2 of the Moray Local Plan 2008. The Planning Adviser to be in attendance and the site inspection to be undertaken prior to the case coming back to the MLRB after all the responses to the new evidence submissions are available and that the applicant be requested to mark out the proposed measurements of the visibility splay on the ground for the site inspection;
 - (ii) the applicant be requested to clarify, by means of a written narrative and scale plans, the manner in which they propose the 4.5m setback/215m visibility splay to the north of the southern junction could be provided and clarify why they consider that they meet the test for the submission of new evidence as set out in Section 43B (1) of the Town & Country Planning (Scotland) Act 1997, as amended;
 - (iii) on receipt of the information requested at (ii) above it be dealt with as potential new evidence and circulated to all relevant Interested Parties, in terms of Regulation 15 of the Town & Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008 seeking their views on the proposed amended visibility splay and whether or not they believe that applicant meets the test for the submission of new evidence; and

- (iv) a note setting out the powers of a Local Review Body in terms of the Town & Country Planning (Notification of Applications)(Scotland) Direction 2009 be prepared and circulated to all members of the MLRB.
- 3.7 At the meeting of the MLRB on 16 December 2010 there was submitted a 'Summary of Information' report detailing the outcome of the MLRB's previous consideration of the request for review. There were appended to the report as 1, 2 & 3, respectively, a copy of the applicant's new evidence submission, responses from Transport Scotland and Moray Council's Transportation Section to the new evidence submission and a response to Transport Scotland's submission from the applicant.
- 3.8 On resuming consideration of the request for review the Chairman referred the members of the MLRB to the terms of the response from Transport Scotland, set out in Appendix 2 to the Summary of Information report, which intimated that there was, unusually, no longer an objection from a Scottish Government Agency as Transport Scotland are now satisfied that the visibility splay can be adequately controlled through conditions. In light of this the proposed site inspection which was arranged for Friday 10 December was cancelled by the Clerk to the MLRB, in consultation with individual members of the MLRB on the grounds that in light of the responses to the new evidence submission and the applicant's response it would not have been in the public interest to incur unnecessary expenditure in the current economic climate and, in response to a question from the Chairman, the MLRB formally approved the action taken to cancel the unaccompanied site inspection.
- 3.9 Prior to resuming consideration of the request for review the Legal Adviser reminded the MLRB that before it can technically consider the issue of the revised visibility splay it first has to consider whether or not to accept the new evidence submission. Members of the MLRB will also have seen the submissions on the new evidence test from which it will be noted that there are submissions which if the MLRB considered were of sufficient weight could meet the 'as a consequence of exceptional circumstances' test set out in sub-sections (1)(b) of Section 43B the Town & Country Planning (Scotland) Act 1997, as amended. The meeting also noted that no adverse comments had been received from Interested Parties regarding the admission of the new evidence.
- 3.10 The MLRB agreed that the new evidence submission met the test of exceptional circumstances, in terms of Section 43 (B) (1)(b) of the Planning etc (Scotland) Act 2006, as amended and agreed to enter it into consideration in the case.
- 3.11 Thereafter the MLRB agreed that it now had sufficient information to proceed to determine the request for review.
- 3.12 The Chairman, Councillor Ross, moved that, in light of the response to the new evidence from Transport Scotland and the applicant's response thereto, the request for review be granted and that the application for full planning permission be approved as complying with policy, subject to standard conditions and conditions and informatics recommended by consultees, to include the specific condition recommended by Transport Scotland. The motion was supported by Councillors Hogg and MacKay.

- 3.13 The MLRB also expressed concern in regard to an apparent lack of clarification or communication in the handling of the application given that Transport Scotland originally intimated that it would not be objecting to the proposed development and then several months later, and unknown to the applicant, the agency objected to the proposal leading to the refusal. Whilst acknowledging that this issue was not material or relevant to the request for review it was remitted to the Planning Adviser to raise the MLRB's concerns with the Council's Planning & Economic Development Manager.
- 3.14 The MLRB agreed that the request for review be granted and that the application for full planning permission be approved as complying with policy, subject to the attached conditions and informatics

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Rhona Gunn
Legal Adviser to the MLRB

CONDITIONS

1. 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.
2. Unless otherwise agreed with the Council, as Planning Authority, the development hereby approved shall be carried out strictly in accordance with the approved plans and conditions.
3. Prior to work commencing on site the applicant shall complete the attached notification of initiation of development and submit it to the local planning authority.
4. Upon completion of the development or as soon as practicable after doing so the attached notification of completion of development shall be completed and submitted to the local planning authority.
5. No boundary fences, hedges, walls or any obstruction whatsoever over 1.0 m in height and fronting onto the public road shall be within 2.4 m of the edge of the carriageway.
6. The width of vehicular access shall be 2.4m-3.0m; and have a maximum gradient of 1:20 measured for the first 5.0 m from the edge of the public carriageway. Section of access over the public footpath/verge shall be to The Moray Council specification and surfaced in bitmac.
7. No water shall be allowed to drain, or loose material to be carried, onto the public footpath/carriageway.
8. A parking layby 8.0 m long x 2.5 m wide with 30 degrees splayed ends shall be provided at the edge of the public road to allow visiting and service vehicles to park clear of the public road. The vehicular access(es) should lead off the layby(s). Layby to be to The Moray Council specification and be surfaced in bitmac.
9. A minimum of 3 private parking space(s) shall be provided at all times.
10. A turning area shall be provided within the curtilage of the site to enable vehicles to enter/exit in a forward gear.
11. New boundary walls/fences shall be set back from the edge of the public road at a distance of 2.0 metres.
12. No part of the development shall proceed until a visibility splay is provided (and subsequently maintained) on each side of the junction to the satisfaction of the local Planning Authority. These splays are the triangles of ground bounded on 2 sides by the first 4.5 metres of the centreline of the U126h (the set back dimension) and the nearside trunk road carriageway measured 215 metres (the y dimension) in both directions from the intersection of the junction 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

REASONS

1. The time limit condition is imposed in order to comply with the requirements of Section 58(i) of the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006.
2. In order to ensure that there are no unauthorised departures from the approved plans which could adversely affect the development or character and amenity of the surrounding properties and area.
3. To ensure that the planning authority is aware that development is about to commence and any suspensive conditions can be followed up.
4. To ensure that the planning authority is aware that the development is complete and is able to follow up any conditions.
5. In the interests of road safety.
6. In the interests of road safety.
7. In the interests of road safety.
8. In the interests of road safety.
9. In the interests of road safety.
10. In the interests of road safety.
11. In the interests of road safety.
12. In the interests of road safety.

ADDITIONAL NOTES FOR INFORMATION OF THE APPLICANT

THE TRANSPORTATION MANAGER, DIRECT SERVICES, ACADEMY STREET, ELGIN has commented that:-

The applicant shall be responsible for ensuring that water does not run from the public road into his property.

The applicant shall ensure that their operations do not adversely affect any Public Utilities which should be contacted prior to commencement of operations.

The applicant shall free and relieve the Roads Authority from any claims arising out of his operations on the road or extension to the road.

The Transportation Manager must always be contacted before any works commence. This includes any temporary access which should be agreed with the Transportation Manager prior to work on it commencing

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 21 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008.

- 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.

The Moray Council

NOTIFICATION OF INITIATION OF DEVELOPMENT

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

Planning Application Reference No: 10/00745/APP

Date issued:

I hereby give notice that works as detailed under the above planning application will commence on:

Signed: _____ Date: _____

THE FOLLOWING INFORMATION MUST BE PROVIDED:

1. Name and address of person carrying out the development:

2. The full name and address of the landowner, if a different person:

3. Where a site agent is appointed, their full name and contact details:

4. The date of issue and reference number of the grant of planning permission:

Please return this form, duly completed to: -

The Moray Council
Development Management
Development Services
Environmental Services Department
Council Office,
High Street
Elgin IV30 1BX

IMPORTANT

It is important that the Environmental Services Department is advised when you propose to start work as failure to do so may result in enforcement action be taken.

Please complete and return this form.

The Moray Council

NOTIFICATION OF COMPLETION OF DEVELOPMENT

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

Planning Application Reference No: 10/00745/APP

Date issued:

I hereby give notice that works as detailed under the above planning application will be completed on:

Signed: Date:

Please return this form, duly completed to: - The Moray Council
Development Management
Development Services
Environmental Services Department
Council Office
High Street
Elgin IV30 1BX

IMPORTANT

It is important that the Environmental Services Department is advised when the development has been completed as failure to do so may result in enforcement action be taken.

Please complete and return this form.