



## MORAY COUNCIL LOCAL REVIEW BODY

### Review Decision Notice

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Decision by Moray Local Review Body (the MLRB)

- Request for Review reference : Case 026
- Site address: Hardmuir View, Easter Hardmuir, Auldearn
- Application for review by Mrs Karen Sutherland against the decision by an Appointed Officer of Moray Council.
- Application 10/00051/APP : Full planning permission for the erection of a traditionally designed dwellinghouse and associated works at Hardmuir View, Easter Hardmuir, Auldearn.

Date of Decision Notice: March 2011

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### 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 24 February and 23 March 2011. The Review Body was attended at both meetings by Councillors B Jarvis (Chairman), J Hogg & G Leadbitter.

## **2.0 Proposal**

- 2.1 This is an application for full planning permission for the erection of a traditionally designed dwellinghouse at Hardmuir View, Easter Hardmuir, Auldearn

### **MLRB Consideration of request for review**

- 3.1 At the meeting of the MLRB on 24 February 2011 there was submitted a Summary of Information report setting out the reasons for refusal together with a copy of the Report of Handling, a copy of the Notice of Review and a copy of the Grounds for Review and supporting documents.
- 3.2 Following consideration of the case papers the MLRB agreed that it did not have sufficient information in order to proceed to determine the request for review and agreed that an unaccompanied site inspection be undertaken, the purpose of which being to view the site in the context of Policies H8 and IMPI of the Moray Local Plan 2008. The MLRB also requested that the Planning Adviser attend the unaccompanied site inspection.
- 3.3 At the meeting of the MLRB on 24 March 2011 there was submitted a Summary of Information report detailing the outcome of the MLRB's previous consideration of the request for review. The report also advised that the unaccompanied site inspection was carried out on Friday 18 March 2011.
- 3.4 Prior to resuming consideration of the request for review the Legal Adviser advised the meeting that, in accordance with the notification procedures set out in The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008, (the Regulations) the Clerk to the MLRB had notified interested parties of receipt of the request for review by first class mail on 1 February 2011 and as no representations were received within the 14 day period a further letter was issued on 17 February 2011 to interested parties advising that the request for review would be submitted to this meeting of the MLRB. In response to the notifications one of the interested parties had responded by letter dated 5 March 2011 intimating that both letters of notification had been received on 3 March 2011 but gave no indication as to why the letters had not been received until 3 March 2011. The Legal Adviser also advised the meeting that whilst the Regulations do not allow for any discretion to an LRB to accept late responses the MLRB has, once in the past, agreed, in the interests of natural justice, to accept a late response. It was noted however that the late response was accepted on that occasion as it was only a day late and was received over the Christmas period when the Council Offices were closed and that on notification, the applicant had indicated that they would not object to the late response being considered by the MLRB. The circumstances in this case were very different. In conclusion the Legal Adviser's advice to the meeting was that there was nothing on the face of the letter on which the MLRB could reasonably base a decision to accept the response although late in the interests of natural justice.
- 3.5 The MLRB unanimously agreed not to accept the late response from an interested party.

- 3.6 In regard to the unaccompanied site inspection the Planning Adviser advised the meeting that on arrival at the site he reminded the members of the MLRB as to the reasons for refusal which mainly related to alleged prominence of the site in the flat countryside around the site and from the unclassified road, the lack of an effective backdrop, that the development would not integrate with the surrounding area and as a result it would be overtly prominent. He had also reminded the members of the MLRB that this was a detailed application as opposed to an application to establish the principle of erecting a house on the site.
- 3.7 The MLRB agreed that it now had sufficient information and proceeded to determine the request for review.
- 3.8 Councillor Hogg expressed the view that, in his opinion, the aim of Policy H8 of the Moray Local Plan 2008 is basically to avoid conspicuous sites in open locations and any houses in a rural location should integrate with its surroundings. He was also of the view however that in flat areas like those around Easter Hardmuir the required degree of integration of a single house can be achieved by a combination of scale, style, the avoidance of the site being on the skyline and not on an artificially elevated site or in the middle of a field. Whilst the house requires to integrate with its surroundings it does not require to be concealed from view within its surroundings and, whilst not contained in the Appointed Officer's report of handling, it was, in his opinion, implied that there was a lack of concealment. Councillor Hogg then referred the meeting to the requirements of Policy H8 as set out on page 23 of the Moray Local Plan 2008. He expressed the view that, in his opinion, the site met the 50% boundary requirement, had sufficient backdrop with Hardmuir Wood to the east and Macbeth's Hillock to the south and whilst he accepted that the proposed development would be on view from the single track road (U74E) there is nothing in policy H8 to say that a house should not be visible from the adjacent highway and therefore the proposed development complied with policy in terms of siting. In terms of design Councillor Hogg expressed the view that whilst he accepted that the proposed overall scale & design was acceptable he had concerns regarding the proposed finish on the front elevation, as illustrated on page 9 of the case papers, which indicated a mix of stone and harl. As three of the elevations would be on view from the public highway (U74E) he sought clarification in regard to the statement in policy H8 requiring 'Uniform external finishes' given that the overriding aim was to achieve a significant degree of compliance. The Planning Adviser advised the meeting that although the design and finishes of the proposed house are not specifically referred to in the Appointed Officer's report of handling as he had concentrated on the principle of a house on the site it was his understanding that in regard to uniformity of finish this related to about 90% of the elevations being the same, the remaining 10% relating to specific finishes round windows and doors. The aim of the policy was to ensure uniformity on all sides. He also advised the meeting that were the MLRB minded to approve the request for review and grant planning consent a condition could be applied stipulating the type of finish.

- 3.9 Councillor Leadbitter sought clarification as to the difference between 1½ storey and a 1¾ storey. The Planning Adviser advised the meeting that it was his understanding that this related to the amount of headroom across the upper floor rooms. A 1¾ storey dwelling would have full headroom across the whole room whereas a 1½ storey would have an element of comb ceilings. In noting the difference Councillor Leadbitter expressed the view that, in his opinion, it was a matter of interpretation in regard to the level of backdrop contributing to the suitability of the site and, on balance, having had the opportunity to visit the site, he agreed with the views expressed by Councillor Hogg and was swayed in favour of the applicant's interpretation. This view was also supported by Councillor Jarvis.
- 3.10 In regard to the question of uniformity of finish Councillor Hogg was of the view that whilst the proposed design was not a reason for refusal the scale was referred to and the more open the location the more important it was to ensure that the design and scale complied with policy. Councillor Hogg was of the opinion that the proposed finish, as shown on the illustration on page 9 of the case papers, fell short of compliance and in order to comply suggested that a condition be applied to ensure that the finish, excluding windows and doors, was the same on all sides of the proposed dwelling. This was agreed.
- 3.11 Reference was also made to the proposed planting schedule on the site plan on page 17 of the case papers and in particular to the gorse along the eastern fence boundary. Given that it was difficult to read the proposals given the size of the print it was suggested that, if not already covered by the proposals, consideration be given to applying a condition to retain the gorse which was considered to provide a natural feature distinguishing the site from the adjoining field.
- 3.12 Following consideration the MLRB it was agreed that a condition be applied requiring the retention of the gorse on the eastern boundary or that an alternative hedge be provided to be agreed with the Director of Environmental Services.
- 3.13 Accordingly the MLRB unanimously agreed that 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 specific conditions requiring the same finish, excluding windows and doors, on all elevations and the retention of the gorse on the eastern boundary or that an alternative hedge be provided to be agreed with the Director of Environmental Services, and informatives recommended by consultees.
- 3.14 The meeting also noted the concerns expressed that the illustration of the proposed dwelling on page 9 of the case papers was misleading as it showed the dwelling surrounded by high trees which was not the case as was evident on the site inspection.

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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. The front elevation of the building shown finished in stone cladding, shall instead be finished in roughcast, to match that used on the other elevations.
4. The gorse strip along the eastern boundary is to be retained, or replaced by a native species hedge to a standard to be agreed with the Director of Environmental Services
5. 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.
6. 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.
7. No water shall be permitted to drain or loose material be carried onto the public footway/carriageway.
8. 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 to allow visiting service vehicles to park clear of the public road. The vehicular access(es) should lead off the lay-by(s). The lay-by must be constructed in accordance with The Moray council specification and surfaced with bituminous macadam.
9. Parking provision shall be as follows: -
  - 2 spaces up to 3 bedrooms
  - 3 spaces for 4 or more bedrooms
10. 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. The pipe shall be laid to a self-cleansing gradient.
11. A turning area shall be provided within the curtilage of the site to enable vehicles to enter and exit in a forward gear.
12. A visibility splay of 2.4m x 90m shall be provided and maintained at the access in both directions. The provision of this visibility must be maintained free of any obstruction above 1.0m in height (for vehicular traffic).
13. New boundary walls/fences shall be set back from the edge of the public carriageway at a distance of 2.0m.
14. Parking provision shall be outwith visibility splays.

## REASONS

1. The time limit condition is imposed in order to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006.
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. To ensure a uniform finish to the building.
4. To assist with the integration of the building into the landscape.
5. To ensure that the planning authority is aware that development is about to commence and any suspensive conditions can be followed up.
6. To ensure that the planning authority is aware that the development is complete and is able to follow up any conditions.
7. To ensure acceptable development that does not create any hazard to road users in the interests of road safety.
8. To ensure acceptable infrastructure at the development access.
9. To ensure acceptable development in the interests of road safety.
10. To ensure acceptable infrastructure at the development access.
11. To ensure acceptable development in the interests of road safety.
12. To ensure acceptable Access and Visibility in the interests of road safety for the proposed development and other road users.
13. To ensure acceptable development in the interests of road safety.
14. To ensure acceptable Access and Visibility in the interests of road safety for the proposed development and other road users.

## **ADDITIONAL NOTES FOR INFORMATION OF THE APPLICANT**

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

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

Planning consent does not carry with it the right to carry out works within the public road boundary and the applicant is obliged to contact the Transportation Manager for road opening permit in accordance with the Roads (Scotland) Act 1984. This includes any temporary access joining with the public road.

The applicant shall be responsible for ensuring that surface/ground 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 applicants 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 Roads Authority prior to work commencing on it.

SCOTTISH WATER has indicated that the granting of Planning Consent does not guarantee a connection to their infrastructure.

## 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:

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

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

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

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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.**