



MORAY COUNCIL LOCAL REVIEW BODY

Review Decision Notice

Decision by Moray Local Review Body (the MLRB)

- Request for Review reference : Case 027
- Site address: 'Stargate' Pinefield Crescent, Elgin
- Application for review by Andrew Kelly against the decision by an Appointed Officer of Moray Council.
- Application 10/01569/APP : Full planning permission for an extension to an existing house.

Date of Decision Notice: 16 May 2011

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 March and 28 April 2011. The Review Body was attended at both meetings by Councillors G Leadbitter (Chairman), J Hogg & B Jarvis.

2.0 Proposal

- 2.1 This is an application for full planning permission for the erection of an extension to an existing house at 'Stargate' Pinefield Crescent, Elgin

MLRB Consideration of request for review

- 3.1 At the meeting of the MLRB on 24 March 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 Prior to considering the request for review the Planning Adviser advised the meeting of an error in the Decision Notice dated 26 November 2010. The Notice referred to the application being contrary to policy H3 'new Housing in Built-Up Areas' of the Moray Local Plan 2008 when in fact the correct policy is H5 'House Alterations and Extensions' referred to in the Appointed Officer's report of handling and that applied in the consideration of this application.
- 3.3 The Planning Adviser also drew the MLRB's attention to comments in the applicant's statement on page 3 of the Notice of Review which raised issues in regard to the administration of the planning application and it was noted that whilst these may be matters for concern they were not material or relevant to the request for review.
- 3.4 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 H5 and IMPI of the Moray Local Plan 2008. The MLRB also requested that the Planning Adviser attend the unaccompanied site inspection.
- 3.5 At the meeting of the MLRB on 28 April 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 Thursday 21 April 2011.
- 3.6 In regard to the unaccompanied site inspection the Planning Adviser advised the meeting that on arrival at the site the members of the MLRB observed the gable of the building to which the extension was proposed and noted the reasons for refusal as set out in the Appointed Officer's decision notice and the applicant's grounds for review as set out in the Notice of Review.
- 3.7 The MLRB agreed that it had sufficient information and proceeded to determine the request for review.

- 3.8 Councillor Hogg expressed the view that whilst taking a simplistic approach he would concur with the reasons for refusal, as detailed in the 'Summary of Information' report, the application requires to be determined in terms of Policy H5 of the Moray Development Plan 2008 unless there are material considerations of sufficient weight to justify departing from policy. In this regard Councillor Hogg was of the view that the MLRB should focus on the fact that the house and proposed extension abuts a commercial area consisting of mixed scale industrial and commercial buildings and at the other end of the road there is a church which has the feature of a large commercial building and decide if the commercial elements of this location add up to a material consideration of sufficient weight to outweigh the provisions of policy H5.
- 3.9 The Planning Adviser advised the meeting that the Moray Development Plan 2008 is the primary consideration in the determination of planning applications and it was for the members of the MLRB to decide whether or not the surrounding locale was a material consideration of such weight to consider departing from policy.
- 3.10 Following consideration Councillor Hogg moved that the request for review be granted and planning consent granted, as an acceptable departure from policy on the grounds that the commercial elements of this location add up to a material consideration of sufficient weight to outweigh the provisions of policy H5. The motion was seconded by Councillor Paul.
- 3.11 Councillor Leadbitter expressed the view that whilst accepting that the principle of an extension would not set an undesirable precedent he was of the view that the proposed extension significantly conflicts with the character of the existing house in terms of scale, proportions and design and as such the resulting development would have a significant adverse visual impact on the appearance of the existing house and for these reasons the request for review should be refused.
- 3.12 Accordingly MLRB agreed, on a two to one majority, that the request for review be granted and that the application for full planning permission be approved, as an acceptable departure from the Moray Local Plan 2008, subject to standard conditions and conditions and informatives recommended by consultees.
- 3.13 Councillor Leadbitter also referred the MLRB to the applicant's statement on seeking the review, as set out in page 3 of the Notice of review and expressed his concern in regard to the issues raised by the applicant relating to the handling of their planning application and whilst it was not within the remit of the MLRB to consider such issues, enquired if the matter could be brought to the attention of the appropriate departmental management official. The Planning Adviser undertook to raise the matter with the Planning & Economic Development Manager.

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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. 3 private parking spaces shall be provided at all times.

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. 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.

ADDITIONAL NOTES FOR INFORMATION OF THE APPLICANT

THE BUILDING STANDARDS MANAGER, has commented that

A Building Warrant will be required for the proposals. Should you require further assistance please do not hesitate to contact Building Standards, Environmental Services Department, Council Office, High Street, ELGIN IV30 1BX or by telephoning 01343 563243.

THE DEVELOPMENT CONTROL MANAGER, DEVELOPMENT SERVICES, has commented that:-

During construction work the applicant and/or the developer should remain vigilant for signs of bats, if they come across any bats or any signs of bats, all work in that area must cease immediately and Scottish Natural Heritage must be contacted for further advice. It should be noted that as bats are a European Protected Species, as listed in the Conservation (Natural Habitats &c.) Regulations 1994 it is illegal to:

- Deliberately kill, injure, disturb or capture/take European Protected Species of animal
- Damage or destroy the breeding sites or resting places of such animals.

Furthermore, where it is proposed to carry out works that will affect a European Protected Species or their shelter/breeding places, whether or not they are present, a licence is required from the appropriate licensing authority.

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

No building materials/scaffolding/builder's skip shall obstruct the public road (includes footpaths) without permission from this Department.

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 CONTAMINATED LAND SECTION has commented that:-

Your property has been identified as being in the vicinity of the following potential sources of contamination:

MOD parade ground on site as indicated on map group D
Various unclassified works (Pinefield Industrial site) within 50 metres to the north, west and south as indicated on map group E

Map Group A 1868 - 1897 Ordnance Survey Maps
Map Group B 1898 -1906 Ordnance Survey Maps
Map Group C 1930 - 1938 Ordnance Survey Maps

Map Group D 1959 - 1971 Ordnance Survey Maps
Map Group E 1969 - 1992 Ordnance Survey Maps
Map Group F Present Day Ordnance Survey Maps

The Moray Council does not have information to confirm whether or not the ground has been contaminated, however it is recommended that you investigate this matter prior to proceeding with the proposed works. Should contamination be identified you should contact the Environmental Health section immediately and carry out agreed remediation works. For advice on researching/investigating a site, please visit the Council" website at www.moray.gov.uk/ContaminatedLand.

Alternatively you can contact the Environmental Health Section on 01343 563345 or by email to contaminated.land@moray.gov.uk

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.