



MORAY COUNCIL LOCAL REVIEW BODY

Review Decision Notice

Decision by Moray Local Review Body (the MLRB)

- Request for Review reference : Case 037
- Site address: Land adjacent to the Lorry Park, Keith
- Application for review by Mr Eric Green against the decision by an Appointed Officer of Moray Council.
- Application11/00032/APP : Installation of a single C&F Green Energy 20kw wind turbine on a 20m mast in order to generate electricity.
- Unaccompanied site inspection carried out by the MLRB on Monday 24 October 2011.
- Date of Decision Notice: 21 November 2011

Decision

The MLRB agreed to dismiss the request for review and uphold the decision of the Appointed Officer to refuse full planning permission.

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 28 October 2011. The Review Body was attended at both meetings by Councillors G Leadbitter (Chairman), L Creswell & P Paul.

2.0 Proposal

- 2.1 This is an application for planning permission in principle for installation of a single C&F Green Energy 20kw wind turbine on a 20m mast in order to generate electricity on land adjacent to the Lorry Park, Keith.

MLRB Consideration of request for review

- 3.1 At the meeting of the MLRB on 22 September 2011 there was submitted a 'Summary of Information' report by the Clerk to the MLRB setting out the reasons for refusal together with a copy of the Report of Handling and a copy of the Notice of Review & supporting documents.
- 3.2 Prior to considering the request for review the Clerk to the MLRB advised the meeting that subsequent to notifying interested parties of receipt of the request for review it had been ascertained that other parties, which, in terms of the regulations are classed as interested parties, had been consulted by the Appointed Officer. These parties were subsequently notified and not all had responded prior to the meeting and that the expiry date for responses was 27 September 2011. In light of this the Clerk recommended that full consideration of the case should be deferred to the next meeting of the MLRB and in the meantime the MLRB may wish to consider if it required any other additional information or procedures to be undertaken in the interim.
- 3.3 The MLRB agreed that the request for review be deferred to the next meeting and in the interim arrangements be made for an unaccompanied site inspection be undertaken, the purpose of which being to view the site in the context of Policies E10, ER1 and IMPI of the Moray Local Plan 2008 (MLP) and the location of the proposed wind turbine in relation to the area zoned in the MLP for an industrial site, the Lorry Park and residential properties. The MLRB also requested that the Planning Adviser attend the unaccompanied site inspection and that a larger scale version of the Keith Countryside Around Town (CAT) map, than that contained in the MLP document, to include the location of the proposed wind turbine in relation to the site zoned for an industrial site, the Lorry Park and residential properties, be provided to members of the MLRB prior to the unaccompanied site inspection.
- 3.4 At the meeting of the MLRB on 28 October 2011 there was submitted a 'Summary of Information' report by the Clerk to the MLRB detailing the outcome of the MLRB's previous consideration of the request for review. There was also appended to the report as Appendix 1 a copy of a representation from an interested party, following notification of the request for review, a copy of which had been forwarded to the applicant's agent. The meeting also noted that the additional information requested by the MLRB, prior to the unaccompanied site inspection, is not considered new evidence in terms of the statutory procedures as the plan is merely a reproduction of that contained in the Moray Local Plan 2008 and therefore information which is already in the public domain and deemed to be within the knowledge of the Appointed Officer. The applicant's agent was provided with an internet link to the information provided to the MLRB. The unaccompanied site inspection was carried out on Monday 24 October 2011.
- 3.5 In regard to the unaccompanied site inspection the Planning Adviser advised the meeting that on arrival at the site he reminded members of the MLRB of the reasons for refusal which, as well as referring to breaching the CAT policy, included objections in terms of potential noise disturbance and shadow flicker and could adversely impact on the future development of the I3 Bridge Street Industrial Estate. There was also an objection on the potential adverse impact the erection of a turbine will have on three adjacent radio links operated by Scottish Hydro. Members of the MLRB also viewed the site, its' proximity to the settlement boundary, the extent of the CAT and other land uses and land use designations in the immediate area and location of the nearby residential sites.

- 3.6 The MLRB agreed that it had sufficient information and proceeded to determine the request for review.
- 3.7 Councillor Leadbitter expressed the view that as the CAT policy is quite prescriptive then if consents are to be considered within the CAT boundary then either the boundary needs to be reviewed or a policy requires to be developed for small scale renewables within CAT boundaries both of which would be better considered during the review of the Moray Local Plan. In this particular case there was additional objections in terms of noise disturbance, shadow flicker, adverse impact on the future development of the I3 Bridge Street Industrial Estate and the potential adverse impact the erection of a turbine will have on three adjacent radio links operated by Scottish Hydro. For these reasons Councillor Leadbitter was minded to refuse the request for review on the grounds set out by the Appointed Officer in the refusal notice. This view was supported by Councillors Paul and Creswell.
- 3.8 The MLRB unanimously agreed that the request for review be refused and the original decision of the Appointed Officer to refuse the application be upheld on the grounds that the proposal is contrary to policies E10 Countryside Around Towns (CAT), E9 Settlement Boundaries, ER1 Renewable Energy Proposals, IMP1 Development Requirements and EP8 Pollution of the adopted Moray Local Plan 2008 for the following reasons:
1. The proposed turbine would represent inappropriate development within the CAT, which would not fall within any of the categories of development identified as exceptions allowed under policy E10. Furthermore it would have a detrimental effect upon the character of the CAT designation, by reason of its scale, prominent position on the edge of the town and resulting visual impact, and as such it would fail to preserve the distinction between the built up area and the countryside which policies E10 and E9 seek to protect. The introduction of the turbine in this location would therefore undermine the aims of policies E10 and E9 which seek to prevent development sprawl within CATs and those areas immediately outwith the settlement boundaries and would also be contrary to policies ER1 and IMP1 that seek to safeguard landscape character.
 2. The proposed turbine would be positioned adjacent to the I3 Bridge Street Industrial Estate designation to the north and west and would give rise to potential noise disturbance and shadow flicker, adversely impacting on the future occupiers of the units i.e. office type uses within the estate. This would be contrary to policies IMP1, EP8 and associated guidance within Planning Advice Note 1/2011 Planning and Noise which require proposals to be sensitively sited and not to give rise to unacceptable noise pollution. In addition this could potentially undermine the future development of the estate as envisaged under policy I3 and the longer term extension of the area.

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Sean Hoath
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 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.

