



## 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 041
- Site address: Braco lodge, 42 Mayne Road, Elgin IV30 1PB
- Application for review by Dr & Mrs A Blain against the decision by an Appointed Officer of Moray Council.
- Application11/00460/APP: Full planning permission to erect a dwelling house on a site within the grounds of Braco Lodge, 42 Mayne Road, Elgin
- Unaccompanied site inspection carried out by the MLRB on Thursday 1 December 2011.
- Date of Decision Notice: 7 February 2012

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### Decision

The MLRB agreed to uphold the request for review 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.

### 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 17 November 2011 & 17 January 2012. The Review Body was attended at both meetings by Councillors P Paul (Chair), L Creswell & J Hogg.

### 2.0 Proposal

- 2.1 This is an application for full planning permission to erect a dwelling house on a site within the grounds of Braco Lodge, 42 Mayne Road, Elgin.

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

- 3.1 At the meeting of the MLRB on 17 November 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 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 H3, H4 and IMPI of the MLP 2008. It was also agreed that the Planning Adviser attend the unaccompanied site inspection.
- 3.3 At the meeting on 17 November 2011 Councillor Paul sought clarification in regard to the status of the references in the appellant's grounds for review to statements contained in a previous MLRB Decision Notice relating to a Notice of Review in respect of an application for planning consent in principle on the same site. The meeting noted that this Notice of Review was in respect of a different application for full planning consent, albeit on the same site, and required to be considered against the current policies set out in the MLP 2008 on its individual merits. It was also noted that it was a matter for the MLRB to consider whether the statements referred to were a material consideration in this case.
- 3.4 At the meeting of the MLRB on 17 January 2012 there was submitted a 'Summary of Information' report detailing the outcome of the MLRB's previous consideration of the request for review.
- 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 and that there were no issues with house design or amenity of neighbouring properties. The MLRB noted that the refusal was on the basis of the proposal being backland resulting in 2 small house plots and that it was considered out of keeping with the character of the surrounding area. He also identified the proposed access point and confirmed there were no objections from the Council's Transportation Section. The plot boundaries and the position of house and parking/turning area were also identified and the MLRB noted that the plot area was just above the 400 sq m threshold for subdivisions. The Planning Adviser also referred the appellant's 'grounds for review' and the examples of sub-division of large plots within the locality and in this regard he advised the MLRB that no comparable sub-division examples had been identified in the surrounding area when the previous request for review had been considered.
- 3.6 The MLRB agreed that it had sufficient information and proceeded to determine the request for review.
- 3.7 Councillor Paul intimated that there were no objections from the Council's Transportation Manager in respect of the proposed access arrangements, the proposed development complied with policy H4 of the MLP in terms of plot size, there would be no adverse impact on neighbouring properties in terms of privacy levels and expressed the view that, in her opinion, consideration required to be given to the reasons for refusal relating to 'backland development' and impact on the character of the surrounding area and as to whether or not there were any material considerations to justify departing from policy.

- 3.8 Councillor Hogg referred to the 'Assessment of Proposal' set out in the Report of Handling (page 3 of the review documents submitted to the MLRB on 17 November 2011) which recommended refusal of the application as it fell short of compliance with policies H3 of the MLP relating to 'adverse impact', H4 as the site is defined as backland and H4 and IMP1 in regard to 'in keeping with the surrounding area'. The Report of Handling however advised that there are substantial areas of compliance across the same policies with particular reference to the site occupying less than 50% of the original plot, the site being over 400sqm and the report further accepts that there would be no adverse impact and the proposed development would be in keeping with the surrounding properties. In regard to the two reasons for refusal Councillor Hogg expressed the view that non-compliance with policy H3 in terms of adverse impact should be disregarded as the report of Handling indicates that there would be no adverse impact.
- 3.9 Councillor Hogg then referred Planning Circular 4/2009 'Development Management' and in particular to Annex A relating 'Defining a Material Consideration' a copy of which had been previously circulated to all members of the MLRB and was made available at the meeting for ease of reference. He expressed the view that the advice firstly requires the MLRB to consider the provisions of the Local Plan which he considered the MLRB had covered in its consideration of the relevant elements of policies H3, H4 and IMP1. Section 2 of Annex A also requires the MLRB, having considered the relevant elements of the policies to then consider the aims and objectives of these policies, particularly in regard to the backland element of H4 and whether the proposal is in keeping with the surrounding area provision of H4 and IMP1. In this regard Councillor Hogg drew members' attention to the Report of Handling which explained that under policy H4, relating to backland sites, there was a presumption against such sites to protect the amenity of adjacent householders. The Report of Handling however specifically states that the proposed development 'will not have an unacceptable overbearing or overshadowing impact on the neighbouring properties. The Report of Handling also advises that the overall appearance of the proposed development is considered to be in keeping with the surrounding additional properties in the locale. These two references were, in his opinion, material considerations of sufficient weight to outweigh the backland element of policy H4 and the not in keeping with the local area provision of policies H4 and IMP1. Councillor Hogg also referred to two explanations set out in Section 5 of Annex 5 which makes reference to the environmental impact and design of a proposed development and its relationship to its surroundings both of which, in his opinion, are considered acceptable in the Report of Handling and therefore can be considered as further material considerations of sufficient weight to justify approving the application as an acceptable departure. For these reasons Councillor Hogg was minded to grant the request for review and approve the application as an acceptable departure.
- 3.10 The Chair, Councillor Paul intimated her agreement with the views expressed by Councillor Hogg and sought clarification from the Legal and Planning Advisers in regard to the Councillor Hogg's reasoning and conclusions.

- 3.11 The Legal Adviser advised the MLRB that, in his opinion, it was a fair and accurate interpretation of Annex A in regard to defining a material consideration. The Planning Adviser advised the meeting that it is accepted that there is no issue with the design of the proposed development or the loss of amenity to the neighbours from the proposed development. The grounds for refusal related to the creation of two small house plots which would be out of character with the wider area which is characterised by houses set in generous garden grounds and it was for the MLRB to consider whether there were any material considerations of sufficient weight to overcome the character elements of the reasons for refusal.
- 3.12 Thereafter the MLRB unanimously agreed that the material considerations referred to by Councillor Hogg were of sufficient weight to outweigh the relevant elements of policies H4 and IMP1 of the MLP referred to in the reasons for refusal and agreed 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, subject to standard conditions and conditions and informatives recommended by consultees.

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**Paul Nevin**  
**Legal Adviser to the MLRB**

## Conditions

1. The development to which this permission relates must be begun not later than the expiration of 3years 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 authority.
5. The exiting trees located at the southern and western boundaries of the site as identified on plan 11:07:01 shall be retained throughout the lifetime of the development. Any trees that die or become seriously damaged or diseased shall be replaced in the following planting season by others of similar number and species unless otherwise agreed by the planning authority.
6. The width of the vehicular access shall be 2.4m – 3.0m and have a maximum gradient of 1:20 measured for the first 5.0m from the edge of the public carriageway. The part of the access over the public footway/verge shall be to The Moray Council specification and surfaced with bituminous macadam.
7. No water shall be permitted to drain or loose material be carried onto the public footway/carriageway.
8. Drop kerbs shall be provided across the access to The Moray Council specification. A road opening permit must be obtained from the Roads Authority before carrying out this work.
9. Parking provision shall be as follows:  
No. of spaces shall be \_\_\_\_2\_\_\_\_ Private
10. A turning area shall be provided within the curtilage of the site to enable vehicles to enter and exit in a forward gear.
11. A visibility splay of 2.4m x 25m shall be provided and maintained at the access in both directions, clear of any obstruction above 0.6m in height.
12. New boundary walls/fences shall be set back from the edge of the public carriageway behind the visibility splay. The footway shall be extended into the area of ground in front of the visibility splay to the Moray Council specification and surfaced with bituminous macadam.

## 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. To safeguard the privacy of adjoining properties in the interests of residential amenity.
6. To ensure acceptable development in the interests of road safety.
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 development in the interests of road safety.
11. To ensure acceptable Access and Visibility in the interests of road safety for the proposed development and other road users.
12. To ensure acceptable Access and Visibility in the interests of road safety for the proposed development and other road users.

## **INFORMATIVES**

THE TRANSPORTATION MANAGER HAS COMMENTATED THAT:-

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

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

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 developer must contact the Roads Authority Street Lighting Section at Ashgrove Depot, Elgin – Tel (01343) 557300, Ext 7343 to discuss the proposals as there may be street lighting cables in the footway at the proposed access.

## 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.**