



MORAY COUNCIL LOCAL REVIEW BODY

Review Decision Notice

Decision by Moray Local Review Body (the MLRB)

- Request for Review reference : Case 042
- Site address: Cairnhill Cottage, Knock, Keith
- Application for review by Mr Richard Wilson against the decision by an Appointed Officer of Moray Council.
- Application 11/01011/APP : Alter and extend the existing dwellinghouse at Cairnhill, Knock, Keith
- Date of Decision Notice: 7 February 2012

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 a meeting on 15 December 2011 and 12 January 2012. The Review Body was attended at both meetings by Councillors B Jarvis (Chair), J Hogg & P Paul.

2.0 Proposal

- 2.1 This is an application for the erection of a 1½ storey extension (5.3 metres high) totalling 42m² with a flat roof. The proposal would provide a kitchen/ diner and utility room on the ground floor and 2 bedrooms on the first floor. The extension would be attached to the rear elevation of the existing building

MLRB Consideration of request for review

- 3.1 At the meeting of the MLRB on 15 December 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 had 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 2 (f) of the Moray Structure Plan and policies H5 and IMP1 of the MLP 2008. It was also agreed that the Planning Adviser attend the unaccompanied site inspection.
- 3.3 In regard to the site inspection Councillor Paul enquired if policy H8 should also be taken into account given that the applicant's representative refers to this policy in the grounds for review. The Planning Adviser advised the meeting that policy H8 relates to new housing in the open countryside whereas the application relates to altering and extending an existing house and therefore policy H5 applies. However, it was for the MLRB to consider if there are elements of policy H8 relating to design they consider require to be taken into account. It was agreed that the site inspection be also viewed in the context of policy H8 of the MLP 2008. It was also agreed that a larger scale drawing of the proposed development be provided for the site inspection.
- 3.4 At the subsequent meeting of the MLRB on 12 January 2012 there was submitted a 'Summary of Information' report detailing the outcome of the MLRB's previous consideration of the request for review and advising that the unaccompanied site inspection was undertaken on 2011.
- 3.5 Prior to the MLRB continuing consideration of the request for review the Planning Adviser drew the MLRB's attention to the reference in Sections 12 & 13 of the appellant's grounds for review (page 13 of the case papers for the meeting on 15 December 2011) to the Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2011 which will come into force on 6 February 2012. The statement implied that after the 6 February 2012 the appellant's proposal would be considered as 'permitted development' and therefore it would be unreasonable for the MLRB to dismiss the appeal in this instance. The Planning Adviser advised the meeting that having consulted with colleagues he had been advised that this would not be the case in this instance. In regard to the new legislation the Legal Adviser advised the meeting that, in terms of Annexe A to Planning Circular 4/2009 'Development Management Processes', the impending legislation referred to relating to permitted development may be considered a 'material consideration' and that it was a matter for the MLRB to consider whether this was appropriate in this case, taking into account the advice from the Planning Adviser, and if so what weight it would wish to apply.

- 3.6 In noting the advice the MLRB agreed that that the reference to material considerations was not relevant in this case and thereafter the Chairman invited the Planning Adviser to give a brief resume of what was viewed and referred to during the unaccompanied site inspection
- 3.7 The Planning Adviser advised the meeting that on arrival at the site he explained what the proposal involved two further rear extensions, which created a full length extension with a flat/mansard style roof. He reminded the MLRB members that the Appointed Officer's reasons for refusal related to the size and design of the flat roof extension to the rear of the property being unsympathetic to and detracted from the character and appearance of the dwellinghouse. He also reminded the MLRB of the Appellant's grounds for review which related to the extension not being readily visible from road and that the existing "mansard" extension meant that the new extension was in character with the appearance of the property.
- 3.8 The MLRB agreed that it now had sufficient information and proceeded to determine the request for review.
- 3.9 Councillor Hogg expressed the view that having had the opportunity to view the site consideration of this particular North-East house type was, in his opinion, the key issue both in terms of history and determination of the request for review. He advised the meeting that this particular house type basically consists of two rooms, usually approximately 11' x 14' with a small thin room to the rear and a staircase, usually accessed from the room on the right hand side, leading to attic space which is greatly reduced by a heavily coombed ceiling which, in his opinion, is a very restricted floor plan and therefore, in his opinion, not considered by today's standards as a 1½ storey house. Councillor Hogg was of the view that this particular house type did not meet modern day accommodation requirements hence the application to alter and extend the dwelling.
- 3.10 Councillor Hogg then referred members to policy H5 of the Moray local Plan 2008 (MLP) which allows for alterations and extension which usually consist of further units of the same basic form as the parent property, either in the form of a L, T or H shape which can increase the floor space over 1½ storeys by as much as 200% and, in his opinion, successful extensions work well when they reflect the essential scale, propositions and design elements of the parent house.
- 3.11 Councillor Hogg then referred to the reference in the review papers to a 'mansard' roof and intimated that it was his understanding that a mansard roof consisted of two 70° pitches under two 30° ones. The proposed extension however, in his opinion, consisted of two 80° pitches at either end of a flat roof which is not a 'mansard' form and therefore should not, in his opinion, be taken into account. The proposal, in his opinion, is for a rectangular box, flat roofed extension with a slated cheek at either end. In conclusion Councillor Hogg intimated that having visited the site and considered all the case papers he had come to the same conclusion as the Appointed Officer and moved that the request for review be refused for the reasons set out in the Decision Notice dated 22 August 2011.

- 3.12 In the event of the MLRB agreeing with his motion Councillor Hogg also invited the MLRB to consider advising the applicant that the MLRB understands and is sympathetic to the need to extend the dwelling, that it supports enhancing such house types with sympathetic extensions and hopes that the applicant will reconsider the aims of policy H5 of the MLP and re-apply accordingly.
- 3.13 Councillor Paul also expressed the view that whilst she sympathised with the need to extend the dwelling she also agreed with the view expressed by the Appointed Officer in the Report of Handling which refers to the 11.5 metre gable width coupled with the flat roof gives the building a top heavy form which is disproportionate to the existing elevations and fundamentally this proposal would not meet policy H5 as it fails to satisfy rural house design requirements, which will result in an unacceptable detrimental impact upon the appearance of the house and the surrounding area. For these reasons Councillor Paul agreed with the views expressed by Councillor Hogg that the request for review should be refused for the reasons set out in the Decision Notice dated 22 August 2011.
- 3.14 Councillor Jarvis agreed with the views expressed by Councillors Hogg and Paul and 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 application is a departure from Structure Plan Policy 2(f) and Local Plan Policies H5 and IMP1 and refused on the grounds that the size and design of the flat roof extension to the rear of the property would be unsympathetic to and detract from the character and appearance of the dwellinghouse.
- 3.15 The MLRB also agreed that the additional comments made by Councillor Hogg in regard to the MLRB understanding and being sympathetic to the need to extend the dwelling, that it supports enhancing such house types with sympathetic extensions and hopes that the applicant will reconsider the aims of policy H5 of the MLP and re-apply accordingly be conveyed to the applicant on advising of the outcome of the Notice of Review.

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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.