



MORAY COUNCIL LOCAL REVIEW BODY

Review Decision Notice

Decision by Moray Local Review Body (the MLRB)

- Request for Review reference : Case 045
 - Site address: Hilton Heights, Hilton Farm, Buckie
 - Application for review by Strathdee Properties Limited against the decision by an Appointed Officer of Moray Council.
 - Application 11/01569/APP : Full Planning Permission for the erection of a house and garage at Hilton Heights, Hilton Farm, Buckie.
 - Unaccompanied site inspection carried out by the MLRB on Monday 19 March 2012
 - Date of Decision Notice: 30 April 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 23 February and 22 March 2012. The Review Body was attended at both meetings by Councillors D Ross (Chair), J Mackay & P Paul.

2.0 Proposal

- 2.1 This is an application for full planning permission for the erection of a 1 ½ storey house, garage and associated works on farmland at Hilton Heights, Hilton Farm, by Buckie. The site is an irregular shaped parcel of farmland of 3254 sqm, which occupies an elevated position within the eastern corner of field 1.5 km east of Drybridge. Approximately 55 % of its boundaries are established and defined by post and wire fencing and adjoining woodland. The general locality includes four other approved house plots to the west, 3 of which have been developed, the nearest being 200m away.

3. MLRB Consideration of request for review

- 3.1 At the meeting of the MLRB on 23 February 2012 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 1(e) of the approved Moray Structure 2007 and policies H8 and IMP1 of the adopted MLP 2008. It was also agreed that the Planning Adviser attend the unaccompanied site inspection.
- 3.4 At the meeting of the MLRB on 23 March 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 had explained the reasons for refusal which related to representing an unacceptable cumulative build up of housing in the area and would detract from the rural character, as there were already three recently constructed houses in the vicinity and with consent for a fourth and this application would represent a fifth. This was seen as creating an unacceptable build up and may set a precedent for further houses within this area. In the applicant's defence he stated that the house was approximately 200m from the other houses and that this was considered to be a sufficient distance to reduce or overcome the concerns of density or build up in this locus.
- 3.6 The MLRB agreed that it now had sufficient information and proceeded to determine the request for review.
- 3.7 Councillor Mackay expressed the view that he disagreed with the Appointed Officer's decision and in his opinion he considered that this was a good site for a house as there was ample room, did not, in his opinion, constitute a cluster or ribbon development and there was a marvellous back drop and for these reasons Councillor Mackay moved approval of the review.
- 3.8 Councillor Ross expressed the view that although he did not disagree with Councillor Mackay he was not convinced that the application was good in terms of the policies. In his opinion the layout of the field would encourage further development between the current final house and the proposed new dwelling house. There were already three established and inhabited houses with another potential plot for sale and the proposed development, in his opinion, would create a cumulative build up and for this reason he agreed with the decision of the Appointed Officer and moved refusal of the request for review.

- 3.9 Councillor Paul expressed the view that in terms of the issues expressed relating to other applications being submitted, each application required to be considered on its individual merits and was minded to uphold the request for review and seconded Councillor Mackay's motion to uphold the request for review. In supporting Councillor Mackay's motion Councillor Paul expressed the view that whilst, in her opinion, the application was perhaps border line, as two of the plots were quite a distance away from the other two, she had taken this into account and could not judge what may happen in the future. She was also of the opinion if she could accept that the two houses were quite a distance apart she could also accept one up in the corner and did not consider it was right to make a decision on an assumption of what might happen in the future.
- 3.10 Councillor Ross clarified his position and advised that he did not make his decision on assumptions as each application is considered on its individual merits and this was not his sole reason for refusal. However whilst accepting Councillor Paul's comments in respect of the access road layout the developments sited along the road were, in his opinion, beginning to create a build up. He also agreed with Councillor Mackay there was sufficient back drop.
- 3.11 The Clerk sought clarification from the two members moving to uphold the request for review and it was noted that they were doing so on the basis that, in their opinion, the proposed development would not result in an unacceptable cumulative build of housing in the area, nor would it detract from the rural character of the area, nor would it set an undesirable precedent and for these reasons moved that the request for review be upheld and that full planning permission be granted, as complying with policy, subject to standard conditions and conditions and informatives recommended by consultees.
- 3.12 Accordingly the MLRB agreed, on a two to one majority, that the request for review be upheld and that full planning permission be approved, as complying with policy, subject to standard conditions and conditions and informatives recommended by consultees.

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Sean Hoath
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. That all planting, seeding or turfing forming part of the approved landscape scheme shall be carried out in the first planting and seeding seasons following the occupation of the dwellinghouse; or the completion of the building works, whichever is the sooner. Any trees or plants which (within a period of 5 years from the planting) die, are removed or become seriously damaged or diseased shall be replaced in the following planting season with others of similar size, number and species unless this Council (as Planning Authority) gives written consent to any variation of this planning condition.
6. Notwithstanding the provisions of Class 7 in Schedule 1 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, or any Order revoking or amending that Order, and unless alternative agreements are reached with the Head of Development Services, the boundaries of the site shall be comprised:-
 - post and wire fence
7. No boundary fences, hedges, walls or any other obstruction whatsoever over 1.0m in height and fronting onto the public road shall be within 2.4m of the edge of the carriageway.
8. The width of the vehicular access shall be 5.5m for the first 15 metres and 3.5m thereafter and have a maximum gradient of 1:20 measured for the first 5.0m from the edge of the public carriageway. The first 15m of the access track, measured from the edge of the public road, shall be constructed to the Moray Council specification and surfaced with bituminous macadam.
9. No water shall be permitted to drain or loose material be carried onto the public footway/carriageway.
10. 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 should lead off the lay-by. The lay-by must be constructed in accordance with The Moray Council specification and surfaced with bituminous macadam.

11. Three car parking spaces shall be provided within the site prior to the occupation or completion of the dwellinghouse, whichever is the sooner. The parking spaces shall thereafter be retained throughout the lifetime of the development, unless otherwise agreed in writing with the Council as Planning Authority.
12. A visibility splay of 4.5m x 160m shall be provided and maintained at the access onto the public road in both directions, clear of any obstruction above 1.0m in height (measured from the level of the carriageway).

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. In order to ensure that the approved landscaping works are timeously carried out and properly maintained in a manner which will not adversely affect the development or amenity and character of the area.
6. In order to ensure that consideration can be given to the appearance and impact of boundary enclosures other than those specified.
7. To ensure acceptable development in the interests of road safety.
8. To ensure acceptable infrastructure at the development access.
9. To ensure acceptable development that does not create any hazard to road users 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.

LIST OF INFORMATIVES:

MANAGER (DEVELOPMENT MANAGEMENT) has commented that:-

It is noted that your planning application proposes a septic tank and soakaway/infiltration drainage system and the suitability of the ground condition to accommodate this will be dealt with as part of your Building Warrant application. Full details of a ground assessment, trial pit investigations and percolation test results, from a suitably qualified person as contained within the Council's List of Approved Certifiers, will be required prior to obtaining a Building Warrant

An application for a Building Warrant and compliance with the Building Regulations are entirely separate from Planning procedures. Furthermore, the granting of Planning Consent does not guarantee approval of a Building Warrant.

If you have not already done so and you may wish to satisfy yourself about the adequacy of ground conditions separately at this stage, if so I recommend that you contact the Building Standards Section directly at Environmental Services, The Moray Council, Council Offices, High Street, Elgin, IV30 1BX, telephone(01343) 563243.

Please note that any proposed discharges to land or the water environment will require authorisation from SEPA under the Water Environment (Controlled Activities) (Scotland) Regulations 2011. For further details refer to SEPA website http://www.sepa.org.uk/water/water_regulation/regimes.aspx.

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

Planning consent does not carry with it the right to carry out works within the public road boundary (including the roadside verge) and the applicant must contact the Transportation Manager for a **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.

No retaining structures or embankments shall be constructed along the edge of the road, whether retaining the public road or ground adjoining the public road without prior consultation and agreement of the Roads Authority.

Information to accompany Decision Notice:

Scottish Water Consultation Response

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: 11/01569/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: 11/01569/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.