



MORAY COUNCIL LOCAL REVIEW BODY

Review Decision Notice

Decision by Moray Local Review Body (the MLRB)

- Request for Review reference : Case 047
 - Site address: Torfness, Elgin
 - Application for review by Mr & Mrs Paul Main against the decision by an Appointed Officer of Moray Council.
 - Application 10/02015/PPP : Planning Permission in Principle for a new dwelling house, garage and associated works on land adjacent to Torfness, Elgin.
 - Unaccompanied site inspection carried out by the MLRB on Tuesday 18 April 2012
 - Date of Decision Notice: 11 May 2012
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Decision

The MLRB agreed to uphold the request for review and grants planning permission in principle, 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 22 March and 18 April 2012. The Review Body was attended at both meetings by Councillors R Shepherd (Chair), J Mackay & P Paul.

2.0 Proposal

- 2.1 This is an application for planning permission in principle for the erection of a dwelling house in the garden ground adjacent to Torfness, Elgin.

3. MLRB Consideration of request for review

- 3.1 At the meeting of the MLRB on 22 March 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 18 April 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 grounds for refusal which related to being contrary to Moray Local Plan 2008 (MLP) policies H8, E7 & IMP1 as it was considered that the proposed development would extend linear development along the roadside, it might create a negative precedent for further similar developments and would have a detrimental impact on the character in an area designated as an Area of Great Landscape Value (AGLV). He then outlined the grounds for review which contended that the site is well screened on three sides, that national planning guidance and the Council's Structure Plan and Local Plan all encourage well sited houses in the countryside. The appellant was also of the opinion that the proposal complied with policy H8 in that it was not a multiple house application, it had a high standard of siting and design, it would have additional substantial landscaping and was not considered to contribute to a build up in the area. The Planning Adviser also advised there were no issues with design, no objections from consultees and as part of the site inspection the MLRB had viewed the locations of some of the examples of other approved houses in the area cited by the appellant in their grounds for review.
- 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, having had the opportunity to visit the site, the proposed development, in his opinion, does comply with the MLP in that it is a single house development, would be well sited and would not adversely detract from the character of the surrounding area which is designated as an AGLV. He also expressed the view that whilst the proposed development, in his opinion, would not create a linear extension he may take a different view in respect of any further developments of a similar nature in the immediate area albeit each application required to be considered on its individual merit.

- 3.8 Councillor Paul intimated that having had the opportunity to visit the site she agreed with the decision of the Appointed Officer. In her opinion, given the number of existing developments along the roadside, the proposed development would create ribbon development along the roadside and would have an unacceptable impact on the character of the surrounding area which is designated as an AGLV. For these reasons Councillor Paul moved 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 proposed development was contrary to policies H8, E7 & IMP1 of the MLP in that the development extends linear development along the roadside and sets a negative precedent for further similar development along the roadside, which would result in a detrimental impact of the character of an area that is designated for its great landscape value.
- 3.9 Councillor Shepherd intimated that he supported the views expressed by Councillor Mackay and moved that the request for review be upheld and that planning permission in principle be granted, as complying with policy.
- 3.10 Accordingly the MLRB agreed, on a two to one majority, that the request for review be upheld and that planning permission in principle be granted, as complying with policy, subject to standard conditions and conditions and informatives recommended by consultees to include a specific condition restricting the height of the proposed development to one and a half storeys in line with the indicative drawings submitted with the planning application.

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Paul Nevin
Legal Adviser to the MLRB

Conditions

1. (a) That in the case of any matter specified in conditions attached to the planning permission in principle, application for approval must be made before:-
 - (i) that expiration of 3 years from the date of the grant of planning permission in principle; or
 - (ii) the expiration of 6 months from the date on which an earlier application for such approval for the same matters was refused; or
 - (iii) the expiration of 6 months from the date on which an appeal against such refusal was dismissed; whichever is the latest: provided that only one such application for approval of matters specified in conditions may be made in the case after the expiration of the 3 year period mentioned in sub-paragraph (i) above.
- (b) That the development to which the permission relates must be begun not later than whichever is the later of the following dates:-
 - (i) the expiration of 3 years from the date of the grant of planning permission in principle; or
 - (ii) the expiration of 2 years from the final approval of the matters specified in conditions or in the case of approval on different dates the final approval of the last such matter to be approved.
2. The approval hereby granted is for planning permission in principle and prior to the commencement of the development approval of matters specified in conditions, including the siting, design and external appearance of the building(s) the means of access thereto and the landscaping of the site shall be obtained from the Council, as Planning Authority.
3. The grant of planning permission in principle hereby granted for the proposed development shall be carried out only in accordance with detailed drawings which shall previously have been submitted to and approved by the Council, as Planning Authority. These drawings shall show the matters specified in conditions numbered 4 - 8 below.
4. Plans, sections and elevations of all buildings proposed with details of the type and colour of all external materials and finishes shall be submitted in accordance with condition no. 3 above.
5. The proposed layout of the site showing the exact position of the site boundaries, the position of all buildings, the means of access, areas for vehicle parking and the arrangements for the disposal of foul and surface water (i.e. a SUDS system or equivalent) shall be submitted in accordance with condition no. 3 above.
6. Details of the exact extent, type and finish of all other works including walls, fences and other means of enclosure and screening shall be submitted in accordance with condition no. 3 above.

7. Sections through the site showing the development on its finished levels in relation to existing levels shall be submitted in accordance with condition no. 3 above.
8. Landscaping proposals showing any existing trees/hedges/shrubs to be retained or removed together with details of the type, position and number of all planting to be undertaken and details of all surfacing materials shall be submitted in accordance with condition no. 3 above.
9. 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.
10. 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:-
Natural drystone dyke, a post and wire fence or a hedge made of native species to be agreed in writing with the Planning Authority prior to planting.
11. 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.
12. 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.
13. No water shall be permitted to drain or loose material be carried onto the public footway/carriageway.
14. 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.
15. Parking provision shall be as follows:

2 spaces for a dwelling with three bedrooms or less; or

3 spaces for a dwelling with four bedrooms or more.
16. Any existing ditch, watercourse or drain under the site access shall be piped using a suitable diameter of pipe, agreed with the Roads Maintenance Manager (300mm minimum). The pipe shall be laid to a self-cleansing gradient and connected to an outfall.
17. A turning area shall be provided within the curtilage of the site to enable vehicles to enter and exit in a forward gear.

18. A visibility splay of 2.4m x 120m shall be provided and maintained at the access in both directions, clear of any obstruction above 1.0m in height.
19. New boundary walls/fences shall be set back from the edge of the public carriageway at a distance of 2.0m.
20. The dwellinghouse hereby approved shall not exceed one and a half storeys in height.
21. Prior to any development works commencing:-
 - i) a detailed drawing (scale 1:500) showing the location and design of a passing place on the section of the U11E Auchtertyre Road between the C3E Elgin-Pluscarden Road and the U112E Miltonduff Road (to the Moray Council standards and specification), shall be submitted to and approved in writing by the Council, as Planning Authority in consultation with the Roads Authority; and
 - ii) thereafter the passing place shall be constructed in accordance with the approved drawing prior to any development works commencing (except for those works associated with the provision of the passing place).

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 the matters specified can be fully considered prior to the commencement of development.
3. As the approval is granted for planning permission in principle only and in order that detailed consideration can be given to the matters specified.
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8. As the approval is granted for planning permission in principle only and in order that detailed consideration can be given to the matters specified.
9. 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.
10. In the interests of the character and amenity of the area.

11. To ensure acceptable development in the interests of road safety.
12. To ensure acceptable infrastructure at the development access.
13. To ensure acceptable development that does not create any hazard to road users in the interests of road safety.
14. To ensure acceptable infrastructure at the development access.
15. To ensure acceptable development in the interests of road safety.
16. To ensure acceptable infrastructure at the development access.
17. To ensure acceptable development in the interests of road safety.
18. To ensure acceptable Access and Visibility in the interests of road safety for the proposed development and other road users.
19. To ensure acceptable development in the interests of road safety.
20. In the interests of the character and amenity of the surrounding countryside.
21. To enable drivers of vehicles to have adequate forward visibility to see approaching traffic and for two vehicles to safely pass each other ensuring the safety and free flow of traffic on the public road.

List of Informatives:

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 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.

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: 10/02015/PPP

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: 10/02015/PPP

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.