



MORAY COUNCIL LOCAL REVIEW BODY

Review Decision Notice

Decision by Moray Local Review Body (the MLRB)

- Request for Review reference : Case 048
- Site address: Mill of Newmill, Keith, Moray AB55 6LA
- Application for review by Mr R Davidson against the decision by an Appointed Officer of the Moray Council.
- Application 11/01995/APP
- Unaccompanied site inspection carried out by MLRB on 21 June 2012

Date of Decision Notice: 18 July 2012

Decision

The MLRB agreed to uphold the request for review and grants 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 planning permission was considered by the MLRB at two meetings on 7 June and 28 June 2012. The Review Body was attended at both meetings by Councillors B Jarvis (Chair), L Creswell & J MacKay.

2.0 Proposal

- 2.1 This is an application for installation of a 20kw turbine on a 20m high mast on farmland at Mill of Newmill, Keith, Moray, AB55 6LA.

3.0 MLRB Consideration of request for review

- 3.1 At the meeting of the MLRB on 7 June 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 there was insufficient information in order to proceed to determine the request for review and it was agreed that an unaccompanied site inspection be undertaken, the purpose of which being to view the site in the context of Policies E10, ER1 and IMP1 of the adopted Moray Local Plan 2008.
- 3.3 It was also agreed that the Planning Adviser attend the unaccompanied site inspection.
- 3.4 At the subsequent meeting of the MLRB on 28 June 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 Thursday 7 June 2012.
- 3.5 In regard to the unaccompanied site inspection the Planning Adviser advised the meeting that on arrival she reminded Members that they had viewed the site at a distance and in close proximity. Members were also made aware of the height of the turbine to blade tip and the percentage of energy produced for consumption by the farm and steading and the location of the proposal in relation to the boundaries of the Keith CAT. She also outlined the reasons for refusal and the 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 McKay expressed the view that, having had the opportunity to visit the site, in his opinion, Policy E10 places a clear presumption against development within the Countryside Around Town unless it involves redevelopment in relation to agricultural, forestry or low intensity recreational use which are allowed under the terms of other policies within these areas. In noting that the applicant states that 63% of energy produced will be used within the house and steading and relates to farming practice, it therefore could be argued that the turbine is required for agricultural purposes and could be seen as a material consideration to justify departing from policy and the Moray Local Plan 2008. He was also of the opinion that given the scale of the proposed development that this could not be viewed as development sprawl, would not detract from the special character of the area and would not cause any loss or distinction between the build up of the area or countryside. He further advised that the visual impact of the proposed

turbine was demonstrated within the visual assessment submitted in support of the application which highlighted that the turbine is not skyline and a backdrop is provided by the local topography and would not detract from the designation of the site. For these reasons Councillor Mackay moved that the request for review be upheld and planning permission be granted as an acceptable departure from policy, subject to standard conditions relating to a single wind turbine. There being no-one otherwise minded the motion became the finding of the meeting and it was agreed to uphold the review.

- 3.8 Accordingly, the MLRB agreed that the request for review be upheld and planning permission granted as an acceptable departure from policy subject to standard conditions relating to a single wind turbine and conditions and informatives recommended by consultees

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Paul Nevin
Legal Adviser to the MLRB

Conditions:

1. Within 25 years of the date of this consent or when the turbine has ceased its generating function, whichever is sooner, the turbine shall be removed from the site in its entirety and the foundation shall be top soiled, graded and seeded on the basis of details first agreed in writing with the Planning Authority.
2. Where interference to domestic television reception is caused as a result of the development hereby approved the developer shall take steps to make good the reception, either by eliminating the cause of the interference or by providing an alternative means by which television signals may be received. Within two weeks of being notified by the planning authority of the existence of such interference (or within a longer period as the planning authority may allow) the developer shall submit to the authority for its approval proposals to make good the reception, including a programme showing the time within which the proposals will be completed. The proposals shall be carried out in accordance with the terms on which they are approved.
3. The sound pressure level from the turbine, LAEQ 10min, measured at any point within 15m of the facade of any noise sensitive premises not occupied by the applicant, shall not exceed 38dB(A) at wind speeds up to and including 8m/s, as measured or calculated at a height of 10m above ground level. The noise from the turbine shall not exceed the limit and, in addition, shall contain no distinct tonal characteristics, as measured at the nearest noise sensitive properties.

At the reasonable request of the Planning Authority, following a complaint to Moray Council relating to noise emissions from the wind turbine, the person in control of the turbine shall measure, at their own expense, the level of noise emissions from the wind turbine in order to demonstrate compliance with this condition.

Measurements shall be made using a sound level meter of at least Type 1 quality (as defined in EC Standard 651 (1979)), using a fast time weighted response incorporating a windshield using a ½ inch diameter microphone, between 1.2m and 1.5m above ground level and at least 10m from any wall, hedge or reflective surface.

For the purpose of this condition 'wind speed' means the wind speed measured at a height of 10m above ground level.

This condition is on the basis of the installation of a CF20 (20kw) turbine, in accordance with the supporting documents.

4. Before development begins written evidence must be submitted to the planning authority which demonstrates that the applicant has submitted the following information to the:

Defence Estates MOD
 Assistant Safeguarding Officer (margot.williams829@de.mod.uk),
 Safeguarding - Wind Energy, Defence Infrastructure Organisation,
 Kingston Road, Sutton Coldfield, West Midlands, B75 7RL:-

- the date construction starts and ends
- the maximum height of construction equipment
- the latitude and longitude of the turbine

Reasons:

1. To accord with the provisions of the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc (Scotland) Act 2006, to allow the planning authority to review the circumstances of the temporary permission in the interests of the amenity of the area in the longer term, beyond the 25 year period covered by the permission.
2. In order to ensure that an alternative means of obtaining a television reception can be achieved in the event of interference to domestic television reception occurring.
3. To protect local residents from noise from the turbines.
4. To maintain air safety.

IMPORTANT NOTES ABOUT THIS DECISION

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 as set out above.

DURATION OF THIS PERMISSION

In accordance with Section 58 (i) of the Town and Country Planning (Scotland) Act 1997 as amended, 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.

If the development has not commenced within this period then this permission shall lapse unless there is a specific condition attached to this permission which varies the stated timescale.

COMMENCEMENT AND COMPLETION OF THE DEVELOPMENT

The following are statutory requirements of the Town & Country Planning (Scotland) Act 1997, as amended. Failure to meet their respective terms represents a breach of

planning control and may result in formal enforcement action. Copies of the notices referred to below are attached to this permission for your use.

NOTIFICATION OF INITIATION OF DEVELOPMENT - S.27A of the 1997 Act, as amended requires that any person who has been granted planning permission (including planning permission in principle) and intends to start development must, as soon as practicable after deciding the date they will start work on the development, give notice to the planning authority of that date. This ensures that the planning authority is aware that the development is underway and can follow up on any suspensive conditions attached to the permission. Therefore, prior to any work commencing on site, the applicant/developer must complete and submit to the Moray Council, as planning authority, the attached Notification of Initiation of Development.

NOTIFICATION OF COMPLETION OF DEVELOPMENT - S.27B of the 1997 Act, as amended requires that any person who completes a development for which planning permission (including planning permission in principle) has been given must, as soon as practicable after doing so, give notice of completion to the planning authority. This will ensure that the planning authority is aware that the development is complete and can follow up any planning conditions. Therefore, on completion of the development or as soon as practicable after doing so, the applicant/developer must complete and submit to the Moray Council, as planning authority the attached Notification of Completion of Development.

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: 11/01995/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:

2. The full name and address of the landowner, if a different person:

3. Where a site agent is appointed, their full name and contact details:

4. The date of issue and reference number of the grant of planning permission:

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: 11/01995/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
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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.