



MORAY COUNCIL LOCAL REVIEW BODY

Review Decision Notice

Decision by Moray Local Review Body (the MLRB)

- Request for Review reference : Case 052
 - Site address: Foths View, Rashcrook, Birnie
 - Application for review by Mr Ian Mackay against the decision by an Appointed Officer of the Moray Council.
 - Application 11/01890/APP: Planning Permission for erection of Two Timber Chalets for Holiday Purposes and Associated Works.
 - Unaccompanied site inspection carried out by the MLRB on Thursday 21 June 2012
 - Date of Decision Notice: 18 July 2012.
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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 meetings on 7 June and 28 June 2012. The Review Body was attended at both meetings by Councillors B Jarvis (Chair), L Creswell & R Shepherd.

2.0 Proposal

- 2.1 Farm diversification project to erect two timber chalets for holiday purposes and associated works on Foths View, Rashcrook, Birnie, near Elgin.

3. 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 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 ED9 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 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.
- 3.5 In regard to the unaccompanied site inspection the Planning Adviser advised the meeting that on arrival at the site she had reminded members about the location of the site and the existing boundary delineation of the site. She also outlined the reasons for refusal and the grounds for review. She further explained that a previous application had been refused on the basis of design as being essentially a dwellinghouse as opposed to tourist accommodation and that the proposal had been redesigned and consisted of timber walled chalet style buildings on a reduced plot size.
- 3.6 The MLRB agreed that it now had sufficient information and proceeded to determine the request for review.
- 3.7 Councillor Shepherd intimated that, having had the opportunity to visit the site, he was of the opinion that the decision of the Appointed Officer should be upheld for the reasons set out in the application Decision Notice as approval would be contrary to policies ED9 and IMP1 of the Moray Local Plan.
- 3.8 Councillor Jarvis expressed the view that, having had the opportunity to visit the site, the proposed development, in his opinion does comply with policies ED9 and IMP1 of the Moray Local Plan on the basis that the applicant had undertaken a lot of work to meet the planning conditions for the area and was trying to encourage economic development and tourism which would be essential in the coming years for diversifying the local economy.
- 3.9 Councillor Creswell intimated that she supported the views expressed by Councillor Jarvis and moved that the request for review be upheld and that planning permission be granted, as complying with policies ED9 and IMP1 of the Moray Local Plan .
- 3.10 Accordingly the MLRB agreed, on a two to one majority, that the request for review be upheld and that planning permission be granted, as complying with policy, 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 cottages hereby approved shall be used for holiday purposes only and shall not be used as the sole or main place of residence of any occupant; a holiday being defined as a stay of one or more nights away from that person's sole or main place of residence.
2. 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.
3. The width of each individual 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.
4. No water shall be permitted to drain or loose material be carried onto the public footway/carriageway.
5. An access lay-by 12.0m 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 accesses should lead off the lay-by. The lay-by must be constructed in accordance with The Moray Council specification and surfaced with bituminous macadam.
6. Parking provision shall be as follows:

No. of spaces shall be 3 for each property

The car parking spaces shall be provided within the site prior to the occupation or completion of each 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.

7. A turning area shall be provided within the curtilage of the each plot to enable vehicles to enter and exit in a forward gear.
8. 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 (measured from the level of the carriageway).
9. New boundary walls/fences shall be set back from the edge of the public carriageway at a distance of 2.0m.

Reasons

1. In order to ensure that the cottages are used for holiday purposes only.
2. To ensure acceptable development in the interests of road safety, in accordance with 2008 Moray Local Plan Policy T2.
3. To ensure acceptable infrastructure at the development access, in accordance with 2008 Moray Local Plan Policy T2.
4. To ensure acceptable development that does not create any hazard to road users in the interests of road safety, in accordance with 2008 Moray Local Plan Policy T2.
5. To ensure acceptable infrastructure at the development access, in accordance with 2008 Moray Local Plan Policy T2.

6. To ensure acceptable development in the interests of road safety, in accordance with 2008 Moray Local Plan Policy T5.
7. To ensure acceptable development in the interests of road safety, in accordance with 2008 Moray Local Plan Policy T2.
8. To enable drivers to vehicles leaving the site to have a clear view over a length of road sufficient to allow safe exit, in the interests of road safety for the proposed development and other road users, in accordance with 2008 Moray Local Plan Policy T2.
9. To ensure acceptable development in the interests of road safety, in accordance with 2008 Moray Local Plan Policy T2.

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.

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. 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.

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: 11/01890/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 11/01890/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.