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Main Street, Urquhart, Elgin, Moray, IV30 8LG

## PPP TO ERECT NEW DWELLING HOUSE AT WARDEND, LONGMORN, BY ELGIN FOR MR DAVID HOWLETT. 10-37

### REVIEW STATEMENT.

We refer to planning application 12/00487/PPP which was submitted to the Council on the 20<sup>th</sup> of March 2012 and was subsequently refused on the 11<sup>th</sup> of May 2011 by planning Officer Maurice Booth. **We feel that the positioning of this proposed house will have a minimal impact on the surrounding countryside and will not be breaching Policies H8 and IMP1 as stated by Mr Booth.**

#### **REASONS.**

- A. Previous Review case No 034.
- B. Complies fully with current Local Plan Policies.
- C. Location of proposed house renders the planning officer's reason for refusal as inaccurate and misleading.
- D. Inconsistency.

#### **EVIDENCE.**

##### **A.**

This is not the first application we have made for this site. We refer to the previous Review (Case No 034) and this Review was lost on a 2-1 vote against the proposal. However, from the case notes, a copy is provided, we have highlighted an area where one of the Review Board states that he wants to refuse the Appeal on the grounds of visibility issues. There were never any visibility concerns which were pointed out to this Councillor but he still refused the Appeal on these grounds. Visibility was never an issue and the client lost the Appeal on this decision.



## B.

In terms of Policy, this site complies fully with the current Moray Council Local Plan Policy booklet which has been adopted by said Council. The site has two long established boundaries and has significant tree cover so as to comply fully with Policy H8. . Mr Booth actually confirms in his reasons for refusal that **“Policy H8 is relatively permissive”**. We agree that the Policy is relatively permissive which is why people apply for new housing in the countryside. The fact remains that our client’s proposals conform to the Council’s policies for housing in the countryside in terms of the Local Plan and it is only the officer’s opinion that this house would not **“be absorbed into the rural character of the area”**. Again, we would have to disagree with his opinion as this house will be completely obscured from view from any local road network and because of the carefully selected position within the site for the house; it will not be seen from anywhere. This being the case, Mr Booth is wrong to say that this house will not be absorbed into the natural countryside. The second reason for refusal given is that by allowing this house to be passed, this would encourage further such development This house is not proposed to be in full view from the roads or from any other area where it might be exposed. Further sites which may be exposed to the roads network may have a detrimental impact on the countryside and may not be absorbed into the countryside but in this case, any house on this site will be totally obscured from view.

## C

The officer has provided a map as evidence as to the amount of application being received in this area. Some of these applications have been duplicates and others have been refusals for some reason or another. The picture is distorted. We provided evidence to say that the density of approvals in the Birnie area is no worse than in areas at Archiestown, Mulben and Mosstowie to name but three. There are new houses springing up in the Birnie area but what sets our client’s proposals apart from any other is the fact that it is set in a clearing in the trees. There are thick trees to the North, East and the West and there is a thinner cover of trees to the South facing on to the track. The main reason for refusal of this application is that **“THE PROPOSAL WOULD BEGIN TO HAVE A MATERIALLY DETRIMENTAL IMPACT AND SIGNIFICANTLY ERODE THE REMAINING UNDEVELOPED NATURE OF THE SETTING”**.



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**This is in-accurate and mis-leading.** We hope that a site visit will demonstrate that a house located within the tree area on this site will have the minimum of impact on the countryside and the surrounding area. If this area has reached saturation point then why has there not been a moratorium put on accepting applications in this locale?

D.

We refer to another application in the Carron area where an application we made for Planning Permission in Principal was made under Ref No 10/02040/PPP and was refused by Mr Iain Drummond as he felt the area had too many houses and an additional house would lead to an unplanned build up of housing in this area. This application was refused on 30<sup>th</sup> March 2012. Three months later, Mr Booth grants Planning Permission for a new dwelling house across the track from where our client had previously been refused (planning reference No 12/00292/APP). Here we have a situation where decision making is inconsistent and arbitrary. There are no clear guidelines as to how many houses actually constitute too much development and officer's interpretation must be open to challenge

Summary.

The site under review is well secluded from the surrounding road network.

There are Policies in place for housing development in the countryside and this site complies fully with these policies.

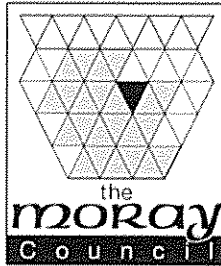
What makes this site different from the majority of other sites in the area is its seclusion. It will not be seen therefore it cannot impact on the surrounding countryside. As for precedent, if the Council's own policies allow for this type of development then each application must be viewed on its own merit. In this instance, the site is set within a thick blanket of trees and obscured from view and will not erode the remaining undeveloped nature of the setting.

The officer dealing with this case has demonstrated how arbitrary decision making is within the planning department by allowing an approval for a



house in the Carron area where a fellow colleague had already decided that there are too many houses in this location. This is not an attempt to discredit the planning officers but it does highlight how unfair arbitrary decision making is when no clear guidelines exist and it is certainly not fair on the client who has to pay for this.

We respectfully ask that taking all of the above and enclosed into account, that you overturn the planning officer's decision to refuse our client's application and grant Planning Permission in Principle for this secluded building plot in the trees.



## MORAY COUNCIL LOCAL REVIEW BODY

### Review Decision Notice

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Decision by Moray Local Review Body (the MLRB)

- Request for Review reference : Case 034
  - Site address: Wardend, Longmorn
  - Application for review by Mr David Howlett against the decision by an Appointed Officer of Moray Council.
  - Application 11/00095/PPP : Erection of a new dwelling house.
  - Unaccompanied site inspection carried out by the MLRB on Thursday 18 August 2011.
  - Date of Decision Notice: 14 September 2011
- 

#### **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 meetings on 28 July and 25 August 2011. The Review Body was attended at both meetings by Councillors B Jarvis (Chairman), L Creswell & G Leadbitter.

#### **2.0 Proposal**

- 2.1 This is an application for full planning permission for the erection of a new dwelling at Wardend, Longmorn.

### **MLRB Consideration of request for review**

- 3.1 At the meeting of the MLRB on 28 July 2011 there was submitted a Summary of Information report setting out the reasons for refusal together with a copy of the Report of Handling, a copy of the Notice of Review and a copy of the Grounds for Review and 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 H8 and IMPI of the Moray Local Plan 2008. The MLRB also requested that the Planning Adviser attend the unaccompanied site inspection.
- 3.3 The unaccompanied site inspection was carried out on Thursday 18 August 2011 during which members of the MRLB requested that, prior to the meeting on 25 August 2011 details of the location of other applications in the vicinity which had been approved or refused be circulated to members of the MLRB. This information was provided to members of the MLRB and copied to the appellant and interested parties.
- 3.4 At the meeting on 25 August 2011 there was submitted a 'Summary of Information' report detailing the outcome of the MLRB's previous consideration of the request for review.
- 3.5 The Principal Solicitor advised the meeting that she and the Planning adviser were in agreement that the plan previously circulated to Members with the location of other applications in the vicinity which had been approved or refused was not new evidence in terms of the statutory procedures as the plan merely brought together information that was already in the public domain and therefore was deemed to have been within the knowledge of the Appointed Officer.
- 3.6 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 reasons for refusal and outlined the grounds for Review. He also confirmed that the plan, circulated to members of the MLRB, the Appellant and interested Parties prior to the meeting, giving details of the location of other applications in the vicinity contained details of all applications submitted, and not just those that had been approved.
- 3.7 The MLRB agreed that it now had sufficient information and proceeded to determine the request for review.

- 3.8 Councillor Leadbitter expressed the view that the application comes under a policy that is very open to interpretation and the setting of a limit of the number of houses that can be approved in an area was not in reality an arbitrary decision as it was based on the knowledge and experience of the Appointed Officer and the works done in that area already, but he was having difficulty with this application in seeing how it would impact on the open nature of the landscape when it was set back in trees. The information provided to Members was useful in showing the layout of where applications have come in the area and how the current one sits within the open nature of the surrounding area and he felt as regards this particular application because it sits within the woods it is clearly heavily shielded on three sides and cannot be seen from the surrounding countryside on three sides with only the 4<sup>th</sup> side which faces on to the road being open for viewing from directly in front of the plot. For that reason Councillor Leadbitter moved that the request for review be approved as the site was not an open one, and the tree cover provides significant shielding and he did not think it would impact on further development in the area as this is not an open site and so he would allow the appeal because he felt it would not impact on the surrounding area.
- 3.9 Councillor Creswell was of the view that the access/egress from the site would cause difficulty because of the long wooded area and would set a precedent for other house building and possibly cause a build up as well and for these reasons Councillor Creswell moved that the request for review be refused.
- 3.10 Councillor Jarvis moved that the request for review be refused as there had been a number of applications approved within the area and he was of the view that there seems to be build up of housing in that area and he was of the view that another one would significantly erode the openness of the area and on that ground he moved refusal of the application as contrary to Policies H8 and IMP1.
- 3.11 The Planning Adviser advised the meeting that in terms of Councillor Creswell's comments on access, there had been no objections received in this regard from the Transportation Section. Councillor Creswell remained of the same view.
- 3.12 Thereafter, by a 2:1 majority the request for review was dismissed and the original decision of the Appointed Officer to refuse the application upheld on the grounds that overall, the amount of new development in the immediate area is considered to have reached a point where further development would not be absorbed into the rural character of the area. The proposal would begin to have a materially detrimental impact and significantly erode the essential remaining openness of the setting. Further development would be encouraged, and although policy H8 of the Moray Local Plan 2008 (MLP) is relatively permissive a point has to be drawn in any given locale when further housing would erode the fundamental rural qualities of the setting and in this respect both H8 and IMP1 policies of the MLP are breached and further such development would be encouraged.

.....  
**Rhona Gunn**  
**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.