



## 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 054
- Site address: Application for review by Mr John Cadenhead against the decision by an Appointed Officer of Moray Council.
- Application: 11/00700/APP – For the erection of a dwelling house and detached garage on a gap site at County Houses, Orton, Mosstodloch
- Unaccompanied site inspection carried out by MLRB on 1<sup>st</sup> August 2012.

Date of Decision Notice: 31 August 2012

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#### **Decision**

The MLRB agreed to uphold the decision of the Appointed Officer and refuse planning permission in principle.

#### **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 28 June and 2 August 2012. The Review Body was attended at both meetings by Councillors B Jarvis, (Chair), L Creswell and R Shepherd.

#### **2.0 Proposal**

- 2.1 This is an application for planning permission for the erection of a dwellinghouse and detached garage on gap site at County Houses, Orton, Mosstodloch.

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

- 3.1 At the meeting of the MLRB on 28 July 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 T2 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 2 August 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 1<sup>st</sup> August 2012.
- 3.5 In regard to the unaccompanied site inspection the Planning Adviser advised the meeting that on arrival at the site she had shown members the location of the site and referred to the Transportation drawing showing the required visibility splay. Members were shown the land within the applicants control and advised of the length of visibility splay required. She also outlined the reasons for the review and advised the meeting that the Appointed Officers grounds for refusal were on the basis that a safe and suitable access onto the public road could not be achieved as the applicant was unable to demonstrate that the visibility splay required could be provided and maintained. The land required extends beyond and is outwith the applicant's ownership and control. She further advised that in the grounds for review the applicant had stated that the refusal goes against Government policy for self building, the plot was bought in 2007 with planning consent which has now lapsed and at no point did the Council inform the applicant of a change in policy. It was further stated that any condition attached to land outwith the plot would be incompetent
- 3.6 The MLRB agreed that it now had sufficient information and proceeded to determine the request for review
- 3.7 Councillor Creswell having visited the site expressed the view that due to the distance and visibility that the applicant had within his control that in her opinion the access to the site was unsafe and given that no response had been received from the estate for these reasons she moved that the decision of the Appointed Officer be upheld.

- 3.8 Councillor Shepherd expressed the view that having visited the site he was also of the opinion that the site access was unsafe due to the visibility splay and concurred with the views expressed by Councillor Creswell to uphold the decision of the Appointed Officer.
- 3.8 Councillor Jarvis expressed the view that he would normally be minded to uphold the decision of the Appointed Officer given the visibility issues, however given that previous planning permission had been granted and that the ground affected lies outwith the control of the applicant, for this reason he was of the opinion to grant the review.
- 3.9 Accordingly, the MLRB agreed, on a two to one majority, that the request for review be refused and the original decision of the Appointed Officer be upheld and that the application be refused on the grounds that the proposal is contrary to Policies T2 and IMP1 of the adopted Moray Local Plan 2008 because in terms of servicing the site and road safety considerations, a safe and suitable access onto the public road, B9105 cannot be achieved as the applicant is unable to demonstrate that the visibility splay requirement at the site access can be provided and maintained for the development, in particular the land required to form the visibility splays which extends beyond, and is located outwith the applicant's ownership/control.

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**Paul Nevin**  
**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.