



MORAY COUNCIL LOCAL REVIEW BODY

Review Decision Notice

Decision by Moray Local Review Body (the MLRB)

- Request for Review reference : Case 058
- Site address: Application for review by Mr Gavin Strathdee against the decision by an Appointed Officer of the Moray Council.
- Application: 12/00539/APP – For the erection of a dwellinghouse with detached double garage at Upper Clarkly, Clarklyhill, Burghead, Moray
- Unaccompanied site inspection carried out by MLRB on 18 September 2012.

Date of Decision Notice: 31 October 2012

Decision

The MLRB agreed to uphold the decision of the Appointed Officer and refuse 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 planning permission was initially submitted to the meeting of the MLRB on 23 August 2012 where the MLRB agreed that all cases would be site visited prior to consideration. The case was therefore deferred for a site visit and considered at the meeting of the MLRB on 27 September 2012. The Review Body was attended by Councillors B Jarvis, (Chair), G Leadbitter, and L Creswell.

2.0 Proposal

- 2.1 This is an application for planning permission for the erection of a dwellinghouse with detached double garage at Upper Clarkly, Clarklyhill, Burghead, Moray.

3.0 MLRB Consideration of request for review

- 3.1 At the meeting of the MLRB on 27 September 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 In regard to the unaccompanied site inspection carried out on Tuesday 18 September 2012 the Planning Adviser advised the meeting that on arrival at the site she had advised members of the MLRB of the reasons for refusal, outlined the previous planning history and summarised the Grounds for Review. On the site inspection members were shown the location of the site and also viewed the site from a distance on the Burghead/Cummingston Road.
- 3.3 The proposal was refused under the Housing in the Countryside policy as the proposed development would be overtly prominent. From the surrounding vantage points the development would appear as skyline with the hill to the rear not significantly reducing the impact when the site is viewed from the north east. Furthermore, it would encourage further such development on surrounding hillside sites. There was insufficient information to confirm whether there would be no noise nuisance for future occupants from the nearby wind turbine permitted. Visibility onto the public road and access infrastructure is substandard and inadequate for any further intensification of traffic. No assurance that the applicant has the necessary control over access and adjoining land. She confirmed that in relation to this application the roads issues had not been resolved however they could be resolved on the basis of the applicant submitting amended drawings.
- 3.4 In the grounds for review the applicant has stated that the dwellinghouse would integrate very well into the hillside on the basis that it has over 50% defined boundaries, sits in a hollow, the site would be planted with trees and shrubs and only the ridge of the proposed dwelling would appear as skyline. The waterhouse and pump house are higher up the hillside. There is also reference to pictures of other buildings and structures in the vicinity.
- 3.5 The MLRB agreed that it now had sufficient information and proceeded to determine the request for review.
- 3.6 Councillor Leadbitter expressed the view that this application was similar to the previous one submitted and contained nothing to change his previous decision and for that reason he moved that the original decision of the Appointed Officer to refuse the application be upheld on the grounds that the proposed development was contrary to Policy 1(e) of the Moray Structure Plan and IMP1 and H8 of the Moray Local Plan.

- 3.7 In seconding the motion Councillor Coull expressed the view that this application was more prominent and located further up the hill and for these reasons he was minded to uphold the original decision of the Planning Officer.
- 3.8 Councillor Creswell agreed with both Councillors Leadbitter and Coull that the application be refused for the reasons given.
- 3.9 Councillor Jarvis was of the view that the application in his opinion was not overtly prominent and for this reason moved approval of the review.
- 3.10 Accordingly, the MLRB agreed on a three to one majority that the request for review be refused and the decision of the Appointed Officer be upheld on the grounds that:
- 1 The proposal would be contrary to policies 1(e) of the Moray Structure Plan and IMP1 and H8 of the Moray Local Plan for the following reasons:
 - (i) The shallow hillside rising to the rear of the site would do little to offset the elevated prominence of the site and the likely extensive clearance of the natural gorse vegetation covering the site would add to the impact of the proposed development over the surrounding area. From surrounding public vantage points the development would appear as "skyline", with the hill to the rear not significantly reducing the impact when the site is viewed directly from the north east. On this basis the proposed development would be overtly prominent.
 - (ii) The proposed development would encourage further such development on surrounding hillside sites.
 2. the proposal would be contrary to policies IMP1 and EP8 of the Moray Local Plan for the following reasons:
 - (i) At the time of considering the application there was insufficient information to confirm that there would not be noise nuisance for future occupants from the nearby wind turbine permitted.
 3. the proposal would be contrary to policy T2 of the Moray Local Plan for the following reasons:
 - (i) The visibility onto the public road and the access infrastructure is substandard and inadequate for any further intensification of

traffic. At the time of considering the application there was no assurance that the applicant had the necessary control over the access and adjoining land in order to ensure the necessary upgrading to the visibility, access width and surfacing.


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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.