



MORAY COUNCIL LOCAL REVIEW BODY

Review Decision Notice

Decision by Moray Local Review Body (the MLRB)

- Request for Review reference : Case 060
 - Site address: Wardend, Longmorn, Elgin
 - Application for review by Mr D Howlett against the decision by an Appointed Officer of Moray Council.
 - Application 12/00487/PPP: Planning Permission for the Erection of a new dwelling house at Wardend, Longmorn.
 - Unaccompanied site inspection carried out by the MLRB on 18th September 2012
 - Date of Decision Notice: 31 October 2012
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Decision

The MLRB agreed to uphold the request for review and grant 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 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 first considered at the meeting of the MLRB on 27 September 2012. The Review Body was attended by Councillors C.Tuke (Chair), B Jarvis, C Goull, L Creswell and G Leadbitter.

2.0 Proposal

- 2.1 This is an application for planning permission for the erection of a dwellinghouse at a site at Wardend, Longmorn, Elgin, Moray. The same proposal was dismissed on appeal by the Local Review Body on 25 August 2011.

3. 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. Members were further advised that the same application had previously been dismissed by a former MLRB.
- 3.3 The reasons for refusal were that the amount of 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 and proposals would begin to have a materially detrimental impact and significantly erode the remaining undeveloped nature of the setting.
- 3.4 In the grounds for review the applicant states that the positioning of the house will have minimal impact on the surrounding countryside and will not breach policies H8 and IMP1. The review also stated that the previous refusal was based on visibility grounds where there were never any visibility issues and that the map provided as evidence on the number of applications submitted was distorted. At this point it was advised that the present MLRB had no locus to review a decision of a previous hearing and that the proper route to achieve this would have been via Judicial Review although the opportunity to do so had now passed due to expiration of time limits. Therefore the application to the MLRB was being considered afresh. The grounds of review further stated that the house would be completely obscured from any road and it would not be seen from anywhere. Accordingly the Applicant challenged the finding of the appointed officer that the building would not be absorbed into the natural countryside. The applicant proposed that the development would be no worse than other development at Mulben, Archiestown or Mosstowie.
- 3.5 Further the applicant queried why there had been no moratorium put in place if the area had reached saturation point. As there is no clear guidance as to how many houses actually constitutes too much development the applicant stated that the appointed officer's interpretation must therefore be open to challenge.
- 3.6 The MLRB agreed that it now had sufficient information and proceeded to determine the request for review.

- 3.7 Councillor Jarvis expressed the view that the application was the same as 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 Policies H8 and IMP1.
- 3.8 In seconding the motion Councillor Leadbitter expressed the view that a build up of houses in the area had been breached and for this reason he moved that the original decision of the Appointed Officer be upheld.
- 3.9 Councillor Coull expressed the view that in his opinion the application did not breach policies H8 and IMP1 as there were a lot of trees which would screen the on-going development and that the rural character of the countryside would be maintained and the location would not be affected and complied with policies H8 and IMP1 and for these reasons he moved approval of the application.
- 3.10 In seconding the amendment, Councillor Tuke agreed with the reasons expressed by Councillor Coull that the application be approved.
- 3.11 Councillor Creswell, having visited the site also agreed with Councillors Coull and Tuke and agreed that the appeal be upheld as complying with policy.
- 3.12 Accordingly, the MLRB agreed on a three to two majority that the request for review be upheld and that planning permission be approved, as complying with policies IMP1 and H8, subject to standard conditions and conditions and informatives recommended by consultees.

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Paul Nevin
Legal Adviser to the MLRB

Planning Application Reference 12/00487/PPP

Planning Appeal Reference 12/00023/REF

Erect new dwellinghouse at Site at Wardend Longmorn Elgin

Schedule of Conditions

Conditions:

1. The approval hereby granted is for planning permission in principle and prior to the commencement of the development approval of matters specified in conditions, including the siting, design and external appearance of the building(s) the means of access thereto and the landscaping of the site shall be obtained from the Council, as Planning Authority.
2. The grant of planning permission in principle hereby granted for the proposed development shall be carried out only in accordance with detailed drawings which shall previously have been submitted to and approved by the Council, as Planning Authority. These drawings shall show the matters specified in conditions numbered 3 - 7 below.
3. Plans, sections and elevations of all buildings proposed with details of the type and colour of all external materials and finishes shall be submitted in accordance with condition no. 2 above.
4. The proposed layout of the site showing the exact position of the site boundaries, the position of all buildings, the means of access, areas for vehicle parking and the arrangements for the disposal of foul and surface water (i.e. a SUDS system or equivalent) shall be submitted in accordance with condition no. 2 above.
5. Details of the exact extent, type and finish of all other works including walls, fences and other means of enclosure and screening shall be submitted in accordance with condition no. 2 above.
6. Sections through the site showing the development on its finished levels in relation to existing levels shall be submitted in accordance with condition no. 2 above.
7. Landscaping proposals showing any existing trees/hedges/shrubs to be retained or removed together with details of the type, position and number of all planting to be undertaken and details of all surfacing materials shall be submitted in accordance with condition no. 2 above.

8. The design and materials of the dwellinghouse and landscaping proposals shall comply with the following requirements:-
- a) A roof pitch of between 40-55 degrees;
 - b) A gable width of no more than 2.5 times the height of the wall from ground to eaves level;
 - c) Uniform external finishes and materials including slate or dark "slate effect" roof tiles;
 - d) A vertical emphasis and uniformity to all windows;
 - e) Proposals must be accompanied by a plan showing 25% of the plot area to be planted with native species trees, at least 1.5m in height;
 - f) Where there is an established character, or style, of boundary demarcation in the locality (e.g. beech hedges, dry stone dykes) new boundaries must be sympathetic.
9. The width of the 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.
10. No water shall be permitted to drain or loose material be carried onto the public footway/carriageway.
11. An access lay-by 8.0m 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 access should lead off the lay-by. The lay-by must be constructed in accordance with The Moray Council specification and surfaced with bituminous macadam.
12. The first 10m of the access track, measured from the edge of the public road, shall be constructed to the Moray Council specification and surfaced with bituminous macadam.
13. Parking provision shall be as follows:
- 2 spaces for a dwelling with three bedrooms or less; or
 - 3 spaces for a dwelling with four bedrooms or more.
- The car parking spaces shall be provided within the site prior to the occupation or completion of the 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.
14. Any existing ditch, watercourse or drain under the site access shall be piped using a suitable diameter of pipe, agreed with the Roads Maintenance Manager (300mm minimum). The pipe shall be laid to a self-cleansing gradient and connected to an outfall.

15. A turning area shall be provided within the curtilage of the site to enable vehicles to enter and exit in a forward gear.
16. 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).
17. 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 matters specified can be fully considered prior to the commencement of development.
2. As the approval is granted for planning permission in principle only and in order that detailed consideration can be given to the matters specified.
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8. In order to ensure that the development harmonises with the appearance and character of the surrounding properties and area.
9. To ensure acceptable infrastructure at the development access, in accordance with 2008 Moray Local Plan Policy T2.
10. 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.
11. To ensure acceptable infrastructure at the development access, in accordance with 2008 Moray Local Plan Policy T2.

12. To ensure acceptable infrastructure at the development access, in accordance with 2008 Moray Local Plan Policy T2.
13. To ensure an acceptable development in terms of parking provision and amenity of the area, in accordance with 2008 Moray Local Plan Policy T5.
14. To ensure acceptable infrastructure at the development access.
15. To ensure acceptable development in the interests of road safety, in accordance with 2008 Moray Local Plan Policy T2.
16. 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.
17. To ensure acceptable development in the interests of road safety, in accordance with 2008 Moray Local Plan Policy T2.

List of Informatives

Comments received from SCOTTISH WATER are attached for your information.

MANAGER (DEVELOPMENT MANAGEMENT) has commented that:-

It is noted that your planning application proposes a septic tank and soakaway/infiltration drainage system and the suitability of the ground condition to accommodate this will be dealt with as part of your Building Warrant application. Full details of a ground assessment, trial pit investigations and percolation test results, from a suitably qualified person as contained within the Council's List of Approved Certifiers, will be required prior to obtaining a Building Warrant

An application for a Building Warrant and compliance with the Building Regulations are entirely separate from planning procedures. Furthermore, the granting of Planning Consent does not guarantee approval of a Building Warrant.

If you have not already done so and you may wish to satisfy yourself about the adequacy of ground conditions separately at this stage, if so I recommend that you contact the Building Standards Section directly at Environmental Services, The Moray Council, Council Offices, High Street, Elgin, IV30 1BX, telephone(01343) 563243.

Please note that any proposed discharges to land or the water environment will require authorisation from SEPA under the Water Environment (Controlled Activities) (Scotland) Regulations 2011. For further details refer to SEPA website http://www.sepa.org.uk/water/water_regulation/regimes.aspx.

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

DURATION OF THIS PERMISSION

In accordance with Section 59 of the Town and Country Planning (Scotland) Act 1997 as amended:

- (a) That in the case of any matter specified in conditions attached to the planning permission in principle, application for approval of matters specified in conditions must be made before:-
 - (i) that expiration of 3 years from the date of the grant of planning permission in principle; or
 - (ii) the expiration of 6 months from the date on which an earlier application for such approval for the same matters was refused; or
 - (iii) the expiration of 6 months from the date on which an appeal against such refusal was dismissed; whichever is the latest, and
- (b) That the development to which the permission relates must be begun not later than whichever is the later of the following dates:-

- (i) the expiration of 3 years from the date of the grant of planning permission in principle; or
- (ii) the expiration of 2 years from the final approval of the matters specified in conditions or in the case of approval on different dates the final approval of the last such matter to be approved.

If an application for approval of matters specified in conditions has not been made or the development has not begun within the specified dates this planning permission in principle shall lapse unless there is a specific condition attached to this permission which varies the stated timescales.

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.

NOTIFICATION OF COMPLETION OF PHASED DEVELOPMENT – Under S.27B(2) of the 1997 Act, as amended where permission is granted for phased development, the permission is subject to a condition (see Schedule of Conditions above) requiring the applicant/developer as soon as practicable after each phase to give notice of that completion to the planning authority. This will allow the planning authority to be aware that particular phase(s) of the development is/are complete. When the last phase is completed the applicant/developer must also complete and submit a Notification of Completion of Development.