



## 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 076
  - Site address: Whinnyhaugh Farm, Burnside Road, Garmouth, Fochabers
  - Application for review by Mr A Boyne against the decision by an Appointed Officer of the Moray Council.
  - Planning Application 12/01696/PPP: Proposed erection of 20kw wind turbine (13.1 metre rotor diameter) and installation of underground cables at Whinnyhaugh Farm, Burnside Road, Garmouth, Fochabers
  - Unaccompanied site inspection carried out by the MLRB on Friday 19 April 2013
  - Date of Decision Notice: 15 May 2013
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#### Decision

The MLRB agreed to uphold the original decision of the Planning Officer to refuse the application.

#### 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 the meeting held on 25 April 2013.
- 1.3 The Review Body was attended by Councillors C Tuke (Chair), G Coull, G Leadbitter and J MacKay.

## **2.0 Proposal**

- 2.1 This is an application for planning permission to erect 20kW wind turbine (13.1 metre rotor diameter) and installation of underground cables at Whinnyhaugh Farm, Burnside Road, Garmouth, Fochabers

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

- 3.1 At the meeting of the MLRB on 25 April 2013 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 Friday 19 April 2013 members were shown the location of the proposed turbine and given information on the height to blade tip of the installation and advised of the distance away from the nearest residential property. The Planning Adviser set out the reasons for the refusal stating that the turbine by virtue of its height and location results in an unacceptable level of visual intrusion, dominating the surrounding countryside, to the detriment of both the character of the immediate surrounding countryside, including the eastern approach into Garmouth.
- 3.3 An overview was given of the Appellant's grounds for review which stated that they did not feel it would be visually intrusive and that there is still a relationship between the turbine and farm use. The location would not be visible from the village of Kingston or most of Garmouth. It was also believed by the Appellant that there was only one objection to the proposal.
- 3.4 In terms of the handling report, the Planning Adviser advised that the refusal was on the basis of local plan policies whereas the Appointed Officer had made reference to the structure plan policies in the handling report. In the handling report it made reference to policy 2. This should have read policy 2L which is "promoting opportunities for the sensitive development of renewable energy and promoting renewable energy in new development". This was noted.
- 3.5 Councillor Leadbitter, having had the opportunity to view the site and consider the Appellant's grounds for review intimated that he found the site visit particularly useful in this case as it helped identify the issues of location, prominence and as the proposed turbine is to be situated on a raised piece of ground, between 2 houses with no backdrop he moved that the original decision of the Planning Officer be upheld for the reasons stated in the report.
- 3.6 Councillor Tuke, having had the opportunity to view the site and consider the Appellant's grounds for review advised that he agreed with Councillor Leadbitter's

comments. He also advised that there had been 5 objections from 5 houses to the east of the proposed turbine and felt it would be visible from the outskirts of both. For these reasons he seconded Councillor Leadbitter's motion to reject the appeal on the grounds that the application did not comply with the Moray Local Planning Policies ER1, IMP1 and Policy 2L of the Moray Structure Plan.

- 3.7 Councillor J MacKay, having had the opportunity to view the site and consider the Appellant's grounds for review intimated that he disagreed with the decision of the Appointed Officer. He expressed the view that due to the development's location being 170 m from the nearest property and, as the Council's guidelines state that a turbine should be at least 130 m from the nearest property; this particular application is within the Council guidelines. Councillor MacKay further stated that as there was another turbine situated approximately 1 3/4 miles from this site which has been given planning permission, he felt that in order to be consistent, this turbine should be permitted. With regard to the 5 objectors, Councillor MacKay stated that as they were objecting due to mounting evidence that properties in the vicinity of wind turbines will lose value of 5-15%, this is not a planning consideration and therefore should be disregarded.
- 3.8 Councillor MacKay also stated that the reasons for objection would have to be due to height and location and visual intrusion. Councillor MacKay stated that Scottish National Heritage had recommended unconditional approval and for these reasons he moved that the request for review was upheld and planning consent granted subject to conditions.
- 3.9 Councillor Tuke clarified Councillor MacKay's statement regarding a separation of 130m (10 times rotor diameter) by saying that this recommended distance was specifically in relation to shadow-flicker and did not relate to the visual impact of the application.
- 3.10 Councillor Coull, having had the opportunity to view the site and consider the Appellant's grounds for review was of the opinion that the visual impact was significant in this particular application and for this reason he supported Councillor Leadbitter's motion to refuse the appeal.
- 3.11 On a 3 to 1 majority, the MLRB agreed to uphold the decision of the Appointed Officer to refuse the application. Therefore the appeal was refused.

  
**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.