



MORAY COUNCIL LOCAL REVIEW BODY

Review Decision Notice

Decision by Moray Local Review Body (the MLRB)

- Request for Review reference: Case 077
 - Site address: Newfield House, Lossiemouth Road, Elgin, IV30 4LF
 - Application for review by Mr I Aitkenhead against the decision by an Appointed Officer of the Moray Council.
 - Planning Application 12/00652/APP: Vary conditions 11 and 12 of planning consent ref 09/02161/APP for erection of 8 flats and conditions 5 and 6 of planning consent ref 11/00233/APP for erection of 4 flats to allow for revised location of cycleway at Newfield House, Lossiemouth Road, Elgin, IV30 4LF
 - Unaccompanied site inspection carried out by the MLRB on Friday 24 May 2013
 - Date of Decision Notice: 12 June 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 30 May 2013.
- 1.3 The Review Body was attended by Councillors C Tuke (Chair), B Jarvis, G Coull, J MacKay and R Shepherd.

2.0 Proposal

- 2.1 This is an application for planning permission to vary conditions 11 and 12 of planning consent reference 09/02161/APP for the erection of 8 flats and conditions 5 and 6 of planning consent reference 11/00233/APP for the erection of 4 flats to allow for the revised location of a cycleway at Newfield House, Lossiemouth Road, Elgin.

3.0 MLRB Consideration of request for review

- 3.1 With regard to the unaccompanied site inspection carried out on Friday 24 May 2013, the Planning Adviser advised the Meeting that on arrival at the site, Members were shown the proposed route of the cycle/pedestrian route.
- 3.2 In terms of the refusal, the Planning Adviser advised that the proposal was considered to be contrary to policies IMP1 and T2, as variation to the conditions would lead to a sub standard pedestrian/cycle route serving developments approved under applications 09/02161APP and 11/00233/APP. This would be to the detriment of pedestrian and cycle safety.
- 3.3 In the Appellant's grounds for review it stated that the gantry required to be moved on to the forecourt which would not be so prominent, would restrict parking and commercial vehicles may not be able to use that area. The Appellant considered the main area of objection was over road safety and that cyclists would be put in extreme danger with cyclists passing the entrance and exit to the site and motorists having little chance to react to them. The Appellant further considered that they were proposing a safer alternative.
- 3.4 Councillor Coull, having had the opportunity to view the site and consider the Appellant's grounds for review, agreed with the original decision of the Appointed Officer to refuse the application in terms of safety for cyclists and moved to refuse the appeal.
- 3.5 Councillor Tuke, having had the opportunity to view the site and consider the Appellant's grounds for review, pointed out anomalies in the Transportation report where it detailed that there were 2 right angle bends within the Appellant's proposed route. On closer inspection, Councillor Tuke was of the opinion that the 2 bends proposed by the Appellant appeared to be less than 40 degrees. Councillor Tuke went on to point out that the route proposed by Transportation had 1 right angle bend in it. He also advised that Transportation had quoted cycling policies by Transport Scotland which are for guidance and these policies also apply to trunk roads. Therefore, as the road in question was not a trunk road, this was irrelevant. Councillor Tuke further advised that the amount of cycle and pedestrian traffic on the road would be limited and at present it is used through a non delineated area. Therefore, Councillor Tuke moved that the appeal be upheld with the added condition that the route proposed by the Appellant is well marked and protected by bollards of approximately the width of a car, which would assist with safety concerns. As it is a very low speed manoeuvring area and has been well used in the past without incident, Councillor Tuke could not see any objection

to Policy T2, as the proposal would be appropriate for the facilities or to Policy IMP1, as this was also adequate for the proposal given. He therefore moved to uphold the appeal.

Councillor Jarvis, having had the opportunity to view the site and consider the Appellant's grounds for review, seconded Councillor Coull's motion to uphold the decision of the Appointed Officer. He intimated that, whilst he could understand the issues raised by the Appellant, the changes, whilst being moderately safer to a cyclist, in his opinion presented more danger to pedestrians.

- 3.6 Cllr McKay, having had the opportunity to visit the site and given full consideration to the Appellant's request for review, advised that he agreed with the Roads Service in that a pedestrian and cycle route passing through a petrol filling station and gas cylinder compound is unacceptable. He further agreed that the development was contrary to policies IMP1 and T2. Councillor McKay was also concerned that there appeared to be many uncertainties in the application with regard to the cycle path. He acknowledged that whilst a representative of the Appellant cycled 6 times down the cycle way to look at the 3 cycle routes and deemed, in his opinion, the 1st route suicidal, Councillor McKay was of the opinion that if one route is classified as suicidal then as the other 2 routes were in such close proximity, there is bound to be an element of danger. Therefore Councillor McKay agreed with the Appointed Officer in this instance and supported the motion by Councillor Coull, seconded by Councillor Jarvis, to refuse the application.
- 3.7 Cllr Shepherd, having had the opportunity to visit the site and given full consideration to the Appellant's request for review advised that he was minded to agree with the opinion of Cllr Tuke and seconded his motion to uphold the Applicant's appeal.
- 3.8 Thereafter, on a 3 to 2 majority, the MLRB agreed to uphold the decision of the Appointed Officer to refuse the application as it was contrary to policies IMP1 and T2. Therefore the appeal was refused.

Aileen Scott
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.