



MORAY COUNCIL LOCAL REVIEW BODY

Review Decision Notice

Decision by Moray Local Review Body (the MLRB)

- Request for Review reference: Case 080
 - Site Address: Rashcrook Neuk, Rashcrook, Birnie, Moray
 - Application for review by Mr Gavin Strathdee against the decision by an Appointed Officer of the Moray Council.
 - Planning Application 12/01793/APP - Proposed Erection of Dwellinghouse with Attached Garage - Rashcrook Neuk, Rashcrook, Birnie, Moray
 - Unaccompanied site inspection carried out by the MLRB on Friday 21 June 2013
 - Date of Decision Notice: 18 July 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 27 June 2013.
- 1.3 The Review Body was attended by Councillors C Tuke (Chair), G Leadbitter, G Coull, J Mackay and R Shepherd.

2.0 Proposal

- 2.1 This is an application for planning permission for a proposed erection of a dwellinghouse with attached garage - Rashcrook Neuk, Rashcrook, Birnie, Moray

3.0 MLRB Consideration of request for review

- 3.1 With regard to the unaccompanied site inspection carried out on 21 June 2013, the Planning Adviser advised the meeting that on the site visit members were shown the location of the proposed site in the corner of a field.
- 3.2 In terms of the refusal, the Planning Adviser advised that the proposal is contrary to housing in the countryside policies on the basis that it does not have the requisite minimum established boundaries. Furthermore, it lacks backdrop and enclosure provided by surrounding landform or vegetation cover. Together with its close proximity to the road, it would result in an overtly prominent and visually intrusive development which would not integrate sensitively into the surrounding landscape and thereby significantly detract from the appearance and amenity of the locality.
- 3.3 In the Appellants Grounds for Review, the appellant made a statement on each individual criteria of the relevant policies. The main points raised were that the dwelling would enhance the area in terms of its low impact design that is contemporary in arrangement with traditional characteristics. This design has previously been approved in rural locations. The site occupies a corner spot with two existing boundaries and would integrate well into the surrounding countryside rather than detracting from the local area.
- 3.4 Councillor Tuke asked for clarification on the existing boundaries within the site. In response the Planning Adviser advised that according to the Town and Countryside guidance that was adopted in June 2010, that Policy H8 required that 50% of the site boundaries of the proposals are long established and are capable of distinguishing the site from the surrounding land. Examples are dykes, hedgerows, water courses, woodland, tracks and roadways. Fencing such as post and wire, hedgerows that have been recently planted and tracks that have been recently formed would not constitute a site boundary for the purpose of this definition as they were not well established.
- 3.5 Councillor Tuke, having had the opportunity to view the site and consider the Appellant's grounds for review was of the opinion that the post and wire fence that provided the boundary of the site in question was of a significant age and not like a new fence. Furthermore, as there were similar properties in the area and he felt the proposed property was not overtly prominent, he moved to uphold the appeal.
- 3.6 Councillor Mackay, having had the opportunity to view the site and consider the Appellant's grounds for review advised that all policies of the local plan were important, in particular policy H8, and must be adhered to. He was of the opinion that this application contravenes policy H8 in many aspects as it is overtly prominent in terms of its proximity to the road, and in flat open country which offers

no immediate backdrop. Therefore Councillor Mackay moved refusal of the application on the grounds that the proposal does not comply with Moray Local Planning Policies H8 and IMP1.

- 3.7 Councillor Shepherd, having had the opportunity to view the site and consider the Appellant's grounds for review was of the same opinion as Councillor Tuke and agreed with his motion to uphold the appeal.
- 3.8 Councillor Leadbitter, having had the opportunity to view the site and consider the Appellant's grounds for review was of the opinion to agree with Councillor Mackay and did not feel that the post and wire fencing constituted a reasonable boundary and therefore agreed with Councillor McKay's motion to refuse the appeal.
- 3.9 Councillor Coull, having had the opportunity to view the site and consider the Appellant's grounds for review was minded to agree with the opinions of Councillors Mackay and Leadbitter with particular reference to the guidance from the Planning Adviser with regard to the post and wire fence in that the requirement was to have 50% established boundaries and the site in question only had one established boundary and subsequently agreed with Councillor McKay's motion to refuse the appeal.
- 3.10 Therefore on a three to two majority, the MLRB agreed to uphold the decision of the Appointed Officer to refuse the application and 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.