



MORAY COUNCIL LOCAL REVIEW BODY

Review Decision Notice

Decision by the Moray Local Review Body (MLRB)

- Request for review reference: Case 093
- Site address: The Level Farm, Birnie, Moray
- Application for review by Grant and Geoghegan, Unit 4, Westerton Road Business Centre, 4 Westerton Road South, Keith, AB55 5FH against the decision by an Appointed Officer of the Moray Council
- Planning Application: 13/01281/APP
- Unaccompanied site inspection carried out by the MLRB on 23 January 2014
- Date of decision notice: 11 February 2014

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. Preliminary

- 1.1 This Notice constitutes the formal decision 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 January 2014.
- 1.3 The Review Body was attended by Councillors C Tuke (Chairman), G Leadbitter, G Alexander, J Mackay and R Shepherd.

2. Proposal

- 2.1 This is an application for planning permission to erect a house on the site adjacent to The Level Farm, Birnie, Moray.

3. MLRB Consideration of Request for Review

- 3.1 There was submitted a 'Summary of Information' report setting out the reasons for refusal together with a copy of the Report of Handling and a copy of the Notice of Review and supporting documents. With reference to item (ii) on the 'Summary of Information' report, where it stated that a reason for refusal was that the proposal would encourage further such development, the Planning Adviser advised the Committee that this should be disregarded as it was not a valid reason for refusal, and this was noted by the Committee.
- 3.2 The MLRB agreed that it had sufficient information to determine the request for review.
- 3.3 With regard to the unaccompanied site inspection carried out on 23 January 2014, the Planning Adviser advised that Members were shown the site where the proposed development would take place.
- 3.4 In terms of the reasons for refusal, the Planning Adviser advised that the application was found to be contrary to policies H8 (and Supplementary Guidance) and IMP1 relating to development requirements of the Moray Local Plan 2008, as the site is in an area of open landscape and, as an addition to the existing consents for the two other houses and an archery centre, together with the new and established housing nearby, would begin a significant build-up of development in the vicinity such that there would be a detrimental impact on the open rural characteristics of the landscape. It was further considered that the proposal would establish a linear, ribbon form of development along the access road that would result in development that was contrary to the dispersal rural settlement pattern in the area which would contribute to an urbanisation of the setting.
- 3.5 In terms of the Appellant's grounds for review, the Appellant is of the opinion that the proposal meets the siting and design requirements of the lead policy H8 for testing the acceptability of a new house in the countryside, as 50% of the boundaries are long-established, the site is not overtly prominent and, as the plot is located within an established group of properties, it does not detract from the character or setting of the existing buildings or surrounding area. Furthermore, the Appellant was of the opinion that the proposal would not have a detrimental impact on the open rural character of the landscape as it would be part of an established group of buildings, it would not be at odds with the settlement pattern as it is an acceptable addition to an existing grouping and does not enlarge the group or extend its overall footprint as a linear extension because it is contained within it. The Appellant further stated that the proposal would not begin a significant build of development and would be contained and enclosed within the existing grouping and was acceptable in relation to other relevant Local Plan policies with regard to design, access, parking and drainage.
- 3.6 Councillor Leadbitter, having had the opportunity to visit the site and consider the Appellant's grounds for review, was of the opinion that the proposal complied with policies H8 and IMP1 of the Moray Local Plan, as it was not in open landscape, existing planting was being retained and it could not be viewed from the main road and therefore moved that the appeal be upheld and planning permission granted.

- 3.7 Councillor Mackay, having had the opportunity to visit the site and consider the Appellant's grounds for review, was of the same mind as Councillor Leadbitter and seconded his motion as he also was of the opinion that the proposed development complied with policies H8 and IMP1 of the Moray Local Plan.
- 3.8 Councillor Shepherd, having had the opportunity to visit the site and consider the Appellant's grounds for review, agreed with the decision of the Appointed Officer in that the proposal was contrary to policies H8 and IMP1 of the Moray Local Plan and moved as an amendment, that the appeal be refused. This motion was seconded by Councillor Alexander.
- 3.9 On a division there voted:-
- For the Motion (3): Councillors Leadbitter, Mackay and Tuke
- For the Amendment (2): Councillors Alexander and Shepherd
- 3.10 Accordingly the Motion became the finding of the Meeting and the appeal was upheld and planning permission granted.

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.

Conditions

1. Prior to any development works commencing:
 - i) a visibility splay 4.5 metres by 165 metres to the north and 4.5 metres by 50 metres to the south shall be provided at the access onto the public road; and
 - ii) thereafter the visibility splay shall be maintained at all times free from any obstruction exceeding 0.9 metres above the level of the carriageway. (Note: excluding the existing telegraph poles to the north of the access).
2. Two car parking spaces shall be provided within the dwellinghouse 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.

Reasons

1. To enable drivers of vehicles entering or exiting the site to have a clear view so that they can undertake the manoeuvre safely and with the minimum interference to the safety and free flow of traffic on the public road, in accordance with 2008 Moray Local Plan Policy T2.
2. To ensure an acceptable development in terms of parking provision and amenity of the area, in accordance with 2008 Moray Local Plan Policy T5.

Informatives

THE TRANSPORTATION MANAGER, DIRECT SERVICES has commented that:-

Visibility splays relate to the visibility available to a driver at or approaching a junction in both directions. It is related to the driver's eye height, object height above the road, distance back from the main road known as the 'X' distance and a distance along the main road known as the 'Y' distance. The Y distance is related either to the design speed of the road and a corresponding 'stopping sight distance' or in some circumstances may be based on observed '85th percentile vehicle speeds'. Advice on this matter can be obtained by emailing transport.develop@moray.gov.uk and reference to the following pages on the Council web site

Transportation Service Requirements for Small Developments in the Countryside Full document <http://www.moray.gov.uk/downloads/file79761.pdf>
Checklist <http://www.moray.gov.uk/downloads/file68812.pdf>

Public utility apparatus may be affected by this proposal. Contact the appropriate utility service in respect of any necessary utility service alterations which have to be carried out at the expense of the developer.

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 applicants shall free and relieve the Roads Authority from any claims arising out of his operations on the road or extension to the road.

Comments received from SCOTTISH WATER are attached for your information.

04/08/2013

Moray Council
Development Services Environment
Services
High Street
Elgin
IV30 1BX



SCOTTISH WATER

Customer Connections
419 Balmore Road
Glasgow
G22 6NU

Customer Support Team
T: 0141 355 5511
F: 0141 355 5386
W: www.scottishwater.co.uk
E: connections@scottishwater.co.uk

Dear Sir/ Madam

**PLANNING APPLICATION NUMBER:
13/01281/APP DEVELOPMENT: Moray Birnie
Adj To The Level OUR REFERENCE: 630532
PROPOSAL: Erect house on site Adjacent To The Level Farm Birnie Moray**

Please quote our reference in all future correspondence

In terms of planning consent, Scottish Water does not object to this planning application. However, please note that any planning approval granted by the Local Authority does not guarantee a connection to our infrastructure. Approval for connection can only be given by Scottish Water when the appropriate application and technical details have been received.

There are no public sewers in the vicinity of the proposed development.

The water network that serves the proposed development may be able to supply the new demand.

Glenlatterach Water Treatment Works has limited capacity available for new demand.
The Developer should discuss their development directly with Scottish Water.

In some circumstances it may be necessary for the Developer to fund works on existing infrastructure to enable their development to connect. Should we become aware of any issues such as flooding, low pressure, etc the Developer will be required to fund works to mitigate the effect of the development on existing customers. Scottish Water can make a contribution to these costs through Reasonable Cost funding rules.

A totally separate drainage system will be required with the surface water discharging to a suitable outlet. Scottish Water requires a sustainable urban drainage system (SUDS) as detailed in Sewers for Scotland 2 if the system is to be considered for adoption.

Scottish Water's current minimum level of service for water pressure is 1.0 bar or 10m head at the customer's boundary internal outlet. Any property which cannot be adequately serviced from the available pressure may require private pumping arrangements installed, subject to compliance with the current water byelaws. If the developer wishes to enquire about Scottish Water's procedure for checking the water pressure in the area then they should write to the Customer Connections department at the above address.

If the connection to public sewer and/or water main requires to be laid through land out-with public ownership, the developer must provide evidence of formal approval from the affected landowner(s). This should be done through a deed of servitude.

Should the developer require information regarding the location of Scottish Water infrastructure they should contact our Property Searches Department, Bullion House, Dundee, DD2 5BB. Tel – 0845 601 8855.

If the developer requires any further assistance or information on our response, please contact me on the above number or alternatively additional information is available on our website:
www.scottishwater.co.uk.

Yours faithfully

Linzi Chalmers

Customer Connections Administrator