



MORAY COUNCIL LOCAL REVIEW BODY

Review Decision Notice

Decision by Moray Local Review Body (the MLRB)

- Request for Review reference : Case 041
- Site address: Braco lodge, 42 Mayne Road, Elgin IV30 1PB
- Application for review by Dr & Mrs A Blain against the decision by an Appointed Officer of Moray Council.
- Application 11/00460/APP: Full planning permission to erect a dwelling house on a site within the grounds of Braco Lodge, 42 Mayne Road, Elgin
- Unaccompanied site inspection carried out by the MLRB on Thursday 1 December 2011.
- Date of Decision Notice: 7 February 2012

Decision

The MLRB agreed to uphold the request for review and grants full 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 full planning permission was considered by the MLRB at meetings on 17 November 2011 & 17 January 2012. The Review Body was attended at both meetings by Councillors P Paul (Chair), L Creswell & J Hogg.

2.0 Proposal

2.1 This is an application for full planning permission to erect a dwelling house on a site within the grounds of Braco Lodge, 42 Mayne Road, Elgin.

3. MLRB Consideration of request for review

- 3.1 At the meeting of the MLRB on 17 November 2011 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 Following consideration of the case papers the MLRB agreed that it did not have sufficient information in order to proceed to determine the request for review and agreed that an unaccompanied site inspection be undertaken, the purpose of which being to view the site in the context of Policies H3, H4 and IMPI of the MLP 2008. It was also agreed that the Planning Adviser attend the unaccompanied site inspection.
- 3.3 At the meeting on 17 November 2011 Councillor Paul sought clarification in regard to the status of the references in the appellant's grounds for review to statements contained in a previous MLRB Decision Notice relating to a Notice of Review in respect of an application for planning consent in principle on the same site. The meeting noted that this Notice of Review was in respect of a different application for full planning consent, albeit on the same site, and required to be considered against the current policies set out in the MLP 2008 on its individual merits. It was also noted that it was a matter for the MLRB to consider whether the statements referred to were a material consideration in this case.
- 3.4 At the meeting of the MLRB on 17 January 2012 there was submitted a 'Summary of Information' report detailing the outcome of the MLRB's previous consideration of the request for review.
- 3.5 In regard to the unaccompanied site inspection the Planning Adviser advised the meeting that on arrival at the site he reminded members of the MLRB of the reasons for refusal and that there were no issues with house design or amenity of neighbouring properties. The MLRB noted that the refusal was on the basis of the proposal being backland resulting in 2 small house plots and that it was considered out of keeping with the character of the surrounding area. He also identified the proposed access point and confirmed there were no objections from the Council's Transportation Section. The plot boundaries and the position of house and parking/turning area were also identified and the MLRB noted that the plot area was just above the 400 sq m threshold for subdivisions. The Planning Adviser also referred the appellant's 'grounds for review' and the examples of sub-division of large plots within the locality and in this regard he advised the MLRB that no comparable sub-division examples had been identified in the surrounding area when the previous request for review had been considered.
- 3.6 The MLRB agreed that it had sufficient information and proceeded to determine the request for review.
- 3.7 Councillor Paul intimated that there were no objections from the Council's Transportation Manager in respect of the proposed access arrangements, the proposed development complied with policy H4 of the MLP in terms of plot size, there would be no adverse impact on neighbouring properties in terms of privacy levels and expressed the view that, in her opinion, consideration required to be given to the reasons for refusal relating to 'backland development' and impact on the character of the surrounding area and as to whether or not there were any material considerations to justify departing from policy.

3.8 Councillor Hogg referred to the 'Assessment of Proposal' set out in the Report of Handling (page 3 of the review documents submitted to the MLRB on 17 November 2011) which recommended refusal of the application as it fell short of compliance with policies H3 of the MLP relating to 'adverse impact', H4 as the site is defined as backland and H4 and IMP1 in regard to 'in keeping with the surrounding area'. The Report of Handling however advised that there are substantial areas of compliance across the same policies with particular reference to the site occupying less than 50% of the original plot, the site being over 400sqm and the report further accepts that there would be no adverse impact and the proposed development would be in keeping with the surrounding properties. In regard to the two reasons for refusal Councillor Hogg expressed the view that non-compliance with policy H3 in terms of adverse impact should be disregarded as the report of Handling indicates that there would be no adverse impact.

3.9 Councillor Hogg then referred Planning Circular 4/2009 'Development Management' and in particular to Annex A relating 'Defining a Material Consideration' a copy of which had been previously circulated to all members of the MLRB and was made available at the meeting for ease of reference. He expressed the view that the advice firstly requires the MLRB to consider the provisions of the Local Plan which he considered the MLRB had covered in its consideration of the relevant elements of policies H3, H4 and IMP1. Section 2 of Annex A also requires the MLRB, having considered the relevant elements of the policies to then consider the aims and objectives of these policies, particularly in regard to the backland element of H4 and whether the proposal is in keeping with the surrounding area provision of H4 and IMP1. In this regard Councillor Hogg drew members' attention to the Report of Handling which explained that under policy H4, relating to backland sites, there was a presumption against such sites to protect the amenity of adjacent householders. The Report of Handling however specifically states that the proposed development 'will not have an unacceptable overbearing or overshadowing impact on the neighbouring properties. The Report of Handling also advises that the overall appearance of the proposed development is considered to be in keeping with the surrounding additional properties in the locale. These two references were, in his opinion, material considerations of sufficient weight to outweigh the backland element of policy H4 and the not in keeping with the local area provision of policies H4 and IMP1. Councillor Hogg also referred to two explanations set out in Section 5 of Annex 5 which makes reference to the environmental impact and design of a proposed development and its relationship to its surroundings both of which, in his opinion, are considered acceptable in the Report of Handling and therefore can be considered as further material considerations of sufficient weight to justify approving the application as an acceptable departure. For these reasons Councillor Hogg was minded to grant the request for review and approve the application as an acceptable departure.

3.10 The Chair, Councillor Paul intimated her agreement with the views expressed by Councillor Hogg and sought clarification from the Legal and Planning Advisers in regard to the Councillor Hogg's reasoning and conclusions.

3.11 The Legal Adviser advised the MLRB that, in his opinion, it was a fair and accurate interpretation of Annex A in regard to defining a material consideration. The Planning Adviser advised the meeting that it is accepted that there is no issue with the design of the proposed development or the loss of amenity to the neighbours from the proposed development. The grounds for refusal related to the creation of two small house plots which would be out of character with the wider area which is characterised by houses set in generous garden grounds and it was for the MLRB to consider whether there were any material considerations of sufficient weight to overcome the character elements of the reasons for refusal.

3.12 Thereafter the MLRB unanimously agreed that the material considerations referred to by Councillor Hogg were of sufficient weight to outweigh the relevant elements of policies H4 and IMP1 of the MLP referred to in the reasons for refusal and agreed that the request for review be granted and that the application for full planning permission be approved, as an acceptable departure from the Moray Local Plan, subject to standard conditions and conditions and informatives recommended by consultees.

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Paul Nevin
Legal Adviser to the MLRB