



MORAY COUNCIL LOCAL REVIEW BODY

Review Decision Notice

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case 104
 - Site address: Birkenbaud Lodge, Wardend, Birnie
 - Application for review by Mrs Freda Strathdee, c/o Strathdee Properties Ltd against the decision of an Appointed Officer of The Moray Council.
 - Planning Application 14/00543/APP to erect a dwelling house with integral garage at Birkenbaud Lodge, Wardend, Birnie.
 - Unaccompanied site inspection carried out by the MLRB on 31 July 2014.
 - Date of decision notice: 26 August 2014
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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 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 31 July 2014.
- 1.3 The Review Body was attended by Councillors C. Tuke (Chair), B. Jarvis (Vice Chair), G. Leadbitter (Deputy Vice), G. Coull, F. Murdoch, J. Mackay and R. Shepherd.

2. Proposal

- 2.1 This is an application for planning permission to erect a dwelling house with integral garage at Birkenbaud Lodge, Wardend, Birnie.

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 copies of the Report of Handling, Notice of Review and supporting documents.
- 3.2 With regard to the unaccompanied site inspection carried out on 31 July 2014, the Planning Adviser advised that Members were shown the site where the proposed development would take place.
- 3.3 The Planning Adviser advised the MLRB that the application had been refused on the grounds that the proposal was contrary to Policies H8 and IMP1 of the Moray Local Plan 2008. She informed the MLRB that the Appointed Officer had advised that the development of a house plot in the location would, in terms of its proximity to other dwellings (consented), result in an unacceptable build-up of residential development and detract from the rural character and appearance of the surrounding countryside.
- 3.4 Referring to the Appellant's grounds for review, the Planning Adviser advised that the Appellant had stated that the proposal complies with Policies H8 and IMP1 as site design is of an adequate size and space to enhance the area without creating sense of overcrowding. They advised that they did not believe that the density would be overly excessive with another dwelling, which would be of a similar scale and low impact rural design to approved developments nearby. The Appellant stated that the proposal would provide a small cluster of dwellings with a sense of space and character appropriate for the location.
- 3.5 Councillor Coull, having had the opportunity to visit the site and consider the Appellant's grounds for review, stated that he was of the opinion that the proposal complied with Policies H8 and IMP1 of the Moray Local Plan 2008 in that the development would not detract from the rural characteristics of the landscape nor create a build up of dwellings. Accordingly, he moved that the appeal be upheld and planning permission be granted, subject to standard conditions.
- 3.6 There being no one otherwise minded, the MLRB agreed to uphold the appeal and grant planning permission, subject to standard conditions.

Paul Nevin
Senior Solicitor (Property and Contracts)
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 detailed drawing (scale 1:500 or 1:1000 which shall also include details to demonstrate control of the land) showing the visibility splay 4.5 metres by 120 metres and a schedule of maintenance for the splay area shall be submitted to and approved by the Council, as Planning Authority in consultation with the Roads Authority;
 - (ii) the visibility splay shall be provided in accordance with the approved drawing prior to any works commencing (except for those works associated with the provision of the visibility splay); and
 - (iii) thereafter the visibility splay shall be maintained at all times free from any obstruction exceeding 0.6 metres above the level of the carriageway in accordance with the agreed schedule of maintenance.
2. Prior to the commencement of development details shall be submitted for the approval in writing of the Planning Authority, in consultation with the Roads Authority, to ensure no water or loose material shall be permitted to drain or be carried onto the public footpath/carriageway for the life time of the development.
3. The width of the vehicular access shall be as existing and have a maximum gradient of 1:20 measured for the first 5.0m from the edge of the public carriageway. The first 10m of the access track, measured from the edge of the public road, shall be constructed to the Moray Council specification and surfaced with bituminous macadam.
4. Three car parking spaces shall be provided within the 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, unless otherwise agreed in writing with the Council as Planning Authority.
5. A turning area shall be provided within the curtilage of the site to enable vehicles to enter and exit in a forward gear.
6. Effective point of entry ultraviolet treatment and pre-filtration shall be installed to the domestic water supply prior to occupation of the house.

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 acceptable infrastructure at the development access through the provision of details currently lacking, in accordance with 2008 Moray Local Plan Policy T2.
3. To ensure acceptable infrastructure at the development access, in accordance with 2008 Moray Local Plan Policy T2.
4. To ensure an acceptable development in terms of parking provision and amenity of the area, in accordance with 2008 Moray Local Plan Policy T5.
5. To ensure acceptable development in the interests of road safety, in accordance with 2008 Moray Local Plan Policy T2.
6. In order to ensure provision of a wholesome supply of water.

Informatives

The Transportation Manager, Direct Services has commented that:-

Planning consent does not carry with it the right to carry out works within the public road boundary.

Before starting any work on the existing public road the applicant is obliged to apply for a road opening permit in accordance with Section 85 of the Roads (Scotland) Act 1984. This includes any temporary access joining with the public road. Advice on these matters can be obtained by emailing roadspemits@moray.gov.uk

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