



THE MORAY COUNCIL LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR120
 - Site address: 350m North West of Damhead, Forres
 - Application for review by Mrs F. Spillings against the decision of an Appointed Officer of The Moray Council.
 - Planning Application 14/02088/APP to replace storage shed and builders yard with house and garage at 350m North West of Damhead, Forres
 - Unaccompanied site inspection carried out by the MLRB on 24 April 2015
 - Date of decision notice: 16 June 2015
-

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 30 April 2015.
- 1.3 The Review Body was attended by Councillors C. Tuke (Chair), G. Coull (Deputy Chair), J. Allan and K. Reid.

2. Proposal

- 2.1 This is an application for planning permission to replace storage shed and builders yard with house and garage at 350m North West of Damhead, Forres.

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, Grounds for Review and supporting documents.
- 3.2 In relation to whether the MLRB had sufficient information to determine the request for review, Councillor Coull noted that there was dubiety on the status of the land and sought clarification from a planning aspect. In response, Mrs E. Gordon, Planning Adviser, advised that confirmation was sought by the Transportation Department in their consultation response to the planning application and noted that the Appointed Officer had confirmed that there was no record of the site having consent for a builder's storage and yard. She further advised that there was an ongoing enforcement case investigation at the request of the Applicant and that initial findings suggested that there was no planning permission for the site to be a builder's storage and yard.
- 3.3 Councillor Reid sought clarification that, whilst the Planning Department were of the understanding that there was no planning permission for the site as a builder's storage and yard, the Applicant was claiming it was being used as such. The Planning Adviser confirmed that this was a correct understanding of the situation.
- 3.4 The Chair queried whether planning permission was required for a change of use from agricultural buildings to builder's storage and noted that the Applicant's Notice of Review was based on traffic movements as oppose to the junction use. In response, the Planning Adviser confirmed that planning permission would be required for a change of use in this circumstance.
- 3.5 Councillor Coull sought confirmation that the site has planning permission for agricultural use and, regardless of the ongoing enforcement investigation, that was the view of the Planning Department. The Planning Adviser confirmed that this was a correct understanding of the site's status.
- 3.6 Thereafter, the MLRB agreed that it had sufficient information to determine the request for review.
- 3.7 With regard to the unaccompanied site inspection carried out on 24 April 2015, the Planning Adviser advised that Members were shown the site where the proposed development would take place.
- 3.8 The Planning Adviser advised the MLRB that the application had been refused on the grounds that the application would be contrary to Policy T2 of the Moray Local Plan 2008 in that the B9010/U107E junction with the unclassified road serving the site has insufficient visibility and permitting further development without significant improvements to this junction would result in hazards to road users.
- 3.9 Referring to the Applicant's Grounds for Review, the Planning Adviser advised that the Applicant had stated that planning permission was granted for a storage shed in 1997, which was built 18 months later and has been in use ever since. Noting that any vehicular traffic from a new dwelling would be offset by reduction of traffic from the storage shed and builder's yard, they

advised that this was accepted as equivalent when enquiries were made to the Transportation Department.

- 3.10 The Applicant, noting that a reason for refusal was that the B9010/U107E junction required improvement to be made safe, advised that improvements to the junction was started in January 2015, 1 week after refusal of the application, and that it had been widened to enable the accommodation of two cars passing one another. They noted that the garden boundary on one side has been stepped back to give clear visibility and that the hedge on the other side has been maintained below 1m.
- 3.11 The Planning Adviser advised that there was a significant amount of further representations received from objectors restating their comments alongside a letter of support. She also noted that the Transportation Department has set out further explanation of the reason for refusal and that this was pertinent as it related to some of the additional points raised by them that are not dealt with in the Report of Handling.
- 3.12 Referring to the improvements to the junction, the Planning Adviser noted that the works undertaken by Transportation did not widen the road and that the Council agreed, by negotiation, minor improvements to the junction that were the minimum acceptable in terms of road safety. She further advised that this did not go so far as to enable intensification of the use of the junction by additional traffic associated with new development and that further improvements would be required to enable additional traffic associated with development to use this junction.
- 3.13 The Chair, having had the opportunity to visit the site and consider the Applicant's Grounds for Review, stated his opinion that the application complied with Policy T2 in that there would not be a difference in intensification of the junction and that the visibility sight lines were adequate in both directions.
- 3.14 Councillor Coull stated he was of the same opinion as the Chair and seconded his motion.
- 3.15 The Planning Adviser, referring to the further representation from Mr Hallett, noted that it had been disputed that the storage shed and builder's yard had not been used for a number of years after the owner moved operations to Burghead.
- 3.16 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.

CONDITION

1. The development to which this permission relates must be begun not later than the expiration of 3 years beginning with the date on which this permission is granted.

Reason: The time limit condition is imposed in order to comply with the requirements of Section 58(i) of the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006.

INFORMATIVES

THE CONTAMINATED LAND SECTION has commented that:-

Your property has been identified as being in the vicinity of the following potential source of contamination:

Builders yard including storage of construction on site as indicated on map group F.

Map Group A 1868 - 1897 Ordnance Survey Maps
Map Group B 1898 - 1906 Ordnance Survey Maps
Map Group C 1930 - 1938 Ordnance Survey Maps
Map Group D 1959 - 1971 Ordnance Survey Maps
Map Group E 1969 - 1992 Ordnance Survey Maps
Map Group F Present Day Ordnance Survey Maps

The Moray Council does not have information to confirm whether or not the ground has been contaminated, however it is recommended that you investigate this matter prior to proceeding with the proposed works. Should contamination be identified you should contact the Environmental Health section immediately and carry out agreed remediation works. For advice on researching/investigating a site, please visit the Council website at www.moray.gov.uk/ContaminatedLand. Alternatively you can contact the Environmental Health Section on 01343 563345 or by email to contaminated.land@moray.gov.uk

Comments received from SCOTTISH WATER are attached for your information.