



## THE MORAY COUNCIL LOCAL REVIEW BODY

### DECISION NOTICE

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Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR119
  - Site address: Speyview, Dundurcas, Orton
  - Application for review by Mr John Cadenhead, c/o Grant and Geoghegan, against the decision of an Appointed Officer of The Moray Council.
  - Planning Application 14/01971/APP for erection of house and garage at Speyview, Dundurcas, Orton
  - Unaccompanied site inspection carried out by the MLRB on 24 April 2015
  - Date of decision notice: 02 July 2015
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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.

#### 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 erect house and garage at Speyview, Dundurcas, Orton.

#### 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 The MLRB agreed that it had sufficient information to determine the request for review.
- 3.3 regard to the unaccompanied site inspection carried out on 24 April 2015, Mr K. Henderson, Planning Adviser, advised that Members were shown the site where the proposed development would take place.
- 3.4 The Planning Adviser advised the MLRB that the application had been refused on the grounds that it was contrary to Policies T2 and IMP1 of the Moray Local Plan 2008 because, in terms of servicing the site and road safety implications and the absence of evidence to demonstrate control over all the land within the visibility splay area to ensure the required splay can be provided and maintained, a safe and suitable access onto the public road has not been provided and the development would involve the use of an access onto the B9015 Rothes-Kingston Road where visibility is severely restricted by adjacent hedges/trees and would likely give rise to conditions detrimental to the safety of other road users.
- 3.5 Referring to the Applicant's Grounds for Review, the Planning Adviser advised that the Applicant had stated their belief that the proposal complies with all of the relevant policies relating to design, parking and drainage and that the sole reason for refusal relates to Policy T2 upon which the application was refused. The Applicant noted that the visibility splay being sought by the Transportation Department was 152m and involves a small sliver of land over two adjacent plots to the north-east of the site. They advised that the owner of the land immediately to the north-east of the site has not been willing to discuss or provide any agreement relating to the provision and maintenance of the part of the visibility splay which affects his land.
- 3.6 The Applicant stated that the review should be determined on the basis of the visibility splay which can be provided out with third party land and this extends to 78.8m, as was determined during the course of the previous planning application in 2011 and the case to be heard by the MLRB. They advised that, in addition to the views of consultees, material considerations such as planning history and relationship of the site to the surroundings should have to be taken into account in relation to the interpretation of policy.
- 3.7 Noting that the site has been subject to previous planning consents that were approved, under similar policies to the current development plan, for a single dwelling in 2002, followed by two dwellings in 2007, the Applicant advised that on both occasions the visibility available was accepted and was not a requirement for any third party land. They stated that the proposal relates to a long established group of 9 houses where the existing access arrangements appear to function without the need for any obvious mitigation measures and expressed their opinion that the standard of visibility available to the north-east of the proposed site compares favourably to other existing plots within the grouping of the site.
- 3.8 The Chair reminded the MLRB that it was within their powers to apply suspensive conditions to any application that they were minded to approve.
- 3.9 In response, Councillor Coull queried whether the MLRB could grant planning permission subject to the submission of the required visibility splay. The Chair

noted that the only objection was from the Transportation Department and that he would support a suspensive condition in relation to the submission of a visibility splay to the satisfaction of the Transportation Department.

- 3.10 The Legal and Planning Advisers advised that a suspensive condition can be applied to any planning permission as long as it meets the condition test. In relation to the case being considered, the Legal and Planning Advisers expressed their opinion that a suspensive condition would not satisfy the reasonableness element of the test as the Applicant had been unable to demonstrate any control over third party lands which would be required to meet the visibility splay.
- 3.11 The Planning Adviser also advised that the Applicant was seeking a decision based on a reduced visibility splay.
- 3.12 The Chair, having had the opportunity to visit the site and consider the Applicant's Grounds for Review, stated that by setting a suspensive condition relating to a visibility splay, the MLRB would be agreeing that while the application did not comply with Policy T2 of the Moray Local Plan 2008 in its current form, it had the potential to do so if future negotiations with third party landowners proved successful. He acknowledged the comments by the Legal and Planning Advisers regarding the reasonableness element of the test but contended that, although the ground in question was not in the ownership of the Applicant, it was not unreasonable for them to enter into negotiations with the said owners to provide the required visibility splay.
- 3.13 Accordingly, the Chair moved that the appeal be upheld and planning permission be granted, subject to standard conditions and a suspensive condition that a visibility splay, achieving the requirements of Policy T2, be submitted to the satisfaction of the Transportation Department. This was seconded by Councillor Coull.
- 3.14 There being no one otherwise minded, the MLRB agreed to uphold the appeal and grant planning permission, subject to standard conditions and a suspensive condition that a visibility splay, achieving the requirements of Policy T2, be submitted to the satisfaction of the Transportation Department.

**Paul Nevin**  
**Senior Solicitor (Property & 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. Notwithstanding the submitted details, prior to any development works commencing:
  - (i) a detailed drawing (scale 1:500 which shall also include details to demonstrate control of the land) showing the visibility splay 2.4 metres by 152 metres, with all boundaries set back to a position behind the required visibility splay, 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 0.26 metres above the level of the adjacent carriageway in accordance with the agreed schedule of maintenance.

**Reason:** 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.

# The Moray Council

## NOTIFICATION OF INITIATION OF DEVELOPMENT

Section 27A Town and Country Planning (Scotland) Act 1997

Planning Application Reference No:

Date issued:

I hereby give notice that works as detailed under the above planning application will commence on:

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

### THE FOLLOWING INFORMATION MUST BE PROVIDED:

1. Name and address of person carrying out the development:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. The full name and address of the landowner, if a different person:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Where a site agent is appointed, their full name and contact details:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. The date of issue and reference number of the grant of planning permission:

\_\_\_\_\_  
\_\_\_\_\_

Please return this form, duly completed to: - The Moray Council  
Development Management  
Development Services  
Environmental Services Department  
Council Office,  
High Street  
Elgin IV30 1BX

Or email to: - [development.control@moray.gov.uk](mailto:development.control@moray.gov.uk)

## **IMPORTANT**

**It is important that the Environmental Services Department is advised when you propose to start work as failure to do so may result in enforcement action be taken.**

**Please complete and return this form.**

# **The Moray Council**

## **NOTIFICATION OF COMPLETION OF DEVELOPMENT**

**Section 27B Town and Country Planning (Scotland) Act 1997**

**Planning Application Reference No:**

**Date issued:**

I hereby give notice that works as detailed under the above planning application will be completed on: .....

Signed: ..... Date: .....

Please return this form, duly completed to: - The Moray Council  
Development Management  
Development Services  
Environmental Services Department  
Council Office  
High Street  
Elgin IV30 1BX

Or email to: - [development.control@moray.gov.uk](mailto:development.control@moray.gov.uk)

### **IMPORTANT**

**It is important that the Environmental Services Department is advised when the development has been completed as failure to do so may result in enforcement action be taken.**

**Please complete and return this form.**