



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR128
 - Site address: 80 Mannachie Grove, Forres
 - Application for review by Mr Mark Thompson against the decision of an Appointed Officer of The Moray Council
 - Planning Application 15/01097/APP for change of use of land from public park land to garden ground and erect a 1.8 metre high fence
 - Unaccompanied site inspection carried out by the MLRB on 22 September 2015
 - Date of decision notice: 9 October 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. 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 24 September 2015
- 1.3 The MLRB was attended by Councillors C. Tuke (Chair), G. Coull (Deputy Chair), J. Allan, G. Cowie, K. Reid and R. Shepherd.

2. Proposal

- 2.1 This is an application for planning permission for change of use of land from public park land to garden ground and erect a 1.8 metre high fence at 80 Mannachie Grove, 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 The MLRB agreed that it had sufficient information to determine the request for review.
- 3.3 As a preliminary matter, the Legal Adviser noted that reference was made within the Applicant's Grounds for Review to the Applicant pursuing a Purchase Notice should his Notice of Review be unsuccessful. He advised that every planning application refusal is subject to a Purchase Notice and an applicant is required to claim and prove that the land subject to the application 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.
- 3.4 The Legal Adviser stated that it was for the MLRB to determine what was deemed a material consideration but advised that what an applicant may or may not do in the future as unlikely to amount to a material consideration.
- 3.5 With regard to the unaccompanied site inspection carried out on 22 September 2015, Mr K. Henderson, Planning Adviser advised that Members of the MLRB were shown the site where the proposed development would take place.
- 3.6 Mr Henderson advised the MLRB that the application had been assessed against both the Moray Local Plan 2008 and Moray Local Development Plan 2015 and that the overriding principle of Policy E4, which was now E5 in the 2015 Plan, has remained the same despite slight changes to the wording.
- 3.7 He further advised that the proposal was refused on the grounds that it does not comply with Moray Local Plan 2008 Policies E4, IMP1 and Forres ENV1 and Moray Local Development Plan 2015 Policies E5, IMP1 and Forres ENV 1 in that the development would result in the loss of a section of open space protected by the ENV designation and would remove a point of access to the wider ENV designation, reducing the openness and connectivity of the ENV site to the detriment of the amenity and character of the surrounding area.
- 3.8 Referring to the Applicant's Ground for Review, Mr Henderson advised that the Applicant had stated that he is the owner of the land in question, which was purchased in 2006 part in part from Springfield Properties and The Moray Council. The Applicant noted that an application for a change of use for a portion of land to the rear of the property was approved in 2005 and that at least three other applications of a similar nature have been approved in this area.
- 3.9 At the time of the 2005 application, the Appellant stated that The Moray Council had offered the option of extending the West boundary fence to 66 Mannachie Grove which would have the same impact of restricting access as this application. He noted that he has been maintaining the land as legal owner and the change of use would not impact on any third parties as the land in question serves no other purpose other than a grassed area. Expressing his wish to erect a boundary fence to designate the land as his property, the Applicant stated that enclosing this area would benefit the residents of the cul-de-sac by enhancing privacy and security.
- 3.10 The Applicant advised that if the review was to be unsuccessful, he would pursue a requirement that the land is purchased from him by The Moray

Council in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997 as this restriction would serve the Applicant no beneficial purpose for owning and being legally responsible for this area of land for his intended reasons as it would be out of his control.

- 3.11 The Chair, having had the opportunity to visit the site and consider the Applicant's Grounds for Review, stated that he believed that the proposal complied with Policies E4, IMP1 and Forres ENV1 on the grounds that it would create a minimal detrimental impact on the amenity and character of the surrounding area. Accordingly, he moved that the review be upheld and planning permission be granted, subject to standard conditions and a condition, to be determined by the Planning and Transportation departments, regarding an acceptable thoroughfare from the cul-de-sac to the public park.
- 3.12 Councillor Shepherd stated he was of the same opinion as the Chair and seconded his motion.
- 3.13 In response to advice from the Legal Adviser, the Chair clarified that his reasoning for his motion was that he believed the proposal was an acceptable departure, as oppose to complies, with Policies E4, IMP1 and ENV1 on the grounds that it would have a minimal detrimental impact on the amenity and character of the surrounding area.
- 3.14 There being no one otherwise minded, the MLRB agreed to uphold the review and grant planning permission, subject to standard conditions and a condition - to be determined by the Planning and Transportation departments - regarding an acceptable thoroughfare from the cul-de-sac to the public park.

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 22 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013

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 Muthority 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.

IMPORTANT NOTE

YOU ARE OBLIGED TO COMPLY WITH THESE CONDITIONS AND NOTES

SCHEDULE OF CONDITIONS

By this Notice, The Moray Council has **GRANTED PLANNING PERMISSION** for this proposal subject to conditions as appropriate to ensure implementation of the proposal under the Town & Country Planning (Scotland) Act 1997, as amended. **It is important that these conditions are adhered to and failure to comply may result in enforcement action being taken.**

CONDITION(S)

Permission is granted subject to the following conditions: -

1. No development shall commence until details of measures to allow public access through the site from the cul-de-sac to the north of the application site to the play park to the west have been submitted and approved in writing by the Planning Authority. The approved details shall be implemented within 3 months of the erection of the fence hereby approved and shall be maintained in perpetuity.

Reason: In order to secure public access to the designated amenity space

ADDITIONAL NOTES FOR INFORMATION OF THE APPLICANT

The following notes are provided for your information, including comments received from consultee:-

None.

IMPORTANT NOTES ABOUT THIS DECISION

DURATION OF THIS PERMISSION

In accordance with Section 58 (i) of the Town and Country Planning (Scotland) Act 1997 as amended, 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.

If the development has not commenced within this period then this permission shall lapse unless there is a specific condition attached to this permission which varies the stated timescale.

COMMENCEMENT AND COMPLETION OF THE DEVELOPMENT

The following are statutory requirements of the Town & Country Planning (Scotland) Act 1997, as amended. Failure to meet their respective terms represents a breach of planning control and may result in formal enforcement action. Copies of the notices referred to below are attached to this permission for your use.

NOTIFICATION OF INITIATION OF DEVELOPMENT - S.27A of the 1997 Act, as amended requires that any person who has been granted planning permission (including planning permission in principle) and intends to start development must, as soon as practicable after deciding the date they will start work on the development, give notice to the planning authority of that date. This ensures that the planning authority is aware that the development is underway and can follow up on any suspensive conditions attached to the permission. Therefore, prior to any work commencing on site, the applicant/developer must complete and submit to the Moray Council, as planning authority, the attached Notification of Initiation of Development.

NOTIFICATION OF COMPLETION OF DEVELOPMENT - S.27B of the 1997 Act, as amended requires that any person who completes a development for which planning permission (including planning permission in principle) has been given must, as soon as practicable after doing so, give notice of completion to the planning authority. This will ensure that the planning authority is aware that the development is complete and can follow up any planning conditions. Therefore, on completion of the development or as soon as practicable after doing so, the applicant/developer must complete and submit to the Moray Council, as planning authority the attached Notification of Completion of Development.

NOTIFICATION OF COMPLETION OF PHASED DEVELOPMENT – Under S.27B(2) of the 1997 Act, as amended where permission is granted for phased development, the permission is subject to a condition (see Schedule of Conditions above) requiring the applicant/developer as soon as practicable after each phase to give notice of that completion to the planning authority. This will allow the planning authority to be aware that particular phase(s) of the development is/are complete. When the last phase is completed the applicant/developer must also complete and submit a Notification of Completion of Development.

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

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

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.