



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR127
 - Site address: Berryhillock, Grange, Keith
 - Application for review by Mr and Mrs D. Russell, c/o Mr A. Tait, Rural House Ltd against the decision of an Appointed Officer of The Moray Council.
 - Planning Application 15/00705/APP for the erection of dwellinghouse
 - Unaccompanied site inspections carried out by the MLRB on 23 October and 11 December 2015
 - Date of decision notice: 14 January 2016
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Decision

The MLRB agreed to dismiss the request for review and uphold the original decision of the Appointed Officer to refuse the above noted application.

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 2013.
- 1.2 The above application for planning permission was considered by the MLRB at the meeting held on 17 December 2016.
- 1.3 The MLRB was attended by Councillors C. Tuke (Chair), G. Cowie, M. McConachie, K. Reid and R. Shepherd.

2. Proposal

- 2.1 This is an application for planning permission for the erection of dwellinghouse at Berryhillock, Grange, Keith.

3. MLRB Consideration of Request for Review

- 3.1 Councillors Reid and Shepherd, having not taken part in the site visit for this Review, took no part in the relevant discussion or decision.
- 3.2 Under reference to paragraph 5(a) of the minute of this Body dated 29 October 2015, the Moray Local Review Body (MLRB) continued to consider a

request from the Applicant seeking the removal of Condition 4 of Planning Application 15/00705/APP, for the erection of dwellinghouse at Berryhillock, Grange, Keith, as granted by the Appointed Officer on 29 June 2015.

- 3.3 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.
- 3.4 The MLRB agreed that it had sufficient information to determine the request for review.
- 3.5 Ms E. Webster, Planning Adviser, advised that Members carried out a second unaccompanied site visit on 11 December 2015 where they were shown the site of the proposed developments and re-evaluated the passing places and crossroads junction within the vicinity.
- 3.6 The Planning Adviser advised the MLRB that the application was approved on 29 June 2015 and that the Applicant was seeking the removal of Condition 4, which states:-

4. Prior to any development works commencing:-

- (i) a detailed drawing (1:500) showing the location and design of a passing place on the C46H Grange Crossroads-Forty Crossroads Road (to the Moray Council standards and specification), shall be submitted to and approved in writing by the Council, as Planning Authority in consultation with the Roads Authority; and
- (ii) thereafter the passing place shall be constructed in accordance with the approved drawing prior to any development works commencing (except for those works associated with the provision of the passing place).

Reason: To enable drivers of vehicles to have adequate forward visibility to see approaching traffic and for two vehicles to safely pass each other ensuring the safety and free flow of traffic on the public road.

- 3.7 Referring to the Applicant's Grounds for Review, the Planning Adviser advised that the Applicant had stated that they did not believe the construction of a passing place is necessary on the section of road adjacent to the plot because the road there is straight and has good visibility in both directions; there is an opportunity for cars to pass at the junction with the Edengight Road (approximately 300m from the plot); there is an opportunity for cars to pass at an existing passing place (approximately 400m in the opposite direction from the plot); cars will be able to pass at the front entrance to the new dwelling; and trees would need to be cut down to create a passing place.
- 3.8 The Planning Adviser noted that a representation was received from Transportation in response to the MLRB's request for further information. She advised that Transportation had confirmed that the passing place at Site C, as identified in Appendix 1 of their response, had been upgraded and was now a formal passing place. She further advised that Transportation had reaffirmed the requirement for Condition 4 to enable two vehicles to safely pass each, ensuring the safety and free flow of traffic on the public road.

- 3.9 Councillor McConachie, having had the opportunity to visit the site and consider the Applicant's Grounds for Review, moved that the review be partially dismissed and the condition be amended so that the passing place would be at Site B, as indicated on page 38 of the report.
- 3.10 In response, the Chair sought clarity that Councillor McConachie was seeking to dismiss the review. Councillor McConachie stated that he wished the condition be amended so that the passing place would be at Site B and the crossroads junction would not be altered.
- 3.11 The Chair advised that Councillor McConachie's motion would leave more than 150m between passing places. He noted that, at the site visit, it was clear that vehicles were overriding the crossroad's verges and that the passing place to the north of the site was now resolved as a formal passing place. The Chair stated that there were concerns with inter-visibility between the crossroad junction and the site entrance would remain.
- 3.12 As an amendment, Councillor Cowie moved that the review be dismissed and the Appointed Officer's decision be upheld to refuse the planning application.
- 3.13 The Chair stated he was of the same opinion as Councillor Cowie and seconded his amendment.
- 3.14 The Clerk sought clarification as to the terms of Councillor McConachie's motion.
- 3.15 In response, Councillor McConachie stated that if the MLRB were to say improvements were required to the junction then they would not be agreeing with the Appointed Officer as there was no mention of this within the condition.
- 3.16 The Chair queried whether Councillor McConachie was seeking that the passing place be provided at Site B, in discussion with Transportation. Councillor McConachie stated that the condition requires the passing place to be approved by the Council, as Planning Authority and that this may, or may not be, at Site B. He advised that if possible, Site B would be sufficient for the passing place.
- 3.17 In response, the Chair advised that Site B was one of the options available and the condition, as written, left it to the Applicant and the Council to determine the best possible position. He stated his belief that Councillor McConachie was trying to stipulate how Transportation should handle discussions.
- 3.18 Councillor McConachie advised that there had been debate regarding the crossroads junction however there was no mention of this within the condition and he did not wish for this to be included.
- 3.19 The Chair advised that there was still some confusion regarding the terms of the motion and reminded the MLRB that the condition currently leaves the position of the passing place to be determined by the Applicant and the Council.
- 3.20 Councillor McConachie advised that his motion was to partially dismiss the review and amend Condition 4 to clarify that no improvement works are required at the crossroads.

- 3.21 The Chair stated his opinion that the crossroads junction was not wide enough and that the matter should be left to Transportation to decide what is required.
- 3.22 Councillor Cowie noted that there was nothing within the papers regarding improvements to the junction, however it was for Transportation to decide whether these were required.
- 3.23 There being no seconder, Councillor McConachie's motion fell.
- 3.24 Thereafter, the MLRB agreed to dismiss the review and uphold the Appointed Officer's decision to refuse the planning application.

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 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 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.