



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR141
 - Site address: Site at Clarkley Hill, Burghead
 - Application for review by Mr Daniel Ralph and Son, c/o Mr Keith Remnant, Ichthus Architects against the decision of an Appointed Officer of The Moray Council
 - Planning Application 15/01790/APP for construction of funeral chapel and formation of new burial ground
 - Unaccompanied site inspection carried out by the MLRB on 21 January 2016
 - Date of decision notice: 25 February 2016
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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 2013.
- 1.2 The above application for planning permission was considered by the MLRB at the meeting held on 28 January 2016.
- 1.3 The MLRB was attended by Councillors C. Tuke (Chair), G. Coull (Deputy Chair), G. Cowie, M. McConachie and R. Shepherd.

2. Proposal

- 2.1 This is an application for planning permission for construction of funeral chapel and formation of new burial ground on Site at Clarkley Hill, Burghead.

3. MLRB Consideration of Request for Review

- 3.1 The Moray Local Review Body (MLRB) considered a request from the Applicant seeking a review of the decision of the Appointed Officer, in terms of the Scheme of

Delegation, to refuse an application for construction of a funeral chapel and formation of new burial ground on Site at Clarkley Hill, Burghead.

- 3.2 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.
- 3.3 The MLRB agreed that it had sufficient information to determine the request for review.
- 3.4 With regard to the unaccompanied site inspection carried out on 21 January 2015, Mrs Gordon, Planning Adviser, advised that Members of the MLRB were shown the site where the proposed development would take place.
- 3.5 The Planning Adviser advised the MLRB that the application had been refused on the grounds that the proposal was contrary to Policies ED7 and IMP1 of the Moray Local Development Plan 2015 in that the large modern building involved and the extensive parking/service areas are in a prominent roadside rural location and represent unplanned and visually intrusive development.
- 3.6 Referring to the Applicant's Grounds for Review, the Planning Adviser advised that the Applicant had stated that the design has a roof line that has been broken up to reduce impact of the building. The Applicant further stated that the two end sections have a lowered ridgeline and lower roof pitch so that it looks more like a cluster of farm buildings, including catslide roofs.
- 3.7 The Planning Adviser advised that the Applicant had stated mounding/ground sculpture were proposed to mask the building and car parking and that the Applicant considered that this will allow buildings to blend into the landscape with the visibility of the buildings from the road broken up by planting rather than being stark and prominent. She noted that the Applicant had highlighted that the nearby football stadium was a modern building masked by trees and that there are modern residential developments with red tiled roofs therefore making buildings prominent on the horizon.
- 3.8 The Chair advised that there were a number of factual errors in the Report for Handling and noted that:-
 - the Appointed Officer who determined the previous application also considered the current application;
 - the chapel building roof is stipulated as having grey concrete tiling within plans, and not grey corrugated steel roofing;
 - the boundary of the Burghead settlement was amended in the Moray Local Development Plan 2015 and was now closer to the site than previously; and
 - screening and tree planting was proposed for the development despite the Appointed Officer stating "the proposals...would lack any landscape features..."
- 3.9 Councillor Coull, 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 ED7 and IMP1 of the Moray Local Development Plan 2015 on the grounds that the proposal would not be visually intrusive as screening was proposed on 3 sides of the site.

- 3.10 Councillor McConachie stated he was of the same opinion as the Chair and seconded his motion.
- 3.11 The Chair advised that he would be in agreement with Councillor Coull, subject to a condition that the trees are replaced if they die within a certain period, to be determined by the Planning Authority, and that the first 10m of access from the public road be constructed to The Moray Council specification and surfaced with bituminous macadam.
- 3.12 The Planning Adviser sought clarity as to whether conditions proposed by statutory consultees were also to be added to the planning permission should it be granted. In response, Councillors Coull and McConachie agreed to amend thier motion accordingly to include the conditions proposed by the Chair and statutory consultees.
- 3.13 There being no one otherwise minded, the MLRB agreed to uphold the review and grant planning permission in respect of Planning Application 15/01790/APP, subject to conditions proposed by statutory consultees, that trees are replaced if the die within a certain period, to be determined by the Planning Authority, and that the first 10m of access from the public road be constructed to The Moray Council specification and surfaced with bituminous macadam.

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.

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. Prior to any development works commencing 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/carrageway for the life time of the development.

Reason: To ensure acceptable infrastructure at the development access through the provision of details currently lacking and to ensure the safety and free flow of traffic on the public road and access to the site by minimising the road safety impact from extraneous material and surface water in the vicinity of the new access.

2. Prior to any development works commencing a detailed drawing (scale 1:200) showing provision of an access onto the public road, meeting the following requirements:
 - (a) A minimum width of 8.0m with a maximum gradient of 1:20 measured for the first 5.0m from the edge of the public carrageway.
 - (b) Access radii of 8.0m, kerbed using 255 x 125mm splayed precast concrete kerbs to The Moray Council specification; and
 - (c) The first 10m of the access, measured from the edge of the public road, constructed to The Moray Council specification and surfaced with bituminous macadam.
 - (d) Provision of drainage infrastructure to accommodate additional surface water.

And thereafter the access place shall be constructed in accordance with the approved drawing.

Reason: To ensure acceptable infrastructure at the development access through the provision of details currently lacking.

3. Prior to any development works commencing:
 - (a) 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 215 metres at the access onto the public road, 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; and

- (b) 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
- (c) thereafter the visibility splay shall be maintained at all times free from any obstruction exceeding 0.26 metres above the level of the 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.

- 4. Sixty-eight car parking spaces shall be provided within the site prior to the occupation or completion of the development, 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.

Reason: To ensure the permanent availability of the level of parking necessary for residents/visitors/others in the interests of an acceptable development and road safety.

- 5. A turning area shall be provided within the curtilage of the site to enable vehicles to enter and exit in a forward gear.

Reason: To ensure the provision for vehicles to enter/exit in a forward gear in the interests of the safety and free flow of traffic on the public road.

- 6. Boundary walls/fences shall be set back from the edge of the public carriageway at a minimum distance of 4.0m to enable the future provision of pedestrian/cycle infrastructure.

Reason: To safeguard provision of active travel infrastructure adjacent to the public road.

- 7. Prior to the commencement of any works on site a detailed scheme for surface water drainage shall be submitted to and agreed by the Planning Authority, in consultation with SEPA. The scheme shall detail two levels of sustainable drainage SUDS treatment for all roads/carparking areas and one level of SUDS treatment for roof run off, and all work shall be carried out in accordance with the approved scheme.

Reason: To ensure adequate protection of the water environment from surface water run-off.

- 8. That no development shall take place until a Landscape Scheme (drawn to scale) is submitted to and approved by this Council (as Planning Authority). This Landscape Scheme shall show:-

- (a) the location of any existing trees, shrubs and hedgerows on the site and identify those to be retained and those to be removed;
- (b) details of the measures to be taken to protect any existing trees, shrubs and hedgerows during the course of developing the site;
- (c) details of the numbers, species, position, planting distances and sizes of all planting to be undertaken;
- (d) the position of any children's play areas and public amenity open space. Details of the surface finishes, boundary enclosures and number, type (for example,

inclusion of manufacturer's specification) and position of pieces of play equipment to be provided.

Reason: In order that detailed consideration can be given to the landscaping of the site.

9. That all planting, seeding or turfing forming part of the approved landscape scheme shall be carried out in the first planting and seeding seasons following the occupation of the building; or the completion of the building works, whichever is the sooner. Any trees or plants which (within a period of 5 years from the planting) die, are removed or become seriously damaged or diseased shall be replaced in the following planting season with others of similar size, number and species unless this Council (as Planning Authority) gives written consent to any variation of this planning condition.

Reason: In order to ensure that the approved landscaping works are timeously carried out and properly maintained in a manner which will not adversely affect the development or amenity and character of the area.

10. The developer shall secure the implementation of an archaeological watching brief, to be carried out by an archaeological organisation acceptable to the Aberdeenshire Council Archaeology Service on behalf of the planning authority, during any ground breaking and development work. The retained archaeological organisation shall be afforded access at all reasonable times and allowed to record and recover items of interest and finds. Terms of Reference for the watching brief will be supplied by the Aberdeenshire Council Archaeology Service.

The name of the archaeological organization retained by the developer shall be given to the planning authority and to the Aberdeenshire Council Archaeology Service in writing not less than 14 days before development commences.

Reason: To record items of archaeological interest.

ADDITIONAL NOTES FOR INFORMATION OF THE APPLICANT

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

The Transportation Manager (The Moray Council) 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 roadspmits@moray.gov.uk

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.

If required, street furniture will need to be repositioned at the expense of the developer. In addition any existing roadside ditch may require a pipe or culvert. Advice on these matters can be obtained by emailing road.maint@moray.gov.uk

No building materials/scaffolding/builder's skip shall obstruct the public road (including footpaths) without permission from the Roads Authority.

The applicant shall be responsible for ensuring that surface/ground water does not run from the public road into his property.

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.

No retaining structures or embankments shall be constructed along the edge of the road, whether retaining the public road or ground adjoining the public road without prior consultation and agreement of the Roads Authority.

The formation of the required visibility splay will involve the removal of trees and vegetation, setting back of boundary fences and the lowering of ground levels.

The Lands, Parks and Countryside Officer (The Moray Council) has commented that:-

There is no requirement from a local authority point of view for a facility like this, in this location, just now.

Burghead cemetery has a current projected life of 12 years and The Moray Council have for a number of years adopted the practice of not selling lairs in advance where a cemetery has less than 10 years projected capacity.

The Moray Council will very shortly be in a position where lairs will not be sold in advance of a burial. I would estimate that this will extend the life of the cemetery to some 20 years.

The developer will therefore need to be aware that he will need to make provision for the maintenance and management of the burial ground.

The Scottish Environment Protection Agency has commented that:-

The scheme shall be developed in accordance with the technical guidance contained in The SUDS Manual (C697) and should incorporate source control.

For statutory and general advice a copy of SEPA's letter dated 3 November 2015 is attached with this consent.

The Environmental Protection Manager (The Moray Council) has commented that:-

The premises will require to comply with the Health and Safety at Work etc. Act 1974 and the Workplace (Health, Safety and Welfare) Regulations 1992.

The Environmental Health Section of Moray Council would be the enforcing authority in the premises.

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:

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

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

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

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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.