



## MORAY LOCAL REVIEW BODY

### DECISION NOTICE

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Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR147
  - Site address: Site 370M South of Kinloss Golf Course Clubhouse, Kinloss
  - Application for review by Mr T. Dingwall, c/o Mr S. Morrison, Grant & Geoghegan against the decision of an Appointed Officer of The Moray Council.
  - Planning Application 15/01864/APP to erect dwellinghouse
  - Unaccompanied site inspection carried out by the MLRB on 24 March 2016
  - Date of decision notice: 3 May 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 Thursday 31 March 2016.
- 1.3 The MLRB was attended by Councillors C. Tuke (Chair), G. Cowie, M. McConachie and R. Shepherd.

#### **2. Proposal**

- 2.1 This is an application for planning permission to erect dwellinghouse on Site 370M South of Kinloss Golf Course Clubhouse, Kinloss.

#### **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 to erect dwellinghouse on Site 370M south of Kinloss Golf Course Clubhouse, Kinloss.

- 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 As a preliminary matter, Mrs Gordon, Planning Officer (Planning & Development) advised that she had been consulted by, and gave advice to, the Appointed Officer during consideration of the planning application and, in the interests of natural justice, declared an interest and left the meeting, taking no part in the discussion of this item.
- 3.5 With regard to the unaccompanied site inspection carried out on Thursday 24 March 2016, Mr Henderson, Planning Adviser, advised that Members were shown the site where the proposed development would take place.
- 3.6 The Planning Adviser advised the MLRB that the application had been refused on the grounds that the proposal was contrary to Policies H7(c) and IMP1 of the Moray Local Development Plan 2015. He advised that allowing further expansion of housing in the golf course area, together with the associated access roads, would result in a build-up such that there would be a detrimental impact on the rural character and important amenity value of the area.
- 3.7 Referring to the Applicant's Grounds for Review, the Planning Adviser advised that the Applicant had stated that the introduction of a dwelling within an established housing group set in a wider scattering of houses and agricultural buildings reflects the established settlement pattern and does not meet the Council's definition of obtrusive development.
- 3.8 Stating that the proposed plot does not detract from the character and setting of the area and is very well related to the size and characteristics of approved plots, the Applicant advised that they believed the plot benefits from mature landscaped surroundings and would be well screened.
- 3.9 Referring to build up, the Applicant stated their belief that because the site is well defined and within a mature woodland setting with restricted views, concluding that a single house would have an adverse impact on the appearance and character of existing buildings or the surrounding countryside on account of unacceptable build up is not reasonable. They noted that the site has more than 50% of its boundaries as long established features through the substantial number of mature trees that surround the site.
- 3.10 Councillor Cowie, having had the opportunity to visit the site and consider the Applicant's Grounds for Review, moved that the review be dismissed and the Appointed Officer's decision to refuse planning permission be upheld.
- 3.11 Councillor McConachie stated that he believed there would not be a detrimental increase in traffic due to the use of the golf course that already

exists and as such complied with Policy IMP1. He advised that the proposal integrates with the setting of woodland and moved, as an amendment, that the review be upheld and planning permission granted, subject to standard conditions.

- 3.12 Councillor Shepherd stated that he was of the same opinion as Councillor Cowie and seconded his motion.
- 3.13 Councillor Tuke stated his belief that, whilst visible, the proposal was not intrusive. He advised that the proposal was close to a tee-box and that there could be an intrusion of golf balls and, in seconding Councillor McConachie's amendment, proposed that a condition be included that fencing be erected to protect the dwelling. Councillor McConachie agreed to amend his amendment accordingly.
- 3.14 The Legal Adviser advised that the dwelling was situated behind the tee-box referred to by the Chair. Accepting that the position of the dwelling would not be affected by stray golf balls, Councillor McConachie and the Chair agreed to amend their amendment accordingly to withdraw the proposed condition regarding fencing.
- 3.15 Councillor Cowie queried whether any additional tree planting was required. In response, the Planning Adviser advised that there was no requirement for compensatory planting but noted that planting was proposed within the application and there was requirements of Policy H7 'Housing in the Countryside' that would be required to be met.
- 3.16 The Chair proposed that an informative be included that the Applicant retains as much woodland/trees as possible. Councillor McConachie agreed to amend his motion accordingly.
- 3.17 On a division, there voted:-
- For the Motion (2): Councillors Cowie and Shepherd.
- For the Amendment (2): Councillors McConachie and Tuke
- Abstentions (0)
- 3.18 In terms of Standing Order 63 (c) and there being an equality of voting, the Chair exercised his casting vote in favour of the amendment.
- 3.19 Accordingly, the amendment became the finding of the Body and the MLRB agreed to uphold the review and grant planning permission in respect of Planning Application 15/01864/APP, subject to standard conditions and an informative that the Applicant retain as much woodland/trees as possible.

**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:
  - (i) 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;
  - (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 0.6 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.

2. Three car parking spaces shall be provided within the site prior to the occupation or completion of the dwellinghouse, 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.

3. 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.

## **ADDITIONAL NOTES FOR INFORMATION OF THE APPLICANT**

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

**The Transportation Manager** advises:-

Planning consent does not carry with it the right to carry out works within the public road boundary.

A refuse collection regime shall be put in place to bring waste from the proposed chalets and houses to a point near the public road. Purchasers of the proposed houses shall be informed that doorstep refuse collection by The Moray Council will not occur due to the gradient of the private access track.

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 [roadspermits@moray.gov.uk](mailto:roadspermits@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.

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

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.

**The Manager (Development Management)** advises:-

It is noted that your planning application proposes a septic tank and soakaway/infiltration drainage system and the suitability of the ground condition to accommodate this will be dealt with as part of your Building Warrant application. Full details of a ground assessment, trial pit investigations and percolation test results, from a suitably qualified person as contained within the Council's List of Approved Certifiers, will be required prior to obtaining a Building Warrant

An application for a Building Warrant and compliance with the Building Regulations are entirely separate from Planning procedures. Furthermore, the granting of Planning Consent does not guarantee approval of a Building Warrant.

If you have not already done so and you may wish to satisfy yourself about the adequacy of ground conditions separately at this stage, if so I recommend that you contact the Building Standards Section directly at Environmental Services, The Moray Council, Council Offices, High Street, Elgin, IV30 1BX, telephone(01343) 563243.

Please note that any proposed discharges to land or the water environment will require authorisation from SEPA under the Water Environment (Controlled Activities) (Scotland) Regulations 2011. For further details refer to SEPA website [http://www.sepa.org.uk/water/water\\_regulation/regimes.aspx](http://www.sepa.org.uk/water/water_regulation/regimes.aspx).

The Applicant is requested to leave as much woodland/trees as possible.

## **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](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.**