



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR148
 - Site address: North Maggie Knockater, Craigellachie
 - Application for review by Mr Gavin Strathdee, c/o Mr Stewart Reid, Strathdee Properties Ltd against the decision of an Appointed Officer of The Moray Council
 - Planning Application 15/02010/APP to erect dwellinghouse with detached garage
 - Unaccompanied site inspection carried out by the MLRB on 22 April 2016
 - Date of decision notice: 21 June 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 26 May 2016.
- 1.3 The MLRB was attended by Councillors C. Tuke (Chair), G. Cowie, K. Reid and R. Shepherd.

2. MLRB Consideration of Request for Review

- 2.1 Under reference to paragraph 3(a) of the minute of this Body dated 28 April 2016, the Moray Local Review Body (MLRB) continued to consider 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 with detached garage at North Maggie Knockater, Craigellachie.

- 2.2 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.
- 2.3 As requested by the MLRB at its meeting on 28 April 2016, a map was provided by Development Management, attached as Appendix 4 to the report, setting out the locations of the recent consents in context with the site subject to review.
- 2.4 The MLRB agreed that it had sufficient information to determine the request for review.
- 2.5 With regard to the unaccompanied site inspection carried out on 22 April 2016, Mr Henderson, Planning Adviser, advised that Members were shown the site where the proposed development would take place.
- 2.6 The Planning Adviser advised the MLRB that the application had been refused on the grounds that the proposal was contrary to the provisions of Policies H7: New Housing in the Open Countryside and IMP1: Developer Requirements of the adopted Moray Local Development Plan (MLDP) 2015 and, as a material consideration, the associated Supplementary Guidance 'Housing in the Countryside' where, because of its siting/location and when added to other existing and recently approved dwellings, the additional house would result in an incremental but further cumulative build up and accumulation of dwellings extending along the U64H Road. As a result, the Planning Adviser advised that the proposal would be detrimental to the rural character of the open countryside surrounding Craigellachie. He noted that this area had been identified as one in which there has been a significant growth in housing proposals and where further development, such as this proposal, would detract from the amenity and appearance of existing development and irreversibly alter the character of the countryside in this locality.
- 2.7 Referring to the Applicant's Grounds for Review, the Planning Adviser advised that the Applicant had stated that the site is not located on a skyline or on artificially raised ground and would have a sloping wooded back drop helping it integrate into the existing housing pattern. Advising that the dwelling is located next to two existing properties, forming a small cluster of 3 houses that is similar to nearby existing arrangements, the Applicant stated their opinion that this is consistent with the settlement pattern in this area.
- 2.8 The Applicant stated that it is acknowledged that the proposal will increase the number of houses in the area but advised that they did not believe it will change the rural character of the area or result in unacceptable accumulation. They further advised that the site would be bounded by at least 50% existing boundaries and noted that any compensatory planting will be carried out on land within their control via a planning condition.
- 2.9 Councillor Reid, having had the opportunity to visit the site and consider the Applicant's Grounds for Review, stated that she was minded to agree with the Appointed Officer and moved that the review be dismissed and the Appointed Officer's decision be upheld to refuse planning permission in respect of Planning Application 15/02010/APP.

- 2.10 Councillor Shepherd stated he was of the same opinion as Councillor Reid and seconded her motion.
- 2.11 The Chair stated that he believed the proposal complied with Policies H7 and IMP1 on the grounds that, against a sloping wooded back drop, it was not visually intrusive. Accordingly, he moved that the review be upheld and planning permission be granted in respect of Planning Application 15/02010/APP, subject to conditions he would set should he find a seconder to his motion.
- 2.12 Following discussion and in response to a query from Councillor Cowie, the Planning Adviser confirmed that a condition could be applied that a lay-by be provided to Council standards prior to commencement of development.
- 2.13 Councillor Cowie agreed to second the Chair's motion subject to a condition that a lay-by be provided prior to commencement of development.
- 2.14 The Chair stated that his proposed conditions would be that a lay-by be provided to Council standards prior to commencement of development and that compensatory planting be provided on site. Councillor Cowie agreed to the proposed conditions and formally seconded the Chair's motion.
- 2.15 In response to discussions and the Chair's proposed conditions, Councillor Reid withdrew her motion and stated that she was of the same opinion as the Chair and Councillor Cowie.
- 2.16 Councillor Shepherd stated that he was still minded to agree with the Appointed Officer and moved that the review be dismissed and the Appointed Officer's decision be upheld to refuse planning permission in respect of Planning Application 15/02010/APP. There being no seconder, Councillor Shepherd's motion fell.
- 2.17 Thereafter, the MLRB agreed that the review be upheld and planning permission be granted in respect of Planning Application 15/02010/APP, subject to conditions that a lay-by be provided to Council standards prior to commencement of development and that compensatory planting be provided on site.

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 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. No development shall commence until details of a scheme of hard and soft landscaping works have been submitted to, and approved in writing by, the Council as Planning Authority. Details of the scheme shall include:-
 - (i) All earthworks and existing and finished ground levels in relation to an identified fixed datum point;
 - (ii) A plan showing existing landscaping features and vegetation to be retained and those to be removed;
 - (iii) The location and design, including materials, of any existing or proposed walls, fences and gates;
 - (iv) All soft landscaping and planting works, including plans and schedules showing the location, species and size of each individual tree and/or shrub and planting densities. The Scheme details shall provide for 25% of the plot area to be planted/covered with native species trees/shrubs at least 1.5m in height.

Landscaping works shall be carried out in accordance with the approved scheme. All planting, seeding or turfing as may be comprised in the approved details shall be carried out in the first planting and seeding seasons following the commencement of development, unless otherwise stated in the approved scheme. Any trees or plants which within a period of five years from the completion of the development die, for whatever reason are removed or damaged shall be replaced in the next planting season with others of the same size and species.

Reason: In order to ensure that a high standard of landscaping is achieved, appropriate to the location of the site.

2. Prior to the commencement of development, 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/carriageway 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.

3. Prior to any development works commencing:-

- (i) a detailed drawing (scale 1:500) showing the location and design of a passing place on the section of the U64H Balnacoul Road between the properties named 'Balnacoul' and 'Belnagarrow' (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.

4. 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 2.4 metres by 70 metres, with all boundaries set back to a position behind the required visibility splay with ground levels reduced within the 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
- (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 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.

5. The width of the vehicular access shall be a minimum of 3.0m and have a maximum gradient of 1:20 measured for the first 5.0m from the edge of the public carriageway. The first 10m of the access track, measured from the edge of the public road, shall be constructed to The Moray Council specification and surfaced with bituminous macadam.

Reason: To ensure acceptable infrastructure at the development access.

6. An access lay-by 8.0m long by 2.5m wide with 30 degrees splayed ends shall be provided at the edge of the public road to allow visiting service vehicles to park clear of the public road. The vehicular access should lead off the lay-by. The lay-by must be constructed in accordance with The Moray Council specification and surfaced with bituminous macadam.

Reason: To enable visiting service vehicles to park clear of the public road in the interests of road safety.

7. Any existing ditch, watercourse or drain under the site access shall be piped using a suitable diameter of pipe, agreed with the Roads Maintenance Manager

(300mm minimum). The pipe shall be laid to a self-cleansing gradient and connected to an outfall.

Reason: To ensure the construction of an acceptable access in the interests of road safety and effective drainage infrastructure.

8. 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 and road safety.

9. 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.

ADDITIONAL NOTES FOR INFORMATION OF THE APPLICANT

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

The Building Standards Manager advises:-

A Building Warrant will be required for the proposals. Should you require further assistance please do not hesitate to contact Building Standards, Environmental Services Department, Council Office, High Street, ELGIN IV30 1BX or by telephoning 01343 563243.

The Transportation Manager advises:-

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

Before commencing development, the Applicant is obliged to apply for Construction Consent in accordance with Section 21 of the Roads (Scotland) Act 1984 for new roads for the passing place. The Applicant will be required to provide technical information, including drawings and drainage calculations. Advice on this matter can be obtained from The Moray Council web site or by emailing transport.develop@moray.gov.uk

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

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 Applicant 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 developer must contact the Roads Authority Roads Maintenance Manager (East) at Ashgrove Depot, Elgin – Tel (01343) 557300, Ext 7325 to discuss the proposals.

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.

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.