



## MORAY LOCAL REVIEW BODY

### DECISION NOTICE

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Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR154
  - Site address: East Birkenbaud, Wardend, By Birnie
  - 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 15/02084/APP for proposed erection of dwellinghouse with detached garage
  - Unaccompanied site inspection carried out by the MLRB on 17 May 2016
  - Date of decision notice: 21 June 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 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 A request was submitted by the Applicant seeking a review of the decision of the Appointed Officer, in terms of the Scheme of Delegation, to refuse an application for the proposed erection of dwellinghouse with detached garage at East Birkenbaud, Wardend, By Birnie.
- 2.2 There was submitted a 'Summary of Information' report setting out the reasons for refusal, together with documents considered or prepared by the

Appointed Officer in respect of the planning application and the Notice of Review, Grounds for Review and supporting documents submitted by the Applicant.

- 2.3 The MLRB agreed that it had sufficient information to determine the request for review.
- 2.4 With regard to the unaccompanied site inspection carried out on 17 May 2016, Mr Henderson, Planning Adviser, advised that Members were shown the site where the proposed development would take place.
- 2.5 The Planning Adviser advised the MLRB that the application had been refused on the grounds that the proposal was contrary to Policies H7: New Housing in the Open Countryside and IMP1 of the Moray Local Development Plan (MLDP) 2015 and Supplementary Guidance 'Housing in the Countryside' on the grounds that the rural housing pattern within this part of the district is characterised by single house plots and clusters of housing dispersed across the countryside to the south of Elgin. He noted that the application site itself falls within the area of 'Wardend' which has seen significant growth in single house developments over recent years, and is specifically highlighted within supplementary guidance as an area where the impact of cumulative build-up of housing requires particular attention.
- 2.6 Referring to the case of the current application, the Planning Adviser advised that five house plots have been approved to the west (with 2 built and 3 to be erected), three plots lie within cleared forestry to the north and a further plot (and 3 houses) lie to the south east. He noted that the introduction of a further house plot into this locality, in addition to these approved plots and built dwellings, would result in an unacceptable cumulative build-up of residential development that would be detrimental to the rural character of the area.
- 2.7 Whilst currently screened by trees, the Planning Adviser noted that the cumulative impact of the proposals in terms of associated activities i.e. increased traffic movements, bin collections etc would bring further inappropriate suburban development into the area. Given these impacts, he noted that the proposal is considered to constitute an inappropriately located site which fails to satisfy the siting criteria of Policies H7 and IMP1 and associated Supplementary Guidance 'Housing in the Countryside'.
- 2.8 Referring to the Applicant's Grounds for Review, the Planning Adviser advised that the Applicant had stated their opinion that the house is not overtly prominent as is not artificially elevated and is not in the centre of a field. They advised that it would have a tree lined backdrop to the north and east helping it integrate into the housing pattern.
- 2.9 The Applicant stated that the settlement pattern of Moray is characterised by small clusters of housing and single houses nestled into existing woodland. They advised that there are similar types of clusters nearby and, in their opinion, the proposed arrangement would be similar, would integrate into the existing settlement pattern, and would not change the rural character at Wardend. The Applicant noted that the site would be defined by at least 50% existing boundaries consisting of existing mature trees and a defined track along the south west boundary.

- 2.10 Councillor Cowie, having had the opportunity to visit the site and consider the Applicant's Grounds for Review, stated that he 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 15/02084/APP.
- 2.11 The Chair stated that he believed the proposal complied with Policies H7 and IMP1 on the grounds that the proposal was extremely well hidden and therefore not visually intrusive. Accordingly, he moved that the review be upheld and planning permission be granted in respect of Planning Application 15/02084/APP, subject to conditions proposed by the Transportation Manager and that refuse waste bins be placed at the roadside on collection day.
- 2.12 In response, the Legal Adviser advised that the proposed condition regarding refuse waste collection would not be enforceable. The Chair agreed to withdraw the proposed condition from his motion.
- 2.13 Councillor Reid stated she was of the same opinion as Councillor Cowie and seconded his motion.
- 2.14 Councillor Shepherd stated that he was of the same opinion as Councillors Cowie and Reid.
- 2.15 There being no seconder, the Chair's motion fell.
- 2.16 Thereafter, the the MLRB agreed to dismiss the review and uphold the Appointed Officer's decision to refuse planning permission in respect of Planning Application 15/02084/APP.

**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.