



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR153
 - Application for review by Mr John Russell, Interurban Developments Ltd against the decision of an Appointed Officer of The Moray Council
 - Planning Application 16/00241/PPP to erect 4 dwellinghouses on Site to Rear of Heatherlea, Main Street, Tomintoul
 - Unaccompanied site inspection carried out by the MLRB on 24 June 2016
 - Date of decision notice: 11 July 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 30 June 2016
- 1.3 The MLRB was attended by Councillors C. Tuke (Chair), G. Cowie 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 to erect 4 dwellinghouses on Site to Rear of Heatherlea, Main Street, Tomintoul.
- 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 24 June 2016, Mrs Gordon, as Planning Adviser to this review, advised that Members of the MLRB 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 1 and 3 of the Cairngorms National Park Local Development Plan 2015 as the erection of 4 dwellinghouses within the proposed site would result in overdevelopment of the site, to the detriment of the character and appearance of the surrounding streetscape and resulting in an unacceptable overbearing impact on the surrounding residential properties.
- 2.6 Advising that the proposed development does not incorporate adequate on-site vehicular parking to the standard required by the Roads Authority, the Planning Adviser noted that the proposal, if permitted, would therefore be likely to lead to an undesirable increase in on street parking to the detriment of road safety.
- 2.7 Referring to the Applicant's Grounds for Review, the Planning Adviser advised that the Applicant had stated their opinion that the reasons for refusal lack clarity and relate to unspecified impacts. They advised that a planning and design statement, in addition to indicative plans detailing maximum footprint of the buildings and the potential maximum of built development were provided and stated their belief that the indicative drawings appear to have penalised the Applicant. Noting that the footprint illustrates the potential maximum of built development, they advised that the footprint ratio is better than some surrounding developments and could be controlled by condition.
- 2.8 The Applicant advised that the building height is indicative and the exact height of the building, roof or ridgeline can be specified by condition. They noted that the development to the north of the site is two storey and stated their belief that it is considered 2 storey can be accommodated on this site. Advising that the layout of the plots taking up the width of the site is consistent with an adjacent development, the Applicant noted that the drawings are indicative and exact window positioning can be specified by a condition. The Applicant acknowledged that there will be a change to the area but stated that they not considered the scale or magnitude of change to justify refusal as there are mechanisms to deal with any perceived concerns. They noted there was no identifiable adverse impact on the neighbouring residential amenity from the concerns expressed in the Appointed Officer's report of handling.
- 2.9 Addressing the reasons for refusal relating to insufficient parking, the Applicant noted that the report of handling states that, due to issues in relation to the principle of development, the shortfall of parking spaces was not raised with the Applicant, although it represents a further reason for refusal. They advised that the issue could be overcome with the provision of further car parking on the frontage of the site, which is a characteristic of the surrounding street layout. The Applicant stated their belief that the parking requirements

could be secured by condition as this is an application in principle and should not have featured within the decision notice.

- 2.10 The Planning Adviser noted that a further representation had been received from The Moray Council's Transportation section which advised that The Moray Council's parking standards for 2 bedroom houses is 2 spaces per dwelling which meant a total of 8 spaces are required for the proposal. They noted that there was an error in the original response to the planning application which set out spaces for flats, rather than houses, and referred to 6 spaces. Referring to the layout plan provided, Transportation advised that they had concluded there is insufficient space on the site frontage to provide the required number of parking spaces and therefore this could not be conditioned.
- 2.11 In response to further representations, the Applicant had stated their opinion that Transportation had significantly changed the goal posts with the requirement for 8 spaces as opposed to 6. They advised that they had not had the opportunity to gain a full understanding of the issues surrounding the reason for refusal regarding parking and noted that they had incurred expense and pursued an appeal based on the requirement of 6 spaces. They stated their belief that this is considered unreasonable.
- 2.12 The Applicant challenged the application of Policy T5: Parking Standards as The Moray Council's parking standards are not applicable to developments within the Cairngorms National Park. Referring to Planning Advice Note 75 'Planning for Transport', the Applicant stated the parking must be handled sensitively and adapt to particular local circumstances. The Applicant noted that Designing Streets references a more flexible approach to encourage street design that engenders place and quality.
- 2.13 Councillor Cowie, having had the opportunity to visit the site and consider the Applicant's Grounds for Review, stated that he did not believe 8 parking spaces could fit within the site. He advised 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 16/00241/PPP.
- 2.14 The Chair, stating his belief that the proposal was not an overdevelopment of the site, queried whether the MLRB could apply a condition that 8 parking spaces must be provided. In response, the Planning Adviser referred to the further representation from Mrs D. Anderson, Senior Engineer (Transportation) and noted Transportation's conclusion that there was insufficient space on the site and therefore parking provision could not be conditioned.
- 2.15 Councillor Shepherd stated that he was of the same opinion as Councillor Cowie and seconded his motion.
- 2.16 The Chair stated that he believed the proposal was contrary to Policy T5 of the Moray Local Development Plan 2015 only as he did not believe the proposal was an overdevelopment of the site. Councillors Cowie and Shepherd agreed to amend their motion according.
- 2.17 Thereafter, the MLRB agreed to dismiss the review and uphold the Appointed Officer's decision, on the grounds that the proposal was only contrary to

Policy T5 of the Moray Local Development Plan 2015, to refuse planning permission in respect of Planning Application 16/00241/PPP.

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.