



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR156
 - Application for review by Mr R. Wiles, c/o Mrs C. McKay, Wittets Ltd against the decision of an Appointed Officer of The Moray Council
 - Planning Application 15/02106/PPP to erect dwellinghouse on Land Adjacent to Bracany, Bracany Park, Longmorn
 - 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 a dwellinghouse on land adjacent to Bracany, Bracany Park, Longmorn.
- 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 Moray Local Development Plan (MLDP) 2015 Policies IMP1: Developer Requirements, T2: Provision of Access, H5: Development within Rural Groupings, E4: Trees and Development and ER2: Development in Woodlands and the Fogwatt Settlement Statement. She advised that the proposed development would involve the intensification of use of an existing vehicular access onto A941 Main Road Fogwatt where forward visibility is restricted by the vertical and horizontal alignment of the road and by adjacent obstructions and would be likely to give rise to conditions detrimental to the road safety of road users.
- 2.6 Due to the shape and landlocked nature of the site, the Planning Adviser noted that any reasonably sized house would result in a cramped form of development and hence would have a detrimental impact on the character of the overall setting of the rural grouping. She advised that this detrimental impact would be added to by the loss of an undeveloped area that contributes to the relatively low density character of the area. She further advised that the removal of the trees would have an adverse impact on the natural and visual amenity value of the site.
- 2.7 Referring to the Applicant's Grounds for Review, the Planning Adviser advised that the Applicant had stated that the land proposed for development has been used as general amenity and at no time has the area been available for use by the public. They advised that the house can be designed to prevent overlooking into neighbouring gardens and the main trees providing screening are shown as being retained.
- 2.8 Referring to records of accidents in this location, the Applicant advised that the data show that accidents were both caused by driver error and therefore identifying this junction within the development plan is unjustified, particularly when so many dwellings already have approval to use this junction and a 50 mph speed restriction has been applied.
- 2.9 The Applicant advised that the site is not landlocked, has an existing access and has been shown to be able to be developed without being cramped. They stated that the character of the setting is high density development where dwellings are surrounded by other dwellings. Stating their opinion that the land does not have any public status, the Applicant advised that there was no requirement for this to be retained for amenity when other dwellings were approved.
- 2.10 Referring to the removal of trees, the Applicant advised that there is no tree preservation order on any trees and that the removal of trees does not require planning permission. They stated their opinion that it is unjustified that

removal is seen as a reason for refusal when this is private land and not public amenity.

- 2.11 The Planning Adviser noted that a further representation had been received from The Moray Council's Transportation section which advised that the Applicant's Grounds for Review includes accident data for Neil Miller's Garage access only and does not consider the other accidents in the vicinity of the site, which indicate the wider pattern of accidents involving vehicles making turning manoeuvres. They noted that there is a history of accidents involving vehicles turning right into side roads/accesses on this stretch of the A941.
- 2.12 In response to the further representation, the Planning Adviser noted that the Applicant had stated that the two accidents at Neil Miller's access could have occurred at any junction and identifying it within the development plan is unjustified. They acknowledged however that vehicles waiting to turn right into the access do not have a dedicated right turn lanes and sit on the carriageway whilst waiting to make their manoeuvre.
- 2.13 Councillor Cowie, having had the opportunity to visit the site and consider the Applicant's Grounds for Review, expressed concerns regarding the safety of road users and risk of flooding. 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 15/02106/PPP.
- 2.14 The Chair expressed sympathy with the Applicant in that he did not believe the site is land locked. He further stated his belief that the proportion of increase in traffic would not constitute an intensification of the existing vehicular access. Referring to Policy IMP1, the Chair agreed with the Appointed Officer that proposal would have a detrimental impact of the relatively low density character of the area and seconded Councillor Cowie's motion.
- 2.15 Councillor Shepherd stated that he was of the same opinion as Councillor Cowie and the Chair.
- 2.16 Thereafter, the MLRB agreed to dismiss the review and uphold the Appointed Officer's decision to refuse planning permission in respect of Planning Application 15/02106/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.