



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR163
 - 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 16/00660/APP to erect dwellinghouse with separate double garage at College of Roseisle Neuk, Wester Buthill, Roseisle
 - Unaccompanied site inspection carried out by the MLRB on Friday 19 August 2016
 - Date of decision notice: 06 September 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 25 August 2016.
- 1.3 The MLRB was attended by Councillors C. Tuke (Chair), G. Coull (Deputy 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 with separate double garage at College of Roseisle Neuk, Wester Buthill, Roseisle.
- 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 19 August 2016, Mr Henderson, 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 H7: New Housing in the Open Countryside and IMP1: Developer Requirements of the Moray Local Development Plan (MLDP) 2015 and the associated Supplementary Planning Guidance 'Housing in the Countryside'. He stated that, added to the existing consents for two houses immediately to the south and the other houses permitted in the vicinity, the proposals would result in an unacceptable build-up of housing development in the area which would begin to detrimentally impact on the rural character of the area.
- 2.6 Referring to the Applicant's Grounds for Review, the Planning Adviser advised that the Applicant had stated their belief that the dwelling would not be overtly prominent and the site is not on a skyline or artificially elevated ground, or in open settings such as the centre of a field. Noting that the site would have a backdrop of mature trees, the Applicant advised that they would be willing to carry out the required area of compensatory planting.
- 2.7 Stating that the area is characterised by small clusters of housing and individual houses, the Applicant advised that if the proposal were to be approved then it would form a cluster of three houses which would be consistent with housing groupings nearby. Noting that there are areas of large trees and fields between and around these clusters to ensure a rural dynamic is maintained, the Applicant stated that it was difficult to see how the rural character would suffer any detrimental impact with the introduction of this proposal. They advised that the site would be defined and bounded by at least 50% existing boundaries.
- 2.8 The Chair, having had the opportunity to visit the site and consider the Applicant's Grounds for Review, stated that he believed the proposal was in a well screened area, which contains 5 adjacent approved sites, with trees throughout and therefore complied with policies. According, he moved that the review be upheld and planning permission be granted in respect of Planning Application 16/00660/APP.
- 2.9 In response to advice from the Planning Adviser, the Chair moved that planning permission be granted subject to standard and consultees conditions and additional conditions regarding compensatory planting and that the first 15m of access from the public road be constructed to The Moray Council specification and surfaced with bituminous macadam.
- 2.10 Councillor Cowie requested that a condition be included that the

improvements to access and construction of lay-by be provided prior to the commencement of development. The Chair agreed to amend his motion accordingly.

2.11 Councillor Coull stated that he was of the same opinion as the Chair and seconded his motion.

2.12 There being one otherwise minded, the MLRB agreed to uphold the review and grant planning permission in respect of Planning Application 16/00660/APP, subject to the following conditions:-

- (i) standard and consultees;
- (ii) compensatory planting;
- (iii) that the first 15m of access from the public road be constructed to The Moray Council specification and surfaced with bituminous macadam;
and
- (iv) that improvements to access and the construction of a lay-by be provided prior to the commencement of development.

Paul Nevin
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. Notwithstanding the submitted details, prior to any development works commencing details shall be submitted to and approved in writing by the Council, as Planning Authority, in consultation with the Council, as Roads Authority, regarding:-
 - (i) the provision of a visibility splay 4.5 metres by 215 metres to the east and 2.9 metres by 215 metres to the west at the access onto the public road (C25e Alves-Roseisle Road) in both directions; and
 - (ii) a schedule of maintenance for the splay area; and
 - (iii) thereafter, prior to any development works commencing (except for those works associated with the provision of the visibility splay), the visibility splay shall be provided in accordance with the approved drawing; and
 - (iv) 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 ensure acceptable infrastructure to access the development and to enable drivers of vehicles entering or exiting the development 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. Notwithstanding the submitted details, prior to any development works commencing details shall be submitted to and approved in writing by the Council, as Planning Authority, in consultation with the Council, as Roads Authority, regarding:-
 - (i) The provision of a bin storage area and lay-by for refuse collection vehicles adjacent to the access onto the C25e Alves-Roseisle Road); and
 - (ii) thereafter the refuse collection area and bin store shall be provided in accordance with the approved details prior to the occupation or completion of the dwellinghouse, whichever is the sooner.

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

3. No development shall commence until:-
 - (i) a detailed drawing (scale 1:500) showing the location and design of a passing place on the section of the private road leading to the site (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 ensure acceptable infrastructure to access the development with the minimum interference to the safety and free flow of traffic on the public road.

- 4. Prior to the commencement of development, the width of the Private Road which joins the C25E Alves – Roseisle Road shall be 5.5m for the first 15 metres measured from the edge of the public road and have a maximum gradient of 1:20 measured for the first 5.0m from the edge of the public road.

Also, the first 15m of the Private Road, measured from the edge of the public road, shall be constructed to The Moray Council specification and surfaced with bituminous macadam. The radii at the junction of the Private Road onto the public road shall be 7.6m and need not be kerbed.

Reason:- To ensure acceptable development that does not create any hazard to road users in the interests of road safety.

- 5. No water shall be permitted to drain or loose material be carried onto the public footway/carriageway.

Reason:- To ensure hazardous are not created on the public road.

- 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 private road to allow visiting service vehicles to park clear of the road and act as an informal passing place. 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 private road and enable vehicles on the private road to pass each other in the interests of road safety.

- 7. 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.

- 8. 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 road.

9. No development shall commence until details have been submitted to the Council, as planning authority, regarding details of a woodland planting scheme (the Replanting Scheme) within Moray to compensate, in this case, the removal of 0.2114ha of existing woodland from the site in order to accommodate the development. The Replanting Scheme details shall:-
- (i) include the specifications for:-
 - (a) on-site replanting;
 - (b) off-site compensatory planting;
 - (c) tree maintenance and protection to established planting (including Deer Management); and
 - (ii) comply with the requirements set out in the UK Forestry Standard (Forestry Commissions, 2011. ISBN 978-0-85538-830-0) and the guidelines to which it refers and include:-
 - (a) details of the location of the area to be planted;
 - (b) details of land owners and occupiers of the land to be planted;
 - (c) the nature, design and specification of the proposed woodland to be planted;
 - (d) details of all necessary consents for the Replanting Scheme and timescales within which each shall be obtained;
 - (e) the phasing and associated timescales for implementing the Replanting Scheme;
 - (f) proposals for the maintenance and establishment of the Replanting Scheme, including annual checks; protection from predation; replacement planting; fencing; ground preparation; and drainage, etc.

Thereafter, the development shall be implemented in accordance with the approved Replanting Scheme details, including the phasing and timescales as set out therein.

Reason:- Details of the matter specified are lacking from the submission and to ensure an acceptable form of development where replacement or compensatory planting is provided where the development results in a loss of woodland.

10. Unless otherwise agreed in writing with the Planning Authority, the glazing in the windows and patio doors of the Lounge, Kitchen Dining Family Room, and all bedrooms shall consist of two panes of normal float glass of 6mm and 8mm thickness, separated by a 20mm wide cavity. The sound reduction performance of the windows and patio doors to the Lounge, Kitchen Dining Family Room and all bedrooms shall be equal to, or better than, that stated in Section 4.11 of the Noise Impact Assessment supporting document of 31st May 2016 by Charlie Fleming Associates, Acoustical Consultants and Noise Control Engineers, 5 Saltpans, Charlestown, Fife, KY11 3EB and titled "Report on Air Traffic Noise For Strathdee Properties At College of Roseisle Neuk, Buthill, Roseisle, Kinloss."

Reason:- To protect against aircraft noise nuisance.

11. Acoustically attenuated ventilators shall be installed in the windows of the Lounge, Kitchen Dining Family Room and all bedrooms of the house. These should have an element normalised level difference $D_{n,e}$ of at least 35dB in the 500Hz octave band. If two trickle ventilators are to be installed in a given room, the $D_{n,e}$ should be 38dB, and subsequently the $D_{n,e}$ should be 41 dB if

four trickle ventilators are to be installed, in accordance with Section 4.10 of the Noise Impact Assessment supporting document dated 31st May 2016 by Charlie Fleming Associates Limited, Acoustical Consultants and Noise Control Engineers, 5 Saltpans, Charlestown, Fife and titled "Report on Air Traffic Noise For Strathdee Properties At College of Roseisle Neuk, Buthill, Roseisle, Kinloss."

Reason:- To protect against aircraft noise nuisance.

ADDITIONAL NOTES FOR INFORMATION OF THE APPLICANT

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

The Transportation Manager has commented that:-

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

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 applicants 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 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.

Manager (Development Management) has commented that:-

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.

Prior to the commencement of development Scottish Water shall be liaised with and the requirements fulfilled.

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.