



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR161
 - Application for review by Mr David Nelmes, c/o Mr Craig Mackay, CM Design against the decision of an Appointed Officer of Moray Council
 - Planning Application 16/00344/APP to erect a single storey office building on Land 170m Northwest of Damhead Farm, Kinloss [Ward 8: Forres]
 - Unaccompanied site inspection carried out by the MLRB on 19 August 2016
 - Date of decision notice: 23 November 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 on the following occasions:- 25 August 2016; 29 September 2016 and 27 October 2016.
- 1.3 On 25 August 2016, the MLRB was attended by Councillors Councillors C. Tuke (Chair), G. Coull (Deputy Chair), G. Cowie and R. Shepherd. On 29 September 2016, Councillors Councillors C. Tuke (Chair), G. Cowie, M. McConachie, K. Reid and R. Shepherd were in attendance. On 27 October 2016, Councillors C. Tuke (Chair), G. Coull (Deputy Chair), G. Cowie, M. McConachie, K. Reid and R. Shepherd were in attendance.

2. MLRB Consideration of Request for Review

25 August 2016

- 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 single storey office building on Land 170m Northwest of Damhead Farm, Kinloss.

- 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 As a preliminary matter, the Legal Adviser advised that the Applicant had included information relating to the access from the B9089 which was not before the Appointed Officer during the determination of the planning application subject to review and could therefore be deemed as new evidence by the MLRB. He stated that he would interject if the matter of access became applicable to the MLRB's decision.
- 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 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.
- 2.6 The Planning Adviser advised the MLRB that the application had been refused on the grounds that the proposal was contrary to Policies ED7: Rural Business Proposals, EP10: Foul Drainage, E9: Settlement Boundaries, T2: Provision of Access and IMP1: Developer Requirements of the Moray Local Development Plan (MLDP) 2015. He noted that the proposal was for a permanent building immediately out-with the settlement boundary of Kinloss thereby compromising the extent and limit of development permitted under the current local development plan period for the defined settlement of Kinloss. Stating that the proposal would further damage the definition between the built settlement of Kinloss and the surrounding open countryside, he advised that no locational need had been established and the site and Kinloss is sufficiently close to alternative appropriately serviced business sites and other suitable properties.
- 2.7 Advising that the proposed development would involve the intensification of use an access onto B9089 Kinloss-Burghead Road, the Planning Adviser noted that visibility is restricted by the alignment of the road, hedges/trees/vegetation and an adjacent boundary fence, and would be likely to give rise to conditions detrimental to the road safety of road users. He advised that the proposed business development would not be connected to the public sewer despite its close proximity to the settlement of Kinloss.
- 2.8 Referring to the Applicant's Grounds for Review, the Planning Adviser advised that the Applicant had stated that the application relates to the desire to expand a Kinloss business by relocating its activities to a small parcel of waste ground which is located marginally outwith the settlement boundary. They advised that the proposal fully complies with Policy ED7 as it can be integrated into its countryside setting without difficulty and that a locational need has been established and no other facilities are available.
- 2.9 Stating that the proposal could be deemed an acceptable departure to Policy

E9 due to similar property nearby and marginal infringement, the Applicant advised that any concerns regarding town and countryside distinction can be dismissed as the land is narrow and would never accommodate development beyond what is being proposed. They stated their belief that the development would not present a negative impact in any way and would enhance an area of wasteland and decay.

- 2.10 Referring to access, the Applicant advised that a suitable and safe access to the development can be achieved and that they have the approval of the landowners and as such the matter could be dealt with by a suspensive condition.
- 2.11 Councillor Coull, having had the opportunity to visit the site and consider the Applicant's Grounds for Review, stated that he believed the Applicant had submitted a strong case and that Policy ED7 could be met with a suspensive condition regarding access. He advised his belief that the proposal complied with Policies IMP1 and EP10 and that it was an acceptable departure from Policy E9 as the site lay just outside the boundary. Accordingly, he moved that the review be upheld and planning permission be granted in respect of Planning Application 16/00344/APP.
- 2.12 At this juncture, the Legal Adviser stated that that the Applicant, within their response - dated 8 August 2016 - to Transportation's further representation, had included letters from landowners in respect of the required visibility splay which was not before the Appointed Officer during the determination of the planning application subject to review and could therefore be deemed as new evidence by the MLRB. He advised that the MLRB were required to determine whether the information constituted new evidence and, if so, whether it was a material consideration. He further advised that should the MLRB agree that the information was new evidence which was a material consideration, then the MLRB would be prohibited from determining the review at that meeting and would require to request representations from relevant parties, in this case the Applicant and Transportation.
- 2.13 The Chair, referring to Transportation's further representation, queried whether the MLRB required to defer when it appeared that the letters on pages 87 to 92 was the proof of providing the visibility splay requested by Transportation. In response, the Legal Adviser stated that the evidence has not been presented to Transportation and, therefore, should the MLRB agree that the information was new evidence which was a material consideration, then the MLRB would be prohibited from determining the review at that meeting and would require to request representations from relevant parties, in this case the Applicant and Transportation.
- 2.14 In response to the advice from the Legal Adviser, the Chair, stating his belief that the MLRB were in a position where Policy T2 remained the only policy to be addressed, moved that new and material evidence had been introduced and that the MLRB request representations from relevant parties in accordance with the Regulations.
- 2.15 Councillor Coull withdrew his motion.
- 2.16 There being no one otherwise minded, the MLRB agreed:-
 - (i) that new and material evidence had been introduced by the Applicant within their response, dated 8 August 2016, to Transportation's further

representation; and

- (ii) to defer consideration of Case LR161 and request representations from relevant parties, namely the Applicant and Transportation, on the new and material evidence.

29 September 2016

- 2.17 Councillors McConachie and Reid, having not taken part in the site visit nor any of the previous discussions of the case, took no part in the relevant discussion or decision.
- 2.18 Under reference to paragraph 4(a) of the minute of this Body dated 25 August 2016, the 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 a single storey office building on Land 170m Northwest of Damhead Farm, Kinloss.
- 2.19 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.
- 2.20 The Chair advised the meeting that some members of the MLRB had received an email from the Applicant's Agent outwith the procedure and moved that a short adjournment be taken to seek further advice.
- 2.21 On resumption, the Chair advised that the MLRB were unable to consider the contents of the email received and moved that the case be deferred to a hearing session to consider the specified matter of access, in terms of Policies T2 and ED7, and that the Applicant (or their Agent) and a representative of The Moray Council's Transportation department be invited to appear, after which the MLRB would consider and, if so disposed, determine the review.
- 2.22 There being no one otherwise minded, the MLRB agreed to defer consideration of Case LR161 to a hearing session to consider the specified matter of access, in terms of Policies T2 and ED7, and that the Applicant (or their Agent) and a representative of Moray Council's Transportation department be invited to appear, after which the MLRB would consider and, if so disposed, determine the review.

27 October 2016

- 2.23 Councillors Coull, McConachie and Reid, having not taken part in the site visit nor any of the previous discussions of the case, took no part in the relevant discussion or decision.
- 2.24 Under reference to paragraph 3 of the Minute of this Body dated 29 September 2016, the 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 a single storey office building on Land 170m Northwest of Damhead Farm, Kinloss.
- 2.25 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.

- 2.26 At its meeting on 29 September, the MLRB agreed to defer consideration of Case LR161 to a hearing session to consider the specified matter of access, in terms of Policies T2 and ED7, and that the Applicant (or their Agent) and a representative of Moray Council's Transportation department to be invited to appear, after which the MLRB would consider and, if so disposed, determine the review. Hearing Statements from the Applicant and Moray Council's Transportation department were provided as Appendix 6 and 7 of the report respectively.
- 2.27 The Chair welcomed those present and advised them that, in terms of Section 1 (4) of Schedule 1 of the Regulations 2013, all parties and the MLRB were reminded that discussion during the hearing session was restricted to the specified matter of access, in terms of Policies T2 and ED7, and any discussion on other matters would not be allowed.
- 2.28 The MLRB noted that Mr C. Mackay, Managing Director and Principal Designer (CM Design) and Mr D. Nelmes (Applicant) were in attendance and representing the Applicant and that the Senior Engineer (Transport Development) was in attendance representing Moray Council's Transportation department.
- 2.29 Mr Mackay and Mr Nelmes, representing the Applicant, addressed the meeting on the specified matter, as set out in their Hearing Statement, and advised that they had additional documents for the MLRB's consideration, if disposed, that they believed allowed the formation of a visibility splay to the satisfaction of the Council's Transportation department.
- 2.30 There were no questions to Mr Mackay and Mr Nelmes from the MLRB.
- 2.31 The Senior Engineer (Transport Development), addressed the meeting on the specified matter, as set out in her Hearing Statement, and thereafter responded to questions from the MLRB.
- 2.32 On the invitation of the Chair, Mr Mackay and Mr Nelmes took the opportunity to summarise their Hearing Statement and requested that the MLRB consider the additional documents in relation to the visibility splay.
- 2.33 The Chair stated that if the Applicant had evidence that would allow for a visibility splay to be achieved then this should be presented to all parties present and moved that there be a short adjournment to consider the information.
- 2.34 In response, Mr Nevin, as Legal Adviser to this review, queried whether the information was specifically in relation to the specified matter of access. Mr Mackay confirmed this was the case and that the information contained a plan of the visibility splay, amended to 1:1000 scale, that provided further information on the owners of the respective land and letters from those owners confirming their agreement to meeting the splay requirements.
- 2.35 Thereafter, the MLRB agreed to take the new information into account and took a short adjournment to allow all parties to consider the documentation.

- 2.36 On resumption and the invitation of the Chair, the Senior Engineer (Transport Development) advised that, having reviewed the documents submitted by the Applicant, the information provided was acceptable and recommended that should the MLRB wish to uphold the review then a suspensive condition be applied that the formation of the visibility splay be supplied prior to commencement of development.
- 2.37 In accordance with the agreed procedure, the Clerk, Mrs Gordon and Mr Nevin, as Planning and Legal Advisers respectively to this review, advised that they had no comments or clarification to make in light of the submissions.
- 2.38 The Chair stated that he believed that the proposal now complied with Policies T2 and ED7 and moved that the specified matter of access had now been resolved and that if the MLRB were minded to uphold the review then a suspensive condition relating to the provision of a visibility splay and maintenance schedule prior to commencement of development be applied.
- 2.39 This was unanimously agreed by the MLRB and it proceeded to determine the review.
- 2.40 The Chair, referring to Policy EP10, suggested that a suspensive condition be applied that the proposal connects to the public sewer system as Kinloss was a settlement of less than 2000 population. In response, the Planning Adviser advised against the use of a suspensive condition as it was not reasonable in the circumstances due to the lack of information within the Applicant's submissions.
- 2.41 Thereafter, the Chair stated that he believed the proposal complied with Policies T2 and EP10, subject to suspensive conditions, and that it was an acceptable departure from Policies ED7 and ED9 on the grounds that the proposal was almost invisible from the road and there was no negative amenity impact. Accordingly, he moved that the review be upheld and planning permission granted in respect of Planning Application 16/00344/APP, subject to standard/consultee conditions and suspensive conditions that the following are provided prior to commencement of development:-
- (i) a visibility splay and maintenance schedule; and
 - (ii) connection to the public sewer system.
- 2.42 Councillor Cowie stated that he was of the same opinion as the Chair and seconded his motion.
- 2.43 In response to the Chair's motion, the Planning Adviser referred the MLRB to page 43 of the Moray Local Development Plan 2015 in respect of the justification of Policy E9 and advised that the MLRB should give full consideration to all aspects of the policy.
- 2.44 The Chair advised that the proposal did not constitute ribbon development, had minimal visual impact and maintained a clear distinction between the built up area and the countryside by the surrounding vegetation.
- 2.45 There being no one otherwise minded, the MLRB unanimously agreed to uphold Case LR161 and grant planning permission in respect of Planning Application 16/00344/APP, subject to standard/consultee conditions and

suspensive conditions that the following are provided prior to commencement of development:-

- (i) a visibility splay and maintenance schedule; and
- (ii) connection to the public sewer system.

Paul Nevin
Senior Solicitor (Property & Contacts)
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, 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. Prior to the commencement of development, at the access onto the public road a visibility splay of 4.5 metres by 120 metres to the west and 4.5 metres by 160 metres to the east shall be provided, clear of any obstruction above 0.26 metres. All vegetation within this splay must be removed and boundary fences set back to the position behind the visibility splay. The splay shall be maintained thereafter.

Reason:- In order to ensure vehicle safety entering and leaving the access to the public road.

2. The house shall be connected to the public sewer system prior to commencement of development.

Reason:- In order to ensure adequate foul drainage provision.

ADDITIONAL NOTES FOR INFORMATION OF THE APPLICANT

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

The Environmental Health Manager (Development Services) has commented that:-

The premises will require to comply with the Health and Safety at Work etc Act 1974 and the Workplace (Health, Safety and Welfare) Regulations 1992.

The Environmental Health Section of Moray Council would be the enforcing authority in the premises.

LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT

The following plans and drawings form part of the decision:-

Reference	Version	Title
		Access lay-by/passing place
WML 09/15/001		Location Plan
WML 09/15/002		Site Plans
WML 09/15/003		Ground Floor Plans
WML 09/15/004		Elevations
WML 09/15/004		Section Details
160073.NELMES.01PP		Visibility Splay Proposals

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 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 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.

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:

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2. The full name and address of the landowner, if a different person:

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3. Where a site agent is appointed, their full name and contact details:

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4. The date of issue and reference number of the grant of planning permission:

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Please return this form, duly completed to: - 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.

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: - 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.