



## MORAY LOCAL REVIEW BODY

### DECISION NOTICE

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Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR168
  - Application for review by Mr & Mrs Mark Davies, c/o Mr Colin Keir, Plans Plus against the decision of an Appointed Officer of Moray Council
  - Planning Application 16/01139/APP to erect a dwellinghouse on Plot Adjacent to Eastwood, Calcots, Elgin [Ward 4: Fochabers Lhanbryde]
  - Unaccompanied site inspection carried out by the MLRB on 26 October 2016
  - Date of decision notice: 24 November 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 27 October 2016.
- 1.3 The MLRB was attended by Councillors G. Coull (Deputy Chair), G. Cowie, M. McConachie, K. Reid and R. Shepherd.

#### **2. MLRB Consideration of Request for Review**

- 2.1 In the absence of the Chair, Councillor Coull, in his role as Deputy Chair of the Body, assumed the position of Chair.
- 2.2 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 planning permission to erect a dwellinghouse on Plot Adjacent to Eastwood, Calcots, Elgin.
- 2.3 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.

- 2.4 In response to the Chair's query as to whether the MLRB had sufficient information to determine the request for review, Councillor Reid noted that the Applicant had suggested a willingness to amend their design of the gable and queried whether it was possible to request details of this from the Applicant.
- 2.5 The Chair advised that an amended design would constitute new information and trigger the need for the review to be processed as such. He noted a previous case where the MLRB had requested an amended design and that the process was long and drawn out for the Applicant and as such it may be quicker for the Applicant to reapply with an amended design.
- 2.6 In response, Mrs Scott, as Legal Adviser to this review, advised that whilst it may not necessarily be a quicker process for the Applicant to reapply, it would be a cleaner process as the MLRB would be considering a different proposal which would then be subject to neighbour and consultee notification.
- 2.7 Thereafter, the MLRB agreed that it had sufficient information to determine the request for review.
- 2.8 With regard to the unaccompanied site inspection carried out on Wednesday 26 October 2016, Mrs MacDougall, as Planning Adviser to this review, advised that Members of the MLRB were shown the site where the proposed development would take place and provided with a summary of the reasons for refusal and the Applicant's Grounds for Review.
- 2.9 The Planning Adviser advised the MLRB that the application had been refused on the grounds that the proposal was contrary to the provisions of Policies H7 *New Housing in the Open Countryside*, T2 *Provision of Access* and IMP1 *Developer Requirements* of the Moray Local Development Plan 2015. She noted that the proposed development would result in an intensification of use an existing access where the visibility is restricted by the adjacent building, fences and trees, and would be likely to give rise to conditions detrimental to the road safety of road users contrary to the provisions of Policies T2 and IMP1.
- 2.10 Referring to the gable design, the Planning Adviser advised that the proposal incorporates a gable design which does not comply with the gable eaves formula required by Policy H7 and therefore represents an inappropriate form of development in the countryside.
- 2.11 Referring to the Applicant's Grounds for Review, the Planning Adviser advised that the Applicant had stated that there is a history of safety at the existing access and this proposal would create a reduction in traffic in comparison to previous years. They advised that to make the existing access safer, they had applied to move the existing driveway from the north side of Eastwood to the south side to avoid traffic entering and leaving on the corner. The Applicant noted that the access has been designed and constructed in accordance with The Moray Council's specification and had been issued with a completion certificate.

- 2.12 Noting that any specifications which do not meet Council's requirements regarding the construction of the bungalow can be amended to suit, as was done with the design and construction of the access, the Applicant advised that the drive would, at the most, accommodate 2 extra cars leaving in the morning and returning in the evening. They noted that this, given the history and previous use of the access, was a massive reduction and cited various examples of historic use which would be a higher level of usage than proposed.
- 2.13 The Applicant advised that from 2009 to date there has never been an incident and noted that traffic will never be as heightened as it has been. Referring to stopping distances, the Applicant noted that the stopping distance at 60mph was 73m according to the DVLA and that the visibility at the access exceeds this. The Applicant advised that most vehicles travel at slower speeds than 60mph due to the nearby corner and noted that they had suggested traffic calming measures which were refused by the Council.
- 2.14 In concluding, the Applicant stated that other accesses and permitted development proposals have poor visibility and queried why, if there is a road safety issue under current guidelines, development would be permitted due to an applicant having historic permission.
- 2.15 Councillor McConachie noted that the Applicant was willing to amend the design of the gable end and stated that the difference was only 0.6m. In response, the Planning Adviser advised that the pitch of a gable required to be proportionate to the house and the gable eaves formula required by Policy H7 ensured that the design was in harmony and could easily be absorbed into the surrounding landscape.
- 2.16 Having had the opportunity to visit the site and consider the Applicant's Grounds for Review, Councillor Cowie stated that he agreed with the Appointed Officer and had concerns in respect of the visibility splay. Accordingly, he moved that the review be dismissed and the Appointed Officer's decision be upheld to refuse planning permission in respect of Planning Application 16/01139/APP.
- 2.17 Councillor Shepherd stated that he was of the same opinion as Councillor Cowie and seconded his motion.
- 2.18 Councillor Reid advised that she did not believe there was an intensification of use of the existing access due to its historical use but expressed concern in relation to the design which she believed could be addressed in an amended application. Accordingly, she moved that the review be dismissed and the Appointed Officer decision be upheld to refuse planning permission in respect of Planning Application 16/01139/APP, on the grounds that the proposal was contrary to Policy H7 only.
- 2.19 The Chair stated that he believed there to be limited, if any, intensification of use of the existing access but did not believe the design complied with Policy H7 and, as such, seconded Councillor Reid's amendment.

2.20 On a division, there voted:-

For the motion (2):- Councillors Cowie and Shepherd

For the amendment (3):- Councillors Reid, Coull and McConachie.

Abstentions (0)

2.21 Accordingly, the amendment became the finding of the MLRB and it agreed to dismiss Case LR168 and uphold the Appointed Officer's decision to refuse planning permission in respect of Planning Application 16/01139/APP, on the grounds that the proposal was contrary to Policy H7 only.

**Aileen Scott**  
**Legal Services Manager (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.