



## MORAY LOCAL REVIEW BODY

### DECISION NOTICE

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Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR174
  - Application for review by Mr and Mrs Burnett, c/o Mr Ian Sutherland McCook, 1 Architects Ltd against the decision of an Appointed Officer of Moray Council
  - Planning Application 16/01653/APP for proposed caretaker's house at Covesea Golf Course, Lossiemouth
  - Unaccompanied site inspection carried out by the MLRB on 25 January 2017
  - Date of decision notice: 24 February 2017
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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 26 January 2017.
- 1.3 The MLRB was attended by Councillors C. Tuke (Chair), G. Coull (Deputy Chair), G. Cowie and R. Shepherd.
- 1.4 Councillor Shepherd, having not taken part in the site visit, took no part in the relevant discussion or decision of this review and had left the meeting by this juncture.

#### 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 erect a caretaker's house at Covesea Golf Course, Lossiemouth.

- 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 Moray Local Review Body (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 25 January 2017, Mrs MacDougall, Planning Officer (Planning & Development), 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.
- 2.5 The Planning Adviser advised the MLRB that the application had been refused on the grounds that the proposal was Policy E8 *Coastal Protection Zone* of the Moray Local Development Plan 2015 as none of the exceptions provided for in the policy apply and the development would introduce a form of development that would be out of harmony in the sensitive coastal area involved.
- 2.6 Referring to the Applicant's Grounds for Review, the Planning Adviser advised that the Applicant had stated their belief that the rigid interpretation of Policy E8 is not producing a well-balanced outcome. Accepting that the site does not strictly meet the requirements of having an existing residential use, they advised that it does have a previous residential use evidenced by the historic photographs submitted with the planning application. The Applicant noted that the previous house sat right on the foreshore and part of the walls still remain, to level 3 and 4 of Policy H6, and therefore was a precedent of residential use on the site. Stating that there is no operational sense in recreating a house in this location being so far removed from the site entrances and unable to monitor security, the Applicant advised that this site is also likely to be deemed to be at risk of coastal flooding and detract from the amenity of the beach area.
- 2.7 The Applicant advised that there is an inherent contradiction between theoretical policy objectives and the practical situation on the ground. Noting that it is assumed that permission was given for the restaurant and storage shed on the grounds that these are temporary and could be removed if business was no longer operating, they advised that it is unlikely buildings would be demolished and that the reality is all buildings would likely remain in the landscape irrespective of whether they are residential or non-residential. The Applicant advised that there have been three fires on the site and the location is a target for thieves. Stating that an on-site presence is a deterrent to potential crimes, the Applicant advised that without someone living on site it does not make sense to invest in rebuilding the café/clubhouse. They stated that CCTV is not adequate in this location, would be vulnerable to damage and vandalism and would have blind spots.
- 2.8 In concluding, the Applicant stated that the proposal is barely visible from the foreshore and would not be visible from Covesea Village or any resident to the east or west. They stated that planning consent for a house will secure the

longevity of the business.

- 2.9 Councillor Coull, having had the opportunity to visit the site and consider the Applicant's Grounds for Review, stated that he believed the proposal complied with Policy E8 as there was an existing use on the site, albeit in a different location. He advised that the proposed location would be more sympathetic. Accordingly, he moved that that the review be upheld and planning permission be granted in respect of Planning Application 16/01653/APP, subject to standard and consultee conditions.
- 2.10 Councillor Cowie stated that he was of the same opinion as Councillor Coull and seconded his motion.
- 2.11 The Chair stated his belief that the proposal did not comply with Policy E8 but was an acceptable departure on the basis of security, economic development and that the visual impact was not unacceptable. Accordingly, he moved that that the review be upheld and planning permission be granted on the grounds that the proposal was an acceptable departure from Policy E8. There being no seconder, the Chair's amendment fell.
- 2.12 The Chair moved that an additional condition be applied that the first 15m of access from the B9040 be constructed to Moray Council specification and surfaced with bituminous macadam. Councillors Coull and Cowie agreed to amend their motion accordingly.
- 2.13 Thereafter, the MLRB agreed to uphold Case LR174 and grant planning permission in respect of Planning Application 16/01653/APP, subject to standard and consultee conditions and that the first 15m of access from the B9040 be constructed to Moray Council specification and surfaced with bituminous macadam.



**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.

## 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 details shall be submitted for the approval in writing of the Planning Authority, in consultation with the Roads Authority, to ensure no water or loose material shall be permitted to drain or be carried onto the public footpath/carriageway for the life time of the development.

**Reason:** To ensure acceptable infrastructure at the development access through the provision of details currently lacking and to ensure the safety and free flow of traffic on the public road and access to the site by minimising the road safety impact from extraneous material and surface water in the vicinity of the access.

2. Prior to any development works commencing:-
  - (i) a detailed drawing (scale 1:500 or 1:1000 which shall also include details to demonstrate control of the land) showing the visibility splay 4.5 metres by 215 metres, with all boundaries set back to a position behind the required visibility splay, and a schedule of maintenance for the splay area shall be submitted to and approved by the Council, as Planning Authority in consultation with the Roads Authority; and
  - (ii) the visibility splay shall be provided in accordance with the approved drawing prior to any works commencing (except for those works associated with the provision of the visibility splay); and
  - (iii) thereafter the visibility splay shall be maintained at all times free from any obstruction exceeding 0.6 metres above the level of the carriageway in accordance with the agreed schedule of maintenance.

**Reason:** To enable drivers of vehicles to have adequate forward visibility to see approaching traffic and for two vehicles to safely pass each other ensuring the safety and free flow of traffic on the public road.

3. The width of the vehicular access shall be as existing and have a maximum gradient of 1:20 measured for the first 5.0m from the edge of the public carriageway. The first 15m of the access track, measured from the edge of the public road, shall be constructed to Moray Council specification and surfaced with bituminous macadam.

**Reason:** To ensure acceptable infrastructure at the development access.

4. Two 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.

5. A minimum composite noise reduction of 31 dB shall be achieved by the external façade of the development, comprising the walls and roof structure, windows and ventilation of the dwelling. Unless otherwise agreed in writing with the Planning Authority, in consultation with the Environmental Health Manager, the sound insulation values of the façade elements shall be equal to or better than that stated in page 5, Table 2 of the noise impact assessment supporting document by Atmos Consulting, dated 31st May 2016, and titled "Environmental Noise Impact Assessment, 16/00555/APP, Caretaker's House at Covelea Links Golf Course, Technical Report 35800-01."

**Reason:** In order to protect from aircraft noise.

## **ADDITIONAL NOTES FOR INFORMATION OF THE APPLICANT**

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

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](http://www.sepa.org.uk/water/water_regulation/regimes.aspx)

Prior to the commencement of development Scottish Water shall be liaised with and an adequate and wholesome water supply provided to the house.

THE TRANSPORTATION MANAGER, DIRECT SERVICES 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](mailto: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.

No building materials/scaffolding/builder's skip shall obstruct the public road (including footpaths) without permission from the Roads Authority.

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.

## **LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT**

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

Reference	Version	Title
452.016		Location Plan
15.452/015		Site Plan
A-01		Perspective View Front
A-02		Perspective View Rear
A-03		Ground Floor Plan
A-04		First Floor Plan
A-05		Sections
A-06		Elevations (1)
A-07		Elevations (2)

## **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:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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: - Moray Council  
Development Management  
Development Services  
Environmental Services Department  
Council Office  
High Street  
Elgin IV30 1BX

Or email to: - [development.control@moray.gov.uk](mailto: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](mailto: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.**