



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR171
 - Application for review by Mr Gavin Strathdee, c/o Mr Stewart Reid, Strathdee Properties Ltd against the decision of an Appointed Officer of Moray Council
 - Planning Application 16/00989/APP for proposed erection of dwellinghouse with detached garage at Lower Wardend Side, Wardend, Birnie
 - Unaccompanied site inspection carried out by the MLRB on 25 January 2017
 - Date of decision notice: 27 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.

2. MLRB Consideration of Request for Review

- 2.1 Councillor Shepherd, having not taken part in the site visit, took no part in the relevant discussion or decision.
- 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 a planning application to erect a dwellinghouse with a detached garage at Lower Wardend Side, Wardend, Birnie.

- 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 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 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.
- 2.6 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 the Open Countryside* and IMP1 *Developer Requirements* of the Moray Local Development Plan 2015 where, because of its siting/location, the proposal would result in an additional dwelling contributing to an unacceptable build-up of new housing in an inappropriate ribbon development changing the rural character of the surrounding area. She further advised that, because of its siting/location in the area of Wardend, the proposal will contribute to build-up that could irreversibly alter the character of the locality.
- 2.7 Referring to the Applicant's Grounds for Review, the Planning Adviser advised that the Applicant had stated that the settlement pattern in the area is characterised by small clusters of housing and individual houses nestled among existing mature and semi mature tree growth in random patterns. They stated their opinion that the proposal would form a cluster of three dwellings and would blend into the existing settlement layout.
- 2.8 The Applicant advised that a ribbon pattern would be avoided given the random placement arrangement of the various houses without detrimental impacts and therefore the proposal will therefore not have a detrimental impact on the Wardend area. Stating their opinion that the additional house would have minimal impact on rural character as it integrated into the landscape, the Applicant noted that the proposal will be accessed by an existing track and there would be sufficient farmland around the cluster to maintain the rural dynamic. They advised that the rural character would be unchanged as the plot has been designed to be generous in size and to integrate with the existing settlement pattern which means it will not form any sense of urbanisation.
- 2.9 Referring to the existing borrow pit, the Applicant advised that this will integrate the dwelling into the landscape and would provide adequate enclosure. They further advised that the site will benefit from an upgraded and improved existing access track. In concluding, the Applicant stated that there was a demand for rural housing, no technical objections from statutory consultees and that the site is not overtly prominent and the house design meets the requirements of Policy H7.
- 2.10 Councillor Cowie, referring to the borrow pit that currently exists on the site, queried whether it would be reinstated or required planning permission. In

response, the Planning Adviser advised that the borrow pit did not have planning permission but was unsure if it was required.

- 2.11 Having had the opportunity to visit the site and consider the Applicant's Grounds for Review, Councillor Cowie stated he believed the proposal complied with Policy H7 as it was sensitively sited and moved that the review be upheld and planning permission be granted in respect of Planning Application 16/00989/APP.
- 2.12 The Chair stated that he believed the proposal complied with Policies H7 and IMP1 in that the site was isolated and that the proposal did not contribute to an unacceptable build-up in the surrounding area. Accordingly, he seconded Councillor Cowie's motion subject to the inclusion of standard and consultee conditions.
- 2.13 Councillor Cowie agreed to amend his motion to reflect the Chair's comments on policy and conditions.
- 2.14 Councillor Coull stated he was of the same opinion as Councillor Cowie and the Chair.
- 2.15 There being no one otherwise minded, the MLRB agreed to uphold Case LR171 and grant planning permission in respect of Planning Application 16/00989/APP, subject to standard and consultee conditions.



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 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 120 metres 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;
 - (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 0.26 metres above the level of the carriageway in accordance with the agreed schedule of maintenance.

Reason: To enable drivers of vehicles entering or exiting the site 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. 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.

3. Prior to any development works commencing the first 10m 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. 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 an acceptable development in terms of parking provision

and amenity of the area.

5. 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 acceptable development in the interests of road safety.

ADDITIONAL NOTES FOR INFORMATION OF THE APPLICANT

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

THE TRANSPORTATION SERVICE have 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.

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.

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 vegetation and the lowering of ground levels.

LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT

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

Reference	Version	Title
LOW-WARD-SIDE/PLANNING/0		Site and Location Plan
LOW-WARD-SIDE/PLANNING/02		Elevations and Floor Plans
LOW-WARD-SIDE/PLANNING/LP		Location Plan - NTS

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.