



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR177
 - Application for review by Mrs A. Jackson, c/o Mrs C. McKay, Wittets Ltd against the decision of an Appointed Officer of Moray Council
 - Planning Application 16/01627/PPP for proposed erection of dwellinghouse on Land Adjacent to Hillside House, Rothes
 - Unaccompanied site inspection carried out by the MLRB on Monday 27 March 2017
 - Date of decision notice: 17 April 2017
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Decision

The MLRB agreed to uphold the request for review and grant planning permission in principle, 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 in principle was considered by the MLRB at the meeting held on Thursday 30 March 2017.
- 1.3 The MLRB was attended by Councillors C. Tuke (Chair), G. Coull (Deputy Chair), G. Cowie, M. McConachie 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 a planning application to erect a dwellinghouse on land adjacent to Hillside House, Rothes.
- 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.

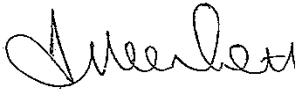
- 2.3 The MLRB agreed that it had sufficient information to determine the request for review.
- 2.4 With regard to the unaccompanied site inspection carried out on 27 March 2017, Mrs R. MacDougall, Planning Officer (Development Planning & Facilitation), as Planning Adviser to this review, advised that 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 contrary to Policies E9 *Settlement Boundaries*, H7 *New Housing in the Open Countryside* and IMP1 *Developer Requirements* of the Moray Local Development Plan 2015 and, as a material consideration, the associated Supplementary Planning Guidance 'Housing in the Countryside' where, because of its siting/location, it may make for a more overtly prominent house located in proximity to the A941 road, when compared with an earlier application (16/00262/PPP) on this site, and it would result in an unacceptable form of development.
- 2.6 In being located immediately outwith the settlement boundary of Rothes, the Planning Adviser advised that development on this site would no longer maintain the distinction between settlement and countryside, and in leading to an unwarranted expansion of Rothes, the proposal - in conjunction with other existing (new build) development to the north west - would result in the further, additional, build up and extension of the existing ribbon form of development already located off a layby off the A941. She further advised that, as a result, the proposal would detract from the existing rural character and appearance of the locality.
- 2.7 Referring to the Applicant's Grounds for Review, the Planning Adviser advised that the Applicant noted that planning permission for a single house on the site was approved in July 2009 and that this consent expired in July 2014. They advised that the application was made in February 2016 and refused in April 2016 due to changes to the settlement boundary made as part of the review of the Local Development Plan. Advising that the settlement boundary was altered hard to the proposed site, they stated planning consent was still valid when the Proposed Plan was approved in January 2014 and suggested that either extending the boundary hard to their approved site was not a concern in relation to planning policy or the existence of the live consent was overlooked.
- 2.8 The Applicant advised that the proposal had been submitted to take account of the reasons for refusal of the application made in February 2016. Stating that the house has been located away from the boundary to allow for additional tree planting, the Applicant noted that the design statement highlights an existing mature tree belt and a tree belt over 30m wide is shown to provide visual screening from the A941.
- 2.9 Referring to the refusal for the site being overtly prominent, the Applicant

advised that, when approaching Rothes along the A941, the house would be seen after passing three existing new build houses. Stating their belief that the proposal is far less prominent compared to the three approved houses, the Applicant noted that the site is lower than the road and has a large natural backdrop of mature trees. They also noted that additional tree screening to the A941 was being proposed.

- 2.10 The Applicant stated their opinion that there is sufficient existing tree screening and additional planting proposed over a significant width to visually separate the new proposed dwelling from any new development, therefore addressing concerns regarding the proposal being located immediately out with the settlement boundary.
- 2.11 Noting that planning permission was approved on the proposed site, and for the other three houses, when the settlement expansion was approved in the Proposed Plan, the Applicant advised that this proposal would have been seen as being acceptable at this stage in relation to the existing rural character and appearance of the locality. They stated their belief that the proposal offers greater visual separation between the grouping of four houses and the settlement boundary and development within OPP2 could be controlled within any application. They advised that the unlikely development of OPP2 would extend toward the settlement boundary due to the slope of the site and the meeting of gradients in Transportation Design Standards.
- 2.12 Councillor McConachie, having had the opportunity to visit the site and consider the Applicant's Grounds for Review, stated that he believed the proposed tree planting along the A941 would mitigate the impact of the development for road users. Noting that the site is well below the A941, he advised that the proposal would join an existing grouping of houses and would not alter the view from Rothes. Accordingly, he believed the proposal complied with policy and moved that the review be upheld.
- 2.13 Referring to the Applicant's Grounds for Review, Councillor Cowie queried whether the Applicant should have been notified of changes to the settlement boundary as part of the Proposed Plan. In response, the Planning Adviser advised that neighbour notification would only have been issued where premises existed on the site, which was not the case at the time.
- 2.14 The Chair stated his belief that the site was sufficiently separate from the settlement boundary by a gully and was hidden from north-bound road users by the natural ridge and to south-bound users by the natural land fall. He agreed to second Councillor McConachie's motion if he agreed that the proposal was an acceptable departure from Policy E9 and complied with Policies H7 and IMP1 for these reasons and that permission would be subject to subject to standard/consultee conditions and that screening be provided along the boundary with the A941 prior to commencement of development, following payment of developer obligations or registration of a Section 75 agreement.
- 2.15 Councillor McConachie agreed to amend his motion accordingly to reflect the Chair's comments on policy and conditions.
- 2.16 The Legal Adviser sought clarification on the reason for the proposal being an acceptable departure from Policy E9. In response, the Chair advised that the

existence of a natural gully and screening between the site and the settlement boundary maintains the distinction.

- 2.17 There being no one otherwise minded, the MLRB agreed to uphold Case LR177 and grant planning permission in principle in respect of Planning Application 16/01627/PPP, subject to standard/consultee conditions and that screening be provided along the boundary with the A941 prior to commencement of development, following payment of developer obligations or registration of a Section 75 agreement.

A handwritten signature in black ink, appearing to read 'Aileen Scott', with a stylized, cursive script.

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.

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. The approval hereby granted is for planning permission in principle and prior to the commencement of the development approval of matters specified in conditions, including the siting, design and external appearance of the building(s) the means of access thereto and the landscaping of the site shall be obtained from the Council, as Planning Authority.

Reason: In order to ensure that the matters specified can be fully considered prior to the commencement of development.

2. The grant of planning permission in principle hereby granted for the proposed development shall be carried out only in accordance with detailed drawings which shall previously have been submitted to and approved by the Council, as Planning Authority. These drawings shall show the matters specified in conditions numbered 3-8 below.

Reason: As the approval is granted for planning permission in principle only and in order that detailed consideration can be given to the matters specified.

3. Plans, sections and elevations of all buildings proposed with details of the type and colour of all external materials and finishes shall be submitted in accordance with Condition no. 2 above.

Reason: As the approval is granted for planning permission in principle only and in order that detailed consideration can be given to the matters specified.

4. The proposed layout of the site showing the exact position of the site boundaries, the position of all buildings, the means of access, areas for vehicle parking and the arrangements for the disposal of foul and surface water (i.e. a SUDS system or equivalent) shall be submitted in accordance with Condition no. 2 above.

Reason: As the approval is granted for planning permission in principle only and in order that detailed consideration can be given to the matters specified.

5. Details of the exact extent, type and finish of all other works including walls, fences and other means of enclosure and screening shall be submitted in accordance with Condition no. 2 above.

Reason: As the approval is granted for planning permission in principle only and in order that detailed consideration can be given to the matters specified.

6. Sections through the site showing the development on its finished levels in relation to existing levels shall be submitted in accordance with Condition no. 2 above.

Reason: As the approval is granted for planning permission in principle only and in order that detailed consideration can be given to the matters specified.

7. Landscaping proposals showing any existing trees/hedges/shrubs to be retained or removed together with details of the planting types (species), position, sizes, and numbers of all planting to be undertaken, the timescale(s) for undertaking planting and the arrangements to protect existing or proposed planting during construction works in accordance with Condition no. 2 above.

Reason: As the approval is granted for planning permission in principle only and in order that detailed consideration can be given to the matters specified.

8. As part of part of the requirements of Conditions 2-7:

- (a) The dwelling shall not exceed one and a half storey construction with any upper floor accommodation located wholly or substantially with the roof space and served by dormers and/or roof light arrangements;
- (b) the design and materials of the dwellinghouse and landscaping proposals shall include the following requirements:-
 - (i) a roof pitch of between 40-55 degrees;
 - (ii) a gable width of no more than 2.5 times the height of the wall from ground to eaves level;
 - (iii) uniform external finishes and materials including slate or dark "slate effect" roof tiles;
 - (iv) a vertical emphasis and uniformity to all windows and doors;
 - (v) the landscape scheme shall provide for 25% of the plot area to be planted with native species trees, at least 1.5m in height;
 - (vi) the landscape scheme shall include the provision of screen planting along the A941 boundary of the site, and the scheme details shall confirm that all such planting shall be undertaken prior to any other development works commencing on the site;
 - (vii) the boundary demarcation for the site shall reflect the established character or style (e.g. beech hedges, dry stone dykes or equivalent) in the locality; and
 - (viii) all access, parking and turning arrangements shall include the requirements of Conditions 9-11 below.

Reason: In order to ensure that the development harmonises with the appearance and character of the surrounding properties and area, and to ensure an acceptable form of development in terms of road safety and parking provision in conjunction with the proposed development.

9. Prior to the commencement of development, details shall be submitted for the approval in writing of the Council, as Planning Authority, in consultation with the Council, as Roads Authority, to ensure that the flow of water from the A941 is unimpeded and that the Council, as Roads Authority, has unhindered access to maintain the existing drainage assets which run through the site.

Reason: To ensure the construction of an acceptable development in the interests of safeguarding existing roads drainage infrastructure.

10. No boundary fences, hedges, walls or any other obstruction whatsoever over 1.0m in height and fronting onto the public road shall be within 2.4m of the edge of the carriageway.

Reason: To enable drivers to vehicles leaving the site to have a clear view over a length of road sufficient to allow safe exit, in the interests of road safety for the proposed development and other road users.

11. Parking provision shall be as follows:

- 2 spaces for a dwelling with three bedrooms or less; or
- 3 spaces for a dwelling with four bedrooms or more.

The 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.

ADDITIONAL NOTES FOR INFORMATION OF THE APPLICANT

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

The MANAGER (DEVELOPMENT MANAGEMENT) has commented that:-

The development, as hereby granted, has been subject to developer obligations towards the provision of demand responsive transport and the reconfiguration of the existing health centre facility which serves the area.

THE TRANSPORTATION MANAGER has commented that:-

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

The development is not directly served by a public road. The Applicant should note that it is their responsibility to establish any Rights of Vehicular Access with the party (parties) in control of the private road which serves the site.

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 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.

LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT

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

Reference	Version	Title
16:25:02		Existing Site Plan
16:25:03		Proposed Site Plan
16:25L04		Location Plan

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

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.