



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR180
 - Application for review by Mrs D. McConachie, c/o Mr S. Reid, Strathdee Properties Ltd against the decision of an Appointed Officer of Moray Council
 - Planning Application 16/01469/APP to erect dwellinghouse with detached garage at West Troves, Troves, Elgin
 - 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, 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 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

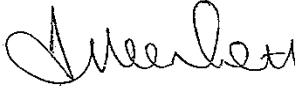
- 2.1 In terms of Standing Order 28, the MLRB agreed to vary the order of business as set down on the agenda to consider Item 4 (c) 'Case No. LR179' in conjunction with Item 4 (d) 'Case LR180' due to the cases being on the same overall site and having identical reasons for refusal and Grounds for Review.
- 2.2 Two requests were submitted by the Applicant seeking a review of the decisions of the Appointed Officer, in terms of the Scheme of Delegation, for

proposed erection of dwellinghouse with detached garage at East Troves, Troves, Elgin and to erect dwellinghouse with detached garage at West Troves, Troves, Elgin.

- 2.3 There were submitted 'Summary of Information' reports 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 for each case.
- 2.4 As a preliminary matter, the Senior Planning Officer (Development Planning & Facilitation), as Planning Adviser to these reviews, advised that gypsy/travellers sites are considered to fall within the sui generis category and as such the sites cannot be classed as having had residential use on them. She noted that the sites would also have required a change of use from woodland to gypsy/travellers site and, under the Town & Country Planning (Scotland) Act 1997, it requires to be used continuously for 10 years for the site to become a lawfully established change of use, which these sites have not.
- 2.5 The MLRB agreed that it had sufficient information to determine the requests for review.
- 2.6 With regard to the unaccompanied site inspections carried out on 27 March 2017, the Planning Adviser advised that Members of the MLRB were shown the site where the proposed developments would take place and provided with a summary of the reasons for refusal and the Applicant's Grounds for Review.
- 2.7 The Planning Adviser advised the MLRB that the applications had been refused on the grounds that the proposal was contrary to Policies E10 *Countryside Around Towns (CAT)*, H7 (c) *New Housing in the Open Countryside* and IMP1 *Developer Requirements* of the Moray Local Development Plan 2015. She advised that although within a defined area, the site is attractively rural and considerably contributes to the general rural character of the overall area. Stating that the proposals would contribute to a build-up with the development having the effect of changing the rural character of the area, the Planning Adviser advised that none of the exceptions provided for under Policy E10 apply to the site and that the proposals would erode the distinction with the built-up area.
- 2.8 Referring to the Applicant's Grounds for Review, the Planning Adviser advised that the Applicant had stated their opinion that the proposals satisfies Policy E10 as the site is located on the edge of the CAT and will not impact on the setting of Elgin.
- 2.9 Referring to Policy H7, the Applicant advised that the development of these houses is in a location entirely in keeping with the surrounding clusters of housing found in the area and that the development would be 'easily absorbed' within the rural character of the Troves area without causing concerns in terms of build-up. They stated that the houses will not be prominent in the landscape as they are nestled amongst trees and will have a mature woodland backdrop, noting that the sites are defined by at least 50% existing boundaries, the design criteria is met and the provisions pertaining to infrastructure and services is satisfied.

- 2.10 The Applicant stated that the sites are in a natural clearing and have a lawful established residential use following use as a travelling persons site since 2008. Noting that the sites have previously been used as 'brownfield' and currently detracts from the attractive rural nature of the area, the Applicant advised that there have been no technical objections to the proposal from statutory consultees.
- 2.11 The Chair sought clarification as to whether the sites were wholly in the CAT or overlapped the boundary edge. In response, the Planning Adviser confirmed that the sites were wholly within the CAT boundary.
- 2.12 Referring to Policy E10, Councillor McConachie stated his belief that the proposals complied with policy as they were rehabilitating sites which were currently an eyesore. In response, the Chair, Planning Adviser and Legal Adviser noted that the policy exception referred to the rehabilitation of an existing building, of which none existed on the sites, and that the MLRB would need to identify a reason for an acceptable departure from Policy E10 to uphold the review.
- 2.13 Councillor Coull, having had the opportunity to visit the site and consider the Applicant's Grounds for Review, stated that he believed the proposals complied with Policies H7 and IMP1 and were an acceptable departure from Policy E10 as the sites, being on the edge of the CAT boundary, were far enough away from the settlement of Elgin and were well screened.
- 2.14 In response, the Legal Adviser stated that whilst the sites were on the edge of the CAT boundary, they were still within the boundary and the MLRB would be required to justify why the proposals were an acceptable departure. She suggested that the MLRB may wish to consider a condition to retain screening of the site to maintain the rural character of the area.
- 2.15 Councillor Coull moved that the MLRB uphold Case LR179 and Case LR180 and grant planning permission in respect of Planning Applications 16/01468/APP and 16/01469/APP, subject to a condition that sufficient screening be provided around the site throughout the lifetime of the development, on the grounds that the proposals complied with Policies H7 and IMP1 and were an acceptable departure from Policy E10 as the sites were far enough away from the settlement of Elgin and were well screened, maintaining the rural character of the area.
- 2.16 Councillor McConachie stated that he was of the same opinion as Councillor Coull and seconded his motion.
- 2.17 In response to a query from Councillor Cowie, Councillors Coull and McConachie agreed to amend their motion to grant planning permission subject to standard/consultee conditions as well as their proposed screening condition.
- 2.18 As an amendment, the Chair stated that he did not believe the proposals were an acceptable departure from Policy E10 and moved that the MLRB agree to dismiss Case LR179 and LR180 and uphold the Appointed Officer's decision to refuse planning permission in respect of both applications. There being no seconder, Councillor Tuke's amendment fell.

- 2.19 There being no one otherwise minded, the MLRB agreed to uphold Case LR179 and Case LR180 and grant planning permission in respect of Planning Applications 16/01468/APP and 16/01469/APP, subject to standard/consultee conditions and a condition that sufficient screening be provided around the site throughout the lifetime of the development.

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. Notwithstanding the submitted details, prior to any development works commencing:-
 - (a) 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 160 metres to the north-west and 4.5 metres by 120 metres to the south east (to the C1E Lhanbryde-Fogwatt Road/C20E Linkwood-Troves Road junction), 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
 - (b) 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
 - (c) 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 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.

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 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 new access.

3. The width of the vehicular access shall be 5.5m, and have a maximum gradient of 1:20 measured for the first 5.0m from the edge of the public carriageway. The first 10m of the access track, measured from the edge of the public road, shall be constructed to the Moray Council specification and surfaced with bituminous macadam.

Reason: To ensure acceptable infrastructure at the development access.

4. An access lay-by 12.0m long by 2.5m wide with 30 degrees splayed ends shall be provided at the edge of the public road to allow visiting service vehicles to park clear of the public road. The vehicular access should lead off the lay-by. The lay-by must be constructed in accordance with The Moray Council specification and surfaced with bituminous macadam.

Reason: To enable visiting service vehicles to park clear of the public road in the interests of road safety.

5. Any existing ditch, watercourse or drain under the site access shall be piped using a suitable diameter of pipe, agreed with the Roads Maintenance Manager (300mm minimum). The pipe shall be laid to a self-cleansing gradient and connected to an outfall.

Reason: To ensure acceptable infrastructure at the development access.

6. 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 the permanent availability of the level of parking necessary for residents/visitors/others in the interests of an acceptable development and road safety.

7. 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 the provision for vehicles to enter/exit in a forward gear in the interests of the safety and free flow of traffic on the public road.

8. Prior to the commencement of development details of screen planting around the site shall be agreed in writing with the Planning Authority. The details in this respect shall include species, density, size, the timing for the planting and provision for maintenance.

Reason: In order to provide screening in the interests of natural amenity.

ADDITIONAL NOTES FOR INFORMATION OF THE APPLICANT

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

The formation of the required visibility splay will involve the removal of trees and vegetation.

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 Applicant shall be responsible for ensuring that surface/ground water does not run from the public road into their property.

The Applicant shall free and relieve the Roads Authority from any claims arising out of their 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
WEST-TROVES/PLANNING/LP		Location Plan
WEST-TROVES/PLANNING/01		Site Information
WEST-TROVES/PLANNING/02		General Arrangements

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.