



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR195
 - Application for review by Mr David Barclay against the decision of an Appointed Officer of Moray Council
 - Planning Application 17/01515/APP for a house build and temporary siting of caravan at Speyview, Dundurcas, Orton, Fochabers
 - Unaccompanied site inspection carried out by the MLRB on 19 February 2018
 - Date of decision notice: 12 March 2018
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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 22 February 2018.
- 1.3 The MLRB was attended by Councillors D Gatt (Chair), M Macrae (Depute Chair), D Bremner, G Cowie, M McLean, A Patience and D Ross.

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 an application on the grounds that the development is contrary to policy T2 in the Moray Local Development Plan for the following reason:-

- that the proposed development involved the use of a vehicular access onto B9015 Rothes-Kingston Road where visibility is restricted by the

adjacent trees, hedges and vegetation, and gives rise to conditions detrimental to the road safety of road users.

- 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 With regard to the accompanied site inspection carried out on 19 February 2018, the Chair stated 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.
- 2.4 The Chair asked the MLRB if they had sufficient information to determine the request for review. In response, the MRLB agreed that it had sufficient information.
- 2.5 The Chair asked if there were any preliminary matters which the Planning or Legal Adviser wished to raise. In response, both the Planning and Legal Advisers confirmed that they had no preliminary matters that they wished to raise.
- 2.6 Councillor Ross sought clarification in regard to the visibility splay and in particular to the problems with the tree on the visibility splay and asked whether Transportation could further look at the safety of the carriageway in regard to that particular tree as he was of the opinion that the tree was old and perhaps needed to be taken down for safety reasons which may alleviate the problems in regard to the visibility splay.
- 2.7 In response the Legal Services Manager (Property and Contracts) advised that Transportation would have had an opportunity to have raised any concerns on the condition of the tree in any of their submissions that they put before the LRB. The issue is in relation to the tree's impact on the visibility splay for this site but generally Transportation are not concerned about the health of the tree or seeking its removal.
- 2.8 The Senior Planning Officer (Development Planning and Facilitation) further advised that the visibility splay beyond the tree was inhibited and referred the Committee to the further representation from Transportation at paragraph 5 on page 36 of the of the report. She further advised that in relation to reducing the speed limit the criteria had been already set out by Transportation in their further representation as outlined in paragraph 13 on page 37 of the report and that this was not met.
- 2.9 Councillor Cowie, having had the opportunity to visit the site, moved that the appeal be dismissed and the decision of the Appointed Officer upheld on the grounds that the proposal is contrary to policies T2 and IMP1. This was seconded by Councillor Macrae.
- 2.10 Councillor Ross, having had the opportunity to visit the site, moved that consideration of the application be deferred in order for further information to be provided in regard to the road speeds, the health of the tree and to allow the applicant to make further contact with the land owner.

2.11 On a division there voted:

For the Motion (4) Councillors Cowie, Macrae, Gatt and M McLean

For the Amendment (3) Councillors Ross, Bremner and Patience

Abstentions (0)

2.12 Accordingly the Motion became the finding of the MLRB and it was agreed to dismiss Case LR195 and uphold the decision of the Appointed Officer to refuse planning permission in respect of planning application 17/01515/APP on the grounds that the proposal is contrary to policies T2 and IMP1(c) for the following reasons:-

1. the proposed development involved the use of a vehicular access onto B9015 Rothes-Kingston Road where visibility is restricted by the adjacent trees, hedges and vegetation, and gives rise to conditions detrimental to the road safety of road users contrary to policy T2; and
2. the proposed development does not provide access to the site at the appropriate level contrary to policy IMP1(c).

Mrs Aileen Scott
Legal Services Manager (Property and 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.