



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR197
 - 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 17/01522/APP – Proposed Erection of Dwellinghouse with Detached Garage at Upper Birnie View, Wardend, Birnie
 - Unaccompanied site inspection carried out by the MLRB on 26 March 2018
 - Date of decision notice: 16 April 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 29 March 2018.
- 1.3 The MLRB was attended by Councillors D Gatt (Chair), M Macrae (Depute Chair), D Bremner, G Cowie, M McLean 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 proposal would be contrary to policies PP1, H7, T2 and IMP1 of the Moray Local Development Plan 2015 and Supplementary Guidance "Housing in the Countryside" 2015 and Guidance Note on Landscape and Visual Impacts of Cumulative Build-up of Housing in the Countryside (2017) for the following reasons:

1. The site is in an area that is subject to significant development build up which has already eroded the rural character of the area. The introduction of an additional would compound the impact of development in this area and add to an unacceptable cumulative build-up of residential development detrimental to the rural character of the area. Given these impacts, the proposal is considered to constitute an inappropriately located site which fails to satisfy the siting criteria of policies PP1, H7, IMP1 and associated Supplementary Planning Guidance 'Housing in the Countryside' 2015 and Guidance Note on Landscape and Visual Impacts of Cumulative Build-up of Housing in the Countryside 2017.
 2. In the absence of any viable means to control access to the junction to the east of the site or any mechanism to secure adequate visibility at that junction safe entry and exit to the site cannot be guaranteed and as such the proposal is contrary to policy T2.
- 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 site inspection carried out on 26 March 2018, the Chair stated that all Members of the Moray Local Review Body (MLRB), with the exception of Councillor Maria McLean, were shown the site where the proposed development would take place and had before them papers which set out both the reasons for refusal and the Applicants grounds for review.
 - 2.4 The Chair asked if there were any preliminary matters which the Planning or Legal Advisers wished to raise. In response, both the Planning and Legal Advisers confirmed that they had no preliminary matters that they wished to raise.
 - 2.5 The Chair then asked the MLRB if they had sufficient information to determine the request for review. In response, the MLRB unanimously agreed that it had sufficient information.
 - 2.6 Councillor Cowie, having had the opportunity to visit the site and consider the Applicant's grounds for review, stated that he had noted that there were 2 entrances to the proposed development, one that was adequate and the other inadequate in terms of the visibility splay and queried whether the planning application could be approved subject to a condition to ensure use of the adequate entrance.
 - 2.7 In response, the Planning Adviser advised that Transportation had stated in their consultation response that it was noted that visibility was impaired at one of the entrances to the development and that the Applicant could not block this entrance with a barrier. The Planning Adviser advised that the Appointed Officer's Report of Handling stated that applying a condition preventing the access of the existing houses to the adequate entrance was not deemed reasonable and was therefore contrary to policy T2 in terms of access.
 - 2.8 Following consideration of the advice from the Planning Adviser, Councillor Cowie stated that he agreed with the opinion of the Appointed Officer in that the proposal was contrary to policies PP1, H7, T2 and IMP1 of the Moray Local Development Plan 2015 and Supplementary Guidance "Housing in the

Countryside” 2015 and Guidance Note on Landscape and Visual Impacts of Cumulative Build-up of Housing in the Countryside (2017) and moved that the appeal be refused on those grounds. This was seconded by Councillor Macrae.

- 2.9 There being no-one otherwise minded, the MLRB agreed to dismiss Case LR197 and uphold the decision of the Appointed Officer to refuse planning permission in respect of planning application 17/01522/APP.

Paul Nevin
Senior Solicitor
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.