



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR209
 - Application for review by Mr and Mrs John Kelbie, c/o Mr Richard Madders, Madders Design Services against the decision of an Appointed Officer of Moray Council
 - Planning Application Planning Application 18/00383/APP – Erect dwellinghouse on site in garden ground of Ingleside, St Aethans Road, Burghead, Moray
 - Unaccompanied site inspection carried out by the MLRB on 27 August 2018
 - Date of decision notice: 17 September 2018
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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 30 August 2018.
- 1.3 The MLRB was attended by Councillors David Bremner, Paula Coy and Amy Patience.

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:
- 2.2 The proposal is contrary to the Moray Local Development Plan policies H1 (a), H3 and IMP1 for the following reasons:

- i. 'tandem' backland development. There is a specific presumption against such development under policy H3. At 230 sq m (excluding the access) the site is also significantly below the minimum 400 sq m required for subdivision. The proposals represent over-intensive, cramped development that would result in a loss of residential amenity to the neighbouring properties due to the relationship of a separate new residential building to the private rear areas of neighbouring houses. There would also be a detrimental impact on the character of the area from introducing a new house into a secluded private rear garden area.

The proposal would also introduce vehicular and other activity into what is currently a private rear garden area, to the further detriment of neighbouring residential amenity.

- 2.3 A Summary of Information report set 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 With regard to the unaccompanied site inspection carried out on 27 August 2018, the Chair stated that all members of the Moray Local Review Body (MLRB) present 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 Applicant's grounds for review.
- 2.5 In response to a question from the Chair as to whether the Legal and Planning Advisers had any preliminary matters to raise, the Legal Adviser advised that he had nothing to raise at this time. The Planning Adviser highlighted an error in the decision notice which stated that the site was 230 sq m excluding access when it was actually 320 sq m excluding access as detailed in the Report of Handling. This was noted.
- 2.6 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.
- 2.7 Councillor Bremner, having had the opportunity to visit the site and consider the Applicant's grounds for review stated that he had measured the size of the plot from the plans within the paperwork received and, as the access only extends for 5 m, was of the opinion that the remainder should be included in the size of the plot which he measured to be 390 sq m. He further stated that he did not agree with the reasons for refusal given by the Appointed Officer particularly in relation to the proposal being a tandem backland development as the existing house has its own access.
- 2.8 The Planning Adviser advised that Policy H3 also referred to backland development and that the principals in relation to privacy and vehicle activity would still be relevant.
- 2.9 Councillor Bremner stated that, as the vehicle access only extended for 5 meters, in his opinion the vehicle activity argument was not relevant. In relation to intrusiveness, he stated that the proposal was no different to the surrounding properties and would blend into the character of the area and

moved that the appeal be upheld and planning permission granted. This was seconded by Councillor Coy.

- 2.10 There being no-one otherwise minded, the MLRB agreed to uphold the appeal and grant planning permission in respect of planning application 18/00383/APP subject to the receipt of developer obligations as required by the Council.

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.

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 the occupation or completion of the dwelling, whichever is sooner works shall take place to ensure that no boundary fences, hedges, walls or any other obstruction whatsoever over 1.0m in height (measured from the level of the carriageway) and fronting onto the public road shall be within 2.4m of the edge of the carriageway. This will require the lowering of the existing timber boundary fence to the south of the access, along with the lowering of the existing timber fence perpendicular to the road frontage for a distance of 2.4m into the site measured from the edge of the public carriageway.

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. The width of the vehicular access shall be as existing and have a maximum gradient of 1:20 measured for the first 5.0m from the edge of the public carriageway. The first 5m 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

3. Two car parking spaces shall be provided for use 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.

4. No development shall commence until samples of the external material finishes have been submitted to the Council as Planning Authority and approved in writing. Thereafter, the development shall be completed in accordance with the approved samples.

Reason: To ensure the house is suitable for the character and appearance of the surrounding area.

5. Notwithstanding the details shown in drawing number MDS 0078-03 hereby approved, No development shall commence until a Landscape Scheme (drawn to scale) is submitted to and approved by the Planning Authority. This Landscape Scheme shall show:-
- (a) the location of any existing trees, shrubs and hedgerows on the site and identify those to be retained and those to be removed;
 - (b) details of the measures to be taken to protect any existing trees, shrubs and hedgerows during the course of developing the site;
 - (c) details of the numbers, species, position, planting distances and sizes of all planting to be undertaken.
 - (d) new planting shall also include the provision of screen planting, as indicated in drawing number MDS 0078-03.

Reason - In order that detailed consideration can be given to the landscaping of the site.

6. That all planting, seeding or turfing forming part of the approved landscape scheme shall be carried out in the first planting and seeding seasons following the occupation of the house; or the completion of the building works, whichever is the sooner. Any trees or plants which (within a period of 5 years from the planting) die, are removed or become seriously damaged or diseased shall be replaced in the following planting season with others of similar size, number and species unless the Council (as Planning Authority) gives written consent to any variation of this planning condition.

Reason - In order to ensure that the approved landscaping works are timeously carried out and properly maintained in a manner which will not adversely affect the development or amenity and character of the area.

7. That no trees, shrubs or hedgerows on the site shall be removed without the prior written consent of the Council as Planning Authority.

Reason - In order to ensure that the existing and proposed trees, shrubs or hedgerows are retained as they add interest and character to the site and will contribute to the appearance of the development approved herewith, as well as enabling screening in the interests of the amenity of neighbouring properties.

ADDITIONAL NOTES FOR INFORMATION OF THE APPLICANT

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

The Transportation Manager, Moray Council, has commented:-

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

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.

Comments from Scottish Water are attached for your attention.

LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT

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

Reference	Version	Title
MDS 0078-03		Site plan and sections
MDS 0078-02		Elevations and floor plans

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.



THE MORAY COUNCIL

NOTIFICATION OF INITIATION OF DEVELOPMENT

Section 27A Town and Country Planning (Scotland) Act 1997

Application Number

Date Decision Issued

Location and Description of
Development

**Please note that all suspensive conditions must be discharged prior to
commencement of development**

Date works are to Commence	
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Name, Address and contact details of developer

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**The Full name and Address and contact details of the landowner, if a different
person**

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Where an agent is appointed, their full name and contact details

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Signed

Name (Print)

Date

Please complete and return this form to:

**The Moray Council, Development Management Manager, Council Offices, High
Street, Elgin, Moray IV30 6UG**

OR

E-mail: development.control@moray.gov.uk



THE MORAY COUNCIL

NOTIFICATION OF COMPLETION OF DEVELOPMENT

Section 27A Town and Country Planning (Scotland) Act 1997

Application Number

Date Decision Issued
Location and Description of
Development

Date of completion of works	
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Name, Address and contact details of developer

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The Full name and Address and contact details of the landowner, if a different person

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Where an agent is appointed, their full name and contact details

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Signed

Name (Print)

Date

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Please complete and return this form to:

The Moray Council, Development Management Manager, Council Offices, High Street, Elgin, Moray IV30 6UG

E-mail: development.control@moray.gov.uk