



MORAY COUNCIL LOCAL REVIEW BODY

Review Decision Notice

Decision by Moray Local Review Body (the MLRB)

- Request for Review reference : Case 009
- Site address: Plot B Lockers, Followsters Farm, Newmill, Keith
- Application for review by Mr John Cousar against the decision by an Appointed Officer of Moray Council.
- Application 09/01110/OUT : Planning permission in principle for the erection of a dwellinghouse.
- Accompanied site inspection carried out by the MLRB on Friday 14 May 2010.

Date of Decision Notice: 7 June 2010

Decision

The MLRB reverses the decision of the Appointed Officer and grants 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.

This permission does not carry with it any necessary consent or approval to the proposed development under the Building (Scotland) Act 1959 as amended or other enactments.

1.0 Preliminary

- 1.1 This Notice constitutes the formal decision notice of the Moray Local Review Body (MLRB) as required by the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008.
- 1.2 The above application for planning permission in principle was considered by the MLRB at meetings on 22 April and 19 May 2010. The Review Body was attended at both meetings by Councillors P Paul (Chair), B Jarvis and J MacKay.

2.0 Proposal

- 2.1 This is an application for planning permission in principle for the erection of a dwellinghouse and associated works to upgrade/extend track to Plot B, Lockers, Followsters Farm, Newmill, Keith.

3.0 MLRB Consideration of request for review

- 3.1 At the meeting of the MLRB on 22 April 2010 it was agreed that there was insufficient information in order to proceed to determine the request for review and it was agreed that a site inspection be undertaken, the purpose of which being to view the site in the context of policy 1(e) of the Moray Structure Plan 2007, and Policies H8 and IMP1 of the Moray Local Plan 2008. The MLRB also agreed that given the site could not be accessed safely that the site inspection be accompanied with the Planning & Legal Advisers in attendance.
- 3.2 The accompanied site inspection was carried out on Friday 14 May 2010. On the site of the proposed development the Planning Adviser to the MLRB summarised the grounds for refusal and the case put forward by the applicant for a Review. He also pointed out that although there was evidence of previous buildings on the site, the applications were not on a "replacement" basis, as the remains did not meet Level 2 requirements of policy H7 of the Moray Local Plan 2008. He indicated the location of the public road to the east, referred to in the reasons for refusal, from which the LRB also viewed the site. The MLRB noted that the site would be accessed via an extension of an existing track to the south, which would be extended to Plot B. There were no requests from those accompanying the MLRB on the site inspection to view anything further. The MLRB then proceeded, unaccompanied, with the knowledge of the applicant's agent, to view the site from the public road to the east.
- 3.3 Whilst viewing the site from the public road to the east clarification was sought by the MLRB members as to whether 25% tree planting would make the site more acceptable. The Planning Adviser to the MLRB advised that this was not intended to be used as a mitigating factor to justify otherwise intrusive development, and is to be applied to all applications. He had referred the MLRB to the two aspects of the Council's Housing in the Countryside policy which relate to siting and design. The 25% tree planting is in the 'Design' section and only comes in to play if the siting elements have been met, which had been deemed not to be the case in this instance. The Planning Adviser was not required to give any other substantive planning advice.
- 3.4 On reviewing the case at the meeting on 19 May 2010 the MLRB agreed that it now had sufficient information in order to proceed to determine the request for review and following consideration agreed that, in their opinion, this site and proposed access was much less intrusive than Plot A when viewed for the road to the east, had a natural backdrop provided by the slope of the field, was not located in the middle of a field, would not be overtly prominent and would not detract from the rural character of the surrounding countryside.

- 3.5 For these reasons the LRB agreed that the request for review be granted and that the application for planning permission in principle be approved as complying with policy, subject to the attached conditions and informatives which include a condition that the height of the proposed dwelling does not exceed one and a half storeys in height.

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R D Burns
Clerk to the MLRB

CONDITIONS

1. (a) That in the case of any matter specified in conditions attached to the planning permission in principle, application for approval must be made before:-
 - (i) that expiration of 3 years from the date of the grant of planning permission in principle; or
 - (ii) the expiration of 6 months from the date on which an earlier application for such approval for the same matters was refused; or
 - (iii) the expiration of 6 months from the date on which an appeal against such refusal was dismissed; whichever is the latest: provided that only one such application for approval of matters specified in conditions may be made in the case after the expiration of the 3 year period mentioned in sub-paragraph (i) above.
- (b) That the development to which the permission relates must be begun not later than whichever is the later of the following dates:-
 - (i) the expiration of 3 years from the date of the grant of planning permission in principle; or
 - (ii) the expiration of 2 years from the final approval of the matters specified in conditions or in the case of approval on different dates the final approval of the last such matter to be approved.
2. 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.
3. The grant of planning permission 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 4-7 below.
4. 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 3 above.
5. 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 3 above.
6. 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 3 above.
7. Sections through the site showing the development on its finished levels in relation to existing levels shall be submitted in accordance with condition 3 above.
8. The dwelling shall be single or one and a half storey construction.

9. The design and materials of the dwellinghouse and landscaping proposals shall comply with the following requirements:-
 - (a) A roof pitch of between 40-55 degrees;
 - (b) A gable width of no more than 2.5 times the height of the wall from ground to eaves level;
 - (c) Uniform external finishes and materials including slate or dark "slate effect" roof tiles;
 - (d) A vertical emphasis and uniformity to all windows;
 - (e) Proposals must be accompanied by a plan showing 25% of the plot area to be planted with native species trees, at least 1.5m in height;
 - (f) Where there is an established character, or style, of boundary demarcation in the locality (e.g. beech hedges, dry stone dykes) new boundaries must be sympathetic.
10. The roof of the dwelling hereby approved shall be finished in natural slate or a good quality artificial slate to be agreed in writing by the Council (as Planning Authority) prior to the commencement development.
11. Two private car parking spaces for up to a 3 bedroomed dwelling and three private car parking spaces for a 4 or more bedroomed dwelling shall be provided.
12. The private access track from Burns of Kininite to the site shall be upgraded to a minimum width of 4.0 metres and shall be capable of supporting a vehicle axle load of 14 tonnes.

REASONS

1. The time limit condition is imposed in order to comply with the requirements of Section 59 of the town and Country Planning (Scotland) Act 1997 as amended by the Planning etc (Scotland) Act 2006.
2. In order to ensure that the matters specified can be fully considered prior to the commencement of development.
3. As the approval is granted for planning permission in principle only and in order that detailed consideration can be given to the matters specified.
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8. In order to ensure that the development harmonises with the appearance and character of the surrounding properties and area.
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10. The roof of the dwelling hereby approved shall be finished in natural slate or a good quality artificial slate to be agreed in writing by the Council (as Planning Authority) prior to the commencement development.
11. In the interests of road safety.
12. In the interests of road safety.

ADDITIONAL NOTES FOR INFORMATION OF THE APPLICANT

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

THE TRANSPORTATION MANAGER, DIRECT SERVICES, ACADEMY STREET, ELGIN has commented that:-

‘The final section of road leading to the plot is a private access track and would require upgrading to ensure that it would be accessible for emergency service vehicles’.

THE CONTAMINATED LAND SECTION OF THE MORAY COUNCIL ENVIRONMENTAL SERVICES DEPARTMENT, HIGH STREET, ELGIN has commented that:-

Due to the past agricultural use of the site, there is always a potential for contamination to have arisen from, for example, farm tips, chemical storage or animal burial sites. The Moray Council does not have information to confirm whether or not the ground has been contaminated, however it is recommended that you investigate this matter prior to proceeding with the proposed works. Should contamination be identified you should contact the Environmental Health section immediately and carry out agreed remediation works. For advice on researching/investigating a site, please visit the Council website at www.moray.gov.uk/ContaminatedLand. Alternatively you can contact the Environmental Health Section on 01343 563345 or by email to contaminated.land@moray.gov.uk

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 21 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008.

- 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.