



MORAY COUNCIL LOCAL REVIEW BODY

Review Decision Notice

Decision by Moray Local Review Body (the MLRB)

- Request for Review reference : Case 011
- Site address: Upper Thorn, Drybridge, Buckie
- Application for review by Mr Donald MacKenzie against the decision by an Appointed Officer of Moray Council.
- Application 09/01618/PPP : Planning permission in principle for the erection of a house.
- Unaccompanied site inspection carried out by the MLRB on Monday 28 June 2010.

Date of Decision Notice : 19 July 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 15 May and 30 June 2010. The Review Body was attended at both meetings by Councillors B Jarvis (Chair), J Hogg and J MacKay.

2.0 Proposal

- 2.1 This is an application for planning permission in principle for the erection of a dwellinghouse on part of a field at Upper Thorn, Drybridge, Buckie. The site comprises the front portion of a large field, which rises away from the adjoining public road to the east. Approx. 0.105 ha (0.26 acres) in area, it is rectangular in shape and has 2/3rds of its boundaries defined by post and wire fencing and the adjacent road verge. The general locality of the site includes a farm building to the north and two dwellings to the southeast. An access to the site is to be formed onto adjacent minor road.

3.0 MLRB Consideration of request for review

- 3.1 At the meeting of the MLRB on 15 May 2010 the Planning Adviser to the MLRB referred the meeting to additional information submitted by the applicant, in support of the grounds for review, relating to access visibility and, on the advice of the Legal & Planning Advisers to the MLRB, it was agreed that this additional information constituted 'New Evidence' in terms of Section 43B(1) of the Town & Country Planning (Scotland) Act 1997, as amended, and it was agreed to seek the views of the Applicant, the Appointed Officer and Interested Parties through the 'Written Submissions' procedure set out in Regulation 15 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure)(Scotland) Regulations 2008 on:-
- (a) whether they are aware of any facts or circumstances which would preclude the applicant from meeting the statutory test for the consideration of new evidence ie 'new material will only be permitted where the party can demonstrate that it could not have been introduced earlier in the process, or that it arises as a consequence of exceptional circumstances'; and
 - (b) the substance of the information.
- 3.2 As well as seeking the views of the Applicant, the Appointed Officer and Interested Parties on the new evidence submission the MLRB agreed that an unaccompanied site inspection be undertaken, the purpose of which being to view the site in the context of policies H8, IMP1 and T2 of the Moray Local Plan 2008. The MLRB also requested that the Planning Adviser to the MLRB be in attendance. The MLRB further agreed that prior to undertaking the site inspection an overview of the history of all applications determined since the 2000 Moray Local Plan within a 1 mile radius of Upper Thorn, Drybridge be provided to members of the MLRB. This information was considered planning advice on a matter of fact, part of the planning history, and not further information in terms of Regulation 15 of Town and Country Planning (Schemes of Delegation and Local Review Procedure)(Scotland) Regulations 2008 nor new evidence in terms of Section 43B(1) of the Town & Country Planning (Scotland) Act 1997, as amended.

- 3.3 The unaccompanied site inspection was carried out on Monday 29 June 2010. Prior to arriving at the site the Planning Adviser to the MLRB advised the members of the MLRB that the information requested by the MLRB in regard the planning history of all applications determined since to the 2000 Moray Local Plan within a 1 mile radius of the proposed development included all consents and refusals for both outline and detailed applications and not just new housing consents. It was noted that this information had been circulated, prior to the meeting, to the applicant and interested parties. The Planning Adviser to the MLRB had also summarised the reasons for refusal, which related to prominence, backdrop and character and a requirement to meet policy T2 in terms of visibility and provision of a passing place/lay-by and the grounds for seeking a review. On arriving at the site members of the MLRB viewed the site, on approach, at the site and to the south of the site, in terms of prominence, backdrop and character. At the meeting on 30 June 2010 the Planning Adviser to the MLRB also confirmed that he was not required to give any substantive planning advice on the site inspection.
- 3.4 Copies of the 'Written Submission' responses to the new evidence, submitted in support of the grounds for review, were submitted to the meeting of the MLRB on 30 June 2010. Prior to considering the submissions the Legal Adviser to the MLRB advised the MLRB that as this only related to access visibility, which was the second ground for refusal, she recommended that, should the MLRB agree that it now had sufficient information in order to proceed to consider and determine the request for review, it proceed to consider the first reason for refusal in regard to prominence, backdrop and character. In the event of the MLRB disagreeing with the Appointed Officer's interpretation of Local Plan policies in regard to prominence, backdrop and character she would then give advice on the new evidence. However were the MLRB to agree with the Appointed Officer's interpretation then the request for review would be refused and there would be no need to consider the responses to the new evidence submission.
- 3.5 The MLRB agreed to accept the Legal Adviser's advice and agreed that it now had sufficient information in order to proceed to determine the request for review and proceeded to consider the first reason for refusal in regard to prominence, backdrop and character.
- 3.6 Councillor Hogg expressed the view that, in his opinion, there were inconsistencies in the reason for refusal relating to prominence, backdrop and character. In regard to the proposed site being on elevated open ground Councillor Hogg was of the view that the site is less elevated than the ground behind it. In regard to having insufficient backdrop he referred the MLRB to the 1 mile radius planning history map and expressed the view that when approaching the site from north there is a clear backdrop of hillside with two houses to the south-east, numbered 17 & 49 on the map, which are elevated above the application site and further along also the development numbered 48 on the map. On approaching the site from the south there is an existing backdrop of farm buildings, which are quite prominent, and the combination of these, in his opinion, met the requirement of policy H8 in regard to backdrop. Councillor Hogg also intimated that he disagreed with the suggestion that the proposed site would occupy the skyline. In his view this was only when viewed from the adjacent highway. When viewed from other locations on the site inspection the site was, in his opinion, in a secluded location, could not be viewed from afar and was in keeping with the rural character of the area. For these reasons and the requirement for 25% tree cover Councillor Hogg was of the opinion that the proposed development complies with policy H8 of the Moray Local Plan 2008.

- 3.7 Councillor MacKay concurred with the views expressed by Councillor Hogg and added that, in his opinion, the ratio of elevated ground was so insignificant that it was hardly visible and was also in keeping with the character of the area. He was also of the view that it was clear that the issue of the visibility splay could be overcome.
- 3.8 Councillor Jarvis concurred with the views expressed and the MLRB agreed that the application complied with policy H8.
- 3.9 The Legal Adviser to the MLRB then advised the MLRB in regard to the responses to the Written Submission procedure relating to the new evidence submitted by the applicant in support of the grounds for review.
- 3.10 The Legal Adviser referred the MLRB to Section 43B of the Town & Country Planning (Scotland) Act 1997, as amended, and advised the meeting that it was her opinion and that of the Planning Adviser, that in this case the new evidence was simply a change to the application and did not meet the test of sub-sections (1) or (2) of Section 43B. The aim of the new evidence provisions was, in her opinion, generally to ensure that matters which should always be a consideration for the MLRB could still be considered on review even if they were not specifically canvassed in the papers originally before the Appointed Officer. Other than that, new evidence would be admitted only if there was a good reason (exceptional circumstances or not previously available) why it wasn't available from the outset. In this case the Applicant had changed the application in what appeared to be an effort to have a "second bite at the cherry" through the review process. This was not the intention behind section 43B, and would mean that the MLRB would not truly be reviewing what the Appointed Officer considered, but rather a new application with significant changes. Where an application is refused, applicants are permitted to submit, free of charge, an amended application within one year after the refusal, and that is the appropriate route in these circumstances. As regards the suggestion that the new evidence was referable to the development plan or was otherwise a material consideration, the mere fact that the change pertained to access did not satisfy this test. As regards the suggestion that the altered visibility details could not have been submitted previously, it appeared from the papers (document 1(b) page 12) that had the Applicant consulted Futureplans at the outset, an acceptable visibility splay would have been proposed as the problems with the original access proposed by the Applicant were obvious. As regards the claim that there were otherwise exceptional circumstances justifying admission of the new evidence, there was no evidence of any misleading dialogue regarding the visibility issue prior to the issue of the refusal notice by the Appointed Officer, which was the sort of context which the MLRB had accepted in one previous case, could amount to exceptional circumstances. As a matter of policy the Appointed Officer could not be expected to effectively coach applicants through methods of resolving planning issues, particularly where there were several issues which required to be resolved. Applicants could seek independent advice in this regard as indeed the Applicant had done in this case, and then take advantage of the free resubmission arrangements. However, the Legal Adviser indicated that she appreciated members of the MLRB might find refusal of the review on the second ground frustrating as it now appeared that satisfactory access had been agreed. In particular the Legal Adviser advised that, having discussed the issue with the Planning Adviser, as it was evident from the responses to the Written Submissions procedure that the amended visibility splay and lay-by at the access to the proposed site met the requirements of policy T2 of the Moray Local Plan 2008, were the MLRB minded to approve the request for review the visibility issue could be controlled by a condition as suggested by the Applicant, without the necessity of actually admitting the new evidence into consideration.

- 3.11 The MLRB accepted the advice of the Legal & Planning Advisers to the MLRB and it was agreed that the new evidence would not be admitted into the MLRB's consideration of the request for review.
- 3.12 Thereafter the MLRB agreed that the request for review be granted and that the application for planning permission in principle be approved, subject to the attached conditions and informatives which include specific conditions that the height of the proposed dwelling does not exceed one and a half storeys in height and that the proposed visibility splay and passing place/lay-by at the access to the site is as detailed in the new evidence submission in support of the grounds for review and conditions and informatives recommended by consultees.

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Rhona Gunn
Legal Adviser 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).
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. Prior to the commencement of construction, a visibility splay of 2.4m x 120m shall be provided and maintained at the access in both directions, clear of any obstruction above 1.0m in height. The centreline of the proposed access must be located 6.8 metres from the boundary fence line to the north.
11. No boundary fences, hedges, walls or any obstruction whatsoever over 1.0 m in height and fronting onto the public road shall be within 2.4 m of the edge of the carriageway.
12. The width of vehicular access shall be 2.4m – 3.0m and have a maximum gradient of 1:20 measured for the first 5.0 m from the edge of the public carriageway. Section of access over the public footpath/verge shall be to The Moray Council specification and surfaced in bitmac.
13. No water shall be permitted to drain or loose material to be carried onto the public footpath/carriageway.
14. A parking layby 8.0 m long x 2.5 m wide with 30 degrees splayed ends shall be provided at the edge of the public road to allow visiting and service vehicles to park clear of the public road. The vehicular access(es) should lead off the layby(s). Layby to be to The Moray Council specification and be surfaced in bitmac.
15. 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.
16. A turning area shall be provided within the curtilage of the site to enable vehicles to enter/exit in a forward gear.
17. New boundary walls/fences shall be set back from the edge of the public road at a distance of 2.0 metres.
18. 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.

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. In the interests of road safety
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18. In the interests of road safety

ADDITIONAL NOTES FOR INFORMATION OF THE APPLICANT

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

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 his property.

The applicant shall ensure that their operations do not adversely affect any Public Utilities, which should be contacted prior to commencement of operations.

The applicant shall free and relieve the Roads Authority from any claims arising out of his operations on the road or extension to the road.

The Transportation Manager must always be contacted before any works commence and a road opening permit must be obtained. This includes any temporary access, which should be agreed with the Roads Authority prior to work on it commencing.

The developer must contact the Roads Authority Roads maintenance Manager (East) at Ashgrove Depot, Elgin – Tel (01343) 557300, Ext 7325 to discuss the proposals in relation to the diameter of the pipe.

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.