



## MORAY COUNCIL LOCAL REVIEW BODY

### Review Decision Notice

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Decision by Moray Local Review Body (the MLRB)

- Request for Review reference : Case 014
- Site address: Chapelhead Crossroads, Keith
- Application for review by Mr Russell Morrison against the decision by an Appointed Officer of Moray Council.
- Application 09/01942/PPP for planning permission in principle for the erection of a dwellinghouse.
- Unaccompanied site inspection carried out by MLRB on 17 September 2010

Date of Decision Notice: 13 October 2010

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#### **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.

#### **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.
- 1.3 The above application for planning permission in principle was considered by the MLRB at two meetings on 12 August and 22 September 2010. The Review Body was attended at both meetings by Councillors D Ross (Chair), J Hogg and J MacKay.

## **2.0 Proposal**

- 2.1 This is an application for planning permission in principle to erect a dwellinghouse on a site at Chapelhead Crossroads, Keith.

## **3.0 MLRB Consideration of request for review**

- 3.1 At the meeting of the MLRB on 12 August 2010 it was agreed that there was insufficient information in order to proceed to determine the request for review and it was agreed that an unaccompanied site inspection be undertaken, the purpose of which being to view the site in the context of Policy H8 of the Moray Local Plan 2008 and that the Planning Adviser be in attendance.
- 3.2 The unaccompanied site inspection was carried out on Friday 17 September 2010 and at the meeting of the MLRB on 22 September 2010 the Planning Adviser advised the meeting that, on arrival at the site subject of the review, he had identified the site and, whilst not required to give any advice, outlined the key issues for the grounds for refusal and summarised the grounds for review. He advised the meeting that the key issues in the refusal were that the proposal was seen to be contrary to part of Policy H8 of the Moray Local Plan 2008 in that the proposal, if approved, would create an unacceptable accumulation of houses/new house plots, which would be detrimental to the open rural character of this location where no rural community was designated and whilst there were aspects of the policy which were satisfied these could not override the argument of build-up in the wider area. The meeting also noted that the counter argument, set out in the grounds for review, that as it was not a multi house application there was no need to refer it to a rural community and it could be considered under the housing in the open countryside policy. The proposal was also considered to be in keeping with the character of the wider area, did not represent linear or ribbon development and had sufficient backdrop and boundaries to comply with the criteria of Local Plan policies. The Planning Adviser advised that he had also pointed out a number of other new developments along the minor road leading to the site referred to in the supporting papers. He had also clarified that as the application was for planning permission in principle the location of the proposed dwelling within the site was indicative and not necessarily the definitive location were the request for review to be granted.
- 3.3 The MLRB agreed that it now had sufficient information in order to proceed to determine the request for review and proceeded to consider the request for review.
- 3.4 Councillor Ross moved refusal of the request for review on the grounds of character and build up of the area and for these reasons the Appointed Officer's decision be upheld for the reasons detailed in the decision notice. Councillor Ross also had concerns about the site plan being only indicative as he felt there were sufficient backdrops only in one area.

- 3.5 Councillor Hogg referred to the site inspection from which members of the MLRB would have noted that the site was exceptionally large, part of which, in his opinion, complied with policies H8 & IMP1 of the Moray Local Plan 2008 and part would fail to integrate in terms of H8 & IMP1. He then referred to the site plan on page 30 and the coloured photograph on page 32 of the supporting documents and expressed the view that were the proposed dwelling to be located to the north east of the site it would, in his opinion, fully comply with policies H8 & IMP1. It would also be well screened with the substantial backdrop of trees to the north-west of the site. In this respect Councillor Hogg sought clarification if it was possible, were the request for review to be approved and planning consent in principle to be granted, to condition the location of the dwelling to the north of the site roughly as indicated on the plan on page 30 of the supporting papers and to restrict the height of the dwelling to a maximum of one and a half storeys.
- 3.6 In confirming that it would be possible to condition the issues raised by Councillor Hogg the Planning Adviser reminded the meeting that the reasons for refusal and subject of review related to the proposal creating an unacceptable accumulation of dwellings which would be detrimental to the character of the area and not other issues relating to policies H8 & IMP1.
- 3.7 Councillor Hogg expressed the view that by drawing the site up to meet the line of trees to the north-west of the site it then becomes related to an existing agricultural development and thus, in his opinion, fully complies with policies H8 & IMP1 and would not create an unacceptable build-up of dwellings in this area. For these reasons Councillor Hogg moved, as an amendment, that the request for review be granted and that the application for planning permission in principle be approved as complying with policy, subject to standard conditions and conditions and informatives recommended by consultees and to include specific conditions relating to the location of the proposed dwelling being to the northeast of the site as indicated on the plan at page 30 of the case papers and restricting the height to a maximum of one and a half storeys. The amendment was seconded by Councillor MacKay.
- 3.8 Accordingly MLRB agreed, on a two to one majority, 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 specific conditions relating to the location of the proposed dwelling being to the northeast of the site as indicated on the plan at page 30 of the case papers and restricting the height to a maximum of one and a half storeys.

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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 sighting, 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 4-9 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. The position of the dwelling within the site shall be on the eastern side, in the location as indicated on drawing 555/0809/M, as submitted with the planning application.
7. 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.
8. 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.
9. Landscaping proposals showing any existing trees/hedges/shrubs to be retained or removed together with details of the type, position and number of all planting to be undertaken and details of all surfacing materials shall be submitted in accordance with condition 3 above.
10. The dwelling shall be one and a half storey construction.
11. 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.
12. 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.
13. 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.
14. No water shall be permitted to drain onto the public footpath/carriageway.
15. 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.
16. Parking provision shall be 2 spaces for a dwelling with three bedrooms or less or 3 spaces for a dwelling with four bedrooms or more.
17. 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.

18. A visibility splay of 2.4m x 120m shall be provided and maintained at the access in both directions within which there shall be no obstruction above 1.0m in height.
19. A turning area shall be provided within the curtilage of the site to enable vehicles to enter/exit in a forward gear.
20. New boundary walls/fences shall be set back from the edge of the public road at a distance of 2.0 metres.

## **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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6. In the interests of visual amenity, and to ensure the building is close to other neighbouring property.
7. As the approval is granted for planning permission in principle only and in order that detailed consideration can be given to the matters specified.
8. As the approval is granted for planning permission in principle only and in order that detailed consideration can be given to the matters specified.
9. As the approval is granted for planning permission in principle only and in order that detailed consideration can be given to the matters specified.
10. In order to ensure that the development harmonises with the appearance and character of the surrounding properties and area.
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12. In the interests of road safety.

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19. In the interests of road safety.
20. 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 (includes footpaths) without permission from this Department.

A road opening permit must be obtained from the Roads Authority before undertaking any works within the public road and verge.

The applicant shall be responsible for ensuring that 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. This includes any temporary access which should be agreed with the Transportation Manager prior to work on it commencing.

No retaining structures or embankments shall be constructed along the edge of the road, whether retaining the public road or ground adjoining the public road without prior consultation and agreement of the Roads Authority

## 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.