



## 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 003
- Site address: Newton House, Elgin
- Application for review by Newton House Moray against the decision by an Appointed Officer of Moray Council.
- Application 09/01714/PPP for planning permission for 5 house plots in the paddock.
- Unaccompanied site inspection carried out by MLRB on 19 March 2010

Date of Decision Notice: 25 October 2010

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### Decision

The MLRB reverses the decision of the Appointed Officer and grants Planning Permission in Principle, as an acceptable departure from the Moray Development Plan 2008, subject to the terms of the Section 75 Agreement and 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 three meetings on 25 February, 24 March and 28 September 2010. The Review Body was attended at all three meetings by Councillors P Paul (Chair), D Ross & R Shepherd.

## **2.0 Proposal**

- 2.1 This is an application for planning permission in principle to provide 5 house plots in the paddock at Newton House, Elgin

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

- 3.1 At the meeting of the MLRB on 25 February 2010 there was submitted a copy of the Appointed Officer's Report of Handling on the planning application, a copy of the Notice of Review, a copy of the Grounds for Review and supporting documents, copies of further representations from interested parties following notification of the Request for Review and the applicants response to the further representations.
- 3.2 On consideration of the papers submitted the MLRB agreed that there was insufficient information in order to proceed to determine the request for review and it was agreed that an accompanied site inspection be undertaken, the purpose of which being to view the site in the context of the listed building and the proposed road layout and that the Legal and Planning Advisers be in attendance. It was also agreed that the Planning Adviser provide the MLRB with a written summary on the advice given on enabling development referred to in the grounds for review
- 3.2 The unaccompanied site inspection was carried out on Friday 19 March 2010 and at the meeting of the MLRB on 24 March 2010 there was submitted a written summary, prepared by the MLRB's Planning Adviser, on the advice given at the meeting on 25 February 2010 on enabling development.
- 3.3 On the resumption of consideration of the review at the meeting on 24 March 2010 the MLRB agreed that it considered that it now had sufficient information in order to proceed to determine the request for review.
- 3.4 Following consideration of the submitted papers and having had the opportunity to visit the site the MLRB agreed with the view expressed by Appointed Officer that the application was contrary to Policy H8 of the Moray Local Plan. Indeed, this appeared to be accepted by the applicant. The MLRB then considered whether or not Section 114 of Scottish Planning Policy (SPP) in regard to 'Enabling Development' was a material consideration of sufficient weight to justify departing from policy and approving the application as an acceptable departure.

- 3.5 The meeting noted that the Appointed Officer was of the opinion that the separation distance between the listed building and the proposed development is such that it was a stand-alone development and should be assessed as such. The MLRB however was of the view that, having carried out a site inspection, the proposed development was within the grounds of Newton House and of sufficient close physical proximity to justify considering Section 114 of the SPP in regard to Enabling Development as a material consideration.
- 3.6 Following consideration the MLRB agreed that in principle, it was of the opinion that the terms of Section 114 of the SPP relating to 'Enabling Development' was a material consideration of sufficient weight to justify departing from Policy H8 of the Moray Local Plan and agreed that it was therefore minded to grant the request for review and approve planning permission in principle, as an acceptable departure, subject to the following information being provided to the satisfaction of the MLRB at a future meeting:-
- (i) confirmation of the accuracy of the financial appraisal;
  - (ii) the investigation of appropriate terms with a view to reaching a Section 75 Agreement to secure the restoration of Newton House in terms of the existing planning permission; and
  - (iii) appropriate conditions to attach to any subsequent consent granted to include:-
    - (a) those recommended by consultees;
    - (b) standard conditions; and
    - (c) specific conditions relating to the paddock development being carried out in accordance with the approved plans, woodland planting, in particular on the eastern boundary of the site, street lighting suitable for a rural setting and the reinstatement of the footpath to the A96.
- 3.7 At the meeting of the MLRB on 28 September 2010 there was submitted a copy of the concluded Section 75 Agreement prepared by the MLRB's Legal Adviser and a copy of draft conditions prepared by the MLRB's Planning Adviser.
- 3.8 The Planning Adviser also advised the meeting that, as requested, he had undertaken an assessment of the financial appraisal, which had confirmed to his satisfaction that without the income from the subsequent sale of the 5 plots there would be a shortfall in funding the restoration of Newton House. He also confirmed that the draft conditions included specific conditions requested by the MLRB relating to the paddock development being carried out in accordance with the approved plans, woodland planting, in particular on the eastern boundary of the site, street lighting suitable for a rural setting and the reinstatement of the footpath to the A96.

- 3.9 In regard the Section 75 Agreement the Legal Adviser advised the meeting that he had consulted widely with other local authorities on the preparation of the Agreement which, in his opinion, was sufficiently robust to ensure delivery of the restoration of Newton House. In response to a question he confirmed that the terms of the Agreement were acceptable to the applicant, which had been confirmed by the signing of the Agreement. He also advised that on the MLRB's confirmation of approval of planning permission in principle the applicant would forward the Section 75 Agreement to the Land Register Scotland and on receipt of confirmation of the registration the Decision Notice, including planning consent, would be issued.
- 3.10 Following consideration the MLRB agreed to confirm it was of the opinion that the terms of Section 114 of the SPP relating to 'Enabling Development' was a material consideration of sufficient weight to justify departing from Policy H8 of the Moray Local Plan and agreed to grant the request for review and approve planning permission in principle, as an acceptable departure from the 2008 Moray Development Plan, subject to the terms of the Section 75 Agreement and the attached conditions and informatives which include specific conditions relating to the paddock development being carried out in accordance with the approved plans, woodland planting, in particular on the eastern boundary of the site, street lighting suitable for a rural setting and the reinstatement of the footpath to the A96.

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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, and 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. 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. Planting to include woodland outside the site boundary as indicated on drawing 4025/31
9. The dwellings shall be two storey construction. Designs of houses to be as per house types as contained on drawings 4025/33 and 4025/34
10. The existing footpath to the west of the site is to be re-instated, and a spur extended to serve the houses, as shown on drawing 4025/31
11. 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.
12. The width of the vehicular access shall be as shown in drawing no. 4025/31 Rev D. The access shall be constructed to The Moray Council adoptable standards.
13. Access Road A within the site shall be constructed to The Moray Council roads adoption standards up to and including the proposed turning hammerhead for refuse collection vehicles.
14. Access Road B within the site shall be constructed to The Moray Council roads adoption standards up to the point where it narrows from 5.5m to 4.0m.
15. No water shall be permitted to drain or loose material to be carried onto the public footpath/carriageway.
16. 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.
17. A visibility splay of 4.5m x 215m shall be provided at the access, clear of obstructions above 1.0m in height.
18. New boundary walls/fences shall be set back from the edge of the public carriageway as shown in drawing no. 4025/31 Rev D.
  - a. A hardstanding area, no smaller than 1.0m by 2.0m, shall be provided in the verge at a position to be agreed with the Roads Authority for pupils to stand on whilst waiting for the school bus.

- b. Street lighting provision to be appropriate to the rural setting.

## **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. 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. In order to ensure that the development harmonises with the appearance and character of the surrounding properties and area.
10. In the interests of amenity
11. In the interests of road safety
12. In the interests of road safety
13. In the interests of road safety
14. In the interests of road safety
15. In the interests of road safety
16. In the interests of road safety
17. In the interests of road safety
18. In the interests of road safety
19. In the interests of road safety
20. In the interests of amenity

## **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.

Construction Consent for the roads will be required under Section 21 of the Roads (Scotland) Act 1984.

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. This includes any temporary access, which should be agreed with the Transportation Manager prior to work on it commencing.

The developer must contact the Street Lighting Section at the Ashgrove Depot, Elgin Tel 01343 557300 ext 7343 to discuss his proposals.

The Director of Environmental Services has advised that no development will be allowed to take place until restoration works to Newton House have been completed, as specified in the Section 75 Agreement.

The terms of the Section 75 Agreement can be viewed, on request, at the Moray Council Access Point, Council Office, Elgin or online at [www.moray.gov.uk](http://www.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.