



MORAY COUNCIL LOCAL REVIEW BODY

Review Decision Notice

Decision by Moray Local Review Body (the MLRB)

- Request for Review reference : Case 020
- Site address: Braco Lodge, 42 Mayne Road, Elgin
- Application for review by Dr. A Blain against the decision by an Appointed Officer of Moray Council.
- Application 10/00462/PPP: Planning permission in principle for the erection of a dwellinghouse on a site within the Grounds of Braco Lodge.
- Unaccompanied site inspections carried out by the MLRB on Thursday 18 November and Friday 10 December 2010

Date of Decision Notice: 24 December 2010

Decision

The MLRB upheld the decision of the Appointed Officer to refuse planning permission in principle.

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 full planning permission was considered by the MLRB at meetings on 21 October, 18 November and 16 December 2010. The Review Body was attended at all three meetings by Councillors D Ross (Chair), J Hogg & J MacKay

2.0 Proposal

- 2.1 This is an application for planning permission in principle for the erection of a new dwellinghouse on a site within the grounds of Braco Lodge, Mayne Road, Elgin

3.0 MLRB Consideration of request for review

- 3.1 At the meeting of the MLRB on 21 October 2010 there was submitted a Summary of Information report setting out the reasons for refusal together with a copy of the Report of Handling, a copy of the Notice of Review and a copy of the Grounds for Review and supporting documents.
- 3.2 Following consideration of the case papers the MLRB agreed that there was insufficient information in order to proceed to determine the request for review and agreed that an unaccompanied site inspection be undertaken, the purpose of which being to view the site in the context of Policies H3, H4 and IMPI of the Moray Local Plan 2008. It was also agreed that an overview of approved applications to sub-divide plots in the west end of Elgin, between the A96, Wittet Drive, Hay Street and Wards Road, be provided to the MLRB prior to undertaking the unaccompanied site inspection. This information was considered part of the planning history on a matter of fact and not new evidence in terms of the regulations. The MLRB also requested that the Planning Adviser attend the unaccompanied site inspection.
- 3.3 At the meeting of the MLRB on 18 November 2010 there was submitted a Summary of Information report detailing the outcome of the MLRB's previous consideration of the request for review. The report advised that, as previously requested an overview of approved applications to sub-divide plots in the west end of Elgin, between the A96, Wittet Drive, Hay Street and Wards Road, was provided to members of the MLRB prior to undertaking the unaccompanied site inspection and was also copied to the applicant for his information. The unaccompanied site inspection was carried out on Thursday 18 November 2010, prior to the commencement of the MLRB meeting.
- 3.4 In regard to the unaccompanied site inspection the Planning Adviser advised the meeting that on arrival he identified the site, the point of access and the location which was within the garden ground to the rear of the parent property. In response to a question he also confirmed that the application complied with Policy H4 in regard to plot size and subdivision but was regarded as backland development which was contrary to Policy H4. He also confirmed to the reasons for refusal set out in the Handling Report and why it was considered to be out of character with the surrounding area.

- 3.5 Members of the MLRB agreed that they now had sufficient information and proceeded to determine the request for review.
- 3.6 Councillor MacKay referred to Policy H4 and intimated that whilst the site met the sub-division and plot size criteria it was considered backland development. However having had the opportunity to visit the site the proposal, in his opinion, meets all the requirements for sub-division and would not impact on the area and with its high garden walls would fit in well within the garden area. He also expressed the view that, whilst not a planning consideration, the applicants are the owners of the parent property who were now looking to downsize and for the reasons he had outlined he was minded to uphold the request for review and grant outline planning consent.
- 3.7 Councillor Ross expressed the view that, having visited the site and viewed the neighbouring properties over the surrounding garden walls, he would agree with Councillor MacKay that there would be no loss of amenity to neighbouring properties and noted that none of these had objected to the proposed development.
- 3.8 Councillor Hogg expressed the view that, in his opinion, approval or otherwise of the application hinged on the scale of the proposed development. As this was an outline application there was no indication of the proposed scale. Councillor Hogg was of the view that were the proposed development to be a single storey dwelling with a floor area sufficiently confined so as not to compete with the adjacent properties then he would be in favour of granting the request for review and approving outline planning consent. His concern would be that if an outline consent was granted without any restrictions then a large dwelling could be erected which, in his opinion, would impact on the amenity of the surrounding area. For these reasons Councillor Hogg enquired as to the possibility of applying conditions to restrict the height and footprint of the proposed dwelling were the request to be upheld and consent granted.
- 3.9 The Planning Adviser advised the meeting that whilst such conditions could be applied to an approval there was no occupancy criteria within Local Plan policies, a planning consent went with the land and not the person and so the identity of the potential occupants or their age was irrelevant in planning terms. He also reminded the MLRB that it had recently refused a request for review in Keith which also related to backland development and therefore were the MLRB minded to approve this request for review it would require to be clear in stipulating it's reasons in the decision notice for approving this one and not the one in Keith, particularly the distinction between the two.

- 3.10 Members of the MLRB expressed their views on the two applications and whilst backland development was common to both the one in Keith was also refused on the grounds that it was contrary to Policy T2 of the Moray Local Plan in that it would have an adverse effect on road safety at the access onto the roadway that would result in increased congestion or conflict between vehicles departing and arriving at the same time. This was not the case with the current request for review. The MLRB was of the view that each request for review required to be considered on its merits and expressed concern if they were to have to take into consideration previous case decisions where only one feature of refusal was similar.
- 3.11 Councillor Ross sought clarification in regard to the conditions recommendation by the Council's Transportation Section given that he had some concerns regarding the proposed access and egress on the site inspection.
- 3.12 The Planning Adviser advised the meeting on the terms of the recommended conditions from the Council's Transportation Section and it was noted that were the application to be approved and were the applicant to be unable to meet the requirements of the transportation conditions then the development could not proceed.
- 3.13 The MLRB noted that the Appointed Officer, in the Handling Report, accepted that 'a single storey house could be constructed within the site without having an adverse impact in terms of overshadowing and privacy levels on the neighbouring properties' and it was in this respect that the MLRB discussed the appropriateness of conditions so as to ensure that were the MLRB to uphold the request for review and grant outline consent the ratio of house to garden area remained acceptable.
- 3.14 Following discussion the MLRB agreed to defer consideration of the request for review to the next meeting of the MLRB and, in the interim, that the Planning Adviser was requested to provide the MLRB with a range of options, in terms of conditions, to control the footprint of the proposed dwelling so as to ensure that were the MLRB to uphold the request for review and grant outline consent the ratio of house to garden area remained acceptable. It was also agreed that a further unaccompanied site inspection take place, prior to the next meeting, and that the range of options be provided to members of the MLRB prior to the site inspection.

- 3.15 At the meeting of the MLRB on 16 December 2010 there was submitted a 'Summary of Information' report detailing the outcome of the MLRB's previous consideration of the request for review. The report advised that, as previously requested, the Planning Adviser had provided the MLRB with a 'range of options', in terms of conditions, to control the footprint of the proposed dwelling so as to ensure that were the MLRB to uphold the request for review and grant outline consent the ratio of house to garden area remained acceptable. A copy of the 'range of options' had been forwarded to the applicant and Interested Parties, prior to the meeting, and a copy was appended to the 'Summary of Information' report as Appendix 1. The further unaccompanied site inspection was carried out on Friday 10 December 2010.
- 3.16 On the unaccompanied site inspection on 10 December 2010 the Planning Adviser reminded the members of the MLRB that the purpose of the further unaccompanied site inspection was to consider the means by which they could control the footprint/plot ratio, should they be inclined to approve the application. He referred to the 'range of options', which included statistics about the floor area/plot ratio of the indicative arrangement for the house as submitted with the application. He also advised the MLRB of the plot ratios of other houses in the vicinity and the references in the 'range of options' were replicated on site in respect of the indicative arrangements relating to 100sq. m then reduced these to 80 and 60 sq m for comparison purposes. In response to a question on the site in regard to any indication as to the proposed height of the proposed house the Legal Adviser had intimated that there was no indication in the application as to the proposed height only that it would be small and compact. He also advised the MLRB that the reference to a single storey house had been introduced by the Appointed Officer in the Report of Handling, in the context of character and amenity in that such a house could be constructed without having an adverse impact in terms of amenity and character.
- 3.17 Members of the MLRB agreed that they now had sufficient information and proceeded to determine the request for review.
- 3.18 The Chairman, Councillor Ross, expressed the view that, whilst there were strong arguments put forward by the applicant, having seen the house footprint outlined on the plot at the further unaccompanied site inspection on Friday 10 December 2010 any restriction the MLRB was likely to approve relative to the footprint of a house within the plot to fit in with the character of the surrounding area would make the house too small for anyone to live in. For these reasons Councillor Ross moved that the request for review be refused and that the Appointed Officer's decision to refuse the application for the reasons set out in the decision notice be upheld.

3.19 There being no-one otherwise minded Councillor Ross's motion became the finding of the meeting and it was agreed that the original decision of the Appointed Officer to refuse the application be upheld on the grounds that the development does not comply with the Moray Local Plan 2008, policies H3: New Housing in Built-Up Areas, H4: Sub Division for House Plots and IMP1: Development Requirements, in that the development is not in keeping with the character of the area, on the basis that the development would result in the formation of two small residential plots within an area characterised by houses set in generous garden grounds.

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Rhona Gunn
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 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.