



## 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 022
- Site address: Site 3, Seafield Street, Findochty
- Application for review by Mr N Cowie against the decision by an Appointed Officer of Moray Council.
- Application 10/00844/APP : Full planning permission for the erection of a wooden garage with felt roof and wooden hinged doors opening outwards with no other doors or windows.

Date of Decision Notice: 24 December 2010

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#### **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 a meeting on 16 December 2010. The Review Body was attended by Councillors D Ross (Chair), J Hogg & B Jarvis.

#### **2.0 Proposal**

- 2.1 This is an application for full planning permission for the erection of a wooden garage with felt roof and wooden hinged doors opening outwards with no other doors or windows on Site 3, Seafield Street, Findochty, Moray

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

- 3.1 At the meeting of the MLRB on 16 December 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, copies of further representations from Interested Parties following statutory notification of the request for review and the applicant's response to the further representations.
- 3.2 Prior to considering the request for review the Legal Adviser drew the MLRB's attention to the applicant's response to further representations from Interested Parties set out in Appendix 4 to the Summary of Information report. She 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 designed to address the ground for refusal 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 she advised is the appropriate route in these circumstances.
- 3.3 As regards the potential claim that there were otherwise exceptional circumstances justifying admission of the new evidence, there was no evidence of any misleading dialogue regarding the issues raised in this particular case prior to the issue of the refusal notice by the Appointed Officer, which was the sort of context which the MLRB had accepted in previous cases, 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 and then take advantage of the free resubmission arrangements. The Planning Adviser supported this advice.
- 3.4 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.

- 3.5 Following consideration of the case papers the MLRB agreed that it had sufficient information in order to proceed to determine the request for review and the Chairman, Councillor Ross, moved that the request for review be refused and the decision of the Appointed Officer upheld on the grounds that the proposed garage, in its current location, is contrary to policy T2 of the Moray Local Plan. The motion was supported by Councillors Jarvis and Hogg.
- 3.6 Accordingly the MLRB agreed that the original decision of the Appointed Officer to refuse the application be upheld on the grounds that the location of the proposed garage interferes with the cross corner visibility splay between Seafield Street and the Primary School Access Road. The area is subject to a 20 mph speed limit and as such the minimum forward visibility around a bend is 25 metres. In this instance this cannot be achieved and as the site is in close proximity to the local primary school, departures from standards are not permitted.

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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.