



## 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 023
- Site address: Westwood Mosstowie
- Application for review by Mr Roy Fleming against the decision by an Appointed Officer of Moray Council.
- Application 10/00746/APP : Full planning permission for the erection of a dwellinghouse on a site at Westwood, Mosstowie

Date of Decision Notice: 11 March 2011

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#### **Decision**

The MLRB reverses the decision of the Appointed Officer and grants Full Planning Permission, 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 full planning permission was considered by the MLRB at a meeting on 16 December 2010 and at a Hearing Session and meeting on 24 February 2011. The Review Body was attended at all three meetings by Councillors D Ross (Chairman), G Leadbitter & B Jarvis.

## **2.0 Proposal**

- 2.1 This is an application for full planning permission for the erection of a dwellinghouse on a site at Westwood, Mosstowie.

### **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.
- 3.2 Following consideration of the case papers the MLRB agreed that it did not have sufficient information in order to proceed to determine the request for review.
- 3.3 The Chairman, Councillor Ross, expressed the view that, in his opinion, it would be beneficial, in this instance, for an unaccompanied site inspection to be carried out, the purpose of which being to view the site in the context of policy 2 (e) of the Moray Structure Plan and policies E10 and H8 of the Moray Local Plan 2008 and from the accompanying roadways. He was also of the view that the Planning Adviser be in attendance. The Chairman also referred members of the MLRB to the case papers and in particular to the reference in the applicant's submission to a fairly recent nearby development approved by the Council's Planning & Regulatory Services Committee against the recommendation of the Appointed Officer and moved that the MLRB hold a Hearing to hear from the Appointed Officer and the Applicant on their views on the proposed development. The motions were supported by Councillors Jarvis and Leadbitter.
- 3.4 Accordingly the MLRB agreed to refer the request for review to a Hearing and, in terms of Schedule 1, 1 (1) of the Regulations, an invitation to be heard be extended to the applicant and the Appointed Officer. In terms of Schedule 1, 1 (2) of the Regulations the specified matters being consideration of the application in terms of policy 2 (e) of the Moray Structure Plan and policies E10 and H8 of the Moray Local Plan 2008 to include particular reference to the recent nearby development approved by the Planning and Regulatory Services Committee against the recommendation of the Appointed Officer. It was also agreed an unaccompanied site inspection to be carried out, the purpose of which being to view the site in the context of policy 2 (e) of the Moray Structure Plan and policies E10 and H8 of the Moray Local Plan 2008 and from the accompanying roadways. The Planning Adviser was to be in attendance and the site inspection to be carried out prior to the Hearing.

The unaccompanied site inspection was carried out on Friday 18 February 2011.

- 3.5 At the Hearing Session on 24 February 2011 the Chairman advised the meeting that both the applicant and the Appointed Officer had accepted the invitation to be heard. He also outlined the procedure the MLRB proposed to adopt for the Hearing session and the order in which the specified matters were to be discussed which was accepted by the parties invited to be heard.

- 3.6 On the invitation of the Chairman Mr J Geoghegan, Chartered Town Planner, addressed the meeting on behalf of the Applicant, Mr R Fleming, on the specified matters relating to the request for review in regard to the application for full planning permission for a modest dwelling of traditional one and a half storey design with traditional finishes on an extremely well defined and enclosed site which is wrapped into the landscape by the surrounding slopes, trees and woodland. There are other established houses nearby along with a children's nursery and a substantial new house approved by the Council beside the nursery at a previous Hearing.
- 3.7 Mr Geoghegan advised the meeting that the application was refused on a single policy issue which was its location within the Countryside Around Towns (CAT) designation for Elgin under Policy 2E of the Structure Plan and E10 of the Local Plan. Whilst the proposal is not one of the exceptions usually allowed for in the CAT Mr Geoghegan reminded the MLRB that the Planning Act requires decisions on Planning applications to be made in accordance with the Development Plan unless there are "material considerations" to justify doing otherwise. So in this case it is perfectly correct and reasonable to grant planning consent provided the MLRB is satisfied there are material considerations to justify the approval.
- 3.8 Mr Geoghegan referred the MLRB to the current Scottish Government planning Circular 4/2009, which sets out the new requirements for processing planning applications, which advises that it is necessary to take into account the aims and objectives of the Plan as well as the detailed wording of policies. Circular 4/2009 states that material considerations include the environmental impact of a proposal; the design of the development and its relationship to its surroundings and the planning history of the site. Taking these material considerations into account and the aims and objectives of the Moray Local Plan 2008 Mr Geoghegan expressed the view that there, in his opinion, were good and sound reasons to justify approving the proposal.
- 3.9 Mr Geoghegan advised the MLRB that the site is located on the very western edge of Elgin's large and extensive CAT, as shown on the location plan on page 17 of the Grounds for Review, and the Case Officer's Report of Handling confirms that the proposal complies with Policy H8 for Housing in the Countryside. Whilst the objective of the CAT policy is to prevent the sprawl of Elgin into the countryside Mr Geoghegan was of the view that as a site on the very edge of such a large CAT designation with no visual connection to Elgin or its suburbs and as a site which fully complies with Policy H8, ensuring that it will integrate successfully with the appearance and character of the surrounding countryside, there can be no question, in his opinion, of the proposal being seen as the sprawl of Elgin into the wider countryside.

In support of his opinion Mr Geoghegan also expressed the view that this is especially the case when the site is considered alongside the existing group of buildings in the immediate vicinity which includes; three established houses, a children's nursery and a large new house beside the nursery, a short distance to the South of the proposed site, which was approved as an acceptable departure from the CAT policy at a Hearing of the Council in December 2006. It was not considered that the large new house beside the nursery would compromise the CAT policy and this is borne out in practice.

- 3.10 Mr Geoghegan advised the meeting that the proposed house has been specifically designed to have a very traditional appearance and character and has been carefully set on the site to take full advantage of the very strong rising backdrop of trees to the North and East and to make best use of the extensive new planting on the site to the South and West carried out by the applicant over a number of years who also owns an acre of woodland to the east of the site. There are two approaches to the site, one from the North along a minor road, and the other from the South along the same road. The house cannot be seen along the approach from the North. From the South it is not only set against an extensive and very strong backdrop but will be screened and shielded from view by the existing properties immediately to the South because of the levels of the road and the lie of the land as well as by significant new planting on the Southern boundary of the site. The insignificant impact that the house will have is also evidenced by there being no objections or representations against the proposal from any third parties and no objections from any consultees.
- 3.11 Mr Geoghegan concluded his submission to the MLRB by expressing the view that, in his opinion, there were sound material considerations in this case which members of the MLRB can confidently rely on to provide sufficient weight to justify an acceptable departure from policy, namely
- This proposal will not compromise the objectives of the policy for the CAT to prevent urban sprawl under policy 2E of the Structure Plan;
  - It complies fully with the Council's policy for Housing in the Countryside including design;
  - It will fit extremely well into the landscape because of the strong backdrop and enclosure provided by the rising land to the North and existing trees both around and within the site;
  - The site is tied in with an existing group of buildings on the very Western fringe of Elgin's large CAT; and
  - The Council approved a new and larger house as an acceptable departure from the CAT Policy a short distance to the South. This house has been built. It does not compromise the CAT policy.
- 3.12 Mr Geoghegan also reminded the MLRB that planning applications should be approved where there are material considerations to justify an acceptable departure from policy. In this particular case there were, in his opinion, good and sound material considerations which the MLRB would be justified in placing weight on to approve the proposal and recommended that the request for review be upheld and planning consent granted.
- 3.13 On the completion of his statement the Chairman referred Mr Geoghegan to section 2.5 'Material Considerations' of his statement and requested that he expand on his 'good and justifiable' reasons to approve the application, particularly in regard to the planning history of the proposed site and the environmental impact of the proposal.

- 3.14 Mr Geoghegan referred the MLRB to the site to the south of the proposed development, approved by the Council against recommendation, the footprint of which was about three times the size of that proposed and therefore a much more substantial house approved as an acceptable departure from policy. Mr Geoghegan also referred to the aims and objectives of Policy 2E of the Structure Plan and E10 of the Local Plan which is to prevent sprawl from Elgin into the countryside, however given the location of the site on the very edge of the CAT designation with no visual connection to Elgin there is no sprawl evidenced and it was not unusual to have houses in the CAT either individually or as part of smaller groups therefore the proposed development is, in his opinion, consistent with the settlement pattern within the CAT. As regards the proposed development's environmental impact it will have a very low environmental impact as it is a very well defined and enclosed site, it is entirely screened from the north and the view from the south is varied given the differing road levels on approach which, with the absorption into the landscape by the existing natural features and existing buildings to the south of the site, will provide it with a setting when approaching from the south which is in keeping with the requirements of Policy H8.

Mr Geoghegan also intimated, in response to a question from the Chair, that whilst he accepted that each application required to be considered on its own individual merits, he had made reference in his submissions to the application approved by the Council, against recommendation, as an example of an application being approved within the CAT designation as there were material considerations of such weight to justify doing so and material considerations did not require to be exactly the same in each case to justify departing from policy. The connection between the two sites is the legitimacy of using material considerations to justify departing from policy.

On the invitation of the Chairman the Appointed Officer indicated that he had no questions he would wish to put to the applicant's representative through the Chair.

- 3.15 On the invitation of the Chairman the MLRB then heard Mr M Booth the Appointed Officer, in respect of this planning application. Mr Booth referred the meeting to Policy 2(e) of the Moray Structure Plan which is a general statement indicating that the countryside around the towns identified (including Elgin) will be protected from development. He advised the meeting that whilst the proposed development complies with Policy H8 the site lies within the designated CAT area which states unequivocally that development will be refused. The specific exceptions identified within the policy do not apply in this case.
- 3.15 Mr Booth referred the MLRB to the nearby Woodside Steading, which is also in the CAT, and advised that there was a refusal next to a converted steading for a new house (ref planning application 04/01522/OUT) and that unlike the current application the proposal at Woodside was on the site of a partially built building. He also advised the meeting that an appeal to the Scottish Government was rejected, however a subsequent amended application was submitted (ref. planning application 06/01353/FUL) and approval was granted, as an acceptable departure, at a Hearing.
- 3.16 Mr Booth also advised the meeting that there have been two previous refusals on the current proposal site, planning applications 06/02982/FUL and 06/01126/OUT, on grounds that included the CAT. As with the current application, the concerns in relation to the CAT are with the principle of the development, there is no suggestion in the policy that if the details are acceptable then development will be approved.

- 3.17 Mr Booth concluded his statement to the MLRB by expressing the view that the decision on the current application is consistent with CAT policy E 10 for the refusal of new development and is also consistent with the original decision at Woodside Steading which was upheld at appeal.
- 3.18 On the completion of his statement the Chairman of the MLRB sought clarification from Mr Booth as to whether it was usual or unique for a planning application for a house within a CAT designation to comply with Policy H8 of the Local Plan and not Policy 2(e) of the Structure Plan or fail on both counts, as suggested by the applicant's agent in his submission. In response Mr Booth advised the meeting that a relatively small number of applications are made for houses with CAT designations and whilst it is possible for an application to comply with Policy H8 but not the CAT policy which is quite specific and rigorously applied he was unaware of any other such applications since the 2008 Moray Local Plan was adopted.
- 3.19 On the invitation of the Chairman the applicant's representative indicated that he had no questions he would wish to put to the Appointed Officer through the Chair.
- 3.20 On the invitation of the Chairman Mr Geoghegan summarised his presentation reiterating the key aspects of his submission, as detailed above. The Appointed Officer declined the invitation to summarise indicating that he had covered the key issues in his presentation. On the conclusion of Mr Booth's presentation and there being no other business the Chairman declared the hearing Session concluded.
- 3.21 Thereafter the MLRB resumed consideration of the request for review of this planning application following the Hearing Session on the specified matters.
- 3.22 In regard to the unaccompanied site inspection carried out on Friday 18 February 2011 the Planning Adviser advised the meeting that, on arrival, he had identified the site and confirmed the reasons for refusal. He had also pointed out the 'Countryside Around Town (CAT) boundary in relation to the proposed application site and identified the site of the application, referred to in the applicant's submission, as that approved by the Council against recommendation. The MLRB agreed that it now had sufficient information and agreed to proceed to determine the request for review.
- 3.23 Councillor Ross expressed the view that, having had the opportunity to hear from both the Appointed Officer and the Applicant's Agent on the case, he was of the opinion that the proposed development was on the extreme of the Elgin CAT and that the material considerations put forward by the applicant's agent in support of the application, were of sufficient weight to justify departing from policy. For these reasons he moved that the request for review be granted and that the application for full planning permission be approved as an acceptable departure from the Moray Local Plan 2008. This was seconded by Councillor Jarvis.
- 3.24 Councillor Leadbitter was of the view that the CAT policy should be adhered to and whilst he accepted that the proposed development was located on a well defined site and absorption into the landscape is acceptable he supported the decision of the Appointed Officer to refuse the application for the reasons set out in the Decision Notice dated 23 September 2010.

- 3.25 Accordingly MLRB agreed, on a two to one majority, that the request for review be granted and that the application for full planning permission be approved, as an acceptable departure from the Moray Local Plan 2008, subject to standard conditions and conditions and informatives recommended by consultees.

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**Rhona Gunn**  
**Legal Adviser to the MLRB**

## **CONDITIONS**

1. The development to which this permission relates must be begun not later than the expiration of 3 years beginning with the date on which this permission is granted.
2. Unless otherwise agreed with the Council, as Planning Authority, the development hereby approved shall be carried out strictly in accordance with the approved plans and conditions.
3. Prior to work commencing on site the applicant shall complete the attached notification of initiation of development and submit it to the local planning authority.
4. Upon completion of the development or as soon as practicable after doing so the attached notification of completion of development shall be completed and submitted to the local planning authority.
5. 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
6. 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.
7. No water shall be permitted to drain, or loose material to be carried, onto the public carriageway.
8. A turning area shall be provided within the curtilage of the site to enable vehicles to enter/exit in a forward gear.
9. A visibility splay of 2.4m x 25m shall be provided and maintained at the access in both directions.
10. New boundary walls/fences shall be set back from the edge of the public road at a distance of 2.0 metres.
11. Parking spaces shall be provided at the rate of 2 private spaces.

## **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 there are no unauthorised departures from the approved plans which could adversely affect the development or character and amenity of the surrounding properties and area.
3. To ensure that the planning authority is aware that development is about to commence and any suspensive conditions can be followed up.



4. To ensure that the planning authority is aware that the development is complete and is able to follow up any conditions.
5. In the interests of road safety.
6. In the interests of road safety.
7. In the interests of road safety.
8. In the interests of road safety.
9. In the interests of road safety.
10. In the interests of road safety.
11. 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.

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, and a road opening permit must be obtained. This includes any temporary access, which should be agreed with the Roads Authority prior to work commencing on it.

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 Local Authority.

THE CONTAMINATED LAND SECTION has commented that:-

Your property has been identified as being in the vicinity of the following potential sources of contamination:

Chemical works (fertiliser manufacture) on site as indicated on map group A, B and D.

Sand Quarry approximately 5 metres to the north-west as indicated on map group F and E.

Map Group A 1868 - 1897 Ordnance Survey Maps

Map Group B 1898 - 1906 Ordnance Survey Maps

Map Group C 1930 - 1938 Ordnance Survey Maps

Map Group D 1959 - 1971 Ordnance Survey Maps

Map Group E 1969 - 1992 Ordnance Survey Maps

Map Group F Present Day Ordnance Survey Maps

The Moray Council does not have information to confirm whether or not the ground has been contaminated, however it is recommended that you investigate this matter prior to proceeding with the proposed works. Should contamination be identified you should contact the Environmental Health section immediately and carry out agreed remediation works. For advice on researching/investigating a site, please visit the Council's website at [www.moray.gov.uk/ContaminatedLand](http://www.moray.gov.uk/ContaminatedLand).

Alternatively you can contact the Environmental Health Section on 01343 563345 or by email to [contaminated.land@moray.gov.uk](mailto:contaminated.land@moray.gov.uk)

SCOTTISH WATER has commented as follows:

The applicant must make a separate application to Scottish Water Planning & Development Services team for permission to connect to the public wastewater system and/or water network at the appropriate time. It is important to note that the granting of planning consent does not necessarily guarantee a connection to Scottish Water's assets.

## 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.

## **The Moray Council**

### **NOTIFICATION OF INITIATION OF DEVELOPMENT**

#### **Section 27A Town and Country Planning (Scotland) Act 1997**

**Planning Application Reference No: 10/00745/APP**

**Date issued:**

I hereby give notice that works as detailed under the above planning application will commence on:

Signed: ..... Date: .....

**THE FOLLOWING INFORMATION MUST BE PROVIDED:**

1. Name and address of person carrying out the development:

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2. The full name and address of the landowner, if a different person:

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3. Where a site agent is appointed, their full name and contact details:

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4. The date of issue and reference number of the grant of planning permission:

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Please return this form, duly completed to: - The Moray Council  
Development Management  
Development Services  
Environmental Services Department  
Council Office,  
High Street  
Elgin IV30 1BX

### **IMPORTANT**

**It is important that the Environmental Services Department is advised when you propose to start work as failure to do so may result in enforcement action be taken.**

**Please complete and return this form.**

## **The Moray Council**

### **NOTIFICATION OF COMPLETION OF DEVELOPMENT**

**Section 27B Town and Country Planning (Scotland) Act 1997**

**Planning Application Reference No: 10/00745/APP**

**Date issued:**

I hereby give notice that works as detailed under the above planning application will be completed on: .....

Signed: ..... Date: .....

Please return this form, duly completed to: - The Moray Council  
Development Management  
Development Services  
Environmental Services Department  
Council Office  
High Street  
Elgin IV30 1BX

### **IMPORTANT**

**It is important that the Environmental Services Department is advised when the development has been completed as failure to do so may result in enforcement action be taken.**

**Please complete and return this form.**