



MORAY COUNCIL LOCAL REVIEW BODY

Review Decision Notice

Decision by Moray Local Review Body (the MLRB)

- Request for Review reference : Case 024
- Site address: Catherinebraes Farm, Elchies, Aberlour
- Application for review by Mr & Mrs J C Cameron against the decision by an Appointed Officer of Moray Council.
- Application 10/00948/PPP : Planning permission in principle for the erection of two low cost dwellinghouses on rough grazing land at Catherinebraes Farm, Craigellachie, Aberlour.
- Unaccompanied site inspection carried out by the MLRB on Friday 18 February 2011.

Date of Decision Notice: 11 March 2010

Decision

The MLRB agreed to dismiss the request for review and uphold 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 planning permission in principle was considered by the MLRB at meetings on 13 January and 24 February 2011. The Review Body was attended at both meetings by Councillors B Jarvis (Chairman), J Hogg & D Ross.

2.0 Proposal

- 2.1 This is an application for planning permission in principle for the erection of two low cost dwellinghouses on rough grazing land at Catherinebraes Farm, Craigellachie, Aberlour.

3.0 MLRB Consideration of request for review

- 3.1 At the meeting of the MLRB on 13 January 2011 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 Prior to considering the request for review the Legal Adviser advised the MLRB that a response from the Council's Transportation Section to the notification of the request for review had been received after expiry of the period allowed for in terms of The Town and Country (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008 (the Regulations). Whilst there is no dispensing power within the Regulations the Legal Adviser advised the MLRB that, in terms of natural justice, given the Council offices were closed over the Christmas period and therefore it would not have been possible for an Interested Party to submit a response for consideration within the stipulated period, the MLRB would have a discretion to accept a late response. The Legal Adviser also advised the MLRB that the applicant had been contacted, prior to the meeting, and had indicated that he had no objection to the late response being accepted by the MLRB and taken into consideration as part of the case papers and invited the MLRB to consider accepting the late response. This was agreed and a copy of the response from the Council's Transportation Section was tabled at the meeting.
- 3.3 The Legal Adviser also confirmed that all the information pertaining to the request for review had been before the Appointed Officer at the time of consideration of the planning application, including details of the proposed amended access arrangements and so there was no issue as to new evidence. The Planning Adviser also confirmed that the details mentioned in the response from the Council's Transportation Section were submitted to the Appointed Officer during consideration of the planning application and that the issues raised could be controlled by a planning condition were the MLRB minded to approve the request for review. The Planning Adviser also advised the MLRB that the issue relative to access was a secondary issue and that the primary reason for refusal, in this case, was on grounds relating to policy H8 'Housing in the Countryside' of the Moray Local Plan 2008. The issue relating to access would only become a consideration if the MLRB was, following consideration of the request for review, minded to overturn the reasons for refusal relating to policy H8.
- 3.4 In response to a question in regard to the reference in the applicant's submission to any consent being conditional to there being no other sites along the proposed access road the MLRB noted that as planning conditions relate to land as opposed to a person(s) this would not be considered as a valid condition. It was also noted that the reference to 'low cost dwellinghouses' could not be conditioned as part of a planning consent

- 3.5 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 and agreed that an unaccompanied site inspection be carried out, the purpose of which being to view the site in the context of policies H8 and T2 of the Moray Local Plan 2008. It was also agreed that an overview of planning application approvals and refusals within the last 10 years within a reasonable radius of the proposed development be provided to the MLRB prior to undertaking the unaccompanied site inspection. The MLRB also requested that the Planning Adviser attend the unaccompanied site inspection.
- 3.6 At the meeting of the MLRB on 24 February 2011 the MLRB noted that, as previously requested at the meeting on 13 January 2011, the Planning Adviser had provided the MLRB with an overview of planning application approvals and refusals within the last 10 years within a reasonable radius of the proposed development prior to undertaking the unaccompanied site inspection, which took place on Friday 18 February 2011. A copy of the information provided by the Planning Adviser had also been forwarded to the applicant and Interested Parties.
- 3.7 The Planning Adviser advised the meeting that on the unaccompanied site inspection on Friday 18 February 2011 the MLRB had viewed the location of applications in the wider area, identified in the overview requested by the MLRB, and that he had identified the site and the proposed access point. The MLRB had viewed the location of the proposed house plots and noted the Appointed Officer's reasons for refusal. The Planning Adviser had also referred to Policy T2 which, although not a reason for refusal, was considered relevant as the revised access proposals were acceptable to the Council's Transportation Section provided the proposed new lay-by is moved to avoid a road gully which could be covered by a condition were the MLRB minded to uphold the request for review and grant planning permission in principle.
- 3.8 The MLRB agreed that it had sufficient information and proceeded to determine the request for review.
- 3.9 The Chairman, Councillor Jarvis expressed the view that, having had the opportunity to visit the site, the proposed sites would, in his opinion, have a detrimental impact on the character of the area and moved that the request for review be refused and the original decision of the Appointed Officer to refuse the application be upheld on the grounds that the development does not comply with Policy H8 of the Moray Local Plan 2008 for the reasons set out in the Decision Notice of 10 November 2010.
- 3.10 Councillor Hogg expressed his concerns in regard to the scarring effect the proposed access road might have on the hillside. He also expressed the view that whilst the proposed houses were quite far from the B9102 road and would only be visible on approach from the Archiestown side of the B9102 that, on balance, he supported the view expressed by Councillor Jarvis in that the request for review be refused for the reasons set out in the Decision Notice of 10 November 2010.

- 3.11 Councillor Ross was of the view that whilst the applicant had made every effort to locate the proposed houses as far away from public view as possible he was in agreement with the views expressed by Councillors Hogg and Jarvis that the request for review be refused on the grounds that the development does not comply with Policy H8 of the Moray Local Plan 2008 for the reasons set out in the Decision Notice of 10 November 2010.
- 3.12 Accordingly the MLRB unanimously agreed that the request for review be refused and the original decision of the Appointed Officer to refuse the application be upheld on the grounds that the proposal is contrary to Policy H8 of the Moray Local Plan 2008 for the following reasons:
- (i) together with nearby development the application would result in more than two dwellings in the vicinity which would begin to contribute to a material build-up of housing. This would have a detrimental effect on the attractive openness of the rural location and the houses would begin to intrude on the essential rural character of the area; and
 - (ii) further such proposals would be encouraged.

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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.