



MORAY COUNCIL LOCAL REVIEW BODY

Review Decision Notice

Decision by Moray Local Review Body (the MLRB)

- Request for Review reference : Case 025
- Site address: Cowfords Farm, Mosstodloch
- Application for review by Mr William Marwick against the decision by an Appointed Officer of Moray Council.
- Application 10/00943/APP : Full planning permission to store caravans, mobile homes and farm machinery in buildings on agricultural land at Cowfords farm, Mosstodloch

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 full planning permission.

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 24 February 2011. The Review Body was attended by Councillors B Jarvis (Chair), J Hogg and G Leadbitter.

2.0 Proposal

- 2.1 This is an application for full planning permission to store caravans, mobile homes and farm machinery in buildings on agricultural land at Cowfords farm, Mosstodloch

3.0 MLRB Consideration of request for review

- 3.1 At the meeting of the MLRB on 24 February 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 supporting documents.
- 3.2 Prior to considering the request for review the Legal Adviser referred the MLRB to the further information provided by the Appellant in the Notice of Review relative to policy T2 and the traffic issues arising from the application, which is summarised at sections 3.4 and then 4.3 and 4.4 of the response from Transport Scotland to notification of the request for review, as set out in Appendix 3 of the case papers. The Appellant had rightly pointed out that this information is new evidence as it was not before the Appointed Officer at the time the original application was determined.
- 3.3 The Legal Adviser advised the MLRB that if this new evidence was to be admitted, the Appellant would have to satisfy the MLRB that there were either exceptional circumstances or that the traffic issue could not have been raised before and, in her opinion, there was nothing in the papers to suggest that there were exceptional circumstances. As to whether this information could have been made available before, it was arguable that, in her opinion, as this application lies very close to a significant trunk road development, and the completion of the roadworks had been delayed at the time of the application, the Appellant should have known that the views of Transport Scotland would have to be sought, and that their views would have had to entail consideration of traffic movements onto the trunk road as to which no information was supplied at that stage. On that basis, the Legal Adviser advised the MLRB that, in keeping with previous advice given in similar cases, the proper method of bringing that new information into consideration is to take advantage of the one year free resubmission period and not to seek to innovate upon an application at the review stage. The additional information was, in her opinion, previously available as a matter of fact in that it was within the knowledge of the Appellant, but he simply did not appreciate that it was significant or know how to put it forward. Whilst therefore the Appellants situation certainly aroused sympathy, the legal advice was that it did not, in her opinion, fall within the statutory test.
- 3.4 The Legal Adviser also advised the MLRB that even if members were not wholly convinced by that argument, there were further practical and technical reasons why members should consider this application without the new material recently provided. These reasons were highlighted in sections 4.5 to 4.7 of the response from Transport Scotland, in terms of which it was apparent that even with the additional information contained in the Notice of Review, Transport Scotland would still have had to maintain their objection to the application as the number of traffic movements was not supplied at that stage. Again, presumably the applicant did not appreciate that numbers were required rather than a simple description. As a result, this information did not form part of the papers before the MLRB.

- 3.5 On receipt of a copy of Transport Scotland's response to the notification of review the Appellant had forwarded the required information about the number of traffic movements to Transport Scotland, by email dated 18 February 2011 and in a reply received by the Clerk to the MLRB on 21 February 2011 Transportation Scotland had confirmed that they could finally withdraw their objection as the matter could be dealt with satisfactorily with a suspensive condition. The difficulty in placing this second wave of additional information before the MLRB was that it had not been received within the period permitted by the Regulations (within 14 days of intimation of the Transport Scotland response to the Notice of Review), and even if the MLRB was minded to ignore that matter, and to ask to have sight of the emails, the views which had already been outlined by the Legal Adviser about whether that information could then validly form part of the MLRBs considerations would remain, and were if anything rendered stronger by what would be yet another innovation upon the information based on which the original determination was made.
- 3.6 In conclusion the Legal Adviser advised the MLRB that the new information detailed in the Notice of Review at the bottom of page 2 and top of page 3 and as submitted by Transport Scotland by email dated 21 February 2011 should be omitted from consideration by the MLRB as not falling within either exception to the new evidence rule, and that the MLRB should proceed to determine the application on the same facts as the Appointed Officer reached his determination, perhaps with a recommendation that the Appellant takes advantage of the free resubmission period. As the works to the bypass were not yet concluded, any delay caused by this reapplication would appear to be unlikely to prejudice the Appellant as any permission ultimately granted is likely to be subject to a suspensive condition tied to completion of the road works. The Planning Adviser concurred with the advice of the Legal Adviser.
- 3.7 The MLRB accepted the advice of the Legal Adviser and agreed that the new information detailed in the Notice of Review at the bottom of page 2 and top of page 3 and as submitted by Transport Scotland by email dated 21 February 2011 be omitted from the MLRB's consideration of the request for review.
- 3.8 The MLRB proceeded to consider the request for review and agreed that it had sufficient information to proceed to determine the review.
- 3.9 Following consideration 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 would be contrary to policy T2 in the Moray Local Plan 2008 on the grounds that the proposed development could result in an increase in the number of vehicles entering and leaving the traffic stream at a location where visibility is limited and therefore create potential hazards.

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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.