



MORAY COUNCIL LOCAL REVIEW BODY

Review Decision Notice

Decision by Moray Local Review Body (the MLRB)

- Request for Review reference : Case 028
- Site address: 45 Templand Road, Lhanbryde
- Application for review by Mr & Mrs Thomas Stables against the decision by an Appointed Officer of Moray Council.
- Application 10/01737/APP : Full planning permission for a proposed new external access stair and formation of a deck with balustrading over the existing flat roof extension.

Date of Decision Notice: 16 May 2011

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 meetings on 24 March and 28 April 2011. The Review Body was attended at both meetings by Councillors B Jarvis (Chairman), J Hogg & G Leadbitter.

2.0 Proposal

- 2.1 This is an application for full planning permission for a proposed new external access stair and formation of a deck with balustrading over the existing flat roof extension.

MLRB Consideration of request for review

- 3.1 At the meeting of the MLRB on 24 March 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 Planning Adviser advised the meeting of an error in the Decision Notice dated 26 November 2010. The Notice referred to the application being contrary to policy H3 'new Housing in Built-Up Areas' of the Moray Local Plan 2008 when in fact the correct policy is H5 'House Alterations and Extensions' referred to in the Appointed Officer's report of handling and that applied in the consideration of this application.
- 3.3 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 undertaken, the purpose of which being to view the site in the context of Policies H5 and IMPI of the Moray Local Plan 2008. The MLRB also requested that the Planning Adviser attend the unaccompanied site inspection.
- 3.4 At the meeting of the MLRB on 28 April 2011 there was submitted a Summary of Information report detailing the outcome of the MLRB's previous consideration of the request for review. The report also advised that the unaccompanied site inspection was carried out on Thursday 21 April 2011.
- 3.5 In regard to the unaccompanied site inspection the Planning Adviser advised the meeting that on arrival at the site he reminded the members of the MLRB as to the reasons for refusal and the applicant's grounds for review as set out in the Notice of Review. Members of the MLRB also noted the proximity of the proposed balcony to neighbouring properties and also observed that there was already a window in the west gable of the existing flat roofed extension to the property and that there is also open parkland to the rear of the proposed development.
- 3.6 The MLRB agreed that it had sufficient information and proceeded to determine the request for review.
- 3.7 Councillor Leadbitter referred the meeting to point 4 of the applicant's reasons for review, which intimated that the applicant may be prepared to consider reducing the area of decking to help limit the impact on the house frontage and it was noted that as this information had not been before the Appointed Officer at the time of consideration of the planning application it would essentially be a change the application and therefore the proper avenue if the applicants wished to pursue this option would be to take advantage of the one year free resubmission period and submit a revised planning application and not to seek to innovate upon an application at the review stage.

- 3.8 Thereafter Councillor Leadbitter referred to the unaccompanied site inspection from which he had noted that the property had obviously been reasonably sympathetically developed and extended over a period of time. In regard to the current proposed development however Councillor Leadbitter expressed the view that he was not convinced that it would be sympathetic to the area and, in his opinion, would create a significant intrusion on neighbouring properties.
- 3.9 Councillor Hogg agreed with the view expressed by Councillor Leadbitter and was also of the view that there were no reasons, in his opinion, for a departure from policy and agreed with the reasons for refusal as set out in the planning application decision notice and moved that the request for review be dismissed.
- 3.10 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 proposed development is contrary to the adopted Moray Local Plan 2008 policies H5 and IMP1 where:
1. The proposed formation of deck with balustrading over the existing flat roof extension would have a significant and detrimental impact on overlooking and privacy issues for neighbouring properties.
 2. Approval of this proposal would set an undesirable precedent for similar types of development resulting in overlooking of neighbouring properties in the locality.
 3. In addition, approval of this proposal would result in an undesirable change in the character of the area.

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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.