

11/01012/ppp

NOTICE OF REVIEW

UNDER SECTION 43A(8) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (AS AMENDED) IN RESPECT OF DECISIONS ON LOCAL DEVELOPMENTS

THE TOWN AND COUNTRY PLANNING (SCHEMES OF DELEGATION AND LOCAL REVIEW PROCEDURE) (SCOTLAND) REGULATIONS 2008

THE TOWN AND COUNTRY PLANNING (APPEALS) (SCOTLAND) REGULATIONS 2008

IMPORTANT: Please read and follow the guidance notes provided when completing this form. Failure to supply all the relevant information could invalidate your notice of review.

Use BLOCK CAPITALS if completing in manuscript

Applicant(s)

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Mark this box to confirm all contact should be through this representative:

* Do you agree to correspondence regarding your review being sent by e-mail? Yes No
x

Planning authority Moray Council

Planning authority's application reference number 11/01012/ppp

Site address Site south of Bow Bridge

Description of proposed development The proposal is to build a two storey dwelling

Date of application 25 Jun 11 Date of decision (if any) 22 Aug 11

Note. This notice must be served on the planning authority within three months of the date of the decision notice or from the date of expiry of the period allowed for determining the application.

Nature of application

- 1. Application for planning permission (including householder application)
- 2. Application for planning permission in principle
- 3. Further application (including development that has not yet commenced and where a time limit has been imposed; renewal of planning permission; and/or modification, variation or removal of a planning condition)
- 4. Application for approval of matters specified in conditions

Reasons for seeking review

- 1. Refusal of application by appointed officer
- 2. Failure by appointed officer to determine the application within the period allowed for determination of the application
- 3. Conditions imposed on consent by appointed officer

Review procedure

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Please indicate what procedure (or combination of procedures) you think is most appropriate for the handling of your review. You may tick more than one box if you wish the review to be conducted by a combination of procedures.

- 1. Further written submissions
- 2. One or more hearing sessions
- 3. Site inspection
- 4. Assessment of review documents only, with no further procedure

If you have marked box 1 or 2, please explain here which of the matters (as set out in your statement below) you believe ought to be subject of that procedure, and why you consider further submissions or a hearing are necessary:

I would like the opportunity to address the Review Panel, either onsite or in a personal hearing to explain my position on this matter.

Site inspection

In the event that the Local Review Body decides to inspect the review site, in your opinion:

- | | Yes | No |
|--|-----|--------------------------|
| 1. Can the site be viewed entirely from public land? | x | <input type="checkbox"/> |
| 2. Is it possible for the site to be accessed safely, and without barriers to entry? | x | <input type="checkbox"/> |

If there are reasons why you think the Local Review Body would be unable to undertake an unaccompanied site inspection, please explain here:

Note. The planning authority will make a copy of the notice of review, the review documents and any notice of the procedure of the review available for inspection at Council Office, High Street, Elgin until such time as the review is determined. It is also be available on the planning authority website.

Checklist

Please mark the appropriate boxes to confirm you have provided all supporting documents and evidence relevant to your review:

- Full completion of all parts of this form
- Statement of your reasons for requiring a review
- All documents, materials and evidence which you intend to rely on (e.g. plans and drawings or other documents) which are now the subject of this review.

Note. Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice from that earlier consent.

Declaration

I the applicant [delete as appropriate] hereby serve notice on the planning authority to review the application as set out on this form and in the supporting documents.

Signed

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Date

25 August 2011

**PPP TO ERECT NEW DWELLING HOUSE TO THE SOUTH AND
OVERLOOKING BOW BRIDGE, GARMOUTH FOR MR COLIN BIRNIE.**

11/01012/ppp

REVIEW STATEMENT

Introduction

These grounds for review of a decision to refuse planning permission for a house at the South of Bow Bridge, Garmouth are being submitted under section 43A of the Town and Country Planning (Scotland) Act 1997 (as amended). This notice of review has been lodged within the prescribed three month period from the refusal of permission dated 22nd August 2011.

The grounds for review respond to the reasons for the refusal of planning permission and address the proposal in relation to Development Plan Policies and relevant material planning considerations as required by Section 25 of the Town and Country Planning (Scotland) Act 1997 (as amended). The application was dated 25th June 2011 and was refused under the Council's Delegation scheme by the case officer.

Reason for Refusal

The Council's reason for refusal is as follows:

"The proposal is contrary to the adopted Moray Local Plan 2008 policies H8 and IMP1 because the proposed house, when added to the number of approved and existing properties in this immediate vicinity, would result in an unacceptable build up and linear form of development extending through the woodland which would detract from the character and setting of the countryside."

Policy

Moray Local Plan 2008 Appendix 4 reflects the Structure Plan strategy by directing the majority of new development to the established settlement hierarchy whilst allowing for development in rural Moray in accordance with a range of subject specific policies including the protection of specifically designated sensitive landscape and habitat areas.

The landscape in this part of Moray is characterised by single and small groups of buildings dispersed throughout the area, which is largely uncluttered/open in nature. This site is located in the countryside outwith the towns, villages and designated rural communities which make up the established settlement hierarchy. It is not within any of the specifically designated sensitive landscape areas defined in the Local Plan e.g. Countryside Around Towns, Areas of Great Landscape Value, National Scenic Areas, Coastal Protection Zones and Gardens and Designed Landscapes. It is also not within any of the designated sensitive habitat areas defined in the Local Plan e.g. Sites of Interest to Natural Science, Sites of Special Scientific Interest, RAMSAR sites, SWT, Wildlife Sites, National Nature Reserves and Special Areas of Conservation.

Scottish Planning Policy 15 (SPP15) – Planning for Rural Development (2005) (Appendix 6) encourages a more supportive attitude towards ‘appropriate’ development in rural areas (para 1). It encourages planning authorities and agencies involved in rural development to adopt a proactive approach to *providing land for development*.

There is a clear commitment in National Planning Policy and Guidance and the Moray Structure Plan Strategy to the principle of well sited and designed new housing in the countryside. The Moray Local Plan 2008 recognises this and allows for new housing subject to siting and design criteria being met with additional controls in designated areas of landscape and habitat significance. The site is not within any areas of designated landscape or habitat significance.

Scottish Planning Policy (Appendix 6) supports small scale housing in "all rural areas" (para 94), including new clusters and groups, extensions to existing clusters and groups and plots on which to build individually designed houses. Planning Advice Note 72 (PAN72) – Housing in the Countryside (2005) (Appendix 7) requires new housing in small groups to avoid a suburban appearance, by being sympathetic in terms of orientation, topography, scale, proportion and materials to other buildings in the locality. The position of the house on this application alongside the existing developments helps to create a sympathetic and rural appearance.

Application versus Policy

The principle of the acceptability of the site itself requires to be tested primarily against Local Plan Policy H8 – New Housing in the Countryside. Policy H8 starts off by saying that it assumes against multiple house applications (more than 2) on the basis that these are more appropriately directed to Rural Communities (policy H6) and the replacement of Existing Buildings (policy H7). The application is not a multiple house application. It is for one house only.

The Council states *“the proposed house, when added to the number of approved and existing properties in this immediate vicinity, would result in an unacceptable build up and linear form of development extending through the woodland”*

The build up of houses in this locality to date has been approved by the Council. By implication the existing build up complied with policy and is also in keeping with the surrounding countryside. As a result, the recent approved applications must also represent an acceptable contribution to the existing character of this part of the countryside. The Local Plan does not identify this locality as being endangered by a detrimental build up of development that does not comply with existing character. There were no objections from the public. So it would be correct to assume that the build up of houses in this part of the Moray countryside to date is acceptable to both the local community and the Council and complies with the policies of the latter.

Under Policy guidance *“unacceptable build up”* is not in itself a reason for refusal. Any *“Build Up”* must be shown to be detrimental in terms of policy. There is no evidence to support this in the refusal notice.

However, the Policy H8 does state:

“New dwellings in the open countryside will be acceptable subject to meeting the requirements below:

Siting

- *It does not detract from the character or setting of existing buildings, or their surrounding area when added to an existing grouping or linear extension.*
- *It is not overtly prominent (such as on a skyline or on an artificially elevated ground; or in open settings such as central fields. Where an otherwise prominent site is offset by natural backdrops, these will normally acceptable in terms of criterion.*
- *At least 50% of the site boundaries are long established and are capable of distinguishing the site from surrounding land (for example dykes, hedgerows, watercourses, woodlands, tracks and roadways"*

Council policy does not forbid the accumulation of houses in the countryside. Provided an accumulation of individual houses in the countryside is not detrimental to the existing character of development in that part of the countryside, there is no policy reason in the Local Plan for refusal. The addition of one house (Policy H8) must be shown to detract from the character or setting of existing buildings, or their surrounding area if the development is to be refused. Therefore it is not enough for the Council in this instance to say that:

"the introduction of the proposed additional fifth house plot into this setting in close proximity (within 25m.) to this group of dwellings approved at Caravilla would detract from the rural character and setting of the existing development and woodland area."

The Council must demonstrate this clearly with evidence in terms of policy. This was not done.

"Notwithstanding the mature trees which help screen the existing dwellings at Caravilla the existing buildings are currently visible from the public road."

The proposed site is located in a woodland surrounded by mature pine and beech trees. The site can only be viewed in a westerly direction from a minor public road running North/South and even then the view is partially obstructed by the existing trees and a hedged area. The ground to the east is all open farm land and bordered by woodland and the River Spey. There are no views from this direction. By reference it cannot be classed as *"overtly prominent"*.

The site is bordered on the westerly side by an existing track running through the woodland . It is bordered on the south and east by sloping ground leading to an existing ditch. So 50% of the site boundaries are long established.

I also refute the claim that the application is contrary to Policy IMP1 taken in order as follows;

- The scale, density and character is appropriate to the surrounding area. I have already highlighted that the Council have approved 4 previous applications in this area. Development has already started nearby at Malverston and this will involve building 40 houses in the countryside. 09/01714/ppp approved 5 houses in a country setting so I would argue that a precedence has already been set.
- The development is integrated into the surrounding landscape. Each site is separated by an area of trees. To date each house is aligned in a different aspect which does not create a "linear appearance" as stated in the Refusal Notice. Instead they are separate houses in a rural setting and not a "build up" as stated. Due to the layout of the land the proposed house will look

North/South which again will differ in aspect to existing houses. Proposed future tree/hedge planting will further add to this isolated nature of this application.

- The Transport manager has no objection to the application. A lay by will be provided.
- Public water, telephone and electricity are all nearby and provision has been made for drainage.
- The site is 1 mile from Mosstodloch School and the village with the social facilities it provides.
- Renewable energy systems and sustainable design will be incorporated at the detailed planning stage.
- A lay by for passing and servicing will be provided.
- Retention of existing trees and further planting will ensure that the character of the environment is maintained.
- There is no flood risk
- There is no pollution problem
- There is no contamination issues
- This is not prime agricultural land, not a preferred area for forestry nor are there significant workable reserves of minerals being sterilised.
- Waste generated from the house will be minimal but will be taken to a collection point as specified by the Council.

The report confirms that despite the planning application being advertised in the local press there were no objections from third parties. It also confirms that there were no objections from statutory consultants which included the Councils Environmental Health Manager, Contaminated Land Team, Transportation Manager, Environmental Protection Manager and Scottish Water.

Accordingly, I do not believe that this application can be refused under Policy IMP1.

“The proposal may also lead to the creations of an infill site in the gap which would be created between this proposal and an earlier approved property, which may lead to further requests for additional development and further exacerbate the linear build up of houses within this rural woodland location.”

Any future planning applications should be judged on their own merits and under policy guidance. However, there is no room to build in this area due to the sloping and unstable ground to the east. In addition, 11/00369/ppp stipulates that at least 25% of the woodland will be retained. Due to the positioning of the house on that site it would mean that the trees to the north would have to be retained to comply with planning criteria. This would be in keeping with all the other sites in the locality that are all separated by an area of trees creating an “individual appearance” rather than a “linear build up” of houses.

Conclusion

- The terms of the reason for refusal are not full, clear or consistent with policy.
- National Planning Policy and Moray Councils Structure and Local Plan policies all encourage well sited houses in the country.
- The Council has encouraged the extension of this grouping by granting permissions to the north of this site.

- There were no public or technical objections.
- The Council has produced no evidence to demonstrate that the proposed house creates a build up of houses additional to those existing that can be shown to detract in any material way from the existing rural character of the area.
- The proposal complies with Policies H8 and IMP1.