



MORAY COUNCIL LOCAL REVIEW BODY

Review Decision Notice

Decision by Moray Local Review Body (the MLRB)

- Request for Review reference : Case 033
- Site address: 2 Berryhillock, Keith
- Application for review by Genesis Properties against the decision by an Appointed Officer of Moray Council.
- Application 11/00009/APP : Erection of a dwelling house, including access road and garage on Plot 2.
- Unaccompanied site inspection carried out by the MLRB on Thursday 18 August 2011.
- Date of Decision Notice: 14 September 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 28 July and 25 August 2011. The Review Body was attended at both meetings by Councillors B Jarvis (Chairman), L Creswell & G Leadbitter.

2.0 Proposal

- 2.1 This is an application for full planning permission for the erection of a dwelling house, including access road and garage, on Plot 2, Berryhillock, Keith.

MLRB Consideration of request for review

- 3.1 At the meeting of the MLRB on 28 July 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 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 H8 and IMPI of the Moray Local Plan 2008. The MLRB also requested that the Planning Adviser attend the unaccompanied site inspection.
- 3.3 Councillor Leadbitter sought clarification in regard to the reference in the 'Representations' section on page 2 of the Report of Handling to 'The number of plot has increased from three up to two' and it was agreed that this information be sought through the 'Written Submission' procedures set out in Regulation 15 of the Town & Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008 and the responses thereto submitted to the next meeting of the MLRB following expiry of the written submission procedure timescales and the unaccompanied site inspection.
- 3.4 The unaccompanied site inspection was carried out on Thursday 18 August 2011.
- 3.5 At the meeting of the MLRB on 25 August 2011 there was submitted a 'Summary of Information' report detailing the outcome of the MLRB's previous consideration of the request for review.
- 3.6 In regard to the unaccompanied site inspection the Planning Adviser advised the meeting that on arrival at the site he advised members of the MLRB of the reasons for refusal, outlined the previous planning history and summarised the Grounds for Review. He had also pointed out the location of the approved house sites, the site under Review and the means of access to the sites. The Review site was also inspected from the adjacent property.
- 3.7 The MLRB agreed that it now had sufficient information and proceeded to determine the request for review.

- 3.8 Councillor Leadbitter referred to an issue on page 27 of the Notice of Review where the Applicant had stated that the transportation section had requested conditions in an informative, and that the planning gains section would have sought a contribution towards local roads and infrastructure which the applicant would be willing to meet, while at the same time on page 28 of the Notice of Review it was considered that there were no traffic implications. He was of the view that this was contradictory because it states on one hand that they are happy to contribute to transportation conditions which would suggest that they accept them, but on the other hand it states that none are needed. It also stated at the bottom of page 28 of the Notice of Review that the Council shall not refuse the subject application in respect of the structure plan and it may be concluded that the Applicant feels that the application is in accordance with the structure plan but Councillor Leadbitter was of the view that this was spurious because the development plan is a combination of the structure plan and the local plan which interprets the strategic direction of the structure plan and if refusal of the application was on the basis of the local plan then inherently that means that it is also a refusal on the basis of the structure plan as well because they are part of one and the same development plan and have to be considered together and not separately. He referred to policy H8 of the Moray Local Plan 2008 (MLP) which assumes against multiple house applications and specifically states more than 2 and he was of the view to refuse the appeal on the grounds that the application was contrary to policy H8 which specifically states no more than 2 and policy IMP1 of the MLP because the character and density was not appropriate to the surrounding area. For these reasons Councillor Leadbitter moved that the request for review be dismissed and the original decision of the Appointed Officer to refuse the application be upheld.
- 3.9 Councillors Creswell and Jarvis supported the motion to refuse the application by Councillor Leadbitter.
- 3.10 The Planning Adviser made reference to Councillor Leadbitter's comments in respect of multiple house applications and clarified that this is an application for one house so in itself it is not a multiple house application and that the applicant had taken advantage of this by submitting three separate applications, two of which have already been approved and so the third in its own right could not be regarded as a multiple house application and therefore the ground for refusal would have to be on build up and character only.
- 3.11 Thereafter, 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 H8 and IMP1.

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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.