



MORAY COUNCIL LOCAL REVIEW BODY

Review Decision Notice

Decision by Moray Local Review Body (the MLRB)

- Request for Review reference : Case 036
 - Site address: Lilac Neuk, Keith
 - Application for review by Mr R Davidson against the decision by an Appointed Officer of Moray Council.
 - Application11/00157/APP : Full planning permission for the installation of a single C&F Green Energy 20kw wind turbine on a 20m mast in order to generate electricity.
 - Unaccompanied site inspection carried out by the MLRB on Monday 24 October 2011.
 - Date of Decision Notice: 21 November 2011
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Decision

The MLRB agreed to uphold the request for review and grants full planning consent as an acceptable departure from the Moray Local Plan 2008, subject to the conditions appended to this decision notice. Attention is also drawn to the informative notes which follow the conditions.

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 22 September and 28 October 2011. The Review Body was attended at both meetings by Councillors G Leadbitter (Chairman), L Creswell & P Paul.

2.0 Proposal

- 2.1 This is an application for full planning permission for the installation of a single C&F Green Energy 20kw wind turbine on a 20m mast in order to generate electricity at Lilac Neuk, Keith. The application site relates to an area of open farmland roughly 250 metres south from the Public Road (A95). The nearest noise sensitive property would be over 330 metres away from the proposed site. Access to the site would be via existing field entrances onto the aforementioned public road. The site is within the Keith Countryside Around Towns (CAT) designation as defined in the Moray Local Plan 2008.

MLRB Consideration of request for review

- 3.1 At the meeting of the MLRB on 22 September 2011 there was submitted a 'Summary of Information' report by the Clerk to the MLRB setting out the reasons for refusal together with a copy of the Report of Handling and a copy of the Notice of Review & supporting documents.
- 3.2 The Clerk to the MLRB advised the meeting that subsequent to notifying interested parties of receipt of the request for review it had been ascertained that other parties, which, in terms of the regulations are classed as interested parties, had been consulted by the Appointed Officer. These parties were subsequently notified and whilst none had objected to the application not all had responded prior to the meeting and that the expiry date for responses was 27 September 2011. In light of this the Clerk recommended that full consideration of the case should be deferred to the next meeting of the MLRB and in the meantime the MLRB may wish to consider if it required any other additional information or procedures to be undertaken in the interim.
- 3.3 The MLRB agreed that the request for review be deferred to the next meeting and in the interim arrangements be made for an unaccompanied site inspection be undertaken, the purpose of which being to view the site in the context of Policies E10, ER1 and IMPI of the Moray Local Plan 2008 and access requirements. The MLRB also requested that the Planning Adviser attend the unaccompanied site inspection and that a larger scale version of the Keith Countryside Around Town (CAT) map, than that contained in the Moray Local Plan 2008 document, to include the location of the proposed wind turbine, be provided to members of the MLRB prior to the unaccompanied site inspection.
- 3.4 At the meeting of the MLRB on 28 October 2011 there was submitted a 'Summary of Information' report by the Clerk to the MLRB detailing the outcome of the MLRB's previous consideration of the request for review. The meeting also noted that on expiry of notification of the review to all interested parties no further representations were received. The meeting also noted that the additional information requested by the MLRB, prior to the unaccompanied site inspection, is not considered new evidence in terms of the statutory procedures as the plan is merely a reproduction of that contained in the Moray Local Plan 2008 and therefore information which is already in the public domain and deemed to be within the knowledge of the Appointed Officer. The applicant's agent was provided with an internet link to the information provided to the MLRB. The unaccompanied site inspection was carried out on Monday 24 October 2011.

- 3.5 In regard to the unaccompanied site inspection the Planning Adviser advised the meeting that on arrival at the site he pointed out Lilac Neuk Cottage, which is to be the benefiting property from the proposed wind turbine, and the field on the opposite side of the road in which the turbine is to be located. Members viewed the enlarged map provided prior to the site inspection on which the location of the turbine was indicated within the Keith Countryside Around Town (CAT) and settlement boundaries. He also reminded the MLRB of the reasons for refusal, which related to a breach of the CAT policy and confirmed that there were no noise, shadow flicker or radio interference objections.
- 3.6 The MLRB agreed that it had sufficient information and proceeded to determine the request for review.
- 3.7 Councillor Paul expressed the view that having considered all aspects of the case it seemed to her that the only reason for refusal is the fact that the proposed development is within the CAT which has a presumption against development albeit there have been cases where permission has been granted as acceptable departures. In this case the access would not be taken off a trunk road, the site is, in her opinion, on the very edge of the CAT boundary and when viewed from the A96 and the A95 trunk roads there are trees on both the eastern and western approaches along the A95 and therefore visibility of the small scale turbine will be restricted when approaching from the east or west along the A95. For these reasons Councillor Paul moved that the request for review be upheld and planning consent granted as an acceptable departure from policy on the grounds that the current CAT policy does not sufficiently take account of small scale renewables, which was not a significant issue when the Moray Local Plan 2008 was developed and that in this case the turbine will have a negligible visual impact on the surrounding landscape. This was seconded by Councillor Creswell.
- 3.8 Councillor Leadbitter expressed the view that as the CAT policy is quite prescriptive then if consents are to be considered within the CAT boundary then either the boundary needs to be reviewed or a policy requires to be developed for small scale renewables within CAT boundaries both of which would be better considered during the review of the Moray Local Plan. For these reasons he was minded to refuse the request for review on the grounds set out by the Appointed Officer in the refusal notice.
- 3.9 Thereafter the MLRB agreed by a 2:1 majority that the request for review be granted and full planning consent granted as an acceptable departure from the Moray Local Plan 2008, subject to standard conditions relating to wind turbines and conditions and informatives recommended by consultees.

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Sean Hoath
Legal Adviser to the MLRB

CONDITIONS

1. The development to which this permission relates must be begun not later than the expiration of 3 years beginning with the date on which this permission is granted.
2. Unless otherwise agreed with the Council, as Planning Authority, the development hereby approved shall be carried out strictly in accordance with the approved plans and conditions.
3. Prior to work commencing on site the applicant shall complete the attached notification of initiation of development and submit it to the local planning authority.
4. Upon completion of the development or as soon as practicable after doing so the attached notification of completion of development shall be completed and submitted to the local planning authority.
5. Prior to development commencing, details shall be submitted to and approved by the Council as planning authority in consultation with Transport Scotland, as trunk roads authority and its operating company regarding the proposed route for any abnormal loads on the trunk road network. The required details shall identify all accommodation measures required as a result of the proposed load movements including the temporary removal of street furniture, junction widening, traffic management etc.
6. Prior to delivery of the turbines and where not previously identified in the details required by Condition 5 above, details shall be submitted to and approved by the Council as planning authority in consultation with Transport Scotland, as trunk roads authority and its operating company regarding any additional signing or temporary traffic control measures deemed necessary due to the size or length of the proposed loads being delivered.
7. The sound pressure level from the turbine, LAEQ 10min, measured at any point within 15m of the facade of any noise sensitive premises not occupied by the applicant, shall not exceed 38dB(A) at wind speeds up to and including 8m/s, as measured or calculated at a height of 10m above ground level. The noise from the turbine shall not exceed the limit and, in addition, shall contain no distinct tonal characteristics, as measured at the nearest noise sensitive properties.

At the reasonable request of the Planning Authority, following a complaint to Moray Council relating to noise emissions from the wind turbine, the person in control of the turbine shall measure, at their own expense, the level of noise emissions from the wind turbine in order to demonstrate compliance with this condition.

Measurements shall be made using a sound level meter of at least Type 1 quality (as defined in EC Standard 651 (1979)), using a fast time weighted response incorporating a windshield using a ½ inch diameter microphone, between 1.2m and 1.5m above ground level and at least 10m from any wall, hedge or reflective surface. For the purpose of this condition 'wind speed' means the wind speed measured at a height of 10m above ground level.

8. Within 25 years of the date of this consent or when the turbines have ceased their generating function, whichever is sooner, the turbines shall be removed from the site in their entirety and the foundations shall be top soiled, graded and seeded on the basis of details first agreed in writing with the Planning Authority.
9. Where interference to domestic television reception is caused as a result of the development hereby approved the developer shall take steps to make good the reception, either by eliminating the cause of the interference or by providing an alternative means by which television signals may be received. Within two weeks of being notified by the planning authority of the existence of such interference (or within a longer period as the planning authority may allow) the developer shall submit to the authority for its approval proposals to make good the reception, including a programme showing the time within which the proposals will be completed. The proposals shall be carried out in accordance with the terms on which they are approved.
10. This permission relates solely to the installation of one C&F Green Energy 20kw wind turbines (12.8m blade diameter), as detailed in the supporting documents accompanying this application, unless otherwise agreed by the Planning Authority.
11. Before development begins written evidence must be submitted to the planning authority which demonstrates that the applicant has submitted the following information to the Defence Estates MOD Safeguarding Officer (david.naylor-gray@de.MOD.uk), Safeguarding - Wind Energy, Defence Estates, Kingston Road, Sutton Coldfield, West Midlands, B75 7RL:-
 - the date construction starts and ends
 - the maximum height of construction equipment
 - the latitude and longitude of the turbine

REASONS FOR CONDITIONS

1. The time limit condition is imposed in order to comply with the requirements of Section 58(i) of the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006.
2. In order to ensure that there are no unauthorised departures from the approved plans which could adversely affect the development or character and amenity of the surrounding properties and area.
3. To ensure that the planning authority is aware that development is about to commence and any suspensive conditions can be followed up.
4. To ensure that the planning authority is aware that the development is complete and is able to follow up any conditions.
5. To maintain safety for both Trunk Road traffic and the traffic moving to and from the development and to ensure that the transportation will not have any detrimental effect on structures within the route path.
6. To minimise interference with the safety and free flow of the traffic on the Trunk Road Network.
7. To protect local residents from noise from the turbines.

8. In order to ensure the timeous return of the site to its natural state, or re-consideration for an extended period of operation.
9. In order to ensure that an alternative means of obtaining a television reception can be achieved in the event of interference to domestic television reception occurring.
10. To protect local residents from noise from the turbines.
11. To maintain air safety.

ADDITIONAL NOTES FOR INFORMATION OF THE APPLICANT

TRANSPORT SCOTLAND has commented that:

In issuing planning permission the applicant should be informed that the consent does not carry with it the right to carry out works within the trunk road boundary and that he must consult with Transport Scotland, Trunk Road and Bus Operations through its Management Organisation. BEAR NE on the terms and conditions, under Roads legislation, that require to be agreed to enable works within the trunk road boundary to be approved in this case temporary improvement of trunk road junctions to allow transportation of exceptional loads.

In relation to Condition 6 any additional measures deemed necessary must be undertaken by a recognised QA traffic management consultant, to be approved by Transport Scotland and / or its Operating Company before delivery commences.

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.

The Moray Council

NOTIFICATION OF INITIATION OF DEVELOPMENT

Section 27A Town and Country Planning (Scotland) Act 1997

Planning Application Reference No: 10/00745/APP

Date issued:

I hereby give notice that works as detailed under the above planning application will commence on:

Signed: Date:

THE FOLLOWING INFORMATION MUST BE PROVIDED:

1. Name and address of person carrying out the development:

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2. The full name and address of the landowner, if a different person:

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3. Where a site agent is appointed, their full name and contact details:

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4. The date of issue and reference number of the grant of planning permission:

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Please return this form, duly completed to: - The Moray Council
Development Management
Development Services
Environmental Services Department
Council Office,
High Street
Elgin IV30 1BX

IMPORTANT

It is important that the Environmental Services Department is advised when you propose to start work as failure to do so may result in enforcement action be taken.

Please complete and return this form.

The Moray Council

NOTIFICATION OF COMPLETION OF DEVELOPMENT

Section 27B Town and Country Planning (Scotland) Act 1997

Planning Application Reference No: 10/00745/APP

Date issued:

I hereby give notice that works as detailed under the above planning application will be completed on:

Signed: Date:

Please return this form, duly completed to: - The Moray Council
Development Management
Development Services
Environmental Services Department
Council Office
High Street
Elgin IV30 1BX

IMPORTANT

It is important that the Environmental Services Department is advised when the development has been completed as failure to do so may result in enforcement action be taken.

Please complete and return this form.