



## MORAY COUNCIL LOCAL REVIEW BODY

### Review Decision Notice

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Decision by Moray Local Review Body (the MLRB)

- Request for Review reference : Case 038
- Site address: Wardend Fishery, Birnie, Elgin
- Application for review by Mr Iain MacDonald against the decision by an Appointed Officer of Moray Council.
- Application 1002067/APP : Full planning permission to erect a one and a half storey dwellinghouse on a site at Wardend Fishery, Birnie, Elgin.
- 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, 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 to erect a one and a half storey dwellinghouse on a site at Wardend Fishery, Birnie, Elgin. The site lies between the lodge which was approved as part of the fishery and a large new house to the south (08/01492/FUL) The fishing lodge approval (06/02300/FUL) was subsequently granted an amended approval for use as a dwellinghouse. The area is landscaped, fronts the unclassified road, has the fishery lake to the rear and in the near distance to the west there is a low hillside. Coniferous woodland rises to the south on the opposite side of the road.

### **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 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 and that a plan be provided to members of the MLRB, prior to the site inspection, indicating the locations of all applications approved or refused within a 1 mile radius of the proposed dwellinghouse.
- 3.3 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 the plan provided to members of the MLRB, prior to the site inspection, indicating the locations of all applications approved or refused within a ½ mile radius of the proposed house, is not considered new evidence in terms of the statutory procedures as the plan merely brings together information that was already in the public domain and therefore deemed to have been within the knowledge of the Appointed Officer. A copy of the information provided to members was also copied to the applicant. The unaccompanied site inspection was carried out on Monday 24 October 2011.
- 3.4 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 that it was a detailed application and no objections had been raised regarding the design element of the proposed development. As well as viewing the site of the application the MLRB also viewed the sites of multiple houses raised by the applicant in his grounds for review.
- 3.5 The MLRB agreed that it had sufficient information and proceeded to determine the request for review.

- 3.6 Prior to giving further consideration Councillor Paul sought clarification on the second ground for refusal set out in the refusal notice given that she did not consider this to be appropriate in this case and that each application should be considered on their individual merits and therefore, in her opinion, the third ground for refusal was also not appropriate. The Planning Adviser confirmed that in respect of the second reason, there had been a misinterpretation of the 'multiple house' aspect of the policy, and this matter was currently under discussion within the Development Management Section of the Environmental Services Department of the Council, so as to ensure consistency in interpretation. The other two reasons were appropriate interpretations in terms of policy H8.
- 3.7 Thereafter Councillor Paul expressed the view that having had participated in an extensive site inspection and viewed the site in context and in terms of the superimposed photograph showing the proposed development (page 13 of the case papers submitted the MLRB on 22 September 2011) it was, in her opinion, an ideal location for a house. She also expressed the view that it will not be in a prominent position, will not have a materially detrimental impact on the area nor would it contribute to an urban type build-up of development that would be inappropriate to the character of the surrounding area. For these reasons Councillor Paul moved that the request for review be upheld and full planning consent granted as complying with policy. This view was supported by Councillors Creswell and Leadbitter.
- 3.8 The MLRB unanimously agreed that the request for review be granted and that the application for full planning permission be approved, as complying with policy, subject to standard conditions 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. That no development shall take place until a Landscape Scheme (drawn to scale) is submitted to and approved by this Council (as Planning Authority). This Landscape Scheme shall show:-
  - (a) the location of any existing trees, shrubs and hedgerows on the site and identify those to be retained and those to be removed;
  - (b) details of the measures to be taken to protect any existing trees, shrubs and hedgerows during the course of developing the site;
  - (c) details of the numbers, species, position, planting distances and sizes of all planting to be undertaken.
4. That all planting, seeding or turfing forming part of the approved landscape scheme shall be carried out in the first planting and seeding seasons following the occupation of the dwellinghouse; or the completion of the building works, whichever is the sooner. Any trees or plants which (within a period of 5 years from the planting) die, are removed or become seriously damaged or diseased shall be replaced in the following planting season with others of similar size, number and species unless this Council (as Planning Authority) gives written consent to any variation of this planning condition.
5. No water shall be permitted to drain or loose material be carried onto the public footway/carriageway.
6. The first 10m of the access track, measured from the edge of the public road (U119E Birkenbaud Road), shall be constructed to the Moray Council specification and surfaced with bituminous macadam.
7. Three private parking spaces shall be provided at all times.
8. A visibility splay of 4.5m x 120m shall be provided and maintained at the access in both directions, clear of any obstruction above 1.0m in height.

9. 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.
10. 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.

## **Reasons**

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. In order to ensure that the approved landscaping works are timeously carried out and properly maintained in a manner which will not adversely affect the development or amenity and character of the area.
4. In order to ensure that the approved landscaping works are timeously carried out and properly maintained in a manner which will not adversely affect the development or amenity and character of the area.
5. To ensure acceptable development that does not create any hazard to road users in the interests of road safety.
6. To ensure acceptable infrastructure at the development access.
7. To ensure acceptable development in the interests of road safety.
8. To ensure acceptable Access and Visibility in the interests of road safety for the proposed development and other road users.
9. To ensure that the planning authority is aware that development is about to commence and any suspensive conditions can be followed up.
10. To ensure that the planning authority is aware that the development is complete and is able to follow up any conditions.

## **INFORMATIVES.**

MANAGER (DEVELOPMENT MANAGEMENT) has commented that:-

It is noted that your planning application proposes a septic tank and soakaway/infiltration drainage system and the suitability of the ground condition to accommodate this will be dealt with as part of your Building Warrant application. Full details of a ground assessment, trial pit investigations and percolation test results, from a suitably qualified person as contained within the Council's List of Approved Certifiers, will be required prior to obtaining a Building Warrant

An application for a Building Warrant and compliance with the Building Regulations are entirely separate from planning procedures. Furthermore, the granting of Planning Consent does not guarantee approval of a Building Warrant.

If you have not already done so and you may wish to satisfy yourself about the adequacy of ground conditions separately at this stage, if so I recommend that you contact the Building Standards Section directly at Environmental Services, The Moray Council, Council Offices, High Street, Elgin, IV30 1BX, telephone(01343) 563243.

Please note that any proposed discharges to land or the water environment will require authorisation from SEPA under the Water Environment (Controlled Activities) (Scotland) Regulations 2011. For further details refer to SEPA website [http://www.sepa.org.uk/water/water\\_regulation/regimes.aspx](http://www.sepa.org.uk/water/water_regulation/regimes.aspx).

THE TRANSPORTATION MANAGER, DIRECT SERVICES, ACADEMY STREET, ELGIN has commented that:-

The applicant shall be responsible for ensuring that surface/ground water does not run from the public road into his property.

The applicant shall ensure that their operations do not adversely affect any Public Utilities, which should be contacted prior to commencement of operations.

The applicants shall free and relieve the Roads Authority from any claims arising out of his operations on the road or extension to the road.

The Transportation Manager must always be contacted before any works commence and a road opening permit must be obtained. This includes any temporary access, which should be agreed with the Roads Authority prior to work commencing on it.

## 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.**

