



MORAY COUNCIL LOCAL REVIEW BODY

Review Decision Notice

Decision by Moray Local Review Body (the MLRB)

- Request for Review reference : Case 039
- Site address: Cara Villa, Fochabers
- Application for review by Mr Colin Birnie against the decision by an Appointed Officer of Moray Council.
- Application11/01012/PPP: Planning permission in principle to build a two storey dwelling on a site south of the Bow Bridge
- Unaccompanied site inspection carried out by the MLRB on Thursday 10 November 2011.
- Date of Decision Notice: 29 November 2011

Decision

The MLRB agreed to uphold the request for review and grants planning permission in principle, 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 planning permission in principle was considered by the MLRB at meetings on 28 October and 17 November 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 planning permission in principal to erect a two storey dwelling on land to the south and overlooking Bow Bridge at a site at Cara Villa, Fochabers. The application site relates to an area of land in a rural woodland area south of Garmouth. The site is approx 2120 sq. m. in size and is relatively level. The site is accessed from an existing private road which serves the neighbouring Cara Villa to the south and two adjoining site's (11/00369/PPP and 08/01933/FUL) adjacent to the site's eastern boundary. The private access connects to the public road circa 120m south west of the site. All site boundaries are comprised of mature woodland. There are a number of mature trees throughout the site and there is a stated intention to retain 25% of trees within the site.

3. MLRB Consideration of request for review

3.1 At the meeting of the MLRB on 28 October 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:-

- (i) it did not have sufficient information in order to proceed to determine the request for review;
- (ii) 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;
- (iii) 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 the immediate vicinity of the proposed dwellinghouse;
- (iv) if considered appropriate after the site inspection, a further map be provided prior to the meeting, showing the locations of all house applications within the wider area, the radius of which to be determined at the site inspection.
- (v) copies of the plans submitted with the planning application be circulated to members of the MLRB together, in accordance with a previous MLRB decision, a copy of a location plan of the proposed site given that one was not included with the review documents; and
- (vi) a copy of all information referred to in (iii) and (iv) be copied to the applicant.

- 3.3 At the meeting of the MLRB on 17 November 2011 there was submitted a 'Summary of Information' report detailing the outcome of the MLRB's previous consideration of the request for review. There was also appended to the report as Appendix 1 a copy of the plan and associated information provided to members of the MLRB, prior to the site inspection, indicating the locations of all applications approved or refused within the immediate vicinity of the proposed development. There was also circulated, prior to the meeting, a supplementary plan and associated information indicating the locations of all applications approved or refused within a ½ mile radius of the proposed development requested by the MLRB at the unaccompanied site inspection. The meeting noted that this additional information provided to the MLRB was not considered new evidence in terms of the statutory procedures as the plans merely bring 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 the MLRB 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 and on looking at the plan of the history of applications in the immediate vicinity the position of the existing house was established, the sites with existing planning consent and the site subject of the review. He reminded members of the MLRB of the reasons for refusal which related to build-up, linear pattern and not in keeping with the character of the surrounding area. The settlement pattern in the wider area was also viewed and a map indicating the locations of all applications approved or refused within a ½ mile radius of the proposed development was requested which indicated one other house application within the ½ mile radius. He also advised that whilst the application was for permission in principle the application indicated that a two storey house was to be provided and he also confirmed that, in terms of policy H8, 25% of the plot would require to be planted with trees. The MLRB agreed that it had now sufficient information and proceeded to determine the request for review.
- 3.5 Councillor Leadbitter expressed the view that, having considered all the information in respect of the review and having had the opportunity to visit the site of the application, the site was secluded within woods and there is one existing dwelling, one other near completion and two other application sites approved within the immediate vicinity so there was already a group of four and a fifth consent, in his opinion, would extend the development linearly and would agree with the decision of the Appointed Officer that the proposed development would also lead to an uncharacteristic build-up in the area which would detract from the character and setting of the surrounding countryside. For these reasons Councillor Leadbitter moved that the request for review be refused for the reasons set out by the Appointed Officer in the refusal notice.

- 3.6 Councillor Paul expressed the view that, having had the opportunity to visit the site, she was of the opinion the group of houses was more of a 'cluster' rather than linear development and, in terms of character, it was located in a well appointed site which would not be seen on approach from the west and from the east there were open fields and the River Spey and not a lot of properties on the other side of the River Spey. For these reasons Councillor Paul moved approval of the application, as complying with policy, on the grounds that, in her opinion, the proposed development and the existing developments and consents represented a 'cluster' rather than linear development which would not result in an unacceptable build up nor would it detract from the character and setting of the surrounding countryside. This was seconded by Councillor Creswell.
- 3.7 In response to a question from Councillor Paul in regard to the possibility of applying a condition prohibiting the removal of the row of trees between the houses and the road the Planning Adviser advised the meeting that as the trees were outwith the site he did not consider that it would be appropriate to apply such a condition.
- 3.8 Thereafter the MLRB agreed by a 2:1 majority that the request for review be granted and planning permission in principle be granted as complying with the Moray Local Plan 2008 (MLP 2008), subject to standard conditions and conditions and informatives recommended by consultees.

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Sean Hoath
Legal Adviser to the MLRB

Conditions

1. (a) That in the case of any matter specified in conditions attached to the planning permission in principle, application for approval must be made before:-
 - (i) that expiration of 3 years from the date of the grant of planning permission in principle; or
 - (ii) the expiration of 6 months from the date on which an earlier application for such approval for the same matters was refused; or
 - (iii) the expiration of 6 months from the date on which an appeal against such refusal was dismissed; whichever is the latest: provided that only one such application for approval of matters specified in conditions may be made in the case after the expiration of the 3 year period mentioned in subparagraph (i) above.
- (b) That the development to which the permission relates must be begun not later than whichever is the later of the following dates:-
 - (i) the expiration of 3 years from the date of the grant of planning permission in principle; or
 - (ii) the expiration of 2 years from the final approval of the matters specified in conditions or in the case of approval on different dates the final approval of the last such matter to be approved.
2. The approval hereby granted is for planning permission in principle and prior to the commencement of the development approval of matters specified in conditions, including the siting, design and external appearance of the building(s) the means of access thereto and the landscaping of the site shall be obtained from the Council, as Planning Authority.
3. The grant of planning permission in principle hereby granted for the proposed development shall be carried out only in accordance with detailed drawings which shall previously have been submitted to and approved by the Council, as Planning Authority. These drawings shall show the matters specified in conditions numbered 4-9 below.
4. Plans, sections and elevations of all buildings proposed with details of the type and colour of all external materials and finishes shall be submitted in accordance with condition no. 3 above.

5. The proposed layout of the site showing the exact position of the site boundaries, the position of all buildings, the means of access, areas for vehicle parking and the arrangements for the disposal of foul and surface water (i.e. a SUDS system or equivalent) shall be submitted in accordance with condition no. 3 above.
6. Details of the exact extent, type and finish of all other works including walls, fences and other means of enclosure and screening shall be submitted in accordance with condition no. 3 above.
7. Sections through the site showing the development on its finished levels in relation to existing levels shall be submitted in accordance with condition no. 3 above.
8. Landscaping proposals showing any existing trees/hedges/shrubs to be retained or removed together with details of the type, position and number of all planting to be undertaken and details of all surfacing materials shall be submitted in accordance with condition no. 3 above.
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.
11. No boundary fences, hedges, walls or any other obstruction whatsoever over 1.0m in height and fronting onto the public road shall be within 2.4m of the edge of the carriageway.
12. The width of the vehicular access shall be 5.5m for the first 15 metres measured from the edge of the public carriageway and 3.5m thereafter, and have a maximum gradient of 1:20 measured for the first 5.0m from the edge of the public carriageway.
13. No water shall be permitted to drain or loose material be carried onto the public footway/carriageway.
14. An access lay-by 12.0m long by 2.5m wide with 30 degrees splayed ends shall be provided at the edge of the public road to allow visiting service vehicles to park clear of the public road. The vehicular access should lead off the lay-by. The lay-by must be constructed in accordance with The Moray Council specification and surfaced with bituminous macadam. Note: the provision of this access lay-by shall be shown on the drawings for any subsequent planning application.
15. The first 10m of the access track, measured from the edge of the public road, shall be constructed to the Moray Council specification and surfaced with bituminous macadam.
16. Two private car parking spaces for up to a 3 bedroomed dwelling and three private car parking spaces for a 4 or more bedroomed dwelling shall be provided.
17. A turning area shall be provided within the curtilage of the site to enable vehicles to enter and exit in a forward gear.

18. A visibility splay of 4.5m x 215m shall be provided and maintained at the access in both directions, clear of any obstruction above 1.0m in height. Note: the provision of this visibility splay shall be shown on the drawings for any subsequent planning application.

Reasons

1. The time limit condition is imposed in order to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006.
2. In order to ensure that the matters specified can be fully considered prior to the commencement of development.
3. As the approval is granted for planning permission in principle only and in order that detailed consideration can be given to the matters specified.
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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.
11. To ensure acceptable development in the interests of road safety.
12. To ensure acceptable infrastructure at the development access.
13. To ensure acceptable development that does not create any hazard to road users in the interests of road safety.

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16. To ensure acceptable development in the interests of road safety.
17. To ensure acceptable development in the interests of road safety.
18. To ensure acceptable Access and Visibility in the interests of road safety for the proposed development and other road users.

INFORMATIVES.

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

Planning consent does not carry with it the right to carry out works within the public road boundary and the applicant must contact the Transportation Manager for road opening permit in accordance with the Roads (Scotland) Act 1984. This includes any temporary access joining with the public road.

No building materials/scaffolding/builder's skip shall obstruct the public road (including footpaths) without permission from the Roads Authority.

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.

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.