



MORAY COUNCIL LOCAL REVIEW BODY

Review Decision Notice

Decision by Moray Local Review Body (the MLRB)

- Request for Review reference : Case 030
- Site address: 11 North Street, Bishopmill, Elgin
- Application for review by Ms Teresa Baldwin against the decision by an Appointed Officer of Moray Council.
- Application1001214/APP : Full planning permission for the erection of a dwellinghouse at the rear of 11 North Street, Bishopmill, Elgin.
- Unaccompanied site inspection carried out by the MLRB on Monday 25 July 2011.
- Date of Decision Notice: August 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 26 May and 28 July 2011. The Review Body was attended at both meetings by Councillors G Leadbitter (Chairman), L Creswell & P Paul (substituting for Councillor B Jarvis, Ward Member).

2.0 Proposal

- 2.1 This is an application for full planning permission for the erection of a dwellinghouse at the rear of 11 North Street, Bishopmill, Elgin

MLRB Consideration of request for review

- 3.1 At the meeting of the MLRB on 26 May 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 and copies of further representations received from interested parties following notification of request for review.
- 3.2 During discussion Councillor Creswell sought clarification in regard to the statement in the Appellant's grounds for review that they would 'be willing to forego permitted development rights as a condition of planning consent'. The Planning Adviser advised the meeting that, in terms of the relevant Planning Acts, there are certain amounts by which a person can extend or alter their property without the need to obtain planning consent and the Appellant had indicated that they would be prepared to forego these rights were the MLRB minded to uphold the request for review and grant planning consent, which would then require the appellant to submit a planning application in respect of any future proposals to extend or alter the property thus allowing the planning authority a degree of control over the level of development on the site.
- 3.3 Councillor Leadbitter referred to concerns expressed in the case papers to access, particularly in regard to construction traffic, and enquired if this was an issue which could be covered by an appropriate condition(s) should the MLRB be minded to grant the request for review. The Planning Adviser advised the meeting that, as indicated in the Report of Handling, there was no objection from the Council's Transportation Section albeit their consultation response indicated that this would be subject to a number of conditions and informatives. It was agreed that a copy of the consultation response from the Council's Transportation Section be included in the case papers for submission to the next meeting of the MLRB following the unaccompanied site inspection. In noting that whilst the consultation response is part of the application papers and therefore deemed to be part of the review application it was also noted that it would not have been in the public domain and therefore the Appellant and other interested parties would not have been aware of the content. In light of this it was agreed to obtain the views of the Appellant and interested parties on the consultation response through the 'Written Submissions' procedure 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 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 H4 and IMPI of the Moray Local Plan 2008, the concerns expressed by those submitting representations on the application and the character of the area. The MLRB also requested that the Planning Adviser attend the unaccompanied site inspection.

- 3.5 The MLRB also agreed that as this is an application for full planning consent it would be beneficial to have sight of the design drawings, which are part of the application papers and therefore deemed to be part of the review application and in the public domain, prior to the unaccompanied site inspection. The meeting also noted that the design specification element of the proposed dwellinghouse was not included in the reasons for refusal and that although referred to as a low carbon specification the method of construction was not a material planning consideration.
- 3.6 At the meeting of the MLRB on 28 July 2011 there was submitted a 'Summary of Information' report detailing the outcome of the MLRB's previous consideration of the request for review and advising that the unaccompanied site inspection was carried out on Monday 25 July 2011.
- 3.7 In regard to the unaccompanied site inspection the Planning Adviser advised the meeting that on arrival at the site members of the MLRB noted the access off Mitchell Crescent and the proposed access to the site. Members also noted the site itself in the context of the overall site applied for and the land which would remain within the ownership of the parent property. Members were also shown the character of the plot size, proposed house type and general character of the area.
- 3.8 The MLRB agreed that it had sufficient information and proceeded to determine the request for review.
- 3.9 Councillor Paul sought clarification in regard to the proposed plot size in the context of Policy H4 of the Moray Local Plan 2008 (Local Plan). The Planning Adviser advised the meeting the Policy H4 requires a plot size of at least 400m² whereas the proposed site was approximately 260m².
- 3.10 Councillor Leadbitter expressed the view that whilst there were issues of overlooking in relation to a neighbouring property this could, in his opinion, were the MLRB minded to uphold the request for review, be resolved by the application of appropriate conditions. He also expressed the view that the subdivision of the original plot clearly left the parent property, in his opinion, with less than 50% of the overall plot size and the proposed plot was significantly less than the 400m² required by Policy H4 of the Local Plan and therefore, in his opinion, made it a very cramped site and contrary to Policy H4 of the Local Plan. He was also of the view that whilst Policy IMP1 of the Local Plan was quite flexible Policy H4 was quite specific. For these reasons Councillor Leadbitter moved that the request for review be refused on the grounds that the proposed development does not comply with Policy H4 and IMP1 of the Local Plan for the reasons set out in the application decision notice.

3.11 Councillor Leadbitter's views were supported by Councillors Paul and Creswell and 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 H5 and IMP1 for the following reasons:

- (i) The site is of insufficient size for a new dwelling and a cramped form of development would result that would compromise the openness in an already densely developed area.
- (ii) The proposed development would result in overlooking in relation to a neighbouring house and would have a detrimental amenity impact on adjoining residential properties.
- (iii) The site involves subdivision by more than 50% of the original parent plot.

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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.