



## 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 067
  - Site address: Muirfield, 27 Forteach Avenue, Elgin, Moray
  - Application for review by Mr Ken Bowlt, against the decision by an Appointed Officer of the Moray Council.
  - Application 11/01405/APP: Proposed Solar Panels to Flat Roof.
  - Unaccompanied site inspection carried out by the MLRB on 16 November 2012
  - Date of Decision Notice: 10 January 2012
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#### Decision

The MLRB agreed to uphold the request for review and grant planning permission, subject to the conditions appended to this decision notice.

#### 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 case was considered at the meeting of the MLRB on 22 November 2012. The Review Body was attended by Councillors C Tuke (Chair), B Jarvis, G Coull, L Creswell, J Mackay and R Shepherd.

#### 2.0 Proposal

2.1 This is an application for planning permission for proposed solar panels to a flat roof at Muirfield, 27 Forteach Avenue, Elgin, Moray.

### **3.0 MLRB Consideration of request for review**

- 3.1 In regard to the unaccompanied site inspection carried out on Friday 16 November 2012 the Planning Adviser advised the meeting that on arrival at the site, members were shown the plans for the proposal and the location of the panels on the roof. Members also viewed the applicant's photographs of various viewpoints looking onto the house.
- 3.2 The proposals had been refused on the basis that the solar panels in the proposed position would have an adverse impact on the visual appearance of the existing property and the surrounding locality in which the property is located.
- 3.3 The Applicant's submission was that the position of the proposed panels was carefully selected. The panels were barely visible and from some views not seen at all. The applicant provided photographs from various locations within their submission and stated that the panels are simple rectangular and flat and do not detract from the unique design of the existing house. The proposed positioning is south facing to maximise solar gain. The panels would be a small ancillary feature mostly out of sight. The applicant also made reference to the role of renewables in contributing to efforts to reduce greenhouse gas emissions and address climate change.
- 3.4 Councillor Tuke advised the MLRB that following the site visit he had drawn up a scale diagram indicating the line of sight which suggested that there would be little visual intrusion in his view. He further suggested that as the roof railings were original features of the house and when replaced would be 0.8m high then the 1.78m of the panels would be mitigated to 0.98m and accordingly within the permitted development rules.
- 3.5 In response, the Legal Adviser suggested that if Councillor Tuke's logic was followed then any feature on the roof could be considered as the height from which the 1m permitted development could be measured e.g. a chimney pot. The Legal Adviser stated that this could not be proper interpretation of the rules and rather that the 1m tolerance should be measured from the actual roof and not installations on it.
- 3.6 The Planning Adviser in order to give clarification referred the MLRB to item 3 (a) page 13 of the Appellant's submission where it states that the height of the proposed panels is 1.01m at 30° with the supporting structure the overall height above the flat roof would just be over the one metre "bubble" of the permitted development rights and would not require planning consent.
- 3.7 Councillor Jarvis expressed the view that because the development was only 1cm outwith the bubble he was of the opinion that the appeal should be upheld.
- 3.8 Councillor Tuke advised that whether the development was within or without the bubble it was his opinion that there would be minimal visual impact as the panel and house fascias were all black and matching and would be in keeping with the area and he could see no problem with this and for these reasons he agreed that the appeal be upheld.

- 3.9 Councillor J MacKay expressed the view that having had the opportunity to visit the site to gain a clearer understanding of the application and the reasons for refusal, he made reference to Policy H5 which clearly states that house alterations and extensions would normally be approved, if the appearance of the house and the surrounding area was not adversely affected in terms of style, scale, proportions or materials. He further intimated that although this application may infringe on Policy H5 he was of the opinion that it was not in any significant measure to justify refusal as the impact of the panels on the roof was minimal and would be visible by a matter of millimetres and would barely be seen from ground level. As there were no objections from neighbours, for these reasons he moved that the request for review be upheld and planning permission granted.
- 3.10 The Legal Adviser referred to previous comments made by Councillor Jarvis in relation to the proposal just being 1cm outwith the bubble. He stated that these rules are statutory in nature and the MLRB would need to be clear on this if they proposed to discount them.
- 3.11 On the advice of the Legal Adviser, Councillor Jarvis agreed to withdraw his comments in relation to the application being outwith the bubble, however he was still minded to uphold the appeal as complying with policy and agreed that the request for review be upheld and planning permission granted.
- 3.12 There being no-one otherwise minded the MLRB that the that the request for review be upheld and that planning permission be approved as complying with policy subject to standard conditions.



**Paul Nevin**  
**Legal Adviser to the MLRB**

Conditions – None

## **IMPORTANT NOTES ABOUT THIS DECISION**

### **DURATION OF THIS PERMISSION**

In accordance with Section 58 (i) of the Town and Country Planning (Scotland) Act 1997 as amended, 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.

If the development has not commenced within this period then this permission shall lapse unless there is a specific condition attached to this permission which varies the stated timescale.

### **COMMENCEMENT AND COMPLETION OF THE DEVELOPMENT**

The following are statutory requirements of the Town & Country Planning (Scotland) Act 1997, as amended. Failure to meet their respective terms represents a breach of planning control and may result in formal enforcement action. Copies of the notices referred to below are attached to this permission for your use.

**NOTIFICATION OF INITIATION OF DEVELOPMENT - S.27A of the 1997 Act, as amended** requires that any person who has been granted planning permission (including planning permission in principle) and intends to start development must, as soon as practicable after deciding the date they will start work on the development, give notice to the planning authority of that date. This ensures that the planning authority is aware that the development is underway and can follow up on any suspensive conditions attached to the permission. Therefore, prior to any work commencing on site, the applicant/developer must complete and submit to the Moray Council, as planning authority, the attached Notification of Initiation of Development.

**NOTIFICATION OF COMPLETION OF DEVELOPMENT - S.27B of the 1997 Act, as amended** requires that any person who completes a development for which planning permission (including planning permission in principle) has been given must, as soon as practicable after doing so, give notice of completion to the planning authority. This will ensure that the planning authority is aware that the development is complete and can follow up any planning conditions. Therefore, on completion of the development or as soon as practicable after doing so, the applicant/developer must complete and submit to the Moray Council, as planning authority the attached Notification of Completion of Development.

**NOTIFICATION OF COMPLETION OF PHASED DEVELOPMENT – Under S.27B(2) of the 1997 Act, as amended** where permission is granted for phased development, the permission is subject to a condition (see Schedule of Conditions above) requiring the applicant/developer as soon as practicable after each phase to give notice of that completion to the planning authority. This will allow the planning authority to be aware that particular phase(s) of the development is/are complete. When the last phase is completed the applicant/developer must also complete and submit a Notification of Completion of Development.

## **ADDITIONAL NOTES FOR INFORMATION OF THE APPLICANT**

The following notes are provided for your information including comments received from consultees:-

**DETAILS OF ANY VARIATION MADE TO ORIGINAL PROPOSAL,**

**AS AGREED WITH APPLICANT (S.32A of 1997 ACT)**

**DETAILS WHERE DIFFERENT TIME-PERIOD(S) FOR DURATION OF PLANNING  
PERMISSION IMPOSED (S.58/59 of 1997 ACT)**

**TERMS OF S.75 AGREEMENT RELATING TO THIS APPLICATION**

The terms, or summary of terms of the Agreement can be inspected at:-

# The Moray Council

## NOTIFICATION OF INITIATION OF DEVELOPMENT

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

Planning Application Reference No:

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:

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.**