



MORAY COUNCIL LOCAL REVIEW BODY

Review Decision Notice

Decision by Moray Local Review Body (the MLRB)

- Request for Review reference: Case 082
 - Site Address: Between Moorside and Oakview, Mosstowie, Elgin
 - Application for review by Mr J Geoghegan, Grant and Geoghegan, Unit 4, Westerton Road Business Centre, 4 Westerton Road South, Keith, AB55 5FH
 - Planning Application 13/00188/APP – Erect a house on site between Moorside and Oakview, Mosstowie, Elgin.
 - Unaccompanied site inspection carried out by the MLRB on Friday 23 August 2013
 - Date of Decision Notice: 23 September 2013
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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. 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 was considered by the MLRB at the meeting held on 29 August 2013.
- 1.3 The Review Body was attended by Councillors B Jarvis (Chair), G Leadbitter, G Coull, and J Mackay.

2.0 Proposal

- 2.1 This is an application for planning permission for a proposed erection of a house on the site between Moorside and Oakview, Mosstowie, Elgin.

3.0 MLRB Consideration of request for review

- 3.1 With regard to the unaccompanied site inspection carried out on 23 August 2013, the Planning Adviser advised that Members were shown the site and the representations to the proposal were summarised.
- 3.2 In terms of the refusal, the Planning Adviser advised that the proposal is contrary to the Countryside around Towns (CAT) policy as the proposal is not one of the permitted exceptions allowed within the CAT. In terms of housing in the countryside policies, the roadside development would link well separated houses to the east and west and create a linear form of development out of keeping with the character of the area creating a build up of development. Furthermore, the proposal would be overtly prominent due to its detrimental impact on the overall rural character of the setting.
- 3.3 In terms of the Appellant's grounds for review, the Appellant is of the opinion that the siting and design of the proposal are acceptable. The siting of new houses as part of an existing grouping within the CAT can be acceptable without compromising the intended aims of the policy. He further stated that the site is well defined, enclosed and naturally screened and that views of the house will only be available over very short distances. The site is not overtly prominent as it does not occupy the skyline and is not in the centre of a field.
- 3.4 Councillor Leadbitter having had the opportunity to view the site and consider the Appellant's grounds for review was minded to refuse the appeal as he does not feel there should be any development in the CAT, and as he had previously refused a similar development in the CAT wanted to maintain consistency. Thereafter Councillor Leadbitter moved to uphold the decision of the Planning Officer and refuse the application. This was seconded by Councillor Jarvis as he too was of the opinion that the CAT Policy is very clear with a defined purpose and he could not find any reason to depart from it.
- 3.5 Councillor MacKay, having had the opportunity to view the site and consider the Appellant's grounds for review was of the opinion that the site was a gap/infill site in an established grouping of buildings where consent has already been granted for additional new houses. As it is about one and a half miles from the west of Elgin with intervening rising ground, the site could not be seen from Elgin, nor could Elgin be seen from the site. Therefore, Councillor Mackay failed to see how approval of this application could possibly compromise the aim of the CAT Policy which is to limit sprawl and preserve the distinction between town and countryside. Furthermore, as there are a number of groupings of existing buildings within the CAT where additional dwellings have been approved and successfully added without compromising the aims of the CAT Policy he concluded that these material considerations fully justify a departure from policy.

- 3.6 With regard to Policy H8, Councillor Mackay did not agree that the development would create a linear form of development as this was a gap site within an existing grouping, not a linear extension and fully complies with the siting requirements of Policy H8. Furthermore, the site is set against a backdrop of trees and shrubs within its boundaries, with a farm building set at a higher level to the south. Therefore the site cannot be considered in any way prominent and therefore complies with Policy H8.
- 3.7 With regard to Policy IMP1, Councillor Mackay did not accept that the development would have a “detrimental impact” upon the open rural character of the setting. He stated that it was clear from the application that the proposal is of an appropriate scale, density and character, and would integrate well into the surrounding area.
- 3.8 Therefore, for the reasons stated above, Councillor MacKay raised an amendment to Councillor Leadbitter’s motion and moved that the Planning Officer’s decision be overturned and the appeal upheld as an acceptable departure from Policy and subject to the standard conditions relating to CAT Policy. This was seconded by Councillor Shepherd.
- 3.9 On a division there voted:-
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|------------------------|--|
| For the Motion (2): | Councillors Leadbitter and Jarvis |
| For the Amendment (3): | Councillors Mackay, Shepherd and Coull |
- 3.10 Accordingly the Amendment became the finding of the Meeting and the appeal was upheld.

Paul Nevin
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.

CONDITIONS

1. Prior to any development works commencing
 - i) a detailed drawing (scale 1:500) showing the location and design of a passing place on the section of the C4E Cloves-Lochinver Road between the C3E Elgin-Pluscarden Road and the C26E Milntown-Lochside Road (to the Moray Council standards and specification), shall be submitted to and approved in writing by the Council, as Planning Authority in consultation with the Roads Authority; and
 - ii) thereafter the passing place shall be constructed in accordance with the approved drawing prior to any development works commencing (except for those works associated with the provision of the passing place).
2. Prior to any development works commencing:
 - i) a detailed drawing (scale 1:500 or 1:1000 which shall also include details to demonstrate control of the land) showing the visibility splay 2.4 metres by 160 metres and a schedule of maintenance for the splay area shall be submitted to and approved by the Council, as Planning Authority in consultation with the Roads Authority; and
 - ii) the visibility splay shall be provided in accordance with the approved drawing prior to any works commencing (except for those works associated with the provision of the visibility splay); and
 - iii) thereafter the visibility splay shall be maintained at all times free from any obstruction exceeding 1.0 metres above the level of the carriageway in accordance with the agreed schedule of maintenance.
3. Prior to any development works commencing details shall be submitted to and approved by the Council, as Planning Authority in consultation with the Roads Authority, to ensure no water or loose material shall be permitted to drain or be carried onto the public footpath/carriageway for the life time of the development.
4. Prior to any development works commencing details shall be submitted to and approved by the Council, as Planning Authority in consultation with the Roads Authority for the provision of an access lay-by 8.0m 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. Thereafter the lay-by shall be constructed in accordance with the approved drawing and to The Moray Council specification and surfaced with bituminous macadam.
5. 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.

6. The width of the vehicular access shall be a minimum of 3.0m and have a maximum gradient of 1:20 measured for the first 5.0m from the edge of the public carriageway. The first 5m 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.
7. Three car parking spaces shall be provided within the site prior to the occupation or completion of the dwellinghouse, whichever is the sooner. The parking spaces shall thereafter be retained throughout the lifetime of the development, unless otherwise agreed in writing with the Council as Planning Authority.
8. A turning area shall be provided within the curtilage of the site to enable vehicles to enter and exit in a forward gear.
9. Boundary walls/fences shall be set back from the edge of the public carriageway at a minimum distance of 2.0m and behind the required visibility splays.

REASONS

1. To enable drivers of vehicles to have adequate forward visibility to see approaching traffic and for two vehicles to safely pass each other ensuring the safety and free flow of traffic on the public road, in accordance with 2008 Moray Local Plan Policies T2 and IMP1.
2. To enable drivers of vehicles entering or exiting the site to have a clear view so that they can undertake the manoeuvre safely and with the minimum interference to the safety and free flow of traffic on the public road, in accordance with 2008 Moray Local Plan Policy T2.
3. To ensure acceptable infrastructure at the development access through the provision of details currently lacking, in accordance with 2008 Moray Local Plan Policy T2.
4. To ensure acceptable infrastructure at the development access through the provision of details currently lacking, in accordance with 2008 Moray Local Plan Policy T2.
5. To ensure acceptable development in the interests of road safety, in accordance with 2008 Moray Local Plan Policy T2.
6. To ensure acceptable infrastructure at the development access, in accordance with 2008 Moray Local Plan Policy T2.
7. To ensure an acceptable development in terms of parking provision and amenity of the area, in accordance with 2008 Moray Local Plan Policy T5.

8. To ensure acceptable development in the interests of road safety, in accordance with 2008 Moray Local Plan Policy T2.
9. To ensure acceptable development in the interests of road safety, in accordance with 2008 Moray Local Plan Policy T2.

INFORMATIVES

TRANSPORTATION advise:

Planning consent does not carry with it the right to construct a new road or any part of a road. In accordance with Section 21 of the Roads (Scotland) Act 1984 Construction Consent for new roads (includes passing places, modified junctions and footpaths) that will form part of the public road will be required. Advice on this matter can be obtained by emailing transport.develop@moray.gov.uk and reference to the following pages on the Council web site

Checklist: <http://www.moray.gov.uk/downloads/file68812.pdf>

RCC: http://www.moray.gov.uk/moray_standard/page_65638.html

Specification: <http://www.moray.gov.uk/downloads/file68813.pdf>

The applicant is obliged to apply for a road opening permit in accordance with Section 85 of the Roads (Scotland) Act 1984. Advice on this matter can be obtained by emailing roads.permits@moray.gov.uk and reference to the following page on the Council web site

Road Opening: http://www.moray.gov.uk/moray_standard/page_79860.html

Visibility splays relate to the visibility available to a driver at or approaching a junction in both directions. It is related to the driver's eye height, object height above the road, distance back from the main road known as the 'X' distance and a distance along the main road known as the 'Y' distance. The Y distance is related either to the design speed of the road and a corresponding 'stopping sight distance' or in some circumstances may be based on observed '85th percentile vehicle speeds'. Advice on this matter can be obtained by emailing transport.develop@moray.gov.uk and reference to the following pages on the Council web site

Transportation Service Requirements for Small Developments in the Countryside Full document <http://www.moray.gov.uk/downloads/file79761.pdf>

Checklist <http://www.moray.gov.uk/downloads/file68812.pdf>

Public utility apparatus may be affected by this proposal. Contact the appropriate utility service in respect of any necessary utility service alterations which have to be carried out at the expense of the developer.

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

No retaining structures or embankments shall be constructed along the edge of the road, whether retaining the public road or ground adjoining the public road without prior consultation and agreement of the Roads Authority.

Comments received from SCOTTISH WATER are detailed below:

15th February 2013

SCOTTISH WATER

Customer Connections
419 Balmore Road
Glasgow
G22 6NU

Customer Support Team
T: 0141 355 5511
F: 0141 355 5386
W: www.scottishwater.co.uk
E: individualconnections@scottishwater.co.uk

Development Services Environment Services
The Moray Council
High Street
Elgin
IV30 1BX

Dear Sir Madam

PLANNING APPLICATION NUMBER: 13/00188/APP
DEVELOPMENT: Elgin Mosstowie
OUR REFERENCE: 622382
PROPOSAL: Erect house on
Please quote our reference in all future correspondence

In terms of planning consent, Scottish Water does not object to this planning application. However, please note that any planning approval granted by the Local Authority does not guarantee a connection to our infrastructure. Approval for connection can only be given by Scottish Water when the appropriate application and technical details have been received.

Glenlatterach Water Treatment Works – has limited capacity available for new demand. The Developer should discuss their development directly with Scottish Water. Should the developer require information regarding the location of Scottish Water infrastructure they should contact our Property Searches Department, Bullion House, Dundee, DD2 5BB. Tel – 0845 601 8855.

If the developer requires any further assistance or information on our response, please contact me on the above number or alternatively additional information is available on our website: www.scottishwater.co.uk.

Yours faithfully

Lynsey Horn
Customer Connections Administrator