



MORAY COUNCIL LOCAL REVIEW BODY

Review Decision Notice

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case 094
 - Site address: Upper Hempriggs, Kinloss, Forres
 - Application for review by Mr Derek Fraser, c/o Altype Plans, The Barn, 11 Whiteinch, Smallholdings, Kinloss, IV36 3TS against the decision by an Appointed Officer of The Moray Council.
 - Planning Application 13/01480/APP for erection of house.
 - Unaccompanied site inspection carried out by the MLRB on 20 February 2014
 - Date of decision notice: 7 April 2014
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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. Preliminary

- 1.1 This Notice constitutes the formal decision 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 27 February 2014.
- 1.3 The Review Body was attended by Councillors C. Tuke (Chair), B. Jarvis (Vice Chair), G. Alexander and J. Mackay.

2. Proposal

- 2.1 This is an application for planning permission to erect a house on a site at Upper Hempriggs, Kinloss, Forres.

3. MLRB Consideration of Request for Review

- 3.1 There was submitted a 'Summary of Information' report setting out the reasons for refusal, together with a copy of the Report of Handling and a copy of the Notice of Review and supporting documents.
- 3.2 The MLRB agreed that it had sufficient information to determine the request for review.
- 3.3 With regard to the unaccompanied site inspection carried out on 20 February 2014, the Planning Adviser advised that on the site visit, Members were shown the site where the proposed development would take place.
- 3.4 The Planning Adviser advised the MLRB that the application had been refused on the grounds that the proposal was contrary to Policy 1(e) of the Moray Structure Plan 2007 and H8 (and associated Supplementary Planning Guidance) of the Moray Local Plan 2008. She informed the MLRB that the Appointed Officer had advised that an additional house in the location would lead to a build-up of development which would be unduly prominent in the flat and open landscape. Furthermore, the Planning Adviser advised that the applicant had failed to demonstrate that at least 50% of the site's boundaries were long-established and capable of distinguishing from surrounding land.
- 3.5 Referring to the Appellant's grounds for review, the Planning Adviser advised that the Appellant had stated that the dwelling was specifically positioned to meet current planning policy criteria and guidance and complies with the scale, siting, design and servicing requirements of Policy IMP1. The Appellant stated that the proposal would integrate with the existing neighbours dwellings to provide a cluster similar to others in the locality and that more 50% of the site boundaries are existing fencing.
- 3.6 Councillor Jarvis, having had the opportunity to visit the site and consider the Appellant's grounds for review, expressed his opinion that, whilst it was difficult to agree that the house would be adversely prominent in terms of policy H8 due to other buildings in the immediate vicinity, the application fails to demonstrate that at least 50% of the site boundaries are long established and are capable of distinguishing the site from the surrounding land on the long established boundaries. On these grounds, he moved that the MLRB uphold the decision of the Appointed Officer and refuse the application. This was seconded by Councillor Mackay.
- 3.7 As an amendment, the Chair stated his opinion that the proposal complied with Policy H8 of the Moray Local Plan in terms of prominence and integration with the landscape and was an acceptable departure in terms of boundaries as there was a distinguishable boundary on the ground due to agricultural land use despite the lack of a long established built boundary feature. Accordingly, he moved that planning permission be granted, subject to standard conditions. This was seconded by Councillor Alexander.

3.8 On a division, there voted:-

For the Motion (2): Councillors Jarvis and Mackay.

For the Amendment (2): Councillors Tuke and Alexander.

Abstentions (0)

3.9 In terms of Standing Order 65 (e) and there being an equality of voting, the Chair exercised his casting vote in favour of the amendment.

3.10 According, the amendment became the finding of the meeting and the MLRB agreed to uphold the appeal and grant planning permission, subject to standard conditions.

Paul Nevin
Senior Solicitor (Property & Contracts)
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. No development shall commence until details of a scheme of hard and soft landscaping works have been submitted to, and approved in writing by the Planning Authority. Details of the scheme shall include:
 - A plan showing existing landscaping features and vegetation to be retained and those to be removed;
 - The location and design, including materials, of any existing or proposed walls, fences and gates;
 - All soft landscaping and planting works, including plans and schedules showing the location, species and size of each individual tree and/or shrub and planting densities. The Scheme details shall provide for 25% of the plot area to be planted/covered with native species trees/shrubs at least 1.5m in height.

Landscaping works shall be carried out in accordance with the approved scheme. All planting, seeding or turfing as may be comprised in the approved details shall be carried out in the first planting and seeding seasons following the commencement of development, unless otherwise stated in the approved scheme.

Any trees or plants which within a period of five years from the completion of the development die, for whatever reason are removed or damaged shall be replaced in the next planting season with others of the same size and species.

2. No development shall commence until a detailed drawing (scale 1:500 or 1:1000 which shall also include details to demonstrate control of the land) showing the visibility splay 4.5 metres by 160 metres to the west and 4.5m x 215m to the east and a schedule of maintenance for the splay area have been submitted to and approved by the Planning Authority in consultation with the Roads Authority. No development (except that associated with the provision of the visibility splay) shall commence until the visibility splay have been provided in accordance with the approved drawing and thereafter the visibility splay shall be maintained at all times free from any obstruction exceeding 0.26 metres above the level of the carriageway in accordance with the agreed schedule of maintenance.
3. No water shall be permitted to drain or loose material be carried onto the public footway/carriageway.
4. The house hereby approved shall not be occupied until three car parking spaces have been provided within the site. The parking spaces shall thereafter be retained throughout the lifetime of the development, unless otherwise agreed in writing with the Council as Planning Authority.
5. The house hereby approved shall not be occupied until a turning area has been provided within the curtilage of the site to enable vehicles to enter and exit in a forward gear.

REASONS

1. In order to ensure that the development harmonises with the character and appearance of the surrounding properties and area.
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.
3. To ensure acceptable development that does not create any hazard to road users in the interests of road safety.
4. To ensure an acceptable development in terms of parking provision and amenity of the area.
5. To ensure acceptable development in the interests of road safety.

INFORMATIVES

The Transportation Manager has commented:

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>

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.