



## MORAY COUNCIL LOCAL REVIEW BODY

### Review Decision Notice

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Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case 097
  - Site address: The Orchard, Ashfield, Garmouth
  - Application for review by The Architecture Studio, The Orchard, Ashfield, Garmouth, IV32 7LF against the decision of an Appointed Officer of The Moray Council.
  - Planning Application 10/01385/APP – Extend planning consent for erection of house and garage on site at The Orchard, Ashfield, Garmouth
  - Unaccompanied site inspection carried out by the MLRB on 20 March 2014
  - Date of decision notice: 23 April 2014
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### Decision

The MLRB agreed to uphold the original decision of the Planning Officer to grant the above noted application subject to the conditions stipulated in the original planning consent.

#### 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 March 2014.
- 1.3 The Review Body was attended by Councillors B Jarvis, G Leadbitter, G Alexander and G Coull.

## **2. Proposal**

- 2.1 This is an application for planning permission to erect a house and garage on the site at The Orchard, Ashfield, Garmouth.

## **3. MLRB Consideration of Request for Review**

- 3.1 At the meeting of the MLRB, there was submitted a "Summary of Information" report by the Clerk to the MLRB, setting out the conditions stipulated with regard to the planning permission, together with a copy of the Report of Handling and a copy of the Notice of Review and supporting documents.
- 3.2 With regard to the unaccompanied site inspection carried out on 20 March 2014, the Planning Adviser advised that on the site visit, Members were shown the site where the proposed development would take place.
- 3.3 In terms of the Appellant's grounds for review, the Planning Adviser advised that the planning application had been granted subject to 6 conditions and that the Appellant sought the removal of the first condition which is as follows:
- 3.4 Prior to any development works commencing:
- (a) 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 120 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;
  - (b) 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
  - (c) 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.
- 3.5 The Planning Adviser further advised that the Appellant had requested that the first condition be replaced with a new condition that relates to the management of the verge to the west and hedgerows to the east of the site and advised the Committee that at the site visit it had been noticed that the Appellant had cut back the hedge along the southern boundary of the application site. The Appellant had further stated in the notice of review that as he owns the land to the north and east of the site, he would be willing to cut back the hedge on the southern boundary on a regular basis so that it does not overhang the road verge. The Appellant was also willing to manage the road verge to the west by removing all gorse and any other bushes that are

contained by the visibility splay in that direction as per previous correspondence with the Transportation Department in 2010 which had stated that maintaining the hedgerow to the south and land immediately to the east of the site would be acceptable.

- 3.6 Further representation had been received from the Transportation Department which stated that flexibility regarding the visibility splay had already been relaxed from 4.5 m to 2.4 m and that the removal of the condition for the visibility splay and replacement with a condition relating to the management of the hedge would still leave the hedge lying within the sightlines for the access to the public road which would not be acceptable. Transportation further stated that planning conditions must be precise and enforceable and a proposal to cut back the hedge would not be precise.
- 3.7 With regard to the Appellant's response to the further representation received from Transportation, the Appellant is of the opinion that, although there had been flexibility in the visibility splay, further flexibility could be applied. Furthermore, as previous correspondence from the Transportation Department had showed a willingness to accept the retention of the hedge in its entirety provided it be cut back on a regular basis, this was contrary to the Transportation Manager's response to the Notice of Review.
- 3.8 Councillor Alexander, having had the opportunity to visit the site and consider the Appellant's grounds for review stated that, at the site visit, he had found it difficult to see approaching traffic from the east. Furthermore, he was of the opinion that it would be difficult to monitor the Appellant's suggested condition to manage the verge to the west and hedgerows to the east of the site. Councillor Alexander further stated that, with more houses, the chances of a potential road traffic accident increased and therefore moved to uphold the original decision of the Appointed Officer and grant planning permission subject to the original conditions stipulated.
- 3.9 Councillor Leadbitter having had the opportunity to visit the site and consider the Appellant's grounds for review stated that he was uncomfortable when pulling out from the junction at the site due to a lack of visibility and seconded Councillor Alexander's motion to uphold the original decision of the Appointed Officer.
- 3.10 There being no one otherwise minded the original decision of the Appointed Officer was upheld and the appeal was refused.

**Mr Paul Nevin**  
**Senior Solicitor**  
**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.