

THE MORAY COUNCIL

MINUTES OF THE THREE MEETINGS OF THE LOCAL REVIEW BODY

THURSDAY 22 APRIL 2010

COUNCIL OFFICE, ELGIN

(a) REQUESTS FOR REVIEW : WARD 2 : KEITH & CULLEN

PRESENT

Councillors D Ross (Chair), J Hogg and P Paul.

IN ATTENDANCE

R Gunn, Acting Principal Solicitor (Litigation & Licensing) Legal Adviser, M Cross, Principal Planning Officer (Planning & Development) Planning Adviser, V Valiente, Solicitor and the Senior Committee Services Officer, Clerk to the meeting.

CASE 004

PLANNING APPLICATION 09/01611/PPP : PLANNING PERMISSION IN PRINCIPLE FOR THE ERECTION OF A NEW DWELLINGHOUSE ON A SITE ADJACENT TO ROADSIDE CROFT GRANGE KEITH

Under reference to the Minute of the meeting of the Local Review Body (LRB) dated 25 February 2010 the LRB resumed consideration of the review of this Planning Application.

The meeting noted that the LRB had undertaken an unaccompanied site inspection on Friday 19 March 2010. The meeting also noted that in respect of this case the only legal advice given was to reiterate previous advice that members of the LRB should not discuss any aspect of the case either in transit to or during the site inspection and to advise as to the purpose of the site inspection, as previously agreed by the LRB. The Planning Adviser also advised that he assisted in pointing out the site on approach and also advised the meeting as to what the LRB viewed on the site inspection, but was not required to give any substantive planning advice.

The Chairman sought the views of the Legal Adviser in regard to the applicant meeting the test for the submission of new evidence raised at the meeting on 25 February 2010 now that written submissions had been received. The Legal Adviser advised the meeting that having reflected on the advice given at the meeting on 25 February 2010 her advice to this and future meetings of the LRB would be that new information, such as new planning policies/guidance/interpretation, which comes under the heading of 'any other material consideration' in terms of Section 43 (B)(2) of the Planning etc. (Scotland) Act 2006, should be accepted into the consideration of a review by the LRB without the necessity of the statutory test for new evidence set out in Section 43(B) (1) first having to be met. However, as this new information would not have been before the Appointed Officer, prior to the delegated determination of the application, the Legal Adviser confirmed that her advice would

still be to seek the views of the Appointed Officer, the applicant and interested parties on the impact the new information might have on the application under review before beginning a substantive consideration of that new information. The Legal Adviser recommended that these views be sought, as had been the case in this review, under the 'Written Submissions' procedure in terms of Regulation 15, albeit there would be no requirement for the applicant to meet the test for the submission of new evidence, in terms of Section 43(B)(1) of the 2006 Act in this case. This advice was accepted by the LRB

Thereafter the LRB agreed that it now had sufficient information in order to proceed to determine the request for review and proceeded to consider the submissions in respect of the new information raised in regard to the new Scottish Planning Policy (SPP) issued in February 2010 with particular reference to the section on Rural Development, copies of which were appended to the review papers as Appendix 2. The LRB noted the terms and conclusions of the submissions.

The LRB then proceeded to consider the terms of refusal and grounds for review and it was agreed that the key criteria related to compliance or otherwise with Moray Local Plan Policy H8 in regard to prominence, rural character of the surrounding area, precedent and the extent of the backdrop.

Following consideration of the review Councillor Ross expressed the view that, in his opinion, the roadside location of the site was overtly prominent and for that reason moved that the request for review be refused and the Appointed Officer's decision upheld for the reasons detailed in the decision notice.

Councillor Paul was of the opinion, that the site was not overtly prominent, it has sufficient backdrop, the proposed development would not change the character of the surrounding rural area and overall she considered it a suitable site for development. For these reasons Councillor Paul moved, as an amendment, that the request for review be granted and that the application for planning permission in principle be approved as complying with policy, subject to standard conditions and conditions and informatives recommended by consultees. The amendment was seconded by Councillor Hogg.

Accordingly LRB agreed, on a two to one majority, that the request for review be granted and that the application for planning permission in principle be approved as complying with policy, subject to standard conditions and conditions and informatives recommended by consultees.

(b) REQUESTS FOR REVIEW : WARD 2 : KEITH & CULLEN**PRESENT**

Councillors D Ross (Chair), J MacKay and P Paul.

IN ATTENDANCE

R Gunn, Acting Principal Solicitor (Litigation & Licensing) Legal Adviser, M Cross, Principal Planning Officer (Planning & Development) Planning Adviser, V Valiente, Solicitor and the Senior Committee Services Officer, Clerk to the meeting.

**CASE 005
PLANNING APPLICATION 09/01961/PPP : PLANNING PERMISSION IN
PRINCIPLE FOR THE ERECTION OF A NEW DWELLINGHOUSE ON A SITE AT
GROALPANS GLEN OF NEWMILL KEITH**

Under reference to Paragraph (c) of the Minute of the meeting of the Local Review Body (LRB) dated 24 March 2010 there was submitted a set of replacement papers in respect a request from the applicant, Mr D Jenkinson, seeking a review of the decision of the Appointed Officer, in terms of the Scheme of Delegation, to refuse planning permission in principle for the erection of a new dwellinghouse on a site at Groalpens, Glen of Newmill, Keith.

In regard to the ordinance survey maps submitted by the applicant, in support of the request for review, the Legal & Planning Advisers, were of the view that whilst not before the Appointed Officer at the time of determination of the application the Appointed Officer would have been aware of the topography of the surrounding area and therefore the submission of these maps were not considered to be new evidence, in terms of Section 43(B) of the Planning etc. (Scotland) Act 2006 although the applicant had indicated that new evidence had been submitted. This advice was accepted by the LRB.

Following consideration the LRB agreed that there was insufficient 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 Policy H8 of the Moray Local Plan 2008. The LRB requested the Planning Adviser to attend the site inspection.

(c) REQUEST FOR REVIEW : WARD 4 : FOCHABERS LHANBRYDE**PRESENT**

Councillors P Paul (Chair) J Hogg & R Shepherd.

IN ATTENDANCE

R Gunn, Acting Principal Solicitor (Litigation & Licensing) Legal Adviser, M Cross, Principal Planning Officer (Planning & Development) Planning Adviser, V Valiente, Solicitor and the Senior Committee Services Officer, Clerk to the meeting.

**CASE 002
PLANNING APPLICATION 09/00963/OUT : PLANNING PERMISSION IN
PRINCIPLE TO FORM 2 PRIVATE HOUSE PLOTS AT WALKERS CRESCENT
(KIRKHILLHEAD) LHANBRYDE**

Under reference to the Minute of the meeting of the Local Review Body (LRB) dated 25 February 2010 the LRB resumed consideration of the review of this Planning Application.

There was appended to the summary of information on the case as appendices 1 and 2 respectively a Report of Handling in regard to planning application 06/02562/OUT, requested at the meeting on 25 February 2010, and copies of responses received to the new evidence submission (applicant's Transport Assessment) sought in terms of Regulation 17.

In regard to the new evidence the LRB agreed that, in terms of Section 43 (B) (1)(b) of the Planning etc (Scotland) Act 2006, the applicant met the test of exceptional circumstances on the grounds set out on pages 23 and 24 of the papers for the meeting on 25 February 2010. The LRB agreed that the applicant's Transport Assessment and responses to the written submissions procedure be taken into account as part of the LRB's consideration of the request for review. The LRB also agreed that, having undertaken an accompanied site inspection on Friday 19 March 2010, it considered that it no longer required independent advice from a Specialist Adviser on number of children walking in the area.

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Thereafter the LRB agreed that it now had sufficient information in order to proceed to determine the request for review.

The meeting noted that the key issue was whether or not a safe and suitable access could be provided from Walkers Crescent onto the public highway in terms of Policy T2 of the Moray Local Plan 2008 and also, given the lack of footways and parked cars on Walkers Crescent, whether the substandard access width and visibility would be hazardous to pedestrians and other road users.

Councillor Hogg expressed the view that, in his opinion, the key issue was the claim that one house approved in 2006 (application 06/02562/OUT) complied with policy T2 (then T3) but one additional house did not. In this regard he referred Members to the location plan on page 60 of the applicant's submission and advised the meeting that some 22 existing houses use the two junctions onto St Andrews Road and Garmouth Road and whilst visibility at the latter is restricted it did not, in his opinion, impair the site line sufficiently to make it unsafe. Having undertaken some research he was not aware of any evidence or record of any accidents at the junction. Councillor Hogg also expressed the view that were the Roads Authority to consider the junction(s) to be unsafe they could take enforcement action to improve the access(s,) visibility, however again he could find no evidence of any proposed or pending action to improve road safety in the immediate vicinity, from which he can only assume that the Roads Authority considered the two accesses safe for the existing 22 houses and the one additional house approved in 2006. For these reasons Councillor Hogg moved approval of the application on the grounds that the requirements of Policy T2 of the Moray Local Plan are met in that one house in addition to the existing 22 houses and the one approved in 2006 has no significant impact on road safety including any potential hazard to pedestrians and other road users, and bearing in mind the access width. The motion was seconded by Councillor Shepherd.

Councillor Paul advised the meeting that she had a different view and would have recommended that the request for review be refused and the Appointed Officer's decision to refuse the application upheld. However the LRB agreed, by a two to one majority to approve the request for review and that the application for planning permission in principle be approved as complying with policy. Thereafter the LRB considered appropriate conditions to be applied to the consent.

Following consideration the LRB agreed that the conditions applied to the planning application 06/02562/OUT also be applied to this application, subject to conforming with current legislation and delegated authority to the Planning Adviser to frame and attach specific conditions relating to compliance with Contaminated Land requirements, the re-routing of the pedestrian route across the site along the northern boundary and an appropriate condition requiring a pre-development road condition survey, and that any subsequent damage during the construction period, be made good thereafter.

(c) REQUEST FOR REVIEW : WARD 1 : SPEYSIDE GLENLIVET

PRESENT

Councillors B Jarvis (Substituting for P Paul [Ward Member]) R Shepherd & J MacKay.

IN ATTENDANCE

R Gunn, Acting Principal Solicitor (Litigation & Licensing) Legal Adviser, M Cross, Principal Planning Officer (Planning & Development) Planning Adviser, V Valiente, Solicitor and the Senior Committee Services Officer, Clerk to the meeting.

1. APPOINTMENT OF CHAIR

It was agreed that Councillor Shepherd take the Chair.

2. DECLARATIONS OF INTEREST

In terms of Standing Order 20 the meeting noted that there were no declarations of interest in regard to Case 010.

3. CASE 010

PLANNING APPLICATION 09/01982/PPP : PLANNING PERMISSION IN PRINCIPLE FOR THE ERECTION OF THREE DWELLINGS AT CATHERINEBRAES FARM ELCHIES CRAIGELLACHIE

The Local Review Body (LRB) considered a request by the applicants, Mr & Mrs J C Cameron, seeking a review of the decision of the Appointed Officer, in terms of the Scheme of Delegation, to refuse an application for planning permission in principle for the erection of three dwellings at Catherinebraes Farm, Elchies, Craigellachie.

The LRB agreed that it had sufficient information in order to proceed to determine the request for review.

The meeting noted that the key issues related to Policy H8 of the Moray Local Plan 2008 which presumes against developments of more than two houses and that it was the view of the Appointed Officer that approval of the application would also create a linear development with potential for further development in the area, it would create an undesirable build up of houses, would detract from the rural character of the area and set an undesirable precedent for similar developments in the area. The meeting also noted the terms of the request for review which put forward an opposing view.

The meeting also noted that in regard to the applicant's suggestion that he would be prepared, not being aware of the terms of Policy H8, to amend the application to two houses this was not an issue which was not within the powers of the LRB.

Following consideration Councillor Shepherd expressed the view that the application was contrary to Policy H8 of the Moray Local Plan 2008 and, in his opinion, there were no material considerations to justify departing from policy and moved refusal of the request for review and that the Appointed Officer's decision to refuse the application for the reasons set out in the decision notice be upheld. The motion was supported by Councillors Jarvis and MacKay.

Accordingly the LRB agreed that the original decision of the Appointed Officer to refuse the application be upheld on the grounds that the proposal is contrary to the Moray Local Plan 2008 for the following reasons:-

1. Contrary to the Moray Local Plan 2008 policy H8 the application is for more than two dwellings and the sites create a linear development with potential for further development of a similar nature along the length of the access road.

2. Contrary to the Moray Local Plan 2008 policy H8 the proposed development will create an undesirable extended build up of houses in the vicinity of Catherinebraes Farm which will detract from the character of the area and conflict with the rural nature of dispersed housing in the surrounding area.
3. Approval of this application will set an undesirable precedent for similar developments in the vicinity to this development.

(d) REQUESTS FOR REVIEW : WARD 2 : KEITH & CULLEN

PRESENT

Councillors P Paul, B Jarvis (Substituting for R Shepherd [Ward Member] & J MacKay.

IN ATTENDANCE

R Gunn, Acting Principal Solicitor (Litigation & Licensing) Legal Adviser, M Cross, Principal Planning Officer (Planning & Development) Planning Adviser, V Valiente, Solicitor and the Senior Committee Services Officer, Clerk to the meeting.

1. APPOINTMENT OF CHAIR

It was agreed that Councillor Paul take the Chair.

2. DECLARATIONS OF INTEREST

In terms of Standing Order 20 the meeting noted that there were no declarations of interest from Members in regard to Cases 006, 007,008 & 009.

3. CASE 006

PLANNING APPLICATION 09/00955/OUT : PLANNING PERMISSION IN PRINCIPLE FOR THE ERECTION OF A HOUSE AND GARAGE ON A SITE AT THORNTON CROFT DAVOCH OF GRANGE KEITH

The Local Review Body (LRB) considered a request, on behalf of the applicant, Mr T Munro, seeking a review of the decision of the Appointed Officer, in terms of the Scheme of Delegation, to refuse an application for planning permission in principle for the erection of a house and garage on a site at Thornton Croft, Davoch of Grange, Keith.

In regard to the copy of title deeds submitted by the applicant, in support of the request for review, although the applicant had indicated that new evidence had been presented, the Legal & Planning Advisers, were of the view that this document was a matter of public record and accessible to the public and therefore not considered to be new evidence, in terms of Section 43(B) of the Planning etc. (Scotland) Act 2006. This advice was accepted by the LRB.

Following consideration the LRB agreed that there was insufficient 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 H8 and IMPI of the Moray Local Plan 2008. The LRB requested that the Planning Adviser attend the site inspection.

On the determination of this case Mr Cross, Planning adviser left the meeting and Mr McPherson, Planning Officer joined the meeting to act as Planning adviser for the next case.

4. CASE 007
PLANNING APPLICATION 09/00247/FUL : PLANNING PERMISSION FOR THE
ERECTION OF TWO 800KW WIND TURBINES AT MYRETON
CROSSROADS KEITH

The meeting noted that Mr Cross, Planning Adviser, was a consultee in respect of this Case and would be taking no part in the consideration of the Case and Mr N McPherson, Planning Officer would act as the LRB's Planning Adviser in his stead.

The Local Review Body (LRB) considered a request, on behalf of the applicant, Mr C Streeter, seeking a review of the decision of the Appointed Officer, in terms of the Scheme of Delegation, to refuse an application for planning permission for the erection of two 800kw wind turbines at Myreton Crossroads, Keith.

Following consideration the LRB agreed that there was insufficient 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 2(b) and 2(l) of the Moray Structure Plan 2007 and ER1 and IMP1 of the Moray Local Plan 2008. In this regard it was also agreed that the application site be viewed from a number of vantage points within the vicinity taking into account the content of the Report of Handling and the applicant's submissions. The Planning Adviser to be in attendance.

The Planning Adviser advised the meeting that the Renewable Energy section of the new SPP and the Council's recent Policy Interpretation for Wind Turbine Developments, approved at the meeting of the Planning & Regulatory Services Committee on 6 April 2010 (para 5 of the Minute refers), would require to be taken into account by the LRB as material considerations in terms of Section 43(B)(2) of the Planning etc (Scotland) Act 2006. In this regard it was agreed to seek views on these policy documents from the Applicant, the Appointed Officer and Interested Parties, in terms of the written submissions procedure set out in Regulation 15.

It was also agreed that the responses to the written submissions procedure be circulated to members of the LRB prior to making arrangements for the unaccompanied site inspection.

On the conclusion of this case Mr McPherson, acting Planning Adviser, left the meeting and Mr Cross, Planning Adviser rejoined the meeting.

5. CASE 008
PLANNING APPLICATION 09/01109/OUT – PLANNING PERMISSION IN
PRINCIPLE FOR THE ERECTION OF A HOUSE ON PLOT A LOCKERS
FOLLOWSTERS FARM NEWMILL KEITH

The Local Review Body (LRB) considered a request, on behalf of the applicant, Mr J Cousar, seeking a review of the decision of the Appointed Officer, in terms of the Scheme of Delegation, to refuse planning permission in principle for the erection of a house on Plot A, Lockers, Followsters Farm, Newmill, Keith.

Following consideration the LRB agreed that there was insufficient information in order to proceed to determine the request for review and agreed that site inspection be undertaken, the purpose of which being to view the site in the context of policy 1(e) of the Moray Structure Plan 2007, and Policies H8 and IMP1 of the Moray Local Plan 2008. The LRB also agreed that given the site could not be accessed safely that the site inspection be accompanied with the Planning & Legal Advisers in attendance.

6. CASE 009
PLANNING APPLICATION 09/01110/OUT – PLANNING PERMISSION IN
PRINCIPLE FOR THE ERECTION OF A HOUSE ON PLOT B LOCKERS
FOLLOWSTERS FARM NEWMILL KEITH

The Local Review Body (LRB) considered a request, on behalf of the applicant, Mr J Cousar, seeking a review of the decision of the Appointed Officer, in terms of the Scheme of Delegation, to refuse planning permission in principle for the erection of a house on Plot B, Lockers, Followsters Farm, Newmill, Keith.

Following consideration the LRB agreed that there was insufficient information in order to proceed to determine the request for review and agreed that site inspection be undertaken, the purpose of which being to view the site in the context of policy 1(e) of the Moray Structure Plan 2007, and Policies H8 and IMP1 of the Moray Local Plan 2008. The LRB also agreed that given the site could not be accessed safely that the site inspection be accompanied with the Planning & Legal Advisers in attendance.