

THE MORAY COUNCIL
MINUTES OF THE THREE MEETINGS OF THE LOCAL REVIEW BODY

WEDNESDAY 19 MAY 2010

COUNCIL OFFICE, ELGIN

(a) REQUEST FOR REVIEW : WARD 4 : FOCHABERS LHANBRYDE

PRESENT

Councillors J Hogg (Substituting for Councillor D Ross - Ward member), B Jarvis (substituting for Councillor R Shepherd) & J Mackay.

IN ATTENDANCE

R Burns, Chief Legal Officer, 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 Jarvis take the Chair.

2. DECLARATIONS OF INTEREST

In terms of Standing Order 20 the meeting noted that Councillor R Shepherd had declared an interest in Case 011 and would not be participating in the consideration and determination of the request for review. There were no other declarations of interest in regard to Case 011

3. CASE 011

PLANNING APPLICATION 09/01618/PPP – PLANNING PERMISSION IN PRINCIPLE TO ERECT A HOUSE AT UPPER THORN, DRYBRIDGE, BUCKIE

The Local Review Body (LRB) considered a request on behalf of the applicant, Mr D Mackenzie, 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 at Upper Thorn, Drybridge, Buckie.

Prior to considering the request the Planning Adviser referred the meeting the additional information submitted by the applicant, in support of the grounds for review, relating to access visibility and, on the advice of the Legal & Planning Advisers, it was agreed to accept this additional information as 'New Evidence' in terms of Section 43B(1) of the Town & Country Planning (Scotland) Act 1997, as amended, and to seek the views of the Applicant, the Appointed Officer and Interested parties through the 'Written Submissions' procedure set out in Regulation 15 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure)(Scotland) Regulations 2008 on:-

- (a) whether they are aware of any facts or circumstances which would preclude the applicant from meeting the statutory test for the consideration of new evidence ie 'new material will only be permitted where the party can demonstrate that it could not have been introduced earlier in the process, or that it arises as a consequence of exceptional circumstances'; and
- (b) the substance of the information.

Following consideration the LRB agreed that there was insufficient information in order to proceed to determine the request for review and agreed that as well as obtaining the views of the Applicant, the Appointed Officer and Interested parties on the new evidence an unaccompanied site inspection be undertaken, the purpose of which being to view the site in the context of policies H8, IMP1 and T2 of the Moray Local Plan 2008. The Planning Adviser to be in attendance.

Advice was also sought on the LRB obtaining a history of all applications determined since to the 2000 Moray Local Plan within a 1 mile radius of Upper Thorn, Drybridge. The Planning Adviser advised that as this was considered planning advice on a matter of fact, part of the planning application history, it could be provided to the LRB and not considered to be further information in terms of Regulation 15 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure)(Scotland) Regulations 2008 nor new evidence in terms of Section 43B(1) of the Town & Country Planning (Scotland) Act 1997. It was also agreed that an overview of this information be provided to the LRB prior to the site inspection.

(b) REQUEST FOR REVIEW : WARD 2 : KEITH & CULLEN

PRESENT

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

IN ATTENDANCE

R Burns, Chief Legal Officer, 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 (b) of the Minute of the meeting of the Local Review Body (LRB) dated 22 April 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 14 May 2010. The Planning Adviser advised that he assisted in pointing

out the site on approach and on site advised as to the general nature of the proposal. He summarised the reasons for refusal and grounds for seeking a review and advised that there had been two previous refusals on the site. He also advised that members of the LRB viewed the aspects referred to in the applicant's submission in regard to height/elevation/other properties in the location and the extent of prominence and backdrop. He also confirmed that he was not required to give any substantive planning advice.

The LRB agreed that it now had sufficient information in order to proceed to determine the request for review and proceeded to consider the terms of refusal and grounds for review.

Councillor Ross expressed the view that, in his opinion, there was no natural backdrop and the site was overtly prominent when viewed from several vantage points. Councillor MacKay was of the opinion that the proposed site was not located on made-up ground and was far less prominent than the neighbouring property known as 'Heaven's Doorstep'.

Clarification was sought in regard to the approval of the two storey dwelling known as 'Heaven's Doorstep' which is located approximately 250 metres uphill to the north-east of the site under review and it was noted that the development was approved under delegation to the Appointed Officer.

Councillor Paul expressed the view that, in her opinion, the site was not in an overtly prominent position, had a natural backdrop and would not detract from the rural character of the surrounding countryside. She was also of the view that given the topography of the surrounding countryside all the properties in the area could be considered relatively prominent. For these reasons Councillor Paul moved that the request for review be granted and the application for planning permission in principle be approved, as complying with policy, subject to appropriate conditions. The motion was seconded by Councillor MacKay.

Councillor Ross was still of the opinion that a one and a half storey dwelling on this site would be overtly prominent and for this reason the request for review should be refused and the decision of the Appointed Officer upheld.

Accordingly the LRB agreed, by 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 Moray Council standard planning application conditions to include a condition restricting the height of the proposed dwelling to single storey and conditions and informatives recommended by consultees.

On the conclusion of consideration of this case the Chairman referred to this and other instances of what he considers were inconsistencies in the application and interpretation of planning policies by planning officers in the determination of planning applications. Whilst noting that this was not an issue for the LRB the Planning Adviser undertook to bring the LRB's concerns to the attention of the Council's Head of Development Services.

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

PRESENT

Councillors P Paul (Chair), B Jarvis & J MacKay.

IN ATTENDANCE

R Burns, Chief Legal Officer, 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. 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

Under reference to Paragraph (d) 3 of the Minute of the meeting of the Local Review Body (LRB) dated 22 April 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 14 May 2010. The Planning Adviser advised that the site had been viewed from the roadside and the location of other approvals in the immediate locale were noted. He had summarised the reasons for refusal, which related to build up and character but not prominence and had also summarised the grounds for seeking a review, including the reference to other groupings of houses characteristic in the area. He also advised that during the site inspection he had been asked to confirm the number of properties within the groupings referred to in the grounds for review and a note of these was tabled at the meeting. It was noted that this information had been circulated, prior to the meeting, to the applicant and interested parties. The Planning Adviser also confirmed that he was not required to give any substantive planning advice on the site inspection.

The LRB agreed that it now had sufficient information in order to proceed to determine the request for review and proceeded to consider the terms of refusal and grounds for review.

Councillor Jarvis expressed the view that, in his opinion, the proposed development would represent an unacceptable build up and for that reason the decision of the Appointed Officer to refuse the application should be upheld.

Councillor MacKay expressed the view that each application required to be considered on its merits and was of the opinion that another house would not create an unacceptable build-up to the existing grouping of buildings and new house plots and would not be detrimental to the rural character of the area. For these reasons Councillor MacKay moved that the request for review be granted and the application for planning permission in principle be approved, as complying with policy, subject to appropriate conditions. The motion was seconded by Councillor Paul.

Accordingly LRB agreed, by 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 Moray Council standard planning application conditions to include a condition that the height of the proposed dwelling does not exceed one and a half storeys in height and conditions and informatives recommended by consultees.

2. 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

Under reference to Paragraph (d) 5 of the Minute of the meeting of the Local Review Body (LRB) dated 22 April 2010 the LRB resumed consideration of the review of this Planning Application.

The meeting noted that the LRB had undertaken an accompanied site inspection on Friday 14 May 2010. The Planning Adviser advised that he had summarised the grounds for refusal and the case put forward by the applicant for a Review. He also pointed out that although there was evidence of previous buildings on the site, the applications were not on a “replacement” basis, as the remains did not meet Level 2 requirements of policy H7 of the Moray Local Plan 2008. He had indicated the location of the public road to the east, referred to in the reasons for refusal, from which the LRB also viewed the site. He also advised that the site would be accessed via an extension of an existing track to the south, which would be extended to Plot B, Lockers and then across the field to Plot A. The Planning Adviser also advised that whilst viewing the site from the public road to the east clarification was sought from the LRB members as to whether 25% tree planting would make the site more acceptable. He had advised that this was not intended to be used as a mitigating factor to justify otherwise intrusive development, and is to be applied to all applications. He had referred the LRB to the two aspects of the Council’s Housing in the Countryside policy which relate to siting and design. The 25% tree planting is in the ‘Design’ section and only comes in to play if the siting elements have been met, which had been deemed not to be the case in this instance. He also confirmed that he was not required to give any other substantive planning advice.

V Valiente, Solicitor and Legal Adviser on the accompanied site inspection, advised that 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 LRB agreed that it now had sufficient information in order to proceed to determine the request for review and proceeded to consider the terms of refusal and grounds for review.

Following consideration Councillor Jarvis expressed the view that, in his opinion, the application was for a house in the middle of a field and agreed with the decision of

the Appointed Officer. Councillor MacKay intimated that his initial views were that the public road to the east, referred to in the reasons for refusal, was mainly used by farm and postal vehicles and that it was obvious from the site inspection that a house had been on the site in the past, albeit this was not an application for a replacement house.

Councillor Paul intimated that her main concern related to the prominence of the proposed access to the site across an open field and whilst the land rises to the west of the site this was not, in her opinion, sufficient to overcome the prominence of the site and the proposed access to the site from Plot B, Lockers.

Thereafter the LRB unanimously agreed that the request for review be refused and the original decision of the Appointed Officer to refuse the application be upheld on the grounds that the proposal is contrary to policy 1(e) of the Moray Structure Plan 2007 and policies H8 and IMP1 of the adopted Moray Local Plan 2008 for the following reasons:-

'The proposal involves the formation of a house plot and associated access track in the central area of a field within an open rural setting. It would be readily visible from elevated viewpoints along the public road to the east and other than a small stand of trees within the site, would have no backdrop to offset its prominence. Given these site characteristics and surroundings, the prospective dwelling and access track would represent inappropriate 'overtly prominent' development in the countryside that would neither be low-impact nor well located. The resultant development would detract from the rural character of this part of the countryside contrary to the above provisions. No material considerations exist to warrant a departure from policy'.

3. 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

Under reference to Paragraph (d) 6 of the Minute of the meeting of the Local Review Body (LRB) dated 22 April 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 14 May 2010. The Planning Adviser advised that the information referred to and advice given on the site inspection was the same as that provided in regard to Case 008 relating to Plot A, Lockers.

V Valiente, Legal Adviser on the accompanied site inspection advised that 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 LRB agreed that it now had sufficient information in order to proceed to determine the request for review and proceeded to consider the terms of refusal and grounds for review.

Following consideration the LRB unanimously agreed that, in their opinion, this site and proposed access was much less intrusive than Plot A when viewed for the road to the east, had a natural backdrop provided by the slope of the field, was not located in the middle of a field, would not be overtly prominent and would not detract from the rural character of the surrounding countryside.

For these reasons the LRB agreed that the request for review be granted and that the application for planning permission in principle be approved as complying with policy, subject to Moray Council standard planning application conditions to include a condition that the height of the proposed dwelling does not exceed one and a half storeys in height and conditions and informatives recommended by consultees.