

STATEMENT OF APPEAL

IN RESPONSE TO

REFUSAL OF PLANNING PERMISSION BY MORAY COUNCIL FOR THE ERECTON OF 4 RESIDENTIAL UNITS AT SITE TO THE REAR OF HEATHERLEA, MAIN STREET, TOMINTOUL, MORAY, (TOMNABAT LANE).

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CONTENTS

INTRODUCTION

- 2 THE PROPOSED DEVELOPMENT
- 3 THE REASON FOR REFUSAL
- 4 GROUNDS OF APPEAL
- 5 CONCLUSIONS
- 6 KEY SUPPORTING DOCUMENTS

1 INTRODUCTION

An application for the erection of four residential units was submitted to Moray Council on the 13 February. Following consideration of the application, the appointed officer resolved to refuse planning permission under delegated powers. The Decision Notice to refuse was issued on the 04 April 2016.

The Appellant, Interurban Developments Limited, appeals against the refusal of planning permission. This appeal statement sets out the particulars of the case considered relevant to the determination of the appeal against the refusal of planning permission by Moray Council.

2 THE PROPOSED DEVELOPMENT

The application sought to obtain consent, in principle, for the erection of four residential units on the site.

The extent of information required in support of in principle applications by legislation is minimal with many submissions just identifying the site with a red line. However, Interurban provided an indicative design to illustrate the maximum development potential to de-risk the site. This was undertaken to assist the case officer's deliberations and neighbouring residents. A Planning and Design Statement was also submitted.

The appeal forms as required by the Local Review Body are lodged along with this appeal statement which builds upon the content of the Planning Drawing as well as the Planning and Design Statement that was submitted with the application. The planning appeal assessment focuses on the key issues highlighted by Moray Council in the reasons for refusal.

3 REASON FOR REFUSAL

The reason for refusal of planning permission, as set out in the Moray Council Decision Notice dated 11 April 2016, is as follows:-

The proposal is contrary to policies 1 and 3 of the Cairngorms National Park Local Development Plan 2015 for the following reasons:

- 1. Erection of 4 dewllinghouses within the proposed site would result in overdevelopment of the site, to the detriment of the character and appearance of the surrounding streetscape and resulting in an unacceptable overbearing impact on the surrounding residential properties.
- The proposed development does not incorporate adequate on-site vehicular parking to the standard required by the Roads Authority. The proposal, if permitted, would therefore be likely to lead to an undesirable increase in on-street parking to the detriment of road safety.

It is considered that the reasons for refusal lacks clarity and relates to unspecified impacts.

4 GROUNDS OF APPEAL

The Appellant's Grounds of Appeal are set out below, and form the basis of the appeal against Moray Council's refusal of planning permission in-principle. Reason 2 – 'road safety grounds' is considered first before addressing Reason 1 -concerns regarding the 'streetscene and impact on surrounding residential properties'. In addition, an inaccuracy contained within the Report of Handling is also highlighted.

Refusal Reason 2 – Road Safety Grounds.

Sections 37 and 41 of the Town and Country Planning (Scotland) Act 1997 gives the planning authority great scope to impose conditions.

The power to impose conditions is an important material consideration, and a decision to refuse a development without having considered the scope and effectiveness of conditions which would make such a development acceptable often leads to penalties for decision makers. Advice on the need to consider whether conditions may make a proposal acceptable which would be otherwise unacceptable is to be found in Scottish Government Circular 4/1998.

Interurban would draw the Local Review Body's attention to the appraisal section of the delegated officer's Report of handling which confirms: -

In addition to the above the Transportation service has recommended refusal of the application on the basis that the indicative plans show a shortfall of two car parking spaces, in that the plans show 4 spaces and the Council's car parking standards require 6. Due to the issues in relation to the principle of the development this matter was not raised with the applicants and although it represents a further reason for refusal it is one which could potentially be overcome, with the provision of further car parking on the frontage of the site, which is a characteristic of the surrounding street layout.

In this case Interurban is of the view that the parking requirements for the development could be secured by condition control for this in-principle application therefore Refusal Reason 2 - Road Safety Concerns should not have featured within the 'four corners' of the decision notice.

In the appellant's view, the stance taken by the appointed officer, that there are road safety concerns, is untenable.

<u>Refusal Reason 1 – Streetscene and impact on surrounding residential properties.</u>

The proposed development has been developed over a considerable period of time and took account of the Councils residential development to the North of the site which was progressed under permitted development and was considered to comply with the Local Development Plan.

The resultant submission incorporated a Planning and Design Statement as well as indicative plans detailing the <u>maximum</u> footprint of the buildings and the potential building design that could potentially be pursued and assessed at the 'detailed stage' of the application process.

The submission of these illustrative drawings appear to have penalised Interurban and resulted in the refusal of the application. The report of handling incorporates the following concerns:-

Concern with the scale of the footprint – The footprint shown seeks to illustrate the potential maximum form of built development that can be accommodated on the site. Interurban would note that the footprint to plot ration shown is better than the ratio for the corner building on Tomnabat Lane and Delnabo Road in the Council Development to the North of the site. Notwithstanding the size of the footprint of the development this could have been controlled and assessed at the matters specified by condition stage.

Concern with the height of the building – As noted in the delegated officer's report of handling the building design is indicative. Accordingly, the exact height of the building/roof ridgeline can be looked at via the matters specified by condition application. Interurban note that the Council development to the North has two storey buildings and consider that two storey buildings can be accommodated on this site.

Concern that the footprint takes up the width of the site with the exception of the footpaths round the building – The layout of the plot directly adjacent to the North in the Council Development takes up the width of the plot with a footpath around the side of the property. Interurban Indicative layout is therefore consistent with the Council's approved layout.

Concern with the location of windows - The submitted drawings of the potential building elevations are indicative. The exact positioning of windows can be look at via the matters specified by condition application. Interurban would note that windows can be orientated to face the front and rear gardens.

While Interurban acknowledge that there will be a change to the area compared to the status quo, it is not considered that the scale or magnitude of change justify refusal of the application and there were mechanisms in place for the delegated officers perceived concerns to be considered via the matters specified by condition stage.

Taking the above into account Interurban cannot agree that there is an identifiable adverse impact on the streetscene from this in-principle application. Furthermore, there is no identifiable impact on neighbouring residential amenity from the concerns expressed in the report of handling.

It is considered that the appointed officer's stance on this reason for refusal is untenable.

Report of Handling Inaccuracy

The Report of Handling advises in the appraisal section that:-

Developer contributions (policy 11)

The applicants have confirmed that they are agreeable to providing the development contribution which has been identified in relation to this proposal. On this basis the proposal is considered compliant with policy 11 and had the application been approved, this would have been either secured up front prior to the release of the consent or via a Section 75 legal agreement.

However, it should be noted that Interurban questioned the developer contribution calculation for this application. While accepting that a contribution would be required (but in a reduced form) Interurban was also of the view that there were other suitable mechanisms to secure the developer contributions for this site.

5 CONCLUSIONS

This appeal statement contests the decision by the appointed officer to refuse the proposed in-principle application for residential development.

Taking account of the reasons set out in this statement and as supported by accompanying documents it is respectfully submitted to the Local Review Body that the appeal should be allowed.

6 KEY SUPPORTING DOCUMENTS

Local Review Body Application Form

- 00_Appeal Statement
- 01_Decision Notice
- 02_Report of Handling
- 03_Planning Permission Application Form
- 04_Planning and Design Statement
- 05_Existing Proposed Location Plan (Refused)
- 06_Existing Proposed Site Plan (Refused)
- 07_Tomnabat Lane Planning Drawings x4
- 08_Developer Contribution Consultation Response
- 09_E-mail to Developer Contribution Officer