

NOTICE OF REVIEW

UNDER SECTION 43A(8) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (AS AMENDED) IN
RESPECT OF DECISIONS ON LOCAL DEVELOPMENTS

THE TOWN AND COUNTRY PLANNING (SCHEMES OF DELEGATION AND LOCAL REVIEW PROCEDURE)
(SCOTLAND) REGULATIONS 2008

THE TOWN AND COUNTRY PLANNING (APPEALS) (SCOTLAND) REGULATIONS 2008

IMPORTANT: Please read and follow the guidance notes provided when completing this form.
Failure to supply all the relevant information could invalidate your notice of review.

Use **BLOCK CAPITALS** if completing in manuscript

Applicant(s)

Name Donna & Mark Davies

Address

Postcode

Contact Telephone 1

Contact Telephone 2

Fax No

E-mail*

Agent (if any)

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Mark this box to confirm all contact should be
through this representative: ☐

* Do you agree to correspondence regarding your review being sent by e-mail?

Yes No
X ☐

Planning authority

Moray Council

Planning authority's application reference number

16/01820/APP

Site address

Eastwood, Calcots, Elgin, IV30 8NQ

Description of proposed
development

Erect dwelling house at site opposite Eastwood

Date of application

30/11/16

Date of decision (if any)

25/01/17

Note. This notice must be served on the planning authority within three months of the date of the decision notice or from the date of expiry of the period allowed for determining the application.

Nature of application

1. Application for planning permission (including householder application) ✓
2. Application for planning permission in principle ✓
3. Further application (including development that has not yet commenced and where a time limit has been imposed; renewal of planning permission; and/or modification, variation or removal of a planning condition) ✓
4. Application for approval of matters specified in conditions ☐

Reasons for seeking review

1. Refusal of application by appointed officer ✓
2. Failure by appointed officer to determine the application within the period allowed for determination of the application ☐
3. Conditions imposed on consent by appointed officer ☐

Review procedure

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Please indicate what procedure (or combination of procedures) you think is most appropriate for the handling of your review. You may tick more than one box if you wish the review to be conducted by a combination of procedures.

1. Further written submissions ✓
2. One or more hearing sessions ✓
3. Site inspection ✓
4. Assessment of review documents only, with no further procedure ✓

If you have marked box 1 or 2, please explain here which of the matters (as set out in your statement below) you believe ought to be subject of that procedure, and why you consider further submissions or a hearing are necessary:

I have ticked all the boxes here as I would like every opportunity for this information to be re-considered bearing in mind the LRBs decision previously which refused the building on the grounds of house design only, and agreed that there would be no intensification of traffic. I am happy for the LRB to decide upon which measures would serve this application best and what procedures they feel are appropriate.

Site inspection

In the event that the Local Review Body decides to inspect the review site, in your opinion:

- | | Yes | No |
|--|-----|--------------------------|
| 1. Can the site be viewed entirely from public land? | ✓ | <input type="checkbox"/> |
| 2. Is it possible for the site to be accessed safely, and without barriers to entry? | ✓ | <input type="checkbox"/> |

If there are reasons why you think the Local Review Body would be unable to undertake an unaccompanied site inspection, please explain here: n/a

Statement

You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. Note: you may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

If the Local Review Body issues a notice requesting further information from any other person or body, you will have a period of 14 days in which to comment on any additional matter which has been raised by that person or body.

State here the reasons for your notice of review and all matters you wish to raise. If necessary, this can be continued or provided in full in a separate document. You may also submit additional documentation with this form.

My original application was refused on the grounds of H7, house design and, following an objection from transportation, on the grounds of the possibility of 'intensification of traffic' as a result of this new build. I appealed this decision and the LRB made the following decision on 24th November 2016, Case LR168:

'2.21 Accordingly, the amendment became the finding of the MLRB and it agreed to dismiss Case LR168 and uphold the Appointed Officer's decision to refuse planning permission in respect of Planning Application 16/01139/APP, on the grounds that the proposal was contrary to Policy H7 only'

Upon voting, the LRB decided that I provided sufficient evidence to support my belief that there would be no intensification of traffic, and that the best and most efficient way forward, was for me to re-apply under a fresh application as opposed to the LRB granting permission on a conditional basis that the design would be rectified (See 2.5). The LRB stated that permission with conditions is a lengthy process and it would be more beneficial to me to proceed with an amended design. Upon resubmitting an amended and acceptable design, transportation have had the opportunity to object again, thus forcing the appeal procedure on the grounds of intensification of traffic, which as explained has already been dismissed by the LRB in November. (2.19 *The Chair stated that he believed there to be limited, if any, intensification of use of the existing access but did not believe the design complied with Policy H7 and, as such, seconded Councillor Reid's amendment.*)

The house design has now been suitably amended with no further objection from Moray Council; this was the LRBs only grounds for refusal of the previous application.

For the purposes of this appeal, I have copied the original appeal comments to explain why there will be no intensification of traffic, however, as explained; these comments have already been heard and agreed upon by the LRB, I have attached separately the response from transportation and my response to the points raised. The original comments are noted below:

We purchased Eastwood, Calcots, Elgin, IV30 8NQ in 2009 with a view to extending it to accommodate our family, to make the existing access safer we applied to move the driveway from the North side of the house to the South side to avoid traffic entering and leaving on the corner (BW 09/01102/FUL, approved 09/11/09 – 'Alt & Ext dwelling house, erect new garage, form new vehicular access & site mobile home on site'.)

An email dated 17 August 2016 from Shona Strachan mentions that had we asked at this time if further development would be an option in the future we would have been told this would be refused. When transportation/roads department met with Mark and I in 2009 regarding the visibility splay, we did not to

our recollection have a conversation around further development, as this was not our intention at this time.

The access was designed and constructed in accordance with Moray Council's specification, and was issued with a completion certificate earlier this year. We have amended boundary lines several times to comply with Moray Council and have agreed to maintain these visibility splays at our own expense, we have had to reduce our front garden to accommodate the required splay and are willing to do this further should it be requested.

Any specifications that do not currently meet Moray Council's requirements regarding the construction of the bungalow can be amended to suit, as with the design and construction of the existing access – we have offered to widen this or to improve it in any way Moray Council feels would be suitable, despite the fact that they have recently passed it by issuing a completion certificate. There can only ever be at one given time, one vehicle entering and one vehicle leaving, the driveway is wide enough to accommodate this simultaneously, and can be widened further if required, within the property.

The original comments from transportation mentioned that they were refusing this due to an intensification of traffic on the B9103, we note however that the wording of this has changed to 'an intensification of use an existing access'. Our plans show a shared section of drive forking out to 2 separate accesses within the grounds of the property by at least 15 metres. The existing drive would therefore at the most accommodate 2 extra cars leaving in the morning and 2 cars returning in the evening. Giving the history of the property and the previous use of the access this is actually a massive reduction of traffic using the access. Since 2009 we have had 5 people living in the house, all drivers, (only 2 now) and during the periods that Moray Council could not offer a yard with suitable parking for our staff, 14 members of staff would park in our garden and be driven to work from this meeting point, the same 14 members of staff would then return to collect their cars at the end of the day (an average of an additional 5 or 6 vehicles). Throughout this period there were also heavy traffic entering and leaving the property as there were major renovation and landscaping works being carried out over a 2 year period. In 2014, Moray Council roads department used our garden to store their heavy equipment and materials whilst they were re surfacing the B9103, during this period they were entering and leaving our access on an hourly basis in slow moving vehicles. For the period 2009 to date there has never been an incident as a result of anyone accessing or leaving this driveway, we have since reduced the movement drastically, as there are only 2 people living here now. Even if a family of 5 moves into our house, the traffic will never be as heightened as it has been in previous years, with no problems relating to safety whatsoever.

We discussed with James Smith several comparisons where construction has been permitted recently, and have been informed by him that the applicants must have obtained historic permissions. It seems unrealistic that every comparison we offered was met with this answer. As far as we can gather, this has been refused as a road safety issue. Our confusion around this is that if it were a road safety issue under the current guidelines, why then would this be permitted due to an applicant having historic permission? Surely a road safety issue is more important than the timing of an application. We have asked for several traffic calming measures, all of which have been refused by Moray Council. Moray Council are aware of the potential problem at the corner as they have placed a crash barrier there, on occasion and especially in winter drivers sometimes take the corner at a speed unsuitable for the conditions, there have been a couple of incidents since 2009 at this corner, but none relating to our access as this is before our house. According to DVLA, the stopping distance at 60 mph is 73m, our visibility far exceeds this on both directions. Most vehicles are travelling far slower than this as they are either just leaving or just entering a corner. We asked James Smith about rumble strips and were informed that this could not be an option as they were only placed in areas where there were street lights; we have even offered to install these at our own expense as we are contractors for Moray Council. Both Mark and I have been in various parts of Scotland over the past few weeks (Highland, and as far as the borders), where there were rumble strips in many rural areas, none of which were in lit areas. It was suggested that this is the Scottish Government's laws not Moray Council, but we challenge this upon seeing them elsewhere in Scotland recently.

I had asked several times if permission would be granted and even submitted a preliminary enquiry for this purpose. However, as we had a buyer interested (which we have had to refuse) the timing was important to have a decision on this. Moray Council informed me that the only way I could get permission was to apply for full planning. This cost me £1500 (£508 for Moray Council), to be told in the first instance

that permission would not be granted. This seemed like an obvious decision from Moray Council at this stage and one I feel could have been discussed beforehand and certainly prior to the expense we have incurred.

We purchased Eastwood as our forever home, but our children have since left home. The building of a bungalow is the most obvious and sensible decision for us in order for us to stay in this area for budget, work and family purposes. We are surrounded by unsuitable (according to Moray Council) driveways, our 3 families of neighbours access and leave a shared drive with less visibility than ours, as do several houses along the B9103 to name but a few. There are houses being built in Longmorn with little visibility, Moray Council have permitted the building of a garden centre on the blind spot on the A96, there are many examples we could offer of permitted developments that are far more unsuitable than what we are requesting. Our request comes with a history of safety and a guaranteed reduction of traffic from previous years to and from the existing access that Moray Council deemed as acceptable. We accept there are guidelines in place i.e. floor space etc that can be referred to whilst deciding on such applications, however these must be open to discretion and common sense otherwise Moray Council will put an end to any further development in the country.

Have you raised any matters which were not before the appointed officer at the time the determination on your application was made?

Yes No
☐ ☒

If yes, you should explain in the box below, why you are raising new material, why it was not raised with the appointed officer before your application was determined and why you consider it should now be considered in your review.

List of documents and evidence

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review and intend to rely on in support of your review.

Moray Local Review Body Decision Notice 24.11.16
 Plans
 Response from Transportation from original appeal 11.10.16
 My response to points raised by Transportation 13.10.16

Note. The planning authority will make a copy of the notice of review, the review documents and any notice of the procedure of the review available for inspection at Council Office, High Street, Elgin until such time as the review is determined. It is also be available on the planning authority website.

Checklist

Please mark the appropriate boxes to confirm you have provided all supporting documents and evidence relevant to your review:

- ✓ ☐ Full completion of all parts of this form
- ✓ ☐ Statement of your reasons for requiring a review
- ✓ ☐ All documents, materials and evidence which you intend to rely on (e.g. plans and drawings or other documents) which are now the subject of this review.

Note. Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice from that earlier consent.

Declaration

I the applicant hereby serve notice on the planning authority to review the application as set out on this form and in the supporting documents.

Signed

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Date

26/01/2017
