



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR168
 - Application for review by Mr & Mrs Mark Davies, c/o Mr Colin Keir, Plans Plus against the decision of an Appointed Officer of Moray Council
 - Planning Application 16/01139/APP to erect a dwellinghouse on Plot Adjacent to Eastwood, Calcots, Elgin [Ward 4: Fochabers Lhanbryde]
 - Unaccompanied site inspection carried out by the MLRB on 26 October 2016
 - Date of decision notice: 24 November 2016
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Decision

The MLRB agreed to dismiss the request for review and uphold the original decision of the Appointed Officer to refuse the above noted application.

1. Preliminary

- 1.1 This Notice constitutes the formal decision of the MLRB as required by the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013.
- 1.2 The above application for planning permission was considered by the MLRB at the meeting held on 27 October 2016.
- 1.3 The MLRB was attended by Councillors G. Coull (Deputy Chair), G. Cowie, M. McConachie, K. Reid and R. Shepherd.

2. MLRB Consideration of Request for Review

- 2.1 In the absence of the Chair, Councillor Coull, in his role as Deputy Chair of the Body, assumed the position of Chair.
- 2.2 A request was submitted by the Applicant seeking a review of the decision of the Appointed Officer, in terms of the Scheme of Delegation, to refuse an application for planning permission to erect a dwellinghouse on Plot Adjacent to Eastwood, Calcots, Elgin.
- 2.3 There was submitted a 'Summary of Information' report setting out the

reasons for refusal, together with documents considered or prepared by the Appointed Officer in respect of the planning application and the Notice of Review, Grounds for Review and supporting documents submitted by the Applicant.

- 2.4 In response to the Chair's query as to whether the MLRB had sufficient information to determine the request for review, Councillor Reid noted that the Applicant had suggested a willingness to amend their design of the gable and queried whether it was possible to request details of this from the Applicant.
- 2.5 The Chair advised that an amended design would constitute new information and trigger the need for the review to be processed as such. He noted a previous case where the MLRB had requested an amended design and that the process was long and drawn out for the Applicant and as such it may be quicker for the Applicant to reapply with an amended design.
- 2.6 In response, Mrs Scott, as Legal Adviser to this review, advised that whilst it may not necessarily be a quicker process for the Applicant to reapply, it would be a cleaner process as the MLRB would be considering a different proposal which would then be subject to neighbour and consultee notification.
- 2.7 Thereafter, the MLRB agreed that it had sufficient information to determine the request for review.
- 2.8 With regard to the unaccompanied site inspection carried out on Wednesday 26 October 2016, Mrs MacDougall, as Planning Adviser to this review, advised that Members of the MLRB were shown the site where the proposed development would take place and provided with a summary of the reasons for refusal and the Applicant's Grounds for Review.
- 2.9 The Planning Adviser advised the MLRB that the application had been refused on the grounds that the proposal was contrary to the provisions of Policies H7 *New Housing in the Open Countryside*, T2 *Provision of Access* and IMP1 *Developer Requirements* of the Moray Local Development Plan 2015. She noted that the proposed development would result in an intensification of use an existing access where the visibility is restricted by the adjacent building, fences and trees, and would be likely to give rise to conditions detrimental to the road safety of road users contrary to the provisions of Policies T2 and IMP1.
- 2.10 Referring to the gable design, the Planning Adviser advised that the proposal incorporates a gable design which does not comply with the gable eaves formula required by Policy H7 and therefore represents an inappropriate form of development in the countryside.
- 2.11 Referring to the Applicant's Grounds for Review, the Planning Adviser advised that the Applicant had stated that there is a history of safety at the existing access and this proposal would create a reduction in traffic in comparison to previous years. They advised that to make the existing access safer, they had applied to move the existing driveway from the north side of Eastwood to the south side to avoid traffic entering and leaving on the corner. The Applicant noted that the access has been designed and constructed in accordance with The Moray Council's specification and had been issued with a completion certificate.

- 2.12 Noting that any specifications which do not meet Council's requirements regarding the construction of the bungalow can be amended to suit, as was done with the design and construction of the access, the Applicant advised that the drive would, at the most, accommodate 2 extra cars leaving in the morning and returning in the evening. They noted that this, given the history and previous use of the access, was a massive reduction and cited various examples of historic use which would be a higher level of usage than proposed.
- 2.13 The Applicant advised that from 2009 to date there has never been an incident and noted that traffic will never be as heightened as it has been. Referring to stopping distances, the Applicant noted that the stopping distance at 60mph was 73m according to the DVLA and that the visibility at the access exceeds this. The Applicant advised that most vehicles travel at slower speeds than 60mph due to the nearby corner and noted that they had suggested traffic calming measures which were refused by the Council.
- 2.14 In concluding, the Applicant stated that other accesses and permitted development proposals have poor visibility and queried why, if there is a road safety issue under current guidelines, development would be permitted due to an applicant having historic permission.
- 2.15 Councillor McConachie noted that the Applicant was willing to amend the design of the gable end and stated that the difference was only 0.6m. In response, the Planning Adviser advised that the pitch of a gable required to be proportionate to the house and the gable eaves formula required by Policy H7 ensured that the design was in harmony and could easily be absorbed into the surrounding landscape.
- 2.16 Having had the opportunity to visit the site and consider the Applicant's Grounds for Review, Councillor Cowie stated that he agreed with the Appointed Officer and had concerns in respect of the visibility splay. Accordingly, he moved that the review be dismissed and the Appointed Officer's decision be upheld to refuse planning permission in respect of Planning Application 16/01139/APP.
- 2.17 Councillor Shepherd stated that he was of the same opinion as Councillor Cowie and seconded his motion.
- 2.18 Councillor Reid advised that she did not believe there was an intensification of use of the existing access due to its historical use but expressed concern in relation to the design which she believed could be addressed in an amended application. Accordingly, she moved that the review be dismissed and the Appointed Officer decision be upheld to refuse planning permission in respect of Planning Application 16/01139/APP, on the grounds that the proposal was contrary to Policy H7 only.
- 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.

2.20 On a division, there voted:-

For the motion (2):- Councillors Cowie and Shepherd

For the amendment (3):- Councillors Reid, Coull and McConachie.

Abstentions (0)

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.

Aileen Scott
Legal Services Manager (Property & Contracts)
Legal Adviser to the MLRB

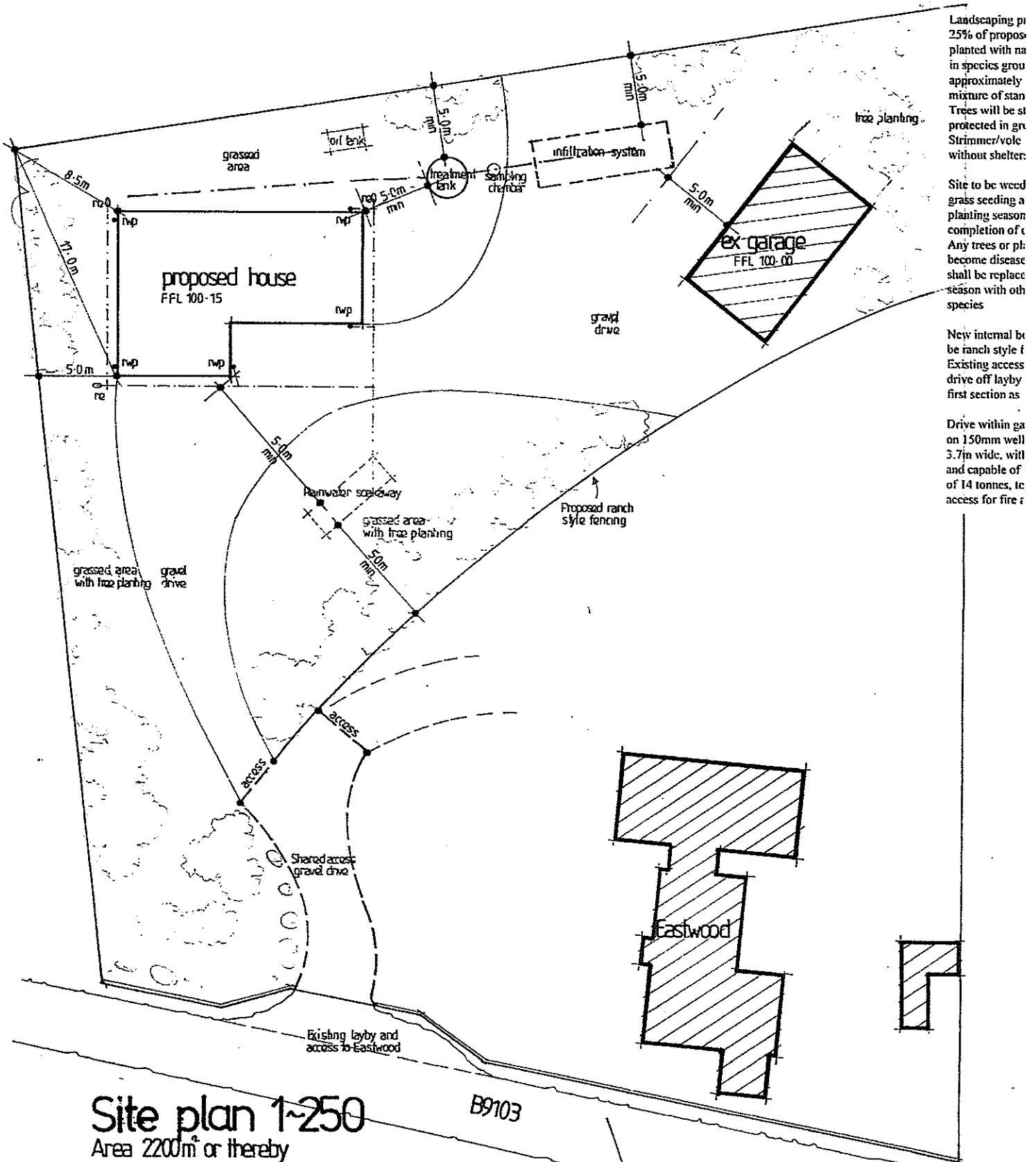
TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

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 22 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013

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.

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Local Review**LRB Ref 168****Planning Application Reference 16/01139/APP Erect dwellinghouse on Plot Adjacent To Eastwood Calcots Elgin****Response from Transportation, Moray Council**

1. This document is in response to the Notice of Review and the Statement of Case submitted on behalf of Donna and Mark Davies and sets out observations by Transportation on the application and the grounds for seeking a review.
2. This review concerns planning application 16/01139/APP for the erection of a dwelling house on a site within the garden grounds of Eastwood, served by an existing access onto the B9103 Lossie – Sheriffston – Orton – Mulben Road, which currently serves one dwelling. The existing access is sited some 85 metres to the south of a bend in the road.
3. Transportation received the consultation for planning application 16/01139/APP on 29 July 2016. A copy of the consultation response is attached (**TMC01**), which details Transportation's objection on the grounds of Moray Local Development Plan 2015 Policy T2: Provision of Road Access.
4. The B9103 is part of the strategic road network in Moray, providing an important link from Lossiemouth and Elgin to the A96 and onwards to the south, and is a key route for movement both within Moray and to locations beyond. The B9103 at this location is subject to a 60mph speed limit. The required visibility splay for development, including additional development served by an existing access, for a 60 mph road is 4.5 metres by 215 metres in both directions.
5. Transportation's visit to this site identified that the required visibility splay at an 'x' distance of 4.5 metres is restricted by trees and vegetation, walls, fences and the property 'Eastwood'. Sightlines are also restricted by a bin store which has been constructed adjacent to the existing access. At an 'x' distance of 2.4 metres the sightlines to the south are improved, although still would not provide the full 'y' distance for a 60 mph road. However to the north the sightlines remain obstructed by the existing building and boundary walls. Photographs taken during the site visit at the access onto the public road at 'x' distances of 2.4 metres and 4.5 metres are attached (**TMC02**).
6. Visibility splays for private accesses onto the public road are required to ensure that there is adequate inter-visibility between vehicles on the public road and a vehicle at the private access onto the public road. If a development involves the intensification of use of an existing vehicular access onto the public road where visibility is severely restricted by adjacent hedges/trees/walls/embankment/buildings/obstructions and would be likely to give rise to conditions detrimental to the road safety of road users, the development is contrary to Moray Local Plan policies T2 Provision of Access and IMP1 Development Requirements.
7. Visibility splays relate to the visibility available to a driver at or approaching a junction in both directions. It is related to the driver's eye height, object height above the road, distance back from the main road known as the 'x' distance and a distance along the main road known as the 'y' distance. The 'y' distance is related either to the design speed of the road and a corresponding 'stopping sight distance' or in some circumstances may be based on observed '85th percentile vehicle speeds'. For an

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access serving multiple properties in the countryside the 'x' distance is 4.5m, measured from the edge of the public carriageway along the centre-line of the proposed private access.

8. A detailed description of the relevance and consideration of visibility splays can be found in The Moray Council document Transportation Guidelines for Small Developments in the Countryside (TRSDC). TRSDC can be accessed via the following web link <http://www.moray.gov.uk/downloads/file105341.pdf> It should be noted that the requirements for visibility splays within the document TRSDC are based on those set out in the Design Manual for Roads and Bridges (DMRB) Volume 6 Section 2 Part 6 TD 42/95, which has been industry standard guidance since 1995. An extract from the DMRB is attached (TMC03).
9. The original access serving the property 'Eastwood' was some 40 metres to the north of the current access. In the summer of 2009 the appellant relocated the access to its current location. Whilst this location did not meet the full visibility splay standards, given the constraints of land ownership, it was accepted as it afforded an improvement to the available sightlines. At that time there was no intensification of use associated with the re-location of the access.
10. Subsequent to the re-location of the access an application was made to the Traffic Commissioner for a Heavy Goods Vehicle operator's licence at the property 'Eastwood'. The Moray Council Transportation, as a statutory consultee, objected to the granting of a licence on road safety grounds, as it would result in an intensification of use of an access onto the public road with severely restricted visibility.
11. The appellant's statement refers to the historic travel behaviour at the property 'Eastwood' and anticipated changes in travel behaviour should the property be sold. However there is no means of ensuring that the anticipated changes occur or that the level of use of the access can be controlled in the future.
12. When considering development an intensification of use of an access onto the public road is assessed in terms of changes to floorspace, number of houses, changes in use class and so forth – all of which are controlled by planning legalisation. The proposed development, which is an additional property to be served by the existing access, is therefore deemed to be an intensification of use.
13. The appellant's statement also refers to other developments in Moray which have been granted planning permission and in their view are developments that are 'far more unsuitable' than the proposed development. It is understood that these developments were referred to by the appellant during a site meeting between a Transportation officer and the appellant on 25 August 2016. The names of these developments are not fully provided within the statement but are understood to be a group of house plots with an access onto the A941 some 220 metres to the south of the 50mph speed limit at Fogwatt and the relocated access for the Threaplands Garden Centre on the A96 (Trunk Road) to the east of Lhanbryde (which was assessed by Transport Scotland).

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14. Transportation can confirm that these developments are subject to planning conditions relating to the provision of visibility splays of 4.5 metres by 215 metres in both directions at the access onto the public road. A list of the most recent planning permission numbers for these developments in attached (TMC04).
15. During the site meeting on 25 August 2016, the appellant requested if traffic calming measures to reduce vehicle speeds could be provided. The traffic calming measures referred to were 'road humps' (vertical deflections). Discussions during the site meeting related to the requirement for street lighting to present where traffic calming measures are installed.
16. Local Transport Note 01/07 Traffic Calming (LTN 01/07), paragraph 2.8.2, page 26 states that *'The road hump regulations requirements for road lighting of road hump schemes, other than in 20 mph zones, are that lighting should extend over the length of the road containing the humps'*. This is national guidance on traffic calming used by the Moray Council and other local authorities in the Scotland and the wider United Kingdom. An extract from LTN 01/07 relating to the use 'road humps' is attached (TMC05).
17. The appellant's statement refers to the provision of 'rumble strips' or 'rumble devices' to slow vehicle speeds on the B9013. LTN 01/07, paragraph 5.1.2, page 67 states that *'Although in some locations rumble devices have been used with the aim of reducing speeds, the evidence so far indicates that any speed reduction is likely to be minimal and will be eroded through the passage of time.'* The use of 'rumble strips' would therefore not assist in achieving the significant reduction in vehicle speeds on the B9013 which could then in turn support a reduction in the required 'y' distance for the visibility splay at the private access. An extract from LTN 01/07 relating to the use 'rumble strips' is attached (TMC06).
18. Finally, during the consideration of the planning application the appellant was advised that any proposed reduction in the 'y' distance for the required visibility splays would need to be supported by evidence in the form of a speed survey. However given that the available visibility to the north of the access is severely limited by the existing building and the bend in the road, and observations of vehicle speeds elsewhere on the B9013 which are around the speed limit, it is unlikely that the results of any speed survey would support the use of the existing access for further development.
19. The existence of the access at this location is a matter of fact. However the intensification of use which this proposal would engender would be detrimental to road safety.
20. Transportation, respectfully, requests the MLRB to uphold the decision by the appointed officer. In particular on the grounds that Moray Local Plan Policy T2: Provision of Road Access is not satisfied.

Transportation
11 October 2016

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Response from Mr & Mrs Davies in relation to comments from Transportation, Moray Council - Date received – 12.10.16, Date responded – 13.10.16

Points 1 – 4 No comment or dispute.

5. We have said from the start of this process that if there is anything we could change to assist with this application, we are open to suggestions and are willing to make whatever changes necessary to allow this permission to go through. This would include removing the wall at the south, the bin store is a temporary structure and has since been moved. We have previously sought permission from the land owner to reduce the boundary next door back from the road and are currently maintaining this strip at our own expense. We would be willing to approach them again and seek permission to remove any trees that are obstructing the splay with a view to planting new in a more acceptable area. We would also be willing to alter the fencing at the north of the property and if permitted, reduce the height of the bank at the corner on the north side.
6. We appreciate the purpose of visibility splays, we disagree that the visibility is 'severely restricted'. We have been using this access since 2009, when we re-positioned it according to Moray Council's specification and have since deemed it acceptable in the form of a recent completion certificate. We also appreciate that the paperwork states that an extra footprint equates to an intensification of traffic, however, our appeal is based on what is actually happening in reality as opposed to possible scenarios set out in legislation. The reality of the situation is that this existing access has been subjected to a massive amount of traffic for the past 7 years, all without incident. This is the evidence that the visibility is not 'severely restricted' or there would have been at least 1 accident as a result, yet there have been none. We were granted permission in 2009 to build a 2 bedroom extension; there were no issues of intensification of traffic at this stage, yet 7 years later when we request to build a 2 bedroom bungalow, suddenly there is an intensification of traffic – we struggle to see what the difference is. The extra 2 bedrooms were to accommodate our growing family who all drive, had we build a 2 bedroom bungalow instead of the extension we fear we would still be having the same problems, yet it is clear there would be absolutely no difference to the volume of traffic. We have noted in our original comments about how many cars accessed this property in the past and have evidenced that this can now only ever be a reduction in traffic in relation to historic events. We cannot stress clearly enough that this is already deemed as safe due to the complete lack of

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incident when the use of the access has been heightened tremendously in the past.

7. We have no dispute that these are the facts involving a visibility splay. We are struggling to see the common sense approach to this and why the 'x' distance has to be 4.5m from the edge of the public carriageway – no-one leaves their driveway from 4.5m back from the edge of the road as it makes no sense to do this and serves no purpose. We would also like to point out that this is an existing access, not a new one, however, we have also said that we are willing to reconstruct the access and the joint access in any way Moray Council sees fit to do so. The original plan shows the multiple (joint) part of the drive well within the grounds of the property (15m at least), therefore our original request involves the same amount of traffic (1 vehicle) entering and leaving at any one time, as it currently does. DVLA states that stopping distance at 60 mph is 73 m, which is within the visibility range currently.
8. We are aware of this.
9. The purpose of building a 2 bedroom extension was to accommodate more people in this house, we are struggling to see why this is not an intensification of traffic issue, when building a 2 bedroom bungalow is. These people have since left and we are now back to 2 drivers. Should these 2 drivers be allowed to build a small bungalow in the grounds, there would be 2 drivers in one part of the land, sharing a drive with a possible 4 drivers at Eastwood – how is this different to what it used to be? Can we also point out at this stage that during construction and due to multiple parking at Eastwood, there will never be the same level of traffic using this property as before. Therefore, despite what legislation states about footprints etc, we have in fact reduced the volume of traffic and even with the construction of a bungalow, will continue to do so.
10. This point is accurate, and equally confusing. This was an application for an Operator's licence to run a small 7.5 tonne vehicle as the premises we worked from in Elgin could not accommodate this lorry and we wanted to keep it at this property overnight for safety reasons. This did not stop Moray Council using this access whilst they were resurfacing the B9103. We were asked to accommodate their vehicles for this period and their materials. This involved them coming in and out of our access many times during the day in slow moving heavy goods vehicles for several days/weeks. Surely if it is okay for Moray Council to use this access for this purpose, it is okay for us to do so also? We have no problem allowing this, but do wish to express the fact that along with these slow moving heavy goods vehicles entering and leaving our

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property, there were the usual traffic (our children still lived at home at this point) and yet, there were still no incidents involving the safety. There were no traffic restrictions at our property whilst this was ongoing i.e. lights etc. We are not sure how much more evidence we can provide that despite the level of traffic to and from this access, there have never been any safety issues, therefore the visibility splay in existence is surely suitable and effective, and would more than accommodate our request to build a small bungalow.

11. We agree that the use of the property in the future cannot be predicted, however, we do feel that regardless of the volume of traffic at this property in the future, it will likely never meet the volume of traffic we have had here in the past, without incident. This brings us back to the fact that we have actually reduced the volume of traffic here as opposed to potentially increasing it. As mentioned originally, when Moray Council could not offer us a unit with suitable parking, our staff (14 members) parked in our garden and were transported to work and back in the evening. We doubt this would be the situation for any new owner of Eastwood.
12. We appreciate that this is what the legislation states. As previously mentioned, we were hoping that our appeal would be based on what is actually happening in reality, not what paperwork predicts would happen. We are aware that other properties that do not comply with this legislation are being permitted to develop due to the fact that their permission is historic and falls within different requirements due to the date they applied. Our point is that if this was a safety issue, they would not be permitted to build if they do not currently comply either. This makes the situation a paperwork exercise as opposed to a safety issue, and had we applied to do this several years ago, we would not be having this problem now, yet the outcome would be that we would have permission granted as the paperwork at the time would have allowed it.
13. During the site visit with James Smith on 25 August 2016, he stated that he could not comment on any other permissions, but did explain that they would likely be historical. The building of Threaplands Garden Centre on the A96 is clearly permitted and was assessed by Transport Scotland. Does this mean that Moray Council and Transport Scotland are not working in conjunction with each other and therefore not consistent with legislation?
14. This may be the situation, however, if you drive along the B9103 you can clearly see many properties with far less visibility than what we currently have and propose, these properties are permitted to use these accesses, some of which are obviously not acceptable. The fact that they are existing historically

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seems to be enough for Moray Council to accept them. Therefore, why is our argument for historic safety not being considered?

15. During the meeting we discussed every aspect and possibility of absolutely anything that would help our case. We were informed that no traffic calming measures would be placed, and no speed restrictions would be offered, we were previously told that no mirrors would be put in place. We had previously installed a sign at the road to the north stating 'Caution, concealed entrance' which Moray Council asked us to remove.
16. As in 15.
17. The request for rumble strips was in relation to the conversation around there being 2 car incidents over the past 7 years where traffic have come around the corner too fast for the road conditions (both in winter), and have hit the crash barrier, well before the drive and nothing to do with the drive. We then suggested rumble strips as a possible solution to this, which was dismissed.
18. It would appear that Moray Council are of the opinion that a 'speed survey would not support the use of the existing access for further development'. The bend on the road naturally slows traffic down in the first instance. Secondly, should Moray Council be suggesting that this is not the case and traffic still come round the corner at 60mph, surely this backs up our point of the access being safe, in that there has never been an incident involving the existing access.
19. Giving an average volume of traffic per property, say 4 cars for a 4 bedroom house and 2 cars for a 2 bedroom house, the most traffic accessing this property would be 6 cars. There have been 3 times this amount of traffic entering and leaving this access historically and without incident. This is evidence that the reality of the situation is that it is not detrimental to road safety, despite what the paperwork suggests.
20. We respectfully request the MLRB to overrule the decision by the appointed officer. In particular on the grounds that there is no evidence to suggest this would intensify traffic, and even if it did, no evidence to suggest this would be a safety issue. This is an existing access, not a new one, with 7 years of incident free traffic entering, leaving and passing the driveway, there are no reasons to believe this would be any different with the existence of a small bungalow. The house was built in 1876 with the original drive being at the north side of the house on the corner, until we relocated it in 2009. This was also without incident and in a far more dangerous place than it currently is and throughout the lifetime of the property to date.

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We wish to stay in Moray as this is where our work and family are, we are both self employed with Mark employing several members of staff in this area. We had a buyer interested in purchasing half our land and Eastwood, we would have kept the other half of the land and the garage, but have had to refuse this sale until a decision is made regarding this appeal. Should we have to relocate, which would be to somewhere rural, our concerns are that with these new regulations, which seem extremely unreasonable and unnecessary, we are not only restricted with building at our own plot, but would be restricted to build anywhere within the countryside in Moray. These regulations have surely had a massive impact on the amount of building in the country and seem so unreasonable, especially when you consider the accesses within the town which are in some places almost impossible to navigate. Already we have had to dismiss several potential plots as we fear Moray Council will not allow access to them based on where they are. We hope there are provisions for Moray Council to use a common sense approach to this, and to have the ability to use their discretion where the legislation is concerned, and to take into consideration the points listed about the historic and current safety at this existing access.

This concludes our response.

Donna & Mark Davies, Eastwood, Calcots, Elgin, IV30 8NQ. 13.10.16.