

Local Review

LRB Ref 178

Planning Application Reference 16/01820/APP Erect dwellinghouse on Plot Adjacent to Eastwood Calcots Elgin

Response from Mr & Mrs Davies in relation to comments from Transportation, Moray Council - Date received – 20.02.17, Date responded – 27.02.17

Points 1 – 5 No comment or dispute.

6. 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.
7. 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 built 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.

8. 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.
9. We are aware of this.
10. 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. We struggle to see the significance of a previous application for building 4 houses being refused; this was requested by a previous owner and is not similar in any way to what we are proposing.
11. Our access has been constructed in accordance with Moray Council's regulations, and was subject to several visits by various departments, the conclusion being that a completion certificate was issued. Had the access not complied, a completion certificate would not have been issued.
12. 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

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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 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.

13. 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.
14. 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.
15. 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

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that Moray Council and Transport Scotland are not working in conjunction with each other and therefore not consistent with legislation?

16. 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 seems to be enough for Moray Council to accept them. Therefore, why is our argument for historic safety not being considered?
17. 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.
18. As in 17.
19. 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.
20. 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.
21. 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.
22. 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

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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.

Additional points

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.

We would also like to note our distress at having to go through this procedure for a second time, when the LRB stated clearly the first time around that they did not believe there would be an intensification of traffic, and refused the appeal on design grounds only. We are aware of the procedures out with Moray Council's control, and appreciate how frustrating this must be for Moray Council as well as for applicants, and cannot stress enough that these procedures would benefit from being revisited and amended to make them more reasonable and less time and money consuming for both parties.

With regards to Scottish Water's comments, we currently use a self contained biodisc waste water treatment plant and are aware that this will be the case for the proposed development.

This concludes our response.

Donna & Mark Davies, [REDACTED] 27.02.17