



**LOCAL REVIEW BOARD**

**STATEMENT OF APPEAL**



Erect Replacement Dwellinghouse at Hillview, Garmouth Road,  
Lhanbryde, Elgin

**August 2019**

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<b>Our Reference:</b>	180002.CAMPBELL
<b>Local Authority:</b>	The Moray Council
<b>Planning Application Ref:</b>	19/00309/PPP
<b>Application Proposal:</b>	Erect Replacement Dwellinghouse
<b>Site Address:</b>	Hillview, Garmouth Road, Lhanbryde
<b>Appellants:</b>	Mrs D Campbell
<b>Date Application Validated:</b>	29 <sup>th</sup> March 2019
<b>Council Decision Notice Date:</b>	6 <sup>th</sup> June 2019
<b>Reason for Refusal:</b>	<p><i>“The proposal is contrary to policies H1 and IMP1 in the Moray Council Development Plan for the following reason: the site is of insufficient size to provide for a house with adequate levels of amenity which avoids an intrusive impact on neighbouring houses, it is also considered that any reasonably sized house on the site would result in cramped, over development of the site which would be to the detriment to the character of the area and residential amenity and as such the proposal is contrary to the provisions of The Moray Local Development Plan 2015.</i></p> <p><i>By virtue of reliance for off street parking and turning to take access onto a narrow confined land with poor access onto Walker Crescent, close to its junction with Garmouth Road the additional traffic would result in a detrimental impact to the amenity of the locality and to other users of the lane. The existing lane is therefore inadequate to receive additional traffic and would not meet the requirements of Policy T2 which requires an access to the appropriate to the needs of the development</i></p>

	<p><i>There is currently insufficient information to assess the proposals against the requirements of Policies EP5 and IMP1 and associated Supplementary Guidance Flood Risk and Drainage Impact Assessments for New Development. On the basis that site drainage cannot be confirmed as compliant with the above policies in terms of the provision of water disposal and treatment from the site.”</i></p>
<p><b>Application Drawings &amp; Supporting Documents:</b></p>	<p>DOC001 - CMD Drawing – 180002.CAMPBELL.01PP (A)  DOC002 - CMD Drawing – 180002.CAMPBELL.02PP (A)  DOC003 – Handling Report  DOC004 – Decision Notice</p>
<p><b>Contents:</b></p>	<ol style="list-style-type: none"> <li>1. Introduction – Page 3</li> <li>2. Background – Page 4</li> <li>3. Statement of Case – Page 5</li> <li>4. Policy Compliance – Page 6</li> <li>5. Conclusion – Page - 8</li> </ol>



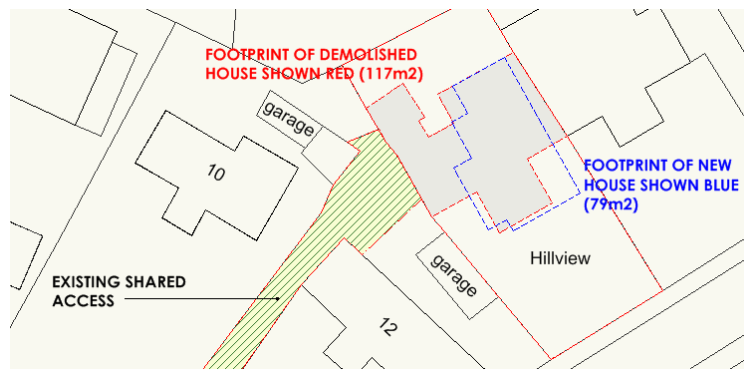
## 1. Introduction

1.1. The following Statement of Case, submitted by CM Design, Town Planning & Architectural Consultants, has been prepared to support a Local Review Board submission relating to a;

### Replacement house on the footprint of a former house demolished by instruction of Moray Council

1.2. The background to this case and the planning application is a tragic one and worthy of the attention of the Review Board.

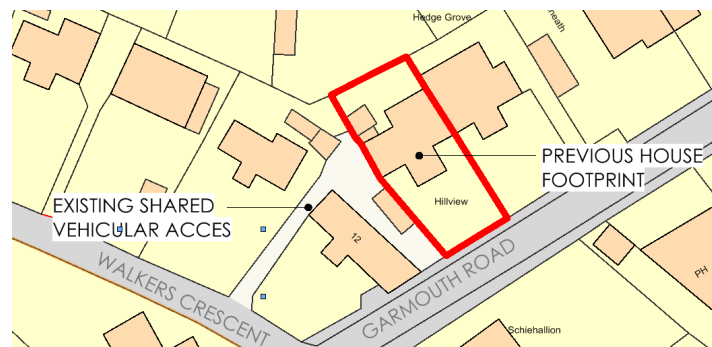
1.3. The former house at Hillview, Garmouth Road, Lhandbryde was **demolished in response to an order by Moray Council** without any advice to the appellant in terms of securing consent for its replacement. The former footprint is shown **red** on the adjacent picture and the proposed footprint shown **blue**



1.4. Significant **material considerations** exist in the context of this application and appeal and can be summarised as follows;

- There **was a house on site** until Moray Council instructed it to be demolished.
- The client was **not advised** to secure consent for replacement before obeying Moray Council instructions to demolish.
- Consent **would have been granted**, if an application had been made prior to demolition.
- The Transportation Department **APPROVE** of the current access and parking arrangements

1.5. Current Policy can support the application even if not able to be seen as an existing house site. This application and Appeal relates to the appellants wish to replace the house that Moray Council instructed them to demolish.



## 2. Background

- 2.1. The background to this case is unique and perhaps should not be considered under the terms of Planning Policy alone. There are mitigating circumstances and material considerations that are important to be aware of.
- 2.2. The house was the family home of the appellant's grandparents since 1964 and latterly by only the grandfather until he was placed in respite care in 2012.
- 2.3. The foundations of the house remain on site to this day, as does the garage.
- 2.4. During the time that the appellant's grandfather was in care, concern arose with regard to the condition of his home and, for various reasons, the family were unable to secure the autonomy to address these concerns.
- 2.5. In 2015 and following the passing of the appellants grandfather, Moray Council made contact with the appellant and the family to require that the issue be addressed.
- 2.6. Following the need for a Structural Assessment, it was found that the property was beyond feasible repair and, in consultation with Moray Council, the building was dismantled to foundation level and made safe.
- 2.7. The appellant and family did not suspect for a second that this action and compliance with Moray Council's wishes would leave them stripped of a family home and asset.
- 2.8. It is an undisputed fact that, should the appellant have been advised to secure consent **prior to obeying Moray Council's instruction** to demolish the house, Planning Consent would have been granted without any difficulty.
- 2.9. Whilst the circumstances surrounding the reasons for the **demolition** might afford sufficient material consideration to allow this appeal to be upheld, there are also other material considerations in relation to current planning policy that might also allow the application to be approved as a vacant site.
- 2.10. Whilst it is requested that the Appeal Board recognise the site as an existing house site by virtue of what remains on site and by virtue of how the demolition was encouraged by Moray Council, there are also some material considerations that might allow current Policy to permit the redevelopment of the site. These are explored later in this Statement.

### 3. Statement of Case

- 3.1. Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 (as amended) requires applications to be determined in accordance with the Development Plan ie the adopted Moray Local Development Plan 2015, unless **material considerations** indicate otherwise.
- 3.2. As stated earlier in this Statement there are significant **material considerations** to be aware of this case and are repeated here for the sake of clarity.
- There **was a house on site** until Moray Council instructed it to be demolished.
  - The client was **not advised** to secure consent for replacement before obeying Moray Council instructions to demolish.
  - Consent **would have been granted**, if an application had been made prior to demolition.
  - The Transportation Department **APPROVE** the access and parking arrangements
  - Current Policy can support the application even if not able to be seen as an existing house site
- 3.3. This current Plan is soon to be replaced by the Proposed Plan which was considered to be the “settled view” of Moray Council but with only “minimal weight” being applied to it. The 2015 MDLP remains the primary consideration. This point is important in relation to how council have applied the need for drainage management measures to be concluded at the planning stage.
- 3.4. The appellant feels particularly aggrieved that no advice to apply for a replacement property was given, when Moray Council asked the family to deal with the decay of their grandparents home in 2015.
- 3.5. The house was the former home of the appellant’s grandparents from 1964 and up to 2012 when the widowed grandfather was taken into respite care.
- 3.6. The grandfather was fiercely independent and refused to allow anyone to help to look after the property, which was in an already ruinous condition because of his own failing health and inability to maintain it
- 3.7. Sadly, the grandfather never returned to his home having passed away in 2015.
- 3.8. In that same year the appellant’s family were approached by Moray Council to make the building safe and after due consideration of Structural Engineers, an order was made to demolish it.
- 3.9. The appellant and her family agreed to this, all the while assuming that they could simply replace it.
- 3.10. The appellant faced costs of over £20k for the demolition and thought that this might be acceptable given the value of the land as a house site at that time.
- 3.11. Without consent, the value of the site cannot be realised and the appellant and family are now facing the loss of a family asset which was strived for and established over many decades of hard work by their grandparents.

#### 4. Policy Compliance

4.1. The current application has been refused on the grounds of **three separate issues**. Whilst it is understood that the case officer can only decide upon the merits of a case in the light of current Policy, this Appeal Statement seeks to draw attention to the significant material considerations that might allow that decision to be reconsidered.

4.2. **REASON FOR REFUSAL NO 1** - *“The proposal is contrary to policies H1 and IMP1 in the Moray Council Development Plan for the following reason: the site is of insufficient size to provide for a house with adequate **levels of amenity** which avoids an **intrusive impact** on neighbouring houses, it is also considered that any reasonably sized house on the site would result in cramped, **over development** of the site which would be to the detriment to the character of the area and residential amenity and as such the proposal is contrary to the provisions of The Moray Local Development Plan 2015.*

4.2.1. Notwithstanding the **material consideration** that an application for replacement would have been approved prior to demolition, there are other considerations that might allow this application to be in concordance with Policy H1 and IMP1

4.2.2. **Amenity** – any suggested loss of amenity is only within the context of the site being considered a vacant portion of amenity ground rather than its former use as a house site. The current amenity enjoyed by the surrounding houses has only been afforded to them by the instruction by Moray Council to demolish the home that formally existed there. The “level of amenity” proposed is greater than formally enjoyed by the house on site and equal to any other adjacent house in the row.

The appellant contends that the proposals present a greater degree of amenity to the site itself and neighbouring properties than the former property presented and that this application could be considered to comply with Policy H1 and IMP1

4.2.3. **Intrusive impact** – The surrounding properties have been used to a house being present on this site since it was first built after the war. Equally, they have been familiar with the access to the former house being used for decades and accessing the domestic garage that remains on site today.

The appellant contends that the proposals do not present any impact upon neighbours that they were not formally familiar with prior to the property at Hillview being demolished

4.2.4. **Overdevelopment** – The surrounding properties are all of a similar nature with a mixture of detached and semi - detached post war properties with small gardens front and rear. The previous picture clearly shows how the settlement pattern of the area reflects what was formally on site and demonstrates how the impact of this proposal will be no different.

The appellant contends that the proposals continue to reflect the settlement pattern of the area and that the site size is equal to and in excess of several adjacent homes.



4.3. **REASON FOR REFUSAL No.3** – *“By virtue of reliance for off street parking and turning to take access onto a narrow confined land with poor access onto Walker Crescent, close to its junction with Garmouth Road the additional traffic would result in a detrimental impact to the amenity of the locality and to other users of the lane. The existing lane is therefore inadequate to receive additional traffic and would not meet the requirements of Policy T2 which requires an access to the appropriate to the needs of the development”*

- 4.3.1. As can be seen from the Case Officers Handling Report, the Transportation Department **do not object** to the access and parking arrangements as proposed.
- 4.3.2. It is only the case officer who considers that the current access to Hillview, which has been used for over 60 years without incident, to be less than satisfactory.
- 4.3.3. It is important to note that the vehicular access is private and belongs to the site and will inevitably continue to be used to access the site regardless of the case officers concerns and regardless of the future use of the site.
- 4.3.4. It is perhaps ironic that the appellant could continue to use the site on a daily basis to park family vehicles, within the garage or otherwise, without consent and with no greater or lesser impact than formally experienced prior to the house being demolished.  
*Given the garage on site and the nature of the access, there can be no inferred assumption of increased burden of use by giving consent to this replacement. The impact upon the neighbours by the existing access has been in place for decades and will continue to be so.*

4.4. **REASON FOR REFUSAL No.3** – *“There is currently insufficient information to assess the proposals against the requirements of Policies EP5 and IMP1 and associated Supplementary Guidance Flood Risk and Drainage Impact Assessments for New Development. On the basis that site drainage cannot be confirmed as compliant with the above policies in terms of the provision of water disposal and treatment from the site”*

- 4.4.1. This matter relates to the **early adoption** of Supplementary Guidance on Drainage and Flood Risk detailed within the **emerging** Local Development Plan and basically requires that site testing be carried out on site to identify the means of dealing with foul and surface water discharge.
- 4.4.2. This matter was the subject of a **“late consultation”** (see the case officer’s Report of Handling) and was able to be addressed within the time allowed for this application to be considered
- 4.4.3. Notwithstanding the fact that the previous house at Hillview was successfully connected to the public system in all respects, the ability to **1)** connect the foul discharge to the public system and **2)** deal with surface water on site, is assured
- 4.4.4. The detail of any discharge measures is adequately dealt with by Building Control at the point of applying for a warrant.
- 4.4.5. It is requested that this matter be dealt with, in terms of Planning Approval, by **suspensive condition.**



The appellant will be delighted to address this technical issue and face the inevitable costs of doing so, once the outcome of this Appeal is known.

- 4.5. it can be seen that, even if the site were to be considered a vacant parcel of amenity ground without any history, certain merits are available for the application to be considered to be **compliant with Policy**.
- 4.6. However, the history of this site is well known and the very unfair circumstances that led it to lose its status as a house site is also clear
- 4.7. The potential for compliance as a vacant site AND the unfair history of how it lost its house site status are considered to be significant material considerations that might allow this Appeal to be upheld.

## 5. Conclusion

- 5.1. The unique circumstances of this case are clear and without doubt.
- 5.2. Only perhaps a Local Review Board can adequately consider the unique circumstances of this case and its impact upon a local family
- 5.3. Moray Council's own records with corroborate the course of events that led to the demolition of the appellants's family home at Hillview
- 5.4. As a result of timeously and willingly complying with Moray Council's wishes that the former property at Hillview be demolished, the appellant and the family have been effectively stripped of their family home and asset.
- 5.5. It is regrettable that Moray Council did not advise the appellant of the importance of applying for consent to replace the house before agreeing to demolish it.
- 5.6. It is hoped that the circumstances of the demolition might present the Board with a sufficiently material consideration to allow this Appeal to be upheld.
- 5.7. Moreover it is hoped that the additional merits of this case in terms of how it could be considered to comply with Policy, regardless of its history, would also be a significant consideration.
- 5.8. **The appellant respectfully requests that the unique nature of this case be fully considered and the Appeal to approve this application be upheld.**