

LOCAL REVIEW BOARD APPEAL AGAINST THE MORAY COUNCIL REFUSAL OF PLANNING  
APPLICATION: 09/00963/OUT –FORMATION OF 2NO PRIVATE HOUSE PLOTS AT WALKERS  
CRESCENT (KIRKHILLHEAD) LHANBRYDE MORAY

Our Ref. 090172/ROBERTSON/mjh  
Your Ref. 09/00963/OUT  
Council Refusal Notice dated 8<sup>th</sup> October 2009



## DOCUMENT 05

### Dougall Baillie Associates Consulting Engineers Transportation Statement

**ROBERTSON HOMES LTD**

**APPEAL AGAINST  
REFUSAL OF PLANNING CONSENT  
FOR**

**DEVELOPMENT OF 2 HOUSES  
AT  
WALKER CRESCENT, LHANBRYDE**

**TRANSPORTATION STATEMENT**

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**December 2009**

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**1. Introduction**

- 1.1 In 2009, Robertson Homes Limited applied for outline planning consent for a development of 2 houses at Walkers Crescent, Lhanbryde, Moray. The Council decided to refuse the application under delegated powers in October 2009.
- 1.2 In November 2009, Robertson Homes Limited appointed Dougall Baillie Associates (DBA) to consider and report on the traffic and transportation ground for refusal, which was:
  1. *The proposal is contrary to Policy T2 in the adopted Moray Local Plan 2008, as a safe and suitable access cannot be provided owing to the substandard access width, and visibility of Walkers Crescent on to the public highway, and the use of which would result in hazards to pedestrians and other road users.*
- 1.3 DBA have considered the application and supporting statement, and the Department of Environmental Services Direct Services Transportation – Planning Consultation Sheet dated 11 June 1009, which forms the background to the above reason for refusal.
- 1.4 Cognisance has also been taken of any local objections to the proposal, insofar as they relate to the Council’s Reason for Refusal, although most objections cover the same points as the Planning Consultation Sheet mentioned above.
- 1.5 It was also recognised that Planning Consent was granted in 2007, for one additional house on the site subject of the current appeal. The point at issue, in traffic and road safety terms, is therefore the impact of the one additional dwelling now sought, not both, since one could be built in any case as a result of the extant consent.
- 1.6 DBA have also visited the site, and carried out an examination of the access roads and junctions. These are considered in detail in this report, which is an appendix to the applicants’ written statement.
- 1.7 This report has been prepared by Andrew Carrie, until recently a Director of Dougall Baillie Associates, Consulting Engineers, where he was responsible for a range of the firm’s traffic and transportation projects, including the examination of the traffic implications of residential, industrial, retail and leisure developments throughout Scotland and the rest of the United Kingdom. He is now retained by the firm as a Consultant. He has 30 years experience in highway and traffic engineering.
- 1.8 He holds an Honours Degree in Civil Engineering, and is a Chartered Engineer. He is a Fellow of the Institution of Civil Engineers, and a Fellow of the Institution of Highways and Transportation.
- 1.9 Before joining DBA, he was employed as a Project Engineer with the former Lothian Regional Council's Department of Highways, engaged on all aspects of traffic management and road safety, including the assessment of the traffic impact of major developments on behalf of the Roads Authority.

**Dougall Baillie Associates**

- 1.10 He has given transportation planning assistance to central and local government departments and to private developers, and has carried out numerous Traffic Impact Studies for new developments for both private and public sector clients.

**2. Status of Private / Public Road**

- 2.1 Before discussing the detailed aspects of road widths, etc, it may be helpful to clarify the status of Walkers Crescent, and the spur that leads from the middle of the Crescent to St Andrews Road. As noted in the Transportation response, these roads are private (unadopted) roads.
- 2.2 All of these roads are open to the public, and meet the definition of a “road” as defined in Section 151 of the Roads (Scotland) Act 1984, ie *“any way (other than a waterway) over which there is a public right of passage (by whatever means) and includes the road’s verge, and any bridge (whether permanent or temporary) over which, or tunnel through which, the road passes; and any reference to a road includes a part thereof”*.
- 2.3 For clarity, the Act also defines a “public road” as being *“a road which a roads authority have a duty to maintain”*, (ie an adopted road) while a private road is *“any road other than a public road”*.
- 2.4 Thus the only difference in the Act, between a private road and a public road, relates to who is responsible for its maintenance, not to who may or may not use it.
- 2.5 All three sections of road referred to have an adopted system of street lighting, maintained by the Council. That confirms the road’s status as a road open to the public, and not as a private access (in which case, subject to title, residents may have been entitled to exercise control over its use).
- 2.6 The Roads (Scotland) Act 1984 does not set out how many houses constitute a “public right of passage” and can therefore be served by a “private access” before a more formal “road” is required. Most Councils have introduced guidelines for new developments which vary widely. Some require that developments of more than two houses should be served by a road. Moray Council have previously indicated that the critical number of houses is 4. Aberdeenshire Council permit up to 6 houses before a road is required. In all cases, the Councils would expect a new road to be built to adoptable standards, that is to say, either a shared surface or a full road of say 5.5 metres in width, with separate footways.
- 2.7 It is fair to say that, if the development of the 23 existing houses in Walkers Crescent was proposed now, the Council would require a much higher standard of road, and would insist that the access road had to be adopted. That, however, is not the appropriate consideration here: the fact is that those 23 houses are there, and the access road is private.
- 2.8 If the development was much bigger, and had to be served by an adopted public road, then that adopted road would have to be connected to the remainder of the public road system: an adopted road must be accessed via other adopted roads. That is not the case here, as two houses, on their own, can be served by an unadopted road or shared private access
- 2.9 The material consideration is whether or not two additional houses would have such an impact that they would suddenly require the existing road to be widened to an adoptable standard. This report now goes on to discuss the various matters raised by the Council and objectors, and concludes that such improvements are not required.

**3. Access Width**

- 3.1 The grounds for refusal make specific reference to access width, and it is therefore appropriate to deal with this aspect first.
- 3.2 Walkers Crescent can be considered as three distinct sections as shown in the attached drawing entitled “Robertson Appeal 01”. There is an internal T-junction approximately midway along the length of the Crescent, with an arm southwards to a junction with St Andrews Road, shown in green on the drawing. This section of road is shown in Photograph 1 in Appendix 1, and is approximately 4 metres in width. There is no separate pedestrian footway. One house has frontage onto this length of road, while two houses on St Andrews Road also have vehicle accesses near the southern end.
- 3.3 From the internal junction, Walkers Crescent is linked to Garmouth Road to the east (red section on the drawing). This section of road is shown in Photographs 2 and 3, and is approximately 3.5 metres in width, although the effective width is reduced by approximately 0.5 metres because of an overhanging boundary hedge. There are 10 houses along this section of road.
- 3.4 To the west of the internal junction, Walkers Crescent is a cul-de-sac serving 13 existing houses, and the proposed development site. This section of road is shown in blue in the drawing, and is shown in Photographs 4, 5, 6 and 7. The width of this section varies between 3.5 metres and 4.5 metres between boundary walls. Again, there are no separate pedestrian footways. 12 houses are accessed from this section of road.
- 3.5 Robertson already have planning consent for one additional house on the site subject of this appeal. A further planning consent was granted in 2006 for a further additional house, adjacent to the Old School House, to the south of Walkers Crescent. This section of road will therefore serve a total of 14 houses, in any case, in the future.
- 3.6 Roads of this width (whether adopted or not) are not uncommon in developments which pre-date the 1984 Roads (Scotland) Act and subsequent Council design standards.
- 3.7 Indeed, current thinking is that residential streets should recognise that all road users have shared needs, and that streets should fit into the development, rather than the development fitting around a network of standard roads. The Scottish Government have recently completed consultation on their new “Designing Streets” document, which seeks to redress the present imbalance and dominance of design for vehicle movements.
- 3.8 Moray Council’s Planning and Regulatory Committee on 24 November 2009 considered a report by the Director of Environmental Services, and agreed to undertake public consultation on a new “Urban Design Guide” which recognises the principles of the national “Designing Streets” guidance and the need to reduce the previous dominance of the needs of vehicle users.
- 3.9 The proposed development is entirely in keeping with the character of Walkers Crescent, and is consistent with the aims of Designing Streets and the Council’s own Urban Design Guide. The development does not require “full standard” access roads in accordance with previous design standards.

**4. Junction Visibility**

- 4.1 Again, the grounds for refusal make specific reference to visibility at the junction of Walkers Crescent with the main road.
- 4.2 There are, in fact, two accesses into Walkers Crescent. There is the access on to Garmouth Road, to which the Council refer in their reason for refusal, and a second access, on to St Andrews Road, which is not referred to either in the reason for refusal or in the Planning Consultation Sheet of June 2009.
- 4.3 The side road in both cases is already a “road” open to the public (as defined in the Roads (Scotland) Act 1984), serving the 23 existing dwellings in Walkers Crescent. The current proposal would not result in a “step change” in the amount of traffic using the junction, to the extent that a higher junction standard would be required automatically.
- 4.4 In particular, DBA have examined the necessary junction visibility splay, which is specified in the form “x metres by y metres”, where “y” is the distance to which visibility should be available in both direction along the main road, and “x” is the distance along the centre line of the side road, from which the points at “y” should be visible.
- 4.5 The “y-distance” (ie the length along the main road) is dependent on the speed of approaching traffic, and should be sufficient to ensure both that drivers emerging from the side road are able to safely assess gaps in main road traffic, and that drivers on the main road are able to recognise the presence of the junction, and be able to stop safely if the emerging driver makes an error. This distance is therefore specified as the “Stopping Sight Distance” for the main road traffic, and this in turn is directly related to the speed of main road traffic.
- 4.6 In this instance, for a lightly-trafficked side road, the appropriate visibility splay should be 2.4 metres by 70 metres.
- 4.7 Photograph 8 shows the junction between Walkers Crescent and Garmouth Road, ie at the east end of the red section of road shown in Figure 1.
- 4.8 Observations on site indicate that the visibility at this existing road junction is currently restricted by the boundary hedges of adjacent properties, to a value well below the 2.4 metres by 70 metres standard.
- 4.9 That does not, in itself, necessarily make the junction unsafe. DBA understand that there is no record of injury accidents at this junction, as drivers are clearly sensible enough to be cautious when exiting the junction.
- 4.10 It should also be pointed out that, if there is an existing visibility problem, giving rise to a safety difficulty, then the roads authority already have powers under Section 83 of the Roads (Scotland) Act 1984 to control or remove obstructions to visibility at any bend, corner or junction on a road (noting that the Act does not specify “public road” but simply “road” which would include a private road such as Walkers Crescent). The fact that Roads Authorities normally choose not to exercise those powers should not necessarily prevent minor development in these circumstances. Either there is a danger (on which the Roads Authority can, and indeed, have a duty to act) or there is not.

- 4.11 The second access junction to the site, from St Andrews Road, has no such visibility difficulties, Photograph 9 shows the visibility looking west, and Photograph 10 the visibility looking east, from a point 2.4 metres back on the side road. There is no restriction to driver visibility at this junction.
- 4.12 DBA observed the use of both junctions on the morning of Thursday 10 December 2009, from 7.30 to 9.00 am, that is to say, the period of the day when the junctions could be expected to be busiest, when people are leaving for work.
- 4.13 No vehicles were observed to leave Walkers Crescent at Garmouth Road during that time. Two vehicles left shortly after that period, and both vehicles turned left, to go north. One of those was the postman in a van. The development would not require an increase in the number of postal delivery vans: that vehicle is there anyway.
- 4.14 During the same 90 minute period, 5 vehicles left the access to turn right on to St Andrews Road. This is to be expected, as the main likely destination (Elgin) lies to the west, and that is the most direct route from nearly all of the existing dwellings on Walkers Crescent. Drivers leaving Walkers Crescent at Garmouth Road, but intending to go west or east, would still have to negotiate the junction of Garmouth Road and St Andrews Road, which can be busy with queues at times.
- 4.15 It is therefore evident that drivers are choosing the direct access on to St Andrews Road in preference to the Walkers Crescent access on to Garmouth Road because it is the quicker route for the main destinations. It also does not suffer from the junction visibility difficulties to which the Council refer in their consultation response.
- 4.16 There is no apparent reason why the junction could not adequately serve the marginal increase in traffic arising from the proposed development.

**5. Pedestrian Safety**

- 5.1 The Planning Consultation Sheet and some of the local objectors raise the question of pedestrian safety, both on surrounding roads and on the access track to the development site itself. They point out, in particular, that the access roads are regularly used by school children going to and from the local primary school.
- 5.2 There is a signposted core path which shares the site access, and goes north through Crooked Wood to the village of Urquhart, about 1 mile to the north. In addition, there is an informal path from Kirkhill which joins Walkers Crescent at the same point.
- 5.3 There are two other informal paths, linking to St Andrews Road. The first is an unsurfaced track around the east side of the graveyard, from the top of the steps at the War Memorial. This track is shown in Photograph 11.
- 5.4 The second goes from the western end of Walkers Crescent, down to the rear of the Tennant Arms Hotel on St Andrews Road. Although there is a considerable difference in level between the track and the hotel car park, pedestrians would be able to negotiate a somewhat precarious stepped buttress of the car park retaining wall, which is shown in Photograph 12.
- 5.5 The primary school lies on the east side of Garmouth Road, just to the north of Walkers Crescent. Thus any schoolchildren using that path would join Walkers Crescent at the site access, and then use the blue and red sections of Walkers Crescent before crossing Garmouth Road to the school.
- 5.6 During DBA's observations between 7.30 and 9.00 am on Thursday 10 December, only one primary school child was observed to walk through Walkers Crescent, entering at the road access at St Andrews Road, and exiting on to Garmouth Road. That child was accompanied by an adult.
- 5.7 No other primary school children were observed to emerge from Walkers Crescent at Garmouth Road.
- 5.8 Based on those observations, it would appear that the use of Walkers Crescent, and the site access path, by children walking to the primary school, is very limited.
- 5.9 DBA also observed that secondary school pupils catch a bus at the hotel on St Andrews Road, to go to Milnes High School in Fochabers. Although the bus also goes up Garmouth Road, some pupils choose to walk to St Andrews Road so that they can first visit the local shop opposite.
- 5.10 A total of 7 secondary school pupils were observed to enter Walkers Crescent at Garmouth Road. 4 of those were observed to emerge at the St Andrews Road junction, while the other 3 did not. That group of 3 were seen slightly later crossing from the shop, so must have used either of the two informal paths (ie alongside the grave yard or through the hotel car park) to access St Andrews Road.
- 5.11 In addition, 3 adult pedestrians were observed to walk through Walkers Crescent between the St Andrews Road junction and Garmouth Road, over that same 90 minute period.

- 5.12 That then represents a total of 12 pedestrians through Walkers Crescent over that 90 minute period: 1 primary school pupil, 7 secondary school pupils, and 4 adults (one of those accompanying the primary school child).
- 5.13 All 12 pedestrians used the “red” section of Walkers Crescent (ie from Garmouth Road) from which, as stated earlier, no vehicles emerged during that same period. The scope for pedestrian / vehicle conflict is therefore extremely limited.
- 5.14 9 of those pedestrians (ie all except the group of 3 secondary pupils) used the “green” section of Walkers Crescent, ie the access to St Andrews Road. During that same period, there were a total of 5 traffic movements on that section of road, so again, the scope for pedestrian / vehicle conflict is extremely limited.
- 5.15 The remaining 3 secondary pupils used a short length of the “blue” cul-de-sac section of Walkers Crescent. The number of vehicle movements on this particular road section was not observed, but could be no more than 5 vehicles, so yet again, there is limited likelihood of pedestrian / vehicle conflict.
- 5.16 The observer’s intention was to photograph a vehicle passing pedestrians to demonstrate how much space was available. That situation did not arise, however, during the period of observations.
- 5.17 One of the objections mentions that two houses could mean 4 cars, and that would add significantly to existing traffic on Walkers Crescent, to the detriment of pedestrian safety. Although it may be true that the development could result in 4 more cars parked, the suggested link to increased traffic flow overlooks two important points.
- 5.18 First, one of the proposed houses already has planning consent. The actual increase, in practice, in the number of cars owned as a result of the current application, is therefore only two cars.
- 5.19 More importantly, there is no evidence that all of those vehicles would be entering or leaving Walkers Crescent at the same time. People do not all leave for work at the same time, or return home during the same peak hour, so great caution should be exercised in translating “number of cars owned” into “number of car movements in the peak hour”.
- 5.20 For example, there are 23 dwellings in Walkers Crescent, plus 2 with driveways on to the link that exits to St Andrews Road: a total of 25 dwellings. Each of those dwellings was observed, at the start of the day, to have at least one car parked outside, while many had two. The objector’s reasoning would suggest that at least 23 vehicles (and probably twice that) would leave Walkers Crescent during the time that children are walking to school. In practice, only 5 vehicles were observed to leave over a period of one and a half hours.
- 5.21 There is no reason to suppose that residents of the proposed new houses would use their cars any more extensively than the existing residents do, so the increase in car movements on Walkers Crescent is likely to be marginal.
- 5.22 It cannot be denied that, as the number of users of any length of road increases, there is a greater likelihood that one or more of them will make an error which may lead to an accident. It would be unreasonable to assume otherwise. That in itself, however, does not constitute grounds to refuse any application which might lead to increased traffic flows, however marginal – if it did, it would effectively create a



presumption against any increase in traffic or pedestrian flows, on any road or at any junction, anywhere. The test that must be applied, sensibly, is to ask whether any change in risk to road safety is real and / or significant.

- 5.23 There is no evidence in the Planning Consultation Sheet that there is already a road safety problem, or that one would be created or exacerbated as a result of the proposed development. In view of the evidence above, the Council's reasoning for including this in their reason for refusal is therefore flawed.

**6. Road Construction**

- 6.1 The Planning Consultation Sheet and some of the local objectors state that the road is generally in poor condition, and *“the likelihood is that the impact of construction traffic on this road... will be seriously detrimental and may require extension(sic) remedial works to rectify damage caused during construction.”*
- 6.2 Although the construction of the road is unknown, visual inspection shows very little indication of underlying problems. There is little surface damage, being limited to one or two shallow potholes.
- 6.3 It is inappropriate to recommend refusal of a planning application because of speculation that damage may be caused to the road construction, when there is little evidence that such damage will actually occur, in practice. It would be more appropriate to apply a planning condition requiring a pre-development road condition survey, and that any subsequent damage during the construction period, be made good thereafter.

**7. Conclusions**

7.1 Moray Council decided to refuse the application under delegated powers in October 2009. This Statement examines the grounds for refusal, which was:

*1. The proposal is contrary to Policy T2 in the adopted Moray Local Plan 2008, as a safe and suitable access cannot be provided owing to the substandard access width, and visibility of Walkers Crescent on to the public highway, and the use of which would result in hazards to pedestrians and other road users.*

7.2 Policy T2 states that “*The Council will require that a safe and suitable access from the public highway is provided to serve new development and where appropriate any necessary modifications to the existing road network to mitigate the impact of development traffic, and the provision of appropriate facilities for public transport, cyclists and pedestrians. Access proposals that have an adverse impact on the surrounding landscape and environment that cannot be mitigated will be refused*”.

7.3 Of those, the Council’s reason for refusal focuses on substandard road width and visibility at the junction of Walkers Crescent on to the public highway.

7.4 This report discusses both of those specific points, and concludes that, while the existing road width may not meet current design standards for new roads, roads of this type and layout are not uncommon in older developed areas (preceding the Roads (Scotland) Act 1984), and current design standards should not be applied to determine whether or not such roads are suitable for modest additional development. The appropriate test is whether or not the proposed development will have a significant impact on those roads.

7.5 This report examines junction visibility and notes that there are two accesses serving the site, one of which, mentioned by the Council, has poor visibility, while the other, on to St Andrews Road, has better visibility. By observation, the second junction is clearly the preferred route for existing residents and there is no reason why the residents of the proposed development should have any different preference. Again, the appropriate test is whether or not the proposed development will have a significant impact on those roads.

7.6 In any event, this report notes that the maintenance of adequate junction visibility at road junctions (whether those roads are adopted or not) is entirely within the control of the Council as roads authority, under the 1984 Act.

7.7 This report also examines pedestrian routes and pedestrian safety, as that is also mentioned in the reason for refusal, and notes that very few pedestrians use Walkers Crescent, and because of very low vehicle flows, the likelihood of pedestrians meeting a moving vehicle, at present, is very low.

7.8 There is no evidence in the Planning Consultation Sheet that there is already a road safety problem, or that one would be created or exacerbated as a result of the proposed development (of that single additional house over the house already approved). There is no reason to suppose that the behaviour of any new residents, in respect of care or responsibility on the access routes, would be any different from that displayed by existing residents.

7.9 The Council’s reasoning for suggesting a road safety in their ground of refusal is therefore flawed.

- 7.10 Scottish Planning Policy 17 states in paragraph 72 states that *“Safe and appropriate access design should reflect the type of road involved, the scale of the development, the nature of the area, and the volume and character of traffic likely to use both the road and access.”*
- 7.11 This reflects current national design practice, as encapsulated in “Designing Streets”, which is moving away from the dominance of “standard” road designs, towards streets more compatible with the development they serve. This national trend has been embraced by Moray Council who, in November 2009, approved a draft “Urban Design Guide” to be taken forward for consultation.
- 7.12 It may be seen as incongruous that, at the same time, the same Council is opposed to the development of a single additional house (one of the two houses proposed already having planning consent in principle) because current design standards are not met.
- 7.13 The current response would appear to be inconsistent with the contents of an email between two senior officers in the Council on 12 April 2005, in respect of a previous application for two houses on the same site (ie exactly the same development as is proposed now, but before one of the dwellings was granted planning consent). It is clear from that email that Transportation Services “would have no objections to the additional two plots being accessed off Walkers Crescent from the lane opposite the cemetery”.
- 7.14 While the Council officials may argue that this was not a formal response, but merely an electronic conversation between two officers, it demonstrates that, in many cases, the interpretation of what is acceptable and what is not, can be subjective, rather than quantitative, and different officers may apply a different interpretation of the same standards and legislation. In this case, both officers are experienced and the opinion expressed in that email cannot be regarded as carrying no weight, as the officials would now prefer.
- 7.15 There has been no change to the Council’s standards or legislation applicable to access design since that time. Indeed, if anything, the current trend is away from the rigid application of design standards, as discussed earlier. It is difficult to reconcile that trend, and the previous email exchange, with the Council’s apparent harder interpretation in respect of this almost identical application.
- 7.16 This report therefore concludes that the access roads are compatible with the scale of the development, the nature of the area and the volume and character of traffic likely to use the access, in accordance with SPP17.
- 7.17 It is therefore considered that the requirements of Policy T2 are also met, and that there are therefore no grounds on which the application should be refused, and that planning consent should therefore be granted.

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## **APPENDIX A**

### **Photographs**



**Photo 1 – Route from St Andrews Road**





**Photo 2 – Looking East Towards Garmouth Road**



**Photo 3 – Looking West Past Internal Junction**





**Photo 4 – Looking East from Proposed Site Access**



**Photo 5 - Looking West from Internal Junction**





**Photo 6 – Looking West Towards Site Access**



**Photo 7 – Looking East Towards Internal Junction**



**Photo 8 – Garmouth Road Junction**





**Photo 9 – St Andrews Road Junction Looking West**

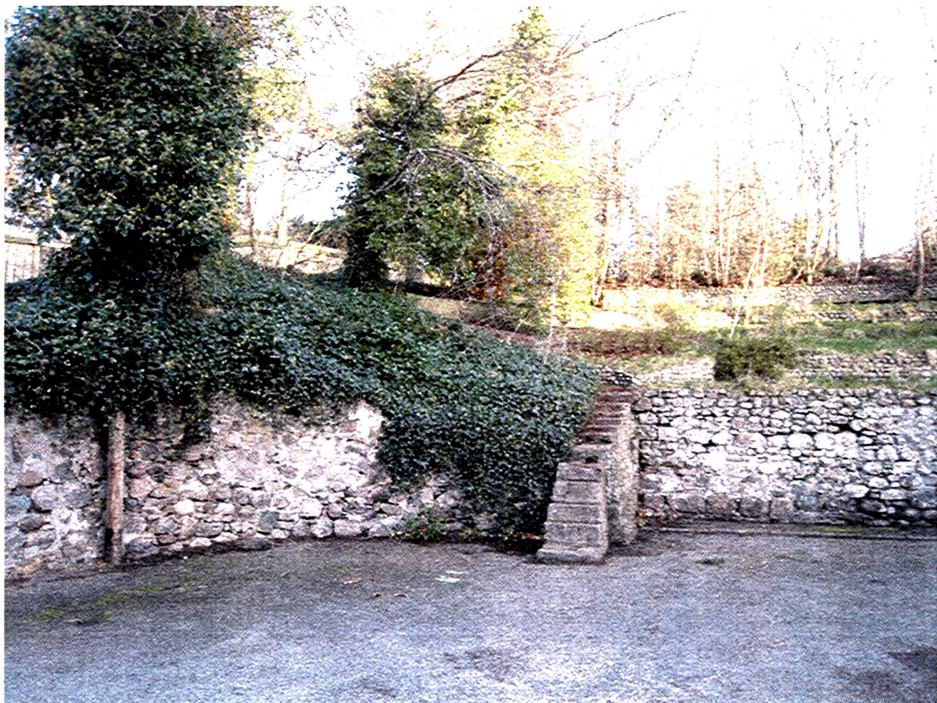


**Photo 10 – St Andrews Road Junction Looking East**





**Photo 11 – Foot Track Beside Grave Yard**



**Photo 12 – Footpath Steps to Hotel Car Park**