

11 March 2010

Our Ref. 090172/ROBERTSON/mjh
Your Ref. LRB/CASE 002/RR

Mr Ron Ritchie
Clerk to the Local Review Body
The Moray Council
Council Office
High Street
Elgin

Dear Ron:

**TOWN & COUNTRY PLANNING LOCAL REVIEW BOARD FOR PLANNING
APPLICATION 09/00963/OUT - WALKERS CRESCENT, LHANBRYDE**

I refer to the above Local Review and your letter dated 8th March 2010, regarding the LRB Legal Advisor advice that, our client Transport Assessment is to be treated as 'New Evidence'.

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 (thereafter called 'the Regulations'), allows any party the ability to submit new material, where it is demonstrated that it could not have been provided earlier in the process, or that it arises as a consequence of exceptional circumstances.

Consequently, as the Council is treating the DBA Transportation Statement as 'new evidence', the appellant is required to provide justification as why it meets the statutory tests outlined above.

In response, the appellants considers the DBA Transportation Statement conforms to the 'exceptional circumstances' exception, due to the failings of the Planning Service to; a) Keep the applicant informed of the decision making process, b) respond to the appellant email seeking the delay in determination whilst they provide supporting information, and c) Failing to issue the decision notice in a timely manner.

The appellant submitted the above application to the Council on the 18th May 2009, along with a Supporting Planning Statement (Document 13) and the email acknowledgement from the Council that two houses would be acceptable on the site in terms of road access/safety (Document 02).

Based on this information, our client truly believed that approval should be forthcoming within the 2 month timeframe. Therefore it was a surprise, when the appellant contacted the Planning Officer over 8 weeks after the application expiry date to be informed that the Transportation Section had provided a recommendation to refuse the application on the 12th June 2006.

1 - 5 Pinetree House
Pinefield Crescent
Elgin
Moray
Scotland
IV30 6HZ

01343 540020
01343 540038

cm design.biz
office@cm design.biz

Bridge Street
Elgin
Highland
Scotland
IV12 4EJ

01667 300230
01667 454318

w cm design.biz
e office@cm design.biz



At no time between the Planning Service receipt of this consultation and our client chasing progress on 21st September 2009, did the Planning Officer update the appellant as to the progress of the application or the consultation response received from the Transportation Section.

Following receipt of the Transportation Section comments (Document 14) and after due consideration, the appellant contacted the Planning Officer on 16th October 2009 to advise that they were compiling additional information to support the application and therefore requesting the application was not determined until this additional information was submitted (Document 15). No response has ever been received to this request.

Nevertheless, on the 2nd November 2009 our client received a Refusal Notice dated 8th October 2009 for the application. Immediately, our client contacted the Acting Development Control Manager (Mr Angus Burnie) to question this unacceptable delay in issuing the Decision Notice and to query the commencement of the 3 month appeal period timeframe (Document 16). Again no response has ever been received to this email.

In reviewing the timeline of the decision and our client correspondence, it would transpire that when the appellant contacted the Planning Officer on the 16th October 2009 to advise further information was forthcoming, a decision had already been taken on the application, this information was never conveyed to the appellant and, as such, they continued to commission the Transportation Statement without the knowledge that the application had already been determined.

The above inaction by the Planning Service, resulted in our client being unable to submit the DBA Transportation Statement prior to the planning application being determined and for these reasons we believe the DBA Report can be accepted as 'new material' under the 'exceptional circumstances' criteria.

I trust the above meets with your approval and I would ask that you do not hesitate to contact me if you wish to discuss further.

Sincerely,

Matthew Hilton

Chartered Town Planning Consultant
CM Design

matthew.hilton@cmdesign.biz

Please respond to our Elgin Office

c.c Client
All Interested Parties

planning consultancy • architectural design • project management

Page 2 of 2

from conception...
to completion

LHANBRYDEBRAE BIRNIE - MAYNE ROAD ELGIN.
From: Iain Robertson [roberti@moray.gov.uk]
Sent: 12 April 2005 12:29
To: belbyj@moray.gov.uk
Subject: LHANBRYDE/BRAE BIRNIE - MAYNE ROAD, ELGIN.

Walkers Crescent, Lhanbryde is a Private Unadopted Road.
would have no objections to the additional two plots being accessed of Walkers
Crescent from the lane opposite the cemetery. (Existing access to Brylach.)

Land at Kirkhillhead, Lhanbryde
Planning Statement in support of Application
5th May 2009

1.0 Introduction

- 1.1 This planning statement has been prepared in support of an outline planning application for 2 dwellings at Kilkhillhead, Lhanbryde.
- 1.2 The statement sets out a detailed justification for the approval of this application taking into account the physical characteristics of the site, its location within a built up area, its planning history and the policies of the approved Development Plan.
- 1.3 The statement thereafter sets out conclusions and confirms that the application should be approved.

2.0 Site Location

- 2.1 The application site extends to 0.21 hectares (0.53 acres) and lies to the north of Walkers Crescent within the built up area of Lhanbryde. The site is surrounded by housing development, the most recent of which lies immediately to the north.
- 2.2 The site itself is roughly rectangular in shape and falls gently from north to south. It comprises unkempt scrubland with concrete block walls and 1.8m high screen fencing forming its eastern and southern boundaries. The remaining boundaries have no such boundary treatments.

3.0 Planning Policy

- 3.1 The Development Plan for the site comprises the Moray Structure Plan (MSP) approved by Scottish Ministers in April 2007 and the Moray Local Plan (MLP) adopted in December 2008.
- 3.2 MSP supports the development of infill and brownfield sites which meet sustainability objectives. Policy H3 of MLP supports new housing development within settlement boundaries provided:-
- It does not adversely impact on the surrounding environment, and
 - Adequate servicing and infrastructure is available or can be made available.
- 3.3 The application site lies within the built up area of Lhanbryde and consequently there is a presumption in favour of development. Such development reduces the need to release greenfield land, helps to regenerate run down urban areas and encourages a more sustainable pattern of transportation. Policy H3 notes that such development also accords with SPP3.

4.0 Planning History

- 4.1 Outline planning permission to form 1 no private house plot on the site was granted on 20th February 2007 subject to various conditions (Ref: 06/02562/OUT). This outline planning permission remains valid until 20th

February 2012. A copy of the Decision Notice is enclosed with this application.

- 4.2 Prior to this application being lodged, pre application discussions were held with TMC. These discussions confirmed that the principle of residential development was acceptable on the site. Furthermore, TMC (Transportation) confirmed via e-mail that they had no objection to the provision of two dwellings on the application site (A copy of this e-mail is enclosed).
- 4.3 Consequently, an application was submitted to the Council on this basis. However, Planning Officials were unable to support the application due to concerns expressed by their transportation colleagues which were in direct conflict to their previously stated position as to the adequacy of Walkers Crescent to accommodate the development.
- 4.4 In order to progress matters, the applicants were encouraged to amend the application to provide for a single dwelling. The applicants agreed to this request and outline planning permission was eventually granted via delegated powers as set out above. Of course, this permission does not negate the confirmation from the transportation department that additional traffic would be insignificant and hence they would have no objection to 2 dwellings being accommodated on the site.

5.0 Conclusions

- 5.1 The Planning Acts requires applications to be determined in accordance with the Development Plan unless material considerations indicate otherwise. Both the Moray Structure Plan and the Moray local Plan support the development anticipated within this application.
- 5.2 There are no material considerations which suggest that the provisions of the Development Plan should be set aside. Previous objections to the application regarding the perceived constraints are access are not supported by the relevant response from the transportation department of TMC. In fact the opposite is the case.
- 5.3 In view of the above, it is hoped that this application can be approved.



**TRANSPORT RESPONSE RE WALKERS CRES PROPOSAL FOR 2
HOUSES 09/963**

**Maurice Booth to: COLIN SOUTER
Please respond to maurice.booth**

21/09/2009 10:11

Colin

Attached as requested.

Maurice

-----Original Message-----

From: MAURICE BOOTH [mailto:maurice.booth@moray.gov.uk]
Sent: 21 September 2009 10:19
To: MAURICE BOOTH
Subject: Scanned Document

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| Attachment File Format: | Adobe PDF |

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**DEPARTMENT OF ENVIRONMENTAL SERVICES
DIRECT SERVICES TRANSPORTATION - PLANNING CONSULTATION SHEET**

INITIALS: DA DATE: 11/06/2009

APPLICANT: ROBERTSON HOMES LIMITED

SITE: WALKER'S CRESCENT, LHANBRYDE (2 houses)

REASONS FOR REFUSAL

Preamble

There have been a series of planning application for this site, some of which have been withdrawn, over the past three years. The applications are as follows:

- 06/00426/OUT – 3 dwellings (Withdrawn)
- 06/02562/OUT – 1 dwelling (Permitted)
- 08/00388/OUT – 2 dwellings (Withdrawn)

The Transportation consultation response to these applications has been as follows:

- 06/00426/OUT – recommend refusal
- 06/02562/OUT – no transportation consultation response on the file
- 08/00388/OUT – recommend refusal

The proposed house plots are located on a vacant area of ground behind "Balnakyle" in Walkers Crescent, Lhanbryde. Access is to be provided via Walkers Crescent and an existing private driveway between "Balnakyle" and "Shangri-La".

Walkers Crescent is a Private (Unadopted) Road. The implication of this is that The Moray Council has an undertaking to maintain the surface of the road only, in all other aspects it is a private road. The road is generally in a poor condition as its status indicates. The likelihood is that the impact of construction traffic on this road, the construction of which is unknown, will be seriously detrimental and may require extension remedial works to rectify damage caused during construction.

In addition to the surfacing which, as stated above, is not in good condition the road is of narrow width, there are no footways, and the junctions with the public road network have restricted visibility. The limited private parking provision for properties on Walkers Crescent can lead to overspill of parked vehicles on the road at peak periods. In short, it is not the type of road that can comfortably accommodate any increase in vehicular traffic.

The private driveway serving the site from Walkers Crescent is even more restricted. The useable vehicle width is approximately 3m, it is not surfaced and it is supported on its west side by a historic retaining wall of unknown condition. It is therefore considered suitable as a private driveway only and would normally be expected to serve a maximum of two properties (it already serves "Bryloch " and "Balnakyle").

It is normal for a road serving more than this number of houses to be of adoptable standard. It is questionable whether any vehicles larger than a car could make the turn from the site onto the driveway, which would obviously restrict access to the site for service and emergency vehicles.

Additionally this track is clearly a well-used local pedestrian route (it is a signed Core Path) linking Kirkhill to the village services and is also a natural route to the local primary school for children coming from Kirkhill. Increasing the potential for vehicle/pedestrian conflict on this path is not in the best interests of pedestrian safety, and this is obviously of heightened concern when the route is considered to be a regularly used route to a primary school.

Even if it was considered acceptable to allow access via the driveway, a high fence on the boundary of "Balnakyle" restricts visibility at the junction between the drive and Walkers Crescent, increasing concerns regarding vehicle/pedestrian conflict still further at this point. It does not appear likely that this issue could be resolved as the restriction is located within private garden ground outwith the applicant's control.

Policy T2 requires any new development to be served by a safe and suitable access from the public road. For all of the reasons stated above the increased usage of the access to this site has potential to have a seriously detrimental effect on road safety. I therefore do not consider it to be a safe or suitable access for even the limited traffic that would be generated by the proposed two-house development.

I am aware that the Applicant has submitted an email from one of my predecessors in this position indicating that two houses could be acceptable on this site. I view the status of this email as a dialogue between two council officers regarding a pre-application inquiry. Unfortunately I take a different view to that suggested in the email, a view also expressed by my immediate predecessor in this position, and cannot support that view that two houses is acceptable in the formal planning process.

LOCAL PLAN POLICIES

POLICY T2: PROVISION OF ROAD ACCESS

The Council will require that a suitable and safe road 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, cycling and pedestrians. Access proposals that have a significant adverse impact on the surrounding landscape and environment that cannot be mitigated will be refused.

Robertson

Colin Souter/Robertson
Group Scotland Ltd

16/10/2009 08:29

www.robertsonhomes.co.uk

To maurice.booth@moray.gov.uk

cc Bruce Walker/Robertson Group Scotland Ltd@Robertson
Group Scotland Ltd

bcc

Subject Walkers Crescent, Lhanbyrde

Planning reference 09/00963/OUT

FAO Mr M Booth

Further to receipt of your email containing comments from your Transportation colleagues , we are currently reviewing this information with a view of compiling additional information to support our application.

We therefore request that this application is not determined at this moment

We hope you find the above in order

Regards

Colin Souter
Technical Manager
Robertson Homes

10 Perimeter Road
Pinefield
Elgin
IV30 6AE

Direct Dial (01343) 557538
Mobile No 07810 857090
Fax No (01343) 550100
email c.souter@robertson.co.uk

Robertson

Colin Souter/Robertson
Group Scotland Ltd

03/11/2009 18:04

www.robertsonhomes.co.uk

To <angus.burnie@moray.gov.uk>

cc Bruce Walker/Robertson Group Scotland Ltd@Robertson
Group Scotland Ltd

bcc

Subject walkers Crescent Lhanbryde

Application reference 09/00963/OUT

Angus, I am unsure if this should be directed to Maurice or yourself, though as you have signed the notice, I thought it more prudent to contact yourself direct.

I note for the record that the notice was signed on the 8th October 2009, although as can be seen from the date stamp this was only received on the 2nd November 2009. Given that the appeal period is now only 3 months, this does not give us much time to pull together an appeal package should we proceed down that route.

I therefore request clarity on our appeal period given that it has taken 3 1/2 wks to obtain the paperwork.



- 3649_001.pdf

Regards

Colin Souter
Technical Manager
Robertson Homes

10 Perimeter Road
Pinefield
Elgin
IV30 6AE

Direct Dial (01343) 557538
Mobile No 07810 857090
Fax No (01343) 550100
email c.souter@robertson.co.uk

Document 16