



CENTRAL SERVICES			
17 JUN 2010			
CITEE	ESTATES	REG.	PERSONNEL
COMMENTS			

Please reply to Garmouth Office

The Clerk
Moray Council Local Review Body
The Moray Council
Council Offices
High Street
ELGIN IV30 1BX

Our Ref: CAS/MDL/AD 600/0410/Mc

15 June 2010

Dear Sir

Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008
Request for Review: Planning Application 09/01618/PPP – Planning permission in principle to erect a house at Upper Thorn, Drybridge, Buckie

I refer your letter of 24th May 2010, and the letter from Richard Smith, Appointed Officer, dated 7th June 2010

Our comments on the Appointed Officer’s letter of 7th June 2010 are as follows: -

The appointed officer makes several assertions without providing evidence to support them. He says the visibility splay could have been made available during consideration of the application, but fails to mention that the submission of the first visibility splay for which there were several options was part of a dialogue initiated by the Council but not formally followed through. We are advised by our client that he complied with the Council’s request and submitted a visibility splay but heard no more until the refusal notice was issued. Had he been advised of the Council’s concerns over his submission he could have answered them, testing out a revised location as has now been done. It is obvious from the submitted plans and the first visibility drawing that the options for taking access to the road had to cross the farm building forecourt to emerge on the road at some point over a frontage of 20m in width. It was equally obvious that if the specific visibility splay submitted was not acceptable to the Council, others to the north could be tested on site if required. We are advised however that our client was not formally told that there were concerns over his first option, and therefore had no reason to suspect that he needed to submit an alternative to the Council. Apart from this, one might ask why the Council did not decide to make the matter of visibility the subject of a condition, suspensive (which would have provided scope for any agreement over land not currently controlled or owned by the applicant) or otherwise, to be considered as part of a subsequent detailed planning application, as there appeared to be no objection in principle on roads grounds. Visibility in this case was purely a matter of detail. Consideration of visibility should have been left to the detailed application stage.

The Appointed Officer does not quote Para 38 of Circular 7/2009 in full, and therefore misses some of the rights eligible to our client which we have described in our response to the letter from the Senior Engineer Transport Development. Neither does he provide evidence to explain how he concludes that

we have failed to “demonstrate that either exception applies in this case”. In the absence of any reasoning he may have had it is difficult for us to comment on his assertion other than referring you to the comments we made with regard to this matter in our letter in response to the Senior Engineer Transport Development’s letters of 11th May and June 1st 2010

The Appointed Officer finishes by saying “ *In light of the foregoing , the correct procedure would be to submit a further application that seeks to address the reasons for refusal.*” We are unaware of any procedure that could cause our client to submit a further application at this juncture and the appointed officer provides no reference to one. It would not make sense to our client to abandon this Notice of Review. He submitted it to have all of the reasons for refusal reviewed, including those relating to Housing in the Countryside Policy. In our opinion the most sensible manner of dealing with this review would be to reduce any doubt by allowing the Senior Engineer Transport Development’s confirmation that adequate visibility can now be achieved and proceed to review the other reasons for refusal. If the Local Review Board Decides to grant approval it could retain appropriate control of the situation by attaching an appropriately worded condition governing access and visibility. If it is considered to be absolutely necessary, such a condition could be drawn up in a negative or suspensive form to ensure maximum control over access and visibility (Circular 4/1998 The Use of Conditions in Planning Permissions, AnnexA, Para 38 explains). Given the confirmation now made by the Senior Engineer Transport Development we would doubt however that this would be necessary.

In conclusion therefore we request that the Local Review Body rejects the Appointed Officer’s comments for the reasons we have provided

Should you have any queries or require further information please do not hesitate to contact us.

Yours faithfully


Malcolm D Leiper Dip TP, MRTPI
for *futureplans*