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CENTRAL SERVICES			
17 JUN 2010			
CITEE	ISSUES	LEADS	PERSONNEL
COMMENTS		Our Ref: CAS/MDL/AD 600/0410/Mc	

architects & planners

Please reply to Garmouth Office

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

14th 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

Thank you for your letter of 24th May 2010 and the letter from the Transportation Manager dated 1st June 2010.

Our comments are as follows: -

Firstly we would refer you to our letters of 22nd April and 13th May 2010 where we have already provided arguments.

However, since the issue of visibility was a reason for refusal it is therefore vital to our client that proper consideration of the matter is not denied. We therefore feel it necessary to expand upon our earlier arguments. Our comment is as follows: -

We believe that in deciding whether to accept information that we have submitted in our notice of Review, the Board is required to consider interpretation of Para 38 of Circular 7/2009, in its entirety and not just the extract (a) and (b) quoted in your letter.

Para 38 states –

MATTERS WHICH MAY BE RAISED IN A REVIEW

Para38. Section 43B of the Act restricts the introduction of material in the review proceedings which was not before the appointed person at the time the determination reviewed was made.

New material will only be permitted where the party can

- *demonstrate that it could not have been introduced earlier in the process, or*
- *that it arises as a consequence of exceptional circumstances.*

This does not affect requirement or entitlement to have regard to the provisions of the development plan or any other material considerations.

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This raises the question of whether our evidence demonstrating an acceptable visibility splay can be accepted as

- new material :
- a matter that can be legitimately referred to under the provisions of the development plan
- any other material consideration
- or indeed all three

To be accepted by the Review Board the information regarding visibility only has to be acceptable under one of the above categories. We believe it qualifies under several. Our explanation for each of the categories is as follows.

- a) under the category “the party can demonstrate that it could not have been introduced earlier in the process”

Our client did not submit a visibility splay as part of his original submission (which was validated and registered by the Council on the basis of the initial site plan submitted). He was subsequently requested to submit a drawing showing a visibility splay during the course of consideration of the application. He had one option drawn up and submitted it. He heard no more until he received the refusal notice. As a result he was not given any reason why his visibility splay was not acceptable to the Council, nor the opportunity to consider the other options open to him to draw up another, such as the one he has submitted along with the Notice of Review. Our client therefore could not have provided this information before now because the Council did not formally advise him of its reasons for rejecting his visibility splay. Nor did the Council advise him of the fact, which was obvious to us, that there were other options on ground within his control that could be explored.

All of this also raises another important material question. Why did the Council need to request a visibility splay at that stage? This is an application for planning permission in principle where matters of principle can be considered so that applicants, if successful, can expend further time and money on matters of detail with some confidence. In this case the Council could have quite legitimately made visibility the subject of a condition to be considered at the detailed application stage. Had visibility proved unachievable (which of course would not have happened) the detailed application would have simply failed. This is standard practice. Projects approved in Principle can still fail to achieve detailed planning permission if matters of detail cannot be resolved at the detail stage. In other words the Council needlessly initiated the consideration of a matter of detail while only at the stage of considering principle. Furthermore the Council did not follow through the consideration of this matter of detail thoroughly or formally. This left our client at a disadvantage.

b) under the category -“that it arises as a matter of exceptional circumstances”

We would argue that the circumstances here are arguably exceptional. As stated above the Council could have approved visibility in principle without asking for detailed information at this stage. This would have resulted in a condition attached to any approval in principle requiring our client to show how he could achieve the required visibility as a matter of detail at a later stage.

The “new information,” regarding visibility therefore passes both of these tests (although passing one would be sufficient for it to be considered by the Local Review Board.

As regards the remaining requirements of Para 38. Section 43B of the Act, we believe the visibility information can also be accepted for consideration by the Review Board for the following reasons: -

Regard to provisions of the development plan

On behalf of our client we have had regard to Policy T2 Provision of Road Access. In so doing we have drawn up a visibility splay that meets Council standards. It is our client’s prerogative to do this. As it happens we have demonstrated to the satisfaction of the Senior Engineer Transport Development that “suitable and safe road access from the public highway can be provided to serve the new development.” The Senior Engineer Transport Development has confirmed this in his letters of 1st June and 11th May 2010

Any other material consideration.

The provision of visibility and road access is unquestionably a material consideration to any planning application that requires road access.

Therefore even if the Review Board decided to reject the information we submitted regarding visibility on the grounds that it is “new,” and inadmissible in terms of the tests referred to, the information is still admissible because it has regard to the provisions of the development plan and because it is very definitely a material consideration, these being two matters that are specifically identified in the Act as not being affected by the “tests” for the consideration of new evidence.

In conclusion therefore we submit that the visibility splay that we have submitted along with our client’s Notice of Review should be accepted and considered by the Board because: -

- It could not have been introduced earlier for the reasons we have described above.
- The circumstances are exceptional because a matter of detail was sought by the Council during the consideration of planning principles when it would have been perfectly reasonable for the Council to have made such a matter the subject of a planning condition for consideration as part of the necessary and subsequent detailed planning application.

- The Act makes it clear that our client is entitled to have regard to the provisions of the development plan and any material consideration in preparing evidence for submission to the Review Board

Apart from all of the above, common sense suggests that it would be obtuse and unduly bureaucratic for the Board to reject the fact that the Senior Engineer Transport Development has effectively and formally confirmed that there is now no objection on roads grounds for refusal, and that the required visibility can be achieved.

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*