

LOCAL REVIEW BOARD APPEAL AGAINST THE MORAY COUNCIL REFUSAL OF PLANNING
APPLICATION: 08/01369/FUL – DEMOLISH THE REMAINS OF AN EXISTING COTTAGE AND REPLACE
WITH A TRADITIONALLY DESIGNED ONE AND A HALF STOREY DWELLINGHOUSE AT TOMNAGLIEN
COTTAGE, BALLINDALLOCH, MORAY

Our Ref. 080089/BALLINDALLOCH/mjh
Your Ref. 08/01369/FUL
Council Refusal Notice dated 7TH May 2010



1.0 INTRODUCTION

- 1.1 In June 2008, CM Design Chartered Town Planners and Chartered Architect (thereafter called 'The Agent') submitted a detailed planning application on behalf of The Trustees of The Ballindalloch Trust (thereafter called 'The Appellants'), to The Moray Council (thereafter called 'The Council') to demolish the remains of an existing cottage and replace with a traditionally designed one and a half storey dwellinghouse at Tomnaglien Cottage, Ballindalloch, Moray (Council Ref. No. 08/01369/FUL Refers).
- 1.2 On the 7th May 2010 the Appointed Officer refused the application (Decision Notice - Document CMD001), which was contrary to his earlier advice that the application was acceptable. The single reason for refusal stated on the decision is:
- 'The proposed development would result in increasing the number and type of vehicles using the southerly access (onto the A96 trunk road to the west of the site) entering and leaving the traffic stream at a point where visibility is restricted thus creating interference with the safety and free flow of the traffic on the trunk road.'
- 1.3 Following consideration of this decision and a review of the southerly junction, the appellant disputes this reasons for refusal and, as such, seeks a review of this decision.

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2.0 APPEAL SITE DESCRIPTION

- 2.1 The appeal site is roughly rectangular in form and sits on the eastern side of the U126h Public Road, approximately 800 metres from the Tomfarclas Distillery. The site currently accommodates a derelict cottage and the remains of a small brye, both of which are proposed to be removed as part of this development.
- 2.2 The boundaries are defined by the long standing access track to the south and the public road to the west, both the northern and eastern boundaries will be formed as part of this submission with holly and rowan hedging.
- 2.3 The site is relatively level, with the wider agricultural land to the east sloping down to the small Green Burn. To the north and south of the site are substantial woodland areas, which would screen this site from anything but the occasional passing vehicle.
- 2.4 Access to the site is afforded off the lightly trafficked U126h public road, which adjoins the A95 Trunk Road at two points. The northerly junction is located at grid reference NJ 209 388 and this junction is the primarily junction with the U126h Public road. This junction also serves as the access point to the Tomfarclas Distillery and for this reason the junction and public roadway has been previously substantially upgraded. The second more minor junction between the A95 and U126h is located at grid reference NJ 185 372 and is the junction referred to as the southerly junction in the reason for refusal.

3.0 PLANNING CONSIDERATIONS

- 3.1 The only point under contention in this appeal is the single reason for refusal which refers to the visibility being restricted at the southern junction between the U126h Public Road and the A95 Trunk Road (the reason for refusal refers to the A96 Trunk Road, the U126h public road does not join the A96 and as such the reminder of this Statement of Case refers to the A95 Trunk Road

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which the U126h does join) and therefore the application failure to conform to policy T2 of the Moray Local Plan 2008.

- 3.2 Initially, we feel it is important to note that upon submission of the application the Appointed Officer consulted the Trunk Road Directorate, who confirmed they had no objection to this development and this advice was relayed to ourselves, with the Appointed Officer advising he was content with the submission. Regrettably, as the Planning Service has failed to respond to a Freedom of Information request seeking copies of this consultation within the statutory 20 working days timeframe, the appellant is unable to include evidence demonstrating this assertion as part of this appeal (Document CMD002 & CMD003).
- 3.3 The only issue which delayed the timely determination of the application was the requirement to demonstrate that the site could be supplied with an adequate water supply and due to the expense in undertaking the bore hole drilling work (in the region of £10,000.00), the appellant sensibly wanted reassurance that the Appointed Officer was fairly content with the application before commissioning this work.
- 3.4 Once this reassurance was provided, the appellant immediately commissioned this work. Unfortunately, due to the poor winter weather conditions, the drilling was significantly delayed and was undertaken in March & April 2010 and upon immediate receipt of the test data from the drilling contractor (which demonstrated that there was sufficient water) the information was relayed to the Council so they could issue the planning approval. Therefore, there was considerable surprise upon receipt of the decision notice to find the application was refused for the reason outlined above.
- 3.5 Moreover, should the concerns relating to the visibility at the southern junction been passed onto the appellant before the decision was issued, we believe that the refusal of the application would

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have been unnecessary as the appellant would have been able to demonstrate that the visibility splay at the southern junction is already significant and if necessary the appellant could and would have been able to improve it further.

3.6 However, in refusing the application the appellant has been placed in the unfavourable position of having to demonstrate this assertion retrospectively as part of this appeal, thus resulting in the appellant having to submit additional information that was not before the Appointed Officer and for the reasons outlined we would ask that you accept this additional information as part of the appeal.

3.7 In reviewing to the merits of this appeal, the appellant wishes to comment as follows; the site of the proposed house was specifically chosen as it proposes to replace an existing derelict cottage, with an architecturally designed house of traditional design and proportions, meeting the current strict sustainability and environmental aspirations. As such, we would assert that this application is proposing to replace an existing cottage on a one-for-one basis so there is no increase in the number of vehicles utilising the U126h public road and the comment referring to an increase in vehicle movements contained within the reason for refusal are unwarranted.

3.8 In turning to the access to the site, the main approach is along the U126h public road passed the Tomfarclas Distillery and on to A95 Trunk Road (referred to as the northern junction). This junction is only 1.4Km from the application site and due to it serving the distillery, the junction and public road has seen considerable investment, which has resulted in a roadway with a greater number of passing places and a better forward visibility than the southern route. Furthermore, this northern junction has no difficulty in providing the required 215metres visibility splays in both directions as demonstrated on our drawing 080089.ATKINSON.01 (Document CMD001).

- 3.9 Additionally, the closest shops and services to the application site are located in Aberlour which lies to the north-east of the site, with the closest point of access being via the Tomfarclas Distillery junction with the A95 Trunk Road and, as such, the appellant believes that by default most vehicular movements onto the trunk road will be via the northern junction.
- 3.10 As part of the planning application the Appointed Officer raises no concerns over the northern junction and approach road and as such we conclude that there is no concern over the use of this junction.
- 3.11 Obviously future residents of this proposed house would have the option of using the significantly further away (2.5Km) southern junction between the U126h public road and A95 Trunk Road and, as such, consideration is also required as to the visibility provision this junction provides.
- 3.12 Corollary, we have undertaken a review of this southern junction and have found that visibility to the south of this junction extends to the required 215metres (the length required for a road with a design speed of 60mph) (Document CMD005). This visibility splay does not cross any land outwith the extent of the road verge and therefore any planting which currently restricts visibility could be removed/reduced in height in order to improve the sight line to the required length.
- 3.13 The visibility splay in the northern direction could extend to 187metres, however, a number of self seeded scrub brushes within the road verge somewhat restricts this visibility. As these brushes are located within the adopted road verge, there is nothing to prevent their removal (by the appellant/Trunk Road Authority) to improve the junction visibility.
- 3.14 In terms of the length of this sight line, the appellant accepts that at 187 metres, it is slightly short of the ideal of 215 metres. However, this ideal is appropriate for a road with a design speed of 60mph (the national speed limit), a speed which is only appropriate for straight sections of a road

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where good forward visibility is afforded, on a road which meanders, such as in this instance, a reduce design speed and visibility splay could be adopted. A road with a design speed of 54mph (the next cut off) requires a visibility splay of 160metres and as the splay achievable in this instance is 187metres it is contended that in this instance the visibility achievable could be deemed appropriate.

3.15 Nevertheless, should the Council deem the splay to the north requires to be the full 215metres, as the appellant owns the agricultural fields bounding the Trunk Road to the east, they would be content to realign the existing fence and regrade the existing ground to ensure that the full 215metres splay can be provided (Refer to CMD005). We understand that this aspect could be conditioned as part of the planning approval and I can confirm that the appellant would be content with this approach.

3.16 This improvement would create a junction which conforms to the required standard, which would be to the benefit to all road users, whilst achieving the desired planning approval for the appellant and for these reasons we consider this to be an acceptable development fully in compliance with Council policy.

4.0 OTHER POLICY CONSIDERATIONS

4.1 As this appeal is for the erection of a new house, in order for completeness and accuracy of this Statement of Case, it is appropriate for the appellant to briefly consider the other relevant Local Plan policies, namely policies H7 and IMP1.

4.2 Policy H7 (Re-use and Replacement of Existing Buildings in the Countryside) permits the erection of a replacement house where there is evidence of a previous building on the site. In this instance, as confirmed in the Appointed Officer Report of Handling (Document CMD006) the existing building on site conforms to 'Level 4' of policy H7 and is therefore suitable to be replaced.

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4.3 The proposed house, as noted above, is of traditional design and proportions, extending to one and a half storey with traditional gable widths and again the Appointed Officer Report of Handling confirm that the house design accords with Council policy.

5.0 CONCLUSIONS

5.1 In 2008, the appellants submitted a detailed application to the Moray Council to demolish the remains of an existing cottage and replace with a traditionally designed one and a half storey dwellinghouse at Tomnaglien Cottage, Ballindalloch, Moray (Council Ref. No. 08/01369/FUL Refers). The Council refused the proposal (Decision Notice – Document 01), under delegated powers on 7th May 2010, and after due consideration the appellants has decided to exercise their right to seek a review of this decision.

5.2 The access to the site is served via a public road which joins the A95 Trunk Road at two locations; the northern access is close to the Tomfarclas Distillery and this junction provides the required 215metres visibility splays in both directions as demonstrated on our drawing 080089.ATKINSON.01 and the appointed Officer raised no concerns over this access point.

5.3 The southern junction is the access point which the Appointed Officer considers offers substandard visibility and was the justification for the refusal of the application. Nevertheless, this Statement of Case has demonstrated that this junction already offers substantial visibility in both directions, with 215metres being achievable in the southerly direction and 187 metres achievable in the northerly direction.

5.4 Moreover, the report has shown the ability and the appellant acceptability that the northerly visibility splay could be improved to 215metres if considered necessary. This improvement would be to the benefit to all road users, whilst achieving the desired planning approval for the appellant.

- 5.5 Finally, the Statement of Case has supported the Appointed Officer consideration that the design of the proposed house and the site acceptability in terms of policy H7 is in accordance with Council policy.
- 5.6 Consequently, based on all of the above, the appellant believes this appeal should be duly permitted and, as such, we look forward to the Local Review Board assessment and decision in early course.