

21 October 2010

Our Ref. 080089/BALLINDALLOCH/mjh
Your Ref. LRB/CASE 019

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 08/01369/FUL – REPLACE HOUSE WITH NEW HOUSE AT
TOMNAGLIEN COTTAGE, BALLINDALLOCH**

I refer to the above Local Review and your letter dated 30TH September 2010, regarding the LRB Legal Advisor advice that the information regarding the provision of the amended visibility splay 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.

As noted in Section 3.6 of the appellant Statement of Case, the planning application was under consideration with the Council for a long period, during which time the Appointed Officer consulted Transport Scotland who confirmed by way of email on 4th July 2008 (Document CMD007) that they did not object to this application. Regrettably, once the appellant submitted the outstanding private water information, the Appointed Officer deemed it appropriate to reconsult Transport Scotland.

This new consultation response from Transport Scotland, changed their previous advice that the application was acceptable and they now sought its refusal. This new consultation is stamped by the Council as being received on 4th May 2010 (Document CMD008).

Within 3 days of receipt of this new consultation, the Appointed Officer issued the Refusal Notice on 7th May 2010. At no point during these 3 days did the Appointed Officer notify the appellant of this fundamental change in Transport Scotland advice, nor offer the appellant any opportunity to address this new objection.

Again as noted in Section 3 of the appellant Statement of Case, should the appellant have been advised of this major change in position by Transport Scotland, they would have been able to fully review the second more distant access point. If this opportunity had

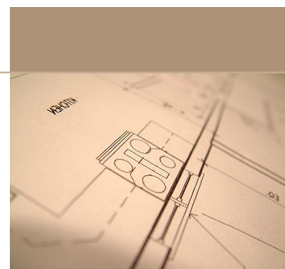
1 - 5 Pinetree House
Pinefield Crescent
Elgin
Moray
Scotland
IV30 6HZ

† 01343 540020
† 01343 540038
w cmdesign.biz
e office@cmdesign.biz

4 Bridge Street
Nairn
Highland
Scotland
IV12 4EJ

† 01667 300230
† 01667 454318
w cmdesign.biz
e office@cmdesign.biz





been afforded to the appellant, they would have submitted the enclosed plan (Document CMD009), thereby avoiding the issue of having to seek its inclusion as new evidence.

Therefore, based on the above, the appellant contends that this plan should be accepted as 'new evidence' as it is evident that the appellant was not afforded the opportunity to present it earlier in the process.

In response to the Local Review Board request that the appellant provides information and a plan as to how they would propose to form a 4.5m x 215m visibility splay at this junction. On behalf of the appellant, we submitted a letter dated 22nd September 2010 (copy enclosed) disputing the requirement that a set-back distance of 4.5metres should be required in this instance.

In summary, this letter noted that the Design Manual for Roads & Bridges (DMRB) (TD 41/95) (Document CMD010) states that a 4.5metre set-back distance is normally required when it is anticipated that more than one vehicle is likely to be waiting to join the Trunk Road from a junction.

At a junction which is lightly trafficked (identified as a junction serving less than 12 houses) the DMRB allows a reduced set back distance of 2.4 metres. In this instance, the junction serves only 3 existing houses and therefore the reduced set-back distance of 2.4 metres should be considered acceptable.

At this set-back distance, the enclosed plan demonstrates that the second more distant junction from the proposed house can afford adequate visibility on the proviso that the existing self-seeded shrubbery is removed from the road verge.

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

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

**† 01343 540020
† 01343 540038
w cmdesign.biz
e office@cmdesign.biz**

**4 Bridge Street
Nairn
Highland
Scotland
IV12 4EJ**

**† 01667 300230
† 01667 454318
w cmdesign.biz
e office@cmdesign.biz**

