

Appeal Decision Notice

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Decision by Roger Wilson a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-300-2012
- Site address: Site on East Road, Elgin, Moray
- Appeal by Mr J Brown against the decision by Moray Council to grant planning permission (in principle) reference 09/01477/OUT dated 23 February 2011 subject to conditions.
- The development proposed: Formation of a commercial estate
- The condition appealed against is: 9 c) In respect of the arrangements for means of access, the requirements shall include details of the location, design and layout and time-scale for the provision of the following: (i) a second point of access providing a connection for vehicles, pedestrians and cyclists between the site and Linkwood Place.
- *Reason for the condition – To ensure an acceptable form of development in the interests of the amenity and appearance of the development, to ensure an appropriate means of drainage for the site, including provision for the required levels of treatment and in the interests of road safety to provide access movement and connectivity for all modes of transport, including sustainable transport modes taking account of PAN75 and Designing Streets.*
- Date of site visit by Reporter: 5 July 2011

Date of appeal decision: 26 July 2011

Decision

I ALLOW the appeal and VARY the terms of the planning permission to delete the terms of condition 9 c).

Reasoning

1. The determining issues in this appeal are whether the condition at issue complies with the terms of Circular 4/1998: The Use of Conditions in Planning Permissions and having regard to the provisions of the development plan and any other material considerations.
2. Circular 4/1998 sets out six 'tests' for conditions:
 - (i) necessity,
 - (ii) relevance to planning,
 - (iii) relevance to the development permitted,
 - (iv) enforceability,

- (v) precision and
- (vi) reasonableness in all other respects.

3. The appeal site lies on the eastern edge of Elgin adjoining the A96 trunk road. There is a roundabout on the south-western corner from which access is proposed (north of Reiket Lane) and these factors are all in line with structure plan policy 1. The proposed road layout within the site includes a priority junction that connects the main site access road serving the development plots to the north arm of the roundabout. From this junction the road would extend northwards to form a stub intended to serve possible future development to the northern area of the site. To the west is another commercial/industrial site (Linkwood Place) terminating at its east end with a mini-roundabout. It is from this position that the council's proposed condition is seeking a potential link into this development site (about 107m northeast along the proposed access road).

4. From the submissions by the parties, it seems to me that tests (ii), (iv) and (v) of the Circular are not at issue. I will therefore concentrate on the remaining tests: (i) necessity, (iii) relevance to the development permitted, and (vi) reasonableness in all other respects.

Necessity

5. The council's local plan policy T2 (Provision of Road Access) states that the road access arrangements should be suitable for the proposed development, and ensure that they are safe and provide for public transport, cycling and pedestrians. Local plan policy IMPI c) also requires adequate provision of transport infrastructure at an appropriate level to serve the development.

6. There is general agreement between the parties that the secondary access would not be required for reasons of road or junction capacity serving the development. Similarly, the council has indicated that safety is not the primary concern either. The council has not directly challenged the appellant's traffic assessment, and a sensitivity test - to show the impact if the lower traffic generating industrial/trade counter elements were to be replaced by further business park use – caused no capacity/safety issues either. Although the council indicated a desire for the second access to Linkwood Place, in the event that potential traffic levels required it, I am not convinced that there was a capacity/safety basis for it.

7. Although there are currently no footways to the A96 on the north side along the boundary with the site, the proposal would provide a 2 metre wide footway adjacent to the access road through the site, and this would connect directly to a pedestrian/cycle crossing on the east side of the roundabout (condition 9 c) [iii]) and thence to all points west towards Elgin town centre. There is a similar crossing already in place on the west side of the roundabout. From the information set out in paragraphs 5-6 above, I am satisfied that the development plan policy requirements are met.

8. There are a number of aspects of the Scottish Policy Statement 'Designing Streets' that are relevant to urban sites, but in my opinion this policy is primarily aimed at residential and mixed-use schemes. The proposed site and its environs show few, if any, of the wider place-related functions of streets. Designing Streets places emphasis on 'safe and pleasant' and 'adaptable' aspects of street design, and it also highlights connections to

wider networks. It requires good connectivity for all modes of transport, and PAN75: Planning for Transport has similar objectives. The council's supplementary planning guidance 'Urban Design Guide' highlights that connections should reflect the surrounding street pattern where appropriate, and should aim to spread traffic throughout the site and surroundings, thereby reducing congestion. It also encourages a permeable movement framework that accommodates desire lines, connects with adjacent street networks and allows for future connections.

9. The proposed link could improve accessibility of the site and integrate the site with the existing neighbouring mixed use commercial development, but equally, there are potential negative aspects arising:

- extra heavy goods vehicles using the new access road and roundabout on the A96,
- inappropriate 'rat-running',
- increased vehicular through-movements at the expense of pedestrian/cyclist safety, and
- a decrease in the available capacity of the site's junction with the A96 roundabout that may prevent proposed uses on the later plots being developed within the site.

10. I am aware of a planning permission for the road/footpath details to this development (ref.10/00524/APP); it refers in its condition 9 to the possible second connection to Linkwood Place being dependent on a 'capacity trigger'. That condition has not been challenged, but my decision in this case is considered separately on its own merits.

11. In summary on this issue, the secondary connection is not needed for capacity or, primarily, safety reasons. It may offer some advantages in terms of permeability and connectivity, but it is by no means clear that these outweigh potential disadvantages. For these reasons, I am not satisfied that the condition fulfils the test of necessity.

Relevance to the development permitted

12. From my reasoning on necessity in paragraphs 5-11, there is some doubt whether the proposed condition is strictly relevant to this development. Whether, in the broader sphere, the secondary access would resolve any existing deficiencies in the transport network or satisfy the council's wider objectives is not relevant to this development.

Reasonableness

13. From my conclusions on the issues of necessity and relevance to the development permitted, I find that the condition is unreasonable and therefore unjustified.

Roger Wilson

Reporter

