

21.09.2011

suite 8/1
175 Finnieston Street
Glasgow G3 8HD

Dear Sir/Madam

Response to representations by Moray Council Transportation. [MCT] on 10/00524/APP.

The applicant has used the same headings and paragraph numbers as the MCT representation apart from the conclusion.

Background

PPA-300-2012 (Appeal)

MCT noted that the Reporter allowed the appeal for consent 09/01477/OUT and deleted condition 9 c) that had required a secondary access to Linkwood Place. What the Reporter actually said regarding the consideration of this clause and its relevance to the current review / appeal case for 10/00524/APP was stated at clause 10 of his previously sent decision and reads:

'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.'

The applicant is now challenging clause 9 and clauses 8 and part of 6 of planning consent 10/00524/APP and considers that the principle established in the legally binding decision of the Reporter in the appeal of 09/01477/OUT for the same site should be applied to the relevant clauses in 10/00524/APP by the Local Review Body [LRB].

2 Development Plan Considerations.

Following consideration of these in PPA-300-2012 (Appeal) the Reporter states in the last sentence of clause 7 of his decision: 'From the information set out in paragraphs 5-6 above, I am satisfied that the development plan policy requirements are met' [by the appellant]

4.2 See point 2 under Development plan considerations heading above

4.3 As the clauses in question refer to and or stem from the clause deleted by the Reporter in a related application for the same site and his decision is a legal precedent his decision should be a material consideration for this Review. Following the Reporters decision the applicant verbally requested senior planning officer, Mr Angus Burnie how the subject clauses could best be removed from 10/00524/APP. In addition to suggesting a review the applicant recalls that after taking advice from a senior legal Moray Council advisor Mr Burnie confirmed that the Moray Council would not be minded to enforce conditions that were contrary to the Reporters findings in a related application. The applicant sent an email to Mr Burnie requesting confirmation of this on 15th September 2011 but still awaits a reply. A copy will be sent under separate cover.

4.4 Whilst the desire for a secondary access by MCT had been acknowledged and indicatively shown on plans at their request, the subsequent independent investigations (like the TA) and decisions (e.g. PPA-300-2012 (Appeal)) undertaken by parties other than MCT have shown conditions for a secondary access to be unnecessary and unreasonable.

4.5 Traffic from a detailed list of specific uses and scenarios have been supplied and tested and MCT acknowledge there are no capacity issues. If different more intensive uses are proposed at a later date then MCT can request a revised TA at that time.

4.8 see 4.5 and note that retention of the planning conditions would have opposing significant negative consequences including:

- 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.

The Reporter agreed with this at clause 10 of PPA-300-2012 and went on to say at clause 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.'

Conclusion

MCT appear to have simply re iterated their opinion on the need for a secondary access via a link road to Linkwood Place ignoring the outcome and reasoning of the legally binding decision of the Reporter in the appeal of the need for a secondary access in the directly related overarching consent 09/01477/OUT for the same site.

MCT have ignored the fact that the conditions fail at least three of the required tests regarding the use of conditions from Circular 4/1998: and should therefore be deleted. The clauses are not necessary or relevant to the development permitted and are unreasonable. The majority of the documents the Reporter relied on to make his decision were before the Planning Authority at the time the decision on 10/00524/APP was made in particular the opinions expressed by consultants WSP in their letter dated 02 December 2010. A further copy of this letter is attached for ease of reference.

In light of the foregoing the applicant would respectfully request the LRB to obtain the views of the planning authority and the Moray Council legal team as to whether they would have included the part of clause 6 and all of clauses 8 and 9 that the applicant has asked to be deleted if the Reporter's decision was available to them at the time of issuing consent. If the answer is no then this is further confirmation the clauses should be deleted.

If they are minded to retain these clauses then the applicant would request a hearing.

Yours faithfully

Jack Brown
Applicant