

THE MORAY COUNCIL
MINUTE OF SPECIAL MEETING OF THE ENVIRONMENTAL SERVICES COMMITTEE
TUESDAY 11 MARCH 2008
COUNCIL OFFICE, ELGIN

PRESENT

Councillors A Wright (Joint Chair : Planning & Environment), J Russell (Joint Chair : Transportation & Direct Services), J Divers, G Leadbitter, M McConachie, G McDonald, G McIntyre, A McKay, P Paul and R Shepherd.

APOLOGIES

Apologies for absence were intimated on behalf of Councillors J Hamilton, F Murdoch, I Ogilvie and I Young.

ALSO PRESENT BY INVITATION IN RESPECT OF ITEMS 3

The applicants, Mr J Innes (in respect of Plot 1), Mr W Binnie (in respect of Plot 2) and their agent, Mr M Hilton, CM Design.

IN ATTENDANCE

The Director of Environmental Services, A Burnie, Principal Planning Officer (Development Control) A MacEachan Senior Solicitor (Commercial and Conveyancing), and the Senior Committee Services Officer, Clerk to the Meeting.

1. CHAIR

The Chair was taken by Councillor A Wright (Joint Chair : Planning & Environment).

2. DECLARATION OF GROUP DECISIONS

There were no declarations from group leaders or spokespersons in regard to any prior decisions taken on how members will vote on any item on the Agenda.

3. PLANNING APPLICATION PUBLIC HEARINGS

- (a) 07/02707/FUL: Erect new house on Plot 1 Land Street, Rothes for Mr James Innes
- (b) 07/02695/FUL : Erect new house on Plot 2, Land Street, Rothes for Mr William Binnie

The meeting noted that given the applications related to adjacent house plots and the applicants had appointed the same representative it was proposed that the applicants representative address the meeting on both applications at the same time. The objectors would address the Committee on their objections to both or individual applications. Each application however would be determined separately on their individual merit.

There were submitted reports by the Chief Legal Officer and the Director of Environmental Services regarding the applications. The reports by the Chief Legal Officer advised that, in terms of the Council's Scheme of Delegation relating to Planning Applications, the applications had been referred direct to a Hearing to which the applicants and objectors were invited to attend and be afforded the opportunity of being heard. The report also set out the proposed procedures for the Hearings.

The reports by the Director of Environmental Services, Appendix 1 to the reports, gave details of the applications and the consultations, which had been undertaken regarding them and the relevant planning criteria in terms of the Moray Development Plan and the Emerging Local Plan 2008, as a material consideration. The reports recommended that planning consent be granted as acceptable departures, subject to conditions detailed in the reports and notification to Scottish Ministers as

developments in which the Authority has an interest. The meeting also noted that Members of the Committee visited the sites of the applications on Tuesday 3 March 2008.

The Chairman welcomed those present to the meeting and reminded them that the Special Meeting had been arranged to allow those submitting representations on the application to speak to their representations and the applicant to be heard before the Committee reached its decision on the application. He also advised those present that submissions must be restricted to those already submitted and that the Hearing would be confined to examining the planning merits of the application and therefore discussion on irrelevant non-planning related issues would not be considered.

The meeting noted that the applicants, Mr Innes and Mr Binnie, were present and would be represented by Mr M Hilton, CM Design.

The Clerk to the Committee advised the meeting that of those objectors to the application listed on pages 22 & 47 of the Planning Officer's reports, Mr Anderson had accepted the invitation to be heard, however was unable to attend due to ill health. The meeting noted that details of Mr Anderson's representations and those of the other objectors were set out in the Planning Officer's report. The meeting also noted that Mr D Slessor was unable to attend the Hearing due to other commitments and had requested that the terms of his letter of objection dated 17 December 2007 be reiterated to the Committee.

REPRESENTATIONS ON BEHALF OF THE APPLICANT

Mr M Hilton addressed the meeting, on behalf of the applicants. He advised the meeting in regard to the background to the applications and that both applicants were required to relocate as their existing properties were to be demolished as part of the Rothes Flood Alleviation Scheme. The meeting also noted that prior to submitting the applications several options had been considered, none of which, for various reasons, were considered suitable. Following negotiations with the Council the applicants agreed to acquire the proposed sites subject to obtaining planning consent.

Mr Hilton referred to the Planning Officer's, which recommended approval of the applications as acceptable departures from the sub-division policy LH5. He advised the meeting that the main reason for this departure relates to the house size in relation to the plot size. The sub-division policy dictates that the maximum house size should only be one third of the total plot size. The meeting noted that Plot 1 was 480 square metres with a footprint of 177 square metres for the house. This was 17 square metres larger than one third of the plot size. Plot 2 was slightly larger with a plot size of 496 square metres with a footprint of 177 square metres resulting in 11.6 square metres excess over the one third plot size. The Planning Officer however recommended approval of the applications, as they are not considered to be an excessive over development of the plot. He also referred to other existing sites in the vicinity, which are in excess of one third of the plot size.

In regard to the objections to the applications Mr Hilton advised the meeting that, in regard to loss of parking on the amenity ground, 6 dilapidated garages currently occupy the site, 5 are vacant and one is rented to the Horticultural Society for storage of horticultural implements. He advised that none of the garages were actually used as parking spaces and that a large proportion of the site is given over to rough ground with self-seeded trees and sporadic planting across it. It was also the site for the Council's recycling bins. He also drew Members attention to the consultation response from the Council's Transportation Section, which raised no objection to the proposals or loss of the parking. In this regard he was also of the view that Land Street has well used on-street parking along its length and that there is additional parking in Seafield Square, which under utilised.

In regard to the loss of amenity raised by two householders on Spey Drive, Mr Hilton advised the meeting that, as those Members who attended the site visit would have noted, there is a former railway line, a public footpath, then a couple of single storey houses beyond this. The distance between the application sites and the properties on Spey Drive is approximately 30 metres and there is a 10 metre wide footpath running between the sites. The properties in Spey Drive have quite a low boundary wall, approximately 1.2 metres high and anyone who walks along the former railway line can easily look into the back gardens of the Spey Drive properties. Part of the proposals relating to the two applications include the erection of a 1.8 metre high fence along the rear boundaries, a first floor gable end window had been re-sited and all windows to the rear of the proposed houses are on the ground floor. Mr Hilton disputed the references to the design of the properties being unsympathetic to the area. In his opinion they are designed to be one and a half storeys in height,

traditional gable width and had traditional dormer windows towards the front of Land Street and will continue to add to the vitality and the mix of architectural styles within Rothies. In conclusion the applicants consider that the proposals before the Committee are acceptable in terms of amenity, privacy and impact on the character of the area, views which are fully support the Planning Officer who is recommending approval of the applications, as acceptable departures.

There were no questions to the Applicants' representative.

REPRESENTATIONS TO THE APPLICATION

The meeting noted the terms of the objections to the applications and the responses thereto, as set out in the Planning Officer's report.

The Clerk read out the terms of the objection from **Mr D Slessor** who was unable to attend the Hearing. The meeting noted that Mr Slessor's objection related to Plot 2 and that whilst he had no objection to a house being built on the site it was the height of the proposed house he objected to. He understood that the proposed house will be 7.5 metres in height which is 2.3 higher than his property and would not blend in with the other buildings in the area. He also expressed his concerns in regard to the affect the loss of car parking space will have on an already congested street.

SUMMARIES OF SUBMISSIONS

The applicants' representative declined the invitation to summarise, intimating that he had nothing further to add and, in response to a question from the Clerk, intimated that he was satisfied with the conduct of the proceedings of the Hearing.

COMMITTEE CONSIDERATION OF THE APPLICATIONS

Prior to considering the applications the Chairman advised the meeting that, as noted on the site visit, the reason for the departure related to the amount of land taken up by the house footprints which were larger than one third of the plot sizes. The amount of land over the one third approximated to that occupied by the conservatories and had the applications excluded this provision they would have complied with policy and granted consent. Applications for the conservatories could have been made later and granted consent under permitted development.

In response to a question from Councillor Paul the meeting noted that were the applications to be approved and a subsequent request was received for the removal of the parking requirement within each Plot this would be considered a significant amendment and the matter would be referred back to Committee for consideration.

The Committee then proceeded to determine the applications individually.

(i) 07/02707/FUL: ERECT NEW HOUSE ON PLOT 1 LAND STREET, ROTHES FOR MR JAMES INNES

Councillor Wright moved approval of the application and there being no-one otherwise minded it was agreed that the application be approved, subject to the following conditions and notification to Scottish Ministers as a development in which the Authority has an interest:-

1. The time limit condition is imposed in order to comply with the requirements of Section 58 of the Town and Country Planning (Scotland) Act 1997.
2. Unless otherwise agreed with the Council, as Planning Authority, the development hereby approved shall be carried out strictly in accordance with the approved plans and conditions.
3. The development shall relate to the amended plan 2007.241.INNES.02A submitted under cover of the applicants/agents letter dated 20th February 2008 regarding amended site arrangements including details of boundary walls and fences.
4. Unless otherwise agreed with the Council (as Planning Authority) the development shall not commence until samples of the proposed external roof and wall materials have been submitted to and approved by the Head of Development Services.

5. The use of Marley Modern (including mock bond) grey concrete tiles is not approved and as part of the samples or specifications required by Condition 4, the roof shall be externally finished in slates, or a good quality 'artificial' slate (eg Marley Edgemere or similar), or smooth grey Marley Ludlow Major tiles.
6. Sample panels of roughcast shall be prepared on the site for the inspection and approval of the Head of Development Services and the roughcast work shall not be carried out until agreement has been reached with the Head of Development Services regarding the type and colour of materials to be used.
7. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(Scotland) Order 1992 (or any order revoking and re-enacting that order) no development specified in Article 3, Schedule 1, Part 1, Class 1 and 3 shall be carried out without the approval of the Council as Planning Authority.
8. No boundary fences, hedges, walls or any obstruction whatsoever over 1.0 m in height and fronting onto the public road shall be within 2.4 m of the edge of the carriageway.
9. No water shall be permitted to drain or loose material be carried onto the public footpath/carriageway.
10. Drop kerbs shall be provided across the access to The Moray Council specification.
11. Three (minimum) private parking space(s) shall be provided at all times within the site.
12. New boundary walls/fences shall be set back from the edge of the public road at a distance of 1.8 metres.
13. The footpath arrangements and location of the boundary wall along Land Street as shown on amended drawing H2007.241.INNES.02A are not approved, and
 - (a) prior to development works first commencing details shall be submitted to and approved by the Council, as Planning Authority regarding
 - i) the repositioning of the proposed boundary wall behind a 1.8 m footway to be provided along Land Street; and
 - ii) the location, design construction specifications and surfacing materials for a 1.8 m wide footway to be constructed along the whole frontage of the site onto the public road (i.e. for Plot 1 and Plot 2 as proposed under formal decision notice 07/02695/FUL) to tie into the existing footway to the south and north of the sites. (This shall include infilling of the existing breaks in the footway and the removal and replacement of road gullies currently located within the proposed footway position); and
 - (b) prior to first occupation of the house hereby approved the footway shall be constructed in accordance with the approved plans and made available for use.
14. If significant unsuspected contamination is found then all work shall cease until an appropriate investigation to determine the nature, extent and potential impacts of the contamination has been undertaken and a remediation method statement agreed with The Council as Planning Authority.
15. No development shall commence until the developer has ensured all asbestos has been removed from the site by a specialised licensed contractor and disposed of to a suitable waste site. The details of removal and disposal shall be submitted by the developer in writing to the Council as Planning Authority for approval no later than fourteen (14) days prior to commencement of these works. Within six (6) weeks of completion of the agreed works a report shall be submitted by the developer, in writing to the Council as Planning Authority for approval which validates the removal and disposal of the asbestos.

Reasons:

1. The development to which this permission relates must be begun not later than the expiration of five years beginning with the date on which this permission is granted.
2. In order to ensure that there are no unauthorised departures from the approved plans which could adversely affect the development or character and amenity of the surrounding properties and area.
3. In order to avoid any ambiguity regarding the terms of this consent and to ensure a satisfactory form of development in the interests of the amenities and appearance of the development and the surrounding locality.
4. In order to ensure that the development harmonises with the appearance and character of the surrounding properties and area.
5. In order to ensure that the development harmonises with the appearance and character of the surrounding properties and area.
6. In order to ensure that the development harmonises with the appearance and character of the surrounding properties and area.
7. In order that consideration can be given to the appearance and impact of the development specified in the condition.
8. In the interests of road safety.
9. In the interests of road safety.
10. In the interests of road safety.
11. In the interests of road safety.
12. In the interests of road safety.
13. In the interests of road and pedestrian safety.
14. In order to safeguard the health and safety of the occupants of the property from the effects of harmful ground contamination.
15. In order to safeguard the health and safety of the occupants of the properties, construction personnel and the local environment from the effects of asbestos contamination.

(ii) 07/02695/FUL : ERECT NEW HOUSE ON PLOT 2, LAND STREET, ROTHES FOR MR WILLIAM BINNIE

Councillor Wright moved approval of the application and there being no-one otherwise minded it was agreed that the application be approved, subject to the following conditions and notification to Scottish Ministers as a development in which the Authority has an interest:-

1. The development to which this permission relates must be begun not later than the expiration of five years beginning with the date on which this permission is granted.
2. Unless otherwise agreed with the Council, as Planning Authority, the development hereby approved shall be carried out strictly in accordance with the approved plans and conditions.
3. The development shall relate to the amended plan 2007.241.BINNIE.02A and SF14829-001 (as stamped AMENDED) submitted under cover of the applicants/agents letter dated 20th February 2008 regarding amended site arrangements including details of boundary walls and fences, the repositioning of the house within the site and revised elevation details to provide a roof velux in the side roof slope for the undeveloped attic.
4. Unless otherwise agreed with the Council (as Planning Authority) the development shall not commence until samples of the proposed external roof and wall materials have been submitted to and approved by the Head of Development Services.

5. The use of Marley Modern (including mock bond) grey concrete tiles is not approved and as part of the samples or specifications required by Condition 4, the roof shall be externally finished in slates, or a good quality 'artificial' slate (Marley 'Edgemere' or similar), or smooth grey Marley Ludlow Major concrete tiles.
6. Sample panels of roughcast shall be prepared on the site for the inspection and approval of the Head of Development Services and the roughcast work shall not be carried out until agreement has been reached with the Head of Development Services regarding the type and colour of materials to be used.
7. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(Scotland) Order 1992 (or any order revoking and re-enacting that order) no development specified in Article 3, Schedule 1, Part 1, Class 1 and 3 shall be carried out without the approval of the Council as Planning Authority.
8. No boundary fences, hedges, walls or any obstruction whatsoever over 1.0 m in height and fronting onto the public road shall be within 2.4 m of the edge of the carriageway.
9. No water shall be permitted to drain or loose material be carried onto the public footpath/carriageway.
10. Drop kerbs shall be provided across the access to The Moray Council specification.
11. Three (minimum) private parking space(s) shall be provided at all times within the site.
12. New boundary walls/fences shall be set back from the edge of the public road at a distance of 1.8 metres.
13. The footpath arrangements and location of the boundary wall along Land Street as shown on amended drawing H2007.241.BINNIE.02A are not approved, and
 - (a) prior to development works first commencing details shall be submitted to and approved by the Council, as Planning Authority regarding
 - i) the repositioning of the proposed boundary wall behind a 1.8 m footway to be provided along Land Street; and
 - ii) the location, design construction specifications and surfacing materials for a 1.8 m wide footway to be constructed along the whole frontage of the site onto the public road (i.e. for Plot 1 and Plot 2 as proposed under formal decision notice 07/02695/FUL) to tie into the existing footway to the south and north of the sites. (This shall include infilling of the existing breaks in the footway and the removal and replacement of road gullies currently located within the proposed footway position); and
 - (b) prior to first occupation of the house hereby approved the footway shall be constructed in accordance with the approved plans and made available for use.
14. If significant unsuspected contamination is found then all work shall cease until an appropriate investigation to determine the nature, extent and potential impacts of the contamination has been undertaken and a remediation method statement agreed with The Council as Planning Authority.

15. No development shall commence until the developer has ensured all asbestos has been removed from the site by a specialised licensed contractor and disposed of to a suitable waste site. The details of removal and disposal shall be submitted by the developer in writing to the Council as Planning Authority for approval no later than fourteen (14) days prior to commencement of these works. Within six (6) weeks of completion of the agreed works a report shall be submitted by the developer, in writing to the Council as Planning Authority for approval which validates the removal and disposal of the asbestos.

Reasons:

1. The time limit condition is imposed in order to comply with the requirements of Section 58 of the Town and Country Planning (Scotland) Act 1997.
2. In order to ensure that there are no unauthorised departures from the approved plans which could adversely affect the development or character and amenity of the surrounding properties and area.
3. In order to avoid any ambiguity regarding the terms of this consent.
4. In order to ensure that the development harmonises with the appearance and character of the surrounding properties and area.
5. In order to ensure that the development harmonises with the appearance and character of the surrounding properties and area.
6. In order to ensure that the development harmonises with the appearance and character of the surrounding properties and area.
7. In order that consideration can be given to the appearance and impact of the development specified in the condition.
8. In the interests of road safety.
9. In the interests of road safety.
10. In the interests of road safety.
11. In the interests of road safety.
12. In the interests of road safety.
13. In the interests of road and pedestrian safety.
14. In order to safeguard the health and safety of the occupants of the property from the effects of harmful ground contamination.
15. In order to safeguard the health and safety of the occupants of the properties, construction personnel and the local environment from the effects of asbestos contamination.

(iii) REFERRAL TO SCOTTISH MINISTERS

In regard to the requirement to notify Scottish Ministers the Director of Environmental Services advised the meeting that, prior to notifying Scottish Ministers, the Council requires to inform all objectors of it's decision to grant planning permission and provide a statement of reasons for that decision. The objectors are then given a minimum of 14 days to lodge any further representations. Should any further representations be received then the Council is required to consider these and determine whether it is still of a mind to grant planning permission.

The Director also advised that in the event of there being no response after the 14 day representation period, Scottish Ministers would be notified. They would have 28 days from receipt of the notification to consider whether or not they would wish to call in the application

for their own consideration. In the event that there was a response(s) then, given the particular circumstances relating to these applications, the Director sought Committee approval for delegated authority to consider these and if there were no new objections, Scottish Ministers be notified.

Following discussion the Committee agreed that in the event of a response(s) being received during the 14 day decision notification period the Director of Environmental Services be granted delegated authority to consider these and if there were no new objections, Scottish Ministers be notified.