

## **THE MORAY COUNCIL**

### **MINUTE OF MEETING OF THE PLANNING & REGULATORY SERVICES COMMITTEE**

**TUESDAY 3 JUNE 2008**

**COUNCIL OFFICE, ELGIN**

#### **PRESENT**

Councillors S. Cree (Chair), J Russell (Deputy Chair), G Coull, J Divers, M McConachie, A McDonald, G McDonald, F Murdoch, D Stewart and A Wright.

#### **APOLOGIES**

Apologies for absence were intimated on behalf of Councillors L Bell, J Hamilton and A McKay.

#### **IN ATTENDANCE**

The Director of Environmental Services, the Planning and Development Manager, the Development Control Manager, J Martin, Principal Planning Officer (Development Control), T Simpson, Engineer (Development Control) Transportation and P Haslam, Senior Engineer (Flooding and Coastal Protection) in respect of item 4, the Environmental Health Manager and J McLennan, Principal Environmental Health Officer in respect of item 10; A Scott, Principal Solicitor (Commercial and Conveyancing) and the Senior Committee Services Officer, Clerk to the Meeting.

### **WELCOME TO NEW MEMBERS**

This being the first meeting of the newly constituted Planning & Regulatory Services Committee the Chairman welcomed Councillors Coull, Anita McDonald & Stewart to this their first meeting of the new planning Committee. He also made reference to the forthcoming changes facing local authorities in terms of the Scottish Government's proposals for modernising the planning system and of his proposals to bring forward appropriate training sessions for Members as matters progress. He also paid tribute to work of his predecessor Councillor Wright, Joint Chair (Planning & Environment) of the former Environmental Services Committee.

### **1. ADDITIONAL BUSINESS**

In terms of Standing Order 25 (iv) the Committee agreed to accept as an additional item of business to be transacted at the meeting an oral progress report on the actions approved on 16 April 2008 in regard to a breach of planning consent in respect of the residential development at Thornhill Road, New Elgin on the Chairman certifying that, in his opinion, it required to be considered on the grounds of urgency given the timescales involved.

## 2. DECLARATION OF GROUP DECISIONS

In terms of Standing Order 20 the meeting noted that Councillor A McDonald declared a personal interest in Planning Application 07/02629/FUL (pages 21 to 29 of the Director's Report).

There were no other 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. RESIDENTIAL DEVELOPMENT AT THORNHILL ROAD, ELGIN

Under reference to Paragraph 7 of the Minute of the Environmental Services Committee dated 16 April 2008, in regard to the breach of planning consent in respect of the residential development at Thornhill Road, New Elgin, the meeting noted that interim road safety measures have been implemented and are operating satisfactorily. In regard to progress regarding negotiations between the developers and the landowner in order to comply fully with the conditions of consent in respect of road widening it was noted that the water tank at the centre of the issue would require to be replaced which was considered by the developers as prohibitive in terms of cost. An alternative was suggested whereby the cycleway/public footpath would be re-routed around the water tank. This however was not, following consultation with the Council's Transportation Section, considered a suitable alternative. It has also been ascertained that the removal of a small doorway at the front of the water tank would enable the developers to complete the 3-metre wide cycleway/public footpath and thus comply with the consent. It is hoped this matter can now be progressed with the landowner as quickly as possible given the temporary nature of the road safety measures currently in place.

Following discussion the meeting agreed to note the current position relative to the implementation of interim road safety measures and ongoing discussions between the developers and the landowner in order for the developers to comply with the conditions of planning consent.

## 4. PLANNING APPLICATIONS

### SPEYSIDE GLENLIVET : WARD 1

#### (a) **06/01756/OUT      OUTLINE TO ERECT DWELLINGHOUSE ON SPEY STREET, ROTHES FOR MR MIKE MUNRO**

There was submitted a report by the Director of Environmental Services recommending that, for reasons detailed in the report, planning consent be refused in respect of an outline application to erect a dwellinghouse on Spey Street, Rothies for Mr Mike Munro.

The meeting noted that the application had been referred to Committee in terms of the Scheme of Delegation given that the Development Control Manager considered that the application raises matters of planning significance. The meeting also noted that the application had been advertised as a departure from policy to which no representations had been received, therefore were the Committee minded to

approve the application a Hearing would not be required. In the event of granting approval Scottish Ministers would however require to be notified, in terms of Circular 5/2007, prior to the issue of consent given that a statutory consultee (SEPA) had objected to the application. Members of the Committee visited the site of the application on Friday 30 May 2008. There was also tabled at the meeting flood risk mapping plans of the area produced by SEPA and the Moray Flood Alleviation Team in respect of 1:200 years flood risk.

On the invitation of the Chair the meeting heard Councillor P Paul, one of the three Ward 1 Members not on the Committee. She advised the meeting that the applicant currently resides in an area which has flooded on more than one occasion and chose the proposed site as it was designated for housing in the Local Plan and had no history of flooding. She also advised the meeting that Spey Street was not affected during the recent flooding incidents in Rothes and that, as indicated in the Planning Officer's report, approval of this application would not jeopardise the remaining land which falls within the R1 designation. In regard to flood risk she was of the view that there was conflicting advice from SEPA and the Moray Flood Alleviation (MFA) Team. On one hand SEPA were intimating that, whilst the site lies just outwith their 1:200 flood limit, they were of the view that there is insufficient information to demonstrate that the proposal has been designed to minimise risk and will not contribute to or increase the risk of flooding elsewhere and were therefore recommending refusal. MFA on the other hand advise that the current flood risk, according to up to date modelling, place the risk in the 1:50 and 1:100 year, plus climate change, category. As the design standard will be a minimum of 1:100 years MFA has intimated that as an adjacent development, which has recently been completed, has a similar risk it would be unreasonable to object to this application on flood risk grounds. Councillor Paul also reminded Members that the MFA team has been involved in flood alleviation in Rothes for the past six years and the Rothes Flood Alleviation Scheme, prepared by MFA and approved by the Council and the Scottish Government, is based on a 1:100 years, plus climate change, category.

P Haslam, Senior Engineer (Flooding and Coastal Protection) advised the meeting that the Rothes Flood Alleviation Scheme, which has been accepted by Scottish Ministers, is based on 1:100 years plus climate change, which equates to 1:200 years at the time of construction. He also advised that the flood risk maps tabled at the meeting were based on information required for the Flood Alleviation Scheme and not an individual house development. In his opinion were there to be flooding in the area it would, in all probability, flow down the streets and that it was unlikely that the proposed site would flood.

In response to a question in regard to the differing advice from SEPA and MFA team the meeting noted that, whilst guidance indicates that planning authorities should take a precautionary view in such cases, it was a matter of judgement for individual Members. It was also noted that the flood risk maps produced by SEPA were not as good as those produced by MFA team given that SEPA do not take into account any flood alleviation works, however SEPA remain the statutory consultee.

Thereafter Councillor Wright expressed the view that in this instance, in his opinion, the advice of MFA team outweighs that of SEPA and for that reason moved approval of the application, as complying with policy, subject to standard conditions and



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. No water shall be permitted to drain or loose material carried onto the public footpath/carriageway.
4. Drop kerbs shall be provided across the widened access to The Moray Council Roads Service specification. A road-opening permit must be obtained from The Moray Council Direct Services before carrying out this work.
5. Three private parking spaces shall be provided.
6. That the development hereby approved will be for alterations and extension to the property and not for granny accommodation.

**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 the interests of road safety.
4. In the interests of road safety.
5. In the interests of road safety.
6. For clarification and the avoidance of doubt.

On the determination of this application Councillor A McDonald rejoined the meeting.

**HELDON & LAICH : WARD 5**

**(d) 07/02173/FUL CONSTRUCT A NEW RESIDENTIAL DWELLINGHOUSE ON LAND TO REAR OF SEAVIEW ROAD CUMMINGSTON FOR MR DUNCAN FRASER**

There was submitted a report by the Director of Environmental Services recommending that, for reasons detailed in the report, planning consent be refused in respect of an application to construct a new residential dwellinghouse on land to the rear of Seaview Road, Cummington for Mr Duncan Fraser.

The meeting noted that the application had been referred to Committee in terms of the Scheme of Delegation given that the application had attracted competent written objections from more than 5 separate households or other premises. The meeting also noted that the application had been advertised as a departure from policy to which objections had been received and therefore were the Committee minded to approve the application a Hearing was recommended. Members of the Committee visited the site of the application Friday 30 May 2008.

Following consideration the Committee agreed that the application be refused for the following reasons:-

1. The proposal is contrary to policies 2(a) and 2(b) of the Moray Structure Plan 2007, to policies L/ENV7, L/ENV9 and L/IMP2 of the Moray Local Plan 2000 and policies E7 and E8 of the Emerging Local Plan for the following reasons: -
  - i) Reflecting the attractive foreland setting the area provides for panoramic views across the Moray Firth, the site is subject to both Coastal Protection Zone and Area of Great Landscape Value designations. The proposed residential development would be a significant breach of these special designations which have a particular significance to the established setting and public outlook of Cummington.
  - ii) Ancillary development (such as dwellings, surfacing and garden structures) together with the impact of lighting during darkness hours would further increase the significant impact of the development proposed.
  - iii) Further such intrusive development would be encouraged.
  
2. The proposal is contrary to policy 1(e) in the Moray Structure Plan 2007 and to policies L/ENV10, L/HC3 and L/IMP2 in the Moray Local Plan 2000 for the following reasons: -
  - i) The proposed development would be visually intrusive in a prominent location.
  - ii) It would not be positioned sensitively along with existing buildings and would represent unplanned sprawl beyond an established compact settlement boundary.
  - iii) It would not integrate sensitively with the landform, or blend unobtrusively in its surroundings.
  - iv) The development would represent a breach in the established settlement pattern.
  - v) Further such development would be encouraged.

3. The proposal would be contrary to policy 1(e) in the Moray Structure plan 2007 and to policies L/HC5 and L/IMP2 in the Moray Local Plan 2000 for the following reason: -
  - i) The horizontal scale and shallow pitched modern roof form would result in a design unsympathetic to the traditional design in the nearby settlement.
4. The proposal is contrary to policy L/T4 in the Moray Local Plan 2000 and policy T2 in the Emerging Local Plan for the following reason: -
  - i) Visibility from the track onto the public highway is inadequate and this would result in hazards to road users.
5. At the time of considering the application there was insufficient detailed information confirming that potential hazards to future occupants would not occur from methane and carbon dioxide migration.

#### **FORRES : WARD 8**

- (e) **07/01932/FUL          ERECT DWELLINGHOUSE ON SITE AT THE REAR OF THE CLOVER SHERIFFBRAE FORRES FOR JOHN ROBERTSON (NORTH) LIMITED**

There was submitted a report by the Director of Environmental Services recommending that, subject to conditions detailed in the report, planning consent be granted in respect of an application to erect a dwellinghouse on a site at the rear of The Clover, Sheriffbrae, Forres for John Robertson (North) Limited.

The meeting noted that the application had been referred to Committee in terms of the Scheme of Delegation given that the application had attracted competent written objections from more than 5 separate households or other premises and that members of the Committee visited the site of the application Friday 30 May 2008. The meeting also noted that outline planning consent for the sub-division of the garden to form a house plot had been granted, under delegation, in consultation with the Local Member, in April 2005.

There was also circulated to Members of the Committee and the Development Control Manager, prior to the meeting, in accordance with the policy decision of December 1991, two additional representations on the application, one of which was on behalf of the Sheriffbrae Residents Association, the other from an individual objector.

The Development Control Manager advised the meeting that given access was to be taken off a private road the reference in Condition 4, of the recommended consent, to the word 'public' be deleted. He also advised the meeting that having considered the additional representations he was of the view that these were adequately covered in the report. He was still of the view that, in terms of planning merit, the application complied with policy and was therefore recommending approval of the application, subject to the conditions detailed in the report.

During discussion reference was made to the potential impact, in terms of flood risk and ground stability, the proposed SUD's water system might have on the adjoining property 'Rannoch Lodge'. It was noted that Condition 7 required the submission and approval of details for the proposed surface water drainage involving a SUDs water system or equivalent, prior to the commencement of development. It was also noted that an additional 'Informative' could be added to the consent requesting that the submission of details of the SUDs water system or equivalent should demonstrate ground stability and that there will be no water run-off into adjoining properties.

The Principal Solicitor (Commercial & Conveyancing) advised the meeting that many of the issues raised by the objectors were genuine matters of concern between the parties but were not issues which could be properly be considered in determining a planning application. Members could only address the planning merits of the proposal.

Following consideration the Committee agreed to approve the application, subject to the inclusion of an appropriate additional 'Informative' to the effect that the submission details of the SUDs water system or equivalent should demonstrate ground stability and that there will be no water run-off into adjoining properties and the following conditions:-

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. No boundary fences, hedges, walls or any obstruction whatsoever over 1.0-m in height and fronting on to the adjacent road shall be within 2.4 m of the edge of the carriageway.
4. The width of the vehicular access shall be 2.4 - 3.0 m and have a maximum gradient of 1:20 measured for the first 5.0 m from the edge of the adjacent carriageway.
5. No water shall be permitted to drain or loose material be carried onto the adjacent footpath/carriageway.
6. New boundary walls/fences shall be set back from the edge of the adjacent carriageway at a distance of 2.5 m.
7. No development shall commence until details for surface water drainage involving a SUDs water system or equivalent is submitted to and approved by the Council as Planning Authority.

**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 the interests of road safety.
4. In the interests of road safety.
5. In the interests of road safety.
6. In the interests of road safety.
7. To ensure that the surface water from the development is dealt with in a sustainable manner that avoids flooding and pollution.

**7. APPOINTMENT OF PUBLIC ANALYST, AGRICULTURAL ANALYST AND DEPUTY AGRICULTURAL ANALYSTS**

There was submitted a report by the Director of Environmental Services advising the Committee that the Public Analysts in Aberdeen and Dundee have developed a system of joint working to provide a better service to local authorities they serve and invited the Committee to formally appoint Stephen Appleton to act as Public Analyst and Official Agricultural Analyst for The Moray Council.

Following consideration the Committee agreed to appoint Stephen Appleton MSc, MChem A, CChem, MRSC to act as a Public Analyst and Official Agricultural Analyst for The Moray Council.

**8. CHANGES TO DEVELOPMENT SERVICES PERFORMANCE INDICATORS FOR 2008/09**

There was submitted a report by the Director of Environmental Services inviting the Committee to consider proposed amendments to the reporting of Development Services performance information for 2008/09, details of which were set out in the Appendix to the report. The meeting noted that the list of performance indicators for Development Services has been reviewed to ensure that the indicators were both relevant to and reflective of service performance.

Following consideration the Committee agreed to approve the proposed changes to the Development Services performance indicators, as detailed in Appendix 1 to the report, with the exception of the proposed amendments to indicators ENVDV041, ENVDV043 & SPS1aii-Food Safety which are to remain in their current format.

**9. PERFORMANCE REVIEW FOR PERIOD JANUARY TO MARCH 2008**

There was submitted a report by the Director of Environmental Services providing the Committee with an update on performance against indicators relating to Development Services Section of the Environmental Services Department together with an overview of complaints for the Service overall, details of which were set out in Section 4.2 of the report (complaints) and Appendix 1 to the report (Performance Indicators).

The Director of Environmental Services also advised the meeting that the Food Standards Agency had recently carried out a review of the Action Plan stemming from the review of the Council's 2007 Food Enforcement Service Delivery and that all the items highlighted in that review had been carried out to their satisfaction. He also advised that given the difficulties in recruiting and retaining Building Standards staff consideration was being given to the establishment of an apprenticeship post.

During discussion the meeting noted Members concerns in regard to the increase in the number of amended plans submitted and the impact this has on service delivery. Clarification in regard to how long after the 20-day deadline complaints were responded to should be included in future reports.

Following consideration the Committee agreed:-

- (i) to note the current position in regard to performance against indicators relating to the Development Services department and complaints;
- (ii) that a Members' seminar be arranged to discuss concerns in regard to the increase in the submission of amended plans and length of time taken to receive consultee responses and the impact these issues have on service delivery;
- (iii) that following the seminar, referred to in (ii) above, a report thereon be submitted to a future meeting of the Committee with a view to adopting a policy on these issues;
- (iv) that consideration be given to introducing indicators identifying the average time taken to determine Planning and Building Warrant applications; and
- (v) that a report on the Council's position relative to the national indicators for 2007/08 in respect of indicators SDS1aii DC & SDS1cii DC be submitted to the appropriate Committee(s) once they are known.

#### **10. FOOD ENFORCEMENT SERVICE DELIVERY PLAN 2008/09 AND REVIEW 2007/08**

There was submitted a report by the Director of Environmental Services seeking Committee approval of The Food Enforcement Service Delivery Plan 2008/09 and the Performance Review based on the Service Delivery Plan 2007/08, details of which were set out in Appendix 1 to the report. The meeting noted that approval is being sought so as to ensure compliance with the Food Standards Agency Framework Agreement on Local Authority Food Law Enforcement (Framework Agreement).

Following consideration the Committee agreed:-

- (i) to approve the Food Enforcement Service Delivery Plan 2008/09, and the Performance Review based on the Service Delivery Plan 2007/08, as detailed in Appendix 1 to the report, subject to Section 3.2 of the report on complaints being reworded; and
- (ii) that arrangements be made for an appropriate percentage of Category E businesses, contacted under the Food Hygiene Inspection alternative enforcement strategy, be visited in order to test the validity of the responses and that the outcome be included in the next quarterly performance report to Committee.

### **11. CONFERENCE: PLACES NEED VISION**

There was submitted a report by the Director of Environmental Services inviting the Committee to consider an invitation for the Council to be represented at a 'Planning for Councillors' conference 'Places need vision' to be held in Glasgow on 21 June 2008.

Following consideration the Committee agreed that the Council be represented at the conference by Councillors Cree and G McDonald.