

**THE MORAY COUNCIL****MINUTE OF MEETING OF THE PLANNING & REGULATORY SERVICES COMMITTEE****TUESDAY 24 NOVEMBER 2009****COUNCIL OFFICE, ELGIN****PRESENT**

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

**IN ATTENDANCE**

The Director of Environmental Services, Head of Development Services, the Planning & Development Manager, J Martin, Principal Planning Officer & B Smith Acting Principal Planning Officer (Development Control) in respect of item 4, R Gerring, Senior Engineer (Transport Development), A Scott, Principal Solicitor (Commercial and Conveyancing), D Westmacott, Apprentice Committee Services Officer and the Senior Committee Services Officer, Clerk to the Meeting.

**1. DECLARATION OF GROUP DECISIONS**

In terms of Standing Order 20 the meeting noted that there were no declarations from Members or group leaders or spokespersons in regard to any prior decisions taken on how members will vote on any item on the Agenda.

**2. EXEMPT INFORMATION**

The meeting resolved that in terms of Section 50A(4) and (5) of the Local Government (Scotland) Act 1973, as amended, the public and media representatives be excluded from the meeting during consideration of the Items of business appearing at the relevant paragraphs of this minute as specified below, so as to avoid disclosure of exempt information of the class described in the appropriate paragraphs of Part 1 of Schedule 7A of the Act.

**3. WRITTEN QUESTIONS**

A written question was submitted from Councillor Murdoch in the following terms:-

“Following recent changes, no houses in a new development can be occupied until the roads, pavements and street lighting are up to standard and functioning. However, there are some partially completed developments which were occupied before this rule came into place and where residents are struggling to live with incomplete roads, no pavements and no illumination. Is there any way of insisting that these facilities be brought up to standard for these residents, or a way that the new rules can be applied retrospectively, or any other way we can assist these people who may be forced to live on a building site for many years because of the economic downturn?”

The Council response was:-

“Section 17 of the Roads (Scotland) Act 1984 provides a financial mechanism to ensure that an adequate road system is constructed to service residential developments. The roads must be constructed to a standard satisfactory to the local road authority so that they can be added to the list of public roads. This is achieved by means of road bonds and the procedure is covered in the Security for Private Road Works (Scotland) (Amendment) Regulations 1998.

Section 21(4) of the Roads (Scotland) Act 1984 states that it shall be a condition of a construction consent that the works shall be completed within a period of not less than three years from the date on which the consent is given. The standard period used by Transportation for construction consent is three years.

The local roads authority may grant construction consent with conditions. Transportation applies a condition to new construction consents requiring street lighting and footways to be completed prior to the occupation of dwellings. It is not possible for this condition to be applied to construction consents that have already been issued.

The Security for Private Road Works (Scotland) (Amendment) Regulations 1998 identifies specified stages when it is possible for the local road authority to release the appropriate part of the security following an application submitted by the person who lodged the security.

On occasions where complaints are received by Transportation from residents in partially completed developments a letter confirming the responsibilities of the developer is issued to the residents and the person who lodged the road bond.

Section 21(5) of the Roads (Scotland) Act 1984 states that where a condition imposed by a construction consent has not been fulfilled, the local roads authority may serve a notice requiring the new road to be brought into conformity with the construction consent. In serving such a notice, the developer must be given reasonable time within which to comply with the notice.

If the local roads authority has to complete the road or rectify defects in it, it may for that purpose call up any road bond lodged in respect of the road. There is a risk, that the Council could incur costs above the value of the road bond, due to increased costs (materials, labour, etc).

The first option pursued by Transportation is for the developer to complete all of the works in accordance with the construction consent. This will enable the full bond to be released following the 12-month maintenance period, or addition of the relevant road to the list of public roads”.

In response to a supplementary question from Councillor Murdoch in regard the possibility of speeding up the process of getting developers to complete roads, pavements and illuminations at the earliest opportunity the meeting noted that, in terms of legislation, construction consent cannot be issued for less than three years and cannot be enforced until expiry of this period. It was also noted that during the construction period all roads infrastructure and winter maintenance is the responsibility of the developer until it has been

brought up to a standard acceptable to the Council and adopted by the local authority on to the List of Roads.

#### **4. PLANNING APPLICATIONS**

##### **SPEYSIDE GLENLIVET : WARD 1**

**(a) 09/01520/APP                      CHANGE OF USE OF COUNCIL AMENITY LAND TO  
PRIVATE GARDEN GROUND AT 8 CONGLASS LANE  
TOMINTOUL FOR MR A D THOMSON**

There was submitted a report by the Appointed Officer recommending that, subject to conditions detailed in the report, planning consent be granted in respect of an application for the change of use of Council amenity land to private garden ground at 8 Conglass lane, Tomintoul for Mr A D Thomson.

The meeting noted that the application had been referred to Committee in terms of the Scheme of Delegation as the Council has a financial interest in the land.

Following consideration the Committee agreed to approve the application, subject to the following conditions:-

1. 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.
2. The land shall only be used for domestic purposes incidental to and ancillary to the use of the dwellinghouse as such.

##### **Reasons:**

1. 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.
2. In order to ensure that the land is used for domestic purposes only.

On the determination of the application the Head of Development Services advised the meeting in regard to representations made by the Heads of Planning to the Scottish Government in respect of the legislation which requires the referral of minor applications, such as these, to Committee where a Council has a financial interest. The meeting, in noting that any change would require secondary legislation, also noted that the Development Management Section's views on this matter would be added to these representations and forwarded to Scottish Ministers.

**KEITH & CULLEN : WARD 2****(b) 09/01790/APP                      ERECTION OF TWO STOREY DWELLINGHOUSE ON PLOT 9  
FORMER FILLING STATION AND LAND, SEAFIELD ROAD,  
CULLEN, BUCKIE FOR MR CHARLIE MILNE**

There was submitted a report by the Appointed Officer recommending that, for reasons detailed in the report, planning consent be refused in respect of an application for the erection of a two storey dwelling house on Plot 9, Former Filling Station and Land, Seafield Road, Cullen for Mr Charlie Milne.

The meeting noted that the application had been referred to Committee in terms of the Scheme of Delegation given that the site lies within a development which was previously considered by the Committee and the Appointed Officer considers that significant amendments have been made to the proposal. The report also advised that whilst the application had been advertised as a departure from the Development Plan to which objections had been received there would be no requirement for a Hearing, were the Committee minded to approve the application, given that the departure was not considered significant. It was also noted that members of the Committee visited the site of the application on Friday 20 November 2009.

Following consideration the Committee agreed to refuse the application for the following reasons:-

1. The proposal is contrary to Moray Local Plan 2008 policies T2, T7, ED6, IMP1 & Cullen OPP2.
2. The proposal would increase the density of a residential development already at its limit in terms of allowing sufficient amenity space and layout. The proposed unit would be detrimental to the streetscape on Glebe Park Crescent as it would break the established building line by being close to the heel of the pavement where all other houses are set back. In addition it would result in a development of a density and character inappropriate to the surrounding area.
3. The position of the proposed unit would curtail pedestrian and vehicular visibility thus having an adverse impact on Judy's Lane footpath which is part of the Safer Routes to School network.

**BUCKIE : WARD 3****(c) 09/01707/APP                      CHANGE OF USE OF LAND FROM COUNCIL AMENITY TO  
GARDEN AT 32 ANTON STREET, BUCKIE FOR DONNA AND  
KEVIN McKAY**

There was submitted a report by the Appointed Officer recommending that, subject to conditions detailed in the report, planning consent be granted in respect of an application for the change of use from Council amenity to garden at 32 Anton Street, Buckie for Donna and Kevin McKay.

The meeting noted that the application had been referred to Committee in terms of the Scheme of Delegation as the Council has a financial interest in the land.

Following consideration the Committee agreed to approve the application, subject to the following conditions:-

1. The development to which this permission relates must be begun not later than the expiration of 3 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. Prior to work commencing on site the applicant shall complete the attached notification of initiation of development and submit it to the local planning authority.
4. Upon completion of the development or as soon as practicable after doing so the attached notification of completion of development shall be completed and submitted to the local planning authority.
5. No boundary fences, hedges, walls or any other obstruction whatsoever over 1.0m in height and fronting onto the public road shall be within 2.4m of the edge of the carriageway.
6. The width of the vehicular access shall be 2.4m - 3.0m and have a maximum gradient of 1:20 measured for the first 5.0m from the edge of the public carriageway. The part of the access over the public footway/verge shall be to The Moray Council specification and surfaced with bituminous macadam.
7. No water shall be permitted to drain or loose material be carried onto the public footway/carriageway.
8. Drop kerbs shall be provided across the access to The Moray Council specification. A road opening permit must be obtained from the Roads Authority before carrying out this work.
9. The existing pedestrian route to the south east of the site, linking Anton Street to Merson Park shall be retained.
10. 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.

#### **Reasons:**

1. The time limit condition is imposed in order to comply with the requirements of Section 58(i) of the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006.

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. To ensure that that the planning authority is aware that development is about to commence and any suspensive conditions can be followed up.
4. To ensure that that the planning authority is aware that the development is complete and is able to follow up any conditions.
5. In the interests of road safety.
6. In the interests of road safety.
7. In the interests of road safety.
8. In the interests of road safety.
9. In the interests of road safety.
10. In order to ensure that the development harmonises with the appearance and character of the surrounding properties and area.

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

**(h) 09/00120/OUT      OUTLINE TO ERECT NEW GOLF CLUBHOUSE TRAINING FACILITIES 5 HOLIDAY CHALETs GREEN KEEPERS SHED TENNIS COURTS AND 18 DWELLINGHOUSES AT KINLOSS COUNTRY GOLF CLUB, KINLOSS FOR TOMMY AND KAREN DINGWALL**

There was submitted a report by the Appointed Officer recommending that, for reasons detailed in the report, outline planning consent be refused in respect of an outline application to erect a new golf clubhouse, training facilities, 5 holiday chalets, green keepers shed, tennis courts and 18 dwelling houses at Kinloss Country Golf Club, Kinloss for Tommy and Karen Dingwall.

The meeting noted that the application had been referred to Committee in terms of the Scheme of Delegation as it is a major development in that the overall site area exceeds 2 hectares. The meeting also noted that the application had been advertised as a departure from the Development Plan to which objections had been received and, as it was considered to be a significant departure, were the Committee minded to approve the application a Hearing would be required and the application advertised as a departure from policy CF4 of the Development Plan. The meeting also noted that there were representations in support of the application from Highlands & Islands Enterprise (HIE) and the Moray Tourism Executive. Members of the Committee visited the site of the application on Friday 20 November 2009.

On the invitation of the Chairman, J Martin, Principal Planning Officer, spoke to the terms of the report and concluded that notwithstanding the benefits of the economic assessment, submitted with the application, the application should be refused on the grounds that it was contrary to policies H8 and CF4 of the Development Plan. He also advised the meeting that subsequent to the preparation of the report it had been ascertained that were the Committee 'minded to approve' the application there would be no requirement to refer the application to Scottish Ministers given an outstanding objection to the development from SEPA. It was also noted that were the Committee 'minded to approve' the application there would be no need for a further departure advert in respect of policy CF4, as this tied in with policy H8.

Councillor Hamilton expressed the view that, in his opinion, had the application been submitted purely in regard to the leisure part of the development, which would have brought substantial economic benefits to Kinloss and the whole of Moray, it would have, in all probability, been granted approval. There were no objections from statutory consultees and the comments from SEPA would be addressed at the detailed stage of the application. Whilst accepting that the inclusion of the housing element in the application was possibly a departure from policies H8 and CF4 of the Development Plan, Councillor Hamilton expressed the view that in the current economic climate he would not like to see the application being refused and was of the opinion that the potential economic benefits should be a material consideration in the consideration of the application. For these reasons Councillor Hamilton moved that the Committee be 'minded to approve' the application as an acceptable departure, subject to referral to a pre-determination Hearing. The motion was seconded by Councillor Russell.

As an amendment Councillor Wright, seconded by Councillor Cree, moved refusal of the application, as recommended, for the reasons detailed in the Appointed Officer's report on the application.

On a division there voted:-

|                       |                                                                                        |
|-----------------------|----------------------------------------------------------------------------------------|
| For the Motion (5)    | Councillors Bell, Divers, Hamilton, McConachie & Russell,                              |
| For the Amendment (8) | Councillors Coull, Cree, A McDonald, G McDonald, A McKay, Murdoch, Stewart and Wright. |

Abstentions (0)

Accordingly the amendment became the finding of the meeting and it was agreed that the application be refused for the following reasons:-

1. The proposed development is contrary to policy H8 of the Moray Local Plan in that it includes proposals for a development of multiple houses more appropriately directed to Rural Communities and the Re-use and Replacement of Existing Buildings.
2. The proposed development is contrary to policy CF4 of the Moray Local Plan in that it includes an element of housing development which is not in accordance with other development plan policies.
3. The proposed housing would establish an undesirable precedent for further development of this nature in rural locations.

## **5. MORAY LOCAL PLAN 2008 : DEVELOPMENT BRIEFS**

There was submitted a report by the Director of Environmental Services inviting the Committee to consider the terms of three Development Briefs which have been prepared in regard to sites in Cullen, Portknockie and Findochty for the purposes of consultation with interested parties. Copies of the draft Development Briefs were appended to the report.

The meeting noted that Development Briefs are a means of expanding upon Local Plan site designations, and providing additional information and detail on technical and design matters, so that potential developers have a better understanding of what form their development proposals should take.

During discussion Councillor G McDonald expressed concerns in regard to the potential impact the development of the sites in Findochty and Portknockie may have on the respective commuting travel and roads infrastructure in these areas and requested that officers take these concerns into consideration in their further discussions with the Council's Transportation Section in regard to developer contributions and roads infrastructure. In agreeing to take these concerns into consideration in the further discussions with the Council's Transportation Section the Planning & Development Manager also advised the meeting that on receipt of responses to the consultations, and prior to the submission of a further report, Officers will liaise with the respective Ward Members for the three development sites so as to ensure that Members are fully aware of what is being fed back from the community and technical advisers.

Following consideration the Committee agreed:-

- (i) to approve the content of the Development Briefs, for the purposes of consultation, as set out in the appendix to the report, in regard to sites in Cullen, Portknockie & Findochty;
- (ii) to issue the Development Briefs for consultation with interested parties/stakeholders; and
- (iii) that a further report is submitted to Committee following consultation.

## **6. URBAN DESIGN GUIDE : SUPPLEMENTARY PLANNING GUIDANCE**

There was submitted a report by the Director of Environmental Services seeking approval, for the purpose of consultation, of a draft Urban Design Guide, a copy of which was appended to the report.

The meeting noted that the Scottish Government are encouraging local authorities to promote better urban design standards to produce sustainable places on the ground. The need for Urban Design Guidance in Moray to support the Moray Local Plan 2008 has been identified. The draft guide aims to create well designed and connected safe and pleasant places of character and identity and once approved will supplement Local Plan Policies, and become a material consideration.

During discussion reference was made to a number of other related policies/guidance which, although not considered directly relevant to the proposed design guide should, in the members' views, be referred to in the guidance. In noting that 'Urban' referred to all built up areas within Moray it was suggested that a clear definition of what is meant by 'Urban' should be included within the introduction to the design guide. Clarification was also sought as whether or not there was any proposal to hold a seminar/meeting with local developers/agents to discuss the guidance prior to the submission of a report on the outcome of the consultations on the draft guidance.

Following consideration the Committee agreed:-

- (i) to approve the draft Urban Design Guide Supplementary Planning Guidance, as set out in the appendix to the report, for consultation, subject to insertion of a definition of 'Urban' insofar as it relates to the draft guidance and cross references to other appropriate guidance/policies in regard to trees, carbon footprints, energy efficiency and play areas;
- (ii) that a report on the consultation exercise, summarising representations received, is presented to a future meeting of the Committee; and
- (iii) to note that the draft Guide would be placed on the agenda for the meeting between Officers of the Council and Developers/Agents to be held in January 2010 in regard to developer contributions.

## **7. WIND ENERGY POLICY ADVICE**

Under reference to Paragraph 2 of the Minute of this Committee dated 29 September 2009 there was submitted a report by the Director of Environmental Services inviting the Committee to consider the terms of a 'Policy Interpretation Note' for Local Plan Policy ER1 on renewable Energy Proposals, a copy of which was appended to the report.

During discussion concerns were expressed in regard to the potential impact the proposed percentage of surplus energy to be allowed before being classed as 'commercial' and the onus being placed on officials in regard to cases which involve perceived visual impact. It was also noted that a map plotting all approved, refused and currently pending applications for wind turbines was currently being prepared in order to give an indication of the distribution/concentration of turbines across Moray. Once completed, this will allow for better consideration of the cumulative impact.

Following consideration the Committee agreed:-

- (i) to defer consideration of the policy advice note for further research into issues raised by Members in regard to electricity capacity and clearer guidance on perception relating to applications for turbines, particularly in built up areas; and
- (ii) that an updated map plotting all approved, refused and currently pending applications for wind turbines in Moray accompanies all future applications.

On the conclusion of this item Councillor Hamilton left the meeting.

## **8. PROGRESS REVIEW AGAINST PERFORMANCE INDICATORS AND REVENUE BUDGETS FOR PERIOD APRIL TO SEPTEMBER 2009**

There was submitted a report by the Director of Environmental Services advising the Committee with an update of service performance against performance indicators relating to the Development Services Section of the Environmental Services Department and progress against annual revenue budgets, details of which were set out in appendices 1 & 2 respectively. The report also provided the Committee with an overview of development services complaints, as detailed in Section 4.4 of the report, and seeking Committee approval of a revised reporting format.

Following consideration the committee agreed to:-

- (i) note the update of Service Performance regarding the Performance Indicators relating to Development Services, subject to the deletion of the reference to 'slight' in second sentence of report conclusions.;
- (ii) note progress against departmental budgets; and
- (iii) approve the revised reporting format.

## **9. QUESTION TIME**

Councillor G McDonald expressed his concerns in regard to an application for 64 houses in Buckie, which would have come to Committee as a major application. However the application was subsequently amended to 49 houses and will now be determined by the Appointed Officer in terms of the Scheme of Delegation. He sought clarification in regard to the possible submission of a subsequent application for the other 15 houses, which would also be dealt with under delegated powers, and thus circumventing the need for referral to Committee and Member input. The meeting noted that had the application for 49 houses been for one of the smaller communities in Moray it may, in terms of the Scheme of Delegation, have been referred to Committee as it would, in all probability, have raised matters of wider community interest.

In response the meeting noted that each application required to be considered on individual merit in terms of the Scheme of Delegation and that the option was always open, given the prior history of an application/development site, for any application to be referred to Committee should it considered to raise matters of wider community interest and/or planning significance