

PLANNING APPLICATION: 07/02695/FUL

In the event that a recommendation on this planning application is overturned the Committee is reminded of the advice contained on the front page of the agenda for Reports on Applications

The Proposal

- Erect new house with proposed external finishes of grey concrete tiles (Marley Modern, mock bond), buff drydash with fyfestone quoin details.
- On front elevation dormers serve first floor bedroom accommodation within roof space. On rear elevation, ground floor windows serve dressing and en-suite rooms (to bedroom), bathroom, toilet, kitchen and sunroom and velux in roof space for first floor landing and undeveloped attic area.
- 1.8 metre high timber fencing, to side (north) and rear (east) boundary and 1 metre high roughcast wall along Land Street and to side (south) boundary, separating Plot 2 from Plot 1.
- Excluding projecting bay window, front elevation set back approx. 1.86 metres behind existing footway along Land Street and 1.3 metres (min) from rear boundary.
- New access off Land Street and 1.8 metre footway required along Land Street frontage of Plots 1 and 2 (existing breaks in footway to be made good).
- Public mains water and sewer connections with surface water to soakaway within plot.

NOTE: the north point orientation on the agent's site plan is incorrect. References in this report are based on the correct orientation.

The Site

- 496m² plot located on eastern side of Land Street.
- Northern part of an existing area of open ground, currently used for waste recycling and parking, including six lock-up garages (to be demolished) with proposed Plot 1 (application 07/02707/FUL refers) located to south.
- To north is existing electricity sub-station and an amenity area (Rothes ENV9).
- To south, beyond Plot 1, are single-storey properties including 2 Land Street and to west, on opposite side of Land Street are one-and-a-half storey (accommodation in roof space served by dormers) and two-storey property.
- To east, is former railway line, now a footpath (Rothes ENV1) and with detached single-storey property with concrete tiles on Spey Drive.

Policy / Objections-Representations / Consultations - See Appendix

History

07/02707/FUL - Erect new house on Plot 1, Land Street - currently under consideration - see separate report.

07/02001/GPA - Without prejudice, proposal for housing (two plots) to be determined in accordance with planning policy unless material considerations indicate otherwise. The site is included the Rothes ENV9 designation, which presumes against development and adjoins the ENV1 designation. The proposal should not prejudice the designation and is likely to be subject to a flood risk assessment. Further advice provided regarding contaminated land and need to protect any protected species on site. (NOTE: this advice was based on a different (larger) site area. Plots 1 and 2 as proposed are located outwith the Rothes ENV9 and ENV1 designations, and the 1 in 200 year flood event area, based on SEPA's indicative flood maps).

October/November 2007 - Without prejudice, applicant (for plot 2) advised that proposals to sub-divide site for two houses departs from policy L/H5. Concern expressed about the applicant's proposed designs and materials rather than the principle of development on this prominent site. These were not considered to comply with policy nor respect the existing character of the Land Street area where slate/stone property of more 'traditional' design predominate, with single-, one-and-a-half, and two-storey houses abutting the pavement or set back from it and main roof/ridgelines trend parallel to Land Street. Sketch designs were prepared to illustrate a one-and-a-half storey design considered to comply with policy and more in keeping with the existing character than designs advanced by the applicant which, being standardised designs, were not appropriate for the chosen location. In addition, advice given on issues regarding the use of slates, contaminated land, on-site parking and re-instatement of footpath.

19th September 2007 - The Moray Council agree to offer the site to the two house owners, whose houses will be demolished as a consequence of the Rothes Flood Alleviation Scheme (Rothes FAS), and for officers to negotiate the acquisition of a privately owned garage on the site.

Advertisement

Advertised as a departure from the development plan.

Observations

Amended details were received (February 2008) including details of the boundary fence and wall, the area of the plot and the house footprint, the repositioning of the house closer to Land Street and amended elevation details with a roof velux on the side roof slope instead of a window in the gable end wall of the first floor attic. These details do not warrant re-notification.

Departure from the Development Plan (L/H5)

Plot 2 (and Plot 1) is derived from the sub-division of an existing area of ground. The proposal departs from policy L/H5 because this plot exceeds 50% of the total area of ground being sub-divided and the built-up area is in excess of one-third of the total plot area.

In both cases a departure can be supported. The plot is 50.8% of the total area, or 8m² over the requirement. The built-up area exceeds the one-third of the plot by approx 11.6m² (an area almost equivalent to the proposed sun room attached to the property). Given the extent of these excesses, the proposal does not result in a significant over-development of the site and in other respects, including amenity considerations, the proposal is acceptable in policy terms (see below). Whilst a hardstanding area is provided for parking, any subsequent provision of a garage, for example as 'permitted development' (both post-consent and after use of the dwelling), would increase the built-up area of the plot and result in a more substantive over-development of the site. To safeguard the potential impact of future building, it is recommended that 'permitted development' rights be removed.

The proposal satisfies other aspects of policy L/H5 where at 496m², the minimum required site area of 400m² is achieved. Although 'main' windows on the front and rear elevations are within 4 metres of the boundary, they face public routes onto Land Street and the footpath along the former railway. For those on the rear elevation, all at ground floor level, the 1.8 metre high boundary fence will mitigate any adverse overlooking and privacy impacts to the proposed and existing properties, as will the replacement of the gable window by a roof velux for the upper floor attic. The family and sunroom windows on the southern elevation of the house are 6 metres and 4 metres off the 1 metre high boundary wall between Plot 2 and 1 respectively. Other aspects of policy L/H5 may not be relevant in particular the regard to the scale and architecture of the parent property where no parent property exists.

In character terms, the 8.8 metre distance to property on the opposite side of Land Street (the nearest building) is considered satisfactory. Along Land Street some properties abut each other and others are separated by gaps of varying distance. Generally speaking, the proposal follows a similar alignment as other property along the eastern side of Land Street and therefore, maintains a similar distance relationship to property on the opposite side of Land Street or to Spey Drive to the east. The overall style and scale of property is considered to complement and be in keeping with the character of Land Street (see below).

Impact on the Locality (L/H4, L/IMP1, L/IMP3)

The proposed residential use of the site is in keeping with the character of the area. Architectural styles and scales vary on Land Street. In this case, the proposed design is considered satisfactory, notwithstanding actual differences in size and design details from the illustrative sketch details prepared at the pre-application stage.

The proposal is not considered to have a significant adverse amenity impact on neighbouring property including lighting and privacy considerations having regard to the intervening distance between property, the orientation/location and type of accommodation served by each window, and the existing and proposed boundary treatments for the plot and neighbouring property, etc.

The proposal is considered to provide a satisfactory living environment, subject to conditions as recommended. As acknowledged by the agent, slates are the predominant roof material found in this area and have been used on more recent developments in the locality. The proposed choice of concrete tile is considered unsuitable and likely to appear 'flat' and/or 'heavy' as a result of the smooth surface, size of the tile (despite a 'groove' in the tile suggesting otherwise) and 'thick' leading edge. Rather than introduce an additional roof material it would be more appropriate to use slates (or a slate 'equivalent') or the concrete roof tile used on 2 Land Street (Marley, Ludlow Major, grey) to reflect actual roof materials used on Land Street.

Access, Parking, Drainage and Contaminated Land Issues (L/ENV22, L/IMP6, L/IMP7, L/T4, L/T7)

Following consultation and subject to conditions as recommended there are no objections in terms of contaminated land, transportation and drainage issues. The provision of a continuous footway of increased width along the Land Street frontage of both plots reduces the plot area available for development (see Objections/Representations).

Material considerations

Emerging Moray Local Plan 2008

All proposals determined after 3rd March 2008 require to take account of the emerging plan which is a material consideration. In this case, the proposal does not encroach onto the Rothes ENV6 and ENV1 designations. In addition and subject to conditions as recommended, the proposal is considered to accord with policy H3, T2, T5, EP5, EP10 and IMP1 for reasons set out in this report. Although policy EP9 (regarding contaminated land) is not used, this issue has been addressed under the provisions of the current (statutory) development plan, PAN 33 and the associated assessment regime. Although described as sub-division for house plots, policy H4 refers to sub-division of housing plots and on that basis, this policy does not apply.

Rothes Flood Alleviation Scheme

Whilst the applicant's identity (for Plots 1 and 2) is not a determining factor, their existing properties will be demolished as part of the Rothes FAS. As a material consideration the Rothes FAS does not include, nor establish the principle for any replacement property, let alone the applicants' chosen sites and in any event, loss of property will be addressed separately through compensation. On this basis the Rothes FAS, as a material consideration, is not of sufficient weight to over-ride the provisions of the development plan. In this case, the proposal can be supported as a departure from the plan for reasons other than the Rothes FAS. The Council's offer of the sites to the applicants was subject to planning issues being resolved.

Recommendation

Approval.

Procedure

In addition to a hearing, and if minded to approve this proposal, the Council must notify this application to Scottish Ministers as a development in which the authority has an interest i.e. ownership interest identified at the time of making the application and as a departure from the development plan. This notification should occur after the Planning Authority has resolved to grant planning permission and before Scottish Ministers are notified. Objectors are afforded an opportunity to provide comments on the statement of reasons for the Council decision and also to make representations to the Planning Authority and to Scottish Ministers if they consider their earlier representations have not been properly dealt with by the Authority. (Circular 5/2007 and PAN 82 refers).

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Signature (*Alan Short, Development Control Manager*)

R A STEWART
DIRECTOR OF ENVIRONMENTAL SERVICES

APPENDIX

POLICY

Moray Structure Plan 2007 and/or Moray Local Plan 2000

Policy 1: Development and Community

The policy set out below identifies the strategic community development requirements for the delivery of the structure plan strategy-

The Moray Structure Plan Strategy will be supported by:

- a) the identification within the local plan of the business and industrial land allowances set out in Schedule 1 and the provision of strategic business locations at Elgin and Forres Enterprise Park and business park opportunities at Buckie, Keith and Lossiemouth;
- b) the encouragement of tourism development opportunities;
- c) the identification within the Local Plan of the housing allowances set out within Schedule 2;
- d) the provision of affordable housing in association with new housing development where a demand is identified in the Local Housing Strategy;
- e) the encouragement of low impact, well-designed development in the countryside to support local communities and rural businesses;
- f) sustaining the vitality and viability of town centres through the support of opportunities and proposals for retail and commercial development in accordance with the sequential approach;
- g) promotion of the strategic transport links as set out in Proposal 2;
- h) the protection and enhancement and new provision of facilities for community use, healthcare, sport and recreation;
- i) the inclusion within Local Plans of a policy requiring appropriate developer contributions towards healthcare and other community facilities.

Policy 2: Environment and Resources

The Moray Structure Plan Strategy will be supported by: -

- a) protecting international, national and local nature conservation and scenic designations from inappropriate development;
- b) protecting the wider natural environment and local biodiversity from inappropriate development and promote opportunities for environmental enhancement and restoration where possible;

- c) working in partnership with the Cairngorms National Park Authority and other interested parties to implement the objectives of the National Park;
- d) restricting development within coastal areas outwith settlements to only that in which social and economic benefits outweigh environmental impact;
- e) providing protection from development to the countryside around the towns of Elgin, Buckie, Keith, Forres and Lossiemouth;
- f) conserving and enhancing the areas built heritage resources and their settings;
- g) supporting proposals aimed at regenerating the area's natural and built environment including good design;
- h) providing waste management facilities to deliver Area Waste Plan and National Waste Plan objectives and ensuring that new development is designed to facilitate waste management practices and promotes the minimisation of waste;
- i) promoting sustainable urban drainage systems (SUDS) in all new developments;
- j) promoting schemes to alleviate flooding in a sustainable and sensitive way using natural cosystems and features where possible and also restricting development within flood risk areas following the guidance set out in the Risk Framework in SPP7: 'Planning and Flooding' and promoting flood risk management schemes to tackle flooding that threatens existing development and considering development proposals against the Flood Risk Framework set out in Table 5;
- k) safeguarding the area from pollution and contamination;
- l) promoting opportunities for the sensitive development of renewable energy and promoting renewable energy in new development;
- m) safeguarding resources for the production of minerals, preferred forestry areas, and prime agricultural land.

Policy L/ENV18: Public Amenity and Open Spaces

The Council will protect existing 'green' space within its towns and villages which are deemed to contribute to the amenity and environment of built up areas. Within these areas there will be a general presumption against development which threatens to diminish the amenity value of individual locations.

This policy should be read in conjunction with S/ENV6 and L/IMP4.

Policy L/ENV4: Tree Preservation Orders and Controls on Trees

The Council will serve Tree Preservation Orders (TPO) on potentially vulnerable trees which are of significant amenity value to the community as a whole.

Within Conservation Areas the Council will not normally agree to the felling or removal of trees and advice will be sought to determine when there is a need to serve a TPO.

The Council may attach conditions on planning consents ensuring that existing trees and hedges are retained or replaced. An applicant may be required to survey and identify those trees to be protected within the development site.

When imposing planting or landscaping conditions on certain developments especially in rural areas, the Council will specify the use of native species of trees and will prioritise the re-establishment and extension of hedgerows and/or shelter belts.

Policy L/ENV22: Pollution Conditions

Where there is a risk of pollution from a proposed development, which is the subject of a planning application, the council will apply conditions to a consent, or enter into an agreement with a developer, to ensure a specified reduction or removal of the pollution element and will require subsequent independent monitoring of pollution levels.

Policy L/H4: Infill and Brownfield Housing

Approval will normally be granted (subject to policies L/ED5 in mixed-use areas and L/ED6 on opportunity sites) for the change of use or redevelopment of vacant property for residential use provided that the location can provide a satisfactory living environment.

Policy L/H5: Sub-Division for House Plots

A new house should be a suitable distance away from the nearest building, to allow it to fit comfortably with the character of the area. Plots must not be subdivided by more than 50% and must provide for a site of, at minimum, 400 sq. m, excluding access. (In certain circumstances such as for example, a proposal to extend a terrace or where an existing house is to be subdivided internally, this may be relaxed). The built-up area of the application site should not exceed one third of the total area of the plot and, to avoid overlooking and to maintain privacy, main windows (i.e. kitchen, living room, bedroom) must be at least 4m from the boundary they face, unless that boundary fronts onto a road or public pavement or follows an established building line. The house style must complement both the character of the area, and the scale and architecture of the parent property.

The Council will not normally approve applications for backland sites (e.g. those in back gardens which do not have a road frontage) on the grounds of character and amenity.

This policy is subservient to a number of settlement specific policies dealing with localised subdivision and backland development issues, contained in the village statements for Craigellachie, Dallas, Kingston, Newmill, Tomintoul and Urquhart.

Policy L/T4: Provision of Road Access

The Council will require that a suitable and safe access from the public highway is provided.

Policy L/T7: Parking Standards

Proposals for different forms of development must comply with the Council's 'Car Parking Standards' (available from the Council's Roads Service).

Where development (including housing) within the defined town centre cannot reasonably supply parking on site, (or where it is appropriate not to include parking), the developer will require to comply with the Council's system for 'commuted payments' for parking. Housing development in town centres which need not provide residential parking on site, must make provision for vehicular access for deliveries and emergencies.

In housing developments of over 30 houses, provision must be made for communal off-street parking, in addition to in-curtilage in order to permit the parking of large commercial vehicles away from road frontages.

Policy L/IMP1: Development in Built-up Areas

In areas covered by this policy, (i.e. all land within settlement boundaries and rural communities), the Council will, in considering applications for planning permission, try to ensure that proposals for development do not harm the general character of the surrounding area. Applications will therefore take account of the main uses of land and buildings in the vicinity, the mix of such uses and the architectural quality of the area. The main concern of the Council is to ensure that development proposals should neither conflict with nor detract from the character, amenity and design of an area. This policy will not preclude appropriate new development and is not intended solely to maintain the status quo.

In interpreting and clarifying this policy, the Council will take into account the guidelines on Character, Amenity and Design.

Guidelines on Character, Amenity and Design (L/IMP1)

a. Character

The character of an area is assessed by the;

- (i) main uses;
- (ii) appropriateness of a diversity of uses; and
- (iii) desirability of introducing a development which may detrimentally alter the existing balance of usage
- (iv) architectural style of the area.

b. Amenity

The amenity of an area is assessed in terms of both the people who will occupy the development site, and the adjoining occupiers. In short, new developments should be "good neighbours". Where there is an inherent incompatibility of neighbouring developments, or where remedial action cannot be made effective, applications are likely to be refused.

The important aspects of amenity which the Council considers are worth protecting are:-

- (i) **Privacy** - for both the occupants of a proposed development and surrounding neighbours. Loss of privacy can be minimised by re-orientation, reducing the densities of development reducing the size of buildings, and attention to building levels or by design modifications, for example, window proportion and size.
- (ii) **Traffic** - the introduction of increased traffic movement and resulting noise, can significantly detract from the amenities of an area.
- (iii) **General Disturbance** - protection from activities which create unreasonable levels of noise, smells and other discomforts including wheeled bin locations.
- (iv) **Sunlight/Daylight** - adequate levels of sunlight and daylight, and to a lesser extent, outlook, should be safeguarded for surrounding properties and afforded to new developments.

c. Design

Design of new development should not only relate to the type of development in the immediate vicinity but also to the wider issues of context and setting. This need not be restrictive to new or innovative architectural expression.

Applicants should, therefore, avoid design proposals which compromise the appearance of design characteristics of the surrounding area.

In considering the appropriateness of a design the Council will have regard to:

- (i) The scale of adjoining development.
- (ii) The materials, finishes and colours used in nearby development.
- (iii) Any features on or near the site worthy of reproduction, protection or enhancement, e.g. trees, hedges, views and other features of public importance.
- (iv) Principles of site sensitive design e.g. that pitched roofs are preferred to flat roofs, piended dormers to box dormers, vertical windows to horizontal picture windows etc., where these features predominate in an area.

(i) Design Principles

All building development must be designed to respond adequately to the locality. Applications must meet the following requirements:-

- a) appropriate location in landscape or townscape
- b) careful placement on a site, particularly in relation to character, amenity and energy conservation
- c) appropriate size and form in relation to existing buildings, sky line and landform

- d) appropriate density, layout and orientation in relation to character, amenity, privacy of neighbouring properties and energy conservation
- e) sensitive use of materials and colours in relation to existing setting and environmental impact

Standardised solutions to building design are not encouraged and will not be acceptable unless existing context (the design and character of the existing surroundings) suggests otherwise. Design solutions which seriously compromise the amenity and character of the area will not be permitted.

Highly innovative, experimental solutions will be encouraged but may not be suitable in every situation. In certain circumstances, the Council may request written design statements explaining various aspects of design solution e.g. explaining why a particular approach has been taken, and expect applications to show new buildings in their wider relationship with surrounding properties and the site (plans and elevations/perspective/ photomontages showing adjacent buildings, trees, landform etc)

(ii) Design Briefs

For sites where development may have significant local impact; the Council will produce detailed Design Briefs which will provide an analysis of context and existing character and state important design principles, major factors affecting the Development and other material considerations.

(iii) High Profile/Landmark Sites

Where a building is either high profile or will have high impact within the townscape or open countryside, i.e. along the A class road network and high street frontages, within defined town centres, and at major visitor attractions and prominent rural locations, The Council will expect high quality solutions and may consult with bodies such as The Royal Fine Arts Commission, the Royal Institute of Architects in Scotland, the Scottish Civic Trust, Historic Scotland and the Association for the Protection of Rural Scotland, to assist with the assessment of the design impact.

On sites considered to be high profile, the Council will encourage applicants and landowners to sponsor design competitions prior to the submission of a planning application under the rules and procedures as advised by the RIAS Competitions Unit.

(iv) Materials

The Council will particularly encourage the use of materials which are sustainable. The use of salvaged or recycled material is encouraged in most circumstances subject to local situation and there is a strong expectation that traditional materials will be used on heritage structures. The Council will discourage the over use of high energy materials (i.e. those which require high energy levels to make and dispose) where alternatives can be used and is also concerned about the potential long term affects of using Tropical Hardwoods, from non-managed sources.

Policy L/IMP7: Drainage Impact

New development must connect to a public sewer for the disposal of foul drainage if one is available within a Town, Village or Rural Community. If it is not available alternative forms of treatment may be considered and must meet with the approval of NOSWA and SEPA. The Council will promote the employment of Sustainable Urban Drainage Systems (Sustainable

Urban Drainage Systems) in the disposal of surface water run-off, and unless otherwise advised by SEPA, will operate a presumption against the disposal of surface water directly to a watercourse. Proposals must meet the requirements of policies L/ENV21 (Private Waste Water Treatment and Drainage), L/ENV22 (Pollution Conditions), L/ENV23 (Private Water Supplies), L/ENV24 (Surface Water Drainage) and L/ENV26 (Control of Development in Flood Risk Areas) in Chapter 2, if relevant.

Policy L/IMP8: Departures From The Local Plan

Departures from the local plan will be managed in accordance with advice as laid down in Planning Advice Note 41: Development Plan Departures (The Scottish Executive). Proposals which involve substantive or significant policy changes or which are judged to involve major social, environmental or economic impacts, will be the subject of formal alteration procedures to amend the local plan. Such procedures will allow for a structural community participation input and may include a Public Local Enquiry.

MATERIAL CONSIDERATION: EMERGING MORAY LOCAL PLAN 2008

ENV1 Former Railway Line

The route of the former railway line running south between Spey Drive and Land Street. Previous suggestions that this be considered as a spur route to the Speyside Way have not been supported by Scottish Natural Heritage. The site does however serve as a useful amenity as a walking route, and the Council will ensure that it remains as such, and where possible carry out repairs and maintenance. It may however be difficult to control the historical use of the line by vehicles for providing access to the rear of Land Street properties.

ENV9 High Street/Seafield Square

Although only a small area of grass, this site provides a valuable open space at an important location in the townscape. Development on this site (including any proposals to site telephone kiosks; post boxes; or any other public utility) will be strongly resisted.

ENV6 Green Corridors/Natural/Semi Natural Greenspaces

North Street; Elgin Road; The Back Burn; Glen Grant; Rothes Burn; Glen Rothes; North Street; Adjacent to Football Ground.

ENV7 Civic Space

High Street/Seafield Square

E4: Green Spaces

Development which would cause the loss of, or impact on, areas identified in the settlement statements under the ENV designation as green spaces will be refused unless:

- a. the proposal is for a public use that clearly outweighs the value of the green space, and
- b. the development is sited and designed to minimise adverse impacts on the recreational, amenity and biodiversity value of the site.

Development proposals on ENV5 sports areas will also be considered against policy CF2: Providing recreational land and open space.

E3: Tree Preservation Orders and Controls on Trees

The Council will serve Tree Preservation Orders (TPOs) on potentially vulnerable trees which are of significant amenity value to the community as a whole, or trees of significant biodiversity value.

Within Conservation Areas the Council will only agree to the felling of dead, dying, or dangerous trees. Trees felled within Conservation areas or subject to TPO protection should be replaced, unless otherwise agreed with the Council.

The Council may attach conditions on planning consents ensuring that existing trees and hedges are retained or replaced. An applicant will be required to survey and identify those trees to be protected within the development site. A safeguarding distance should be retained between mature trees and proposed developments.

When imposing planting or landscaping conditions on certain developments especially in rural areas, the Council will specify the use of native species of trees and will prioritise the re-establishment and extension of hedgerows and/or shelterbelts.

EP5: Surface Water Drainage: Sustainable Urban Drainage Systems (SUDS)

Surface water from development should be dealt with in a sustainable manner that avoids flooding and pollution and promotes habitat enhancement and amenity. All sites should be drained by a SUDS system or equivalent. A Drainage Assessment will be required for developments of 10 houses, or greater than 100 sq metres for non residential proposals. Applicants must agree provisions for long term maintenance to the satisfaction of the Council, SEPA and Scottish Water.

EP8: Pollution

Planning applications that are subject to significant pollution including noise, air, water and light will only be approved where a detailed assessment report on the levels, character and transmission of the potential pollution is provided by the applicant to show how the pollution can be appropriately mitigated. Where the Council applies conditions to the consent to deal with pollution matters these may include subsequent independent monitoring of pollution levels.

EP9: Contaminated Land

Development proposals on potentially contaminated land will be approved if:

- a. site specific risk assessments are undertaken by the applicant to identify any actual or possible significant risk to human health or safety, or to the environment and that any previous historic uses are not continuing to cause significant pollution to the water environment, and
- b. effective remediation measures are agreed to ensure the site is made suitable for any new use granted consent, and
- c. appropriate measures for the disposal of any contaminated material is agreed with the Council.

The Council will consult SEPA in respect of pollution of controlled waters and licensing issues arising from remediation works.

H3: New Housing in Built-Up Areas

New housing within settlement boundaries will be acceptable if:

- a. it does not adversely impact on the surrounding environment, and
- b. adequate servicing and infrastructure is available, or can be made available.

H4: Sub Division for House Plots

Proposals for the subdivision of housing plots in those settlements where there is no specific embargo, will be acceptable if the plot subdivision is less than 50% of the original plot; if the plot is not a backland site; and, if the site provided is at least 400 square metres excluding access. The house style must complement the character of the area as well as the scale and architecture of the parent property.

T2: Provision of Road Access

The Council will require that a suitable and safe road access from the public highway is provided to serve new development and where appropriate any necessary modifications to the existing road network to mitigate the impact of development traffic, and the provision of appropriate facilities for public transport, cycling, and pedestrians. Access proposals that have a significant adverse impact on the surrounding landscape and environment that cannot be mitigated will be refused.

SPP17 details that there is a presumption against new accesses onto a trunk road and that the Scottish Executive will consider the case for such justifications, where nationally significant growth or regeneration benefits can be demonstrated.

T5: Parking Standards

Proposals for development must conform with the Council's policy on parking standards.

IMP1: Development Requirements

New development will require to be sensitively sited, designed and serviced appropriate to the amenity of the surrounding area. It must meet the following criteria:

- a. the scale, density and character must be appropriate to the surrounding area,
- b. the development must be integrated into the surrounding landscape,
- c. adequate roads, public transport, and cycling and footpath provision must be available, at a level appropriate to the development,
- d. adequate water, drainage and power provision must be made,

- e. sustainable urban drainage systems should be used where appropriate, in all new developments
- f. there must be adequate availability of social, educational, healthcare and community facilities,
- g. the development should, where appropriate, demonstrate how it will incorporate renewable energy systems and sustainable design and construction. Supplementary Guidance will be produced to expand upon some of these criteria,
- h. provision for the long term maintenance of public landscape and amenity areas must be made,
- i. conservation of natural and built environment resources must be demonstrated,
- j. appropriate provision to deal with flood related issues must be made, including the possibility of coastal flooding from rising sea levels and coastal erosion,
- k. pollution, including ground water must be avoided,
- l. appropriate provision to deal with contamination issues must be made, and
- m. the development must not sterilise significant workable reserves of minerals, prime quality agricultural land, or preferred areas for forestry planting.
- n. where appropriate, arrangements for waste management should be provided.

IMP2: Development Impact Assessments

The Council will require applicants to provide impact assessments in association with planning applications in the following circumstances:

- a. an Environmental Assessment (EA) will be required for all developments within or adjacent to international or national natural heritage designations, and for other major proposals that are likely to have significant environmental affects under the terms of the EA regulations.
- b. a Transport Assessment (TA) is required for developments that raise significant transport implications such as additional peak hour traffic, traffic late at night in a residential area or road safety concerns. The indicative thresholds contained in the related guidance to SPP17 will be used. However it should be noted that Transport Assessments could be required no matter the size of the site. Moray Council will develop its own thresholds and promote these through Supplementary Guidance. The Moray Council's Roads Service can assist in providing a screening option on whether a Transport Assessment will be sought.
- c. a full Retail Impact Assessment (RIA) will be required for all retail proposals of 1000 square metres gross or more. For smaller developments the Council may require a retail statement to be prepared by the applicant.

- d. where appropriate, applicants will be asked to carry out other assessments e.g. noise; air quality; flood risk; badger or bat surveys to confirm the compatibility of the development proposal.

OBJECTIONS-REPRESENTATIONS

a) *Letters received from:*

- A K Muir, 8 Spey Drive, Rothes AB38 7BY (2 letters)
- Miss L Bunker, 3 Land Street, Rothes AB38 7BY (letter objects to Plots 1 and 2)
- D Slessor, 1 Land Street, Rothes AB38 7BA

The main points are:

Impact on area

- Double-storey dwelling, on already elevated site, will overshadow property and severely restrict, if not completely block out, sunlight and daylight. (Muir)
- Proposal will overlook property and remove all privacy to rear of property including bedroom, kitchen, conservatory and rear garden. (Muir)
- Development will remove sunlight and daylight expected and enjoyed and do not wish to sacrifice the right to day and sun-light. (Muir)
- Double-storey dwelling appears out of place with surrounding area including bungalows on Spey Drive and the one-and-a-half storey properties at the front (Land Street). (Muir)
- Bungalow would be more in keeping with area although it would still overlook and overshadow property. (Muir)
- Proposal will totally block view of Ben Aigan and most of light and will need to get some bedroom curtains as 'they' will see straight in. (Bunker)
- No objection to house being developed on the site but object to height of building at 7.5 metres, which is 2.3 metres higher than the terraced houses opposite, hence proposal will not blend with other buildings in area. (Slessor)
- Previous application to extend flat roof changed to pitched roof to give more pleasing experience. (Slessor)
- A solution would be to build at same level as the 'Dorrans', which start at 2 Land Street and are at the same level as the railway line. (Slessor)

Applicant's Agent comment: The house is 3 metres off rear site boundary, and coupled with 10 metre wide access track and over 20 metres length to gardens of Spey Drive, there is over 23 metres between the houses. Planting along the eastern edge of the former railway line is outwith the site and unaffected by the development. Any detrimental impact on the amenity and privacy of the residential properties would be insignificant given the urban location and does not warrant refusal of the application. Given the distance between properties there would be no loss of sunlight/daylight to Spey Drive properties which have relatively low boundary walls adjoining the track and are extensively overlooked from the well-used track.

The proposed one-and-a-half storey design incorporates traditional features and gable width and sympathetically complements the existing one-and-a-half storey properties along the west of Land Street. Rothes has a substantial mix of building design, sizes and finishes creating a vibrant urban landscape. This new additional building will continue the mix of varying architectural styles in the locale, the design is acceptable and would not diminish the character of the area.

The site is an area of rough ground. The block of rented garages and recycling point are in a poor state. The remaining area is overgrown with self-seeded planting and cannot be considered to add significantly to the amenity of the area. Redevelopment will improve the overall street appearance.

Comment: There is no right to light and right of view is not a material planning consideration. Land Street is separated from Spey Drive by the former railway line, now a footpath (Roths ENV1), which helps define the character of that area of single-storey development from that on Land Street, where older, more traditional style property of varying scales with slate roofs predominate. Some properties abut the pavement, whilst others are set back within their plots. The proposed one-and-a-half storey design incorporates some but not all of the indicative design details made available to the applicant (of Plot 2) as being more in keeping with the locality than the originally intended design. For example, the proposals as submitted are larger in area and propose concrete tiles.

Taking into account the different designs and scales of property, boundary enclosures, ground levels, the orientation/location and type of accommodation served by the windows and the intervening distance between property, Plot 2 (and/or Plot 1 when considered together), is not considered to have a significant adverse affect on the amenity of surrounding property, including privacy and outlook. Towards Spey Drive the outlook from the first floor roof velux over the landing area is skywards and a gable window in the gable end of the first floor attic area has been replaced by a roof velux on the side roof slope to overcome any potential overlooking/privacy issue associated with that opening. On the rear elevation, the outlook from windows - all ground floor - will be obstructed by 1.8 metre high fencing along the rear boundary, existing landscaping along the former railway line and high conifer hedging and/or fencing enclosing the rear gardens of the objector's properties on Spey Drive.

Notwithstanding the suggested alternative design solutions, the proposal as submitted for Plot 2 (and Plot 1) does not include excavation of the site to build at the same level as 2 Land Street. The Council is required to determine the application as submitted.

Parking

- Area currently used for parking vehicles off the road, even if the area may not belong to the people who use it. The development would mean vehicles being parked on a road which is very narrow at best and will be fortunate to fit the number of vehicles requiring space. (Muir)
- Vehicles currently park on the land. There will be more parking in the road once the garages come down and more during building works. (Bunker)
- Turning into/out of Kirk Place is blind. There was a question about available parking during the application to develop the old barn. (Bunker)
- Big house and undeveloped attic - how many bedrooms? More bedrooms, more people, more cars. (Bunker)
- Concern about where vehicles which park in this area will go in an already congested street and can only see vehicles parking on the street. (Slessor)

Applicant's Agent comment: The loss of garages and parking is accepted and disappointing but there are a significant number of unused formal parking spaces within Seafield Square. The loss of this informal parking area is not considered to warrant refusal of the application.

Comment: Following consultation, the Transportation Manager has not objected to the development in terms of access to the site, the loss of on-site parking, or traffic and road safety impacts arising from this development. Within each plot, a hardstanding area is proposed which can accommodate the required standard of parking. The development of the old barn includes provision for on-site parking arrangement.

Future use and alternative locations

- How much room does this retired couple need? Will they be running a B&B or selling after a year to make maximum profit? (Bunker)
- On a new estate off Spey Street, the applicants would have parking, garden and a better view and not ruin mine. (Bunker)

Applicant's Agent comments: The site is an area of rough ground. The block of rented garages and recycling point are in a poor state. The remaining area is overgrown with self-seeded planting and cannot be considered to add significantly to the amenity of the area. Redevelopment will improve the overall street appearance.

Comment: This application requires to be determined on the basis of its suitability for a house as opposed to any speculation over the future intentions of the applicant. The Council has agreed to dispose of this area as a site for housing. Irrespective of the location and/or availability of other sites elsewhere, the Council is required to determine the submitted application on its merits in accordance with the development plan unless material considerations indicate otherwise.

Neighbour notification to 8 Spey Drive

- Not received notification for Plot 2, only received for Plot 1 and trust application will be refused. (Muir).
- If not receiving notification request explanation on why application allowed to proceed. (Muir)

Applicant's Agent comment: Following investigation, letters addressed to Spey Drive were delivered to Spey Street. Regrettably not all occupants of Spey Street delivered the letters to the respective properties on Spey Drive. To address this a proactive approach was adopted where all three Spey Drive properties were re-notified (hand delivery) and certificates issued, to afford notifiable interests the requisite timeframe to review the proposal. The agents apologise for any misunderstanding and upset caused by this failure and categorically state that no malicious was intended. Nevertheless, the occupant of 8 Spey Drive was aware of the proposal and expressed concerns in their letter (for Plot 1).

Comment: Planning decisions are based on development plan policy related considerations as opposed to procedural matters such as notification, which is the responsibility of an applicant/agent. However, if the procedures are not observed the validity of the decision may be subject to challenge. In this case the agent has rectified the situation and afforded the objector (and two other properties on Spey Drive) a further period of notification. All representations received on expiry of the relevant period have been taken into account. Following consideration of the additional representation received (from Muir), the agent has referred back to their earlier response (as included above) to outline their position and opinion regarding matters of privacy and any perceived imposition by the new development.

b) Letter signed by the applicants of Plots 1 and 2 (Messrs Innes and Baillie) and written in conjunction with the withdrawal of their objections to the Rothes FAS, the main points of which are:

- Apart from issues regarding flood waters through the village and the need for a bridge, which appears to be addressed and investigated properly, need satisfactory financial agreement and planning permission for new homes.
- The new home issue remains unresolved and the applicants place their trust in the Planning Department and Moray Council that this obstacle can be overcome to end two years of uncertainty, disappointment, blockages and refusals from various sources.

- Applicants have always believed a viable flood prevention scheme was urgently required, despite the personal sacrifice and upheaval, and now depend on the Council's approval of planning applications to allow all parties to move forward.

Comment: The Council's offer to dispose of the ground was subject to resolution of planning issues. Each application requires to be determined on its merits in accordance with the development plan unless material considerations indicate otherwise. The Flood Prevention Order (yet to be confirmed) and the planning application (as granted permission) for the Rothes FAS involve the loss of the applicants' property on Burnside Street. This loss of property is being addressed separately through compensation. Neither the Order nor the planning consent include provision for replacement property.

c) correspondence received from the applicants agent, the main points of which are:

- Whilst advertised as contrary to Local Plan policy L/H5, the principal policy is L/H4: Infill and Brownfield Housing, which sets a general presumption in favour of new housing on vacant ground within the urban setting provided a satisfactory living environment can be maintained by the existing properties and created for the proposed house. This policy includes no statistical requirements.
- The statistical requirements of policy L/H5 are addressed whereby:
 - the requirement that plots must not be subdivided by more than 50% is not relevant,
 - plot 1 is 480m² and Plot 2 is 496m². The applications comply with the requirement that plots exceed 400 sq m.
 - the built-up areas are 37% and 39% respectively, hence the proposal fails this aspect of the policy. However, a departure can be considered, the size of the houses being approximately the same as the applicant's existing houses which will be demolished to facilitate construction of the Rothes FAS.
 - for Plot 2, all windows except those fronting the public road to the front of the site and those to the rear fronting the public footpath are over 4 metres off the boundary and therefore Plot 2 is considered to conform to this policy aspect.
 - to fit the house, off road parking and all site services on Plot 1, the house has to be sited fairly close to the southern extent of the site. The small kitchen window is only 1 metre from the boundary and an ancillary family room window is approx. 2 metres off the boundary. To safeguard privacy and amenity, a 1.8 metre high fence would be erected along this boundary.
- The character and overall design of the properties adds to the mix of varying building style, design and finishes evident throughout Rothes and Moray. Therefore, this application does not result in a detrimental impact on the character of the area.
- Applicant wishes to utilise Marley Modern Mock Bond roof tiles yet would be content with a condition for a slate grey coloured high quality roof tile, with a small leading edge to be used instead. Slates are predominant in the locale yet serious budget constraints dictate that slates are outwith the client's aspiration.
- Lack of fencing details is an oversight and as client anxious over the timeframe of this project, this issue could be dealt with by suspensive condition.

Comment: The agent's comments pre-date amended plans (February 2008) which provide details of the boundary fence and wall, the area of the plot and the house footprint, the repositioning of the house closer to Land Street and amended elevation details with a roof velux on the side roof slope instead of a window in the gable end wall of the first floor attic. Whilst financial considerations are not a material planning consideration, the agent's suggested condition lacks precision and although invited to specify an actual product, the agent re-stated the intention to use grey Marley Modern concrete tiles (which do not have a thin leading edge).

Policy L/H4 is one of several policies to be taken into account and refers to the change of use or redevelopment of vacant property not vacant ground as stated by the agent. Nevertheless, the proposal provides for a satisfactory living environment (see Observations).

The agent's statistical analysis is not agreed. Both plots exceed 400m² and one-third of their respective plot area but the size of Plot 2 exceeds 50% of the total area of ground being sub-divided. Whereas the agent's figures suggest the built up area for plot 2 is larger than Plot 1, both properties are the same size (as confirmed on the amended site plan) and because Plot 2 is bigger, the % built-up area on Plot 2 should be less than that for Plot 1. At the stated built-up area of 177m², each house occupies 36.88% of Plot 1 and 35.6% of Plot 2. If the scaled elevation/layout drawings are used, these figures are reduced slightly to 36.34% and 35.54% respectively. Taking into account the implications of the required 1.8 metre wide footway along Land Street the respective available plot size, % plot size relative to total area and % built-up area of each plot is 469m², 49.25% and 37.7% for Plot 1 and 483m², 50.72% and 36.2% for Plot 2 respectively.

The size of the applicants' existing property and the impact of the Rothes FAS do not address the supporting aims and objectives of policy L/H5 which seek to ensure that development does not impair amenity of neighbouring property nor lead to over-development.

CONSULTATIONS

Building Standards Manager, Development Services - Building Warrant required.

Environmental Health Manager, Development Services - No objections.

Environmental Protection Manager, Direct Services - No objections.

Contaminated Land, Development Services - Conditions recommended regarding removal of asbestos and addressing unsuspected contamination.

Scottish Water - Does not object but planning approval does not guarantee connection to Scottish Water infrastructure. Possible pressure issues within water network and issues within waste water network serving the development and necessary for developer to ensure that development will not have any detrimental impact on water services. Separate surface water SUDS required.

Transportation, Manager, Direct Services - Approve subject to standard conditions including parking and access and house not to be occupied until new 1.8 metre wide footway constructed along whole site frontage.

Scottish & Southern Energy - Any excavation close to under ground cables passing under front of plot must be carried out in accordance with health and safety guidance.