

ENVIRONMENTAL SERVICES

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Website: www.moray.gov.uk

Our reference: DA/LRB197

Your reference: MLRB0197/ACK

Chief Legal Officer
Per Ms L Rowan
Committee Services
The Moray Council
High Street
ELGIN
IV30 1BX

13 February 2018

Dear Sir

**TOWN AND COUNTRY PLANNING (SCHEMES OF DELEGATION AND LOCAL
REVIEW PROCEDURE) (SCOTLAND) REGULATIONS 2008**

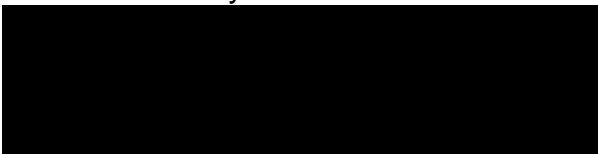
**REQUEST FOR REVIEW: PLANNING APPLICATION 17/01522/APP ERECT DWELLINGHOUSE WITH
DETACHED GARAGE AT UPPER BIRNIE VIEW WARDEND BIRNIE**

I refer to your letter dated 29 January 2018.

I respond on behalf of the Transportation Manager with respect to our observations on the applicant's grounds for seeking a review of the planning authority's decision to refuse the above planning application.

Transportation has reviewed the appellant's grounds for review and the associated documents, and submits the attached representation with associated documents in response.

Yours faithfully



Diane Anderson
Senior Engineer

Local Review

LRB Ref 197

Planning Application Reference 17/01522/APP Erect dwellinghouse with detached garage at Upper Birnie View Wardend Birnie

Response from Transportation, Moray Council

1. This document is in response to the Notice of Review and the Statement of Case submitted by Mr Gavin Strathdee and sets out observations by Transportation on the application and the grounds for seeking a review.
2. This review concerns planning application 17/01522/APP for the erection of a dwelling house served by an existing private track which has two accesses onto the U119E Birkenbaud Road, the western access adjacent to the property 'Birken Heights' and an eastern access adjacent to the property 'Wardend' .
3. Transportation received the consultation for planning application 17/01522/APP on 10 October 2017. A copy of the initial consultation response dated 12 October 2017 is attached (TMC01). This initial consultation response sought further information from the applicant with regard to access arrangements as the submitted drawing showed the provision of a visibility splay at the western access only.
4. The visibility at the eastern access, adjacent to the property 'Wardend' is severely restricted by the boundary wall. A photograph of the view from this access is attached (TMC02).
5. In response to the Transportation request for further information, the applicant proposed to provide a lockable gate, erected across the private access track at the boundary between the site and the property 'Glenluce' to restrict the use of the track as a through route to farm related vehicles only.
6. Transportation considers the restriction of use of track to as a through route for related farm vehicles only to be unenforceable and would not meet the tests for planning conditions as set out in 'Planning Circular 4/1998 The Use of Conditions in Planning Permissions'. The final Transportation consultation response dated 17 November 2017 objected to the proposed development on road safety grounds as there was no evidence that the required visibility splay at the Eastern access adjacent to 'Wardend' could be provided. A copy of the consultation response dated 17 November 2017 is attached (TMC03).
7. Visibility splays for private accesses onto the public road are required to ensure that there is adequate inter-visibility between vehicles on the public road and a vehicle at the private access onto the public road. If a development involves the use of a vehicular access onto the public road where visibility is severely restricted by adjacent hedges/trees/walls/embankment/buildings/obstructions and would be likely to give rise to conditions detrimental to the road safety of road users, the development is contrary to Moray Local Plan policies T2 Provision of Access and IMP1 Development Requirements.

Local Review

LRB Ref 197

Planning Application Reference 17/01522/APP Erect dwellinghouse with detached garage at Upper Birnie View Wardend Birnie

8. Visibility splays relate to the visibility available to a driver at or approaching a junction in both directions. It is related to the driver's eye height, object height above the road, distance back from the main road known as the 'x' distance and a distance along the main road known as the 'y' distance. The 'y' distance is related either to a) the design speed of the road and a corresponding 'stopping sight distance' or b) in some circumstances may be based on observed '85th percentile vehicle speeds'.
9. A detailed description of the relevance and consideration of visibility splays is attached (TMC04) which is an extract from The Moray Council document Transportation Guidelines for Small Developments in the Countryside (TRSDC). TRSDC approved at the Economic Development & Infrastructure Committee on 3 March 2016.
10. The proposal to restrict the use of the private access track as a through route to farm vehicles only through the provision of a lockable gate would not be enforceable and therefore would not meet the tests for the use of planning conditions. Furthermore there is no evidence to indicate that the required visibility splay can be provided at the Eastern access adjacent to 'Wardend'.
11. Transportation, respectfully, requests the MLRB to uphold the decision by the appointed officer. In particular on the grounds that Moray Local Plan Policy T2: Provision of Road Access is not satisfied.

Transportation

13 February 2018

Documents

TMC01	Transportation Consultation Response dated 2 November 2017
TMC02	Photograph of Eastern Access adjacent to 'Wardend'
TMC03	Transportation Consultation Response dated 17 November 2017
TMC04	Extract on Visibility Splays from Transportation Requirements for Small Developments in the Countryside

LRB CASE 197

TMC02 Photograph of Eastern Access adjacent to 'Wardend'
(‘x’ distance 4.5 metres)



Consultation Request Notification

Planning Authority Name	The Moray Council
Response Date	24th October 2017
Planning Authority Reference	17/01522/APP
Nature of Proposal (Description)	Erect dwellinghouse with detached garage at
Site	Upper Birnie View Wardend Birnie Elgin Moray
Site Postcode	N/A
Site Gazetteer UPRN	999999999999
Proposal Location Easting	322619
Proposal Location Northing	855628
Area of application site (Ha)	3098 m²
Additional Comment	
Development Hierarchy Level	LOCAL
Supporting Documentation URL	http://public.moray.gov.uk/eplanning/centralDistribution.do?caseType=Application&keyVal=OX75QMBGIQF00
Previous Application	
Date of Consultation	10th October 2017
Is this a re-consultation of an existing application?	No
Applicant Name	Mr Gavin Strathdee
Applicant Organisation Name	
Applicant Address	Viewfield Farm Craigellachie Aberlour Scotland, UK AB38 9QT
Agent Name	Strathdee Properties Limited
Agent Organisation Name	
Agent Address	Viewfield Farm Craigellachie Aberlour Moray AB38 9QT
Agent Phone Number	
Agent Email Address	N/A
Case Officer	Lisa Macdonald
Case Officer Phone number	01343 563082
Case Officer email address	lisa.macdonald@moray.gov.uk
PA Response To	consultation.planning@moray.gov.uk

NOTE:

If you do not respond by the response date, it will be assumed that you have no

comment to make.

The statutory period allowed for a consultation response is 14 days. Due to scheduling pressures if a definitive response is not received within 21 days this may well cause the two month determination period to be exceeded.

Please respond using the attached form:-

MORAY COUNCIL

PLANNING CONSULTATION RESPONSE

From: Transportation Manager

Planning Application Ref. No: 17/01522/APP

Erect dwellinghouse with detached garage at Upper Birnie View Wardend Birnie Elgin for Mr Gavin Strathdee

I have the following comments to make on the application:-

Please

- | | | |
|-----|---|-------------------------------------|
| (a) | I OBJECT to the application for the reason(s) as stated below | <input type="checkbox"/> |
| (b) | I have NO OBJECTIONS to the application and have no condition(s) and/or comment(s) to make on the proposal | <input type="checkbox"/> |
| (c) | I have NO OBJECTIONS to the application subject to condition(s) and/or comment(s) about the proposal as set out below | <input type="checkbox"/> |
| (d) | Further information is required in order to consider the application as set out below | <input checked="" type="checkbox"/> |

Further information required to consider the application

At present the existing access track serving the site links through to the existing track serving existing properties Wardend, Blackenbrae and Glenluce, and back onto the public road at a location just north of Wardend.

The visibility splay to the south west at the existing access at this location just north of Wardend is currently restricted due to the boundary wall for Wardend.

Further details are required showing the closure of the existing track at a location just to the north of the proposed site, to ensure that vehicles are not able to access the existing junction onto the public road located just north of wardend, and that access to the site would be solely available via the access adjacent to Birken Heights, or alternatively:

The link through may remain if a visibility splay 4.5m x 120m in both directions clear of any obstruction greater than 0.6m (measured from the level of the road) is also provided at the existing access adjacent to Wardend. The applicant does not appear to have control over the land required to create the visibility splay. Evidence of control would therefore be required, through ownership or provision of third party agreement, to demonstrate that the required visibility could be provided and maintained. A topographical survey may also be required to determine whether the required visibility is achievable in the vertical plane to the south west.

Notwithstanding the above the maintenance regime for the visibility splay at the access onto the public road adjacent to Birken Heights shall be to a height of 0.6m above the level of the road, and not 1.0m as has been submitted.

Contact: DA/AG

email address: transport.develop@moray.gov.uk

Consultee: TRANSPORTATION

Date 12 October 2017

Return response to

consultation.planning@moray.gov.uk

Please note that information about the application including consultation responses and representations (whether in support or objection) received on the proposal will be published on the Council's website at <http://public.moray.gov.uk/eplanning/>. (You can also use this site to track progress of the application and view details of any consultation responses and representations (whether in support or objection) received on the proposal). In order to comply with the Data Protection Act, personal information including signatures, personal telephone and email details will be removed prior to publication using "redaction" software to avoid (or mask) the display of such information. Where appropriate other "sensitive" information within documents will also be removed prior to publication online.

Consultation Request Notification

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Applicant Name	Mr Gavin Strathdee
Applicant Organisation Name	
Applicant Address	Viewfield Farm Craigellachie Aberlour Scotland, UK AB38 9QT
Agent Name	Strathdee Properties Limited
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Agent Address	Viewfield Farm Craigellachie Aberlour Moray AB38 9QT
Agent Phone Number	
Agent Email Address	N/A
Case Officer	Lisa Macdonald
Case Officer Phone number	01343 563082
Case Officer email address	lisa.macdonald@moray.gov.uk
PA Response To	consultation.planning@moray.gov.uk

NOTE:

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comment to make.

The statutory period allowed for a consultation response is 14 days. Due to scheduling pressures if a definitive response is not received within 21 days this may well cause the two month determination period to be exceeded.

Please respond using the attached form:-

MORAY COUNCIL

PLANNING CONSULTATION RESPONSE

From: Transportation Manager

Planning Application Ref. No: 17/01522/APP

Erect dwellinghouse with detached garage at Upper Birnie View Wardend Birnie Elgin for Mr Gavin Strathdee

I have the following comments to make on the application:-

- | | Please |
|---|--------------------------|
| (a) I OBJECT to the application for the reason(s) as stated below | X
X |
| (b) I have NO OBJECTIONS to the application and have no condition(s) and/or comment(s) to make on the proposal | <input type="checkbox"/> |
| (c) I have NO OBJECTIONS to the application subject to condition(s) and/or comment(s) about the proposal as set out below | <input type="checkbox"/> |
| (d) Further information is required in order to consider the application as set out below | <input type="checkbox"/> |

The proposed development is for a new dwelling to be served by an existing track which connects to the public road at two locations, to the north of the property 'Wardend' and to the east of the property 'Birken Heights'. The track serves the existing properties 'Wardend', 'Blackenbrae', 'Glenluce', 'Birken Heights' and 'Fairview House'.

An acceptable visibility splay can be provided at the access adjacent to 'Birken heights'. However the visibility splay at the access adjacent to 'Wardend' is currently restricted by the boundary wall for that property.

It is understood that rights of access over the track mean that the applicant would be unable to close the track to prevent vehicles associated with the proposed property utilising the access adjacent to 'Wardend'.

The required visibility at the access adjacent to 'Wardend' would be 4.5m x 120m in both directions clear of any obstruction greater than 0.6m (measured from the level of the road). The applicant does not appear to have control over the land required to create the visibility splay.

Reason(s) for objection

The proposed development, if permitted, would involve the use of a vehicular access onto U119E Birkenbaud Road where visibility is restricted by the adjacent boundary wall for 'Wardend', and would be likely to give rise to conditions detrimental to the road safety of road users contrary to Moray Local Plan policies T2 Provision of Access and IMP1 Development Requirements.

Contact: DA
email address:
transport.develop@moray.gov.uk
Consultee: TRANSPORTATION

Date 17 November 2017

Return response to	consultation.planning@moray.gov.uk
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Please note that information about the application including consultation responses and representations (whether in support or objection) received on the proposal will be published on the Council's website at <http://public.moray.gov.uk/eplanning/> (

5.6 Visibility Splays

- 5.6.1 A well-designed access is important for the safety and convenience of all road users - those proceeding on the public road as well as those using the access. Proposals for a new access or the intensification of use of an existing access will normally have a number of requirements to promote safety and avoid excessive delay
- 5.6.2 Transportation will object to proposals likely to prejudice road safety.
- 5.6.3 Transportation will also raise an objection to the creation of an access and/or visibility splays, unless the applicant is able to demonstrate control or the reasonable prospect of acquiring control of any land likely to be the subject of a condition relating to the provision of any such access and/or visibility splays.
- 5.6.4 Good visibility is essential to enable drivers emerging from the minor road (Private Access/Development Access) to see and be seen by drivers proceeding along the priority road (Public Road)

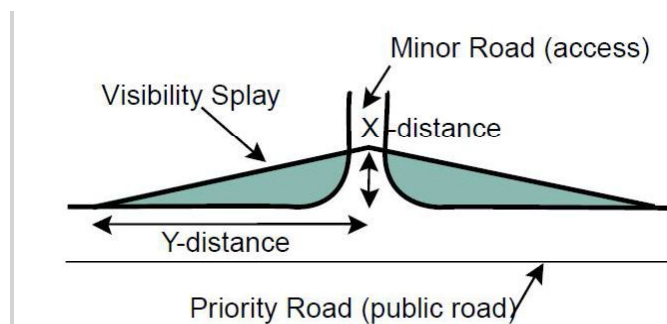


Figure 3: Visibility Splays

- 5.6.5 The x-distance is measured along the centre-line of the minor road from the edge of the running carriageway of the priority road. The y-distance is measured along the near edge of the running carriageway of the priority road from the centre-line of the minor road. Where the access is on the outside of a bend, an additional area will be necessary to provide splays which are tangential to the road edge

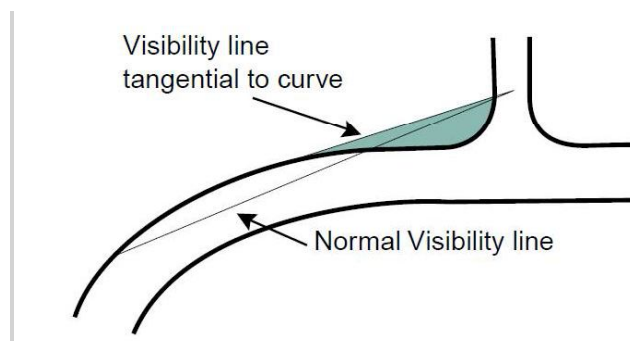


Figure 4: Visibility Splays for Access on Outside of Bend

- 5.6.6 In the case of a new access, x- and y- distances must be adjusted as necessary to allow for any planned road improvements.
- 5.6.7 Forward visibility as shown in Figure 5 is also required to provide inter-visibility between vehicles using the minor road and those proceeding along the priority road. In particular, a vehicle waiting on the priority road to turn right into the access must be able to see oncoming traffic and be seen by following traffic. Forward visibility depends on the same factors as y-distance.

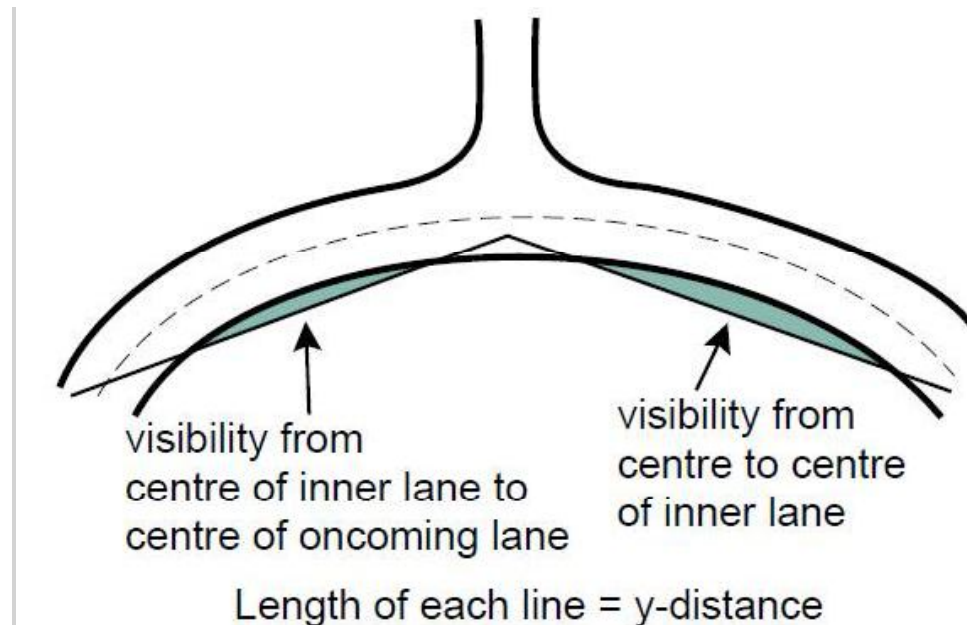


Figure 5: Forward Visibility Requirements

- 5.6.8 The size of the visibility splay depends on the speed limit or observed vehicle speeds on the public road. It is necessary to consider the driver's line of vision, in both the horizontal and vertical planes, and the stopping distance of the vehicle. Where the applicant does not provide observed vehicle speed data, the speed limit will normally be used.
- 5.6.9 The distance along the public road, Y distance, is the distance the driver needs to see along the road edge (see table below). This is measured from the centre line of the access to the location on the road of the approaching vehicle, which varies depending on the speed of approaching traffic. The faster the approaching vehicles, the longer the distance required to see and be seen.
- 5.6.10 The distance back from the public road, X distance, is shown in the table below. The distance varies according to the number of dwellings. The distance is taken from the edge of the carriageway back along the centre line of the private access.

5.6.11 The visibility splay must be assessed between minimum driver's eye line 1.05 metres above the road up to a height 2m above the road and to objective points at the end of the Y distance normally between 0.6m and 2m above the carriageway surface. The assessment must consider obstructions to visibility within the visibility splay including the horizontal and vertical topography in between i.e. hidden dips and crests along the road and any large utilities or other infrastructure already in the area between these points.

5.6.12 For situations with more complex circumstances, such as vertical and horizontal alignment issues, a detailed topographical survey may be requested to ensure the vertical and horizontal zones can be clearly ascertained and any necessary modifications identified.

5.6.13 The following table shows the Y and X values based on speed limit values.

Speed Limit	30	40	50	60
Y Distance (metres)	90	120	160	215
X Distance (metres)	Single dwelling = 2.4m; > 1 dwelling = 4.5m			

5.6.14 The y values shown are based on the speed limit of the public road. It may be possible to reduce y values if actual traffic speeds are provided. This should be based on survey data gathered over a minimum duration of one week at locations to be agreed with the Moray Council.

5.6.15 The access, lay-by and visibility splay (both those beside the minor road and those required for forward visibility) must be established before building work commences, to ensure a safe access for builders and tradesmen.

5.7 Providing and Maintaining Visibility Splays

5.7.1 When submitting a planning application it is necessary for the applicant to demonstrate that they have, and can maintain control over the visibility splay area. The applicant will have responsibility for the maintenance of unobstructed sight lines over the visibility splay area. If the visibility splay area includes any neighbouring land then the applicant will need to discuss this with the landowner and make arrangements to satisfy the requirement to demonstrate adequate control for the lifetime of the development.

- 5.7.2 Applicants should give careful consideration to the Trees and Development Supplementary Guidance. Applicants should note that there is a presumption against the felling/removal of trees purely to form an access/visibility. For the avoidance of doubt the visibility splay is an essential feature required for achieving the Moray Local Development Plan Policy T2 Provision of Road Access.
<http://www.moray.gov.uk/downloads/file100519.pdf>
- 5.7.3 There may be circumstances when the developer wishes to locate the private access on or near a bend in the road. The outside of a bend is the safest option. The extent of the visibility splay must be clearly identified.
- 5.7.4 If there is no alternative arrangement other than to locate the access on the inside of a bend, the applicant must be fully aware of the extent of the area which will be affected by the visibility requirements which they must demonstrate that they have, and can maintain control over, and which must be kept free of obstructions such as buildings, trees shrubs and long grass or other vegetation. In these circumstances early consultation with Transportation officers is recommended.
- 5.7.5 Once provided, visibility splays must be retained and kept clear. In this regard it will be helpful for trees and shrubs to be planted at least 3m to the rear of the visibility splay to allow for future growth.
- 5.7.6 Any boundary walls/fences must be set back to a position behind the required visibility splays.
- 5.7.7 To reduce the impact of an access on the countryside, its location and design must be carefully considered and existing access, including lanes, should be used where possible.
- 5.7.8 Transportation will not introduce a speed limit or warning signage simply to facilitate a new access.
- 5.7.9 Reductions in visibility standards will not be permitted simply because the applicant does not control the required visibility area or does not have a reasonable prospect of bringing it under his control
- 5.7.10 If a dwelling access is located near a junction, visitors might park their vehicles on the priority road and obstruct junction visibility. To reduce this risk, dwelling accesses should not normally join a priority road within the y-distance of a junction.