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**20/00544/APP ERECT 7 DETACHED DWELLINGHOUSES ON SITE  
ADJACENT TO 1-5 STATION ROAD****PORTESSIE, BUCKIE****Morlich Homes Ltd****STATEMENT OF REVIEW****G H Johnston Building Consultants Ltd**  
*planning and architecture***Proposal**

- 1.1 The proposal **[GHJ1]** concerns the development of 7 detached family homes on land adjacent to 1-5 Station Road, Portessie, Buckie. The planning application (20/00544/APP) was submitted in detail on the 28<sup>th</sup> April 2020 and refused under delegation on the 2<sup>nd</sup> December 2020.

**Decision**

- 2.1 The decision notice dated 2<sup>nd</sup> December 2020 **[GHJ2]** indicates the reason for refusal as follows:
- 2.2 *The proposal would be contrary to the Buckie ENV5 designation and associated policies PP1, DP1, DP2, EP2, EP5 and EP7 of the Moray Local Development Plan 2020, in that the development would result in the loss of land within an ENV designation where these policies aim to protect and preserve the characteristics of ENV areas and where policy EP5 specifically excludes residential development within ENV designations.*

**Purpose**

- 3.1 The purpose of this Statement is to demonstrate that while the proposal is contrary to part of the Buckie ENV5 designation and therefore policy EP5 there are significant Material Considerations as defined in Annex A of Circular 3/2013 **[GHJ3]** which can be given weight and allow you as the Decision Makers to make an alternative decision to that of the appointed Planning Officer.

- 3.2 Because of these material considerations outlined in the following paragraphs, the proposed development can be approved as a departure from a relatively small part of Buckie ENV5 and Policy EP5 and as a result proven not to be contrary to policies PP1, DP1, DP2, EP2, and EP7 as stated in the refusal notice.
- 3.3 The statement outlines the Site & Planning History briefly and will show that a small-scale high quality residential development of the type proposed is an appropriate one for this location.
- 3.4 It illustrates that the Buckie ENV5 designation which is the key barrier to approval in this case was attached to the site during the final stage of Examination by the appointed Scottish Government Reporter and failed to recognise the sites proximity to and availability of all necessary infrastructure. Along with an appropriate Sustainable Urban Drainage System solution proposed which will improve the current situation that exists on Station Road **[GHJ4]** the site clearly overcomes any 'site specific constraints' that will allow for development on part of this larger Buckie ENV 5 designation.
- 3.5 That the landscape impact upon the Buckie ENV5 designation can be satisfactorily mitigated through the landscaping proposed by the applicant and the backdrop created by planting 1,000 new Trees along the Southern site boundary, by maintaining a riparian corridor, by introducing both bat and swift nesting boxes on each of the properties and by introducing wildflower areas along service strips. In addition a biodiversity report concluded that there were no rare species of flora or fauna present on the proposed site.
- 3.6 The statement highlights that importantly the site is in an area where there is demand for family housing and which is not addressed in the larger allocations present in the wider Buckie Housing Market. This neighbourhood requirement/need is a key material consideration, and one which was recognised by the Development Plan Team when it designated this site R10 Portessie in the Proposed Moray Local Development Plan in 2019 **[GHJ5]** and which was subsequently marketed for Sale by Moray Council Estates. **[GHJ6]**
- 3.7 Crucially in this case the emerging NPF4 by introducing the concept of 20 minute neighbourhoods **[GHJ7]** is also looking to support more local neighbourhoods and local living of the very type that this site can deliver in Portessie.

- 3.8 To highlight that Scottish Planning Policy (SPP) **[GHJ8]** and the emerging National Planning Framework 4 (NPF4) **[GHJ9]** is adding increasing weight to the delivery of this type of site through consideration of the re-use or re-development of brownfield land before new development takes place on greenfield sites.
- 3.9 That consideration and significant weight should be given to the Economic benefits of delivering 7 family sized homes on this site in the post-COVID economy. And that the delivery of family housing at this specific location will assist in maintaining the future viability of Portessie Primary School by supporting its School Roll **[GHJ10]**.
- 3.10 Showing that the Planning Officer's Report of Handling clearly indicates that in all other respects this development proposal is a good one and one which addresses all key Policy criteria in terms of Placemaking, Design, Biodiversity, Drainage, Parking, Access, Affordable Housing and Developer Obligations. Additionally, it confirms that all statutory Consultees in this case have no objections to our Clients proposed development.
- 3.11 The Net Environmental, Economic and Infrastructure gains achieved by developing the site in line with the submitted details far outweigh the 'late in the day' Buckie ENV5 designation attached to it and provide significant material weight such that the reason for the proposal being refused can be revisited by this Review Board.

### **Setting and Site History**

- 4.1 The site forms part of the former Portessie railway station to the south of station road in Portessie, Buckie. It is currently overgrown with self-seeded vegetation and bushes including whin. The Planning Officer's report of handling **[GHJ11]** describes the site as follows:
- 4.2 *'The site lies to the south of Portessie within the settlement boundary of Buckie and comprises a small portion of the larger Buckie ENV5 green corridor designation, as defined in the Moray Local Development Plan 2020. The site is bounded to the north by Station Road, which forms part of the Sustrans Aberdeen to Inverness cycle route and designated core path network. Station Road also serves the 5 existing houses which bound the site to the north.'*
- 4.3 *'The site is presently a relatively dense thicket of bushes bounded to the west by the public road and further dense bushes beyond, to the east by more dense bushes and to the south by a drainage ditch with open farmland beyond.'*

- 4.4 There is also clear evidence and visible structures associated with the previous railway use, including the stone sidings, the rail bed and embankment located in the middle portion of the site. This previous use now places the site into a 'Brownfield' classification and as such there is clear National Planning support to direct development, including residential development, by considering these areas first, in preference over greenfield allocations. The photographs show the site in its current state. **[GHJ12]**
- 4.5 The topographic survey undertaken across the site indicates that the site is predominantly flat within the north/north western areas with the former railway embankment running through the centre of the proposed development area.
- 4.6 The setting is one on the edge of the Portessie neighbourhood and wholly contained within the Buckie town boundary and physically separated from countryside to the South by the existing drainage ditch.
- 4.7 The site history is varied from its initial use as part of the wider railway network in the last century to its inclusion in successive Local Development Plans in this, some of which is briefly outlined in the following paragraphs for information.
- 4.8 In the Adopted Moray Local Plan 2000 (MLP 2000) which was replaced in November 2008 with the Moray Local Plan 2008 (MLP 2008) the proposed site formed part of a much larger residential development designation known as R6 Portessie with the following description **[GHJ13]**:
- 4.9 *R6 Portessie*  
*Adjoining the golf course, a high quality housing development could be provided allowing the release of single plots, if appropriate. Materials should be selected to cope with the exposed position of the site and to blend (rather than stand out from) the surrounding countryside and townscape. A pedestrian link through the site must be retained in addition to the tree embankment to the south. Hilltop edge development (i.e. The Moray Council Development Plan 2000 within 10m of the cliff face), will be discouraged, and an open area to the south of the golf course has been excluded from the settlement boundary. Any proposed development must allow for the retention of access along the railway line. Access to this site should be taken onto Loanhead / Strathlene Road with provision of 5 passing places. Five passing places must also be provided on the Loanhead Road (Between Station Road and Loanhead Farm). A footway should be provided from the site frontage to Great Eastern Road. A 10m strip of shrubs, e.g., whin, must be provided to the south and eastern boundaries of the site.*

- 4.10 In 2008 the site's Residential Designation was removed and replaced in whole with an ENV designation which remained in place across what was the larger R6 site and was carried forward after review into the Moray Local Development Plan in 2015 (MLDP 2015).
- 4.11 In 2017 a review of the MLDP 2015 was started and the site the subject of this Review was identified in January 2018 in the Main Issues Report as BK5 Station Road, Portessie (LDP2020\_MIR\_BK5) for Residential Development, a Moray Council owned site promoted by Moray Council Estates, seeking a zoning for up to 16 houses. **[GHJ14]**
- 4.12 Having been identified and promoted by the Council during the MIR it was then carried forward into the Proposed Moray Local Development Plan published and placed on consultation in January 2019 identifying the site as R10, Station Road, Portessie with capacity for 5 dwellings. **[GHJ15]**
- 4.13 The zoning R10 was maintained after the proposed plan consultation period ended and the Councils Development Plan Team concluded in response to only one outstanding representation received that no modification was required prior to formal Adoption of the Proposed Plan **[GHJ16]**. They stated:
- 4.14 *'The site is located on the eastern side of Buckie and is currently covered by an ENV designation. The site was previously part of a larger housing designation for housing in the Moray Local Plan 2000. It was changed to an ENV designation in the Local Plan 2008 by the Reporter due to the high biodiversity and amenity value of the site. The site was retained in the Moray Local Development Plan 2015. In support of the allocation of the site in the Proposed Plan, a biodiversity report was provided at the Main Issues Report which demonstrated that there are no rare species of rare flora or fauna on the site.*
- 4.15 *Due to various constraints there are very limited options for development in the eastern side of Buckie. In order to try to facilitate development on the eastern side of Buckie there is scope to allocate a small area of land for low density development. An indicative capacity of five is given which reflects the existing development pattern/density along Station Road as well as respecting the location on top of the coastal cliffs.*
- 4.16 *The developer will be required to consider the potential impact of crossing any services/pipework including sewage pipes within their layout to ensure their proposals prevent adverse impacts. Impact on the existing foul drainage system and any necessary mitigation measures will be dealt with at the planning application stage through Policy EP13 Foul Drainage. The designation text requires a Drainage Impact Assessment to be provided.*

*Site capacities are indicative, and the developable area may be affected by any constraints.*

- 4.17 *The Council acknowledges the importance of the existing cycle path which provides good east west connections across Buckie and the coast. This has been reflected in the site designation text which requires the cycle path to be retained and remain segregated from the road access. This will ensure that any development proposals will not have an adverse impact on this key connection.*
- 4.18 *There is no suggestion or plan to reopen the old railway line. The disused railway line runs through the settlement and other allocated sites in the Local Development Plan and therefore is not a valid planning reason not to allocate the site for development.*
- 4.19 *Issues relating to archaeological features are noted. The regional archaeologist was consulted and raised no objection to the site being included in the plan.'*
- 4.20 Following this period of consultation and the fact there was still only one unresolved representation the matter was referred to the Scottish Government Reporter at the final Examination stage of the Development Plan process.
- 4.21 The Reporter concluded **[GHJ17]** in May/June 2020 that the R10 Designation should be removed from the MLDP2020 for the following reasons:
- 4.22 *'While I note that there is a requirement to protect the cycle route, improve the core path and for any proposed layout to take account of any existing services present, this site is subject to a number of site specific constraints. It is unclear at this stage how these constraints would be overcome.*
- 4.23 *At my site inspection I found it mostly to be covered in shrub and it was boggy and poorly drained. While I note that there may be no important habitat on the site, the established vegetation effectively screens the built edge of Portessie (even in Winter) from the open countryside and provides a valuable landscape setting to the settlement. A similar effect is also achieved on the opposite side of Station Road to the west. The development of this site would breach the natural limit of the village and I would be concerned over the precedent that may be set if it were to remain as a designation for housing. Therefore, I recommend that it is removed from the plan and reinstated as ENV5 as "Green Corridor". I do not consider that the removal of this small site from the plan would impact on the overall supply of housing within the Buckie Housing Market Area.'*

### Reason for Refusal

- 5.1 *The proposal would be contrary to the Buckie ENV5 designation and associated policies PP1, DP1, DP2, EP2, EP5 and EP7 of the Moray Local Development Plan 2020, in that the development would result in the loss of land within an ENV designation where these policies aim to protect and preserve the characteristics of ENV areas and where policy EP5 specifically excludes residential development within ENV designations.*
- 5.2 *The Planning Officers Report of Handling concludes that ‘Whilst it is acknowledged that when this application was submitted this site was a proposed residential designation, the proposed MLDP had very limited material planning weight at this time and now that the MLDP 2020 had been adopted and this residential designation has been removed from the plan and replaced with the Buckie ENV5 designation. As outlined above policy EP5 explicitly excludes residential development and therefore regardless of whether or not any proposed houses could be adequately served in terms of infrastructure, the fundamental principle of locating housing within an ENV area is unacceptable and as such this proposal is recommended for refusal on this basis.’*
- 5.3 It is accepted that the proposal is contrary to part of the Buckie ENV5 designation and therefore policy EP5 however there are material considerations as defined in Annex A of Circular 3/2013 [GHJ3] which can be given weight and allow you as the decision makers to take an alternative view and decision to that of the appointed Planning Officer.
- 5.4 Specifically, the following approach has to be taken when deciding an application:
- *Identify any provisions of the development plan which are relevant to the decision,*
  - *Interpret them carefully, looking at the aims and objectives of the plan as well as detailed wording of policies,*
  - *Consider whether or not the proposal accords with the development plan,*
  - *Identify and consider relevant material considerations for and against the proposal, and*
  - *Assess whether these considerations warrant a departure from the development plan.*

- 5.5 The following paragraphs identify a number of material considerations which would support a departure from part of the Buckie ENV5 designation and Policy EP5 and as a result of these material considerations an acceptable departure would not to be contrary to policies PP1, DP1, DP2, EP2, and EP7 as stated in the refusal notice and confirmed in the Planning Officer's report of handling where it's stated:
- 5.6 *'Whilst the details of the applicant's case are noted and an assessment of the overall design and layout of the scheme has concluded that the proposals would have been compliant with development plan policy on placemaking, design, biodiversity, drainage, parking, access etc, should the site have been designated within the adopted 2020 MLDP for residential development...*
- 5.7 *Drainage (EP12 and EP13)*  
*Drainage information has been provided with the application and identifies the means of surface water disposal from the site. Moray Flood Risk Management have assessed this information and have no objections to the approval of the application. Scottish Water have also raised no objection to the proposed use of the public foul sewer or water supply and as such the proposal is considered to comply with policy EP12.*
- 5.8 *Access (DP1)*  
*The Transportation service, have confirmed they have no objection to the approval of the proposals, subject to conditions, as such the proposed access details comply with policy DP1.*
- 5.9 *The Moray Access Manager has been consulted in relation to the potential impact on the cycleway/core path which bounds the site and given the development has been largely separated from the cycleway/core path and this route has been retained, no objections have been raised in relation to this aspect of the proposals.*
- 5.10 *Developer obligations and affordable housing (PP3 and DP2)*  
*The applicants have confirmed that they are agreeable to entering into a legal agreement to secure the identified developer obligations and affordable housing contributions and as such the proposals are considered compliant with policies PP3 and DP2 in this regard'*

### **Material Considerations**

- 6.1 Annex A of Circular 3/2013 makes the following statement in relation to the weight to be given to material considerations by the decision maker(s):



- 6.2 *'The decision maker will have to decide what considerations it considers are material to the determination of the application. However, the question of whether or not a consideration is a material consideration is a question of law and so something which is ultimately for the courts to determine. It is for the decision maker to assess both the weight to be attached to each material consideration and whether individually or together they are sufficient to outweigh the development plan. Where development plan policies are not directly relevant to the development proposal, material considerations will be of particular importance'*
- 6.3 It goes on to illustrate the type of possible material considerations which amongst others include those below which are in no particular order of significance of the weight to be attributed to each :
- *Scottish Government policy and UK Government policy on reserved matters;*
  - *the National Planning Framework;*
  - *Policy in the Scottish Planning Policy and Designing Streets*
  - *Scottish Government planning advice and circulars;*
  - *EU policy;*
  - *a proposed strategic development plan, a proposed local development plan, or proposed supplementary guidance;*
  - *guidance adopted by a Strategic Development Plan Authority or a planning authority that is not supplementary guidance adopted under section 22(1) of the 1997 Act;*
  - *a National Park Plan;*
  - *community plans;*
  - *the environmental impact of the proposal;*
  - *the design of the proposed development and its relationship to its surroundings;*
  - *access, provision of infrastructure and planning history of the site;*
  - *views of statutory and other consultees;*
  - *legitimate public concern or support expressed on relevant planning matters.*
- 6.4 Scottish Planning Policy (SPP) **[GHJ7]** and the emerging National Planning Framework 4 (NPF4) **[GHJ8]** are clearly key material considerations in many cases and specifically in this one in directing development, in the first instance towards consideration of the re-use and redevelopment of brownfield land over greenfield.
- 6.5 The sites history is one of a former railway station and associated rail network infrastructure from the last Century which over the years has been left and is now overgrown with whin and other bushes and shows clear evidence of it's former railway use (platform stonework, rail bed and embankments).

- 6.6 In National Scottish Government policy terms and indeed in the emerging NPF4 the policy position is to direct development here over allocations which would utilise greenfield land and is a material consideration this case.
- 6.7 The environmental and landscape impact upon the relatively small part of the Buckie ENV5 designation can be satisfactorily mitigated through the landscaping proposed by the applicant through creating/reinforcing a backdrop by planting 1,000 new Trees along the Southern site boundary ensuring containment, by maintaining a riparian corridor, by introducing both bat and swift nesting boxes on each of the properties and by introducing wildflower areas along service strips.
- 6.8 It is also proposed to have post and wire fences along house plot boundaries to aid the free movement of any hedgehog populations in the area.
- 6.9 A biodiversity report commissioned at the time of the MIR concluded that there were no rare species of flora or fauna present on the proposed site.
- 6.10 Importantly also in terms of the sites Amenity it has been confirmed that the site is a boggy poorly drained one and one which will benefit in this specific case from a new SUDS system managing the drainage and improving general amenity for surrounding neighbours.
- 6.11 These mitigation factors along with the baseline biodiversity survey data from the MIR stage show that in terms of its impact upon the environment the proposal is minimal with potentially significant net gains being made through the re-use of a brownfield site and the creation of several new types of habitat as a result of the proposal. This is another material consideration that can be given significant weight.
- 6.12 The Planning Officer's Report of Handling highlights that the design of the proposed development and its relationship to its surroundings is compliant with Development Plan Policy stating:
- 6.13 *'...an assessment of the overall design and layout of the scheme has concluded that the proposals would have been compliant with development plan policy on placemaking, design, biodiversity, drainage, parking, access etc, should the site have been designated within the adopted 2020 MLDP for residential development..'*

- 6.14 The sites Planning History has been well covered elsewhere in this statement and it just remains to say that it can be considered as another key material consideration and again given weight as such in coming to a view on the proposal under review.
- 6.15 There is clear demand for family housing in Portessie and which is not addressed in the larger allocations present in the wider Buckie Housing Market Area. In the Reporters findings the following statement was made:
- 6.16 *'I do not consider that the removal of this small site from the plan would impact on the overall supply of housing within the Buckie Housing Market Area.'*
- 6.17 It is true to say that not allocating a site for 5 houses will have no direct impact on the overall supply figure for the Buckie HMA; however, by not including this small-scale development site at Portessie it has been left bereft of any opportunities for families with specific locational requirements within Portessie itself to secure a new home or indeed for others looking to return from further afield.
- 6.18 This aspect of the zoning was clearly recognised at the time of preparation of the Proposed Plan by the Development Plan Team when it designated this site R10 Portessie and in responding to outstanding representations whereby they stated:
- 6.19 *'Due to various constraints there are very limited options for development in the eastern side of Buckie. In order to try to facilitate development on the eastern side of Buckie there is scope to allocate a small area of land for low density development. An indicative capacity of five is given which reflects the existing development pattern/density along Station Road as well as respecting the location on top of the coastal cliffs.'*
- 6.20 This clearly also has a knock-on effect in terms of supporting the local Portessie Primary School Role at a time when the School Estate is under constant review regarding capacity take up. The development of 7 new family sized homes gives the opportunity to maintain its longer-term viability. This should be considered material in this specific case for the reasons highlighted and appropriate weight attached to supporting the delivery of local housing for local people and which supports local services.
- 6.21 The emerging NPF4 adds a key national planning policy direction and consideration (albeit in Draft form) by seeking to introduce the concept of 20 minute neighbourhoods. Portessie as a location and the approval of this site are exactly the types of place that this new national planning framework is looking to support and encourage and again weight should be assigned to this as a material consideration.

- 6.22 Consideration and weight has to be given to the Economic benefits of delivering 7 family sized homes on this site can bring locally in the uncertain post-COVID economy.
- 6.23 A further material consideration in this case is that all statutory Consultees have no objections to our Clients proposed development, again something which can be considered when coming to a view on the proposal.
- 6.24 Our Clients proposal whilst receiving 5 objections/representations also received 7 representations in support of their development proposal which were summarised in the Planning Officer's Report of Handling and which are worth reiterating as a final point for consideration. The representations in support stated the following:
- *This is a fantastic opportunity for the area. Given the uncertain times we find ourselves in this would create employment for local trades which can only be a good thing. There is a very limited market supply of houses in the Portessie area and this site would upgrade Station Road which is in a poor state of repair at the moment.*
  - *It is good to finally see new properties being proposed in Portessie as it is a beautiful area with a limited market supply.*
  - *We are looking to relocate to the area and having great difficulty finding a suitable property with 4 bedrooms. The proposed small scale development would be ideal for our needs as are looking for a new build property within a community but without living on a large scale development/site.*
  - *The development will help support the school role of Portessie primary school, where it is difficult to find a property within the catchment which suits family needs.*
  - *There is a large amount of availability for new build energy efficient homes in other areas of Buckie but no availability in the Portessie area.*
  - *Without developments like this that school numbers will fall and as has been seen with other areas the school will inevitably close which would be a huge loss to the area.*
  - *An energy efficient family home, within safe walking distance to the school. I believe this development is something that the Portessie area badly needs.*

- 6.25 The Net Environmental, Economic and Infrastructure gains achieved by developing the site in line with the submitted details far outweigh the somewhat 'late in the day' Buckie ENV5 designation attached to it and provide significant material weight such that the reason for the proposal being refused can be revisited by this Review Board.

### **Summary**

- 7.1 In summary there are a significant number of material considerations in this particular case which have been outlined in the preceding paragraphs of this statement of review and which would justifiably allow development on part of this Buckie ENV5 designation. Whilst a departure from Policy EP5 it can be considered as an acceptable one given the nature and extent of these.

### **Conclusion**

- 8.1 **The Review Body is invited to approve the application as an acceptable departure from part of the Buckie ENV5 designation and Policy EP5 given the material considerations outlined and to therefore Grant our Clients planning permission in full for the development of 7 detached family homes on land adjacent to 1-5 Station Road, Portessie, Buckie.**

- 9.1 **Productions**

**[GHJ1]** Planning Application and Submitted Plans

**[GHJ2]** Decision Notice Dated 2<sup>nd</sup> December 2020

**[GHJ3]** Annex A of 3/2013 Development Management Procedures

**[GHJ4]** GMC Survey Report – Drainage Impact Assessment

**[GHJ5]** Extract from 2019 Proposed Plan (Map)

**[GHJ6]** Moray Council Site R10 Marketing Schedule

**[GHJ7]** Extract from NPF4 Draft (Page 13 Concept of 20 minute neighbourhoods)

**[GHJ8]** Extract from SPP Extract (Page 13 Para 40)

- [GHJ9]** Extract from NPF4 Draft (Page 32)
- [GHJ10]** Extract from School Roll Forecasts
- [GHJ11]** Planning Officers Report of Handling (20/00544/APP)
- [GHJ12]** Site Photographs
- [GHJ13]** Extract from MLP2000 (Map and Text)
- [GHJ14]** Extract from MIR Schedule (Page 1 & BK5 Station Road)
- [GHJ15]** Extract from Proposed Plan (Page 2, R10 Text and Map)
- [GHJ16]** Planning Authority Response to Outstanding Representation on Proposed R10
- [GHJ17]** Extract from Reporters Examination Findings (Page 395)

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