

**RESPONSE TO FURTHER REPRESENTATIONS TO LOCAL
REVIEW RELATING TO:**

PLANNING APPLICATION REFERENCE: 20/01658/APP

LOCAL REVIEW REFERENCE: LR/LR259

This paper is submitted as a response to the Further Representations 1-3 received following notification by Moray Council.

It is worth stating at the outset:

This is a planning application, and it is the adopted planning policies and other material planning considerations that are of strict relevance to its consideration. Notwithstanding the representations received, it is only those material to planning that can be considered in the decision-making on this planning application.

The policy support and merits of the application are already well-documented in the submitted Planning Supporting Statement and Notice of Review Statement and it is not the intention to repeat it all again here, unless necessary to directly respond to a point made. This Response should therefore be read together with the information already submitted.

The following tables capture and respond to all the points raised in the Further Representations including those which are non-material. Responses are provided to the non-material points merely to correct misleading information and state the facts. Those points which are non-material should be totally disregarded by the Local Review Body when deciding on this application. The representations are captured under the following subject headings:

- **AVAILABILITY AND SUITABILITY OF OTHER OPTIONS**
- **PHOTOGRAPHS**
- **INFRASTRUCTURE**
- **FLOODING AND DRAINAGE**
- **AFFORDABILITY**
- **LOCATION IN PRESSURISED AND SENSITIVE AREAS**
- **AMENITY**
- **ROAD SAFETY**
- **MISCELLANEOUS ISSUES**

AVAILABILITY AND SUITABILITY OF OTHER OPTIONS

Objections have been raised asserting that there are other locations available to the applicant within the extended farm holding, including land adjoining Rafford Village and outwith the Pressurised and Sensitive Area.

The reasons for the chosen location (and therefore the reasons why alternative locations are not acceptable) are already fully outlined in the submissions.

The applicant has demonstrated that the site, the subject of this review, is the only available, viable and suitable site. It is not the case that the applicant has recently chosen this site without any forethought. The site choice follows an extended and costly search over the past 12 years. The applicant in searching for a site for a farmhouse must consider factors beyond those a member of the public would in choosing their house location. As stated, this is not a house for A. N. Other. This is a house to enable the succession of this farm holding into the future. The reasons for the site location are fully outlined in the submission and have not been acknowledged by the Representees.

By way of one example reason, the suggestion that the house could be located immediately adjacent to Rafford or on land outwith the Pressurised and Sensitive Areas would not support the ongoing animal husbandry needs, as asserted by the applicant through the Agricultural Needs Assessment. It would not be practical nor sustainable for the efficient running of the farm. Those inefficiencies are currently evident to the applicant whilst currently trying to make a living from the existing base near Rafford. Any alternative location within the Pressurised and Sensitive Areas is unlikely to meet the planning policy tests and would not be supported by the Agricultural Needs Assessment.

As such, if the applicant were to randomly chose an alternative site for the farmhouse, that was not close to the farm steading (where the cattle are sheltered, housed, and wintered), it would not be practical. This ties in with the Agricultural Need Assessment.

Whilst there were other potential site locations, every one of these have been openly presented in the submissions along with factual and genuine reasons for their dismissal, e.g., access, availability of services and utilities, loss of quality farmland, viability and practical reasons relating to the efficient running of the farm holding into the future, particularly in relation to animal husbandry, as part of this farming succession.

With respect to those Representees asserting that there are alternatives, as they have not managed this farm holding, they do not have all the available facts to claim any other site is available, viable or suitable for the applicant. Their views are just that, based on false assumptions, which show a misunderstanding of the operational requirements of this farming business.

It is also asserted in the representations that there have been several available properties and plots, but these have been sold by the applicant, implying that this whole situation has been engineered.

This assertion is false. The fact is that in the past 12 years there has been only one plot sold and built on. The fact is that this planning application comes at the end of a long and costly 12-year search. It is inconceivable why it would be asserted that any person would invest time and money for this long period whilst exploring other sites and engineering the whole situation, just to engineer the submission of this planning application 12 years later.

Notwithstanding all the above misguided suggestions and false assumptions of the applicant's needs, this planning application is for this site alone and not another site.

The fact is that this remains the only viable option to the applicant that meets all their needs as a fourth-generation farmer managing this farm holding. It is this site that must be assessed against planning policy and other material planning considerations.

PHOTOGRAPHS

It is asserted that the photographs provided are misrepresentative and 'staged.' This is categorically not accepted by the applicant.

In the first instance, 'staging' of photographs is also a pointless exercise. The planning officer visits the site as part of their assessment and if photographs were 'staged' then this would easily be found out. The purpose of the photographs is merely to demonstrate the case for approval to the planning officer and for them to consider as part of their assessment.

By way of direct responses to the representations, any new photographs that have been provided were taken during May 2021 and were necessary to address the concerns within the Officer's Handling Report and the reasons for refusal; neither of which were available during the winter months.

The appeal must be submitted within a 3-month timeframe, necessitating any additional photographs to be taken during the months of May, June, and July.

However, it should also be pointed out that there were photographs submitted with the planning application in December 2020, including photographs taken between August and the submission date.

It is not therefore correct to assert that the applicant has in any way chosen the timing for the photographs or that they are misleading; they have been taken at different times to suit the submission date and the appeal timeframe.

Regardless of the assertions made in the representations, all the photographs provided accurately show the site from a public domain and they have not been 'staged'.

It is accepted that in winter there may be less screening from vegetation, dependent upon the nature of that vegetation (size, species, and whether it is deciduous or coniferous). However, the proof is in the photographs and site visits undertaken by myself and the applicant. They all show significant mature landscaping around the site, in the vicinity and viewed from the public domain.

LRB59 Further Representation 3 has included two photographs to demonstrate an impact on the landscape in December 2020. The first photograph in fact assists the Review and clearly shows that the new house would not be clearly visible within the landscape. Even during the winter months of December, as shown, there is substantial mature landscaping providing a natural backdrop and hedging in the foreground. The second zoomed photograph, whilst it shows an arrow for the location of the house (which is incorrect),

demonstrates that to see the site it is necessary to use a zoom facility on a camera or indeed a pair of binoculars. All sites will generally be visible if a high-powered lens is pointed at the target. The reason for the 'zoomed' photograph submitted by the applicant (Photograph 3 in the Notice of Review Statement) was to show that even with a magnified view of the site, there is no harm caused by the construction of the proposed house on this site. In fact this photograph is more honest than the Representees in that it shows the field in full view.

It is also worth pointing out the planning test here is not whether you can see the house/plot but whether it has a detrimental and visual impact upon the landscape. An argument together with a significant number of photographs taken at different times and from different viewpoints have been presented by the applicant in the submissions and accordingly it has been fully demonstrated and proven that there is no harmful impact.

It is also implied that the applicant does not have 'local knowledge'.

As stated in the submissions, the applicant and his family have worked their farm holdings for four generations and clearly are well qualified to have local knowledge about the landscape, more so than the existing residents. The applicants are out in the landscape, every hour of the day, day in, day out, in every season and it is therefore asserted by the applicant that of all those involved in this process, they are best placed to have that knowledge. In fact, the natural landscape, is undoubtedly a legacy of their undertaking through planting, growing, etc on the land.

It is asserted in the representations that 'staging' has occurred relating to the 'unauthorised' hedge cutting.

In the first instance, most of the photographs in the original planning submission were taken by me, with no knowledge of the situation in terms of hedge cutting etc, as such 'staging' could not have occurred. Those submitted in the Notice of Review Statement were taken by the applicant to fit within the statutory Review timeframe.

By way of fact, the applicant undertook the hedge cutting solely to assist road users, including the residents of Sourbank and the surrounding area. The hedges had not been cut by Moray Council. They were cut back so cars could drive along the road without scratching their paintwork and avoid the potholes that were being created because of residents of Sourbank and the surrounding area driving predominantly up the one side of the road in order to avoid these hedges, which were hugely overgrown. Furthermore, not only did the use of one side of the road create potholes, the use of the verges as an alternative caused the road to become dirty and dangerous.

As such, it is therefore fact the cutting of hedges was not a 'staging' exercise but instead since no other person took it upon themselves to alleviate the problems being cause, the hedges were cut as an act of goodwill on behalf of the applicants and the residents of Sourbank, who could then commute to and from their homes with greater ease.

It is asserted by Further Representation 2 that the photographs provided by the applicant misrepresent the proximity of the site to their property, Park View.

These photographs are factually correct and have not been 'staged' or engineered to misrepresent. They, in combination with the drawings, accurately represent the situation on the ground. The photographs provided by the representee in fact confirm the significant distance between neighbouring properties.

It is asserted that the hedge cutting was part of the ‘staging’ exercise by the applicant.

Whether the hedge cutting was ‘unauthorised’ etc is also not a matter for consideration as part of this planning review. Notwithstanding this, it is unclear why the removal of greenery would assist the applicant’s case. Surely, it would be more ‘staged’ to allow it to overgrow so that the site might be less visible?

The provision of photographs of other new builds in the area is questioned.

Photographs of other new build in the area is provided, as stated, to demonstrate that Moray Council has permitted housing that has no landscape backdrop and is detrimental to the landscape and visual amenities. The photographs/cases are provided to demonstrate by comparison, this proposal has significant existing mature landscaping in which to sensitively locate a house without any detriment to the landscape.

Notwithstanding the above points, the fact is ‘staging’ of photographs is not a material planning consideration. The response here is to correct misleading statements made within the representations and to provide the Local Review Body with the facts of the situation.

INFRASTRUCTURE

Photographs have been provided by Further Representee 3 of some overflowing bins asserting that there are problems regarding refuse storage and collection, the road, turning etc. The assertion is made that the applicant’s photograph of the bin storage area is misrepresentative of the situation.

The photographs provided by the applicant were intended to show the location of the bins and nothing further. It is therefore neither non-representative nor ‘staged.’ It could equally be asserted that the bins being full on the day of the Representee’s photographs were ‘staged’ but it is not necessary for the applicant to put this forward as a rebuttal because it is for the Council’s expert officers to decide whether the bin storage/collection relating to this proposal is satisfactory.

This issue was fully considered and dismissed in the Officer’s Handling Report, confirming that the bin storage and collection was acceptable. The application was not refused on these grounds.

Pressure on electricity, drainage, road usage etc has also been raised by Further Representee 1.

No evidence has been presented by the Representee to demonstrate or prove the points made.

Those infrastructure matters which are material planning considerations have been covered in the planning submission and found to be satisfactory in the Officer’s Handling Report. The application was not refused on these grounds.

FLOODING AND DRAINAGE

It is advised that the Representees are not assured that there is not a flooding issue and that there are drainage issues.

The fact is that this matter has been fully assessed by the Council's experts along with SEPA, the Scottish Government experts.

The fact is, flooding and drainage issues were fully considered and dismissed in the Officer's Handling Report, confirming that there was no flooding risk and that the drainage details were acceptable. The application was not refused on these grounds.

AFFORDABILITY

A Representee advises that there are inconsistencies over affordability on the basis that this is a family business and not the young farmer.

It is not considered necessary to repeat the affordability argument and how it fits within the context of agricultural need and farming succession. This is all fully demonstrated within the submissions.

In brief, the proposed new house is required for farming succession for the young farmer, who will take over from his father and run the farming business. There is a proven agricultural need for both the house, its functional need and its location.

Owing land on which to build a new house, which is the case here, significantly reduces the costs involved and therefore makes it more affordable. A basic search online will show that building plots for single houses in the Rafford/Forres area are currently being advertised at prices between £60,000 – 200,000. This price would not be applicable for the applicant since they already own the land. Their costs will only involve the construction costs, making it significantly more affordable.

The fact is that there is a prove need for affordable housing here to meet a genuine need. This need would be met by granting this planning permission.

LOCATION IN PRESSURISED AND SENSITIVE AREAS

It is asserted that solely because there is no policy or exceptions allowed in the Moray LDP that allows housing in the Pressurised and Sensitive Areas, that this proposal should automatically be refused on this basis.

As already stated, whilst there is no policy exception in the Moray LDP, this does not automatically mean that a proposal must be refused. Material planning considerations must also be considered when making a planning decision. The planning merits of the proposals must be considered. Moray Council can therefore legitimately decide to approve this application based on the individual merits presented, which are all material planning considerations.

The submissions have presented those material planning considerations and merits as being:

- Farming succession needs
- Agricultural, locational, and functional needs
- Affordable housing need and provision for a key worker
- Inconsistency of Moray LDP policies with most other Scottish rural authorities (in allowing housing when presented with a case based on the afore-mentioned bullet-pointed material planning considerations)
- Inconsistency with national planning policy, which seeks to be flexible and promote farming and the rural economy and the provision of affordable housing to meet all needs.
- Sustainable development and transport requirements

All these material considerations, individually and cumulatively, as presented in detail within the submissions in, provide a strong argument for the approval of this single house in this location to meet the applicant's needs.

AMENITY

It is asserted in Further Representation 2, that there is an impact upon residential amenity.

Regarding these concerns:

- The main elevation (and living area) for Park View is orientated away from the track, where there are uninterrupted views of the countryside. There is a boundary hedge along the boundary of the field from the rear. The house at Park View is below the level of the track, as fully demonstrated by the applicant in the submissions, but also now supplemented by those photographs provided by the representee. The relative level serves to restrict any view from the rear of the property. Furthermore, any view from the rear of Park View must of minimal value and directed at the gorse bushes, or indeed obstructed by their own parked cars (as also demonstrated in the photographs). If the view is important, it is questioned why the parking of cars is not undertaken elsewhere on their land.

As this is the applicant's land (the fields and the track) they have the right to park any vehicle, which could obstruct that view (either permanently or temporarily whilst working in the field). However, this 'view' has in fact been enhanced for the representee (and would be maintained) by the creation of the gap, where the access would be created.

Notwithstanding all of this, there is no right to a view in planning and whether the representee can view the fields (in the applicant's ownership) and beyond, or not, is irrelevant. This is not a material planning consideration for the Local Review Body.

- There would be no loss of privacy because of this proposal. The proposed new house is located sufficiently distant, orientated, and designed not to impact upon any neighbouring property's privacy.
- It is unclear how the creation of a new driveway/access to the proposed house can create a loss of privacy to any of the adjacent residential properties. This is an

open field used for farming purposes and accessed by the applicant for those purposes. It is not an unused area with restricted human access.

- There would be no additional privacy issues relating to the use of the existing track for access to the proposed new house.

This track is private and owned by the applicant and it is within their right to use it for access. Right of access is extended to this Representee. No other rights are given to the Representee.

It is also a public right of way used by walkers, cyclists, and horse-riders.

The construction of this proposed new house would not change this situation and involve any loss of privacy beyond what may already be experienced by the Representee by the applicant or members of the public using the track.

All relevant amenity issues have all been covered both in the applicant's submission and within the Officer's Handling Report and dismissed. The application has not been refused on this basis.

ROAD SAFETY

It is asserted that there is an impact upon road safety by the Further Representation 2.

Regarding these concerns:

- The traffic increase would not significantly increase. This is a minor development for one single house for one family, accessed directly from a track within the applicant's ownership (and not the Representees). This is a farm track and can already be used by the applicant for access by farm vehicles along the rear side of this property.
- There would be no road safety issues. The representee over-states the point by mentioning their grandchildren and imply they will no longer be able to freely use the garden. Those children presumably have access to the area to the front and side of the house, without the need to play in a dirt farm track at the rear of the house. With this being a farm track, regardless of a house being built or not, the current situation would not change. The grandchildren would still need to be road safety aware when outside, particularly since the Representee has chosen not to secure their garden with a fence.

Notwithstanding all the above, it has been fully demonstrated within the applicant's submissions that this is not the case. The Transport Section of the Council has confirmed that there are no road safety issues relating to this application other than the need to provide visibility splays. Visibility splays have accordingly been included in the proposals which fully meet their requirements.

MISCELLANEOUS ISSUES

Whilst the representee states they have maintained the track; this is a choice and not a requirement. It is not a material planning consideration.

It is unclear why Further Representee considers they know the facts relating the withdrawal of the previous application nor why this has any bearing on this application. The Representee is not correct in their assumption. However, whatever the point being made is, it is irrelevant and not a material planning consideration relating to this planning application.

It is concluded that none of the points raised in the Further Representations would override the material considerations and merits of this application such that it should be refused. No policy is referenced in their assertions. Most of the points raised are non-material considerations and should be dismissed accordingly. Similarly, many of the points are based on false assumptions rather than fact.

This response provides the facts of the situation and the case and therefore afford greater weight in the review of this case by the Local Review Body. The facts present a genuine case of need.

Accordingly, it is requested the Local Review Body allow this appeal to enable this long-standing farming business to go through the farming succession process and to continue this viable farming business for the future benefit not only of the applicant but to the rural economy and local community.