

Response to Representation from Moray Council Transportation department.

As previously mentioned in the application supporting documentation Moray Council made improvements to the visibility in the North East direction at the junction of the U107E and the B9010 in 2015. This involved the removal of a high hedge and the construction of a low wall fronting the property 'The Holm' (situated on the North East side of the junction)

In the summer of 2020 the owner of the property 'KANTARA' (situated on the North West side of the junction) removed a high hedge and replaced it with a high fence in breach of Scottish Government householder permitted development rights: *Guidance Legislation Class 3E, 2b Development is not permitted by this class if any part of the resulting gate, fence, wall or other means of enclosure would exceed one metre in height where it (1) fronts a road.*

This high fence severely reduced visibility from the U107E onto the B9010 in a North West direction.

Below email from Stuart Dale, Planning Enforcement dated 6<sup>th</sup> January 2021

Dear Mr Kemp,

Apologies for not responding sooner but I have only just returned to the office this morning after an extended Christmas break.

I am aware that the question of the hedge has been raised by Transportation and I am sure this will form part of the consultation process. The officer dealing with the planning application is a Mr Craig Wilson and I have forwarded your email to him for his attention.

The very reason that an application is required in this matter is because the householder is breaching Class 3E in that the fence is over 1.0m in height fronting a road. The application may or may not be approved and that is a matter yet to be determined but the only way that the householder could hope to retain the fence would be by submitting a retrospective planning application that would be considered acceptable in planning terms.

If you have any further comments or concerns then they would be best directed to Mr Wilson directly at email: [craig.wilson@moray.gov.uk](mailto:craig.wilson@moray.gov.uk)

Regards,

Stuart Dale

Planning Officer (Enforcement)

A Council Planning Officer noticed the height of the fence and also the poor visibility and referred this to Planning Enforcement as per the above letter. The result of this intervention was that the Council purchased some land from the owner of 'Kantara' and removed the fence.

For a very short length of time the visibility in both directions at the junction was unrestricted and the best it had been for more than 20 years.

However Moray Council then proceeded to rebuild the fence to the same height but this time further back from the road thereby constructing a visibility splay in the North West direction. The current fence is still more than 1.5M high and the last 3.5M still fronts the main road and hence is still in breach of Class 3E. There is also a gate in the fence that fronts directly onto the main road and this is considered to be highly dangerous.

Transportation has supplied a photograph of the fence in their representation, TMC03. Please also note the height of the low wall in photograph 1 which was built by the Council in 2015 and which complies with Class 3E. It is not readily apparent why the Council built the wooden fence so high because it stands in contradiction to the low wall which affords visibility as far as the eye can see. If the Council truly wanted to seriously improve visibility at the junction then they should have limited the fence to a height of 1M and not waste Council tax funds. Following a phone conversation with a member of the Transportation team I now understand that this was done to protect the privacy of the owners of 'KANTARA' hence privacy has been put before road safety for all users of this junction.

The photograph of the fence also reveals a short vertical yellow line which is in fact where the fence should be according to the official Council drawing passed by the planning department. If this fence was moved back to the yellow line and also reduced in height then visibility would be further enhanced. I have written to the Council and suggested both of these options but have been told that no further alterations will be taking place.

I find it very difficult to comprehend why Transportation has gone to all the expense of purchasing land using Council Tax money then removing and rebuilding a high fence also using Council Tax funds and then having the audacity to suggest that the visibility is still not fit for purpose. A much cheaper option would have been to simply lower the height of the existing fence to 1M thereby saving several thousand pounds.

The first 2 photographs supplied by Transportation under the reference TMC03 clearly show that the visibility in both directions is more than adequate and therefore easily complies with DP1 'Development Principles' section 2 'Transportation', part 'a' (safe entry and exit) and it is misleading to suggest otherwise.

Because of the latest improvement to the visibility splay, there is now more than adequate inter-visibility between vehicles entering and exiting the junction. There is

in fact space at the junction to allow for 2 cars to pass each other however because of the recent improvement to visibility this is no longer necessary because the vehicles can clearly see each other as they approach the junction.

The 3<sup>rd</sup> and 4<sup>th</sup> photographs under the reference TMC03 show the visibility when the "X" distance is 4.5M, this being the distance from the dotted white lines to the driver's eye. Having been a motorist for more than 50 years I am completely at a loss as to why anyone would want to stop here and not move up to the junction before moving onto the main road as per the Highway Code. The dotted white lines are there for a purpose and that is to define where the main carriageway runs so that drivers can see where they need to stop or give way.

The final 2 photographs show the width of the lane and this has remained unchanged for more than 20 years. During this time approval has been given to build 11 houses, the latest permission being granted in 2015.

The width of the lane is common to many such lanes in the rural community and users are aware of the fact that many of these have limited numbers of passing places. We have already stated that we would be willing to construct an additional passing place in the U107E thereby effectively doubling the number of official sign-posted passing places.

The damage to the verge in the final photograph could have been avoided if the Council had either removed the verge during their improvements or more simply fitted bollards as per the other side of the lane.

Paragraph 6 in the Response from Transportation considers that all traffic associated with a new dwelling would be "new" traffic. However the reality is that the previous owner of the land operated a herb business with the associated supply and delivery vehicles and the owners own vehicle using the lane on a daily basis. The "new" traffic would be a single vehicle using the lane maybe twice per week and hence there would actually be less traffic using the lane than previously was the case.

### Conclusion

Transportation have spent many thousands of pounds purchasing land, removing a high fence and replacing it with another high fence which their contractor has in fact built in the wrong position. There is also a gate in the fence which leads directly to the main road. All of this expensive work was carried out to improve the visibility splay at the road junction. However Transportation suggests that this **still** falls short of what would ordinarily be required. The easiest and cheapest solution would have been to simply reduce the height of the fence to 1M similar to the wall on the opposite side of the lane which the Council constructed in 2015.

I have been told by Transportation that the fence was rebuilt to the current height to allow for privacy for the owners of 'KANTARA' and suggest that this has been done at the expense of a visibility splay that would meet the required standards.

However photographs supplied by transportation indeed confirm that the actual visibility at the dotted white lines at the junction is in fact more than acceptable and does in fact comply with DP1. Also there would be no intensification of use of the lane or junction; rather there would be an overall reduction in traffic from previous use.

The appointed case officer confirms that *' the addition of a new house on this site would therefore not create ribbon development or an unacceptable build-up of new housing that would be detrimental to the character of the wider area. Additional tree planting is also proposed within the site which would aid to integrate a new house easily into the existing site and further screen any property from neighbours. Therefore, overall, the proposal is considered to comply with the siting requirements of policy DP4'*.

There was no other objection by any other council department nor has there been any objection by any neighbours or users of the U107E lane.

The appointed officer therefore only refused the proposal because of the objection from Transportation.

We have since planted another 40 trees on the site following this report.

I would therefore respectfully request that the MLRB consider this response and allow the proposal to proceed.