

## **ENVIRONMENTAL SERVICES**

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Our reference: LR/LRB265

Your reference: LR265

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

03 November 2021

Dear Madam

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

**REQUEST FOR REVIEW: PLANNING APPLICATION 21/01250/PPP ERECT DWELLINGHOUSE WITH  
DETACHED GARAGE AT FLORRIE'S FIELD DAMHEAD RAFFORD FORRES**

I refer to your email dated 25<sup>th</sup> October 2021.

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**

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## Local Review

LRB Ref 265

**Planning Application Reference 21/01250/PPP Erect dwellinghouse with detached garage at Florrie's Field Damhead Rafford Forres**

### Response from Transportation, Moray Council

1. This document is in response to the Notice of Review and the Statement of Case submitted by Mr Andrew Kemp and sets out observations by Transportation on the application and the grounds for seeking a review.
2. This review concerns planning application 21/01250/PPP to erect a new dwelling house. Access would be provided via a new access onto the U107E Fernielea Road, which joins the wider road network at its junction with the B9010 Main Road, Rafford.
3. Transportation received the consultation for planning application 21/01250/PPP on 18<sup>th</sup> August 2021. A copy of Transportations consultation response dated 25<sup>th</sup> August 2021 is attached (TMC01).
4. The basis of the appellants request for review is that the site was the former location of a caravan and agricultural buildings associated with the previous owner of the site (which was for a heather and herb business), and the associated vehicular trips for the previous operations would essentially be replaced by those associated with the proposed new dwelling. Additionally the appellant considers that the visibility splay at the junction onto the B9010 is acceptable, and that the carriageway for the side road (U107E) is wide enough to accommodate two vehicles passing each other at the junction.
5. The previous use and associated buildings did not have Planning Permission, and instead was subject only to 'permitted development' rights for Agricultural use (AGR). The permitted development rights for Agricultural use are strictly subject to various restrictions and limitations, including limits on the use, duration of operations, size of buildings, and distance from a public road. The development "must not give rise to, or alter or extend, a dwelling", and also the "development giving rise to buildings, structures or works not designed for agricultural purposes is not permitted".
6. The previous traffic would have been strictly associated with the restricted Agricultural based permissions (not transferrable to domestic use). Transportation therefore considers that all traffic associated with the proposed new dwelling would be "new" traffic.

#### Visibility Splays

7. Visibility splays at junctions on the public road are required to ensure that there is adequate inter-visibility between vehicles. If a development involves the intensification of use of a junction where visibility is restricted by adjacent hedges/ boundary fences etc, then this would be likely to give rise to conditions

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detrimental to the road safety of road users, contrary to Moray Local Plan policy DP1 'Development Principles' section (ii)- 'Transportation', part 'a)' (safe entry and exit)

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 '85<sup>th</sup> percentile vehicle speeds'. For a junction serving additional development the 'x' distance is 4.5m, measured from the edge of the public carriageway along the centre-line of the side road.
9. A detailed description of the relevance and consideration of visibility splays is attached (TMC02) which is an extract from The Moray Council document Transportation Guidelines for Small Developments in the Countryside (TRSDC). TRSDC was approved at the Economic Development & Infrastructure Committee on 20 April 2010.

## Background

10. The B9010 Main Road/U107E Fernielea Road junction was previously identified for improvements on road safety grounds following complaints to Transportation (Traffic section) regarding the restricted visibility. The visibility at this junction onto the B9010 was previously severely restricted in both directions by the boundary hedges of the adjacent properties, 'The Holm' and 'Kantara'.
11. An officer from the Traffic section originally approached the owners of both these properties to secure, by control or agreement, improvements to the sightlines. The officer was able to secure improvements to the visibility splay in a southerly direction only (across the frontage of 'The Holm'. These improvements were considered to be the minimum acceptable in terms of road safety and did not go so far as to enable the intensification of use of the junction by additional traffic associated with any new development. The visibility splay to the north-west at that time remained severely restricted due to an existing high hedge across the frontage of 'Kantara'.
12. A previous Planning Application for this site (21/00005/PPP) was objected to by Transportation on the grounds of the constrained visibility and lack of passing space at this junction being considered likely to result in conditions detrimental to road safety of road users. Transportations response stated "The junction has been identified as requiring improvements to the visibility splays for the minor

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road and widening works. Further development via this junction would not be acceptable unless the improvements had been implemented. The improvements require land located outwith the extents of the public verge (third party). “

13. Subsequently as a result of enforcement proceedings relating to a high fence which was erected without consent by new owners of the property, and through negotiations with Transportation Officers the new owners of 'Kantara' agreed to the setting back of the high fence and hedge to provide a minor betterment to the visibility splay from the adjacent junction. (21/00512/APP relates). These works have now been completed with the former timber fence (which was subject to the enforcement case), and high hedge to rear now being set back to provide a visibility splay of approximately 2.4m x 36m from the junction across the frontage of 'Kantara'.
14. Once again it must be emphasised that although minor improvements have now been provided to the visibility splays in both directions at the junction onto the B9010 (across the frontages of both 'The Holm' and 'Kantara') these improvements are considered to be the minimum acceptable in terms of road safety and do not go so far as to enable the intensification of use of the junction by additional traffic associated with any new development.
15. It should also be highlighted that a visibility splay “x” distance of 2.4 metres, is normally associated with accesses serving single properties. An access or junction such as this serving multiple properties would ordinary have a more onerous visibility splay ‘x’ distance requirement of 4.5m.

#### Existing B9010/U107E Fernielea Road Junction

16. The U107E Fernielea Road is a single track road with limited passing opportunities. The road serves a number of residences and farms and is a 'dead end' road. As the road approaches the B9010 it remains narrow, with an inadequate width to allow two vehicles to comfortably pass. The existing measurements are as follows:

#### Existing Road Measurements at junction onto the B9010

<b>Distance from Road Markings at edge of B9010</b>	<b>Fernielea Road - Approximate Road Width (edge of carriageway to edge of carriageway)</b>
0 metres	11.0 metres
2.5 metres	5.5 metres
5.0 metres	4.2 metres
7.5 metres	3.4 metres

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**Local Review****LRB Ref 265****Planning Application Reference 21/01250/PPP Erect dwellinghouse with detached garage at Florrie's Field Damhead Rafford Forres**

10.0 metres	3.0 metres
12.5 metres	2.9 metres
15.0 metres	2.8 metres

17. The works undertaken to date have also not resulted in any widening the U107E Fernielea Road as it approaches to the B9010 junction. There is still insufficient width to accommodate two vehicles passing each other at the junction without having overrun the public verge. Additionally of course some of the vehicles may be larger than cars, and given the constrained visibility it would also be likely that the exiting vehicle would be positioned in the centre of the carriageway, as they would not be aware of another vehicle about to turn off the B9010 and towards them. There are also no segregated areas/ footways available for pedestrians to step out of the way of a passing vehicle.

**Additional Development/ intensification of use of the junction**

18. The improvements required to enable additional traffic associated with developments to use the B9010/U107E junction would be an 'x' distance of 4.5 metres and a 'y' distance of 90 metres in both directions, which is in keeping with the standards set out in The Moray Council document Transportation Requirements for Small Developments in the Countryside. The land required to provide the 'appropriate' visibility splays (to roads standards) lies out with the public road verge and within the garden ground of both adjacent properties. Recent photographs taken at 'x' distances of 2.4 metres and 4.5 metres are attached (TMC03).

19. Further improvements to widen the U107E Fernielea Road would also be required to enable additional traffic associated with development to use this junction. The required widening would be to a minimum of 5.5 metres for a distance of 15 metres measured from the edge of the B9010, as set out in The Moray Council document Transportation Requirements for Small Developments in the Countryside. Verges typically of 2.0 metres in width would be required on either side of the widened road. The land required to provide this road improvement (to roads standards) once again lies out with the public road verge and within the garden ground of both adjacent properties.

**Conclusion**

20. Whilst Transportation has been able to secure a limited betterment to the visibility splays, this falls well short of what would ordinarily be required (based on Roads Standards) when considering approaching vehicle speeds and the capacity of the junction. Additional visibility splay improvements would be required along with

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improvements to the width of Fernielea Road at the approach to the junction in order to safely accommodate any intensification of use of this junction.

21. There is no evidence to indicate the necessary visibility splay improvements and required road widening works can be provided by the appellant. There is third party land involved.
22. The proposed new dwelling would be considered to directly result in the intensification of use of this existing constrained junction.
23. Transportation, respectfully, requests the MLRB to uphold the decision by the appointed officer. In particular on the grounds that policy DP1 'Development Principles' section (ii)- 'Transportation', part 'a)' (safe entry and exit) is not satisfied.

Transportation

03 November 2021

#### Documents

- |       |  |
|-------|--|
| TMC01 | Transportation Consultation Response dated 25 <sup>th</sup> August 2021  |
| TMC02 | Extract on Visibility Splays from Transportation Requirement for Small Developments in the Countryside (TRSDC) |
| TMC03 | Site photos (Visibility splays at junction)  |

## Consultation Request Notification

<b>Planning Authority Name</b>	Moray Council
<b>Response Date</b>	1st September 2021
<b>Planning Authority Reference</b>	21/01250/PPP
<b>Nature of Proposal (Description)</b>	Erect dwellinghouse with detached garage at
<b>Site</b>	Florrie's Field Damhead Rafford Forres
<b>Site Postcode</b>	N/A
<b>Site Gazetteer UPRN</b>	000133058522
<b>Proposal Location Easting</b>	306814
<b>Proposal Location Northing</b>	854325
<b>Area of application site (M<sup>2</sup>)</b>	
<b>Additional Comment</b>	
<b>Development Hierarchy Level</b>	
<b>Supporting Documentation URL</b>	<a href="https://publicaccess.moray.gov.uk/eplanning/centralDistribution.do?caseType=Application&amp;keyVal=QXRX1KBG02M00">https://publicaccess.moray.gov.uk/eplanning/centralDistribution.do?caseType=Application&amp;keyVal=QXRX1KBG02M00</a>
<b>Previous Application</b>	21/00005/PPP 09/00690/AGR 08/02170/AGR
<b>Date of Consultation</b>	18th August 2021
<b>Is this a re-consultation of an existing application?</b>	No
<b>Applicant Name</b>	Mr Andrew Kemp
<b>Applicant Organisation Name</b>	
<b>Applicant Address</b>	Gorse Bank Damhead Rafford Forres Moray IV36 2SJ
<b>Agent Name</b>	
<b>Agent Organisation Name</b>	
<b>Agent Address</b>	
<b>Agent Phone Number</b>	
<b>Agent Email Address</b>	N/A
<b>Case Officer</b>	Fiona Olsen
<b>Case Officer Phone number</b>	01343 563189
<b>Case Officer email address</b>	fiona.olsen@moray.gov.uk
<b>PA Response To</b>	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.

Data Protection - Moray Council is the data controller for this process. Information collected about you on this form will be used to process your Planning Application, and the Council has a duty to process your information fairly. Information we hold must be accurate, up to date, is kept only for as long as is necessary and is otherwise shared only where we are legally obliged to do so. You have a legal right to obtain details of the information that we hold about you.

For full terms please visit [http://www.moray.gov.uk/moray\\_standard/page\\_121513.html](http://www.moray.gov.uk/moray_standard/page_121513.html)

For full Data Protection policy, information and rights please see [http://www.moray.gov.uk/moray\\_standard/page\\_119859.html](http://www.moray.gov.uk/moray_standard/page_119859.html)

You can contact our Data Protection Officer at [info@moray.gov.uk](mailto:info@moray.gov.uk) or 01343 562633 for more information.

Please respond using the attached form:-



## MORAY COUNCIL

### PLANNING CONSULTATION RESPONSE

**From:** Transportation Manager

**Planning Application Ref. No: 21/01250/PPP**  
**Erect dwellinghouse with detached garage at**  
**Florrie's Field Damhead Rafford Forres for Mr Andrew Kemp**

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

- |   | <b>Please</b>                       |
|---|-------------------------------------|
| (a) I OBJECT to the application for the reason(s) as stated below   | <input checked="" 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 type="checkbox"/>            |

*This proposal is for the erection of a new dwelling swerved via the U107E Fernielea Road.*

*The U107E Fernielea Road is a narrow no through road with limited passing places, which gains access to the wider road network via a junction onto the B9010 Main Road, Rafford. This junction is the sole point of access from the site onto the wider road network.*

*The visibility splay to the north west at the U107E/B9011 Junction is presently restricted by a high timber boundary fence along the site boundary of 'Kantara'. Additionally the narrow width of the U107E at the junction makes it difficult for two vehicles to pass each other.*

#### Background

*A previous Planning Application for this site (21/00005/PPP) was objected to by Transportation on the grounds of the constrained visibility and lack of passing space at this junction being considered likely to result in conditions detrimental to road safety of road users. Transportations response stated "The junction has been identified as requiring improvements to the visibility splays for the minor road and widening works. Further development via this junction would not be acceptable unless the improvements had been implemented. The improvements require land located outwith the extents of the public verge (third party)."*

*Subsequently, and as a result of enforcement proceedings relating to the high fence which was actually erected without consent (in front of an existing high hedge); through negotiations with Transportation Officers the owner of Kantara agreed to the setting back of the high fence and hedge to provide an improved visibility splay from the adjacent junction. (21/00512/APP relates).The works to improve the visibility splay have been*

*completed with the former timber fence now being set back to provide a 2.4m x 36m visibility splay from the junction.*

*It should be highlighted that whilst these works do offer an 'improvement' to the previous visibility afforded by the high fence (and high hedge behind), the sightline still falls well short of what would ordinarily be accepted as an appropriate visibility splay based on approaching vehicle speeds. The works have also provided no improvement to the width of the junction, meaning that it would still be difficult for vehicles to pass when meeting each other at the junction.*

*Therefore on the basis that the visibility splay at the U107E/B9011 junction is still constrained, and the U107E at the junction is still too narrow to allow vehicles to safely pass each other Transportation's previous response would still apply:*

### **Reason for objection**

The existing U107E/B9011 junction serving the site is considered to be inadequate to serve the proposed development, by reason of its restricted visibility and width. Transportation therefore considers that the proposal, if permitted, would result in an intensification of use of the constrained junction and be likely to give rise to conditions detrimental to the road safety of road users contrary to Moray Local Development Plan policy DP1 'Development Principles' section (ii)- 'Transportation', part 'c)' (safe access to and from the road network).

**Contact: AG**  
**email address: [transport.develop@moray.gov.uk](mailto:transport.develop@moray.gov.uk)**  
**Consultee: TRANSPORTATION**

**Date 25 August 2021**

**Return response to**

**[consultation.planning@moray.gov.uk](mailto: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://publicaccess.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.

## 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)

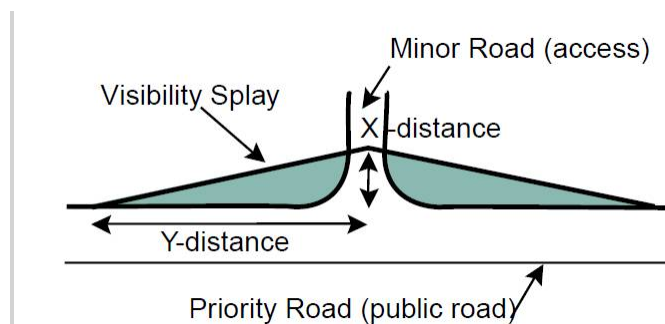


Figure 3: Visibility Splays

- 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

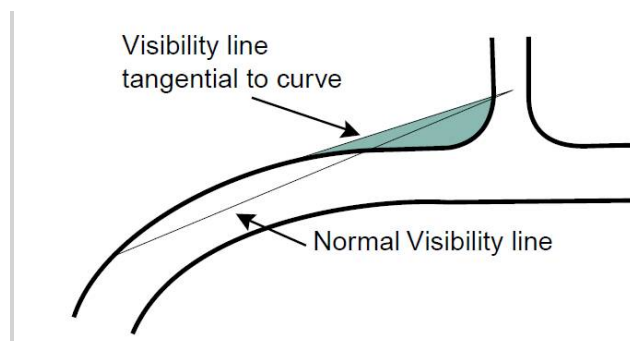


Figure 4: Visibility Splays for Access on Outside of Bend

- 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.

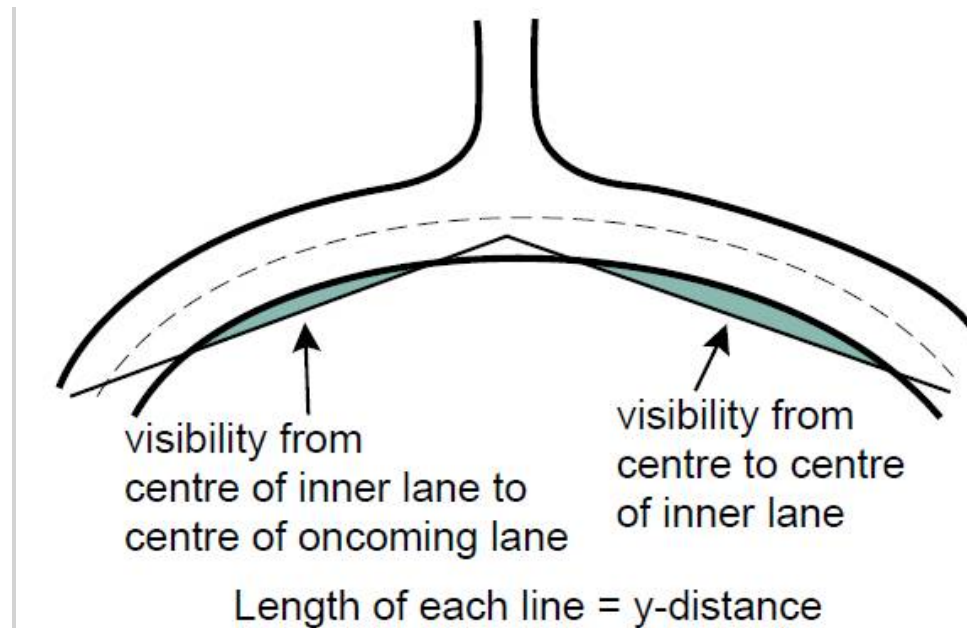


Figure 5: Forward Visibility Requirements

- 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.



VIEW DRIVERS EYE HEIGHT – 2.4M “X” DISTANCE TO SOUTH-EAST



VIEW DRIVERS EYE HEIGHT – 2.4M “X” DISTANCE TO NORTH-WEST



VIEW DRIVERS EYE HEIGHT – 4.5M “X” DISTANCE TO SOUTH-EAST



VIEW DRIVERS EYE HEIGHT – 4.5M “X” DISTANCE TO NORTH-WEST





PHOTO OF JUNCTION SHOWING APPROACH ONTO B9010



PHOTO SHOWING NARROW VERGE AND EVIDENCE OF VEHICLE VERGE OVERRUNING

**mORday**  
council

**m2oRday**  
council

**m2oRday**  
council