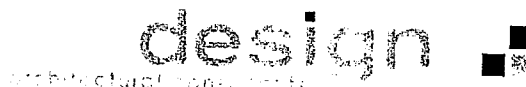


LOCAL REVIEW BOARD APPEAL AGAINST THE MORAY COUNCIL REFUSAL OF PLANNING
APPLICATION: 09/00963/OUT –FORMATION OF 2NO PRIVATE HOUSE PLOTS AT WALKERS
CRESCENT (KIRKHILLHEAD) LHANBRYDE MORAY

Our Ref. 090172/ROBERTSON/mjh
Your Ref. 09/00963/OUT
Council Refusal Notice dated 8th October 2009



1.0 INTRODUCTION

1.1 In June 2009, Robertson Homes Ltd sought outline planning approval from The Moray Council (thereafter called 'The Council') for the erection of two detached house plots at Walker's Crescent, Lhanbryde, Moray (Council Ref. No. 09/00963/OUT Refers).

1.2 Following consideration, the Council refused the proposal (Decision Notice – Document 01), under delegated powers on 8th October 2009, for the single reason of:

The proposal is contrary to policy T2 in the adopted Moray Local Plan 2008 as a safe and suitable access cannot be provided owing to the substandard access width, and visibility of Walkers Crescent onto the public highway and the use of which would result in hazards to pedestrian and other road users

1.3 After due consideration, the applicant – Robertson Homes Ltd (thereafter called 'The appellant') has decided to exercise their right to seek a review of this decision, in accordance with section 43A of the Town & Country Planning (Scotland) Act 1997 (as amended) and the following is their detailed Statement of Case to accompany the enclosed 'Notice of Review' application form.

1.4 This Statement of Case has been prepared on behalf of the appellant, by CM Design Chartered Planning and Architectural Consultants (thereafter called 'The agent'), with the assistance of Dougall Baillie Associates Consulting Engineers (DBA).

2.0 APPEAL SITE BACKGROUND

2.1 The appeal site is an irregular shaped parcel of disused ground, extending to approximately 1980 square metres. It is bounded on three sides (east, south and

west) by residential properties, with the eastern boundary comprising of a residential housing development recently completed by the appellants.

2.2 The northern boundary is defined by the Kirkhillhead Woodland, which leads into the extensive Crooked Woodland beyond. Kirkhillhead Wood is covered by an Environmental designation (ENV2) within the Moray Local Plan 2008 and is also protected with a Tree Preservation Order (TPO). The appeal site whilst bordering the woodland will not detrimentally affect either of these designations.

2.3 The appellants have an existing pedestrian and vehicular right of access to the appeal site from Walkers Crescent. Walkers Crescent is a Private (Unadopted) Road, the surface of which the Council has an obligation to maintain. The last part of the access to the site is via a private shared unmade track running between the residential properties 'Gormond' & 'Balnakyle'.

2.4 Moreover, following the enactment of Land Reform (Scotland) Act 2003 the Council identified various Core Path networks throughout the Council area and Walkers Crescent and the private access road were identified as one of Lhanbryde's Core Paths.

2.5 In addition, pedestrian access to the site is also gained via an existing made footpath between 82 & 84 Woodside Drive (the appellants recently completed residential development). This made footpath dissects the appeal site and is unmade at this point and as part of the appeal submission it is proposed to route the footpath along the northern extent of the site, thereby protecting this pedestrian route.

2.6 Due to the site location within the urban environment, all services are readily available and it is therefore proposed to connect the development to both the public water supply and public sewers.

3.0 SITE PLANNING HISTORY

3.1 In 2005 the appellants undertook preliminary discussions with the Council Planning Service (including the Council Transportation Section), regarding the acceptability of developing the appeal site. The Planning Service raised no objections to this proposal

and the Transportation Section confirmed by email (Document 02) that they would have no objections to a development of two house plots.

- 3.2 Subsequently, in 2006 the appellant sought outline planning approval for three house plots on this site (Council Ref. 06/00426/OUT refers) and following discussions with the Planning Officer this application was later withdrawn. The appellant shortly thereafter submitted a revised application for a single house plot (Council Ref. 06/02562/OUT refers). This application was duly permitted in February 2007 and is still an extant permission.
- 3.3 Following the appellants' reconsideration of the development potential of the appeal site, they submitted another application for two house plots, in accordance with the recommendation of the Transportation Section aforementioned email (08/00388/OUT refers). Again following discussions with the Planning Officer this application was later withdrawn.
- 3.4 More recently, the appellants decided to resubmit the proposal for two house plots on this site (the application subject to this appeal). Regrettably, this application was refused for the reason outlined in Section 1.2 above and it is this application which is now subject to the Local Review Board consideration.

4.0 PLANNING CONSIDERATIONS

- 4.1 Section 25 of the Town and Country Planning Act (as amended) requires that a planning application and a subsequent appeal are determined in accordance with the provisions of the development plan, unless there are material considerations which indicate otherwise.
- 4.2 In this instance the primary area under contention relates to the Moray Local Plan 2008 Policy T2: *Provision Of Road Access (Document 03)*, with the prevalent section of this policy stating:

'...The Council will require that a suitable and safe road access from the public highway is provided to serve new development...'

- 4.3 Whilst the Council Decision Notice claims that *'...a safe and suitable access cannot be provided owing to the substandard access width, and visibility of Walkers Crescent onto the public highway...'*
- 4.4 This single reason for refusal is elaborated on at length within the Council's 'Report of Handling Document' (Document 04), and in summary the Council Transportation Section concludes that:
- Walkers Crescent is a narrow road with no footways;
 - The Junctions of Walkers Crescent and the public road network have restricted visibility;
 - Walkers Crescent is utilised as overspill parking by residents;
 - Access to the appeal site from the private access road is restricted and it is questioned if larger vehicles could turn safely;
 - The private access road is further restricted in terms of its width;
 - The construction of the private access road is unknown and additional traffic could damage it further;
 - The private access is utilised as a local pedestrian route and conflict could arise between motor vehicles and pedestrians;
 - The junction of the private access road and Walkers Crescent has restricted visibility.
- 4.5 In response, the appellant wishes to address each of these concerns, with the support of the Transportation Statement prepared by Dougall Baillie Associates (DBA) (Document 05).
- 4.6 Initially, looking at the restrictive width of Walkers Crescent and the absence of any dedicated footpaths. As noted in Section 3 of the DBA Report, the appellant accepts Walkers Crescent fails to meet the Council current Design Standards for adoptable roads which were agreed following the enactment of the Road (Scotland) Act 1984. However, this is not uncommon with developments which pre-date the Road Act

- 4.7 More recently the uses of 'shared surfaces'/'Homezones' are becoming more accepted across the Council area. These 'shared surface' schemes promote both vehicle and pedestrian movements on the same surface and avoid the use of separate pavements. Although Walkers Crescent is not formally designated as a 'shared surfaces'/'Homezones', the appellant would contend that it has all the characteristics of such an area. Therefore, the appellant finds itself in agreement with the DBA Report that the additional of a single house (one house on the site already has planning approval) will not have a significant impact on the condition and/or safe usage of this road.
- 4.8 The second primary issues the Council Transportation Section raise is the substandard nature of the visibility from Walkers Crescent onto the public road. Following DBA site survey it has been identified that there are two points at which Walkers Crescent joins the public road network; the first point being the junction of Walkers Crescent and Garmouth Road (Shown as Junction A on the Plan in Document 06). The appellant again accepts the Council Transportation Section notion that this junction currently has restrictive visibility in both directions, created by the boundary hedges of the properties on either side of the junction (See Photo 8 of the DBA Report – Document 05).
- 4.9 Nevertheless, DBA Report highlights that Walkers Crescent meets the definition of a 'Road' as specified within the Road Scotland Act and therefore the Council (as Roads Authority) have the power to remove obstructions to the visibility, if the junction was accepted as causing a road hazard.
- 4.10 As there is no record of any accidents at this junction and the Council has not exercised its power to improve the visibility, the appellant concludes the Council do not believe the visibility is such a problem that it should preclude this development.
- 4.11 Moreover, in looking at the second access point (Walkers Crescent junction with St, Andrews Street Shown as Junction B on the Plan in Document 06), DBA Report has again reviewed the visibility at this junction and has found that at this point there is no

restriction to driver visibility in either direction (Section 4.11 and Photos 1, 9 & 10 – Document 05).

- 4.12 In considering the visibility splays of this junction on a map base, the visibility in a western direction extends to 70metres, whilst the eastern splay extends to well in excess of 110metres (Please refer to the plan: Robertson.Appeal.02 - Document 10). Table 2/1 of Volume 6, Section 2 of 'The Design Manual for Roads and Bridges' set the visibility requirement of a 30mph road at 70metres in both directions and, as St. Andrews road is within Lhanbryde's 30m.p.h. limit the enclosed plan clearly demonstrates that the Walkers Crescent - St. Andrews Road Junction (Junction B) conforms to this requirement.
- 4.13 The author of the DBA Report states that he undertook observations of vehicle movements along Walkers Crescent on the morning of Thursday 10th December 2009, between 7.30am and 9.00am – the period of the day when the junctions could be expected to be the busiest period, when commuters are leaving for work and parents taking their children to school.
- 4.14 These observations informed the author that no vehicles left or entered Walkers Crescent via the Garmouth Road Junction (Junction A) and that all vehicles (5 in total) left Walkers Crescent via the St. Andrews Road Junction (Junction B) and all these vehicles turned right. Which as commented on in Section 4.14 of the DBA Report, is expected as the most likely destination is Elgin, which lies to the west and if these vehicles exited via the Garmouth Road Junction, drivers would still have to negotiate the Garmouth Road – St. Andrews Road Junction (Junction C on the Plan in Document 06), which can be busy at this time of day, with traffic backing up on Garmouth Road beyond the Walkers Crescent – Garmouth Road Junction (Junction A).
- 4.15 DBA Report also reviewed the usage of the entire length of Walkers Crescent as a pedestrian route and during the time of the assessment a total of only 12 pedestrians walked through (Section 5.12 – Document 05). As noted in Section 5.16 of the DBA Report, it was the author's intention to photograph a vehicle passing a pedestrian in

order to fully review the potential conflict. However, due to the low usage of Walkers Crescent by vehicles and pedestrians this situation did not occur. Therefore, the author concludes that the Council Transportation Section reasoning for seeking the refusal of this application on this ground is flawed (Section. 5.23 – Document 05).

- 4.16 The Council Report of Handling goes on to note that the properties on Walkers Crescent have limited parking provision and this in turn leads to vehicles parking along the length of Walkers Crescent, which the Transportation Section implies leads to a further reduction in the road width.
- 4.17 The appellant does not accept this notion, as all the properties along the road have private parking areas and the Photographs within the DBA Report illustrates that no vehicles are parked along the length of the road at the busiest time of day. The only on road parking at this locale is at the end of Walkers Crescent (Area Coloured Brown on the Plan in Document 06), where the road widens to approximately 12metres, thus creating no road safety issues (Photograph 01 – Document 09).
- 4.18 The last portion of the access to the appeal site is via a private access track (Coloured Yellow on the Plan in Document 06) and the Council Transportation Section notes various concerns over this private access regarding its construction and ability to accommodate additional vehicles.
- 4.19 Nevertheless, the Council is correct in noting this is an existing private access over which the appellants have unrestrictive rights, which they currently utilise in order to gain vehicular access to the appeal site. Therefore, concerns over the construction and long term maintenance of this track are outwith the remit of the Council and are essentially legal matters between the properties which utilise/control the access.
- 4.20 Corollary, the appellant believes the Transportation Section concerns over the integrity of the 'historic' wall (Photograph 02- Document 09) and the surfacing/maintenance of the access track are matters for the appellant to address in agreement with the other joint owners. Therefore, they are not deemed to be material considerations in the determination of this appeal and should have no bearing on its outcome.

- 4.21 With regards the safe use of the private access, CM Design has measured its width and found the usable uniform width to be 4.4metres. This is considered to be an acceptable width for a private access, providing inter-visible passing places are provided at a maximum of 150metres distance.
- 4.22 In this instance, the length of the private access track from Walkers Crescent to the appeal site via this private access is only relatively short at just 15metres. Accordingly, should a vehicle be attempting to enter the private access whilst another vehicles is trying to leave, the vehicle entering should have enough warning to stop at the wide section of Walkers Crescent, thus avoiding this potential conflict.
- 4.23 Additionally as the appeal site fronts this private access track, the appellant is content to form a lay-by at the site entrance. This lay-by would not only permit vehicles to pass safely, it will also aid larger vehicles manoeuvring into the site without causing the conflicts anticipated by the Council.
- 4.24 The Transportation Section goes on to note that the private access, over which the appellant has unrestrictive rights, is part of the Lhanbryde Core Path network and that the private access track is '*...a regularly used route to the primary school...*' (Para. 6. Report of Handling – Document 04). Nevertheless, the DBA Report highlights that only one primary school child utilised Walkers Crescent on the way to the primary school (Section 5.6 DBA Report – Document 05) and that child did not walk along the footpath across or adjacent to the appeal site.
- 4.25 Moreover, during the entire time of the DBA authors observations no school children crossed the appeal site and consequently, the appellant would assert that school children conflict is negligible.
- 4.26 Finally, the Transportation Section questions the restriction of the visibility of the private access track onto Walkers Crescent, due to the fence along the boundary of 'Balnakyle'.

- 4.27 Whilst the appellant accepts this visibility is restrictive, they note that the fence which restricts the visibility appears to be erected relatively recently (Photograph 3 – Document 09) and as noted in Section 4.8 above, the Council (as Road Authority) has the power to improve visibility over any road, should they deem the visibility to be a road hazard. In this case the appellant is unaware of any accidents at this location and therefore it has to be questioned if the restriction in visibility causes a road hazard.
- 4.28 It should also be noted that the visibility standards outlined in the ‘Design Manual for Roads & Bridges’ which are utilised by the Council, refer to access onto the public (adopted) road network and previously mentioned Walkers Crescent is a Private (Unadopted) Road and, as such, the specified standards are not relevant in this instance.
- 4.29 Furthermore, the appellant considers vehicular speeds along this section of Walkers Crescent to be comparably slow and as this part of the road is moderately wide, they assert that concerns over the visibility restriction are alleviated to a degree which makes this development is acceptable.

5.0 OTHER RELEVANT PLANNING CONSIDERATIONS

- 5.1 In order to ensure the accuracy and completeness of this Local Review Board Appeal, the appellant considers it is essential to briefly consider other Moray Local Plan 2008 policies which are relevant to a housing development within the urban environment, namely; Policy H3: New Housing in Built Up Areas (Document 07) and Policy IMP1: Development Requirements (Document 08).
- 5.2 Both of these policies set a general presumption in favour of new housing within the settlement envelope on the proviso that the site is of sufficient size to accommodate the development, the design and site layout complements the character of the area and that the proposal does not impinge on neighbouring uses in terms of amenity and privacy.
- 5.3 The appeal site lies within Lhanbryde settlement boundary as defined in the Moray Local Plan 2008 and, as such, policy H3 is the relevant policy.

5.4 With regards to the plots size, as noted in Section 2.0 above, the appeal site extends to 1980 square metres, thereby making each site in excess of 900square metres. This plot size is considered to be sufficient to accommodate the proposal and is characteristic of other residential plots in the locality, as a result the appellant asserts the density of the proposal is acceptable.

5.5 In terms of the design of the houses and impacts on surrounding uses, as this application is in 'Outline', these issues will primarily be dealt with during the 'matters specified in conditions' application. Nevertheless, it can be concluded that as the surrounding area is mainly residential and the plots are of sufficient size to accommodate relatively large properties, no conflicts should arise in this instance.

6.0 LOCAL REPRESENTATION

6.1 In accordance with the neighbour notification in place at the time, the appellant undertook the appropriate notification and Council advertised the application in the Northern Scot. This publicity resulted in seven properties submitting letters of representation.

6.2 These letters raised various concerns, including; the development setting, access/traffic, site preparation, character of the area, safety and Ecology. Upon receipt of these letters, the appellant provided the Council a written response (Document 12), which we consider adequately deals with their concerns.

7.0 CONCLUSIONS

7.1 In 2009 Robertson Homes Ltd submitted an Outline planning application for two house plots following previous comments (via email) from the Council Transportation Section that two houses would be acceptable.

7.2 Regrettably, this application was refused as a '*...safe and suitable access cannot be provided owing to the substandard access width, and visibility of Walkers Crescent onto the public highway and the use of which would result in hazards to pedestrian*

and other road users. and it is this decision which is subject to this appeal to the Local Review Board.

- 7.3 In considering this reason for refusal, the appellant Statement of Case, in collaboration with Dougall Baillie Associates Transportation Statement, has demonstrated that the width of Walkers Crescent is not uncommon of housing developments of this era and that the addition of a single house will not increase the conflict between motor vehicles and pedestrians to the detriment of road safety.
- 7.4 The above Statement also reviews the Council Transportation Section allegation that Walkers Crescent junctions onto the public highway have restrictive visibility. This review accepts that the Walkers Crescent – Garmouth Road Junction (Junction A) is currently below standard. However, if the Council considered this lack of visibility to be a road safety issue they have the power under the Road Scotland Act to remove the hedges which restrict the visibility.
- 7.5 In addition, the appellants have demonstrated that the second point of access does not have the same restrictions over visibility and in fact this junction conforms to the requirements outlined in the 'Design Manual for Roads and Bridges'.
- 7.6 DBA Report has also disproved the Transportation Section concerns over the potential pedestrian conflict (especially the primary school children conflict), as at the busiest time of day only 12 pedestrians (1 primary school child) and 5 vehicles were noted as using Walkers Crescent over a 90 minute period, This results in the likelihood of pedestrians meeting a moving vehicle to be very low.
- 7.7 With regards the private access track, much of the Transportation Section comments are not material to the consideration of this application and the issue of the alleged restrictive width has proved to be unsubstantiated.
- 7.8 The restriction in visibility of the private access and Walkers Crescent is again within the control of the Council to alleviate. Nevertheless, the appellant does not believe it to be a concern which warrants the dismissal of this appeal, as vehicle movements are

relatively slow at this point and Walkers Crescent is comparatively wide at this location.

- 7.9 The Planning Officer raised no objections in terms of the other main planning considerations, namely; site size, character, density, privacy and amenity and the appellant concurs with this.
- 7.10 Whilst the application attracted a number of letters of representations, the majority of these concerns related to private matters outwith the consideration of the planning system and the remaining issues have been adequately dealt with by the DBA Report and previously by the appellant.
- 7.11 Consequently, based on all of the above, the appellant believes the application and therefore this appeal should be duly permitted and, as such, we look forward to the Local Review Board approving of this appeal