

1 February 2010

Our Ref. 090172/ROBERTSON/mjh
Your Ref. RR/LRB/Case 002

Ron Ritchie
Senior Committee Services Officer
The Moray Council
Council Office,
High Street,
Elgin
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Dear Mr Ritchie:

PLANNING LOCAL REVIEW BOARD APPEAL 09/00963/OUT: WALKERS CRESCENT,
LHANBRYDE.

1.1 I refer to the above appeal, our various telephone conversations and email correspondence and your letter dated 18th January 2009 enclosing the copies of the 4 representation to the above appeal on CD.

1.2 These representations can primarily been divided into two categorises; The first from the Council Transportation Section and secondly the letters from neighbouring properties, and we intend to deal with both separately.

1.3 In reviewing the technical objections raised by the Council Transportation Section initially, the appellant considers it is worthy to note the following:

1.4 On a point of procedure, it is noted that these comments are not provided on the Council letterhead, nor are they dated or attributed to a Council Official and whilst the appellant accepts these comments were likely submitted by the Council Transportation Section, they have no way to verify this, nor question the expertise of the author of this paper. Furthermore, in a court of law this document would be considered inadmissible due to the above failings.

1.5 Furthermore, our client is concerned over the lack of impartiality in this document, as in Section 1 (Site Planning History) refers to only two applications, both of which were withdrawn by the applicant prior to the decision being taken by the Council and are therefore not a material planning consideration in the determination of this Local Review Board Appeal.

1.6 The only material consideration in terms of planning history for this site relates to an outline planning application to erect one house on the site (Council Ref. 06/02562/OUT). This

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application was permitted under delegated powers on 20 February 2007 without any objection from the Council Transportation Section.

1.7 To avoid any ambiguity with regards to the timeframe for the above single house application, we can confirm that the approved application was submitted following the withdrawal of the first application 06/00426/OUT. Our client is therefore, surprised that the Transportation Consultation Response for the approved site is omitted from their response to this appeal, as we consider it to be the only material consideration in terms of planning history.

1.8 In reviewing their second section (Junctions of Walkers Crescent with Public Roads), the appellant notes the first line of the first paragraph states "...in the case of a wholly new development there is a requirement ...for a visibility splay of 4.5 x 70 metres..." In this instance the roadway and junction are existing and already serve 28 properties, 2 approved house plots and historic graveyard. Therefore, the appellant questions the relevance of this statement in light of the above conditions.

1.9 With regards to the stated requirement for the visibility splay to be 4.5 x 70 metres, whilst the appellant does not dispute the 70 metre requirement, concern has to be raised over the 4.5 metre distance, as the 'Scottish Government Designing Street, Consultation Draft' (Document 13) states in para. G4.7.6 that "...an X distance of 2.4metres should normally be used in most built-up situations..." para. G4.7.8 & G4.7.9 continues by stating "...using an X distance in excess of 2.4 m is not generally required in built up areas....." Based on this document our client believes the visibility splay requirement for Walkers Crescent should be 2.4m x 70m and as demonstrated in Document 10 of our main report the principal access/egress conforms entirely to this requirement, contrary to the Transportation Section comments.

2.0 Progressing to the Transportation Section third sub-heading (Walkers Crescent - Existing Conditions), the appellant accepts that their movement survey was over a limited timeframe. Regrettably, this was somewhat due to the failings of the Council in terms of issuing the application decision documents and the resulting tight timeframe for preparing and submitting this appeal (Elaborated on in para. 3.1 below).

2.1 Even though the survey was undertaken on a December morning, the weather conditions whilst cold were dry and clear, so is likely to be typical of children walking to school. Had it been raining, or forecast to rain, then the objectors' point may be worthy of consideration.

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2.2 Moreover, the majority of school children noted on Walkers Crescent were catching the school bus from outside the Tennant Arms Hotel on St. Andrews Road. These children were all of secondary school age and attend Milnes High School in Fochabers.

2.3 Consequently, it is extremely unlikely the number of school children fluctuate significantly over the year as parents will be loath to drive this distance to the school when there is already a school bus providing transit.

2.4 With regards the timeframe of the survey, it is agreed December is not an ideal time of year. However, the survey had to be carried out within the time scale available. The results we quote are the results observed on the day. DBA would be pleased to compare the results with any surveys carried out by the residents, or by the Council, at what they consider to be more typical times. To date, it is worthy of note that no data has been made available to our client for comparison purposes.

2.5 DBA understands in general, roads authorities will accept traffic surveys for the purposes of preparing Transportation Assessments at any time of year, provided that they are not undertaken during holidays. In traffic terms, the preferred "neutral" month is August (when daily traffic flows approximate most closely to the annual average). It would be ludicrous, however, to suggest a survey in August of children walking to school, when the school only returns from holiday at the end of that month!

2.6 The photographs the Transportation Section have provided in Annex 3, only show cars parked on the last portion of Walkers Crescent and, as note in Para. 4.17 of our main Report, this section of the road is approximately 12 metres wide. Consequently the few vehicles parked on these photos cause no road safety issues.

2.7 DBA was on site at 7am, and there were no vehicles parked along Walkers Crescent, apart from at the wider section at the western end. There are no photos taken at that time because it was still dark. At the end of the survey (09:00) DBA walked along Walkers Crescent, and were there until after 10am, and again, no vehicles were observed parking anywhere else along Walker's Crescent, apart from the postman. There may well be deliveries at other times. In any event, the point is NOT that there is already sporadic parking on Walkers Crescent - the point is "how much difference does the development make to that existing situation" and the answer is "none".

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2.8 With reference to the appearance of Walkers Crescent characterising a Home Zone in our original report, we were not suggesting that Walkers Crescent is, or should be made, a formal home zone. We merely pointed out that it has the characteristics of one.

2.9 The main obstruction to the visibility of the private track onto Walkers Crescent is the recently erected high timber fence around 'Balnakyle'. Our client, can identify no formal planning permission for this fence and therefore finds it incongruous that an unauthorised fence should be utilised as a means to oppose their development!

3.0 Within the Section the Transportation has entitled 'Policy T2 -Provision of Road Access' they have underlined the last sentence of justification. This sentence states that "where the access to a site is unmade or a private track, it MAY require to be surfaced to a suitable standard and require the provision of passing places or to be widened accordingly." These "requirements" are discretionary - they "may" be required, (the implication being that it depends on circumstances). DBA view is that they are not required for the existing use of Walkers Crescent, nor were they required for the additional house already approved on our clients' site, or the consent granted for a house opposite, to the rear of the hotel. Nevertheless, for some reason, they appear to be required now, for this additional dwelling (and even then, there is clearly disagreement within Transportation Services as to whether they are required or not).

3.1 In turning to the letters of representations from the various neighbouring properties, initially our client wishes to stress that there was no malice in submitting the appeal on 21st December 2009 as alleged in various letters. Unfortunately, the three month timeframe for the preparation and submission of this appeal was seriously reduced by the failings of the Planning Section to issue the decision documents in a timely manner coupled with the 3 month period expiring over the Christmas/New Year holidays on 8th January 2010.

3.2 With regards the delay in issuing the decision documents, the Refusal Notice is dated 8th October 2009, but was only received by our client on the 2nd November 2009. Following which our client immediately (3rd November 2009) emailed the Principal Planning Officer to query the timeframe for the Appeal submission, regrettably this email has gone unanswered and, as such, we have assumed that the 3 month period ran from the 8th October. The delay in issuing the decision notice, thereby gave our client only a 7 week period in which to prepare and submit their appeal before the Christmas Break.

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3.3 Moreover, following discussions with the Senior Committee Clerk, the appellant agreed to an extension of the 14 day period for representations to be submitted, this extension gave all parties a full 15 days (excluding the period 24th December 2009 – 4th January 2010) in which to prepare and submit their representation. This time period is longer than the legislation requires and, as such, our client does not accept any allegation of malice and/or strategic submission of this appeal.

3.4 Each representations raises slightly different issues and therefore we propose to address each one individually and initially considering the comments from Mr & Mrs Gillespie, Brylach, Walkers Crescent, the appellant wishes to note the following;

3.5 The appellant has a legal right of access to the site from Walkers Crescent via the private access track and they would be happy to demonstrate this if required. The planning application drawing (Document 11) clearly shows the proposed routes of the services along the footpath between 82 & 84 Woodside Drive and, as such, our client is not proposing to lay them through the private access track.

3.6 Whilst this appeal is for two houses on the appeal site, as noted above, the appellant has already secured planning approval for one house on the appeal site (Council Ref. 06/02562/OUT). Consequently, the only issue under contention in the appeal relates to the formation of a second house plot and any detrimental issues this might create.

3.7 Mr & Mrs Gillespie included several copies of letters they have sent to various section of the Councils and their local Councillor regarding the unauthorised use of the footpath running adjacent to their property by motorbikes. Their last letter (23rd June 2009) sought the installation of a gate across the entrance of the footpath to deter the motorbike use and it is our understanding that this gate has not be erected. Therefore, as our client is proposing to form a footpath along the top of their site to link with the existing footpath, our client would be content to install a gate at the path entrance to deter the use of motorbikes should this appeal be supported.

3.8 Mr & Mrs Gillespie also raise a point regarding the junction midway along Walkers Crescent, saying that they asked the Council to provide markings and signs, but they declined as the road is private. The responsibility for markings and signs falls to the residents, if they consider the junction unsafe. The residents have not considered it sufficiently unsafe to have signs and markings installed. The proposed development would not significantly increase the existing accident risk.

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3.9 In response to Mr & Mrs Brown, Balnakyle, Walkers Crescent letter, they again comment on the short period of time over which the DBA survey was undertaken and the appellant comments in section 2.1 above are again relevant.

4.0 Mr & Mrs Brown also comments on the disruption that will be caused with the erection of the two houses. This disruption will be short term during the construction of the houses only and as the Council has already permitted one house on this site, our client does not consider the additional disruption caused by the erection of a second house warrants the refusal of this appeal.

4.1 As noted above (para.3.7) our client is content to install a gate at the path entrance to deter the use of motorbikes should this appeal be supported, which should resolve one of Mr & Mrs Brown main concerns.

4.2 The comments regarding the length of time of the survey and time of year of the survey have be adequately addressed in the paragraphs above and, as such, we see little merit in repeating them here and would instead refer you to paragraphs

4.3 Mr Taylor's letter mainly reiterates the comments raised by the other neighbouring properties and the Council Transportation Section comments and, as such, we do not propose to add anything further with reference to his letter.

4.4 I trust the above resolves any concerns you may have over this proposal and we would respectfully ask that you support our appeal and approve the second house on this site.

Sincerely,

Matthew Hilton

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