
Local Review

LRB Ref 97

Planning Application Reference 13/01876/APP Erect new house and garage at The Orchard, Ashfield, Garmouth (Extension of planning permission 10/01385/APP)

Response from Transportation, Moray Council

1. This document is in response to the Notice of Review and the Statement of Case submitted by the appellant and sets out observations by Transportation on the application and the grounds for seeking a review.
2. This review concerns planning application 13/01876/APP for the erection of a dwelling house and garage to be served by an existing access onto the C1E Garmouth-Lhanbryde Road. The appellant is seeking to remove the planning condition 1 of this planning permission which relates to the provision of visibility splay of 2.4 metres by 120 metres at the access onto the public road.
3. Visibility splays for private accesses onto the public road are required to ensure that there is adequate inter-visibility between vehicles on the public road and a vehicle at the private access onto the public road. If a development involves the intensification of use of a vehicular access onto the public road where visibility is severely restricted by adjacent hedges/trees/walls/embankment/buildings/obstructions and would be likely to give rise to conditions detrimental to the road safety of road users, the development is contrary to Moray Local Plan policies T2 Provision of Access and IMP1 Development Requirements.
4. 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 the design speed of the road and a corresponding 'stopping sight distance' or in some circumstances may be based on observed '85th percentile vehicle speeds'. In the case of planning application 13/01876/APP, the access lies within a 40mph speed limit and a standard 'y' distance of 120 metres which relates to that speed limit was applied.
5. A detailed description of the relevance and consideration of visibility splays is attached (TMC01) 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. The full document is available via the following web link <http://www.moray.gov.uk/downloads/file79761.pdf> It should be noted that the requirements for visibility splays within the document TRSDC are based on those set out in the Design Manual for Roads and Bridges (DMRB) Volume 6 Section 2 Part 6 TD 42/95, which has been industry standard guidance since 1995. An extract from the DMRB is attached (TMC02).

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6. The existing access onto the C1E Garmouth-Lhanbryde Road (also known as Station Road) lies within a 40 mph speed limit. The visibility to the east of the access is restricted by an existing hedge and vegetation. The road verge along the site frontage is very narrow measuring 0.9m – 1.0m. A fenceline is present behind the existing hedge.
7. The development site was granted planning permission in principle for a single house in 2010 (09/02358/PPP). There was one objection to this planning application which raised road safety concerns. This objection is referred to in the Report of Handling for this application, a copy of which is attached (TMC03). During the assessment of this application it was confirmed that the applicant controlled the ground necessary to provide the required visibility splay to the east of the access.
8. The standard for accesses onto the public road which serve multiple properties is for the provision of visibility splays with an 'x' distance of 4.5 metres. However in this instance a relaxation to the minimum of 2.4 metres was accepted to minimise the impact of providing the visibility splay on the existing hedge along the road frontage of the site. A copy of the final consultation response to planning application 09/02358/PPP is attached (TMC04).
9. A further detailed application for this development site, 10/01385/APP was submitted by the applicant in August 2010. A copy of the consultation response to planning application 10/01385/APP is attached (TMC05) along with a copy of the Report of Handling (TMC06). The approved plans for this site included a drawing showing the provision of the 2.4 metres by 120 metres visibility splay across the frontage of the site. A copy of this approved plan is attached (TMC07).
10. When planning application 13/01876/APP was submitted the documentation did not include the previously approved drawings. However as this application was for the renewal of an existing planning permission and the applicant had already demonstrated his ability to provide the required visibility splay to the east, the Transportation response recommended the use of a suspensive planning condition in relation to the provision of the visibility splay. A copy of the Transportation response is attached (TMC08) along with a copy of the Report of Handling (TMC09).
11. Through this review the appellant is seeking to remove the visibility splay planning condition and have it replaced with a condition relating to the management of the hedge in terms of cutting back the hedge so that it does not overhang the road verge. However this would still leave the hedge lying within the sightlines for the access onto the public road. This would not be acceptable.
12. Planning Circular 04/1998 'The Use of Conditions in Planning Permissions' sets out the criteria for the use of planning conditions stating that they must be precise and enforceable.

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13. Planning conditions must be formulated precisely, leaving no doubt about exactly what is required in order to comply with the terms of a planning condition. Precise wording of conditions is crucial when it comes to enforcement. A condition must be definitive with certain criterion by which the applicant can ascertain what is required.
14. The proposal to cut back the hedge from the road verge is not precise. At this location the majority of the boundary fence for this property lies behind the hedge. A 'natural' boundary such as a hedge which will change position (grow) over time and therefore cannot with certainty be used to define the boundary of the edge of the public road verge. The proposed replacement condition would not provide the certain criterion by which the applicant and the planning authority can ascertain what is required and for officers to assess when a breach of conditions has taken place.
15. A degree of flexibility has already been applied to the visibility splay planning condition by relaxing the 'x' distance to 2.4 metres as opposed to 4.5 metres. This was accepted in order to minimise the impact of forming the visibility splay on the existing hedge, which is under the control of the applicant.
16. Transportation, respectfully, requests the MLRB to uphold the decision by the appointed officer and retain planning condition 1 which relates to the provision of the 2.4 metres by 120 metres at the access onto the public road to ensure that Moray Local Plan Policy T2: Provision of Road Access is satisfied.

Transportation
17 February 2014

Documents

TMC01	Extract on Visibility Splays from Transportation Requirements for Small Developments in the Countryside
TMC02	Extract on Visibility Splays from Design Manual for Roads and Bridges, Volume 6 Section 2 Part 6
TMC03	Report of Handling for Planning Application 09/02358/PPP
TMC04	Final Transportation Consultation Response for 09/02358/PPP
TMC05	Transportation Consultation Response for 10/01385/APP
TMC06	Report of Handling for Planning Application 10/01385/APP
TMC07	Approved Plan for Planning Permission 10/01385/APP
TMC08	Transportation Consultation Response for 13/01876/APP
TMC09	Report of Handling for Planning Application 13/01876/APP