

APPENDIX 4

APPLICANT'S RESPONSE TO FURTHER REPRESENTATIONS

Monday, 08 August 2016

Our Ref: 160073/NELMES/AM

Your Ref: MLRB0161/ACK

Mr Darren Westmacott

Clerk to the Local Review Board
The Moray Council
Council Offices
High Street
Elgin
IV30 1BX

**PLANNING APPEAL FOR NEW OFFICE PREMISES
AT DAMHEAD, KINLOSS, MORAY, IV36 3UA**

Dear Darren

I refer to the above subject and the recent representation received from Senior Roads Engineer, Diane Anderson.

The reason for objection was stated to be as follows.

"the proposed development, if permitted would involve intensification of use of an access onto B9011 Kinloss-Burghead Road where visibility is restricted by the alignment of the road, hedges/trees/vegetation and an adjacent boundary fence and would be likely to give rise to conditions detrimental to the road safety of road users contrary to Moray Local Development Plan policies T2 Provision of Access and IMP1 Development requirements"

I can confirm that **safety of road users has now been assured** as we have secured written consents from all landowners to form and manage the required visibility splays.

Copies of the written approval from Bowlt, on behalf of Mr Rhind (land to East) and The Forestry Commission (land to West) are attached to this response.

Given that we have proven that the visibility splays can be achieved, we request that this requirement be addressed by means of suspensive condition, as also suggested by point no.8 of Ms Andersons report.

Point no.11 of Ms Andersons response raises a new issue of pedestrian access to the site which was not highlighted as being a requirement in the initial application or advice.

Our client wishes to point out that it is highly unlikely that pedestrians will wish to reach the new business location and that there will be **no intensification of pedestrian traffic** that would give rise to a need for footpath improvements.

Nevertheless, our client believes that an adequate informal rural footway exists linking the final point of the public footpath to the woodland walks that are accessed from the private road to Damhead.

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PLANNINGCONSULTANCY

ARCHITECTURALDESIGN

PROJECTMANAGEMENT

RENEWABLECONSULTANCY

This track is maintained at all times and can be improved with a further wearing course, in a manner suiting its rural location, if deemed necessary.

Point no.12 of Ms Andersons report requires clarification before we can adequately respond. It appears to state that the parking provision is adequate and in fact in excess of what is required. This we would assume would be a positive point. Ms Anderson then goes onto state that "Transportation considers that staff would be highly likely to be travelling to work by private car, particularly as the site is remote from the main settlement area of Kinloss and a safe access to the site for pedestrians is not available"

Our client would contend that the existing commonly used roadside track has been perfectly adequate for local use for decades and **will be made all the more safe** as a result of visibility splays being proposed by this development.

We therefor contend that

1. Sufficient pedestrian access exists, and moreover such use would not be increased by this development.
2. Existing pedestrian access to the nearby woodland walks would be made safer by the visibility splay proposals of this application
3. The matter of road safety is no longer an issue due to our ability to prove the ability to form and control all required visibility splays.

I trust this response meets with your approval and ask that you do not hesitate to contact me should further queries arise.

Sincerely yours,

C.J.S MACKAY

PRINCIPAL DESIGNER AND PLANNING CONSULTANT

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Our Ref: ADN/AM 0876

Your Ref:

Date: 08 August 2016

Dear Mr Nelmes

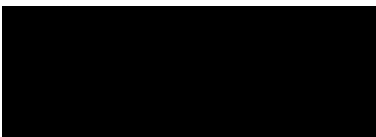
**MESSRS RHIND
PLANNING APPLICATION 1600344/APP
ERECTION OF SINGLE STOREY OFFICE BUILDING ON
LAND 170m NORTH-WEST OF DAMHEAD FARM, KINLOSS**

I understand that the Moray Council require confirmation that the visibility to the west of the junction between the B9089 and the access leading to Damhead, Kinloss, can be improved and maintained in the event that Planning Consent was granted for the office premises applied for under the abovementioned Planning Application. To that end, as confirmed to you, our clients have obtained servitude rights in their favour to create and maintain a sightline over that part of the property immediately west of the junction, "Jhelum", where this adjoins the B9089 the public roadway (copy attached).

I am authorised to confirm on behalf of my clients, as the beneficiaries of the servitude, that should you be successful in obtaining Planning Consent (application reference 1600344/APP), they will clear the site line area required over Jhelum and will allow you rights to maintain the visibility splay in terms of the servitude obtained, insofar as they are able to do so under that servitude agreement.

I trust the above is of assistance, but if you require any further clarification, please do let me know.

Yours sincerely



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DEED OF SERVITUDE

by

Mrs JOAN ELSIE JENNINGS residing formerly at Berengoria, Balloch, Inverness and now at Jhelum, Burghead Road, Kinloss as the sole surviving proprietor of the Burdened Property following the death of THOMAS DERRICK DAVID JENNINGS conform to survivorship destination contained within the Disposition in joint favour of the said Mrs Joan Elsie Jennings and Thomas Derrick David Jennings recorded in the Division of the General Register of Sasines applicable to the County of Moray on the Twenty-eighth September Nineteen Hundred and Seventy (the "Burdened Owner")

in favour of

ALEXANDER RHIND AND MRS KAYE RHIND both residing formerly at Newton of Struthers Farmhouse, Kinloss, by Forres, Moray and now at The Bungalow, Newton of Struthers Farm, Kinloss, GRAHAM ALEXANDER RHIND and MRS CLAIRE FIONA RHIND both residing at Newton of Struthers Farmhouse, Kinloss, aforesaid as Trustees under Deed of Trust by themselves known as The Rhind 2008 Discretionary Trust recorded in the Division of the General Register of Sasines applicable to the County of Moray on Fourth April Two Thousand and Eight (the "Benefited Owner")

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed:-

"Burdened Property" means ALL and WHOLE the dwelling house and others known as and forming Jhelum, Burghead Road, Kinloss, Forres in the County of Moray with the solum thereof and ground attached which solum and ground attached extends to 761 decimal or thousandth parts of an acre of thereby imperial measure lying in the southeast side of the public road leading from Forres to Burghead and is more particularly described disposed by and delineated in red and coloured pink on the plan annexed and executed as relative to the Feu Disposition by Alexander John Rhind in favour of the said Mrs Joan Elsie Jennings and the said Thomas Derrick David Jennings recorded as aforesaid;

"Benefited Property" means ALL and WHOLE that area or piece of ground extending to 4.96 hectares or thereby at Damhead, Kinloss aforesaid conform to Disposition in favour of the Benefited Owner dated 4 March 2002 and recorded in the Division of the General Register of Sasines for the Country of Moray on 14 March 2002;

"Consideration" means the sum of Two Thousand Pounds (£2,000);

"Servitude Conditions" means the conditions under which the servitude right is to be exercised contained in Part 3 hereof;

"Servitude Right" means a servitude right to construct and thereafter maintain a tarmacadamed bell mouth or entranceway over the area hatched in red on the plan annexed and executed as relative hereto together with the right to maintain a site line in connection with the said servitude right to the benefited property;

REGISTERS OF SCOTLAND
GENERAL REGISTER OF SASINES
COUNTY OF MORAY
YEAR 2014
YEARLY RUNNING NUMBER 88
PREPRINTED AND RECORDED ON 07 FEB 2014

"Real Burdens" means (primo) no building or erection or screen of any kind whether permanent or temporary shall ever be built or put upon the Visibility Splay area forming part of the Burdened Property without the prior written consent of the Benefited Owner; (secundo) the air space above the Visibility Splay area shall never be used for any purpose other than an open space; (tertio) the Burdened Owner shall carry out no act on the said Visibility Splay area contrary to the requirements of the Roads Authority in respect of the maintenance of site lines or bell mouth or for access to the Burdened Property.

"Visibility Splay Area" means that area outlined in red on the plan annexed and executed as relative hereto forming part and portion of the Burdened Property.

2. **GRANT OF SERVITUDE**

The Burdened Owner grants the Servitude Right in favour of the Benefited Owner and the Benefited Owner's successors in title, assignees and disponees whomsoever and the Benefited Owner hereby creates real burdens for the benefit of the Benefited Property against the Burdened Owner and the Burdened Owner's successors in title, assignees and disponees of the Burdened Property.

3. **SERVITUDE CONDITIONS**

The Benefited Owner will be responsible for re-siting the existing post and wire fence presently situated within the Visibility Splay Area to run between points A to B and B to C on the said plan.

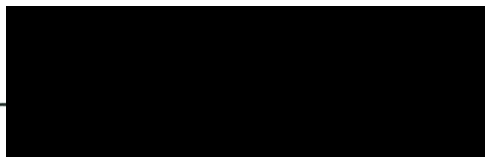
The Benefited Owner will be solely responsible for maintaining the tarmacadam bell mouth or entrance area to be formed in terms of the Servitude Right.

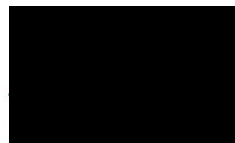
The Benefited Owner will be solely responsible for maintaining the vegetation within the Visibility Splay Area so as not to interfere with the sight lines to be provided by the Visibility Splay Area.

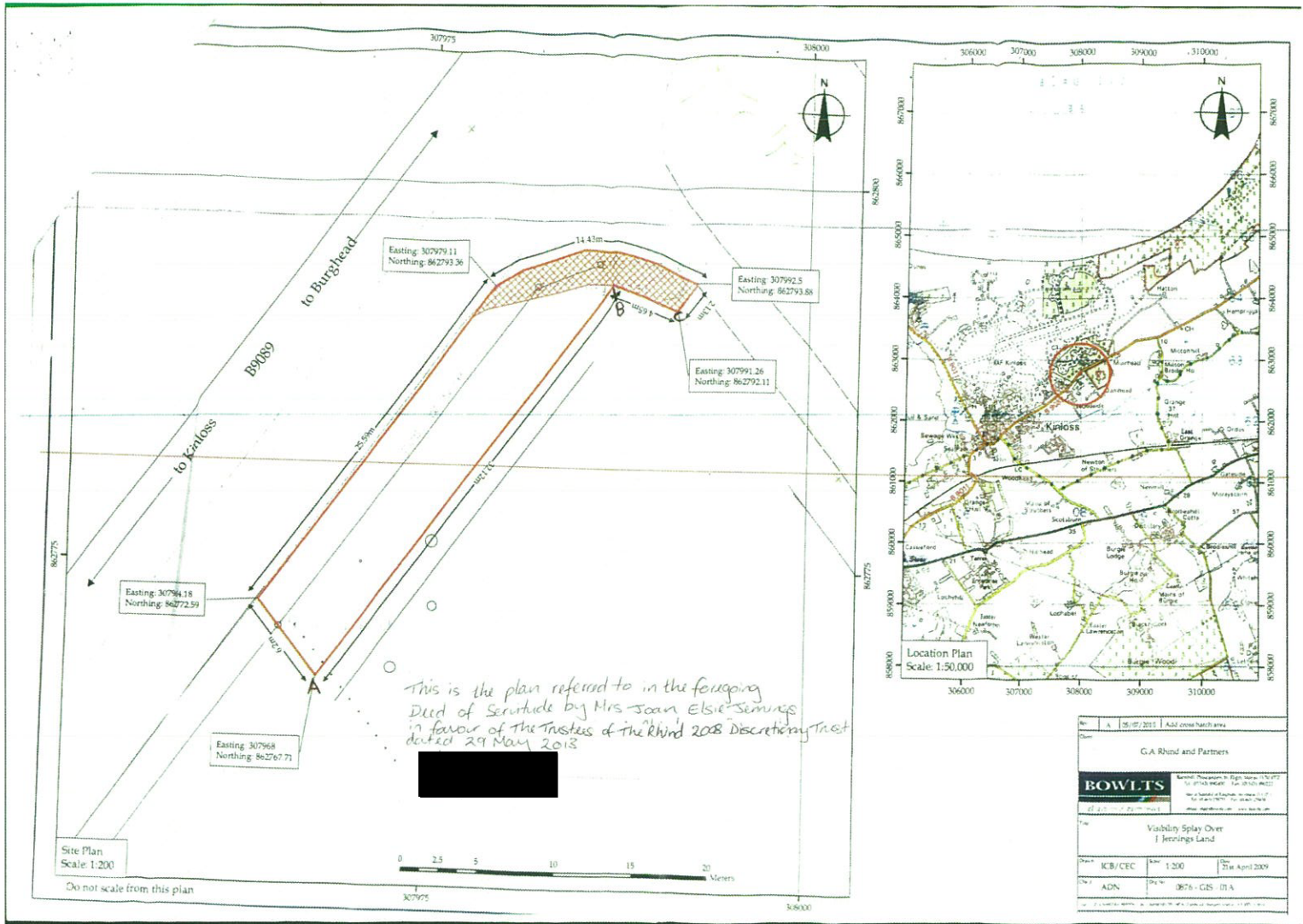
4. **WARRANTICE**

The Burdened Owner grants simply warrantice.

IN WITNESS WHEREOF these presents consisting of this, the preceding page and the plan annexed and executed as relative hereto, are subscribed by the said Mrs Joan Elsie Jennings at Forres on Twenty Ninth day of May Two Thousand and Thirteen in the presence of Colin John Styles, Solicitor 100c High Street, Forres.









Moray and Aberdeenshire Forest District

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Estates Forester
Brian Stacey

5th August 2016

Dear David,

Re: Vision Splay East of the Damhead Steading Road Junction with B9089 at Kinloss

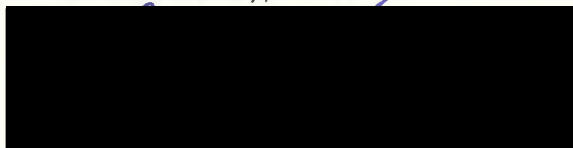
Thank you for meeting me on 3rd August 2016 to look at the vision splay on the east side of the junction of Damhead Steading Road with the B9089 at Kinloss.

You are applying for permission from the local planning authority (Moray Council) to construct a new office on Damhead Steading Road, Kinloss to enable your business, Winterburn Media Limited, to grow. You have been advised that the vision splay at the north end of Damhead Steading Road will need to be increased before any additional development is permitted along this road and that before your application can be considered you require "*...the permission of the local landowner to control and maintain the visibility splay required.*" Some of the land on the east side of Damhead Steading Road affected by the enlarged vision splay is part of the National Forest Estate managed by Forest Enterprise Scotland on behalf of Scottish Ministers.

The required vision splay is "*... 4.5 metres x 160 metres to the east, clear of any obstruction above 0.26 metres ...*" and "*...Formation of the visibility splay would require removal of all vegetation within the splay and the setting back of fencelines to a position outwith the splay.*" At present there is no fenceline within the desired vision splay on the National Forest Estate and the vegetation greater than 2.6m tall is predominately self-set birch and a maximum of 4 mature pine crop trees.

Forest Enterprise Scotland has no 'in principle' objection to the clearance of vegetation from within the required vision splay and the maintenance of this vegetation below 2.6m above ground level. Any costs incurred in creating and maintaining the vision splay would be borne by you and not by Forest Enterprise Scotland.

Yours sincerely,



Brian Stacey
Estates Forester