

Lissa Rowan

Subject: FW: 21/01250/PPP

Importance: High

From: andy kemp [REDACTED]
Sent: 14 December 2021 10:20
To: Beverly Smith <Beverly.Smith@moray.gov.uk>
Subject: Fwd: 21/01250/PPP

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Good morning Beverly

The email trail below should be sufficient information for the LRB.

kind regards

Andrew Kemp
Sent from my iPad

Begin forwarded message:

From: andy kemp [REDACTED]
Date: 13 December 2021 at 11:53:44 GMT
To: Beverly Smith <Beverly.Smith@moray.gov.uk>
Subject: Re: 21/01250/PPP

Good morning Beverly

Thank you for your reply and your apology. If by email exchange you are referring also to the original email sent from me on Friday 10th December at 15:16 then this would be a start in the right direction and would satisfy my immediate concern. I think the process would also have to involve confirmation from the LRB members that they have received this information prior to the meeting taking place.

Could I also bring to your attention page 49 of the Agenda documentation which seems to suggest that there was some confusion and also uncertainty with regards to the proper procedures to be followed at the time.

With regards to the fence issue, I am sure that you will agree that road safety is very much in the public interest. The original enforcement case was raised by a member of your own department because of the visibility issue for road users. A second case was then raised because it was in the incorrect position and this also affects the visibility for road users.

Kind regards

Andrew Kemp

Sent from my iPad

On 13 Dec 2021, at 07:23, Beverly Smith <Beverly.Smith@moray.gov.uk> wrote:

Morning Andy,

I spent time on Friday investigating this issue through our uniform data base as I felt it important to resolve this issue quickly for you in light of the LRB meeting this week. I also then telephoned our systems support officer who reviewed the audit trail for this specific representation (the only one received). I immediately telephoned you back to advise you of the dates that redaction took place and confirmed that our system does not allow me to confirm whether any representation we received is made public. During our telephone call I also advised you that these types of enquiry generally at a time when the application is live and not post decision. There is no other investigation that is open to me to be carried out otherwise I would have advised you of this on Friday.

By trying to resolve your enquiry quickly in light of your concerns I felt was the correct approach to take in light of the circumstances. I do not accept that there has been a breakdown in communication and that it is "scandalous and appalling". I also advised you that you would have needed to check the live system from the date the representation was received until the decision was made, a point where the representation is made sensitive. I am unsure why you advised me that the representation had been received on 25 August and where you obtained this information from.

I am more than happy to apologise for a set of circumstances where a representation was not publicly displayed which would be down to human error. In this instance I will accept that the representation was not displayed as you state that you did not see it.

Would it be of any help if I sent a copy of this e-mail exchange with the committee services clerk and ask if this can be reported at the meeting on Thursday?

The handling report does not contain names and addresses of representations and these can be submitted from anyone not just within the immediate surroundings.

With regard to the fence and its position I will investigate this further and advise you whether it is expedient to take any further action on this separate matter. To take enforcement action it would need to be in the public interest to do so and not just because the fence was not in the exact position as approved. I can advise that this is standard practice in accordance with the Enforcement Charter.

Kind regards

Beverly Smith B.A.Hons B.PL MRTPI | Development Management & Building Standards Manager | Economic Growth and Development
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From: andy kemp [REDACTED]
Sent: 11 December 2021 20:40
To: Beverly Smith <Beverly.Smith@moray.gov.uk>
Cc: Jim Grant <Jim.Grant@moray.gov.uk>
Subject: Re: 21/01250/PPP

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Good evening Beverly

I note your reply below and also note that you have been unable to confirm whether the representation was made public or not. Yet you chose to blame me for not requesting to see a letter that I didn't even know existed.

The unfortunate situation as you call it was caused by someone in your department not doing their job properly by either not sending the letter to me for comment or for not ensuring that it was on the website so that I could view it in full and then have the opportunity to respond. This opportunity was denied to me. This is clear for all to see. There has been a breakdown in communication and you are trying to blame me and this is simply scandalous and appalling. You have not had the time to investigate this fully having only discussed this with you on the phone on Friday afternoon. However you have simply chosen to put all the blame at my door and this is unacceptable.

This issue is not resolved and requires more investigation and for someone to be accountable and to take responsibility. Blaming me for not requesting to see a letter that I didn't even know existed simply beggars belief and I am struggling to believe that you have actually put this in writing.

This issue also needs to be put right, bearing in mind that the MLRB is due to discuss this matter on Thursday 16th December.

The representation was indeed summarised in the report of handling, my point is that we should have been able to view the full content before it was put in this report and most definitely before it was put on the agenda for the LRB. Transportation have seen the full letter so why was I not been allowed to see it before it miraculously appeared on the agenda for the MLRB. Also in the report of handling there is know reference as to where the representation came from but in the agenda it is clearly from a neighbour.

So that it is clear for all those involved and for those yet to become involved I suggest that there was a clear breech of planning control in that I did not see the contents of the letter until it was actually in the agenda for the LRB.

I also notice that you have chosen to ignore my comments concerning the compliance officer and his actions or rather lack of same in that the fence is still in the wrong position and your compliance officer knows this and yet has chosen to ignore the fact and do nothing about it. I wonder if this normal and accepted practice within the planning department.

Regards

Andrew Kemp

Sent from my iPad

On 10 Dec 2021, at 17:22, Beverly Smith <Beverly.Smith@moray.gov.uk> wrote:

Dear Mr Kemp

I have copied your e-mail to Stephen Cooper regarding the comments made in relation to transportation and a fence/purchase of land for further comment.

I have advised you this afternoon that I am unable to confirm from checking our system whether the one representation received in relation to your planning application was made public or not during the determination process. It is an unfortunate situation that you were not aware of it until you received your decision in October. The issues raised in the representation related to transportation matters which you were already fully aware of. The representation received was summarised in the handling report and you have been able to view this since the decision was issued. No request for a copy of this representation has ever been received.

The LRB meeting is a separate process from the determination of the planning application.

I am assuming from your e-mail that breach of planning control is now resolved.

Should you require any assistance from myself do not hesitate to contact me again.

Kind regards

Beverly Smith B.A.Hons B.PL MRTPI | Development Management & Building Standards Manager | Economic Growth and Development
beverly.smith@moray.gov.uk | [website](#) | [facebook](#) | [twitter](#) | [News page](#)

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From: andy kemp [REDACTED]
Sent: 10 December 2021 15:16

To: Jim Grant <Jim.Grant@moray.gov.uk>
Cc: Beverly Smith <Beverly.Smith@moray.gov.uk>
Subject: Fwd: 21/01250/PPP

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Good afternoon

Regardless of the outcome of our case at the Moray Local Review Body meeting next Thursday. I feel compelled to bring the following information to your attention.

It is difficult to know where to begin in describing the sorry state of affairs that has plagued the above planning application.

The above application was refused by the Planning Officer after receiving an objection from Transportation. Yet it was Transportation that used Council Tax payers money to purchase some land at the end of the U107E from the owners of the property "Kantara" and then go on to create a visibility splay that they claim is still not fit for purpose.

The process involved the taking down of a high fence that was subject to enforcement because another Planning Officer had noted how high it was and also that it fronted a main road contravening Class 3 as per below.

From: Stuart Dale
<Stuart.Dale@moray.gov.uk>
Date: 6 January 2021 at 09:57:59 GMT
To: 'andy kemp'
[REDACTED]
Subject: RE: Height of wooden fence fronting the B9010 in upper Rafford.

Dear Mr Kemp,

Apologies for not responding sooner but I have only just returned to the office this

morning after an extended Christmas break.

I am aware that the question of the hedge has been raised by Transportation and I am sure this will form part of the consultation process . The officer dealing with the planning application is a Mr Craig Wilson and I have forwarded your email to him for his attention.

The very reason that an application is required in this matter is because the householder is breaching Class 3E in that the fence is over 1.0m in height fronting a road. The application may or may not be approved and that is a matter yet to be determined but the only way that the householder could hope to retain the fence would be by submitting a retrospective planning application that would be considered acceptable in planning terms.

If you have any further comments or concerns then they would be best directed to Mr Wilson directly at email: craig.wilson@moray.gov.uk

Regards,

Stuart Dale
Planning Officer (Enforcement)

Some of the fence was moved back thereby creating a visibility splay. However on close examination it became clear that the fence had been put back in the wrong position thereby reducing the effectiveness of the visibility splay.

I pointed this out to the Planning officer who had approved the new drawings for the fence. At this stage a compliance case was raised and Harry Gordon became involved. I spoke to Mr Gordon on the phone where he

informed me that nothing would be done about the fence being in the wrong position. He also refused my offer to meet him onsite where I could have shown him the correct position for the fence and also the tree that should have been removed as per the official drawings thereby allowing for the fence to be put further back from the road and thereby creating a better visibility splay which after all was the original goal in this pointless exercise.

So just to examine the facts: A Planning officer visiting the Damhead area of Rafford notes that a fence fronting the main road is too high. Enforcement then gets involved and the upshot of this is that Transportation negotiate with the owner of the fence to purchase some land at great expense, remove and rebuild a fence astonishingly to the same height, all in the interest of creating a visibility splay that they claim is still not fit for purpose.

If this is not a reckless use of Council funds then I don't know what is.

When I noticed that the new fence was in the incorrect position I suggested that if the last 3M were lowered then visibility would be greatly improved. This section also includes a gate which exits directly onto the road which is just plain dangerous.

My observations were ignored by members of Planning and Transportation. I am not sure who or which department is tasked with actually checking that buildings or fences for that matter are built to the correct specification and in the correct position but I suggest that they are not doing a great job.

I did however discuss the saga of the fence with a member of Transportation who admitted that the fence was rebuilt to the same height so that the owners of "Kantara" could have some privacy. So the message was loud and clear, privacy comes before road safety in Moray.

At this stage it is also worth mentioning that in 2015 improvements were made to the visibility splay on the other side of the Damhead lane at the same junction. This consisted of the removal of a high hedge which was replaced by a low wall all carried out by Moray Council.

So in 2015 a low wall was built which affords excellent visibility in one direction, yet in 2021 a high fence was built with restricted visibility. At this stage I am seriously at a loss as to what is going on within the various departments involved.

So after receiving a refusal to our application from the Planning officer we decided to go through the appeal process.

We submitted our appeal electronically on 17th October and then waited for any representation to be submitted and conveyed to us. We fully expected Transportation to object. We waited for more than 5 weeks which was surely longer than is allowed and then contacted the Committee Services department on 22nd November as per below. We also believed that our appeal would be heard during the November MLRB but subsequently found out that this had been cancelled with no reason being given.

Good evening Lindsey

We submitted our appeal documentation on the 18th October and there are no additional representations currently on the Website. It is my understanding that any representation should have been submitted within 21 days of the 18th of October which was the 8th of November and this was 2 weeks ago.

So if any representation has in fact been received and not put on the Website we have in fact not been given the opportunity to respond within the allocated time frame.

Please can you confirm exactly what is going on.

Kind regards

Andrew Kemp

The response to this email was that Transportation had indeed responded with

information dated 3rd November. However as stated above this had not been entered onto the planning website, nor had we been informed by any other means of its existence. So our understanding at this time was that there had been no representation from any council department.

After speaking to someone in your legal department I was told that this omission was due to staff shortages and sickness of the individual dealing with this case which meant that the representation from Transportation was simply not processed.

Because it had not been processed in a timely manner this also meant that my opportunity to respond had also expired. Although I was then given 14 days in which to respond

I suggested that given the exceeded time frame the representation from Transportation should be disregarded but was told that this would not happen. However I wonder what would have happened if my reply had taken longer than the stipulated 14 days.

Moving on. As I am sure you will be fully aware, during the application process neighbours are able to make comments and or objections as they see fit. Once received by the planning department they appear on the website with the persons details removed. However this did not happen on this occasion.

Within our LRB appeal documentation I stated that there were no objections from the neighbours with regards to the proposed dwelling. You can only imagine my total dismay when I was actually reading the agenda for the MLRB to discover that on page 59 there was a copy of a letter from a neighbour sent to your planning department in September. This was never put on the website during the application process and as a result I have not seen it before nor have I been given the opportunity to respond.

There was a brief mention in the Report of Handling document :
Issue: Concern regarding road safety when two cars are passing on the U107E road near the junction.

Issue: Concern regarding increase in traffic on public road.

So it appears that both Planning and Transportation have seen the letter but I have not.

So the current situation is that my appeal documentation contains a statement declaring that there is no objection from any neighbour when indeed there was and this is clearly itemised on the agenda which will be put in front of the MLRB next Thursday. Also the agenda and specifically page 59 does not show the photo of 2 cars passing in the lane as the text describes.

It is ironic that the stance of this letter is that the customer objects to the planning application when on the last line it clearly states that there is no objection to the development.

I am sure you will appreciate that some would see this as being selective and not in a good way.

You will note that the application is for a dwelling and not for road improvements.

I am extremely concerned at the manner in which this application has been handled by members of all departments including Committee Services. For me there has been a serious lack of transparency which so easily could have been avoided.

Moreover I am more than concerned at the blatant misuse of Council Tax funds during the fiasco with the fence at the junction onto the B9010. Because it was the subject of enforcement the most cost effective solution would have been to simply lower the height to 1m as per the wall on the opposite side of the junction. This would have allowed unrestricted visibility in this direction.

I am fully aware that the meeting of the MLRB is on Thursday 16th December, I am also fully aware that much of the information supplied in this letter is not in the appeal documentation yet forms a vital part of the evidence. I am sure you will agree that in the interest of fairness and transparency this information should be made available to the MLRB so that a more informed decision can be made.

I look forward to your response.

Andrew Kemp

Sent from my iPad