



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR149
 - Site address: Site Adjacent to Seaview Caravan Park, Findhorn Road, Kinloss
 - Application for review by Seaview Caravan Park, c/o Mrs Cynthia McKay, Wittets Ltd against the decision of an Appointed Officer of The Moray Council
 - Planning Application 15/02188/APP for change of use of vacant land to provide fenced enclosure for ancillary use to existing business
 - Unaccompanied site inspection carried out by the MLRB on 22 April 2016
 - Date of decision notice: 17 May 2016
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Decision

The MLRB agreed to dismiss the request for review and uphold the original decision of the Appointed Officer to refuse the above noted application.

1. Preliminary

- 1.1 This Notice constitutes the formal decision of the MLRB as required by the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013.
- 1.2 The above application for planning permission was considered by the MLRB at the meeting held on 28 April 2016.
- 1.3 The MLRB was attended by Councillors C. Tuke (Chair), G. Coull (Deputy Chair), G. Cowie, M. McConachie, K. Reid and R. Shepherd.

2. Proposal

- 2.1 This is an application for planning permission for change of use of vacant land to provide fenced enclosure for ancillary use to existing business at Seaview Caravan Park, Findhorn Road, Kinloss.

3. MLRB Consideration of Request for Review

- 3.1 A request was submitted by the Applicant seeking a review of the decision of the Appointed Officer, in terms of the Scheme of Delegation, to refuse an application for change of use of vacant land to provide fenced enclosure for ancillary use to existing business on site adjacent to Seaview Caravan Park,

Findhorn Road, Kinloss.

- 3.2 There was submitted a 'Summary of Information' report setting out the reasons for refusal, together with documents considered or prepared by the Appointed Officer in respect of the planning application and the Notice of Review, Grounds for Review and supporting documents submitted by the Applicant.
- 3.3 As a preliminary matter, and referring to page 40 of the papers, the Legal Adviser advised that Mr Holling's representation was received outwith the statutory period for submitting representations but had formed part of the Appointed Officer's consideration of the application. He further advised that Mr Hollings had submitted a further representation to the Notice of Review however this had not be submitted to the MLRB for their consideration as, in terms of the Regulations, Mr Hollings was not considered an Interested Party.
- 3.4 The Chair, referring to page 87, advised that he had sought legal advice in respect of Richard Lochhead MSP's letter to the Chief Executive of The Moray Council. He advised that an MSP is not a statutory consultee and that his letter was treated as a member of public's representation to the planning application.
- 3.5 The Moray Local Review Body (MLRB) agreed that it had sufficient information to determine the request for review.
- 3.6 With regard to the unaccompanied site inspection carried out on Friday 22 April 2016, Mrs Gordon, Planning Adviser, advised that Members were shown the site where the proposed development would take place.
- 3.7 The Planning Adviser advised the MLRB that the application had been refused on the grounds that the proposal was contrary to Policies E8: Costal Protection Zone (CPZ), IMP1: Developer Requirements, ED7: Rural Business Proposals, ED8: Tourism Facilities and Accommodation and T2: Provision of Access of the Moray Local Development Plan (MLDP) 2015.
- 3.8 Stating that the proposal would result in permanent loss of an area designated as CPZ, which is protected under Policy E8 for its landscape, character, nature conservation, recreation and tourism benefits, the Planning Adviser noted that the compound and associated activities/external storage on a previously undeveloped coastal marshy woodland would undermine and detract from the unspoilt character of the area contrary to the objectives of E8 and IMP1.
- 3.9 The Planning Adviser noted that any visual impact would be exacerbated further by the prominent roadside location of the site, heightened by clearance of vegetation and uses and associated works to form the fenced enclosure and hard standing which are visible from the adjacent public road/cycle path.
- 3.10 Stating that the proposals, in terms of siting and design and associated activity, would represent an inappropriate form of development for this location, the Planning Adviser also noted that it would give rise to unacceptable landscape character and visual impacts contrary to Policies E8, IMP1, ED7 and ED8.

- 3.11 The Planning Adviser advised that the Applicant does not appear to control sufficient land to provide adequate visibility at access onto the cycle track and that the proposed access would be detrimental to road safety contrary to Policy T2. Noting that the proposed access is located adjacent to trees which would obstruct views on cyclists using the adjacent cycle track, the Planning Adviser advised that these trees are out with the planning application boundary.
- 3.12 Referring to the Applicant's Grounds for Review, the Planning Adviser advised that the Applicant had noted that Policy E8 refers to tourist use and had stated that the existing use relates to the adjacent caravan park which is utilised by tourists or holiday use.
- 3.13 The Applicant noted that, although claimed to undermine and detract from the unspoilt character of the area contrary to Policy E8, Scottish Natural Heritage (SNH) had advised that it is very likely, given the scale of the proposal, that the proposal can be carried out in such a way that there would be no impact on any interests of the protected areas of Moray and Nairn Coast Special Protection Area (SPA) and Ramsar site.
- 3.14 Referring to siting and design, the Applicant advised that SNH had stated that there will be no adverse impact on SPA and Ramsar interests and that a reduction in the extent of fencing and indigenous planting proposed would minimise any visual impact. The Applicant stated their belief that if it were not the CPZ zoning, the proposal would not have been opposed and that the consultation with SNH should have removed concerns on impact on the CPZ as there will be no adverse impact on any interests within the protected area.
- 3.15 The Applicant stated that they have control over land outwith the cycle track and verge to provide the visibility splay and that the trees obstructing views are also within the Applicant's ownership.
- 3.16 Councillor Cowie, having had the opportunity to visit the site and consider the Applicant's Grounds for Review, moved that the review be dismissed and the Appointed Officer's decision be upheld to refuse planning permission in respect of Planning Application 15/02188/APP.
- 3.17 The Chair stated he was of the same opinion as Councillor Cowie and seconded his motion.
- 3.18 Councillor Shepherd stated that he was of the same opinion as Councillor Cowie and the Chair.
- 3.19 There being no one otherwise minded, the MLRB agreed to dismiss the review and uphold the Appointed Officer's decision to refuse planning permission in respect of Planning Application 15/02188/APP.

Paul Nevin
Senior Solicitor (Property and Contracts)
Legal Adviser to the MLRB

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

Notification to be sent to Applicant on determination by the Planning Authority of an application following a review conducted under Section 43A(8)

Notice Under Regulation 22 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013

1. If the Applicant is aggrieved by the decision of the Planning Authority to refuse permission or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the Applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.

2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the Planning Authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.