



Report to the Scottish Ministers

Town and Country Planning (Scotland) Act 1997

Report by Sinéad Lynch, a reporter appointed by the Scottish Ministers

- Case reference: NA-300-001
- Site Address: Seaview Caravan Park, Kinloss, Forres, IV36 3TF
- Application by Duncan Brown
- Application for planning permission ref. 23/00976/APP dated 9 June 2023
- The development proposed: convert the Old Stable Bar to 3 holiday let apartments

Date of this report and recommendation: 23 May 2024

Recommendation

Refuse planning permission.

Background

1. This proposal seeks planning permission to redevelop the former Old Stable Bar at the Seaview Caravan Park to form three holiday apartments. The application site forms part of a larger caravan park, located to the east of the B9011 Findhorn Road. It lies to the south of the town of Findhorn, and south-west of the Kinloss air base. The application property is a building dating from 1870. Its most recent use was as a lounge bar associated with the Seaview Caravan Park. The building has been extended and altered over the years and is currently vacant.

2. An application for planning permission was submitted to Moray Council. Objections from consultees were received from Moray Flood Risk Management and from Scottish Environment Protection Agency (SEPA). The objections both relate to compliance with national and local flood-related policy and guidance. The application was refused by planning officials, under delegated authority, as being contrary to flood risk policy. It was then appealed to the Moray Local Review Body, who were minded to uphold the appeal and grant planning permission.

3. The application was notified to Scottish Ministers and called in for Scottish Ministers determination on 11 March 2024 in accordance with section 46 of the Town and Country Planning (Scotland) Act 1997, in view of the proposed development's potential conflict with the application of national policy on flooding.

4. I determined that a site inspection was not necessary in this instance and have reached my decision based on written submissions from the parties.

This report identifies the main issues for Ministers' consideration, my conclusions on those issues and my recommendation as to whether planning permission should be granted.

Policy context

5. The development plan for this case comprises National Planning Framework 4 (NPF4) and the Moray Local Development Plan 2020 (MLDP) and its associated supplementary guidance.

6. Other relevant SEPA policy and guidance documents include:

- Flood Risk and Land Use Vulnerability Guidance (2018)
- Planning Background Paper on Flood Risk (2018)
- Planning Information Note 4: SEPA position on development protected by a Flood Protection Scheme (2018)
- Technical Flood Risk Guidance for Stakeholders (2022)
- Climate Change Allowances for flood risk assessment in land use planning (2023)

The relevant issues for Ministers' consideration

7. Having considered all the evidence before me my advice is that the main considerations for Ministers in deciding this application are:

- [The principle of development;](#)
- [Flood risk and mitigation;](#)
- [Economic benefits of the proposal; and](#)
- [Redevelopment of a brownfield site.](#)

The main points for the applicant

- The applicant submitted a [statement](#) in support of the application and additional information in support of the appeal to the Moray Local Review Body
- There have been no reports or evidence of flooding at this location to date
- The reuse of the building is unreasonably limited by the application of the flood risk
- The proposal would assist in promoting tourism in the area
- There would be a lesser impact on tourists than on permanent residents
- The building is currently empty, and the adjoining building is already occupied for residential purposes. It has a similar floor level to the Old Stables.

The main points for the planning authority

- The local review body noted that the road would act as a flood barrier and prevent flooding of the caravan park
- The proposal to convert a derelict building which has been empty for many years was welcome
- Members considered that the proposal would be an acceptable departure from NPF4 and MLDP policies

The main points for SEPA

- In accordance with SEPA's [Land Use Vulnerability guidance](#), the current use is considered to be a 'least vulnerable use', whereas the proposed use is considered to be a 'highly vulnerable use'
- The application site is fully within an area at risk of flooding as shown on the Future Flood Maps
- Including an allowance for climate change, the coastal flood level for the area is 4.1 metres AOD (above ordinance datum). All development on the site should be limited to land higher than 4.1 metres AOD, with a separate freeboard allowance of 0.6 metres for finished floor levels
- Taking account of future climate change in sea level rise, the road at 3.2 metres AOD would be inundated and evacuation may be restricted or not possible

Other parties' cases

- Moray Council's Flood Risk Management consultation response objected to the proposal. The increase in vulnerability, due to the increase in difficulty on evacuation and the need for coastal protections measures were cited as reasons for objection, and as well as non-compliance with NPF4 policies 10 and 22.
- Scottish Water had no objection to the proposal, subject to confirmation of water and wastewater capacity.
- Aberdeenshire Archaeology Service had no objection or comment to make.
- The council's developer obligation team advised that developer obligations would not be sought, as the proposal would not have a detrimental impact on local infrastructure that would require mitigation.
- Moray Council Environmental Health had no objections.
- The Ministry of Defence Safeguarding had no safeguarding objections to the proposal.
- The council's transport team had no objections, subject to the imposition of two conditions relating to on-site parking provision and turning areas.

Reporter's findings

The principle of development

8. The application site is not located within a settlement, nor within a rural group boundary, as set out in the MLDP. It is not allocated for a specific use in the LDP and there are no designations which would restrict its use. MLDP Policy DP1 Development Principles contains a number of criteria for development which the proposal is capable of meeting. The site is brownfield, and NPF4 Policy 9 Brownfield, vacant and derelict land and empty buildings gives broad support for the sustainable reuse of such land. The proposal could also comply with Policy 30 of NPF4 Tourism part e). MLDP Policy DP8 Tourism Facilities & Accommodation sets out that tourism proposals will be supported where they comply with

relevant policies. As a matter of principle, I am satisfied that the proposed use of the application site for holiday letting units would be supported.

Flood risk and mitigation

9. Presently, the use of the building as a lounge bar (last known use) is considered to be a 'least vulnerable land use' in accordance with SEPA's Land Use Vulnerability guidance. The proposed development would change that categorisation to a 'highly vulnerable land use'.

10. The site itself does not appear to be within an area of flood risk, as set out in the SEPA Flood Maps, but the access road, the B9011 is at risk to varying degrees. However, SEPA's Future Flood maps illustrate the site as being fully inundated by coastal flooding with a 0.5% chance of flooding. The access road would be at risk from both coastal and river flooding, again with a 0.5% chance of flooding.

11. The coastal flood level for the area is 4.01 metres AOD, which includes an allowance for climate change based on the UK climate change predictions 2018. All development at the site should be limited to areas higher than 4.01 metres AOD. The coastal flood level does not account for the potential effects of wave action, funnelling or local bathymetry and so an additional and separate freeboard allowance of 0.6 metres is required for any finished floor levels.

12. The plans submitted with the proposal do not annotate a ground level or a finished floor level for the site or development. From the submitted plans, it appears that the finished floor level internally would not change. The level of the road in the vicinity of the application site is 3.2 metres AOD. The application site is lower than the road level and so I am satisfied that in a future flood event, the site would be inundated. Including the freeboard allowance, the finished floor level of the proposed development would need to be in excess of 4.7 metres AOD. I am satisfied that the proposed development would have a finished floor level substantially lower than 4.7 metres AOD.

13. NPF4 Policy 1 Tackling the climate and nature crises sets out that when considering all development proposals, significant weight will be given to the global climate and nature crises. Given the impact the predicted rise in sea levels will have on flooding at the site, as shown on the SEPA Future Flood maps, I am satisfied that the proposal is not in accordance with Policy 1.

14. Policy 2 Climate mitigation and adaptation of NPF4 at part b) says that developments will be sited and designed to adapt to current and future risks from climate change. The primary means by which the Old Stable could be adapted to future risk from climate change is to raise the finished floor level, which in this instance is not practical or possible and which has not been proposed by the applicant. Part c) of the policy supports proposals to retrofit measures for adaptation to climate change will be supported. No such measures have been included in this proposal. I find that the proposal does not comply with Policy 2.

15. NPF4 Policy 22 Flood risk and water management promotes avoidance as a first principle and aims to reduce the vulnerability of existing and future development to flooding. Retrofitting the building in order to facilitate a more vulnerable use, if that were possible, would not accord with the principle of avoidance. The policy sets out at part a) criteria where development proposals will be supported. The proposed development does not meet any of the criteria, as although for redevelopment of an existing building, it is not for an equal or less vulnerable use. I am satisfied that the proposed development is not compliant with Policy 22.

16. MLDP Policy DP1 Development Principles sets out at part (iii) Water environment, pollution contamination b) that new development should not be located in areas at flood risk or increase vulnerability to flooding, with an exception for changes of use to an equal or less vulnerable use. Policy EP12 Management and Enhancement of the Water Environment advises that for development on or near coastal locations, future flooding will be taken into consideration. The policy requires an appropriate level flood risk assessment to be provided by the applicant. The applicant has not supplied such an assessment in this instance. I am satisfied that the proposal is not compliant with policies DP1 and EP12 of the MLDP.

17. The applicant suggests that the proposed use as holiday letting units would be a less vulnerable use and that there would be a lower risk of difficult evacuation. The adjoining old schoolhouse is in residential use already and there are occupied caravans on site and so there is no overall increase in risk. There are no reports or evidence of actual flooding.

18. I note the objections of both SEPA and Moray Flood Risk Management. The potential mitigation available to reduce the risk of flooding is limited due to the existing building floor levels, and to the finished level of the road. The change in use would give rise to an increase in vulnerability to risk. The potential access to the site would be inundated in a future flood situation, with a consequential impact on evacuation and public safety. Overall, I find that the proposal would not meet the policy criteria of either NPF4 or the MLDP.

Economic benefits of the proposal

19. NPF4 Policy 29 Rural development encourages rural economic activity. I find the proposal could meet the criteria set out in the policy, as it would reuse an existing redundant building; would be suitably scaled and in keeping with the character of the area and would support local employment. Policy 30 Tourism aims to encourage, promote and facilitate tourism development. The proposal is capable of complying with all relevant criteria.

20. MLDP Policy DP8 Tourism Facilities & Accommodation is supportive of tourist-related development. This proposal is generally compliant with the policy in terms of locational justification, being a reuse of an existing redundant building in an area associated with tourist related activity but fails to meet the policy requirement to comply with other plan policies.

21. Although there would be some economic benefit from the reuse of the existing building for tourist purposes and associated local employment opportunities, I do not consider this sufficient to overcome the proposal's inability to comply with other relevant policies of NPF4 and the MLDP.

Redevelopment of a brownfield site

22. NPF4 Policy 9 Brownfield, vacant and derelict land and empty buildings encourages the reuse of empty buildings. The proposed development makes use of an empty building and I find that it would be in accordance with the policy.

Other matters for Ministers' consideration

23. The Moray Local Review Body gave weight to the conversion of a derelict building and its productive reuse. The proposal was considered an acceptable departure from development plan policy. It was considered that the road would act as a flood barrier and prevent the site from flooding. I am satisfied that the proposal would bring a disused building back into a productive use, but that conversion raises the vulnerability level of the

site. The road is shown to be currently at risk of flooding, but it is the future flood risk which is greatest, and which cannot be mitigated through design, as the road level at 3.2 metres AOD is significantly lower than the predicted flood level at 4.01 metres AOD. I find that it is unlikely that the road could act as a flood barrier or provide any protection for the site in these circumstances.

Proposed Conditions

24. The planning authority has proposed three conditions to be imposed in the event of the Scottish Ministers deciding to grant planning permission. Subject to minor editing these are set out in appendix 1 at the end of this report. The applicant has not raised any objections to these.

25. I have added condition 1, which sets an expiry date for a permission of three years, in accordance with Section 58 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006. I have also added condition 2, which addresses the detailed design of the proposed development.

26. I have considered these in terms of the six tests set out in Circular 4-1998 regarding the use of conditions in planning permissions and I am satisfied that the tests are met.

27. No developer contributions would be required, as confirmed by the council's developer obligation team, and so no legal agreement or obligation is required.

Conclusions and recommendation

28. I conclude that the proposal does not accord overall with the relevant provisions of the development plan. The productive reuse of a vacant building and the provision of holiday accommodation are material considerations which weigh in favour of the proposal. My assessment above on flood risk and evacuation lead me to conclude that overall, these benefits do not outweigh the flood risk and public safety issues.

29. I have considered all the submissions and documents drawn to my attention. There are no other material considerations that would cause me to change my conclusion.

30. Therefore I recommend that planning permission is refused.

31. If Ministers disagree with the above recommendation and are minded to grant planning permission, then I recommend that this is subject to the conditions listed in Appendix 1.

Sinéad Lynch
Reporter

Appendix 1: Recommended conditions

1. The development hereby permitted shall be started before the expiration of three years from the date of this permission.

Reason: To comply with Section 58 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

2. No development shall commence on site until the following details have been submitted to and agreed in writing by the planning authority. Thereafter the development shall be undertaken in strict accordance with the approved details, unless otherwise agreed in writing by the planning authority. Details shall include:

- i. Precise details of all external building materials (include colour finishes);
- ii. Precise details of the siting, scale, and design of turning and parking areas.

Reason: Further details are required to ensure a satisfactory form of development which respects the character and visual amenity of the surrounding area.

3. The units hereby approved shall be used for holiday/short term letting purposes only and shall not be used as the sole or main place of residence of any occupant; a holiday being defined as a stay of one or more nights by a person or persons away from that person or persons sole or main place of residence unless otherwise agreed with this Council as Planning Authority and shall not be occupied by the same person or persons for more than 4 months in any calendar year(Any such period shall not run consecutively to such a period in any successive or preceding year).

Reason: In the interests of amenity and in order to ensure that the unit is used for the purpose applied and upon which its planning merits have been assessed.

4. Parking shall be the following:

- 3 car parking spaces retained for the old schoolhouse
- 2 car parking spaces for each new apartment
- 3 car parking spaces retained for the existing site reception

The parking spaces shall be demarked on site in accordance with submitted drawing reference "0621.2417.05B" and made available for use prior to the first occupation of the first apartment, and thereafter be retained within the site throughout the lifetime of the development unless otherwise agreed in writing with the Council as Planning Authority.

Reason: To ensure the permanent availability of the level of parking necessary for residents/visitors/others in the interests of an acceptable development and road safety.

5. A turning area shall be retained within the curtilage of the site to enable vehicles to enter and exit in a forward gear.

Reason: To ensure the provision for vehicles to enter/exit in a forward gear in the interests of the safety and free flow of traffic on the public road.