

Mrs. Ann Mowat
12 Seafield Place, Cullen

Refusal of Planning Application for removal of Planning Condition 07/00758/FUL

Reasons for Notice of Review

The fundamental reason for the request for a review of the decision to refuse my application for removal is my firm belief that the proposal to create a future public footpath utilising part of my garden ground is completely impractical due to a combination of factors. I am not opposed to the principle of creating a network of footpaths as such but feel that in this situation there is a practical and common sense alternative.

I believe that an inspection of the site by members of the Local Review Body will make this abundantly clear.

The decision notice states that the reason for refusal is that the application to remove the condition is contrary to Moray Local Plan Policy CF3, Countryside Recreation: Access and Trails and Policy T7, Cycling Walking and Equestrian Networks. It states that removal of the condition will:

- Restrict access to the former railway line to the south and remove the potential to create a future public footpath
- Impede the opportunity to provide a pedestrian link from New View Court along the railway line to Seafield Farm
- Compromise future pedestrian linkage to the R1 residential site and limit the number of opportunities for pedestrian access through the area
- Be contrary to the long term objectives of Sustrans to develop more off road sections of the NCC1 cycle route
- Affect the development of the old railway line as an Aspirational Core Path.

I will respond to each of these reasons in my comments below and point out reasons why in my view the decision should be over-ruled.

Moray Local Plan Policies CF3 and T7

These are general but very worthwhile statements of policy. However, in relation to the specific application site, removal of the planning condition will not breach the intentions of these policies because it will not be possible to economically and safely create a pathway suitable for cycling, walking, equestrian or motorized sport beyond the site where it abuts the former railway line. Moreover, there already exists a safe and well used pathway, about 100 yards from my address, leading from Seafield Place to the Crannoch and this already provides a pedestrian route from New View Court to Seafield Farm.

Policy CF3 says, *“Development proposals will not be permitted which prejudice rights of way, identified paths and trails for non-motorised public access, inclusive of routes from the statutory Moray Core Paths Plan”*.

The proposed path does not fit into any of these categories of path/trail therefore the requirements of the policy cannot be breached by removal of the planning condition. Moreover the spirit of the policy can be fully met by the provision of a safe and achievable footpath along the western edge of the R1 residential site. See further comments below in relation to the R1 site.

Policy T7 says, *“The Council will promote the improvement of the cycling, walking, equestrian and motorised sport path networks within Moray. It will give priority to the path networks and to long distance routes including the Aberdeen to Inverness National Cycle Route and the Speyside Way. Development proposals that adversely impact on the routes and cannot be adequately mitigated will not be acceptable”.*

The policy states a general and correct emphasis on improving and protecting opportunities for cycling, walking, etc. Fundamental to consideration of any opportunity to improve access is the fact that it must be technically and economically viable. The proposal to create a public footpath through the site is neither technically or economically viable for the reasons given in support of the application to remove the condition. These can be summarised as follows:

1. The site is contained in a very steep sided cutting
2. The area is densely wooded, heavily overgrown and unused
3. The bed of the railway line has no functioning drainage and in when it rains becomes a muddy pond with deep muddy sediment
4. The site level is elevated well above the former railway bed – approximately 4 – 5m
5. Construction costs to clear the area and form a footpath would be very high
6. There is no access for construction machinery or materials (a large amount of fill material would need to be imported
7. A footpath at this low, concealed level would create a considerable public safety risk

The policy also states that, *“Development proposals that adversely impact on routes and cannot be mitigated will not be acceptable”.* Although an access route through the site is not viable, the aspiration to expand the network of pedestrian routes can be achieved by the alternative proposal to create a pathway along the western boundary of the R1 site thus mitigating the perceived loss of a potential route.

It should also be borne in mind that Moray Council have allowed the route of the former railway line to be compromised by allowing development with no mitigation on numerous sites within the vicinity including Cullen (for example the bungalow on the railway viaduct at the north end of Reidhaven Street and the housing estate at New View Court).

Aspirational Paths

Moray Core Paths Plan Finalised Version 2009 makes no reference to any aspirational pathway utilizing the former railway line and certainly does not show any hint of a requirement for a path through the application site. In the reasons for refusal the planning officer makes reference to the Moray Core Paths Plan due to be adopted in 2011. There appears to be no reference to this document on the Moray Council website.

In the Report of Handling the planning officer notes comments received from the Environmental Protection Manager/ Right of Way Officer. These state that the Cullen railway is an Aspirational Core Path. My previous reasons relating to technical and financial viability must be considered and as previously mentioned the aspiration to expand the footpath network can be achieved in a more sensible and achievable way.

Sustrans

In the reasons for refusal the Planning Officer makes reference to the long term objectives of Sustrans and states that removal of the planning condition would be contrary to these objectives. In the Report of Handling the planning officer notes comments received from the Environmental Protection Manager/ Right of Way Officer which state that the Cullen railway is a prime candidate for development as a future off road section of the cycle route. In their published information and website Sustrans makes no specific reference to any aspirations for any future paths in or around Cullen. The comments previously made regarding technical and financial viability clearly show that the former railway line at this point cannot be considered to be a prime candidate for a future off road section of cycle route. I suspect that the Environmental Protection Manager/ Right of Way Officer has never visited the site to look at the site conditions and levels.

ENV Green Corridor Status

The Report of Handling points out that the former railway line which lies to the north and south of the site is designated ENV Green Corridor in the Moray Local Plan, 2008. The integrity of this land designation will in no way affected by the removal of the planning condition. The site of the former railway line will provide an excellent wildlife corridor and safe haven (this is already evident by the deer, rabbits, birds, insects and plants in this area).

R1 Residential Site

The comments from the Transportation Manager raise objections on two grounds:

1. The pedestrian link through the site must be maintained such that any future pedestrian linkage to the R1 Seafield Place residential site is not compromised.
2. The proposed removal of the condition contravenes Policy T7.

With regard to objection 1 the Transportation Manager has clearly never visited the site! The relative ground levels between the R1 site and the former railway line prevent any possibility of providing any future link. The removal of the planning condition therefore can in no way compromise something which cannot be achieved.

The southern boundary of the R1 residential site is formed by the farm track and public footpath from Seafield Place to Seafield Farm and the Crannoch. This pathway provides numerous potential points of access from the future housing development. In addition, the western boundary of the R1 site extends alongside the former railway line at the top of the railway cutting. This would provide a perfect location to create a new public footpath which meets all the aspirations which the planning condition sought to

achieve but would actually be deliverable. There are excellent views all along this field edge and the contours are such that they would make a very comfortable future footpath. By contrast a footpath along the former railway line would be in a very deep gully all of the way to the Crannoch as opposed to the path mentioned above which gives wonderful views over the Moray Firth and the surrounding countryside.

The steepness of the railway cutting reduces as it extends to the south and if there was to be any potential of forming an additional future pathway, the logical place to do it would be at the southern tip of the R1 site. However, it should be pointed out that even at this point there is a considerable level difference between the site and the bed of the former railway line.

With regard to objection 2 from the Transportation Manager, in relation to Policy T7, this has been addressed above earlier.

Alternative Proposal

I would respectfully suggest that there is scope in the vicinity of my house to provide a sensible and achievable new footpath route along the western edge of the R1 site. Contours are workable, there is no access problem for construction, the route would provide multiple points of access to the R1 housing and link in perfectly to Seafield Place and to the existing tracks to Seafield Farm and the Crannoch. This route would be safe and provide excellent views from an elevated position all the way along its length.

Summary

My house has been constructed in a position on site which maintains a clearance of 3 metres from the eastern boundary. The face of the retaining wall built along the bottom of the banking to the east of my house is 1.2 metres from the corner of the house which provides the clearance sought for a footpath. The careful setting out of the house thus ensures that a footpath could actually be formed here in the future if it was ever required. Removal of the condition does not change that fact therefore there is no reason to require enforcement of the condition. What the condition sought to safeguard (the potential to form a footpath at some indeterminate point in the future) is not jeopardised by removal of the condition.

I have been advised that planning conditions must be deliverable in order to be enforceable. The notional future footpath in reality is not deliverable in technical or economic terms. An updated Statement in Support of the Application (08.03.11) has been prepared and submitted in support of my Notice of Review.

When the foundations of the house were being laid, someone from the Planning Department visited the site to see that the gas protection membrane was being properly laid in accordance with the requirements of the planning condition. At that stage it should have been noticed that because of the lie of the land the path would be difficult to form and feel the officer responsible at that point should have said something rather than waiting until seeking enforcement once the house was built.

Although one of the reasons given for not granting my application to have the planning condition removed was that it was the notional footpath would be a continuation of the costal path along the old railway line. The integrity of this route was damaged many years ago when development was allowed to go ahead which now requires pedestrians

and cyclists to come off the railway line at North Deskford Street effectively terminating the route at that point.

I feel that it is absolutely essential that the members of the Review Body should actually visit the site of my house, walk through the gate to the south of the garden and see the condition of the land beyond my site and then make a considered decision as to the feasibility of the path there. Whilst it looks very logical on plan to propose a footpath link through this site it is in fact completely impractical when looked at on site.

In conclusion I would point out that the condition required the path to be formed through my property regardless of when the "aspirational path" might be made. If the path was to be formed it would create a very narrow pathway with on one side a sloping embankment and on the other a fence along a route which would be going nowhere but which would constitute a significant safety hazard as a lane. Will Moray Council take responsibility for seeing that it does not become a dumping ground for waste, etc? At the moment it is incorporated into the landscaping of my property and is not a risk to anyone. With regard to the safety aspect I have contacted the Grampian Police Safety Officer who will visit and provide an opinion on the health and safety risk and crime risk posed if a dead-end footpath was to be formed in this area. I will notify you of the outcome of this visit in due course.

Mrs. Ann Mowat.

08.03.11