**Local Government and Communities Directorate**

Planning, Architecture and Regeneration Division

Planning Decisions

E-mail: Planning.Decisions@gov.scot

W MacDonald

WA MacDonald Building Design Limited

11 Mansefield Park

Kirkhill

Inverness

IV5 7ND

Our ref: NA-300-001

Planning Authority ref:23/00976/APP

10 September 2024

Dear William MacDonald

**DECISION NOTICE**

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997**

**APPLICATION FOR PLANNING PERMISSION FOR CONVERSION OF THE OLD STABLE BAR TO 3 HOLIDAY LET APARTMENTS AT SEAVIEW CARAVAN PARK, KINLOSS, FORRES, IV36 3TF (‘the proposed development’)**

1. This letter contains the Scottish Ministers’ decision on the above planning application submitted to Moray Council by William MacDonald (Agent) on behalf of Duncan Brown (Applicant) on 09 June 2023 (Council reference: 23/00976/APP).

1. The application was called in for the Scottish Ministers’ determination on 11 March 2024 by direction under section 46 of the Town and Country Planning (Scotland) Act 1997 in view of the proposed development having a potential conflict with national policy on flood risk.
2. The application was considered by means of written submissions by a reporter appointed by the Scottish Ministers for that purpose.

1. The final report with the reporters’ recommendation was issued to the Scottish Ministers on 23 May 2024. A copy of the reporters’ report (‘the Report’) is enclosed. All references to paragraph and chapter numbers, unless otherwise stated, are to those in the Report.
2. Following the submission of the reporter’s report, the Scottish Ministers requested and obtained further information on a number of matters related to flood risk from the applicant, the Scottish Environment Protection Agency (SEPA) and the planning authority. Each of those parties were given an opportunity to comment on the further information received.

**Reporter’s Recommendation and Scottish Ministers’ Decision**

1. The reporter has recommended that planning permission should be refused. The Scottish Ministers have carefully considered all of the evidence presented and the reporter’s findings and conclusions in the Report. The Scottish Ministers disagree with the reporter’s recommendation, as explained in this decision letter, and grant planning permission for the proposed development for a period limited to 25 years, subject to conditions.

The development plan, policy context and main issues

1. Under the terms of section 25 of the Town and Country Planning (Scotland) Act 1997 (‘the Planning Act’) the application must be determined in accordance with the development plan, unless material considerations indicate otherwise.
2. The Scottish Ministers agree with the reporter at paragraph 5 that the development plan for this case comprises National Planning Framework 4 (NPF4, 2023) and the Moray Local Development Plan 2020 (MLDP) and its associated statutory supplementary guidance. The Scottish Ministers agree with the reporter’s identification in paragraph 6 of other relevant policy and guidance documents.
3. The Scottish Ministers also agree with the reporter that the main considerations for Ministers in deciding this application are the principle of development; flood risk and mitigation; the economic benefits of the proposal; and the redevelopment of a brownfield site (paragraph 7).

The principle of development

1. The application site is not located within a settlement, nor within a rural group boundary. It is not allocated for a specific use in the MLDP and there are no designations which would restrict its use. The site is brownfield, the last known use being a lounge bar. The Scottish Ministers agree with the reporter that the principle of development is supported by the MLDP policy DP8 (Tourism Facilities & Accommodation) and NPF4 policy 9 (Brownfield vacant and derelict land) which gives broad support for sustainable reuse of such land (paragraph 8).

Flood Risk

1. The Scottish Ministers agree with the reporter’s assessment that the proposed development would change the current categorisation from a ‘least vulnerable land use’ to a ‘highly vulnerable land use’ (paragraph 9).
2. The Scottish Ministers agree with the reporter’s findings that the site does not appear to be at present flood risk but the B9011 access road in parts is and that the SEPA Future flood maps show that the site and access road by the 2080s may have a 0.5% chance of flooding with no mitigation (paragraphs 10-12).
3. The Scottish Ministers agree with the reporter (paragraph 13) that the proposal is not in accordance with NPF4 Policy 1 (Tacking the climate and nature crises) given the impact the predicted rise in sea levels will have on flooding at the site. As noted by the reporter in paragraph 14, the primary means by which the Old Stable could be adapted to future risk from climate change (and to comply with NPF4 Policy 2 (Climate mitigation and adaptation) 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.
4. NPF4 Policy 22 (Flood risk and water management) sets out to strengthen resilience to flood risk by promoting avoidance as a first principle and reducing the vulnerability of existing and future development to flooding. The Moray Local Development Plan (MLDP) Policy DP1 Development Principles and Policy EP12 Management and Enhancement of the Water Environment generally accord with the intentions of NPF Policy 22. The Scottish Ministers agree with the reporter that the proposal does 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. The Scottish Ministers agree with the reporter’s findings that the proposal would not meet the policy criteria of either NPF4 or the MLDP (Paragraphs 15 - 18).

Economic benefits of the proposal

1. The Scottish Ministers agree with the reporter at paragraphs 19 and 20 that the proposal is generally compliant with NPF4 Policy 29 which encourages rural economic activity and with NPF Policy 30 aims to encourage, promote and facilitate tourism development as it would reuse an existing redundant building and would support tourism and the local employment. They also agree that MLDP Policy DP8 Tourism Facilities & Accommodation is also supportive of the proposed development.

Redevelopment of a brownfield site

1. Policy 9(a) of NPF4 states that development proposals that will result in the sustainable reuse of brownfield land, including vacant and derelict land and buildings, whether permanent or temporary, will be supported. The Scottish Ministers agree with the reporter’s findings at paragraph 22 and consider that this policy provides support to the reuse of this empty building.
2. The Scottish Ministers conclude that the proposed development gains support from LDP Policies DP8 and NPF4 Policies 9, 29 and 30. They also conclude that it is contrary to NPF4 Policy 22 and LDP Policy DP1 and EP12 and agree with the reporter’s conclusion at paragraph 28 that the proposal does not accord overall with the relevant provisions of the development plan given the future predicted flood risk.

Material Considerations

1. The Scottish Ministers note from the reporter’s findings at paragraph 23 that 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. The Scottish Ministers agree with the reporter’s findings that given the ground levels it is unlikely that the road could act as a flood barrier or provide any protection for the site in a predicted future flood event.
2. The Scottish Ministers agree with the reporter’s findings in paragraph 28 that the productive reuse of a vacant building and the provision of holiday accommodation are material considerations which weigh in favour of the proposal.
3. Further submissions have since been provided by the applicant, the council and SEPA to clarify the present day and future flood risk and any mitigation. They note it is a future flood risk from climate change that is greatest, not the present day risk. The Scottish Ministers note that the first iteration of the Kinloss to Hatton Coastal Climate Change Adaption Plan has since been published (in April 2024). The Scottish Ministers note also that the applicant has provided a Flood Resilience Statement and proposes to adopt the following mitigation measures: door flood barrier; kitchen fitments raised on plastic tower feet; electrical sockets fitted higher on walls and partitions, and 'smart' underfloor ventilation bricks which help to prevent water ingress below floors.
4. The Scottish Ministers agree with the reporter (paragraph 28) that the proposed development does not accord overall with the development plan, due to flood risk. They also agree with the reporter that reuse of a vacant building and the provision of holiday accommodation are material considerations which weigh in favour of the proposal. The Scottish Ministers have taken into account that the site is not at present risk of flood, but from future flood risk due to climate change. On this basis the Scottish Ministers consider that planning permission could be allowed on a long-term temporary basis. The Scottish Ministers consider that in this particular instance, the benefits of bringing an existing vacant building back into productive use on a temporary basis outweighs the departure from flood risk policy contained in NPF4 and the LDP and that the balance is in favour of granting planning permission.
5. The Scottish Ministers conclude overall that the productive reuse of this vacant building and the provision of holiday accommodation and local employment are material considerations which in this case justify granting temporary planning permission, as a departure from the development plan, subject to conditions on additional mitigation measures.

Conditions

1. Given the risk of future flooding, the Scottish Ministers consider that planning permission should be granted for a limited period, and that the situation could be reviewed in the light of the circumstances pertaining at the time. In addition to the reporter’s recommended conditions, Scottish Ministers impose a condition setting out the duration of consent for 25 years from the date of this decision. This time period will allow for monitoring of future flood risk predictions and climate change adaptation measures in this coastal area.
2. In the interests of safety and to minimise risk to life and property, Scottish Ministers impose an additional condition requiring a Flood Emergency Plan for the evacuation of the occupiers of the development.
3. To ensure that the buildings are as flood resilient as possible to reduce damage during any flooding events, Scottish Ministers also impose an additional condition that before work commences on site, that the Flood Resilience Statement is submitted to the planning authority and approved in writing and the Flood Resilience measures shall be fully implemented prior to occupation of the development.

**Formal Decision**

1. Accordingly, for the reasons given above, the Scottish Ministers hereby grant planning permission for a period limited to 25 years for the proposed development subject to the conditions listed in the appendix of this decision notice.

**Right to Challenge**

1. The decision of the Scottish Ministers is final, subject to the right conferred by Sections 237 and 239 of the Town and Country Planning (Scotland) Act 1997, of any person aggrieved by the decision to apply to the Court of Session within 6 weeks of the date of this letter. If such an appeal is made, the Court may quash the decision if satisfied that it is not within the powers of the Act, or that the applicant’s interests have been substantially prejudiced by a failure to comply with any requirements of the Act, or of the Tribunals and Inquiries Act 1992, or any orders, regulations or rules made under these Acts.
2. A copy of this letter and the reporter’s report has been sent to the Moray Council.

Parties who commented on the application will also be informed of the decision.

Yours sincerely

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Jane Smith

Scottish Government

Planning Decisions

**Appendix: Conditions**

1. The use authorised by this planning permission shall be discontinued on or before the date of expiry of the period 25 years beginning with 10 September 2024.

Reason:  In the interests of safety and to minimise risk to life and property from predicted future flood risk.

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

Reason: To ensure that the consent is implemented within a reasonable period.

3. 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.

4. 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.

5. 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.

6. 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.

7. Before work commences on site, a Flood Emergency Plan, for the evacuation of the occupiers of the development, shall be submitted to the planning authority and approved in writing. Thereafter the recommendations of the flood evacuation plan shall be fully implemented prior to occupation of the development.

*Reason: In the interests of safety and to minimise risk to life and property.*

8.Before work commences on site, the Flood Resilience Statement is submitted to the planning authority and approved in writing and the Flood Resilience measures shall be fully implemented prior to occupation of the development.

*Reason: In the interests of safety and to minimise risk to life and property.*