

Mrs A Mowat
12 Seafield Place, Cullen

Application for Removal of Planning Condition Statement in Support of the Application

08.03.11

1.00 Background to application

- 1.01 Planning consent for the dwelling at 12 Seafield Place was granted on 9 July 2007 under reference 07/00758/FUL.
- 1.02 Condition 11 annexed to the consent required, inter alia, details of a footpath link to be submitted and approved prior to development commencing and that the footpath so approved be constructed prior to the occupation of the dwellinghouse. The reason for the condition was to safeguard the footpath in the interest of free access. The adopted local plan at the time the application was approved was the Moray Local Plan : 2000.
- 1.03 The condition has not been complied with and this application seeks to obtain consent for the removal of the condition.
- 1.04 The house has now been completed to a very high standard and is occupied by the applicant, Mrs Mowat.
- 1.05 The application site was identified in the Moray local Plan : 2000 as allocation R4. This was a gap site with a maximum capacity of two houses. The allocation attracted a supplementary statement that **'In order to safeguard the long term potential of the railway, provision must be made for a 3 metre wide public footpath along either the western or eastern boundary of the site connecting to the former railway line to the south.'**
- 1.06 There is nothing in the Moray Local Plan : 2000 that requires the actual formation of the footpath along either the western or eastern boundary of the site. Provision merely has to be made to safeguard the long term potential of the railway.
- 1.07 Part of the former railway line to the south of the site and across the road from the site were also identified within the the Moray Local Plan : 2000 and safeguarded by Policy ENV3 which advises that **'An opportunity exists to provide a pedestrian link from the Council housing area at New View Court, along the former railway line to Seafield Farm. Landscaping and footpath provision would have to take account of varying ground levels associated with the infilling of a section of the line immediately south of Seafield Place (designated R4). The mature trees either side of the railway line should be retained as important landscape features and natural habitats safeguarded.'**

- 1.08 The Moray Local Plan : 2000 recognised that there was a potential possibility of creating a footpath along the route of the former railway line both to the north and to the south of the application site. On that basis it was reasonable to require the development of the R4 site to include a provision that would safeguard that potential possibility. The Plan also recognised that the provision of such a path would require infilling of a section of the line immediately south of the application site and that the path would have to have regard to the varying ground levels associated with that infilling. No infilling has taken place to date.
- 1.09 The safeguarded provision in relation to the application site was unfortunately misconstrued at the time of the original planning application as a requirement to actually provide a footpath link. Clearly, unless and until the infilling of the section of the railway track had been undertaken and finished levels have been ascertained, it would have been impossible to provide meaningful details of a footpath that would provide the effective pedestrian link anticipated by the Local Plan.

2.00 Discussions regarding the footpath during the processing of the initial application

- 2.01 The project architect and the Council's Planning Officer, Richard Smith discussed the requirements in relation to the footpath. In an e mail dated 25th June 2007 Richard Smith acknowledged that a 3 metre wide strip had been accommodated within the proposed site layout. Mr Smith advised that a planning condition would need to be imposed requiring the 3 metre wide strip of ground to be kept free from obstruction and with a fence provided for separation purposes. The discussion at this stage of the processing of the application recognised the impediment to the actual provision of a footpath noted in paragraph 1.09 above and merely sought to safeguard the longer term potential possibility that a footpath might be viable.
- 2.02 The project architect responded by suggesting that the erection of a fence would be unsightly and that any condition should refer to a requirement prior to occupation rather than commencement of works due to allow the applicant time to engage a landscape designer at the end of the construction process. Indeed, the proximity of the fence to the proposed house would have rendered construction of house extremely difficult in terms of access for plant and equipment.
- 2.03 Discussions continued and widened to include the Council's Environmental Protection Section who had confirmed that they would be happy with a 1.2 metre wide footpath of hardcore and blinding located within the 3 metre wide strip of ground previously referred to. This was confirmed to the project architect by e mail from Mr Smith on the 3 July 2007. The project architect confirmed that this would be acceptable by e mail dated 5 July 2007.

- 2.04 Condition 11 requires the submission of details of the footpath to be agreed ***'before development of the site begins.'*** The project architect failed at the time to appreciate that the initial discussions regarding the requirement to safeguard the potential possibility of a footpath being formed to the north and south of the application site and the consequential requirement to safeguard a 3 metre wide strip of ground along the western or eastern boundary of the site in accordance with policy ENV 3 had somehow changed to a requirement to physically provide a footpath. The requirement for the submission of details of the footpath prior to the commencement of works on site was inadvertently overlooked as it was inconsistent with the project architect's understanding of the e mail exchanges with the Planning Officer.
- 2.05 Work commenced on the house on 17 March 2008 and completed on 20 April 2009. Condition 11 also required that the footpath be completed prior to the occupation of the house regardless of whether the section of the railway track to the south of the application site had been infilled as required or not.

3.00 Current Policy Position

- 3.01 The current policy position relating to the application site and the railway line to the north and to the south of the application site has changed from that envisaged when the Moray Local Plan : 2000 was in the course of preparation more than a decade ago.
- 3.02 Firstly, the Land Reform (Scotland) Act : 2003 obligated The Moray Council to provide a Moray Core Paths Plan. This document was the subject of considerable consultation and was finalised in 2009. One of the functions of this document was ***'to facilitate opportunities to capitalise and consolidate scarce resources for paths and contribute to a wide range of local, regional and national policy objectives in terms of economic development, health, sustainable transport, community safety and social inclusion.'*** The objective was to apply scarce resources most effectively and in doing so certain Guiding Principles and Key Features of the whole Moray Paths Network were established and are to found in Appendix 2 of the Council's approved Moray Core Paths Plan. These include, where feasible, provisions for all abilities including wheelchair access. Paths should also provide high quality recreation and transportation opportunities within and between communities.
- 3.03 The process of preparing the Moray Core Paths Plan involved a detailed analysis of the potential of all existing and possible footpath routes. Within this context, the potential reuse of redundant railway lines was a major consideration as they

afforded established long distance routes that connected the countryside to the very heart of settlements.

- 3.04 In the case of Cullen, the Moray Local Plan : 2008 identifies the reuse of part of the dismantled railway line to the west of the settlement as the T3 Sustrans Cycle Route. This is an important long distance route. However, this important route does not utilise the whole of the route of the dismantled railway through Cullen but stops short to the east of the Castle Hill Motte where the route follows a public road.
- 3.05 The Moray Local Plan : 2008 gives no indication that the potential footpath route to the north and to the south of the application site has maintained any support. The areas formerly occupied by the railway line to the north and to the south of application site is now subject to policy E4 and designated ENV6 on the settlement statement plan. The ENV6 designation does not apply to any part of the application site. The ENV6 designation refers to '**Green Corridors/Natural/Semi Natural**' green spaces. There is no longer any reference in this latest iteration of Council policy to the long term safeguarding of a potential route for a possible footpath along the route of the railway line to the north or to the south of the application site.
- 3.06 The settled view of The Moray Council with regard to footpath provision in Cullen is detailed on Map 19A of the Moray Core Path Plan : Finalised Version. This plan shows a 'promoted path' along Seafield Place. No reference is seen to any potential use of the route of the railway track to the north or to the south of the application site. Clearly, the need to consolidate scarce resources has recognised that this potential route is simply not viable in terms of the Guiding Principles and Key Features of the Moray Core Path Plan.
- 3.07 There is a neighbouring core footpath designated as CU05 that connects the end of Seafield Place to Lintmill. This is a fairly circuitous route through the countryside which could be significantly shortened by the use of the route of the railway track to the south of the application site. The initial stage of the preparation of the Core Paths Plan involves a comprehensive audit of footpaths in the area. Beyond that point the plan needs to evaluate access needs in the area. Clearly the cost of bringing this section of the railway track bed back into beneficial use as a footpath has failed to attract any support during the audit process or the evaluation of access needs in the area. That reality has been recognised as far as Cullen and the application site is concerned without reservation in the Moray Local Plan : 2008. The Moray Local Plan : 2008 is entirely consistent with the Moray Core Paths Plan : Finalised version as far as the application site is concerned.

- 3.08 There has been a reference to 'Aspirational Routes' in a manner that perhaps overstates their significance. In earlier versions of the Moray Core Paths Plan there were references to 'aspirational routes' but these were deleted to accord with revised governmental guidance on Core Path Planning. Scarce resources have to be carefully focussed on fully supporting the Core Path system.

4.00 Summary and Conclusions

- 4.01 The original planning consent was granted within the context of the policies contained within the Moray Local Plan : 2000. That plan contained a provision that required the potential route of a possible footpath that ran along the route of a dismantled railway line to be safeguarded. That potential route ran through the application site and in terms of the Development Plan all that was sought was that the potential route would be safeguarded within the curtilage of the dwellinghouse. There was no requirement within the Moray Local Plan : 2000 for the applicant to construct part of a much longer footpath over the route of the former railway line to the north and to the south of the application site. Safeguarding the possibility that the route might be developed at some point in time was all that was required to fully satisfy the requirements of the Moray Local Plan : 2000.
- 4.02 The terms of Condition 11 annexed to Consent Reference 07/00758/FULL exceeded that which was required to satisfy, in full, the requirements of the Moray Local Plan : 2000.
- 4.03 An application for the removal of a planning consent condition is deemed appropriate when circumstances have changed. In this instance circumstances have changed dramatically both in terms of the current adopted Moray Local Plan : 2008 policies and by the finalisation of the Moray Core Paths Plan.
- 4.04 As a site inspection will reveal, the potential for the formation of a footpath along the bed of the former railway line to the north and, more particularly, to the south of the application site would not constitute the best use of scarce resources due purely to the configuration of the track and the adjacent embankments. That fact was recognised as early as 2000 when the Moray Local Plan : 2000 considered that infilling of a section of the railway line would be required and that the provision of any footpath would require to have regard to the varying levels associated with that infilling exercise. No infilling has taken place. No regard can, therefore, be taken to the levels associated with the infilling exercise. Condition 11 is by reference to the provisions of the Moray Local Plan : 2000 wholly incompetent as it is incapable of being enforced unless and until the infilling of the railway line to the south of the site has been completed. This, in turn, would render the planning consent inoperable within the statutory time period from the date of approval.

- 4.05 The current and up to date Development Plan Policy situation is to be found in the Moray Local Plan : 2008. There is recognition within this document that the previously safeguarded route for a possible footpath to the north of the planning site, along the side of the planning application site and to the south of the planning application site is no longer to be protected as the route, itself, has failed to attract support either in terms of assessment of established local need or the audit of the route undertaken in respect of the Moray Core Path Plan : Finalised Version. Both these Plans, approved by The Moray Council are entirely consistent in dismissing the notion that a route for a footpath along this stretch of the former railway line is a viable possibility. On that basis there is absolutely no policy justification for retaining a planning consent condition that failed to meet the test of reasonable competence in relation to the policies in the earlier Moray Local Plan : 2000.
- 4.06 It is respectfully requested, having regard to the foregoing, that the Review Body sustains the application and grants planning consent for the removal of the condition as requested.

5.00 Documents Referred to:-

- Moray Local Plan : 2000 (Policy ENV3 and Cullen Settlement Statement and Map)
- Moray Local Plan : 2008 (Policy E4 and Cullen Settlement Statement and Map)
- Moray Core Paths Plan : Finalised Version : 2009 (Map 19 and 19A)