

Mrs. Ann Mowat
12 Seafield Place, Cullen, Buckie. AB56 4TE



applicants response
appendix 1.doc

Chief Legal Officer
Per Mr R Ritchie
Committee Services
The Moray Council
High Street
ELGIN
IV30 1BX

Your Ref.RR/LRB/Case 029

10th April, 2011

Dear Sir,

Mrs. A. Mowat
12 Seafield Place Cullen
Request for Review: Planning Application 10/01693/APP

I refer to your letter of 28th March, 2011 relating to the above and enclosing copies of two further letters of representation and wish to comment on a number of matters as follows.

Review / Site Visit

I note that in your letter you state that all documents and notices relating to the above Notice of Review will be presented to Moray Local Review Body on Thursday 28th April, 2011. I wish to draw your attention to the fact that I have requested a site visit by members of MLRB and would be extremely concerned if the review was to be concluded without a site visit.

In this regard I would draw your attention to one of the recent letters of representation from Legal and Committee Services, Central Services dated 15th March, 2011 which states, ***“I would confirm that a site inspection should be undertaken if this has not already been done, and would suggest that the proposed alternative route be assessed for its suitability”***.

I would be grateful if you could clarify the situation with regard to a site visit and advise me accordingly.

Concerns Regarding the Report of Handling

Prior to submitting the Notice of Review application, in preparing my reasons for review I went to the Council's online applications website to check some matters and noticed that there was reference to 10 comments having been received in response to the consultation process. I was unable to access these documents which had been removed from the website. My architect contacted the planning office and requested access to all of the relevant documents to allow him to assist me to prepare my case and after some initial difficulty he was sent a series of emails by Teresa Ruggeri. Unfortunately the information was not sent till after I had submitted the online application (I was anxious to ensure the application was submitted within the required timescale). However, these emails provided copies of only 6 of the 10 comments and I still have no knowledge of what the others were or what views they expressed.

I am very concerned that there would appear to be a deliberate attempt to prevent access to some information. Since the report of handling only refers to 6 comments received whereas the online application website shows that there had been 10 what were the other comments, who were they from,

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what views did they express and why have they not been referred to in the report of handling? (See attached screen image of the website which shows the reference to 10 comments). There may of course be a perfectly logical explanation for this but it is a matter of concern and one which I feel needs to be answered.

When I opened the 6 comments and compared them to the statements made in the case officer's Report of Handling I was further concerned at his very biased interpretation of some of the comments received. In my opinion he has deliberately picked up on certain statements which support his prejudgement of the application and ignored other statements. I do not believe he has acted impartially or fairly.

For example he states that the response from Legal and Committee Services, ***"Provides general advice on rights of way legislation. Refers Planning Section to Moray Access Officer for further advice on footpath issue"***.

When I was eventually able to read the comments provided by Legal and Committee Services in their email dated 19th October, 2010 it was apparent that they were in fact very specific and not just general advice. The email states, ***"...I am not aware of any rights of way in this area..."***.

The same email states, ***"...it is clear from your report that the relevant area is overgrown and not being used, which would suggest that there is no public demand to exercise access rights on that section of railway track. Unless Ian Douglas is aware of any strong local representation requiring access over the railway line, then I can see no reason why the applicant must comply with the original condition"***. (Emphasis added).

None of the comments from the Access Officer provide any evidence of rights of way or public demand for them.

If the legal advice is that there is no reason why the applicant must comply with the condition why has this been deliberately ignored by the case officer?

When looking at the other responses from Development Plans, Transportation and the Access Manager it is clear that the case officer only selected phrases and comments which supported his decision and he did not present an objective and balanced view of all that the responses actually say.

Grampian Police Comments

When I submitted the Notice of Review application, in the concluding remarks of my Reasons for Notice of Review document, I stated that with regard to the safety aspect I had contacted the Grampian Police Safety Officer who had agreed to visit the site and provide an opinion on the health/safety and crime risks posed if a footpath was to be formed. I can confirm that this visit has taken place and I enclose a copy of a letter dated 17th March, 2011 from Grampian Police, Community Support.

Mr. Galashan, Force Architectural Liaison Officer, states that best practice guidelines suggest footpaths should:

- be as wide and straight as possible
- avoid a 'tunnel' effect
- enable two people to pass without encroachment
- provide a direct and logical route to ensure it is well used

The proposed footpath through my site fails in all these respects.

The letter also states that houses are most vulnerable to break in from the rear footpaths which provide unrestricted and unobserved access to the rear should be avoided.

In goes on to point out that the increased height of the garden and property with blank gable end means that there would be no natural surveillance overlooking the narrow footpath.

The letter questions the need for the footpath which would bring pedestrians to an area of waste ground and a deep gully which has no natural surveillance and could become a target for youth congregation and anti social behaviour. He points out that there is already evidence of dumping in this area.

It concludes by commenting on the existing path to Cranoch Woods which leads from Seafield Place and is open and provides a safer route for walkers.

Transportation

I refer to the letter dated 22nd March, 2011 from the Senior Engineer (Transport Development) in which he states that Transportation's reasons for refusal were to safeguard future access through my site to ensure future pedestrian linkage from the R1 site. As I have said repeatedly, anyone passing comment on this situation should come and look at the site! There is absolutely no way that safe and viable access can be formed from the R1 site down to the bed of the old railway line. This will be abundantly clear when members of the MLRB visit the site. No one would ever climb down a steep embankment to the bed of the former railway line and then chose to climb back up another 4 or 5 metres to access Seafield Street!

Moray Access Manager

I refer to the further consultation response dated 16th March, 2011 from the Moray Access Officer. In this response Ian Douglas refers to some of the arguments put forward in my Reasons for Notice of Review and states that he refutes them. I question the practicality and objectivity of his judgement in this regard for reasons which follow.

In his letter he acknowledges that, "**...the railway in its current state does not function as a footpath. Much work would be needed to develop this line to a cycle route standard including extensive infilling, levelling, drainage and application of a smooth running surface**".

He then goes on to say that it would be technically possible to develop the footpath. There is no argument that anything is technically possible, it is in this case simply not feasible for technical, financial and safety reasons.

He pours scorn on my argument relating to public safety but in this regard I would simply point to the expert opinion on this matter contained in the letter from Grampian Police referred to above.

He acknowledges the whole uncertainty of the notional future footpath and cycle route by stating, "**Whether the route is ever developed will depend upon competing priorities and available resources which are uncertain at this time**".

He then goes on to say that unless a margin is left to accommodate the path at the site of the house then the opportunity will be lost. This margin exists. The setting out of the house and the retaining wall at the eastern boundary maintains minimum clearances of 3m and 1.2m respectively. The access manager makes reference to the need to maintain the path margin presumably to protect the potential of forming a path at a later date should the route attract a core path status. The condition requires a path to be constructed which is a totally different issue.

Conclusion

Despite the fact that both Transportation and the Access Manager have provided further comments I think it is worth stressing that their responses completely ignore the fact that there is currently and for the foreseeable future no available funds to incorporate the route into the core path network. There is

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therefore no capacity within the Local Authority's funding circumstances to adjust the levels of the track to the south of the house as anticipated when the local plan designation for site was originally promoted. If the levels cannot be adjusted then path formation simply cannot proceed as envisaged in the earlier Local Plan and the whole exercise becomes completely impracticable.

The condition can surely only be implementable in circumstances where the route was included as a core path, rather than the longer aspirational alternative that was selected for inclusion in the network, and funding was directed to the delivery of the route in its entirety.

If the planning condition is not removed I am going to be expected to construct a path which quite clearly is not going to be utilised. The reality of the situation is clearly accepted by Legal and Committee Services in their comments, which were ignored by the case officer, when they question the need and practicality of a path in the location under consideration.

I respectfully request members of the MLRB to visit the site to see the force of the logic of my case and overturn the decision to refuse my application to have the planning condition removed.

Yours Faithfully,

Mrs. Ann Mowat