



MORAY COUNCIL LOCAL REVIEW BODY

Review Decision Notice

Decision by Moray Local Review Body (the MLRB)

- Request for Review reference : Case 040
- Site address: Sea View Park, Findhorn Road, Kinloss
- Application for review by Mr Duncan Brown against the decision by an Appointed Officer of Moray Council.
- Application11/000072/APP : Change of use from 38 static vans to 38 residential vans by upgrading both vans and site to give 12 months continues use at Sea View Park, Findhorn Road, Kinloss
- Date of Decision Notice: November 2011

Decision

The MLRB agreed to dismiss the request for review and uphold the decision of the Appointed Officer to refuse full planning permission.

1.0 Preliminary

- 1.1 This Notice constitutes the formal decision notice of the Moray Local Review Body (MLRB) as required by the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008.
- 1.2 The above application for full planning permission was considered by the MLRB at a meeting on 17 November 2011. The Review Body was attended by Councillors P Paul (Chair), J Hogg & B Jarvis.

2.0 Proposal

- 2.1 This is an application for full planning permission for the change of use from 38 static vans to 38 residential vans by upgrading both vans and site to give 12 months continues use at Sea View Park, Findhorn Road, Kinloss.

MLRB Consideration of request for review

- 3.1 At the meeting of the MLRB on 17 November 2011 there was submitted a 'Summary of Information' report by the Clerk to the MLRB setting out the reasons for refusal together with a copy of the Report of Handling and a copy of the Notice of Review & supporting documents.
- 3.2 Following consideration of the case papers the MLRB agreed that it had sufficient information in order to proceed to determine the request for review.
- 3.3 Councillor Hogg expressed the view that the lead policy in this case was policy H11 which specifically excludes residential use except in emergency situations requiring short-term re-housing and where temporary consent is required in relation to the construction of a house and therefore consideration required to be given as to whether there were any material consideration of sufficient weight to outweigh the provisions of policy H11. He then referred to the appellant's grounds for review, set out on page 10 of the case papers, which sets out two issues for the MLRB to consider as material considerations to justify departing from policy H11. Firstly based upon the view that there is insufficient demand for holiday lets and because of this the provision of residential facilities to help to sustain the viability of the caravan park and whilst he fully understood the argument he also understood that financial viability could not be considered as a material consideration and sought clarification of this.
- 3.4 The Planning Adviser advised the meeting that whilst financial viability could be considered as a material consideration it would be necessary to decide upon the weight to be attached to it if, for example, the site is not viable and goes out of use and becomes a derelict site then, in such circumstances and in economic terms, an alternative use could become a material consideration. It was however a matter for the MLRB to consider if the financial viability is a material consideration and as to how much weight should be applied to it.
- 3.5 In noting the response Councillor Hogg then referred to the guidance note previously issued to members of the MLRB on material considerations (Annex A of the Scottish Government Planning Circular 4/2009 – Development Management Procedures) and expressed the view that there was nothing which, in his opinion, indicated that any substantial weighting could be applied to the financial viability aspect of it and therefore, from the evidence presented, fell short, in his opinion, of being a material consideration.
- 3.6 Councillor Hogg then referred to the second point the MLRB was being asked to consider which related to satisfying a demand for low cost housing and in so doing might have some local economic impact. Whilst accepting that approval could increase spending in the local area however in Kinloss there is no evidence that he could find that employment in the area being adversely affected by a shortage of low cost housing. There was also the release of Ministry of Defence (MOD) housing which is already increasing the supply of good affordable housing in the area and therefore would find it difficult to take the appellant's view into account as a material consideration of any significant weight and sought guidance on this view. The Planning Adviser reiterated his earlier advice and added that whilst like the first issue raised by the appellant in his grounds for review the second issue could be considered as a material consideration, however it was a matter for the MLRB to decide whether it was and as to how much weight to apply to it.

- 3.7 On noting the response Councillor Hogg then referred to the assertion in the appellant's grounds for review that approval of the application would ensure the survival of the caravan park in the post closure of RAF Kinloss which, whilst he considered this a valid assertion this economic position could be considered short-term given the arrival of some 930 army personnel at RAF Kinloss in the summer of 2012 and therefore he could not place any significant weight on this as a material consideration of such weight to outweigh the provisions of policy H11.
- 3.8 Having carefully considered all aspects of the case Councillor Hogg expressed the view that policy H11 is quite specific in its exclusion of residential use and could find no material considerations of such weight to justify departing from policy H11 and for these reasons moved that the request for review be refused.
- 3.9 Councillor Jarvis expressed the view that, in his opinion, the economic and viability issues raised in the grounds for review were a material consideration of such weight to justify departing from policy H11. The applicant was, in the current economic climate, trying to diversify in order to stay financially viable and, in his opinion, should be supported a view which he noted was supported by a number of local businesses in the area. For these reasons Councillor Jarvis moved that the request for review be granted and planning consent granted as an acceptable departure from the MLP 2008.
- 3.10 Councillor Paul enquired if any consideration was being given to reviewing policy H11 as part of the Local Plan Review which was currently being undertaken. The Planning Adviser advised the meeting the review of the Local Plan Review is in the early stages and will take approximately 2 years to complete and, to date, there had been no representations received in regard to amending policy H11. He also advised that, whilst not prejudging modern caravans, the underlying principle behind the current policies is that the Council does not believe that caravans make suitable full-time residencies and if it was now the view that modern caravans were more suitable for residential use then this could be looked at as part of the review if such evidence was to be presented for consideration.
- 3.11 In noting the response Councillor Paul expressed the view that, in her opinion, the way forward was to seek a review of policy H11 as part of the Local Plan Review and that the request for review should be refused for the reasons outlined by Councillor Hogg.
- 3.12 The MLRB agreed by a 2:1 majority that the request for review be refused and the original decision of the Appointed Officer to refuse the application be upheld on the grounds that the application does not comply with Moray Local Plan 2008 policies ED9: Tourism Facilities and Accommodation and H11: Residential Caravans and Sites on the basis that the development will increase the areas dependency on residential caravans and have an adverse impact on the tourism industry in Moray.
- 3.13 It was also noted that it was open to the appellant, in light of changing circumstances, to seek a review of policy H11 as part of the Local Plan Review.

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Sean Hoath
Legal Adviser to the MLRB

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

Notification to be sent to applicant on determination by the planning authority of an application following a review conducted under section 43A(8)

Notice Under Regulation 21 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008.

- 1 If the applicant is aggrieved by the decision of the planning authority to refuse permission or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.

- 2 If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.