



TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997
THE TOWN AND COUNTRY PLANNING (NOTIFICATION OF APPLICATIONS)
(SCOTLAND) DIRECTION 1997

CHANGE OF USE OF PART OF A96 TRUNK ROAD TO HOLIDAY PARK EXTENSION
WITH 27 PITCHES OPERATING 12 MONTH PER YEAR AT BURNSIDE CARAVAN SITE
KEITH ROAD FOCHABERS MORAY IV32 7ET

WRITTEN STATEMENT BY KEN AITKEN
TRANSPORT SCOTLAND
NETWORK OPERATIONS: TRUNK ROAD AND BUS OPERATIONS
DEVELOPMENT MANAGEMENT

LRB Ref: MLRB 095
LA Ref: 13/00280/APP
TRNMD Ref: NE/110/2013B

1 Details of Application

- 1.1 This written statement refers to the planning applications submitted to Moray Council by Christies Park Limited. The application relates to the change of use of part of A96 trunk road to holiday park extension with 27 pitches operating 12 month per year at Burnside Caravan Park, Keith Road, Fochabers.
- 1.2 Transport Scotland were notified of the appeal by Moray Council in a letter received on the 16 January 2014 advising that any further statements in relation should be submitted to the Clerk of the Review Body within 14 days of receipt of the letter.

2 Planning Application

2.1 This planning application was referred to the Transport Scotland - Trunk Road and Bus Operations by Moray Council on the basis of its potential impact on the nearby A96 Trunk Road. This site has been subject to a number of applications over the years.

2.2 Transport Scotland responded to Moray Council for the first consultation on the 16 April 2009, recommending that planning permission be refused on the following grounds

The proposed development is considered premature until such time as the future trunk road realignment is completed

2.3 In addition the applicant was contacted by Transport Scotland's designers for the Fochabers and Mosstodloch Bypass, on the feasibility of the extension of the caravan park and was advised, on the 16 June 2006, as follows:

"At this stage in the tender process / build-up to the construction phase, Transport Scotland is still of the opinion that the planning application to extend the caravan site at Burnside is premature. Consideration of your proposal to extend the caravan site can only be taken forward once the bypass is open and traffic is removed from this section of the existing trunk road. At this stage we will have approved the contractor's detailed design for the bypass and in particular the cycle track layout running along the disused section of the A96 and the location of the pedestrian / cycle underpass at Dramlachs will have been finalised. Until these detailed plans are submitted and approved the layout of the cycle track and pedestrian underpass at Dramlachs are still undecided and for this reason a definitive answer on your extension proposal to the caravan site cannot be given. At this time a decision cannot be made either way on your proposal to extend the caravan site and I would ask that you re-open discussions with the Local Authority planning department and Transport Scotland once the new bypass is open."

2.4 The applicant submitted a further application on the 4 January 2012 prior to the opening of the bypass on the 31 January 2013. The issues had not yet been resolved and Transport Scotland responded to Moray Council for this consultation on the 16 April 2009, recommending that planning permission be refused on the following grounds

The proposed development is considered premature until such time as the required land is declared surplus to the contract and the future trunk road boundary is determined.

- 2.5 A subsequent application was submitted in April 2013 and Transport Scotland were consulted again. The land issues were proving difficult to resolve and as such Transport Scotland responded to Moray Council on the 1 May 2014, recommending that planning permission be refused on the following grounds
- This application is premature. The land has not been declared surplus to date. This process is on-going.*

3 Subsequent Correspondence with Planning and Final Response

- 3.1 Following this response the Planning Officer contacted Transport Scotland to ask if it would be possible to consider if a suspensive condition could be applied allow consent to be granted. This consent would only permit construction of the caravan park after the land was released and the appropriate legal agreements were in place.
- 3.2 Transport Scotland responded on the 15 May 2013 that it should be acceptable to issue a suspensive condition to the effect that no work may commence on site until all relevant land has been legally declared surplus and ownership changed to the Applicant.
- 3.3 However, shortly after this email was sent to Moray Council, it was ascertained that as part of the overall Traffic Regulation Order process, this section of road had already been redetermined as a cycleway, and as such would be unavailable for any redevelopment, without the appropriate legal changes being made to the Traffic Regulation Orders. This is open to consultation and objection and there is no guarantee that this could actually be changed to allow the development to proceed.
- 3.4 Consequently, Transport Scotland issued a revised TR/NPA/2 to Moray Council dated 23 May 2014, recommending that planning permission be refused on the following grounds
- The land is to be utilised for a cycleway and therefore not available for this development*

- 3.5 The Planning Officer then responded to Transport Scotland on the 12 July noting the position and asking if there was any opportunity to access the development by either sharing the existing cycleway or amending the cycleway to allow the development to proceed.
- 3.6 The redetermination order which changed part of old road to cycleway will not permit by law any vehicles, other than cycles, to use this part of the old road.
- 3.7 Furthermore, the extent of the redetermined cycleway is such that the remaining land would not be wide enough to site caravans and allow access to the caravans as well.
- 3.8 There is no possibility of the applicant's plan being implemented as detailed on the submitted plans. This could only be implemented by the applicant making changes to the layout; preparing the necessary legal orders; and passing them on to Transport Scotland to promote, all at his own expense. This has no guarantee of success and as such would not pass the tests for planning conditions which have been laid down by the Courts.
- 3.9 As such Moray Council Planning requested that Transport Scotland supply a revised response which provided more detail for the reasons for refusal.
- 3.10 Consequently, Transport Scotland sent a revised response to Moray Council on the 4 September 2013, recommending that planning permission be refused on the following grounds

The proposed development would result in increased interference with the safety and free flow of cyclists and pedestrians on the cyclepath / footpath created on the length of trunk road made redundant after the opening of the Fochabers & Mosstodloch bypass.

The development would create a demand for parking, which would lead to uncontrolled parking and increase interference with the safety and free flow of cyclist and pedestrians on the cyclepath / footpath created on the length of trunk road made redundant after the opening of the Fochabers & Mosstodloch bypass.

4 Other Issues

- 4.1 Transport Scotland, or our agents, have had some limited discussions with the applicant as evidenced by the extract of the email in paragraph 2.3.
- 4.2 Transport Scotland's position throughout has been that until the design and land issues were finalised it would be difficult to make a decision on the applicant's proposals.
- 4.3 In the same email as paragraph 2.3, dated on the 16 June 2006, it was highlighted to the applicant the process to be followed regarding the land issues
- "...under the Critchel Down rules, Transport Scotland are required to offer land back to its former owner when surplus to requirements or if the owner is not interested put the surplus land on the open market. This process is controlled by Transport Scotland's Construction Section and I will inform the relevant project manager for the Scheme that you are interested in acquiring any possible land adjacent to the caravan site which is declared surplus at the end of the construction phase and of your development proposal to extend the site."*
- 4.4 Further investigation has not identified who owns the land adjacent to the A96 at this location, which has been the main reason for the delay in resolving the land issue. Consequently, Critchel Downs rules, do not apply and the land would have to be offered for sale on the open market.
- 4.5 While the applicant may have been involved in discussions with Transport Scotland in the past there has been no direct contact during the planning process.
- 4.6 The necessary statutory processes were carried out for the promotion of the Traffic Regulation Orders to redetermine the carriageway as cycleway, which includes extensive consultation through local notices and press adverts. No objections to the redetermination of the carriageway to cycleway were received.

5 Conclusions & Recommendations

- 5.1 Transport Scotland have consistently advised the applicant that until the design and the land issues were completed it was premature to consider his proposals.
- 5.2 The redetermination of the carriageway to cycleway was widely advertised and no objections to its extent or implementation were received.
- 5.3 The proposal cannot be constructed as detailed on the planning submission due the existence of the designated cycleway.
- 5.4 No vehicles other than cycles can use the designated cycleway and even if there was space to permit the caravans to be sited on the adjacent land there would be no way of accessing them by motorised vehicles, or even allow the siting of the caravans in the first place.
- 5.5 Insufficient space is available adjacent to the designated cycleway to locate and access caravans.
- 5.6 The Traffic Regulation Orders for the cycleway cannot be changed without following the statutory legal procedure. These changes cannot be guaranteed and as such are not permissible as planning conditions as this fails the necessary tests for planning conditions
- 5.7 Consequently, Transport Scotland must maintain the objection to this proposed redevelopment of a section of the A96, and would respectfully request that the Local Review Body refuses this application.

Ken Aitken
Transport Scotland - TRBO
Buchanan House
29 January 2014