

**THE MORAY COUNCIL**  
**MINUTE OF SPECIAL MEETING OF**  
**THE PLANNING & REGULATORY SERVICES COMMITTEE**  
**TUESDAY 4<sup>TH</sup> AUGUST 2009**  
**COUNCIL OFFICE, ELGIN**

**PRESENT**

Councillors S. Cree (Chair), J Russell (Deputy Chair), L Bell, G Coull, J Divers, J Hamilton, M McConachie, A McDonald, G McDonald, F Murdoch, D Stewart and A Wright.

**APOLOGIES**

Apologies for absence were intimated on behalf of Councillor A McKay.

**IN ATTENDANCE**

The Head of Development Services, Mr J Martin, Principal Planning Officer, (Development Control), Mr R Gerring, Senior Engineer (Transport Development), Mr A McEachan, Principal Solicitor (Commercial and Conveyancing) and Mrs S Kennedy, Committee Services Officer, Clerk to the Meeting.

**DECLARATION OF GROUP DECISIONS**

There were no declarations from Members, group leaders or spokespersons in regard to any prior decisions taken on how members will vote on any item on the Agenda.

**PUBLIC HEARING: 09/00004/FUL and 09/00139/CON: TO ALTER EXISTING  
WORKSHOP TO CREATE TWO DWELLINGS ON SITE ADJACENT TO THE  
PUBLIC HALL, FINDHORN FOR MR BRUCE HAY**

There were submitted reports by the Chief Legal Officer and the Development Control Manager regarding a detailed application to alter existing workshops to create two dwellings on a site adjacent to the Public Hall, Findhorn for Mr Bruce Hay.

Under reference to a special meeting of the Planning and Regulatory Committee dated 23 June (paragraph 5 (f) of the Minute refers) the report by the Chief Legal Officer advised that, Committee were "minded to approve" the applications as acceptable departures from policy, subject to referral to a Hearing to which the applicant and those submitting representations be invited to attend and be afforded the opportunity of being heard. The report also set out the proposed procedures for the Hearing, and advised that Members of the Committee had visited the site of the application on Friday 8 May 2009.

The report by the Development Control Manager gave details of the background to the application, the consultations which had been undertaken regarding it and the relevant planning criteria in terms of the Moray Development Plan. The meeting noted that the application had been advertised as a development affecting the setting of a Listed Building; as demolition requiring Conservation Area consent; as development affecting Conservation Areas and as a Departure in respect of Conservation and Listed Building policies and for these reasons the report recommended that planning consent be refused. The meeting also noted that the application had been deferred from the meeting of the Planning & Regulatory Committee dated 23 June 2009 for further investigation of car parking issues.

The Chairman welcomed those present and advised them that submissions must be restricted to those already submitted. He further advised that the Hearing would be confined to examining the planning merits of the application and therefore discussion on irrelevant non-planning related issues would not be considered.

The meeting noted that Mr Cyril Smith and Mr Malcolm Leiper; Future Plans would represent the applicant Mr Bruce Hay, Elgin. Mr and Mrs Bruce Hay were also present.

The Clerk to the Committee advised the meeting that, of those objectors to the application listed on page 101 of the Planning Officer's report, Mr P Carroll, Mr T Negus (representing Findhorn and Kinloss Community Council), Mr H Grigor and Dr R Stewart were present and had accepted the invitation to be heard.

There were no statements submitted for the hearing. One objector had declined the invitation to attend and others did not respond to the invitation, aside from those in attendance at the meeting.

Thereafter, the Chairman outlined the procedure to be followed for the Hearing, which was accepted by the Committee, the applicant's representative and the objectors to the application.

## **REPRESENTATIONS ON BEHALF OF THE APPLICANT**

**Mr Cyril Smith** addressed the meeting on behalf of the Applicant, Mr Bruce Hay, with regard to an application for planning permission to alter an existing workshop to create two dwellings on the site adjacent to the Public Hall, Findhorn for Mr Bruce Hay.

Mr Smith advised the meeting that the proposed application had been ongoing for 10 years and the applicants were personally committed to doing the right thing for this unique location to deliver a finished project to the very best standards that would provide a sense of pride for both the owners and the community.

With regard to the building he advised that it would blend in easily with the location with the low profile of the horizontal roof lines giving elevation reconciliation between the taller buildings at either side enabling the new build to fit in snugly below the eaves. He further advised that the existing perimeter walls and existing openings would be retained giving access to the back lying accommodation. Mr Smith further advised that the unique westerly views over Findhorn Bay had been the driving force for the first floor accommodation with the layout of the living rooms introducing a step in the roof levels. The materials and colours had

been chosen to blend aesthetically with the skyline to reflect the heritage of the property and to act as a bridge between the two neighbouring properties.

There were no questions to Mr Smith.

**Mr Malcolm Leiper** also addressed the meeting on behalf of the Applicant, Mr Bruce Hay and outlined the history and background to the application. He advised that boat builders who had lived in Findhorn had previously owned the site however commercial boat building had ceased in 1998. Thereafter, the building had been used for other activities however they were not seen to be economically viable. In regard to the current proposal, Mr Leiper advised that the application had been the subject of considerable consultation and re-design and their clients had remained open to make any changes in order to meet objections. He made reference to previous applications, which had resulted in the application being referred to an appeal, which was refused.

Following on from the appeal Mr Leiper advised the meeting that in consultation with the Planning Department and Historic Scotland a draft design statement had been prepared.

The meeting noted that Findhorn and Kinloss Community Council had been consulted on the draft application prior to submission and their comments had been noted and dealt with at this time. It was further noted that Historic Scotland was particularly keen that the roof should not cut into the roof of the older adjoining building. There had been no objections received from the neighbouring hall. Thereafter, Mr Leiper referred the meeting to a photomontage of what the finished building would look like.

With regard to objections expressed by Findhorn and Kinloss Community Council, Mr Leiper was of the view that their concerns had been addressed and the applicant had given them assurances about the future use of the amenity ground and his understanding was that the Community Council was no longer objecting to the proposal.

With regard to parking and servicing he advised that this had always taken place in front of the site and he had received confirmation from the Roads Department that the proposals would result in a net reduction in parking requirements. At the present time the building required 5 parking spaces, however under road standards, it would just require 4, which would allow plenty of room for pedestrian flow. He further advised that the building was currently an industrial building and as such had no conditions attached so presumably if someone was working, they could work all hours of the day and night. The site also had vehicular access rights over a privately owned road in front of the site and the historic frontage was being kept.

In conclusion, he advised that the character of the conservation area would not be harmed and that the historic frontage would be retained and maintained. Any alterations to the building area would be plain and modest with views from and of listed buildings in the vicinity being preserved with no disturbance to the open space used by the public and for these reasons he asked the meeting to approve the application.

There were no questions to Mr Leiper.

## REPRESENTATIONS ON THE APPLICATION

**Mr P T Carroll** addressed the meeting on his objections and stated that as a resident of Findhorn for the past 25 years he had no objections to the design of the proposed application, however he had primarily objected to the planning application on two grounds.

Prior to continuing his presentation, photographs of a recent fair day in the village were circulated to the meeting.

Firstly, Mr Carroll made reference to the change of use and advised the meeting that the use of the site would have an impact on the community as the residents of the village used the ground for recreational purposes. He advised that all communities, wherever they are, require central areas where they can meet, enjoy and have recreation and as Findhorn did not have a park the area of ground around the two quays was the centre of village recreation.

Mr Carroll made reference to the photomontage produced by Mr Leiper and stated that although it was very impressive it did not show any people, whereas his photographs circulated to the meeting related to a recent fair day and showed a thousand people milling around the proposed development area. He expressed the view that the impact from villagers and tourists in a public amenity area hard up against the residential development was illogical and undesirable.

Secondly, with regard to car parking. Mr Carroll advised that the developer had pointed out that an area of 2 metres in front of the building was available for car parking, however the Traffic Manager had pointed out that this was less than the minimum specified within the report. Mr Carroll suggested that if cars were parked there, then it would have an impact on public amenity ground and although this was used as an access road it was not used as an access road when events were being held and he felt this was unacceptable. He also wondered how residents could be stopped from accessing this area and in his opinion felt that this would lead to residents calling for a Noise Abatement Order, which would make no sense. He was of the view that if there was to be a public amenity area then it should be separate from a residential area.

There were no questions to Mr Carroll.

**Mr T Negus** on behalf of Findhorn and Kinloss Community Council addressed the meeting and stated that Findhorn and Kinloss Community had previously objected to the application on two grounds.

Firstly, the Community Council had objected to the proposed demolition of the existing seaward facade together with the sheer size and arrangement of the earlier proposed design, which would adversely alter the architectural nature of the buildings in the heart of this conservation area. Secondly there was extreme concern about the possible loss of public amenity use of the area in front of the proposed development. However he advised that the Community Council was of the view that their earlier concerns about the design of the new development had largely been addressed in the new plan with its retention of the façade, significantly lowered roofline and provision of off street parking, albeit limited.

With regard to the concerns expressed over potential loss of public amenity ground, Mr Negus advised that Findhorn and Kinloss Community Council in its consultation response dated 27 February had covered this aspect in some detail, including a number of photographs to illustrate the reasons for their concerns.

Mr Negus, referred to the area of ground in front of the proposed site and advised that the ground was currently leased by the Village Residents Association and was effectively the Findhorn Village Square. This area was used for the Annual Village Fete and Lifeboat Days, the open air Songs of Praise services and the village Hogmanay gathering. The meeting noted that villagers had expressed concerns, that in the event that the site in question should become residential, a situation could arise where potential neighbour hostility could affect the enjoyment of such village occasions by the public. Mr Negus was of the view that this could be seen as contrary to Local Plan policies CF1 and IMP1 (subsection H).

In conclusion, Mr Negus advised the meeting that his understanding of the situation was that both owners of the site had given firm assurances to the Moray Council Planning Department that they had no intention of interfering with the traditional public enjoyment of the area, particularly during these traditional annual events and whilst he appreciated that such assurances were not necessarily legally binding, and that future owners of the property may not be like minded, on balance the Community Council were minded to accept these assurances at face value and therefore were not objecting to the application.

There were no questions to Mr Negus.

**Mr H Grigor** addressed the meeting on his objections and echoed the concern previously expressed by Mr Carroll with regard to public amenity ground.

With regard to parking issues, Mr Grigor stated that whilst it had been demonstrated that there was internal parking and external parking, he was of the view that the two could not be used at the same time.

Mr Grigor also referred to the site, which had been used for boat building until 1998, and thereafter by five other small businesses. He expressed the view that as the small businesses had been given notice to quit the building, this had effectively reduced the number of objections to the planning application and in his opinion felt if the application was approved this could result in other inappropriate applications being submitted.

In conclusion, he expressed the view that that he would really like to see the Council and the Committee pay heed to the views of the local villagers, many of whom did not wish to see this application going ahead.

There were no questions to Mr Grigor.

**Dr R J Stewart** addressed the meeting on his objections and stated that as a resident of the village for the past 40 years he would like to see Findhorn remain as it is, however he would confine his objection to the point that the proposed development goes directly against the development requirements for conservation areas, in that it adversely affects both the character and appearance of the conservation area.

He advised the meeting that Findhorn was a unique old seaport, which attracted enormous numbers of people worldwide, and if the heritage of the area were destroyed then the whole ethos of its being would be destroyed. He also advised that the workshops were part of the heritage of the village and traditional craftsmen attracted visitors to the area.

With reference, to the use of the workshops, Dr Stewart was of the opinion that some of the previous workers would like to come back to work in the area and felt that it was not necessary to change the use of the building and asked the Committee to refuse the application and retain the unique heritage of Findhorn.

There were no questions to Dr Stewart

### **WRITTEN REPRESENTATION**

There were no written representations submitted to this meeting.

### **SUMMARIES OF SUBMISSIONS**

On the invitation of the Chairman, Mr M Leiper, on behalf of the Applicant, and Mr P Carroll, summarised their respective submissions. Mr Negus, Mr Grigor and Dr Stewart declined the invitation.

In response to a question from the Chair, both parties intimated that they were satisfied with the conduct of the proceeding of the Hearing.

### **COMMITTEE CONSIDERTION OF THE APPLICATION**

Mr J Martin, the Principal Planning Officer reiterated his recommendations for refusal as detailed within the report

In response to Members questions regarding parking/access issues the Senior Engineer, Transportation advised that these issues had been investigated and that 2 parking spaces per dwelling would be required and 2.5m was the normal parking width. The application provided provision for 2 undercraft-parking spaces and 2 front parking spaces and in view of the conservation area and changes to the layout and a one-way system he felt on balance that this was acceptable.

In response to member's questions regarding the legality of the assurance given by the Applicant in regard to the use of the amenity ground, Mr A McEachan, Principal Solicitor (Commercial and Conveyancing) advised the meeting that they could consider the use of a Section 75 Agreement. Following further discussion the Committee felt that this would be difficult to enforce.

Thereafter, Councillor Bell, seconded by Councillor Hamilton, moved approval of the application, subject to standard conditions and Informatives. There being no-one otherwise minded the motion became the finding of the meeting and it was agreed that the application be approved, as an acceptable departure, subject to the following conditions and Informatives:-

**Conditions:**

1. The development to which this permission relates must be begun not later than the expiration of five years beginning with the date on which this permission is granted.
2. Unless otherwise agreed with the Council, as Planning Authority, the development hereby approved shall be carried out strictly in accordance with the approved plans and conditions.
3. No water shall be permitted to drain, or loose material be carried onto the public footpath/carriageway.
4. A minimum of 2 no private car parking spaces shall be provided for each dwellinghouse.
5. Prior to the occupation of the houses, the two parking spaces outside of the building shall be demarcated using a material, which is sympathetic to the surrounding conservation area. Details of the material shall be submitted for the approval in writing of the Planning Authority prior to the commencement of development.

**Reasons:**

1. The time limit condition is imposed in order to comply with the requirements of Section 58 of the Town and Country Planning (Scotland) Act 1997.
2. In order to ensure that there are no unauthorised departures from the approved plans, which could adversely affect the development or character and amenity of the surrounding properties and area.
3. In the interests of road safety.
4. In the interests of road safety.
5. In the interests of road safety and in order to preserve the character of the conservation area.

**Informatives:**

- THE TRANSPORTATION MANAGER, DIRECT SERVICES, ACADEMY STREET, ELGIN has commented that:-
- No building materials/scaffolding/builder's skip shall obstruct the public road (including footpaths) without permission from this Department.
- The applicant shall be responsible for ensuring that water does not run from the public road into his property.
- The applicant shall ensure that their operations do not adversely affect any Public Utilities, which should be contacted prior to the commencement of operations.

- The applicant shall free and relieve the Roads Authority from any claims arising out of his operations on the road or extension to the road.
- No retaining walls should be constructed along the edge of the road, whether retaining the public road or ground adjoining the public road, without prior consultation, and agreement of the Transportation Manager.
- THE CONTAMINATED LAND SECTION has commented that:-
- Your property has been identified as being in the vicinity of the following potential source of contamination:

Workshop on site as indicated on present Ordnance Survey Maps.

The Moray Council does not have information to confirm whether or not the ground has been contaminated, however, it is recommended that you investigate this matter prior to proceeding with the proposed works. Should contamination be identified you should contact the environmental Health Section immediately and carry out agreed remediation works. For advice on researching/investigating a site, please visit the Council's website at [www.moray.gov.uk/ContaminatedLand](http://www.moray.gov.uk/ContaminatedLand). Alternatively you can contact the Environmental Health Section on 01343 563345 or by email to [contaminated.land@moray.gov.uk](mailto:contaminated.land@moray.gov.uk)

- SCOTTISH WATER has commented that:-
- This approval does not guarantee a connection to Scottish Water's infrastructure. A separate application should be made for connection to our infrastructure after full planning has been granted.