

THE MORAY COUNCIL
MINUTE OF SPECIAL MEETING OF
THE PLANNING & REGULATORY SERVICES COMMITTEE
TUESDAY 29 SEPTEMBER 2009
COUNCIL OFFICE, ELGIN

PRESENT

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

APOLOGIES

Apologies for absence were intimated on behalf of Councillor J Hamilton, M McConachie and A Wright.

IN ATTENDANCE

The Director of Environmental Services, the Head of Development Services, Mr J Martin, Principal Planning Officer, (Development Control), Mr Iain Drummond, Planning Officer, Mr R Gerring, Senior Engineer (Transport Development), Mrs A Scott, Principal Solicitor (Commercial and Conveyancing), Darren Westmacott, (Apprentice Committee Services Officer), and Mrs S Kennedy, Committee Services Officer, Clerk to the Meeting

ALSO IN ATTENDANCE

Councillor P Paul.

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.

2. PUBLIC HEARING: 08/01867/FUL : CHANGE OF USE OF PLAY TRAIL TO INDUSTRIAL AT PLAYTRAIL, NORTH STREET, ROTHES, MORAY FOR ROTHES COMMUNITY LIMITED FOR ROTHES COMMUNITY LIMITED

There were submitted reports by the Chief Legal Officer and the Development Control Manager regarding a detailed application for a change of use of a play trail to industrial use at Play Trail, North Street, Rothes for Rothes Community Limited.

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 departure from the development plan and had been referred to a hearing on the basis that one objection had been received in relation to the development. The meeting noted that the application was solely for the approval of a change of use of the site and does not cover aspects such as access, drainage, landscaping, design, noise/emission or impact and that these issues will be assessed through the submission of a subsequent application for planning permission and for these reasons the report recommended that planning consent be granted.

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 the apologies from the Applicant, Mr J Anderson, Company Secretary, Rothes Community Limited who unfortunately could not be present at the meeting; however, he had submitted a statement in support of his application, which would be read out by the Clerk at the appropriate juncture.

The Clerk to the Committee advised the meeting that there was one objector to the application listed on page 11 of the Planning Officer's report, Mr Cameron Gordon per Mr Malcolm Leiper of Future Plans, the Barnyard Studios, South Road, Garmouth was present and had accepted the invitation to be heard.

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

REPRESENTATIONS ON BEHALF OF THE APPLICANT

The Clerk read out a statement on behalf of the Applicant, Mr J Anderson, Company Secretary, Rothes Community Limited with regard to the application for planning permission for a change of use of a play trail site to industrial use at Play Trail, North Street, Rothes, Moray for Rothes Community Limited.

The meeting noted that Rothes Community Limited had purchased the piece of land, now known as the Play Trail in 2001 for the senior pupils at the local primary school who wished to create a play area and nature trail. It was noted that a great deal of voluntary work had been carried out in preparing the site, however over time numerous problems had arisen such as diseased trees and drainage issues were encountered prolonging progress. Delay was further exacerbated when the project leader had to take a year out for personal reasons and during this time lapse the pupils concerned had moved on and enthusiasm had waned. Furthermore parents had become sceptical about the choice of the location for the project due to its proximity to the Combination of Rothes Distillers animal feeds factory, This left Rothes Community Limited with a piece of ground which had become unkempt and was an eyesore at one of the entrances to the town. In addition, Rothes Community Limited had spent a considerable amount on making good the site including tree surgery at a cost that they were unable to maintain. Rothes Community Limited therefore decided to sell the plot and to do this it was necessary to apply for planning permission for a change of use to

Industrial use, which had been the sites former use. Being aware of the need for land for industrial purposes in Speyside, Rothes Community Limited considered this avenue of disposal to be the only sensible course of action and in view of the recent news that the Combination of Rothes Distillers was to expand its operations it was felt that the current status of “recreational” was totally inappropriate.

In response to the planning considerations raised by Mr Cameron Gordon, the meeting noted that Rothes Community Limited was unable to answer these as they had no intention of developing the site and would be selling it on to someone else to do so and questions could be raised at this juncture.

REPRESENTATIONS ON THE APPLICATION

Mr M Leiper representing Mr Cameron Gordon addressed the meeting on his objections to the proposed change of use.

Firstly, Mr Leiper advised the meeting that Mr Gordon owns and lives in Greenbrae, which adjoins the site on the western boundary. He also owns substantial land adjacent to the site boundary and has recently received planning permission to have the visibility splay onto North Street, Rothes improved by the removal of an old abutment. Mr Leiper said that Mr Gordon, as a local business man, did not want to stop acceptable development; however it was understandable that as he owns a substantial amount of ground he would want to protect his rights. He was also concerned about the apparent lack of detail submitted by the applicant for a change of use and was further puzzled with the novel wording used in the permission being recommended to the Committee, which he found to be strange in many aspects and was of the view that this could be dangerous. He was also concerned, despite the Council’s well intentioned efforts that they might be on the verge of granting some form of change of use that would become less regulated than the report suggests.

Mr Leiper advised that on September 2nd 2008, objections were submitted on behalf of Mr Gordon with regard to the lack of information that is usually required for the proper consideration of a change of use. Mr Leiper said that this was not an application in principle but an application for a change of use. With regard to the recommendation approving industry he expressed concern and advised that the classification of industry was wide, covering scrap yard to boat yard and although the application was just for use of the land there were no details of protective measures for adjoining land and over the last 12 months his client had not been notified of any further details received.

With regard to the committee report he advised that his client remained concerned about the lack of detail in respect of the application as detailed in the proposal on page 6 of the report. He also had concerns in terms of the recommendation, the lack of conditions from the consultees and the lack of conditions for the type of industry. Following receipt of the report, Mr Leiper advised that he had discussed the application with Planning Officers and Mrs A Scott, the Principal Solicitor, (Commercial and Conveyancing). He intimated he now understood that planning condition 2 was to be amended, however as he had no sight of the wording he would have to address the issue in the report. He also expressed concern that the Council was confusing an application for a change of use with an application for permission in principle which are two different things. He remained concerned about condition 2 which did not comply with the Government Circular on the “Use of conditions in Planning” because the recommendation gives with one hand and takes away with the other.

He contended that this nullifies the application because the applicant could not implement the consent as they could not enter the land site and all planning applications have to be capable of being implemented. He felt that this would leave the Council open to legal challenge. For these reasons he felt that planning permission as it stands should be refused.

With regard to fees for an application of this size he expressed the view that as the applicant had applied for a change of use rather than approval in principle he would be getting permission at a discount of over £2000.

Mr Leiper referred to paragraph 2, page 6 of the report which states that the applicant had not submitted any specific details for the site and that a further planning application would be required. He advised that when you get planning permission for a change of use further planning application is not required it has to stand on its own. If you get planning permission in principle it has built in a mechanism for further planning applications which in themselves have safeguards which involve amongst other things the notification of neighbours.

In conclusion he advised that the application for a change of use should not be given in principle and that Committee should consider a full change of use, which must be fully independent on its submissions and this could not be implemented because the applicant could not access the ground. With regard to consultation with the Roads Department and Sepa he advised that no conditions were attached to the report and it did not comply with Government Circulars. He expressed the view that the application would be open to legal challenge in the Courts and that it sent a message to other developers to pay a fee of £290 for change of use rather than pay a fee of £2600 for issuing planning permission. He advised that pending the outcome of the meeting he expressed the view that this could affect his client's rights and could have an adverse affect on the Council and for these reasons he felt the application should be refused.

There were no questions to Mr Leiper.

SUMMARIES OF SUBMISSIONS

In view that the applicant was not present and that it was normal practice for the applicant to respond to questions, Mr Leiper declined the Chairman's invitation to sum up on this occasion.

In response to a question from the Chair, the Objector's representative intimated that he was satisfied with the conduct of the proceeding of the Hearing.

COMMITTEE CONSIDERTION OF THE APPLICATION

Mr Martin, the Principal Planning Officer re-iterated his recommendation for acceptance of the application as detailed in the report. He advised that there was a tree preservation order on the site but that would not preclude development. With regard to consultations he advised that Roads, Contaminated Land, the Environmental Health Manager; Development Services, Moray Flood Alleviation, Scottish Water and the Health and Safety Executive had no objections to the application. He further advised that SEPA had no objections to the proposals subject to an acceptable SUDS scheme being provided for any further application.

Mrs Scott, Principal Solicitor, (Commercial and Conveyancing) sought clarification with regard to page 2 of the report, in respect of recommendation 2 which was proving to be problematic. Mr Martin, Principal Planning Officer clarified the position and agreed that the second sentence in recommendation 2 should be removed.

In response to members' questions and concerns in respect of planning fees; change of designation, the appropriateness of the application for a change of use and the possibility of a legal challenge for the Council, the Head of Development Services clarified the issues and advised the meeting that Committee were being asked to consider a planning application for a change of use, however he disagreed with Mr Leiper that this was an application in principle. He further advised that if members felt that they could not resolve the position the option was either to approve subject to the removal of condition 2 or refuse.

Mrs Scott, Principal Solicitor (Commercial & Conveyancing) also clarified the position and advised that this was an unusual application for a change of use, in that the applicant had decided not to submit further detail. She further advised that whoever decides to develop the site would have to provide further details in future applications and although she had some sympathy with Mr Leiper, she clarified that any objector would have a further opportunity to address their concerns.

With regard to the proposed change of designation, Mrs Scott advised that the planning application was a departure from policy and Committee had determined and dealt with departures before. Planning Officers have to have regard to material considerations and if there was a departure from policy there were safeguards in place and she was satisfied that the application was an acceptable departure.

The Director of Environmental Services endorsed the comments of the Head of Development Services and the Principal Solicitor, (Commercial & Conveyancing).

Thereafter, Councillor Bell advised the Committee that he was satisfied and moved approval of the application with the proviso that any future development proposal come back to this Committee. This was seconded by Councillor Coull.

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; and also noting that any further applications relating to the site would come before Committee.

Recommendation: Permit - Subject To The Following: -

1. The development to which this permission relates must be begun not later than the expiration of 3 years beginning with the date on which this permission is granted.
2. This application is solely for the approval of change of use of the site and does not cover aspects such as access, drainage, landscaping, design and noise/emission or impact.

Reasons:

1. The time limit condition is imposed in order to comply with the requirements of Section 58(i) of the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006.
2. In the interests of clarity.

List of Informatives:

THE CONTAMINATED LAND SECTION has commented that: -

Your property has been identified as being in the vicinity of the following potential sources of contamination:

- Animal feed factory approximately 8 metres to the east as indicated on map group C, D, E and F.
- Railway approximately 20 metres to the east as indicated on map group A, B, D and D.

Map Group A 1868 - 1897 Ordnance Survey Maps
 Map Group B 1898 - 1906 Ordnance Survey Maps
 Map Group C 1930 - 1938 Ordnance Survey Maps
 Map Group D 1959 - 1971 Ordnance Survey Maps
 Map Group E 1969 - 1992 Ordnance Survey Maps
 Map Group F Present Day 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. Alternatively you can contact the Environmental Health Section on 01343 563345 or by email to contaminated.land@moray.gov.uk

The Development Control Manager has commented that that any future application for planning permission on the site must contain the following details,

- Plans, sections and elevations of all buildings proposed with details of the type and colour of all external materials and finishes.
- The proposed layout of the site showing the exact position of the site boundaries, the position of all buildings, the means of access, areas for vehicle parking and the arrangements for the disposal of foul and surface water (i.e. a SUDS system or equivalent).
- Details of the exact extent, type and finish of all other works including walls, fences and other means of enclosure.
- Sections through the site showing the development on its finished levels in relation to existing levels.
- Landscaping proposals showing any existing trees/hedges/shrubs to be retained or removed together with details of the type, position and number of all planting to be undertaken and details of all surfacing materials

The Transportation Manager has commented that any future application for planning permission on the site must satisfy the following points,

- A Traffic Impact Assessment shall be carried out in relation to the Development. The applicant or his agent should contact the Transportation Manager at an early date to agree parameters.
- Access should be taken into the site from North Street and a minimum spacing of 40 metres between junctions on North Street should be achieved.
- Provision for pedestrians/cyclists will also be required.
- No boundary fences, hedges, walls or any obstruction whatsoever over 1.0 m in height and fronting onto the public road shall be within 2.4 m of the edge of the carriageway.
- No water shall be permitted to drain onto the public footpath/carriageway.
- Drop kerbs shall be provided across the access to The Moray Council specification.
- A turning area shall be provided within the curtilage of the site to enable vehicles to enter/exit in a forward gear.
- A visibility splay of 2.4 metres x 70 metres shall be provided at the access.
- New boundary walls/fences shall be set back from the edge of the public road at a distance of 2 metres.
- Parking provision shall be outwith visibility splays.