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Charles Scott
Shepherd and Wedderburn

Date:
25 November 2016

By email to Charles.scott@shepwedd.com

Dear Charles,

HARBOURS ACT 1964 – GARDENSTOWN HARBOUR ORDER

I refer to the application submitted on behalf of your client, Gardenstown Harbour Trustees for the making of the Gardenstown Harbour Revision Order (the order) under section 14 of the Harbours Act 1964 (the 1964 Act). This letter conveys the Scottish Ministers' decision following their consideration of the application and representations made on it.

Purpose of the HRO

The purpose of the order is to update the constitution of the trust in accordance with 'Modern Trust Ports for Scotland' guidance and to make changes to the powers of the Trustees to improve the management of Gardenstown Harbour.

The Application

Gardenstown Harbour Trust is the statutory harbour authority for Gardenstown Harbour and they submitted an application for a revision order under section 14 of the 1964 Act to Scottish Ministers on 2 March 2016.

The application was advertised in the Edinburgh Gazette on 8 March and in the Banffshire Journal on 8 and 15 March 2016.

Objections

During the 42 day consultation period 1 objection was received on behalf of the Royal Yachting Association (RYA) and RYA Scotland.

The RYA objection highlights issues with the general byelaw and directions powers within the order. The RYA also had concerns with harbour charges powers, which they believe were unacceptably wide.

Following a period of correspondence with the objector, the applicant was unable to negotiate the withdrawal of the objections and on 28 June Scottish Ministers agreed that this should be handled by written representations.

The applicant conceded on some of the changes to the harbour charges. The RYA accepted this amendment and an agreement was reached on the objection pertaining to harbour charges.

No solution was found to the objection regarding general byelaws and directions.

Ministers have considered the points made on all sides and determined that the order should be made with modifications which they consider achieve a balance between the demands of the objector and the needs of the Harbour Authority.

The Scottish Minister's Consideration

Section 14(2)(b) of the 1964 Act requires that a Harbour Revision Order shall not be made in relation to a harbour unless the appropriate Minister is satisfied that the making of the Order is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner or of facilitating the efficient and economical transport of goods or passengers by sea or in the interests of the recreational use of sea-going ships.

Ministers were satisfied that the modified draft order meets all three of these requirements.

- Following concerns on the transition to the new constitution and the issues raised by objectors, Scottish Ministers have decided to make the Gardenstown Harbour Revision Order with modifications which appear to them to be necessary but which do not substantially affect the character of the order.

The below amendments will be required to the order to ensure that the order delivers what is intended. These are as follows:

Articles 2 & 3

Minor amendments to clarify the meaning of the terms within the Order.

Article 4 & 6

Modifications to clarify the new constitution of the Trustees

Article 5 & 8 Minor amendment to clarify appointment of Trustees and the term casual vacancy.

Article 13

To clarify for the objector when and for what charges may be levied.

Articles 14 & 15

Minor amendment to clarify the purposes for which byelaws maybe made, the timing for responses on consultation on the draft byelaws and removing the charge for a copy of the byelaws.

Article 17

Further details provided on the repeal of the articles of the 1911 order in relation to transitional provisions.

Right to Challenge Decision

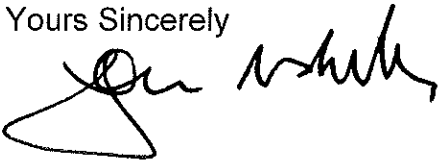
The foregoing decision of the Scottish Ministers is final but any person who desires to question its making on the grounds that there was no power to make it or that a requirement of the 1964 Act was not complied with in relation to it may, within six weeks from the date the order comes into force, make an application for this purpose to the Court of Session.

Any person thinking of challenging the decision to make the order is advised to seek legal advice before taking any action.

Availability of Decision

A copy of this letter is being sent to all those who were consulted/made objections or representations on the order and will be published on the Transport Scotland website.

Yours Sincerely



John Nicholls
Director

