



## MORAY LOCAL REVIEW BODY

### DECISION NOTICE

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Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR193
  - Application for review by Mr Ifran Ashrif, c/o Mr Colin Keir, Plans Plus against the decision of an Appointed Officer of Moray Council
  - Planning Application 17/01401/APP - Change of use of former barber shop to hot food take-away at 1 Springfield Road, Elgin, Moray, IV30 6BY
  - Unaccompanied site inspection carried out by the MLRB on 22 January 2018
  - Date of decision notice: 8 March 2018
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#### Decision

The MLRB agreed to uphold the request for review and grant planning permission, subject to the conditions appended to this decision notice. Attention is also drawn to the informative notes which follow the conditions.

#### 1. Preliminary

- 1.1 This Notice constitutes the formal decision of the MLRB as required by the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013.
- 1.2 The above application for planning permission was considered by the MLRB at the meeting held on 25 January 2018.
- 1.3 The MLRB was attended by Councillors D Gatt (Chair), M Macrae (Depute Chair), D Bremner, G Cowie, M McLean, and D Ross.

#### 2. MLRB Consideration of Request for Review

- 2.1 A requested was submitted by the Applicant seeking a review of the decision of the Appointed Officer, in terms of the Scheme of Delegation, to refuse an application on the grounds that the proposal is contrary to the provisions of the Moray Local Development Plan 2015 policies T5, R3 and IMP1 for the following reasons:-
  - (1) the proposal does not include on-site vehicular parking and as such does not comply with Moray Council's Parking Standards contrary to policy T5;

- (2) the proposal does not include on-site vehicular parking and would give rise to an undesirable increase in on-street parking and in failing to provide adequate parking is contrary to policy R3; and
  - (3) the proposal does not include on-site vehicular parking and would lead to an undesirable increase in on-street parking to the detriment of road safety which would not be appropriate to the amenity of the surrounding area contrary to policy IMP1.
- 2.2 There was submitted a Summary of Information report setting out the reasons for refusal, together with documents considered or prepared by the Appointed Officer in respect of the planning application and the Notice of Review, Grounds for Review and supporting documents submitted by the Applicant.
  - 2.3 With regard the unaccompanied site inspection carried out on 22 January 2018, the Chair stated that members of the Moray Local Review Body (MLRB) were shown the site where the proposed development would take place and had before them papers setting out both the reasons for refusal and the Applicant's grounds for review.
  - 2.4 The Chair asked if there were any preliminary matters which the Planning or Legal Advisers wished to raise. In response, both the Planning and Legal Advisers confirmed that they had no preliminary matters that they wished to raise.
  - 2.5 The Chair then asked the MLRB if they had sufficient information to determine the request for review. In response, the MLRB unanimously agreed that it had sufficient information.
  - 2.6 The Chair sought clarification from the Planning Officer as to what part of the parking standards were not being met by the Applicant.
  - 2.7 The Planning Officer advised that no on-site parking was being provided by the Applicant and that the change of use would lead to an undesirable increase in on-street parking which would be detrimental to road safety in the area. He further advised that as the application was unique (sui generis) it may not have been picked up in the parking standards.
  - 2.8 The Chair was of the view that the Appointed Officer had therefore not made out the grounds for refusal in terms of the parking standards.
  - 2.9 Councillor Cowie stated that, in his opinion, the development met policy T5 in relation to parking standards as the road in question was a slip road and not on a bus route.
  - 2.10 Councillor Macrae, having had the opportunity to visit the site and consider the Applicant's grounds for review moved that the appeal be upheld and planning permission granted with the condition that the opening hours of the takeaway be 0700-2300 as per the recommendation from Environmental Services. This was seconded by Councillor Bremner.

2.11 There being no-one otherwise minded, the MLRB agreed to uphold the appeal and grant planning permission in respect of planning application 17/01401/APP with the condition that the opening hours of the takeaway be 0700-2300 hours.

**Mr Paul Nevin**  
**Senior Solicitor (Property and Contracts)**  
**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 22 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013**

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.

## IMPORTANT NOTE

### YOU ARE OBLIGED TO COMPLY WITH THESE CONDITIONS AND NOTES

#### SCHEDULE OF CONDITIONS

By this Notice, Moray Council has **GRANTED PLANNING PERMISSION** for this proposal subject to conditions as appropriate to ensure implementation of the proposal under the Town & Country Planning (Scotland) Act 1997, as amended. **It is important that these conditions are adhered to and failure to comply may result in enforcement action being taken.**

#### CONDITION(S)

Permission is granted subject to the following conditions: -

The building shall not be used for the use hereby approved until the approved ventilation and extraction system has been installed and is fully operational. Thereafter the approved system shall be maintained in operational condition at all times. For the avoidance of doubt the extraction and ventilation system shall be as detailed in 'Report on Kitchen Canopy Extract Fan Sound for Speyfruit at 1 Springfield Road, Elgin, Moray' date 1 September 2017 and as noted on approved drawing 16-68-D-1B.

Reason: In order to protect the occupants of neighbouring properties from the smells associated with the proposed use.

#### ADDITIONAL NOTES FOR INFORMATION OF THE APPLICANT

The following notes are provided for your information, including comments received from consultees:-

The Environmental Health Manager has commented as follows:

- I. The premises will require to comply with the Health and Safety at Work etc Act 1974 and the Workplace (Health, Safety and Welfare) Regulations 1992.
- II. The Environmental Health Section of Moray Council would be the enforcing authority in the premises.
- III. The premises will require to comply with the Food Hygiene (Scotland) Regulations 2006.
- IV. The proprietor will require to register the premises in terms of the Food Hygiene (Scotland) Regulations 2006.
- V. Measures require to be taken to prevent a smell nuisance in terms of the Environmental Protection Act 1990

#### LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT

The following plans and drawings form part of the decision:-

Reference	Version	Title
16-68-D1	A	Elevations floor plan site and location plan
16-68-D-1	B	Elevations floor plan site and location plan

## **IMPORTANT NOTES ABOUT THIS DECISION**

### **DURATION OF THIS PERMISSION**

In accordance with Section 58 (i) of the Town and Country Planning (Scotland) Act 1997 as amended, 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.

If the development has not commenced within this period then this permission shall lapse unless there is a specific condition attached to this permission which varies the stated timescale.

### **COMMENCEMENT AND COMPLETION OF THE DEVELOPMENT**

The following are statutory requirements of the Town & Country Planning (Scotland) Act 1997, as amended. Failure to meet their respective terms represents a breach of planning control and may result in formal enforcement action. Copies of the notices referred to below are attached to this permission for your use.

#### **NOTIFICATION OF INITIATION OF DEVELOPMENT**

S.27A of the 1997 Act, as amended requires that any person who has been granted planning permission (including planning permission in principle) and intends to start development must, as soon as practicable after deciding the date they will start work on the development, give notice to the planning authority of that date. This ensures that the planning authority is aware that the development is underway and can follow up on any suspensive conditions attached to the permission. Therefore, prior to any work commencing on site, the applicant/developer must complete and submit to Moray Council, as planning authority, the attached Notification of Initiation of Development.

#### **NOTIFICATION OF COMPLETION OF DEVELOPMENT**

S.27B of the 1997 Act, as amended requires that any person who completes a development for which planning permission (including planning permission in principle) has been given must, as soon as practicable after doing so, give notice of completion to the planning authority. This will ensure that the planning authority is aware that the development is complete and can follow up any planning conditions. Therefore, on completion of the development or as soon as practicable after doing so, the applicant/developer must complete and submit to Moray Council, as planning authority the attached Notification of Completion of Development.

#### **NOTIFICATION OF COMPLETION OF PHASED DEVELOPMENT**

Under S.27B(2) of the 1997 Act, as amended where permission is granted for phased development, the permission is subject to a condition (see Schedule of Conditions above) requiring the applicant/developer as soon as practicable after each phase to give notice of that completion to the planning authority. This will allow the planning authority to be aware that particular phase(s) of the development is/are complete.

When the last phase is completed the applicant/developer must also complete and submit a Notification of Completion of Development.

**MORAY COUNCIL**

**NOTIFICATION OF INITIATION OF DEVELOPMENT**

**Section 27A Town and Country Planning (Scotland) Act 1997**

**Planning Application Reference No:**

**Date issued:**

I hereby give notice that works as detailed under the above planning application will commence on:

Signed: ..... Date: .....

**THE FOLLOWING INFORMATION MUST BE PROVIDED:**

1. Name and address of person carrying out the development:

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2. The full name and address of the landowner, if a different person:

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3. Where a site agent is appointed, their full name and contact details:

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4. The date of issue and reference number of the grant of planning permission:

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Please return this form, duly completed to: - Moray Council  
Development Management  
Development Services  
Environmental Services Department  
Council Office  
High Street  
Elgin IV30 1BX

Or email to: - [development.control@moray.gov.uk](mailto:development.control@moray.gov.uk)

**IMPORTANT**

**It is important that the Environmental Services Department is advised when you propose to start work as failure to do so may result in enforcement action be taken.**

**Please complete and return this form.**

**MORAY COUNCIL**

**NOTIFICATION OF COMPLETION OF DEVELOPMENT**

**Section 27B Town and Country Planning (Scotland) Act 1997**

**Planning Application Reference No:**

**Date issued:**

I hereby give notice that works as detailed under the above planning application will be completed on: .....

Signed: ..... Date: .....

Please return this form, duly completed to: - Moray Council  
Development Management  
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Environmental Services Department  
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High Street  
Elgin IV30 1BX

Or email to: - [development.control@moray.gov.uk](mailto:development.control@moray.gov.uk)

**IMPORTANT**

**It is important that the Environmental Services Department is advised when the development has been completed as failure to do so may result in enforcement action be taken.**

**Please complete and return this form.**