



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR243
 - Application for review by Mr Alexander Laing c/o Ian Sutherland McCook, 1 Architects against the decision of an Appointed Officer of Moray Council
 - Planning Application 19/01659/APP – Erection of visitor café on land adjacent to the Moray Coastal Path at Patrol Road, Portknockie
 - Date of decision notice: 23 November 2020
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Decision

The MLRB agreed to uphold the request for review and grant planning permission/planning permission in principle, 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 on the following occasions:- 24 September 2020 and 29 October 2020.
- 1.3 On 24 September 2020, the MLRB was attended by Councillors Bremner (Depute Chair), Alexander, Cowie, Gatt, Powell, Ross and Taylor. On 29 October 2020, Councillors Bremner (Depute Chair), Alexander, Cowie, Gatt, R McLean, Powell, Ross and Taylor were in attendance.

2. MLRB Consideration of Request for Review

24 September 2020

- 2.1 Councillors Gatt and Powell, having declared an interest in this item, took no part in its consideration.

- 2.2 A request was submitted by the Applicant seeking a review of the decision of the Appointed Officer, in term of the Scheme of Delegation, to refuse planning permission on the grounds that:

The proposed café is contrary to Moray Local Development Plan (MLDP) 2020 policies DP6 and Portknockie OPP1 and Moray Local Development Plan 2015 policies ED4 and Portknockie I1 for the following reasons:-

- i. The proposal would introduce an incompatible use into an established business area and would create conflict with other existing uses.
- ii. The proposal fails to provide for a comprehensive scheme of improvement across the whole site and as such would fail to provide a development that would enhance the visual appearance of the site or the quality of the built environment.

2.3 A Summary of Information Report set out the reasons for refusal, together with the documents considered or prepared by the Appointed Officer in respect of the planning application, in addition to the Notice of Review, Grounds for Review and supporting documents submitted by the Applicant.

2.4 In response to a question from the Chair as to whether the Legal and Planning Advisers had any preliminary matters to raise, the Legal Adviser highlighted that the Applicant, on his Notice of Review application, had requested that the Moray Local Review Body (MLRB) undertake a site visit and asked the MLRB to give this consideration when deciding if they had enough information to determine the case.

2.5 Ms Webster, Planning Adviser advised that since the original planning application had been determined, the MLDP 2020 plan had been formally adopted however the decision notice referenced both the MLDP 2015 plan and the MLDP 2020 plan, as the new plan carried significant weight at the time of determination. Ms Webster further pointed out an error on page 53 of the papers where the word "shed" should read "café". This was noted.

2.6 Councillor Ross, having considered the case in detail, moved that the MLRB defer consideration of the case to allow an independent person from the Planning Service to visit the site to take further photographs so that the MLRB can make an informed decision.

2.7 There being no-one otherwise minded, the MLRB agreed to defer case LR243 to allow an independent person from the Planning Service to visit the site to take further photographs for the MLRB to consider.

29 October 2020

2.8 Councillors Gatt and Powell, having declared an interest in this item, took no part in its consideration.

2.9 Under reference to paragraph 5 of the minute of the meeting of the Moray Local Review Body (MLRB) dated 24 September 2020, the MLRB continued to consider a request from the Applicant seeking a review of the decision of the Appointed Officer, in terms of the Scheme of Delegation, to refuse planning permission on the grounds that:

The proposed café is contrary to Moray Local Development Plan (MLDP) 2020 policies DP6 and Portknockie OPP1 and Moray Local Development Plan 2015 policies ED4 and Portknockie I1 for the following reasons:-

- i. The proposal would introduce an incompatible use into an established business area and would create conflict with other existing uses.
- ii. The proposal fails to provide for a comprehensive scheme of improvement across the whole site and as such would fail to provide a development that would enhance the visual appearance of the site or the quality of the built environment.

- 2.10 The Chair stated that, at the meeting of the MLRB on 24 September 2020, the MLRB agreed to defer case LR243 to allow an independent person from the Planning Service to visit the site to take further photographs for the MLRB to consider.
- 2.11 In response to a question from the Chair as to whether the Legal and Planning Advisers had any preliminary matters to raise, Ms Webster, Planning Adviser advised that since the original planning application had been determined, the MLDP 2020 plan had been formally adopted however the decision notice referenced both the MLDP 2015 plan and the MLDP 2020 plan, as the new plan carried significant weight at the time of determination. Ms Webster further pointed out an error on page 69 of the papers where the word "shed" should read "café". This was noted.
- 2.12 Councillor Ross, having considered the case in detail along with the further photographs provided, was of the view that the site in question was very run down and in need of development and that the proposal would enhance the area and provide further economic benefit to Portknockie.
- 2.13 In response, Ms Webster advised that, in order to comply with planning policy, the site on the whole would require to be redeveloped and not just the area that the application related to.
- 2.14 Councillor Cowie agreed with Councillor Ross and struggled to see how the site could be developed as a whole if each part was owned by different people. He further stated that it was not possible for the Applicant to comprehensively develop the whole site as he does not own it all however, in his opinion, the proposal would enhance the site and would therefore be an acceptable departure to policy.
- 2.15 In response, Ms Webster advised that the policy is clear and that, when the site was submitted as a bid at the time of the Main Issues Report in 2019, it was on the understanding that all the land owners were in agreement that the site should be developed as a whole and on that basis the site was reallocated to an opportunity site to allow a mix of uses in that area.
- 2.16 Councillor Ross remained of the view that the site in question was very run down and in need of development and that the proposal would enhance the area and provide further economic benefit to Portknockie. Furthermore, Councillor Ross was of the view that the use was compatible with existing uses rather than incompatible and so complied with policy, particularly as existing users of the site appeared to welcome the development. Councillor Ross therefore moved that the MLRB uphold the appeal and grant planning permission in respect of Planning Application 19/01659/APP as in his view the proposal complied with policies OPP1 and DP6 (Mixed Use and Opportunity Sites) of the MLDP 2020. This was seconded by Councillor Cowie.

2.17 There being no-one otherwise minded, the MLRB agreed to uphold the appeal and grant planning permission in respect of Planning Application 19/01659/APP subject to standard conditions and reasons.

Mr S Hoath
Senior Solicitor
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: -

1. Notwithstanding the provisions of the Town and Country Planning (Use Classes) (Scotland) Order 1997 (as amended, revoked or re-enacted; with or without modification) and Article 3 and and Classes 10 to 13 of Schedule 1 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended, revoked or re-enacted; with or without modification), the development hereby approved shall be used solely for a cafe and for no other use or purpose.

Reason: In order to enable the Planning Authority to retain effective control over future development within the application site so that it is carefully managed and does not result in over-development or an adverse impact on the amenity of the area or undue demands on infrastructure.

2. Unless otherwise agreed in writing, no development shall commence until a strategy to assess and then, where subsequently appropriate, a strategy to deal with potential contamination on the site have been submitted to, and accepted in writing by, the Council as Planning Authority. The strategies shall be devised and overseen by an appropriately qualified person in accordance with relevant up-to-date authoritative technical guidance, e.g. BS10175 'The Investigation of Potentially Contaminated Sites - Code of Practice', and shall include:
 - i) an appropriate level of characterisation of the type, nature and extent of contamination on the site and accompanying risk assessment as described in Planning Advice Note 33 Development of Contaminated Land (Revised 2000);
 - ii) how any identified contamination will be dealt with during construction works;
 - iii) details of remedial measures required to treat, remove or otherwise mitigate contamination to ensure that the site is suitable for the proposed use, and that it does not represent a risk to health or of pollution in the wider environment; and
 - iv) a means of verifying the condition of the site on completion of the remedial measures.

Thereafter, no development shall commence (other than those works required to investigate and remediate contamination on the site) until written confirmation has been issued by the Council as Planning Authority that the works have been implemented and completed in accordance with the agreed details.

Reason: To ensure that the site is suitable for the proposed use, and that risks to the wider environment and to users of neighbouring land from on-site contamination are appropriately assessed and managed.

3. No development works on the building shall commence until the existing footway located along the full extents of the frontage of the site onto Patrol Road has been widened to 2.0m to the Moray Council specification and surfaced with bituminous macadam, including the surfacing of the short section of presently unsurfaced footway located along the frontage of Workshop 2 as detailed on submitted drawing 483.01.

Reason: To ensure acceptable infrastructure for pedestrians to access the development.

4. The café hereby approved shall not be used until ten car parking spaces have been provided within the site. The parking spaces shall thereafter be retained throughout the lifetime of the development, unless otherwise agreed in writing with the Council as Planning Authority.

Reason: To ensure the permanent availability of the level of parking necessary for staff/visitors/others in the interests of an acceptable development and road safety.

5. Notwithstanding the submitted details new boundary fences/walls located along the site frontage onto Patrol Road shall be no greater than 0.9m in height unless otherwise approved in writing by the Planning Authority in consultation with the Roads Authority.

Reason: To enable drivers of vehicles entering or exiting the site to have a clear view so that they can undertake the manoeuvre safely and with the minimum interference to the safety and free flow of traffic on the public road.

6. A turning area shall be provided within the curtilage of the site to enable vehicles to enter and exit in a forward gear.

Reason: To ensure the provision for vehicles to enter/exit in a forward gear in the interests of the safety and free flow of traffic on the road.

7. The width of the vehicular access shall be minimum 3.5m and have a maximum gradient of 1:20 measured for the first 5.0m from the edge of the public carriageway. The part of the access over the footway shall be to The Moray Council specification and surfaced with bituminous macadam.

Reason: To ensure acceptable infrastructure at the development access

8. All drainage proposals shall be in accordance with GMC Surveys' Site Investigation and Drainage Assessment 16 April 2020 and associated details dated 28 May 2020. All measures for the management of surface water shall be implemented in full prior to the first occupation of any part of the extension hereby approved.

Reason: To ensure that surface water drainage is provided timeously and complies with the principles of SUDS and in order to protect the water environment.

9. Unless otherwise agreed in writing by the Planning Authority, in consultation with the Environmental Health Manager, the use of the development shall be permitted between the hours of 0900 to 1800 hours only.

Reason: In order to ensure that the operation of the development does not detrimentally impact neighbouring amenity.

10. The rating level of noise associated with the development's ventilation system shall not exceed the background sound level by more than 5 dB(A) at the nearest noise sensitive dwelling. Measurement and assessment to demonstrate compliance with the rating level shall be undertaken in accordance with BS 4142: 2014 Methods for rating and assessing industrial and commercial sound.

Reason: In order to ensure that the operation of the development does not detrimentally impact neighbouring amenity.

11. Kitchen ventilation noise emissions between the daytime permitted period of 0900 to 1800 hours shall not exceed Noise Rating Curve (NR) 25, as determined within a living apartment of the nearest noise sensitive property with the window moderately open. This limit would apply and be determined over a 1 hour duration within any daytime period.

Reason: In order to ensure that the operation of the development does not detrimentally impact neighbouring amenity.

12. The final selected kitchen ventilation system shall be as provided in the supporting document of 3 July 2020 and titled "Extract Specification", or equal alternative system of no greater noise output and otherwise agreed in writing by the Planning Authority, in consultation with the Environmental Health Manager.

Reason: In order to ensure that the operation of the development does not detrimentally impact neighbouring amenity.

13. Unless otherwise agreed in writing by the Planning Authority, in consultation with the Environmental Health Manager, the development shall install and maintain throughout the lifetime of the development , the odour control filtration requirements arising from the Odour Assessment Supporting Document titled "Risk Assessment for Odour 2020"

Reason: In order to ensure that the operation of the development does not detrimentally impact neighbouring amenity.

ADDITIONAL NOTES FOR INFORMATION OF THE APPLICANT

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

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.



THE MORAY COUNCIL

NOTIFICATION OF INITIATION OF DEVELOPMENT

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

Application Number

Date Decision Issued

Location and Description of
Development

**Please note that all suspensive conditions must be discharged prior to
commencement of development**

Date works are to Commence	
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Name, Address and contact details of developer

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**The Full name and Address and contact details of the landowner, if a
different person**

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Where an agent is appointed, their full name and contact details

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Signed

Name (Print)

Date

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Please complete and return this form to:

**The Moray Council, Development Management Manager, Council Offices, High
Street, Elgin, Moray IV30 6UG**

OR

E-mail: development.control@moray.gov.uk



THE MORAY COUNCIL

NOTIFICATION OF COMPLETION OF DEVELOPMENT

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

Application Number

Date Decision Issued
Location and Description of
Development

Date of completion of works	
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Name, Address and contact details of developer

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The Full name and Address and contact details of the landowner, if a different person

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Where an agent is appointed, their full name and contact details

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Signed

Name (Print)

Date

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Please complete and return this form to:

The Moray Council, Development Management Manager, Council Offices, High Street, Elgin, Moray IV30 6UG

E-mail: development.control@moray.gov.uk