

Notice of Review Site: 4 Riverside Road, Elgin IV30 6LS

Notice of Review Proposal: Erection of hot Sandwich Shop including Drive Through

Applicant: SLD Group Property Limited

Agent: Ryden LLP

Reference of original planning application: 21/01146/APP

Notice of Review submitted November 2021

NOTICE OF REVIEW APPLICANT'S STATEMENT (PAPER APART)

(This document extends to 6 pages)



1. Overview

- Ten years ago, The Moray Council granted planning permission for the land at Linkwood East to be used for a range of commercial uses which could have seen the entire site developed for uses which may not have included any within Classes 4, 5, or 6.
- The site which is the subject of this Notice of Review (Document APP 2) lies within the land for which the above planning permission was granted.
- During the past decade, the linear area of land between Riverside Road and the trunk road has been developed along these lines. Class 1, Class 3, and sui generis uses have been developed.
- The application site is a small site within this zone.
- There has been no interest in business or industrial uses for the application site. Because of its location, it was always the intention to develop the site in a way which completed the other two of drive-through units at this location (KFC and Costa).
- The applicant accepts that adopted planning policy now takes a different position to that which the council took when granting planning permission ten years ago for the Linkwood East site.
- Nevertheless, the applicant believes that, with the development of the linear area of land having taken the form that it has, the development of this small site within that linear area would not undermine planning policy, nor pose any threat to general industrial land supply. On the contrary, it would deliver the early development of the site, delivering investment and jobs.
- Planning officers have refused the planning application under delegated powers. The refusal is for a single reason: *The proposed change of use is contrary to Moray Local Development Plan Policies 2020 DP5 and Elgin 16 as the proposed use does not comply with the range of acceptable uses identified in Policies DP5 and Elgin 16 would result in the loss of employment land in Elgin.* (Document APP 10)
- The applicant submits that the members of the Local Review Body are entitled to strike different balance when placing weight on the objectives of local development plan policy.
- In this case, the applicant submits that members of the Local Review Body can safely reach a different decision to that taken by the planning officer when the application was determined under delegated powers.
- The remainder of this document provides more information in support of this application for a Notice of Review.

2. Supporting information

RELEVANT PLANNING HISTORY

In February 2011, the Moray Council granted Planning Permission in Principle for the development of a 'commercial estate' on a site at East Road, Elgin, Moray. The reference of the planning permission was 09/01477/OUT. In general terms, the redline boundaries for the planning permission were broadly equivalent to the area of land which is now covered by Local Development Plan Allocation I6.

The Planning Permission in Principle permitted a range of use classes to be developed within the site. These are listed in Condition 10 of the planning permission. The permitted uses included Classes 2, 3, 4, 5, 6, 7, and 11. A limited amount of Class 1 retail use was also permitted, provided it was ancillary retailing to any industrial or commercial business provided on the site (Condition 11 of the planning permission details this).

The access road framework which was approved within Planning Permission in Principle was physically implemented. However, rather than being approved via an application for matters specified in condition, the then applicant sought a new detailed planning permission for the road network. In doing so, the applicant failed to realise that by using an application for detailed planning permission rather than an application for matters specified in condition, he was failing to implement 09/0477/OUT.

The reason that this planning history is important is that, within the last 10 years, there was existing a planning permission which could have been implemented any time up until 7 years ago. That planning permission was for a much wider range of uses than the Classes 4, 5, and 6 uses which are now contained within LDP Allocation I6. At one stage, a cinema (Class 11) was proposed for the site and this would have been consistent with the planning permission.

Also of material consideration is that, although the planning authority has, through the local development plan process sought to narrow the range of uses which can be implemented at the site covered by Allocation I6, it has nevertheless granted planning permission for a range of uses on the road frontage part of the site which are more consistent with the 2011 planning permission than they are with the LDP Policy position. These uses have included:

- A KFC drive-through (granted planning permission in 2011);
- A furniture retail store (granted planning permission in 2017);
- A Costa Coffee drive-through (granted planning permission 2017); and
- A car sales use (granted planning permission in 2018).

Together, these uses now dominate frontage of the I6 site, as it faces the trunk road.

The application site lies within this linear section of Site I6. It is a relatively small site.

The applicant always anticipated that it was likely to be occupied by a further Class 3-type use. In anticipation of that, the access roads infrastructure for the Costa drive-through were developed in a way which would also serve the site which is the subject of the current application.

To illustrate all of this, the aerial photograph below illustrates all of the above planning uses. It also shows very clearly the context of the application site (identified as Plot 3B). It would not be unreasonable to describe the application site as a last-remaining, residual site within the linear stretch of Site I6 which sits between Riverside Road and the trunk road.

It is submitted that it is reasonable to take into account all of the above as a material consideration in the consideration of the current application.



RELEVANT PLANNING POLICY

POLICY DC5 (BUSINESS AND INDUSTRY) AND THE RELATED SITE ALLOCATION OF I6 (LINKWOOD EAST)

The applicant accepts that the proposed development is contrary to the site-specific land-use allocation for the application site (I6 of the Local Development Plan). The applicant also accepts that Policy DP5 protects such allocations of land which is allocated for business and industry.

However, the applicant submits that there is a strong case to consider a range of relevant material considerations which may allow the planning authority to set a more flexible interpretation of policy in relation to this specific site. These include:

- The policy designation does not reflect what has actually been developed on the linear area of land at Linkwood East between Riverside Road and the trunk road (and this includes planning decision as recently as 2018 to approve car sales);
- The policy designation does not reflect that these developments which have been implemented have a life-span of between 30 and 50 years (and unless these uses and buildings are subject to some major economic downturn, mean that the land in question will not be available for developments within Use Classes 4, 5, or 6 for that period of time);
- The uses which have been implemented probably have an employment density per square metre at least as good as developments in Classes 4 and 5, and probably much better than Class 6;
- The application site is one small site remaining in the linear strip of land lying between Riverside Road and the trunk road and to insist that the application site alone should be reserved for uses within Classes 4, 5, or 6, is unreasonable;
- Although it is accepted, as has been suggested by planning officers, that the site could potentially be developed for Class 4, such development is very unlikely at this location; and
- As noted within the consultation response by the Development Plan Team (Document APP 9, Page 3 Paragraph 1 under the sub-heading 'Siting and Principal of Development (DP5 & Elgin I6)), the proposed development **would** be compatible with the neighbouring uses, given that they are similar in character (drive through fast food outlets).

All of the above material considerations are specific to the application site itself.

This leaves the question as to whether or not the development of the application site for the use proposed would negatively affect or undermine the supply of land within Elgin in particular, and the Moray in general, in relation to development land available for Classes 4, 5, and 6.

In the submission of the applicant, the council's own industrial land supply figures demonstrate that the development of the application site would not materially affect the supply of industrial and business land within the area.

3. Conclusion

The application site lies within a linear strip of land which has been developed during the past decade for a range of commercial uses. None of these uses fall within Classes 4, 5 or 6.

The application site lies within this linear strip. It is a small site and its development for the application proposal would be consistent with the adjacent land-uses.

The planning officers wish to defend the retention of the application site for a use which falls within Class 4, 5, or 6. Such uses could include an office pavilion, a general industrial workshop, or a storage and distribution depot. It is the submission of the applicant that the remaining, small site is not really suitable for any of these uses.

The reason for refusal in the Decision Notice seeks to protect the land for employment use. It is the applicant's submission that the uses which have been implemented within the linear strip fronting the trunk road probably have an employment density per square metre at least as good as developments in Classes 4 and 5, and probably much better than Class 6. The applicant believes that this will be the case for the proposed development which is the subject of this Notice of Review. Employment opportunity will therefore not be lost. Rather, it will be implemented soon rather than waiting many years, perhaps decades for a use compliant with Class 4, 5, or 6.

The applicant commends this Notice of Review to members and requests that the Notice of Review is allowed and planning permission granted for the proposed development.

(End of statement)

Note 1: For the avoidance of doubt, the images reproduced in this document are images which were lodged with the original planning application.