



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR269
 - Application for review by SLD Group Property Limited c/o Mr Brian Muir, Ryden LLP against the decision of an Appointed Officer of Moray Council
 - Planning Application 21/01146/APP – Erection of hot sandwich shop including drive through at 4 Riverside Road, Elgin, IV30 6LS
 - Date of decision notice: 10 March 2022
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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 24 February 2022.
- 1.3 The MLRB was attended by Councillors Bremner, Cowie, Gatt, A McLean, R McLean, Powell and Ross.

2. MLRB Consideration of Request for Review

- 2.1 A request was submitted by 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 change of use is contrary to Moray Local Development Plan Policies 2020 DP5 and Elgin I6 as the proposal use does not comply with the range of acceptable uses identified in policies DP5 and Elgin I6 would result in a loss of employment land in Elgin.

- 2.2 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.
- 2.3 In response to a question from the Chair as to whether the Legal or Planning Advisers had any preliminary matters to raise, both the Legal and Planning Advisers advised that they had nothing to raise at this time.
- 2.4 The Chair then asked the Moray Local Review Body (MLRB) if it had sufficient information to determine the request for review. In response, the MLRB unanimously agreed that it had sufficient information to determine the case.
- 2.5 During discussion, it was noted that there were other similar developments on this piece of ground and it was queried why this application had been refused when others had been granted.
- 2.6 In response, Mrs Gordon, Planning Adviser advised that policy DP5 and I6 designation clearly states that the industrial land in question should only be used for Class 4 (business use) Class 5 (General Industrial) and Class 6 (Storage and Distribution) and that using it for a hot sandwich shop does not fall into any of those categories. Mrs Gordon highlighted that it was acknowledged within the Report of Handling that there were similar developments surrounding the proposal however the MLDP 2020 was recently adopted and the Reporter had acknowledged the anomalies within this piece of land however was of the view that the remaining land should be designated employment land.
- 2.7 Councillor Gatt, having considered the case in detail, was of the view that the proposal is an acceptable departure from policy DP5 (Business and Industry) and Elgin I6 as the proposal is in keeping with surrounding businesses and will also provide employment in Moray in the form of 8 full time and 8 part time jobs. This was seconded by Councillor A McLean.
- 2.8 There being no-one otherwise minded, the MLRB agreed to grant planning permission in respect of Planning Application 21/01146/APP as the proposal is considered to be an acceptable departure from policy DP5 (Business and Industry) and Elgin I6 as it is in keeping with surrounding businesses and will also provide employment in Moray in the form of 8 full time and 8 part time jobs.

Mrs Aileen Scott
Legal Services Manager
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. Parking (including cycle parking) shall be provided in accordance with the approved site plan (drawing number SW/01780/007 Rev D) prior to the development becoming operational and shall thereafter be maintained and available for use unless otherwise agreed in writing by the Planning Authority in consultation with the Roads Authority.

Reason: To ensure the permanent availability of the level of parking necessary in the interest of an acceptable development and road safety.

2. Prior to the development becoming operational and opened to the public the EV charging shall be provided and thereafter maintained and available for use unless otherwise agreed in writing by the Planning Authority in consultation with the Roads Authority.

Reason: In the interests of an acceptable form of development and the provision of infrastructure to support the use of low carbon transport.

3. That all planting, seeding or turfing forming part of the approved landscape scheme as well as provision of the benches (as shown on the approved Site Plan drawing number SW/01780/007 Rev D) shall be carried out in the first planting and seeding seasons following the first use of the development or the completion of the building works, whichever is the sooner. Any trees or plants which (within a period of 5 years from the planting) die, are removed or become seriously damaged or diseased shall be replaced in the following planting season with others of similar size, number and species unless this Council (as Planning Authority) gives written consent to any variation of this planning condition.

Reason - In order to ensure that the approved landscaping works are timeously carried out and properly maintained in a manner which will not adversely affect the development or amenity and character of the area.

4. All drainage shall be carried out in accordance with the approved plans and Drainage Impact Assessment & SUDS Strategy by CainTech dated August 2021 (project ref J4902) approved as part of this application.

Reason: To ensure surface water drainage is carried out in accordance with the detail contained in the approved plans.

ADDITIONAL NOTES FOR INFORMATION OF THE APPLICANT

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

THE DEVELOPMENT MANAGEMENT & BUILDING STANDARDS MANAGER has commented that:-

The signage shown on the approved plans is not approved as part of this consent, and will require an application for Advertisement Consent in its own right. A Building Warrant will be required for the proposals. Should you require further assistance please do not hesitate to contact Building Standards, Environmental Services Department, Council Office, High Street, ELGIN IV30 1BX or by telephoning 01343 563243. Comments from SCOTTISH WATER are attached for your attention/information.

THE ENVIRONMENTAL HEALTH MANAGER, DEVELOPMENT SERVICES, has commented that:-

The premises will be required to comply with the Food Hygiene (Scotland) Regulations 2006.

The proprietor will be required to register the premises in terms of the Food Premises (Registration) Regulations 1991.

The premises will be required to comply with The Health and Safety at Work etc. Act 1974 and associated regulations enforced by this section.

THE DIRECTOR, TRANSPORT SCOTLAND has commented that:-

To obtain permission to work within the trunk road boundary, contact the Area Manager through the general contact number below (quote TS TRBO reference number NE/114/2021). The Operating Company has responsibility for co-ordination and supervision of works and after permission has been granted it is the developer's contractor's responsibility to liaise with the Operating Company during the construction period to ensure all necessary permissions are obtained.

Area Manager (A96)
Buchanan House, 58 Port Dundas Road, Glasgow, G4 0HF
0141 272 7100

Operating Company
BEAR Scotland - North East
Bear House, Inveralmond Road, Inveralmond Industrial Estate, PERTH, PH1 3TW
01738 448600
NEplanningapplications@bearsotland.co.uk

THE TRANSPORTATION MANAGER, DIRECT SERVICES has commented that:-

Planning consent does not carry with it the right to carry out works within the public road boundary and the applicant is obliged to contact the Transportation Manager for road opening permit in accordance with the Roads (Scotland) Act 1984. This includes any temporary access joining with the public road.

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 | |
|---------------------------------------|--|

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 | |
|------------------------------------|--|

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