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23<sup>rd</sup> September 2022

The Moray Council  
Planning Department  
Council Office  
High Street  
Elgin  
Moray  
IV30 1BX

Submission to The Review Body via the ePlanning online Portal

**Proposed Refurbishment /upgrading of existing Commercial premises; (former baker) to a Takeaway Restaurant at 212 High Street, Elgin. Moray. IV30 1BA for Sanus Moor Ltd**

I refer to the above proposal which was refused Planning permission on the 29<sup>th</sup> June 2022.

We wish to make a formal appeal to the Review Body and list our comments below.

**BACKGROUND**

A formal planning application was submitted to the Moray Council on the 22<sup>nd</sup> October 2021. The application proposal is to refurbish an existing bakery to a smaller takeaway unit; this may be anything from a Donut shop to a Mexican takeaway, and at this stage it is unknown.

The bakery opened in 1927 and the current rear section of which the subject of the planning application forms part, operated from the site since the 1970's. Latterly, with 4 retail shops to service, it operated on a significantly larger scale in terms of the delivery of raw materials, packaging etc than that which would be undertaken by the current proposal. Trading took place until 2010, and since then, the premises have been under-utilised for storage. The flatted development to the immediate west was built before the bakery ceased to operate. There has been no additional relevant development in the vicinity since then, with the exception of the addition of a loading bay on Thunderton Place in 2013.

The premises are and always have been commercial in nature. Part of these premises have recently gained planning approval to convert into 3 small residential units; 1 above and 2 to the north, separated by an access stair.

Other commercial premises operate in the same vicinity, receiving deliveries on a regular basis.

During the period the application was under consideration; further details / notes were incorporated to the proposals and submitted to planning and Environmental Health to address various points raised. We note that the refusal documents contained the original submissions and not some of the updated ones. I have added an **Existing** extract terminal on to the plans for the review and stress we feel that this is acceptable; this was omitted as we understood it would not be required; however it is **Existing**.

**Reasons for refusal;**

*1. The lack of information in relation to the noise and odour impacts from the takeaway means it is not possible to assess or appropriately mitigate the impact of the proposed takeaway on the residential amenity on the existing and consented residential properties which are adjacent to or adjoin the site. The application therefore fails to demonstrate that it can be serviced or controlled in a way that is appropriate to the character of the site and its immediate residential surrounds. The proposal is therefore contrary to Policies DP7, DP1, EP14 and EP9.*

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### **DP7 Retail/Town centres;**

Developments likely to attract significant footfall including retail, offices, leisure, entertainment/cultural and community facilities must be located in town centres.

Within Core Retail Areas (identified on settlement maps, CRA), at ground level, only development for Use Class 1 Shops, Use Class 2 Financial, professional and other services, or Use Class 3 Food and drink will be supported. Above ground floor level residential use will, in principle, be supported as an appropriate use.

Proposals must be appropriate to the scale, character and role of the town centre (Table 6) and support a mix of uses within the town centre. Proposals that would lead to a concentration of a particular use to the detriment of the town's vitality and viability will not be supported.

### **DP1 development Principles**

This policy applies to all development, including extensions and conversions and will be applied reasonably taking into account the nature and scale of a proposal and individual circumstances.

The Council will require applicants to provide impact assessments in order to determine the impact of a proposal. Applicants may be asked to determine the impacts upon the environment, transport network, town centres, noise, air quality, landscape, trees, flood risk, protected habitats and species, contaminated land, built heritage and archaeology and provide mitigation to address these impacts.

Development proposals will be supported if they conform to the relevant Local Development Plan policies, proposals and additional guidance, meet the following criteria and address their individual and cumulative impacts:

### **EP14 Pollution, Contamination & Hazards**

#### **Pollution**

Development proposals which may cause significant air, water, soil, light or noise pollution or exacerbate existing issues must be accompanied by a detailed assessment report on the levels, character and transmission of the potential pollution with measures to mitigate impacts. Where significant or unacceptable impacts cannot be mitigated, proposals will be refused.

#### **Contamination**

Development proposals on potentially contaminated land will be approved where they comply with other relevant policies and;

- i) The applicant can demonstrate through site investigations and risk assessment, that the site is in a condition suitable for the proposed development and is not causing significant pollution of the environment; and
- ii) Where necessary, effective remediation measures are agreed to ensure the site is made suitable for the new use and to ensure appropriate disposal and/ or treatment of any hazardous material.

#### **Hazardous sites**

Development proposals must avoid and not impact upon hazardous sites or result in public safety concerns due to proximity or use in the vicinity of hazardous sites.

### **EP9 Conservation areas.**

All development within a conservation area must preserve and enhance the established traditional character or appearance of the area. New development as well as alterations or other redevelopment will be refused if it adversely affects the character and appearance of the conservation area in terms of scale, height, massing, colour, materials and siting. This will typically require the use of traditional materials and styles to be used. Contemporary designs and materials can be acceptable and have a positive effect on the conservation area if the material finishes and design respect the architectural authenticity of the building and character of the conservation area.

Development proposals involving the demolition of buildings within a Conservation Area will be refused unless the building is of limited townscape value, its structural condition rules out retention at a reasonable cost, or its form or location makes its re-use extremely difficult. The demolition of a building for redevelopment will only be considered where there are acceptable proposals and it can be demonstrated that a new building will preserve and enhance the character of the conservation area.

### **Appeal Response;**

**a.** The application meets policy DP7; The building is located in the town centre, its last use was a bakery which is being reduced in size and is located on the ground floor only.

**b.** The application clearly meets policy DP1; which refers mainly to design; The building is existing with its last use being a bakery, it has existing an existing extract terminal that will be made good for the proposed extract system.

**c.** The application complies with policy EP14 with regards Pollution, Contamination and hazardous sites; The following notes were submitted with the planning application which we felt at the time, covered any concerns Environmental Health may have and covered these policies;

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- i. Noise emissions from the ventilation and extract system shall not exceed Noise Rating Curve NR25 as measured inside the nearest noise sensitive dwelling between the hours of 2300 to 0700 hours.
- ii. Noise emissions from the ventilation and extract system shall not exceed Noise Rating Curve NR35 as measured inside the nearest noise sensitive dwelling at all other times.
- iii. There must be adequate odour control by the use of carbon filtration, a scheme to be submitted to the Environmental Health for consideration, and to be as per the 'guidance on the control of odour and noise from commercial kitchen exhaust systems' prepared by NETCEN

The extract systems is a relatively specialist trade; unfortunately, in addition to these notes; environmental health asked for a detailed design of the system. Seeking a specialist to come up with a detailed design and specification and submitting in time was not provided by the agent. Notwithstanding this; we now have a scheme designed and specified to meet the approval of the Environmental Health Department which satisfies all policies. What we have allowed for is for the most onerous case. It must be further noted that the termination point is existing.

In the Agents experience; these notes provided would normally be suffice to gain Planning Approval. Subject to gaining approval, it is not at this stage known exactly what type of food is going to be provided; a sandwich shop, coffee and cakes, fish and chips or Chinese cuisine. For example; if it ends up a take-away for coffee and sandwiches/cakes, the extract system now designed will not be required.

I would respectfully suggest it is far simpler to include the generic notes ensuring all meets Planning approval and policies; Thereafter, a detailed layout and specification would then be produced, submitted and approved by the Environmental Health Department at the Building Warrant stage as well as certified at the completion certificate stage; Thus ensuring these policies already highlighted on the submission drawings if approved, were fulfilled. This would have been normal procedure so as the applicant does not incur unnecessary expenditure, particularly given the reasons for refusal set out in number 2.

d. The application clearly meets policy EP9 Conservation areas; this again refers mainly to design. The Building is existing and we do not propose any major alterations to it; it will therefore clearly be conserved and refurbished. Its last use was a bakery and the new use will not adversely affect the character; use or appearance of the building at all. The remaining parts of the building have already gained Planning permission previously for residential use.

#### **Reasons for refusal;**

*2. The proposal would result in an increase in pedestrian and vehicular activity at a sensitive location, which cannot be safely accommodated or mitigated against, and would therefore be likely to give rise to conditions detrimental to the road safety of road users contrary to Moray Local Development Plan policies DPI 'Development Principles' section (ii)- 'Transportation', part 'a)' (safe entry and exit).*

#### **DPI development Principles' section (ii) transportation part 'a' (safe entry and exit);**

a) Proposals must provide safe entry and exit from the development, including the appropriate number and type of junctions, maximise connections and routes for pedestrians and cyclists, including links to active travel and core path routes, reduce travel demands and ensure appropriate visibility for all road users at junctions and bends. Road, cycling, footpath and public transport connections and infrastructure must be provided at a level appropriate to the development and connect people to education, employment, recreation, health, community and retail facilities.

#### **Appeal Response;**

We understand that the application would have been recommended for approval, had the applicant agreed to additional work in upgrading the infrastructure on the west side of Batchen Lane leading from South Street to the proposal. Namely constructing new footpaths and enlarging the existing footpath adjacent to the proposal. ( see appendix 1)

It was also brought to our attention that these works would impact on the existing trees between the car park and Batchen lane and the suggested mitigation is that any trees impacted the proposal would have to be the subject of a tree survey carried out in accordance with BS 5837: 2012, by a suitably qualified arborist, and consist of a schedule and scale plan containing a range of information about each tree about on, or bordering, the site. It was also highlighted that trees in the Conservation Area are protected and may be subject to Tree Preservation Order if necessary which means that while the option suggested by Transportation might meet Transportation requirements it may contravene other equally applicable planning policy and legislative requirements.

With agreeing to these works; the Roads authority would have withdrew their objection. We assume therefore that had these footpaths been proposed; this would have demonstrated in the eyes of the roads Authority; that the establishment would have deemed to have safe entry and exit and therefore comply with the policy.

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This is a significant amount of work on public infrastructure that the applicant was asked to commit too, which seems to be out of proportion with the scale of the proposal and not actually necessary.

The works requested by the roads authority to enable their objection to be withdrawn, was only the addition of footpaths and widening the existing footpath; this would not improve road users with vehicles on the infrequent occasion where deliveries were being made; I would suggest that the widening of the existing footpath would actually have a detrimental effect on road users; narrowing the road at this corner. Importantly; this suggests that they have no issue with deliveries.

### **Patrons using the proposal**

Pedestrian customers have multiple access routes from the High Street, South Street, Thunderton Place and Northfield Terrace.

The vast majority of customers are likely to approach from the east or west via Thunderton Place; where there are public footpaths or from the High Street via Thunderton Place or one of the several Closes coming off the High Street.

It is unusual in Moray to have takeaway establishments with a large amount of parking facilities. I understand that the council owned car parks are underutilized in Elgin, particularly in the evenings, and there are 2 car parks available; Northfield Terrace car park at all times and Batchen Lane multi Story car park through the day. The proposal is fortunate to have these available. Driving customers will have these car parks adjacent and parking along Thunderton Place or on the High Street.

Conclusion; It is clear therefore that the existing infrastructure provides adequate safe entry and exit from the proposal from all routes, pedestrian and vehicular and therefore complies with this policy.

### **Deliveries to the proposal**

As previously pointed out; the works requested by the roads authority to enable their objection to be withdrawn was only the addition of footpaths and widening the existing footpath. This would not affect deliveries; this suggests that they have no issue with deliveries.

However it is reiterated that the building referred to in this proposal is an existing bakery and therefore its existing use is commercial. Deliveries to the rear of the premises were undertaken by the bakery for many years. The previous loading arrangements were 2 vans picking up and dropping off goods, multiple times a day starting at 6am, servicing 4 shops; and large-scale wholesale deliveries. When not in use, the bakery vans were permanently parked in the parking area in front of the flats. The applicant could in theory go back to this level of use which is far more onerous than now proposed; a small take-away unit. The bakery was in use when both the car park and the nearby flatted developments were already in existence.

There are a number of other commercial premises along Thunderton Place which currently receive deliveries to the rear via Thunderton Place; Qismat Tandoori Restaurant, Birnies pet shop, Thunderton House, The Granary, The Whitehorse, Badenoch's, Emporium, Scribbles, the China Town takeaway etc. Other commercial premises in the vicinity receive deliveries to the High Street; Kombucha café, the Northern Chip Shop and also Qismat. When Qismat receive deliveries at the front (see Appendix 2) they are often transported along a lane which is 1.1m wide. The Roads Department raised a concern about deliveries along the wider lane to the immediate west of the premises, which we do not believe is a legitimate concern.

It should be noted that there is indiscriminate parking along Batchen lane and Thunderton Place as well as the existing footpaths being utilised for bin stores ( see appendix 3,4 and 5) It seems peculiar that the council are asking for additional footpaths to be installed so patrons can access and exit the premises safely (from a direction that would be rarely used) while the existing footpaths that are far more likely to be used, have refuse waste bins on them. It is presumed that the council bin lorry which empties these bins parks on the double yellow lines opposite the parked cars (loading and unloading only) (see Appendix 4), as could deliveries to other premises and the application in question.

Given that the planning application is very much in accordance with the Elgin Town Centre Masterplan - a mixed residential and commercial development by an independent small business of under-utilised or vacant town centre premises to create a vibrant town centre, it should have been approved.

Martin Archibald ( agent)

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