



## MORAY LOCAL REVIEW BODY

### DECISION NOTICE

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Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR280
  - Application for review by Mrs Dawn Thirkell, Little Sparkles against the decision of an Appointed Officer of Moray Council
  - Planning Application 22/00400/APP – Increase number of children approved under ref 21/00400/APP from 9 to 15 at Child Minding Business at 36 Smith Drive, Elgin, Moray, IV30 4NE
  - Date of decision notice: 6 December 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 on the following occasions:- 27 September 2022 and 17 November 2022.
- 1.3 On 27 September 2022, the MLRB was attended by Councillors Macrae (Chair), Dunbar (Depute Chair), Cameron, Harris, Keith, McBain, Ross and Warren. On 17 November 2022, Councillors Macrae (Chair), Cameron, Harris, Keith, McBain, Ross and Warren were in attendance.

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

##### 27 September 2022

- 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 proposal is contrary to the requirements of policy DP1 (I) (a & e), because:

- The site is within a quiet residential area and the scale of the proposal would result in a level of activity in relation to the arrival and departure of children and staff and activity throughout the day that is not in keeping with the character of the area.
- There would be an adverse impact on the privacy of neighbouring properties as a result of the increase in the arrivals and departures of children and staff and increased noise and activity throughout the day.

- 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, Councillor Warren asked when site visits would be resuming for MLRB cases as she was of the view that a site visit would have been beneficial for this case.
- 2.5 In response, Mr Hoath, Legal Adviser advised that the cases on the agenda had been rescheduled from a previously arranged meeting and that additional photographs of the site had been uploaded to the Council's Committee Management and Information System (CMIS) along with the agenda in line with the agreed arrangement due to the temporary suspension of site visits as a result of the Covid 19 pandemic. He further stated that the restriction on site visits had since been lifted and that these would be arranged for all cases going forward.
- 2.6 After considering the response from Mr Hoath, Councillor Warren confirmed, along with the other Members of the MLRB, that there was sufficient information to determine the case.
- 2.7 Councillor McBain, having considered the case in detail and also driven around the site of the proposal, was of the view that increasing the number of children at the already established child minding business from 9 to 15 largely complied with policy but in the event there may be considered to be a departure from policy DP1 (Development Principles) he was of the view that this was slight and acceptable. He noted however that there was nothing in the paperwork to confirm whether there would be 15 children at the property at any one time and sought clarification in this regard.
- 2.8 In response, Mrs Gordon, Planning Adviser advised that it would be unreasonable to attach a condition to the planning consent stipulating times when children could be dropped off and when children could be present.
- 2.9 Having considered the advice from Mrs Gordon, Councillor McBain remained of the view that the proposal was an acceptable departure from policy DP1

(Development Principles) of the Moray Local Development Plan (MLDP) 2020 in terms of a) character and e) adverse impact on neighbouring properties and moved that the MLRB uphold the appeal and grant planning permission in respect of Planning Application 22/00400/APP.

- 2.10 Councillor Dunbar noted that the child minding business had already been granted previous planning permission for up to 9 children in 2021 and was found to comply with policy DP1 at that time and agreed to second Councillor McBain's motion.
- 2.11 Councillor Keith noted that this was an established business with no proposed change to footpaths or vehicle access and that the character of the house would not change. He further noted that there is an existing pick up and drop off policy with many children walking to and from the property. In terms of being contrary to the character of the neighbourhood, Councillor Keith highlighted that planning permission had already been granted for up to 9 children in 2021 and that, in his opinion, increasing this to 15 children would not result in an overbearing loss of amenity for neighbouring properties.
- 2.12 Councillor Warren stated that there was no indication that there would be 15 children on the premises at any one time and that usually the number of children within a child minding setting varied throughout the day. In terms of the safety of children, Councillor Warren stated that the Care Inspectorate would ensure that measures were in place to keep the children safe. Councillor Warren also noted that there had been no objections to the proposal.
- 2.13 In response, Mrs Gordon, Planning Adviser advised that providing planning permission would give the Applicant consent to have 15 children present at any time and that a proposal could still be considered to be detrimental to an area even though there were no objections.
- 2.14 Councillor Harris, having considered the case in detail, was concerned about the increase in children to 15 in terms of noise levels and child safety as the proposal was within a residential area. She stated that neighbouring residents would rely on the Council to apply planning policy when determining planning applications to protect their living environment and moved, as an amendment, that the MLRB uphold the original decision of the Appointed Officer to refuse planning permission in relation to Planning Application 22/00400/APP on the basis that it is contrary to policy DP1 (Development Principles) of the MLDP 2020 in terms of a) character and e) adverse impact on neighbouring properties.
- 2.15 Councillor Ross seconded Councillor Harris' amendment stating that a child minding business for 15 children was more akin to a small nursery and not suitable for a residential area.
- 2.16 On a division there voted:

For the Motion (5):	Councillors McBain, Dunbar, Keith, Macrae and Warren
For the Amendment (3):	Councillors Harris, Ross and Cameron
Abstentions (0):	Nil

- 2.17 Accordingly, the Motion became the finding of the MLRB and it was agreed to grant planning permission in respect of Planning Application 22/00400/APP as it is an acceptable departure from policy DP1 (Development Principles) of the MLDP 2020 in terms of a) character and e) adverse impact on neighbouring properties.
- 2.18 Following the meeting, it was noted that clarification had not been sought from the MLRB as to whether any conditions should be attached to the planning consent. Following consultation with the Chair, Depute Chair, Legal and Planning Advisers, it was agreed that a report would be brought to the next meeting of the Moray Local Review Body to clarify this prior to a decision notice being issued.

## **17 November 2022**

- 2.19 Under reference to paragraph 6 of the Minute of the meeting of the Moray Local Review Body (MLRB) dated 27 September 2022, a report by the Depute Chief Executive (Economy, Environment and Finance) sought clarification from the MLRB in relation to a decision taken regarding a Notice of Review application in respect of Planning Application 22/00400/APP.
- 2.20 During his introduction, Mr Hoath, Legal Adviser apologised to the MLRB and the Appellant for having to seek this clarification in relation to any conditions the MLRB may have wished to attach to the planning permission in terms of operating hours, as this should have been clarified at the last meeting of the MLRB.
- 2.21 Councillor McBain stated that, when the proposal was discussed at the previous meeting of the MLRB on 27 September 2022, he was of the understanding that the application would be restricted in this way and that the childminding business would operate between the hours of 7:30 am and 6:00 pm. The other members of the MLRB agreed that this was their understanding also.
- 2.22 The Chair stated that the Appointed Officer had proposed that the planning permission include the following condition in relation to opening hours and standard conditions and informatives from the Transportation Service as follows and sought the agreement of the MLRB to attach this to the decision notice as it should have been added to accurately reflect the original decision:
- 2.23 The business shall operate between 0730 hours and 1800 hours Monday - Friday only and at no other times except where agreed in writing with the planning authority in consultation with the environmental health authority when it can be demonstrated to the satisfaction of the planning authority in consultation with the environmental health authority that there is an exceptional requirement for operation outwith the permitted opening hours.
- 2.24 Reason: In order to ensure that the operation of the business does not detrimentally impact neighbouring amenity.
- 2.25 This is in addition to the Transportation condition and informatives:
- 2.26 The existing car parking shall be retained, with all existing parking spaces made available for use by staff, residents and customers throughout the

lifetime of the development, unless otherwise agreed in writing with the Council as Planning Authority.

- 2.27 Reason: To ensure the permanent availability of the level of parking necessary for residents/staff/visitors/others in the interests of an acceptable development and road safety.
- 2.28 Informatives:  
Planning consent does not carry with it the right to carry out works within the public road boundary.
- 2.29 No building materials/scaffolding/builder's skip shall obstruct the public road (including footpaths) without permission from the Roads Authority.
- 2.30 This was unanimously agreed.
- 2.31 Thereafter, the MLRB agreed to apply the following conditions and informatives to the recently granted planning permission in respect of Planning Application 22/00400/APP:
- 2.32 The business shall operate between 0730 hours and 1800 hours Monday - Friday only and at no other times except where agreed in writing with the planning authority in consultation with the environmental health authority when it can be demonstrated to the satisfaction of the planning authority in consultation with the environmental health authority that there is an exceptional requirement for operation outwith the permitted opening hours.
- 2.33 Reason: In order to ensure that the operation of the business does not detrimentally impact neighbouring amenity.
- 2.34 This is in addition to the Transportation condition and informatives:
- 2.35 The existing car parking shall be retained, with all existing parking spaces made available for use by staff, residents and customers throughout the lifetime of the development, unless otherwise agreed in writing with the Council as Planning Authority.
- 2.36 Reason: To ensure the permanent availability of the level of parking necessary for residents/staff/visitors/others in the interests of an acceptable development and road safety.
- 2.37 Informatives:  
Planning consent does not carry with it the right to carry out works within the public road boundary.
- 2.38 No building materials/scaffolding/builder's skip shall obstruct the public road (including footpaths) without permission from the Roads Authority.

**Mr Sean 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: -

The business shall operate between 0730 hours and 1800 hours Monday - Friday only and at no other times except where agreed in writing with the planning authority in consultation with the environmental health authority when it can be demonstrated to the satisfaction of the planning authority in consultation with the environmental health authority that there is an exceptional requirement for operation outwith the permitted opening hours.

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

The existing car parking shall be retained, with all existing parking spaces made available for use by staff, residents and customers 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 residents/staff/visitors/others in the interests of an acceptable development and road safety.

#### **ADDITIONAL NOTES FOR INFORMATION OF THE APPLICANT**

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

Planning consent does not carry with it the right to carry out works within the public road boundary.

No building materials/scaffolding/builder's skip shall obstruct the public road (including footpaths) without permission from the Roads Authority.

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

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

Reference	Version	Title
		Location Plan
		Site Plan
		Parking 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.





## 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**

<b>Date works are to Commence</b>	
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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

.....  
.....  
.....

**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](mailto: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

<b>Date of completion of works</b>	
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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](mailto:development.control@moray.gov.uk)**