



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR282
 - Application for review by Mrs Jen Taylor, c/o Mr Martin Archibald Architectural and Planning against the decision of an Appointed Officer of Moray Council
 - Planning Application 21/01686/APP – Change of use of former bakery to a takeaway restaurant at 212 High Street, Elgin, Moray, IV30 1BA
 - Unaccompanied site inspection carried out by the MLRB on 17 January 2023
 - Date of decision notice: 6 February 2023
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Decision

The MLRB agreed to dismiss the request for review and uphold the original decision of the Appointed Officer to refuse the above noted application.

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 19 January 2023.
- 1.3 The MLRB was attended by Councillors Macrae (Chair), Dunbar (Depute), Cameron, Keith, McBain, Ross and Warren.

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:
- 2.2 The proposal is contrary to the Moray Local Development Plan (MLDP) 2020 because:

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.
 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 MLDP policies DP1 'Development Principles' section (ii)- 'Transportation', part 'a)' (safe entry and exit).
- 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 or Planning Advisers had any preliminary matters to raise, the Planning Adviser advised that he had nothing to raise at this time.
- 2.5 Mr Hoath, Legal Adviser advised that, during the short adjournment, he had advised the Chair and Depute Chair that the Applicant had stated in his Notice of Review Application that he wished the Moray Local Review Body (MLRB) to consider information that was not before the Appointed Officer at the time the original application was considered. He advised that this further information was significant and may affect the outcome of the appeal. He further advised that, should the MLRB wish to consider this information, it should decide whether any further procedure should be applied such as whether the Appointed Officer and Interested Parties should be given the opportunity to consider and comment on the new information by way of written submissions and/or a hearing. Mr Hoath did however point out that the new information would not be able to be consulted on with the wider public at this stage. Mr Hoath concluded by advising that the MLRB may be of the view that there is sufficient information within the agenda to make a determination on the Planning Application without a further procedure and that if this was the case and the Planning Application was refused, the Applicant could submit a further Planning Application including the new information and that this would be free of charge were it submitted within one year of the MLRB's decision.
- 2.6 Councillor McBain, having considered the case in detail, was of the view that there was sufficient information within the agenda and moved that the MLRB proceed to determine the case as it is. This was seconded by the Chair.
- 2.7 Councillor Cameron was of the view that the MLRB should have the opportunity to consider the new information submitted by the Applicant, given that it was significant, and moved as an amendment, that the MLRB defer the case to allow the Appointed Officer and Interested Parties the opportunity to comment on the new information, by way of written submissions. This was seconded by Councillor Ross.

2.8 On a division there voted:

For the Motion (4):	Councillors McBain, Macrae, Dunbar and Keith
For the Amendment (3):	Councillors Cameron, Ross and Warren
Abstention (0):	Nil

2.9 Accordingly, the Motion became the finding of the Meeting and the MLRB agreed to proceed to consider the case with the information before them.

2.10 Councillor Cameron, having visited the site and considered the case in detail, fully understood why the application had been refused given the further residential development in the area. He was of the view that the location of the proposal was wrong and moved that the MLRB refuse the appeal and uphold the original decision of the Appointed Officer to refuse Planning Application 21/01686/APP as the proposal fails to comply with policies DP7 (Retail/Town Centres), DP1 (Development Principles), EP14 (Pollution, Contamination and Hazards) and EP9 (Conservation Areas) of the MLDP 2020. This was seconded by Councillor Dunbar.

2.11 Councillor Keith, having visited the site and considered the case in detail, did not agree that there would be a significant increase in pedestrian and vehicular activity to the detriment of road safety and further noted that there is a public car park immediately adjacent to the location of the proposal. Councillor Keith further stated that, as it was unknown what type of take away food facility would be occupying the premises, there was no way of knowing whether there would be any noise or odour impacts. Councillor Keith therefore moved that the MLRB uphold the appeal and grant planning permission in respect of Planning Application 21/01686/APP as, in his opinion, the proposal is an acceptable departure from policies DP7 (Retail/Town Centres), DP1 (Development Principles), EP14 (Pollution, Contamination and Hazards) and EP9 (Conservation Areas) of the MLDP 2020. This was seconded by Councillor Ross.

2.12 On a division there voted:

For the Motion (4):	Councillors Cameron, Dunbar, Macrae and Warren
For the Amendment (3):	Councillors Keith, Ross and McBain
Abstention (0):	Nil

2.13 Accordingly, the Motion became the finding of the Meeting and the MLRB agreed to refuse the appeal and uphold the original decision of the Appointed Officer to refuse Planning Application 21/01686/APP as the proposal fails to comply with policies DP7 (Retail/Town Centres), DP1 (Development Principles), EP14 (Pollution, Contamination and Hazards) and EP9 (Conservation Areas) of the MLDP 2020.

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.