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CHANGE OF USE OF BAKERY TO RESTAURANT WITH FLAT ABOVE AND 2 NO HOUSES TO THE REAR AT 9 NEW STREET ROTHES AB38 7BQ.

PLANNING REFERENCE NUMBER 21/01545/APP.

PLANNING REVIEW.

This application was submitted to Moray Council planners on the 30th of September 2021 and was registered valid on the first of October 2021. **With the application was a full sound report from a sound engineer.** A copy of the portal submission is included in the Review documentation. We will explain the critical relevance in due course. The application was assigned to planner Iain Drummond. At some stage during the processing of this application the planner changed to Andrew Miller.

During the course of the application we were advised that a number of consultees had raised objections on various grounds and the objection requiring most attention was the need for a Flood Risk Assessment. This took some time to obtain due to the fact that the engineers were very busy and it took some time to actually prepare the report. However the indication from the flood risk assessment was that the new houses to the rear had to have the ground floor levels raised by 860mm. We raised the floor levels by 900mm and confirmed with Building Control that there were no issues with ramped access not being provided to these proposed dwellings which was agreed. Plans were changed and parking arrangements at the rear were tweaked to satisfy Transportation.

The Flood Risk Assessment was loaded on to the Council portal on the 19th December 2022. Only after a chase up email did we have any communication from the planners on the 23rd of February 2023. We have highlighted this delay simply because had the application been dealt with timeously, any reference to National Planning Framework 4 would not have been relevant. The planners delay in auctioning the flood risk assessment to SEPA and their own flood team allowed them to refuse the application on NPF4 policies. These policies were never even considered at the time of making the application but due to planning delays, they are their reasons for refusal. NPF4 came into being on the 13th of February 2023 10 days before the planners made





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contact. Applying policies 16 months after a submission date would require Agents to operate a crystal ball to assess what policies do not exist but might arise more than a year later. It is a ludicrous situation made worse by the fact that the application could have been decided before any NPF4 policies even were in place.

To add to this situation we have an email from the planners intimating that there was no sound report on the system. You can see from the correspondence at the beginning of the original application that the sound report is clearly there and in 3 parts due to the size of the file. This was also cleared by Environmental Health as being acceptable. Transportation were also happy with our proposals. This left flooding as the only issue to refuse this application. Again, the plans were altered to take into account the recommendations of the FRA and complied with the report fully.

At this point we should state clearly that if the FRA had be dealt with timeously by the planning department NPF4 policies would not have been a consideration for refusal of this application.

Had these policies been in place at the time of making the application we may have been able to say to our client that we cannot make this work which would have saved him thousands of pounds not having to get sound engineers involved nor flooding consultants.

REASONS FOR REFUSAL.

The first point to note is that the recently constructed Rothes flood defences appear to have been a waste of money as it states that these defences would only provide a degree of protection. This intimates that there is still a danger. Since the flood defences were installed there have been no reports of any flooding in this particular area of Rothes.

The crucial point of refusal states that “ the site is at risk from flooding and a safe and flood free route to and from a secure place that is connected to ground above the design flood level and/or wider area”.

In response to this statement we would offer the following.

Planners were happy to see the building turned into a restaurant which we had calculated to hold around 40 people. This is acceptable to have 40





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people plus staff exposed to flooding but not the flat 2.5m higher than the restaurant floor level which is 860mm BELOW the flooding level. The flat would have provided accommodation for the staff members who in the event of a flood would either have been working in the restaurant or safe at first floor level in the accommodation. Any occupiers of the houses to the rear would still have been higher than the anticipated maximum flood level and could have retreated a further 2600mm higher to the first floor level by which time 50% of the houses on the East side of Green Street would have their roofs under water.

CRUCIALLY, directly across the road from the application site on either side of the Police Station, the ground rises sharply uphill which would provide a point of safety had the occupants needed to evacuate due to flooding. This has not been taken into consideration by the Flood Team nor SEPA. New Street is virtually flat from the bridge to the South and the roundabout to the North which would mean that any flooding would disperse South to North before flowing Eastwards making this area of Rothes like a flood plane.

Based on this information, the restaurant, which planners considered acceptable, is the part of the building most susceptible to flooding and the flat and the 2 houses offer safety with floor levels at 2500mm higher than the restaurant floor level.

In further support of this Review we should also point out that with the demolition of the rear wing of the bakery this would reduce the footprint of the built up area even with the introduction of the two house units. This should surely be seen as a gain in terms of flooding.

SUPPORT it is worth pointing out that since the refusal of the application reached the press there were at least 74 comments on social media from locals expressing their disappointment at this proposal not gaining a consent. It was deemed a welcome asset to the town.





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SUMMARY.

The reasons for refusal of this application are based on policies which did not exist at the point of lodging of the application. Had the planners not delayed the processing of this application when the Flood Risk Assessment had been lodged, these NPF4 policies would not have been in place. Through no fault of the applicant, this project has been refused due to a delay in the planning procedure.

The reasons for refusal are flawed and do not take into consideration the following.

1. Existing robust flood defences installed at millions of pounds of cost.
2. The floor levels of the flat and the two houses offer heights of safety in the event of a major flood breaching these defences. 2.5 meters higher than the restaurant which planners deem acceptable and can hold up to 40 people.
3. There is a simple route to higher ground which exists directly across the road to the West of the application site. **We would urge Councillors to look at this specific point and the levels right down New Street when they carry out their site visit.**

Finally, this is something welcomed in Rothes by locals. Flooding HAS been considered but the safety levels of the 2 houses and flat are greater than most of the houses in the town itself. This could set a dangerous precedent that would mean no further development could be allowed in Rothes and this building will be boarded up and left to fall into disrepair right in the middle of the town. It will in effect be incapable of being developed.

