



## MORAY LOCAL REVIEW BODY

### DECISION NOTICE

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Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR299
  - Application for review by Mr Ryann Ferguson, c/o Mr Colin Keir, Plans Plus against the decision of an Appointed Officer of Moray Council
  - Planning Application 23/01371/APP – Retrospective consent to convert part of garage to hair salon at 22 Duffus Crescent, Elgin
  - Unaccompanied site inspection carried out by the MLRB on 13 March 2024
  - Date of decision notice: 26 March 2024
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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 14 March 2024.
- 1.3 The MLRB was attended by Councillors Macrae (Chair), Dunbar (Depute), Harris, Keith, McBain, van der Horn 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 provisions of the Development Plan because:
  - (i) The salon as a class 1 (shop use) is an incompatible use within a residential property.

- (ii) The salon within the private residential property is incompatible with the residential area, and the traffic movements with their associated noise and disturbance would have a significant adverse impact on the character and residential amenity of the surrounding residential properties.

The proposal is therefore contrary to National Planning Framework 4 (NPF4) Policies 16 b) and 14 c) and Moray Local Development Plan (MLDP) 2020 Policies DP1 (i) a) and PP2 of the Development Plan.

- 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, both the Legal and Planning Advisers advised that they had nothing to raise at this time.
- 2.5 The Chair then asked the 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 Councillor Dunbar, having reviewed the case in detail and visited the site of the application, noted the reasons for refusal however stated that she was of the view that, in terms of NPF4 Policy 16b) the proposal would contribute to providing and enhancing local infrastructure facilities and services and improve the residential amenity of the surrounding area. In terms of NPF4 Policy 14c), Councillor Dunbar believed the proposal was not detrimental to the area and is consistent with the 16 qualities of successful places. In terms of policies DP1 (Development Principles) (i) a) Councillor Dunbar stated that, in her opinion, the character of the proposal is acceptable and supports a walkable neighbourhood and in relation to PP2 (Sustainable Economic Growth) of MLDP 2020, stated that the proposal would contribute to the economic growth of the area and supports the Moray Economic Strategy. Taking all the above into consideration, Councillor Dunbar moved that the MLRB uphold the appeal and grant planning permission in respect of Planning Application 23/01371/APP as, in her opinion, the proposal complies with policy 14c) (Design, Quality and Place) part c) and policy 16 (Business and Industry) part b) of NPF4 and policies DP1 (Development Principles) (i) a) and PP2 (Sustainable Economic Growth) of MLDP 2020.
- 2.7 Councillor van der Horn agreed to second Councillor Dunbar's motion stating that having a hair salon in a residential area should not be precluded.
- 2.8 Mrs MacDonald, Planning Adviser advised that, during the consultation period, the Transportation Section had suggested transportation conditions should the application be approved and sought clarification as to whether Councillor Dunbar's motion to grant planning permission would be subject to the suggested conditions from the Transportation Service.
- 2.9 In response, both Councillors Dunbar and van der Horn agreed to add the conditions from the Transportation Service to their motion.
- 2.10 Mrs MacDonald, Planning Adviser further highlighted that granting planning permission for this planning application would mean that the property could

be used for class 1a use (shops, and financial, professional and other services) and sought clarification as to whether Councillors Dunbar and van der Horn wished to add a condition to ensure that the use be restricted to a hair salon and that only residents of the property could work there.

- 2.11 In response, both Councillors Dunbar and van der Horn agreed to add a condition to ensure that the use be restricted to a hair salon and that only residents of the property be permitted to work there.
- 2.12 There being no-one otherwise minded, the MLRB unanimously agreed to grant planning permission in respect of Planning Application 23/01371/APP as it is considered that the proposal complies with:
- NPF4 Policy 16b) as it would contribute to providing and enhancing local infrastructure facilities and services and improve the residential amenity of the surrounding area;
  - NPF4 Policy 14c) as the proposal is not detrimental to the area and is consistent with the 16 qualities of successful places;
  - MLDP 2020 Policy DP1 (Development Principles) (i) a) as the character of the proposal is acceptable and supports a walkable neighbourhood;
  - MLDP 2020 Policy PP2 (Sustainable Economic Growth) as the proposal would contribute to the economic growth of the area and supports the Moray Economic Strategy; and
  - subject to the conditions detailed in this Notice.

**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: -

1. Within six months of the date of this decision notice the existing driveway shall be reconfigured and extended to provide four car parking spaces. The car parking spaces shall thereafter be retained within the site throughout the lifetime of the development for use by residents and customers, 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/visitors/customers in the interests of an acceptable development and road safety.

2. Notwithstanding the provisions of the Town and Country Planning (Use Classes) (Scotland) Order 1997 (as amended, revoked or re-enacted; with or without modification) and Article 3 and Classes 10 to 13a of Schedule 1 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended, revoked or re-enacted; with or without modification), the development hereby approved shall be used solely for a hair salon and for no other use or purpose.

Reason: To enable the Planning Authority to retain effective control over future development within the application site so that it is carefully managed and does not result in over-development or an adverse impact on the amenity of the area.

3. The hair salon hereby approved shall only be operated by those permanently living at the house known as 22 Duffus Crescent, Elgin.

Reason: To ensure the scale of the activities at the premises is such that nuisance to neighbours is avoided.

4. No water shall be permitted to drain or loose material be carried onto the public footway/carriageway.

Reason: To ensure the safety and free flow of traffic on the public road and access to the site by minimising the road safety impact from extraneous material and surface water in the vicinity of the access.

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

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

The Transportation Manager has commented that:

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

The applicant should note that the short section of (shared) road serving the site is private and is not adopted by the Roads Authority.

Public utility apparatus may be affected by this proposal. Contact the appropriate utility service in respect of any necessary utility service alterations which have to be carried out at the expense of the developer.

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

The Environmental Health Manager has commented that:

The premises must comply with the Health and Safety at Work etc Act 1974 and the Workplace (Health, Safety and Welfare) Regulations 1992.

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

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

Reference	Version	Title
RF/01		Elevations and floor plans
RF/02		Site Location 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**

**The Full name and Address and contact details of the landowner, if a different person**

**Where an agent is appointed, their full name and contact details**

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)**