

**Reasons for Notice of Review
Planning Application Ref 11/01521/APP**

Introduction

The applicant has been striving, through the submission of two successive planning applications, to meet all of the Council's requirements in order that he may continue running his business. He believes that he can demonstrate that the Officer's Reasons for Refusal are marginal and flawed. Furthermore given that the Burger Van can operate legally on the public highway outside 32 Burnbank, it would make very good sense for the Council to approve its relocation to the proposed less prominent and less hazardous position, thereby exercising a greater degree of control over the whole operation.

Comment on Reason for Refusal

The reason for refusal is flawed. Policy IMP1 has not been applied properly. In support of this review Policy IMP1 is set out below with our comments inserted in blue in relation to each individual element of the policy.

Policy IMP1

New development will require to be sensitively sited, designed and serviced appropriate to the amenity of the surrounding area. It must meet the following criteria:

- a) the scale, density and character must be appropriate to the surrounding area.

This is a small scale development located in a relatively large garden at the side of a residential property. Small retail operations are very much in character with residential areas and always have been. Chip shops, small general stores are all to be found in residential areas throughout Moray, albeit some struggle in the current financial climate. Hot food vans and taxis are also to be found stored beside proprietors houses throughout Moray. There is nothing particularly out of character or unusual about this proposal

- b) the development must be integrated into the surrounding landscape,
The applicant has located the burger van away from the public highway (where he can actually continue to operate legally without planning permission !) in an attempt to improve amenity, safety and screening

- c) adequate roads, public transport, and cycling and footpath provision must be available, at a level appropriate to the development,
The Transport Manager has no objection to the proposal as now submitted. Additional car parking can be achieved on site.
- d) adequate water, drainage and power provision must be made,
Not applicable to this proposal
- e) sustainable urban drainage systems should be used where appropriate, in all new developments
This can be achieved
- f) there must be adequate availability of social, educational, healthcare and community facilities,
The proposal is a social / community facility within a residential area
- g) the development should, where appropriate, demonstrate how it will incorporate renewable energy systems and sustainable design and construction. Supplementary Guidance will be produced to expand upon some of these criteria,
Not applicable to this proposal
- h) provision for the long term maintenance of public landscape and amenity areas must be made,
Not applicable to this proposal
- i) conservation of natural and built environment resources must be demonstrated,
Not applicable to this proposal
- j) appropriate provision to deal with flood related issues must be made, including the possibility of coastal flooding from rising sea levels and coastal erosion,
Flood risk to this site has been addressed and resolved recently
- k) pollution, including ground water must be avoided,
Not applicable to this proposal
- l) appropriate provision to deal with contamination issues must be made,
No issues of contamination have been raised by the appropriate authority

- m) the development must not sterilise significant workable reserves of minerals, prime quality agricultural land, or preferred areas for forestry planting.

Not applicable to this site

- n) where appropriate, arrangements for waste management should be provided.

As stated in the Report of Handling the Environmental Health Section has confirmed that any issue of litter can be addressed through other existing Legislation. The applicant is willing to apply for trade waste disposal arrangements and the Planning Officer acknowledges that the applicant makes every effort to address the issue of litter. Most significantly the Environmental Health Department has no objection to this application

The above analysis quite clearly demonstrates that the proposal actually complies with Policy IMP1.

In summary and with reference to the wording of the reason for refusal

- Small hot food and retail operations are very much in character with residential areas in Moray and elsewhere.
- The current application proposes a sensitive location for the unit, off the public highway and at the gable of the proprietor's house despite the fact he could operate and park it on the public highway without planning permission. The proposed location is by far the more sensitive.
- The proposed location allows for customers to be clear of the site. The site is at an end of terrace with no neighbouring houses adjoining house to the south west. The currently proposed arrangement greatly reduces any effect of customers congregating.

Comment on Officer's Observations - Assessment of Proposal in Report of Handling

The officer appears to have found it difficult to arrive at compelling reasons for refusing this application

He acknowledges that the snack bar currently operates legitimately on the public highway.

He confirms that the current application overcomes issues raised by the previous refusal i.e. :-

- The Environmental Health Section states the van can now demonstrate that its use as a snack bar will not cause an unacceptable discharge of smells and odours and that the proposal can now be considered to comply with Policy EP8
- The Transportation Engineer has assessed that the proposal in terms of road safety and transportation standards and has raised no objection subject to conditions covering satisfactory car parking provision (which can be achieved on land owned by the applicant)

The above are both very significant aspects of the amenity and character of a residential area which are not threatened by this application.

This only leaves the Officer's analysis of :-

- "Visual and character impact (IMPI)" - in which he acknowledges the improved location at the gable of the house and even confirms (see Visibility in his Main Issues Section) that "*the unit will be located at the gable of the house to mitigate against it being seen from neighbouring properties,*" but he fails to weigh this against the fact that the unit could simply and legally remain in operation on the much more exposed position on the public highway. While he claims that the mobile catering van remains out of character with its immediate surroundings he provides no underlying argument or evidence, planning based or otherwise, to justify this view. There is no acknowledgement of the fact that small scale retail operations are very much in character with residential areas and that mobile snack bars are to be found operating in residential areas and parked in them when not

in use. The officer's analysis on this issue is marginal, subjective and not rigorously related to policy.

- Residential amenity (IMPI) – Here he describes the proposal as permanent while it is only proposed that it operates at a certain time of the day and will also be moved off site when servicing other parts of Moray. His claim that a mobile hot food bar is fundamentally alien to a residential area is extreme and unfounded (see our earlier comments). His statement that “there can be no effective planning control placed on these potential impacts is flawed. Any issues regarding positioning or screening etc of the van within the site could be addressed legitimately by way of planning condition. The Council could also make permission temporary by condition (say 5 years- which is acceptable to the applicant) if deemed appropriate. Indeed it is common planning practice to limit the period of permission for mobile structures in order to control any possible deterioration of the mobile unit

Comment on Main Issues Section of Report of Handling.

Our comments on the issues listed are as follow : -

Safety – Officer confirms there is no objection

Trading Hours – Officer confirms that trading hours could be controlled by means of condition.

Precedent – Officer appears to confirm that proposal will not constitute a precedent if approved.

Environmental Concerns - Officer acknowledges applicant's efforts to control litter but curiously appears to suggest that this amenity issue is not one of the matters that is being assessed despite the fact that it is under control and capable of being controlled by the Council.

Odour – Officer confirms the Environmental Health is satisfied.

Noise – Officer claims that this is addressed in the observations section but it is not. We find no specific mention of noise in the observations section. We can only assume that this is because between the hours of 9.30am – 2.00pm one would expect a degree of noise. In any case the officer puts forward no adverse evidence related to noise.

Service – The officer claims that this is not a planning matter. We however contend that the provision of snacks is an amenity which is indeed a planning matter. The letters of support also refer to the snack bar as a welcome local service in the residential area.

Security – The officer does not acknowledge the applicant's intention to fit CCTV to monitor the site and control littering and behaviour.

Visibility – The officer appears to accept that the proposed location of the unit will lessen its visual impact on neighbouring properties .

We conclude from the above there are no valid objections arising from the main issues.

Objections and Representations

We have commented upon the 6 letters of objection during consideration of the application. Copies of our letters are attached. They raise issues already discussed elsewhere in our comments.

It is noteworthy that there were 5 letters of support (see attached)

The comments of support include : -

- The unit is a handy facility for both residents and schoolchildren.
- The operators go to great lengths to remove litter.
- The proposed location is a safer alternative for school children than the High Street.
- Current siting of unit off the road is an improvement in safety terms.
- Proposed unit is conveniently sited for a snack while walking along Burnside of the Speyside Way.

Contrary to the Report of handling The Lennox Community Council representation is not an objection. The Moray Council's own summary clearly states that the Community Council neither objects nor supports the application, and only agrees that it was appropriate to consider the application as not being in accordance with the Local Plan. In other words the Community Council agreed with the procedure adopted at the outset but has no view one way or the other as to the outcome. It is of course perfectly in order for the Moray Council to approve

applications which are not in accordance with a local plan provided there are justifiable reasons. In this case we would contend that it has now been demonstrated that the application is not a departure from the Local plan and that there is good reason to approve it.

CONCLUSION

In all of the above we have demonstrated that: -

The planning officer's Report of Handling and Reasons for Refusal are flawed. There are no valid planning objections to this application.

- The Transportation Manager has no Objection
- The Environmental Health Officer has no objection
- There are no valid technical objections over Safety, Trading Hours, Litter, Odour, Noise, Security.
- The Lennox Community council has no objection.
- Small scale retail/convenience outlets are not out of character with residential areas.
- Burger Vans whether operating or in storage are not out of character with residential areas.
- This application complies with Policy IMP1.
- The Burger Van could legally operate from the public Highway in front of 32 Burnbank.
- There is local support for the application.
- Any planning issues raised can be controlled by condition.
- The Council could if it deems necessary approve the application for a temporary period of 5 years.
- Given that the Burger Van can operate legally on the public highway outside 32 Burnbank, it would make very good sense for the Council to approve its relocation to the proposed less prominent and less hazardous position, thereby exercising a greater degree of control over the whole operation.

For all of the above reasons the Council is requested to approve this application.