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Grounds of Appeal

Land at 65 Marleon Field, Elgin, Moray

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Executive Summary

Planning permission is sought for a change of use to incorporate an area of adjacent land into the residential curtilage of the subject property and a change of use to use one room (2.9m x 3.5m) within a new outbuilding (which does not need planning permission on its own) for use by the appellant as a Beauty Salon.

The application was refused on the basis that the proposal would have an undue impact upon neighbouring amenity. However, no objections have been received from neighbouring residents and this appeal statement is submitted in the knowledge that the proposed business would not generate more activity in and around the property than would be normal for a dwelling of this size and it is abundantly clear that the proposed use can take place without any detrimental impact upon the amenity of neighbours.

The appellant offers a specialised service to disabled clients and to clients with additional support needs meaning the relaxed domestic atmosphere of the property is exactly why the applicant wishes to offer these services from home. In this context, it would be to the detriment of the appellant's business model to compromise residential amenity.

It is respectfully submitted, when all matters are considered in the round, that the proposed use of one room in the building for a small scale, low key business use is fully in accordance with National and Local Planning Policy. There are many instances in Moray where small businesses of a similar scale and nature to that proposed, operate successfully from domestic properties without any undue impact upon neighbouring residential amenity. We have included a sample of such cases below which Members can refer to;

- 04/00124/FUL | Proposed erection of new hair dressing salon on | Garden Ground At 1 Chapel Street Findochty Buckie Banffshire AB56 2PX
- 07/02111/FUL | Change of use of existing shed to operate dog grooming business at | 61 Nelson Terrace Keith Moray AB55 5FD
- 14/01177/APP | Convert garden studio to craft home bakery at | Carsemoor Cottage Spey Bay Fochabers Moray IV32 7PJ
- 17/00840/APP | Erect cabin for beauty business in rear garden of | 11 Regency Road Buckie Moray AB56 1EE

The proposed development complies with all the relevant parts of lead policy IMP1 so it is respectfully asked that the appeal be allowed and planning permission granted. Member's will be aware that appropriately worded conditions can be imposed pertaining to the hours of operation, making the permission personal to the appellant, restricting the number of customers on the site at any one time and ensuring that a parking space is made available for customers at all times. Such conditions are routinely imposed in such circumstances and would be fully in accordance with the relevant circular tests.

1.0 Introduction

These grounds for review of a decision to refuse planning permission are submitted under section 43A of the Town and Country Planning (Scotland) Act 1997 (as amended). This notice of review has been lodged within the prescribed three month period from the refusal of permission dated the 16th of April 2019.

The grounds for review respond to the reasons for the refusal of planning permission and address the proposal in relation to Development Plan Policies and relevant material planning considerations as required by Section 25 of the Town and Country Planning (Scotland) Act 1997 (as amended).

2.0 Background

The application was made valid under reference 19/00173/APP on the 18th of February 2019 and was refused under the Councils Scheme of Delegation by the case officer on the 16th of April 2019. The reasons for refusal (Appendix 1) state that;

The proposal is contrary to the provisions of the Moray Local Development Plan 2015 because the introduction of a business use to which there would be visiting members of the public is considered to result in an adverse impact on the amenity of neighbouring properties in the surrounding residential area, contrary to policy IMP1.

The proposal also fails to comply with the requirements of the Proposed Moray Local Development Plan 2020 (policy DP1).

3.0 The Proposal

The proposal is for a change of use to incorporate an area of adjacent land into the residential curtilage of the property. The appellant proposes to build a summerhouse on this extended garden ground (10.9m x 4.2m x 2.7m high) - it should be noted that this structure on its own does not require planning permission. However, planning permission is sought by the appellant to use one room (2.9m x 3.5m) for small scale business use.

The appellant is an experienced beautician who proposes to use this room to offer services on an appointment only basis, Tuesday to Friday between 9.30am and 5pm. The appellant specialises in serving clients who have disabilities or learning difficulties so a move to a room at the subject property is sought with the express purpose of catering more specifically to the individual needs of her clients.

The room is for the sole use of the appellant and there would no additional employees. The business would serve up to 15 clients per week. There is space for 3 cars to the front of the property and the appellant proposes to leave a minimum of 15 minutes between appointments to ensure no traffic issues arise

4.0 The Site

The subject site comprises an area of amenity land to the rear of a modern semi-detached house, the same width of the plot and protruding by approximately 13.5 metres. The existing garden is bounded by a 1.8m wooden fence and it is proposed to extend that around the land referred to in this case.

5.0 Development Plan Context

The Development Plan for Moray comprises the Moray Local Development Plan 2015 and its associated Supplementary Guidance. As stated by the appointed officer, following its approval by Committee, the Proposed Moray Local Development Plan 2020 is now considered to be the "settled view" of the Council however given its status, minimal weight can only be given to the provisions within the document.

The Planning Act requires planning applications to be determined in accordance with the Development Plan unless there are “material considerations” to justify doing otherwise. Scottish Government Circular 4/2009 (Appendix 2) describes how planning applications should be determined when balancing the Development Plan and material considerations. It sets out the following approach;

- Identify the provisions of the development plan which are relevant to the decision;
- Interpret them carefully, looking at the aims and objectives of the plan as well detailed wording of policies;
- Consider whether or not the proposal accords with the Development Plan,
- Identify and consider relevant material considerations for and against the proposal, and
- Assess whether these considerations warrant a departure from the Development Plan.

The provisions of the circular are important in the context of this application because the appellants consider the proposal to be in full accordance with the Development Plan and that there are no material considerations that would warrant the refusal of this application.

Moray Local Development Plan 2015

There are no policies which are specific to the proposal at hand. As a result, the lead policy in the assessment of this application is IMP1 (Appendix 3, page 8) which is essentially a list of material planning considerations. Relevant to this case is;

- the quality of development in terms of its siting, design and servicing (transport and drainage);
- whether the proposal is suitable in the context of the surrounding built and natural environment, and;
- that it does not result in any undue impact upon neighbouring amenity.

Policy T2 (Appendix 3, page 9) relates to the provision of safe and suitable access arrangements and policy T5 (Appendix 3, page 10) relates to the provision of appropriate parking to serve the proposed development.

Policy PP1 Sustainable Economic Growth (Appendix 3, page 11) of the Moray Local Development Plan supports development that helps diversify the economy of Moray, to enable population growth, increased employment and reduce dependency on public sector employment.

Moray Local Development Plan 2020

The appointed officer refers to policy DP1 (Appendix 3, page 12) in his deliberations and has therefore placed some weight on it in the decision making process. As such, it is of relevance to the consideration of the proposals by Member's.

This policy is essentially an updated version of IMP1; it sets out material planning considerations under 3 headings, “Design”, “Transportation” and “Water environment, pollution, contamination”. The matters set out in this policy echo that of IMP1, therefore no additional matters relevant to the assessment of this application are raised in reference to this policy.

National Planning Policy and Guidance

National Planning Policy and Guidance is a material planning consideration to be taken into account in the consideration of planning applications. It is set out in Scottish Planning Policy (SPP) and Planning Advice Notes (PAN's).

National Planning Framework 3

NPF3 is the spatial expression of the Government's Economic Strategy which seeks to support sustainable economic growth across the country. Principally, it supports the many and varied opportunities for planning to support business and employment and highlights the role a positive planning policy context can play in delivering economic benefits.

Scottish Planning Policy 2014 (Appendix 4)

Scottish Planning Policy (SPP) sets out the Scottish Governments overarching policy on land use planning. SPP advises that Planning should take a positive approach to enabling high quality development and making efficient use of land to deliver long term benefits for the public, while protecting and enhancing natural and cultural resources. In this context, paragraph 95 of SPP states that Plans should encourage opportunities for home working.

6.0 Reason for Refusal

The reason for refusal states that *“the proposal is contrary to the provisions of the Moray Local Development Plan 2015 because the introduction of a business use to which there would be visiting members of the public is considered to result in an adverse impact on the amenity of neighbouring properties in the surrounding residential area, contrary to policy IMP1”*.

There is no specific matter referred to in this reason for refusal so the implication by the appointed officer is that the introduction of a business use which attracts visiting members of the public could not operate within a domestic curtilage without an adverse impact upon the amenity of neighbouring residents.

In this context, it is important to note that the GPDO grants planning permission for the provision of a building of the scale and proportions proposed in this case within the curtilage of a dwellinghouse; but as Member's will be aware this permission is subject to a series of proviso's and only applies where the building is required for a purpose incidental to the enjoyment of the dwellinghouse. In this case, the outbuilding at the appeal site is to be erected partly to enable the appellant to transfer her Beautician business to her home.

At this point, it may be useful to clarify two points of planning law. First, that there are two main types of “development” defined by the Planning Act. One is operational development, such as the erection of a building; the other is making a material change of use of land. Second, when considering the use of land or buildings for the purposes of planning law, a key matter which has to be considered is the definition of the “planning unit”.

Put simply as an illustration, the use of a vegetable plot in a typical domestic garden of a house is not “agricultural” for planning purposes – it is residential, because it is part and parcel of a unit of which the primary use is residential. The planning unit in this case is the whole of the property at 65 Marleon Field i.e. the outbuilding is in the same occupation as the dwelling and is part of the same planning unit. The use of one small room within a predominantly domestic outbuilding to serve a small number of customers per day/ week would be commensurate to the activity one would expect at a residential property and thereby reasonable to suggest that such activity would be incidental to the primary use of the planning unit as a whole.

In this context, the appellant respectfully asks Members to note that small businesses of a similar scale and nature to that proposed in this case operate from homes all over the country without any undue impact on neighbouring properties or residents. We have provided a few examples below which have been approved in Moray over the years;

- 04/00124/FUL | Proposed erection of new hair dressing salon on | Garden Ground At 1 Chapel Street Findochty Buckie Banffshire AB56 2PX
- 07/02111/FUL | Change of use of existing shed to operate dog grooming business at | 61 Nelson Terrace Keith Moray AB55 5FD

- 14/01177/APP | Convert garden studio to craft home bakery at | Carsemoor Cottage Spey Bay Fochabers Moray IV32 7PJ
- 17/00840/APP | Erect cabin for beauty business in rear garden of | 11 Regency Road Buckie Moray AB56 1EE

It is clear that the implication in the reason for refusal, that a business use which involves visiting members of the public in a domestic curtilage is unacceptable on the basis of general amenity, is fundamentally flawed. The reason for refusing planning permission lacks sufficient detail relating to a specific area of concern and is therefore considered to lack precision.

We would respectfully ask that Members consider the proposal on its individual merits. The test in planning terms relates to whether the addition of a small scale business use causes such disturbance as to adversely change the domestic character of the property. Although there is insufficient detail in the reason for refusal, the Officer does refer to the potential “planning consequences” that led to this application being refused in his report (Appendix 5, page 16) i.e. “...consideration must be given to the principle of the erection of the proposed business unit. The proposed use by its own nature will result in activity of customers coming and going (be it through the house or via the side) to access the rear of a house. This activity is not a typical use that would be found in the rear garden of a house in a residential area and it is considered that it, if permitted, would result in an adverse impact on the amenity of neighbouring properties in terms of privacy. Accordingly, the general principle of the proposed building for business use is not acceptable and considered to be contrary to policy IMP1, due to its adverse impact on the amenity of the surrounding area.”

In summary, the officer concludes that there would be an undue impact upon privacy, specifically, as a result of customers arriving and departing the property. We would strongly contend that this conclusion lacks any basis in fact and that a small scale, low key use such as this can operate with no significant impact upon the privacy of neighbouring residents.

The first thing to note is that the appellant’s neighbours are in full support of the proposals and Member’s will note that no letters of objection were received. The appellant contacted the Planning Authority to seek advice on whether the proposed activity needed planning permission- the submission of an application was not the result of Enforcement action.

The proposed use would involve a maximum of 15 clients per week- an average of less than 4 a day. The appellant has stated her intention to leave a minimum of 15 minutes between clients’ to ensure that only one client will be at the property at any one time. It is clear then that the proposed level of activity is not over and above the movements one would expect to see at a typical dwelling and that the additional movements would be of no consequence in planning terms.

The next matter is the suitability of the property to accommodate this use. As stated, planning permission is sought to extend the domestic curtilage of the property thereby providing ample space to construct a building of the dimensions proposed. In fact, as stated, the structure itself would not need planning permission on its own. The subject property benefits from two parking spaces (and a third in the garage) and one parking space would always be left free for client’s to ensure that there would be no on street parking and thereby no impact upon road safety.

On privacy specifically, as raised by the officer in his report, Member’s will note that a 1.8 metre high wooden fence currently bounds the property which means that views into the site are restricted. Further, the proposed building is of single storey construction and orientated in such a way that means there are no direct views between its windows and the windows of neighbouring properties. The nature of the business means that amplified music will not be played and in any case, the business would not operate out with normal working hours so an undue, unacceptable impact upon neighbouring amenity in regard to privacy, overlooking, prejudice to sunlight/ daylight will not arise.

On this basis, we would contend that the activity proposed will not be at a level that would have a detrimental impact on the amenity of neighbours, with particular regard to privacy.

8.0 Conclusion

This appeal statement is submitted in the knowledge that the proposed business would not generate more activity in and around the property than would be normal for a dwelling of this size and it is abundantly clear that the proposed use can take place without any detrimental impact upon the amenity of neighbours.

The reason for this proposal is quite clear; the relaxed domestic atmosphere of the property is exactly why the applicant wishes to offer these services from home. In this context, it is abundantly clear that the appellant's business model would not compromise residential amenity and that the Officer's reasons for refusing this application are fundamentally flawed. It is unfortunate that sufficient weight was not given to the nature of the business in the decision making process.

It is respectfully submitted, when all matters are considered in the round, that the proposed use of one room in the building for a small scale, low key business use, which specifically serves client's with additional needs, is fully in accordance with National and Local Planning Policy. The appointed officer does not list policy PP1 Sustainable Economic Growth in the report as relevant to this application however; we would submit that appropriate weight must be given to the contribution the proposed business will make to the Moray Economy. Evidently, it will not have an enormous turnover but it does provide a specialist service to a small proportion of the Moray population in a way that accords with the spirit of the Moray Economic Strategy.

Further, the proposed development complies with all the relevant parts of IMP1 so it is respectfully asked that the appeal should be allowed and planning permission granted. Member's will be aware that appropriately worded conditions can be imposed pertaining to the hours of operation, making the permission personal to the appellant, restricting the number of customers on the site at any one time and ensuring that a parking space is made available for customers at all times. Such conditions are routinely imposed in such circumstances and would be fully in accordance with the relevant circular tests. The appellant welcomes the imposition of appropriately worded conditions in these regards.