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Grounds of Appeal- Appendices

Land at 65 Marleon Field, Elgin, Moray

Issue Date:
30th June 2019

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**MORAY COUNCIL
TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997,
as amended**

REFUSAL OF PLANNING PERMISSION

**[Elgin City North]
Application for Planning Permission**

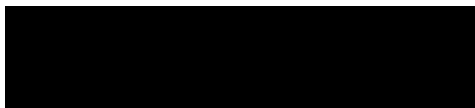
TO Ms Laura Mackay
c/o Grant And Geoghegan Limited
Unit 4
Westerton Road Business Centre
4 Westerton Road South
Keith
AB55 5FH

With reference to your application for planning permission under the above mentioned Act, the Council in exercise of their powers under the said Act, have decided to **REFUSE** your application for the following development:-

Change of use of amenity land to garden ground and erect summer house/work room and shed at 65 Marleon Field Elgin Moray IV30 4GE

and for the reason(s) set out in the attached schedule.

Date of Notice: **16 April 2019**



HEAD OF DEVELOPMENT SERVICES
Environmental Services Department
Moray Council
Council Office
High Street
ELGIN
Moray IV30 1BX

**IMPORTANT
YOUR ATTENTION IS DRAWN TO THE REASONS and NOTES BELOW**

SCHEDULE OF REASON(S) FOR REFUSAL

By this Notice, Moray Council has REFUSED this proposal. The Council's reason(s) for this decision are as follows: -

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).

LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT

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

Reference	Version	Title
014/0840/P-1		Fence details site and location plan
014/0840/P-2		Elevations and floor plans

**DETAILS OF ANY VARIATION MADE TO ORIGINAL PROPOSAL,
AS AGREED WITH APPLICANT (S.32A of 1997 ACT)**

N/A

**NOTICE OF APPEAL
TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997**

If the applicant is aggrieved by the decision to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the planning authority to review the case under section 43A of the Town and Country Planning (Scotland) Act 1997 within three months from the date of this notice. The notice of review should be addressed to The Clerk, Moray Council Local Review Body, Legal and Committee Services, Council Offices, High Street, Elgin IV30 1BX. This form is also available and can be submitted online or downloaded from www.eplanning.scotland.gov.uk

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 5 of the Town and Country Planning (Scotland) Act 1997.



ANNEX A

DEFINING A MATERIAL CONSIDERATION

1. Legislation requires decisions on planning applications to be made in accordance with the development plan (and, in the case of national developments, any statement in the National Planning Framework made under section 3A(5) of the 1997 Act) unless material considerations indicate otherwise. The House of Lord's judgement on *City of Edinburgh Council v the Secretary of State for Scotland* (1998) provided the following interpretation. If a proposal accords with the development plan and there are no material considerations indicating that it should be refused, permission should be granted. If the proposal does not accord with the development plan, it should be refused unless there are material considerations indicating that it should be granted.
2. The House of Lord's judgement also set out the following approach to deciding an application:
 - Identify any 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 as 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.
3. There are two main tests in deciding whether a consideration is material and relevant:
 - It should serve or be related to the purpose of planning. It should therefore relate to the development and use of land, and
 - It should fairly and reasonably relate to the particular application.
4. It is for the decision maker to decide if a consideration is material and to assess both the weight to be attached to each material consideration and whether individually or together they are sufficient to outweigh the development plan. Where development plan policies are not directly relevant to the development proposal, material considerations will be of particular importance.

5. The range of considerations which might be considered material in planning terms is very wide and can only be determined in the context of each case. Examples of possible material considerations include:
 - Scottish Government policy, and UK Government policy on reserved matters
 - The National Planning Framework
 - Scottish planning policy, advice and circulars
 - European policy
 - a proposed strategic development plan, a proposed local development plan, or proposed supplementary guidance
 - Guidance adopted by a Strategic Development Plan Authority or a planning authority that is not supplementary guidance adopted under section 22(1) of the 1997 Act
 - a National Park Plan
 - the National Waste Management Plan
 - community plans
 - the environmental impact of the proposal
 - the design of the proposed development and its relationship to its surroundings
 - access, provision of infrastructure and planning history of the site
 - views of statutory and other consultees
 - legitimate public concern or support expressed on relevant planning matters
6. The planning system operates in the long term public interest. It does not exist to protect the interests of one person or business against the activities of another. In distinguishing between public and private interests, the basic question is whether the proposal would unacceptably affect the amenity and existing use of land and buildings which ought to be protected in the public interest, not whether owners or occupiers of neighbouring or other existing properties would experience financial or other loss from a particular development.

Policy IMP1 Developer Requirements

New development will require to be sensitively sited, designed and serviced appropriate to the amenity of the surrounding area. It should comply with the following criteria

- a) The scale, density and character must be appropriate to the surrounding area.
- b) The development must be integrated into the surrounding landscape
- c) Road, cycling, footpath and public transport must be provided at a level appropriate to the development. Core paths; long distance footpaths; national cycle routes must not be adversely affected.
- d) Acceptable water and drainage provision must be made, including the use of sustainable urban drainage systems (SUDS) for dealing with surface water.
- e) Where of an appropriate scale, developments should demonstrate how they will incorporate renewable energy systems, and sustainable design and construction. Supplementary Guidance will be produced to expand upon some of these criteria.
- f) Make provision for additional areas of open space within developments.
- g) Details of arrangements for the long term maintenance of landscape areas and amenity open spaces must be provided along with Planning applications.
- h) Conservation and where possible enhancement of natural and built environmental resources must be achieved, including details of any impacts arising from the disturbance of carbon rich soil.
- i) Avoid areas at risk of flooding, and where necessary carry out flood management measures.
- j) Address any potential risk of pollution including ground water contamination in accordance with recognised pollution prevention and control measures.
- k) Address and sufficiently mitigate any contaminated land issues
- l) Does not sterilise significant workable reserves of minerals or prime quality agricultural land.
- m) Make acceptable arrangements for waste management.

Justification

The quality of development in terms of its siting, design and servicing is a priority consideration within the Plan. In the first instance, development needs to be suitable to the surrounding built and natural environment. Development should be adequately serviced in terms of transport, water, drainage, with particular emphasis on providing pedestrian and cycle access, and any necessary public transport facilities/connections. The use of SUDS and incorporation of renewable energy techniques and sustainable design and construction methods will all help promote sustainability in Moray. Most of the serious flood risks have been addressed by flood alleviation schemes, but there are still areas that are susceptible and these should be avoided. Similarly, pollution issues in relation to air, noise, groundwater and ground contamination, must be adequately addressed to provide proper development standards.

Policy T2 PROVISION OF ACCESS

The Council will require that new development proposals are designed to provide the highest level of access for end users including residents, visitors, and deliveries appropriate to the type of development and location. Development must meet the following criteria:

- Proposals must maximise connections and routes for pedestrian and cyclists, including links to active travel and core path routes, to reduce travel demands and provide a safe and realistic choice of access.
- Provide access to public transport services and bus stop infrastructure where appropriate.
- Provide appropriate vehicle connections to the development, including appropriate number and type of junctions.
- Provide safe entry and exit from the development for all road users including ensuring appropriate visibility for vehicles at junctions and bends.
- Provide appropriate mitigation/modification to existing transport networks where required to address the impacts of new development on the safety and efficiency of the transport network. This may include but would not be limited to, the following measures, passing places, road widening, junction enhancement, bus stop infrastructure and drainage infrastructure. A number of potential road improvements have been identified in association with the development of sites the most significant of these have been shown on the Settlement Map as TSPs.
- Proposals must avoid or mitigate against any unacceptable adverse landscape or environmental impacts.

Developers should give consideration to aspirational core paths (under Policy 2 of the Core Paths Plan) and active travel audits when preparing proposals.

New development proposals should enhance permeability and connectivity, and ensure that opportunities for sustainable and active travel are protected and improved.

Justification

Policy supports the creation of sustainable communities accessible by a range of transport modes including viable alternatives to private vehicles. Pedestrian movement, cycling and public transport routes will be a priority. At the early design stages consideration should be given to the likely desire routes (public transport, schools, and facilities) which shall inform the layout and design of the development. Inclusion of aspirational core paths and active travel audit proposals will provide new links that have a focus on facilitating active travel and sustainable transport helping to maximise new development's accessibility and connections to existing networks and facilities.

The street design guidance within Designing Streets can be used as a material consideration in determining applications. Proposals must incorporate the principles of "Designing Streets" and the Council's supplementary guidance "People and Paces – A design Guide for Moray". Consideration should also be given to any active travel audits in place. For smaller developments in the countryside the Council's guidance "Transportation Requirements in Small Developments in Rural Parts of Moray" should be considered. The Planning Authority will be realistic about the likely availability of public transport services in rural areas. Innovative solutions such as demand responsive public transport and small scale park and ride facilities at nodes on bus corridors are encouraged to reduce travel demands by private vehicles.

Continued on next page.

Policy T5

PARKING STANDARDS

Proposals for development must conform with the Council's current policy on parking standards.

Justification

The application of parking standards related to development assists in the implementation of appropriate traffic management, and in the availability of on-street car parking provision. The standards specify where there is scope to provide commuted payments as an alternative to parking on site, as well as the need for parking for commercial vehicles.

Primary Policies

The Primary Policies reflect the priorities set out in Scottish Planning Policy and the objectives of the Council. These policies will be applied to all development proposals and used with the more detailed policies set out within the relevant sections to determine planning proposals.

The primary policies aim to support the Scottish Government's aims in terms of sustainable economic growth, climate change and placemaking.

PP1 Sustainable Economic Growth

The Local Development Plan identifies employment land designations to support requirements identified in the Moray Economic Strategy. Development proposals which support the Strategy and will contribute towards the delivery of sustainable economic growth and the transition of Moray towards a low carbon economy will be supported where the quality of the natural and built environment is safeguarded and the relevant policies and site requirements are met.

Justification:

The Moray Economic Strategy provides a long term strategy to influence decision makers in addressing the challenges in diversifying the economy of Moray. This includes the objectives for growth and inward investment in higher paid employment, to reduce the outmigration of young people and to reduce any dependency on public sector employment including the defence sector.

The aims of the strategy are to deliver population growth, create 5,000 jobs and raise earnings to above the Scottish average. The Strategy includes an Action Programme which identifies a programme of projects and enabling actions with a focus on improving regional infrastructure including, road, rail and air and broadband connectivity, opportunities to grow and diversify the economy in the sectors of life sciences, engineering, energy, food and drink and tourism. The Strategy and Action Programme also support the reinforcement of Elgin as a regional centre through the Elgin City for the Future Masterplan to support the towns of Buckie, Forres, Keith and Lossiemouth and the settlements of Speyside.

The aims of this policy must be balanced with the need to safeguard Moray's natural and built environment.

DP1 DEVELOPMENT PRINCIPLES

This policy applies to all developments, including extensions and conversions and will be applied proportionately.

The Council will require applicants to provide impact assessments in order to determine the impact of a proposal. Applicants may be asked to determine the impacts upon the environment, transport network, town centres, noise, air quality, landscape, trees, flood risk, protected habitats and species, contaminated land, built heritage and archaeology and provide mitigation to address these impacts.

Development proposals will be supported if they conform to the relevant Local Development Plan policies, proposals and additional guidance, meet the following criteria and address their individual and cumulative impacts:

(i) Design

- a) The scale, density and character must be appropriate to the surrounding area and create a sense of place (see Policy PP1) and support the principles of a walkable neighbourhood.
- b) The development must be integrated into the surrounding landscape which will include safeguarding existing trees and undertaking replacement planting to include native trees for any existing trees that are felled, and safeguarding any notable topographical features (e.g. distinctive knolls), stone walls and existing water features by avoiding channel modifications and culverting. A tree survey and tree protection plan must be provided with planning applications for all proposals where mature trees are present on site or that may impact on trees outwith the site. The strategy for new tree provision should follow the principles of the "Right Tree in the Right Place".
- c) Make provision for new open space and connect to existing open space under the requirements of Policy EP5 and provide details of the future maintenance of these spaces. A detailed landscape plan must be submitted with planning applications and include information about green/blue infrastructure, tree species, planting, ground/soil conditions, and natural and man-made features (e.g. grass areas, wildflower verges, fencing, walls, paths, etc.).
- d) Demonstrate how the development will conserve and enhance the natural and built environment and cultural heritage resources, retain original land contours and integrate into the landscape.
- e) Proposals must not adversely impact upon neighbouring properties in terms of privacy, daylight or overbearing loss of amenity.
- f) Proposals do not result in backland development or plots that are subdivided by more than 50% of the original plot. Sub-divided plots must be a minimum of 400m², excluding access and the built-up area of the application site will not exceed one-third of the total area of the plot and the resultant plot density and layout reflects the character of the surrounding area.
- g) Pitched roofs will be preferred to flat roofs and box dormers are not acceptable.
- h) Existing stone walls on buildings and boundaries must be retained.

Alterations and extensions must be compatible with the character of the existing building in terms of design, form, choice of materials and positioning and meet all other relevant criteria of this policy.
- i) Proposals must orientate and design buildings to maximise opportunities for solar gain.



avoid development in areas at risk. Where appropriate, development plans should identify areas at risk and areas where a managed realignment of the coast would be beneficial.

89. Plans should identify areas of largely developed coast that are a major focus of economic or recreational activity that are likely to be suitable for further development; areas subject to significant constraints; and largely unspoiled areas of the coast that are generally unsuitable for development. It should be explained that this broad division does not exclude important local variations, for example where there are areas of environmental importance within developed estuaries, or necessary developments within the largely unspoiled coast where there is a specific locational need, for example for defence purposes, tourism developments of special significance, or essential onshore developments connected with offshore energy projects or (where appropriate) aquaculture.

90. Plans should promote the developed coast as the focus of developments requiring a coastal location or which contribute to the economic regeneration or well-being of communities whose livelihood is dependent on marine or coastal activities. They should provide for the development requirements of uses requiring a coastal location, including ports and harbours, tourism and recreation, fish farming, land-based development associated with offshore energy projects and specific defence establishments.

91. Plans should safeguard unspoiled sections of coast which possess special environmental or cultural qualities, such as wild land. The economic value of these areas should be considered and maximised, provided that environmental impact issues can be satisfactorily addressed.

Supporting Business and Employment

NPF Context

92. NPF3 supports the many and varied opportunities for planning to support business and employment. These range from a focus on the role of cities as key drivers of our economy, to the continuing need for diversification of our rural economy to strengthen communities and retain young people in remote areas. Planning should address the development requirements of businesses and enable key opportunities for investment to be realised. It can support sustainable economic growth by providing a positive policy context for development that delivers economic benefits.

Policy Principles

93. The planning system should:

- promote business and industrial development that increases economic activity while safeguarding and enhancing the natural and built environments as national assets;
- allocate sites that meet the diverse needs of the different sectors and sizes of business which are important to the plan area in a way which is flexible enough to accommodate changing circumstances and allow the realisation of new opportunities; and
- give due weight to net economic benefit of proposed development.

Key Documents

- [Government Economic Strategy](#)⁴²

⁴² www.scotland.gov.uk/Topics/Economy/EconomicStrategy

- [Tourism Development Framework for Scotland](#)⁴³
- [A Guide to Development Viability](#)⁴⁴

Delivery

Development Planning

94. Plans should align with relevant local economic strategies. These will help planning authorities to meet the needs and opportunities of indigenous firms and inward investors, recognising the potential of key sectors for Scotland with particular opportunities for growth, including:

- energy;
- life sciences, universities and the creative industries;
- tourism and the food and drink sector;
- financial and business services.

95. Plans should encourage opportunities for home-working, live-work units, micro-businesses and community hubs.

96. Development plans should support opportunities for integrating efficient energy and waste innovations within business environments. Industry stakeholders should engage with planning authorities to help facilitate co-location, as set out in paragraph 179.

97. Strategic development plan policies should reflect a robust evidence base in relation to the existing principal economic characteristics of their areas, and any anticipated change in these.

98. Strategic development plans should identify an appropriate range of locations for significant business clusters. This could include sites identified in the [National Renewables Infrastructure Plan](#)⁴⁵, [Enterprise Areas](#)⁴⁶, business parks, science parks, large and medium-sized industrial sites and high amenity sites.

99. Strategic development plans and local development plans outwith SDP areas should identify any nationally important clusters of industries [handling hazardous substances](#) within their areas and safeguard them from development which, either on its own or in combination with other development, would compromise their continued operation or growth potential. This is in the context of the wider statutory requirements in the Town and Country Planning (Development Planning) (Scotland) Regulations 2009⁴⁷ to have regard to the need to maintain appropriate distances between sites with hazardous substances and areas where the public are likely to be present and areas of particular natural sensitivity or interest.

100. Development plans should be informed by the Tourism Development Framework for Scotland in order to maximise the sustainable growth of regional and local visitor economies. Strategic development plans should identify and safeguard any nationally or regionally important locations for tourism or recreation development within their areas.

⁴³ www.visitscotland.org/pdf/Tourism%20Development%20Framework%20-%20FINAL.pdf

⁴⁴ www.scotland.gov.uk/Resource/Doc/212607/0109620.pdf

⁴⁵ www.scottish-enterprise.com/~media/SE/Resources/Documents/Sectors/Energy/energy-renewables-reports/National-renewables-infrastructure-plan.ashx

⁴⁶ www.scotland.gov.uk/Topics/Economy/EconomicStrategy/Enterprise-Areas

⁴⁷ These statutory requirements are due to be amended in 2015 as part of the implementation of Directive 2012/18/EU on the control of major-accident hazards involving dangerous substances.

REPORT OF HANDLING

Ref No:	19/00173/APP	Officer:	Andrew Miller
Proposal Description/ Address	Change of use of amenity land to garden ground and erect summer house/work room and shed at 65 Marleon Field Elgin Moray IV30 4GE		
Date:	16/04/19	Typist Initials:	FJA

RECOMMENDATION

Approve, without or with condition(s) listed below	N	
Refuse, subject to reason(s) listed below	Y	
Legal Agreement required e.g. S,75	N	
Notification to Scottish Ministers/Historic Scotland	N	
Hearing requirements	Departure	N
	Pre-determination	N

CONSULTATIONS

Consultee	Date Returned	Summary of Response
Moray Flood Risk Management	12/04/19	No objections.
Contaminated Land	21/02/19	No objections.
Environmental Health Manager	21/02/19	No objections.
Transportation Manager	07/03/19	No objection subject to conditions relation to parking and access.
Building Standards Manager	21/02/19	Building Warrant required.

DEVELOPMENT PLAN POLICY

Policies	Dep	Any Comments (or refer to Observations below)
EP5: Sustainable Urban Drainage Systems	N	
EP10: Foul Drainage	N	
T5: Parking Standards	N	
IMP1: Developer Requirements	Y	
DP1 Development Principles	Y	

REPRESENTATIONS

Representations Received		NO
Total number of representations received		
Names/Addresses of parties submitting representations		
Summary and Assessment of main issues raised by representations		
Issue:		

Comments (PO):

OBSERVATIONS – ASSESSMENT OF PROPOSAL

Legislative Requirements

Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 (as amended) require applications for planning permission to be determined in accordance with the development plan (i.e. the Moray Local Development Plan 2015 (MLDP)) unless material considerations indicate otherwise.

On 18 December 2018, at a special meeting of the Planning and Regulatory Services Committee, the Proposed Moray Local Development Plan 2020 was approved as the "settled view" of the Council and minimal weight will be given to it, with the 2015 MLDP being the primary consideration.

The main planning issues are considered below.

Site

The site comprises a modern semi-detached house and an area of amenity space to the rear of the house, the same width of the plot and protruding by approximately 13.5 metres.

Proposal

Consent is sought for the change of use of the area of ground to the rear of the house to incorporate it into its curtilage, and the erection of a single storey building on the extended garden ground. The building would be used as a beautician's salon, and would incorporate a domestic summer house and shed. It would measure 10.9 x 4.2 metres (approx.), reaching a height of 2.7 metres with a very shallow mono-pitch roof, finished in white render to the walls and grey metal sheeting to the roof. The extended garden ground would be enclosed by a 1.8 metre high timber slatted fence. The area to the front of the existing house would be converted to parking and hardsurfacing would be provided to the rear of the property - whilst these are shown on the plans they do not require planning consent under permitted development rights.

Supporting information provided with the application identifies that the beauticians would be run by the occupant of the house with no additional employees. It is proposed that it would operate on an appointment only basis, 9.30am - 5pm Tuesday to Friday.

Principle

The proposed extension of the garden ground of the house into the area of amenity space is considered to be suitable - a number of properties in the area have undertaken this. The resultant plot would follow the width of the existing house plot, and would not result in the loss of valued amenity space (at the time of this application it was overgrown and unkempt).

However, 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.

Design and Siting

The proposed building would be relatively large and of simple design and finishes. Whilst this design is basic and its scale relatively large (almost a similar length as the house itself), the building alone would not require consent were it for domestic use and located within the curtilage of the house that is proposed (i.e. extended). On this basis, the proposed building is considered to be suitable in terms of its design and siting.

Parking and Access

Sufficient parking can be provided to the front of the house, in line with the requirements of policy T5. It is noted the Transportation Manager raised no objection to the proposal, subject to conditions in relation to the provision of parking spaces to the front.

Drainage

The unit would connect to the public water/sewerage supply. This is acceptable, satisfying policy EP10. With regard to surface water drainage, a drainage statement provided with the application details the proposed use of a surface water soakaway for the proposed building. This found that the ground conditions are suitable for the proposed arrangement, with Moray Flood Risk Management raising no objection to the proposed scheme. As such there is no conflict with policy EP5.

Recommendation

Refusal is recommended.

OTHER MATERIAL CONSIDERATIONS TAKEN INTO ACCOUNT

N/A

HISTORY

Reference No.	Description		
18/01230/ID	Erect log cabin in rear garden to operate as beauty room at 65 Marleon Field Elgin Moray IV30 4GE		
	Decision	Planning Permission Required	Date Of Decision 17/10/18

ADVERT

Advert Fee paid?	Yes	
Local Newspaper	Reason for Advert	Date of expiry
Northern Scot	No Premises	21/03/19
PINS	No Premises	21/03/19

DEVELOPER CONTRIBUTIONS (PGU)

Status	N/A

DOCUMENTS, ASSESSMENTS etc. *

* Includes Environmental Statement, Appropriate Assessment, Design Statement, Design and Access Statement, RIA, TA, NIA, FRA etc

Supporting information submitted with application?	YES	
Summary of main issues raised in each statement/assessment/report		
Document Name:	Supporting Statement	
Main Issues:	Email received 07/04/19 outlining proposed operation of business.	
Document Name:	Drainage Report	
Main Issues:	Outlines proposed drainage arrangement for the proposed unit.	

S.75 AGREEMENT

Application subject to S.75 Agreement		NO
Summary of terms of agreement:		
Location where terms or summary of terms can be inspected:		

DIRECTION(S) MADE BY SCOTTISH MINISTERS (under DMR2008 Regs)

Section 30	Relating to EIA		NO
Section 31	Requiring planning authority to provide information and restrict grant of planning permission		NO
Section 32	Requiring planning authority to consider the imposition of planning conditions		NO
Summary of Direction(s)			