



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR301
 - Application for review by Ms Miglena Stafanova against the decision of an Appointed Officer of Moray Council
 - Planning Application 23/01971/APP – Convert front section of garage to hair salon retaining rear section as garden store at 7 Mitchell Crescent, Elgin
 - Unaccompanied site inspection carried out by the MLRB on 15 May 2024
 - Date of decision notice: 15 July 2024
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Decision

The MLRB agreed to uphold the request for review and grant planning permission/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 16 May 2024.
- 1.3 The MLRB was attended by Councillors Macrae (Chair), Dunbar (Depute), Cameron, 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) A bespoke hair salon is an incompatible use within a domestic garage in the confines of a residential property.
 - ii) The salon within the private residential property is incompatible with the residential location, and the increase in footfall and traffic movements with their associated noise and disturbance would have an adverse impact on the residential amenity of the surrounding residential properties.
- 2.3 The proposal is therefore contrary to Nation Planning Framework 4 (NPF4) Policies 26 b) and 14 c) and Moray Local Development Plan (MLDP) 2020 Policies DP1 (i) a) and PP2.
- 2.4 The Summary of Information Report set out the reasons for refusal, including the documents considered or prepared by the Appointed Officer regarding the planning application. It also included the Notice of Review, Grounds for Review and supporting documents submitted by the Applicant.
- 2.5 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.
- 2.6 The Chair then asked the Moray Local Review Body (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.
- 2.7 Councillor Dunbar, having visited the site and considered the case in detail, was of the view that the proposal complies with NPF4 policy 14 (Design, Quality and Place) and MLDP 2020 Policy PP2 (Sustainable Economic Growth) and was an acceptable departure from NPF4 Policy 26b) (Business and Industry) and MLDP 2020 Policy DP1 (Development Principles) taking into consideration the suggested conditions from the Transportation Service in relation to the required access and parking specification should the planning application be approved and moved that the MLRB uphold the appeal and grant planning permission in relation to Planning Application 23/01971/APP for this reason. Councillor Keith seconded this.
- 2.8 During further discussion, concern was raised in relation to the Planning Service being unable to practically or effectively enforce any planning conditions which would seek to restrict the operation of the hair salon to the hours, days and numbers of clients identified by the applicant.
- 2.9 In response, Mrs MacDonald, Planning Adviser advised that, whilst it was not possible to enforce conditions in relation to operation, if the MLRB were minded, they could add a condition to reflect that the proposal be restricted for use as a hair salon.
- 2.10 After considering this advice from the Planning Adviser, both Councillors Dunbar and Keith agreed to add this to their motion adding that this be restricted further by only residents of the property working in the hair salon.
- 2.11 Councillor van der Horn having considered the case in detail agreed with the original decision of the Appointed Officer to refuse the planning application as it is contrary to NPF4 Policies 26b) (Business and Industry) and 14c) (Design, Quality and Place) and MLDP 2020 Policies DP1 (i) a) (Development Principles) and PP2 (Sustainable Economic Growth) and moved that the

MLRB refuse the appeal and uphold the original decision of the Appointed Officer for those reasons. Councillor Harris seconded this.

2.12 On a division there voted:

For the Motion (4):	Councillors Dunbar, Keith, Macrae and McBain
For the Amendment (4):	Councillors van der Horn, Harris, Cameron and Warren
Abstentions (0):	Nil

2.13 There being an equality of votes and in terms of Standing Order 63e) the Chair, having the casting vote, cast this in favour of the Motion.

2.14 Accordingly, the Motion became the finding of the meeting and the MLRB agreed to uphold the appeal and grant planning permission in relation to Planning Application 23/01971/APP as the proposal complies with NPF4 policy 14 (Design, Quality and Place) and MLDP 2020 Policy PP2 (Sustainable Economic Growth) and is an acceptable departure from NPF4 Policy 26b) (Business and Industry) and MLDP 2020 Policy DP1 (Development Principles) taking into consideration the suggested conditions from the Transportation Service in relation to the required access and parking specification, subject to:

- a condition to ensure the use of the property is for a hair salon with only residents of the property working there; and
- the suggested conditions from the Transportation Service in relation to the required access and parking specification.

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. The development to which this permission relates must be begun not later than the expiration of 3 years beginning with the date on which the permission is granted.

Reason: The time limit condition is imposed in order to comply with the requirements of section 58 of the Town and Country Planning (Scotland) Act 1997 as amended.

2. Unless otherwise agreed in writing with Moray Council (as Planning Authority) the salon will be used as a hair salon only and be operated only by the residents of parent property within which the salon sits.

Reason – In order to control the nature of the development undertaken and ensure it remains linked to the parent property.

3. Notwithstanding the submitted details prior to the first use of the garage as a hair salon a section of the existing (indented) boundary wall and pedestrian gate fronting onto the U171E Mitchell Crescent shall be removed to extend the existing access to a width of no greater than 5.0m. Access to the widened driveway/parking area thereafter shall be provided via the existing unaltered drop kerbs.

Reason: To ensure acceptable infrastructure at the development access

4. Parking provision shall be the following:
 - 2 spaces retained for the property; and
 - 1 space provided for customers.

The car parking spaces shall be provided within the site prior to the first use of the garage as a hair salon and made available for use by staff and customers throughout the lifetime of the development, 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/customers/others in the interests of an acceptable development and road safety.

5. 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 widened access.

6. Unless otherwise agreed in writing with the Planning Authority, the use of the development shall be permitted between the hours of 1500 to 1800 hours from Tuesday to Saturday.

Reason: In the interest of residential amenity.

ADDITIONAL NOTES FOR INFORMATION OF THE APPLICANT

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

THE DEVELOPMENT MANAGEMENT & BUILDING STANDARDS MANAGER has commented that:-

Please contact the Building Standards Duty Officer in order to ascertain whether a Building Warrant will be required for these proposals between 2pm and 4pm or telephone on 03001234561. No appointment is necessary. Alternatively e-mail buildingstandards@moray.gov.uk

THE TRANSPORTATION MANAGER, DIRECT SERVICES has commented that:- Planning consent does not carry with it the right to carry out works within the public road boundary.

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.

Before starting any work on the existing public road the applicant is obliged to apply for a road opening permit in accordance with Section 56 of the Roads (Scotland) Act 1984. This includes any temporary access joining with the public road. Advice on these matters can be obtained by emailing roadspermits@moray.gov.uk

The applicant shall free and relieve the Roads Authority from any claims arising out of their operations on the road or extension to the road.

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 will require to comply with the Health and Safety at work Act 1974 and associated regulations.

LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT

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

Reference	Version	Title
		Location Plan
23-37-D-1	A	Elevations and floor plans

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**

Date works are to Commence	
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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**

OR

E-mail: 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

Date of completion of works	
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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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E-mail: development.control@moray.gov.uk