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Grounds of Appeal

24/01431/APP – The Level Farm, Birnie

Issue Date: 7th August 2025

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1.0 Introduction

The following appeal statement provides the grounds for review of a decision to refuse retrospective planning permission for a secure caravan storage facility at the Level Farm, Birnie, submitted under Section 43A of the Town and Country Planning (Scotland) Act 1997 (as amended) and lodged within the prescribed three-month period from the refusal of permission dated 27th of May 2025.

It specifically responds to the Council's Reason for Refusal and assesses the proposal against the relevant Development Plan Policies articulated by NPF4 and the adopted Moray Local Development Plan 2020 as required by Section 25 of the Town and Country Planning (Scotland) Act 1997 (as amended).

2.0 The Proposal

The proposal seeks retrospective planning permission for a secure caravan storage facility which, since 2016, has been run as a successful farm diversification element of the Level Farm business in Birnie, which is located a short distance to the south of Elgin.

The facility provides a maximum of 65 safe and secure storage areas- the site is locked with clients given specific access codes and CCTV is in place. There are no restrictions when customers can access the site but movements to and from the facility are intermittent, generally very low and largely concentrated in the summer months. In the Appellants' experience, there have never been more than 3 customers at the facility at any one time since it opened.



Caravan storage facility in the foreground, with a Timber Kit Factory to the rear which was recently granted planning permission for an extension (Picture is 3 years old).

The caravan storage facility runs alongside the existing, established farm business (holding number: 85/591/0003) and is located on poor quality, underutilised agricultural land. The farm remains fully operational- the storage facility compliments rather than replaces any agricultural activity, supporting the overall economic sustainability of the farm business. Access to the site is via an existing, shared, farm access which extends from the Glenlossie Road to the west. The storage facility generates infrequent trips, on average less than one per day across a calendar year.

There are no national or international environmental or landscape designations covering the subject site, nor does the site suffer from flood risk. In addition, there is no historic or archaeological interest in the site and no prime agricultural land or peatland is involved.

As evidenced by the contents of the Case Officer's Report of Handling, there are no consultee or third party environmental or technical objections to the proposal.

3.0 Reason for Refusal

The application, Reference No. 24/01431/APP, was refused under the Council's Scheme of Delegation by the Case Officer on the 27th of May 2025 (Appendix 1). The Reason for Refusal states that:

'The proposal is contrary to the Moray Local Development Plan 2020 (MLDP) because it is located in the Elgin Countryside Around Towns designation and is a use that is not acceptable under the terms of associated MLDP Policy EP4 "Countryside Around Towns". It subsequently fails to comply with the requirements of MLDP Policy DP5 (g) "Business and Industry" on the basis farm diversification proposals must comply with all relevant MLDP Policies. There are no material considerations that indicate otherwise.'

As detailed below, it is respectfully submitted that the Case Officer's assessment of the application and subsequent Reason for Refusal is flawed due to a failure to take proper account of the relevant policy test contained within Part (b) of Policy EP4 'Countryside Around Towns'.

4.0 Grounds of Appeal

As evidenced in the Report of Handling (Appendix 2), the Appellant agrees with the Case Officer's assessment that the proposal is in compliance with the following key policies:

- NPF4 Policy 3 Biodiversity (Appendix 3, page 1) and MLDP Policy EP2 Biodiversity (Appendix 3, page 2) in respect of proposed biodiversity enhancements subject to an appropriately worded planning condition(s).
- NPF4 Policy 13 Sustainable Transport (Appendix 3, page 3-4) and MLDP Policy PP3 Infrastructure and Services (Appendix 3, page 5-7) in respect of site access subject to an appropriately worded planning condition(s).
- NPF4 Policy 14 Design, Quality and Place (Appendix 3, page 8) and MLDP Policy DP1 Development Principles (Appendix 3, page 9-11) in respect of siting and design matters.
- NPF4 Policy 22 Flood Risk and Water Management (Appendix 3, page 12-13) and MLDP Policy EP12 Management and Enhancement of the Water Environment (Appendix 3, page 14-17) in respect of drainage matters.

The Case Officer also confirms in tabulated form on Pages 1-2 of his Report of Handling that the proposals do not conflict with NPF4 Policies 1 (Appendix 3, page 18), 2 (Appendix 3, page 19), 5 (Appendix 3, page 20) and 12 (Appendix 3, page 21-22) in respect of climate change, soils and waste respectively.

He further acknowledges that NPF4 Policy 29 Rural Development (Appendix 3, page 23) supports farm diversification as does MLDP Policy DP5 'Business and Industry' (Appendix 3, page 24-25).

Unlike the Case Officer, it is the Appellant's contention that the proposal meets **all** the policy tests of the Development Plan including MLDP Policies EP4 'Countryside Around Towns' (CAT) (Appendix 3, page 26) and DP5 'Business and Industry' which form the basis of the Reason for Refusal. This difference of opinion with the Case Officer is addressed in detail below.

MLDP Policy EP4 'Countryside Around Towns' (CAT) contains a general presumption against development in areas identified around the core towns of Moray such as Elgin unless it meets one of the stated exceptions.

Exceptions listed in parts (a) and (c) of the policy do not apply in this case.

Part (b) is the relevant exceptions part of MLDP Policy EP4 that applies in this case and provides support for developments which:

*"(b) Are necessary for the purposes of agriculture, forestry, low intensity recreational or tourism use **or specifically allowed under the terms of other Local Development Plan policies** or settlement statements within these areas". (emphasis added)*

It is accepted that although directly associated with an agricultural business, the proposed farm diversification scheme is not strictly for agricultural purposes and therefore fails the first part of part (b).

However, as highlighted above, there are two parts to EP4's policy test (b) which in this case is whether farm diversification schemes are '*specifically allowed under the terms of other Local Development Plan policies*'.

Farm diversification is clearly supported under part (g) Rural Business and Farm Diversification of MLDP Policy DP5 Business and Industry which states:

*"Farm diversification proposals and business proposals that will support the economic viability of the farm business are **supported** where they meet the requirements of all other relevant Local Development Plan policies."* (emphasis added)

Furthermore, as highlighted above, Members attention is drawn to Part (a) of NPF4 Policy 29 which specifically states, "*development proposals that contribute to the viability, sustainability and diversity of rural communities and local rural economy will be **supported**, including.....(ii) diversification of existing businesses*". (emphasis added).

It is acknowledged that storage and distribution uses would normally be encouraged to locate within existing industrial parks/areas in towns such as Elgin.

There is however no definition of what constitutes 'farm diversification' in either NPF4 or the MLDP 2020.

According to the NFU, farm diversification involves using farm assets (land, buildings, skills) to develop new income streams beyond conventional agriculture.

This is what the Level Farm business has been doing for the past 9 years with its storage and distribution facility and there is no reason why such a use cannot be considered an appropriate form of farm diversification in this instance.

Members will be aware that for most cases, 'farm diversification' schemes are focused on non-agricultural activities.

On the basis that the farm diversification proposal is specifically allowed for under MLDP Policy DP5 (g), supported by NPF4 Policy 29 (a) (ii) and, compliant with all other policies in both NPF4 and the adopted MLDP 2020, as evidenced in the Case Officer's Report of Handling and summarised above, it follows that, contrary to the Case Officer's view, it is clearly in accordance with the second policy test part of EP4 (b) which states that it is either '*necessary for the purpose of agriculture, forestry, low intensity recreational or tourism use **or specifically allowed under the terms of other Local Development Plan policies***'. (emphasis added)

It is contended that the above assessment is the correct interpretation and application of the relevant policy tests in both MLDP Policies EP4 and DP5. If it is not, it follows that every farm diversification scheme in CAT areas around the core towns of Moray would not be acceptable and that surely cannot be the case given that farms are the dominant land use in such areas.

5.0 Conclusions

As members will be aware, Section 25 of the Town and Country Planning (Scotland) Act 1997 (as amended) states that planning applications are required to be determined in accordance with the Development Plan unless material considerations indicate otherwise.

The focused policy assessment set out above clearly demonstrates that the proposal, on any proper and correct interpretation, is compliant with the relevant planning policies contained in NPF4 and the adopted Moray Local Development Plan 2020 respectively and should be afforded the presumption in favour of development given to proposals that accord with the Development Plan.

The importance of this facility to the local area cannot be overstated. In addition to the above, Members are respectfully requested to note the content of the 20 letters of support contained within Appendix 4.

It is therefore respectfully suggested that there being no other material considerations that outweigh the strong presumption in favour of development, Members uphold the appeal under review and grant the proposal planning permission.