



MORAY COUNCIL LOCAL REVIEW BODY

Review Decision Notice

Decision by Moray Local Review Body (the MLRB)

- Request for Review reference : Case 050
 - Site address: 32 Burnbank, Fochabers IV32 7EQ
 - Application for review by Mr Ian Gordon against the decision by an Appointed Officer of the Moray Council.
 - Application 11/01521/APP : Planning Permission for change of use of part of garden for Burger Van Business
 - Unaccompanied site inspection carried out by the MLRB on Thursday 21 June 2012.
 - Date of Decision Notice: 18 July 2012.
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Decision

The MLRB agreed to uphold the request for review and grants planning permission, subject to the conditions appended to this decision notice. Attention is also drawn to the informative notes which follow the conditions.

1.0 Preliminary

- 1.1 This Notice constitutes the formal decision notice of the Moray Local Review Body (MLRB) as required by the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008.
- 1.2 The above application for planning permission was considered by the MLRB at meetings on 7 June and 28 June 2012. The Review Body was attended at both meetings by Councillors B Jarvis (Chair), L Creswell & R Shepherd.

2.0 Proposal

- 2.1 This is an application for planning permission for change of use of part of garden for Burger Van Business.

3. MLRB Consideration of request for review

- 3.1 At the meeting of the MLRB on 7 June 2012 there was submitted a 'Summary of Information' report by the Clerk to the MLRB setting out the reasons for refusal together with a copy of the Report of Handling and a copy of the Notice of Review & supporting documents.
- 3.2 Following consideration of the case papers, the MLRB agreed that it did not have sufficient information in order to proceed to determine the request for review and agreed that an unaccompanied site inspection be undertaken, the purpose of which being to view the site in the context of Policy IMP1 of the adopted Moray Local Plan 2008.
- 3.3 It was also agreed that the Planning Adviser attend the unaccompanied site inspection.
- 3.4 At the meeting of the MLRB on 28 June 2012 there was submitted a 'Summary of Information' report detailing the outcome of the MLRB's previous consideration of the request for review.
- 3.5 In regard to the unaccompanied site inspection, the Planning Adviser advised the meeting that on arrival at the site she had reminded members about the location of the proposed burger van and the associated car parking. She also outlined the reasons for refusal and the grounds for review. She further reminded members that the applicant had been asked at the previous meeting of the MLRB on 7 June 2012 to provide further information relating to his comments about not requiring planning permission to trade from the highway.
- 3.6 The MLRB agreed that it now had sufficient information and proceeded to determine the request for review.
- 3.7 Councillor Creswell expressed the view that, having had the opportunity to visit the site of the proposed development that in her opinion, the business would be better sited off the road and although she had previous concerns with regard to the safety of the children coming from the school she noted that these issues had been addressed within the report and for these reasons she moved to grant the review on the grounds that this would not be contrary to policy IMP1.
- 3.8 Councillor Shepherd sought clarity from the Legal Adviser that, as the applicant currently held a street traders licence would this allow him to trade from the street. The Legal Adviser advised the meeting that whether or not the applicant could trade from the street was not material to the MLRB's consideration of this review given that planning permission was being sought for a change of use of part of garden ground for a burger van business and not consent to operate on the street.
- 3.9 Thereafter, Councillor Shepherd expressed the view that the burger van business was safer trading off the street and concurred with the views expressed by Councillor Creswell and for these reasons he was minded to grant the review. He also was of the view that the burger van sited on the street was material to the case.

- 3.10 Councillor Jarvis expressed the view that having had the opportunity to visit the site, he was of the opinion, that siting the burger van business off the road would improve the look of the area and would be sensitively sited and would not detract from the appearance or character of the surrounding area. He was also of the opinion that given that vehicle and people movement were already there that this would have no adverse impact and would not be detrimental to the area. For these reasons Councillor Jarvis agreed with the views expressed by Councillors Creswell and Shepherd that the request for review should be granted and planning consent granted as complying with policy.
- 3.11 Accordingly MLRB agreed that the request for review be granted and that the application for planning permission be approved, subject to standard conditions and condition and informatives recommended by consultees.

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Paul Nevin
Legal Adviser to the MLRB

Conditions:

1. Two car parking spaces, to be used by customers, shall be provided within the site and shall thereafter be retained throughout the lifetime of the development, unless otherwise agreed in writing with the Council as Planning Authority.
2. Two car parking spaces for the dwellinghouse shall be provided within the site and shall thereafter be retained throughout the lifetime of the development, unless otherwise agreed in writing with the Council as Planning Authority.

Reasons:

1. To ensure acceptable development in the interests of road safety.
2. To ensure acceptable development in the interests of road safety.

LIST OF INFORMATIVES:

THE SCOTTISH ENVIRONMENTAL PROTECTION AGENCY has commented that;
Flood risk

The Indicative River & Coastal Flood Map (Scotland) has been produced following a consistent, nationally-applied methodology for catchment areas equal to or greater than 3km² using a Digital Terrain Model (DTM) to define river cross-sections and low-lying coastal land. The outlines do not account for flooding arising from sources such as surface water runoff, surcharged culverts or drainage systems. The methodology was not designed to quantify the impacts of factors such as flood alleviation measures, buildings and transport infrastructure on flood conveyance & storage. The Indicative River & Coastal Flood Map (Scotland) is designed to be used as a national strategic assessment of flood risk to support planning policy in Scotland. For further information please visit www.sepa.org.uk/flooding/flood_map.aspx.

Please note that we are reliant on the accuracy and completeness of any information supplied by the applicant in undertaking our review, and can take no responsibility for incorrect data or interpretation made by the authors.

Regulatory Advice

Regulatory Requirements

Details of regulatory requirements and good practice advice for the applicant can be found on our website at www.sepa.org.uk/planning.aspx. If you are unable to find the advice you need for a specific regulatory matter, please contact a member of the operations team in your local SEPA office at: 28 Perimeter Road, Pinefield, Elgin, IV30 6AF, [Tel:01343 547663](tel:01343547663)

If you have any queries relating to this letter, please contact me by telephone on 01224 266656 or by e-mail to planning.aberdeen@sepa.org.uk.

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 21 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008.

- 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.

The Moray Council

NOTIFICATION OF INITIATION OF DEVELOPMENT

Section 27A Town and Country Planning (Scotland) Act 1997

Planning Application Reference No: 11/01521/APP

Date issued:

I hereby give notice that works as detailed under the above planning application will commence on:

Signed: Date:

THE FOLLOWING INFORMATION MUST BE PROVIDED:

1. Name and address of person carrying out the development:

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2. The full name and address of the landowner, if a different person:

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3. Where a site agent is appointed, their full name and contact details:

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4. The date of issue and reference number of the grant of planning permission:

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Please return this form, duly completed to: - The Moray Council
Development Management
Development Services
Environmental Services Department
Council Office,
High Street
Elgin IV30 1BX

IMPORTANT

It is important that the Environmental Services Department is advised when you propose to start work as failure to do so may result in enforcement action be taken.

Please complete and return this form.

The Moray Council

NOTIFICATION OF COMPLETION OF DEVELOPMENT

Section 27B Town and Country Planning (Scotland) Act 1997

Planning Application Reference No: 11/01521/APP

Date issued:

I hereby give notice that works as detailed under the above planning application
will be completed on:

Signed: Date:

Please return this form, duly completed to: - The Moray Council
Development Management
Development Services
Environmental Services Department
Council Office
High Street
Elgin IV30 1BX

IMPORTANT

**It is important that the Environmental Services Department is advised
when the development has been completed as failure to do so may result
in enforcement action be taken.**

Please complete and return this form.