

THE MORAY COUNCIL
MINUTE OF SPECIAL MEETING OF THE ENVIRONMENTAL SERVICES COMMITTEE
MONDAY 22 OCTOBER 2007
COUNCIL OFFICE, ELGIN

PRESENT

Councillors A Wright (Joint Chair : Planning & Environment), J Russell (Joint Chair : Transportation & Direct Services), J Divers, G Leadbitter, M McConachie, G McDonald, A McKay, F Murdoch, I Ogilvie, P Paul, R Shepherd and I Young.

APOLOGIES

Apologies for absence were intimated on behalf of A Bisset, J Hamilton and G McIntyre.

ALSO PRESENT BY INVITATION

IN RESPECT OF ITEM 3

The applicant, Mr. R Robertson and his Agent, Mr. R Stirrat, Planning Consultant.

Also present were P Anderson, Mr & Mrs D J Edmond, A Fraser, V Morrison, Mr & Mrs R Stott, Rev Wing Commander A L Willis and Mr D McWilliam, representing Strathisla Community Council, objectors to the application.

IN ATTENDANCE

The Head of Development Services, The Development Control Manager, J Martin, Principal Planning Officer (Development Control [Planning]), T Simpson, Engineer (Development Control [Roads], R Gerring, Engineer (Transport Development) in respect of Item 5, the Principal Solicitor (Commercial and Conveyancing) and the Senior Committee Services Officer, Clerk to the Meeting.

ALSO IN ATTENDANCE BY INVITATION

Miss N Abrahams and Mr. R Murdoch, Scottish Environmental Protection Agency (SEPA), in respect of Item 3.

1. CHAIR

The Chair was taken by Councillor A Wright (Joint Chair : Planning & Environment).

2. DECLARATION OF GROUP DECISIONS

In terms of the relevant Standing Order 20 and the Councillor's Code of Conduct the meeting noted that there were no declarations from Group Leaders or spokespersons in regard to any prior decisions taken on how members will vote on any item on the agenda.

3. PUBLIC HEARING RE. PLANNING 06/01594/FUL : ERECT 16 NEW HOUSES (AMENDED TO 12) WITH OIL FUEL TANKS COMPLETE WITH ACCESS ROAD/PARKING, WATER SUPPLY AND DRAINAGE SYSTEM WITH REED BED ON A SITE AT MULBEN, KEITH FOR SUN HONEY DEVELOPMENTS LTD.

Under reference to Paragraph 4 of the Minute of the special meeting of the Committee dated 27 September 2007 there were submitted reports by the Chief Legal Officer and the Director of Environmental Services regarding an application to erect 16 new houses (amended to 12) with oil fuel tanks, complete with access road/parking, water supply and drainage system with reed bed, on a site at Mulben, Keith for Sun Honey Developments Ltd.

The report by the Chief Legal Officer advised that, at the meeting of this Committee held on 27 September 2007, it was agreed to defer consideration of the application for further consultations with SEPA and Network Rail in regard to bank realignment, culvert maintenance and other issues raised by Local Members and that a report thereon be submitted to a Hearing on 22 October 2007. It was also agreed that the photographic evidence referred to by Councillor Paul be made available to SEPA and the Moray Flood Alleviation Team and included with the report to the Hearing on 22 October 2007, details of which were appended to the report.

The Development Control Manager advised the meeting that, subsequent to the meeting on 27 September 2007, he had further discussions with SEPA in regard to the concerns expressed at that meeting and suggested that an additional Condition 18 be included. The terms of the condition being that 'Prior to the occupation of any dwellinghouse approved as part of this scheme the approved river engineering works to the Auchlunkart Burn are completed'. He also advised that, as originally submitted, the scheme proposed 4 affordable housing units which was considered an over provision, in terms of the guidance. The amended scheme is for 12 houses and therefore only 1 affordable unit is required. In view of this the Development Control Manager advised that, should the Committee be minded to approve the application, he be granted delegated powers to approve the application, subject to agreement with the developer on the provision of one affordable housing unit and the conditions detailed in the report, inclusive of the additional Condition 18.

The Chairman welcomed those present to the meeting and reminded them that the Special Meeting had been arranged to allow those submitting representations on the application to speak to their representations and the applicant to be heard before the Committee reached its decision on the application. He also advised those present that submissions must be restricted to those already submitted and that the Hearing would be confined to examining the planning merits of the application and therefore discussion on irrelevant non-planning related issues would not be considered.

The meeting noted that the applicant, Mr R Robertson, was present and would be represented by his Agent, Mr R Stirrat, Planning Consultant.

The Clerk to the Committee advised the meeting that of those who had submitted representations on the application, referred to in the report on the application, Mrs P Anderson, Mr & Mrs D J Edmond, A Fraser, Mrs V Morrison, Mr & Mrs R Stott and Rev Wing Commander A Willis were present and would be speaking to their objections. Mr D McWilliam was also present and would be speaking on behalf of Strathisla Community Council. Mr & Mrs Abrahams had intimated that they were unable to attend and had submitted a statement, which would be referred to at the appropriate juncture in the proceedings. Mr Grole having declined the invitation to be heard or submit a statement.

REPRESENTATIONS ON BEHALF OF THE APPLICANT

Mr **Stirrat**, Stirrat Planning Consultant, addressed the meeting, on behalf of the applicants Sun Honey Developments. He expressed his concern in regard to the length of time taken to determine the application in respect of a site long identified in the Local Plan as suitable for housing. In his opinion the application satisfactorily meets all the necessary site development matters appropriate for approval. Whilst aware that some objectors remain concerned with site flooding potential, despite all technical assurances to the contrary, Mr Stirrat considered these fears to be ill founded, a view which is supported by the expert SAC report and lack of objection from SEPA and the Council's own Flood Unit. Mr Stirrat also expressed the view that the recommendation to conditionally approve reflects the outcome of much negotiation between the developer and Planning Officials and that the drainage matters, as well as access and design, have been fully taken into account.

Mr Stirrat then referred Members to the Moray Local Plan, which identifies Site B for housing and that in December 1997 a site development brief was published with an estimated capacity for 10-12 houses. The Brief also advised that the site development should have a distinct and rural character, that it is a crucial piece of infilling linking the two distinct areas of Mulben, the houses and the school in Upper Mulben and Mulben itself including the village hall, houses and the garage. He also referred to section 2.6 of the site development brief, which refers to part of the site being at risk from flooding from the Burn of Auchlunkart. He also made reference to the review of the Local Plan 2000 which commenced in 2004 in which the finalised version identifies two development sites, A and B, noting that the latter may require flood alleviation measures on site. The finalised version also notes that site B, extended from previous designations and encompassing the proposed access road and foul drainage scheme will only be released in phases with no more than the original 12 houses permitted during the currency of the plan. In regard to the proposed development Mr Stirrat advised the meeting

that the application was submitted in compliance with the adopted Local Plan and site development brief, in full recognition of the site development constraints and requirements. In order that house development proposals were based on full survey information and understanding, Mr Stirrat advised the meeting that, in 2006, the applicant commissioned a detailed drainage impact assessment from SAC Environmental, Aberdeen, which is a Scottish-wide expert company respected by SEPA. In regard to the study undertaken by SAC he advised the meeting that SEPA participated in the study with early technical advice and that SEPA were formally consulted on the final application and had no objection and on the 18 July 2007 again confirmed their approval of site development drainage proposals.

Mr Stirrat then referred to several points within the SAC report, the conclusion of which being that the site will not contribute to the existing flooding problem if the technical proposals are implemented. He referred to the objections to the proposed development relating to flooding, inappropriate number and density, lack of local amenities, dangerous footpath, opposed to street lighting and safety concerns relating to children, fast traffic and congregation at the bus shelter and questioned the total community opposition to the application. It was his client's opinion that objection at the public meeting held on the 21 of March 2006 come only from about one quarter of the households and the SAC report was not available at that time.

Mr Stirrat referred to the terms of a letter of support from the landowner and farmer of Site B. Whilst appreciating that this support may be considered self-servicing it was based on knowledge of a 75 year period and he could never recall the site being under water in all these years. Whilst accepting that a small area of low lying ground by the burn spilled over a few yards into the field this has been recognised and is to be rectified as part of the proposed development. Mr Stirrat then referred to road drainage improvements carried out by BEAR Scotland over a year ago in the vicinity of the proposed new entrance to the site. A drainage ditch was installed on the south side and channels cut from the road on the north side into Site B which has resulted in drainage improvements on the A95, a view which has been confirmed to his client by the local garage owner.

In regard to the statutory consultations undertaken with SEPA it is noted that there are no objections providing that bank re-alignment works are carried out and continued maintenance of the box culvert is secured is by means of a planning mechanism. In regard to surface water SEPA advised that it is acceptable that surface waters are discharged to a pond and the foul drainage proposals are also acceptable.

Mr Stirrat expressed the view that he considered that the conditional recommendation for approval is logical and in accordance with the technical advice and Site B's statutory Local Plan designation as a housing site. He was of the view that the objections from some of the local community do not properly take account of the advice of the SAC report, the positive effect of proposed works and the lack of objection from both SEPA and the Council's own Flood Alleviation Unit. The amended proposal for 12 houses was, in his opinion, well laid out and designed and will link the two parts of Mulben with a high quality scheme and create a larger overall scale of settlement and rural community and will not worsen any perceived road pedestrian safety concerns. Foul drainage had been dealt with by a well engineered environmental scheme and surface water discharges are similarly dealt with by detailed measures within the site. The wider surface water drainage and catchment flooding incidences will also be dealt with by widening the Auchlunkart Burn and monitoring of the already improved box culvert under the railway. He also expressed the view that the development of Site B does not worsen the present situation but actually improves it and will improve a greater drainage capacity to the Auchlunkart Burn which should alleviate flooding problems in upper Mulben situated in the adjoining catchment and that this also applied to past drainage and flooding problem of some houses in Mulben which has already been alleviated by improvement works on the A95.

In conclusion Mr Stirrat was of the view that the Committee should approve the application without further delay, as there is no logical or statutory basis for refusal.

Thereafter Mr Stirrat responded to Members' questions and the meeting noted that as the Burn is outwith the ownership of the applicant the long term maintenance of the Burn would be a Council responsibility and that Network Rail had also accepted a maintenance responsibility in regard to the culvert. In regard to the ditches within the site, the meeting noted that these will be maintained by the applicant.

REPRESENTATIONS TO THE APPLICATION

Mr David McWilliam addressed the meeting on behalf of **Strathisla Community Council**. He referred to the public meeting held by Sun Honey Developments on 21 March 2006 at which almost every household of Mulben and Boharm area was represented and at the end of the meeting there was almost unanimous rejection of the proposals. As a consequence, Strathisla Community Council, as consultees held a special meeting in Mulben on Tuesday 1st August 2006 to obtain the views of the local community and to view the proposed site. The conclusion of the meeting was that the application should be rejected on the grounds of flooding, possibility of sewerage back flows and contamination, high housing density of the proposal, lack of local amenities and road safety.

This area is subject to regular flooding every few years to the extent that residents in a number of properties in the village are unable to obtain insurance or its very expensive. It is the view of the Community Council that the proposed site currently acts as a flood plain and thereby reduces the depth of flooding in the existing village. Floodwaters arrive in the area from all the surrounding land onto the proposed site and down the A95 from the Maggieknockater direction into the old village. The Community Council is concerned that raising the level of the proposed site and reducing its natural drainage properties by building houses and creating roads will remove a significant proportion of the flood plain effect and thus increase flooding in the old village. Mr McWilliam also advised the meeting that it would be necessary to raise part of the site by a considerable amount as some parts have suffered flooding of a depth up to 2 metres.

In regard to the possibility of sewerage back flows and contamination the Community Council was of the opinion that during periods of flooding the bio-plant and reed bed will be under water to a depth likely to be in the region of 1-2 metres. This could result in the possibility that excrement will become mixed with the floodwaters and it is not known whether the floodwaters will carry this contamination into properties further exacerbating the resultant disruption and costs.

The meeting noted that the Community Council also had concerns in regard to the proposed density on the site. With later developments in the adjoining area likely to raise the number to nearly 60 houses, this would, in their opinion, lead to a huge percentage increase in the size of Mulben village and would be out of character with the existing village and would be nothing less than the destruction of a small rural community and replaced by an urban development in a rural setting. In this context Mr McWilliam also referred to a lack of local amenities now that the village shop, church and primary school are closed and there is no industry other than farming.

On the question of road safety Mr McWilliam referred to the proposed footpath fronting the proposed development on a trunk road which is narrow and frequent minor accidents occur on the bridge to the Keith side of the Mulben Crossroads. This will be the only route for children to take between the development and hall and playing field and presents obvious dangers.

For these three reasons Strathisla Community Council is unanimous in its recommendation that this application should be rejected. If the application is to be further pursued it is recommended that flooding and road risk assessments be carried out before approval is granted and that the developer be required to fund considerable infrastructure improvements, perhaps even contributing to the restoration of a primary school in the area.

There were no questions from Members on Mr McWilliam's presentation

Mr & Mrs R Stott, respectively, addressed the meeting on their representations on the application. The meeting noted that their main issue of concern related to flooding and referred to paragraphs 43 and 53 of SPP3 and SPP7, respectively, which state that 'Sites likely to be at significant risk from flooding, including those on the functional flood plain should not be developed for new housing'. They were of the view that any flood alleviation measures involving the watercourse of the burn has the potential effect of eroding the bank on the north side, which is their only protection against a major flood. They also expressed the view that that to change the flow and shape of the burn was a very dangerous experiment to undertake. Raising the level of the site to accommodate the proposed development was also of concern given that the site has always acted as an overflow for a high volume of water from the hills and burn. Reference was made to the planning guidance in regard to Bad Neighbour Development that the construction of buildings which will affect residential property by reason of noise or artificial lighting and/or bring crowds into a generally quiet area. In this regard they referred to their concerns in terms of potential noise and road safety given that the proposed access and footpath given that this leads onto and fronts a trunk road. There is no street lighting in this area

at the present time and the introduction of such will, in their opinion, draw attention to the development and would not blend in to the surroundings. They were also of the view that approval of the proposed development was not appropriate to its surroundings and if their property is flooded as a result of approval of the development they would hold the Council responsible for any damages.

There were no questions from Members on their presentations.

Mrs V Morrison expressed her concerns in regard to the lack of facilities in Mulben and road safety concerns in regard to an access on leading onto a trunk road and a proposed footpath fronting a trunk road. In regard to flooding Mrs Morrison was of the view that there was significant risk of flooding to the proposed and surrounding area and was of the opinion that, in time, the proposed reed bed carrying overflow domestic waste would not be able to function properly which may contaminate the burn. She also had concerns regarding the visual impact the proposed development would have, not only on the village but also from the A95 and the Aberdeen/Inverness rail line.

There were no questions from Members on Mrs Morrison's presentation.

Mrs P Anderson expressed her concerns in regard to the proposed boundary changes to accommodate a sewage treatment plant and site access which will adversely impact on her quality of life and amenity currently enjoyed and the re-sale value of her property.

There were no questions from Members on Mrs Anderson's presentation.

Mrs A Fraser was of the opinion that the proposed site is unsuitable and inappropriate for a building development on the scale of the proposal. Her reasons for this is that area is well known to be prone to flooding and was concerned of the potential effect on the proposed reed bed in the event of flooding. Photographs in support of her concerns were circulated at the meeting. She also expressed the view that as there are no amenities in Mulben, the village cannot sustain a development of this size. Mrs Fraser was also concerned in regard to the impact the proposed introduction of street lighting will have on the area and the effect the elevation of the site will have on adjoining properties in regard to potential flooding.

In response to a question from the Chair in regard to the relevance of the photographs tabled by Mrs Fraser, in support of her objections, she advised the meeting that this demonstrated the knock-on effect of building on what is currently considered a flood plain would have on the area. There were no other questions from Members on Mrs Fraser's presentation.

Mr & Mrs Edmond addressed the meeting on their representations on the application. The meeting noted that they were of the view that the most contentious issue was that of flooding. Mrs Edmond referred to the issue of disproportionate density and made reference to several Scottish Planning Policies (SPP) and the Moray Structure Plan in support of her views. She also made reference to policies within the Moray Local Plan in regard to retaining the rural character of an area. In this regard she requested consistency in decisions and made reference to the refusal of an application for a single house on the grounds that it failed to integrate sensitively with the existing landforms so as blend in unobtrusively and would be visually prominent overlooking the A95. Mr Edmond referred to proposed land raising on the development site and the potential consequences of this, in terms of increased flood risk, to his and his neighbours properties and questioned the basis of the findings of the SAC report. In this regard he referred to the history of flooding in the area and tabled a copy of a letter from the Council's Consultancy Manager. This advised that the Trunk Roads authority had a responsibility, as the owner of the Blackhillock Bridge, to ensure that water from upstream is passed downstream in a controlled manner and should consider replacing the bridge with a suitable structure to take flood flows. This issue and the effects it causes, as could be seen from the photographs circulated with the papers, are still outstanding. Mr Edmond was of the view that the proposals contained in the application relating to flood risk will not alleviate the existing risk and the proposed raising of the land within the site will only exacerbate the problems. In support of his opinions Mr Edmond referred to extracts from SPP3 and SPP7 in regard to flood risk. These policies concluded that sites likely to be at significant risk from flooding, including those on the functional plain, should not be developed for new housing and placed a requirement on developers and planning authorities to deal seriously with flooding and err on the side of caution where flood risk is an issue. For those reasons set out in their presentations and letters of objection, Mr Edmond urged the Committee to refuse the application.

There were no questions from Members on Mr & Mrs Edmond's presentations

Rev Wing Commander A L Willis addressed the meeting on his representations on the application. He referred to the background and history of flooding in the area which resulted in fields and roads being under a considerable depth of water and coupled with the backing up at the Blackhillock Bridge led to approximately 80% of the proposed development site submerged in fast flowing flood water. He referred to the site plan and photographs, circulated with the papers, which indicated the direction of the water flow, in times of flooding, the areas previously flooded and areas usually flooded after heavy rain. He also expressed his concerns in regard to the potential affect approval of the application will have for the occupants of the new houses, the other residents of the village and the surrounding environment were flooding to occur after completion. He also sought clarification of the future responsibility to residents in the event of consent being granted and the area was subject to further flooding, given that the developer has already indicated that this would not be their responsibility. For these reasons and those set out in his letter of objection Rev Willis urged the Committee to refuse the application.

There were no questions from Members on Rev Willis's presentation.

The Clerk then read out the statement for on behalf on **Mrs K Abrahams**. The meeting noted that that Mrs Abrahams was of the view that whilst the amount of houses had been reduced to 12 this was, in her opinion, still disproportionate considering that Mulben was a scattered community with no facilities. She was also concerned in regard to the effects the introduction of street lighting will have adding artificial lighting to a relatively quiet area which she considered came under the 'bad neighbour development' policy.

COMMENTS ON SUBMISSIONS BY DEVELOPMENT CONTROL MANAGER

In regard to the submissions made the Development Control Manager advised the meeting that the requirement for a footpath fronting the site was on the advice of the Trunk Roads Authority as was the case in respect of the proposed access to the development. Whilst the Committee required to take into consideration Scottish Planning Policy guidance the most important policies to take into consideration are those within the Council's current Development Plan and their reference to the application. Committee should adhere to these policies unless there are material considerations of such weight to justify departing from policy as in respect of this application. In order to accommodate the location of the access off the trunk road, as advocated by the Trunk Roads Authority, it was necessary to extend the site boundary leading to the departure, which is considered acceptable. It was also noted that as the Finalised Draft Moray Local Plan was not as yet a material consideration the reference within it to the application site was not relevant to the application, which must be considered and determined within the current Local Plan policies.

STATEMENT BY BEHALF OF SEPA

On the invitation of the Chairman Mr R Murdoch, a Hydrologist with SEPA, advised the meeting on SEPA's involvement in the flood risk assessment. On being notified by the Council that there may be a flood risk reference was made to the maps for the area held by SEPA. These indicated that the northern area of the site had a substantial flood risk but not the area on which the houses were to be built and the developer was requested to submit a flood risk assessment. This required, in terms of SPP7, to protect a 1 in 200 years situation. On assessing the proposals SEPA were satisfied that these were sufficient that proposed re-engineering works proposed would contain double the water produced in a 1 in 200 instance and therefore had no objections to the proposed development.

Thereafter Mr Murdoch responded to Members' questions. The meeting noted that the water entering the site from the A95 was considered as surface water run-off and would be dealt with by the SUDS drainage proposals for the site. It was also noted that SEPA do not undertake any on site investigations prior to responding to the Council on flood risk assessments and, in SEPA's opinion, the proposals put forward would alleviate the flood risk and would continue to do so providing that appropriate future maintenance is carried out.

SUMMARIES OF SUBMISSIONS

The Chairman then invited the applicant's representative and those submitting representations to summarise their respective submissions and in doing so those submitting representations may wish to consider these being done collectively. All the objectors, bar Mrs Morrison, Mrs Anderson and Mrs Fraser, summarised their presentations. On being asked if they were satisfied with the conduct of the proceedings of the Hearing, all bar Mrs Stott and Mrs Anderson intimated that they were satisfied. Mrs Stott and Mrs Anderson intimating that they considered there was an element of irritation from the Chair in regard to length of their summaries. The meeting noted that this related to a number of speakers, with the exception to the Community Council representative, going over large parts of their submissions again rather than summarising.

COMMITTEE CONSIDERATION OF THE APPLICATION

Thereafter officers of the Council and SEPA representatives responded to Members questions and the following points were noted:

- that the river bank on the bend of the burn would be excavated backwards in the site some 10 metres from the edge of the burn rising in level from approximately 6.5m back;
- that SEPA was satisfied with the information and proposals provided by the applicant in regard to flood risk and that the proposed pond will be able to cope with additional surface water run-off other than that from the site;
- that whilst accepting that the Blackhillock Bridge was a 'pinch-point' restricting the flow of water during periods of heavy rainfall, causing the water to spill out on to the roadway, this was not considered as part of the flood assessment which was based on the catchment area based on a 1 in 200 years situation;
- that the provision of a footpath would be conditional on the details being agreed with the Trunk Roads Authority, taking into consideration the views expressed during the presentations;
- that the site is within an area designated in the Local Plan for housing and therefore the application requires to be considered in terms of the policies of the current Local Plan;
- whilst acknowledging that frequency and levels of flooding may have changed since the site was designated for housing the Committee must, in considering the application, have regard to the Development Plan and any material considerations, including local knowledge. In this regard it was considered that the application had addressed the flooding concerns and both SEPA and the Council's Flood Alleviation Team, in their capacity as the technical expertise in these matters, had indicated that they were satisfied with the proposals to alleviate the flood risk;
- that in regard to future liability, in the event of the application being approved, if it is seen that the Council, as planning authority, having taken into consideration all the material considerations and current policies, based on sound technical appraisal and advice, had acted responsibly, in terms of SPP7, then it would be unlikely for the Council to be held liable in the event of any future claims for compensation in the event of flooding;
- the concerns expressed on the potential impact of the proposed street lighting, which is currently unquantifiable, will have on the rural setting of the village; and
- that the application referred to by Mrs Edmonds in her presentation was refused for different reasons to those, which are applicable in respect of this application.

Following discussion Councillor Wright intimated that, having listened to all the presentations made, and whilst having sympathy with some of the issues raised by the objectors, particularly in regard to road safety, he was of the view that in light of the technical advice received and the proposed conditions to be applied to the consent the application should be approved as recommended. For these reasons Councillor Wright moved that the Director of Environmental Services be granted delegated powers to approve the application, subject to agreement with the applicant on the provision of one affordable housing unit and the conditions detailed in the report, to include that additional condition suggested by the Principal Planning Officer, at the commencement of the Hearing, in respect of engineering works. The motion was seconded by Councillor Russell.

Councillor Paul expressed the view that local knowledge was very important and required to be taken into consideration as were the changes which had taken place in the area since the adoption of the current Local Plan, particularly in regard to local amenities and flooding, which was now a regular occurrence. She also expressed concerns, in terms of road safety, in regard to the proposed footpath fronting the site on a trunk road and remained unconvinced that the proposed technical measures would alleviate the flooding concerns.

For these reasons Councillor Paul moved, as an amendment, refusal of the application on the grounds that she was not satisfied that the proposed development fully complied with Policy L/ENV24 in regard to surface water drainage, road safety concerns in regard to the proposed footpath fronting the site on a trunk road and that she remained unconvinced that the proposed technical measures would alleviate the flooding concerns. The amendment was seconded by Councillor Murdoch.

Councillor G McDonald intimated that whilst supportive of the proposed amendment he was of the opinion that the proposed development was also contrary to Policy L/IMP2 in regard to lighting in that it did not accord with how the Council will deal with rural communities and sought clarification on procedures.

Following discussion Councillor Paul, with the agreement of Councillor G McDonald and her seconder, agreed to amend her amendment to include the additional reason put forward by Councillor G McDonald.

On a division there voted:-

For the Motion (2)	Councillors Russell and Wright.
For the Amendment (9)	Councillors Divers, Leadbitter, McConachie, G McDonald, A McKay Murdoch, Ogilvie, Paul and Young.
Abstentions (1)	Councillor Shepherd.

Accordingly the Motion became the finding of the meeting and it was agreed that the application be refused for the following reasons:-

1. The proposal is not fully in compliance with Policy L/ENV24 with regard to surface water drainage, and as the proposed flood alleviation measures are not considered to be adequate to address flooding concerns.
2. The proposal is contrary to Policy L/IMP2 for Development in Rural Areas in terms of its impact on the character and amenity of the area, particularly with regard to the provision of street lighting.
3. General road safety concerns with regard to the provision of a public footpath fronting the site on a trunk road.

On the determination of this application Councillor Young left the meeting.

Adjournment of Meeting

In terms of Standing Order 22 the meeting agreed to adjourn at 12.41p.m and to suspend Standing Order 61 and reconvene at 1.30 p.m.

Resumption of Meeting

The meeting resumed at 1.30 p.m

PRESENT

Councillors A Wright (Joint Chair : Planning & Environment), Councillors J Russell (Joint Chair : Transportation & Direct Services), J Divers, G Leadbitter, M McConachie, G McDonald, A McKay, F Murdoch, I Ogilvie, P Paul and R Shepherd.

ALSO PRESENT IN RESPECT OF ITEM 4

Councillor D Stewart.

APOLOGIES

Apologies for absence were intimated on behalf of A Bisset, J Hamilton, G McIntyre and I Young.

ALSO PRESENT BY INVITATION**IN RESPECT OF ITEM 4**

The applicants Tulloch of Cummington Ltd were represented by Mr J Tulloch (Snr) and Mr J Tulloch (Jnr).

Also present were Mrs P Murphy, Ms J Ralph and Mrs T Smith, objectors to the application.

IN RESPECT OF ITEM 5

The applicant's agent Mr F Littlejohn, Montagu Evans.

Also present was Mr R Robertson, objector to the application, and his Agent, B Muir, Muir Smith Evans, Planning Consultants.

IN ATTENDANCE

The Director of Environmental Services (in respect of Item 5), The Head of Development Services, The Development Control Manager, J Martin, Principal Planning Officer (Development Control [Planning]), T Simpson, Engineer (Development Control [Roads]) & R Gerring, Engineer (Transport Development) in respect of Item 5, the Principal Solicitor (Commercial and Conveyancing) and the Senior Committee Services Officer, Clerk to the Meeting.

4. PUBLIC HEARING RE. PLANNING APPLICATION 05/01755/FUL : ERECT DWELLINGHOUSES, PROVISION OF SOCIAL HOUSING AND CONSTRUCT ROADS AT INCHBROOM ROAD, INCHBROOM AVENUE, LOSSIEMOUTH FOR TULLOCH OF CUMMINGSTON

Under reference to Paragraph 3 of the Minute of the Committee dated 17 April 2007 there were submitted reports by the Chief Legal Officer and the Director of Environmental Services regarding an application to erect dwellinghouses, provision of social housing and construct roads at Inchbroom Road, Lossiemouth for Tulloch of Cummington.

The report by the Chief Legal Officer advised that, at the meeting of this Committee held on 17 April 2007, it was agreed that the application be referred direct to a Hearing on a date to be determined following the local government elections on 3 May 2007 to which the applicant and the objectors be invited to attend and be afforded the opportunity of being heard. The report also set out the proposed procedures for the Hearing and advised that members of the Committee visited the site of the application on Monday 8 October 2007.

The report by the Director of Environmental Services (Appendix 1 to the report) gave details of the application and the consultations, which had been undertaken regarding it and the relevant planning criteria in terms of the Moray Development Plan. The report also recommended that the Director of Environmental Services be granted delegated powers to approve the application, as an acceptable departure, subject to the submission of a woodland management plan for the agreement of the council, in consultation with Scottish Natural Heritage and conditions detailed in the report.

The Chairman welcomed those present to the meeting and reminded them that the Special Meeting had been arranged to allow those submitting representations on the application to speak to their representations and the applicant to be heard before the Committee reached its decision on the application. He also advised those present that submissions must be restricted to those already submitted and that the Hearing would be confined to examining the planning merits of the application and therefore discussion on irrelevant non-planning related issues would not be considered.

The meeting noted that the applicants were present and that Mr J Tulloch (Jnr) would be speaking on behalf of the applicant.

The Clerk to the Committee advised the meeting that of those who had submitted representations on the application, referred to in the report on the application, Mrs P Murphy, Ms J Ralph and Mrs T Smith were present and would be speaking to their objections. Mr A Edwards, Mr G Marshall, Mr K Munro, Mr & Mrs J Stewart and Mr A Wood had intimated that they were unable to attend and had submitted statements and would be referred to at the appropriate juncture in the proceedings. The others having either declined the invitation or did not respond.

REPRESENTATIONS ON BEHALF OF THE APPLICANT

Mr J Tulloch (Jnr) addressed the meeting on behalf of the applicant Tulloch of Cummington Ltd. He advised the meeting that the proposed site extends to an area of 17 acres of woodland on the south eastern outskirts of Lossiemouth with defined boundaries of Inchbroom Avenue and the existing Local Authority housing to the north, Inchbroom Road to the south and the disused railway line to the east.

The current planning application is for a low density development of 64 buildings, a mixture of bungalows, houses, apartments and affordable homes retaining around a third of the total site area as a belt of existing woodland around the north, east and southern site boundaries together with designated open spaces and garden areas within the site. These proposals will result in a very low density of under four buildings to the acre by comparison to the current modern developments in Elgin and Forres areas, which are producing around eleven units to the acre and Hopeman and Burghead eight units to the acre. Mr Tulloch Jnr referred to the historical residential designation of Site R5 which was incorporated into the final adopted plan and subsequently the Moray Local Plan 2000 and Moray Structure Plan and more recently into the current draft Moray Local Plan finalised version 2006. The suggested tree belt along Inchbroom Road varies in depth to form a more irregular natural line which averages 25 metres deep. The meeting noted that there is also a further 50 metre continuation of woodland on the southern side of Inchbroom Road adding additional screening to the development from incoming traffic to Lossiemouth. A further 10 metre tree belts have also been retained to the north and east boundary of the site, which were not a requirement of the local plan.

In regard to the planning application Mr Tulloch Jnr advised the meeting that an initial planning application for eight houses on Inchbroom Avenue was submitted and refused in November 2003 on the advice of Planning Officers on the grounds that a comprehensive application for the whole development site was required. A subsequent application was submitted in August 2005 for the development of the complete R5 area to include the erection of dwelling houses, provision of social housing and roads infrastructure. This application was resubmitted in October 2006 to include the construction of a new roundabout and link road on A941 and whilst concerns were raised by the Planning Officer with regard to the density of the housing on the site agreement was reached on a satisfactory reduced number of units and a final revised layout was submitted in August 2007. He also advised that during consideration of the application discussions with the Council's Roads Section highlighted concerns in regard to the existing Inchbroom Road/A941 junction, which was considered sub-standard and that junction improvements may be required to accommodate the additional traffic from the development of Site R5 and a traffic impact assessment was suggested. The applicants subsequently put forward proposals to form a new roundabout and link road and have secured the option on additional land to enable this to proceed. These proposals will remove all incoming B9013 traffic to Lossiemouth from the existing Inchbroom Road junction improving road safety and the amenity of the surrounding properties.

A full ecological survey was also carried out and a report submitted to the Planning Section in January 2000. He also advised that following concerns by local residents a further squirrel survey was also carried out, in consultation with Scottish Natural Heritage (SNH), and only one squirrel dray was found, located in the tree belt to be retained along Inchbroom Road. Mr Tulloch Jnr also advised that due to the development's close proximity to the former landfill site a full contamination survey was carried out with regular monitoring of gas levels over a period of seven months and a report submitted to the Council's Contaminated Land Team has resolved any outstanding issues of concern.

In conclusion Mr Tulloch Jnr was of the view that Site R5 Inchbroom Road has been zoned for residential development for over 10 years and the proposals set out in the amended application will provide a mix of quality new homes to satisfy an ever increasing demand for private housing in Lossiemouth whilst also providing much needed additional affordable homes. The proposed new

roundabout will slow down incoming traffic to Lossiemouth, improve road safety in general and remove the majority of vehicles from an otherwise unsatisfactory main road junction. A substantial amount of existing woodland will be retained to the benefit of amenity for new and existing homeowners. All concerns regarding contamination, environmental and ecological matters have been addressed by the applicants and Mr Tulloch, Jnr requested that the application be approved as recommended.

In response to a question from Councillor Stewart in regard to consideration being given to further reducing the proposed density to 60, as set out in the Development Plan, Mr Tulloch, Jnr advised the meeting that whilst the original proposals for 100 units was optimistic they were of the view that given a site extending to 17 acres the original designation for 60 units was on the low side given current densities elsewhere in Moray and the demand for housing in Lossiemouth. He was also of the opinion that were consent only granted for 60 additional land designated for housing would require to be released to meet the demand.

There were no other questions on Mr Tulloch, Jnr's presentation.

Prior to hearing the objectors presentations, the Development Control Manager advised the meeting that in the event of the committee being minded to approve the application he recommended an additional Condition 26 to the effect 'That no development shall commence on site until such time as details of the affordable housing element of the scheme have been submitted and agreed in writing by this Council as Planning Authority'.

REPRESENTATIONS TO THE APPLICATION

Mrs P Murhpy addressed the meeting on her representations on the application. The meeting noted that having listened to Mr Tulloch Jnr's presentation Mrs Murphy still wished to object to the proposed development on the grounds set out in her letter of objection on the grounds of loss of amenity, increased noise pollution and the proposed density of the development. She also expressed her concerns in regard to the effect that the destruction of the woodland area will have on the local wildlife population and the potential implications for road safety in the area through increased traffic. Mrs Murphy was also concerned in regard to road and site safety in respect of the dumping of building materials on the site, which she understood, from the applicant, would continue for several years.

There were no questions from Members on Mrs Murphy's presentation.

Ms J Ralph addressed the meeting on her family's representations on the application. She advised the meeting that on viewing the proposals for the first time her family were in a state of shock and disbelief as to the sheer magnitude of the proposed development and proceeded to detail her family's concerns in regard to the proposed layout, scale and overall suitability of developing on the site in question.

Ms Ralph expressed the view that approval of the application would destroy the pine woodland surrounding their property leaving them in the middle of a building site for several years with the accompanying loss of amenity and noise and dust pollution. She also expressed the view that the loss of quality of life of adjoining residents was low down the list of developer considerations and as well as the huge negative impact the proposed development will have on the adjoining properties the resident red squirrel population will be wiped out. She took issue with the outcome of the two ecological impact assessments carried out in regard to the squirrel population and circulated a number of photographs in support of her views. In this regard she also reminded Members that red squirrels are protected under the Wildlife & Countryside Act and through the International Bern Convention and that the Scottish Wildlife Trust advise that 'any woodland which is home to red squirrels should be protected. At present there is growing momentum to protect red squirrels in Scotland, and any development proposal that would threaten them would seem to be something that the Local Authority should already have dismissed out of hand'.

Ms Ralph then made reference to the applicant's assertion, within the planning officer's report, that objectors should have raised objections to the site designation at the Local Plan review prior to its inclusion in the Development Plan 2000. She reminded the meeting that the designation referred to 60 units and not the original 101 units, amended to 96 and then the current 79 which is a departure from policy by a massive 19 units.

She referred to the requirement, due to site drainage constraints, to install another sewage pumping station in the area and, given the existing complaints regarding obnoxious emissions from the existing sewer pump station located at the entrance to the old Elgin/Lossiemouth railway line, less than 500m from their property, questioned the suitability of the site for such dense housing.

She then referred to specific plots within the proposed development and was of the view that the siting of Plot 45 was, given its close proximity to their property, in contravention of policy L/IMP3, Section i), d) in terms of layout and orientation in relation to character, amenity and privacy of neighbouring properties. If approved this would, in her opinion, present future problems in regard to maintaining the leylandii hedging bordering their property. In this regard she referred to the unfair statement in the Planning Officer's report which placed the onus on them to negotiate with the future owners of the adjoining plot in regard to maintenance access. Plot 60 also raised the same issues and Ms Ralph was of the view that it should be a matter for the Developer to ensure that a maintenance access strip was left around their property. In support of her view Ms Ralph pointed out that the ecological assessment stated that 'the trees and shrubs around Treetops will be left intact to screen the house from the development' and concluded that 'the area around Treetops was used by several bird species and therefore trees and shrubs should not be removed from this area'. She was also of the view that if Plot 45 were to be granted it would also be in conflict with the advice of SNH in regard to the felling of mature conifers in this specific area. She also referred to the siting of Plot 54 which would be located next to their septic tank and soakaway which will eventually cause problems and friction at a future date.

Ms Ralph also had road safety concerns in regard to the B9013, which, in her opinion, had become an increasingly busy and dangerous route which will be exacerbated by the increase in the level of traffic 79 additional houses will bring. For these reasons Ms Ralph urged the Committee to refuse the application.

There were no questions from Members on Ms Ralph's presentation.

Mrs T Smith supported the views expressed by Ms Ralph in regard to the effect on wildlife in the area and expressed her concerns in regard to the proposed siting for the sewage pump, recycling centre and play area which, in her opinion, should be sited within the development and not adjacent to the existing housing estate at Inchbroom Avenue/Woodland Walk. She was also concerned in regard to the effect the proposed development will have on her quality of life.

There were no questions from Members on Mrs Smith's presentation

Thereafter the Clerk and the Principal Solicitor (Commercial & Conveyancing) read out a number of statements from those who had submitted representations on the application and were unable to attend the Hearing.

Mr A Edwards wished to continue his objections to the proposed amended layout and in particular to those relating to the proposed siting for the sewage pump, recycling centre and play area which, in his opinion, should not impact on the quality of life currently enjoyed by local residents who will not benefit from the provision of these services. He was of the view that these services should be sited in the midst of those residencies they are designed to serve.

Mr & Mrs Stewart were concerned in regard to the number of trees to be felled, the effect this will have on the local wildlife and on the aesthetic amenity of the woodland. They also expressed concerns in regard to the increase in noise pollution, which will be caused by additional traffic and the nuisance to householders in close proximity to the roundabout.

Mr Munro was of the view that it was important, in terms of Policy ENV6 Inchbroom Road, for the approach to Lossiemouth to retain a belt of trees on either side of Inchbroom Avenue. He also referred to the requirements of Policy R5 Inchbroom and was of the view that the south end of the site should be low density and that one access road is enough, subject to Inchbroom Road being widened to 5.5m for the midway site access point, westwards with one footway. He was also of the view that the proposed new road would be a charter for speeders approaching the roundabout on the A941 from the B9013. Mr Munro was also concerned in regard the effect the proposed development would have on the wild life in the area. He was of the view that if a new roundabout is to proceed on the A941 approach to Lossiemouth, wildlife corridors between the wetland areas of Sunbank Quarry and the old landfill site should be included as part of the design to allow free movement.

The meeting noted that **Mr G Marshall** was concerned in regard to the effect the proposed development would have on the diversity and strength of the wildlife present in this particular area of woodland.

Mr Wood expressed his concerns in regard to what he considered the unlawful use of the site as a building materials landfill site by not only the applicant but also other contractors. This practice was being carried out without any signs warning of the dangers of heavy vehicles operating in a residential area and was also of the view that clearing up the subsequent mudbath, during periods of rain, on the roadway and footpaths should be the responsibility of the Applicant.

In his statement **Mr G Erskine** urged the Committee to approve the application, subject to a condition to the effect that the proposed new road and roundabout must be completed prior to any building construction taking place. By doing so this would be of major benefit to those living locally, causing less inconvenience during the building construction and improving road safety in an area particularly for those with young children.

COMMENTS OF DEVELOPMENT CONTROL MANAGER ON REPRESENTATIONS

Prior to hearing the summaries of submissions the Development Control Manager advised the meeting on a number of issues in regard to the submissions from objectors. The meeting noted that whilst he was unable to give a specific time for the provision of the proposed new roundabout the matter was covered in the proposed Conditions 3, 4 & 5, which required the completion of the roundabout prior to the occupation of the 30th residential unit. The concerns regarding wildlife were noted and would be dealt with as part of the Woodland Management Plan to be submitted and approved, in consultation with SNH. The plans submitted indicated the retention of some trees around Treetops in order to protect the amenity of the property and that plots 45, 54 and 60 were some 25m from Treetops. Agreement with Scottish Water will be required in regard to the provision of the sewage pumping station, prior to the commencement of the development, as detailed in Condition 21. The location of the recycling centre will be 35m from the nearest adjoining property and the play area 30m from the nearest property.

The meeting also noted that in regard to the objection from the Council's Head of Estates this related to a small area of ground within the Council's ownership, which is no longer part of the proposed development site and is to be retained in trees.

SUMMARIES OF SUBMISSIONS

The Chairman then invited the applicants, Mrs Murphy, Ms Ralph and Mrs Smith to summarise their respective submissions. On the conclusion of their summaries and on the invitation of the Chairman all intimated that they were satisfied with the conduct of the proceedings of the Hearing.

COMMITTEE CONSIDERATION OF THE APPLICATION

The Development Control Manager advised the meeting that the cost of the provision of a new roundabout will be met by the applicant and that Scottish Water will be the responsible for the sewage pumping station. Thereafter, Officials responded to Members' questions. Whilst noting that the substantial reduction in the overall number of units now proposed (101 down to 79) is considered an acceptable departure concerns were expressed in regard to the possibility of setting a dangerous precedent given that approval of 79 units represented a one third increase on the site designation. In regard to Condition 5, relating to the provision of a roundabout, it was noted that, in road safety terms, it was the view of officers that whilst the existing roads infrastructure can accommodate an additional amount of traffic without the need for improvements, it is estimated that by the occupation of the 30th house improvements will require to be in place.

Following consideration Councillor Wright, seconded by Councillor Shepherd, moved approval of the application as an acceptable departure, subject to the conditions detailed in the report and that the proposed Woodland Management Plan includes the retention of 5 acres of trees.

As an amendment Councillor G McDonald, seconded by Councillor Paul, moved refusal of the application on the grounds that the proposed development was in breach of the Local Plan designation for Site R5 Inchbroom Road, Lossiemouth.

On a division there voted:-

For the Motion (4) Councillors Divers, Russell, Shepherd, Wright,

For the Amendment (5) Councillors Leadbitter, McConachie, G McDonald, Ogilvie and Paul.

Abstentions (2) Councillors A McKay and Murdoch.

5. PUBLIC HEARING RE. PLANNING APPLICATIONS 06/02603/FUL & 06/026176/FUL : ERECTION OF OPEN CLASS 1 NON-FOOD EXTENSION TO EXISTING RETAIL PARK AT SPRINGFIELD RETAIL PARK EDGAR ROAD ELGIN MORAY FOR THE BRITISH LAND COMPANY PLC

Under reference to Paragraph 7 (f) of the Minute of the Committee dated 10 October 2007 there were submitted reports by the Chief Legal Officer and the Director of Environmental Services regarding applications 06/02603/FUL and 06/026176/FUL in regard to the erection of open Class 1 non-food extensions to an existing retail park at Springfield Retail Park, Edgar Road, Elgin for the British Land Company.

The report by the Chief Legal Officer advised that, at the meeting of this Committee held on 10 October 2007, it was agreed that the Committee was 'Minded to Approve' the applications as departures from policy, subject to referral to a Hearing. The report also set out the proposed procedures for the Hearing and advised that members of the Committee visited the site of the application on Monday 8 October 2007.

The reports by the Director of Environmental Services (Appendix 2 to the report) gave details of the applications and the consultations, which had been undertaken regarding them and the relevant planning criteria in terms of the Moray Development Plan. The reports also recommended that the applications be approved as acceptable departures, subject to the satisfactory completion of the revocation procedure with regard to previous permission reference 04/01771/FUL for the erection of a restaurant and conditions detailed in the report.

The Chairman welcomed those present to the meeting and reminded them that the Special Meeting had been arranged to allow those submitting representations on the application to speak to their representations and the applicant to be heard before the Committee reached its decision on the application. He also advised those present that submissions must be restricted to those already submitted and that the Hearing would be confined to examining the planning merits of the application and therefore discussion on irrelevant non-planning related issues would not be considered.

On the invitation of the Chairman, J Martin, Principal Planning Officer, advised the meeting that one of the applications was for an extension to the existing middle unit infilling a small gap between the units currently occupied by Textile World and Currys. The second application was for an entirely new unit to be located between Au Natural and Homebase. The units would be finished to match the existing units, including the recently approved changes to the frontage. There were no objections from SEPA and flooding was not an issue. He also advised that whilst there had been concerns regarding the reduction of available car parking provision the applicant had agreed to the revocation of an existing consent for a restaurant in the vicinity of the units thus freeing up car parking spaces to meet these concerns. Whilst the applications had attracted a representation, on the grounds that the objector was of the opinion that approval of the applications would lead to an over provision of Class 1 Non-Food in the Springfield area, the Planning Department was of the view that the departure was minor and was recommending approval of the applications as acceptable departures subject to the satisfactory completion of the revocation procedure with regard to previous permission reference 04/01771/FUL for the erection of a restaurant, conditions detailed in the report and two additional conditions requiring the submission, prior to the commencement of trading on site, of a Travel Plan, the provision of a new bus layby and bus shelter and improved pedestrian and public transport access.

The meeting noted that the applicant was represented by Mr F Littlejohn, Planning Consultant, Montagu Evans and the objector, Robertson Property Limited, by Mr B Muir of Muir, Smith, Evans.

Thereafter the Chairman outlined the procedure to be followed for the Hearing, which was accepted by Mr Littlejohn and Mr Muir.

REPRESENTATIONS ON BEHALF OF THE APPLICANT

Mr Littlejohn addressed the meeting on behalf of the applicant, The British Land Company Plc. He referred to the two applications, which will provide additional retail floor space of 324m² and 980m², respectively, which will consolidate the existing retail provision at Springfield Retail Park and accommodate retailers who cannot readily trade from the town centre. He also advised the meeting that agents, acting on behalf of his client, advise that there continues to be strong demand from interested parties for retail floor space in Elgin, a view which is accepted by the Council's planning Officials. He then referred to the Planning Officer's report, the terms of which have been accepted by his client, and in particular to the representations from Robertson Property Limited. Although his client did not formally respond to the terms of the objection Mr Littlejohn advised the meeting that the context of that objection mainly related to a previous application for a relaxation allowing for a wider range of goods to be sold from the central units. The meeting noted that this approval was subsequently challenged at a judicial review and dismissed. Whilst the current applications are considered as departures from policy in respect of Edgar Road Retail Policy Mr Littlejohn indicated that he was in agreement with the Planning Officer's analysis of the proposals which, on balance, do not represent a significant departure from policy. He also referred to the statement from the objector that they considered it reasonable to invoke the convention that no further planning permissions should be granted for open Class 1 non-food retail floorspace until the existing permissions in the area have been implemented and a reasonable time has elapsed in order to assess the affect on the town centre.

Mr Littlejohn advised the meeting that no such convention exists and in support of the application a retail statement and addendum were submitted, both in terms of isolation and cumulatively and on assessment, the Council's Planning Officers have accepted that the proposed development would not adversely impact on the vitality and viability of the town centre. He did not accept the assertion that the proposal represents a significant increase to the Springfield Retail Park and was of the view that, in context, it was a relatively modest extension to the Retail Park. He also noted that although the objector had reserved the right to make further submissions and objections once they had the opportunity to review the supporting statement on retail and planning issues, a supporting Transport Assessment and technical documents on flooding, nothing further had been submitted.

In conclusion Mr Littlejohn expressed the view that, in his opinion, the applications represented a modest extension to Springfield Retail Park and will consolidate retail provision at the Park, it would not adversely impact on the vitality and viability of the town centre and urged the Committee to approve the application, as recommended.

There were no questions from Members.

REPRESENTATIONS TO THE APPLICATION

Mr Muir addressed the meeting on the objections from Robertson Property Limited. He referred the Committee to the decision taken by the Council last year when it decided to remove the bulky goods restriction from a significant amount of retail floor space at Springfield Retail Park, which was, in his opinion, in direct contradiction of the evidence provided by Council Officials at a Public Inquiry in 2004 and a reasonable interpretation of the Local Plan. He expressed the view that as mezzanine floors can be installed within the units, without planning consent, the approval of the consent granted effectively doubled the size of these units and the way they can trade. In regard to the dismissal of the legal challenge to the decision Mr. Muir advised the meeting that this was due to a legal point as his client had not lodged an objection at the time and that the decision made no comment on the merits of the case which did not go one way or another on the veracity of the challenge.

Mr. Muir also expressed the view that the applications were at odds with any reasonable interpretation of the Local Plan and was of the opinion, that the report was incomplete and misleading in that it masked the actual floor space to be provided. Taking the previous consent and that for the applications under consideration, if approved, this could create a fashion, footwear and clothing retail floor space of 74,000m² which did not exist a year ago. This was, in his opinion, a scenario which the Council was trying to avoid as the Development Plan advocated the development of retail floor space in Elgin on a phased basis. He then referred Members to the Planning Officer's report which, on page 95, made reference to the proposals not being considered as a departure, as they are extensions and not new build whereas the Planning Officer had earlier referred to two applications, one for an extension and one for an entirely new unit. Page 96 of the report refers to, on balance, the proposals

did not represent a significant departure and the recommendation intimating that the proposals were departures from the Development Plan. Whilst his client agreed that the proposals represented departures from policy the report was, in his opinion, misleading and inconsistent.

In his opinion approval of these applications would be a step to far in the development of retail floor space in Elgin and whilst accepting that over the next ten years there will be a need for an increase in retail floor space in the town centre and elsewhere in order to stem the leakage to Inverness and Aberdeen this requires to be undertaken on a phased basis, as per the Local Plan. In conclusion Mr Muir reiterated his opinion that the reports on the applications were incomplete and misleading and on behalf of his client, Robertson Property Limited requested that the Committee refuse both applications. In the event of the Committee approving the applications he requested that consideration be given to restricting the additional floor space provided to bulky goods and that the applicant be requested to make a financial contribution to the local transport infrastructure, which would be in keeping with applications of this nature.

There were no questions from Members

SUMMARIES OF SUBMISSIONS

The Chairman then invited Mr. Littlejohn and Mr. Muir to summarise their respective submissions. On the conclusion of their summaries and in response to a question from the Chair, they intimated that they were satisfied with the conduct of the proceedings of the hearing.

COMMITTEE CONSIDERATION OF THE APPLICATION

The Development Control Manager confirmed that the introduction of mezzanine floors within the units would be considered as permitted development and apologised for the error on page 95 of the Planning Officer's report which indicated that the proposals were considered as a departure when it should have indicated that the proposals were considered to be acceptable departures. The Committee also noted the concerns expressed by Councillor Divers in that whilst both SEPA and the Council's Flood Alleviation Team had no objections to the applications or comments on drainage or flood risk local knowledge indicates that there have been instances of flooding to the rear of the units and on Edgar Road.

Following consideration, Councillor Wright, seconded by Councillor Shepherd, moved approval of the applications as acceptable departures, subject to the satisfactory completion of the revocation procedure with regard to previous permission reference 04/01771/FUL for the erection of a restaurant, conditions detailed in the report and the two additional conditions requiring the submission, prior to the commencement of trading on site, of a travel Plan, the provision of a new bus layby and bus shelter and improved pedestrian and public transport access.

As an amendment, Councillor Russell moved refusal on the grounds that the proposed developments were departures from policy.

The Principal Solicitor (Commercial & Conveyancing) advised the meeting that she did not consider the proposed amendment valid on the grounds that unlike the two earlier Hearings, the applications were refused on planning grounds and not just because they were departures from the Development Plan. She also advised that planning guidance does allow for departures from policy where it can be demonstrated that there are material considerations to justify doing so. The Director of Environmental Services also advised the meeting that in light of the findings of Reporters at various Public Inquiries, he considered that it would be difficult, in this instance, to defend a refusal on appeal.

Thereafter Councillor Russell, seconded by Councillor Divers, moved refusal of the applications on the grounds that, in his opinion, there is already an excess of retail capacity of this type in this particular area of Elgin and approval of these applications would be detrimental to the Council's ambitions for the development of the High Street.

On a division there voted:-

For the Motion (8) Councillors McConachie, G McDonald, A McKay, Murdoch, Ogilvie, Paul, Shepherd and Wright.

For the Amendment (3) Councillors Divers, Leadbitter and Russell.

Abstentions (0)

Accordingly the Motion became the finding of the meeting and it was agreed that the applications be approved as acceptable departures, subject to the satisfactory completion of the revocation procedure with regard to previous permission reference 04/01771/FUL for the erection of a restaurant and the following conditions:-

1. The development to which this permission relates must be begun not later than the expiration of five years beginning with the date on which this permission is granted.
2. Unless otherwise agreed with the Council, as Planning Authority, the development hereby approved shall be carried out strictly in accordance with the approved plans and conditions.
3. That prior to the commencement of trading on site, a travel Plan shall be submitted for the approval in writing of The Moray Council as Planning Authority. The travel Plan must cover pedestrian and cyclist access, access to public transport services, parking management, travel option awareness initiatives, management of deliveries and any home delivery service, monitoring regime and reports. The Travel Plan must take account of any measures introduced through the planning process and the monitoring period must be a minimum of 3 years from the commencement of trading.
4. That prior to the commencement of trading on site, a new bus layby and bus shelter (as shown on drawing SK070709-01) must be provided. Pedestrian access must be improved through the new footpaths shown on the approved plans, and in addition a gated access at the south-east corner of the site shall be provided that will enable (controlled) pedestrian access from the south.

Reasons:

1. 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.
2. In order to ensure that there are no unauthorised departures from the approved plans, which could adversely affect the development or character and amenity of the surrounding properties and area.
3. In the interests of sustainable development, reducing vehicular trips and traffic impact.
4. As agreed with the applicant's agent and in the interests of pedestrian and public transport access and traffic management.