

REPORT OF HANDLING

Ref No:	11/01521/APP	Officer:	Stuart Morrison
Proposal Description/ Address	Change of use of part of garden to use for burger van business at 32 Burnbank Fochabers Moray IV32 7EQ		
Date:	23.12.2011	Typist Initials:	JC

RECOMMENDATION

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

CONSULTATIONS

Consultee	Date Returned	Summary of Response
Transportation Manager	21/11/11	No objections. Conditions recommended.
Scottish Environment Protection Agency	18/11/11	No objections. Note to applicant.
Environmental Health Manager	05/12/11	No objections. Conditions recommended.
Contaminated Land	10/11/11	No objections. Informative recommended.

DEVELOPMENT PLAN POLICY

Policies	Dep	Any Comments (or refer to Observations below)
EP8: Pollution	N	
Whole of Policy 1	N	
Whole of Policy 2	N	
R4: Neighbourhood and Local Shops	N	
T2: Provision of Road Access	N	
T5: Parking Standards	N	
EP7: Control of Dev in Flood Risk Areas	N	
EP9: Contaminated Land	N	
EP10: Foul Drainage	N	
IMP1: Development Requirements	Y	

REPRESENTATIONS

Representations Received

YES

Total number of representations received

12 representations, including 5 in support and 6 in objection. Also one objection from Lennox Community Council.

Names/Addresses of parties submitting representations

Name	Address
Mrs Joanne Swift	12 Spey Crescent Fochabers Moray IV32 7QN
Ms K Finnie	13 Gordon Crescent Portsoy AB45 2QA
Mr Raymond Campbell	107 Milton Drive Buckie AB56 1NZ
Miss Sarah Allen	Westermillbank 8 Uppermill Street Blairgowrie PH10 6AG
Miss Laura Rogers	3 Westerton Place Aberdeen AB16 7LP
Mary Campbell	29 Burnbank Fochabers Moray IV32 7EQ
Mr Alexander Innes	30 Burnbank Fochabers Moray IV32 7EQ
Mrs Angela Stevenson	31 Burnbank Fochabers Moray IV32 7EQ
Scarlett Courtney	
Mr Stephen M Ryan	2 Spey Road Fochabers Moray IV32 7QP
Lennox Community Council	Per Mr Arthur Fearnley Secretary 18 The Muir Bogmoor Fochabers
Mr William Reid	Greenacres Oldmills Fochabers Moray IV32 7HH

Summary and Assessment of main issues raised by representations

OBSERVATIONS – ASSESSMENT OF PROPOSAL

Site Characteristics;

The application site forms part of the side garden (currently surfaced with gravel) of dwelling within a residential area in the north east of Fochabers which is occupied by the applicant. The dwelling is at the end of a row of terraced houses. The snack bar is ~~currently operating from the street~~ and is clearly visible due to its prominent position at the front of the property which is open to public views from the footpath and the road. The front garden is bounded by a 1 metre high stone wall and the rear garden is defined by wooden paling fencing, neither of which encloses the mobile catering unit. The dwelling has an existing driveway and off- road parking for several vehicles.

This portion of the garden has been reinstated recently following damage caused by a flooding event, along with the reconstruction of the bridge. This aspect will be addressed in the main body of the report.

Proposal;

This is a retrospective application which seeks Planning Permission for the siting of a mobile snack bar within the curtilage of a residential property occupied by the applicant. The mobile snack bar measures 1.8 metres by 4.2 metres and is approximately 2.5 metres high. The unit is located within 20 metres of 25 Burnbank (across the road) and is roughly 10 metres away from the adjoining residential property to the north. The snack bar serves both hot and cold food and is open from 11am until 2.00 pm (Monday to Friday). There is no upgrade to the existing access proposed in this application, but there is parking provision for two cars associated with the business as well as 2 parking spaces allocated to the residential property. A connection to the public water supply is proposed.

A similar application to this was refused consent under reference 11/00497/APP on the 29th of June 2011 for reasons of incompatibility with the residential area based on amenity and appearance. The reasons for refusal also included loss of amenity based on the fact that the van could not make adequate provision for the effective treatment or mitigation against the ventilation and discharge of cooking smells and odours. The Transportation Section also recommended refusal on the basis of insufficient parking provision which would place an additional pressure on parking provision in an area where parking provision is already constrained and this would be detrimental to highway safety. This application is an attempt by the operators of the burger van to address these reasons for refusal, and to accord with IMP1, T2, T5 and EP8.

Analysis;

The main considerations in the assessment of this revised application are IMP1 Development Requirements, T2 Provision of Access and T5 Parking Standards.

In terms of visual and character impact (IMP1) – there has been no change in the type of mobile catering unit proposed in this revised application. However, the unit is now proposed further away from the residential dwelling, adjacent to the existing garden wall which forms the southern boundary of the property at 32 Burnbank. Despite this however, in terms of visual impact, the mobile catering unit remains out of character with its immediate surroundings and the surrounding neighbourhood. As a result, this proposal cannot, in terms of visual or character impact, be seen to accord with provisions (a) or (b) of IMP1.

Residential amenity (IMP1) - The permanent location of this unit in this location is fundamentally alien to its residential surroundings. Although the unit is proposed in a different part of the curtilage of the host property, it is neither sensitively sited nor appropriate to the amenity, appearance and character of its surroundings mainly because of the nature of both vehicular and pedestrian movements associated with the use (including large groups of customers congregating at the site). **There can be no effective planning control placed on these potential impacts, so any detrimental impact upon the amenity of the adjoining occupiers and surrounding area.**

In addition, and in relation to the effective provision to mitigate against the ventilation and discharge of cooking smells and odours, a ventilation/ extraction unit has been installed in the mobile catering unit. This has led to the **Environmental Health Section** stating the van can now demonstrate that its use as a snack bar would not cause an unacceptable discharge of smells and odours. **The proposal can now be considered to accord with EP8.**

Access/ Parking (MLP policies T2 & T5) – The Transportation Engineer has assessed the proposal in terms of road safety and transportation standards and has raised **no objection to the proposal subject** to conditions covering provision of satisfactory parking provision.

OTHER MATERIAL CONSIDERATIONS TAKEN INTO ACCOUNT

HISTORY			
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Reference No.	Description		
11/00497/APP	Change of use of part of garden to use for burger van business at 32 Burnbank Fochabers Moray IV32 7EQ		
	Decision	Refuse	Date Of Decision 29/06/11

ADVERT		
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Advert Fee paid?	Yes	
Local Newspaper	Reason for Advert	Date of expiry
Northern Scot	Development specified in Schedule 3	08/12/11
Northern Scot	No Premises	08/12/11
Northern Scot	Departure from development plan	08/12/11
PINS	No PremisesDevelopment specified in Schedule 3Departure from development plan	08/12/11

DEVELOPER CONTRIBUTIONS (PGU)	
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Status	
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DOCUMENTS, ASSESSMENTS etc. *

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

Supporting information submitted with application?

YES

Summary of main issues raised in each statement/assessment/report

Document Name: **Supporting letter dated the 15th of August 2011 and subsequent letters in December**

The applicant has submitted various letters in support of the development. Beyond the points summarised below all communication have been read and taken into consideration prior to making a decision.

Main Issues:

Safety- the proposed location of the mobile catering unit is far less conspicuous than before and it safer for customers than if the unit is located at the road side because the customers are currently off the road and pavement. **Because the applicant holds all the relevant licenses it would be possible to pull the unit onto the road to continue trading.** Reference is made to the unit in question and other traders that have been parking in the same place for several years. Where the applicant's unit is situated there is no obstruction either to the roadway or the footpath and this is considered to be a much safer location than being on the road.

Officer comment:-The Transportation Manager has assessed this proposal and deemed the proposal acceptable in terms of road safety, parking provision and access.

Trading hours- the trading hours of this unit are listed in the supporting statement as 9.30am until 2.00pm, Monday to Friday. This section also asks for a reason as to the premise for the previous officers report stating that the units opening hours 'did not outweigh other considerations about the proposal'.

Officer Comment: - The hours of use could be the subject of a planning condition in the event that the unit was approved. The 'other considerations' to which the applicant makes reference are again listed in detail in the body of the handling report.

Precedent- There are examples of vendor vans parked on gardens and driveways throughout Moray.

Officer comment: - this application will be considered on its individual merits.

Environmental Concerns- The Environmental Heath Section have recommended that the issue of litter can be addressed through other legislation. The applicant is willing to apply for trade waste disposal arrangements.

Officer comment: - litter is inevitably going to be a consequence of such an operation. It has been noted that the applicant makes every attempt to address this issue; however this is not what is being assessed in the planning application. This application will assess the suitability of development with such potential impacts in that location (see Observations).

General Amenity Issues.

Odour- There are no more smells than would be emitted from neighbouring properties when preparing food domestically. An improved roof ventilation system has been fitted to the catering unit.

Officer Comment: - The roof ventilation fitted to the van has been confirmed by Environmental Health as adequate for the effective treatment or mitigation against the ventilation and discharge of cooking smells and odours.

Noise- The proposed trading hours of 9am to 2pm will not have an adverse impact on the character of the residential street.

Officer Comment: - this aspect of the development will be addressed in detail in the observations section of the handling report.

Service- there are many walkers from the Speyside Way who stop and ask for refreshments. The catering unit provides a much needed service.

Officer comment: - This is not a planning matter.

Security- The applicants intend to fit CCTV to monitor site and littering. No unsavoury behaviour will be tolerated.

Visibility- The unit will be located at the gable of the house to mitigate against it being seen from neighbouring properties.

S.75 AGREEMENT

Application subject to S.75 Agreement

NO

Summary of terms of agreement:

Location where terms or summary of terms can be inspected:

DIRECTION(S) MADE BY SCOTTISH MINISTERS (under DMR2008 Regs)			
Section 30	Relating to EIA		NO
Section 31	Requiring planning authority to provide information and restrict grant of planning permission		NO
Section 32	Requiring planning authority to consider the imposition of planning conditions		NO
Summary of Direction(s)			