

MORAY COUNCIL

Minute of Meeting of the Moray Local Review Body

Thursday, 19 January 2023

Council Chambers, Council Office, High Street, Elgin, IV30 1BX

PRESENT

Councillor Neil Cameron, Councillor Amber Dunbar, Councillor Sandy Keith, Councillor Marc Macrae, Councillor Paul McBain, Councillor Derek Ross, Councillor Sonya Warren

APOLOGIES

Councillor Juli Harris

IN ATTENDANCE

Mr A Miller, Senior Planning Officer and Mrs L MacDonald, Senior Planning Officer as Planning Advisers, Mr S Hoath, Senior Solicitor and Mrs J Smith, Solicitor as Legal Advisers and Mrs L Rowan, Committee Services Officer as Clerk to the Meeting.

1 Chair

Councillor Macrae, being Chair of the Moray Local Review Body, chaired the meeting.

2 Declaration of Group Decisions and Members Interests

In terms of Standing Order 20 and the Councillor's Code of Conduct, 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 or any declarations of Members interests in respect of any item on the agenda.

3 Minute of Meeting dated 17 November 2022

The Minute of the meeting dated 17 November 2022 was submitted and approved.

4 Adjournment

The Chair sought the agreement of the Moray Local Review Body to adjourn the meeting for a short period to consider the procedure for the meeting. This was unanimously agreed.

5 LR282 - Ward 7 - Elgin City South

Planning Application 21/01686/APP - Change of use of former bakery to a takeaway restaurant at 212 High Street, Elgin, Moray, IV30 1BA

A request was submitted by the Applicant, seeking a review of the decision of the Appointed Officer, in terms of the Scheme of Delegation, to refuse planning permission on the grounds that:

The proposal is contrary to the Moray Local Development Plan (MLDP) 2020 because:

1. The lack of information in relation to the noise and odour impacts from the takeaway means it is not possible to assess or appropriately mitigate the impact of the proposed takeaway on the residential amenity on the existing and consented residential properties which are adjacent to or adjoin the site. The application therefore fails to demonstrate that it can be serviced or controlled in a way that is appropriate to the character of the site and its immediate residential surrounds. The proposal is therefore contrary to Policies DP7, DP1, EP14 and EP9.
2. The proposal would result in an increase in pedestrian and vehicular activity at a sensitive location, which cannot be safely accommodated or mitigated against, and would therefore be likely to give rise to conditions detrimental to the road safety of road users contrary to MLDP policies DP1 'Development Principles' section (ii)- 'Transportation', part 'a)' (safe entry and exit).

A Summary of Information Report set out the reasons for refusal, together with the documents considered or prepared by the Appointed Officer in respect of the planning application, in addition to the Notice of Review, Grounds for Review and supporting documents submitted by the Applicant.

In response to a question from the Chair as to whether the Legal or Planning Advisers had any preliminary matters to raise, the Planning Adviser advised that he had nothing to raise at this time.

Mr Hoath, Legal Adviser advised that, during the short adjournment, he had advised the Chair and Depute Chair that the Applicant had stated in his Notice of Review Application that he wished the Moray Local Review Body (MLRB) to consider information that was not before the Appointed Officer at the time the original application was considered. He advised that this further information was significant and may affect the outcome of the appeal. He further advised that, should the MLRB wish to consider this information, it should decide whether any further procedure should be applied such as whether the Appointed Officer and Interested Parties should be given the opportunity to consider and comment on the new information by way of written submissions and/or a hearing. Mr Hoath did however point out that the new information would not be able to be consulted on with the wider public at this stage. Mr Hoath concluded by advising that the MLRB may be of the view that there is sufficient information within the agenda to make a determination on the Planning Application without a further procedure and that if this was the case and the Planning Application was refused, the Applicant could submit a further Planning Application including the new information and that this would be free of charge were it submitted within one year of the MLRB's decision.

Councillor McBain, having considered the case in detail, was of the view that there was sufficient information within the agenda and moved that the MLRB proceed to determine the case as it is. This was seconded by the Chair.

Councillor Cameron was of the view that the MLRB should have the opportunity to consider the new information submitted by the Applicant, given that it was significant, and moved as an amendment, that the MLRB defer the case to allow the Appointed Officer and Interested Parties the opportunity to comment on the new information, by way of written submissions. This was seconded by Councillor Ross.

On a division there voted:

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| For the Motion (4): | Councillors McBain, Macrae, Dunbar and Keith |
| For the Amendment (3): | Councillors Cameron, Ross and Warren |
| Abstention (0): | Nil |

Accordingly, the Motion became the finding of the Meeting and the MLRB agreed to proceed to consider the case with the information before them.

Councillor Cameron, having visited the site and considered the case in detail, fully understood why the application had been refused given the further residential development in the area. He was of the view that the location of the proposal was wrong and moved that the MLRB refuse the appeal and uphold the original decision of the Appointed Officer to refuse Planning Application 21/01686/APP as the proposal fails to comply with policies DP7 (Retail/Town Centres), DP1 (Development Principles), EP14 (Pollution, Contamination and Hazards) and EP9 (Conservation Areas) of the MLDP 2020. This was seconded by Councillor Dunbar.

Councillor Keith, having visited the site and considered the case in detail, did not agree that there would be a significant increase in pedestrian and vehicular activity to the detriment of road safety and further noted that there is a public car park immediately adjacent to the location of the proposal. Councillor Keith further stated that, as it was unknown what type of take away food facility would be occupying the premises, there was no way of knowing whether there would be any noise or odour impacts. Councillor Keith therefore moved that the MLRB uphold the appeal and grant planning permission in respect of Planning Application 21/01686/APP as, in his opinion, the proposal is an acceptable departure from policies DP7 (Retail/Town Centres), DP1 (Development Principles), EP14 (Pollution, Contamination and Hazards) and EP9 (Conservation Areas) of the MLDP 2020. This was seconded by Councillor Ross.

On a division there voted:

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| For the Motion (4): | Councillors Cameron, Dunbar, Macrae and Warren |
| For the Amendment (3): | Councillors Keith, Ross and McBain |
| Abstention (0): | Nil |

Accordingly, the Motion became the finding of the Meeting and the MLRB agreed to refuse the appeal and uphold the original decision of the Appointed Officer to refuse Planning Application 21/01686/APP as the proposal fails to comply with policies DP7 (Retail/Town Centres), DP1 (Development Principles), EP14 (Pollution, Contamination and Hazards) and EP9 (Conservation Areas) of the MLDP 2020.

