



REPORT TO: MORAY LOCAL REVIEW BODY ON 17 NOVEMBER 2022

SUBJECT: NOTICE OF REVIEW – PLANNING APPLICATION 22/00400/APP

BY: DEPUTE CHIEF EXECUTIVE (ECONOMY, ENVIRONMENT AND FINANCE)

1. REASON FOR REPORT

- 1.1 To seek clarification from the Moray Local Review Body (MLRB) in relation to a decision taken regarding a Notice of Review application in respect of Planning Application 22/00400/APP.
- 1.2 This report is submitted to Committee in terms of Section V (1) of the Council's Scheme of Administration relating to determining a request by an Applicant to review a planning application decision of the Appointed Officer.

2. RECOMMENDATION

- 2.1 It is recommended that the MLRB confirm what conditions, if any, should be applied in relation to the recently granted planning permission in respect of Planning Application 22/00400/APP.**

3. BACKGROUND

- 3.1 At the meeting of the MLRB on 27 September 2022, the MLRB considered a request from an Applicant seeking a review of the decision of the Appointed Officer, in terms of the Scheme of Delegation, to refuse planning permission in relation to Planning Application 22/00400/APP on the grounds that:

The proposal is contrary to the requirements of policy DP1 (I) (a & e), because:

- The site is within a quiet residential area and the scale of the proposal would result in a level of activity in relation to the arrival and departure of children and staff and activity throughout the day that is not in keeping with the character of the area.

- There would be an adverse impact on the privacy of neighbouring properties as a result of the increase in the arrivals and departures of children and staff and increased noise and activity throughout the day.
- 3.2 During the meeting, it was queried whether increasing permission from 9 children up to 15 would mean that 15 children could be present at the same time within the property. Both the Legal and Planning Advisers advised that by granting planning permission, the Applicant could have up to 15 children present at any one time as it was up to the Applicant as to how the business is conducted.
- 3.3 Questions were also asked in relation to when the child-minding business would operate and the Planning Adviser highlighted a section in the Report of Handling which stated that the application sought to increase the maximum number of children that can be cared for at any one time to 15 and employ an additional member of staff who will not live on site. Furthermore, the Report of Handling mentioned a change to operating hours from 8:00 am until 6:00 pm to 7:30 am until 6:00 pm. These details were supplied by the Applicant as part of their planning application confirming how the business would operate in practice. The change in operating hours was considered to be minor however, had the Appointed Officer been minded to approve the planning application, a condition would have been imposed to this effect.
- 3.4 During further discussion, it was noted that planning permission was already in place in terms of Planning Application 21/00400/APP for 9 children and that planning application 22/00400/APP sought to increase the number to 15. It was noted that this was an established business and that there were no proposed changes to the character of the property. It was further noted that a pick up and drop off policy was already in place, there had been no objections to the proposal and increasing the number of children to 15 would not be an over-bearing loss of amenity to neighbouring properties.
- 3.5 Some members of the MLRB considered the review should be supported however some agreed with the view of the Appointed Officer as set out in paragraph 3.1. The matter was put to the vote, and following that vote (5:3:0), the MLRB agreed to uphold the review and grant planning permission in respect of Planning Application 22/00400/APP.
- 3.6 Following the meeting, discussions took place as to whether any standard conditions and informatives should be included with the consent to clearly set the operating parameters for the business. The original Appointed Officer suggested a condition in relation to the revised number of children and the updated opening hours, as both issues had been addressed on the previous consent for Planning Application 21/00400/APP and had been covered in the application 22/00400/APP as submitted. It should be noted that no change of decision is sought and it is merely clarification in relation to whether any conditions should be applied. The change in numbers is beyond doubt and cannot be revisited.
- 3.7 It is acknowledged that this point should have been raised for confirmation when the MLRB reached a view on this application however that did not happen. It is important that any formal decision notice is clear, unambiguous and properly reflects the intentions of the MLRB. As conditions were not

explicitly stipulated at the meeting of the MLRB on 27 September 2022 when the review was upheld and planning permission was granted in respect of Planning Application 22/00400/APP, clarification is sought whether the MLRB intended any such conditions to be applied.

4. SUMMARY OF IMPLICATIONS

(a) Corporate Plan and 10 Year Plan (Local Outcomes Improvement Plan (LOIP))

None

(b) Policy and Legal

It is important that any decision notice issued is clear, unambiguous and properly reflects the intentions of the MLRB in reaching a decision on the application before them.

(c) Financial Implications

None

(d) Risk Implications

If planning permission is granted without any conditions there is a risk, however unlikely, that a 24 hour childminding business could be permitted.

(e) Staffing Implications

None

(f) Property

None

(g) Equalities/Socio Economic Impact

None

(h) Climate Change and Biodiversity Impacts

None

(i) Consultations

Legal Services Manager, Sean Hoath, Senior Solicitor, Eily Webster, Principal Planning Officer have been consulted on the report and any comments incorporated.

5. CONCLUSION

5.1 Following consideration of a Notice of Review Application in relation to Planning Application 22/00400/APP at a meeting of the MLRB on 27 September 2022, planning permission was granted however clarification is sought as to whether the MLRB intended for any conditions to be applied to the consent.

Author of Report: Lissa Rowan, Committee Services Officer
Background Papers:
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