



Moray Local Review Body

Thursday, 19 January 2023

NOTICE IS HEREBY GIVEN that a Meeting of the **Moray Local Review Body** is to be held at **Council Chambers, Council Office, High Street, Elgin, IV30 1BX** on **Thursday, 19 January 2023 at 09:30.**

BUSINESS

1. **Sederunt**
2. **Declaration of Group Decisions and Members Interests ***
3. **Minute of Meeting dated 17 November 2022** **5 - 10**
4. **LR282 - Ward 7 - Elgin City South** **11 - 104**
Planning Application 21/01686/APP – Change of use of former bakery to a takeaway restaurant at 212 High Street, Elgin, Moray, IV30 1BA

Summary of Local Review Body functions:

To conduct reviews in respect of refusal of planning permission or unacceptable conditions as determined by the delegated officer, in terms of the Scheme of Delegation to Officers under Section 43(A)(i) of the Town & Country Planning (Scotland) Act 1997 and the Town & Country Planning (Scheme of Delegation and Local Review Procedure)(Scotland) Regulations 2013, or where the Delegated Officer has not determined the application within 3 months of registration.

* **Declaration of Group Decisions and Members Interests** - The Chair of the meeting shall seek declarations from any individual or political group at the beginning of a meeting whether any prior decision has been reached on how the individual or members of the group will vote on any item(s) of business on the Agenda, and if so on which item(s). A prior decision shall be one that the individual or the group deems to be mandatory on the individual or the group members such that the individual or the group members will be subject to sanctions should they not vote in accordance with the prior decision. Any such prior decisions will be recorded in the Minute of the meeting.

** **Written Questions** - Any Member can put one written question about any relevant and competent business within the specified remits not already on the agenda, to the Chair provided it is received by the Proper Officer or Committee Services by 12 noon two working days prior to the day of the meeting. A copy of any written answer provided by the Chair will be tabled at the start of the relevant section of the meeting. The Member who has put the question may, after the answer has been given, ask one supplementary question directly related to the subject matter, but no discussion will be allowed.

No supplementary question can be put or answered more than 10 minutes after the Council has started on the relevant item of business, except with the consent of the Chair. If a Member does not have the opportunity to put a supplementary question because no time remains, then he or she can submit it in writing to the Proper Officer who will arrange for a written answer to be provided within 7 working days.

*** **Question Time** - At each ordinary meeting of the Committee ten minutes will be allowed for Members questions when any Member of the Committee can put a question to the Chair on any business within the remit of that Section of the Committee. The Member who has put the question may, after the answer has been given, ask one supplementary question directly related to the subject matter, but no discussion will be allowed.

No supplementary question can be put or answered more than ten minutes after the Committee has started on the relevant item of business, except with the consent of the Chair. If a Member does not have the opportunity to put a supplementary question because no time remains, then he/she can submit it in writing to the proper officer who will arrange for a written answer to be provided within seven working days.

THE MORAY COUNCIL

Moray Local Review Body

SEDERUNT

Councillor Marc Macrae (Chair)
Councillor Amber Dunbar (Depute Chair)

Councillor Neil Cameron (Member)
Councillor Juli Harris (Member)
Councillor Sandy Keith (Member)
Councillor Paul McBain (Member)
Councillor Derek Ross (Member)
Councillor Sonya Warren (Member)

Clerk Name:	Lissa Rowan
Clerk Telephone:	07765 741754
Clerk Email:	committee.services@moray.gov.uk

Minute of Meeting of the Moray Local Review Body

Thursday, 17 November 2022

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

PRESENT

Councillor Neil Cameron, Councillor Juli Harris, Councillor Sandy Keith, Councillor Marc Macrae, Councillor Paul McBain, Councillor Derek Ross, Councillor Sonya Warren

APOLOGIES

Councillor Amber Dunbar

IN ATTENDANCE

Ms Webster, Principal Planning Officer (Strategic Planning and Development) and Mrs Gordon, Planning Officer and Mr Henderson, Planning Officer as Planning Advisers, Mr Hoath, Senior Solicitor and Ms Smith, Solicitor as Legal Advisers and Mrs Rowan, Committee Services Officer as Clerk to the Moray Local Review Body.

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 27 September 2022

The Minute of the meeting dated 27 September 2022 was submitted and approved.

4 Notice of Review - Planning Application 22/00400/APP

Under reference to paragraph 6 of the Minute of the meeting of the Moray Local Review Body (MLRB) dated 27 September 2022, a report by the Depute Chief Executive (Economy, Environment and Finance) sought clarification from the MLRB in relation to a decision taken regarding a Notice of Review application in respect of Planning Application 22/00400/APP.

During his introduction, Mr Hoath, Legal Adviser apologised to the MLRB and the Appellant for having to seek this clarification in relation to any conditions the MLRB may have wished to attach to the planning permission in terms of operating hours, as this should have been clarified at the last meeting of the MLRB.

Councillor McBain stated that, when the proposal was discussed at the previous meeting of the MLRB on 27 September 2022, he was of the understanding that the application would be restricted in this way and that the childminding business would operate between the hours of 7:30 am and 6:00 pm. The other members of the MLRB agreed that this was their understanding also.

The Chair stated that the Appointed Officer had proposed that the planning permission include the following condition in relation to opening hours and standard conditions and informatives from the Transportation Service as follows and sought the agreement of the MLRB to attach this to the decision notice as it should have been added to accurately reflect the original decision:

The business shall operate between 0730 hours and 1800 hours Monday - Friday only and at no other times except where agreed in writing with the planning authority in consultation with the environmental health authority when it can be demonstrated to the satisfaction of the planning authority in consultation with the environmental health authority that there is an exceptional requirement for operation outwith the permitted opening hours.

Reason: In order to ensure that the operation of the business does not detrimentally impact neighbouring amenity.

This is in addition to the Transportation condition and informatives:

The existing car parking shall be retained, with all existing parking spaces made available for use by staff, residents and customers throughout the lifetime of the development, unless otherwise agreed in writing with the Council as Planning Authority.

Reason: To ensure the permanent availability of the level of parking necessary for residents/staff/visitors/others in the interests of an acceptable development and road safety.

Informatives:

Planning consent does not carry with it the right to carry out works within the public road boundary.

No building materials/scaffolding/builder's skip shall obstruct the public road (including footpaths) without permission from the Roads Authority.

This was unanimously agreed.

Thereafter, the MLRB agreed to apply the following conditions and informatives to the recently granted planning permission in respect of Planning Application 22/00400/APP:

The business shall operate between 0730 hours and 1800 hours Monday - Friday only and at no other times except where agreed in writing with the planning authority in consultation with the environmental health authority when it can be

demonstrated to the satisfaction of the planning authority in consultation with the environmental health authority that there is an exceptional requirement for operation outwith the permitted opening hours.

Reason: In order to ensure that the operation of the business does not detrimentally impact neighbouring amenity.

This is in addition to the Transportation condition and informatives:

The existing car parking shall be retained, with all existing parking spaces made available for use by staff, residents and customers throughout the lifetime of the development, unless otherwise agreed in writing with the Council as Planning Authority.

Reason: To ensure the permanent availability of the level of parking necessary for residents/staff/visitors/others in the interests of an acceptable development and road safety.

Informatives:

Planning consent does not carry with it the right to carry out works within the public road boundary.

No building materials/scaffolding/builder's skip shall obstruct the public road (including footpaths) without permission from the Roads Authority.

5 LR277 - Ward 4 - Fochabers and Lhanbryde

Planning Application 21/01664/PPP – Erect dwellinghouse on site at Stratton Wood, Fochabers

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 for a new house on this site would not comply with the siting requirements of policies DP1 (Development Principles) and DP4 (Rural Housing) and would result in the permanent loss of woodland which is unacceptable in terms of policy EP7 (Forestry Woodlands and Trees) and refusal is recommended.

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 she had nothing to raised at this time.

The Legal Adviser advised that the Applicant had provided new information with his Notice of Review application in the form of additional photographs of the site, information in respect of fly tipping in the area and further information relating to compensatory planting of woodland. The Legal Adviser sought clarification from the MLRB as to whether it wished to consider this information, in which case

consideration should be given as to whether a further procedure should be carried out in the spirit of fairness, to allow the Appointed Officer to comment on this new information which would result in the case being deferred until the next meeting of the MLRB.

In response, Councillor Warren stated that, having been on the site visit and having read the paperwork, she was of the view that she had enough information to make an informed decision. The other Members of the MLRB agreed with her.

Councillor Harris, having considered the case in detail raised concern in relation to the impact on wildlife, flora and fauna should the development go ahead and stated that she agreed with the original decision of the Appointed Officer and moved that the MLRB refuse the appeal and uphold the original decision of the Appointed Officer as the proposal is contrary to policies DP1 (Development Principles) , DP4 (Rural Housing) and EP7 (Forestry, Woodlands and Trees) of the Moray Local Development Plan (MLDP) 2020. This was seconded by Councillor Warren.

Councillor McBain, having considered the case in detail and having visited the site in question, was of the view that the proposal complied with policy EP7 (Forestry, Woodlands and Trees) as no tree is being felled in order for the development to take place. With regard to policy DP4 (Rural Housing), Councillor McBain was of the view that the proposal complied with this policy as the house would be surrounded by trees on 3 sides therefore would have no impact to neighbouring properties. In relation to policy DP1 (Development Principles), Councillor McBain stated that, in his opinion, the proposed design and scale of the house fits within the conditions of this policy. Councillor McBain further stated that he was very familiar with the site having grown up in the area and stated that it was never woodland and was often used for fly tipping and, in his opinion, the proposed development would be an improvement to the area. Taking this into consideration, Councillor McBain moved that the MLRB uphold the appeal and grant planning permission in respect of Planning Application 21/01664/PPP as, in his opinion, the proposal complied with policies DP1 (Development Principles) , DP4 (Rural Housing) and EP7 (Forestry, Woodlands and Trees) of the MLDP 2020. This was seconded by Councillor Macrae.

In response, Ms Webster, Planning Adviser advised that the definition of woodland did not just apply to trees but included the ground, vegetation and soil. She further advised that the fact that the area had been used for fly tipping in the past should not be used as a material consideration when considering the planning application.

On a division there voted:

For the Motion (5):	Councillors Harris, Warren, Cameron, Keith and Ross
For the Amendment (2):	Councillors McBain and Macrae
Abstentions (0):	Nil

Accordingly, the Motion became the finding of the Meeting and the MLRB and it was agreed to refuse the appeal and uphold the original decision of the Appointed Officer as the proposal is contrary to policies DP1 (Development Principles) , DP4 (Rural Housing) and EP7 (Forestry, Woodlands and Trees) of the MLDP 2020.

Planning Application 22/00215/APP – Erect dwelling house on land adjacent to Easter Covesea Cottage, Duffus, Moray

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:

1. The application proposes a new dwellinghouse on a site within an identified pressurised and sensitive area where no new housing will be permitted due to the landscape and visual impacts associated with buildup and is therefore contrary to policy DP4 - Rural Housing.
2. A new house on this site would detract from the rural landscape character of the wider area as the site would not contain sufficient backdrop and containment and would create ribbon development with the neighbouring plot (with extant permission for a new house) contrary to the siting criteria as set by Policy DP4 Rural Housing as well as DP1 Development Principles.
3. The site is located within the Burghead to Lossiemouth SLA the proposal for a house plot would not fall within any of the development categories permitted under EP3 for a rural location within the SLA and no new housing is permitted in the open countryside in this SLA therefore the proposal would be contrary to policy EP3 - Special Landscape Areas.

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, both the Legal and Planning Advisers advised that they had nothing to raise at this time.

The Chair then asked the Moray Local Review Body (MLRB) if it had sufficient information to determine the request for review. In response, the MLRB unanimously agreed that it had sufficient information to determine the case.

Councillor Cameron, having considered the case in detail, stated that the reasons for refusal were clear and that the development should not be permitted. This was unanimously agreed by the other members of the MLRB.

The MLRB therefore agreed to refuse the appeal and uphold the original decision of the Appointed Officer to refuse planning permission in respect of Planning Application 22/00215/APP as the proposal is contrary to policies DP4 (Rural Housing), DP1 (Development Principles) and EP3 (Special Landscape Areas) of the Moray Local Development Plan (MLDP) 2020.



MORAY LOCAL REVIEW BODY

19 JANUARY 2023

SUMMARY OF INFORMATION FOR CASE No LR282

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

Ward 7 – Elgin City South

Planning permission was refused under the Statutory Scheme of Delegation by the Appointed Officer on 29 June 2022 on the grounds that:

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

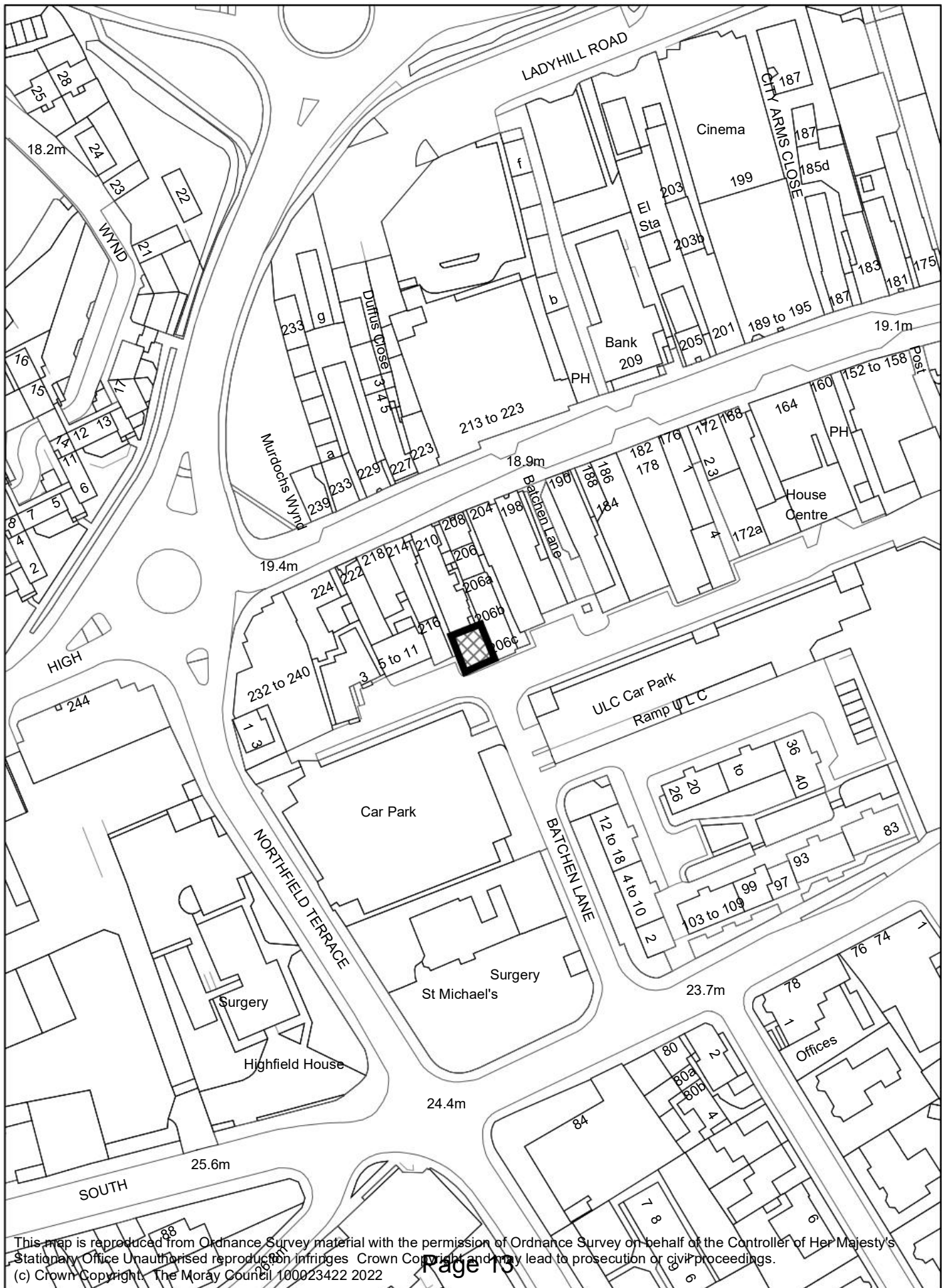
- (i) The lack of information in relation to the noise and odour impacts from the takeaway means it is not possible to assess or appropriately mitigate the impact of the proposed takeaway on the residential amenity on the existing and consented residential properties which are adjacent to or adjoin the 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.
- (ii) 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 Moray Local Development Plan policies DP1 'Development Principles' section (ii)- 'Transportation', part 'a)' (safe entry and exit).

Documents considered or prepared by the Appointed Officer in respect of the above planning application are attached as **Appendix 1**.

The Notice of the Review, Grounds for Review and any supporting documents submitted by the Applicant are attached as **Appendix 2**.

Further Representations received in response to the Notice of Review are attached as **Appendix 3**.

No representation was received from the Applicant in response to the Further Representations.





APPENDIX 1

DOCUMENTS CONSIDERED OR PREPARED BY THE APPOINTED OFFICER



The Moray Council Council Office High Street Elgin IV30 1BX Tel: 0300 1234561 Email: development.control@moray.gov.uk

Applications cannot be validated until all the necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 100489946-001

The online reference is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the planning Authority about this application.

Type of Application

What is this application for? Please select one of the following: *

- ☐ Application for planning permission (including changes of use and surface mineral working).
- ☐ Application for planning permission in principle.
- ☐ Further application, (including renewal of planning permission, modification, variation or removal of a planning condition etc)
- ☐ Application for Approval of Matters specified in conditions.

Description of Proposal

Please describe the proposal including any change of use: * (Max 500 characters)

Refurbishment / upgrading of existing Commercial premises ; (former baker) to a Takeway Restaurant

Is this a temporary permission? * ☐ Yes ☒ No

If a change of use is to be included in the proposal has it already taken place?
(Answer 'No' if there is no change of use.) * ☐ Yes ☒ No

Has the work already been started and/or completed? *

☒ No ☐ Yes – Started ☐ Yes - Completed

Applicant or Agent Details

Are you an applicant or an agent? * (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application)

☐ Applicant ☒ Agent

Agent Details

Please enter Agent details

Company/Organisation:	Architectural & Planning		
Ref. Number:		You must enter a Building Name or Number, or both: *	
First Name: *	Martin	Building Name:	The Old Church
Last Name: *	Archibald	Building Number:	
Telephone Number: *	01343870408	Address 1 (Street): *	Church Road
Extension Number:		Address 2:	Garmouth
Mobile Number:		Town/City: *	Moray
Fax Number:		Country: *	Scotland
		Postcode: *	IV32 7SR
Email Address: *	martin.archibald@sky.com		

Is the applicant an individual or an organisation/corporate entity? *

☒ Individual ☐ Organisation/Corporate entity

Applicant Details

Please enter Applicant details

Title:	Mrs	You must enter a Building Name or Number, or both: *	
Other Title:		Building Name:	c/o The Old Church
First Name: *	Jen	Building Number:	
Last Name: *	Taylor	Address 1 (Street): *	Church Road
Company/Organisation	Sanus Moor Ltd	Address 2:	Garmouth
Telephone Number: *		Town/City: *	Fochabers
Extension Number:		Country: *	Scotland
Mobile Number:		Postcode: *	IV32 7SR
Fax Number:			
Email Address: *			

Site Address Details

Planning Authority:

Moray Council

Full postal address of the site (including postcode where available):

Address 1:

212 HIGH STREET

Address 2:

Address 3:

Address 4:

Address 5:

Town/City/Settlement:

ELGIN

Post Code:

IV30 1BA

Please identify/describe the location of the site or sites

Northing

862765

Easting

321342

Pre-Application Discussion

Have you discussed your proposal with the planning authority? *

☐ Yes ☒ No

Site Area

Please state the site area:

72.00

Please state the measurement type used:

☐ Hectares (ha) ☒ Square Metres (sq.m)

Existing Use

Please describe the current or most recent use: * (Max 500 characters)

Commercial former baker

Access and Parking

Are you proposing a new altered vehicle access to or from a public road? *

☐ Yes ☒ No

If Yes please describe and show on your drawings the position of any existing. Altered or new access points, highlighting the changes you propose to make. You should also show existing footpaths and note if there will be any impact on these.

<p>Are you proposing any change to public paths, public rights of way or affecting any public right of access? * ≤ Yes T No</p> <p>If Yes please show on your drawings the position of any affected areas highlighting the changes you propose to make, including arrangements for continuing or alternative public access.</p>	
<p>How many vehicle parking spaces (garaging and open parking) currently exist on the application Site?</p>	<div style="border: 1px solid black; width: 100px; height: 25px; margin: 0 auto;">0</div>
<p>How many vehicle parking spaces (garaging and open parking) do you propose on the site (i.e. the Total of existing and any new spaces or a reduced number of spaces)? *</p>	<div style="border: 1px solid black; width: 100px; height: 25px; margin: 0 auto;">0</div>
<p>Please show on your drawings the position of existing and proposed parking spaces and identify if these are for the use of particular types of vehicles (e.g. parking for disabled people, coaches, HGV vehicles, cycles spaces).</p>	
<h2 style="margin: 10px 0;">Water Supply and Drainage Arrangements</h2>	
<p>Will your proposal require new or altered water supply or drainage arrangements? * ≤ Yes T No</p>	
<p>Do your proposals make provision for sustainable drainage of surface water?? * ≤ Yes T No (e.g. SUDS arrangements) *</p> <p>Note:-</p> <p>Please include details of SUDS arrangements on your plans</p> <p>Selecting 'No' to the above question means that you could be in breach of Environmental legislation.</p>	
<p>Are you proposing to connect to the public water supply network? *</p> <p>≤ Yes</p> <p>≤ No, using a private water supply</p> <p>T No connection required</p> <p>If No, using a private water supply, please show on plans the supply and all works needed to provide it (on or off site).</p>	
<h2 style="margin: 10px 0;">Assessment of Flood Risk</h2>	
<p>Is the site within an area of known risk of flooding? * ≤ Yes T No ≤ Don't Know</p> <p>If the site is within an area of known risk of flooding you may need to submit a Flood Risk Assessment before your application can be determined. You may wish to contact your Planning Authority or SEPA for advice on what information may be required.</p> <p>Do you think your proposal may increase the flood risk elsewhere? * ≤ Yes T No ≤ Don't Know</p>	
<h2 style="margin: 10px 0;">Trees</h2>	
<p>Are there any trees on or adjacent to the application site? * ≤ Yes T No</p> <p>If Yes, please mark on your drawings any trees, known protected trees and their canopy spread close to the proposal site and indicate if any are to be cut back or felled.</p>	
<h2 style="margin: 10px 0;">Waste Storage and Collection</h2>	
<p>Do the plans incorporate areas to store and aid the collection of waste (including recycling)? * T Yes ≤ No</p>	

If Yes or No, please provide further details: * (Max 500 characters)

refuse and re-cycling bin store proposed

Residential Units Including Conversion

Does your proposal include new or additional houses and/or flats? *

≤ Yes ☐ No

All Types of Non Housing Development – Proposed New Floorspace

Does your proposal alter or create non-residential floorspace? *

☐ Yes ≤ No

All Types of Non Housing Development – Proposed New Floorspace Details

For planning permission in principle applications, if you are unaware of the exact proposed floorspace dimensions please provide an estimate where necessary and provide a fuller explanation in the 'Don't Know' text box below.

Please state the use type and proposed floorspace (or number of rooms if you are proposing a hotel or residential institution): *

Class 3 Restaurant/cafe

Gross (proposed) floorspace (In square meters, sq.m) or number of new (additional) Rooms (If class 7, 8 or 8a): *

38

If Class 1, please give details of internal floorspace:

Net trading spaces:

Non-trading space:

Total:

If Class 'Not in a use class' or 'Don't know' is selected, please give more details: (Max 500 characters)

Schedule 3 Development

Does the proposal involve a form of development listed in Schedule 3 of the Town and Country Planning (Development Management Procedure (Scotland) Regulations 2013) *

≤ Yes ☐ No ≤ Don't Know

If yes, your proposal will additionally have to be advertised in a newspaper circulating in the area of the development. Your planning authority will do this on your behalf but will charge you a fee. Please check the planning authority's website for advice on the additional fee and add this to your planning fee.

If you are unsure whether your proposal involves a form of development listed in Schedule 3, please check the Help Text and Guidance notes before contacting your planning authority.

Planning Service Employee/Elected Member Interest

Is the applicant, or the applicant's spouse/partner, either a member of staff within the planning service or an elected member of the planning authority? *

≤ Yes ☐ No

Certificates and Notices

CERTIFICATE AND NOTICE UNDER REGULATION 15 – TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (SCOTLAND) REGULATION 2013

One Certificate must be completed and submitted along with the application form. This is most usually Certificate A, Form 1, Certificate B, Certificate C or Certificate E.

Are you/the applicant the sole owner of ALL the land? *

☒ Yes ☐ No

Is any of the land part of an agricultural holding? *

☐ Yes ☒ No

Certificate Required

The following Land Ownership Certificate is required to complete this section of the proposal:

Certificate A

Land Ownership Certificate

Certificate and Notice under Regulation 15 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

Certificate A

I hereby certify that –

(1) - No person other than myself/the applicant was an owner (Any person who, in respect of any part of the land, is the owner or is the lessee under a lease thereof of which not less than 7 years remain unexpired.) of any part of the land to which the application relates at the beginning of the period of 21 days ending with the date of the accompanying application.

(2) - None of the land to which the application relates constitutes or forms part of an agricultural holding

Signed: Martin Archibald

On behalf of: Mrs Jen Taylor

Date: 21/10/2021

☒ Please tick here to certify this Certificate. *

Checklist – Application for Planning Permission

Town and Country Planning (Scotland) Act 1997

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

Please take a few moments to complete the following checklist in order to ensure that you have provided all the necessary information in support of your application. Failure to submit sufficient information with your application may result in your application being deemed invalid. The planning authority will not start processing your application until it is valid.

a) If this is a further application where there is a variation of conditions attached to a previous consent, have you provided a statement to that effect? *

☐ Yes ☐ No ☒ Not applicable to this application

b) If this is an application for planning permission or planning permission in principle where there is a crown interest in the land, have you provided a statement to that effect? *

☐ Yes ☐ No ☒ Not applicable to this application

c) If this is an application for planning permission, planning permission in principle or a further application and the application is for development belonging to the categories of national or major development (other than one under Section 42 of the planning Act), have you provided a Pre-Application Consultation Report? *

☐ Yes ☐ No ☒ Not applicable to this application

Town and Country Planning (Scotland) Act 1997

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

d) If this is an application for planning permission and the application relates to development belonging to the categories of national or major developments and you do not benefit from exemption under Regulation 13 of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, have you provided a Design and Access Statement? *

☐ Yes ☐ No ☐ Not applicable to this application

e) If this is an application for planning permission and relates to development belonging to the category of local developments (subject to regulation 13. (2) and (3) of the Development Management Procedure (Scotland) Regulations 2013) have you provided a Design Statement? *

☐ Yes ☐ No ☐ Not applicable to this application

f) If your application relates to installation of an antenna to be employed in an electronic communication network, have you provided an ICNIRP Declaration? *

☐ Yes ☐ No ☐ Not applicable to this application

g) If this is an application for planning permission, planning permission in principle, an application for approval of matters specified in conditions or an application for mineral development, have you provided any other plans or drawings as necessary:

☐ Site Layout Plan or Block plan.

☐ Elevations.

☐ Floor plans.

☐ Cross sections.

☐ Roof plan.

☐ Master Plan/Framework Plan.

☐ Landscape plan.

☐ Photographs and/or photomontages.

☐ Other.

If Other, please specify: * (Max 500 characters)

Provide copies of the following documents if applicable:

A copy of an Environmental Statement. * ☐ Yes ☐ N/A

A Design Statement or Design and Access Statement. * ☐ Yes ☐ N/A

A Flood Risk Assessment. * ☐ Yes ☐ N/A

A Drainage Impact Assessment (including proposals for Sustainable Drainage Systems). * ☐ Yes ☐ N/A

Drainage/SUDS layout. * ☐ Yes ☐ N/A

A Transport Assessment or Travel Plan ☐ Yes ☐ N/A

Contaminated Land Assessment. * ☐ Yes ☐ N/A

Habitat Survey. * ☐ Yes ☐ N/A

A Processing Agreement. * ☐ Yes ☐ N/A

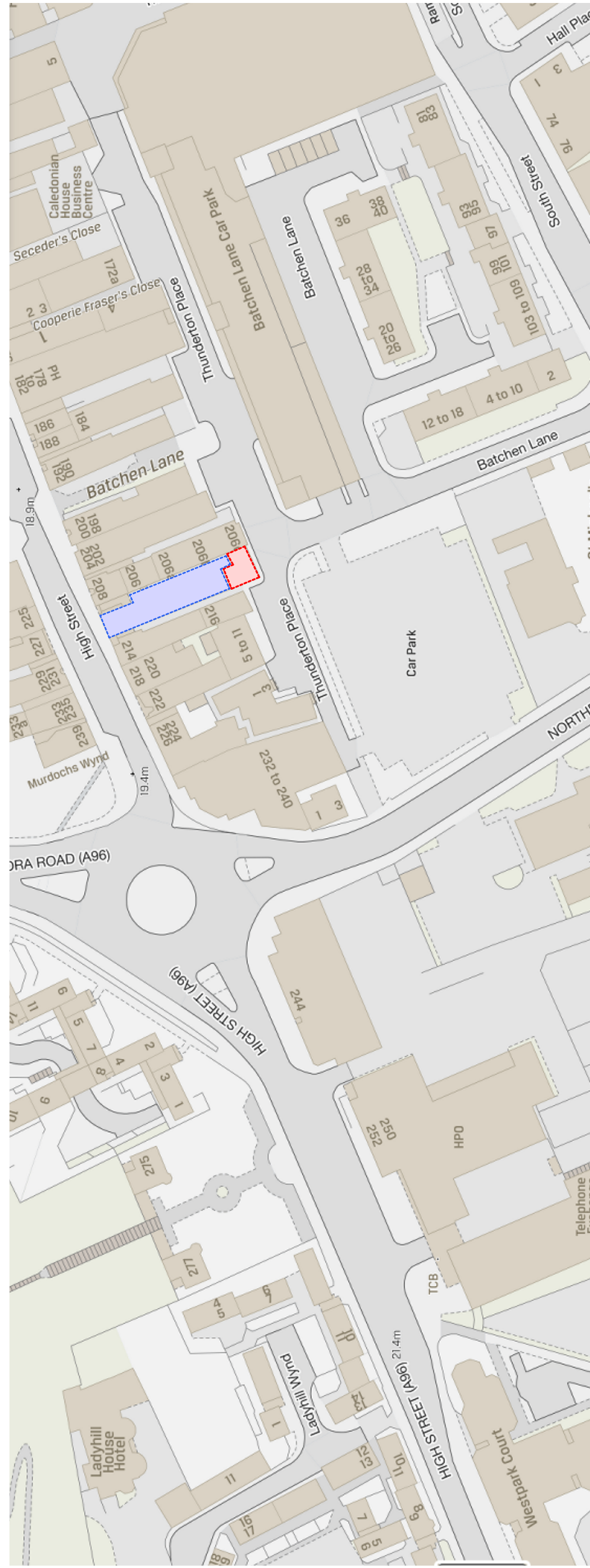
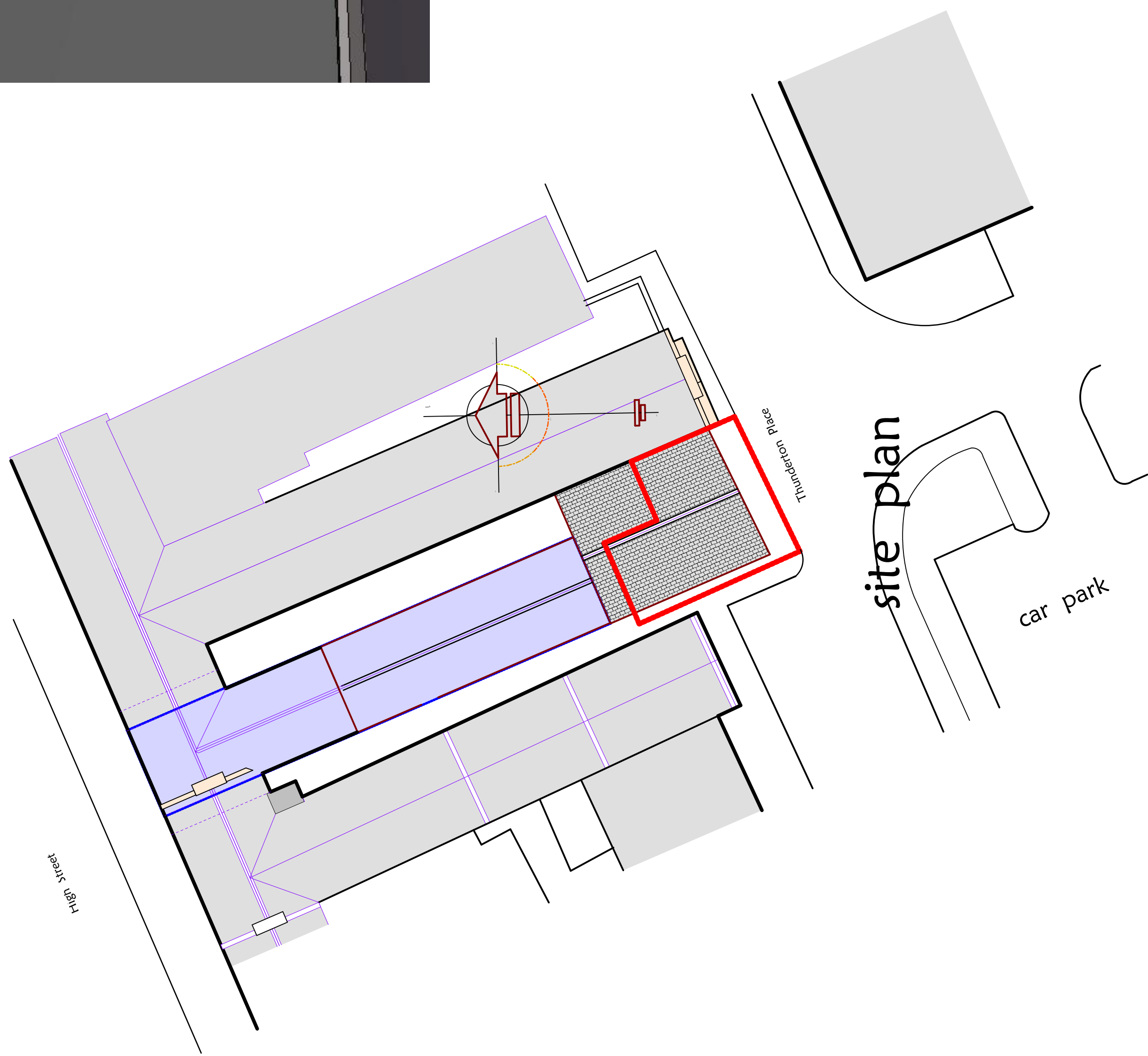
Other Statements (please specify). (Max 500 characters)

Declare – For Application to Planning Authority

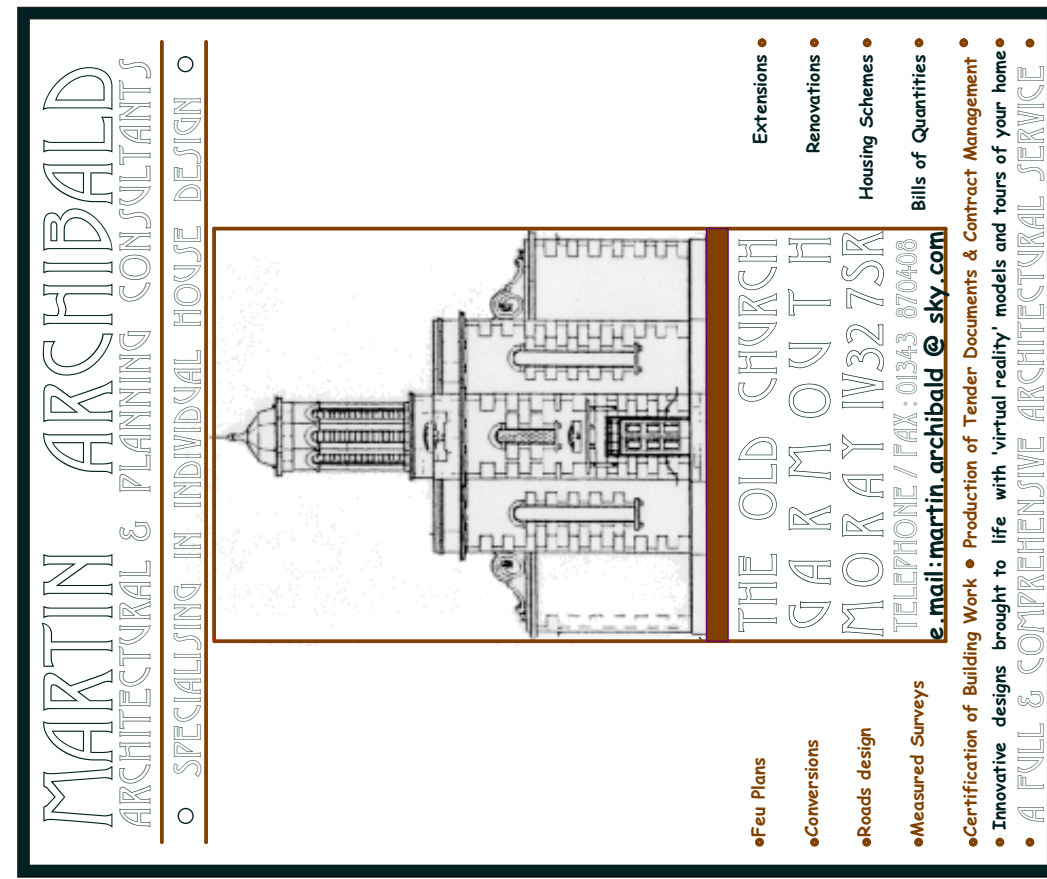
I, the applicant/agent certify that this is an application to the planning authority as described in this form. The accompanying Plans/drawings and additional information are provided as a part of this application.

Declaration Name: Mr Martin Archibald

Declaration Date: 21/10/2021



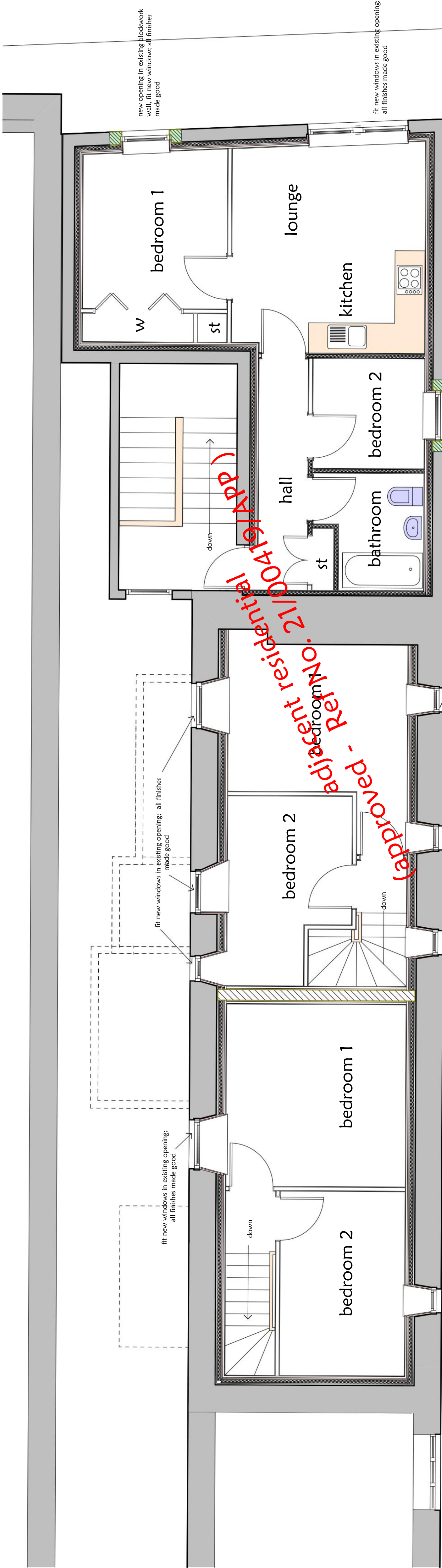
location plan



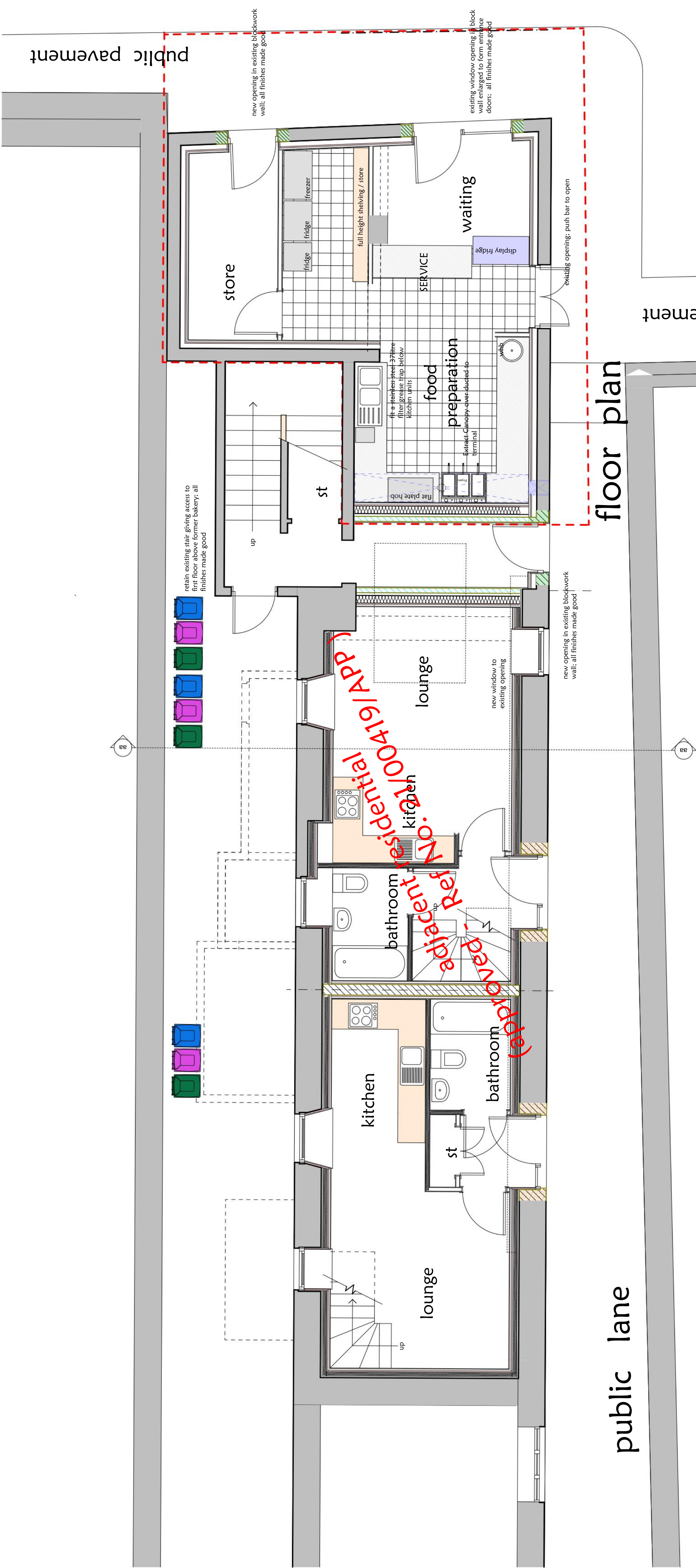
Project	Refurbishment / upgrading of existing Commercial premises ; (former baker) to a Takeaway Restaurant at 212 High Street, Elgin. Moray. IV30 1BA for Sanus Moor Ltd
Scale	1:200 + 1:1000
Drawing	Martin Archibald
Date	February 2021
Signed	<i>Martin Archibald</i>

33 : 2021 : 3

Drawing No



first floor plan (approved - Ref No. 21/00419/APP)



Noise emissions from the ventilation and extract system shall not exceed Noise Rating Curve NR25 as measured inside the nearest noise sensitive dwelling between the hours of 2300 to 0700 hours.

Noise emissions from the ventilation and extract system shall not exceed Noise Rating Curve NR35 as measured inside the nearest noise sensitive dwelling at all other times.

low level extract, there must be adequate odour control by the use of carbon filtration, a scheme to be submitted to the Environmental Health for consideration, and to be as per the guidance on the control of odour and noise from commercial kitchen exhaust systems prepared by NETCEN

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Project: Refurbishment / upgrading of existing Commercial premises : (former baker) to a Takeaway Restaurant at 212 High Street, Elgin. Moray. IV30 1BA for Sanus Moor Ltd

Scale: 1:50 Date: February 2021

Drawn by: Martin Archibald Signed: Martin Archibald

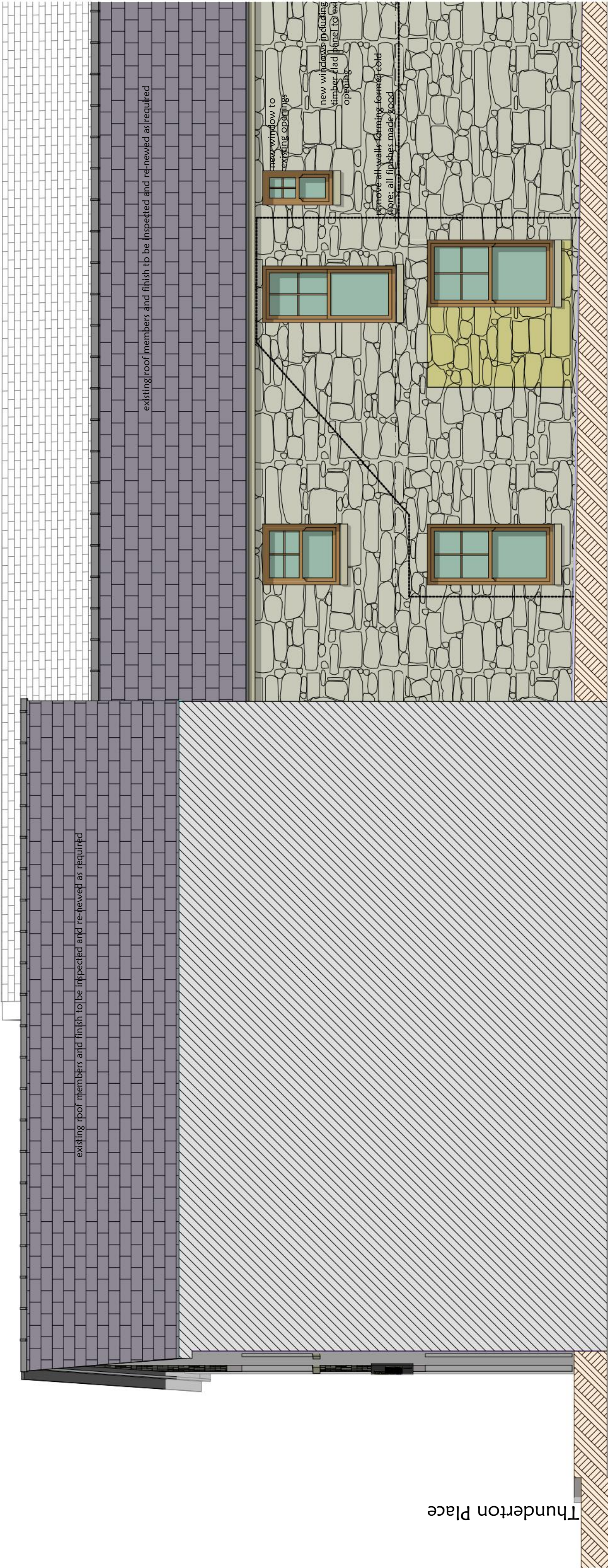
Drawing No: 33 : 2021 : 1

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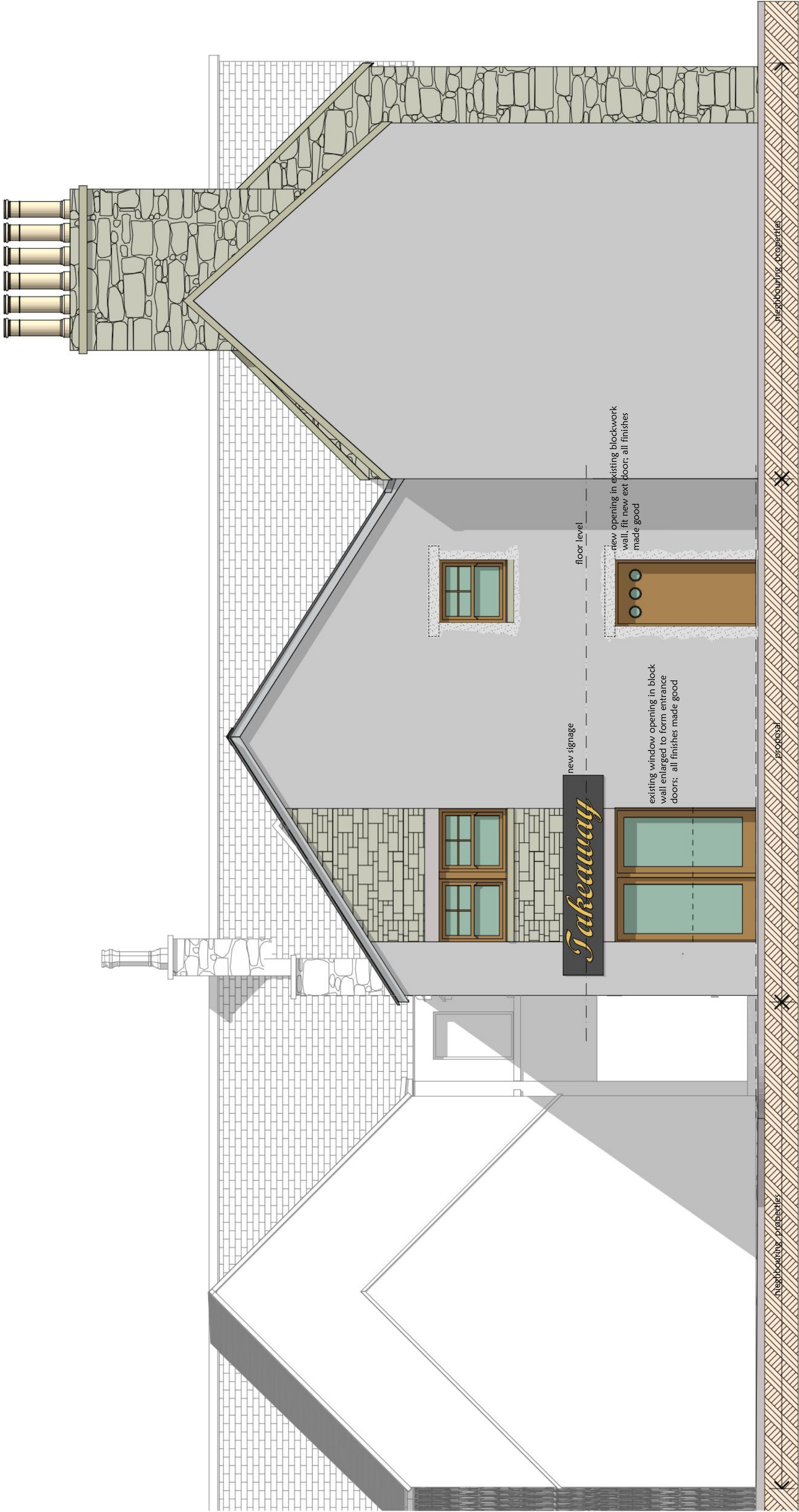
Page 27



west elevation within lane

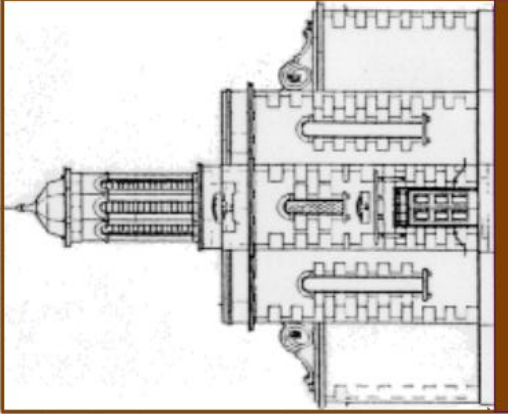


sectional east elevation



south elevation

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Project		Refurbishment / upgrading of existing Commercial premises : (former baker) to a Takeaway Restaurant at 212 High Street, Elgin. Moray. IV30 1BA for Sanus Moor Ltd	
Scale	1:50	Date	February 2021
Drawn by	Martin Archibald	Signed	Martin Archibald
Drawing No	33 : 2021 : 2		

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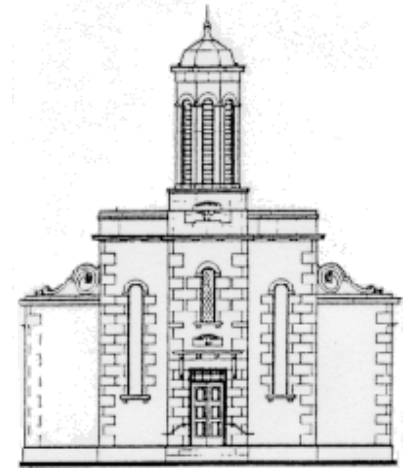
Page 29

MARTIN ARCHIBALD

ARCHITECTURAL & PLANNING CONSULTANTS

Our Ref: MJA/mja/JT
20th October 2021

The Moray Council
Development Services
Planning Department
Elgin
Moray
IV30 9BX



THE OLD CHURCH
GARMOUTH
MORAY
IV32 7SR

Telephone: (01343) 870408
e.mail: martin.archibald@sky.com

Proposed Refurbishment /upgrading of existing Commercial premises; (former baker) to a Takeaway Restaurant at 212 High Street, Elgin. Moray. IV30 1BA for Sanus Moor Ltd

SUPPORTING STATEMENT

I refer to the above planning application and would like to include this statement to support our submission. Included are Drawing numbers

17:2021:1 floor plan showing proposal and adjacent residential units (approved under 21/00419/APP).

17:2021:2 elevations

21:2021:3 site and location plan along with a perspective view.

Background

The applicant purchased the building in 1999, which was 'Smillies the Bakers' It operated as Bakers until it was rented out to Ashers; another Baker in 2007, and they continued to use it until their operations were consolidated elsewhere. It has been empty since and used for storage.

A planning application was submitted (21/00419/APP (E)(C)(D) - Moray) and a planning objection was raised by the Transportation department to the provision of a takeaway as part of the application. The main objections appear to be the possibility of patrons parking on the corner while dropping off and picking up as well as delivery of supplies.

So as not to hold up the residential aspect of the application, the commercial part was removed from the original proposals with the view to re-applying for it separately.

The commercial unit is a crucial part of the development for the applicant. Planning permission been approved for the residential element and we need to reapply for planning permission for the commercial unit at the rear.

The Site referred to

The main part of the existing building was used as a manufacturing bakery from 1927 until around 10 years ago and since then it has been used as a storage unit. The more modern extension to the rear of the property was added to the main building in the 1970's following a compulsory purchase of land and buildings belonging to the owners of the main building, and extending towards South Street. This compulsory purchase permitted the present development of Batchen Lane and former Rose Nursery (now the existing car park).

The new extension formed part of the bakery incorporating an access door towards the rear and opening onto the public footway at the end of the private lane. This access was used as the entry point for raw material deliveries and the exit point for finished goods being loaded into company vans for delivery to the company's chain of retail outlets and wholesale customers. It is therefore the case that the vehicles making both deliveries and distributing finished goods, parked at the rear of the building (not the side as described in the objection) during the unloading/ loading process for short periods over a period of some 40 years.

Our Ref: MJA/mja/JT
20th October 2021

The Proposal

Deliveries

It is therefore the case that the vehicles making both deliveries and distributing finished goods, parked at the rear of the building during the unloading/ loading process for short periods over a period of some 40 years forms a precedent for this activity at the rear of the property. The proposal is to re-furbish part of an existing commercial premises.

Any vehicle parked on Batchen Lane; out with the loading restricted area, does not offer an obstruction to other vehicles accessing the area; due to the width of the road at this point. Vehicles parked in this way offer no more of an obstacle or indeed a safety concern to pedestrians, than similar vehicles seeking to gain delivery access to the various establishments; Chinese takeaway, Davidson the Butcher, Birnie Pet Shop, The Badenoch's pub, Qismat Indian restaurant and other commercial properties with delivery access directly off Batchen Lane.

There seems no logical reason why the area immediately behind the former bakery is marked as a 'no loading at any time' area since other more narrow areas of Batchen Lane bear no such restriction. There is no valid reason to object to deliveries being made from vehicles parked on the High Street via the private lane to the side of the former bakery. Items normally delivered to outlets of this nature are not particularly bulky and are delivered in a timely manner; they can use the High Street as all the other commercial premises do.

Pedestrian access

Customers using the takeaway would, due to the proximity of Northfield Terrace car park, have unprecedented access to parking not available to most other takeaway outlets in the centre of Elgin. This benefit is particularly relevant bearing in mind that a significant proportion of takeaway business is undertaken in the evening when town centre car parks are free of charge and under-utilised.

Many takeaway premises in the centre of Elgin open directly onto the public footway of streets carrying through traffic (High Street, Batchen Street, Commerce Street) the latter two having very narrow pavements, so again the precedent has been set. The public footway behind the former bakery runs to the end of the private lane and terminates at the rear access to the Qismat restaurant. It is therefore of little use to pedestrians wishing to travel further and as such is little used. By comparison footways outside takeaway premises on, for example; Commerce Street have significantly heavier footfall. Due to the very close proximity of the private lane this offers ample potential as a queuing opportunity.

The illegal and irresponsible parking on footways is not a planning consideration and ought not therefore to be considered as a legitimate objection.

Conclusion

We consider this application to represent a small but greatly needed revitalisation of the central Elgin area, bringing back to use an underutilised building. There is ample parking for persons using the takeaway and for the reasons stated above, deliveries does not present itself as a reason for refusal.

Martin Archibald (agent)

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Monday, 01 November 2021



Local Planner
Development Services
Moray Council
Elgin
IV30 1BX

Development Operations
The Bridge
Buchanan Gate Business Park
Cumbernauld Road
Stepps
Glasgow
G33 6FB

Development Operations
Freephone Number - 0800 3890379
E-Mail - DevelopmentOperations@scottishwater.co.uk
www.scottishwater.co.uk



Dear Customer,

212 High Street, Elgin, IV30 1BA
Planning Ref: 21/01686/APP
Our Ref: DSCAS-0051880-QHT
Proposal: Change of use of former bakery to a takeaway restaurant at

Please quote our reference in all future correspondence

Audit of Proposal

Scottish Water has no objection to this planning application; however, the applicant should be aware that this does not confirm that the proposed development can currently be serviced and would advise the following:

Water Capacity Assessment

Scottish Water has carried out a Capacity review and we can confirm the following:

- ▶ There is currently sufficient capacity in GLENLATTERACH Water Treatment Works to service your development. However, please note that further investigations may be required to be carried out once a formal application has been submitted to us.

Waste Water Capacity Assessment

- ▶ There is currently sufficient capacity for a foul only connection in the MORAY WEST PFI Waste Water Treatment works to service your development. However, please note that further investigations may be required to be carried out once a formal application has been submitted to us.

Please Note

- ▶ The applicant should be aware that we are unable to reserve capacity at our water and/or waste water treatment works for their proposed development. Once a formal

connection application is submitted to Scottish Water after full planning permission has been granted, we will review the availability of capacity at that time and advise the applicant accordingly.

Surface Water

For reasons of sustainability and to protect our customers from potential future sewer flooding, Scottish Water will not accept any surface water connections into our combined sewer system.

There may be limited exceptional circumstances where we would allow such a connection for brownfield sites only, however this will require significant justification from the customer taking account of various factors including legal, physical, and technical challenges.

In order to avoid costs and delays where a surface water discharge to our combined sewer system is anticipated, the developer should contact Scottish Water at the earliest opportunity with strong evidence to support the intended drainage plan prior to making a connection request. We will assess this evidence in a robust manner and provide a decision that reflects the best option from environmental and customer perspectives.

General notes:

- ▶ Scottish Water asset plans can be obtained from our appointed asset plan providers:
 - ▶ Site Investigation Services (UK) Ltd
 - ▶ Tel: 0333 123 1223
 - ▶ Email: sw@sisplan.co.uk
 - ▶ www.sisplan.co.uk
- ▶ Scottish Water's current minimum level of service for water pressure is 1.0 bar or 10m head at the customer's boundary internal outlet. Any property which cannot be adequately serviced from the available pressure may require private pumping arrangements to be installed, subject to compliance with Water Byelaws. If the developer wishes to enquire about Scottish Water's procedure for checking the water pressure in the area, then they should write to the Customer Connections department at the above address.
- ▶ If the connection to the public sewer and/or water main requires to be laid through land out-with public ownership, the developer must provide evidence of formal approval from the affected landowner(s) by way of a deed of servitude.
- ▶ Scottish Water may only vest new water or waste water infrastructure which is to be laid through land out with public ownership where a Deed of Servitude has been obtained in our favour by the developer.
- ▶ The developer should also be aware that Scottish Water requires land title to the area of land where a pumping station and/or SUDS proposed to vest in Scottish Water is constructed.

- ▶ Please find information on how to submit application to Scottish Water at [our Customer Portal](#).
-

Next Steps:

▶ All Proposed Developments

All proposed developments require to submit a Pre-Development Enquiry (PDE) Form to be submitted directly to Scottish Water via [our Customer Portal](#) prior to any formal Technical Application being submitted. This will allow us to fully appraise the proposals.

Where it is confirmed through the PDE process that mitigation works are necessary to support a development, the cost of these works is to be met by the developer, which Scottish Water can contribute towards through Reasonable Cost Contribution regulations.

▶ Non Domestic/Commercial Property:

Since the introduction of the Water Services (Scotland) Act 2005 in April 2008 the water industry in Scotland has opened to market competition for non-domestic customers. All Non-domestic Household customers now require a Licensed Provider to act on their behalf for new water and waste water connections. Further details can be obtained at www.scotlandontap.gov.uk

▶ Trade Effluent Discharge from Non Dom Property:

- ▶ Certain discharges from non-domestic premises may constitute a trade effluent in terms of the Sewerage (Scotland) Act 1968. Trade effluent arises from activities including; manufacturing, production and engineering; vehicle, plant and equipment washing, waste and leachate management. It covers both large and small premises, including activities such as car washing and launderettes. Activities not covered include hotels, caravan sites or restaurants.
- ▶ If you are in any doubt as to whether the discharge from your premises is likely to be trade effluent, please contact us on 0800 778 0778 or email TEQ@scottishwater.co.uk using the subject "Is this Trade Effluent?". Discharges that are deemed to be trade effluent need to apply separately for permission to discharge to the sewerage system. The forms and application guidance notes can be found [here](#).
- ▶ Trade effluent must never be discharged into surface water drainage systems as these are solely for draining rainfall run off.
- ▶ For food services establishments, Scottish Water recommends a suitably sized grease trap is fitted within the food preparation areas, so the development complies with Standard 3.7 a) of the Building Standards Technical Handbook and for best management and housekeeping practices to be followed which prevent food waste, fat oil and grease from being disposed into sinks and drains.

- ▶ The Waste (Scotland) Regulations which require all non-rural food businesses, producing more than 50kg of food waste per week, to segregate that waste for separate collection. The regulations also ban the use of food waste disposal units that dispose of food waste to the public sewer. Further information can be found at www.resourceefficientscotland.com

I trust the above is acceptable however if you require any further information regarding this matter please contact me on **0800 389 0379** or via the e-mail address below or at planningconsultations@scottishwater.co.uk.

Yours sincerely,

Pamela Strachan

Development Services Analyst

Tel: 0800 389 0379

planningconsultations@scottishwater.co.uk

Scottish Water Disclaimer:

"It is important to note that the information on any such plan provided on Scottish Water's infrastructure, is for indicative purposes only and its accuracy cannot be relied upon. When the exact location and the nature of the infrastructure on the plan is a material requirement then you should undertake an appropriate site investigation to confirm its actual position in the ground and to determine if it is suitable for its intended purpose. By using the plan you agree that Scottish Water will not be liable for any loss, damage or costs caused by relying upon it or from carrying out any such site investigation."

Response On Development Affecting Trunk Roads and Special Roads

The Town and Country Planning (Scotland) Act 1997

**The Town and Country Planning (Development Management Procedure)
(Scotland) Regulations 2013 S.I.2013 No 155 (S.25)**

Town and Country Planning (Notification of Applications) (Scotland) Direction 2009

To Moray Council Elgin	Council Reference:-	21/01686/APP
	TS TRBO Reference:-	NE/149/2021

Application made by Sanus Moor Ltd per Martin Archibald, The Old Church Church Road Garmouth Moray IV32 7SR and received by Transport Scotland on 29 October 2021 for planning permission for change of use of former bakery to a takeaway restaurant located at 212 High Street Elgin Moray affecting the A96 Trunk Road.

Director, Roads Advice

1. The Director does not propose to advise against the granting of permission ☒
2. The Director advises that planning permission be refused (see overleaf for reasons). ☐
3. The Director advises that the conditions shown overleaf be attached to any permission the council may give (see overleaf for reasons). ☐

To obtain permission to work within the trunk road boundary, contact the Area Manager through the general contact number below. The Operating Company has responsibility for co-ordination and supervision of works and after permission has been granted it is the developer's contractor's responsibility to liaise with the Operating Company during the construction period to ensure all necessary permissions are obtained.

TS Contact:-

Area Manager (A96)

0141 272 7100

Buchanan House, 58 Port Dundas Road, Glasgow, G4 0HF

Operating Company:-

NORTH EAST

Address:-

Bear House, Inveralmond Road, Inveralmond Industrial Estate, PERTH, PH1 3TW

Telephone Number:-

01738 448600

e-mail address:-

NEplanningapplications@bearsotland.co.uk

Transport Scotland Response Date:- 08-Nov-2021

Transport Scotland Contact:- Iain Clement

Transport Scotland Contact Details:-

Roads - Development Management

Buchanan House, 58 Port Dundas Road, Glasgow, G4 0HF

Telephone Number:

e-mail: development_management@transport.gov.scot

NB - Planning etc. (Scotland) Act 2006

Planning Authorities are requested to provide Transport Scotland , Roads Directorate, Network Operations - Development Management with a copy of the decision notice, and notify Transport Scotland, Trunk Roads Network Management Directorate if the recommended advice is not accepted .

Consultation Request Notification

Planning Authority Name	Moray Council
Response Date	12th November 2021
Planning Authority Reference	21/01686/APP
Nature of Proposal (Description)	Change of use of former bakery to a takeaway restaurant at
Site	212 High Street Elgin Moray IV30 1BA
Site Postcode	N/A
Site Gazetteer UPRN	000133000629
Proposal Location Easting	321342
Proposal Location Northing	862765
Area of application site (M²)	72
Additional Comment	
Development Hierarchy Level	LOCAL
Supporting Documentation URL	https://publicaccess.moray.gov.uk/eplanning/centralDistribution.do?caseType=Application&keyVal=R1D833BGIZS00
Previous Application	21/00419/APP 01/00698/FUL
Date of Consultation	29th October 2021
Is this a re-consultation of an existing application?	No
Applicant Name	Sanus Moor Ltd
Applicant Organisation Name	
Applicant Address	Per Agent
Agent Name	Martin Archibald
Agent Organisation Name	
Agent Address	The Old Church Church Road Garmouth Moray IV32 7SR
Agent Phone Number	
Agent Email Address	N/A
Case Officer	Shona Strachan
Case Officer Phone number	01343 563303
Case Officer email address	shona.strachan@moray.gov.uk
PA Response To	consultation.planning@moray.gov.uk

NOTE:

If you do not respond by the response date, it will be assumed that you have no comment to make.

The statutory period allowed for a consultation response is 14 days. Due to scheduling pressures if a definitive response is not received within 21 days this may well cause the two month determination period to be exceeded.

Data Protection - Moray Council is the data controller for this process. Information collected about you on this form will be used to process your Planning Application, and the Council has a duty to process your information fairly. Information we hold must be accurate, up to date, is kept only for as long as is necessary and is otherwise shared only where we are legally obliged to do so. You have a legal right to obtain details of the information that we hold about you.

For full terms please visit http://www.moray.gov.uk/moray_standard/page_121513.html

For full Data Protection policy, information and rights please see http://www.moray.gov.uk/moray_standard/page_119859.html

You can contact our Data Protection Officer at info@moray.gov.uk or 01343 562633 for more information.

Please respond using the attached form:-

MORAY COUNCIL

PLANNING CONSULTATION RESPONSE

From: Aberdeenshire Council Archaeology Service

Planning Application Ref. No: 21/01686/APP

Change of use of former bakery to a takeaway restaurant at 212 High Street Elgin Moray IV30 1BA for Sanus Moor Ltd

I have the following comments to make on the application:-

- | | Please |
|---|--------------------------------------|
| (a) I OBJECT to the application for the reason(s) as stated below | x
<input type="checkbox"/> |
| (b) I have NO OBJECTIONS to the application and have no condition(s) and/or comment(s) to make on the proposal | x |
| (c) I have NO OBJECTIONS to the application subject to condition(s) and/or comment(s) about the proposal as set out below | <input type="checkbox"/> |
| (d) Further information is required in order to consider the application as set out below | <input type="checkbox"/> |

Reason(s) for objection

None

Condition(s)

None

Further comment(s) to be passed to applicant

Further information required to consider the application

Contact: Claire Herbert
email address:
archaeology@aberdeenshire.gov.uk
Consultee: Archaeology service

Date...11/11/21.....
Phone No ...01467 537717

Return response to	consultation.planning@moray.gov.uk
---------------------------	---

Please note that information about the application including consultation responses and

representations (whether in support or objection) received on the proposal will be published on the Council's website at <http://publicaccess.moray.gov.uk/eplanning/> (You can also use this site to track progress of the application and view details of any consultation responses and representations (whether in support or objection) received on the proposal). In order to comply with the Data Protection Act, personal information including signatures, personal telephone and email details will be removed prior to publication using "redaction" software to avoid (or mask) the display of such information. Where appropriate other "sensitive" information within documents will also be removed prior to publication online.

Consultation Request Notification

Planning Authority Name	Moray Council
Response Date	12th November 2021
Planning Authority Reference	21/01686/APP
Nature of Proposal (Description)	Change of use of former bakery to a takeaway restaurant at
Site	212 High Street Elgin Moray IV30 1BA
Site Postcode	N/A
Site Gazetteer UPRN	000133000629
Proposal Location Easting	321342
Proposal Location Northing	862765
Area of application site (M²)	72
Additional Comment	
Development Hierarchy Level	LOCAL
Supporting Documentation URL	https://publicaccess.moray.gov.uk/eplanning/centralDistribution.do?caseType=Application&keyVal=R1D833BGIZS00
Previous Application	21/00419/APP 01/00698/FUL
Date of Consultation	29th October 2021
Is this a re-consultation of an existing application?	No
Applicant Name	Sanus Moor Ltd
Applicant Organisation Name	
Applicant Address	Per Agent
Agent Name	Martin Archibald
Agent Organisation Name	
Agent Address	The Old Church Church Road Garmouth Moray IV32 7SR
Agent Phone Number	
Agent Email Address	N/A
Case Officer	Shona Strachan
Case Officer Phone number	01343 563303
Case Officer email address	shona.strachan@moray.gov.uk
PA Response To	consultation.planning@moray.gov.uk

NOTE:

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two month determination period to be exceeded.
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For full terms please visit http://www.moray.gov.uk/moray_standard/page_121513.html

For full Data Protection policy, information and rights please see http://www.moray.gov.uk/moray_standard/page_119859.html

You can contact our Data Protection Officer at info@moray.gov.uk or 01343 562633 for more information.

Please respond using the attached form:-

MORAY COUNCIL

PLANNING CONSULTATION RESPONSE

From: Transportation Manager

Planning Application Ref. No: 21/01686/APP

Change of use of former bakery to a takeaway restaurant at 212 High Street Elgin Moray IV30 1BA for Sanus Moor Ltd

I have the following comments to make on the application:-

Please

- | | | |
|-----|---|--------------------------|
| (a) | I OBJECT to the application for the reason(s) as stated below | x |
| (b) | I have NO OBJECTIONS to the application and have no condition(s) and/or comment(s) to make on the proposal | <input type="checkbox"/> |
| (c) | I have NO OBJECTIONS to the application subject to condition(s) and/or comment(s) about the proposal as set out below | <input type="checkbox"/> |
| (d) | Further information is required in order to consider the application as set out below | <input type="checkbox"/> |

This proposal is for the conversion of former baker to a takeaway. No parking presently exists or is proposed. However the site sits within Elgin Town Centre and is therefore subject to 'The Moray Council Town Centre Zero parking provision'. A public Car Park is located immediately adjacent to the south, and with others available nearby.

The proposal includes the formation of two new door openings directly onto the U171E Batchen Lane.

The existing footway located adjacent to the site within Batchen Lane is narrow and already subject to a high number of pedestrian movements due to the close proximity to a public car park, and residential parking adjacent. Customers entering and exiting the takeaway via the new entrance doorway (or queuing outside) would increase the likelihood of pedestrians having to step onto the carriageway to pass each other. This would not be acceptable. There also does not appear to be scope to contain waste bins within the site (with presentation on collection day only), with waste bins also impacting upon the available footway with.

There are waiting restrictions present within Batchen Lane, including loading restrictions. Any unauthorised loading to the side of the building would not only obstruct access to the residential units adjacent to the west and also likely require the vehicle to undertake a reversing manoeuvre at a location where a high number of pedestrians may be present, and further exacerbated by the narrow footway width and subsequent intensification of use as a result of the proposed development itself. Again this would not be acceptable. The access from the lane onto High Street is very narrow and would be likely to prevent all but the smallest of goods being delivered via a vehicle parked on the High Street. The lane is also subject to a very uneven surface with drainage channels present which would make manoeuvring trolleys difficult. However even if improvements could be provided to the lane (eg widen the frontage onto the High Street/ improve surfacing) the High Street itself is narrow, with waiting restrictions present, and with limited on street parking

available nearby. Any vehicle stopped on the carriageway loading or unloading goods would obstruct other vehicles trying to pass. Delivery vehicles would not be permitted to park over the public footway. Therefore servicing the site from the High Street would not appear to be a viable option for deliveries associated with this proposal. Similarly there is a 'communal' Loading bay available within Batchen Lane. However as it is located over 110m away from the site, it would also not be considered as a viable location for deliveries associated with this proposal. Although customer and staff parking could be undertaken with thin the Moray Council Car Park immediately adjacent, under the regulations for the Car Parking Order deliveries could not be undertaken from the car park.

This section of Batchen Lane is already subject to a number of complaints from adjacent residents and businesses due to access to their properties and vehicle parking being obstructed by illegally/ or inappropriately parked vehicles, including vehicles parking over the footway (including within the High Street adjacent). Although these are primarily police enforcement matters Transportation would not support any proposal which would be likely to exacerbate any existing problems at this sensitive location.

On the basis that there is inadequate provision for queuing or waiting within the adjacent footway, and that deliveries associated with the proposed development at this time cannot be safely facilitated, Transportation would not support the proposed new take-away.

Reason(s) for objection

Transportation considers that the proposal, if permitted, 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 Moray Local Development Plan policies DP1 'Development Principles' section (ii)- 'Transportation', part 'a)' (safe entry and exit)

Further comment(s) to be passed to applicant

In order for Transportation to Support the proposed takeaway, the existing footway would require to be widened to accommodate the additional commercial footfall and waiting associated with the take-away, along with measures put in place to facilitate the safe delivery of goods.

The attached sketch '21-01686-APP Sketch showing footway improvements' has been prepared to highlight one suggested option, with deliveries undertaken from the closest, safe, available location to the site (approximately 50m to the south within Batchen Lane. The option would require the provision of a new 2.0m footway from a delivery area, and with widening and alterations to the existing footway at the building entrance, with drop kerbs at each crossing point. It should be highlighted that these works would be subject to Roads Construction Consent, and all costs associated with the works would be borne by the applicant. It should also be highlighted that the formation of the new footway down from the loading area would be likely to require the removal of existing trees due to the changes to level differences possibly resulting in exposure of the tree roots.

Contact: AG
email address: transport.develop@moray.gov.uk
Consultee: TRANSPORTATION

Date 30 November 2021

Return response to

consultation.planning@moray.gov.uk

Please note that information about the application including consultation responses and representations (whether in support or objection) received on the proposal will be published on the Council's website at <http://publicaccess.moray.gov.uk/eplanning/>. (You can also use this site to track progress of the application and view details of any consultation responses and representations (whether in support or objection) received on the proposal). In order to comply with the Data Protection Act, personal information including signatures, personal telephone and email details will be removed prior to publication using "redaction" software to avoid (or mask) the display of such information. Where appropriate other "sensitive" information within documents will also be removed prior to publication online.



PROHIBITED FOR THE USE WITH PLANNING APPLICATIONS
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From: Tracey Dickieson <Tracey.Dickieson@moray.gov.uk>
Sent: 12 Apr 2022 08:51:10
To: DMSMyEmail@moray.gov.uk
Cc:
Subject: FW: 21/01686/APP 212 High Street Elgin Moray
Attachments:

From: Douglas Caldwell <Douglas.Caldwell@moray.gov.uk>
Sent: 08 April 2022 16:27
To: Planning Consultation <consultation.planning@moray.gov.uk>
Cc: Shona Strachan <Shona.Strachan@moray.gov.uk>
Subject: 21/01686/APP 212 High Street Elgin Moray

Please find below this Section’s objection to the above application –

The application has been considered in respect of Local Plan Policy EP 14. This policy confirms the need for detailed assessments where significant noise and odour emissions are likely. The ventilation extraction proposed is in very close proximity to dwellings and therefore necessitates a detailed Noise Impact Assessment and Odour Impact Assessment to be provided. For further clarification, the Noise Impact Assessment (NIA) by a noise consultant should seek to assess the level of significance of all noise sources having regard to PAN1/2011 and the associated Technical Assessment of Noise (TAN), in particular the NIA should:-

1. Measure pre-existing ambient noise levels and describe and predict noise levels arising from the development.
2. Establish criteria for assessing the impact of the noise on its surroundings;
3. Outline measures available to reduce noise impact to acceptable levels.

An Odour Impact Assessment is required to be carried out by a ventilation engineer or other competent person in terms of the EMAQ document *“The Control of Odour and Noise from Commercial Kitchen Exhaust Systems, dated 5th September 2018”*. Assessments have not been submitted by the agent to address these significant aspects of odour and noise and accordingly does not meet with Local Plan Policy EP 14 and forms the basis of this Sections objection.

This Section also has concerns that noise and odour emissions arising from the development may give rise to a Statutory Nuisance in terms of the Environmental Protection Act 1990 and is a further basis for our objection.



Douglas A Caldwell MIOA | Environmental Health Officer | Economic Growth and Development.
Working pattern – compressed hours Monday, Tuesday, Thursday, Friday
douglas.caldwell@moray.gov.uk | [website](#) | [facebook](#) | [twitter](#) | [News page](#)
01343 563355 |

Comments for Planning Application 21/01686/APP

Application Summary

Application Number: 21/01686/APP

Address: 212 High Street Elgin Moray IV30 1BA

Proposal: Change of use of former bakery to a takeaway restaurant at

Case Officer: Shona Strachan

Customer Details

Name:

Address:

Comment Details

Commenter Type: Neighbour

Stance: Customer objects to the Planning Application

Comment Reasons:

- Litter
- Parking
- Precedent
- Road access
- Road safety
- Smell
- Traffic

Comment: The location of this on Thunderton place and Batchen Lane and could place a burden on local residents parking. There are no allowances in the planning request for an area of parking or waiting for members of the public to collect their orders. Because of this current residents could be impacted by patrons blocking access and impeding traffic as they collect their order. This was previously included in a planning application and was withdrawn as problems of traffic and parking were highlighted. There does not appear to be any additions to this plan to address this. If approved this could also increase the amount of litter in the area and an increase in smell from food waste and cooking.

Comments for Planning Application 21/01686/APP

Application Summary

Application Number: 21/01686/APP

Address: 212 High Street Elgin Moray IV30 1BA

Proposal: Change of use of former bakery to a takeaway restaurant at

Case Officer: Shona Strachan

Customer Details

Name: [REDACTED]

Address: [REDACTED]

Comment Details

Commenter Type: Neighbour

Stance: Customer objects to the Planning Application

Comment Reasons:

- Noise
- Parking
- Poor design
- Road safety
- Smell
- Traffic

Comment: Busy area already. Will be very smelly and noisy and there is not enough parking spaces as it is.

REPORT OF HANDLING

Ref No:	21/01686/APP	Officer:	Shona Strachan
Proposal Description/ Address	Change of use of former bakery to a takeaway restaurant at 212 High Street Elgin Moray IV30 1BA		
Date:	23.06.2022	Typist Initials:	LMC

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

CONSULTATIONS		
Consultee	Date Returned	Summary of Response
Scottish Water	01/11/21	No objection subject to Scottish Water Pre-Development Enquiry Process.
Transport Scotland	08/11/21	No objection in relation to proximity of Trunk Road Network.
Aberdeenshire Council Archaeology Service	11/11/21	No objection.
Environmental Health Manager	08/04/22	Objection: insufficient information in relation to the proposed extraction/ventilation and their noise and odour impacts which is required under Policy EP14.
Transportation Manager	30/11/21	Objection: the increase in pedestrian and vehicular activity at a sensitive location, which cannot be safely accommodated or mitigated against, would give rise to conditions detrimental to the road safety of road users contrary to Moray Local Development Plan policies DP1 'Development Principles' section (ii)- 'Transportation', part 'a)' (safe entry and exit).

DEVELOPMENT PLAN POLICY		
Policies	Dep	Any Comments (or refer to Observations below)
DP1 Development Principles	Y	See observations
EP14 Pollution Contamination Hazards	Y	
DP7 Retail/Town Centres	Y	

EP9 Conservation Areas	Y	
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REPRESENTATIONS		
Representations Received	YES	
Total number of representations received: TWO		
Names/Addresses of parties submitting representations		
Name and address details of parties submitting representations withheld in accordance with the General Data Protection Regulations.		
Summary and Assessment of main issues raised by representations		
<p>Issue: Parking, Road Access, Road Safety, Traffic.</p> <p>The location of this on Thunderton Place and Batchen Lane could place a burden on local residents parking. There are no allowances in the planning request for an area of parking or waiting for members of the public to collect their orders. Because of this current residents could be impacted by patrons blocking access and impeding traffic as they collect their order. This was previously included in a planning application and was withdrawn as problems of traffic and parking were highlighted. There does not appear to be any additions to this plan to address this.</p> <p>Comments (PO): The Transportation Consult response recognises that the site sits within Elgin Town Centre and is therefore subject to 'The Moray Council Town Centre Zero parking provision' and there is a public car park in close proximity of the site.</p> <p>However, Transportation's analysis confirms there is inadequate provision for queuing or waiting within the adjacent footway to accommodate the proposal which includes two new door openings directly onto the U171E Batchen Lane and that deliveries associated with the proposed development cannot at this time be safely facilitated without providing improved access arrangements to accommodate the additional commercial footfall and deliveries associated with this intensified use.</p> <p>Transportation has objected to the proposal because 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 Moray Local Development Plan policies DP1 'Development Principles' section (ii) 'Transportation', part 'a)' (safe entry and exit).</p>		
<p>Issue: Smell and food waste: If approved the takeaway would increase the smell from food waste and cooking.</p> <p>Comments (PO): Environmental Health has raised lack of sufficient and appropriate extraction/ventilation and an assessment of the related noise and odour impacts as objection matters on this application as such this will form one of the reasons for refusal of the application.</p>		

OBSERVATIONS – ASSESSMENT OF PROPOSAL
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Legislative Requirements

Section 25 of the 1997 Act as amended requires applications to be determined in accordance with the development plan i.e. the adopted Moray Local Development Plan 2020 (MLDP) unless material considerations indicate otherwise. The main planning issues are considered below:

Proposal

Planning permission is sought for the change of use of former bakery to a takeaway restaurant at 212 High Street. The application applies to the ground floor of the rear modern addition to 212 High Street which fronts onto Batchen Lane. The existing use of this part of the building is as a store.

The middle span of the building as well as the first floor of the rear modern extension of 212 High Street was recently granted planning permission for conversion to 3 apartments under application reference 21/00419/APP (consent dated 30 August 2021). This means that one of the approved apartments would be directly above the proposed takeaway and another apartment would adjoin to the north.

No information has been provided on the type of food that would be prepared or the hours of operation of the premises. The application proposes an "extract canopy ducted to new grille in wall" for extraction purposes for the takeaway to be located on the western elevation in very close proximity to the existing residential property and also immediately below, and, adjacent to the recently consented residential uses at 212 High Street but no information in relation to noise and odour has been submitted as part of the application.

A supporting statement has been submitted as part of the application submission which seeks to address Transportations concerns in relation to deliveries and pedestrian access to the site.

Site

As noted previously, the application site relates to the modern rear store of the existing building at 212 High Street. This part of the building fronts onto Batchen Lane. The site is adjacent to residential properties. The properties adjacent to the east have dormer windows which sit in very close proximity of the roof of the site and the residential properties to the west are separated from the site by a narrow lane. As noted, the consent recently issued under 21/00419/APP (consent dated 30 August 2021) means that one of the approved apartments would be directly above the proposed takeaway and another apartment would adjoin to the north. This means that there are residential uses (existing and consented) either adjoining the site or in extremely close proximity. Other land uses in the vicinity of the site include public car parking and commercial uses.

The site is located in the defined Town Centre of Elgin (but outwith the Core Retail Area) and the Elgin Town Centre Conservation Area.

Background

Application 21/00419/APP which was for conversion to 3 apartments at 212 High Street initially included the proposed takeaway element. However, it was subsequently removed from the proposal because of the objections from Environmental Health and Transportation which set out detailed reasons for objection and the matters that needed to be addressed to overcome the objections. In such cases (withdraw and resubmit) the norm is for any future application to fully resolve previously identified objections.

Policy Assessment

Site and Design Impact of the Development - Policies (DP7, DP1, EP14 and EP9)

Policy DP7 Part (a) is focused on town centres and advises that proposals must be appropriate to the scale, character and role of the town centre.

Policy DP1 which applies to all proposals advises that applicants will be required to provide impact assessments on a range of matters including noise and air quality in order to determine the impact of the proposal and provide mitigation to address these impacts. This policy also requires proposals to be of a scale, density and character which is appropriate to the surrounding area.

Policy EP14 advises that development proposals which would cause significant air and noise pollution must be accompanied by a detailed assessment report on the levels, character and

transmission of potential pollution with measures to mitigate impacts. Where significant or unacceptable impacts cannot be mitigated, proposals will be refused.

Policy EP9 requires all development within a conservation area to preserve and enhance the established traditional character of the area.

This application proposes a takeaway premises at a location in which there are residential uses (existing and consented) either adjoining the site or in extremely close proximity; this means that the potential for detrimental residential amenity impact is significant. The application proposes an "extract canopy ducted to new grille in wall" for extraction purposes to be positioned on the western elevation in very close proximity to the existing residential property and also immediately below and adjacent to the recently consented residential uses at 212 High Street. Given the extremely close proximity of existing and consented residential properties, there is a need to assess and mitigate any noise and odour impacts arising from the takeaway as the risk of detrimental residential amenity impact is significant.

The consultation process with Environmental Health sought to clarify a number of matters in relation to the use proposed, including confirmation on the proposed hours of operation and the type of food to be prepared. The need for detailed assessment on the noise and odour impacts arising from the proposed extraction upon the existing and consented residential uses was also identified.

No such information has been provided and whilst the applicant/agent did moot a potential change in location and type of extraction to a flue to be located on the east elevation, Environmental Health confirmed that the potential for amenity impacts remained very high given the adjacent residential properties and the very close proximity of the neighbouring dormer windows, Environmental Health also confirmed that the need for detailed assessment would remain. It was also confirmed by the planning officer that any change in location/type of extraction would be a material change to the proposal and would require a fresh application this was not pursued.

The finalised consultation response from Environmental Health confirmed the need for detailed assessments given that significant noise and odour emissions are likely to arise. The ventilation extraction proposed is in extremely close proximity to dwellings (existing and proposed) and therefore necessitates detailed Noise Impact Assessment and Odour Impact Assessment to be provided. Noting that the assessments had not been provided the response concluded as an objection from the Environmental Health Section.

Given the extremely close proximity of the takeaway to existing and consented residential properties which are adjacent to or adjoin the site; the risk of detrimental residential amenity impacts from the noise and odour arising from the takeaway is significant. Unfortunately, the lack of information in relation to the noise and odour from the takeaway means it is not possible to assess or appropriately mitigate the impact of the proposal on these residential properties. 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.

Access Requirements - Policy DP1 and EP9

Transport Scotland has raised no objection to the proposal in relation to proximity of Trunk Road Network.

The Council's Transportation Section has objected to the proposal on access grounds and their consultation response provides the following detailed analysis:

No parking presently exists or is proposed. However the site sits within Elgin Town Centre and is therefore subject to 'The Moray Council Town Centre Zero parking provision'. A public Car Park is located immediately adjacent to the south, and with others available nearby.

The proposal includes the formation of two new door openings directly onto the U171E Batchen Lane.

The existing footway located adjacent to the site within Batchen Lane is narrow and already subject to a high number of pedestrian movements due to the close proximity to a public car park, and residential parking adjacent. Customers entering and exiting the takeaway via the new entrance doorway (or queuing outside) would increase the likelihood of pedestrians having to step onto the carriageway to pass each other. This would not be acceptable. There also does not appear to be scope to contain waste bins within the site (with presentation on collection day only), with waste bins also impacting upon the available footway with.

There are waiting restrictions present within Batchen Lane, including loading restrictions. Any unauthorised loading to the side of the building would not only obstruct access to the residential units adjacent to the west and also likely require the vehicle to undertake a reversing manoeuvre at a location where a high number of pedestrians may be present, and further exacerbated by the narrow footway width and subsequent intensification of use as a result of the proposed development itself. Again this would not be acceptable. The access from the lane onto High Street is very narrow and would be likely to prevent all but the smallest of goods being delivered via a vehicle parked on the High Street. The lane is also subject to a very uneven surface with drainage channels present which would make manoeuvring trolleys difficult. However even if improvements could be provided to the lane (eg widen the frontage onto the High Street/ improve surfacing) the High Street itself is narrow, with waiting restrictions present, and with limited on street parking available nearby. Any vehicle stopped on the carriageway loading or unloading goods would obstruct other vehicles trying to pass. Delivery vehicles would not be permitted to park over the public footway. Therefore servicing the site from the High Street would not appear to be a viable option for deliveries associated with this proposal. Similarly there is a 'communal' Loading bay available within Batchen Lane. However as it is located over 110m away from the site, it would also not be considered as a viable location for deliveries associated with this proposal. Although customer and staff parking could be undertaken within the Moray Council Car Park immediately adjacent, under the regulations for the Car Parking Order deliveries could not be undertaken from the car park.

This section of Batchen Lane is already subject to a number of complaints from adjacent residents and businesses due to access to their properties and vehicle parking being obstructed by illegally/ or inappropriately parked vehicles, including vehicles parking over the footway (including within the High Street adjacent). Although these are primarily police enforcement matters Transportation would not support any proposal which would be likely to exacerbate any existing problems at this sensitive location. It is further noted that public representation has been made on this application detailing the existing access constraints.

On the basis that there is inadequate provision for queuing or waiting within the adjacent footway, and that deliveries associated with the proposed development at this time cannot be safely facilitated, Transportation would not support the proposed takeaway use as proposed.

In order to address these concerns and to provide assistance to the applicant Transportation identified possible access upgrades which would entail widening the footway to accommodate additional commercial footfall and waiting associated with the take-away, along with measures put in place to facilitate the safe delivery of goods (as shown on sketch '21-01686-APP Sketch) showing footway improvements' which forms part of the Transportation Consultation Response. Transportation did identify in their response that this suggestion would likely to require the removal of existing trees due to the changes to level differences possibly resulting in exposure of the tree roots. With this in mind the Planning Officer confirmed that trees in the Conservation Area are protected and may be subject to Tree Preservation Order if necessary which means that while the option suggested by Transportation might meet Transportation requirements it may contravene other equally applicable planning policy and legislative requirements. It was confirmed by the Planning

Officer should this suggestion be pursued a tree survey carried out in accordance with BS 5837: 2012, by a suitably qualified arborist would need to be carried out on any trees impacted by the access proposal so that the impact of the proposal on the existing trees could be fully assessed. This proposal was not pursued and no other access upgrades have been put forward by the applicant/agent.

Given the existing access constraints and in the absence of any proposed mitigation/upgrade proposals; Transportation considers that the proposal, if permitted, 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 Moray Local Development Plan policies DP1 'Development Principles' section (ii) 'Transportation', part 'a)' (safe entry and exit).

Conclusion and Recommendation

Following consideration of the material considerations in the case inclusive of the detailed consultations responses from the Council's Environmental Health and Transportation Sections, it is concluded that: there is a lack of information to assess or control the noise and odour impacts of the takeaway on the existing and consented residential properties which are adjacent to or adjoin the site. Further, the increased pedestrian and vehicular activity at this sensitive location would give rise to conditions detrimental to the road safety of road users. The proposal therefore fails to comply with local plan requirements and the application is therefore refused.

OTHER MATERIAL CONSIDERATIONS TAKEN INTO ACCOUNT

None

HISTORY

Reference No.	Description			
21/00419/APP	Conversion of former baker to 3 residential units at 212 High Street Elgin Moray IV30 1BA			
	Decision	Permitted	Date Of Decision	30/08/21
01/00698/FUL	Erect a shop window canopy at 212 High Street Elgin Moray IV30 1BA			
	Decision	Permitted	Date Of Decision	03/08/01

ADVERT

Advert Fee paid?	Yes		
Local Newspaper	Reason for Advert	Date of expiry	
Northern Scot	Planning application affecting LB/CA Development specified in Schedule 3	25/11/21	
PINS	Planning application affecting LB/CA Development specified in Schedule 3	25/11/21	

DEVELOPER CONTRIBUTIONS (PGU)

Status	N/A
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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 Statement

Main Issues:

Provides comments in support of the application and seeks to address Transportations concerns in relation to deliveries and pedestrian access, noting:

“Deliveries: It is therefore the case that the vehicles making both deliveries and distributing finished goods, parked at the rear of the building during the unloading/ loading process for short periods over a period of some 40 years forms a precedent for this activity at the rear of the property. The proposal is to re-furbish part of an existing commercial premises. Any vehicle parked on Batchen Lane; out with the loading restricted area, does not offer an obstruction to other vehicles accessing the area; due to the width of the road at this point. Vehicles parked in this way offer no more of an obstacle or indeed a safety concern to pedestrians, than similar vehicles seeking to gain delivery access to the various establishments; Chinese takeaway, Davidson the Butcher, Birnie Pet Shop, The Badenoch's pub, Qismat Indian restaurant and other commercial properties with delivery access directly off Batchen Lane.

There seems no logical reason why the area immediately behind the former bakery is marked as a 'no loading at any time' area since other more narrow areas of Batchen Lane bear no such restriction. There is no valid reason to object to deliveries being made from vehicles parked on the High Street via the private lane to the side of the former bakery. Items normally delivered to outlets of this nature are not particularly bulky and are delivered in a timely manner; they can use the High Street as all the other commercial premises do”.

“Pedestrian Access: Customers using the takeaway would, due to the proximity of Northfield Terrace car park, have unprecedented access to parking not available to most other takeaway outlets in the centre of Elgin. This benefit is particularly relevant bearing in mind that a significant proportion of takeaway business is undertaken in the evening when town centre car parks are free of charge and under-utilised. Many takeaway premises in the centre of Elgin open directly onto the public footway of streets carrying through traffic (High Street, Batchen Street, Commerce Street) the latter two having very narrow pavements, so again the precedent has been set. The public footway behind the former bakery runs to the end of the private lane and terminates at the rear access to the Qismat restaurant. It is therefore of little use to pedestrians wishing to travel further and as such is little used. By comparison footways outside takeaway premises on, for example; Commerce Street have significantly heavier footfall. Due to the very close proximity of the private lane this offers ample potential as a queuing opportunity. The illegal and irresponsible parking on footways is not a planning consideration and ought not therefore to be considered as a legitimate objection.”

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)			



**MORAY COUNCIL
TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997,
as amended**

REFUSAL OF PLANNING PERMISSION

**[Elgin City South]
Application for Planning Permission**

TO



With reference to your application for planning permission under the above mentioned Act, the Council in exercise of their powers under the said Act, have decided to **REFUSE** your application for the following development:-

**Change of use of former bakery to a takeaway restaurant at 212 High Street
Elgin Moray IV30 1BA**

and for the reason(s) set out in the attached schedule.

Date of Notice: **29 June 2022**



HEAD OF ECONOMIC GROWTH AND DEVELOPMENT

Economy, Environment and Finance
Moray Council
Council Office
High Street
ELGIN
Moray
IV30 1BX

IMPORTANT
YOUR ATTENTION IS DRAWN TO THE REASONS and NOTES BELOW

SCHEDULE OF REASON(S) FOR REFUSAL

By this Notice, Moray Council has REFUSED this proposal. The Council's reason(s) for this decision are as follows: -

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

- (i) 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.
- (ii) 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 Moray Local Development Plan policies DP1 'Development Principles' section (ii)- 'Transportation', part 'a)' (safe entry and exit).

The proposal therefore fails to comply with the requirements of the Moray Local Development Plan 2020 and the application is therefore refused.

LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT

The following plans and drawings form part of the decision:-

Reference	Version	Title
33:2021:3		Site and location plan
33:2021:1		Floor plan
33:2021:2		Elevations

NOTICE OF APPEAL
TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

If the applicant is aggrieved by the decision to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the planning authority to review the case under section 43A of the Town and Country Planning (Scotland) Act 1997 within three months from the date of this notice. The notice of review should be addressed to The Clerk, Moray Council Local Review Body, Legal and Committee Services, Council Offices, High Street, Elgin IV30 1BX. This form is

also available and can be submitted online or downloaded from
www.eplanning.scotland.gov.uk

If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.



APPENDIX 2

NOTICE OF REVIEW, GROUNDS FOR REVIEW & SUPPORTING DOCUMENTS



The Moray Council Council Office High Street Elgin IV30 1BX Tel: 0300 1234561 Email: development.control@moray.gov.uk

Applications cannot be validated until all the necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 100489946-002

The online reference is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the planning Authority about this application.

Applicant or Agent Details

Are you an applicant or an agent? * (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application)

☐ Applicant ☒ Agent

Agent Details

Please enter Agent details

Company/Organisation:	Architectural & Planning		
Ref. Number:		You must enter a Building Name or Number, or both: *	
First Name: *	Martin	Building Name:	Thistle Crofts
Last Name: *	Archibald	Building Number:	
Telephone Number: *	07710 243008	Address 1 (Street): *	South Erradale
Extension Number:		Address 2:	Gairloch
Mobile Number:		Town/City: *	Wester Ross
Fax Number:		Country: *	Scotland
		Postcode: *	IV21 2AU
Email Address: *	martin.archibald@sky.com		

Is the applicant an individual or an organisation/corporate entity? *

☒ Individual ☐ Organisation/Corporate entity

Applicant Details

Please enter Applicant details

Title:	Mrs	You must enter a Building Name or Number, or both: *	
Other Title:		Building Name:	
First Name: *	Jen	Building Number:	1
Last Name: *	Taylor	Address 1 (Street): *	Auchtercairn
Company/Organisation	Sanus Morr Ltd	Address 2:	Gairloch
Telephone Number: *		Town/City: *	Wester Ross
Extension Number:		Country: *	Scotland
Mobile Number:		Postcode: *	IV21 2BH
Fax Number:			
Email Address: *	j123ennifer@gmail.com		

Site Address Details

Planning Authority:	Moray Council
Full postal address of the site (including postcode where available):	
Address 1:	212 HIGH STREET
Address 2:	
Address 3:	
Address 4:	
Address 5:	
Town/City/Settlement:	ELGIN
Post Code:	IV30 1BA

Please identify/describe the location of the site or sites

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Northing	862765	Easting	321342
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Description of Proposal

Please provide a description of your proposal to which your review relates. The description should be the same as given in the application form, or as amended with the agreement of the planning authority: *
(Max 500 characters)

Change of use of former bakery to a takeaway restaurant at 212 High Street Elgin Moray IV30 1BA

Type of Application

What type of application did you submit to the planning authority? *

- ☒ Application for planning permission (including householder application but excluding application to work minerals).
- ☐ Application for planning permission in principle.
- ☐ Further application.
- ☐ Application for approval of matters specified in conditions.

What does your review relate to? *

- ☒ Refusal Notice.
- ☐ Grant of permission with Conditions imposed.
- ☐ No decision reached within the prescribed period (two months after validation date or any agreed extension) – deemed refusal.

Statement of reasons for seeking review

You must state in full, why you are seeking a review of the planning authority's decision (or failure to make a decision). Your statement must set out all matters you consider require to be taken into account in determining your review. If necessary this can be provided as a separate document in the 'Supporting Documents' section: * (Max 500 characters)

Note: you are unlikely to have a further opportunity to add to your statement of appeal at a later date, so it is essential that you produce all of the information you want the decision-maker to take into account.

You should not however raise any new matter which was not before the planning authority at the time it decided your application (or at the time expiry of the period of determination), unless you can demonstrate that the new matter could not have been raised before that time or that it not being raised before that time is a consequence of exceptional circumstances.

Appeal statement attached

Have you raised any matters which were not before the appointed officer at the time the Determination on your application was made? *

☒ Yes ☐ No

If yes, you should explain in the box below, why you are raising the new matter, why it was not raised with the appointed officer before your application was determined and why you consider it should be considered in your review: * (Max 500 characters)

the position of an existing extract terminal is included. We have also shown a layout for the extract system, however this is all internal and does not require planning approval in itself

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review and intend to rely on in support of your review. You can attach these documents electronically later in the process: * (Max 500 characters)

appeal statement - MJA/mja/JT/SM 23rd Sept 2022 floor plans - 33 : 2021 : 1c elevations - 33 : 2021 : 2a site plan - 33 : 2021 : 3
extract layout from specialist extract specification -

Application Details

Please provide the application reference no. given to you by your planning authority for your previous application.

21/01686/APP

What date was the application submitted to the planning authority? *

21/10/2021

What date was the decision issued by the planning authority? *

29/06/2022

Review Procedure

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Can this review continue to a conclusion, in your opinion, based on a review of the relevant information provided by yourself and other parties only, without any further procedures? For example, written submission, hearing session, site inspection. *

☒ Yes ☐ No

In the event that the Local Review Body appointed to consider your application decides to inspect the site, in your opinion:

Can the site be clearly seen from a road or public land? *

☒ Yes ☐ No

Is it possible for the site to be accessed safely and without barriers to entry? *

☒ Yes ☐ No

Checklist – Application for Notice of Review

Please complete the following checklist to make sure you have provided all the necessary information in support of your appeal. Failure to submit all this information may result in your appeal being deemed invalid.

Have you provided the name and address of the applicant?. *

☒ Yes ☐ No

Have you provided the date and reference number of the application which is the subject of this review? *

☒ Yes ☐ No

If you are the agent, acting on behalf of the applicant, have you provided details of your name and address and indicated whether any notice or correspondence required in connection with the review should be sent to you or the applicant? *

☒ Yes ☐ No ☐ N/A

Have you provided a statement setting out your reasons for requiring a review and by what procedure (or combination of procedures) you wish the review to be conducted? *

☒ Yes ☐ No

Note: You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. You may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

Please attach a copy of all documents, material and evidence which you intend to rely on (e.g. plans and Drawings) which are now the subject of this review *

☒ Yes ☐ No

Note: Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice (if any) from the earlier consent.

Declare – Notice of Review

I/We the applicant/agent certify that this is an application for review on the grounds stated.

Declaration Name: Mr Martin Archibald

Declaration Date: 27/09/2022



Our Ref: MJA/mja/JT/SM

Your Ref: 21/01686/APP

23rd September 2022

The Moray Council
Planning Department
Council Office
High Street
Elgin
Moray
IV30 1BX

Submission to The Review Body via the ePlanning online Portal

Proposed Refurbishment /upgrading of existing Commercial premises; (former baker) to a Takeaway Restaurant at 212 High Street, Elgin. Moray. IV30 1BA for Sanus Moor Ltd

I refer to the above proposal which was refused Planning permission on the 29th June 2022.

We wish to make a formal appeal to the Review Body and list our comments below.

BACKGROUND

A formal planning application was submitted to the Moray Council on the 22nd October 2021. The application proposal is to refurbish an existing bakery to a smaller takeaway unit; this may be anything from a Donut shop to a Mexican takeaway, and at this stage it is unknown.

The bakery opened in 1927 and the current rear section of which the subject of the planning application forms part, operated from the site since the 1970's. Latterly, with 4 retail shops to service, it operated on a significantly larger scale in terms of the delivery of raw materials, packaging etc than that which would be undertaken by the current proposal. Trading took place until 2010, and since then, the premises have been under-utilised for storage. The flatted development to the immediate west was built before the bakery ceased to operate. There has been no additional relevant development in the vicinity since then, with the exception of the addition of a loading bay on Thunderton Place in 2013.

The premises are and always have been commercial in nature. Part of these premises have recently gained planning approval to convert into 3 small residential units; 1 above and 2 to the north, separated by an access stair.

Other commercial premises operate in the same vicinity, receiving deliveries on a regular basis.

During the period the application was under consideration; further details / notes were incorporated to the proposals and submitted to planning and Environmental Health to address various points raised. We note that the refusal documents contained the original submissions and not some of the updated ones. I have added an **Existing** extract terminal on to the plans for the review and stress we feel that this is acceptable; this was omitted as we understood it would not be required; however it is **Existing**.

Reasons for refusal;

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.

*Submission to The Review Body via the ePlanning online Portal
23rd September 2022*

DP7 Retail/Town centres;

Developments likely to attract significant footfall including retail, offices, leisure, entertainment/cultural and community facilities must be located in town centres.

Within Core Retail Areas (identified on settlement maps, CRA), at ground level, only development for Use Class 1 Shops, Use Class 2 Financial, professional and other services, or Use Class 3 Food and drink will be supported. Above ground floor level residential use will, in principle, be supported as an appropriate use.

Proposals must be appropriate to the scale, character and role of the town centre (Table 6) and support a mix of uses within the town centre. Proposals that would lead to a concentration of a particular use to the detriment of the town's vitality and viability will not be supported.

DP1 development Principles

This policy applies to all development, including extensions and conversions and will be applied reasonably taking into account the nature and scale of a proposal and individual circumstances.

The Council will require applicants to provide impact assessments in order to determine the impact of a proposal. Applicants may be asked to determine the impacts upon the environment, transport network, town centres, noise, air quality, landscape, trees, flood risk, protected habitats and species, contaminated land, built heritage and archaeology and provide mitigation to address these impacts.

Development proposals will be supported if they conform to the relevant Local Development Plan policies, proposals and additional guidance, meet the following criteria and address their individual and cumulative impacts:

EP14 Pollution, Contamination & Hazards

Pollution

Development proposals which may cause significant air, water, soil, light or noise pollution or exacerbate existing issues must be accompanied by a detailed assessment report on the levels, character and transmission of the potential pollution with measures to mitigate impacts. Where significant or unacceptable impacts cannot be mitigated, proposals will be refused.

Contamination

Development proposals on potentially contaminated land will be approved where they comply with other relevant policies and;

- i) The applicant can demonstrate through site investigations and risk assessment, that the site is in a condition suitable for the proposed development and is not causing significant pollution of the environment; and
- ii) Where necessary, effective remediation measures are agreed to ensure the site is made suitable for the new use and to ensure appropriate disposal and/ or treatment of any hazardous material.

Hazardous sites

Development proposals must avoid and not impact upon hazardous sites or result in public safety concerns due to proximity or use in the vicinity of hazardous sites.

EP9 Conservation areas.

All development within a conservation area must preserve and enhance the established traditional character or appearance of the area. New development as well as alterations or other redevelopment will be refused if it adversely affects the character and appearance of the conservation area in terms of scale, height, massing, colour, materials and siting. This will typically require the use of traditional materials and styles to be used. Contemporary designs and materials can be acceptable and have a positive effect on the conservation area if the material finishes and design respect the architectural authenticity of the building and character of the conservation area. Development proposals involving the demolition of buildings within a Conservation Area will be refused unless the building is of limited townscape value, its structural condition rules out retention at a reasonable cost, or its form or location makes its re-use extremely difficult. The demolition of a building for redevelopment will only be considered where there are acceptable proposals and it can be demonstrated that a new building will preserve and enhance the character of the conservation area.

Appeal Response;

a. The application meets policy DP7; The building is located in the town centre, its last use was a bakery which is being reduced in size and is located on the ground floor only.

b. The application clearly meets policy DP1; which refers mainly to design; The building is existing with its last use being a bakery, it has existing an existing extract terminal that will be made good for the proposed extract system.

c. The application complies with policy EP14 with regards Pollution, Contamination and hazardous sites; The following notes were submitted with the planning application which we felt at the time, covered any concerns Environmental Health may have and covered these policies;

*Submission to The Review Body via the ePlanning online Portal
23rd September 2022*

- i. Noise emissions from the ventilation and extract system shall not exceed Noise Rating Curve NR25 as measured inside the nearest noise sensitive dwelling between the hours of 2300 to 0700 hours.
- ii. Noise emissions from the ventilation and extract system shall not exceed Noise Rating Curve NR35 as measured inside the nearest noise sensitive dwelling at all other times.
- iii. There must be adequate odour control by the use of carbon filtration, a scheme to be submitted to the Environmental Health for consideration, and to be as per the 'guidance on the control of odour and noise from commercial kitchen exhaust systems' prepared by NETCEN

The extract systems is a relatively specialist trade; unfortunately, in addition to these notes; environmental health asked for a detailed design of the system. Seeking a specialist to come up with a detailed design and specification and submitting in time was not provided by the agent. Notwithstanding this; we now have a scheme designed and specified to meet the approval of the Environmental Health Department which satisfies all policies. What we have allowed for is for the most onerous case. It must be further noted that the termination point is existing.

In the Agents experience; these notes provided would normally be suffice to gain Planning Approval. Subject to gaining approval, it is not at this stage known exactly what type of food is going to be provided; a sandwich shop, coffee and cakes, fish and chips or Chinese cuisine. For example; if it ends up a take-away for coffee and sandwiches/cakes, the extract system now designed will not be required.

I would respectfully suggest it is far simpler to include the generic notes ensuring all meets Planning approval and policies; Thereafter, a detailed layout and specification would then be produced, submitted and approved by the Environmental Health Department at the Building Warrant stage as well as certified at the completion certificate stage; Thus ensuring these policies already highlighted on the submission drawings if approved, were fulfilled. This would have been normal procedure so as the applicant does not incur unnecessary expenditure, particularly given the reasons for refusal set out in number 2.

d. The application clearly meets policy EP9 Conservation areas; this again refers mainly to design. The Building is existing and we do not propose any major alterations to it; it will therefore clearly be conserved and refurbished. Its last use was a bakery and the new use will not adversely affect the character; use or appearance of the building at all. The remaining parts of the building have already gained Planning permission previously for residential use.

Reasons for refusal;

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 Moray Local Development Plan policies DPI 'Development Principles' section (ii)- 'Transportation', part 'a)' (safe entry and exit).

DPI development Principles' section (ii) transportation part 'a' (safe entry and exit);

a) Proposals must provide safe entry and exit from the development, including the appropriate number and type of junctions, maximise connections and routes for pedestrians and cyclists, including links to active travel and core path routes, reduce travel demands and ensure appropriate visibility for all road users at junctions and bends. Road, cycling, footpath and public transport connections and infrastructure must be provided at a level appropriate to the development and connect people to education, employment, recreation, health, community and retail facilities.

Appeal Response;

We understand that the application would have been recommended for approval, had the applicant agreed to additional work in upgrading the infrastructure on the west side of Batchen Lane leading from South Street to the proposal. Namely constructing new footpaths and enlarging the existing footpath adjacent to the proposal. (see appendix 1)

It was also brought to our attention that these works would impact on the existing trees between the car park and Batchen lane and the suggested mitigation is that any trees impacted the proposal would have to be the subject of a tree survey carried out in accordance with BS 5837: 2012, by a suitably qualified arborist, and consist of a schedule and scale plan containing a range of information about each tree about on, or bordering, the site. It was also highlighted that trees in the Conservation Area are protected and may be subject to Tree Preservation Order if necessary which means that while the option suggested by Transportation might meet Transportation requirements it may contravene other equally applicable planning policy and legislative requirements.

With agreeing to these works; the Roads authority would have withdrew their objection. We assume therefore that had these footpaths been proposed; this would have demonstrated in the eyes of the roads Authority; that the establishment would have deemed to have safe entry and exit and therefore comply with the policy. **Page 77**

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23rd September 2022*

This is a significant amount of work on public infrastructure that the applicant was asked to commit too, which seems to be out of proportion with the scale of the proposal and not actually necessary.

The works requested by the roads authority to enable their objection to be withdrawn, was only the addition of footpaths and widening the existing footpath; this would not improve road users with vehicles on the infrequent occasion where deliveries were being made; I would suggest that the widening of the existing footpath would actually have a detrimental effect on road users; narrowing the road at this corner. Importantly; this suggests that they have no issue with deliveries.

Patrons using the proposal

Pedestrian customers have multiple access routes from the High Street, South Street, Thunderton Place and Northfield Terrace.

The vast majority of customers are likely to approach from the east or west via Thunderton Place; where there are public footpaths or from the High Street via Thunderton Place or one of the several Closes coming off the High Street.

It is unusual in Moray to have takeaway establishments with a large amount of parking facilities. I understand that the council owned car parks are underutilized in Elgin, particularly in the evenings, and there are 2 car parks available; Northfield Terrace car park at all times and Batchen Lane multi Story car park through the day. The proposal is fortunate to have these available. Driving customers will have these car parks adjacent and parking along Thunderton Place or on the High Street.

Conclusion; It is clear therefore that the existing infrastructure provides adequate safe entry and exit from the proposal from all routes, pedestrian and vehicular and therefore complies with this policy.

Deliveries to the proposal

As previously pointed out; the works requested by the roads authority to enable their objection to be withdrawn was only the addition of footpaths and widening the existing footpath. This would not affect deliveries; this suggests that they have no issue with deliveries.

However it is reiterated that the building referred to in this proposal is an existing bakery and therefore its existing use is commercial. Deliveries to the rear of the premises were undertaken by the bakery for many years. The previous loading arrangements were 2 vans picking up and dropping off goods, multiple times a day starting at 6am, servicing 4 shops; and large-scale wholesale deliveries. When not in use, the bakery vans were permanently parked in the parking area in front of the flats. The applicant could in theory go back to this level of use which is far more onerous than now proposed; a small take-away unit. The bakery was in use when both the car park and the nearby flatted developments were already in existence.

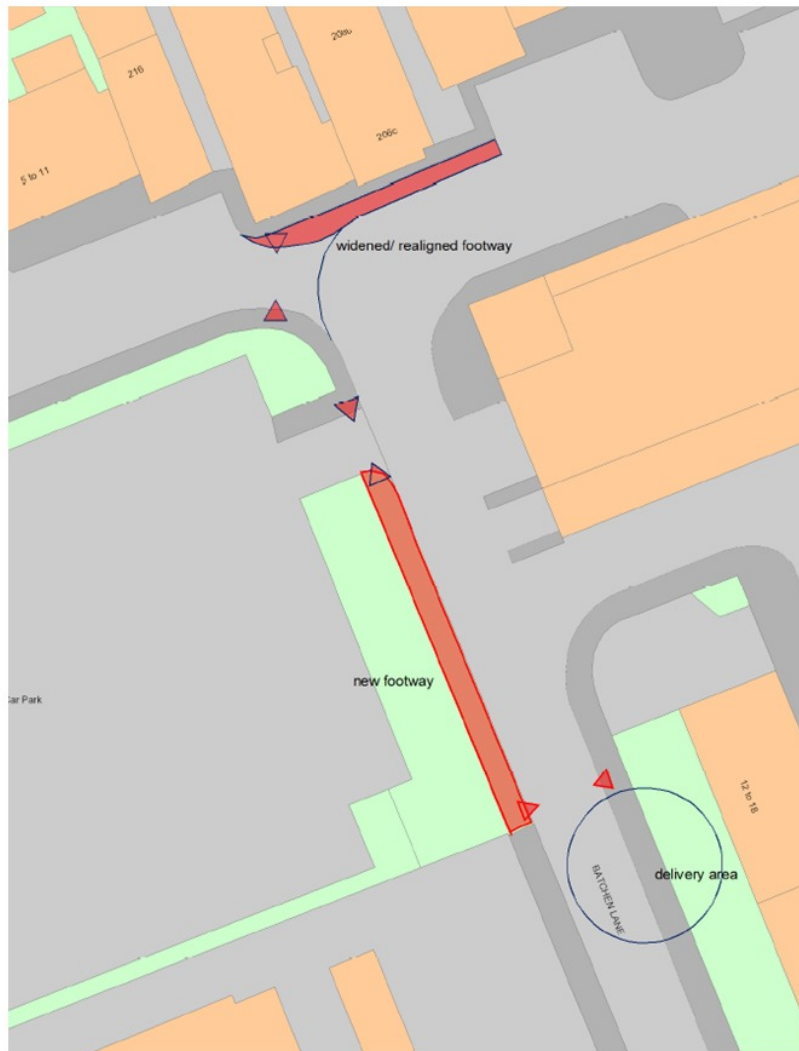
There are a number of other commercial premises along Thunderton Place which currently receive deliveries to the rear via Thunderton Place; Qismat Tandoori Restaurant, Birnies pet shop, Thunderton House, The Granary, The Whitehorse, Badenoch's, Emporium, Scribbles, the China Town takeaway etc. Other commercial premises in the vicinity receive deliveries to the High Street; Kombucha café, the Northern Chip Shop and also Qismat. When Qismat receive deliveries at the front (see Appendix 2) they are often transported along a lane which is 1.1m wide. The Roads Department raised a concern about deliveries along the wider lane to the immediate west of the premises, which we do not believe is a legitimate concern.

It should be noted that there is indiscriminate parking along Batchen lane and Thunderton Place as well as the existing footpaths being utilised for bin stores (see appendix 3,4 and 5) It seems peculiar that the council are asking for additional footpaths to be installed so patrons can access and exit the premises safely (from a direction that would be rarely used) while the existing footpaths that are far more likely to be used, have refuse waste bins on them. It is presumed that the council bin lorry which empties these bins parks on the double yellow lines opposite the parked cars (loading and unloading only) (see Appendix 4), as could deliveries to other premises and the application in question.

Given that the planning application is very much in accordance with the Elgin Town Centre Masterplan - a mixed residential and commercial development by an independent small business of under-utilised or vacant town centre premises to create a vibrant town centre, it should have been approved.

Martin Archibald (agent)

Submission to The Review Body via the ePlanning online Portal
23rd September 2022



Appendix 1

*Submission to The Review Body via the ePlanning online Portal
23rd September 2022*



Appendix 2



7
Appendix 3

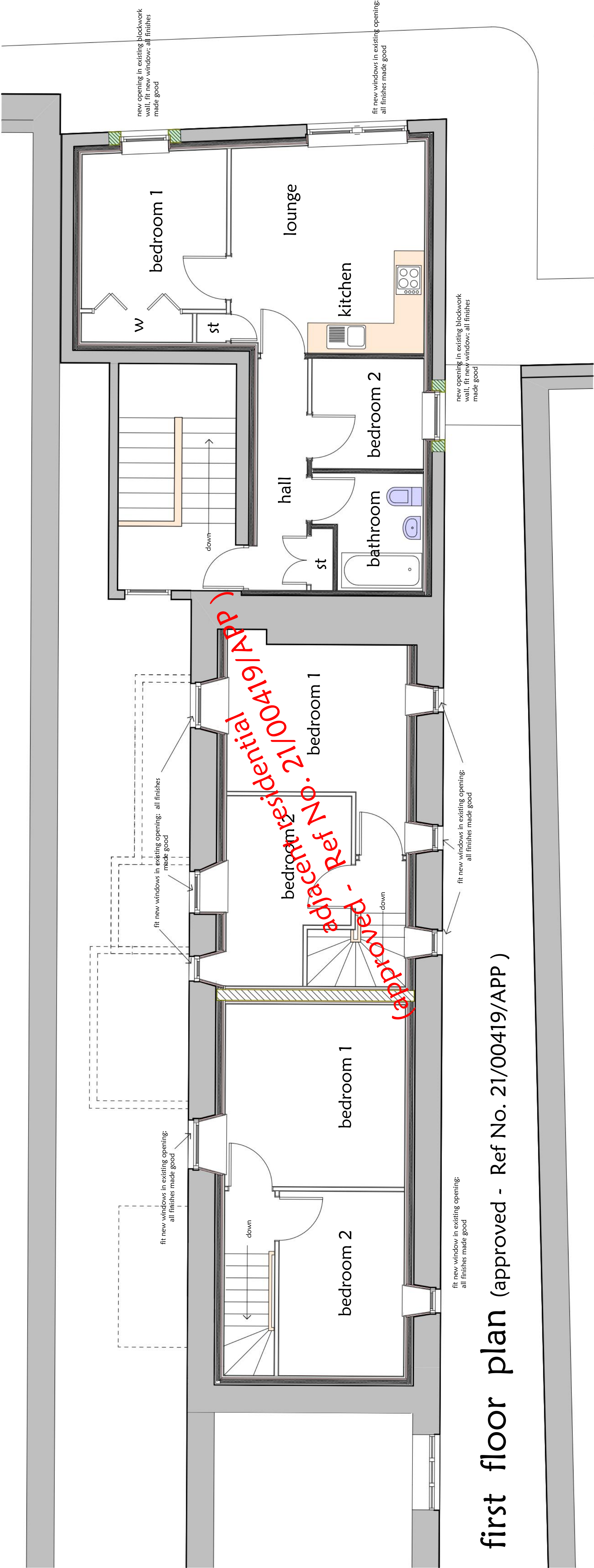
*Submission to The Review Body via the ePlanning online Portal
23rd September 2022*



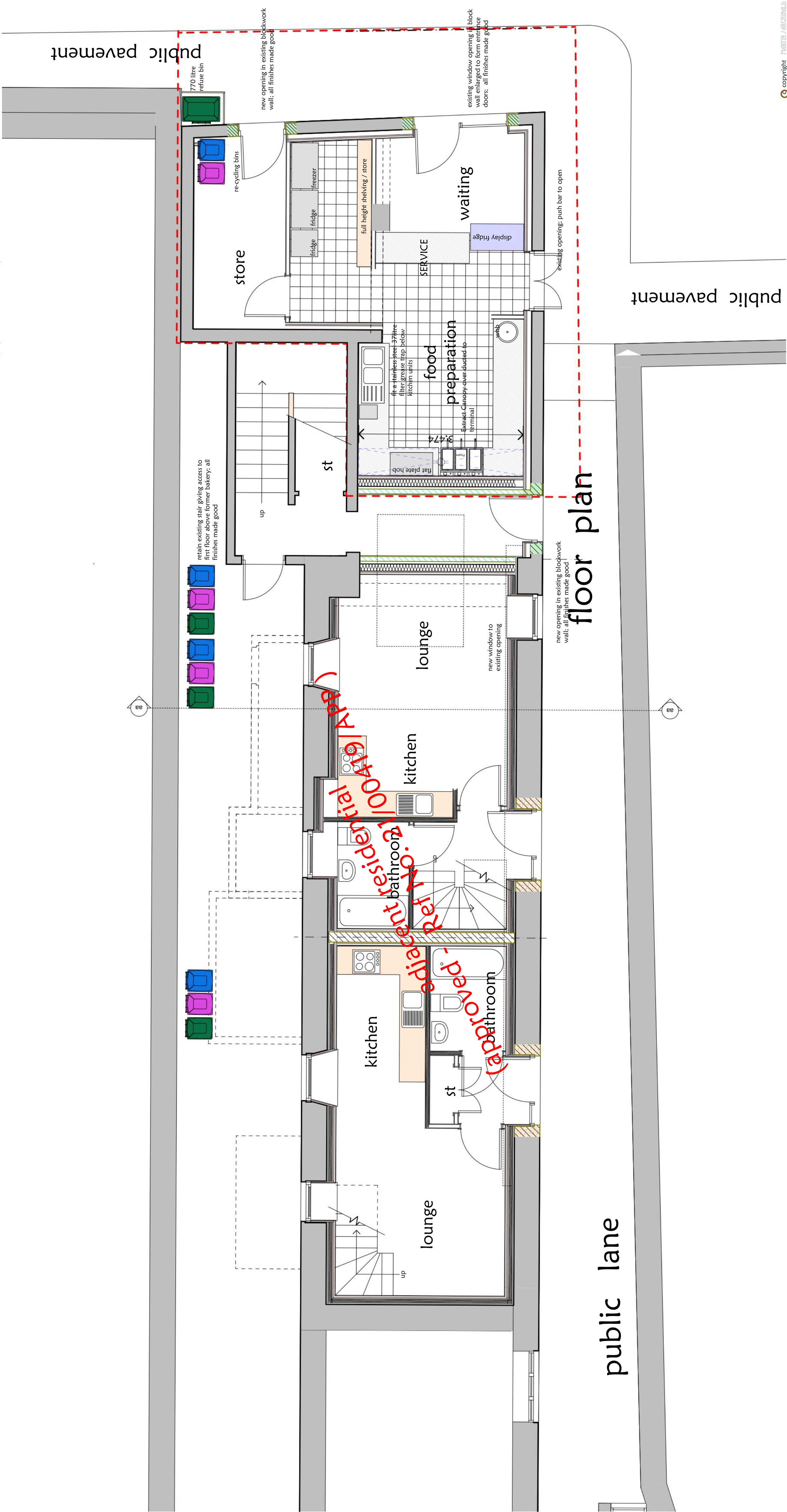
Appendix 4



Appendix 5
Page 81



first floor plan (approved - Ref No. 21/00419/APP)



floor plan

public lane

public pavement

Noise emissions from the ventilation and extract system shall not exceed Noise Rating Curve NR25 as measured inside the nearest noise sensitive dwelling between the hours of 2300 to 0700 hours.

Noise emissions from the ventilation and extract system shall not exceed Noise Rating Curve NR35 as measured inside the nearest noise sensitive dwelling at all other times.

low level extract, there must be adequate odour control by the use of carbon filtration, a scheme to be submitted to the Environmental Health for consideration, and to be as per the guidance on the control of odour and noise from commercial kitchen exhaust systems' prepared by NETCEN

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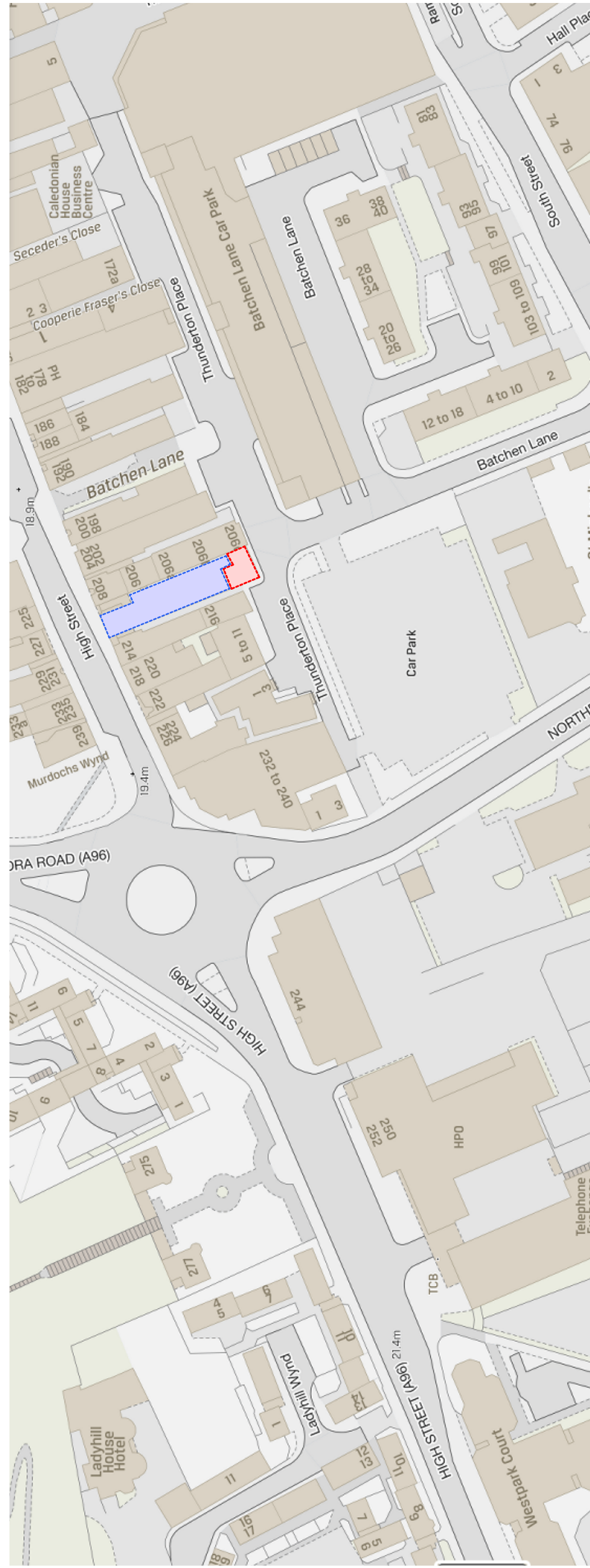
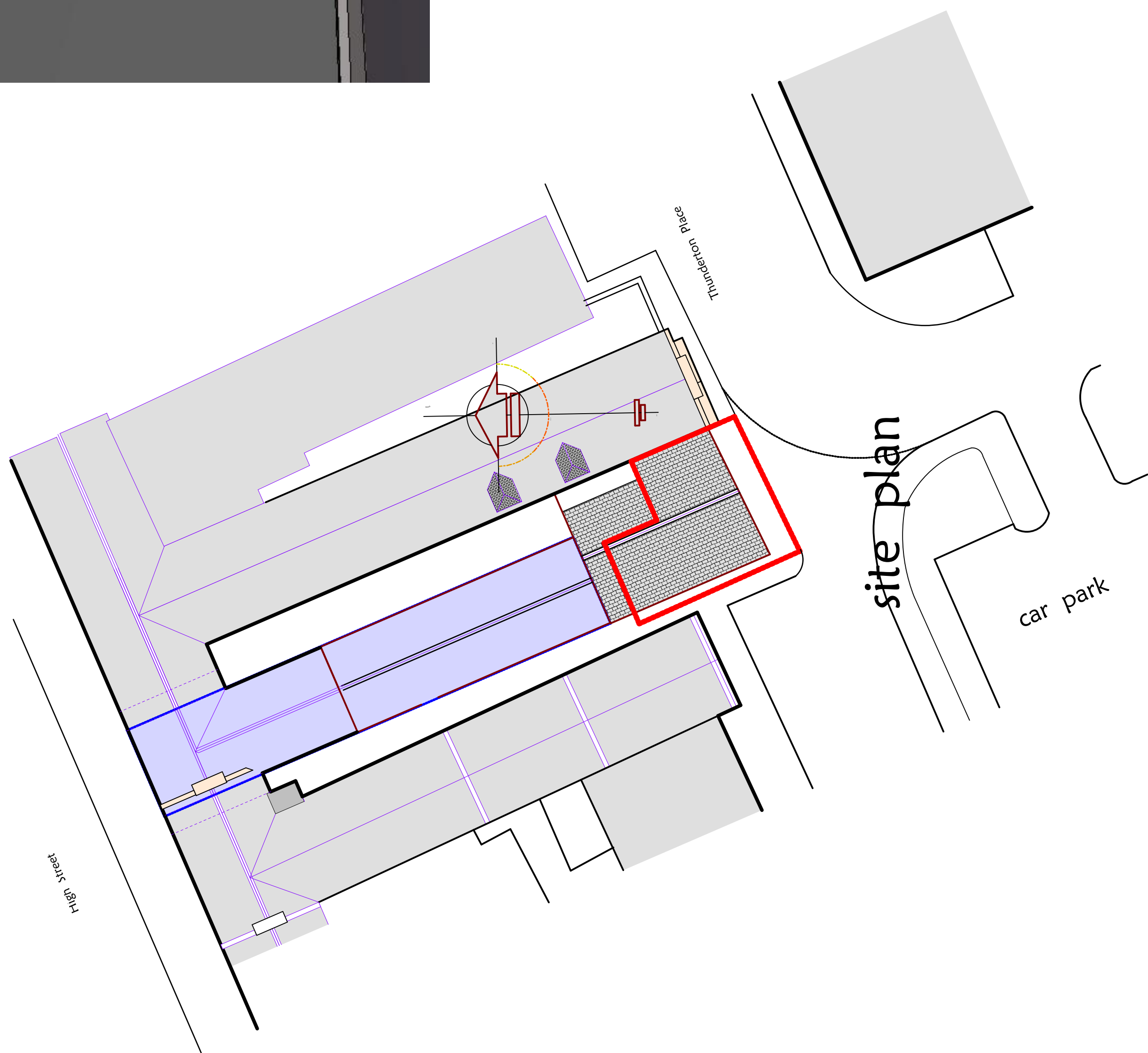
THE OLD CHURCH
MORAY IV327SR
TYPICAL / TYPICAL VIEW
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• Full Plans
• Extensions
• Alterations
• Extensions
• Heating Schemes
• Bill of Materials
• Bill of Quantities
• Bill of Materials
• Bill of Quantities
• Bill of Materials
• Bill of Quantities

• Full Plans
• Extensions
• Alterations
• Extensions
• Heating Schemes
• Bill of Materials
• Bill of Quantities
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Project		Refurbishment / upgrading of existing Commercial premises : (former baker) to a Takeaway Restaurant at 212 High Street, Elgin, Moray, IV30 1BA for Sanus Moor Ltd	
Scale	1:50	Date	February 2021
Drawn by	Martin Archibald	Signed	Martin Archibald
Drawing No	33 : 2021 : 1		

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location plan

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Project	Refurbishment / upgrading of existing Commercial premises ; (former baker) to a Takeaway Restaurant at 212 High Street, Egin. Moray. IV30 1BA for Sanus Moor Ltd		
Scale	1:200 + 1:1000	Date	February 2021
Drawing	Martin Archibald	Signed	<i>Martin Archibald</i>
Drawing No		33 : 2021 : 3	



APPENDIX 3

FURTHER REPRESENTATIONS FROM INTERESTED PARTIES



ENVIRONMENTAL SERVICES

Diane Anderson

Senior Engineer

PO Box 6760
Elgin, Moray IV30 9BX

Telephone: 01343 563782

Fax: 01343 563990

email: diane.anderson@moray.gov.uk

Website: www.moray.gov.uk

Our reference: LR/LRB282

Your reference: LR282

Chief Legal Officer
Per Ms L Rowan
Committee Services
The Moray Council
High Street
ELGIN
IV30 1BX

07 December 2022

Dear Madam

**TOWN AND COUNTRY PLANNING (SCHEMES OF DELEGATION AND LOCAL
REVIEW PROCEDURE) (SCOTLAND) REGULATIONS 2008**

**REQUEST FOR REVIEW: PLANNING APPLICATION 21/01686/APP CHANGE OF USE OF FORMER
BAKERY TO A TAKEAWAY RESTAURANT AT 212 HIGH STREET ELGIN**

I refer to your email dated 28th November 2022.

I respond on behalf of the Transportation Manager with respect to our observations on the applicant's grounds for seeking a review of the planning authority's decision to refuse the above planning application.

Transportation has reviewed the appellant's grounds for review and the associated documents, and submits the attached representation with associated documents in response.

Yours faithfully



Diane Anderson
Senior Engineer

Local Review**LRB Ref 282****Planning Application Reference 21/01686/APP Change of use of former bakery to a takeaway restaurant at 212 High Street Elgin****Response from Transportation, Moray Council**

1. This document is in response to the Notice of Review and the Statement of Case submitted by Sanus Moor Ltd and sets out observations by Transportation on the application and the grounds for seeking a review.
2. This review concerns planning application 21/01686/APP Change of use of part of a former bakery to a takeaway restaurant at 212 High Street Elgin.
3. Transportation received the consultation for planning application 21/01686/APP on 29th October 2021. A copy of Transportations consultation response dated 30th November 2021 is attached (TMC01).
4. This proposal was originally submitted as part of a larger overall redevelopment which incorporated a change of use of part of the former bakers to 3no residential apartments plus the formation of a new take-away to rear. Following on objection by Transportation the applicant submitted revised proposals under a re-consultation for the same planning reference which removed the takeaway element from the application (21/00419/APP). The subsequently submitted revised proposal for the change of use to 3no residential apartments was not objected to by Transportation and subsequently consented on 30th August 2021
5. It should also be highlighted that another part of the former bakery building (the original shop fronting onto the High Street) has already been converted and presently operates as a nail studio.
6. The proposed takeaway restaurant is to be accessed via a new pedestrian door opening onto the U171E Batchen Lane (along with the formation of a new door adjacent to the 'store' area). The original customer access to the bakers was via the High Street.
7. There are waiting restrictions present within Batchen Lane, including specific loading restrictions, meaning that deliveries to the takeaway could not be facilitated from the adjacent roadside..
8. Similarly there are also waiting restrictions present within the High Street (which is subject to a one way traffic system).
9. No off street parking is presently available for proposed for the development (including for the consented apartments). However a public Pay and Display car park (Northfield Terrace car park) is located in close proximity to the proposed takeaway, and with others nearby.
10. Whilst there is a public car park adjacent, the Car Park Order does not permit any parking associated with commercial development, meaning that whilst staff could park within it, the car park could not be utilised as a loading bay for the takeaway.

Local Review

LRB Ref 282

Planning Application Reference 21/01686/APP Change of use of former bakery to a takeaway restaurant at 212 High Street Elgin

11. The proposal, including the formation of a new pedestrian entrance to the rear via Batchen Lane is considered to be likely to result in an increase in pedestrian activity when compared to the existing situation. The existing footway adjacent is narrow and already subject to high numbers of passing pedestrians, primarily due to the close proximity to the public car park.
12. As a result of the increased activity associated with the takeaway (customers entering and exiting the building, or queuing outside), it would be considered likely to increase the likelihood of pedestrians having to step onto the carriageway to pass each other, potentially into the path of a passing vehicle.
13. Due to the presence of waiting/ loading restrictions outside, any unauthorised parking or loading to the side of the building would not only be likely to obstruct vehicular access to the residential units, or refuse collection vehicles adjacent to the west but also likely require the vehicle to undertake an unsuitable reversing manoeuvre (at a location where a high number of pedestrians may be present). Any risk would be further exacerbated by the narrow footway width and subsequent intensification of use by pedestrians as a result of the proposed development itself.
14. The Waiting/ Loading Restrictions within Batchen lane were approved by the Economic Development and Infrastructure Services Committee dated 29th October 2010.
15. Access from the site onto the C39E High Street is via a very narrow private lane which would be likely to prevent all but the smallest of goods being delivered via a vehicle parked on the High Street. The lane is also subject to a very uneven surface with drainage channels present which would make manoeuvring trolleys difficult.
16. High Street itself is also narrow, with waiting restrictions present, and with limited on street parking available nearby. Any vehicle stopped on the carriageway loading or unloading goods would obstruct other vehicles trying to pass. Delivery vehicles would not be permitted to park over the public footway. The nearest loading bay within the High Street is located approximately 140m away.
17. Similarly there is a communal Loading bay available within Batchen Lane. However, again it is located approximately 110m away and with no direct, and continuous footway provision to the site.
18. At the time of the application it was not clear as to where the bins associated with the takeaway would be stored, and potentially therefore creating an obstruction to pedestrians, particularly as a result of the existing narrow footway provision, and loss of storage areas due to the development of the residential apartments. It should be highlighted that the drawing submitted to support the Local Review differs slightly to the previously submitted details (reference "33:2021:1") in that it

Local Review

LRB Ref 282

Planning Application Reference 21/01686/APP Change of use of former bakery to a takeaway restaurant at 212 High Street Elgin

now shows waste bins located within and outside the 'store' area whereas the bins were not previously shown.

19. At this location there is already a history of obstruction related complaints from adjacent residents/ businesses relating to inappropriate parking or driver behaviour. This proposal without the interventions sought by Transportation would be considered likely to exacerbate any existing issues.
20. In order to try and address the pedestrian accessibility constraints, as well as the appropriate servicing of the site for deliveries Transportation provided the applicant with suggested improvement works (TMC 03). This included alterations to the existing junction immediately opposite to widen the footway, and improve pedestrian crossing arrangements (visibility, new drop kerbs etc), as well as a separate suggested loading area, provided by a new section of footway (to ensure that the cages etc could be transferred safely between the site and the new loading area)
21. To date the applicant has not submitted any proposals which aim to resolve either of the two key issues/concerns; namely improvements to existing pedestrian access arrangements, and measures to ensure that the site may be safely and lawfully serviced.
22. Transportation respectfully, requests that the MLRB to uphold the decision by the appointed officer. In particular on the grounds that Transportation considers that the proposal, if permitted, would result in an increase in pedestrian and vehicular activity at a sensitive location which would be likely to give rise to conditions detrimental to the road safety of road users contrary to Moray Local Development Plan policies DP1 'Development Principles' section (ii)- 'Transportation', part 'a)' (safe entry and exit)

Transportation xx December 2022

Documents

TMC01	Transportation Consultation Response dated 30 November 2021
TMC02	Site photos
TMC03	Transportation sketch showing suggested infrastructure improvements

Consultation Request Notification

Planning Authority Name	Moray Council
Response Date	12th November 2021
Planning Authority Reference	21/01686/APP
Nature of Proposal (Description)	Change of use of former bakery to a takeaway restaurant at
Site	212 High Street Elgin Moray IV30 1BA
Site Postcode	N/A
Site Gazetteer UPRN	000133000629
Proposal Location Easting	321342
Proposal Location Northing	862765
Area of application site (M²)	72
Additional Comment	
Development Hierarchy Level	LOCAL
Supporting Documentation URL	https://publicaccess.moray.gov.uk/eplanning/centralDistribution.do?caseType=Application&keyVal=R1D833BGIZS00
Previous Application	21/00419/APP 01/00698/FUL
Date of Consultation	29th October 2021
Is this a re-consultation of an existing application?	No
Applicant Name	Sanus Moor Ltd
Applicant Organisation Name	
Applicant Address	Per Agent
Agent Name	Martin Archibald
Agent Organisation Name	
Agent Address	The Old Church Church Road Garmouth Moray IV32 7SR
Agent Phone Number	
Agent Email Address	N/A
Case Officer	Shona Strachan
Case Officer Phone number	01343 563303
Case Officer email address	shona.strachan@moray.gov.uk
PA Response To	consultation.planning@moray.gov.uk

NOTE:

If you do not respond by the response date, it will be assumed that you have no comment to make.

The statutory period allowed for a consultation response is 14 days. Due to scheduling pressures if a definitive response is not received within 21 days this may well cause the

two month determination period to be exceeded.
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Data Protection - Moray Council is the data controller for this process. Information collected about you on this form will be used to process your Planning Application, and the Council has a duty to process your information fairly. Information we hold must be accurate, up to date, is kept only for as long as is necessary and is otherwise shared only where we are legally obliged to do so. You have a legal right to obtain details of the information that we hold about you.

For full terms please visit http://www.moray.gov.uk/moray_standard/page_121513.html

For full Data Protection policy, information and rights please see http://www.moray.gov.uk/moray_standard/page_119859.html

You can contact our Data Protection Officer at info@moray.gov.uk or 01343 562633 for more information.

Please respond using the attached form:-

MORAY COUNCIL

PLANNING CONSULTATION RESPONSE

From: Transportation Manager

Planning Application Ref. No: 21/01686/APP

Change of use of former bakery to a takeaway restaurant at 212 High Street Elgin Moray IV30 1BA for Sanus Moor Ltd

I have the following comments to make on the application:-

Please

- | | | |
|-----|---|-------------------------------------|
| (a) | I OBJECT to the application for the reason(s) as stated below | <input checked="" type="checkbox"/> |
| (b) | I have NO OBJECTIONS to the application and have no condition(s) and/or comment(s) to make on the proposal | <input type="checkbox"/> |
| (c) | I have NO OBJECTIONS to the application subject to condition(s) and/or comment(s) about the proposal as set out below | <input type="checkbox"/> |
| (d) | Further information is required in order to consider the application as set out below | <input type="checkbox"/> |

This proposal is for the conversion of former baker to a takeaway. No parking presently exists or is proposed. However the site sits within Elgin Town Centre and is therefore subject to 'The Moray Council Town Centre Zero parking provision'. A public Car Park is located immediately adjacent to the south, and with others available nearby.

The proposal includes the formation of two new door openings directly onto the U171E Batchen Lane.

The existing footway located adjacent to the site within Batchen Lane is narrow and already subject to a high number of pedestrian movements due to the close proximity to a public car park, and residential parking adjacent. Customers entering and exiting the takeaway via the new entrance doorway (or queuing outside) would increase the likelihood of pedestrians having to step onto the carriageway to pass each other. This would not be acceptable. There also does not appear to be scope to contain waste bins within the site (with presentation on collection day only), with waste bins also impacting upon the available footway with.

There are waiting restrictions present within Batchen Lane, including loading restrictions. Any unauthorised loading to the side of the building would not only obstruct access to the residential units adjacent to the west and also likely require the vehicle to undertake a reversing manoeuvre at a location where a high number of pedestrians may be present, and further exacerbated by the narrow footway width and subsequent intensification of use as a result of the proposed development itself. Again this would not be acceptable. The access from the lane onto High Street is very narrow and would be likely to prevent all but the smallest of goods being delivered via a vehicle parked on the High Street. The lane is also subject to a very uneven surface with drainage channels present which would make manoeuvring trolleys difficult. However even if improvements could be provided to the lane (eg widen the frontage onto the High Street/ improve surfacing) the High Street itself is narrow, with waiting restrictions present, and with limited on street parking

available nearby. Any vehicle stopped on the carriageway loading or unloading goods would obstruct other vehicles trying to pass. Delivery vehicles would not be permitted to park over the public footway. Therefore servicing the site from the High Street would not appear to be a viable option for deliveries associated with this proposal. Similarly there is a 'communal' Loading bay available within Batchen Lane. However as it is located over 110m away from the site, it would also not be considered as a viable location for deliveries associated with this proposal. Although customer and staff parking could be undertaken with thin the Moray Council Car Park immediately adjacent, under the regulations for the Car Parking Order deliveries could not be undertaken from the car park.

This section of Batchen Lane is already subject to a number of complaints from adjacent residents and businesses due to access to their properties and vehicle parking being obstructed by illegally/ or inappropriately parked vehicles, including vehicles parking over the footway (including within the High Street adjacent). Although these are primarily police enforcement matters Transportation would not support any proposal which would be likely to exacerbate any existing problems at this sensitive location.

On the basis that there is inadequate provision for queuing or waiting within the adjacent footway, and that deliveries associated with the proposed development at this time cannot be safely facilitated, Transportation would not support the proposed new take-away.

Reason(s) for objection

Transportation considers that the proposal, if permitted, 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 Moray Local Development Plan policies DP1 'Development Principles' section (ii)- 'Transportation', part 'a)' (safe entry and exit)

Further comment(s) to be passed to applicant

In order for Transportation to Support the proposed takeaway, the existing footway would require to be widened to accommodate the additional commercial footfall and waiting associated with the take-away, along with measures put in place to facilitate the safe delivery of goods.

The attached sketch '21-01686-APP Sketch showing footway improvements' has been prepared to highlight one suggested option, with deliveries undertaken from the closest, safe, available location to the site (approximately 50m to the south within Batchen Lane. The option would require the provision of a new 2.0m footway from a delivery area, and with widening and alterations to the existing footway at the building entrance, with drop kerbs at each crossing point. It should be highlighted that these works would be subject to Roads Construction Consent, and all costs associated with the works would be borne by the applicant. It should also be highlighted that the formation of the new footway down from the loading area would be likely to require the removal of existing trees due to the changes to level differences possibly resulting in exposure of the tree roots.

Contact: AG
email address: transport.develop@moray.gov.uk
Consultee: TRANSPORTATION

Date 30 November 2021

Return response to

consultation.planning@moray.gov.uk

Please note that information about the application including consultation responses and representations (whether in support or objection) received on the proposal will be published on the Council's website at <http://publicaccess.moray.gov.uk/eplanning/>. (You can also use this site to track progress of the application and view details of any consultation responses and representations (whether in support or objection) received on the proposal). In order to comply with the Data Protection Act, personal information including signatures, personal telephone and email details will be removed prior to publication using "redaction" software to avoid (or mask) the display of such information. Where appropriate other "sensitive" information within documents will also be removed prior to publication online.



View (to east) of existing footway at proposed new takeaway entrance Batchen Lane



View (to west) of existing footway at proposed new takeaway entrance Batchen Lane



View from residential parking adjacent. Note the narrow access road and access requirements for refuse collection vehicles



View from South Street down towards site.



View of existing narrow private lane linking onto the High Street



View from High Street of existing narrow private lane



Waiting restrictions within High Street



Waiting/ Loading restrictions within Batchen Lane



Streetview image of inappropriate driver parking and loading behaviour adjacent within High Street



Streetview image showing example of inappropriate driver parking behaviour outside proposed entrance



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Lissa Rowan

From: Tim Betts
Sent: 12 December 2022 11:29
To: Lissa Rowan
Cc: Douglas Caldwell
Subject: RE: Notice of Review: Planning Application 21/01686/APP

Lissa

I hope this finds you well.

Please find our comments below.

Cheers

Tim

In relation to paragraph 5 of the 'Background' submission within the *Planning Statement*, the agent mentions an existing extract grill which this Section understands to be on the southern elevation. This Section would comment that the putting forward of this south facing extract location is new information and therefore has not been assessed as part of the current application under consideration. Having reviewed the supporting plans submitted with this appeal the position of this extract grill is not indicated and plans appear to retain the existing west facing terminal grill location.

Irrespective of this being an existing extract terminal grill on the southern elevation, it still raises concern with this Section in regards to noise and odour given the close proximity to residential properties immediately above the grill location. As part of pre-planning preliminary discussions, the agent has been previously advised in relation to this location that detailed noise and odour impact assessments would be required.

Within the 'Appeal Response' section of the *Planning Statement* the applicant suggests that EP14 is complied with, whereas this Section is not of the view that it is complied with. In particular, the applicant submitted notes on the suggested noise and odour criteria in section C under the heading 'Appeal Response'. This Section clarified with the applicant that the proposed criteria was insufficient and therefore not acceptable.

Furthermore, the applicant refers to a new "scheme designed and specified to meet the approval of the Environmental Health Department which satisfies all policies". At this stage, this Section has not agreed a design scheme which satisfies all policies.

I hope this information assists at this time.

From: Lissa Rowan <Lissa.Rowan@moray.gov.uk>
Sent: 28 November 2022 13:20
Subject: Notice of Review: Planning Application 21/01686/APP

Good afternoon

Please find attached correspondence in relation to the above Notice of Review.

Kind regards

Lissa

Lissa Rowan | Committee Services Officer | Governance, Strategy and Performance Services

lissa.rowan@moray.gov.uk | [website](#) | [facebook](#) | [twitter](#) | [instagram](#) | [news](#)

07765 741754

