

## MORAY COUNCIL

### MINUTE OF SPECIAL MEETING OF THE PLANNING AND REGULATORY SERVICES COMMITTEE

WEDNESDAY 15 FEBRUARY 2023

COUNCIL CHAMBERS, ELGIN

#### **PRESENT**

Councillors Gordon (Chair), Macrae (Depute), Cameron, Divers, Dunbar, Fernandes, Gatt, Keith, Lawrence, Leadbitter, McBain, Van Der Horn and Warren

#### **APOLOGIES**

Apologies were intimated on behalf of Councillors Cowe and Ross

#### **IN ATTENDANCE**

Head of Economic Growth and Development, Development Management and Building Standards Manager, Mr N MacPherson, Principal Planning Officer, Mrs D Anderson, Senior Engineer (Transportation), Mr A Miller, Senior Planning Officer, Mr D Caldwell, Environmental Health Officer, Legal Services Manager and Mrs L Rowan, Committee Services Officer as Clerk to the Committee.

#### **1. DECLARATION OF GROUP DECISIONS AND MEMBER'S INTERESTS**

In terms of Standing Order 21 and the Councillors' 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.

Councillor Macrae, on behalf of the Conservative Group, noted that one of the Applicants is Sir Edward Mountain, a Conservative Member of the Scottish Parliament and acknowledged that this may raise the question of a possible conflict of interest for Members of the Conservative Group. Having taken advice from the Deputy Monitoring Officer, and given that none of the Conservative Councillors have any close, personal link to Sir Edward Mountain, all Conservative Members on the Planning and Regulatory Services Committee were of the view that they are able to determine the planning application from an unbiased stand point and that there is no need for a declaration of interest from Conservative Group Members in relation to this planning application. This was noted.

The Legal Adviser advised that Councillor Ross had submitted apologies for the Committee as, prior to the meeting, he had declared an interest in Item 3 Planning Application 21/01901/EIA as his wife is Chair of Speyside Community Council and would be addressing the Committee on behalf of Speyside Community Council at the meeting and, as there was only one item on the agenda, had submitted apologies for the full meeting.

There were no further declarations of Member's interests in respect of any item on the agenda.

## 2. PLANNING APPLICATION 21/01901/EIA

### WARD 1: SPEYSIDE GLENLIVET

#### **Proposed 100,000 tonnes per annum malt producing facility on Land at Greens of Rothes, Rothes, Moray for Simpsons Malt Ltd and Sir Edward Mountain**

A report by the Head of Governance, Strategy and Performance asked the Committee to consider Planning Application 21/01901/EIA following conclusion of a Pre-determination Hearing at a special meeting of the Planning and Regulatory Services Committee earlier in the day.

Councillor Macrae, having considered the report from the Appointed Officer and the statements from the Applicant's representatives and interested parties moved that the Committee grant planning permission, as recommended, in relation to Planning Application 21/01901/EIA subject to the conditions detailed in the report. This was seconded by Councillor McBain.

Councillor Leadbitter noted the comments during the hearing in relation to the biomass plant no longer being required and the reduction in capacity from 100,000 to 85,000 tonnes and sought clarification as to whether the Committee could proceed to determine the planning application as set out in the report while knowing of these changes.

In response, Mr Miller, Senior Planning Officer advised that the planning application has to be determined as submitted which would include the biomass plant and 100,000 tonne capacity.

Through the Chair, the Head of Economic Growth and Development asked for a short adjournment to allow discussion with the Applicant's representatives in relation to the biomass plant. This was agreed.

Following the short adjournment, the Head of Economic Growth and Development advised that the Applicant was agreeable to add a further condition to reflect that no biomass plant would be permitted on the site.

On hearing the advice from the Head of Economic Growth and Development, both Councillors Macrae and McBain agreed to amend their motion to include the additional condition regarding the biomass plant.

Councillor Van Der Horn raised concern that parts of the Flood Risk Assessment document on the planning portal could not be read and was not fit for purpose.

In response, Mr MacPherson advised that the Flood Risk Assessment had been submitted correctly by the Applicant however on upload to the planning portal following redaction some of the maps had reversed which had caused some confusion. He however confirmed that the Appendix to the Flood Risk Assessment is correct and all the other plans in the wider submission are correctly orientated and the calculations and conclusions in the document are competent.

The Legal Adviser further advised that the statutory consultees would have had sight of the original plans and commented on the correct version.

Councillor Van Der Horn remained dissatisfied and moved that the Committee refuse Planning Application 21/01901/EIA as it is contrary to policy EP6 (Settlement Boundaries) and that there was not enough detail within the report in terms of the visual impact of the development. This was seconded by Councillor Cameron.

On a division there voted:

For the Motion (8):	Councillors Macrae, McBain, Divers, Dunbar, Gordon, Gatt, Keith and Leadbitter
For the Amendment (4):	Councillors Van Der Horn, Cameron, Fernandes and Lawrence
Abstentions (1):	Councillor Warren

Accordingly, the Motion became the finding of the Committee and it was agreed to grant planning permission, as recommended, in relation to Planning Application 21/01901/EIA subject to the following conditions and reasons with an additional condition to reflect that the development would not include a biomass plant/boiler as shown indicatively on the site layout plan and referred to in the supporting Environmental Impact Assessment Report.

1. In accordance with Section 59 of the Town and Country Planning (Scotland) Act 1997 as amended:
  - (a) That in the case of any matter specified in conditions attached to the planning permission in principle, application for approval of matters specified in conditions must be made before:-
    - (i) that expiration of 3 years from the date of the grant of planning permission in principle; or
    - (ii) the expiration of 6 months from the date on which an earlier application for such approval for the same matters was refused; or
    - (iii) the expiration of 6 months from the date on which an appeal against such refusal was dismissed; whichever is the latest, and
  - (b) That the development to which the permission relates must be begun not later than whichever is the later of the following dates:-
    - (i) the expiration of 3 years from the date of the grant of planning permission in principle; or
    - (ii) the expiration of 2 years from the final approval of the matters specified in conditions or in the case of approval on different dates the final approval of the last such matter to be approved.

If an application for approval of matters specified in conditions has not been made or the development has not begun within the specified dates this planning permission in principle shall lapse unless there is a specific condition attached to this permission which varies the stated timescales.

**Reason:** The time limit condition is in accordance with section 59 of the Town and Country Planning (Scotland) Act 1997 as amended.

2. The approval hereby granted is for planning permission in principle and prior to the commencement of the development approval of matters specified in conditions, including the siting, design and external appearance of the

building(s), plant and other structures; the means of access thereto; drainage; and the landscaping of the site shall be obtained from the Council, as Planning Authority.

**Reason:** In order to ensure that the matters specified can be fully considered prior to the commencement of development.

3. The grant of planning permission in principle hereby granted for the proposed development shall be carried out only in accordance with detailed drawings which shall previously have been submitted to and approved by the Council, as Planning Authority. These drawings shall show the matters specified in conditions numbered 3-8 below.

**Reason:** As the approval is granted for planning permission in principle only and in order that detailed consideration can be given to the matters specified.

4. Plans, sections and elevations of all building(s), plant and structures proposed with details of the type and colour of all external materials and finishes shall be submitted in accordance with condition no. 3 above.

**Reason:** As the approval is granted for planning permission in principle only and in order that detailed consideration can be given to the matters specified.

5. The proposed layout of the site showing the exact position of the site boundaries, the position of all buildings, the means of access, areas for vehicle parking and the arrangements for the disposal of foul and surface water (i.e. a SUDS system or equivalent) shall be submitted in accordance with condition no. 2 above.

**Reason:** As the approval is granted for planning permission in principle only and in order that detailed consideration can be given to the matters specified.

6. Details of the exact extent, type and finish of all other works including walls, fences and other means of enclosure (including noise attenuation bunds) and screening shall be submitted in accordance with condition no. 2 above.

**Reason:** As the approval is granted for planning permission in principle only and in order that detailed consideration can be given to the matters specified.

7. Sections through the site showing the development on its finished levels in relation to existing levels shall be submitted in accordance with condition no. 2 above.

**Reason:** As the approval is granted for planning permission in principle only and in order that detailed consideration can be given to the matters specified.

8. Landscaping proposals which reflect the planting shown in the EIA Site Layout Plan, drawing number SML-001-013 hereby approved and detail any existing trees/hedges/shrubs to be retained or removed together with details of the type, position and number of all planting to be undertaken and details of all surfacing materials shall be submitted in accordance with condition no. 2 above. The landscaping proposals shall be maintained in accordance with the maintenance details specified in section 10.212 of the EIA Report hereby approved.

**Reason:** As the approval is granted for planning permission in principle only and in order that detailed consideration can be given to the matters specified.

9. For the avoidance of doubt, the height of the buildings, structures and plant hereby approved, shall be in accordance with the indicative heights specified in section 10.24 of the approved Environmental Impact Assessment Report as well as those indicated on the LVIA Massing Elevation drawing.

**Reason:** To ensure the development is carried in accordance with the detail contained within the information that accompanied the application, the landscape and visual impact of the development having been assessed against this.

10. Prior to development commencing, a phasing plan for the development, which includes timing for provision of the buildings and plant permitted, along with any infrastructure, landscaping and bunding shall be submitted and approved in writing by the Council, as Planning Authority. Thereafter, the development shall proceed in accordance with the approved phasing plan, unless otherwise agreed in writing with the Council, as Planning Authority.

**Reason:** To allow consideration to be given to the phased delivery of the development.

11. A Waste Management Plan shall be submitted to and approved in writing by the Council, as Planning Authority prior to development commencing. The Waste Management Plan shall relate to the operation of the development hereby approved and include information on the following:
  - a) identification of the likely waste sources associated with the operation of the development;
  - b) proposed waste management requirements, including provisions to maximise waste reduction and waste separation at source; and
  - c) proposed waste management and storage strategy, which shall include details of:
    - i. measures to minimise cross-contamination of materials
    - ii. storage of waste and by-products (including measures to ensure waste is secure from wind/weather)
    - iii. provision of access for collection of waste, and
    - iv. recycling and localised waste management facilities.

Thereafter, the Waste Management Plan shall be implemented in full accordance with the details hereby approved prior to the completion or first operation of development hereby approved (whichever is the soonest).

**Reason:** To ensure waste is minimised as a result of the operation of the proposed development, in accordance with National Planning Framework 4 Policy 12 – Zero Waste.

12. Prior to any development commencing, a Decarbonisation Strategy shall be submitted to and approved in writing by the Council, as Planning Authority. The Decarbonisation Strategy shall include detail of:
  - a. Measures to improve the efficiency of the operation of the development (including, but not limited to industrial processes and building operations) in order to reduce potential carbon emissions; and

- b. Commitment to continually review operations, improve efficiencies and further reduce carbon emissions throughout the lifetime of the development, should new technology/methodologies allow.

Thereafter the development shall be developed and operated in accordance with the approved decarbonisation strategy, unless otherwise agreed in writing with the Council, as Planning Authority.

**Reason:** To ensure carbon emissions are minimised during the operation of the development, in accordance with National Planning Framework Policy 26 – Business and Industry.

13. Prior to any development commencing, a scheme which shows biodiversity mitigation and enhancement measures shall be submitted and approved in writing by the Council, as Planning Authority. The scheme shall demonstrate how the mitigation measures (as outlined in sections 8.277 – 8.291 of the Environmental Impact Assessment Report approved as part of this application) have been incorporated into the final design of the development hereby approved, and provide timing for the delivery of the measures. Thereafter all measures shall be provided in full accordance with the approved details.

**Reason:** To ensure timely delivery of biodiversity mitigation and enhancement, as identified in the Environmental Impact Assessment Report that accompanied this application, in the interests of the environment.

14. Unless otherwise agreed in writing with the Council, as Planning Authority (and in consultation with Moray Flood Risk Management and SEPA), there shall be no development or land-raising within the functional floodplain as outlined in Figure 7 within the Flood Risk Assessment (Ref. P20-083 SM Rothes EIA/RPT Rothes Detailed FRA and DIA).

**Reason:** To ensure there is no increased flood risk as a result of the development.

15. Prior to development commencing, a Construction Environmental Management Plan (CEMP) shall be submitted to and agreed in writing by the Council, as Planning Authority in consultation with the Environmental Health Manager, Moray Flood Risk Management, NatureScot (SNH) and Scottish Gas Networks. The plan shall include:
  - a) measures to minimise construction related noise, vibration, dust and artificial lighting on nearby residential properties and ecology, including nearby water courses;
  - b) a waste management strategy that includes:
    - i. identification of the likely waste sources associated with the operation of the development;
    - ii. proposed waste management requirements, including provisions to maximise waste reduction and waste separation at source; and
    - iii. proposed waste management and storage strategy, which shall include details of measures to minimise cross-contamination of materials, storage of waste (including measures to ensure waste is secure from wind/weather), provision of access for collection of waste, and recycling and localised waste management facilities;
  - c) measures to ensure soil disturbance is minimised during construction;

- d) a scheme of surface water management to prevent run-off from the site during construction works;
- e) protection measures for trees adjacent to the site to be provided during the course of works;
- f) a scheme of works for any development within 35 metres of the high pressure gas pipeline that passes through the site, along with detail of any construction or land movement on or in close proximity to the high-pressure gas main.

The above measures shall be accompanied by information for the timing of their provision. Thereafter the development shall be carried out in accordance with the details hereby approved unless otherwise agreed with the Council, as Planning Authority, in writing.

**Reason:** In order to ensure environmental impacts are suitably managed and maintained during the construction phase.

16. Construction works (incl. vehicle movements) associated with the development that are audible above background noise levels at the boundary of any noise sensitive dwelling shall be permitted between 0700 - 1900 hours, Monday to Friday and 0800 - 1700 hours on Saturdays only, and at no other times out with these permitted hours (including National Holidays) shall construction works be undertaken except where previously agreed in writing with the Council, as Planning Authority and where so demonstrated that operational constraints require limited periods of construction works to be undertaken out with the permitted/stated hours of working.

**Reason:** In order to ensure the times of construction are controlled so as to prevent noise disturbance to neighbouring residential amenity.

17. As part of condition 6, 3 metre high acoustic bunds shall be provided along the northern and western site boundaries of the development, as illustrated in dark green in figure 3.1 and figure 3.2 and also described in Table 6.1, page 20, of the noise impact assessment prepared by The Airshed, 5 Lauder Place, East Linton, titled "Environmental Noise Assessment for Proposed Maltings Rothes. Report Ref. AS 0806, dated 16th November 2021" within Appendix 11.1 of the Environmental Impact Assessment Report supporting document. The final selected acoustic barrier in terms of chosen material, design, surface density shall be submitted in a plan and agreed in writing with the Council, as Planning Authority prior to the use being established, and shall thereafter be installed and retained throughout the lifetime of the development in full accordance with the details hereby approved prior to the development becoming operational or its completion (whichever is the soonest).

**Reason:** To ensure an acceptable form of development as these details are lacking from the application.

18. Prior to the development commencing, a detailed Light Impact Assessment undertaken by a competent person shall be submitted to and agreed in writing with the Council, as Planning Authority. The findings arising from the assessment shall thereafter be implemented and retained throughout the lifetime of the development in full accordance with the details hereby approved prior to the development becoming operational or its completion (whichever is the soonest).

**Reason:** To ensure an acceptable form of development as these details are lacking from the application.

19. Fixed plant noise emissions associated with the development shall not exceed Noise Rating Curve (NR) 25, as determined within the bedroom of the nearest noise sensitive property with the window moderately open, during the night-time hours of 2300 to 0700 hours. This limit would apply and be determined over a minimum of 5 minutes duration within the night-time hours of 2300 to 0700 hours.

**Reason:** In order to protect local residents from noise nuisance by limiting noise emissions from the development.

20. The rating level of noise associated with the development ventilation shall not exceed the background sound level by more than 5 dB (A) at the nearest noise sensitive dwelling. Measurement and assessment to demonstrate compliance with the rating level shall be undertaken in accordance with BS 4142: 2014 Methods for rating and assessing industrial and commercial sound. For the purpose of measurement and assessment using this above standard, the background sound level has been determined as an L A 90 of 39 dB, as stated within the "Proposed Design Criteria" section of the noise impact assessment prepared by The Airshed, 5 Lauder Place, East Linton, titled "Environmental Noise Assessment for Proposed Maltings Rothes. Report Ref. AS 0806, dated 16th November 2021" within Appendix 11.1 of the Environmental Impact Assessment Report supporting document.

**Reason:** To protect local residents from noise nuisance by limiting noise emissions from the development.

21. Prior to the development commencing and in order to demonstrate compliance with condition 20 above, a further detailed Noise Impact Assessment (NIA) shall be submitted to and approved in writing by the Council, as Planning Authority. The NIA shall be undertaken in accordance with BS 4142:2014 Method for rating and assessing industrial and commercial sound. The approved operational noise rating levels arising from this further NIA shall not be exceeded during the operational lifetime of the development.

**Reason:** In order to ensure that in the final design selected a further assessment of noise impact shall be undertaken and can demonstrate no noise nuisance to local residents.

22. Prior to the development commencing, a detailed noise management plan for operational noise at the development shall be reported in writing to and approved by the Council as Planning Authority. Thereafter the development will be carried out in full accordance with the agreed plan for the operational lifetime of the development.

**Reason:** In order to ensure noise impacts are suitably managed and maintained during the operational phase.

23. Unless otherwise agreed in writing with the Planning Authority, access and egress by HGV vehicles to the development during the operational phase shall not be permitted between 1800 and 0800 hours.



**Reason:** In order to ensure the times of HGV vehicle access and egress is controlled so as to prevent noise nuisance to local residents.

24. No works in connection with the development hereby approved shall commence unless an archaeological written scheme of investigation (WSI) has been submitted to and approved in writing by the planning authority and a programme of archaeological works has been carried out in accordance with the approved WSI. The WSI shall include details of how the recording and recovery of archaeological resources found within the application site shall be undertaken, and how any updates, if required, to the written scheme of investigation will be provided throughout the implementation of the programme of archaeological works. Should the archaeological works reveal the need for post excavation analysis the development hereby approved shall not be brought into use unless a Post-Excavation Research Design (PERD) for the analysis, publication and dissemination of results and archive deposition has been submitted to and approved in writing by the planning authority. The PERD shall be carried out in complete accordance with the approved details.

**Reason:** To safeguard and record the archaeological potential of the area.

25. Notwithstanding the options submitted and prior to the completion of development or the development becoming operational (whichever is soonest), details shall be submitted for approval in writing by the Planning Authority in consultation with the Roads Authority which demonstrate the provision of a pedestrian connection between the development and New Street in Rothes (including any associated works required). Thereafter the pedestrian connection shall be provided in accordance with the approved details prior to the completion of the development or the development becoming operational (whichever is soonest).

**Reason:** To ensure an acceptable development in road safety terms through the provision of details to be agreed.

26. There shall be no obstructions over 0.26 metres in height measured from the nearest edge of the carriageway and all boundary walls/fences/hedges set back to a position behind the visibility splay as shown in drawing LGR-WSP-XX-XX-DR-C-006 Rev A. Thereafter prior to completion of the site access or the access becoming operational the visibility splay shall be provided in accordance with the approved details and maintained in accordance with a schedule of maintenance to be agreed in writing by the Council, as Planning Authority.

**Reason:** To ensure an acceptable development in terms of visibility splays, road safety and non-vehicular accessibility, through the provision of details currently lacking and/or incorrectly shown on the submitted particulars to date.

27. No part of the development shall be completed or become operational until evidence has been submitted to demonstrate that the statutory process to promote and implement any new speed limit(s) on the B9015 required as a consequence of the proposed development, have been completed by Moray Council.

**Reason:** To ensure an acceptable development through the provision of details currently lacking and/or incorrectly shown on the submitted particulars to date.

28. No works shall commence on site until a Construction Traffic Management Plan has been submitted to and approved in writing by the Council, as Planning Authority in consultation with the Roads Authority. The Construction Traffic Management Plan shall include the following information:
- a) duration of works;
  - b) construction programme;
  - c) number of vehicle movements (i.e. materials, plant, staff, components);
  - d) anticipated schedule for delivery of materials and plant;
  - e) full details of any temporary construction access;
  - f) measures to be put in place to prevent material being deposited on the public road;
  - g) measures to be put in place to safeguard the movements of pedestrians;
  - h) traffic management measures to be put in place during works including any specific instructions to drivers; and
  - i) Parking provision, loading and unloading areas for construction traffic.

Thereafter, the development shall be implemented in accordance with the approved details.

**Reason:** To ensure an acceptable form of development in terms of the arrangements to manage traffic during construction works at the site.

29. Notwithstanding the details submitted (which do not include sufficient detail of the proposed staff and operational parking within the proposed development), no development shall commence until the following have been submitted for approval in writing by the Planning Authority in consultation with the Roads Authority:

A Parking Assessment to demonstrate adequate parking provision including but not limited to the following provisions:

- a) Car spaces for staff and visitors (including disabled parking spaces)
- b) Operational parking for HGV's
- c) Secure and weatherproof cycle parking
- d) EV charging spaces (in accordance with the Moray Local Development Plan 2020 and supplementary guidance).

A plan (Scale 1:500 min) of the proposed locations for parking and internal roads within the site serving the parking, including swept paths at locations to be agreed with the Roads Authority.

Thereafter, unless otherwise approved in writing by the Planning Authority, the development shall be completed in accordance with the approved details and no part of the development shall become operational until the parking associated with it has been provided and is retained and available for use at all times.

**Reason:** To ensure the permanent availability of parking and the provision of infrastructure to support the use of low carbon transport, through the provision of details currently lacking in the interests of an acceptable development and road safety.

30. No boundary fences, hedges, walls or any other obstruction whatsoever over 1.0 metre in height and fronting onto the public road shall be within 2.4 metres of the edge of the carriageway, measured from the level of the public carriageway, unless otherwise agreed in writing by the Council, as Planning Authority in consultation with the Roads Authority.

**Reason:** To enable drivers of vehicles leaving driveways to have a clear view over a length of road sufficient to allow safe exit, in the interests of road safety for the proposed development and other road users.

31. All drainage shall be designed in accordance with the details specified in the "Detailed Flood Risk Assessment and Drainage Impact Assessment" hereby approved.

**Reason:** To ensure surface water drainage is provided in accordance with the approved details.

32. The development hereby approved shall not include a biomass plant/boiler as shown indicatively on the site layout plan and referred to in the supporting Environmental Impact Assessment Report, both hereby approved.

**Reason:** That a biomass plant/boiler is no longer required to provide energy/heat for this development, as confirmed by the applicant.