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**REPORT TO: PLANNING AND REGULATORY SERVICES COMMITTEE ON  
13 NOVEMBER 2018**

**SUBJECT: PROGRESS OF APPLICATION 17/00834/PPP FOR PLANNING  
PERMISSION IN PRINCIPLE FOR DEVELOPMENT ON LAND AT  
FINDRASSIE, ELGIN**

**BY: CORPORATE DIRECTOR (ECONOMIC DEVELOPMENT,  
PLANNING AND INFRASTRUCTURE)**

**1. REASON FOR REPORT**

- 1.1 To inform the Committee about the progress of an application for planning permission in principle for development on land at Findrassie, Elgin.
- 1.2 This report is submitted to Committee in terms of Section III (E) (1) of the Council's Scheme of Administration relating to exercising the statutory functions of the Council as a Planning Authority.

**2. RECOMMENDATION**

**2.1 It is recommended that the Committee:**

- (i) note the progress made on the legal agreement associated with development proposed at Findrassie including the need for further consideration of the draft legal agreement following the recent receipt of comments/revisals made by the applicant's legal representative; and
- (ii) agrees to apply a Direction (under Section 59 of the 1997 Planning Act, as amended) instead of a planning condition, as currently agreed, in respect of the time period within which approval of matters specified in conditions must be made from the date of granting planning permission in principle. This Direction will be incorporated into the formal decision notice.

### **3. BACKGROUND**

- 3.1 Following consideration on 24 April 2018, this Committee agreed to grant planning permission in principle for application 17/00834/PPP, for a mixed use development on land at Findrassie subject to conditions as recommended and completion of a legal agreement prior to the issue of any formal grant of planning permission in principle (PPP) (paragraph 8 of Minute refers).
- 3.2 As a mixed use development, the application for PPP includes Class 9 residential development (c.400 – 500 houses, including affordable housing and student residential accommodation); community facilities including a new primary school with playing fields; associated neighbourhood uses and employment opportunities within Class 1 (Shops), Class 2 (Financial, professional and other services), Class 3 (Food and drink), Class 4 (Business), Class 7 (Hotel), Class 8 (Residential institutions) and Class 10 (Non-residential institutions) (Use Classes Order 1997 refers) together with associated infrastructure, for example, roads, pedestrian and cycle routes, drainage, services, open space, and landscaping including advance landscaping.
- 3.3 The development will be located on land, approx. 48.6ha and referred to as Area 1, which forms part of the (larger) Elgin R11 Findrassie/Myreside and Elgin I8 Newfield designations, as defined in the adopted Moray Local Development Plan 2015. As a material consideration, the approved Findrassie Masterplan applies to the identified designations, including the Area 1 site.
- 3.4 As part of the permission, a number of planning conditions are proposed to regulate and restrict the development including those which require further details to be submitted for approval on matters relating to the siting, design and servicing of the development, etc. before the development can commence. In this case, a 5 year period is applied, from the date of granting planning permission in principle, for the submission of further application(s) regarding matters about the detailed design and site layout arrangements for development within the Area 1 site at Findrassie.
- 3.5 The legal agreement associated with the development relates to developer obligations towards primary education facilities (a 2.5ha serviced site for a primary school) and secondary education facilities, healthcare, transportation and sports and recreation facilities; and delivery of positive boundary treatment to western edge of existing electricity sub-station.
- 3.6 At present and by exchange of email correspondence, an extended time-period for the determination of the application has been agreed for a further two months from 26 September 2018.

#### **Draft Section 75 agreement**

- 3.7 On 25 March 2015, this Committee agreed, in relation to applications which are to be approved subject to a legal agreement being signed, that if the agreement is not concluded within a period of 4 months (from the date Legal Services are instructed) then where the decision was made by this Committee these applications will be reported back to the next available Committee for further consideration and where the decision was made under delegated powers, this will be the subject of review by the Head of Service, and consideration will be given to refuse the application if it is demonstrated that the process is being hindered by the applicant preventing conclusion of an agreement in a timely manner. (Paragraph 6 of Minute refers).
- 3.8 For the proposed development at Findrassie as described, a draft legal agreement was prepared by the Council's Legal Services Section and issued to the applicant's agent on 7 June 2018. Given the nature of the proposal the legal agreement is complex.
- 3.9 The applicant's legal representative only returned the draft agreement to the Council on 23 October 2018.
- 3.10 Since the application was first considered, and a draft legal agreement exchanged, the application has not really progressed much towards its conclusion. However, some four months later, a response from the applicant's legal representative has now been received. This response includes an offer to provide a Certificate of Title, to remove the need for the Council to review the title which is described as "very complex", and a series of detailed comments/revisals made on the draft agreement.
- 3.11 In order to progress the agreement, the comments/revisals will need to be the subject of further detailed consultation with all relevant officials within the Council, in order to assess the implications of the applicant's proposed amendments before the agreement can be progressed further and then finalised, recorded and any grant of planning permission in principle issued for the development. Arrangements to undertake further consultation are in progress.

**Proposed Direction regarding duration of the permission**

- 3.12 In terms of the duration of the PPP for the development, a planning condition (2) was agreed allowing a 5 year period rather than 3 year period within which applications must be made for the requisite approval of matters specified in conditions (of the planning permission in principle) before the development can begin.
- 3.13 Under Section 59 of the 1997 Planning Act as amended, and where considered appropriate, the Council, as Planning Authority can substitute and specify an alternative time-period other than the 3 year period as stated in the Act. However, this should be applied as a Direction not by planning condition. To address this procedural requirement, it is recommended that that the Direction as set out in **Appendix 1** be included in any formal decision notice granting planning permission for the development. With the Direction applied, condition 2 as currently agreed will be omitted from the formal decision. This

will require all remaining conditions to be renumbered but their content and purpose remain unaltered.

#### **4. SUMMARY OF IMPLICATIONS**

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

As well as supporting and facilitating the Council's priority for economic development in Moray, performance monitoring is also required to ensure delivery of priorities and Council decisions.

**(b) Policy and Legal**

The 1997 Planning Act as amended provides the statutory legal framework within which planning decisions are made as well as requiring decisions to be made in accordance with the development plan unless material considerations indicate otherwise. The latter includes planning policy regarding consideration of developer obligations to mitigate the impact of proposed development.

**(c) Financial Implications**

In connection with preparing the legal agreement, the heritable proprietor is responsible for meeting the Council's reasonable legal fees and outlays, and recording dues.

**(d) Risk Implications**

If the legal agreement is not concluded, the application will require to be remitted back to the Committee for further consideration. This will incur further delay in the determination of this proposal.

**(e) Staffing Implications**

Further consultation within relevant Council Services is required to enable consideration of the applicant's comments/revisals. Legal services are currently short staffed and this complex and time consuming issue will put further pressure on staff in that service.

**(f) Property**

None.

**(g) Equalities/Socio Economic Impact**

None.

**(h) Consultations**

The Corporate Director (Economic Development Planning & Infrastructure), the Head of Development Services, Legal Services Manager (Property and Contracts), Manager (Development Management), and Lissa Rowan (Committee Services Officer) have been consulted, and comments received have been incorporated into the report.

## **5. CONCLUSION**

- 5.1 Over four months have passed between the issue of a draft legal agreement to the applicant's agent regarding development on land at Findrassie and its return to the Council. In light of the detailed comments/revisals made to the document by the applicant's legal representative, further consideration and consultation will be required before any agreement is finalised and recorded prior to issue of any formal decision notice.**
- 5.2 To accord with the requirements of the 1997 Planning Act as amended, a Direction rather than a planning condition is required to set out the duration of the planning permission in principle (see Appendix 1). It is recommended that the Direction be incorporated into any formal decision issued for the development proposed at Findrassie.**

Author of Report: Angus A Burnie

Background Papers:

Ref: 17/00834/PPP