THE HIGHLAND COUNCIL

SOUTH PLANNING APPLICATIONS COMMITTEE 20 May 2014

Agenda Item 5.10

Report No PLS/041/14

12/00103/FUL : Mr William MacMillan 42 – 44 Millburn Road, Inverness

Report by Area Planning Manager - South

SUMMARY

Description: Change of use of motorcycle showroom and workshop to restaurant and

separate class 3 hot food takeaway

Recommendation - GRANT

Ward: 17, Inverness Millburn

Development category: Local Development

Pre-determination hearing: Not required

Reason referred to Committee: Community Council objection.

1. PROPOSED DEVELOPMENT

1.1 Existing motorcycle showroom / workshop (now disused) to be converted into a restaurant and hot food takeaway. Proposed conservatory extension to Millburn Road elevation to form part of restaurant area, and toilet / storage extension along gable towards Budget Tyres premises to the west. Small extensions to rear to form toilet and amended rear staff entrance. Area to rear also used to form bin storage area, and to site a cold storage cabin.

External sitting out area to be provided adjacent to restaurant entrance, and disabled access ramp formed to this entrance.

25 car parking spaces formed along with associated planting on area of disused land to the east, and footpath link provided alongside the site access road and continuing to join the Millburn Road / A9 intersection roundabout (Raigmore Interchange). 2 cycle parking stands to be formed adjacent to proposed takeaway entrance.

- 1.2 No pre-application consultation took place.
- 1.3 The existing site access is via a private road which runs from the KFC entrance past Budget Tyres to the site. This will be amended to include a pedestrian footpath along its full length and a speed table adjacent to the building entrance.

The footpath then continues along the perimeter to form a pedestrian link into the site off the Raigmore Interchange.

- 1.4 A transport statement and swept path analysis have been submitted in support of the application.
- 1.5 **Variations**: The car park area has been increased, cycle parking has been included, and the footpath link to the Raigmore Interchange has been included within the application.

2. SITE DESCRIPTION

2.1 The site lies adjacent to Millburn Road, and immediately to the east of Budget Tyres. A wooded escarpment bounds the south site boundary, separating the site from the Raigmore estate. The area between the east site boundary and the Raigmore Interchange is disused and overgrown in nature.

The site lies below the level of Millburn Road, at the bottom of a small embankment. The site itself is largely level.

A single storey building currently occupies the western end of the site. It is set back slightly from Budget Tyres, and then steps back. The building is currently disused and boarded up.

3. PLANNING HISTORY

3.1 None

4. PUBLIC PARTICIPATION

4.1 Advertised : Neighbour

Representation deadline: 17 February 2012

Timeous representations: 1
Late representations: 0

- 4.2 Material considerations raised are summarised as follows:
 - Use incompatible with adjacent motorists centre (Budget Tyres)
 - Road safety concerns
 - Conflict in vehicle movements between parking and manoeuvring in the carriageway outside Budget Tyres by their customers and service vehicles and the proposed takeaway / restaurant customers
- 4.3 All letters of representation are available for inspection via the Council's eplanning portal which can be accessed through the internet www.wam.highland.gov.uk/wam. Access to computers can be made available via Planning and Development Service offices.

5. CONSULTATIONS

5.1 **Environmental Health**: No objection. Recommend noise condition to cover ventilation / air conditioning / heating / refrigeration equipment; and condition to specify kitchen ventilation / extraction system to control cooking odours.

- 5.2 **Forestry**: No objection. The proposal should not have any implications for the trees. Care must be taken not to damage trees on the woodland to the south. There could be pressure to have these trees cut back or removed.
- 5.3 **Transport Planning**: No objections. Details of the retaining wall need to be clarified with the Council's Chief Structural Engineer; raised table pedestrian crossing / traffic calming should be a maximum of 3.5m wide; service area / turning head to comply with Council standards; alternative parking needs to be provided for Budget Tyres; suggest monitoring parking provision to ensure it is adequate, and additional parking provided on land to the east of the site if it proves inadequate.
- Raigmore Community Council: Object. Welcome development since this area is an eyesore, but concerns regarding access. Slow / static traffic experienced due to queues at KFC, and additional traffic will exacerbate the problem. Delivery vehicles have also been known to stop on the dual carriageway to off load. Consider the junction is inadequate to accommodate increased traffic flows. The submitted TIA does not adequately address these concerns.
- 5.5 **Transport Scotland :** No objection.

6. DEVELOPMENT PLAN POLICY

The following policies are relevant to the assessment of the application

6.1 Highland-wide Local Development Plan 2012

28 Sustainable design

29 Design quality and place making

Trees and development

6.2 Inverness Local Plan (as continued in force 2012)

31 Urban distributor roads

Business allocation

7. OTHER MATERIAL CONSIDERATIONS

7.1 Inner Moray Firth Proposed Local Development Plan

IN14 Millburn Road Retail

7.2 Highland Council Supplementary Planning Policy Guidance

Not applicable

7.3 Scottish Government Planning Policy and Guidance

Not applicable

8. PLANNING APPRAISAL

- 8.1 Section 25 of the Town and Country Planning (Scotland) Act 1997 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise.
- 8.2 This means that the application requires to be assessed against all policies of the Development Plan relevant to the application, all national and local policy guidance and all other material considerations relevant to the application.

8.3 **Development Plan Policy Assessment**

The site is allocated for business purposes in the adopted Inverness Local Plan, and for retail in the Inner Moray Firth Proposed Local Development Plan.

The former use of the premises was as a motorcycle showroom and workshop. The proposed use is as a restaurant and hot food takeaway. This complies with the business allocation in the Inverness Local Plan, although it does not correspond to the proposed 'retail' allocation in the emerging Inner Moray Firth Local Development Plan. Nevertheless the proposal must be considered consistent with the development opportunities afforded the site in terms of re-use of an existing developed site.

The adjacent premises are Budget Tyres, with KFC (takeaway / restaurant) beyond. The proposed takeaway / restaurant use therefore reflects the nature of uses in the immediate vicinity and will integrate with surrounding land uses in a satisfactory manner, and comply with adopted policy.

The proposed use includes the retention of the wooded escarpment adjacent to, but outwith, the site boundaries. Planting is also included within the proposed car parking layout which will reinforce the backdrop of the wooded escarpment and enhance the appearance of the site on this important main route into Inverness. This complies with Policy 51(trees and development) and Policy 28 (sustainable design) of the Highland-wide Local Development Plan.

The provision of the footpath link to the Raigmore Interchange and the associated 'entrance' feature will both incorporate public art and help to encourage walking to the site, in compliance with Policy 29 (design quality and place making) and Policy 28 (sustainable design) which also seeks to ensure that development is accessible by public transport, cycling and walking as well as by car. This will further help to enhance this approach into Inverness and help to provide a sense of place and identity.

The existing building will have a conservatory style extension added to the Millburn Road elevation. This will provide an element of visual interest and an open aspect to an otherwise bland building, and meets the requirements for a high quality design in keeping with the local character of the area, in accordance with Policies 28 and 29.

8.4 Material Considerations

Concerns have been expressed regarding the adequacy of the junction of the access road with Millburn Road to accommodate additional traffic. This junction currently serves KFC, Budget Tyres, and the application site, and following the opening of KFC traffic queuing back onto Millburn Road has been experienced. The applicant therefore commissioned a Transport Statement. This assesses the proposal, the traffic which is likely to be generated by it at peak times, the traffic generated by KFC, and the anticipated parking demand.

This concludes that the issues which have been experienced are a result of the layout within the KFC site and that the traffic associated with the proposed restaurant and takeaway will not materially impact on the highway network under conditions. Planning permission free flowing has now been (11/04374/FUL) for improvements to the access at KFC which should provide a solution to the issues of congestion at the junction of the site access with Millburn Road. The peak traffic flows generally associated with a drive-through takeaway, such as KFC, do not correspond with the peak traffic flows generally associated with a restaurant / takeaway facility such as that the subject of this application. The peak flows will therefore not be significantly impacted by this proposal.

Raigmore Community Council disagrees with the hypothesis that the peak times for the KFC drive-through and the peak times for a restaurant / takeaway do not coincide. They consider that early evening will still be busy for both venues. The traffic survey showed traffic generated by KFC peaked on Friday evening between 17:30 and 18:30, and on Saturday from 12:30 – 13:30. The anticipated peak times for a restaurant / takeaway (based on TRICS data (Trip Rate Information Computer System, which is the national standard for trip generation analysis)) is 19:00 – 20:00 on Friday, and 13:00 – 14:00 on Saturday. There is no reason why this research should not be accepted.

Raigmore Community Council also points out that the Transport Statement does not take account of additional traffic which will be generated following the opening of the new Beechwood Inverness Campus of UHI in 2015. The traffic modelling took account of traffic growth between 2012 (when the data was collected) and 2014 and included anticipated development traffic, but not anticipated Campus traffic following its opening in 2015. However, the modelling demonstrated that the junction will operate well within capacity under free flowing traffic conditions. TEC Roads are in agreement with the conclusions reached regarding junction capacity and the safe operation of the junction with Millburn Road.

It is accepted that traffic associated with KFC does occasionally prevent free flowing conditions, and thus delays the movement of vehicles from Millburn Road to the private road. This will, however, continue regardless of whether the proposed restaurant / takeaway goes ahead. Consent has also been given for alterations to the KFC access arrangements which, once implemented, should address this issue.

The access into the site runs past Budget Tyres. Their customers currently park on and alongside the access road, and manoeuvre within the carriageway. This area is also used for their deliveries. The proposed takeaway and restaurant is likely to generate a significant increase in traffic movements over the previous use as a motorcycle showroom / workshop, and this will create a conflict in vehicle movements. However, Budget Tyres have now obtained planning permission (13/04374/FUL) for the formation of a car park on vacant land immediately to the west of their unit. Once formed, this will provide off street parking for their customers, and will avoid the potential conflict in traffic movements between Budget customers and those visiting the proposed restaurant / takeaway.

The applicant has also indicated that double yellow lines will be provided along the access road. This would serve to prevent the parking of vehicles within the access road and thus remove the conflict in traffic movement near the site entrance. A condition will be included to restrict implementation of the use until the road markings are in place. It is understood that the area currently used for parking is within Council ownership and this provides additional opportunity to control use of the land if required.

The proposed restaurant / takeaway includes the formation of 25 car parking spaces. The Transport Statement concludes that 20 parking spaces are required, and Transport Planning guidelines look for a maximum provision of 35. Since this is a maximum requirement, less spaces will be accepted if justified. The application has been amended to provide 25 parking spaces, which is between the anticipated requirement and the maximum requirement, and therefore provides a margin for error should the actual requirement prove greater than anticipated. Transport Planning suggest that the area immediately to the east of the site could act as an 'overflow' car park if required, but this area lies outwith the application site, and it is therefore not a part of this application. It is unreasonable to require its reservation for overflow parking, especially since figures suggest that the proposed parking arrangement will be adequate.

The access off Millburn Road to the site currently has no pavement, and Millburn Road itself slopes up towards the roundabout, resulting in the application site being at the bottom of the Millburn Road embankment and therefore not lending itself to direct pedestrian access off Millburn Road. It is therefore proposed to encourage safe pedestrian access through the provision of a footpath running along the full length of the access road (adjacent to the bottom of the Millburn Road embankment), and continuing to meet up with the Millburn Road pavement at the Raigmore Interchange. This will discourage the creation of 'desire routes' by provision of good pedestrian links, and is welcomed. This will, however, require the provision of a length of retaining wall alongside part of the proposed footpath at the bottom of the Millburn Road embankment.

8.5 Other Considerations – not material

KFC customers sometimes stop at the bus stop whilst making purchases from KFC. However, safe driving and proper highway use is an issue for the police, rather than the Planning Authority. Consent has now been given (11/04374/FUL) for alterations to the KFC access arrangements which should help to encourage the free flow of traffic within the KFC site and this should encourage their customers to utilise the parking provided rather than parking within Millburn Road.

Raigmore Community Council request that if consent is granted, the access off Millburn Road should be adopted and maintained by Highland Council, including winter gritting and snow clearing. This will help to prevent vehicles entering or exiting the businesses from sliding into other traffic due to uncleared snow or ice. Although these motives are commendable, the allocation of resources in relation to snow and ice clearing is an issue for the Roads Authority and can not be enforced through planning conditions.

8.6 Matters to be secured by Section 75 Agreement

None

9. CONCLUSION

9.1 All relevant matters have been taken into account when appraising this application. It is considered that the proposal accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

10. RECOMMENDATION

Action required before decision issued N

Subject to the above, it is recommended the application be **Granted** subject to the following conditions and reasons / notes to applicant.:

1. Prior to the first use of the premises as a takeaway or restaurant, double yellow lines (to prevent parking) shall be provided along the access road, the details of which shall be submitted to and agreed in writing by the Planning Authority before development commences on site, and shall thereafter be retained in perpetuity.

Reason: In the interests of road safety, in order to prevent the parking of vehicles within the access road which would lead to a dangerous conflict of traffic movement.

- 2. Prior to the first use of the premises as a takeaway or restaurant, the following works shall take place to the access / parking area, and shall thereafter be retained in perpetuity:
 - The footpath alongside the access road, and continuing through the site to join Millburn Road in the vicinity of the Raigmore Interchange, shall be formed in full, including provision of the retaining feature to comply with the requirements of the Council's Chief Structural Engineer;

- The raised table traffic calming / pedestrian crossing detail shall be provided, to a width of 3.5m, and appropriate signage and road markings provided to indicate the give and take priority basis;
- The service area / turning head shall be formed in full;
- The 'Sheffield' style cycle parking stands shall be provided in full.

Reason: In the interests of road safety, in order to ensure the provision of a safe access, facilitate safe servicing arrangements, to ensure the provision of adequate parking facilities, to facilitate the use of a variety of modes of transport, and to encourage the safe operation of the site.

3. No development shall commence until full details of all external ducting and other elements of the proposed ventilation system have been submitted to, and approved in writing by, the Planning Authority. Thereafter, development shall progress in accordance with these approved details.

Reason: In order to safeguard the amenity of neighbouring properties and occupants.

4. All plant, machinery and equipment associated with ventilation, air-conditioning, heating and refrigeration services or similar and including fans, ducting and external openings shall be so installed, maintained and operated such that any associated operating noise does not exceed NR 20 when measured or calculated within any noise-sensitive premises with windows open for ventilation purposes. For the purposes of this condition, "noise-sensitive premises" includes, but is not necessarily limited to, any building, structure or other development the lawful use of which a) falls within Classes 7 (Hotels & Hostels), 8 (Residential Institutions) or 9 (Houses) of the Town and Country Planning (Use Classes) (Scotland) Order 1997 (as amended), or b) is as a flat or static residential caravan.

Reason: In order to safeguard the amenity of neighbouring properties and occupants.

Development shall not commence on site until details of the proposed cooking odour extraction system has been submitted to and agreed in writing by the Planning Authority. The system shall be designed, installed, effectively operated and maintained to ensure that odours are not detectable within neighbouring premises. For the avoidance of doubt, the extraction equipment installed in pursuance of this condition shall be regularly maintained to ensure its continued satisfactory operation and the cooking process shall cease to operate if at any time the extraction equipment ceases to function to the satisfaction of the Planning Authority.

Reason: in the interest of residential amenity.

6. No development or work shall commence until a detailed specification for all proposed external materials and finishes (including trade names and samples where necessary) has been submitted to, and approved in writing by, the Planning Authority. Thereafter, development and work shall progress in accordance with these approved details.

Reason: In the interests of visual amenity, to ensure the development is sensitive to and compatible with its context.

7. No development shall commence until full details of the fencing around the service area / bin storage area has been submitted to and approved in writing by the Planning Authority. The fencing shall thereafter be erected in accordance with these details before the takeaway or restaurant is first used, and shall thereafter be retained in perpetuity.

Reason: To ensure that suitable provision is made for the storage of waste, and in the interests of the visual amenity of the area.

8. Prior to the first use of the premises as a takeaway or restaurant, the landscaping works shall be carried out in full accordance with the approved scheme. Any trees or plants which within a period of five years from the completion of the development die, for whatever reason are removed or damaged shall be replaced in the next planting season with others of the same size and species.

Reason: In order to ensure that a high standard of landscaping is achieved, appropriate to the location of the site.

9. No development, site excavation or groundwork shall commence until all retained trees, including those adjacent to the site boundary but outwith the site, have been protected against construction damage using protective barriers located beyond the Root Protection Area (in accordance with BS5837:2012 Trees in Relation to Design, Demolition & Construction, or any superseding guidance prevailing at that time). These barriers shall remain in place throughout the construction period and must not be moved or removed during the construction period without the prior written approval of the Planning Authority.

Reason: In order to ensure the protection of retained trees, which are important amenity assets, both during construction and thereafter.

10. Prior to the first use of the premises as a takeaway or restaurant, the gateway feature adjacent to the proposed footpath link at its intersection with Millburn Road at the Raigmore Interchange shall be installed, and shall thereafter be retained in perpetuity.

Reason: In the interests of visual amenity, to ensure a complete scheme of development is provided appropriate to the prominent location of the site.

REASON FOR DECISION

The proposals accord with the provisions of the Development Plan and there are no material considerations which would warrant refusal of the application.

TIME LIMITS

LIMIT FOR THE IMPLEMENTATION OF THIS PLANNING PERMISSION

In accordance with Section 58 of the Town and Country Planning (Scotland) Act 1997 (as amended), the development to which this planning permission relates must commence within THREE YEARS of the date of this decision notice. If development has not commenced within this period, then this planning permission shall lapse.

FOOTNOTE TO APPLICANT

Initiation and Completion Notices

The Town and Country Planning (Scotland) Act 1997 (as amended) requires all developers to submit notices to the Planning Authority prior to, and upon completion of, development. These are in addition to any other similar requirements (such as Building Warrant completion notices) and failure to comply represents a breach of planning control and may result in formal enforcement action.

- The developer must submit a Notice of Initiation of Development in accordance with Section 27A of the Act to the Planning Authority prior to work commencing on site.
- On completion of the development, the developer must submit a Notice of Completion in accordance with Section 27B of the Act to the Planning Authority.

Copies of the notices referred to are attached to this decision notice for your convenience.

Accordance with Approved Plans & Conditions

You are advised that development must progress in accordance with the plans approved under, and any conditions attached to, this permission. You must not deviate from this permission without consent from the Planning Authority (irrespective of any changes that may separately be requested at the Building Warrant stage or by any other Statutory Authority). Any pre-conditions (those requiring certain works, submissions etc. prior to commencement of development) must be fulfilled prior to work starting on site. Failure to adhere to this permission and meet the requirements of all conditions may invalidate your permission or result in formal enforcement action

Flood Risk

It is important to note that the granting of planning permission does not imply there is an unconditional absence of flood risk relating to (or emanating from) the application site. As per Scottish Planning Policy (p.198), planning permission does not remove the liability position of developers or owners in relation to flood risk.

Local Roads Authority Consent

In addition to planning permission, you may require one or more separate consents (such as dropped kerb consent, a road openings permit, occupation of the road permit etc.) from TECS Roads prior to work commencing. These consents may require additional work and/or introduce additional specifications and you are therefore advised to contact your local TECS Roads office for further guidance at the earliest opportunity.

Failure to comply with access, parking and drainage infrastructure requirements may endanger road users, affect the safety and free-flow of traffic and is likely to result in enforcement action being taken against you under both the Town and Country Planning (Scotland) Act 1997 and the Roads (Scotland) Act 1984.

Further information on the Council's roads standards can be found at: http://www.highland.gov.uk/yourenvironment/roadsandtransport

Application forms and guidance notes for access-related consents can be downloaded from:

http://www.highland.gov.uk/yourenvironment/roadsandtransport/roads/Applicationformsforroadoccupation.htm

Mud & Debris on Road

Please note that it an offence under Section 95 of the Roads (Scotland) Act 1984 to allow mud or any other material to be deposited, and thereafter remain, on a public road from any vehicle or development site. You must, therefore, put in place a strategy for dealing with any material deposited on the public road network and maintain this until development is complete.

Damage to the Public Road

Please note that the Council, under Section 96 of the Roads (Scotland) Act 1984, reserves the right to recover all costs for repairing any damage to the public road (and/or pavement) which can be attributed to construction works for this development.

Works to Millburn Road embankment

Please note that any works to the Millburn Road embankment, including the provision of the retaining wall, will require the prior approval of the Council's Chief Structural Engineer (david.gc.mackenzie@highland.gov.uk).

Construction Hours and Noise-Generating Activities

You are advised that construction work associated with the approved development (incl. the loading/unloading of delivery vehicles, plant or other machinery), for which noise is audible at the boundary of the application site, should not normally take place outwith the hours of 08:00 and 19:00 Monday to Friday, 08:00 and 13:00 on Saturdays or at any time on a Sunday or Bank Holiday in Scotland, as prescribed in Schedule 1 of the Banking and Financial Dealings Act 1971 (as amended).

Work falling outwith these hours which gives rise to amenity concerns, or noise at any time which exceeds acceptable levels, may result in the service of a notice under Section 60 of the Control of Pollution Act 1974 (as amended). Breaching a Section 60 notice constitutes an offence and is likely to result in court action.

If you wish formal consent to work at specific times or on specific days, you may apply to the Council's Environmental Health Officer under Section 61 of the 1974 Act. Any such application should be submitted after you have obtained your Building Warrant, if required, and will be considered on its merits. Any decision taken will reflect the nature of the development, the site's location and the proximity of noise sensitive premises. Please contact env.health@highland.gov.uk for more information

Building on the Boundary

It is noted that your proposals involve building on or up to the boundary of your property. Please be advised that this permission does not entitle you to build on, under or over ground outwith your ownership or to enter private ground to demolish, construct or maintain your property. You must ensure that all development, including foundations, roof overhangs and rainwater goods are contained wholly within your own ground, unless you have the agreement of any neighbouring landowner for any works which encroach on their property.

Bilingual Signage

In line with the Council's Gaelic Language Plan and policies, you are encouraged to consider the use of both Gaelic and English on signage within in this development (both internal and external signs). For further guidance, you may wish to contact the Council's Gaelic Development Manager (01463 724287) or Comunn na Gàidhlig (01463 234138).

Kitchen Ventilation System

You are advised to contact Environmental Health (Patricia Sheldon) with details of your proposals to minimise the potential noise impact and details of proposed controls to ensure that odours are not detectable within neighbouring premises.

Advertisement consent

You are advised that any signage will require separate consent under the Town and Country Planning (Control of Advertisements) (Scotland) Amendment Regulations 1992, and are NOT permitted as part of this consent.

Signature: Allan J Todd

Designation: Area Planning Manager - South

Author: Susan Hadfield

Background Papers: Documents referred to in report and in case file.

Relevant Plans: Plan 1 – site location plan

Plan 2 – site layout plan

Plan 3 – floor plans

Plan 4 – proposed elevations

Appendix – Letters of Representation

Name	Address	Date Received	For/Against
Budget Tyres (per lan Lasseter)	DGG Planning, Berry Grange, Inhurst Lane, Baughurst, Tadley	9/02/12, 19/03/12	Against





