

**Item: 4**

**Planning Committee: 21 August 2024.**

**Install Replacement Windows and Doors, Three Air Source Heat Pumps, External Insulation and PV Array at Trenabie House, Pierowall, Westray.**

**Report by Corporate Director for Neighbourhood Services and Infrastructure.**

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## 1. Overview

- 1.1. This report considers an application for planning permission for the installation of replacement windows and doors, three air source heat pumps, external insulation and a free-standing photovoltaic (PV) array at the surgery, Trenabie House, 2 Gill Pier, Pierowall, Westray. One valid representation (objection) has been received, albeit issues raised in the objection have been addressed. The development complies with relevant policies, and objections and other material considerations do not merit refusal of the application.

Application Reference:	24/046/PP.
Application Type:	Planning permission.
Proposal:	Install replacement windows and doors, three air source heat pumps, external insulation and a PV array.
Applicant:	NHS Orkney.
Agent:	Jonathan Forbes, c/o NORR, 5 Longman Road, Inverness, IV1 1RY.

- 1.2. All application documents (including plans, consultation responses and valid representations) are available for members to view [here](#) (click on “Accept and Search” to confirm the Disclaimer and Copyright document has been read and understood, and then enter the application number given above).

## 2. Recommendations

- 2.1. It is recommended that members of the Committee:
- i. Approve the application for the installation of replacement windows and doors, three air source heat pumps, external insulation and a free-standing photovoltaic array at Trenabie House, Pierowall, Westray, subject to the conditions detailed in Appendix 1 to this report.

## 3. Consultations

- 3.1. Development and Marine Planning – Environmental Planner.

No objection to the proposal, subject to a condition regarding implementation of biodiversity measures as required by National Planning Framework 4 Policy 3.

- 3.2. Environmental Health.

No objections regarding the air source heat pumps.

## 4. Representations

- 4.1. One valid representation (objection) has been received from:

- Duncan and Louise Drever, 3 Gill Pier, Pierowall, Westray KW17 2DL.

- 4.2. The representation is on the following grounds:

- The external insulation impacting the available width of the adjacent access.

- 4.3. Other non-material matters are raised but are not relevant to the planning decision.

## 5. Relevant Planning History

- 5.1. Planning applications

Reference	Proposal	Location	Decision	Date
00/307/PPF	Change of use of part of house to create surgery and self-contained flat.	Trenabie House, Westray.	Approve	17.11.00

## 6. Relevant Planning Policy and Guidance

- 6.1. The full text of the Orkney Local Development Plan 2017 and supplementary guidance can be read on the Council website [here](#).
- 6.2. National Planning Framework 4 can be read on the Scottish Government website [here](#).
- 6.3. The key policies, supplementary guidance and planning policy advice listed below are relevant to this application:
  - Orkney Local Development Plan 2017:
    - Policy 1 – Criteria for All Development.
    - Policy 2 – Design.
    - Policy 7C – Energy.
  - National Planning Framework 4:
    - Policy 1 – Tackling the Climate and Nature Crisis.
    - Policy 2 – Climate Mitigation and Adaption.
    - Policy 3 – Biodiversity.
    - Policy 11 – Energy.

## 7. Legislative position

- 7.1. Section 25 of the Town and Country Planning (Scotland) Act 1997 as amended (the Act) states, “Where, in making any determination under the Planning Acts, regard is to be had to the development plan, the determination is, unless material considerations indicate otherwise...to be made in accordance with that plan...”
- 7.2. Annex A of Planning Circular 3/2013: ‘development management procedures’ provides advice on defining a material consideration, and following a House of Lords’ judgement with regards the legislative requirement for decisions on planning applications to be made in accordance with the development plan, confirms the following interpretation: “If a proposal accords with the development plan and there are no material considerations indicating that it should be refused, permission should be granted. If the proposal does not accord with the development plan, it should be refused unless there are material considerations indicating that it should be granted.”
- 7.3. Annex A continues as follows:

- The House of Lords' judgement also set out the following approach to deciding an application:
  - Identify any provisions of the development plan which are relevant to the decision.
  - Interpret them carefully, looking at the aims and objectives of the plan as well as detailed wording of policies.
  - Consider whether or not the proposal accords with the development plan.
  - Identify and consider relevant material considerations for and against the proposal.
  - Assess whether these considerations warrant a departure from the development plan.
- There are two main tests in deciding whether a consideration is material and relevant:
  - It should serve or be related to the purpose of planning. It should therefore relate to the development and use of land.
  - It should relate to the particular application.
- The decision maker will have to decide what considerations it considers are material to the determination of the application. However, the question of whether or not a consideration is a material consideration is a question of law and so something which is ultimately for the courts to determine. It is for the decision maker to assess both the weight to be attached to each material consideration and whether individually or together they are sufficient to outweigh the development plan. Where development plan policies are not directly relevant to the development proposal, material considerations will be of particular importance.
- The range of considerations which might be considered material in planning terms is very wide and can only be determined in the context of each case. Examples of possible material considerations include:
  - Scottish Government policy and UK Government policy on reserved matters.
  - The National Planning Framework.
  - Designing Streets.
  - Scottish Government planning advice and circulars.
  - EU policy.
  - A proposed local development plan or proposed supplementary guidance.
  - Community plans.

- The environmental impact of the proposal.
- The design of the proposed development and its relationship to its surroundings.
- Access, provision of infrastructure and planning history of the site.
- Views of statutory and other consultees.
- Legitimate public concern or support expressed on relevant planning matters.
- The planning system operates in the long term public interest. It does not exist to protect the interests of one person or business against the activities of another. In distinguishing between public and private interests, the basic question is whether the proposal would unacceptably affect the amenity and existing use of land and buildings which ought to be protected in the public interest, not whether owners or occupiers of neighbouring or other existing properties would experience financial or other loss from a particular development.

7.4. Where a decision to refuse an application is made, the applicant may appeal under section 47 of the Act. Scottish Ministers are empowered to make an award of expenses on appeal where one party's conduct is deemed to be unreasonable. Examples of such unreasonable conduct are given in Circular 6/1990 and include:

- Failing to give complete, precise and relevant reasons for refusal of an application.
- Reaching a decision without reasonable planning grounds for doing so.
- Not taking into account material considerations.
- Refusing an application because of local opposition, where that opposition is not founded upon valid planning grounds.

7.5. An award of expenses may be substantial where an appeal is conducted either by way of written submissions or a local inquiry.

#### **Status of the Local Development Plan**

7.6. Although the Orkney Local Development Plan 2017 is “out-of-date” and has been since April 2022, it is still a significant material consideration when considering planning applications. The primacy of the plan should be maintained until a new plan is adopted. However, the weight to be attached to the Plan will be diminished where policies within the plan are subsequently superseded.

#### **Status of National Planning Framework 4**

- 7.7. National Planning Framework 4 (NPF4) was adopted by Scottish Ministers on 13 February 2023, following approval by the Scottish Parliament in January 2023. The statutory development plan for Orkney consists of NPF4 and the Orkney Local Development Plan 2017 and its supplementary guidance. In the event of any incompatibility between a provision of NPF4 and a provision of the Orkney Local Development Plan 2017, NPF4 is to prevail as it was adopted later. It is important to note that NPF4 must be read and applied as a whole, and that the intent of each of the 33 policies is set out in NPF4 and can be used to guide decision-making.
- 7.8. In the current case, there is not considered to be any incompatibility between the provisions of NPF4 and the provisions of the Orkney Local Development Plan 2017, to merit any detailed assessment in relation to individual NPF4 policies.

## **8. Assessment**

- 8.1. Planning permission is sought for upgrading the NHS Orkney surgery at Trenabie House, 2 Gill Pier, Pierowall and includes the installation of three air source heat pumps, replacement windows and doors, external insulation, and a PV array. Trenabie House is located adjacent to the Gill Pier within the settlement boundary of Pierowall, as indicated in the Location Plan attached as Appendix 2 to this report.
- 8.2. Support for air source heat pumps and solar panel arrays is confirmed in Local Development Plan Policy 7C 'All Renewables and Low Carbon Energy Developments', and the solar array and air source heat pumps would increase the use of renewable energy and be acceptable in principle under Policy 7C 'All Renewables and Low Carbon Energy Developments', and Policy 11 'Energy' of the Local Development Plan.
- 8.3. Windows and doors are proposed to be replaced throughout the building. A planning condition would control colour, and the door and window replacement would comply with Policy 2 'Design' of the Local Development Plan.

### **External Insulation**

- 8.4. Proposed external wall insulation is the focus of the objection, raised by the residents of the neighbouring property at 3 Gill Pier due to the depth of the insulation overhanging their access (on the basis the existing gable is the property boundary). The objection includes: "...I was approached and told that they plan to put exterior cladding on the building which will add 4" to its footprint. We already have a very narrow driveway and do not want it made smaller...". However, as submitted, the wall bounding the objector's access is not proposed to be externally

insulated or otherwise altered, as confirmed in the submitted elevations. The matter referred to in the objection therefore does not exist in the proposal, nonetheless the objection 'relates to' matters included in the application and meets the test of being a valid representation.

- 8.5. The agent provided further clarification regarding there being no external insulation on the affected gable in correspondence and annotated plans in June 2024, and the objector was notified of this and given time to study the information and opportunity to make further representation or withdraw the objection. There has been no response to date, and therefore it must be taken that their objection remains.

### **Selected Other Works**

- 8.6. The three air source heat pumps would be located to the north-east elevation of the surgery. Being located to the rear of the property, no significant impact is anticipated on the character of the area. The separation distance between the air source heat pumps and neighbouring properties is sufficient that Environmental Health has not raised any objection regarding noise. The heat pumps are therefore considered to comply with Policies 1(ix) 'Criteria for All Development' and 9G 'Landscape', and on the basis noise would be controlled by condition, with Policies 1(iv and vii) 'Criteria for All Development' and 7C 'All Renewables and Low Carbon Energy Developments' of the Local Development Plan.
- 8.7. The proposed solar array would consist of 10 panels in two rows, located within the curtilage. A visibility bund would be formed and seeded with Orkney wildflowers to the southern side of the solar panel array to reduce the impact of the development.

### **Biodiversity**

- 8.8. NPF4 Policy 3 c) requires that development takes account of biodiversity. Biodiversity measures would be employed in the development, which have been agreed by the Environmental Planner as appropriate and proportionate. The measures would be secured by condition to meet the requirements of NPF4 Policy 3.

## **9. Conclusion**

- 9.1. The proposed development complies with Policies 1, 2 and 7C of the Orkney Local Development Plan (2017), and Policies 1, 2, 3 and 11 of National Planning Framework 4. The proposal is acceptable in principle, and in terms of residential

amenity. There are no material considerations including those raised in the objection that outweigh this conclusion.

**For Further Information please contact:**

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**Implications of Report**

1. **Financial:** None.
2. **Legal:** Detailed in section 7 above.
3. **Corporate Governance:** In accordance with the Scheme of Administration, determination of this application is delegated to the Planning Committee.
4. **Human Resources:** None.
5. **Equalities:** Not relevant.
6. **Island Communities Impact:** Not relevant.
7. **Links to Council Plan:** Not relevant.
8. **Links to Local Outcomes Improvement Plan:** Not relevant.
9. **Environmental and Climate Risk:** None.
10. **Risk:** If Members are minded to refuse the application, it is imperative that clear reasons for proposing the refusal of planning permission on the basis of the proposal being contrary to the development plan policy and the officer's recommendation be given and minuted. This is in order to provide clarity in the case of a subsequent planning appeal or judicial review against the Planning Committee's decision. Failure to give clear planning reasons for the decision could lead to the decision being overturned or quashed. In addition, an award of costs could be made against the Council. This could be on the basis that it is not possible to mount a reasonable defence of the Council's decision.
11. **Procurement:** None.
12. **Health and Safety:** None.
13. **Property and Assets:** None.
14. **Information Technology:** None.
15. **Cost of Living:** None.

**List of Background Papers**

Orkney Local Development Plan 2017, available [here](#).

National Planning Framework 4, available [here](#).

**Appendix**

Appendix 1 – Planning conditions.

Appendix 2 – Location Plan.



## Appendix 1.

01. The development hereby approved to which this planning permission relates must be begun not later than the expiration of three years, beginning with the date on which the permission is granted, which is the date of this decision notice. If development has not commenced within this period, this planning permission shall lapse.

Reason: In accordance with Section 58 of the Town and Country Planning (Scotland) Act 1997, as amended, which limits the duration of planning permission.

02. No replacement doors or windows shall be installed until full details of the colour of the doors and window frames have been submitted to and approved, in writing, by the Planning Authority. Thereafter, doors and windows shall be installed wholly in accordance with approved details.

Reason: Details are not submitted, and in the interests of visual amenity and the appearance of the development.

03. Throughout the lifetime of the development, the total maximum noise from the Air Source Heat Pumps hereby approved shall not exceed NR25 within any residential property outwith the development site, where NR25 is the Noise Rating Curve at 25, (noise measurements to be made with a window of any residential property outwith the development open no more than 50mm).

Reason: In the interests of residential amenity, to protect nearby residents from excessive noise disturbance from the air source heat pumps.

04. Throughout the lifetime of the development, any exterior lighting installed shall be positioned, angled and controlled to prevent any direct illumination, glare or light spillage outwith the site boundary. The use of automatic cut-out or sensor operated external lighting of limited timed illumination shall be used. External lighting on the building shall meet the requirements for Zone E2 areas (Rural/Small Village locations) as defined by the Institution of Lighting Professionals.

Reason: To ensure lighting installed within the application site does not spill beyond the intended target area, does not impact adversely upon the amenity of adjacent properties, does not result in 'sky glow', and to accord with Planning Policy Advice: Amenity and Minimising Obtrusive Lighting (2021).

06. The biodiversity measures described in the submitted Biodiversity form (dated 8 February 2024) and shown on the Site Plan hereby approved (reference OKDC-NOR-WS-ZZ-DR-A-00011, revision P01, dated 11 December 2023) shall be implemented in full no later than the first planting season following commencement of development. Thereafter the biodiversity measures shall be permanently retained in accordance with the approved details, including replacement within the next planting season of any planting that does not survive, is removed, or is damaged.

Reason: To ensure biodiversity measures are implemented as required by National Planning Framework 4 Policy 3.

07. Hours of work during the construction of the development hereby approved, involving the use of machinery and powered tools, or any other operation, for example hammering, that would generate noise audible beyond the boundary of the site, shall be restricted to 07:30 to 18:00 Mondays to Fridays, 08:00 to 13:00 on Saturdays and not at all on Sundays, Christmas or New Year Public Holidays unless otherwise agreed, in writing, with the Planning Authority.

Reason: In the interest of residential amenity of the area and in order to reduce any possible nuisance arising to nearby residents during the construction of the development.

DATE	REVISION	REV	DRW	CHK
11/12/2023	First Issue	P01	JF	MF

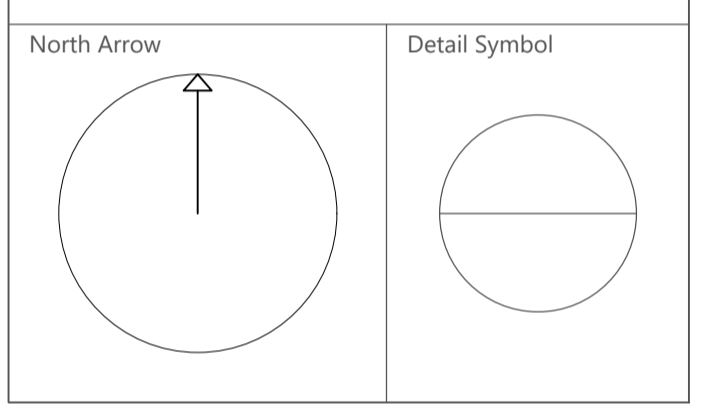
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Keyplan



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Project  
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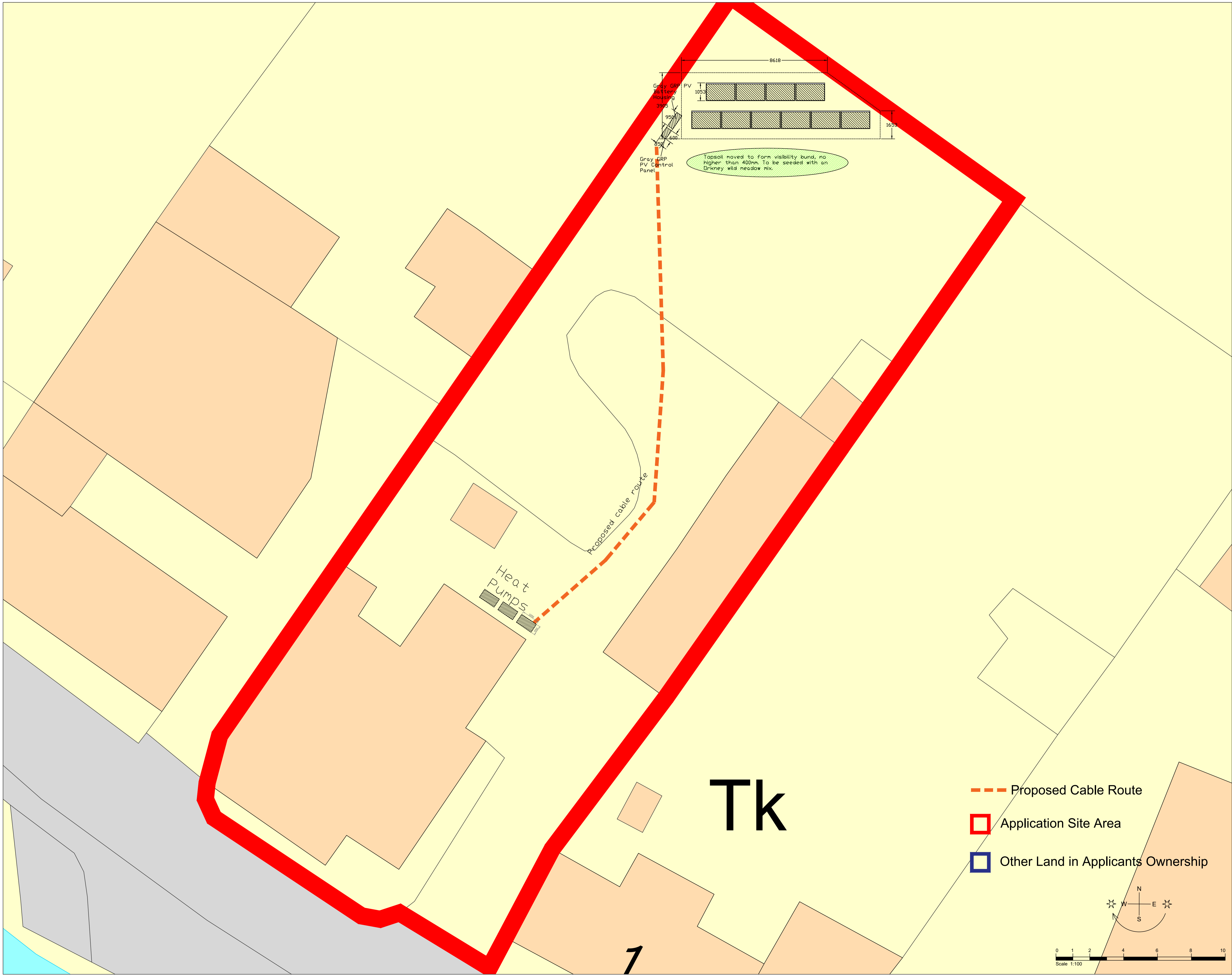
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- Proposed Cable Route
- Application Site Area
- Other Land in Applicants Ownership

