

Item: 6

Planning Committee: 20 March 2024.

Install two replacement windows and door at Alladale, Back Road, St Margaret's Hope.

Report by Corporate Director for Neighbourhood Services and Infrastructure.

1. Summary

1.1.

Householder planning permission is sought to install two replacement windows and a door at Alladale, Back Road, St Margaret's Hope. The development is acceptable in terms of design and impact on the conservation area. One objection has been received regarding the use of UPVC, as well as an objection from the Orkney Heritage Society, a local non-statutory consultee, on the same grounds. The objections are not of sufficient weight to merit refusal of the application. Accordingly, the application is recommended for approval.

Application Number:	23/366/HH.
Application Type:	Householder.
Proposal:	Install two replacement windows and door.
Applicant:	Mr David Ross.

1.2.

All application documents (including plans, consultation responses and 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. Consultations

2.1. Orkney Heritage Society

Orkney Heritage Society has commented, "...while UPVC window and door might be appropriate for the modern flat roofed extension, we did not feel that the replacement of the existing wooden sash and case window should comply with the policy for windows in conservation areas".

3. Representations

3.1.

One objection has been received, from:

- The Architectural Heritage Society of Scotland, AHSS National Office, 15 Rutland Square, Edinburgh, EH1 2BE

3.2.

The objection relates to concerns regarding the use of UPVC.

4. Relevant Planning History

No relevant planning history.

5. Relevant Planning Policy and Guidance

5.1.

The full text of the Orkney Local Development Plan 2017 and supplementary guidance can be read on the Council website [here](#).

5.2.

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 8 - Historic Environment & Cultural Heritage.
- National Planning Framework 4:
 - Policy 7 – Historic Assets and Places.
- Planning Policy Advice:
 - Historic Environment (Topics and Themes).
- Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997

6. Legal Aspects

6.1.

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...”

6.2.

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."

6.3.

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.

6.4.

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.

6.5.

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

6.6. Status of the Local Development Plan

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.

6.7. Status of National Planning Framework 4

6.7.1.

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 the National Planning Framework 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.

6.7.2.

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.

7. Assessment

7.1. Background

Planning permission is sought to install two replacement windows and a door at the house known as Alladale, Back Road, St Margaret's Hope, indicated in the Site Plan attached as Appendix 1 to this report. The site lies within St Margaret's Hope Conservation Area. The proposal is at the rear of the property only, which is not open to wider public views within the conservation area nor the public realm. The proposed replacement windows and door are UPVC construction, and all three installations would be to existing openings, one in the original rear wall of the house, and two in a later extension.

7.2. Historic Environment

7.2.1.

The application site is within the conservation area; this is the reason a planning application is required, and that the works are not permitted development. The critical consideration in the determination of this application is its impact on the character and appearance of the conservation area.

7.2.2.

National Planning Framework 4, Policy 7 'Historic assets and places' states that development proposals in or affecting conservation areas will only be supported where the character and appearance of the conservation area and its setting is preserved or enhanced.

7.2.3.

Orkney Local Development Plan 2017, Policy 8 'Historic Environment and Cultural Heritage' requires a proportionate approach to development impacting the historic environment.

7.2.4.

Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states that proposals should have regard to the desirability of preserving or enhancing the character or appearance of the conservation area.

7.2.5.

In considering applications affecting unlisted buildings in conservation areas, assessment is whether the development would affect the character or appearance of the area of special interest which is desirable to preserve or enhance. In that regard, entirely private (often rear) elevations and spaces are assessed differently than street facing and other public elevations. Historic environment policies set out the specification of roofing materials, wall finishes, windows and doors, and other materials in the key, public-facing elevations. A pragmatic approach is taken, and these specifications are balanced against a greater freedom of materials and finishes in private, non-public facing parts of a building or site.

7.2.6.

In this case, the proposed window and door replacements are in the rear, non-public facing elevation. The rear elevation faces into a semi-enclosed private rear garden, and set low below the main garden ground, which is accessed from a private access road. The proposed works would not be visible from the public realm and would therefore have no impact on the character or appearance of the conservation area from a public perspective. This addresses the consultation and representation concerns regarding the use of UPVC in the conservation area, as there would be no public impact.

7.2.7.

In line with this pragmatic approach – consistently applying relevant historic environment policies where there would be public impact and balancing that against the provision of other modern synthetic materials in other elevations – the proposed replacement windows and door are considered acceptable and would not adversely impact on the character or appearance of the conservation area.

8. Conclusion and Recommendation

The development complies with Policies 1 and 8 of the Orkney Local Development Plan 2017, Policy 7 of National Planning Framework 4, and Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, as amended. The proposal would not adversely impact on the character and appearance of the conservation area. The consultation body and public objection are not of sufficient weight to merit refusal. Accordingly, the application is recommended for approval, subject to the following condition:

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.

9. Contact Officer

Murray Couston, Planning Officer, Email murray.couston@orkney.gov.uk

10. Appendix

Appendix 1: Site Plan.

 <p>LAND REGISTER OF SCOTLAND</p>	Version date	TITLE NUMBER
	08/10/2020	OAZ16659

	BRITISH NATIONAL GRID EASTING/NORTHING	
	344725, 993501	

344725, 993501	Survey Scale	Print Scale
	1:2500	1:2500 @ A4

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