

Item: 4.2

Local Review Body: 26 October 2022.

Proposed Erection of House (Sub-division of Curtilage) and Alteration of Access at Kelda Ber, Tankerness (22/135/PP).

Report by Corporate Director for Strategy, Performance and Business Solutions.

1. Purpose of Report

To determine a review of the decision of the Appointed Officer to refuse planning permission for the proposed erection of a house (sub-division of curtilage) and alteration of an access at Kelda Ber, Tankerness (22/135/PP).

2. Recommendations

The Local Review Body is invited to note:

2.1.

That planning permission for the proposed erection of a house (sub-division of curtilage) and alteration of an access at Kelda Ber, Tankerness, was refused by the Appointed Officer on 29 July 2022, for the reasons outlined in section 3.2 of this report.

2.2.

That the applicant has submitted a Notice of Review requesting that the decision of the Appointed Officer, referred to at paragraph 2.1 above, be reviewed.

It is recommended:

2.3.

That the Local Review Body determines whether it has sufficient information to proceed to determination of the review, and if so:

- Whether to uphold, reverse or vary the decision of the Appointed Officer.
- In the event that the decision is reversed or varied, the reasons and the detailed conditions to be attached to the decision notice.

2.4.

That, in the event the Local Review Body agrees that further information is required to determine the review, what further information is required, which parties are to be requested to provide the information, and whether to obtain further information by one or more of the following methods:

- By means of written submissions; and/or.
- By the holding of one or more hearing.

3. Background

3.1.

Planning application 22/135/PP relates to the proposed erection of a house (sub-division of curtilage) and alteration to an access at Kelda Ber, Tankerness.

3.2.

The Appointed Officer refused the planning application on 29 July 2022 on the following grounds:

3.2.1.

The curtilage to be subdivided fails to comply both with the definition of curtilage, and the requirement that the curtilage to be subdivided has served the host house for a period of ten years or greater as stated in the Supplementary Guidance: Housing in the Countryside (2021). The host house in this case is the adjacent Kelda Ber, which has been separate from the application site since 2017, with use prior to this dating from 2012. The proposed development is considered contrary to Policy 5E – Single Houses and new Housing Clusters in the Countryside, part v: the subdivision of a dwelling house or its residential curtilage, of the Orkney Local Development Plan 2017.

3.2.2.

The development is not designed taking into consideration provisions of overarching Policy 1 in relation to local site context, density and layout of development or relationship to the host house, Kelda Ber and as such the development fails to comply with Policy 1 (i, ii and iii) of the Orkney Local Development Plan 2017.

3.2.3.

The proposed private foul drainage is not acceptable as the soakaway discharges to the roadside ditch to the potential detriment of the environment and public health, recognising potential impact to road workers. The development fails to comply with Policy 13 C (ii) – Flood Risk, SuDS and Waste Water Drainage of the Orkney Local Development Plan 2017, as the proposed foul drainage system is considered to pose a risk of detrimental effect, including cumulative effect to the natural environment and surrounding uses.

3.2.4.

The proposed development does not accord with all relevant Development Criteria (DC), as required and as stated within Supplementary Guidance: Housing in the Countryside (2021), specifically in relation to DC3 and DC7 as the overall proposal does not reflect the scale and character of neighbouring sites and does not deal with the foul drainage soakaway appropriately, with discharge to the roadside ditch being considered as unacceptable.

3.3.

In terms of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013, the applicant has submitted a Notice of Review and supporting information, which is attached as Appendix 1 to this report.

3.4.

The Planning Handling Report, Planning Services file and the Decision Notice, including the reason for refusal, referred to in section 3.2 above, are attached as Appendices 2, 3 and 4 to this report.

4. Review Procedure

4.1.

In response to a Notice of Review “interested parties” are permitted to make a representation to the Local Review Body. “Interested parties” include any party who has made, and not withdrawn, a representation in connection with the application. No further representations were received.

4.2.

In accordance with the Council’s policy to undertake site inspections of all planning applications subject to a local review, prior to the meeting to consider the review, a site visit to Kelda Ber, Tankerness, was undertaken at 09:30 on 26 October 2022.

4.3.

The Local Review Body may uphold, reverse or vary the decision of the Appointed Officer. In the event that the decision is reversed, an indication of relevant matters, in respect of potential planning conditions, are as follows:

- Access.
- Landscaping.
- Underbuild.
- SUDS.
- Foul Drainage.
- External Lighting.

4.3.1.

All conditions should be in accordance with [Planning Circular 4/1998](#) regarding the use of conditions in planning permissions.

4.4.

If the decision is reversed and the development is approved, it is proposed that powers be delegated to the Corporate Director for Strategy, Performance and Business Solutions, in consultation with the Planning Advisor and the Legal Advisor, to determine the necessary conditions, based on the relevant matters, agreed in terms of section 4.3 above.

4.5.

If the Local Review Body decides that further procedure is required, it may decide to hold a pre-examination meeting to consider what procedures to follow in the review, or to obtain further information by one or more of the following methods:

- By means of written submissions; and/or.
- By the holding of one or more hearing(s).

5. Relevant Planning Policy and Guidance

5.1.

Section 25 of the Town and Country Planning (Scotland) Act 1997 as amended 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...”

5.2.

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

5.2.1.

The policies listed below are relevant to this application:

- Orkney Local Development Plan 2017:
 - Policy 1 – Criteria for All Development.
 - Policy 2 – Design.
 - Policy 5E(v) – Housing in the Countryside – the subdivision of a dwelling house or its residential curtilage.
 - Policy 9G – Landscape.
 - Policy 13 – Flood Risk, SuDS and Waste Water Drainage.
 - Policy 14C – Road Network Structure.
- Supplementary Guidance: Housing in the Countryside (2021).

6. Corporate Governance

This report relates to the Council complying with its statutory duties as a Planning Authority and therefore does not directly support and contribute to improved outcomes for communities as outlined in the Council Plan and the Local Outcomes Improvement Plan.

7. Financial Implications

All resources associated with supporting the review procedure, mainly in the form of staff time, are contained within existing Planning Service revenue budgets.

8. Legal Aspects

8.1.

Under the Planning etc (Scotland) Act 2006 and the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013 where an application for planning permission for local development has been determined by the Appointed Officer in accordance with the Council's Planning Scheme of Delegation, the applicant is entitled to seek a review of that decision by the Local Review Body.

8.2.

The procedures to be followed in respect of the review are as detailed in section 4 above.

8.3.

A letter from the Chief Planner, Scottish Government, in July 2011 confirmed that a review by a Local Review Body should be conducted by means of a full consideration of the application afresh.

9. Contact Officers

Karen Greaves, Corporate Director for Strategy, Performance and Business Solutions, extension 2202, Email karen.greaves@orkney.gov.uk

Angela Kingston, Clerk to the Local Review Body, Email angela.kingston@orkney.gov.uk

Roddy MacKay, Planning Advisor to the Local Review Body, extension 2530, Email rodny.mackay@orkney.gov.uk

Georgette Herd, Legal Advisor to the Local Review Body, Email georgette.herd@orkney.gov.uk

10. Appendices

Appendix 1 – Notice of Review (pages 1 – 10).

Appendix 2 – Planning Handling Report (pages 11 – 21).

Appendix 3 – Planning Services File (pages 22 – 48).

Appendix 4 – Decision Notice and Reasons for Refusal (pages 49 – 55).

Pages 1 to 55, can be viewed [here](#), clicking on “Accept and Search” and inserting the planning reference “22/135/PP”.