

Item: 4.1

Planning Committee: 23 August 2023.

Vary condition 03 (access and parking provision) of planning permission 19/365/PP at Garden House, New Scapa Road, Kirkwall.

Report by Corporate Director for Neighbourhood Services and Infrastructure.

1. Summary

1.1.

The current application is submitted under Section 42 of the Town and Country Planning (Scotland) Act 1997, as amended, to vary a planning condition attached to planning permission 19/365/PP, for the redevelopment of Garden House. The proposed variation of condition would allow the development to be completed and occupied in conjunction with an access and parking arrangement in Scapa Crescent which differs to that approved with the application. To be clear, the current application is not seeking permission for the rearranged access and parking arrangement, which is already approved (under permitted development provisions), but to vary the planning condition only. One objection has been received on grounds of parking provision, and the safety of pedestrians and road users. The objection is not of sufficient weight to merit refusal of the application. Accordingly, the application is recommended for approval.

Application Number:	23/157/VR.
Application Type:	Removal or variation of planning condition.
Proposal:	Vary condition 03 (access and parking provision) of planning permission 19/365/PP.
Applicant:	Orkney Islands Council.
Agent:	Alan Gray, c/o HRI Munro Architecture, Naver House, Thurso, KW14 7QA.

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. Roads Services

“The removal of the condition 03 from planning ref 19/365/PP will result in a loss of 10 parking spaces within the development area which is not ideal. However, the provision of on-street parking does go some way to offsetting the loss of dedicated parking spaces. On balance while there is a reduction in the overall number of parking spaces originally planned, there are at least some on-street parking spaces now indicated to be provided, resulting in a reduction it is not of a magnitude that would cause any major concern. Therefore, Roads Services have no adverse comment to make provided suitable conditions are applied to ensure that the amended parking layout is constructed prior to the building coming into use.”

2.2. Scottish Water

“Scottish Water has no objection to this planning application...”

3. Representations

3.1.

One objection (including subsequent submission) has been received, from:

- Fraser Anderson, Margaret Anderson and Tracy Russell, Dellovo, New Scapa Road, Kirkwall, KW15 1BL.

3.2.

The objection is on grounds of parking provision, and the safety of pedestrians and road users.

4. Relevant Planning History

Reference	Proposal	Location	Decision	Date
19/376/PP	Change of use from offices (Class 4) to offices and other services (Class 2), extend, alter existing car park and stop up public road to form car parking	Garden House, New Scapa Road, Kirkwall, KW15 1BL.	Approve.	15.09.20.

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:
 - The Spatial Strategy.
 - Policy 1 – Criteria for All Development.
 - Policy 14 – Transport, Travel and Road Network Structure.
- National Planning Framework 4.

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 Lord’s 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 Lord's 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

7.1.1.

Planning permission 19/365/PP was approved on 15 September 2020 to change the use of Garden House to offices and other services, including an extension to the building, alterations to the car park, and the stopping up of the short section of public road at Scapa Crescent immediately north of the building to form additional car parking. That planning permission remains extant.

7.1.2.

Completion of the Garden House redevelopment as approved requires both planning permission, and a Stopping Up Order under Section 207 of the Town and Country Planning (Scotland) Act 1997, as amended. A Stopping Up Order was proposed: 'The Orkney Islands Council (Scapa Crescent, Kirkwall) Stopping Up Order 2021'. This proposed Order was published and received public objections, and following a hearing held by Planning and Environmental Appeals Division of the Scottish Government on 25 August 2022, Scottish Ministers declined to confirm the Order.

7.1.3.

Planning condition 03 attached to planning permission 19/365/PP (detailed in full below for ease) requires the approved access and parking provision and alterations to be constructed and completed prior to first occupation of the approved development, including the alterations to Scapa Crescent:

"03. All access and parking provision and alterations hereby approved shall be constructed and completed wholly in accordance with approved details prior to first occupation of the development hereby approved, and thereafter shall be retained in accordance with these details throughout the lifetime of the development, unless otherwise agreed, in writing, by the Planning Authority."

This planning condition is listed in Appendix 2 attached to this report, alongside the proposed amended wording.

7.1.4.

In the context that the Stopping Up Order has not been confirmed, an alternative road and parking layout has therefore been designed, as shown in the Site Plan, attached as Appendix 1 to this report. This maintains the road as a through route (not stopped up), with some realignment and the provision of four parking spaces on each side of the road (eight total). Therefore, whilst the issue of the Stopping Up Order is not a direct consideration for the current application, it is relevant in the background.

7.1.5.

The carrying out of the works required for the construction of the amended road and parking layout is permitted development under the provisions of Part 12 'Development by Local Authorities' of The Town and Country Planning (General Permitted Development) (Scotland) Order 1992, as amended. The effect is that planning permission is approved for the development – as deemed planning permission under the provisions of the 1992 Order – and a separate application for planning permission is not required for the road and parking works.

7.1.6.

The deemed planning permission is a critical point in relation to the current application; the current application is not consideration of the amended road and parking design but is for variation of planning condition 03 attached to planning permission 19/365/PP only.

7.1.7. Purpose of application

The redevelopment of Garden House including works within Scapa Crescent, is approved, and planning condition 03 requires access and parking works to be completed in accordance with the road layout that formed part of the 19/365/PP approval. On the basis this cannot be completed, as the Stopping Up Order is not confirmed, an alternative access and parking arrangement has been designed. That alternative arrangement has deemed planning permission. The current planning application is to vary condition 03, so that application 19/365/PP can be implemented and completed as currently approved, except for condition 03 varied to relate to the amended, approved Scapa Crescent design, as follows (with additional text shown in bold for clarity):

“All access and parking provision and alterations hereby approved shall be constructed and completed wholly in accordance with **the Proposed Site Plan, drawing 101, revision F**, prior to first occupation of the development hereby approved, and thereafter shall be retained in accordance with these details throughout the lifetime of the development, unless otherwise agreed, in writing, by the Planning Authority.”

7.1.8.

The access and parking layout included in application 19/365/PP and the alternative access and parking arrangement both have planning permission. This planning application is to allow the occupation of a redeveloped Garden House to move from one approved design to a different approved design, under the resultant independent planning permission.

7.2. Road Safety

7.2.1.

Bearing in mind the alternative road design has deemed planning permission, the roads authority was consulted with regards the proposal to vary the terms of planning condition 03, and no concerns were raised regarding parking provision for the safety of road users and pedestrians, the development is considered to comply with relevant access and parking planning policies.

7.2.2.

Material planning considerations in the submitted objection, including supplementary submission, relate to parking provision and safety of road users. In that context, the objection mainly relates to the amended road layout at Scapa Crescent, stating “We strongly oppose the amended plans for the road at the bottom of Scapa Crescent”. It is elaborated that the amended layout could create parking and manoeuvring issues and affect the safety and convenience of visitors to the adjacent properties.

7.2.3.

Again, it is important to note the purpose of this application, as an application to vary a planning condition. This is not an application to change the road layout; as explained at section 7.1.6 above; the amendment to the road layout has deemed planning permission as permitted development. The road layout is therefore not open to objection as it is already approved. The current application is to vary a planning condition only, to bring that planning condition into line with the approved, amended road layout. Nonetheless, Roads Services has assessed the application including in relation to the road safety and layout considerations raised in the objection, and Roads Services has confirmed no objection to the application.

8. Conclusion and Recommendation

8.1.

This application is not a reconsideration of the Garden House redevelopment, as considered under application 19/365/PP, and is an application submitted under Section 42 of the 1997 Act to vary condition 03 of planning permission 19/365/PP, so that occupation of the redeveloped Garden House relates to an alternative access and parking arrangement. That alternative arrangement benefits from deemed planning permission, and the current application is not consideration of the merits of that alternative arrangement, but whether it is appropriate to allow condition 03 to relate to the alternative arrangement rather than the originally approved arrangement, which is no longer feasible on the basis the Stopping Up Order has not been confirmed. Objections are of insufficient weight to warrant refusal. On the basis the variation of condition relates to an alternative arrangement that benefits from deemed planning permission, there being no concerns from the roads authority, and the remainder of the development being unchanged, the current application is considered to comply with Policies 1 and 14 of the Orkney Local Development Plan 2017, and relevant provisions of National Planning Framework 4.

8.2.

Accordingly, the application is recommended for approval, subject to the conditions attached as Appendix 3 to this report. The approval of planning permission under Section 42 of the 1997 Act constitutes an independent permission to carry out the same development as previously approved, but subject to the new or varied conditions; as such, Appendix 3 contains all planning conditions attached to 19/365/PP. It should also be noted that the original planning permission would not be superseded if this application is approved but would remain extant and unamended (albeit not able to be complied with due to the Stopping Up Order not being confirmed).

9. Contact Officer

Jamie Macvie, Service Manager (Development Management), Email jamie.macvie@orkney.gov.uk

10. Appendices

Appendix 1: Site Plan.

Appendix 2: Planning condition to be amended.

Appendix 3: Planning Conditions.

GENERAL NOTES:

DO NOT SCALE FROM THIS DRAWING
This drawing is to be used in conjunction with consultants drawings, where appropriate, and the specification / construction notes.
Any discrepancies are to be referred to the CA.

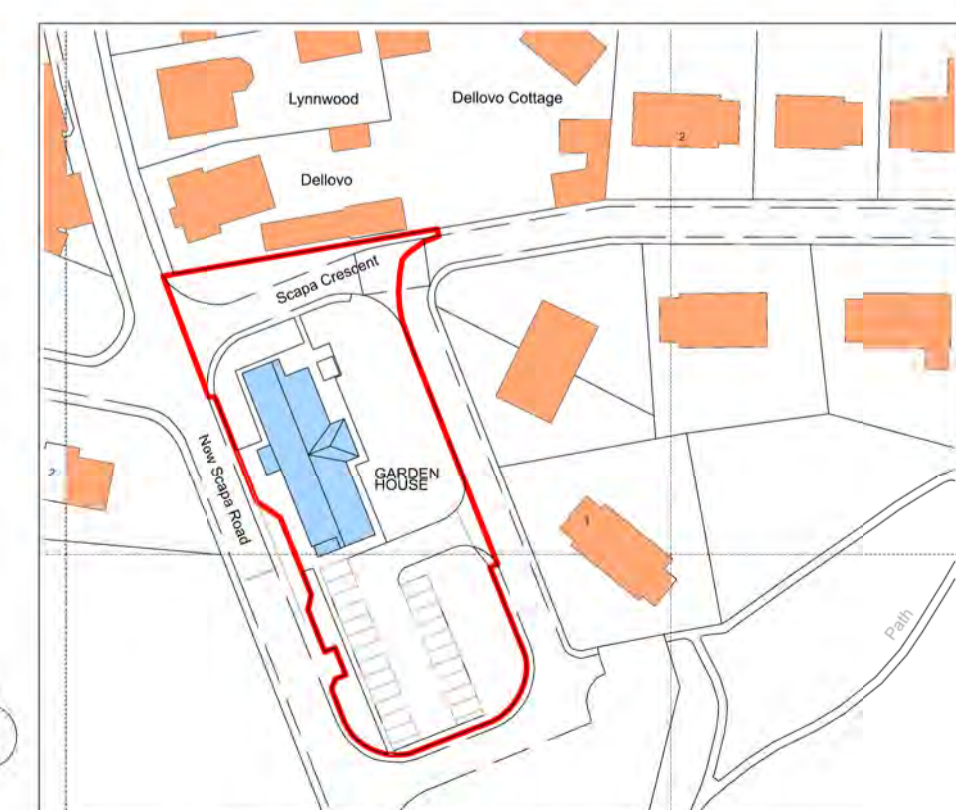
ANY AND ALL DIMENSIONS TO BE CHECKED ON SITE PRIOR TO ORDERING MATERIALS AND GOODS

LEGEND:

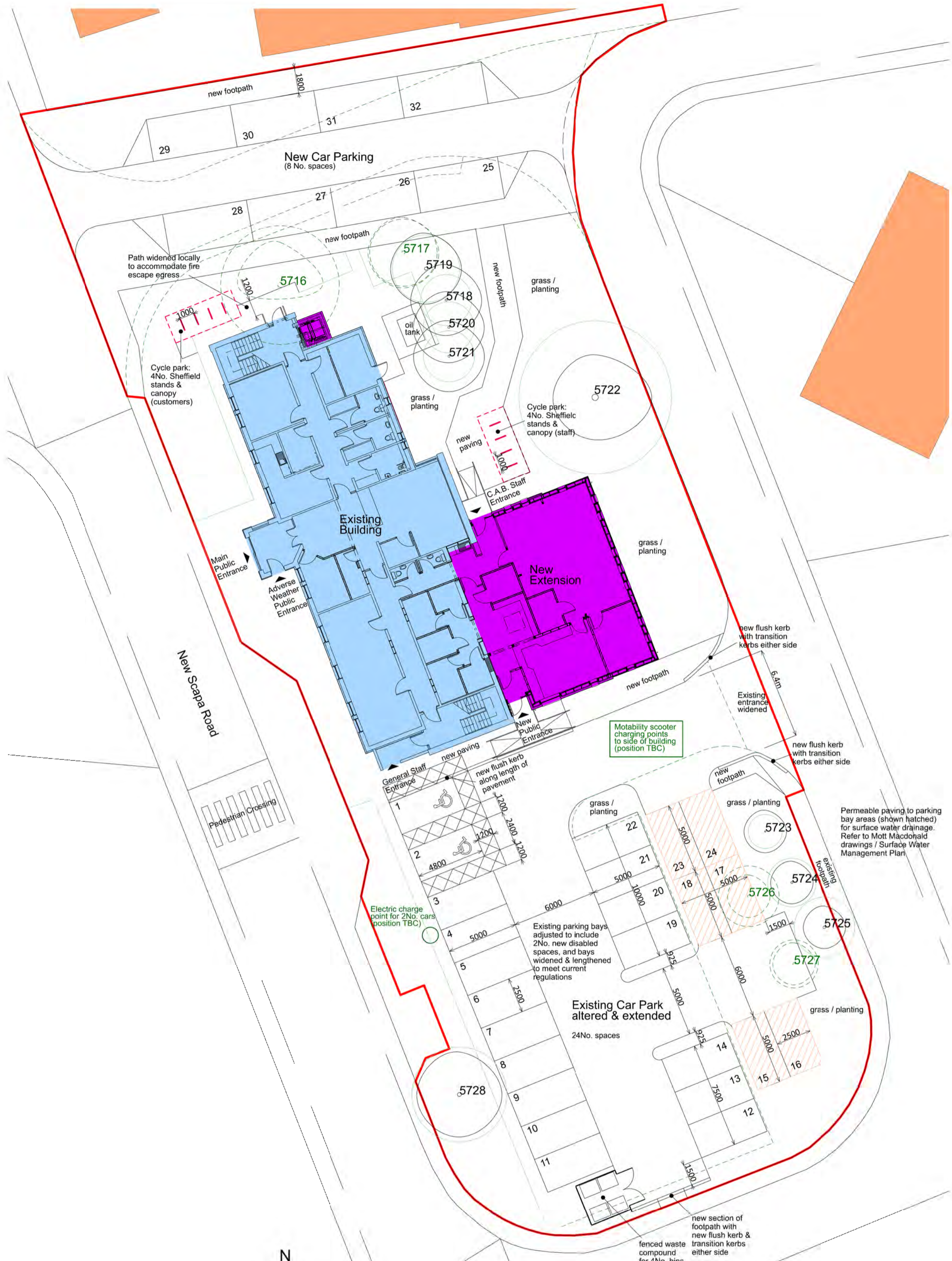
- Removals
- 5723 Tree No. & canopy
- 5717 Tree to be removed
- Tree root protection areas



1 Existing Site Plan
Scale 1:200 @ A1



3 Location Plan
Scale 1:1250 @ A1



2 Proposed Site Plan
Scale 1:200 @ A1

PLANNING

F	Planning Status; Revised Road arrangement with roadside parking	19.04.23
E	User client comments added; Pedestrian Crossing indicated; Site boundary updated; Tender status	17.11.22
D	Tree info updated; Car parking in closed section of Scapa Crescent. Layby shown removed; Tree info added; Cycle & waste areas added; Parking altered.	18.10.19
C	New car park altered; Oil tank re-located; Notes added.	17.09.19
B	Warrant notes added.	26.07.19
A		21.07.19
Revision	Description	Date

**GARDEN HOUSE
KIRKWALL
ORKNEY**

**LOCATION PLAN,
EXISTING SITE PLAN
& PROPOSED SITE PLAN**

Scale:	Date:	Lead:	Drawn:	Checked:
As noted @A1	12.02.19	MW	GF	XX

Project Number:	Drawing:	Revision:
I.7115c	101	F

Appendix 2.

Existing planning condition:

All access and parking provision and alterations hereby approved shall be constructed and completed wholly in accordance with approved details prior to first occupation of the development hereby approved, and thereafter shall be retained in accordance with these details throughout the lifetime of the development, unless otherwise agreed, in writing, by the Planning Authority.

Proposed planning condition:

All access and parking provision and alterations hereby approved shall be constructed and completed wholly in accordance with the Proposed Site Plan, drawing 101, revision F, prior to first occupation of the development hereby approved, and thereafter shall be retained in accordance with these details throughout the lifetime of the development, unless otherwise agreed, in writing, by the Planning Authority.

Appendix 3.

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. Throughout the lifetime of the development hereby approved, surface water must be treated in accordance with the principles of Sustainable Drainage Systems (SUDS) and be compliant with the guidance set out in CIRIA's SuDS Manual C753. The requisite surface water drainage shall be operational prior to the development being brought into use and shall be maintained as such thereafter.

All surface water shall be contained within the development site and there shall be no surface water drainage run-off onto the road or adjacent land.

Reason: To ensure the provision of an adequate surface water drainage system and to accord with Policy 13B – Sustainable Drainage Systems (SuDS) of Orkney Local Development Plan 2017, and in the interests of road safety.

03. 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 on 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 this development.

04. All access and parking provision and alterations hereby approved shall be constructed and completed wholly in accordance with the Proposed Site Plan, drawing 101, revision F, prior to first occupation of the development hereby approved, and thereafter shall be retained in accordance with these details throughout the lifetime of the development, unless otherwise agreed, in writing, by the Planning Authority.

Any damage caused to the existing road infrastructure during construction of the development shall be repaired prior to first occupation of the development, to the satisfaction of the Planning Authority, in conjunction with Roads Services.

Reason: In the interests of road safety.

05. All tree protection shall be implemented wholly in accordance with the sequence of works and specifications included in the 'Tree Protection Plan' hereby approved. No excavation works shall be carried out within the site until all protective fencing is erected in accordance with the tree protection plan and is inspected on site and confirmed as acceptable by the Planning Authority.

Reason: To ensure adequate protection of trees, including roots, throughout the construction of the development.