

Item: 4.5

Planning Committee: 8 March 2023.

Erect Timber Fence (Part Retrospective) at 80 Victoria Street, Kirkwall.

Report by Corporate Director for Neighbourhood Services and Infrastructure.

1. Summary

1.1.

Listed building consent is sought to erect a fence in the rear garden ground of 80 Victoria Street, Kirkwall. The property is both C listed and situated within the Kirkwall Conservation Area. Works have commenced, so the application is part retrospective. One objection has been received on grounds of the impact on the setting of the listed building and character and appearance of the area. The objection is considered of insufficient weight to merit refusal. It is concluded that the development complies with relevant policy provisions of National Planning Framework 4 and the Orkney Local Development Plan 2017. Accordingly, the application is recommended for approval.

Application Number:	22/431/LB.
Application Type:	Listed Building Consent.
Proposal:	Erect a timber fence (part retrospective).
Applicant:	Mrs Anne-Marie MacGregor.
Agent:	Stephen J Omand, 14 Victoria Street, Kirkwall, KW15 1DN.

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

Orkney Heritage Society was consulted but has not responded.

3. Representations

3.1.

One objection has been received from:

- Mr Ashley Brown, 76 Victoria Street, Kirkwall, Orkney, KW15 1DQ.

3.2.

The objection is on the grounds of setting of a listed building and character and appearance of the area.

4. Relevant Planning History

Reference	Proposal	Location	Decision	Date
15/151/LB	Block doorway, install an air source heat pump, secondary glazing, replace windows, doors and a gate and paint walls, windows and doors.	80 Victoria Street, Kirkwall, KW15 1DQ.	Approve	01.07.2015
16/204/LB	Display a sign.	80 Victoria Street, Kirkwall, KW15 1DQ.	Approve	14.06.2016

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 2 – Design.
 - Policy 8 – Historic Environment and Cultural Heritage
- Supplementary Guidance: Historic Environment and Cultural Heritage (2017).
- 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. Principle and Background

The application seeks part-retrospective permission as works to erect the fence have commenced. These works were raised in an enforcement complaint received by the planning authority. Following a site meeting between the applicant and the Service Manager (Development Management) to establish the works taking place and to confirm the consents required, the applicant ceased work and submitted the current application shortly thereafter.

7.2. Siting and Setting

7.2.1.

The property fronts the main thoroughfare of the Kirkwall conservation area, as shown on the site plan attached as Appendix 1 to this report, but all proposed works would take place within the rear curtilage. The rear garden can be accessed by a narrow lane between 76 and 80 Victoria Street; however, the extent of the proposed works visible from Victoria Street public realm is negligible.

7.2.2.

The rear garden slightly rises to the east and extends to meet Victoria Lane, the edge of the conservation area. The rear boundary is a modern dashed and gated wall at a height of approximately 1.8 metres. The garden ground is therefore not readily viewed from Victoria Lane and the layout and content of the garden does not impact on the character and appearance of the wider area.

7.3. Fence

The fencing would be largely obscured from the west access lane and not visible at all from Victoria Lane to the rear. Nonetheless, the fence is designed to the appropriate standard in the setting of a listed building, with vertical slats and structural supports mostly hidden and a natural weathered finish. This is an appropriate design, material choice and finish for use within the conservation area and immediate setting of a listed building. The design and specification of the fence proposed, and partly installed, is considered to protect the character and appearance of the conservation area, and the setting and special interest of the listed building.

8. Conclusion and Recommendation

The site can accommodate the development, which would not have an unacceptable impact on the special architectural or historic interest of the listed building or its immediate and wider setting. The objection is of insufficient weight to warrant refusal. As such, it is considered that the development would accord with the relevant policy provisions of National Planning Framework 4 and Policy 8 of the Orkney Local Development Plan 2017. Accordingly, the application is recommended for approval, subject to the conditions attached as Appendix 2 to this report.

9. Contact Officers

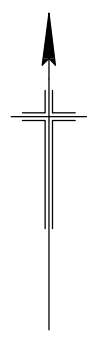
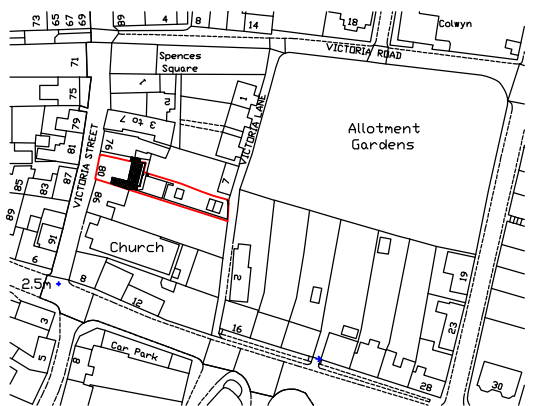
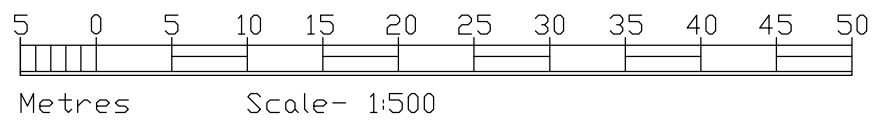
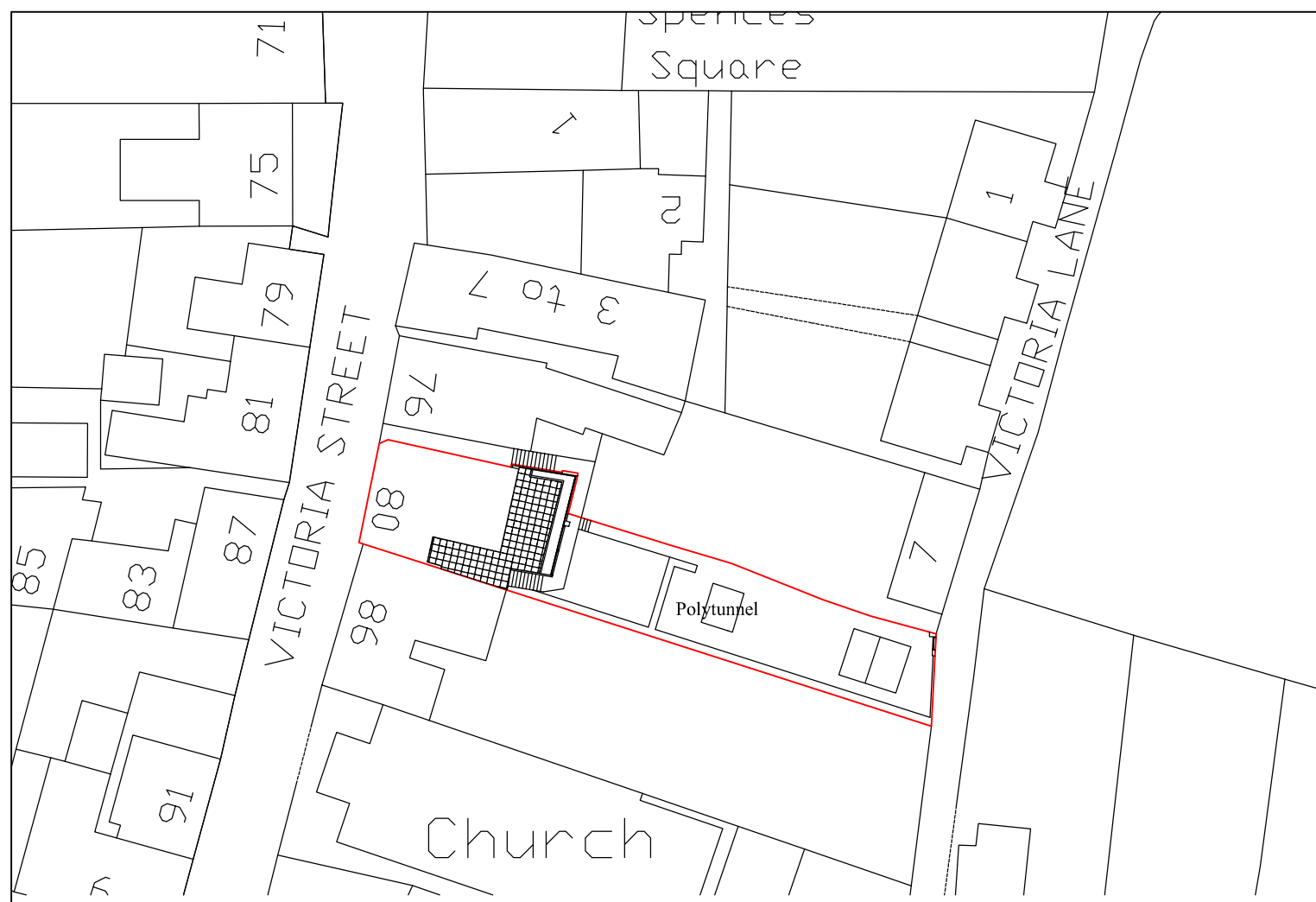
Jamie Macvie, Service Manager (Development Management), Email Jamie.macvie@orkney.gov.uk

Dean Campbell, Planning Officer, Email dean.campbell@orkney.gov.uk

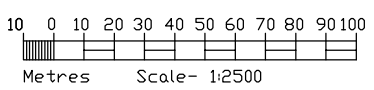
10. Appendices

Appendix 1: Site Plan.

Appendix 2: Planning Conditions.



Erection of timber fence, re-paving of courtyard and erection of Polytunnel (Restrospective).
 For Mrs Anne-Marie MacGregor,
 Dwg No 1433/1/P1/LB1. Plan Size A4.



OS Licence No- ES100003740

Appendix 2

01. The works permitted by this listed building consent shall be commenced within three years, beginning with the date of the grant of listed building consent, which is the date of this decision notice. If the works have not commenced within this period, this listed building consent shall lapse.

Reason: In accordance with Section 16 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, as amended, which limits the duration of listed building consent.

02. Notwithstanding details included in plans and other drawings hereby approved, the entirety of the fence including all structural supports shall be constructed from timber and left to weather naturally.

Reason: To preserve the special interest and setting of the listed building.