



ORKNEY
ISLANDS COUNCIL

Item: 3

Local Review Body: 11 March 2025.

Proposed Siting of House at Ness Road, Stromness (23/444/PIP).

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

1. Overview

- 1.1. Planning application 23/444/PIP in respect of the proposed siting of a house at Ness Road, Stromness, was refused by the Appointed Officer on 24 December 2024.
- 1.2. Under the Town and Country Planning (Scotland) Act 1997 (the Act) and the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013 (the Regulations), 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.
- 1.3. The applicant has submitted a Notice of Review (see Appendix 1) requesting that the decision of the Appointed Officer, referred to at paragraph 1.1 above, be reviewed. The applicant has indicated that the review can be determined without any further procedures.
- 1.4. A letter from the Chief Planner, Scottish Government, issued 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.
- 1.5. Section 21 of the Scheme of Administration states that the Local Review Body will undertake unaccompanied site inspections for all planning applications subject to a local review, prior to meeting to consider the review. The purpose of the site inspection, together with the procedure to be adopted, are set out in section 21.2 of the Scheme of Administration. The applicant and interested parties have been advised that an unaccompanied site inspection to Ness Road, Stromness, is due to be undertaken on 11 March 2025 at approximately 13:30.
- 1.6. The review procedure is set out in section 4 below.

2. Recommendations

- 2.1. The Local Review Body is required to:
 - i. Determine 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.
- 2.2. Should the Local Review Body determine that the decision is reversed or varied, it is required to:
 - i. Determine the reasons, and, if applicable, the relevant matters in respect of potential conditions to be attached to the decision notice.
- 2.3. Should the Local Review Body determine that the decision is reversed or varied, it is recommended that members of the Local Review Body:
 - i. Delegate powers to the Corporate Director for Strategy, Performance and Business Solutions, following consultation with the Planning Advisor and the Legal Advisor, to determine the necessary conditions to attach to the Decision Notice.
- 2.4. Should the Local Review Body determine that it does not have sufficient information to proceed to determination of the review, it is required to:
 - i. Determine 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 under the procedure set out in Regulation 15 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013; and/or
 - By the holding of one or more hearing under the Hearing Session Rules set out in Schedule 1 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013.

3. Planning Authority Decision

- 3.1. The Planning Handling Report, Planning Services file and the Decision Notice are attached as Appendices 2, 3 and 4 to this report.

3.2. On 24 December 2024, the Appointed Officer refused planning application 23/444/PIP on the following grounds:

01. The proposal fails to comply with the Policy 14 'Transport, Travel and Road Network Infrastructure' of the Orkney Local Development Plan 2017 as it would result in an unacceptable impact on the safety of road users and pedestrians, and visibility from the proposed access is unacceptable. Roads Services as the roads authority has objected to the development.

02. The development would not preserve or enhance the character or appearance of Stromness Conservation Area, and is contrary of Policy 7d) of National Planning Framework 4, Policy 8 of the Orkney Local Development Plan 2017, Supplementary Guidance 'Historic Environment and Cultural Heritage' (2017), and Planning Policy Advice 'Historic Environment (Topics and Themes)' (2017) and 'Urban Conservation Areas Management Plan' (2017), and fails the test of Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, as amended.

4. Local 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. A representation was received from Development Management and is attached as Appendix 5.

4.2. In instances where a representation is received from an "interested party", the applicant is afforded the opportunity to make comments on any representation received. No further comment was received from the applicant or agent.

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:

- Duration of consent.
- Approval of matters specific in conditions.
- Detailed layout.
- Design and appearance including height restriction.
- Site and floor levels.
- Access and parking.
- Visibility splays including demolition of boundary wall.
- Water supply.
- Foul drainage.

- Surface water.
 - Bin storage and collection.
 - Biodiversity enhancement.
 - Construction management plan.
 - Hours of construction.
- 4.4. All conditions should be in accordance with Planning Circular 4/1998 regarding the use of conditions in planning permissions.
- 4.5. If the decision is reversed and the development is approved, it is proposed that powers are delegated to the Corporate Director for Strategy, Performance and Business Solutions, following consultation with the Planning Advisor and the Legal Advisor, to determine the necessary conditions, based on the relevant matters, agreed in terms of section 4.2 above.
- 4.6. 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 under the procedure set out in Regulation 15 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013; and/or.
 - By the holding of one or more hearing under the Hearing Session Rules set out in Schedule 1 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013.

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](#). Although the Orkney Local Development Plan 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.

5.3. National Planning Framework 4 was approved by Parliament on 11 January 2023 and formally adopted by Scottish Ministers on 13 February 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 National Planning Framework 4 and a provision of the Orkney Local Development Plan 2017, National Planning Framework 4 is to prevail as it was adopted later. It is important to note that National Planning Framework 4 must be read and applied as a whole, and that the intent of each of the 33 policies is set out in National Planning Framework 4 and can be used to guide decision-making.

5.4. It is for the Local Review Body to determine which policies are relevant to this application; however the policies listed below were referred to by the Appointed Officer in the Planning Handling Report:

- National Planning Framework 4:
 - Policy 3 – Biodiversity.
 - Policy 7 – Historic Assets and Places.
 - Policy 13 – Sustainable Transport.
 - Policy 16 – Quality Homes.
- Orkney Local Development Plan 2017:
 - Policy 1 – Criteria for All Development.
 - Policy 5 – Housing.
 - Policy 8 – Historic Environment and Cultural Heritage.
 - Policy 14 – Transport, Travel and Road Network Infrastructure.
- Supplementary Guidance:
 - Historic Environment and Cultural Heritage (2017).
- Planning Policy Advice:
 - Historic Environment (Topics and Themes) (2017).
 - Urban Conservation Areas Management Plan (2017).

For Further Information please contact:

Susan Shearer, Planning Advisor to the Local Review Body, extension 2433, Email: susan.shearer@orkney.gov.uk.

Implications of Report

1. **Financial:** All resources associated with supporting the review procedure, mainly in the form of staff time, are contained within existing revenue budgets.
2. **Legal:** The legal implications are set out in the body of the report.
3. **Corporate Governance:** In accordance with the Scheme of Administration, determination of Notices of Review is delegated to the Local Review Body.
4. **Human Resources:** None.
5. **Equalities:** None.
6. **Island Communities Impact:** None.
7. **Links to Council Plan:** The proposals in this report support and contribute to improved outcomes for communities as outlined in the following Council Plan strategic priorities:
 - Growing our economy.
 - Strengthening our Communities.
 - Developing our Infrastructure.
 - Transforming our Council.
8. **Links to Local Outcomes Improvement Plan:** The proposals in this report support and contribute to improved outcomes for communities as outlined in the following Local Outcomes Improvement Plan priorities:
 - Cost of Living.
 - Sustainable Development.
 - Local Equality.
9. **Environmental and Climate Risk:** None.
10. **Risk:** None.
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](#).

Planning Circular 4/1988, available [here](#).

Appendices

Appendix 1 – Notice of Review (pages 1 – 18).

Appendix 2 – Planning Handling Report (pages 19 - 24).

Appendix 3 – Planning Services File (pages 25 - 61).

Appendix 4 – Decision Notice (pages 62 - 66).

Appendix 5 – Representation from Development Management (page 67).

Pages 1 to 66 can be viewed [here](#), clicking on “Accept and Search” and inserting the planning reference “23/444/PIP”.

23/444/PIP**Siting of a house at Ness Road, Stromness****Regulation 10(b) Representation by Interested Party – Development Management**

The Notice of Review relies heavily on an appeal decision from 2008, which has limited weight in the current determination, given that the decision to which it related has lapsed, and in the intervening years approval of roads guidance, a conservation area appraisal, an amendment to the conservation area boundary, two Local Development Plans with related policies, and adoption of national planning Framework 4.

The decision was made in relation to current policies and designation.

To maximise visibility from any proposed access in the boundary wall, would involve extensive demolition to improve visibility splays, which would have an unacceptable impact on the character and appearance of the conservation area.

The development can either (1) increase impact on the conservation area by demolishing the wall to increase visibility splays, or (2) maintain the wall and limit the opening to an access with only, minimising impact on the conservation area but in doing so, reducing visibility and road safety to the minimum. Both requirements of protecting the conservation area and the safety of road users cannot be achieved.

As is common with other houses in Stromness, it would be an acceptable solution (whilst accepted it would be less desirable for the house occupant) for the house to have no dedicated or curtilage parking. I.e. create a house site as desired, with a pedestrian access created and a gate formed in the boundary wall. That would allow a house but avoid a road safety issue or unacceptable impact on the conservation area.

At the time of the appeal decision in 2006, as quoted in the letter accompanying the Notice of Review, *“neither the appeal site nor the plot of Red Roof lies within the conservation area”*. That is now outdated, and since the boundary review in 2012, the entirety of the application site including the boundary wall is located within Stromness Conservation Area. Hence the limited relevance of the 2008 appeal decision.

For the avoidance of doubt, refusal of the current application for house and access, would not prejudice a subsequent application for a house only, with pedestrian access.

Development Management**17 January 2025**