

Item: 5.1

Local Review Body: 2 February 2022.

Proposed Erection of Two Storage Sheds and Create Hardstanding at The Orcadian, Hell's Half Acre, Crowness Crescent, Hatston, Kirkwall (21/128/PP)

Report by Chief Executive.

1. Purpose of Report

To determine a review of the decision of the Appointed Officer, specifically in respect of Conditions 2 and 4 attached to the approved planning permission for the erection of two storage sheds and creation of hardstanding at The Orcadian, Hell's Half Acre, Crowness Crescent, Hatston, Kirkwall.

2. Recommendations

The Local Review Body is invited to note:

2.1.

That planning permission for the erection of two storage sheds and creation of hardstanding at The Orcadian, Hell's Half Acre, Crowness Crescent, Hatston, Kirkwall, was granted by the Appointed Officer on 23 November 2021, subject to the conditions outlined in section 3.3 of this report.

2.2.

That the applicant has submitted a Notice of Review requesting that the decision of the Appointed Officer, specifically in respect of Conditions 2 and 4 attached to the approval, 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 21/128/PP relates to the erection of two storage sheds and creation of hardstanding at The Orcadian, Hell's Half Acre, Crowness Crescent, Hatston, Kirkwall.

3.2.

The Appointed Officer granted the planning application on 23 November 2021 subject to conditions.

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, which is attached as Appendix 1 to this report. The Notice of Review relates specifically to Conditions 2 and 4 attached to the approval, as noted below:

3.3.1.

Condition 2 – No development shall commence until full details of any external lighting to be used within the site and/or along its boundaries and/or access have been submitted to, and approved in writing by, the Planning Authority. Such details shall include full details of the location, type, angle of direction and wattage of each light which shall be so positioned and angled to prevent any direct illumination, glare or light spillage outwith the site boundary. Thereafter only the approved details shall be implemented.

Reason: In order to ensure that any lighting installed within the application site does not spill beyond the intended target area, does not impact adversely upon the amenity of adjacent properties and does not result in "sky glow".

3.3.2.

Condition 4 – Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 or the Town and Country Planning (Use Classes) (Scotland) Order 1997 or any order amending of these Orders, the building hereby approved shall be used only for storage and shall not be used for any other purpose within Use Class 6 without the express grant of planning permission from the Planning Authority.

Reason: To enable the Planning Authority to consider the implications of any subsequent change of use.

3.4.

The Planning Handling Report, Planning Services file and the Decision Notice, including the conditions attached to the approval, 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. One representation, attached as Appendix 5 to this report, has been received from Roads Services, who have confirmed concerns in respect of any future change of use of the sheds and the implications that might have on the level of parking required as well as the ability to provide adequate manoeuvring space within the site should service/delivery vehicles need to access.

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. The applicant’s response to the representation from Roads Services is detailed in Appendix 6 to this report.

4.3.

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 The Orcadian, Hell’s Half Acre, Crowness Crescent, Hatston, Kirkwall, was undertaken at 09:30 on 2 February 2022.

4.4.

The Local Review Body may uphold, reverse or vary the decision of the Appointed Officer. The full set of planning conditions which have been applied to the current planning consent are detailed in the Decision Notice, attached at Appendix 4.

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 at:

<https://www.orkney.gov.uk/Service-Directory/D/Planning-Policies-and-Guidance.htm>

The policies listed below are relevant to this application:

- Orkney Local Development Plan 2017:
 - Policy 1 – Criteria for All Development.
 - Policy 2 – Design.
 - Policy 4 – Business, Industry and Employment (Part A – Within Settlements).
 - Policy 13 – Flood Risk, SuDS and Waste Water Drainage.
 - Policy 14 – Transport, Travel and Road Network Infrastructure.

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.

There are two options available to applicants to challenge any condition attached to a planning permission.

8.2.

Under Section 42 of the Town and Country Planning Scotland Act 1997 an application can be made to the planning authority for permission to develop the application site without complying with one or more of the conditions, subject to

which the permission was granted. The planning authority can decide that the permission should be granted subject to the same conditions (ie application refused), or if the application is successful, permission will be granted without the condition(s) which has been contested.

8.3.

Alternatively, 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. The review process covers any conditions imposed on a planning permission.

8.4.

Scottish Government advice on the use of conditions in planning permissions is provided in Planning Circular 4/1998. As a matter of policy, conditions should only be imposed when they are:

- Necessary.
- Relevant to planning.
- Relevant to the development to be permitted.
- Enforceable.
- Precise.
- Reasonable in all other respects.

8.5.

The full text of Planning Circular 4/1998 can be found on the Scottish Government website at: <https://www.gov.scot/publications/planning-circular-4-1998-use-of-conditions-in-planning-permissions/>. Paragraph 85 indicates that in exceptional circumstances conditions may be imposed to restrict further development which would normally be permitted by the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order or the Town and Country Planning (Use Classes) (Scotland) Order 1997.

8.6.

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

8.7.

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

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

Katharine McKerrell, Legal Advisor to the Local Review Body, Email
katharine.mckerrell@orkney.gov.uk

10. Appendices

Appendix 1 – Notice of Review (pages 1 – 26)

Appendix 2 – Planning Handling Report (pages 26 – 28)

Appendix 3 – Planning Services File (pages 29 – 74)

Appendix 4 – Decision Notice with Conditions (pages 75 – 93)

Appendix 5 – Further Representation from Interested Party (pages 94 – 95)

Appendix 6 – Applicant’s Response to Representation from Interested Party (pages 96 – 97)

Pages 1 to 97, with the exception of pages 94 to 97, can be viewed at
<https://planningandwarrant.orkney.gov.uk/online-applications/search.do?action=simple&searchType=Application> and inserting the planning reference “21/128/PP”.

All other documents can be viewed at <https://www.orkney.gov.uk/council-meetings.htm?postid=4860&postdiaryentryid=10905>