

**Item: 6**

**Planning Committee: 21 August 2024.**

**Erect a Domestic Shed (Retrospective) at The Mad Hatter, Northside Road, Birsay.**

**Report by Corporate Director for Neighbourhood Services and Infrastructure.**

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## 1. Overview

- 1.1. This report considers an application for planning permission to erect a domestic shed. The application is retrospective as the shed has been erected. Two valid representations (objections) have been received, and in accordance with the Scheme of Delegation for Planning Committee, the application must be reported to Planning Committee for determination. The development complies with relevant policies, and objections and other material considerations do not merit refusal of the application.

Application Reference:	24/237/HH.
Application Type:	Householder planning permission.
Proposal:	Erect a domestic shed (retrospective).
Applicant:	Mr Ben Wood.
Agent:	May Banks, c/o Peter Finnigan Architects, Mayfield, St Margaret's Hope, KW17 2TL .

- 1.2. All application documents (including plans, consultation responses and valid 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. Recommendations**

2.1. It is recommended that members of the Committee:

- i. Approve the application for retrospective planning permission in respect of the proposed erection of a domestic shed at The Mad Hatter, Northside Road, Birsay, subject to the conditions detailed in Appendix 1 to this report.

## **3. Consultations**

3.1. Scottish Water

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

3.2. Roads Services

No consultation response received (consulted 5 July 2024).

## **4. Representations**

4.1. Two valid representations (objections) have been received from:

- Sally and Chris Read, Hawin, Northside, KW17 2LU
- David and Ailsa Taylor, Muckle Geo, Northside, KW17 2LU

4.2. Objections are on the following grounds:

- The use of the building (as a business, not domestic).
- Scale/design of the development (including relative to the house).
- Parking associated with the building.
- Noise impact from activities at the building.
- Vehicle movements on the public road associated with the building, and impact on the safety of road users and pedestrians.
- Impact on privacy.

## 5. Relevant Planning History

### 5.1. Planning applications

Reference	Proposal	Location	Decision	Date
05/195/PPF	Erection of a house	Hawin (land near), Northside, Birsay	Approve	23.06.05
16/575/HH	Extend a house	The Mad Hatter, Northside, Birsay	Approve	19.01.17

- 5.2. The Planning Authority was alerted to the shed at the subject of this application in August 2022 by a public enforcement complaint. Site inspection confirmed that the shed had been erected, and other enforcement investigations noted the business 'Boostprojekt' advertised from the building, as vehicle 'Remapping & Performance Tuning Services'. This is the business use referenced in the representations at section 4 above.
- 5.3. A Planning Contravention Notice (requisition for information notice) was served in May 2023. This confirmed some activities being carried out at the premises. Further site investigation confirmed that due to the dimensions of the building, a planning application was required for its erection, even if used for any purpose incidental to the enjoyment of the house (i.e. the building could not be erected under permitted development provisions, irrespective of the use).
- 5.4. Following further correspondence, a notice under Section 33A of the Town and Country Planning (Scotland) Act 1997, as amended, was served in April 2024. A S33A notice requires the person on receipt of the notice to submit an application for planning permission.
- 5.5. It is necessary to separate (1) the erection of the shed from (2) the use of the shed. Whilst its use is of course dependent on its presence, it is possible to seek to regularise the erection of a building through a retrospective application, and as part of that application confirm the proposed use (notwithstanding any unauthorised activity carried out to that date). That is the current situation.
- 5.6. Planning enforcement is remedial rather than punitive, and the application can therefore be assessed on its merits as submitted, including if a proposed development would remedy any previous breaches of planning control recorded.

## 6. Relevant Planning Policy and Guidance

- 6.1. The full text of the Orkney Local Development Plan 2017 and supplementary guidance can be read on the Council website [here](#).
- 6.2. National Planning Framework 4 can be read on the Scottish Government website [here](#).
- 6.3. The key policies, supplementary guidance and planning policy advice listed below are relevant to this application:
  - Orkney Local Development Plan 2017:
    - Policy 1 – Criteria for All Development.
    - Policy 2 – Design.
  - National Planning Framework 4.

## 7. Legislative position

- 7.1. 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...”
- 7.2. Annex A of Planning Circular 3/2013: ‘development management procedures’ provides advice on defining a material consideration, and following a House of Lords’ 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.”
- 7.3. Annex A continues as follows:
  - The House of Lords’ 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.
- 7.4. 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.
- 7.5. An award of expenses may be substantial where an appeal is conducted either by way of written submissions or a local inquiry.

#### **Status of the Local Development Plan**

- 7.6. 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.

#### **Status of National Planning Framework 4**

- 7.7. 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 NPF4 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.

- 7.8. 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.

## **8. Assessment**

- 8.1. As noted in section 1 above, the current application is retrospective for the erection of the shed within the curtilage of the domestic property known as The Mad Hatter, Northside, Birsay, as indicated in the Location Plan attached as Appendix 2 to this report. In seeking to regularise the situation, it is legitimate that the application can be submitted as a householder planning application and therefore as a shed for domestic purposes only. In terms of concerns raised in representations and enforcement investigation notes regarding commercial activities at the shed, this cannot prejudice consideration of the application as submitted, noting that if approved it would be subject to a planning condition to strictly control the use. For certainty regarding the development, the proposed use was confirmed at validation stage of the application, and the agent confirmed the building as: "...general storage/workshop for domestic purposes. No commercial use at all."

### **Principle**

- 8.2. The development of a domestic garage for ancillary and incidental use is acceptable in principle. As noted above, a planning condition would be attached to control its use for domestic purposes only; previous use of the shed or speculation regarding potential ongoing/future uses is not material to the planning consideration, and any future breaches of condition or other unauthorised development would be dealt with accordingly.

### **Design and Appearance**

- 8.3. The scale of the building is raised in representations. It is large relative to the footprint of the existing house and other neighbouring buildings, and by virtue of the steel portal frame construction the building has a shallower roof pitch than nearby domestic and other traditional buildings. However, the housing in the area is generally scattered, with agricultural and other non-domestic buildings visible. In a wider landscape context therefore, the building is not so large that it is unacceptable or would merit refusal on grounds of design and appearance. That is aided by the recessive grey colour used for the metal wall and roof cladding. The proposal is acceptable with regards design and complies with Policy 2 'Design'.

## **Residential Amenity**

- 8.4. Sufficient outdoor amenity space is retained for the occupiers of the property. The building has no windows, other than rooflights, thereby avoiding any overlooking of neighbouring properties. The privacy concern raised in objection is therefore of insufficient weight to merit refusal of the application. The building would not contribute to any significant additional overshadowing. In that regard, the development complies with Policy 1 'Criteria for All Development'.
- 8.5. The issue of noise relates to unauthorised commercial activities carried out in the building. Based on the application as submitted, the use of the building would be limited to domestic activities only, in the context that residential properties are protected from noise nuisance under other legislation.

## **Access and parking**

- 8.6. Concerns raised in objections regarding vehicle parking and the use of the public road relate principally to the unauthorised use of the shed for commercial purposes that prompted the enforcement complaints. Roads Services has not responded to the consultation request but it is not anticipated that those same concerns would occur in relation to domestic use as proposed.

## **9. Conclusion**

- 9.1. The proposed development complies with Policies 1 and 2 of the Orkney Local Development Plan (2017) and relevant policy provisions of National Planning Framework 4. The proposal is acceptable in principle, and in terms of design and residential amenity. There are no material considerations including those raised in the objections that outweigh this conclusion, noting that consideration of this application is not prejudiced by previous unauthorised development.

### **For Further Information please contact:**

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

### **Implications of Report**

- 1. Financial:** None.
- 2. Legal:** Detailed in section 7 above.
- 3. Corporate Governance:** In accordance with the Scheme of Administration, determination of this application is delegated to the Planning Committee.
- 4. Human Resources:** None.
- 5. Equalities:** Not relevant.



6. **Island Communities Impact:** Not relevant.
7. **Links to Council Plan:** Not relevant.
8. **Links to Local Outcomes Improvement Plan:** Not relevant.
9. **Environmental and Climate Risk:** None.
10. **Risk:** If Members are minded to refuse the application, it is imperative that clear reasons for proposing the refusal of planning permission on the basis of the proposal being contrary to the development plan policy and the officer's recommendation be given and minuted. This is in order to provide clarity in the case of a subsequent planning appeal or judicial review against the Planning Committee's decision. Failure to give clear planning reasons for the decision could lead to the decision being overturned or quashed. In addition, an award of costs could be made against the Council. This could be on the basis that it is not possible to mount a reasonable defence of the Council's decision.
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](#).

#### **Appendix**

Appendix 1 – Planning conditions.

Appendix 2 – Location Plan.

## **Appendix 1.**

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. The development hereby approved shall be used for domestic purposes incidental to the enjoyment of the dwellinghouse The Mad Hatter only. The building shall not be used for any commercial activity unless express planning permission is approved.

Reason: To protect the amenity of nearby residential properties, and in accordance with the householder application type, and confirmation of proposed use submitted with the application.

03. Throughout the lifetime of the development hereby approved, surface water shall be managed in accordance with the principles of Sustainable Drainage Systems (SuDS) and the guidance set out in CIRIA's SuDS Manual C753. Requisite surface water drainage measures shall be operational prior to the development being brought into use and shall be maintained as operational thereafter and throughout the lifetime of the development.

All surface water shall be contained within the application site and shall be managed to avoid flow into any adjacent road or other land.

Reason: To ensure appropriate management of surface water drainage, in accordance with Policy 13B 'Sustainable Drainage Systems (SuDS)' of the Orkney Local Development Plan 2017, NPF4, and to protect road safety.

PROJECT: PROPOSED NEW SHED  
AT THE MAD HATTER, BIRSAY

DRAWING : PROPOSED  
LOCATION PLAN

SCALE : 1: 2500

DRAWN BY : MAY 2024  
MB

**P.J. FINNIGAN ARCHITECTS**

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