



Item: 3

Local Review Body: 10 October 2024.

Proposed Siting of Two Houses and Create Access on Land near Thorne Villa, Harray (22/179/PIP).

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

1. Overview

- 1.1. Planning application 22/179/PIP in respect of the proposed siting of two houses and creation of an access on land near Thorne Villa, Harray, was refused by the Appointed Officer on 30 November 2023.
- 1.2. Under the Town and Country Planning (Scotland) Act 1997 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.
- 1.3. The applicant's agent has submitted a Notice of Review (see Appendix 1) requesting that the decision of the Appointed Officer be reviewed. The applicant has indicated that they think the most appropriate way for their review to be conducted is by the assessment of the review documents only, with no further procedure.
- 1.4. The matter was first considered by the Local Review Body on 3 July 2024, when the Committee determined it did not have sufficient information in order to proceed to determine the review and accordingly, resolved that it should not be determined without further procedure.
- 1.5. The Local Review Body determined that the further procedure should comprise the further written submissions procedure under Regulation 15 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013 to ensure the applicant was afforded the opportunity to provide updated submissions on their Notice of Review now that new Development Management Guidance in respect of Housing in the Countryside was in force.

- 1.6. The Local Review Body also determined that Development Management be included in the procedure notice, required in terms of the written submissions procedure referred to above, in order that Development Management was afforded the opportunity to make comments on the applicant's updated submissions.
- 1.7. 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.
- 1.8. 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.
- 1.9. Prior to the meeting of the Local Review Body held on 3 July 2024, the applicant and interested parties were advised that an unaccompanied site inspection to land near Thorne Villa, Harray, would be undertaken at 10:30 that day, which was duly noted in the Minute of the Meeting as having taken place.
- 1.10. 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. It is recommended that members of the Local Review Body:
- i. Delegates 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 30 November 2023, the Appointed Officer refused planning application 22/179/PIP on the following grounds:
- Policy 5E (vi) of the Orkney Local Development Plan 2017 provides for “...the creation of one housing plot within an existing housing group during the lifetime of the Orkney Local Development Plan...” The planning application is submitted in principle for two housing plots, therefore exceeding and contrary to the provision of Policy 5E (vi) of the Orkney Local Development Plan 2017.
 - The application site is not within an ‘existing housing group’ as defined in paragraph 3.19 of Supplementary Guidance ‘Housing in the Countryside’ (2021). The proposed development therefore fails to meet the requirement of point 1, of paragraph 3.20 of Supplementary Guidance ‘Housing in the Countryside’ (2021), and is therefore contrary to Policy 5E (vi) of the Orkney Local Development Plan 2017.

- The application site does not ‘share boundaries with two existing independent dwelling houses’. The proposed development therefore fails to meet the requirement of point 2, of paragraph 3.20 of Supplementary Guidance ‘Housing in the Countryside’ (2021), and is therefore contrary to Policy 5E (vi) of the Orkney Local Development Plan 2017.
- On the basis the application site is not within a ‘housing group’ as defined for the purposes of new housing in the countryside, the development cannot accord with and enhance a housing group. The plot shape and development density are not similar to houses nearby. The proposed development therefore fails to meet the requirement of point 3, of paragraph 3.20 of Supplementary Guidance ‘Housing in the Countryside’ (2021), and is therefore contrary to Policy 5E (vi) of the Orkney Local Development Plan 2017.
- No provision exists within Policy 17 ‘Rural homes’ of National Planning Framework 4 for infill housing development in the countryside. The proposed development is therefore contrary to Policy 17 of National Planning Framework 4.

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 to this report.
- 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. Comments received from the applicant’s agent on the further representations received are attached as Appendix 6 to this report.
- 4.3. Since the Appointed Officer’s refusal and the submission of the Notice of Review a new Development Management Guidance – Housing in the Countryside (DMG) (see Appendix 7) was ratified by the Council on 30 April 2024. As a result, and as outlined in section 1 above, on 3 July 2024, the Local Review Body resolved that it had insufficient information to determine the review and agreed that the further procedure should comprise the written submission procedure.
- 4.4. The written submissions from the applicant’s agent are attached as Appendix 8 to this report. The further representation from Development Management is attached as Appendix 9 to this report.

- 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 following 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.
- 4.6. 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:
- Approval of matters specified:
 - Siting and design
 - Site layout
 - Boundaries
 - Landscaping
 - Surface water drainage
 - Foul drainage
 - Refuse bin storage
 - External lighting
 - Access
 - Hours of construction
 - Biodiversity enhancement.
- 4.7. All conditions should be in accordance with [Planning Circular 4/1998](#) regarding the use of conditions in planning permissions.
- 4.8. 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 4.3 above.

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:
- Orkney Local Development Plan 2017:
 - Policy 1 – Criteria for All Development.
 - Policy 5E – Housing, Single Houses and new Housing Clusters in the Countryside.
 - Policy 8B - Historic Environment and Cultural Heritage.
 - Policy 9 – Natural Heritage and Landscape.
 - Policy 13 – Flood Risk, Sustainable Drainage Systems (SuDS) and Waste Water Drainage.
 - Policy 14 – Transport, Travel and Road Network Infrastructure.
 - Supplementary Guidance:
 - Housing in the Countryside (2021).
 - National Planning Framework 4:
 - Policy 17 – Rural Homes.

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:** Not applicable.
- 8. Links to Local Outcomes Improvement Plan:** Not applicable.
- 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](#).

Supplementary Guidance for Housing in the Countryside, available [here](#).

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

Appendices

Appendix 1 – Notice of Review (pages 1 - 20)

Appendix 2 – Planning Handling Report (pages 21- 29)

Appendix 3 – Planning Services File (pages 30 - 57)

Appendix 4 – Decision Notice and Reasons for Refusal (pages 58 - 61)

Appendix 5 – Representation from Development Management (pages 62 - 63)

Appendix 6 – Comments from Agent on further representation received (pages 64 - 65)

Appendix 7 - Development Management Guidance – Housing in the Countryside (pages 66 – 68)

Appendix 8 – Written Submission from Agent (pages 69 – 75).

Appendix 9 – Representation from Development Management (page 76).

Pages 1 to 61 can be viewed [here](#), clicking on “Accept and Search” and inserting the planning reference "22/179/PIP".

Pages 66 to 68 can be viewed [here](#).

22/179/PIP**Proposed formation of Two House Plots at Land Near Thorne Villa, Stoneyhill Road, Harray****Regulation 10(b)****Representation by Interested Party – Development Management**

The Notice of Review (“the Notice”) relies heavily on the Chief Planner letter dated 8 February 2023 which advises that ‘in the event of any incompatibility between a provision of NPF4 and a provision of an LDP, whichever of them is the later in date is to prevail’.

The Notice states that the Local Development Plan has been superseded by NPF4 and that “the policies of NPF4 should be the determining factor in the assessment of any planning application”. This is correct to a point, but whilst NPF4 has primacy in instances of incompatibility between the Local Development Plan and NPF4, that is not the case here, and the Local Development Plan remains a material consideration and cannot be set aside.

The Notice states that reasons for refusal which rely on policies of the Local Development Plan are “not relevant” and “cannot be cited as justification”. Development Management does not agree with this conclusion, which implies that the Local Development Plan currently has no role in decision-making; that is not the case.

Irrespective of the above, references in the Notice to relevant policies of NPF4 can also be scrutinised.

The Notice notes that the relevant policy of NPF4 is Policy 17 ‘Rural homes’.

However, the Notice states that the planning handling report has “wrongly referred to Policy 17 (a) and (b)” and contends that the application should be assessed in relation to “Policy 17c alone”, on the basis the application site is in a ‘remote rural’ area.

The statement that Orkney is designated as ‘remote rural’ area is correct. However, the interpretation of Policy 17 (c) is not correct.

Policy 17 (c) as follows:

c) Development proposals for new homes in remote rural areas will be supported where the proposal:

- i. supports and sustains existing fragile communities;*
- ii. supports identified local housing outcomes; and*
- iii. is suitable in terms of location, access, and environmental impact.*

The 'and' is critical; i.e. any proposed development must meet i, ii and iii to be compliant with Policy 3 (c).

Whilst the Policy 17 text confirms that "The Scottish Government's 6 fold Urban Rural Classification 2020 should be used to identify remote rural areas" which identifies all Orkney as remote rural, it also confirms that "Plans should reflect locally appropriate delivery approaches."

In that context, 'fragile communities' identified in point i of Policy 17 (c) are the unconnected isles of Orkney, where an open approach to housing in the countryside operates, not applicable in the Mainland. That is further supported by the confirmation in point ii that proposals must 'support identified local housing outcomes' which is the open approach in the unconnected isles, and the multiple limited provisions of housing in the countryside in the Mainland.

Therefore, relying on Policy 17 (c) alone as stated in the Notice results in a conclusion that the proposal does not comply with Policy 17.

Indeed, taking the logic of the Notice to its conclusion would result in an open policy of housing development in all Orkney countryside, with the Local Development Plan and Supplementary Guidance abandoned, which is clearly not the case.

Summary

The Local Development Plan is not incompatible with NPF4, in relation to housing in the countryside/rural homes.

The proposed development meets none of the policy provisions in 17 (a).

17 (c) is not relevant, other than to confirm that the site is 'remote rural' but not fragile and that local housing outcomes should be used as the basis of decision-making, as set out in the Local Development Plan.

In terms of Policy 5E of the Local Development Plan, and Supplementary Guidance 'Housing in the Countryside', the proposed development meets none of the policy provisions.

This includes assessment in relation to the infill policy provision. Fundamentally, the provision "allows for the creation of one housing plot within an existing housing group" and the application is for two housing plots, not one. Further, the site is not in a housing group as defined, and does not share boundaries with two occupied and independent dwelling houses.

The proposed development, for two plots in previously undeveloped countryside in the Mainland, simply meets none of the relevant policy provisions of NPF4, or any of the relevant provisions of the Local Development Plan.

Development Management

10 March 2024

22/179/PIP**Proposed formation of Two House Plots at Land Near Thorne Villa, Stoneyhill**

The following comments are submitted in response to the Development Management submission.

NPF4

Section 24(3) of the Town and Country Planning (Scotland) Act 1997, states that in the event of any incompatibility between a provision of NPF and a provision of an LDP, whichever of them is the later in date is to prevail.

There is no ambiguity in the terms of the legislation. Where there is a change in policy, it is the later adopted policy that will apply.

The Orkney Islands Local Development Plan dates to 2017. The Council's website advises that *'where policies in NPF4 contradict those in the Orkney Local Development Plan 2017 and its associated Supplementary Guidance then NPF4, as the most recent plan, will take precedence.'*

In this instance, NPF4 defines the area as Remote Rural as is acknowledged by the planning authority. This means that the relevant NPF4 policy for assessing this application is Policy 17 part (c). As stated in the main appeal submission, Part c requires a proposal for new homes in the remote rural areas to meet three criteria.

The first relates to the defined fragile areas and is not relevant as the proposed site is not within a defined fragile area.

The second criteria relates to identified housing outcomes and, where established, that the proposal meets the third criteria which relates to location, access and environmental impact.

The Local Development Plan identifies that a significant number of individual houses will be secured through development of 'windfall' sites. This makes a valuable contribution to the local housing requirements and outcomes. There is therefore no conflict with criteria (ii).

Criteria (iii) relates to location, access and environmental impact. None of these three criteria were raised as reasons for refusal. The site is situated between existing houses, will continue the established linear pattern that is a characteristic of Orkney housing on the Mainland areas and will have no adverse environmental impact on the site or surrounding area – all matters that were assessed in the original determination of the application.

Summary

The correct policy for determination of applications within the defined Remote Rural areas as set out in the recently adopted NPF4 policy framework is Policy 17 – Rural Homes, Part c.

While the Policy set out in NPF4 represents a departure from the established policies and guidance that existed prior to the adoption and introduction of NPF4, these older policies cannot now be used to assess a planning application where the terms set out in NPF4 differ. The Review Body is respectfully reminded

that legislation as set out in Section 24(3) of the Town and Country Planning (Scotland) Act 1997 stipulates that the more recent policy will take precedence.

It is acknowledged that Policy 17 (c) introduces a change to the previous policy governing individual houses within the countryside. But the terms of NPF4 quite evidently allow for the development of the two houses as proposed.

Procedure Notice Under Regulation 15 of The Town and Country Planning (Schemes of Delegation and Local Review Procedure)(Scotland) Regulations 2013

Planning Application 22/179/PIP

Proposed Siting of Two Houses and Create Access on Land Near Thorne Villa, Harray

INTRODUCTION

This report is in response to the Regulation 15 Procedure Notice which was served following the decision of the Local Review Body to provide the applicant with an opportunity to respond to the issue raised by the planning authority of new information that had not previously been shared with the applicant or planning consultant.

The case presented in the original Appeal Statement remains valid and the Review Body is therefore requested to consider this response in conjunction with the original appeal submission, including all supporting information.

BACKGROUND

The application for two houses on land at Stoneyhill Road, Harray was submitted in May 2022. It was eventually refused planning permission in November 2023, some 18 months after submission. The reasons for refusal are set out in the Appeal Statement. A Review was lodged with the Council in February 2024.

It is understood the appeal was to be determined at the Review Body meeting in April 2024 but was removed from the agenda on the day of the meeting. Despite frequent requests to the case officer to explain the reason why the appeal was not determined, no response or clarification was ever received.

This was particularly frustrating for the applicant, Orkney Builders (Contractors) Ltd who had also sought clarification on why the appeal was not to be determined at the scheduled Review meeting.

Subsequently, the appeal was included on the July 2024 Review meeting. It is noted that it is only because of the Review Body Councillor's intervention that the applicant is now afforded the opportunity to comment on the late introduction of a new policy. The applicant would like to thank the Review Body for providing this opportunity to respond to the Council's new information.

PROCEDURAL ISSUES

The application was determined on the basis of the policies in force at the time of submission, namely the Orkney Local Development Plan 2017 and the newly adopted NPF4.

The appeal is based on the premise that the refusal was based on an incorrect interpretation of policy.

The Chief Planner, in his letter dated 8 February 2023, addressed to all planning authorities, made clear that in accordance with Section 24(3) of the Town and Country Planning (Scotland) Act 1997 *'in the event of any incompatibility between a provision of NPF4 and a provision of an LDP, whichever of them is the later in date is to prevail'*.

This unequivocal advice from the Chief Planner means that the planning application ought properly to have been assessed on the basis of NPF4 because the Orkney Local Development Plan is dated 2017 and therefore significantly predates NPF4 which must, in accordance with the Chief Planner, and legislation, prevail over the LDP. It is NPF4 that provides the up to date policy guidance for assessment of planning applications involving housing in the countryside.

For the planning authority to delay consideration of the appeal to enable a new policy to be adopted does the applicant a significant disservice and is without justification. It seems that when the planning officers noted the shortcomings in failing to properly implement the policies of NPF4, a new supplementary planning guidance was drafted and subsequently adopted. However, it does not address the Remote Rural classification of the land.

The Review Body may also be interested to note that the Orkney Islands website fails to provide a clear link to the revised document and unhelpfully directs you to the earlier version dated 2021.

It is against this unusual procedural background that the appeal is now to be determined.

PLANNING POLICY CONSIDERATIONS

NPF4 supersedes the adopted OLDP which was adopted in 2017 and predates NPF4 by some 8 years. Based on the Chief Planner advice and statutory legislation, it is NPF4 policies that will prevail.

NPF4 defines the entire Orkney Islands area as Remote Rural. This cannot be contested as the definition of Remote Rural is clearly set out in NPF4. It is any area that is described as such within the Scottish Government's 6 Fold Urban Rural Classification 2020. It is not a matter for debate. NPF4 establishes those areas that are described as *rural* and those that are *remote rural*. This definition and that it must apply to all of Scotland is set out in Policy 17. It states:

LDPs should set out tailored approaches to rural housing and where relevant include proposals for future population growth – including provision for small-scale housing such as crofts and woodland crofts and the appropriate resettlement of previously inhabited areas. The Scottish Government's 6 fold Urban Rural Classification 2020 should be used to identify remote rural areas. Plans should reflect locally appropriate delivery approaches. Previously inhabited areas that are suitable for resettlement should be identified in the spatial strategy

NPF4 Policy 17 applies to Rural Housing. It has a specific section (17c) on policy guidance for housing in the defined remote rural areas. Policy 17c states that 'proposals for new homes will be supported' where the proposal

- Supports and sustains existing fragile communities
- Supports local housing outcomes
- Is suitable in terms of location, access and environmental impact.

The proposal will help support the local community by providing the opportunity for two homes within an established, albeit dispersed settlement which supports individual houses set along the public road. A key Objective and Priority of Orkney Islands Council is to ensure an adequate supply of houses and this is set out in the Council's Local Housing Strategy. The Council's Plan 2023-2028 sets out the key priorities which focus on growing the economy and strengthening its communities. Providing opportunities for new houses fits this objective and priority.

The Council's Plan advises that a key Outcome is to 'provide more quality homes to rent or buy in various locations, providing more choice.' The proposed house plots are within an established local community and the form and layout of the plots are sympathetic to the established pattern of development.

The proposed two plots will occupy land that is not actively farmed and in terms of location has access to existing community facilities including local services, school transport and waste collection. The location of the plots is close to two existing houses with a further already granted planning permission. The siting of two houses within the 'bookends' of the two existing houses will not result in an unacceptable visual intrusion of the landscape character nor will it impact on protected species or archaeological features.

Orkney Islands Council is currently seeking views on a strategy for housing in Orkney which aims to see up to 1035 homes being built over the next ten years. The local housing strategy has at its core the provision of more homes for rent or to buy across the island communities. This proposal will deliver two new houses within an area that already supports housing and where only recently one additional house has been granted permission.

The proposal entirely accords with NPF4 Policy 17c and should be approved.

COMMENTS ON DEVELOPMENT MANAGEMENT GUIDANCE, HOUSING IN THE COUNTRYSIDE, MARCH 2024

The DMG is directed at providing advice on housing in the countryside and the application of NPF4 Policy 17 alongside the OLDP 2017. It does not alter the Guidance already in force but simply identifies where it is considered to continue to be relevant. The key issue is however, that it does NOT address the matter of the land use allocation of the Orkney Islands as now being Remote Rural.

The advice of the Chief Planner must be noted. NPF4 will supersede any pre-existing adopted plan where there is an incompatibility. The OLDP does not differentiate between Rural and Remote Rural areas as required by NPF4.

The DMG 'aims to show where there is alignment and where there is incompatibility'. There can be no compatibility in the areas now defined as Remote Rural as NPF4 introduces new policy criteria. These supersede the OLDP.

The new DMG completely ignores the fact that NPF4 designates the site as Remote Rural where development will be supported provided it is consistent with the relevant criteria noted above. The new DMG relates only to the policy as it must apply to Rural areas. It makes no reference to Remote Rural despite the clear instruction by the Chief Planner that where there is an inconsistency in the two policies, NPF4 will prevail.

NPF4 determines the land use classification for the entirety of Scotland. NPF4 was subject to detailed and protracted consultation with planning authorities before its adoption in February 2023.

The land classification is based on the Scottish Government Urban Rural Land Use Classification 2020 (extract below). This is a new policy and supersedes the existing Council OLDP policies for housing in the countryside. There is a statutory legal requirement under the terms of the Town and Country Planning (Scotland) Act Section 24 (3) which, as confirmed, states:

(3) In the event of any incompatibility between a provision of the National Planning Framework and a provision of a local development plan, whichever of them is the later in date is to prevail.

(4) For the purposes of subsection (3)—

(a) the date of the National Planning Framework is the latest date on which it was published under section 3CA(7),

(b) the date of a local development plan is the date on which it was constituted under section 20

As the OLDP and new DMG do not differentiate between different rural area types, it cannot be considered consistent with NPF4. NPF4 stipulates that areas will be defined as rural or remote rural. The appeal site is Remote Rural. The new DMG ignores the criteria for remote rural areas and chooses to ignore that a differentiation must be made.

The reference to infill and single house plot is not relevant in the Remote Rural allocation as clearly set out in NPF4 Policy 17. These policy exceptions apply to rural areas only.

Noting the site is within a Remote Rural land allocation, it is Policy 17c of NPF4 that must be applied. The appeal statement previously submitted describes how the proposal fully accords with the criteria of Policy 17c. The Review Body is respectfully requested to refer to the Appeal Statement for clarity on this matter.

The Chief Planner has issued a further letter dated 26 June 2024. It advises that 'Scotland has declared a national housing emergency' and confirms that one of the Scottish Government's key priorities is 'to expand housing supply and meet the needs of the population and tackle homelessness.'

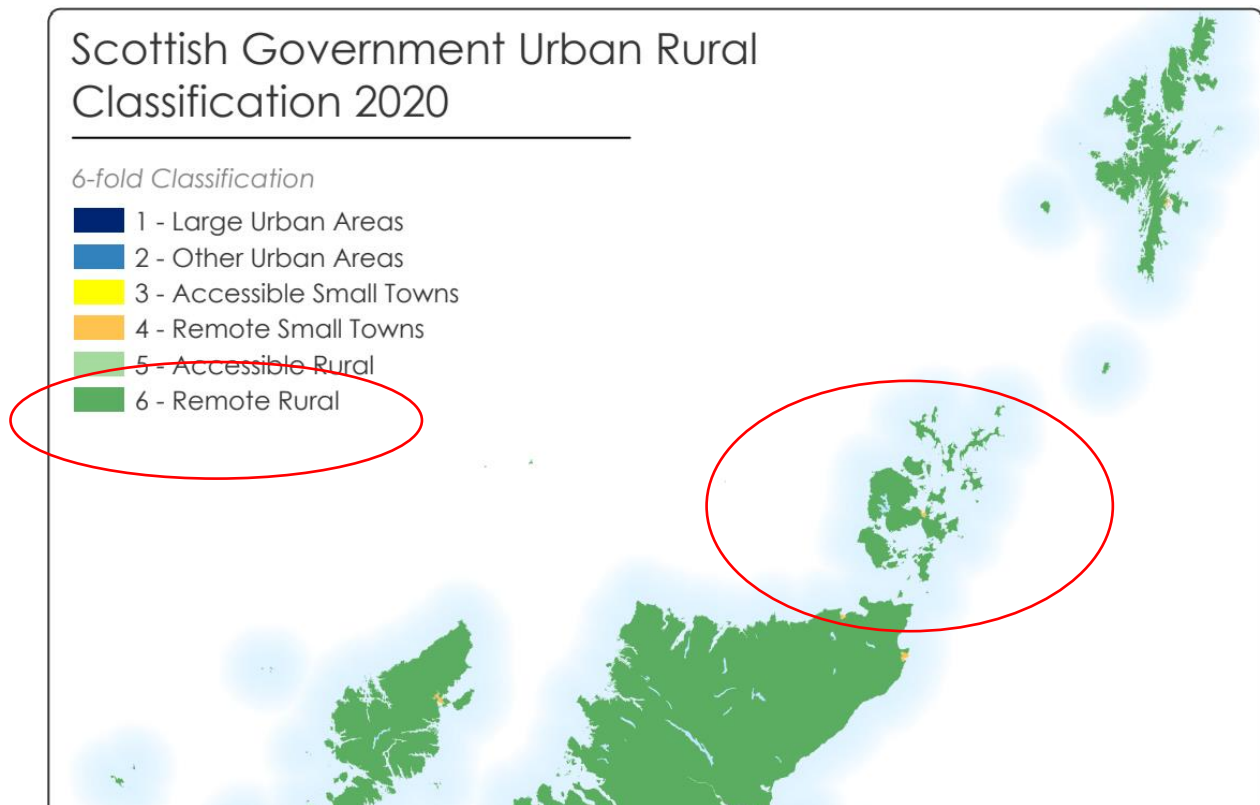
The Chief Planner confirms that the Scottish Government is seeking to develop a more positive dialogue on planning for housing, recognising the benefits quality homes and places can bring.

This proposal delivers two houses within a group of existing houses where the proposed form and layout is consistent with the existing settlement pattern. It will have no adverse effect on the amenity of adjacent residents, does not impact on archaeology or historical features and is within an area that is already served by existing community services including refuse collection, school transport and local bus service.

The proposal must be determined in line with the correct policy. The new DMG does not alter the fact that the site is within the defined Remote Rural area where Policy 17c applies. This states that a proposal for new housing is required only to meet the relevant terms of the stated criteria, which it does.

There are no grounds for refusal based on the correct application of NPF4 Policy 17c. The new DMG does not alter this position as it fails to acknowledge the definition of Remote Rural as required by the Chief Planner and statutory planning legislation.

For all these reasons, the Review Body is respectfully requested to allow the appeal and grant planning permission.



Extract Urban Rural 6 Fold Classification – Orkney is defined as Remote Rural in which Policy 17c only applies.

Rural homes

Policy Principles

Policy Intent:

To encourage, promote and facilitate the delivery of more high quality, affordable and sustainable rural homes in the right locations.

Policy Outcomes:

- Improved choice of homes across tenures so that identified local needs of people and communities in rural and island areas are met.
- Homes are provided that support sustainable rural communities and are linked with service provision.
- The distinctive character, sense of place and natural and cultural assets of rural areas are safeguarded and enhanced.

Local Development Plans:

LDPs should be informed by an understanding of population change over time, locally specific needs and market circumstances in rural and island areas.

LDPs should set out tailored approaches to rural housing and where relevant include proposals for future population growth – including provision for small-scale housing such as crofts and woodland crofts and the appropriate resettlement of previously inhabited areas. The Scottish Government's 6 fold Urban Rural Classification 2020 should be used to identify remote rural areas. Plans should reflect locally appropriate delivery approaches. Previously inhabited areas that are suitable for resettlement should be identified in the spatial strategy.

Policy 17

- a) Development proposals for new homes in rural areas will be supported where the development is suitably scaled, sited and designed to be in keeping with the character of the area and the development:
- i. is on a site allocated for housing within the LDP;
 - ii. reuses brownfield land where a return to a natural state has not or will not happen without intervention;
 - iii. reuses a redundant or unused building;
 - iv. is an appropriate use of a historic environment asset or is appropriate enabling development to secure the future of historic environment assets;
 - v. is demonstrated to be necessary to support the sustainable management of a viable rural business orcroft, and there is an essential need for a worker (including those taking majority control of a farm business) to live permanently at or near their place of work;
 - vi. is for a single home for the retirement succession of a viable farm holding;
 - vii. is for the subdivision of an existing residential dwelling; the scale of which is in keeping with the character and infrastructure provision in the area; or
 - viii. reinstates a former dwelling house or is a one-for-one replacement of an existing permanent house.
- b) Development proposals for new homes in rural areas will consider how the development will contribute towards local living and take into account identified local housing needs (including affordable housing), economic considerations and the transport needs of the development as appropriate for the rural location.
- c) Development proposals for new homes in remote rural areas will be supported where the proposal:
- i. supports and sustains existing fragile communities;
 - ii. supports identified local housing outcomes; and

iii. is suitable in terms of location, access, and environmental impact.

d) Development proposals for new homes that support the resettlement of previously inhabited areas will be supported where the proposal:

- i. is in an area identified in the LDP as suitable for resettlement;
- ii. is designed to a high standard;
- iii. responds to its rural location; and
- iv. is designed to minimise greenhouse gas emissions as far as possible.

Policy impact:

- ✔ Just Transition
- ✔ Conserving and recycling assets
- ✔ Local living
- ✔ Compact urban growth
- ✔ Rebalanced development
- ✔ Rural revitalisation

Key policy connections:

[Tackling the climate and nature crises](#)

[Climate mitigation and adaptation](#)

[Natural places](#)

[Historic assets and places](#)

[Green belts](#)

[Brownfield, vacant and derelict land and empty buildings](#)

[Coastal development](#)

[Sustainable transport](#)

[Design, quality and place](#)

[Local Living and 20 minute neighbourhoods](#)

[Infrastructure first](#)

[Quality homes](#)

[City, town, local and commercial centres](#)

[Rural development](#)

[Tourism](#)

Extract from NPF4 Policy 17 – Correct policy section for Remote Rural highlighted in red outline.

NEIGHBOURHOOD SERVICES AND INFRASTRUCTURE

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Planning Application: 22/179/PIP
Applicant: Orkney Builders (Contractors)
Proposal: Proposed formation of Two House Plots
Location: Land Near Thorne Villa, Stoneyhill Road, Harray

Notice of Review

Procedure Notice under Regulation 15 of The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013

I refer to the applicant's procedure notice received 10 August 2024. Please regard this is final, further comment, submitted 14 days from the date of receipt of the procedure notice as requested.

The procedure notice does not introduce any new information with regards the relevant policy of the Local Development Plan, but instead focuses on and repeats comments regarding procedure and Policy 17c of National Planning Framework 4 (NPF4).

That Orkney is defined in NPF4 as 'Remote Rural' is not disputed. Neither is it disputed that where there is any conflict between provisions of a Local Development Plan and NPF4, that NPF4 takes primacy.

However, the procedure notice and the position of the applicant fails, as it is presented that the Housing in the Countryside guidance adopted in Orkney, as interpretation of the relevant provisions of NPF4, is superseded by NPF4 Policy 17c to the extent that the relevant countryside provisions need not be applied.

That is not the application of relevant policies in Orkney. To follow the approach proposed in this notice of review, would be to set aside the established and adopted approach to housing in the countryside.

I.e., if the approach proposed by the notice of review was followed and the application approved, the tailored provisions of infill development, subdivision of curtilage, one for ones, etc., would be set aside, and instead an approach where the principle of development be accepted anywhere in the countryside. That is clearly not the policy position in Orkney, in terms of the tailored approach adopted for the Mainland and connected isles.

The implications of supporting this application should not be underestimated, and implications must be understood, which would go far beyond what may otherwise seem like a relatively small scale or insignificant development of two house sites.

Few decisions create as much discussion as housing in the countryside policy, and key to confidence in the planning authority is consistency and certainty.

Approaching the proposed development in the context of the established and adopted housing in the countryside provisions, the decision is simple – that the development is contrary to the policy provision for infill development, as set out in detail in the original delegated handling report. That clear, simple outcome must not be lost in the subsequent correspondence regarding procedure.

To approve the development would undermine the years of application of the infill housing policy provision (and the housing in the countryside provisions generally), create an inconsistency of approach, and unnecessarily create an uncertainty of decision making and risk confidence in the approach taken by the planning authority, for the sake of such a relatively small development.

Opportunities will exist in future to review housing in the countryside policy provisions, taken at a local level. But the appropriate way to do that is not by piecemeal approval of individual development.

Development Management
23 August 2024