

## **Item: 5.3**

**Local Review Body: 6 October 2021.**

**Proposed Erection of House with Integral Garage and Air Source Heat Pump (Part Retrospective) at Vanskavaig, Carness Road, St Ola (21/094/PP).**

**Report by Chief Executive.**

### **1. Purpose of Report**

To determine a review of the decision of the Appointed Officer to refuse planning permission for the proposed erection of a house with an integral garage and an air source heat pump (part retrospective) at Vanskavaig, Carness Road, St Ola.

### **2. Recommendations**

The Local Review Body is invited to note:

#### **2.1.**

That planning permission for the proposed erection of a house with an integral garage and an air source heat pump (part retrospective) at Vanskavaig, Carness Road, St Ola, was refused by the Appointed Officer on 20 May 2021, for the reasons outlined in section 3.2 of this report.

#### **2.2.**

That the applicant has submitted a Notice of Review requesting that the decision of the Appointed Officer, referred to at paragraph 2.1 above, be reviewed.

#### **2.3.**

That as part of the Notice of Review, referred to at paragraph 2.2 above, the applicant has submitted new information detailed in section 5.1 of the report that has not been assessed by the appointed person at the time of the determination of the application.

#### **2.4.**

That the information, referred to at paragraph 2.3 above, does not constitute a new matter and forms part of the review, as listed at Appendix 1 to this report.

**It is recommended:**

#### **2.5.**

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.

## **2.6.**

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 21/094/PP relates to the proposed erection of a house with an integral garage and an air source heat pump (part retrospective) at Vanskavaig, Carness Road, St Ola.

### **3.2.**

The Appointed Officer refused the planning application on 20 May 2021 on the following grounds:

#### **3.2.1.**

The site is located within a Waste Water Consultation Area, where cumulative drainage impact is a material planning consideration and where there are additional constraints regarding the disposal of sewage. Orkney Local Development Plan 2017 Policy 13C – Waste Water Drainage requires that all development within the settlement boundaries connects to the public sewer and the Scottish Environment Protection Agency (SEPA) and has objected to the development on grounds of "private foul water drainage discharge within the town of Kirkwall rather than connecting to public sewer". The public sewer is within 70 metres of the proposed development site and Scottish Water have indicated that the proposed development would be serviced by Kirkwall Waste Water Treatment Works. Unlike other neighbouring properties in the area, which have been permitted private sewage systems under previous Orkney Local Development Plans and policies dependent upon when these houses were approved, there is also an absence of any planning approval for the development of a house on the proposed site which would have established the principle of a house on the site and would have included relevant sewage requirements and therefore there is no material weight to balance against the current policy and SEPA objection to the current proposal.

### **3.2.2.**

Due to the failure to connect to the public sewer, the development is contrary to Orkney Local Development Plan 2017 Policy 1 – Criteria for All Development and Policy 13C – Waste Water Drainage. There have been no changes to relevant policies within the Orkney Local Development Plan 2017 or other material considerations during the period between the refusal of the previous Planning Application 18/419/PP on 20 December 2018 (and subsequent refusal by the Local Review Body on 2 May 2019) that would outweigh policy concerns.

### **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 and supporting information, which is attached as Appendix 1 to this report.

### **3.4.**

The Planning Handling Report, Planning Services file and the Decision Notice, including the reason for refusal, 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 SEPA, who have confirmed that they maintain their objection to the application as it proposes a private foul drainage discharge within Kirkwall rather than connecting to the public sewer.

### **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 SEPA is detailed in Appendix 6 to this report. The response confirms ongoing discussions between the applicant and SEPA.

### **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 Vanskavaig, Carness Road, St Ola, will be undertaken at 10:30 on 6 October 2021.

#### **4.4.**

The Local Review Body may uphold, reverse or vary the decision of the Appointed Officer. In the event that the decision is reversed, draft planning conditions are attached at Appendix 7 for consideration.

#### **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. New Information**

#### **5.1.**

The Notice of Review, attached as Appendix 1 to this report, indicates that the applicant has raised additional matters which were not before the appointed officer at the time the application was determined. This is in the form of historical information in regard to SEPA discharge consents in the vicinity of the site, together with additional correspondence from the applicant to SEPA seeking clarification on a discharge consent issued for Vanskavaig Lodge and Caravan issued in August 2020.

#### **5.2.**

Under the Town and Country Planning (Schemes of Delegation and Local Review Procedures) (Scotland) Regulations 2013, a party to the proceedings is not to raise any matter which was not before the appointed person at the time the determination was made. As the information relates to drainage matters which are key to the determination of this application, it is therefore not considered that the new information constitutes a new matter and it has been allowed to form part of the review.

### **6. Relevant Planning Policy and Guidance**

#### **6.1.**

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..."

#### **6.2.**

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 5A – Housing in Settlements.
  - Policy 9G – Landscape.
  - Policy 13B – Sustainable Drainage Systems (SuDS).
  - Policy 13C – Waste Water Drainage.
  - Policy 14C – Road Network Structure.
- Supplementary Guidance and Planning Policy Advice:
  - Settlement Statement for the Towns – Kirkwall (2017).
  - Kirkwall Urban Design Framework.
  - Planning Policy Advice – Development Quality Within Settlements (2012).
  - Planning Policy Advice – Amenity and Minimising Obtrusive Lighting (2021).

## **7. 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.

## **8. 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.

## **9. Legal Aspects**

### **9.1.**

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.

### **9.2.**

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

### **9.3.**

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.

## **10. Contact Officers**

Angela Kingston, Clerk to the Local Review Body, Email  
[angela.kingston@orkney.gov.uk](mailto:angela.kingston@orkney.gov.uk)

Roddy MacKay, Planning Advisor to the Local Review Body, extension 2530, Email  
[rodny.mackay@orkney.gov.uk](mailto:rodny.mackay@orkney.gov.uk)

Paul Maxton, Legal Advisor to the Local Review Body, Email  
[paul.maxton@orkney.gov.uk](mailto:paul.maxton@orkney.gov.uk)

## **11. Appendices**

Appendix 1 – Notice of Review (pages 1 – 16).

Appendix 2 – Planning Handling Report (pages 17 – 29).

Appendix 3 – Planning Services File (pages 30 – 52).

Appendix 4 – Decision Notice and Reasons for Refusal (pages 53 – 59).

Appendix 5 – Further Representation from Interested Party (pages 60 – 61).

Appendix 6 – Applicant's Response to Representation from Interested Party (page 62).

Appendix 7 – Draft Conditions (pages 63 – 65).

Pages 1 to 65, with the exception of pages 60 to 65, can be viewed at  
[https://www.orkney.gov.uk/Service-Directory/D/application\\_search\\_submission.htm](https://www.orkney.gov.uk/Service-Directory/D/application_search_submission.htm)  
and inserting the planning reference "21/094/PP".

All other documents can be viewed at  
<https://www.orkney.gov.uk/Council/C/LRC2021.htm> and referring to the relevant meeting date.

**From:** [Planning.North](#)  
**To:** [Angela Kingston](#); [Committees](#)  
**Subject:** Fw: Planning App 21.094.PP - Notice of Review  
**Date:** 02 September 2021 16:49:19

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OFFICIAL – BUSINESS

Dear Ms Kingston

Further to the notice of review below, SEPA has the following additional comments:

We are obliged to object to this application as it proposes a private foul drainage discharge within the town of Kirkwall rather than connecting to public sewer. Such proposals for a private waste water system within a settlement of greater than 2000 population, and one which is served by a public sewer network, is in principle unacceptable given that it could jeopardise further development of the public sewer and a proliferation of private systems in urban areas could lead to issues of environmental pollution and nuisance. We are aware that public sewer infrastructure in this area of Kirkwall is not far away and we would suggest that the Council, SEPA, and Scottish Water, could at some point discuss the potential to extend the sewer infrastructure into the area more generally to facilitate further development in the area. We would be happy to participate in such discussions.

SEPA has investigated the CAR registration number CAR/R/1194644. This Registration was applied for through the SEPA website. However, it was made in error as the discharge reflected a historic situation rather than an existing ongoing discharge and does not reflect the requirements of a new development. It is also not correct in terms of its location which appears to have the site on a neighbouring area of land. If planning permission is granted, SEPA would welcome further engagement with the developer however SEPA cannot guarantee that an acceptable private drainage solution will be found and could refuse any subsequent CAR application.

Please do not hesitate to contact me should you have any further queries.

Regards

Clare

**Clare Pritchett**

Senior Planning Officer

Planning Service, SEPA, Inverdee House, Baxter Street, Torry, Aberdeen, AB11 9QA

Email: [planning.north@sepa.org.uk](mailto:planning.north@sepa.org.uk)

Telephone: 07917 430485

Part Time: Tuesday, Wednesday & Thursday

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*Registered office: Strathallan House, Castle Business Park, Stirling FK9 4TZ. Under the Regulation of Investigatory Powers Act 2000, the email system at SEPA may be subject to monitoring from time to time.*

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**From:** Committees <committees@orkney.gov.uk>  
**Sent:** 23 August 2021 11:31  
**To:** Angela Kingston <angela.kingston@orkney.gov.uk>  
**Subject:** Planning App 21.094.PP - Notice of Review

CAUTION: This email originated from outside the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

**Classification: NOT PROTECTIVELY MARKED**

**Planning App 21.094.PP  
Proposed Erection of House with Integral Garage and Air Source Heat Pump (Part Retrospective) at Vanskavaig, Carness Road, St Ola  
Notice of Review**

The above planning application was refused by the Appointed Officer on 20 May 2021.

The applicant has submitted a Notice of Review in terms of section 43A(8) of the Town and Country Planning (Scotland) Act 1997, as amended.

In terms of Regulation 10(b) of the Town and Country Planning (Schemes of Delegation and Local Review Procedures) (Scotland) Regulations 2013, as an interested party to the above application, I hereby notify you of the same.

Copies of any representations previously made with respect to the application will be considered by the Local Review Body when determining the review.

You may make further representations to the Local Review Body, which should be submitted to me, in writing, **no later than Sunday 5 September 2021**. In writing includes by e-mail.

A copy of the Notice of Review and other documents related to the review can be inspected by following the link below and inserting the reference number "21/094/PP":

<https://planningandwarrant.orkney.gov.uk/online-applications/>

Angela Kingston  
Clerk to the Local Review Body

Angela Kingston  
Committees Officer, Chief Executive's Service  
Orkney Islands Council

As I am currently working from home, please email in the first instance ([angela.kingston@orkney.gov.uk](mailto:angela.kingston@orkney.gov.uk) or [committees@orkney.gov.uk](mailto:committees@orkney.gov.uk))



## Appendix 6

21/094/PP – Notice of Review

### Proposed Conditions

01. The materials used on the external surfaces of the development hereby approved shall be as follows:

- Roof —Flat Profile Concrete Tiles, Colour: Grey.
- Walls – Dry Dash, Colour: Ashton Cream, Basecourse – Colour: to match.
- Doors and Windows – PVCu, Colour: White.
- Fascias and Soffits - PVCu, Colour: White.
- Rainwater Goods – PVCu, Colour: Black.

Reason: To ensure that the external appearance of the development is acceptable.

02. Throughout the life of the development, the maximum noise from the Air Source Heat Pump hereby approved shall not exceed NR25 within any residential property outwith the development site, where NR25 is the Noise Rating Curve at 25, (noise measurements to be made with a window of any residential property outwith the development open no more than 50mm).

Reason: To protect any nearby residents from excessive noise disturbance from the air source heat pump.

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

All surface water shall be contained within the development site and there shall be no surface water drainage run-off onto the road or adjacent land.

Reason: To ensure the provision of an adequate surface water drainage system and to accord with Policy 13B – Sustainable Drainage Systems (SuDS) of Orkney Local Development Plan 2017, Scottish Planning Policy – Managing Flood Risk and Drainage, and in the interests of road safety.

04. The system hereby approved for the disposal of sewage shall be connected to the house and fully operational prior to the first occupation of the development hereby approved. The sewage system shall be installed in such a way that it can, in future, be connected to Scottish Water's foul drainage system.

Reason: In the interests of environmental protection.

Note: Prior to the commencement of the development, the developer shall consult the Scottish Environment Protection Agency (SEPA) with regard to authorisations required for discharges of sewerage effluent to land or water.

05. Throughout the lifetime of the development, the garage hereby approved shall be restricted to private use incidental to the enjoyment of the dwellinghouse, including use for the storage of vehicles and for domestic storage. No commercial activity shall be carried out in, or from, the garage.

Reason: In the interests of the protection of the residential amenity of the area.

06. Throughout the lifetime of the development hereby approved, the only point of access to the development shall be the existing access only, as shown on the approved site plan. No other accesses to the site shall be formed or used.

Any damage caused to the existing road infrastructure during construction of the development shall be repaired prior to first occupation of the development, to the satisfaction of the Planning Authority, in conjunction with Roads Services.

Reason: In the interests of road safety.

07. Throughout the lifetime of the development, any external lighting used on the dwelling, garage and any outbuilding(s) shall be downward facing only and shall comply with the Council's requirements of Orkney Local Development Plan 2017 Policy 2 (principle vi) that all external lighting shall minimise light pollution and shall meet the requirements specified by the Institution of Lighting Professionals for Zone E2 areas (Low District Brightness). The lighting shall be turned off when not required either by automatic sensor or manually.

Note: Further information regarding the control of light pollution and obtrusive light can be viewed online at [www.theilp.org.uk/documents/obtrusive-light/](http://www.theilp.org.uk/documents/obtrusive-light/) (Institution of Lighting Professionals (Guidance Notes for the Reduction of Obtrusive Light GN01:2011)).

Reason: To minimise obtrusive light, glare or distraction in the interests of safeguarding the amenity of the area and to accord with Orkney Local Development Plan 2017, Policy 2 – Design, and Planning Policy Advice: Amenity and Minimising Obtrusive Lighting (March 2021).

08. Hours of work during the construction of the development hereby approved, involving the use of machinery and powered tools, or any other operation, for example hammering, that would generate noise audible beyond the boundary of the site, shall be restricted to 07:30 to 18:00 Monday to Friday and 08:00 to 13:00 Saturdays, not at all on Sundays, Christmas or New Year Public Holidays, unless otherwise agreed, in writing, with the Planning Authority.

Throughout the construction phase of the development there shall be no burning of waste material on site.

Reason: In the interest of residential amenity of the area, and in order to reduce any possible nuisance arising to nearby residents during the construction of this development.