

## Item: 4.1

**Planning Committee: 18 January 2023.**

**Erect Two Houses with Air Source Heat Pumps and Create an Access at Braeside (land near), West Greaves, St Mary's, Holm.**

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

### 1. Summary

#### 1.1.

An application for planning permission has been submitted for two semi-detached houses, on land within the settlement boundary of St Mary's, Holm. The principle is acceptable, and the siting, orientation, design and materials are considered appropriate. Residential amenity and the safety of road users would be adequately protected, and the development would include appropriate management of surface water. Objections have been received on grounds of road safety and residential amenity. The objections are not of sufficient weight to merit refusal of the application. Accordingly, the application is recommended for approval.

Application Number:	22/236/PP.
Application Type:	Planning Permission.
Proposal:	Erect two houses with air source heat pumps and create an access.
Applicant:	Alfred Flett Limited.
Agent:	Mr Stephen J Omand, 14 Victoria Street, Kirkwall, KW15 1DN.

#### 1.2.

All application documents (including plans, consultation responses and 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. Consultations

Consultation bodies have not objected or raised any technical issues which could not be addressed by planning conditions.

### **3. Representations**

#### **3.1.**

Two objections have been received, from:

- Robert and Heather MacKenzie, Strathavon, West Greaves Road, St Marys, Holm, KW17 2RU.
- Mr James Thomas, Braeside, Holm, KW17 2RU.

#### **3.2.**

The objections are based on the following matters, which have been considered in the assessment of the proposal:

- Road safety.
- Residential amenity.

### **4. Relevant Planning History**

None in relation to the application site.

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

#### **5.1.**

The full text of the Orkney Local Development Plan 2017 and supplementary guidance can be read on the Council website [here](#).

#### **5.2.**

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.
  - Policy 5 – Housing.
  - Policy 13 – Flood Risk, SuDS and Waste Water Drainage.
  - Policy 14 – Transport, Travel and Road Network Infrastructure.
- Guidance:
  - Supplementary Guidance: Settlement Statements (2017).
  - Planning Policy Advice: Amenity and Minimising Obtrusive Lighting (2021).

## 6. Legal Aspects

### 6.1.

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..."

### 6.2.

Annex A of Planning Circular 3/2013: 'development management procedures' provides advice on defining a material consideration, and following a House of Lord's 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."

### 6.3.

Annex A continues as follows:

- The House of Lord's 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.
  - Policy in the Scottish Planning Policy and Designing Streets.
  - Scottish Government planning advice and circulars.
  - EU policy.
  - A proposed strategic development plan, a proposed local development plan, or proposed supplementary guidance.
  - Guidance adopted by a Strategic Development Plan Authority or a planning authority that is not supplementary guidance adopted under section 22(1) of the 1997 Act.
  - 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.

#### **6.4.**

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.

## **6.5.**

An award of expenses may be substantial where an appeal is conducted either by way of written submissions or a local inquiry.

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

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.

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

Revised Draft National Planning Framework 4 (NPF4) has not yet been approved by Parliament and adopted. NPF4 is therefore a material consideration of limited weight in the assessment of planning applications. Once adopted, NPF4 will form part of the statutory Development Plan, and provide the national planning policy context and agenda for the assessment of all planning applications. Whilst NPF4 is a material consideration, current planning applications should still be assessed against the adopted Orkney Local Development Plan 2017.

### **6.7.1.**

In the case of this current application, there is not considered to be any significant conflict between the proposed development and the policies of NPF4 to merit any detailed assessment in relation to individual NPF4 policies.

## **7. Assessment**

### **7.1. Background and Principle**

#### **7.1.1.**

The application site is located within the settlement boundary of St Mary’s, Holm. The land is semi-improved grass and includes a concrete building foundation. The site is to the rear/west of the residential curtilage of ‘Braeside’, and access is proposed to West Greaves Road to the south-east of the houses, as indicated on the Location/Site Plan attached as Appendix 1 to this report. It is not known if the concrete base is a remnant of a group of Second World War structures which were located to the west of West Greaves Road, including a barrage balloon site, gun emplacement and associated huts.

#### **7.1.2.**

On the basis the application site is within the settlement boundary of St Mary’s, comprising the development of unallocated land, the principle of the development is acceptable in accordance with Policy 5A: Housing in Settlements, which confirms “a presumption in favour of appropriate residential development outwith allocations

where it consists of infill development, conversion, the redevelopment of derelict land/exiting premises...”.

## **7.2. Design and Appearance**

### **7.2.1.**

The proposal is for two semi-detached houses. The three-bedroom houses would be single storey of a simple modern design. The design of these dwellings would be unlikely to have a significant impact on the character of the area or detract from other dwellings nearby, given the mix of periods, scale, design and materials of other houses in the vicinity.

### **7.2.2.**

The proposed materials for both houses include black flat profile concrete roof tiles, light coloured dry dash walls, window frames in anthracite and black rainwater goods. A single access from West Greaves Road would be provided, and each plot would include off-road parking and adequate amenity space for the occupiers of the dwellings. The materials and amenity space are acceptable, and it is considered the dwellings would integrate with wider housing development in the vicinity. Site sections have been provided to indicate how the houses would be dug into the existing slope.

### **7.2.3.**

It is therefore considered that the proposed development complies with Policy 1: Criteria for All Development and Policy 2: Design.

## **7.3. Residential Amenity**

Given the orientation and position of the windows of existing neighbouring and the proposed dwellings, the potential impact of overlooking or loss of privacy to third parties in the area would be minimal, including no directly facing windows between dwellings, in accordance with the requirements of Planning Policy Advice: Amenity and Minimising Obtrusive Lighting. Planning conditions would protect the amenity of the surrounding area during construction. An air source heat pump is proposed for each of the dwellings. These are acceptable and would be subject to noise condition to protect residential amenity. The scale and orientation of the proposed development, combined with the houses being dug into the slope, would ensure protection of residential amenity from overshadowing or overlooking. It is considered that the proposed development would have no unacceptable impact on residential amenity of third-party dwellings, and therefore would comply with Policy 1.

## **7.4. Parking Provision, Access and Road Safety**

### **7.4.1.**

Three off-road parking spaces are proposed for each dwelling. The single access onto West Greaves Road would provide access to these proposed plots, as well as to adjacent land. The access would be constructed to the relevant construction standard as required by Roads Services. In terms of compliance with Policy 14C, it is

considered that the site could be safely and conveniently accessed by service and delivery vehicles appropriate for the scale of the development.

#### **7.4.2.**

Roads Services was consulted and has no objections to the proposed development subject to appropriate planning condition regarding the construction of the access junction. Whilst road safety matters have been raised as reasons of objection, on the basis the roads authority is satisfied, the development is considered to comply with the requirements of Policy 14: Transport, Travel and Road Network Infrastructure as it could be safely and conveniently accessed and would be safe for all road users.

#### **7.4.3.**

As is required for all developments of more than a single dwelling within a settlement boundary, the access track from the public road to the houses will require a sealed surface. This would be controlled by planning condition.

### **7.5. Foul and Surface Water Drainage**

#### **7.5.1.**

It is proposed to connect the houses to the Scottish Water public sewer. Scottish Water has confirmed that the development would be serviced by the St Mary's Waste Water Treatment Works, and has advised that there is currently sufficient capacity for a foul connection from the site.

#### **7.5.2.**

Surface water from the houses would be treated on site, with each house having a surface water soakaway located within the garden area, located to the rear of the houses due to the sloping nature of the site. Surface water from the access track would be managed to avoid surface water affecting neighbouring land and planning conditions would be attached requiring all surface water to be treated in accordance with the requirements of Sustainable Drainage Systems (SuDS), and for details of surface water management from the access track, in accordance with Policy 13.

## **8. Conclusion and Recommendation**

The principle of the development is acceptable within a settlement boundary. The proposed density of development and the design and appearance of the houses are considered acceptable in this location. The safety of road users would be protected, as confirmed by Roads Services. Surface water would be managed, and residential amenity adequately protected. Objections received on material planning grounds are not considered of sufficient weight to merit refusal. The development accords with Policies 1, 2, 5, 13 and 14 of the Orkney Local Development Plan 2017, Supplementary Guidance: Settlement Statements (2017) and Planning Policy Advice: Amenity and Minimising Obtrusive Lighting (2021). Accordingly, the application is **recommended for approval**, subject to the conditions attached as Appendix 2 to this report.

## **9. Contact Officers**

Alison Poke, Planning Officer, Email [alison.poke@orkney.gov.uk](mailto:alison.poke@orkney.gov.uk)

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

## **10. Appendices**

Appendix 1: Location/Site Plan.

Appendix 2: Planning Conditions.



Holmlea

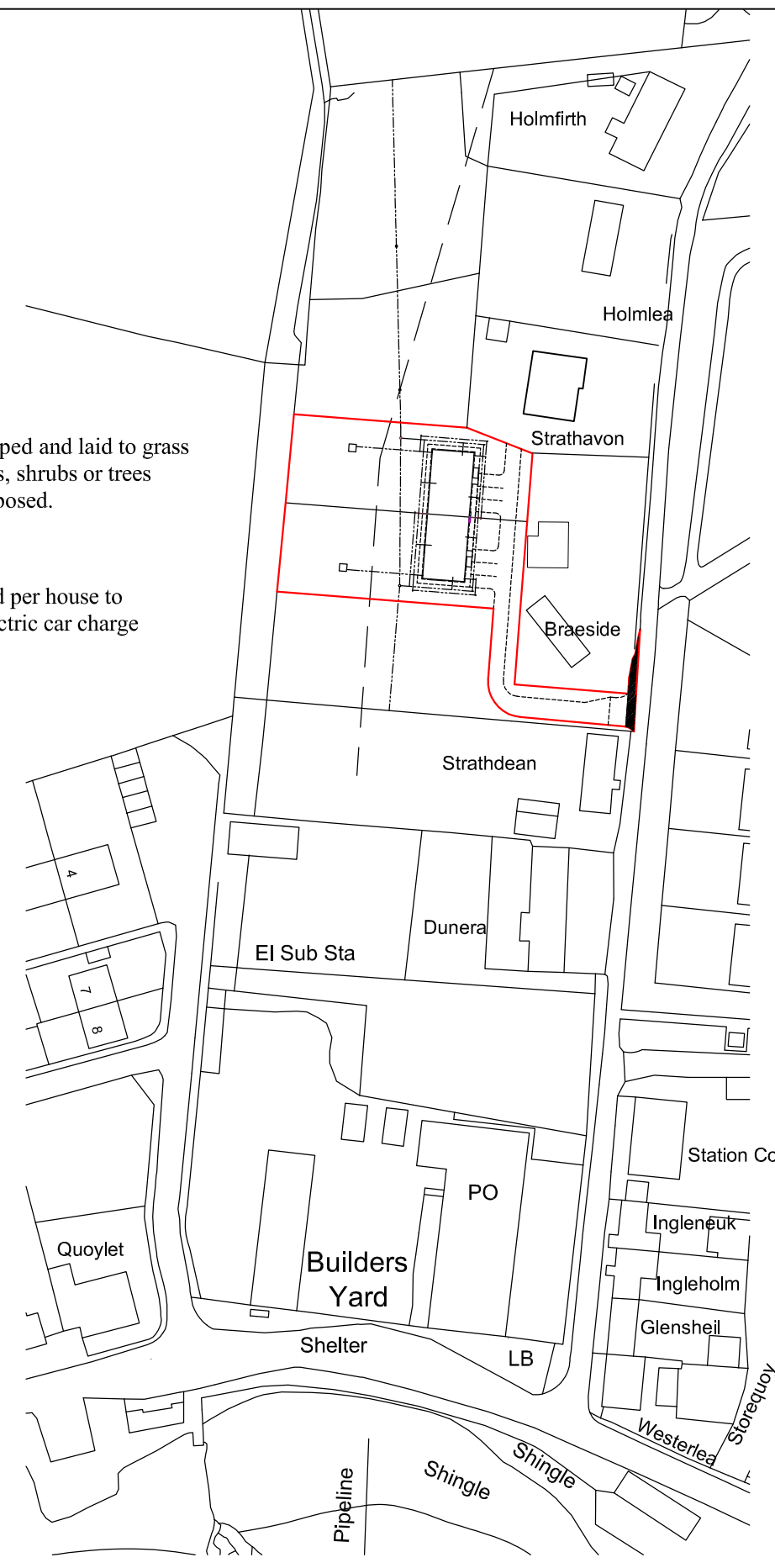
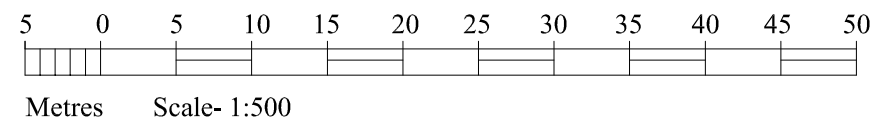
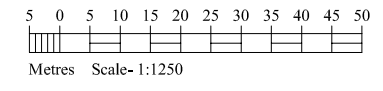
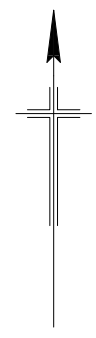
Strathavon

Braeside

Strathdean

Sites to be landscaped and laid to grass with no bushes, shrubs or trees proposed.  
Ducting to be provided per house to accommodate future electric car charge points.

Surfaced layby  
Access to Roads Services Specification for 2-4 houses.



Erection of 2 Semi-detached Bungalows and installation of heat pumps.  
Off West Greaves Road,  
Holm.  
For Alfred Flett Ltd.  
Drwg No- 1630/1/P2. Plan Size A3.

OS Licence No- ES100003740

## Appendix 2.

01. No development shall commence until full details of the management of surface water from the access track are submitted to, and approved in writing by, the Planning Authority, in conjunction with Roads Services. These details shall include prevention of the flow of surface water to the public road. Thereafter, the development shall be constructed wholly in accordance with approved details and shall be retained in accordance with these details throughout the lifetime of the development.

Reason: To ensure the appropriate management of surface water from all parts of the development.

02. No demolition or any other works in connection with the development shall commence until a plan and photographic survey of the existing concrete foundation in the application site have been submitted to, and approved in writing by, the Planning Authority, in conjunction with the Islands Archaeologist.

All visible parts of the structure, together with the setting of the structure and any unusual features shall be photographed. The photographic viewpoints shall be clearly annotated on a plan to accompany the survey. The photographs and plan shall be in a digital format and shall be clearly marked with the planning application reference.

Reason: In the interests of the protection of Orkney's archaeological and cultural heritage resources and to accord with Policies 8A and 8B(vi): Historic Environment and Cultural Heritage of Orkney Local Development Plan 2017, Supplementary Guidance: Historic Environment and Cultural Heritage (2017) and Planning Policy Advice: Historic Environment (Topics and Themes) (2017).

03. No development shall commence until the developer submits written confirmation from Scottish Water that the existing public sewer and water main, both within the application site to the west of the proposed houses, are sufficient distance from the houses, and any safeguarding requirements provided by Scottish Water. Thereafter, during construction works and throughout the lifetime of the development, the public sewer and water main infrastructure shall be protected, including in accordance with any requirements stipulated by Scottish Water.

Reason: To protect public infrastructure located within the application site.

04. Throughout the lifetime of the development hereby approved, all surface water within the application site area shall 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. Requisite surface water drainage shall be operational prior to first occupation of the development 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 runoff to the public 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.

05. The development shall be excavated into the existing slope, as detailed in the site sections hereby approved, and finished floor levels shall be constructed above existing ground level unless specifically indicated in approved drawings.

Reason: For the avoidance of doubt, in accordance with submitted drawings, and to minimise visual impact of development on sloping ground.

06. The access hereby approved with the public road shall be constructed to the Council's Roads Services standard drawing 'SD-01 Typical Access for Single Development (2-4 houses)', attached to and forming part of this decision notice, including dimensions, road construction, any pipe required, and verge or footway. The access shall be constructed and completed wholly in accordance with these details prior to any other works commencing on the development hereby approved, and thereafter shall be retained in accordance with these details throughout the lifetime of the development, unless otherwise agreed, in writing, by the Planning Authority.

Reason: In the interests of road safety.

07. 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.

08. The development hereby approved shall not be occupied or otherwise brought into use until all communal parts of the proposed shared access track are finished with a bituminous surface, or other sealed surface agreed, in writing, by the Planning Authority.

Reason: To ensure an appropriate specification and finish for communal accesses within a town or village.

09. Should any contamination be revealed during construction, including the breaking up and excavation of the existing concrete foundation, works shall be temporarily halted, and the Planning Authority and Environmental Health shall be notified immediately. Thereafter, works shall not recommence until the extent and nature of the contamination has been investigated at the developer's expense, and to the satisfaction of Environmental Health. Where appropriate, a suitable scheme for the mitigation of any risks arising from the contamination shall be submitted to, and agreed in writing by, the Planning Authority, and the development shall thereafter be completed wholly in accordance with the approved mitigation.

Reason: To ensure the development is protected from any contamination revealed during construction works.

10. Total noise from the air source heat pump(s) hereby approved shall not exceed NR25 within any residential property outwith the development, 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 50 mm).

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

11. Throughout the lifetime of the development hereby approved, any external lighting used on the development shall be downward facing only and shall comply with the requirements of Policy 2 (principle vi), to minimise light pollution and meet the requirements specified by the Institution of Lighting Professionals for Zone E1/E2 areas (Rural/Low District Brightness). The lighting shall be turned off when not required either by automatic sensor or manually.

Reason: To minimise obtrusive light, glare or distraction in the interests of safeguarding the amenity of the area and to accord with Policy 2: Design of Orkney Local Development Plan 2017.

12. 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 Mondays to Fridays, 08:00 to 13:00 on Saturdays and not at all on Sundays, Christmas or New Year Public Holidays unless otherwise agreed, in writing, with the Planning Authority.

There shall be no burning of waste or any other materials on site at any time during the construction phase of the development.

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.