

Item: 4.4

Planning Committee: 8 March 2023.

Erect Timber Fence, Pave Courtyard and Erect Polytunnel (Part Retrospective) at 80 Victoria Street, Kirkwall.

Report by Corporate Director for Neighbourhood Services and Infrastructure.

1. Summary

1.1.

Householder planning permission is sought to erect a fence, pave a courtyard and erect a polytunnel in the rear garden ground of 80 Victoria Street, Kirkwall. The property is both category C listed and situated within the Kirkwall Conservation Area. Works have commenced, so the application is part retrospective. One objection has been received on grounds of residential amenity and impact on the setting of the listed building and character and appearance of the area. The objection is considered of insufficient weight to merit refusal. It is concluded that the development complies with relevant policy provisions of National Planning Framework 4 and the Orkney Local Development Plan 2017. Accordingly, the application is recommended for approval.

Application Number:	22/430/HH.
Application Type:	Householder.
Proposal:	Erect a timber fence, pave a courtyard and erect a polytunnel (part retrospective).
Applicant:	Mrs Anne-Marie MacGregor.
Agent:	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

No consultations were required for this application.

3. Representations

3.1.

One objection has been received from:

- Mr Ashley Brown, 76 Victoria Street, Kirkwall, Orkney, KW15 1DQ.

3.2.

The objection is on the grounds of overshadowing, impact on residential amenity, setting of a listed building and character and appearance of the area.

4. Relevant Planning History

Reference	Proposal	Location	Decision	Date
92/143/PPF	Proposed extension to house	80 Victoria Street, Kirkwall, KW15 1DQ	Approve	28.04.1992
09/566/PP	Demolish garage and erect new boundary wall and wooden shed (retrospective)	80 Victoria Street, Kirkwall, KW15 1DQ	Approve	26.02.2010
15/150/PP	Block doorway, install an air source heat pump, replace windows, doors and a gate and paint walls, windows and doors	80 Victoria Street, Kirkwall, KW15 1DQ	Approve	01.07.2015
15/151/LB	Block doorway, install an air source heat pump, secondary glazing, replace windows, doors and a gate and paint walls, windows and doors	80 Victoria Street, Kirkwall, KW15 1DQ	Approve	01.07.2015
16/204/LB	Display a sign	80 Victoria Street, Kirkwall, KW15 1DQ	Approve	14.06.2016

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:
 - The Spatial Strategy.
 - Policy 1 – Criteria for All Development.
 - Policy 2 – Design.
 - Policy 8 – Historic Environment and Cultural Heritage
- Supplementary Guidance: Historic Environment and Cultural Heritage (2017).
- National Planning Framework 4.

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.
 - 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.

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

6.7.1.

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 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 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.

6.7.2.

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.

7. Assessment

7.1. Background

The application seeks part-retrospective permission as the polycrubb is erected and works to erect the fence have commenced. These works were raised in an enforcement complaint received by the planning authority. Following a site meeting between the applicant and the Service Manager (Development Management) to establish the works taking place and to confirm the consents required, the applicant ceased work and submitted the current application shortly thereafter.

7.2. Siting and Setting

7.2.1.

The property fronts the main thoroughfare of the Kirkwall conservation area, as shown in the site plan attached as Appendix 1 to this report, but all proposed works would take place within the rear curtilage. The rear garden can be accessed by a narrow lane between 76 and 80 Victoria Street; however, the extent of the proposed works visible from Victoria Street public realm is negligible.

7.2.2.

The rear garden slightly rises to the east and extends to meet Victoria Lane, the edge of the conservation area. The rear boundary is a modern dashed and gated wall at a height of approximately 1.8 metres. The garden ground is therefore not readily viewed from Victoria Lane and the layout and content of the garden does not impact on the character and appearance of the wider area.

7.3. Polycrubb

A tall stone wall splits the garden, and a shed is located to the very rear of the garden. Together, these elements largely enclose that part of the garden and shield the polycrubb from outward views from the listed property, as well as fleeting views over the rear wall from Victoria Lane. This extent of enclosure from public view is critical, and in conjunction with the height of the rear boundary wall, notwithstanding the modern synthetic finish of the polycrubb, it is not considered to negatively affect the setting of the listed building, or the character and appearance of the conservation area.

7.4. Paving

A large extension to the rear of the house is a relatively modern addition to the original property, with the contemporary hard landscaping works, walls and steps to an equally modern finish. While modern concrete paving is not generally supported within readily visible areas of the conservation area and/or immediate setting of a listed building, given the extent to which the landscaping is sited in a sunken section of the rear garden enclosed by a retaining wall, and on the basis it would replace equally modern paving and would be viewed alongside other modern finishes and paving, on balance the proposed concrete paving is deemed acceptable in this instance.

7.5. Fence

The fencing would be largely obscured from the west access lane, and not visible at all from Victoria Lane to the rear. Nonetheless, the fence is designed to the appropriate standard in the setting of a listed building, with vertical slats and structural supports mostly hidden and a natural weathered finish. This is an appropriate design, material choice and finish for use within the conservation area and immediate setting of a listed building. Planning permission was previously granted for a fence, under application 15/150/PP, across the rear of the sunken section of the garden immediately to the rear of the house. The fence design in the current application differs slightly, including an extension to the length of the fence, that extends from the corner of the sunken garden towards the rear of the house. The design and specification of the fence proposed, and partly installed, is not considered to cause an unacceptable impact on the setting and character of the area.

7.6. Residential Amenity

7.6.1.

In terms of noise or activity, as a relatively minor-scale residential development, the works would not introduce any activity to the area that would impact residential amenity and the level of private dedicated amenity space would be retained.

7.6.2.

The neighbour at 76 Victoria Street has objected due to potential overshadowing affecting the property, due to the extended height of fence above the existing wall, noting in terms of daylight that the application site is located to the south of the neighbouring property. In this relatively densely developed town centre location, rear gardens are often enclosed, with walls, fences, gates and extensions prevalent throughout. The south-facing windows and door of 76 Victoria Street are already affected by the built form of 80 Victoria Street and situated within an enclosed lane. The proposed fence would have a limited 19-centimetre increase in height from the existing solid wall. The combination of limited increase in height, slatted design and the existing offset neighbouring window and door location in an enclosed lane, it is not considered proportionate or necessary to require a daylight and sunlight impact assessment. It is concluded that the proposed development would not cause, or exacerbate existing, overshadowing of windows or garden ground of the neighbouring property to the north, to the extent that the application should be refused.

8. Conclusion and Recommendation

The principle of the development is acceptable, as relatively minor domestic works. The site can accommodate the development, and the design, materials, form and scale of development is considered acceptable in this location. Residential amenity would be safeguarded. The objection is of insufficient weight to warrant refusal. The proposed development would accord with the provisions of National Planning Framework 4 and Policies 1, 2 and 8 of the Orkney Local Development Plan 2017.

Accordingly, the application is recommended for approval, subject to the conditions attached as Appendix 2 to this report.

9. Contact Officers

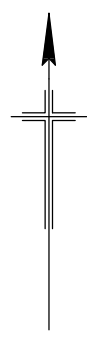
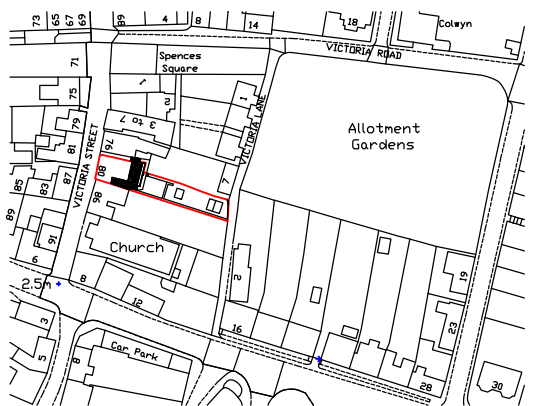
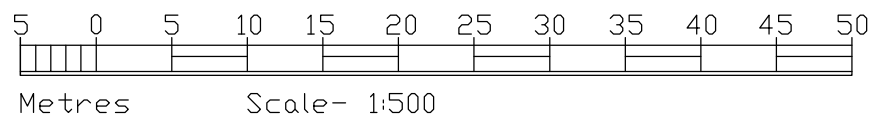
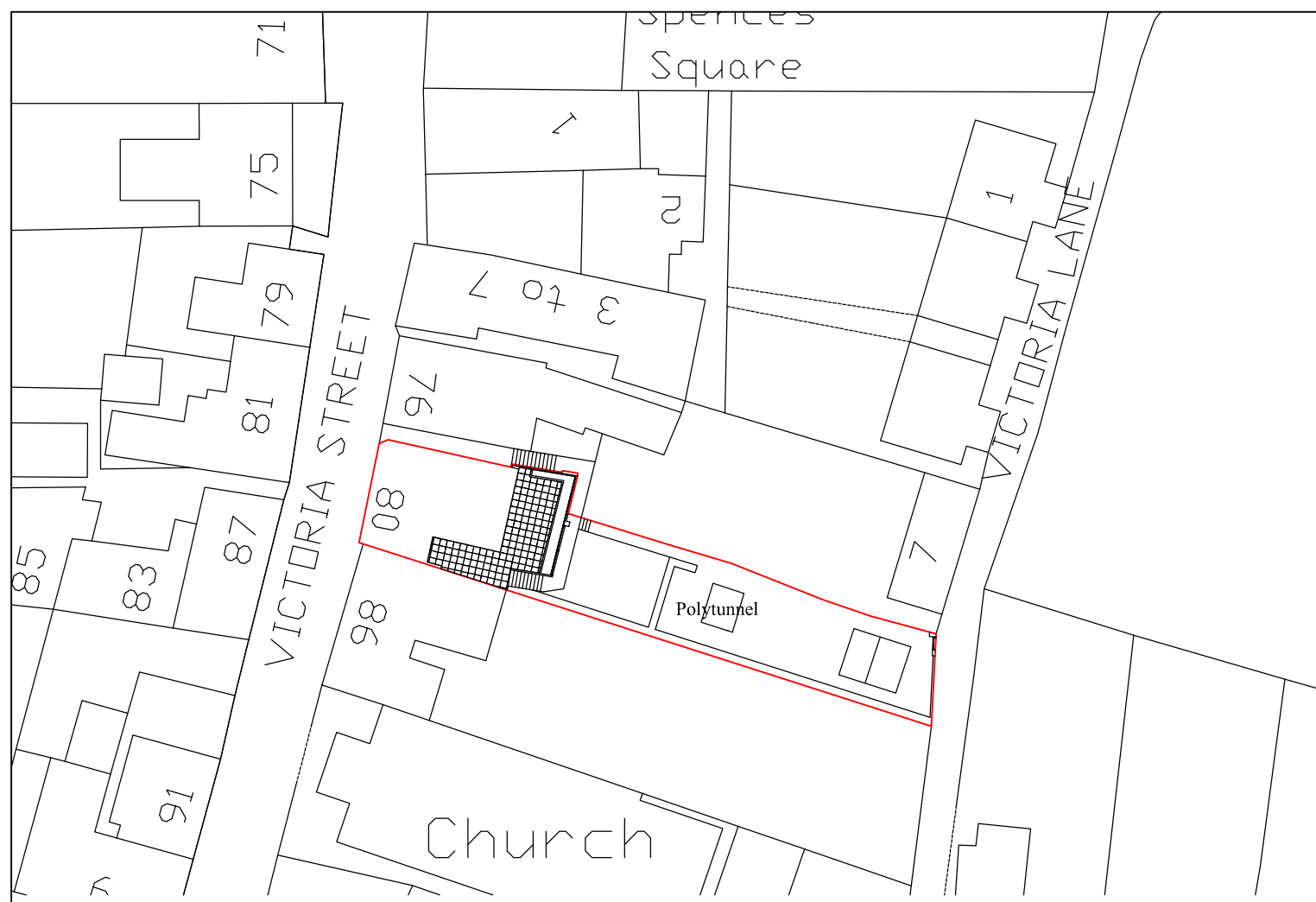
Jamie Macvie, Service Manager (Development Management), Email Jamie.macvie@orkney.gov.uk

Dean Campbell, Planning Officer, Email dean.campbell@orkney.gov.uk

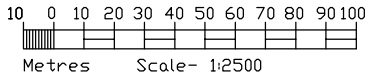
10. Appendices

Appendix 1: Site Plan.

Appendix 2: Planning Conditions.



Erection of timber fence, re-paving of courtyard and erection of Polytunnel (Restrospective).
 For Mrs Anne-Marie MacGregor,
 Dwg No 1433/1/P1/LB1. Plan Size A4.



OS Licence No- ES100003740

Appendix 2

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. 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.