

## **Item: 4.3**

**Local Review Body: 24 August 2023.**

**Proposed Erection of Replacement House with Integral Garage (One for One) incorporating Existing Outbuilding (Amendment to 22/222/PP) (23/083/PP).**

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

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

To determine a review of the decision of the Appointed Officer, specifically in respect of Condition 2 attached to the approved planning permission for the erection of a replacement house with integral garage (one for one), incorporating an existing outbuilding (Amendment to 22/222/PP).

### **2. Recommendations**

The Local Review Body is invited to note:

#### **2.1.**

That planning permission for the erection of a replacement house with integral garage (one for one), incorporating an existing outbuilding (Amendment to 22/222/PP), was granted by the Appointed Officer on 21 June 2023, subject to the conditions outlined in section 3.3 of this report.

#### **2.2.**

That the applicant has submitted a Notice of Review requesting that the decision of the Appointed Officer, specifically in respect of Condition 2 attached to the approval, referred to at paragraph 2.1 above, be reviewed.

**It is recommended:**

#### **2.3.**

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.

## **2.4.**

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 under the procedure set out in Regulation 15 of the Town and Country Planning (Scheme 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 (Scheme of Delegation and Local Review Procedure) (Scotland) Regulations 2013.

## **3. Background**

### **3.1.**

Planning application 23/083/PP relates to the erection of a replacement house with integral garage (one for one), incorporating an existing outbuilding (Amendment to 22/222/PP).

### **3.2.**

The Appointed Officer granted the planning application on 21 June 2023 subject to conditions.

### **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, which is attached as Appendix 1 to this report. The Notice of Review relates specifically to Condition 2 attached to the approval, as noted below:

#### **3.3.1.**

Condition 2 – A condition / dilapidation survey shall be carried out jointly with the developer /developer's representative and Roads Services, both prior to works commencing and again upon completion of work on the hereby approved development site on the existing public road infrastructure that will be used to access and egress the development site. The applicant shall be responsible for funding the condition / dilapidation survey and the cost of any repairs following any damage to the public road which is attributed to this development which may have been caused by vehicles or plant accessing or egressing the site. Any works identified to be carried out shall be carried out to the satisfaction of the Planning Authority in conjunction with Roads Services within three months of completion of works on site.

The developer will also be responsible for maintaining any damage caused to the public road in such a manner that the roads always remain safe for other road users and until permanent repair works are agreed and carried out.

Reason: In the interest of road safety.

### **3.4.**

The Planning Handling Report, Planning Services file and the Decision Notice, including the conditions attached to the approval, 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. No further representations were received.

### **4.2.**

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 Littlequoy, Burray, is due to be undertaken at 14:30 on 23 August 2023.

### **4.3.**

The Local Review Body may uphold, reverse or vary the decision of the Appointed Officer. The full set of planning conditions which have been applied to the current planning consent are detailed in the Decision Notice, attached at Appendix 4.

#### **4.3.1.**

All conditions should be in accordance with [Planning Circular 4/1998](#) regarding the use of conditions in planning permissions.

### **4.4.**

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 under the procedure set out in Regulation 15 of the Town and Country Planning (Scheme 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 (Scheme of Delegation and Local Review Procedure) (Scotland) Regulations 2013.

## 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 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.

#### 5.2.1.

The policies 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 9 – Natural Heritage and Landscape.
  - Policy 13 – Flood Risk, SuDS and Waste Water Drainage.
  - Policy 14 – Transport, Travel and Road Network Infrastructure.
- National Planning Framework 4.

#### 5.2.2.

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.

## 6. 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.

## **7. 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.

## **8. Legal Aspects**

### **8.1.**

There are two options available to applicants to challenge any condition attached to a planning permission.

### **8.2.**

Under Section 42 of the Town and Country Planning Scotland Act 1997 an application can be made to the planning authority for permission to develop the application site without complying with one or more of the conditions, subject to which the permission was granted. The planning authority can decide that the permission should be granted subject to the same conditions (ie application refused), or if the application is successful, permission will be granted without the condition(s) which has been contested.

### **8.3.**

Alternatively, 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. The review process covers any conditions imposed on a planning permission.

### **8.4.**

Scottish Government advice on the use of conditions in planning permissions is provided in Planning Circular 4/1998. As a matter of policy, conditions should only be imposed when they are:

- Necessary.
- Relevant to planning.
- Relevant to the development to be permitted.
- Enforceable.
- Precise.
- Reasonable in all other respects.

### **8.5.**

Paragraph 85 of [Planning Circular 4/1998](#) indicates that, in exceptional circumstances, conditions may be imposed to restrict further development which would normally be permitted by the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order or the Town and Country Planning (Use Classes) (Scotland) Order 1997.

## **8.6.**

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

## **8.7.**

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.

## **9. Contact Officers**

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Susan Shearer, Planning Advisor to the Local Review Body, extension 2533, Email [susan.shearer@orkney.gov.uk](mailto:susan.shearer@orkney.gov.uk)

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## **10. Appendices**

Appendix 1 – Notice of Review (pages 1 – 28).

Appendix 2 – Planning Handling Report (pages 29 – 31).

Appendix 3 – Planning Services File (pages 42 – 72).

Appendix 4 – Decision Notice with Conditions (pages 73 – 88).

Pages 1 to 88 can be viewed [here](#), clicking on “Accept and Search” and inserting the planning reference “23/083/PP”.