

Item: 5.2

Local Review Body: 6 October 2021.

Proposed Erection of Replacement House (one for one) and Creation of Access at Upper Nisthouse, Germiston Road, Stenness (21/074/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 replacement house (one for one) and creation of an access at Upper Nisthouse, Germiston Road, Stenness.

2. Recommendations

The Local Review Body is invited to note:

2.1.

That planning permission for the proposed erection of a replacement house (one for one) and creation of an access at Upper Nisthouse, Germiston Road, Stenness, was refused by the Appointed Officer on 29 June 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.

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; and/or.
- By the holding of one or more hearing.

3. Background

3.1.

Planning application 21/074/PP relates to the proposed siting of a replacement house (one for one) and creation of an access at Upper Nisthouse, Germiston Road, Stenness.

3.2.

The Appointed Officer refused the planning application on 29 June 2021 on the following grounds:

3.2.1.

The proposed development is considered to impose an inappropriate form and scale of development and would appear incongruous. It is not sited or designed to be successfully incorporated into the location or local landscape. The development would also result in an unacceptable impact to the visual amenity of the surrounding area. The development fails to comply with Policy 1 'Criteria for All Development', sections i and iv, of the Orkney Local Development Plan 2017.

3.2.2.

The static caravan to be replaced by the proposed house is ancillary to the use and enjoyment of the existing house at Upper Nisthouse. The static caravan is not an independent house and as such does not meet the terms of applicable structures that can be replaced under policy provisions. The development fails to comply with Policy 5E (iii) for The Replacement of an Existing Building or Structure of the Orkney Local Development Plan 2017.

3.2.3.

The full extent of ground to be used for the proposed development does not comply with the definition of curtilage with the proposed development requiring an extension to the current curtilage associated with Upper Nisthouse to accommodate the application as proposed. The development fails to comply with Policy 5E (v) for The Subdivision of a Dwelling House or its Residential Curtilage of the Orkney Local Development Plan 2017.

3.2.4.

The proposed house site is not considered to be situated to minimise negative impacts on the local landscape. The proposed development is not sited and designed to minimise negative impacts on the landscape given its prominent location on rising ground in an elevated situation. The development is not sited, scaled or otherwise designed to reflect its context and will dominate the nearby Upper Nisthouse and steading as well as being overtly dominating within the wider local landscape. Given the location of the development and prominence within the local

landscape, the proposed development is considered contrary to Policy 9 'Natural Heritage and Landscape', section G i and ii of the Orkney Local Development Plan 2017.

3.2.5.

The proposed development does not accord with all relevant Development Criteria (DC), as required and as stated with 'Supplementary Guidance: Housing in the Countryside' 2021, specifically in relation to DC2 and DC3. The proposed development is not located nor situated to fit into the landscape, it fails to minimise landscape and visual impacts of the development and is out of keeping with the location as it would dominate houses and structures in the surrounding area through a combination of excessive scale and inappropriate form.

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. 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 Upper Nisthouse, Germiston Road, Stenness, will be undertaken at 10:45 on 6 October 2021.

4.3.

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 5 for consideration.

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; and/or.
- By the holding of one or more hearing(s).

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 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 5E (iii) – Housing in the Countryside – The Replacement of an Existing Building or Structure.
 - Policy 5E (v) – Housing in the Countryside – The Subdivision of a Dwelling House or its Residential Curtilage.
 - Policy 9G – Landscape.
 - Policy 13 – Flood Risk, SuDS and Waste Water Drainage.
 - Policy 14C – Road Network Structure.
- Supplementary Guidance:
 - Housing in the Countryside (2021).

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.

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.

8.2.

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

8.3.

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.

9. Contact Officers

Angela Kingston, Clerk to the Local Review Body, Email
angela.kingston@orkney.gov.uk

Roddy MacKay, Planning Advisor to the Local Review Body, extension 2530, Email
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Paul Maxton, Legal Advisor to the Local Review Body, Email
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10. ,Appendices

Appendix 1 – Notice of Review (pages 1 – 11).

Appendix 2 – Planning Handling Report (pages 12 – 21).

Appendix 3 – Planning Services File (pages 22 – 48).

Appendix 4 – Decision Notice and Reasons for Refusal (pages 49 – 55).

Appendix 5 – Draft Conditions (pages 56 – 58).

Pages 1 to 58, with the exception of pages 56 to 58, can be viewed at https://www.orkney.gov.uk/Service-Directory/D/application_search_submission.htm and inserting the planning reference "21/074/PP".

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

Appendix 5

21/074/PIP – Notice of Review

Proposed Conditions

01. No other development shall commence until detailed cross-sections of the site showing existing levels and proposed finished levels have been submitted to, and approved in writing by, the Planning Authority. Detailed drawings shall include cross sections through the approved house site, both north to south and east to west intersecting centrally.

Reason: To ensure that the development is sensitive to, and compatible with, its context.

02. Within the application site, no building or structure shall be constructed upon land raised above its current level.

Reason: To ensure that land-raising does not result in a building or structure constructed at a height such that it gives rise to visual concerns.

03. Within the application site, no building or structure shall feature underbuilding exceeding 500mm in height above ground level. For the purposes of this condition, height is a reference to height when measured from ground level, and ground level means the level of the surface of the ground immediately adjacent to the building or structure or, where the level of the surface of the ground is not uniform, the level of the lowest part of the surface of the ground adjacent to it.

Reason: To ensure that underbuilding is kept to a minimum, in the interests of visual and residential amenity.

04. No other development shall commence prior to the access with the public road being constructed to the Council's Roads Services standard drawing 'SD-02 Alternative Typical Access for Two Dwellings', 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 in advance of any such deviation from the agreed details by the Planning Authority.

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.

05. No other development shall commence until details of a scheme of hard and soft landscaping works have been submitted to, and approved in writing by, the Planning Authority. Details of the scheme shall include:

- All earthworks and existing and finished ground levels in relation to an identified fixed datum point.
- All soft landscaping and planting works, including plans and schedules showing the location, species of shrubs and trees and planting densities with particular emphasis on boundary planting.
- The location and design, including materials, of any existing or proposed walls, fences and gates.

Thereafter, all landscaping works shall be carried out in accordance with the approved scheme. All planting, seeding or turfing as may be comprised in the approved details shall be carried out no later than the first planting and seeding seasons following the first occupation of the house, unless otherwise stated in the approved scheme.

Any trees or plants which within a period of five years from the completion of the development die, for whatever reason or are removed or damaged shall be replaced in the next planting season with others of the same size and species.

Reason: In order to ensure that a high standard of landscaping is achieved, appropriate to the location of the site and that inappropriate suburban boundary finishes are not employed in this rural location.

06. No other development shall commence until details of the siting of refuse disposal bins and recyclable material storage and collection points in respect of the approved house have been submitted to, and approved in writing by, the Planning Authority.

Reason: In order to ensure that adequate provision for domestic waste and recycle is provided and for the avoidance of doubt.

07. All surface water drainage provision within the application site(s) shall accord with the principles of Sustainable Urban Drainage Systems (SUDS) and be designed to the standards outlined in Sewers for Scotland Fourth Edition, or any superseding guidance prevailing at the time and shall be implemented and completed prior to the first occupation of any of the development.

Reason: To ensure that surface water drainage is provided timeously and complies with the principles of SUDS; in order to protect the water environment.

08. Any exterior lighting employed shall be so positioned, angled and controlled to prevent any direct illumination, glare or light spillage outwith the site boundary. The use of automatic cut-out or sensor operated external lighting of limited timed illumination is advocated.

Reason: In order to ensure that any lighting installed within the application site does not spill beyond the intended target area, does not impact adversely upon the amenity of adjacent properties and does not result in 'sky glow'.

09. The existing static caravan on site and as shown on approved drawing "Proposed Site Plan" dated 02/2021, shall be wholly removed from site prior to the first occupation of the house or upon completion of the house, whichever is the sooner. All ancillary equipment, fixtures and services related to this static caravan shall likewise be removed with the site with the area subject to reinstatement in accordance with the approved details arising from compliance with condition 05.

Reason: To ensure that the redundant static caravan is removed from the site, in the interests of visual amenity and for the avoidance of doubt.

10. 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.

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.