

Item: 6

Planning Committee: 12 February 2025.

Proposed Creation of an Access (Relocation of Approved Access) near Errival, Dalespot, St Ola.

Report by Corporate Director for Neighbourhood Services and Infrastructure.

1. Overview

- 1.1. This report considers an application to create (relocate) an access (to serve approved development), as a resubmission of 24/384/PP, at Errival, Dalespot, St Ola. Two letters of objection have been received. The development complies with relevant policies, and objections and other material considerations do not merit refusal of the application.

Application Reference:	24/460/PP.
Application Type:	Planning Permission.
Proposal:	Create (relocate) an access (to serve approved development) (resubmission of 24/384/PP).
Applicant:	Mr Stewart K Henderson.
Agent:	Stephen Omand.

- 1.2. All application documents (including plans, consultation responses and valid 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. Recommendations

- 2.1. It is recommended that members of the Committee:
- i. Approve the application for planning permission in respect of the proposed creation (relocation) of an access (to serve approved development) near Errival, Dalespot, St Ola, subject to the conditions detailed in Appendix 1 to this report.

3. Consultations

Roads Services

- 3.1. “In general, the information provided in relation the amended access location is acceptable, albeit that there are a couple of minor amendments that would improve the design and useability of the access and crossing point which potentially could be controlled by condition which are noted below.
- The access road should be a minimum of 5.5 metres wide for at least the first 10 metres of the access road, with the first 10 metres of the access having a 50mm minimum thick bituminous surface applied.
 - The tactile paving indicated on ‘Waiting Area & Bin Store’ drawing should be relocated south to the start of the two-metre-wide footway, with the tactile paving on the opposite side of the road moved accordingly, with the tactile paving on both sides of the road being directly opposite each other.
 - The bin store should be relocated to the northern end of two-metre-wide section of footway.

In addition to the above the undernoted informative should also be applied to any planning permission that may be granted.”

Scottish Water

- 3.2. Scottish Water offers no objection. In terms of infrastructure, it is noted, “Scottish Water records indicate that there is live infrastructure in the proximity of your development area that may impact on existing Scottish Water assets...The applicant must identify any potential conflicts with Scottish Water assets and contact our Asset Impact Team via our Customer Portal for an appraisal of the proposals. The applicant should be aware that any conflict with assets identified will be subject to restrictions on proximity of construction. Please note the disclaimer at the end of this response.”

Development and Marine Planning (Environment)

- 3.3. No objection to the proposal. No biodiversity measures are required.

4. Representations

- 4.1. Two valid representations (objections) have been received from:
- Mr A Bremner, Bendigo, St Ola.
 - Mr and Mrs Strutt, 2 Glendale Park, Kirkwall, St Ola.

4.2. The representations are on the following grounds:

- Proximity of access to existing access to Bendigo, causing road safety issues.
- Proximity of access to existing access to site (and not using existing access).
- Layout of junction.
- Size of bin storage area.
- Length of pavement waiting area.
- Reduction in length of bus layby.
- Arrangement of the bus layby and bin store.

4.3. Other, non-material comments are raised in the representation.

5. Relevant Planning History

Reference	Proposal	Location	Decision	Date
18/135/PP.	Construct access road and install services and drainage for 9 house sites, and landscaping.	Errival (Land Near), St Ola.	Grant Subject to Conditions.	15.11.2018.
21/349/PP.	Erect nine houses with integral garages and communal bin store.	Errival (Land Near), St Ola.	Grant Subject to Conditions.	17.02.2022.
24/384/PP.	Create (relocate) an access (to serve approved development).	Errival (Land Near), St Ola.	Withdrawn.	10.12.2024.

6. Relevant Planning Policy and Guidance

- 6.1. The full text of the National Planning Framework 4 can be read on the Scottish Government website [here](#).
- 6.2. Orkney Local Development Plan 2017 and supplementary guidance can be read on the Council website [here](#).
- 6.3. The key policies, supplementary guidance and planning policy advice listed below are relevant to this application:

- National Planning Framework 4:
 - Policy 13: Sustainable transport.
 - Policy 14: Design, quality and place
 - Policy 15: Local Living and 20 minute neighbourhoods.
- Orkney Local Development Plan 2017:
 - Policy 1: Criteria for All Development.
 - Policy 5: Housing, ‘Housing in Settlements’.
 - Policy 14: Transport, Travel and Road Network Infrastructure.

7. Legislative Position

- 7.1. 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...”
- 7.2. Annex A of Planning Circular 3/2013: ‘development management procedures’ provides advice on defining a material consideration, and following a House of Lords’ 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.”
- 7.3. Annex A continues as follows:
- The House of Lords’ 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.

7.4. 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.

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

Status of the Local Development Plan

7.6. 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.

Status of National Planning Framework 4

7.7. 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 NPF4 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.

7.8. 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.

8. Assessment

- 8.1. Planning permission is sought to change the proposed position of the access to a housing development, previously approved under 18/135/PP (Construct access road and install services and drainage for 9 house sites, and landscaping on land near Errival, St Ola), as indicated in the site plan attached as Appendix 2 to this report. The proposed access is outlined in red (to the south), with the existing approved access which would now form part of Plot 7 also outlined in red (to the north), and other land in the applicant's ownership outlined in blue.
- 8.2. The site is located in St Ola and lies to the east of the A961 Kirkwall to St Margaret's Hope road, in the area known as Dalespot which is a Rural Settlement. Dalespot was the original farm which now lies to the south. Currently there are eight houses within the Dalespot settlement, and the original farm. There are presently two access routes into the surrounding houses, one at the northern end serving two houses (approximately 249 metres to the north) and the original farm access which serves the remaining houses (approximately 94 metres south), with the access to Bendigo on the opposite side of the road approximately 55 metres north of the proposed access. The relocated access would be approximately 126 metres south of the approved access point to the nine house sites.
- 8.3. The proposal also includes a bus layby with waiting area and bituminous footpath on the east side of the A961 and a further waiting area at the west side of the A961. A bin store is also proposed.

Principle

- 8.4. The proposal lies within an area identified for development within the Orkney Local Development Plan and within the Supplementary Guidance (SG) 'Settlement Statements' as Dalespot, St Ola, and therefore a presumption in favour of development exists provided the development accords with the Settlement Statement and other policy considerations. As such the previous application (18/135/PP) was approved, including an access at the northern edge of the site. The application now submitted is to relocate the access to the south end of the site, into the boundary of one of the approved house sites.
- 8.5. Work has commenced on the approved development; therefore, the permission remains extant and the matter subject to consideration is only the relocation of the access. The proposal is acceptable in principle, subject to compliance with further policies.

Access and Parking

- 8.6. Roads Services considers the amended access location to be acceptable in terms of the safety of road users, and has no objection, which addresses much of the concern raised in objections in respect of the length of pavement and arrangement of bus layby and bin store. The following design amendments are recommended by Roads Services, which can be secured by condition:
- The access road constructed to a minimum of 5.5 metres wide for at least the first 10 metres of the access road, with the first 10 metres of the access having a 50-millimetre minimum thick bituminous surface applied.
 - The tactile paving indicated on the 'Waiting Area and Bin Store' drawing being relocated south, to the start of the two-metre-wide footway, with the tactile paving on the opposite side of the road moved accordingly, with the tactile paving on both sides of the road being directly opposite.
 - The bin store relocated to the northern end of two-metre-wide section of footway.
- 8.7. Covering these matters by condition is competent, as the land on which the work would be required would be either in the applicant's ownership or within the roadside verge under the control of the roads authority, noting that the conditions would address the matters of the size of bin storage area, length of the pavement waiting area, and arrangement of the bus layby and bin store, as raised in objections.
- 8.8. In terms of the reduction of the length of the bus layby from that previously approved, as raised in objection, the proposed bus layby is 13 metres with an entrance taper of 12.5 metres, and an overall length of 25.5 metres, compared to the previously approved bus layby which was 26.5 metres. The proposed bus layby and waiting areas have been assessed by Roads Services and are considered appropriate.
- 8.9. Concerns with the visibility from the new junction due to the layout, with the layby being on the north of the junction rather than the south has been raised through representations; this has been fully assessed. Buses and refuse vehicles using this layby would stop occasionally and for short durations only; vehicles using the junction would be able to do so safely.
- 8.10. The existing access to Bendigo is approximately halfway between the consented access and the access now proposed; the proposed access is approximately 10 metres closer to the Bendigo junction. The safety of the access to Bendigo is raised

in the objections; the location of the access has been assessed by Roads Services, which has raised no objection to the relocation of the access.

- 8.11. The matters raised by objectors with regards road safety have been assessed, and the recommendations of Roads Services on related matters would be implemented, being controlled by planning conditions where necessary.
- 8.12. Policy 14 'Transport, Travel and Road Network Infrastructure' supports development only where it is well connected to the existing network of roads, paths and cycleways and would not create a barrier to future development. The site is well connected to the road network and is on the public bus route. Roads Services has confirmed no objection to the proposal in terms of design and layout, or the safety of road users, and the site is easily accessed from the A961. The proposal complies with Policy 14.

Residential Amenity

- 8.13. Policy 1 'Criteria for All Development' states that development can only be supported where the amenity of the surrounding area is preserved and there are no unacceptable adverse impacts on the amenity of adjacent and nearby properties/users.
- 8.14. An objection was raised that the bin storage area is too small; the proposed block-built bin store is smaller than the store currently approved, being 3 x 2.5 metres compared to the approved 10 x 3.5 metres. In agreement that the bin store is not adequate as proposed, a condition would be attached to require full details of the design including an increase to the size to be submitted and approved.
- 8.15. In terms of noise from construction, a condition would also be attached to limit the hours of construction.
- 8.16. Subject to conditions, it is not considered that there would be any unacceptable impact on neighbouring properties, and the development is considered compliant with Policy 1.

9. Conclusion

- 9.1. The proposed development complies with Policies 1, 5 and 14 of the Orkney Local Development Plan 2017 and relevant policy provisions of National Planning Framework 4. The proposal is acceptable in principle, and with regards impact on roads, road safety and amenity. There are no material considerations including those raised in the objections that outweigh this conclusion.

For Further Information please contact:

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Implications of Report

- 1. Financial:** None.
- 2. Legal:** Detailed in section 7 above.
- 3. Corporate Governance:** In accordance with the Scheme of Administration, determination of this application is delegated to the Planning Committee.
- 4. Human Resources:** None.
- 5. Equalities:** Not relevant.
- 6. Island Communities Impact:** Not relevant.
- 7. Links to Council Plan:** Not relevant.
- 8. Links to Local Outcomes Improvement Plan:** Not relevant.
- 9. Environmental and Climate Risk:** None.
- 10. Risk:** If Members are minded to refuse the application, it is imperative that clear reasons for proposing the refusal of planning permission on the basis of the proposal being contrary to the development plan policy and the officer's recommendation be given and minuted. This is in order to provide clarity in the case of a subsequent planning appeal or judicial review against the Planning Committee's decision. Failure to give clear planning reasons for the decision could lead to the decision being overturned or quashed. In addition, an award of costs could be made against the Council. This could be on the basis that it is not possible to mount a reasonable defence of the Council's decision.
- 11. Procurement:** None.
- 12. Health and Safety:** None.
- 13. Property and Assets:** None.
- 14. Information Technology:** None.
- 15. Cost of Living:** None.

List of Background Papers

National Planning Framework 4, available [here](#).
Orkney Local Development Plan 2017, available [here](#).

Appendices

Appendix 1 – Planning Conditions.
Appendix 2 – Location Plan.

Appendix 1.

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. No development shall commence until a Maintenance Scheme, for the maintenance in perpetuity of all communal areas, including roads, footpaths communal bin store, and those elements of surface water drainage regimes not maintained either by the Council or Scottish Water, have been submitted to and approved, in writing, by the Planning Authority. Thereafter, the Maintenance Scheme shall be implemented in full, including in accordance with any timescales contained therein.

Reason: To ensure that all communal spaces, facilities and landscaping areas are properly managed and maintained.

03. No development shall commence until a Construction Method Statement has been submitted to and approved, in writing, by the Planning Authority. The statement shall provide for:

- The parking of vehicles of site operatives and visitors.
- Loading and unloading of plant and materials.
- Storage of plant and materials used in constructing the development.

Development shall thereafter be carried out wholly in accordance with the Construction Method Statement throughout the construction period.

Reason: To safeguard the amenity of neighbouring properties and occupants.

04. Notwithstanding the submitted details of the junction, no development shall commence until full design and construction details of the junction and associated footpath, waiting areas, bin store and bus layby have been submitted to and approved, in writing, by the Planning Authority, in conjunction with Roads Services. Thereafter, no other development shall commence until the junction and associated footpath, waiting areas, bin store and bus layby are completed wholly in accordance with the approved details. Thereafter, those details shall be maintained to the approved standard, unless/until adopted for maintenance under the Roads (Scotland) Act 1984 (as amended).

Note:

- The access road shall be a minimum of 5.5 metres wide for at least the first 10 metres of the access road, with the first 10 metres of the access having a 50-millimetre minimum thick bituminous surface applied.
- The tactile paving indicated on 'Waiting Area and Bin Store' drawing shall be relocated south to the start of the two-metre-wide footway, with the tactile paving

on the opposite side of the road moved accordingly, with the tactile paving on both sides of the road being directly opposite each other.

- The communal bin store shall be designed to a size adequate to accommodate all bins associated with the development, and shall be relocated to the northern end of two-metre-wide section of footway

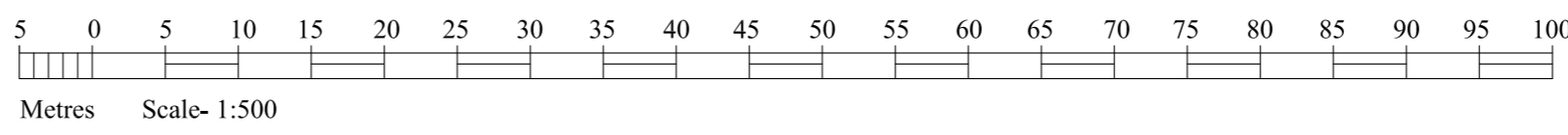
Reason: To ensure the timely provision of an appropriate means of access and servicing in the interests of road safety.

05. Hours of construction 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 only take place between the hours of 08:00 and 18:00 Mondays to Fridays, 08:00 to 12:30 on Saturdays and not at all on Sundays or the 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.

06. A plan showing the visibility splays from junction hereby approved with the A961 shall be submitted to and approved, in writing, by the Planning Authority (noting that these visibility splays have been calculated and assessed for the purposes of the planning decision). Thereafter and throughout the lifetime of the development, these defined visibility splays shall always be kept clear of any vegetation or planting, or any other physical obstructions, which would obscure visibility or exceed a height of one metre.

Reason: In the interest of road safety.



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