

Item: 4.1

Local Review Body: 24 August 2023.

Proposed Extension of House and Other Works and Erection of Boundary Wall (Part Retrospective) at Ferndale, Willow Road, Kirkwall (22/453/HH).

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 to refuse planning permission for the proposed extension of a house and other works and erection of a boundary wall (part retrospective) at Ferndale, Willow Road, Kirkwall (22/453/HH).

2. Recommendations

The Local Review Body is invited to note:

2.1.

That planning permission for the proposed extension of a house and other works and erection of a boundary wall (part retrospective) at Ferndale, Willow Road, Kirkwall, was refused by the Appointed Officer on 21 April 2023, 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 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 22/453/HH relates to the proposed extension of a house and other works and erection of a boundary wall (part retrospective) at Ferndale, Willow Road, Kirkwall.

3.2.

The Appointed Officer refused the planning application on 21 April 2023 on the following grounds:

3.2.1.

The proposed installation of PVC rainwater goods, composite door and standard modern windows in the historic building, loss of Welsh slate and removal of the two decorative chimney stacks would harm, and would not protect or enhance, Orkney's cultural heritage. The development is therefore contrary to Policy 1(x): Criteria for All Development, and Policy 2(i): Design, of Orkney Local Development Plan 2017.

3.2.2.

The proposed installation of PVC rainwater goods, composite door and standard modern windows in the historic building, loss of Welsh slate and removal of the two decorative chimney stacks would not preserve or enhance the architectural and historic significance of the cultural heritage asset or its setting, contrary to Policy 8: Historic Environment and Cultural Heritage of the Orkney Local Development Plan 2017, Supplementary Guidance: Historic Environment and Cultural Heritage, and Planning Policy Advice: Historic Environment (Topics and Themes) and Urban Conservation Areas Management Plan.

3.2.3.

The development would not preserve or enhance the character or appearance of Kirkwall Conservation Area. It is considered that approval of the development would result in the Planning Authority failing in its general duty under Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, as amended, that special

attention shall be paid to the desirability of preserving or enhancing the character or appearance of a conservation area in which development is proposed.

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. Further representations were received from Orkney Heritage Society and Development Management, and are attached as Appendices 5 and 6 respectively.

4.2.

In instances where a representation is received from an “interested party”, the applicant is afforded the opportunity to make comments on any representation received. No further comment was received from the applicant.

4.3.

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 Ferndale, Willow Road, Kirkwall, is due to be undertaken at 11:30 on 23 August 2023.

4.4.

The Local Review Body may uphold, reverse or vary the decision of the Appointed Officer. In the event that the decision is reversed, an indication of relevant matters, in respect of potential planning conditions, are as follows:

- Boundary wall construction and finish.
- Retention/protection of trees.
- Surface water drainage.
- Hours of construction work.

4.4.1.

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

4.5.

If the decision is reversed and the development is approved, it is proposed that powers be delegated to the Corporate Director for Strategy, Performance and Business Solutions, in consultation with the Planning Advisor and the Legal Advisor, to determine the necessary conditions, based on the relevant matters, agreed in terms of section 4.4 above.

4.6.

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 8 – Historic Environment and Cultural Heritage.
- Supplementary Guidance:
 - Historic Environment and Cultural Heritage.
- Planning Policy Advice:
 - Historic Environment (Topics and Themes).
 - Urban Conservation Areas Management Plan.
- Historic Environment Scotland – Managing Change in the Historic Environment Guidance Notes:
 - Roofs.
 - Windows.
 - Doorways.
 - Extensions.
- 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.

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

Karen Greaves, Corporate Director for Strategy, Performance and Business Solutions, extension 2202, Email karen.greaves@orkney.gov.uk

Hazel Flett, Clerk to the Local Review Body, Email hazel.flett@orkney.gov.uk

Susan Shearer, Planning Advisor to the Local Review Body, extension 2533, Email susan.shearer@orkney.gov.uk

Stuart Bevan, Legal Advisor to the Local Review Body, extension 2220, Email stuart.bevan@orkney.gov.uk

10. Appendices

Appendix 1 – Notice of Review (pages 1 – 17).

Appendix 2 – Planning Handling Report (pages 18 – 30).

Appendix 3 – Planning Services File (pages 31 – 50).

Appendix 4 – Decision Notice and Reasons for Refusal (pages 51 – 58).

Appendix 5 – Further representation from Orkney Heritage Society (pages 59 – 60).

Appendix 6 – Further representation from Development Management (pages 61 – 64).

Pages 1 to 58, can be viewed [here](#), clicking on “Accept and Search” and inserting the planning reference “22/453/HH”.

From: [sjrosie](#)
To: [Committees](#)
Subject: Re: Planning App 22.453.HH - Notice of Review
Date: 21 May 2023 14:08:30

Dear Angela

While making some comments, Orkney Heritage Society did not object to this application. The Society has gone on the basis that if something is not done about this building then it is in danger of being lost altogether, which would be a pity. We welcomed the applicant's willingness to retain most of the existing building, particularly the frontage and considered it better not to object than seeing this application turned down.

Regards

Spencer Rosie

----- Original Message -----

From: "Committees" <committees@orkney.gov.uk>
To: "Angela Kingston" <angela.kingston@orkney.gov.uk>
Sent: Thursday, 18 May, 23 At 10:21
Subject: Planning App 22.453.HH - Notice of Review

Classification: OFFICIAL

Planning App 22.453.HH

Proposed Extension of House and Other Works and Erection of Boundary Wall (Part Retrospective) at Ferndale, Willow Road, Kirkwall

Notice of Review

The above planning application was refused by the Appointed Officer on 21 April 2023.

The applicant has submitted a Notice of Review in terms of section 43A(8) of the Town and Country Planning (Scotland) Act 1997, as amended.

In terms of Regulation 10(b) of the Town and Country Planning (Schemes of Delegation and Local Review Procedures) (Scotland) Regulations 2013, as an interested party to the above application, I hereby notify you of the same.

Copies of any representations previously made with respect to the application will be considered by the Local Review Body when determining the review.

You may make further representations to the Local Review Body, which should be submitted to me, in writing, **no later than Wednesday 31 May 2023**. In writing includes by e-mail.

A copy of the Notice of Review and other documents related to the review can be inspected by following the link below and inserting the reference number "22/453/HH":

<https://planningandwarrant.orkney.gov.uk/online-applications/>

Angela Kingston

Clerk to the Local Review Body

Angela Kingston

Committees Officer

Strategy, Performance and Business Solutions

Orkney Islands Council, Council Offices, Kirkwall, Orkney, KW15 1NY

As I am currently working from home, please email in the first instance (angela.kingston@orkney.gov.uk or committees@orkney.gov.uk)

From: [Jamie Macvie](#)
To: [Committees](#)
Cc: [Hazel Flett](#); [Dean Campbell](#)
Subject: RE: Planning App 22.453.HH - Notice of Review
Date: 17 July 2023 17:46:47
Attachments: [22-453-HH - Development Management Interested Party .pdf](#)

Classification: NOT PROTECTIVELY MARKED

Please find attached representation from Development Management has an interested party, received no later than Tuesday 18 July as requested.

Regards
Jamie

Jamie Macvie MRTPI
Service Manager, Development Management
Planning and Community Protection
Neighbourhood Services and Infrastructure
Orkney Islands Council, Council Offices, Kirkwall, Orkney, KW15 1NY

Telephone 01856 873535 Extension 2529

Officers should only be contacted directly in relation to current applications. Pre-application advice, general enquiries, or enforcement or other correspondence regarding determined applications should be sent to planning@orkney.gov.uk

From: Committees <committees@orkney.gov.uk>
Sent: 05 July 2023 10:31
To: planning <planning@orkney.gov.uk>
Cc: Hazel Flett <Hazel.Flett@orkney.gov.uk>; Angela Kingston <angela.kingston@orkney.gov.uk>
Subject: Planning App 22.453.HH - Notice of Review

Classification: NOT PROTECTIVELY MARKED

Planning App 22.453.HH
Applicant: Ms Jeana Leslie
Proposed Extension of House and Other Works and Erection of Boundary Wall (Part Retrospective) at Ferndale, Willow Road, Kirkwall
Notice of Review

The above planning application was refused by the Appointed Officer on 21 April 2023.

The applicant has submitted a Notice of Review in terms of section 43A(8) of the Town and Country Planning (Scotland) Act 1997, as amended.

In terms of Regulation 10(b) of the Town and Country Planning (Schemes of Delegation and Local Review Procedures) (Scotland) Regulations 2018, as an interested party to the above application, I hereby notify you of the same.

Copies of any representations previously made with respect to the application will be considered by the Local Review Body when determining the review.

You may make further representations to the Local Review Body, which should be submitted to me, in writing, **no later than Tuesday, 18 July 2023**. In writing includes by e-mail. A copy of any representations provided will be sent to the applicant for comment.

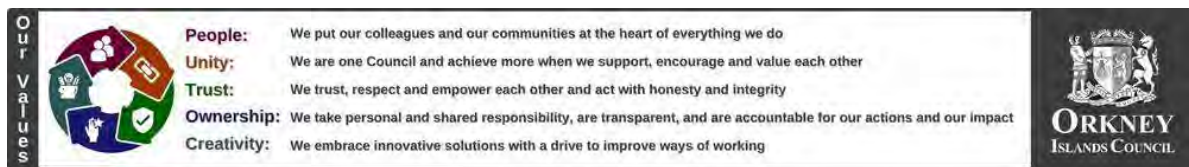
A copy of the Notice of Review and other documents related to the review can be inspected by following the link below and inserting the reference number "22/453/HH":

<https://planningandwarrant.orkney.gov.uk/online-applications/>

Sent on behalf of
Angela Kingston
Clerk to the Local Review Body

Hazel Flett
Service Manager (Governance)

Strategy, Performance and Business Solutions | Orkney Islands Council
Council Offices | Kirkwall | Orkney | KW15 1NY
Telephone: 01856 873535 Extension 2208 | Direct Dial: 01856 886463



22/453/HH

Proposed Extension of House and Other Works and Erection of Boundary Wall (Part Retrospective) at Ferndale, Willow Road, Kirkwall

Regulation 10(b)

Representation by Interested Party – Development Management

To consider the matters subject to review, it is important to reiterate the background to this case. The property is located within Kirkwall Conservation Area, and was subject to works carried out without the benefit of planning permission. The planning authority has offered a pragmatic approach throughout consideration of this case, but there will always naturally be a limit in concessions that can be made before the integrity of the planning system, and the consistency reasonably expected by the public, would be brought into undermined.

In relation to the chimney stacks, for example, is also important to bear in mind that it is not a decision of the should be required to be installed on the property. The property had chimney stacks historically, which as noted in the Planning Handling Report are a key feature of properties within the conservation area. Those chimney stacks were removed without planning permission, and so the property as it exists is unauthorised, and under the powers of the planning authority the of the owner could be required to reinstate those. The application should therefore be regarded as a (retrospective) application to remove chimney stacks, not an application to erect/reinstate chimney stacks. Whilst the outcome be the same, it is an important distinction, and the application should be considered as if the chimney stacks are still in place, and LRB should view the property as if the prominent decorative chimney stacks are in place and this is an application submitted to remove them, and in the context of the relevant historic environment policies whether it would be considered appropriate to allow them to be removed.

Related to the chimney stacks is the statement in the Notice of Review that the chimney stacks 'were demolished due to being in dangerous condition'. There is no evidence to support this claim, either by structural report or other evidence. The planning authority will always take a pragmatic approach when independent information such as a structural survey is submitted in support of an application. But it is not sufficient for an applicant to simply state that part of the structure is dangerous, without any evidence, to support an application to remove a building feature that is otherwise protected by policies.

In a broader sense, the agent for the application has suggested that a case could be made to demolish the property. Again, this has not been presented, and the demolition of the property has not been tested through the Conservation Area Consent process which is subject to statutory consultation with Historic Environment Scotland. Any such statement should therefore be disregarded and should not prejudice consideration of whether the works subject to the Notice of Review are appropriate. Any decision must assume that the house is being retained, and therefore considered as works to an existing property within the conservation area. There can be no leniency towards inappropriate works, on the basis a property owner has agreed to retain a building, when there is currently no alternative; the

default is that the building is retained, and therefore any alterations are considered in that context.

The Notice of Review also refers to the recent planning history. The planning authority position is that this demonstrates the pragmatism and fairness of the planning process to date. As set out in section 8.6. of the Planning Handling Report, the planning authority supported a large scale extension to the rear of the property, taking the consistent approach applied throughout all conservation areas that high quality extensions of appropriate materials can be allowed in the conservation areas, in combination with appropriate restoration of any traditional or historic parts of the building. The previous planning approval included an extension of high-quality materials to the rear of the property, in conjunction with the retention (reinstatement) of the chimney stacks and appropriate retention/relocation of the existing windows, and an appropriate finish to the roof.

The policy position is clear in the Planning Handling Report, set out in detail in relation to each of the proposed works. Multiple parts of the proposed development are contrary to policy. The implications in relation to statute are also set out, including that in making decisions, the planning authority has a duty under Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, as amended, to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area.

For the above reasons, and whilst there is no precedent set by any individual planning application, and each application must be considered on its merits, if the development was to be approved as submitted, it would be a detail and approach not supported in any of the conservation areas for approximately 15 years. An alternative means of delivering the development has already been approved. Approval could undermine that well-established consistency of approach taken throughout all the conservation areas.

Development Management

17 July 2023