

## Item: 4

**Planning Committee: 8 May 2024.**

### **Change of Use from Dental Practice to Boarding House (Class 7), Install Air Source Heat Pumps and Other External Alterations at 10 King Street, Kirkwall.**

**Report by Corporate Director for Neighbourhood Services and  
Infrastructure.**

## **1. Summary**

### **1.1.**

Planning permission is sought for the change of use from a dental practice to a boarding house (Class 7), together with the installation of replacement windows, doors, rainwater goods, rooflights and air source heat pumps at 10 King Street, Kirkwall. The development is acceptable in principle, in terms of design, its impact on the listed building and conservation area, roads and biodiversity. One objection has been received regarding parking, with implications for road safety. The objection is not of sufficient weight to merit refusal of the application. Accordingly, the application is recommended for approval.

Application Number:	23/142/PP.
Application Type:	Planning Permission.
Proposal:	Change of use from dental practice to a boarding house (Class 7), install replacement windows, doors, rainwater goods, install rooflights and air source heat pumps.
Applicant:	NHS Orkney.
Agent:	Stephen 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**

### **2.1. Roads Services**

Roads Services noted that the application fails to meet the requirements of Section 3.7 Parking Standards for Use Classes of the National Roads Development Guide, as no parking is being provided as required. However, it is recognised that NPF4,

Policy 13 'Sustainable Transport' would take precedence in this case. As such, Roads Services does not object to the application.

Whilst giving weight to NPF4 Policy 13 'Sustainable Transport', Roads Services notes that it must also be recognised that the cumulative effect of developments being approved with either no parking, or a reduced level of parking, within the town centre area is having a negative impact on the surrounding streets.

## 2.2 Environmental Health

No objection to the proposal subject to a condition relating to noise from the air source heat pumps.

## 2.3 Policy (Environment)

No requirement for biodiversity enhancement measures as there is no physical change to the footprint of the building proposed.

## 2.4 Scottish Water

No objections to the proposal.

## 3. Representations

### 3.1.

One objection has been received, from:

- Sheila Beaven, 8 King Street, Kirkwall, KW15 1JF.

### 3.2.

The objection relates to vehicle parking, both during construction of the development, and during its operation, and potential resulting impacts on road safety.

## 4. Relevant Planning History

### 4.1.

Reference	Proposal	Location	Decision
23/143/LB	Install replacement windows, doors and rainwater goods, install rooflights and air source heat pumps and strip and replace interior.		Pending decision

### 4.2.

The above application is for listed building consent, submitted in conjunction with the current planning application, for the same development.

## **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:
  - Policy 1 – Criteria for All Development.
  - Policy 3 - Settlements, Town Centres and Primary Retail Frontages.
  - Policy 8 – Historic Environment and Cultural Heritage.
  - Policy 14 - Transport, Travel and Road Network Structure.
- National Planning Framework 4:
  - Policy 7 – Historic Assets and Places.
  - Policy 13 – Sustainable Transport.
  - Policy 27 - City, town, local and commercial centres.

## **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 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.”

### 6.3.

Annex A continues as follows:

- The House of Lords' judgement also sets 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**

#### **7.1.1.**

Planning permission is sought for the change of use from a (former) dental practice (Class 1A) to a boarding house (Class 7), and associated external alterations including replacement windows and doors, installation of rooflights and air source heat pumps.

#### **7.1.2.**

The building is category B listed, and located within Kirkwall Conservation Area, as indicated in the Location Plan attached as Appendix 1 to this report. It is currently vacant.

#### **7.1.3.**

The description as 'boarding house' as taken from the list of accommodation types that fall under Class 7 of the Town and Country Planning (Use Classes) (Scotland) Order 1997, as amended, alongside hotel, guest house, and hostel. The proposed operational model for the premises was clarified by the agent as part of the planning process, and it has been confirmed that the building would operate as a single planning unit, not as eight separate accommodation units. None of the occupants would regard the premises as their primary place of residence, and occupants would be limited to NHS employees and agency staff on short-term visits. NHS Orkney would have responsibility for management of refuse bins, and for laundry and other servicing of the building.

#### **7.1.4.**

This operational model for the premises would be controlled by planning condition, which would be different than typical 'hostel' or 'boarding house' where individual rooms or beds could be offered on an open basis. That would not be the case, and the occupation would be visiting NHS Orkney staff only.

#### **7.1.5.**

In terms of the external alterations, proposed rooflights are in a typical arrangement within the roof, and a traditional specification. The air source heat pumps would be

screened. The existing windows, although of traditional design, are not historic and likely date from alterations to the building in the 1970s/1980s.

## **7.2. Principle**

### **7.2.1.**

The application site lies within Kirkwall Town Centre and, therefore, the Kirkwall settlement boundary. The Orkney Local Development Plan (OLDP) 2017 Policy 3 'Settlements, Town Centres and Primary Retail Frontages' states that, "development proposals within defined settlements will be supported where there will be no significant adverse environmental impacts or any adverse impacts on the amenity of surrounding users".

### **7.2.2.**

National Planning Framework 4 (NPF4) Policy 27 'City, town, local and commercial centres' states that, "development proposals that enhance and improve the vitality and viability of city, town and local centres, including proposals that increase the mix of uses, will be supported".

### **7.2.3.**

Although the Class 7 use would be restricted by planning condition to NHS Orkney staff only, it is nonetheless a use that would be typically directed to a town centre location. The proposal complies with OLDP Policy 3 'Settlements, Town Centres and Primary Retail Frontages' and NPF4 Policy 27 'City, town, local and commercial centres' and is therefore acceptable in principle.

## **7.3. Listed Building and Conservation Area**

### **7.3.1.**

The building is category B listed. In terms of impact on the special architectural and historic interest of the listed building, this will be principally assessed under application for listed building consent 23/143/LB. The site is located within Kirkwall Conservation Area, in a relatively prominent and street-fronting location.

### **7.3.2.**

OLDP Policy 8 'Historic Environment and Cultural Heritage' requires a proportionate approach to development impacting on the historic environment. Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states that the proposed development should have regard to the desirability of preserving or enhancing the character or appearance of the conservation area.

### **7.3.3.**

NPF4 Policy 7 'Historic assets and places' states that development proposals in or affecting conservation areas will only be supported where the character and appearance of the conservation area and its setting is preserved or enhanced.

#### **7.3.4.**

The main fabric of the building would be unaffected by the proposed development. The proposed rooflights are sited appropriately on the front elevation. The replacement windows would be timber, with a vertically sliding sash and case mechanism, and would match the existing glazing pattern. The front door would also be timber. Similarly, the replacement gate is to match the existing. The addition of heat pumps is common in the area, and these would be appropriately screened.

#### **7.3.5.**

The development would not adversely impact the character or appearance of the conservation area, and therefore complies with OLDP Policy 8, NPF4 Policy 7 and Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

### **7.4. Roads**

#### **7.4.1**

As stated by Roads Services and its consultation response, the proposal does not meet the requirements of Section 3.7 Parking Standards for Use Classes of the National Roads Development Guide, as no parking is being provided. However, NPF4 Policy 13 'Sustainable Transport' would take precedence and therefore Roads Services has not objected to the application. The site is in a town centre location and would be well served by public transport. In that regard, the proposed development complies with OLDP Policy 14 'Transport, Travel and Road Network Structure'.

#### **7.4.2.**

In terms of the objection received, this relates to the lack of parking provision during construction, and whilst the development is in operation, and the potential for vehicle manoeuvring to be affected as a result, with a potential risk to road safety. As noted above, no parking would be provided as part of the development, which in this location is acceptable in terms of policy. It is stated in correspondence from the agent that occupants of the premises would be for short visits and from outside Orkney, and therefore unlikely to have individual vehicles. In line with other developments, should there be any such requirement, public parking is available nearby. Furthermore, any parking offences within the public road would be a matter for Police Scotland.

#### **7.4.3.**

There are no unacceptable parking or road safety issues created by the proposed development, and the application is considered to comply with OLDP Policy 14 'Transport, Travel and Road Network Structure' and NPF4 Policy 13 'Sustainable Transport'.

## **8. Conclusion and Recommendation**

The development complies with policies 3, 8 and 14 of the Orkney Local Development Plan 2017, and policies 7, 13 and 27 of National Planning Framework 4 as well as Section 64 of the Planning (Listed Buildings and Conservation Areas)



(Scotland) Act 1997. The proposal is acceptable in principle, would not adversely impact the character or appearance of the conservation area or the special interest of the listed building, and is acceptable with regards parking and road safety. The objection is not of sufficient weight to merit refusal. Accordingly, the application is recommended for approval, subject to the conditions attached as Appendix 2 to this report.

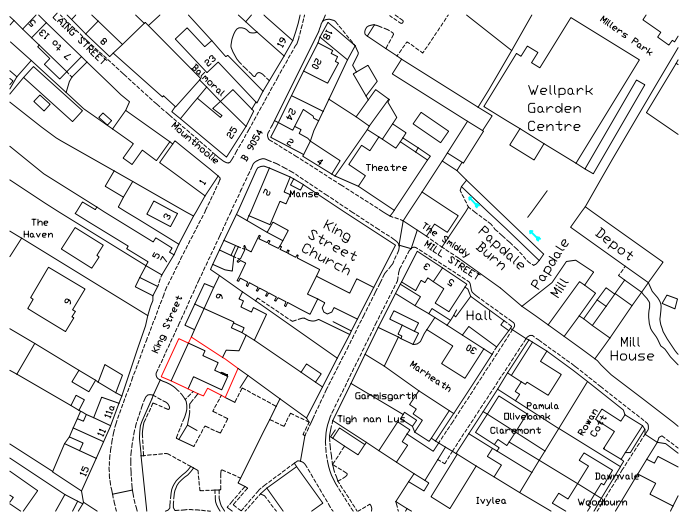
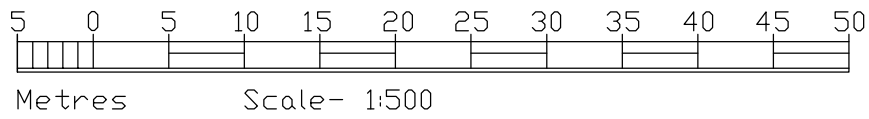
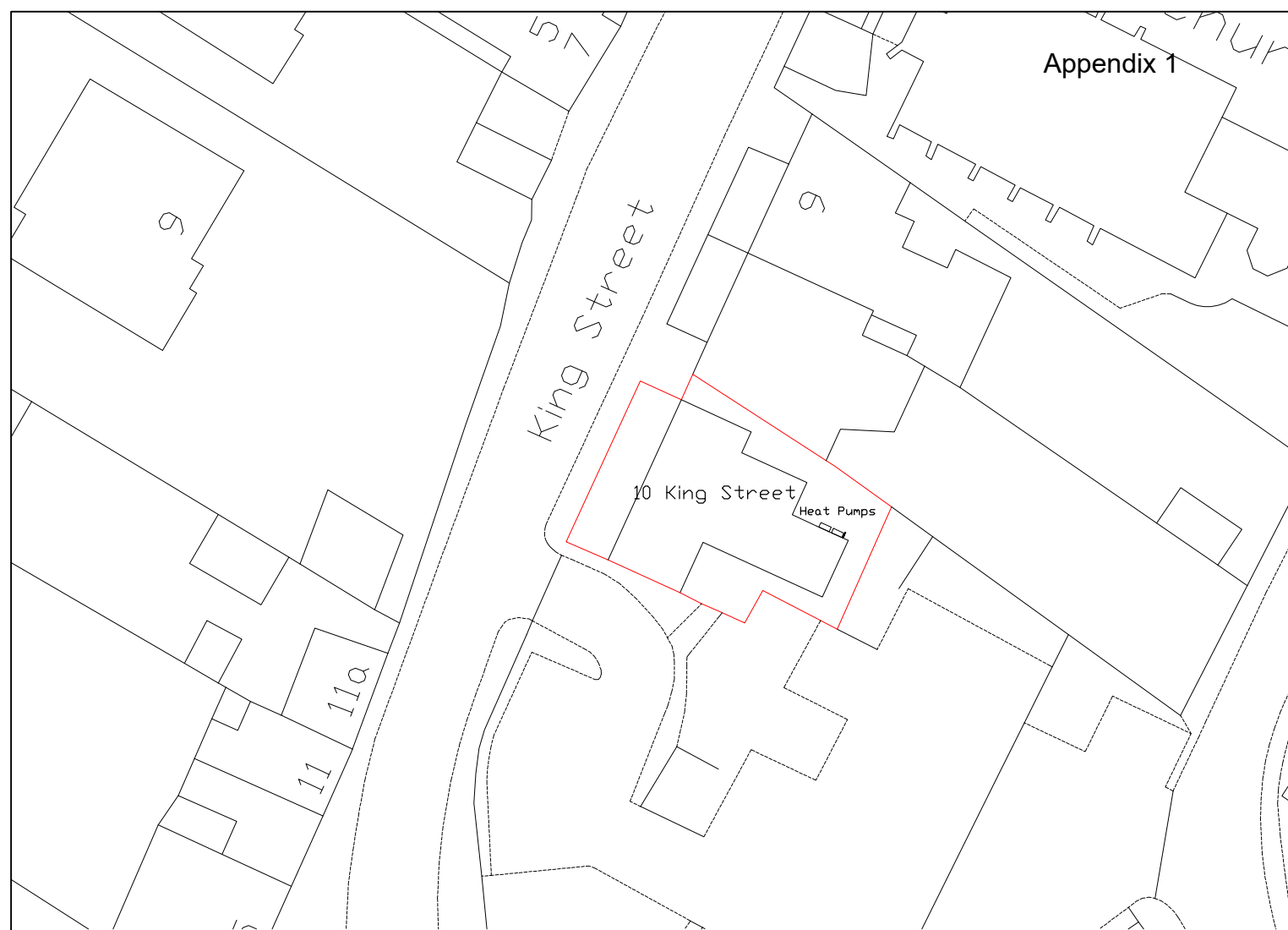
## **9. Contact Officer**

Murray Couston, Planning Officer, Email [murray.couston@orkney.gov.uk](mailto:murray.couston@orkney.gov.uk)

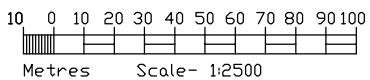
## **10. Appendices**

Appendix 1: Site Plan.

Appendix 2: Planning Conditions.



Change of use from dental practice to a boarding house (Class 7), install replacement windows, doors and rainwater goods, and install rooflights and air source heat pumps' At 10 King Street, Kirkwall, KW15 1JF.  
 For NHS Orkney.  
 Plan Size A4.  
 Dwg No 1640/1/P and LB Rev A



## 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. The property shall operate as a single planning unit only, wholly under the management and operation of NHS Orkney. The accommodation shall be occupied by visiting staff for the requirements of NHS Orkney only, and the rooms shall not be let or occupied by any other party, publicly or privately. The rooms shall not operate as separate planning units.

Reason: To protect the residential amenity of the surrounding area.

03. The air source heat pumps hereby approved shall be screened as specified in accordance with the approved drawings. The screening shall be installed prior to operation of any unit or no later than six weeks after the installation date of the first unit, whichever is sooner, and thereafter shall be retained in situ throughout the lifetime of the development.

Reason: To ensure the screening of incongruous plant and to preserve the character, appearance and setting of the listed building.

04. 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 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.