

Item: 3

Planning Committee: 4 December 2024.

**Change of Use from Part of Car Park to Parking for Haulage Vehicles
(Retrospective) at Hoy Hotel, Hoy.**

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

1. Overview

- 1.1. This report considers an application for the change of use of part of a hotel car park to parking for haulage vehicles (retrospective) at Hoy Hotel, Hoy. One letter of objection has been received. The development complies with relevant policies, and objections and other material considerations do not merit refusal of the application.

Application Reference:	24/012/PP.
Application Type:	Planning Permission.
Proposal:	Change of use from part of car park to parking for haulage vehicles (retrospective).
Applicant:	John MF Groat and Sons.
Agent:	AR Structural Design Ltd.

- 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 retrospective planning permission in respect of the change of use from a car park to parking for haulage vehicles at Hoy Hotel, Hoy, subject to the conditions detailed in Appendix 1 to this report.

3. Consultations

Roads Services

3.1. No objection to the proposal.

Environmental Health

3.2. No objection to the proposal but have noted that tarmac or concrete for the parking area would alleviate issues regarding dust. A condition has been attached with regards to this.

Development and Marine Planning (Environment)

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

4. Representations

4.1. One valid representation (objection) has been received from:

- Mr S Tizzard, Treetops, Hoy.

4.2. The representation is on the following grounds:

- Impact on amenity including from noise, vibrations, air pollution, loss of daylight.
- Limit access to the property.
- Impact on biodiversity.

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

5. Relevant Planning History

5.1. No relevant planning history.

6. Relevant Planning Policy and Guidance

6.1. The full text of the Orkney Local Development Plan 2017 and supplementary guidance can be read on the Council website [here](#).

6.2. National Planning Framework 4 can be read on the Scottish Government 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 3: Biodiversity.
- Orkney Local Development Plan 2017:
 - Policy 1: Criteria for All Development.
 - Policy 3: Settlements, Town Centres and Primary Retail Frontages.
 - 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. As noted in section 1 above, retrospective planning permission is sought for the change of use from part of a car park to parking for haulage vehicles at Hoy Hotel, Hoy, as indicated in the location plan attached as Appendix 2 to this report (outlined in red, with other land in the applicant's ownership outlined in blue).
- 8.2. The requirement for planning permission follows consultation with Development Management by the Driver and Vehicle Standards Agency, for the use of the application site as an operating centre; an operating centre is where a goods vehicle is normally kept when not in use. An operating centre must meet certain conditions, including confirming its status in terms of planning permission. The operating centre is already in use, hence the current planning application is retrospective. The part of the car park is indicated as providing adequate space for an articulated tractor unit and two trailers.

Principle

- 8.3. The site is located within Lyness settlement boundary. Policy 3 - Settlements, Town Centres and Primary Retail Frontages of the Local Development Plan 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.
- 8.4. The site is currently in use as a hotel car park with no restrictions on vehicle numbers or movement. The proposal would regularise the use of part of the car park for a commercial vehicle. As noted above, this is where the vehicle and trailers would be kept when not in use, and not a place where commercial vehicles would otherwise operate in or from. In essence, the basic function of the site would not be significantly altered, as vehicle parking. The proposal is acceptable in principle, subject to compliance with further policies.

Access and Parking

- 8.5. Policy 14 of the Local Development Plan allows development only where the development is well connected to the existing network of roads, paths and cycleways and would not create a barrier to future development. Development should be able to be safely and conveniently accessed by service, delivery and other goods vehicles, and design should cause minimal impact on the character of a site and the surrounding area. Roads Services have confirmed no objection to the proposal in terms of design and layout, and the site is easily accessed from the

B9047. The development would not obstruct lawful access to the neighbouring property. The proposal complies with Policy 14 of the Local Development Plan.

Residential Amenity

- 8.6. Policy 1 of the Local Development Plan 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.
- 8.7. The residential property 'Treetops' is located on the western boundary of the proposal site, and an objection has been received from the occupier primarily on amenity grounds. Environmental Health has been consulted and offered no objection, subject to comment regarding the risk of dust from the current ground material and that the parking area should be a sealed surface; a condition would be attached to this effect.
- 8.8. A condition would also be attached to limit the hours of operation from 06:00 to 19:00 alongside a condition relating to storage of material on the site. It can be noted that Environmental Health also has powers under separate legislation to investigate any reported noise nuisance from the site.
- 8.9. The development as submitted includes the enclosure of the site with a 1.8 metre timber fence. Any such fence is a balance of providing screening to benefit a neighbouring property, whilst ensuring the fence itself does not become oppressive on the boundary at that scale. Therefore, a condition would be attached, requiring construction of a fence but to be no higher than 1.2 metres.
- 8.10. Subject to conditions, including in relation to the specific amenity issues raised in the representation, it is not considered that there would be any unacceptable additional impact on neighbouring properties than exists in relation to the hotel parking, and the development is considered compliant with Policy 1 of the Local Development Plan.

Biodiversity

- 8.11. Initial consultation with the Environmental Planner required additional measures to be submitted for biodiversity enhancement; accordingly, the development was updated, and some planters would be included within the site, which is adequate to meet the requirements of Policy 3 of NPF4 with regards biodiversity enhancement.

9. Conclusion

- 9.1. The proposed development complies with Policies 1, 3 and 14 of the Orkney Local Development Plan 2017 and Policy 3 of NPF4. The proposal is acceptable in principle, and with regards impact on roads, residential amenity and biodiversity. 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

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

Appendices

Appendix 1 – Planning Conditions.

Appendix 2 – Location Plan.

Appendix 1.

01. Within six months of the date of this decision notice, the site shall be finished with bituminous or concrete surface. Prior to the construction of the surface, full details of proposed materials and extent of surfacing shall be submitted to and approved, in writing, by the Planning Authority, and thereafter surfacing shall be carried out wholly in accordance with these approved details.

Reason: To protect the amenity of neighbouring properties.

02. Throughout the lifetime of the development hereby approved, surface water shall be managed in accordance with the principles of Sustainable Drainage Systems (SuDS) and the guidance set out in CIRIA's SuDS Manual C753. Requisite surface water drainage measures shall be operational prior to the development being brought into use and shall be maintained as operational thereafter and throughout the lifetime of the development.

All surface water shall be contained within the application site and shall be managed to avoid flow into any adjacent road or other land, including from the surfacing specified in condition 01.

Reason: To ensure appropriate management of surface water drainage, in accordance with Policy 13B 'Sustainable Drainage Systems (SuDS)' of the Orkney Local Development Plan 2017, NPF4, and to protect road safety.

03. Notwithstanding drawing 2811/23, no permission is approved for the specified fence of 1.8 metres in height. Within six months of the date of this decision notice, a fence of 1.2 metres in height shall be erected. Prior to construction of the fence, full details of the design and extent of the fence shall be submitted to and approved, in writing, by the Planning Authority, and thereafter the fence shall be constructed wholly in accordance with these approved details.

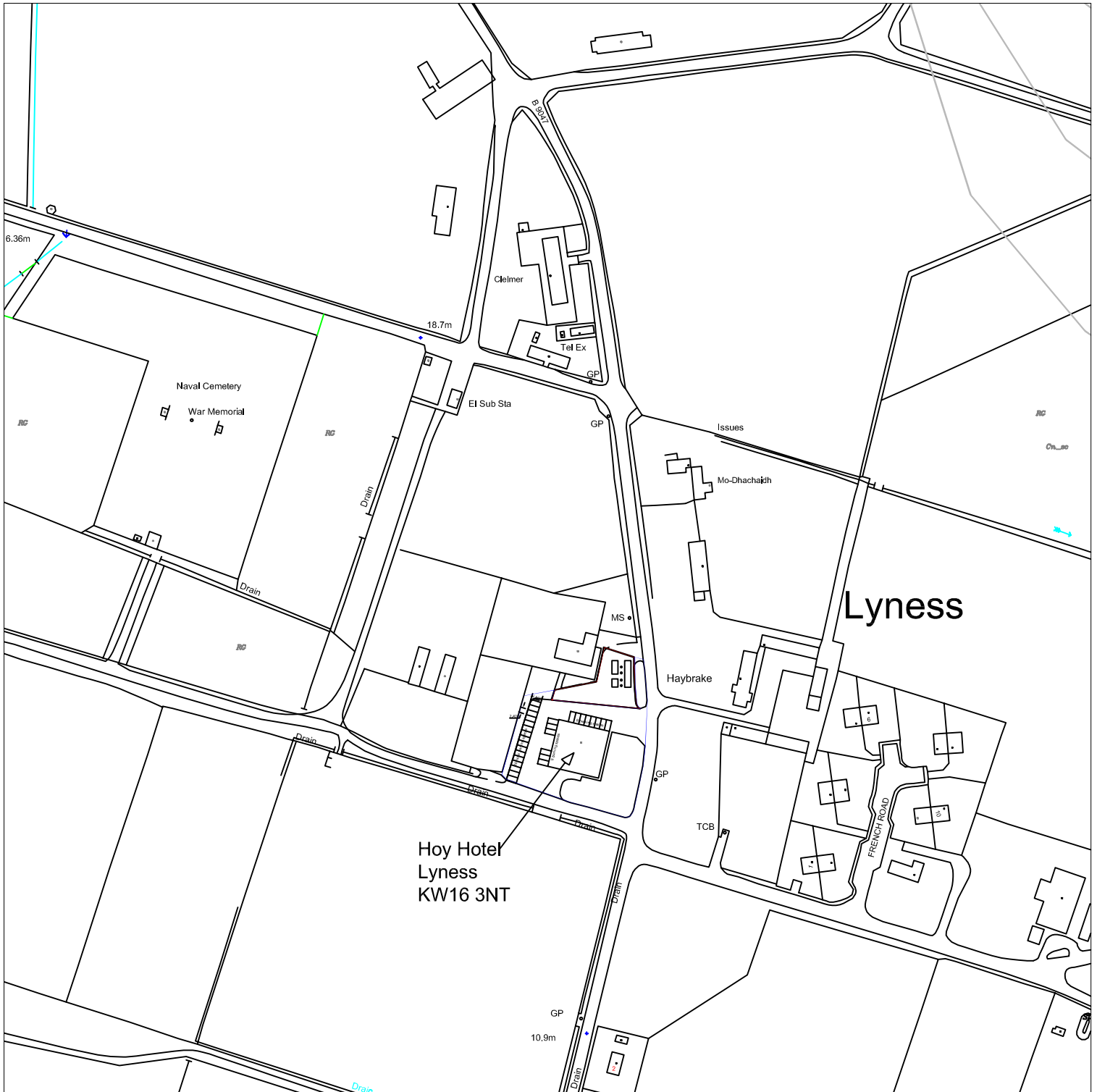
Reason: To protect the amenity of neighbouring properties.

04. Vehicle movements to or from the development hereby approved shall not be carried out between the hours of 19:00 and 06:00.

Reason: To protect the amenity of neighbouring properties from excessive noise/disturbance associated with the development.

05. The development hereby approved is for keeping/parking vehicles and trailers only, and no other operations shall be carried out within the site, including storage or transfer of materials.

Reason: To protect the amenity of neighbouring properties.



0 20 40 80 120 160 200m

LOCATION PLAN SCALE 1:2500 metres

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Ordnance Survey 0100031673