

Item: 3

Planning Committee: 26 March 2025.

Proposed Change of Use from Three Flats to Boarding House (Class 7) and Installation of Replacement Windows and Doors and Air Source Heat Pump at 3 Castle Street, Kirkwall.

Report by Corporate Director for Neighbourhood Services and Infrastructure.

1. Overview

1.1. This report considers the proposed change of use of three flats to a boarding house (Class 7) and to install replacement windows and doors and an air source heat pump at 3 Castle Street, Kirkwall. The property is within the Kirkwall settlement boundary, the designated Town Centre, and Kirkwall Conservation Area. One objection has been received, regarding the growth of short-term let properties in the area, impact on housing, and impact on amenity. The development complies with relevant policies, and the objection and other material considerations do not merit refusal of the application.

Application Reference:	24/465/PP.
Application Type:	Full Planning Permission.
Proposal:	Change of use from three flats to a boarding house (Class 7), install replacement windows and doors and install air source heat pump.
Applicant:	John McGregor Construction.
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 change of use from three flats to a boarding house (Class 7), install replacement windows and doors and install an air source heat pump at 3 Castle Street, Kirkwall, subject to the conditions detailed in Appendix 1 to this report.

3. Consultations

Roads Services

- 3.1. “The application as submitted fails to meet the requirements of Section 3.7 Parking Standards for Use Classes of the NRDG, as insufficient parking is being provided as part of this development proposal. However, it is recognised that NPF4, Policy 13 Sustainable Transport would take precedence on this occasion, therefore in this instance Roads Services do not object to planning permission being granted.

Whilst giving recognition to NPF4, Policy 13 Sustainable Transport, it must also to be recognised that the cumulative effect of developments being granted planning permission with either no parking, or a reduced level of parking within the town centre area is already having a negative impact on the surrounding streets.”

Scottish Water

- 3.2. “Scottish Water has no objection to the proposal.”

Orkney Heritage Society (East)

- 3.3. “OHS welcomes the bringing back into use of this large town centre building and has no objection to this application.”

Engineering Services

- 3.4. “The proposed development is not indicated by SEPA mapping to be at risk of surface water or coastal flooding. Scottish Water modelling of surface water which accounts for climate change and restrictions in the sewer system predicts minor overland flow on Castle Street. The information provided indicates that the entrances from street level have steps to the internal floor level. The likelihood of internal flooding and property damage is therefore considered to be very low.

However, the modelling outputs from Scottish Water predict that safe access and egress from the property to further afield would be cut off at Junction Road, Broad

Street and Albert Street. While this proposed change of use satisfies SEPA LUPS-GU24 vulnerability guidance (change of use to equal or less vulnerable use), it is considered that the occupants would be at higher risk of being cut off by flooding than if the building were permanently occupied by someone familiar with the area.

It is therefore recommended that the applicant puts in place measures to ensure that the safety of guests is considered in the event of extreme rainfall events, which are widely predicted to become more frequent and severe. Steps which could be considered include (not exhaustive):

- Subscribing to SEPA Floodline alerts and Met Office Weather Warning alerts by phone
- Ensuring that phone numbers for guests are taken so they can be made aware if/when local flooding is expected
- Inclusion of flood risk information in a guest information pack.”

4. Representations

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

- Leslie Sinclair, 31A Broad Street, Kirkwall, KW15 1DH

4.2. Representations are on the following grounds:

- Rapid growth of short term let properties in the area.
- Impact on range and tenure of local housing.
- Impact on residential amenity.
- Users of short terms lets impeding pedestrian and vehicular access.
- ‘Over-occupation’ of local businesses.

5. Relevant Planning History

5.1. Planning applications

Reference	Proposal	Location	Decision	Date
23/316/PP.	Convert three flats to a house.	3 Castle Street, Kirkwall, KW15 1HE.	Grant Subject to Conditions.	01.11.2023.

Reference	Proposal	Location	Decision	Date
19/390/PP.	Change of use from shop (Class 1) and office (Class 4) to 3 flats and install 2 air source heat pumps (part retrospective).	3 Castle Street, Kirkwall, KW15 1HE.	Grant Subject to Conditions.	20.01.2020.
18/378/PP.	Change of use from a shop and cafe to shop (Class 1) and office (Class 4).	3 Castle Street, Kirkwall, KW15 1HE.	Grant.	30.11.2018.
03/569/PPF.	Change of use to music school with associated bar and shop.	1-3 Castle Street, Kirkwall.	Grant Subject to Conditions.	30.03.2004.
85/314/PPF.	Change of use from office to social club with bar facilities.	3 Castle Street, Kirkwall.	Grant.	11.02.1986.

- 5.2. Planning permission 23/316/PP was approved in November 2023, but was not initiated, and so whilst an extant permission, can be disregarded in terms of the current use of the premises.
- 5.3. Previously, planning permission 19/390/PP was approved in January 2020, to convert the building to three flats. That application was part-retrospective by virtue of the air source heat pumps that had been installed on the north elevation of the building. When approved, on the basis some of the works included in that proposal were already implemented, the planning permission overall was regarded as implemented and remains extant. Therefore, whilst never fitted out or occupied as flats, that is the current lawful planning use, and the current application is for a change of use from flats to a boarding house.

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 (NPF4):
 - Policy 7. Historic assets and places.
 - Policy 13. Sustainable transport.
 - Policy 14. Design, quality and place.
 - Policy 22. Flood risk and water management.
 - Policy 30. Tourism.
 - Orkney Local Development Plan 2017 (OLDP):
 - Policy 1: Criteria for All Development.
 - Policy 2: Design.
 - Policy 3: Settlements, Town Centres and Primary Retail Frontages.
 - Policy 4: Business, Industry and Employment.
 - Policy 8: Historic Environment and Cultural Heritage.
 - Policy 13: Flood Risk, SuDS and Waste Water Drainage.
 - 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

Background and Proposal

- 8.1. Planning permission is sought for a change of use from three flats to a boarding house (Class 7), in conjunction with installation of replacement windows and doors and an air source heat pump, as indicated in the Location Plan attached as Appendix 2 to this report. The site is located within Kirkwall, in the defined Town Centre, and in Kirkwall Conservation Area. Being three storeys, the building is prominent in the street and in a key historic setting, in the setting of listed buildings including the category 'A' listed St Magnus Cathedral.
- 8.2. The description 'boarding house' relates to the various functions described within Use Class 7 'hotels and hostels' of The Town and Country Planning (Use Classes) (Scotland) Order 1997, as amended, which includes hotels, hostels, guesthouses, and boarding houses. In this case, the description relates to the proposed model of operation. The development is designed as visitor accommodation, comprising ten rooms, each with an ensuite shower room. The design includes no reception area and would utilise self-check-in, and does not rely on a permanent staff presence, (so is not a hotel or guest house), and there would be no communal lounge, laundry or kitchen facilities (so is not a hostel). Therefore, the description is boarding house, as ten rooms within a single premises.

Principle

- 8.3. Use Class 7 is a commercial use, in terms of Policy 4 (iii) of the Local Development Plan, which supports the redevelopment of existing sites within the settlement boundary.
- 8.4. The proposal is within Kirkwall Town Centre and would support its vibrancy, vitality and viability, in accordance with the Town Centre First Principle of Policy 3A of the Local Development Plan.
- 8.5. Policy 30 of NPF4 supports new tourism-related developments, including accommodation. Including in relation to the submitted objection regarding the provision of additional tourist accommodation, the development is acceptable in principle.
- 8.6. In terms of the loss of permanent housing (flats) for the provision of tourist accommodation, this is raised in the objection and is a material planning consideration. There is no adopted policy which specifically prohibits the conversion of residential property to short-term lets or visitor accommodation, and each case must be considered in terms of the amenity impacts and other circumstances relating to that property. In this case, whilst the current lawful planning use is flats, as noted above this has not been brought into use and the last active use of the premises was a shop on the ground floor, and a café and music rooms on the upper floor. On balance, the loss of approved three flats is not of sufficient weight to merit refusal of the application for visitor accommodation.

Historic Environment

- 8.7. In addition to the change of use, it is proposed to install replacement windows and doors and install an air source heat pump. The proposed window specification is appropriate, in terms of material, finish, glazing pattern and opening mechanism, and consistent with other new and replacement windows installed in historic properties in the conservation area. The air source heat pump would be suitably enclosed. These works would preserve and enhance the character and appearance of the conservation area, and it is considered that the historical value of the assets and their setting would be preserved and enhanced, in accordance with Policy 7(e) of NPF4 and Policies 1 and 8A of the Local Development Plan.

Parking

- 8.8. Roads Services notes that the development would provide insufficient car parking spaces, based on the requirements of the National Roads Development Guide.

However, no objection is confirmed, considering that the area is well-served by sustainable transport modes, which accords with Policy 13(e) of NPF4 and Policy 14B of the Local Development Plan. Whilst this conclusion of no objection can be reached by Roads Services, it is noted that such development will have incremental impact on parking demand in the town centre.

- 8.9. The objection raises the issue of the users of short-term lets impeding pedestrian and vehicular access. As confirmed above, Roads Services has confirmed no objection in relation to the parking demand generated by the proposed use, noting the town centre location and proximity to public transport, and no unacceptable impact on pedestrian or vehicular access is anticipated.

Residential Amenity

- 8.10. The proposed change of use would be unlikely to have any significantly different impact on neighbouring properties than the current approved use as three flats (or the previous use as a café and music rooms). As the window openings are existing, no additional overlooking or privacy issues would be created. Including in relation to the amenity concerns raised in objection, on that basis there would be no unacceptable amenity concerns. It is also relevant that the entire premises would be converted to the boarding house use and would not create a situation of permanent accommodation and visitor accommodation at the same premises, which could lead to new disturbance or amenity issues.
- 8.11. The proposed use would contribute positively to the living component of the 20-minute neighbourhoods within the settlement where it accords with Policy 15 of NPF4. Notwithstanding the objection which includes ‘over-occupation’ of local businesses, shops, food and drink premises, other local businesses may benefit from those occupying the proposed development.

Flood Risk

- 8.12. The site is not indicated as at risk of flooding in Scottish Environment Protection Agency mapping and Scottish Water modelling of surface water shows minor overland flow on Castle Street. The existing level difference between the street and internal floor level would further reduce flood risk. It is anticipated that in extreme rainfall events, access and egress could be affected at neighbouring streets and it is therefore recommended by Engineering Services that the applicant implements measures to ensure that the safety of guests is considered in the event of any such extreme rainfall events. This would be noted on the decision notice by informative. The proposed development would not create additional risk of flooding and complies with Policy 13 of the Local Development Plan and Policy 22 of NPF4.

9. Conclusion

- 9.1. The proposed development complies with Policies 1, 2, 3, 4, 8, 13 and 14 of the Orkney Local Development Plan 2017, and Policies 7, 13, 14, 22 and 30 of National Planning Framework 4. The proposal is acceptable in principle, and in terms of design, impact on the historic environment, residential amenity, and flood risk. There are no material considerations including those raised in the objection 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.

1. 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.

2. Occupation of (any part of) the boarding house hereby approved shall not exceed a maximum of 28 days by any person or group of persons, between the dates of 1 March and 31 October (inclusive) in any calendar year. To facilitate the enforcement of such control, the operators of the boarding house shall throughout the lifetime of the development maintain and shall make available to the Planning Authority, if requested, a register of occupiers of the boarding house to which this planning permission relates.

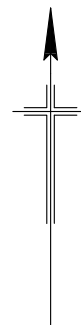
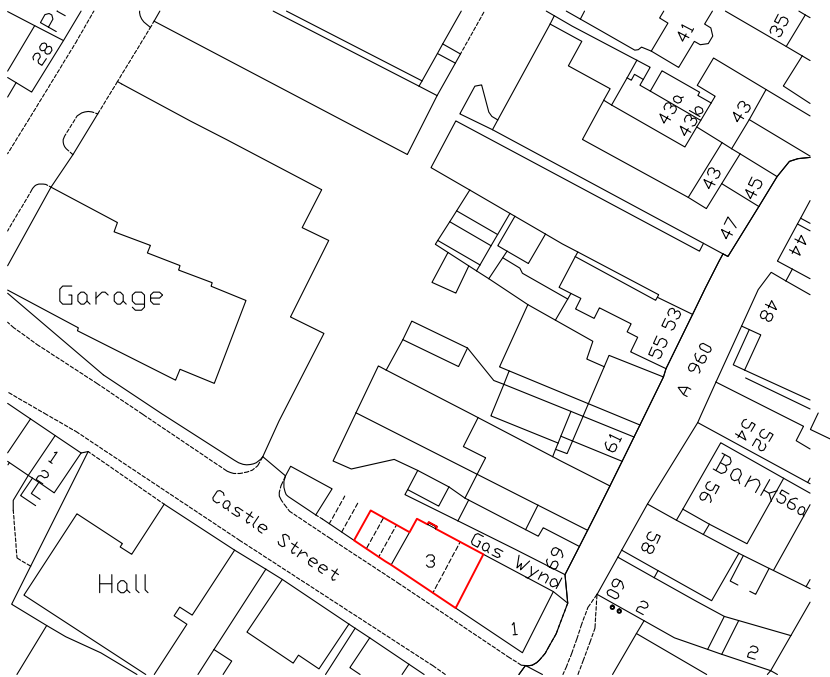
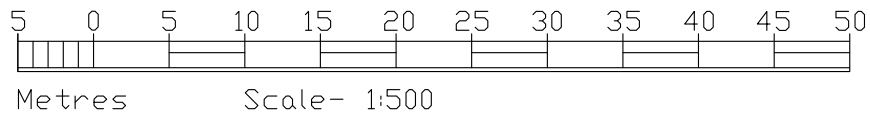
Reason: To ensure that the boarding house is occupied only on a short-term basis.

3. No development shall commence until full details of timber housing to enclose the air source heat pump has been submitted to and approved, in writing, by the Planning Authority. The development hereby approved shall not be brought into use until the air source heat pump has been enclosed, wholly in accordance with approved details. The housing shall thereafter be retained throughout the lifetime of the development.

Reason: To ensure screening of incongruous plant and preserve the character and appearance of the conservation area.

4. The development hereby approved shall not be brought into use until the replacement doors hereby approved have been installed, wholly in accordance with approved details.

Reason: To secure replacement of parts of the building which do not contribute positively to the character or appearance of the conservation area, in conjunction with the change of use. [The existing windows do not harm the character or appearance of the conservation area, so their replacement has a neutral impact.]



Change of Use from Flats to Boarding House.
 At 3 Castle Street, Kirkwall, KW15 1DF.
 Plan Size A4
 Dwg No 1720/1/P.

