

Item: 7

Planning Committee: 14 February 2024.

Erect a toilet block at Twatt Airfield/HMS Tern, Birsay.

Report by Corporate Director for Neighbourhood Services and Infrastructure.

1. Summary

1.1.

Planning permission is sought to erect a toilet block at HMS Tern, Birsay. The development is acceptable in principle and location. Two objections have been received relating to design, siting, and soakaway from the septic tank. The objections are not of sufficient weight to merit refusal of the application. Accordingly, the application is recommended for approval.

| | |
|---------------------|--|
| Application Number: | 23/347/PP. |
| Application Type: | Planning permission. |
| Proposal: | Erect a toilet block. |
| Applicant: | Birsay Heritage Trust. |
| Agent: | Eric Grieve, East Nearhouse, Birsay, KW17 2ND. |

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. Islands Archaeologist

Initially objected to the proposal on design and siting but following a site visit and amended drawings, no objection.

2.2. Roads Services

No objections to the proposal.

2.3. Environmental Health

No objections to the proposal.

2.4. Development and Marine Planning (Biodiversity)

No objections subject to a condition relating to biodiversity enhancement measures.

2.5. Scottish Water

No objections to the proposal.

3. Representations

3.1.

Two objections have been received, from:

- Mr John Mickleborough, Broadmeadow, Bryameadow Road, Sandwick, KW17 2JH
- Kenny and Mrs Pauline Sinclair, Newhall, Bryameadow Road, Sandwick, KW17 2JH.

3.2.

The objections relate to concerns regarding design, siting, and soakaway.

4. Relevant Planning History

No relevant planning history.

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 2 – Design.
 - Policy 8 – Historic Environment and Cultural Heritage.
 - Policy 13 – Flood Risk, SuDS and Waste Water Drainage.
 - Policy 14 – Transport, Travel and Road Network Structure.
- National Planning Framework 4:
 - Policy 3 – Biodiversity.
 - Policy 7 – Historic Assets and Places.

- Policy 14 – Design, Quality and Place.
- Policy 30 – Tourism.

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 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.

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

Planning permission is sought to erect a toilet block at HMS Tern, Birsay, in the location indicated on the Location Plan attached as Appendix 1 to this report. The proposal includes an access ramp and a septic tank. The site forms part of the former RNAS Twatt airfield, built during World War Two. The complex of remaining buildings includes a category C listed air raid shelter adjacent, and the former cinema.

7.2. Principle

The proposal would result in the introduction of toilet facilities at an important historic site and would add functionality and accessibility for tours run by Birsay Heritage Trust. It should also be noted that the permission would be for a temporary period of three years to allow the Trust time to plan for a permanent building. The addition of an amenity block at this location is acceptable in principle, subject to compliance with other policies.

7.3. Design and Historic Environment

7.3.1.

The proposed toilet block would be horizontally timber clad and finished in an olive green paint to closely match the historic colour used in wartime sites, with a similar historic reference used for downpipe colour. The block would measure approximately 2.5 metres in height and 4.5 metres in length. This colour scheme is an amendment to the external finishes proposed initially, and addresses points raised in representations.

7.3.2.

The block would be sited to the north of the former cinema, with the category C listed air raid shelter located immediately to the north. In discussion with the applicant, it was noted that the proposed location was in part to utilise existing infrastructure, and so the structure is partly hidden from view by the cinema. In addition to the proposed colours matching the historic match palette, the block is of a modest size that would not be prominent in the landscape.

7.3.3.

The proposal raises no concerns with regards to design, siting, or its impact on the setting of the listed building. The proposal complies with Local Development Plan Policies 2 and 8 and NPF4 Policies 7 and 14.

7.4. Biodiversity

Biodiversity measures appropriate to the nature and scale of the development have been included. A condition would be attached to ensure these are implemented. The proposal complies with Policy 3 of NPF4.

7.5. Drainage

Policy 13C of the Local Development Plan provides for the use of a private sewerage system where there is limited public sewer connection, provided there would be no detrimental impacts including cumulative effects to the built and natural environment or surrounding uses. Percolation tests and a drainage calculation have been submitted. A condition would be attached requiring detailed drainage design to be submitted and approved prior to commencement of development and completed prior to the toilets being brought into use. The design would also be subject to authorisation by SEPA. These safeguards are considered to address concerns raised regarding impact of the drainage on existing buildings. The proposal complies with Policy 13 of the Local Development Plan.

7.6. Access

Roads Services has no objection to the proposal. The site is accessed by an existing road and the addition of two car parking spaces raises no road safety concerns. The proposal complies with Policy 14 of the OLDP.

8. Conclusion and Recommendation

The development complies with policies 1, 2, 8, 13 and 14 of the Orkney Local Development Plan 2017, and Policies 3, 7, 14 and 30 of National Planning Framework 4. The proposal is acceptable in principle, in terms of design, impact on the historic environment, drainage and access. Objections raised on grounds of design, siting, and soakaway from the septic tank have been adequately addressed, and do not merit refusal of the application. 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.

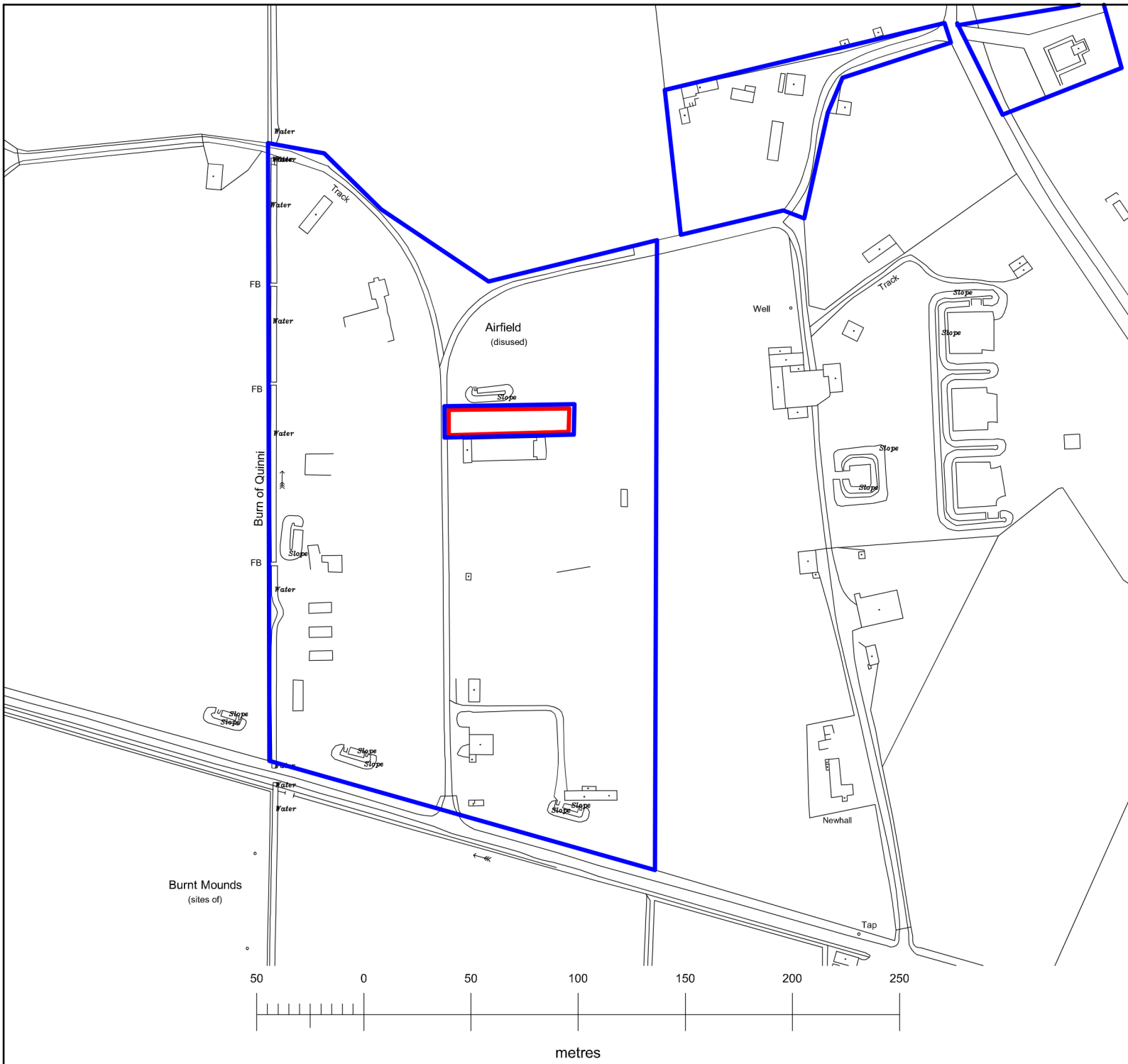
10. Appendices

Appendix 1: Site Plan.

Appendix 2: Planning Conditions.

Appendix 1

Ordnance Survey
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| 1 | Initial Drawing | 14/08/23 |
|---|-------------------------|---------------------|
| Rev | Description | Date |
| | | |
| Project HMS Tern Toilet Block, Birsay Heritage Trust | | |
| Drawing Location Plan | | |
| Drawn By E. Grieve | Checked By M. Grieve | Approved By - |
| Drawing No. TERN01 | Scale 1:2500 | Date August 2023 |

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. Planning permission is hereby approved for a temporary period only and shall cease to have effect three years from the date of decision. At the end of the period of permission, the building(s) shall be removed, the use discontinued, and the land restored to its former condition within three months of this date.

Reason: To ensure that the temporary development is timeously removed in the interests of the visual amenities of the area.

03. No development shall commence until full details of the waste water system are submitted to, and approved in writing by, the Planning Authority. Thereafter, the development shall be completed wholly in accordance with these details prior to the toilets being brought into use.

Reason: In the interests of environmental protection and to accord with Policy 13C 'Waste Water Drainage' of Orkney Local Development Plan 2017.

04. The biodiversity measures described in the submitted Biodiversity form (dated 4 November 2023) and shown on plan TERN06, shall be implemented in full no later than the first planting season following installation of the waste water treatment system and soakaway. The biodiversity measures shall be permanently managed and retained in accordance with the approved details, including replacement of any planting that does not survive, is removed, or is damaged, unless otherwise agreed, in writing, with the Planning Authority.

Reason: To ensure biodiversity measures are implemented as required by Policy 3 'Biodiversity' of National Planning Framework 4.