

Item: 4.2

Local Review Body: 4 October 2023.

Proposed Conversion of Former Shop and Flatted Dwelling to Four Flats and other works at 5-7 King Street, Kirkwall (Resubmission of 22/264/PP) (23/099/PP).

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 conversion of a former shop and house to four flats, at 5-7 King Street, Kirkwall (resubmission of 22/264/PP).

2. Recommendations

The Local Review Body is invited to note:

2.1.

That planning permission for the proposed conversion of a former shop and house to four flats, extension including a balcony to the rear and installation of replacement windows, doors, rooflights and ridge tiles at 5-7 King Street, Kirkwall (resubmission of 22/264/PP), was refused by the Appointed Officer on 14 May 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; and/or.
- By the holding of one or more hearing.

3. Background

3.1.

Planning application 23/099/PP relates to the proposed conversion of a former shop and house to four flats, extension including a balcony to the rear and installation of replacement windows, doors, rooflights and ridge tiles at 5-7 King Street, Kirkwall, and is a resubmission of planning application 22/264/PP.

3.2.

The Appointed Officer refused the planning application on 14 May 2023 on the following grounds:

3.2.1.

The proposed development would not accord with the car parking standards that are set in the National Roads Development Guide, which has been adopted as Planning Policy Advice. The development is therefore considered contrary to Policy 14B(iii) 'Transport, Travel and Road Network Infrastructure', of the Orkney Local Development Plan 2017.

3.2.2.

The proposed lack of dedicated parking provision would create an unacceptable burden on existing infrastructure and services that cannot be resolved. The development is therefore considered contrary to Policy 1(v) 'Criteria for All Development' of Orkney Local Development Plan 2017.

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 Development Management and Sheila Beavan, 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. Comments received from the applicant’s agent on the further representations received are attached as Appendix 7.

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 5-7 King Street, Kirkwall, is due to be undertaken at 14:00 on 4 October 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:

- Materials and finishes.
- Window specification W11 and W12.
- Boundary wall.
- Surface water drainage.
- Hours of construction work.
- External Lighting.

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; and/or.
- By the holding of one or more hearing(s).

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:
 - The Spatial Strategy.
 - Policy 1 – Criteria for All Development.
 - Policy 2 – Design.
 - Policy 3 - Settlements, Town Centres and Primary Retail Frontages.
 - Policy 5 – Housing.
 - Policy 8 – Historic Environment and Cultural Heritage.
 - Policy 14 – Transport, Travel and Road Network Infrastructure.
- Supplementary Guidance:
 - Historic Environment and Cultural Heritage (2017).
- Planning Policy Advice:
 - Historic Environment (Topics and Themes) (2017).
 - Amenity and Minimising Obtrusive Lighting (2021).

- 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, extension 2208, 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

Georgette Herd, Legal Advisor to the Local Review Body, extension 2195, Email georgette.herd@orkney.gov.uk

10. Appendices

Appendix 1 – Notice of Review (pages 1 to 60).

Appendix 2 – Planning Handling Report (pages 61 to 70).

Appendix 3 – Planning Services File (pages 71 to 99).

Appendix 4 – Decision Notice and Reasons for Refusal (pages 100 to 106).

Appendix 5 – Further representation from Development Management (pages 107 to 108).

Appendix 6 – Further representation from Sheila Beavan (page 109).

Appendix 7 – Comments from Agent on further representations received (pages 110 to 114).

Pages 1 to 106, can be viewed at [here](#), clicking on “Accept and Search” and inserting the planning reference “23/099/PP”.

From: [Dean Campbell](#)
To: [Hazel Flett](#)
Cc: [Committees](#)
Subject: RE: Planning App 23.099.PP - Notice of Review
Date: 29 August 2023 09:33:07

Classification: NOT PROTECTIVELY MARKED

Hi Hazel,

Thank you for the notification. I provide the below response as a further representation to this local review case:

As case officer for the development I can confirm that the merits of the case were assessed and described as presented in the handling report.

However, since the date of the original decision, Development Management has had further discussions with Development and Marine Planning in relation to the relevance and weight of policies in National Planning Framework 4.

Under the 'Sustainable transport' heading, Policy 13 b) of NPF4 states as follows:

- b) Development proposals will be supported where it can be demonstrated that the transport requirements generated have been considered in line with the sustainable travel and investment hierarchies and where appropriate they:*
- i. Provide direct, easy, segregated and safe links to local facilities via walking, wheeling and cycling networks before occupation;*
 - ii. Will be accessible by public transport, ideally supporting the use of existing services;*

On the basis that the refusal was based on (a lack of) car parking provision in relation to the National Roads Development Guide and the development therefore being contrary to Policy 14 of the Local Development Plan, in considering the Review, elected members may wish to consider whether it has been demonstrated that the transport requirements of the development (i.e. car parking) have been considered in terms of sustainable travel, and whether the development would be adequately connected to local facilities by walking, wheeling and cycling, and whether it would be easily accessible by public transport. If the development is considered to comply with provisions of this policy, that can be balanced against the failure to comply with the relevant policy of the Local Development Plan, as forms the basis of the refusal.

Development Management has not assessed the development taking Policy 13 b) into account, and this is therefore a matter for the decision-maker in determining the Review.

Kind regards,

Dean Campbell
Planning Officer, Development Management
Planning and Community Protection
Neighbourhood Services and Infrastructure
Orkney Islands Council, Council Offices, Kirkwall, Orkney, KW15 1NY
Telephone 01856 873535 Extension 2528

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: Hazel Flett <Hazel.Flett@orkney.gov.uk>
Sent: Wednesday, August 23, 2023 9:04 AM
To: planning <planning@orkney.gov.uk>
Cc: Hazel Flett <Hazel.Flett@orkney.gov.uk>
Subject: Planning App 23.099.PP - Notice of Review

Classification: NOT PROTECTIVELY MARKED

Planning App 23.099.PP

Applicant: Isle Of Bute Jewellery Ltd

Proposed conversion of former shop and house to four flats, extend including balcony to the rear and install replacement windows, doors, rooflights and ridge tiles at 5-7 King Street, Kirkwall (resubmission of 22/264/PP)

Notice of Review

The above planning application was refused by the Appointed Officer on 14 May 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, 5 September 2023**. In writing includes by e-mail. A copy of any representations provided will be sent to the applicant for comment.

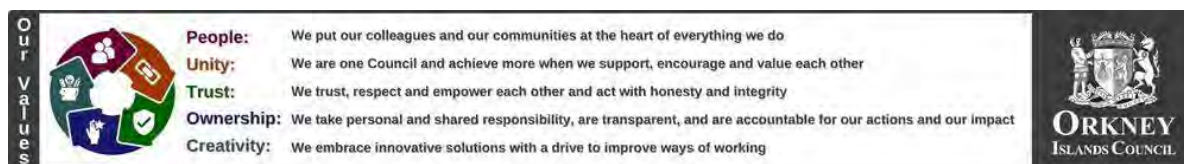
A copy of the Notice of Review and other documents related to the review can be inspected by following the link below and inserting the reference number "23/099/PP":

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

Kind regards

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



From: [REDACTED]
To: [Hazel Flett](#)
Subject: Planning App 23.099.PP
Date: 01 September 2023 11:43:31

Sent on behalf of Sheila Beaven, 8 King Street, Kirkwall.

In response to **Planning Application 23.099.PP Notice of Review** I would like to make the following observations; largely relating to issues of parking, traffic flow and resident access on King Street.

This is one of four current development applications on or adjacent to King Street and all of multiple occupancy.

With reference to the Executive Summary, paragraph 10 Discussion;

It is disingenuous to assert that the building's previous use as a shop would have resulted in a greater level of traffic. I have lived on King Street since 1983, some neighbours for longer and none of us ever experienced parking or access difficulties when the shop was in use. Camilla Eames Knitwear was hardly the busiest of shops and Corsie Domestic Appliances was a workshop with very little actual customer footfall.

It is naive to suppose that a development of four flats will not result in a greater need for parking, whether on or off-street. King Street has, at most, five available spaces for daily use and these are currently occupied most days. The east side of the street has restricted parking with no parking from 8am-6pm; Monday-Saturday. The constant flouting of these regulations results in restricted traffic flow along a busy through route and hazardous ingress and egress for those of us accessing our own garage entrances.

The appellants provide a helpful list of existing public car parks but the three closest to King Street i.e. the King Street car park, the OIC IT car park and the OIC car park off Mill Street are full occupied every working day, largely by OIC staff and public parking, whether long or short-stay, is not encouraged.

In the short term, if works were to be carried out, what provision would be in place for parking of contractors' vehicles?

5-7 King Street is described as a prominent and important building within the Kirkwall Conservation Area which will fall into dereliction if planning is refused. This sounds rather like emotional blackmail and considering that the building has been in a dilapidated state for years under current ownership, rings rather hollow.

I hope that thought will be given to the daily round of those who actually live and work here in deciding whether or not this disproportionate development is allowed to proceed.

Yours sincerely,
Sheila Beaven.

From: [Karen Clark](#)
To: [Hazel Flett](#)
Subject: Re: Notice of Review - 23.099.PP - 5-7 King Street, Kirkwall
Date: 18 September 2023 11:04:23
Attachments: [Response to representaions.docx](#)

Classification: OFFICIAL

Morning,

Please find the response to the representations from interested parties to the above mentioned Notice of Review. I would be grateful if this response was provided to members of the LRB.

Many thanks
Karen Clark

From: Hazel Flett <Hazel.Flett@orkney.gov.uk>
Date: Friday, 8 September 2023 at 09:40
To: Karen Clark <karen@ktclark.co.uk>
Cc: Kevin Crawford <kevin@crawfordarchitecture.co.uk>, Hazel Flett <Hazel.Flett@orkney.gov.uk>
Subject: Notice of Review - 23.099.PP - 5-7 King Street, Kirkwall

Classification: OFFICIAL

Planning App 23.099.PP
Applicant: Isle Of Bute Jewellery Ltd
Proposed conversion of former shop and house to four flats, extend including balcony to the rear and install replacement windows, doors, rooflights and ridge tiles at 5-7 King Street, Kirkwall (resubmission of 22/264/PP)
Notice of Review

Further to the above, I have received the attached representations from interested parties.



In terms of Regulation 10(5) of the Town and Country Planning (Schemes of Delegation and Local Review Procedures)(Scotland) Regulations 2018, you have 14 days in which to make comment on the attached representations.

Accordingly, I look forward to hearing from you no later than **Thursday, 21 September 2023**.

Kind regards

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

Our Values		People: We put our colleagues and our communities at the heart of everything we do
	Unity: We are one Council and achieve more when we support, encourage and value each other	
	Trust: We trust, respect and empower each other and act with honesty and integrity	
	Ownership: We take personal and shared responsibility, are transparent, and are accountable for our actions and our impact	
	Creativity: We embrace innovative solutions with a drive to improve ways of working	
	 ORKNEY ISLANDS COUNCIL	

Hazel Flett
Service Manager (Governance)
Strategy, Performance and Business Solutions
Orkney Islands Council
Council Offices
Kirkwall
Orkney KW15 1NY
Issued by e mail to Hazel.Flett@orkney.gov.uk

18th September 2023

Dear Sir/Madam,

Planning App 23.099.PP

Applicant: Isle of Bute Jewellery Ltd

Proposed conversion of former shop and house to four flats, extend including balcony to the rear and install replacement windows, doors, rooflights and ridge tiles at 5-7 King Street, Kirkwall (resubmission of 22/264/PP)

Notice of Review

I refer to the aforementioned Notice of Review and to the representations from interested parties which we received on the 8th of September 2023 and would make the following comments.

Comments from the Planning Officer: As is highlighted in the Appeal Statement, NPF 4 was adopted on the 13th of February 2023 and provides the most up to date policy advice. The transitional advice from the Chief Planner confirms that, if there is any incompatibility between a provision of NPF and a provision of an LDP, NPF4 policy prevails.

In relation to Policy 13 Sustainable Transport the Policy Intent is stated as:

“To encourage, promote and facilitate developments that prioritise walking, wheeling, cycling and public transport for everyday travel and reduce the need to travel unsustainably.”

Policy 13 b) goes on:

“Development proposals will be supported where it can be demonstrated that the transport requirements generated have been considered in line with the sustainable travel and investment hierarchies and where appropriate they:

- i. Provide direct, easy, segregated, and safe links to local facilities via walking, wheeling and cycling networks before occupation;*
- ii. Will be accessible by public transport, ideally supporting the use of existing services;”*

Policy 13 (e) further states:

“Development proposals which are ambitious in terms of low/no car parking will be supported, particularly in urban locations that are well-served by sustainable transport modes and where they do not create barriers to access by disabled people.”

This policy position conflicts with Policy 14 B Sustainable Travel of the Orkney Local Development Plan 2017 which requires that:

- i. Developments must accord with the car parking standards that are set in the National Roads Development Guide, which has been adopted as Planning Policy Advice.

The site subject of the current Notice of Review is located in the centre of Kirkwall close to existing amenities and services. In line with Policy 13 of NPF4 the site is well-served by sustainable transport modes, including walking, cycling and public transport links with no barriers to access by disabled people. The central location will assist in supporting local services and facilities. Further, the development is ambitious in terms of low/no car parking within central Kirkwall close to sustainable transport modes. Therefore, it is submitted that the current proposal complies with Policy 13 Sustainable Transport.

However, as the site does not provide dedicated on-site parking, the planning application was considered contrary to Policy 14 of the OLDP 2017.

Therefore, in the current circumstances, there is a conflict between Policy 14 Transport Travel and Road Network Infrastructure of the Orkney Local Development Plan 2017 and Policy 13 Sustainable transport of NPF4 which supports sustainable travel supporting compact urban growth and local living of NPF4. In cases such as this where a conflict has been identified the Chief Planner has confirmed that the policies of NPF4 prevail.

As a result, in this case, compliance with Policy 13 of NPF4 prevails and justifies setting aside the requirements of Policy 14 of the Orkney LDP.

Comments from Sheila Beaven, 8 King Street, Kirkwall- The representation appears to confirm no issue of parking was experienced at the time the shop was open. It is fair to assume that the shop would have attracted a level of parking, this would have varied depending on the day/time of day. However, it is reasonable to assume that the shop did attract a level of traffic, and this would have been roughly similar to the proposed 4 flats. The representation notes that there is both on street parking and local car parks available in the vicinity. Many of the car parks being used by employees of OIC. Again, it is fair to assume that the residents will be looking to park at different times to those employed in the local area, with the majority of their parking requirements in the evening, unless of course they work locally and will be able to walk to work. The site is close to existing local amenities and service has excellent safe and well-lit footpath and cycle links which in turn connect to public transport facilities and therefore it is hoped that residents will have a reduced reliance on the car.

In terms of disturbance due to construction traffic, this is not a valid material planning consideration. However, if approved that appellant as a good neighbour will work with a contractor to minimise any disturbance to local residents.

I trust these comments are of assistance in the consideration the Application for Review.

Yours Faithfully

Karen Clark