

Item: 6

Planning Committee: 14 February 2024.

Change of use of agricultural building to wine storage, distribution and tasting business at Berstane Farmhouse, St Ola.

Report by Corporate Director for Neighbourhood Services and Infrastructure.

1. Summary

1.1.

Planning permission is sought for change of use of an agricultural building to wine storage, distribution and a tasting business at Berstane Farmhouse, St Ola. The development is acceptable in principle and location. Three objections have been received relating to road safety and access. The objections are not of sufficient weight to merit refusal of the application. Accordingly, the application is recommended for approval.

Application Number:	23/228/PP
Application Type:	Planning permission
Proposal:	Change of use of agricultural building to wine storage, distribution and tasting business
Applicant:	Mr Steven MacPhail
Agent:	Mr Leslie Burgher, Seaview, Deerness, KW17 2QL

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

No objections to the proposal.

2.2. Development and Marine Planning (Policy)

No objections to the proposal.

2.3. Development and Marine Planning (Biodiversity)

No objections to the proposal.

2.4. Scottish Water

No objections to the proposal but applicant should follow advice set out in the consultation response.

3. Representations

3.1.

Three objections have been received, from:

- Ms Babette Hegarty, Zan Moir, Berstane Road, St. Ola, Kirkwall.
- Mr David Newstead, Roundhouse, Berstane Lodge Road, Kirkwall.
- Mr William Wilson, Falkland, Berstane Road, Kirkwall.

3.2.

The objections all relate to concerns regarding access to the site from the public road.

4. Relevant Planning History and Context

4.1.

No relevant planning history relating to the application site.

4.2.

The application site is the smaller end of a larger barn which has been used as a venue for wedding ceremonies, marketed as 'Berstane Wedding Barn'. An application has been submitted to regularise this development, and this is at an early stage of consideration. It is also noted that a physiotherapy business is currently operating from a building adjacent to the parking area of the application site, offering 'human, equine and canine physiotherapy treatment'. No planning history exists for that building or its use.

4.3.

Both developments have potential to have cumulative impact on the limited area for parking adjacent to the application site, or to exacerbate the amenity and traffic issues raised in representations, with a wine storage, distribution and tasting business, a physiotherapist, and a wedding ceremony venue all operating from the same small group of buildings and accessed on the same single track access. However, as neither of the other developments has planning permission, this impact cannot be measured.

4.4.

Consideration of this application must not be prejudiced by these other developments, on the basis that if the wine storage, distribution and tasting business is approved, its requirements would form part of the baseline situation for consideration of other development, even if submitted through a retrospective application. Any unauthorised development can be considered through normal planning application and/or enforcement processes.

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 4 - Business, Industry and Employment.
 - Policy 14 – Transport, Travel and Road Network Structure.
- Supplementary Guidance:
 - Development Management Guidance: Business Development Outwith Town Centres.
- National Planning Framework 4:
 - Policy 26 – Business and Industry.
 - Policy 29 – Rural Development.

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

The proposal seeks permission for the change of use of an agricultural building to wine storage, distribution and a tasting business at Berstane Farmhouse, St Ola. The site lies to the east of Kirkwall, outwith the settlement boundary, within a group of farm buildings, as indicated in the Location Plan attached as Appendix 1. The business model proposed is principally importation and sale of wine, the majority sold by a 'monthly wine club' and distributed directly to customers. Retail at the premises would be ancillary to this distribution model, providing for visits to discuss orders and for wine tastings by appointment. These wine tastings would involve groups of no more than 12 people. Proposed operating hours are 09:00 to 17:00 Mondays to Sundays, with up to two evening tasting events per week between 17:00 and 21:00, Mondays to Saturdays.

7.2. Principle

7.2.1.

Policy 4 Business Industry and Employment of the Local Development Plan 2017 supports the principle of expanding existing businesses and creating new businesses in appropriate locations. The creation of new commercial uses at or adjacent to dwelling houses in the countryside will be supported in particular circumstances, including an 'existing redevelopment site' which can include former farm steadings.

7.2.2.

In line with the sequential approach set out in the Town Centre First Principle, commercial developments, at or adjacent to an existing dwelling, or the redevelopment of existing buildings to form a new business will be supported subject to relevant plan policies. This policy does exclude storage and distribution in countryside areas, which is discussed further below.

7.2.3.

The Development Management Guidance: Business Development Outwith Town Centres (October 2023) provides interpretation of the provisions of Policy 29 'Rural Development' of NPF4, and states that it is considered appropriate to allow for an individual resident in the countryside to start a business and have an appropriately scaled building associated with their existing dwelling house or using existing buildings provided that (a) it is compatible with the surrounding area; (b) the predominant use of the original dwelling house and its curtilage is retained; and (c) the business is considered small scale. In this case, the development would not affect the nearby domestic curtilage as it is within a steading, and in that context, it is compatible with the surrounding area and would be considered small scale. This final consideration of small scale relies in part on the content of the operating plan, which includes visitors being by appointment only (not a shop open to passing trade or visiting members of the public), and a limit on the number of persons present for any occasional group wine tastings.

7.2.4.

The combination of being small scale and supporting the reuse of a redundant or unused building or its curtilage are both critical in the principle of development being acceptable, in accordance with the 'All Businesses in the Countryside' heading of Development Management Guidance: Business Development Outwith Town Centres (October 2023).

7.2.5.

NPF4 is supportive of the provision of limited business development in the countryside that serves local needs and does not have a negative impact on nearby commercial centres and local shops. Proposals require to be ancillary to an existing use and be suitably scaled, sited and designed. Policy 26 'Business and Industry' states that development proposals for business, general industrial and storage and distribution uses outwith areas identified for those uses in the LDP will only be supported where the nature and scale of the activity will be compatible with the surrounding area. Policy 29 'Rural Development' states that development proposals that contribute to the viability, sustainability and diversity of rural communities and local rural economy will be supported.

7.2.6.

The business would be considered small scale and would not be open to passing trade. All visits would be by appointment. On this basis, and not being a conventional retail shop model, impact on retail trade of wine in other locations including the town centres is therefore not considered unacceptable. Although the Local Development Plan excludes storage and distribution in the countryside, it is supported by Development Management Guidance: Business Development Outwith Town Centres (October 2023) subject to being small scale. Deliveries to the location would be made by small/medium sized van and deliveries to customers would be by the owners in their own vehicle. This is not considered an unacceptable intensification of use of the track, which serves multiple houses and farm traffic.

7.2.7.

The proposal is acceptable in principle and complies with Policy 4 of the Local Development Plan, NPF4 Policies 26 and 29 and Development Management Guidance: Business Development Outwith Town Centres (October 2023).

7.3. Amenity

As noted above, it is not considered that the proposed use would significantly intensify activities at the site. All visits would be by appointment with no passing trade. Proposed hours of operation are reasonable. The proposal therefore does not raise any concerns with regards amenity.

7.4. Biodiversity

Biodiversity measures are not required given the scale of the proposal, and the development being located within an existing building.

7.5. Access

Roads Services has no objection due to the minor scale of the development proposed. Three objections have been received in relation to traffic on the single-track part of the road. As noted above, the retail element is ancillary to the overall business model and not open to passing trade. In combination with the limited delivery vehicle movements anticipated, it is not considered that the use would intensify traffic to an unacceptable level. The proposal therefore complies with Local Development Plan Policy 14.

8. Conclusion and Recommendation

The development complies with Policies 1, 4 and 14 of the Orkney Local Development Plan 2017, Policies 26 and 29 of National Planning Framework 4, and Development Management Guidance: Business Development Outwith Town Centres. The proposal is acceptable in principle, in terms of its impact on amenity, and with regards to access to the site by road. Supported by the Roads Services consultation response, objections regarding the access are not of sufficient weight to merit refusal of the application. Accordingly, the application is recommended for approval, subject to the conditions attached as Appendix 2 to this report.

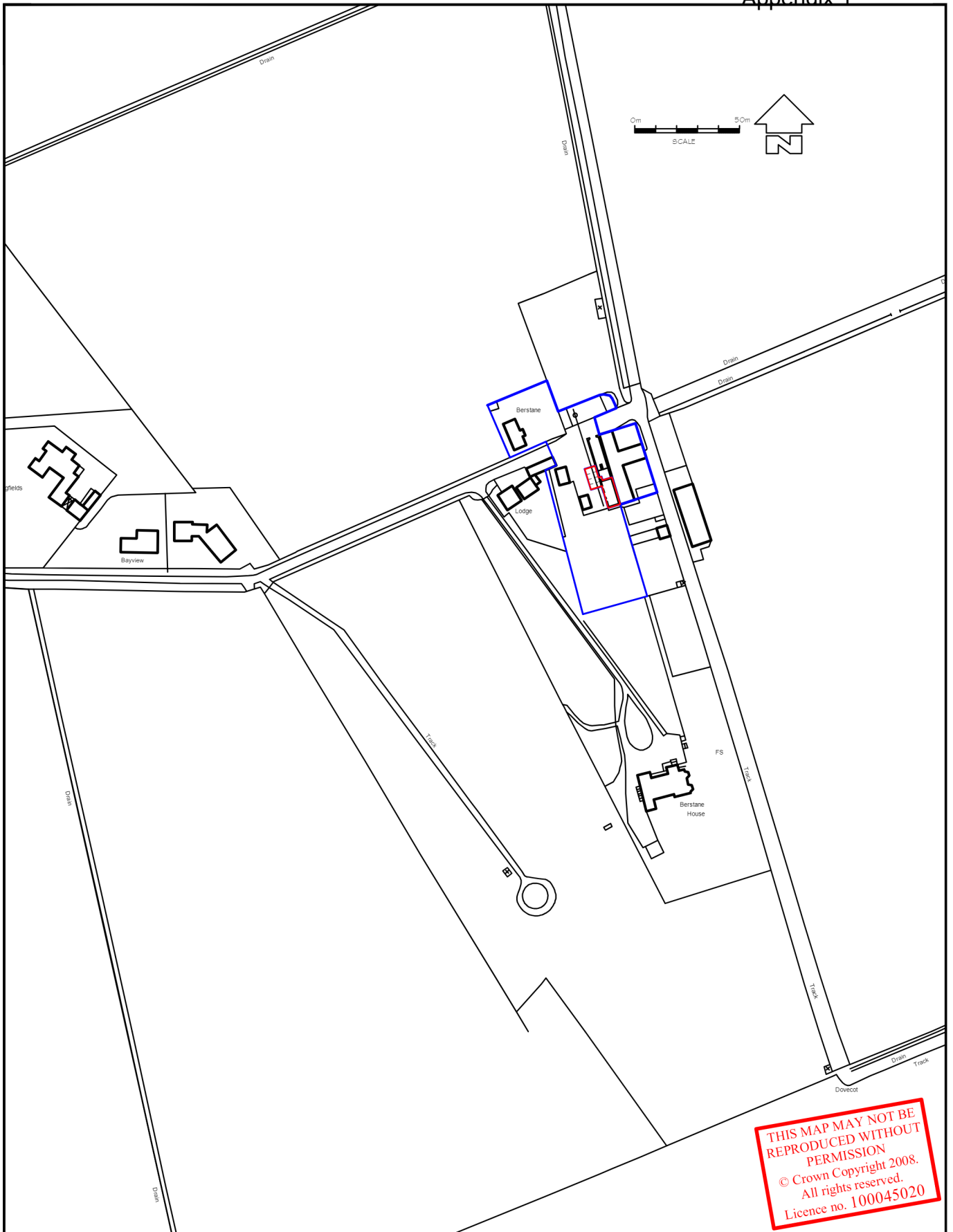
9. Contact Officer

Murray Couston, Planning Officer, Email murray.couston@orkney.gov.uk.

10. Appendices

Appendix 1: Site Plan.

Appendix 2: Planning Conditions.



Leslie Burgher
Chartered Architect



Roebank High Street Kirkwall Orkney KW15 1AZ
t: 01856 871375 e: leslie@leslieburgher.co.uk

Macphail
Orkney Wine Barn

Drawing
Location Plan

Location

A4

Scale:	Drawn:	Date:	Ref:	No:	Amd:
1:2500	jlb		2303	A 001	-

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. No other development shall commence until the parking spaces within the application site area are laid out, wholly in accordance with the site plan hereby approved. Thereafter, and throughout the lifetime of the development, the parking spaces shall be retained free of obstruction and available for parking of vehicles associated with the development.

Reason: To ensure adequate parking provision is retained within the curtilage of the development.

03. The development hereby approved shall be accessed by the public by appointment only and shall not be open to passing trade or other visiting members of the public. Appointment-based visits by the public shall be limited to a maximum of 12 persons on the premises at any time. Hours of operation open to the public shall be 09:00 to 17:00 daily, and no more than two evenings in any week between 17:00 and 21:00 Mondays to Saturdays.

Reason: To ensure the development remains small scale in terms of footfall, to accord with the provisions of Policy 29 'Rural Development' of National Planning Framework 4, and to protect the amenity of the surrounding area.