



**ORKNEY**  
ISLANDS COUNCIL

**Item: 4**

**Local Review Body: 10 October 2024.**

**Proposed Erection of Four Self-catering Pods with Associated Ancillary Building, Access, Parking, Drainage and Landscaping at Riff, Puldrite Road, Rendall (22/319/PP).**

**Report by Corporate Director for Strategy, Performance and Business Solutions.**

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## **1. Overview**

- 1.1. Planning application 22/319/PP in respect of the proposed erection of four self-catering pods with associated ancillary building, access, parking, drainage and landscaping at Riff, Puldrite Road, Rendall, was refused by the Appointed Officer on 30 May 2024.
- 1.2. Under the Town and Country Planning (Scotland) Act 1997 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.
- 1.3. The applicant has submitted a Notice of Review (see Appendix 1) requesting that the decision of the Appointed Officer, referred to at paragraph 1.1 above, be reviewed. The applicant has indicated their preference for a site inspection to be undertaken but have not indicated any other preference in terms of procedure to be followed in respect of the conduct of their review. The Local Review Body will undertake a site inspection as set out in section 1.5 below.
- 1.4. A letter from the Chief Planner, Scottish Government, issued 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.
- 1.5. Section 21 of the Scheme of Administration states that the Local Review Body will undertake unaccompanied site inspections for all planning applications subject to a local review, prior to meeting to consider the review. The purpose of the site inspection, together with the procedure to be adopted, are set out in section 21.2 of the Scheme of Administration. The applicant and interested parties have been

advised that an unaccompanied site inspection to Riff, Puldrite Road, Rendall, is due to be undertaken on 9 October 2024 at approximately 14:00.

1.6. The review procedure is set out in section 4 below.

## **2. Recommendations**

2.1. The Local Review Body is required to:

- i. Determine 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.

2.2. Should the Local Review Body determine that the decision is reversed or varied, it is required to:

- i. Determine the reasons, and, if applicable, the relevant matters in respect of potential conditions to be attached to the decision notice.

2.3. It is recommended that members of the Local Review Body:

- i. Delegates powers to the Corporate Director for Strategy, Performance and Business Solutions, following consultation with the Planning Advisor and the Legal Advisor, to determine the necessary conditions to attach to the Decision Notice.

2.4. Should the Local Review Body determine that it does not have sufficient information to proceed to determination of the review, it is required to:

- i. Determine 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 under the procedure set out in Regulation 15 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013; and/or
  - By the holding of one or more hearing under the Hearing Session Rules set out in Schedule 1 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013.

### **3. Planning Authority Decision**

- 3.1. The Planning Handling Report, Planning Services file and the Decision Notice are attached as Appendices 2, 3 and 4 to this report.
- 3.2. On 30 May 2024, the Appointed Officer refused planning application 22/0319/PP on the following grounds:
  - Proposed development of tourist accommodation in the countryside, including pods, must be both associated with existing built development and avoid areas of open countryside. In this case, the proposed development is in an undeveloped agricultural field and therefore would comprise the development of open countryside. As confirmed by the consultation response from Development and Marine Planning, the development is contrary to the 'Tourism Accommodation in the Countryside' section of Development Management Guidance 'Business Development Outwith Town Centres' (October 2023). That provides spatial interpretation of National Planning Framework 4 and confirms that the proposed development is contrary to Policy 29 of NPF4. The development is also contrary to Policies 3 and 4 of the Orkney Local Development Plan 2017. The development as proposed fails to follow pre-application advice provided, and approval would create inconsistency and uncertainty in decision-making. No material planning considerations outweigh the assessment that the proposed development is contrary to relevant policies and guidance.

### **4. Local 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. A representation was received from Development Management and is attached as Appendix 5.
- 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 on the further representations received are attached as Appendix 6 to this report.
- 4.3. 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:
  - Duration of consent.

- Access.
  - Use and operation.
  - Landscaping.
  - Foul drainage.
  - Surface water drainage.
  - Lighting
- 4.4. All conditions should be in accordance with Planning Circular 4/1998 regarding the use of conditions in planning permissions
- 4.5. Paragraph 85 of Planning Circular 4/1998 indicates that, in exceptional circumstances, conditions may be imposed to restrict further development which would normally be permitted by the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order or the Town and Country Planning (Use Classes) (Scotland) Order 1997.
- 4.6. If the decision is reversed and the development is approved, it is proposed that powers are delegated to the Corporate Director for Strategy, Performance and Business Solutions, following consultation with the Planning Advisor and the Legal Advisor, to determine the necessary conditions, based on the relevant matters, agreed in terms of section 4.3 above.
- 4.7. 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 under the procedure set out in Regulation 15 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013; and/or.
  - By the holding of one or more hearing under the Hearing Session Rules set out in Schedule 1 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013.

## **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 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.

- 5.3. 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.
- 5.4. It is for the Local Review Body to determine which policies are relevant to this application; however the policies listed below were referred to by the Appointed Officer in the Planning Handling Report:
- Orkney Local Development Plan 2017:
    - Policy 1 – Criteria for All Development.
    - Policy 2 – Design.
    - Policy 3 – Settlements, Town Centres and Primary Retail Frontages.
    - Policy 4 – Business, Industry and Employment.
  - National Planning Framework 4:
    - Policy 29 – Rural development.
  - Development Management Guidance:
    - Business Development Outwith Town Centres (October 2023).

**For Further Information please contact:**

Susan Shearer, Planning Advisor to the Local Review Body, extension 2433, Email: [susan.shearer@orkney.gov.uk](mailto:susan.shearer@orkney.gov.uk).

**Implications of Report**

1. **Financial:** All resources associated with supporting the review procedure, mainly in the form of staff time, are contained within existing revenue budgets.
2. **Legal:** The legal implications are set out in the body of the report.
3. **Corporate Governance:** In accordance with the Scheme of Administration, determination of Notices of Review is delegated to the Local Review Body.

4. **Human Resources:** None.
5. **Equalities:** None.
6. **Island Communities Impact:** None.
7. **Links to Council Plan:** The proposals in this report support and contribute to improved outcomes for communities as outlined in the following Council Plan strategic priorities:
  - Growing our economy.
  - Strengthening our Communities.
  - Developing our Infrastructure.
  - Transforming our Council.
8. **Links to Local Outcomes Improvement Plan:** The proposals in this report support and contribute to improved outcomes for communities as outlined in the following Local Outcomes Improvement Plan priorities:
  - Cost of Living.
  - Sustainable Development.
  - Local Equality.
9. **Environmental and Climate Risk:** None.
10. **Risk:** None.
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](#).

Development Management Guidance Business Development Outwith Town Centres (October 2023), available [here](#)

Planning Circular 4/1988, available [here](#).

### Appendices

Appendix 1 – Notice of Review (pages 1 – 9).

Appendix 2 – Planning Handling Report (pages 10 – 19).

Appendix 3 – Planning Services File (pages 20 – 69).

Appendix 4 – Decision Notice (pages 70 – 73).

Appendix 5 – Representation from Development Management (pages 74 – 75).

Appendix 6 – Representation from Applicant (pages 76 - 77).

Pages 1 to 73 can be viewed [here](#), clicking on “Accept and Search” and inserting the planning reference”22/319/PP.”.

## NEIGHBOURHOOD SERVICES AND INFRASTRUCTURE

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**Planning application:** 22/319/PP  
**Applicant:** Greig Sinclair  
**Proposal:** Erection of four self-catering pods with associated ancillary building, access, parking, drainage and landscape  
**Location:** Riff, Puldrite Road, Rendall

### Regulation 10(b)

#### Notice of Review

#### Representation by Interested Party – Development Management

Much of the content of the review refers to application timescales and procedural matters. However, the decision review process, as was the case for the delegated decision, must align with the basic principles of Section 25 of the 1997 Act, which is whether the proposed development accords with the development plan.

The planning handing report is clear that the development does not accord with the development plan.

Reference is made in the review that the consideration period of the application – i.e. the time period when the application was submitted and before it was decided – started under the provisions of the Orkney Local Development Plan 2017 (the Local Development Plan), and was decided following adoption of National Planning Framework 4 (NPF4). It is suggested that this was to the disadvantage of the application, and that the delay specifically was a reason for refusal. That is not the case.

The development is contrary to Policy 4B of the Local Development Plan as it is in an open, greenfield site (notwithstanding other development nearby), and also Policy 3A, and the test of whether it is low footfall. Development must meet both policy requirements to be supported by the Plan, noting that, *“All of the policies in the Plan will be afforded equal weight in the determination of planning applications; if a proposal is contrary to any single policy then it does not accord with the Plan.”* If a development fails to meet either, or both, of the relevant policies, the development cannot be supported.

The policy position at the time of submission, and applying the Section 25 test, is therefore that the development is contrary to the Local Development Plan. That position is consistent with other applications for pods on greenfield sites in the countryside over the lifetime of the Local Development Plan, including development refused, following delegated refusal and review.

On the basis business development in the countryside was a key consideration of NPF4, and that the application was not decided by the time of adoption of NPF4, it was relevant that NPF4 policies were given consideration. If the adoption of NPF4 had changed the policy position to the detriment of the application, weight would've been given to the initial position. But in simple terms, the position was already one of being contrary to policy, so any implication could only be positive following NPF4 adoption.

Policy 29 of NPF4, in relation to all proposed business development in the countryside, *“...is supportive of business development in the countryside where it is (1) small scale and (2) supports one of the following: homeworking; the diversification of an existing business; the reuse of a redundant or unused building or its curtilage; or the reuse of garden ground or brownfield land.”*



Interpretation of this was confirmed by the adoption of Development Management Guidance 'Business Development Outwith Town Centres' (October 2023), to provide policy interpretation for business development in the countryside, and is the spatial approach applied to all business development, taking account of the provisions of the Local Development Plan and NPF4 and making this the clear policy position for decision-making.

The Development Management Guidance confirms that *“support for the principle of tourism accommodation proposals will be given that (a) reuse a redundant building, (b) are located on brownfield land or are (c) closely associated with existing built development and avoid areas of open countryside.”* The proposed development does not (a) reuse a redundant building, is not (b) located on brownfield land, and (c) does not avoid an area of open countryside. The development is in an otherwise undeveloped open agricultural field and fails the spatial requirement to avoid open land.

Again, applying the Section 25 test of whether the development accords with the development plan, the development is contrary to the Development Management Guidance, adopted, interpretation of NPF4 Policy 29.

The development was contrary to the Local Development Plan alone. Following adoption of NPF4, the development is also contrary to NPF4. The development is therefore contrary to the relevant policies of the development plan.

Timescale and other matters raised do not outweigh this policy conclusion.

Another overriding point, as stated in the planning handling report, remains relevant, that a Tourism Accommodation Study for Orkney is required, to consider existing tourism accommodation types and numbers geographically, aspirations and accommodation requirements, and the interaction of tourism accommodation provision and permanent housing requirements for Orkney, taking account of self-contained holiday accommodation, holiday pods, campervan, caravan and camping pitches, bed and breakfasts, guest houses and hotels. The review of the Local Development Plan will enable provision of an updated spatial approach for further accommodation provision, and provision of new tourist accommodation in the meantime should be limited to the measured but flexible provisions already available, but not additional piecemeal development on open land in the countryside which is where the development would fail to be 'planned' and can lead to inconsistency; development must do more than appear to be acceptable on a case by case basis but must meet the policy requirements if there is to be a consistent and high quality approach to all such development.

By law, the decision-maker is required to determine the application in accordance with Section 25 of the Act, with due consideration of whether the development accords with relevant policies. The planning handling report makes clear that at the time of submission (as noted in pre-application advice) under the Local Development Plan, and also under current NPF4 policy provisions, the development is contrary to policy.

**Development Management**  
**10 September 2024**

**Comments provided by Greig Sinclair on representations made on Notice of Review (22/319/PP)**

Thank you for your response relating to the appeal of the planning application for the four self-catering pods (22/319/PP). I think there was a misunderstanding. Although I do consider that there were procedural issues, including the timescale for a decision, one of the main reasons that I filed an appeal is that I firmly disagree that the proposed development contradicts to the policies outlined in the Decision Notice.

As discussed in the Notice of Review statement, the four self-catering pods are proposed to be located in the corner of a field which has an existing road access. These will be developed only 23 m from the farm steading and 33 m from an existing self-catering cottage. My proposal is very similar to the one approved by OIC in 2019, and this development also had to follow the same 2017 Local Development Plan Policies. The pods in that application (19/061/PP) were sited on an agricultural field which was adjacent to the farm and separated by a mature belt of trees. In that Planning Handling Report and Decision Notice, it said “this proposal has been considered against relevant development plan policies and has been judged, on balance, to comply.” The siting of the pods in my application are of a very similar nature to this, although the ones in my application are considerably closer to existing buildings. The reasons for the choice of location for the four self-catering pods at the Riff include:

- The site fits into the corner of a large field without interfering with the farm.
- Once complete it will have a high degree of privacy.
- There is a mature hedgerow between it and the existing steading meaning that while it is separate from the steading it is close enough to allow easy management.
- The mature hedgerow provides shelter to the whole site.
- The mature hedgerow is along the existing road which hides the site from the public and neighbouring properties to the north. In addition, due to the undulation of the land in the immediate area, there is little opportunity for visual impact elsewhere.
- Its position does not affect the running of the existing farming and self-catering business.

I assumed that my application for four self-catering pods would align with the Local Development Plan 2017 policies, just as the approved 2019 pod application.

In terms of NPF4, I did not have foresight of this regulation when I submitted the application, and I could not have responded to the policy details. However, this has been covered in the Notice of Review Statement and the interpretation by OIC that my pods are considered in “an area of open countryside” is not how I would describe the location of the pods. As mentioned above and in the Notice of Review statement, the pods are located in the corner of the field, adjacent to an existing road, located 23 m from the nearest building. It was not the intention to locate the pods in an open agricultural field, hence the reason for selecting a position as close to existing buildings as possible.

In addition, the DMG notes that “NPF4 is supportive of business development in the countryside where it is 1) small scale and 2) supports one of the following: homeworking; the diversification of an existing business; the reuse of a redundant or unused building or its curtilage; or the reuse of garden ground or brownfield land.” In this case, the proposed development may be considered small-scale, with only 8 guests at a maximum to be on site. The proposed pod units will create an expansion of the existing self-catering business and provide further, varied accommodation for guests. The development may as such be considered as “diversification of an existing business” and proposes to utilise ground which could reasonably be considered as closely allied to the farm building and existing self-catering cottage.

We welcome a tourism accommodation study for Orkney as this would be of huge benefit to the community. As part of my research prior to the application for the pods, I sought advice from Destination Orkney and Visit Scotland on the viability of the proposal in the countryside and they indicated there was a need for this type of accommodation. I don't consider this to be a piecemeal approach as we already have an established self-catering business at the location proposed for the pods and have done so for the last 20 years. The pods will not be a new feature on the landscape, they will be supporting an already established business.

Kind regards

Greig Sinclair