

Item: 4.1

Local Review Body: 4 October 2023.

Proposed Erection of Two Flats with Air Source Heat Pumps at 29 Victoria Street, Kirkwall (23/104/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 erection of two flats, with air source heat pumps, at 29 Victoria Street, Kirkwall (23/104/PP).

2. Recommendations

The Local Review Body is invited to note:

2.1.

That planning permission for the proposed erection of two flats, with air source heat pumps, at 29 Victoria Street, Kirkwall, was refused by the Appointed Officer on 26 June 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 23/104/PP relates to the proposed erection of two flats, with air source heat pumps, at 29 Victoria Street, Kirkwall.

3.2.

The Appointed Officer refused the planning application on 26 June 2023 on the following grounds:

3.2.1.

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.

3.2.2.

The proposed development would not accord with the car parking standards 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.

3.3.

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. A response was received from Development Management which confirmed that they had no further comments.

4.2.

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 29 Victoria Street, Kirkwall, is due to be undertaken at 13:35 on 4 October 2023.

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:

- Construction Method Statement.
- Archaeology.
- Retain pedestrian access.
- Squaring off stone boundary wall end.
- Air source heat pump noise/enclosure.
- Surface water drainage.
- Hours of construction work.
- External lighting.

4.3.1.

All conditions should be in accordance with [Planning Circular 4/1998](#) regarding the use of conditions in planning permissions.

4.4.

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 4.3 above.

4.5.

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 11).

Appendix 2 – Planning Handling Report (pages 12 to 20).

Appendix 3 – Planning Services File (pages 21 to 44).

Appendix 4 – Decision Notice and Reasons for Refusal (pages 45 to 50).

Pages 1 to 50, can be viewed [here](#), clicking on “Accept and Search” and inserting the planning reference “23/104/PP”.