

## Item: 3.3

**Planning Committee: 5 September 2018.**

### **Erect House with Integral Garage (Amendment to 11/001/PP) (Retrospective) at Seaways, Firth.**

**Report by Executive Director of Development and Infrastructure.**

## **1. Summary**

### **1.1.**

This application follows application 11/001/PP for a house at this site; however, in progressing works the applicant has undertaken a number of material changes to the development as approved and therefore seeks to regularise these changes by virtue of this application. The house at Seaways, Firth, is accessed from a private road from the A965 Kirkwall to Finstown road, with the site located on the seaward side of the road, see site plan, Appendix 1. The most apparent change is in the external appearance of the house as completed, with amendments to window sizes and shapes and external wall finishes, leading to a more contemporary approach to that as previously approved. The extent of the site has also been slightly altered, the most significant being the built extension of Orkney stone-faced seawall projecting approximately 4 metres into the sea. The fundamental nature and placement of the property on site remains consistent with that previously approved and as such the principle of a house development at this site remains unaltered. Two objections have been received, on the final design and appearance of the house and on the grounds of impact on public access. Whilst the changes to the design and appearance of building and site are material, these changes are not considered to be detrimental to the character, amenity nor setting of the development. Objections are not of sufficient weight to merit refusal, and on balance the development accords with policies 1, 2, 5E, 12, 13 and 14 of the Orkney Local Development Plan 2017.

Application Number:	18/136/PP.
Application Type:	Planning Permission.
Proposal:	Erect a house with an integral garage (amendment to 11/001/PP) (Retrospective).
Applicant:	Mr Nick Mathieson, Seaways, Firth, KW15 1TU.
Agent:	N/A.

### **1.2.**

All application documents (including plans, consultation responses and representations) are available for members to view at the following website address:

[http://www.orkney.gov.uk/Service-Directory/D/application\\_search\\_submission.htm](http://www.orkney.gov.uk/Service-Directory/D/application_search_submission.htm)  
(then enter the application number given above).

## 2. Consultations

Consultees have not objected or raised any issues which cannot be addressed by planning conditions or informatives.

## 3. Relevant Planning History

Reference.	Proposal.	Location.	Decision.	Date.
10/479/PP	Demolish existing buildings, erect a commercial building, and a house with an integral double garage	Orkney Seafayre (Land Near), Grimbister, Firth, Orkney, KW15 1TU	Refused	04.11.2010
11/001/PP	Demolish existing buildings, erect a commercial building, and a house with an integral double garage	Grimbister, Firth, Orkney, KW15 1TU	Granted with conditions	08.03.2011

### 3.1.

This application is presented to regularise works taken in exception to the approval granted under 11/001/PP.

## 4. Representations

### 4.1.

Two objections have been received from:

- Edward L G Drever, Marsdene, Grimbister, Kirkwall KW15 1TU.
- William Clouston, Torsker, Finstown KW17 2EJ.

### 4.2.

A petition was included with representations received which was specifically concerned with the issue of a claimed Right of Way at/by the property subject to application. This was passed to Development and Marine Planning for consideration as a matter most appropriately addressed under the Council's remit as Access Authority.

### 4.3.

The objections are on the following material planning grounds, which have been taken into consideration in the assessment of the proposal:

- The application is at variance to the previous permission granted as it has materially altered the height, materials and finishes and as such is not in keeping with its surroundings.
- Impact to public access owing to the blocking of a right of way.

#### **4.4.**

The claim of public rights of way as an access issue is a material planning consideration. Care is required in balancing this element of use of the site with the principle reason for the requirement of the application as presented, which is to consider the changes made to the development from that as approved under application 11/001/PP. The access case raised by third parties relates to a claimed pedestrian and vehicular right of way to the foreshore from the A965. This matter was neither raised nor considered previously when the house was approved originally. This matter is subject to investigation by the Council as Access Authority separate to the consideration of the merits of this planning application.

#### **4.5.**

A notable element within one of the representations against the application relate to private rights between parties, significantly that of the adjacent property known as 'Marsdene' to the west of the site, including claimed private rights of access and claimed damage to property. These matters are not material planning considerations.

## **5. Relevant Planning Policy and Guidance**

The full text of the Orkney Local Development Plan 2017 (OLDP 2017) and supplementary guidance can be read on the Council website at:

<http://www.orkney.gov.uk/Service-Directory/D/Planning-Policies-and-Guidance.htm>

The policies listed below are relevant to this application:

- Orkney Local Development Plan 2017:
  - Policy 1 – Criteria for All Development.
  - Policy 2 – Design.
  - Policy 5 E – Single Houses and new housing Clusters in the Countryside.
  - Policy 9 – Natural Heritage and Landscape.
  - Policy 10 – Green Infrastructure (Paths, Open Spaces and Green Networks).
  - Policy 12 – Coastal Development.
  - Policy 13 – Flood Risk, SuDS and Waste Water Drainage.
  - Policy 14 – Transport, Travel and Road Network Infrastructure.
- Supplementary Guidance 'Housing in the Countryside' (April 2017).

## **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.**

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.

### **6.3.**

An award of expenses may be substantial where an appeal is conducted either by way of written submissions or a local inquiry.

### **6.4.**

As the application includes a small section of 'Coastal work to combat erosion and maritime works capable of altering the coast...' in front of the house, the works are Schedule 2 development as defined in Column 1 of Schedule 2 of The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017, and as such require the planning authority to adopt a screening opinion to determine whether an Environmental Impact Assessment is required. The screening opinion determined that an EIA is not required for the works.

## **7. Assessment**

### **7.1. Site and Location**

The site occupies a seafront location, as shown on the site plan attached as Appendix 1 to this report, with the forward element of the development comprising hard landscaping/seawall on top of which the house is set. This was subject to significant scrutiny and consideration in the consideration of the original application which, subject to the appropriate Building Warrant, was deemed as acceptable. It is notable that the house design as approved included significant seaward glazing, directly above and on the same plane as the seawall below, but the glazing has been amended to suit the current as-built situation in which the seawall/coastal defences have been built projecting out onto the foreshore, which is part why an application is

required. The raised area including the stone-built seawall is to the east of the existing slipway prior to entering the area of the adjacent property which has small rip rap rock armouring rather than a built seawall to seaward. The neighbouring property is also set nearer to the public road with a significant garden area between the house, known as 'Marsdene', and the foreshore. The site is accessed from the A965 Kirkwall to Finstown road via a private track, the ownership, nature and use of which appears to be in dispute between parties. This track is not a public road, is not a recorded core path and is not recorded by Scotways, The Scottish Rights of Way Society, as a claimed Right of Way.

## **7.2. Principle**

The principle for development has previously been established for the site by virtue of application 11/001/PP. The application is not typical in an Orkney context, in that it is built on the high tide mark, but several other properties are similar nearby, on the road from Kirkwall into Finstown. The site is deemed as acceptable in achieving appropriate service provision and remains consistent with the fundamental principle of development as considered in the earlier approved application.

## **7.3. Design**

### **7.3.1.**

A key issue raised by a third party is the alteration in the nature and design of the property from that approved by application 11/001/PP. This is key, together with the extension of the site seaward, as to why the application was necessary to regularise such matters. Fundamentally the form and massing of the building is unchanged, however there have been significant alterations undertaken in the size, orientation and detailing of windows, with reduced glazing to the seaward side of note. Other windows in the walls have altered to a narrow form in both vertical and horizontal arrangements notably on south and west elevations. The south elevation, facing the public road, has been altered to incorporate a significant element of natural stone facing with elements of wood cladding finished in 'dark spruce' with the projecting garage element being reduced to a single, centrally placed door. These amendments lead to an improved aesthetic and enhanced character from that as previously approved of double door garage and dry dashed finish.

### **7.3.2.**

The property remains as a single storey structure and whilst in a slightly elevated situation, which addresses flood risk concerns, and is not considered to dominate or detract from neighbouring properties. The changes made to external materials and windows have resulted in a design which is more modern and contemporary than that originally approved in the earlier application. Whilst third parties have noted this as a reason for objection as not in-keeping with its surroundings, the development as executed and in context, is considered to achieve an appearance which is not considered to detract from its surroundings, including adjacent properties, and stands on its own merits. The choices of external materials and finishes are considered to be appropriate and similar to other developments of a contemporary nature, with appropriate use of typically natural finishes such as timber and stone,

employing a muted colour scheme which accords with typical practice in a rural setting in Orkney.

#### **7.4. Amenity**

No amenity issues are considered to accrue from the development as built, notwithstanding matters of a civil nature between parties per private access dispute.

#### **7.5. Public Access Issues**

##### **7.5.1.**

The matter of the claimed pedestrian/vehicular right of way, in context as far as this application is concerned, is between the A965 and the foreshore utilising in part or in whole the access track from the public road serving the development site and down to the foreshore, adjacent and to the west of the house. This route is not recorded as a right of way on the National Catalogue of Rights of Way by Scotways, the Scottish Rights of Way Society, and neither is it noted as a Core Path by the Council as Access Authority. The issue appears to have been brought into focus post-development and in part as a consequence of occupation of the house, as the claimed right of way would cut across the domestic curtilage of the property at Seaways to the potential loss of amenity to the house. The owner of Seaways disputes the claimed right of way. The owner/applicant has made a clear statement that materials deposited on the track to the property are not a result of his actions and he is not responsible for such. No physical barriers to access were noted, however as a consequence of landscaping in what is now a grassed, garden area adjacent to the property, access to the foreshore is physically more limited than it once was given the drop down to the foreshore. Notwithstanding the owner's position that this is a private slipway and that any right of public access through his property or public use of the slipway is subject to dispute, unobstructed access does remain to the private slipway.

##### **7.5.2.**

Objectors have cited that because of the development, public access to the foreshore has been lost. This is a claim made as both a civil matter by the neighbouring property owner at Marsdene and by petition to the Council as the Access Authority. This matter was not brought to the attention of the Planning Authority in either of the two previous applications received for this site. It is not certain that any right existed in relation to such access noting that the route is not held on any other database by the Council as a claimed or vindicated Right of Way. To add further complexity to the issue, there appears to be dispute over the extent of the title of Seaways and how this may or may not impact on private rights to the foreshore. Whilst public access is a material planning matter, private rights are a civil matter. Without proof that land ownership has been erroneously stated, it is not a function of the planning process to consider or resolve civil matters of potential ownership dispute.

## **7.6. Sewerage and Drainage**

The development is served by a private drainage system which is subject to building warrant and associated waste water legislation. Rainwater/surface water is addressed through drainage on site. No significant alteration to sewerage and rainwater/surface water drainage handling is noted from that considered and approved under the previous permission.

## **7.7. Flood Risk**

The application site is at risk from coastal flooding. To address this fact and as considered within the previous application, site levels were to be raised to 3.25 metres AOD with finished floor levels set at 3.51 metres AOD. This has been addressed by the applicant as presented in submitted drawings. As such SEPA is satisfied that the house would be outwith the 1 in 200 year flood envelope and as such do not object to the application.

## **7.8. Parking Provision/Access/Road Safety**

The access to and area identified within the application is considered sufficient to meet and address access requirements for the development with no adverse comment received from Road Services.

## **7.9. Coastal Erosion**

The development has resulted in additional works by the developer to coastal defence works to safeguard the property which, combined with associated restrictions on access to the foreshore, has been cited by one of the objectors, the occupant of the neighbouring property at Marsdene, as causing damage to that property. It is not considered unreasonable or unwarranted to carry out works to safeguard the property from both coastal erosion and flood risk. It is however problematic to assess the veracity of the cited impacts accruing from the development to adjacent land, not least because of the slipway, which is pre-existing intervening, built structure between the neighbouring properties. It may however be of greater significance to the neighbouring property that access to the shore at this location is less open than before the house subject to the current application was built, thereby limiting access to repair loose stone armouring on the shore front at Marsdene. Landowners have responsibility for protecting their property from coastal erosion and flooding, subject to planning and other consents where appropriate.

## **8. Conclusion and Recommendation**

The reason for application is a material change to the development as built compared to that as previously approved under application 11/001/PP. These changes are most evident in the alteration of external wall finishes, the placement, size and detailing of windows, and works extending hard landscaping/sea defences seaward, beyond the originally defined area of the application site. This application is presented to regularise such changes. The principle of development/approval for a house at this site was established by the previous application. Design is a material consideration in determination of this application. It is considered that the changes to the appearance of the main body of the house, whilst distinctive, are sympathetic to

both the nature and form of the property and do not negatively impact upon the local setting of the house or appearance of the wider rural area, as such the design as built is considered as acceptable. In consideration of the extension seaward of the site area, largely as a result of hard landscaping and built sea defences, these works are not considered to be obtrusive and ensure that the property as constructed is further safeguarded from flood risk and the negative effects of wave action. The matter of claimed public access rights remain outstanding and in dispute, the outcome of which is not considered to impact directly on the planning matters under consideration within this application; irrespective of the planning outcome, were the claimed right of way to proceed to conclusion where a right of way is vindicated, there is sufficient land to allow for such access to be exercised. The development is considered to accord with policies 1, 2, 5E, 12, 13 and 14 of the Orkney Local Development Plan 2017. Accordingly, the application is **recommended for approval**, subject to the conditions attached as Appendix 2 to this report.

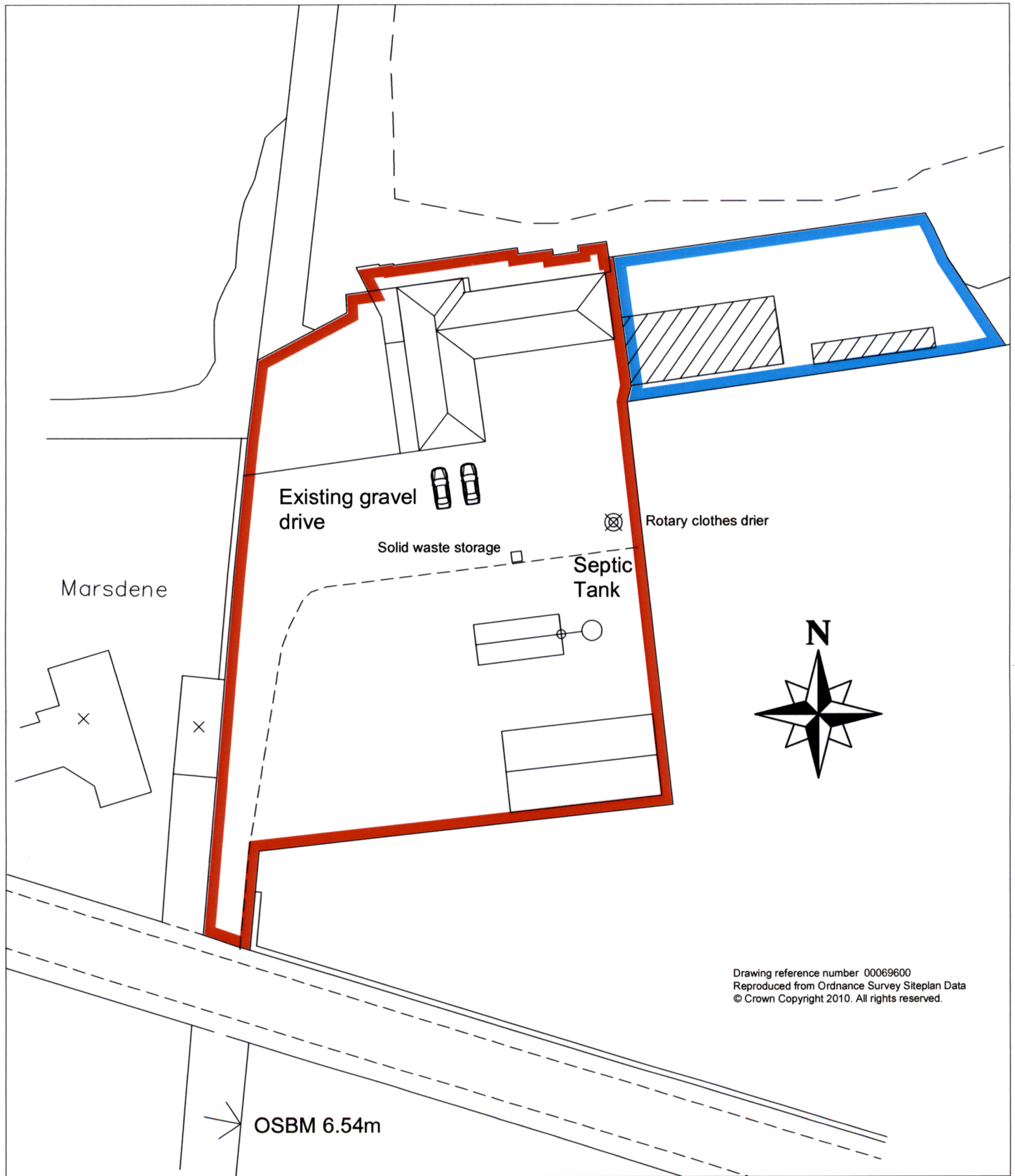
## 9. Contact Officer

David Barclay, Senior Planner, extension 2502, Email [david.barclay@orkney.gov.uk](mailto:david.barclay@orkney.gov.uk)

## 10. Appendices

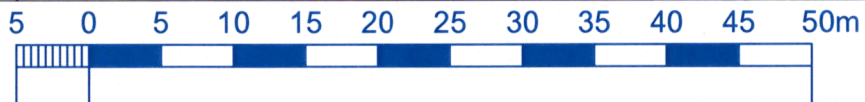
- Appendix 1: Site Plan.
- Appendix 2: Planning Conditions.





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SCALE 1:500



**Nick Mathieson**  
**Proposed House**  
**at Orkney Seafayre, Firth**

**PROPOSED SITE PLAN**

**Drawn by A H MacKenzie**  
**Date June 2010**

Plan/Drawing No:  
 OIC - 03

**Dwg No. 0610/23**  
**Rev "A" 29/03/18 As Built**

**Rev"A"**

## **Appendix 2.**

### **Grant subject to the following conditions:**

1. The vehicular access to the development shall be upgraded to the Council's Road Services specifications for a 'Typical Access for a Single Development for 2 to 4 Houses' attached to and forming part of this Decision Notice within 3 calendar months of the date of this permission. The approved details shall thereafter be implemented and retained throughout the life of the development unless agreed otherwise in writing by the Planning Authority.

Permission will be required from the Council's Road Services to carry out any required works within the area of the road boundary and this shall be obtained prior to any works commencing.

Reason: To ensure a suitable standard of access provision in the interests of road safety.

2. The occupation of the dwelling house shall be limited to a person working in the approved rural business, or a widow or widower of such person, and to any resident dependants, i.e. son/daughter.

Reason: To accord with previous application which was approved under the Orkney Local Development Plan 2014.

3. Surface water drainage provision within the application site shall accord with the principles of Sustainable Urban Drainage Systems (SUDS) and is designed to the standards outlined in Sewers for Scotland Second Edition (or any superseding guidance prevailing at the time).

Reason: To ensure that surface water drainage is provided timeously and complies with the principles of SUDS; in order to protect the water environment.