

## **Item: 5.1**

**Local Review Body: 17 December 2020.**

**Change of Use of Land from Agricultural to Storage, Create Hardstanding, Erect Shed and Fencing and Construct Earth Embankments (Part Retrospective) at Eastquoys, Birsay (20/306/PP).**

**Report by Chief Executive.**

### **1. Purpose of Report**

To determine a review of the decision of the Appointed Officer, specifically in respect of Conditions 3, 7, 8 and 11 attached to the approved part retrospective planning permission for the change of use of land from agricultural to storage, create hardstanding, erect a shed and fencing and construct earth embankments at Eastquoys, Birsay.

### **2. Recommendations**

The Local Review Body is invited to note:

#### **2.1.**

That part retrospective planning permission for the change of use of land from agricultural to storage, create hardstanding, erect a shed and fencing and construct earth embankments at Eastquoys, Birsay, was granted by the Appointed Officer on 12 October 2020, subject to the conditions outlined in section 3.3 of this report.

#### **2.2.**

That the applicant has submitted a Notice of Review requesting that the decision of the Appointed Officer, specifically in respect of Conditions 3, 7, 8 and 11 attached to the approval, 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 20/306/PP relates to the change of use of land from agricultural to storage, create hardstanding, erect a shed and fencing and construct earth embankments (part retrospective) at Eastquoys, Birsay.

#### **3.2.**

The Appointed Officer granted the part retrospective planning application on 12 October 2020 subject to conditions.

#### **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, which is attached as Appendix 1 to this report. The Notice of Review relates specifically to Conditions 3, 7, 8 and 11 attached to the approval, as noted below:

##### **3.3.1.**

Condition 3 – No development shall commence in relation to the ‘PROPOSED STORAGE’ area until an Operational Management Plan for the entire business site (comprising all of the existing and hereby approved premises together) has been submitted to, and approved in writing by, the Planning Authority. This Plan shall specify proposed activities within each part of the site, including Class 4 activities limited to the existing ‘WORKS AREA’ and/or ‘Storage shed’ hereby approved, and confirmation that the entire business site shall operate as a single planning unit. Throughout the lifetime of the development, the business shall operate in accordance with the approved Operational Management Plan, which can be updated in advance of activities or operators within the site being amended.

Reason: The site operates to include multiple activities, including storage, recycle processing, plant hire, sandblasting and an incinerator/ensiler for fish farm waste. The site also includes areas operated by different businesses. To protect the appearance and amenity of the area, it is critical that these multiple activities and operators are coordinated as a single planning unit, under the control of the principal business operator.

##### **3.3.2.**

Condition 7 – Within three years of the date of this consent, the entire southern boundary of the commercial site with the domestic access to Eastquoys shall be enclosed. This shall comprise the ‘Newly created embankment’, an extension to the

existing berm annotated as 'Bund', and a section of 'Timber boarded fence', all as included in 'SITE PLAN C'. These works shall form a permanent boundary, preventing any open access from the adjacent access track into the commercial site.

Reason: To enclose commercial operations from the wider countryside, to protect the amenity of the area. The three year period provided allows the site to be developed in phases, whilst securing appropriate mitigation measures within a reasonable time period.

### **3.3.3.**

Condition 8 – No materials shall be stored on any part of the site at a total height in excess of 3 metres as measured from ground level.

Reason: To protect the appearance of the area in the interest of visual amenity and for the avoidance of doubt.

### **3.3.4.**

Condition 11 – No development shall commence until a Landscaping Plan is submitted to, and approved in writing by, the Planning Authority. This Plan shall include the number, size, density and species of all planting and other landscaping on the berms (embankments/bunds). Thereafter, and no later than the first winter planting season following the construction of any of the berms, the development shall be completed wholly in accordance with the details included in the approved Landscaping Plan. The Landscaping Plan shall also include the control of broadleaf dock, creeping thistle or any other injurious weed to prevent it from out-competing landscaping measures or spreading into adjacent agricultural land.

Reason: To protect the appearance of the area in the interest of visual amenity and for the avoidance of doubt.

## **3.4.**

The Planning Handling Report, Planning Services file and the Decision Notice, including the conditions attached to the approval, 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. No further representations were received.

### **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 Eastquays, Birsay, was undertaken at 10:00 on 17 December 2020.

### **4.3.**

The Local Review Body may uphold, reverse or vary the decision of the Appointed Officer. The full set of planning conditions which have been applied to the current planning consent are detailed in the Decision Notice, attached at Appendix 4.

### **4.4.**

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 at:

<https://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 4 – Business, Industry and Employment (Part B – In the Countryside).
  - Policy 8 – Historic Environment and Cultural Heritage (Part A – All Development).
  - Policy 13 – Flood Risk, SuDS and Waste Water Drainage (Part C – Waste Water Drainage).
  - Policy 14 – Transport, Travel and Road Network Infrastructure (Part A – Transport Infrastructure).

## **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.**

There are two options available to applicants to challenge any condition attached to a planning permission.

### **8.2.**

Under Section 42 of the Town and Country Planning Scotland Act 1997 an application can be made to the planning authority for permission to develop the application site without complying with one or more of the conditions, subject to which the permission was granted. The planning authority can decide that the permission should be granted subject to the same conditions (i.e. application refused), or if the application is successful, permission will be granted without the condition(s) which has been contested.

### **8.3.**

Alternatively, 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. The review process covers any conditions imposed on a planning permission.

### **8.4.**

Scottish Government advice on the use of conditions in planning permissions is provided in Planning Circular 4/1998. As a matter of policy, conditions should only be imposed when they are:

- Necessary.
- Relevant to planning.
- Relevant to the development to be permitted.
- Enforceable.
- Precise.
- Reasonable in all other respects.

## **8.5.**

The full text of Planning Circular 4/1998 can be found on the Scottish Government website at: <https://www.gov.scot/publications/planning-circular-4-1998-use-of-conditions-in-planning-permissions/>.

## **8.6.**

The procedures to be followed in respect of the review are as detailed in section 4 above.

## **8.7.**

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**

Angela Kingston, Clerk to the Local Review Body, Email [angela.kingston@orkney.gov.uk](mailto:angela.kingston@orkney.gov.uk)

Roddy MacKay, Planning Advisor to the Local Review Body, extension 2530, Email [rodny.mackay@orkney.gov.uk](mailto:rodny.mackay@orkney.gov.uk)

Katharine McKerrell, Legal Advisor to the Local Review Body, Email [katharine.mckerrell@orkney.gov.uk](mailto:katharine.mckerrell@orkney.gov.uk)

## **10. Appendices**

Appendix 1 – Notice of Review (pages 1 – 30)

Appendix 2 – Planning Handling Report (pages 31 – 38)

Appendix 3 – Planning Services File (pages 39 – 57)

Appendix 4 – Decision Notice with Conditions (pages 58 – 68)

Pages 1 to 68 can be viewed at [https://www.orkney.gov.uk/Service-Directory/D/application\\_search\\_submission.htm](https://www.orkney.gov.uk/Service-Directory/D/application_search_submission.htm) and inserting the planning reference “20/306/PP”.