

Item: 5.2

Local Review Body: 25 September 2020.

Proposed Erection of House with Integral Garage at Plot 80, The Meadows, Kirkwall (19/374/PP).

Report by Chief Executive.

1. Purpose of Report

To determine a review of the decision of the Appointed Officer, specifically in respect of Condition 1 attached to the approved planning permission for the proposed erection of a house with an integral garage at Plot 80, The Meadows, Kirkwall.

2. Recommendations

The Local Review Body is invited to note:

2.1.

That planning permission for the proposed erection of a house with an integral garage at Plot 80, The Meadows, Kirkwall, was granted by the Appointed Officer on 23 January 2020, subject to the conditions 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, specifically in respect of Condition 1 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 19/374/PP relates to the proposed erection of a house with an integral garage at Plot 80, The Meadows, Kirkwall.

3.2.

The Appointed Officer granted the planning application on 23 January 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 Condition 1 attached to the approval, as noted below:

3.3.1.

Condition 1 – No works shall commence on the construction of the development hereby approved and no other works on the development site shall commence until the road shown outlined in red on Site Plan OIC-02, stamped approved and attached to the decision notice, has been constructed and completed from the point where it meets Flett Drive to the point of access to the dwelling site.

Note: The specification for the road was approved under Planning Approval Reference 06/168/PPF, dated 4 July 2006.

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 Plot 80, The Meadows, Kirkwall, was undertaken at 11:45 on 25 September 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 and supplementary guidance listed below are relevant to this application:

- Orkney Local Development Plan 2017:
 - Policy 1 – Criteria for All Development.
 - Policy 2 – Design.
 - Policy 5 – Housing (Part A – Housing in Settlements).
 - Policy 7 – Energy (Part C – All Renewables and Low Carbon Energy Developments).
 - Policy 9 – Natural Heritage and Landscape (Part G – Landscape).
 - Policy 13 – Flood Risk, SuDS and Waste Water Drainage (Part B – Sustainable Drainage Systems).
 - Policy 13 – Flood Risk, SuDS and Waste Water Drainage (Part C – Waste Water Drainage).
 - Policy 14 – Transport, Travel and Road Network Infrastructure (Part C – Road Network Infrastructure).

- Supplementary Guidance: Settlement Statements for the Towns – Kirkwall (2017).
- Planning Policy Advice – Development Quality Within Settlements (March 2012).

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.

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

8.5.

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, extension 2239, Email angela.kingston@orkney.gov.uk

Roddy MacKay, Planning Advisor to the Local Review Body, extension 2530, Email rodny.mackay@orkney.gov.uk

Katharine McKerrell, Legal Advisor to the Local Review Body, extension 2246, Email katharine.mckerrell@orkney.gov.uk

10. Appendices

Appendix 1 – Notice of Review (pages 1 – 19)

Appendix 2 – Planning Handling Report (pages 20 – 24)

Appendix 3 – Planning Services File (pages 25 – 53)

Appendix 4 – Decision Notice with Conditions (pages 54 – 64)

Pages 1 to 64 can be viewed at https://www.orkney.gov.uk/Service-Directory/D/application_search_submission.htm and inserting the planning reference “19/374/PP”.