

Item: 5.4

Planning Committee: 2 September 2020.

Siting of House for Retiring Farmers at Lower Durrisdale, Jubidee Road, Evie.

Report by Executive Director of Development and Infrastructure.

1. Summary

1.1.

It is proposed in principle to site a house for retiring farmers at Lower Durrisdale, Jubidee Road, Evie. The proposed site is within the wider countryside and not directly associated with any other building or steading and is not within the defined settlement of Evie village. The application has been called in by two Councillors and, in accordance with the Scheme of Delegation, the application must be reported to Committee for determination. The development is considered contrary to Policies 1, 2, 5E and 9 of the Orkney Local Development Plan 2017. Accordingly, the application is recommended for refusal.

Application Number:	20/018/PIP.
Application Type:	Planning Permission in Principle.
Proposal:	Siting of a house for retiring farmers.
Applicant:	Mr Raymond Flaws, Nisthouse Farm, Arwick Road, Evie, KW17 2PF.
Agent:	Mr Colin Begley, HUS Architecture, Braehead, Holm, KW17 2SD.

1.2.

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

https://www.orkney.gov.uk/Service-Directory/D/application_search_submission.htm
(then enter the application number given above).

2. Consultations

2.1.

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

2.2.

Development and Marine Planning has commented as follows:

“On page 22 of the SG is the policy requirements that allows for a single house for retirement and succession of a farm. This provision is to allow for the succession of a business where the retiring farmer is still involved in the business and therefore requires accommodation within the workings of the farm (ie near to the steading or in a location that provides surveillance). The submission notes that the applicant has no family succession plan and therefore does not wish to be involved in the business going forward.

Point 1 of this policy provision states that “They have recently retired, and the business has been or will be sold or transferred to a family member.” As noted, that the applicant has no family succession plan and therefore does not wish to be involved in the business going forward.

Point 2 states that “either the applicant or the family member will live in the proposed house. Confirmation is required through the planning application.” We note in the application that the proposed house is for applicant.

Point 3 states that “any existing houses that form part of the business including past planning approvals (the removal of occupancy conditions and extent consents) will be assessed to establish if there are any suitable alternatives, in operational terms, to provide the housing required.” From completing a site visit, reviewing the submission and online planning applications there are no other houses within the business, apart from the farmhouse itself.

Point 4 states that “evaluate the opportunities to provide the required housing, in a location that is suitable for the business and its operational needs, through the policy provision at Policy 5, section A and Policy 5, section E, part i, ii, iii, iv, v and vi of the OLDP2017.” The application provides some evaluation of the possible housing opportunities. It notes the redundant outbuilding “within” the existing Steading. This building is to the side of the main modern steading and located within a small parcel of land. The building itself accords with policy provision 5E (iii) so it could be replaced and is a housing opportunity. In business terms, the policy provision expects the applicant to be making a valued contribution to the business. The submission notes that the applicant has no family succession plan and therefore does not wish to be involved in the business going forward. There is also another housing opportunity that is noted in the submission as an existing farm building. Although presently used by the applicant for his agricultural business, going forward this building could be classed as redundant as the business maybe worked differently. This building is away from the main steading buildings, is older and not in a full state of repair. The access to other elements of the farm could be maintained and provide a housing opportunity. We note that apart from these 2 housing opportunities there are no other housing opportunities on the land of the business.

Point 5 states that “the viability, scale, longevity and other relevant details of the business must demonstrate that the business is viable.” These details have not been provided at this point in time.

Point 6 states that “Provide full justification for the location proposed for the house. The proposed house should be located with the building of the business, forming part of the building group or in a location that has full business justification and other

relevant justification.” The proposed site has been selected so that the applicant does not have to be involved in the business going forward. It has not been located to provide 24-hour supervision or to provide surveillance of certain elements of the farm; and therefore, cannot be classed as business justification.

This application does not accord with this policy provision as the applicant does not intend to be involved of the business going forward.’

Furthermore – ‘Going forward, the applicant has 2 other housing opportunities on the land of the business.’

3. Representations

No representations have been received.

4. Relevant Planning History

An application for outline planning permission was approved on the site in 1992. That lapsed over 25 years ago and has no relevance to the current application.

5. Relevant Planning Policy and Guidance

The full text of the Orkney Local Development Plan 2017 and supplementary 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 5E – Single Houses and new Housing Clusters in the Countryside.
 - Policy 9 – Natural Heritage & Landscape.
 - Policy 13 – Flood Risk, SuDS and Waste Water Drainage.
 - Policy 14 – Transport, Travel and Road Network Infrastructure.
- Supplementary Guidance: Housing in the Countryside.

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.

7. Assessment

7.1. Background

7.1.1.

The site is located landward of the A966, accessed by private track leading from the unclassified road serving Lower Durrisdale and Gallowhall, as indicated on the location plan attached as Appendix 1 to this report. The site is in the corner of an agricultural field currently laid to grass. Supporting information and historical evidence indicate that a dwelling 'Linasbreck' was previously located on the site; there are no structures within the site currently. The site benefits from a slight plateau within the general slope of the landform although it would be viewed in a slightly elevated situation when viewed from the south west from the A966, albeit with a backdrop of rising ground.

7.1.2.

The application seeks to establish the principle for the development of a new house in the countryside. The application is presented with a supporting statement which aims to address requirements as stated within Supplementary Guidance: Housing in the Countryside in respect of consideration of the requirements of Policy 5E (viii) 'The Provision of a Single Dwelling House to allow for Retirement and Succession of a Farm' of the Orkney Local Development Plan 2017. The supporting statement acknowledges that the proposed development does not conform fully with Policy 5E (viii) nor guidance relative thereto, but seeks to present an exceptional case based on the personal circumstances of the applicant(s) with consideration of relevant policies and Supplementary Guidance: Housing in the Countryside. The supporting statement also considers and discounts other development options that may be available within the agricultural holding that may otherwise have addressed policy and/or guidance requirements given the wishes and circumstance of the applicant(s).

It is also noted by the applicant that pre-application advice was sought and recognises that there was a risk of refusal through application of planning policies. This has led to a greater level of detail and information provided by the applicant than would otherwise be the case for an application for planning permission in principle, in order to have greater information on record should the application be refused and subject to any subsequent process.

7.1.3.

There are no issues in relation to the potential amenity impacts or functionality of the proposed site which would make it unacceptable, with matters such as foul and surface water drainage, parking and access arrangements and sufficiency of amenity space likely to meet requirements subject to further detail through subsequent application.

7.2. Principle

The proposed development is not located within a defined settlement and as such must be considered as the development of single houses in the countryside. The proposed development site has no close association with other buildings, no existing building on site to replace or renovate, and would not provide for rural business housing need. The application as presented relies significantly on the consideration of the personal circumstances of the applicant(s), and a case presented regarding benefits of the chosen site as remote and removed from the main extent of the agricultural holding of Nisthouse Farm. This is to allow for the retirement of the farmers of Nisthouse Farm without succession or any ongoing business interest in the agricultural holding, thereby avoiding a site which may otherwise conflict with the business use of the land.

7.3. Design and Appearance

7.3.1.

Whilst it is recognised that this application is presented in principle only, therefore precluding consideration of detailed design features and finished appearance of the proposed development, this policy remains pertinent as consideration of the character and appearance of the local area are contained as elements within points (i) and (ii) of this policy, as follows:

- Point (i) – it reinforces the distinctive identity of Orkney’s built environment and is sympathetic to the character of its local area.
- Point (ii) – it has a positive or neutral effect on the appearance and amenity of the area.

7.3.2.

The chosen site has no relationship with other buildings or structures to provide landscape context. The location and design justification provided is based at this stage on intentions of development, albeit of high quality, which are not subject to consideration as the application is presented in principle only. The development poses the risk of development which fails to respect the established pattern of rural

housing in the area, introducing a single house on open land in the countryside risking an inappropriate precedent by virtue of the chosen location and landscape context. The development is not considered to reflect the local settlement pattern, nor sympathetic to the character of the local area and as such would be considered contrary to Policy 2.

7.4. Residential Amenity

As a site remote from other houses no significant amenity concerns are considered to arise at this juncture given that the application is in principle only.

7.5. Single Houses in the Countryside

7.5.1.

Outwith the settlements, developments of single houses will be supported where it involves one of the listed policy provisions. Such provisions seek to facilitate opportunities based on brownfield sites, rural business housing needs and infill development where landscape and visual impacts are greatly reduced.

7.5.2.

The application is based on an assertion that policy provision Policy 5 E (viii) 'The Provision of a Single Dwelling House to allow for Retirement and Succession of a Farm' is the most applicable to the circumstances of the applicant and chosen site. This policy is noted by Supplementary Guidance: Housing in the Countryside as allowing 'for a viable farm holding to be passed on to the next generation, allowing for an additional house for the retiring farmer or for a new farmhouse. The retiring farmer under this policy provision could still make a valued contribution to the business on a part time or flexible basis'. This policy provision requires the following to be demonstrated as listed in Supplementary Guidance: Housing in the Countryside:

- Point 1 – they have recently retired, and the business has been or will be sold or transferred to a family member.
- Point 2 – either the applicant or the family member will live in the proposed house. Confirmation is required through the planning application.
- Point 3 – any existing houses that form part of the business including past planning approvals (the removal of occupancy conditions and extant consents) will be assessed to establish if there any are suitable alternatives, in operational terms, to provide the housing required.
- Point 4 – evaluate the opportunities to provide the required housing, in a location that is suitable for the business and its operational needs, through the policy provision at Policy 4, section A and Policy 4, section E part i), ii), iii), iv), v) and vi) of the OLDP 2017.
- Point 5 – the viability, scale, longevity and other relevant details of the business must demonstrate that the business is viable.
- Point 6 – provide full justification for the location proposed for the house. The proposed house should be located with buildings of the business, forming part of a

building group or in a location that has full business justification and other relevant justification.

7.5.3.

As noted at point 6, the location of development submitted under this policy provision is typically required to be located adjacent to existing buildings, given the core basis of the policy that the retiring farmer could still make a valued contribution to the ongoing agricultural business on a part time or flexible basis, as is often the case in generational farm businesses. It would only be in exceptional circumstances, typically locational requirements for the agricultural business, that would require the proposed house to be in an alternative location, away from existing structures or buildings. A supporting statement has been provided which seeks to provide such justification.

7.5.4.

A case is presented, given the land associated with the farm business, that locating the house distant from the steading and main body of the holding is desired as the applicants in this instance are not in a position of succession of the business, nor do they have 'any immediate desire or requirement to be present, essentially within the existing steading after retirement'. An opinion has been stated that the policy "unfairly excludes retiring farmers who through choice or circumstance are without a family succession". This is a misrepresentation of the purpose of the retiring farmer policy; the background position is that any person selling or otherwise disposing of a business cannot necessarily use that sale as the basis for planning permission being granted for a house, however an exception is made where any such sale or disposal is to allow a succeeding family member to take over the running of the business, and therefore the policy exception for a house can only be where there is ongoing involvement from the farmer retiring from the business. In this case it is simply a sale of a business with a confirmation of no future involvement in that business; therefore, there is no basis for the policy exception to be invoked.

7.5.5.

In addition to the policy criteria regarding the principle of development, Supplementary Guidance: Housing in the Countryside also details Development Criteria (DC) which must be addressed for all planning proposals for one or more houses in the countryside. The following DC are relevant in this case:

- DC 1 – It is located and sited to fit into the landscape, minimising the landscape and visual impacts of the development proposal.
- DC2 – The proposed development will be in keeping with the location.

7.5.6.

In a typical application for a retiring farmer, the house would be located adjacent to the steading or other buildings and so these Development Criteria are normally readily met. However, in this case a diametrically opposite justification is proposed from that stated in the guidance, given that the choice of site is based on separation and disconnection from the main body of the agricultural holding.

7.5.7.

It is recognised that the proposal includes indicative details of design in attempting to address development criteria; however, irrespective of any justification provided, the development would result in the placement of a new house in isolation within the countryside, with no acceptable basis for the proposed location. The development does not adequately address any of the opportunities for housing in the countryside as listed in Policy 5 E (viii) and Supplementary Guidance: Housing in the Countryside.

7.6. Natural Heritage and Landscape

Given the proposed location within the corner of a cultivated agricultural field no significant impacts to natural heritage or species with a high conservation value are considered to arise.

7.7. Flood Risk, SuDS and Waste Water Drainage

It is assumed at this in principle stage that private infrastructure within the site can be accommodated to deal with both foul and surface water drainage. The site is not identified as being at risk of flooding. On balance these matters could be addressed by suspensive condition were the application to be approved.

7.8. Road Network Infrastructure

Access would be taken from an existing track. Roads Services has no objection subject to appropriate design and construction of the access and junction with the public road. The site is considered of adequate size to accommodate any necessary parking and manoeuvring space. These matters could be addressed by suspensive condition were the application to be approved.

8. Conclusion and Recommendation

8.1.

The proposal cites the personal circumstances of the applicant(s) and their wish to develop a house to which they could retire, on land within their ownership as part of the agricultural holding of Nisthouse. The development seeks to utilise Policy 5E (viii). Within supporting information provided it is stated this policy 'unfairly excludes retiring farmers who through choice or circumstance are without a family succession' It should be recognised that this is only one policy requirement amongst a list of requirements in Supplementary Guidance: Housing in the Countryside that must be satisfied to justify a house. The case as presented does not meet these tests, noting that the provision for a house in cases of succession applies to exceptional applications only.

8.2.

The proposal fails to address the key requirements of Policy 5E (viii) as fully considered within this report and as advised through the consultation response from Development and Marine Planning. It is noted through that consultation response that the applicant would have other opportunities for sites on the existing holding.

8.3.

There are no material considerations evident either in the merits of the application as presented, or apparent on site which would outweigh the relevant Orkney Local Development Plan policies. The proposal does not accord with the provisions of the Orkney Local Development Plan 2017, and relevant Supplementary Guidance and there are no material considerations which would warrant an outcome other than refusal of the application. The development is considered contrary to Policies 1, 2 and 5E of the Orkney Local Development Plan 2017 and Supplementary Guidance: Housing in the Countryside, by failing to meet and address the stipulated Development Criteria therein. Accordingly, the application is **recommended for refusal**.

9. Reasons for Refusal

01. The proposed site location would not reflect the character of the surrounding area and would appear incongruous and intrusive due to inappropriate siting within the landscape. The development fails to comply with Policy 1 – ‘Criteria for All Development’, sections i and ii, of the Orkney Local Development Plan 2017.

02. The proposed site location is not considered to reflect the local settlement pattern, nor would it reinforce the distinctive identity of Orkney’s rural built environment and is not sympathetic to the character of the local area. The development fails to comply with Policy 2 – ‘Design’, Sections i and ii, of the Orkney Local Development Plan 2017.

03. The proposed development fails to meet any policy requirement for a new house in the countryside. Insufficient justification is provided in relation to Policy 5E (viii) for the Provision of a Single Dwelling House to allow for Retirement and Succession of a Farm. The development is therefore contrary to Policy 5E ‘Housing – Single Houses and new Housing Clusters in the Countryside’ of the Orkney Local Development Plan 2017.

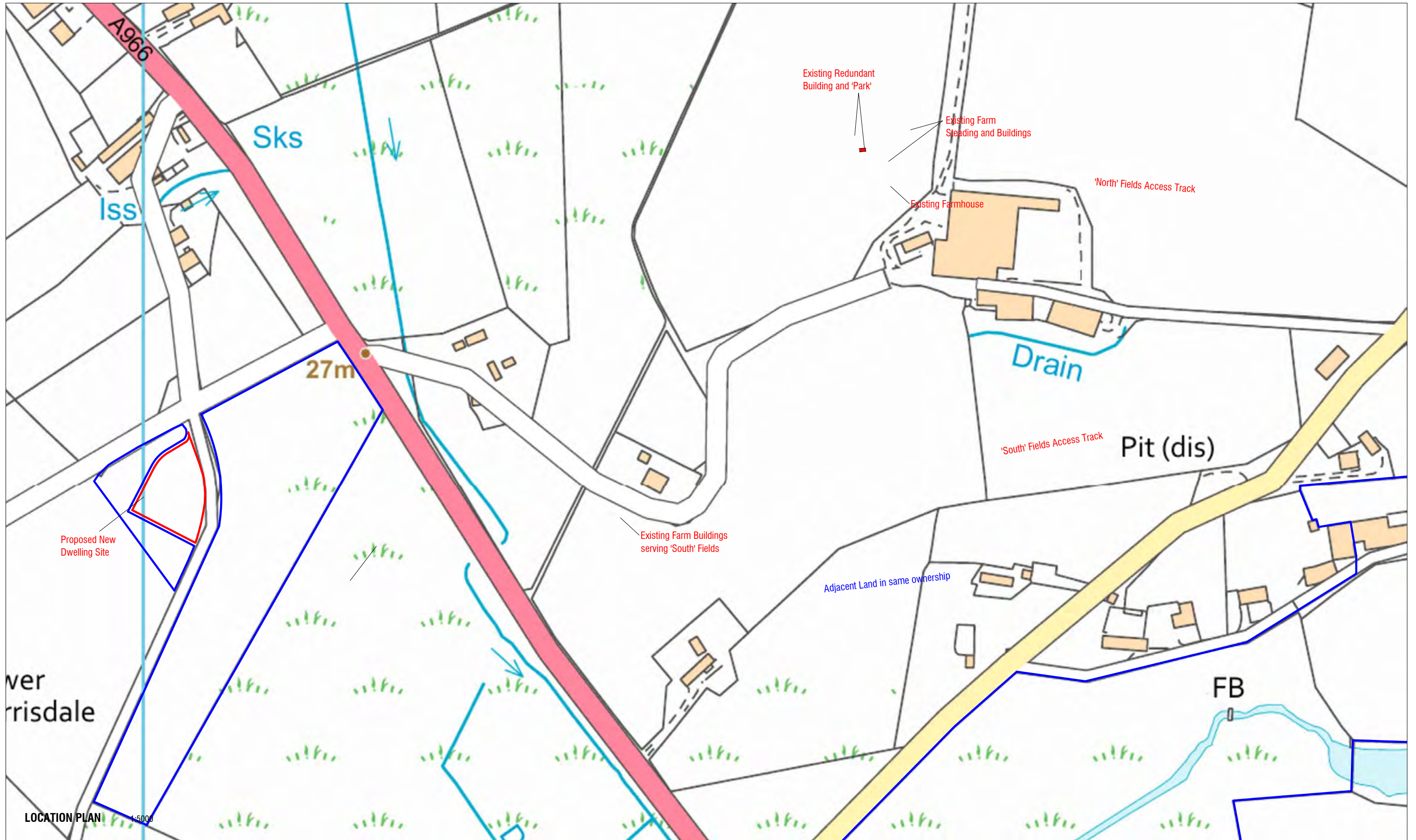
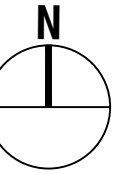
10. Contact Officer

David Barclay, Senior Planner – Development Management, Email david.barclay@orkney.gov.uk

11. Appendix

Appendix 1: Site Plan.

FIG. 5 LOCATION PLAN



LOCATION PLAN 1:5000

dwg no: 19016/000	project: Raymond Flaws
revision: A	drawing: Location Plan
date: Sept. 2019	scale: 1:5000

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notes:
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