



Item: 5

Local Review Body: 10 October 2024.

**Proposed Change of Use of Land from Car Park to Hotel Garden, including Outdoor Seating and Catering Van, and Erect Boundary Wall and Bin Enclosure at Ferry Inn, 10 John Street, Stromness (24/047/PP).
Report by Corporate Director for Strategy, Performance and Business Solutions.**

1. Overview

- 1.1. Planning application 24/047/PP in respect of the proposed change of use of land from a car park to a hotel garden, including outdoor seating and a catering van, and erection of a boundary wall and bin enclosure at Ferry Inn, 10 John Street, Stromness, was granted by the Appointed Officer on 17 June 2024, subject to conditions.
- 1.2. Under the Town and Country Planning (Scotland) Act 1997 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.
- 1.3. The applicant has submitted a Notice of Review (see Appendix 1) requesting that the decision of the Appointed Officer, referred to at paragraph 1.1 above, be reviewed, specifically Conditions 2 and 4 imposed on the consent by the Appointed Officer. The applicant has indicated that they think the most appropriate way for their review to be conducted is by the assessment of the review documents only, with no further procedure.
- 1.4. A letter from the Chief Planner, Scottish Government, issued 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.

- 1.5. Section 21 of the Scheme of Administration states that the Local Review Body will undertake unaccompanied site inspections for all planning applications subject to a local review, prior to meeting to consider the review. The purpose of the site inspection, together with the procedure to be adopted, are set out in section 21.2 of the Scheme of Administration. The applicant and interested parties have been advised that an unaccompanied site inspection to Ferry Inn, 10 John Street, Stromness, is due to be undertaken on 9 October 2024 at approximately 15:00.
- 1.6. The review procedure is set out in section 5 below.

2. Recommendations

- 2.1. The Local Review Body is required to:
- i. Determine 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.
- 2.2. Should the Local Review Body determine that the decision is reversed or varied, it is required to:
- i. Determine the reasons, and, if applicable, the relevant matters in respect of potential conditions to be attached to the decision notice.
- 2.3. It is recommended that members of the Local Review Body:
- i. Delegates powers to the Corporate Director for Strategy, Performance and Business Solutions, following consultation with the Planning Advisor and the Legal Advisor, to determine the necessary conditions to attach to the Decision Notice.
- 2.4. Should the Local Review Body determine that it does not have sufficient information to proceed to determination of the review, it is required to:
- i. Determine 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 under the procedure set out in Regulation 15 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013; and/or

- By the holding of one or more hearing under the Hearing Session Rules set out in Schedule 1 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013.

3. Notice of Review

- 3.1. Attached as Appendix 1 is the Notice of Review submitted by the applicant.
- 3.2. Unfortunately, due to a technical issue with the way in which the Notice of Review form is set up, it cannot be merged into one PDF document. Also, the full text in the box at the bottom of page 3 does not replicate in the PDF version. This is the applicant's response to the question "If yes, please explain below a) why you are raising new material b) why it was not raised with the appointed officer before your application was determined and c) why you believe it should now be considered with your review".

- 3.3. The full text is as follows:

"a) because there appear to be parallel processes between Planning and Licensing in this case and those processes appear not to have dovetailed. We have been guided by the relevant Officer towards this review process in order to rectify what seem to be accepted by officers as being unintended consequences of restrictive conditions.

b) because we did not realise there was any issue. While we accept the Environmental Health response to the Planning consultation was published online around end of April, there was no response received by Licensing with whom we were in close liaison regarding the variation of our license and the extension of the outdoor area. Further, as the area has been operating under occasional license terms for the past 3 summers, with no apparent concern or additional condition from Environmental Health or Planning, we had not been on the look out for this type of issue arising

c) because it is fundamental to our use of the area and requires to be resolved in order to properly align that use with our approved Operating Plan and Premises Licence generally."

4. Planning Authority Decision

- 4.1. The Planning Handling Report, Planning Services file and the Decision Notice are attached as Appendices 2, 3 and 4 to this report.

4.2. On 17 June 2024, the Appointed Officer granted planning application 24/047/PP subject to conditions (see Decision Notice attached as Appendix 4). The Notice of Review relates specifically to Conditions 2 and 4, attached to the approval, as noted below.

- Condition 2 – No other development shall commence until a management plan of the site subject to this approval detailing the nature of use and operation of the outdoor seating and catering van has been submitted to, and approved in writing by, the Planning Authority in consultation with Environmental Health. The plan shall include a statement on use avoiding periods of severe inclement weather. There shall be no amplified outdoor music or other sound system associated with the use of the site.

Reason: In order to ensure that the operation and nature of the outdoor seating area and catering van remains compatible with the surrounding area and for the avoidance of doubt.

- Condition 4 – The outdoor seating area and catering van hereby approved shall not be open to customers, and no customer shall be allowed on site, outwith the hours of 10:00 to 23:00.

Reason: In order to safeguard the amenity of neighbouring properties and occupants.

5. Local Review Procedure

5.1. 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. Representations were received from Environmental Health and Development Management and are attached as Appendices 5 and 6, respectively.

5.2. In instances where a representation is received from an “interested party”, the applicant is afforded the opportunity to make comments on any representation received. Comments received from the applicant on the further representations received are attached as Appendix 7 to this report.

5.3. The Local Review Body may uphold, reverse or vary the decision of the Appointed Officer.

- 5.4. All conditions should be in accordance with Planning Circular 4/1998 regarding the use of conditions in planning permissions. As a matter of policy, all 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.
- 5.5. Paragraph 85 of Planning Circular 4/1998 indicates that, in exceptional circumstances, conditions may be imposed to restrict further development which would normally be permitted by the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order or the Town and Country Planning (Use Classes) (Scotland) Order 1997.
- 5.6. 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 under the procedure set out in Regulation 15 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013; and/or.
 - By the holding of one or more hearing under the Hearing Session Rules set out in Schedule 1 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013.

6. Relevant Planning Policy and Guidance

- 6.1. 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...”
- 6.2. 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 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.

- 6.3. 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.
- 6.4. It is for the Local Review Body to determine which policies are relevant to this application; however the policies listed below were referred to by the Appointed Officer in the Planning Handling Report:
- Orkney Local Development Plan 2017:
 - Policy 1 – Criteria for All Development.
 - Policy 2 – Design.
 - Policy 4 – Business, Industry and Employment.
 - Policy 9 – Natural Heritage and Landscape.
 - Policy 13 – Flood Risk, SuDS and Waste Water Drainage.
 - Policy 14 – Transport, Travel and Road Network Infrastructure.
- 6.5. With regard to National Planning Framework 4 (NPF4), no specific policies were referred to by the Appointed Officer, but they noted that the development complies with relevant policy provisions of NPF4.

For Further Information please contact:

Susan Shearer, Planning Advisor to the Local Review Body, extension 2433, Email: susan.shearer@orkney.gov.uk.

Implications of Report

1. **Financial:** All resources associated with supporting the review procedure, mainly in the form of staff time, are contained within existing revenue budgets.
2. **Legal:** The legal implications are set out in the body of the report.
3. **Corporate Governance:** In accordance with the Scheme of Administration, determination of Notices of Review is delegated to the Local Review Body.
4. **Human Resources:** None.
5. **Equalities:** None.
6. **Island Communities Impact:** None.

7. **Links to Council Plan:** The proposals in this report support and contribute to improved outcomes for communities as outlined in the following Council Plan strategic priorities:
 - Growing our economy.
 - Strengthening our Communities.
 - Developing our Infrastructure.
 - Transforming our Council.
8. **Links to Local Outcomes Improvement Plan:** The proposals in this report support and contribute to improved outcomes for communities as outlined in the following Local Outcomes Improvement Plan priorities:
 - Cost of Living.
 - Sustainable Development.
 - Local Equality.
9. **Environmental and Climate Risk:** None.
10. **Risk:** None.
11. **Procurement:** None.
12. **Health and Safety:** None.
13. **Property and Assets:** None.
14. **Information Technology:** None.
15. **Cost of Living:** None.

List of Background Papers

Orkney Local Development Plan 2017, available [here](#).

National Planning Framework 4, available [here](#).

Planning Circular 4/1988, available [here](#).

Appendices

Appendix 1 – Notice of Review (pages 1 – 12).

Appendix 2 – Planning Handling Report (pages 13 – 16).

Appendix 3 – Planning Services File (pages 17 – 38).

Appendix 4 – Decision Notice (pages 39 – 46).

Appendix 5 – Representation from Environmental Health (pages 47 – 48).

Appendix 6 – Representation from Development Management (page 49).

Appendix 7 – Representation from Applicant (pages 50 – 52).

Pages 1 to 46 can be viewed [here](#), clicking on “Accept and Search” and inserting the planning reference”24/047/PP.”.

Hazel Flett

From: Nick Blowfield
Sent: 26 July 2024 15:31
To: Hazel Flett
Subject: Planning App 24.047.PP - Ferry Inn, 10 John Street, Stromness - Notice of Review

Classification: NOT PROTECTIVELY MARKED

Planning App 24.047.PP**Applicant: Ferry Inn Stromness Ltd****Proposed Change of use of land from car park to hotel garden including outdoor seating and catering van, and erect a boundary wall and bin enclosure at Ferry Inn, 10 John Street, Stromness****Notice of Review**

Having reviewed the documentation submitted by the applicant, in support of their request for review to either amend or preferably remove conditions 2 and 4 of their planning consent which was granted on the 17 June 2024, Environmental Health wish to offer further comment in order to provide some clarification.

We are in agreement with the applicant that conditions 2 and 4 as applied appear subject to question, and to that effect onerous and do not set out to achieve what was intended. The belief being that they were primarily about the preclusion of loud music and associated noisy activities at unsociable hours in order to protect the amenity of the area, given that the nearest residential properties are within 30-40m of the application site.

We note that the applicant has indicated that these issues are addressed via the Alcohol Licence and does not need to form part of the planning permission. However is not as simple as that and they are intrinsically linked. Planning concerns the use of the premises and the impact on its surroundings. Licensing is concerned with upholding the licensing objectives which also includes the safe operation of the premises, so there are subtle differences, which ideally should work hand in hand, but they are two separate regimes. Indeed if the premises were to no longer need the benefit of an alcohol licence any protections provided by that licence would be lost and it would be necessary to ensure sufficient protections were in place to prevent disturbance to the surrounding community, and this could be achieved by an appropriate planning consent.

Furthermore, the Licensing regime currently does not appear to have the necessary controls in place as the current operating plan is very generic with regards to core hours and does not differentiate between the use of the building and the outside space. It would clearly allow for music to be played outside at unsocial hours to the detriment of the amenity of the area. Therefore, this further justifies why we believe it is necessary to apply appropriate planning conditions to protect this and control the use of the outside space.

We note the applicant states that they have operated an outside area since 2011, but consideration has to be given to the fact that this application seeks to regularise a significant increase in the size of this outside space. The fact that the applicant has stated that this space has operated for the past three summers under an occasional licences should be disregarded, as we have been advised that conditions for example relating to noise control cannot generally be attached to occasional licences. As stated previously these are two separate regimes. We also wish to state that the absence of complaints about noise from the premises, should not be considered reason to do away with the necessary protections that conditions to the planning consent would provide.

In this regard the applicant should be commended for the running of the business in such a way that has shown consideration to the surrounding area. However, protections need to be put in place should the ownership or management of the premises ever change hands.

Finally, Environmental Health wish to state we object to the complete removal of conditions that are there to protect the amenity of the surrounding area. However, as stated previously the wording for the conditions should be amended to better reflect what was intended. We accept that music in the outside space should be allowed, but this should be restricted so that the playing of music in the outside space terminates at 23.00. Further consideration could also be given, on how such a condition could allow for festivals of significance such as the Folk festival, are accommodated.

This would be without prejudice to Environmental Health taking the necessary actions under other legislation should complaints be received.

Regards

Nick Blowfield

Environmental Technical Officer
Environmental Health | Planning and Community Protection
Neighbourhood Services and Infrastructure,
Orkney Islands Council, School Place, Kirkwall, KW15 1NY
Tel: 01856 873535 Ext: 2803 email: nick.blowfield@orkney.gov.uk



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24/047/PP**Proposed Change of use of land from car park to hotel garden including outdoor seating and catering van, and erect a boundary wall and bin enclosure****Regulation 10(b)****Representation by Interested Party – Development Management**

In response to points raised within s.8 of the Notice of Review:

- It is incumbent on an application submission to provide all relevant information and detail of a proposed development. If alignment with licensing requirements were sought, that should've been stated by the applicant/agent, to inform the development as proposed. The requirement to align with licencing requirements was not include din information available to the officer in reaching the delegated decision.
- The planning authority is required to consider impacts on amenity as a material planning consideration, mindful of the mixed use of the area and to ensure that impacts to noise sensitive properties, including residential dwellings, self-catering units and other holiday accommodation. In this instance Environmental Health was consulted as an appropriate consultation body.
- The intention was to ensure provision of a mix and balance of uses within a mixed-use area.

In relation to Condition(s) 03 and 04 as subject to review, if the Review is upheld, amendment would be pertinent rather than deletion. This is to ensure the development can co-exist within its vibrant, mixed use, historic town centre setting, without negatively impacting on noise sensitive properties, mindful of the policy aims to protect the viability of town centres.

Irrespective of whether the current hotel or use of the outside space has been the subject of any noise complaints, the conditions and decision must be so robust to withstand the management by other potential future operators of the hotel, noting that the permission will enure for the benefit of the land (and also noting that the hotel is currently offered for sale).

Kate Russell-Duff

From: garethcrichton@btinternet.com
Sent: 30 July 2024 13:37
To: Committees
Cc: kkcrichton@aol.com
Subject: Re: Planning App 24.047.PP - Notice of Review - Ferry Inn, 10 John Street, Stromness

-- External e-mail: **Think** before you **Click**--

Thank you for sight of the attached representations.

The response from Environmental Health seems generally helpful. Cessation of any music playing outside, whether live or 'piped', by 2300 hours, seems reasonable.

We note however that neither representation (we are not entirely sure what the response from Development Management actually means) addresses the issue of access and egress outside of the hours stated in Condition 4 ie 1000-2300. Our request for a review makes clear that this specific condition is entirely unworkable and we are requesting that it be deleted. Rather, our Operating Plan for the premises may adequately govern the use of the space. At very least there should be recognition that we are a full service hotel and as such guests (and staff) require to be able to get in and out of the hotel, and therefore to pass through the outside area, at any time of day. Further, as breakfast service commences at 0700, we believe the area should be able to be used from the start of our operating day. As regards closure at night, we have stated in the variation to our Operating Plan, as approved by the Licensing Board, that the outside area will generally close 1 hour prior to the terminal hour. Put more simply, one hour before the bar closes. We think this is entirely reasonable.

These representations notwithstanding, we ask that the review panel gives proper consideration to our concerns as included at Section 8 (Appendix 1) of the Review Notice submitted and approves appropriate amendments to the decision to allow our business to function reasonably.

Thank you.

Gareth & Karen Crichton

Orkney Island Hotels Ltd

----- Original Message -----

From: committees@orkney.gov.uk

To: garethcrichton@btinternet.com Cc: kkcrichton@aol.com;

Hazel.Flett@orkney.gov.uk; Kate.Russell-Duff@orkney.gov.uk

Sent: Tuesday, July 30th 2024, 11:55

Subject: Planning App 24.047.PP - Notice of Review - Ferry Inn, 10 John Street, Stromness

Classification: NOT PROTECTIVELY MARKED

Planning App 24.047.PP

Applicant: Ferry Inn Stromness Ltd

Proposed Change of use of land from car park to hotel garden including outdoor seating and catering van, and erect a boundary wall and bin enclosure at Ferry Inn, 10 John Street, Stromness

Notice of Review

Further to the above, I have received the attached representations from interested parties.

In terms of Regulation 10(5) of the Town and Country (Schemes of Delegation and Local Review Procedures)(Scotland) Regulations 2013, you have 14 days in which to make comment on the attached representations.

Accordingly, I look forward to hearing from you no later than **Monday, 12 August 2024**.

Kind regards

Katy Russell-Duff

Committees Officer/FOI Practitioner

Strategy, Performance and Business Solutions

Orkney Islands Council

Council Offices, School Place, Kirkwall, Orkney, KW15 1NY

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