

Item: 5.2

Local Review Body: 28 February 2022.

Proposed Siting of Replacement House (one for one) on land near Drunton, Russland Road, Harray (21/436/PIP).

Report by Chief Executive.

1. Purpose of Report

To determine a review of the decision of the Appointed Officer to refuse planning permission in principle for the proposed siting of a replacement house (one for one) on land near Drunton, Russland Road, Harray.

2. Recommendations

The Local Review Body is invited to note:

2.1.

That planning permission in principle for the proposed siting of a replacement house (one to one) on land near Drunton, Russland Road, Harray, was refused by the Appointed Officer on 5 January 2022, for the reasons 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, 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 21/436/PIP relates to the proposed siting of a replacement house (one to one) on land near Drunton, Russland Road, Harray.

3.2.

The Appointed Officer refused the planning application on 5 January 2022 on the following grounds:

3.2.1.

The proposed development is contrary to Policy 5E of the Orkney Local Development Plan 2017, and Supplementary Guidance: Housing in the Countryside (March 2021), option iii) as the application site is not on the same site as the original building and no exceptional case or material planning benefits have been provided to justify relocating the site 350 metres distant.

3.2.2.

The site would be seen in isolation and not in association with other buildings, and therefore would not minimise landscape impacts and would exacerbate the suburbanisation of the countryside. On this basis, the development fails to meet the requirements of development criteria DC2 and DC4 of Supplementary Guidance: Housing in the Countryside (March 2021).

3.2.3.

The proposed house site is not located to minimise negative impacts on the local landscape and has potential to add to incongruous single house development in the countryside. Given the location of the development and prominence within the local landscape, the development fails to comply with Policy 1 – Criteria for All Development, paragraphs (i) and (ii), of the Orkney Local Development Plan 2017.

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 and supporting information, which is attached as Appendix 1 to this report.

3.4.

The Planning Handling Report, Planning Services file and the Decision Notice, including the reason for refusal, 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 Drunton, Rusland Road, Harray, was undertaken at 11:15 on 28 February 2022.

4.3.

The Local Review Body may uphold, reverse or vary the decision of the Appointed Officer. In the event that the decision is reversed, draft planning conditions are attached at Appendix 5 for consideration.

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. New Information

5.1.

The statutory provisions (Section 43B of the Town and Country Planning Scotland Act 1997) prohibit any person raising a matter which was not before the Appointed Officer at the time the determination was made, unless that person can demonstrate that the matter could not have been raised before that time, or that it not being raised before that time was a consequence of exceptional circumstances. However, this prohibition is without prejudice to the requirements to consider development plan provisions and other material considerations.

5.2.

The Notice of Review submitted by the applicant indicates that no new material has been included that was not before the Appointed Officer at the time the application was determined. However, the supporting statement in response to the reasons for refusal refers to new farming regulations that are to be introduced in respect of the storage of slurry, and this is considered to be a new matter. The new regulations, Water Environment (Controlled Activities) (Scotland) Amendment Regulations 2021, which came into force on 1 January 2022, introduces measures around the storage

and application of slurry and digestate, the construction of storage facilities and use of bulk bags for storing silage.

5.3.

The supporting statement provided by the applicant refers to a need to store slurry for six months and the farm currently not having capacity to do so. There might therefore be a need for a new slurry storage area close to the farm which could impact on the development of a new house on, or in the vicinity of the existing redundant building. It is noted that the requirement for slurry storage has been reduced from six months to 22 weeks for housed cattle in the new legislation.

5.4.

No further information has been provided by the applicant as to why this new information was not raised before the application was determined or why it should now be considered in the local review process. The Local Review Body must decide whether this new information should be considered as part of the review.

5.5.

If after conclusion of any further procedure (written submissions, hearing or site inspection), the Local Review Body proposes to take into consideration any new evidence which is material to the determination of the review, then the applicant and any other “relevant party” need to be afforded an opportunity to make representations on such new evidence.

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 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 5 – Housing.
 - Policy 13 – Flood Risk, SuDS and Waste Water Drainage.
 - Policy 14 – Transport, Travel and Road Network Infrastructure.

- Supplementary Guidance:
 - Housing in the Countryside (2021).
 - Orkney Core Paths Plan and Maps.

7. 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.

8. 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.

9. Legal Aspects

9.1.

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.

9.2.

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

9.3.

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.

10. Contact Officers

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Roddy MacKay, Planning Advisor to the Local Review Body, extension 2530, Email
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Katharine McKerrell, Legal Advisor to the Local Review Body, Email
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11. Appendices

Appendix 1 – Notice of Review (pages 1 – 11).

Appendix 2 – Planning Handling Report (pages 12 – 17).

Appendix 3 – Planning Services File (pages 18 – 38).

Appendix 4 – Decision Notice and Reasons for Refusal (pages 39 – 44).

Appendix 5 – Draft Conditions (pages 46 – 48).

Pages 1 to 48, with the exception of pages 46 to 48, can be viewed at https://www.orkney.gov.uk/Service-Directory/D/application_search_submission.htm and inserting the planning reference “21/436/PIP”.

All other documents can be viewed at <https://www.orkney.gov.uk/council-meetings.htm?postid=5070&postdiaryentryid=11317>.