

Item: 4.1

Local Review Body: 26 October 2022.

Proposed Erection of House at Plot 1 Castlehame, Carness Road, St Ola (22/096/PP).

Report by Corporate Director for Strategy, Performance and Business Solutions.

1. Purpose of Report

To determine a review of the decision of the Appointed Officer to refuse planning permission for the proposed erection of a house at Plot 1 Castlehame, Carness Road, St Ola (22/096/PP).

2. Recommendations

The Local Review Body is invited to note:

2.1.

That planning permission for the proposed erection of a house at Plot 1 Castlehame, Carness Road, St Ola, was refused by the Appointed Officer on 5 August 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 22/096/PP relates to the proposed erection of a house at Plot 1 Castlehame, Carness Road, St Ola.

3.2.

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

3.2.1.

The application site is in the countryside, and the proposed development is contrary to all criteria set out in Policy 5E – Single Houses and new Housing Clusters in the Countryside of the Orkney Local Development Plan 2017, and Supplementary Guidance: Housing in the Countryside (2021).

3.2.2.

By virtue of the prominent location of the proposed site, and the land raising proposed to lift the finished floor level of the house above coastal flood risk levels, the house is not considered to be sited and designed taking into consideration the location and the wider landscape or coastal character, and it is not considered that the layout or landscaping comply with the fundamental principle that development be sympathetic to the character of its local area and have a positive effect on the appearance and amenity of the area. The development is therefore considered contrary to Policy 1 – Criteria for all Development and Policy 2 – Design of the Orkney Local Development Plan 2017.

3.2.3.

Orkney Local Development Plan 2017, at paragraph 07, confirms that, "All of the policies in the Plan will be afforded equal weight in the determination of planning applications; if a proposal is contrary to any single policy then it does not accord with the Plan." Accordingly, the proposed development does not accord with the Plan. In this case, given complexities of the site and aspects of the proposed development cited as concerns in reasons 01 and 02, material considerations including the site history do not outweigh the policy considerations and therefore do not merit any conclusion other than refusal of the application.

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 Plot 1 Castlehame, Carness Road, St Ola, was undertaken at 10:30 on 26 October 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, an indication of relevant matters, in respect of potential planning conditions, are as follows:

- Access track.
- Flood risk escape route.
- Floor level.
- Landscaping.
- Surface water drainage.
- Foul drainage.
- External lighting.
- Deed of conditions.

4.3.1.

All conditions should be in accordance with [Planning Circular 4/1998](#) regarding the use of conditions in planning permissions.

4.4.

If the decision is reversed and the development is approved, it is proposed that powers be delegated to the Corporate Director for Strategy, Performance and Business Solutions, in consultation with the Planning Advisor and the Legal Advisor, to determine the necessary conditions, based on the relevant matters, agreed in terms of section 4.3 above.

4.5.

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 includes two new visualisations (pages 13 and 14 of the Notice of Review) that were not subject to assessment in the determination of the application. The Local Review Body must decide whether this new information should be considered as part of the review.

5.3.

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, 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 [here](#).

6.2.1.

The policies listed below are relevant to this application:

- Orkney Local Development Plan 2017:
 - Policy 1 – Criteria for All Development.
 - Policy 2 – Design.
 - 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).

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

Karen Greaves, Corporate Director for Strategy, Performance and Business Solutions, extension 2202, Email karen.greaves@orkney.gov.uk

Angela Kingston, Clerk to the Local Review Body, Email angela.kingston@orkney.gov.uk

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

Georgette Herd, Legal Advisor to the Local Review Body, Email georgette.herd@orkney.gov.uk

11. Appendices

Appendix 1 – Notice of Review (pages 1 – 14).

Appendix 2 – Planning Handling Report (pages 15 – 28).

Appendix 3 – Planning Services File (pages 29 – 50).

Appendix 4 – Decision Notice and Reasons for Refusal (pages 51 – 61).

Pages 1 to 61, can be viewed at [here](#), clicking on “Accept and Search” and inserting the planning reference “22/096/PP”.