

## Item: 4.3

**Planning Committee: 29 November 2023.**

**Erect Garage at Vallaquie, 11A Royal Oak Road, Kirkwall.**

**Report by Corporate Director for Neighbourhood Services and Infrastructure.**

### 1. Summary

#### 1.1.

Householder planning permission is sought to erect a domestic garage at 11A Royal Oak Road, Kirkwall. The development is acceptable in principle and location. Two objections have been received including on grounds of impact on the character of the area, design, overlooking, and privacy. The objections are not of sufficient weight to merit refusal of the application. Accordingly, the application is recommended for approval, subject to conditions.

Application Number:	23/308/HH.
Application Type:	Householder planning permission.
Proposal:	Erect a garage.
Applicant:	Mr Kenneth Montgomery.
Agent:	John Inkster, 3 Johnston's Rd, Rousay, Orkney, KW17 2PZ.

#### 1.2.

All application documents (including plans, consultation responses and representations) are available for members to view [here](#) (click on “Accept and Search” to confirm the Disclaimer and Copyright document has been read and understood, and then enter the application number given above).

### 2. Consultations

#### 2.1. Roads Services

##### 2.1.1.

“While it is accepted that this development proposal is for what must be assumed is to be a domestic garage given that it is a householder application, the size of the garage, the provision of manoeuvring space to access and egress the garage and the need to extend the existing driveway give cause for concern regarding surface water drainage.

The only mention of any form of surface water drainage is on the 'Elevations' plan provided, which indicates that drainage from the garage roof will be directed towards the existing drainage connection for the property. There is no mention of how the hard standing area outside the garage or the extended driveway area will be drained, therefore the applicant must provide details of how the entire development area can be adequately drained in accordance with SuDS principles for further comment."

### **2.1.2.**

Whilst stated as a 'cause for concern' by Roads Services, given the nature of the proposal as a householder application, it is considered appropriate to attach a condition regarding details of the surface water drainage, including if flow control and attenuation measures are proposed in association with additional discharge to the existing surface water connection.

## **2.2. Scottish Water**

"Scottish Water has no objection to this planning application; however, the applicant should be aware that this does not confirm that the proposed development can currently be serviced and would advise the following:

For all extensions that increase the hard-standing area within the property boundary, you must look to limit an increase to your existing discharge rate and volume. Where possible we recommend that you consider alternative rainwater options. All reasonable attempts should be made to limit the flow.

No new connections will be permitted to the public infrastructure. The additional surface water will discharge to the existing private pipework within the site boundary."

## **3. Representations**

### **3.1.**

Two objections have been received, from:

- Mr Colin Miller, 10A Royal Oak Road, Kirkwall, KW15 1RF.
- Frances Troup, Jarlsholm, 11 Royal Oak Road, Kirkwall, KW15 1RF.

### **3.2.**

Objections are on multiple grounds in respect of impact on the character of the area, design, overlooking, and privacy, as well as reference to potential future use.

## **4. Relevant Planning History**

None.

## **5. Relevant Planning Policy and Guidance**

### **5.1.**

The full text of the Orkney Local Development Plan 2017 and supplementary guidance can be read on the Council website [here](#).

### **5.2.**

The key policies, supplementary guidance and planning policy advice listed below are relevant to this application:

- Orkney Local Development Plan 2017:
  - Policy 1 - Criteria for All Development.
  - Policy 2 – Design.
  - Policy 13 - Flood Risk, SuDS and Waste Water Drainage.
- National Planning Framework 4.

## **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.**

Annex A of Planning Circular 3/2013: ‘development management procedures’ provides advice on defining a material consideration, and following a House of Lord’s judgement with regards the legislative requirement for decisions on planning applications to be made in accordance with the development plan, confirms the following interpretation: “If a proposal accords with the development plan and there are no material considerations indicating that it should be refused, permission should be granted. If the proposal does not accord with the development plan, it should be refused unless there are material considerations indicating that it should be granted.”

### **6.3.**

Annex A continues as follows:

- The House of Lord’s judgement also set out the following approach to deciding an application:
  - Identify any provisions of the development plan which are relevant to the decision.
  - Interpret them carefully, looking at the aims and objectives of the plan as well as detailed wording of policies.

- Consider whether or not the proposal accords with the development plan.
- Identify and consider relevant material considerations for and against the proposal.
- Assess whether these considerations warrant a departure from the development plan.
- There are two main tests in deciding whether a consideration is material and relevant:
  - It should serve or be related to the purpose of planning. It should therefore relate to the development and use of land.
  - It should relate to the particular application.
- The decision maker will have to decide what considerations it considers are material to the determination of the application. However, the question of whether or not a consideration is a material consideration is a question of law and so something which is ultimately for the courts to determine. It is for the decision maker to assess both the weight to be attached to each material consideration and whether individually or together they are sufficient to outweigh the development plan. Where development plan policies are not directly relevant to the development proposal, material considerations will be of particular importance.
- The range of considerations which might be considered material in planning terms is very wide and can only be determined in the context of each case. Examples of possible material considerations include:
  - Scottish Government policy and UK Government policy on reserved matters.
  - The National Planning Framework.
  - Designing Streets.
  - Scottish Government planning advice and circulars.
  - EU policy.
  - A proposed local development plan or proposed supplementary guidance.
  - Community plans.
  - The environmental impact of the proposal.
  - The design of the proposed development and its relationship to its surroundings.
  - Access, provision of infrastructure and planning history of the site.
  - Views of statutory and other consultees.
  - Legitimate public concern or support expressed on relevant planning matters.
- The planning system operates in the long term public interest. It does not exist to protect the interests of one person or business against the activities of another. In distinguishing between public and private interests, the basic question is whether the proposal would unacceptably affect the amenity and existing use of land and buildings which ought to be protected in the public interest, not whether owners or

occupiers of neighbouring or other existing properties would experience financial or other loss from a particular development.

#### **6.4.**

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.

#### **6.5.**

An award of expenses may be substantial where an appeal is conducted either by way of written submissions or a local inquiry.

#### **6.6. Status of the Local Development Plan**

Although the Orkney Local Development Plan 2017 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.

#### **6.7. Status of National Planning Framework 4**

##### **6.7.1.**

National Planning Framework 4 (NPF4) was adopted by Scottish Ministers on 13 February 2023, following approval by the Scottish Parliament in January 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 NPF4 and a provision of the Orkney Local Development Plan 2017, NPF4 is to prevail as it was adopted later. It is important to note that NPF4 must be read and applied as a whole, and that the intent of each of the 33 policies is set out in NPF4 and can be used to guide decision-making.

##### **6.7.2.**

In the current case, there is not considered to be any incompatibility between the provisions of NPF4 and the provisions of the Orkney Local Development Plan 2017, to merit any detailed assessment in relation to individual NPF4 policies.

## **7. Assessment**

### **7.1. Location and background**

#### **7.1.1.**

The application seeks planning permission for the erection of a double garage to the rear of 11A Royal Oak Road, Kirkwall, as indicated in the Site Plan attached as Appendix 1 to this report. The site is the rear garden of a single storey, semi-detached dwelling set within a residential development to the south of Kirkwall. The sloping rear garden has been excavated and a retaining wall erected, in the location where the garage is proposed.

#### **7.1.2.**

The proposed garage would be set to the rear of the site, measuring 10.19 metres in width and 7.06 metres in depth. At its tallest, the monopitch roof of the garage would measure 3.22 metres. Due to the topography of the site, and some groundworks, the full height of the building would not be visible from neighbouring properties.

### **7.2. Principle**

Policy 1 'Criteria for All Development' states that development will be supported where it "is sited and designed taking into consideration the location and the wider townscape..." and where the "amenity of the surrounding area is preserved and there are no unacceptable adverse impacts on the amenity of adjacent and nearby properties/users". The development comprises a building ancillary to the use and enjoyment of an existing house, and as such is householder development. The development of a domestic garage within the curtilage of a house for ancillary and incidental use is acceptable in principle. A planning condition would be attached to control its use for domestic purposes only; any speculation regarding potential future uses is not material to the planning consideration.

### **7.3. Design and Amenity**

#### **7.3.1.**

The design of the garage is typical of an outbuilding in a domestic setting, and there are examples of double and larger garages in the surrounding area. The roof would be dark grey coated profile steel sheet and the walls rendered. Conditions would control materials and finishes. The proposal is acceptable with regards design and complies with Policy 2 'Design'.

#### **7.3.2.**

The proposed garage would leave sufficient outdoor amenity space for the occupiers of the property. The garage would have no windows, aside from a rooflight, thereby avoiding any overlooking of neighbouring properties. Groundworks (including works already carried into the slope of the rear garden) would result in the garage being dug into the site, noting that it would be approximately 60 centimetres above the level of the garden at the rear boundary, where there is a retaining wall. In terms of

overshadowing, there are already boundary treatments in the form of fences and trees. The garage would not contribute to any significant additional overshadowing.

### **7.3.3.**

The proposal is acceptable in terms of design and amenity and complies with Policy 2.

## **7.4. Drainage**

The site is not within an area identified as being a flood risk. Policy 13 'Flood Risk, SuDS and Waste Water Drainage' states that alterations and small-scale extensions are outwith the scope of the policy, providing they would not have a significant effect on any identified local flooding problems, which is considered to apply to this application. Nonetheless, given comments from Roads Services and Scottish Water, a condition would be attached regarding management of surface water. The proposal complies with Policy 13.

## **8. Conclusion and Recommendation**

The proposed development complies with policies 1, 2 and 13 of the Orkney Local Development Plan (2017) and relevant policy provisions of National Planning Framework 4. The proposal is acceptable in principle, and in terms of design, residential amenity, and drainage. There are no material considerations, including those raised in the objections, that outweigh this conclusion. Accordingly, the application is recommended for approval, subject to the conditions attached as Appendix 2 to this report.

## **9. Contact Officers**

Jamie Macvie, Service Manager (Development Management), Email [jamie.macvie@orkney.gov.uk](mailto:jamie.macvie@orkney.gov.uk)

Murray Couston, Planning Officer, Development Management, Email [murray.couston@orkney.gov.uk](mailto:murray.couston@orkney.gov.uk)

## **10. Appendices**

Appendix 1: Site Plan.

Appendix 2: Planning Conditions.



North



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0m 1cm = 12.5m 62.5m  
Scale 1:1250





## Appendix 2.

01. The development hereby approved to which this planning permission relates must be begun not later than the expiration of three years, beginning with the date on which the permission is granted, which is the date of this decision notice. If development has not commenced within this period, this planning permission shall lapse.

Reason: In accordance with Section 58 of the Town and Country Planning (Scotland) Act 1997, as amended, which limits the duration of planning permission.

02. Throughout the lifetime of the development hereby approved, surface water shall be treated in accordance with the principles of Sustainable Drainage Systems (SuDS) and be compliant with the guidance set out in CIRIA's SuDS Manual C753.

No development shall commence until full details regarding the management of all surface water resulting from the development, including any treatment on site, and any surface water sewer connection, have been submitted to and approved, in writing, by the Planning Authority, in conjunction with Roads Services. Thereafter, the development shall be completed wholly in accordance with approved details, prior to being brought into use.

Reason: To ensure the provision of an adequate surface water drainage system and to accord with Policy 13B 'Sustainable Drainage Systems (SuDS)' of Orkney Local Development Plan 2017, Scottish Planning Policy - Managing Flood Risk and Drainage and in the interests of road safety.

03. No development shall commence until full details of the external wall render colour have been submitted to and approved, in writing, by the Planning Authority. Thereafter, the development shall be completed wholly in accordance with approved details.

Reason: To protect the amenity of the area.

04. Hours of work during the construction of the development hereby approved, involving the use of machinery and powered tools, or any other operation, for example hammering, that would generate noise audible beyond the boundary of the site, shall be restricted to 07:30 to 18:00 Mondays to Fridays, 08:00 to 13:00 on Saturdays, and not at all on Sundays or the Christmas or New Year Public Holidays, unless otherwise agreed, in writing, with the Planning Authority.

Reason: In the interest of residential amenity of the area and in order to reduce any possible nuisance arising to nearby residents during the construction of this development.