



Item: 4

Local Review Body: 2 May 2024.

Proposed Siting of Two Houses and Create Access on Land near Thorne Villa, Harray (22/179/PIP).

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

1. Overview

- 1.1. Planning application 22/179/PIP in respect of the proposed siting of two houses and creation of an access on land near Thorne Villa, Harray, was refused by the Appointed Officer on 30 November 2023.
- 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's agent has submitted a Notice of Review (see Appendix 1) requesting that the decision of the Appointed Officer be reviewed.
- 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. In accordance with the Council's policy to undertake site inspections of all planning applications subject to a review, prior to the meeting to consider the review, a site inspection to land near Thorne Villa, Harray, is due to be undertaken at 10:30 on 2 May 2024.
- 1.6. The review procedure is set out in section 4 below.

2. Recommendations

- 2.1. It is recommended that members of the Local Review Body:
- i. 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.
 - ii. Determines, in the event that the decision is reversed or varied, the reasons, and, if applicable, the detailed conditions to be attached to the decision notice.
 - iii. Delegates powers to the Corporate Director for Strategy, Performance and Business Solutions, in consultation with the Planning Advisor and the Legal Advisor, if required, to determine the necessary conditions to attach to the Decision Notice, based on the relevant matters as set out in section 4.3 of this report.
- 2.2. Should the Local Review Body determine that it does not have sufficient information to proceed to determination of the review, it is recommended that members of the Local Review Body:
- i. Determines 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. Planning Authority Decision

- 3.1. On 30 November 2023, the Appointed Officer refused planning application 22/179/PIP on the following grounds:
- Policy 5E (vi) of the Orkney Local Development Plan 2017 provides for “...the creation of one housing plot within an existing housing group during the lifetime of the Orkney Local Development Plan...” The planning application is submitted in principle for two housing plots, therefore exceeding and contrary to the provision of Policy 5E (vi) of the Orkney Local Development Plan 2017.

- The application site is not within an ‘existing housing group’ as defined in paragraph 3.19 of Supplementary Guidance ‘Housing in the Countryside’ (2021). The proposed development therefore fails to meet the requirement of point 1, of paragraph 3.20 of Supplementary Guidance ‘Housing in the Countryside’ (2021), and is therefore contrary to Policy 5E (vi) of the Orkney Local Development Plan 2017.
- The application site does not ‘share boundaries with two existing independent dwelling houses’. The proposed development therefore fails to meet the requirement of point 2, of paragraph 3.20 of Supplementary Guidance ‘Housing in the Countryside’ (2021), and is therefore contrary to Policy 5E (vi) of the Orkney Local Development Plan 2017.
- On the basis the application site is not within a ‘housing group’ as defined for the purposes of new housing in the countryside, the development cannot accord with and enhance a housing group. The plot shape and development density are not similar to houses nearby. The proposed development therefore fails to meet the requirement of point 3, of paragraph 3.20 of Supplementary Guidance ‘Housing in the Countryside’ (2021), and is therefore contrary to Policy 5E (vi) of the Orkney Local Development Plan 2017.
- No provision exists within Policy 17 ‘Rural homes’ of National Planning Framework 4 for infill housing development in the countryside. The proposed development is therefore contrary to Policy 17 of National Planning Framework 4.

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

4. Local 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. A representation was received from Development Management and is attached as Appendix 5 to this report.
- 4.2. 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’s agent on the further representations received are attached as Appendix 6 to this report.
- 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:

- Approval of matters specified:
 - Siting and design
 - Site layout
 - Boundaries
 - Landscaping
 - Surface water drainage
 - Foul drainage
 - Refuse bin storage
 - External lighting
 - Access
 - Hours of construction
 - Biodiversity enhancement.
- 4.4. All conditions should be in accordance with [Planning Circular 4/1998](#) regarding the use of conditions in planning permissions.
- 4.5. If the decision is reversed and the development is approved, it is proposed that powers are 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.
- 4.6. 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 following 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.

5. Relevant Planning Policy and Guidance

- 5.1. 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...”
- 5.2. 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.

- 5.3. 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.
- 5.4. 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 5E – Housing, Single Houses and new Housing Clusters in the Countryside.
 - Policy 8B - Historic Environment and Cultural Heritage.
 - Policy 9 – Natural Heritage and Landscape.
 - Policy 13 – Flood Risk, Sustainable Drainage Systems (SuDS) and Waste Water Drainage.
 - Policy 14 – Transport, Travel and Road Network Infrastructure.
 - Supplementary Guidance:
 - Housing in the Countryside (2021).
 - National Planning Framework 4:
 - Policy 17 – Rural Homes.

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

- **Financial:** All resources associated with supporting the review procedure, mainly in the form of staff time, are contained within existing revenue budgets.
- **Legal:** The legal implications are set out in the body of the report.
- **Corporate Governance:** In accordance with the Scheme of Administration, determination of Notices of Review is delegated to the Local Review Body.
- **Human Resources:** None.
- **Equalities:** None.
- **Island Communities Impact:** None.
- **Links to Council Plan:** Not applicable.
- **Links to Local Outcomes Improvement Plan:** Not applicable.
- **Environmental and Climate Risk:** None.
- **Risk:** None.
- **Procurement:** None.
- **Health and Safety:** None.
- **Property and Assets:** None.
- **Information Technology:** None.
- **Cost of Living:** None.

List of Background Papers

Orkney Local Development Plan 2017.

National Planning Framework 4.

Supplementary Guidance for Housing in the Countryside.

Appendices

Appendix 1 – Notice of Review (pages 1 - 20)

Appendix 2 – Planning Handling Report (pages 21- 29)

Appendix 3 – Planning Services File (pages 30 - 57)

Appendix 4 – Decision Notice and Reasons for Refusal (pages 58 - 61)

Appendix 5 – Representation from Development Management (pages 62 - 63)

Appendix 6 – Comments from Agent on further representation received (pages 64 - 65)

Pages 1 to 61 can be viewed [here](#), clicking on “Accept and Search” and inserting the planning reference”22/179/PIP”.

NOTICE OF REVIEW

Under Section 43A(8) Of the Town and County Planning (SCOTLAND) ACT 1997 (As amended) In Respect of Decisions on Local Developments

The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (SCOTLAND) Regulations 2013

The Town and Country Planning (Appeals) (SCOTLAND) Regulations 2013

IMPORTANT: Please read and follow the guidance notes provided when completing this form. Failure to supply all the relevant information could invalidate your notice of review.

PLEASE NOTE IT IS FASTER AND SIMPLER TO SUBMIT PLANNING APPLICATIONS ELECTRONICALLY VIA <https://www.eplanning.scot>

1. Applicant's Details		2. Agent's Details (if any)	
Title	<input type="text"/>	Ref No.	<input type="text"/>
Forename	<input type="text"/>	Forename	<input type="text"/>
Surname	<input type="text"/>	Surname	<input type="text"/>
Company Name	Orkney Builders (Contractors)	Company Name	Ness Planning
Building No./Name	4	Building No./Name	Westfield
Address Line 1	Crowness Road	Address Line 1	Brae of Cantray
Address Line 2	Hatston Industrial Estate	Address Line 2	Croy
Town/City	Kirkwall	Town/City	<input type="text"/>
Postcode	KW15 1RG	Postcode	IV2 5PW
Telephone	<input type="text"/>	Telephone	<input type="text"/>
Mobile	<input type="text"/>	Mobile	<input type="text"/>
Fax	<input type="text"/>	Fax	<input type="text"/>
Email	<input type="text"/>	Email	nicola@nessplanning.co.uk
3. Application Details			
Planning authority	Orkney Islands Council		
Planning authority's application reference number	22/179/PIP		
Site address	<input type="text" value="Thorne Villa (land near), Stoneyhill Road, Harray, KW17 2JS"/>		
Description of proposed development	<input type="text" value="Site for 2no houses on redundant area of land."/>		

Date of application	31.05.22	Date of decision (if any)	30.11.23
<p>Note. This notice must be served on the planning authority within three months of the date of decision notice or from the date of expiry of the period allowed for determining the application.</p>			
4. Nature of Application			
Application for planning permission (including householder application)			<input type="checkbox"/>
Application for planning permission in principle			<input checked="" type="checkbox"/>
Further application (including development that has not yet commenced and where a time limit has been imposed; renewal of planning permission and/or modification, variation or removal of a planning condition)			<input type="checkbox"/>
Application for approval of matters specified in conditions			<input type="checkbox"/>
5. Reasons for seeking review			
Refusal of application by appointed officer			<input checked="" type="checkbox"/>
Failure by appointed officer to determine the application within the period allowed for determination of the application			<input type="checkbox"/>
Conditions imposed on consent by appointed officer			<input type="checkbox"/>
6. Review procedure			
<p>The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.</p> <p>Please indicate what procedure (or combination of procedures) you think is most appropriate for the handling of your review. You may tick more than one box if you wish the review to be conducted by a combination of procedures.</p>			
Further written submissions			<input type="checkbox"/>
One or more hearing sessions			<input type="checkbox"/>
Site inspection			<input type="checkbox"/>
Assessment of review documents only, with no further procedure			<input checked="" type="checkbox"/>
<p>If you have marked either of the first 2 options, please explain here which of the matters (as set out in your statement below) you believe ought to be subject of that procedure, and why you consider further submissions or a hearing necessary.</p>			
7. Site inspection			
In the event that the Local Review Body decides to inspect the review site, in your opinion:			
Can the site be viewed entirely from public land?			<input checked="" type="checkbox"/>
Is it possible for the site to be accessed safely, and without barriers to entry?			<input checked="" type="checkbox"/>

If there are reasons why you think the Local Review Body would be unable to undertake an unaccompanied site inspection, please explain here:

8. Statement

You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. Note: you may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

If the Local Review Body issues a notice requesting further information from any other person or body, you will have a period of 14 days in which to comment on any additional matter which has been raised by that person or body.

State here the reasons for your notice of review and all matters you wish to raise. If necessary, this can be continued or provided in full in a separate document. You may also submit additional documentation with this form.

Please see attached statement and supporting documentation

Have you raised any matters which were not before the appointed officer at the time your application was determined? Yes No X

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.

9. List of Documents and Evidence

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review

Planning Review Statement
 Extract Policy 17 NPF4
 Chief Planner's letter dated February 2023
 Scottish Government 6 Fold Urban Rural Classification 2020

Note. The planning authority will make a copy of the notice of review, the review documents and any notice of the procedure of the review available for inspection at an office of the planning authority until such time as the review is determined. It may also be available on the planning authority website.

10. Checklist

Please mark the appropriate boxes to confirm that you have provided all supporting documents and evidence relevant to your review:

- Full completion of all parts of this form X
- Statement of your reasons for requesting a review X
- All documents, materials and evidence which you intend to rely on (e.g. plans and drawings or other documents) which are now the subject of this review. X

Note. Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice from that earlier consent.

DECLARATION

I, the applicant/agent hereby serve notice on the planning authority to review the application as set out on this form and in the supporting documents. I hereby confirm that the information given in this form is true and accurate to the best of my knowledge.

Signature: Name: Date:

Any personal data that you have been asked to provide on this form will be held and processed in accordance with Data Protection Legislation.

REVIEW REQUEST AGAINST REFUSAL OF PLANNING PERMISSION 22/179/PIP
SITING OF TWO DWELLING HOUSES
LAND ADJACENT TO STONEYHILL ROAD, HARRAY, ORKNEY KW17 2JS
Date of decision 30 November 2023

Introduction

This report sets out the grounds of appeal against the refusal of planning permission for the development of two house plots on land at Stoneyhill Road, Harray. It addresses the reasons for refusal and identifies the relevant policy criteria that justify the grant of planning permission in determining this request for a Review.

Planning permission was refused following consideration of the application details and the decision notice issued on 30 November 2023.

This Review is submitted within the three month deadline.



Figure 1 – aerial view of proposed site (red) and recently approved plot (yellow) indicating similar plot size and location adjacent to existing houses.

Proposal

The proposal involves the formation of two house plots on land that is situated on the west side of Stoneyhill Road, Harray. The proposed house plots adjoin the boundary of the existing house to the south and are separated by an area of open ground from the boundary of the house to the north.

The plots extend east to west to the existing post and wire fence that defines the rear boundary of the existing field. The two plots will be of a similar size of approximately 1400 sq metres. A new shared access will be formed involving a single new junction with the public road. This will be designed in accordance with roads authority requirements (SC01) for a non-adopted access entrance.

The two plots will have access to an available electricity and public water supply and foul drainage will be provided by means of a private bio-disc and soakaway system. Surface water will be managed on-site to ensure there is no discharge or run off of water from outwith the two plots.

There are no nearby watercourses that would be affected by the proposal and there are no known archaeological features on the site. The Report of Handling confirms the two plots will not adversely affect the Inner Sensitive Zone of the Heart of Neolithic Orkney World Heritage Site. Development of the site would ensure that the proposed houses would be 1 or 1½ storey, and no higher than the adjacent existing houses, Thorne Villa and The View.

No infrastructure or design matters are raised in the assessment or listed as reasons for refusal.

Site description

The site is located at Harray, on the west side of Stoneyhill Road and comprises an area of open ground set between two existing houses. The house to the north has recently obtained planning permission for a further house in the curtilage. The immediate area therefore comprises three houses with the two plots set mid-way between the existing development footprint.

The existing houses are each single-storey, detached properties of traditional proportions and material finishes. Each has a generous curtilage in which the houses are located centrally. The two proposed plots would accommodate developments of a similar scale and form and these would be subject to further application in any event.



Figure 2 – application sites outlined in red

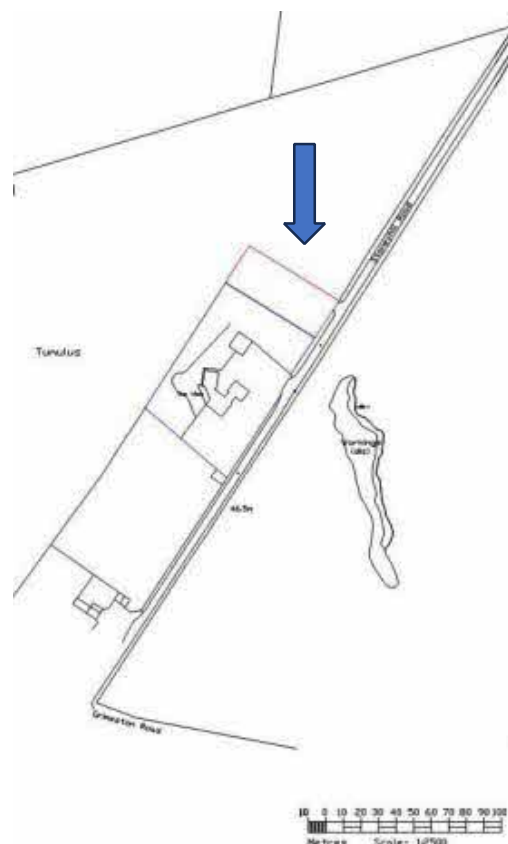


Figure 3 – plot for which planning permission has recently been granted

Council's Reasoning for Refusal

The Council's reasoning for the decision to refuse planning permission is noted on the decision notice as:

The proposed development is contrary to the provisions of the National Planning Framework 4 and the Orkney Local Development Plan 2017, and there are no material considerations either within documentation submitted, or apparent on site, which would warrant any outcome other than refusal of the application. The decision to refuse the application can rest wholly on the unacceptable principle of development, and the failure to comply with Policy 5E 'Houses and new Housing Clusters in the Countryside' of the Orkney Local Development Plan (2017), and there being no relevant policy provision within Policy 17 'Rural homes' of National Planning Framework 4.

This is important as it confirms that the Council has based its justification and reasoning in terms of NPF4 based on Policy 17. As will be explained within this Review statement, Policy 17 must be applied only as it is relevant to the circumstances. Orkney is defined as Remote Rural in the Scottish Government 6 Fold Rural Classification (attached) and this, as explained in the following sections, is a material planning consideration. The further reference to Local Development Plan policy is not relevant as it is superseded by NPF4. This is the advice of the Scottish Government Chief Planner (letter attached for reference), who advises that the policies of NPF4 will take precedence over all other, older, policy unless it is compatible, which, in this instance, it is not. NPF4 specifically does not refer to 'clusters' or housing groups and differentiates between rural and remote rural and the different policies that apply to each.

REASONS FOR REFUSAL

The Decision Notice states the following reasons for refusal:

01. Policy 5E (vi) of the Orkney Local Development Plan 2017 provides for "...the creation of one housing plot within an existing housing group during the lifetime of the Orkney Local Development Plan..." The planning application is submitted in principle for two housing plots, therefore exceeding and contrary to the provision of Policy 5E (vi) of the Orkney Local Development Plan 2017.
02. The application site is not within an 'existing housing group' as defined in paragraph 3.19 of Supplementary Guidance 'Housing in the Countryside' (2021). The proposed development therefore fails to meet the requirement of point 1, of paragraph 3.20 of Supplementary Guidance 'Housing in the Countryside' (2021), and is therefore contrary to Policy 5E (vi) of the Orkney Local Development Plan 2017.
03. The application site does not 'share boundaries with two existing independent dwelling houses'. The proposed development therefore fails to meet the requirement of point 2, of paragraph 3.20 of Supplementary Guidance 'Housing in the Countryside' (2021), and is therefore contrary to Policy 5E (vi) of the Orkney Local Development Plan 2017.
04. On the basis the application site is not within a 'housing group' as defined for the purposes of new housing in the countryside, the development cannot accord with and enhance a housing group. The plot shape and development density are not similar to houses nearby. The proposed development therefore fails to meet the requirement of point 3, of paragraph 3.20 of Supplementary Guidance 'Housing in the Countryside' (2021), and is therefore contrary to Policy 5E (vi) of the Orkney Local Development Plan 2017.

05. No provision exists within Policy 17 'Rural homes' of National Planning Framework 4 for infill housing development in the countryside. The proposed development is therefore contrary to Policy 17 of National Planning Framework 4.

Comments on Reasons for Refusal

Consideration of the reasons for refusal requires an assessment of the relevant policy guidelines. Reasons 1-4 refer specifically to guidance and policy that is superseded by Policy 17 NPF4. This is what the Chief Planner instructs. Existing Policies that are not consistent with NPF4 will be superseded.

Reason 5 infers that because NPF4 Policy 17 does not reference 'clusters' they cannot be supported. However, this relates to rural areas and not remote rural areas as here.

No other concerns were raised including site and setting, habitats and species, infrastructure or the impact on historical assets. The key consideration to address is therefore compliance with policy for rural housing development.

NPF4

The recent adoption of NPF4 by Scottish Government is a material consideration. The Chief Planner in her letter dated 8 February 2023 to all planning authorities advises that 'in the event of any incompatibility between a provision of NPF4 and a provision of an LDP, whichever of them is the later in date is to prevail'. This accords with the terms of Section 24(3) of the Town and Country Planning (Scotland) Act 1997.

Recognising that the Orkney Local Development Plan 2017 is out of date, the policies of NPF4 should be the determining factor in the assessment of any planning application. Supplementary Guidance is dated 2021 and is therefore also superseded by NPF4 where it is incompatible with the terms of NPF4.

This means that the reasons for refusal (1-4) which rely on Policy 5E- 'Houses and new Housing Clusters in the Countryside' are not relevant and cannot be cited as justification for the refusal of planning permission. This is because the relevant policy assessment is NPF4 Policy 17c).

Reference to the policies of the Orkney Local Development Plan where it differs from that of the relevant policies of NPF4 cannot be used as a reason for refusal. As advised by the Chief Planner, the more up-to-date and recent policy document will supersede the older policies. As a document dating to 2017, NPF4 will supersede the policies it contains where there is divergence.

Policy 5E is incompatible with the relevant Rural Homes Policy 17 of NPF4. Refusal of the application on the basis of Policy 5E is not therefore competent in this situation and is not a material planning consideration.

NPF4 Policy 17 – Rural Homes

The correct and appropriate policy to use for the determination of this application is NPF4 Policy 17c) – Rural Homes. To understand this policy, it is first important to determine the location of the development. Policy 17 divides development into those areas defined as 'rural' and those as 'remote rural'. This distinction is vital to the determination of this proposal.

Scottish Government's 6 fold Urban Rural Classification 2020 (URC)

The definition of rural and remote rural is contained within the Scottish Government's 6 fold Urban Rural Classification 2020 (URC). This is used to identify Remote Rural areas across Scotland. The URC provides a

set of maps which identify remote rural areas. Orkney is defined as Remote Rural for the purposes of the Classification. (Annexed to this statement).

This distinction is critical to this application.

Where an area is defined as Remote Rural, Policy 17 part c) only applies. Policy 17 is principally concerned with development within rural areas but makes a clear distinction at Policy 17 c) between rural and remote rural areas. Policy criteria that apply to rural areas do not apply to the remote rural areas. This is a material consideration.

To clarify, Policy 17 is split into 4 sections (a-d).

17a applies to rural areas

17b applies to rural areas

17c applies to remote rural areas

17d applies to resettlement in uninhabited areas

Therefore, this proposal falls to be assessed with reference to Policy 17c alone, not 17 a or b. This area is defined as remote rural and must be assessed on that basis.

The case officer has failed to assess the case on the correct policy criteria and has wrongly referred to Policy 17 (a) and (b).

The following section addresses the reasons for refusal in detail.

Policy 17 c) advises that development proposals for new homes in remote rural areas will be supported provided the proposal:

- Supports and sustains existing fragile communities
- Supports local housing outcomes
- Is suitable in terms of location, access and environmental impact.

Policy 17c) therefore supports the principle of proposals for new homes in remote rural areas. The three criteria against which this support is measured can be assessed as follows.

The proposal will help support the local community by providing the opportunity for two homes within an established, albeit dispersed settlement which supports individual houses set along the public road. A key Objective and Priority of Orkney Islands Council is to ensure an adequate supply of houses and this is set out in the Council's Local Housing Strategy. The Council's Plan 2023-2028 sets out the key priorities which focus on growing the economy and strengthening its communities. Providing opportunities for new houses fits this objective and priority. The Plan advises that a key Outcome is to 'provide more quality homes to rent or buy in various locations, providing more choice.' The proposed house plots are within an established local community and the form and layout of the plots are sympathetic to the established pattern of development.

The proposed two plots will occupy land that is not actively farmed and in terms of location has access to existing community facilities including local services, school transport and waste collection. The location of the plots is close to two existing houses with a further already granted planning permission. The siting of two houses within the 'bookends' of the two existing houses will not result in an unacceptable visual intrusion of the landscape character nor will it impact on protected species or archaeological features.

Orkney Islands Council is currently seeking views on a strategy for housing in Orkney which aims to see up to 1035 homes being built over the next ten years. The local housing strategy has at its core the provision of more homes for rent or to buy across the island communities. This proposal will deliver two new houses within an area that already supports housing and where only recently one additional house has been granted permission.

Policy 17 c) – Rural Homes therefore supports development of new homes within defined remote rural areas.

Reasons for Refusal

The following sections assess the 5 reasons for refusal.

Reason 1

As detailed, Policy 5E is no longer relevant and is superseded by Policy 17 Rural Homs of NPF4. There is no justification for Reason 1 and it cannot be substantiated as a competent reason for refusal noting the advice to planning authorities that the more recent policy document must apply where there is a divergence. Policy 17 does not include reference to housing clusters. The presence or otherwise of a cluster is no longer relevant in determining a planning application.

Reason 2

For the same reason as has been stated, NPF4 supersedes all previous policy guidance, including Supplementary Guidance, when it is not compatible with NPF4. Remote Rural areas as defined by NPF4 do not require to meet specific locational or cluster /infill criteria. Reference to paragraph 3.20 of the Supplementary Guidance (SG) 2021 is not relevant as remote rural areas are not measured against cluster or infill criteria. The SG predates NPF4 and in this instance is superseded by Policy 17c) and cannot competently be used as a reason for refusal.

Reason 3

This reason also refers to Policy 5E and the SG, and again is not relevant when cross referenced to the terms of Policy 17 c) which is the up to date adopted policy guidance governing housing within the defined Remote Rural areas.

Reason 4

Reason 4 refers again to LDP Policy 5E and the SG. These two policy documents are superseded by NPF4 where there is incompatibility, as here. NPF4 does not require new housing within remote rural areas to be situated within established housing clusters.

Reason 5

This reason refers to Policy 17 and its application for individual houses within rural areas. This site is within a Remote Rural area and different sections of Policy 17 apply as has been identified. This reason for refusal cannot be substantiated.

Summary of reasons for refusal

Scottish Government seek to encourage vibrant and sustainable rural communities. The purpose of Policy 17 as it applies to Remote Rural areas is to support and sustain the existing communities.

None of the 5 reasons stated are relevant to the application as NPF4 Policy 17c) supersedes the adopted policies of the Local Development Plan and Supplementary Guidance.

The test must be whether the proposal accords with Policy 17c). This policy exception does not specify the location and siting of a house only that it is compatible with meeting local housing need objectives and is suitable in terms of location. The surrounding area is characterised by single houses set within generous curtilages and these two plots do not differ in that respect.

The proposal accords with the key determining NPF4 Policy 17c).

The reasons for refusal do not identify any other issues or concerns with any other NPF4 policy criteria indicating that the development is in compliance with all other relevant matters.

The proposal to provide two house plots within an area of established housing is consistent with the characteristics of the area. As a Planning in Principle application, conditions can be applied that will manage design and siting details.

The Chief Planner advises that policies that are no longer compatible with NPF4 will no longer apply. Policy 5E of the LDP is no longer relevant as the area in which the houses are to be located is defined as Remote Rural. Policies that apply to Rural areas cannot therefore apply to this site.

The Reasons for Refusal do not recognise the distinction between the two definitions of rural and this proposal cannot be refused by reference to Policy 5E. Whether a cluster exists or not is no longer a determining factor as a policy exception. This is a Remote Rural area and must be assessed on Policy 17c).

The proposal for two new plots is consistent with the surrounding area and each is of a similar scale and form to that of the recently approved plot to the north of the appeal site (20/426/PIP).

For all these reasons, it is requested that the Review is allowed and planning permission be granted.

DOCUMENTS SUBMITTED IN SUPPORT OF THE REVIEW

1. Planning application form **
2. Planning submission drawings**
3. Extract NPF4 Policy 17 – Rural Homes
4. Chief Planners letter dated February 2023
5. Scottish Government's 6 fold Urban Rural Classification 2020

** denotes documents held on the planning case file and not provided.

Rural homes

Policy Principles

Policy Intent:

To encourage, promote and facilitate the delivery of more high quality, affordable and sustainable rural homes in the right locations.

Policy Outcomes:

- Improved choice of homes across tenures so that identified local needs of people and communities in rural and island areas are met.
- Homes are provided that support sustainable rural communities and are linked with service provision.
- The distinctive character, sense of place and natural and cultural assets of rural areas are safeguarded and enhanced.

Local Development Plans:

LDPs should be informed by an understanding of population change over time, locally specific needs and market circumstances in rural and island areas.

LDPs should set out tailored approaches to rural housing and where relevant include proposals for future population growth – including provision for small-scale housing such as crofts and woodland crofts and the appropriate resettlement of previously inhabited areas. The Scottish Government's 6 fold Urban Rural Classification 2020 should be used to identify remote rural areas. Plans should reflect locally appropriate delivery approaches. Previously inhabited areas that are suitable for resettlement should be identified in the spatial strategy.

Policy 17

- a) Development proposals for new homes in rural areas will be supported where the development is suitably scaled, sited and designed to be in keeping with the character of the area and the development:
- i. is on a site allocated for housing within the LDP;
 - ii. reuses brownfield land where a return to a natural state has not or will not happen without intervention;
 - iii. reuses a redundant or unused building;
 - iv. is an appropriate use of a historic environment asset or is appropriate enabling development to secure the future of historic environment assets;
 - v. is demonstrated to be necessary to support the sustainable management of a viable rural business or croft, and there is an essential need for a worker (including those taking majority control of a farm business) to live permanently at or near their place of work;
 - vi. is for a single home for the retirement succession of a viable farm holding;
 - vii. is for the subdivision of an existing residential dwelling; the scale of which is in keeping with the character and infrastructure provision in the area; or
 - viii. reinstates a former dwelling house or is a one-for-one replacement of an existing permanent house.
- b) Development proposals for new homes in rural areas will consider how the development will contribute towards local living and take into account identified local housing needs (including affordable housing), economic considerations and the transport needs of the development as appropriate for the rural location.
- c) Development proposals for new homes in remote rural areas will be supported where the proposal:
- i. supports and sustains existing fragile communities;
 - ii. supports identified local housing outcomes; and

- iii. is suitable in terms of location, access, and environmental impact.
- d) Development proposals for new homes that support the resettlement of previously inhabited areas will be supported where the proposal:
- i. is in an area identified in the LDP as suitable for resettlement;
 - ii. is designed to a high standard;
 - iii. responds to its rural location; and
 - iv. is designed to minimise greenhouse gas emissions as far as possible.

Policy impact:

- ✔ Just Transition
- ✔ Conserving and recycling assets
- ✔ Local living
- ✔ Compact urban growth
- ✔ Rebalanced development
- ✔ Rural revitalisation

Key policy connections:

[Tackling the climate and nature crises](#)

[Climate mitigation and adaptation](#)

[Natural places](#)

[Historic assets and places](#)

[Green belts](#)

[Brownfield, vacant and derelict land and empty buildings](#)

[Coastal development](#)

[Sustainable transport](#)

[Design, quality and place](#)

[Local Living and 20 minute neighbourhoods](#)

[Infrastructure first](#)

[Quality homes](#)

[City, town, local and commercial centres](#)

[Rural development](#)

[Tourism](#)



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8 February 2023

Dear Colleague

Transitional Arrangements for National Planning Framework 4

Following the approval by the Scottish Parliament of National Planning Framework 4 (NPF4) on 11 January 2023, the following provides advice on NPF4 becoming part of the statutory 'development plan' alongside local development plans (LDPs). We intend for this advice to support consistency in decision making ahead of new style LDPs being in place.

The Development Plan

In Scotland, the planning system is plan-led. From 13 February, on adoption and publication by Scottish Ministers, NPF4 will form part of the statutory development plan, along with the LDP applicable to the area at that time and its supplementary guidance. NPF4 will supersede National Planning Framework 3 and Scottish Planning Policy (SPP) (2014). NPF3 and SPP will no longer represent Scottish Ministers' planning policy and should not therefore form the basis for, or be a consideration to be taken into account, when determining planning applications on or after 13 February.

On 13 February, Strategic Development Plans (SDP) and associated supplementary guidance will cease to have effect and as such no longer be part of the development plan.

LDPs already adopted will continue to be part of the development plan. For avoidance of doubt, existing LDP land allocations will be maintained.

LDPs within SDP areas will no longer be required to be consistent with the SDP. For proposed LDPs prepared prior to the adoption and publication of NPF4, it may be that there are opportunities to reconcile identified inconsistencies with NPF4 through the examination process. However there are clear limitations to this. The scope of an examination is limited to issues raised in representations and the process must remain proportionate and fair.

Whether an LDP has been adopted prior to or after the adoption and publication of NPF4, legislation states that in the event of any incompatibility between a provision of NPF and a

provision of an LDP, whichever of them is the later in date is to prevail (Town and Country Planning (Scotland) Act 1997 ("the 1997 Act"); section 24(3)).

Across Scotland there is a substantial amount of supplementary guidance associated with SDPs and LDPs. Supplementary guidance associated with SDPs will no longer have effect following adoption and publication of NPF4 on 13 February. Supplementary guidance associated with LDPs which was in force before 12 February (the date on which section 13 of the 2019 Act comes into force) will continue to be in force and be part of the development plan (1997 Act; paragraph 2 of schedule 1).

As the development plan system transitions to one without statutory supplementary guidance, the Planning (Scotland) Act 2019 (Commencement No.11 and Saving and Transitional Provisions) Regulations 2023 provide for local authorities to continue to prepare and adopt supplementary guidance associated with LDPs until 31 March 2025. Supplementary guidance adopted under those provisions is to be treated as forming part of the development plan for the area to which the LDP relates.

The provisions of section 16(1)(a) of the 1997 Act require planning authorities to prepare a new LDP for their area at intervals of no more than 10 years or whenever required to do so by the Scottish Ministers. It will be important for the first round of 'new style' LDPs to be prepared in a timely fashion. We expect that every planning authority in Scotland will have a new style plan in place within around 5 years of the new development plan regulations coming into force, which we anticipate happening this spring.

Legislation provides for planning authorities to prepare LDPs that include policies and proposals for development and use of land in their area. There is no legal requirement for LDPs to be directly 'compatible' with NPF4, although in preparing LDPs, there will be a statutory requirement under section 16(2)(a)(i) of the 1997 Act that planning authorities take the NPF into account.

Applying NPF4 Policy

Section 25 of the 1997 Act requires that decisions are made in accordance with the development plan unless material considerations indicate otherwise. Application of planning judgement to the circumstances of an individual situation remains essential to all decision making, informed by principles of proportionality and reasonableness.

It is important to bear in mind NPF4 must be read and applied as a whole. The intent of each of the 33 policies is set out in NPF4 and can be used to guide decision-making. Conflicts between policies are to be expected. Factors for and against development will be weighed up in the balance of planning judgement.

It is recognised that it may take some time for planning authorities and stakeholders to get to grips with the NPF4 policies, and in particular the interface with individual LDP policies. As outlined above, in the event of any incompatibility between a provision of NPF and a provision of an LDP, whichever of them is the later in date is to prevail. Provisions that are contradictory or in conflict would be likely to be considered incompatible.

We expect that monitoring of the policies will particularly focus on new and developing policy areas, so that their application in practice can inform future guidance.

Below we have set out some more specific advice on individual policies.

Policy 1 – Tackling the climate and nature crises

This policy prioritises the climate and nature crises in all decisions. It should be applied together with the other policies in NPF4. It will be for the decision maker to determine whether the significant weight to be applied tips the balance in favour for, or against a proposal on the basis of its positive or negative contribution to the climate and nature crises.

Policy 2 - Climate mitigation and adaptation

There is currently no single accepted methodology for calculating and / or minimising emissions. The emphasis is on reducing emissions as far as possible, rather than eliminating all emissions.

At this stage, quantitative assessments are not expected for all applications and there are no defined thresholds that require different levels of information at this stage. Planning authorities will be aware that this is unlikely to be a key consideration for many applications, for example for smaller scale developments, householder applications or many changes of use. However, for other types of development proposals that may generate significant emissions, such as some national or major developments, we consider it to be reasonable to expect quantitative information to be provided. For developments that require an Environmental Impact Assessment (EIA), the impact of the project on climate (e.g. the nature and magnitude of greenhouse gas emissions) and the vulnerability of the project to climate change will have been considered as appropriate in the EIA Report. See [Circular 1/2017](#) for further information.

Last year the Scottish Government published [carbon management guidance for projects and programmes](#). Whilst this is aimed at larger scale projects within city region and growth deals and a fully quantified approach is only likely to be proportionately applicable to larger scale proposals, at least whilst practice and methodologies develop over the coming years, the guidance includes useful information and highlights established methodologies which may be of assistance to applicants and planning authorities. Published research on the Lifecycle Greenhouse Gas Emissions of NPF4 Proposed National Developments¹, also offers an example of a high-level approach to identifying direct and indirect effects of proposals on GHG emissions which can be embedded into statutory Environmental Assessment obligations.

Policy 3 - Biodiversity

To support this policy in practice, NatureScot previously consulted on new 'Developing with Nature guidance' to accompany NPF4 Biodiversity policy 3c), which is to be applied to certain local development. A final version of the guidance will be available shortly. We are committed to developing guidance to accompany wider NPF4 policy 3, and – recognising that currently there is no single accepted methodology for calculating and / or measuring biodiversity 'enhancement' – we have commissioned research to explore options for developing a biodiversity metric or other tool, specifically for use in Scotland. There will be some proposals which will not give rise to opportunities to contribute to the enhancement of biodiversity, and it will be for the decision maker to take into account the policies in NPF4 as a whole, together with material considerations in each case.

¹ [National Planning Framework 4 - lifecycle greenhouse gas emissions: assessment findings - gov.scot \(www.gov.scot\)](#)

Policy 16 - Quality homes

NPF4 sets out a distinct, new approach to planning for new homes across Scotland that aims to deliver more quality homes that meet diverse needs. Policy 16, Quality Homes, promotes a plan-led approach.

New style LDPs must include targets for meeting the housing needs of people living in the area, this is referred to in NPF4 as the "Local Housing Land Requirement" (LHLR)². The LHLR will be informed by the Evidence Report and Gate Check process. It is expected that the LHLR will exceed the Minimum All-Tenure Housing Land Requirements (MATHLR) set out in NPF4.

Proposed Plans will allocate sites to meet the LHLR and, in doing so, we expect there to be greater emphasis on delivery. Policy 16 looks to incentivise delivery of allocated sites, as they will have been considered and agreed through the comprehensive and participative LDP preparation process. If an LDP reaches Examination without sufficient sites identified to meet the LHLR, a planning authority can be required to prepare another Proposed LDP under new legislative provisions in section 19ZA of the 1997 Act.

Once adopted, the delivery of new style LDPs will be monitored and supported through the Housing Land Audit and the LDP Delivery Programme. New guidance on Housing Land Audits will be prepared this year, in collaboration with key stakeholders. The new guidance will seek to ensure a consistent approach is adopted in the preparation of new Housing Land Audits. If needed, collaboration on the LDP Delivery Programme can assist in early consideration of bringing forward longer term sites.

Policy 16 is applicable to decision making when NPF4 becomes part of the statutory development plan. As outlined above, SPP(2014) will be superseded and not form part of Scottish Government planning policies, including: the requirement to maintain at least a 5 year supply of effective housing land at all times, shortfalls in supply indicating LDP policies are not up-to-date, the 'presumption in favour of development that contributes to sustainable development' and the concept commonly known as the 'tilted balance'. Consideration must be given as to whether provisions in LDPs are incompatible with provisions of NPF4. Where there is an incompatibility, such as between a housing exceptions policy in an LDP and Policy 16(f) of NPF4, the latter will prevail.

Policy 23 - Health and safety

We understand that there were some concerns about references within NPF4 to suicide risk, including recognition that LDPs should be informed by awareness of locations of concern for suicide. We would draw your attention to [Creating Hope Together \(Scotland's Suicide Prevention Action Plan 2022-2025\)](#) which was published last year by the Scottish Government together with COSLA. This recognises the importance of the National Planning Framework in reflecting the role of planning in suicide prevention. Further resources are referenced in the action plan and have been produced by Public Health Scotland.

²NPF4: Annex F provides the Local Housing Land Requirement means "The amount of land required for housing, as identified by the local development plan. The Local Housing Land Requirement (LHLR) is expected to exceed the 10 year Minimum All-Tenure Housing Land Requirement (MATHLR) set out in the National Planning Framework"

It may also be useful to see [guidance](#) produced by the Welsh Government, which emphasises a pragmatic approach, suggests that suicide prevention should ideally be built into the design of projects and should be compatible with creation of good places. It also references further available practical advice on this.

Policy 27(d) - Drive through developments

During the Parliamentary scrutiny of the draft NPF4, there was some debate about the meaning and application of Policy 27(d), which states that “drive-through developments will only be supported where they are specifically supported in the LDP”. The intention of this policy was to ensure that this type of development is considered as an integral part of the wider development plan, and is not (as has been erroneously reported) a moratorium or ban on such developments.

In applying policy 27(d) and whether such developments are supported, planning authorities may regard wider uses that are compatible with the drive through function to be included, as there is no single class of development that this relates to and may sometimes be considered as *sui generis*. Suitable locations may include for example those allocated for Class 1 shops or Class 3 Food and drink, depending on the nature of the proposal involved in each case. In looking at the potential impact of the development as a whole, as always, decisions will depend on the facts and circumstances of each individual case and regard should be given to wider policies within NPF4, including those relating to reducing emissions that contribute to climate change and to wider policies that aim to improve town centres and support local living.

Looking forward, we will include guidance on drive throughs and the relationship to Policy 27(d) within the forthcoming local development plan guidance, which will be published this spring to support implementation of the new arrangements for LDPs.

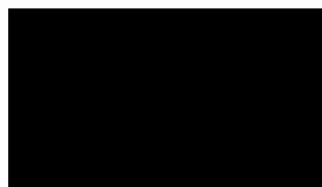
Further Planning Guidance and Advice

In the NPF4 Delivery Programme, we have given our commitment to progress work on a new suite of guidance and advice that will support activity to deliver the policy intent of NPF4. We will do this alongside careful monitoring of the implementation of policies. With some substantial changes being made through the reform of our planning system, both through legislation and in NPF4, there will now be some discrepancies in existing planning guidance and advice as a result. Nevertheless, there will remain aspects which will still be useful for reference through the new planning system and policy approach. Over time, we will review that historic advice as appropriate.

Yours faithfully



Dr Fiona Simpson
Chief Planner



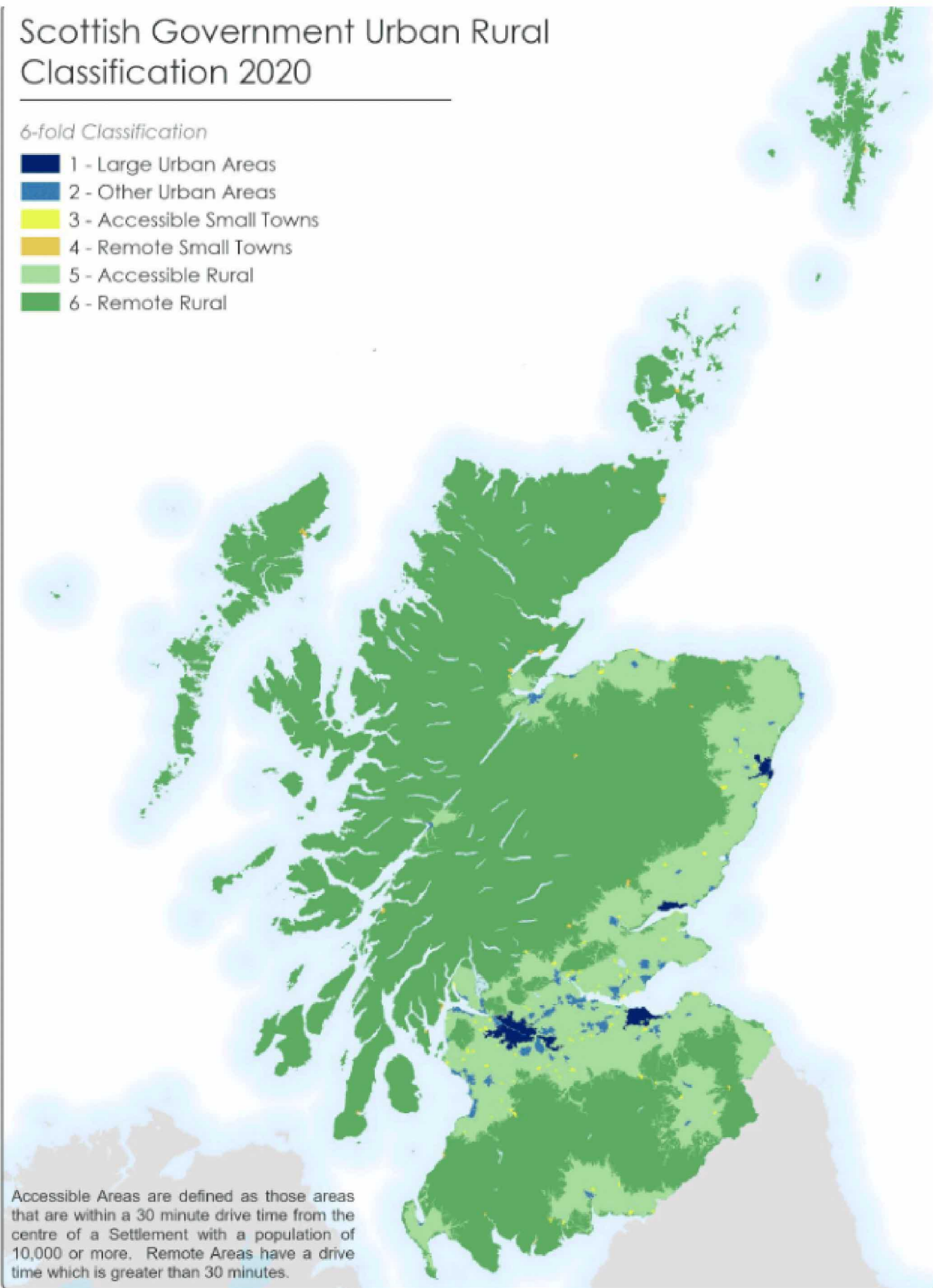
Tom Arthur
Minister for Public Finance, Planning
and Community Wealth

Scottish Government Urban Rural Classification 2020

6-fold Classification

- 1 - Large Urban Areas
- 2 - Other Urban Areas
- 3 - Accessible Small Towns
- 4 - Remote Small Towns
- 5 - Accessible Rural
- 6 - Remote Rural

Accessible Areas are defined as those areas that are within a 30 minute drive time from the centre of a Settlement with a population of 10,000 or more. Remote Areas have a drive time which is greater than 30 minutes.



Planning Handling Report.

Siting of two houses and create an access

Determination under delegated powers: 21 February 2023.

1. Summary

1.1.

Application Number:	22/179/PIP
Application Type:	Planning Permission in Principle.
Proposal:	Siting of two houses and create an access
Applicant:	Orkney Builders (Contractors) Ltd

1.2.

The application seeks to develop land for the development of two houses with a shared access onto the adjoining Stoneyhill Road, Harray. The site is within open countryside and not within a defined settlement located in an area of rough ground, characterised by mainly gorse scrub, with other properties 'Thorne Villa' to the south and 'The View' nearby to the north. The proposed site is west of the road and is separated from the road by a strip of land to safeguard underlying Scottish Water infrastructure. The proposed site benefits from panoramic views to the west as land falls away towards the Loch of Harray. The site is within the inner sensitive zone of the Heart of Neolithic Orkney World Heritage Site.

1.3.

All application documents (including plans, consultation responses and representations) are available 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

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

3. Representations

No representations have been received.

4. Relevant Planning History

No planning history on record. No pre-application advice was sought.

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 5E – Housing, Single Houses and new Housing Clusters in the Countryside
 - Policy 8B – Historic Environment and Cultural Heritage.
 - Policy 9 – Natural Heritage and Landscape.
 - Policy 13 – Flood Risk, SuDS and Waste Water Drainage.
 - Policy 14 – Transport, Travel and Road Network Infrastructure.
- Supplementary Guidance
 - Housing in the Countryside (2021).
- National Planning Framework 4.
 - Policy 17 – Rural homes

6. Legal Aspects

6.1.

Section 25 of the Town and Country Planning (Scotland) Act 1997 (“the Act”) states that in making determinations under the Planning Acts the determination should be in accordance with the development plan unless material considerations determine otherwise.

6.2. 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.

6.3. Status of National Planning Framework 4

6.3.1.

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.

6.3.2.

In the current case, there is some incompatibility between the provisions of NPF4 and the provisions of the Orkney Local Development Plan 2017, on the basis that the provision for infill development within a housing group within the Local Development Plan, does not exist within Policy 17 of the NPF4. However, the development is considered to fail to comply with both, including the earlier Local Development Plan provision, and therefore in terms of relevance to this decision, there is no incompatibility that has affected the decision. The relevant respective policy provisions are covered in detail in paragraphs 7.2.6 to 7.2.9 below.

7. Assessment

7.1. Background

7.1.1.

The site is adjacent and to the west of the Stoneyhill Road in Harray near the properties of 'The View' and 'Thorne Villa' in a generally agricultural area, with a mix of arable, grazing, and rough and semi-natural ground. The application site itself is characterised by semi-natural scrub, rather than actively cultivated agricultural land. The application site is separated from the public road by a 6-metre servitude strip safeguarding underlying Scottish Water infrastructure.

7.1.2.

Planning permission in principle is sought for two house sites, with a proposed shared access to the public road. The application is accompanied by a design statement. The supporting document acknowledges "the fact that it does not fall within the prescriptive criteria as set out in the Design Guidance", and therefore does not meet fundamental requirements of the policies and guidance relating to housing in the countryside for Mainland and the interlinked isles.

7.1.3.

There are no technical issues in relation to the functionality of the proposed sites which would make it undevelopable. However, for determining applications for houses in the countryside, before assessing the technical ability of a site to accommodate access, parking, drainage or other matters, applications are considered in relation to relevant policy provisions regarding the principle of development.

7.2. Principle

7.2.1. Orkney Local Development Plan 2017

The proposed development is not located within a defined settlement and as such is subject to consideration under Policy 5E, for Single Houses and new Housing Clusters in the Countryside, and Supplementary Guidance 'Housing in the Countryside' (2021). No substantive justification has been provided for the proposed development beyond a statement by the applicant regarding limited numbers of available housing sites in the countryside and a described 'housing crisis'.

7.2.2.

The provisions for housing in the countryside under Policy 5E are as follows:

Outwith the settlements, on the Mainland and Linked South Isles, developments of single houses and housing clusters will be supported where it involves one of the following:

- i. The reinstatement or redevelopment of a former dwelling house.*
- ii. The conversion of a redundant building or structure.*
- iii. The replacement of an existing building or structure.*
- iv. The re-use of brownfield land, where the previous use is evident on site.*
- v. The subdivision of a dwelling house or its residential curtilage.*
- vi. Single house infill development within existing housing groups.*
- vii. The provision of a single dwelling house for a rural business where 24 hour supervision is an operational requirement (including agricultural workers or crofters).*
- viii. The provision of a single dwelling house to allow for the retirement succession of a viable holding.*

If a building or structure is of architectural and / or historic merit, the consolidation and retention of the building will be required by planning condition through options i), ii), iii) or iv).

7.2.2.

Simply, the proposed development does not meet any of the eight policy provisions that allow for housing development in the countryside. The application is presented based on a case which relates to housing demand and general points regarding the 'fit' of the development, whilst acknowledging that the development is incompatible with relevant policy, with specific reference made to the provision of Policy 5E (vi), for a single house infill within an existing housing group. The application is for two house sites and between two individual houses, which are separated by approximately 90 metres of rough ground, comprising scrub cover.

7.2.3.

Supplementary Guidance 'Housing in the Countryside' (2021) provides the interpretation of Policy 5E (vi) and confirms that for houses to be defined as a 'housing group' for the purposes of a new infill house, the existing group must be:

"...four or more occupied and independent dwelling houses which relate to each other and are viewed as a group, meaning two or more of the houses share domestic curtilage boundaries."

It is further confirmed that an infill site must meet the following requirements:

1. Be within a housing group as defined above.
2. Be located in between two of the occupied and independent dwelling houses with the infill site sharing boundaries with these two dwelling houses.
3. Accord with and enhance the housing group, with a similar plot size and shape, development density and design.
4. Allow for an independent dwelling house and curtilage.

Each of these criteria must be met, to comply with policy. This application fails to meet criteria 1, 2 and 3.

7.2.4. Case presented by developer

The developer presents a case that a relatively recent planning permission 20/426/PIP (which lapses in April 2024), close to the application site to the north-east, within the property 'The View', creates a group of three. This is not the case, as that planning permission for subdivision of garden ground is approved in principle only and is therefore not an 'occupied house', and regardless of the stage of that permission, does not create a group of 'four or more occupied houses'.

7.2.5.

Consideration can also be made of the statement by the developer of the *"limited nature of remaining available developments sites that exist within the Orkney countryside"* and that relevant policy provisions for housing in the countryside *"has not substantially increased the availability of policy-compliant available sites"*. This is an unsubstantiated statement, and decisions must be plan-led and based on policy provisions rather than any anecdotal statements regarding the supply of housing.

7.2.6. National Planning Framework 4

The application was submitted, and initially considered, in relation to the housing in the countryside policy provisions of Policy 5E of Local Development Plan, and as noted above the application fundamentally fails to meet any of the policy provisions. Whilst awaiting consultation responses during the prolonged consideration period for this application, National Planning Framework 4 (NPF4) has been adopted and is also relevant to consideration. Policy 17 'Rural homes' of NPF4 confirms that the Local Development Plan should set out a tailored approach to rural housing and reflect locally appropriate delivery approaches.

7.2.7.

The Scottish Government's Chief Planner's Letter on Transitional Arrangements notes that "NPF4 will form part of the statutory development plan, along with the LDP applicable to the area at that time and its supplementary guidance LDPs already adopted will continue to be part of the development plan." For avoidance of doubt, existing LDP land allocations are maintained. However, the Chief Planner's Letter also states that "whether an LDP has been adopted prior to or after the adoption and publication of NPF4, legislation states that in the event of any incompatibility between a provision of NPF and a provision of an LDP, whichever of them is the later in date is to prevail (Town and Country Planning (Scotland) Act 1997 ("the 1997 Act"); section 24(3)).

7.2.8.

Policy 17 'Rural Homes' of NPF4 provides a range of policy provisions for housing in the countryside. Review of Policy 17 of NPF4 against Policy 5E of the LDP has been carried out by Development and Marine Planning, which concluded that Policy 17 largely aligns with provisions of the Local Development Plan, and therefore any incompatibility is minimal. The exception is infill development within existing housing groups in the countryside, where there is no provision in Policy 17 of NPF4. Specific policy provision Policy 5E (vi) of the Local Development Plan is therefore incompatible with Policy 17 of NPF4. Noting that NPF4 must prevail in cases of incompatibility, there is no policy provision for infill housing development in the countryside.

7.2.9.

The proposed development is therefore not compliant with the provisions of Policy 5E (vi) of the Local Development Plan. Policy 17 of NPF4 has no policy provision for infill housing in the countryside. The policy framework for this application has therefore moved from a situation of non-compliance with the relevant policy, to there being no relevant policy provision at all. The weight able to be attached to the case made by the developer in the submitted Design Statement is minimal and is significantly outweighed by the clear policy position. The conclusion that the development fails the test of principle is considered clear.

7.3. Historic Environment and Cultural Heritage**7.3.1.**

The submitted design statement makes no comment in relation to development within the Inner Sensitive Zone of the Heart of Neolithic Orkney World Heritage Site. A requirement of Policy 8, Historic Environment and Cultural Heritage, part B 'Specific Policy Considerations (i) Heart of Neolithic Orkney World Heritage Site' requires that it be demonstrated that development would not have a significant negative impact on the Outstanding Universal Value of the World Heritage Site or its setting. No consideration of any impacts arising have been presented within the information as submitted. Based on the information provided, it is not considered that the development, subject to appropriate safeguards, would have a significant negative impact on the Outstanding Universal Value of the World Heritage Site, albeit the development would have some impact on setting. As the development fails

to clearly in terms of principle, a further consideration on this matter has not been required.

7.3.2.

Several mapped/recorded archaeological features exist in the vicinity of the application site. In consultation with the Islands Archaeologist, it was commented that *“The proposal is on unimproved land and the prehistoric burial mounds, henge, and standing stones in the vicinity indicate that there is a high risk of significant archaeological remains surviving below the ground. This would require contracting suitable professional archaeologists to conduct an intrusive archaeological evaluation prior to any construction works, with the potential that archaeological remains could be found that would require full excavation, analysis and publication at the developer’s cost.”* This is a matter that could be secured by planning condition, but as above, as the development fails in principle and is unable to be supported, further consideration or submissions on this matter were not considered reasonable and have not been required.

7.4. Natural Heritage and Landscape

7.4.1.

No impacts would be anticipated to natural heritage features or species with any statutory designation. However, the scrub which is dominated by gorse provides cover and habitat for birds and other native wildlife. The field is relatively unusual in its immediate context, which is otherwise mostly improved or semi-improved grassland or arable, and so the gorse cover adds to the mosaic of habitats the area, along with a similar patch of scrub cover 300-400 metres to the east.

7.4.2.

In terms of development, the site is an area where individual houses and small steadings are relatively common, typically relating to the road network. In consideration of the open and large-scale character of the landscape character type ‘Loch Basins’, as defined in the Orkney Landscape Character Assessment, it is noted that new development can be both highly visible and potentially intrusive. Such effects would be magnified by incongruous development, and this could be exacerbated by the creation of two additional sites, risking ribbon development. As the application fails in principle, further consideration of landscape impact or potential mitigation was not necessary.

7.5. Flood Risk, SuDS and Waste Water Drainage

The site is not identified as being at risk of flooding. The extent and ownership of the wider site is such that matters of surface water drainage could be satisfactorily addressed. The site is within an area of constraint for waste water drainage, requiring specific technical design to ensure anything drainage system could operate correctly.

7.6. Road Network Infrastructure

Access is proposed from the Stoneyhill Road, using a shared access. Subject to appropriate planning conditions including the formation of a satisfactory junction with the public road and provision of a new passing place on the public road, Roads Services does not object. The site is considered of adequate size to accommodate any necessary parking and manoeuvring space.

8. Conclusion

8.1.

Fundamentally, the proposed development does not meet any of the policy provisions for new housing in the countryside and is contrary to both the Orkney Local Development Plan, Policy 5E, and Supplementary Guidance 'Housing in the Countryside' (2021). This is acknowledged in supporting documentation submitted with the application, which seeks to outweigh the policy position by a statement regarding the availability of housing sites in the countryside and the effectiveness of current policies in meeting housing demand. The statements are unsubstantiated, and of minimal weight in terms of decision-making, noting that the decision must be policy and plan led. In terms of a proposal for infill development, following adoption of National Planning Framework 4, the planning application has moved from a situation of being contrary to the relevant policy provision Policy 5E (vi) 'infill development in a housing group', to a situation where there is no relevant policy provision at all, on the basis Policy 17 'Rural homes' of NPF4 includes no provision for infill housing development in the countryside. The application would be refused under the provisions of the Local Development Plan alone, and the situation is confirmed by provisions of NPF4.

8.2.

The application site is within the Inner Sensitive Zone of the Heart of Neolithic Orkney World Heritage Site. The impact of the proposed development has not been considered within submitted supporting documentation, and the proposed development has potential to alter local experience of the landscape, and to lead to ribbon development and an element of suburbanisation in the countryside by creating a row of houses alongside the road, contrary to Development Criterion 4 of Supplementary Guidance 'Housing in the Countryside'.

8.3.

The proposed development is contrary to the provisions of the National Planning Framework 4 and the Orkney Local Development Plan 2017, and there are no material considerations either within documentation submitted, or apparent on site, which would warrant any outcome other than refusal of the application.

Consideration of layout and design, and related potential impacts on the setting of the World Heritage Site are relevant. However, in this case, the decision to refuse the application can rest wholly on the unacceptable principle of development, and the failure to comply with Policy 5E 'Houses and new Housing Clusters in the Countryside' of the Orkney Local Development Plan (2017), and there being no

relevant policy provision within Policy 17 'Rural homes' of National Planning Framework 4.

9. Reasons for Refusal

01. Policy 5E (vi) of the Orkney Local Development Plan 2017 provides for "...the creation of one housing plot within an existing housing group during the lifetime of the Orkney Local Development Plan..." The planning application is submitted in principle for two housing plots, therefore exceeding and contrary to the provision of Policy 5E (vi) of the Orkney Local Development Plan 2017.

02. The application site is not within an 'existing housing group' as defined in paragraph 3.19 of Supplementary Guidance 'Housing in the Countryside' (2021). The proposed development therefore fails to meet the requirement of point 1, of paragraph 3.20 of Supplementary Guidance 'Housing in the Countryside' (2021), and is therefore contrary to Policy 5E (vi) of the Orkney Local Development Plan 2017.

03. The application site does not 'share boundaries with two existing independent dwelling houses'. The proposed development therefore fails to meet the requirement of point 2, of paragraph 3.20 of Supplementary Guidance 'Housing in the Countryside' (2021), and is therefore contrary to Policy 5E (vi) of the Orkney Local Development Plan 2017.

04. On the basis the application site is not within a 'housing group' as defined for the purposes of new housing in the countryside, the development cannot accord with and enhance a housing group. The plot shape and development density are not similar to houses nearby. The proposed development therefore fails to meet the requirement of point 3, of paragraph 3.20 of Supplementary Guidance 'Housing in the Countryside' (2021), and is therefore contrary to Policy 5E (vi) of the Orkney Local Development Plan 2017.

05. No provision exists within Policy 17 'Rural homes' of National Planning Framework 4 for infill housing development in the countryside. The proposed development is therefore contrary to Policy 17 of National Planning Framework 4.

10. Contact Officer

Jamie Macvie MRTPI, Service Manager, Development Management

23 November 2023



Council Offices School Place Kirkwall KW15 1NY Tel: 01856 873 535 (ex 2504) Email: planning@orkney.gov.uk

Applications cannot be validated until all the necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 100566129-001

The online reference is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the planning Authority about this application.

Type of Application

What is this application for? Please select one of the following: *

- Application for planning permission (including changes of use and surface mineral working).
- Application for planning permission in principle.
- Further application, (including renewal of planning permission, modification, variation or removal of a planning condition etc)
- Application for Approval of Matters specified in conditions.

Description of Proposal

Please describe the proposal including any change of use: * (Max 500 characters)

Siting of two dwelling houses on land adjacent to Stoneyhill Road, Harray.

Is this a temporary permission? *

Yes No

If a change of use is to be included in the proposal has it already taken place?
(Answer 'No' if there is no change of use.) *

Yes No

Has the work already been started and/or completed? *

No Yes – Started Yes - Completed

Applicant or Agent Details

Are you an applicant or an agent? * (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application)

Applicant Agent

Applicant Details

Please enter Applicant details

Title:	<input type="text" value="Mr"/>	You must enter a Building Name or Number, or both: *	
Other Title:	<input type="text"/>	Building Name:	<input type="text" value="Orkney Builders Contractors Ltd"/>
First Name: *	<input type="text" value="Sinclair"/>	Building Number:	<input type="text" value="4"/>
Last Name: *	<input type="text" value="Craigie"/>	Address 1 (Street): *	<input type="text" value="Crowness Road"/>
Company/Organisation	<input type="text" value="Orkney Builders (Contractors) Ltd"/>	Address 2:	<input type="text"/>
Telephone Number: *	<input type="text" value="01856871447"/>	Town/City: *	<input type="text" value="Kirkwall"/>
Extension Number:	<input type="text"/>	Country: *	<input type="text" value="United Kingdom"/>
Mobile Number:	<input type="text"/>	Postcode: *	<input type="text" value="KW15 1RG"/>
Fax Number:	<input type="text"/>		
Email Address: *	<input type="text" value="sinclair@orkneybuilders.com"/>		

Site Address Details

Planning Authority:

Full postal address of the site (including postcode where available):

Address 1:	<input type="text"/>
Address 2:	<input type="text"/>
Address 3:	<input type="text"/>
Address 4:	<input type="text"/>
Address 5:	<input type="text"/>
Town/City/Settlement:	<input type="text"/>
Post Code:	<input type="text"/>

Please identify/describe the location of the site or sites

<input type="text" value="Site on Stoneyhill Road, Harray, Orkney, KW17 2JS."/>

Northing	<input type="text" value="1015598"/>	Easting	<input type="text" value="331814"/>
----------	--------------------------------------	---------	-------------------------------------

Pre-Application Discussion

Have you discussed your proposal with the planning authority? *

Yes No

Site Area

Please state the site area:

2883.00

Please state the measurement type used:

Hectares (ha) Square Metres (sq.m)

Existing Use

Please describe the current or most recent use: * (Max 500 characters)

Redundant area of land with vegetation including gorse bushes.

Access and Parking

Are you proposing a new altered vehicle access to or from a public road? *

Yes No

If Yes please describe and show on your drawings the position of any existing. Altered or new access points, highlighting the changes you propose to make. You should also show existing footpaths and note if there will be any impact on these.

Are you proposing any change to public paths, public rights of way or affecting any public right of access? *

Yes No

If Yes please show on your drawings the position of any affected areas highlighting the changes you propose to make, including arrangements for continuing or alternative public access.

Water Supply and Drainage Arrangements

Will your proposal require new or altered water supply or drainage arrangements? *

Yes No

Are you proposing to connect to the public drainage network (eg. to an existing sewer)? *

- Yes – connecting to public drainage network
 No – proposing to make private drainage arrangements
 Not Applicable – only arrangements for water supply required

As you have indicated that you are proposing to make private drainage arrangements, please provide further details.

What private arrangements are you proposing? *

- New/Altered septic tank.
 Treatment/Additional treatment (relates to package sewage treatment plants, or passive sewage treatment such as a reed bed).
 Other private drainage arrangement (such as chemical toilets or composting toilets).

What private arrangements are you proposing for the New/Altered septic tank? *

- Discharge to land via soakaway.
 Discharge to watercourse(s) (including partial soakaway).
 Discharge to coastal waters.

Please explain your private drainage arrangements briefly here and show more details on your plans and supporting information: *

Foul drainage will be dealt with by means of biodisc (the technical detail of which will form part of a later detailed application for planning permission).

Do your proposals make provision for sustainable drainage of surface water?? *
(e.g. SUDS arrangements) *

Yes No

Note:-

Please include details of SUDS arrangements on your plans

Selecting 'No' to the above question means that you could be in breach of Environmental legislation.

Are you proposing to connect to the public water supply network? *

Yes

No, using a private water supply

No connection required

If No, using a private water supply, please show on plans the supply and all works needed to provide it (on or off site).

Assessment of Flood Risk

Is the site within an area of known risk of flooding? *

Yes No Don't Know

If the site is within an area of known risk of flooding you may need to submit a Flood Risk Assessment before your application can be determined. You may wish to contact your Planning Authority or SEPA for advice on what information may be required.

Do you think your proposal may increase the flood risk elsewhere? *

Yes No Don't Know

Trees

Are there any trees on or adjacent to the application site? *

Yes No

If Yes, please mark on your drawings any trees, known protected trees and their canopy spread close to the proposal site and indicate if any are to be cut back or felled.

All Types of Non Housing Development – Proposed New Floorspace

Does your proposal alter or create non-residential floorspace? *

Yes No

Schedule 3 Development

Does the proposal involve a form of development listed in Schedule 3 of the Town and Country Planning (Development Management Procedure (Scotland) Regulations 2013) *

Yes No Don't Know

If yes, your proposal will additionally have to be advertised in a newspaper circulating in the area of the development. Your planning authority will do this on your behalf but will charge you a fee. Please check the planning authority's website for advice on the additional fee and add this to your planning fee.

If you are unsure whether your proposal involves a form of development listed in Schedule 3, please check the Help Text and Guidance notes before contacting your planning authority.

Planning Service Employee/Elected Member Interest

Is the applicant, or the applicant's spouse/partner, either a member of staff within the planning service or an elected member of the planning authority? * Yes No

Certificates and Notices

CERTIFICATE AND NOTICE UNDER REGULATION 15 – TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (SCOTLAND) REGULATION 2013

One Certificate must be completed and submitted along with the application form. This is most usually Certificate A, Form 1, Certificate B, Certificate C or Certificate E.

Are you/the applicant the sole owner of ALL the land? * Yes No

Is any of the land part of an agricultural holding? * Yes No

Are you able to identify and give appropriate notice to ALL the other owners? * Yes No

Certificate Required

The following Land Ownership Certificate is required to complete this section of the proposal:

Certificate B

Land Ownership Certificate

Certificate and Notice under Regulation 15 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

I hereby certify that

(1) - No person other than myself/the applicant was an owner [Note 4] of any part of the land to which the application relates at the beginning of the period of 21 days ending with the date of the accompanying application;

or –

(1) - I have/The Applicant has served notice on every person other than myself/the applicant who, at the beginning of the period of 21 days ending with the date of the accompanying application was owner [Note 4] of any part of the land to which the application relates.

Name:

Address:

Date of Service of Notice: *

(2) - None of the land to which the application relates constitutes or forms part of an agricultural holding;

or –

(2) - The land or part of the land to which the application relates constitutes or forms part of an agricultural holding and I have/the applicant has served notice on every person other than myself/himself who, at the beginning of the period of 21 days ending with the date of the accompanying application was an agricultural tenant. These persons are:

Name:

Address:

Date of Service of Notice: *

Signed: Mr Sinclair Craigie

On behalf of:

Date: 16/05/2022

Please tick here to certify this Certificate. *

Checklist – Application for Planning Permission

Town and Country Planning (Scotland) Act 1997

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

Please take a few moments to complete the following checklist in order to ensure that you have provided all the necessary information in support of your application. Failure to submit sufficient information with your application may result in your application being deemed invalid. The planning authority will not start processing your application until it is valid.

a) If this is a further application where there is a variation of conditions attached to a previous consent, have you provided a statement to that effect? *

Yes No Not applicable to this application

b) If this is an application for planning permission or planning permission in principle where there is a crown interest in the land, have you provided a statement to that effect? *

Yes No Not applicable to this application

c) If this is an application for planning permission, planning permission in principle or a further application and the application is for development belonging to the categories of national or major development (other than one under Section 42 of the planning Act), have you provided a Pre-Application Consultation Report? *

Yes No Not applicable to this application

Town and Country Planning (Scotland) Act 1997

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

d) If this is an application for planning permission and the application relates to development belonging to the categories of national or major developments and you do not benefit from exemption under Regulation 13 of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, have you provided a Design and Access Statement? *

Yes No Not applicable to this application

e) If this is an application for planning permission and relates to development belonging to the category of local developments (subject to regulation 13. (2) and (3) of the Development Management Procedure (Scotland) Regulations 2013) have you provided a Design Statement? *

Yes No Not applicable to this application

f) If your application relates to installation of an antenna to be employed in an electronic communication network, have you provided an ICNIRP Declaration? *

Yes No Not applicable to this application

g) If this is an application for planning permission, planning permission in principle, an application for approval of matters specified in conditions or an application for mineral development, have you provided any other plans or drawings as necessary:

Site Layout Plan or Block plan.

Elevations.

Floor plans.

Cross sections.

Roof plan.

Master Plan/Framework Plan.

Landscape plan.

Photographs and/or photomontages.

Other.

If Other, please specify: * (Max 500 characters)

A Design Statement is included.

Provide copies of the following documents if applicable:

A copy of an Environmental Statement. *

Yes N/A

A Design Statement or Design and Access Statement. *

Yes N/A

A Flood Risk Assessment. *

Yes N/A

A Drainage Impact Assessment (including proposals for Sustainable Drainage Systems). *

Yes N/A

Drainage/SUDS layout. *

Yes N/A

A Transport Assessment or Travel Plan

Yes N/A

Contaminated Land Assessment. *

Yes N/A

Habitat Survey. *

Yes N/A

A Processing Agreement. *

Yes N/A

Other Statements (please specify). (Max 500 characters)

Declare – For Application to Planning Authority

I, the applicant/agent certify that this is an application to the planning authority as described in this form. The accompanying Plans/drawings and additional information are provided as a part of this application.

Declaration Name: Mr Sinclair Craigie

Declaration Date: 16/05/2022

Payment Details

Cheque: Orkney Builders (Contractors) Ltd, 026783

Created: 16/05/2022 10:29

Design Statement

Applicant: Orkney Builders (Contractors) Limited
Crowness Road
Kirkwall
KW15 1SZ

Project: Siting of two dwelling houses

Location: Land adjacent to Stoneyhill Road, Harray

Revision: —

Date: 13th May 2022

Pre-application discussions: -

Site Planning history: -

Background

The application site is located on the Stoneyhill Road in Harray. Planning permission was recently granted to sub-divide the domestic curtilage of the property bordering the eastern side of the application site (20/426/PIP). This additional property has resulted in what was a pair of houses becoming a group of three, with the application site now being within a gap site in the middle of the group.

Siting

The site is of sufficient size to accommodate two spacious domestic plots, each with an area of approximately 1400m², both of which would access onto Stoneyhill Road via a single new shared access built to OIC's required standard.

Both plots are desirably positioned to exploit the panoramic view over the West Mainland and towards Hoy.

Design

Detailed design of the properties will be subject to a later planning application.

Infrastructure & Drainage

The site will be accessed from the Stoneyhill Road via a new shared access built to OIC's required standard. The recently approved 20/426/PIP includes a condition to provide a passing place, at a position to be agreed with the Roads Department. If additional passing place infrastructure provision is required as a result of this development proposal, we will be pleased to agree specification and position with OIC's Roads Department and install as a condition of approval.

An existing water main runs between the application site and the roadside, and electricity supply infrastructure is positioned immediately adjacent to the proposal site, with access to both being straightforward for both proposed domestic house plots.

Foul drainage will be dealt with by means of biodisc (the technical detail of which will form part of a later detailed application for planning permission).

Policy

The current policy represents challenges now given the limited nature of remaining available developments sites that exist within the Orkney countryside. The supplemental guidance has been in use now for an extended period of time, and an ever-decreasing number of compliant development sites remain available as a result. Whilst an updated iteration of the design guidance was recently consulted upon, this has not substantially increased the availability of policy-compliant available sites.

The current 'housing crisis' has stimulated much discussion and commentary of late, indeed we've heard regularly of ambitions amongst Elected Members to facilitate new and spacious housing development in the Orkney Countryside rather than to favour continual growth of the Towns. With this in mind, and given that the proposed application site represents an anomaly in terms of compliance with the Design Guidance, we have opted to apply for planning permission as the site is so obviously suitable for development, despite the fact that it does not fall within the prescriptive criteria as set out in the Design Guidance.

With consideration to specific elements of the Design Guidance, the following key areas are pertinent:

Supplementary Guidance: Housing in the Countryside, Policy 5E (vi):
"Single house infill development within existing housing groups".

Single House Infill

Whilst only a single house infill is mentioned in the above noted policy, in the case of the application site this would represent a waste of finite land resource, and would result in a failure on the part of the development to make most appropriate use of this rare and attractive development site. The most logical and natural solution for this site is to provide a pair of domestic plots, both of which fall within the 1500m² limit for domestic curtilage as required by Section 2 of the Supplementary Guidance: Housing in the Countryside Policy, section 2.10, DC9.

Constitution of a 'housing group'

The Design Guidance explicitly states that in order to be considered a 'housing group' at least four occupied houses are required, at least two of which share a boundary. This exacting description of what constitutes a 'group' of houses substantially limits opportunity to develop many appropriate and very natural/obvious house development sites around the Orkney countryside, including the application site.

The application site sits within an existing pair of two houses, that is due to be expanded to form a group of three (20/426/PIP). The group of houses forms a rectangular shaped plan layout, with long-established boundaries immediately adjacent to the public highway (refer to 'figure 1' below and site plan).



Figure 1: site context aerial view

Summary/Conclusion

The only long-term feasible use for this area of land is for residential development, and it is our opinion that the development of additional houses within the existing group will:

- not detract from any other property in the area
- will offer efficiencies in connection with civic services due to grouping of properties (such as refuse collection and school bus provision)
- will support increased school pupil numbers locally
- will support the sustainability of the local community within the Parish

NEIGHBOURHOOD SERVICES AND INFRASTRUCTURE

Corporate Director: Hayley Green, MBA (Public Service)
Council Offices, Kirkwall, Orkney, KW15 1NY

Tel: 01856 873535 Website: www.orkney.gov.uk
Email: planning@orkney.gov.uk



ORKNEY
ISLANDS COUNCIL

31st May 2022

Orkney Builders (Contractors) Ltd
C/o Mr Sinclair Craigie
4 Crowness Road
Kirkwall
United Kingdom
KW15 1RG

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997, as amended DEVELOPMENT MANAGEMENT PROCEDURE (SCOTLAND) REGULATIONS 2013 INVALID APPLICATION

Dear Orkney Builders (Contractors) Ltd

Ref No: 22/179/PIP
Type: Planning in Principle
Location: Thorne Villa (Land Near), Harray, Orkney
Proposal: Siting of two houses and create access

Invalid application

Your recent application has been assessed on 31st May 2022 and we are writing to confirm that your submission is not sufficient to legally validate the application.

An invalid application is one where the form and/or the content of information submitted has not met the requirements of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013.

An application must be accompanied by all relevant plans and drawings as are considered necessary by the planning authority to describe the development to which the application relates (Regulation 9(3)) and other matters, including the correct forms, certificates and appropriate fee.

In this case, the application was assessed as invalid in the following matters:

01. Location & Site Plan

Blue land ownership outline should be two complete, separate polygons (to the east of each site)

Please note that the application cannot be made valid until all the above listed information is provided in accordance with statutory requirements.

To avoid further delay, all required information should be submitted as soon as possible. If the information is not submitted **within 28 days** of this correspondence, the application and all associated documents (and fee) will be returned to you and the application will not be processed.

Should you have any queries about the information required above please contact Development Management by email at planning@orkney.gov.uk or by telephone at the below number, using the extension provided.

Validation checks and issuing any requests for further information are carried out by different staff on different days. As such, there is no requirement to contact any particular member of staff in response to this invalid letter, and any queries can be answered by a technician on any given day.

Should you contact Development Management, simply confirm the application reference and that your contact is in relation to an invalid application.

Yours sincerely

Development Management,
Neighbourhood Services and Infrastructure,
Council Offices, School Place, Kirkwall, Orkney, KW15 1NY

Tel: 01856 873535 ext. 2504

Email: planning@orkney.gov.uk

Consultee List

Application Number 22/179/PIP

- Roads Services
- Scottish Water
- Development & Marine Planning
- Engineering Services

Neighbour Notification List

From the 3rd August 2009 the responsibility for Neighbour Notification transferred from the applicant to Orkney Islands Council. The Council will send out Notices to those having an interest in land coterminous with or within 20 metres of the boundary of the land for which development is proposed. Where there are no premises on this land and where the Council is unable to identify a relevant address to which notification can be sent, it will advertise this in the local press.

Below is a list of the properties notified for this application.

Application Number 22/179/PIP

- Thorne Villa, Stoneyhill Road, Harray, Orkney Islands, KW17 2JS

Number of neighbours notified: 1

Wednesday, 22 June 2022



Local Planner
Development Management, Development and Infrastructure
Orkney Islands Council
Kirkwall
KW15 1NY

Development Operations
The Bridge
Buchanan Gate Business Park
Cumbernauld Road
Stepps
Glasgow
G33 6FB

Development Operations
Freephone Number - 0800 3890379
E-Mail - DevelopmentOperations@scottishwater.co.uk
www.scottishwater.co.uk



Dear Customer,

Thorne Villa (Land Near), Harray, Orkney, KW17 2JS
Planning Ref: 22/179/PIP
Our Ref: DSCAS-0066618-RRB
Proposal: Siting of two houses and create an access

Please quote our reference in all future correspondence

Audit of Proposal

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. Please read the following carefully as there may be further action required. Scottish Water would advise the following:

Water Capacity Assessment

Scottish Water has carried out a Capacity review and we can confirm the following:

- ▶ There is currently sufficient capacity in the Boardhouse Water Treatment Works to service your development. However, please note that further investigations may be required to be carried out once a formal application has been submitted to us.

Waste Water Capacity Assessment

- ▶ Unfortunately, according to our records there is no public Scottish Water, Waste Water infrastructure within the vicinity of this proposed development therefore we would advise applicant to investigate private treatment options.

Please Note

- ▶ The applicant should be aware that we are unable to reserve capacity at our water and/or waste water treatment works for their proposed development. Once a formal connection application is submitted to Scottish Water after full planning permission has been granted, we will review the availability of capacity at that time and advise the applicant accordingly.

Asset Impact Assessment

Scottish Water records indicate that there is live infrastructure in the proximity of your development area that may impact on existing Scottish Water assets.

- ▶ 6" AC water main in the site boundary

The applicant must identify any potential conflicts with Scottish Water assets and contact our Asset Impact Team via [our Customer Portal](#) for an appraisal of the proposals.

The applicant should be aware that any conflict with assets identified will be subject to restrictions on proximity of construction. Please note the disclaimer at the end of this response.

Written permission must be obtained before any works are started within the area of our apparatus

Surface Water

For reasons of sustainability and to protect our customers from potential future sewer flooding, Scottish Water will not accept any surface water connections into our combined sewer system.

There may be limited exceptional circumstances where we would allow such a connection for brownfield sites only, however this will require significant justification from the customer taking account of various factors including legal, physical, and technical challenges.

In order to avoid costs and delays where a surface water discharge to our combined sewer system is anticipated, the developer should contact Scottish Water at the earliest opportunity with strong evidence to support the intended drainage plan prior to making a connection request. We will assess this evidence in a robust manner and provide a decision that reflects the best option from environmental and customer perspectives.

General notes:

- ▶ Scottish Water asset plans can be obtained from our appointed asset plan providers:
 - ▶ Site Investigation Services (UK) Ltd
 - ▶ Tel: 0333 123 1223
 - ▶ Email: sw@sisplan.co.uk

▶ www.sisplan.co.uk

- ▶ Scottish Water's current minimum level of service for water pressure is 1.0 bar or 10m head at the customer's boundary internal outlet. Any property which cannot be adequately serviced from the available pressure may require private pumping arrangements to be installed, subject to compliance with Water Byelaws. If the developer wishes to enquire about Scottish Water's procedure for checking the water pressure in the area, then they should write to the Customer Connections department at the above address.
 - ▶ If the connection to the public sewer and/or water main requires to be laid through land out-with public ownership, the developer must provide evidence of formal approval from the affected landowner(s) by way of a deed of servitude.
 - ▶ Scottish Water may only vest new water or waste water infrastructure which is to be laid through land out with public ownership where a Deed of Servitude has been obtained in our favour by the developer.
 - ▶ The developer should also be aware that Scottish Water requires land title to the area of land where a pumping station and/or SUDS proposed to vest in Scottish Water is constructed.
 - ▶ Please find information on how to submit application to Scottish Water at [our Customer Portal](#).
-

Next Steps:

▶ **All Proposed Developments**

All proposed developments require to submit a Pre-Development Enquiry (PDE) Form to be submitted directly to Scottish Water via [our Customer Portal](#) prior to any formal Technical Application being submitted. This will allow us to fully appraise the proposals.

Where it is confirmed through the PDE process that mitigation works are necessary to support a development, the cost of these works is to be met by the developer, which Scottish Water can contribute towards through Reasonable Cost Contribution regulations.

▶ **Non Domestic/Commercial Property:**

Since the introduction of the Water Services (Scotland) Act 2005 in April 2008 the water industry in Scotland has opened to market competition for non-domestic customers. All Non-domestic Household customers now require a Licensed Provider to act on their behalf for new water and waste water connections. Further details can be obtained at www.scotlandontap.gov.uk

▶ **Trade Effluent Discharge from Non-Domestic Property:**

- ▶ Certain discharges from non-domestic premises may constitute a trade effluent in terms of the Sewerage (Scotland) Act 1968. Trade effluent arises from activities including; manufacturing, production and engineering; vehicle, plant and equipment washing, waste and leachate management. It covers both large and small premises, including activities such as car washing and laundrettes. Activities not covered include hotels, caravan sites or restaurants.
- ▶ If you are in any doubt as to whether the discharge from your premises is likely to be trade effluent, please contact us on 0800 778 0778 or email TEQ@scottishwater.co.uk using the subject "Is this Trade Effluent?". Discharges that are deemed to be trade effluent need to apply separately for permission to discharge to the sewerage system. The forms and application guidance notes can be found [here](#).
- ▶ Trade effluent must never be discharged into surface water drainage systems as these are solely for draining rainfall run off.
- ▶ For food services establishments, Scottish Water recommends a suitably sized grease trap is fitted within the food preparation areas, so the development complies with Standard 3.7 a) of the Building Standards Technical Handbook and for best management and housekeeping practices to be followed which prevent food waste, fat oil and grease from being disposed into sinks and drains.
- ▶ The Waste (Scotland) Regulations which require all non-rural food businesses, producing more than 50kg of food waste per week, to segregate that waste for separate collection. The regulations also ban the use of food waste disposal units that dispose of food waste to the public sewer. Further information can be found at www.resourceefficientscotland.com

I trust the above is acceptable however if you require any further information regarding this matter please contact me on **0800 389 0379** or via the e-mail address below or at planningconsultations@scottishwater.co.uk.

Yours sincerely,

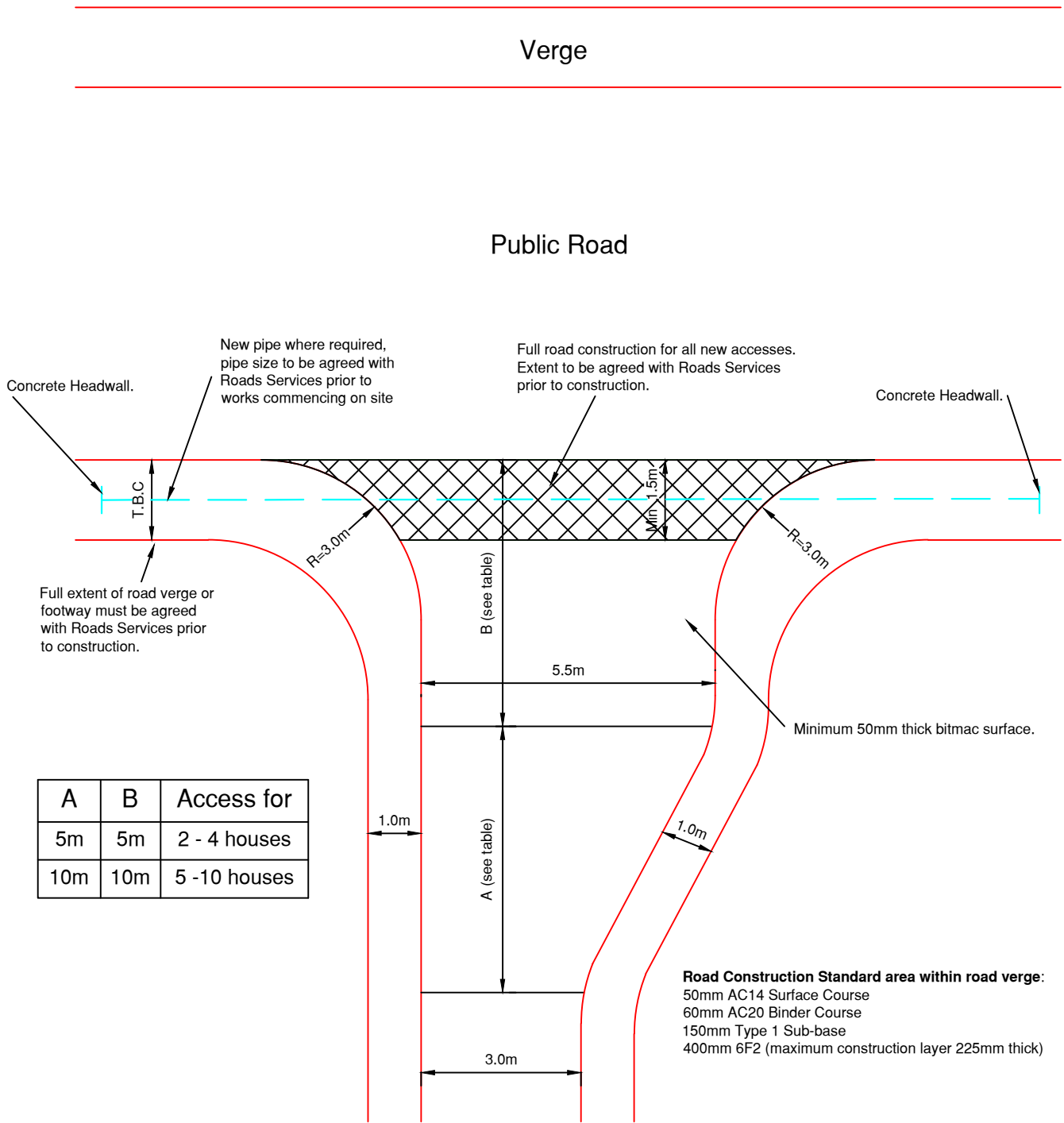
Angela Allison

Development Services Analyst

PlanningConsultations@scottishwater.co.uk

Scottish Water Disclaimer:

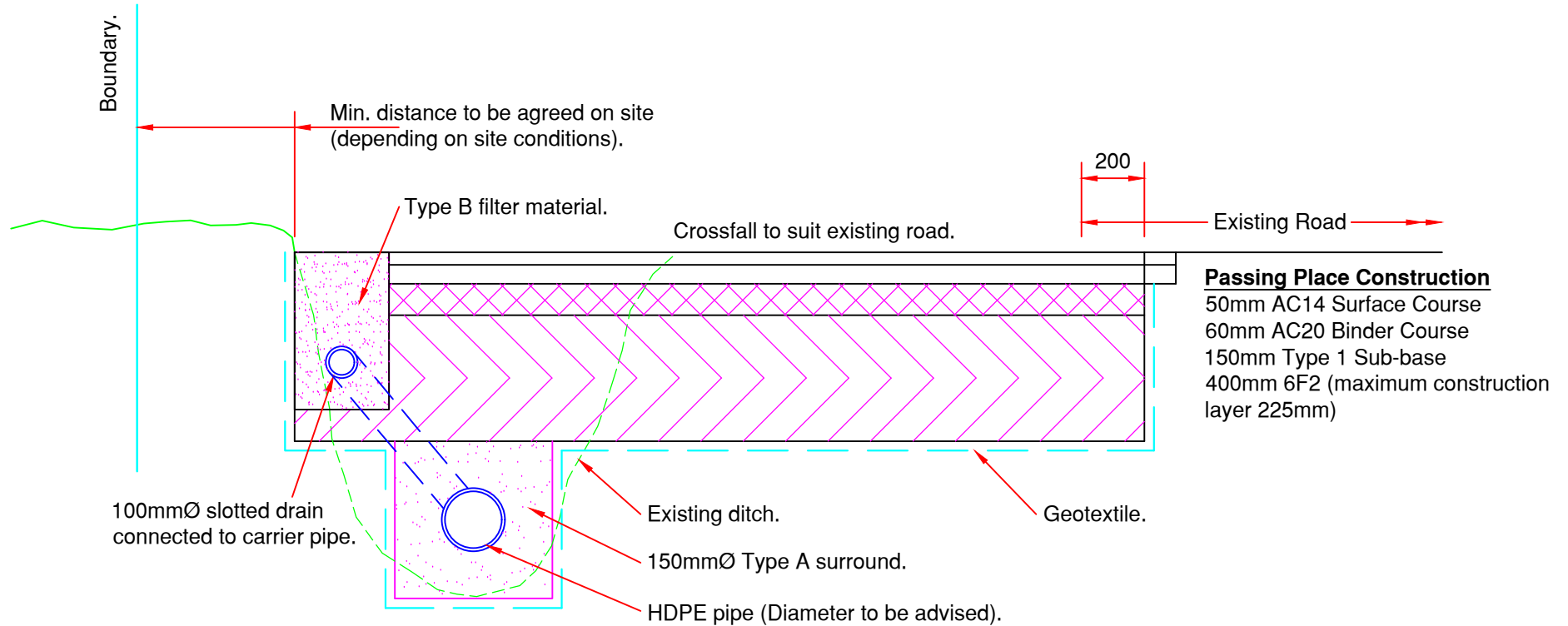
"It is important to note that the information on any such plan provided on Scottish Water's infrastructure, is for indicative purposes only and its accuracy cannot be relied upon. When the exact location and the nature of the infrastructure on the plan is a material requirement then you should undertake an appropriate site investigation to confirm its actual position in the ground and to determine if it is suitable for its intended purpose. By using the plan you agree that Scottish Water will not be liable for any loss, damage or costs caused by relying upon it or from carrying out any such site investigation."



**TYPICAL ACCESS FOR SINGLE DEVELOPMENT
(NON-ADOPTED)**

Rev 1 14/12/20 DW Road construction detail amended

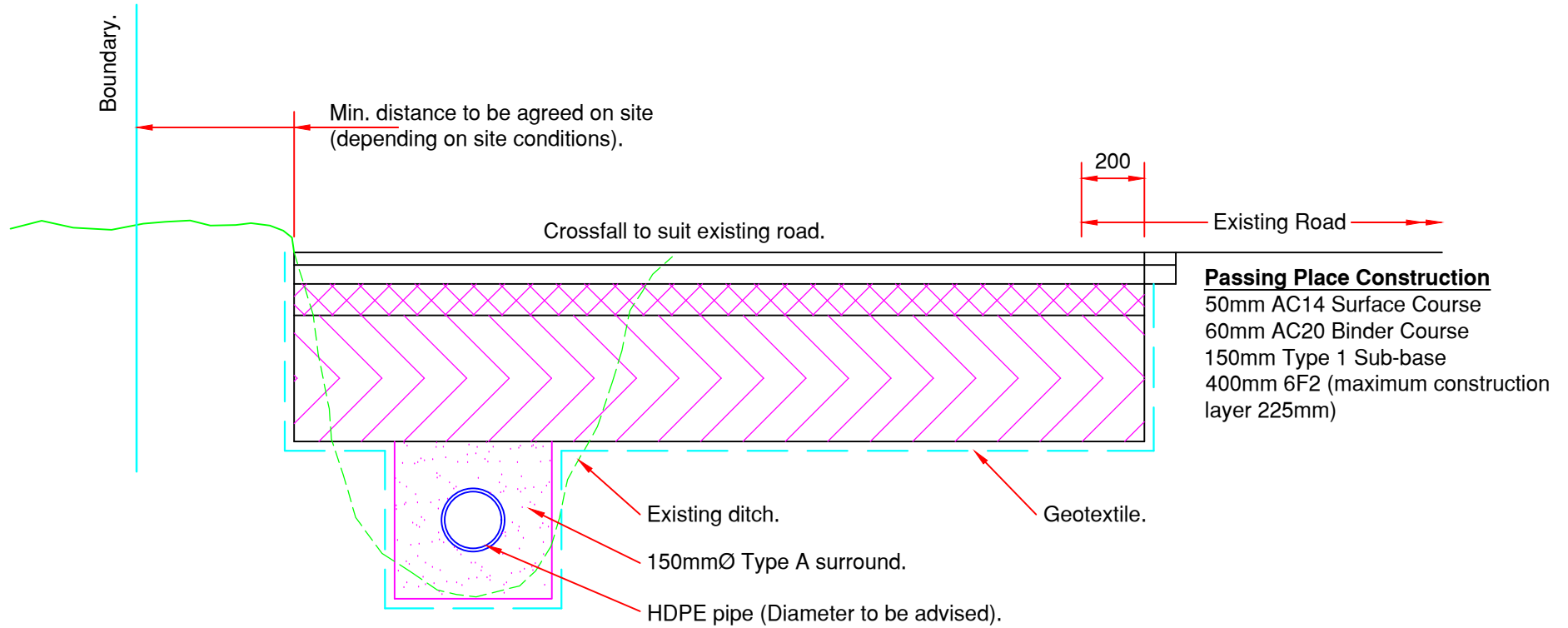
File Ref. R3.40.01	Drg. No. SD-01	ROAD SERVICES	NEIGHBOURHOOD SERVICES & INFRASTRUCTURE	 ORKNEY ISLANDS COUNCIL
Revision 1			Council Offices, Kirkwall Orkney, KW15 1NY tel (01856) 873535 fax (01856) 876094	
Date January 2013	Drawn D R W		Corporate Director :- Hayley Green MBA (Public Service)	
Scale Not to Scale	Checked K D Roy			



**TYPICAL CROSS SECTION
OPTION C**


Rev 1 14/20/2020 DW Carriageway construction detail amended

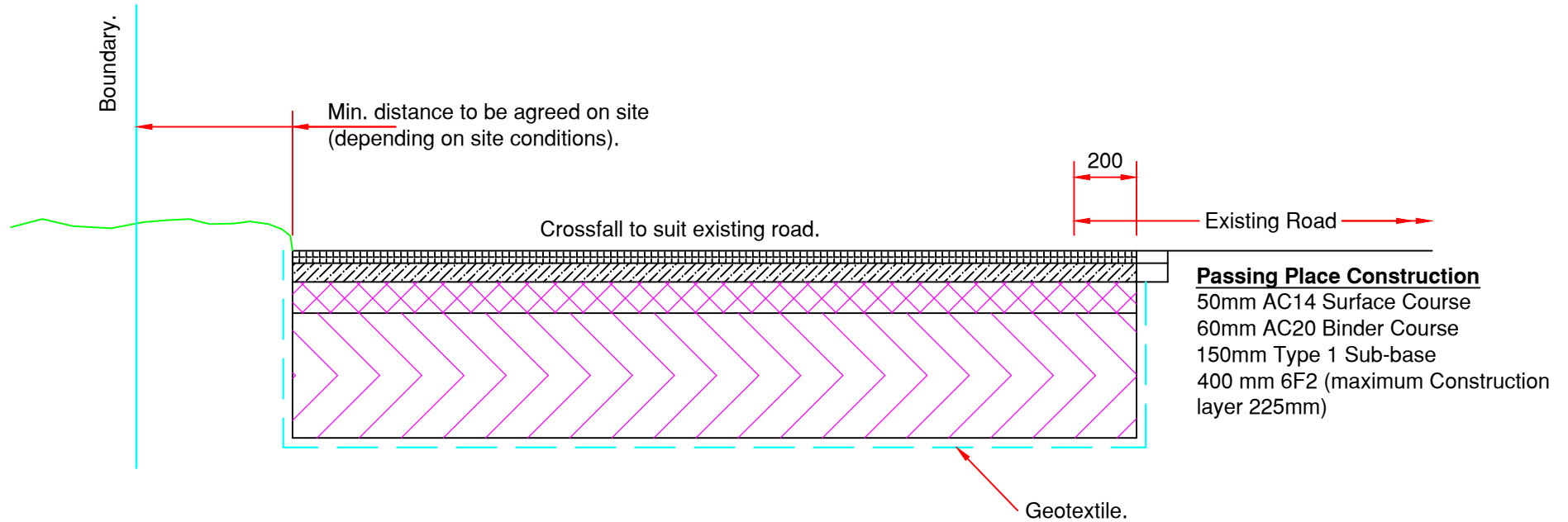
File Ref. R3.40.01		Drg. No. PP02 C		Passing Place Details Option C	ROADS SERVICES	NEIGHBORHOOD SERVICES & INFRASTRUCTURE Council Offices, Kirkwall Orkney, KW15 1NY tel (01856) 873535 fax (01856) 876094 Corporate Director :- Hayley Green MBA (Public Service)	 ORKNEY ISLANDS COUNCIL
Revision	1						
Date	May 2022	Drawn	DRW				
Scale	Not to Scale	Checked	K D Roy				



**TYPICAL CROSS SECTION
 OPTION B**

Rev 1 14/12/20 DW Carriageway construction detail amended


File Ref. R3.40.01	Drg. No. PP02 B	Passing Place Details Option B	ROADS SERVICES	NEIGHBOURHOOD SERVICES & INFRASTRUCTURE Council Offices, Kirkwall Orkney, KW15 1NY tel (01856) 873535 fax (01856) 876094 Corporate Director :- Hayley Green MBA (Public Service)	 ORKNEY ISLANDS COUNCIL.
Revision 1					
Date May 2022	Drawn DRW				
Scale Not to Scale	Checked K D Roy				

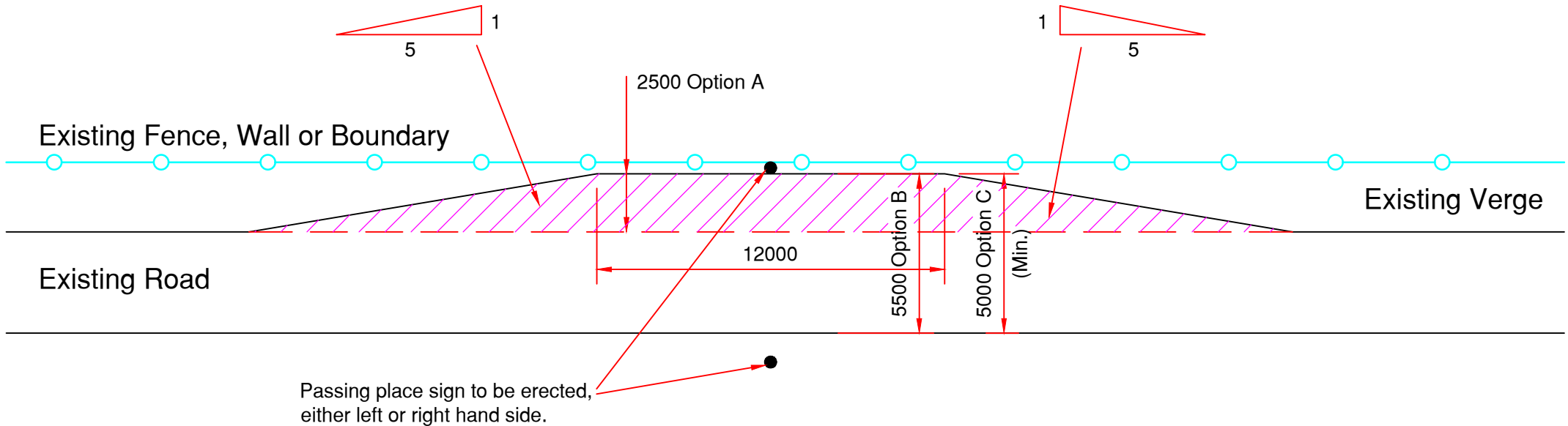


Passing Place Construction
 50mm AC14 Surface Course
 60mm AC20 Binder Course
 150mm Type 1 Sub-base
 400 mm 6F2 (maximum Construction layer 225mm)

**TYPICAL CROSS SECTION
 OPTION A**

Rev 1 14/12/2020 DW Carriagewa construction detail amended

File Ref. R3.40.01	Drg. No. PP02 A	Passing Place Details Option A	ROADS SERVICES	NEIGHBOURHOOD SERVICES & INFRASTRUCTURE Council Offices, Kirkwall Orkney, KW15 1NY tel (01856) 873535 fax (01856) 876094 Corporate Director :- Hayley Green MBA (Public Service)	 ORKNEY ISLANDS COUNCIL
Revision 1					
Date May 2020	Drawn DRW				
Scale Not to Scale	Checked K D Roy				



PLAN

File Ref. R3.40.01		Drg. No. PP01	
Revision		Date	
April 2022		Drawn DRW	
Scale Not To Scale		Checked K D Roy	

Passing Place Plan

ROADS SERVICES

NEIGHBOURHOOD SERVICES & INFRASTRUCTURE
 Council Offices, Kirkwall
 Orkney, KW15 1NY
 tel (01856) 873535
 fax (01856) 876094

Corporate Director :-
 Hayley Green
 MBA (Public Service)



ORKNEY
ISLANDS COUNCIL

INTERNAL MEMORANDUM TO: Roads Services

Date of Consultation	7th June 2022
Response required by	28th June 2022
Planning Authority Reference	22/179/PIP
Nature of Proposal (Description)	Siting of two houses and create an access
Site	Thorne Villa (Land Near), Harray, Orkney
Proposal Location Easting	331812
Proposal Location Northing	1015600
Area of application site (Metres)	2897
Supporting Documentation URL	http://planningandwarrant.orkney.gov.uk/online-applications/ Please enter - 22/179/PIP
PA Office	Development Management
Case Officer	Mr Jamie Macvie
Case Officer Phone number	01856 873535 EXT 2529
Case Officer email address	jamie.macvie@orkney.gov.uk
PA Response To	planningconsultation@orkney.gov.uk

Comments:

No adverse comment provided the conditions and informative noted below are applied to any planning permission that may be granted.

CONDITION

The access hereby approved with the public road shall be constructed to the Council's Roads

Services standard drawing 'SD-01 Typical Access for Single Development (2-4 houses)', attached to and forming part of this decision notice, including dimensions, road construction, any pipe required, and verge or footway. The access shall be constructed and completed wholly in accordance with these details prior to any other works commencing on of the development hereby approved, and thereafter shall be retained in accordance with these details throughout the lifetime of the development, unless otherwise agreed in writing by the Planning Authority.

Any damage caused to the existing road infrastructure during construction of the development shall be repaired prior to first occupation of the development, to the satisfaction of the Planning Authority, in conjunction with Roads Services.

Reason: In the interests of road safety.

CONDITION

A new passing place shall be constructed at a location to be determined with Roads Services in conjunction with Development Managements on the Stoneyhill Road Road, Harray. The passing place shall then be constructed in accordance with the council's detail for a passing place prior to commencement of any works within the hereby approved development site.

Reason: In the interest of road safety.

INFORMATIVE

It is an offence under Section 56 of the Roads (Scotland) Act 1984 to carry out any excavations within the boundary of the public road without written permission of the roads authority. Therefore, one or more separate consents will be required from the Council's Roads Services to carry out any works within the road boundary, prior to any works commencing. These consents may require additional work and/or introduce additional specifications. You are therefore advised to contact Roads Services for further advice as early as possible.

Any damage caused to the existing road infrastructure during construction of the development shall be repaired prior to the development being brought into use, to the satisfaction of the Planning Authority, in conjunction with Roads Services.

It is an offence under Section 95 of the Roads (Scotland) Act 1984 to allow mud or any other material to be deposited, and thereafter remain beyond the working day, on a public road from any vehicle or development site.

D.W.



REFUSE PLANNING PERMISSION IN PRINCIPLE
DELEGATED DECISION

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT, 1997 (as amended) ("The Act")
DEVELOPMENT MANAGEMENT PROCEDURE (SCOTLAND) REGULATIONS 2013

Ref: 22/179/PIP

Orkney Builders (Contractors) Ltd
C/o Mr Sinclair Craigie
4 Crowness Road
Kirkwall
United Kingdom
KW15 1RG

With reference to your application registered on 31st May 2022 for planning permission for the following development:-

PROPOSAL: Siting of two houses and create an access

LOCATION: Thorne Villa (Land Near), Harray, Orkney

Orkney Islands Council in exercise of its powers under the above Act and Regulations, hereby **REFUSE Planning Permission in Principle for the reason(s) outlined on the next page.**

The plans to which this decision relates are those identified in Schedule 1 attached.

The Council's reasoning for this decision is:

The proposed development is contrary to the provisions of the National Planning Framework 4 and the Orkney Local Development Plan 2017, and there are no material considerations either within documentation submitted, or apparent on site, which would warrant any outcome other than refusal of the application. The decision to refuse the application can rest wholly on the unacceptable principle of development, and the failure to comply with Policy 5E 'Houses and new Housing Clusters in the Countryside' of the Orkney Local Development Plan (2017), and there being no relevant policy provision within Policy 17 'Rural homes' of National Planning Framework 4.

(For further detail you may view the Planning Handling Report for this case by following the Application Search and Submission link on the Council's web page and entering the reference number for this application).

Please read carefully the Terms and Conditions on the following pages as failure to comply may result in enforcement action.

Decision date: 30th November 2023

Jamie Macvie MRTPI, Service Manager, Development Management, Orkney Islands Council, Council Offices, Kirkwall, Orkney, KW15 1NY

Ref: 22/179/PIP

REASONS FOR REFUSAL

01. Policy 5E (vi) of the Orkney Local Development Plan 2017 provides for "...the creation of one housing plot within an existing housing group during the lifetime of the Orkney Local Development Plan..." The planning application is submitted in principle for two housing plots, therefore exceeding and contrary to the provision of Policy 5E (vi) of the Orkney Local Development Plan 2017.
02. The application site is not within an 'existing housing group' as defined in paragraph 3.19 of Supplementary Guidance 'Housing in the Countryside' (2021). The proposed development therefore fails to meet the requirement of point 1, of paragraph 3.20 of Supplementary Guidance 'Housing in the Countryside' (2021), and is therefore contrary to Policy 5E (vi) of the Orkney Local Development Plan 2017.
03. The application site does not 'share boundaries with two existing independent dwelling houses'. The proposed development therefore fails to meet the requirement of point 2, of paragraph 3.20 of Supplementary Guidance 'Housing in the Countryside' (2021), and is therefore contrary to Policy 5E (vi) of the Orkney Local Development Plan 2017.
04. On the basis the application site is not within a 'housing group' as defined for the purposes of new housing in the countryside, the development cannot accord with and enhance a housing group. The plot shape and development density are not similar to houses nearby. The proposed development therefore fails to meet the requirement of point 3, of paragraph 3.20 of Supplementary Guidance 'Housing in the Countryside' (2021), and is therefore contrary to Policy 5E (vi) of the Orkney Local Development Plan 2017.
05. No provision exists within Policy 17 'Rural homes' of National Planning Framework 4 for infill housing development in the countryside. The proposed development is therefore contrary to Policy 17 of National Planning Framework 4.

Ref: 22/179/PIP

SCHEDULE 1 – PLANS, VARIATIONS AND ANY OBLIGATION**1. Plans and Drawings**

The plans and drawings to which this decision relates are those identified below:

Location & Site Plans	OIC-01	1

2. Variations

If there have been any variations made to the application in accordance with section 32A of the Act these are specified below:

Date of Amendment:

Reasons

RIGHT TO SEEK A REVIEW

If you are unhappy with the terms of this decision you have a right to ask for a review of your planning decision by following the procedure specified below.

PROCEDURE FOR REQUESTING A REVIEW BY THE LOCAL REVIEW BODY

1. If the applicant is aggrieved by the decision of the Appointed Officer to:
 - a. Refuse any application, or
 - b. Grant permission subject to conditions.

In accordance with the Town and Country Planning (Scheme of Delegation and Local Review Procedure) (Scotland) Regulations, the applicant may apply to the Local Review Body within three months from the date of this notice for a review of that decision.

2. Forms to request a review are available from either address below, or from <http://www.orkney.gov.uk/Service-Directory/D/appeal-a-decision.htm>.

Completed forms to request a review should be submitted to the address below:

Committee Services
Orkney Islands Council
Council Offices
School Place
KIRKWALL
Orkney
KW15 1NY

and at the same time a copy of the notice for a review should be sent to:

Planning Manager (Development Management)
Orkney Islands Council
Council Offices
School Place
KIRKWALL
Orkney
KW15 1NY

Email: planning@orkney.gov.uk

3. whether by the planning authority or by the Scottish Ministers, and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part 5 of the Act.

22/179/PIP**Proposed formation of Two House Plots at Land Near Thorne Villa, Stoneyhill Road, Harray****Regulation 10(b)****Representation by Interested Party – Development Management**

The Notice of Review (“the Notice”) relies heavily on the Chief Planner letter dated 8 February 2023 which advises that ‘in the event of any incompatibility between a provision of NPF4 and a provision of an LDP, whichever of them is the later in date is to prevail’.

The Notice states that the Local Development Plan has been superseded by NPF4 and that “the policies of NPF4 should be the determining factor in the assessment of any planning application”. This is correct to a point, but whilst NPF4 has primacy in instances of incompatibility between the Local Development Plan and NPF4, that is not the case here, and the Local Development Plan remains a material consideration and cannot be set aside.

The Notice states that reasons for refusal which rely on policies of the Local Development Plan are “not relevant” and “cannot be cited as justification”. Development Management does not agree with this conclusion, which implies that the Local Development Plan currently has no role in decision-making; that is not the case.

Irrespective of the above, references in the Notice to relevant policies of NPF4 can also be scrutinised.

The Notice notes that the relevant policy of NPF4 is Policy 17 ‘Rural homes’.

However, the Notice states that the planning handling report has “wrongly referred to Policy 17 (a) and (b)” and contends that the application should be assessed in relation to “Policy 17c alone”, on the basis the application site is in a ‘remote rural’ area.

The statement that Orkney is designated as ‘remote rural’ area is correct. However, the interpretation of Policy 17 (c) is not correct.

Policy 17 (c) as follows:

c) Development proposals for new homes in remote rural areas will be supported where the proposal:

- i. supports and sustains existing fragile communities;*
- ii. supports identified local housing outcomes; and*
- iii. is suitable in terms of location, access, and environmental impact.*

The 'and' is critical; i.e. any proposed development must meet i, ii and iii to be compliant with Policy 3 (c).

Whilst the Policy 17 text confirms that "The Scottish Government's 6 fold Urban Rural Classification 2020 should be used to identify remote rural areas" which identifies all Orkney as remote rural, it also confirms that "Plans should reflect locally appropriate delivery approaches."

In that context, 'fragile communities' identified in point i of Policy 17 (c) are the unconnected isles of Orkney, where an open approach to housing in the countryside operates, not applicable in the Mainland. That is further supported by the confirmation in point ii that proposals must 'support identified local housing outcomes' which is the open approach in the unconnected isles, and the multiple limited provisions of housing in the countryside in the Mainland.

Therefore, relying on Policy 17 (c) alone as stated in the Notice results in a conclusion that the proposal does not comply with Policy 17.

Indeed, taking the logic of the Notice to its conclusion would result in an open policy of housing development in all Orkney countryside, with the Local Development Plan and Supplementary Guidance abandoned, which is clearly not the case.

Summary

The Local Development Plan is not incompatible with NPF4, in relation to housing in the countryside/rural homes.

The proposed development meets none of the policy provisions in 17 (a).

17 (c) is not relevant, other than to confirm that the site is 'remote rural' but not fragile and that local housing outcomes should be used as the basis of decision-making, as set out in the Local Development Plan.

In terms of Policy 5E of the Local Development Plan, and Supplementary Guidance 'Housing in the Countryside', the proposed development meets none of the policy provisions.

This includes assessment in relation to the infill policy provision. Fundamentally, the provision "allows for the creation of one housing plot within an existing housing group" and the application is for two housing plots, not one. Further, the site is not in a housing group as defined, and does not share boundaries with two occupied and independent dwelling houses.

The proposed development, for two plots in previously undeveloped countryside in the Mainland, simply meets none of the relevant policy provisions of NPF4, or any of the relevant provisions of the Local Development Plan.

Development Management

10 March 2024

22/179/PIP**Proposed formation of Two House Plots at Land Near Thorne Villa, Stoneyhill**

The following comments are submitted in response to the Development Management submission.

NPF4

Section 24(3) of the Town and Country Planning (Scotland) Act 1997, states that in the event of any incompatibility between a provision of NPF and a provision of an LDP, whichever of them is the later in date is to prevail.

There is no ambiguity in the terms of the legislation. Where there is a change in policy, it is the later adopted policy that will apply.

The Orkney Islands Local Development Plan dates to 2017. The Council's website advises that *'where policies in NPF4 contradict those in the Orkney Local Development Plan 2017 and its associated Supplementary Guidance then NPF4, as the most recent plan, will take precedence.'*

In this instance, NPF4 defines the area as Remote Rural as is acknowledged by the planning authority. This means that the relevant NPF4 policy for assessing this application is Policy 17 part (c). As stated in the main appeal submission, Part c requires a proposal for new homes in the remote rural areas to meet three criteria.

The first relates to the defined fragile areas and is not relevant as the proposed site is not within a defined fragile area.

The second criteria relates to identified housing outcomes and, where established, that the proposal meets the third criteria which relates to location, access and environmental impact.

The Local Development Plan identifies that a significant number of individual houses will be secured through development of 'windfall' sites. This makes a valuable contribution to the local housing requirements and outcomes. There is therefore no conflict with criteria (ii).

Criteria (iii) relates to location, access and environmental impact. None of these three criteria were raised as reasons for refusal. The site is situated between existing houses, will continue the established linear pattern that is a characteristic of Orkney housing on the Mainland areas and will have no adverse environmental impact on the site or surrounding area – all matters that were assessed in the original determination of the application.

Summary

The correct policy for determination of applications within the defined Remote Rural areas as set out in the recently adopted NPF4 policy framework is Policy 17 – Rural Homes, Part c.

While the Policy set out in NPF4 represents a departure from the established policies and guidance that existed prior to the adoption and introduction of NPF4, these older policies cannot now be used to assess a planning application where the terms set out in NPF4 differ. The Review Body is respectfully reminded

that legislation as set out in Section 24(3) of the Town and Country Planning (Scotland) Act 1997 stipulates that the more recent policy will take precedence.

It is acknowledged that Policy 17 (c) introduces a change to the previous policy governing individual houses within the countryside. But the terms of NPF4 quite evidently allow for the development of the two houses as proposed.