

Item: 4.2

Planning Committee: 26 April 2023.

Install a Freestanding ATM Kiosk with Public Telephone at 5 Victoria Street, Stromness.

Report by Corporate Director for Neighbourhood Services and Infrastructure.

1. Summary

1.1.

Planning permission is sought to erect an automated teller machine (ATM) with a public telephone adjacent to Victoria Street, Stromness. The site is situated within Stromness Conservation Area and in front of the category C listed 5 Victoria Street. One objection has been received on grounds of the impact on the commercial property which fronts the proposed ATM, loss of parking and the impact on character and appearance of the conservation area. This is considered of insufficient weight to merit refusal. It is concluded that the development complies with relevant policy provisions of National Planning Framework 4 and the Orkney Local Development Plan 2017. Accordingly, the application is recommended for approval.

Application Number:	22/336/PP.
Application Type:	Planning Permission.
Proposal:	Install a freestanding ATM kiosk with public telephone.
Applicant:	Mr John Wainwright.
Agent:	C Thorp Planning, 97 Westminster Avenue, Sheffield, S10 4ER.

1.2.

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

2. Consultations

2.1. Roads Services

No consultation response received.

2.2. Other Consultation Bodies

Scottish Water and Orkney Heritage Society have not objected or raised any issues which cannot be addressed by planning conditions

3. Representations

3.1.

One objection has been received from:

- Katherine Kemp, Wishart's Hardware, 14 Victoria Street, Stromness, KW16 3AA.

3.2.

The objection is on the grounds of impact on the commercial property which fronts the proposed ATM, loss of parking and the impact on character and appearance of the conservation area.

4. Relevant Planning History

No relevant planning history.

5. Relevant Planning Policy and Guidance

5.1.

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

5.2.

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

- Orkney Local Development Plan 2017:
 - The Spatial Strategy.
 - Policy 1 – Criteria for All Development.
 - Policy 2 – Design.
 - Policy 3 – Settlements, Town Centres and Primary Retail Frontages.
 - Policy 4 – Business, Industry and Employment.
 - Policy 8 – Historic Environment and Cultural Heritage.
- Supplementary Guidance:
 - Historic Environment and Cultural Heritage (2017).
- Planning Policy Advice:
 - Historic Environment (Topics and Themes) (2017).
- National Planning Framework 4.

6. Legal Aspects

6.1.

Section 25 of the Town and Country Planning (Scotland) Act 1997 as amended (the Act) states, "Where, in making any determination under the Planning Acts, regard is to be had to the development plan, the determination is, unless material considerations indicate otherwise...to be made in accordance with that plan..."

6.2.

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

6.3.

Annex A continues as follows:

- The House of Lord's judgement also set out the following approach to deciding an application:
 - Identify any provisions of the development plan which are relevant to the decision.
 - Interpret them carefully, looking at the aims and objectives of the plan as well as detailed wording of policies.
 - Consider whether or not the proposal accords with the development plan.
 - Identify and consider relevant material considerations for and against the proposal.
 - Assess whether these considerations warrant a departure from the development plan.
- There are two main tests in deciding whether a consideration is material and relevant:
 - It should serve or be related to the purpose of planning. It should therefore relate to the development and use of land.
 - It should relate to the particular application.
- The decision maker will have to decide what considerations it considers are material to the determination of the application. However, the question of whether or not a consideration is a material consideration is a question of law and so something which is ultimately for the courts to determine. It is for the decision maker to assess both the weight to be attached to each material consideration and whether individually or together they are sufficient to outweigh the

development plan. Where development plan policies are not directly relevant to the development proposal, material considerations will be of particular importance.

- The range of considerations which might be considered material in planning terms is very wide and can only be determined in the context of each case. Examples of possible material considerations include:
 - Scottish Government policy and UK Government policy on reserved matters.
 - The National Planning Framework.
 - Designing Streets.
 - Scottish Government planning advice and circulars.
 - EU policy.
 - A proposed strategic development plan, a proposed local development plan, or proposed supplementary guidance.
 - Guidance adopted by a Strategic Development Plan Authority or a planning authority that is not supplementary guidance adopted under section 22(1) of the 1997 Act.
 - Community plans.
 - The environmental impact of the proposal.
 - The design of the proposed development and its relationship to its surroundings.
 - Access, provision of infrastructure and planning history of the site.
 - Views of statutory and other consultees.
 - Legitimate public concern or support expressed on relevant planning matters.
- The planning system operates in the long term public interest. It does not exist to protect the interests of one person or business against the activities of another. In distinguishing between public and private interests, the basic question is whether the proposal would unacceptably affect the amenity and existing use of land and buildings which ought to be protected in the public interest, not whether owners or occupiers of neighbouring or other existing properties would experience financial or other loss from a particular development.

6.4.

Where a decision to refuse an application is made, the applicant may appeal under section 47 of the Act. Scottish Ministers are empowered to make an award of expenses on appeal where one party's conduct is deemed to be unreasonable. Examples of such unreasonable conduct are given in Circular 6/1990 and include:

- Failing to give complete, precise and relevant reasons for refusal of an application.
- Reaching a decision without reasonable planning grounds for doing so.
- Not taking into account material considerations.

- Refusing an application because of local opposition, where that opposition is not founded upon valid planning grounds.

6.5.

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

6.6. Status of the Local Development Plan

Although the Orkney Local Development Plan 2017 is “out-of-date” and has been since April 2022, it is still a significant material consideration when considering planning applications. The primacy of the plan should be maintained until a new plan is adopted. However, the weight to be attached to the Plan will be diminished where policies within the plan are subsequently superseded.

6.7. Status of National Planning Framework 4

6.7.1.

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

6.7.2.

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

7. Assessment

7.1. Siting and Principle

7.1.1.

The site is in a prominent position adjacent to the main thoroughfare of Stromness town centre and in front of category C listed 5 Victoria Street, as indicated on the location plan attached as Appendix 1 to this report. The site is within the defined settlement boundary of Stromness and Stromness Conservation Area.

7.1.2.

An ATM with a public telephone could attract high footfall, so the open location within the defined town centre is appropriate. The site comprises two existing, redundant modern telephone boxes, which do not contribute to the character of the

conservation area. The proposed development would include the removal of these telephone boxes in conjunction with the proposed installation.

7.2. Design and Appearance

7.2.1.

The design of the proposed kiosk is predicated on its visibility and ease of access, which also enables passive security and safety. The proposed unit is positioned in a readily visible location on the main thoroughfare of the Stromness Conservation Area and sited to enable adequate functionality, in terms of both use and maintenance.

7.2.2.

While the scale and form of the kiosk is considered acceptable, the design submitted initially was based on commercial prominence, with a design that was incongruous and could not be supported. Street furniture in the conservation area is generally black or other dark colour, and simple in design, for cohesion and appropriateness in a historic environment. Through balanced negotiation, the design, branding and colours have been simplified to a design appropriate to the area, while retaining the required discernability in terms of function and visibility.

7.2.3.

The resulting tax, two-tone colour scheme is accepted, and the colours would reflect shades from the commercial colour palette within Planning Policy Advice: Historic Environment (Topics and Themes).

7.2.4.

The materials have been amended from a modern synthetic finish to the proposed powder coated metal, which is an appropriate finish within a historic setting and again consistent with other street furniture. In conjunction with the design and colour scheme, the appearance is considered of sufficient quality to justify approval.

7.3. Paving

The proposed unit would require concrete resurfacing for installation which would be finished with flagstones to match the existing ground covering. This would be an appropriate finish and supported in such a visible part of the conservation area and in the immediate setting of a listed building. This would also provide some planning benefit and improve the existing situation of exposed concrete.

7.4. Residential Amenity

The use of this area of the town centre would be maintained and the relatively minor development would not introduce any additional activity to the area that would cause an unacceptable adverse impact on the amenity of any neighbouring properties, including from noise, loss of privacy or impact on daylight or sunlight.

7.5. Impact to Commercial Property

7.5.1.

The proposed kiosk would be sited in the same general location as the existing telephone boxes, with the form projecting into the forecourt area by an additional metre. However, when considering the access and door swing of the existing telephone boxes, the required space for the proposed development to function is similar.

7.5.2.

The kiosk would be at a similar height and sited 400 millimetres closer to the adjacent building. However, at approximately 1.8 metres from the building line and at the northern edge of the forecourt, it is considered that there would be no unacceptable impact on the visibility of the commercial windows from the street or from closer view from within the forecourt.

7.5.3.

Roads Services has not provided a consultation response, and has therefore made no objection or other comment with regards parking and road safety. It is concluded that the development would have no unacceptable impact on the commercial activity of the adjacent premises. There are no material considerations that would warrant refusal.

7.6. Safety

As the unit would be sited centrally, adjacent to a wall and within a forecourt, its use would be entirely off the street. As such, it is considered there are no unacceptable general safety or road safety concerns.

8. Conclusion and Recommendation

8.1.

The principle of the development is acceptable, as a new community facility, in turn supporting footfall and activity within the town centre. The area can fully accommodate the proposed works and on balance, the development and potential impact on the streetscape is considered acceptable. Residential amenity would be safeguarded throughout the construction period.

8.2.

The objection is of insufficient weight to warrant refusal. It is concluded that the development complies with relevant policy provisions of National Planning Framework 4 and Policies 1, 2, 3, 4 and 8 of the Orkney Local Development Plan 2017. Accordingly, the application is **recommended for approval**, subject to conditions, attached as Appendix 2 to this report.

9. Contact Officers

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

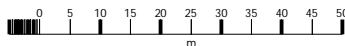
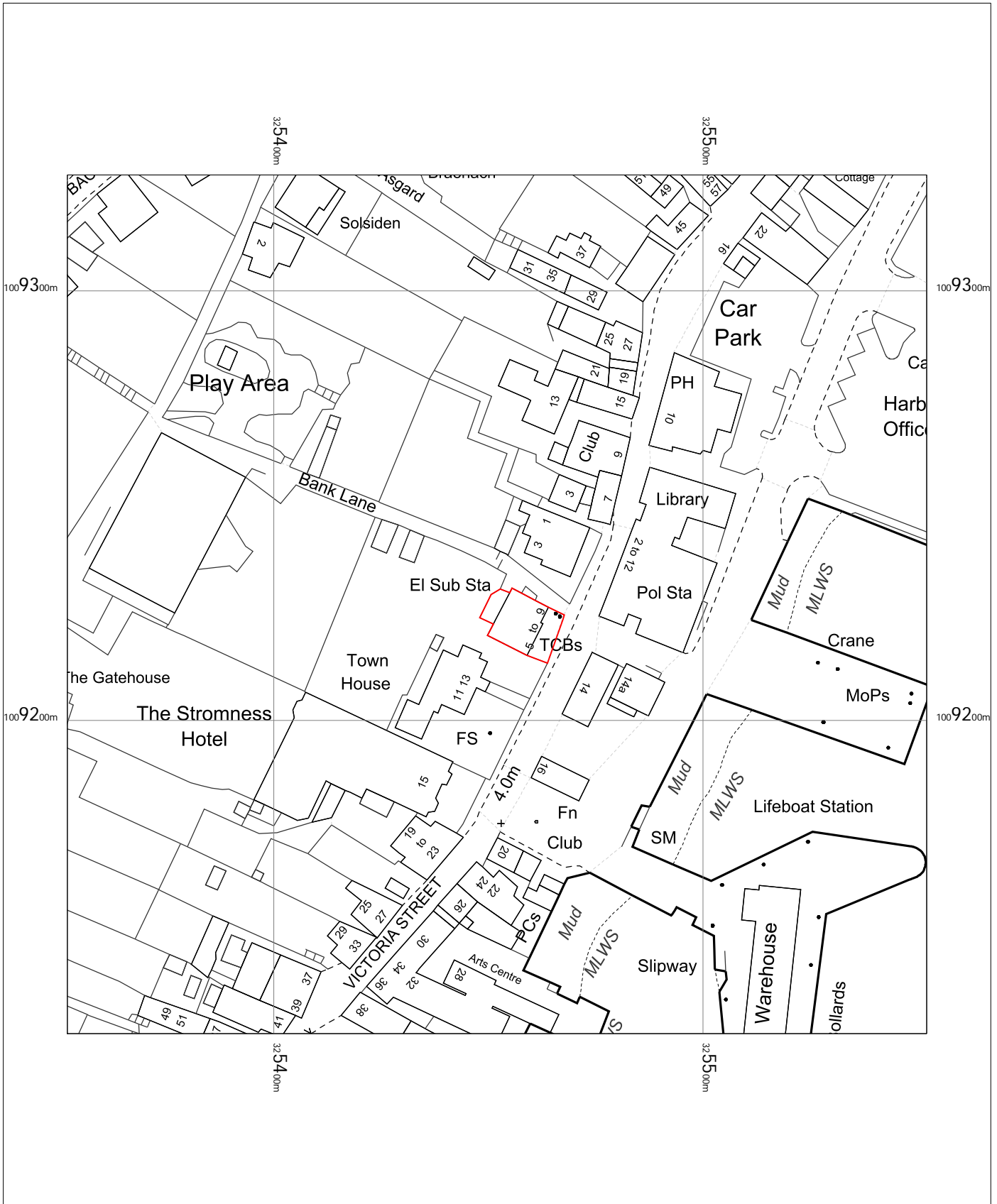
Dean Campbell, Planning Officer, Email dean.campbell@orkney.gov.uk

10. Appendices

Appendix 1: Location Plan.

Appendix 2: Planning Conditions.

Victoria Street, KW16 3AA

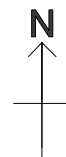


Victoria Street,
Stromness,
Orkney Islands
KW16 3AA

OS MasterMap 1250/2500/10000 scale
Monday, August 22, 2022, ID: MPMBW-01057213
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Appendix 2.

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

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

02. The concrete base shall be finished using a natural flagstone to match the adjacent forecourt prior to first use of the kiosk hereby approved.

Reason: To preserve the character and appearance of the conservation area.

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

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

04. If the kiosk hereby approved is not operational for a period of one year, the kiosk and any other associated equipment shall be removed with the ground made good to match the flagstone finish.

Reason: To preserve the character and appearance of the conservation area.