

Item: 3.1

Planning Committee: 30 May 2018.

Erect House with Integral Garage and Air Source Heat Pump and Create an Access (subdivision of curtilage) at Fea House, Tankerness Hall Road, Tankerness.

Report by Executive Director of Development and Infrastructure.

1. Summary

1.1.

Planning permission is sought to subdivide domestic ground at Fea House, Tankerness Hall Road, Tankerness, and to erect a dwelling on the subdivided ground. Determination of this application was deferred by the Committee at its meeting held on 18 April 2018 in order that a site visit by members could be carried out. The development is acceptable in principle, under the provisions of Policy 5E(v) of the Orkney Local Development Plan 2017. Three objections have been received on grounds of road safety, residential amenity, loss of privacy, over-development, failure to accord with policy. The objections are of insufficient weight to merit refusal. The proposed development accords with Policies 1, 2, 5, 9, 13 and 14 of the Orkney Local Development Plan 2017 and Supplementary Guidance 'Housing in the Countryside'.

Application Number	18/056/PP.
Application Type	Planning Permission.
Proposal	Erect a house with an integral garage and an air source heat pump and create an access (subdivision of curtilage) at Fea House, Tankerness Hall Road, Tankerness.
Applicant	Mr Kenneth Adam, Lochland Developments Limited, 9 King Harald Kloss, Kirkwall KW15 1FT.
Agent	Ms Di Grieve, Breck Designs, Kveldsro, Weyland Terrace, Kirkwall, KW15 1LS.

1.2.

All application documents (including plans, consultation responses and representations) are available for members to view at the following website address:

http://www.orkney.gov.uk/Service-Directory/D/application_search_submission.htm
(then enter the application number given above).

2. Consultations

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

3. Representations

3.1.

Three objections have been received from:

- Dr Ian Cunningham, Feaquooy, Tankerness, KW17 2QS.
- Allan D Pugh, Denhead, Tankerness, KW17 2QS.
- Lorraine Shearer, Kelda Ber, Tankerness, KW17 2QS.

3.2.

The objections are on the following grounds:

- Road safety.
- Residential amenity and loss of privacy.
- Overdevelopment.
- Legitimacy of the site as 'domestic curtilage'.
- Suburbanisation of the countryside.

4. Relevant Planning History

Reference.	Proposal.	Location.	Decision.	Date.
17/428/PP	Erect a house with an integral garage and an air source heat pump and create an access (subdivision of curtilage).	Fea House, Tankerness Hall Road, Tankerness.	Withdrawn.	29.01.2017.
12/109/PP.	Amend planning permission 07/393/PPF to erect a house with integral garage, air source heat pump and create an access.	Fea Hill (land near), Tankerness.	Grant subject to conditions.	07.05.2012.

07/393/PPF.	Erect a house.	Skibbowick (land near), Tankerness.	Grant subject to conditions.	25.09.2007.
97/386/PPF.	Erect a house.	Skibbowick Hill (land near), Tankerness.	Grant subject to conditions.	02.12.1997.

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:

<http://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 2 – Design.
 - Policy 5 – Housing.
 - 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’ (March 2017).

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.

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.

6.3.

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

6.4.

Reference is made to the extent of curtilage of the existing property. The word "curtilage" is not defined in statute, and does not have specific or precise meaning within a given discipline or field in Scots law. It appears in a variety of contexts from town and country planning to tenants' rights, and although its precise meaning remains unclear it is a commonly used concept. However, it is critical to note that this report does not seek to contest whether the current application site is domestic curtilage in relation to case law on the matter; relevant to consideration of this application is the definition of curtilage as provided in Supplementary Guidance 'Housing in the Countryside'.

7. Assessment

7.1. Location and Site

The application site is located in the countryside, in the Skibbowick area of Tankerness, to the west of the dwelling at Fea House, as indicated on the location plan attached as Appendix 1 to this report. The site is generally flat, laid to grass, and approximately 1350 square metres in area. It is on slightly lower ground than the dwellings across the public road at Kelda Ber and Denhead.

7.2. Principle of Development

7.2.1.

Policy 5E(v) of the Orkney Local Development Plan 2017 provides for the subdivision of a dwelling or its residential curtilage in the countryside. Section 3.17 of Supplementary Guidance 'Housing in the Countryside' states that applications will be supported where the proposal demonstrates that:

- 1. The subdivision is achievable without the need to extend the existing curtilage, with all proposed development being fully contained within the boundary of the existing curtilage.
- 2. The proposed house and the host house have adequate parking, access provision and outside amenity space.
- 4. The residential amenity of adjacent properties, including that of the host house must be protected.
- 5. The curtilage to be sub-divided has legitimately served the host house on or before the date of the adoption of the Orkney Local Development Plan 2017.

7.2.2.

Critical is the definition of 'curtilage' as provided in the 'Definitions' section of Supplementary Guidance 'Housing in the Countryside'. This is the relevant definition in relation to any applications for the subdivision of curtilage under the provisions of Policy 5E(v) of the Orkney Local Development Plan 2017.

7.2.3.

The definition of 'curtilage' in Supplementary Guidance 'Housing in the Countryside' is as follows: "Curtilage is defined as the extent of the land associated with the building (house) which is used and maintained as domestic space. The curtilage is often demarked by a boundary wall or fence and contains a lawn or garden, drying area, vegetable patch and any outbuildings which are ancillary to the property such as sheds, stores or garages. When applying for planning permission to erect a house, the extent of the application site will ultimately define the extent of the domestic space or garden ground of the property."

7.2.4.

The current application site was included as part of the larger application site for the dwelling at Fea House with the first application approved at the site, 97/386/PPF, and with subsequent applications and approvals 07/393/PPF and 12/109/PP. Through that site history, the current application site is land that is 'associated' with the existing house. The application site is currently used and maintained as domestic space. The extent of 'garden ground of the property' for the purposes of the policy is clearly defined as the extent of the application site of the original house. The current application site is within that original application site.

7.2.5.

Submitted objections question the legitimacy of the site, citing case law tests of residential curtilage. However, as stated in section 6.4 above, this is not a test of curtilage in relation to case law. Indeed, it can be conceded it is not curtilage in that sense. However, the definition provided in Supplementary Guidance for the purposes of Policy 5E(v) is relevant and in that context the site meets the test, and the four points stated in section 7.2.1 can therefore be tested.

7.2.6.

Accepting that the site is curtilage for the purposes of Policy 5E(v) only, the subdivision is achievable without the need to extend the existing curtilage, the proposed house and the host house have adequate parking, access provision and outside amenity space, the residential amenity of adjacent properties, including that of the host house would be adequately protected, and curtilage to be sub-divided has legitimately served the host house on or before the date of the adoption of the Orkney Local Development Plan 2017. The development is therefore acceptable in principle.

7.2.7.

Pre-application advice was provided to the applicant by the Planning Manager, Development and Marine Planning in March 2017 (noting that the current application

site is referred to as Site 2), stating, “Sites 1 and 2 were included within the application sites for the adjacent houses and therefore have current planning approval for residential use. For that reason, the most appropriate means to secure planning permission on the sites is to apply for planning permission on the grounds that you are subdividing the curtilage of an existing property...On site 2, although the land has never functionally acted as garden ground, it could be used as such at any time. To that end, it would be legitimate to apply for its subdivision.”

7.3. Character of the Area

7.3.1.

Concern has been raised by objectors regarding overdevelopment of the area. Skibbowick was formally a Local Housing Area as designated in the Orkney Local Plan 2004. Local Housing Areas ceased to be designated in the Orkney Local Development Plan 2014. Subsequent housing in the countryside policies have allowed for new dwellings in the countryside through various means if they meet the criteria set out in the relevant planning policy.

7.3.2.

Development Criteria DC3 of Supplementary Guidance ‘Housing in the Countryside’ states that proposed development should not lead to suburbanisation of the countryside. Due to the former designation and development of Skibbowick as a Local Housing Area, as well as subsequent development approved under the provisions of other housing in the countryside policies, the general appearance is of a small settlement within the countryside. In this respect, it is considered that a level of suburbanisation, and arguably overdevelopment, has already taken place in Skibbowick. However, it is considered that the existing overall character of the area would not be significantly affected by the addition of a single dwelling; the proposed house would not ‘lead to’ suburbanisation, but would be within an existing suburbanised area.

7.3.3.

The house would be evenly spaced from other dwellings and would be located within an adequately sized plot. When viewed both from a distance and the adjacent public road, the dwelling would be viewed together with other similar developments and in a similar development pattern. In this respect it is considered that the dwelling would not be incongruous in the landscape. The proposed development therefore accords with Policies 1 (i and ii) and 9G of the Orkney Local Development Plan 2017, and Development Criteria DC3 and DC9 of Supplementary Guidance ‘Housing in the Countryside’.

7.4. Residential Amenity

7.4.1.

The proposed subdivision to provide the new house plot is wholly achievable within the boundary of the curtilage of Fea House as approved under 12/109/PP. The resultant adjoining plots, over 1300 and 1900 square metres respectively, would each have adequate off-road parking provision, access and outside amenity space.

7.4.2.

The proposed dwelling would be located 43 metres from the closest part of the dwelling at Fea House. A single WC window would face the blank gable end of that dwelling and there would be no overlooking of principal windows. The proposed dwelling would be over 45 metres from the neighbouring properties of Kelda Ber and Denhead and would be on slightly lower ground. The windows to the south elevation of the proposed dwelling would principally face the gardens and garages of those properties. The separation distance between facing principal windows in the proposed house and those of all neighbouring houses is more than double the recommended 21 metres.

7.4.3.

It is accepted that some light from the headlights of cars exiting the proposed property would be directed towards the houses opposite the site, but this would be momentary as the cars turn onto the road. This issue would be most evident at night and during the winter months, but due to the limited number of vehicle movements that would be expected at a domestic property, it would be unlikely to have an unacceptable impact on residential amenity.

7.4.4.

The proposal is for a single dwelling in a rural residential area, where a certain amount of domestic and vehicular noise can be expected. Bearing in mind the separation distance of the site from the closest dwellings at Kelda Ber, Denhead and Fea House, that the development is for domestic use only and that there is an adjacent public road, it is considered that the proposal would adequately protect residential amenity. The development complies with Policy 1(iv) and Policy 5E(v) of the Orkney Local Development Plan 2017 and Supplementary Guidance 'Housing in the Countryside'.

7.5. Access/Road Safety

7.5.1.

Roads Services objected to a previous application on the site which included a single access from the public road, on the basis the number of accesses to Tankerness Hall Road should be minimised. A joint access was therefore investigated, but due to land ownership constraints was not possible. On that basis, Roads Services has accepted the development as submitted and has no objection regarding road infrastructure or impact on other existing developments in the area.

7.5.2.

The location of the proposed access provides adequate forward visibility and a condition would secure construction of the access to the required specification. The access would not increase the burden on the road infrastructure or have an unacceptable impact on road safety, and the development complies with Orkney Local Development Plan 2017 policy 14C and development criterion DC4 of Supplementary Guidance 'Housing in the Countryside'.

7.6. Sewerage and Drainage

7.6.1.

The development proposes to use a Bio-disc package sewage treatment system and surface water drainage would be dealt with by Sustainable Drainage System, including a French drain along the site boundary to connect to the existing culvert. The development would comply with Policies 13B and 13C of the Orkney Local Development Plan 2017 and Development Criteria DC6 of Supplementary Guidance 'Housing in the Countryside'.

7.6.2.

In its consultation response, Scottish Water indicated that a water main runs through the site. This issue has been addressed previously by the applicant and it is understood that the proposed built development would be 3.4 metres from the main. This is a matter to be confirmed and resolved between the developer and Scottish Water, at the developer's own expense.

8. Conclusion and Recommendation

The proposed development accords with the provisions of Policy 5E(v) of the Orkney Local Development Plan 2017 for the subdivision of domestic curtilage, as defined in Supplementary Guidance 'Housing in the Countryside'. The design of the dwelling would be coherent with others in the adjacent area and it would be at a sufficient distance from other dwellings to maintain privacy and residential amenity. Objections are of insufficient weight to warrant refusal. The proposed development would accord with Policies 1, 2, 5, 9, 13 and 14 of the Orkney Local Development Plan 2017 and Supplementary Guidance 'Housing in the Countryside' and therefore the proposal is **recommended for approval**, subject to the conditions attached in Appendix 2.

9. Contact Officer

Sue Doyle, Planning Officer, extension 2503, Email sue.doyle@orkney.gov.uk.

10. Appendices

Appendix 1: Location Plan.

Appendix 2: Planning Conditions.