

Item: 5

Planning Committee: 21 August 2024.

**Change of Use from Flat to Self-Catering Unit (Retrospective) at
51 Dundas Street, Stromness.**

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

1. Overview

- 1.1. This report considers an application for planning permission for a change of use of a residential flat to a self-catering unit. The application is retrospective. One valid representation has been received. The development complies with relevant policies, and objections and other material considerations do not merit refusal of the application.

Application Reference:	24/119/PP.
Application Type:	Planning permission.
Proposal:	Change of use from a flat to a self-catering unit (retrospective).
Applicant:	Miss Jennifer Simpson, 36 Forest Drive, Sibleby, LE12 7TD.

- 1.2. All application documents (including plans, consultation responses and valid 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. Recommendations

- 2.1. It is recommended that members of the Committee:
- i. Approve the application for retrospective planning permission in respect of the proposed change of use of a flat to a self-catering unit at 51 Dundas Street, Stromness, subject to the conditions detailed in Appendix 1 to this report.

3. Consultations

3.1. Roads Services

Roads Services noted that the application fails to meet the requirements of Section 3.7 Parking Standards for Use Classes of the National Roads Development Guide, as no parking is being provided. However, it is recognised that NPF4, Policy 13 ‘Sustainable Transport’ would take precedence in this case. As such, Roads Services does not object to the application. Whilst giving weight to NPF4 Policy 13 ‘Sustainable Transport’, Roads Services notes that it must also be recognised that the cumulative effect of developments being approved with either no parking, or a reduced level of parking, within the town centre area is having a negative impact on the surrounding streets.

4. Representations

4.1. One valid representation (objection) has been received from:

- Zak Mathieson, 59 Dundas Street, Stromness, KW16 3DA

4.2. The representation is on the following grounds:

- Lack of residential accommodation in Stromness.
- Noise impact from activities at the building.
- Car parking.

5. Relevant Planning History

5.1. None.

6. Relevant Planning Policy and Guidance

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

6.2. National Planning Framework 4 can be read on the Scottish Government website [here](#).

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

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

- Policy 3 - Settlements, Town Centres and Primary Retail Frontages.
- Policy 4 – Business, Industry and Employment.
- Policy 8 – Historic Environment and Cultural Heritage.
- Policy 14 – Transport, Travel and Road Network Structure.
- National Planning Framework 4:
 - Policy 7 – Historic Assets and Places.
 - Policy 13 – Sustainable Travel.
 - Policy 14 – Design, Quality and Place.
 - Policy 27 – City, Town and Commercial Centres.
 - Policy 30 – Tourism.

7. Legislative position

- 7.1. 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...”
- 7.2. Annex A of Planning Circular 3/2013: ‘development management procedures’ provides advice on defining a material consideration, and following a House of Lords’ 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.”
- 7.3. Annex A continues as follows:
- The House of Lords’ judgement also set out the following approach to deciding an application:
 - Identify any provisions of the development plan which are relevant to the decision.
 - Interpret them carefully, looking at the aims and objectives of the plan as well as detailed wording of policies.
 - Consider whether or not the proposal accords with the development plan.
 - Identify and consider relevant material considerations for and against the proposal.

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

another. In distinguishing between public and private interests, the basic question is whether the proposal would unacceptably affect the amenity and existing use of land and buildings which ought to be protected in the public interest, not whether owners or occupiers of neighbouring or other existing properties would experience financial or other loss from a particular development.

7.4. 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.

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

Status of the Local Development Plan

7.6. 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.

Status of National Planning Framework 4

7.7. 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 NPF4 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.

- 7.8. 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.

8. Assessment

- 8.1. Planning permission is sought for the change of use from a residential flat to a self-catering unit (short stay holiday/ visitor accommodation) at 51 Dundas Street, Stromness, as indicated in the Location Plan attached as Appendix 2 to this report. The application is retrospective; the property has been in self-catering use since 2021; the applicant only became aware of the requirement for the change of use due to planning status being a test of short term let licence (STL) applications.
- 8.2. Flats are classed as sui generis in terms of the Town and Country Planning (Use Classes) Scotland Order 1997 (as amended) and are classed differently to a dwelling house. Sui generis is a term which refers to a use in a class of its own, hence the requirement for a planning application to change from a flat to a self-catering unit. Many properties have followed this requirement for a change of use from a flat to short-term let since the introduction of short-term let licensing in 2022.

Principle

- 8.3. The application site is in the designated Stromness Town Centre, where development should support its vibrancy, vitality, and viability in accordance with Local Development Plan Policy 3 ‘Settlements, Town Centres and Primary Retail Frontages’ which states that, “development proposals within defined settlements will be supported where there will be no significant adverse environmental impacts or any adverse impacts on the amenity of surrounding users”. NPF4 Policy 27 ‘City, town, local and commercial centres’ states that “development proposals that enhance and improve the vitality and viability of city, town and local centres, including proposals that increase the mix of uses, will be supported”. The proposal complies with both policies and is therefore acceptable in principle.

Conservation Area

- 8.4. The site is located within Stromness Conservation Area, situated on the first floor of the building. Local Development Plan Policy 8 ‘Historic Environment and Cultural Heritage’ requires a proportionate approach to development impacting on the historic environment. Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states that the proposed development

should have regard to the desirability of preserving or enhancing the character or appearance of the conservation area.

- 8.5. NPF4 Policy 7 'Historic assets and places' states that development proposals in or affecting conservation areas will only be supported where the character and appearance of the conservation area and its setting is preserved or enhanced. Visually, the building would be unaffected by the proposed development.
- 8.6. The development would not adversely impact the character or appearance of the conservation area, and complies with Local Development Plan Policy 8, NPF4 Policy 7 and Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

Roads and parking

- 8.7. As stated in the Roads Services consultation response, the proposal does not meet the requirements of Section 3.7 Parking Standards for Use Classes of the National Roads Development Guide, as no parking is being provided. However, NPF4 Policy 13 'Sustainable Transport' takes precedence and therefore Roads Services has not objected to the application.
- 8.8. In terms of the objection received, this relates to the lack of parking within Stromness advising that there is a serious deficiency and that the roads are narrow and illegally parked cars can result in the roads being blocked which can affect emergency vehicles. No parking would be provided as part of the development, however it should be noted that there is no parking available for the present use as a flat therefore the proposal should not cause any notable additional impact on parking within the area. Any parking offences within the public road would be a matter for Police Scotland.
- 8.9. There are no unacceptable parking or road safety issues created by the proposed development. The site is in a town centre location and would be well served by public transport, and the application is considered to comply with Local Development Plan Policy 14 'Transport, Travel and Road Network Structure' and NPF4 Policy 13 'Sustainable Transport'.

Amenity

- 8.10. The applicant has submitted a planning statement in support of the application. The statement addresses the impact of the self-catering use on residential amenity, including noise and parking, and includes supporting correspondence from the former downstairs neighbour and property manager. The statement

highlights that there are no known complaints from neighbours to the self-catering holiday accommodation.

- 8.11. The property has a separate entrance from the flat below. It is not expected that any noise heard by neighbours would be significantly different from that reasonably expected from a flat. The development is therefore not considered as having a significantly detrimental effect on the amenity of nearby residents, and would comply with NPF 4 Policy 30(e) part (i).

Tourism

- 8.12. NPF4 Policy 30 'Tourism' seeks to encourage, promote and facilitate sustainable tourism development which benefits local people, is consistent with our net zero and nature commitments, and inspires people to visit Scotland. Section 30 e) specifically relates to STL proposals:

e) Development proposals for the reuse of existing buildings for short term holiday letting will not be supported where the proposal will result in:

- i. An unacceptable impact on local amenity or the character of a neighbourhood or area; or
- ii. The loss of residential accommodation where such loss is not outweighed by demonstrable local economic benefits.

- 8.13. The proposal is located within the town centre, in a part of the town that is largely residential with a few commercial properties; however, it is not considered that this proposal would have an unacceptable impact on this local amenity or the character of the area.

- 8.14. On balance, it is considered that the proposal complies with NPF4 Policy 30 'Tourism'.

9. Conclusion

- 9.1. The development complies with policies 1, 3, 4, 8 and 14 of the Orkney Local Development Plan 2017, and policies 7, 13, 14, 27 and 30 of National Planning Framework 4 as well as Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. The proposal is acceptable in principle, would not adversely impact the residential amenity of the area, and is acceptable with regards parking and road safety. There are no material considerations including those raised in the objections that outweigh this conclusion, noting that consideration of this application is not prejudiced by the development being carried out on an unauthorised basis.

For Further Information please contact:

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Implications of Report

- 1. Financial:** None.
- 2. Legal:** Detailed in section 7 above.
- 3. Corporate Governance:** In accordance with the Scheme of Administration, determination of this application is delegated to the Planning Committee.
- 4. Human Resources:** None.
- 5. Equalities:** Not relevant.
- 6. Island Communities Impact:** Not relevant.
- 7. Links to Council Plan:** Not relevant.
- 8. Links to Local Outcomes Improvement Plan:** Not relevant.
- 9. Environmental and Climate Risk:** None.
- 10. Risk:** If Members are minded to refuse the application, it is imperative that clear reasons for proposing the refusal of planning permission on the basis of the proposal being contrary to the development plan policy and the officer's recommendation be given and minuted. This is in order to provide clarity in the case of a subsequent planning appeal or judicial review against the Planning Committee's decision. Failure to give clear planning reasons for the decision could lead to the decision being overturned or quashed. In addition, an award of costs could be made against the Council. This could be on the basis that it is not possible to mount a reasonable defence of the Council's decision.
- 11. Procurement:** None.
- 12. Health and Safety:** None.
- 13. Property and Assets:** None.
- 14. Information Technology:** None.
- 15. Cost of Living:** None.

List of Background Papers

Orkney Local Development Plan 2017, available [here](#).
National Planning Framework 4, available [here](#).

Appendix

Appendix 1 – Planning conditions.
Appendix 2 – Location Plan.

Appendix 1.

01. The self-catering unit hereby approved shall be used solely as holiday letting accommodation. Occupation of the self-catering unit shall not exceed a maximum of 28 days by any person or group of persons in total, between the dates of 1 March and 31 October in any calendar year. To facilitate the enforcement of such control, the owners of the self-catering unit shall at all times maintain and shall make available to the Planning Authority upon reasonable request, a register of occupiers of the holiday accommodation to which this permission relates.

Reason: To comply with Orkney Local Development Plan policies to ensure that the self-catering unit is not used as a full-time residence.



51 Dundas Street, Stromness, KW16 3DA

