



**ORKNEY**  
ISLANDS COUNCIL

**Item: 4**

**Local Review Body: 3 April 2025.**

**Proposed Siting of House and Creation of Access near Seaview,  
Annfield Road, Tankerness (24/351/PIP).**

**Report by the Chief Executive.**

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## **1. Overview**

- 1.1. Planning application 24/351/PIP in respect of the proposed siting of a house and creation of an access near Seaview, Annfield Road, Tankerness, was refused by the Appointed Officer on 28 November 2024.
- 1.2. Under the Town and Country Planning (Scotland) Act 1997 (the Act) and the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013 (the Regulations), 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 has submitted a Notice of Review (see Appendix 1) requesting that the decision of the Appointed Officer, referred to at paragraph 1.1 above, be reviewed. The applicant has indicated that the review can be determined without any further procedures.
- 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. Section 21 of the Scheme of Administration states that the Local Review Body will undertake unaccompanied site inspections for all planning applications subject to a local review, prior to meeting to consider the review. The purpose of the site inspection, together with the procedure to be adopted, are set out in section 21.2 of the Scheme of Administration. The applicant and interested parties have been advised that an unaccompanied site inspection to the site near Seaview, Annfield Road, Tankerness, is due to be undertaken on 3 April 2025 at approximately 09:40.
- 1.6. The review procedure is set out in section 4 below.

## **2. Recommendations**

- 2.1. The Local Review Body is required to:
  - i. Determine 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.
- 2.2. Should the Local Review Body determine that the decision is reversed or varied, it is required to:
  - i. Determine the reasons, and, if applicable, the relevant matters in respect of potential conditions to be attached to the decision notice.
- 2.3. Should the Local Review Body determine that the decision is reversed or varied, it is recommended that members of the Local Review Body:
  - i. Delegate powers to the Chief Executive, following consultation with the Planning Advisor and the Legal Advisor, to determine the necessary conditions and informatives, if appropriate, to attach to the Decision Notice.
- 2.4. Should the Local Review Body determine that it does not have sufficient information to proceed to determination of the review, it is required to:
  - i. Determine 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 Regulations; and/or
    - By the holding of one or more hearing under the Hearing Session Rules set out in Schedule 1 of the Regulations.

## **3. Planning Authority Decision**

- 3.1. The Planning Handling Report, Planning Services file and the Decision Notice are attached as Appendices 2, 3 and 4 to this report.
- 3.2. On 28 November 2024, the Appointed Officer refused planning application 24/351/PIP on the following grounds:
  01. Under Orkney Policy Local Development Plan Policy 5E(vi) – Single House In-Fill Development within Existing Housing Groups and Supplementary Guidance: Housing in the Countryside (2021), infill development is defined and is required to

be located within a housing group and “located in between two of the occupied and independent dwelling houses with the infill site sharing boundaries with these two dwelling houses.”

Under Orkney Policy Local Development Plan Policy 5E(vi) – Single House In-Fill Development within Existing Housing Groups and Supplementary Guidance: Housing in the Countryside (2021) these definitions are:

Existing Housing Group – “where there are 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”

Infill Development – “Be located in between two of the occupied and independent dwelling houses with the infill site sharing boundaries with these two dwelling houses”.

The domestic curtilage of the proposed site does not adjoin/share the domestic curtilage boundary with the house at Craigmaddie as there is non-domestic land between them and due to the separation distance between Craigmaddie and Seaview, Craigmaddie would not form part of a ‘housing group’.

The development site is not located within a housing group or an infill development as defined under Orkney Local Development Plan Policy 5E(vi) – Single House In-Fill Development within Existing Housing Groups and Supplementary Guidance: Housing in the Countryside (2021).

02. The development of a house on the site would result in a coalescence of the wider housing group at Annfield and the existing dwellings set in relation to the A960 (including Craigmaddie and the properties across the road at Ingawood and Gleneagles which do not meeting the criteria of a housing group) and the proposed site would be ‘lined up’ with other houses to address the road which would lead to suburbanisation of countryside and impacts upon the landscape and visual amenity.

The development would not comply with Orkney Local Development Plan 2017 Policies 1 (i and ix) – Criteria for All Development. 5E(vi) – Single House In-fill Development within Existing Housing Groups, 9G – Landscape and Supplementary Guidance: Housing in the Countryside (2021).

03. The Location and Site Plans submitted with the application include an area of land to the west that is roadside verge to the rear of a passing place that was approved under condition 9 attached to planning ref 22/215/PP for a development

of a house on a different site in Annfield and upgrading of the junction and installation of a passing place on Annfield Road by a separate developer and which is not in the ownership of the applicant. By including this area, changes to the current red outlined site area cannot be processed as a working amendment and the acceptability of the location of the proposed access therefore cannot be fully assessed and the development would not comply with OLDP 2017 Policy 14C – Road Network Infrastructure.

## **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.
- 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 from the applicant 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:
  - Duration of consent.
  - Matters:
    - Site layout.
    - Site levels/sections.
    - Design and appearance.
    - Landscaping.
    - Access and parking arrangements.
    - Passing place approved under reference 22/215/PP.
    - Surface water drainage.
    - Forward visibility.
    - Water supply.
    - Foul drainage.
    - Refuse and recycling storage.
    - Electric vehicle charging.
    - Biodiversity enhancement.
  - Hours of work.

- 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 Chief Executive, following 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 follow in 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 Regulations 2013; and/or.
  - By the holding of one or more hearing under the Hearing Session Rules set out in Schedule 1 of the Regulations.

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

- 5.1. Section 25 of the Act 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 2 – Design.
  - Policy 5E(vi) – Single House In-fill Development within Existing Housing Groups.
  - Policy 9C – Wider Biodiversity and Geodiversity.
  - Policy 9G – Landscape.
  - Policy 13B – Sustainable Drainage Systems (SuDS).
  - Policy 13C -Waste Water Drainage.
  - Policy 14B – Sustainable Travel.
  - Policy 14C – Road Network Infrastructure.
- Guidance:
  - Supplementary Guidance: Housing in the Countryside (2021).
  - Planning Policy Advice: Amenity and Minimising Obtrusive Lighting (2021).
  - Planning Policy Advice: National Roads Development Guide (2015).
  - Development Management Guidance: Considering and Including Biodiversity in Development.
- National Planning Framework 4:
  - Policy 2 – Climate Mitigation and Adaption.
  - Policy 3 – Biodiversity.
  - Policy 14 – Design, Quality and Place.
  - Policy 16 – Quality Homes.
  - Policy 17 – Rural Homes.
  - Policy 22 – Flood Risk and Water Management.

**For Further Information please contact:**

Susan Shearer, Planning Advisor to the Local Review Body, extension 2433, Email: [susan.shearer@orkney.gov.uk](mailto:susan.shearer@orkney.gov.uk).

**Implications of Report**

1. **Financial:** All resources associated with supporting the review procedure, mainly in the form of staff time, are contained within existing revenue budgets.
2. **Legal:** The legal implications are set out in the body of the report.
3. **Corporate Governance:** In accordance with the Scheme of Administration, determination of Notices of Review is delegated to the Local Review Body.
4. **Human Resources:** None.
5. **Equalities:** None.

6. **Island Communities Impact:** None.
7. **Links to Council Plan:** The proposals in this report support and contribute to improved outcomes for communities as outlined in the following Council Plan strategic priorities:
  - Growing our economy.
  - Strengthening our Communities.
  - Developing our Infrastructure.
  - Transforming our Council.
8. **Links to Local Outcomes Improvement Plan:** The proposals in this report support and contribute to improved outcomes for communities as outlined in the following Local Outcomes Improvement Plan priorities:
  - Cost of Living.
  - Sustainable Development.
  - Local Equality.
  - Improving Population Health.
9. **Environmental and Climate Risk:** None.
10. **Risk:** None.
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](#).

Planning Circular 4/1988, available [here](#).

### Appendices

Appendix 1 – Notice of Review (pages 1 – 13).

Appendix 2 – Planning Handling Report (pages 14 – 30).

Appendix 3 – Planning Services File (pages 31 – 50).

Appendix 4 – Decision Notice (pages 51 – 56).

Appendix 5 – Representation from Development Management (pages 57 – 58).

Appendix 6 – Comments from Applicant on further representation received (pages 59 – 61).

Pages 1 to 56 can be viewed [here](#), clicking on “Accept and Search” and inserting the planning reference “24/351/PIP”.

## Proposed Siting of House and Create Access

### Regulation 10(b) Representation by Interested Party

#### Development Management

The application is submitted, and the Review based on the terms of, the policy provision for a 'Single House In-Fill Development within Existing Housing Groups Policy', Policy 5E (vi) of the Local Development Plan.

Supplementary Guidance confirms that (emphasis added): "an existing housing group is where there are 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**.

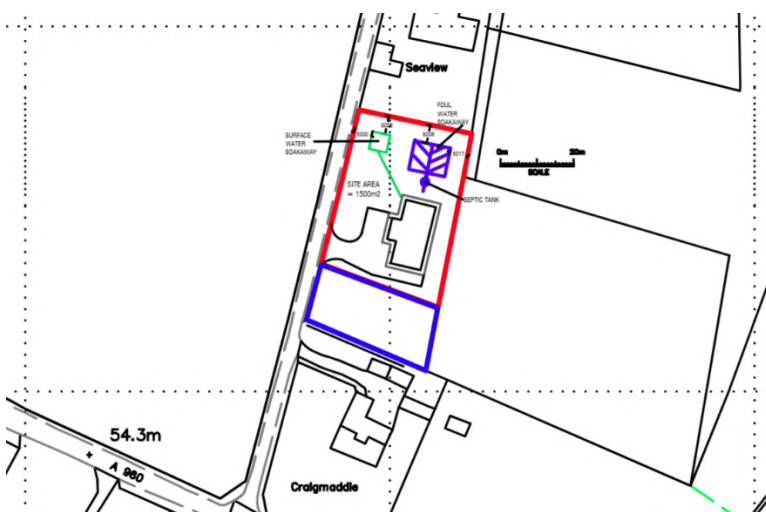
It must first therefore be determined whether the proposed application site is 'within a housing group'.

The conclusion of the planning assessment is that the relatively modern grouping of houses to the north of the application site (below, left) is a housing group, but that the property 'Craigmaddie' to the south (right, below) does not form part of that housing group. The property Craigmaddie is separate from those other houses, sits on slightly higher ground and fronts main road, and has a different character to the housing group to the north. The application site, as indicated by the red arrow, is therefore open land between a housing group and an individual house, rather than being 'viewed as a group' as required.



It is accepted that the above can be open to some interpretation, although the conclusion of the planning officer is clearly laid out in the report of handling.

However, the second policy requirement for the application site to share a domestic curtilage boundary with two or more houses is not interpretation or assessment but is a matter of fact.



The planning application site area is outlined in red above. As defined in regulation 9 of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, the land outlined in blue is 'neighbouring land is owned by the applicant'. This is not part of the application site.



Supplementary Guidance: Housing in the Countryside (2021) confirms that:

*“The infill site will:*

- 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.”*

As a matter of fact, the application site – the area outlined in red – does not share a boundary with two dwelling houses. Irrespective of any other policy provisions which would support the development, the application is therefore contrary to Policy 5E.

It would be open to the applicant to formally resubmit an application that extended the application site area so that it was located between two independent houses and also shared domestic curtilage boundaries; however, that would risk the application site area then being contrary to Development Criterion 9 regarding maximum site area (that is likely to have led to the application site area submitted). And the consideration of the extent of the housing group to the north would also apply to any amended application site area. Regardless, that is not a matter for this consideration, and the application must be assessed as submitted.

Various compelling statements are made in the Review with regards the history of the area generally, and the former Local Housing Area located nearby. However, the application must be determined on its merits, based on the current policy provision.

As submitted, as an infill site within a housing group, to be supportable under the provisions of the policy it must meet all the terms of the policy. That requires the application site boundary – the red line – to share a boundary with two dwelling houses that form the housing group within which it is located. And the application site boundary, simply, does not share a boundary with two or more houses. A development either meets this requirement, or it does not. And this development does not.

## **Development Management**

**27 February 2025**

## 24/351/PIP Proposed Siting of House and Create Access Regulation 10(b) Representation by Interested Party Development Management

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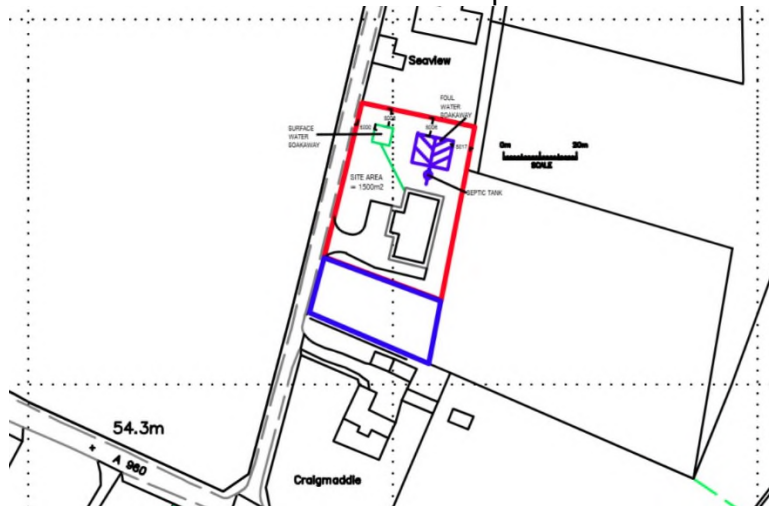
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## **Development Management 27**

**February 2025**

I believe the proposed site can be referenced accurately to the OIC Supplementary Guidance example illustrations 3.24 and 3.25 in terms of forming a housing group with Craigmaddie. I also believe siting of a modern property adjacent to Craigmaddie would not adversely affect the character of this property or the surrounds and would fit within the area causing minimal landscape and visual impact.

I do agree the site is in excess of the prescriptive size stated in DC9 of 1500m<sup>2</sup> site area maximum, however, I believe the proposed development site is proportional in size to the adjacent sites, which also exceed 1500m<sup>2</sup>. I would urge a review committee to exercise a degree of practical common sense when interpreting illustrations 3.24 & 3.25. By my interpretation the physical site size (regardless of red or blue lines on a drawing) lies somewhere between examples 3.24 & 3.25 and merits consideration on its own proportions to its surroundings, not judged solely by the rigid prescriptive nature of DC9.

I understand and accept that the red and blue lines on the drawing submitted means, on paper, the application site does not share a domestic curtilage boundary with Craigmaddie. However, the practical reality is that the site (red and blue area) does share a physical boundary with Craigmaddie and I would ask that a committee review would look at it on this practical basis. I thank the planning officer for the helpful suggestion of a resubmission. But, I feel the proposed site would again be refused at the PIP initial stages on other points as discussed within this report.

Again, I would be extremely grateful if the review committee would consider a site visit to Tankerness before final judgment. I strongly feel viewing the site in person would show clearly the site warrants planning in principle be granted. I have lived near the proposed site, 100m away, for the last 20 years and would not wish to see detrimental development take place within this area.

Thank you to all for your valuable time.

Regards

Neil Robertson