

Item: 5.1

Planning Committee: 7 October 2020.

Erect House with Integral Garage and Air Source Heat Pump and Create Access at Eastr, Stromness

Report by Executive Director of Development and Infrastructure.

1. Summary

1.1.

It is proposed to erect a single storey house with an integral garage and an air source heat pump and create an access on Downies Lane to the south of the property known as Eastr, Stromness. The proposed site is in the countryside and not within the defined settlement of Stromness. The site is within the Hoy and West Mainland National Scenic Area. Supporting information has been provided by the applicant in relation to the location and design of the proposed development and also the personal circumstances of the applicant. The application has been called in by two Councillors and, in accordance with the Scheme of Delegation, the application must be reported to Committee for determination. The development is considered contrary to Policies 1, 2, 5E and 9 of the Orkney Local Development Plan 2017. Accordingly, the application is recommended for refusal.

Application Number:	20/157/PP.
Application Type:	Planning Permission.
Proposal:	Erect a house with an integral garage and an air source heat pump and create an access.
Applicant:	Miss Corinne Sinclair, Eastr, Stromness, KW16 3HS.
Agent:	Mr Stephen J Omand, 14 Victoria Street Kirkwall, KW15 1DN.

1.2.

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

2.1.

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

2.2.

Notwithstanding the above comment in relation to technical matters, Roads Services requires the widening of a section of Downie's Lane from a previously widened section of road outside the property known as Eastr, along the length of the site that has a boundary with Downie's Lane, and for these widening works to be completed prior to any other works within the site.

2.2.1.

In response, the agent has requested that Roads Services reconsider and withdraw that requirement, stating that the request is "very unreasonable and onerous" on the basis Downie's Lane is not an adopted road and citing ownership.

2.2.2.

The requirement for an upgrade to the road is consistent with other developments approved and under consideration, which is accessed from Downie's Lane, and remains the position of Roads Services.

2.3.

Development and Marine Planning has commented as follows:

"The main material consideration in the determination of this planning application is the Orkney Local Development Plan 2017.

The site is located on high ground directly to the south of the existing house known as Eastr off the Downie's Lane, Stromness. This location is in the open countryside as it is not located within the settlement boundary of Stromness. The settlement boundaries are detailed in the Proposals Map of the Orkney Local Development Plan 2017. Therefore, this application does not accord with Policy 5 – Housing, part A – Housing in Settlements of the Orkney Local Development Plan 2017.

Additionally, within this Policy at part E – Single Houses and new Housing Clusters in the Countryside, there are eight policy provisions that allow for appropriate housing development in the open countryside. These provisions are:

- 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 and, 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; or
- viii. The provision of a single dwelling house to allow for the retirement succession of a viable farm holding.

This application does not accord with any of these provisions and therefore does not accord with Policy 5 – Housing, part E – Single Houses and new Housing Clusters in the Countryside of the Orkney Local Development Plan 2017.

The siting of the proposed house is in a prominent location within the National Scenic Area of the Hoy and the West Mainland. Development and Marine Planning are concerned that the proposal may have a significant effect on the overall integrity of the area or the qualities for which it has been designated. At this time, with limitations on completing site visits, we are unable to consider the landscape impact fully and reserve the right to add further comment at a later stage.

To conclude, this application does not accord with the Policy 5 – Housing of the Orkney Local Development Plan, 2017 and no information of a significant material weight has been provided that would change this opinion.”.

3. Relevant Planning History

3.1.

There is no record of planning application history on the site.

3.2.

Pre-application advice was provided, which is referenced within the supporting statement submitted. Advice provided noted the lack of basis in either policy or guidance for the approval of the proposed development. Indication was, however, provided that an annex to the property known as Eastra, north of the proposed site, may provide an opportunity for development. It was anticipated that an appropriately designed annex could provide the accommodation needs of the applicant, whilst according with policy as development associated with the property known as Eastra. This has been discounted by the applicant, in pursuance of a wholly separate and independent dwelling.

4. Relevant Planning Policy and Guidance

4.1.

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 2 – Design.
 - Policy 5E – Single Houses and new Housing Clusters in the Countryside.
 - Policy 9 – Natural Heritage and Landscape.
 - Policy 14 – Transport, Travel and Road Network Infrastructure.
- Supplementary Guidance: Housing in the Countryside.

4.2.

National Planning Framework 3 is cited in the call in by Councillors. As a long-term strategy for Scotland and the spatial expression of Scottish Government plans for development and investment in infrastructure, it is of minimal relevance in terms of determining a local planning application for an individual house.

4.3.

In relation to specialist housing provision and other specific needs, the only reference in Scottish Planning Policy for the provision of housing for independent living for those with a disability is in paragraph 132, where it is required as part of the Housing Need and Demand Assessment, in relation to the preparation of policies to support the delivery of appropriate housing. This does not prejudice the determination of applications for individual houses.

5. Legal Aspects

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 shall be made in accordance with the plan unless material considerations indicate otherwise.”

5.2.

5.2.1.

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.”

5.2.2.

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.
 - Policy in the Scottish Planning Policy and 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. Assessment

6.1. Background

6.1.1.

The site is located on the edge of an agricultural field laid to grass adjacent and to the west of Downie's Lane, outside the defined town boundary of Stromness – to the north of the former viewpoint and south of the property Eastr, as indicated on the Location and Site Plan attached as Appendix 1 to this report. The proposed site is in a prominent location given the elevated nature of this section of Downie's Lane in relation to Stromness.

6.1.2.

It is proposed to develop a new house in the countryside. A supporting document has been submitted by the agent, providing a background statement in support of the application and presenting the personal circumstances of the applicant, principally in relation to medical conditions, with a view towards establishing need through exceptional personal circumstances. The supporting document includes letters of support from the applicant's parents, employer, medical professionals and the owner of a neighbouring property.

6.1.3.

Given the complex nature of the medical conditions, an independent assessment was sought by the Planning Authority to provide a summary of the medical conditions. This has been provided by a general practitioner, signed on soul and conscience as an independent view.

6.1.4.

The existing property of Eastr is linked to the current application, on the basis the supporting information confirms it is occupied by the applicant's parents (and

currently the applicant) and therefore offers the potential for familial support in proximity to the proposed development site. This proximity forms a fundamental part of the applicant's case for the proposed site, combined with a desire for an independent house, with the option of a detached annex dismissed as not providing the independence sought. However, this creates apparent conflict within the supporting statement as it is acknowledged that in future there may not be support from family residing at Eastra, through the passage of time. Therefore, on one hand, the exceptional case made for the location of the house is to be in proximity of parents to provide support but, on the other hand, the case for an independent house is on the basis that through the passage of time, support may not be available from the parents. It was, for this reason, that the Planning Authority advised an annex would be a suitable compromise, providing independently accessed accommodation at the site for as long as the support from parents was available.

6.1.5.

The soul and conscience letter refers to the benefits of an independent house in relation to recovery, but does not refer to the particular house design or location proposed.

6.1.6.

There are no technical issues in relation to the servicing of the site which would make it unacceptable, with matters such as foul and surface water drainage, parking and sufficiency of amenity space likely to meet requirements, subject to securing the works required by Roads Services through condition, should the application to be approved.

6.2. Principle

6.2.1.

The proposed development is not located within a defined settlement and as such must be considered as the development of single houses in the countryside. Policy provision is based on the development of land at existing buildings, housing needs of rural businesses and subdivision and infill development. The proposed development does not accord with any of the eight Housing in the Countryside policy provisions. The application relies on the personal circumstances of the applicant only. Furthermore, the proposed development fails to address key development criteria including siting within the landscape, failing to minimise landscape and visual impacts arising due to the proposed location.

6.2.2.

Simply, and notwithstanding the personal circumstances submitted, the application has no basis in relation to any of the policy provisions for housing in the countryside as set out in Policy 5E – Housing in the Countryside of the Orkney Local Development Plan 2017, nor the Development Criteria in Supplementary Guidance: Housing in the Countryside. Supporting information and the soul and conscience letter provided by a general practitioner can be considered as a material planning consideration, but on balance with all relevant matters, any weight provided to the

personal circumstances are significantly outweighed by the policy provisions of the Orkney Local Development Plan 2017.

6.3. Design and Appearance

6.3.1.

A design statement has been provided in support of the application. The proposed house would be single storey in nature, with a 'T' plan, gable ended in form and with an integral garage. A heat pump is also proposed. Proposed external finishes are cream/white render to walls, black concrete roof tiles and anthracite windows and doors. There is no apparent significant or notable design feature relating to the personal circumstances submitted that would not normally be expected in a house design.

6.3.2.

Key to the consideration of design and appearance are Policies 1 and 2, Criteria for All Development and Design respectively. Both policies place significant emphasis on achieving appropriate development in appropriate locations, ensuring that all development is sited and designed taking into consideration the location, and in accordance with fundamental design principles:

- Point (i) – it reinforces the distinctive identity of Orkney's built environment and is sympathetic to the character of its local area.
- Point (ii) – it has a positive or neutral effect on the appearance and amenity of the area.

6.3.3.

In addition to the policy criteria regarding the principle of development, Supplementary Guidance: Housing in the Countryside also details Development Criteria (DC) which must be addressed for all planning proposals for one or more houses in the countryside. The following DC are relevant in this case:

- DC 1 – it is located and sited to fit into the landscape, minimising the landscape and visual impacts of the development proposal.
- DC2 – the proposed development will be in keeping with the location.
- DC3 – the proposed pattern of development will not lead to the suburbanisation of Orkney's Countryside.

6.3.4.

Whilst it is accepted that the site could meet technical requirements for construction of a house as indicated through the submitted supporting design statement, the proposed development fails to address how the development relates to its setting or the wider landscape in context. The proposed development would, by its nature, introduce a single detached house in a skyline location, prominent from visual receptors in the local area and highly trafficked parts of Stromness, including Cairston Road, the A965 main road and Hillside Road. The proposed development would fail to respect the established pattern of rural housing in the area. Concerns

regarding potential landscape impact are heightened by the situation of the development within the Hoy and West Mainland National Scenic Area. The development is not considered to reflect the local settlement pattern or be sympathetic to the character of the local area and as such would be considered contrary to both Policies 1 and 2.

6.4. Residential Amenity

As a site remote from other houses no significant amenity concerns are considered to arise.

6.5. Natural Heritage and Landscape

6.5.1.

The proposed development is situated within the Hoy and West Mainland National Scenic Area (NSA). Whilst the design of the proposed house, including scale, is similar to other houses in the general area, the siting is not acceptable. This is due to the gradient and nature of the landform in which it would be located. The proposed development would add to other properties in the general area which already break the skyline. Continued erosion of landscape quality can affect the overall integrity of the NSA or the qualities for which it has been designated; incremental inappropriate development of single houses in the countryside, particularly in prominent situations, is not appropriate.

6.5.2.

The supporting statement refers to the site selection process and association with the existing house. Whilst landscape and visual amenity grounds may be reduced by locating the proposed house closer to the existing house to the north, the applicant has indicated that gradients are preferential at the chosen location, which aligns with the applicant's desire to develop a wholly independent and separate development to that of Eastra. Irrespective of this reason, the case remains that the proposal seeks to develop a site which would be prominent to multiple visual receptors and which has no policy basis.

6.5.3.

The proposed development is not considered to be sited appropriately, it fails to be sympathetic to the character of the local area and is not sited to minimise negative impacts on the landscape. As such the development fails to accord with Policies 1, 2 and 9G and the Development Criteria as listed within Supplementary Guidance: Housing in the Countryside.

6.6. Road Network Infrastructure

Access would be taken directly from the public road. Roads Services has no objection, subject to a planning condition requiring the applicant to widen the section of Downie's Lane from the previously widened section of road outside the property of Eastra, along the entire length of the site that has a boundary with Downie's Lane, and with the proposed access to the public road undertaken in compliance with the

roads authority standards. The site is considered of adequate size to accommodate any necessary parking and manoeuvring space.

7. Conclusion and Recommendation

7.1.

It is recognised that effort has been made by the applicant/agent in demonstrating a case for development based on personal circumstances. It is also acknowledged that the applicant has medical conditions; a soul and conscience letter has been provided by a general practitioner in this regard, within which the benefit of an independent house is noted, although not necessarily the specific house design or location as proposed. Planning case law is such that exceptional personal circumstances can be regarded as a material planning consideration in the balance of determination of a planning application. However, such exceptional matters must be considered in relation to, and in balance with, all other material planning considerations, principally compliance or non-compliance with the policies of the adopted Local Development Plan, in this case The Orkney Local Development Plan 2017 and relevant Supplementary Guidance. The proposal fails to comply with any policy requirement of Policy 5E – Housing in the Countryside or Supplementary Guidance: Housing in the Countryside, as set out within this report and clarified in the consultation response from Development and Marine Planning. In this case, other factors including the personal circumstances of the applicant do not outweigh the policies of the adopted Local Development Plan and any decision other than refusal cannot be justified.

7.2.

Beyond the key consideration of Housing in the Countryside policy provisions and the principle of the development, the siting of the proposed development is also considered inappropriate, which is of increased concern given the location within the Hoy and West Mainland National Scenic Area. The development is therefore considered to be contrary to Policies 1, 2 and 9G in relation to appropriate location and siting. The proposal also fails to address aspects of the ten listed Development Criteria as stated within the Supplementary Guidance: Housing in the Countryside.

7.3.

There are no material considerations evident either in the merits of the application as presented, or apparent on site, which would outweigh the policies of the Orkney Local Development Plan 2017, or which would warrant an outcome other than refusal of the application. The development is considered contrary to Policies 1, 2, 5E and 9G of the Orkney Local Development Plan 2017 and Supplementary Guidance: Housing in the Countryside. Accordingly, the application is **recommended for refusal**.

8. Reasons for Refusal

01. The proposed development fails to meet any policy requirement for a new house in the countryside. Specifically, the application fails to meet any one of the eight policy provisions in relation to Housing in the Countryside as included in Policy 5E.

The application is contrary to Policy 5E – Housing – Single Houses and new Housing Clusters in the Countryside of the Orkney Local Development Plan 2017.

02. The site location would not reflect the character of the surrounding area and would appear incongruous and intrusive due to inappropriate siting within the landscape. The development fails to comply with Policy 1 – Criteria for All Development, paragraphs i and ii, of the Orkney Local Development Plan 2017.

03. The site location would not reflect the local settlement pattern, it would not reinforce the distinctive identity of Orkney’s rural built environment and would not be sympathetic to the character of the local area. The development fails to comply with Policy 2 – Design, paragraphs i and ii, of the Orkney Local Development Plan 2017.

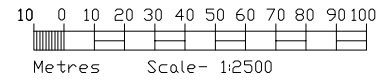
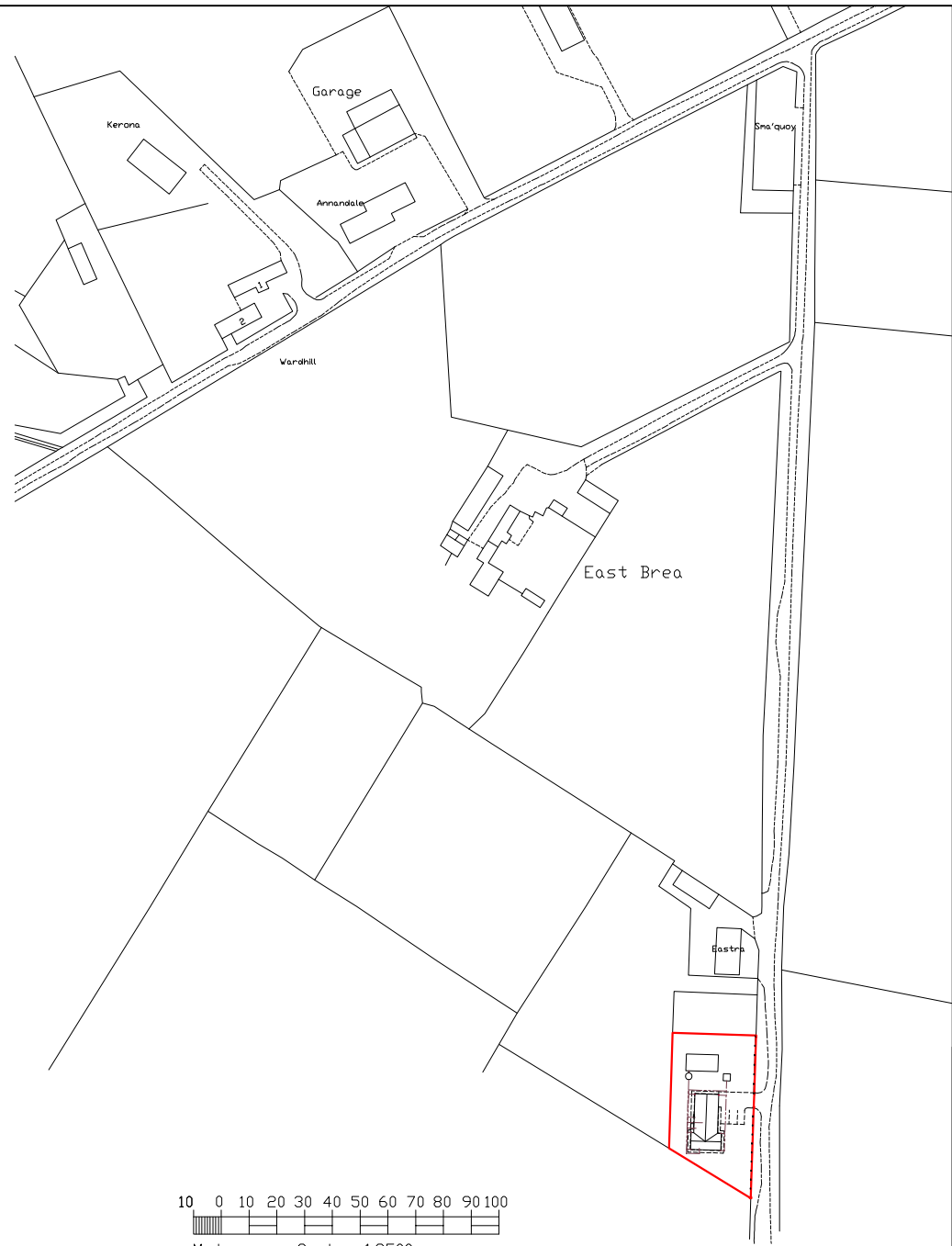
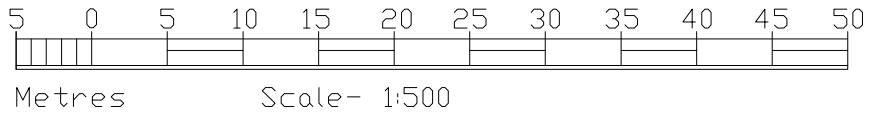
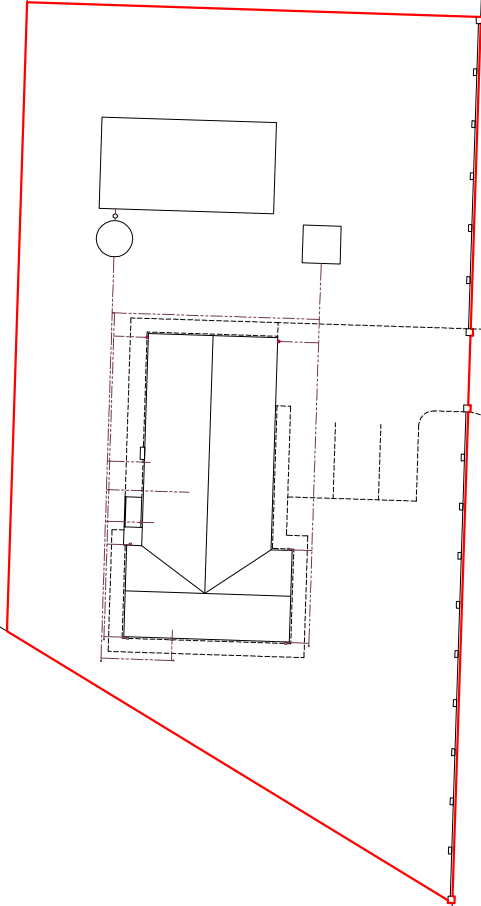
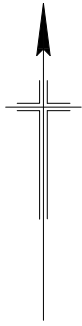
04. The proposed house location and footprint are not sited to minimise negative impacts on the local landscape. The proposed site location would also have the potential, in combination with the other isolated house along Downie’s Lane, to create incongruous development of individual houses in the landscape. Given the location of the development and prominence within the local landscape the proposal is considered contrary to Policy 9 – Natural Heritage and Landscape, paragraph G i, ii and iii.

9. Contact Officer

Jamie Macvie, Planning Manager – Development Management, Email: jamie.macvie@orkney.gov.uk

10. Appendix

Appendix 1: Location and Site Plan.



Title
Erection of House & Garage and Installation of Air Source Heat Pump near Eastrra, Stromness.
Client
Miss Corrine M Sinclair, Estra, Stromness, KW16 3HS. Drwg No- 1571/1/P1 Plan Size- A4.