

## Minute

### Local Review Body

Wednesday, 29 May 2019, 09:30.

Council Chamber, Council Offices, School Place, Kirkwall.



### Present

Councillors Owen Tierney, Stephen Sankey, Alexander G Cowie, Norman R Craigie, Robin W Crichton, David Dawson, Barbara Foulkes, John A R Scott, Graham L Sinclair, Duncan A Tullock and Kevin F Woodbridge.

### Clerk

- Angela Kingston, Committees Officer.

### In Attendance

- Roddy Mackay, Planning Advisor.
- Katharine McKerrell, Legal Advisor.

### Not Present

- Councillor Magnus O Thomson.

### Declarations of Interest

- No declarations of interest were intimated.

### Chair

- Councillor Owen Tierney.

## 1. Disclosure of Exempt Information

The Local Review Body noted the proposal that the public be excluded from the meeting for consideration of Appendix 1 of Item 2, as the business discussed involved the potential disclosure of exempt information of the classes described in the relevant paragraphs of Part 1 of Schedule 7A of the Local Government (Scotland) Act 1973 as amended.

## 2. Planning Application (18/325/PP)

### Change of Use from Self-Catering to Domestic (Retrospective) at New Breck, Beaquoy Road, Birsay

After consideration of a report by the Chief Executive, copies of which had been circulated, the Local Review Body:

Noted:

**2.1.** That retrospective planning permission for the change of use from self-catering to domestic at New Breck, Beaquoy Road, Birsay, was refused by the Appointed Officer on 3 December 2018, for the reasons outlined in section 3.2 of the report by the Chief Executive.

**2.2.** That the applicant had submitted a Notice of Review requesting that the decision of the Appointed Officer, referred to at paragraph 2.1 above, be reviewed.

**2.3.** That, in accordance with policy, the Local Review Body had undertaken an unaccompanied visit to the site, referred to at paragraph 2.1 above, at 10:15 on 24 April 2019.

**2.4.** That, on 24 April 2019, the Local Review Body resolved that the review should not be determined without further procedure and, in noting the reference in the "Supporting Statement for Review Committee" to potential hardship, the further procedure should comprise further information from the applicants to clarify any circumstances they wished the Local Review Body to consider in respect of hardship.

After hearing a report from the Planning Advisor, the Local Review Body:

Resolved, in terms of delegated powers:

**2.5.** That the review be determined without further procedure.

On the motion of Councillor Owen Tierney, seconded by Councillor Stephen Sankey, the Local Review Body resolved that the public be excluded from this part of the meeting, as the business to be considered involved the disclosure of exempt information as defined in paragraph 6 of Part 1 of Schedule 7A of the Local Government (Scotland) Act 1973 as amended.

After seeking clarification on aspects of the further information, submitted by the applicants and contained within Appendix 1 to the report by the Chief Executive, the Chair adjourned the meeting at 10:20.

Councillor Owen Tierney left the meeting at this point.

Signed: Owen Tierney.

The meeting reconvened at 11:30 and Councillor Stephen Sankey took the Chair for the remainder of the meeting.

Following clarification on certain information, submitted by the applicants, within Appendix 1 to the report by the Chief Executive, the Local Review Body resolved, in terms of delegated powers, that the public be readmitted for the remainder of the meeting.

Councillor Graham L Sinclair, seconded by Councillor Robin W Crichton, moved that the decision of the Appointed Officer, to refuse the application for retrospective planning permission for the change of use from self-catering to domestic at New Breck, Beaquoy Road, Birsay, be upheld.

Councillor David Dawson, seconded by Councillor Barbara Foulkes, in noting that the development had already been built, moved an amendment that retrospective planning permission be granted in respect of the change of use from self-catering to domestic at New Breck, Beaquoy Road, Birsay, as, in their opinion:

(1) The case law provided, Westminster City Council v Portland Plc [1985] A.C. 661, had demonstrated that the personal circumstances of the applicants could be a material consideration in extremely exceptional circumstances where a specific case had been made by the applicants.

(2) The additional information provided by the applicants had demonstrated the case for personal hardship.

On a vote being taken 8 members voted for the amendment and 2 for the motion, and the Local Review Body:

Resolved, in terms of delegated powers:

**2.6.** That retrospective planning permission be granted in respect of the change of use from self-catering to domestic at New Breck, Beaquoy Road, Birsay, subject to conditions.

**2.7.** That powers be delegated to the Executive Director of Development and Infrastructure, in consultation with the Vice Chair of the Local Review Body, to finalise the wording of an additional condition relating to the following:

- The larger business development approved under planning application reference 13/056/PP had not been enacted.
- Due to the change of use to a house of one part of the larger overall business approved under planning application reference 13/056/PP, the residual, not commenced, part of the development, would not meet the criteria to justify a locational requirement for a business use in the countryside, in the absence of the part of the business development hereby changed to a house. As such, no other part of that consent should be carried out.

**2.8.** That the retrospective planning permission, referred to at paragraph 2.6 above, be issued, subject to the conditions attached as Appendix 1 to this Minute, together with the additional condition referred to at paragraph 2.7 above.

### **3. Conclusion of Meeting**

At 11:45 the Vice Chair declared the meeting concluded.

Signed: S Sankey.

**Appendix 1.**

**Change of Use from Self-Catering to Domestic at New Breck  
Beauguay Road, Birsay (Retrospective) (18/325/PP)**

**Grant subject to the following conditions:**

01. The building hereby approved shall be used as a domestic dwelling only, and for no other purpose or use.

Reason: For the avoidance of doubt and in accordance with the use as applied for.

02. The junction of the access hereby approved with the public road shall be constructed to the Council's Roads Services standard drawing 'SD-03 Typical Access Over Verge for Single Development', attached to and forming part of this decision notice, including dimensions, road construction, any pipe required and verge or footway. The access shall be constructed and completed wholly in accordance with these details within 6 months of the date of this decision, and thereafter shall be retained in accordance with these details throughout the lifetime of the development, unless otherwise agreed, in writing, by the Planning Authority.

Any damage caused to the existing road infrastructure during construction of the development shall be repaired to the satisfaction of the Planning Authority, in conjunction with Roads Services.

Reason: In the interests of road safety.

03. Total noise from the Air Source Heat Pump(s) installed shall not exceed NR25 within any residential property outwith the development, where NR25 is the Noise Rating Curve at 25 (noise measurements to be made with a window of any residential property outwith the development open no more than 50 mm).

Reason: To protect any nearby residents from excessive noise disturbance from the air source heat pump(s).

**Proposed Additional Condition – Subject to Confirmation following  
consultation:**

04. Notwithstanding development included within the proposal description and approved plans for planning application reference 13/056/PP, the development hereby approved shall be limited to the red outlined application site only, and no buildings or other developments shall be carried out in any other part of planning application site reference 13/056/PP. The guesthouse and stables/kennels shall not be constructed. The use of the land within the application site boundary of 13/056/PP, but not comprising application site reference 18/325/PP, shall remain as agricultural land, and is neither domestic, nor related to any previous proposed use. Domestic curtilage is limited to the application site hereby approved.

Reason: For the avoidance of doubt. The original planning application 13/056/PP was approved as a business development in the countryside comprising multiple related structures of the same development. It was approved under the provisions of the Business Development in the Countryside Local Development Plan policy, following establishment of a locational justification for a new business in the countryside. On the basis that the change of use to a house of one part of the larger overall business has hereby been approved, the business justification for the larger development is compromised, and on balance the residual, not commenced, part of the development would no longer meet the criteria to justify a locational requirement for a business use in the countryside without the part of the business development hereby changed to a house.