



Item: 4

Local Review Body: 3 July 2024.

Proposed Erection of House with Integral Garage and Air Source Heat Pump and Upgrade Access at Yairsay, St Ola (22/473/PP).

Report by Corporate Director for Strategy, Performance and Business Solutions.

1. Overview

- 1.1. Planning application 22/473/PP in respect of the proposed erection of a house with an integral garage and an air source heat pump and upgrading an access at Yairsay, St Ola, was refused by the Appointed Officer on 9 February 2024.
- 1.2. Under the Town and Country Planning (Scotland) Act 1997 and the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013, 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's agent has submitted a Notice of Review (see Appendix 1) requesting that the decision of the Appointed Officer be reviewed.
- 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. In accordance with the Council's policy to undertake site inspections of all planning applications subject to a review, prior to the meeting to consider the review, a site inspection to Yairsay, St Ola, is due to be undertaken on 3 July 2024 at 11:15.
- 1.6. The review procedure is set out in section 4 below.

2. Recommendations

- 2.1. It is recommended that members of the Local Review Body:
- i. Determines 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.
 - ii. Determines, in the event that the decision is reversed or varied, the reasons, and, if applicable, the detailed conditions to be attached to the decision notice.
 - iii. Delegates powers to the Corporate Director for Strategy, Performance and Business Solutions, in consultation with the Planning Advisor and the Legal Advisor, if required, to determine the necessary conditions to attach to the Decision Notice, based on the relevant matters as set out in section 4.3 of this report.
- 2.2. Should the Local Review Body determine that it does not have sufficient information to proceed to determination of the review, it is recommended that members of the Local Review Body:
- i. Determines 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 Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013; and/or
 - By the holding of one or more hearing under the Hearing Session Rules set out in Schedule 1 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013.

3. Planning Authority Decision

- 3.1. On 9 February 2024, the Appointed Officer refused planning application 22/473/PP on the following grounds:
- Based on site specific traffic survey data and subsequent assessment by the roads authority, it is concluded that the proposed development would have unacceptable impact on road safety due to insufficient forward visibility from the access junction. Roads Services has objected to the application on these grounds of road safety. The development is contrary to Policy 1 'Criteria for All New Development' part (vi) of the Orkney Local Development Plan 2017 as it would 'result in an unacceptable level of risk to public health and safety'. The development is also contrary to Policy 14C 'Road Network Infrastructure' of the Orkney Local Development Plan 2017 part (iii) is the upgrade to an existing

access fails to meet the requirements of the National Roads Development Guide and would not be 'safe for all road users'.

- 3.2. The Planning Handling Report, Planning Services file and the Decision Notice are attached as Appendices 2, 3 and 4 to this report.

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. Representations were received from Roads Services and Development Management and are attached as Appendices 5 and 6, respectively.
- 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 received from the applicant’s agent on the further representations received are attached as Appendix 7 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
 - Access construction including visibility splays
 - Tree protection
 - Breeding birds
 - Biodiversity enhancement
 - Japanese knotweed management
 - Surface water drainage
 - Demolition of existing
 - External lighting
 - Landscaping
 - Hours of construction
 - Construction traffic management plan
- 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 Corporate Director for Strategy, Performance and Business Solutions, in 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 following 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 Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013; and/or.
 - By the holding of one or more hearing under the Hearing Session Rules set out in Schedule 1 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013.

5. Relevant Planning Policy and Guidance

- 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 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 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).
- Planning Policy Advice:
 - Amenity and Minimising Obtrusive Lighting (March 2021).
 - National Roads Development Guide (July 2015).
 - Trees and Woodland (April 2014)
- National Planning Framework 4:
 - Policy 17 – Rural homes.

For Further Information please contact:

Susan Shearer, Planning Advisor to the Local Review Body, extension 2433, Email: 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.
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.

National Planning Framework 4.

Supplementary Guidance: Housing in the Countryside (March 2017).

Planning Policy Advice: Amenity and Minimising Obtrusive Lighting (March 2021).

Planning Policy Advice: National Roads Development Guide (July 2015).

Planning Policy Advice: Trees and Woodland (April 2014).

Appendices

Appendix 1 – Notice of Review (pages 1 – 31).

Appendix 2 – Planning Handling Report (pages 32 – 40).

Appendix 3 – Planning Services File (pages 41 – 97).

Appendix 4 – Decision Notice and Reasons for Refusal (pages 98 –105).

Appendix 5 – Representation from Roads (pages 106 – 110).

Appendix 6 – Representation from Development Management (pages 111 - 113).

Appendix 7 - Representation from Applicant's Agent (pages 114 – 118).

Pages 1 to 105 can be viewed [here](#), clicking on “Accept and Search” and inserting the planning reference”22/473/PP.”.

Kate Russell-Duff

From: Donald Wilson on behalf of roads planning
Sent: 23 May 2024 15:00
To: Kate Russell-Duff; roads planning
Cc: Hazel Flett
Subject: RE: Planning App 22/473/PP - Yairsay, St Ola - Notice of Review
Attachments: TR Advice on Planning for Small Development (Visibility Splay extract).pdf

Classification: NOT PROTECTIVELY MARKED

Katy,

In response to the notice of review for the development at Yairstay, St Ola (22/473/PP), Roads Services would like to note that the desktop assessment referred to in the Planning Review Statement, consisted of preparing a Cad drawing and assessing the maximum theoretical visibility splays that could be delivered within the boundary of the public road. Following which it was clear that the forward visibility of 215 metres for a road subject to a 60mph speed limit would be unachievable given the geometry of the A965 at the proposed entrance to the development site.

Following the traffic speed survey the average 85th percentile speed, which is the industry standard used to either set or determine the speed limit of / for vehicles on a public road and refers to a speed where 85% of vehicles travel at or below. Which when considering the overall average 85th percentile speeds from the traffic survey were 56.73mph (Counter C) and 55.79mph (Counter D), which potentially would have resulted in a reduction of the visibility for Counter C (to the north of the access) to 185 metres and for Counter D (on the southern side of the access) to 175 metres. However, even with the reduced visibility splays it was still not possible to achieve the required visibility without using land outwith the boundary of the public road with out using land under the ownership of a third party.

Therefore, with the applicant being unable to provide any feasible way to achieve the potentially reduced visibility splay Roads Services have no alternative but to object to this development proposal.

For you information I have attached an extract from a Transport Scotland document to hopefully make the need for visibility splays clearer.

Regards

Donald Wilson

Neighbourhood Services
Neighbourhood Services & Infrastructure
Orkney Islands Council

Tel 01856 873535 Ext 2302

From: Kate Russell-Duff <Kate.Russell-Duff@orkney.gov.uk>
Sent: Thursday, May 16, 2024 3:28 PM
To: roads planning <roads.planning@orkney.gov.uk>

Cc: Hazel Flett <Hazel.Flett@orkney.gov.uk>; Kate Russell-Duff <Kate.Russell-Duff@orkney.gov.uk>
Subject: RE: Planning App 22/473/PP - Yairsay, St Ola - Notice of Review

Classification: NOT PROTECTIVELY MARKED

Further to the below email, please note that there is an error in the date which should read, Sunday 26 May 2024.

I apologise for this error.

Kind regards

Katy Russell-Duff
 Committees Officer/FOI Practitioner
 Strategy, Performance and Business Solutions
 Orkney Islands Council
 Council Offices, School Place, Kirkwall, Orkney, KW15 1NY
 Telephone (01856) 873535 Extension 2239

From: Kate Russell-Duff <Kate.Russell-Duff@orkney.gov.uk>
Sent: Monday, May 13, 2024 10:38 AM
To: roads planning <roads.planning@orkney.gov.uk>
Cc: Hazel Flett <Hazel.Flett@orkney.gov.uk>; Kate Russell-Duff <Kate.Russell-Duff@orkney.gov.uk>
Subject: Planning App 22/473/PP - Yairsay, St Ola - Notice of Review

Classification: NOT PROTECTIVELY MARKED

Planning App: 22/473/PP
Applicant: Orkney Builders (Contractors) Ltd
Proposed Erection of House with Integral Garage and Air Source Heat Pump and Upgrade
Access at Yairsay, St Ola
Notice of Review

The above planning application was refused by the Appointed Officer on 9 February 2024.

The applicant has submitted a Notice of Review in terms of section 43A(8) of the Town and Country Planning (Scotland) Act 1997, as amended.

In terms of Regulation 10(b) of the Town and Country (Schemes of Delegation and Local Review Procedures)(Scotland) Regulations 2013, as an interested party to the above application, I hereby notify you of the same.

Copies of any representations previously made with respect to the application will be considered by the Local Review Body when determining the review.

You may make further representations to the Local Review Body, which should be submitted to me, in writing, not later than **Sunday, 28 May 2024**. In writing includes by e-mail. A copy of any representations provided will be sent to the applicant for comment.

A copy of the Notice of Review and other documents related to the review can be inspected by following the link below and inserting the reference number "22/473/PP":

[Application Search and Submission \(orkney.gov.uk\)](https://orkney.gov.uk)

Kind regards

Katy Russell-Duff
Committees Officer/FOI Practitioner
Strategy, Performance and Business Solutions
Orkney Islands Council
Council Offices, School Place, Kirkwall, Orkney, KW15 1NY
Telephone (01856) 873535 Extension 2239

Access Design Considerations

Visibility Splays

A visibility splay is an essential safety feature of your access or junction. This is the distance a driver needs to be able to see left and right along the trunk road when waiting to turn out of a junction or access onto the trunk road. These areas, known as visibility splays, are indicated as the shaded areas on Diagram 1. These are important as drivers need a clear view of approaching traffic in order to exit safely.

Visibility splays also allow traffic on the public road to see pedestrians, cyclists and vehicles leaving the development. An unobstructed visibility splay allows you to see and be seen, therefore the longer the length of visibility splay, the more time another road user has to see you, and for you to see them.

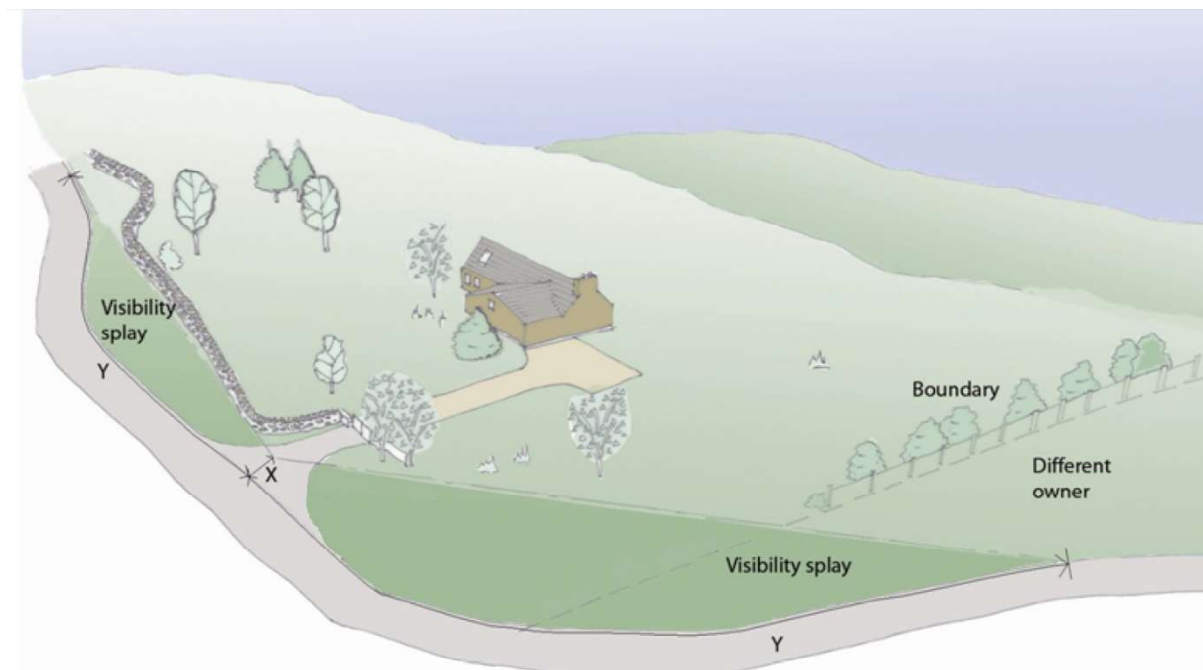


Diagram 1: Visibility Splays – Reproduced with kind permission of The Highland Council

The visibility splay is made up of two distances shown as 'x' and 'y' in Diagram 1. The 'x' distance is measured along the centreline of the access from the edge of the trunk road carriageway and is normally 4.5 metres. This can be reduced to 2.4 metres, or 2 metres in certain circumstances. The distance you need to see along the road (the 'y' distance) is measured in both directions from the centreline of the access along the nearside edge of the trunk road carriageway. The 'y' distance for different speeds can be found in Table 1. The traffic speed can be based on speed limits or measured traffic speeds.

The visibility splay starts at 'x' distance from drivers eye height which is between 1.05 and 2 metres, depending on the vehicle. From this height at the access or junction the driver needs to see an object height of between 0.26 metres and 1.05 metres above the road surface along the 'y' distance. Therefore the visibility splay must be kept clear of objects that may block this view to ensure that the driver can clearly see approaching traffic. As well as achieving visibility splays applicants will

usually be required to maintain them. It may be necessary for developers to approach adjacent land owners to obtain permission to enter their land to cut back vegetation for this purpose.

Speed of traffic on the Trunk Road	kilometres per hour	30	50	60	70	85	100	120
	miles per hour	19	31	37	43	53	62	75
'y' Distance (m)		45	70	90	120	160	215	295

Table 1: Visibility Splay "y" distance

In urban areas, a visibility splay should also be provided from a driveway to the footway to allow young children to be seen by the driver. This splay should be 2 metres by 2 metres from the driver's eye height of 1.05 metres to an object height of 0.6 metres above the rear of the footway, as shown in diagram 2.

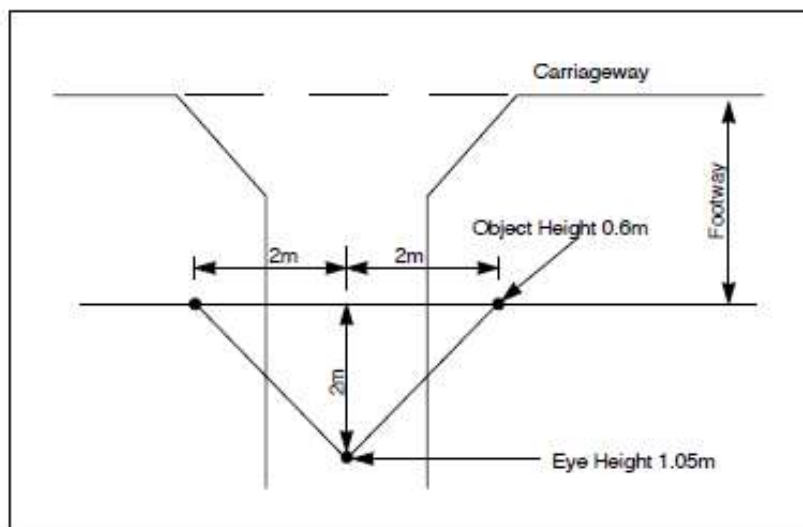


Diagram 2: Footway Visibility at access

Forward Visibility

Forward visibility is the distance drivers can see when travelling along the trunk road. Drivers need sufficient time to be able to see, and react appropriately to potential hazards such as a vehicle waiting to turn right into an access or junction. Developers will be expected to demonstrate that they can achieve the forward visibility required which will depend on the speed of the traffic on the trunk road. Contact the Transport Scotland Development Management Team for further advice on requirements.

22/473/PP**Proposed Erection of House with Integral Garage and Air Source Heat Pump and Upgrade Access at Yairsay, St Ola****Regulation 10(b)****Representation by Interested Party – Development Management**

The Notice of Review is based on three assumptions – that the current use of the site is residential, that the consultation response by the roads authority (Roads Services) is desktop only, and that the level of risk created by the development would not be to an ‘unacceptable level’.

On the first point, it is stated that the property was “...occupied as a private dwelling until relatively recently and the use remains residential although the premises ceased occupation and is now in a ruinous state.” The meaning of ‘relatively recent’ can be debated, but regardless the property has been vacant for decades, and it is acknowledged that it is in a ruinous and partly collapsed state.

Critically in planning terms, the residential use has been abandoned. The site is not residential, irrespective of formal use.

Similarly, and noted as fundamental in the Notice of Review, it is stated that the access serves an existing dwelling as well as a field. Again, the existing access does not serve a dwelling, as there is no dwelling currently and no residential use.

In this regard and related to the visibility splay requirements, the Notice of Review states, “Had the proposal sought to increase the number of houses or resulted in a significantly more dense development, the case for securing improved visibility sightlines could have been justified.” Simply, the application proposes a house site where one does not exist currently.

Consideration of the application must therefore include that a house site would be created in a location where there is no house currently. In road safety terms, it is proposed to use the location of an agricultural access as a domestic access. The situation must be accepted, that the agricultural access exists, but this does not prejudice proper consideration of the upgrading of that access to serve a proposed dwelling. Road safety is a material planning consideration, and irrespective of any other current use, if an access is assessed as unsafe by the roads authority, that is a legitimate reason for a planning application to be refused, even where there is general policy support for a development in principle.

Much is made in the Notice of Review that the consultation response from Roads Services includes a desktop assessment.

For some applications, the consultation response by Roads Services as the roads authority is based on the design speed (or speed limit) of a road, and/or a desk-based assessment of road geometry or visibility splays.

Given the implications on the decision in this case, Roads Services initially noted that forward visibility from the junction is less than required by the National Roads Development Guide (which is adopted by the Council as Planning Policy Advice and cannot simply be dismissed as national guidance), but also noted that a traffic survey had been commissioned by the developer and awaited the results of that traffic survey.

In this case therefore, the Roads Services response is based on the findings of that traffic survey commissioned by the developer. i.e. not theoretical results based on the design speed of the road but based on actual survey data.

The traffic speed survey confirmed the average 85th percentile speed – the industry standard used to determine a speed where 85% of vehicles travel at or below. Different speed counters confirmed traffic speeds, which allowed the required forward visibility in both directions to be reduced from the default for a road with that speed limit.

However, even with these reduced visibility splays, it is not possible to provide the required visibility without relying on land beyond the boundary of the public road (and not in the control of the developer). This is the desktop assessment carried out by Roads Services, and a necessary part of any assessment of visibility splays – plotting those reduced visibility splays on an accurate Ordnance Survey base map, to allow that to be verified on site. Officers inspected the site, to view the amended visibility splays as viewed from the access location.

The Notice of Review states, *“No site-specific assessment has been made.”* This is not correct.

It is also stated, *“The Roads Services assessment of the available visibility is only estimated. No on-site measurements have been undertaken nor has any assessment of the actual available visibility been undertaken by the Roads Service in their determination of the proposal. Their objection which has resulted in the refusal of planning permission, is not an accurate assessment but by their own admission, is an estimate based on a desktop appraisal.”* This statement may be perceived as an attempt to undermine the credibility of the assessment carried out by Roads Services. The statement is not correct. Site inspection confirms the findings of the desktop assessment, which is a necessary stage of the overall assessment of the access. Visibility is not ‘estimated’; necessary visibility is based on the developer’s own traffic survey, that was plotted on an Ordnance Survey base map as the desktop assessment stage of the process, and that was verified on site.

The Notice of Review also seeks to reach conclusions regarding stage at which embedded risk tips from being ‘acceptable’ to ‘unacceptable’. As planning authority, following the detailed assessment carried out in this case, the planning decision was based on the advice of the roads authority. The Notice of Review also refers to ‘continued use’ of an existing access, ignoring the point made above that the proposed continued use would not be agricultural only, but would be an intensification of the access to serve a house.

Overall, the Notice of Review also seeks to undermine the importance of the conclusions reached by Roads Services, as well as the role of forward visibility splays in assessing whether an access is safe or not, based in this case on the speed of traffic as surveyed. Roads Services has confirmed that the necessary safe forward visibility cannot be achieved, and it is therefore concluded that the development could not be safely accessed, and it is therefore a reasonable conclusion that the level of risk is unacceptable.

Simply, the proposed development would not 'improve an existing situation' or 'enhance road safety' as stated, but would result in the creation of a house site based on intensification of use of an access that is concluded as unsafe, based on the developer's own traffic survey data and the insufficient forward visibility splays available.

Development Management

26 May 2024

22/473/PP**PROPOSED ERECTION OF HOUSE WITH INTEGRAL GARAGE AND AIR SOURCE HEAT PUMP AND
UPGRADE ACCESS****YAIRSAY, ST OLA****RESPONSE TO COMMENTS SUBMITTED BY DEVELOPMENT MANAGEMENT AND TRANSPORT
PLANNING**

Development Management – Appellant Response

Development Management has identified that the existing premises are in a ruinous state which is self-evident on site. However, in planning terms, the use as a residential premises has not been abandoned. The term abandonment has been assessed on many occasions at Court and on appeal to the DPEA.

No other use has been implemented on the site in the interim since the last occupation of the premises. Lack of use of an existing premises cannot amount to abandonment, a matter that is substantiated at law. The matter of abandonment has been assessed in Court and it is widely acknowledged that the question of abandonment will depend on four key criteria.

Abandonment

An aerial view of the site which clearly reveals the existing buildings on site demonstrating that there has been no abandonment of use.

Based on determination of such matters at Court, it is generally accepted that an assessment of Abandonment is based on 4 key criteria:

1. Is the property capable of accommodating its former use
2. Was the former use lawful
3. Has an alternative use been implemented in the interim
4. The owner's intention as to whether to suspend the use or cease it permanently.

The fact the original house is no longer habitable does not mean the residential use has been abandoned. The Courts have determined that the removal of a roof does not in itself render the use abandoned. The use as a house remains as there has been no intervening alternative use.

The length of time the property has not been used as a dwelling is irrelevant, it is the fact that there has been no alternative use of the premises in the intervening period that determines that the use as a residential property has not been abandoned.

The planning authority will be aware that the site has not had any planning permission for alternative uses in the interim. The property remains visible on site and its original intended use as a residential property has not altered. The use has not been abandoned.

The final test is the intentions of the owner. The intentions are quite clear, the owner seeks to maintain the residential use of the site and replace the existing residential building. The owners of the site have at no time use the premises for an alternative purpose.

Abandonment only occurs when the intention of the owner is clearly one of seeking an alternative use, whether lawful or not. In this instance, the premises may have deteriorated to its present state, but its use cannot be considered as abandoned. The use has remained as residential. The ruinous state of the house is not a material consideration in the established use of the site as residential and assessment of abandonment.

The property remains as residential, and the redevelopment of the site is entirely in accordance with the established use of the site.

On the second point raised, noting that the site has a very evident previous use that remains extant, the existing access serving the site is valid and can continue in use without any recourse to the planning or roads authority. This access cannot simply be discounted because the planning officer considers the existing residential use is not valid. The fact remains, the use of the site is residential and the use has not been abandoned, there has been no other use of the site since the house became vacant, no matter its status, and by default, the existing access continues to serve a site with residential use.

The Development Management response is therefore unfounded and without basis. The use as residential has not been abandoned. The Courts have considered the matter of abandonment in so far as it relates to planning use, and there is no doubt that a use can only be considered abandoned if an alternative use has been implemented in the interim or the owner has intended to remove its extant use.

The determination of abandonment is not subjective but must be based on interpretation under law. This use is not abandoned. The access therefore serves an existing residential use.

Roads matters

The national standards that provide guidance for road sightline visibility are acknowledged and there is no intent to undermine these standards. Rather, the Review Body is requested to consider two material considerations.

Firstly, the access exists and serves an established residential use. This is fact and cannot be discounted. This is not a field access but an access driveway that serves an existing purpose. The site access can continue in use without any recourse to the planning or roads authority. The proposal involves an upgrade of the access junction and so will improve an existing situation.

The applicant has removed vegetation to improve sightline visibility. All of this confirms that the existing access junction, which does serve an established and legitimate residential use, will be upgraded and so improve an existing situation.

Secondly, it cannot be overlooked that the access in its current form can be used without any limitation. The roads authority is gaining an improvement to an existing situation. While it may not achieve dimensions that fully accord with the guidelines, it does improve an existing situation. The balance between the continued use of the existing access junction when measured against the improvements that will be delivered, is a material consideration.

A distinction has to be made when assessing this proposal between as an existing access that will be upgraded and one that is new and created because of a development. In the latter situation, meeting the full standards would be justified. In this instance, the access junction exists, it serves an established residential use and can be upgraded to improve the situation.

The aerial view of the site demonstrates the wide sweeping curves of the public road and that the site access junction is based at the centre of a concave curve providing a clear view in either direction.

More significantly, when compared to the junction to the north that serves the industrial estate, it is very evident that the roads authority standards have not been met and this junction is substandard in terms of visibility. That road junction carries a significantly greater volume of traffic than the appeal site which is for one house. The junction serving the industrial estate is a clear example of how the assessment of roads matters can and will be assessed on each individual situation. If the access junction to the north is considered safe and suitable for the level of traffic it accommodates, there can be little justification for raising concerns with an existing junction which will be upgraded to serve an existing established use of the site.

Summary

While Development Management may view the residential use of the site as 'abandoned', this is erroneous and is not substantiated by the Courts. Abandonment of a use can only be substantiated if the use has been replaced by an alternative use or the intent of the owner has been to use it for an alternative

purpose. The condition of the building does not matter: the Courts rule that the original use will remain unaltered. The use of the site therefore remains residential. No alternative use has been introduced and the buildings on site remain as a testament to the original use as a house.

The existing access serves an existing residential use. A balanced assessment is required. The existing access will be upgraded with improved visibility. The area is one of wide-open agricultural land. The reality is that a vehicle leaving the site will be visible to passing traffic and will have views across the existing fields as well as the existing road.



Aerial view of the proposed site indicates the wide sweeping curve and opportunity for clear sightlines in either direction.

Existing sub-standard junction serving the industrial estate to the north is identified in blue

The junction may not meet current guidelines for an individual access, but it is an existing access serving a site with an existing residential use. Other junctions within the vicinity do not meet the required guidelines. This proposal does not result in an unacceptable situation. The access will continue in use in any event.

For all these reasons, the Review Body is respectfully requested to allow the appeal and grant planning permission for the house.

Ness Planning

June 2024