

**Item: 4**

**Planning Committee: 10 December 2025.**

**Proposed Erection of Agricultural Shed (Retrospective) at Orgil Farm,  
Braebuster Road, Hoy.**

**Report by Director of Infrastructure and Organisational Development.**

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## **1. Overview**

- 1.1. This report considers the erection of an agricultural shed at Orgil Farm, Braebuster Road, Hoy. Construction works have commenced, and the application is therefore retrospective. One objection has been received, in terms of the setting and condition of the category 'C' listed farm building adjacent to the proposed development. The development complies with relevant policies, and the objection and other material considerations do not merit refusal of the application.

Application Reference:	25/262/PP.
Application Type:	Full Planning Permission.
Proposal:	Erect an agricultural shed (retrospective).
Applicant:	Mr Donald Macisaac.
Agent:	Cindy Mackenzie, Cindy Mackenzie Architectural Services, Braeside, Ontoft Road, St. Margaret's Hope, KW17 2TL.

- 1.2. All application documents (including plans, consultation responses and valid representations) are available for members to view [here](#) (click on "Accept and Search" to confirm the Disclaimer and Copyright document has been read and understood, and then enter the application number given above).

## **2. Recommendation**

- 2.1. It is recommended that members of the Committee:
- Approve the application for retrospective planning permission in respect of the erection of an agricultural shed at Orgil Farm, Braebuster Road, Hoy, subject to the conditions detailed in Appendix 1 to this report.

### **3. Consultations**

#### **Roads Services**

- 3.1. Roads Services has confirmed no objection.

#### **Scottish Water**

- 3.2. Scottish Water has confirmed no objection.

#### **Orkney Heritage Society**

- 3.3. Orkney Heritage Society has confirmed no objection.

#### **Islands Archaeologist**

- 3.4. Islands Archaeologist has confirmed there is no significant adverse impact to the listed building setting and its heritage value.

### **4. Representation**

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

- Mr Jamie Christley, Sutherland Court, Kirkwall, KW15 1DL.

- 4.2. The representation is on the following grounds:

- Failure to reinstate the unauthorised demolition of category 'C' listed Orgil farm building adjacent.
- Failure to prioritise the reinstatement of demolished listed building, and therefore by instead pursuing the unauthorised proposed development, having a negative impact on the listed building.

### **5. Relevant Planning History**

- 5.1. No relevant planning history.

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

- 6.1. The full text of the Orkney Local Development Plan 2017 and supplementary guidance can be read on the Council website [here](#).
- 6.2. National Planning Framework 4 can be read on the Scottish Government website [here](#).

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

- National Planning Framework 4 (NPF4):
  - Policy 3 - Biodiversity.
  - Policy 7 - Historic assets and places.
  - Policy 22 - Flood risk and water management.
  - Policy 26 - Business and industry.
  - Policy 29 – Rural Development.
- Orkney Local Development Plan 2017 (OLDP):
  - Policy 1 - Criteria for All Development.
  - Policy 2 - Design.
  - Policy 4 - Business, Industry and Employment.
  - Policy 8 - Historic Environment and Cultural Heritage.
  - Policy 9 - Natural Heritage and Landscape.
- Planning Policy Advice:
  - Amenity and Minimising Obtrusive Lighting (2021).

## **7. Legislative Position**

7.1. Section 25 of the Town and Country Planning (Scotland) Act 1997 as amended (the Act) states, “Where, in making any determination under the Planning Acts, regard is to be had to the development plan, the determination is, unless material considerations indicate otherwise...to be made in accordance with that plan...”

7.2. Annex A of Planning Circular 3/2013: ‘development management procedures’ provides advice on defining a material consideration, and following a House of Lords’ judgement with regards the legislative requirement for decisions on planning applications to be made in accordance with the development plan, confirms the following interpretation: “If a proposal accords with the development plan and there are no material considerations indicating that it should be refused, permission should be granted. If the proposal does not accord with the development plan, it should be refused unless there are material considerations indicating that it should be granted.”

7.3. Annex A continues as follows:

- The House of Lords’ judgement also sets out the following approach to deciding an application:
  - Identify any provisions of the development plan which are relevant to the decision.

- Interpret them carefully, looking at the aims and objectives of the plan as well as detailed wording of policies.
- Consider whether or not the proposal accords with the development plan.
- Identify and consider relevant material considerations for and against the proposal.
- Assess whether these considerations warrant a departure from the development plan.
- There are two main tests in deciding whether a consideration is material and relevant:
  - It should serve or be related to the purpose of planning. It should therefore relate to the development and use of land.
  - It should relate to the particular application.
- The decision maker will have to decide what considerations it considers are material to the determination of the application. However, the question of whether or not a consideration is a material consideration is a question of law and so something which is ultimately for the courts to determine. It is for the decision maker to assess both the weight to be attached to each material consideration and whether individually or together they are sufficient to outweigh the development plan. Where development plan policies are not directly relevant to the development proposal, material considerations will be of particular importance.
- The range of considerations which might be considered material in planning terms is very wide and can only be determined in the context of each case. Examples of possible material considerations include:
  - Scottish Government policy and UK Government policy on reserved matters.
  - The National Planning Framework.
  - Designing Streets.
  - Scottish Government planning advice and circulars.
  - EU policy.
  - A proposed local development plan or proposed supplementary guidance.
  - Community plans.
  - The environmental impact of the proposal.
  - The design of the proposed development and its relationship to its surroundings.
  - Access, provision of infrastructure and planning history of the site.

- Views of statutory and other consultees.
  - Legitimate public concern or support expressed on relevant planning matters.
  - The planning system operates in the long term public interest. It does not exist to protect the interests of one person or business against the activities of another. In distinguishing between public and private interests, the basic question is whether the proposal would unacceptably affect the amenity and existing use of land and buildings which ought to be protected in the public interest, not whether owners or occupiers of neighbouring or other existing properties would experience financial or other loss from a particular development.
- 7.4. Where a decision to refuse an application is made, the applicant may appeal under section 47 of the Act. Scottish Ministers are empowered to make an award of expenses on appeal where one party's conduct is deemed to be unreasonable. Examples of such unreasonable conduct are given in Circular 6/1990 and include:
- Failing to give complete, precise and relevant reasons for refusal of an application.
  - Reaching a decision without reasonable planning grounds for doing so.
  - Not taking into account material considerations.
  - Refusing an application because of local opposition, where that opposition is not founded upon valid planning grounds.
- 7.5. An award of expenses may be substantial where an appeal is conducted either by way of written submissions or a local inquiry.

#### **Status of the Local Development Plan**

- 7.6. Although the Orkney Local Development Plan 2017 is “out-of-date” and has been since April 2022, it is still a significant material consideration when considering planning applications. The primacy of the plan should be maintained until a new plan is adopted. However, the weight to be attached to the Plan will be diminished where policies within the plan are subsequently superseded.

#### **Status of National Planning Framework 4**

- 7.7. National Planning Framework 4 (NPF4) was adopted by Scottish Ministers on 13 February 2023, following approval by the Scottish Parliament in January 2023. The statutory development plan for Orkney consists of NPF4 and the Orkney Local Development Plan 2017 and its supplementary guidance. In the event of any incompatibility between a provision of NPF4 and a provision of the Orkney Local

Development Plan 2017, NPF4 is to prevail as it was adopted later. It is important to note that NPF4 must be read and applied as a whole, and that the intent of each of the 33 policies is set out in NPF4 and can be used to guide decision-making.

- 7.8. In the current case, there is not considered to be any incompatibility between the provisions of NPF4 and the provisions of the Orkney Local Development Plan 2017, to merit any detailed assessment in relation to individual NPF4 policies.

## **8. Assessment**

### **Background and Proposal**

- 8.1. The site is located at Orgil Farm, Braebuster Road, Hoy, as indicated on the Site Plan attached as Appendix 2 to this report.
- 8.2. The site is adjacent to and within the immediate setting of the category 'C' listed Orgil Farm (reference LB46364), an unusually planned farm, being unique on Hoy, based round a square plan incorporating all necessary agricultural buildings, as well as farm cottages, in a compact space. Until recent years, the original arrangement remained intact with very little alteration, with the impressive range of cart arches to the east of particular interest. That steading has been affected by unlawful demolition in recent years.
- 8.3. The current development proposed is therefore unauthorised, with construction works substantially underway without the benefit of planning permission, in the context that the same landowner has carried out extensive unlawful works to the adjacent listed building. This is the issue raised in the public representation, that in terms of the protection of the special interest of the listed building and its setting, the building itself has been subject to unlawfully executed works while its setting has concurrently been eroded by the erection of a new building. The representation also contends that if investment is proposed to the agricultural unit, that should be to the reinstatement of the steading, and not for a new building.
- 8.4. The development proposed is a relatively simple form agricultural shed, with a rectangular plan and mono pitch roof, and dark green sheeting, sited on an existing earth sided concrete base, previously used as a silo pit. The proposed shed would be used for agricultural purposes, providing space to store farm machinery and other agriculture related uses.

## **Principle**

- 8.5. The development would not place an unacceptable burden on existing infrastructure or services and meets the 'Isles Approach' of the Spatial Strategy of the Local Development Plan.
- 8.6. The proposed development would be seen in the immediate setting of the listed building, and introduces built form where that setting has remained otherwise open throughout the lifetime of the listed building. However, that does not in itself make the development unacceptable in terms of Policy 8A of the Local Development Plan, and the test is whether the development would preserve or enhance the setting of the listed building, or where the setting would not be preserved, if that would be mitigated. This is further discussed at section 8.10 below.
- 8.7. The development would contribute to the existing agricultural business use, in accordance with Policy 4B(i) of the Local Development Plan and Policy 29(a)(ii) of NPF4.

## **Design, Landscape, and Setting of Listed Building**

- 8.8. The proposed building (approximately 23.3 x 7.5 x 4.9 metres) would sit on an existing concrete silo base. The timber frame already constructed would be strengthened using a 600-millimetre-high concrete wall in the north, east and south elevations. The external walls and the mono-pitched roof would be finished using a dark 'Juniper Green' coloured, box profile sheeting.
- 8.9. During negotiation, it was suggested to the applicant that a grey/brown sheeting be used, to be more sympathetic to the colours of the stone walls and slate roof of the adjacent listed building; however, in addition to work having commenced on the building without planning permission, the applicant has also already purchased the green sheeting. This creates a difficult situation where, if the applicant is unwilling to amend to a more appropriate finish, the remaining decision is whether the impact of the dark green is acceptable. Ultimately, it is considered that the dark green would allow the building to be absorbed into the farmed background landscape. This is aided by the existing silo bank parallel to the south elevation of the structure which would act as a wind break and provide some screening. As such, the development would not create any unacceptable adverse impact to its landscape setting. On that basis, the proposal would comply with Policies 1 and 2 of the Local Development Plan.

- 8.10. In terms of the setting of the listed building, the impact is considered adequately mitigated by the scale and location of the building, the cladding material, and the partial screening described above. In conjunction with protecting the ongoing agricultural use of the steading overall, the development is therefore considered to comply with Policy 8A of the Local Development Plan.

### **Access and Parking**

- 8.11. Roads Services has no adverse comments on the development but confirmed that any damage caused to the existing road infrastructure during construction must be repaired prior to the development being brought into use, to the satisfaction of the Planning Authority, in conjunction with Roads Services.

### **Water Supply and Drainage**

- 8.12. The development would not require any new water connections and would not impact any water infrastructure. As the shed is proposed on an existing concrete silo base, the development would not alter the existing drainage arrangements. Scottish Water has no objection to the application.

### **Flood Risk**

- 8.13. The SEPA flood maps have identified a 10% chance of Surface Water and Small Watercourses Flooding within the application site area and Policy 22 of NPF4 is therefore applicable, which notes that areas at risk of flooding should not be developed unless an exemption applies. The agricultural shed would be used mainly for equipment storage. All materials would be flood resilient. The low vulnerability proposed use can be considered an exemption to Policy 22(a) of NPF4.

### **Biodiversity Enhancement**

- 8.14. The development would make use of an existing concrete silo base which would result in minimum impact on existing vegetation. A hedge of flowering currant (*Ribes Sanguineum*) would be planted along the silo bank to the south to enhance the biodiversity while retaining the existing vegetation. The introduction and subsequent retention of the biodiversity enhancement measures proposed would be controlled by planning condition. The development is considered compliant with Policy 3C 'Biodiversity' of NPF4.



## **Landscape**

- 8.15. The development is located within the Hoy and West Mainland National Scenic Area. Due to the scale, external finishes and landscaping proposed, it is considered that the development would not have a significant effect on the overall integrity of the area or the qualities for which it has been designated. As such it would comply with Policy 9G of the Local Development Plan.

## **Residential Amenity**

- 8.16. The development is distant from residential properties and accordingly no overlooking or privacy issues would be created. External lighting would be controlled by a planning condition. The shed is proposed as ancillary to the main farm business.

## **Representation**

- 8.17. The representation raises the issue of the overall protection of the special interest of the listed farm steading, on the key matter that simultaneous with unlawful works being executed for the partial demolition of the listed steading, time and finance from the farm business has been used for the construction of an unauthorised building. The representation raises the concept that in the context of a breach of planning control, instead of seeking for that to be remedied by the rebuilding of the steading, the situation is compounded by a further breach of planning control by the building of a new shed. There may also be an argument that if additional agricultural floor area is created in a new building, there is less incentive to rebuild and repair the existing listed building.
- 8.18. These concerns are noted. Ultimately, it is considered that consideration of the proposed, currently unauthorised, building should not be prejudiced by the unlawful works to the listed steading, to the extent that the proposed new shed be refused. Instead, it is considered that the new shed can be supported, but without any prejudice to separate enforcement action in relation to the listed steading.

## **9. Conclusion and Recommendation**

- 9.1. The proposed development complies with relevant policies of National Planning Framework 4 and the Orkney Local Development Plan 2017. The proposal is acceptable in principle, and in terms of design and residential amenity. The setting of the adjacent listed building can be protected and the overall integrity of the National Scenic Area would not be impacted. There are no material considerations, including those raised in the objection, that outweigh this conclusion. The

application is therefore recommended for approval, subject to the conditions attached as Appendix 1 to this report.

**For Further Information please contact:**

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**Implications of Report**

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

**List of Background Papers**

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

**Appendices**

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

## **Appendix 1.**

1. Surface water shall be managed in accordance with the principles of Sustainable Drainage Systems (SuDS) and the guidance set out in CIRIA's SuDS Manual C753 throughout the lifetime of the development hereby approved. Requisite surface water drainage measures shall be operational prior to the development being brought into use and shall be maintained as operational thereafter and throughout the lifetime of the development.

All surface water shall be contained within the application site and shall be managed to avoid flow into any adjacent road or other land.

Reason: To ensure appropriate management of surface water drainage, in accordance with Policy 13B 'Sustainable Drainage Systems (SuDS)' of the Orkney Local Development Plan 2017, and to protect road safety.

2. The biodiversity enhancement measures identified on the 1:200 Proposed Site Plan (Dwg. No. 002) shall be implemented in full no later than the first planting season following commencement of development. Thereafter the earth side/silo bank and biodiversity measures shall be permanently retained in accordance with the approved details, including replacement of any planting that does not survive, is removed, or is damaged, unless otherwise agreed, in writing, by the Planning Authority.

Reason: To ensure biodiversity measures are implemented as required by Policy 3 Biodiversity of National Planning Framework 4.

3. Throughout the lifetime of the development hereby approved, any exterior lighting employed on the development shall be so positioned, angled and controlled to prevent any direct illumination, glare or light spillage outwith the site boundary. External lighting on the building shall meet the requirements for Zone E3/E4 areas (Medium Brightness/High District Brightness) as defined by the Institution of Lighting Professionals.

Reason: To ensure that any lighting installed within the application site does not spill beyond the intended target area, does not impact adversely upon the amenity of adjacent properties and does not result in 'sky glow' and to accord with Orkney Local Development Plan 2017 Policy 2 'Design' and Planning Policy Advice: Amenity and Minimising Obtrusive Lighting (2021).

