

## Item: 4.3

**Planning Committee: 18 December 2019.**

**Remove Condition 02 from Planning Permission 18/136/PP  
(Occupation of House) at Seaways, Firth.**

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

### 1. Summary

#### 1.1.

It is proposed to remove condition 02 from planning permission 18/136/PP in respect of the house known as Seaways, Firth. The condition in question is one of occupancy which ties occupancy of the house on the site to a person working in an associated approved rural business. One letter of objection has been received. There are no objections from consultees. The proposed development is considered in accordance with Policy 5E (vii) of the Orkney Local Development Plan 2017 and Supplementary Guidance: Housing in the Countryside, section 4 - The Removal of Residential Occupancy Conditions. Accordingly, the application is recommended for approval, through removal of condition 02 from planning permission 18/136/PP.

Application Number:	19/342/VR.
Application Type:	Planning Permission under section 42 (Town and Country Planning (Scotland) Act 1997) – Determination of applications to develop land without compliance with conditions previously attached.
Proposal:	Remove condition 02 from planning permission 18/136/PP (occupation of house) at Seaways, Firth.
Applicant:	Mr Nick Mathieson, Orkney Seafayre, Firth, Orkney, KW15 1TU.

#### 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](https://www.orkney.gov.uk/Service-Directory/D/application_search_submission.htm)  
(then enter the application number given above).

### 2. Consultations

#### 2.1. Development and Marine Planning

The following response was received from Development and Marine Planning:

“At Section 4 of Supplementary Guidance: Housing in the Countryside, it states that an applicant may in some instances require to apply to remove occupancy conditions on a historic grant of planning permission; and further notes that this could be because there has been a change in planning policy (national or local) or change in the business circumstances.

Scottish Planning Policy (June 2014) states at point 83, under Promoting Rural Development that:

‘In remote rural areas, where new development can often help to sustain fragile communities, plans and decision making should generally:

- Not impose occupancy restrictions on housing.’

At v) under status in Scottish Planning Policy it states that ‘Where should is used it reflects Scottish Ministers’ expectations of an efficient and effective planning system.’

Scottish Planning Policy is of high material weight and should be fully considered in the determination of this planning application for the removal of an occupancy condition.”

### **3. Representations**

#### **3.1.**

One letter of objection has been received from:

- Edward L G Drever, Marsdene, Grimbister, Kirkwall KW15 1TU.

#### **3.2.**

The letter of objection raises matters regarding the nature of business use of the premises at Orkney Seafayre. Although other matters are raised that may not be relevant to this determination, on the basis business use is referenced, the representation is considered to be material to the application under consideration.

#### **3.3.**

As stated, several other points are raised within the objection which are not relevant to consideration of the application. Such points include access matters and standards, property ownership, boundary works, works on the foreshore and planning process and practice. These points are not material and are not taken into account in the consideration of the application, which is solely concerned with the removal of condition 02 from planning permission 18/136/PP (occupation of house).

## 4. Relevant Planning History

### 4.1.

Reference.	Proposal.	Location.	Decision.	Date.
10/479/PP	Demolish existing buildings, erect a commercial building, and a house with an integral double garage.	Orkney Seafayre (Land Near), Grimbister, Firth, Orkney, KW15 1TU.	Refused.	04.11.2010
11/001/PP	Demolish existing buildings, erect a commercial building, and a house with an integral double garage.	Grimbister, Firth, Orkney, KW15 1TU	Granted with conditions.	08.03.2011
18/136/PP	Erect a house with an integral garage (amendment to 11/001/PP) (Retrospective).	Seaways, Firth, KW15 1TU.	Committee granted with conditions.	05.09.2018

### 4.2.

The most recent application, 18/136/PP, was retrospective in nature and covered a range of works given that the development had materially altered from that granted permission under 11/001/PP. As a retrospective application, planning conditions applied followed those of the previous, parent application. As such the occupancy of the house being limited to a person working in the approved rural business was carried into the permission granted under 18/136/PP.

## 5. Relevant Planning Policy and Guidance

### 5.1. Orkney Local Development Plan 2017.

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 policy listed below is relevant to this application:

- Orkney Local Development Plan 2017:
  - Policy 5E (vii) – The Provision of a Single Dwelling House for a Rural Business.

## **5.2. Scottish Government Chief Planner Letter**

### **5.2.1.**

In 2011 the Scottish Government Chief Planner wrote to all planning authorities clarifying the Government's views on the use of conditions or planning obligations to restrict the occupancy of new rural housing.

### **5.2.2.**

The letter is clear that the Scottish Government believes that occupancy restrictions are rarely appropriate and so should generally be avoided. It goes on to advise that where the authority is satisfied that an adequate case has been made, it should not be necessary to use formal mechanisms to restrict occupancy. Subsequent planning legislation, Scottish Planning Policy (June 2014), reflects this intended approach.

## **5.3. Scottish Planning Policy (June 2014)**

- Point 83, under Promoting Rural Development it is stated that “In remote rural areas, where new development can often help to sustain fragile communities, plans and decision making should generally: Not impose occupancy restrictions on housing”.
- At v) under status in Scottish Planning Policy it states that “Where should is used it reflects Scottish Ministers’ expectations of an efficient and effective planning system”.

## **6. Legal Aspects**

### **6.1.**

This application is submitted under Section 42 of The Town and Country Planning (Scotland) Act 1997 (as amended). Section 42 of the Act states “on such an application the planning authority shall consider only the question of the conditions subject to which planning permission should be granted”.

### **6.2.**

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...”

### **6.3.**

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.

#### **6.4.**

An award of expenses may be substantial where an appeal is conducted either by way of written submissions or a local inquiry.

## **7. Assessment**

### **7.1. Background**

Orkney Seafayre is located on the seaward side of the A965 Kirkwall to Finstown road accessed via a short private shared access track, approximately 500 metres to the east of Finstown, as indicated on the site plan attached as Appendix 1 to this report. The setting is a small group of buildings comprising a house (Seaways) and two commercial sheds, housing shellfish ponds (Orkney Seafayre) with a now disused pier. One of the commercial sheds is historic and is in a shorefront location, whilst the more recent shed dates from planning permission 11/001/PP. The property as a whole is immediately adjacent to the property known as Marsdene.

### **7.2.**

The business use at the site has historically been involved with shellfish, with landings being managed and processed at the site by the applicant. Supporting information submitted by the applicant notes his trading use from 2012, with the applicant reliant on fishermen landing their catch to the location to make use of the ponds and processing thereafter. This business use was stated as relatively successful but reliant on a single supplier; this regular use ceased in early 2018 due to the death of the applicant's single supplier of shellfish. Thereafter, as supplied in supporting information submitted with the current application, the business was actively promoted and advertised in the local press, the website [findafishingboat.com](http://findafishingboat.com), at Kirkwall Fisheries Office and directly to potentially interested parties. The premises are currently rented out to a third party as shellfish ponds with the applicant acting solely as out of hours cover in the event of electrical failure/site maintenance.

### **7.3.**

The applicant has cited the vagaries of the shellfish industry regarding the continuing tied relationship between the use of the business and occupancy of the house, particularly as the nature of the business has now changed to relying on a third party to operate on a fully commercial basis. The applicant has stated personal concern due to occupancy of the house being directly tied to the business use. No change of business use is proposed.

## **7.4.**

The condition from application reference 18/136/PP which this application seeks to remove is worded as follows:

“02. The occupation of the dwelling house shall be limited to a person working in the approved rural business, or a widow or widower of such person, and to any resident dependants, ie son/daughter.

Reason: To accord with previous application which was approved under the Orkney Local Development Plan 2014.”

## **7.5.**

The proposal seeks to remove this occupancy condition, applied to planning application reference 18/136/PP which, as an application to regularise changes in design of the property, followed the parent application for the house, reference 11/001/PP. The original policy basis for the use of such a condition was to support the erection and occupation of a house in the countryside as a dwelling close to a business premises, which was a key justification for a house in that location.

## **7.6.**

Current planning practice would generally not include conditions being attached to restrict occupancy of housing in the countryside, with some exceptions. This is stated in Scottish Planning Policy (June 2014) and also in Supplementary Guidance: Housing in the Countryside, in relation to The Provision of a Single Dwelling House for a Rural Business, Policy 5E (vii) of the Orkney Local Development Plan 2017. The Supplementary Guidance states at point 3.30 that:

“The Use of Occupancy Conditions

The emphasis through this guidance has been placed on the provision of full justification for a new development rather than supporting an approach of issuing planning permission with conditions that restrict who lives in the house after construction. The Council reserves the right to attach these conditions to applications if there is considered to be sufficient justification.”.

## **8. Conclusion and Recommendation**

### **8.1.**

There have been changes in both local and national planning policy since the date of determination of the parent application 11/001/PP on 3 March 2011. Current practice is that planning conditions to restrict occupancy of the house are not necessary unless there are exceptional circumstances such as a house erected remote from any business premises. The applicant has evidenced a change in business circumstance and has indicated the burden which such a condition imposes, and the personal anxiety caused. The use and nature of the commercial activity on site would remain unchanged, but occupancy of the house would not be tied to that business use.

## **8.2.**

As an application submitted under Section 42 of The Town and Country Planning (Scotland) Act 1997 (as amended), consideration is of the conditions subject to which planning permission should be granted only, not the principle, layout or form of the development. This application is solely concerned with the removal of condition 02 of planning application reference 18/136/PP. If considered acceptable to remove or vary any specific conditions, Planning Circular 3/2013 states that planning authorities should attach to the new consent all other conditions from the previous permission that remain pertinent.

## **8.3.**

It is considered that the applicant has provided a reasonable and justifiable case under section 42 of The Town and Country Planning (Scotland) Act 1997 (as amended) for removing the occupancy link between the house and the business. This is considered to be in accordance with the Orkney Local Development Plan 2017, Policy 5E (vii), and Supplementary Guidance: Housing in the Countryside (April 2017), section 4: The Removal of Residential Occupancy Conditions. Accordingly, the application is recommended for approval, subject to the condition attached as Appendix 2 to this report.

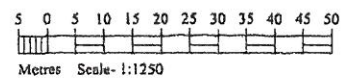
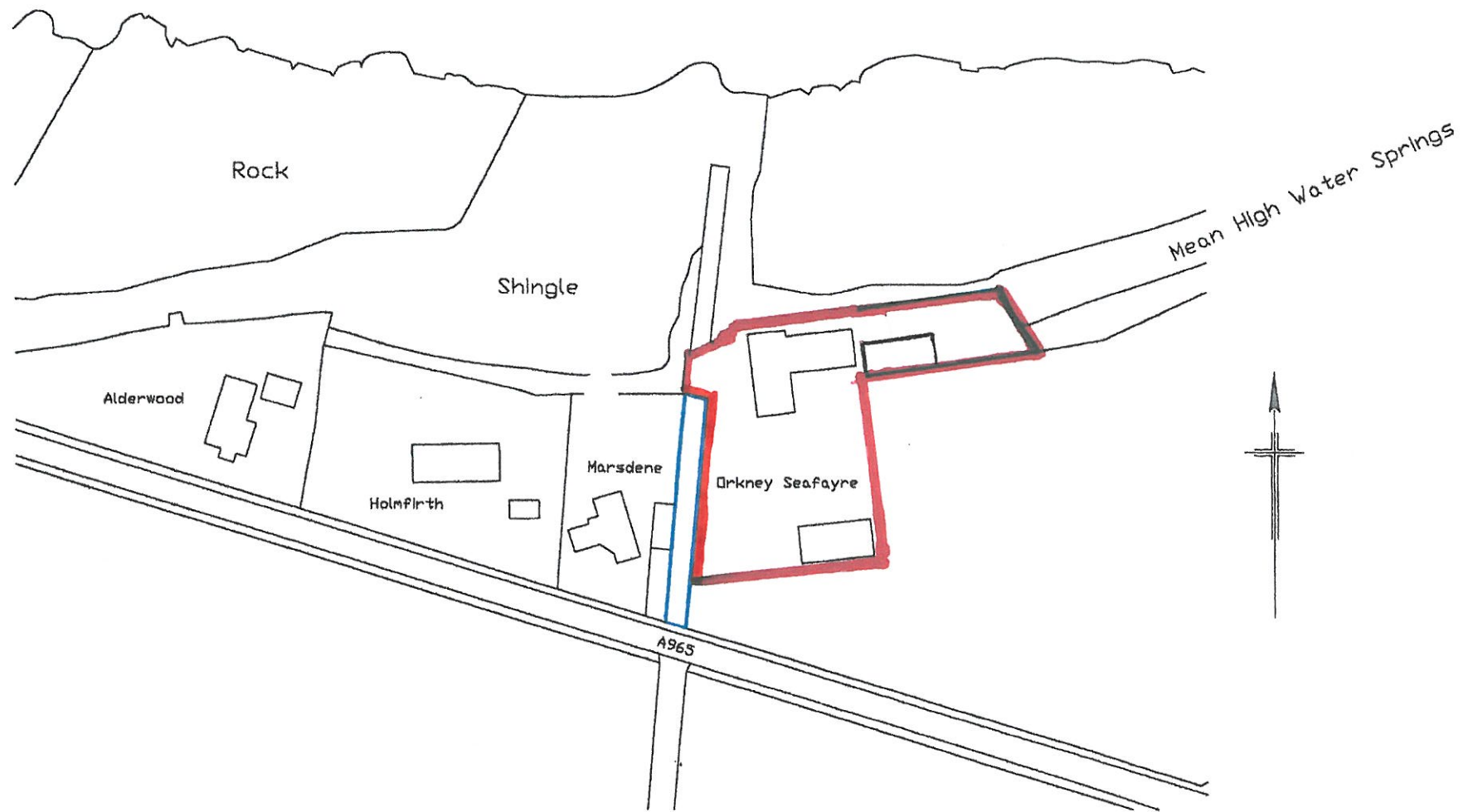
## **9.Contact Officer**

David Barclay, Senior Planner, extension 2502, Email [david.barclay@orkney.gov.uk](mailto:david.barclay@orkney.gov.uk)

## **10. Appendices**

Appendix 1: Site Plan.

Appendix 2: Planning Condition.



Erect a house with an integral garage (amendment to 11/001/PP) (Retrospective) at Seaways, Firth.  
OS Licence No- ES100003740



## **Appendix 2**

### **Condition**

01. Surface water drainage provision within the application site shall accord with the principles of Sustainable Urban Drainage Systems (SUDS) and is designed to the standards outlined in Sewers for Scotland Second Edition (or any superseding guidance prevailing at the time).

Reason: To ensure that surface water drainage is provided timeously and complies with the principles of SUDS; in order to protect the water environment.