

Minute

Local Review Body

Thursday, 10 October 2024, 14:00.

Council Chamber, Council Offices, School Place, Kirkwall.



Present

Councillors Owen Tierney, David Dawson, P Lindsay Hall, W Leslie Manson, James R Moar, Raymond S Peace, John A R Scott, Ivan A Taylor and Duncan A Tullock.

Present via remote link (Microsoft Teams)

Councillor Janette A Park.

Clerk

- Katy Russell-Duff, Committees Officer.

In Attendance

- Hazel Flett, Service Manager (Governance).
- Susan Shearer, Planning Advisor.
- Stuart Bevan, Legal Advisor.

Observing

- Josh Rendall, Graduate Planner (Development Planning).

Apology

- Councillor Jean E Stevenson.

Declaration of Interest

- Councillor W Leslie Manson – Item 1.

Chair

- Councillor Owen Tierney.

1. Planning Application 22/179/PIP

Proposed Siting of Two Houses and Creation of Access near Thorne Villa, Harray

Councillor W Leslie Manson declared an interest in this item, his connection being that he had social and recreational contact with the applicant, and was not present during discussion thereof. Councillor W Leslie Manson also confirmed that he had not taken part in the unaccompanied site inspection on 3 July 2024.

After consideration of a report by the Corporate Director for Strategy, Performance and Business Solutions, copies of which had been circulated, and after hearing a presentation from the Planning Advisor, the Local Review Body:

Noted:

1.1. That planning permission in principle for the proposed siting of two houses and creation of an access near Thorne Villa, Harray, was refused by the Appointed Officer on 30 November 2023, for the following reasons:

- Policy 5E (vi) of the Orkney Local Development Plan 2017 provides for "...the creation of one housing plot within an existing housing group during the lifetime of the Orkney Local Development Plan..." The planning application is submitted in principle for two housing plots, therefore exceeding and contrary to the provision of Policy 5E (vi) of the Orkney Local Development Plan 2017.
- The application site is not within an 'existing housing group' as defined in paragraph of 3.19 of Supplementary Guidance 'Housing in the Countryside' (2021). The proposed development therefore fails to meet the requirement of point 1, of paragraph 3.20 of Supplementary Guidance 'Housing in the Countryside' (2021), and is therefore contrary to Policy 5E(vi) of the Orkney Local Development Plan 2017.
- The application site does not 'share boundaries with two existing independent dwelling houses'. The proposed development therefore fails to meet the requirement of point 2, of paragraph 3.20 of Supplementary Guidance 'Housing in the Countryside' (2021), and is therefore contrary to Policy 5E (vi) of the Orkney Local Development Plan 2017.
- On the basis the application site is not within a 'housing group' as defined for the purposes of new housing in the countryside, the development cannot accord with and enhance a housing group. The plot shape and development density are not similar to houses nearby. The proposed development therefore fails to meet the requirement of point 3, of paragraph 3.20 Supplementary Guidance 'Housing in the Countryside' (2021), and is therefore contrary to Policy 5E (vi) of the Orkney Local Development Plan 2017.
- No provision exists within Policy 17 of 'Rural homes' of National Planning Framework 4 for infill housing development in the countryside. The proposed development is therefore contrary to Policy 17 of National Planning Framework 4.

1.2. That the applicant's agent had submitted a Notice of Review requesting that the decision of the Appointed Officer, referred to at paragraph 1.1 above, be reviewed, a summary of which was provided as part of the presentation from the Planning Advisor.

1.3. That, in accordance with policy, the Local Review Body had undertaken an unaccompanied site inspection to the site near Thorne Villa, Harray, at 10:30 on 3 July 2024, where the site and its setting within the rural context was observed.

1.4. That, on 3 July 2024, the Local Review Body determined:

- That it had insufficient information in order to proceed to determine the review.
- That the review should not be determined without further procedure.

- That the further procedure should comprise:
 - The further written submissions procedure under Regulation 15 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013 to ensure the applicant was afforded the opportunity to provide updated submissions on their Notice of Review now that new Development Management Guidance in respect of Housing in the Countryside was in force.
- That Development Management be included in the procedure notice, required in terms of the written submissions procedure referred to above, in order that Development Management was afforded the opportunity to make comments on the applicant's updated submissions.

1.5. The procedure notice response from the applicant's agent, attached as Appendix 8 to the report by the Corporate Director for Strategy, Performance and Business Solutions, together with the response from Development Management, attached as Appendix 9, both of which were summarised in the presentation from the Planning Advisor.

The Local Review Body thereafter determined that it had sufficient information to proceed to determination of the review and, on the motion of Councillor Duncan A Tullock, seconded by Councillor P Lindsay Hall, the Local Review Body:

Resolved, in terms of delegated powers:

1.6. That the decision of the Appointed Officer, to refuse planning permission in principle for the proposed siting of two houses and creation of an access near Thorne Villa, Harray, should be reversed.

1.7. That planning permission in principle be granted for the proposed siting of two houses and creation of an access near Thorne Villa, Harray, subject to conditions.

1.8. That the Local Review Body's reasons for granting planning permission in principle for the proposed siting of two houses and creation of an access near Thorne Villa, Harray, were that, in the Local Review Body's opinion:

- The situation of housing in Orkney demanded that other areas were considered to help with the housing emergency.
- That, when Policy 17 of National Planning Framework 4 was considered, the policy intent was to encourage, promote and facilitate the delivery of more high quality affordable and sustainable rural homes in the right location.
- The proposed development was sited and designed taking into consideration the location and the wider landscape.
- The proposed density of the development was appropriate to the location.
- The proposed development was not prejudicial to the effective development of, or existing use of, the wider area.
- The amenity of the surrounding area was preserved and there were no unacceptable adverse impacts on the amenity of adjacent and nearby properties/users.
- The proposed development would not create an unacceptable burden on existing infrastructure and services that could not be resolved.
- The proposed development did not result in an unacceptable level of risk to public health and safety.

- The proposed development supported and sustained the community of Harray, a community located in a countryside which was shrinking as far as housing was concerned, with people migrating to population centres within Orkney due to a lack of housing in the countryside.
- The proposed development supported identified local housing outcomes.
- The proposed development was suitable in terms of location, access and environmental impact.
- Although the development was sited within the World Heritage Site, it was located between two properties and was not on the skyline.

And accordingly, the proposed development complied with the following policies:

- Orkney Local Development Plan 2017:
 - Policy 1, parts (i), (ii), (iii), (iv), (v) and (vi) – Criteria for All Development.
 - Policy 8B – Historic Environment and Cultural Heritage.
- National Planning Framework 4:
 - Policy 17(c) – Rural Homes.

The Local Review Body resolved, in terms of delegated powers:

1.9. That powers be delegated to the Corporate Director for Strategy, Performance and Business Solutions, following consultation with the Planning Advisor and the Legal Advisor, to determine the necessary conditions to attach to the planning permission in principle for the proposed siting of two houses and creation of an access on land near Thorne Villa, Harray, based on the following relevant matters:

- Approval of matters specified:
 - Siting and design.
 - Site layout.
 - Boundaries.
 - Landscaping.
 - Surface water drainage.
 - Foul drainage.
 - Refuse bin storage.
 - External lighting.
- Access.
- Hours of construction.
- Biodiversity enhancement.
- Archaeological assessment.

Councillor John A R Scott joined the meeting at this point.

2. Planning Application 22/319/PP

Proposed Erection of Four Self-catering Pods with Associated Ancillary Building, Access, Drainage and Landscaping at Riff, Puldrite Road, Rendall

Councillor Janette A Park advised that, as she had not taken part in the unaccompanied site inspection, in terms of Standing Order 8.6, she could not take part in the deliberations and left the meeting at this point.

After consideration of a report by the Corporate Director for Strategy, Performance and Business Solutions, copies of which had been circulated, and after hearing a presentation from the Planning Advisor, the Local Review Body:

Noted:

2.1. That planning permission for the proposed erection of four self-catering pods with associated ancillary building, access, drainage and landscaping at Riff, Puldrite Road, Rendall, was refused by the Appointed Officer on 30 May 2024, for the following reasons:

- Proposed development of tourist accommodation in the countryside, including pods, must be both associated with existing built development and avoid areas of open countryside. In this case, the proposed development is in an undeveloped agricultural field and therefore would comprise the development of open countryside. As confirmed by the consultation response from Development and Marine Planning, the development is contrary to the 'Tourism Accommodation in the Countryside' section of Development Management Guidance 'Business Development Outwith Town Centres' (October 2023). That provides spatial interpretation of National Planning Framework 4 and confirms that the proposed development is contrary to Policy 29 of NPF4. The development is also contrary to Policies 3 and 4 of the Orkney Local Development Plan 2017. The development as proposed fails to follow pre-application advice provided, and approval would create inconsistency and uncertainty in decision-making. No material planning considerations outweigh the assessment that the proposed development is contrary to relevant policies and guidance.

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, a summary of which was provided as part of the presentation from the Planning Advisor.

2.3. That, in accordance with policy, the Local Review Body had undertaken an unaccompanied site inspection to the site at Riff, Puldrite Road, Rendall, at 14:00 on 9 October 2024, where the following was observed:

- The location of the site itself.
- The built form surrounding the site.
- The topography of the ground in question.

The Local Review Body thereafter determined that it had sufficient information to proceed to determination of the review and, on the motion of Councillor W Leslie Manson, seconded by Councillor John A R Scott, the Local Review Body:

Resolved, in terms of delegated powers:

2.4. That the decision of the Appointed Officer to refuse planning permission for the proposed erection of four self catering pods with associated ancillary building, access, parking, drainage and landscaping at Riff, Puldrite Road, Rendall, should be reversed.

2.5. That planning permission be granted for the proposed erection of four self-catering pods with associated ancillary building, access, parking, drainage and landscaping at Riff, Puldrite Road, Rendall, subject to conditions.

2.6. That the Local Review Body's reasons for granting planning permission for the proposed erection of four self-catering pods with associated ancillary building, access, parking, drainage and landscaping at Riff, Puldrite Road, Rendall, were that, in the Local Review Body's opinion:

- The proposed development would be subject to limited footfall and therefore complied with the sequential approach outlined in Policy 3A of the Orkney Local Development Plan.
- Based on their site inspection, the proposed development was not located in an open field, but was sited and designed taking into consideration the location and the wider landscape and coastal character.
- The proposed density of the development was appropriate to the location.
- The proposed development was not prejudicial to the effective development of, or existing use of, the wider area.
- The amenity of the surrounding area was preserved and there were no unacceptable adverse impacts on the amenity of adjacent and nearby properties/users.
- The proposed development did not create an unacceptable burden on existing infrastructure and services that could not be resolved.
- The proposed development did not result in an unacceptable level of risk to public health and safety.
- The proposed development would create new commercial uses at or adjacent to dwelling houses in the countryside which encouraged homeworking and the redevelopment of brownfield sites for commercial use as part of the sequential approach to delivering business, industry and employment where there was a specific locational requirement.
- The proposed development would contribute to the viability, sustainability and diversity of rural communities and the local rural economy, in that use of good quality land for development was minimised, business viability was not adversely affected and the proposal related to diversification of an existing business.
- The proposed development supported local employment and was suitable in terms of location, access, siting, design and environmental impact.
- The nature and scale of the proposed huts was compatible with the surrounding area and the proposal complied with relevant good practice guidance.

And accordingly, the proposed development complied with the following policies:

- Orkney Local Development Plan 2017:
 - Policy 1, parts (i), (ii), (iii), (iv), (v) and (vi) – Criteria for All Development.
 - Policy 3A – Settlements, Town Centres and Primary Retail Frontages.
 - Policy 4 – Business, Industry and Development.
- National Planning Framework 4:
 - Policy 29, parts (a) and (c) – Rural development.
 - Policy 30 (d) – Tourism.

The Local Review Body resolved, in terms of delegated powers:

2.7. That powers be delegated to the Corporate Director for Strategy, Performance and Business Solutions, following consultation with the Planning Advisor and the Legal Advisor, to determine the necessary conditions to attach to the planning permission for the proposed erection of four self-catering pods with associated ancillary building, access, parking, drainage and landscaping at Riff, Puldrite Road, Rendall, based on the following relevant matters:

- Duration of consent.
- Access.
- Use and operation.
- Landscaping.
- Foul drainage.
- Surface water drainage.
- Lighting.
- Biodiversity enhancement.

3. Planning Application 24/047/PP

Proposed Change of Use of Land from Car Park to Hotel Garden, including Outdoor Seating and Catering Van, and Erect Boundary Wall and Bin Enclosure at Ferry Inn, 10 John Street, Stromness

Councillor Janette A Park had previously advised that, as she had not taken part in the unaccompanied site inspection, in terms of Standing Order 8.6, she could not take part in the deliberations and had left the meeting prior to consideration of Item 2 above.

After consideration of a report by the Corporate Director for Strategy, Performance and Business Solutions, copies of which had been circulated, and after hearing a presentation from the Planning Advisor, the Local Review Body:

Noted:

3.1. That planning permission for the proposed change of use of land from a car park to a hotel garden, including outdoor seating and catering van, and erection of a boundary wall and bin enclosure at Ferry Inn, 10 John Street, Stromness, was granted by the Appointed Officer on 17 June 2024, subject to conditions.

3.2. That the applicant had submitted a Notice of Review requesting that the decision of the Appointed Officer, referred to at paragraph 3.1 above, specifically in respect of Conditions 02 and 04, be reviewed, a summary of which was included in the presentation from the Planning Advisor.

3.3. That, in accordance with policy, the Local Review Body had undertaken an unaccompanied site inspection to the Ferry Inn, 10 John Street, Stromness, at 15:00 on 9 October 2024, where the site, as an associated outside space of the Ferry Inn and its urban context with mixed uses including residential type uses, was observed.

3.4. That, in accordance with Scottish Government advice on the use of conditions in planning permissions, conditions should only be imposed when they were:

- Necessary.
- Relevant to planning.
- Relevant to the development to be permitted.
- Enforceable.
- Precise.
- Reasonable in all other respects.

The Local Review Body thereafter determined that it had sufficient information to proceed to determination and, on the motion of Councillor Duncan A Tullock, seconded by Councillor P Lindsay Hall, the Local Review Body:

Resolved, in terms of delegated powers:

3.4. That the decision of the Appointed Officer, to grant planning permission for the change of use of land from a car park to a hotel garden, including outdoor seating and catering van, and erection of a boundary wall and bin enclosure at Ferry Inn, 10 John Street, Stromness, subject to conditions, be varied, in that Conditions 02 and 04 be amended.

3.5. That the Local Review Body's reasons for varying Conditions 02 and 04 were that, in the Local Review Body's opinion:

- The original Condition 02 attached to the decision notice in respect of 24/047/PP was not reasonable.
- The original Condition 04 attached to the decision notice in respect of 24/047/PP was not reasonable or enforceable.

The Local Review Body resolved, in terms of delegated powers:

3.6. That powers be delegated to the Corporate Director for Strategy, Performance and Business Solutions, following consultation with the Planning Advisor and the Legal Advisor, together with the Chair and Vice Chair of the Local Review Body, to determine the detail of the amended conditions to be attached to the decision notice in respect of 24/047/PP.

4. Conclusion of Meeting

At 15:55 the Chair declared the meeting concluded.

Signed: Owen Tierney.