

**Item: 5**

**Planning Committee: 26 March 2025.**

**Proposed Stripping of Slates and Demolition of Part of Building at  
1 King Street, Kirkwall.**

**Report by Corporate Director for Neighbourhood Services and  
Infrastructure.**

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## **1. Overview**

- 1.1. This report considers an application to strip slates from a the roof and demolish part of the building at 1 King Street, Kirkwall. One letter of objection has been received. The development complies with relevant policies, and objections and other material considerations do not merit refusal of the application.

Application Reference:	24/492/PP.
Application Type:	Planning Permission.
Proposal:	Strip slates from roof and demolish part of building.
Applicant:	Mr Lyall Harray.
Agent:	Stephen Omand.

- 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. Recommendations**

- 2.1. It is recommended that members of the Committee:
- i. Approve the application for planning permission to strip slates from the roof and demolish part of 1 King Street, Kirkwall, subject to the conditions detailed in Appendix 1 to this report.

### 3. Consultations

#### 3.1. Roads Services

“Whilst Roads Services do not object to the proposed development, there are some concerns given that the existing building forms a boundary with Laing Street and King Street. Therefore, a condition should be applied that requires the applicant to provide a further site plan that clearly indicates the areas of public road that will be occupied to enable the works to be carried out safely. This is something that could be conditioned to be provided prior to any works commencing on site.”

#### 3.2. Orkney Heritage Society

“OHS has no objection to this application. Presumably the demolition works will not involve any work below ground level, otherwise the County Archaeologist would need to be involved. The Society is glad to see something being done with this site and look forward to seeing plans for its redevelopment.”

### 4. Representations

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

- Mr B K Gorie, 5 Papdale Road, Kirkwall.

4.2. The representation is on the following grounds:

- Damage to building following works.

### 5. Relevant Planning History

Reference	Proposal	Location	Decision	Date
CAC-330-2.	Conservation Area Consent Appeal.	1 King Street, Kirkwall, Orkney.	Appeal Dismissed.	10.10.2024.
23/158/CC.	Demolish a former house.	1 King Street, Kirkwall, Orkney.	Refused.	08.07.2024.
23/081/PP.	Demolish former house and erect two houses with air source heat pumps.	1 King Street, Kirkwall, Orkney.	Refused.	26.11.2024.

## 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:
    - Policy 7: Historic assets and places.
  - Orkney Local Development Plan 2017:
    - Policy 1: Criteria for All Development.
    - Policy 8: Historic Environment and Cultural Heritage.

## 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 set 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**

- 8.1. Planning permission is sought to strip slates from roof and demolish part of 1 King Street, Kirkwall, as indicated in the location plan attached as Appendix 2 to this report.
- 8.2. 1 King Street is a two-storey building, located in a prominent corner position within Kirkwall Conservation Area where Laing Street meets King Street, with listed buildings located opposite in two directions. It is described by Historic Environment Scotland as “a mid- to late-19th century modest two-storey house with a series of outbuildings to the rear”.

### **Principle**

- 8.3. The value of the original, historic part of the building is strengthened by the recent appeal decision CAC-330-2, which confirmed that demolition of the entire building is not appropriate in terms of protecting the character and appearance of the conservation area. However, the principle of removing the later addition outbuildings is acceptable. The property is not listed, and the later additions do not contribute positively to the conservation area. The principle of development is therefore accepted.

### **Historic Environment**

- 8.4. Local Development Plan Policy 8 ‘Historic Environment and Cultural Heritage’ supports the demolition of buildings within the conservation area provided it meets the following criteria:

*i. it does not make a positive contribution to the special character of the conservation area, and where the application is supported by acceptable proposals for the redevelopment of the cleared site; or*

*ii. its retention, restoration or reuse has been fully considered but its structural condition rules out retention at reasonable cost, or its form or location makes its re-use/retention extremely difficult; and*

*iii. The comparative socio-economic merits of the new build proposal for the site outweigh the benefits of retaining the building.*

- 8.5. NPF4 Policy 7 'Historic places and assets' echoes this, confirming that unlisted buildings that make a positive contribution to the character of the conservation area should be retained.
- 8.6. As noted above, the later additions to the building are of no architectural merit and do not make a positive contribution to the conservation area. Their removal would not negatively impact on the character and appearance of the conservation area.
- 8.7. Concerns have been raised in the objection regarding the potential for the original building to be damaged if not made wind and watertight following the proposed works. Given that the key purpose of the proposed works is to remove the poorer quality later additions and strip the site back to the original, historic building to allow consideration of its integration into redevelopment of the site, it is in the developer's interest to protect the fabric of that structure. The works to remove the roofing slates would be temporary, to ensure the building does not impact public safety, again with a view to a traditional roofing finish to be reinstated as part of the development. A temporary roof cover would be installed in the meantime, to prevent water ingress to the fabric of the masonry walls or the building interior; a condition would be attached to ensure that the building is made wind and watertight to avoid any deterioration.
- 8.8. The proposal is acceptable with regards to its impact on the character and appearance of the conservation area and complies with Local Development Plan Policy 8 and NPF4 Policy 7.

### **Road safety**

- 8.9. As required by the Roads Services consultation response and to provide clarity on the area of public road required to carry out the works, a planning condition would require submission of details to be approved, in conjunction with Roads Services. Approval and the limitation of these details would ensure protection of the safety of road users.

## **Breeding birds**

- 8.10. The property is currently open in places, in both the roof and wall cladding. This allows entry for birds, which are present at the site. In recognition of the protection provided to nests of any wild birds while in use or being built, a breeding bird protection plan would be controlled by condition, to control the timing of works and if required a pre-demolition inspection by a suitably qualified ecologist.

## **9. Conclusion**

- 9.1. The proposal complies with the Orkney Local Development Plan 2017 and National Planning Framework 4. The proposal is acceptable in principle and would protect the character and appearance of Kirkwall Conservation Area. There are no material considerations including those raised in the objections that outweigh this conclusion.

### **For Further Information please contact:**

Murray Couston, Planning Officer (Development Management), Email  
[murray.couston@orkney.gov.uk](mailto:murray.couston@orkney.gov.uk)

### **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.

01. The development hereby approved to which this planning permission relates must be begun not later than the expiration of three years, beginning with the date on which the permission is granted, which is the date of this decision notice. If development has not commenced within this period, this planning permission shall lapse.

Reason: In accordance with Section 58 of the Town and Country Planning (Scotland) Act 1997, as amended, which limits the duration of planning permission.

02. No development shall commence until full details of temporary measures to protect the fabric of the retained building, and appearance of the building and site have been submitted to and approved, in writing, by the Planning Authority. These details shall include a schedule of works, the material and height of the site boundary, removal of any materials resulting from the demolition, maintenance of a clear site, temporarily making good the west elevation of the building following removal of the additions, the method of fixing the roofing felt, and all measures required to prevent water ingress to the fabric of the masonry walls and interior of the retained building. Thereafter, these measures shall be implemented wholly in accordance with the approved details.

Reason: To ensure the building does not fall into disrepair and to protect the character and appearance of the conservation area.

03. No development shall commence until a Works Site Plan is submitted to and approved, in writing, by the Planning Authority, in conjunction with Roads Services. This Plan shall clearly identify all areas of the public road that would be occupied to enable the works to be carried out. Thereafter, all works shall be carried out wholly in accordance with this Works Site Plan.

Reason: To protect the safety of pedestrians and road users.

Note: This planning condition is without prejudice to any other consents required by the roads authority.

04. The existing roof slates shall be carefully removed by hand. All complete slates in sound condition shall be retained and stored for re-use for a purpose to be agreed, in writing, by the Planning Authority. No salvaged slates shall be disposed of or removed from the application site until approved, in writing, by the Planning Authority.

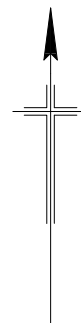
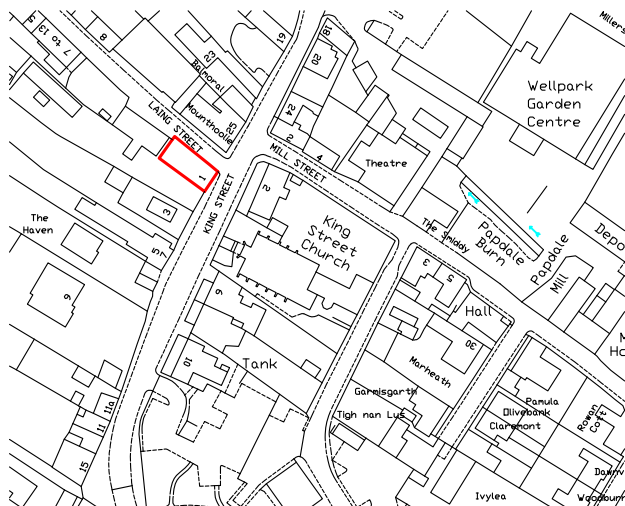
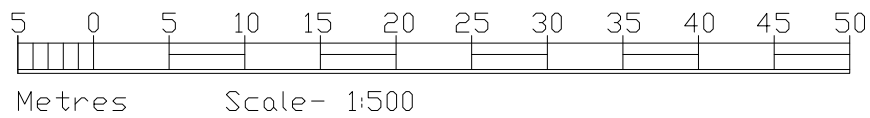
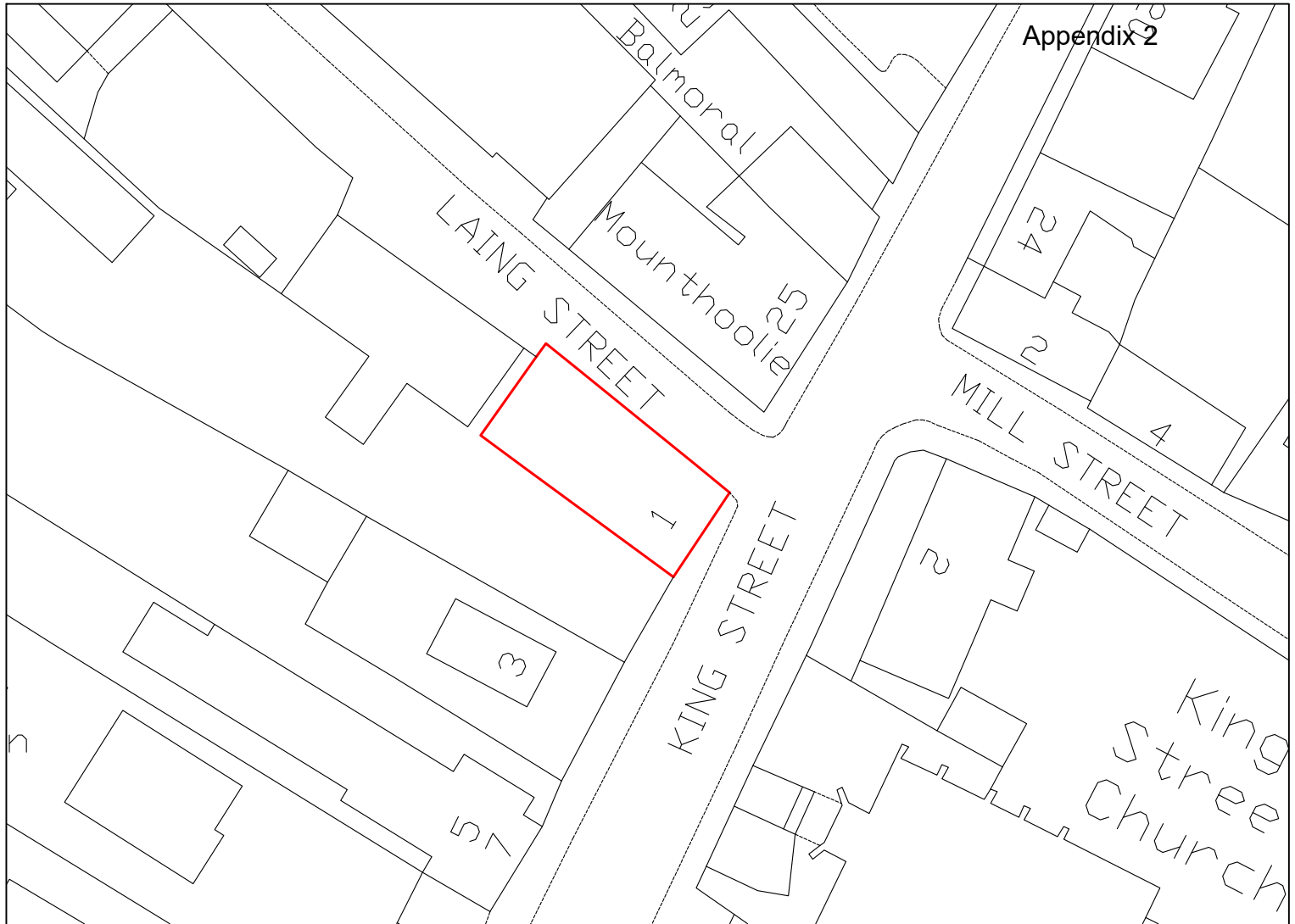
Reason: To ensure retention of a limited resource and traditional roofing material, and to ensure retention of any re-usable materials.

05. The permission hereby approved to replace the slate roof with felt is for a temporary period and shall expire two years from the date of the decision notice. Prior to expiry of the temporary permission, the roof shall be fully reinstated with Welsh slate, unless express planning permission has been approved for any other specification and finish.

Reason: To protect the character and appearance of the conservation area, and to ensure the use of felt roofing.

06. No development shall commence during March to August (inclusive), or (if during these months) until a pre-start inspection of the existing building has been completed by a suitably experienced (and licensed) ecologist, to identify signs of breeding birds and until an appropriate Breeding Bird Protection Plan has been submitted to and approved, in writing, by the Planning Authority. Thereafter, the development shall be carried out wholly in accordance with the approved Breeding Bird Protection Plan. Once commenced, any demolition works shall run continuously until completed.

Reason: To avoid adverse effects on breeding birds, which use the building, and to meet the requirements of Policy 9C 'Wider Biodiversity and Geodiversity' of the Orkney Local Development Plan 2017, and to comply with protected species legislation.



Stripping of roofs & demolition of rear extensions with retention of walls.  
 At 1 King Street, Kirkwall, KW15 1JF.  
 For Lyall Harray, Westbreck, Glaitness Road, Kirkwall, KW15 1TW.  
 Plan Size A4.  
 OS Licence No- ES100003740

