

Item: 5.1

Local Review Body: 28 February 2022.

Erection of Four Agricultural Buildings, Temporary Siting of Caravan and Creation of Access (Part Retrospective) at Redlums, Rousay (21/010/PP).

Report by Chief Executive.

1. Purpose of Report

To determine a review of the decision of the Appointed Officer, specifically in respect of Conditions 5, 7 and 11 (iv) and (v) attached to the approved planning permission for the erection of four agricultural buildings, the temporary siting of a caravan and the creation of an access (part retrospective) at Redlums, Rousay.

2. Recommendations

The Local Review Body is invited to note:

2.1.

That planning permission for the erection of four agricultural buildings, the temporary siting of a caravan and the creation of an access (part retrospective) at Redlums, Rousay, was granted by the Appointed Officer on 21 December 2021, subject to the conditions outlined in section 3.3 of this report.

2.2.

That the applicant has submitted a Notice of Review requesting that the decision of the Appointed Officer, specifically in respect of Conditions 5, 7 and 11 (iv) and (v) attached to the approval, referred to at paragraph 2.1 above, be reviewed.

It is recommended:

2.3.

That the Local Review Body 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.
- In the event that the decision is reversed or varied, the reasons and the detailed conditions to be attached to the decision notice.

2.4.

That, in the event the Local Review Body agrees that further information is required to determine the review, 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; and/or.
- By the holding of one or more hearing.

3. Background

3.1.

Planning application 21/010/PP relates to the erection of four agricultural buildings, the temporary siting of a caravan and the creation of an access (part retrospective) at Redlums, Rousay.

3.2.

The Appointed Officer granted the planning application on 21 December 2021 subject to conditions.

3.3.

In terms of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013, the applicant has submitted a Notice of Review, which is attached as Appendix 1 to this report. The Notice of Review relates specifically to 5, 7 and 11 (iv) and (v) attached to the approval, as noted below:

3.3.1.

Condition 5 – Residential occupation of the touring caravan hereby approved is for a temporary period only and shall cease to have effect on 13 April 2023 (the 'cessation date'). Prior to the cessation date, the touring caravan shall be removed completely from the site. Notwithstanding the provisions of Schedule 1 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended, revoked or re-enacted; with or without modification), no other touring or residential caravan(s) shall be sited within the approved development site unless planning permission is expressly granted by the Planning Authority.

Reason: To ensure that the development does not become used for permanent residential occupation in the interest of the area's visual amenity, in recognition of the lack of private amenity space and in accordance with the use applied for.

3.3.2.

Condition 7 – Notwithstanding the elevations, floor plans and other details hereby approved of the general purpose shed (reference A 04), within three months of the date of this decision notice the developer shall remove the dormer windows on the south roof slope of the building and shall finish both planes of the roof in a uniform manner using the approved finish of concrete tiles.

Reason: To ensure that the development is sensitive to, and compatible with, its context and approved use.

3.3.3.

Condition 11 (iv) and (v) - Within six months of the date of this decision notice, full details of a scheme of hard and soft landscaping works shall be submitted to, and approved in writing by, the Planning Authority.

Details of the scheme shall include:

iv. All soft landscaping and planting works, including plans and schedules showing the location, species and size of each individual tree and/or shrub and planting densities, taking due cognisance of guidance available from the Orkney Woodland Project.

v. A programme for preparation, completion and subsequent on-going maintenance and protection of all landscaping works.

Thereafter, all landscaping works shall be carried out wholly in accordance with the approved scheme. All planting, seeding or turfing as may be comprised in the approved details shall be carried out in the first planting and seeding seasons following the commencement of development, unless otherwise stated in the approved scheme.

Any trees or plants which within a period of five years from the completion of the development die, for whatever reason are removed or damaged shall be replaced in the next planting season with others of the same size and species.

Reason: To ensure adequate landscaping within the application site, to protect the amenity of the area.

3.4.

The Planning Handling Report, Planning Services file and the Decision Notice, including the conditions attached to the approval, referred to in section 3.2 above, are attached as Appendices 2, 3 and 4 to this report.

4. 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. One representation, attached as Appendix 5 to this report, has been received from Roads Services. This notes that the relevant drawing showing the access as agreed with Roads Services has been inadvertently missed from the approved set of plans issued with the Decision Notice and should be included to allow Condition 1, attached to the planning permission, to be enforced.

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. No response from the applicant has been received.

4.3.

In accordance with the Council’s policy to undertake site inspections of all planning applications subject to a local review, prior to the meeting to consider the review, a site visit to Redlums, Rousay, was undertaken at 09:00 on 28 February 2022.

4.4.

The Local Review Body may uphold, reverse or vary the decision of the Appointed Officer. The full set of planning conditions which have been applied to the current planning consent are detailed in the Decision Notice, attached at Appendix 4.

4.5.

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 follow in the review, or to obtain further information by one or more of the following methods:

- By means of written submissions; and/or.
- By the holding of one or more hearing(s).

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 at:

<https://www.orkney.gov.uk/Service-Directory/D/Planning-Policies-and-Guidance.htm>

The policies listed below are relevant to this application:

- Orkney Local Development Plan 2017:
 - Policy 1 – Criteria for All Development.
 - Policy 2 – Design.
 - Policy 4C – Business, Industry and Employment, The Isles Approach.

- Policy 5D – Housing, Residential Caravans and Other Temporary Residential Structures.
- Policy 9D and 9E – Natural Heritage and Landscape, The Water Environment and Peat and Soils.
- Policy 13 – Flood Risk, SuDS and Waste Water Drainage.
- Policy 14 – Transport, Travel and Road Network Infrastructure.

6. Corporate Governance

This report relates to the Council complying with its statutory duties as a Planning Authority and therefore does not directly support and contribute to improved outcomes for communities as outlined in the Council Plan and the Local Outcomes Improvement Plan.

7. Financial Implications

All resources associated with supporting the review procedure, mainly in the form of staff time, are contained within existing Planning Service revenue budgets.

8. Legal Aspects

8.1.

There are two options available to applicants to challenge any condition attached to a planning permission.

8.2.

Under Section 42 of the Town and Country Planning Scotland Act 1997 an application can be made to the planning authority for permission to develop the application site without complying with one or more of the conditions, subject to which the permission was granted. The planning authority can decide that the permission should be granted subject to the same conditions (ie application refused), or if the application is successful, permission will be granted without the condition(s) which has been contested.

8.3.

Alternatively, under the Planning etc (Scotland) Act 2006 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. The review process covers any conditions imposed on a planning permission.

8.4.

Scottish Government advice on the use of conditions in planning permissions is provided in Planning Circular 4/1998. As a matter of policy, conditions should only be imposed when they are:

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

8.5.

The full text of Planning Circular 4/1998 can be found on the Scottish Government website at: <https://www.gov.scot/publications/planning-circular-4-1998-use-of-conditions-in-planning-permissions/>. Paragraph 85 indicates that in exceptional circumstances conditions may be imposed to restrict further development which would normally be permitted by the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order .

8.6.

The procedures to be followed in respect of the review are as detailed in section 4 above.

8.7.

A letter from the Chief Planner, Scottish Government, 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.

9. Contact Officers

Angela Kingston, Clerk to the Local Review Body, Email angela.kingston@orkney.gov.uk

Roddy MacKay, Planning Advisor to the Local Review Body, extension 2530, Email rodny.mackay@orkney.gov.uk

Katharine McKerrell, Legal Advisor to the Local Review Body, Email katharine.mckerrell@orkney.gov.uk

10. Appendices

Appendix 1 – Notice of Review (pages 1 – 4)

Appendix 2 – Planning Handling Report (pages 5 – 19)

Appendix 3 – Planning Services File (pages 20 – 59)

Appendix 4 – Decision Notice with Conditions (pages 60 – 77)

Appendix 5 – Further Representation from Interested Party (pages 78 – 79)

Pages 1 to 79, with the exception of pages 78 and 79, can be viewed at <https://planningandwarrant.orkney.gov.uk/online-applications/search.do?action=simple&searchType=Application> and inserting the planning reference “21/010/PP”.

All other documents can be viewed at <https://www.orkney.gov.uk/council-meetings.htm?postid=5070&postdiaryentryid=11317>.