

**Item: 6**

**Planning Committee: 25 June 2025.**

**Proposed Erection of House near Kingswood, Croval Road, Stromness.**

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

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## **1. Overview**

- 1.1. This report considers an application for the erection of a house with an integral garage and an air source heat pump on land near Kingswood, Croval Road, Stromness. One objection has been received regarding access and construction noise. The development complies with relevant policies, and objections and other material considerations do not merit refusal of the application.

Application Reference:	25/015/PP.
Application Type:	Planning Permission.
Proposal:	Erect a house with an integral garage and an air source heat pump.
Applicant:	Carol Rae .
Agent:	John Winstanley, West Manse, Deerness, KW17 2QH.

- 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:
- i. Approve the application for planning permission in respect of the proposed erection of a house with an integral garage and an air source heat pump on land near Kingswood, Croval Road, Stromness, subject to the conditions detailed in Appendix 1 to this report.

### 3. Consultations

#### **Roads Services.**

- 3.1. No objection, subject to a planning condition regarding the access and the public road.

#### **Scottish Water.**

- 3.2. No objection.

#### **Development and Marine Planning.**

- 3.3. Confirmation received that the proposed site is outside the boundary of the adjacent development brief area, therefore, the principle should be assessed as an infill development within the settlement boundary.

#### **Environmental Health**

- 3.4. Standard condition recommended regarding the air source heat pump.

### 4. Representation

- 4.1. One valid representation (objection) has been received from:
- Antony Hodgson, Sorpool, Croval Road, Stromness, KW16 3JW.
- 4.2. Representation is on the following grounds:
- Noise during the construction of the development.
  - Access to the development.
  - Impact on road infrastructure.

### 5. Relevant Planning History

- 5.1. Planning applications

Reference	Proposal	Location	Decision	Date
11/117/PP.	Amend planning permission 08/153/PPF to change house type and erect a	Oglaby Branch Road (Land Near), Stromness.	Grant subject to conditions.	18.04.2011.

Reference	Proposal	Location	Decision	Date
	detached double garage.			
08/153/PPF.	Erect a house.	Oglaby Branch Road(Land Near), Stromness.	Grant subject to conditions.	12.05.2008.

- 5.2. Pre-application advice was provided in March 2024 regarding relevant policies, siting and design, and confirmation of general policy support was provided.

## 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 3 - Biodiversity.
    - Policy 14 - Design, quality and place.
  - Orkney Local Development Plan 2017:
    - Policy 1 - Criteria for All Development.
    - Policy 2 - Design.
    - Policy 5 - Housing.

## 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. As noted in section 1 above, permission is sought for the erection of a house with an integral garage and an air source heat pump on land near Kingswood, Croval Road, Stromness, as indicated in the Location Plan attached as Appendix 2 to this report. The application site forms part of the curtilage of the dwelling at Kingswood. It is proposed to subdivide the curtilage to form a new plot.

#### **Principle**

- 8.2. The site is located within the Stromness settlement boundary. The proposed development would be an infill development and therefore supported in principle by Policy 5A of the Local Development Plan. The application site is adjacent to land covered by the Stromness: South End Development Brief (2024); however, the application site lies outside the area, and it is therefore of minimal relevance.

### **Roads Services**

- 8.3. Roads Services raised no objection to the proposal and noted that the access must be upgraded in accordance with a standard specification. In relation to the objection received, this roads authority response confirms no concerns regarding the capacity of the road network. With regards the upgraded access, whilst also part of the objection in terms of character and appearance, the standard specification is considered an appropriate upgrade of the existing junction, and that it would have no unacceptable impact on the appearance of the wider area. The proposal is considered to comply with Policy 14 'Transport, Travel and Road Network Structure' of the Local Development Plan, subject to conditions.

### **Residential Amenity**

- 8.4. The proposal does not raise any concerns regarding neighbouring residential amenity, due to the distance from other dwellings. Kingswood would be the closest house, being the property that would have its curtilage subdivided; however, the orientation of the proposed house, and the design which includes the garage at the closest part to the existing house, are such that there would be no unacceptable impacts on amenity from loss of daylight, or impact on privacy. The proposal complies with Policy 1 'Criteria for All Development' of the Local Development Plan.
- 8.5. In terms of construction noise as raised in the representation, hours of work would be controlled by planning condition which is a standard approach to protect residential amenity.

### **Design**

- 8.6. The proposal does not raise any design concerns as the siting, layout and density of the development are appropriate to the location, in compliance with Policy 14 'Design, quality and place' of NPF4. External finishes consist of a dark roof, grey render for the external wall and rainwater goods in black. The development complies with Policy 2 'Design' of the Local Development Plan, as it is sympathetic to the character of the local area and would not impact the integrity of the Hoy and West Mainland National Scenic Area.

## **Biodiversity**

- 8.7. Existing willows and flax that align the west and south boundary currently would be protected and retained. The submitted biodiversity enhancement form confirms proposed additional hedging including native trees. These measures are considered proportionate to the nature and scale of the proposed development, and the development therefore complies with Policy 3 'Biodiversity' of NPF4.

## **9. Conclusion**

- 9.1. The proposed development complies with the relevant policies of the National Planning Framework 4 and the Orkney Local Development Plan 2017. The proposal is acceptable in principle, and in terms of details including design, amenity, and access. There are no material considerations, including those raised in the objections, that outweigh this conclusion.

### **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](#).

### **Appendix**

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. Hours of work during the construction of the development hereby approved, involving the use of machinery and powered tools, or any other operation, for example hammering, that would generate noise audible beyond the boundary of the site, shall be restricted to 07:30 to 18:00 Mondays to Fridays, 08:00 to 13:00 on Saturdays and not at all on Sundays, Christmas or New Year Public Holidays unless otherwise agreed in writing with the Planning Authority.

Throughout the construction phase of the development there shall be no burning of waste material on site.

Reason: In the interest of residential amenity of the area and in order to reduce any possible nuisance arising to nearby residents during the construction of the development.

03. Total noise from the air source heat pump installed shall not exceed NR25 within any residential property outwith the development, where NR25 is the Noise Rating Curve at 25, (noise measurements to be made with a window of any residential property outwith the development open no more than 50 mm.)

Reason: To protect any nearby residents from excessive noise disturbance from the air source heat pump.

04. No other development shall commence until the existing access junction with the public road has been upgraded to the Council's Roads Services standard drawing 'SD-05 (Typical Access Over Verge With Service Bay)' for 2 to 4 dwellings, attached to and forming part of this decision notice, including dimensions, road construction, any pipe required, and verge or footway. Thereafter the access shall be retained in accordance with these details throughout the lifetime of the development, unless otherwise approved, in writing, by the Planning Authority. Any damage caused to the existing road infrastructure during construction of the development shall be repaired prior to first occupation of the development, to the satisfaction of the Planning Authority, in conjunction with Roads Services.

Reason: In the interests of road safety.

05. The biodiversity measures described in the submitted Biodiversity form (dated 24 January 2025) shall be implemented in full no later than the first planting season following commencement of development. Thereafter, the biodiversity measures shall be permanently retained in accordance with the approved details, including the replacement of any planting that does not survive, is removed, or is damaged, unless otherwise approved, in writing, by the Planning Authority.

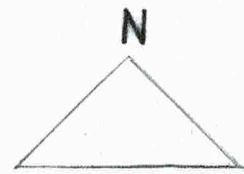
Reason: To ensure biodiversity measures are implemented as required by National Planning Framework 4 Policy 3 'Biodiversity'.

06. The development hereby approved shall not be occupied or brought into use until all boundary finishes have been completed in full, in accordance with details provided in the submitted Design Statement (dated 3 February 2025). Thereafter, these boundary details shall be permanently retained in accordance with the approved details unless otherwise approved, in writing, by the Planning Authority.

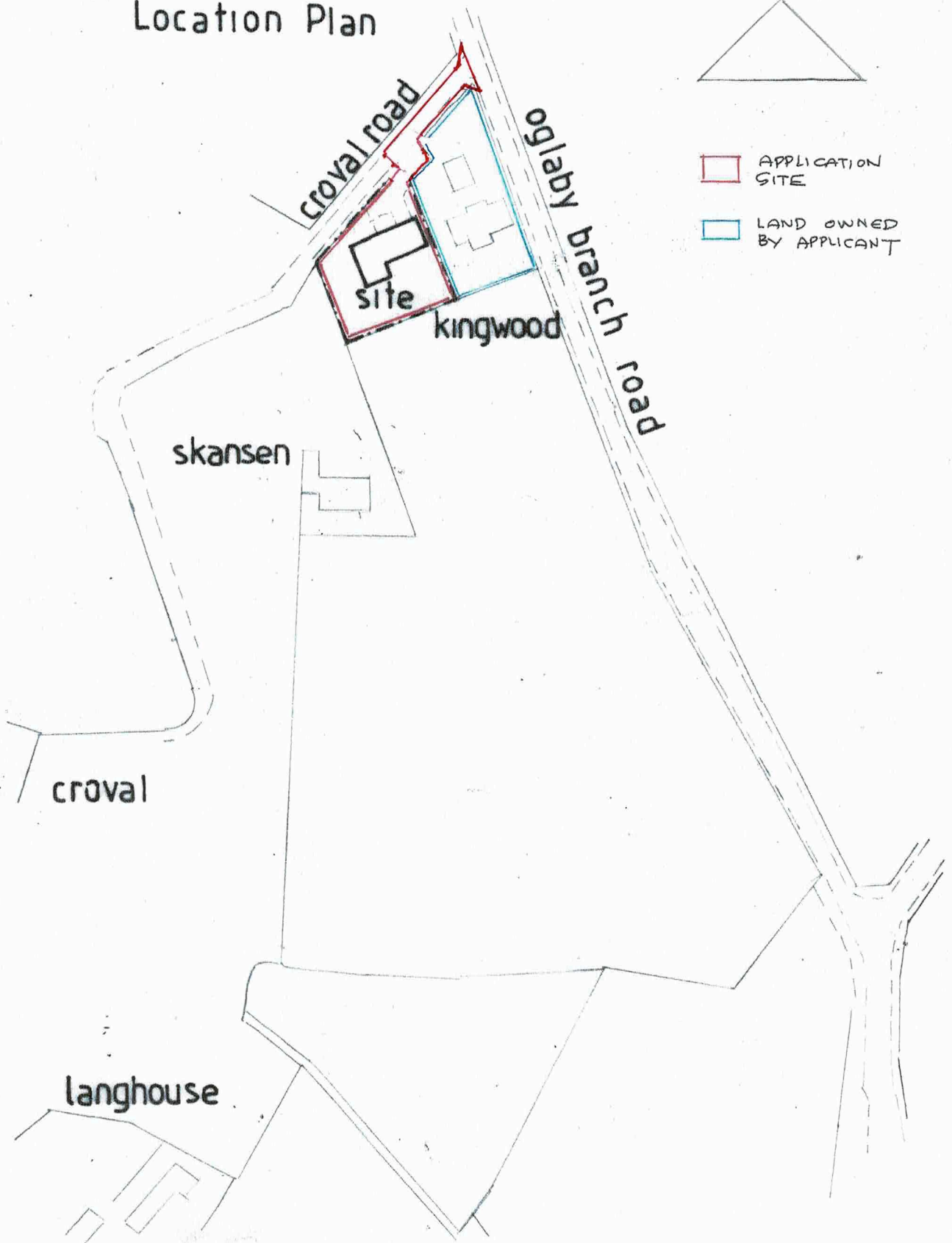
Reason: To protect the amenity of the area.



# Location Plan



- APPLICATION SITE
- LAND OWNED BY APPLICANT



1:1250