

## **Item: 3.3**

**Local Review Body: 25 January 2019.**

**Proposed Erection of House and Creation of Access on land near Everybist, Westside Road, Rousay (18/328/PIP).**

**Report by Chief Executive.**

### **1. Purpose of Report**

To determine a review of the decision of the Appointed Officer, specifically in respect of Condition 2 attached to the approved planning permission in principle for the proposed erection of a house and creation of an access on land near Everybist, Westside Road, Rousay.

### **2. Recommendations**

The Local Review Body is invited to note:

#### **2.1.**

That planning permission in principle for the proposed erection of a house and creation of an access on land near Everybist, Westside Road, Rousay, was granted by the Appointed Officer on 23 October 2018, subject to the conditions outlined in section 3.2 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 Condition 2 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 18/328/PIP relates to the proposed erection of a house and creation of an access on land near Everybist, Westside Road, Rousay.

#### **3.2.**

The Appointed Officer granted the planning application on 23 October 2018 subject to the following conditions:

##### **3.2.1.**

Condition 1 – Within three years of the date of this permission, an application for approval of the following matters shall be submitted to, and approved by, the Planning Authority:

- The final design and external appearance of the building.
- The layout and surface finishes of the site, including all roads, accesses and parking areas.
- The design and location of any boundary walls and fences.
- The provision of drainage works.
- The disposal of sewage.
- The landscaping of the site (including details of species, sizes, number, type).
- Detailed cross sections of the house on the site, including existing and proposed ground levels, and proposed finished floor levels.

No development shall commence until all of these matters have been approved and, thereafter, the development shall be carried out in accordance with the approved details, unless otherwise agreed in writing by the Planning Authority.

##### **3.2.2.**

Condition 2 – The access hereby approved with the public road (Westside Road) shall be constructed to the Council's Road Services standard drawing 'SD-01 Typical Access for Single Development (2-4 houses)', attached to and forming part of this decision notice, including dimensions, road construction, any pipe required, and verge or footway. The access shall be constructed and completed wholly in accordance with these details prior to first occupation of the development hereby approved, and thereafter shall be retained in accordance with these details throughout the lifetime of the development, unless otherwise agreed in writing by the Planning Authority.

### **3.2.3.**

Condition 3 – 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 Monday to Friday and 08:00 to 13:00 Saturdays, not at all on Sundays, Christmas or New Year Public Holidays unless otherwise agreed in writing with the Planning Authority.

### **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.

### **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. No further representations were received.

### **4.2.**

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 the land near Everybist, Westside Road, Rousay, was undertaken at 09:30 on 23 January 2019.

### **4.3.**

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 attached at Appendix 5.

### **4.4.**

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:

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

The policies and supplementary guidance listed below are relevant to this application:

- Orkney Local Development Plan 2017:
  - Policy 1 – Criteria for All Development
  - Policy 2 – Design
  - Policy 5 – Housing (Part C – The Isles Approach for Housing)
  - Policy 9 – Natural Heritage and Landscape (Part G – Landscape)
  - Policy 13 – Flood Risk, SuDS and Waste Water Drainage
  - Policy 14 – Transport, Travel and Road Network Infrastructure (Part C – 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 (i.e. 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.**

The procedures to be followed in respect of the review are as detailed in sections 4.3 and 4.4 above.

## **8.5.**

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, extension 2239, Email [angela.kingston@orkney.gov.uk](mailto:angela.kingston@orkney.gov.uk)

Roddy MacKay, Planning Advisor to the Local Review Body, extension 2530, Email [roddy.mackay@orkney.gov.uk](mailto:roddy.mackay@orkney.gov.uk)

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## **10. Appendices**

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

Appendix 2 – Planning Handling Report (pages 5 – 7)

Appendix 3 – Planning Services File (pages 8 – 81)

Appendix 4 – Decision Notice with Conditions (pages 82 – 89)

Appendix 5 – Planning Conditions (pages 90 – 91)

Pages 1 to 91, with the exception of pages 79, 90 and 91, can be viewed at [http://www.orkney.gov.uk/Service-Directory/D/application\\_search\\_submission.htm](http://www.orkney.gov.uk/Service-Directory/D/application_search_submission.htm) and inserting the planning reference “18/328/PIP”.

All other documents can be viewed at <http://www.orkney.gov.uk/Council/C/LRC2019.htm> and referring to the relevant meeting date.