

Item: 2

Planning Committee: 1 July 2026.

**Proposed Extension of House at Heather Cottage, Berstane Road,
Kirkwall.**

Report by Director of Infrastructure and Organisational Development.

1. Overview

- 1.1. This report considers a householder planning application to extend a house at Heather Cottage, Berstane Road, Kirkwall. Consultation bodies have raised no concerns, and no representations have been received. The application is made on behalf of a staff member of the Planning Service and, in accordance with the Scheme of Administration, the application must be reported to the Planning Committee for determination. The proposed development complies with relevant policies of National Planning Framework 4 and the Orkney Local Development Plan 2017.

| | |
|------------------------|---|
| Application Reference: | 26/072/HH. |
| Application Type: | Householder. |
| Proposal: | Extend a house. |
| Location: | Heather Cottage, Berstane Road, Kirkwall. |
| Applicant: | Mr. David Mager. |

- 1.2. All application documents (including plans and consultation responses) 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 extension of a house at Heather Cottage, Berstane Road, Kirkwall, subject to the conditions detailed in Appendix 1 to this report.

3. Consultations

Roads Services

3.1. Roads Services has confirmed no adverse comments.

Scottish Water

3.2. Scottish Water has confirmed no objection.

4. Representation

4.1. No representations received.

5. Relevant Planning History

5.1. Planning applications

| Reference | Proposal | Location | Decision | Date |
|-------------|----------------------------------|---|------------------------------|-------------|
| 92/199/PPF. | Proposed extension to a house. | Heath Cottage, Berstane Road, Kirkwall, Orkney. | Grant. | 05.06.1992. |
| 01/394/PPF. | Erect Garage. | Heath Cottage, Berstane Road, Kirkwall. | Grant Subject to Conditions. | 29.11.2001. |
| 13/417/PP. | Install an air source heat pump. | Heath Cottage, Berstane Road, Kirkwall, Orkney, KW15 1SZ. | Grant Subject to Conditions. | 11.11.2013. |

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 (NPF4):
 - Policy 14 - Design, quality and place.
 - Policy 16 - Quality homes.
- Orkney Local Development Plan 2017 (OLDP):
 - Policy 1 - Criteria for All Development.
 - Policy 2 - Design.

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 sets 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

Background and Proposal

- 8.1. The property is an existing dwelling at Heather Cottage, formerly Heath Cottage, Berstane Road, Kirkwall, within the Kirkwall settlement boundary, as indicated in the Location Plan attached as Appendix 2 to this report.
- 8.2. Householder planning permission is sought to erect a single storey extension connecting the existing garage outbuilding and converting it to other domestic uses. The extension footprint would overlay the existing concrete driveway to northwest and part of the rear garden at southeast to the single storey house.

Principle

- 8.3. The development would be located within the existing residential curtilage, being an extension to the existing house only. The principle of the development is acceptable, including in relation to Policy 1 'Criteria for All Development' of the Orkney Local Development Plan 2017.

Design

- 8.4. The southeast part of the extension would infill the corner of the existing house by enlarging the internal bedroom spaces. The northwest extension would connect the existing garage outbuilding through the kitchen adding an extra utility, shower, office/studio and domestic workshop/tool room. Doors would be introduced to access the house from the retaining driveway and rear garden.
- 8.5. The existing flat roof of the kitchen and shower room would be extended at either side, roofing the extended areas while adding black uPVC fascias and rainwater goods. The doors and windows would be black uPVC finished and all the external walls of the extension including garage would be finished with light brown harling to match with the existing house.
- 8.6. Overall external finishes and scale would merge the extended structure to the surrounding environment with minimum visual impact. On that basis, in terms of design and appearance, the proposal would comply with Policies 14 and 16 of NPF4 and Policies 1 and 2 of the Orkney Local Development Plan.

Access and Parking

- 8.7. The proposed extension would utilise the space of the existing garage and part of the driveway to the northwest of the house. The rest of the existing driveway would likely provide sufficient space for the currently occupied and intended parking requirement. Therefore, the loss of parking spaces would create minimum impact and the Roads Services has no objection. The Informative 1, listed in Appendix 1, regarding the protection of road infrastructure during construction has been requested to attach to the planning permission.

Water Supply and Drainage

- 8.8. The existing water supply and drainage infrastructure would be utilised. The surface water would be managed within the site boundary and there would be no extra burden to the surrounding drainage. Scottish Water has no objection to the application.

Residential Amenity

- 8.9. The single-story extension would align with the building lines of the existing house without introducing any windows to northwest and southeast elevations. Accordingly, the development would be unlikely to create any overshadowing and overlooking issues towards the neighbouring residential properties on either side.

9. Conclusion

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

For Further Information please contact:

Shanka Weerasekara, Graduate Planner (Development Management),
Email shanka.weerasekara@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. The extension hereby approved shall be maintained and operated as a domestic space attached to the host house, within the residential curtilage and acting as a single planning unit only, unless express planning permission is approved by the Planning Authority.

Reason: To safeguard the residential amenity of the surrounding area.

03. Surface water shall be managed in accordance with the principles of Sustainable Drainage Systems (SuDS) and the guidance set out in CIRIA's SuDS Manual C753 throughout the lifetime of the development hereby approved.

Requisite surface water drainage measures shall be operational prior to the development being brought into use and shall be maintained as operational thereafter and throughout the lifetime of the development.

All surface water shall be contained within the application site and shall be managed to avoid flow into any adjacent road or other land.

Reason: To ensure appropriate management of surface water drainage, in accordance with Policy 13B 'Sustainable Drainage Systems (SuDS)' of the Orkney Local Development Plan 2017, and Policy 22 'Flood risk and water management of National Planning Framework 4, and to protect road safety.

04. 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.

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

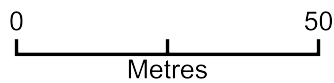
INFORMATIVES

01. It is an offence under Section 56 of the Roads (Scotland) Act 1984 to carry out any excavations within the boundary of the public road without written permission of the roads authority. Therefore, one or more separate consents will be required from the Council's Roads Services to carry out any works within the road boundary, prior to any works commencing. These consents may require additional work and/or introduce additional specifications. You are therefore advised to contact Roads Services for further advice as early as possible.

Any damage caused to the existing road infrastructure during construction of the development shall be repaired prior to the development being brought into use, to the satisfaction of the Planning Authority, in conjunction with Roads Services.

It is an offence under Section 95 of the Roads (Scotland) Act 1984 to allow mud or any other material to be deposited, and thereafter remain beyond the working day, on a public road from any vehicle or development site.

Location Plan: Heather Cottage, Berstane Road, Kirkwall, KW15 1SZ



Plan Produced for: David Mager

Date Produced: 09 Mar 2026

Plan Reference Number: TQRQM26068151058803

Scale: 1:1250 @ A4