

**Item: 6**

**Planning Committee: 26 March 2025.**

**Proposed Installation of Foul Water Pipe and Raising of Path Level at 2 South End, Stromness.**

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

---

## **1. Overview**

- 1.1. This report considers an application to install a foul water pipe and raise the path level at 2 South End, Stromness. Two letters of objection have been received, as well as further comments from one of the representees. The development complies with relevant policies, and objections and other material considerations do not merit refusal of the application.

Application Reference:	25/002/HH.
Application Type:	Householder.
Proposal:	Install foul water pipe and raise path level.
Applicant:	Mrs Rebecca Plater.
Agent:	Grieve Associates.

- 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 install a foul water pipe and raise the path level at 2 South End, Stromness, subject to the conditions detailed in Appendix 1 to this report.

### 3. Consultations

#### 3.1. Roads Services

“No adverse comment. However, it must be noted that the works to connect the property to the foul sewer network will require the closure of the public road in the vicinity of the works, which will incur additional costs for not only the road closure but also to ensure that affected properties can be serviced and that waste and recycling collections are facilitated.”

#### 3.2. Scottish Water

“Scottish Water has no objection to this planning application. The applicant should be aware that this does not confirm that the proposed development can currently be serviced. Further advice is available within the consultation response.”

### 4. Representations

4.1. Two valid representations (objections) have been received from:

- Mr Anthony Barthrope, 12 South End, Stromness.
- Rex and Rosemary Anderson, Heath Hill, 6 Hillside Road, Stromness.

4.2. Representations are on the following grounds:

- Impact on historic environment.
- Disruption during construction.
- Impact on neighbouring properties including parking, businesses, existing drainage.

4.3. Other procedural issues are raised including the neighbour notification process, display of the site notice, and application consultation. Development Management is satisfied that regulatory requirements have been met, and these submissions are not material to the planning decision.

### 5. Relevant Planning History

Reference.	Proposal.	Location.	Decision.	Date.
24/490/LB.	Install foul water pipe and raise path level.	2 South End, Stromness, KW16 3DJ.	Pending.	

## 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. As noted in section 1 above, planning permission is sought to install a foul water pipe and raise the path level at 2 South End, Stromness, as indicated in the Location Plan attached as Appendix 2 to this report. Currently the property discharges (with licence) to the sea. It is proposed to connect the property to the public foul drainage system. To achieve the necessary pipe installation, the path would be raised by 320 millimetres, requiring flagstones within the property to be lifted and re-laid. A separate application for listed building consent is under consideration, reference 24/490/LB.
- 8.2. Whilst the submitted plans show the full proposed length of pipe and connection point, it should be noted that the current application is for the extent of works within the application site boundary only, as indicated by the red line application site boundary. Any works outside this red line, i.e. any works within the road boundary, would require separate planning permission, either express planning permission through application, or deemed permission of the works are carried out by a statutory undertaker including Scottish Water. This clarification makes some consultation response and representation content obsolete, in relation to direct works to the public road or resulting disruption. To be clear, approval of the current application does not infer approval of works within the public road or other land outside the application site boundary and is without prejudice to any separate consideration of such works.

### **Historic Environment**

- 8.3. The property is late eighteenth century and is category C listed and within Stromness Conservation Area, and impact on the historic environment designations is raised in representations. The works would involve raising the path on the north side of the house, which would involve also raising the wall on which the flagstones are located, at the edge of the retaining wall to the sea. Subject to appropriate materials and finishes, it is considered that these works and the lifting and relaying of flagstones could be carried out to protect the special interest of the listed building. The existing flagstones would be reused.

- 8.4. Notwithstanding comments raised in representations, the proposals have special regard to the desirability of preserving the listed building and its setting and would not adversely impact its special architectural or historic interest. The proposals would preserve the character and appearance of the conservation area. The proposal complies with Local Development Plan Policy 8 and NPF4 Policy 7.

### **Roads Services**

- 8.5. Roads Services raised no objection to the proposal and noted that the works to connect the property to the foul sewer network would require closure of the public road in the vicinity of the works (noting other implications including additional costs regarding the road closure and engineering services are maintained to affected properties).
- 8.6. As noted above, whilst future works may be required outside the current planning application site area, the current planning application assessment can only be in relation to those works applied for, which are limited by the planning application site boundary. In that regard, the proposal complies with Local Development Plan Policy 14 'Transport, Travel and Road Network Infrastructure'.

### **Representations**

- 8.7. As noted above, comments regarding disruption during construction within the road boundary, disruption to a neighbouring self-catering business, and impact on the existing drainage system during connection works as well as its capacity, are obsolete in terms of this current planning application. Similarly, with regards impact on neighbouring parking, whilst neighbouring properties may be affected by future works outside the current domestic curtilage, those would be subject to separate consideration and the current assessment can only consider the application and application site boundary as submitted. As noted above, approval of the current application does not infer approval of works within the public road or on neighbouring land.

## **9. Conclusion**

- 9.1. The proposal complies with the Orkney Local Development Plan 2017 and National Planning Framework 4. The proposal is acceptable with regards to its impact on the historic environment and raises no concerns with regards to road safety. The special interest of the listed building would be protected, and the character and appearance of the conservation area would be preserved. 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.



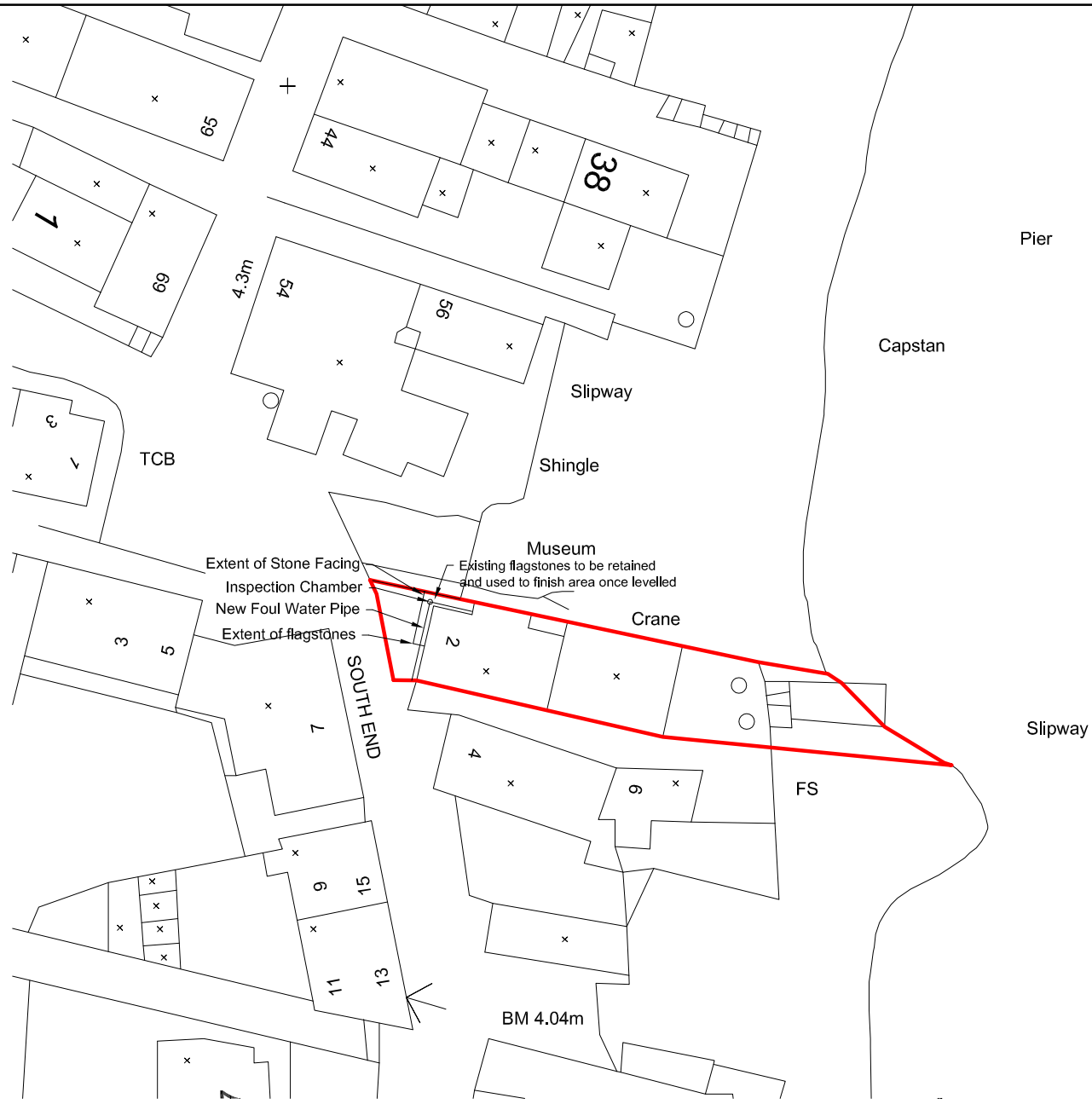
## **Appendix 1.**

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. The raising of the vertical face of the stone pier wall on the north elevation shall be carried out using Orkney stone only, of matching type and size to the existing wall, and using a matching method of construction. No cuts shall be visible in the finished stone face. The existing flagstones shall be carefully lifted, stored on site for re-use, and reinstated to match the existing arrangement including order and upward face. These works shall be completed within 28 days of the installation of any pipe below any respective part of the path, unless otherwise approved, in writing, by the Planning Authority.

Reason: To safeguard the character and appearance of this listed building and the conservation area.



Ordnance Survey  
 Serial number: 140907  
 ©Crown copyright and database right 2024  
 Ordnance Survey licence 100048957  
 Reproduction in whole or in part is prohibited  
 without the prior permission of Ordnance Survey

Rev	Description	Date
Project		
2 South End, Stromness, Mains Sewer Connection for Mrs R Plater		
Drawing		
Site Plan		
Drawn By	Checked By	Drawing Size
E. Grieve	M. Grieve	A4
Drawing No.	Scale	Date
24-ST-02-01	1:500	December 2024

