

Item: 3

Planning Committee: 21 August 2024.

Change of Use of Barn to Wedding Venue (Retrospective) at Berstane Farmhouse, St Ola.

Report by Corporate Director for Neighbourhood Services and Infrastructure.

1. Overview

- 1.1. This report considers an application for planning permission for a change of use of a barn to a wedding venue at Berstane Farmhouse, St Ola. The application is retrospective as the use of the venue has commenced. Three valid representations have been received, one neutral comment and two objections. The development complies with relevant policies, and objections and other material considerations do not merit refusal of the application.

Application Reference:	23/466/PP.
Application Type:	Planning permission.
Proposal:	Change of use of a barn to wedding venue (retrospective).
Applicant:	Mr Steven MacPhail.
Agent:	Mr Leslie Burgher, Seaview, Deerness, KW17 2QL.

- 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 retrospective planning permission in respect of the proposed change of use of a barn to a wedding venue at Berstane

Farmhouse, St Ola, subject to the conditions detailed in Appendix 1 to this report.

3. Consultations

3.1. Development and Marine Planning

No objections.

3.2. Environmental Health.

No objections.

3.3. Building Standards

Some concerns raised regarding several requirements that may not be met to issue a building warrant. No objections to the planning application.

3.4. Roads Services

No objections, subject to a condition requiring passing places.

4. Representations

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

- Ms Babette Hegarty, Zan Moir, Berstane Road, St. Ola.
- Mr William Wilson, Falkland, Berstane Road.

4.2. One valid representation (neutral comment) has been received from:

- Mr David Newstead, Roundhouse, Berstane Lodge Road.

4.3. Representations are on the following grounds:

- Vehicle movements on the road to the property.
- Noise impact from activities at the building.

Relevant Planning History

4.4. Planning applications

Reference	Proposal	Location	Decision	Date
23/228/PPF	Change of use of agricultural building to wine storage, distribution and tasting business	Berstane Farmhouse, Berstane Lodge Road, St Ola	Approve	21.02.24

5. Relevant Planning Policy and Guidance

- 5.1. The full text of the Orkney Local Development Plan 2017 and supplementary guidance can be read on the Council website [here](#).
- 5.2. National Planning Framework 4 can be read on the Scottish Government website [here](#).
- 5.3. The key policies, supplementary guidance and planning policy advice listed below are relevant to this application:
 - Orkney Local Development Plan 2017:
 - Policy 1 – Criteria for All Development.
 - Policy 4 – Business, Industry and Employment.
 - Policy 14 – Transport, Travel and Road Network Structure.
 - Supplementary Guidance:
 - Development Management Guidance: Business Development Outwith Town Centres
 - National Planning Framework 4:
 - Policy 26 – Business and Industry.
 - Policy 29 – Rural Development

6. Legislative position

- 6.1. 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..."

6.2. 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."

6.3. 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.

6.4. 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.
- 6.5. 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

- 6.6. 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

- 6.7. 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.
- 6.8. 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.

7. Assessment

- 7.1. As noted in section 1 above, permission is sought for the change of use of a barn to a wedding venue (retrospective) at Berstane Farmhouse, St Ola, as indicated in the Location Plan attached as Appendix 2 to this report. The site lies to the east of Kirkwall, outwith the settlement boundary, within a group of farm buildings. Permission was previously approved for a wine tasting business in the other part of the same farm building.

Principle

- 7.2. Policy 4 ‘Business and Industrial Land’ supports the principle of expanding existing businesses and creating new businesses in appropriate locations. The creation of new commercial uses at or adjacent to dwelling houses in the countryside will be

supported to encourage homeworking, including the diversification of an existing rural business.

- 7.3. In line with the sequential approach set out in the Town Centre First Principle, commercial developments, at or adjacent to an existing dwelling, or the redevelopment of existing buildings to form a new business will be supported subject to relevant plan policies.
- 7.4. Development Management Guidance: Business Development Outwith Town Centres (the DMG) states that it is appropriate to allow an individual resident in the countryside to create a business and have an appropriately scaled building associated with their existing dwelling house or existing buildings provided that (a) it is compatible with the surrounding area; (b) the predominant use of the original dwelling house and its curtilage is retained; and (c) the business is considered small scale. It is also notable that the proposed development makes use of an existing building and does not involve a green field site or open land.
- 7.5. The diversification of an existing business is acceptable if it supports and complements an existing and established business such as an existing farm business allowing it to diversify, again noting that the development is not proposed on open land.
- 7.6. NPF4 Policy 26 'Business and Industry' confirms its intent is to encourage, promote and facilitate business and industry uses and to enable alternative ways of working such as home working, live-work units and micro-businesses.
- 7.7. NPF4 Policy 29 'Rural Development' states that development proposals that contribute to the viability, sustainability and diversity of rural communities and local rural economy will be supported including the diversification of existing businesses, reuse of a redundant or unused building and small-scale developments that support new ways of working such as remote working, homeworking and community hubs.
- 7.8. The proposal would result in the diversification of an existing business adjacent to the dwellinghouse of the applicant and would reuse an unused building, albeit part of the building has recently received permission for a wine tasting business. The business would be considered small scale, in part due to the limitations of the operation, and operated by the owners of the adjacent dwellinghouse. The proposal would have no unacceptable impact on businesses at any other location in Orkney.

- 7.9. In terms of how the business would be operated, a design statement has been submitted, including in relation to amenity and access.
- 7.10. The proposal is acceptable in principle and complies with Policy 4 of the Local Development Plan, NPF4 Policies 26 and 29, and the DMG 'Business Development Outwith Town Centres'.

Amenity

- 7.11. Following consultation, and review of the design statement which includes an operating plan, Environmental Health has no objection. Conditions would be attached to control maximum number of guests, operating hours and use of the venue strictly for wedding ceremonies, to ensure no unacceptable impact on neighbouring amenity. Subject to those planning conditions, notwithstanding concerns raised in objection, the proposal would not adversely impact the amenity of neighbouring properties and would comply with Local Development Plan Policy 1.

Access

- 7.12. In the context of the concerns regarding the access road as raised in objections, Roads Services has confirmed no objection to the development. It is noted that the increased traffic could have a detrimental impact on the road infrastructure; therefore, a condition would be attached requiring the construction of a passing place. On that basis, Roads Services considers the development acceptable, and the proposal complies with Local Development Plan Policy 14.

8. Conclusion

- 8.1. The proposed development complies with Policies 1, 4 and 14 of the Orkney Local Development Plan (2017), Policies 26 and 29 of National Planning Framework 4, and Development Management Guidance 'Business Development Outwith Town Centres'. The proposal is acceptable in principle, and in terms of residential amenity and impact on the road network, subject to infrastructure upgrade. There are no material considerations including those raised in the objections that outweigh this conclusion, noting that consideration of this application is not prejudiced by the development being carried out on an unauthorised basis.

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 shall not be operated as a wedding venue until a passing place has been constructed on Berstane Lodge Road, St Ola. The location of this passing place shall be approved in advance, in writing, by the Planning Authority, in conjunction with Roads Services. The passing place shall thereafter be constructed wholly in accordance with the Council's detail for a passing place, attached to and forming part of this decision notice, in the location approved.

Reason: In the interest of road safety.

02. The operating hours of the development hereby approved shall be limited to 11:00 to 20:00 Mondays to Saturdays.

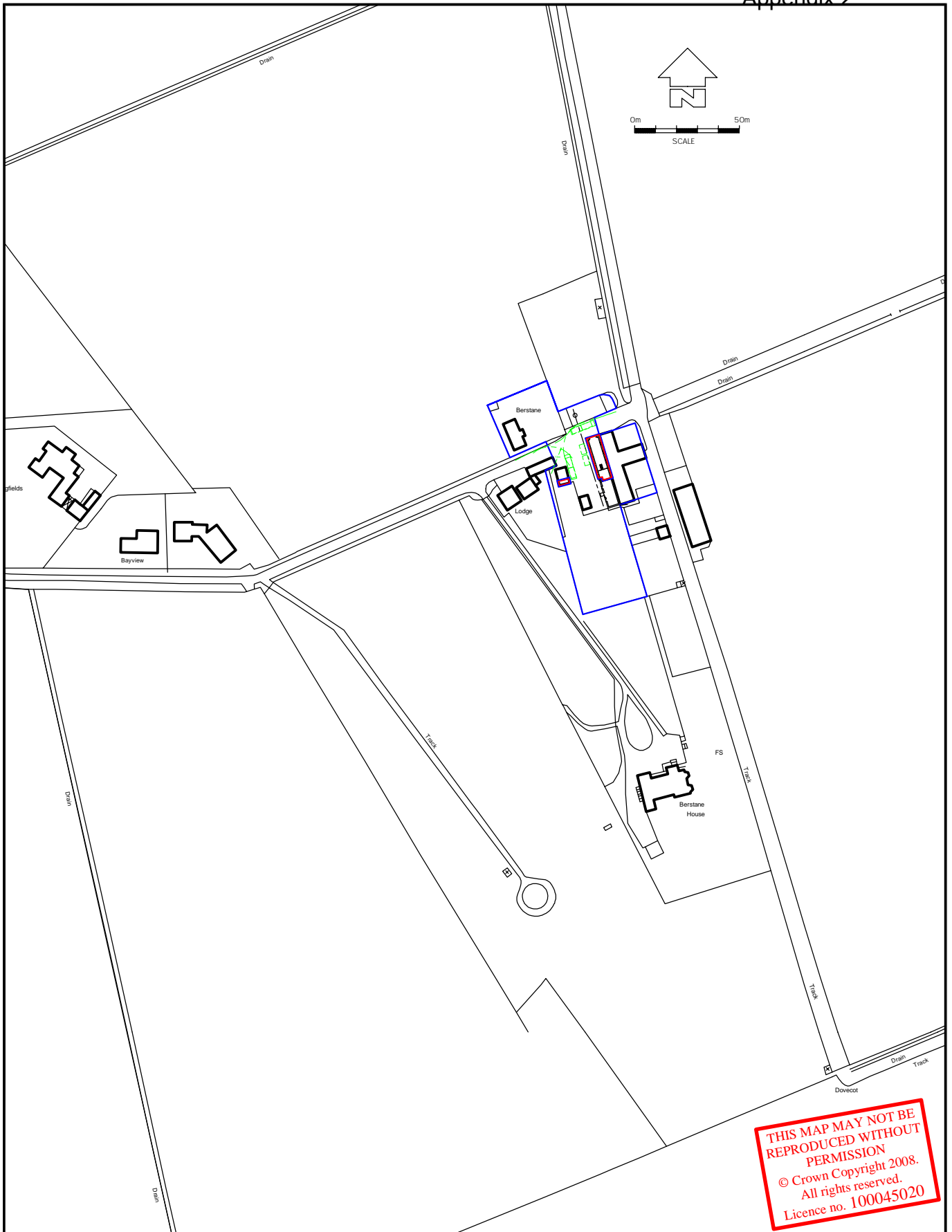
Reason: To protect the residential amenity of the surrounding area.


03. The development hereby approved shall be limited to a maximum of 80 attendees at any time.

Reason: To protect the residential amenity of the surrounding area, and to control vehicle movements.

04. The development hereby approved shall be limited to ceremonies only and shall not be used for wedding receptions. No food or drink shall be served at the development. The development shall not operate simultaneously with the wine distribution or wine tasting business located in the same building, approved under planning reference 23/228/PP.

Reason: To protect the residential amenity of the surrounding area, and to control vehicle movements, as both developments within the building were submitted and assessed separately.



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	<p>Drawing Location Plan</p>				<p>Consent</p>
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