



Item: 3

Local Review Body: 27 October 2025.

**Proposed Erection of Two Self-catering Cabins at Muckleston,
Bimbister Road, Harray (24/475/PP).**

Report by Chief Executive.

1. Overview

- 1.1. Planning application 24/475/PP in respect of the proposed erection of two self-catering cabins at Muckleston, Bimbister Road, Harray, was refused by the Appointed Officer on 17 July 2025.
- 1.2. Under the Town and Country Planning (Scotland) Act 1997 (the Act) and the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013 (the Regulations), 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.
- 1.3. The applicant has submitted a Notice of Review (see Appendix 1) requesting that the decision of the Appointed Officer, referred to at paragraph 1.1 above, be reviewed. The applicant has indicated that the review can be determined without any further procedure.
- 1.4. A letter from the Chief Planner, Scottish Government, issued 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.
- 1.5. Section 21 of Orkney Islands Council's Scheme of Administration states that the Local Review Body will undertake unaccompanied site inspections for all planning applications subject to a review, prior to the meeting to consider the review. The purpose of the site inspection together with the procedure to be adopted, are set out in section 21.2 of the Scheme of Administration.

1.6. The applicant and interested parties have been advised that an unaccompanied site inspection to Muckleston, Bimbister Road, Harray, is due to be undertaken on 27 October 2025 at 14:30. The applicant has stated that, although the site cannot be seen from the public road, it can be accessed safely and without barriers to entry.

1.7. The review procedure is set out in section 4 below.

2. Requirements and Recommendations

2.1. The Local Review Body is required to:

- i. Determine 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.

2.2. Should the Local Review Body determine that the decision is reversed or varied, it is required to:

- i. Determine the reasons, and, if applicable, the relevant matters in respect of potential conditions and informatics, if appropriate, to be attached to the decision notice.

2.3. Should the Local Review Body determine that the decision is reversed or varied, it is recommended that members of the Local Review Body:

- i. Delegate powers to the Chief Executive, following consultation with the Planning Advisor and the Legal Advisor, to determine the necessary conditions and informatics, if appropriate, to attach to the Decision Notice.

2.4. Should the Local Review Body determine that it does not have sufficient information to proceed to determination of the review, it is required to:

- i. Determine 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 under the procedure set out in Regulation 15 of the Regulations; and/or
 - By the holding of one or more hearing under the Hearing Session Rules set out in Schedule 1 of the Regulations.

3. Planning Authority Decision

- 3.1. The Planning Handling Report, Planning Services file and the Decision Notice are attached as Appendices 2, 3 and 4 to this report.
- 3.2. On 17 July 2025, the Appointed Officer refused planning application 24/475/PP on the following grounds:
 01. Proposed development of tourist accommodation in the countryside, including pods, must be both associated with existing built development and avoid areas of open countryside. In this case, the proposed development is in an open parcel of land and therefore would comprise the development of open countryside. The development is contrary to the 'Tourism Accommodation in the Countryside' section of Development Management Guidance 'Business Development Outwith Town Centres' (October 2023). That provides spatial interpretation of National Planning Framework 4 and confirms that the proposed development is contrary to Policy 29 of NPF4. The development is also contrary to Policies 3 and 4 of the Orkney Local Development Plan 2017. Approval would create inconsistency and uncertainty in decision-making. No material planning considerations outweigh the assessment that the proposed development is contrary to relevant policies and guidance.

4. Local 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. A representation was received from Development Management and is attached as Appendix 5.
- 4.2. In instances where a representation is received from an "interested party", the applicant is afforded the opportunity to make comments on any representation received. No further comment was received from the applicant.
- 4.3. The Local Review Body may uphold, reverse or vary the decision of the Appointed Officer. In the event that the decision is reversed, an indication of relevant matters, in respect of potential planning conditions, are as follows:
 - Duration of consent.
 - Use limited to short-term letting.
 - Limit person/persons occupation days per annum.
 - Link management to adjacent house.

- Biodiversity enhancement.
- New or upgraded passing place.
- Management of waste/refuse.
- Foul drainage.
- Surface water drainage.
- Design and materials, including lighting.

4.4. All conditions should be in accordance with Planning Circular 4/1998 regarding the use of conditions in planning permissions.

4.5. If the decision is reversed and the development is approved, it is proposed that powers are delegated to the Chief Executive, following consultation with the Planning Advisor and the Legal Advisor, to determine the necessary conditions and informatics, based on the relevant matters agreed in terms of section 4.3 above.

4.6. 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 under the procedure set out in Regulation 15 of the Regulations 2013; and/or.
- By the holding of one or more hearing under the Hearing Session Rules set out in Schedule 1 of the Regulations.

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 [here](#). Although the Orkney Local Development Plan 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.

5.3. National Planning Framework 4 was approved by Parliament on 11 January 2023 and formally adopted by Scottish Ministers on 13 February 2023. The statutory development plan for Orkney consists of the National Planning Framework and the Orkney Local Development Plan 2017 and its supplementary guidance. In the event of any incompatibility between a provision of National Planning Framework 4 and a provision of the Orkney Local Development Plan 2017, National Planning Framework 4 is to prevail as it was adopted later. It is important to note that National Planning Framework 4 must be read and applied as a whole, and that the intent of each of the 33 policies is set out in National Planning Framework 4 and can be used to guide decision-making.

5.4. It is for the Local Review Body to determine which policies are relevant to this application; however the policies listed below were referred to by the Appointed Officer in the Planning Handling Report:

- National Planning Framework 4:
 - Policy 1 – Tackling the climate and nature crises.
 - Policy 2 – Climate mitigation and adaptation.
 - Policy 3 – Biodiversity.
 - Policy 5 – Soils.
 - Policy 14 – Design, quality and place.
 - Policy 22 – Flood risk and water management.
 - Policy 29 – Rural development.
 - Policy 30 – Tourism.
- Orkney Local Development Plan 2017:
 - The Spatial Strategy.
 - Policy 1 – Criterial for All Development.
 - Policy 2 – Design.
 - Policy 3 – Settlements, Town Centres and Primary Retail Frontages
 - Policy 4 – Business, Industry and Employment.
 - Policy 9 – Natural Heritage and Landscape.
 - Policy 13 – Flood Risk, SuDS and Waste Water Drainage.
 - Policy 14 – Transport, Travel and Road Network Infrastructure.
- Supplementary Guidance:
 - Natural Environment (March 2017).
- Planning Policy Advice:
 - Amenity and Minimising Obtrusive Lighting (2021).
 - National Roads Development Guide (2015).

- Development Management Guidance:
 - Business Development Outwith Town Centres (2023).

For Further Information please contact:

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Implications of Report

1. **Financial:** All resources associated with supporting the review procedure, mainly in the form of staff time, are contained within existing revenue budgets.
2. **Legal:** The legal implications are set out in the body of the report.
3. **Corporate Governance:** In accordance with the Scheme of Administration, determination of Notices of Review is delegated to the Local Review Body.
4. **Human Resources:** None.
5. **Equalities:** None.
6. **Island Communities Impact:** None.
7. **Links to Council Plan:** The proposals in this report support and contribute to improved outcomes for communities as outlined in the following Council Plan strategic priorities:
 - Growing our economy.
 - Strengthening our Communities.
 - Developing our Infrastructure.
 - Transforming our Council.
8. **Links to Local Outcomes Improvement Plan:** The proposals in this report support and contribute to improved outcomes for communities as outlined in the following Local Outcomes Improvement Plan priorities:
 - Cost of Living.
 - Sustainable Development.
 - Local Equality.
 - Improving Population Health.
9. **Environmental and Climate Risk:** None.
10. **Risk:** None.
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](#).

Development Management Guidance ‘Business Development Outwith Town Centres’ (October 2023), available [here](#).

Planning Circular 4/1998, available [here](#).

Appendices

Appendix 1 – Notice of Review (pages 1 – 31).

Appendix 2 – Planning Handling Report (pages 32 – 40).

Appendix 3 – Planning Services File (pages 41 – 71).

Appendix 4 – Decision Notice and Reasons for Refusal (pages 72 – 75).

Appendix 5 – Representation from Development Management (pages 76 – 79).

Pages 1 to 75 can be viewed [here](#), by clicking on “Accept and Search” and inserting the planning reference “24/475/PP”.

INFRASTRUCTURE AND ORGANISATIONAL DEVELOPMENT

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Planning Application: 24/475/PP
 Proposal: Erect two self-catering cabins
 Location: Muckleston, Bimbister Road, Harray

Notice of Review

The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013

Regulation 10 – Representation as an Interested Party

The application is for two self-catering cabins (pods), for tourism purposes only. This must not be confused with housing demand, and applicant references to the empty homes officer remit and SSEN interests are not relevant.

As acknowledged in the review, negative pre-application advice was provided, but the development was nonetheless submitted.

As set out in the planning handline report, the development must comply with Development Management Guidance 'Business Development Outwith Town Centres', and it is concluded that it does not.

And in that context, the definition of open countryside is relevant. Reference is made in the review to the title deed of the property. This should be dismissed as not relevant to a planning consideration. Land being in the same ownership does not make it curtilage. It also does not affect whether it meets the definition of open countryside.

The statement "...all the proposed development land is associated with the dwelling at Muckleston and therefore, should be viewed as within the curtilage of the dwelling.." is incorrect in planning terms, and in terms of legal definition.

Details are provided of nearby buildings, the parcel of ground within which the development is located, and introduction of the concept of a 'cluster' of development in the vicinity. Again, consideration must revert to the requirement to be 'open countryside' as set out in the Development Management Guidance.

This is not a sliding scale of 'openness' or enclosure. To provide a consistent approach to application of the policies, for a development site to be considered not open countryside, it must be within the curtilage of a building or have some lawful status for development. Otherwise, endless, small, enclosed parcels of land could be 'created' adjacent to buildings and then claimed as not open. An individual judgement of 'doing no harm' undermines that consistency.

This is a critical requirement. Fair and consistent application of policies cannot rely on a judgement based solely on the appearance of a property, even if a parcel of land is enclosed, hedging planted, grass mown to look like garden, etc. Without a planning permission, the status of the land is no different to any other parcel of open agricultural land. Consistent planning decisions cannot rely on arbitrary judgements of being open or not open.

Implications of an inconsistent approach

Much concern was raised locally when land was offered for sale in Harray (and elsewhere) through an auction site. That land was purchased as a whole field, split into small plots and sold through auction and small individual parcels. Some of those small plots were in a part of a field adjacent to existing buildings (as below).

There was public concern regarding that approach, and it provided an insight into how the countryside may be developed in a scenario where development could be erected without the current measured provision through policies.



The approach suggested by the applicant in the review is that the development should be approved, largely on the basis the land is not 'open' countryside, and that it is a small parcel of ground, and there are buildings nearby.

If that approach is taken, based on a judgement of the application site rather than consistent application of policy, it risks opening up fields and development such as the auction site, which caused such interest, to pods and other development. It leads to arbitrary judgements regarding 'openness'. It would be unhelpful if the suggestion was that owning a small parcel of land, and enclosing it, even if it has no planning status, was the basis for development in the countryside.

In planning use class terms, there is no difference between the current application site, and a piece of land adjacent to the buildings in the land offered at auction above. Planning decisions cannot be based on ownership and/or a boundary treatment.

The integrity of decision making, and the planning application process generally, relies on a consistency, which approval of the current case would erode. Even if as an individual case in front of LRB, would seem to 'make sense' for the site or be of little or no harm. That approach to the development must be put aside, and instead be policy-led, thinking of unintended consequences.

A reasonable and varied approach

There are many examples across the Orkney countryside where one or multiple pods have been approved, with positive pre-application advice and favourable decisions provided.

Applicants have taken care to ensure the pods are located within the garden ground of a house, or if relating to business premises, within the lawful curtilage of the business. The size and types of pods and other accommodation has also varied.

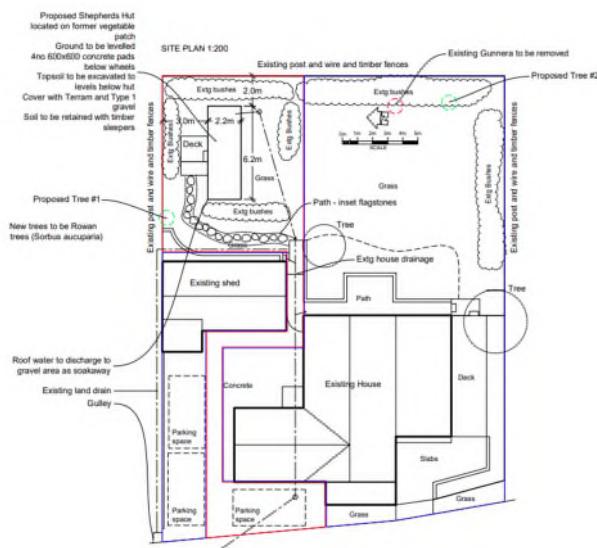
Pragmatism has been exercised by the planning authority, for example to allow the (below ground) drainage systems of pods to be located outside the curtilage for example, but always ensuring the built development is within the existing 'developed' area, or approved curtilage of a building, and therefore by definition avoiding open ground or open countryside, which may range from a small enclosure adjacent, through to a large field. But in all cases, if not developed and with no established use, then it must be considered 'open' in land use terms.

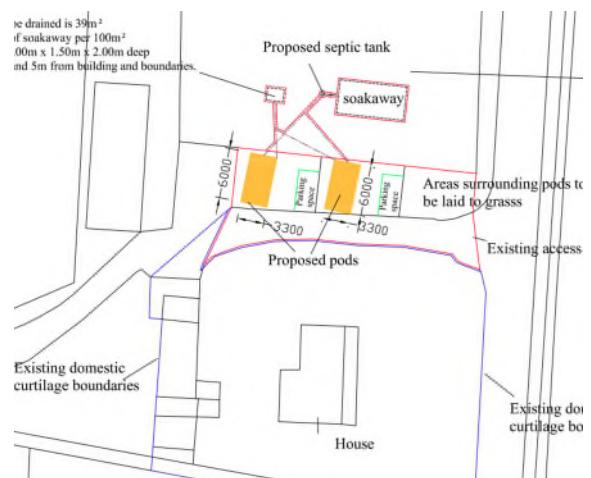
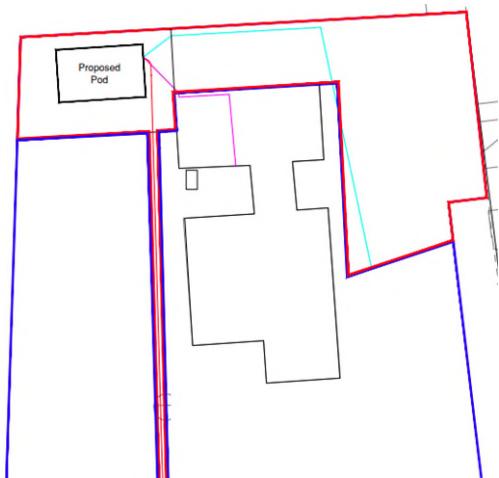
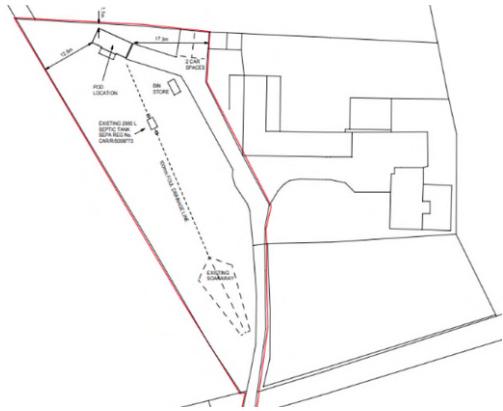
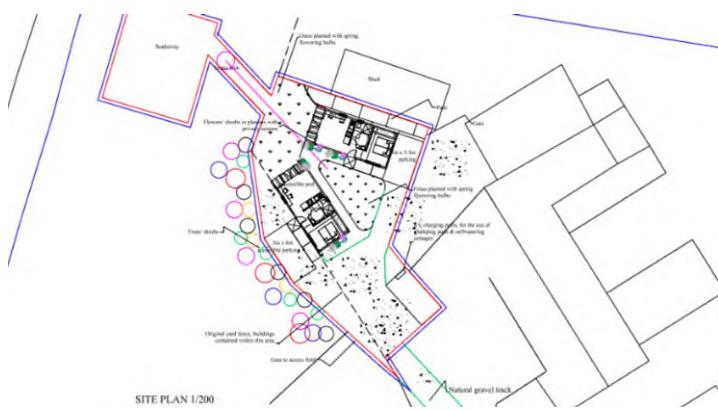
To break that consistent approach, for the sake of allowing an individual development, would undermine many years of negotiations, discussion, advice, and decision making. And it would be unfair to all those who followed planning advice in good faith.

It may be considered that the approach should change or be updated, but the route to do that is a future change in policy (ensuring that is done in a way that delivers what is wanted, and without unintended consequences such as the auction site plots). But current policy provision should not be challenged by piecemeal decisions, regardless of how harmless the decision may appear on the face of it.

Below are just a few examples of the many pods, shepherd's hut, cabin, and other development types approved in the countryside, all within the curtilage of a house or other building.

The current site is not curtilage or developed land, regardless of the ownership, association, appearance, management, or proximity to the house. The development is contrary to policy and guidance, and the Section 25 assessment is that the application be refused.





Development Management 11 September 2025