

## Minute

### Local Review Body

Wednesday, 6 October 2021, 12:00.

Microsoft Teams.



### Present

Councillors Robin W Crichton, John A R Scott, Alexander G Cowie, Norman R Craigie, David Dawson, Stephen Sankey, Owen Tierney, Duncan A Tullock and Heather N Woodbridge.

### Clerk

- Angela Kingston, Committees Officer.

### In Attendance

- Roddy Mackay, Planning Advisor.
- Paul Maxton, Legal Advisor.

### Observing

- Lorraine Stout, Press Officer.

### Apology

- Councillor Barbara Foulkes.

### Not Present

- Councillor Magnus O Thomson.

### Declaration of Interest

- Councillor Norman R Craigie – Item 5.

### Chair

- Councillor Robin W Crichton.

## 1. Suspension of Standing Orders

The Local Review Body **suspended Standing Order 8.11** to enable members to participate in the meeting from a remote location, as the decision to be made was as a result of a quasi-judicial or regulatory hearings process, such as a planning application or an appeal.

## **2. Form of Voting**

The Local Review Body resolved that, should a vote be required in respect of the Notices of Review to be considered at this meeting, notwithstanding Standing Order 21.4, the form of voting should be by calling the roll (recorded vote).

## **3. Planning Application 21/030/HH**

### **Proposed Extension of House at 16 Hermaness, Kirkwall**

After consideration of a report by the Chief Executive, copies of which had been circulated, the Local Review Body:

Noted:

**3.1.** That planning permission for the proposed extension of a house at 16 Hermaness, Kirkwall, was refused by the Appointed Officer on 8 July 2021, for the reasons outlined in section 3.2 of the report by the Chief Executive.

**3.2.** That the applicant had submitted a Notice of Review in respect of the decision of the Appointed Officer to refuse planning permission for the proposed extension of a house at 16 Hermaness, Kirkwall.

**3.3.** That, in accordance with policy, the Local Review Body had undertaken an unaccompanied visit to the site at 16 Hermaness, Kirkwall, at 09:30 on 6 October 2021.

After hearing a report from the Planning Advisor, the Local Review Body:

Resolved, in terms of delegated powers:

**3.4.** That the review in respect of the decision of the Appointed Officer to refuse planning permission for the proposed extension of a house at 16 Hermaness, Kirkwall, should be determined without further procedure.

On the motion of Councillor Robin W Crichton, seconded by Councillor Stephen Sankey, the Local Review Body resolved, in terms of delegated powers:

**3.5.** That the decision of the Appointed Officer to refuse planning permission for the proposed extension of a house at 16 Hermaness, Kirkwall, be upheld for the following reasons:

- The extension would represent overdevelopment of the site, with particular reference to site coverage and in combination with the area of garden ground already covered by built development. The development would not be consistent with, and would be detrimental to, the character of the area. As such, the development was contrary to Orkney Local Development Plan 2017 Policies 1 and 2, and Planning Policy Advice: Amenity and Minimising Obtrusive Lighting (2021).
- The scale and location of the proposed extension would adversely impact the residential amenities of the neighbouring property, by virtue of overbearing impact, proximity and potential for overlooking, contrary to Orkney Local Development Plan 2017 Policies 1 and 2, and Planning Policy Advice: Amenity and Minimising Obtrusive Lighting (2021).

#### **4. Planning Application 21/074/PP**

##### **Proposed Erection of Replacement House (One for One) and Creation of Access at Upper Nisthouse, Germiston Road, Stenness**

After consideration of a report by the Chief Executive, copies of which had been circulated, the Local Review Body:

Noted:

**4.1.** That planning permission for the proposed erection of a replacement house (one for one) and the creation of an access at Upper Nisthouse, Germiston Road, Stenness, was refused by the Appointed Officer on 29 June 2021, for the reasons outlined in section 3.2 of the report by the Chief Executive.

**4.2.** That the applicant had submitted a Notice of Review in respect of the decision of the Appointed Officer to refuse planning permission for the proposed erection of a replacement house (one for one) and the creation of an access at Upper Nisthouse, Germiston Road, Stenness.

**4.3.** That, in accordance with policy, the Local Review Body had undertaken an unaccompanied visit to the site at Upper Nisthouse, Germiston Road, Stenness, at 10:45 on 6 October 2021.

After hearing a report from the Planning Advisor, the Local Review Body:

Resolved, in terms of delegated powers:

**4.4.** That the review in respect of the decision of the Appointed Officer to refuse planning permission for the proposed erection of a replacement house (one for one) and the creation of an access at Upper Nisthouse, Germiston Road, Stenness, should be determined without further procedure.

On the motion of Councillor Owen Tierney, seconded by Councillor David Dawson, the Local Review Body resolved, in terms of delegated powers:

**4.5.** That the decision of the Appointed Officer to refuse planning permission for the proposed erection of a replacement house (one for one) and the creation of an access at Upper Nisthouse, Germiston Road, Stenness, should not be upheld.

**4.6.** That planning permission be granted in respect of the proposed erection of a replacement house (one for one) and the creation of an access at Upper Nisthouse, Germiston Road, Stenness, subject to conditions.

**4.7.** That the Local Review Body's reasons for granting planning permission were that, in the Committee's opinion:

- The walled parcel of ground on which the proposed house, garden, septic tank and soakaway were to be located met the definition of curtilage provided within Supplementary Guidance: Housing in the Countryside (2021), in that the land was associated with and in the ownership and/or control of the host house, was being used and maintained as domestic space and was demarked by a boundary wall. It was therefore appropriate to consider the proposal under section (v) of Policy 5E – Single

Houses and New Housing Clusters in the Countryside, which permitted the sub-division of the residential curtilage of a dwelling-house.

- In acknowledging the policy requirement in Supplementary Guidance: Housing in the Countryside (2021) that all the proposed development should be fully contained within the boundary of the curtilage and noting that in this proposal the access road was outwith the curtilage boundary, the Local Review Body noted that the intention was to use the existing track adjacent to the curtilage boundary to access the development, and therefore considered that the presence of, and the re-use/upgrade of an existing access track negated the requirement for all elements of the proposed development to be contained within the curtilage boundary, in this particular instance.
- The design, scale and form of the proposed development was considered to be sympathetic and appropriate to the nature and character of the local landscape, resulting in no unacceptable impact to the visual amenity of the surrounding area.

And, accordingly, the proposed development would comply with the following policies:

- Orkney Local Development Plan 2017:
  - Policy 1 – Criteria for All Development.
  - Policy 2 – Design.
  - Policy 5E – Housing – Single Houses and New Housing Clusters in the Countryside, section (v).
- Supplementary Guidance: Housing in the Countryside (2021), paragraphs 3.17 and 5.05.

Councillor Stephen Sankey, seconded by Councillor John A R Scott, moved that an additional condition, ensuring that appropriate infrastructure for the future installation of an electric vehicle charging point, be included to those proposed by officers to form part of the decision to grant planning permission for the erection of a replacement house (one for one) and the creation of an access at Upper Nisthouse, Germiston Road, Stenness.

Councillor Duncan A Tullock, seconded by Councillor David Dawson, moved an amendment that the conditions proposed by officers should form part of the decision to grant planning permission.

The result of a recorded vote was as follows:

For the Amendment:

Councillors Alexander G Cowie, Norman R Craigie, Robin W Crichton, David Dawson, Owen Tierney and Duncan A Tullock (6).

For the Motion:

Councillors Stephen Sankey, John A R Scott and Heather N Woodbridge (3).

The Amendment was therefore carried.

The Local Review Body thereafter resolved, in terms of delegated powers:

**4.8.** That the conditions, attached as Appendix 1 to this Minute, should form part of the decision to grant planning permission for the erection of a replacement house (one for one) and the creation of an access at Upper Nisthouse, Germiston Road, Stenness, referred to at paragraph 4.6 above.

## **5. Planning Application 21/094/PP**

### **Proposed Erection of House with Integral Garage and Air Source Heat Pump (Part Retrospective) at Vanskavaig, Carness Road, St Ola**

Councillor Norman R Craigie declared a non-financial interest in this item, in that one of the interested parties was related to him, and left the meeting at this point.

After consideration of a report by the Chief Executive, copies of which had been circulated, the Local Review Body:

Noted:

**5.1.** That planning permission for the proposed erection of a house with an integral garage and an air source heat pump (part retrospective) at Vanskavaig, Carness Road, St Ola, was refused by the Appointed Officer on 20 May 2021, for the reasons outlined in section 3.2 of the report by the Chief Executive.

**5.2.** That the applicant had submitted a Notice of Review in respect of the decision of the Appointed Officer to refuse planning permission for the proposed erection of a house with an integral garage and an air source heat pump (part retrospective) at Vanskavaig, Carness Road, St Ola.

**5.3.** That, in accordance with policy, the Local Review Body had undertaken an unaccompanied visit to the site at Vanskavaig, Carness Road, St Ola, at 10:00 on 6 October 2021.

After hearing a report from the Planning Advisor, the Local Review Body:

Resolved, in terms of delegated powers:

**5.4.** That the review in respect of the decision of the Appointed Officer to refuse planning permission for the proposed erection of a house with an integral garage and an air source heat pump (part retrospective) at Vanskavaig, Carness Road, St Ola, should be determined without further procedure.

On the motion of Councillor Robin W Crichton, seconded by Councillor Duncan A Tullock, the Local Review Body resolved, in terms of delegated powers:

**5.5.** That the decision of the Appointed Officer to refuse planning permission for the proposed erection of a house with an integral garage and an air source heat pump (part retrospective) at Vanskavaig, Carness Road, St Ola, be upheld for the following reasons:

- The site was located within a Waste Water Consultation Area, where cumulative drainage impact was a material planning consideration and where there were additional constraints regarding the disposal of sewage. Orkney Local Development

Plan 2017 Policy 13C – Waste Water Drainage required that all development within the settlement boundaries connect to the public sewer and the Scottish Environment Protection Agency (SEPA) had objected to the development on grounds of “private foul water drainage discharge within the town of Kirkwall rather than connecting to public sewer”. The public sewer was within 70 metres of the proposed development site and Scottish Water had indicated that the proposed development would be serviced by Kirkwall Waste Water Treatment Works. Unlike other neighbouring properties in the area, which had been permitted private sewage systems under previous Orkney Local Development Plans and policies dependent upon when those houses were approved, there was also an absence of any planning approval for the development of a house on the proposed site which would have established the principle of a house on the site and would have included relevant sewage requirements and therefore there was no material weight to balance against the current policy and SEPA objection to the current proposal.

- Due to the failure to connect to the public sewer, the development was contrary to Orkney Local Development Plan 2017 Policy 1 – Criteria for All Development, and Policy 13C – Waste Water Drainage. There had been no changes to relevant policies within the Orkney Local Development Plan 2017 or other material considerations during the period between the refusal of the previous Planning Application 18/419/PP on 20 December 2018 (and subsequent refusal by the Local Review Body on 2 May 2019) that would outweigh policy concerns.

## **6. Conclusion of Meeting**

At 13:00 the Chair declared the meeting concluded.

Signed: Rob Crichton.

## Appendix 1.

### **Proposed Erection of Replacement House (one for one) and Creation of Access at Upper Nisthouse, Germiston Road, Stennes (21/074/PP).**

#### **Grant subject to the following conditions:**

01. No other development shall commence until detailed cross-sections of the site showing existing levels and proposed finished levels have been submitted to, and approved in writing by, the Planning Authority. Detailed drawings shall include cross sections through the approved house site, both north to south and east to west intersecting centrally.

Reason: To ensure that the development is sensitive to, and compatible with, its context.

02. Within the application site, no building or structure shall be constructed upon land raised above its current level.

Reason: To ensure that land-raising does not result in a building or structure constructed at a height such that it gives rise to visual concerns.

03. Within the application site, no building or structure shall feature underbuilding exceeding 500mm in height above ground level. For the purposes of this condition, height is a reference to height when measured from ground level, and ground level means the level of the surface of the ground immediately adjacent to the building or structure or, where the level of the surface of the ground is not uniform, the level of the lowest part of the surface of the ground adjacent to it.

Reason: To ensure that underbuilding is kept to a minimum, in the interests of visual and residential amenity.

04. No other development shall commence prior to the access with the public road being constructed to the Council's Roads Services standard drawing 'SD-02 Alternative Typical Access for Two Dwellings', 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 any other works commencing on 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 in advance of any such deviation from the agreed details by the Planning Authority.

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

Reason: In the interests of road safety.

05. No other development shall commence until details of a scheme of hard and soft landscaping works have been submitted to, and approved in writing by, the Planning Authority. Details of the scheme shall include:

- All earthworks and existing and finished ground levels in relation to an identified fixed datum point.

- All soft landscaping and planting works, including plans and schedules showing the location, species of shrubs and trees and planting densities with particular emphasis on boundary planting.
- The location and design, including materials, of any existing or proposed walls, fences and gates.

Thereafter, all landscaping works shall be carried out in accordance with the approved scheme. All planting, seeding or turfing as may be comprised in the approved details shall be carried out no later than the first planting and seeding seasons following the first occupation of the house, unless otherwise stated in the approved scheme.

Any trees or plants which within a period of five years from the completion of the development die, for whatever reason or are removed or damaged shall be replaced in the next planting season with others of the same size and species.

Reason: In order to ensure that a high standard of landscaping is achieved, appropriate to the location of the site and that inappropriate suburban boundary finishes are not employed in this rural location.

06. No other development shall commence until details of the siting of refuse disposal bins and recyclable material storage and collection points in respect of the approved house have been submitted to, and approved in writing by, the Planning Authority.

Reason: In order to ensure that adequate provision for domestic waste and recycle is provided and for the avoidance of doubt.

07. All surface water drainage provision within the application site(s) shall accord with the principles of Sustainable Urban Drainage Systems (SUDS) and be designed to the standards outlined in Sewers for Scotland Fourth Edition, or any superseding guidance prevailing at the time and shall be implemented and completed prior to the first occupation of any of the development.

Reason: To ensure that surface water drainage is provided timeously and complies with the principles of SUDS; in order to protect the water environment.

08. Any exterior lighting employed shall be so positioned, angled and controlled to prevent any direct illumination, glare or light spillage outwith the site boundary. The use of automatic cut-out or sensor operated external lighting of limited timed illumination is advocated.

Reason: In order to ensure that any lighting installed within the application site does not spill beyond the intended target area, does not impact adversely upon the amenity of adjacent properties and does not result in 'sky glow'.

09. The existing static caravan on site and as shown on approved drawing "Proposed Site Plan" dated 02/2021, shall be wholly removed from site prior to the first occupation of the house or upon completion of the house, whichever is the sooner. All ancillary equipment, fixtures and services related to this static caravan shall likewise be removed with the site with the area subject to reinstatement in accordance with the approved details arising from compliance with condition 05.

Reason: To ensure that the redundant static caravan is removed from the site, in the interests of visual amenity and for the avoidance of doubt.

10. 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 residential amenity of the area and in order to reduce any possible nuisance arising to nearby residents during the construction of this development.