

Item: 5.1

Local Review Body: 8 April 2022.

Proposed Siting of Replacement House (one for one) on land near Drunton, Russland Road, Harray (21/436/PIP).

Report by Corporate Director for Strategy, Performance and Business Solutions.

1. Purpose of Report

To determine a review of the decision of the Appointed Officer to refuse planning permission in principle for the proposed siting of a replacement house (one for one) on land near Drunton, Russland Road, Harray.

2. Recommendations

The Local Review Body is invited to note:

2.1.

That planning permission in principle for the proposed siting of a replacement house (one to one) on land near Drunton, Russland Road, Harray, was refused by the Appointed Officer on 5 January 2022, for the reasons outlined in section 3.2 of this report.

2.2.

That the applicant has submitted a Notice of Review requesting that the decision of the Appointed Officer, referred to at paragraph 2.1 above, be reviewed.

2.3.

That, as part of the Notice of Review, referred to at paragraph 2.2 above, the applicant had submitted information which, in terms of Section 43B of the Town and Country Planning (Scotland) Act 1997 as amended, was deemed as new information.

2.4.

That, on 28 February 2022, the Local Review Body resolved that the new information, referred to at paragraph 2.3 above, namely new farming regulations, the Water Environment (Controlled Activities) (Scotland) Amendment Regulations 2021, which came into force on 1 January 2022, and introduced measures regarding the storage of slurry, should be taken into account when determining the review.

2.5.

That, on 28 February 2022, the Local Review Body resolved that the Review should not be determined without further procedure, and that the further procedure should comprise the following:

- An opportunity for relevant parties, including the Scottish Environment Protection Agency and the Council's Environmental Health Service, to make representations on the new information referred to at paragraph 2.4 above.
- Further information from the applicant's agent to clarify whether the application was being made under the criteria of Policy 5E iii – the replacement of an existing building or structure or Policy 5E viii – the provision of a single dwelling house to allow for the retirement succession of a viable farm holding.

2.6.

That, in accordance with policy, the Local Review Body had undertaken an unaccompanied visit to the site at Drunton, Russland Road, Harray, at 11:00 on 28 February 2022.

It is recommended:

2.7.

That the Local Review Body determines 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.
- In the event that the decision is reversed or varied, the reasons and the detailed conditions to be attached to the decision notice.

2.8.

That, in the event the Local Review Body agrees that further information is required to determine the review, 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; and/or.
- By the holding of one or more hearing.

3. Introduction

At its meeting held on 28 February 2022, the Local Review Body resolved:

- That the new information, namely new farming regulations, the Water Environment (Controlled Activities) (Scotland) Amendment Regulations 2021, which came into force on 1 January 2022, and introduced measures regarding the storage of slurry, should be taken into account when determining the review.
- That, accordingly, the review should not be determined without further procedure, and that the further procedure should comprise:

- An opportunity for relevant parties, including the Scottish Environment Protection Agency and the Council's Environmental Health Service, to make representations on the new information.
- Further information from the applicant's agent to clarify whether the application was being made under the criteria of Policy 5E iii – the replacement of an existing building or structure or Policy 5E viii – the provision of a single dwelling house to allow for the retirement succession of a viable farm holding.

4. Background

4.1.

Planning application 21/436/PIP relates to the proposed siting of a replacement house (one to one) on land near Drunton, Russland Road, Harray.

4.2.

The Appointed Officer refused the planning application on 5 January 2022 on the following grounds:

4.2.1.

The proposed development is contrary to Policy 5E of the Orkney Local Development Plan 2017, and Supplementary Guidance: Housing in the Countryside (March 2021), option iii) as the application site is not on the same site as the original building and no exceptional case or material planning benefits have been provided to justify relocating the site 350 metres distant.

4.2.2.

The site would be seen in isolation and not in association with other buildings, and therefore would not minimise landscape impacts and would exacerbate the suburbanisation of the countryside. On this basis, the development fails to meet the requirements of development criteria DC2 and DC4 of Supplementary Guidance: Housing in the Countryside (March 2021).

4.2.3.

The proposed house site is not located to minimise negative impacts on the local landscape and has potential to add to incongruous single house development in the countryside. Given the location of the development and prominence within the local landscape, the development fails to comply with Policy 1 – Criteria for All Development, paragraphs (i) and (ii), of the Orkney Local Development Plan 2017.

4.3.

In terms of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013, the applicant has submitted a Notice of Review and supporting information, which were issued with the papers for the meeting of the Local Review Body held on 28 February 2022, which also

included the Planning Handling Report, Planning Services file and the Decision Notice, including the reason for refusal.

5. Further Information

5.1.

The new information provided by the applicant refers to amendments to The Water Environment (Controlled Activities) (Scotland) Regulations 2011, as set out in The Water Environment (Controlled Activities) (Scotland) Amendment Regulations 2021. The Regulations are implemented by the Scottish Environment Protection Agency (SEPA) and apply regulatory control over activities which may affect the water environment, with the activities of discharges, diffuse pollution, abstractions, engineering works and groundwater included within the Regulations.

5.2.

In relation to storage of slurry, the 2021 Regulations, which came into force on 1 January 2022, include improving controls on the storage of slurry and digestate to reduce leakage, and more targeted spreading to maximise the nutrient benefit and reduce emissions. A new silo or slurry storage system constructed on or after 1 January 2022 must not be situated within 10 metres of any surface water or opening into a surface water drain, and for slurry storage systems to be 'fit for purpose' and new, substantially reconstructed or enlarged slurry stores to have a life expectancy of at least 20 years, with proper maintenance. In addition, silage bales or bulk bags is covered by the legislation but only in so far as they must not be stored, opened, or unwrapped within 10 metres of any surface water.

5.3.

There is also a requirement for SEPA to be notified prior to commencement of such works, and the minimum capacity of a slurry storage system must be sufficient to store the total quantity of slurry likely to be produced in 22 weeks by housed cattle.

5.4.

At its meeting held on 28 February 2022, the Local Review Body wished to provide an opportunity for relevant parties, including the Scottish Environment Protection Agency and the Council's Environmental Health Service, to make representations on the new information, referred to above. A copy of the response from the Scottish Environment Protection Agency is attached as Appendix 1 to this report. No response has been received from the Council's Environmental Health Service or any other relevant parties.

5.5.

At the same meeting, further information was also requested from the applicant's agent, to clarify whether the application was being made under the criteria of Policy 5E iii – the replacement of an existing building or structure; or Policy 5E viii – the provision of a single dwelling house to allow for the retirement succession of a viable

farm holding. A copy of the agent's response is attached as Appendix 2 to this report.

6. Review Procedure

6.1.

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. No further representations were received.

6.2.

In accordance with the Council's policy to undertake site inspections of all planning applications subject to a local review, prior to the meeting to consider the review, a site visit to Drunton, Russland Road, Harray, was undertaken at 11:15 on 28 February 2022.

6.3.

The Local Review Body may uphold, reverse or vary the decision of the Appointed Officer. In the event that the decision is reversed, draft planning conditions are attached at Appendix 3 for consideration.

6.4.

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; and/or.
- By the holding of one or more hearing(s).

7. Relevant Planning Policy and Guidance

7.1.

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..."

7.2.

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 at:

<https://www.orkney.gov.uk/Service-Directory/D/Planning-Policies-and-Guidance.htm>

The policies listed below are relevant to this application:

- Orkney Local Development Plan 2017:
 - Policy 1 – Criteria for All Development.
 - Policy 5 – Housing.
 - Policy 13 – Flood Risk, SuDS and Waste Water Drainage.
 - Policy 14 – Transport, Travel and Road Network Infrastructure.
- Supplementary Guidance:
 - Housing in the Countryside (2021).
 - Orkney Core Paths Plan and Maps.

8. Corporate Governance

This report relates to the Council complying with its statutory duties as a Planning Authority and therefore does not directly support and contribute to improved outcomes for communities as outlined in the Council Plan and the Local Outcomes Improvement Plan.

9. Financial Implications

All resources associated with supporting the review procedure, mainly in the form of staff time, are contained within existing Planning Service revenue budgets.

10. Legal Aspects

10.1.

Under the Planning etc (Scotland) Act 2006 and the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013 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.

10.2.

The procedures to be followed in respect of the review are as detailed in section 6 above.

10.3.

A letter from the Chief Planner, Scottish Government, 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.

11. Contact Officers

Karen Greaves, Corporate Director for Strategy, Performance and Business Solutions, extension 2202, Email karen.greaves@orkney.gov.uk

Angela Kingston, Clerk to the Local Review Body, Email angela.kingston@orkney.gov.uk

Roddy MacKay, Planning Advisor to the Local Review Body, extension 2530, Email roddy.mackay@orkney.gov.uk

Katharine McKerrell, Legal Advisor to the Local Review Body, Email katharine.mckerrell@orkney.gov.uk

12. Appendices

Appendix 1 – SEPA Response.

Appendix 2 – Agent's Response.

Appendix 3 – Draft Conditions.

Appendix 1

From: [Planning.North](#)
To: [Committees](#)
Subject: RE: Planning App 21.436.PIP - Notice of Review
Date: 10 March 2022 11:47:48

OFFICIAL

Thank you for your email.

I can confirm that SEPA Planning do not have any specific comments to make in relation to this application. I have also checked with the Local Regulatory Compliance team and they also have no concerns or detailed comments to make.

Kind regards

Laura

Laura Wilson

Senior Planning Officer / Flood Risk Hydrology – Regional Partnerships and Engagement.
Scottish Environment Protection Agency (SEPA)
Graesser House | Dingwall Business Park | Fodderty Way | Dingwall | IV15 9XB
e: laura.wilson@sepa.org.uk t: 01349 860422 w: www.sepa.org.uk

For Planing queries email: Planning.North@SEPA.org.uk

For Flood Risk queries email: FloodRisk.North@sepa.org.uk

Our planning guidance: www.sepa.org.uk/environment/land/planning/

Please note that my regular work pattern is Monday, Wednesday, Thursday Friday - Planning. Tuesday - Hydrology

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Appendix 2

From: [Christopher Omand](#)
To: [Committees](#)
Cc: [Angela Kingston](#)
Subject: RE: Planning App 21.436.PIP - Notice of Review
Date: 17 March 2022 16:16:12
Attachments: [Amended response to the reasons for refusal - 17-03-22.pdf](#)

Hi Angela

Please find attached the amended response with the correct heading. I have also added the response to the location of a storage area under section one.

Thank you

Christopher

**Christopher J Omand, BSc (Hons), M.R.I.C.S.
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Proposed Siting of Replacement House (one for one) on land near Drunton, Russland Road, Harray

In response to the reasons for refusal of application 21/436/PIP.

1. *“The proposed development is contrary to Policy 5E of the Orkney Local Development Plan 2017, and Supplementary Guidance 'Housing in the Countryside' (March 2021), option iii) as the application site is not on the same site as the original building and no exceptional case or material planning benefits have been provided to justify relocating the site 350 metres distant. “*

The proposed location is not out of keeping with the area, which is made up of single dwelling sites and clusters of farm buildings. The site is located taking into consideration the location and landscape character. The area comprises scattered housing of all varying types and sizes. There is not one type of location and siting of a house throughout this area. This could be said about the majority of rural locations throughout Orkney. There is evidence of sites/houses over the years being approved, which are located over 350m away from the redundant building/house.

Further reasoning is also due to new farming regulations coming in, which are making some changes to how slurry is stored. Farmers must be able to store 6 months of slurry and at present the farm does not have the capability to do this. It is for this reason that an additional storage area, possibly a slurry lagoon will be required at a low area. The best location for this would be on the outskirts of the farm, which then would mean the area of the redundant building and any nearby fields would not be suitable locations for a new dwelling. By moving the site to the proposed location allows it to comply with road services and also takes it away from a working farm.

Further to the above we received a response from SAC (Scottish Agricultural College), which stated that if a slurry tank/lagoon was to ever be erected and if it was within 400m of a dwelling not part of the farm then full planning permission would be required, whereas if it is a dwelling connected to the farm then there is no minimum distance required.

Due to the requirement for a slurry storage area it would make sense to move the proposed site away from the farm to reduce any future potential risk of objections which might hinder development of the farm.

2. *“The site would be seen in isolation and not in association with other buildings, and therefore would not minimise landscape impacts and would exacerbate the suburbanisation of the countryside. On this basis, the development fails to meet the requirements of development criteria DC2 and DC4 of the Supplementary Guidance 'Housing in the Countryside' (March 2021).”*

There are several sites throughout the Netherbrough and Russland Road which are isolated sites/houses. This is the same as most rural areas throughout Orkney.

3. *“The proposed house site is not located to minimise negative impacts on the local landscape and has potential to add to incongruous single house development in the countryside. Given the location of the development and prominence within the local landscape, the development fails to comply with Policy 1 ‘Criteria for All Development’, paragraphs i) and ii), of the Orkney Local Development Plan 2017.”*

The proposed site is situated in an area which is in keeping with the location. There are single dwellings located along Rusland Road on both sides. Any house on this site will not impact on the landscape and will be designed sympathetically with the area in mind.

I trust this clarifies our objections to the reasons for refusal.



Christopher Omand, BSc (Hons), M.R.I.C.S.

Appendix 3.

Proposed Conditions 21/436/PIP

01. Within three years of the date of this permission, an application for approval of the following matters shall be submitted to, and approved by, the Planning Authority:

(a) The final design and external appearance of the house and any other buildings.

(b) The layout and surface finishes of the site, including all roads, accesses and parking areas.

(c) The design and location of any boundary walls and fences.

(d) The provision of drainage works.

(e) The disposal of sewage, noting the advice provided by SEPA and its consultation response, including that the discharge from the waste water drainage system should be to either a soakaway without overflow or mound soakaway.

(f) The landscaping of the site (including details of species, sizes, number, type).

(g) Detailed cross sections of the house on the site, including existing and proposed ground levels, and proposed finished floor levels, specifying that the finished floor level is not above existing ground level.

No development shall commence until all of these matters have been approved and, thereafter, the development shall be carried out in accordance with the approved details, unless agreed otherwise in writing by the Planning Authority.

Reason: To accord with the Town and Country Planning (Scotland) Act 1997 as amended, and because the approval is in principle only.

02. The access hereby approved with the public road shall be constructed to the Council's Roads Services standard drawing 'SD-05 (Typical Access Over Verge With Service Bay)', 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 of 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 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.

03. Prior to the first occupation of the development hereby approved in principle, the sewage system approved under the subsequent AMC/Full Planning Application shall be connected and fully operational and prior to the commencement of the development, the developer shall consult the Scottish Environment Protection

Agency (SEPA) with regard to authorisations required for discharges of sewerage effluent to land or water.

SEPA (Orkney) can be contacted at Norlantic House, Hatston, Kirkwall (Telephone: 01856 871080). Further information may also be found on SEPA's website at: <https://www.sepa.org.uk/>.

Reason: In the interests of environmental protection and to accord with Policy 13C – Waste Water Drainage of Orkney Local Development Plan 2017.

04. Throughout the lifetime of the development hereby granted planning permission, surface water must be treated in accordance with the principles of Sustainable Urban Drainage Systems (SUDS) and be compliant with the guidance set out in CIRIA's SuDS Manual C753. The requisite surface water drainage shall be operational prior to the development being brought into use and shall be maintained as such thereafter.

All surface water shall be contained within the development site and there shall be no surface water drainage run-off onto the road or adjacent land.

Uncontaminated surface water, including roof water, should be disposed of by the use of SUDS in accordance with General Binding Rules 10 and 11 of CAR. Further details regarding General Binding Rules and Controlled Activities Regulations (CAR) may be found on SEPA's website at: https://www.sepa.org.uk/media/34761/car_a_practical_guide.pdf.

Reason: To ensure the provision of an adequate surface water drainage system and to accord with Policy 13 of Orkney Local Development Plan 2017, Scottish Planning Policy and in the interests of road safety.

05. No development shall commence until the existing building indicated as 'Redundant Farm Building' on Location Plan OIC-01 and Site Plan OIC-02 is entirely demolished and the material disposed of. All material resulting from demolition not required in the construction of the replacement dwelling shall be removed from site and disposed of in a licensed waste disposal facility or used for purposes for which planning permission is either not needed or has been granted.

Reason: To protect the appearance of the area and as the demolition of the structure is required to establish the principle of the replacement house to comply with Orkney Local Development Plan 2017 Policy 5E(iii) – Replacement of an Existing Building or Structure and Supplementary Guidance: Housing in the Countryside (2021).

06. Hours of work during the demolition of the Redundant Farm Building and construction of the development hereby approved in principle, 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 Monday to Friday and 08:00 to 13:00 Saturdays, not at all on Sundays, Christmas or New Year Public Holidays unless otherwise agreed in writing with the Planning Authority.

Throughout the construction phase of the development there shall be no burning of waste material on site.

Reason: In the interest of residential amenity of the area and in order to reduce any possible nuisance arising to nearby residents during the demolition works and construction of the development.

07. Throughout the lifetime of the development hereby approved in principle, any external lighting used on the dwelling and any outbuilding(s) shall be downward facing only and shall comply with the Council's requirements of Orkney Local Development Plan 2017 Policy 2 (principle vi) that all external lighting shall minimise light pollution and shall meet the requirements specified by the Institution of Lighting Professionals for Zone E1/E2 areas (Rural/Low District Brightness). The lighting shall be turned off when not required either by automatic sensor or manually.

Note: Further information regarding the control of light pollution and obtrusive light can be viewed online at www.theilp.org.uk/documents/obtrusive-light/ (Institution of Lighting Professionals (Guidance Notes for the Reduction of Obtrusive Light GN01:2011) and www.scotland.gov.uk/Publications/2007/03/14164512/0 Scottish Executive (Transport Scotland) Guidance Note (Controlling Light Pollution and Reducing Lighting Energy Consumption).

Reason: To minimise obtrusive light, glare or distraction in the interests of safeguarding the amenity of the area and to accord with Orkney Local Development Plan 2017 Policy 2 – Design.