

Item: 6

Planning Committee: 9 October 2024.

Erect a Domestic Garage at Seaways, Firth.

Report by Corporate Director for Neighbourhood Services and Infrastructure.

1. Overview

- 1.1. This report considers a householder planning application for the erection of a single storey domestic garage within the garden ground of Seaways, Firth. One valid representation has been received, objecting to the development on the grounds of overdevelopment and vehicular access to the development. The development complies with relevant policies, and objections and other material considerations do not merit refusal of the application.

Application Reference:	24/247/HH.
Application Type:	Householder planning permission.
Proposal:	Erect a domestic garage.
Applicant:	Nick Mathieson, Seaways, Firth, KW15 1TU.

- 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 in respect of the erection of a garage at Seaways, Firth, subject to the conditions detailed in Appendix 1 to this report.

3. Consultations

3.1. Scottish Water.

Scottish Water has no objection to this planning application.

3.2. Roads Services.

No adverse comment.

4. Representations

4.1. One valid representation (objection) has been received from:

- Mr Edward Drever, Marsdene, Firth, KW15 1TU.

4.2. The representation is on the following grounds:

- Overdevelopment.
- Vehicular access.

4.3. Other matters are raised in the representation that are not material planning matters.

5. Relevant Planning History

5.1. Planning applications

Reference	Proposal	Location	Decision	Date
18/136/PP.	Erect a house with an integral garage (amendment to 11/001/PP) (Retrospective).	Seaways, Firth.	Approve, subject to conditions.	05.09.18.
11/001/PP.	Demolish existing buildings, erect a commercial building, and a house with an integral double garage.	Orkney Seafayre, Firth.	Approve, subject to conditions.	08.03.11.

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 14. Design, quality and place.
 - Orkney Local Development Plan 2017:
 - Policy 1: Criteria for All Development.
 - Policy 2: Design.
 - Policy 14: Transport, Travel and Road Network Infrastructure.

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, permission is sought for the erection of a domestic garage at Seaways, Firth as indicated by the annotation 'NEW SHED' in the Location Plan attached as Appendix 2 to this report. This would be an additional shed, to the integral garage included in application 18/136/PP. Notwithstanding comments included in the objection, the garage is proposed for domestic use, located within the curtilage and to the south of the existing house. The garage would be single storey to a height of 5.2 metres, with a smooth render on three sides and stone cladding on the north elevation facing the house, and a tiled roof to match the existing house. The floor plan shows a single open floor area.

Principle

- 8.2. The development of a domestic garage within the curtilage of a house for ancillary and incidental use is acceptable in principle. This would be subject to a planning condition to control its use for domestic purposes only. Any other speculation regarding potential future use is not material to the planning consideration.

Residential Amenity

- 8.3. The proposed garage would leave sufficient outdoor amenity space for the occupiers of the property and is not considered overdevelopment of the site, as stated within the objection. The garage would have no windows facing towards any neighbouring properties and would be sufficiently distant from any neighbouring properties that there would be no overshadowing. The development complies with Policy 1 'Criteria for all Development' of the OLDP.

Design

- 8.4. The proposed scale and finishes are consistent with the existing adjacent development and would have no unacceptable impact on the character or appearance of its immediate surroundings, or the wider area. In that regard, the development complies with Policy 2 'Design' of the OLDP and Policy 14 of NPF4.

Access

- 8.5. The objection raises the vehicular access to the site from the public road. Planning application 18/136/PP regularised the existing house as constructed, including a planning condition regarding the access. The access specification was approved and is constructed in accordance with the approved detail. As a domestic garage only, no significant additional vehicular traffic is anticipated, and Roads Services has confirmed no objection to the development as proposed. Accordingly, the development can be considered to comply with Policy 14 'Transport, Travel and Road Network Infrastructure' of the OLDP.

9. Conclusion

- 9.1. The proposed development complies with Policies 1, 2 and 14 of the Orkney Local Development Plan (2017), and Policy 14 of National Planning Framework 4. The proposal is acceptable in principle, and in terms of design, development of the domestic curtilage, and access. There are no material considerations including those raised in the objections that outweigh this conclusion.

For Further Information please contact:

Jamie Macvie, Service Manager (Development Management), Email
jamie.macvie@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](#).

Appendix

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.

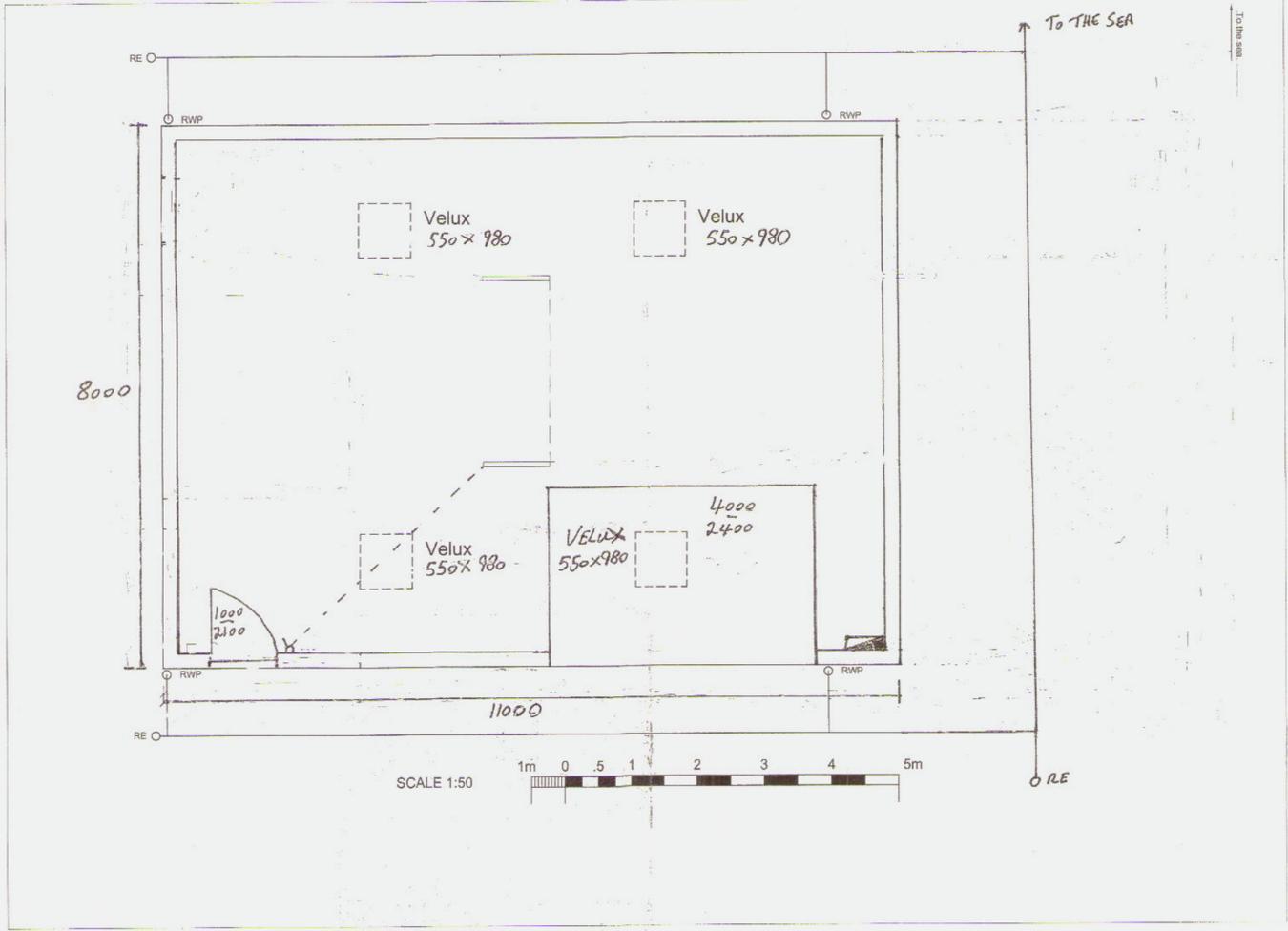
02. The garage hereby approved shall be used for purposes ancillary to the occupation of and incidental to the enjoyment of the dwellinghouse 'Seaways' only, and not for any other use or purpose without express planning permission.

Reason: For the avoidance of doubt, to control the use as an ancillary domestic garage only.

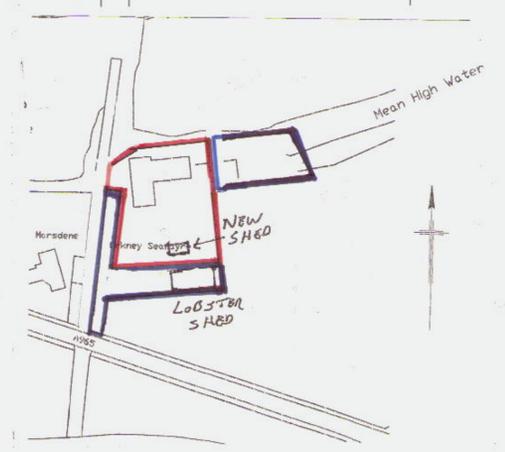
03. Hours of work during the construction of the development hereby approved, involving the use of machinery and powered tools, or any other operation, for example hammering, that would generate noise audible beyond the boundary of the site, shall be restricted to 07:30 to 18:00 Mondays to Fridays, 08:00 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.

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

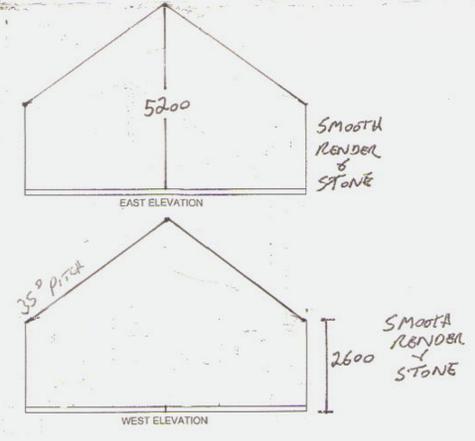
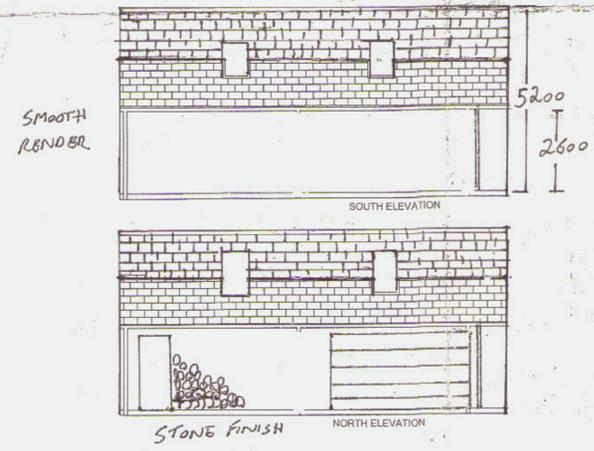
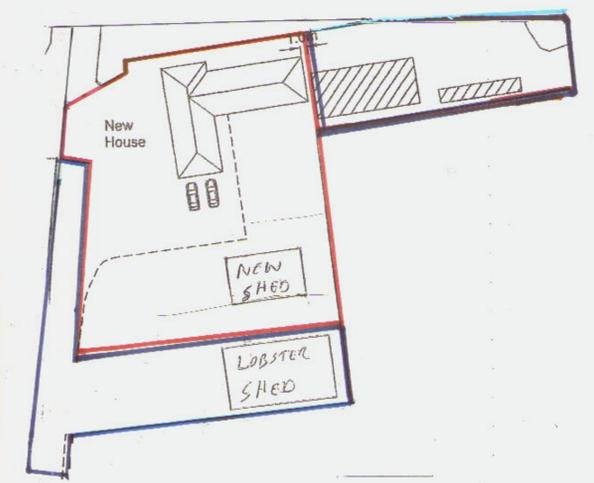
Reason: In the interest of residential amenity of the area and to reduce any possible nuisance arising to nearby residents during the construction of the development.



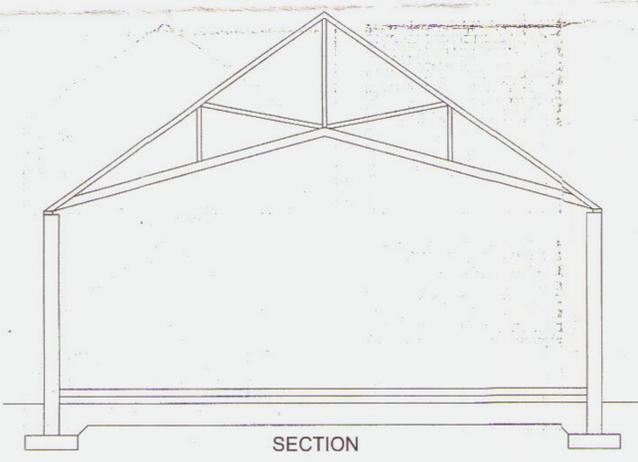
SCALE 1:2500



SCALE 1:500



SCALE 1:100



- External Finishes**
- Roof - Redland Grey tiles.
 - Wall - render & STONE
 - Window and doors - GREY UPVC
 - Fascias & Soffits - GREY UPVC
 - Black gutters and downpipes.

NICK MATHIESON
 PROPOSED SHED
 SHED LAYOUT & ELEVATIONS
 MAY 2024