

Item: 5

Planning Committee: 12 February 2025.

Proposed Erection of House with Air Source Heat Pump and Temporary Siting of Caravan at Ha'breck Green, Pierowall, Westray.

Report by Corporate Director for Neighbourhood Services and Infrastructure.

1. Overview

- 1.1. This report considers an application to erect a house with an air source heat pump and temporary siting of caravan on a site at Ha'breck Green (near Trenabie Mills), Pierowall, Westray. One letter of objection has been received. The development complies with relevant policies, and objections and other material considerations do not merit refusal of the application.

Application Reference:	24/245/PP.
Application Type:	Planning Permission.
Proposal:	Erect a house with an air source heat pump and temporary siting of caravan.
Applicant:	Mr J & Mrs L Brown.
Agent:	Breck Designs.

- 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 to erect a house with an air source heat pump and temporary siting of caravan on a site at Ha'breck Green, near Trenabie Mills, Pierowall, Westray, subject to the conditions detailed in Appendix 1 to this report.

3. Consultations

Engineering Services

- 3.1. No objection to the proposal following an updated drawing showing an alternate access to and from the site. Although the site itself is not within a flood risk area, the access track is in an area with a high likelihood of coastal flooding. It was therefore requested that it be shown that safe access and egress from the site would be possible in a flooding event. This has been provided satisfactorily.

Roads Services

- 3.2. No objection, subject to a condition relating to the construction of the access from the public road.

Development and Marine Planning (Environment)

- 3.3. No objection to the proposal, subject to condition regarding biodiversity enhancement.

Environmental Health

- 3.4. No objection to the proposal, subject to a noise condition relating to the air source heat pump.

Scottish Water

- 3.5. No objection to the proposal; the applicant should take note of the advice provided within the consultation response.

4. Representations

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

- Chris Edwards, Ulva Cottage, Westray.

- 4.2. Representations are on the following grounds:

- Access.
- Design.
- Waste.
- Drainage.

5. Relevant Planning History

Reference	Proposal	Location	Decision	Date
21/362/PIP.	Siting of two houses.	Trenabie Mill (Land Near), Westray, Orkney.	Withdrawn.	07.12.2021.

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 3: Biodiversity.
 - Policy 7: Historic assets and places.
 - Policy 17: Rural Homes.
 - Policy 22: Flood risk and water management.
 - Orkney Local Development Plan 2017:
 - Policy 1: Criteria for All Development.
 - Policy 2: Design.
 - Policy 5: Housing.
 - Policy 8: Historic Environment and Cultural Heritage.
 - Policy 13: Flood Risk, SuDS and Waste Water Drainage.
 - 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. Planning permission is sought to erect a house with an air source heat pump including temporary siting of caravan on a site at Ha'breck Green (near Trenabie Mills), Pierowall, Westray, as outlined in red on the location plan attached as Appendix 2 to this report.

Principle

- 8.2. The site is located within Pierowall settlement boundary where Policy 5A of the OLDP 2017 supports appropriate residential development outwith allocations where it consists of infill development, conversion, the redevelopment of derelict land/existing premises, or the sub-division of garden ground. The proposal is infill development.

- 8.3. The principle of development is further supported by Policy 5C ‘The Isles Approach for Housing’ of the OLDP 2017 which confirms, “There is a presumption in favour of new housing on the non-linked isles where it accords with ‘The Isles Approach’ set out within the Spatial Strategy”.
- 8.4. The Spatial Strategy confirms that, “Development within the islands, which support permanent resident populations and are served by public transport services, will be supported where it accords with relevant Plan policies and where it shall not place any unacceptable burden on existing infrastructure and services”.
- 8.5. These provisions align with Policy 17 – Rural homes, part a), of NPF4 which states that development proposals for new homes in remote rural areas will be supported where the proposal:
- supports and sustains existing fragile communities;
 - supports identified local housing outcomes; and
 - is suitable in terms of location, access, and environmental impact.
- 8.6. The principle of the proposed development is therefore acceptable, and the development can be supported subject to compliance with other relevant policies.

Design and layout, and setting of the listed building

- 8.7. The application site is in a slightly elevated position within the village and is located approximately 50 metres west of a group of traditional buildings which includes Trenabie Bere Mill and Trenabie Mill, both category B listed buildings. The proposed house is single storey, and comprising two relatively long narrow plans joined by a central flat roof. Whilst on higher ground, the ridge of the proposed house would appear similar to the taller mill and agricultural buildings nearby.
- 8.8. The material finishes, appearance and setting within the site are considered acceptable. The proposed materials – coloured cement fibre cladding, white dry-dash, and stone cladding – are in keeping with the mixed character of the area. A condition would ensure all materials are approved prior to work commencing, in part to ensure full details are provided to help protect the setting of the listed buildings.
- 8.9. Private foul and surface drainage are achieved on site and will be secured by an appropriate condition.

- 8.10. The proposal is acceptable with regards to layout and design and complies with Policy 2 ‘Design’ of the OLDP 2017. Notwithstanding comments raised in the objection, subject to condition regarding materials and by virtue of the scale and proportions, it is considered that the setting of the listed buildings would be adequately protected, in accordance with Policy 8 ‘Historic Environment and Cultural Heritage’ of the OLDP 2017 and Policy 7 ‘Historic assets and places’ of NPF4.

Residential Amenity

- 8.11. Given the separation distances from neighbouring properties, it is considered there would be no unacceptable amenity concerns, and that any issues regarding light pollution would be addressed by condition to secure appropriate external lighting, in accordance with Planning Policy Advice ‘Amenity and Minimising Obtrusive Lighting’ (2021). Comments raised in the objection regarding internal lights and light flicker from a potential television within the house are not of sufficient weight to refuse the application.
- 8.12. Environmental Health has recommended a condition regarding potential noise from the air source heat pump, which would be attached.
- 8.13. The proposal raises no concerns regarding amenity and complies Policy 1 ‘Criteria for all Development’ of the OLDP 2017.

Road Safety

- 8.14. Following consultation, Roads Services has no objection to the proposal subject to a condition regarding construction of the access from the public road. An informative has also been requested relating to any other works to a public road.
- 8.15. The proposal raises no concerns with regards the safety of road users, and the proposal complies with Policy 14 ‘Transport, Travel and Road Network Infrastructure’ of the OLDP 2017.

Flood Risk

- 8.16. The development site is not indicated to be at risk of flooding; however, SEPA flood risk mapping indicates that part of the access track is at a high likelihood (defined as 10% chance in any given year) of coastal flooding. Engineering Services requested that a route for safe access and egress be demonstrated, for the property and for emergency services in the event of a flooding event.

- 8.17. Following submission of a revised plan showing an alternative route, Engineering Services has no objection. The proposal complies with Policy 13 'Flood Risk, SuDS and Waste Water Drainage' of the OLDP 2017 and NPF4 Policy 22 'Flood risk and water management'. As a single house proposal, surface water drainage would be managed within the site, and the final drainage design would be subject to building warrant application.

Temporary Caravan

- 8.18. The siting of a temporary caravan is proposed, and is acceptable for the purposes of accommodation during the house build. A condition would be applied limiting this for a period of two years.

Access/Right of Way

- 8.19. Core path W3 runs along the boundary of the application site to the east and south. The submission raises no concerns that there will be any interference with access to this path. Any impact on access along the path would be a matter for other legislation. Notwithstanding comments raised in the objection, status as a Core Path does not prohibit use of the route as a means of access to a residential development. Maintenance responsibility for the access is a private, civil matter and not a planning consideration.

Biodiversity

- 8.20. Biodiversity measures proportionate to the nature and scale of the proposed development have been submitted, as described in the submitted Biodiversity form (dated 14 June 2024). A condition would ensure the proposed biodiversity measures are carried out. The proposal complies with NPF4 Policy 3 'Biodiversity'.

9. Conclusion

- 9.1. The proposal complies with the relevant policies of the National Planning Framework 4 and the Orkney Local Development Plan 2017. The proposal is acceptable in principle, design, its impact on road safety, flood risk, amenity and biodiversity. There are no material considerations including those raised in the objections that outweigh this conclusion.

For Further Information please contact:

Murray Couston, Planning Officer (Development Management), Email
murray.couston@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

National Planning Framework 4, available [here](#).

Orkney Local Development Plan 2017, available [here](#).

Appendices

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. Throughout the lifetime of the development hereby approved, surface water shall be managed in accordance with the principles of Sustainable Drainage Systems (SuDS) and the guidance set out in CIRIA's SuDS Manual C753. Requisite surface water drainage measures shall be operational prior to the development being brought into use and shall be maintained as operational thereafter and throughout the lifetime of the development.

All surface water shall be contained within the application site and shall be managed to avoid flow into any adjacent road or other land.

Reason: To ensure appropriate management of surface water drainage, in accordance with Policy 13B 'Sustainable Drainage Systems (SuDS)' of the Orkney Local Development Plan 2017, Policy 22 'Flood risk and water management' of National Planning Framework 4, and to protect road safety.

03. Unless prior express planning permission is approved for a further period, the temporary residential caravan(s) hereby approved shall be installed within the site no earlier than one calendar month prior to formal commencement of development and shall be removed from the site and the land restored as domestic curtilage within two years of the date of commencement of development.

Reason: Planning permission is granted on a temporary basis only for the reasons disclosed in the application submission; removal of the caravan and the reinstatement of the land at the end of the temporary period is necessary to safeguard amenity.

04. Notwithstanding details submitted and hereby approved, no development shall commence until full details of all external finishing materials and colours have been submitted to and approved, in writing, by the Planning Authority. The development shall be finished externally wholly in accordance with these approved details.

Reason: For the avoidance of doubt and to ensure a satisfactory standard of development.

05. No other development shall commence until the junction of the existing access track with the public road has been upgraded to the Council's Roads Services standard drawing 'SD-01 Typical Access for Single Development (5-10 houses)', attached to and forming part of this decision notice, including dimensions, road construction, any pipe required, and verge or footway. Thereafter the access 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.

06. The biodiversity conservation measures of vegetation retention along the access track verge and ditch, and the biodiversity enhancement measures of hedge and bulb planting, described in the submitted Biodiversity form (dated 14 June 2024) and shown on the 1:1000 site plan drawing (reference Site Plan C, undated, published 1 July 2024) shall be implemented in full no later than the first planting season following commencement of development. Thereafter the biodiversity measures shall be permanently retained in accordance with the approved details, including replacement of any planting that does not survive, is removed, or is damaged, unless otherwise approved, in writing, by the Planning Authority.

Reason: To ensure biodiversity measures are implemented as required by Policy 3 of National Planning Framework 4.

07. Any exterior lighting employed shall be so positioned, angled and controlled to prevent any direct illumination, glare or light spillage outwith the site boundary.

Reason: 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', in accordance with Planning Policy Advice 'Amenity and Minimising Obtrusive Lighting' (2021).

SITE AT HA'BRECK GREEN
WESTRAY

