



**Item: 6**

**Planning Committee: 25 March 2026.**

**Proposed Siting of House (Subdivision of Curtilage) at Midhouse,  
Tenston Road, Sandwick.**

**Report by Director of Infrastructure and Organisational Development.**

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## **1. Overview**

- 1.1. This report considers an application for the siting of a house, comprising the subdivision of domestic curtilage, at Midhouse, Tenston Road, Sandwick. One valid representation has been received. The development complies with relevant policies, and objections and other material considerations do not merit refusal of the application.

Application Reference:	25/377/PIP.
Application Type:	Planning Permission in Principle.
Proposal:	Siting of a house (subdivision of curtilage).
Applicant:	Mr and Mrs A Manzie.
Agent:	LBCA, c/o Leslie Burgher, Seaview, Halley Road, Deerness, KW17 2QL.

- 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. Recommendation**

- 2.1. It is recommended that members of the Committee:
- i. Approve the application for planning permission in principle in respect of the siting of a house (subdivision of curtilage) at Midhouse, Tenston Road, Sandwick, subject to the conditions detailed in Appendix 1 to this report.

### **3. Consultations**

#### **Scottish Water**

- 3.1. Confirmation of no objection provided.

#### **Islands Archaeologist**

- 3.2. “There are no known historic environmental assets in the proposed development site. Despite the presence of the mound of Shennar Howe, some 140m south-west of the development site, and a number of burial mounds 340m to the south and 400m to the west, there is no indication that there is a likelihood of any in the confined area of the proposed development plot. Therefore, I have no recommendations to make.”

#### **Roads Services**

- 3.3. “It is noted that boundary of the proposed site includes an area that forms part of the public [road], whilst it is not an unusual situation that a landowner own the land upon which the public road is built, the is vested in the local authority for maintenance purposes and shouldn’t be included within the boundary of the of any development site. It should also be noted the public road also includes any verges from the edge of the carriageway surface up to any defined boundary, where there is no defined boundary the road verge up to at least the first 1.5 metres from the edge of the carriageway would be considered as forming part of the public road.

Therefore, whilst Roads Services do not object to this development proposal in addition to the conditions and informative noted below, a further condition should be applied in relation to some form of boundary treatment being provided along the boundary of the site with public road. With the details of the boundary treatment being submitted for agreement by the planning authority in conjunction with Roads Services prior to any works commencing on site, that the approved boundary treatment is installed prior to occupation of any approved dwelling, and thereafter retained in accordance with any additional conditions that may be applied throughout the lifetime of the development...”

#### **Development and Marine Planning**

- 3.4. No response received.

## 4. Representation

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

- Julia Gray, Arburn, Tenston Road, Sandwick.

4.2. The representation is on the following grounds:

- Potential impact on access to a neighbouring field, due to impact on a field gate.
- Impact on agricultural vehicle manoeuvring due to a turning area being included within the proposed curtilage.

## 5. Relevant Planning History

5.1. Planning application

Reference	Proposal	Location	Decision	Date
13/517/PIP.	Siting of a house (subdivision of domestic curtilage).	Midhouse (Land Near), Tenston, Sandwick, KW16 3JA.	Grant subject to conditions.	10.02.2014.

5.2. There is no record of pre-application advice sought for the development.

## 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 14. Design, quality and place.
  - Policy 16. Quality homes.
  - Policy 17. Rural homes.

- Orkney Local Development Plan 2017:
  - Policy 1: Criteria for All Development.
  - Policy 2: Design.
  - Policy 5: Housing.
  - Policy 9: Natural Heritage and Landscape.
  - Policy 14: Transport, Travel and Road Network Infrastructure.
- Supplementary Guidance:
  - Housing in the Countryside (2021).
- Planning Policy Advice:
  - Amenity and Minimising Obtrusive Lighting (2021).
  - Heart of Neolithic Orkney World Heritage Site (2010).
  - National Roads Development Guide (2015).
- Development Management Guidance:
  - Considering and Including Biodiversity in Development (2023).
  - Housing in the Countryside (2024).

## 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 in principle is sought for the siting of a house at Midhouse, Tenston Road, Sandwick, as indicated in the Location Plan attached as Appendix 2 to this report. The site is within the existing lawful curtilage of the dwelling at Midhouse, and it is proposed to subdivide the curtilage to create a site.

### **Principle**

- 8.2. The site is in the countryside (not in a settlement boundary). The principle of the development is therefore considered in relation to Policy 17 'Rural homes' of NPF4, and Policy 5E 'Housing' of the Orkney Local Development Plan. Supplementary Guidance 'Housing in the Countryside' (2021) confirms the multiple provisions for housing in the countryside applied under Policy 5E, and Development Management Guidance (2024) confirms the spatial strategy for housing in the countryside, to align the provisions of Policy 5E in terms of Policy 17 of NPF4.
- 8.3. Critical is the provision of Policy 5E, part v 'The subdivision of a dwelling house or its residential curtilage'. In that regard, the application site area is within land that meets the definition of curtilage, including that it is associated with and is used and maintained as domestic space and has lawful status as curtilage, and is not other land associated with the house that fails to meet the definition.
- 8.4. Having established the status of the land as curtilage, it is confirmed that the curtilage to be subdivided has served the host house for a period not less than 10 years, the subdivision is achievable without any requirement to extend the existing

curtilage with all parts of the development fully contained within the boundary, and adequate servicing and amenity space is available for both the existing house and the proposed site.

- 8.5. The principle of the development is therefore acceptable in relation to NPF4 and the Orkney Local Development Plan 2017.

### **Access**

- 8.6. Roads Services has confirmed no objection, including in relation to proposed access provision, and including the application site boundary in relation to the boundary of the public road. As noted in the representation, the application site area includes a strip of surface road which acts as a wider section of road or layby. The public road boundary will often include verges and extend beyond the metalled portion of the road. For the purposes of the planning application, it is not necessary to define the extent of the public road, and the application consideration relies on the comments of the Roads Authority. In relation to the comments raised by the objector therefore, and part of the wider section of road being incorporated within the application site area, in the absence of objection from Roads Services or any comment confirming that the wider surfaced area is formally part of the public road, there is no access reason that would merit refusal of the application.
- 8.7. In terms of the field gate access, this is shown in the north-west corner of the application site area, with access from the public road to the field gate relying on crossing through the application site area as submitted. Again, Roads Services has not objected to the planning application, taking account of existing accesses to the public road, and no impacts on road safety are anticipated. Beyond that material consideration, access to the field across land in other ownership, and/or any private rights of access, are a private matter and not relevant to the planning application consideration.
- 8.8. Notwithstanding any uncertainty resulting from the above conclusions, it is notable that the site plan includes annotation that the existing passing place, and the existing field access, are proposed “to remain unaltered”. Overall, and avoiding consideration of any private or legal matters, there are no matters related to access or road safety that would merit refusal of the application, and the development is considered to comply with Policy 14 ‘Transport, Travel and Road Network Infrastructure’ of the Orkney Local Development Plan 2017.

## **Design**

- 8.9. The proposal is in principle only, with no detailed design available at this stage. The indicative site layout provided complies with Policies 1 and 2 of the Orkney Local Development Plan 2017, and the density of the development is appropriate to the surrounding location. The development is also considered compliant with Policy 14 'Design, quality and place of NPF4.

## **National Scenic Area**

- 8.10. The site is located within the Hoy and West Mainland National Scenic Area. Given the scale of development, and proximity of other buildings, it is considered that the proposal would not have a significant effect on the overall integrity of the area or the qualities for which it has been designated, and therefore complies with Policy 9 'Natural Heritage and Landscape' of the Orkney Local Development Plan 2017.

## **Biodiversity**

- 8.11. The site consists of rough grass. The submitted Biodiversity Enhancement Form and measures in the site plan are proportionate to the nature and scale of the proposed development and would be detailed in any future application for approval of matters specified in conditions. The development complies with NPF4 Policy 3 'Biodiversity'.

## **Residential Amenity**

- 8.12. The proposal does not raise any concerns regarding neighbouring residential amenity, due to the distance from other dwellings. The host house of Midhouse is closest; any future house design can take account of separation distance requirements and be appropriately designed to protect residential amenity.

## **9. Conclusion**

- 9.1. The proposed development complies with Policies 1, 2, 5, 9 and 14 of the Orkney Local Development Plan 2017, Policies 3, 14 and 17 of National Planning Framework 4, relevant supplementary guidance and other guidance. The proposal is acceptable in principle, and there are no material considerations, including those raised in the objections, that outweigh this conclusion. The application is therefore recommended for approval, subject to the conditions listed in Appendix 1 to this report.

### **For Further Information please contact:**

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### **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](#).

### **Appendices**

Appendix 1 – Planning Conditions.

Appendix 2 – Location Plan.

## Appendix 1.

01. The development hereby approved to which this planning permission in principle relates must be begun not later than the expiration of five years, beginning with the date on which the permission in principle is granted, which is the date of this decision notice. If development has not begun at the expiration of this period, the planning permission in principle lapses.

Reason: In accordance with Section 59 of the Town and Country Planning (Scotland) Act 1997, as amended.

02. No development shall commence until all matters specified below have been approved on application to the Planning Authority:

- i. A detailed layout of the site of the proposed development including all roads, footways, and parking areas.
- ii. Site levels as existing and proposed, based on a fixed datum point.
- iii. Detailed cross sections of the house on the site, including existing and proposed ground levels, and proposed finished floor level(s), including that all structures be excavated into existing contours without requirement for underbuilding.
- iv. The design and external appearance of the proposed development (all buildings and structures) including details of materials and colours. The total area of buildings shall not exceed one third of the site area.
- v. All hard and soft landscaping proposals for the site of the proposed development (including boundary treatments). Full details of the landscaping of the site (including details of species, sizes, number, type) shall be indicated on a Landscape Plan.
- vi. Details of access and parking arrangements.
- vii. Details of the proposed water supply arrangements.
- viii. Details of the treatment of foul drainage.
- ix. Details of the management of surface water, including in relation to the access. 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.
- x. Details of refuse and recycling bin storage, including for collection.
- xi. The design and location of all boundary walls and fences, noting that a boundary shall be installed to the public road.
- xii. A Biodiversity Enhancement Form, including full details of measures that will be implemented on the site, photographs, and site layout plan showing biodiversity measures including location, size and number of plants/trees/bushes. Names of all plants/trees/bushes should be given, both their common and scientific names. This is to ensure that biodiversity measures are implemented as required by National Planning Framework 4 Policy 3.

Reason: Planning permission is granted in principle only and these specified matters must be approved prior to commencement of development.

03. Hours of work during construction works related to 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 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 this development.

04. In accordance with condition 02 above, no other development shall commence until the access with the public road has been constructed to the Council's Roads Services standard drawing 'SD-01 Typical Access for Single Development (2-4 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.

05. No development shall commence until a condition/dilapidation survey of a defined section of the public road has been carried out by the developer, in conjunction with Roads Services, including any section of the public road used for access/egress to the site by construction traffic. Full details of the survey shall be submitted to, and approved, in writing, by the Planning Authority, in conjunction with Roads Services, including the full length of road to be surveyed. Thereafter, the survey shall be carried out wholly in accordance with approved details and shall be completed again following completion of the development.

This condition/dilapidation survey, and any repairs required to the public road to make good damage which is attributed to this development, including by any vehicles or plant accessing or egressing the sites, shall be funded by the developer. All repairs or other works required to be carried out shall be completed to the satisfaction of the Planning Authority, in conjunction with Roads Services, within three months of completion of the development.

The developer shall also be responsible for maintaining any damage caused to the public road in such a manner that the roads always remain safe for other road users and until permanent repair works are agreed and carried out.

Reason: In the interest of road safety.

