Item: 5

Planning Committee: 25 March 2026.

Proposed Erection of House, Demolition of Redundant House and Erection of Replacement House and Garage at Keldroseed, Lyking Road, Sandwick.

Report by Director of Infrastructure and Organisational Development.

1. Overview

1.1. This report considers an application for the erection of two houses at Keldroseed, Lyking Road, Sandwick. One house is the proposed replacement of an existing redundant house; the application includes the erection of an additional house. No valid representations have been received. Whilst the principle of the replacement house can be accepted, the application must be considered as submitted and there is no policy support for the additional house proposed. Without prejudice to any future resubmission of the replacement house application alone, taking the application as submitted, it is contrary to the provisions of the Local Development Plan and there are no material considerations which merit approval of the application.

Application Reference:	25/368/PP.
Application Type:	Planning Permission.
Proposal:	Erect a house, demolish existing redundant house and erect a replacement house and garage.
Applicant:	Orkney Builders (Contractors) Ltd, c/o Sinclair Craigie, 4 Crowness Road, Kirkwall, KW15 1RG.

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. Refuse the application for planning permission in respect of the proposed erection of a house, demolition of an existing redundant house and erection of a replacement house and garage at Keldroseed, Lyking Road, Sandwick.

3. Consultations

Roads Services

3.1. "No adverse comment provided the undernoted conditions and informative to any planning permission that may be granted."

Development and Marine Planning - Environment

3.2. "The site is within 0.5km of the Site of Special Scientific Interest and Special Areas of Conservation of the Loch of Stenness. Therefore, particular care will be required to present contaminated run-off reaching the loch.

The proposal seeks to offset the removal of scrub and long grass through new planting, assuming a net biodiversity gain. However, abandoned buildings and unmanaged vegetation can already support significant wildlife, including nesting birds protected under the Wildlife and Countryside Act 1981 and National Planning Framework 4 Policy 4.

Existing tall vegetation and ruins may provide valuable habitat for birds, invertebrates and small mammals. Replacing scrub and long grass with managed lawns would not constitute biodiversity enhancement.

To achieve genuine enhancement, the landscaping scheme should clearly specify diverse, wildlife-supporting planting, including native species and flowering plants that benefit pollinators across seasons."

Scottish Water

3.3. No objection.

4. Representations

4.1. No valid representations (objections) have been received.

5. Relevant Planning History

5.1. There are no records of planning history of the site.

5.2. No pre-application advice was provided prior to submission of the application. However, given the uncertainty regarding the additional house proposed, advice was provided at the validation stage as follows:

"…To be absolutely fair to any applicant before a fee is taken and the application validated, we try to be clear on the implications. Therefore:

- If no evidence exists that the building was occupied as a house, it can be regarded as a redundant building, and replaced on a one-for-one basis (a single house only).
- If evidence is provided that the building was occupied as a house, it can be replaced either as a redundant building or as a former house. Any residential use of the land is long abandoned, but if supported by evidence that the land was residential in recent decades, there may be the basis of a case for the second house.

Whilst the redundant building was sold in a 3850 square metre plot, we must bear in mind that a replacement house sitting in a large parcel of ground, does not automatically justify making use of that land by erecting an additional house.

Therefore, please (1) confirm the policy provision proposed for each house, and (2) provide any evidence that the building was ever occupied as a house.

If nothing can be provided, as you know the application would have to be determined on that basis. And you would choose to proceed with the submission based on this clear advice.

The final option, if doubt remains over the second house, is to split the application into two, with no implications on the planning fee, to pursue the replacement house following positive advice, and allowing the other house to be tested should you wish to pursue that with separately."

5.3. This advice provided the option for the application to be divided, for the replacement house part of the proposal to proceed, based on the positive advice, rather than the application considered as a whole. However, the application was submitted for the replacement house and the additional house together.

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 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.
- Supplementary Guidance:
  - Housing in the Countryside (2021).
- Development Management Guidance:
  - 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

Background and proposal

8.1. As noted in section 1 above, planning permission is sought for the erection of a replacement house, including demolition of the existing redundant house, and the erection of an additional house adjacent at Keldroseed, Lyking Road, Sandwick, as indicated in the Location Plan attached as Appendix 1 to this report.

8.2. The planning application site is a large triangular area of land adjacent to the Lyking Road, sloping and overlooking the west end of the Loch of Stenness. A two-storey derelict structure is located relatively centrally within the triangular area; this is in poor condition due to long-term vacancy and weather damage. There are holes in the roof and many of the windows are absent, leaving the building open to the elements at many of the openings. The eastern, lower end of the application site area is characterised by a relatively large area of established shrubs.

Policy context

8.3. The site is located outwith a settlement boundary, and the application must therefore be considered under the housing in the countryside provisions. This is set out in Policy 17 ‘Rural development’ of NPF4, with the alignment of this policy and the Orkney Local Development Plan confirmed in Development Management Guidance ‘Housing in the Countryside’ (2024). This ensures the NPF4 requirement for a tailored approach to rural housing is met, and applies the housing in the countryside policy provisions of Policy 5E of the Orkney Local Development Plan.

8.4. Relevant therefore are the eight specific policy provisions of Policy 5E of the Orkney Local Development Plan, as set out in Supplementary Guidance 'Housing in the Countryside' (2021).

Principle – replacement house

8.5. Information was requested at the validation stage of the application, in terms of the status of the existing redundant building on the site; given the condition of the building, it is not clear visually whether the house was partly built but never completed, or was a house and has degraded to its current condition. Evidence was provided that the building was at one stage occupied as a house, and a sales disposition from 1993 refers to internal domestic fittings.

8.6. As the proposed replacement of a former house therefore, policy provision 5E (iii) is relevant, as the replacement of an existing building or structure. The building is not 'an existing house' but does meet the definition of a 'redundant former house' and therefore the principle of replacing the house can be accepted.

8.7. In cases where the redundant former house has no architectural and/or historic merit, as is the case, the building may be demolished as part of the development, with the replacement house located on the same site. That is the nature of the development as proposed. The principle of the replacement house is therefore acceptable.

Principle – additional house

8.8. The eight policy provisions of Supplementary Guidance 'Housing in the Countryside' (2021) are also relevant in relation to the proposed additional house. Each criterion can be considered in turn:

- (i) The proposed additional house is on open land and does not comprise redevelopment of the structure of the existing former house.
- (ii) Similarly, the proposed additional house does not comprise the conversion of an existing redundant building.
- (iii) There is only one building within the application site area, which is proposed to be utilised for the replacement house described above; the proposed additional house is therefore not the replacement of an existing building. The one-for-one provision exists to replace a former house and create a new house, not to replace a house and create two or more houses.

- (iv) The proposed additional house is not on brownfield land (noting the definition of a brownfield site as land where contaminants are present or suspected of being present and including man-made features exceeding 2m in height).
- (v) The additional house does not comprise the subdivision of an existing house or its residential curtilage. For the avoidance of doubt, curtilage for the purposes of new housing in the countryside is defined in the Supplementary Guidance; the existing redundant building is not a house, and therefore by definition does not have domestic curtilage. Curtilage to be subdivided must have served a host house for 10 years or longer; again, this calculation is not required on the basis the existing building is not a house. A curtilage cannot be both created and subdivided in the same application.
- (vi) The additional house is not within an 'existing housing group' as defined in the Supplementary Guidance.
- (vii) and (viii) The additional house is not presented as required in connection with a rural business.

8.9. The proposed additional house within the planning application meets none of the criteria for housing development in the countryside. A planning proposal with full support for a one-for-one replacement house, which has been utilised as a means of providing rural houses for many years, cannot be used as the basis for additional arbitrary housing sites in the countryside.

Principle – summary

8.10. The principle of the replacement house is acceptable, in replacement of the existing redundant former house, in relation to Policy 5E of the Orkney Local Development Plan. However, the proposed additional house has no policy justification and is simply submitted alongside the part of the development that can be supported. The option to split the proposal was made to the applicant, but this was declined. The application must therefore be determined as submitted. On the basis one of the houses is contrary to policy, the application overall is contrary to Policy 5E, Supplementary Guidance 'Housing in the Countryside' (2021), and Policy 17 of NPF4. Refusal of the application as submitted, is without prejudice to any future resubmission for the single replacement house, which could be supported.

Access

8.11. Roads Services raised no objection to the proposal, subject to conditions including formation of an access in accordance with a Roads Services standard drawing, together with the undertaking of a pre- and post-construction condition / dilapidation survey of a defined section of the public road. These measures are to safeguard public road infrastructure and to ensure that any damage attributable to construction traffic is appropriately remedied.

Design

8.12. The Site 1 proposed design consists of a two-storey house with a simple rectangular plan, and a dual-pitched roof with a smaller section of flat roof to the south elevation. The overall scale, form and massing comply with Orkney Local Development Plan 2017 Policy 2 'Design'. External finishes include dashed blockwork, dark grey concrete roof tiles, dark grey windows and doors, black rainwater goods, and a fibre cement cladding feature.

8.13. Site 2 consists of a proposed single-storey house. Again, the overall design complies with Orkney Local Development Plan 2017 Policy 2 'Design', with a similar palette of materials including dashed blockwork, dark grey concrete roof tiles, dark grey windows and doors, and black rainwater goods.

National Scenic Area

8.14. The site is located within the Hoy and West Mainland National Scenic Area. Given the scale of development, and proximity of other buildings, it 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.

Residential Amenity

8.15. The proposal does not raise any concerns regarding neighbouring residential amenity in terms of loss of privacy or daylight, due to the distance from other dwellings, including within the site area. Therefore, the proposal complies with Policy 1 'Criteria for All Development' of the Orkney Local Development Plan 2017.

Biodiversity

8.16. The proposal includes a biodiversity enhancement form and proposed measures. However, the conclusion of the additional house would necessitate the removal of a relatively large area of established shrubs/scrub from the site, with this proposed

to be mitigated by new planting. The requirements of Policy 3 'Biodiversity' of NPF4 is to enhance biodiversity, not only to mitigate impacts, and not facilitate development proposals that would result in a loss of biodiversity overall. As stated in the consultation response from the Environmental Planner, such existing vegetation can support significant wildlife, including nesting birds.

8.17. It is concluded that removal of the existing established scrub and its replacement as proposed would not meet biodiversity enhancement policy requirements.

8.18. Further information was not requested regarding biodiversity enhancement as the fundamental principle of the application is not acceptable.

Drainage

8.19. Given the slope of the site and the proximity of a loch designated for natural heritage interests, details were requested regarding proposed treatment of foul drainage. Adequate details have been provided, including testing on site of ground conditions, and it is considered that foul drainage can be adequately managed on site.

9. Conclusion

9.1. The principle of a new house on Site 1 is acceptable as a replacement of the existing redundant former house, under the provisions of Policy 5E of the Orkney Local Development Plan 2017, and Supplementary Guidance 'Housing in the Countryside' (2021). Technical matters including access and drainage can be addressed. Proposed designs are acceptable, and the development would have no unacceptable impact on the integrity of the National Scenic Area.

9.2. However, the proposed additional house formed as Site 2 has no basis in policy. Whether submitted as a stand-alone proposal or in conjunction with another house which can be supported, the house in Site 2 is contrary to all relevant policy provisions of Policy 5E of the Orkney Local Development Plan 2017, and Supplementary Guidance 'Housing in the Countryside' (2021), and Policy 17 'Rural homes' of NPF4. The development must be considered as submitted overall, and the applicant did not take the option of splitting or reducing the proposal, an order for the 'supportable' part of the submitted development to be progressed.

10. Reasons for Refusal

10.1. Taken as a whole, the proposed development is contrary to Policy 17 'Rural homes' of National Planning Framework 4, Policy 5 'Housing' of the Orkney Local Development Plan 2017, and Supplementary Guidance 'Housing in the Countryside' (2021). Specifically, there is no provision for the proposed house in Site 2, which meets none of the criteria for housing in the countryside.

10.2. The development proposed includes removal of an established area of shrubs/ scrub, and measures proposed would not secure biodiversity enhancement. The development is therefore contrary to Policy 3 'Biodiversity' of National Planning Framework 4.

For Further Information please contact:
Isla McLeod, Graduate Planner (Development Management), extension 2758. Email isla.mcleod@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. Should Members be minded to approve the application (see section 10 Risk below), it is recommended that powers be delegated to the Director of Infrastructure and Organisational Development to determine appropriate conditions to be attached to the consent.
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 approve the application, it is imperative that clear reasons for proposing the approval of planning permission, on the basis of the proposal being in compliance with development plan policies and contrary to the officer's recommendation, be given and minuted. 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 – Location Plan.

Voy

Roselea

Keldroseed

Easter Voy Cottage

Well

Well

Existing house to be demolished

Existing fence

Fence

Existing 11kV line

Exclusion zone

Planting:
Bushes and small trees

Development site

Upper parking area

Grass

Gravel

+17.5

FFL 14.8

House 1

FFL 15.1

5m min

5m min

Fence

Gravel

+15.5

+17.0

Grass

Lower parking area

Fence

Existing track and right of way to Easter Voy to be made good

Planting:
Bushes and small trees

16.0+

14.0+

14.0+

5m min

House 2

FFL 14.15

+14.0

+15.0

Fence

Grass

Gravel

13.6+

+13.6

+12.0

+12.5

+14.5

+14.0

Wastewater treatment plant and soakaway

Fence

201.4m

79.5m

16.0m

2.4m

Visibility splays

Existing access to be upgraded with tarmac to 5m from road

A

B

C

0m 20m

SCALE

Planting for biodiversity:
Area of bushes and small trees chosen from Orkney Stock of the following species:
DOWNY BIRCH (Betula pubescens)
ROWAN (Sorbus aucuparia)
Eared Willow (Salix aurita)
Grey Willow (Salix cinerea)
Tea-leaved Willow (Salix phylicifolia)
Creeping Willow (Salix repens)
Glandular Dog Rose (Rosa squarrosa)
Glaucous Dog Rose (Rosa vosagiaca)

Fences to be post and wire

Consents

Amendments

Client:
Orkney Builders (Contractors) Ltd
Project:
Keldroseed
Drawing:
Site
Scale: A2
Drawn: jlb

Leslie Burgher
Chartered Architect
Seaview Deerness Orkney KW17 2QL
t: 077303 10110 e: leslie@leslieburgher.co.uk

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