

Item: 4

**Planning Committee: 9 October 2024.** 

Erect Two Houses with Air Source Heat Pumps at Johnston's Road, Rousay.

Report by Corporate Director for Neighbourhood Services and Infrastructure.

#### 1. Overview

1.1. This report considers an application for planning permission for the erection of two houses with air source heat pumps at Johnston's Road, within the settlement boundary of Brinyan, Rousay. The design is considered acceptable in relation to existing local development. One 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:	22/486/PP.		
Application Type:	Planning permission.		
Proposal:	Erect two houses with air source heat pumps.		
Applicant:	Rousay, Egilsay and Wyre Development Trust, C/o Mr David Campbell.		
Agent:	R Clouston Ltd, 10 Grainshore Drive, Hatston Industrial Estate, Kirkwall.		

1.2. All application documents (including plans, consultation responses and valid representations) are available for members to view <a href="here">here</a> (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:
  - Approve the application for planning permission in respect of the proposed erection of two houses with air source heat pumps at Johnston's Road, Rousay, subject to the conditions detailed in Appendix 1 to this report.

#### 3. Consultations

#### 3.1. Roads Services

The development will result in the loss of two parking spaces adjacent to No 6 Johnston's Road, however given that they appear to have been marked in an area that appears to be part of the turning area at the end of the road, the loss of the spaces while not ideal is accepted on this occasion.

It is also noted that on the Proposed Site plan drawing No 002 Rev B that there is a shaded area adjacent to No 6 Johnston's Road which is annotated as 'CONNECT TO EXISTING ROAD AND PATH'...the developer should provide updated drainage information to include this area and provide details of the proposed construction for this area.

#### 3.2. Scottish Water

No objection. A water main runs along the east boundary of the site; accordingly, a 3 metre standoff zone has been designated within Plot 2.

#### 3.3. Engineering Services

"The coefficient of permeability obtained through site investigation (0.000041m/s) has been applied to the Brett Landscaping Ltd. calculations relating to the road area between Plots 1 and 2 and the north end of Johnston's Road, along with an appropriate gradient. The outputs relate to a 1:200 year event with a 40% climate change uplift and indicate that a permeable pavement constructed in a way that reflected the Brett Landscaping calculations would be acceptable in terms of performance.

The (Causeway software) calculations provided for the permeable paving proposed for Plots 1 and 2 continue to be based upon a gradient of 1:200 rather than the 1:30 (approximately) proposed for the new surfaces proposed. These calculations, therefore, do not reflect the proposed arrangement. Also, the contributing areas for the drainage serving Plots 1 and 2 do not appear to be shown.

The drainage calculations for Plots 1 and 2 should be amended to reflect the installation proposed. In addition, although it is noted that a typical detail of internal check dams has been provided, the locations of any internal check dams proposed for the permeable paving serving Plots 1 and 2 as well as that serving the shared road area should be provided on a plan.

With the surface water drainage and therefore flood risk outside the development being dependant upon effective infiltration devices, relevant calculations and sufficient detail on what is proposed are required. It is therefore recommended that provision of satisfactory information relating to the above be a requirement prior to the commencement of construction."

# 4. Representations

- 4.1. One valid representation (objection) has been received from:
  - Paul Stewart, 5 Johnston's Road, Rousay, KW17 2PZ.
- 4.2. The valid representation is on the following grounds:
  - The scale and dominance of the proposed building within its context.
  - The residential character of the area.
  - Overshadowing and loss of natural light to neighbouring residential properties.
  - Noise impact from construction activities.
  - Standing water around existing properties.

# 5. Relevant Planning History

#### 5.1. Planning applications

Reference	Proposal	Location	Decision	Date
93/23/243/PPF.	la a a a a a . a al	Trumland Pier (Near) Rousay.	Granted - Conditional Consent	08.09.1993
93/23/107/PPO.	houses and	Trumland Pier (Near), Rousay.	Outline planning permission.	12.05.1993

## 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 <a href="https://example.com/here/beat-4016">here</a>.
- 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:
    - o Policy 3. Biodiversity.
    - o Policy 14. Design, quality and place.
    - o Policy 16. Quality homes.
    - o Policy 17. Rural homes.
    - o Policy 22. Flood risk and water management.
  - Orkney Local Development Plan 2017:
    - o Policy 1: Criteria for All Development.
    - o Policy 2: Design.
    - o Policy 3: Settlements, Town Centres and Primary Retail Frontages.
    - o Policy 5: Housing.
    - o Policy 9: Natural Heritage and Landscape.
    - o Policy 13: Flood Risk, SuDS and Waste Water Drainage.
    - o Policy 14: Transport, Travel and Road Network Infrastructure.
  - Supplementary Guidance:
    - o Settlement Statements (2017).
  - Planning Policy Advice:
    - o Amenity and Minimising Obtrusive Lighting (2021).

# 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:
  - o Identify any provisions of the development plan which are relevant to the decision.
  - o Interpret them carefully, looking at the aims and objectives of the plan as well as detailed wording of policies.
  - o 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:
  - o It should serve or be related to the purpose of planning. It should therefore relate to the development and use of land.
  - o 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.
- o The National Planning Framework.
- Designing Streets.
- Scottish Government planning advice and circulars.
- o EU policy.
- A proposed local development plan or proposed supplementary guidance.
- Community plans.
- o 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 two single storey dwellings including the extension of Johnston's Road, as indicated in the Location Plan attached as Appendix 2 to this report. Brinyan is a defined rural settlement located on the south coast of Rousay. The application site is to the north of Johnston's Road and west of Pier Houses. Existing houses in the area are semi-detached, both single storey and two storey.
- 8.2. The proposed dwellings would be of simple modern form and single storey design, located centrally within the plots, perpendicular to each other. The houses are both two bedroomed units finished with white dry dashed walls, cement fibre clad porches, black roof tiles, anthracite grey window frames and grey doors, solar panels and air source heat pumps.
- 8.3. The land slopes from the public road (B9065) to the north of the site towards the coast; the sloping nature of the site requires that retaining walls are included within the design.

#### Principle

- 8.4. The Spatial Strategy of the Orkney Local Development Plan 2017 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. In turn, Policy 5C 'The Isles Approach for Housing' 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."
- 8.6. Policy 5A 'Housing and Settlements' confirms that the development is considered infill developments of housing allocations, which will be supported where it accords with the relevant settlement statement. The development accords with Policy 5A, and the principle of the housing development is therefore accepted.
- 8.7. These provisions align with Policy 17 c) of NPF4 which states: "c) Development proposals for new homes in remote rural areas will be supported where the proposal: i. supports and sustains existing fragile communities; ii. supports identified local housing outcomes; and iii. is suitable in terms of location, access, and environmental impact."
- 8.8. The principle of housing development in Rousay is therefore acceptable.

#### **Residential Amenity**

- 8.9. The houses would be to the north of Johnston's Road, fronting onto the turning head off the extended Johnston's Road. The gables would be blank, including facing towards the adjacent 5 and 6 Johnston's Road. The rear elevation of Plot 2 would face onto 7 Pier Houses, and at less than 21 metres, a 1.2-metre-high fence would be required to avoid overlooking and loss of privacy. It is therefore considered that the proposed dwellings would be unlikely to have a significant impact on the residential amenity of the dwellings in Johnston's Road or Pier Houses through overlooking or overshadowing.
- 8.10. There is sufficient amenity and parking space within the curtilage of each of the dwellings. A condition would be attached to an approval to ensure that any external lighting used on the buildings on the sites would minimise light pollution as required by Planning Policy Advice: Amenity and Minimising Obtrusive Lighting (March 2021).

- 8.11. The objector raised concerns that the development would have an adverse impact in terms of privacy, given the higher elevation of the proposed site and that privacy is already limited. It was also raised that natural light would be reduced due to the proximity and dimensions of the two proposed buildings, as was noise from construction activities. As described above, the layout of the development and distances between buildings, in conjunction screen fencing and mitigation, are sufficient to protect residential amenity.
- 8.12. Noise would result from construction works. However, these works would be relatively short-term, and hours of work would be restricted by condition. This is considered proportionate, notwithstanding sensitivity to noise at neighbouring properties, and is balanced against the provision of housing within an existing village settlement. The proposal would comply with Policy 1 'Criteria for All Development' and NPF4 Policy 16.

#### **Design, Housing Density and Layout**

- 8.13. The objection raises concern regarding design, density and layout, as well as concerns regarding the loss of an open aspect and the proposal not being inkeeping with the Orkney landscape and the surrounding settlement.
- 8.14. In consideration of these matters, the existing settlement is a mixture of building styles and includes both modern and traditional development. The proposed development is located within a relatively modern housing development, with these houses any variety of plot sizes. The proposed houses are a simple modern design and palette of materials. The scale, design and form of the proposed houses are considered acceptable, and the development would be unlikely to have a significant impact on the character of the area.
- 8.15. The dwellings would not exceed one third of their respective plots and each plot would be of adequate size to provide outdoor amenity space and off-street parking. It is considered that the proposed development would be acceptable in terms of design and appearance and would accord with Policy 1 'Criteria for all Development' and Policy 2 'Design', and relevant sections of the Supplementary Guidance: Settlement Statements.

#### **Biodiversity**

8.16. The application site is unused land associated with previous housing development. This application was submitted prior to adoption of NPF4. As such, the submission was made in relation to Policy 9 'Natural Heritage and Landscape' of the Local Development Plan (rather than Policy 3 of NPF4 as would be the case for a current

submission). There are trees and shrubs on the western boundary and southern boundary of the site which would not be affected by the development and additional planting along the northern boundary is proposed which would be a mixture of bay willow, hawthorn and rose. A landscape condition would address landscaping including types of planting and future maintenance, to accord with Policy 9.

#### Drainage

- 8.17. The applicant has prepared a drainage strategy for the site, and there have been several amendments to this document during consideration of the application, to address both new houses as well as associated parking and new access.
  Engineering Services and Roads Services are satisfied that the information is acceptable, and the surface water drainage details could be approved subject to condition.
- 8.18. The objector has advised that whenever there is a period of prolonged rain here a lot of standing water is created around 5 and 6 Johnston's Road. However, the technical assessment by the relevant consultation bodies concludes that the development would have no unacceptable impact.
- 8.19. There is no objection from SEPA, Scottish Water or Engineering Services in respect of drainage. The development would meet the relevant standards in respect of surface water drainage and is considered to comply with Policy 13 'Flood Risk, SuDS and Waste Water Drainage'.

#### **Access**

- 8.20. The development would result in the loss of two parking spaces adjacent to number 6 Johnston's Road. However, those two parking spaces are marked in an area that is part of the turning area at the end of the road, and Roads Services confirms that the loss of the spaces can be accepted on this occasion.
- 8.21. There is no objection to this area being upgraded and used as an access to the development site, the area is not included within the boundary of the site and is not part of the adopted road network. That part of the access has not been included in the drainage design but would contribute to the impervious area of the site once constructed, therefore further drainage information would be required, and be subject to condition.

### 9. Conclusion

9.1. The proposed development complies with Policies 1, 2, 3, 5, 9, 13 and 14 and the Spatial Strategy of the Orkney Local Development Plan (2017), Policies 3, 14, 16, 17 and 22 of National Planning Framework 4, Supplementary Guidance -Settlement Statements (2017) and Planning Policy Advice 'Amenity and Minimising Obtrusive Lighting' (2021). The proposal is acceptable in principle, and in terms of residential amenity, character of the area, drainage and roads. There are no material considerations including those raised in the objections that outweigh this conclusion.

#### For Further Information please contact:

Margaret Gillon, Senior Planner (Development Management), Email margaret.gillon@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.
- 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 <u>here</u>. National Planning Framework 4, available <u>here</u>.

## **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. No development shall commence until a scheme for the maintenance, in perpetuity, of all communal areas, including roads, footpaths and on-site green spaces and/or other spaces, facilities, and those elements of both foul and surface water drainage regimes not maintained either by the Council or Scottish Water, have been submitted to, and approved in writing by, the Planning Authority. Thereafter, the approved scheme shall be implemented in full and in accordance with the timescales contained therein.

Reason: To ensure that all communal spaces, facilities and landscaping areas are properly managed and maintained.

03. No development shall commence until a Construction Method Statement has been submitted to, and approved in writing by, the Planning Authority. The statement shall provide for:

- The parking of vehicles of site operatives and visitors.
- Loading and unloading of plant and materials.
- Storage of plant and materials used in constructing the development.
- The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate.
- Measures to control the emission of dust and dirt during construction.
- A scheme for recycling/disposing of waste resulting from demolition and construction works.

For the avoidance of doubt there shall be no burning or burying of waste within the site.

The approved Construction Method Statement shall be applied and complied with throughout the construction period.

Reason: To safeguard the amenity of neighbouring properties and occupants.

04. Notwithstanding approved details of the communal foul drainage scheme, no development shall commence until full details of connection of all houses to the Waste Water Treatment Works have been submitted to, and approved in writing by, the Planning Authority. Thereafter, the connection as approved shall be implemented in full.

Reason: In order to protect people and the environment from the impact of waste water and ensure the connection to the public sewerage network is achieved where appropriate.

05. No development shall commence until full details of the management of surface water have been submitted to, and approved in writing by, the Planning Authority in conjunction with Engineering Services. These details shall include all elements of the shared access road including prevention of the flow of surface water from the shared access road into land adjacent; and addressing all matters outstanding including the correct calculation relating to the site gradient as proposed, contribution area, drainage calculations and sufficient details to enable flood risk to be fully assessed. Thereafter, the development shall be constructed wholly in accordance with approved details and shall be retained in accordance with these details throughout the lifetime of the development.

Reason: To ensure the provision of an adequate surface water drainage system and to accord with Policy 13B 'Sustainable Drainage Systems (SuDS)' of Orkney Local Development Plan 2017.

06. Throughout the lifetime of the development hereby approved, all surface water within the application site area shall be treated in accordance with the principles of Sustainable Drainage Systems (SuDS) and be compliant with the guidance set out in CIRIA's SuDS Manual C753. Requisite surface water drainage shall be operational prior to first occupation of the development 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 runoff to the public road or adjacent land.

Reason: To ensure the provision of an adequate surface water drainage system and to accord with Policy 13B 'Sustainable Drainage Systems (SuDS)' of Orkney Local Development Plan 2017.

07. No other development shall commence until completion of the section of footway along the public road and the refuse / recycling bin collection area. These works shall be completed wholly in accordance with construction details as shown on drawing J8614, to the satisfaction of the Planning Authority, in consultation with Roads Services. Only the approved details shall be constructed and thereafter these details shall be maintained to the approved standard, unless/until it is adopted for maintenance under the Roads (Scotland) Act 1984 (as amended).

Reason: To ensure the timely provision of an appropriate means of access and servicing in the interests of road safety.

08. The development hereby approved shall not be occupied or otherwise brought into use until all communal parts of the proposed shared access track are finished with a bituminous surface, or other sealed surface agreed, in writing, by the Planning Authority and in accordance with construction details as shown on drawing J8614 to the satisfaction of the Planning Authority, in consultation with the Roads Authority.

Reason: To ensure an appropriate specification and finish for communal accesses within a settlement as identified by Supplementary Guidance: Settlement Statements.

09. All landscaping works shall be carried out in accordance with the proposed site plan (reference J8614). No development shall commence until full details of the number, density and species of trees proposed to be planted, and full details of any existing trees or shrubs on the site to be pruned or removed, have been submitted to, and approved in writing by, the Planning Authority. All approved planting and

seeding shall be carried out in the first planting season following the commencement of the development, unless otherwise stated within the approved details. Any trees or plants which, within a period of five years from the completion of the development, die or for whatever reason are removed or damaged shall be replaced in the next planting season with others of the same size and species, unless otherwise agreed, in writing, by the Planning Authority.

Reason: In order to ensure that the approved landscaping works are properly undertaken on site and that biodiversity measures are implemented as required by Policy 9 of the Orkney Local Development Plan 2017.

10. Throughout the lifetime of the development hereby approved, any external lighting used on the approved houses shall be downward facing only and shall comply with the requirements Policy 2 (principle vi), to minimise light pollution and 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.

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

11. 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.

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

12. No house hereby approved shall be occupied until all approved and associated means of enclosure have been constructed wholly in accordance with approved details, including screen fencing. No development shall commence until full details of all screen fencing, including height and location, have been submitted to, and approved in writing by, the Planning Authority. Thereafter, the means of enclosure shall be constructed and permanently retained in accordance with the approved details.

Reason: In the interests of the residential amenity of occupants, and to protect the privacy and visual amenity of the area.

13. No development shall commence until full details of finished floor levels and garden ground levels, including full contour plans at 0.5 metre intervals, have been submitted to, and approved in writing by, the Planning Authority. Thereafter, all ground levels shall be finished wholly in accordance with approved contour plans.

Reason: To ensure that there is no increased risk of flooding.

14. The 3 metre standoff zone from the water main along the east boundary of the site shall be keep clear of any planting, buildings or structures throughout the lifetime of the development; the only exception is if planting, buildings or structures are

agreed in writing by Scottish Water and confirmation of any such agreement is provided to the Planning Authority in advance of the planting, or erection of the building or structure.

Reason: To protect public water infrastructure.

