



ORKNEY
ISLANDS COUNCIL

Item: 4

Local Review Body: 21 August 2025.

Proposed Siting of House for Retiring Farmers near Upper Ellibister, Rendall (24/449/PIP).

Report by Chief Executive.

1. Overview

- 1.1. Planning application 24/449/PIP in respect of the proposed siting of a house for retiring farmers near Upper Ellibister, Rendall, was refused by the Appointed Officer on 3 June 2025.
- 1.2. Under the Town and Country Planning (Scotland) Act 1997 (the Act) and the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013 (the Regulations), where an application for planning permission for local development has been determined by the Appointed Officer in accordance with the Council's Planning Scheme of Delegation, the applicant is entitled to seek a review of that decision by the Local Review Body.
- 1.3. The applicant's agent has submitted a Notice of Review (see Appendix 1) requesting that the decision of the Appointed Officer, referred to at paragraph 1.1 above, be reviewed. The agent has indicated that they think the most appropriate way for the review to be conducted is by site inspection only, with no other further procedure.
- 1.4. A letter from the Chief Planner, Scottish Government, issued in July 2011, confirmed that a review by a Local Review Body should be conducted by means of a full consideration of the application afresh.
- 1.5. Section 21 of the Scheme of Administration states that the Local Review Body will undertake unaccompanied site inspections for all planning applications subject to a local review, prior to meeting to consider the review. The purpose of the site inspection, together with the procedure to be adopted, are set out in section 21.2 of the Scheme of Administration. The applicants' agent and interested parties have been advised that an unaccompanied site inspection to the site near Upper Ellibister, Rendall, is due to be undertaken on 21 August 2025 at approximately 09:40.
- 1.6. The review procedure is set out in section 4 below.

2. Recommendations

- 2.1. The Local Review Body is required to:
 - i. Determine whether it has sufficient information to proceed to determination of the review, and if so whether to uphold, reverse or vary the decision of the Appointed Officer.
- 2.2. Should the Local Review Body determine that the decision is reversed or varied, it is required to:
 - i. Determine the reasons, and, if applicable, the relevant matters in respect of potential conditions to be attached to the decision notice.
- 2.3. Should the Local Review Body determine that the decision is reversed or varied, it is recommended that members of the Local Review Body:
 - i. Delegate powers to the Chief Executive, following consultation with the Planning Advisor and the Legal Advisor, to determine the necessary conditions and informatives, if appropriate, to attach to the Decision Notice.
- 2.4. Should the Local Review Body determine that it does not have sufficient information to proceed to determination of the review, it is required to:
 - i. Determine what further information is required, which parties are to be requested to provide the information, and whether to obtain further information by one or more of the following methods:
 - By means of written submissions under the procedure set out in Regulation 15 of the Regulations; and/or
 - By the holding of one or more hearing under the Hearing Session Rules set out in Schedule 1 of the Regulations.

3. Planning Authority Decision

- 3.1. The Planning Handling Report, Planning Services file and the Decision Notice are attached as Appendices 2, 3 and 4 to this report.
- 3.2. On 3 June 2025, the Appointed Officer refused planning application 24/449/PIP on the following grounds:

01. The proposed site location would not reflect the character of the surrounding area and would appear incongruous and intrusive due to inappropriate siting within the landscape. The development fails to comply with Policy 1 “Criteria for All Development”, points i and ii, of the Orkney Local Development Plan 2017.

02. The proposed site location does not reflect the local settlement pattern, nor would it reinforce the distinctive identity of Orkney’s rural built environment and is not sympathetic to the character of the local area. The development fails to comply with Policy 2 “Design”, points i and ii, of the Orkney Local Development Plan 2017.

03. The proposed development fails to meet policy requirements for a new house in the countryside. Insufficient justification is provided in relation to Policy 5E (viii) for the Provision of a Single Dwelling House to allow for Retirement and Succession of a Farm. For a planning application to benefit from the provisions of this policy, it must be located with existing buildings at the business. The principle and the location sit together, and it would be contrary to the policy for the principle to be accepted and the requirements of the policy to be abandoned. The development is therefore contrary to Policy 5E “Housing – Single Houses and new Housing Clusters in the Countryside” of the Orkney Local Development Plan 2017.

4. Local Review Procedure

- 4.1. In response to a Notice of Review, “interested parties” are permitted to make a representation to the Local Review Body. “Interested parties” include any party who has made, and not withdrawn, a representation in connection with the application. A representation was received from Development Management and is attached as Appendix 5.
- 4.2. In instances where a representation is received from an “interested party”, the applicant is afforded the opportunity to make comments on any representation received. No further comment was received from the applicants and/or their agent.
- 4.3. The Local Review Body may uphold, reverse or vary the decision of the Appointed Officer. In the event that the decision is reversed, an indication of relevant matters, in respect of potential planning conditions, are as follows:
 - Duration of consent.
 - All matters to be specified, to be subject to further application.
 - Agricultural occupation.
- 4.4. All conditions should be in accordance with Planning Circular 4/1998 regarding the use of conditions in planning permissions.

- 4.5. If the decision is reversed and the development is approved, it is proposed that powers are delegated to the Chief Executive, following consultation with the Planning Advisor and the Legal Advisor, to determine the necessary conditions and informatics, based on the relevant matters agreed in terms of section 4.3 above.
- 4.6. If the Local Review Body decides that further procedure is required, it may decide to hold a pre-examination meeting to consider what procedures to follow in the review, or to obtain further information by one or more of the following methods:
- By means of written submissions under the procedure set out in Regulation 15 of the Regulations 2013; and/or.
 - By the holding of one or more hearing under the Hearing Session Rules set out in Schedule 1 of the Regulations.

5. Relevant Planning Policy and Guidance

- 5.1. Section 25 of the Act as amended 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...”.
- 5.2. The full text of the Orkney Local Development Plan 2017 (OLDP 2017) and other supplementary planning advice and guidance can be read on the Council website [here](#). Although the Orkney Local Development Plan 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.
- 5.3. National Planning Framework 4 was approved by Parliament on 11 January 2023 and formally adopted by Scottish Ministers on 13 February 2023. The statutory development plan for Orkney consists of the National Planning Framework and the Orkney Local Development Plan 2017 and its supplementary guidance. In the event of any incompatibility between a provision of National Planning Framework 4 and a provision of the Orkney Local Development Plan 2017, National Planning Framework 4 is to prevail as it was adopted later. It is important to note that National Planning Framework 4 must be read and applied as a whole, and that the intent of each of the 33 policies is set out in National Planning Framework 4 and can be used to guide decision-making.

5.4. It is for the Local Review Body to determine which policies are relevant to this application; however the policies listed below were referred to by the Appointed Officer in the Planning Handling Report:

- National Planning Framework 4:
 - Policy 1 – Tackling the climate and nature crises.
 - Policy 2 – Climate mitigation and adaptation.
 - Policy 3 – Biodiversity.
 - Policy 5 – Soils.
 - Policy 14 – Design, quality and place.
 - Policy 15 – Local Living and 20 minute neighbourhoods.
 - Policy 16 – Quality homes.
 - 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 13 – Flood Risk, SuDS and Waste Water Drainage.
 - Policy 14 – Transport, Travel and Road Network Infrastructure.
- Supplementary Guidance:
 - Housing in the Countryside.

For Further Information please contact:

Gavin Barr, Planning Advisor to the Local Review Body, extension 2530, Email: gavin.barr@orkney.gov.uk.

Implications of Report

1. **Financial:** All resources associated with supporting the review procedure, mainly in the form of staff time, are contained within existing revenue budgets.
2. **Legal:** The legal implications are set out in the body of the report.
3. **Corporate Governance:** In accordance with the Scheme of Administration, determination of Notices of Review is delegated to the Local Review Body.
4. **Human Resources:** None.
5. **Equalities:** None.
6. **Island Communities Impact:** None.
7. **Links to Council Plan:** The proposals in this report support and contribute to improved outcomes for communities as outlined in the following Council Plan strategic priorities:

- ☐ Growing our economy.
 - ☐ Strengthening our Communities.
 - ☐ Developing our Infrastructure.
 - ☐ Transforming our Council.
8. **Links to Local Outcomes Improvement Plan:** The proposals in this report support and contribute to improved outcomes for communities as outlined in the following Local Outcomes Improvement Plan priorities:
- ☐ Cost of Living.
 - ☐ Sustainable Development.
 - ☐ Local Equality.
 - ☐ Improving Population Health.
9. **Environmental and Climate Risk:** None.
10. **Risk:** None.
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](#).
Planning Circular 4/1988, available [here](#).

Appendices

Appendix 1 – Notice of Review (pages 1 – 36).
Appendix 2 – Planning Handling Report (pages 37 – 48).
Appendix 3 – Planning Services File (pages 49 – 108).
Appendix 4 – Decision Notice (pages 109 – 112).
Appendix 5 – Representation from Development Management (page 113).

Pages 1 to 112 can be viewed [here](#), clicking on “Accept and Search” and inserting the planning reference “24/449/PIP”.

INFRASTRUCTURE AND ORGANISATIONAL DEVELOPMENT

Director: Hayley Green, MBA (Public Service)
Council Offices, Kirkwall, Orkney, KW15 1NY

Tel: (01856) 873535 extension 2504
Email: planning@orkney.gov.uk

Website: www.orkney.gov.uk



Planning Application:	24/449/PIP
Applicant:	Mr and Mrs D Steven Nicolson
Proposal:	Siting of a house for retiring farmers
Location:	Upper Ellibister (Land Near), Rendall

Notice of Review**Procedure Notice under Regulation 15 of The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013**

This response will not repeat the detailed reasoning behind the refusal of the application. But provide a concise overview of key matters.

The applicant (the retiring farmer) currently occupies a house that is distinct/separate from either parcel of land that forms the agricultural business or steading (albeit in general proximity given the geographical spread of the land). The management of the agricultural operation has been achieved over a number of years by the retiring farmer, from their current residence, not directly on the land.

The fundamental rationale behind Policy 5E (viii) is to allow a new house for a retiring farmer where the farmhouse is being vacated to allow for succession of the agricultural business. This is not the case in this application; the applicant seeks a new house which would neither vacate (free up) a farmhouse for succession purposes, nor would it realise the contribution anticipated in policy, that a retiring farmer can make to the business by being located at a steading.

In terms of that valued contribution that the retiring farmer could make, a case is made that the proposed open location could assist with that contribution. However, the whole agricultural operation was run from the current house. I.e. it doesn't follow that the farm could be managed from the current house, but the retiring farmer couldn't 'help out' from the same location.

Alongside that, whilst the farm was operated from that house, given its location, supporting documents state that the current house "does not and has never formed part of the farming business". The proposal is therefore to simply create a new house site, not a succession situation which is the basis of the policy.

Other applications in Orkney have led to situations where a retirement house is justified, normally at a steading and occasionally where there is agricultural justification for a remote location (which is not provided on this occasion). The agent refers to "precedent for a retiring farmers house to be erected some distance from the main group of farm buildings". But this application is not a typical situation, and as stated above is to create an additional house site on a farm, under the retirement and succession policy provision, when not a farmhouse succession situation.

It is in effect a viable holding being operated from a remote location, and when the current operation model ceases, the operator picking an open site for a house as part of the change in business.

The agent seeks a "common-sense approach worthy of consideration". The conclusion cannot rely on an arbitrary common sense position, or precedent, but must be a policy-based decision. And the development is contrary to policy. Refusal is without prejudice to a future resubmission that follows advice.

Development Management
4 July 2025