



## Report to the Scottish Ministers

### TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

Called in application for planning permission to convert a redundant store to four flats

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Report by [REDACTED] a reporter appointed by the Scottish Ministers

- Case reference: NA-ORK-027
- Site Address: 42 Junction Road, Kirkwall Orkney KW15 1AG
- Application for planning permission (case reference 18/267/PP) dated 30 June 2018 called in by notice dated 31 January 2019
- The development proposed: Change of use from storage to four flats, including installation of Air Source Heat Pumps
- Date of site visit: 2 April 2019

Date of this report and recommendation: 26 April 2019

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Proposed conversion of storage building to form 4 one bedroom flats at 42 Junction Road, Kirkwall, Orkney

• Case reference	NA-ORK-027
• Case type	Called in planning application
• Reporter	[REDACTED]
• Applicant	[REDACTED]
• Planning authority	Orkney Islands Council
• Other parties	Scottish Environment Protection Agency [REDACTED] [REDACTED]
• Date of application	30 June 2018
• Date case received by DPEA	1 February 2019
• Method of consideration and date	Written submissions and accompanied site inspection on 2 April 2019
• Date of report	26 April 2019
• Reporter's recommendation	Refuse planning permission

### Summary of report

This application is to convert an existing storage building to form 4 one bedroom flats.

The building comprises two storeys, in a traditional style, with a predominantly stone exterior. It is located close to the centre of Kirkwall, in an area of mixed uses, in close proximity to two other similar buildings in residential use.

Although superficially in a good state externally, and forming an attractive feature of the street scene, the interior of the building is virtually derelict, with collapsing floors and internal partitions.

Processing of the planning application resulted in receipt of two representations from very close neighbouring residents expressing concern about disturbance from construction noise and possible interference with access to an adjacent car parking area in separate ownership.

Consultations resulted in concerns about flood risk from the council's engineering services staff and the Scottish Environment Protection Agency (SEPA). The ground floor of the converted building would be at risk of flooding to a depth of 0.35 metre during a 1 in 200 year flood event.

Conversion of the semi-derelict building would have the benefits of restoring the building to a new use, retaining it as an attractive component of the street scene, and providing additional housing stock in an accessible town centre location.

Although recommended for refusal by the council's planning staff for flood risk and residential amenity reasons (there would be a potential loss of privacy and overshadowing due to the close proximity of adjacent buildings), the planning committee opted to give priority to the benefits of the proposal, and in doing so set aside the flood risk objection from SEPA. This led to the call in of the application for determination by Scottish Ministers.

Flood risk and residential amenity issues are considered in chapters two and three below. Other relevant local development plan policies are considered in chapter four below. Chapter five brings together these matters, concluding that planning permission should be refused.

The reason for this conclusion and recommendation is that although the proposed conversion of the building would offer very significant benefits (summarised above), the high risk and very serious consequences of flooding of the new flats would be so severe that they outweigh the undoubted benefits of the proposal.

An investigation is currently in progress to address surface water management issues in Kirkwall. It is expected to be completed in June 2019. The results of this study are therefore not currently available, and any actions arising may take some time for implementation. However the study may in due course open the way for the flood risk at the application site to be reduced to an acceptable level.

Restoration of this building is highly desirable, so it is hoped that the applicant can pursue a creative and innovative approach to achieve a residential conversion that adequately addresses the flood risk, perhaps drawing lessons from other locations where long established buildings have experienced regular flooding, such as Dumfries and York.

## **Recommendation**

I recommend that planning permission is refused.

If this recommendation is not accepted, additional information and a list of suggested planning conditions is appended at the end of this report.

DPEA case reference: NA-ORK-027

The Scottish Ministers  
Edinburgh

Ministers

I have conducted a site visit in connection with this application to convert a redundant storage building to form four flats at 42 Junction Road, Kirkwall, Orkney. The reason for the call in of the application by Scottish Ministers is in view of the possible significant adverse impacts as two of the properties are at a medium to high risk of flooding and no mitigation measures are proposed.

The site visit was attended by the applicant and a representative of Orkney Islands Council.

All documents marked \* can be found on the DPEA public website by searching on the DPEA case reference, and then selecting the column of documents titled Appeal Documentation.

### Chapter One : Description and Background

1. This report is based on the planning application and supporting documents submitted to the council; the documents created by Orkney Islands Council during the consideration of the application, including the consultation replies, public representations, the committee report, and the minute of the committee meeting; and the information resulting from the site visit.
2. The application property is a vacant two storey building located in an area of mixed uses close to the centre of Kirkwall. Although partially of concrete brick construction, the Junction Road façade has a traditional stone built appearance, typical of many of the buildings that contribute to the character of the historic core of the town. The building has previously been in storage use but the interior is now in a very bad semi-derelict state, with collapsing floors and internal partitions. There is a wooden single storey extension on the south side, also in a very bad state. The north side of the building directly abuts the site boundary, where a narrow private lane in different ownership gives access to a small parking area to the rear. Another two storey stone building, in residential use, is located on the opposite side of this lane.
3. The proposal involves the demolition of the wooden extension on the south side of the building, where a paved area and bin storage would be formed. The original building would be converted to form four self contained one bedroom flats, two of which would be on the ground floor\*. The roof profile would be increased by 0.4m to accommodate the new rooms. In addition to windows on the front (Junction Road) façade, the resulting building

would have 3 windows at ground and first floor levels on the southern façade, and single windows serving bedrooms at ground and first floor level on the northern façade.

4. A consultation reply from the council's Environmental Health Officer\* states that it is no longer intended to use Air Source Heat Pumps in the development.

5. Among the consultation responses to the planning application, a letter from the Scottish Environment Protection Agency (SEPA) dated 9 August 2018\* advised that the agency objected to the proposal due to flood risk. A subsequent letter from SEPA dated 28 August 2018\* advised that the agency was in a position to remove the objection on the basis that the finished floor level of the ground floor flats would be raised so as to be 0.2 metre (m) above the predicted level of a 1 in 200 year flood event. This would involve an increase of 0.55m in the height of the finished floor level.

6. It subsequently emerged that this increase in the floor level would not be practicable, and the application was therefore considered on the basis of the original proposal. Consequently the original objection from SEPA was maintained.

7. The application was considered by the Orkney Islands Council Planning Committee at a meeting on 12 December 2018. The committee report\* prepared by the council's Executive Director of Development and Infrastructure recommended refusal of permission due to flood risk and concerns about the impact on residential amenity in relation to neighbouring properties.

8. The Planning Committee resolved to approve the application for the reasons set out in the minute of the committee meeting\* (see below). This led to the notification to Scottish Ministers of the council's intention to approve, and the consequential direction\* from the Scottish Ministers to call in the application for their own decision.

9. Section 25 of the Town and Country Planning (Scotland Act) 1997 requires planning applications to be determined in accordance with the provisions of the development plan unless material considerations indicate otherwise.

10. The committee report\* refers to several development plan policies that have potential relevance to the determination of the application.

11. My report considers the flood risk aspects of the proposal (chapter two); potential impact on residential amenity (chapter three); and other development plan policies that have potential relevance (chapter four). Conclusions on these matters are brought together in chapter five, which also includes consideration of material considerations that might justify a departure from the approved policies.

## Chapter Two : Flood Risk

12. The planning application\* form states that the site is within an area where there is a known risk of flooding.

13. A consultation reply from the council's Department of Engineering Services\* states that the site is located in an area where there is a high risk of surface water flooding. The maximum level of surface water flooding at this location is taken to be 2.6m above Ordnance Datum (AOD). A minimum of 0.2m freeboard (the height of the finished floor

level above the predicted flood level) would be applied, giving a requirement of 2.8m AOD. The reply notes that there is no information in the application on the height of the finished floor level, nor of the arrangements for drainage and surface water disposal.

14. In a later response\*, the Engineering Services staff stated that a finished floor level of 2.8m would be acceptable, and that a Surface Water Management Plan for Kirkwall is expected to be published in June 2019. The plan will identify actions to be taken to reduce the risk of surface water flooding in Kirkwall, but those actions and their implications are not yet known.

15. The consultation reply from SEPA dated 9 August 2018\* referred to above stated an objection to the proposal for the following reasons:

- The area has a history of flooding from a combination of surface water and small watercourses passing through culverts which have been known to surcharge during heavy rain events.
- Scottish Planning Policy (paragraph 256) states that “the planning system should prevent development which would have a significant probability of being affected by flooding.”
- The site lies within an area where the SEPA flood prediction maps show a medium likelihood of flooding of 0.5% annual probability (a 1 in 200 year event).
- Flooding would be likely to affect the site to a level of 2.6m AOD. Flooding of this severity was experienced in October 2006, and smaller floods have occurred on numerous occasions over the years.
- The ground floor level of the building is understood to be 2.25m AOD.
- Current SEPA guidance for the re-use of buildings that are at risk of flooding is that proposed uses that are of equal or less vulnerability are acceptable.
- The previous storage use is classed as “least vulnerable” but the proposed residential use is classed as “highly vulnerable”. Consequently the proposed change of use to residential would be unacceptable on the basis of flood risk policy.
- SEPA understands that a surface water management scheme for Kirkwall is in preparation. The agency may be able to review its position on this proposal if sufficient improvements can be made, leading to a lower level of risk.

16. SEPA was subsequently in a position to withdraw the objection, based on an understanding that the finished floor level of the proposal would be increased to 2.8m AOD, although there would be no dry access or egress to or from the building during a 1 in 200 year flood event. It subsequently emerged that an increase of this magnitude would not be practicable, so that the SEPA objection is maintained

17. The report to the planning committee recommended that the application be refused due (among other reasons) to the risk of flooding affecting the new flats. This would be contrary to policy 13A of the Orkney Local Development Plan (2017) which seeks to avoid situations where development would have a significant probability of flooding. In addition, policy 1 of the plan does not support development that would result in an unacceptable level of risk to public health and safety. It would be premature to approve the proposal in advance of the results of the Kirkwall Surface Water Management Plan becoming available.

18. The committee did not accept this recommendation for reasons recorded in the minute of the meeting\*. These are that, in the committee’s opinion:

- The proposed development would bring two unused former storage buildings into use within the settlement area of Kirkwall where there is a general presumption in favour of residential development, including infill development and conversion and redevelopment to bring derelict buildings back into use; and
- Redevelopment of a prominent site would contribute to the regeneration of the town centre, taking precedence over and outweighing the objection lodged by SEPA. This would be in accordance with local development plan policies 1, 5 and 14 (Criteria for All Development, Housing, and Flood Risk).

19. As noted in paragraph 17 above, policy 13 of the Orkney Local Development Plan seeks to avoid situations where development would have a significant probability of flooding. The information from SEPA summarised in paragraph 15 above shows that the location of the application site is within an area that is at medium risk of flooding, with a history of flooding. This echoes the consultation reply\* from the council's Engineering Services staff, which described the area as being at high risk, and the application form which states that the location is within a known area of flooding.

20. The SEPA prediction for a 1 in 200 year flood event (which is the usual criterion for these assessments) indicates a peak flood level at the site of 2.6m. The finished floor level of the proposal is 2.25m, giving a potential flood depth of 0.35m within the ground floor flats. This gives no margin for safety, and also implies that the property might be subject to a lower level of flooding more frequently than 1 in 200 years.

21. I conclude from this is that there is a significant probability that the proposed ground floor flats would be subject to flooding, contrary to the objective of policy 13. In addition, this level of flood risk for new residential properties would be unacceptable to SEPA, and would also be in breach of the Scottish Government Planning Policy objective that the planning system should prevent development which would have a significant probability of being affected by flooding. Accordingly I find that the proposal would be contrary to these various policies which all seek to avoid creating situations where new development would be subject to an unacceptable risk of flooding.

22. I note the council's reasons for accepting this situation. These are considered in chapter five below.

### Chapter Three : Potential Impact on Residential Amenity

23. Policy 1 of the local development plan (Criteria for All Development) sets out a number of criteria to be applied to new development proposals. Item iv on the list requires that the amenity of the surrounding area is preserved and there are no unacceptable adverse impacts on the amenity of adjacent and nearby properties/users.

24. Representations from neighbouring residents express concerns about construction noise causing disturbance, and possible interference with access to the parking area to the rear.

25. The committee report notes potential problems of privacy/overlooking resulting from the new windows that would be created in the northern and southern façades of the building, due to the close proximity of adjacent residential properties. The report suggests that obscured glazing may be required on some of these windows to mitigate this problem, unless some rearrangement of windows can be devised.

26. These façades of the application building are in close proximity to the adjacent residential buildings, so that the new windows on these elevations would be extremely close to existing windows. On the south side, the ground floor windows would not be a problem as there is a single storey outbuilding on the adjoining property that would provide a privacy screen. However the 3 new windows on the upper floor would face corresponding windows on the adjoining property.

27. On the north side, there would be two new bedroom windows that would face the adjoining building at a distance of less than 5m. I agree with the council's planning staff that this would give rise to a real and perceived loss of privacy, especially as the intervening lane appears to be in a separate ownership, outwith the application site.

28. The report also refers to an increase in overshadowing of the building to the north (which is already substandard) due to the raising of the roof line of the application building.

29. As these buildings are already so close together, it would require a detailed analysis to determine what degree of sunlight would be lost at the existing south facing windows. However, given the close packed arrangement of these traditional property boundaries and buildings, I do not think that a marginal loss of the duration of sunlight would be a significant issue.

30. The adjacent access lane and parking area appear to be in a separate ownership from the application property. Consequently there can be no interference to access along the lane and into the parking area except by an agreed arrangement to facilitate construction work.

31. I have sympathy with those affected by the noise of construction work but this is an inevitable issue where redevelopment is taking place among such closely packed properties. In these circumstances, if the development proceeds, the days and hours of construction activity should be limited to Monday-Friday 0800-1800, excluding any Saturday or Sunday working, due to the close proximity of the neighbouring residential properties.

32. I conclude from all this that the proposed conversion of the application site to residential use would have the potential to cause some loss of amenity to neighbouring residents. Requiring obscured glazing on the windows of habitable rooms would result in an unwelcome reduction in the enjoyment of those rooms. I therefore conclude that the objective of section iv of policy 1 of the local development plan would not be fully met, although the necessary upgrading of old buildings in a densely packed location such as this would make it very difficult to do so.

#### Chapter Four : Other Development Plan Policies

33. The committee resolution to approve this application makes reference to local development plan policies 1, 5 and 13 (Criteria for All Development, Housing, and Flood Risk), while the committee report also mentions policies 2 (Design) and 14 (Transport). Flood risk has been considered in chapter two. The remaining policies are considered in sequence below.

34. Local development plan policies 1 and 2 set out a series of objectives for new development, the latter focussing on design principles that reinforce the distinctive



character of Orkney's built environment. Paragraph 7.5 of the committee report explains why the re-use and retention of this building would be appropriate, the relatively confined setting and close proximity of other buildings being acceptable as part of the historic character of this area close to the town centre.

35. I agree that the conversion of this building to residential use would be acceptable and desirable in principle, as it would restore what is a virtually derelict building to a new use, so that it can continue to make a contribution to the character of the area where stone buildings of this scale predominate. Thus, apart from the issues of flood risk and residential amenity considered in the two previous chapters, I agree with the councillors and planning staff that the proposal would be generally in accordance with the provisions of local development plan policies 1 and 2.

36. Section A iii of local development plan policy 5 states a presumption in favour of appropriate residential development including the conversion and redevelopment of derelict land/existing premises. The current proposal would clearly be in accordance with this part of the policy.

37. The relevant part of local development plan policy 14 (Transport) is section B iii which requires developments to comply with the standards for parking provision that have been adopted by the council. In this proposal, it would be one space per flat. None are proposed as the site is too small to accommodate any off-street parking. Thus any cars owned by occupants of the 4 flats would add to the pressure on on-street parking and public car parks that is already experienced. However the council's Roads Services staff are content to dispense with this requirement on this occasion due to town centre location of the property.

38. I agree that there is no need to insist on dedicated off-street parking for this development. These would be one bedroom flats located conveniently close to the services available in and near the town centre, including the nearby bus station/transport hub. Thus it is ideally situated for persons who do not own cars, minimising the need for travel by unsustainable modes. On this basis, I conclude that although the proposal does not comply with the requirements of policy 14, there are good reasons to justify a departure.

#### Chapter Five : Synthesis and Conclusions

39. Drawing these matters together, for the reasons explained above, I find that the proposal would be generally in accordance with local development plan policies one and two (General Criteria and Design), other than the adverse effects on local amenity due to overlooking/privacy issues and some increase in overshadowing of the property to the north; would be in accordance with policy 5 (Housing); and would not be in accordance with policies 13 (Flooding) and 14 (Transport).

40. As explained in the previous paragraph, I agree with council officials that the absence of off-street parking provision in the proposal would not be a serious deficiency, and could be regarded as a welcome contribution to promoting the use of sustainable modes of transport. The potential effects on the amenity of neighbouring residential properties would be undesirable, but could probably be reduced or mitigated by adjustments to the detailed design of the proposal.

41. It is the potential problem of flooding that is the critical issue in the determination of this application, and is the reason for call-in.

42. I agree with the reasons that the council has put forward in support of approval of this application. This is a potentially attractive traditional building located in a fairly prominent position. The interior is in a very bad state and further deterioration is likely. Restoration would bring the building back into use and would safeguard the fabric as part of the Kirkwall townscape. The provision of some small flats close to the town centre would no doubt be a welcome addition to the housing stock. I can therefore understand why the committee opted to give priority to these benefits, and in doing so to set aside the flooding concerns expressed by the council's engineering staff and SEPA. It is this dilemma that is at the heart of the determination of this application.

43. It is clear that the application site is at significant if not serious risk of being affected by peak flood events. The results of the ongoing study into surface water management in Kirkwall are not yet available, and action arising from the study may take some time to implement. Accordingly I cannot give any weight to this study, though the council and SEPA may be in a position to do so in due course, once the results become available.

44. The best available information indicates that the ground floor of the property would be at risk of flooding to a depth of 0.35m during a peak event, with no margin of freeboard to safeguard the interior. This, together with lower levels of flooding during less serious but more frequent flood events, would result in a flood risk to the occupants that would exceed the accepted standard adopted by SEPA. It would also breach Scottish Government Planning Policy relating to flood risk (paragraph 256 of Scottish Planning Policy).

45. The serious impact of flooding of residential properties is regularly shown on TV news reports, with ruined furnishings discarded in the street for disposal and lengthy drying out, refurbishment, and interior redecoration required. This evidently has a devastating effect on the occupiers, especially as there can be no certainty that the event will not be repeated at some unpredictable future date. I consider that this would have potentially very serious impacts on the residential amenity of the occupiers of the proposed flats, in the widest sense of the phrase, amounting to a serious breach of that aspect of policy one of the local development plan.

46. For these reasons, I find that the risk of flooding of the proposed flats, and the very serious consequences for the occupiers, constitute a breach of policy 13 of the local development plan, as well as the corresponding SEPA and Scottish Government policies. I recognise the undoubted benefits of the proposal, but find that they are outweighed by the flood risk implications. I therefore conclude that planning permission should be refused, and recommend accordingly.

47. I regret that this decision, if accepted by Scottish Ministers, will set back the progress towards the benefits that the development proposal would provide. It may be that the results of the ongoing surface water management study will open the way for a further application, perhaps incorporating mitigation measures to prevent water entering the residential accommodation.

48. In this context, I hope that it would be possible to pursue a creative and innovative approach to water ingress mitigation measures, perhaps drawing on experience from

locations where properties have been regularly subjected to flooding, such as parts of Dumfries and York.

49. If this recommendation to refuse planning permission is not accepted, I recommend that planning conditions are imposed on the permission to seek alterations to the design details to minimise the privacy issues, perhaps involving some repositioning of relevant windows. In addition, I recommend that there should be a requirement to bring forward additional building details to minimise the risk of ingress of flood water, perhaps by a modest increase in the finished ground floor level and external barriers that can be put in place when necessary to protect the affected doors. Other measures may also be possible, in consultation with appropriate specialists. Finally, I recommend that construction work is limited to Mondays-Fridays only, between the hours of 8am to 6pm. A list of recommended conditions is appended below.

50. Whichever scenario is adopted, I hope that a serious effort can be made to save this building to achieve the benefits envisaged by the Islands Council.



Reporter

### **Application plans**

1524-1-P1 & BW 1 Sections, elevations and floor plans

1524-2-P1 & BW 1 Site layout plan

1524-3-P1 & BW 1 Location and site plan

1524-4-P1 & BW 1 Demolitions

### **Appendix : List of recommended planning conditions**

1. The development shall incorporate any minor repositioning of windows and opaque glazing of windows if and as required by the council.

Reason : To minimise loss of privacy at this and neighbouring residential properties.

2. Before work on the proposed development commences, the applicant shall submit to the council for consideration details of features to be incorporated to prevent or reduce ingress of flood water into the interior of the building. No work shall commence until such details have been approved by the council, and shall be incorporated in the reconstruction of the building.

Reason : To minimise the risk of flood water entering the building.

3. Construction work during the development of the site shall not take place outwith the hours 0800-1800 Monday-Friday and not at all on Saturdays and Sundays. Delivery and removal of construction plant and materials to and from the site shall be restricted to the same periods.

Reason : In the interests of residential amenity, especially due to the close proximity of neighbouring residential properties.

## Advisory notes

- 1. The length of the permission:** This planning permission will lapse on the expiration of a period of three years from the date of this decision notice, unless the development has been started within that period (See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).
- 2. Notice of the start of development:** The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).
- 3. Notice of the completion of the development:** As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended)).