



**Guidance on Local Review under Section 43A of the Town and Country Planning (Scotland) Act 1997 (as amended) to be considered by the Planning Committee sitting as Local Review Body: Local Review Ref: 2013/322/VCON – LR18 - To vary condition 1 of planning permission 2009/268/PCD to erect temporary flue for woodburning stove on workshop (retrospective): Hillside Lodge, Hillside Road, Sandwick, Shetland, ZE2 9HW.**

## **1 Introduction**

- 1.1 The Planning Scheme of Delegations that has been approved by the Council, as well as that which has been approved by the Scottish Ministers, identifies the appropriate level of decision making to ensure compliance with the 1997 Planning Act.
- 1.2 The Scheme of Delegations, following the hierarchy of development introduced by the Planning etc. (Scotland) Act 2006 which is at the heart of the modernised planning system, provides that where a decision on an application for planning permission for a local development (as defined in the Hierarchy of Development) is to be taken it may, subject to certain exceptions, be so by officers as have been appointed by the planning authority.
- 1.3 A decision on an application for planning permission for a local development that is taken by an officer (the appointed person) under the Scheme of Delegations has the same status as other decisions taken by the planning authority other than arrangements for reviewing the decision. Sections 43A(8) to (16) of the 1997 Act remove the right of appeal to the Scottish Ministers, and put in place arrangements for the planning authority reviewing these decisions instead.
- 1.4 The Full Council resolved on 12 May 2011 (Minute Ref: 57/11) that the remit of the Planning Committee be extended to include the functions of the Local Review Body, who would review the decision taken.

## **2 Process**

- 2.1 The procedures for requiring a review and the process that should then be followed are set out in regulations, and these have been followed in the administrative arrangements that have been carried out for support of this review in accordance with its being the intention that decision making by the Local Review Body will follow a public hearing. This however should be confirmed by the Review Body in each case before proceeding.
- 2.2 The Review Body is, where a decision has been taken that the review is to follow the public hearing procedure, required to follow Hearing Session Rules under Schedule 1 of The Town and Country Planning (Schemes of

Delegation and Local Review Procedure) (Scotland) Regulations 2013. In doing so they are to confirm the matters to be considered and the order in which persons entitled to appear are to be heard.

- 2.3 It has been the intention that such hearing sessions will be held in a similar manner to the current Planning Committee, with the Planning Service Case Officer presenting on the matters to be considered, followed by those persons entitled to appear other than the applicant, followed by the applicant, with its being the case that Members of the Review Body can ask questions throughout the process. The hearing session can similarly proceed in the absence of any person entitled to appear at it. The Review Body should confirm this order and confirm the time each person entitled to appear is to be afforded beforehand.
- 2.4 The Hearing Session Rules prescribe that the hearing shall take the form of a discussion led by the local review body and cross-examination shall not be permitted unless the local review body consider that this is required to ensure a thorough examination of the issues. Persons entitled to appear are entitled to call evidence unless the local review body consider it to be irrelevant or repetitious. The local review body may also refuse to permit the cross-examination of persons giving evidence, or the presentation of any matter where they similarly consider them to be irrelevant or repetitious.
- 2.5 The matters that are attached for the purposes of consideration by the Review Body in this case comprise: the decision in respect of the application to which the review relates, the Report on Handling and any documents referred to in that Report (including: the planning application form, and any supporting statement and additional information submitted, consultation responses and representations received prior to the decision notice by the appointed person being issued); the notice of review given in accordance with Regulation 9; all documents accompanying the notice of review in accordance with Regulation 9(4); any representations or comments made under Regulation 10(4) or (6); and any 'hearing statement' served in relation to the review.
- 2.6 In order to be able to give notice of their decision in accordance with the regulations, the local review body must be clear on the details of the development plan and any other material considerations to which it had regard in determining the application, and, where relevant: include a description of any variation made to the application in accordance with section 32A(a) of the 1997 Act; specify any conditions to which the decision is to be subject; include a statement as to the duration of any permission granted or make a direction as to an alternative (and in the case of a planning permission in principle any substitute time periods to apply to approvals of matters specified in conditions); and if any obligation is to be entered into under section 75 of the 1997 Act in connection with the application state where the terms of such obligation or a summary of such terms may be inspected.

planning committee.doc  
J R Holden  
Planning Committee: 711/2014



## **SHETLAND ISLANDS COUNCIL**

### **Town and Country Planning (Scotland) Acts**

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With reference to the application for **Planning Permission** (described below) under the above Acts, the Shetland Islands Council in exercise of these powers hereby **REFUSE Planning Permission** for the development in accordance with the particulars given in, and the plans accompanying the application as are identified subject to the reasons specified below.

#### **Applicant Name and Address**

Alexander C. Ward  
Hillside Lodge  
Hillside Road  
Sandwick  
Shetland  
ZE2 9HW

#### **Reference Number:** 2013/322/VCON

To vary condition 1 of planning permission 2009/268/PCD to erect temporary flue for woodburning stove on workshop (retrospective): Hillside Lodge, Hillside Road, Sandwick, Shetland, ZE2 9HW

#### **Details of Refused Plans and Drawings:**

- Location Plan Drawing No. AW/L/01  
Stamped Received. 12.09.2013
- Site Plan Drawing No. AW/L/02 C  
Stamped Received. 12.09.2013
- Floor & Elevation Plan Drawing No. AW/L/07  
Stamped Received. 12.09.2013

#### **Reasons for Council's decision:**

Due to existing site levels; the height of the flue which has been installed on the workshop; and the flue's close proximity to the residential housing scheme at Aestbrak, when the wood burning stove that the flue serves is in use the smoke emanating from the flue is likely to result in it having an adverse impact upon neighbouring residential amenity. As such, the proposed development is therefore contrary to Shetland Local Plan (2004) Policy LPNE10.

27 March 2014

  
Executive Manager

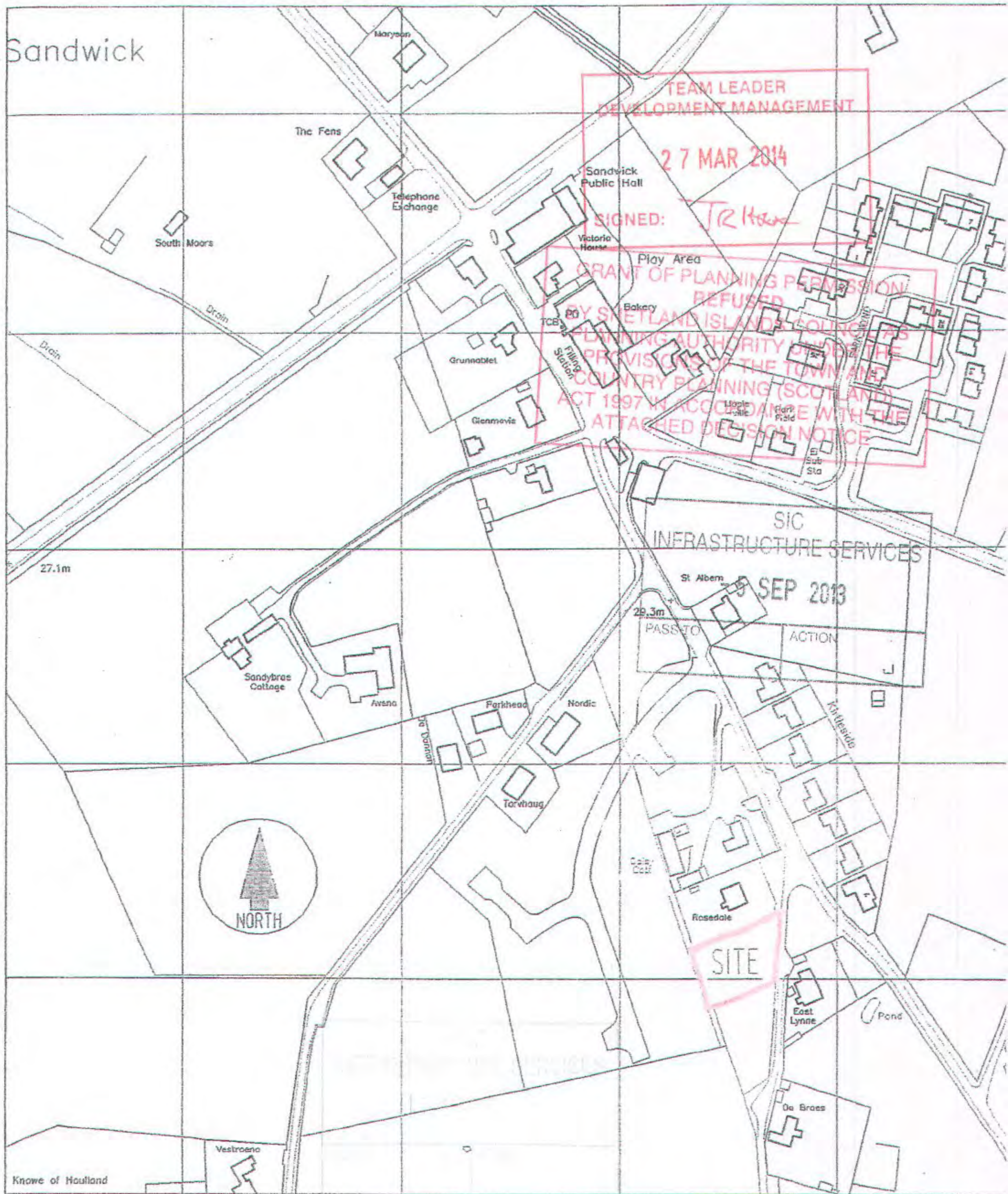
## **IMPORTANT INFORMATION**

If you are aggrieved by the decision of the planning authority to refuse permission for or approval required by a condition in respect of the proposed development, you may require the planning authority to review the case under section 43A of the Town and Country Planning (Scotland) Act 1997 within 3 months from the date of this notice. The notice of review should be addressed to: Shetland Islands Council, Planning, Development Services Department, 8 North Ness Business Park, Lerwick, Shetland, ZE1 0LZ. The necessary form can be obtained upon request from the same address.

If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.



Sandwich



SIC INFRASTRUCTURE SERVICES	
PASS TO	ACTION

# PLANNING ISSUE

Project:

Drawing Title  
LOCATION PLAN

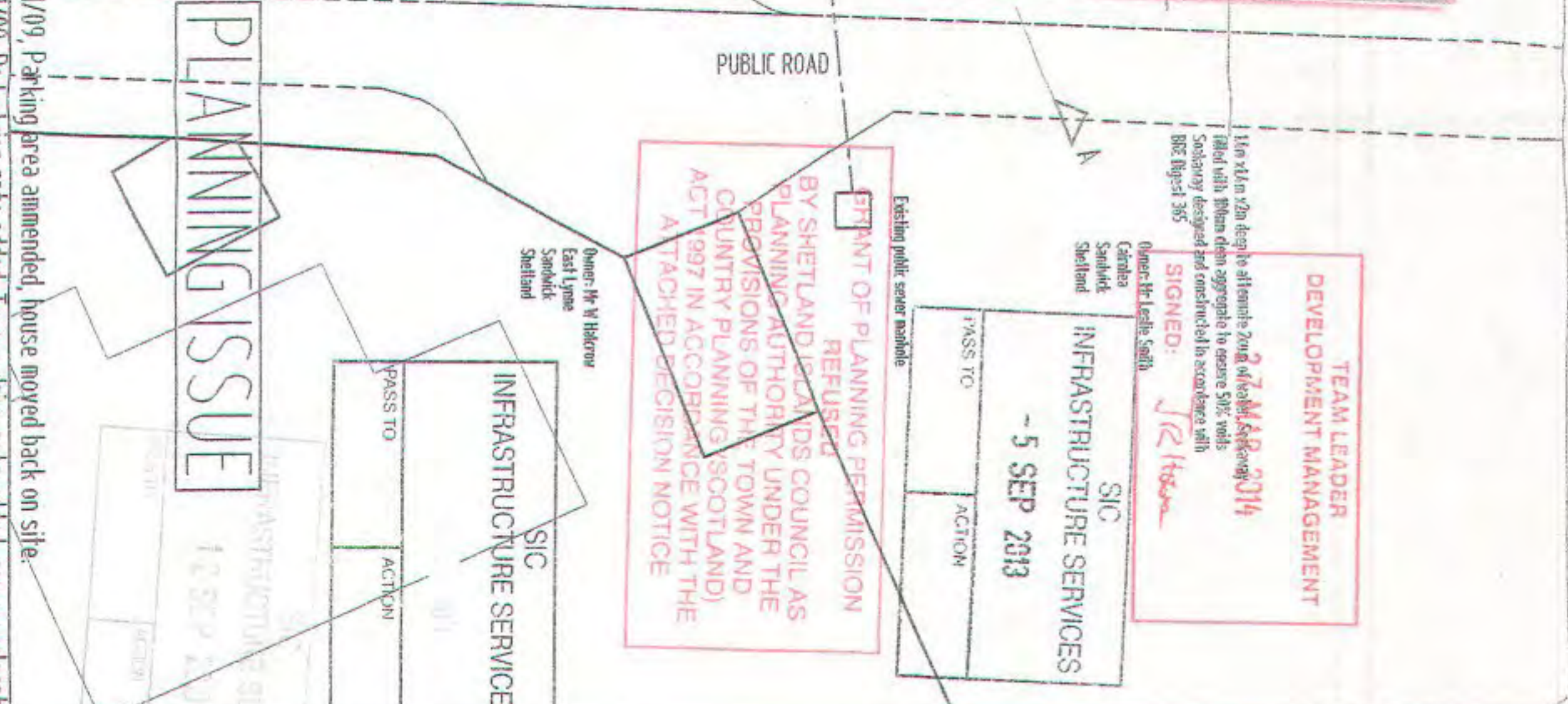
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Drawing No:  
AW/L/01

Date:  
Aug 09

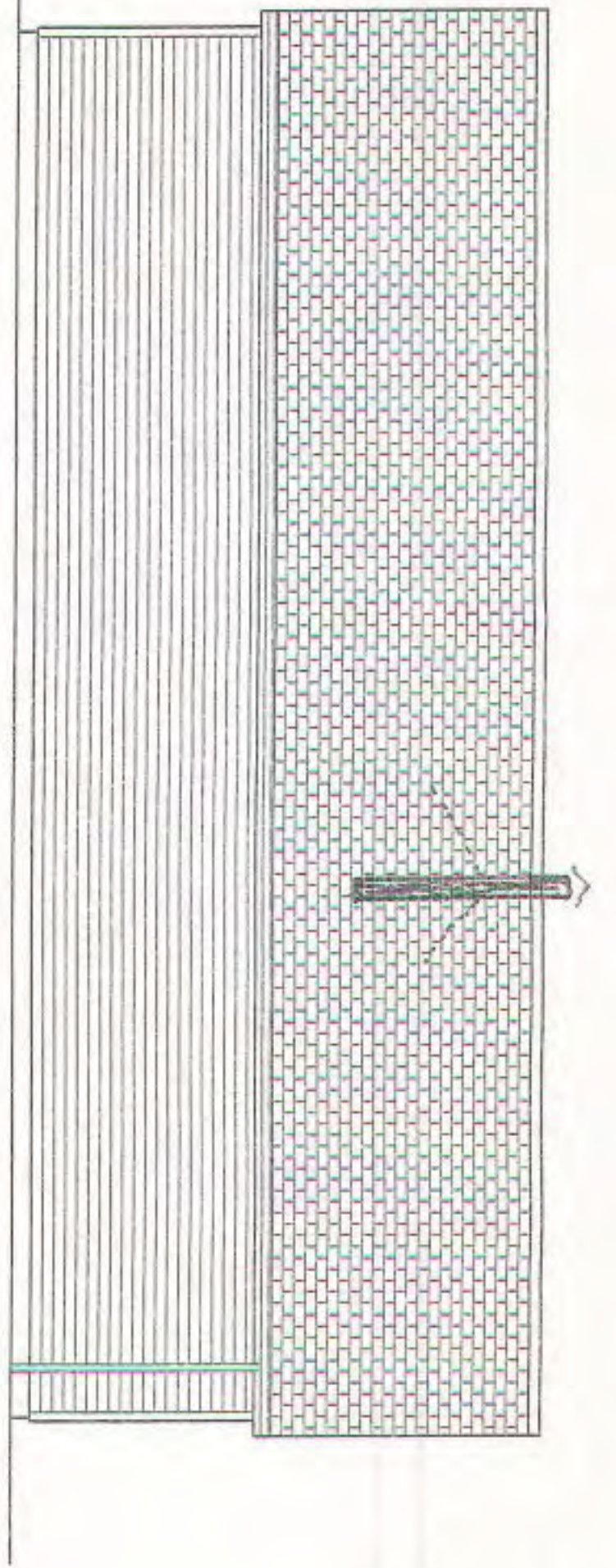
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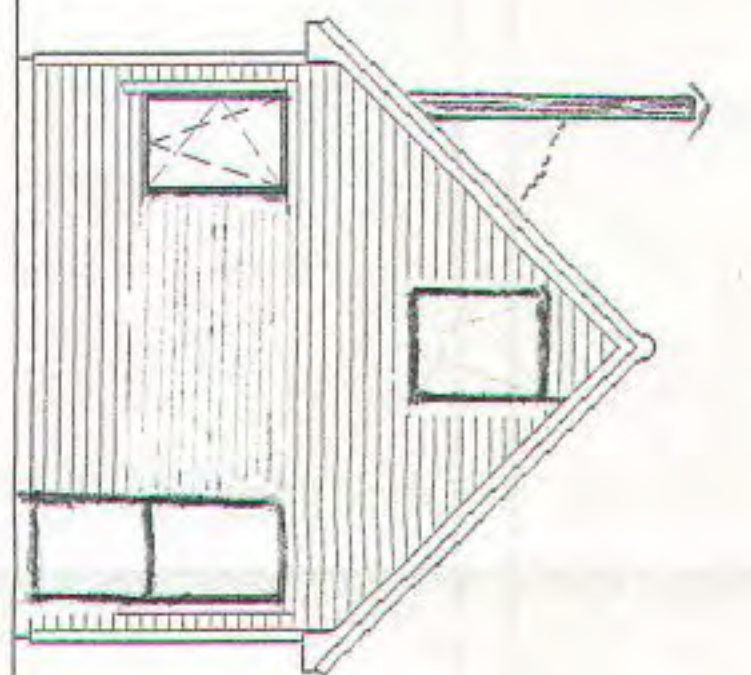


Project	
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Date	30/07/09
Drawing No	AW/L/02
Revision	C





WEST ELEVATION



SOUTH ELEVATION

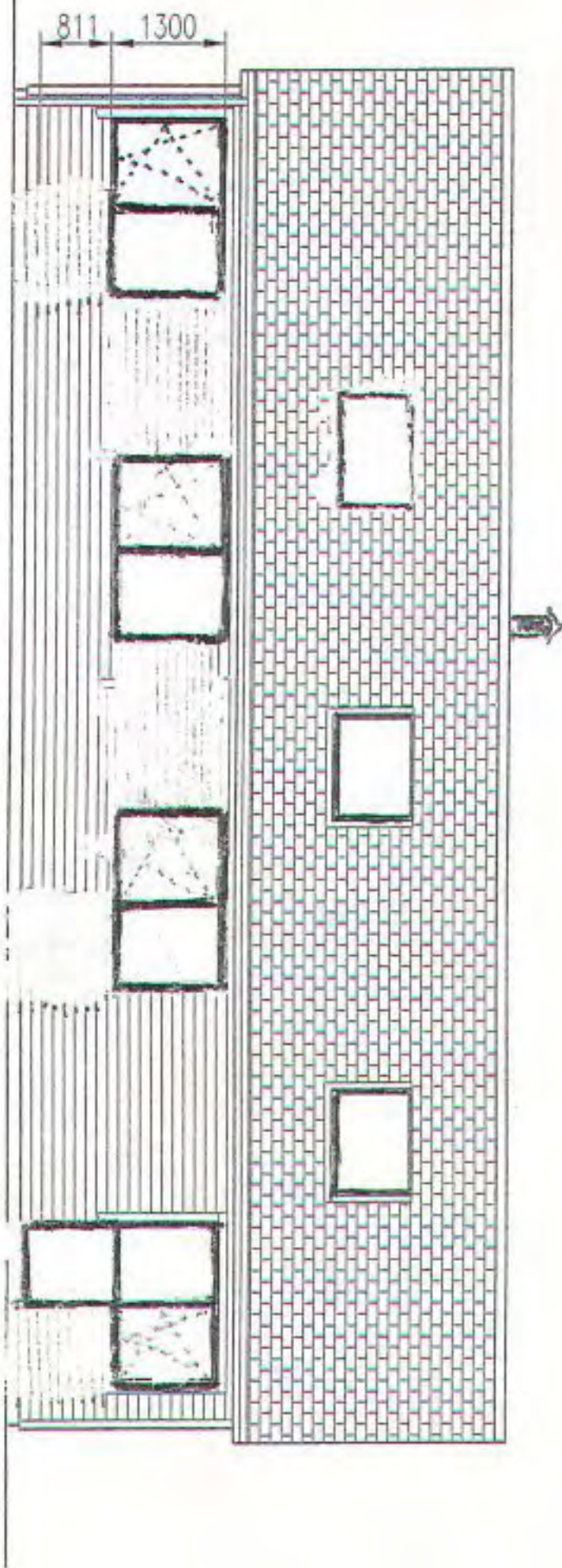
TEAM LEADER  
DEVELOPMENT MANAGEMENT

27 MAR 2014

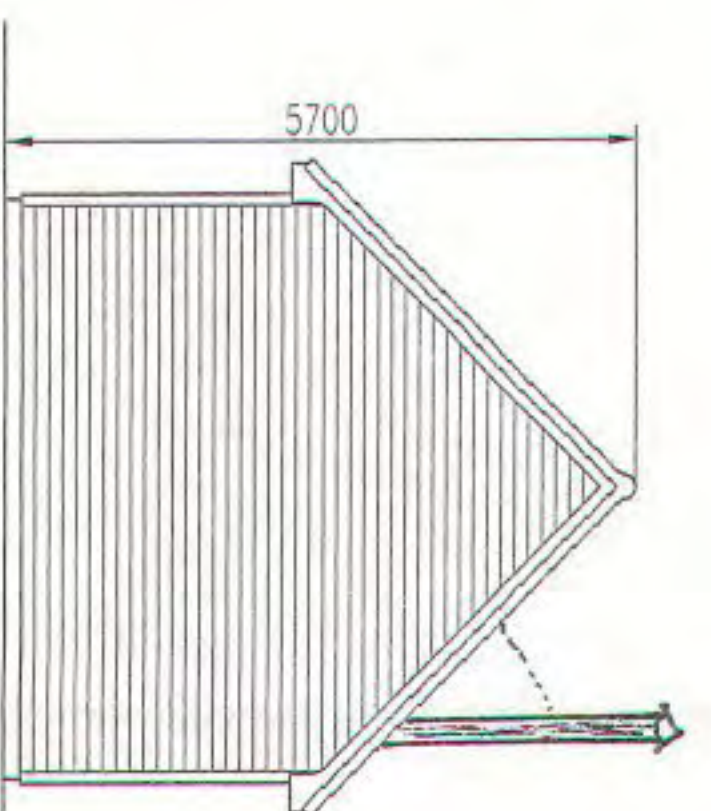
SIGNED:

*[Signature]*

GRANT OF PLANNING PERMISSION  
REFUSED  
BY SHETLAND ISLANDS COUNCIL AS  
PLANNING AUTHORITY UNDER THE  
PROVISIONS OF THE TOWN AND  
COUNTRY PLANNING (SCOTLAND)  
ACT 1997 IN ACCORDANCE WITH THE  
ATTACHED DECISION NOTICE



EAST ELEVATION



NORTH ELEVATION

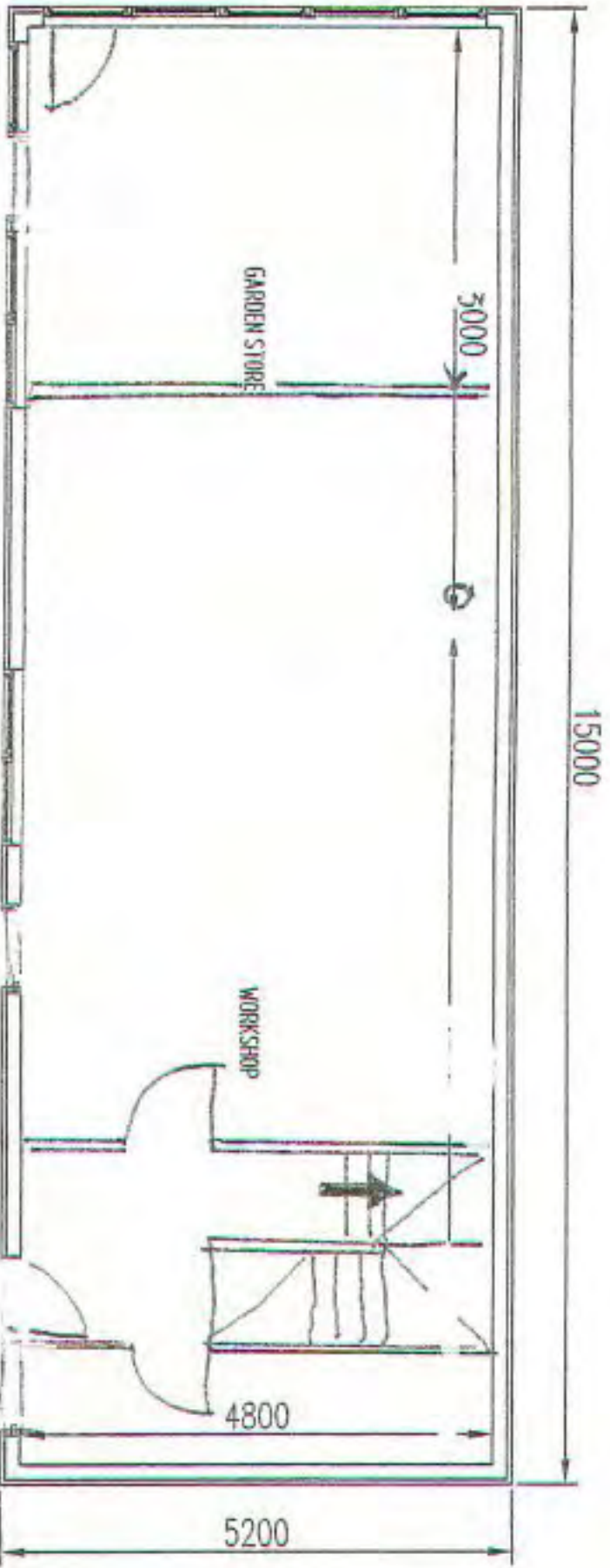
SIC

INFRASTRUCTURE SERVICES

- 5 SEP 2013

PASS TO ACTION

**MATERIAL FINISHES:**  
Roof: Profiled interlocking concrete tiles - Brindle  
Walls: Horizontal log roll timber cladding - 'Pouta' (light brown)  
Windows/Doors: Timber - Dark Brown stain.  
Fascias: Timber - Dark Brown stain.  
Gutters: uPVC - Black  
Underbuilding: Dry dash render - Brown.



PLAN

Project:

WORKSHOP PLAN & ELEVATIONS

Drawing title

Scale

1:100

Date

29/07/09

Drawing No

AW/L/07

Revision



## **Delegated Report of Handling**

**Development:** To vary condition 1 of planning permission 2009/268/PCD to erect temporary flue for woodburning stove on workshop (retrospective)

**Location:** Hillside Lodge, Hillside Road, Sandwick, Shetland

**By:** Alexander C. Ward

**Application Ref:** 2013/322/VCON

### **1. Introduction**

This planning application seeks to apply to vary condition no. 1 of planning permission 2009/268/PCD to erect a temporary flue for a woodburning stove on a workshop (retrospective) at Hillside Lodge, Hillside Road in Sandwick.

### **2. Statutory Development Plan Policies**

#### **Shetland Islands Council Structure Plan (2000) Policies**

GDS3 - General Development Policy Existing Settlements

GDS4 - General Development Policy Natural and Built Environment

SPNE1 - Design

#### **Shetland Islands Council Local Plan (2004) (As Amended) Policies**

LPNE10 - Development and the Environment

LPBE13 - Design

### **3. Safeguarding**

30km Radius Scatsta - 30km Sumburgh Scatsta: 1

Main Areas of Best Fit - Main Areas of Best Fit: Sandwick

Decrofted - Decrofted: 18148

Land Capability Agriculture - code: 4.2

Zone 2 Modified - Zone 2: Housing Zone 2

### **4. Consultations**

Environmental Health was consulted on the 13 September 2013. Their comments dated 14 November 2013 can be summarised as follows:

I have visited the site concerned today and discussed the use of the stove with the applicant. The fire was well stoked during my visit and there was no nuisance noted.



I am of the opinion that there is a possibility of a statutory nuisance if certain weather conditions persist - that is in terms of wind direction, fuel type and temperature inversions etc. The flue has been extended but there still is a possibility of nuisance in particular weather conditions.

After discussion relating to the intended use of the stove, I am satisfied that the likelihood of nuisance can be adequately controlled by the applicant. Advice was given on site regarding the duration of use of the fire, wind direction and appropriate type of fuel.

I have made the applicant aware that, if I am satisfied that a nuisance has occurred and is likely to recur, a statutory notice can be served under the Environmental Protection Act 1990 to prevent recurrence.

Roads Traffic was consulted on the 13 September 2013. Their comments dated 20 September 2013 can be summarised as follows:

The previous planning application 2009/268/PCD for a dwelling house, garage and workshop on this site required 3 car parking spaces to be provided within the site, along with turning provision. To date the only development that has been carried out is the building of the workshop.

As per Condition 10 of the original consent this workshop was assessed as being incidental to the primary site use as residential and as such had no parking or servicing demand requirement.

The change of use of the workshop to a business premises, following the temporary change of use to a dwelling, would lead to a specific parking requirement for the workshop of 3 spaces, based on 3 spaces/100m<sup>2</sup> for manufacturing workshops and storage space.

This would require 6 spaces to be provided on site. The current site plans only indicate 2 spaces, and does not appear to allow any further spaces to be provided without a significant change to the site layout.

While I have no objection to the temporary change of use for the workshop into residential accommodation, while the consented house is being built, I would recommend against permitting the change of use to business use without extra parking spaces being provided. As I do not consider that this level of parking provision can be properly provided on the site I must recommend refusal.

Other comments on the application are as follows:-

1. The required visibility splays must be provided before any building works start on site and must be maintained during the course of the works and thereafter. The applicant should show that they have control over any ground required to provide the required visibility splays.



- a. A visibility splay of 2.5 metres by 60 metres must be provided at the junction of the access with the public road. This is available at present.
2. No fence, wall, bushes or other potential obstruction to visibility should be permitted within 2.5 metres of the edge of the public road.
3. The gradient of the access should not exceed 5% (slope of 1 in 20) for at least the first 6 metres from the edge of the public road.
4. The access should be surfaced in bitmac or double coat hot tar surface dressing for at least the first 6 metres from the edge of the public road.
5. The access should be designed in order that it does not shed surface water from the site onto the public road.
6. Site drainage should be designed, provided and maintained such that no surface water from the site shall be permitted to drain or run onto the public road or footway.
7. Turning provision for cars should be made within the site in the form of a standard hammerhead or a manoeuvring space of at least 7.6 metres by 7.6 metres in size.

At this time there is no proper parking or turning provision within the site, even though the site is being used for residential purposes. Condition 7 of the original consent required that the parking and turning provision for the site must be provided before construction of the dwelling house began. Given that the residential caravans on site are located on-top of the area designated for parking and turning for the site I do not see how the site can be developed in line with the original consent.

I would therefore ask that you give full consideration as to how the development and use of this site can be controlled so that it does not continue to cause problems with parking along the edge of the public road adjacent to the site.

Scottish Water Customer Connections was consulted on the 13 September 2013. Their comments dated 11 October 2013 can be summarised as follows:

Scottish Water has no objection to this planning application. Since the introduction of the Water Services (Scotland) Act 2005 in April 2008 the water industry in Scotland has opened up to market competition for non-domestic customers. Non-domestic Household customers now require a Licensed Provider to act on their behalf for new water and waste water connections.

Further details can be obtained at [www.scotlandontap.gov.uk](http://www.scotlandontap.gov.uk).



In terms of planning consent, Scottish Water does not object to this planning application. However, please note that any planning approval granted by the Local Authority does not guarantee a connection to our infrastructure. Approval for connection can only be given by Scottish Water when the appropriate application and technical details have been received.

Sandy Loch Water Treatment Works currently has capacity to service this proposed development.

The water network that serves the proposed development is currently able to supply the new demand.

Beachcroft Waste Water Treatment Works currently has capacity to service this proposed development.

The waste water network that serves the proposed development is currently able to accommodate the new demand.

Scottish Water's current minimum level of service for water pressure is 1.0 bar or 10m head at the customer's boundary internal outlet. Any property which cannot be adequately serviced from the available pressure may require private pumping arrangements installed, subject to compliance with the current water byelaws. If the developer wishes to enquire about Scottish Water's procedure for checking the water pressure in the area then they should write to the Customer Connections department at the above address.

It is possible this proposed development may involve building over or obstruct access to existing Scottish Water infrastructure. On receipt of an application Scottish Water will provide advice that will require to be implemented by the developer to protect our existing apparatus.

Should the developer require information regarding the location of Scottish Water infrastructure they should contact our Property Searches Department, Bullion House, Dundee, DD2 5BB. Tel - 0845 601 8855.

If the developer requires any further assistance or information on our response, please contact me on the above number or alternatively additional information is available on our website: [www.scottishwater.co.uk](http://www.scottishwater.co.uk).

Sandwick Community Council was consulted on the 13 September 2013. Their comments dated 11 November 2013 can be summarised as follows:

This application has been discussed by the Community Council members at their meeting in October and again this month.



It was agreed to support Ms. Kenny, one of the neighbours of the proposed development, in her objection to the flue.

**5. Statutory Advertisements**

The application was advertised in the Shetland Times on 13.12.2013.

A site notice was not required to be posted.

**6. Representations**

Representations were received from the following properties:

Mrs A Kenny, 8 Aestbrek, Sandwick

in relation to the environmental health impact of the proposed flue.

**7. Report**

Section 25 of the Town and Country Planning (Scotland) Act 1997 (as amended) states that:

*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.*

There are statutory Development Plan Policies against which this application has to be assessed and these are listed at paragraph 2 above. The determining issues to be considered are whether the proposal complies with Development Plan Policy, or there are any other material considerations which would warrant the setting aside of Development Plan Policy.

On 12 September 2013, the applicant initially applied to vary conditions 1 and 10 of planning permission 2009/268/PCD to erect flue for wood burning stove on workshop, allow occupancy of workshop as a dwellinghouse for a period of 4 years and use of workshop building for business purposes thereafter at Hillside Lodge, Hillside Lodge which lies within a Zone 2 area of Sandwick.

As a result of the proposed change from a workshop to a temporary dwellinghouse and to utilise for business purposes in future, the Roads Service and Scottish Water were consulted in conjunction with Environmental Health and the Sandwick Community Council.

In response to the consultation request, Roads Traffic considered that an appropriate level of parking provision for the proposed change of use cannot be properly provided on site and therefore recommended refusal on this basis.



One letter of objection was received from a neighbour on 17 September 2013 relating to the height of the flue which is at the same height as the objector's ground level back garden and as a result, the smoke from the flue blows directly towards their back door. According to the objector, this situation is having an adverse impact upon their health and safety due to the smoke levels as they cannot let their son play in the back garden; cannot put washing out on the line nor open their rear windows. Further concern is also expressed about the flue being used in an unfinished building structure, which could potentially be a fire hazard.

The Sandwich Community Council confirmed in an email received by the Planning Authority on 11 November 2013, that it supported the neighbour to the proposed development in her objection to the flue.

On 23 September 2013, the applicant contacted the Planning Service by telephone to ask whether he needed to apply to occupy the workshop building as a dwellinghouse on the basis that no sleeping within it would take place. An email was sent to the applicant that day to advise that his query would require further investigation and that as he had yet to decide precisely what was being applied for, the 'clock' in terms of the Planning Services' time in handling the planning application had been stopped. The applicant was also informed that the clock would recommence when he could confirm to the Planning Authority, what the planning application is for.

On 1 October 2013, the applicant emailed the Planning Service to request removal of "using the workshop as a dwelling for 4 years" from the description of proposed development and to replace this title with "changing of condition 10 to allow daytime use (not sleeping in) the workshop for relaxation and recreation whilst the dwelling is being built and permitted use for business purposes". The applicant also requested that condition 9 be changed 'to allow for slightly greater underbuilding on the dwelling than is shown on the original plans/drawings'.

As such, the applicant was advised via return email, that the clock had restarted in terms of processing the planning application. The applicant was also informed that the Planning Authority would be seeking advice from the Council's Legal Services to obtain its opinion as to whether it is right and proper for the Planning Authority to accept what in effect amounts to a request for a Section 32A variation, under the principal Planning Act. This was in the context of consideration of whether what the applicant intends to use the workshop for, constitutes a material change of use.

A complete timeline of communications undertaken between the applicant and the Planning Service from September 2013 to January 2014 has been attached as Appendix A to this delegated report.



In relation to the request to increase the amount of underbuilding on the approved dwellinghouse, the applicant was informed that it would not be possible at this stage to change the description of the development being proposed to such an extent, however it may be possible for the Planning Authority to accept the proposed change as a minor variation under Section 64 of the principal Planning Act, which would serve to meet the terms of condition no. 9. The applicant was advised that to do so, would require the submission of revised plans and that it would be up to the Planning Authority to establish whether the change in underbuilding could be accepted as a non-material amendment to the existing consent. If so and the proposed changes were deemed to be acceptable, then the revised plans would supersede the previously approved elevation drawing no. AW/L/04 Rev A.

On 7 October 2013, under the reference of the current planning application (2013/322/VCON), the applicant submitted:

- an elevation drawing (drawing no. AW/L/04) of the approved dwellinghouse with a proposed revision which stated 'greater underbuild at front covered by cladding' on the north elevation;
- a revised site plan (drawing No. AW/L/02) indicating 6 car parking spaces; and
- a supporting statement which states:

"The intended business use is that of a traditional cabinet making/furniture restoration/upholstery business, using traditional hand methods with infrequent use of machines between the hours of 8am to 6pm.

These machines are of a professional nature with the latest health and safety features fitted for noise reduction etc. The planer/thicknesser will have a spiral cutter block that reduces noise by over 50% on that of other planer-thicknessers.

These machines are the same machines that I would use for a hobby/pastime. The only difference is that I would be earning money from using the space. The building itself is well insulated and according to Ian Taylor from Environmental Health who has visited the site, the business and machinery will have no impact on the surrounding area. Any visitors to the workshop will be kept to a minimum and will be by appointment only where possible"

In a telephone conversation and subsequent emails on 12 November 2013, a progress update on the application was provided to advise the applicant that two objections to the proposed development had been received and that the Planning Authority was waiting to receive



consultation responses from the Council's Legal Services and from Environmental Health in order to help better inform the decision making process. As such, an extension of time to determine the application was requested up to and including 12 December 2013. The applicant agreed in writing that this was acceptable on 12 November 2013 in conjunction with a statement to confirm that they are not asking permission to use the workshop as a dwellinghouse as they would be sleeping in the 2 static caravans, but to use the workshop during the day. It was also confirmed that the wood burning stove and flue is being used as a temporary site heater which will be removed and replaced on the approved dwellinghouse (which has yet to be constructed on site) as soon as the roof of that building is on.

On 14 November 2013, a consultation response was received from Environmental Health which considers that although there was no statutory nuisance recorded whilst being on site, and despite the fact that the flue has been extended in height, they were of the opinion that there remains a possibility that a statutory nuisance will occur which will be dependent on weather conditions, wind direction, fuel type and temperature inversions.

The Planning Authority contacted Environmental Health by telephone to discuss the flue at which point it was confirmed by Environmental Health that they are of the opinion that depending on certain weather conditions, there is a significant risk that a statutory nuisance will occur due to smoke emanating from the flue. It was also reiterated at this point that should a statutory nuisance occur and it be considered by Environmental Health that this situation was likely to recur, then a statutory notice could be served under the Environmental Protection Act 1990 to prevent such recurrence.

In support of the application and in relation to the objection raised about the wood burning flue, the applicant stipulates that the flue is only temporary and is acting as a site heater to dry the building out and he expects to remove the flue (from the workshop) sometime next year in order to install in the main house when it has been constructed on site. The applicant also wishes it to be clarified that they are not living in the workshop, contrary to the neighbour's objection.

Due to the complex and changing nature to the description of development, during the planning process it was considered appropriate to contact the Council's Legal Service. In the first place this was in order to establish: a) whether it was appropriate for the Planning Authority to accept a Section 32A variation request under the principal planning act; and b) if utilising the workshop for daytime relaxation/recreation constitutes a material change of use. This 'health check' was considered necessary to ensure that whatever decision is finally made, it is legally sound, thereby benefitting all parties with an interest in the process being followed.

After undertaking appropriate consultation with Legal Services, the following information was relayed to the applicant via email on 27 November 2013:

"The planning application 2013/322/VCON (proposed variation to planning consent 2009/268/PCD) as initially submitted proposed that the workshop be used as a dwellinghouse for 5 years and then proposed not to use the building for business purposes thereafter. Legal Services have advised that both these proposals constitute material changes of use of the building from that use which is authorised by the existing consent and also that it is not possible for the Planning Authority to grant approvals for changes of use exclusively via an application for variation of conditions. As such, it is not possible for the Planning Authority to make a determination on the application with the original description other than for one of refusal. Such proposals for the residential and then follow on business use of the workshop therefore require, firstly, the submission and subsequent consideration and approval by the Planning Authority of a full planning application to change the use of the workshop into a dwellinghouse, followed then by a second application for full planning permission at a later date to change its use again for business purposes.

Your email of 1 October 2013, which seeks to change the description of development .../... [to vary conditions 1 and 10 of planning permission 2009/268/PCD to erect a temporary flue for a wood burning stove; to use the workshop for daytime relaxation/recreation and to use the workshop for business purposes and to increase the underbuild on the front of the main house] to remove the proposal to utilise the workshop as a dwellinghouse constitutes what is called as request for a Section 32A variation of application 2013/322/VCON (change before a determination). Again, the proposal to change the current workshop into business use that is proposed by you to remain in the description (though permitted immediately rather than after a period of 4 years) constitutes a material change of use ... and as such cannot be dealt with by the Planning Authority under the variation application other than with a refusal. Thus a separate planning application for full planning permission to change the use of the workshop into business use will need to be submitted to the Planning Authority for appropriate consideration, if this is to be the intended end use of the building. This advice is of course provide without prejudice to a determination on such an application."

It was also relayed to the applicant that utilising the current workshop for daytime relaxation/recreation does not constitute a material change of use as it is ancillary to the enjoyment of the dwellinghouse (including under the current circumstances on site). Thus, the applicant can continue to utilise the workshop for this purpose without requiring any formal planning consent, however the Planning Authority is unable to agree to the Section 32A variation request due to the proposed change of use for business purposes.



As such, it was proposed that the Planning Authority amend the title of the description of development "to vary condition no. 1 of planning permission (2009/268/PCD) to construct temporary flue for wood burning stove on workshop (retrospective)". This was accepted by the applicant in an email dated 4 December 2013.

As for the request to increase the underbuild on the front of the approved dwellinghouse, it was reiterated to the applicant that such a proposal will require the submission of revised plans in order that the Planning Authority can undertake due consideration to establish whether or not the change proposed is a material variation, or if it can be dealt with as a minor amendment to the existing consent.

Following a site visit to the area to view the retrospective flue on 3 December 2013, it was evident that due to the position, location and height of the flue on the workshop building and the site levels involved between this building and the housing scheme situated at Aestbrak, that the flue is very close in proximity to the neighbouring properties. Environmental Health have already intimated in a previous phone call that they felt there was a significant risk of a statutory nuisance occurring as a result of smoke emanating from the flue depending on weather conditions and two objections to the proposed development have been received in relation to the environmental impacts of the flue on residential amenity.

Shetland Local Plan (2004) Policy LPNE10 states that applications for planning permission for the extraction and exploitation of natural resources will normally be permitted, provided that the proposal does not have an unacceptably significant adverse effect on the natural and built environment. When assessing development proposals, the following general considerations will be taken into account:

- a) likely impacts on amenity and the environment as a whole;
- b) effects on nearby residents and the buildings they occupy;
- c) landscape character and visual amenity;
- d) water resources and the marine environment; biodiversity, archaeology and other land uses in the area;
- e) transport considerations; and
- f) current government guidance, other policies in the Shetland Structure and Local Plan and particularly those relating to the proposed type of development.

It is considered that the retrospective flue which is the subject of this planning application, being in close proximity to the neighbouring properties at Aestbrak, due to the site levels involved and positioning of the flue on the workshop, is likely to result in the smoke emanating from it giving rise to a statutory nuisance, and so it will therefore ultimately have a detrimental impact upon the amenities of nearby residents and the buildings they occupy. As such, it is recommended that this planning application be refused as the proposed development is contrary to Shetland Local Plan (2004) Policy LPNE10.

**8. Recommendation**

Refuse permission.

**Reasons for Council's decision**

Due to existing site levels; the height of the flue which has been installed on the workshop; and the flue's close proximity to the residential housing scheme at Aestbrak, when the wood burning stove that the flue serves is in use the smoke emanating from the flue is likely to result in it having an adverse impact upon neighbouring residential amenity. As such, the proposed development is therefore contrary to Shetland Local Plan (2004) Policy LPNE10.

**9. List of refused plans:**

- Location Plan Drawing No. AW/L/01 - Stamped Received. 12.09.2013
- Site Plan Drawing No. AW/L/02 C - Stamped Received. 12.09.2013
- Floor & Elevation Plan Drawing No. AW/L/07 - Stamped Received. 12.09.2013

**10. Further Notifications Required**

The objectors to the proposed development will require to be notified of the planning outcome.

**11. Background Information Considered**

Planning Application 2009/268/PCD – To erect dwellinghouse, garage, workshop and decking (permanent), a caravan (temporary), and to apply for temporary consent for an existing caravan and an existing kennel (retrospective), Plot 1, Hillside Road, Sandwick by Mr A Ward. Approved 22 January 2010.

Appendix A – Timeline of communications undertaken between the applicant, Mr Alex Ward and the Planning Service.

322\_Delegated\_Refusal\_Report\_of\_Handling.doc

Officer: Dawn Stewart

Date: 24 January 2014

Revised Date: 27 March 2014



# PLANNING DATA SHEET

Officer:

DCS

Valid Ref: 2013/1322/VCON

Online Ref:

SEDD Code: 3b

## Description of Development:

To vary conditions 1 & 10 of planning permission 2009/268/PCO; to erect flue for woodburning stove on workshop, & allow occupancy of workshop as a dwellinghouse for a period of 4 years & use of workshop building for business purposes thereafter, Hillside Lodge, Hillside Road, Sandwich

Applicant:

Alexander C. Ward

Agent:

EIA Development: YES ☒ NO  
Schedule 1 Schedule 2

Category of Development  
☒ Local ☐ Major ☐ National

Statutory Exception: YES ☒ NO  
Processing Agreement: YES ☒ NO  
Processing Agreement Met: YES ☒ NO  
Legal Agreement: YES ☒ NO

Fees:		Correct Fee: £192.00
Fee 1	Date Rec'd: 12.9.13	Fee Rec'd: £192.00
Fee 2	Date Rec'd:	Fee Rec'd: £
Advert Fee	Date Rec'd:	Fee Rec'd: £

Further details required to validate planning application:

Cross References: 2013/155/FREAP  
09 0845 12-223 2009/276/PCO  
2009/268/PCO

Safeguarding: Yes / No

Housing Zone ☒ ☐ Zone: 1 2 3 4 LPA

Cons Area ☐ ☒

Listed Building ☐ ☒ Grade A B C (s)

Scheduled Mon ☐ ☒

MOD ☐ ☒

SSSI/SAC/SPA/NNR ☐ ☒

NSA ☐ ☒

HSE ☐ ☒

HIAL/Scatsta/Ting ☒ ☐ All 10 15 45 90 300m

NATS ☐ ☒

Good Agric Land ☒ ☐

C. C. Land ☐ ☒

Burn Buffer/ 5m Contour ☐ ☒

Access Track/Core Path/Right of Way ☐ ☒

Land Capability Agri ☒ ☐ 4:2

Notes:

Other safeguarding:

Decanted ☒ ☐  
Area of best fit ☒ ☐

Internal Consultations	CON1 DATE IN	None CON2 DATE IN
Building Standards	<input type="checkbox"/>	<input type="checkbox"/>
Dev Plans	<input type="checkbox"/>	<input type="checkbox"/>
Coastal	<input type="checkbox"/>	<input type="checkbox"/>
Env Health	E <input checked="" type="checkbox"/> 14.11.13	<input type="checkbox"/>
Marine	<input type="checkbox"/>	<input type="checkbox"/>
Roads Traffic	E <input checked="" type="checkbox"/> 20.9.13	<input checked="" type="checkbox"/>
Roads Drainage	<input type="checkbox"/>	<input type="checkbox"/>
Date sent out:	13.9.13	

External Consultations	CON1 DATE IN	None CON2 DATE IN
HIAL/Scatsta	<input type="checkbox"/>	<input type="checkbox"/>
Scottish Water	E <input checked="" type="checkbox"/>	<input type="checkbox"/>
SEPA (Attach PDF)	<input type="checkbox"/>	<input type="checkbox"/>
SNH	<input type="checkbox"/>	<input type="checkbox"/>
Com Con	E <input checked="" type="checkbox"/>	<input type="checkbox"/>
Archaeologist	<input type="checkbox"/>	<input type="checkbox"/>
RSPB	<input type="checkbox"/>	<input type="checkbox"/>
SBRC	<input type="checkbox"/>	<input type="checkbox"/>
HSE/PADHI	<input type="checkbox"/>	<input type="checkbox"/>
Scottish Gvt	<input type="checkbox"/>	<input type="checkbox"/>
Historic Scotland	<input type="checkbox"/>	<input type="checkbox"/>
Other Consults:		
	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>
Date sent out:	13.9.13	

ADVERTS	MEDIA	DATE
20 (1) (a) Neighbour Notification		
20 (1) (b) No premises or neighbouring land to send notice		
20 (1) (c) Schedule 3		
20 (1) (d) Contrary to the approved Dev plan Departing Policies	ST	13.12.13
60(2)(a) Setting of LB		
65(2)(a) Conservation Area		
13. EIA (1)		
13. EIA (2)		

APPLICATION PROGRESS	INITIAL	DATE
Received / Stamped	CS	12.9.13
Reception / Plot etc	CS	12.9.13
Valid: YES / NO		
Invalid Letter Sent: YES / NO / NA		
Date valid	CS	12.9.13
Scan file	CS	13.9.13
Ack Letter & Receipt	CS	13.9.13
NN Letter	CS	13.9.13
Consultations		
Advert		
Advert Fee recovery letter sent		
Allocated to	DCS	23.10.13
Site Visit	DCS	3.12.13
Passed to DM Team Leader With Delegated Report of Handling	Yes	24.11.13
Draft Approved by DM Team Leader	Be	27.12.13
Approved by Executive Manager of Planning		
Decision Notice created and returned to officer for checking & Stamping	CS	27.3.14
Officer checks decision notice and stamps and returns to Admin	DCS	27.3.14
Stamp Plans & Scan with Decision Notice	CS	27.3.14
Appeal? YES / NO		

Statutory Minimum 14 Days ☐ Delegated

Period for determination 21 Days ☒ YES/NO

Local Review Body Date .....

Planning Committee Date .....

Further Notifications Required:	INITIAL	DATE
Who:		
•		
•		
•		



**Holden John@Development Service**

**From:** ALEX WARD [REDACTED]  
**Sent:** 29 March 2014 09:14  
**To:** Stewart Dawn@Development Service  
**Cc:** Holden John@Development Service; tavish.scott.msp@scottish.parliament.uk  
**Subject:** Temporary site heater flue.

Dear Dawn Stewart,

I have received your refusal notice about my temporary site heater flue - although I strongly disagree with the handling of the application and how you came to your conclusion, if indeed a planning application was ever needed for this temporary site heater which was only ever made following a visit from your enforcement officer with a threat of a stop notice on the entire build.

I will be putting an appeal in against this decision, and this is just to inform you we will continue to use the temporary site heater until a further higher decision has been made as advised I could do by yourself in a phone call in the afternoon on the 27/3/2014.

If we do not hear back from you by the 1/4/2014 we will take it that the advice still stands.

Regards,

Alex Ward

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# Shetland Islands Council

Executive Manager: Iain S McDiarmid  
Director: Neil Grant

Amanda Kenny  
8 Aestbrek  
Sandwick  
Shetland  
ZE2 9UJ

Planning  
Development Services  
8 North Ness Business Park  
Lerwick  
Shetland  
ZE1 0LZ

Telephone: 01595 744293  
[www.shetland.gov.uk](http://www.shetland.gov.uk)

If calling please ask for:  
Dawn Stewart  
Planning Officer  
[Dawn.Stewart@shetland.gov.uk](mailto:Dawn.Stewart@shetland.gov.uk)  
Direct Dial: 01595 744817

COPY

Our Ref: 2013/322/VCON

Date: 27 March 2014

Dear Sir/Madam

	Town and Country Planning (Scotland) Acts
<b>Development</b>	<b>To vary condition 1 of planning permission 2009/268/PCD to erect temporary flue for woodburning stove on workshop (retrospective)</b>
<b>Location</b>	<b>Hillside Lodge, Hillside Road, Sandwick, Shetland ZE2 9HW</b>
<b>Application No.</b>	<b>2013/322/VCON</b>

I refer to the above application in response to which you submitted a representation.

I can inform you that the application has now been considered by the Council's Executive Manager of Planning under powers delegated to him in the Scheme of Delegations for the Planning Service that has been approved by the Scottish Ministers. He determined that consent be refused.

A copy of the decision notice is available for inspection on our website at <http://pa.shetland.gov.uk/> or at our office at the above address.

Yours faithfully

Dawn Stewart  
Planning Officer





# Shetland Islands Council

Executive Manager: Iain S McDiarmid  
Director: Neil Grant

Sandwick Community Council  
[REDACTED]

Planning  
Development Services  
8 North Ness Business Park  
Lerwick  
Shetland  
ZE1 0LZ

Telephone: 01595 744293  
[www.shetland.gov.uk](http://www.shetland.gov.uk)

If calling please ask for:  
Dawn Stewart  
Planning Officer  
[Dawn.Stewart@shetland.gov.uk](mailto:Dawn.Stewart@shetland.gov.uk)  
Direct Dial: 01595 744817

COPY

Our Ref: 2013/322/VCON

Date: 27 March 2014

Dear Sir/Madam

	Town and Country Planning (Scotland) Acts
<b>Development</b>	<b>To vary condition 1 of planning permission 2009/268/PCD to erect temporary flue for woodburning stove on workshop (retrospective)</b>
<b>Location</b>	<b>Hillside Lodge, Hillside Road, Sandwick, Shetland ZE2 9HW</b>
<b>Application No.</b>	<b>2013/322/VCON</b>

I refer to the above application in response to which you submitted a representation.

I can inform you that the application has now been considered by the Council's Executive Manager of Planning under powers delegated to him in the Scheme of Delegations for the Planning Service that has been approved by the Scottish Ministers. He determined that consent be refused.

A copy of the decision notice is available for inspection on our website at <http://pa.shetland.gov.uk/> or at our office at the above address.

Yours faithfully

Dawn Stewart  
Planning Officer

**Holden John@Development Service**

**From:** Holden John@Development Service  
**Sent:** 27 March 2014 16:24  
**To:** McDiarmid Iain@Development Service  
**Cc:** Stewart Dawn@Development Service  
**Subject:** FW: Alex Ward, Hillside Lodge, Hillside, Sandwick, Shetland  
**Attachments:** 322\_Timeline.doc; 322\_Delegated\_Report\_of\_Handling.doc  
 Iain,

With reference to the Chief Executive's request for a full explanation of the circumstances that gave rise to Mr Ward's approach to Tavish Scott MSP, and then in turn Mr Scott's email to the Chief Executive, firstly, I can advise that a determination on Mr Ward's application has now been made and a decision notice issued. Coincidentally, at the same time as the applicant was chasing progress so to has been an objector to the application. The application has been refused.

The Report of Handling, together with the Appended timeline, provide the fullest explanations of how the application was dealt with and the issues that were at play. These are attached. The timeline that was appended to the report ends at 24 January 2014, but there was overlapping and subsequent email communication between myself and Mr Ward which is set out below. The latest is that which was sent by myself earlier today that, amongst other matters, seeks to address both criticism of the Service's handling of the application and a notion by Mr Ward of 'striking a deal' on a fee for an application he might make on a full application for change of use.

John

John Holden  
 Team Leader - Development Management  
 Planning  
 Ext 3898

**"From:** Holden John@Development Service  
**Sent:** 27 March 2014 15:45  
**To:** 'ALEX WARD'  
**Subject:** FW: Planning application - Alex Ward

Dear Mr Ward,

Firstly, I can confirm that a determination has now been made on your planning application ref. 2013/322/VCON. Details of the determination will appear on the Council's website, and a paper copy of the decision notice will be put in the post to you.

It has previously been suggested by you that during the early stages of the Service's handling of your application you were 'misinformed' by officers.

The officers who you dealt with at the time you submitted your application and who were involved at the validation stage have confirmed to me that you were advised that variations to conditions attached to planning consents attract a fee of £192, and that this would be checked before it was confirmed back to you. They, however, say that they did not instruct you of what to apply for, nor what you should write on the application form's Part 6. The officer who was in attendance when you filled in the application form originally, says that they did not guide you in what you needed to do, nor did they examine the description of what you were proposing to do as they recognised that they could not be your planning advisor.

Up until the time an application is formally submitted the advice and services the Council provide are free, and go beyond the statutory functions of the Council. It is open to you (and indeed any other person) to seek independent planning advice at any time during the process of working to a planning decision, and also to make the choice on what it is you want to do.

As I consider is evidenced by the Report of Handling that the planning officer has prepared and which informed the determination that has been made, during the course of the planning process for your application the description of development was the subject of change due to the nature of the proposals under

27/03/2014



consideration changing. All the while the Service has sought to ensure that the determination finally made on your application is legally sound, which I hope you will appreciate can only benefit all parties. The taking of advice from the Council's Legal Services during the processing of your application has confirmed that it is not possible for a material change of use of the workshop to business use to be authorised under the terms of a variation application. If, as you have previously stated, when you first came to the Service in relation to what you had in your mind you thought you would have to apply for full planning permission, it always remained open to you to do this. This is particularly the case given during the planning process for your now refused application you cited that you have experience of the process in England as it related to your business there. Despite requests you did not provide the details relating to your experience that might well have assisted matters later on.

On the issue of what business would constitute a material change of use were it to take place at the workshop at the site, and how this sits with what you intend to do, during the handling of your application the Service in my opinion sought to be as helpful as possible, going so far as to relay information to you it had itself received from the Council's Legal Services. As I have said previously, whether or not change of use is "material", and therefore requires planning permission is a question of fact and degree for the planning authority, or the Scottish Ministers on appeal, to decide. There is no general guidance on when a change of use will be considered "material", but some assistance is given by case law. It remains open to you to seek to apply for whatever planning permission you wish, but I would comment, having reviewed the planning file, that any business use that was not considered ancillary to the residential use of the site as a whole might not be able to be supported given that already, in the context of your recently determined application, consultations that took place when it had a business use proposed as part of it prompted a recommendation for refusal from the Council's Roads Services.

As regards the fee for any full application for change of use that you might choose to make, as I have stated above, notwithstanding its being your opinion that on the basis of your having been misinformed you should only pay the difference between £382 and £192; firstly, I am not satisfied from the evidence that you were forced to make the application in the way that you did; and secondly, it is not in any event within the gift of planning officials to enter into what would be tantamount to 'deals' as regards fees for planning applications. The fees for planning applications are set down by Regulations that are made by the Scottish Ministers, and are subject to full auditing. The Planning Authority could not validate your now determined variation application without the correct fee of £192 having been paid. Similarly, it will not be able to validate any application you might choose to make for a full change of use application unless it receives a fee of £382.

I hope this clarifies the position.

Yours sincerely

John Holden  
Team Leader - Development Management

Shetland Islands Council  
Planning  
Development Services Department  
8 North Ness Business Park  
Lerwick  
Shetland  
ZE1 0LZ

Tel: (01595) 743898

**From:** Holden John@Development Service  
**Sent:** 11 February 2014 15:12  
**To:** 'ALEX WARD'  
**Subject:** RE: Planning application - Alex Ward

Dear Mr Ward,

I apologise for the fact you have not received an acknowledgement to your email of 23 January 2014 until now. The reason for this is that I have only today returned to work after 2 weeks sick leave,

Now that I am back at work I will provide you with a substantive response to your email as soon as I can.

27/03/2014

Yours sincerely

John Holden  
Team Leader - Development Management  
Planning

Shetland Islands Council  
Planning  
Development Services Department  
8 North Ness Business Park  
Lerwick  
Shetland  
ZE1 0LZ

Tel: (01595) 743898

**From:** ALEX WARD [REDACTED]  
**Sent:** 03 February 2014 10:19  
**To:** Holden John@Development Service  
**Subject:** Re: Planning application - Alex Ward

Dear John Holden,

*I sent an email to yourself dated 23/1/2014 (see below)*

*Again I am asking you to please confirm how much I should pay for a full planning application for change of use of the workshop/garage so I may run a small business from it.*

*As I have said before I do not feel that I should have to pay the full amount of £382 as your department advised me on how the original application should proceed, contrary to what I wanted to pay and do which was £382 not £192 that I was advised to pay. By my calculation I should only have to pay £50, this being £382 - £192 - £140 (advertising costs that would have been included in a full planning application).*

*Could you please reply as soon as possible so I am able to proceed once again with this matter.*

*I do feel now extremely annoyed it has taken the council 28 weeks so far for an application for a small business (which turns out I was badly advised) and wood burning flue (which we are still unsure whether we actually need as it is part of a building process and is temporary) and nobody seems to be concerned or in any hurry to try and resolve any of these issues.*

Regards,  
Alex Ward

**From:** ALEX WARD [REDACTED]  
**To:** "john.holden@shetland.gov.uk" <john.holden@shetland.gov.uk>  
**Sent:** Thursday, 23 January 2014, 10:40  
**Subject:** Re: Planning application - Alex Ward

Dear John Holden,

*In reference to your email below 22 Jan 2014, I have come to the conclusion that to save any more confusion and mistakes being made by the planning department, I feel best way now to move forward, unless you can remove condition 10 and 11 completely is to submit a fresh full planning application \*as I was going to originally until told otherwise by your department\*, for change of use the*

27/03/2014



workshop/garage to allow them to be used for business purposes. However I am concerned that I have to pay another £382 for this mistake by the planning department instead of the difference between the two fees as we discussed earlier which I feel is only fair considering the run around I have been given by your department regarding information that clearly has not be correct on more than one occasion.

Please could you now advise me what you think I should be paying for this fresh full planning application for change of use for small business.

I will await Dawn Stewart response now regarding the temporary site heater (flue).

Regards,  
Alex Ward

**From:** "john.holden@shetland.gov.uk" <john.holden@shetland.gov.uk>

**To:** [REDACTED]

**Cc:** Dawn.Stewart@shetland.gov.uk

**Sent:** Wednesday, 22 January 2014, 17:25

**Subject:** RE: Planning application - Alex Ward

Dear Mr Ward

Thank you for your email.

I know that Dawn is working on providing you with a response to your recent emails to her.

If after receiving her response you would still wish a variation of conditions 10 to 11 to be considered - with them referencing 'material change of use', the task of assessing acceptance of the request as a Variation of Application will be completed. In any event if you would clarify the precise wordings of the varied conditions you would be seeking this would avoid any doubt about what precisely you are seeking.

Yours sincerely

John Holden  
Team Leader - Development Management  
Planning

Shetland Islands Council  
Planning  
Development Services Department  
Grantfield  
Lerwick  
Shetland  
ZE1 0NT

Tel: (01595) 743898

**From:** ALEX WARD [REDACTED]

**Sent:** 22 January 2014 09:01

**To:** Holden John@Development Service

**Subject:** Re: Planning application - Alex Ward

Dear John Holden,

Thank you for getting back to me, however I think it is only fair that a few points are made clear. I agree I have had numerous contacts with the planning department over this matter:

- 1) Mr Norman Sineath who came to the site to discuss matters that had arisen
- 2) Yourself, as this was who I was told contact by Mr Sineath.

27/03/2014

3) Mr Jonny Wiseman who you passed the matter on to.

4) Mr Richard McNeil who I spoke to as the duty officer at the time I handed in the current planning permission (2013)

5) From then on I had spoken either Dawn Stewart my case officer or yourself when further clarification was needed when I thought I was getting nowhere.

Based on the information given from your planning department I have been absolutely clear about what I have been asking. Things have only changed when information given from the planning department to me has been found to be incorrect eg that the caravans HAD to be removed by November 2014, no mention that I could apply for an extension. Mr Sineath also said I couldn't use the workshop until main house was built despite having full planning permission again, I was proved correct that I could use it.

Having spoken to Dawn Stewart about condition 10 and 11 she has not put anything in writing as to what I can or cannot do and is unwilling to discuss the matter any further, which makes it pretty difficult to proceed. Not that she put this in writing so therefore can be denied. As you said in your last email she can tell me what I can and can't do in my workshop, business or otherwise, I would be extremely grateful if you could please ask her to put this in writing so everybody who would ever need to know now or in the future it would be clear to all.

Over the matter of the flue she has been aware from the beginning when she became my case officer and rest of the planning department for that matter, that the flue was part of the building process not a material part of the building and therefore temporary. As such any money for advertising costs should have been asked for when presenting the planning application to the council not 11 weeks later (5 weeks after she was given the case) if they are indeed needed ?

The only other reason that I have spoken to other people in the council was when the data protection act was broken on more than one occasion and I tried to put it right, those being Clare Summers then Dawn Stewart, yourself and finally chief executive secretary until I got the matter resolved. Mr McDiramid phoned me back over this matter on your behalf so I was told asking me to stop ringing the planning officers (I was only contacting Dawn Stewart and yourself at this point) because once again no answers were forthcoming and Dawn Stewart was not returning messages, once again making it extremely difficult to communicate without myself having to chase around to find out what exactly was going on which you can appreciate not only very frustrating but very time consuming when you can appreciate I too am extremely busy trying to build my house and work and bring up my family I really don't have the time to be chasing the planning department and find documents and legislation to prove that some of the planning departments information is clearly wrong.

I have absolutely no problem paying the fee for advertising (£140) for the flue so long as in writing to me what I am exactly paying for. Dawn Stewart to this date has not stated why or how flue exactly contravenes the local development plan other than "it does" she may have explained to you but nothing in writing to me and does not feel she has too (most helpful).

So I have been asked to pay the council a fee for something that I am not privy to know and have been told will not be explained other than in her final report after I have paid the money (which I may have not had to do depending on a report) and refusing to discuss with me again making application process so unnecessarily challenging.

I feel I am being blamed for mistakes being made from within the planning department and things are being made extremely difficult for myself to achieve my goals through the planning process.

I will be in first thing this morning to pay the flue advertising cost £140 I am not particularly happy about it as explained above why, I trust if the advertising was not necessary I will be reimbursed by the council.

I appreciate the fact you need to distance yourself from the application but someone needs to sort

27/03/2014



*what has become a tangled mess out and if it's not yourself then perhaps someone else.*

Regards,  
Alex Ward"

**From:** McDiarmid Iain@Development Service  
**Sent:** 23 March 2014 08:30  
**To:** Boden Mark@Executive Office  
**Subject:** RE: Alex Ward, Hillside Lodge, Hillside, Sandwick, Shetland

Good Morning,

Yes, we will spend even more time dealing with Mr. Ward.  
In terms of professional officer time per pound, he certainly has got best value, although I am not sure the public of Shetland would agree!

rgds

Iain

**From:** Boden Mark@Executive Office  
**Sent:** 22 March 2014 15:09  
**To:** McDiarmid Iain@Development Service  
**Cc:** Grant Neil@Development  
**Subject:** FW: Alex Ward, Hillside Lodge, Hillside, Sandwick, Shetland

Iain,

I refer to the e mail below and to my acknowledgement thereof which I copied to you.

Would you be so kind as to look into this matter and draft a full explanation for me to send to Mr Ward with a copy to the MSP.

Please also consider whether or not I should advise the MSP to copy correspondence to Councillor Robertson. If you have not already briefed Councillor Robertson you might wish to consider doing so now.

Mark

**From:** Sally Ritch [REDACTED] **On Behalf Of** Scott T (Tavish), MSP  
**Sent:** 21 March 2014 15:38  
**To:** Boden Mark@Executive Office  
**Subject:** Alex Ward, Hillside Lodge, Hillside, Sandwick, Shetland

Dear Mark,

**Alex Ward, Hillside Lodge, Hillside, Sandwick, Shetland**

Mr Ward submitted a planning application on 12<sup>th</sup> September 2013 reference 2013/322/vcon on the advice of planning officers. It has still not been determined nor taken to the SIC Planning Committee. That means SIC have failed to comply with the statutory guidelines on determination times. Could you explain to Mr Ward why he is still waiting and when this application will be determined?

27/03/2014


Could you also explain why Mr Ward has had eight separate planning officers, why the Head of SIC Planning has told Mr Ward by phone not to contact the department at any time and ascertain why SIC Planning are making life so impossible for a family trying to build a house and begin a business in Shetland. I was frankly embarrassed by what I was told today when I visited the site.

I do want to stress that planning officials Richard MacNeill and Jonny Wiseman were seen by Mr Ward to have been professional, helpful and constructive. I thank them for their attempts to resolve matters.

I would be grateful for your advice on this and as to whether I should copy this case to the Cllr Frank Robertson, chairman of Planning, the Convenor and the Political Leader.

With best wishes,

Tavish

**Tavish Scott MSP**  
**MSP for Shetland**  
*Shetland Parliamentary Office*  
*171 Commercial Street*  
*Lerwick*  
*Shetland*  
*ZE1 0HX*  


*Scottish Parliament*  
*Edinburgh*  
*EH99 1SP*

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**Holden John@Development Service****From:** Holden John@Development Service**Sent:** 27 March 2014 15:45**To:** 'ALEX WARD'**Subject:** FW: Planning application - Alex Ward

Dear Mr Ward,

Firstly, I can confirm that a determination has now been made on your planning application ref. 2013/322/VCON. Details of the determination will appear on the Council's website, and a paper copy of the decision notice will be put in the post to you.

It has previously been suggested by you that during the early stages of the Service's handling of your application you were 'misinformed' by officers.

The officers who you dealt with at the time you submitted your application and who were involved at the validation stage have confirmed to me that you were advised that variations to conditions attached to planning consents attract a fee of £192, and that this would be checked before it was confirmed back to you. They, however, say that they did not instruct you of what to apply for, nor what you should write on the application form's Part 6. The officer who was in attendance when you filled in the application form originally, says that they did not guide you in what you needed to do, nor did they examine the description of what you were proposing to do as they recognised that they could not be your planning advisor.

Up until the time an application is formally submitted the advice and services the Council provide are free, and go beyond the statutory functions of the Council. It is open to you (and indeed any other person) to seek independent planning advice at any time during the process of working to a planning decision, and also to make the choice on what it is you want to do.

As I consider is evidenced by the Report of Handling that the planning officer has prepared and which informed the determination that has been made, during the course of the planning process for your application the description of development was the subject of change due to the nature of the proposals under consideration changing. All the while the Service has sought to ensure that the determination finally made on your application is legally sound, which I hope you will appreciate can only benefit all parties. The taking of advice from the Council's Legal Services during the processing of your application has confirmed that it is not possible for a material change of use of the workshop to business use to be authorised under the terms of a variation application. If, as you have previously stated, when you first came to the Service in relation to what you had in your mind you thought you would have to apply for full planning permission, it always remained open to you to do this. This is particularly the case given during the planning process for your now refused application you cited that you have experience of the process in England as it related to your business there. Despite requests you did not provide the details relating to your experience that might well have assisted matters later on.

On the issue of what business would constitute a material change of use were it to take place at the workshop at the site, and how this sits with what you intend to do, during the handling of your application the Service in my opinion sought to be as helpful as possible, going so far as to relay information to you it had itself received from the Council's Legal Services. As I have said previously, whether or not change of use is "material", and therefore requires planning permission is a question of fact and degree for the planning authority, or the Scottish Ministers on appeal, to decide. There is no general guidance on when a change of use will be considered "material", but some assistance is given by case law. It remains open to you to seek to apply for whatever planning permission you wish, but I would comment, having reviewed the planning file, that any business use that was not considered ancillary to the residential use of the site as a whole might not be able to be supported given that already, in the context of your recently determined application, consultations that took place when it had a business use proposed as part of it prompted a recommendation for refusal from the Council's Roads Services.

As regards the fee for any full application for change of use that you might choose to make, as I have stated above, notwithstanding its being your opinion that on the basis of your having been misinformed you should only pay the difference between £382 and £192; firstly, I am not satisfied from the evidence that you were forced to make the application in the way that you did; and secondly, it is not in any event within the gift of planning officials to enter into what would be tantamount to 'deals' as regards fees for planning applications. The fees for planning applications are set down by Regulations that are made by the Scottish Ministers, and are subject to full auditing. The Planning Authority could not validate your now determined variation

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application without the correct fee of £192 having been paid. Similarly, it will not be able to validate any application you might choose to make for a full change of use application unless it receives a fee of £382.

I hope this clarifies the position.

Yours sincerely

John Holden  
Team Leader - Development Management

Shetland Islands Council  
Planning  
Development Services Department  
8 North Ness Business Park  
Lerwick  
Shetland  
ZE1 0LZ

Tel: (01595) 743898

**From:** Holden John@Development Service  
**Sent:** 11 February 2014 15:12  
**To:** 'ALEX WARD'  
**Subject:** RE: Planning application - Alex Ward

Dear Mr Ward,

I apologise for the fact you have not received an acknowledgement to your email of 23 January 2014 until now. The reason for this is that I have only today returned to work after 2 weeks sick leave,

Now that I am back at work I will provide you with a substantive response to your email as soon as I can.

Yours sincerely

John Holden  
Team Leader - Development Management  
Planning

Shetland Islands Council  
Planning  
Development Services Department  
8 North Ness Business Park  
Lerwick  
Shetland  
ZE1 0LZ

Tel: (01595) 743898

**From:** ALEX WARD [REDACTED]  
**Sent:** 03 February 2014 10:19  
**To:** Holden John@Development Service  
**Subject:** Re: Planning application - Alex Ward

Dear John Holden,

27/03/2014

I sent an email to yourself dated 23/1/2014 (see below)

Again I am asking you to please confirm how much I should pay for a full planning application for change of use of the workshop/garage so I may run a small business from it.

As I have said before I do not feel that I should have to pay the full amount of £382 as your department advised me on how the original application should proceed, contrary to what I wanted to pay and do which was £382 not £192 that I was advised to pay. By my calculation I should only have to pay £50, this being £382 - £192- £140 (advertising costs that would have been included in a full planning application).

Could you please reply as soon as possible so I am able to proceed once again with this matter.

I do feel now extremely annoyed it has taken the council 28 weeks so far for an application for a small business (which turns out I was badly advised) and wood burning flue (which we are still unsure whether we actually need as it is part of a building process and is temporary) and nobody seems to be concerned or in any hurry to try and resolve any of these issues.

Regards,  
Alex Ward

**From:** ALEX WARD [REDACTED]  
**To:** "john.holden@shetland.gov.uk" <john.holden@shetland.gov.uk>  
**Sent:** Thursday, 23 January 2014, 10:40  
**Subject:** Re: Planning application - Alex Ward

Dear John Holden,

In reference to your email below 22 Jan 2014, I have come to the conclusion that to save any more confusion and mistakes being made by the planning department, I feel best way now to move forward, unless you can remove condition 10 and 11 completely is to submit a fresh full planning application \*as I was going to originally until told otherwise by your department\*, for change of use the workshop/garage to allow them to be used for business purposes. However I am concerned that I have to pay another £382 for this mistake by the planning department instead of the difference between the two fees as we discussed earlier which I feel is only fair considering the run around I have been given by your department regarding information that clearly has not be correct on more than one occasion.

Please could you now advise me what you think I should be paying for this fresh full planning application for change of use for small business.

I will await Dawn Stewart response now regarding the temporary site heater (flue).

Regards,  
Alex Ward

**From:** "john.holden@shetland.gov.uk" <john.holden@shetland.gov.uk>  
**To:** [REDACTED]  
**Cc:** Dawn.Stewart@shetland.gov.uk  
**Sent:** Wednesday, 22 January 2014, 17:25  
**Subject:** RE: Planning application - Alex Ward

Dear Mr Ward

Thank you for your email.

27/03/2014

I know that Dawn is working on providing you with a response to your recent emails to her.

If after receiving her response you would still wish a variation of conditions 10 to 11 to be considered - with them referencing 'material change of use', the task of assessing acceptance of the request as a Variation of Application will be completed. In any event if you would clarify the precise wordings of the varied conditions you would be seeking this would avoid any doubt about what precisely you are seeking.

Yours sincerely

John Holden  
Team Leader - Development Management  
Planning

Shetland Islands Council  
Planning  
Development Services Department  
Grantfield  
Lerwick  
Shetland  
ZE1 0NT

Tel: (01595) 743898

**From:** ALEX WARD [REDACTED]  
**Sent:** 22 January 2014 09:01  
**To:** Holden John@Development Service  
**Subject:** Re: Planning application - Alex Ward

Dear John Holden,

Thank you for getting back to me, however I think it is only fair that a few points are made clear. I agree I have had numerous contacts with the planning department over this matter:

- 1) Mr Norman Sineath who came to the site to discuss matters that had arisen
- 2) Yourself, as this was who I was told contact by Mr Sineath.
- 3) Mr Jonny Wiseman who you passed the matter on to.
- 4) Mr Richard McNeil who I spoke to as the duty officer at the time I handed in the current planning permission (2013)
- 5) From then on I had spoken either Dawn Stewart my case officer or yourself when further clarification was needed when I thought I was getting nowhere.

Based on the information given from your planning department I have been absolutely clear about what I have been asking. Things have only changed when information given from the planning department to me has been found to be incorrect eg that the caravans HAD to be removed by November 2014, no mention that I could apply for an extension. Mr Sineath also said I couldn't use the workshop until main house was built despite having full planning permission again, I was proved correct that I could use it.

Having spoken to Dawn Stewart about condition 10 and 11 she has not put anything in writing as to what I can or cannot do and is unwilling to discuss the matter any further, which makes it pretty difficult to proceed. Not that she put this in writing so therefore can be denied. As you said in your last email she can tell me what I can and can't do in my workshop, business or otherwise, I would be extremely grateful if you could please ask her to put this in writing so everybody who would ever need to know now or in the future it would be clear to all.

Over the matter of the flue she has been aware from the beginning when she became my case officer

27/03/2014



and rest of the planning department for that matter, that the flue was part of the building process not a material part of the building and therefore temporary. As such any money for advertising costs should have been asked for when presenting the planning application to the council not 11 weeks later (5 weeks after she was given the case) if they are indeed needed ?

The only other reason that I have spoken to other people in the council was when the data protection act was broken on more than one occasion and I tried to put it right, those being Clare Summers then Dawn Stewart ,yourself and finally chief executive secretary until I got the matter resolved. Mr McDiramid phoned me back over this matter on your behalf so I was told asking me to stop ringing the planning officers (I was only contacting Dawn Stewart and yourself at this point) because once again no answers were forthcoming and Dawn Stewart was not returning messages, once again making it extremely difficult to communicate without myself having to chase around to find out what exactly was going on which you can appreciate not only very frustrating but very time consuming when you can appreciate I too am extremely busy trying to build my house and work and bring up my family I really don't have the time to be chasing the planning department and find documents and legislation to prove that some of the planning departments information is clearly wrong.

I have absolutely no problem paying the fee for advertising (£140) for the flue so long as in writing to me what I am exactly paying for. Dawn Stewart to this date has not stated why or how flue exactly contravenes the local development plan other than " it does" she may have explained to you but nothing in writing to me and does not feel she has too (most helpful).

So I have been asked to pay the council a fee for something that I am not privy to know and have been told will not be explained other than in her final report after I have paid the money (which I may have not had to do depending on a report) and refusing to discuss with me again making application process so unnecessarily challenging.

I feel I am being blamed for mistakes being made from within the planning department and things are being made extremely difficult for myself to achieve my goals through the planning process.

I will be in first thing this morning to pay the flue advertising cost £140 I am not particularly happy about it as explained above why, I trust if the advertising was not necessary I will be reimbursed by the council.

I appreciate the fact you need to distance yourself from the application but someone needs to sort what has become a tangled mess out and if it's not yourself then perhaps someone else.

Regards,  
Alex Ward

**From:** "john.holden@shetland.gov.uk" <john.holden@shetland.gov.uk>  
**To:** [REDACTED]  
**Cc:** Dawn.Stewart@shetland.gov.uk  
**Sent:** Tuesday, 21 January 2014, 17:01  
**Subject:** RE: Planning application - Alex Ward

Dear Mr Ward,

Thank you for copying me in on your email communications directed to Dawn, both from a time before the telephone call I asked her to make to you after we talked today, and then afterwards.

27/03/2014

I understand you have may have tried to telephone me after your telephone conversation with Dawn.

It appears that the contact you have had with various officers within the service area I am responsible for has perhaps only served to lead to matters being confused, particularly with regards to the understanding of what your intentions and proposals for development amount to, and following on from this morning's contact: what had or had not been said previously; and adding to the confusion by, for example, seeking to draw comparisons, be this in relation to parts of a building process or how the issue of amenity is considered between proposals. The result appears to be that contact with anyone other than a nominated officer and by telephone are not the most constructive of means by which your application can be progressed.. So as to overcome this and help ensure that you to can be confident that the detail and merits of your application are clear as a determination on your application is reached, I propose that communications should only take place in writing from now on, and with Dawn. Unfortunately, as the designated Appointed Person who may end up making a determination on you application I really need to distance myself from carrying out any assessments myself before I am presented with a Report of Handling. Up until this point I am really just seeking to ensure that progress is made in an as efficient way as possible.

In relation to your application I gather that Dawn explained to you the impact of your proposal that she considered gave rise to a need to carry out publicity on your proposal. I have to advise you that without making a payment of the sum due for the publicity the Planning Authority has carried out the relevant Regulations prevent it from making a determination under any circumstance. If by the time when Dawn is clear on what your proposal amounts to and has prepared a Report of Handling you have still not made the relevant payment, any development that has taken place outside of the terms of the permission you already have can still be the subject of formal consideration of a need for formal enforcement action.

It should be perfectly possible for Dawn to answer your questions as to what you can use your workshop/garage for at the present time from the advice that she has received from Legal Services to date. During my conversation with you I indicated that I was of the view that it would likely not be possible within a condition to define a specific as to what will constitute a material change of use. This is because whether or not a change of use is "material" and therefore requires planning permission is a question of fact and degree for the planning authority, or the Scottish Ministers on appeal, to decide. There is no general guidance on when a change of use will be considered "material", but some assistance is given by case law.

Yours sincerely

John Holden  
Team Leader - Development Management  
Planning

Shetland Islands Council  
Planning  
Development Services Department  
Grantfield  
Lerwick  
Shetland  
ZE1 0NT

Tel: (01595) 743898

**From:** ALEX WARD [REDACTED]  
**Sent:** 21 January 2014 13:14  
**To:** Stewart Dawn@Development Service  
**Cc:** Holden John@Development Service  
**Subject:** Re: Planning application - Alex Ward

Dear Dawn Stewart,

Just a note to re-confirm to you the workshop building has full permission to be used for general relaxation/recreation etc.

27/03/2014

Please note the wood burning flue as I have said many times via email and on phone is part of the building process for drying out the workshop it is temporary and not a permanent structure as I said to you this morning, this is the same situation as using a digger for digging the footings /foundations for a house as opposed to using the driveway to store diggers, you seem to be wanting to ignore the fact it's part of a building process.

I feel your not working with me but against me, and not wanting to try and resolve any difficulties to come to a satisfactory conclusion that could work for both of us.

Regards,  
Alex Ward

**From:** ALEX WARD [REDACTED]  
**To:** "Dawn.Stewart@shetland.gov.uk" <Dawn.Stewart@shetland.gov.uk>  
**Cc:** "john.holden@shetland.gov.uk" <john.holden@shetland.gov.uk>  
**Sent:** Tuesday, 21 January 2014, 12:36  
**Subject:** Re: Planning application - Alex Ward

Dear Dawn Stewart,

Following our telephone conversation, as you said you will not now discuss condition 10 or 11 and have nothing more to say on the matter. In the conversation before Christmas where I said that these conditions prevent me from doing paperwork or even filling out a tax form as these would be for business purposes, you said you work from home and do council business from there, therefore I could do the same even though condition 10 and 11 state not for business purposes. Could you please confirm that I can however use the workshop /garage for business purposes as long as this does not constitute a material change of use.

If you will not confirm one way or the other, do I take I can use the workshop/garage for business purposes contrary to the wording on my original application as long as it does not constitute a material change of use.

Regards,  
Alex Ward

**From:** ALEX WARD [REDACTED]  
**To:** "Dawn.Stewart@shetland.gov.uk" <Dawn.Stewart@shetland.gov.uk>  
**Sent:** Tuesday, 21 January 2014, 11:23  
**Subject:** Re: Planning application - Alex Ward

Dear Dawn Stewart,

It's been 26 weeks since the enforcement officer came to my site and advised to put an application (despite having full planning) in i which we did very quickly on his request. It took 1 month just to get a reply as to whether we actually needed further planning application which the planning department said we did. Although now it turned out later that some of it was not required being badly advised by the planning department.

I am still waiting for your reply about a temporary flue which is being used as part of the building process (not part of the structure itself) and change of condition 10 and 11 (reference not for business purposes).

I have given permission already for 1 time extension which has lapsed over a month ago. Nobody has bothered to ask me for another time extension, we are no closer it appears to any answers to my questions regarding above and being asked to pay for something which you have not be able to justify yet and you stated that you did not know where exactly I was contravening the local development plan.



Upon taking outside advice nobody can understand why condition 10 and 11 can not be changed so that I can use the workshop and garage for business purposes so long as it does not constitute a material change of use see previous email.

Please can you now as a matter of urgency update me as to what any progress is being made. I am now getting very frustrated as to the lack progress and communication within planning department for what essentially is a straightforward planning application it beggers belief at just how long this has taken to date with no proper answers.

Regards,  
Alex Ward

**From:** "Dawn Stewart@shetland.gov.uk" <Dawn.Stewart@shetland.gov.uk>  
**To:** [REDACTED]  
**Sent:** Wednesday, 8 January 2014, 11:50  
**Subject:** RE: Planning application - flue ? ad costs

Dear Mr Ward

Thank you for your email which I have received today upon my return to work. I will get back to you in due course in relation to your comments.

Regards  
Dawn Stewart  
Planning Officer – Development Management

Tel: 01595 744817  
Email: dawn.stewart@shetland.gov.uk

**From:** ALEX WARD [REDACTED]  
**Sent:** 05 January 2014 11:27  
**To:** Stewart Dawn@Development Service  
**Subject:** Re: Planning application - flue ? ad costs

Dear Dawn Stewart,

You have told me which documents that my application apparently "does not accord with the provisions of the development plan ", however I would appreciate it if you could demonstrate exactly where it does not apply before I pay any further fees.

I am still requesting that condition 10 and 11 are changed so as "I can use the garage and workshop for business purposes so long as any work done does not constitute a material change of use". I intend to be using the workshop at present for office based work, designing and consultation work (as well as for the making and repairing of furniture that I already have permission to do so). If I wish in the future to do any other work that would involve a material change of use I will obviously contact the planning department with a full planning application to do so.

Having discussed this with John Holden and yourself my current planning 2009 has been written in such a way that this prevents me from working from home (as you do working on council business from home) even though it was probably not meant to be so tight and written like it was I feel the above suggestion would clear this up and would make it clear to all involved and prevent any misunderstanding. The fact remains is has been written in such a way to prevent me from working from home and therefore could be used to prevent me from working from home if someone now or in future decided to be awkward.

27/03/2014

Kind Regards,

Alex Ward

From: ALEX WARD [REDACTED]

To: "dawn.stewart@shetland.gov.uk" <dawn.stewart@shetland.gov.uk>

Sent: Saturday, 14 December 2013, 14:42

Subject: Re: Planning application - flue ? ad costs

Dear Dawn Stewart,

Before I pay for any advertising costs for the wood burning flue, could you please provide me with information stating exactly what does not accord with the provisions of the development plan for my own reference.

Regards,

Alex Ward

From: ALEX WARD [REDACTED]

To: "dawn.stewart@shetland.gov.uk" <dawn.stewart@shetland.gov.uk>

Sent: Wednesday, 4 December 2013, 10:10

Subject: Planning application

Hi Dawn,

I note the title of my planning application has now been changed for the flue which is fine, however I am still waiting for a response from an email sent to John Holden as to how this application for the change of use for the business ( as this not mentioned in the title) is going to proceed due to incorrect advice given at the time of me submitting the application.  
I hope to hear back from someone soon.

Regards,

Alex Ward.

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27/03/2014

## Holden John@Development Service

**From:** Holden John@Development Service  
**Sent:** 11 February 2014 15:12  
**To:** 'ALEX WARD'  
**Subject:** RE: Planning application - Alex Ward

Dear Mr Ward,

I apologise for the fact you have not received an acknowledgement to your email of 23 January 2014 until now. The reason for this is that I have only today returned to work after 2 weeks sick leave,

Now that I am back at work I will provide you with a substantive response to your email as soon as I can.

Yours sincerely

John Holden  
Team Leader - Development Management  
Planning

Shetland Islands Council  
Planning  
Development Services Department  
8 North Ness Business Park  
Lerwick  
Shetland  
ZE1 0LZ

Tel: (01595) 743898

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**From:** ALEX WARD [REDACTED]  
**Sent:** 03 February 2014 10:19  
**To:** Holden John@Development Service  
**Subject:** Re: Planning application - Alex Ward

Dear John Holden,

I sent an email to yourself dated 23/1/2014 (see below)

Again I am asking you to please confirm how much I should pay for a full planning application for change of use of the workshop/garage so I may run a small business from it.

As I have said before I do not feel that I should have to pay the full amount of £382 as your department advised me on how the original application should proceed, contrary to what I wanted to pay and do which was £382 not £192 that I was advised to pay. By my calculation I should only have to pay £50, this being £382 - £192- £140 (advertising costs that would have been included in a full planning application).

Could you please reply as soon as possible so I am able to proceed once again with this matter.

I do feel now extremely annoyed it has taken the council 28 weeks so far for an application for a small business (which turns out I was badly advised) and wood burning flue (which we are still unsure whether we actually need as it is part of a building process and is temporary) and nobody seems to be concerned or in any hurry to try and resolve any of these issues.

Regards,  
Alex Ward

11/02/2014



**From:** ALEX WARD [REDACTED]  
**To:** "john.holden@shetland.gov.uk" <john.holden@shetland.gov.uk>  
**Sent:** Thursday, 23 January 2014, 10:40  
**Subject:** Re: Planning application - Alex Ward

Dear John Holden,

In reference to your email below 22 Jan 2014, I have come to the conclusion that to save any more confusion and mistakes being made by the planning department, I feel best way now to move forward, unless you can remove condition 10 and 11 completely is to submit a fresh full planning application \*as I was going to originally until told otherwise by your department\*, for change of use the workshop/garage to allow them to be used for business purposes. However I am concerned that I have to pay another £382 for this mistake by the planning department instead of the difference between the two fees as we discussed earlier which I feel is only fair considering the run around I have been given by your department regarding information that clearly has not be correct on more than one occasion.

Please could you now advise me what you think I should be paying for this fresh full planning application for change of use for small business.

I will await Dawn Stewart response now regarding the temporary site heater (flue).

Regards,  
 Alex Ward

**From:** "john.holden@shetland.gov.uk" <john.holden@shetland.gov.uk>  
**To:** [REDACTED]  
**Cc:** Dawn.Stewart@shetland.gov.uk  
**Sent:** Wednesday, 22 January 2014, 17:25  
**Subject:** RE: Planning application - Alex Ward

Dear Mr Ward

Thank you for your email.

I know that Dawn is working on providing you with a response to your recent emails to her.

If after receiving her response you would still wish a variation of conditions 10 to 11 to be considered - with them referencing 'material change of use', the task of assessing acceptance of the request as a Variation of Application will be completed. In any event if you would clarify the precise wordings of the varied conditions you would be seeking this would avoid any doubt about what precisely you are seeking.

Yours sincerely

John Holden  
 Team Leader - Development Management  
 Planning

Shetland Islands Council  
 Planning  
 Development Services Department  
 Grantfield  
 Lerwick  
 Shetland  
 ZE1 0NT

Tel: (01595) 743898

**From:** ALEX WARD [REDACTED]  
**Sent:** 22 January 2014 09:01  
**To:** Holden John@Development Service  
**Subject:** Re: Planning application - Alex Ward

Dear John Holden,

Thank you for getting back to me, however I think it is only fair that a few points are made clear. I agree I have had numerous contacts with the planning department over this matter:

- 1) Mr Norman Sineath who came to the site to discuss matters that had arisen
- 2) Yourself, as this was who I was told contact by Mr Sineath.
- 3) Mr Jonny Wiseman who you passed the matter on to.
- 4) Mr Richard McNeil who I spoke to as the duty officer at the time I handed in the current planning permission (2013)
- 5) From then on I had spoken either Dawn Stewart my case officer or yourself when further clarification was needed when I thought I was getting nowhere.

Based on the information given from your planning department I have been absolutely clear about what I have been asking. Things have only changed when information given from the planning department to me has been found to be incorrect eg that the caravans HAD to be removed by November 2014, no mention that I could apply for an extension. Mr Sineath also said I couldn't use the workshop until main house was built despite having full planning permission again, I was proved correct that I could use it.

Having spoken to Dawn Stewart about condition 10 and 11 she has not put anything in writing as to what I can or cannot do and is unwilling to discuss the matter any further, which makes it pretty difficult to proceed. Not that she put this in writing so therefore can be denied. As you said in your last email she can tell me what I can and can't do in my workshop, business or otherwise, I would be extremely grateful if you could please ask her to put this in writing so everybody who would ever need to know now or in the future it would be clear to all.

Over the matter of the flue she has been aware from the beginning when she became my case officer and rest of the planning department for that matter, that the flue was part of the building process not a material part of the building and therefore temporary. As such any money for advertising costs should have been asked for when presenting the planning application to the council not 11 weeks later (5 weeks after she was given the case) if they are indeed needed?

The only other reason that I have spoken to other people in the council was when the data protection act was broken on more than one occasion and I tried to put it right, those being Clare Summers then Dawn Stewart, yourself and finally chief executive secretary until I got the matter resolved. Mr McDiramid phoned me back over this matter on your behalf so I was told asking me to stop ringing the planning officers (I was only contacting Dawn Stewart and yourself at this point) because once again no answers were forthcoming and Dawn Stewart was not returning messages, once again making it extremely difficult to communicate without myself having to chase around to find out what exactly was going on which you can appreciate not only very frustrating but very time consuming when you can appreciate I too am extremely busy trying to build my house and work and bring up my family I really don't have the time to be chasing the planning department and find documents and legislation to prove that some of the planning departments information is clearly wrong.

I have absolutely no problem paying the fee for advertising (£140) for the flue so long as in writing to me what I am exactly paying for. Dawn Stewart to this date has not stated why or how flue

11/02/2014

exactly contravenes the local development plan other than" it does" she may have explained to you but nothing in writing to me and does not feel she has too (most helpful).

So I have been asked to pay the council a fee for something that I am not privy to know and have been told will not be explained other than in her final report after I have paid the money (which I may have not had to do depending on a report) and refusing to discuss with me again making application process so unnecessarily challenging.

I feel I am being blamed for mistakes being made from within the planning department and things are being made extremely difficult for myself to achieve my goals through the planning process.

I will be in first thing this morning to pay the flue advertising cost £140 I am not particularly happy about it as explained above why, I trust if the advertising was not necessary I will be reimbursed by the council.

I appreciate the fact you need to distance yourself from the application but someone needs to sort what has become a tangled mess out and if it's not yourself then perhaps someone else.

Regards,  
Alex Ward

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**From:** "john.holden@shetland.gov.uk" <john.holden@shetland.gov.uk>  
**To:** [REDACTED]  
**Cc:** Dawn.Stewart@shetland.gov.uk  
**Sent:** Tuesday, 21 January 2014, 17:01  
**Subject:** RE: Planning application - Alex Ward

Dear Mr Ward,

Thank you for copying me in on your email communications directed to Dawn, both from a time before the telephone call I asked her to make to you after we talked today, and then afterwards.

I understand you have may have tried to telephone me after your telephone conversation with Dawn.

It appears that the contact you have had with various officers within the service area I am responsible for has perhaps only served to lead to matters being confused, particularly with regards to the understanding of what your intentions and proposals for development amount to, and following on from this morning's contact: what had or had not been said previously; and adding to the confusion by, for example, seeking to draw comparisons, be this in relation to parts of a building process or how the issue of amenity is considered between proposals. The result appears to be that contact with anyone other than a nominated officer and by telephone are not the most constructive of means by which your application can be progressed.. So as to overcome this and help ensure that you to can be confident that the detail and merits of your application are clear as a determination on your application is reached, I propose that communications should only take place in writing from now on, and with Dawn. Unfortunately, as the designated Appointed Person who may end up making a determination on you application I really need to distance myself from carrying out any assessments myself before I am presented with a Report of Handling. Up until this point I am really just seeking to ensure that progress is made in an as efficient way as possible.

In relation to your application I gather that Dawn explained to you the impact of your proposal that she considered gave rise to a need to carry out publicity on your proposal. I have to advise you that without making a payment of the sum due for the publicity the Planning Authority has carried out the relevant Regulations prevent it from making a determination under any circumstance. If by the time when Dawn is clear on what your proposal amounts to and has prepared a Report of Handling you have still not made the relevant payment, any development that has taken place outside of the terms of the permission you already have can still be the subject of formal consideration of a need for formal enforcement action.

11/02/2014

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Yours sincerely

John Holden  
Team Leader - Development Management  
Planning

Shetland Islands Council  
Planning  
Development Services Department  
Grantfield  
Lerwick  
Shetland  
ZE1 0NT

Tel: (01595) 743898

---

**From:** ALEX WARD [REDACTED]  
**Sent:** 21 January 2014 13:14  
**To:** Stewart Dawn@Development Service  
**Cc:** Holden John@Development Service  
**Subject:** Re: Planning application - Alex Ward

Dear Dawn Stewart,

Just a note to re-confirm to you the workshop building has full permission to be used for general relaxation/recreation etc.

Please note the wood burning flue as I have said many times via email and on phone is part of the building process for drying out the workshop it is temporary and not a permanent structure as I said to you this morning, this is the same situation as using a digger for digging the footings /foundations for a house as opposed to using the driveway to store diggers, you seem to be wanting to ignore the fact it's part of a building process.

I feel your not working with me but against me, and not wanting to try and resolve any difficulties to come to a satisfactory conclusion that could work for both of us.

Regards,  
Alex Ward

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**From:** ALEX WARD [REDACTED]  
**To:** "Dawn.Stewart@shetland.gov.uk" <Dawn.Stewart@shetland.gov.uk>  
**Cc:** "john.holden@shetland.gov.uk" <john.holden@shetland.gov.uk>  
**Sent:** Tuesday, 21 January 2014, 12:36  
**Subject:** Re: Planning application - Alex Ward

Dear Dawn Stewart,

11/02/2014



Following our telephone conversation, as you said you will not now discuss condition 10 or 11 and have nothing more to say on the matter. In the conversation before Christmas where I said that these conditions prevent me from doing paperwork or even filling out a tax form as these would be for business purposes, you said you work from home and do council business from there, therefore I could do the same even though condition 10 and 11 state not for business purposes. Could you please confirm that I can however use the workshop /garage for business purposes as long as this does not constitute a material change of use.

If you will not confirm one way or the other, do I take I can use the workshop/garage for business purposes contrary to the wording on my original application as long as it does not constitute a material change of use.

Regards,  
Alex Ward

---

**From:** ALEX WARD [REDACTED]  
**To:** "Dawn.Stewart@shetland.gov.uk" <Dawn.Stewart@shetland.gov.uk>  
**Sent:** Tuesday, 21 January 2014, 11:23  
**Subject:** Re: Planning application - Alex Ward

Dear Dawn Stewart,

It's been 26 weeks since the enforcement officer came to my site and advised to put an application (despite having full planning) in which we did very quickly on his request. It took 1 month just to get a reply as to whether we actually needed further planning application which the planning department said we did. Although now it turned out later that some of it was not required being badly advised by the planning department.

I am still waiting for your reply about a temporary flue which is being used as part of the building process (not part of the structure itself) and change of condition 10 and 11 (reference not for business purposes).

I have given permission already for 1 time extension which has lapsed over a month ago. Nobody has bothered to ask me for another time extension, we are no closer it appears to any answers to my questions regarding above and being asked to pay for something which you have not be able to justify yet and you stated that you did not know where exactly I was contravening the local development plan.

Upon taking outside advice nobody can understand why condition 10 and 11 can not be changed so that I can use the workshop and garage for business purposes so long as it does not constitute a material change of use see previous email.

Please can you now as a matter of urgency update me as to what any progress is being made. I am now getting very frustrated as to the lack progress and communication within planning department for what essentially is a straightforward planning application it beggers belief at just how long this has taken to date with no proper answers.

Regards,  
Alex Ward

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**From:** "Dawn.Stewart@shetland.gov.uk" <Dawn.Stewart@shetland.gov.uk>  
**To:** [REDACTED]  
**Sent:** Wednesday, 8 January 2014, 11:50  
**Subject:** RE: Planning application - flue ? ad costs

Dear Mr Ward

Thank you for your email which I have received today upon my return to work. I will get back to you in due

11/02/2014

course in relation to your comments.

Regards  
Dawn Stewart  
Planning Officer – Development Management

Tel: 01595 744817  
Email: dawn.stewart@shetland.gov.uk

---

**From:** ALEX WARD [REDACTED]  
**Sent:** 05 January 2014 11:27  
**To:** Stewart Dawn@Development Service  
**Subject:** Re: Planning application - flue ? ad costs

Dear Dawn Stewart,

You have told me which documents that my application apparently "does not accord with the provisions of the development plan ", however I would appreciate it if you could demonstrate exactly where it does not apply before I pay any further fees.

I am still requesting that condition 10 and 11 are changed so as "I can use the garage and workshop for business purposes so long as any work done does not constitute a material change of use". I intend to be using the workshop at present for office based work, designing and consultation work (as well as for the making and repairing of furniture that I already have permission to do so). If I wish in the future to do any other work that would involve a material change of use I will obviously contact the planning department with a full planning application to do so.

Having discussed this with John Holden and yourself my current planning 2009 has been written in such a way that this prevents me from working from home (as you do working on council business from home) even though it was probably not meant to be so tight and written like it was I feel the above suggestion would clear this up and would make it clear to all involved and prevent any misunderstanding. The fact remains is has been written in such a way to prevent me from working from home and therefore could be used to prevent me from working from home if someone now or in future decided to be awkward.

Kind Regards,

Alex Ward

**From:** ALEX WARD [REDACTED]  
**To:** "dawn.stewart@shetland.gov.uk" <dawn.stewart@shetland.gov.uk>  
**Sent:** Saturday, 14 December 2013, 14:42  
**Subject:** Re: Planning application - flue ? ad costs

Dear Dawn Stewart,

Before I pay for any advertising costs for the wood burning flue, could you please provide me with information stating exactly what does not accord with the provisions of the development plan for my own reference.

Regards,  
Alex Ward

**From:** ALEX WARD [REDACTED]  
**To:** "dawn.stewart@shetland.gov.uk" <dawn.stewart@shetland.gov.uk>  
**Sent:** Wednesday, 4 December 2013, 10:10  
**Subject:** Planning application

Hi Dawn,

I note the title of my planning application has now been changed for the flue which is fine, however I am still waiting for a response from an email sent to John Holden as to how this application for the change of use for the business ( as this not mentioned in the title) is going to proceed due to incorrect advice given at the time of me submitting the application.  
I hope to hear back from someone soon.

Regards,  
Alex Ward.

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11/02/2014

**Holden John@Development Service**

**From:** ALEX WARD [REDACTED]  
**Sent:** 03 February 2014 10:19  
**To:** Holden John@Development Service  
**Subject:** Re: Planning application - Alex Ward  
**Follow Up Flag:** Follow up

**Flag Status:** Red

Dear John Holden,

I sent an email to yourself dated 23/1/2014 (see below)

Again I am asking you to please confirm how much I should pay for a full planning application for change of use of the workshop/garage so I may run a small business from it.

As I have said before I do not feel that I should have to pay the full amount of £382 as your department advised me on how the original application should proceed, contrary to what I wanted to pay and do which was £382 not £192 that I was advised to pay. By my calculation I should only have to pay £50, this being £382 - £192- £140 (advertising costs that would have been included in a full planning application).

Could you please reply as soon as possible so I am able to proceed once again with this matter.

I do feel now extremely annoyed it has taken the council 28 weeks so far for an application for a small business (which turns out I was badly advised) and wood burning flue (which we are still unsure whether we actually need as it is part of a building process and is temporary) and nobody seems to be concerned or in any hurry to try and resolve any of these issues.

Regards,  
 Alex Ward

---

**From:** ALEX WARD [REDACTED]  
**To:** "john.holden@shetland.gov.uk" <john.holden@shetland.gov.uk>  
**Sent:** Thursday, 23 January 2014, 10:40  
**Subject:** Re: Planning application - Alex Ward

Dear John Holden,

In reference to your email below 22 Jan 2014, I have come to the conclusion that to save any more confusion and mistakes being made by the planning department, I feel best way now to move forward, unless you can remove condition 10 and 11 completely is to submit a fresh full planning application \*as I was going to originally until told otherwise by your department\*, for change of use the workshop/garage to allow them to be used for business purposes. However I am concerned that I have to pay another £382 for this mistake by the planning department instead of the difference between the two fees as we discussed earlier which I feel is only fair considering the run around I have been given by your department regarding information that clearly has not be correct on more than one occasion.

Please could you now advise me what you think I should be paying for this fresh full planning application for change of use for small business.

I will await Dawn Stewart response now regarding the temporary site heater (flue).

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Regards,  
Alex Ward

**From:** "john.holden@shetland.gov.uk" <john.holden@shetland.gov.uk>  
**To:** [REDACTED]  
**Cc:** Dawn.Stewart@shetland.gov.uk  
**Sent:** Wednesday, 22 January 2014, 17:25  
**Subject:** RE: Planning application - Alex Ward

Dear Mr Ward

Thank you for your email.

I know that Dawn is working on providing you with a response to your recent emails to her.

If after receiving her response you would still wish a variation of conditions 10 to 11 to be considered - with them referencing 'material change of use', the task of assessing acceptance of the request as a Variation of Application will be completed. In any event if you would clarify the precise wordings of the varied conditions you would be seeking this would avoid any doubt about what precisely you are seeking.

Yours sincerely

John Holden  
Team Leader - Development Management  
Planning

Shetland Islands Council  
Planning  
Development Services Department  
Grantfield  
Lerwick  
Shetland  
ZE1 0NT

Tel: (01595) 743898

**From:** ALEX WARD [REDACTED]  
**Sent:** 22 January 2014 09:01  
**To:** Holden John@Development Service  
**Subject:** Re: Planning application - Alex Ward

Dear John Holden,

Thank you for getting back to me, however I think it is only fair that a few points are made clear. I agree I have had numerous contacts with the planning department over this matter:

- 1) Mr Norman Sineath who came to the site to discuss matters that had arisen
- 2) Yourself, as this was who I was told contact by Mr Sineath.
- 3) Mr Jonny Wiseman who you passed the matter on to.
- 4) Mr Richard McNeil who I spoke to as the duty officer at the time I handed in the current planning permission (2013)
- 5) From then on I had spoken either Dawn Stewart my case officer or yourself when further clarification was needed when I thought I was getting nowhere.

Based on the information given from your planning department I have been absolutely clear about what I have been asking. Things have only changed when information given from the planning department to me has been found to be incorrect eg that the caravans HAD to be removed by November 2014, no mention that I could apply for an extension. Mr Sineath also said I couldn't use

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the workshop until main house was built despite having full planning permission again, I was proved correct that I could use it.

Having spoken to Dawn Stewart about condition 10 and 11 she has not put anything in writing as to what I can or cannot do and is unwilling to discuss the matter any further, which makes it pretty difficult to proceed. Not that she put this in writing so therefore can be denied. As you said in your last email she can tell me what I can and can't do in my workshop, business or otherwise, I would be extremely grateful if you could please ask her to put this in writing so everybody who would ever need to know now or in the future it would be clear to all.

Over the matter of the flue she has been aware from the beginning when she became my case officer and rest of the planning department for that matter, that the flue was part of the building process not a material part of the building and therefore temporary. As such any money for advertising costs should have been asked for when presenting the planning application to the council not 11 weeks later (5 weeks after she was given the case) if they are indeed needed ?

The only other reason that I have spoken to other people in the council was when the data protection act was broken on more than one occasion and I tried to put it right, those being Clare Summers then Dawn Stewart, yourself and finally chief executive secretary until I got the matter resolved. Mr McDiramid phoned me back over this matter on your behalf so I was told asking me to stop ringing the planning officers (I was only contacting Dawn Stewart and yourself at this point) because once again no answers were forthcoming and Dawn Stewart was not returning messages, once again making it extremely difficult to communicate without myself having to chase around to find out what exactly was going on which you can appreciate not only very frustrating but very time consuming when you can appreciate I too am extremely busy trying to build my house and work and bring up my family I really don't have the time to be chasing the planning department and find documents and legislation to prove that some of the planning departments information is clearly wrong.

I have absolutely no problem paying the fee for advertising (£140) for the flue so long as in writing to me what I am exactly paying for. Dawn Stewart to this date has not stated why or how flue exactly contravenes the local development plan other than "it does" she may have explained to you but nothing in writing to me and does not feel she has too (most helpful).

So I have been asked to pay the council a fee for something that I am not privy to know and have been told will not be explained other than in her final report after I have paid the money (which I may have not had to do depending on a report) and refusing to discuss with me again making application process so unnecessarily challenging.

I feel I am being blamed for mistakes being made from within the planning department and things are being made extremely difficult for myself to achieve my goals through the planning process.

I will be in first thing this morning to pay the flue advertising cost £140 I am not particularly happy about it as explained above why, I trust if the advertising was not necessary I will be reimbursed by the council.

I appreciate the fact you need to distance yourself from the application but someone needs to sort what has become a tangled mess out and if it's not yourself then perhaps someone else.

Regards,  
Alex Ward

11/02/2014

**From:** "john.holden@shetland.gov.uk" <john.holden@shetland.gov.uk>  
**To:** [REDACTED]  
**Cc:** Dawn.Stewart@shetland.gov.uk  
**Sent:** Tuesday, 21 January 2014, 17:01  
**Subject:** RE: Planning application - Alex Ward

Dear Mr Ward,

Thank you for copying me in on your email communications directed to Dawn, both from a time before the telephone call I asked her to make to you after we talked today, and then afterwards.

I understand you have may have tried to telephone me after your telephone conversation with Dawn.

It appears that the contact you have had with various officers within the service area I am responsible for has perhaps only served to lead to matters being confused, particularly with regards to the understanding of what your intentions and proposals for development amount to, and following on from this morning's contact: what had or had not been said previously; and adding to the confusion by, for example, seeking to draw comparisons, be this in relation to parts of a building process or how the issue of amenity is considered between proposals. The result appears to be that contact with anyone other than a nominated officer and by telephone are not the most constructive of means by which your application can be progressed.. So as to overcome this and help ensure that you to can be confident that the detail and merits of your application are clear as a determination on your application is reached, I propose that communications should only take place in writing from now on, and with Dawn. Unfortunately, as the designated Appointed Person who may end up making a determination on you application I really need to distance myself from carrying out any assessments myself before I am presented with a Report of Handling. Up until this point I am really just seeking to ensure that progress is made in an as efficient way as possible.

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Yours sincerely

John Holden  
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 Planning

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 ZE1 0NT

Tel: (01595) 743898

11/02/2014

**From:** ALEX WARD [REDACTED]  
**Sent:** 21 January 2014 13:14  
**To:** Stewart Dawn@Development Service  
**Cc:** Holden John@Development Service  
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Dear Dawn Stewart,

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Regards,  
 Alex Ward

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**Cc:** "john.holden@shetland.gov.uk" <john.holden@shetland.gov.uk>  
**Sent:** Tuesday, 21 January 2014, 12:36  
**Subject:** Re: Planning application - Alex Ward

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Please can you now as a matter of urgency update me as to what any progress is being made. I am now getting very frustrated as to the lack progress and communication within planning department for what essentially is a straightforward planning application it beggers belief at just how long this has taken to date with no proper answers.

Regards,  
Alex Ward

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**From:** "Dawn.Stewart@shetland.gov.uk" <Dawn.Stewart@shetland.gov.uk>  
**To:** [REDACTED]  
**Sent:** Wednesday, 8 January 2014, 11:50  
**Subject:** RE: Planning application - flue ? ad costs

Dear Mr Ward

Thank you for your email which I have received today upon my return to work. I will get back to you in due course in relation to your comments.

Regards  
Dawn Stewart  
Planning Officer – Development Management

Tel: 01595 744817  
Email: dawn.stewart@shetland.gov.uk

---

**From:** ALEX WARD [REDACTED]  
**Sent:** 05 January 2014 11:27  
**To:** Stewart Dawn@Development Service  
**Subject:** Re: Planning application - flue ? ad costs

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wish in the future to do any other work that would involve a material change of use I will obviously contact the planning department with a full planning application to do so.

Having discussed this with John Holden and yourself my current planning 2009 has been written in such a way that this prevents me from working from home (as you do working on council business from home) even though it was probably not meant to be so tight and written like it was I feel the above suggestion would clear this up and would make it clear to all involved and prevent any misunderstanding. The fact remains is has been written in such a way to prevent me from working from home and therefore could be used to prevent me from working from home if someone now or in future decided to be awkward.

Kind Regards,

Alex Ward

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To: "[dawn.stewart@shetland.gov.uk](mailto:dawn.stewart@shetland.gov.uk)" <[dawn.stewart@shetland.gov.uk](mailto:dawn.stewart@shetland.gov.uk)>

Sent: Saturday, 14 December 2013, 14:42

Subject: Re: Planning application - flue ? ad costs

Dear Dawn Stewart,

Before I pay for any advertising costs for the wood burning flue, could you please provide me with information stating exactly what does not accord with the provisions of the development plan for my own reference.

Regards,

Alex Ward

From: ALEX WARD [REDACTED]

To: "[dawn.stewart@shetland.gov.uk](mailto:dawn.stewart@shetland.gov.uk)" <[dawn.stewart@shetland.gov.uk](mailto:dawn.stewart@shetland.gov.uk)>

Sent: Wednesday, 4 December 2013, 10:10

Subject: Planning application

Hi Dawn,

I note the title of my planning application has now been changed for the flue which is fine, however I am still waiting for a response from an email sent to John Holden as to how this application for the change of use for the business ( as this not mentioned in the title) is going to proceed due to incorrect advice given at the time of me submitting the application. I hope to hear back from someone soon.

Regards,

Alex Ward.

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## **2013/322/VCON – TIMELINE**

### **12 September 2013**

**Mr Alexander C Ward** (the applicant) initially applied 'to vary conditions 1 and 10 of planning permission 2009/268/PCD to erect flue for woodburning stove on workshop and allow occupancy of workshop as a dwellinghouse for a period of 4 years and use of workshop building for business purposes thereafter at Hillside Lodge, Hillside Road, Sandwich.

### **17 September 2013**

Objection received from neighbour **Mrs Amanda Kenny** (objector) in relation to smoke emanating from the retrospective flue which is causing amenity problems.

### **18 September 2013**

Letter sent to Ms Kenny to acknowledge objection letter.

### **20 September 2013**

**Roads Traffic** responded to consultation request recommending application be refused on the grounds of a lack of parking capacity to accommodate any future business enterprise.

### **23 September 2013**

Telephone conversation between applicant, Mr Ward and **John Holden** (am).

Mr Holden followed this conversation up with an email which states:

"You are waiting on a response to your query – whether you need to occupy the workshop building as a dwellinghouse on the basis that no sleeping within it is to take place. I will try to provide you with a response as soon as possible, but you are of course entitled to seek independent planning advice. In the meantime, without you knowing precisely what your application needs to be for I am 'stopping the clock' as far as the Planning Authority's assessment and consideration of it is concerned (for the purposes of the Scottish Government's measurement of planning authorities performance). The clock will restart when you, as a result of advice given, confirm to the Planning Authority what your application is for and any variation of application deemed required as a result is accepted."

### **30 September 2013**

Telephone conversation between Mr Ward and Mr Holden.

### **1 October 2013**

Mr Ward emailed Mr Holden. Content states:

"Following our conversation on the phone yesterday, we have decided that the best course of action would be to ask for the removal of "using the workshop as a dwelling for 4 years" replacing it with "changing of condition 10 to allow daytime use (not sleeping in) the workshop for relaxation and recreation whilst the dwelling is being built and permitted use for business purposes".

I would also like condition 9 to change to allow for slightly greater underbuilding on the dwelling than is shown on the original plans/drawings.

The request for the wood burning stove flue remains as first requested.

Please could you amend the new change of conditions application already submitted and fees paid so it can be now taken off hold Ref 2013/322/VCON to allow the application to move forward."

#### **4 October 2013**

Mr Holden responded to the above email to inform that he intended to undertake communications with the Council's legal services to obtain its opinion on whether it is right and proper for the Planning Authority to accept what in effect amounts to a request for a Section 32A variation under the principal planning act (in the context of consideration of whether what the applicant intends to use the workshop for, constitutes a material change of use). The clock was also recommenced. As regards the request to increase the underbuilding of the dwellinghouse, Mr Holden informed that it is not possible at this stage to change the description of development being proposed to such an extent and advised that it may be possible to accept the proposed change to the approved plans as a minor variation under Section 64 of the principal Planning Act, which would serve to meet the terms of condition 9, should this be considered by the Planning Authority as a non-material variation to the previously approved drawings. Mr Ward was also advised that revised plans would require to be submitted for appropriate consideration in this respect.

#### **7 October 2013**

On 7 October 2013, Mr Ward submitted a supporting statement:

"The intended business use is that of a traditional cabinetmaking/furniture/restoration/upholstery business, using traditional hand methods with infrequent use of machines between the hours of 8am to 6pm.

These machines are of a professional nature with the latest health and safety features fitted for noise reduction etc. The planer/thicknesser will have a spiral cutter block that reduces noise by over 50% on that of other planer/thicknessers.

These machines are the same machines that I would use for a hobby/pastime. The only difference is that I would be earning money from using the space.



The building itself is well insulated and according to **Ian Taylor** from Environmental Health who has visited the site, the business and machines will have no impact on the surrounding area.

Any visitors to the workshop will be kept to a minimum and will be by appointment only where possible."

#### **11 October 2013**

**Scottish Water** responded to consultation request with no objection to the proposed development.

#### **7 November 2013**

The case officer for the proposed development, **Dawn Stewart**, contacted **Keir Marshall** at Legal Services to obtain advice as to whether it is appropriate for the Planning Service to accept the above request for a Section 32A variation under the principal planning act and to establish if utilising the workshop for daytime relaxation/recreation constitutes a change of use. She also sought to confirm whether if it does, if this, and the proposal to use the workshop for business purposes, if it too constitutes a change of use, could legitimately be authorised by the Council under the terms of a variation application i.e. to carry out a 'health check' to ensure that whatever decision is made, it is legally sound, which can only be to the benefit of all parties with an interest in the process being followed.

#### **11 November 2013**

**Sandwick Community Council** responded to second consultation request and objected to the proposed development in support of Mrs Kenny's objection in relation to the flue.

#### **12 November 2013**

At 10.15 am I received an email from Mr Ward to request a progress update given that "it's been 2 months since the application was submitted and I heard nothing from the planning department as to any progress or any extension needed to make a decision. I note the community council supporting Mrs Kenny's objection, I do hope I get a chance to put and support my side of wanting a temporary flue etc at some point and not just an automatic refusal based on Mrs Kenny's opinions."

The Case Officer, Ms Stewart contacted Mr Ward by telephone to advise that the reason for delay was that we had been waiting on receipt of consultation responses in relation to the proposed development from the local Community Council and from Environmental Health and also that Legal Advice was being sought. Mr Ward mentioned that the Community Council had objected and she agreed that this had been received by the Planning Service the previous day. Mr Ward does not believe that the Community Council's objection should be upheld as they are simply

agreeing with Mrs Kenny. Ms Stewart informed that the objection received from the local Community Council stands, as they are the people in a position to represent the views of the community in which the proposed development is taking place. Mr Ward wanted to arrange a site visit with the case officer in order that he could present his point of view. Ms Stewart informed Mr Ward that she would undertake a site visit once she had received the responses from legal services and Environmental Health. Mr Ward asked the name of the Environmental Health Officer she had been in touch with and she informed that it was **Patti Dinsdale**. Ms Stewart reiterated John's previous email, that the proposed underbuild to the dwellinghouse was an amendment to the existing consent which could not be dealt with under the terms of the current planning application submission. She asked if Mr Ward would agree to an extension of time to determine the application to enable the required responses to be received and he verbally agreed to a month's extension, up to and including 12 December 2013.

At 10.54am Ms Stewart received a further email from Mr Ward to confirm his agreement to an extension for determination by a month and to inform that he had been in touch with Patti Dinsdale and had organised a site visit with her later on in the week.

Mr Ward also reiterated that that they are not asking permission to use the workshop as a dwellinghouse but will use it during the day as they will be sleeping in the 2 static caravans on site and that the wood burning stove and flue is only a temporary site heater which will be removed from the workshop and replaced on the dwellinghouse when it is constructed.

At 10.58 am, Ms Stewart chased up Legal Services for a response on the current situation.

At 11:02 am, another email was received by Ms Stewart from Mr Ward to attach a previous email sent to Mr Holden (dated 1 October 2013) in relation to the title of his planning application, given that the 'internet still shows the old title which is incorrect and this is what may be causing some confusion to some'.

At 11:17 am, Ms Stewart thanked the applicant by email for confirmation of the extension of time to determine his planning application to enable an appropriate assessment to be made and informed that she was aware of the previous email in relation to the description of proposed development.

Ms Stewart spoke to Mrs Dinsdale by phone to chase up her response to the proposed development. She advised that although she had been down to the site on previous occasions, no statutory nuisance had been recorded from the flue smoke, however she was of the opinion that it was significantly likely that a a statutory nuisance would occur as a result of the fumes from the flue but this would be entirely dependent on weather conditions/wind direction etc. She confirmed that another site visit had been organised with the applicant for Thursday 14 November 2013.

**14 November 2013**

Environmental Health

The Planning Service received a consultation response from Environmental Health stating that a site visit had been undertaken and the use of the stove had been discussed with the applicant. The fire was well stoked during the visit and no nuisance was noted.

Environmental Health are of the opinion that there is a possibility of a statutory nuisance occurring if certain weather conditions persist – i.e. wind direction, fuel type, temporary inversions etc. The flue has been extended but there is still a possibility of nuisance occurring in particular weather conditions. After discussion with the applicant, Environmental Health are satisfied that the likelihood of nuisance can be adequately controlled by the applicant. Advice was also given on site regarding the duration of use of the fire, wind direction and appropriate type of fuel. Environmental Health have also made the applicant aware that, if they become aware of and are satisfied that a nuisance has occurred and is likely to recur, a statutory notice can be served under the Environmental Protection Act 1999 to prevent recurrence.

Business Support & Legal Services

Mr Ward contacted Mrs **Claire Summers (Business Support Officer)** via telephone to complain about an email he had submitted previously (in relation to the objection to his planning application submission) which had appeared online. On several occasions throughout the day, Mr Ward called to demand that this document be taken offline despite it being clearly explained to him that all non-sensitive correspondence is placed on line, but private information such as email addresses, phone numbers, signatures and other sensitive data is always redacted. As a result of the continuous complaint, Mrs Summers contacted **Susan Brunton** at Legal Services to seek clarification on this matter.

Ms Brunton confirmed in a return email that whilst Mrs Summers was writing this email, she had received a call from the Chief Executive's office about the same issue. Ms Brunton had a phone call with **Kimberley Smith (Business Support Officer)** about this situation, following which Legal requested that the email be removed overnight in order to reassure the complainant and preserve the position until such time as proper legal advice could be provided.

**15 November 2013**

Mr Holden emailed legal services to confirm that the Planning Service is happy to follow Legal's advice and to provide further information on the Data Protection Act 1998.

**Kristen Johnson** from Legal Services responded via email to check that the applicant does not wish an email to be published as part of the Planning Register because of the reference he makes to his neighbours. The legal advice given states:

"In the absence of regulations providing any detail or clarity on what additional documents must be part of the planning register (under S36(ab)), and in the interests of ensuring we have open and transparent decision making, the planning register should include documents which were taken into account when dealing with the planning application. Therefore, if the statement made by the applicant regarding his neighbours will not be taken into account when dealing with the planning application then it can be redacted. However, if it does form part of the decision making process then it must be published. An explanation of the Council's duty to maintain and publish a planning register will have to be explained to the applicant in order that he understands what requires to be published in relation to his planning application. This will provide an opportunity to determine what parts of his email he does not wish to be published.

Mr Holden emailed Mr Ward as outlined above and to confirm that in the meantime, his email of 5 November 2013 at 10.09 am would not be published on the Council's website and had been removed from the planning file. As a result, Mr Ward was informed that none of this email's content could be taken into account by the Planning Officer handling the planning application. Mr Ward was also advised that he could alternatively submit another submission but should ensure that the content of which was acceptable to him for publishing and subsequent consideration by the Planning Officer.

At 19:48, Mr Ward emailed Ms Stewart to state that the title on the internet in respect of his planning application proposal was incorrect and therefore could cause confusion to some people. He reiterated that they are asking for permission to vary conditions 1 and 10 of planning permission 2009/268/PCD : to erect a temporary flue for a wood burning stove as a site heater in the workshop and be able to use the workshop during the day for recreation/relaxation etc (if permission is indeed required for this part). To be able to use the workshop for business purposes and to increase the underbuild on the front of the main house.

In reference to Roads consultation comments, Mr Ward stated that 4 car parking spaces are indicated on the original approved plans, not 2 as Roads state and 6 car parking spaces can be situated at the front of the site (drawings included). Mr Ward refutes Roads implication that he is causing problems with parking along the edge of the public road adjacent to the site as the cars in question are not his and have no association with the proposed development whatsoever. Mr Ward commented that it would have helped if Roads had come on site instead of just driving by. Mr Ward was on the driveway when the inspection took place and states that 'he could have

stopped and asked instead of just assuming the cars were mine'. Furthermore, in support of his application regarding the only objection to the flue, Mr Ward reiterates that the flue is only temporary and is acting as a site heater to dry out the building. He expects to remove the flue sometime next year to put it into the main house. Mr Ward also states that "contrary to Ms A Kenny's comments that I and my family are currently living in the workshop, I would like to make it very clear we are not and the building itself is structurally sound. I feel her comments and objections have more to do with her view being lost as opposed to anything else. I therefore feel a site visit would be very advantageous as soon as convenient to yourself."

#### **18 November 2013**

Ms Stewart acknowledged receipt of Mr Ward's email by return and informed that the reason why no site visit had been undertaken was simply because she was waiting for a response from Legal Services as to the changes Mr Ward was proposing. She also informed that the Planning Service cannot change the description of development on Mr Ward's application (on file and online) before hearing from Legal Services that it was acceptable to do so, but assured that once their comments had been received, she would be in a position to consider his application further.

An initial response was received from Mr Marshall at Legal Services on 18 November 2013, although further correspondence took place between Ms Stewart and Legal Services between this date and 27 November 2013.

#### **27 November 2013**

Ms Stewart sent an email to Mr Ward to establish the current situation as regards his planning application submission, following receipt of legal advice.

The following data was relayed to the applicant:

**"Planning Permission 2009/268/PCD – To erect dwellinghouse, garage, workshop and decking (permanent), a caravan (temporary) and to apply for temporary consent for an existing caravan and an existing kennel (retrospective) at Plot 1, Hillside Road, Hillside, Sandwich = Approved 22 January 2010**

**Planning Application 2013/322/VCON – To vary conditions 1 & 10 of planning permission 2009/268/PCD to erect flue for woodburning stove on workshop and allow occupancy of workshop as a dwellinghouse for a period of 4 years and use of workshop building for business purposes thereafter, Hillside Lodge, Hillside, Sandwich**

**Email request for a Section 32A variation of planning application 2013/322/VCON to vary conditions 1 and 10 of planning permission 2009/268/PCD to erect a temporary flue for a wood burning stove; to use the workshop for daytime relaxation/recreation and to use the workshop**



**for business purposes and to increase the underbuild on the front of the main house, Hillside Lodge, Hillside Road, Sandwich**

As you are aware, I have taken legal advice on whether it is appropriate for the Planning Service to accept the above request for a Section 32A variation under the principal planning act and to establish if utilising the workshop for daytime relaxation/recreation constitutes a change of use. I have also sought to confirm whether if it does, if this, and the proposal to use the workshop for business purposes, if it too constitutes a change of use, could legitimately be authorised by the Council under the terms of a variation application i.e. I have carried out a 'health check' to ensure that whatever decision is made it is legally sound, which can only be to the benefit of all parties with an interest in the process being followed. As such, I can now respond to you as follows.

The planning application 2013/322/VCON (proposed variation to planning consent 2009/268/PCD) as initially submitted proposed that the workshop be used as a dwellinghouse for 4 years and then proposed a change to use for business purposes thereafter. Legal Services have advised that both these proposals constitute material changes of use of the building from that use which is authorised by the existing consent, and also that it is not possible for the planning authority to grant approvals for changes of use exclusively via an application for variation of conditions. As such, it is not possible for the planning authority to make a determination on the application with this original description other than for one of refusal. Such proposals for the residential and then follow on business use of the workshop therefore require, firstly, the submission and subsequent consideration and approval by the planning authority of a full planning application to change the use of the workshop into a dwellinghouse, followed then by a second application for full planning permission at a later date to change its use again for business purposes.

Your email of 1 October 2013, which seeks to change the description of development (as outlined in heading no. 3 above), to remove the proposal to utilise the workshop as a dwellinghouse, constitutes what is called a request for a Section 32A variation of application 2013/322/VCON (change before a determination). Again, the proposal to change the current workshop into business use that is proposed by you to remain in the description (though permitted immediately rather than after a period of 4 years) constitutes a material change of use (as advised by Legal Services), and as such cannot be dealt with by the planning authority under the variation application other than with a refusal. Thus a separate planning application for full planning permission to change the use of the workshop into business use will need to be submitted to the Planning Authority for appropriate consideration if this is to be the intended end use of the building. This advice is of course provided without prejudice to a determination on such an application.

I can however advise that it is considered that utilising the current workshop for daytime relaxation/recreation does not constitute a material change of use as it is

ancillary to the enjoyment of the dwellinghouse (including under the current circumstances on site). Therefore you can continue to utilise the workshop during the daytime for these relaxation/recreation purposes specified without requiring any formal planning consent. Nevertheless, the planning authority is unable to agree to the Section 32A variation you have requested, more particularly because of its proposing the change of use of the workshop for business purposes.

Given that the dwellinghouse has not yet been constructed on site or occupied, you do not currently benefit from permitted development rights, which is why a planning application was required to construct the flue (albeit retrospectively) on the workshop because it represents a material change to the development (taking into account planning considerations it gives rise to).

As such, as I see matters, in order that your current application might possibly be progressed in a way other than to a refusal, the description of planning application 2013/322/VCON will need to be amended to something along the lines of the following:

***“To vary condition no. 1 of planning consent 2009/268/PCD to construct temporary flue for woodburning stove on workshop (retrospective), Hillside Lodge, Hillside, Sandwick.”***

You will note that this suggested description does not refer to the proposal to increase the underbuild on the front of the dwellinghouse. This is because, as outlined in a previous email to you on 4 October 2013 by my Team Leader, John Holden, your request to increase the amount of underbuilding on your dwellinghouse will require you to submit revised elevation drawings and submit a request to accept these changes as a minor variation under Section 64 of the principal Planning Act. It will then be for the Planning Service to determine whether this aspect of your proposal can be treated as a non-material variation or amendment to the existing approved plan (Drawing AW/L/04 Rev A). It is not possible to change the description of development in your current planning application (2013/322/VCON) to this extent via a Section 32A variation. This aspect of your proposal was reiterated in a telephone conversation with you on 12 November 2013.

I should be grateful to learn how you would wish the Planning Service to proceed. In the meantime when I undertake a site visit it will at this point only be in order to assess that part of your proposal that relates to the flue.

Should you have any queries about the above, please do not hesitate to contact me.”

**28 November 2013**

Mr Ward called Ms Stewart to ask if he has to apply for full planning permission to change the use of the workshop to business use. This was confirmed.

Mr Ward stated that he had been advised by 'Richard O'Neill' (**Richard MacNeill – Planning Officer**) early in the process to apply to vary conditions for his proposed development and was instructed not to pay a full planning application fee. Mr Ward stated that Mr MacNeill had checked the situation with Mrs Summers 'who is supposed to be an expert on all this stuff' and the applicable fee was £192 – even though, Mr Ward himself was of the opinion that he would need to apply for full planning consent and at that time had £400 available to pay for this type of application to change the use and could have incorporated the flue aspect into this singular planning application form at that time.

Ms Stewart explained that the planning application fee for a variation is £192 as correctly indicated, whilst the fee for a full planning consent is £382. She explained that she couldn't possibly comment on who or what might have been said between himself and colleagues in the past as she had not been present – all that she could do was assess the current situation and application, which is what she had done and the conclusion was (as per the legal advice sought) that:

- Full planning consent is required to change the use of the workshop to either a dwellinghouse or to business use, which will require a full planning application and fee of £382 to be submitted;
- Revised drawings and a letter to request an amendment to the existing consent (2009/268/PCD) for the proposed change in underbuilding height for the dwellinghouse is required to be submitted which will need to be formally assessed by the Planning Authority to establish whether or not this can be treated as a minor variation to the existing consent;
- The flue can be dealt with under the current application to vary condition no. 1 of planning consent 2009/268/PCD and we can change the description of development to remove the proposed changes of use from this description.

Mr Ward is aggrieved that he was 'misinformed' in the early stages as he is of the opinion that he has been conned out of £192. If he had paid £382 for full consent in the first place (including flue), then this issue would not have arisen with legal. He now wants to pay a further £192, to change the application to vary condition into a full planning permission, meaning he can add in the change of use of the workshop for business purposes. Ms Stewart informed Mr Ward that this would not be possible – that the flue could be dealt with under the current variation of conditions application and that he would need to re-apply for full planning permission for his proposed change of use given that the Planning Service cannot change the type of planning application that has been applied for. Mr Ward ended the conversation stating that he intended to contact Mr Holden to complain later on in the day.

**3 December 2013**

A site visit to the area was undertaken by the Case Officer, Ms Stewart. Photographs of Mr Ward's workshop and retrospective flue were taken during this visit.

Mr Holden sought further legal advice from Mr Marshall at Legal Services.

#### **4 December 2013**

Mr Ward emailed Ms Stewart to note that the title of his planning application had been changed which was fine, however he stated that he was still waiting for a response from an email sent to Mr Holden as to how the application for the change of use for business purposes (as this is not mentioned in the title) was going to proceed, due to incorrect advice being given at the time Mr Ward submitted his planning application.

#### **9 December 2013**

Mr Holden emailed Mr Ward to notify that investigations were ongoing and as a result, further legal advice was being sought. Mr Ward was informed that as soon as conclusions were reached, Mr Holden would be presenting his findings to the Executive Manager – Planning due to Mr Ward's fee dispute.

Mr Marshall of Legal Services emailed John Holden with an initial response to queries about Mr Ward's planning application in respect of separate permissions being applied for, fees due and enforcement issues.

#### **11 December 2013**

A letter was sent to Mr Ward to inform that the Planning Service had to undertake publicity on the application in the Shetland Times given that the proposed development does not accord with the provisions of the development plan. As such, the payment of an advertisement fee of £140.00 was requested.

#### **12 December 2013**

Mr Ward emailed Mr Holden stating the following:

"I am left wondering what exactly is going on. I have obviously read your email .../... however it has now been 20 weeks since **Mr Norman Sineath [Enforcement Officer]** came to my site and it appears the only thing that has been achieved with an application submitted to the Planning Department on their advice, is that I am allowed to use the workshop before the main house is built which is something I already knew for general relaxation/recreation use but planning did not. I am still waiting on a decision for the wood burning stove flue and change of use to business due to mistakes made by the planning department. I have already allowed for 1 time extension. Nobody has bothered to contact me as to whether another time extension is needed by your department (decision date is today) and we are now currently approaching the xmas holidays which will obviously now cause further

delays. Please could you now update as [a] matter of some urgency as [to] what progress is being made [with] reference [to] the flue and the business (we are waiting for the lawyers is now not [an] acceptable answer) as this has been going on for far too long and too many mistakes are being made with my application [-] your department has already been in contact at least twice with the lawyers. I am now having to turn down work and lose money due to decisions not being made.

I did ring earlier, but neither yourself or Dawn Stewart my case officer was in to discuss anything. I was told you might be in sometime this afternoon."

*NB: Ms Stewart was working at home in the afternoon and contactable by email and Mr Holden was in meetings for most of the day.*

### **13 December 2013**

The planning application was advertised as being contrary to policy in the Shetland Times.

Mr Holden contacted Mr Ward in response to his email of 12 December 2013 to inform that we are concerned that no mistakes are made and that any determinations made in relation to proposals must have a sound legal basis which has taken time to achieve in conjunction with other work commitments. Mr Ward was advised to contact **Ken Allan, Team Leader for Asset and Properties** who may be able to provide assistance on any properties within the Council's ownership which might be available to utilise for business purposes.

### **14 December 2013**

Mr Ward emailed Ms Stewart to state 'before I pay for any advertising costs for the wood burning flue, could you please provide me with information stating exactly what does not accord with the provisions of the development plan for my own reference.'

Ms Stewart contacted Mr Ward by telephone and informed that the proposal was contrary to Shetland Local Plan (2004) Policies LPNE10 and LPHOU4 and that she would not be providing any further reasons as this would be considered during the construction of any future report and in the context of any recommendation made.

### **16 December 2013**

Mr Ward emailed Ms Stewart stating:

"Following a conversation with Mr John Holden this morning, he asked me to contact you regarding the removal of conditions 10 and 11 from my planning application as this is so restrictive that it prevents me from working from home to a point of not even being allowed an office or workspace. This is in contradiction to Scottish planning policy – Economic Development paragraph 47 which states "development plans should support small business development and growth and promote opportunities for low impact industrial business and service uses which can



co-exist with housing and other sensitive uses without eroding amenity. Planning Authorities should adopt a flexible approach to working from home where the amenity of surrounding properties will not be significantly affected."

The working on my planning permission condition 10 and 11 states "it shall not be use for any business or commercial purpose .../... prevents me doing anything relating to work in these 2 building[s] being the garage/workshop to the extent of not being able to store files. I am therefore requesting that conditions 10 and 11 be removed from my planning permission that [has] already been granted. If however any business in the future that constitutes a 'material change of use', then obviously planning permission would be sought through a brand new full planning application'.

Ms Stewart contacted Mr Ward by email to reiterate that the proposal was contrary to Shetland Local Plan (2004) Policies LPNE10 and LPHOU4.

### **17 December 2013**

Ms Stewart contacted Mr Marshall of Legal Services as Mr Ward now requested that the Planning Service remove conditions 10 and 11 from the previous planning consent (2009/268/PCD) under the terms of the current application 2013/322/VCON, as Mr Ward considers that these conditions are too restrictive.

Mr Marshall responded to conclude that 'working from home, using a laptop, telephone, storing filing etc is likely to be a use incidental to the use of the dwellinghouse. If a large part of the dwellinghouse is used as a workplace, then the use will no longer be ancillary. Also, if the premises were to be used as an office with customers or clients coming and going or any noisome or nuisance business was carried on, then this would not be ancillary to its use as a house. The condition was applied to prohibit business use. Working from home would usually be ancillary, however using home as work would not. As such, the conditions do not need to be varied to allow such ancillary use.

Ms Stewart attempted to relay this information to Mr Ward over the phone on several occasions throughout the conversation however, Mr Ward disagreed and demanded that the conditions be removed from his previous planning consent, under the terms of the current application. Ms Stewart stressed that following legal advice, the only part of Mr Ward's planning application that could legally be considered was the part which relates to the retrospective flue.

Mr Ward wanted to know exactly what policies his proposed was supposed to be contrary to. Ms Stewart informed Mr Ward that she considered it was contrary to Shetland Local Plan (2004) Policy LPNE10 (in terms of development and the environment) and Policy LPHOU4 (in terms of residential amenity). Mr Ward wanted a more detailed explanation as to why his flue would be considered contrary to such 'documents'. Ms Stewart once again informed that such details would only be identified during the writing up of either a delegated report of handling or report to

Planning Committee (if appropriate) and during consideration of the proposed development in conjunction with relevant policies

Mr Ward also made several disparaging comments about the planning officer who had dealt with his previous consent stating that the person in question obviously had little experience of determining planning applications and applying conditions appropriately because what the conditions applied to his previous consent were too stringent. Ms Stewart assured Mr Ward that the case officer who dealt with his previous consent was a fully qualified planner and had indeed had planning experience before joining Shetland Islands Council's Planning Authority. Mr Ward then acquiesced that his previous case officer had perhaps not fully appreciated the content of the restrictive conditions and had perhaps therefore applied them unintentionally without fully thinking about the consequences of doing so. Ms Stewart advised Mr Ward that the conditions that had been applied were standard conditions that have been used previously on other planning consents and which would probably be utilised again in future to ensure that ancillary buildings to a dwellinghouse remain as such, unless full planning permission is applied for and successful, should the proposed use be considered to be a material change of use from that of the existing use.

Mr Ward once again made reference to his past experiences with planning authorities from his previous address in England and stated that he was not impressed with Shetland Islands Council's Planning Services' handling of his planning applications to date due to the length of time taken etc.

Ms Stewart pointed out that Mr Ward had changed his mind on several occasions as to what it was he actually wished to apply for which had essentially created complexities for all parties involved in this planning application submission. As a result of the complex nature of his proposals, legal advice had been sought to ensure that the Planning Service could legally deal with the changes proposed, in an appropriate and proper manner. Ms Stewart also pointed out that Scottish Planning Law and English Planning Law are different but suggested that Mr Ward provide details of his planning history in order that the Planning Service in Shetland might learn something from his past experiences, however, Mr Ward could not provide that information over the phone, as he said he would have to look up his previous address.

Ms Stewart informed Mr Ward again, that all that she could assess at this time was the retrospective flue. The description of his planning application had been changed accordingly with Mr Ward's agreement and that it was anticipated that a decision would be made after the advertisement expiration date. The conversation ended once again with Mr Ward intending to contact John Holden for further discussion on this situation.

### **5 January 2014**

Upon return to work on 8 January 2014, Ms Stewart noted another email received from Mr Ward on 5 January 2014 which states the following:

"You have told me which documents that my application apparently "does not accord with the provisions of the development plan", however I would appreciate it if you could demonstrate exactly where it does not apply before I pay any further fees.

I am still requesting that condition 10 and 11 are changed so as "I can use the garage and workshop for business purposes so long as any work done does not constitute a material change of use". I intend to be using the workshop at present for office based work, designing and consultation work (as well as for the making and repairing of furniture that I already have permission to do so). If I wish in the future to do any other work that would involve a material change of use I will obviously contact the planning department with a full planning application to do so.

Having discussed this with John Holden and yourself my current planning 2009 has been written in such a way that this prevents me from working from home (as you do working on council business from home) even though it was probably not meant to be so tight and written like it was. I feel the above suggestion would clear this up and would make it clear to all involved and prevent any misunderstanding. The fact remains [it] has been written in such a way to prevent me from working from home and therefore could be used to prevent me from working from home if someone now or in future decided to be awkward."

### **8 January 2014**

Ms Stewart acknowledged receipt of Mr Ward's email of 5 January 2013 and noted that she would respond to his comments in due course.

Following a discussion about the latest communication received from Mr Ward with Planning Management, Ms Stewart was instructed to prioritize the creation of a time line of communications received between all parties involved in the planning process in respect of Mr Ward's planning application to vary conditions from the date that this was received in September 2013.

### **9 January 2014**

The required timeline took 6 hours to write between 0900-1245 and 1345-1600.

### **10 January 2014**

The required timeline took a further 2 hours and 30 minutes to write between 09.15-09.45 in the morning and between 13.45 and 15.45 in the afternoon.

**13 January 2014**

Following further discussion on the current situation, Mr Holden was passed the planning application file as he intends to respond to Mr Ward's email of 5 January 2014.

**21 January 2013**

Following a further telephone conversation between Mr Ward and Mr Holden, Ms Stewart was asked to call Mr Ward to once again provide him with a reason as to why his planning application had been advertised.

Upon contacting Mr Ward, he asked if she had read his email from earlier this morning. She said that she hadn't been aware of an email as yet. He said she should read it before responding. She briefly scanned over the email and realised that Mr Ward was unhappy about the length of time taken to process his planning application. A copy of Mr Ward's initial email is attached below:

*"Dear Dawn Stewart*

*It's been 26 weeks since the enforcement officer came to my site and advised to put an application (despite having full planning) in i which we did very quickly on his request. It took 1 month just to get a reply as to whether we actually needed further planning application which the planning department said we did. Although now it turned out later that some of it was not required being badly advised by the planning department.*

*I am still waiting for your reply about a temporary flue which is being used as part of the building process (not part of the structure itself) and change of condition 10 and 11 (reference not for business purposes).*

*I have given permission already for 1 time extension which has lapsed over a month ago. Nobody has bothered to ask me for another time extension, we are no closer it appears to any answers to my questions regarding above and being asked to pay for something which you have not be able to justify yet and you stated that you did not know where exactly I was contravening the local development plan.*

*Upon taking outside advice nobody can understand why condition 10 and 11 can not be changed so that I can use the workshop and garage for business purposes so long as it does not constitute a material change of use see previous email.*

*Please can you now as a matter of urgency update me as to what any progress is being made. I am now getting very frustrated as to the lack progress and communication within planning department for what essentially is a straightforward planning application it beggers belief at just how long this has taken to date with no property answers.*

*Regards,*

*Alex Ward"*

Ms Stewart informed Mr Ward that the reason for her phone call was to discuss the reasoning behind advertising his planning application. Mr Ward said that he wasn't prepared to pay an advertisement fee without knowing exactly why his application had been advertised. Ms Stewart informed Mr Ward that the flue was advertised as being contrary to Shetland Local Plan (2004) Policy LPHOU4 and LPNE10 due to its potential impact on residential amenity and the environment. Ms Stewart pointed out that Mr Ward had been informed about this situation on previous occasions over the phone and via email and again reiterated that the full details of the impact of the flue would be established in the consideration of any future report written.

Mr Ward said that Ms Stewart had stated in a previous conversation that she didn't know why the application had been advertised. Ms Stewart refuted this statement. Again, Mr Ward claimed that she had said she didn't know why his proposal was contrary to the policies stated. Ms Stewart again denied to Mr Ward that she had ever said such words and asked if he had read the policies outlined to him. Mr Ward informed that he had read the policies, but didn't see why his proposal could be considered to be contrary to them. Ms Stewart explained that in her opinion, which she was entitled to and had a professional planning qualification for, the reason why she had considered that the flue could be contrary to policy was due to smoke emanating from the flue which could potentially affect residential amenity in the surrounding area and the environment. Mr Ward disagreed with this consideration and stated that she was wrong in her assessment because the building the flue is situated on is not a house. Ms Stewart explained that it was his neighbours residential amenity that she was concerned about given that this workshop is situated within a largely residential area, however Mr Ward considered that as the flue was situated on a workshop and not a residential dwellinghouse, his application should not have been advertised as such. Mr Ward then said that if this was the case, then every single planning application received should be advertised due to its potential impact on others. Ms Stewart said that this was not the case as each application is assessed on its own merits and in its particular context. Mr Ward said that having a shed in someone's garden could have an impact on neighbours and therefore should be advertised as such if that was the line of reasoning she was going down.

At this point Ms Stewart realised that the conversation was deteriorating rapidly. Mr Ward was constantly talking over her points and she could hear Mrs Ward in the background providing additional comments throughout the conversation.

Mr Ward moved on to the business aspect of his proposal. Ms Stewart informed Mr Ward that she wasn't prepared to discuss this element of his proposal because as he had been informed on numerous occasions, following legal advice, this aspect of his proposal could not be dealt with under the terms of his current planning application submission. Ms Stewart also informed Mr Ward that she was aware that he had had



a conversation about this aspect of his proposal with her Line Manager, Mr Holden earlier on that day and as a result, was not prepared to keep going over old ground. Ms Stewart also confirmed that she had provided a timeline of communications undertaken to date on Mr Ward's planning application to date and that this had been passed to Mr Ward for his consideration and to establish the current status.

Ms Stewart reminded Mr Ward that he had agreed with her previous assessment of the situation, following receipt of the legal advice, that the only part of his planning application that could legally be assessed was the retrospective flue which had been placed on the workshop without planning consent. Mr Ward claimed that the flue didn't need consent because it is being used as part of building operations to dry out his workshop as the tiles hadn't been completed on the roof and that as soon as the tiles were up, the flue would be removed.

Mr Ward went on to say "if I had a business running from my workshop and had diggers on my driveway to run that business I would need planning permission – would I not?" Ms Stewart attempted to halt this line of enquiry and stated that this had nothing to do with his current proposal. Mr Ward informed that he was simply providing an example that should be listened to. He repeated his earlier question and Ms Stewart confirmed that a material change of use would require planning consent. He then went on to say 'if I had diggers on my driveway for the purposes of constructing my house, would this require consent?' Ms Stewart said no, because the construction phase of any dwellinghouse would be part of that permission and would be for a temporary period of time. He said 'precisely and my flue is also temporary and part of the ongoing building operations' and therefore does not need consent.

Ms Stewart reminded Mr Ward that he had informed the Planning Service in writing that his family were utilising the shed throughout the day for recreation/relaxation purposes, however Mr Ward claims that the flue is not connected to the use of the workshop, which isn't being used for relaxation/recreation purposes – it is merely an oven to dry out the shed roof.

Throughout the conversation Mr Ward also mentioned problems he has had throughout the process with various colleagues. Ms Stewart once again informed Mr Ward that she was not prepared to comment or partake in a debate about what had or might have been said in a conversation between himself and her colleagues, particularly when she had not been present at such events. Mr Ward became quite heated and stated that the reason they were being mentioned was due to the planning department's continual inaccuracies and then demanded to know why the process was taking so long. Ms Stewart informed Mr Ward again that legal advice had had to be obtained due to the complexities of the case which had taken longer than anticipated and she stated that this was in effect a direct result of the fact that Mr Ward appeared to change his mind about what he was applying for, which had

caused considerable confusion to all parties involved and therefore subsequent delays.

Mr Ward said he wanted the conditions restricting his business operations removed from his previous consent. Ms Stewart said that as Mr Ward was well aware, she couldn't do so under the terms of the current planning application applied for and he asked 'why not?' Before waiting for a response, he stated 'I've made a planning application, paid the fees due [this part of the conversation also contained accusations about other officers providing Mr Ward with incorrect information about fees etc. etc.] and it is therefore up to you to assess my proposal'. At this point in the conversation, Ms Stewart decided that there was little point in the conversation continuing and therefore informed Mr Ward that she wasn't prepared to discuss the situation any further. She advised Mr Ward that should he wish to continue to discuss his issues, that he should contact her Line Manager directly. He asked 'is that John Holden' and this was confirmed. The conversation ended with an understanding on Ms Stewart's part that Mr Ward intended to contact Mr Holden again to make further complaint about the handling of his planning application, about her handling and assessment of the planning application to date and about this latter communication.

After this conversation had taken place, Ms Stewart received the following two emails:

*"Dear Dawn Stewart*

*Following our telephone conversation, as you said you will not now discuss condition 10 or 11 and have nothing more to say on the matter. In the conversation before Christmas where I said that these conditions prevent me from doing paperwork or even filling out a tax form as these would be for business purposes, you said you work from home and do council business from there, therefore I could do the same even though condition 10 and 11 state not for business purposes. Could you please confirm that I can however use the workshop /garage for business purposes as long as this does not constitute a material change of use.*

*If you will not confirm one way or the other, do I take I can use the workshop/garage for business purposes contrary to the wording on my original application as long as it does not constitute a material change of use.*

*Regards*

*Alex Ward"*

*"Dear Dawn Stewart*

*Just a note to re-confirm to you the workshop building has full permission to be used for general relaxation/recreation etc.*

*Please note the wood burning flue as I have said many times via email and on phone is part of the building process for drying out the workshop it is temporary and not a permanent structure as I said to you this morning, this is the same situation as using a digger for digging the footings /foundations for a house as opposed to using the driveway to store diggers, you seem to be wanting to ignore the fact it's part of a building process.*

*I feel your not working with me but against me, and not wanting to try and resolve any difficulties to come to a satisfactory conclusion that could work for both of us.*

*Regards,*

*Alex Ward"*

Ms Stewart did not respond to any of these emails but forwarded each of them to Line Manager, Mr Holden for his information/subsequent action and to await further instruction.

Mr Holden sent the following email to Mr Ward later that day:

*"Dear Mr Ward,*

*Thank you for copying me in on your email communications directed to Dawn, both from a time before the telephone call I asked her to make to you after we talked today, and then afterwards.*

*I understand you have may have tried to telephone me after your telephone conversation with Dawn.*

*It appears that the contact you have had with various officers within the service area I am responsible for has perhaps only served to lead to matters being confused, particularly with regards to the understanding of what your intentions and proposals for development amount to, and following on from this morning's contact: what had or had not been said previously; and adding to the confusion by, for example, seeking to draw comparisons, be this in relation to parts of a building process or how the issue of amenity is considered between proposals. The result appears to be that contact with anyone other than a nominated officer and by telephone are not the most constructive of means by which your application can be progressed.. So as to overcome this and help ensure that you too can be confident that the detail and merits of your application are clear as a determination on your application is reached, I propose that communications should only take place in writing from now on, and with Dawn. Unfortunately, as the designated Appointed Person who may end up making a determination on you application I really need to distance myself from carrying out any assessments myself before I am presented with a Report of Handling. Up until this point I am really just seeking to ensure that progress is made in an as efficient way as possible.*

*In relation to your application I gather that Dawn explained to you the impact of your proposal that she considered gave rise to a need to carry out publicity on your proposal. I have to advise you that without making a payment of the sum due for the publicity the Planning Authority has carried out the relevant Regulations prevent it from making a determination under any circumstance. If by the time when Dawn is clear on what your proposal amounts to and has prepared a Report of Handling you have still not made the relevant payment, any development that has taken place outside of the terms of the permission you already have can still be the subject of formal consideration of a need for formal enforcement action.*

*It should be perfectly possible for Dawn to answer your questions as to what you can use your workshop/garage for at the present time from the advice that she has received from Legal Services to date. During my conversation with you I indicated that I was of the view that it would likely not be possible within a condition to define a specific as to what will constitute a material change of use. This is because whether or not a change of use is "material" and therefore requires planning permission is a question of fact and degree for the planning authority, or the Scottish Ministers on appeal, to decide. There is no general guidance on when a change of use will be considered "material", but some assistance is given by case law.*

*Yours sincerely*

*John Holden*

*Team Leader - Development Management*

*Planning*

*Shetland Islands Council*

*Planning*

*Development Services Department"*

**21 January 2014**

It was requested that the above information be added to the communications timeline, which took a further 4 hours and 30 minutes to write between 13.45 pm and 18.15 pm.

**22 January 2014**

Following receipt of a further email from Mr Ward which made further reference to the planning department's handling of his application, Mr Holden instructed Ms Stewart to respond to Mr Ward's previous 3 emails. Whilst in the process of constructing a response, she received the following email from Mr Ward:

*"Dear Dawn Stewart,*

*You may or may not be aware I have paid this morning £140 that you insist that I must pay. For your information I have again read document LPHOU4 and it states "general requirements for all dwelling houses. In all zones, applications for new houses for the conversion of a building to form a house or bringing back into use of an abandoned house, will need to meet all the following requirements:- etc "*

*As you are well aware my workshop is \*NOT\* a dwelling house and the flue is part of a building process to dry out the building which it is temporary and will be removed as soon as the workshop is wind and water tight. Therefore this policy does not apply and I should not have had to pay £140 advertising costs.*

*I can only presume you are trying to make it fit this policy- The dwelling on my site is the main big building (see plans) which has full planning permission for 2 wood burning flues and clearly has bedrooms to make it therefore a dwelling.*

*A dwelling is defined as a place of habitation which must include sleeping accommodation. My workshop has no sleeping facilities/bedrooms and therefore is NOT a dwelling.*

*John Holden has said to me in an email that you are able to tell me what I can do in the workshop regarding "business purposes" you have asked me what I intend doing in there at present time and I responded in an email to you and I'm awaiting a response to that, reference conditions 10 and 11, in writing.*

*I look forward to a speedy answer to try and resolve the situation at everyone earliest convenience.*

*Regards,*

*Alex Ward"*

*Mr Holden sent the following response to Mr Ward in relation to his email of 22 January 2014*

*"Dear Mr Ward*

*Thank you for your email.*

*I know that Dawn is working on providing you with a response to your recent emails to her.*

*If after receiving her response you would still wish a variation of conditions 10 to 11 to be considered - with them referencing 'material change of use', the task of assessing acceptance of the request as a Variation of Application will be completed. In any event if you would clarify the precise wordings of the varied conditions you would be seeking this would avoid any doubt about what precisely you are seeking.*

*Yours sincerely*



*John Holden*

*Team Leader - Development Management*

*Planning*

*Shetland Islands Council*

*Planning*

*Development Services Department*

*Grantfield*

*Lerwick*

*Shetland*

*ZE1 0NT*

*Tel: (01595) 743898"*

**23 January 2014**

The required updated timeline took a further 1 hour to write up between 9.10 am and 10.10 am.

As requested by Mr Holden, Ms Stewart responded to Mr Ward's emails of 21 and 22 January 2014 which stated:

*"Dear Mr Ward*

*I write in reference to the latest 4 emails you have sent to me in relation to your planning application submission.*

*Shetland Local Plan (2004) Policy LPNE10 stipulates that when assessing development proposals, the following general consideration will be taken into account:*

- a) Likely impacts on amenity and the environment as a whole;*
- b) Effects on nearby residents and the buildings they occupy;*
- c) Landscape character and visual amenity;*
- d) Water resources and the marine environment; biodiversity; archaeology and other land uses in the area;*
- e) Transport considerations;*
- f) Current Government guidance, other policies in the Shetland Structure and Local Plan and particularly those relating to the proposed type of development.*

*I consider that the retrospective flue situated on your workshop may have a potentially adverse impact on nearby residents and the buildings they occupy due to the smoke that emanates from the flue, which is why your planning application was advertised as being contrary to policy. I acknowledge that my previous reference to Policy LPHOU4 may have been misleading given that it relates directly to new dwellinghouses and apologise for any confusion caused. However, please note that this policy was considered due to the potential impact on residential amenity, given that previously you had proposed to live in the workshop.*

*As regards any proposed business use, please note that I consider that working from home, i.e. using a laptop, telephone, storing filing or storing tools etc and making and repairing furniture yourself is likely to be a use incidental to the use of the dwellinghouse. When a material change of use takes place, this is a matter of fact and degree and could hinge on changes in characteristics of the use of the site. If the premises are to be used as an office/workshop with a customer base, resulting in comings and goings by third parties, or any impacts were to arise that would not be expected for a residential area, then this might not be considered to be ancillary. To confirm, you can use the workshop for any purpose that is considered by the Planning Authority to be incidental to the enjoyment of the dwellinghouse.*

*I trust this clarifies the situation.*

*Regards*

*Dawn Stewart*

*Planning Officer – Development Management*

*Tel: 01595 744817*

*Email: [dawn.stewart@shetland.gov.uk](mailto:dawn.stewart@shetland.gov.uk)*

*At 12.48pm, Ms Stewart received the following email from Mr Ward:*

*"Dear Dawn Stewart*

*Thank you for your email, however you and John Holden were made fully aware that I was not going to be living in the workshop building well before any advert was even mentioned due to needing 3 separate building warrants if this went ahead, that idea was very quickly changed, may well even be decided before or just as you took on the case not to do that, and planning were informed of this.*

*Reading Policy LPNE10, virtually any planning application would fit this and as the wood burning flue is part of a building process and therefore I feel does not require planning permission and this policy would not apply, because whether or not a nuisance is being caused would be down to environmental control to deal with the same as any smoke from any source. This does not answer the question as to why*

*11 weeks after my application was checked and verified by the planning department that is then decided (5 weeks after you took the case) an advertisement was needed.*

*Calling this an oversight is not acceptable, it was yet another mistake made, of which I am paying for.*

*As for the condition 10 and 11 unless they are removed as I said in an email to Mr John Holden this morning, I feel the only course of action now to resolve what has become a complete mess putting it very politely is to make a fresh full planning application for change of use as \* I originally tried to do\*, but was otherwise directed not to by the council planning department and change the conditions instead, which only led to further confusion and gave me a complete run around. Due to your answer being so grey and "woolly" and open to misinterpretation this seems to be my only course of action as I feel yet another visit from the enforcement officer could still be possible and would complicate things still further causing nothing but harassment in the end, something I wish to avoid for myself and family.*

*I trust I will get an answer about the flue very shortly so at very least now this part can finally move on.*

*Regards Alex Ward"*

Following receipt of this latter correspondence, the Case Officer for the proposed development, was instructed to continue with her assessment of the planning application submission on the basis that this considered the flue aspect of the proposed development only.

#### **24 January 2014**

The Case Officer, D Stewart completed a delegated report of handling recommending that the proposed development be refused due to the adverse impacts that the flue could have on the residential amenity of neighbouring residents, in compliance with Shetland Local Plan (2004) Policy LPNE10.

#### **Parties involved with this planning application to date:**

Dawn Stewart, Planning Officer – Development Management

John Holden, Team Leader – Development Management

Richard MacNeill, Planning Officer – Development Management

Claire Summers, Business Support – Development Management

Kimberley Smith, Business Support – Development Management

Norman Sineath, Enforcement Officer – Development Management

Iain McDiarmid, Head of Planning

Keir Marshall, Legal Services

Kirsten Johnson, Legal Services

Susan Brunton, Legal Services

Chief Executive

Roads Service

Ian Taylor, Environmental Health

Patti Dinsdale, Environmental Health

Scottish Water

Sandwich Community Council

Ms Amanda Kenny, objector

Mr Ward, applicant

**Dawn Stewart**

**Planning Officer – Development Management**

**23 January 2014**

**Ref: 322\_Timeline**

## Stewart Dawn@Development Service

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**From:** ALEX WARD [REDACTED]  
**Sent:** 23 January 2014 12:48  
**To:** Stewart Dawn@Development Service  
**Cc:** Holden John@Development Service  
**Subject:** Re: Planning Application 2013/322/VCON

Dear Dawn Stewart,

Thank you for your email, however you and John Holden were made fully aware that I was not going to be living in the workshop building well before any advert was even mentioned due to needing 3 separate building warrants if this went ahead, that idea was very quickly changed, may well even be decided before or just as you took on the case not to do that, and planning were informed of this.

Reading Policy LPNE10, virtually any planning application would fit this and as the wood burning flue is part of a building process and therefore I feel does not require planning permission and this policy would not apply, because whether or not a nuisance is being caused would be down to environmental control to deal with the same as any smoke from any source. This does not answer the question as to why 11 weeks after my application was checked and verified by the planning department that is then decided (5 weeks after you took the case) an advertisement was needed.

Calling this an oversight is not acceptable, it was yet another mistake made, of which I am paying for.

's for the condition 10 and 11 unless they are removed as I said in an email to Mr John Holden this morning, I feel the only course of action now to resolve what as become a complete mess putting it very politely is to make a fresh full planning application for change of use as \* I originally tried to do\*, but was otherwise directed not to by the council planning department and change the conditions instead, which only led to further confusion and gave me a complete run around. Due to your answer being so grey and "woolly" and open to misinterpretation this seems to be my only course of action as I feel yet another visit from the enforcement officer could still be possible and would complicate things still further causing nothing but harassment in the end, something I wish to avoid for myself and family.

I trust I will get an answer about the flue very shortly so at very least now this part can finally move on.

Regards Alex Ward

**From:** "Dawn.Stewart@shetland.gov.uk" <Dawn.Stewart@shetland.gov.uk>  
**To:** [REDACTED]  
**Sent:** Thursday, 23 January 2014, 11:52  
**Subject:** Planning Application 2013/322/VCON

Dear Mr Ward

I write in reference to the latest 4 emails you have sent to me in relation to your planning application submission.

Shetland Local Plan (2004) Policy LPNE10 stipulates that when assessing development proposals, the following general consideration will be taken into account:

- a) Likely impacts on amenity and the environment as a whole;
- b) Effects on nearby residents and the buildings they occupy;
- c) Landscape character and visual amenity;
- d) Water resources and the marine environment; biodiversity; archaeology and other land uses in the area;
- e) Transport considerations;
- f) Current Government guidance, other policies in the Shetland Structure and Local Plan and particularly those relating to the proposed type of development.

I consider that the retrospective flue situated on your workshop may have a potentially adverse impact on nearby residents and the buildings they occupy due to the smoke that emanates from the flue, which is why your planning application was advertised as being contrary to policy. I acknowledge that my previous reference to Policy LPHOU4 may have been misleading given that it relates directly to new dwellinghouses and apologise for any confusion caused. However, please note that this policy was considered due to the potential impact on residential amenity, given that previously you had proposed to live in the workshop.

As regards any proposed business use, please note that I consider that working from home, i.e. using a laptop, telephone, storing filing or storing tools etc and making and repairing furniture yourself is likely to be a use incidental to the use of the dwellinghouse. When a material change of use takes place, this is a matter of fact and degree and could hinge on changes in characteristics of the use of the site. If the premises are to be used as an office/workshop with a customer base, resulting in comings and goings by third parties, or any impacts were to arise that would not be expected for a residential area, then this might not be considered to be ancillary. To confirm, you can use the workshop for any purpose that is considered by the Planning Authority to be incidental to the enjoyment of the dwellinghouse.

I trust this clarifies the situation.

Regards  
Dawn Stewart  
Planning Officer – Development Management

Tel: 01595 744817

Email: [dawn.stewart@shetland.gov.uk](mailto:dawn.stewart@shetland.gov.uk)

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## Stewart Dawn@Development Service

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**From:** Stewart Dawn@Development Service  
**Sent:** 23 January 2014 11:52  
**To:** 'ALEX WARD'  
**Subject:** Planning Application 2013/322/VCON

Dear Mr Ward

I write in reference to the latest 4 emails you have sent to me in relation to your planning application submission.

Shetland Local Plan (2004) Policy LPNE10 stipulates that when assessing development proposals, the following general consideration will be taken into account:

- a) Likely impacts on amenity and the environment as a whole;
- b) Effects on nearby residents and the buildings they occupy;
- c) Landscape character and visual amenity;
- d) Water resources and the marine environment; biodiversity; archaeology and other land uses in the area;
- e) Transport considerations;
- f) Current Government guidance, other policies in the Shetland Structure and Local Plan and particularly those relating to the proposed type of development.

I consider that the retrospective flue situated on your workshop may have a potentially adverse impact on nearby residents and the buildings they occupy due to the smoke that emanates from the flue, which is why your planning application was advertised as being contrary to policy. I acknowledge that my previous reference to Policy LPHOU4 may have been misleading given that it relates directly to new dwellinghouses and apologise for any confusion caused. However, please note that this policy was considered due to the potential impact on residential amenity, given that previously you had proposed to live in the workshop.

As regards any proposed business use, please note that I consider that working from home, i.e. using a laptop, telephone, storing filing or storing tools etc and making and repairing furniture yourself is likely to be a use incidental to the use of the dwellinghouse. When a material change of use takes place, this is a matter of fact and degree and could hinge on changes in characteristics of the use of the site. If the premises are to be used as an office/workshop with a customer base, resulting in comings and goings by third parties, or any impacts were to arise that would not be expected for a residential area, then this might not be considered to be ancillary. To confirm, you can use the workshop for any purpose that is considered by the Planning Authority to be incidental to the enjoyment of the dwellinghouse.

I trust this clarifies the situation.

Regards  
Dawn Stewart  
Planning Officer – Development Management

Tel: 01595 744817  
Email: [dawn.stewart@shetland.gov.uk](mailto:dawn.stewart@shetland.gov.uk)

**Holden John@Development Service**

**From:** ALEX WARD [REDACTED]  
**Sent:** 23 January 2014 10:40  
**To:** Holden John@Development Service  
**Subject:** Re: Planning application - Alex Ward

Dear John Holden,

In reference to your email below 22 Jan 2014, I have come to the conclusion that to save any more confusion and mistakes being made by the planning department, I feel best way now to move forward, unless you can remove condition 10 and 11 completely is to submit a fresh full planning application \*as I was going to originally until told otherwise by your department\*, for change of use the workshop/garage to allow them to be used for business purposes. However I am concerned that I have to pay another £382 for this mistake by the planning department instead of the difference between the two fees as we discussed earlier which I feel is only fair considering the run around I have been given by your department regarding information that clearly has not be correct on more than one occasion.

Please could you now advise me what you think I should be paying for this fresh full planning application for change of use for small business.

I will await Dawn Stewart response now regarding the temporary site heater (flue).

Regards,  
 Alex Ward

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**From:** "john.holden@shetland.gov.uk" <john.holden@shetland.gov.uk>  
**To:** [REDACTED]  
**Cc:** Dawn.Stewart@shetland.gov.uk  
**Sent:** Wednesday, 22 January 2014, 17:25  
**Subject:** RE: Planning application - Alex Ward

Dear Mr Ward

Thank you for your email.

I know that Dawn is working on providing you with a response to your recent emails to her.

If after receiving her response you would still wish a variation of conditions 10 to 11 to be considered - with them referencing 'material change of use', the task of assessing acceptance of the request as a Variation of Application will be completed. In any event if you would clarify the precise wordings of the varied conditions you would be seeking this would avoid any doubt about what precisely you are seeking.

Yours sincerely

John Holden  
 Team Leader - Development Management  
 Planning

Shetland Islands Council  
 Planning  
 Development Services Department  
 Grantfield  
 Lerwick  
 Shetland  
 ZE1 0NT

23/01/2014

Tel: (01595) 743898

**From:** ALEX WARD [REDACTED]

**Sent:** 22 January 2014 09:01

**To:** Holden John@Development Service

**Subject:** Re: Planning application - Alex Ward

Dear John Holden,

Thank you for getting back to me, however I think it is only fair that a few points are made clear. I agree I have had numerous contacts with the planning department over this matter:

- 1) Mr Norman Sineath who came to the site to discuss matters that had arisen
- 2) Yourself, as this was who I was told contact by Mr Sineath.
- 3) Mr Jonny Wiseman who you passed the matter on to.
- 4) Mr Richard McNeil who I spoke to as the duty officer at the time I handed in the current planning permission (2013)
- 5) From then on I had spoken either Dawn Stewart my case officer or yourself when further clarification was needed when I thought I was getting nowhere.

Based on the information given from your planning department I have been absolutely clear about what I have been asking. Things have only changed when information given from the planning department to me has been found to be incorrect eg that the caravans HAD to be removed by November 2014, no mention that I could apply for an extension. Mr Sineath also said I couldn't use the workshop until main house was built despite having full planning permission again, I was proved correct that I could use it.

Having spoken to Dawn Stewart about condition 10 and 11 she has not put anything in writing as to what I can or cannot do and is unwilling to discuss the matter any further, which makes it pretty difficult to proceed. Not that she put this in writing so therefore can be denied. As you said in your last email she can tell me what I can and can't do in my workshop, business or otherwise, I would be extremely grateful if you could please ask her to put this in writing so everybody who would ever need to know now or in the future it would be clear to all.

Over the matter of the flue she has been aware from the beginning when she became my case officer and rest of the planning department for that matter, that the flue was part of the building process not a material part of the building and therefore temporary. As such any money for advertising costs should have been asked for when presenting the planning application to the council not 11 weeks later (5 weeks after she was given the case) if they are indeed needed ?

The only other reason that I have spoken to other people in the council was when the data protection act was broken on more than one occasion and I tried to put it right, those being Clare Summers then Dawn Stewart, yourself and finally chief executive secretary until I got the matter resolved. Mr McDiramid phoned me back over this matter on your behalf so I was told asking me to stop ringing the planning officers (I was only contacting Dawn Stewart and yourself at this point) because once again no answers were forthcoming and Dawn Stewart was not returning messages, once again making it extremely difficult to communicate without myself having to chase around to find out what exactly was going on which you can appreciate not only very frustrating but very time consuming when you can appreciate I too am extremely busy trying to build my house and work and bring up my family I really don't have the time to be chasing the planning department and find documents and legislation to prove that some of the planning departments information is clearly wrong.

I have absolutely no problem paying the fee for advertising (£140) for the flue so long as in writing to me what I am exactly paying for. Dawn Stewart to this date has not stated why or how flue

23/01/2014

exactly contravenes the local development plan other than" it does" she may have explained to you but nothing in writing to me and does not feel she has too (most helpful). So I have been asked to pay the council a fee for something that I am not privy to know and have been told will not be explained other than in her final report after I have paid the money (which I may have not had to do depending on a report) and refusing to discuss with me again making application process so unnecessarily challenging.

I feel I am being blamed for mistakes being made from within the planning department and things are being made extremely difficult for myself to achieve my goals through the planning process.

I will be in first thing this morning to pay the flue advertising cost £140 I am not particularly happy about it as explained above why, I trust if the advertising was not necessary I will be reimbursed by the council.

I appreciate the fact you need to distance yourself from the application but someone needs to sort what has become a tangled mess out and if it's not yourself then perhaps someone else.

Regards,  
Alex Ward

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**From:** "John.Holden@shetland.gov.uk" <john.holden@shetland.gov.uk>  
**To:** [REDACTED]  
**Cc:** Dawn.Stewart@shetland.gov.uk  
**Sent:** Tuesday, 21 January 2014, 17:01  
**Subject:** RE: Planning application - Alex Ward

Dear Mr Ward,

Thank you for copying me in on your email communications directed to Dawn, both from a time before the telephone call I asked her to make to you after we talked today, and then afterwards.

I understand you have may have tried to telephone me after your telephone conversation with Dawn.

It appears that the contact you have had with various officers within the service area I am responsible for has perhaps only served to lead to matters being confused, particularly with regards to the understanding of what your intentions and proposals for development amount to, and following on from this morning's contact: what had or had not been said previously; and adding to the confusion by, for example, seeking to draw comparisons, be this in relation to parts of a building process or how the issue of amenity is considered between proposals. The result appears to be that contact with anyone other than a nominated officer and by telephone are not the most constructive of means by which your application can be progressed.. So as to overcome this and help ensure that you to can be confident that the detail and merits of your application are clear as a determination on your application is reached, I propose that communications should only take place in writing from now on, and with Dawn. Unfortunately, as the designated Appointed Person who may end up making a determination on you application I really need to distance myself from carrying out any assessments myself before I am presented with a Report of Handling. Up until this point I am really just seeking to ensure that progress is made in an as efficient way as possible.

In relation to your application I gather that Dawn explained to you the impact of your proposal that she considered gave rise to a need to carry out publicity on your proposal. I have to advise you that without making a payment of the sum due for the publicity the Planning Authority has carried out the relevant Regulations prevent it from making a determination under any circumstance. If by the time when Dawn is clear on what your proposal amounts to and has prepared a Report of Handling you have still not made the relevant payment, any development that has taken place outside of the terms of the permission you already have can still be the subject of formal consideration of a need for formal enforcement action.

23/01/2014

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Yours sincerely

John Holden  
Team Leader - Development Management  
Planning

Shetland Islands Council  
Planning  
Development Services Department  
Grantfield  
Lerwick  
Shetland  
ZE1 0NT

Tel: (01595) 743898

---

**From:** ALEX WARD [REDACTED]  
**Sent:** 21 January 2014 13:14  
**To:** Stewart Dawn@Development Service  
**Cc:** Holden John@Development Service  
**Subject:** Re: Planning application - Alex Ward

Dear Dawn Stewart,

Just a note to re-confirm to you the workshop building has full permission to be used for general relaxation/recreation etc.

Please note the wood burning flue as I have said many times via email and on phone is part of the building process for drying out the workshop it is temporary and not a permanent structure as I said to you this morning, this is the same situation as using a digger for digging the footings /foundations for a house as opposed to using the driveway to store diggers, you seem to be wanting to ignore the fact it's part of a building process.

I feel your not working with me but against me, and not wanting to try and resolve any difficulties to come to a satisfactory conclusion that could work for both of us.

Regards,  
Alex Ward

---

**From:** ALEX WARD [REDACTED]  
**To:** "Dawn.Stewart@shetland.gov.uk" <Dawn.Stewart@shetland.gov.uk>  
**Cc:** "john.holden@shetland.gov.uk" <john.holden@shetland.gov.uk>  
**Sent:** Tuesday, 21 January 2014, 12:36  
**Subject:** Re: Planning application - Alex Ward

Dear Dawn Stewart,

23/01/2014

Following our telephone conversation, as you said you will not now discuss condition 10 or 11 and have nothing more to say on the matter. In the conversation before Christmas where I said that these conditions prevent me from doing paperwork or even filling out a tax form as these would be for business purposes, you said you work from home and do council business from there, therefore I could do the same even though condition 10 and 11 state not for business purposes. Could you please confirm that I can however use the workshop /garage for business purposes as long as this does not constitute a material change of use.

If you will not confirm one way or the other, do I take I can use the workshop/garage for business purposes contrary to the wording on my original application as long as it does not constitute a material change of use.

Regards,  
Alex Ward

---

**From:** ALEX WARD [REDACTED]  
**To:** "Dawn.Stewart@shetland.gov.uk" <Dawn.Stewart@shetland.gov.uk>  
**Sent:** Tuesday, 21 January 2014, 11:23  
**Subject:** Re: Planning application - Alex Ward

Dear Dawn Stewart,

It's been 26 weeks since the enforcement officer came to my site and advised to put an application (despite having full planning) in i which we did very quickly on his request. It took 1 month just to get a reply as to whether we actually needed further planning application which the planning department said we did. Although now it turned out later that some of it was not required being badly advised by the planning department.

I am still waiting for your reply about a temporary flue which is being used as part of the building process (not part of the structure itself) and change of condition 10 and 11 (reference not for business purposes).

I have given permission already for 1 time extension which has lapsed over a month ago. Nobody has bothered to ask me for another time extension, we are no closer it appears to any answers to my questions regarding above and being asked to pay for something which you have not be able to justify yet and you stated that you did not know where exactly I was contravening the local development plan.

Upon taking outside advice nobody can understand why condition 10 and 11 can not be changed so that I can use the workshop and garage for business purposes so long as it does not constitute a material change of use see previous email.

Please can you now as a matter of urgency update me as to what any progress is being made. I am now getting very frustrated as to the lack progress and communication within planning department for what essentially is a straightforward planning application it beggers belief at just how long this has taken to date with no proper answers.

Regards,  
Alex Ward

---

**From:** "Dawn.Stewart@shetland.gov.uk" <Dawn.Stewart@shetland.gov.uk>  
**To:** [REDACTED]  
**Sent:** Wednesday, 8 January 2014, 11:50  
**Subject:** RE: Planning application - flue ? ad costs

Dear Mr Ward

Thank you for your email which I have received today upon my return to work. I will get back to you in due

23/01/2014



course in relation to your comments.

Regards  
Dawn Stewart  
Planning Officer – Development Management

Tel: 01595 744817  
Email: dawn.stewart@shetland.gov.uk

---

**From:** ALEX WARD [REDACTED]  
**Sent:** 05 January 2014 11:27  
**To:** Stewart Dawn@Development Service  
**Subject:** Re: Planning application - flue ? ad costs

Dear Dawn Stewart,

You have told me which documents that my application apparently "does not accord with the provisions of the development plan ", however I would appreciate it if you could demonstrate exactly where it does not apply before I pay any further fees.

I am still requesting that condition 10 and 11 are changed so as "I can use the garage and workshop for business purposes so long as any work done does not constitute a material change of use". I intend to be using the workshop at present for office based work, designing and consultation work (as well as for the making and repairing of furniture that I already have permission to do so). If I wish in the future to do any other work that would involve a material change of use I will obviously contact the planning department with a full planning application to do so.

Having discussed this with John Holden and yourself my current planning 2009 has been written in such a way that this prevents me from working from home (as you do working on council business from home) even though it was probably not meant to be so tight and written like it was I feel the above suggestion would clear this up and would make it clear to all involved and prevent any misunderstanding. The fact remains is has been written in such a way to prevent me from working from home and therefore could be used to prevent me from working from home if someone now or in future decided to be awkward.

Kind Regards,  
Alex Ward

**From:** ALEX WARD [REDACTED]  
**To:** "dawn.stewart@shetland.gov.uk" <dawn.stewart@shetland.gov.uk>  
**Sent:** Saturday, 14 December 2013, 14:42  
**Subject:** Re: Planning application - flue ? ad costs

Dear Dawn Stewart,

Before I pay for any advertising costs for the wood burning flue, could you please provide me with information stating exactly what does not accord with the provisions of the development plan for my own reference.

Regards,  
Alex Ward

**From:** ALEX WARD [REDACTED]  
**To:** "dawn.stewart@shetland.gov.uk" <dawn.stewart@shetland.gov.uk>  
**Sent:** Wednesday, 4 December 2013, 10:10  
**Subject:** Planning application

Hi Dawn,

I note the title of my planning application has now been changed for the flue which is fine, however I am still waiting for a response from an email sent to John Holden as to how this application for the change of use for the business ( as this not mentioned in the title) is going to proceed due to incorrect advice given at the time of me submitting the application.  
I hope to hear back from someone soon.

Regards,  
Alex Ward.

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**Holden John@Development Service**

**From:** Holden John@Development Service  
**Sent:** 22 January 2014 17:26  
**To:** 'ALEX WARD'  
**Cc:** Stewart Dawn@Development Service  
**Subject:** RE: Planning application - Alex Ward

Dear Mr Ward

Thank you for your email.

I know that Dawn is working on providing you with a response to your recent emails to her.

If after receiving her response you would still wish a variation of conditions 10 to 11 to be considered - with them referencing 'material change of use', the task of assessing acceptance of the request as a Variation of Application will be completed. In any event if you would clarify the precise wordings of the varied conditions you would be seeking this would avoid any doubt about what precisely you are seeking.

Yours sincerely

John Holden  
 Team Leader - Development Management  
 Planning

Shetland Islands Council  
 Planning  
 Development Services Department  
 Grantfield  
 Lerwick  
 Shetland  
 ZE1 0NT

Tel: (01595) 743898

**From:** ALEX WARD [REDACTED]  
**Sent:** 22 January 2014 09:01  
**To:** Holden John@Development Service  
**Subject:** Re: Planning application - Alex Ward

Dear John Holden,

Thank you for getting back to me, however I think it is only fair that a few points are made clear. I agree I have had numerous contacts with the planning department over this matter:

- 1) Mr Norman Sineath who came to the site to discuss matters that had arisen
- 2) Yourself, as this was who I was told contact by Mr Sineath.
- 3) Mr Jonny Wiseman who you passed the matter on to.
- 4) Mr Richard McNeil who I spoke to as the duty officer at the time I handed in the current planning permission (2013)
- 5) From then on I had spoken either Dawn Stewart my case officer or yourself when further clarification was needed when I thought I was getting nowhere.

Based on the information given from your planning department I have been absolutely clear about what I have been asking. Things have only changed when information given from the planning department to me has been found to be incorrect eg that the caravans HAD to be removed by November 2014, no mention that I could apply for an extension. Mr Sineath also said I couldn't use

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the workshop until main house was built despite having full planning permission again, I was proved correct that I could use it.

Having spoken to Dawn Stewart about condition 10 and 11 she has not put anything in writing as to what I can or cannot do and is unwilling to discuss the matter any further, which makes it pretty difficult to proceed. Not that she put this in writing so therefore can be denied. As you said in your last email she can tell me what I can and can't do in my workshop, business or otherwise, I would be extremely grateful if you could please ask her to put this in writing so everybody who would ever need to know now or in the future it would be clear to all.

Over the matter of the flue she has been aware from the beginning when she became my case officer and rest of the planning department for that matter, that the flue was part of the building process not a material part of the building and therefore temporary. As such any money for advertising costs should have been asked for when presenting the planning application to the council not 11 weeks later (5 weeks after she was given the case) if they are indeed needed ?

The only other reason that I have spoken to other people in the council was when the data protection act was broken on more than one occasion and I tried to put it right, those being Clare Summers then Dawn Stewart ,yourself and finally chief executive secretary until I got the matter resolved. Mr McDiramid phoned me back over this matter on your behalf so I was told asking me to stop ringing the planning officers (I was only contacting Dawn Stewart and yourself at this point) because once again no answers were forthcoming and Dawn Stewart was not returning messages, once again making it extremely difficult to communicate without myself having to chase around to find out what exactly was going on which you can appreciate not only very frustrating but very time consuming when you can appreciate I too am extremely busy trying to build my house and work and bring up my family I really don't have the time to be chasing the planning department and find documents and legislation to prove that some of the planning departments information is clearly wrong.

I have absolutely no problem paying the fee for advertising (£140) for the flue so long as in writing to me what I am exactly paying for. Dawn Stewart to this date has not stated why or how flue exactly contravenes the local development plan other than " it does" she may have explained to you but nothing in writing to me and does not feel she has too (most helpful).

So I have been asked to pay the council a fee for something that I am not privy to know and have been told will not be explained other than in her final report after I have paid the money (which I may have not had to do depending on a report) and refusing to discuss with me again making application process so unnecessarily challenging.

I feel I am being blamed for mistakes being made from within the planning department and things are being made extremely difficult for myself to achieve my goals through the planning process.

I will be in first thing this morning to pay the flue advertising cost £140 I am not particularly happy about it as explained above why, I trust if the advertising was not necessary I will be reimbursed by the council.

I appreciate the fact you need to distance yourself from the application but someone needs to sort what has become a tangled mess out and if it's not yourself then perhaps someone else.

Regards,  
Alex Ward

**From:** "john.holden@shetland.gov.uk" <john.holden@shetland.gov.uk>  
**To:** [REDACTED]  
**Cc:** Dawn.Stewart@shetland.gov.uk  
**Sent:** Tuesday, 21 January 2014, 17:01  
**Subject:** RE: Planning application - Alex Ward

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Yours sincerely

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 Team Leader - Development Management  
 Planning

Shetland Islands Council  
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 Development Services Department  
 Grantfield  
 Lerwick  
 Shetland  
 ZE1 0NT

Tel: (01595) 743898

**From:** ALEX WARD [REDACTED]  
**Sent:** 21 January 2014 13:14  
**To:** Stewart Dawn@Development Service  
**Cc:** Holden John@Development Service  
**Subject:** Re: Planning application - Alex Ward

Dear Dawn Stewart,

Just a note to re-confirm to you the workshop building has full permission to be used for general relaxation/recreation etc.

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**From:** ALEX WARD [REDACTED]  
**To:** "Dawn.Stewart@shetland.gov.uk" <Dawn.Stewart@shetland.gov.uk>  
**Cc:** "john.holden@shetland.gov.uk" <john.holden@shetland.gov.uk>  
**Sent:** Tuesday, 21 January 2014, 12:36  
**Subject:** Re: Planning application - Alex Ward

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**To:** "Dawn.Stewart@shetland.gov.uk" <Dawn.Stewart@shetland.gov.uk>  
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**From:** "Dawn.Stewart@shetland.gov.uk" <Dawn.Stewart@shetland.gov.uk>

**To:** [REDACTED]

**Sent:** Wednesday, 8 January 2014, 11:50

**Subject:** RE: Planning application - flue ? ad costs

Dear Mr Ward

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Regards  
Dawn Stewart  
Planning Officer – Development Management

Tel: 01595 744817  
Email: dawn.stewart@shetland.gov.uk

---

**From:** ALEX WARD [REDACTED]

**Sent:** 05 January 2014 11:27

**To:** Stewart Dawn@Development Service

**Subject:** Re: Planning application - flue ? ad costs

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22/01/2014

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Kind Regards,

Alex Ward

**From:** ALEX WARD [REDACTED]

**To:** "[dawn.stewart@shetland.gov.uk](mailto:dawn.stewart@shetland.gov.uk)" <[dawn.stewart@shetland.gov.uk](mailto:dawn.stewart@shetland.gov.uk)>

**Sent:** Saturday, 14 December 2013, 14:42

**Subject:** Re: Planning application - flue ? ad costs

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**To:** "[dawn.stewart@shetland.gov.uk](mailto:dawn.stewart@shetland.gov.uk)" <[dawn.stewart@shetland.gov.uk](mailto:dawn.stewart@shetland.gov.uk)>

**Sent:** Wednesday, 4 December 2013, 10:10

**Subject:** Planning application

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22/01/2014

**Holden John@Development Service**

**From:** ALEX WARD [REDACTED]  
**Sent:** 22 January 2014 09:01  
**To:** Holden John@Development Service  
**Subject:** Re: Planning application - Alex Ward

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Regards,  
Alex Ward

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**To:** [REDACTED]  
**Cc:** Dawn.Stewart@shetland.gov.uk  
**Sent:** Tuesday, 21 January 2014, 17:01  
**Subject:** RE: Planning application - Alex Ward

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It appears that the contact you have had with various officers within the service area I am responsible for has perhaps only served to lead to matters being confused, particularly with regards to the understanding of what your intentions and proposals for development amount to, and following on from this morning's contact: what had or had not been said previously; and adding to the confusion by, for example, seeking to draw comparisons, be this in relation to parts of a building process or how the issue of amenity is considered between proposals. The result appears to be that contact with anyone other than a nominated officer and by telephone are not the most constructive of means by which your application can be progressed.. So as to overcome this and help ensure that you to can be confident that the detail and merits of your application are clear as a determination on your application is reached, I propose that communications should only take place in writing from now on, and with Dawn. Unfortunately, as the designated Appointed Person who may end up making a determination on you application I really need to distance myself from carrying out any assessments myself before I am presented with a Report of Handling. Up until this point I am really just seeking to ensure that progress is made in an as efficient way as possible.

In relation to your application I gather that Dawn explained to you the impact of your proposal that she considered gave rise to a need to carry out publicity on your proposal. I have to advise you that without making a payment of the sum due for the publicity the Planning Authority has carried out the relevant Regulations prevent it from making a determination under any circumstance. If by the time when Dawn is clear on what your proposal amounts to and has prepared a Report of Handling you have still not made the relevant payment, any development that has taken place outside of the terms of the permission you already have can still be the subject of formal consideration of a need for formal enforcement action.

22/01/2014

It should be perfectly possible for Dawn to answer your questions as to what you can use your workshop/garage for at the present time from the advice that she has received from Legal Services to date. During my conversation with you I indicated that I was of the view that it would likely not be possible within a condition to define a specific as to what will constitute a material change of use. This is because whether or not a change of use is "material" and therefore requires planning permission is a question of fact and degree for the planning authority, or the Scottish Ministers on appeal, to decide. There is no general guidance on when a change of use will be considered "material", but some assistance is given by case law.

Yours sincerely

John Holden  
Team Leader - Development Management  
Planning

Shetland Islands Council  
Planning  
Development Services Department  
Grantfield  
Lerwick  
Shetland  
ZE1 0NT

Tel: (01595) 743898

---

**From:** ALEX WARD [REDACTED]  
**Sent:** 21 January 2014 13:14  
**To:** Stewart Dawn@Development Service  
**Cc:** Holden John@Development Service  
**Subject:** Re: Planning application - Alex Ward

Dear Dawn Stewart,

Just a note to re-confirm to you the workshop building has full permission to be used for general relaxation/recreation etc.

Please note the wood burning flue as I have said many times via email and on phone is part of the building process for drying out the workshop it is temporary and not a permanent structure as I said to you this morning, this is the same situation as using a digger for digging the footings /foundations for a house as opposed to using the driveway to store diggers, you seem to be wanting to ignore the fact it's part of a building process.

I feel your not working with me but against me, and not wanting to try and resolve any difficulties to come to a satisfactory conclusion that could work for both of us.

Regards,  
Alex Ward

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**From:** ALEX WARD [REDACTED]  
**To:** "Dawn.Stewart@shetland.gov.uk" <Dawn.Stewart@shetland.gov.uk>  
**Cc:** "john.holden@shetland.gov.uk" <john.holden@shetland.gov.uk>  
**Sent:** Tuesday, 21 January 2014, 12:36  
**Subject:** Re: Planning application - Alex Ward

Dear Dawn Stewart,

Following our telephone conversation, as you said you will not now discuss condition 10 or 11 and have nothing more to say on the matter. In the conversation before Christmas where I said that these conditions prevent me from doing paperwork or even filling out a tax form as these would be for business purposes, you said you work from home and do council business from there, therefore I could do the same even though condition 10 and 11 state not for business purposes. Could you please confirm that I can however use the workshop /garage for business purposes as long as this does not constitute a material change of use.

If you will not confirm one way or the other, do I take I can use the workshop/garage for business purposes contrary to the wording on my original application as long as it does not constitute a material change of use.

Regards,  
Alex Ward

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**To:** "Dawn.Stewart@shetland.gov.uk" <Dawn.Stewart@shetland.gov.uk>  
**Sent:** Tuesday, 21 January 2014, 11:23  
**Subject:** Re: Planning application - Alex Ward

Dear Dawn Stewart,

It's been 26 weeks since the enforcement officer came to my site and advised to put an application (despite having full planning) in which we did very quickly on his request. It took 1 month just to get a reply as to whether we actually needed further planning application which the planning department said we did. Although now it turned out later that some of it was not required being badly advised by the planning department.

I am still waiting for your reply about a temporary flue which is being used as part of the building process (not part of the structure itself) and change of condition 10 and 11 (reference not for business purposes).

I have given permission already for 1 time extension which has lapsed over a month ago. Nobody has bothered to ask me for another time extension, we are no closer it appears to any answers to my questions regarding above and being asked to pay for something which you have not be able to justify yet and you stated that you did not know where exactly I was contravening the local development plan.

Upon taking outside advice nobody can understand why condition 10 and 11 can not be changed so that I can use the workshop and garage for business purposes so long as it does not constitute a material change of use see previous email.

Please can you now as a matter of urgency update me as to what any progress is being made. I am now getting very frustrated as to the lack progress and communication within planning department for what essentially is a straightforward planning application it beggers belief at just how long this has taken to date with no proper answers.

Regards,  
Alex Ward

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**From:** "Dawn.Stewart@shetland.gov.uk" <Dawn.Stewart@shetland.gov.uk>  
**To:** [REDACTED]  
**Sent:** Wednesday, 8 January 2014, 11:50  
**Subject:** RE: Planning application - flue ? ad costs

Dear Mr Ward

Thank you for your email which I have received today upon my return to work. I will get back to you in due

22/01/2014



course in relation to your comments.

Regards  
Dawn Stewart  
Planning Officer – Development Management

Tel: 01595 744817  
Email: dawn.stewart@shetland.gov.uk

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**From:** ALEX WARD [REDACTED]  
**Sent:** 05 January 2014 11:27  
**To:** Stewart Dawn@Development Service  
**Subject:** Re: Planning application - flue ? ad costs

Dear Dawn Stewart,

You have told me which documents that my application apparently "does not accord with the provisions of the development plan ", however I would appreciate it if you could demonstrate exactly where it does not apply before I pay any further fees.

I am still requesting that condition 10 and 11 are changed so as "I can use the garage and workshop for business purposes so long as any work done does not constitute a material change of use". I intend to be using the workshop at present for office based work, designing and consultation work (as well as for the making and repairing of furniture that I already have permission to do so). If I wish in the future to do any other work that would involve a material change of use I will obviously contact the planning department with a full planning application to do so.

Having discussed this with John Holden and yourself my current planning 2009 has been written in such a way that this prevents me from working from home (as you do working on council business from home) even though it was probably not meant to be so tight and written like it was I feel the above suggestion would clear this up and would make it clear to all involved and prevent any misunderstanding. The fact remains is has been written in such a way to prevent me from working from home and therefore could be used to prevent me from working from home if someone now or in future decided to be awkward.

Kind Regards,

Alex Ward

**From:** ALEX WARD [REDACTED]  
**To:** "dawn.stewart@shetland.gov.uk" <dawn.stewart@shetland.gov.uk>  
**Sent:** Saturday, 14 December 2013, 14:42  
**Subject:** Re: Planning application - flue ? ad costs

Dear Dawn Stewart,

Before I pay for any advertising costs for the wood burning flue, could you please provide me with information stating exactly what does not accord with the provisions of the development plan for my own reference.

Regards,  
Alex Ward

**From:** ALEX WARD [REDACTED]  
**To:** "dawn.stewart@shetland.gov.uk" <dawn.stewart@shetland.gov.uk>  
**Sent:** Wednesday, 4 December 2013, 10:10  
**Subject:** Planning application

22/01/2014

Hi Dawn,

I note the title of my planning application has now been changed for the flue which is fine, however I am still waiting for a response from an email sent to John Holden as to how this application for the change of use for the business ( as this not mentioned in the title) is going to proceed due to incorrect advice given at the time of me submitting the application.  
I hope to hear back from someone soon.

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**Holden John@Development Service**

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**From:** Holden John@Development Service  
**Sent:** 21 January 2014 17:01  
**To:** 'ALEX WARD'  
**Cc:** Stewart Dawn@Development Service  
**Subject:** RE: Planning application - Alex Ward

Dear Mr Ward,

Thank you for copying me in on your email communications directed to Dawn, both from a time before the telephone call I asked her to make to you after we talked today, and then afterwards.

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22/01/2014

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22/01/2014

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**To:** [REDACTED]

**Sent:** Wednesday, 8 January 2014, 11:50

**Subject:** RE: Planning application - flue ? ad costs

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Tel: 01595 744817

Email: dawn.stewart@shetland.gov.uk

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Tuesday 21 January 2014

Following a telephone conversation between Mr Alex Ward and John Holden, I was asked to call Mr Ward to provide him with a reason as to why his planning application had been advertised.

On contacting Mr Ward by phone, he asked if I had read his email from earlier this morning. I said that I hadn't been aware of an email as yet. He said I should read it before responding. I scanned over the email quickly and realised that Mr Ward was unhappy about the length of time taken to process his planning application. A copy of Mr Ward's initial email is attached below:

*"Dear Dawn Stewart*

*It's been 26 weeks since the enforcement officer came to my site and advised to put an application (despite having full planning) in i which we did very quickly on his request. It took 1 month just to get a reply as to whether we actually needed further planning application which the planning department said we did. Although now it turned out later that some of it was not required being badly advised by the planning department.*

*I am still waiting for your reply about a temporary flue which is being used as part of the building process (not part of the structure itself) and change of condition 10 and 11 (reference not for business purposes).*

*I have given permission already for 1 time extension which has lapsed over a month ago. Nobody has bothered to ask me for another time extension, we are no closer it appears to any answers to my questions regarding above and being asked to pay for something which you have not be able to justify yet and you stated that you did not know where exactly I was contravening the local development plan.*

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*Please can you now as a matter of urgency update me as to what any progress is being made. I am now getting very frustrated as to the lack progress and communication within planning department for what essentially is a straightforward planning application it beggers belief at just how long this has taken to date with no property answers.*

*Regards,*

*Alex Ward"*

I said that the reason for my phone call was to discuss the reasoning behind advertising his planning application. Mr Ward said that he wasn't prepared to pay an advertisement fee without knowing exactly why his application had been advertised. I said that I had already explained to him on several occasions over the phone and via email that the flue was advertised as being contrary to Shetland



Local Plan (2004) Policy LPNE10 (development and the environment) and LPHOU4 (residential amenity) and that the full details of which would be outlined in the consideration of my report.

Mr Ward said that I had stated previously in a conversation that I didn't know why the application had been advertised. I refuted this statement. Again, Mr Ward claimed that I had said I didn't know why his proposal was contrary to the policies stated. I again denied to Mr Ward that I had ever said such words and asked if he had read the policies outlined to him. Mr Ward informed that he had read the policies, but didn't see why his proposal could be considered to be contrary to them. I said that "in my opinion, which I was entitled to and had a professional planning qualification for, the reason why it was contrary to policy was due to the smoke emanating from the flue which could potentially affect residential amenity and the environment". Mr Ward stated that I was wrong in my assessment because the building the flue is situated on is not a house. I explained that it was his neighbours amenity that I was concerned about which is what the policy is for – to protect residential amenity, but Mr Ward does not agree as the flue is situated on a workshop and not a residential dwellinghouse and therefore considers that his application should not have been advertised as such. Mr Ward then said that if this was the case, then every single planning application received should be advertised due to its potential impact on others. I said that this was not the case as each application is assessed on its own merits and in its particular context. Mr Ward said that having a shed in someone's garden could have an impact on neighbours and therefore should be advertised as such if that was the line of reasoning I was going down.

At this point I realised that the conversation was deteriorating rapidly. Mr Ward was constantly talking over my points and I could hear Mrs Ward providing additional comments throughout the conversation.

Mr Ward moved on to the business aspect of his proposal. I informed that I wasn't prepared to discuss this element of his proposal because as he had been informed on numerous occasions following legal advice that this aspect of his proposal could not be dealt with under the terms of his current planning application submission. Mr Ward started to object once more, but I informed that I was aware he had had a conversation about this aspect of his proposal with John Holden earlier on and was aware of the situation and therefore was not prepared to keep going over old ground. I said that as he had also been made aware earlier today, I had already provided a timeline of communications undertaken to date on his planning application and that this had been passed to John for his consideration and to establish the current status.

I also stated that Mr Ward had previously agreed with me, following receipt of the legal advice, that the only part of his planning application that could legally be assessed was the retrospective flue which had been placed on the workshop without planning consent. Mr Ward claimed that the flue didn't need consent because it is being used as part of building operations to dry out his workshop as the tiles hadn't been completed on the roof and that as soon as the tiles were up, the flue would be removed.

He went on to say "if I had a business running from my workshop and had diggers on my driveway to run that business I would need planning permission – would I not?" I attempted to halt this line of enquiry and stated that this had nothing to do with his current proposal. I was aware that Mr Ward was becoming increasingly angry. He informed that he was simply providing me with an example that I should listen to. He repeated his earlier question and I confirmed that a material change of

use would require planning consent. He then went on to say 'if I had diggers on my driveway for the purposes of constructing my house, would this require consent?' I said no, because the construction phase of any dwellinghouse would be part of that permission and would be for a temporary period of time. He said 'precisely and my flue is also temporary and part of the ongoing building operations'.

I reminded Mr Ward that he had informed the Planning Service in writing that his family were utilising the shed throughout the day for recreation/relaxation purposes, however Mr Ward claims that the flue is not connected to the use of the workshop, which isn't being used for relaxation/recreation purposes – it is merely an oven to dry out the shed roof.

Throughout the conversation Mr Ward also mentioned problems he has had throughout the process with various colleagues. I informed Mr Ward that I was not prepared to comment or partake in a debate about what had or might have been said in a conversation between himself and other colleagues, particularly when I had not been present at such events. Mr Ward became quite heated and stated that the reason they were being mentioned was due to the planning department's continual inaccuracies and then demanded to know why the process was taking so long. I informed that one of the reasons as he was aware, was the need to obtain legal advice which had taken longer than anticipated due to the complexities of the case, which was in effect a direct result of the fact that he appeared to change his mind about what he was applying for which had caused considerable confusion to all parties involved and therefore subsequent delays.

Mr Ward said he wanted the conditions restricting his business operations removed from his previous consent. I said that as he was aware, I couldn't do so under the terms of the current planning application applied for and he asked 'why not?' Before waiting for a response, he stated 'I've made a planning application, paid the fees due [this part of the conversation also contained accusations about other officers providing Mr Ward with incorrect information about fees etc. etc.] and it is therefore up to you to assess my proposal'. At this point I realised there was little point in the conversation continuing and therefore informed Mr Ward that I wasn't prepared to discuss the situation any further. I advised that should he wish to continue to discuss his issues he should contact my line Manager. He asked 'is that John Holden' and I said 'yes'. The conversation ended with an understanding on my part that Mr Ward intends to contact John again to make further complaint about the handling of his planning application and about today's communications.

After this conversation had taken place, I received the following two emails:

*"Dear Dawn Stewart*

*Following our telephone conversation, as you said you will not now discuss condition 10 or 11 and have nothing more to say on the matter. In the conversation before Christmas where I said that these conditions prevent me from doing paperwork or even filling out a tax form as these would be for business purposes, you said you work from home and do council business from there, therefore I could do the same even though condition 10 and 11 state not for business purposes. Could you please confirm that I can however use the workshop /garage for business purposes as long as this does not constitute a material change of use.*

*If you will not confirm one way or the other, do I take I can use the workshop/garage for business purposes contrary to the wording on my original application as long as it does not constitute a material change of use.*

*Regards*

*Alex Ward"*

*"Dear Dawn Stewart*

*Just a note to re-confirm to you the workshop building has full permission to be used for general relaxation/recreation etc.*

*Please note the wood burning flue as I have said many times via email and on phone is part of the building process for drying out the workshop it is temporary and not a permanent structure as I said to you this morning, this is the same situation as using a digger for digging the footings /foundations for a house as opposed to using the driveway to store diggers, you seem to be wanting to ignore the fact it's part of a building process.*

*I feel your not working with me but against me, and not wanting to try and resolve any difficulties to come to a satisfactory conclusion that could work for both of us.*

*Regards,*

*Alex Ward"*

As requested, I haven't responded to any of these emails but forwarded each of them to my line manager for his information/subsequent action and therefore await further instruction.

In relation to email number 1:

***"I am still waiting for your reply about a temporary flue which is being used as part of the building process (not part of the structure itself) and change of condition 10 and 11 (reference not for business purposes)."***

I acknowledged Mr Ward's email upon my return to work on 8 January 2014 and following a discussion between colleagues, informed him that I would get back to him in due course. As a result of the discussions undertaken, the file was passed to John at the start of last week in order to prepare a response to Mr Ward.

***"I have given permission already for 1 time extension which has lapsed over a month ago. Nobody has bothered to ask me for another time extension, we are no closer it appears to any answers to my questions regarding above and being asked to pay for something which you have not be able to justify yet and you said that you did not know where exactly I was contravening the local development plan."***

The day before the time lapsed on the extension (11 December 2013) the DM team had a discussion about the current situation as Mr Ward appeared to keep changing his mind about what he was actually applying for. I asked at that time if I should request a further extension of time to determine the application and was told that there was no point in requesting a further extension

given the circumstances. I informed Mr Ward on several occasions via phone and via email that his application was advertised because I considered his proposal was contrary to Shetland Local Plan (2004) Policies LPNE10 and LPHOU4 and advised him where he could locate the document online. I was informed at that point that I did not need to go into the specifics, but merely let him know which policies were involved and to make sure Mr Ward was aware his proposal would be fully considered against these policies and therefore detailed in any future report written – which I did by phone and by email. I have informed Mr Ward today that I consider smoke emanating from the flue may have an impact on neighbourhood residential amenity and the environment. At no point have I ever stated to Mr Ward or anyone else that I 'did not know where exactly .../[Mr Ward]... was contravening the local development plan'.

***"Upon taking outside advice nobody can understand why condition 10 and 11 can not be changed so that I can use the workshop and garage for business purposes so long as it does not constitute a material change of use see previous email.***

Legal advice has been undertaken as regards Mr Ward's proposals. He has been informed on several occasions that an application for full planning permission is required to be submitted and assessed for any proposed material change of use.

In relation to email number 2:

Mr Ward has been informed on several occasions that planning permission will be required to change the use of his workshop if that use is deemed by the Planning Service to be a material change to its existing use. The simple fact that he intends in future to use the workshop for business purposes which will have a client base, means that the public will be visiting his workshop which is why Roads Services objected as they consider that there is insufficient parking on site to accommodate this aspect of his proposal. During assessment of the current planning application, Mr Ward was previously informed that he could continue to use the workshop for his families recreation/relaxation as it was ancillary accommodation to the enjoyment of the dwellinghouse (despite the fact that his dwellinghouse (which has planning consent) as yet has not been constructed on site).

In relation to email 3:

I have been striving to accommodate Mr Ward's constant communications over several months since the application was first assigned to me. During any verbal or written communications I have always remained polite and consistent in my responses and have attempted to resolve Mr Ward's 'difficulties' in conjunction with assessing other applications in my caseload. Despite my continued efforts to explain the situation to Mr Ward, he either refuses to accept my findings or simply disagrees with my assessment of the issues he has raised.

Despite the numerous conversations with Mr Ward and the written responses given, I am absolutely convinced that because I ended up standing up to Mr Ward today and refused to accept his accusations, or to continue to discuss the issues he keeps raising time and time again (both relevant and irrelevant), I have now become the object of his disdain and therefore future complaint.

Given the tone of the conversation held earlier today with Mr Ward and subsequent emails received from him, the latter part of his latest email which implies that I should 'come to a satisfactory conclusion that could work for both of us' is intimidating in tone. I believe that if Mr Ward does not hear exactly what he wants to hear, then he will continue to make life difficult for me, for my colleagues and the Planning Service as a whole.

For the timeline record of communications undertaken to date, please note that this latter account has taken another 4 hours and 30 minutes to write.

Dawn Stewart

Planning Officer – Development Management

## Stewart Dawn@Development Service

---

**From:** ALEX WARD [REDACTED]  
**Sent:** 05 January 2014 11:27  
**To:** Stewart Dawn@Development Service  
**Subject:** Re: Planning application - flue ? ad costs

Dear Dawn Stewart,

You have told me which documents that my application apparently "does not accord with the provisions of the development plan ", however I would appreciate it if you could demonstrate exactly where it does not apply before I pay any further fees.

I am still requesting that condition 10 and 11 are changed so as "I can use the garage and workshop for business purposes so long as any work done does not constitute a material change of use".

I intend to be using the workshop at present for office based work, designing and consultation work (as well as for the making and repairing of furniture that I already have permission to do so). If I wish in the future to do any other work that would involve a material change of use I will obviously contact the planning department with a full planning application to do so.

Having discussed this with John Holden and yourself my current planning 2009 has been written in such a way that this prevents me from working from home (as you do working on council business from home) even though it was probably not meant to be so tight and written like it was I feel the above suggestion would clear this up and would make it clear to all involved and prevent any misunderstanding. The fact remains is has been written in such a way to prevent me from working from home and therefore could be used to prevent me from working from home if someone now or in future decided to be awkward.

Kind Regards,

Alex Ward

**From:** ALEX WARD [REDACTED]  
**To:** "dawn.stewart@shetland.gov.uk" <dawn.stewart@shetland.gov.uk>  
**Sent:** Saturday, 14 December 2013, 14:42  
**Subject:** Re: Planning application - flue ? ad costs

Dear Dawn Stewart,

Before I pay for any advertising costs for the wood burning flue, could you please provide me with information stating exactly what does not accord with the provisions of the development plan for my own reference.

Regards,  
Alex Ward

**From:** ALEX WARD [REDACTED]  
**To:** "dawn.stewart@shetland.gov.uk" <dawn.stewart@shetland.gov.uk>  
**Sent:** Wednesday, 4 December 2013, 10:10  
**Subject:** Planning application

Hi Dawn,

I note the title of my planning application has now been changed for the flue which is fine, however I am still waiting for a response from an email sent to John Holden as to how this application for the change of use for the business ( as this not mentioned in the title) is going to proceed due to incorrect advice given at the time of me submitting the application.

I hope to hear back from someone soon.

Regards,  
Alex Ward.

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**Holden John@Development Service**

**From:** Holden John@Development Service  
**Sent:** 13 December 2013 15:12  
**To:** 'ALEX WARD'  
**Cc:** Stewart Dawn@Development Service  
**Subject:** FW: Planning Application Ref: 2013/322/VCON

Dear Mr Ward,

Further to our telephone conversation this afternoon, if you would be good enough to provide the property address of where in England you carried out the development (business use) you say was the same as is now proposed, this could assist in establishing similarities between the circumstances.

Yours sincerely

John Holden  
 Team Leader - Development Management  
 Planning

Shetland Islands Council  
 Planning  
 Development Services Department  
 Grantfield  
 Lerwick  
 Shetland  
 ZE1 0NT

Tel: (01595) 743898

---

**From:** Holden John@Development Service  
**Sent:** 13 December 2013 10:01  
**To:** 'ALEX WARD'  
**Cc:** Allan Kenn@Asset & Properties Unit; Stewart Dawn@Development Service  
**Subject:** RE: Planning Application Ref: 2013/322/VCON

Dear Mr Ward,

Thank you for your email. I was in meetings for much of the day yesterday.

I am concerned that no mistakes are made, and that the determination(s) that the planning authority makes in relation to proposals are so having a sound legal basis. Unfortunately work to make sure this ends up being the case in this instance is taking time, and has, as in each and every other case, to take place at the same time as other work. The current planning control position at your development site, the history to and manner of your submission, as well as what your proposals amount to are all issues to which account must be given, aside from the separate consideration of your proposals' merits that will follow..

I am sorry if as you say you are turning down work. It could be that the Council has premises authorised for business use that it could offer, or other parties could have premises available in the area. Ken Allan, Team Leader - Asset & Properties will be able to advise on what property is available in the Council's estate on 01595 744175.

Yours sincerely

John Holden  
 Team Leader - Development Management  
 Planning

Shetland Islands Council

13/12/2013

Planning  
Development Services Department  
Grantfield  
Lerwick  
Shetland  
ZE1 0NT

Tel: (01595) 743898

**From:** ALEX WARD [REDACTED]  
**Sent:** 12 December 2013 14:25  
**To:** Holden John@Development Service  
**Subject:** Re: Planning Application Ref: 2013/322/VCON

Dear Mr Holden,

I am left wondering what exactly is going on. I have obviously received your email below, however it has now been 20 weeks since Mr Norman Sineath came to my site and it appears the only thing that been achieved with an application submitted to the planning department on their advice, is that I am allowed to use the workshop before the main house is built which is something I already knew for general relaxation/recreation use but planning did not. I am still waiting on a decision for the wood burning stove flue and change of use to business due to mistakes made by the planning department. I have already allowed for 1 time extension. Nobody has bothered to contact me as to whether another time extension is needed by your department (decision date is today) and we are now currently approaching the xmas holidays which will obviously now cause further delays. Please could you now update as matter of some urgency as what progress is being made reference the flue and the business (we are waiting for the lawyers is now not acceptable answer) as this has being going on for far too long and too many mistakes are being made with my application your department has already been in contact at least twice with the lawyers. I am now having to turn down work and lose money due to decisions not being made. I did ring earlier but neither yourself or Dawn Stewart my case officer was in to discuss anything. I was told you might be in sometime this afternoon.

Regards,  
Alex Ward

**From:** "john.holden@shetland.gov.uk" <john.holden@shetland.gov.uk>  
**To:** [REDACTED]  
**Cc:** Dawn.Stewart@shetland.gov.uk  
**Sent:** Monday, 9 December 2013, 17:27  
**Subject:** Planning Application Ref: 2013/322/VCON

Dear Mr Ward,

I can advise that my investigations are ongoing.

I have considered it prudent to take further legal advice so that when I do respond I will know what applications should be submitted, and in what format, for you to be able to properly seek to carry out the developments you wish to.

The questions at issue arise from the advice received previously that your proposal to use the workshop for business use should be dealt with by a full application for change of use. They concern the propriety of having separate permissions on the same site which are incompatible with each other, and establishment of a separate planning unit.

As soon as conclusions are reached I will be presenting my findings to the Executive Manager-Planning since in your communication relating to how your application was handled in its early

13/12/2013

stages you indicate that you feel you should only pay the difference between the fee for the variation application already paid (£192), and that of a full planning application for change of use (£382) i.e. £190.

Yours sincerely

John Holden  
Team Leader - Development Management  
Planning

Shetland Islands Council  
Planning  
Development Services Department  
Grantfield  
Lerwick  
Shetland  
ZE1 0NT

Tel: (01595) 743898

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**Holden John@Development Service**

**From:** ALEX WARD [REDACTED]  
**Sent:** 29 November 2013 12:18  
**To:** Holden John@Development Service  
**Subject:** Re: Planning Application Ref: 2013/322/VCO

Dear John Holden,

Following our conversation, when I first came to the planning department to hand in my planning application I was under impression that I was going to have to apply for full planning permission for the flue and the change of use of the workshop for business use. Richard Mcneil was unsure about this so accepted the application and said he would check the details with Claire Summers as she deals with applications and fees all the time. I was later contacted to come in to the planning department with a fee of £192 (not £382 for full planning permission) and to change the document to "change of conditions 1 and 10". Condition 10 being to use the workshop for domestic use not business, changing this to allow for business use.

I have now been informed that I need another full planning application for change of use for business. An extra £382. I feel that if the planning application cannot be excepted under change of conditions that I should only pay the difference between £382 and the £192 that I already paid as this is what I should have paid originally but was told not to.

Will this mean I will have to wait another 8 weeks for a decision or whether a decision can be made on the basis of information already submitted to yourselves for the flue and business use as it is only the title full planning permission and the fee that is different the end result - temporary erection of flue and to use the workshop for business use is still the same.

Kind Regards,  
 Alex Ward

**From:** "John.Holden@shetland.gov.uk" <John.Holden@shetland.gov.uk>  
**To:** [REDACTED]  
**Sent:** Thursday, 28 November 2013, 14:28  
**Subject:** Planning Application Ref: 2013/322/VCO

Dear Mr Ward,

I have picked up on the fact that you have been attempting to contact me by telephone.

When I returned from my meeting this morning I found that I had been presented with a file note detailing your telephone conversation with Dawn Stewart this morning.

In the light of its content I am looking into the suggestion that it appears you are making - that you were 'misinformed' by officers in the early stages of your dealings with the Service about your proposals. In the meantime if you wish to confirm your concerns in writing please do so, otherwise I shall proceed and provide a response on the basis of my investigation of matters covered in the file note.

*(From hereon in typed after our telephone conversation at 2.20pm)*

I look forward to receiving the email you said you will be sending.

Yours sincerely

John Holden  
 Team Leader - Development Management  
 Planning

Shetland Islands Council

Planning  
Development Services Department  
Grantfield  
Lerwick  
Shetland  
ZE1 0NT

Tel: (01595) 743898

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## Stewart Dawn@Development Service

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**From:** Stewart Dawn@Development Service  
**Sent:** 16 December 2013 16:01  
**To:** 'ALEX WARD'  
**Subject:** RE: Planning application - flue ? ad costs

Dear Mr Ward

Please note that your planning application was advertised on Friday 13 December 2013 as being contrary to the approved Development Plan, the departing policies being Shetland Local Plan (2004) Policies LPHOU4 and LPNE10.

Regards  
Dawn Stewart  
Planning Officer – Development Management

Tel: 01595 744817  
Email: [dawn.stewart@shetland.gov.uk](mailto:dawn.stewart@shetland.gov.uk)

---

**From:** ALEX WARD [REDACTED]  
**Sent:** 14 December 2013 14:42  
**To:** Stewart Dawn@Development Service  
**Subject:** Re: Planning application - flue ? ad costs

Dear Dawn Stewart,

Before I pay for any advertising costs for the wood burning flue, could you please provide me with information stating exactly what does not accord with the provisions of the development plan for my own reference.

Regards,  
Alex Ward

**From:** ALEX WARD [REDACTED]  
**To:** "[dawn.stewart@shetland.gov.uk](mailto:dawn.stewart@shetland.gov.uk)" <[dawn.stewart@shetland.gov.uk](mailto:dawn.stewart@shetland.gov.uk)>  
**Sent:** Wednesday, 4 December 2013, 10:10  
**Subject:** Planning application

Hi Dawn,

I note the title of my planning application has now been changed for the flue which is fine, however I am still waiting for a response from an email sent to John Holden as to how this application for the change of use for the business ( as this not mentioned in the title) is going to proceed due to incorrect advice given at the time of me submitting the application.

I hope to hear back from someone soon.

Regards,  
Alex Ward.

## Stewart Dawn@Development Service

---

**From:** ALEX WARD [REDACTED]  
**Sent:** 16 December 2013 13:00  
**To:** Stewart Dawn@Development Service  
**Subject:** Re: Planning application - change of conditions

Dear Dawn Stewart,

Following a conversation with Mr John Holden this morning, he asked me to contact you regarding the removal of conditions 10 and 11 from my planning application as this is so restrictive that it prevents me from working from home to a point of not even been allowed an office or workspace. This is in contradiction to Scottish planning policy - economic development paragraph 47- which states : "development plans should support small business development and growth and promote opportunities for low impact industrial business and service uses which can co exist with housing and other sensitive uses without eroding amenity. Planning authorities should adopt a flexible approach to working from home where the amenity of surrounding properties will not be significantly affected.

The wording in my planning permission condition 10 and 11 states "it shall not be used for any business or commercial purpose" prevents me doing anything relating to work in these 2 building being the garage / workshop to the extent of not being able to store files. I am therefore requesting that conditions 10 and 11 be removed from my planning permission that already been granted. If however any business in the future that constitutes a "material change of use", then obviously planning permission would be sought through a brand new full planning application.

Regards,  
Alex Ward.

**From:** ALEX WARD [REDACTED]  
**To:** "[dawn.stewart@shetland.gov.uk](mailto:dawn.stewart@shetland.gov.uk)" <[dawn.stewart@shetland.gov.uk](mailto:dawn.stewart@shetland.gov.uk)>  
**Sent:** Saturday, 14 December 2013, 14:42  
**Subject:** Re: Planning application - flue ? ad costs

Dear Dawn Stewart,

Before I pay for any advertising costs for the wood burning flue, could you please provide me with information stating exactly what does not accord with the provisions of the development plan for my own reference.

Regards,  
Alex Ward

**From:** ALEX WARD [REDACTED]  
**To:** "[dawn.stewart@shetland.gov.uk](mailto:dawn.stewart@shetland.gov.uk)" <[dawn.stewart@shetland.gov.uk](mailto:dawn.stewart@shetland.gov.uk)>  
**Sent:** Wednesday, 4 December 2013, 10:10  
**Subject:** Planning application

Hi Dawn,

I note the title of my planning application has now been changed for the flue which is fine, however I am still waiting for a response from an email sent to John Holden as to how this application for the change of use for the business ( as this not mentioned in the title) is going to proceed due to incorrect advice given at the time of me submitting the application.

I hope to hear back from someone soon.

Regards,  
Alex Ward.



- No services operating

If you have any queries regarding services over the Christmas and New Year period please contact the operators for up-to-date information.

The Transport Office at 6 North Ness will close at 5pm on Tuesday 24th December 2013 and reopen at 9am on Friday 3rd January 2014. All dial-a-ride bookings can still be made on 01595 745745 but calls will go direct to the service operator.

**Ze Trans**  
SHETLAND'S TRANSPORT PARTNERSHIP



4.87.46843

Comments can be made to the Crofting Commission by any member of the crofting community within the locality of the land, within 28 days of the date of this newspaper. Crofting Commission, Great Glen House, Leachkin Road, Inverness, IV3 6NW or info@crofting.scotland.gov.uk

**DECROFTING DIRECTION ISSUED**

Name, Croft, Extent/Reason, Conditions, Case number

A J Hughson  
Brunt Hamarsland, Tingwall  
0.120 ha - Site of Garage and  
Body Repair Business  
4.86.45883

Conditions: 1, 3(c), 4

**Conditions**

- (1) Purchase area within 5 years of the date of direction
- (3) Complete enclosure of the land with a stock proof fence within 4 months of:
- (c) acquisition
- (4) That fence shall be maintained in good order and repair by each successive owner or occupier of the land.

Any person with an interest in the application may appeal against a decision to the Scottish Land Court within 42 days of the date of this advert.

**FISHING GEAR AND NETS**

- Depositing of fishing gear, nets and trawl doors on Lerwick Port Authority piers, or within LHD's area of operation at Holmsgarth, is not permitted unless via prior agreement with LPA or LHD.
- All unidentified fishing gear, nets and trawl doors stored outside at Holmsgarth, including within LHD's operational area, net repair areas, or on Holmsgarth Jetty (formerly Shell Jetty) will be removed after Monday 20 January 2014.
- Any unidentified items remaining in storage on LPA or LHD property after this date are liable to be removed and disposed of without any further notice or compensation.

13th December, 2013



**LERWICK PORT AUTHORITY**

Albert Building, Lerwick, Shetland, ZE1 0LL.  
Tel. +44 (0)1595 692991.



5 Alexandra Buildings, Lerwick, Shetland, ZE1 0LL.  
Tel. +44 (0)1595 693768.

**Shetland Islands Council 13.12.13**

These applications, associated plans and documents can be examined, 09.00-17.00, Mon-Fri, at: Shetland Islands Council, Development Services Department, Grantfield, Lerwick, ZE1 0NT. Please call 744800 to make an appointment if you wish to discuss any application.

**Town and County Planning (Development Management Procedure) (Scotland) Regulations 2013**

**Format: Ref No; Proposal & Address**

2013/042/MAR To relocate a block of eight 80m - circumference cages and a feed barge at an existing salmon farm (retrospective). Also to permit the siting of an additional two 80m - circumference cages and enable cohabitation of wrasse for sea lice control (proposed), Lippie Geo, Clift Sound.

2013/322/VCON To vary condition 1 of planning permission 2009/268/PCD to erect temporary flue for woodburning stove on workshop (retrospective), Hillside Lodge, Hillside Road, Sandwick.

Written comments may be made to Iain McDiarmid, Executive Manager, at the above address, email planning.control@shetland.gov.uk by 27/12/2013.

**Town and Country Planning (Scotland) Act 1997 and Town and Country Planning (Listed Buildings and Buildings in Conservation Areas) (Scotland) Regulations 1987**

**Format: Ref No; Proposal & Address**

2013/383/LBC Erect an external PIR light to entrance on the front elevation, Annsbrae House, Annsbrae Place, Lerwick.

Written comments may be made to Iain McDiarmid, Executive Manager, at the above address, email planning.control@shetland.gov.uk by 03/01/2014.

**PUBLIC NOTICES**

£3.00 per line (minimum £12.00)  
Panel £3.00 extra



Amnesty International

**E.G.M. (Extraordinary General Meeting)**

Monday, 30th December, at MAREEL, Lerwick - All

**South Nesting Hall GRAND PRIZE DRAW**

30th NOVEMBER

1st - Mrs J. LEASK  
2nd - Mrs J. HUTCHISON  
3rd - Mr G. FRASER

Thank you to Northlink Ferries

**PROPOSED**

Thady Muldown Crofting Comm assign the tenat Daal, Skeld, Brough, Skeld, B If you have application, you on the proposa other permanent Commission, Gre kin Road, Inverni info@crofting.sco days from the da advert.

Please note th provide are part

**Holden John@Development Service**

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**From:** Holden John@Development Service  
**Sent:** 13 December 2013 10:01  
**To:** 'ALEX WARD'  
**Cc:** Allan Kenn@Asset & Properties Unit; Stewart Dawn@Development Service  
**Subject:** RE: Planning Application Ref: 2013/322/VCON

Dear Mr Ward,

Thank you for your email. I was in meetings for much of the day yesterday.

I am concerned that no mistakes are made, and that the determination(s) that the planning authority makes in relation to proposals are so having a sound legal basis. Unfortunately work to make sure this ends up being the case in this instance is taking time, and has, as in each and every other case, to take place at the same time as other work. The current planning control position at your development site, the history to and manner of your submission, as well as what your proposals amount to are all issues to which account must be given, aside from the separate consideration of your proposals' merits that will follow..

I am sorry if as you say you are turning down work. It could be that the Council has premises authorised for business use that it could offer, or other parties could have premises available in the area. Ken Allan, Team Leader - Asset & Properties will be able to advise on what property is available in the Council's estate on 01595 744175.

Yours sincerely

John Holden  
 Team Leader - Development Management  
 Planning

Shetland Islands Council  
 Planning  
 Development Services Department  
 Grantfield  
 Lerwick  
 Shetland  
 ZE1 0NT

Tel: (01595) 743898

---

**From:** ALEX WARD [REDACTED]  
**Sent:** 12 December 2013 14:25  
**To:** Holden John@Development Service  
**Subject:** Re: Planning Application Ref: 2013/322/VCON

Dear Mr Holden,

I am left wondering what exactly is going on. I have obviously received your email below, however it has now been 20 weeks since Mr Norman Sineath came to my site and it appears the only thing that been achieved with an application submitted to the planning department on their advice, is that I am allowed to use the workshop before the main house is built which is something I already knew for general relaxation/recreation use but planning did not. I am still waiting on a decision for the wood burning stove flue and change of use to business due to mistakes made by the planning department. I have already allowed for 1 time extension. Nobody has bothered to contact me as to whether another time extension is needed by your department (decision date is today) and we are now currently approaching the xmas holidays which will obviously now cause further delays. Please could you now update as matter of some urgency as what progress is being made reference the flue and the business (we are waiting for the lawyers is now not acceptable answer) as this has being going on for far too long and too many mistakes are being made with my application your

13/12/2013

department has already been in contact at least twice with the lawyers. I am now having to turn down work and lose money due to decisions not being made.

I did ring earlier but neither yourself or Dawn Stewart my case officer was in to discuss anything. I was told you might be in sometime this afternoon.

Regards,  
Alex Ward

---

**From:** "john.holden@shetland.gov.uk" <john.holden@shetland.gov.uk>  
**To:** [REDACTED]  
**Cc:** Dawn.Stewart@shetland.gov.uk  
**Sent:** Monday, 9 December 2013, 17:27  
**Subject:** Planning Application Ref: 2013/322/VCON

Dear Mr Ward,

I can advise that my investigations are ongoing.

I have considered it prudent to take further legal advice so that when I do respond I will know what applications should be submitted, and in what format, for you to be able to properly seek to carry out the developments you wish to.

The questions at issue arise from the advice received previously that your proposal to use the workshop for business use should be dealt with by a full application for change of use. They concern the propriety of having separate permissions on the same site which are incompatible with each other, and establishment of a separate planning unit.

As soon as conclusions are reached I will be presenting my findings to the Executive Manager-Planning since in your communication relating to how your application was handled in its early stages you indicate that you feel you should only pay the difference between the fee for the variation application already paid (£192), and that of a full planning application for change of use (£382) i.e. £190.

Yours sincerely

John Holden  
Team Leader - Development Management  
Planning

Shetland Islands Council  
Planning  
Development Services Department  
Grantfield  
Lerwick  
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ZE1 0NT

Tel: (01595) 743898

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**Holden John@Development Service**

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Regards,  
 Alex Ward

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**To:** [REDACTED]  
**Cc:** Dawn.Stewart@shetland.gov.uk  
**Sent:** Monday, 9 December 2013, 17:27  
**Subject:** Planning Application Ref: 2013/322/VCON

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Yours sincerely

13/12/2013

John Holden  
Team Leader - Development Management  
Planning

Shetland Islands Council  
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Development Services Department  
Grantfield  
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Shetland  
ZE1 0NT

Tel: (01595) 743898

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# Shetland Islands Council

Executive Manager: Iain S McDiarmid  
Director: Neil Grant

Alexander C. Ward  
Hillside Lodge  
Hillside Road  
Sandwick  
Shetland  
ZE2 9HW

Planning  
Development Services  
Grantfield  
Lerwick  
Shetland  
ZE1 0NT

Telephone: 01595 744800  
Fax: 01595 744804  
[www.shetland.gov.uk](http://www.shetland.gov.uk)

If calling please ask for:  
Dawn Stewart  
Planning Officer - Development  
Management  
Direct Dial: 01595 744817

COPY

Our Ref: 2013/322/VCON

Date: 11 December 2013

Dear Sir/Madam

## **The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013**

**Development:** To vary condition 1 of planning permission 2009/268/PCD to erect temporary flue for woodburning stove on workshop (retrospective)  
**Address of Site:** Hillside Lodge, Hillside Road, Sandwick, Shetland ZE2 9HW  
**Applicant:** Alexander C. Ward

I refer to your planning application for permission to vary condition 1 of planning permission 2009/268/PCD to erect temporary flue for woodburning stove on workshop (retrospective), at Hillside Lodge, Hillside Road, Sandwick, Shetland ZE2 9HW.

The Planning Service's assessment of the merits of your proposal is ongoing.

The Planning Service has had to undertake publicity on the application in the Shetland Times. This is on account of one of it having been considered that the application relates to development which does not accord with the provisions of the development plan.

The Town and Country Planning (Charges for Publication of Notices) (Scotland) Regulations 2009 provide for the recovery from the applicant of the cost of publicising a planning application as is required by regulation 20 of the above mentioned 2013 Regulations. Under the Town and Country Planning (Scotland) Act 1997 (as amended), the planning authority cannot determine the application until these costs have been recovered.

Accordingly, and until such time as the Planning Service receives from you payment of the sum of £140.00, a decision notice on your application cannot be issued. Payment should be made either by cheque (made payable to the Shetland Islands Council), by credit/debit card at the office of the Planning Service, Grantfield, or by the exact amount of cash. To accord with the 2009 Regulations payment is requested within 21 days of the date of this letter. When making the payment please quote the planning authority reference number for your application.

Further information on the planning application procedures being followed can be obtained from the same address or by telephone on 01595 744800.

Yours faithfully

Executive Manager – Planning





# Shetland Islands Council

Executive Manager: Iain S McDiarmid  
Director: Neil Grant

Alexander C. Ward  
Hillside Lodge  
Hillside Road  
Sandwick  
Shetland  
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If calling please ask for:  
Dawn Stewart  
Planning Officer - Development  
Management  
Direct Dial: 01595 744817

Date: 11 December 2013

Our Ref: 2013/322/VCON

Dear Sir/Madam

Town and Country Planning (Scotland) Acts

**Development** To vary condition 1 of planning permission 2009/268/PCD to erect temporary flue for woodburning stove on workshop (retrospective)

**Location** Hillside Lodge, Hillside Road, Sandwick, Shetland ZE2 9HW

**Application No.** 2013/322/VCON

## Planning and Advertisement Fees

	Fee Due	Paid	Balance
Planning Application	£192.00	£192.00	£0.00
Advertising Costs	£140.00	£0.00	£140.00
<b>Balance to Pay</b>			<b>£ 140.00</b>

If there is an outstanding balance shown, this must be made before the statutory 2 month period for determination of your application can begin

A payment request will be issued in respect of any outstanding balance.

Yours faithfully

Dawn Stewart  
Planning Officer - Development Management

**Holden John@Development Service**

**From:** Holden John@Development Service  
**Sent:** 09 December 2013 17:28  
**To:** 'ALEX WARD'  
**Cc:** Stewart Dawn@Development Service  
**Subject:** Planning Application Ref: 2013/322/VCON

Dear Mr Ward,

I can advise that my investigations are ongoing.

I have considered it prudent to take further legal advice so that when I do respond I will know what applications should be submitted, and in what format, for you to be able to properly seek to carry out the developments you wish to.

The questions at issue arise from the advice received previously that your proposal to use the workshop for business use should be dealt with by a full application for change of use. They concern the propriety of having separate permissions on the same site which are incompatible with each other, and establishment of a separate planning unit.

As soon as conclusions are reached I will be presenting my findings to the Executive Manager-Planning since in your communication relating to how your application was handled in its early stages you indicate that you feel you should only pay the difference between the fee for the variation application already paid (£192), and that of a full planning application for change of use (£382) i.e. £190.

Yours sincerely

John Holden  
Team Leader - Development Management  
Planning

Shetland Islands Council  
Planning  
Development Services Department  
Grantfield  
Lerwick  
Shetland  
ZE1 0NT

Tel: (01595) 743898

**Holden John@Development Service**

---

**From:** Holden John@Development Service  
**Sent:** 28 November 2013 14:29  
**To:** 'ALEX WARD'  
**Subject:** Planning Application Ref: 2013/322/VCO n

Dear Mr Ward,

I have picked up on the fact that you have been attempting to contact me by telephone.

When I returned from my meeting this morning I found that I had been presented with a file note detailing your telephone conversation with Dawn Stewart this morning.

In the light of its content I am looking into the suggestion that it appears you are making - that you were 'misinformed' by officers in the early stages of your dealings with the Service about your proposals. In the meantime if you wish to confirm your concerns in writing please do so, otherwise I shall proceed and provide a response on the basis of my investigation of matters covered in the file note.

*(From hereon in typed after our telephone conversation at 2.20pm)*

I look forward to receiving the email you said you will be sending.

Yours sincerely

John Holden  
Team Leader - Development Management  
Planning

Shetland Islands Council  
Planning  
Development Services Department  
Grantfield  
Lerwick  
Shetland  
ZE1 0NT

Tel: (01595) 743898

28/11/2013

**From:** Stewart Dawn@Development Service  
**Sent:** 27 November 2013 14:43  
**To:** 'ALEX WARD'  
**Subject:** 2013/322/VCON

Dear Mr Ward

- 1. Planning Permission 2009/268/PCD – To erect dwellinghouse, garage, workshop and decking (permanent), a caravan (temporary) and to apply for temporary consent for an existing caravan and an existing kennel (retrospective) at Plot 1, Hillside Road, Hillside, Sandwick = Approved 22 January 2010**
- 2. Planning Application 2013/322/VCON – To vary conditions 1 & 10 of planning permission 2009/268/PCD to erect flue for woodburning stove on workshop and allow occupancy of workshop as a dwellinghouse for a period of 4 years and use of workshop building for business purposes thereafter, Hillside Lodge, Hillside, Sandwick**
- 3. Email request for a Section 32A variation of planning application 2013/322/VCON to vary conditions 1 and 10 of planning permission 2009/268/PCD to erect a temporary flue for a wood burning stove; to use the workshop for daytime relaxation/recreation and to use the workshop for business purposes and to increase the underbuild on the front of the main house, Hillside Lodge, Hillside Road, Sandwick**

As you are aware, I have taken legal advice on whether it is appropriate for the Planning Service to accept the above request for a Section 32A variation under the principal planning act and to establish if utilising the workshop for daytime relaxation/recreation constitutes a change of use. I have also sought to confirm whether if it does, if this, and the proposal to use the workshop for business purposes, if it too constitutes a change of use, could legitimately be authorised by the Council under the terms of a variation application i.e. I have carried out a 'health check' to ensure that whatever decision is made it is legally sound, which can only be to the benefit of all parties with an interest in the process being followed. As such, I can now respond to you as follows.

The planning application 2013/322/VCON (proposed variation to planning consent 2009/268/PCD) as initially submitted proposed that the workshop be used as a dwellinghouse for 4 years and then proposed a change to use for business purposes thereafter. Legal Services have advised that both these proposals constitute material changes of use of the building from that use which is authorised by the existing consent, and also that it is not possible for the planning authority to grant approvals for changes of use exclusively via an application for variation of conditions. As such, it is not possible for the planning authority to make a determination on the application with this original description other than for one of refusal. Such proposals for the residential and then follow on business use of the workshop therefore require, firstly, the submission and subsequent consideration and approval by the planning authority of a full planning application to change the use of the workshop into a dwellinghouse, followed then by a second application for full planning permission at a later date to change its use again for business purposes.

Your email of 1 October 2013, which seeks to change the description of development (as outlined in heading no. 3 above), to remove the proposal to utilise the workshop as a dwellinghouse, constitutes what is called a request for a Section 32A variation of application 2013/322/VCON (change before a determination). Again, the proposal to change the current workshop into business use that is proposed by you to remain in the description (though permitted immediately

rather than after a period of 4 years) constitutes a material change of use (as advised by Legal Services), and as such cannot be dealt with by the planning authority under the variation application other than with a refusal. Thus a separate planning application for full planning permission to change the use of the workshop into business use will need to be submitted to the Planning Authority for appropriate consideration if this is to be the intended end use of the building. This advice is of course provided without prejudice to a determination on such an application.

I can however advise that it is considered that utilising the current workshop for daytime relaxation/recreation does not constitute a material change of use as it is ancillary to the enjoyment of the dwellinghouse (including under the current circumstances on site). Therefore you can continue to utilise the workshop during the daytime for these relaxation/recreation purposes specified without requiring any formal planning consent. Nevertheless, the planning authority is unable to agree to the Section 32A variation you have requested, more particularly because of its proposing the change of use of the workshop for business purposes.

Given that the dwellinghouse has not yet been constructed on site or occupied, you do not currently benefit from permitted development rights, which is why a planning application was required to construct the flue (albeit retrospectively) on the workshop because it represents a material change to the development (taking into account planning considerations it gives rise to).

As such, as I see matters, in order that your current application might possibly be progressed in a way other than to a refusal, the description of planning application 2013/322/VCON will need to be amended to something along the lines of the following:

***"To vary condition no. 1 of planning consent 2009/268/PCD to construct temporary flue for woodburning stove on workshop (retrospective), Hillside Lodge, Hillside, Sandwick."***

You will note that this suggested description does not refer to the proposal to increase the underbuild on the front of the dwellinghouse. This is because, as outlined in a previous email to you on 4 October 2013 by my Team Leader, John Holden, your request to increase the amount of underbuilding on your dwellinghouse will require you to submit revised elevation drawings and submit a request to accept these changes as a minor variation under Section 64 of the principal Planning Act. It will then be for the Planning Service to determine whether this aspect of your proposal can be treated as a non-material variation or amendment to the existing approved plan (Drawing AW/L/04 Rev A). It is not possible to change the description of development in your current planning application (2013/322/VCON) to this extent via a Section 32A variation. This aspect of your proposal was reiterated in a telephone conversation with you on 12 November 2013.

I should be grateful to learn how you would wish the Planning Service to proceed. In the meantime when I undertake a site visit it will at this point only be in order to assess that part of your proposal that relates to the flue.

Should you have any queries about the above, please do not hesitate to contact me.

Regards  
Dawn Stewart  
Planning Officer – Development Management  
Tel: 01595 744817  
Email: dawn.stewart@shetland.gov.uk

## Stewart Dawn@Infrastructure Svs

---

**From:** Stewart Dawn@Infrastructure Svs  
**Sent:** 18 November 2013 09:36  
**To:** 'ALEX WARD'  
**Subject:** RE: Further supporting information - 20013/322/VCON

Dear Mr Ward

I write to acknowledge receipt of your email. The reason why no site visit has been undertaken as yet is simply because I am waiting for a response from Legal Services regarding your proposed changes to the description of your planning application. Please note that we cannot change the description of development, before hearing from Legal if it is acceptable to do so. Once their comments have been received I will be in a position to consider your application further.

Regards  
Dawn Stewart  
Planning Officer – Development Management

Tel: 01595 744817  
Email: [dawn.stewart@shetland.gov.uk](mailto:dawn.stewart@shetland.gov.uk)

---

**From:** ALEX WARD [REDACTED]  
**Sent:** 15 November 2013 19:48  
**To:** Stewart Dawn@Infrastructure Svs  
**Subject:** Further supporting information - 20013/322/VCON

Dear Dawn Stewart,

The title on the internet for my planning application is wrong and therefore could cause some confusion to some people.

We are asking for permission to vary conditions 1 and 10 of planning permission 2009/268/PCD : To erect a temporary flue for a wood burning stove as a site heater in the workshop and be able to use the workshop during the day for recreation/relaxation etc (if permission is indeed required for this part). To be able to use the workshop for business purposes and to increase the under build on the front of the main house.

Roads - In reference to the roads comment report. 4 car parking spaces are indicated on the original approved plans, not 2 cars as stated, and 6 car parking spaces can be situated at the front of the site - see drawings contrary to roads comment.

I also note that Roads imply I'm causing problems with parking along the edge of the public road adjacent to the site. The cars in question are not mine and have no association with the site whatsoever.

It would have helped if roads had come on to site instead of just a drive by. I was myself on my driveway when he did his inspection he could have stopped and asked instead just assuming the cars were mine.

In support of my application regarding the only objection the wood burning flue is only temporary and is acting as a site heater drying the building out. I am expecting to remove flue sometime next year to put into the main house. Contrary to Ms A Kenny's comments that I and my family are currently living in the workshop I would like to make it very clear we are not and the building itself is structurally sound. I feel her comments and objections have more to do with her view being lost as oppose to anything else. I therefore feel a site visit would be very advantageous as soon as convenient to yourself.

Régards,  
Alex Ward

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2011/10/26/1000

SIC  
INFRASTRUCTURE SERVICES  
07 OCT 2013

PAGE TO	ACTION
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1. The site is a large industrial site (former railway) located in the south of the town of SIC, with a view of the town and the railway station.

Access to the site is via the main road (A10) and the railway station.

Public Road

SIC  
INFRASTRUCTURE SERVICES  
17 NOV 2009

PAGE TO	ACTION
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PLANNING ISSUE

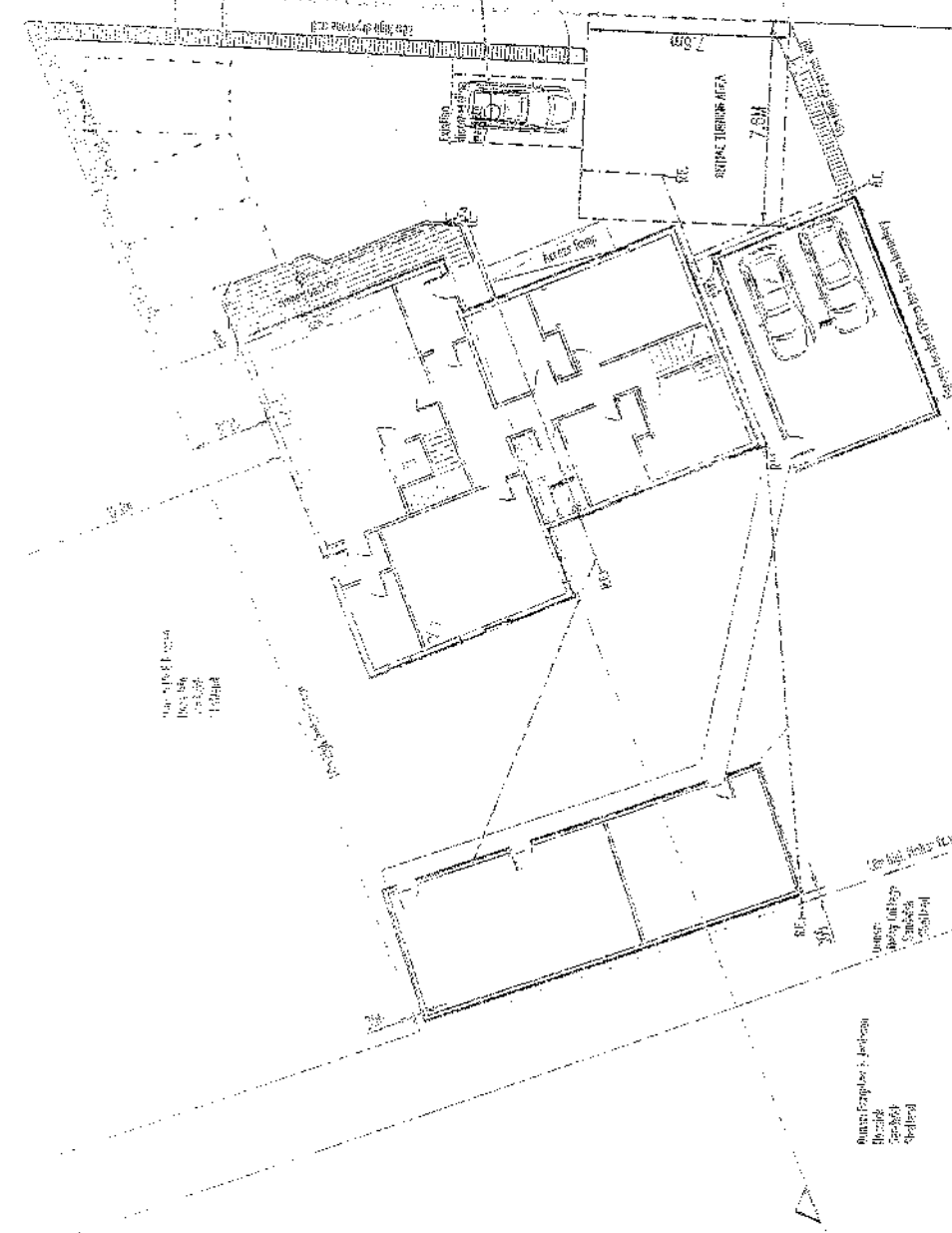
1. The site is a large industrial site (former railway) located in the south of the town of SIC, with a view of the town and the railway station.

GREEN

SHOWN HERE, NOT LIT, THE LAND

THE PLAN

1. The site is a large industrial site (former railway) located in the south of the town of SIC, with a view of the town and the railway station.	2. The site is a large industrial site (former railway) located in the south of the town of SIC, with a view of the town and the railway station.
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## Stewart Dawn@Infrastructure Svs

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**From:** ALEX WARD [REDACTED]  
**Sent:** 15 November 2013 19:48  
**To:** Stewart Dawn@Infrastructure Svs  
**Subject:** Further supporting information - 20013/322/VCON

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Regards,  
Alex Ward

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**Holden John@Infrastructure Services**

**From:** Holden John@Infrastructure Services  
**Sent:** 15 November 2013 15:54  
**To:** 'ALEX WARD'  
**Cc:** Summers Claire@Infrastructure Svs; Smith Kimberley@Infrastructure Svs; Garriock Jill@Infrastructure Svs  
**Subject:** Planning Application Ref: 2013/322/VCON - Email dated 5 November 2013, 10.09

Dear Mr Ward,

I write following on from your contact with various services within the Council concerning the availability to view on the Council's website of your email of 5 November 2013, 10.09 directed to the Planning Officer handling your planning application.

Having taken Legal advice it is appropriate that I firstly point out that it is a duty of the Council to maintain and publish a register of planning applications. What is the content of this register can be the subject of regulations, and the section within the Principal Planning Act we follow specifies what such regulations may cover. This includes documents which were taken into account when dealing with a planning application. Currently there have been no regulations made in relation to such documents, so in the absence of such regulations providing any detail or clarity on what additional documents must be part of the planning register, in the interests of ensuring we have open and transparent decision making, the Council is of the mind that the planning register should include documents which were taken into account when dealing with a planning application.

With the above in mind therefore, if you do not wish your email of 5 November 2013 to appear on the Council's website it should properly be removed from the planning file so that no account is given to its content (in its entirety) by the Planning Officer handling your application. If on the other hand there is a particular part of the email that you would not wish to be published (which as a consequence would not then be taken into account when your application is dealt with), but there are other parts of it you would wish to be taken into account, you are invited to attend the Planning Office here at Grantfield during normal office hours so that you can 'redact' i.e. block out, that part of the email you would not wish to be published and afforded opportunity to the Planning Officer to take into account as part of the decision making process.

In the meantime your email of 5 November 2013, 10.09 will not be published on the Council's Website and has been removed from the planning file, recognising of course that none of its content can be taken into account by the Planning Officer handling your planning application. An alternative available to you is to make a further submission about which you should hold no concern about any part of its content being published and available on the planning file, and therefore taken into account.

I hope this clarifies the position.

Yours sincerely

John Holden  
 Team Leader - Development Management  
 Planning

Shetland Islands Council  
 Planning  
 Development Services Department  
 Grantfield  
 Lerwick  
 Shetland  
 ZE1 0NT

Tel: (01595) 743898

15/11/2013

## Stewart Dawn@Infrastructure Svs

---

**From:** Dinsdale Patti@Infrastructure Services  
**Sent:** 14 November 2013 11:02  
**To:** Stewart Dawn@Infrastructure Svs  
**Cc:** Taylor Ian@Infrastructure Services  
**Subject:** FW: Consultation response 2013/322/VCON

Dawn  
Consultation response 2013/322/VCON

I have visited the site concerned today and discussed the use of the stove with the applicant.

The fire was well stoked during my visit and there was no nuisance noted.

I am of the opinion that there is a possibility of a statutory nuisance if certain weather conditions persist - that is in terms of wind direction, fuel type and temperature inversions etc. The flue has been extended but there still is a possibility of nuisance in particular weather conditions.

After discussion relating to the intended use of the stove, I am satisfied that the likelihood of nuisance can be adequately controlled by the applicant. Advice was given on site regarding the duration of use of the fire, wind direction and appropriate type of fuel.

I have made the applicant aware that, if I am satisfied that a nuisance has occurred and is likely to recur, a statutory notice can be served under the Environmental Protection Act 1990 to prevent recurrence.

Regards

Patti Dinsdale  
Environmental Health Officer  
Charlotte House  
Commercial Road  
Lerwick  
ZE1 0LX  
01595 744842

## Stewart Dawn@Infrastructure Svs

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**From:** Stewart Dawn@Infrastructure Svs  
**Sent:** 12 November 2013 11:17  
**To:** 'ALEX WARD'  
**Subject:** RE: VCON2013/322 - Alex Ward

Hi Alex

Thank you for your email confirming that an extension of time to determine your application is acceptable, which will allow an appropriate assessment of your planning application to be made. As such, the time period has increased up to and including 12 December 2013.

Apologies for any previous confusion – I am aware of your email to alter the description of the current planning application to remove the dwelling aspect from the title.

Regards  
Dawn Stewart  
Planning Officer – Development Management

Tel: 01595 744817  
Email: [dawn.stewart@shetland.gov.uk](mailto:dawn.stewart@shetland.gov.uk)

---

**From:** ALEX WARD [REDACTED]  
**Sent:** 12 November 2013 10:54  
**To:** Stewart Dawn@Infrastructure Svs  
**Subject:** VCON2013/322 - Alex Ward

Hi,

Following our conversation this morning I'm confirming an extension for determination for the above planning application of a month as we discussed.

I have just spoken to Pattie Dinsdale (environmental health) who I have invited to a site visit this week which she has agreed to.

Also just for your information again we not asking permission to use the workshop as a dwelling. We will be using the workshop during the day and sleeping in the 2 static caravans. The wood burning stove and flue is a only temporary site heater in the workshop as it is moving into the house as soon as the roof is on.

Kind Regards,  
Alex Ward

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## Stewart Dawn@Infrastructure Svs

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**From:** ALEX WARD [REDACTED]  
**Sent:** 12 November 2013 11:02  
**To:** Stewart Dawn@Infrastructure Svs  
**Subject:** Fw: Ref 2013/322/VCON

Hi,

Please find the enclosed email for the revised title of the planning application, the internet still shows old title which is incorrect and this is what may be causing some confusions to some.

Kind Regards,  
Alex Ward.

----- Forwarded Message -----

**From:** ALEX WARD [REDACTED]  
**To:** "john.holden@shetland.gov.uk" <john.holden@shetland.gov.uk>  
**Sent:** Tuesday, 1 October 2013, 20:26  
**Subject:** Ref 2013/322/VCON

Dear Mr Holden,

Following our conversation on the phone yesterday, we have decided that the best course of action would be to ask for the removal of "using the workshop as a dwelling for 4 years" replacing it with "changing of condition 10 to allow daytime use (not sleeping in) the workshop for relaxation and recreation whilst the dwelling is being built and permitted use for business purposes".

I would also like condition 9 to change to allow for slightly greater underbuilding on the dwelling than is shown on the original plans/drawings.

The request for the woodburning stove flue remains as first requested.

Please could you amend the new change of conditions application already submitted and fees paid so it can be now taken off hold Ref 2013/322/VCON to allow the application to move forward.

Kind Regards,  
Alex Ward

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**Stewart Dawn@Infrastructure Svs**

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**From:** ALEX WARD [REDACTED]  
**Sent:** 12 November 2013 10:54  
**To:** Stewart Dawn@Infrastructure Svs  
**Subject:** VCON2013/322 - Alex Ward

Hi,

Following our conversation this morning I'm confirming an extension for determination for the above planning application of a month as we discussed.

I have just spoken to Pattie Dinsdale (environmental health) who I have invited to a site visit this week which she has agreed to.

Also just for your information again we not asking permission to use the workshop as a dwelling. We will be using the workshop during the day and sleeping in the 2 static caravans. The wood burning stove and flue is a only temporary site heater in the workshop as it is moving into the house as soon as the roof is on.

Kind Regards,  
Alex Ward

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**Stewart Dawn@Infrastructure Svs**

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**From:** ALEX WARD [REDACTED]  
**Sent:** 12 November 2013 10:15  
**To:** Stewart Dawn@Infrastructure Svs  
**Subject:** Re VCON/2013 /322

Hi,

Just wondering what is happening with my planning application, as it's been 2 months since the application was submitted and I heard nothing from the planning department as to any progress or any extension needed to make a decision. I note the community council supporting Ms A Kenny's objection, I do hope I get a chance to put and support my side of wanting a temporary flue etc at some point and not just an automatic refusal based on Ms Kenny's opinions.

Please can you get in touch with an update about the application, very much appreciated as soon as your able to do so .

Kind Regards,

Alex Ward [REDACTED]

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DS

# Sandwick Community Council

Clerk: Rosemary Inkster,  
Wainui,  
Hoswick,  
Sandwick,  
Shetland.  
ZE2 9HL



Planning  
Infrastructure Services Dept.,  
SIC  
LERWICK

8 November 2013

Planning Application 2013/322/VCON

This application has been discussed by the Community Council members at their meeting in October and again this month.

It was agreed to support Ms. Kenny, one of the neighbours of the proposed development, in her objection to the flue.

Rosemary Inkster  
Clerk

SIC INFRASTRUCTURE SERVICES	
11 NOV 2013	
PASS TO	ACTION



## Supporting Statement.

The intended business use is that of a traditional cabinetmaking / furniture restoration / upholstery business, using traditional hand methods with infrequent use of machines between the hours of 8am to 6pm.

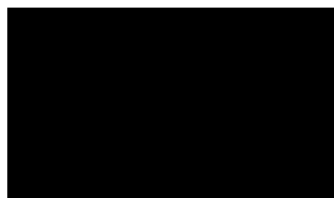
These machines are of a professional nature with the latest health and safety features fitted for noise reduction etc. The planer / thicknesser will have a spiral cutter block that reduces noise by over 50% on that of other planer - thicknessers.

These machines are the same machines that I would use for a hobby / pastime. The only difference is that I would be earning money from using the space.

The building itself is well insulated and according to Ian Taylor from Environmental Health who has visited the site, the business and machines will have no impact on the surrounding area.

Any visitors to the workshops will be kept to a minimum and will be by appointment only where possible.

SIC INFRASTRUCTURE SERVICES	
07 OCT 2013 RMS	
PASS TO 160794	ACTION



**Holden John@Infrastructure Services**

**From:** Holden John@Infrastructure Services  
**Sent:** 04 October 2013 10:17  
**To:** 'ALEX WARD'  
**Subject:** RE: Ref 2013/322/VCON

Dear Mr Ward,

I refer to your email below.

I am asking the Council's Legal Services for its opinion on whether it is right and proper for the Planning Authority to accept what in effect amounts to request for a Section 32A variation under the principal Planning Act. This is in the context of consideration of whether what you intend to use the workshop for constitutes a material change of use. I can nevertheless confirm that with your having made the request, and so having it firmly in your mind what you wish to do, the clock on your application restarted as of 1 October 2013.

On the matter of your wish to increase the amount of underbuilding on your dwelling, it is not possible at this stage to change the description of the development being proposed to such an extent. It may be possible for the Planning Authority to accept the change you wish to make to your approved plans in this respect as a minor variation under Section 64 of the principal Planning Act, which would serve to meet the terms of condition 9. You will need to submit revised plans, that if the proposed change sought is accepted by the Planning Authority as not being material, would supersede approved Drawing AW/L/04 Rev. A.

Yours sincerely

John Holden  
 Team Leader - Development Management  
 Planning

Shetland Islands Council  
 Planning  
 Development Services Department  
 Grantfield  
 Lerwick  
 Shetland  
 ZE1 0NT

Tel: (01595) 743898

---

**From:** ALEX WARD [REDACTED]  
**Sent:** 01 October 2013 20:27  
**To:** Holden John@Infrastructure Services  
**Subject:** Ref 2013/322/VCON

Dear Mr Holden,

Following our conversation on the phone yesterday, we have decided that the best course of action would be to ask for the removal of "using the workshop as a dwelling for 4 years" replacing it with "changing of condition 10 to allow daytime use (not sleeping in) the workshop for relaxation and recreation whilst the dwelling is being built and permitted use for business purposes".

I would also like condition 9 to change to allow for slightly greater underbuilding on the dwelling than is shown on the original plans/drawings.

The request for the woodburning stove flue remains as first requested.

Please could you amend the new change of conditions application already submitted and fees paid so it can be now taken off hold Ref 2013/322/VCON to allow the application to move forward.

04/10/2013

Kind Regards,  
Alex Ward

---

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For more information please visit <http://www.symanteccloud.com>

---

04/10/2013

**Holden John@Infrastructure Services**

---

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04/10/2013

**Holden John@Infrastructure Services**

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**From:** Holden John@Infrastructure Services

**Sent:** 23 September 2013 10:34

**To:** [REDACTED]

**Subject:** Planning Application 2013/322/VCON - To vary conditions 1 and 10 of Planning Permission 2009/268/PCD

Dear Mr Ward,

Further to our telephone conversation this morning.

You are waiting on a response to your query - whether you need to apply to occupy the workshop building as a dwelling house on the basis that no sleeping within it is to take place. I will try to provide you with a response as soon as possible, but you are of course entitled to seek independent planning advice. In the meantime, without you knowing precisely what your application needs to be for I am 'stopping the clock' as far as the Planning Authority's assessment and consideration of it is concerned (for the purposes of the Scottish Government's measurement of planning authorities performance). The clock will restart when you, as a result of advice given, confirm to the Planning Authority what your application is for and any Variation of Application deemed required as a result is accepted.

Yours sincerely

John Holden  
Team Leader - Development Management  
Planning

Shetland Islands Council  
Planning  
Development Services Department  
Grantfield  
Lerwick  
Shetland  
ZE1 0NT

Tel: (01595) 74898

23/09/2013



# Shetland Islands Council

Executive Manager: Iain S McDiarmid  
Director: Neil Grant

Amanda Kenny  
8 Aestbrek  
Sandwick  
Shetland  
ZE2 9UJ

Planning  
Development Services  
Grantfield  
Lerwick  
Shetland  
ZE1 0NT

Telephone: 01595 744800  
Fax: 01595 744804  
[www.shetland.gov.uk](http://www.shetland.gov.uk)

If calling please ask for:  
Claire Summers  
Business Support Officer  
[claire.summers@shetland.gov.uk](mailto:claire.summers@shetland.gov.uk)  
Direct Dial: 01595 744814

Our Ref: 2013/322/VCON

Date: 18 September 2013

Dear Sir/Madam

	Town and Country Planning (Scotland) Acts
<b>Development</b>	<b>To vary conditions 1 and 10 of planning permission 2009/268/PCD; to erect flue for woodburning stove on workshop, and allow occupancy of workshop as a dwellinghouse for a period of 4 years and use of workshop building for business purposes thereafter</b>
<b>Location</b>	<b>Hillside Lodge, Hillside Road, Sandwick</b>
<b>Application No.</b>	<b>2013/322/VCON</b>

## **Acknowledgement of Representation of a Planning Application**

Your representation in respect of the above noted application was received on 18 September 2013 and I would advise you that your comments, in so far as they relate to planning matters, will be considered prior to the determination of the application.

Please be aware that under the terms of the Council's approved Planning Scheme of Delegations, the Appointed Person is authorised to determine applications for planning permission unless there is an exception that applies. The above application may, therefore, be determined by the Appointed Person, or by the Planning Committee or Council, depending on the circumstances of the case.

Once the application has been determined you will be informed of the Planning Authority's decision.

Yours faithfully

Claire Summers  
Business Support Officer

**Summers Claire@Infrastructure Svs**

---

**From:** Amanda Kenny [REDACTED]  
**Sent:** 17 September 2013 20:40  
**To:** Planning Control@Infrastructure Svs  
**Cc:** [REDACTED]  
**Subject:** Objection to Planning Application 2013/322/VCON

Application No. 2013/322/VCON

Dear sirs/Madam,

I am writing to you to object to the planning application no. 2013/322/VCON. I am objecting to the erected flue because it is at the same height as my back garden ground level and therefore the smoke is blowing immediately towards my back door. This is having a huge impact on our health and safety. I cannot let my son play in the back garden, can't open windows due to the smoke and can't even hang out my washing. Surely this shouldn't be allowed to be erected at all? It is clearly in use currently without the above planning permission approval.

I also have concerns with it being in use with the building unfinished and what would happen if a spark came out the flue and set alight the building which causes me great concern knowing that there is a young family living in their and also the safety of the unfinished building structure.

I have already contacted Norman Sineath expressing my concerns and also environmental services who plan to make a visit when possible. I will also be getting in touch with SEPA as this is having an adverse effect on our health. ma

As I have said before my main concern is the smoke and what it may contain and the affect it will have on my family.

I would appreciate if this can be looked into from a health and safety aspect.

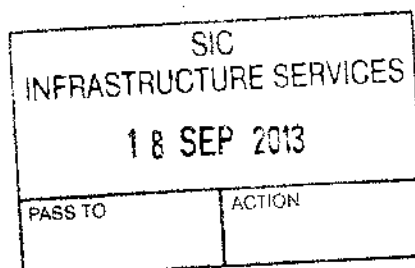
Regards

Amanda Kenny

---

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For more information please visit <http://www.symanteccloud.com>

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## MEMO

To: Development Control

From: Roads

If calling please ask for  
Brian Halcrow  
Direct Dial: 4883

Medium: email

Our Ref: BH/SMG/R/G2/SW

Your Ref:

Date: 20<sup>th</sup> September 2013

**Application: 2013/322/VCON**

**Address: Hillside Lodge, Hillside Road, Sandwick, Shetland, ZE2 9HW**

**Proposal: To vary conditions 1 and 10 of planning permission 2009/268/PCD; to erect flue for woodburning stove on workshop, and allow occupancy of workshop as a dwellinghouse for a period of 4 years and use of workshop building for business purposes thereafter.**

**Date of Consultation: 16<sup>th</sup> September 2013**

SIC INFRASTRUCTURE SERVICES	
20 SEP 2013	
PASS TO	ACTION

**Comments:**

### **RECOMMEND REFUSAL**

The previous planning application 2009/268/PCD for a dwelling house, garage and workshop on this site required 3 car parking spaces to be provided within the site, along with turning provision. To date the only development that has been carried out is the building of the workshop.

As per Condition 10 of the original consent this workshop was assessed as being incidental to the primary site use as residential and as such had no parking or servicing demand requirement.

The change of use of the workshop to a business premises, following the temporary change of use to a dwelling, would lead to a specific parking requirement for the workshop of 3 spaces, based on 3 spaces/100m<sup>2</sup> for manufacturing workshops and storage space.

This would require 6 spaces to be provided on site. The current site plans only indicate 2 spaces, and does not appear to allow any further spaces to be provided without a significant change to the site layout.

While I have no objection to the temporary change of use for the workshop into residential accommodation, while the consented house is being built, I would recommend against permitting the change of use to business use without extra parking spaces being provided. As I do not consider that this level of parking provision can be properly provided on the site I must recommend refusal.

Other comments on the application are as follows:-

1. The required visibility splays must be provided before any building works start on site and must be maintained during the course of the works and thereafter. The applicant should show that they have control over any ground required to provide the required visibility splays.



- a. A visibility splay of 2.5 metres by 60 metres must be provided at the junction of the access with the public road. This is available at present.
2. No fence, wall, bushes or other potential obstruction to visibility should be permitted within 2.5 metres of the edge of the public road.
3. The gradient of the access should not exceed 5% (slope of 1 in 20) for at least the first 6 metres from the edge of the public road.
4. The access should be surfaced in bitmac or double coat hot tar surface dressing for at least the first 6 metres from the edge of the public road.
5. The access should be designed in order that it does not shed surface water from the site onto the public road.
6. Site drainage should be designed, provided and maintained such that no surface water from the site shall be permitted to drain or run onto the public road or footway.
7. Turning provision for cars should be made within the site in the form of a standard hammerhead or a manoeuvring space of at least 7.6 metres by 7.6 metres in size.

At this time there is no proper parking or turning provision within the site, even though the site is being used for residential purposes. Condition 7 of the original consent required that the parking and turning provision for the site must be provided before construction of the dwelling house began. Given that the residential caravans on site are located on-top of the area designated for parking and turning for the site I do not see how the site can be developed in line with the original consent.

I would therefore ask that you give full consideration as to how the development and use of this site can be controlled so that it does not continue to cause problems with parking along the edge of the public road adjacent to the site.

Executive Manager, Roads

11<sup>th</sup> October 2013



**Scottish  
Water**

Always serving Scotland

Shetland Islands Council  
Grantfield -  
Lerwick  
ZE1 0NT

**SCOTTISH WATER**

Customer Connections  
The Bridge  
Buchanan Gate Business Park  
Cumbernauld Road  
Stepps  
Glasgow  
G33 6FB

Customer Support Team

SIC INFRASTRUCTURE SERVICES	
11 OCT 2013	
PASS TO	ACTION

Dear Sir Madam

**PLANNING APPLICATION NUMBER: 2013/322/VCON**

**DEVELOPMENT: Sandwick, Hillside Rd**

**OUR REFERENCE: 633316**

**PROPOSAL: To vary conditions 1 and 10 of planning permission 2009/268/PCD; to erect flue for woodburning stove on workshop, and allow occupancy of workshop as a dwellinghouse for a period of 4 years and use of workshop building for business purposes thereafter**

**Please quote our reference in all future correspondence**

Scottish Water has no objection to this planning application. Since the introduction of the Water Services (Scotland) Act 2005 in April 2008 the water industry in Scotland has opened up to market competition for non-domestic customers. Non-domestic Household customers now require a Licensed Provider to act on their behalf for new water and waste water connections. Further details can be obtained at [www.scotlandontap.gov.uk](http://www.scotlandontap.gov.uk).

In terms of planning consent, Scottish Water does not object to this planning application. However, please note that any planning approval granted by the Local Authority does not guarantee a connection to our infrastructure. Approval for connection can only be given by Scottish Water when the appropriate application and technical details have been received.

Sandy Loch Water Treatment Works currently has capacity to service this proposed development.

The water network that serves the proposed development is currently able to supply the new demand.

Beachcroft Waste Water Treatment Works currently has capacity to service this proposed development.

The waste water network that serves the proposed development is currently able to accommodate the new demand.

Scottish Water's current minimum level of service for water pressure is 1.0 bar or 10m head at the customer's boundary internal outlet. Any property which cannot be adequately serviced from the available pressure may require private pumping arrangements installed, subject to compliance with the current water byelaws. If the developer wishes to enquire about Scottish Water's procedure for checking the water pressure in the area then they should write to the Customer Connections department at the above address.

It is possible this proposed development may involve building over or obstruct access to existing Scottish Water infrastructure. On receipt of an application Scottish Water will provide advice that advice that will require to be implemented by the developer to protect our existing apparatus.

Should the developer require information regarding the location of Scottish Water infrastructure they should contact our Property Searches Department, Bullion House, Dundee, DD2 5BB. Tel – [REDACTED]

If the developer requires any further assistance or information on our response, please contact me on the above number or alternatively additional information is available on our website: [www.scottishwater.co.uk](http://www.scottishwater.co.uk).

Yours faithfully

**Lynsey Horn**  
Customer Connections Administrator

Infrastructure Services Department  
Shetland Islands Council  
**Planning Application**

FOR OFFICIAL USE ONLY

Reference No:

Associated Application No:

Registration Date:

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997, AS AMENDED BY THE PLANNING ETC (SCOTLAND) ACT 2006. TOWN & COUNTRY PLANNING (HAZARDOUS SUBSTANCES) (SCOTLAND) ACT 1997.

(PLEASE READ THE NOTES FOR GUIDANCE BEFORE COMPLETING THIS FORM. IT IS IMPORTANT THAT THIS FORM IS COMPLETED CORRECTLY TO AVOID DELAYS IN PROCESSING).

Separate forms must be completed for applications for House Alterations and Extensions, Listed Building Consent, Conservation Area Consent, Advertisement Consent and other categories of application.

**1**

**I/We Apply To The Council For:** Please tick relevant box

Full Planning Permission (FPP) ☐

Renewal of Temporary Permission ☐

Planning Permission in principle (PPP) ☐

Variation of a planning condition(s) ☒

Approval of matters specified in conditions (AMC) ☐

Reference number(s) of previous planning application(s)/permission(s) (if known) 2009/268/PCD

Reference number(s) of proposal of Application Notice(s) (if applicable) \_\_\_\_\_

Have there been any pre-application discussions with planning? YES ☒ NO ☐

If yes, what type:

Telephone Letter Meeting: meeting - Mr Sineath / Mr MacNeil

Pre-application officer's name: Telephone - Mr Wilson Email - Mr Holter

**2**

**The Application is considered to be a:**

National Development ☐

Major Development ☐

Local Development ☒

**3**

**Applicant's Name only:** Alexander C Ward

**4**

**Address or Location of Proposed Development** please include postcode

Hillside Lodge, Hillside, Sandwick Shetland

POSTCODE ZE29 6LH

**5**

**Existing Use of Land and/or Buildings** please give details

WORKSHOP

CSu 160626

**6**

**Description of Proposed Development** please specify what is being proposed

Vary Condition No. 1 to ~~return~~ <sup>erect</sup> flue for woodburning stove and  
Vary condition No 10 to occupy as a dwelling house for a period  
of 4 years and use for Buisson purposes thereafter

V11 07/09

7

**Residential Development**

Number of dwelling houses proposed \_\_\_\_\_ Site Area (hectares) \_\_\_\_\_

8

**Commercial/Industrial Development**

	Existing	Proposed
(a) Site Area (gross)	<u>0.098</u> hectares	<u>0.098</u> hectares
(b) Manufacturing/Production area	<u>38</u> sq m	<u>38</u> sq m
(c) Storage Area	<u>4848</u> sq m	<u>38</u> sq m
(d) Office/Ancillary Area	<u>0</u> sq m	<u>10</u> sq m
(e) Retail (Net Floor Area)	<u>0</u> sq m	<u>0</u> sq m
(f) Intended hours of Operation	<u>9-5</u> hrs	_____ days
(g) Types of vehicles and number of movements	No: <u>1/week</u>	Type: <u>car</u>
(h) Present and proposed staff numbers	Present: <u>1</u>	Proposed: <u>1</u>

9

**Proposed Access Arrangements**

Please tick relevant boxes and note that such details are required for PPP applications

Do you intend to:

use an existing access



improve an existing access



form a new access



10

**Parking**Number of existing parking spaces on site 4Number of additional parking spaces proposed 0

11

**Proposed Drainage Connections**

Please tick relevant boxes

Drawings indicating whether disposal method proposals are new or as existing should be submitted including location of outfalls, connections etc.

(a) Foul Drainage

to public sewer



to existing septic tank



to new septic tank with soakaway



to new septic tank with sea outfall



(b) Surface Water - Please give full details and drawings

Public Sewer



Sustainable drainage system



Other



**12****Proposed External Building Materials And Colour Finishes**

Outside walls and roof covering *Concrete double palette (brindle) layroll (panta).*  
 Parking areas/Driveway surface *Bitmac or black paving*  
 Landscaping *Grass / trees / flower bed.*  
 Windows / Doors *Hardan*  
 Boundary treatment (fences, walls etc.) *1.0m wooden fence. 1/2m stone wall*

**13****Hazardous Materials**

Does the proposal involve the use, storage or manufacture of hazardous materials? Yes ☐ No ☒

If the proposal involves the use, storage or manufacture of any "hazardous materials" (such as liquified Petroleum Gas, Hydrogen, Liquid Oxygen, or any explosive) please give details and the quantities in a covering letter.

**14****Any other particulars to which the applicant wishes to draw attention**

*I am asking permission to move out of the caravans that we are currently living in and move temporarily into the workshop while we build the house, and permission removed when the house is finished.*

*A wood burning stove has been fitted into the workshop to dry out the building and act as a site heater.*

*We would like to retain this heater until the house is finished, then remove it to be replaced in the house.*

*I would also like condition 10 removed allowing me to use the workshop to run a small cabinetmaking / furniture restoration / upholstery business.*

## 15 LAND OWNERSHIP CERTIFICATE

(Article 8(8), Town & Country Planning (General Development Procedure)(Scotland) Order 1992)

You must fill in an appropriate certificate of land ownership.

If you do not own all of the land or property to which this application relates, you must notify all the owners and agricultural tenants at the same time as submitting this form.

If you are unable to identify relevant parties then please contact the Development Management Service within the Planning Service by using the details at the end of this form.

**A** I hereby certify that: Please tick **one** box

1. 21 days before the date of this planning application, the applicant owned **all** the land to which this application relates. ☒
- or
- The applicant has given notice to all persons who, 21 days before the date of this planning application, owned any part of the land to which it relates. They are: ☐

NAME OF OWNER	ADDRESS	DATE NOTIFIED

**B** I further certify that: Please tick **one** box

1. 21 days before the date of this planning application, none of the land formed part of an agricultural holding ☒
- or
2. The applicant has given notice to every person who, 21 days before the date of this application, was a tenant of an agricultural holding, any part of which formed part of the application site. These persons are: ☐

NAME OF TENANT	ADDRESS	DATE NOTIFIED

or

3. The land forms part of an agricultural holding, but there are no tenants. ☐

## 16 CHECKLIST

### Checklist *Please tick all relevant boxes*

- I enclose 4 copies of this form
- I enclose 4 sets of the necessary plans and drawings
- I have completed and enclosed the landownership certificates
- I enclose the necessary fee of £ 102
- I enclose 4 copies of a pre-application consultation report (if necessary)
- I enclose 4 copies of a design statement (if necessary)
- I enclose 4 copies of a design and access statement (if necessary)

<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

**Your application cannot be registered until all these documents and fee are received.**  
Failure to submit a PAC report when necessary will result in the application being returned.

Receipt No.

## 17 Applicant's Details

NAME *Alexander E Ward*  
ADDRESS *Hillside Lodge*

Please tick the box if the applicant is an Elected Member of Shetland Islands Council ☐

*Hillside*  
*Sandwich*  
POSTCODE *ZE29HW*

TELEPHONE

FAX

EMAIL

## 18 Agent's Details

NAME  
ADDRESS

Please tick the box if the agent is an Elected Member of Shetland Islands Council ☐

POSTCODE  
TELEPHONE  
FAX  
EMAIL

## 19 Contact Details

NAME  
ADDRESS

*See Applicant's Details*

POSTCODE  
TELEPHONE  
FAX  
EMAIL



## NEIGHBOUR NOTIFICATION

It is the responsibility of the Council to notify those with an interest in neighbouring land of the submission of a valid planning application. Neighbouring land is that which is within 20 metres of the boundary of the application site. An advert will be placed in the local paper if the Planning Service is unable to notify neighbouring land on which there are no premises, in which case the applicant is required to pay for this advert within 21 days; the decision cannot be issued until this is paid. Therefore, if you know of any person(s) who has any interest in the land neighbouring the site of the proposed development, whether this is the owner or occupier in relation to domestic property, or owner, lessee or occupier in relation to non-domestic property, this could help avoid delay in processing your application. Please use the Neighbour Information Notice.

### 1. Domestic Property

Address

1. The Owner: *Eric Duncan*

*Rosedale*

The Occupier:

*Hillside  
Sandwich*

2. The Owner: *Amanda Clark / Peter Spargo*

*East Lynne*

The Occupier:

*Hillside  
Sandwich*

3. The Owner: ?

*Plot 2*

The Occupier:

*Hillside  
Sandwich*

4. The Owner: *Smith*

*Dairy Cottage*

The Occupier:

*Sandwich  
Shedding*

5. The Owner: *Hjaltland Housing Assoc.*

*Aestbrek ?*

The Occupier:

*Sandwich*

### 2. Non-Domestic Property

1. The Owner:

The Lessee:

The Occupier

2. The Owner:

The Lessee:

The Occupier:

3. The Owner:

The Lessee:

The Occupier:

4. The Owner:

The Lessee:

The Occupier:

Please continue on another sheet as necessary and attach it to the application form.



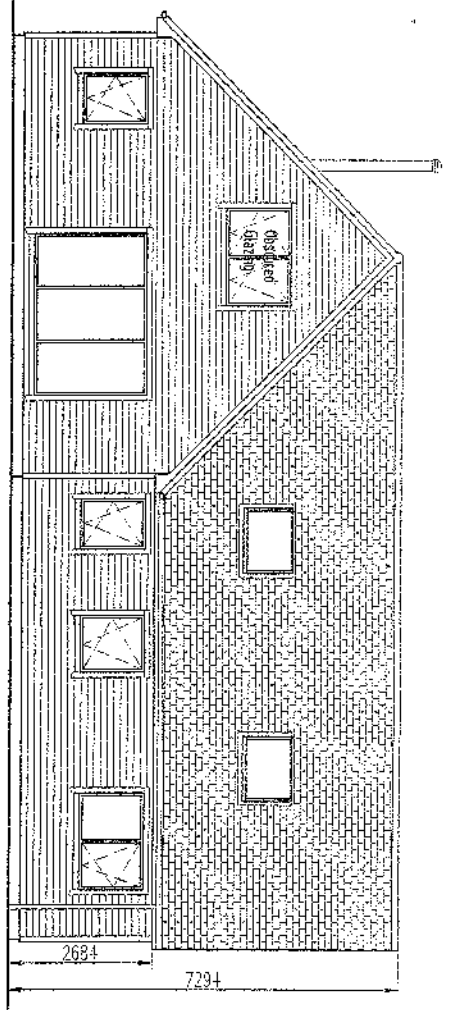
SIC INFRASTRUCTURE SERVICES	
PASS TO	ACTION

# PLANNING ISSUE

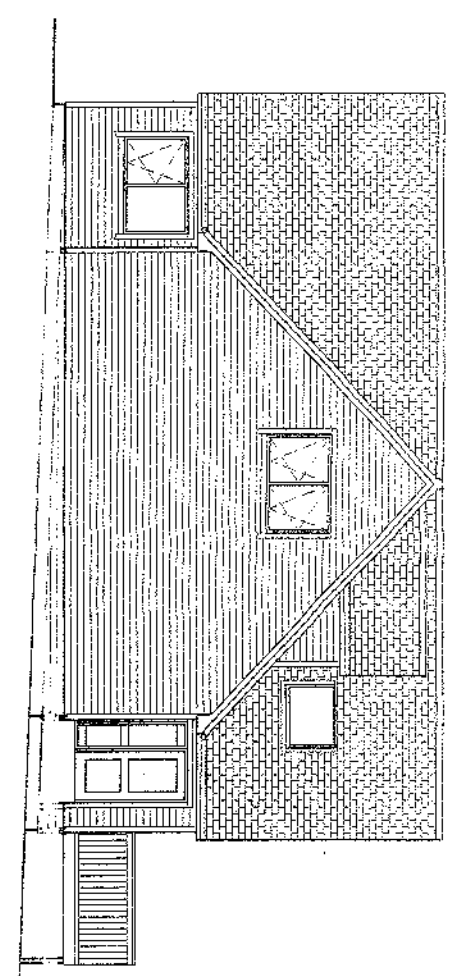
[www.alextechnorth.com](http://www.alextechnorth.com)  
[E-mail:alex@alextechnorth.com](mailto:E-mail:alex@alextechnorth.com)  
 Telephone: 01598 359137

Project	
Drawing Title LOCATION PLAN	
Scale 1:2500	Date Aug 09
Drawing No. AW/L/01	Project No.

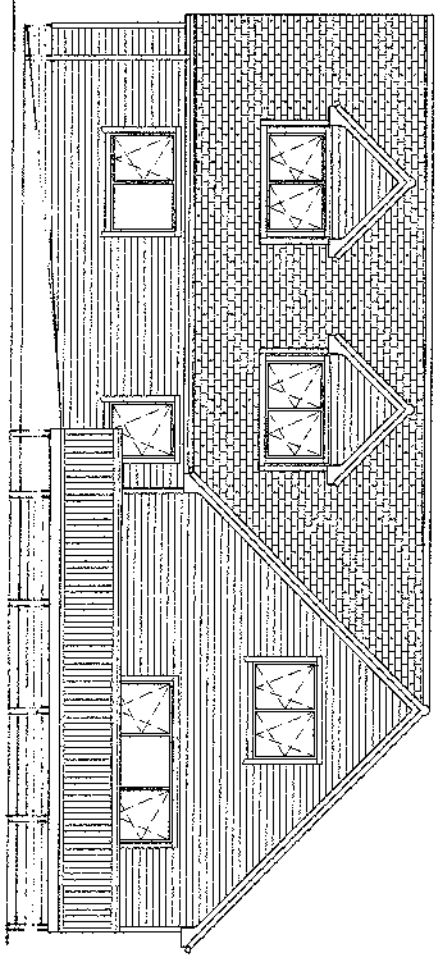
cross section view



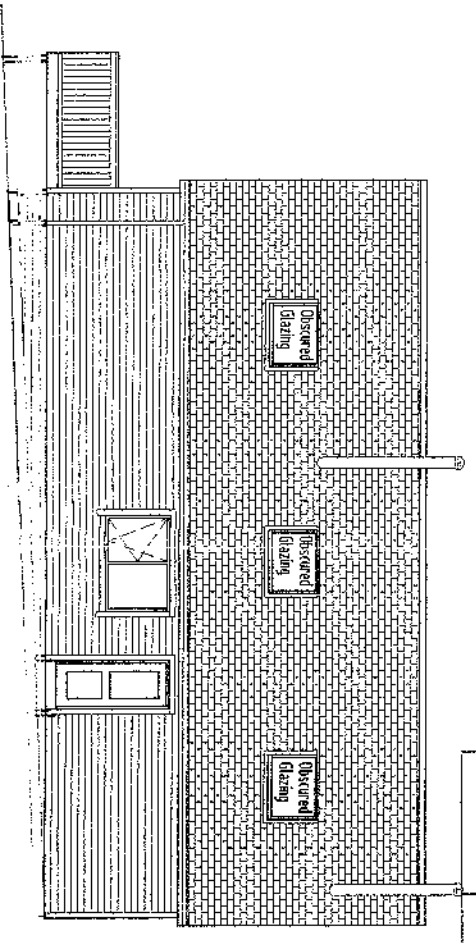
WEST ELEVATION



SOUTH ELEVATION



EAST ELEVATION



NORTH ELEVATION

**MATERIAL FINISHES:**

- Roof: Profiled interlocking concrete tiles - Brindle
- Walls: Horizontal log roll timber cladding - 'Pou'3' (light brown)
- Windows/Doors: Timber - Dark Brown stain.
- Facades: Timber - Dark Brown stain.
- Gutters: uPVC - Black
- Underbuilding: Dry dash render - Brown.

SIC  
INFRASTRUCTURE SERVICES  
07 OCT 2013

PASS TO ACTION

**PLANNING ISSUE**

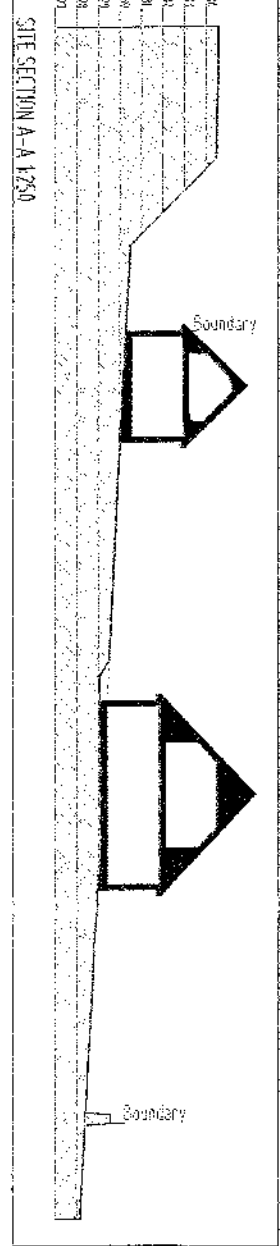
Revision: *Revised to show the building*

SIC  
INFRASTRUCTURE SERVICES  
- 9 NOV 2013

PASS TO ACTION

PROPOSED HOUSE, PLOT 1, HILLSIDE, SANDWICK  
ELEVATIONS

Scale: 1:100  
Date: 29/07/09  
Author: AW/L/04  
Reviewer: A

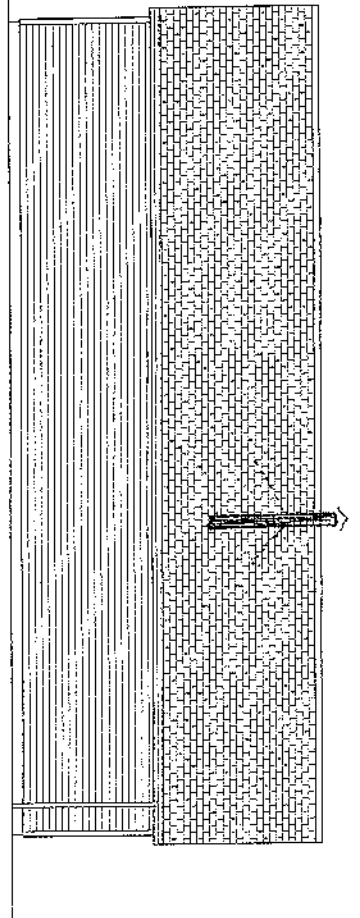


# PLANNING ISSUE

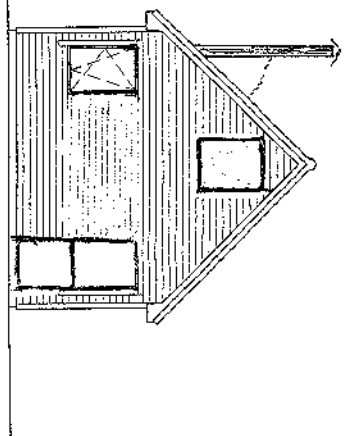
SIC  
INFRASTRUCTURE SERVICES  
- 5 SEP 2013  
PASS TO  
ACTION

- 164 -

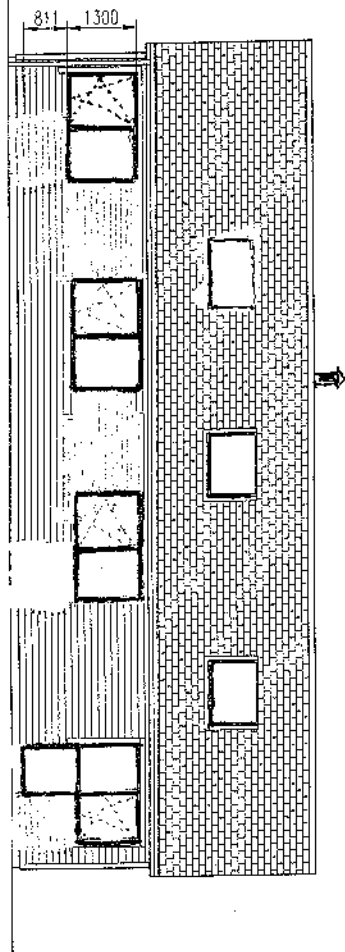
WEST ELEVATION



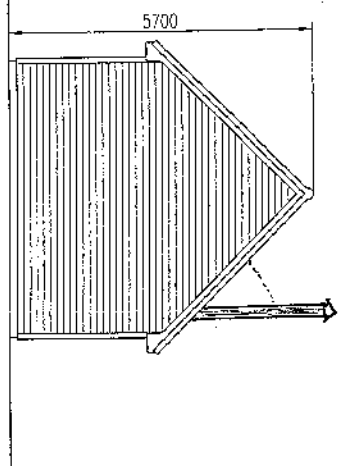
SOUTH ELEVATION



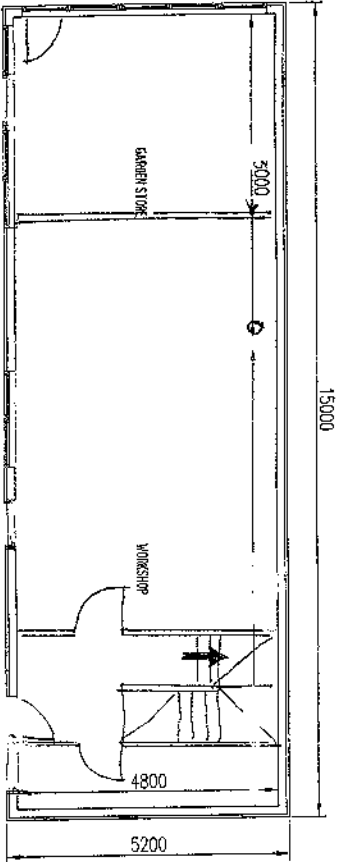
EAST ELEVATION



NORTH ELEVATION



PLAN



**MATERIAL FINISHES:**  
 Roof: Profiled interlocking concrete tiles - Brindle  
 Walls: Horizontal log roll timber cladding - Poufa (light brown)  
 Windows/Doors: Timber - Dark Brown stain.  
 Facias: Timber - Dark Brown stain.  
 Gutters: uPVC - Black  
 Underbuilding: Dry dash render - Brown.

INFRASTRUCTURE SERVICES	
- 5 SEP 2013	
PASS TO	ACTION

Project:	
Drawing title:	
WORKSHOP PLAN & ELEVATIONS	
Scale:	Date:
1:100	29/07/09
Drawing No:	Revision:
AW/L/07	





**Planning Committee**

**7 November 2014**

**2014/290/PPF – Install Air Source Heat Pump, 50 Goodlad Crescent, Lerwick, by Ms Amy Maclean.**

**Report Number : PL-10-14-F**

**Report Presented by Planning Officer –  
Development Management, Planning**

**Development Services Department  
Planning Service**

## **1.0 Summary**

- 1.1 This report concerns the installation of an air source heat pump to be sited at the rear of 50 Goodlad Crescent in Lerwick.
- 1.2 This application is being presented to Members of the Planning Committee under the approved Scheme of Delegation, as the applicant is an employee of the Planning Service.

## **2.0 Decision Required**

- 2.1 The Planning Committee is asked to determine the application. It is recommended that the application be approved subject to conditions.

## **3.0 Determination**

- 3.1 Section 25 of the Town and Country Planning (Scotland) Act (as amended) 1997 states that:

*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.*

There are statutory development plan policies against which this application has to be assessed. Those policies of significance are listed below. Unless material considerations indicate otherwise, the determining issue to be considered is whether the proposal complies with development plan policies.

## **Statutory Development Plan Policies:**

### **Shetland Islands Council Local Development Plan 2014**

GP1 Sustainable Development

RE1 Renewable Energy

### **Shetland Islands Council Interim Planning Policy Towards Sustainable Construction and Better Design in Shetland (Dec 2009)**

SPG 9: Heat Pumps (Ground and Air Source)

### **Safeguarding**

None

## **4.0 Report**

- 4.1 This planning application is for the proposed installation of a ground mounted, free-standing air source heat pump.
- 4.2 The unit stands 619mm high and is 824mm in width and 299mm in depth. The proposed location of the air source heat pump will be in the rear garden area of the applicant's property at 50 Goodlad Crescent - approximately 1 metre from the rear external wall and approximately 200mm off the north garden boundary.
- 4.3 As is standard with these types of development, the Council's Environmental Health Service was consulted at the outset, to ensure that the unit is sited in an appropriate location that will not introduce any unwanted noise pollution. Part of their consideration includes the assessment of the generic noise data submitted with the unit's specification; this is assessed against the proposed location and more importantly, the location of any neighbouring domestic property.
- 4.4 In light of their assessment, the Environmental Health Service has no objections to the siting of the unit in the proposed location. However, to ensure that there would be no risk of noise pollution to the property to the south – number 48 Goodlad Crescent – the Environmental Health Service have recommended that a 5 foot high, closed slatted fence, be erected covering approximately one-third of the length of the garden boundary, measured from the rear elevation. Should Members be minded to approve the application, a condition has been recommended that seeks to ensure that the unit would not be commissioned or become operational, until the installation of the fence is completed and built to a specification previously agreed in writing by the Planning Authority.
- 4.5 In terms of the neighbouring property directly to the north (number 52); the unit will stand 200mm off the boundary directly adjacent to the neighbouring property's rear extension. The extension is a solid block wall construction with no openings, with an approximately 5 foot high block boundary wall directly to the unit's east side. It is therefore considered that the unit will not introduce unwanted noise to number 52 Goodland Crescent, due to wall construction and boundary wall specification.



- 4.6 Within the recently adopted Shetland Local Development Plan (Sept 2014), policy GP1 Sustainable Development, seeks to encourage developments such as air source heat pumps. Policy RE1 Renewable Energy also supports this development, and states that the Council is committed to delivering renewable energy developments that contribute to the sustainable development of Shetland. Proposals for renewable energy developments will be supported where it can be demonstrated that there are no unacceptable impacts on people, the natural and water environment, landscape, historic environment and the built environmental and cultural environment of Shetland. This proposed renewable energy development will not have a negative impact on any of the aforementioned environments.
- 4.7 The unit is sited in a location that will not have any negative impact on the setting of the existing dwellinghouse, nor the setting or character of the Goodland Crescent area, therefore the proposal complies with the aims of interim planning policy SPG9: Heat Pumps (Ground and Air).

## **5.0 Implications (of Decision)**

### Strategic

- 5.1 Delivery on Corporate Priorities – A decision made on the planning application that accords with the development plan would contribute directly to the Single Outcome Agreement through the outcome that we live in well designed, sustainable places.
- 5.2 Community/Stakeholder Issues – Standard consultations were sent during the processing of the application.
- 5.2.1 Shetland Islands Council – Environmental Health Service raised no objections to the proposal subject to the installation of an acoustic barrier/fence along the south boundary, prior to commissioning of the air source heat pump unit.
- 5.3 Policy and/or Delegated Authority – The application is for a development falling within the category of Local Development. As the application is by a member of the Planning Service the decision is therefore delegated to the Planning Committee under the Planning Scheme of Delegations that has been approved by the Scottish Ministers.
- 5.4 Risk Management – If Members are minded to refuse the application, it is imperative that clear reasons for proposing the refusal of planning permission contrary to the development plan policy and the officer's recommendation be given and minuted. This is in order to comply with Regulation 28 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013. Furthermore, it provides 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.

## 6.0 Conclusions

- 6.1 Taking the comments received into account and having assessed the proposed development against Shetland Local Development Plan 2014 policies listed in paragraph 3.1, the proposal is found to be compliant with their aims.
- 6.2 For the reasons set out in section 4 above the proposal complies with the development plan policy and is recommended for approval, subject to the conditions listed in the schedule appended to this Report of Handling.

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For further information please contact:

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*Email: [jonny.wiseman@shetland.gov.uk](mailto:jonny.wiseman@shetland.gov.uk)*

*Report Cleared: 29 October 2014*

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### List of Appendices

- 1a Location Plan
- 1b Site Plan
- 2 Air Source Heat Pump Specification
- 3 Schedule of Recommended Conditions

### Background documents:

- Shetland Local Development Plan 2014
- [Interim Planning Policy Toward Sustainable Construction \(2009\)](#)

Ref.	OWNER / OCCUPIER
①	Owner / occupier The owner / occupier, 43 Goodlad Crescent, Lerwick, Shetland.
②	Owner / occupier The owner / occupier, 44 Goodlad Crescent, Lerwick, Shetland.
③	Owner / occupier The owner / occupier, 45 Goodlad Crescent, Lerwick, Shetland.
④	Owner / occupier The owner / occupier, 46 Goodlad Crescent, Lerwick, Shetland.
⑤	Owner / occupier The owner / occupier, 47 Goodlad Crescent, Lerwick, Shetland.
⑥	Owner / occupier The owner / occupier, 51 Goodlad Crescent, Lerwick, Shetland.
⑦	Owner / occupier The owner / occupier, 48 Goodlad Crescent, Lerwick, Shetland.
⑧	Owner / occupier The owner / occupier, 49 Goodlad Crescent, Lerwick, Shetland.
⑨	Owner / occupier The owner / occupier, 56 Goodlad Crescent, Lerwick, Shetland.
⑩	Owner / occupier The owner / occupier, 52 Goodlad Crescent, Lerwick, Shetland.
⑪	Owner / occupier The owner / occupier, 2 Hayfield Lane, Lerwick, Shetland.
⑫	Owner / occupier The owner / occupier, 4 Hayfield Lane, Lerwick, Shetland.



### LOCATION PLAN

Scale 1:1250



⑬	The owner / occupier, 65 Gilbertson Road, Lerwick, Shetland.
⑭	Owner / occupier The owner / occupier, 67 Gilbertson Road, Lerwick, Shetland.
⑮	Owner / occupier The owner / occupier, 69 Gilbertson Road, Lerwick, Shetland.
⑯	Owner / occupier The owner / occupier, 71 Gilbertson Road, Lerwick, Shetland.
⑰	Owner / occupier The owner / occupier, 73 Gilbertson Road, Lerwick, Shetland.

### PLANNING ISSUE

Project <b>PROPOSED ALTERATIONS TO 50 GOODLAD CRESCENT, LERWICK, SHETLAND, ZE1 0QN.</b>		Date Drawn 10.9.14
Drawing Title Site and location plan		Scale(s) @ A3 1:250 1:1250
Drawing Status <b>PLANNING</b>	Drawing Number <b>1024. 10</b>	Revision -

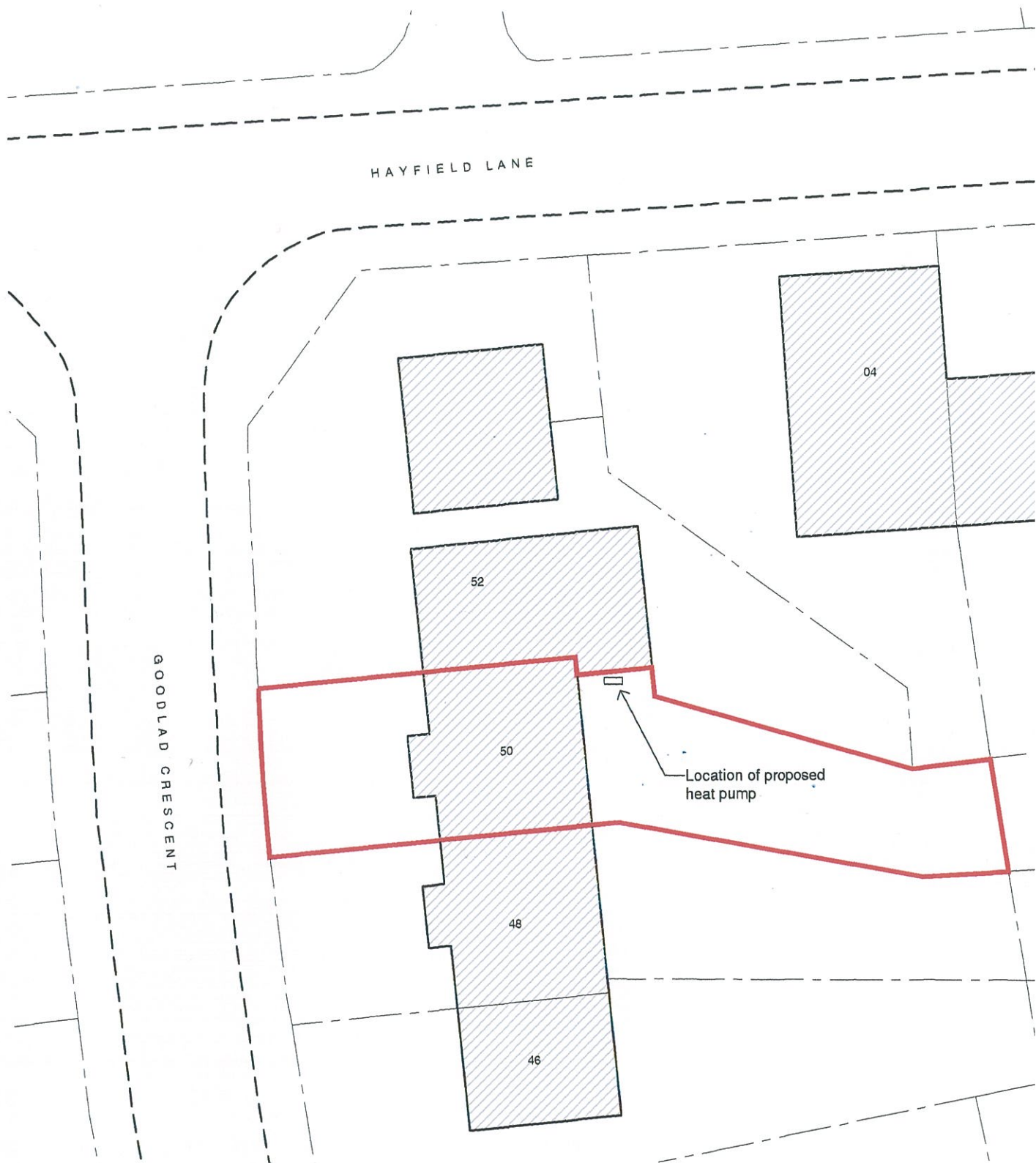
**TECHNICAL SERVICES (shetland) LTD.**  
Land Surveying and Civil Engineering CAD drafting

HOSWICK VISITOR CENTRE SANDWICK SHETLAND ZE29HL

Tel: (01950) 431 502/279  
Mob: 07770 854 578  
E-mail: michael@vegattech.plus.com





**SITE PLAN**

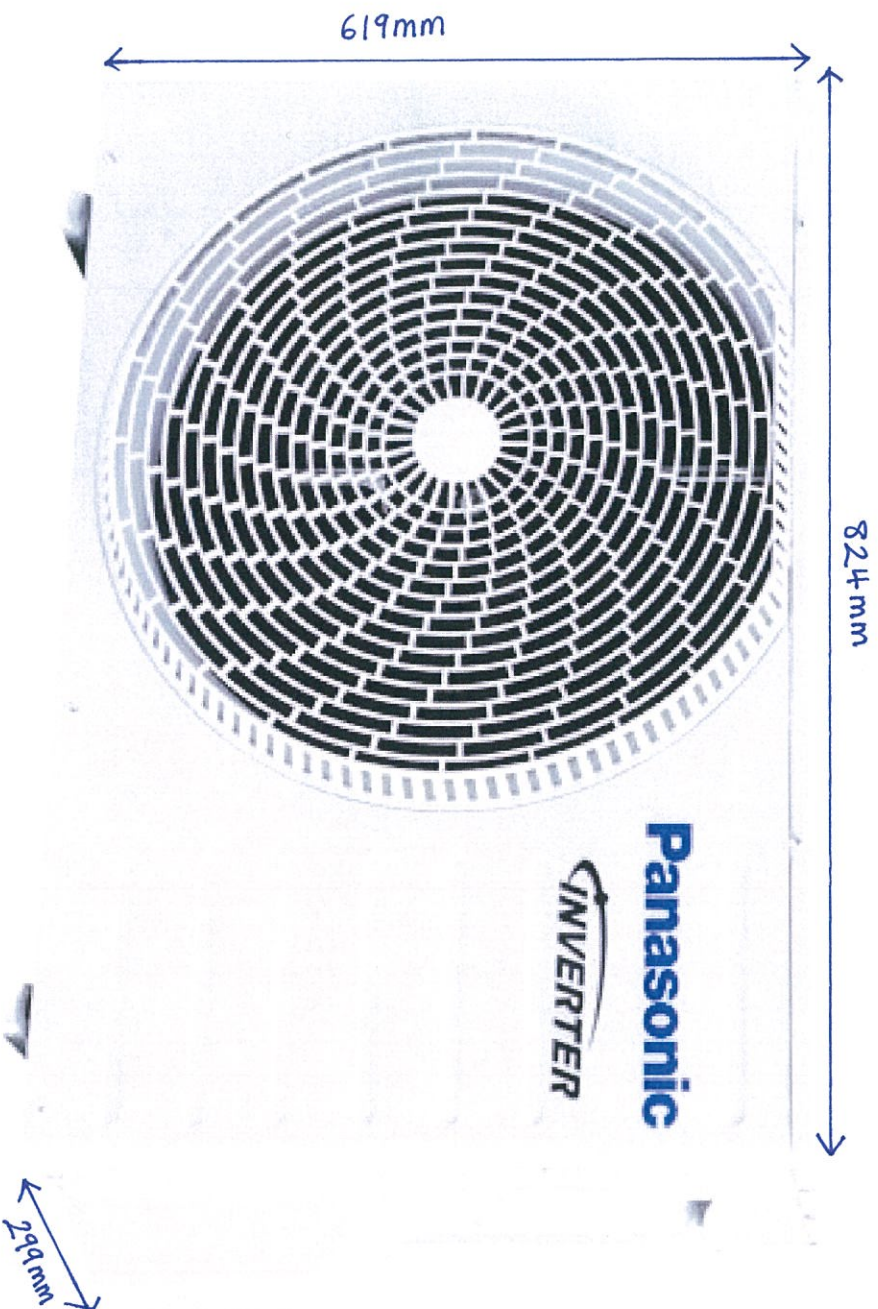
Scale 1:200

**VEGA T**  
Architectur



CU-E15PKE Outdoor unit.

## Appendix 2



SHETLAND ISLANDS COUNCIL	
PLANNING	
15 OCT 2014	
PASS TO	ACTION





**2014/290/PPF: Install air source heat pump, 50 Goodlad Crescent, Lerwick**

**By: Ms Amy Maclean**

**Details of Approved Plans**

- Site & Location Plan 1024.10  
17.09.2014
- Existing Plan 1024.01  
17.09.2014
- Proposed Plan 1024.02  
17.09.2014
- Air Source Heat Pump Details 2014/290/PPF – 01  
19.09.2014
- Air Source Heat Pump Specification 2014/290/PPF – 03  
15.10.2014

**Reasons for Council's Decision**

The siting of the air source heat pump will not have any negative environmental effect on the amenity of surrounding properties, nor will it detract from the setting of Goodlad Crescent. This proposal complies with Shetland Islands Council's Local Development Plan 2014 policies GP1 Sustainable Development, RE1 Renewable Energy and SPG 9: Heat Pumps (Ground and Air Source)

**Schedule of Recommended Conditions**

(1) The development hereby permitted shall not be carried out other than wholly in accordance with the approved plans and details (as may be amended and/or expanded upon by a listed document following afterward) unless previously approved in writing by the Planning Authority.

Reason: For the avoidance of doubt as to what is being authorised by this permission.

(2) The developer shall submit a written 'Notice of Initiation of Development' to the Planning Authority at least 7 days prior to the intended date of commencement of development. Such a notice shall:

(a) include the full name and address of the person intending to carry out the development;

(b) state if that person is the owner of the land to which the development relates and if that person is not the owner provide the full name and address of the owner;

(c) where a person is, or is to be, appointed to oversee the carrying out of the development on site, include the name of that person and details of how that person may be contacted; and

(d) include the date of issue and reference number of the notice of the decision to grant planning permission for such development.

Reason: To ensure that the developer has complied with the pre-commencement conditions applying to the consent, and that the development is carried out in accordance with the approved documents, in compliance with Section 27A of The Town and Country Planning (Scotland) Act 1997 (as amended).

(3) This permission shall relate solely to the installation of:

Panasonic KIT-E15-PKE 'Air to Air' source heat pump no greater than the following dimensions:

Height 619mm

Width 824mm

Depth 299mm

Notwithstanding the provisions of the Town and Country (General Permitted Development (Scotland) Order 1992 or any subsequent replacement or amendment Order, no other Air Source Heat Pump shall be erected on the site hereby approved without planning permission being granted on an application made to the Planning Authority.

Reason: To protect the existing residential amenity of the occupiers of the adjacent properties as the impact of a larger or different Air Source Heat Pump has not been assessed, in compliance with Shetland Islands Council's Local Development Plan policy 2014 Policies GP1 and RE1.

(4) An acoustic barrier or closed slatted fence shall be sited along part of the south boundary of the site as shown in green on the attached plan (2014/290/PPF – 02). No development shall commence until a specification for the acoustic barrier/fence has been submitted to and approved in writing by the Planning Authority. The air source heat pump shall not be commissioned or become operational until the approved acoustic barrier/fence has been completed.

Reason: To protect the amenity of nearby residential properties and in compliance with Shetland Islands Council's Local Development Plan policy 2014 Policies GP1 and RE1.

(5) The acoustic barrier or closed slatted fence shall remain in place throughout the lifetime of the air source heat pump.

Reason: To protect the amenity of nearby residential properties and in compliance with Shetland Islands Council's Local Development Plan policy 2014 Policies GP1 and RE1.