

# MINUTE

# A&B - Public

## Planning Committee

Council Chamber, Town Hall, Lerwick

Friday 7 November 2014 at 10am

### Present:

F Robertson	A Manson
M Bell	P Campbell
S Coutts	B Fox
G Robinson	

### Apologies:

D Ratter	D Sandison
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### In Attendance (Officers):

N Grant, Director - Development  
J Riise, Executive Manager – Governance and Law  
P Dinsdale, Team Leader - Environment  
J Holden, Team Leader – Development Management  
D Stewart, Planning Officer  
J Wiseman, Planning Officer  
K Marshall, Solicitor  
C Anderson, Senior Communications Officer  
A Cogle, Team Leader - Administration

### Also in Attendance

G Smith  
M Stout

### Chair

Mr F Robertson, Chair of the Planning Committee, presided.

### Circular

The circular calling the meeting was held as read.

### Declarations of Interest

None

### 28/14 Minutes

The Committee confirmed the minutes of the meeting held on 15 September 2014 on the motion of Mr B Fox seconded by Mr F Robertson.

### 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:

The Chair commenced the proceedings by stating that under the new Planning Act 2006, the opportunity for appellants to approach Scottish Ministers was removed and instead it was left to local authorities to set up a process by which appeals could be handled locally. He said that, in 2011, the Council approved the extension of the powers of the Planning Committee to sit as a Local Review Body and review decisions made under delegated authority by officers to which the applicant is aggrieved. He said that this was the process being followed here

today. The Chair said that the decision of the Local Review Body is made following a hearing process, and allows the objector, or the objector's agents, to address the meeting. That is followed by questions from Members of the Council, and any points they wish clarification on. He said that in turn was followed by the applicant who is then allowed to address the meeting and they can be questioned by Members regarding technical details. The Chair said it was important for everyone to stay on the item that is being considered and matters of Planning material concern the application or matter being considered. He said the time given for addressing the meeting is 5 minutes, and he would be sticking rigidly to that.

The Chair went on to say that following presentation to the meeting by the objector and the applicant, the Local Review Body will then consider the merits of the case and reach a conclusion. The decision of the Local Review Body is full and final, and it does not have to go back to the Council for ratification. He said that if the appellant is aggrieved, the only recourse is to the Sheriff Courts on matters of procedure by the Local Review Body.

The Chair said he hoped he had made it clear how the process worked. He said that, in the first instance, the Case Officer will take the Committee through the technicalities of the particular matter being considered today. He said he made it quite clear that the only process the Local Review Body was considering today was an appeal by Mr A C Ward of Hillside Lodge, Hillside Road, Sandwick, Shetland, ZE2 9HW, regarding an application to vary condition 1 of planning permission 2009/268/PCD for the erection of a temporary flue to a wood burning stove in a workshop at Hillside Lodge, Hillside Road, Sandwick, Shetland. The Chair stressed that this was a retrospective application.

The Chair invited the Planning Officer (D Stewart) to go through the technicalities of this case, and after that, the staff would not be involved any more except if they are asked to answer technical questions from Members.

29/14     **2013/322/VCON – LR18 – To vary condition 1 of planning permission 2009/268/PCD to erect temporary flue for woodburning stove workshop (retrospective): Hillside Lodge, Hillside Road, Sandwick, Shetland ZE2 9HW**

The Review Body considered a report by the Planning Officer [RECORD Appendix 1]. The Review Body decided to carry out the review process with a public hearing as indicated in the report.

The site was illustrated by a PowerPoint display of photographs and key information. The Planning Officer (D Stewart) presented the following slides as part of her presentation:

- Site layout plan
- Location Plan
- Site layout plan
- Elevations of the retrospective workshop
- Aerial views

The Planning Officer said the aerial images had also been provided to show the location of the applicant's workshop and associated flue in order to show its proximity to neighbouring properties. She said it should be noted that the closest residential properties to the flue, which formulate part of an existing housing development known as Aestbrak, are situated on a higher plateau immediately to the west of the applicant's workshop. She then presented a number of slides containing photographs of the flue from a variety of different angles.

Returning back to the aerial view, the Planning Officer advised that one letter of objection was received from a neighbouring resident on 17 September 2013. This objection received related to the height of the flue which is positioned at the same height as the objector's ground level rear garden, and as a result, the objector has stated that smoke from the flue blows directly in through the patio doors of their dwellinghouse. She said the objector states that this installation is having an adverse impact on their families health and safety to such an extent that they cannot let their son play out in the garden; cannot hang out washing on the clothes line and cannot open the rear windows of their dwellinghouse. The objector has also expressed concern about the flue being utilised in an unfinished building structure which could potentially be a fire hazard.

The Planning Officer said that Sandwick 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. She added that following initial consultation with Environmental Health, they informed that despite the fact that the height of the flue had increased and that no statutory nuisance had been recorded whilst they were on site; they remained of the opinion that depending on certain weather conditions, there was a significant risk of a statutory nuisance occurring to nearby residencies as a direct result of smoke emanating from this flue. Following further discussion about this situation, Environmental Health informed that they had already advised the applicant that should a statutory nuisance occur as a result of particular weather conditions; wind direction; fuel type and/or temperature inversions, they would be minded to serve a statutory nuisance notice under the Environmental Health Protection Act 1990 in order to prevent re-occurrence of this scenario.

The Planning Officer went on to say that in response to the objection raised, the applicant stated that the flue was only temporary and was acting as a site heater to dry the building out and that he fully expected to remove the flue from the workshop sometime in the next year in order to install the flue in his dwellinghouse once it had been constructed on site. Following a site visit to the area to 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 adjacent housing scheme at Aestbrak, that the flue is in very close proximity to these neighbouring properties.

The Planning Officer advised that the key issues in relation to this review were as follows:

- At the time the determination was made, Shetland Local Plan (2004) Policy LPNE10 was relevant to this case which stipulated 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'. In accordance with the terms of this policy therefore, in assessing the proposed development, the likely impacts on amenity and the environment as a whole, in conjunction with the effects on nearby residents and the buildings they occupy were required to be taken into account.
- Given the significant risk of a statutory nuisance occurring and due to the proximity of the flue in its relationship to the neighbouring properties at Aestbrak due to the site levels involved, it was considered that the retrospective flue would have a detrimental impact on the amenities of

nearby residents and the buildings they occupy and as such, a delegated decision notice to refuse planning consent was issued on 27 March 2014, as the proposal was contrary to Shetland Local Plan (2004) Policy LPNE10.

- Shetland Local Development Plan (2014) Policies GP2, which relates to General Requirements for All Development, stipulates that 'Development should not have a significant adverse effect on existing uses' and that 'Development should not compromise acceptable health and safety standards or levels'.
- Policy GP3 relating to Layout and Design, stipulates that 'all new development should be designed to respect the character and local distinctiveness of the site and its surroundings' by ensuring that a proposed development makes a positive contribution to 'ensure a safe and pleasant space and ensure ease of movement and access for all'.

The Planning Officer concluded by saying that it was recommended that the delegated decision to refuse consent for this flue is upheld, given that the flue is contrary to current Shetland Local Development Plan (2014) Policies GP2 and GP3.

The Chair invited the objector to address the meeting. He added that this was a quasi-judicial process but the meeting was conducted as informally as possible to take on all the information and the facts.

Mr I Smith, representing the objector Ms A Kenny, said he was just confirming that smoke from the flue was affecting their health at the house, the same as the Planning Officer (D Stewart) had said. He said that it was affecting their health, as the flue was level with their garden.

The Chair asked if it happened with all directions of the wind. Mr I Smith said that when the wind was in a southerly direction then smoke came towards the house.

Mr M Bell said he was not sure if Mr Smith could answer the question, but asked what direction the wind had to be in order to affect them, and how often this occurred. He also asked how it could be policed, or what in particular could be done to protect the objector. Mr I Smith said that he was unsure, and could not answer how often the wind was in a southerly direction.

The Chair invited the representative of Environmental Health to address the meeting. The Team Leader – Environmental Health said that the Environmental Health Team were contacted about the problems by the objector, and she had also sent some photographs. The site was visited on various days and at various times of the day by Environmental Health staff, and at times there was no statutory nuisance in evidence. She said they had visited again in November 2013 and went round to see Mr and Mrs Ward, when the fire was lit, and discussed the use of different fuels on the fire. With regard to wind direction, the Team Leader said that she had discussed with Mr and Mrs Ward that should there be a statutory nuisance from the smoke and this was preventing residents from using their gardens, putting their washing out or children playing in the garden, a statutory notice would be served. She said Mr Ward had agreed to use clean fuel, and would have regard to the wind direction. The Team Leader said she had no evidence of any nuisance since that time. She had spoken with the complainant who contacted her on 13 October 2013, and had asked her to provide evidence that there had been a

nuisance. She said the complainer had not provided any written records of the dates and times or instances of any problem or nuisances occurring, and so she had explained to the complainer that the Council could only take action if evidence of them being unable to use their garden was provided.

Mr Bell asked Mr I Smith again about what the issues were, and how often they were affected. Mr I Smith said that the chimney was so low that in a certain direction of wind it blows directly into the house. He said it was a health and safety concern as they could not hang out their washing, the children cannot play out in the garden and the patio doors cannot stay open.

Mr B Fox asked what was meant by “clean fuel”. The Team Leader – Environmental Health said that she had meant clean, dry wood, not MDF and no plastic. Mr Fox asked if that was the only type of fuel that was allowed to be burned in a wood burning stove. The Team Leader said that there were no general restrictions in place, but that was the type of fuel that you would expect to burn in a wood burning stove. Mr Fox asked whether to comply with current Climate Change Policy, that only untreated wood should be burnt in a wood burning stove. The Team Leader advised that there was perhaps that expectation, but there was no specific restriction or clean air zones in Shetland, although there was no expectation of dense smoke and ash from such a flue.

Mr B Fox asked Mr I Smith if his house had a vented heat recovery system. Mr Smith said he did not know. Mr Fox explained that such a system took in fresh air from outside and that is then fed back through the system to heat the house. Mr Smith said he understood, it was that type of system that their house had.

There were no further questions from Members for the objector and the Chair invited the applicant to address the meeting.

Mr A Ward said that his workshop and flue were only temporary and had been put in to dry the building out, as there had been a delay in the delivery of the tiles. The wood burning stove had been put in and the expectation had been that when the workshop was wind and watertight the flue would be removed and would be put into the main house, where it had planning permission for. Mr Ward said the Planning Officer and Mr Smith had both said the flue remained at ground level, but he said it did not. He advised that it was about five foot high and then it had been raised further once the extra pipe had been delivered. He said the initial complaint had been when they had to burn the flue at a certain temperature in order to cure the paint, and that this had probably been the cause of the smoke.

Mr Ward said he felt that the Planning Officer had made assumptions and had misrepresented what the Environmental Health Officer [EHO] had said. He said the Planning Officer had said in her report that when the wood burning stove is in use the smoke is “likely” to result in having an adverse effect on neighbouring houses, and later had referred to it being “significantly likely”. Mr Ward said that, however, in the EHO report it was stated as being a “possibility”, not a “significant likelihood” and said that those descriptions were at two completely different ends of the spectrum.

Mr Ward said the flue was being used as part of the process for building a house and he was not clear on why planning permission was needed for this. He referred to questions raised with Planning regarding the use of diggers when building a

house, and used that as an example as to why the flue was being used for exactly the same purpose of building a house, and so did not need permission.

Mr Ward went on to refer to another two applications in Bigton relating to the use of a flue, and these had been processed within four weeks, and had not referred to the same policies being used in his case and that both of these cases had been assessed by Dawn Stewart. The Chair at this point reminded Mr Ward to keep to points pertaining to his own application.

Mr Ward said that he did not believe that that he needed to have planning permission. He said that the stove was a multi-fuel burner, and so it could be converted to burn other materials. Mr Ward pointed out that there had been no complaints in the past 16 months. He said he had installed a weather vane linked to a system in the house which told him which way the wind was blowing, and if it was blowing towards the objector's house, he would not light it, as he did not want to antagonise them.

Mr Ward concluded by referring to the fact that the wood burning stove had less environmental impacts than other forms of fuel, and reminded Members that the flue would be removed very soon once the building was wind and watertight. Mr Ward sought a decision from the Local Review Body to uphold his appeal and grant his application.

During questioning, Mr M Bell asked if there was any other way in which the workshop could be dried out instead of using the flue. Mr Ward said that he could use a dehumidifier or gas heaters, but he found that only two burns were required and it could be left to burn out and it would be counter-productive to do so.

Mr Bell asked how long the process was expected to take. Mr Ward said he expected it to be wind and watertight some time between late Spring and later Summer next year.

Ms A Manson asked what direction the wind had to be in for it to affect the objectors. Mr Ward said that if wind came from due East then smoke from the flue would be directly at the objectors, but predominantly the wind blew straight down the ridge one way or the other, or from the South West, which is away from the objector's house.

Ms Manson asked when the flue was installed. Mr Ward said it had been installed in May 2013. Ms Manson asked why had it not yet dried out. Mr Ward said that when it rained, it was forcing against the side of the building which as yet had no cladding and windows, so as soon as the building is watertight it would take less time to dry out. He went on to explain that once the workshop is dry the flue would be redundant in that building because there would be no need for it, and it will then be moved to the house when it is ready.

Mr Fox asked the objector if he knew where the intake was for the heat recovery ventilation system, whether it was on the side of the house facing the flue or another side. Mr I Smith said it was adjacent to the flue.

The Chair said the Committee had visited the site this morning, and Members were familiar with the location of the flue, the proximity of the objector's house and the dramatic changes in level between the workshop and height of the flue.

The Director of Development pointed out that there was a significant amount of information in front of the Local Review Body today, and reminded everyone that the matter being considered today was related to the temporary flue and the decision to refuse. Secondly, he said that if the Local Review Body were minded to uphold the appeal, it must do so referencing the Local Development Plan 2014, and would need to be clear on the basis for such a decision. Regarding papers for the meeting, the Director added that the papers were accessible on line, and had not been sent to the applicant along with notification for the meeting, but were available to him on line.

During discussion, Mr Fox referred to the fact that this was a retrospective application, and he was looking at it from that point, as well as the fact that the objectors had a young family and considering also what the officers were saying as to the reasons for refusal. He noted that Sandwich Community Council had supported the objector and in his view saying that what Environmental Health said could be mitigated, was speculative; adding that wind direction could change at any time. He said he had asked the question about a heat recovery ventilated system, and he knew from personal experience how smoke for example from a bonfire near his house required him to switch off his system. He said that such a system was very important in terms of modern day systems, and if it was not used it results in condensation, so it has to be running all the time. Mr Fox said he was very much minded to support the officers and moved that the Committee uphold the decision to refuse.

Mr Bell said that the technical issue here was that in a certain direction of wind it clearly becomes an issue for the objectors. He said it was not clear from the objector how often the wind is in their direction, but again he had not been persuaded by Environmental Health that it could be policed. Mr Bell said that he was persuaded by the recommendation from Planning Officers and, on that basis, seconded Mr Fox.

**Decision:**

There being no one otherwise minded, the Chair confirmed the decision of the Local Review Body was to uphold the decision made and reasons given to **REFUSE** planning permission for the development.

The Chair concluded by advising the applicant that the flue could therefore no longer be used.

30/14     **2014/190/PPF – Install Air Source Heat Pump, 50 Goodlad Crescent, Lerwick by Ms Amy Maclean**

The Committee considered a report by the Planning Officer – [RECORD Appendix 2]. The site was illustrated by a PowerPoint display of photographs and key information.

The Planning Officer (J Wiseman) began by stating that this was an application for the installation of a ground mounted air source heat pump at 50 Goodlad Crescent. He said the reason why this application was presented to the Planning Committee, was due to the applicant being an employee of the Planning Service.

The Planning Officer presented the following photographs as part of his presentation:

- the location of property

- back garden area where the pump would be located
- the ground mounted unit
- the proposed location of the unit, showing the neighbouring property's extension wall and the block boundary wall; and
- the neighbouring property and the south boundary fence where the recommended acoustic barrier is to be sited. He added that because this property is sited to the south, there would not be any issue of sunlight or daylight loss to the kitchen window here.

Referring to the back garden area where the pump would be located, the Planning Officer added that there was an extension at the rear of number 52 that also forms a boundary to the applicant's garden. The pump will be sited approximately 200mm off the extension wall – the wall is solid block construction with no window openings. He indicated on the photo that there was a 5 foot high block wall.

The Planning Officer said that, as is standard with the siting of this type of equipment in tight urban areas, Environmental Health were consulted to assess it against any possible noise nuisance. He said that Environmental Health had no objections to the proposed location of the heat pump; however they did recommend that a five foot high acoustic barrier should be erected at the south garden boundary.

The specification of the acoustic barrier being a closed slatted fence, sited a minimum of third of the way along the south boundary.

If Members are minded to approve the application, a condition has been recommended that this is erected before the unit is brought into use, and that it remains in place during its lifetime.

The Planning Officer advised that the key issues in relation to this application were:

- there have been no objections to the siting of the air source heat pump from neighbours or Environmental Health
- it complies with Council policy that seek to encourage the use of energy saving or low carbon renewable heating units such as the one proposed.

The Planning Officer concluded that the application be recommended for approval, subject to the conditions listed within the attached schedule of recommended conditions.

Mr P Campbell asked why the pump was being placed against the wall of the adjoining property, and not on the applicant's property. The Planning Officer advised that the applicant was proposing to undertake a number of home improvements, one of which was to install patio doors, therefore removing any suitable location on the walls of her house.

Mr G Robinson said he had no questions, and moved the recommendation to approve. He added that there was a similar installation at his own property, and he was never aware of it in operation as it was very quiet and unobtrusive, and he could find no reason not to approve. Mr S Coutts seconded Mr Robinson.

### **Decision:**

The Chair confirmed the decision was to **APPROVE** the application, subject to the schedule of recommended conditions attached to the report.



The meeting concluded at 11.50 a.m.

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Chair