

**Planning Committee**  
**Council Chamber, Town Hall, Lerwick**  
**Thursday 25 August 2016 at 2pm**

**Present:**

F Robertson	M Bell
P Campbell	B Fox
G Robinson	D Sandison

**Apologies:**

S Coutts	A Manson
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**In Attendance (Officers):**

I McDiarmid, Executive Manager – Planning  
J Holden, Team Leader – Development Management  
C Gair, Traffic and Road Safety Engineer  
P Sutherland, Solicitor  
L Adamson, Committee Officer

**Chair**

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

**Circular**

The circular calling the meeting was held as read.

**Declarations of Interest**

None

10/16 **Minutes**

The Committee confirmed the minutes of the meeting held on 7 June 2016 on the motion of Mr Sandison, seconded by Mr Campbell.

The Chair advised that the first application presented today would take the form of a Hearing, and he explained to those present the process that would be followed.

11/16 **2016/043/PPP – Develop Site as Laydown Area (Planning Permission in Principle) Graven, Mossbank, Shetland by Shetland Development and Logistics Ltd.**

The Committee considered a report by the Planning Officer – Development Management [RECORD Appendix 1 PL-07-16-F] for a decision following a Hearing.

The Team Leader – Development Management gave a slide presentation, which included maps and photographs of the proposed development site and the key issues.

The Team Leader reported that the application was to consider the principle of a change of use of land at Graven from its present agricultural use (sheep grazing) to form an industrial laydown area. As this was an application for planning permission in principle, only the principle of development of this type in the proposed location

was being considered. The main issues to be considered were whether the principle of the proposed development on this site was acceptable, and if so can the area be developed without any adverse impact on the environment and the amenity of the surrounding area.

The Team Leader advised that the site is located on land at Graven, Sullom Voe some 1.5 miles south east of Sullom Voe Oil Terminal and on the south east side of the B9076 public road. The application site comprises an area of land covering 1.9 hectares which consists predominantly of grazing land and grassy areas along with one residential property which lies adjacent to the south boundary. In terms of the choice of site, the Team Leader advised that the supporting environmental information states that the area is ideally located to service the Sullom Voe Oil and Gas Terminals, the Port of Sellaness and Scatsta Airport with easy access from the public road.

In terms of the Shetland Local Development Plan (2014) (SLDP), Policy ED1 encourages the creation of sustainable economic development where those developments comply with the SLDP's General Policies (GP1, GP2 and GP3). Policies ED1 and GP2 of the SLDP also seek to ensure that in allowing development to proceed that Shetland's unique natural and historic environment is protected.

The proposed site lies in an area where there is considerable industrial activity close by. The SLDP has identified sites with development potential for industrial use in close proximity to this proposed site at Sellaness and Policy ED1 promotes and encourages development opportunities. Scottish Planning Policy also highlights the importance of sustainable economic growth.

The Team Leader reported that the site is adjacent to the Sullom Voe Special Area of Conservation (SAC) which has been designated for lagoons, reefs, shallow inlets and bays. SNH had advised that it would sustain an objection to the proposal unless in the case of approval a condition is attached which ensures that all run off from the site during construction and operation is treated to reduce the sediment load of discharged water to a level similar to that occurring naturally. The Team Leader advised that such a condition has been included in the Schedule of Recommended Planning Conditions attached to the report.

Scottish Environment Protection Agency had asked that conditions be applied to any approval to ensure the submission of a Sustainable Urban Drainage proposal (SUDS) and a Construction Environmental Management Plan which will seek to ensure that the impacts of the development during the construction phase are identified, controlled and minimised in the interests of the environment and amenity of the surrounding area.

The Team Leader advised that Delting Community Council had objected to the proposal on grounds that the application site is in a flood zone and too close to the burn (Burn of Laxobigging). The site sits below the indicative 5m contour. The environmental report submitted with the application contains a flood risk assessment which provides an overview of the flood mechanisms, risk and required mitigation measures. However the submitted proposals detailed plans do not include any specific proposed site level information. Objections have also been raised in regard to the potential flooding of properties which lie adjacent to the site. As no information with regards to site ground level has been provided at this in principle stage, with an approval of planning permission in principle the Team

Leader said it was recommended that a further detailed Flood Risk Assessment be required to be submitted under a specific condition at the same time as the application for Approval of Matters Specified in Condition that deals with the levels to be achieved across the site is made, with both requiring to be agreed in writing by the Planning Authority prior to the commencement of any development on site. This process will, he advised, define the exact extent and levels of proposed earthworks that will not create a flood risk to existing property and surrounding land.

In terms of the access to the site the Roads Service had advised that there are no objections to the proposal and recommended conditions that should be attached to any consent.

In conclusion, the Team Leader advised that the proposed development was considered to be acceptable in principle in ecological and visual terms, subject to the mitigations contained within the Schedule of Recommended Planning Conditions being fully implemented. He said that the chosen location was also considered to be well related to existing industrial uses. It was therefore recommended that the application be approved subject to conditions as set down in the Schedule.

The Chair said that in accordance with the Hearing process, he invited the objector to address the meeting.

Mr A Miller advised that he was representing Ms E Manson, from Graven, who was unable to attend Committee today. Mr Miller said that Ms Manson's comments had been referred to as being neutral, however he confirmed that she had objected to the proposals. Mr Miller advised that the main concern is that the area of land is prone to flooding, and there can be major flooding when both the burns are running high and they block the culverts and the flood water spreads over the flat ground. Mr Miller said that the ground is currently 1 metre above sea level, and with the proposal to increase this to 2 metres above sea level, this could potentially force the flood water to back up causing flooding in their croft and also at the Graven croft. Mr Miller advised that flooding is a historical problem in this area, and has been an issue even before the new road had been built. He said that the drainage has altered significantly due to the new roads, and it was important to note that during the war this area was not used significantly due to the flooding. Mr Miller referred to the comments received from Delting Community Council in terms of this application, where he advised that Shetland Enterprise and the Council have agreed to fund a development plan of the area, and in that regard he questioned whether the decision on this application could wait until that document is published. Mr Miller added that he had submitted photos to illustrate the effect of flooding in this area, which he said had not been submitted with the report to Committee.

The Chair invited Members to put any questions to the objector. There were no points of clarity sought.

The Chair thanked Mr Miller for the information provided.

The Chair invited a representative of the applicant to address the meeting.

Mr C Fleming from EnviroCentre, and agent for the applicant, advised that the original proposal had been for a much larger site, of 6.8 hectares. The initial proposals had triggered a consultation exercise undertaken in December 2014, which had addressed a number of issues including flooding, fisheries, water quality

and birdlife. The consultation provided a good understanding of the concerns and a flood risk assessment was carried out. The assessment concluded that some of the site was not sustainable, and therefore the site was redesigned above the predicted flood levels, and this reduced the site to 1.9 hectares. He said that spot levels on the drawings range from 1.7 metres to 2.9 metres, and flooding is predicted at 2.01 metres in an extreme two hundred year event, and therefore much of the site is above the predicted flood level. In terms of water quality, Mr Fleming advised that a SUDS would be put in place and an Environmental Management Plan carried out.

The Chair invited Members to put any questions to Mr Fleming.

In response to a comment regarding the decision to reduce the area of the application site from 6.8 hectares to 1.9 hectares, Mr Fleming said that it was his understanding that this would still be a viable exercise.

Reference was made to Section 4.13 of the report, and clarification was sought in terms of the recommendation that a further detailed flood risk assessment was required. The Team Leader advised that the Planning Service was content with the level of information that had been provided by the applicant in terms of assessment of flood risk, but following advice from the Council's Drainage Engineer it was recommended that a condition is included should the Committee determine approval of the application in principle, that a further detailed Flood Risk Assessment be submitted at the detailed application stage.

In response to a question regarding the proposal put forward by Delting Community Council for the whole area, including Graven and Sella Ness to Scatsta to be zoned for industry, and a proper Masterplan to be undertaken, the Team Leader clarified that the Committee are to consider this application in terms of current planning policies.

The Chair sought clarity in terms of the findings from the flood risk assessment carried out, and Mr Fleming confirmed that the predictions were for the potential to flood at 2.01 metres. He said that most areas are below that flood platform level. He said that detail has not been put in place as this application was for permission in principle, and the final platform level would be a matter for the detailed application stage.

In response to a question, Mr Fleming advised on his understanding on the standard of access roads onto the site and on the hardstanding.

The Chair thanked Mr Fleming for the information provided.

During debate, the Chair reminded Members that this was an application for planning permission in principle, and that there would be considerable detail required at the detailed application stage.

Mr Robinson said that the questions had been answered very well, and the Committee cannot speculate on any future planning policy. Mr Robinson moved that the application be approved in principle, subject to the conditions attached. Mr Campbell seconded. There was no one otherwise minded.

### **Decision:**

The Committee **APPROVED** the application in principle, subject to the schedule of recommended conditions.

*(Mr G Robinson left the meeting).*

12/16     **2016/003/PPF – Construction of Workshop/Store, Lerwick, Shetland by Michael Stewart**

The Committee considered a report by the Planning Officer – Development Management [RECORD Appendix 2 PL-06-16-F].

The Team Leader – Development Management gave a slide presentation, which illustrated the following:

- Location Map
- Site Plan
- Various photos of the site
- Key Issues

The Team Leader advised that the application was for a workshop/store, and the applicant had confirmed that it will be used for private domestic use and was not for commercial purposes. He reported that planning permission was granted in March 2014 for a smaller workshop/store on this site, and that this earlier application had attracted no objections. The current application proposed a larger building on the site.

The Team Leader explained that when the application was first submitted the proposed building had attracted objections from the operators of the fuel oil depot next door as it could potentially have restricted access along the track to the west of their site. Objections were also received from the Lerwick Community Council to this effect and in connection with the right of way and lack of turning space. The applicant was made aware of the concerns raised and has amended his plans to reduce the size of the proposed building to ensure that it does not restrict access to the oil depot and the core path that runs through the area is not affected. The amended plans also showed a turning area outside the building which the Roads Service had confirmed is acceptable. Certas UK Ltd, the operators of the fuel oil depot, withdrew their objections, but the Lerwick Community Council maintained their objection to the proposal. However following various consultations, that are set out in the report, the Team Leader said that it had been demonstrated that the amended proposals for the smaller workshop store are acceptable.

The Team Leader advised that the proposal had to be assessed against the policies in the Shetland Local Development Plan (SLDP). The site is in an Area of Best Fit in the centre of Lerwick where development is encouraged. He said that this was a relatively small scale development that would only be used for private domestic purposes. The amended plans for a smaller building have minimal impact on the surrounding area and would not have a significant adverse impact on existing users of the area. The core path would not be affected. The Team Leader said that the proposed use as a private domestic workshop/store would be in keeping with the mixture of different uses in the area from industrial to offices to residential. He said that the proposal was acceptable and complies with the aims of the SLDP and was therefore recommended for approval subject to the conditions listed in the schedule attached to the report.

In response to a question, the Team Leader advised that he was not aware that the gate, adjacent to the application site, had any specific function. He added that the Council does not have a key for the gate. The Traffic and Road Safety Engineer recalled that the gate had been erected by Shetland Leasing and Property Company Ltd to prevent access for fly tipping before development of the site at 8 North Ness. It was also advised that the gate was not padlocked at this time.

Mr Bell moved that Committee approve the recommendation for approval of the application subject to conditions listed. Mr Campbell seconded.

13/16     **2016/176/PPF – Extension of Hardstanding Area for Agricultural Implement and General Agricultural Storage, Clate, Symbister, Whalsay, Shetland (Retrospective approval) by John Arthur Shearer**

The Committee considered a report by the Planning Officer –Development Management [RECORD Appendix 3 PL-08-16-F].

The Team Leader – Development Management gave a slide presentation, which included photographs which illustrated the extent of the excavated area and the materials that were still on site on the 7<sup>th</sup> July 2016, and the key issues.

In introducing the application, the Team Leader advised on the principle of the development, as to whether extending an area of land which is currently used for agricultural storage purposes is considered to be acceptable in terms of Policy ED1 as the expansion was in support of a rural business; and in terms of the impact on the environment, whether the use of the excavated materials obtained through the creation of the existing hardstanding area's extension, which could otherwise remain unused, was considered acceptable and a sustainable use of finite resources.

The Team Leader advised that in terms of surface water attenuation and treatment within the site it was considered that given the nature of the development and the location, there was a case for reducing the requirement for attenuation for this application, considering the level of infiltration provided by the permeable surface to be sufficient.

The Team Leader reported that the Roads Service had made comment on the impact on the public road from the vehicle movements which have occurred as a result of the removal of materials excavated that had already taken place, over a distance of approximately 500 metres from the site. He said that no specific conditions had been recommended by the Roads Service, but it was considered that the continued movement of excavated materials will cause further impact damage to the public road. The Team Leader advised that it was therefore considered that the imposition of a planning condition requiring a photographic record of the public road to be submitted to the Planning Service prior to the removal of further excavated materials from the application site was necessary. The Team Leader concluded his presentation by advising that the application was recommended for approval, subject to conditions.

Mr Ratter sought clarity on the use of the application site, and to what extent works on agricultural land constitutes the requirement for planning permission to be sought. The Team Leader explained that the application was for retrospective approval, on the basis that complaints had been received and that visits had been

made to the site in an enforcement capacity. He went on to explain that planning permission would not be required to create a hardstanding area to a certain size for agricultural purposes where the excavated material remains on the croft, however planning permission is required when material is exported from the site. In this case, the applicant had been exporting material, which had been the crux of the complaints in terms of vehicle movements.

During the discussion, clarity was sought in terms of the recommended condition requiring a photographic record of the public road to be undertaken to evidence damage to the road. The Team Leader said that while there was no record of baseline evidence, the comments from the Roads Service on this application was that continued traffic from the application site will cause further damage to the road. A photographic record at this time could be used as evidence to seek compensation from the applicant should there be further damage.

The Chair advised that he was familiar with the stretch of public road in question. In response to questions from the Chair, the Traffic and Road Safety Engineer advised that the road had already sustained damage and that an amount of repair work had been carried out. The Traffic and Road Safety Engineer explained that under the Road (Scotland) Act, the Local Authority has powers to pursue developers who damage the road network through extraordinary use. He said that baseline evidence is required, and as it has to be clearly established who is responsible for the damage in each case before the powers of the Road (Scotland) Act can be applied. He said that in this case however, the difficulty was that much of the damage had already been done, and the first 500 metres of the road had already had patching to keep the road in a reasonably passable condition.

Mr Bell enquired whether it would be competent to apply a condition, should the Committee be minded to grant the application, for it to be the responsibility of the applicant to make good any damage to the road. The Team Leader advised that such a condition had been applied to approval of applications, but these have related more to larger developments. The Executive Manager – Planning explained that for smaller scale developments the Road (Scotland) Act is generally relied on, where the Roads Service would seek a contribution towards repairs to the road. He said that for previous applications of this nature and scale, it has been necessary for a record of the damage to be in place, and as this was a retrospective application, it was difficult to gauge the damage and deal with it under a planning condition. He added that there could be a number of reasons a road could get damaged and not all are related to a planning application.

In response to a question, the Traffic and Road Safety Engineer advised that photographic records carried out at this time would provide an evidence base should further damage occur to the road, however he said that all roads require maintenance at some point.

In response to a question, the Team Leader advised that there was no record of the amount of material that had already been transported from the application site, however he advised that a condition had been included to the recommendation for approval of the application, seeking detail of the movement of materials from the site.

Mr Fox outlined to Members the representation from Whalsay Community Council, as set out in Section 5.2.1 of the report, where he questioned whether the Community Council had actually objected to the proposals.

Mr Ratter moved that the Committee approve the recommendation for approval of the application subject to the conditions as listed. Mr Sandison seconded.

Decision:

The Committee APPROVED the application, subject to the schedule of recommended conditions.

The meeting concluded at 2.50pm.

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Chair