

# MINUTE

# A&B - Public

**Planning Committee**  
**Council Chamber, Town Hall, Lerwick**  
**Thursday 18 January 2018 at 2pm**

**Present:**

T Smith	M Bell
S Coutts	E Macdonald
A Manson	D Sandison
D Simpson	G Smith

**Apologies:**

C Smith

**In Attendance (Officers):**

I McDiarmid, Executive Manager – Planning  
J Holden, Team Leader – Development Management  
D Hunter, Planning Officer  
P Sutherland, Solicitor  
L Adamson, Committee Officer

**Chair**

Mr T Smith, Chair of the Planning Committee, presided.

**Circular**

The circular calling the meeting was held as read.

**Declarations of Interest**

None.

01/18 **Minutes**

The Committee confirmed the minutes of the meeting held on 24 August 2017 on the motion of Mr Bell, seconded by Ms Manson.

**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 advised that the item on the agenda will be considered by the Planning Committee, sitting as the Local Review Body (LRB), and will follow the guidance as provided in the covering report at Item 1. The process will take the form of a Hearing, where the Planning Officer who handled the case will be asked to make a presentation on matters to be considered. Persons entitled to make representations on the application will be given the opportunity to address the Hearing, followed by the applicant/agent, and this will be restricted to a time limit of five minutes. Members of the LRB can ask questions throughout the process, or preferably at the end of each presentation. When questions are completed, Members will debate the proceedings and then make a decision. Cross examination will not be permitted unless the LRB consider it necessary.

The Chair advised that the decision of the LRB is full and final. Should the applicant be

aggrieved by the decision, the only recourse is to the Court of Session in respect of the handling by the LRB.

Before commencing the item, the Chair advised that the LRB would be given the opportunity to decide if a Site Visit is required to determine the application. If so, this Hearing will be adjourned and reconvened at a later date. It also has to be agreed if the Site Visit is unaccompanied or accompanied. It should however be pointed out that only Members who attend the Site Visit can make the final decision on the application.

02/18 **Local Review Ref: 2016/434/PPF – LR30 - Demolish wall next to Fort, extend existing store, change roof material, fit sign above door (retrospective), install wooden gate: 8 Harbour Street, Lerwick, Shetland, ZE1 0LR.**

The Committee considered a report by the Team Leader – Development Management [RECORD Appendix 1] for a decision following a Local Review.

Mr Coutts moved that a site visit was not necessary to determine the application. Mr Bell seconded, and the LRB concurred.

The Planning Officer, case handler of the application, gave a presentation which illustrated the following:

- Location Plan and Site Plan
- Photographs of the site
- Elevations
- Photographs of part of the boundary wall
- Key Issues

The Planning Officer advised that the application had been approved on 14 August 2017. He reported that the appeal relates to two of the conditions attached to the permission, namely Condition 2, which relates to surface water drainage; and, Condition 3, which relates to the removal and replacement of part of the boundary wall of the yard.

The presentation covered the following points:

**Condition 2 – Surface Water Drainage**

- Shetland Local Development Plan 2014 Policy WD3, SUDS required, none proposed
- Scottish Water policy – no surface water to foul sewer, unless circumstances
- Circumstances include where existing / no surface water drainage is appropriate
- Drainage engineer concluded that no additional water into the existing system
- To allow to go ahead, a condition was attached that Scottish Water happy that circumstances are appropriate to continuation of connection (this also prevents exception to policy WD3)
- Appeal documents possibly sufficient to discharge the condition, but two points for clarity:
- Whether Aimera, the licence provider can legally be treated as Scottish Water in this situation, and counts as them for the purposes and wording of the condition.
- Whether the connection from Aimera relates to water connection, foul water connection or both. (The letter is an invoice for connection, only issue invoice of

acceptance). Whether the development proposed includes a surface water connection into the foul water system.

Condition 3 – the removal and replacement of part of the boundary wall of the yard

- The condition was included so that a timescale could be given for completion of the wall – because the permission can be part implemented and the developer could choose to take forever to finish the works.
- Keep the wall in place is because it forms part of the context of the Fort (scheduled monument) and has done so for a significant period of time. The context of the Fort would change without it.
- Six months from when the wall is demolished, was chosen because that was felt to be a reasonable timescale for it to be replaced.
- Since the consent was granted the wall has partially collapsed, as notified by the developer
- The appeal seeks to remove or alter the timescale of this condition
- Incentive to keep the timescales as short as reasonably possible to prevent the lack of a wall becoming part of the context of the Fort – the way that the Fort is read.

The Chair thanked the Planning Officer for his presentation.

In referring to Condition 2, a question was posed as to whether the decision on what would be required to discharge the specifics of the condition would be in the bounds of the Planning Service and Legal Services, rather than the LRB. The Planning Officer confirmed that would be the case. He added that the Planning Service received the additional information on waste and water services at the beginning of December 2017 and there has not been an opportunity to seek clarity since then. He added that the appeal was already in progress at that time.

In response to questions, the Planning Officer advised that the property would discharge into a split system that connects to the public sewer, and he confirmed there would be no increase in volume of water from the development. The Chair commented that it would be up to Scottish Water to upgrade the drain outwith the site, and advised that he did not understand why that had formed part of the application.

Regarding Condition 3, clarification was sought in terms of the 6 month timescale attached to the condition for replacement of the wall. The Planning Officer reported that the six month period commenced from the end of August 2017, being the date when the agent advised the Planning Service that the wall had been removed by gravity, and therefore the period would expire at the end of February 2018. In response to a question, the Planning Officer advised that the timescale had been included otherwise the applicant could take however long he wanted to implement that or any part of the planning permission. A period of six months was considered an appropriate timescale to undertake the work.

In response to a question, it was noted that the dimensions of the wall had not been included in the report, however the LRB were advised on the dimensions of the gate.

In response to a question on the inclusion in Condition 3 for both sides of the replacement wall to be harled, the Planning Officer advised that harling only one

side can lead to potential damage if the extension to the store is not built. There is also the issue of how the wall views from the Fort area.

The Chair invited the agent to present his case on behalf of the applicant.

Mr M Stewart, agent to the applicant, advised on the size of the wall, which runs from the Fort to the storage area with the pointed roof. The part of the wall that fell down before Christmas 2016 had been very insecure, and he had the Planning Officer and the Enforcement Officer on site at that time, so they would be aware of the deterioration of the wall. Mr Stewart commented that he has been dealing with Historic Scotland for a number of years.

Mr Stewart said that for him to rebuild the wall within 6 months would never happen, and that in theory gravity has caused him to breach planning permission, rather than through any fault of his own. Mr Stewart said that he tends to finish works, and would not leave the wall half built.

Regarding Condition 2, Mr Stewart said that SUDS is not applicable. The water is going down the drain and the site is better than it has been in 20 years. Scottish Water do not specifically say Condition 2 is fine, but the drains are clear and all goes into the sewer and there will be no increase of water down the drains. Mr Stewart said that from a practical point of view, the drains will be sorted through Building Control, where the checks are probably more onerous than that of Scottish Water.

In response to a question regarding the timescale to rebuild the wall, Mr Stewart advised that while the part of the wall to be rebuilt following collapse was around 3 metres, he could not get the wall rebuilt within the 6 months stipulated as the application still has to go to Building Control which also takes time. Mr Stewart added that there would be no advantage to him not to complete the wall.

In response to questions, Mr Stewart advised that following receipt of the Building Warrant he would hope to get the wall completed within one year. He reported that to employ a contractor to undertake the works there would be no profit for himself.

The Chair commented that as it stands at this time, the applicant will be in breach of Condition 2 around the end of February 2018, and he sought clarity on what steps can then be taken. The Team Leader – Development Management advised that in cases of breaches of planning control it is open to the Planning Authority to seek developers to co-operate to establish a new timescale. Should there be no co-operation the next route would be to serve an enforcement notice to prescribe a timescale.

The Chair thanked Mr Stewart for the information provided.

During debate, Mr Coutts proposed amended wording to Condition 2, in terms of rationale of evidence to meet the restriction of the condition, namely, "No development of the proposed extension hereby permitted shall take place until: (a) an Agreement to cover acceptance by Scottish Water, or a licence provider, of the level of surface water drainage required for the approved development is in place, ....." The Chair however questioned whether such an agreement would be obtainable as Scottish Water appear to have had no recent involvement in this case.

The Chair then referred to Mr Stewart's comments relating to the requirement for a Building Warrant prior to completion of the project, which he said while possibly not covering legality, would ensure the drainage is to the required standard. He was therefore minded to put furtherance of the project in the hands of Building Standards, to ensure the development complies with regulations as far as drainage is concerned.

Mrs Manson moved approval of the application, with the following amended wording to Condition 2 (a), "No development of the proposed extension hereby permitted shall take place until satisfactory evidence is provided that an agreement is in place with Scottish Water or another service provider. In this instance, this may be in the form of an invoice to prove a contract is in place". Mr Sandison seconded.

In response to a question, Ms Manson clarified that her motion included Condition 2 (b) as set out in the decision notice as reported.

Regarding Condition 3, reference was made on the acknowledgement that the wall would not be built within the timescale stipulated within the condition, and that a variation would need to be made to the condition to set a more realistic timescale for the wall to be rebuilt. In response to a request for clarity from the Chair, the Executive Manager – Planning advised that the LRB meeting today was able to assess the whole development, and has the powers to refuse, approve or attach any condition considered necessary.

During the discussion, a suggestion was made to extend the current deadline of the end of February 2018 by a period of 6 months. A further suggestion was made that the 6 month timescale to rebuild the wall could start following issue of the Building Warrant. The Chair however advised on the uncertainty in terms of the timeframe which would be dependent on when the Building Warrant was applied for, and then a raft of other issues could arise during the process. In that regard, he said that while some leeway could be given, he advised on the need for a timescale to be set. The Executive Manager – Planning said that in terms of clarity, it would be helpful for a date for completion of the wall to be specified.

Mr T Smith moved that the timescale for the wall to be rebuilt is extended by a period of 6 months from the original deadline of the end of February 2018, to 31 August 2018. Mr Bell seconded.

#### **Decision:**

The Local Review Body agreed to uphold the appeal and **APPROVE** the planning permission for the development, with the conditions as listed in the report, and variations to Conditions 2 and 3 as set out below:

- Condition 2 "No development of the proposed extension hereby permitted shall take place until: a) satisfactory evidence is provided that an Agreement is in place with Scottish Water or another service provider. In this instance, this may be in the form of an invoice to prove a contract is in place; and b) written confirmation has been given by the Planning Authority in writing to the developer that the Agreement is satisfactory."

- Condition 3 “The replacement of the existing stone wall approved to be demolished on the eastern boundary of the site with a blockwork grey wet dash harled wall and a timber gate, as shown on approved drawings L(O)4 – Rev. A and A(GD)1, shall be completed by 31 August 2018. A sample panel of the external wall finish shall be prepared and made available to the Planning Authority for inspection. The works towards wet dash harling the remainder of the blockwork wall shall no commence until approval in writing to the sample panel has been given by the Planning Authority, with the blockwork wall thereafter being wet dash harled to the same colour and finish as the approved sample panel. Both sides of the blockwork wall shall be wet dash harled unless otherwise agreed in writing by the Planning Authority”.

The meeting concluded at 2.55pm.

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Chair