

Planning Committee
Council Chamber, Town Hall, Lerwick
Tuesday 10 April 2018 at 2pm

Present:

T Smith	E Macdonald
A Manson	D Sandison
C Smith	G Smith

Apologies:

M Bell	S Coutts
D Simpson	

In Attendance (Officers):

J Holden, Team Leader – Development Management
J Barclay-Smith, Planning Officer – Development Management
Y Goudie, Planning Officer
D Hunter, Planning Officer
C Summers, Planning Officer
P Sutherland, Solicitor
L Adamson, Committee Officer

Also in Attendance

A Cooper, SIC (Representing Delting Community Council)

Chair

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

Circular

The circular calling the meeting was held as read.

Declarations of Interest

None.

03/18 **Minutes**

The Committee confirmed the minutes of the meeting held on 18 January 2018 on the motion of Mr Sandison, seconded by Mr G Smith.

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 Planning Committee will be 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 will be given the opportunity to address the Hearing. The applicant/agent will then be given the opportunity to present their case, and all will

be restricted to a time limit of five minutes. Members can ask questions throughout the process, but preferably at the end of each presentation. When questions are completed, Members will debate the proceedings and make a decision. Cross examination will not be permitted unless the LRB consider it required to ensure thorough examination of the issues.

The Chair advised that the decision of the LRB is full and final. Should the appellant 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, and only Members who attend the Site Visit can make the final decision on the application.

04/18 **Local Review Ref: 2017/247/AMSC – LR31 - Application to discharge conditions 3a – 3d, as specified under approved Planning Permission in Principle 2016/280/PPP: Site 2, Strait, Mossbank, Shetland, ZE2 9RB.**

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

Mr C Smith moved that a site visit was not necessary to determine the application. Ms Macdonald seconded, and the LRB concurred.

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

- Elevations of the proposed dwellinghouse
- Aerial view location plan
- Location Plan
- Site Plan, indicating proposed location of bio plant treatment and discharge to roadside ditch
- Key Issues

The Planning Officer referred to the earlier application for planning permission in principle, granted in 2016, to erect two dwellinghouses on the site with connection to the sewer. He said that the application being considered today is the detailed application for approval of matters specified in conditions to erect a dwellinghouse with a septic tank, on the northernmost of the two sites.

The Planning Officer advised on the reason for refusal of the application, being the proposal is in a settlement with a sewer but there is no connection proposed in the public sewer, which is contrary to Shetland Local Development Plan (SLDP) 2014, Policy WD2 Waste Water. He said that while the application does provide details that meet with requirements of condition 3 parts a) - d) of the planning permission in principle (2016/280/PPP), the proposal to deal with foul drainage by a means other than a piped connection to the public sewer (which would require a separate planning application) departs from the ambit of the planning permission in principle granted, and the flow attention measure within the site to control both the flow of treated effluent and surface water from the site prior to discharge to the

watercourse as proposed is unacceptable under its terms. The details as submitted will result in development that does not comply with SLDP 2014 Policy WD2.

The Planning Officer then provided a summary of the terms of the appeal. The LRB noted that the points raised included that the planning requirements for foul water infrastructure do not match that of SEPA and Scottish Water, the house site was sold by the Council to the applicants without details of the distance to the public sewer, the cost of connecting to the public sewer is prohibitive and SUDS are not required but were asked for anyway.

In referring to Policy WD2 Waste Water in the SLDP 2014, the Planning Officer highlighted the following statements, *“New developments which require waste water disposal and are located within or adjacent to settlements are expected to connect to the public sewer. Where a connection to the public sewer is not achievable and a wastewater system such as a private septic tank is proposed the developer should demonstrate that there should be no detrimental effect, including cumulative effect, on the surrounding uses, natural, built environment and cultural heritage”*. He reported that in terms of the proposed development, Scottish Water confirmed that the developer would be responsible for connection to the sewer but did not state that a connection to the public sewer was not achievable. In their response, SEPA provided a Controlled Activity regulations (CAR) Licence for the proposed septic tank, confirmed the CAR License is an assessment of the specific type of septic tank proposed and is not wholly site specific, and encouraged the applicant to connect to the public sewer but had no formal process for a requirement. The Planning Officer reported that while there was no definition of a “sewered area” in the SLDP 2014, other than being “within or adjacent to a settlement”, the SLDP had however been adopted after consultation with Councillors, MSPs and Statutory Bodies including Scottish Water and SEPA, and no concerns had been raised with the policy on foul water drainage.

The Planning Officer advised that the developer’s reason for appeal relating to the sale of the site by the Council was not a material planning consideration, and it was the responsibility of the developer to ensure compliance with Policy.

Regarding the developer’s reason for appeal relating to the cost of connecting to the public sewer being prohibitive, the Planning Officer said that the agent had stated 100m sewer pipe was unviable due to the cost, and that a septic tank would be viable; it was however unclear from the submission which connection point had been referred to. He said that while personal finances are not a material consideration, the wider economic viability must be assessed. The Planning Officer referred to the Report of Handling, which highlighted a similar application nearby (2017/292/PPF) which was recently approved with a 168m connection to the public sewer. He advised also that the Report of Handling concludes that compliance with the Policy will not make development in the area economically unviable.

In referring to the final point made in the appeal letter, that no SUDS are required for individual houses, the Planning Officer highlighted that the SLDP 2014, Policy WD3 SUDS states that “all development proposals that will give rise to surface water run-off should incorporate SUDS...”

In concluding his presentation, the Planning Officer advised that exceptions to Policies must be handled carefully, and that wider implications of an exception to policy could set a precedent. The Planning Officer reported from discussions with the developer during assessment of the application that for the policy to be set

aside, the developer would need to make a case in material planning terms, for example it was in the wider public interest. The developer however cited cost of infrastructure for the individual dwelling, and therefore the application had been refused.

The Chair thanked the Planning Officer for his presentation, and welcomed questions from Members.

In referring to Policy WD2 Waste Water, in the SLDP 2014, Mr G Smith commented that he had noted with interest, the inclusion of the wording 'expected' rather than 'required'. In his response, the Planning Officer advised there will obviously be circumstances where it is not possible to connect to the public sewer, and there can be exceptions.

In noting there was no definition in the SLDP to the term "sewered area", Mr Sandison questioned whether determination was entirely discretionary or whether there were criteria that can be applied to the definition. The Planning Officer advised that in Shetland there are no settlement boundaries, with settlements being more dispersed, and that each application is considered on a case by case basis. He added that in this case, the application is within the settlement of the village.

During the discussion, clarity was sought on the disparity between Council and SEPA Policies in terms of foul drainage requirements. The Planning Officer explained that SEPA would have stronger policies, for example, on areas of pollution control, chemicals into the water stream, etc. The Council's Policy would however go further than SEPA in terms of a requirement for a connection to a public sewer, if that was achievable.

In response to a question regarding the requirement for a SUDS, the Planning Officer said that surface water SUDS were included as part of the proposed bio plant treatment, and would not be a reason for refusal in this case.

The Chair referred to the aerial view slide of the location plan as had been referred to during the presentation, and sought clarity on the nearest mains drainage connection to the application site. The Planning Officer advised the LRB on the two potential connection areas.

In referring to the comments in the Report of Handling, relating to the development being contrary to Policy WD2, clarity was sought on the comments that provision of the connection to the public sewer will not make development in the area uneconomically viable, where it was previously advised during the presentation that the cost of connecting to the public sewer was not a material planning consideration. The Planning Officer reported that there was a difference between individual costs and wider economic viability which is a material consideration.

During the discussion, Mr Sandison commented on the proposed cost of the sewer connection for this application being approximately £38K, and to his understanding there would be similar costs for parties interested in the other site when trying to encourage development in the area, which he said was at odds with the condition for sustainable development. The Planning Officer advised that the focus for sustainable development is to use existing infrastructure and to build in the centre of a developed area where there is available land for housing, and to build houses together and near to each other which can connect to the same sewer.

The Chair thanked the Planning Officer for the information provided.

The Chair invited Mr Cooper, Chair of Delting Community Council to address the meeting.

Mr Cooper confirmed that he was presenting as Chair of the Delting Community Council, and in no other role. Mr Cooper reported that Delting Community Council over many years have been trying to encourage private housing development at Mossbank, however there were difficulties as some areas had not been zoned for housing development. The last Local Development Plan however provides opportunities to build houses on Council land, and has encouraged young people to look to build in Mossbank, however sewerage is the constraint.

Mr Cooper advised from when the three applications for housing in Mossbank were considered by Delting Community Council, that concern had been raised around the issues with sewerage, as the existing sewerage scheme only connects to the Council houses and a few other houses in the area, with the houses all above the road having septic tanks. Mr Cooper advised however that in first considering this application, the Community Council failed to clarify its concerns on how connection would be made to the public sewer, rather in their response submitted the Community Council asked for "knowledge on how the sewage discharges will be handled". Mr Cooper said that for the avoidance of doubt he would illustrate from the Aerial View slide, to the LRB, the sewerage connections in the area, and he reported that the shortest distance between the application site and a sewerage connection (below the Council houses) was 137m, rather than 100m as had been indicated in the report.

Mr Cooper advised on a number of constraints for the applicant to connect to the public sewer, including the need to put in a pumping station to pump uphill. During his address, Mr Cooper made reference to the application referred to earlier (2017/292/PPF), which had recently been approved with a 168m connection to the public sewer, and advised that there is however some question on whether or not the required flow can be achieved.

In concluding, Mr Cooper said that the issues with this application highlights the inadequacies with the sewerage scheme in Mossbank, and he was aware that young people would want to build in Mossbank if the sewerage scheme can be sorted. Mr Cooper said that on behalf of the Community Council, he hoped that the LRB would support the proposal for a septic tank to be installed and to pipe down across the beach, rather than to consider asking the applicant to pay the considerable cost to link to the nearest public sewer at a distance of 137m from the application site.

In response to requests for clarity, Mr Cooper advised that the ground from the application site to the public sewer connection was very rocky. He added that while the Braehead connection would be the shorter distance, there would be issues due to the gradient of the land.

(Mr Cooper left the meeting).

The Chair invited the appellant to address the meeting.

Mr C Giblin, the applicant, provided the LRB with background to the application, advising that they had purchased the land from the Council in November 2016, and

had been aware from the planning permission there was connection to the public sewer. However, after investigating proposals to connect to the sewer it was found to be at a huge cost, and they had therefore proposed a bio treatment plant. He said that following discussion with Planning Officers in September 2017 they had anticipated approval of the application within the coming days.

In terms of Planning's requirement for a connection to the public sewer, Mr Giblin advised that the connection would be some 100m away, and was uphill, which would involve the need for two domestic pumps, and to cut the road, at a cost of approximately £40K. There would also be ongoing maintenance costs with the pumps, and there would be issues to maintain one pump that had be located outwith their plot of land. He advised also that the LDP does not seem to match Policies from Scottish Water, and seems open to interpretation.

(At the request of Mr Giblin, and with the agreement of the Chair, 2 Maps were circulated to the LRB; (1) included details of sewer connection points in Mossbank, and (2) the houses in Mossbank served by waste treatment (*Copies attached as Appendices 1a and 1b*).

Mr Giblin advised that their proposal to service the site by an EN12566 bio treatment plant, estimated to remove 98% of bacteria, has been approved by SEPA. The sewerage treatment plant would be contained within their land making monitoring and maintenance more accessible, and would be generally a more sensible option.

Mr Giblin said that they are building a family home and do not have the funds to connect to the public sewer. He reported that the Planning Service had suggested that they could club together with the owners of the adjacent site to split costs for the connection to the public sewer, he advised however that the other plot has not been sold and therefore there is no one to share costs. Mr Giblin said that they had been made aware during the appeal, that a separate planning application would be required if their application is approved today, and he sought further guidance in that regard.

During his address, Mr Giblin said that the whole process has put huge strain on the family, has had a negative impact on their health, they have lost their builder due to the delays and they have wished they had never bought the land. He said that they have the support of the community, and Mossbank is in need of regeneration. Mr Giblin added that they also had the support of T Scott, MSP, however they had been advised by the Planning Service that representation had been received outwith the consultation period. He added that there are another three families who want to start building in Mossbank, and are awaiting the outcome of this appeal.

In concluding, Mr Giblin referred to the application (2017/292/PPF) which includes the 168m connection to the public sewer, and he believed the applicants are rescinding as there are issues in getting the required flow at this time.

In response to a comment from the Solicitor, Mr Giblin provided the Planning Officer (D Hunter) with a copy of the two maps, which had been previously circulated to the LRB. In response to a question from the Chair, the Planning Officer said that while he had no comments to make regarding the maps, it would have been helpful to have had earlier sight of the maps during the assessment

process. The Chair added that it would also have been beneficial to the LRB for the information in the maps to have been included within the report.

The Chair welcomed questions from the LRB to the appellant.

In response to a question, Mr Giblin advised that when they bought the site they were aware they had to look to connect to the public sewer, but there was no information on the location of the connection.

During debate, Mr G Smith commented on the reluctance to set precedents, however he said there was an opportunity here to consider the wording of Policy WD2, in terms of the use of the word 'expected' rather than 'required', which he said allows for consideration of exceptions in certain circumstances. He reported that the information in the maps provided highlighted the practical difficulties to connect to the public sewer in Mossbank, and the case to be made for an exception rather than a requirement to connect to the public sewer. In that regard Mr G Smith said he was minded to support the appeal.

Mr C Smith said that this Council, and previous Councils, have always encouraged people to build in rural areas of Shetland, and he advised on the need to continue to encourage people to do their best for what they can afford. In referring to the issue whereby Council and SEPA Policies do not correlate, he said that this needed to be addressed. Mr C Smith moved that the LRB support the appeal, and to waive the cost for the second planning application that the applicant had presented might be required. Mr G Smith seconded.

During the discussion, Members spoke in support of the motion, where the need to have aspirational policies was acknowledged to make sure good planning can be achieved, however there was also a need to look for exceptions to policies when there are acceptable alternatives. Comment was also made that a rigid conclusion had been reached by the Planning Service, when there was no actual definition locally of a "public sewered area".

In response to comments from the Chair in terms of the conditions that would be applied to approval of the application, the Planning Officer – Development Management reminded the LRB on a number of road conditions, relating to the access and parking, that had been set out by the Roads Authority, as outlined in the Report of Handling. During a brief discussion, while it was noted that the roads conditions had not been raised previously during the presentations, the LRB acknowledged the requirement for the applicant to adhere to all the conditions should permission be granted. It was suggested and agreed that reference should be made to the detail in the updated site plan on page 91 of the report, to speed up the planning application process.

Reference was then made to the earlier comments in terms of other families looking to build in Mossbank, where the LRB agreed that each application should be considered on its own merits.

Decision:

The Local Review Body agreed to uphold the appeal and **APPROVE** the application to discharge conditions 3 a – d as specified under approved Planning Permission in Principle 2016/280/PPP, with the conditions requiring adherence to the approved plans, including the site Plan in relation to access and parking.

The meeting concluded at 2.55pm.

.....
Chair