

Planning Committee

Auditorium, Shetland Museum and Archives, Hay's Dock, Lerwick

Thursday 16 February 2017 at 2pm

Present:

F Robertson	M Bell
P Campbell	B Fox
A Manson	D Sandison

Apologies:

S Coutts	D Ratter
G Robinson	

In Attendance (Officers):

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

Also in Attendance:

G Smith, SIC

Chair

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

Circular

The circular calling the meeting was held as read.

Declarations of Interest

None

01/17 Minutes

The Committee confirmed the minutes of the meeting held on 1 November 2016 on the motion of Mr Campbell, seconded by Mr Sandison.

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:

02/17 Local Review Ref: 2016/204/PPF – LR25 – Set down of 3 x 20' Steel Shipping Containers for 3 year period and change of use of land to carry out fish processing and drying operations: Vestinore, Cunningsburgh, Shetland, ZE2 9HF

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

The Chair advised that the Planning Committee are sitting today as a Local Review Body (LRB). He explained that following the modernisation of the Planning Act 2006, the right for appeal to Scottish Ministers was removed and local arrangements were put in place. In 2011, the Council delegated powers to the Planning Committee to act as the Local Review Body.

The Chair explained that the process takes the form of a Hearing, where the officer dealing with the case will make a presentation in respect of the application. That is followed by representation from the objector/agent who has previously notified of their intention to appear at the Hearing. The applicant/appellant/agent would then be given an opportunity to address the meeting. The time afforded to the objector/appellant to address the Hearing would be 5 minutes. He advised that, throughout the process, Members have the opportunity to raise questions of detail with the Planning Officer/objector/appellant, to get a clear understanding of the merits of the case. Cross-examination is not permitted, so having made the presentations, and answered questions put by Members, that is the only additional remarks the objector/appellant can make. The Chair reported that the decision is made on the papers presented to the LRB; the LRB does not accept any papers to be tabled at this meeting. The Chair said that the LRB comes to a determination based on planning merits, and on consideration of local approved policies in the Local Development Plan (LDP) and on that basis the LRB considers the case afresh. He concluded by advising that the findings of the LRB is full and final, with the only recourse for an aggrieved appellant would be to take the matter up with the local Sheriff Court on matters of handling.

The Chair invited the Planning Officer who carried out the original handling of the planning application to make a brief presentation to the LRB.

The Planning Officer (D Hunter) gave a slide presentation, which illustrated the following:

- Site and location plan
- Elevations and visualisation of the 3 containers
- Photographs of the neighbouring croft house

During his presentation, the Planning Officer advised that the site is in the scattered southern residential fringes of Cunningburgh. The proposal consists of three shipping containers located 2 metres from a vacant croft house.

The Planning Officer said that in order to determine whether the principle of the development is acceptable Policies ED1 and ED2 must be considered. The assessment was helped by the draft Supplementary Guidance Business and Industry (SGBI) where developments should first be directed towards existing industrial areas, then to areas where development will not have unacceptable impacts on existing neighbouring uses. He reported that the submission did not contain any justification for why an industrial location could not be used. Next the development should be directed to sites where they will not have unacceptable impacts on existing neighbouring uses. In this case, the site is immediately adjacent to a vacant croft house, and no indication of the types of impacts on the neighbouring uses were submitted as part of the application, e.g. noise, smells, smoke, grit etc.

The Planning Officer explained that it must be considered whether the croft house is abandoned, as if it is not abandoned it would receive the same level of protection as any other dwellinghouse. He said that to assess whether the croft house is abandoned you must look at case law. The Planning Officer referred to the case of *Trustees of the Castell-y-Mynach v Secretary of State for Wales (1985)* that gives four factors in determining whether a use has been abandoned:

1. Physical condition of the building
 - Building appears wind and watertight
2. The period of non-use
 - Unclear but roof appears to be about 1980s, vacant for approximately 15 years
3. Whether there had been any other intervening use
 - Appears to be no other intervening use, none consented
4. Evidence regarding the owners intentions
 - According to Scottish Assessors Association, Council Tax has still been paid for house

The Planning Officer said that, consequently the dwelling was not considered abandoned and assessment of the impacts of the residential amenity of the dwelling were carried out, and therefore no information was presented on noise, waste, smells, vehicle movements, removal of amenity space, privacy impacts, parking requirement for the house, compatibility with residential character, or safe and pleasant residential environment.

The Planning Officer advised on other issues that needed resolved, being:

- Acoustic screening barriers
- Handling of waste on site to minimise impacts
- Minimal vehicle movements
- Screens around the dwelling
- Reinstatement of parking for dwellinghouse

The Key Issues slide, which formed part of the presentation, is set out below:

- Shetland Local Development Plan (2014)
- Acceptability of industrial locations
- Abandonment
- Impacts in terms of noise, fumes and hours of working
- Other concerns

The Planning Officer concluded by advising on the reasons for refusal, being the impacts on the neighbouring croft house and other concerns that were not addressed in the application submission. He said that the proposed development will have an unacceptable impact on the existing neighbouring uses at Vestinore, Cunningsburgh. The proposed location is not appropriate for industrial use. Insufficient details have been provided to satisfy the requirements for: appropriate parking for the proposed development and the existing residential use at Vestinore together; surface water drainage, and waste management, and as submitted the proposal will detrimentally impact on the residential enjoyment of the existing dwellinghouse. The proposed development is therefore contrary to Shetland Local

Development Plan 2014 Policies GP1, GP2, GP3, ED1, ED2, TRANS3, WD3 and W5.

The Chair thanked the Planning Officer for the information provided.

In referring to information in the presentation, Mr Fox sought clarity on who is paying the Council Tax for the croft house. The Planning Officer said he was uncertain who was actually paying the Council Tax, but that the information was from the Scottish Assessors website. Mr Fox referred to the proposed change of use from residential, to industrial, to carry out fish processing, and enquired whether the land would need to be de-crofted. The Planning Officer said that he was uncertain on that requirement, but it would be a matter for crofting legislation/the Crofters Commission. He said however, that in planning terms it is seen simply as a house – Class 9 Residential Use. Mr Fox commented that there would be no relevance if the croft house pertained to the croft.

Mr Bell referred to the initial responses from Environmental Health and SEPA, included in the pack, where it was indicated they had no issues with the proposal. He noted that the Planning Service had then gone back to question their responses, and he enquired whether this would be normal practice. The Planning Officer advised, in instances when it is considered there is a degree of inconsistency, or need for clarification or concerns, the Planning Service would revert back to consultees.

In referring to Policy ED2 “Commercial and Business Developments” being one of the Policies that the development fails to comply with, Mr Sandison advised on the aim of the Policy to encourage development where it is compatible and does not conflict with residential amenity. He said however that that the issue is that the proposal is being based on the croft house being a residential property. The Planning Officer advised that where a proposed development, for industrial use, is being proposed in a residential area, there is a need to seek to protect the residential amenity. He advised that there were situations where these could be compatible, for example, Class 4 Business and Industry developments, for offices.

Mr Sandison questioned whether any different view would be taken of the proposed development, should it be for permanent approval, rather than temporary planning permission. The Planning Officer said that temporary permissions would tend to have less long-term impacts, however in planning terms it is important to seek to protect any impact on a dwellinghouse. Mr Fox sought clarity on whether the opinion of the Planning Service was based on the adjacent croft house or on the private dwellinghouse in terms of amenity. The Planning Officer advised on the need to protect the dwellinghouse as well as the croft house in terms of impact from noise, traffic etc. from the proposed development. He said that there is uncertainty on the levels of noise and smells, and these could be conditioned if it is determined there is an impact on the dwellinghouse. Ms Manson enquired whether the occupier of the neighbouring dwellinghouse had objected to the application. It was confirmed that no objections had been received from the occupier of the dwellinghouse or the owner of the croft house. The Planning Officer added that there is a need to protect any dwellinghouse.

Mr Campbell sought clarity in terms of the changes since the initial submission, as he had noted that welfare/toilet facilities had first been proposed within one of the containers. The Planning Officer advised on his understanding that the croft house was now to be used for welfare/toilet facilities. In response to a question as to

whether that use would constitute the croft house as being habitable, the Planning Officer questioned whether it would change any key aspects of the proposal, however he said that it could give an indication of the physical condition of the croft house, and whether the property is abandoned or not.

Ms Manson enquired whether there was any difference, or distinction, in Planning Law between an abandoned property, and a property not in use. The Planning Officer advised that to determine whether a croft house is abandoned, the case law test would have to be undertaken.

Mr Sandison made reference to the consultation response from the Council's Roads Service in terms of the required width of the access road, which he noted the information had not been passed on to the applicant. The Planning Officer advised that it is a decision for the Case Officer whether to approach the applicant for amendments to be made, or to make a determination on the information received.

The Chair invited the appellant to address the meeting at this point. The Chair reminded the appellant that the LRB would be considering purely material planning matters and on Planning Policy as approved by the Council.

Mr D Polson advised that he was the owner/Director of Thule Ventures Ltd. Mr Polson advised that drying fish had started as a hobby in their kitchen, and has now become a small cottage industry. They are now looking to see if drying cod could become a commercial venture. Mr Polson said that they looked at various options but decided to use containers where the process could be carried out in one facility. They had also looked at various sites, and through a friend of the crofter it was suggested they look at Vestinore as a possible site. Mr Polson said that he did not believe the crofter was thinking to put anyone into the croft house, or to sell it or to renovate the property, and that no money has been spent on the property since it was abandoned in 2002. In referring to the officer's presentation, where it was advised that the property was on the Council Tax list, Mr Polson said that he expected that the listing relates to the dwelling house next door.

Mr Polson advised on their proposal to put the containers down for 3 years, he said however that it is envisaged that in the first 12-18 months they will know whether the business is viable. If it is viable, they would need to move to bigger premises, which would be built somewhere else.

Mr Polson advised that they have applied for grant funding for the project of £72K, and have been approved for £36K from the European Maritime and Fisheries Fund. If they do not get planning permission they will have to turn down the grant.

Mr Polson advised that the decision to have the containers located only 2 metres from the croft house was so that, as far as possible, they would not be seen from the main road.

Mr Polson referred again to the temporary permission for 3 years, which would allow time to realise if the project works or not, but he said also that the 3 containers could be moved at any time should the owner of the croft house decide they need to be moved.

Mr Polson advised that the croft house is in a poor condition. An extension to the property had been built during the 1980s, which they will be using for welfare facilities for their venture. He said that the older part of the croft house is in a very

poor condition, it is riddled with woodworm, the electricity is useless, and the v-lining is coming down. He advised that to renovate the building would take time; for Planning and Building Control approval then for the building works could all take a 3 year timeframe, when his temporary permission would cease. Mr Polson said that he did not see that the proximity of the croft house being a problem, and even if it is determined that the property is not 'abandoned', it would not be an issue as the containers can be moved.

Mr Polson concluded by advising that the landowner/crofter is happy, and the only neighbour is fully supportive of the proposals.

The Chair thanked Mr Polson for the information provided.

Mr Sandison enquired whether Mr Polson considered he had been fully informed on the process during the pre-application discussions with the Planning Service, and whether he had been made aware of the changes to be made during the process. Mr Polson advised that he had been informed enough to seek permission at that time, where his initial proposal was for two containers. Following discussion with Environmental Health, the application then evolved, and the plans were altered to 3 containers in a horse-shoe shape. Mr Polson said that where the application had not met the standards, he had not envisaged so many things would have to be put right during the application stage.

Mr Bell referred to the comments from the Planning Service that no justification had been provided to locate the containers on this particular site, and he enquired of Mr Polson for any additional reasons why he chose the site at Vestinore. Mr Polson advised that he had made a few enquiries for sites in Cunningsburgh, but as far as he was aware there were no sites available in the industrial area, and he had then looked to find an alternative site locally. Mr Polson said that there was a suitable site at Vestinore, and it was available. Also, the project would be a part-time project, and he did not want to travel far from his home. Mr Polson said that he had been attracted to Vestinore as there was nobody there, and although there would not be much noise from the project he would not want to locate the project in somebody's back yard. Mr Polson said he had tried to find a site that had services, and the Vestinore site does not need more landscaping before the containers were set out, so it seemed like a good site. There was also road access to the site, the landowner was happy and it was away from everybody – he added that the site seemed to tick all the boxes.

Mr Bell enquired whether Mr Polson had considered any industrial sites elsewhere in Shetland. Mr Polson advised that he had looked briefly for a site at Broonietaing, Sandwick, but no sites were available at that time. Mr Polson added that he did not want to look at a site much further outside Cunningsburgh.

Mr Bell referred to page 124 of the papers, where he noted an area which had required clarification by the applicant was on how waste arising from the operation of the site would be handled. Mr Polson said that, from discussions with Environmental Health, it has been agreed that a waste bin will be used, where packaging waste can go to landfill, and salt will be disposed to the dump in Lerwick. In response to a question, Mr Polson confirmed that there would be no fish waste, as the fish will come packaged from the supplier, fully filleted and skinned.

In response to questions from the Chair, Mr Polson confirmed that this would be a pilot project to ascertain the success of the venture. He said that by 12-18 months,

or earlier, it will be known if the venture is going to work. Following that initial stage, it is envisaged that plans will be worked on to develop a proper facility somewhere, yet to be decided. He stated that the proposed development at Vestinore will either be a stepping stone, or a dead end. Mr Polson advised, that as far as he was aware, there was no other business in Britain at this time marketing dried salted fish, and he confirmed they would move to a more permanent location if the venture is found to be successful.

The Chair referred to the earlier question from Mr Fox, regarding the proposed change of use from residential, to industrial, and whether the land would need to be de-crofted. He advised that planning consent would be required first, and the land would only have to be de-crofted if the development become a permanent installation, and therefore the land is still technically croftland.

Mr Sandison referred to the list at the bottom of Page 140, being areas which had been raised as issues by the Planning Service during consideration of the application, but had not been advised to Mr Polson, but had been taken into account as grounds for refusal. In response to a question, Mr Polson said that it had not occurred to him that these were areas where information would have to be provided during the planning process, due to the status of the crofthouse.

During debate, Mr Sandison advised that there were a few areas which have heavily influenced how this application proceeded. In that regard, he advised on the consideration being given to the existing crofthouse, as to whether it is habitable or abandoned, as the determination of whether it is a residential property dictates all aspects of the Policies. Mr Fox reminded the LRB that the decision today is final and there is no option for deferral of a decision. He advised on his dilemma in terms of the application, as while it is important to look at these types of developments and new ventures, and he had a great deal of sympathy for the applicant, he also had a great deal of appreciation to the recommendation of the Planning Officer. He went on to advise that officers have to accord to the Policies in the LDP and on that basis he would find it difficult not to support the recommendation.

Mr Bell advised on his concerns in terms of the temporary permission, and whether if the business was successful the applicant would want to develop the site further, and on the process of waste, which he acknowledged was not an issue for this meeting. However, Mr Bell said that it was equally important to encourage development and innovation. He said while he had listened to the evidence, he was still struggling to come to a conclusion.

Mr Campbell said that while there is Policy to support on the one hand, there is also a desire to promote developments. He commented that the applicant has to be applauded on securing 50% of funding from Europe for the venture, which has to be balanced by a judgement with the Policies officers have to work to and a deviation from Policy that may exist to get an appropriate decision.

Mr Fox said that regretfully, the choice of site is not appropriate in this case, and the LRB is duty bound to support the recommendation of the Planning Officers, in accordance with the Policies in the LDP. Mr Fox moved that the LRB support the Officers recommendation, to refuse the application. Mr Bell seconded.

Mr Sandison said that while there is a need to support the specific policies created for planning in Shetland, there is also a need to be proportionate. He said in this

case the application is for temporary permission to prove if the venture would be viable or not; the development would not conflict with the existing settlement as the croft house is not in use, other than for a store, and even if it became habitable it could become so if somebody wanted that in the future. He said that the proposed development was not incompatible in terms of landscape, planning, waste or drainage, and there is access and services at the site. Mr Sandison said that the applicant has demonstrated the ability to respond positively to requirements if these have been required, and the applicant is in the position to meet requirements of planning in all areas. Mr Sandison moved as an amendment, to support the application and to grant permission for a period of 3 years, subject to the appropriate conditions. In seconding, Ms Manson said that there is a difference between an unused property and an abandoned property. She said in this case the property is unused by choice of the landowner, and the applicant has the permission of the landowner to have the containers on the land for 3 years.

The Executive Manager – Planning reminded the LRB, that should the decision be to approve the application, the LRB may wish to consider any planning conditions as part of approval, or any aspects which need further control.

Following summing up, voting took place by a show of hands and the result was as follows:

Amendment (Mr Sandison)	2
Motion (Mr Fox)	3

Decision:

The Local Review Body agreed to uphold the decision made to **REFUSE** planning permission for the development.

The meeting concluded at 3.05pm.

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Chair