



Report to the Scottish Ministers

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

Report by [REDACTED], a reporter appointed by the Scottish Ministers

- Case reference: NA-ORK-028
- Site Address: [REDACTED], Orkney, KW17 2BN
- Application by [REDACTED]
- Application for planning permission, planning authority reference 18/404/PP, dated 28 September 2018, called-in by notice dated 23 May 2019
- The development proposed: conversion of redundant agricultural building to house
- Date of unaccompanied site visit by Reporter: 14 August 2019

Date of this report and recommendation: 20 August 2019



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Conversion of a redundant agricultural building to a house

• Case reference	NA-ORK-028
• Case type	Called- in planning application
• Reporter	██████████
• Applicant	██████████
• Planning authority	Orkney Islands Council
• Other parties	Scottish Environment Protection Agency
• Date of application	28 September 2018
• Date case received by DPEA	28 May 2019
• Method of consideration and date	Written submissions and unaccompanied site inspection on 14 August 2019
• Date of report	20 August 2019
• Reporter’s recommendation	Refuse planning permission

Background

The application site is located on the northern shore of Sanday in Orkney and to the north of a minor road linking the B9068 to the west and B9069 to the east. It comprises disused agricultural buildings associated with Quivals farmhouse. The house and attached buildings are category B listed. The building to be converted is single storey, constructed in coursed rubble and roofed with Orkney slate.

The proposed house would have 3 bedrooms, a lounge and a kitchen diner. Existing openings would be used for windows and doors. Traditional materials would be used on the building.

Objections were made by Orkney Islands Council Engineering Services Flood Officer and SEPA as the application site is located in an area considered to be at medium to high risk from coastal flooding.

The application was refused by a council planning officer on the grounds of flood risk. On appeal to the council’s Local Review Body, the refusal was overturned and the council advised that it was minded to grant planning permission. The council considers the development is acceptable and accords with the strategy and policies of the local development plan, specifically the Isles Approach. It would also bring this category B listed building back into use and secure its long term future. Bearing in mind the applicant has indicated no history of flooding at the site, the council does not consider the site would have a significant possibility of being affected by flooding. The conversion of the building takes precedence over the objections made by SEPA and the council’s Engineering Services.

The applicant's case

The house and steading have been in existence for around 200 years with no reported flooding. This is a sheltered bay not given to storms or extreme tidal action. SEPA specifies an unusually high flood risk level of 4.09 metres AOD and concedes flood risk levels on Sanday are sometimes overestimated. There is no history of significant flooding to properties within the island. Many of the houses on Sanday have a floor level below the SEPA specified level. The steading building has historical importance and the applicant would work sympathetically with the building to bring it back to life. The applicant has signed up for the SEPA Flood Alert programme.

SEPA's case

The site lies within the medium likelihood flood extent of the SEPA Flood Map (0.5% annual probability or in in 200 year). The 1 in 200 year flood level is 3.49 metres above Ordnance Datum (AOD). Where SEPA holds levels of previous flooding in Sanday, they have supported the validity of the estimates. The 1 in 200 year level is an estimate of the level of flooding that has a 0.5% chance of occurring in any one year. Such a flood may not occur in a person's lifetime but there remains a 0.5% chance in any year.

Land at the site is at 3.2 metres AOD which indicates the site is at risk of coastal flooding. Finished floor levels in the house would be 3.5 metres AOD and the access would slope up to the road from 3.35 metres to 3.7 metres. The 3.49 metres flood level is a still water level. It does not account for climate change, wave action, funnelling or local bathymetry. Consequently, a freeboard allowance of 0.6 metres must be added to the 3.49 level bringing the development design level to 4.09 metres AOD. Dry access and egress would also not be possible in the event of a flood.

Flood warning is provided to reduce the impact of flooding to areas already at risk. It should not be relied on to justify an increase in the number of people living in properties at risk. Avoidance of risk is the best way of managing risk. An agricultural building is a less vulnerable use whereas the proposed use would be highly vulnerable because people would be living and sleeping in the property.

Reporter's conclusions

The proposed development would conflict with local development plan Policy 1(iv), as it would result in an unacceptable risk to public health and safety.

It does not draw support from the Isles Approach (local development plan Policy 5 C), as it conflicts with local development plan Policies 1 and 13 because of the risk from flooding.

The proposed works would comply with Policy 8, as it would preserve the architectural significance of this listed building and would enable it to remain in active use; and with Policy 2, as it would reinforce the distinctive identity of Orkney's built environment and would be sympathetic to the character of its local area.

The proposed works would preserve the listed building, its setting or any features of architectural interest (section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997).

There is conflict with local development plan Policy 13 (ii), as the applicant has not proposed any measures to protect against or manage flood risk at the proposed house.

As advised in Scottish Planning Policy, granting planning permission would be contrary to the precautionary approach and it would not lead to flood avoidance. Furthermore, an area of medium to high risk is generally not suitable for additional development in undeveloped or sparsely populated areas.

Although conversion of this category B listed building is an important consideration in favour of the proposed development, I do not consider that this is sufficient to outweigh the very real possibility that the property could flood in the future, bearing in mind the very serious consequences were such flooding to occur when the building was in use as a house.

Recommendation

I recommend that planning permission be refused.

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DPEA case reference: NA-ORK-028

The Scottish Ministers
Edinburgh

Ministers

On 14 August 2019 I conducted an unaccompanied site inspection in connection with a planning application for the conversion of a redundant agricultural building to a house at Quivals, Otterswick Road, Sanday, Orkney.

The planning application was referred to Scottish Ministers as Orkney Islands Council, the planning authority, is minded to grant planning permission against the advice of the Scottish Environment Protection Agency.

Having considered the proposal, the Scottish Ministers decided, in terms of Section 46 of the Town and Country Planning (Scotland) Act 1997, to require the application to be referred to them for determination. Accordingly, a Direction was sent to the council on 23 May 2019.

The Scottish Ministers gave this Direction in view of the proposed development's potential conflict with national policy on flooding and the inadequate justification provided for departing from this policy.

My report takes account of the information submitted by the applicant in the original planning application to the council and in the application for local review; the consultation responses received by the council during the processing of the planning application, including the extensive consultation responses submitted by the Scottish Environment Protection Agency (SEPA); the report of handling prepared by council planning officers; the reasons for the council's decision on local review that planning permission should be granted; and observations I made when I saw the site during my unaccompanied site inspection on 14 August 2019.

Chapter 1 of my report contains background information, Chapter 2 summarises the position of the applicant and SEPA and Chapter 3 comprises my conclusions and the recommendation. The Appendix contains a list of conditions which should be attached to a planning permission should Ministers decide not to accept my recommendation that planning permission should be refused.

CHAPTER 1 BACKGROUND

The application site

1.1 The application site is located on the shore of Lamaness Firth, which leads northwards to Otters Wick, a wide bay on the northern shore of Sanday, one of the Northern Isles in Orkney. It comprises disused agricultural buildings associated with Quivals, a farmhouse. The buildings are located on the north side of a minor road (Otterswick Road) which links the B 9068 road to the west and the B 9069 road to the east. The house at Quivals is positioned at a higher level than the associated disused agricultural buildings.

1.2 Quivals comprises a former schoolhouse which dates possibly to the 18th century, with later alterations and additions. The proposals relate to the byre range to the east of the farmhouse. The buildings comprising the range are single-storey and L-plan and are constructed in coursed rubble, with equal arms and Orkney slate roofs. The whole of the Quivals complex is a category B listed building. There is a driveway access serving Quivals and immediately adjacent to it there is another access leading to the former agricultural buildings.

The proposed development

1.3 The range would be converted to a house with three bedrooms, two en-suite shower rooms, a separate bathroom, a kitchen/dining room and a lounge. The bedrooms would be situated in the southern arm of the byre and the kitchen/diner and lounge would occupy the northern arm.

1.4 The existing window openings on the eastern and southern elevations of the building would be utilised to light the new rooms. A glazed atrium rooflight would be installed on the north and south elevations of the northern arm of the building to light the kitchen and three further rooflights would be installed on the western face of the roof on the southern arm to replace existing rooflights. A lean to shed on the south east corner of the northern arm would be demolished and the stone used to repair the main building. A timber clad porch would be constructed over the entrance door on the south elevation of the northern arm of the building. The courtyard to the east and south of the building would be cleared of concrete walls. Vehicular access would be taken from the minor road to the south west. Foul drainage from the proposed house would be treated in a bio-disc small treatment works located to the north of the building.

Consultations received by the council

1.5 Orkney Islands Council Engineering Services objected to the proposed development in October 2018 for the following reasons:

- the location of the proposed development is considered to be at high risk of
- coastal flooding;
- no information has been provided on proposed finished floor levels; and
- no information has been provided to demonstrate that emergency access and egress in the event of flooding would be possible.

1.6 Following the submission of the Flood Risk Statement by the applicant, Engineering Services advised on 12 December 2018 that the department continues to object due to the risk to the building and occupants during predicted coastal events. The department notes that:

- according to available estimates of the 200 year coastal flood level, a building at the location of the proposed development with a finished floor level of 3.5 metres Above Ordnance Datum would be at risk of internal flooding;
- with reference to storms and exposure in Otters Wick and Lamaness Firth, at times of extreme high tides when the wind is in an unfavourable direction for the site, the site is no less exposed than the road and seawall south of Klondyke (less than 3 kilometres to the east) were when they were washed away in January 2005; and
- information demonstrating that emergency access and egress could be made during periods of predicted flooding events has not been provided.

1.7 Orkney Islands Council Roads Services advises that no new access would be permitted to Otterswick Road and that the existing access should be constructed to the council standard suitable for 2-4 houses.

1.8 Scottish Environment Protection Agency (SEPA) supplied 3 consultation responses at different times during the processing of the application by the council. The detail of these responses can be found at Chapter 2 of this report. In summary, SEPA objects to the proposed development as the proposed house would be at risk of coastal flooding.

1.9 Scottish Water was unable to confirm capacity at Sanday Water Treatment Works and suggested that the applicant completes a pre-development enquiry form. In relation to drainage, there is no waste water infrastructure within the vicinity of the site so private treatment options should be investigated.

Consideration by Orkney Islands Council

1.10 As the application is categorised as a local development, the initial decision to refuse planning permission was made by an officer of the council. This decision is dated 14 December 2018 and was made for the following reason:

“The development is located in an area at risk of coastal flooding. A Flood Risk Assessment (FRA) has been supplied at the request of the Scottish Environment Protection Agency (SEPA), but SEPA has confirmed the FRA does not demonstrate that the development would be free from the risk of flooding. SEPA and Engineering Services have objected to the application for this reason. Policy 13 of the Orkney Local Development Plan 2017 ‘seeks to avoid situations where development would have a significant probability of flooding’ and Policy 1 does not support development that would result in an unacceptable level of risk to public health and safety. Scottish Planning Policy states in paragraph 256, that ‘the planning system should prevent development which would have a significant probability of being affected by flooding’.”

1.11 On 11 January 2019, the applicant made an application for Local Review of this decision. The statement accompanying this application is summarised in Chapter 2 of this

report. Following a visit to the site, the Local Review Body notified Scottish Ministers of its intention to approve the application for planning permission on 21 March 2019.

1.12 The Local Review Body's reasons for granting planning permission were as follows:

- the principle of the development is acceptable and accords with the “isles approach” to support development within the islands which supports permanent resident populations and is served by public transport services;
- conversion of a redundant building forming part of ancillary buildings associated with the farmhouse at Quivals and designated as a Category B listed building would bring it back into use and secure its long term future;
- the detailing of the external changes to the building were sympathetic to the existing building and the character of the local area and would preserve and enhance the building and its setting;
- the proposed conversion of an established building would not cause any unacceptable adverse impacts on the amenity of the adjacent property;
- there would not be any unacceptable burden on existing infrastructure and services created by the proposed development;
- the proposed development supports the presumption in favour of new housing on the non-linked isles;
- acknowledging that the application site was located within the medium likelihood (1 in 200 year) flood extent of the SEPA Flood Map, and noting that the applicant's Flood Risk Statement indicated no history of flooding at the site, and the proposed finished floor level at 3.5 metres Above Ordnance Datum (AOD) was slightly higher than the 1 in 200 year flood level of 3.49 metres AOD, it was not considered that the development would have a significant probability of being affected by flooding;
- conversion of a redundant building into a residential use took precedence over and outweighed the objections raised by the Scottish Environment Protection Agency and the Council's Engineering Service; and
- accordingly, the proposed development would comply with the following:
 - Orkney Local Development Plan 2017:
 - Policy 1 – Criteria for All Development, parts (i), (ii), (iii), (iv), (v), (vi), (ix) and (x).
 - Policy 2 – Design, parts (i) and (ii).
 - Policy 5 – Housing, sections C – The Isles Approach for Housing - and E – Single Houses and New Housing Clusters in the Countryside, part (ii).
 - Policy 8 – Historic Environment and Cultural Heritage, section A – All Development.
 - Policy 13 – Flood Risk, SuDS and Waste Water Drainage, section A – Flood Risk, part (ii).
 - Supplementary Guidance: Housing in the Countryside, paragraph 3.06.

Associated application for listed building consent

1.13 The applicant made an associated application for listed building consent for the proposed conversion works, for which consent was granted by the council on 14 December 2018.

1.14 Historic Environment Scotland does not object to the proposed conversion and advised the utilisation of conservation rooflights, which would be kept within the plane of the roof, to minimise their impact.

Development plan policy and guidance

1.15 The following policies of the Orkney Local Development Plan 2017 are relevant to this application:

The Spatial Strategy - The Plan seeks to support the growth of Orkney's communities in a sustainable manner, ensuring that development is directed in the first instance to places with sufficient infrastructure and facilities to support sustainable social and economic development; the towns, villages and rural settlements of the Plan. Within the Spatial Strategy, the Isles Approach is defined as follows:

Development within the islands, which support permanent resident populations and are served by public transport services, will be supported where it accords with relevant Plan policies and where it shall not place any unacceptable burden on existing infrastructure and services. The Plan identifies Sanday as one of the islands where the Isles Approach applies.

Policy 1 - Criteria for All Development supports development subject to a number of criteria including:

- siting and design taking into account townscape, landscape and coastal character;
- appropriate density;
- no prejudice to development in the wider area;
- no unacceptable impact on neighbours' amenity;
- no unacceptable infrastructure burden; no unacceptable risk to public health and safety;
- resource efficiency;
- waste prevention, reuse, recycling, energy recovery and disposal;
- protection of natural heritage; and
- protection of cultural heritage.

Policy 2- Design – proposals must demonstrate compliance with the following principles:

- reinforcement of Orkney's distinctive identity and sympathetic to local character;
- positive or neutral effect on appearance and amenity;
- appropriate connection to pedestrian, vehicular and public transport routes, prioritising pedestrian access;
- allows for future conversion, extension or adaptation to other uses;
- promotion of sustainable design, minimising use of energy and materials; and
- minimisation of light pollution.

Policy 5 – Housing – the relevant clause in the policy states:

C – The Isles Approach for housing – presumption in favour of new housing on the non-linked isles where it accords with 'The Isles Approach' set out within the Spatial Strategy.

Policy 8 - Historic Environment & Cultural Heritage – relevant clauses are as follows:

- Development which preserves or enhances the archaeological, architectural, artistic, commemorative or historic significance of cultural heritage assets, including their settings, will be supported; and
- In relation to listed buildings, change to a listed building must be managed to protect its special interest while enabling it to remain in/return to active use.

Policy 13 - Flood Risk, SUDs and Waste Water Drainage – in relation to flood risk, the policy requires a flood risk assessment where proposals are in areas identified as being of medium to high risk of flooding. Where built development in the medium to high risk category is permitted, measures to protect against, or manage flood risk will be required. The preamble to the policy explains that the Plan seeks to avoid situations where development would have a significant probability of being affected by flooding or which would increase the probability of flooding elsewhere. It also states that the flood risk framework set out within Scottish Planning Policy will be used in conjunction with the policy during the assessment process to ensure that only appropriate development takes place.

1.16 The council's Housing in the Countryside and Historic Environment and Cultural Heritage Supplementary Guidance is also relevant.

National planning policy

1.17 Scottish Planning Policy 2014 contains a section on Managing Flood Risk and Drainage. The policy principles include:

- a precautionary approach to flood risk from all sources, including coastal, taking account of the predicted effects of climate change;
- flood avoidance: by safeguarding flood storage and conveying capacity, and locating development away from functional flood plains and medium to high risk areas;
- flood reduction: assessing flood risk and undertaking natural and structural flood management measures; and
- avoidance of increased surface water flooding through requirements for Sustainable Drainage Systems (SuDS) and minimising the area of impermeable surface.

1.18 To achieve this the planning system should prevent development which would have a significant probability of being affected by flooding or would increase the probability of flooding elsewhere.

1.19 Scottish Planning Policy identifies the following flood risk framework for local development plans to guide development and which should also apply to development management decisions:

- Little or No Risk – annual probability of coastal or watercourse flooding is less than 0.1% (1:1000 years)
 - No constraints due to coastal or watercourse flooding.
- Low to Medium Risk – annual probability of coastal or watercourse flooding is between 0.1% and 0.5% (1:1000 to 1:200 years)
 - Suitable for most development. A flood risk assessment may be required at the upper end of the probability range (i.e. close to 0.5%), and for essential infrastructure and the most vulnerable uses. Water resistant materials and construction may be required.

- Generally not suitable for civil infrastructure. Where civil infrastructure must be located in these areas or is being substantially extended, it should be designed to be capable of remaining operational and accessible during extreme flood events.
- Medium to High Risk – annual probability of coastal or watercourse flooding is greater than 0.5% (1:200 years)
 - May be suitable for:
 - residential, institutional, commercial and industrial development within built-up areas provided flood protection measures to the appropriate standard already exist and are maintained, are under construction, or are a planned measure in a current flood risk management plan;
 - essential infrastructure within built-up areas, designed and constructed to remain operational during floods and not impede water flow;
 - some recreational, sport, amenity and nature conservation uses, provided appropriate evacuation procedures are in place; and
 - job-related accommodation, e.g. for caretakers or operational staff.
 - Generally not suitable for:
 - civil infrastructure and the most vulnerable uses;
 - additional development in undeveloped and sparsely developed areas, unless a location is essential for operational reasons, e.g. for navigation and water-based recreation, agriculture, transport or utilities infrastructure (which should be designed and constructed to be operational during floods and not impede water flow), and an alternative, lower risk location is not available; and
 - new caravan and camping sites.
 - Where built development is permitted, measures to protect against or manage flood risk will be required and any loss of flood storage capacity mitigated to achieve a neutral or better outcome.
 - Water-resistant materials and construction should be used where appropriate. Elevated buildings on structures such as stilts are unlikely to be acceptable.

1.20 The Scottish Planning Policy Glossary contains the following definition:

Most vulnerable uses (in the context of flood risk and drainage):

Basement dwellings, **isolated dwellings in sparsely populated areas**, dwelling houses behind informal embankments, residential institutions such as residential care homes/prisons, nurseries, children’s homes and educational establishments, caravans, mobile homes and park homes intended for permanent residential use, sites used for holiday or short-let caravans and camping, installations requiring hazardous substance consent. (my emphasis)

CHAPTER 2 – SUMMARIES OF CASE

The applicant

2.1 Following the objection to the proposed development from SEPA, the applicant submitted a flood risk statement. This acknowledges the SEPA objection and points out that the proposal is for conversion of an existing building. There is nothing the applicant can do regarding the location nor to change the floor and ground levels significantly. Were it a new build the house would simply be moved to a different location. The house and steading have been in existence for around 200 years with no reported flooding. Although close by the sea, the large flat basin of water (the Oyce) will accommodate a massive quantity of sea water before producing any significant rise in level. This is a sheltered bay not given to storms nor extreme tidal action.

2.2 A private access to the proposed house leads to the main road which has a spot level of 3.7 metres above Ordnance Datum (AOD). The access track would slope from 3.7 metres AOD to 3.35 metres AOD. At a finished floor level of 3.50 metres AOD, the dwellinghouse floors would be at a safe height above sea level, albeit lower than SEPA recommendations. The applicant would obviously follow flood risk guidelines in the specification and construction of elements. SEPA specifies an unusually high flood risk level of 4.09 metres AOD stated as 3.49 metres AOD plus 600 millimetres freeboard. SEPA further concedes that they sometimes “overestimate the flood risk in Sanday”. Having lived in Sanday all of his life, the applicant notes that there is no history of significant flooding to properties within the island.

2.3 Quivals has historical importance as it was once the islands only school and is a 'B' listed building along with the outbuildings. The applicant hopes to convert the outbuilding into a family home for himself and his family. The submitted plans demonstrate he would work sympathetically with the building to bring it back to life whilst being true to its original architecture. Historic Environment Scotland approved the plans. The applicant has made a couple of subtle, yet important, amendments to them, such as, keeping the vented ridge tiles to further maintain the originality.

2.4 SEPA has objected to the proposal on the grounds of flood risk. SEPA states that because of this the finished floor level should be at least 4.09 metres above sea level. They also state it would be “more at risk from flooding” if the works were to go ahead. The proposed house would have a finished level of 3.49 metres above sea level, with a rising driveway to the existing road. The applicant suggests at least a quarter of the occupied houses on the island have a floor level below this. He questions how an existing building can be more at risk from flooding simply by changing its use.

2.5 SEPA has recently launched their Flood Alert program, at great expense. This is supposed to notify people in good time should a flood (in this instance an enormous change in sea levels) be imminent. The applicant has signed up for this, so if the flood were to happen he and his family would have plenty of time to leave. He points out that SEPA gives good advice in their “preparing for flooding” website that he would utilise if the proposals are allowed to proceed. For example, SEPA states that having a grab bag by the door, with items that would be highly useful in a flood emergency, is a sensible precaution. Plus they point out that backflow, caused by flood water coming back up through sewerage

pipes is a substantial contributor towards water ingress. The applicant would fit one way butterfly valves to prevent this happening.

2.6 The applicant has sold his house on Sanday to fund this project, and he and his family are currently living in rented accommodation. If he is not allowed to change the use of the building and convert it into a home, it is more than likely the family would have to move off the island. This would allow the building to fall into further disrepair and eventually collapse. It would also mean that a child would be taken out of the school. Common sense would suggest that he be allowed to maintain this wonderful building and not allow it to become yet another ruin.

Scottish Environment Protection Agency (SEPA)

2.7 SEPA made three consultation responses to the council in relation to the planning application on 22 October 2018, 22 November 2018 and 4 February 2019. The latest response was overview of SEPA's position and is summarised in the following paragraphs.

2.8 The application site lies entirely within the medium likelihood (0.5% annual probability or 1 in 200 year) flood extent of the SEPA Flood Map. These have been produced following a consistent, nationally-applied methodology for catchment areas equal to or greater than 3 square kilometres using a digital terrain model to define river corridors and lowlying coastal land. The maps are indicative and designed to be used as a strategic tool to assess flood risk at the community level and to support planning policy and flood risk management in Scotland. The 1 in 200 year flood level for the location is 3.49 metres AOD and is an estimated flood level based on the coastal flood boundary method. This method does not account for localised funnelling effects or bathymetry, or the effects of climate change. It is a 'still water' level and does not include any allowance for wave action.

2.9 In its initial advice SEPA stated that the Flood Maps can overestimate risk for Sanday. The overestimation is evident where the flood map extents are seen to cover land which is above the 5 metre contour on the Ordnance Survey map when the flood levels the flood maps represent are less than 4 metres AOD. For clarity, the Flood Map overestimation comes from a technical issue in how the flood levels are projected onto the map, not from the underlying flood levels. SEPA does not believe that the flood level for this location of 3.49 metres AOD is an overestimate. Furthermore, where SEPA holds levels of previous flooding for Sanday and nearby islands, the flood levels have generally supported the validity of the flood level estimates.

2.10 SEPA notes that both the flood statement and the applicant's review statement reference no history of flooding on this site. However, the 1 in 200 year level is an estimate of the level of flooding that has a 0.5% chance of occurring in any one year. This may mean that such a flood may not necessarily occur in a person's lifetime, but there remains a 0.5% chance of occurrence in any year. Although a 0.5% chance may sound low, the consequences of such a flood are high. In addition, SEPA does hold some records of flooding on Sanday and nearby islands. Consideration of the 1 in 200 year flood event is required by Scottish Planning Policy.

2.11 Topographic information available to SEPA indicates that the building is on land at a level of around 3.2 metres AOD, which indicates that the application site would be at risk of coastal flooding. The Flood Risk Statement that was submitted confirms that the finished floor levels would be 3.5 metres AOD and that the access track would slope up from 3.35

metres AOD. Scottish Planning Policy states that “the planning system should prevent development which would have a significant probability of being affected by flooding”. SEPA considers that a proposed finished floor level of 3.5 metres AOD for the development would not be sufficient to ensure that the property is free of flood risk up to the 1 in 200 year event required by Scottish Planning Policy.

2.12 In the event of sea level rise as a result of climate change, the risk over time would increase. A freeboard over and above the flood level is therefore required to account for this and other matters such as potential effects of wave action, funnelling or local bathymetry and, as a precaution, generally to account for any uncertainties in the flood level estimates. This is particularly important for vulnerable development types such as the use proposed. CIRIA guidance C624 Development and Flood Risk - guidance for the construction industry indicates that the freeboard should be at least 0.6 metres. This is a standard freeboard allowance for this type of flood risk and would mean that development design levels should be at least 4.09 metres AOD. Although there are some situations where lower freeboard values such as 0.3 metres are used, these tend to be in town centre locations where the flood risk is from surface water which is not applicable to this case. The ground levels immediately outside the building are such that dry access and egress is also not secured for the proposed property.

2.13 SEPA notes that the applicant references signing up to SEPA’s flood warning service and infers that this would mitigate the risk of flooding at the site. However, the flood warning service should not be used as a reason to allow new development, or new land uses, in areas at risk from flooding. SEPA’s flood warning service in Orkney is very new, and though it is based on the best forecasting and modelling information currently available, it does not fully replicate real world processes and has not been tested so far by any major events. SEPA tries to issue messages 3-6 hours in advance of expected flooding, but it may not be possible to do so when water levels or waves rise more than predicted in the forecast conditions. The flood warning terms and conditions note that SEPA cannot accept responsibility for any loss or damage caused by flooding; by issuing, or failing to issue, flood alerts and flood warnings or by their customers not accessing a flood alert or flood warning in time to take action. Flood warning is provided to try to reduce the impact of flooding to areas already at risk, by providing some additional warning time to prepare. It should not be relied upon to justify an increase in the number of people living in properties at risk. Avoidance of risk is the best method of managing flood risk.

2.14 The proposed development is for the conversion of an existing building. The existing use as an agricultural building is considered a ‘less vulnerable’ use in SEPA’s Land Use Vulnerability Guidance and the proposed use is a ‘highly vulnerable’ use. Therefore, the application represents an increase in vulnerability to flood risk. SEPA explains that the building itself will be at no more or less risk from flooding than in the existing situation. However, the new proposed use of the building, as a residential use, has a greater vulnerability to that flood risk than the existing use. This is because people would be living and sleeping in the building. It is therefore particularly important that flood risk is fully considered to ensure that people and property are safe.

2.15 In summary, the available information demonstrates that the site is at risk from coastal flooding. The proposals include an increase in land use vulnerability. SEPA does not consider that the finished floor levels are sufficient to ensure the property itself would be free from flood risk. In addition, dry access and egress would also not be secured for the proposed property. Therefore, the risk of flooding to the existing building is such that SEPA

does not consider it is suitable for conversion from an agricultural building to a residential dwelling. SEPA therefore objects to the application on flood risk grounds. SEPA notes that this position is echoed by Orkney Island Council's flood engineer. In addition, SEPA highlights the potential difficulties in the future for any occupants in obtaining insurance as no new houses after 2009 built in flood risk areas are guaranteed flood insurance. This could also affect the ability of any future occupiers to mortgage the property.

CHAPTER 3 – CONCLUSIONS AND RECOMMENDATION

3.1 The decision in this case must be made in accordance with the development plan unless material considerations indicate otherwise. As the appeal site is a category B listed building, it is also necessary to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Although the principal issue in considering the application is the flood risk to the proposed development, Ministers are required to address the application as a whole.

3.2 Having regard to the statutory tests summarised above, the main issues to be considered in determining this application are as follows:

- acceptability of the principle of the conversion to a house;
- whether the proposed works would preserve the listed building, its setting or any features of architectural interest; and
- flood risk.

The principle of conversion to a house

3.3 The application site is located on one of the islands where the ‘Isles Approach’ is applicable. The proposed house is intended to be the permanent place of residence of the applicant and his family and it would not place any unacceptable burden on infrastructure or services. Consequently, providing the proposal accords with local development plan policies, the principle of the development would be supported by the local development plan strategy.

3.4 With reference to the criteria of local development plan Policy 1, there is no issue apart from in relation to criterion (vi), which states, “it does not result in an unacceptable level of risk to public health and safety”. This because of the location of the application site in an area which is classified as one where there is a medium to high risk of flooding (see below).

3.5 In relation to Policy 5, criterion C, there is a presumption in favour of new housing on the non-linked isles where it accords with ‘The Isles Approach’ set out in the Spatial Strategy. As noted above, support from the strategy is dependent on compliance with local development plan policies. As the proposed development would conflict with Policy 1, criterion (vi) and Policy 13 criterion (ii) because of the risk from flooding, I do not consider it can draw support from Policy 5 C.

3.6 In its reasons explaining why it considered the proposed development to be acceptable, the council referred to Policy 5, criterion E (ii), which refers to the conversion of a building or structure. However, I note that criterion E begins with the phrase “Outwith the settlements, on the Mainland and Linked South Isles...”. As the application site is on one of the non-linked Northern Isles, I do not consider criterion E is applicable.

The listed building

3.7 The plans show that the original stone walls of the agricultural building would be restored and repaired using stone from an adjacent lean-to which would be demolished. The stonework would be picked and pointed with lime mortar. The existing Orkney grey

slate on the roof would be retained and, where slates are damaged, they would be replaced and pointed with lime mortar. Black cast aluminium would be used for down pipes and gutters and timber sash and case windows would be installed in existing window openings. The existing door on the south gable end would be replaced by vertically boarded timber with a fixed window pane and the window opening on the east gable would be extended downwards to floor level. A porch would be constructed over the entrance door on the south elevation, which would be clad in vertically boarded timber. Velux heritage rooflights would be installed in existing openings on the west face of the roof and the skews would be overlaid with leadwork cladding.

3.8 All of the materials to be used are traditional and would match existing materials on the building. The external form and detailing of the building would also be respected, as the windows and doors would use existing openings with very little alteration for the most part. Accordingly, I consider that the proposed development complies with local development plan Policy 8 as it would preserve the architectural significance of this listed building and would enable it to remain in active use. It would also comply with the first criterion of Policy 2, as it would reinforce the distinctive identity of Orkney's built environment and would be sympathetic to the character of its local area.

3.9 In addition, the proposed works would preserve the listed building, its setting or any features of architectural interest (section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997).

3.10 In reaching these conclusions, I note that Historic Environment Scotland did not object to the proposed conversion works and that the council has granted listed building consent.

Flood risk

3.11 The preamble to local development plan Policy 13 explains that situations where development would have a significant probability of being affected by flooding should be avoided and that the flood risk framework in Scottish Planning Policy will be used in conjunction with the policy to ensure that only appropriate development takes place. The policy principles in Scottish Planning Policy include a precautionary approach to flood risk and flood avoidance by locating development away from medium to high risk areas.

3.12 SEPA has explained that the application site lies within a medium to high risk area where the annual probability of flooding (coastal in this instance) is greater than 0.5% or 1:200 years. Land at the application site is at a level of 3.2 metres AOD. In this area, SEPA Flood Maps show the 1:200 flood level is 3.49 metres above Ordnance Datum (AOD). This means that the site is at risk of coastal flooding. I accept SEPA's assertion that levels of previous flooding for Sanday and nearby islands have generally supported the validity of the flood level estimates.

3.13 The applicant has asserted that no property has flooded on Sanday in recent memory, the implication being that he does not agree that the site is at a medium to high risk from flooding. However, he has provided no evidence for this view, which seems to me to be anecdotal. On the other hand, SEPA has stated that it does hold levels of previous flooding for Sanday and the council's Engineering Services department has referred to the the road and seawall south of Klondyke (less than 3 kilometres to the east) being washed away in January 2005. Both of these statements contradict what the applicant has said.

3.14 In the absence of hard evidence to the contrary, I accept SEPA's evidence that the site is indeed at medium to high risk from flooding.

3.15 The finished floor level of the proposed house would be 3.5 metres AOD. Adding a freeboard allowance of 0.6 metres, as required by SEPA means the house should have a finished floor level of 4.09 metres. In addition, the access to the proposed house would lead from a level of 3.7 metres at the public road in front of the property and would slope down into the site to a level of 3.35 metres AOD.

3.16 I saw at my site visit that the agricultural buildings at Quivals sit at a level which is higher than the beach which is located to the north, east and south of the property. There is also a dry stone wall located around the boundary of the site with the beach at the higher level, although I noted that this wall is in poor repair. It is difficult to imagine when the sun is shining and the weather is calm, as it was on my site inspection, that the sea could rise to a level that would threaten the buildings. However, there is no disagreement between the applicant and SEPA about the details of the levels on the site (3.2 metres), the finished floor level of the proposed house (3.5 metres) or the level of the access (3.35 metres, rising to 3.7 metres). I am, therefore, satisfied that the level of a potential flood, as it would be 3.49 metres AOD (still water level) and up to 4.09 metres AOD when allowing for localised funnelling effects, bathymetry, the effects of climate change or wave action, would be higher than the finished floor level of the proposed house and of its vehicular access.

3.17 The applicant has questioned SEPA's assertion that the proposed house would be more at risk of flooding than the current building. Obviously, changing the use of the property from agricultural storage to a house does not make it more likely to flood. However, the change in the use does increase the vulnerability of the property. If an agricultural building were to flood, the consequences would primarily be monetary. If a house were to flood the consequences would be much more serious, potentially involving injury or loss of life, in addition to monetary loss. This is what SEPA means when it points out that the proposed house would be more vulnerable to flooding than the existing agricultural building.

3.18 It also appears to me that, as the proposed house would be a single storey residential building, there would be no second storey for residents to escape to or to store possessions in should flooding occur quickly. SEPA has also pointed out that the proposed access to the property is likely to be under water in a flood event, which means that residents in the proposed house would have difficulty leaving it if the worst were to occur. SEPA has also pointed out that properties at risk from flooding have great difficulty in obtaining insurance. It seems to me that insurance companies would be very unlikely to insure a property against flood risk damage where SEPA has advised against the proposed development.

3.19 The applicant has signed up to the SEPA flood alert programme. The family would have a grab bag by the door with useful items, as advised, and that one way valves would be fitted to the sewerage pipes to prevent flood water from backing up into the property. These are all sensible precautions for residential properties which are already at risk from flooding. However, as SEPA has pointed out, this advice is not designed to allow more properties to be constructed in areas which are at risk from flooding.

3.20 The applicant has not proposed any measures to protect against or manage flood risk at the proposed house. This is contrary to local development plan Policy 13, criterion (ii). Moreover, as the application site is in an area at medium to high risk of flooding, granting planning permission for the proposal would be contrary to the precautionary approach and it would not lead to flood avoidance. In addition, an area of medium to high risk is generally not suitable for additional development in undeveloped or sparsely populated areas, all as advised in Scottish Planning Policy.

Overall conclusions

3.21 Drawing these issues together, I have concluded that the proposed development:

- conflicts with local development plan Policy 1(iv);
- can draw no support from local development plan Policy 5C;
- complies with local development plan Policies 2 and 8;
- would preserve the listed building, its setting or any features of architectural interest (section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997); and
- conflicts with local development plan Policy 13 (ii) and with the approach on flood risk advised in Scottish Planning Policy.

3.22 The applicant has pointed out that conversion of the building as proposed would ensure that this category B listed building is retained in good repair. I agree that this is an important consideration in favour of the proposed development. It is also the case that the proposal conforms with some local development plan policies, as I note above. However, I do not consider that all of these positives are sufficient to outweigh the very real possibility that the property could flood in the future, bearing in mind the very serious consequences were such flooding to occur when the building was in use as a house.

Recommendations

3.23 For the reasons explained above, I recommend that planning permission should be refused.

3.24 Should Ministers not accept my recommendation and consider that planning permission should be granted, I recommend that the conditions contained in the Appendix to this report should be attached. These are based on the conditions applied by the council to the listed building consent. I consider that these should also be attached to the planning permission, as control of the proposed materials is a matter covered by local development plan policies 8 and 2. I have added a condition requiring details of the proposed entrance porch roof materials, as these are not specified on the plans and a condition specifying access construction details, as these are required by the council's roads service. I have not included the only condition recommended by the council, to do with hours for construction works, as this would be controlled by the council's environmental health officers under other legislation.


Assistant Chief Reporter

APPENDIX – SUGGESTED CONDITIONS

1. The mortar used for re-pointing the walls shall use a lime mortar mix only, with no cement. This lime pointing shall also match the existing and original lime mortar in method of application and flush finish, unless otherwise agreed in writing by the planning authority.
Reason: to protect the fabric, integrity, and special interest of the listed building.
2. Any repair work to the existing slate roof hereby approved shall be finished using matching local slates in size and colour only, and pointed using a lime mortar mix with no cement, unless otherwise agreed in writing by the planning authority.
Reason: to protect the fabric, integrity, and special interest of the listed building.
3. All installed rooflights hereby approved shall conform to conservation specifications being top hung with recessed installation, finished in black and have vertical glazing bars located centrally, unless otherwise agreed in writing by the planning authority.
Reason: in order to safeguard the character and qualities of the listed building.
4. For the avoidance of doubt, all proposed replacement windows and doors shall be constructed from timber in accordance to the details hereby approved, with a painted finish to match the existing, unless otherwise agreed in writing with the planning authority.
Reason: in order to safeguard the character and qualities of the listed building.
5. All new rainwater goods shall be finished in black, heritage cast aluminium with a half round profile to guttering to reflect the visual characteristics of traditional cast iron, unless otherwise agreed in writing by the Planning Authority.
Reason: in order to safeguard the character and qualities of the listed building.
6. Details of the material to be used on the roof of the entrance porch shall be submitted for the consideration and written approval of the planning authority before work starts on the site. Thereafter the approved material shall be installed on the porch roof.
Reason: in order to safeguard the character and qualities of the listed building, as details of the porch roof have not been submitted.
7. The proposed vehicular access shall be constructed to the Orkney Islands Council standard suitable for 2-4 houses.
Reason: in the interests of road safety.