

Item: 4.2

Planning Committee: 4 October 2023.

Siting of House at Noneyha' (Land Near), Noneyha Road, Eday.

Report by Corporate Director for Neighbourhood Services and Infrastructure.

1. Summary

1.1.

Planning permission in principle is sought for a house, accessed from the Noneyha Road in Eday. The development is acceptable in principle and location. Three objections have been received including on grounds of impacts on the existing access, impacts on habitats, species and carbon rich soils from construction of the access track, the practicality of the design of the proposed access track, landscape impact, and protection of existing historic built environment. The objections are not of sufficient weight to merit refusal of the application. Accordingly, the application is recommended for approval.

Application Number:	23/116/PIP.
Application Type:	Planning permission in principle.
Proposal:	Siting of a house.
Applicant:	Mr John Skuse.
Agent:	SJ Omand, c/o Christopher Omand, 14 Victoria Street, Kirkwall, KW15 1DN.

1.2.

All application documents (including plans, consultation responses and representations) are available for members to view [here](#) (click on "Accept and Search" to confirm the Disclaimer and Copyright document has been read and understood, and then enter the application number given above).

2. Consultations

2.1. Roads Services

2.1.1.

"Roads Services have concerns that the transportation of the plant and materials required to construct a property on the proposed development site may have a detrimental effect on the public road, therefore the applicant must provide details of the gross weights, total lengths, materials being transported and number of loads of

each, for all vehicles and plant required to construct the proposed property for further comment. Alternatively given that this is a planning in principle application a condition could be applied that would require the information to be provided with any subsequent application.

It may also be prudent at this stage to apply the condition noted below, to try and ensure that any damage that may be caused to the public road infrastructure by vehicles and plant accessing the development can be appropriately dealt with.”

2.1.2.

As an application for planning permission in principle, it is considered reasonable to follow the alternative approach stated as acceptable by Roads Services, to make details of construction traffic a matter specified in conditions, to be submitted and agreed in any future application.

2.2. Scottish Water

“Scottish Water has no objection to this planning application...”

2.3. Scottish Environment Protection Agency (SEPA)

“The site is adjacent to areas shown to be at risk of flooding based on the SEPA Future Flood Maps. This indicates that there is a risk of flooding from the sea...We require that all development on the site, including any proposed landraising for the access road, is limited to land which is higher than 3.7m AOD. In addition to this, a separate minimum freeboard allowance of 0.6m to account for uncertainties and the effects of wave action is required for finished floor levels. Conditions should therefore be applied that (1) there be no development, or landraising, on ground below 3.7m AOD and that (2) the dwelling should be located on ground with a minimum elevation of 4.3m AOD. This is to ensure compliance with NPF4 in avoiding areas of flood risk and that an appropriate freeboard is provided to the property above the design flood level...”.

3. Representations

3.1.

Three objections (including subsequent submissions) have been received, from:

- Mr Walter Cormack, Cayrne, Eday, KW17 2AA.
- Elizabeth de Stanford Wallitt, Green of Eday, KW17 2AA.
- Ashley J Wakeling, New Green, Green Farm, Eday, KW17 2AA.

3.2.

Objections are on multiple grounds including impacts on the existing access, impacts on habitats, species and carbon rich soils from construction of the access track, the practicality of the design of the proposed access track, landscape impact, and protection of existing historic built environment.

4. Relevant Planning History

None on the application site. Recent application history on nearby land is referenced at section 7.2.1 below.

5. Relevant Planning Policy and Guidance

5.1.

The full text of the Orkney Local Development Plan 2017 and supplementary guidance can be read on the Council website [here](#).

5.2.

The key policies, supplementary guidance and planning policy advice listed below are relevant to this application:

- Orkney Local Development Plan 2017:
 - The Spatial Strategy – The Isles Approach.
 - Policy 1 – Criteria for All Development.
 - Policy 5C – The Isles Approach for Housing.
 - Policy 9C – Wider Biodiversity and Geodiversity.
 - Policy 14C – Road Network Infrastructure.
- National Planning Framework 4:
 - Policy 3 – Biodiversity.
 - Policy 17 – Rural Homes.

6. Legal Aspects

6.1.

Section 25 of the Town and Country Planning (Scotland) Act 1997 as amended (the Act) states, “Where, in making any determination under the Planning Acts, regard is to be had to the development plan, the determination is, unless material considerations indicate otherwise...to be made in accordance with that plan...”

6.2.

Annex A of Planning Circular 3/2013: ‘development management procedures’ provides advice on defining a material consideration, and following a House of Lord’s judgement with regards the legislative requirement for decisions on planning applications to be made in accordance with the development plan, confirms the following interpretation: “If a proposal accords with the development plan and there are no material considerations indicating that it should be refused, permission should be granted. If the proposal does not accord with the development plan, it should be refused unless there are material considerations indicating that it should be granted.”

6.3.

Annex A continues as follows:

- The House of Lord's judgement also set out the following approach to deciding an application:
 - Identify any provisions of the development plan which are relevant to the decision.
 - Interpret them carefully, looking at the aims and objectives of the plan as well as detailed wording of policies.
 - Consider whether or not the proposal accords with the development plan.
 - Identify and consider relevant material considerations for and against the proposal.
 - Assess whether these considerations warrant a departure from the development plan.
- There are two main tests in deciding whether a consideration is material and relevant:
 - It should serve or be related to the purpose of planning. It should therefore relate to the development and use of land.
 - It should relate to the particular application.
- The decision maker will have to decide what considerations it considers are material to the determination of the application. However, the question of whether or not a consideration is a material consideration is a question of law and so something which is ultimately for the courts to determine. It is for the decision maker to assess both the weight to be attached to each material consideration and whether individually or together they are sufficient to outweigh the development plan. Where development plan policies are not directly relevant to the development proposal, material considerations will be of particular importance.
- The range of considerations which might be considered material in planning terms is very wide and can only be determined in the context of each case. Examples of possible material considerations include:
 - Scottish Government policy and UK Government policy on reserved matters.
 - The National Planning Framework.
 - Designing Streets.
 - Scottish Government planning advice and circulars.
 - EU policy.
 - A proposed local development plan or proposed supplementary guidance.
 - Community plans.
 - The environmental impact of the proposal.

- The design of the proposed development and its relationship to its surroundings.
- Access, provision of infrastructure and planning history of the site.
- Views of statutory and other consultees.
- Legitimate public concern or support expressed on relevant planning matters.
- The planning system operates in the long term public interest. It does not exist to protect the interests of one person or business against the activities of another. In distinguishing between public and private interests, the basic question is whether the proposal would unacceptably affect the amenity and existing use of land and buildings which ought to be protected in the public interest, not whether owners or occupiers of neighbouring or other existing properties would experience financial or other loss from a particular development.

6.4.

Where a decision to refuse an application is made, the applicant may appeal under section 47 of the Act. Scottish Ministers are empowered to make an award of expenses on appeal where one party's conduct is deemed to be unreasonable. Examples of such unreasonable conduct are given in Circular 6/1990 and include:

- Failing to give complete, precise and relevant reasons for refusal of an application.
- Reaching a decision without reasonable planning grounds for doing so.
- Not taking into account material considerations.
- Refusing an application because of local opposition, where that opposition is not founded upon valid planning grounds.

6.5.

An award of expenses may be substantial where an appeal is conducted either by way of written submissions or a local inquiry.

6.6. Status of the Local Development Plan

Although the Orkney Local Development Plan 2017 is "out-of-date" and has been since April 2022, it is still a significant material consideration when considering planning applications. The primacy of the plan should be maintained until a new plan is adopted. However, the weight to be attached to the Plan will be diminished where policies within the plan are subsequently superseded.

6.7. Status of National Planning Framework 4

6.7.1.

National Planning Framework 4 (NPF4) was adopted by Scottish Ministers on 13 February 2023, following approval by the Scottish Parliament in January 2023. The statutory development plan for Orkney consists of the National Planning Framework and the Orkney Local Development Plan 2017 and its supplementary guidance. In the event of any incompatibility between a provision of NPF4 and a

provision of the Orkney Local Development Plan 2017, NPF4 is to prevail as it was adopted later. It is important to note that NPF4 must be read and applied as a whole, and that the intent of each of the 33 policies is set out in NPF4 and can be used to guide decision-making.

6.7.2.

In the current case, there is not considered to be any incompatibility between the provisions of NPF4 and the provisions of the Orkney Local Development Plan 2017, to merit any detailed assessment in relation to individual NPF4 policies.

7. Assessment

7.1. Principle

7.1.1.

The Spatial Strategy of the Orkney Local Development Plan 2017 confirms that:

“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.”

7.1.2.

In turn, Policy 5C ‘The Isles Approach for Housing’ confirms:

“There is a presumption in favour of new housing on the non-linked isles where it accords with ‘The Isles Approach’ set out within the Spatial Strategy.”

7.1.3.

These provisions align with Policy 17 c) of NPF4 which states:

“c) Development proposals for new homes in remote rural areas will be supported where the proposal: i. supports and sustains existing fragile communities; ii. supports identified local housing outcomes; and iii. is suitable in terms of location, access, and environmental impact.”

7.1.4.

The principle of the single house development in Eday is therefore acceptable.

7.2. Location and proposal

7.2.1.

The application site is in the south-east of Eday, in an area characterised by a scatter of individual houses and small steadings, as indicated in the Location Plan and Site Plan attached as Appendix 1 to this report. The landscape is a mix of coastal habitat, improved grassland, marshy and semi-improved grassland, and heath. The site is accessed from the public road immediately south of the Backland pier.

7.2.2.

The site would be accessed from an existing access road, the first part of which is a public road and the latter part is a private access road. The existing small house and sheds at Noneyha are located at the end of the access road, and the main part of the proposed development site is located approximately 200 metres south of the steading. Planning permission was approved on 1 September 2023 (following the meeting of the Planning Committee held on 23 August 2023) for a new house, accessed from the existing private access track, located approximately 100 metres north-west of the existing steading.

7.2.3.

The current application is in principle only. The main part of the application site, where the house would be located, is relatively central within a semi-improved grass field, west of derelict buildings at Crookedhall. A notable feature of the application site area is the proposed access track which extends approximately 500 metres from the main part of the application site, north alongside a strip of coastal habitat, and west, inland to where it meets the existing access track. The layout of the access track is raised in representations, including the practicality of the bends, in relation to ability for vehicles to use the track. This is a matter for the applicant, and not a reason for refusal of an application for planning permission in principle.

7.3. Amenity and Design

The house would be located sufficient distance from any neighbouring property that the residential amenity of those existing nearby properties would be protected. The application is in principle only, and details are not available of layout of the site or building design. Those matters would be specified in condition, to be addressed by any follow-up application. The proposed design of the house, including in relation to the surrounding landscape and built environment would be assessed at that stage.

7.4. Biodiversity

The application site is generally located within semi-improved grassland. The main part of the site is central within a field, and the access track runs adjacent to the coastal slope, and the more species-rich habitat within it. This is raised in objections, in terms of the impact of the development on this habitat, and the species that use it. The part of the application site where the proposed track meets the existing private track includes a small triangular area of species-rich heath/grassland; however, the triangular area also includes a strip of the semi-improved field, and so the habitat can be avoided. In reaching a conclusion on potential impact of the development, it is important to note that the most species rich and previously undisturbed habitats would not be directly affected, none of the habitats adjacent to the application site are designated, nationally or locally, and this is an application in principle only. The final point is critical, as biodiversity enhancement and other measures to protect or mitigate impact of existing habitats would be listed amongst matters specified in condition, with a requirement that details of the development be included in any subsequent application, to accord with Policy 3(c) of NPF4 and Policy 9 of the Local Development Plan.

7.5. Carbon rich soils

Objections refer to impact on carbon rich soils and potential for peat. As confirmed above, the site is not designated for habitats or soils, and this is an application in principle only, and therefore a requirement to survey and, if necessary, protect or mitigate impact on carbon rich soils would be listed as a matter specified in condition, with a requirement that details of the development be included in any subsequent application.

7.6. Access

7.6.1.

Roads Services has no objection regarding an additional house being served by the public road network, and has not raised any requirement for upgrading works, including none at the point where the public road network meets the private access track. Objections include reference to the existing access track, and suitability of the proposed width and geometry of the proposed access.

7.6.2.

The development would be accessed partly via an existing track, which currently serves the existing house and buildings and the recently approved development. It is a matter for the applicant to be satisfied that the geometry of their new private track suits particular lengths of vehicles. Roads Services has confirmed no objection to the proposed development on the basis that details of construction traffic be listed as a matter specified in conditions, to be submitted with any future application.

7.7. Flood Risk

The site is adjacent to areas shown to be at risk of flooding based on the SEPA Future Flood Maps, including a risk of flooding from the sea. The approximate coastal flood level for the area is 3.7mAOD including an allowance for climate change. In response, SEPA requires that all development, including any proposed landraising for the access road, be limited to land which is higher than 3.7mAOD. In addition, a separate minimum freeboard allowance of 0.6m to account for uncertainties and the effects of wave action is required for finished floor levels. Planning conditions would therefore require that (1) there be no development, or landraising, on ground below 3.7mAOD and (2) the dwelling be located on ground with a minimum elevation of 4.3mAOD to ensure compliance with NPF4 in avoiding areas of flood risk and that an appropriate freeboard is provided to the property above the design flood level.

8. Conclusion and Recommendation

8.1.

The application is submitted in principle and is acceptable on that basis, as a new individual house in Eday, in accordance with the Spatial Strategy and Policy 5C 'The Isles Approach for Housing' of the Orkney Local Development Plan 2017, and Policy 17 c) of National Planning Framework 4. The location of the site is compatible with the existing pattern of development in the area. The house would be accessed from

a private access track, which extends from the public road network. Roads Services has no objection to the development, subject to conditions. Matters raised in objections including the detail of the private access track, and potential impact of coastal and other habitats, species using those habitats, and potential for impact on carbon rich soils, can be addressed by planning conditions, with full details to be submitted in a future application. There are no designations or conditions evident on site that affect the principle of the development being accepted. The objections are not of sufficient weight to merit refusal of the application.

8.2.

The development is therefore considered to accord with the Spatial Strategy and Policies 1, 2, 5C, 9C and 14C of the Orkney Local Development Plan 2017, and the policy provisions including Policies 3 and 17 of National Planning Framework 4. Accordingly, the application is recommended for approval, subject to the conditions attached as Appendix 2 to this report.

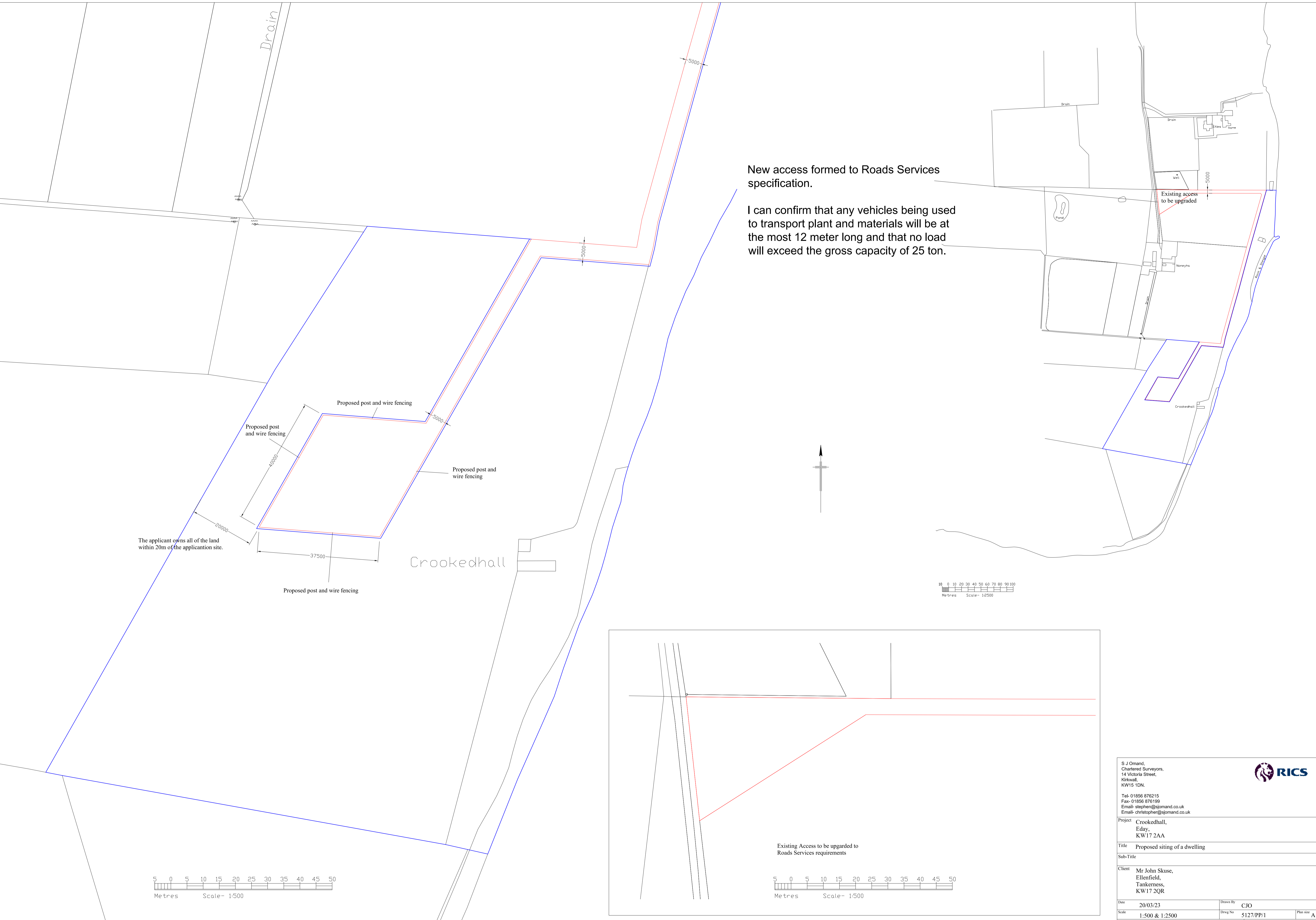
9. Contact Officer

Jamie Macvie, Service Manager (Development Management), Email
jamie.macvie@orkney.gov.uk

10. Appendices

Appendix 1: Site Plan.

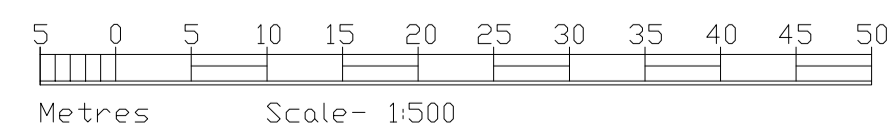
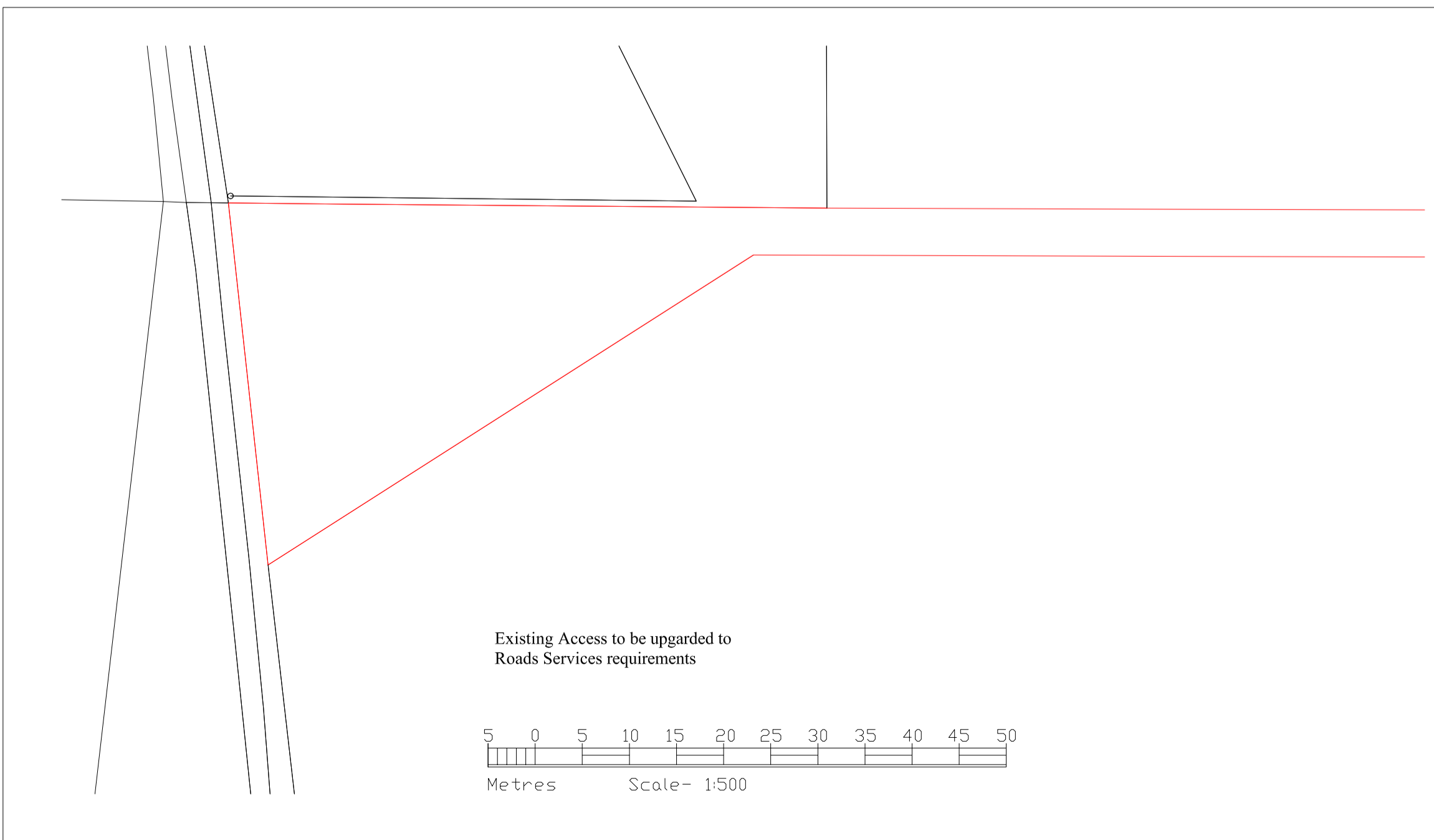
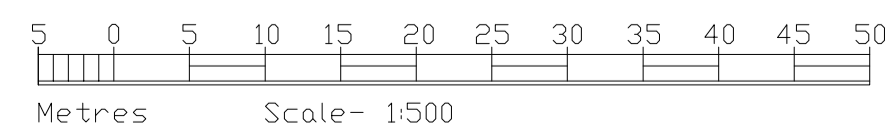
Appendix 2: Planning Conditions.



New access formed to Roads Services specification.

I can confirm that any vehicles being used to transport plant and materials will be at the most 12 meter long and that no load will exceed the gross capacity of 25 ton.

The applicant owns all of the land within 20m of the application site.



S J Omand, Chartered Surveyors, 14 Victoria Street, Kilsnoe, KW15 1DN. Tel- 01856 876215 Fax- 01856 876199 Email- stephen@sjomand.co.uk Email- christopher@sjomand.co.uk			
Project Crookedhall, Eday, KW17 2AA			
Title Proposed siting of a dwelling			
Sub-Title			
Client Mr John Skuse, Ellenfield, Tankerness, KW17 2QR			
Date	20/03/23	Drawn by	CJO
Scale	1:500 & 1:2500	Draw No	S127/PP/1
To comply with The Building (Scotland) Regs 2004, as amended.			Plan size A1 DO NOT SCALE- If in doubt ASK.

Appendix 2

01. An application (or applications) for the approval of matters specified in conditions attached to this planning permission in principle must be made no later than the expiration of three years beginning with the date of this decision notice.

The development to which this planning permission in principle relates must commence no later than two years from the date of the requisite approval of all matters specified in conditions (including, in the case of approval of different matters on different dates, two years from the date of approval of the last such matter). If development has not commenced within this period, then this planning permission in principle shall lapse.

Reason: In accordance with Section 58 of the Town and Country Planning (Scotland) Act 1997, as amended.

02. No development shall commence until all matters specified below have been approved on application to the Planning Authority:

- A detailed layout of the site of the proposed development.
- Site levels as existing and proposed, based on a fixed datum point.
- The design and external appearance of the proposed development (all buildings and structures), noting that the scale and proportions should relate to existing surrounding development.
- Confirmation by layout and levels of no development, or landraising, on ground below 3.7mAOD and that the house is located on ground with a minimum elevation of 4.3mAOD.
- All hard and soft landscaping proposals for the site of the proposed development (including boundary treatments).
- Measures for biodiversity enhancement, in accordance with Policy 3(c) of National Planning Framework 4, which shall include appropriate assessment of any impact of habitats, and species that may use those habitats, adjoining the application site, and also including an assessment of carbon rich soils.
- Details of access and parking arrangements, including width, detailed geometry and surfacing of the access track, including avoidance of the triangular area of species-rich habitat where the proposed access meets the existing access track.
- Details of the proposed water supply arrangements.
- Details of the foul drainage disposal.
- Details of the management of surface water.
- Details of refuse and recycling bin storage, including for collection.

Reason: Planning permission is granted in principle only and these specified matters must be approved prior to commencement of development.

03. No development shall commence until a condition / dilapidation survey of a defined section of the public road has been carried out by the developer, in conjunction with Roads Services, including any section of the public road used for access/egress to the site by construction traffic. Full details of the survey shall be submitted to, and approved in writing by, the Planning Authority, in conjunction with Roads Services, including the full length of road to be surveyed.

Thereafter, the survey shall be carried out wholly in accordance with approved details and shall be completed again following completion of the development.

This condition / dilapidation survey, and any repairs required to the public road to make good damage which is attributed to this development, including by any vehicles or plant accessing or egressing the site, shall be funded by the developer. All repairs or other works required to be carried out shall be completed to the satisfaction of the Planning Authority, in conjunction with Roads Services, within three months of completion of the development.

The developer shall also be responsible for maintaining any damage caused to the public road in such a manner that the roads always remain safe for other road users and until permanent repair works are agreed and carried out.

Reason: In the interest of road safety.

04. Hours of work during the construction of the development hereby approved, involving the use of machinery and powered tools, or any other operation, for example hammering, that would generate noise audible beyond the boundary of the site, shall be restricted to 07:30 to 18:00 Mondays to Fridays, 08:00 to 13:00 on Saturdays and not at all on Sundays, Christmas or New Year Public Holidays unless otherwise agreed, in writing, with the Planning Authority.

There shall be no burning of waste or any other materials on site at any time during the construction phase of the development.

Reason: In the interest of residential amenity of the area and to reduce any possible nuisance arising to nearby residents during the construction of this development.