

## Item: 4

**Planning Committee: 20 March 2024.**

**Change of use of land from agricultural to domestic and alter ground levels (part retrospective) at St Columba's House, Lower Whitehall Road, Stronsay.**

**Report by Corporate Director for Neighbourhood Services and Infrastructure.**

### 1. Summary

#### 1.1.

Planning permission is sought for the change of use of agricultural land to domestic curtilage and for the alteration of ground levels to the rear of the property at St Columba's House, Lower Whitehall Road, Whitehall, Stronsay. The ground works have commenced, so the application is part retrospective. The current application for change of use and ground works only, follows a previous refused application (22/003/PP), which included similar works to those proposed, but also the erection of a building. One objection has been received from a neighbouring property on grounds of flood risk (and raised ground levels) and biodiversity. The application is considered to comply with relevant policies of the Orkney Local Development Plan 2017, Supplementary Guidance, Planning Policy Advice and National Planning Framework 4. Accordingly, the application is recommended for approval.

Application Number:	23/223/PP.
Application Type:	Planning Permission.
Proposal:	Change of use of land from agricultural to domestic and alter ground levels (part retrospective).
Applicant:	Mr Luke Seeber (Brother Gerard), St Columba's House, Lower Whitehall Road, Whitehall, Stronsay, KW17 2AS.

#### 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**

“The latest information provided on drawing 1052/2 Rev A, Post development topographical plan, is acceptable as it no longer has any information in relation to a proposed building. Therefore, Roads Services has no adverse comment make ...”.

### **2.2. Environmental Health**

“From the information that has been submitted with the application it is our understanding that the building element that formed part of the original application (22/003/PP) in 2022 is no longer part of the proposal.

The area of the proposed altered ground levels was the area of concern raised during the last application and remains so now. However, the applicant had clarified that the ‘asbestos’ sheeting has been buried in a hole covered over with other rubble from the building that was demolished. This area has then been delineated by a block wall and it is proposed to lay a concrete slab 6” thick with it being 8” over the area that is outside the old shed base, which we believe may be partially completed.

Given that asbestos fibres are not able to move through soils and will remain virtually unchanged over long periods, to leave in-situ is the most sensible option. Thus, what has been proposed is considered adequate mitigation to eliminate the risk from the asbestos on future users of the site.”.

### **2.3. Engineering Services**

#### **2.3.1. Coastal Flood Risk**

“The application site is at high risk of coastal flooding with a greater than 1 in 10 chance that flooding will occur in any one year. With expected sea level rise, coastal flood risk will increase at this site. However, the application concerns a change of use. The proposal should not increase flood risk within the site or outside it – with wave-driven flooding no more likely to reach the rear of the property than in the pre-development and able to drain to lower land (field) to the south of the boundaries to the existing domestic properties post-event. In the case of inundation from the sea, the volume occupied by the proposed elevated ground is so small in relation to the sea and potentially flooded area that coastal flood risk cannot be considered to be increased as a result of the proposed change.”.

#### **2.3.2 Surface Water Flood Risk**

“SEPA flood mapping indicates existing surface water flood risk to the southern portion of the gardens to the properties. LiDAR derived topographic information provided by the applicant indicates that this flooding would be centered a basin formed on the agricultural land to the south of the garden boundaries, including that to Red House. Overland flow from the development site and adjoining gardens would therefore be towards the basin in the field rather than between gardens.

Taking all of the above into consideration, OIC Engineering does not object to the application. However, it is recommended that, should the application be approved,

then the Planning Authority confirm that the ground between the raised platform and boundary wall to Red House has been restored to the level and profile indicated on drawing 1052/2 Rev. A 'Post Development Topographical Plan'.

## **2.4. Development and Marine Planning – Environment**

“Biodiversity measures proportionate to the nature and scale of the proposed development have been included, as shown and described in the submitted Biodiversity form (dated 25 July 2023). A condition is required to ensure the proposed biodiversity measures are carried out and therefore contribute to meeting the requirements of National Planning Framework 4 policy 3 on biodiversity.”.

## **2.5. Scottish Water.**

No response received to date.

## **3. Representations**

### **3.1.**

One objection has been received, from:

- G L Flett, Redhouse, Stronsay.

### **3.2.**

The objection is based upon the following matters which have been considered in the assessment of the proposal:

- Flood Risk (including concerns regarding land raising).
- Biodiversity.

### **3.3.**

The objector has also raised concerns and objection to the proposal regarding the burying of asbestos within the garden at St Columba's House, resulting from a demolished building. The specific location of the buried material is outwith the current application site and therefore is not a material planning consideration for the current application. As a matter raised within representations, Environmental Health provided comment in the consultation response; that would form advice attached to any decision as an informative. The management of buried materials would fall under other legislation, and as noted above, any burial is outside the current application site boundary and not material to this application.

## **4. Relevant Planning History**

### **4.1.**

Reference	Proposal	Location	Decision	Date
22/003/PP	Change of use of land from	St Columba's House, Lower	Refuse.	22.11.2022.

	agricultural to domestic and erect an outbuilding (part retrospective).	Whitehall Road, Stronsay.		
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#### 4.2.

The planning authority was alerted to works being carried out at the application site in October 2021. The landowner was contacted as part of a subsequent enforcement investigation, including the demolition of an outbuilding, burying of rubble within the land, raising of the ground level and the erection of a block boundary wall. It was concluded that unauthorised development had been carried out, and the landowner was advised on 18 October 2022 that works should cease, that planning permission was required, and to submit a planning application.

#### 4.3.

Planning application reference 22/003/PP was validated on 3 March 2022, for the works carried out and to erect a domestic outbuilding. The application was refused under delegated powers on 22 November 2022, due to flood risk to the proposed building, contrary to Orkney Local Development Plan 2017, Policies 13A 'Flood Risk' and 1(vi) 'Criteria for All Development'.

## 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.
  - Policy 1 – Criteria for All Development.
  - Policy 9C – Natural Heritage and Landscape (Wider Biodiversity and Geodiversity).
  - Policy 9G – Natural Heritage and Landscape (Landscape).
  - Policy 13A – Flood Risk.
  - Policy 13B - Sustainable Drainage Systems (SuDS).
  - Policy 14C – Road Network Infrastructure.
- Guidance:
  - Supplementary Guidance: Natural Environment (2017).

- Planning Policy Advice: Amenity and Minimising Obtrusive Lighting (2021).
- National Planning Policy Framework 4:
  - Policy 3 – Biodiversity.
  - Policy 16 (g, ii) – Quality Homes
  - Policy 22 – Flood Risk and Water Management.

## **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 Lords’ 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 Lords’ 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 National Planning Framework 4 and a provision of the Orkney Local Development Plan 2017, National Planning Framework 4 is to prevail as it was adopted later. It is important to note that National Planning Framework 4 must be read and applied as a whole, and that the intent of each of the 33 policies is set out in National Planning Framework 4 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 National Planning Framework 4 and the provisions of the Orkney Local Development Plan 2017, to merit any detailed assessment in relation to individual National Planning Framework 4 policies, however, there are some new provisions, including biodiversity, and the proposed development has also been assessed against these as appropriate.

## **7. Assessment**

### **7.1. Proposal and Site**

The application is to change the use of former agricultural land to domestic curtilage and the alteration of ground levels to the rear of the property at St Columba’s House, Lower Whitehall Road, Whitehall, Stronsay, as indicated on the Site Plan attached as Appendix 1 to this report. The application is similar to the previous refused application 22/003/PP, but not including any outbuilding.

## **7.2. Flood Risk**

### **7.2.1.**

The site is located within an area that is at high risk of surface water flooding and coastal flooding. Combined with the fact the objection includes flood risk to a neighbouring property from works at St Columba's House, flood risk is a critical consideration.

### **7.2.2.**

Supplementary Guidance: Settlement Statements (Whitehall Village) 2017, states that: *"Much of the coastline of the village is at risk of coastal flooding...."*. The current Flood Risk Management Plan for Orkney (2016) states that *"There is a recorded history of regular coastal flooding on Stronsay, particularly in Whitehall and Mill Bay, where the issue is exacerbated by wave action, the inability of outfalls to discharge freely due to high tide levels and the overtopping of existing coastal defences"*.

### **7.2.3.**

The Scottish Environment Protection Agency (SEPA) Standing Advice and 'Flood Risk and Land Use Vulnerability Guidance' is a material planning consideration in the assessment of proposals within areas of flood risk and confirms that development could be supported if the proposal is for the "redevelopment of an existing building or site for an equal or less vulnerable use". This is reflected in Policy 22(iii) 'Flood Risk and Water Management' of National Planning Policy Framework 4. The proposed development is for the change of use of an area of land from agricultural to domestic and altering ground levels only, not a more vulnerable use, and therefore accords with the SEPA requirements and National Planning Policy Framework 4, Policy 22.

### **7.2.4.**

Engineering Services, as flood risk authority, was consulted and provided advice on coastal floor risk, and surface water flood risk, as repeated in paragraph 2.3. above.

### **7.2.5.**

Adherence to the levels in the plan referred to by Engineering Services (drawing 1052/2 Rev. A 'Post Development Topographical Plan') would be subject to condition.

### **7.2.6.**

Overall, it is concluded that the risk of coastal flooding is not unacceptable, as the development relates to change of use of land and groundworks only. In terms of surface water flooding, to the development, or from the development on other land, which is the focus of the objection, based on the topographical survey and proposed levels Engineering Services has no objections.

## **7.3. Access, Parking and Road Safety**

As the proposed development is for the change of use of land to form an extension to the domestic curtilage of St Columba's House and alterations to ground levels



only, Roads Services has not raised any concerns or objection to the development, which satisfies the requirements of Orkney Local Development Plan 2017, policy 14C 'Road Network Infrastructure'.

## **7.4. Residential Amenity**

The proposed development is for the change of use of an area of agricultural land to domestic curtilage and alteration to ground levels only, including no buildings and at low level, and therefore would have no unacceptable overshadowing or impact on the privacy, daylight or residential amenity of any third-party properties. The proposal would comply with Orkney Local Development Plan 2017 Policy 1(iv) 'Criteria for All Development' and National Planning Framework 4 Policy 16(g, ii) 'Quality Homes'.

## **7.5. Biodiversity**

### **7.5.1.**

The site is not located within any designated natural heritage site or within a Local Nature Conservation Site.

### **7.5.2.**

The objector has raised issues regarding biodiversity: "I find it incredible that having drowned a number of plants the monks are now talking biodiversity. The trees that would be required to mitigate the flood which occurs each winter now will take years to develop...".

### **7.5.3.**

Biodiversity enhancement information has been submitted as a requirement under Policy 3(c) of National Planning Framework 4, which requires all local development to include "appropriate measures to conserve, restore and enhance biodiversity, in accordance with national and local guidance. Measures should be proportionate to the nature and scale of development". The Environmental Planner advises that the submitted biodiversity measures are proportionate to the nature and scale of the proposed development and has no objection.

### **7.5.4.**

It is considered that the development would comply with the biodiversity requirements of National Policy Framework 4, Policy 3 and Orkney Local Development Plan 2017 and Policy 1 'Criteria for All Development', Policy 9C 'Wider Biodiversity and Geodiversity'.

## **8. Conclusion and Recommendation**

The principle of the change of use of the area of agricultural land to garden/domestic and the alteration of ground levels is acceptable. The proposed development is unlikely to have a significant impact on residential amenity, road safety, landscape, visual amenity, or biodiversity. Engineering Services as flood risk authority has no objection regarding coastal flooding and concluded that overland flow from the development site (and adjoining gardens) would therefore be towards the basin in the field, rather than between adjoining gardens. Therefore, subject to completion of

the levels in accordance with submitted plans, the proposed development would comply with Policies 1 'Criteria for All Development', 9C 'Natural Heritage and Landscape (Wider Biodiversity and Geodiversity)', 9G 'Natural Heritage and Landscape (Landscape)', 13A 'Flood Risk', 13B 'Sustainable Drainage Systems (SuDS)', and 14C 'Road Network Infrastructure' of the Orkney Local Development Plan 2017, Supplementary Guidance 'Natural Environment' (2017), Planning Policy Advice 'Amenity and Minimising Obtrusive Lighting' (2021) and would comply with relevant policy provisions of National Planning Framework 4. Objections are of insufficient weight to warrant refusal. Accordingly, the application is recommended for approval, subject to the conditions attached as Appendix 2 to this report.

## **9. Contact Officers**

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

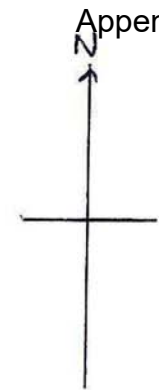
Sue Doyle, Planning Officer, Development Management, Email [sue.doyle@orkney.gov.uk](mailto:sue.doyle@orkney.gov.uk)

## **10. Appendices**

Appendix 1: Site Plan.

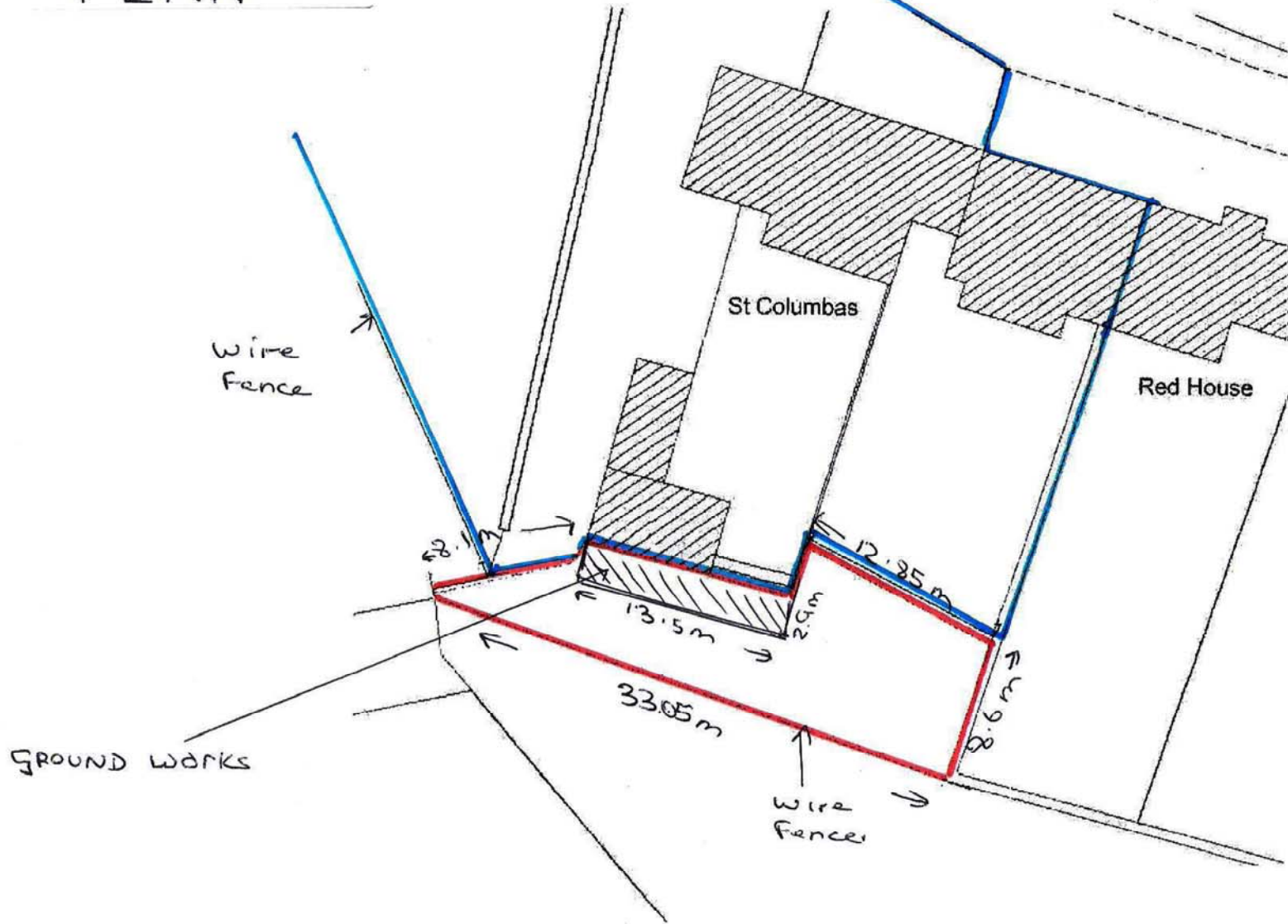
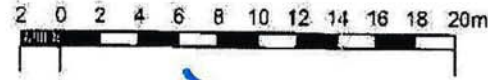
Appendix 2: Planning Conditions.

# LOCATION



# PLAN

SCALE 1:250



## Appendix 2.

01. The development hereby approved to which this planning permission relates must be begun not later than the expiration of three years, beginning with the date on which the permission is granted, which is the date of this decision notice. If development has not commenced within this period, this planning permission shall lapse.

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

02. Throughout the lifetime of the development hereby approved, surface water shall be managed in accordance with the principles of Sustainable Drainage Systems (SuDS) and the guidance set out in CIRIA's SuDS Manual C753. Requisite surface water drainage measures shall be operational prior to the development being brought into use and shall be maintained as operational thereafter and throughout the lifetime of the development.

All surface water shall be contained within the application site and shall be managed to avoid flow into any adjacent road or other land.

Reason: To ensure appropriate management of surface water drainage, in accordance with Policy 13B 'Sustainable Drainage Systems (SuDS)' of the Orkney Local Development Plan 2017, Policy 22 'Flood Risk and Water Management' of National Planning Framework 4, and to protect road safety.

03. Within three months of the date of the decision notice, ground levels between the raised platform hereby approved and the boundary wall to the property 'Red House' adjacent shall be finished to the levels and profiles indicated in the Proposed (Post Development) Topographical Plan (drawing reference: 1052/2 Revision A, dated 21 September 2022).

Reason: For the avoidance of doubt and to ensure overland flow from the development site and adjoining gardens would be directed towards the basin in the agricultural land adjacent rather than between gardens.

04. The biodiversity measures described in the submitted Biodiversity form (dated 25 July 2023) and shown on the site plan contained within the form shall be implemented in full no later than the first planting season following the date of this decision notice. Thereafter the biodiversity measures shall be retained throughout the lifetime of the development in accordance with the approved details, unless otherwise agreed in writing with the planning authority.

Reason: To ensure biodiversity measures are implemented as required by Policy 3 'Biodiversity' of National Planning Framework 4.

05. All landscaping works shall be carried out in accordance with the Proposed Site/Landscaping Plan hereby approved (drawing reference JDC-1690-A300-PL) no later than the first planting season following the date of this decision notice. Any trees, bushes, shrubs or plants which, within a period of five years from the

completion of the development, die, or for any reason are removed or damaged, shall be replaced in the next planting season with others of the same size and species. Thereafter the landscaping measures shall be retained throughout the lifetime of the development in accordance with the approved details, unless otherwise agreed in writing with the Planning Authority.

Reason: To ensure appropriate landscaping of the development.

06. Hours of work during 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.

Throughout the demolition works and construction phase of the development there shall be no burning of waste material on site.

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