

Item: 4.3

Planning Committee: 8 March 2023.

Erect House with Integral Garage, Install Air Source Heat Pump and Create Access (Amendment to 22/047/PP) at Eastra (Land Near), Stromness.

Report by Corporate Director for Neighbourhood Services and Infrastructure.

1. Summary

1.1.

It is proposed to erect a single storey 'L' plan house with an integral garage and an air source heat pump and create an access on Downie's Lane to the south of the property known as Eastra, Stromness. The proposed site is in the countryside and not within the defined settlement of Stromness. The site is within the Hoy and West Mainland National Scenic Area. The proposed development does not accord with the Orkney Local Development Plan 2017; however, significant material weight is placed on the site history and an extant permission for a similar development, approved by the Planning Committee, based on the personal circumstances of the applicant. Given the previous Committee decision for the development, the Corporate Director for Neighbourhood Services and Infrastructure has opted not to exercise delegated powers. On balance, material planning considerations, including the extant consent, are of sufficient weight to recommend approval, contrary to the relevant policies of the Orkney Local Development Plan 2017. Accordingly, the application is recommended for approval.

Application Number:	22/367/PP.
Application Type:	Planning Permission.
Proposal:	Erect a house with an integral garage, install an air source heat pump and create an access (amendment to 22/047/PP).
Applicant:	Miss Corrine Sinclair.
Agent:	Stephen J 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

No adverse comment, subject to attachment of a planning condition regarding access and road safety, as attached to the extant permission 22/047/PP.

2.2. Environmental Health.

No adverse comment, subject to attachment of a planning condition regarding noise from the air source pump and safeguarding residential amenity, as attached to the extant permission 22/047/PP.

3. Representations

No representations received.

4. Relevant Planning History

4.1.

Reference	Proposal	Location	Decision	Date
22/047/PP	Erect a house with an integral garage, install an air source heat pump and create an access	Eastra (Land Near), Stromness, Orkney KW16 3HS.	Approved.	07.07.2022.
PPA-330-2027	Erect a house with an integral garage and an air source heat pump and create an access.	Land near Eastra, Stromness, KW16 3HS.	Appeal dismissed.	20.08.2021.
20/157/PP	Erect a house with an integral garage and an air source heat pump and create an access.	Eastra (Land Near), Stromness, KW16 3HS.	Refused.	08.10.2020.

4.2.

The proposed development has significant planning history. The site currently benefits from planning permission for a similar character of, but materially different, development, reference 22/047/PP. The current application is necessitated through alteration of the application site to relocate the private drainage infrastructure to the east rather than south of the proposed house, alterations to the proposed property including the addition of a roof mounted solar array, repositioning of the air source heat pump, alterations to windows and a minor enlargement of the footprint of the property. The site area remains stated at 1,500 square metres with the overall layout

and appearance of the property as previously approved remaining substantially consistent with that as approved.

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 2 – Design.
 - Policy 5E – Single Houses and new Housing Clusters in the Countryside.
 - Policy 9 – Natural Heritage and Landscape.
 - Policy 14 – Transport, Travel and Road Network Infrastructure.
- Supplementary Guidance: Housing in the Countryside (2021)
- National Planning Framework 4

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. Background

7.1.1.

The site is located on the edge of an agricultural field laid to grass adjacent and to the west of Downie's Lane. The site is located adjacent to and south of the existing property of Eastra, as indicated in the location plan attached as Appendix 1 to this report. The site is outside the defined town boundary of Stromness and as such must be considered as a house site in the countryside. The proposed site is in a prominent location given the elevated nature of this section of Downie's Lane in relation to Stromness.

7.1.2.

It is proposed to develop a single house in the countryside. The previous approved development for the site included a supporting document which provided a background statement in support of the proposed development and presenting the personal circumstances of the applicant which are unchanged given the lifelong nature of the applicant's condition. A letter from a general practitioner, stated as on soul and conscience, was submitted, stating personal support for the applicant. This correspondence details the health conditions of the applicant and states that "it is important that she has a place that is very close by but independent from the parental home". These submitted circumstances remain pertinent to the case under consideration, noting that both the applicant and agent are unchanged.

7.1.3.

Two elements of the personal circumstances of the applicant were raised in support of the application:

- A lifelong, significant and debilitating health condition.
- Financial matters relating to the proposed development.

The complex medical evidence submitted by, and on behalf of, the applicant was, and remains, considered as a relevant material planning consideration, whilst the financial matters are not.

7.1.4.

There are no technical issues in relation to the servicing of the site which would make it unacceptable, with matters such as foul and surface water drainage, parking and sufficiency of amenity space likely to meet requirements, subject to securing the works required by Roads Services through condition, should the application be considered favourably.

7.2. Principle, Design and Appearance

7.2.1.

The proposed site has a significant planning history. The site currently benefits from planning permission 22/047/PP for a similar character of development for a single house, albeit the design proposed now is materially different. The extant approval has significant material weight when considering the application as presented.

7.2.2.

The scale, form and placement of the development under consideration substantially follows that as previously considered per approval 22/047/PP. Detailed reconsideration of such matters is not considered reasonable or proportionate for the current application, given the recent site history. Key matters under consideration are alteration of the site area, repositioning of private drainage and changes to the proposed house from that previously granted planning permission.

7.2.3.

The total site area, 1,500 square metres, and placement of the proposed house within it remains consistent with the currently approved development. The site development area has changed from a rectilinear plot with a north-south axis to a rectilinear plot which has an east-west axis. This is to allow the repositioning of both foul and surface water drainage to the east of the site rather than to the south. Given the altered plot area, combined with the change in levels and the cut proposed to accommodate the proposed development, a reduction in the total length of cut into the slope to the south should result.

7.3. Residential Amenity

7.3.1.

The proposed house is adjacent to the property known as Eastra to the north of the proposed site. At closest point the proposed development is 4.35 metres from Eastra. This would result in a very close relationship between the proposed house and Eastra. As both the proposed development and the existing house are required to be considered as independent houses, the siting and design of the proposed house must consider the impact on residential amenity of Eastra. The proposed house would face both the blank south gable of Eastra at closest proximity, with the garden ground to the rear of Eastra being directly overlooked by the single window serving a room noted as 'carers bedroom' of the proposed house. This would in part be obscured by an existing greenhouse adjacent to the south boundary.

7.3.2.

The air source heat pump is proposed on the north gable facing Eastra. This is placed towards the easternmost extent of the gable and has been subject to consideration in terms of noise. No objection has been received by Environmental Health on this matter, subject to a suitable planning condition to safeguard the amenity of Eastra. The amenity and privacy currently enjoyed by Eastra as an

isolated house in the countryside will be negatively impacted by a house in such proximity; however, this impact is not so great to warrant refusal.

7.3.3.

The relationship to the existing property at Eastra remains unchanged, in relation to the current approval, with regards proximity and height differential given, and the floor level and ridge height of the proposed development. The increase in length of the property, by 0.670 metres, along the elevation facing Eastra to the north on the east-west axis, is not considered to be any more significant in relation to impacts on the landscape as was previously considered under application 22/047/PP.

7.4. Natural Heritage and Landscape

The proposed development is situated within the Hoy and West Mainland National Scenic Area (NSA). The alteration of the plot area and reduction in excavation to the south of the site may reduce the landscape impact of the development from a near-view perspective. An area of landscaping outwith the site boundary to both south and east within land in the ownership of the applicant is indicated. The nature of these works is unspecified and would be secured by appropriate planning condition, noting the landscape sensitivities of the site.

7.5. Road Network Infrastructure

Access would be taken directly from the adjacent road. Roads Services has no objection, subject to a planning condition requiring the developer to widen Downie's Lane across the entire frontage of the site and requiring the proposed access to Downie's Lane to be carried out in compliance with appropriate roads authority standards. The site is considered of adequate size to accommodate any necessary parking and manoeuvring space.

7.6. Restrictive Residential Occupancy

Significant weight was placed on the personal circumstances of the applicant in the currently approved development for a house on this site. Such exceptional circumstances typically lead to a residential occupancy condition being applied, noting that the development is not related to either land management or a business case, but principally the personal circumstance of the applicant. No such planning condition was attached to the current approval, and so is not included in the proposed conditions.

8. Conclusion and Recommendation

8.1.

The proposed development does not accord with Orkney Local Development Plan 2017, Policy 5E: Single Houses and New Housing Clusters in the Countryside as the key policy for the principle of a new house in the countryside. The proposal is also considered contrary to Policy 1: Criteria for All Development and Policy 2: Design. The proposal would also have a detrimental impact on the Hoy and West Mainland National Scenic Area and the landscape setting of Stromness.

8.2.

However, the applicant's personal circumstances have been considered to outweigh the relevant provisions of the Local Development Plan, resulting in the current approval at the site, application 22/047/PP. This permission is extant, and this recent site history is a significant material consideration in assessment of the current application. The development under consideration follows closely the extant approval, with no fundamental change in the design approach or placement of the house within the site, and no change in the personal circumstances of the applicant in the application as submitted. Given the weight provided to the site history and extant consent, 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

David Barclay, Senior Planner (Development Management), Email
david.barclay@orkney.gov.uk

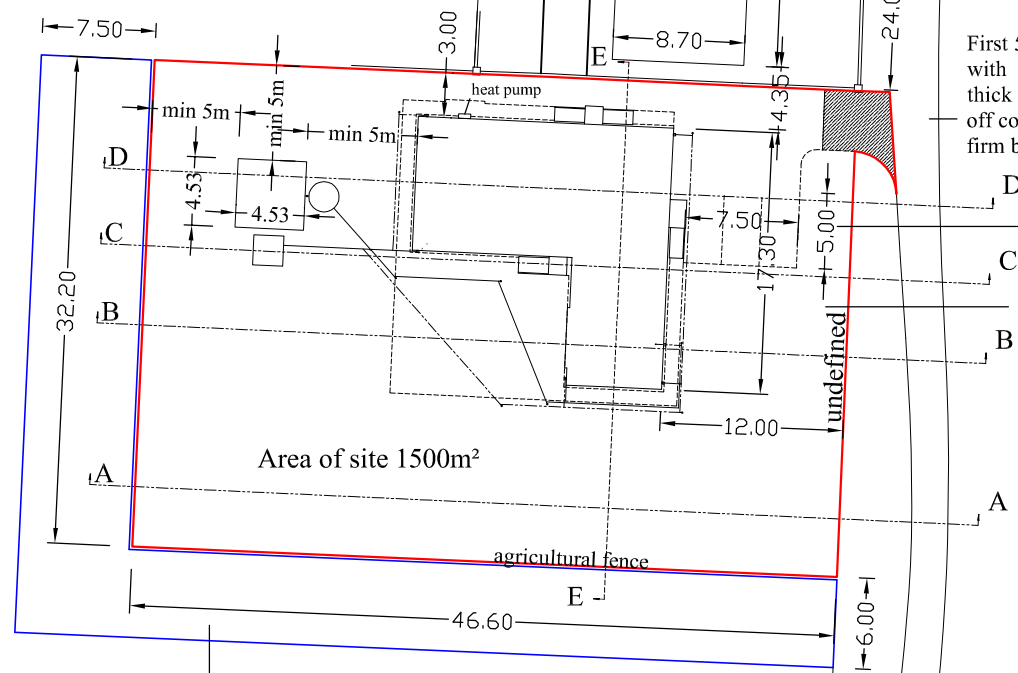
10. Appendices

Appendix 1: Site Plan.

Appendix 2: Planning Conditions.

Septic tank & soakaways a minimum 10m from road and 5m from building and boundaries.
 Septic tank capacity $(5 \times 180) + 2000 = 2900$ litres.
 Area of soakaway $5 \times 16.3 \times 0.25 = 20.5m^2$

Surface water soakaway a minimum 10m from road and 5m from building and boundaries.
 Area to be drained is $200m^2$ therefore assuming $5m^3$ of soakaway per $100m^2$ drained, soakaway is 2.5m deep x $4.53m \times 4.53m$.



Existing surfaced passing place.

First 5m of access finished with minimum 50mm thick layer of tarmadam off compacted Type 1 off firm base.

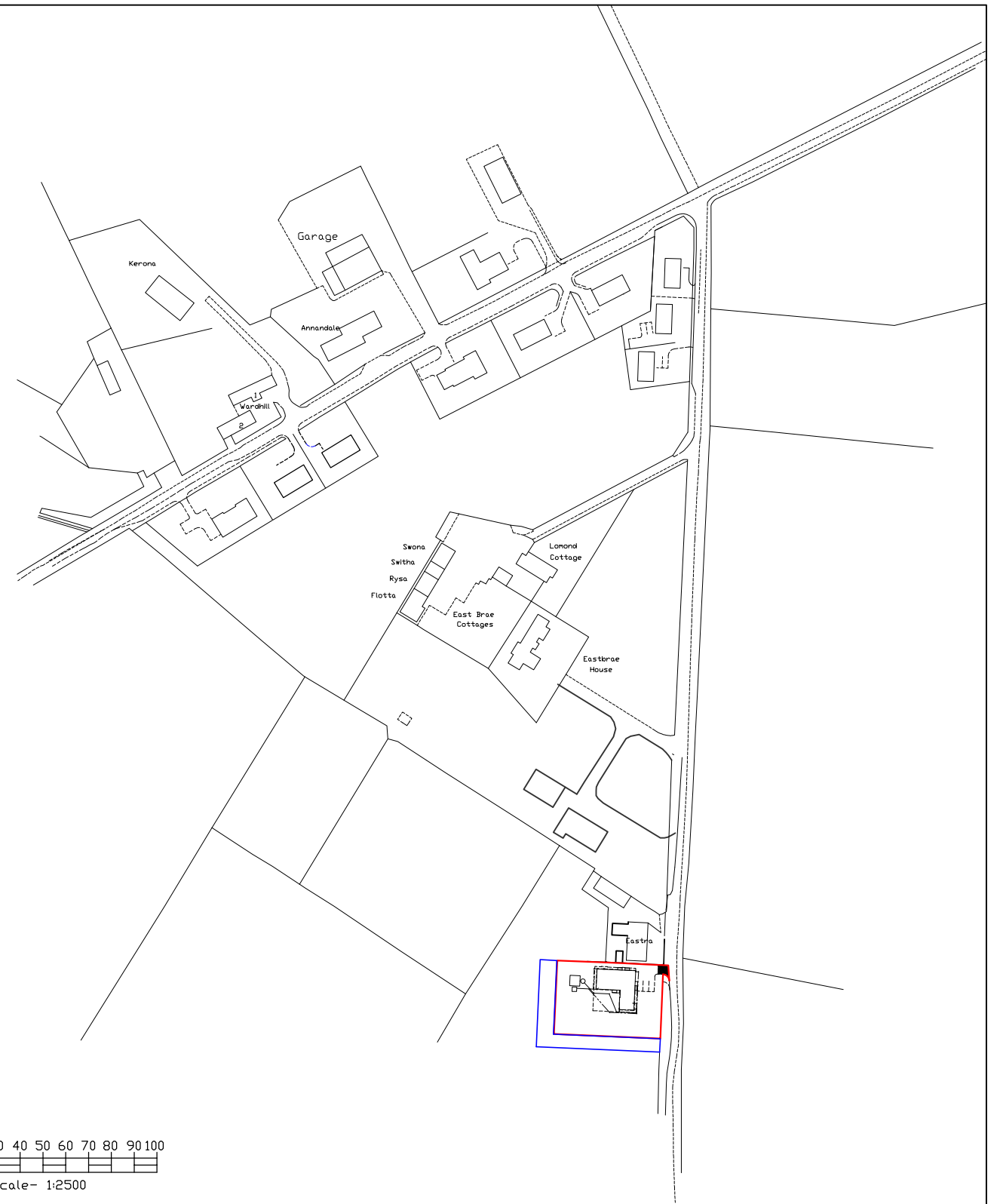
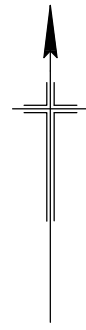
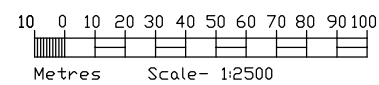
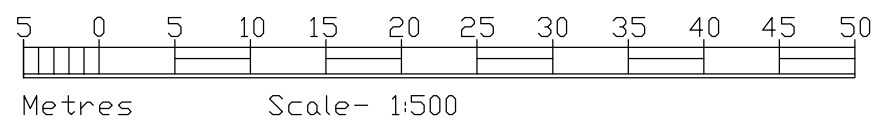
Drive and parking for 3 cars, finished with rolled dust, off consolidated hardcore.

Remainder of site laid to lawns with no shrubs or bushes.

Area of site $1500m^2$

agricultural fence

Additional area of land which will belong to applicant to permit landscaping of site



Project		Near Eastr, Stromness, KW16 3HS.	
Title		Erection of House & Garage.	
Client		Miss Corrine Sinclair, Eastr, Stromness, KW16 3HS.	
Date	September 2022.	Drawn By	SJO
Scale	1:50	Drwg No	1622A/1/P1
		Plan size	A2
To comply with The Building (Scotland) Regs 2004, as amended.		DO NOT SCALE- if in doubt ASK.	

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. Notwithstanding details included in approved drawings, no other development shall commence until the access from the site hereby approved to Downie's Lane has been constructed to the Council's Roads Services standard drawing 'SD-05 (Typical Access Over Verge with Service Bay)', attached to and forming part of this decision notice, including dimensions, road construction, any pipe required, and verge or footway. The access shall be constructed and completed wholly in accordance with these agreed details and thereafter shall be retained in accordance with these approved details throughout the lifetime of the development, unless otherwise agreed, in writing, by the Planning Authority in consultation with the Roads Authority.

Any damage caused to the existing road infrastructure during construction of the development shall be repaired prior to first occupation of the development, to the satisfaction of the Planning Authority, in conjunction with Roads Services.

Reason: In the interests of road safety and for the avoidance of doubt.

03. Notwithstanding landscaping details on the location and site plan hereby approved ('site laid to lawns with no shrubs or bushes'), drawing 1622A/1/P1, no development shall commence until a Landscaping Plan has been submitted to, and approved in writing by, the Planning Authority. The Scheme shall include:

- a) All earthworks and existing and finished ground levels in relation to an identified fixed datum point.
- b) The location and design, including materials, of all proposed walls, fences and gates and ground finishes, including hardstandings.
- c) Soft landscaping and planting, including plans and schedules showing the location, species and size of all individual trees and/or shrubs and planting densities.
- d) A programme for preparation, completion and subsequent on-going maintenance and protection of all landscaping works.

The Landscaping Scheme shall include, but not be limited to, structural shrub and tree planting of suitable species with emphasis on the boundaries of the site where planting can be achieved without impacting on the necessary visibility splay as required by condition 01, and the additional land to the south and west of the application site.

Appropriate boundary treatments on the north boundary should be evidenced to ensure the privacy of the rear garden of the adjacent house is maintained.

Landscaping works shall be carried out in accordance with the approved scheme. All planting, seeding, and/or turfing included in the Scheme shall be carried out in the first planting season following the commencement of development, unless otherwise stated in the approved Scheme.

Any trees or plants which within a period of five years from the completion of the landscaping works 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.

Reason: To ensure that the approved landscaping works are properly undertaken on site.

04. Notwithstanding the provisions of Part 1 of Schedule 1 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended, revoked or re-enacted; with or without modification), no other development in excess of that conferred by this planning permission shall be carried out within the curtilage of the dwellinghouse (1) above the hereby approved ground level and/or (2) further south than the southernmost part of the house hereby approved, without the express grant of planning permission.

Reason: To protect the character and appearance of the area.

05. The planning authority shall be notified, in writing, following excavation and ground preparation works and when the foundation is constructed to, and not exceeding, finished floor level. Thereafter, the development shall not proceed above finished floor level until the expiry of 14 days or confirmation, in writing, from the planning authority that the finished floor level is accepted as in accordance with the hereby approved elevations and sections, whichever is earlier.

Reason: To retain adequate control of a development, in a prominent location and which requires significant ground excavation works.

06. Surface water shall be managed wholly within the boundary of the application site, including the soakaway indicated in the site plan hereby approved, and no surface water shall be released from the site to the public road or any roadside drainage.

Reason: To ensure the provision of an adequate surface water drainage system and to accord with Policy 13B: Sustainable Drainage Systems (SuDS) of Orkney Local Development Plan 2017, Scottish Planning Policy: Managing Flood Risk and Drainage, and for the avoidance of doubt.

07. Throughout the life of the development, the total noise from the Air Source Heat Pump(s) hereby approved shall not exceed NR25 within any residential property outwith the individual house development site, where NR25 is the Noise Rating Curve at 25, (noise measurements to be made with a window of any residential property outwith the development open no more than 50 mm).

Reason: To protect any nearby residents from excessive noise disturbance from the air source heat pump.

08. Any exterior lighting employed on the house hereby approved, shall be so positioned, angled and controlled to prevent any direct illumination, glare or light

spillage outwith the site boundary. The use of automatic cut-out or sensor operated external lighting of limited timed illumination is advocated.

Reason: To ensure that any lighting installed within the application site does not spill beyond the intended target area, does not impact adversely upon the amenity of adjacent properties and does not result in 'sky glow'.

09. Hours of work during the construction of the development hereby approved, including site clearance and preparation, 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 on 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.

Reason: To protect the amenity of neighbouring residential properties.