

## Item: 4.4

**Planning Committee: 29 November 2023.**

**Erect Replacement House with Air Source Heat Pump (One for One) (Amendment to 21/154/AMC) at Minora, Harray.**

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

### 1. Summary

#### 1.1.

Planning permission is sought for a replacement house at Minora, Harray. The development is acceptable in principle, location and design. One objection has been submitted, relating to drainage. The objection is not of sufficient weight to merit refusal of the application. Accordingly, the application is recommended for approval, subject to conditions.

Application Number:	23/312/PP.
Application Type:	Planning permission.
Proposal:	Erect a replacement house with an air source heat pump (one for one) (amendment to 21/154/AMC).
Applicant:	Mr Sean Stanger.
Agent:	Stephen 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 objections, subject to a condition regarding access and an informative being attached.

#### 2.2. Environmental Health

No objections, subject to a condition relating to noise from the air source heat pump being attached.

### 2.3. Development and Marine Planning (Biodiversity)

No objections, subject to a condition relating to the proposed biodiversity enhancement measures being attached.

### 2.4. Scottish Water

No objections.

## 3. Representations

### 3.1.

One objection has been received, from:

- Mr Gavin Critchley, Heatherlea, Stoneyhill Road, Harray, KW17 2JS.

### 3.2.

The objection relates to concerns regarding surface water drainage.

## 4. Relevant Planning History

### 4.1.

Reference	Proposal	Location	Decision	Date
21/154/AMC	Erect a replacement house with an air source heat pump (one for one) (following permission in principle 18/209/PIP).	Minora, Harray, Orkney	Granted subject to conditions	23.06.2021
18/209/PIP	Siting of a replacement house and create an access (one for one).	Minora, Harray, Orkney	Granted subject to conditions	20.07.2018

### 4.2.

Planning permission 21/154/AMC lapsed in June 2023.

## **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 2 – Design.
  - Policy 5 – Housing.
  - Policy 8 – Historic Environment and Cultural Heritage.
  - Policy 13 - Flood Risk, SuDS and Waste Water Drainage.
  - Policy 14C - Transport, Travel and Road Network Structure .
- 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, the proposed development is considered to comply with the relevant provisions of both NPF4 and the Orkney Local Development Plan 2017.

## **7. Assessment**

### **7.1. Background**

Planning permission is sought for the replacement of a redundant house at Minora, Harray. The site is in the countryside, accessed from the Stoneyhill Road as indicated in the Location Plan attached as Appendix 1, with clusters of properties nearby to the east and north.

### **7.2. Principle**

#### **7.2.1.**

The Spatial Strategy of the Orkney Local Development Plan 2017 confirms that: “The Plan strives to support the economic and social aspirations of the rural community by encouraging sustainable economic growth... by providing multiple opportunities for the development of new rural homes, whilst seeking to protect Orkney’s landscape and natural environments for future generations”.

#### **7.2.2.**

The Policy 5E ‘Single Houses and new Housing Clusters in the Countryside’ states that “...on the Mainland and Linked South Isles, developments of single houses and housing clusters will be supported...” where they meet one of the listed criteria. In this case, the proposal complies with criterion (iii) for the replacement of an existing building or structure.

#### **7.2.3.**

This aligns with NPF4 Policy 17 a) which states, “Development proposals for new homes in rural areas will be supported where the development is suitably scaled, sited and designed to be in keeping with the character of the area”, and at point a) iii, where the development “reuses a redundant or unused building”. As the replacement of a former, redundant house, which is not of historic merit, and on the same site, the principle of the proposal is therefore acceptable.

### **7.3. Amenity and Design**

#### **7.3.1.**

Relative to the previously approved house on the site, the design has been altered to include an integral garage. The design of the house is considered acceptable in terms of materials, scale and general appearance and would be similar to others in the Orkney countryside.

### **7.3.2.**

The materials include flat profile concrete tiles in black for the roof, white rendered walls, dark grey (anthracite) doors and window frames and black uPVC fascias, soffits and rainwater goods. Other than defined areas of hardstanding which includes the parking area, the site would be laid to grass. Boundaries would be agricultural fencing, which would be acceptable taking account of the countryside location.

### **7.3.3.**

The closest third party house to the proposed site is Cairnton, 75 metres to the north west. All other third party houses have a separation distance of over 100 metres. These separation distances would help to maintain privacy and it would be unlikely that the proposal would have a significant impact on the residential amenity of third party dwellings through overlooking or overshadowing. The control of noise from the air source heat pump would be secured by condition.

### **7.3.4.**

The site area is sufficient to provide adequate amenity space and parking provision for the occupants of the proposed house.

### **7.3.5.**

As is a requirement under Policy 2(vi) and Planning Policy Advice 'Amenity and Minimising Obtrusive Lighting' (March 2021), a condition would be attached requiring that any external lighting used on the development would minimise obtrusive light and would be downward facing.

### **7.3.6.**

The proposal complies with Policy 2.

## **7.4. Landscape**

The site is located within the Inner Sensitive Zone of the Heart of Neolithic Orkney World Heritage Site. Given the scale of the development, the existing derelict building on the site, existing built development nearby, there being no impact on any sensitive ridgeline, and the distance of the site from monuments within the landscape, it is concluded that the development would not have a significant negative impact on the Outstanding Universal Value of the World Heritage Site or its setting. The development therefore accords with Policy 8.

## **7.5. Biodiversity**

Biodiversity measures appropriate to the nature and scale of the development have been included, and a condition would be attached to ensure these are implemented. The proposal complies with Policy 3 of NPF4.

## **7.6. Drainage**

### **7.6.1.**

One objection has been received relating to drainage. The site lies within a Waste Water Drainage Consultation Area, due to poor ground conditions (and limited public waste water network provision). Policy 13C provides for the use of private foul drainage systems provided there would be no detrimental impacts, including no unacceptable cumulative effects, to the built and natural environment or surrounding uses. SEPA was consulted in relation to the previous application which lapsed in June 2023, and raised no objection. Under amended consultation thresholds, SEPA is no longer a consultation body in relation to foul drainage for a single house in these circumstances. Percolation tests from the previous approved application have been (re)submitted, and the development would be subject to an application for building warrant, which would include details of the design and construction of the wastewater drainage system. Any private sewage treatment system designed to discharge to land or water must, by law, be registered with SEPA.

### **7.6.2.**

The combination of recent site/approval history and percolation testing, the safeguards provided by other assessment of the design and construction of the foul drainage treatment, combined with the scale of the development as a single house, are such that there is no unacceptable risk from drainage, and the proposal complies with Policy 13.

## **7.7. Access**

Roads Services has no objection, provided that the access is constructed to Roads Services Standard drawing 'SD-03 – Access Over Verge for Single Dwelling' which would be controlled by planning condition. The proposal complies with Policy 14.

## **8. Conclusion and Recommendation**

The development is therefore considered to accord with the Spatial Strategy and Policies 1, 2, 5, 8, 13 and 14 of the Orkney Local Development Plan 2017, and the policy provisions, including Policies 3 and 17, of National Planning Framework 4. The proposal is acceptable in principle, in terms of design, amenity, drainage and access. The objection is not of sufficient weight to merit refusal. 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](mailto:jamie.macvie@orkney.gov.uk)

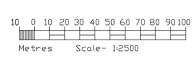
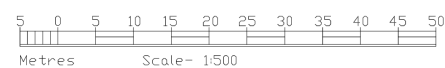
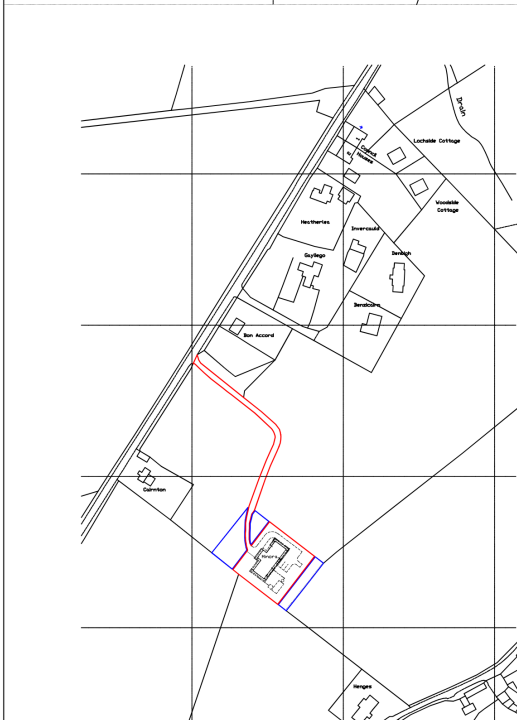
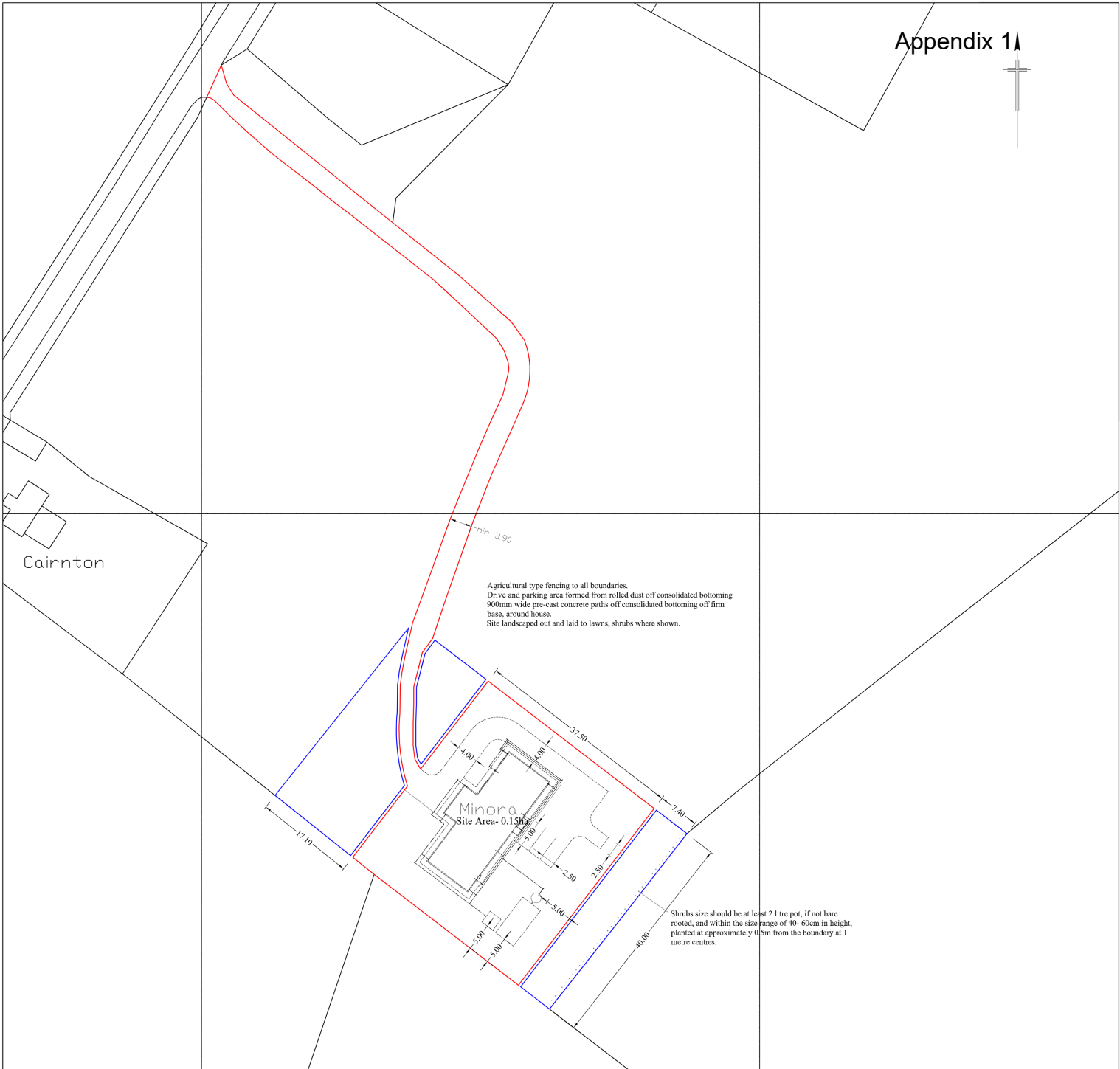
Murray Couston, Planning Officer, Development Management, Email [murray.couston@orkney.gov.uk](mailto:murray.couston@orkney.gov.uk)



## **10. Appendices**

Appendix 1: Location Plan.

Appendix 2: Planning Conditions.



Stephen J Ormand, FRICS, Chartered Surveyor, 14 Victoria Street, Kirkwall, KW15 1DN. Tel- 01856 078215 Email- stephen@sjomand.co.uk					
Project Minora, Harray, KW17 2JS.					
Title Amendment to Planning Approval Reference 21/154/AMC. Erection of house & garage and installation of heat pump.					
Client Sean Stanger, Stangalee, Grimbister, Kirkwall, KW15 1TS.					
Date	August 2023.	Drawn By	SJO	Plan size	A2
Scale	As shown.	Drawg No	1665/1/P1	Rev	
DO NOT SCALE					

## 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. 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 or the Christmas or New Year Public Holidays, unless otherwise agreed, in writing, with the Planning Authority.

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 this development.

03. 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, National Planning Framework 4, and to protect road safety.

04. Throughout the life of the development, the maximum noise from the Air Source Heat Pump hereby granted planning permission shall not exceed NR25 within any residential property outwith the 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 50mm).

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

05. No other development shall commence until the access hereby approved with the public road is constructed to Roads Services' standard drawing 'SD-03 Access Over Verge for Single Dwelling', 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 details, and thereafter shall be retained in accordance with these details throughout the lifetime of the development.

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 to protect the public road infrastructure.

06. Throughout the lifetime of the development, any external lighting used on the dwelling and any outbuilding(s) shall be downward facing only and shall meet the requirements specified by the Institution of Lighting Professionals for Zone E1/E2 areas (Rural/Low District Brightness).

Reason: To minimise obtrusive light, glare or distraction in the interests of safeguarding the amenity of the area and to accord with Policy 2 – Design of the Orkney Local Development Plan 2017 and Planning Policy Advice: Amenity and Minimising Obtrusive Lighting (March 2021).

07. The biodiversity measures identified in the site plan hereby approved, drawing 'Amendment to planning approval reference 21/154/AMC. Erection of house and garage and installation of heat pump', reference 1665/1/P1, and described in the submitted Biodiversity form (dated 20 August 2023), shall be implemented in full no later than the first planting season following commencement of development. Thereafter, the biodiversity measures shall be retained wholly in accordance with the approved details throughout the lifetime of the development.

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