

## Item: 4.2

**Planning Committee: 23 August 2023.**

**Erect a house with a detached garage and an air source heat pump at Noneyha' (Land Near), Noneyha Road, Eday.**

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

### 1. Summary

#### 1.1.

It is proposed to erect a detached house, accessed from the Noneyha Road in Eday. The development is acceptable in principle and detail, with regards landscape impact, residential amenity and safety of road users. One objection has been received on grounds of access, and specifically the width of the existing access track and its capacity to accommodate heavy goods vehicles. The objection is not of sufficient weight to merit refusal of the application. Accordingly, the application is recommended for approval.

Application Number:	23/472/PP.
Application Type:	Planning permission.
Proposal:	Erect a house with a detached garage and an air source heat pump.
Applicant:	Mr and Mrs Angus Brown.
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 the proposed property 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.

It should also be noted that there is a length and weight restriction on all roads on Eday, which restricts the maximum weight of any vehicle to 25 tonnes and a maximum length of 12 metres.”

### **2.1.2.**

In response to the consultation response from Roads Services, the agent confirmed that the vehicle “...being used to transport plant and materials will be a 12 meter long, 16 ton HIAB lorry and that no load will exceed the gross capacity of 25 ton.

The applicant has confirmed that they will repair any damage to the road caused by any construction traffic.”

### **2.1.3.**

Roads Services provided an updated consultation response, confirming no objections to the development and: “The information supplied is acceptable, it is however requested that the condition and informative noted below are applied to any planning permission that may be granted.”

## **2.2. Scottish Water**

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

## **2.3. Environmental Health**

Environmental Health confirmed no objection to the development in relation to noise from the air source heat pump, subject to a standard condition.

## **3. Representations**

### **3.1.**

One objection (including subsequent submission) has been received, from:

- Mr Walter Cormack, Cayrne, Eday, KW17 2AA.

### **3.2.**

The objection is in relation to the existing access track, and specifically the width of the access track and its capacity to accommodate heavy goods vehicles.

## **4. Relevant Planning History**

None.

## **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 5C – The Isles Approach for Housing.
  - Policy14C – Road Network Infrastructure.
- National Planning Framework 4:
  - 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 on the Location Plan and Site Plan attached as Appendix 1. 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 Backaland pier. The site is close to the end of an 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 proposed development is located approximately 100 metres north-west of the steading.

### **7.2.2.**

It is proposed to erect a relatively small single storey house and detached garage in an improved agricultural field, set back approximately 50 metres from the access track. Based on a narrow rectangular plan with a small entrance porch, the house would have a grey standing seam roof, timber clad walls and grey windows and doors. The combination of narrow plan and relatively steeply pitched roof ensure the proportions are appropriate in its rural setting, and the colours are adequately recessive. It is therefore considered that the development would be 'sympathetic to the character of its local area' and would have a 'positive effect on the appearance and amenity of the area' in accordance with Policy 2 'Design'.

### **7.3. Amenity**

The house would be located sufficiently distant from any neighbouring property such that the residential amenity of those existing nearby properties would be protected. Environmental Health has no objection regarding noise from the proposed air source heat pump, subject to a planning condition. The application site is of adequate size to provide required outside amenity space for the residents of the development. On the basis there would be 'no unacceptable adverse impact on the amenity of adjacent or nearby properties or users', the development is considered to accord with Policy 1 'Criteria for All Development'.

### **7.4. Drainage**

The proposed development is on a relatively isolated site, therefore foul and surface water drainage would both be connected to private systems within the boundary of the application site. These private systems would be subject to building warrant application in conjunction with the house.

### **7.5. Access**

#### **7.5.1.**

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.

#### **7.5.2.**

The objection received is principally in relation to the existing access track, including the geometry of the junction between the proposed house access track and the existing farm access track, all on private ground and beyond the public road. The objector has also stated that the existing track is of insufficient width to support particular vehicles, including heavy goods vehicles, fire engines and vehicles with trailers.

### **7.5.3.**

It is relevant that the track is existing, and currently serves the existing house and buildings. The agent has confirmed that the applicant does not propose to widen or otherwise alter the access track, and Roads Services has confirmed no objection on that basis. A dilapidation survey would be required for the public road. It is therefore considered that the development could be 'safely and conveniently accessed by service, delivery and other goods vehicles, as appropriate to the development', noting that the application is for a single house only.

### **7.5.4.**

The development is considered to accord with Policy 14C 'Road Network Infrastructure', and the objection on grounds of access is not of sufficient weight to merit refusal of the application. The objection also includes matters that are not material in planning terms and are not considered in this report.

## **8. Conclusion and Recommendation**

### **8.1.**

The application is acceptable in principle, 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 design is appropriate in its setting, as is the location of the site and its compatibility 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. The public objection is 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 and 14C of the Orkney Local Development Plan 2017, and the policy provisions, including Policy 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**

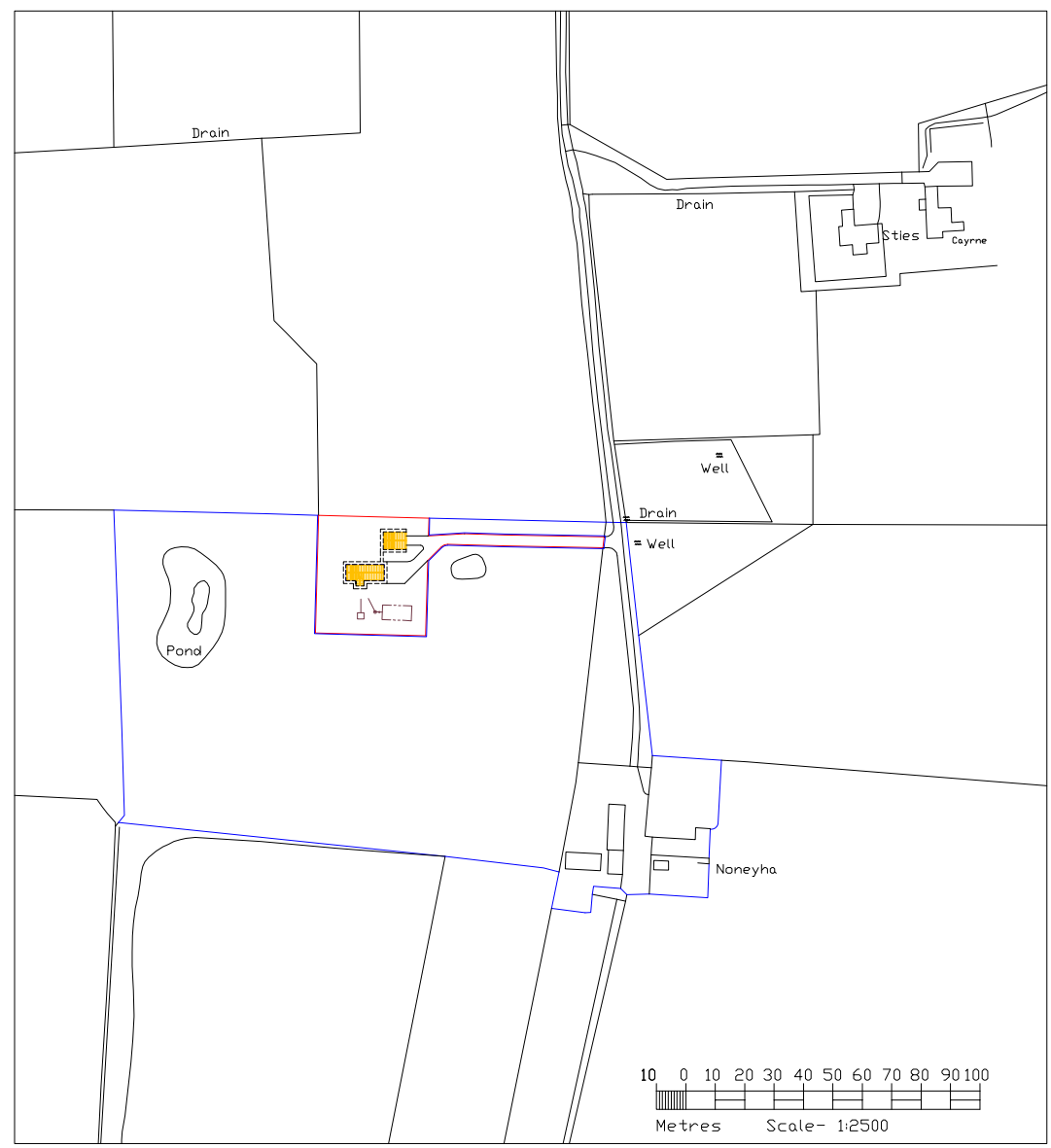
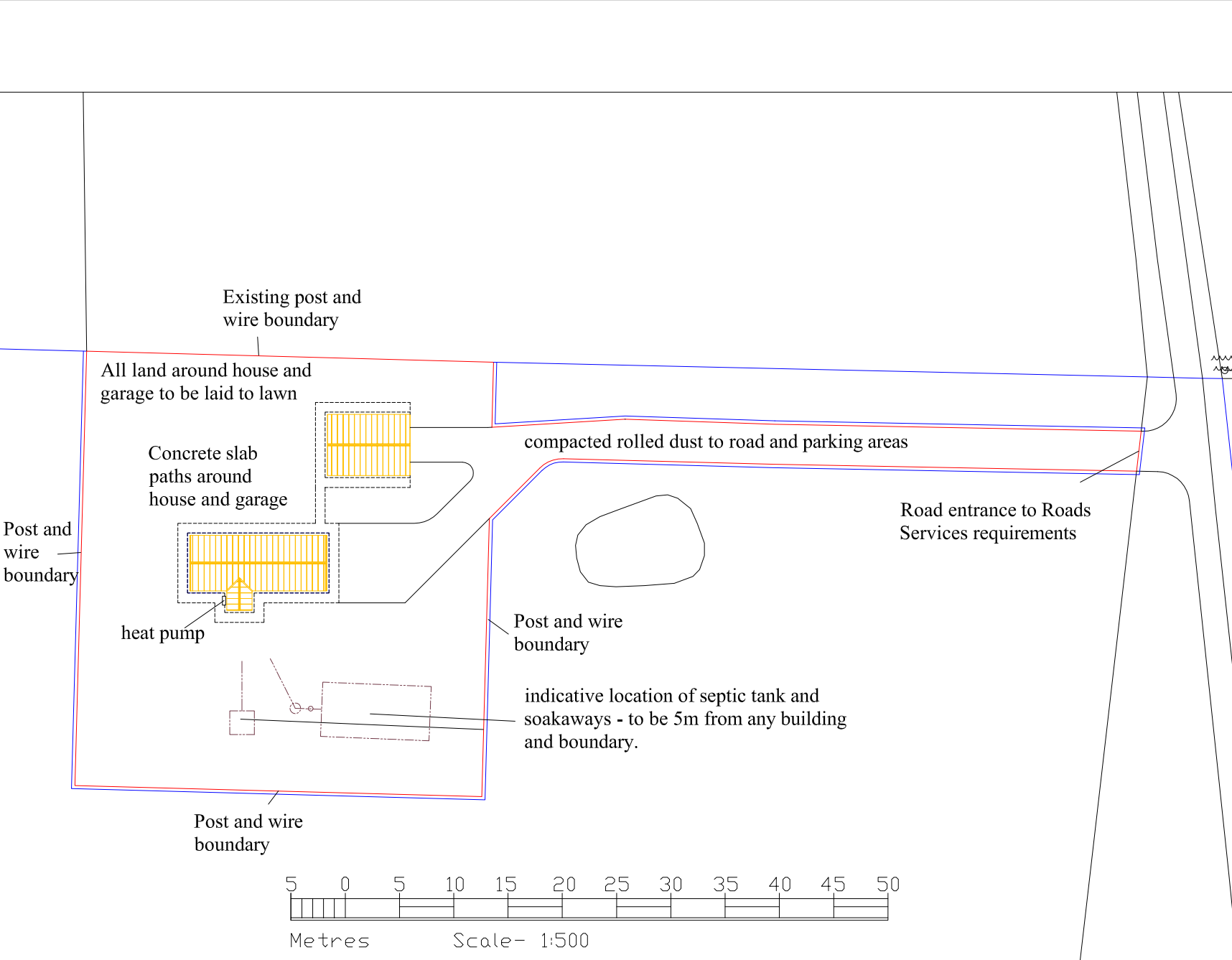
Jamie Macvie, Service Manager (Development Management), Email [jamie.macvie@orkney.gov.uk](mailto:jamie.macvie@orkney.gov.uk)

## **10. Appendices**

Appendix 1: Site Plan.

Appendix 2: Planning Conditions.





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Project	Peddie Ha, Eday, KW17 2AA		
Title	Erection of house and garage		
Sub-Title	Site & Location Plan		
Client	Angus and Maggie Brown, C/o Kerr Carpentry Ltd, The Workshop, Burray, KW17 2UG		
Date	December 2022	Drawn By	CJO
Scale	1:100/150	Drwg No	5121/PP/3
		Plan size	A3
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. Throughout the lifetime of the development hereby approved, surface water shall be treated in accordance with the principles of Sustainable Drainage Systems (SuDS) and be compliant with the guidance set out in CIRIA's SuDS Manual C753. The requisite surface water drainage shall be operational prior to the development being brought into use and shall be maintained as such thereafter.

All surface water shall be contained within the development site and there shall be no surface water drainage run-off to adjacent land.

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.

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 sites, 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. Total noise from the Air Source Heat Pump(s) installed shall not exceed NR25 within any residential property outwith the development, 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.

05. Throughout the lifetime of the development hereby approved, any external lighting used on the dwelling shall be downward facing only and shall comply with the Council's requirements that all external lighting shall minimise light pollution and shall meet the requirements specified by the Institution of Lighting Professionals for Zone E2/E3 areas (Low District/Medium Brightness). The lighting shall be turned off when not required either by automatic sensor or manually.

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

06. 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.