

North Yorkshire Council

Community Development Services

Skipton and Ripon Area Planning Committee

3RD DECEMBER 2024

ZC24/03113/DVCMAJ – SECTION 73 APPLICATION FOR THE VARIATION OF CONDITION 1 OF SECTION 73 PERMISSION ZC24/01066/DVCMAJ TO ALLOW FOR CHANGES TO PROPOSED WINDOW FRAMES, DOOR FRAMES, GARAGE DOOR FRAMES, FRONT DOORS OF DWELLINGS AND GARAGE DOORS TO A DEVELOPMENT OF 33 DWELLINGS ORIGINALLY PERMITTED UNDER RESERVED MATTERS APPLICATION 20/04874/REMAJ AT BRIERLEY HOMES LAVERTON OAKS DEVELOPMENT, LAND COMPRISING FIELD AT 422819 474158, BACK LANE, KIRKBY MALZEARD, NORTH YORKSHIRE, ON BEHALF OF BRIERLEY HOMES LTD.

Report of the Assistant Director Planning – Community Development Services

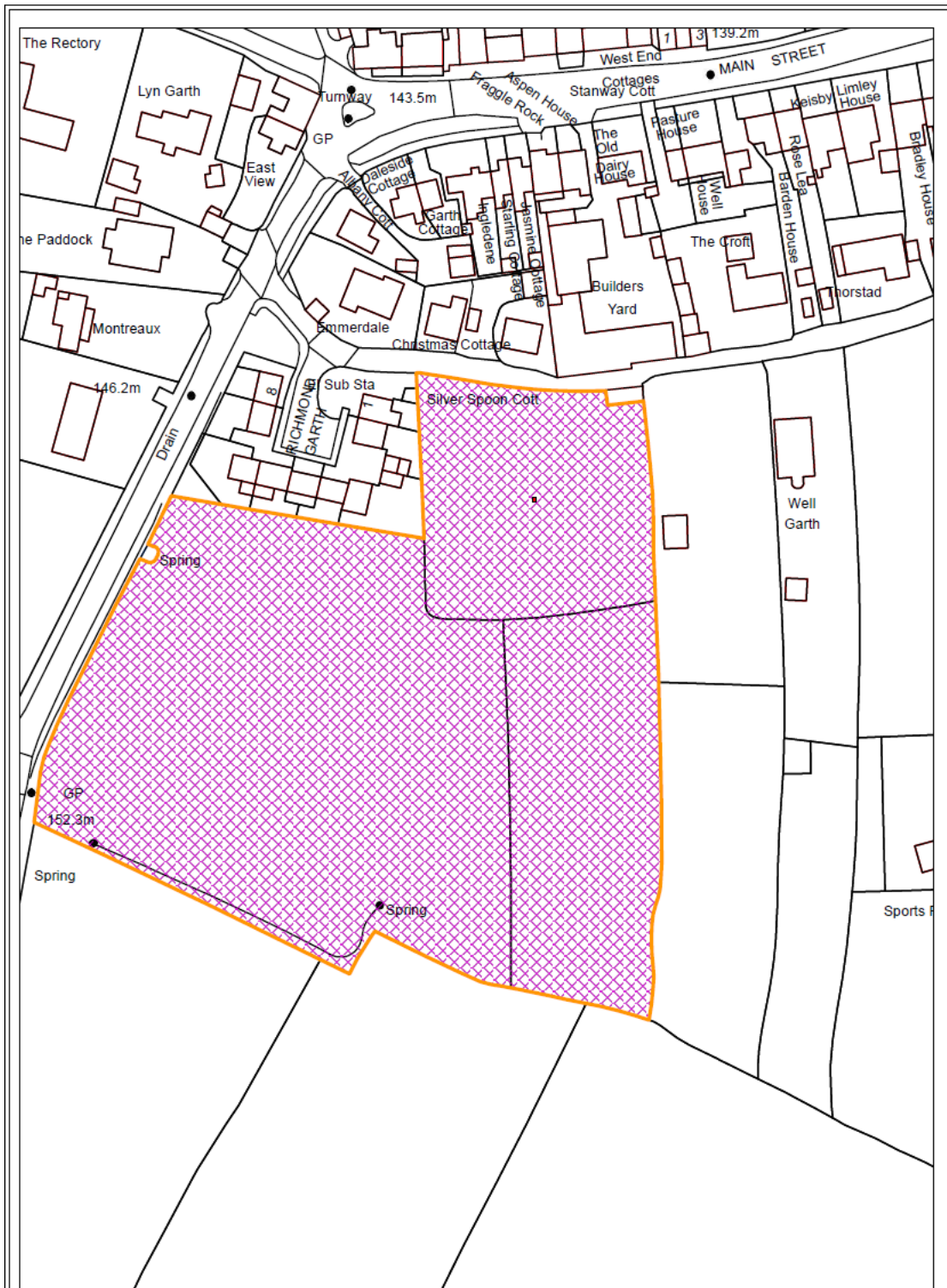
1.0 Purpose of the Report

- 1.1. To determine a Section 73 application for the variation of condition 1 of Section 73 permission ZC24/01066/DVCMAJ to allow for changes to proposed window frames, door frames, garage door frames, front doors of the dwellings and garage doors to a development of 33 dwellings originally permitted under reserved matters application 20/04874/REMAJ on land at Back Lane, Kirkby Malzeard, on behalf of the Assistant Director Planning.
- 1.2. This application is brought to the Planning Committee because the applicant, Brierley Homes, is owned by the Council.

2.0 SUMMARY

RECOMMENDATION: That the Section 73 variation be GRANTED

- 2.1. Planning permission has been granted for a residential development of 33 dwellings at Back Lane, Kirkby Malzeard, in the Nidderdale National Landscape. The current application seeks approval for revised details of doors and windows.
- 2.2. The proposed variations do not materially affect the reserved matters of this development, and it is considered that the application can be supported subject to conditions.



Location Plan

Scale 1:1,250

© Crown copyright and database rights 2017 Ordnance Survey 100019628



3.0 Preliminary Matters

- 3.1. Access to the case file on Public Access can be found [here](#).
- 3.2. Outline planning permission 17/04308/OUTMAJ was granted in January 2019 for the residential development of 1.75ha of land at Kirkby Malzeard, within the Nidderdale National Landscape.
- 3.3. Whilst the outline permission allowed for up to 37 dwellings the reserved matters scheme, 20/04874/REMMAJ, granted in May 2022, provided for fewer dwellings, 33, across the whole site.
- 3.4. Subsequently, both the outline and reserved matters were varied by Section 73 applications. Those further permissions varied the timing of submission for various detailed matters that were required by the conditions of both permissions. As the Local Education Authority advised that no contribution was necessary towards education facilities in the locality, the requirement for such provision on the outline permission was dropped.
- 3.5. The outline permission variation was case reference 22/04924/DVCMAJ of 24 August 2023 and the reserved matters variation was case reference 22/04925/DVCMAJ of 23 March 2023.
- 3.6. A further Section 73 variation was granted in respect of the reserved matters in June this year, ZC24/01066/DVCMAJ. That allowed variation of the house types slightly along with the installation of air source heat pumps and the use of natural stone on all main elevations with render on the remainder.
- 3.7. The approved details showed that the uPVC windows and ribbed effect sectional garage doors were to be anthracite in colour, while the colour of the front doors had not been confirmed.

4.0 Site and Surroundings

- 4.1. The site is located to the south side of Kirkby Malzeard at its western end. To the west it is abutted by Laverton Lane, and to the north by the extant residential development at Richmond Garth along with a 58m long length of Back Lane. The site is in the Nidderdale National Landscape.

5.0 Description of Proposal

- 5.1. The proposal is to vary the colouring of the windows and garage doors and confirm the colour of the front doors. All would be pebble grey (RAL7032) with white frames.

6.0 Planning Policy and Guidance

- 6.1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that all planning authorities must determine each application under the Planning Acts in accordance with Development Plan so far as material to the application unless material considerations indicate otherwise.

Adopted Development Plan

- 6.2. The Adopted Development Plan relevant for this proposal is;
 - Harrogate District Local Plan 2014-2035, adopted March 2020

Emerging Development Plan – Material Consideration

- 6.3. The Emerging Development Plan for this site is -
- The North Yorkshire Local Plan. No weight can be applied in respect of this document at the current time as it is at an early stage of preparation.
 - Kirkby Malzeard, Laverton and Dallowgill neighbourhood plan. This was subject to informal public consultation around the turn of the year. No weight can currently be applied to this document.

Guidance - Material Considerations

- 6.4. Relevant guidance for this application is:
- National Planning Policy Framework 2023
 - National Planning Practice Guidance
 - National Design Guide
 - Nidderdale AONB Management Plan

7.0 Consultation Responses

7.1. The following consultation responses have been received and have been summarised below.

7.2. **Parish Council:** Has no objections

Local Representations

7.3. None.

8.0 Environment Impact Assessment (EIA)

8.1. Located in a 'sensitive area' the development has to be screened, with regard specifically to Schedule 2 of the Environmental Impact Assessment Regulations 2017 (as amended), to establish whether an Environmental Statement is necessary.

8.2. The application has been screened and does not require an Environmental Statement because it would not be of a scale and nature likely to result in a significant environmental impact within the context of the EIA Regulations.

9.0 Main Issues

- 9.1. The key considerations in the assessment of this application are:
- Suitability of varying conditions
 - Impact on the locality
 - Conditions

10.0 ASSESSMENT

Suitability of varying conditions

- 10.1. This application is for a 'minor material amendment' to the approved development for 33 dwellings. Such applications are considered against the Development plan and material considerations such as the National Planning Practice Framework (NPPF) and the conditions attached to the existing permission.
- 10.2. The National Planning Practice Guidance advises that Local Planning Authorities should, in making their decisions, focus their attention on national and development plan policies, and other material considerations which may have changed significantly since the original grant of permission.
- 10.3. The NPPF advises, in paragraph 140, that it should be ensured that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme.
- 10.4. The extant reserved matters permission through the previous Section 73 permission was considered under the current development plan and NPPF.

Impact on the locality

- 10.5. Local Plan Policies HP3 'Local Distinctiveness' and NE5 'Green and Blue Infrastructure' require high quality development that protects characteristics, qualities and features contributing to local distinctiveness, and maintains and enhances local vernacular and the sense of place of individual settlements.
- 10.6. The NPPF has a chapter on 'Achieving well-designed and beautiful places', setting out initially that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve (paragraph 131).
- 10.7. A duty has been imposed under section 85 of the Countryside and Rights of Way Act 2000, as amended by Section 245 of the Levelling-up and Regeneration Act 2023, that in exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty (now known as a National Landscape), a relevant authority must seek to further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty.
- 10.8. The colour changes sought by this Section 73 application do not adversely impact on the development and its surroundings.

Conditions

- 10.9. Advice in the National Planning Practice Guidance is that a permission issued by way of section 73 application is a new independent permission to carry out the same development subject to new or amended conditions. The guidance also sets out that the new permission should restate the conditions imposed on earlier permissions that continue to have effect.

- 10.10. The June 2024 Section 73 permission, which this application seeks to vary the terms of, is subject to 15 conditions.
- 10.11. Subsequent to that decision, detail has been approved (ZC24/02740/DISCON) of a noise assessment of the on-site pumping station. That assessment showed no mitigation as being necessary. Condition 14 regarding the noise assessment consequently now does not continue to have effect. That condition can therefore be removed from a new permission arising from this Section 73 application.
- 10.12. In addition, the details of the natural stone to be used in the external construction of the main walls has been approved under condition 6 (ZC24/02601/DISCON). However, the roofing materials were refused and a further sample of roofing material was also refused (ZC24/03249/DISCON); both being concrete tiles.
- 10.13. Accompanying the original reserved matters application (20/04874/REMMAJ), by a different applicant, was a Design and Access statement which incorrectly described the adjoining Richmond Garth development as having artificial stone facades and artificial slate roofs. Natural reclaimed stone and natural slate has been utilised.
- 10.14. That misinterpretation of the setting lead to artificial materials being specified for the development. The extant Section 73 permission included the use of natural rather than reconstituted stone.
- 10.15. The drawings submitted with this Section 73 application, however, retain a reference to the use of slate grey pitched with thin leading edge concrete tiles.
- 10.16. The issue with the samples of thin leading edge concrete tile so far submitted for inspection is that there is a pronounced visual overlap between the tiles, which is not evident of properties using natural grey or blue slates other than those of stone.
- 10.17. Undoubtedly there is a higher cost to a developer using natural slate, compared to a concrete tile, as each slate covers individually less of a roof space and consequently greater labour is required.
- 10.18. That, however, does not mitigate against the use of slate especially at a location such as this site at an entrance to the village, a Service Village under the terms of Local Plan Policy GS2 and one of only nine in the 1,308 km² area of the Local Plan that offer a demonstrably wider range of retail, service and leisure businesses.
- 10.19. In order therefore to ensure the roof materials are appropriate to the locality and meet the duty imposed through the amendments introduced by the Levelling-up and Regeneration Act 2023, condition 6 should be reworded, still requiring the submission of roofing materials for approval. That would extend the scope of materials being considered to natural slate in keeping with the adjacent dwellings. Appropriate additional wording is proposed in relation to condition 1 concerning the approved drawings etc.
- 10.20. The approved stone is proposed to be referenced now in a new condition 14.

- 10.21. Condition 15 concerning the Ecological Mitigation & Enhancement is corrected and simplified as the time for submission for any alternative related plan has elapsed.

11.0 PLANNING BALANCE AND CONCLUSION

- 11.1. The proposed variations do not materially affect the reserved matters of this development, and it is considered that the application can be supported subject to conditions.

12.0 RECOMMENDATION

- 12.1 That the Section 73 variation be GRANTED subject to the conditions set out below.

- 1 The development to which the reserved matters hereby approved relates shall not be carried out otherwise than in strict accordance with the submitted details and:

- a) the following Ingreen Architectural Solutions Ltd drawings (references commencing 191001);

C01 Plan 1 dated October 20

P01 Revision I External Works & Landscaping dated 23.04.24

P02 Revision E Proposed Typical Street Scenes dated 20.09.24 as modified by the further conditions of this permission;

- b) the following Ingreen Architectural Solutions Ltd Plans & Elevations drawings (references commencing 191001 and dated 20.09.24 unless otherwise stated) and as modified by the further conditions of this permission;

P03 Revision F Plot 1 dated 14.11.24

P04 Revision E Plots 2 & 3

P05 Revision E Plot 6

P06 Revision E Plots 7 & 8

P07 Revision F Plots 9 & 20

P08 Revision E Plots 10, 16 & 24

P09 Revision E Plots 12, 13, 25 & 26

P10 Revision E Plots 11 & 22

P11 Revision F Plots 17,18 & 19

P12 Revision E Plot 23

P13 Revision E Plot 27

P14 Revision E Plots 31 & 32

P15 Revision E Plot 33

P16 Revision D Plots 4 & 5

P17 Revision D Plot 30

P18 Revision D Plots 14 & 15

P19 Revision D Plot 21

P20 Revision D Plot 28

P21 Revision D Plot 29

P22 Revision C Electricity Sub-Station

- c) Ingreen Architectural Solutions Ltd drawing KKIR-IAS-ZZ-00-DR-A-0004 revision P04 Site Plan Showing Materially dated 20.09.24 as modified by the further conditions of this permission;

- d) Eamonn Byrne landscape architects drawings dated 22.03.2022;

20002-LN-0-01 Revision 9 Planting Schedule
 20002-PP-0-01 Revision 9 Planting Plan (Sheet 1 of 2)
 20002-PP-0-01 Revision 9 Planting Plan (Sheet 2 of 2)

- 2 Further to condition 1 above the development shall also be carried out in strict accordance with the following documents unless varied by alternative documents submitted under the further conditions of this permission:
 - a) AWA Tree Consultants Arboricultural Method Statement reference AWA5632AMS dated October 2023.
 - b) Billingham George & Partners Proposed Drainage Plans revision T02 dated 05.01.2023; Sheet 1 of 2 KM-BGP-00-00-DR-C-52-00130
Sheet 2 of 2 KM-BGP-00-00-DR-C-52-00131
 - c) Eamonn Byrne Landscape Architects Landscape Maintenance & Management Plan ref 20002LMP revision 3 dated 20/05/2024.
 - d) Vale Ecology Ecological Mitigation & Enhancement Plan reference 1020 revision 01 dated 26th March 2024.

- 3 The landscaping works shown on revision 9 of both drawings 20002-PP-0-01 and 20002-PP-0-02 shall be undertaken in accordance with the details specified on those drawings and revision 9 of the Planting schedule ref 20002-LN-0-01 and shall accord with the Biodiversity Management Plan. The development shall be carried out in accordance with the approved details.

The planting, seeding and/or turfing shall be carried out in the first planting season following completion of the building works and any trees or shrubs that are found to be dead, dying, severely damaged or diseased within five years of the completion of the building works or five years of the carrying out of the landscaping scheme (whichever is later) shall be replaced in the next planting season by specimens of the same size and species in the first suitable planting season.

- 4 Further to condition 2 above, development shall be undertaken in strict accordance with the Eamonn Byrne Landscape Architects Landscape Maintenance & Management Plan ref 20002LMP revision 3 dated 20/05/2024, unless an alternative Landscape Maintenance and Management Plan has been submitted to and approved in writing by the Local Planning Authority before any external construction of the walls of the development hereby approved takes place. The details of the alternative Landscape Maintenance and Management Plan shall be in accordance with the approved landscape drawings, revision 9 of both 20002-PP-0-01 (sheet 1 of 2) and 20002-PP-0-02-REV9 (sheet 2 of 2) and the development carried out in accordance with the agreed details.

- 5 No dwelling shall be occupied until their associated parking facilities have been constructed in accordance with Site Plan ref 191001 P01 Rev I. Once created these parking areas shall be maintained clear of any obstruction and retained for their intended purpose at all times.

- 6 Before their first use in the construction of the development to which these reserved matters relate and notwithstanding the details specified on the drawings listed in condition 1 samples of the materials to be used in the external construction of the roofs shall be made available on site for inspection by and the written approval of the Local Planning Authority. Development shall be carried out in strict accordance with the approved details.

- 7 Ash Trees ref T24 and T26 (on the eastern boundary of the site as identified in the Arboricultural Assessment), shall notwithstanding reference in the statement to their

removal, be protected during construction and retained thereafter.

8 No occupation of a property shall take place unless the Biodiversity Enhancement Management Plan measures that relate to that property have been implemented in full.

9 No occupation of a dwelling shall occur until;

a) full details of the air source heat pumps have been submitted to and approved in writing by the Local Planning Authority,

b) the air source heat pump located in strict accordance with the details approved under part (a) of this condition and located as shown on drawing 191001 P01 revision I has been made operative, and,

c) low energy lighting and thermal envelope specifications have been provided for that dwelling in accordance with the recommendation included within the Dewpoint Energy Services Energy Statement issue 2.0 dated 18 November 2020. These measures will be retained and maintained thereafter.

Any air source heat pump shall be effectively controlled so that the combined rating level of all such equipment does not exceed the background sound level at any time.

10 Prior to the first occupation of any of the dwellings hereby permitted, the approved boundary treatment shall be fully installed and/or planted. The boundary treatment shall be maintained in accordance with details that are submitted to and approved by the Local Planning Authority prior to their installation and retained at all times thereafter.

11 Further to condition 2 above, the tree protection measures detailed in Section 4 and Appendix 4 of the AWA Tree Consultants Arboricultural Method Statement reference AWA5632AMS dated October 2023 shall be implemented and maintained in accordance with those details at all times during the undertaking of the development hereby granted, unless any alternative Arboricultural Method Statement has been submitted to and approved in writing by the Local Planning Authority. All construction works shall accord with the approved Arboricultural Method Statement at all times. No increased levels shall take place within root protection zones, except where required through the approved details for biodiversity enhancement measures.

12 Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking, re-enacting or modifying that Order), no development of the types described in the following Classes of Schedule 2 shall be undertaken without the express grant of planning permission, other than that expressly authorised by this permission:

Part 1, Class A (enlargements, improvements or other alterations);

Part 1, Class E (incidental buildings, enclosures, swimming, or other pools); and

Part 1, Class F (hard surfaces).

13 Further to condition 2 above, the development shall accord with the approved foul drainage scheme shown on Billingham George & Partners Proposed Drainage Plans revision T02 dated 05.01.2023 Sheet 1 of 2 KM-BGP-00-00-DR-C-52-00130 and Sheet 2 of 2' KM-BGP-00-00-DR-C-52-00131 with the discharge rate to the foul sewer from the pumping station not exceeding 4.75l/s, unless prior to the external construction of the walls of the development hereby approved an alternative foul water drainage has been submitted to and approved in writing by the Local Planning Authority (in consultation with Yorkshire Water). The scheme shall include evidence that the public sewer system has appropriate capacity to serve the

development. Development shall be carried out in strict accordance with the approved foul drainage scheme.

- 14 The stonework of the development shall be carried in strict accordance with details approved under application ZC24/02601/DISCON, unless an alternative natural stone sample and sample stonework panel has been provided for inspection by and the written approved of the Local Planning Authority. The approved sample stonework panel shall be retained on site during the period of construction of all external walls that are constructed in stone.
- 15 Further to condition 2 above, Ecological Mitigation & Enhancement shall be implemented in accordance with the Vale Ecology Ecological Mitigation & Enhancement Plan reference 1020 revision 01 dated 26th March 2024 under the supervision of a suitably qualified Ecological Clerk of Works and a copy of the CEMP (Section 3) must be kept on site and made available to site managers and operatives.

Compliance must be made in particular with Table 1 Ecological Risk Assessment & Mitigation Input, ensuring the protection of habitats including grassland, hedgerows and trees and protected species. That will include up to date bat surveys of building B1, measures to protect previously identified bat roosts in trees T8 and T9 and to undertake precautionary measures in relation to works to other trees and artificial lighting during construction. Also, the precautionary measures set out in relation to nesting birds, badgers and hedgehogs must be implemented.

The measures set out in the BEMP, Section 4 (including enhancing biodiversity during the operational phase of the site, including tree and hedge planting and hedgerow restoration and for grassland enhancement, the provision of bird nesting and bat roosting features and invertebrate habitat) shall be implemented under the supervision of the Ecological Clerk of Works for a minimum period of 30 years. That will be initially the responsibility of the developer but ultimately with that responsibility transferred to the site management company. Progress shall be reported back to the Local Planning Authority in accordance with arrangements set out in the plan at paragraphs 4.9.1.2 and 4.9.1.4.

Reasons for Conditions:-

- 1 and 2 To secure the satisfactory implementation of the proposal and for the avoidance of doubt.
- 3 To safeguard the rights of control by the Local Planning Authority in these respects and in the interests of amenity and in accordance with Policies HP4 and NE3 of the Harrogate District Local Plan 2014-2035.
- 4 To safeguard the rights of control by the Local Planning Authority in these respects and in the interests of amenity and in accordance with Policies HP4 and NE3 of the Harrogate District Local Plan 2014-2035.
- 5 To provide for adequate and satisfactory provision of off-street accommodation for vehicles in the interest of safety and general amenity of the development.
- 6 In the interest of good design and in accordance with policies HP3 and GS6 of the Harrogate District Local Plan 2014-2035.
- 7 In the interest of the protection of important trees and the wider impact on the landscape and in accordance with Policy NE7 of the Harrogate District Local Plan 2014-2035.
- 8 In the interest of Biodiversity enhancement and to accord with policy NE3 of the Harrogate District Local Plan 2014-2035.

- 9 In the interest of sustainable design in accordance with Policy CC4 of the Harrogate District Local Plan 2014-2035.
- 10 In the interests of privacy and residential amenity in accordance with policy HP4 of the Harrogate District Local Plan 2014-2035.
- 11 In the interests of the protection of important retained trees and in accordance with Policy NE7 of the Harrogate Local Plan 2014-2035.
- 12 To enable the Local Planning Authority to exercise control over development in order to ensure there is no resultant detriment to the Nidderdale Area of Outstanding Natural Beauty together with ecological, environmental and biodiversity interests in accordance with policies NE3 and NE7 of the Harrogate District Local Plan 2014-2035.
- 13 In the interest of comprehensive assessment of foul water drainage and for the protection of amenity of the locality.
- 14 In the interest of good design and in accordance with policies HP3 and GS6 of the Harrogate District Local Plan 2014-2035.
- 15 In the interests of Biodiversity and in accordance with Policy NE3 of the Harrogate District Local Plan 2014-2035 and for the avoidance of doubt.

INFORMATIVES

- 1 The Section 73 permission under ZC24/01066/DVCMAJ, subsequent to an earlier such permission 22/04925/DVCMAJ, varied the terms of the conditions of reserved matters consent 20/04874/REMAJ. That reserved matters consent had granted the appearance, landscaping layout and scale of 33 dwellings under the terms of outline permission 17/04308/OUTMAJ, itself later varied by the Section 73 permission 22/04924/DVCMAJ.
- 2 This Section 73 permission together with outline permission 22/04924/DVCMAJ comprise the planning permission and must be read together.
- 3 If the developer is looking to have new sewers included in a sewer adoption agreement with Yorkshire Water Services Limited (under Section 104 of the Water Industry Act 1991), their Developer Services Team should be contacted (telephone 03451 208 482, email: technical.sewerage@yorkshirewater.co.uk) at the earliest opportunity. Sewers intended for adoption should be designed and constructed in accordance with the WRc publication 'Code for Adoption - a design and construction guide for developers' as supplemented by Yorkshire Water's requirements.
- 4 Yorkshire Water Services Limited advise that in terms of water supply a 3" upvc water main runs along the front of the site. Any planting of new trees or such like should not be carried out within 6 metres (3 metres from the centre of the main) to allow access for future maintenance and repair of the asset. The line of the main can be determined under their supervision, however as this main is plastic and hard to trace the line of the main with be approximate only. Please contact tech.support.engineer.north@yorkshirewater.co.uk to arrange a trace. If there are likely to be any changes in ground levels around the 3" main, then these changes will need to be addressed to confirm if the main will be affected. In the event the main will be affected by a change in ground level and in order to protect the main it may need diverting. Any diversion will be at the developers expense (under the provisions of Section 185, Water Industry Act 1991).
- 5 In respect of condition 9 "rating level" and "background sound level" are as defined in BS4142:2014+A1 2019 'Methods for rating and assessing industrial and commercial sound'

and/or its subsequent amendments. Where access to the nearest sound sensitive property is not possible, measurements shall be undertaken at an appropriate location and corrected to establish the noise levels at the nearest sound sensitive property.