

# Report of the Assistant Director (Planning, Transportation & Highways) to the meeting of the Regulatory and Appeals Committee to be held on Thursday the 27<sup>th</sup> of April 2017.

# AJ

---

**Subject:**

Land At Simpsons Green, Apperley Road, Apperley Bridge, Bradford

**Summary statement:**

The committee is asked to consider a planning application to develop land without compliance with conditions previously attached, submitted under the provisions of Section 73 of the Town and Country Planning Act 1990. The development in question is the residential development of 267 dwellings and integral public open space, with associated access, parking and landscaping, which was granted planning permission on 17 December 2014, ref. 14/00255/MAF.

Government guidance makes it clear that an application under Section 73 can be used for the purpose of making a Minor Material Amendment to a previously approved development scheme. This application is for a minor material amendment to the previously approved development through a variation of condition 2 to substitute revised drawings showing changes to retaining walls, boundary treatments, levels, layout and house designs. The changes partly relate to a change in house designs/ layout for 63 units, which are now proposed to be developed by a second house builder, and partly relate to a retrospective regularisation of changes to site retaining walls/ ground levels.

Taking development plan policies and other relevant material considerations into account it is recommended that the proposed minor material amendment is approved and that planning permission for the residential development of 267 dwellings on the land at Simpsons Green is granted subject to a new set of planning conditions which include the proposed revised plans, as set out in Appendix 1.

---

Julian Jackson  
Assistant Director (Planning,  
Transportation & Highways)  
Report Contact: John Eyles  
Major Development Manager  
Phone: (01274) 434380  
E-mail: [john.eyles@bradford.gov.uk](mailto:john.eyles@bradford.gov.uk)

**Portfolio:**  
**Regeneration, Planning and Transport**

**Overview & Scrutiny Area:**  
**Regeneration and Economy**



## **1. SUMMARY**

The Regulatory and Appeals Committee are asked to consider the recommendations for the determination of planning application ref. 16/07708/VOC made by the Assistant Director (Planning, Transportation and Highways) as set out in the Technical Report at Appendix 1.

## **2. BACKGROUND**

Attached at Appendix 1 is a copy of the Technical Report of the Assistant Director (Planning, Transportation and Highways). This identifies the material considerations relevant to the assessment of the planning application.

## **3. OTHER CONSIDERATIONS**

All considerations material to the determination of this planning application are set out in the Technical Report at Appendix 1.

## **4. OPTIONS**

If the Committee proposes to follow the recommendation from the Assistant Director (Planning, Transportation and Highways) and approve the application then the Assistant Director (Planning, Transportation and Highways) can be authorised to issue a Decision Notice granting planning permission for the residential development of 267 dwellings and integral public open space, with associated access, parking and landscaping on the land at Simpsons Green, subject to a new set of planning conditions which include the proposed revised plans.

Alternatively, if the Committee decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they may refuse the application, in which case reasons for refusal will have to be given based upon development plan policies or other material considerations.

## **5. FINANCIAL & RESOURCE APPRAISAL**

None material to the consideration of this application.

## **6. RISK MANAGEMENT & GOVERNANCE ISSUES**

Not applicable.

## **7. LEGAL APPRAISAL**

Both options set out above are within the Council's powers as the Local Planning Authority under the provisions of the Town and Country Planning Act 1990 (as amended).

Section 73(2) of the Act directs that, in considering a planning application under Section 73 of the Town and Country Planning Act 1990, the Local Planning Authority shall consider only the question of the conditions subject to which planning permission should be granted.

## **8. OTHER IMPLICATIONS**

### **8.1 EQUALITY & DIVERSITY**

In writing this report due regard has been taken of the need to eliminate unlawful discrimination, harassment and victimisation, advance equality of opportunity between different groups and foster good relations between different groups, in accordance with the duty placed upon Local Authorities by Section 149 of the Equality Act 2010.

The context of the site, the minor material amendments proposed and the representations which have been made have been reviewed to identify the potential for the determination of this application to disadvantage any individuals or groups of people with characteristics protected under the Equality Act 2010. The outcome of this review is that there is not considered to be any sound reason to conclude that the proposal would have a significantly detrimental impact on any groups of people or individuals with protected characteristics.

Furthermore it is not considered that the proposal would lead to significant adverse impacts on anyone, regardless of their characteristics. Likewise, if planning permission were to be refused by the Committee, it is not considered that this would unfairly disadvantage any groups or individuals with protected characteristics. Full details of the process of public consultation which has been gone through during the consideration of this application and a summary of the comments which have been made by members of the public are attached at Appendix 1.

## **8.2 SUSTAINABILITY IMPLICATIONS**

The proposed minor material amendments to the previously approved development scheme would only result in relatively minor changes to the previously approved residential development. The proposed changes would have no significant impact upon the principle sustainability issues relevant to the residential development of the site in terms of traffic, transportation, construction methods or design.

## **8.3 GREENHOUSE GAS EMISSIONS IMPACTS**

The proposed changes would have no significant impact upon the greenhouse gas emissions associated with the residential development of the site.

## **8.4 COMMUNITY SAFETY IMPLICATIONS**

There are not considered to be any community safety issues material to the consideration of this planning application.

## **8.5 HUMAN RIGHTS ACT**

The Council must seek to balance the rights of applicants to make beneficial use of their property with the rights of nearby residents to quiet enjoyment of their land; together with any overriding need to restrict such rights in the overall public interest. In this case there is no reason to conclude that either granting or refusing planning permission will deprive anyone of their rights under the Human Rights Act.

## **8.6 TRADE UNION**

There are no implications for Trades Unions relevant to this application.

## **8.7 WARD IMPLICATIONS**

The proposal site is within the Idle and Thackley Ward. Ward Councillors the Parish Council and local residents have been made aware of the application and have been given opportunity to submit written representations through two rounds of publicity. In response to this publicity 10 written representations have been received, all of which object to the proposals. A summary of the representations and an assessment of the impact the proposed amendments would have on adjacent residents is included in the report at Appendix 1.

## **9. NOT FOR PUBLICATION DOCUMENTS**

None

## **10. RECOMMENDATIONS**

To Grant Planning Permission for the residential development of 267 dwellings, with associated public open space, access, parking and landscaping works, as previously approved under planning permission ref. 14/00255/MAF, subject to a varied set of planning conditions which incorporate the proposed minor material amendments and also subject to a Deed of Variation under Section 106 of the Act to ensure that the developer continues to be bound by the previously agreed Planning Obligations.

## **11. APPENDICES**

Appendix 1: Technical Report

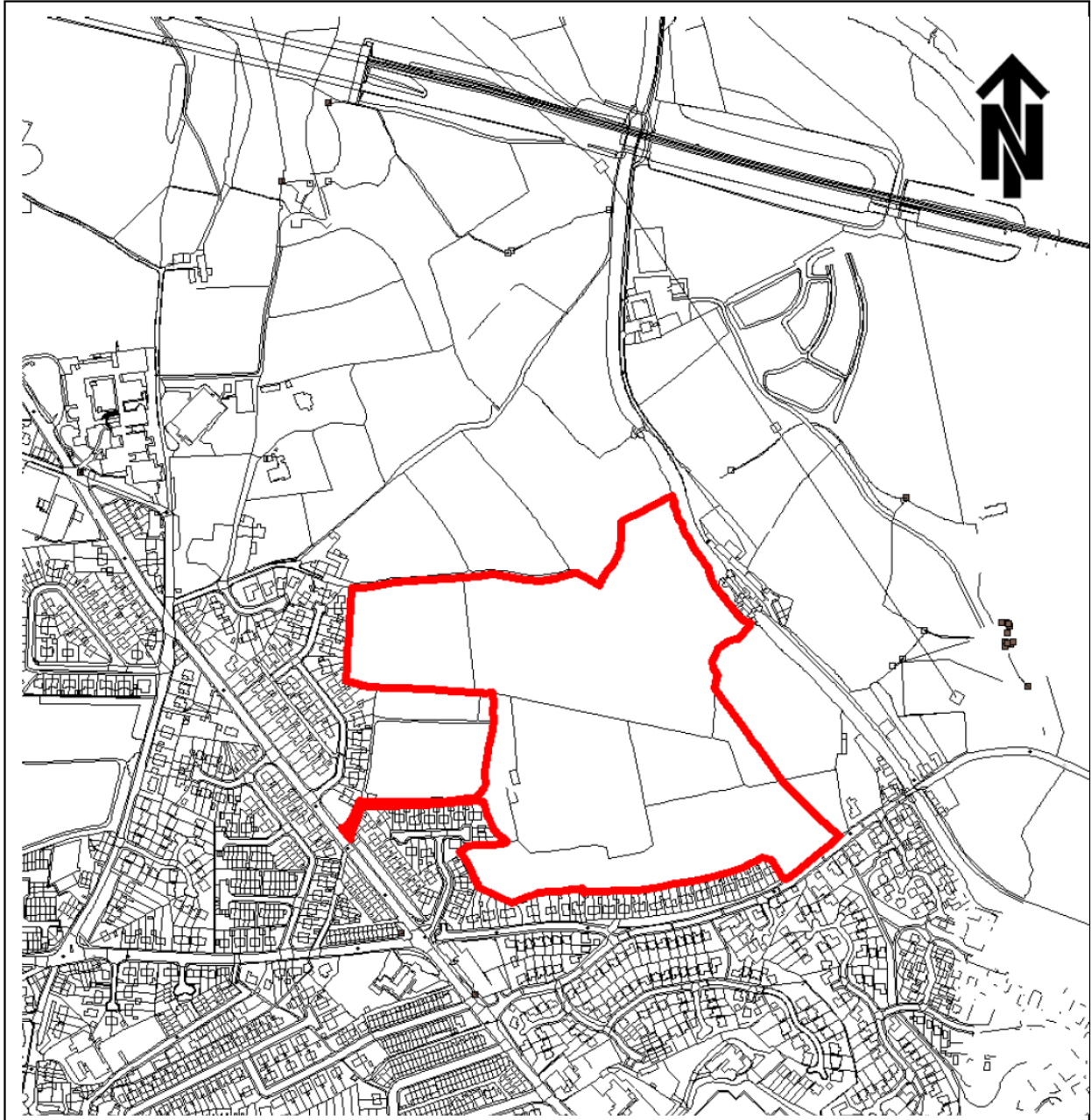
## **12. BACKGROUND DOCUMENTS**

- Replacement Unitary Development Plan for the Bradford District
- National Planning Policy Framework
- Application file 16/07708/VOC
- Application file 14/00255/MAF

**16/07708/VOC**

**City of Bradford MDC**

[www.bradford.gov.uk](http://www.bradford.gov.uk)



**Land At Simpsons Green  
Apperley Road  
Apperley Bridge  
Bradford**

## **Appendix 1**

27 April 2017

**Ward:** Idle and Thackley

**Recommendation:**

To Grant Planning Permission for the residential development of 267 dwellings, with associated public open space, access, parking and landscaping works, as previously approved under planning permission ref. 14/00255/MAF, subject to a varied set of planning conditions which incorporate the proposed minor material amendments and also subject to a Deed of Variation under Section 106 of the Act to ensure that the developer continues to be bound by the previously agreed Planning Obligations.

**Application Number:**

16/07708/VOC

**Type of Application/Proposal and Address:**

This is a planning application to develop land without compliance with conditions previously attached, submitted under the provisions of Section 73 of the Town and Country Planning Act 1990. The development in question is the residential development of 267 dwellings and integral public open space, with associated access, parking and landscaping, which was granted planning permission on 17 December 2014, ref. 14/00255/MAF. Government guidance makes it clear that an application under Section 73 can be used for the purpose of making a Minor Material Amendment to a previously approved development scheme.

This application is for a minor material amendment to the previously approved development through a variation of condition 2 to substitute revised drawings showing changes to retaining walls, boundary treatments, levels, layout and house designs. The changes partly relate to a change in house designs/ layout for 63 units, which are now proposed to be developed by a second house builder, and partly relate to a retrospective regularisation of changes to site retaining walls/ ground levels. The site is the land at Simpsons Green, Apperley Road, Apperley Bridge, Bradford.

**Applicant:**

Mr Shaun Linton – Linden Homes North

**Agent:**

Paul Butler – PB Planning Ltd

**Site Description:**

An 11.7 hectare Greenfield site located in Apperley Bridge to the west of the Leeds-Liverpool Conservation Area. Residential development exists to the west and south of the site along with allotments abutting the western boundary of site. To the east lies the Leeds and Liverpool Canal which is a conservation area which runs through the District and listed buildings and the listed Dobson staircase locks exist on the far side of the towpath. A small sliver of the application site actually falls within the conservation area. To the north of the safeguarded land lies designed green belt land.

The site is identified as a safeguarded site (BN/UR.5) within the Replacement Unitary Development Plan: Proposals for the Bradford North Constituency. Part of the

safeguarded allocation is outside the red line boundary of this application. The site was undulating pasture land enclosed by various dry stone walls.

Bradford North Public Bridleway 84 abuts the northern boundary of the site, and this route is also known as Mitchell Lane. The site itself slopes down from Leeds Road towards the Canal to the north. At present the site is a construction site upon which the 267 new dwellings authorised by planning permission ref. 14/00255/MAF are being constructed. Significant engineering operations have been undertaken to form a series of development platforms upon which the houses are to be built. The site is being built out east to west and a significant number of houses have already been substantially constructed within the eastern area of the site.

**Relevant Site History:**

| <b>Application Ref.</b> | <b>Description</b>   | <b>Decision</b>       |
|-------------------------|--|-----------------------|
| 14/00255/MAF            | Construction of 267 dwellings and integral public open space, with associated access, parking and landscaping                  | Granted 17.12.2014    |
| 16/00479/FUL            | Full planning permission for two residential dwellings   | Granted 10.03.2016    |
| 16/02985/FUL            | Erection of a 1.8m high wall and fence either side of the proposed emergency access with associated reduction in ground levels | Granted 21.06.2016    |
| 16/07707/FUL            | Full planning application for four residential dwellings   | Pending Consideration |

**Replacement Unitary Development Plan (RUDP):**

***Allocation***

Within the Proposals for the Bradford North Constituency Volume of the Replacement Unitary Development Plan the site is identified as being part of an allocated safeguarded site under policy UR5 (reference BN/5.5). A small sliver of the site along its eastern boundary is located within the Leeds-Liverpool Conservation Area.

***Proposals and Policies***

The proposed minor material amendments principally concern house designs, retaining structures and ground levels and therefore the following saved RUDP policies are most relevant:

- UR3 (The Local Impact of Development)
- D1 (General Design Considerations)
- D5 (Landscaping)

**The National Planning Policy Framework (NPPF):**

The National Planning Policy Framework is now a material planning consideration on any development proposal. The Framework highlights the fact that the purpose of the planning system is to contribute to the achievement of sustainable development and that there is a presumption in favour of sustainable development which can deliver:-

- i) Planning for prosperity (an economic role) - by ensuring that sufficient land of the right type and in the right places is available to allow growth and innovation;

- ii) Planning for people (a social role) - by promotion of strong, vibrant and healthy communities by providing an increase supply of housing to meet the needs of present and future generations and by creating a good quality built environment with accessible local services;
- iii) Planning for places (an environmental role) - by protecting and enhancing the natural, built and historic environment, adapting to climate change including moving to a low-carbon economy.

As such the Framework suggests local planning authorities should approve development proposals that accord with statutory plans without delay. Where the development plan is absent, silent or relevant policies are out-of-date, permission should be granted unless:

- any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole;
- or specific policies in the NPPF indicate development should be restricted.

At paragraph 58 the NPPF sets out detailed design criteria, stating that decisions should aim to ensure that developments:

- will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;
- establish a strong sense of place, using streetscapes and buildings to create attractive and comfortable places to live, work and visit;
- optimise the potential of the site to accommodate development, create and sustain an appropriate mix of uses (including incorporation of green and other public space as part of developments) and support local facilities and transport networks;
- respond to local character and history, and reflect the identity of local surroundings and materials, while not preventing or discouraging appropriate innovation;
- create safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion; and
- are visually attractive as a result of good architecture and appropriate landscaping.

### **The National Planning Practice Guidance**

National Planning Practice Guidance (NPPG) acknowledges that new issues may arise after planning permission has been granted, which require modification of the approved proposals. Where these modifications are fundamental or substantial, a new planning application under section 70 of the Town and Country Planning Act 1990 will need to be submitted. Where less substantial changes are proposed, there are other options. These options are to either make a non-material amendment to the planning permission or to amend the conditions attached to the planning permission, including seeking to make minor material amendments.

An application can be made under section 73 of the Town and Country Planning Act 1990 to vary or remove conditions associated with a planning permission. One of the uses of a section 73 application is to seek a minor material amendment, where there is a relevant condition that can be varied. The NPPG advises that there is no statutory definition of a 'minor material amendment' but it is likely to include any amendment where its scale and/or nature results in a development which is not substantially different from the one which has been approved.



**Parish Council:**

Not in a Parish

**Publicity and Number of Representations:**

The application has been advertised through the publication of site notices and press advertisements and the issuing of notification letters to neighbouring properties. Two rounds of publicity were undertaken. The initial consultation period took place between 04 October 2016 and 04 November 2016; this initial consultation only concerned the proposed changes to house designs. In response to this first round of consultation five letters of objection were submitted.

Subsequently the scope of the application was revised to also include retrospective proposals to amend the previously approved site ground levels and associated retaining structures. Further consultation letters were sent out on 16 March 2017 inviting comments of the revised proposals. The further consultation period closed on 06 April 2017. In response to this second round of consultation five further objections were submitted bringing the total to 10.

**Summary of Representations Received:**

- We have had a high intrusive wall built very close to our property which has now been lowered, but from the back of our garden we still see the high end of it, this is imposing.
- The original plans stated that there would be trees and shrubs planted where the wall is now.
- There has been a complete disregard for wildlife, what was once green space is now a huge pile of barren rocks.
- The levels are much higher than originally planned.
- The new houses will completely overlook our home and garden, we will have no privacy even inside our house.
- I am also concerned about surface water as the land slopes towards our property.
- The new build will be intrusively overlooking.
- This is a huge change to the original topography of the land.
- On previous plans, the gabion wall had an approximately 5 foot gap between the boundary fence. Where the gabion wall is now there is no gap for any trees/foliage.
- Object due to the intrusive high gabion walls and that properties will be overlooked by the new builds.
- At the original Miller Homes public meeting we were told that the new development would be no higher than the existing properties adjacent to them. To achieve this, soil would be removed from the site as required. This clearly has not happened.
- The original proposal was for the development to include a wildlife corridor behind the existing houses on Apperley Road and between the new development properties. This corridor was to be planted with trees and shrubbery, providing some degree of privacy and help to block out the imposing views of the new houses as well as to protect the local wildlife. I can see no indication of this corridor on the plans.
- The houses to be built directly behind our property are to be at an elevation which is unnecessarily high and with total disregard for us.

- Consideration should be given to only developing single storey houses on the plots adjacent to existing properties on Apperley Road.
- Concern that the proposed levels will potentially lead to more rainwater run-off onto adjacent properties.
- Land stability concerns.
- The main drainage/man hole plate that was put in place last year/early this year is 3 feet higher than my property.
- My objection is the height of the development site at the back of my property.
- The light has been affected by the high mound of soil without houses on there yet.
- We accept there will be houses there but not towering above us.
- No thought has gone into this short stretch of land compared to the vast amount of land that is remaining.
- I am concerned that my house valuation will be significantly reduced.
- I fully accept that there is going to be a development, but I feel that the levels of the land are not being considered. I have been in residence for 17 years with not being overlooked.

**Consultations:**

***Drainage Unit***

- No comments.

***Highways Development Control***

- I have no highway objection to raise about the proposed amendments.

***Heritage Conservation***

- The variation of house types on plots within the site does not appear to present any heritage issues.

**Summary of Main Issues:**

- 1) Background
- 2) Principle
- 3) Impact of house design/ layout changes
- 4) Impact of ground level and retaining structure changes
- 5) Heritage
- 6) Other Issues

**Appraisal:**

**1) Background**

Planning permission for the residential development of land at Simpsons Green was granted on 17 December 2014 subject to 25 planning conditions and several planning obligations enshrined within a legal agreement made under Section 106 of the Act. Subsequently various technical details, such as drainage, landscaping and construction site management proposals, were approved through submission of details reserved by planning condition applications.

Additionally further full planning applications were approved in respect of the site emergency access and a change in house type for 2 units. Non-material amendment applications were approved in respect of the location of an electricity sub-station and the carriageway alignment of the emergency access road.

The planning permission was implemented by Miller Homes and the major earthworks required to prepare the site for residential development were undertaken by a groundworks contractor over the course of 2016. The groundworks are now nearing completion and house building is well underway. The planning application which is the subject of this report was initially submitted proposing a change in house type for 63 of the 267 units approved under planning permission 14/00255/MAF.

The relevant plots would be developed by a second house builder, Linden Homes. As discussed in following sections of this report, the house type changes do not significantly amend the overall design ethos for the site, in terms of the arrangement, scale, massing and materiality of houses, but will allow the design of the 63 units to be adjusted to reflect the specific architectural style of the second house builder.

However the applicant has chosen to submit the proposed revisions to house types as a minor material amendment to the previous planning permission and any planning permission which ensues from this application would in effect re-issue a new planning permission for the whole site. Therefore any other irregularities from the originally approved development scheme should also be considered.

Independently of the proposed changes to house types a second issue arose in late 2016 which the application is now also seeking to regularise. This issue relates to the site retaining structures and ground levels, particularly along the southern boundary with existing properties on Apperley Road.

An external works plan which illustrated the groundworks proposed to prepare the site for residential development was approved as part of the original planning application. This external works plan illustrated the development of houses on the main part of the site on series of terraces/ development platforms rising from east to west. These development platforms were to be retained, both internally and from the lower level rear gardens of properties on Apperley Road to the south, through the construction of a large number of retaining structures including walls and battered embankments.

The height of the retaining walls shown on the approved plan ranged from 5 metres at the highest but was more typically 1 metre to 2 metres. The retaining proposals for the southern site boundary adjacent to the Apperley Road properties was a battered embankment at the site boundary with a predominantly 1 metre to 2 metre high retaining wall set back approximately 5 metres from the site boundary.

Following the granting of planning permission and prior to commencement on-site the developer reviewed the approved external works plans and certain amendments were made to the retaining wall design in terms of the location and height of retaining structures. Planning approval was not sought for the changes.

In late 2016 complaints were received by the Planning Enforcement Service from the residents of existing properties on Apperley Road. The complaints primarily related to concerns about the height and location of the retaining walls which were being constructed on the southern site boundary adjacent to residents' rear garden fences. Following investigation the discrepancy with the approved external works plan was identified as was the need for remedial works to reduce the overbearing impact of the retaining structures.

The developer was advised of the concern about the height and location of the retaining walls and the fact that the structures which had been erected materially differed from the approved plans. Consequently the developer's engineer was instructed to draw up revised plans showing remedial works to reduce the height of the retaining walls.

These plans were drawn up and submitted for approval under the current section 73 application, which is the subject of this report. The retaining walls shown on the revised plans have been reduced by approximately 1 metre in the locations where the structures were having the greatest overbearing impact on adjacent properties.

## **2) Principle**

The proposal is an application under Section 73 of the Act for the residential development of the land at Simpsons Green, as previously authorised under planning permission ref. 14/00255/MAF, but subject to a varied set of conditions which allow for minor material amendments to the approved development scheme, including changes to house designs, ground levels and retaining structures.

Section 73(5) prohibits applications under Section 73 from being used to extend the time within which a development must be started. The development permitted by planning permission 14/00255/MAF (residential development) has already begun and the changes proposed in the current application have already been partially implemented (in respect of the remedial works to the site retaining walls), therefore section 73(5) is not relevant.

Section 73A states that planning permission for development which has been carried out before the date of the application may be granted so as to have effect from the date on which the development was carried out. Therefore if planning permission is granted as a consequence of the current application it will have immediate effect.

Section 73(2) directs that, for Section 73 applications, 'the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted'. Therefore the principle of granting planning permission for the development as a whole cannot be revisited. However the effects of the proposed changes to the conditions should be fully considered having regard to the provisions of the development plan and to any other material considerations.

In considering an application under Section 73, a full review should be undertaken of all previously imposed planning conditions, taking account of any material changes in circumstances. This process has been gone through and the set of conditions recommended at the end of this report includes various updates to the previously imposed conditions in recognition of details which have already been approved. A new condition requiring approval of landscaping details has also been recommended to allow for an updated landscaping plan to be produced which includes soft landscaping proposals to soften the residual impact of the reduced height gabions & fence upon adjacent residents.

It is considered that the revised conditions recommended at the end of this report are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects and consistent with both saved RUDP policies and the national planning policies set out in the NPPF.

### **3) Impact of house design/ layout changes**

The National Planning Policy Framework (NPPF) confirms that good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people. Planning decisions should aim to ensure that developments:

- will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;
- establish a strong sense of place, using streetscapes and buildings to create attractive and comfortable places to live, work and visit;
- optimise the potential of the site to accommodate development, create and sustain an appropriate mix of uses (including incorporation of green and other public space as part of developments) and support local facilities and transport networks;
- respond to local character and history, and reflect the identity of local surroundings and materials, while not preventing or discouraging appropriate innovation;
- create safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion; and are visually attractive as a result of good architecture and appropriate landscaping.

The NPPF also stresses that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions. At the local level saved RUDP policy D1 sets out design principles, indicating that new development should relate to the existing character of the locality, and policy D5 emphasises the importance of appropriate and effective site landscaping, indicating that existing and new landscape features should be incorporated as an integral part of the proposal.

The proposal includes revised house design plans which affect 63 of the 267 dwellings approved under planning permission 14/00255/MAF, with also associated minor adjustments to the arrangement (layout) of houses and garages. The revised plans propose a similar range of 2 storey detached, semi-detached and terraced houses of a similar form, massing and height to the approved house designs. The main differences relate to the architectural detailing of the elevations in terms of the position and size of projecting gables and the incorporation of bay window and porch features. Although the 63 affected units would be noticeably different in appearance to the approved house types it is not considered that this difference would be significant or adverse or that the revised design elements would be detrimental to the overall quality and character of the residential development scheme.

The relationship between the proposed revised house types and adjacent existing houses has also been considered. It is not considered that either the minor adjustments to layout or the alterations to the appearance and architectural features of the proposed houses would result in a development which is unsympathetic to the character of the existing built environment or which would harm visual amenity in the locality. The proposal is therefore considered to accord with the design and amenity policies set out at paragraph 58 of the NPPF and saved policies UR3 and D1 of the RUDP.

### **4) Impact of ground level and retaining structure changes**

The proposal includes amendments to the site levels and retaining walls, with the main changes relating to the retaining structures constructed adjacent to existing properties

on Apperley Road. The originally approved plans included proposals for extensive retaining structures along the southern boundary of the site; however the approved retaining structures were set-back from the site boundary and were generally 1 to 2 metres in height.

The approved finished floor levels for the houses to be constructed on the plots adjacent to the southern site boundary and the height of those houses is not proposed to change significantly as part of this application. Therefore it is the location and height of the retaining structures which is the primary focus of this report.

As explained in the background section above, an external works plan revision process was undertaken outside of the planning process and the retaining structures which the developer began to construct towards the end of 2016 differed from the approved plans. The applicant was therefore asked to produce revised external works plans and reduce the height of the retaining structures adjacent to the southern site boundary to alleviate the overbearing impact of these structures on adjacent properties.

The worst impact is caused by the gabion retaining wall constructed between plots 233, 234 and 235 and 151, 153 and 155 Apperley Road, the gabion retaining wall constructed between plots 210 and 211 and 131, 133 and 135 Apperley Road and the masonry retaining wall located between plot 199 and 111 Apperley Road.

The approved retaining walls related to these plots were up to 2 metres in height but set-back 5 metres from the rear garden boundaries of the existing properties on Apperley Road, with the 5 metre strip along the boundary formed into a sloping batter. The revised (unapproved) external works plan which was being implemented on-site in late 2016 and was the cause of resident complaints, provided for the construction of retaining walls increased in height to up to 2.9 metres in height, for the upper gabion wall, and up to 2.75 metres in height (with the corner adjacent to 155 Apperley Road at 3.3 metres in height) for the lower gabion wall.

The revised retaining wall proposals which are the subject of this current application are still proposed to be located closer to the site boundary than was originally approved (with a separation of less than 1 metre to the rear boundaries of existing properties) but are now proposed at a reduced height. This reduced height has been achieved by the upper gabion baskets being removed and the gardens of the proposed new plots being stepped down in level internally.

The revised retaining wall height has been reduced by 1.2 metres, from a maximum height of 2.9 metres to a maximum height of 1.7 metres, for the upper gabion wall adjacent to 131, 133 and 135 Apperley Road and has been reduced by 0.85 metres, from a maximum height of 2.75/ 3.3 metres to a maximum height of 1.9/ 2.6 metres for the lower gabion adjacent to 151, 153 and 155 Apperley Road. The 2.6 metre height for the lower gabion wall only relates to a short section of wall at a corner which affects a short section of the rear boundary of the adjacent property 155 Apperley Road. In order to provide for the privacy of adjacent residents the proposal also includes the construction of a 1.8 metre high closed boarded boundary fence on top of the gabion retaining wall.

In terms of the retaining wall proposals for plot 199 the retaining wall for this location is now lower than the originally approved maximum height, a reduction from up to 2 metres in height to up to 1.75 metres in height, and has now also been set-back from

the boundary with 111 Apperley Road, with a batter being formed up to the site boundary in a similar arrangement to the original approval. The projecting culvert manholes which residents have raised concerns about in this location would be covered beneath the batters once the earthworks have been completed in this location.

A full assessment of the acceptability of the revised retaining wall and boundary fencing proposals has been made, in terms of their impact on adjacent residents. As part of this assessment the separation distance between the retaining walls and the rear elevation of the existing houses has been taken into account, with rear garden lengths for the affected properties generally being over 16 metres. The north facing orientation of the gardens and the potential overbearing effect of the proposed reduced height retaining walls on the ground floor rear elevation windows of existing houses has also been taken into account (applying the 25° rule).

The outcome of this assessment is that it is not considered that the proposed revised retaining wall proposals would unacceptably affect the amenities enjoyed by existing adjacent residents through either overshadowing, overbearing/ dominance or overlooking. This is also considered to be true for internal relationships between proposed retaining walls and proposed new houses.

There is no overlooking issue, as screen fencing is to be provided on top of the retaining walls. Notwithstanding the above assessment it is considered appropriate to fully review the landscaping treatments to be provided to the southern site boundary, with a view to introducing soft landscaping to soften the appearance of the retaining walls/ boundary fence as perceived from adjacent gardens. A condition is recommended below reserving approval of details of a revised landscaping scheme accordingly.

The proposed revised external works plans also include other minor changes to the height and location of retaining structures elsewhere on the site. The impact of these other minor changes to the external works proposals on the site have also been carefully assessed; however it is not considered that any of the proposed changes would result in any significant additional harm in terms of amenity or any other considerations.

Therefore it is considered that, subject to reservation of approval of a revised landscaping plan for the site, the proposed minor material amendments to the site levels, retaining walls and boundary treatments are acceptable and accord with saved policies UR3, D1 and D5 of the RUDP.

## **5) Heritage**

To the east of the proposal site lies the Leeds and Liverpool Canal which is a conservation area which runs through the District and listed buildings and the listed Dobson staircase locks exist on the far side of the towpath. A small part of the application site actually falls within the conservation area. Paragraph 132 of the NPPF states that when considering the impact of a proposed development on the significance of a designated heritage asset (such as a listed building or conservation area), great weight should be given to the asset's conservation.

The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development

within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification.

In the case of Barnwell Manor the Court of Appeal held that in enacting section 66(1) of the Listed Buildings Act 1990 Parliament intended that the desirability of preserving the settings of listed buildings should not simply be given careful consideration by the decision-maker for the purpose of deciding whether there would be some harm, but should be given “considerable importance and weight” when the decision-maker carries out the balancing exercise.

The application has been carefully and fully assessed in relation to the positive requirements to protect the conservation area and the setting of nearby listed buildings in accordance with Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and paragraph 132 of the NPPF, including through consultation with the Council’s Heritage Conservation team.

As part of this assessment it was noted that the majority of the most significant proposed changes to house types, layout and retaining structures/ levels do not affect parts of the site which have the greatest potential to impact on the Conservation Area or Listed Buildings. Consideration of the relative significance of the proposed changes in the context of the overall development scheme and the previously judged acceptability of the overall development scheme in terms of its impact on heritage assets also formed part of the assessment.

The outcome of the assessment is that, in this instance, it is not considered that either the proposed minor material amendments to the development scheme, or the overall development itself, would result in any significant harm to either the Conservation Area or the setting of the adjacent Listed Buildings. It is therefore considered that the proposal is in accordance with the provisions of saved RUDP policies BH4A, BH7 and BH20 and Section 7 of the NPPF.

## **6) Other Issues**

Concern has been raised by objectors in relation to the effect the proposed revised retaining structures would have on drainage/ surface water run-off. The Council’s drainage team have been consulted and the potential impact of the altered height and location of retaining structures on the site surface water drainage regime has been fully considered.

However it should be noted that the engineering concept for site has remained relatively consistent from the approved scheme. There is not considered to be any reason to conclude that the proposed amendments to the retaining structures would result in any significant detrimental impacts in terms drainage or flooding issues affecting adjacent properties. A separate issue associated with the diversion of a culverted watercourse along the southern site boundary is currently being addressed but is not relevant to the consideration of the current application.

Residents have also raised concerns about the potential overlooking impact of the proposed new houses adjacent to the existing Apperley Road properties, which are mainly set at a higher level than the existing properties. In relation to this issue it should be noted that the originally approved and currently proposed finished floor level, height and footprint of the proposed new dwellings adjacent to the southern site boundary are



not proposed to alter significantly, with separation distances generally over 25 metres and proposed house heights generally in the range of 8 to 9 metres.

Several development plots are set at a higher level than existing houses on Apperley Road; however this level difference is not proposed to be substantially increased as part of this application. It is not considered that the proposed minor material amendment would result in any significantly increased harm in terms of overlooking or overbearing impacts from proposed new houses upon adjacent existing residential dwellings.

**Reason for Granting Planning Permission:**

The proposed minor material amendment would allow a second house builder to amend the house design for 63 plots with associated minor adjustments to layout. It is considered that the changes do not compromise the design principles of the development scheme and that the revised house designs are appropriate to the site and will not be harmful to visual amenity.

The proposal would also allow for the retrospective regularisation of various changes to the site ground levels and associated retaining structures. Subject to the reduced retaining wall height which has been negotiated and the approval and implementation of appropriate soft landscaping, it is not considered that these changes would unacceptably affect the amenities enjoyed by adjacent residents or result in any other significant harm.

It is considered that the proposal accords with the design principles set out in paragraph 58 of the National Planning Policy Framework and accords with saved policies UR3, D1 and D5 of the replacement Unitary Development Plan.

**Conditions of Planning Permission:**

1. \*\*\*\*\* Implementation Condition Omitted – Application Partly Retrospective \*\*\*\*\*
2. The development hereby approved shall only be carried out in accordance with the approved plans listed below:

LOCATION PLAN - DWG: 100-002  
PLANNING SITE LAYOUT - DWG: 100-001 REV S  
BOUNDARY TREATMENTS – DWG: 100-004 REV S  
BOUNDARY WALL/FENCE DETAIL - DWG: 100-010  
BOUNDARY TREATMENTS 01 - DWG: B.01  
BOUNDARY TREATMENTS 02 - DWG: B.02  
BOUNDARY TREATMENTS 03 - DWG: B.03  
PLAY AREA - DWG: 04  
HOUSE TYPE - PART 1 REV A  
HOUSE TYPE - PART 2 REV A  
HOUSE TYPE - PART 3 REV A  
DWELLINGS ADDENDUM - PART 1  
DWELLINGS ADDENDUM - PART 2  
DWELLINGS ADDENDUM - PART 3  
PLANNING DRAWING OPTION 3E - DWG: 4118013E REV A

LINDEN HOMES PLANNING DRAWINGS - DATED AS RECEIVED ON 28  
SEPTEMBER 2016  
GARAGES 01 - DWG: G.01  
GARAGES 02 - DWG: G.02  
GARAGES 03 - DWG: G.03  
GARAGES 04 - DWG: G.04  
GARAGES 05 - DWG: G.05  
425/51/25.01 REV C - EMERGENCY ACCESS LINK GENERAL ARRANGEMENT  
425/51/25.02 REV A - EMERGENCY ACCESS LINK PROPOSED LEVELS  
425/51/25.03 - EMERGENCY ACCESS LINK LONG SECTION  
425/51/26.01 REV B - SECTION THROUGH EMERGENCY LINK 1  
425/51/26.02 REV B - SECTION THROUGH EMERGENCY LINK 2  
425/51/26.03 REV B - SECTION THROUGH EMERGENCY LINK 3  
425/51/26.04 REV B - SECTION THROUGH EMERGENCY LINK 4  
EXTERNAL WORKS LAYOUT (SHEET 1 OF 7) – DWG: 425-51-08.01 REV.K  
EXTERNAL WORKS LAYOUT (SHEET 2 OF 7) – DWG: 425-51-08.02 REV.L  
EXTERNAL WORKS LAYOUT (SHEET 3 OF 7) – DWG: 425-51-08.03 REV.N  
EXTERNAL WORKS LAYOUT (SHEET 4 OF 7) – DWG: 425-51-08.04 REV.L  
EXTERNAL WORKS LAYOUT (SHEET 5 OF 7) – DWG: 425-51-08.05 REV.F  
EXTERNAL WORKS LAYOUT (SHEET 6 OF 7) – DWG: 425-51-08.06 REV.L  
EXTERNAL WORKS LAYOUT (SHEET 7 OF 7) – DWG: 425-51-08.07 REV.N  
GABION SECTIONS - PLOTS 234 & 235 – DWG: 811099-GW-001  
GABION ELEVATION - PLOT 232-235 MILLER – DWG: 811099-GW-002  
PLOT 211 REAR GARDEN TREATMENT – DWG: LHN182-EW001  
PLOT 208 REAR GARDEN TREATMENT – DWG: LHN182-EW002  
PLOT 202 REAR GARDEN TREATMENT – DWG: LHN182-EW003  
TREE RETENTION/REMOVAL AND PROTECTION – DWG: 1462 06 REV D  
PROPOSED REMEDIATION METHOD STATEMENT, REF. MLR/04, JANUARY 2015  
CONSTRUCTION ENVIRONMENTAL MANAGEMENT PLAN, DATED AS RECEIVED  
ON 02 JUNE 2015  
CONSTRUCTION MANAGEMENT PLAN, REF. CEMP – 02 REV. A  
DRAINAGE LAYOUT 1 OF 3 REF. 425-51 SK15-01 REV A  
DRAINAGE LAYOUT 2 OF 3 REF. 425-51 SK15-02 REV A  
DRAINAGE LAYOUT 3 OF 3 REF. 425-51 SK15-03 REV A  
DIVERTED CULVERTED WATERCOURSE REF. 425-51-11.01 REV L  
DIVERTED CULVERTED WATERCOURSE SECTIONS REF. 425-51-11.02 REV E  
SITE PHASING PLAN, DATED AS RECEIVED ON 09 JAN 2015  
ECOLOGICAL MANAGEMENT STRATEGY, DATED AS RECEIVED ON 09 JAN 2015

Reason: For the avoidance of doubt.

3. The development shall be phased in accordance with the provisions of the Site Phasing Plan, dated as received on 09 Jan 2015. References to a Phase in this planning permission shall be interpreted as references to a phase as identified on the approved Phasing Plan.

Reason: To ensure the satisfactory overall development of the site and to accord with policy UR3 of the Replacement Unitary Development Plan.

4. The development permitted by this planning permission shall be carried out in accordance with the approved flood risk assessment (FRA) 425/51r3 and

supplementary flood risk assessment statement 425/5 along with the following mitigation measures:

- A. Limiting the surface water run-off generated by the up to and including 1 in 100 year critical storm so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site.
- B. An easement of 6 metres will be maintained between the culverted watercourse and the development.

The mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority

Reason: To prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site and to maintain management easement and protect properties from flood risk and to accord with the requirements of the National Planning Policy Framework, and policy NR16 of the Replacement Unitary Development Plan.

5. No residential units within a Phase shall be brought into occupation until the drainage infrastructure for that Phase, as detailed on the drawings listed below, has been fully completed:

DRAINAGE LAYOUT 1 OF 3 ref. 425-51 SK15-01 REV A  
DRAINAGE LAYOUT 2 OF 3 ref. 425-51 SK15-02 REV A  
DRAINAGE LAYOUT 3 OF 3 ref. 425-51 SK15-03 REV A  
DIVERTED CULVERTED WATERCOURSE ref. 425-51-11.01 REV L  
DIVERTED CULVERTED WATERCOURSE SECTIONS ref. 425-51-11.02 REV E

Reason: To prevent the increased risk of flooding, to improve and protect water quality and improve habitat and amenity and to accord with policy NR16 of the Replacement Unitary Development Plan.

6. Unless otherwise approved in writing by the local planning authority, no construction of buildings or other structures shall take place until measures to divert or otherwise formally close the sewers that are laid within the site have been implemented in accordance with details that have been submitted to and approved by the local Planning Authority.

Reason: In the interest of satisfactory and sustainable drainage and to accord with policy UR3 of the Replacement Unitary Development Plan.

7. \*\*\*\*\* Drainage Condition Omitted – Details Approved Under Condition 5 \*\*\*\*\*

8. Prior to the commencement of each Phase of the residential development, details of all external wall and roofing materials to be used in that Phase shall be submitted to and approved in writing by the Local Planning Authority. The residential development shall be constructed in accordance with the approved details unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure the use of appropriate materials in the interests of visual amenity and to accord with Policies UR3 and D1 of the Replacement Unitary Development Plan

9. Before any Phase of the development is brought into use, the proposed means of vehicular and pedestrian access for that Phase shall be laid out, hard surfaced, sealed and drained within the site in accordance with drawing 0135-100-001 Rev S and completed to a constructional specification approved in writing by the Local Planning Authority.

Reason: To ensure that a suitable form of access is made available to serve the development in the interests of highway safety and to accord with Policy TM19A of the Replacement Unitary Development Plan.

10. Construction works shall only be carried out in accordance with the provisions of the CONSTRUCTION MANAGEMENT PLAN, ref. CEMP – 02 Rev. A. Any temporary works, signs and facilities shall be removed and the access reinstated on completion of the development.

Reason: In the interests of highway safety and to accord with Policy TM19A of the Replacement Unitary Development Plan.

11. Prior to the occupation of the development, the i-Transport Travel Plan dated 2014 shall be implemented and thereafter be carried out and operated unless otherwise agreed in writing by the Local Planning Authority.

Reason: To promote sustainable travel options, minimise reliance on the private car, in the interests of environmental sustainability and reduction of traffic congestion, in the interests of highway and pedestrian safety and to accord with policies TM2, TM19A and UR3 of the Replacement Unitary Development Plan.

12. Every property built on the site with a dedicated parking space shall be provided with an outdoor, weatherproof electric vehicle charging point readily accessible from the dedicated parking space. Additional communal electric vehicle recharging points shall be provided at a rate of 1 per every 10 communal parking bays. The electrical circuits shall comply with the Electrical requirements of BS7671: 2008 as well as conform to the IET code of practice on Electric Vehicle Charging Equipment installation 2012 ISBN 978-1- 84919-515-7 (PDF). All EV charging points shall be clearly marked as such and their purpose explained to new occupants within their new home welcome pack / travel planning advice.

Reason: To facilitate the uptake of low emission vehicles by future occupants and reduce the emission impact of traffic arising from the development in line with the council's Low Emission Strategy and National Planning Policy Framework (Paragraph 35).

13. The Construction Environmental Management Plan, Dated as Received on 02 June 2015 shall be implemented in full during the construction of the development.

Reason: To protect amenity and health of surrounding residents in line with the Council's Low Emission Strategy and the National Planning Policy Framework.

14. A remediation verification report prepared in accordance with the approved remediation shall be submitted to and approved in writing by the Local Planning

Authority prior to the first occupation of each phase of the development (if phased) or prior to the completion of the development.

Reason: To ensure that the site is remediated appropriately for its intended use and to comply with policy UR3 of the Replacement Unitary Development Plan.

15. If, during the course of development, contamination not previously identified is found to be present, no further works shall be undertaken in the affected area and the contamination shall be reported to the Local Planning Authority as soon as reasonably practicable (but within a maximum of 5 days from the find). Prior to further works being carried out in the identified area, a further assessment shall be made and appropriate remediation implemented in accordance with a scheme agreed in writing by the Local Planning Authority.

Reason: To ensure that the site is remediated appropriately for its intended use and to comply with policy UR3 of the Replacement Unitary Development Plan.

16. The provisions of the PROPOSED REMEDIATION METHOD STATEMENT, ref. MLR/04, January 2015 shall be implemented in full.

Reason: To ensure that all materials brought to the site are acceptable, to ensure that contamination/pollution is not brought into the development site and to ensure that requirements of policy UR3 of the Replacement Unitary Development Plan have been accorded with.

17. Construction work shall only be carried out between the hours of 0730 and 1800 on Mondays to Fridays, 0730 and 1300 on Saturdays and at no time on Sundays, Bank or Public Holidays, unless specifically agreed otherwise in writing by the Local Planning Authority.

Reason: To protect the amenity of the occupants of nearby dwellings and premises and to accord with Policy UR3 of the Replacement Unitary Development Plan.

18. No residential units within a Phase shall be brought into occupation until full details of the hard and soft landscaping to be provided within that Phase and details of the provisions which shall be made for the maintenance and management of that landscaping, have been submitted to and approved in writing by the Local Planning Authority. Thereafter the approved landscaping works shall be fully implemented before more than half of the residential units within that Phase have been brought into occupation and subsequently maintained and managed in accordance with the approved details.

Reason: To ensure that appropriate landscaping is implemented to provide for an attractive environment which is of ecological benefit and to mitigate the visual impact of the development upon existing adjacent residents. To accord with saved policies D1 and D5 of the replacement Unitary Development Plan.

19. The development shall not be begun, nor shall any demolition, site preparation, ground works, materials or machinery be brought on to the site until Temporary Tree Protective Fencing is erected in accordance with the details shown on the approved drawing entitled TREE RETENTION/REMOVAL AND PROTECTION – dwg: 1462 06 REV D. The temporary Tree Protective Fencing shall be erected in accordance with the

approved plan or any variation subsequently approved, and remains in the location for the duration of the development. No excavations, engineering works, service runs and installations shall take place between the Temporary Tree Protective Fencing and the protect trees for the duration of the development without written consent by the Local Planning Authority.

Reason: To ensure trees are protected during the construction period and in the interests of visual amenity. To safeguard the visual amenity provided by the trees on the site and to accord with Policies NE4, NE5 and NE6 of the Replacement Unitary Development Plan.

20. No residential units within a Phase shall be brought into occupation until the retaining walls and boundary treatments to be provided within that Phase have been fully constructed in accordance with the details shown on the drawings listed below:

EXTERNAL WORKS LAYOUT (SHEET 1 OF 7) – dwg: 425-51-08.01 REV.K  
EXTERNAL WORKS LAYOUT (SHEET 2 OF 7) – dwg: 425-51-08.02 REV.L  
EXTERNAL WORKS LAYOUT (SHEET 3 OF 7) – dwg: 425-51-08.03 REV.N  
EXTERNAL WORKS LAYOUT (SHEET 4 OF 7) – dwg: 425-51-08.04 REV.L  
EXTERNAL WORKS LAYOUT (SHEET 5 OF 7) – dwg: 425-51-08.05 REV.F  
EXTERNAL WORKS LAYOUT (SHEET 6 OF 7) – dwg: 425-51-08.06 REV.L  
EXTERNAL WORKS LAYOUT (SHEET 7 OF 7) – dwg: 425-51-08.07 REV.N  
Boundary Treatments – dwg: 100-004 Rev S  
Boundary Wall/fence detail - dwg: 100-010  
BOUNDARY TREATMENTS 01 - dwg: B.01  
BOUNDARY TREATMENTS 02 - dwg: B.02  
BOUNDARY TREATMENTS 03 - dwg: B.03

Reason: In the interests of amenity and to accord with saved policies UR3, D1 and D5 of the replacement Unitary Development Plan.

21. No development shall take place until a Land Drainage consent is granted by the Local Authority.

Reason: Records indicate a watercourse crosses the site and the extent of the land drainage network within the existing site boundaries must be consented to ensure that no flooding will occur from the site and to accord with the requirements of the National Planning Policy Framework, and policy NR16 of the Replacement Unitary Development Plan.

22. Any trees or plants planted as part of the development, which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.

Reason: In the interests of visual amenity and to accord with Policies D1, UR3, UR5 of the Replacement Unitary Development Plan.

23. The approved Ecological Management Strategy, Dated as Received on 09 Jan 2015 shall be implemented in full.

Reason: To ensure the protection of wildlife and supporting habitat, to secure opportunities for the enhancement of the nature conservation value of the site and to ensure the site is developed in accordance with the principles of the National Planning Policy Framework and policies UR3, NE9, NE10, NE11, NE12 and NE13 of the Replacement Unitary Development Plan.

24. Before the development is brought into use, the off street car parking facility shall be laid out, hard surfaced, sealed and drained within the curtilage of the site in accordance with the approved drawings. The gradient shall be no steeper than 1 in 15 except where otherwise approved in writing by the Local Planning Authority.

Reason: To ensure that a suitable form of access is made available to serve the development in the interests of highway safety and to accord with Policy TM19A of the Replacement Unitary Development Plan.

25. The development of a phase shall not be begun, nor shall any site preparation, ground works, materials or machinery be brought on to the site in relation to that phase until a Tree Protection Plan showing Root Protection Areas and location of temporary Tree Protective Fencing for that phase has been submitted to and approved in writing by the Local Planning Authority in order to protect those trees which are shown to be retained.

The Tree Protection Plan for each phase shall be to a minimum standard as indicated in BS 5837 (2012) or its successor and show the temporary Tree Protective Fencing for each phase being at least 2.3m in height of scaffold type construction and secured by chipboard panels or similar. The position of the temporary Tree Protective Fencing for each phase will be outside Root Protection Areas for that phase (unless otherwise agreed with the Local Planning Authority) as shown on the Tree Protection Plan for that phase.

The development of each phase shall not be begun, nor shall any site preparation, ground works, materials or machinery be brought on to the site in relation to that phase until Temporary Tree Protective Fencing for that phase is erected in accordance with the details submitted in the Tree Protection Plan for that phase as approved by the Local Planning Authority.

The temporary Tree Protective Fencing for each phase shall be driven at least 0.6m into the ground and remain in the location as shown in the approved Tree Protection Plan for that phase and shall not move or be moved for the duration of the development of that phase.

The Local Planning Authority must be notified in writing of the completion of erection of the temporary Tree Protective Fencing for each phase and have confirmed in writing that it is erected in accordance with the approved Tree Protection Plan for that phase.

No development, excavations, engineering works and storage of materials or equipment for each phase shall take place within the Root Protection Areas of that phase for the duration of the development of that phase without written consent by the Local Planning Authority.

Reason: To ensure trees are protected during the construction period and in the interests of visual amenity. To safeguard the visual amenity provided by the trees on the site and to accord with Policies NE4, NE5 and NE6 of the Replacement Unitary Development Plan.

---