

Town and Country Planning Act 1990
Planning and Compulsory Purchase Act 2004
Town and Country Planning (Environmental Impact Assessment) Regulations 2017

Reserved Matters Planning Application
ZC23/04592/REMMAJ

by

Applegreen/Welcome Break

for a proposed Motorway Service Area on the A1(M) at Kirby Hill

Statement of Objection

by

Kirby Hill RAMS
[Residents Against Motorway Services]

April 2025

PLANNING APPLICATION REFERENCE: ZC23/04592/REMMAJ

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NOTE: *All references to the National Planning Policy Framework (NPPF) are to the December 2024 version*

1 RECOMMENDATION

1.1 Following a review of planning application ZC23/04592/REMMAJ with reference to current policy and legislation, with the unique benefit of the expert local knowledge of our community, Kirby Hill RAMS recommends that the reserved matters application be **REFUSED,** for the following reasons:

Access

1.2 The proposed height of the new motorway access to the MSA **exceeds the dimensions in the Parameters Plan** approved at outline stage, contrary to **Condition 5** of the outline permission.

1.3 The proposed MSA rear access **fails to meet relevant highway safety standards** and would increase the risk of accidents on the B6265 Ripon Road. It should be refused on highway safety grounds under **NPPF para 116**, **DMRB CD 109**, and the Local Authority's duty of care under the **Highways Act 1980**.

Landscaping

1.4 The new landscaping proposals represent a **significant departure from the approved parameters** of the outline permission, introduce **unassessed significant effects**, and result in **unacceptable harm to the character and appearance of the area**. The reserved matters application does not align with the **Development Plan** or the outline **Environmental Impact Assessment.**

Layout

1.5 The proposed siting of the **Petrol Filling Station** and **underground fuel storage** above a principal aquifer, in a flood-prone area of an MSA site now requiring extensive proliferation of new surface water drainage infrastructure, creates a **risk of groundwater pollution** and fails to demonstrate compliance with **NPPF Paras 172(c), 174 & 181-182** and the **Environment Agency Groundwater Protection Position Statements.**

1.6 The proposed layout fails to meet the Government's strategic transport and sustainability objectives and current standards set out in **DfT Circular 01/2022** in respect of **EV charging infrastructure.**

Appearance

1.7 The appearance of the development as now proposed results in **substantially greater visual harm** than previously assessed. It undermines **agreed mitigation principles** and would cause **unacceptable harm to local landscape character and visual amenity**, in conflict with **Harrogate Local Plan** Policies **NE4** and **HP3** and **Para 135 a), b) & c)** of the **NPPF**.

Scale

1.8 The proposed development **exceeds both the vertical and horizontal scale permitted** under the outline approval. It now extends into a field east of the A1(M) near Kirby Hill that was to be returned to agriculture. In doing so, it **fails to comply with the approved Parameters Plan** and conflicts with the principles of good design set out in **Paras 135 and 137** of the **NPPF**, which requires development to be sympathetic to local character and Applicants to **work closely with those affected by their proposals** to evolve designs that **take account of the views of the community.**

Parameters Plan

1.9 The **increased heights** of the proposed development rely on an **error** the Applicant has introduced in their interpretation of the Parameters Plan based on **incorrect planning, legal and mathematical argument**, which the LPA must explicitly refute: "*To the nearest metre*" is not equivalent to *"+/- 1 metre*". The LPA must ensure that **Condition 5** is **precise, enforceable and reasonable in all respects**, as required in law and by **Para 57** of the **NPPF**.

Environmental Impact Assessment

1.10 The **environmental effects of the new proposals** and the **changes to the environmental baseline** and context since outline permission, including **cumulative effects**, have not been assessed in an **Environmental Impact Assessment** under the **2017 EIA Regulations**.

Conclusion

1.11 On these grounds, on behalf of the local community, Kirby Hill RAMS respectfully ask Officers to recommend **refusal of this application** and the Strategic Planning Committee to **refuse permission for the proposed development**.

Kirby Hill RAMS

April 2025

2 INTRODUCTION

2.1 Reference is made to planning application ZC23/04592/REMMAJ submitted to North Yorkshire Council on 15th December 2023, seeking approval of reserved matters for a proposed Welcome Break Motorway Service Area (MSA) on the A1(M) at Kirby Hill.

2.2 This statement has been prepared by Kirby Hill RAMS [**R**esidents **A**gainst **M**otorway **S**ervices]. Kirby Hill RAMS is an independent residents' group formed for the sole purpose of objecting to the proposed Kirby Hill MSA. Kirby Hill RAMS has represented the objection case of the local community in respect of repeated MSA planning applications at this site over the last 29 years. We were granted the status of a Rule 6 Party by Planning Inspectors at the 2003, 2011 and 2021 MSA Public Inquiries. We present the objection case on behalf of the local community and the **seven** local Councils surrounding the proposed site, namely:

- Kirby Hill & District Parish Council
- Langthorpe Parish Council
- Marton-le-Moor Parish Council
- Boroughbridge Town Council
- Skelton-cum-Newby Parish Council
- Dishforth Parish Council
- Roecliffe with Westwick Parish Council

which together represent a total electorate of **over 6,000 people**.

2.3 Although the Applicant did not consult Kirby Hill RAMS or the local community ahead of submitting this planning application, we have completed a thorough review of it and made our assessment of the material planning considerations against relevant current legislation and policy. Kirby Hill RAMS submits this statement, representing the views and expertise of the local community, to assist the Local Authority's Planning Officer in making his recommendation and to help our elected representatives on the Strategic Planning Committee to determine this application.

2.4 Kirby Hill RAMS' extensive local expertise enables us to present evidence that reflects the first-hand knowledge and day-to-day experiences of local people over many years. We are in a unique position to provide North Yorkshire Council with a valuable local perspective on this planning application. The **Localism Act 2011** requires that our evidence be afforded significant weight.

2.5 Many of the planning issues and environmental concerns raised by Kirby Hill RAMS on behalf of the local community at the outline stage were deferred by the Applicant saying that they would be addressed as part of the reserved matters. This was a constant refrain at the 2021 Public Inquiry. **Consequently, the issues that matter most to the local community fall to be properly scrutinised and determined as part of this reserved matters application.**

2.6 Having completed a thorough review, Kirby Hill RAMS **strongly objects** to the planning application. The following sections set out our detailed objections in respect of each reserved matter, in turn.

3 RESERVED MATTERS

In respect of each of the reserved matters specifically, Kirby Hill RAMS' objections are as follows:

3.1 ***Access***

3.1.1 Access is defined as a reserved matter by **Condition 1** of the outline permission. **Condition 5** further states: "*The details to be submitted under condition 1 above shall accord within the parameters identified on the Parameters Plan AFL-00-00-DR-A-00120 rev P13 dated 11.07.23 and the ground levels and the heights and internal floorspaces of the proposed buildings* ***shall not exceed those specified***."

Proposed New Motorway Junction

3.1.2 The Applicant's drawing C0003-WBH-XX-XX-DR-C-0001 dated 10 March 2025 titled "*Compliance with Parameters*" shows that the heights of the motorway overbridge and dumb-bell roundabouts **exceed those specified in the Parameters Plan approved at outline stage.**

3.1.3 The heights of these structures, the tallest and most visible elements of the proposed development, have been consistently increased by the Applicant at every stage of the planning process. Table 3.1 below illustrates this:

Year: **Dimension (AOD):**	**2021** **Parameters Plan approved by the Inspector**	**2023** **Parameters Plan approved by the Council (s73)**	**2025** **Final design levels now proposed (reserved matters)**
Eastern dumb-bell roundabout	44.70m	45.95m	46.70m
Centre of motorway overbridge	45.70m	45.70m	46.40m
Western dumb-bell roundabout	44.70m	44.70m	45.20m

Table 3.1: Increase in height of the proposed new motorway junction access over time

3.1.4 The Applicant claims that a tolerance of **+/- 1 metre** should be permitted on all dimensions in the approved Parameters Plan. However, this is an **error** the Applicant has introduced based on **incorrect planning, legal and mathematical argument**, as explained in Section 4: "Parameters Plan" below.

3.1.5 The application should be refused because the proposed height of the new motorway junction access to the MSA exceeds the dimensions in the approved Parameters Plan, breaching Condition 5 and the principle established in *Sage v Secretary of State for the Environment [2003] UKHL 22*, which confirms that development must be carried out strictly in accordance with the terms of planning permission granted.

Proposed MSA Rear Access

3.1.6 The proposed rear access onto a rural B-class road with a 60mph speed limit shown in Drawing 230027-0100-025 dated 22/03/2024 **fails to meet essential visibility standards**, poses significant **safety risks** on a route already designated for high rates of Killed and Seriously Injured (KSI) incidents, and relies on an **incorrect interpretation** of the applicability of national highway design guidance. It is inconsistent with both local and national planning policy objectives around road safety. A departure from national highways safety standards is not justified, given that the stated overriding purpose of the proposed new MSA is to **improve road safety**.

3.1.7 The visibility standard required for a new junction access onto a 60mph road such as the B6265 is **215 metres in both directions**, in accordance with *Design Manual for Roads and Bridges (DMRB) CD 109: Highway Link Design (Table 2.10)*. This is a well-established requirement, irrespective of the road classification, to provide adequate stopping sight distance for approaching vehicles.

3.1.8 The proposed MSA rear access shown in the Applicant's Drawing 230027-0100-025 **does not deliver the required visibility**. The drawing shows that:

- **Left visibility** is only **160m**, a 25.6% shortfall.
- **Right visibility**, while technically 215m, includes a **62m section obstructed by a dip**, reducing effective visibility to **153m** at best, a 28.8% shortfall.

3.1.9 The **hidden dip** immediately west of the proposed rear access is a well-known road feature to local motorists, as it obscures cars from view for a few seconds. The Designer's Response to the Road Safety Audit Stage 1 confirms this, saying: "*The B6265 to the west of the proposed staff access has a dip in its vertical alignment such that vehicles disappear from view*". However, the Applicant's Drawing 230027-0100-025 claims right visibility is only "*obscured for 62m by 0.25m*". The low 0.25m figure quoted is not justified by any evidence and contradicts the Road Safety Audit.

3.1.10 The Applicant is proposing a significant **departure from highway safety standards**, without providing robust safety mitigation or justification based on evidence. Departures from visibility standards should "*only be approved where there is no viable alternative AND where detailed risk assessments show the residual risk can be acceptably mitigated***"** (*DMRB GG 104: Requirements for Safety Risk Assessment*).

3.1.11 The MSA rear access is proposed onto a **Killed and Seriously Injured (KSI)** designated route. Introducing a new junction with compromised visibility in a location with **known collision history** is contrary to basic road safety principles. According to *Highways England IAN 191/16* on "Road Safety Audit", any new access on a road with a high collision rate **must be subject to a higher level of scrutiny**. Creating a new conflict point here would add unacceptable safety risk and increase the likelihood of further KSI incidents involving local people.

3.1.12 Moreover, Para 116 of the **National Planning Policy Framework (NPPF)** states: *"Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety."* This proposal clearly falls into that category, given the combination of sub-standard visibility and the known safety record of the road. **Para 116 of NPPF** therefore provides justification for refusal, since the proposed rear access would have an unacceptable impact on highway safety, requiring a significant departure from standards.

3.1.13 The Applicant claims that **National Highways DMRB standards** should not apply because the B6265 is not part of the Strategic Road Network (SRN). However, this interpretation is **misleading and contrary to common practice**. While DMRB guidance is formally applicable to the SRN, local highway authorities regularly use it to assess non-SRN roads where **no local standards exist or where the design impact is significant**. In England, *Manual for Streets (MfS)* may be used for

urban or low-speed environments, but a new access from a major MSA development onto a rural B-road with a 60mph speed limit would have a **significant design impact**, therefore **DMRB remains the relevant and appropriate standard**. This is clarified in *DMRB CD 109, Section 1.3*: which states: "*This document may be used on local authority roads with appropriate approval".*

3.1.14 Therefore, the refusal to apply DMRB on grounds of network classification is not justified, when local safety conditions demand the highest standards.

3.1.15 Furthermore, in Drawing 210290-0000-016 Rev. A. titled "*MSA Rear Access Junction Off B6265*", approved as part of the s73 application and referenced in Condition 13 of the outline permission, the Applicant states: "*VRS TO BE MODIFIED IN ACCORDANCE WITH **DMRB CD377** TO ACCOMMODATE PEDESTRIAN / CYCLE MOVEMENTS*". This clearly demonstrates that the Applicant considers **DMRB standards are relevant to the MSA rear access design**, invoking them where convenient and dismissing them only where compliance is more challenging. Such selective application of standards is inconsistent and undermines the credibility of their position.

3.1.16 Approving an MSA with this proposed rear access would set a dangerous precedent, potentially also undermining local authority credibility in applying safety-based highways standards. It may expose the Council to legal risk in the event of a future serious collision attributable to the sub-standard access. Council officers and the Strategic Planning Committee would be held accountable by the public and by the relevant authorities for their decision to approve a sub-standard access.

3.1.17 In summary, the proposed MSA rear access:

- Fails to meet established visibility requirements.
- Proposes a new access onto a high-risk KSI route.
- Incorrectly argues against the applicability of DMRB standards.
- Relies on a departure from national highways standards that is not justified, given that the overriding purpose of the proposed development is to improve road safety.

3.1.18 The application should be refused on highway safety grounds, supported by NPPF para 116, DMRB CD 109, and the Local Authority's duty of care under the Highways Act 1980.

Proposed New Access on the A168

3.2 The Applicant's Drawing PL003 dated May 2024 introduces a new access from the A168 intended to serve the surface water lagoon infrastructure located east of the A1(M). This access was not previously proposed and has not been subject to assessment of its design or its potential impacts on the local highway network. Furthermore, it was not considered within the scope of the submitted Road Safety Audit (RSA). In accordance with **Para 116** of the **National Planning Policy Framework (NPPF),** which states that "*development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety*", the application should be refused because this new access has not been subject to appropriate highway design review and road safety auditing to demonstrate it meets the necessary standards for safe operation.

3.3 ***Appearance***

3.3.1 At the 2021 Public Inquiry, all parties accepted that the proposed Motorway Service Area (MSA) would cause significant visual harm within a sensitive and predominantly rural landscape. Outline planning permission was granted solely on the basis that such harm could be acceptably mitigated and was outweighed by the need for an MSA. The reserved matters application departs materially from the approved outline scheme, resulting in a worsened appearance through increased massing, higher ground and building levels, and the expansion of MSA operational infrastructure into previously excluded areas. These changes significantly intensify the visual impact of the development and fundamentally alter the planning balance previously struck. They have not been properly assessed in an updated LVIA. The appearance of the proposed MSA development, described by one local parish councillor as "*a slab of inner-city blight imposed upon a rural idyll*", is now such that the harm outweighs the benefits and permission should be refused.

Higher Site Levels

3.3.2 Most notably, the development now proposes **higher site levels**, particularly at the highest and most visible point of the proposed development: the **eastern dumb-bell roundabout**, The increased height and steeper gradient, together with the **removal of previously proposed screening**, make this engineered structure substantially more prominent when viewed from **Kirby**

Hill and nearby public rights of way. This increased visibility exacerbates the scheme's urbanising effect and results in a materially different appearance than that envisaged in the outline permission.

Extensive Surface Water Infrastructure

3.3.3 The overall **extent and appearance of the development** have also changed significantly due to the introduction of **additional surface water infrastructure**, including extensive lagoons and swales. Crucially, these features now **encroach east of the A1(M)** into a field that was previously to be restored to agricultural use, thereby eroding the rural buffer between the proposed MSA and the village. The unnatural, engineered and urban character of this infrastructure significantly harms the visual amenity of the landscape and undermines the setting of Kirby Hill in an open, large-scale agricultural landscape.

3.3.4 These changes are contrary to the **Harrogate District Landscape Character Assessment (HDLCA)**, which identifies the site as lying within **Landscape Character Area 81 – Dishforth and Surrounding Farmland**. The HDLCA notes the area's open, rolling character and explicitly highlights its **sensitivity to large-scale or urbanising development**. The reserved matters application conflicts with this landscape guidance by intensifying the visual intrusion from unnatural elements and failing to retain the rural qualities that are fundamental to the area's character.

3.3.5 The appearance of the proposed development also conflicts with **Policy NE4 (Landscape Character)** of the **Harrogate District Local Plan**, which requires that development proposals "*protect and/or enhance landscape character and key landscape features.*" By introducing elevated structures and extensive engineered drainage infrastructure and removing key landscape mitigation measures, the application fails to conserve the character of the local landscape and results in avoidable visual harm.

3.3.6 Furthermore, the development fails to comply with **Policy HP3 (Local Distinctiveness)**, which requires that new development "incorporates high quality building, urban and landscape design that reflects local distinctiveness." The new proposals for the elevated dumb-bell roundabout and the field east of the A1(M) do not respond positively to their rural setting and instead impose an urban, engineered character that is wholly inappropriate in this context.

Green Roofs

3.3.7 **Condition 6** of the approved outline permission requires that the details of **appearance** submitted under Condition 1 reserved matters shall provide for a **green/living roof** on the main **Amenity building, HGV Fuel Filling Station** and **Drive Through Coffee Shop**. The approved Design and Access Statement (July 2017) illustrated the use of green roofs as a principal means of softening the scheme's appearance and integrating it into the surrounding landscape. No further detail of the appearance of the green roofs has been provided. On the roof-level drawings of buildings in this application they are shown simply as a green or brown rectangle labelled "Green Roof" or "Sedum Roof", which gives no further detail to support an assessment by decision-makers or the public as to whether what is proposed is in keeping with the outline approval.

3.3.8 The **landscape drawings** in the current application **omit the green roofs entirely**, removing a core element of the visual mitigation that underpinned the outline approval. While the text of the current application still mentions green roofs, their omission from any landscape drawings gives the impression that the Applicant is moving towards a request to vary **Condition 6** - which requires the green roofs - if this reserved matters application is approved.

Appearance Conclusion

3.3.9 **These cumulative changes result in a development that is no longer consistent with the appearance, scale, or landscape-led design principles considered at outline stage.** The increased visual intrusion and diminished mitigation significantly harm the rural setting of Kirby Hill and contravene both local and national policy. In particular, the scheme fails to accord with:

- **Harrogate Local Plan Policy NE4** (Landscape Character)
- **Harrogate Local Plan Policy HP3** (Local Distinctiveness)
- **Paragraph 135 of the NPPF** (Development sympathetic to local character and setting)

3.3.10 In summary, the appearance of the development as now proposed at reserved matters stage results in substantially greater visual harm than previously assessed and cannot be supported in its current form. It conflicts with adopted planning policy, undermines agreed mitigation principles, and would cause unacceptable harm to local landscape character and visual amenity. The application should therefore be refused.

3.4 ***Landscaping***

3.4.1 The reserved matters application as submitted **materially diverges from the scheme approved** in the outline planning permission. These divergences give rise to **significant adverse effects on landscape character and visual amenity** of the surrounding area, particularly east of the A1(M) in relation to the village of Kirby Hill. These changes are **contrary to both local and national planning policy**, as well as the principles underpinning **Environmental Impact Assessment**. On landscape and visual grounds alone, the application should be refused.

Field east of the A1(M)

3.4.2 The outline planning permission explicitly required that the field to the east of the A1(M - the nearest part of the site to Kirby Hill - **be reinstated to agricultural use** following construction of the proposed MSA. This requirement served as a critical environmental safeguard to preserve landscape character, maintain the rural setting of Kirby Hill, and minimize the permanent loss of Best and Most Versatile (BMV) agricultural land. The applicant's Environmental Statement (ES Para 13.4.2) at outline stage acknowledged:

*"It has been determined that there would be **an irreversible loss of circa 9.8 ha** of Grade 2 agricultural land and **a circa 4.3 ha of reversible loss** of Grade 2 agricultural land."*

3.4.3 Despite this key assurance given by the Applicant during the outline stage and public consultation, the current application seeks to introduce **extensive, permanent man-made, surface water infrastructure** (lagoons and swales) into this eastern field. This represents a **material departure from the outline approval** and results in additional irreversible loss of Grade 2 "Best and Most Versatile" (BMV) agricultural land, in direct contravention of:

1. **NPPF Paragraph 187(b) -** which requires decision-makers to recognise the benefits of protecting BMV agricultural land.
2. **Harrogate District Local Plan Policy NE8** – which seeks to protect agricultural land from avoidable development.
3. **Harrogate District Landscape Character Assessment (HDLCA)**. The relevant policies for Area 81: Dishforth and Surrounding Farmland emphasise the importance of preserving the

open and agricultural nature of this landscape and provide the guideline: "*Aim to integrate development*".

4. **NPPF Paragraph 187(a) -** which encourages the protection of high-quality soils.

3.4.4 The new surface water lagoons and swales form part of the permanent MSA operational infrastructure, which would preclude any meaningful return of this land to agriculture. The **environmental and agricultural harm** arising is beyond that considered at the outline stage and requires re-assessment, potentially through a fresh Environmental Statement.

3.4.5 The introduction of artificial drainage lagoons and associated features into this sensitive rural setting represents **a fundamental change in the character and appearance of the area** east of the A1(M). These features are **alien to the landscape** and would significantly undermine landscape character, particularly as experienced by receptors in Kirby Hill and motorists using the A168. The resulting change in the character and visual amenity of this area is contrary to the description and mitigation principles assumed at the outline EIA stage.

3.4.6 The formal Landscape consultation response from the Council's Environment and Design Manager makes the following comments:

"*It is considered that there are too many attenuation ponds both to the east and west of the A1(M) and they are not of a sufficiently naturalistic form.*"

"Details on how to rationalise and resolve the number and shape of the attenuation ponds have not been received. I expected this to be included in the reserved matters application. ***I remain concerned with the effects on landscape character*** *of the number of oddly shaped ponds to the east of the A1(M) being a particular concern. The preference is for one naturalistically formed pond sited in the lowest part of the site. In conclusion I have highlighted the outstanding matters in orange and have a comment on compliance with section 5 of EIA vol 1."*

3.4.7 The application should be refused because this **significant material change in Landscape effects** breaches the principle established in *Sage v Secretary of State for the Environment [2003] UKHL 22*, that development must be carried out strictly in accordance with the terms of the planning permission granted.

Increased Woodland Planting

3.4.8 The increased woodland planting atop the slip road embankments, as now proposed, represents a significant **intensification of soft landscaping** of the built form beyond that envisaged at outline stage. When viewed from the north and east, the MSA would no longer be a discreet low-lying development integrated into its surroundings, but rather would appear as an incongruous, elevated **woodland block** in an otherwise predominantly open agricultural landscape. This visually intrusive change is in direct conflict with both the **HDLCA** and **Saved Policy C2 of the Harrogate District Local Plan**, which seeks to protect landscape character from inappropriate development.

3.4.9 The cumulative impact of the additional woodland planting atop elevated infrastructure, the introduction of engineered water features and the consequent inability to return the field east of the A1(M) to agriculture has not been subjected to robust EIA analysis. This failure is procedurally unlawful and presents a risk of **legal challenge under judicial review**.

Conflict with Policy

3.4.10 The proposal is considered to conflict with the following policy provisions:

- **NPPF para 135:** Emphasizes that developments should be sympathetic to local character and history, including the surrounding built environment and landscape setting.
- **NPPF para 187:** Stipulates that planning decisions should recognize the intrinsic character and beauty of the countryside and the wider benefits from natural capital and ecosystem services. This was clearly recognised at outline stage, with a commitment to protect the field east of the A1(M) and return it to agriculture. It would be inappropriate for the LPA to undermine the assurances given then and grant permission for a different use of this field now.
- **Saved Policy C2 of the Harrogate District Local Plan**: Seeks to protect landscape character from inappropriate development.
- **Harrogate District Landscape Character Assessment (Area 81)**: Advises integrating development and conserving the open, agricultural character of the area.

3.5 **For the reasons outlined above, the landscaping proposals represent a significant departure from the approved parameters of the outline permission, introduce unassessed significant effects, and result in unacceptable harm to the character and appearance of the area. The reserved matters application does not align with the development plan or the principles underpinning the outline EIA. Therefore, it is recommended that the application be refused on landscape and visual impact grounds.**

3.6 ***Layout***

3.6.1 The MSA layout has changed since outline approval. In addition to the encroachment of MSA operational infrastructure into the field east of the A1(M) nearest Kirby Hill described under "Landscaping" above, three other layout points warrant refusal of this application.

Siting of Petrol Filling Station (PFS)

3.6.2 The proposed layout involves locating the petrol filling station (PFS) and associated underground fuel tanks in the **lowest south-east corner of the site**, which was **historically a pond**. This land regularly floods in winter and lies over a **Principal Aquifer**, as defined by the Environment Agency.



Figure 3.1: Photo showing how the proposed location of the Petrol Filling Station (PFS) floods in winter

3.6.3 The proposed layout and siting of the PFS raises serious concerns regarding:

- The **vulnerability of fuel infrastructure to surface water** flooding and rising groundwater.
- The **risk of groundwater contamination** due to proximity to the aquifer.

3.6.4 The extensive proliferation of **new surface water drainage infrastructure** in this reserved matters application, when compared to the outline permission, reinforces the point that the site is flood-prone and endorses the concerns of the local community about siting underground fuel storage in the lowest SE corner of the site where surface water accumulates, as shown in **Figure 3.1**.

3.6.5 The proposed siting of the PFS in the MSA layout fails to demonstrate compliance with:

- **NPPF Paras 172(c) and 174** - which require avoidance of pollution and sustainable use of natural resources.
- **NPPF Paragraph 181-182** - which place the onus on applicants to demonstrate that development will not result in unacceptable risks to human health or the environment.
- **EA Groundwater Protection Position Statements** - which require higher scrutiny and risk assessments for fuel infrastructure over sensitive aquifers.

3.6.6 This element of the proposed MSA layout cannot be approved without clear and robust evidence that it will not increase flood risk or compromise groundwater quality, which has not been provided.

Inadequate Electric Vehicle Charging Provision (DfT Circular 01/2022)

3.6.7 The Government set out in "*The Road to Zero Strategy*" that the sale of petrol and diesel vehicles will end in 2030. In the first quarter of 2025, **29.9%** of all new vehicles registered were either fully electric or plug-in hybrid, indicating a rapidly growing trend (Zap-Map.com).

3.6.8 The Applicant's drawing 3303-01-LA-RM-09 Rev B shows that the proposed layout of the new MSA includes a total of "***20*** *EV Charging Spaces and associated infrastructure*" located north of the petrol filling station and west of the main car park. This is significantly less EV provision than at the existing Wetherby Services (**38** spaces) and less than the number approved by the Council in March 2025 for the new Catterick MSA (**25** spaces at opening, increasing to **95** spaces by year 3 as required by **DfT Circular 01/2022**).

3.6.9 **The Automated and Electric Vehicles Act 2018** requires a new MSA to have **a minimum of 6 ultra-rapid chargers** installed at opening, though this is already considered insufficient given the rapid growth of EV usage.

3.6.10 **DfT Circular 01/2022** "*The Strategic Road Network and the Delivery of Sustainable Development*" is a material consideration in all new MSA development.

3.6.11 **Para 110** states that **"***Due consideration should be given for some chargepoints being located where they can be safely accessed by a recovery vehicle and car towing a caravan.*" **All of the chargepoints shown on the Applicant's drawings are unsuitable for cars towing caravans**.

3.6.12 **Para 111** covers the need for **accessible EV charging: "***The Office for Zero Emission Vehicles (OZEV) has worked with Motability and the British Standards Institution to develop a Publicly Available Specification for accessible charging (PAS 1899), the United Kingdom's first accessibility standard for the design and installation of public chargepoints. PAS 1899 was published in October 2022 and should be considered by any party involved in providing public chargepoints.*" **The proposed MSA does not include any accessible chargepoints.**

3.6.13 **Para 112** mandates that there must be provision (including grid capacity and site layout) for 100% conversion of all car parking spaces to EV charging in the future. The reserved matters application proposes **just 20 EV charging spaces** and **fails to demonstrate** that all other parking bays are capable of future conversion to EV use. There is:

- No clear plan for grid reinforcement or ducting routes.
- No phasing strategy or infrastructure masterplan compliant with the Circular.
- No compliance statement addressing Circular 01/2022 in full.

3.6.14 The Applicant appears to believe that current national MSA policy as set out in DfT Circular 01/2022 should not apply to them. Failure to comply with the Circular will result in **an MSA that is not fit-for-purpose in the 21st century**, because it does not meet the needs of modern motorists. By contrast, in March 2025 North Yorkshire Council approved **a new MSA at Catterick** which was **required to meet Circular 01/2022 standards** on EV provision. Failing to apply the same standard to a new MSA at Kirby Hill, when the reserved matters application is determined after the Catterick permission was granted, would be a backwards step and **procedurally unfair**.

3.6.15 Inadequate EV charging provision is a serious failing of the proposed scheme which renders the application **non-compliant with national policy on transport decarbonisation**, contrary to:

- **DfT Circular 01/2022 Section 5.4**.
- **NPPF Paragraphs 110 and 112**, which promote sustainable transport infrastructure.
- **Harrogate Local Plan Policy TI1 (Sustainable Transport)**.

3.6.16 This failure to future-proof the site undermines the benefits case and the long-term viability and sustainability of the proposed MSA and could prejudice local and national **Net Zero** targets. Furthermore, it is incompatible with building a new MSA in a rural county where the LPA has declared a **Climate Change Emergency.**

3.6.17 The proposed layout is not approvable in its current form and fails to meet the Government's strategic transport and sustainability objectives. In light of the above, the application should be refused because it fails to:

- Locate the Petrol Filling Station away from high flood risk zones and sensitive aquifers.
- Demonstrate full compliance with **DfT Circular 01/2022** on EV charging infrastructure.

3.7 ***Scale***

3.7.1 The reserved matters application **fails to provide a comparative plan showing existing and proposed site levels.** This omission makes it difficult for decision-makers and members of the public to properly assess the full visual and physical implications of the development now proposed, particularly in terms of **its increased vertical and horizontal scale**.

3.7.2 Notwithstanding the absence of such drawings, it is apparent, particularly from the updated access arrangements described in Section 3.1 above, that there has been a **material increase** in the overall height of key elements of the scheme. Specifically, the proposed eastern dumb-bell roundabout nearest to Kirby Hill is now designed to be **8 metres** in height above the A168, approximately **25% higher** than approved by the Secretary of State following the 2021 Public Inquiry. This increase also breaches the **maximum height thresholds** set out in the approved **Parameters Plan** associated with the 2023 Section 73 consent. As such, the proposal is not in accordance with the scale and massing parameters established at outline stage.

3.7.3 As discussed under Section 3.3 (Landscaping), the scheme has also **expanded laterally**, with MSA operational infrastructure (surface water lagoons, drainage swales and a new vehicular access for maintenance) now proposed on land to the east of the A1(M), within a field that was previously **designated to be returned to agricultural use**. This encroachment significantly increases the scheme's footprint and brings built development closer to the village of Kirby Hill, thereby intensifying the visual and spatial impact on the surrounding rural landscape.

3.7.4 These are not minor variations but **substantial and material changes** in **scale** and **extent**. They go beyond what could reasonably be considered to be within the scope of the outline consent and represent a departure from the approved development principles. If the full extent of this scale and eastward expansion had been disclosed and assessed at outline stage, it is highly unlikely that permission would have been granted.

3.7.5 Furthermore, as explained in Section 4 (Parameters Plan) below, the Applicant appears to have **misinterpreted** and **misstated** the tolerances applicable within the approved Parameters Plan, in order to justify this enlarged scale of development. This undermines the purpose of the Parameters Plan, which is to set fixed limits on development parameters for environmental and visual impact assessment purposes.

3.7.6 In summary, the current reserved matters application proposes a development that **exceeds both the vertical and horizontal scale permitted** under the outline approval. In doing so, it **fails to comply with the approved Parameters Plan** and conflicts with the principles of good design set out in **Para 135** of **NPPF**, which requires development to be sympathetic to local character, including the surrounding built environment and landscape setting. **The application should therefore be refused.**

4 PARAMETERS PLAN

4.1 ***Summary***

4.1.1 This section addresses the continued misstatement by the Applicant of the **approved height of the proposed motorway overbridge and dumb-bell roundabouts** within the reserved matters application for the proposed MSA. It concerns the **misinterpretation of height information** on the approved **Parameters Plan**, which forms part of the approved outline planning permission and is expressly referred to by **Condition 5** of the Council's outline approval dated 14th September 2023.

4.2 ***Parameters Plan Status and Legal Interpretation***

4.2.1 The Parameters Plan submitted by the Applicant and approved as part of the outline application **18//00123/EIAMAJ** includes the following note:

"*Measurements based on AOD levels are indicative and to the nearest metre."*

4.2.2 This plan was approved as part of the Inspector's outline consent and is specifically referred to in a condition, thereby forming **an integral and binding component of the permission**. In law, and per established case law (*R (Hart Aggregates Ltd) v Hartlepool BC*; *R (Walker) v Bath and North East Somerset Council*), where Parameters Plans are approved and conditioned, they function not as illustrative aids, but as controlling documents which constrain the form of any subsequent development.

4.2.3 While the term *"indicative*" may imply a degree of flexibility in some contexts, its legal effect here is limited by its inclusion in **a conditioned and approved plan**. Once conditioned, the parameters cease to be illustrative and become **operative constraints on development**, particularly where key figures (e.g. maximum heights) are clearly expressed.

4.3 ***Misinterpretation of Height Tolerances***

4.3.1 The original Parameters Plan approved by the Inspector in 2021 shows the height of the eastern dumb-bell roundabout as **44.7m AOD**. It also states that all measurements are "*to the nearest metre*". The Applicant has, throughout the evolution of the application, stated that this phrase allows for a tolerance of ±1 metre. **That assertion is mathematically and legally incorrect.**

4.3.2 "*To the nearest metre*" is a standard expression of rounding, which allows for a deviation of up **to ±0.5 metres, not ±1 metre.** A height of 44.7m expressed to the nearest metre is 45m.

4.3.3 The Applicant's misinterpretation effectively allows a **2m** range (from 43.7m to 45.7m for a stated figure of 44.7m AOD), which is **not what the plan or the condition permits**.

4.3.4 The inclusion of the word *"indicative*" does not alter the numerical meaning of *"to the nearest metre*" nor provide legal justification for expanding the tolerances of a conditioned plan.

4.4 ***Procedural Inconsistency Confirmed by Section 73 Application***

4.4.1 This misinterpretation is further undermined by the Applicant's own conduct. In the subsequent s73 application **ZC23/01168/DVCMAJ**, the Applicant sought to increase the height of the eastern dumb-bell roundabout to **45.95m AOD** — a full **1.25m** above the originally-stated height, but only **0.95m** above the rounded to-the-nearest-metre height of **45m**.

4.4.2 Had the Applicant truly believed they possessed a ±1m tolerance under the original permission, a Section 73 application to increase the height would have been unnecessary. The fact that they submitted such an application and that it was approved confirms that the original 44.7m AOD figure was understood to be a fixed control.

4.4.3 **The Applicant has already sought and obtained permission for the increased height in the s73 application and cannot now return to their earlier, incorrect interpretation to justify or obscure further increases in height under reserved matters.**

4.5 ***Implications and Legal Risk***

4.5.1 Allowing this reserved matters application to proceed on the basis of the Applicant's continued misstatement creates significant legal and procedural risks for the Council:

- It would breach the requirement under NPPF paragraph 57 that planning conditions (including conditioned plans) be **enforceable, precise and reasonable** in all other respects.
- It may render the reserved matters approval **ultra vires**, by purporting to authorise a development that does not comply with the terms of the outline permission.

- It may give rise to grounds for judicial review on the basis of **Wednesbury unreasonableness** (*Associated Provincial Picture Houses v Wednesbury Corp [1948]*) and procedural unfairness (*R (Barker) v Bromley LBC [2006]*), given that the public and the Strategic Planning Committee relied on the Parameters Plan during the Public Inquiry and the s73 application consultation processes.

4.6 ***Requested Actions***

4.6.1 For the reasons set out above, it is respectfully submitted that:

- **The reserved matters application must be refused** or amended to accurately reflect the binding height controls set by the outline permission.

- The misstatement that "*to the nearest metre*" permits a ±1m tolerance must be **explicitly rejected by the Local Planning Authority.**

- The now proposed **46.7m AOD** final design height for the eastern dumb-bell roundabout must be rejected, as it is justified solely **on the basis of the Applicant's incorrect interpretation of the approved Parameters Plan**.

4.7 ***Conclusion***

4.7.1 The interpretation of the approved Parameters Plan is not a matter of planning judgment; it is a matter of plain language and legal constraint. The Applicant's assertion that "*to the nearest metre*" allows for a ±1m variation is wrong in both respects. **The Local Planning Authority is urged to uphold the integrity of the approved outline permission and ensure compliance with its precise, enforceable and reasonable terms, as required in law and by para 57 of the NPPF**.

5 ENVIRONMENTAL IMPACT ASSESSMENT

5.1 The reserved matters application is not accompanied by an **Environmental Impact Assessment** prepared in accordance with the **2017 EIA Regulations**, to fully assess the impact of these new changes on the locality in light of the current environmental legislation and context. Kirby Hill RAMS has formally requested a screening opinion from the LPA as to whether an EIA is required. The rationale for this screening request is as follows:

5.2 The reserved matters application amounts to a **material change** to the description and environmental parameters assessed at the outline stage. As such, it triggers a requirement for further environmental assessment under the **Town and Country Planning (Environmental Impact Assessment) Regulations 2017**, particularly **Regulation 9**, which prohibits development from proceeding where significant environmental effects have not been properly assessed.

5.3 The reserved matters application introduces a number of **substantive design and environmental changes** described above that were **not assessed at the outline stage**, including:

- Installation of engineered open-water lagoons and drainage features on land previously designated for agricultural restoration.
- A substantial increase in woodland planting, altering the open landscape character of the area.
- A materially higher and more visually prominent eastern roundabout, with loss of approved screening.

5.4 In addition, the **environmental baseline has changed** significantly since the original Environmental Statement was submitted in 2021. In particular, the approval of a second MSA at Catterick - itself EIA development - introduces **new cumulative and in-combination effects** that have not been considered in the original assessment. While the Applicant argues that assessment of cumulative effects is the responsibility of other projects and is not required of them for the proposed Kirby Hill MSA, this is an incorrect interpretation of the 2017 EIA regulations.

5.5 In accordance with the 2017 EIA Regulations, a robust **assessment of cumulative impacts** is essential for the Strategic Planning Committee's decision-making. This is particularly pertinent given the approval of **five** new motorway service areas (MSAs) along the 60-mile stretch of the

A1(M) in North Yorkshire - resulting in an average spacing of just 12 miles between facilities. This is markedly below the national average MSA spacing of 23 miles (based on 100 MSAs across the total 2,300 miles of UK motorway**). The dense concentration of MSA planning approvals in North Yorkshire is unprecedented**, positioning the county as an **outlier nationally**. A credible assessment of the cumulative environmental effects of this clustering is unlikely to support the conclusion that such a high level of provision is either necessary or sustainable.

5.6 The Environmental Statement prepared for the outline application was produced under the 2011 EIA Regulations and does not reflect the current legal framework set out in the 2017 Regulations. A limited update submitted under the Section 73 application in 2023 does not address the full extent of likely significant effects resulting from the current proposals, including cumulative effects.

5.7 Accordingly, and in light of the **materially different environmental impacts** and the **changed context for assessment,** Kirby Hill RAMS requested that the LPA to issue a formal screening opinion as to whether the reserved matters application now constitutes EIA development under Schedule 2 of the 2017 Regulations. A formal response from the LPA is awaited.

5.8 If the LPA determines that the changes do give rise to likely significant effects on the environment, it is required by law to request a further Environmental Statement before determining the application. **Without the benefit of a full assessment of all environmental effects under the 2017 EIA regulations, the application should be refused.**

6 MISSING INFORMATION

6.1 The Applicant's Reserved Matters Statement (Para 1.2.4) explains: "*The reserved matters application has been made pursuant to Condition 1 of the S73 Permission…*" and: "*In addition, the reserved matters application provides details of:*

- *access requirements specified in Condition 13.*
- *appearance requirements specified in Condition 6.*
- *landscaping requirements specified in Condition 8.*
- *layout requirements specified in Condition 24.*
- *construction of the A1(M) dumbbell roundabout in Condition 17.*
- *waste storage facilities and undercover cycle parking in Condition 37."*

6.2 Kirby Hill RAMS has identified the following missing information in the reserved matters application that is material to its determination:

- A drawing showing **existing vs proposed levels** for the site.
- An **updated Landscape Masterplan** showing all of the new surface water infrastructure.
- Updated **landscape drawings** that show the proposed green roofs.
- A **design drawing, visibility splays** and a **Road Safety Audit** for the new proposed A168 access to enable maintenance of the new surface water infrastructure.
- Confirmation that the **eastern dumb-bell roundabout** adjacent to the A168 can be constructed to the height and gradient now specified, **without risk of slope failure**.

7 CONCLUSION

7.1 In conclusion, on the above grounds, Kirby Hill RAMS respectfully ask Officers to recommend **refusal of this application** and the Strategic Planning Committee to **refuse permission for the proposed development**.

Kirby Hill RAMS

April 2025