

6<sup>th</sup> November 2025

Kirklees Council  
Mr V. Grayson

Dear Mr Grayson

**Chidswell, Planning Application – Hey Beck Lane (2020/92350)**

We note that the Council has received a series of representations on this application following the publication of the draft s106 agreement. Having reviewed these representations on behalf of the applicant, the Church Commissioners for England, we are concerned that there is a considerable level of confusion around certain matters. We trust that this letter will help provide a clearer understanding of the key points that have been raised and the outstanding points for the Council to consider.

**High Court judgement & publication of the s106:** The judicial review brought by the Chidswell Action Group (CAG) was successful on one ground only. That ground concerned the Council's failure to publish a draft of the s106 agreement prior to granting planning permission. As quoted by third parties, the judge described this as a "*flagrant breach on purely procedural grounds*" and referred to "*a serious want of transparency*". This procedural breach and lack of transparency has now been remedied by the publication of the s106.

Case law has established that the requirement to publish any proposed or completed planning obligation does not amount to a statutory obligation to undertake consultation on the s106 agreement before granting permission (and it clearly does not amount to an obligation to undertake further consultation on the application as a whole). Publication allows third parties the opportunity to comment on the detailed terms of the s106 should they wish to do so. It is not however intended as an opportunity to allow third parties to reopen up all matters relating to the application.

It is entirely normal (and standard practice for local authorities throughout the country) for Members at planning committee not to see a full draft s106 agreement either before making a resolution or before planning permission is granted. In this case, Members of the Strategic Planning Committee decided to delegate approval of the conditions and the s106 agreement to officers. There is nothing

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unusual or untoward in Members delegating those matters to officers, so that their officers negotiate the detail with applicants and subsequently issue the decision.

As is well established in case law, officers only have a duty to take a matter back to committee if a new material consideration arises, as a result of which officers consider that Members might make a different decision. That position does not arise in this case (in that there are no new material considerations as we explain below), but we understand that, in light of the procedural breach highlighted above, and the criticisms made by the judge, officers have determined to refer the matter back to committee as an exercise of caution.

**Basis for redetermination:** As officers and Members are aware, planning applications must be determined in accordance with the Development Plan unless material considerations indicate otherwise. The Strategic Planning Committee determined on 8<sup>th</sup> December 2022 to grant permission for this application, taking account of those matters and the report from officers. Significantly, this site the subject of this application is allocated for residential development in the adopted Local Plan (as such, the principle of development on this site has been established). The proposed development remains consistent with the allocation (MXS7) in that Plan, and also with the National Planning Policy Framework (NPPF). Contrary to the representations made, no new or different material considerations arise which would mean a different decision should be made taking account of all relevant matters.

It is also important to note that the other four grounds of challenge raised by the Claimants in the judicial review were dismissed. In particular, the judge did not find any issue with the proposed ecology conditions, the accuracy of the Biodiversity Net Gain (BNG) Assessment or the adequacy of the provisions to secure BNG. This has been misunderstood in many of the representations made. Accordingly, there is nothing else (aside from the criticism regarding the Council's failure in publication of the draft s106) in the Court's findings which must be remedied as a consequence of the judgement, as we explain below.

Many of the representations which have been made regarding the publicised draft of the s106 repeat in whole or in part concerns regarding matters that were fully addressed by the officer's report, such as transport impact, ecology / protected species, air pollution, impact on services and facilities and loss of countryside. These are not new matters. There is no material change in policy or any other relevant consideration that would lead to a different decision being made in respect of those matters and we do not address them further in this letter.

**Rebuttal to representations on specific new material considerations:** We focus on the key issues raised in the representations which have been presented as new material considerations and explain why they are not new below.

It should firstly be noted that there is no statutory requirement to provide a 10% BNG for this planning application. BNG only became a statutory requirement for planning applications for major developments submitted on or after 12<sup>th</sup> February 2024. The Commissioners took a voluntary decision, however, to provide a minimum 10% net gain well in advance of the legal requirement.

**(a) Offsite BNG:** It has been argued that the draft s106 agreement could result in the majority of the BNG being provided offsite, and that this was not what the Strategic Planning Committee were led to expect when resolving to grant planning permission. However, this is not correct – and the judge has already considered and rejected this concern.

It was made clear to Members of the Strategic Planning Committee that BNG could be delivered on and/or offsite – this was explained in the Committee Report Recommendation which states that BNG provision would be secured through the s106 agreement as follows: “*a) Contribution (amount to be confirmed) or off-site measures to achieve biodiversity net gain (only applicable if 10% can’t be achieved on site)*”. In addition, the provision of BNG offsite is referred to in paragraph 10.67 of the Committee report, where it states: “*It is also noted that the proposed 10.03% net gain in habitat units is partly reliant upon off-site interventions.*”

Members were fully aware that a high level BNG Assessment (1<sup>st</sup> November 2022) had been made and submitted with the application which indicated that provision would be on and off site, that a precise split was not proposed at that stage, and that this would be revisited at reserved matters stage when a detailed scheme for the site had been designed and a revised and updated biodiversity assessment would be submitted for the Council’s approval. There is nothing unusual about this process when an outline planning application has been submitted. The draft s106 agreement reflects the Recommendation and the position agreed by Members at the Strategic Planning Committee.

The judge expressly finds on some of the points put on behalf of CAG in the judicial review, including the suggestion that the BNG Assessment could produce a requirement for substantial off-site interventions as well as on-site ones, that: “*None of these possibilities persuades me that the way in which the 10 per cent BNG issue was presented to Members in December 2022 was misleading, provided that the proper BNG baseline was used (paragraph 143).*” Furthermore, at paragraph 142, the judge notes that officers could refuse to approve, or instead refer to Committee, any BNG proposal advanced at reserved matters stage which they found to be unacceptable.

No new matters arise in this regard. It is not possible at this stage to identify the precise percentages of BNG that will be provided on site and offsite (which offsite provision would be within the Ancient Woodland buffer, as explained below). This will follow once the detailed design of the development and of the new and enhanced habitats on and offsite has been progressed. However, it is proposed to amend the s106 agreement so that on site BNG provision is expressly preferred (consistent with drafting in the Leeds Road s106 agreement). It remains the case, as identified and accepted by the

judge, that the Council will have the final say in approving the BNG proposals including the appropriate percentage to be provided offsite.

**(b) Use of Ancient Woodland for BNG:** The representations also contend that Members were unaware that BNG would be provided in the ancient woodland, Dum Wood. These representations are misleading.

The draft s106 agreement defines an area of “Ancient Woodland Land”. Importantly, this includes *both* Dum Wood itself (i.e. the ancient woodland), *and* the “Ancient Woodlands Buffer”, being a 20m wide buffer area around Dum Wood, which will be planted. The buffer is also clearly identified on the submitted parameter plan (00-211).

The BNG Assessment submitted with the planning application states, in demonstrating that the site can comfortably achieve a 10% net gain, that “*Dum Wood has not been considered within this assessment...*” (paragraph 17). Only land within the application site boundary and the Ancient Woodlands Buffer were included in the assessment. There was therefore no reliance on improving biodiversity in the ancient woodland to achieve a 10% net gain.

Paragraph 17 of the BNG Assessment goes on to state that the ancient woodland “...*will be managed to increase its condition score and minimize the impacts of increased recreational pressure. This will likely generate additional units.*” It was therefore explained in the application submission documents that managing the ancient woodland (in accordance with the s106 agreement) would lead to enhancements to biodiversity and this could result in an improved biodiversity net gain calculation.

It is extremely surprising that putting in place a plan to enhance and thereby improve the biodiversity of the ancient woodland has been met with such a strong objection from the CAG, particularly given that their objections to the scheme have largely been based on concerns that the development will adversely impact biodiversity.

However, to put beyond doubt that any such biodiversity enhancements are *additional* to the minimum 10% set out in the s106 agreement, we have amended the proposed s106 agreement to confirm that the Offsite BEMP will only relate to the Ancient Woodland Buffer and not the ancient woodland itself. This has the effect of confirming that any improvements made to the ancient woodland would not be included in the BNG net gain calculation.

**(c) Public access to ancient woodland:** The representations also suggest that Members were unaware in taking their decision that the ancient woodland would be managed for public access. This is clearly wrong. Members were fully aware of this proposal when they resolved to support the planning application. This is made clear in the Committee Report in the Recommendation, and at paragraph 10.82 (10) which identifies the matters to be included in the s106 agreement: “*Ancient woodland – management plan (and works, if required) for public access to Dum Wood (outside the application site, but within applicant’s ownership).*”

Understandably, the importance of public access to the woodlands has long been a point raised by CAG and the local community. Mr Duncan Smith began his presentation to the Strategic Planning Committee with: “*Good Morning, Chair. I would like to raise concerns of the impact of wildlife and agricultural land on both applications. I have walked these fields and ancient woodlands for years.*”

In accordance with the resolution of Members, the s106 requires an ancient woodland management plan relating to public access to be approved by officers, and also requires that following the plan's approval, thereafter it is complied with. The Council will therefore have the right of enforcement if the ancient woodland is not appropriately managed in accordance with the plan. We have amended the proposed s106 so that it is clear that the plan will cover all aspects of management and maintenance of the ancient woodland, which will include biodiversity (following the removal of the ancient woodland from the Offsite BEMP) and the monitoring of any impacts arising from the development (including public access). This ensures that there is a mechanism for remedying any impacts on the ancient woodland from the operation of the development as a whole.

Again, we would have anticipated that a management plan for the ancient woodland, which allowed appropriate public access, would be supported by the local community, so the local community could enjoy the woodland in a responsible manner, whilst the character and qualities of the woodland were preserved. Enhancing the biodiversity of the woodland and securing managed public access to it are not incompatible objectives. The alternative would be to prohibit public access entirely; a measure which we would have expected to be wholly unwelcome.

Alongside the ancient woodland management plan, condition 10 of the proposed planning permission requires an ancient woodland protection plan to be submitted and approved in writing by the Council prior to the commencement of any development within 500m of Dum Wood. This would include measures to protect the woodland from dust, light, surface water run-off, noise and other pollution throughout the period of construction. This condition already addresses the concerns raised by some consultees relating to the impact of the construction of the development on the ancient woodlands.

We note at this point that some of the representations make accusations of improper behaviour by the Church Commissioners' agent in relation to the management of the ancient woodlands, citing the 'decimation of two 120-year Oak trees' and indicating that any proposals to improve the woodlands should not be taken on face value. It has been confirmed by the Church Commissioners' agent that all works to trees in the ancient woodland that have been carried out have been in accordance with relevant consents or following the statutory 5-day notice period process, and take account of the need for the Church Commissioners to consider the safety of those accessing their land.

The proposed ancient woodland management plan will provide transparency as to management proposals going forwards. Should any future works to the trees be necessary, these will continue to need the consent of the Council as they fall outside the red line application boundary.

**Worsening housing land supply:** A review of the adopted Local Plan has begun but is in its very early stages, with no draft Plan having been consulted upon. It is notable that the review was instigated following a Council Cabinet meeting on 17<sup>th</sup> October 2023, where it was confirmed by officers that the Local Plan policies still reflected national planning policy, but officers also noted that the Council was then unable to demonstrate a 5-year housing land supply, and was not meeting its housing delivery test targets. Subsequently, in February 2024, the Council issued an 'interim housing position statement' to boost supply, acknowledging that the presumption in favour of sustainable

development (the tilted balance), set out in the NPPF at paragraph 11, applies. This requires planning applications to be considered favourably subject to other policy tests and material considerations.

This highlights the extent of the housing supply challenge in the district and the importance of supporting the development of the application site, which is allocated for development in the adopted Plan, as soon as possible so that it can contribute to the district's identified needs.

**Conclusion:** In summary, no new material considerations arise in this case which could lead to the Strategic Planning Committee taking a different decision to that which it previously reached. There is therefore no requirement on officers to report the matter back to Committee on the basis of new material considerations. All relevant material matters that have been raised have already been fully considered by Planning Committee Members and / or addressed by the judge.

As we have noted in this letter, the draft s106 agreement has been updated to provide express drafting in relation to the following matters raised in the representations:

- Schedule 3 – the clarification of the definition of the ancient woodland management plan to cover management / maintenance of the ancient woodland / buffer generally, including in respect of biodiversity and managing impacts of the operation of the development (including public access).
- Schedule 5 – Offsite BNG Land to comprise the ancient woodland buffer and not the ancient woodland itself. This means that no improvements in the ancient woodland could count towards the 10% BNG requirement.
- Schedule 5, paragraph 3 – Approval of Offsite BEMP subject to the mitigation hierarchy and the provision of BNG on site in preference to offsite where reasonably practicable.

It is appreciated that local communities do not wish to lose the agricultural fields close to them. The Heybeck Lane development site is, however, allocated for residential development in an adopted Local Plan and as such its development accords with national and local policy. It is a site on which the Council relies for its housing land supply and its development should be seen in a context in which the Council is finding it increasingly difficult to meet its growing needs for new housing. The applicant took forward the planning application in good faith, on the basis of that allocation, with the support of the Council.

We trust that this letter helps clarify the matters raised in the representations, so that the planning application can be assessed fairly and in the context of legitimate planning considerations.

Yours sincerely



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