

IN THE MATTER OF:

KIRKLEES COUNCIL PLANNING APPLICATION 2020/92350

LAND SOUTH OF HEYBECK LANE, CHIDSWELL, SHAW CROSS, DEWSBURY

ADVICE ON AMENDED SECTION 106 DRAFT AGREEMENT

1. I am asked to advise Chidswell Action Group following the publication of a further draft amended section 106 agreement (“**the November 6th draft**”) together with a covering letter of the same date from the applicant’s agent.
2. This is the latest in a series of amendments to the original section 106 agreement. The November 6th draft is not signed or executed. The main change from the preceding version is that the area of land available for offsite BNG is substantially reduced. I address this further below.
3. I consider that the November 6th draft does not, on the face of it, answer the concerns raised by the Yorkshire Wildlife Trust (YWT) and Woodland Trust (WT) in their consultation responses submitted during the extended consultation period. These concerns relate to the practical achievability of 10% BNG, and the adverse impact of the development on ancient woodland.
4. I understand that YWT and WT have been asked for their views on the November 6th draft, but a response may not be available before the Council’s consultation cut-off date of 14th November 2025. It appears that the consultation period was not extended after the latest section 106 was published on 6th November 2025, and therefore the SPC may not have the benefit of YWT’s and WT’s updated responses when the application comes before them again.
5. I also note that the Council has received advice from Killian Garvey of counsel dated 7 November 2025, in relation to whether the outline planning application should go back before the SPC. As the advice notes, the Council has decided that the application should go back, and therefore the issue is academic.

6. The rest of Mr Garvey's advice is uncontroversial. The key point is that the SPC is not bound by its December 2022 resolution to grant outline planning permission.
7. If the SPC considers that the section 106 agreement (whichever version is ultimately relied on) does not effectively secure 10% BNG, and protect the ancient woodland bordering the site, these are material planning considerations which are legally capable of justifying a refusal of outline permission. Whether or not they do so is a matter of planning judgement for the SPC, and not a matter of law. As Mr Garvey advises at para 7, the Judicial Review case has no bearing on whether the SPC should grant outline planning permission now.
8. Regrettably, the applicant's agent is not correct in their assertion that "*all relevant material matters that have been raised have already been fully considered by Planning Committee Members and / or addressed by the judge¹*". The SPC must consider the impact of the section 106 agreement which is relied on to make the development acceptable.

NOVEMBER 6th DRAFT S.106

Offsite BNG land

9. This latest draft changes the definition of the "*Offsite BNG land*" from "*the Ancient Woodland Land*" to "*the Ancient Woodland buffer*" (Schedule 5, p.55)
10. The effect is that whatever percentage of the required 10% BNG cannot be achieved onsite will have to be achieved within the woodland buffers to Dum Wood and Dogloitch Wood – bearing in mind that these buffers will have to accommodate the offsite BNG for the larger Leeds Road site as well (see the plan at Appendix 5 to the section 106 agreement).
11. It is surprising that this change has been proposed at such a late stage, without any evidence that what the November 6th draft requires is achievable in practice.

¹ The second point being wrong in principle, see paragraph 7.

12. The agent's covering letter (page 3) appears to dispute that the November 6th draft (like the preceding version) could result in the majority of the BNG being provided offsite. This is not correct, and indeed further down the page the letter states *"it is not possible at this stage to identify the precise percentages of BNG that will be provided on site and offsite"*. More than not identifying precise percentages, the November 6th draft, as well as the draft preceding it, contain no provision as to the split between onsite and offsite BNG.
13. The agent's covering letter says *"it is proposed to amend the s106 agreement so that on site BNG provision is expressly preferred (consistent with the drafting in the Leeds Road s106 agreement)"* but this has not been done as yet. Breach of such a provision would be very difficult to identify, let alone enforce.
14. It therefore remains the case that 9.99% BNG could be provided offsite (in theory, if not in reality) and there would be no breach of the section 106 agreement. Whether or not this is acceptable remains a matter for the SPC's planning judgement.
15. The SPC may wish to consider whether the now substantially reduced size of the land available for offsite BNG, i.e. just the woodland buffers and not the woodland itself as originally envisaged, is realistically capable of achieving the offsite BNG requirements for both developments. The statutory 10% BNG requirement does not apply to this development, but the section 106 agreement exists to make the development acceptable in planning terms: if it cannot practically achieve 10% BNG then it should not be relied on.

Ancient woodland works

16. The agent's letter sharply criticises Chidswell Action Group's concerns about the impact of public access on the ancient woodland. While public access to the woods was briefly mentioned in the December 2022 committee report at paragraph 10.82, within the list of matters to be dealt with by s.106 (the full agreement was not, of course, available to Members) there was no indication that extensive works including path surfacing, signage and dog waste bins, were contemplated.

17. Again, this is a matter for the SPC's planning judgement. They may wish to refer again to WT's consultation response dated 9 October 2025 which sets out in detail the lack of mitigation evidence and the likely deterioration of the ancient woodland.
18. While it is correct that the Council will have control over the ancient woodland management plan, this is not required to be submitted until the first reserved matters application² and is not therefore an integral part of the development's design. Again, whether or not that is acceptable in the light of the Woodland Trust's detailed consultation response is a matter for the SPC.
19. While, plainly, the allocated status of the site and the Council's housing land supply position are material considerations, the weight to be accorded to any consideration is a matter for the SPC. The NPPF (itself a material consideration) is very clear that development resulting in the deterioration of ancient woodland should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists (para 193c).

11 November 2025

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² Sch 3, 6.2