



Submission to the Strategic Planning Committee members 2020/60/92350 – Land south of Heybeck Lane, Chidswell, Shaw Cross, Dewsbury

These documents have been put together for the members of the Strategic Planning Committee by the Chidswell Action Group (CAG). CAG was formed in 2011 and has been objecting to the proposed developments at Chidswell and Heybeck due to irreversible harm to the countryside, wildlife, farmland and nature. CAG represents the community surrounding the developments and has strong support from it. We speak on behalf of your constituents.

Some of the documents in this folder are in the public domain on the Kirklees Planning Portal; others are hidden away, with no title, as 'Neighbour representations'; some have been omitted completely. These are important documents from respected authorities and should have been presented for consideration.

In the High Court judgment, where Outline Planning Permission was quashed, the Judge criticised Kirklees Council for 'a serious want of transparency'. This want of transparency continues as, in our view, Officers place documents strategically on the Portal – particularly those from the Woodland Trust, CPRE and their own Biodiversity Officer. We hope you find the following pages useful.

Kirklees Council's Cabinet stance is that the Judicial Review was only successful due to 'a simple technicality'. This is not the case. The Judge was quite clear that he would not have ruled in favour of CAG had it not been for the grounds relating to the out-of-date ecological surveys (Ground three) and the inaccurate Biodiversity Net Gain Assessment (Ground four). The Judge expressly stated: "The two existing grounds (the third and fourth) and the proposed new fifth ground are interlinked."

The Judge also references the constraint of "the narrow legal basis for objecting in the course of judicial review proceedings, applying the strict judicial review standard, in court after the event."

Kirklees Planning Officers have attempted to approve this application without scrutiny by the Strategic Planning Committee. This Application is only before you due to pressure from Kirklees Councillors and objections from the community and experts such as the Woodland Trust and Yorkshire Wildlife Trust.

When this application was approved in December 2022, it was by a majority vote of just one, with the Strategic Planning Committee Chair giving the casting vote. Now it comes back to the Committee with much more evidence and background information.

Ecological Reports on the site

The Church Commissioners' Ecology consultant, Brooks Ecological, has a testimonial on their website which references their assistance in 'securing planning approvals on some potentially taxing sites'.

This raises two questions:

- What is a 'taxing site'?
- How would you secure planning approval on such a site in an ecological context?

A 'taxing site' could be one with a rich quantity, quality and connectivity of habitats. A mosaic of arable fields, two ancient woodlands, ancient hedgerows and watercourses. One that had been relatively undisturbed for centuries and a habitat for numerous species of wildlife, many of which are protected. One which included the Kirklees Wildlife Habitat Network (KWHN) and two Local Wildlife Sites (LWS) and two Sites of Wildlife Significance (SWS).

How to secure planning approval on such a site? Perhaps to issue ecological reports which downplay or deny the presence of the species and habitat which have protection in the planning process. Or perhaps to describe a rich habitat as being intensively farmed 'with little to no consideration for local wildlife'. Perhaps to focus completely on the red line boundary with no reference to the impact on the connected watercourses or adjacent ancient woodlands.

If the sites were reported to have 'a likely absence' of protected species; if key designations were excluded from the BNG surveys; if the habitat could be described as having a low Ecological baseline, then that might be a strategy to secure planning permission on a 'taxing site'.

But what if new evidence of wildlife species came to light after the reports were published? What if the Environmental Impact Assessment is based on the premise of no protected species being impacted? What if there were no way to mitigate pollution of watercourses during and after construction?

Well, that could cause a problem. Unless, of course, the landowner refused to update the surveys until AFTER permission was granted. That would avoid the need to consult with West Yorkshire Ecology and update the surveys with new, robust, evidence of protected species impacted by development. That would also avoid scrutiny by the Strategic Planning Committee.

At least two further wildlife surveys have been conducted by the Church Commissioners since 2023. On one of these surveys, the Ecologist witnessed an injured Barn Owl in the red line boundary for the Heybeck site. No reports have been published following these surveys.

All of the photographs in this document have been taken on, or adjacent to, the redline boundaries of the Chidswell and Heybeck proposed developments. All photographs have embedded GPS coordinates.

Breeding Birds / Ornithological Suvey

Here's the summary of the birds recorded in the 2018 survey by Brooks Ecological:

Table1 Number and Conservation Status of Bird Species Recorded, April to June 2018

TOTAL NUMBER OF BIRD SPECIES RECORDED	50
BoCC4 Red Listed Species of Conservation Concern	9
BoCC4 Amber Listed Species of Conservation Concern	11
BoCC4 Green Listed Species (not currently considered of conservation concern)	27
Species Not Assessed by BoCC4	3
Protected Species Listed on Schedule 1 of the Wildlife & Countryside Act 1981 (as amended)	0
Species considered by the Rare Breeding Birds Panel (RBBP) (UK) - R = Regular Breeding Birds, O = Occasional Breeding Birds, C = Colonising Species, P = Potential Breeding Birds	0
UK Biodiversity Action Plan (UK BAP) Priority Species in England (UK)	12
International Union for Conservation of Nature (IUCN) European Red List (2015) VU = Vulnerable (Globally Threatened), NT = Near Threatened, (all other species = Least Concern)	3
IUCN Global Red List VU = Vulnerable (Globally Threatened), NT = Near Threatened, (all other species = Least Concern)	2
Species Listed in Annex 1 of the European Union (EU) Wild Birds Directive 2009 (A1)	0

Note that there are no birds included in the surveys for these categories:

- Schedule 1 of the Wildlife & Countryside Act
- Rare Breeding Birds Panel (RBBP)
- Annex 1 of the EU Wild Birds Directive

Barn Owls – Schedule 1 protected birds

The Brooks Ecological Barn Owl reports state:

- Record search did not include any Barn Owl records within two kilometres of the site.
- The farmer at Chidswell Farm stated that he had not observed Barn Owl around the farm buildings or in close proximity to the farm.
- With regard to Barn Owl this type of habitat is often deficient in prey, lacks suitable nesting and roosting sites and consequently supports a very low population density or absence of this species.
- Given these factors, and the relative foraging distance during the breeding season for Barn Owl (in the region of one kilometre from the nest site), it is not considered necessary to undertake further surveys on site during spring or summer 2018 for this species.

Barn Owls are a Schedule 1 protected species and we have submitted our evidence to Kirklees Planning Officers that they are definitely breeding on, or adjacent to, the sites. A Brooks Ecological surveyor also witnessed an injured barn owl within the red line boundary of Heybeck. This sighting, in Spring 2022, has not been reported by Brooks, and the Planning Portal still holds the outdated report that there is low potential for breeding or roosting by this species.

We have extensive evidence of Barn Owls on site – all photographs have embedded GPS coordinates. These are not occasional sightings and The Barn Owl Trust made the following comments in reference to a pair of Barn Owls photographed below Dogloitch Wood:

“The fact you are regularly seeing two Barn Owls strongly suggests they are a pair and are likely getting ready to nest nearby. While Barn Owls are capable of nesting throughout the year, typically the breeding season falls between March- August and so we are very much within that time window right now. When the pair are nesting, they tend to hunt very close by to the nest site (usually within 1km) and so if you are regularly siting them in the local area, I would guess the nest site is somewhere within this area. If you ever see them carrying prey back to a certain location you can be pretty confident there is nest in there.”

Barn Owls are sedentary birds and so although their home range is fairly large outside of the breeding season (up to 5000 hectares), adult birds do not leave this home range. As mentioned, during the nesting season their home range shrinks right down. Therefore, your birds are definitely ‘resident’ in the area, although they may hunt in a wider area throughout the Autumn/Winter months. Only juvenile Barn Owls that are undergoing dispersal (typically in Autumn) would ever be counted as ‘passing through’ until they establish their own home range.”



Photos showing pair of Barn Owls below Dogloitch Wood and Barn Owl with Gawthorpe Water Tower for placement



Kingfishers – Schedule 1 protected birds

We have written repeatedly to Kirklees Planning Officers to advise we had evidence of Kingfishers on Hey Beck. Brooks Ecological have responded to say the Kingfishers are foraging and not resident on site. We know the Kingfishers are breeding on Hey Beck and we have recorded evidence of two broods in one season. Despite this, the Ornithological Survey from 2018 remains on the portal stating no Schedule 1 species recorded.

There has also been a sighting of a Kingfisher in Dum Wood which would indicate they are using the unnamed watercourse within the redline boundaries. The watercourse at risk of pollution from the Heybeck site is very close to Dum Wood. Kingfishers temporarily leave their watercourses and the sighting in Dum Wood is likely to be a juvenile bird which has been driven out of its parents' territory to find its own fishing spots.

Here is a small selection from our evidence of Kingfishers breeding on Hey Beck.



Male Kingfisher with soil on beak from building nest hole



Kingfisher at nest hole entrance – fish head first to feed to chicks



Kingfisher exiting nest hole (second brood of 2024)



First photograph of male kingfisher from 2021

Otters – Species of principal importance

This is Natural England’s standing advice on otters:

“It is a material planning consideration for local planning authorities (LPAs). You should take this advice into account when making planning decisions.

Otters are included on the list of species of principal importance in England under section 41 of the Natural Environment and Rural Communities Act (2006).

You must consider the conservation of otters as part of your planning decision.

The developer must comply with the legal protection of otters.

The developer may need to apply for an otter mitigation licence to carry out their development proposal.

When to ask for a survey

A survey is needed if:

- *distribution and historical records suggest otters may be present – you can search the National Biodiversity Network Atlas by species and location*
- *a development will affect a water body, river, stream, lake, sea or marshland*
- *a development will affect habitats near a water body directly or through environmental effects, such as creating noise or light*
-

Absence of a record does not mean there are no otters. It could mean there is no survey data available for that location.”

We have extensive evidence of the presence of otters on Hey Beck. We picked them up on our Kingfisher trailcams in 2023 with footage showing otters of different sizes – indicating a female with at least two cubs. Our footage is over a number of months with regular captures of Otters passing by the cameras. There are no surveys on the planning portal for Otters.

Here is a still photograph from our video evidence. We have many videos of the Otters at the same spot on Hey Beck.



Redwing in Summer – Schedule 1 and Rare Breeding Bird Panel species

Redwings are a winter migrant to the UK who spend the Summer in Scandinavia. In July 2023 we photographed a Redwing in full breeding plumage on the banking of Hey Beck. We didn't realise the significance of this sighting, or how rare it was, until we reached out to experts for their opinion.

Professor Ian Rotherham commented "*The Redwing in summer in full plumage suggests breeding – so if you haven't done so yet, then do contact the regional BTO Rep for the area*".

A former Editor of Yorkshire Bird Report, Geoff Dobbs, made contact and asked if the image could be shared in a book he was writing: "Birds of Yorkshire". He also asked for information on the location which we shared with him. He was very knowledgeable on the species and said the last time a nest was claimed to be in the UK was in the 19th Century. Geoff then shared his knowledge of previous recordings of Redwing in Yorkshire during the summer, with sightings recorded in 1973, 1993, 1996, 2005 and 2019. Our Summer Redwing on Hey Beck is the next to be officially noted. Geoff confirmed he would be sharing this evidence with the Rare Breeding Bird Panel (RBBP) and we have recorded with West Yorkshire Ecology. Of note, the Brooks Ecological Ornithological Report specifies zero records of RBBP species.

This is not an image of a sick bird which could not make the flight back to Scandinavia. This is a bird in full breeding plumage in July. This bird is probably nesting on the site – possibly in one of the hedgerows in Heybeck. But if they are not included in the surveys there is no requirement for mitigation.



Skylarks & Yellowhammers – Red Listed birds / District level importance

The Brooks Ornithological report identified:

- *Important populations of Skylark*
- *Important breeding population of Yellowhammer*
- *Breeding bird species were found to be widespread*
- *The ornithological value of the site should, overall, be considered at district level.*
- *Any proposed development would compromise bird diversity through loss of breeding and foraging habitat, both locally within the site and, given the breeding populations of species such as Skylark and Yellowhammer recorded on surveys in Spring 2018, also at a district level.*

The draft section 106 agreements include Skylark plots but there is an obvious issue with this. The placement of the Skylark plots next to the new housing will be threatened by predation from pet cats. Skylarks are ground-nesting birds – as are Lapwings, which also breed on the site (UK BAP species and on both the European and Global Red List).

Yellowhammers seem to have been ‘forgotten’ in the Ecological Design Strategy and other mitigation. The removal of the hedgerows on site will be devastating for this species. They will be permanently displaced.

Watercourses and pollution during construction

Three watercourses run through the development sites. All feed into Hey Beck and the Fenton Dam nature reserve. The Heybeck development site is in proximity to one of these watercourses and the topography runs towards it. The watercourse adjacent to Heybeck is part of the KWHN. Construction on the Heybeck site would likely result in pollution of this watercourse. Construction on the Chidswell site would inevitably cause pollution of all three watercourses – it could not be avoided or mitigated.

Here is an excerpt from the Deloitte Environmental Statement:

11.149 In summary, local watercourses A-C do not have a WFD classification and has no nature conservation designations. The Site has low aquatic flora and fauna biodiversity and no protected species aside from bats which use the Site for foraging and has no important social or economic uses such as water supply or navigation. The Site is in Flood Zone 1 and therefore has a Very Low probability of flooding of residential or non-residential properties, however there is the potential for significant effects during construction and operation that require potential mitigation.

These plans show the impact of the proposal on the KWHN. The watercourse adjacent to the Heybeck proposal can be seen as the broader orange strip at the bottom centre of the first image.

Heybeck Lane, Chidswell

Appendix 1 - Kirklees Wildlife Habitat Network (KWHN)



Figure 4 Post-development habitats.



New evidence, submitted every season since 2019 has proven the presence of protected species breeding on the watercourses. If the surveys were updated these protected species would mean the inevitable pollution of the watercourses was a significant issue that could not be fully mitigated. These species are not foraging or passing by as repeatedly claimed by the Church Commissioners' Ecologists. They are actively breeding and have been evidenced over numerous seasons. The last published species reports are years out of date. We know at least two more surveys have been conducted since 2023. Why haven't these been published? Why will the results of the new species surveys be disclosed only AFTER Outline Planning Permission has been granted?

Bat Survey – conducted November 2018

Conclusions & Recommendations



Survey has found the Site to be of relatively low importance to this group and despite the Site's large size, the data collected would indicate that development is unlikely to impact significantly on any of the local bat populations.

It was surprising to read that the bat survey reported activity as being consistently low. Bats can frequently be seen, in large numbers, at all points surrounding the site. The Chidswell Action Group conducted their own bat survey over two seasons, recording the results with the BTO Acoustic Pipeline project and West Yorkshire Ecology.

Our survey results contradicted the finding by Brooks – Over 10,000 positive IDs of 9 species (positive IDs have a likelihood of +50%).



Citizen Science - shared *			
Bats	10,608 records 9 species	Bush Crickets	2,404 records 3 species
Terrestrial Mammals	124 records 5 species	Birds	1,960 records

An independent expert scrutinised the Brooks Ecological Survey Report and made the following comments:

- Only a single Surveyor per transect – insufficient to cover such a large site resulting in high bat activity being easily missed.
- Not enough static detectors for a site of this size.
- Static detectors being moved from one month to the next resulting in a limited snapshot of data.
- Where activity is low in April (as would be expected) the detail is underlined as “very low levels of bat activity”. May activity is described as ‘relatively low’ in the first line of the report, then as ‘significantly greater’ further in the narrative (no underlining). The results in May should ring alarm bells that something was wrong with the methodology used.

It would seem that the Brooks Ecological Bat Surveys may be inadequate and biased in the way the data is presented. Yorkshire Wildlife Trust has also raised concerns about these surveys, which are now over seven years old.

Agricultural Land Classification (ALC)

The Committee does not have all the facts it needs on Agricultural Land Classification. The Applicant acknowledges that the site is mostly Grade 3 agricultural land, but has refused to carry out the soil assessment, which would indicate how much of the site is Grade 3(a) land – that is, “best and most versatile” (BMV) land. This matters because BMV land benefits from particular recognition for its economic and other benefits in the NPPF at para 174(b), and in the Council’s Strategic Development Strategy, which also protects BMV land as part of climate change mitigation:

Promote development that helps to reduce, adapt and mitigate climate change

- Allocating land for new development in locations and ways which reduce greenhouse gas emissions particularly by identifying urban extensions which have the scale and capacity to benefit from low carbon and/or decentralised energy solutions
- Avoiding allocating land where possible in the areas at highest risk of flooding
- Avoiding the best and most versatile agricultural land where possible

In June 2022 CAG wrote to the Kirklees Planning Officer with an important document relating to a previous application for open cast mining, which included the same land as the current Outline Applications on Chidswell and Heybeck – 97/62/92234/EO for RJB Mining. This Kirklees Officer’s Report identifies **68.1 hectares as Best and Most Versatile land**. We requested a response to this information but did not receive a reply from Kirklees Planning.

In October 2022 CAG wrote to Kirklees Planning informing them we had received the information from Natural England which had been withheld by Kirklees Council. In their response to CAG, the Planning Department finally acknowledged receipt of the Kirklees Officer’s report assessing the land as comprising grade 2 & 3a land. However, this information (from Kirklees Council’s own report) has been disregarded with the reasoning that “agricultural land quality can deteriorate or improve in the space of 20 years.” CAG has been independently advised by a specialist in soil quality that it would be “shocking if it went from 2 & 3a to 3b” in that timescale.

The Committee does not know the location or extent of BMV land on the site. It therefore cannot decide whether it would be possible to avoid the BMV land. This is contrary to the Spatial Development Strategy.

Biodiversity Net Gain assessments (BNG)

There have been several objections from the Yorkshire Wildlife Trust identifying flaws with the BNG metrics – please see them further in this folder. The BEMP is inadequate and gives no indication how the uplift in BNG is to be achieved.

In the draft S106 Engrossment there is no obligation to do a required amount of biodiversity remediation on site. The applicant has not demonstrated that this uplift in BNG is achievable.

There has been previously a lack of information how realistic it is to enhance the hedgerows that are being retained. The previously submitted high level BNG assessment para 17 states that they ‘will be enhanced by diversifying them and uplifting their condition score’ with no indication as to how this will be achieved or what makes it feasible to quantifiably uplift them.

Caution must be given to the viability of enhancing hedgerows immediately adjacent to new residential gardens as this may introduce a level of risk in the long-term security of this uplift. Reducing risk is one of the principles of providing evidence of using BNG Best Practice Principles: There is no mention of how these principles are to be addressed.

There is no comment on how the new hedgerows will be achieved, which does not provide confidence in how the calculated BNG will be achieved. This is relevant for any newly planted hedgerows, particularly those that are being planted directly adjacent to new residential plots.

No information how creating grassland in ‘moderate’ condition in the context of an amenity space is included, given how likely it is that this would be managed (likely heavily mown) and the proximity to new residential development introducing additional pressures (such as dog fouling and trampling pressure from new residents potentially impacting species diversity). The BNG High Level assessment states there will be a more diverse habitat creation for any RM proposals (para 17) and this may be trying to be captured by putting all grassland as ‘moderate’ condition, however, there is no justification of this.

There is no justification provided for the assessment of the site’s strategic significance; this is particularly relevant for the off-site proposed habitats as previously published documents propose an uplift in strategic significance which will impact the net gain score. The strategic significance

multiplier is based on mapped outputs within local policy. This is why the Kirklees Wildlife Habitat Network is an important factor for this part of the Defra Metric. Until the Local Nature Recovery Strategy (LNRS) is published, other local policy documents should be used to determine this.

Hedgerow H28 in the Brooks Hedgerow Assessment dated July 2018, document ID General ID 818527 on this application's portal which states:

'14. Hedgerows labelled H7, H9 & H28 on Figure 1 all meet the criteria for 'Important' status under the Hedgerow Regulations 1997. Should development result in the loss or degradation of any of these hedgerows, then a suitable mitigation and compensation strategy will need to be produced and implemented.

'15. The remaining hedgerows, although not qualifying as Important, will all meet the criteria for Habitat of Principle Importance under the NERC Act 2006 and Priority Habitat under the local BAP. On this basis, the scheme should aim for a 'no net loss' in hedgerow cover, with the landscape plan incorporating an equal or greater amount of diverse, native hedgerow to that that is lost. Wherever feasible, the preference should be to retain, protect and enhance existing hedgerows in situ.'

H28 is within the Pennine Foothills Biodiversity Opportunity Zone potentially increasing this to 'high' strategic significance on site. All the hedgerows and Dum wood are within the Pennine Foothills Biodiversity Opportunity Zone.

Referring to the below plan from the Brooke's Hedgerow Assessment pg 6 forming part of the EIA.

It must be noted that H30 and H25 already form part of the Kirklees Wildlife Habitat Network and therefore are of strategic importance.

Irreplaceable features such as historic hedgerows cannot be compensated for or traded.

There is no information in the BEMP (biodiversity management and enhancement plan) against which viability of increasing BNG can be achieved. There is an issue of viability & deliverability here.

It is unclear how, if possible at all, that BNG uplift can be achieved.

Hedgerow map above from the Brooks Hedgerow Assessment dated July 2018, document ID General ID 818527

Land at Chidswell



Figure 1 Hedgerow Plan. Yellow lines = important hedgerows. White lines = hedgerows (not important). Black lines = PRow



Irreplaceable features, such as ancient woodlands cannot be compensated for or traded. Ancient woodland cannot be used for BNG compensation, which must be targeted at lands of minimal existing biodiversity value. Either on-site or off-site, BNG cannot be produced through the use of areas of existing high value.

Ancient woodland is classified in the NPPF as irreplaceable. Its biodiversity value is unique and complex. Therefore, it appears that the previous proposal to shift BNG obligations onto our ancient woodland risked giving the impression that it can be “traded” for development loss, which undermined its protected status in planning policy.

Numerous issues remain unaddressed on the issues of BNG as highlighted previously by Yorkshire Wildlife Trust and these issues remain unaddressed.

Ancient Woodland – Dum Wood

The objections and comments from the Woodland Trust, Yorkshire Wildlife Trust and Professor Ian Rotherham all highlight the deficiencies in addressing the impact on the Ancient Woodland.

There is another issue to highlight which is touched upon in the Delegated Officers Report at para. 7.19, relating to work carried out in Dum Wood on several trees.

In 2024 the landowner applied to fell trees in Dum and Dogloitch woods. The community voiced their concerns to the Council over this application and expert advice was submitted by the Woodland Trust. The decision by the Kirklees’ Officer (ref: 2024/91423) refused any work **within** the ancient woodland but approved work on a formal footpath (outside of the ancient woodland).

Despite this refusal the Landowners agents took heavy equipment into the woods and cut back or felled a number of oak and birch trees – two living oaks estimated to be over 120 years old, and most alarmingly, on 7th October 2024, an oak trunk which had been identified as a suspected bat roost in the objections sent to the council with photographic evidence of droppings on leaves at the base of the tree and a crevice with scratch marks around it.

To our knowledge, no five-day notification was sent to Kirklees regarding this felling of the suspected bat roost. We were advised that by Kirklees that it ‘couldn’t confirm whether an ecologist was or wasn’t present on the site’ when the suspected bat roost was felled. When we also highlighted that heavy machinery had been used inside the Ancient Woodland (contravening the Kirklees decision 2024/91423) we were advised that this was due to the work being carried out by ‘a new organisation that have taken on the contract since the application was made’.

How can the Community, or Strategic Planning Committee members, have confidence that this disregard for protected species and habitat will not happen again if the development is approved?



Before and after of the suspected bat roost including cross-section showing no rot on the trunk

The Planning Portal

Since the Judicial Review application, numerous amendments to the original section 106 agreement have been made. The latest draft amended S106 (the November 6th draft) is the latest in a series of amendments to the original.

As each draft has been published, there have been several responses from the Woodland Trust, Yorkshire Wildlife Trust, CPRE and Noemi Byrd (Barrister instructed by Chidswell Action Group). Publication of these responses on the KC Planning Portal has been inconsistent and could be perceived to demonstrate the 'serious want of transparency' described in the High Court Judgment.

Following the Judicial Review, CPRE objected – their objection has not been added to the portal. CPRE previously objected to the Chidswell site in 2020, but the document was redacted to remove any reference to who it was from – it was filed as an untitled neighbour representation.

In 2020, the Woodland Trust also objected – this objection was redacted to completely remove any reference to the Woodland Trust, including logos and the introduction which described their organisation. This was also filed as an untitled neighbour representation.

Following the Judicial Review, and the publication of the draft s106, the Woodland Trust sent in a further objection. This one was now filed under Consultee responses.

Then came another amended draft of the s106 and Kirklees Officers consulted the Woodland Trust again. The Trust replied to say that they maintained their objection, and then something unusual happened: The Woodland Trust responses were moved out of Consultee responses and the documents were renamed on the portal as a neighbour representation and moved into the 'comments' section along with over 500 documents. On 23 October 2025, we have a record showing it named document "2020-92350_+Consultee+Responses_1109265" but on the 17th November 2025 we noticed the document had been moved and renamed as "2020-92350_+Neighbour+representations_1109517".

We have previously highlighted the lack of transparency in how objections from expert bodies have been redacted and 'buried' in the comments section. CPRE also made the same observation in their 2020 Objection. We were encouraged to see a better labelling of comments following the Judicial Review – and even more encouraged to see that the Planning Officers were now consulting the Woodland Trust. It seems very strange that this situation has been quietly reversed and a decision was taken to rename, and re-file these important technical objections. Who took this decision? And, more importantly: why?

This leads on to the important matter of the legal exchanges. During the Judicial Review process, these documents were not in the public domain. However, since permission was quashed by the High Court, the documents being exchanged are being published on the Planning Portal. The placement of these crucial documents is significant. There are 100s of documents on the Heybeck portal alone. SPC Members, presumably, have this as their main point of reference, so it's key that the main documents are easily available. Chidswell Action Group has submitted several documents from their Barrister who successfully argued the Judicial Review case. Kirklees Council are publishing legal representation from their Barrister on the Committee section of the Portal. Further legal opinion from Deloitte, on behalf of the applicant, is published in the Supporting Information section of the Portal. Important and relevant legal replies, from the Chidswell Action Group's Barrister, are filed under the neighbour representation section despite a specific request that they should be filed

under the Committee section when they were submitted. It's a disservice to the SPC members that these important documents are not clearly presented on the Portal for ease of reference.

To remedy this further 'serious want of transparency', we have put together this file with all the relevant documents that Kirklees Planning Officers have removed, or redacted, from the main sections on the Planning Portal.

Summary of the Judicial Review and the High Court Judgment

This Planning Application has been brought to the Strategic Planning Committee due to a High Court Judgment which quashed the previous Outline Planning Permission granted in December 2022.

At the Council Meeting, 15 October 2025, Cllr Graham Turner made a statement in response to a question on the 'damning report about Kirklees Council' (the High Court Judgment by the Hon Mr Justice Kerr).

Cllr Turner stated *"I don't believe it was damning; it was a simple technicality that caused the High Court to rule in favour of the applicant"*.

The High Court Judgment is at the back of this document.

Three of five grounds were granted permission to proceed to Judicial Review:

- Ground three: "the Defendant erred by taking future ecological surveys into account without sight of the relevant condition or that the ecology conditions which were imposed were ineffective"
- Ground four: "that when it made the decision the Defendant took into account an inaccurate Biodiversity Net Gain (BNG) assessment and/or it issued a decision notice without legally adequate provision to secure BNG"
- Ground five: "failure to publish the section 106 agreement¹ in accordance with Article 40(3)(b) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 [(the 2015 DMP Order)], rendering the grant of planning permission invalid."

In claiming the permission was quashed due to '*a simple technicality*', Cllr Turner has not acknowledged the comment of the Hon Mr Justice Kerr in his judgment:

"The two existing grounds (the third and fourth) and the proposed new fifth ground are interlinked."

Then further in the judgment:

"As I have noted above, the claimant's two grounds and one potential ground are interlinked. In my judgment they are best considered and assessed together and I will therefore return to this ground when assessing the parties' submissions overall."

Grounds Three and Four, ultimately, were not successful but only because of two Supplementary Planning Obligations (SPO1 & SPO2) that were added after the application for Judicial Review. SPO1 was submitted as an attempt to correct the grant of unlawful planning permission. This was not accepted by the Deputy Judge and permission for the Judicial Review to proceed was granted. SPO2 was a further Deed that, **legally**, cured the defects which resulted in the challenge.

Crucially, the Supplementary Planning Obligations were not, as Cllr Turner claimed in his statement to Council: “to address CAG’s concerns”. They were drawn up to defend a case they would have lost on all three grounds without them. And, of course, the SPOs were drawn up long after the Strategic Planning Committee’s decision to approve OPP and without their oversight.

In his Judgement, the Hon Mr Justice Kerr states on the matter of the fifth ground: “it is not disputed that the breach of article 40(3)(b) occurred. It was significant because a major issue at the time of the committee’s resolution in December 2022 was the extent of the gaps in available information about biodiversity issues that would need to be addressed at reserved matters stage. They had not been adequately addressed, in my judgment, at the time the decision under challenge was made; hence **the third ground of challenge would have succeeded, were it not for SPO (2).**”

*Publication of the draft section 106 agreement would have enabled objectors, including the claimant, to comment intelligently and advocate restoring the matter to the committee for further consideration and public debate about the adequacy of the biodiversity safeguards and the achievability of the 10 per cent BNG. **There is, I think, quite a strong likelihood that the issue would have gone back to the committee;** If opponents of the scheme had not been denied access to the draft section 106 agreement before the decision became effective, they could have commented on the shortcomings of that draft agreement...**They would not have been constrained by the narrow legal basis for objecting in the course of judicial review proceedings, applying the strict judicial review standard, in court after the event.**”*