

**Consultation Response from KC,  
Ecology Unit****2024/91023 Land Off, Woodhead Road, Brockholes, Honley, Holmfirth****Erection of 4 dwellings with landscaping and associated infrastructure****Date Responded: 24/05/2024****Responding Officer: Gareth Hey****Responding Ref:**

The application seeks to deliver four homes, as an extension to a previously approved scheme (2022/93897). The following information has been submitted with the application:

- Preliminary Ecological Appraisal (PEA – Brooks Ecological, report ref. ER-7444-01)
- Biodiversity Net Gain Assessment (report ref. ER-7444-02)
- Statutory Biodiversity Metric Calculation Toot (Brooks Ecological, BM-7444-01)
- Statutory Biodiversity Net Gain Condition Assessments

The PEA details that the site comprises a small section of vacant land comprising an area of grassland, of varying distinctiveness. Overall, the site is of minimal ecological value, with areas of neutral grassland providing elevated interest in the context of the site. However, the proposals will seek to enhance the grassland at the site, which will allow for a gain for biodiversity.

The Biodiversity Net Gain Assessment details that the Statutory Metric has been used to calculate the net unit change for the Site, which has been predicted an overall net gain of 0.29 Habitat Units (24.89%) at the site. As detailed through the introduced of the Environment Act 2021 and mandatory Biodiversity Net Gain, a standard planning condition will need be imposed on forthcoming consent that will require the development to demonstrate (i) a minimum 10% net gain and (ii) that Trading rules have been satisfied. In this case, both conditions have been satisfied on-site. In addition to the above, given the proposals at the site will only deliver 1.47 habitat units, it is not considered that this constitutes significant biodiversity enhancement and as such, a monitoring fee will not be required.

Given the above, I have no objection to this application, subject to the following conditions.

1. Prior to the commencement of the development, a plan detailing the positioning, location and specification of one house sparrow (Schwegler 1SP sparrow terrace, or similar) and one bat box (Schwegler 3FE Bat Box or similar) shall be submitted to and approved in writing to the local authority. The boxes shall be installed and retained as detailed in the approved plans.

**Reason:** to provide an enhancement to biodiversity in line with LP30 and the requirements of section 15 of the National Planning Policy Framework.

**Biodiversity Net Gain:**

There is now a separate requirement to provide information about the biodiversity gain condition. This information must be separate to the list of conditions on the decision notice:

The effect of paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990 is that planning permission granted for the development of land in England is deemed to have been granted subject to the condition “(the biodiversity gain condition)” that development may not begin unless:

- (a) a Biodiversity Gain Plan has been submitted to the planning authority, and
- (b) the planning authority has approved the plan.

The planning authority, for the purposes of determining whether to approve a Biodiversity Gain Plan if one is required in respect of this permission would be Kirklees Council.

There are statutory exemptions and transitional arrangements which mean that the biodiversity gain condition does not always apply. These are listed below.

Based on the information available this permission is considered to be one which will require the approval of a biodiversity gain plan before development is begun because none of the statutory exemptions or transitional arrangements listed below are considered to apply.

Statutory exemptions and transitional arrangements in respect of the biodiversity gain condition.

1. The application for planning permission was made before 12 February 2024.
2. The planning permission relates to development to which section 73A of the Town and Country Planning Act 1990 (planning permission for development already carried out) applies.
3. The planning permission was granted on an application made under section 73 of the Town and Country Planning Act 1990 and
  - (i) the original planning permission to which the section 73 planning permission relates\* was granted before 12 February 2024; or
  - (ii) the application for the original planning permission\* to which the section 73 planning permission relates was made before 12 February 2024.
4. The permission which has been granted is for development which is exempt being:
  - 4.1 Development which is not 'major development' (within the meaning of [article 2\(1\) of the Town and Country Planning \(Development Management Procedure\) \(England\) Order 2015](#)) where:
    - i) the application for planning permission was made before 2 April 2024;
    - ii) planning permission is granted which has effect before 2 April 2024; or
    - iii) planning permission is granted on an application made under section 73 of the Town and Country Planning Act 1990 where the original permission to which the section 73 permission relates\* was exempt by virtue of (i) or (ii).
  - 4.2 Development below the de minimis threshold, meaning development which:
    - i) does not impact an onsite priority habitat (a habitat specified in a list published under section 41 of the Natural Environment and Rural Communities Act 2006); and
    - ii) impacts less than 25 square metres of onsite habitat that has biodiversity value greater than zero and less than 5 metres in length of onsite linear habitat (as defined in the statutory metric).
  - 4.3 Development which is subject of a householder application within the meaning of article 2(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015. A "householder application" means an application for planning permission for development for an existing dwellinghouse, or development within the curtilage of such a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse which is not an application for change of use or an application to change the number of dwellings in a building.
  - 4.4 Development of a biodiversity gain site, meaning development which is undertaken solely or mainly for the purpose of fulfilling, in whole or in part, the Biodiversity Gain Planning condition which applies in relation to another development, (no account is to be taken of any facility for the public to access or to use the site for educational or recreational purposes, if that access or use is permitted without the payment of a fee).
  - 4.5 Self and Custom Build Development, meaning development which:

- i) consists of no more than 9 dwellings;
- ii) is carried out on a site which has an area no larger than 0.5 hectares; and
- iii) consists exclusively of dwellings which are self-build or custom housebuilding (as defined in section 1(A1) of the Self-build and Custom Housebuilding Act 2015).

4.5 Development forming part of, or ancillary to, the high-speed railway transport network (High Speed 2) comprising connections between all or any of the places or parts of the transport network specified in section 1(2) of the High Speed Rail (Preparation) Act 2013.

\* “original planning permission means the permission to which the section 73 planning permission relates” means a planning permission which is the first in a sequence of two or more planning permissions, where the second and any subsequent planning permissions are section 73 planning permissions.

#### Irreplaceable habitat

If the onsite habitat includes irreplaceable habitat (within the meaning of the Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024) there are additional requirements for the content and approval of Biodiversity Gain Plans.

The Biodiversity Gain Plan must include, in addition to information about steps taken or to be taken to minimise any adverse effect of the development on the habitat, information on arrangements for compensation for any impact the development has on the biodiversity of the irreplaceable habitat. The planning authority can only approve a Biodiversity Gain Plan if satisfied that the adverse effect of the development on the biodiversity of the irreplaceable habitat is minimised and appropriate arrangements have been made for the purpose of compensating for any impact which do not include the use of biodiversity credits.

#### The effect of section 73D of the Town and Country Planning Act 1990

If planning permission is granted on an application made under section 73 of the Town and Country Planning Act 1990 (application to develop land without compliance with conditions previously attached) and a Biodiversity Gain Plan was approved in relation to the previous planning permission (“the earlier Biodiversity Gain Plan”) there are circumstances when the earlier Biodiversity Gain Plan is regarded as approved for the purpose of discharging the biodiversity gain condition subject to which the section 73 planning permission is granted.

Those circumstances are that the conditions subject to which the section 73 permission is granted:

- i) do not affect the post-development value of the onsite habitat as specified in the earlier Biodiversity Gain Plan, and
- ii) in the case of planning permission for a development where all or any part of the onsite habitat is irreplaceable habitat the conditions do not change the effect of the development on the biodiversity of that onsite habitat (including any arrangements made to compensate for any such effect) as specified in the earlier Biodiversity Gain Plan.

There is a separate requirement to provide information about the biodiversity gain condition. This information must be separate to the list of conditions on the decision notice.