

William Simcock
Kirklees Metropolitan Borough Council
Development Management

Our ref: RA/2024/147770/01-L01
Your ref: 2024/91476

Date: 10 December 2024

By email: dc.admin@kirklees.gov.uk

Dear William

ERECTION OF 24 DWELLINGS – CLOUGH FARM, LONG LANE, EARLSHEATON, DEWSBURY, WF12 8LQ

Thank you for consulting us on this application which we received on 18 November 2024. We have no objection to the proposed development, subject to the following conditions and comments.

BIODIVERSITY

Advice to LPA – Failure to achieve Biodiversity Net Gain for watercourse/trading rules not satisfied

Based on our knowledge of the site and the information submitted, we believe that watercourse habitat immediately adjacent to the proposed development site may have been incorrectly omitted from Biodiversity Net Gain (BNG) assessment. We strongly recommend that this is taken into account when the application is considered for approval.

The statutory Biodiversity Metric includes a watercourse module. The watercourse module accounts for habitats associated with watercourses, including the riparian zone. For rivers, the riparian zone is defined as the area 10m from the top of each bank. Where watercourse habitat, including the riparian zone, falls within a proposed development site (red line boundary), adjacent lengths of watercourse must be included in the BNG assessment, and a minimum 10% net gain must be achieved for Watercourse Units.

The BNG assessment for the proposed development does not currently include watercourse habitat. The BNG report submitted states *“It is BWB’s understanding that the site’s red line boundary does not encroach into the riparian zone (i.e. it is over 10 m from the watercourse) and an assessment of the watercourse will not therefore be required. If this changes or there are to be any direct impacts to the watercourse, it will be necessary to include watercourse units in the BNG assessment.”*

However, the proposed development red line boundary (as shown in drawings submitted) appears to fall within 10m of the bank top of Chickenley Beck watercourse.

We recommend that the LPA seeks clarity on the alignment and proximity of the proposed development's red line boundary to the watercourse habitat, including the riparian zone. Where the proposed development falls within 10m of the river bank top, we recommend that an updated BNG assessment that includes the watercourse module and demonstrates a minimum 10% net gain in Watercourse Units is submitted.

If the watercourse is deemed to form part of the BNG assessment, in line with the biodiversity gain hierarchy, we recommend existing opportunities to deliver river enhancements on-site are explored (see below for more information). Where the minimum 10% net gain for Watercourse Units is unachievable on-site, off-site biodiversity gain options should be explored.

Undeveloped buffer zone for watercourse, pond or wetland: scheme to be submitted

Environment Agency position

Development that encroaches on watercourses can have a potentially severe impact on their ecological value. Networks of undeveloped buffer zones might also help wildlife adapt to climate change and will help restore watercourses to a more natural state as required by the Humber River Basin Management Plan.

The proposed development will therefore be acceptable if a planning condition is included requiring a scheme to be agreed to protect a 10-metre-wide undeveloped buffer zone from the 'Calder from River Colne to River Chad (GB104027062631)' waterbody, which includes Chickenley Beck.

Condition

No development shall take place until a scheme for the provision and management of a 10-metre-wide buffer zone alongside the Chickenley Beck ('Calder from River Colne to River Chad (GB104027062631)') waterbody has been submitted to, and approved in writing by, the local planning authority. Thereafter, the development shall be carried out in accordance with the approved scheme. Any subsequent variations shall be agreed in writing by the local planning authority, in which case the development shall be carried out in accordance with the amended scheme. The buffer zone scheme shall be free from built development including lighting, domestic gardens, and formal landscaping.

The scheme shall include:

- plans showing the extent and layout of the buffer zone
- details of any proposed planting scheme (for example, native species)
- details demonstrating how the buffer zone will be protected during development and managed over the longer term including adequate financial provision and named body responsible for management plus production of detailed management plan
- details of any proposed footpaths, fencing, lighting, etc

Reasons

Land alongside watercourses is particularly valuable for wildlife and it is essential this is protected.

This approach is supported by paragraphs 174 and 180 of the National Planning Policy Framework (NPPF) which recognise that the planning system should conserve and enhance the environment by minimising impacts on and providing net gains for biodiversity. If significant harm resulting from a development cannot be avoided, adequately mitigated, or as a last resort compensated for, planning permission should be refused.

This condition is also supported by legislation set out in the Natural Environment and Rural Communities Act 2006 and Article 10 of the Habitats Directive which stresses the importance of natural networks of linked corridors to allow movement of species between suitable habitats and promote the expansion of biodiversity.

Legally protected species and habitat protection plan

Bats are a protected species under the Wildlife and Countryside Act (1981) and are believed to be present at the proposed development site, as identified within the supporting document 'Preliminary Ecological Appraisal by BWB Consulting, dated March 2024, reference 243830 (document number LLE-BWB-ZZ-XX-RP-LE-0001_PEA) Revision P01'.

The proposed development will only be acceptable if a planning condition is included requiring a plan to protect against and mitigate any damage to habitat that bats may use for roosting in line with Natural England (NE) statutory guidance. Without this condition we would object to the proposal because it cannot be guaranteed that the development will not result in harm to bats and because we may not be able to grant associated permits.

Condition

No development shall take place until a plan detailing the protection of bats and mitigation of damage to habitats that bats use eg the woodland, watercourse and its riparian corridor, populations of bat, a protected species under The Wildlife and Countryside Act 1981 as amended, and Natural Environment and Rural Communities Act 2006 has been submitted to the local planning authority. The plan must consider the whole duration of the development, from the construction phase through to development completion. Any change to operational responsibilities, including management, shall be submitted to, and approved in writing by the local planning authority. The plan should be in order with NE Standing advice. The protection plan shall be carried out in accordance with a timetable for implementation as approved.

Reasons

To protect bats and their habitat within the development site, and to avoid damaging the site's nature conservation value.

This approach is supported by paragraphs 180 and 186 of the National Planning Policy Framework (NPPF) which recognise that the planning system should conserve and enhance the environment by minimising impacts on and providing net gains for biodiversity. If significant harm resulting from a development cannot be avoided, adequately mitigated, or as a last resort compensated for, planning permission should be refused. Without this condition we would object to the proposal because it cannot be guaranteed that the development will not result in significant harm to bats.

The applicant should ensure that the development is carried out in accordance with the recommendations of the 'Preliminary Ecological Appraisal by BWB Consulting, dated March 2024, reference 243830 (document number LLE-BWB-ZZ-XX-RP-LE-0001_PEA) Revision P01.

As such prior to commencement of works the developer should provide a Biodiversity Enhancement and Mitigation Plan (BEMP) with measures outlined to protect retained habitats, enhance existing and create new habitats as well as mitigate losses.

A Construction Environmental Management Plan (CEMP) should be provided to ensure no impacts to the watercourse and the species that use this habitat and a suitable lighting strategy be produced to ensure that habitats that bat may use are not impacted by the proposed development. This should be in accordance with the best practice guidelines outlined in the Bats and artificial light at Night (2023).

We request that we are consulted on any new documents relating to biodiversity interests prior to the commencement of works. Provision of bat and bird boxes are also recommended.

FLOOD RISK

We note that the proposed built development is situated wholly within Flood Zone 1, and all built development is further than 6 metres from Chickenley Beck. We therefore have no objection on flood risk grounds. If this changes, we request to be re-consulted.

Environmental permit - advice to applicant

Chickenley Beck is designated as a main river. The Environmental Permitting (England and Wales) Regulations 2016 require a permit to be obtained for any activities which will take place:

- on or within 8 metres of a main river (16 metres if tidal)
- on or within 8 metres of a flood defence structure or culverted main river (16 metres if tidal)
- on or within 16 metres of a sea defence
- involving quarrying or excavation within 16 metres of any main river, flood defence (including a remote defence) or culvert
- in the floodplain of a main river if the activity could affect flood flow or storage and potential impacts are not controlled by a planning permission

For further guidance please visit <https://www.gov.uk/guidance/flood-risk-activities-environmental-permits> or contact our National Customer Contact Centre on 03708 506 506.

The applicant should not assume that a permit will automatically be forthcoming once planning permission has been granted, and we advise them to consult with us at the earliest opportunity.

If you need any clarification or further information, please contact me.

Yours sincerely

Bev Lambert
Sustainable Places - Planning Advisor

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