

William Simcock
Kirklees Metropolitan Borough Council
Development Management

Our ref: RA/2024/147770/05-L01
Your ref: 2024/91476

Date: 11 April 2025

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

Dear William

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

Thank you for re-consulting us on this application following submission of additional ecology information / amended plans, which we received on 4 April 2025.

We have reviewed the additional information and associated email received for this planning application in response to our previous comments and we have the following comments.

Environment Agency position

We have no objection to the proposed development; however, it will only be acceptable if the following planning condition is included on the decision notice if permission is granted.

Condition

No development shall take place until a scheme to protect retained habitats and species has been submitted to, and agreed in writing by, the local planning authority and implemented as approved. Thereafter, the development shall be implemented in accordance with the approved scheme.

Reasons

Development that alters habitat within the flood plain, encroaches on Chickenley Beck and its riparian buffer, as well as impacts on wildlife may severely affect its ecological value and lead to breaches in legislation. The National Planning Policy Framework (paragraph 193) states that if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.

Information for the LPA/applicant – scheme requirements

- A Construction Environmental Management Plan (CEMP) should be produced to ensure that there is no impact to the watercourse or the woodland. This should include but not be limited to, pollution prevention and suitable fencing and warning signs to avoid impacts on retained habitats.

- The CEMP should detail measures to protect retained habitats, as well measures to protect wildlife.
- The CEMP should include all recommendations made within the 'Long Lane, Earlsheaton Dewsbury Preliminary Ecological Appraisal, March 2024, Doc No: LLE-BWB-ZZ-XX-RP-LE-0001_PEA.
- This should be submitted to the LPA, and we request that we are consulted on it once available.
- Recommendations regarding any lighting used both during the construction phase and as part of the new development paying regard to bats should be appropriately considered. We strongly recommend a suitable lighting strategy is used that follows best practice guidelines outlined in Bats and Artificial Light at Night (2023) to maintain suitable foraging and commuting routes, namely Chickenley Beck and adjacent woodlands as part of the CEMP. The final lighting scheme for the proposed development should be submitted to the LPA for review by an ecologist. We would welcome the opportunity to comment on it along with the CEMP prior to implementation.

ADVISORY COMMENTS FOR THE LPA

BNG Watercourse unit delivery

The applicant has acknowledged that the site contains Watercourse units and has provided a baseline assessment recognising a 10% uplift in units is required to meet the Statutory BNG requirements.

We advise the LPA to make sure that they are happy that all opportunities for on-site unit delivery have been explored, and no on-site opportunities have been overlooked by the applicant. In line with the Biodiversity Gain Hierarchy, enhancement of existing on-site habitats should be prioritised before allocating offsite gains.

BNG post-development encroachment

The Biodiversity Gain Plan provided by the applicant states that the proposed development (on-site) will result in no change in watercourse units.

The Biodiversity Metric provided by the applicant records post-development extent of riparian encroachment as “no encroachment.” We believe this assessment is wrong and should be re-calculated.

We believe that the post-development BNG assessment for Watercourse units has not identified an increase in riparian encroachment that the development will cause.

Riparian encroachment is any feature or intervention within the riparian zone that reduces the quantity, quality or ecological function of the riparian habitat. This includes:

- Buildings or hardstanding
- Management practice (including agriculture)
- Structures that prevent wildlife from accessing the riverbank.

As the development includes building housing, parking spaces and a road in the riparian zone, the post development riparian encroachment will be higher than the baseline riparian encroachment as the riparian zone is currently undeveloped.

This means that the applicant may have undercalculated the number of units that are required to deliver no net loss and a 10% uplift in Watercourse units.

We are highlighting this and recommend that the LPA reviews the Biodiversity Metric and plans to ensure that post-development riparian encroachment is accounted for in the delivery of Watercourse Units.

Water Framework Directive (WFD)

In our previous response we stated that a WFD Assessment may be necessary.

The applicant has now provided a landscape plan which shows the retention of existing trees and vegetation along the river corridor, as well as providing an updated BNG statement which recognises the Watercourse Units on site and accounts for delivery of 10% uplift (dependent on revision to the post-development encroachment values provided in the metric, see informative above). As a result, the risk to the riparian zone is better known and we therefore accept that a WFD Assessment for the development is no longer necessary.

BNG Calculations

The 'Long Lane, Earlsheaton Dewsbury Biodiversity Net Gain Statement March 2025 doc no: LLE-BWB-ZZ-XX-T-EE-0002_Biodiversity Net Gain Statement' states:

4.4 In order to provide the mandatory 10% net gain, the following will be required:

- 4.64 habitat units;*
- 0.53 hedgerow units; and*
- 1.11 watercourse units*

This is contradicted by the figures within the 'Long Lane, Earlsheaton Dewsbury Biodiversity Gain Plan, March 2025, doc no: LLE-BWB-ZZ-XX-T-EE-0003_Biodiversity Gain Plan which states:

2.2 The Site baseline provides a total of 4.22 habitat units, with a combination of low, medium and high distinctiveness habitats. The hedgerow was of low distinctiveness and provided 0.48 units. The watercourse provided 1.01 watercourse units and was high distinctiveness.

We draw your attention to the discrepancy in the figures provided in both documents and recommend you check all calculations.

It also states within doc no: LLE-BWB-ZZ-XX-T-EE-0002:

4.5 It is recommended that the incorporation of trees, grassland and mixed scrub, outside of domestic gardens would give the best opportunity of achieving a net gain on-site and to ensure the trading rules are satisfied. The existing boundary habitats should be retained and adequately protected during the works.'

However, in doc no: LLE-BWB-ZZ-XX-T-EE-0003 it states when discussing gains:

*2.4 This includes proposed developed land, **vegetated gardens**, mixed scrub, modified grassland, other neutral grassland, and urban trees which are used as the basis to convert to post-development units.*
and

3.5 The habitat contributing the largest number of post-development units is the vegetated gardens, which provides 0.32 units. This is not considered significant in relation to the baseline.

We draw your attention to this potential issue which is inconsistent not only with their own submitted statement but also with the statutory guidance from DEFRA 'The Statutory Biodiversity Metric User Guide First published: February 2024 Last updated: July 2024' which states:

*'The post-development **private garden has no public access, and biodiversity net gains cannot be legally secured.** As these gains cannot be secured you should only record created private gardens as either:*

- *'urban – vegetated garden'; or*
- *'urban - unvegetated garden'*

You should not:

- **record the creation of any other new habitats within private gardens**

We recommend you satisfy yourselves with this approach. The rationale being that habitat created or enhanced within a private garden is difficult to legally secure for 30 years, so shouldn't be counted towards the post-development BNG.

Informative – BNG

As stated within an email from the LPA planning officer Biodiversity Net Gain is a requirement that is mandatory and therefore comprehensively covered by a national mandatory requirement to provide a biodiversity gain plan. This will ensure that a minimum 10% net gain is delivered for all habitat typologies, either on or off site. This plan should include habitat management and monitoring plans for a period of up to 30 years, as required in the statutory guidance. We would welcome the opportunity to review and comment on this plan once available.

Informative – habitat enhancements

We encourage the LPA to consider requesting further on-site enhancements for wildlife by requesting incorporation bat and bird boxes in suitable numbers as recommended within the 'Long Lane, Earlsheaton Dewsbury Preliminary Ecological Appraisal, March 2024, Doc No: LLE-BWB-ZZ-XX-RP-LE-0001_PEA. We also encourage including swift bricks or boxes as part of the development.

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

Direct e-mail bev.lambert@environment-agency.gov.uk

Team e-mail sp-yorkshire@environment-agency.gov.uk