

KIRKLEES METROPOLITAN COUNCIL INVESTMENT & REGENERATION SERVICE

DEVELOPMENT MANAGEMENT

Town and Country Planning Act 1990 (as amended) – SECTION 70

DELEGATED DECISION TO DETERMINE PLANNING APPLICATIONS

Reference No:	2024/62/92623/W
Site Address:	Land at, Forest Road, Dalton, Huddersfield, HD5 8EU
Description:	Erection of 3 detached dwellings
Recommending Officer:	Katie Chew

DECISION – CONDITIONAL FULL PERMISSION

I hereby authorise the approval of this application for the reasons set out in the officer's report and recommendation annexed below in respect of the above matter.

John Holmes

AUTHORISED OFFICER

Date: 10th January 2025

Officer Report

Site Description

Land at, Forest Road, Dalton, Huddersfield, HD5 8EU

The application site relates to a large portion of grazing land which is steeply sloped down from Forest Road towards Ravensknowle Road to the rear/west of the application site. The site is bounded by a mix of stone walling, timber fencing and scaffolding tubes/poles.

The site is surrounded by residential development to the east, south and west. Directly to the north is further grazing land which does have planning permission for residential development. Further north are more dwellings. It is also important to note that Almond House Nursery is located to the west of the site.

The site is not located within a Conservation Area and there are no Listed Buildings in close proximity.

Description of Proposal

The application seeks planning permission for the erection of 3 detached dwellings.

The proposed dwellings are to be three storeys in height, but due to sloped land levels, will appear as two-storey dwellings when viewed from Forest Road. The properties are to be accessed from Forest Road to the south-east. The dwellings are to be located in tandem to one another, with all 3 properties fronting Forest Road. Dwellings are to be finished with a mix of pitched and hipped roof designs, with gable frontages. No details are provided in respect of materials to be used within the properties.

Plot 1 comprises of a 4 bedroomed dwelling with a living/dining room, 2 x cloaks, open plan kitchen/dining room, reception room, integral double garage, office, en-suite and family bathroom. The dwelling benefits from garden/amenity spaces to both the front and rear. Off-street parking is available for 4 vehicles.

Plot 2 comprises of a 4 bedroomed dwelling with a living room, 2 cloaks, open plan kitchen/dining area, reception room, integral double garage, office, 2 en-suites and a family bathroom. The dwelling benefits from garden/amenity spaces to both the front and rear. Off-street parking is available for 4 vehicles.

Plot 3 comprises of a 4 bedroomed dwelling with a living room, 2 cloaks, open plan kitchen/dining area, reception room, integral double garage, office, 2 en-suites and a family bathroom. The dwelling benefits from garden/amenity spaces to both the front and rear. Off-street parking is available for 4 vehicles.

New 1.2m high post and rail timber fences are also proposed to the boundaries of the properties, with native species hedgerow planting proposed to the south.

History of negotiations/amendments received

No amendments have been sought.

Relevant Planning History

2024/91191 – Certificate of lawfulness to confirm valid commencement of erection of one dwelling approved under 2016/90951 for erection of 27 dwellings and ancillary works within the 3-year time limit given in condition 1. Approved 11th July 2024.

2024/90488 – Certificate of lawfulness to confirm valid commencement of erection of one dwelling approved under 2016/90951 for erection of 27 dwellings and ancillary works within the 3-year time limit given in condition 1. Withdrawn 12th September 2024.

2023/92563 – Discharge of conditions 5, 6, 7 (drainage) of previous permission 2016/90951 for erection of 27 dwellings and ancillary works. Approved 5th December 2023.

2023/91942 – Discharge of condition 10 (retaining walls/structures) of previous permission 2016/90951 for erection of 27 dwellings and ancillary works. Approved 11th October 2023.

2022/92849 – Discharge conditions 5, 6, 7 (drainage), 10 (retaining walls/structures) on previous permission 2016/90951 for erection of 27 dwellings and ancillary works. Refused 1st December 2022.

2018/92938 – Discharge of conditions 3, 5, 6, 7, 10, 13, 15 and 16 of previous permission 2016/90951 for erection of 27 dwellings and ancillary works. Approved 31st January 2020.

2016/90951 – Erection of 27 dwellings and ancillary works. Approved 17th March 2017.

2001/91708 – Erection of 12 no. detached dwellings with garages. Refused 23rd August 2001. Appeal lodged but not yet determined. This application was refused as:

- (1) The granting of planning permission would provide the opportunity for this greenfield site to be developed before currently identified brownfield housing sites and would therefore prejudice the presumption in PPG3 that brownfield sites should be developed before greenfield sites.*

- (1) The bulk and siting arrangement of a number of the plots (in particular Plots, 4, 5 and 9) would have an adverse effect upon residential amenity contrary to Policy D2 of the Unitary Development Plan.*

2000/92314 – Erection of 12 detached dwellings with garages. Refused 12th October 2000. This application was refused as:

- (1) The granting of planning permission would provide the opportunity for this greenfield site to be developed before currently identified brownfield housing sites and would therefore prejudice the presumption in PPG3 that brownfield sites should be developed before greenfield sites.*
- (1) The proposal fails to make provision of Public Open Space within the site, and as such is contrary to Policy H18 of the Unitary Development Plan.*
- (2) The existing layout is unacceptable in highway terms by way of inadequate access, internal turning and parking arrangements. As such the proposal would not be in the best interests of highway safety and be contrary to Policy D2 of the Unitary Development Plan.*
- (3) The bulk and siting arrangement of a number of the plots (in particular Plots, 4, 5 and 9) would have an adverse effect upon residential amenity contrary to Policy D2 of the Unitary Development Plan.*

Officer note: Whilst this refusal is noted, since this application was decided there has been significant updates in both national and local planning policy and therefore this decision holds minimal weight in the decision-making process of this application.

Planning Enforcement

COMP/17/0126 – Major site monitoring.

Representations

Final publicity date expires:

Neighbour Letters – Expired 19th November 2024.

2 representations have been received in objection; comments are summarised below.

- There are bats that fly around the field for over 10 years at dusk, foxes and cubs every year and recently deer have been in the field too, on a very rare occasion there have been rabbits. These animals should be conserved.

Officer note: Noted. This is discussed in more detail within the biodiversity section of this report.

- In recent years, there has rarely seemed to be a time without some form of building work and/or roadworks on Forest Road and those of us living here have had to put up with endless disruptions and road closures.

Officer note: Noted.

- The whole area is very steep and, being of clay, it is prone to shrinkage, subsidence and water runoff. Some parts of the road have been dug up and refilled multiple times, leading to frequent road and pavement repairs.

Officer note: Noted.

- There is currently already one field on Forest Road being prepared for housing development and there are other, ongoing building works in progress.

Officer note: Noted.

- The heavy machinery travelling up and down and parking on the road, the inevitable dust and fumes, as well as all the associated building equipment, make life very difficult, dirty and noisy.

Officer note: Noted. The Council's Environmental Health team have been consulted on the proposals and raise no objections. An informative is proposed however, should planning permission be granted, which restricts the hours of noisy construction activities.

- Some residents have mobility issues and have to use handrails, especially those with steep steps.

Officer note: Noted.

- Forest Road is a narrow, through road in an already densely packed area with residents juggling for parking spaces and non-residents using it as a rat run. It makes the road potentially hazardous at peak times and a potential danger to children being dropped off/picked up, and to pedestrians.

Officer note: Noted. The Council's Highways Officers have been consulted on the proposals, their comments can be found under the consultation responses and highway safety sections of this report.

- Forest Road is close to major roads and industry, and we need more trees and green space to absorb all the pollution and to support local wildlife. It is well documented that green spaces are hugely beneficial

to people's mental health and wellbeing, and new research suggests that urban greenery can also help towards reducing the negative effects of the rising temperatures which are triggered by climate change.

Officer note: Noted.

- The existing trees look spectacular in spring/summer and are highly beneficial to birds, small mammals and, most importantly, to our greatly endangered pollinators. It is vitally important that we should be restoring and sustaining wildlife habitats in urban areas, not constantly eroding them. Many people stop to pick blackberries from the bramble hedges which also provide cover and nourishment for wildlife.

Officer note: Noted. Unfortunately, these trees are not protected by TPO and therefore can be removed without the need for permission from the Council.

- Although the field has areas that are currently an eyesore, this is partly due to some evident fly tipping, careless digging of land and some contractors leaving roadwork equipment behind, but also due to the people who have kept horses in the field.

Officer note: Noted.

- This is the third or fourth planning proposal for this land in recent years. None have ever come to fruition and all that has been achieved, after some token digging by contractors, is the spoiling of what was already there. They have left huge lumps of exposed clay, erected ugly metal poles and created uneven areas where water has pooled.

Officer note: Noted.

- The proposed houses will not provide any social and/or genuinely affordable housing on this development, just more detached houses that will be beyond the price bracket of many.

Officer note: Noted. Given the small scale and nature of the proposals no affordable housing contributions are required in this instance.

1 general comment has also been received; comments are summarised below.

- Concerns that developing the site might create excess runoff which will inevitably make its way down the hill to properties on Ravensknowle Road.

Officer note: Noted. This is discussed in more detail within the drainage section of this report.

Officer note: We are currently undertaking the legal statutory publicity requirements as set out at Table 1 in the Kirklees Development Management Charter. As such, we have publicised this application via neighbour notification letters only, details of which are outlined above.

Consultation Responses

KC Environmental Health – Comments received 4th November 2024. No objections subject to conditions and informatives relating to land contamination and construction site working times.

KC Highways Development Management – Comments received 7th January 2025. No objections subject to conditions and informatives relating to the provision of a footway to the Forest Road frontage, method of storage/access for waste, slope stability/geotechnical risk assessment, details on the retaining walls adjacent to the highway, and the requirement of written permission of the Council as Highway Authority to carry out works within the highway.

Parish/Town Council

N/A.

Local Ward Members

None.

Planning Policy Background

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The statutory Development Plan for Kirklees is the Local Plan (adopted 27th February 2019).

The application site is allocated on the Local Plan as a Housing Allocation (HS7) and is located within a Bat Alert Area.

Kirklees Local Plan (LP):

- LP1 – Achieving Sustainable Development
- LP2 – Place Shaping
- LP3 – Location of New Development
- LP11 – Housing Mix and Affordable Housing
- LP20 – Sustainable Transport
- LP21 – Highways and Access
- LP22 – Parking
- LP24 – Design

- LP26 – Renewable and Low Carbon Energy
- LP30 – Biodiversity & Geodiversity
- LP51 – Protection and Improvement of Local Air Quality
- LP52 – Protection and Improvement of Environmental Quality
- LP53 – Contaminated and Unstable Land
- LP65 – Housing Allocations

Other Guidance Documents:

- Kirklees Highways Design Guide (2019)
- National Design Guide
- Nationally Described Space Standards
- Kirklees Waste Management Design Guide for New Developments (2020)
- Biodiversity Net Gain in Kirklees Technical Advice Note (2021)
- Kirklees Climate Change Guidance for Planning Applications (2021)
- Housebuilders Design Guide SPD (2019)

National Policies and Guidance

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) updated December 2024, the Planning Practice Guidance Suite (PPGS) first launched 6th March 2014 together with Circulars, Ministerial Statements and associated technical guidance.

The NPPF constitutes guidance for local planning authorities and is a material consideration in determining applications. Most specifically in this instance, the below chapters are of most relevance:

- Chapter 2 – Achieving sustainable development
- Chapter 4 – Decision-making
- Chapter 5 – Delivering a sufficient supply of homes
- Chapter 9 – Promoting sustainable transport
- Chapter 12 – Achieving well-designed places
- Chapter 14 – Meeting the challenge of climate change, flooding and coastal change
- Chapter 15 – Conserving and enhancing the natural environment

Summary of Principal Planning Issues

The following matters are considered in the assessment below –

- 1) Principle of development
- 2) Impact of the proposed development upon the visual amenity of the area
- 3) Impact of the proposed development upon the privacy and amenity of neighbouring properties

- 4) Impact on highway safety
- 5) Other matters
- 6) Conclusion

1 – Principle of Development

1.1 - Sustainable Development

NPPF Paragraph 11 and LP1 outline a presumption in favour of sustainable development. Paragraph 8 of the NPPF identifies the dimensions of sustainable development as economic, social and environmental (which includes design considerations). It states that these facets are mutually dependent and should not be undertaken in isolation.

The dimensions of sustainable development will be considered throughout the proposal. Paragraph 11 concludes that the presumption in favour of sustainable development does not apply where specific policies in the NPPF indicate development should be restricted. This too will be explored.

1.2 – Land Allocation (HS7)

The site forms part of housing allocation HS7 in the Local Plan's proposals map, this allocation has a gross site area and a net site area of 0.65ha. No site constraints have been identified, although it is noted that access is to be via Forest Road, and that access from Bancroft Avenue would require 3rd party land to bring the existing road up to adoptable standards.

1.3 - Housing Density/Delivery

The 2023 update of the five-year housing land supply position for Kirklees shows 3.96 years supply of housing land, and the 2022 Housing Delivery Test (HDT) measurement which was published on 19th December 2023 demonstrated that Kirklees had achieved a 67% measurement against the required level of housing delivery over a rolling 3-year period (against a pass threshold of 75%).

As the Council is currently unable to demonstrate a five-year supply of deliverable housing sites, and delivery of housing has fallen below the 75% HDT requirement, it is necessary to consider planning applications for housing development in the context of NPPF paragraph 11 which triggers a presumption in favour of sustainable development. This means that for decision making *"Where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date (NPPF Footnote 8), granting permission unless: (i) the application of policies in this Framework that protect areas or assets of particular importance (NPPF Footnote 7) provides a strong reason for refusing the development proposed ; or (ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making*

effective use of land, securing well-designed places and providing affordable homes, individually or in combination (NPPF Footnote 9)."

The Council's inability to demonstrate a five-year supply of housing land, or pass the Housing Delivery Test, weighs in favour of housing development but this has to be balanced against any adverse impacts of granting the proposal. The judgement in this case is set out in the officer's assessment.

Policy LP7 of the Kirklees Local Plan states that the efficient use of previously developed land in sustainable locations should be encouraged, provided that it is not of high environmental value and a net density of at least 35 dwellings per hectare should be provided. Principle 4 of the Housebuilders Design Guide seeks to ensure a density of 35 dwellings per hectare or more is achieved. Policy LP7 sets out that lower densities will only be acceptable if it is demonstrated that this is necessary to ensure that development is compatible with its surroundings, development viability would be compromised, or to secure particular house types to meet local housing needs.

As the site measures 0.14ha, it has a potential density of 5 dwellings. However, given the steep and difficult nature of the site, it is considered reasonable that a proposal for 3 dwellings be constructed here, as any additional built form may result in a more complex construction and impact on the ability to provide adequate off-street parking provision for 5 dwellings.

It is also important to note the site benefits from a previous approval of residential development at the site, which was granted on 17th March 2017, under application ref: 2016/90951 for the erection of 27 dwellings and ancillary works. Furthermore, in July 2024 a Certificate of Lawfulness to confirm that valid commencement of the erection of 1 dwelling approved under 2016/90951 for erection of 27 dwellings and ancillary works within the 3-year time limit given in condition 1 was approved.

Whilst this previous permission is acknowledged, and it is understood that should planning permission be granted for these 3 dwellinghouses, the previously approved access onto Forest Road for the larger development would be removed. From discussions with the applicant's agent and from looking through the planning history of the site, it is clear that the site does come with constraints in respect of the technical complexity of constructing previously approved/commenced schemes which is leading to development of the land not coming forward.

Whilst it is noted that the application site does form part of a Housing Allocation (HS7) and the Council would wish to see the larger allocation be developed as a whole, it appears that given the identified constraints this site appears to be struggling to be developed in a manner whereby access is taken from Forest Road and therefore the provision of three dwellings on this site, to a certain extent has a beneficial impact when weighed against the prospect of development of the site not being undertaken at all.

Furthermore, in the event of approval of the development proposal the subject of this application, such approval would not necessarily mean that the remainder of the site within the blue line boundary could not be developed in the future. There is potential for access to be taken across third party land along Bancroft Avenue / adjacent undeveloped garden land but as this is third party land this would need to be agreed with the landowner to allow the road to be undertaken to an adoptable standard. This would need to be investigated by any future developer.

In the consideration of the extant permission for 27 houses (ref: 2016/90951) the following was stated in relation to planning obligations:

The development has undergone an independently assessed viability appraisal. This has concluded that the development is unviable with any S106 contributions (affordable housing, public open space, education). The reason for this is because of the significant costs associated with developing this site resulting from its topography. Officers accept the conclusions of the independent assessment.

Despite the fact there is a consent for 27 dwellings at the site, which would not be subject to any requirements for provision of affordable housing / public open space / education or contributions associated with those matters, the applicant has sought further consent for a lesser scheme. It is clear there are factors relevant to the development of the site which lead to difficulties in developing the land for residential purposes in a manner which is viable.

The proposal would not erode / undermine the provision of S106 obligations as no such obligation is present for the extant consent. Furthermore, a potential alternative access point, which may be less cost prohibitive would remain (albeit over land outside the ownership of the applicant). The proposal would also see a provision of housing in the locality.

Taking the above into consideration, it is deemed that, on balance, the principle of development is acceptable for the erection of 3 dwellinghouses in this location. Having regard to the aforementioned policies.

2 – Impact on Visual Amenity

The NPPF offers guidance relating to design in Chapter 12 (achieving well designed places) whereby paragraph 131 provides a principal consideration concerning design which states: “The creation of high quality beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities”.

Paragraph 135 of the NPPF is of relevance, in particular the following parts: -

'b) Planning policies and decisions should ensure that developments are visually attractive as a result of good architecture, layout and appropriate and effective landscaping.

c) Planning policies and decisions should ensure that developments are sympathetic to local character and history, including the surrounding built environment and landscape setting, whilst not preventing or discouraging appropriate innovation or change'.

Section 12 of the NPPF discusses good design. Good design is a key aspect of sustainable development, it creates better places in which to live and work and helps to make development acceptable to communities. Local Plan Policies LP1, LP2 and most importantly LP24, are all also relevant. All the policies seek to achieve good quality design that retains a sense of local identity, which is in keeping with the scale of development in the local area and is visually attractive.

Policy LP11 sets out that all proposals for housing, including those affecting the existing housing stock, will be of high quality and design and contribute to creating mixed and balanced communities.

Local Plan Policy LP24 states that all proposals should promote good design by ensuring the following:

'a. the form, scale, layout and details of all development respects and enhances the character of the townscape, heritage assets and landscape'.

Paragraph 134 of the NPPF sets out that design guides and codes carry weight in decision making. Of note, Paragraph 139 of the NPPF states that development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes. Relevant to this is the Kirklees Housebuilders Design Guide SPD 2021, which aims to ensure future housing development is of high-quality design.

Principle 2 of the Kirklees Housebuilders Design Guide SPD states that: *"New residential development proposals will be expected to respect and enhance the local character of the area by:*

- Taking cues from the character of the built and natural environment within the locality.*
- Creating a positive and coherent identity, complementing the surrounding built form in terms of its height, shape, form and architectural details.*
- Illustrating how landscape opportunities have been used and promote a responsive, appropriate approach to the local context."*

Regarding the layout and siting of the proposed dwellings, Principle 5 of the Housebuilders Design Guide states, amongst other things, that buildings

should be aligned and set-back to form a coherent building line and designed to front on to the street.

In this instance, all three dwellings are to be orientated to front onto Forest Road, are set back from the highway and form a coherent building line within the streetscene. The proposals are therefore considered to accord with Principle 5 of the above SPD.

Principle 15 of the Housebuilders Design Guide SPD sets out that the design of the roofline should relate well to the site context, including topography, views, heights of buildings and the roof types.

In terms of the height of the proposed dwellings, these properties are to be three-storeys in height but will appear as two-storey dwellings when viewed from Forest Road, this is due to the structures being built into the landscape. This arrangement can be seen throughout Forest Road and given the plethora of house designs in the area, is considered to be acceptable. The dwellings are to be finished with a mix of pitched roof and hipped roof designs, which again is reflective of adjacent neighbouring properties. The proposals are therefore considered to accord with Principle 15 of the above SPD.

Principle 14 of the Housebuilders Design Guide SPD states that the design windows and doors is expected to relate well to the street frontage and neighbouring properties and reflect local character in style and materials.

In terms of the design of windows and doors within the dwellings, these are to be traditional and simple in appearance, with stone heads and cills shown. Whilst there are larger panels of glazing shown to the rear of the properties to provide bifold/patio doors, this is not considered to be incongruous or overly distracting when viewing the properties within the general context of the area. The proposals are therefore considered to accord with Principle 14 of the above SPD.

Principle 13 seeks to ensure consideration is given to use locally prevalent materials and finishing to reflect the locality.

Whilst no details have been provided in respect of materials proposed to be used, Officers would wish to see the dwellings constructed from natural stone and grey roof tiles. Should planning permission be granted, the submission of samples of such materials shall be provided prior to their use, this will be secured via a condition in the interests of visual amenity.

Principle 6 of the Housebuilders Design Guide SPD highlights that *'the space between buildings can help maximise residential amenity in terms of maintaining privacy, reducing overlooking and ensuring natural light is able to penetrate buildings...normally new build development should seek appropriate separation distances for servicing, accommodating future adaptations and creating attractive street scenes. These should be in keeping with the character and context of the site and proportionate to the scale of the dwellings'*.

Paragraph 7.19 of Principle 6 states that for houses two-storeys or above, there should normally be a minimum of a 2m separation distance from the side wall of the new dwelling to a shared boundary. In this instance separation distances of 1.5m to the south (from Plot 1) and 1.3m to the north (from Plot 3) could be provided from all side walls of the dwellings to shared boundaries. Whilst this doesn't meet the recommended 2m separation distances, it does provide a sufficient gap between the dwellings and their neighbours, and when taking into consideration the sloped topography of Forest Road, the differences in land levels also provides some additional visual separation and therefore the proposals are on balance, considered to accord with Principle 6 of the above SPD.

In conclusion, and subject to conditions, the proposed dwellings are considered to be of an acceptable size, scale and design in this location. On this basis, the proposals are deemed to accord with the requirements of Policies LP1, LP2, LP11 and LP24 of the Kirklees Local Plan, Chapter 12 of the National Planning Policy Framework and Principles 2, 5, 6, 13, 14 and 15 of the Housebuilders Design Guide SPD.

3 – Impact on Residential Amenity

Sections B & C of the Kirklees Local Plan Policy LP24 which states that alterations to existing buildings should:

“Maintain appropriate distances between buildings’ and ‘...minimise impact on residential amenity of future and neighbouring occupiers’.

Principle 6 of the House Builders Design Guide sets out that residential layouts must ensure adequate privacy and maintain high standards of residential amenity, to avoid negative impacts on light, outlook and to avoid overlooking.

The text supporting Principle 6 of the Kirklees Housebuilders Design Guide SPD sets out recommended separation distances for two storey properties, these being:

- 21 metres between facing windows of habitable rooms;
- 12 metres between windows of habitable rooms that face onto windows of a non-habitable room;
- 10.5 metres between a habitable room window and the boundary of adjacent undeveloped land; and
- For a new dwelling located in a regular street pattern that is two storeys or above, there should normally be a minimum of a 2 metres distance from the side wall of the new dwelling to a shared boundary.

Further to this, Paragraph 135 of the National Planning Policy Framework states that planning decisions should ensure that developments have a high standard of amenity for existing and future users.

Neighbouring properties with the most potential to be impacted by the proposals are discussed below.

Impact on no. 33 Forest Road

This neighbouring property is located to the north-east of the application site, approximately 3.45m away. Whilst it is acknowledged that 2 windows are proposed within the side elevation (north) of Plot 3 which faces towards no. 33, these windows are to be conditioned to be obscurely glazed, should planning permission be granted. This is in the interests of residential amenity, and therefore Officers have no concerns in regard to overlooking or the loss of privacy on this occasion. In terms of the proposals appearing overbearing, Plot 3 is to be set below the ridge line of no. 33 and given the separation distance of around 1.3m, the proposed dwelling is not considered to appear overly dominant or oppressive in this instance. Finally, whilst there will be some overshadowing in the afternoon, this would not be for a prolonged period of the day and therefore on balance this is deemed to be acceptable.

Impact on nos. 22, 24, 26, 28 and 30 Forest Road

These neighbouring properties are located to the east/south-east of the application site, approximately 22m away. Given this large separation distance and differences in land levels, Officers have no concerns in respect of overshadowing, overlooking or the loss of privacy on this occasion. In terms of the proposals appearing overbearing in nature, the above properties are set at a significantly higher ground level than the proposed dwellings, which are to be built into the landscape, and therefore the proposals are not considered to appear overly dominant or oppressive of nos. 22-30 Forest Road.

Properties located on Ravensknowle Road

These properties are located to the north-west of the application site, approximately 68+ metres away. Given the large separation distances Officers have no concerns in respect of overshadowing, overlooking, or the proposals appearing overbearing in nature when viewed within the general context of the area, where 3 storey dwellings built into the landscape are not uncommon.

Impact on Almond House Nursery

Almond House Nursery is located directly to the south-west of the application site, approximately 6m away. Whilst there are no concerns in respect of overshadowing or the proposals appearing overbearing due to the site's southern location, and separation distances proposed. Officers do note that 2 windows are proposed within the side (south-western) elevation of the dwelling, while new hedging is proposed along the south-western boundary, this could be removed or die in the future and thus remove any screening properties along this boundary, and given the nature of the adjacent nursery it

is considered reasonable to condition that both of these windows be obscurely glazed in the interests of privacy.

Amenity of future occupiers of the proposed dwelling

Consideration must also be given to the amenity of future residents of the proposed dwelling. Principle 16 of the Housebuilders Design Guide seeks to ensure the floorspace of dwellings accords with the 'Nationally Described Space Standards' document (March 2015). Internally, the proposed dwellings would have GIAs that would comfortably exceed the minimal space standards set out in the Nationally Described Space Standards (NDSS). All habitable rooms would also have access to at least 1 window. Officers therefore consider that the proposed dwellings would provide an adequate standard of amenity for future occupiers.

Finally, in terms of amenity space, Principle 17 of the Housebuilders Design Guide seeks to ensure adequate access to private outdoor space that is functional and proportionate to the size of the dwellings and the character/context of the site is provided. In this instance the garden/amenity spaces are proposed to both the front and rear of the properties and are considered to be of an acceptable size given the scale and massing of the dwellings proposed. These amenity spaces will also receive sunlight throughout the day and will provide private areas to the rear, therefore it is considered that the proposed amenity spaces would meet the requirement of Principle 17 of the above SPD.

Paragraph 187 of the NPPF, contained within Chapter 15, sets out that proposals should mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development. Policy LP52 of the Kirklees Local Plan seeks to ensure that, amongst other things, the impact from the noise for new development is acceptable.

Policy LP52 is considered to be of relevance and sets out that development which has the potential to increase pollution from noise must be accompanied by evidence to show that the impacts have been evaluated and measures have been incorporated to prevent or reduce the pollution, so as to ensure it does not reduce the quality of life and well-being of people to an unacceptable level.

In respect to potential impact arising from noise, the Council's Environmental Health team have been consulted on the proposals and note that the area is generally residential in nature and therefore it is considered reasonable to attach an informative should planning permission be granted, which restricts the hours of construction related noise at the site. This is considered to be sufficient to mitigate any concerns relating to noise. Environmental Health Officers do also note that the application concerns the erection of three detached dwellings, with one of the proposed residences neighbours being an established children's nursery which has outdoor play areas, the caveat emptor principal would therefore apply in regard to any play related noise during normal operating times.

In conclusion, taking the above into account it is considered that the proposals would not result in significant and detrimental impacts on the privacy and amenity of any neighbouring occupants, complying with Policies LP24 and LP52 of the Kirklees Local Plan, Chapters 12 and 15 of the National Planning Policy Framework and Principles 6, 16 and 17 of the Housebuilders Design Guide SPD.

4 – Impact on Highway Safety

Local Plan Policies LP21 and LP22 are relevant and seek to ensure that proposals do not have a detrimental impact to highway safety and provide sufficient parking. Paragraph 116 of the NPPF states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Principle 12 of the Housebuilders Design Guide sets out, amongst other things, that parking to serve dwellings should not dominate streets and should be to the side / rear. In this instance parking is proposed within the integral garages of the dwellings and to the front of the properties within the dedicated driveways. This arrangement is not uncommon within the area and given the difficult topography of the site, this is deemed on balance to be acceptable in this location.

Principle 19 of the Housebuilders Design Guide states that provision for waste storage and recycling must be incorporated into the design of new developments in such a way that it is convenient for both collection and use whilst having minimal visual impact on the development. No details have been provided in respect of waste storage and collection; this element of the proposals will therefore be conditioned should planning permission be granted.

This application seeks approval for the erection of 3 detached houses at land at, Forest Road, Dalton, Huddersfield. The proposals show 3 large three storey 4/5 bedroomed detached houses with integral double garages. Double width driveways are shown to the front of the houses with access directly onto Forest Road. The footway along Forest Road is shown to be widened to a minimum of 2.0m across the full site frontage.

Given the nature of the proposals, the Council's Highways Development team were consulted. They note that given that sufficient off-street parking is shown to be provided and the footway to the site frontage is shown to be widened Highways Development Management have no objection to these proposals. This is however subject to conditions and informatives which relate to the provision of a footway to the Forest Road frontage, method of storage/access for waste, slope stability/geotechnical risk assessment, details on the retaining walls adjacent to the highway, and the requirement of written permission of the Council as Highway Authority to carry out works within the highway

Taking the above into consideration, it is therefore considered that the scheme would not represent any additional harm in terms of highway safety and as such complies with Local Plan Policies LP21 and LP22 of the Kirklees Local Plan, Principles 12 and 19 of the Housebuilders Design Guide SPD and Chapter 9 of the National Planning Policy Framework.

5 – Other Matters

Climate Change

On 12th November 2019, the Council adopted a target for achieving ‘net zero’ carbon emissions by 2038, with an accompanying carbon budget set by the Tyndall Centre for Climate Change Research. National Planning Policy includes a requirement to promote carbon reduction and enhance resilience to climate change through the planning system and these principles have been incorporated into the formulation of Local Plan policies. The Local Plan predates the declaration of a climate emergency and the net zero carbon target; however, it includes a series of policies which are used to assess the suitability of planning applications in the context of climate change. When determining planning applications, the Council will use the relevant Local Plan policies and guidance documents to embed the climate change agenda.

The application is supported by a Climate Change Statement, this statement outlines that the new homes will achieve a SAP rating greater than the minimum standard required by building regulations, they will have solar photovoltaic panels installed, use a smart thermostat and LED light bulbs, and energy-efficient kitchen appliances. All new materials are to be sourced locally where possible and existing site materials such as topsoil, hardcore etc. will be reused where possible.

Given the above, it is not considered reasonable to expect any additional information to be submitted in respect of meeting the Council’s Climate Change Agenda.

Biodiversity

Paragraphs 192, 193, 194 and 195 of Chapter 15 of the National Planning Policy Framework are relevant, together with The Conservation of Habitats and Species Regulations 2017 which protect, by law, the habitat and animals of certain species including newts, bats and badgers.

Policy LP30 of the Kirklees Local Plan requires that proposals protect Habitats and Species of Principal Importance. Principle 9 of the Housebuilders Design Guide SPD is also of relevance.

The application site is located within a Bat Alert Area, however, given the nature of the site as existing and that no buildings are to be removed from the site, it is considered unlikely that the proposals would have a significant impact on the bat population. Nonetheless, should planning permission be granted, it is considered that the provision of 1 bat box could be conditioned

per dwelling house (total of 3 bat boxes) to enhance biodiversity at the site, and a bat informative provided to any permission.

A Biodiversity Net Gain (BNG) of 10% for developments is a mandatory requirement in England under the Environment Act 2021, subject to some limited exceptions. Unless exempt, every planning permission granted pursuant to an application submitted after 2nd April 2024 (for minor and other applications) is deemed to have been granted subject to a pre-commencement condition requiring a Biodiversity Gain Plan to be submitted and approved by the Local Planning Authority prior to commencement of the development.

Within the submitted application form the applicant states that the proposals would be subject to the general Biodiversity Gain Condition. Whilst the applicant has submitted The Statutory Biodiversity Metric calculation which shows that the site has an on-site baseline of 1.36 habitat units and 0.00 hedgerow and watercourse units, an on-site post intervention of 0.64 habitat units, and again 0.00 hedgerow and watercourse units, there would be an on-site net change of -52.76% of habitat units, and therefore the total net gain achieved would be less than the target set, with a deficit of 0.85 units. The applicant will therefore need to produce these units either on-site or off-site to meet the required 10% net gain.

Under legislation, a condition is in place by law. The biodiversity gain condition has its own separate statutory basis, as a planning condition under paragraph 13 of Schedule 7A of the Town and Country Planning Act 1990. As such, it is not considered necessary for any further condition to be in place upon any grant of permission given the statutory requirements in relation to biodiversity. However, an informative note will be included to highlight this requirement to the applicant.

Subject to inclusion of the conditions and informative the proposal is considered to be acceptable with regard to the aforementioned policy and legislation.

Contaminated Land

With regard to land quality, paragraphs 187, 196 and 197 of the National Planning Policy Framework and policy LP53 of the Kirklees Local Plan which seeks to ensure land quality is maintained as part of new development.

Given the nature of the proposals the Council's Environmental Health team were consulted, they note that the proposed development is not situated on land identified as potentially contaminated or nearby any landfill site. However, groundworks will be necessary and therefore they recommend a condition in relation to unexpected contamination. This is considered to be sufficient mitigation in this instance.

Drainage

Policy LP28 of the Kirklees Local Plan & Section 14 ('Meeting the challenge of Climate Change, Flooding and Coastal Change') of the National Planning Policy Framework and the National Planning Policy Framework technical guidance document are considered to be relevant in terms of foul/surface water drainage.

The site is within a low probability Flood Risk Zone and therefore if Officers are minded to approve the application, a condition would be placed to ensure that the additional parking spaces would be drained sufficiently and/or made permeable in accordance with Policy LP28 of the Kirklees Local Plan and the Highways Design Guide SPD.

Given the scale of the development, it is considered unnecessary for the LPA to require consultation with the lead local flood Authority (LLFA) or Yorkshire Water in this case particularly as building regulations would require adequate foul / surface water drainage to be undertaken.

There are no other matters for consideration.

6 – Conclusion

The NPPF has introduced a presumption in favour of sustainable development. The policies set out in the NPPF taken as a whole constitute the Government's view of what sustainable development means in practice.

This application has been assessed against relevant policies in the development plan and other material considerations. It is considered that, subject to conditions, the proposed development would constitute sustainable development and is therefore recommended for approval.

Recommendation:

Approve.

Decision Authorisation - Delegated Powers

Application Number: 2024/92623

Officer Recommendation: Approve.

Conditions and Reasons:

1. The development hereby permitted shall be begun within three years of the date of this permission.
Reason: Pursuant to the requirements of Section 91 of the Town and Country Planning Act 1990.
2. The development hereby permitted shall be carried out in complete accordance with the plans and specifications schedule listed in this

decision notice, except as may be specified in the conditions attached to this permission, which shall in all cases take precedence.

Reason: For the avoidance of doubt as to what is being permitted and so as to ensure the satisfactory appearance of the development on completion, and to accord with Policies LP1, LP2, LP3, LP11, LP20, LP21, LP22, LP24, LP26, LP30, LP51, LP52, LP53 and LP65 of the Kirklees Local Plan, Chapters 2, 4, 5, 9, 12, 14 and 15 of the National Planning Policy Framework, and Principles 2, 5, 6, 9, 12, 13, 14, 15, 16, 17, 18 and 19 of the Housebuilders Design Guide SPD.

3. If contamination, the presence of coal and/or evidence of coal workings not previously identified by the developer prior to the grant of this planning permission is encountered during the development, all works in the affected area (except for site investigation works) shall cease immediately and the Local Planning Authority shall be notified in writing within 2 working days. Works in the affected area shall not recommence until either (a) a Remediation Strategy by a suitably competent person has been submitted to and approved in writing by the Local Planning Authority or (b) the Local Planning Authority has confirmed in writing that remediation measures are not required. The Remediation Strategy shall include a timetable for the implementation and completion of the approved remediation measures. Thereafter remediation of the site shall be carried out and completed in accordance with the approved Remediation Strategy. Following completion of any measures identified in the approved Remediation Strategy a Verification Report shall be submitted to the Local Planning Authority. No part of the site shall be brought into use until such time as that part of the site has been remediated in accordance with the approved Remediation Strategy and a Verification Report in respect of those works has been approved in writing by the Local Planning Authority.

Reason: To ensure the safe occupation of the site in accordance with Policy LP53 of the Kirklees Local Plan and paragraph nos. 196 and 197 of the National Planning Policy Framework.

4. Development shall not commence until a scheme detailing the finished slab and floor levels of the dwellings hereby approved together with corresponding existing and finished ground levels related to Ordnance Datum, or an identifiable temporary datum has been submitted to and approved in writing by the Local Planning Authority. The construction of the dwellings shall thereafter be carried out in accordance with the details so approved before the dwellings are first occupied and retained.

Reason: In the interests of visual amenity and the amenity of neighbouring occupiers to accord with Policy LP24 of the Kirklees Local Plan, principle 6 of the Council's adopted Housebuilders Design Guide SPD and policies within Chapter 12 of the National Planning Policy Framework. This is a pre-commencement condition to ensure

the ensuing development is undertaken in the interests of residential amenity of adjacent land and buildings and visual amenity.

5. Notwithstanding the approved plans and information, 3 new bat boxes similar to the Schwegler type 1FR bat boxes shall be installed integral to the each of the new dwellings with one box installed per dwellinghouse. The boxes shall be installed during the period of construction of the dwellinghouse to which they relate on the south-western elevation (side), at least 4m above ground level and not directly above any doors or windows. The development shall not be brought into use until the box to which dwelling it relates has been completed. Thereafter the bat boxes shall be retained.

Reason: To enhance opportunities for biodiversity at the site and to accord with national guidance set out in Chapter 15 of the National Planning Policy Framework, LP30 of the Kirklees Local Plan and Principle 9 of the Housebuilders Design Guide SPD.

6. The windows within the south-western and north-eastern elevations of Plots 1, 2 & 3 hereby approved, shall be fitted with obscure glazing minimum grade 4. Notwithstanding the provisions of Section 55(2)(a)(ii) of the Town and Country Planning Act 1990 and the Town and Country Planning (General Permitted Development)(England) Order 2015 (or any Order revoking or re-enacting that Order with or without modification), the windows shall thereafter be so retained obscurely glazed.

Reason: To protect the amenity of neighbouring properties and future occupiers, in accordance with Policy LP24 of the Kirklees Local Plan, Chapter 12 of the National Planning Policy Framework and Principle 6 of the Housebuilders Design Guide SPD.

7. Notwithstanding the details shown on the approved plan, the development shall not commence until a scheme detailing the provision of a 2.0m wide footway to the Forest Road frontage of the development site, construction specification, surfacing, drainage and kerbing including the relocation of existing street lighting column and associated highway works has been submitted to, and approved in writing by, the Local Planning Authority. The development shall not be brought into use until the approved scheme has been completed which shall be thereafter retained for the lifetime of the development.

Reason: In the interests of amenity and highway safety and to accord with Chapter 9 of the National Planning Policy Framework and Policy LP21 of the Kirklees Local Plan.

8. Development shall not commence until details of storage and access for the collection of wastes from the premises have been submitted to, and approved in writing by, the Local Planning Authority. The approved details shall be provided before first occupation and shall be so retained thereafter.

Reason: In the interests of amenity and highway safety and to accord with Chapter 9 of the National Planning Policy Framework, Policies LP21 and LP22 of the Kirklees Local Plan and Principle 19 of the Housebuilders Design Guide SPD.

9. Development shall not commence until a slope stability/geotechnical risk assessment examining the structural adequacy of the embankment to support the new development has been submitted to and approved in writing by the Local Planning Authority. The details shall incorporate a design statement, all necessary ground investigations on which design assumptions are based, method statements for both temporary and permanent works, removal of any bulk excavations together with slope stability calculations (where required). Subject to the results and the outcome of the ground investigation undertaken at this site, the analysis should also identify any remedial measures required to deal with instability issues and these will need to be submitted to and agreed in writing by the Local Planning Authority, prior to their implementation. The development shall not be brought into use until all remedial measures required to deal with instability issues have been completed and which shall be so thereafter retained throughout the life of the development.

Reason: To ensure that any new retaining structures do not compromise the stability of the highway, to accord with Chapter 9 of the National Planning Policy Framework and Policy LP21 of the Kirklees Local Plan.

10. Before the development commences a scheme detailing the location and cross-sectional information together with the proposed design and construction details for all new retaining walls adjacent to the highway together with any proposed modifications to the existing burr wall/embankment supporting Forest Road shall be submitted to and approved by the Local Planning Authority in writing. The approved scheme shall be implemented and completed prior to the development being brought into use and shall be thereafter retained during the life of the development.

Reason: To ensure that any new retaining structures do not compromise the stability of the highway and to accord with Chapter 9 of the National Planning Policy Framework and Policy LP21 of the Kirklees Local Plan.

11. No development above foundation levels shall take place until all samples of the proposed external walling stone and roofing materials have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be undertaken in accordance with the details so approved which shall be retained thereafter.

Reason: To ensure the satisfactory appearance of the development on completion in the interests of visual amenity, to accord with Policies

LP24 of the Kirklees Local Plan, Principles 2 and 13 of the Housebuilders Design Guide SPD and Chapter 12 of the National Planning Policy Framework.

12. Prior to the development being brought into use, the approved vehicle parking areas shall be surfaced and drained in accordance with the Communities and Local Government; and Environment Agencies 'Guidance on the permeable surfacing of front gardens (parking areas)' published 13th May 2009 (ISBN 9781409804864) as amended or superseded; and thereafter retained throughout the lifetime of the development.

Reason: In the interests of highway safety and to achieve a satisfactory layout to mitigate flood risk and in accordance with LP21 and LP22 of the Kirklees Local Plan, Principle 12 of the Council's adopted Housebuilders Design Guide Supplementary Planning Document and Chapter 14 of the National Planning Policy Framework.

NOTE: The granting of planning permission does not authorise the carrying out of works within the highway, for which the written permission of the Council as Highway Authority is required. You are required to consult the Design Engineer (Kirklees Street Scene: 01484 221000) regarding obtaining this permission and approval of the construction specification. Please also note that the construction of vehicle crossings within the highway is deemed to be major works for the purposes of the New Roads and Street Works Act 1991 (Section 84 and 85). Interference with the highway without such permission is an offence which could lead to prosecution.

NOTE: All contamination reports shall be prepared by a suitably competent person, as defined in Annex 2 of the National Planning Policy Framework 2021. Reports must be prepared in accordance with the following guidance:

- *Land Contamination Risk Management (LCRM)*
- *BS 10175:2011+ A2:2017 Investigation of Potentially Contaminated Sites. Code of Practice*
- *Development on Land Affected by Contamination - Technical Guidance for Developers, Landowners & Consultants - (v11.2) June 2020 by the Yorkshire and Lincolnshire Pollution Advisory Group.*

The conditions relate to Planning Control only. Approval under the Building Regulations may also be required, and the applicant should contact their Building Control Provider for further information. Any other necessary consent must be obtained from the appropriate authority. If the applicant commences work without discharging conditions, they will be at risk of enforcement action and invalidating the permission if the planning condition is a pre commencement condition.

NOTE: No construction related noise shall be audible beyond the site boundary outside the hours of:

07.30 to 18.30 hours Mondays to Fridays

08.00 to 13.00 hours, Saturdays

With no construction related noise audible beyond the site boundary on Sundays or Public Holidays.

Kirklees Council has powers under Section 60 of the Control of Pollution Act 1974 to control noise from construction sites and may serve a notice imposing requirements on the way in which construction works are to be carried out. It has additional powers under Sections 80 of the Environmental Protection Act 1990 to prevent statutory nuisance including noise, dust, smoke and artificial light and must serve an abatement notice when it is satisfied that a statutory nuisance exists or is likely to occur or recur. Failure to comply with a notice served using the above-mentioned legislation would be an offence for which the maximum fine on summary conviction is unlimited.

NOTE: Due to its location, a bat roost may be present on site. Bats are a European protected species under regulation 42 of the Conservation of Habitats and Species Regulations 2017. It is an offence for anyone to intentionally kill, injure or handle a bat, disturb a roosting bat, or sell or offer a bat for sale without a licence. It is also an offence to damage, destroy or obstruct access to any place used by bats for shelter, whether they are present or not. If Bats are found, then contact Natural England.

Plans and specifications schedule:-

Plan Type	Reference	Web ID	Date Received
Location Plan	2234/00	-	13 th September 2024
Planning Site Layout	2234/01	-	13 th September 2024
Planning Housetypes Sheet 1 of 2	2234/02	-	13 th September 2024
Planning Housetypes Sheet 2 of 2	2234/03	-	13 th September 2024
Biodiversity Net Gain Assessment – Supporting Information	ER-7824-01	-	11 th October 2024
Condition Sheet: SCRUB Habitat Type – Supporting Information	-	-	11 th October 2024
The Statutory Biodiversity	BM-7824-01	-	11 th October 2024

Metric Supporting Information	–			
Appendix A Climate Change Statement Supporting Information	–	-	-	18 th September 2024

Pursuant to article 35 (2) of the Town and Country Planning (Development Management Procedure) Order 2015 and guidance in the National Planning Policy Framework, the Local Authority have, where possible, made a preapplication advice service available, complied with the Kirklees Development Management Charter 2015 and otherwise actively engaged with the applicant in dealing with the application. No amendments have been sought on this occasion as the proposals were deemed to be acceptable upon submission.

INFORMATIVE NOTE – Biodiversity Net Gain:

Based on the information available, this permission is considered to be one which requires 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; i) planning permission is granted which has effect before 2 April 2024; or ii) 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).

4.6 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
- i) 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.

Report Dated:

8th January 2025.

