



Appeal Decision

Site visit made on 2 September 2025

by **C Mayes CMLI**

an Inspector appointed by the Secretary of State

Decision date: 13 November 2025

Appeal Ref: APP/Z4718/W/25/3368866

64 Westfield Lane, Scholes, Cleckheaton, Kirklees BD19 6DR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Mr Strickland of RS Developments Ltd. against Kirklees Metropolitan Council.
 - The application Ref is 2025/62/90948/E.
 - The development proposed is erection of 3 dwellings.
-

Decision

1. The appeal is dismissed, and planning permission is refused.

Background and Main Issues

2. The appeal relates to a planning application that was not determined by the Council within the prescribed period. The Council has provided a statement of case, confirming that, had it been able to determine the application within the statutory timescales, it would have refused permission. The Council confirm that the application would have been refused on the grounds that insufficient detail has been submitted to demonstrate that the scheme would not have an adverse impact on ecology, that insufficient evidence has been provided that the proposed development would be exempt from mandatory requirements for Biodiversity Net Gain, and that the proposal would have an adverse impact on the safety of highway users.
3. The principle of residential development on the site has been established through the grant of two previous permissions (Local Authority references 2022/91791 and 2023/91228). Furthermore, the Council considers that the scheme does not give rise to any significant material effects upon the character and appearance of the area, occupants of neighbouring dwellings, ground conditions, flood risk and drainage, and has demonstrated a proactive approach to climate change and I have no reason to disagree.
4. It therefore follows that the main issues are:
 - the effect of the development on ecology;
 - whether the development makes adequate provision for Biodiversity Net Gain (BNG); and,
 - the effect of the development on highway safety, with particular regard to the use of the proposed access on the safety of highway users on Westfield Lane.

Reasons

Ecology

5. No ecology survey or preliminary ecological assessment (PEA) has been submitted with the appeal. Therefore, it has not been established what habitats may be present on site, including those of protected species which may be affected by the proposal.
6. The presence of a protected species is a material consideration when a development proposal is being considered which would be likely to result in harm to that species or its habitat. It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before any planning permission is granted, otherwise all relevant material considerations may not have been addressed in making that decision.
7. Policy LP30 of the Kirklees Local Plan, February 2019, (the LP) makes it clear that development is required to protect species of importance unless the benefits of development clearly outweigh the importance of the ecological interest and that appropriate compensation measures are secured.
8. Hence, in the absence of surveys there cannot be any certainty as to whether the proposal would have any effect on the ecology of the site, and consequently, whether any mitigation would be necessary to specifically address any harm. In this regard the proposal would conflict with Policy LP30 of the LP.

Biodiversity Net Gain (BNG)

9. The application form describes the development site area as being 1200 square metres (sqm). The appellant contends that the development is exempt from the mandatory biodiversity gain condition. Although the site has been laid to hardstanding across its entirety, I have no substantive evidence before me confirming that the development would affect less than 25sqm of onsite habitat or less than 5m of linear habitat.
10. From the information before me, however, it is evident that the site was previously occupied by a single dwelling with a surrounding garden. Planning permission to demolish the existing dwelling and erect 2 detached dwellings was granted (ref. 2022/91791) on 6 April 2023. The appellant states that the bungalow had been demolished prior to 25 August 2023¹ and thus degradation of existing onsite habitat had taken place before this date. Nevertheless, I have not been provided with any evidence that this permission was implemented and subsequently planning permission for a development which also included the demolition of the bungalow was applied for and granted permission on 3 January 2024 (ref. 2023/91228).
11. I have not been provided with substantive evidence that confirms when either of the permissions were implemented and the site laid to hardstanding, particularly given the latter planning permission strongly indicates, through the description of the proposed development that the existing dwelling may not have been demolished at that time. Therefore, I cannot be certain that the activities which degraded the biodiversity value of onsite habitats occurred before the relevant date when the

¹ Planning Practice Guidance (PPG) states that if activities to implement a planning permission are carried out after 25 August 2023 that lower the biodiversity value of onsite habitat, the pre-development value of the onsite habitat is taken to be the biodiversity value immediately before carrying out of the activities.

mandatory requirements for biodiversity gain came into effect. Consequently, in line with Planning Practice Guidance, the biodiversity value of onsite habitats should be assessed as it was prior to the demolition of the previous dwelling and the laying of hardstanding.

12. In the absence of sufficient evidence to the contrary, I conclude that the development is not exempt from the mandatory requirements for biodiversity gain. The proposal is therefore subject to the mandatory biodiversity gain condition and associated information requirements. As such, the proposal does not accord with Policy LP30 of the LP, which seeks, among other things, to ensure development minimises impacts on biodiversity and delivers net biodiversity gains.

Highway Safety

13. The proposed access to the site is from Westfield Lane on the outside of a slight bend in the road. A speed limit of 30mph is in force along this stretch of the road. Access to the main carriageway from the site would be typical of residential development in the area, crossing a footway. Between the footway and main carriageway is an area of the road separated by a broken white line and described by the Council as a cycle lane. However, there are no access restrictions in place and therefore the carriageway from the roadside kerb is useable by all types of vehicles.
14. 2.4m x 45m visibility splays from the proposed access to the site would be provided in line with guidance set out in the Kirklees Highway Design Guide Supplementary Planning Document (November 2019) (SPD). However, the 2.4m setback shown on the plans is from the broken white line within the carriageway rather than from the kerb separating the carriageway and footway. As such, the plans do not demonstrate that adequate visibility for vehicles emerging from the site can be achieved along both the footway and carriageway.
15. Notwithstanding the above, even with a 2.4m setback from the kerb edge, I see no reason why adequate visibility could not be achieved in both directions. As such, had I been minded to allow the appeal a suitably worded condition requiring the submission of a plan showing the visibility splays in the correct location would have overcome the Council's concerns. Consequently, with regard to vehicle access, the development would not result in an unacceptable impact on highway safety.
16. Having considered all the evidence, including the recommendations of the highway authority and observations made during my site visit, I conclude that the proposed development would provide safe and suitable access to the site and would not result in an unacceptable effect on highway safety. In this regard, the proposed development accords with Policy LP21 of the LP and the SPD, which seek to ensure, among other things, that safe and suitable access to the site can be achieved.

Conclusion

17. Although I have found no harm with regard to the effect of the development on highway safety, the harm I have found in respect of the impact of the development on ecology and the information required to meet the mandatory biodiversity gain requirements means that the proposal would conflict with the development plan, when taken as a whole. Material considerations do not indicate that the appeal

should be decided other than in accordance with it. For the reasons given above the appeal should be dismissed and planning permission is refused.

C Mayes

INSPECTOR