



33 Wellington Street, Leeds LS1 4DL Tel +44 (0)113 283 2500
Fax +44 (0)113 245 9412 Document Exchange 12051 Leeds 24
Email @walkermorris.co.uk Web: www.walkermorris.co.uk

F.A.O.: Ms Jillian Rann MRTPI
Development Management Masterplanner
Kirklees Council
Planning and Development Service
Civic Centre
3 Market Street
Huddersfield
HD1 2E

Our ref CAS/TCP/CRE02775.12

Your ref

23 September 2025

by e-mail only (Jillian.Rann@kirklees.gov.uk)

Dear Madam

Certificate of Lawfulness of Existing Use or Development Land at Crossley Lane, Dalton

1. Introduction

- 1.1. We have been instructed by Crest Nicholson Operations Limited (“**Crest**”) to consider The Council of the Borough of Kirklees (“**Council**”) suggestion that an application for a Certificate of Lawfulness of Existing Use or Development pursuant to Section 191 of the Town & Country Planning Act 1990 (as amended), validated by the Council on 20th June 2025 (reference: 2025/91573) (“**CLEUD**”) may be invalid due to certain pre-commencement conditions attached to outline permission reference 2015/90430 (please see section 2.2 below) and reserved matters approval reference 2020/90805 (please see section 2.3 below) (together the “**Permission Permission**”) having not been discharged prior to the end of the time limit for commencement of the development on 24th November 2024.
- 1.2. We explain below why we consider it is possible for the Council to determine the CLEUD. We would be grateful if the Council could consider this letter and confirm by return that the CLEUD will be determined in due course.

2. Background

- 2.1. For detailed background and the planning history please see the Certificate of Lawful Use Supporting Statement prepared by JRP, dated June 2025, attached at Annex 1, which was submitted to the Council as part of the CLEUD application.

- 2.2. Planning permission was granted by the Council on 14th March 2017 for outline permission for erection of residential development comprising (Use Class C3) and incorporating associated new access (to Crossley Lane and Cold Royd Lane), and associated works under reference 2015/60/90430/W (“**2015 Outline Permission**”) (attached at Annex 2).

The Council allege that the pre-commencement conditions set out in Annex 2(a), which are attached to the 2015 Outline Permission have not been discharged prior to commencement of development (collectively the “**2015 Outline Permission Conditions**”).

- 2.3. Reserved matters approval was granted by the Council on 24th November 2022 for reserved matters consent pursuant to the 2015 Outline Permission for erection of residential development comprising (Use Class C3) and incorporating associated new access (to Crossley Lane and Cold Royd Lane), and associated works (122 dwellings) under reference 2020/61/90805/W (“**2020 RMA**”).

The Council allege that the following pre-commencement conditions set out in Annex 3(a), which are attached to the 2020 RMA have not been discharged prior to commencement of development (collectively the “**2020 RMA Conditions**”).

3. **Applications to discharge conditions**

3.1. **Condition Discharge Application Reference 2024/92454 (“CDAR Ref: 2024/92454”)**

3.1.1. CDAR Ref: 2024/92454 seeking the discharge of the 2015 Outline Permission Conditions was submitted on behalf of Crest on 4th October 2024 and validated by the Council on the same day.

3.2. **Condition Discharge Application Reference 2024/92458 (“CDAR Ref: 2024/92458”)**

3.2.1. CDAR Ref: 2024/92458 seeking the discharge of conditions 2 (junction works); 5 (CEMP); 6 (CEMP: Biodiversity); 7 (temporary drainage); and 8 (Ecological Design Strategy) of the 2020 RMA Conditions was submitted on behalf of Crest on 24th August 2024 and validated by the Council on 29th August 2024.

3.3. **Condition Discharge Application Reference 2024/92842 (“CDAR Ref: 2024/92842”)**

3.3.1. CDAR Ref: 2024/92842 seeking the discharge of conditions 3 (drainage); and 4 (adoptable estate roads) of the 2020 RMA Conditions was submitted on behalf of Crest on 4th October 2024 and validated by the Council on the same day.

(collectively the “**Condition Discharge Applications**”).

3.4. It is not disputed between the parties that:

3.4.1. The Condition Discharge Applications were submitted and validated prior to the end of the time limit for commencement of the development on 24th November 2024.

3.4.2. The conditions referred to in sections 3.1, 3.2 and 3.3 above have not been formally discharged.

4. **Works which constitute a lawful commencement**

4.1. As set out in the JRP Statement (Annex 1), following the submission of the Condition Discharge Applications, and whilst the relevant discharge submissions were being discussed with consultees and the case officer at the Council, implementation works commenced in October 2024. The works comprised excavation and foundation to DPC for plot D42 (“**Works**”). The Council does not appear to be disputing that the Works constituted a material operation for the purposes of implementing the Planning Permission. In that regard, for completeness, Section 56 of the Town and Country Planning Act 1990 (“**TCPA 1990**”) prescribes the activities that constitute commencement of the planning permission by the carrying out of a “material operation”. “Material operation” is defined as:

“(4) In subsection (2) “material operation” means—

(a) any work of construction in the course of the erection of a building;

(aa) any work of demolition of a building;

(b) the digging of a trench which is to contain the foundations, or part of the foundations, of a building;

(c) the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in paragraph (b);

(d) any operation in the course of laying out or constructing a road or part of a road;

(e) any change in the use of any land which constitutes material development.”

4.2. There have been a series of cases examining whether certain works are sufficient to commence development. The legal tests are found in the case of *Staffordshire County Council v Riley and others* [2001] EWCA Civ 257. It found that a "material operation" must be:

4.2.1. undertaken in accordance with the relevant planning permission; and

4.2.2. more than de minimis.

4.3. Whether an operation is more than de minimis will be a question of fact and degree. However, the threshold for qualifying works, which fall within the scope of the statutory definitions, is low. In *Malvern Hills DC v Secretary of State for the Environment*, the Court said:

"Section 43 seeks some earnest of intention to develop. The specified operations are not necessarily very extensive. Very little need be done to satisfy the section. That which is done, however, must genuinely be done for the purpose of carrying out the development. Section 43 is a benevolent section that aims at avoiding hardship to a developer who is genuinely undertaking the development".

4.4. The Court found in *High Peak Borough Council v Secretary of State for the Environment*¹ that the digging of a trench may be sufficient to keep a permission alive even though the intention is not to proceed with the whole development immediately and the trench is subsequently backfilled.

4.5. On the basis of what is set out in Section 56 of TCPA 1990 and established in case law, it is clear that the Works were more than sufficient to constitute a material operation for the purposes of implementing the Planning Permission.

5. **The Whitley Principle**

5.1. The Courts have found that the starting point is that if operations contravene a condition precedent then they cannot properly be described as commencing development² (the "**Whitley Principle**")³.

5.2. To be a "condition precedent", a condition should:

5.2.1. expressly prohibit any development before a particular requirement has been met; and

5.2.2. go to the "heart" of the planning permission⁴.

5.3. However, there are a number of recognised exceptions to the Whitley Principle:

5.3.1. The case of *Leisure Great Britain plc v Isle of Wight Council* confirmed that:

¹ [1981] J.P.L 366

² *Whitley & Sons Co Ltd v Secretary of State for Wales* (1992) 64 P &CR 296

³ See also *R (on the application of Hart Aggregates Ltd) v Hartlepool BC* [2005] EWHC 840

⁴ *R (on the Application of Hart Aggregates Ltd) v Hartlepool BC and Greyfort Properties Ltd v Secretary of State for Communities and Local Government* [2011] EWCA 908

"The decision in Whitley can be seen as establishing the proposition that, if a condition requires an approval before a given date and the developer has applied by then for the approval, which is subsequently given so that no enforcement action could be taken, work done before the deadline and in accordance with the scheme ultimately approved can amount to a start to development⁵⁶."

- 5.3.2. Where the local planning authority has agreed development can commence without full compliance with the relevant conditions (albeit the scope for this exception to apply is more limited now than was the case when the *Agecrest* decision was made)⁷;
 - 5.3.3. Where the relevant condition has been complied with in substance, but the formal discharge notice had not been completed before works commenced⁸; and
 - 5.3.4. Where it would be irrational or an abuse of power for the local planning authority to take enforcement action⁹.
- 5.4. The Courts have also recognised that the categories of exceptions to the general principle are not closed¹⁰. In deciding the case of *R (on the application of Hart Aggregates Ltd) v Hartlepool BC*, and in reviewing earlier judgments, Sullivan J highlighted the following points:
- 5.4.1. A distinction should be drawn between matters that go to the underlying principle of a development and those which are properly categorised as 'detail'. In cases of 'detail', a failure to comply with a condition will not render the whole of the development unlawful. The Court gave the example of a breach of condition which required the details of dormer windows to be submitted prior to commencement of development when constructing a house. Sullivan J held to give proper effect to the intention of the planning code, the breach would be a breach of condition only i.e. it would not prevent lawful implementation of the permission in question.
 - 5.4.2. Linked to the previous point, there is also a clear distinction between cases where there is only a permission in principle because no details were submitted (i.e. a 'bare' outline permission), and cases at the opposite end of the spectrum (i.e. a full planning permission) where the breach relates only to a failure to obtain approval for one particular aspect of the development. Sullivan J held that 'common sense' dictated in the

⁵ Our emphasis

⁶ *Leisure Great Britain plc v Isle of Wight Council* 1999 WL 250024

⁷ *Agecrest Ltd v Gwynedd CC* [1998] J.P.L. 325

⁸ *R. v Flintshire County Council Ex p. Somerfield Stores Ltd* [1998] P. & C.R 336

⁹ *R. (Hammerton) v London Underground Ltd* [2002] EWHC 2307 (Admin)

¹⁰ *Leisure Great Britain PLC v Isle of Wight Council* (1999) 80 P&CR 370

latter case, that the planning permission had been lawfully implemented and there had simply been a breach of condition.

5.5. Also of relevance is a planning appeal was determined in 2018, which related to the refusal of discharge of conditions applications. A local planning authority refused the applications on the basis that the submission of the details and their subsequent approval should have been done before the development was commenced. The local planning authority argued that they were not in position to discharge the conditions, as they were worded on a pre-commencement basis.

5.6. The Inspector held that there was no dispute about the acceptability of the submitted details, and therefore allowed the appeals. The Inspector noted that it was not their place to determine whether the original planning permission remains valid, as that could be dealt with under s191 or s192 of the TCPA 1990. Clearly, the Inspector did not regard themselves as precluded from determining the applications that were before them¹¹.

6. **Guidance**

6.1. The National Planning Policy Framework (“**NPPF**”) is also relevant. It advises local planning authorities that they:

“...should approach decisions on proposed development in a positive and creative way.”¹²”

6.2. The NPPF and Planning Practice Guidance (“**PPG**”) do not state that previously validated applications to discharge conditions may be subsequently invalidated at a local planning authorities discretion.

6.3. The PPG goes on to state that a local planning authority:

“...should respond to requests to discharge conditions without delay and must give notice to the applicant of its decision within a period of 8 weeks, beginning with the day immediately following that on which the application is received, or any longer period agreed in writing between the applicant and local planning authority.”¹³

7. **Analysis**

7.1. The deadline for commencement of development under the Planning Permission was 24th November 2024.

¹¹ APP/M1520/W/17/3190666

¹² Paragraph 39

¹³ Paragraph: 034 Reference ID: 21a-034-20190723

- 7.2. The Works were more than sufficient to constitute a material operation for the purposes of implementing the Planning Permission. This does not appear to be disputed by the Council.
- 7.3. The next point to consider is whether the Whitley Principle has been met, or if an exception applies.
- 7.4. Conditions 5, 6, 9, 10 and 14 of the 2015 Outline Permission are drafted as "pre-commencement conditions". Condition 8 of the 2015 Outline Permission is a pre-constructions condition.

Crest and its consultants efforts to discharge the 2015 Outline Permission Conditions, in relation to CDAR Ref: 2024/92454 (please see section 3.1 above) are summarised in Table 1 below:

Table 1

| Condition | LPA Response Received | Applicant Revised info submitted | LPA Response Received | Applicant Revised info submitted | Notes |
|--|--------------------------------------|--|-----------------------|--|-----------------------|
| 5 (access highway works) | Highways 29.10.24 | Missing footway southern side of Crossley Lane between Cold Royd Lane and Sutton Avenue. Queried with Nick Hirst (Meeting 21.01.25) as this forms part of Parcel 1 which has site access and footways. | | | |
| 6 (traffic calming measures) | No response on submitted information | | | | |
| 8 (construction traffic) | Highways 29.10.24 | Amended details submitted 28.05.25 | | | |
| 9 (Phase II Intrusive Site Investigation Report) | Environmental Health 19.09.24 | 11.11.24 | 02.12.24 | 28.05.25 – Remediation Strategy / Re-issued 11.07.25 Further info issued 08.08.25 | Awaiting further info |
| 10 (Remediation Strategy) | Environmental Health 19.09.24 | 11.11.24 | 02.12.24 | 28.05.25 – Remediation Strategy/ Re-issued 11.07.25 Further info issued 08.08.25 | Awaiting further info |
| 14 (landscape) | No response on submitted | | | | |

| | | | | | |
|--|-------------|--|--|--|--|
| | information | | | | |
|--|-------------|--|--|--|--|

7.5. All the 2020 RMA Conditions are drafted as "pre-commencement conditions".

Crest and its consultants efforts to discharge conditions 2, 5, 6, 7 and 8 of the 2020 RMA Conditions, in relation to CDAR Ref: 2024/92458 (please see section 3.2 above) are summarised in Table 2 below:

Table 2

| Condition | LPA Response Received | Applicant Revised info submitted | LPA Response Received | Applicant Revised info submitted | Notes |
|--------------------------------|--------------------------------------|-----------------------------------|-----------------------|----------------------------------|-------|
| 2 (junction works) | No response on submitted information | | | | |
| 5 (CEMP) | No response on submitted information | | | | |
| 6 (CEMP: Biodiversity) | No response on submitted information | | | | |
| 7 (temporary drainage) | 24.09.24 | Revised report re-issued 27.08.25 | | | |
| 8 (Ecological Design Strategy) | No response on submitted information | | | | |

Crest and its consultants efforts to discharge conditions 3 and 4 of the 2020 RMA Conditions, in relation to CDAR Ref: 2024/92842 (please see section 3.3 above) are summarised in Table 2 below:

Table 3

| Condition | LPA Response Received | Applicant Revised info submitted | LPA Response Received | Applicant Revised info submitted | Notes |
|----------------------------|-----------------------|--|-----------------------|----------------------------------|------------------------------|
| 3 (drainage) | 10.11.24 | 04.03.25 | 28.04.25 | | Information to be submitted. |
| 4 (adoptable estate roads) | 29.10.24 | Queried with Nick Hirst (Meeting 21.01.25) to confirm if Officer has seen submitted plans based on consultation response | | | |

7.6. Condition 8 of the 2015 Outline Permission is a pre-constructions condition so is not a "condition precedent" in accordance with the Whitley Principle in that it doesn't expressly prohibit any development before a particular requirement has been met.

7.7. It is clear from Tables 1 to 3 (inclusive) above that:

- 7.7.1. All the Condition Discharge Applications were validated by the Council prior to the end of the time limit for commencement of the development on 24th November 2024.
- 7.7.2. Of the 11 "pre-commencement conditions" (excluding Condition 8 of the 2015 Outline Permission, which is a pre-constructions condition) the Council has not provided Crest a response in relation to the information submitted, in relation to six of those conditions. This is despite telephone conversations with the planning officer, Nick Hirst, and meetings with the Council on 24 October 2023, 24 May 2024 and 21 January 2025 at which the CLEUD was discussed.
- 7.7.3. Of the remaining five "pre-commencement conditions" Crest acted reasonably and submitted additional information in relation to the Council's request as soon as reasonably practicable. Crest should not be prejudiced by the Council's delays in responding to the information submitted as part of the Condition Discharge Applications.
- 7.8. The Courts have found on numerous occasions that it is possible for a local planning authority to determine an application to discharge a condition after the time by when a development must be commenced. Indeed, such circumstances have been held to be an exception to the Whitley principle.
- 7.9. It is evident that:
- 7.9.1. **2015 Outline Permission Conditions:**
- (a) Conditions 6 (traffic calming measures) and 14 (landscape) do not necessarily go to the underlying principle of a development and could be categorised as 'detail' in accordance with the findings of Sullivan J in *R (on the application of Hart Aggregates Ltd) v Hartlepool BC*. In that scenario a failure to comply would not render the whole of the development unlawful. Furthermore, Crest has sought to engage with the Council since the submission of the CDAR Ref: 2024/92454 in order to seek to discharge these conditions in a timely manner.
 - (b) With regard to Conditions 5 (access highway works), 9 (Phase II Intrusive Site Investigation Report) and 10 (Remediation Strategy), additional information requested by the Council was submitted on behalf of Crest as soon as reasonably practicable following the request (which did not change the original submission) and Crest has actively engaged with the Council in seeking the discharge of those conditions.

7.9.2. **2020 RMA:**

- (a) Conditions 2 (junction works), 3 (drainage), 4 (adoptable estate roads), 7 (temporary drainage) and 8 (Ecological Design Strategy) of the 2020 RMA also do not necessarily go to the underlying principle of a development and could be categorised as 'detail', again, as per the findings of Sullivan J in *R (on the application of Hart Aggregates Ltd) v Hartlepool BC*, where a failure to comply would not render the whole of the development unlawful, particularly given that details relating to the matters referred to in these conditions was submitted as part of the of the application for the 2020 RMA.
- (b) With regard to Conditions 5 (CEMP) and 6 (CEMP: Biodiversity) despite Crest seeking to engage with the Council in order to discharge these conditions, the Council to date has not responded. Any breach would therefore relate only to a failure to obtain approval for two particular aspect of an overall substantial development. Sullivan J (in *R (on the application of Hart Aggregates Ltd) v Hartlepool BC*) held that 'common sense' dictated that the planning permission had been lawfully implemented and there had simply been a breach of condition. This breach could be easily remedied by the Council engaging with Crest on the detailed information submitted as part of CDAR Ref: 2024/92458.

7.10. We have also highlighted in sections 5.5. and 5.6 above a planning appeal decision which was made on facts not to dissimilar to the position in this case. In that case, an Inspector was content to determine that conditions should be discharged - in spite of queries being raised by the local planning authority over the lawfulness of the development.

7.11. We consider that the Council should take a positive approach, as prescribed by the NPPF, and proceed to determine the CLEUD and engage with Crest in discharging any outstanding conditions without delay (as required by the PPG).

Yours sincerely,

For Walker Morris LLP

Annex 1
(JRP Supporting Statement – Certificate of Lawful Use – June 2025)

Annex 2
(2015 Outline Permission (Ref: 2015/60/90430/W))

Annex 2(a)
(2015 Outline Permission Conditions)

- 5 (access highway works), which provides "*Development shall not commence until a scheme detailing the layout, construction and specification of the highway works; at the two site access points from Crossley Lane and one from Cold Royd Lane (drawing number P09:4267:75 Rev A) and all associated highway works, and the appropriate Road Safety Audit, has been submitted to and approved in writing by the Local Planning Authority. The development shall not be brought into use until all the works under the approved scheme have been carried out and completed in accordance with the approved scheme and thereafter retained throughout the lifetime of the development.*

Reason: In the interests of the free and safe use of the highway and to accord with Policy T10 of the Kirklees Unitary Development Plan."

- 6 (traffic calming measures), which provides "*No development authorised by this permission shall take place until a scheme detailing the proposed traffic calming measures, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include full sections, drainage works, street lighting, signing, surface finishes and the treatment of sight lines together with an independent safety audit covering all aspects of the work. Before any dwelling is brought into use the scheme shall be completed in accordance with the scheme shown on approved plans and retained thereafter.*

Reason: In the interests of the free and safe use of the highway and to accord with Policy T10 of the Kirklees Unitary Development Plan."

- 8 (construction traffic), which provides "*Prior to construction commencing, a schedule of the means of access to the site for construction traffic shall be submitted to and approved in writing by the Local Planning Authority. The schedule shall include the point of access for construction traffic, details of the times of use of the access, the routing of construction traffic to and from the site, construction workers parking facilities and the provision, use and retention of adequate wheel washing facilities within the site. Thereafter all construction arrangements shall be carried out in accordance with the approved schedule throughout the period of construction.*

Reason: In the interests of the free and safe use of the highway and to accord with Policy T10 of the Kirklees Unitary Development Plan."

- 9 (Phase II Intrusive Site Investigation Report), which provides "*Development shall not commence until a Phase II Intrusive Site Investigation Report has been submitted to and approved in writing by the local planning authority.*

Reason: To ensure the site is fit to receive the new development and to accord with Policy G6 of the Kirklees Unitary Development Plan."

- 10 (Remediation Strategy), which provides "*Where site remediation is recommended in the Phase II Intrusive Site Investigation Report approved pursuant to condition 9, development shall not commence until a Remediation Strategy has been submitted to and approved in writing by the local planning authority. The Remediation Strategy shall include a timetable for the implementation and completion of the approved remediation measures.*

Reason: To ensure the site is fit to receive the new development and to accord with Policy G6 of the Kirklees Unitary Development Plan."

- 14 (landscape), which provides "*Prior to development commencing a landscape management plan including, long term design objectives, management responsibilities and maintenance schedules for all landscape areas, outside of domestic curtilages, shall be submitted to and approved in writing by the local planning authority. The Landscape Management Plan shall include the following:*

- *Details of the extent and types of new planting;*
- *Details of any new habitats created within the site;*
- *Details of maintenance regimes for existing and any new habitats proposed on the site; and*
- *Details of treatment of site boundaries.*

The Landscape Management Plan shall be carried out in accordance with the approved details and any subsequent variation will need to be submitted to and agreed in writing by the Local Planning Authority.

Reason: To accord with the guidance contained in part 11 of the National Planning Policy Framework "Conserving and enhancing the natural environment".

Annex 3
(2020 RMA (Ref: 2020/61/90805/W))

Annex 3(a)
(2020 RMA Conditions)

- 2 (junction works), which provides "*Prior to development commencing, a scheme detailing the proposed widening and re-alignment works at the Crossley Lane/Cold Royd Lane junction shall be submitted to, and approved in writing by, the Local Planning Authority. The scheme shall include full sections, drainage works, street lighting, signing, surface finishes and the treatment of sight lines together with independent safety audits covering all aspects of the work. Before any dwelling is brought into use the scheme shall be completed in accordance with the scheme shown on approved plans and retained thereafter.*

Reason: To ensure that suitable layout of the highway improvement works, in the interest of the safe and efficient operation of the highway and to comply with the aims of Policy LP21 of the Kirklees Local Plan. This is a pre-commencement condition to ensure the necessary design has been secured prior to relevant works being undertaken."

- 3 (drainage), which provides "*Prior to development commencing, notwithstanding the submitted information, a scheme detailing foul, surface water and land drainage, (including off site works, outfalls, balancing works, plans and longitudinal sections, hydraulic calculations, phasing of drainage provision, existing drainage to be maintained / diverted / abandoned, and percolation tests, where appropriate) shall be submitted to, and approved in writing by, the Local Planning Authority. None of the dwellings shall be occupied until such approved drainage scheme has been provided on the site to serve the development or each agreed phasing of the development to which the dwellings relate and thereafter retained.*

Reason: To deliver effective sustainable drainage systems that will be operated, maintained and managed for the lifetime of the development that it will serve, in accordance with Policy LP28 of the Kirklees Local Plan. This is a pre-commencement condition to ensure adequate assessment and implementation may take place at the appropriate stage of the development process."

- 4 (adoptable estate roads), which provides "*Prior to development commencing, a scheme detailing the proposed internal adoptable estate roads shall be submitted to, and approved in writing by, the Local Planning Authority. The scheme shall include full sections, drainage works, street lighting, signing, surface finishes and the treatment of sight lines, together with independent safety audits covering all aspects of work.*

Before any building is brought into use, unless a phasing strategy for implementation is agreed, the scheme shall be completed in accordance with the scheme shown on approved plans and retained thereafter.

Reason: To ensure that suitable layout and design of the access road, in the interest of the safe and efficient operation of the highway and to comply with the aims of Policy LP21 of the Kirklees Local Plan. This is a pre-commencement condition to ensure the necessary design has been secured prior to relevant works being undertaken."

- 5 (CEMP), which provides "*Prior to development commencing, a Construction Environmental Management Plan (CEMP) shall be submitted to, and agreed in writing by, the Local Planning Authority. The plan shall describe in detail the actions that will be taken to minimise adverse impacts on occupiers of nearby properties by effectively controlling:*

- *Noise & vibration arising from all construction related activities.*
- *This should also include suitable restrictions on the hours of working on the site including times of deliveries.*
- *Dust arising from all construction related activities.*
- *Artificial lighting used in connection with all construction related activities and security of the construction site.*

The agreed plan shall be adhered to throughout the construction of the development.

Reason: To safeguard the amenities of the occupiers of nearby properties in accordance with Policies LP24 and LP52 of the Kirklees Local Plan. This is a pre-commencement condition, given the need for adequate consideration of mitigation measures (for the amenity of residents) prior to works commencing on site."

- 6 (CEMP: Biodiversity), which provides "*Prior to development commencing (including demolition, ground works, vegetation clearance), a Construction Environmental Management Plan for Biodiversity (CEMP: Biodiversity) shall be submitted to, and approved in writing by, the Local Planning Authority. The CEMP: Biodiversity shall include the following:*

- a. *Risk assessment of potentially damaging construction activities that refers to the most up-to-date site-specific survey information and specifically to nesting birds, badgers and invasive plant species.*
- b. *Identification of “biodiversity protection zones”, where appropriate.*
- c. *Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).*
- d. *The location and timing of sensitive works to avoid harm to biodiversity features.*
- e. *The times during construction when specialist ecologists need to be present on site to oversee works, where appropriate.*
- f. *Responsible persons and lines of communication.*
- g. *Use of protective fences, exclusion barriers and warning signs, where appropriate.*

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority.

Reason: To protect biodiversity during construction by avoiding direct impacts to protected species and preventing the spread of non-native plants, and to accord with Policy LP30 of the Kirklees Local Plan. This is a pre-commencement condition, given the need for adequate consideration of mitigation measures (the protection of ecology) prior to works commencing on site."

- 7 (temporary drainage), which provides "*Prior to development commencing, a scheme detailing temporary surface water drainage for the construction phase (after soil and vegetation strip) shall be submitted to, and approved in writing by, the Local Planning Authority. The scheme shall detail:*
 - *phasing of the development and phasing of temporary drainage provision.*
 - *include methods of preventing silt, debris and contaminants entering existing drainage systems and watercourses and how flooding of adjacent land is prevented.*

The temporary works shall be implemented in accordance with the approved scheme and phasing. No phase of the development shall be commenced until the temporary works approved for that phase have been completed. The approved temporary drainage scheme shall be retained until the approved permanent surface water drainage system is in place and functioning in accordance with written notification to the Local Planning Authority.

Reason: To prevent and manage flooding and drainage issues during the construction period, in accordance with Policies LP27 and LP28 of the Kirklees Local Plan. This is a pre-commencement condition to ensure the necessary mitigations (against flood risk) are considered and implemented at the appropriate stage."

- 8 (Ecological Design Strategy), which provides "*Prior to development commencing an Ecological Design Strategy (EDS) addressing measures to secure the ecological enhancement of the site shall be submitted to, and approved in writing by, the Local Planning Authority. The EDS shall include, but not be limited to:*
 - a) *Purpose and conservation objectives for the proposed works.*
 - b) *Review of site potential and constraints.*
 - c) *Detailed design(s) and/or working method(s) to achieve stated objectives.*
 - d) *Extent and location/area of proposed works on appropriate scale maps and plans.*
 - e) *Type and source of materials to be used where appropriate, e.g. native species of local provenance.*
 - f) *Timetable for implementation demonstrating that works are aligned with the proposed phasing of development.*
 - g) *Persons responsible for implementing the works.*
 - h) *Details of initial aftercare (5 year minimum) and long-term maintenance (30 year minimum).*
 - i) *Details for monitoring and remedial measures.*
 - j) *Details for disposal of any wastes arising from works.*

The approved EDS shall be implemented in accordance with the approved details and all features shall be retained in that manner thereafter.

Reason: To ensure a scheme that provides a net biodiversity gain, safeguards and enhances the function of the application site, in line with the aims and objectives of Policy LP30 of the Kirklees Local Plan and Chapter 15 of the National Planning Policy Framework. This is a pre-commencement condition to ensure ecological measures are capable of being fully integrated into the construction phase."