

**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:	<b>2025/62/91854/E</b>
Site Address:	1, Barnsley Road, Flockton, Huddersfield, WF4 4DN
Description:	Change of use of land and formation of a tennis court with associated external alterations
Recommending Officer:	Nicole Helliwell

**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.**

Sarah Longbottom

***AUTHORISED OFFICER***

**Date: 27 October 2025**

**Error! Filename not specified.**

### **Officer Report**

**Reference No.** 2025/62/91854/E

**Site Address:** 1, Barnsley Road, Flockton, Huddersfield, WF4 4DN

**Proposal:** Change of use of land and formation of a tennis court with associated external alterations

### **Site Description**

The application relates to 1 Barnsley Road, a two-storey detached property situated in Flockton, Wakefield. The dwelling is of stone construction and incorporates a dual-pitched roof finished in tiles. The surrounding area comprises residential properties of varying materials and architectural styles. The site is not within a conservation area, nor are there any listed buildings or Public Rights of Way (PROW) within close proximity to the site.

### **Description of Proposal**

The application seeks planning permission for the change of use of land and the formation of a tennis court with associated alterations. The proposed works have been summarised below:

- The tennis court would be used privately.
- The court would measure approx. 35m in length and approx. 17.1m in depth.
- The tennis court would have a permeable surface and would be enclosed by mesh fencing approximately 2.75m high.

### **History of negotiations / amendments received**

No amendments were sought or received during the course of the application.

### **Relevant Planning History**

- **2025/90031:** Erection of single storey front and side extensions, erection of front dormers, alterations to rear dormers and raising of ridge height to the existing outbuilding. [Planning application details | Kirklees Council](#) – Conditional Full Permission
- **2012/93332:** Discharge of condition 4 on previous permission 2012/91938 for erection of dwelling and detached garage with first floor hobby room. [Planning application details | Kirklees Council](#)– Discharge of Condition(s) Approved
- **2012/91938:** Erection of dwelling and detached garage with first floor hobby room. [Planning application details | Kirklees Council](#) – Conditional Full Permission
- **2010/90918:** Reserved matters application for erection of one dwelling with detached garage block and demolition of existing dwelling. [Planning application details | Kirklees Council](#) – Approval of Reserved Matters

- **2009/92346:** Outline application for erection of one dwelling with detached garage block, demolition of existing dwelling. [Planning application details | Kirklees Council](#) – Section 106 Outline Permission
- **2007/91151:** Change of use of pit head building to 1 no. dwelling. [Planning application details | Kirklees Council](#) – Conditional Full Permission

### **Representations**

The application was publicised by site notice, which expired on 19<sup>th</sup> September 2025. As a result of the above publicity, no representations have been received.

[Kirkburton Parish Council](#) – No comment

### **Consultation Responses**

The following is a brief summary of Consultee advice (more details are contained in the ‘Assessment’ section of the report, where appropriate):

[KC Ecology](#) - No objection subject to recommended conditions

[KC Environmental Health](#) – No objection subject to recommended condition

[The Mining Remediation Strategy](#) – No objection subject to informative

### **Policy**

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 27<sup>th</sup> February 2019).

The site is located within the designated Green Belt on the Kirklees Local Plan Proposals Map. The most relevant policies for consideration in this case are:

#### **Kirklees Local Plan Policies**

- **LP 1** - Achieving Sustainable Development
- **LP 2** - Place Shaping
- **LP 21** - Highways and Access
- **LP 22** - Parking
- **LP 24** - Design
- **LP 30** - Biodiversity and Geodiversity
- **LP 52** - Protection and Improvement of Environmental Quality
- **LP 53** - Contaminated and Unstable Land
- **LP 56** - Facilities for Outdoor Sport, Outdoor Recreation and Cemeteries

#### **National Policies and Guidance:**

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published 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.

- **Chapter 2** - Achieving Sustainable Development
- **Chapter 12** - Achieving Well-Designed Places
- **Chapter 13** - Protecting Green Belt Land
- **Chapter 14** - Meeting the Challenge of Climate Change, Flooding and Coastal Change
- **Chapter 15** - Conserving and Enhancing the Natural Environment

**Other Guidance Documents:**

- Highways Design Guide SPD (adopted 4th November 2019)
- Biodiversity Net Gain Technical Advice Note (adopted 29th June 2021)
- Planning Applications Climate Change Guidance (2021)

**Assessment**

**1. Principle of development**

**Impact on Green Belt**

The application site is located on land allocated as Green Belt on the Kirklees Local Plan (KLP). As such, the proposal will be assessed having regard to KLP Policy LP56 and Chapter 13 of the National Planning Policy Framework.

Paragraph 153 of the National Planning Policy Framework states that inappropriate development should not be approved except in “very special circumstances”. Paragraphs 153 and 154 of the National Planning Policy Framework outlines that certain forms of development are exceptions to ‘inappropriate development’.

Policy LP56 of the Kirklees Local Plan states that in the Green Belt proposals for appropriate facilities associated with outdoor sport, outdoor recreation or cemeteries will normally be acceptable as long as the openness of the Green Belt is preserved and there is no conflict with the purposes of including land within it.

LP56 continues: *“Proposals should ensure that;*

- a. the scale of the facility is no more than is reasonably required for the proper functioning of the enterprise or the use of the land to which it is associated;*

- b. the facility is unobtrusively located and designed so as not to introduce a prominent urban element into a countryside location, including the impact of any new or improved access and car parking areas*
- c. in the case of all-weather riding arenas or other facilities for the exercising of horses, the degree of engineering operation required and the resultant re-grading of land, including any earth mounding and retaining structures, does not result in incongruous or discordant landform out of character with its setting that cannot be mitigated through the use of appropriate hard and soft landscape techniques.”*

The applicant is seeking planning permission for the change of use of land and the formation of a tennis court with associated alterations. The covering letter states that the tennis court proposed would be for private use only and would be to the standards required for a recreational tennis court. It can therefore be considered to be reasonably required and an appropriate facility for outdoor sports and recreation. As such, the proposed development would accord with to part (a).

Due to the existing boundary treatments and planting, the tennis court would have limited visibility from public vantage points. The proposal would also be set back approximately 82m from Barnsley Road and would be unobtrusively positioned. The proposal would not appear out of keeping with the rural surroundings and would be of an acceptable appearance. As such, the proposal would not introduce a prominent urban element into a countryside location and would preserve the openness of the Green Belt, complying with part (b).

Due to the nature of the proposal, it is noted that minimal ground works will be undertaken as part of the application. The submitted covering letter confirms that the installation of the tennis court would not require significant ground works that would be below any depth of any previous land levelling. As such, the proposed works would not result in significant alterations to the landscape and would not result in an incongruous landform out of character with its setting in accordance with part (c).

On this basis, it is considered that the proposed development constitutes an acceptable form of development in the Green Belt and that the proposal would comply with Policy LP56 of the Kirklees Local Plan and Chapter 13 of the NPPF. The proposal shall now be assessed against all other material planning considerations, which will be addressed below.

## **2. Impact on Visual Amenity**

Policy LP24 of the Kirklees Local Plan states that proposals should promote good design by ensuring the form, scale, layout, and details of all development respects and enhances the character of the townscape, extensions are subservient to the original building, are in keeping with the existing buildings in terms of scale, materials and details.

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.”*

#### Tennis Court

The tennis court proposed would measure approx. 35m in length and approx. 17.1m in depth. The tennis court would have a permeable surface and would be enclosed by mesh fencing approximately 2.75m high. Although the tennis court would be large in size, due to its siting, it would have limited visibility from public vantage points. On this basis, it is considered that the proposed development would not have any significant visual impact on the character and appearance of the surrounding area.

#### Summary

Having taken the above into account, the proposed development would not cause any significant harm to the visual amenity of the surrounding street scene, complying with Policy LP24 of the Kirklees Local Plan and the aims of Chapter 12 and 13 of the National Planning Policy Framework.

### **3. Impact on Residential Amenity of Neighbouring Residents**

Consideration in relation to the impact on the residential amenity of neighbouring occupants shall now be outlined, taking into account Policy LP24 c), which sets out that proposals should promote good design by, amongst other things, extensions minimising impact on residential amenity of future and neighbouring occupiers.

The submitted plans confirm that the host dwelling is situated in an isolated location with the nearest residential property (5 Barnsley Road) located approximately 67m away from the proposed development. Given the nature of the proposal and that the separation distance retained would be substantial, it is considered that the proposal would have an acceptable impact on the neighbour's residential amenity.

#### Summary

Having considered the above factors, the proposals are not considered to result in any adverse impact upon the residential amenity of any surrounding neighbouring occupants, complying with Policy LP24 of the Kirklees Local Plan (b) in terms of the amenities of neighbouring properties and Paragraph 135(f) of the National Planning Policy Framework.

### **3. Impact on Highway Safety**

Local Plan Policies LP21 and LP22 of the Kirklees Local Plan are relevant and seek to ensure that proposals do not have a detrimental impact on highway safety and provide sufficient parking. Furthermore, 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.

The proposal would not materially intensify the use or affect the existing parking arrangements on site. On this basis, it is considered that the proposal would not cause detrimental harm to the safe and efficient operation of the highway network, in accordance with Policies LP21 and LP22 of the Kirklees Local Plan, guidance within the Council's Highways Design Guide SPD, and Chapter 9 of the National Planning Policy Framework.

### **4. 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.

In this case, due to the nature of the proposal is not considered reasonable to require the applicant to put forward any specific resilience measures.

#### Coal Mining Legacy

The application site falls within the defined Development High Risk Area. The Mining Remediation Authority's records indicate that the plotted position of an on-site mine shaft 422415-006 is located in the south western part of the application site and an off-site mine shaft 422415-001 is located adjacent to

the south western corner of the application site with its potential zone of influence extending into the southern part of the site. Due to potential plotting inaccuracies, the actual position of mine shaft 422415-006 could deviate from its plotted position by several meters. In terms of past treatment, mine shaft 422415-001 was filled to the British Coal specification in January 1989. An untreated or inadequately treated mine entry and its resultant zone of influence pose a significant risk not only to surface stability but also public safety.

The planning application seeks permission for the change of use of land and the formation of a tennis court, including associated external alterations. The Cover Letter submitted with the application, dated 7th July 2025, highlights that *'as illustrated by the site planning history for both the erection of the dwelling, removal of the spoil heap and regrading of the land, and subsequent discharge of conditions, all coal mining and contamination remediation works have taken place.'* It further notes that *'the nature of the works, for the installation of a tennis court is not considered to require significant ground works that would be below any depth of any previous land levelling.'* This shows that the proposed development would not require significant groundworks or earthworks to facilitate the development due to the previous approved planning application. As such, the development is considered to fall under part B on the Coal Authority's exemptions list, exempt by nature of development. However, the mine entries do pose a potential public safety risk to those utilising this area, which is of significant concern. As such, the Mining Remediation Authority have no objection subject to the recommended informative.

### Ecology

The site itself consists of primarily grassland with semi-mature trees and a line of hedgerow. The site overall is surrounded by arable land, with low connectivity to wider, rich habitats. Due to the isolated nature of the works, KC Ecology do not believe that a Preliminary Ecological Appraisal is required. However, conditions have been added relating to a Construction Environment Management Plan, lighting strategy and hedgerow and tree protection details.

### Biodiversity Net Gain

Chapter 15 of the NPPF relates to conserving and enhancing the Natural Environment. Paragraph 192 of the NPPF outlines that decisions should promote the protection and recovery of priority species and identify and pursue opportunities for securing net gains for biodiversity. Paragraph 193 goes on to note that if significant harm to biodiversity resulting from development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.

Policy LP30 of the Kirklees Local Plan echoes the NPPF in respect of biodiversity and outlines that development proposals should minimise impacts on biodiversity and provide net biodiversity gains through good design by incorporating biodiversity enhancements and habitat creation where opportunities exist.

There have been updates to Schedule 7A of the Town and Country Planning Act 1990 (inserted by the Environment Act 2021, which result in biodiversity net gain being a statutory requirement. Biodiversity Net Gain (BNG) of 10% for developments is a mandatory requirement in England under the Environment Act 2021.

The submitted Biodiversity Net Gain Assessment demonstrates that there would be a net loss of biodiversity value for habitats comprising 0.12 habitat units. The applicant's agent has confirmed that the 10% net gain will be achieved onsite within the blue line boundary. An informative has been added to the decision notice to reflect this.

#### Contaminated Land

This site has been identified on the Council's mapping system as being located on potentially contaminated land. Therefore, KC Environmental Health have recommended a condition relating to unexpected contamination encountered during any groundworks.

#### Construction Noise

Construction noise can give rise to loss of amenity to neighbouring noise sensitive receptors, therefore, it is considered necessary for a footnote to be imposed restricting the times when noisy construction activities will be permitted.

There are no other matters relevant to the determination of this application.

### **5. Representations**

No representations were received following the statutory publicity.

### **6. Conclusion**

This application for the change of use of land and the formation of a tennis court with associated external alterations at 1 Barnsley Road has been assessed against relevant policies in the development plan as listed in the policy section of the report, the National Planning Policy Framework and other material considerations. Given the acceptable design and lack of harm in terms of visual and residential amenity, the proposed development is considered to be acceptable.

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 the development would constitute sustainable development and is therefore recommended for approval.

Recommendation: Approve

## **Decision Authorisation - Delegated Powers**

**Application Number:** 2025/91854

**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 to ensure the satisfactory appearance of the development on completion, and to accord with Policies LP1, LP2, LP21, LP22, LP24, LP30, LP52, LP53 and LP56 of the Kirklees Local Plan and the aims of the National Planning Policy Framework.

3. No external artificial lighting shall be erected within the site, unless and until details of size, location, orientation, lighting level and any associated fixing apparatus have first been submitted to and agreed in writing by the Local Planning Authority. The lighting shall be installed and operated in accordance with the approved details.

**Reason:** This condition is necessary in the interests of biodiversity and in accordance with Policy LP30 of the Kirklees Local Plan and Chapter 15 of the National Planning Policy Framework.

4. No works shall take place until a Construction Environmental Management Plan (CEMP: Biodiversity) has been submitted to and approved in writing by the local planning authority. The CEMP (Biodiversity) shall include the following:

- a) Summary of potentially damaging activities
- a) Identification of "biodiversity protection zones"
- b) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (these may be provided as a set of method statements)
- c) The location and timing of sensitive works to avoid harm to biodiversity features.
- d) The times during construction when specialist ecologists need to be present on site to oversee works.
- e) Responsible persons and lines of communication.

f) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.

g) Use of protective fences, exclusion barriers and warning signs.

The approved CEMP: Biodiversity 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:** This pre-commencement condition is necessary in the interests of biodiversity and in accordance with Policy LP30 of the Kirklees Local Plan and Chapter 15 of the National Planning Policy Framework.

5. Prior to the development commencing, measures should be put in place to protect the nearby Hedgerow and trees. Protection measures shall include temporary fencing for the protection of hedgerows and trees, include root protection areas, in accordance with BS 5837:2012. The protection measures shall remain in place until the completion of development or unless otherwise agreed in writing with the Local Planning Authority.

**Reason:** To ensure no harm is caused to the nearby trees and hedgerow as a result of the proposed development in line with Policy LP30 of the Kirklees Local Plan. This is a pre-commencement condition to ensure that any mitigation is implemented prior to development.

6. 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.

**NOTE:** In the event of encountering a reptiles or amphibians, all work must cease until the ecological clerk of works and Natural England are contacted for advice on the best way to proceed lawfully. All contractors working on site should be made aware of this advice and provided with the contact details of the ecological clerk of works.

**NOTE:** All contamination reports shall be prepared by a suitably competent person, as defined in Annex 2 of the National Planning Policy Framework. 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:** The proposed development lies within an area that has been defined by the Mining Remediation Authority as containing coal mining features at surface or shallow depth. These features may include: mine entries (shafts and adits); shallow coal workings; geological features (fissures and break lines); mine gas and former surface mining sites. Although such features are seldom readily visible, they can often be present and problems can occur, particularly as a result of new development taking place.

**NOTE:** Any form of development over or within the influencing distance of a mine entry can be dangerous and raises significant land stability and public safety risks. As a general precautionary principle, the Mining Remediation Authority considers that the building over or within the influencing distance of a mine entry should be avoided. In exceptional circumstance where this is unavoidable, expert advice must be sought to ensure a suitable engineering design which takes account of all relevant safety and environmental risk factors, including mine gas and mine-water. Your attention is drawn to the

Mining Remediation Authority Policy in relation to new development and mine entries available at: <https://www.gov.uk/government/publications/building-on-or-within-the-influencing-distance-of-mine-entries>

**NOTE:** Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires a Mining Remediation Authority Permit. Such activities could include site investigation boreholes, excavations for foundations, piling activities, other ground works and any subsequent treatment of coal mine workings and coal mine entries for ground stability purposes. Application forms for Mining Remediation Authority permission and further guidance can be obtained from The Mining Remediation Authority's website at: [www.gov.uk/get-a-permit-to-deal-with-a-coal-mine-on-your-property](http://www.gov.uk/get-a-permit-to-deal-with-a-coal-mine-on-your-property) What is a permit and how to get one? – <https://www.gov.uk/government/publications/permit-process/permit-process>

**NOTE:** If any future development has the potential to encounter coal seams which require excavating, for example excavation of building foundations, service trenches, development platforms, earthworks, non-coal mineral operations, an Incidental Coal Agreement will be required. Further information regarding Incidental Coal Agreements can be found here - <https://www.gov.uk/government/publications/incidental-coal-agreement/guidance-notes-for-applicants-for-incidental-coal-agreements>

**NOTE:** If any coal mining features are unexpectedly encountered during development, this should be reported immediately to the Mining Remediation Authority on 0800 288 4242. Further information is available on the Mining Remediation Authority website at: <https://www.gov.uk/government/organisations/mining-remediation-authority>

**NOTE:** The granting of planning permission does not override any private legal rights or consents that may be required. It is the responsibility of the applicant / developer to ensure that all appropriate consents are in place prior to any development commencing; during the period of construction existing access for neighbouring properties is maintained; and no damage is caused to the access driveway or surrounding properties.

**NOTE:** To minimise noise disturbance at nearby premises it is generally recommended that activities relating to the erection, construction, alteration, repair or maintenance of buildings, structures or roads shall not take place outside the hours of:

- 07.30 and 18.30 hours, Mondays to Fridays
- 08.00 and 13.00hours, Saturdays
- With no working Sundays or Public Holidays

In some cases, different site-specific hours of operation may be appropriate. Under the Control of Pollution Act 1974, Section 60 Kirklees Environment and Transportation Services can control noise from construction sites by serving a notice. This notice can specify the hours during which the works may be carried out.

**Plans and specifications schedule:**

<b>Plan Type</b>	<b>Reference</b>	<b>Date Received</b>
Site Location Plan	11	07/07/2025
Proposed Block Plan & Detail of Fencing around Tennis Court	12	07/07/2025
Existing and Proposed Site Plans	13	07/07/2025
Small Sites Metric	-	07/07/2025
Biodiversity Statement	-	07/07/2025
Covering Letter	-	07/07/2025
Climate Change Statement	-	07/07/2025

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 Planning Authority have, where possible, made a pre-application advice service available, complied with the Kirklees Development Management Charter 2024 and otherwise actively engaged with the applicant in dealing with the application. In this case, the design of the original scheme has been found acceptable. No further amendments or details were sought thereafter. The applicant’s agent has agreed to the pre-commencement conditions.

**Report Dated: 22/10/2025**

**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;
- ii) planning permission is granted which has effect before 2 April 2024; or
- i) 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
- ii) 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.