

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:	2026/62/90706/E
Site Address:	Mars Care And Treats Petcare Europe Ltd, Oakwell Way, Birstall, Batley, WF17 9LU
Description:	Erection of temporary portakabin building for a period of 5 years
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: 15 June 2026

Officer Report

Reference No. 2026/62/90706/E

Site Address: Mars Care And Treats Petcare Europe Ltd, Oakwell Way, Birstall, Batley, WF17 9LU

Proposal: Erection of temporary Portakabin building for a period of 5 years.

Site Description

The application relates to Mars Care And Treats Petcare Europe Ltd situated off Oakwell Way in Birstall, Batley. The site is located within a priority employment area (PEA45) on the Kirklees Local Plan Proposals Map. The wider area comprises a combination of residential and commercial properties of varying materials, ages and architectural styles. The site is not within a conservation area, nor are there any listed buildings within close proximity. However, public right of way BAT/8/30 is located along the eastern boundary of the application site.

Description of Proposal

The application seeks planning permission for the erection of a temporary Portakabin building for a period of 5 years. The details of the proposal have been summarised below:

- The modular building would be temporary and would provide an ancillary wash down / maintenance area to be utilised by existing staff.
- The structure would be single storey in height and would measure approximately 25.53m in length, approx. 6.77m in depth and approx. 3.512m in overall height.
- The structure would be constructed in plastisol-coated galvanised steel cladding.

Relevant Planning History

- **2025/93321:** Erection of 3 storage silos. [Planning application details | Kirklees Council](#) - Conditional Full Permission
- **2025/92205:** Erection of ammonia based refrigeration plant equipment. [Planning application details | Kirklees Council](#) - Conditional Full Permission
- **2016/92985:** Discharge of conditions 3. (Phase II Intrusive Site Investigation Report) 4, 5, & 6. (Remediation Strategy) on previous permission no: 2016/90611 for Demolition of existing security gatehouse and erection of new building with upgraded boundary and site. [Planning application details | Kirklees Council](#) - Discharge of Condition(s) Split Decision

- **2016/90670:** Erection of palisade fence and 4 CCTV masts. Planning application details | Kirklees Council - Conditional Full Permission
- **2016/90611:** Demolition of existing security gatehouse and erection of new building with upgraded boundary and site works. Planning application details | Kirklees Council - Conditional Full Permission
- **2016/90610:** Erection of illuminated signs. Planning application details | Kirklees Council – Advertisement Consent Granted
- **2014/93585:** Installation of reinforced base and erection of 3 silos. Planning application details | Kirklees Council - Conditional Full Permission
- **2013/90657:** Removal of existing product silos and replacement with new product silos. Planning application details | Kirklees Council - Conditional Full Permission
- **2012/91588:** Discharge conditions 7, 9, 10, 11 following a grant of planning permission on 2011/90489. Planning application details | Kirklees Council – Discharge of Condition(s) Split Decision
- **2011/92945:** Non material amendment on application no. 2011/90489 for erection of a packaging extension with associated service yard, loading bays & HGV trailer park, erection of process extension with associated service yard, loading bays & lorry park, alterations to western external open space area to include a woodland walk, alterations to site access arrangement relocation of existing security gatehouse, erection of a new sprinkler tank, formation of hard standing to the west of the new process extension, erection of a enclosure for electric transformer and erection of enclosure to accommodate electric transformer to the north of the existing buildings, amendments to layout of existing car and cycle parking provision and demolition of existing packaging extension. Planning application details | Kirklees Council - NMA Approved
- **2011/92331:** Non material amendment to previous permission 2009/93375 for erection of single wind turbine with ancillary infrastructure to include access. Planning application details | Kirklees Council – NMA Approved
- **2011/90489:** Erection of a packaging extension with associated service yard, loading bays & HGV trailer park, erection of process extension with associated service yard, loading bays & lorry park, alterations to western external open space area to include a woodland walk, alterations to site access arrangement relocation of existing security gatehouse, erection of a new sprinkler tank, formation of hard standing to the west of the new process extension, erection of a enclosure for electric transformer and erection of enclosure to accommodate electric transformer to the north of the existing buildings, amendments to layout of existing car and cycle parking provision and demolition of existing packaging extension. Planning application details | Kirklees Council – Conditional Full Permission

- **2010/93208:** Variation of condition 2 from planning permission 2008/92656 for erection of 50m high anemometry mast. [Planning application details | Kirklees Council](#) - Conditional Full Permission
- **2010/92280:** Removal of existing column and antennas and replacement with new 20m Jupiter column with antennas, together with the addition of 1 no new equipment cabinet. [Planning application details | Kirklees Council](#) - Conditional Full Permission
- **2010/91031:** Installation of 5 powder silos. [Planning application details | Kirklees Council](#) - Conditional Full Permission
- **2009/93375:** Erection of single wind turbine with ancillary infrastructure to include access. [Planning application details | Kirklees Council](#) – Refused (Appeal Upheld)
- **2009/91985:** Erection of replacement facias. [Planning application details | Kirklees Council](#) - Conditional Full Permission
- **2009/91984:** Installation boundary fence, vehicle & pedestrian access gates and security mast. [Planning application details | Kirklees Council](#) – Conditional Full Permission
- **2008/93290:** Installation of 3 no. powder silos to factory. [Planning application details | Kirklees Council](#) – Conditional Full Permission
- **2008/92656:** Erection of 50m high anemometry mast. [Planning application details | Kirklees Council](#) - Conditional Full Permission
- **2000/90227:** Erection of storage building. [Planning application details | Kirklees Council](#) - Conditional Full Permission
- **99/92108:** Erection of 3m high fencing to form compound for plant and machinery. [Planning application details | Kirklees Council](#) - Conditional Full Permission
- **98/91932:** Erection of process building and extension to car park. [Planning application details | Kirklees Council](#) - Conditional Full Permission

Representations

The application was publicised by site notice, which expired on 27th May 2026. As a result of the above publicity, no representations have been received.

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

[The Mining Remediation Authority](#) – No objection

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 27th February 2019).

The site is located within a priority employment area (PEA46) 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 3** - Location of New Development
- **LP 8** - Safeguarding Employment Land and Premises
- **LP 9** - Supporting Skilled and Flexible Communities And Workforce
- **LP 21** - Highways and Access
- **LP 22** - Parking
- **LP 24** - Design
- **LP 30** - Biodiversity & Geodiversity
- **LP 52** - Protection and Improvement of Environmental Quality
- **LP 53** - Contaminated and Unstable Land

In this case, the following SPDs are applicable:

- Highways Design Guide SPD (adopted 4th November 2019)
- Biodiversity Net Gain Technical Advice Note (adopted 29th June 2021)
- Waste Management Design Guide for New Developments (Version 5, October 2020).

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 4** - Decision-Making
- **Chapter 12** - Achieving Well-Designed Places
- **Chapter 14** - Meeting the Needs of Climate Change, Flooding and Coastal Change
- **Chapter 15** - Conserving and Enhancing the Natural Environment

Assessment

1. Principle of development

The site is allocated as a Priority Employment Area (PEA45) on the Kirklees Local Plan (KLP). Policy LP1 of the KLP states that when considering development proposals, the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the NPPF.

With regard to the land allocation as employment land, LP8 supports development which continues the employment use. Part 1 of the policy states that proposals for re-development for employment generating uses (as defined in the Glossary) in Priority Employment Areas will be supported where there is no conflict with the established employment uses in the area (as defined in the Glossary). Part 2 of the policy outlines the limitations if a proposed scheme is proposing a non-employment generating use.

The Local Plan Glossary defines employment generating uses as being those which come under Use Classes B1, B2 and B8. Following changes to the Use Classes Order, Use Class B1 has been replaced with Use Class E. The proposal seeks planning permission for the erection of a temporary Portakabin building for a period of 5 years. Although this would not be an employment generating use (as defined in the Local Plan glossary), it would be provided on land already related to a B2 use. As such, the scheme would comply with Policy LP8.

In this case, the principle of development is considered acceptable, and the proposal shall now be assessed against all other material planning considerations, including visual and residential amenity, as well as highway safety. These issues along with other policy considerations will be addressed below.

1. 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.”*

The modular building would be temporary and would provide an ancillary wash down / maintenance area to be utilised by existing staff. The structure proposed would be single storey in height and would measure approximately 25.53m in length, approx. 6.77m in depth and approx. 3.512m in overall height. The Portakabin would be constructed in plastisol-coated galvanised steel cladding and would be of a simple form. The structure would appear subservient in relation to the existing buildings and would have limited visibility from public vantage points given the significant scale of the site. For these reasons, the proposed development would not cause any significant harm to the visual amenity of the wider street scene, complying with Policy LP24 of the Kirklees Local Plan and the aims of Chapter 12 of the National Planning Policy Framework.

2. Impact on Residential Amenity

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.

Due to its location and nature, the proposal would not cause any additional overlooking, overbearing or overshadowing harm to the residential amenity of nearby neighbouring occupants. Therefore, it is considered that there would be no undue harm with regard to residential amenity.

Having considered the above factors, the proposed works 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 proposed development would not materially intensify the use or affect the existing highway access and parking arrangements on site. Therefore, 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.

Ecology

Given the existing habitats in the location proposed for the modular unit, and the industrial surrounding land use, it is unlikely that protected or priority species are present and likely to be affected by the proposals. However, as there is an existing hedgerow to be removed, KC Ecology have recommended an informative relating to breeding birds.

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.

Details of the proposal's contribution have been provided. The Biodiversity Net Gain Metric demonstrates that an area of Modified Grassland will be lost to the modular unit, and an area of Modified Grassland will be enhanced to Other Neutral Grassland in Moderate condition. As such, an informative has been added to the decision notice to reflect this.

Coal Mining Legacy

The Mining Remediation Authority records indicate that the site lies in the defined Development High Risk Area where underground coal mining has taken place at shallow depth and where further historic unrecorded shallow coal mining is likely to have occurred.

The Mining Remediation Authority's general approach in cases where development is proposed within the defined Development High Risk Area is to recommend that the applicant obtains coal mining information for the application site and submits a Coal Mining Risk Assessment (CMRA) to support their planning application. However, in this particular case, the application is proposing the erection of a Portakabin and this would appear to be a modular building which does not require significant foundations or groundworks. Therefore, this type of development would fall under part B (exempt by nature of development) on the Mining Remediation Authority's exemption list.

Taking into account the above, the Mining Remediation Authority's Planning & Development Team do not consider that a Coal Mining Risk Assessment is required to support the proposal in this case, and do not object to this planning application.

Public Right of Way

Although it is noted that Public footpath BAT/8/30 runs along the eastern boundary of the application site, due to the location of the proposed works, it is considered that there would be no impact upon the PROW's setting.

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

5. Representations

No representations were received following the statutory publicity.

6. History of negotiations/amendments received

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

7. Conclusion

This application for the erection of a temporary Portakabin building for a period of 5 years at Mars Care And Treats Petcare Europe Ltd 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 extension 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: 2026/90706

Officer Recommendation: Approve

Conditions and Reasons

1. The development is hereby approved for a temporary period of 5 years from the date of this permission until 14th June 2031. On expiry of this period the Portakabin building and all associated development shall be removed and the site shall be restored in accordance with a scheme of work which will be submitted to the Local Planning Authority no later than six months before the expiry date of this permission. The scheme of works shall not be implemented until the Local Planning Authority has given its written approval. Works comprising the approved scheme shall be completed within six months of the date of the written approval.

Reason: The granting of a temporary permission would be in the interests of protecting visual amenity in accordance with Policy LP24 of the Kirklees Local Plan and the aims of Chapter 12 of the National Planning Policy Framework.

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, LP8, LP9, LP21, LP22, LP24, LP30, LP52 and LP53 of the Kirklees Local Plan, the guidance within the Council's Highways Design Guide SPD and the aims of the National Planning Policy Framework.

NOTE: No removal of vegetation that may be used by breeding birds shall take place between 1st March and 31st August inclusive, unless a competent ecologist has undertaken a careful, detailed check for active birds' nests immediately prior to the works and provided written confirmation that no birds will be harmed and/or that there are appropriate measures in place to protect nesting bird interest on site. Any such written confirmation should be submitted to the local planning authority.

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 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

NOTE: What is a permit and how to get one?
<https://www.gov.uk/government/publications/permit-process/permit-process>

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: 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: 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: -

Plan Type	Reference	Revision	Date Received
Existing Location & Block Plan	TM420066885	-	25/03/2026
Proposed Location & Block	TM420066885	-	25/03/2026

Plan Type	Reference	Revision	Date Received
Plan			
Proposed Layout 2 x UK123 Ultima Module Building & 1 x TN124 Titan Building	HD/14377/01	B	25/03/2026
The Statutory Biodiversity Metric	-	-	22/05/2026
Design and Access Statement	-	-	25/03/2026
Climate Change Statement	-	-	25/03/2026

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.

Report Dated: 05/06/2026

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.