
Report of the Head of Planning and Development

STRATEGIC PLANNING COMMITTEE

Date: 04-Dec-2025

Subject: Planning Application 2020/92350 Outline application for residential development (Use Class C3) of up to 181 dwellings, engineering and site works, demolition of existing property, landscaping, drainage and other associated infrastructure Land south of, Heybeck Lane, Chidswell, Shaw Cross, Dewsbury

APPLICANT

C C Projects

DATE VALID

22-Jul-2020

TARGET DATE

21-Oct-2020

EXTENSION EXPIRY DATE

24-Dec-2025

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[Public speaking at committee link](#)

LOCATION PLAN



Map not to scale – for identification purposes only

Electoral wards affected: Batley East

Ward Councillors consulted: Yes

Public or private: Public

RECOMMENDATION:

DELEGATE approval of the application and the issuing of the decision notice to the Head of Planning and Development in order to complete the list of conditions including those contained within this report and to secure a Section 106 agreement to cover the following matters:

1) Highway capacity / improvement works – contributions towards junction improvement schemes:

- a) Rein Road junction – £27,360.74.
- b) Shaw Cross junction – £48,204.28.
- c) Soothill Lane junction – £51,222.42.

2) Sustainable transport

- a) Bus stop upgrade contribution – £62,000.
- b) Bus route contribution – £120,000.
- c) Framework Travel Plan (and subordinate plans) implementation and monitoring including fees – £15,000 (£3,000 for five years).

3) Education

- a) £300,000 contribution towards interim primary provision.
- b) Secondary education contribution of £223,957.

4) Open space, including sports and recreation and playspaces – contribution based on Open Space SPD methodology / formulae, taking into account on-site provision (to be confirmed at Reserved Matters stage), and submission of a Public Open Space Scheme.

5) Affordable housing – 20% provision.

6) Biodiversity

- a) 10% biodiversity net gain to be provided on-site, with off-site measures if the full 10% can't be achieved on-site;
- b) Securing other off-site measures (including buffers to ancient woodlands, and provision of skylark plots).

7) Management – the establishment of a management company for the management and maintenance of any land not within private curtilages or adopted by other parties, and of infrastructure. May include street trees if not adopted.

8) Drainage – management company to manage and maintain surface water drainage until formally adopted by the statutory undertaker. Establishment of drainage working group (with regular meetings) to oversee implementation of a site-wide drainage masterplan.

9) Ancient woodland – management plan (and works, if required) for public access to Dum Wood (outside application site, but within applicant's ownership), including the management and maintenance of the buffer between the application site and Dum Wood, and monitoring of impacts on ancient woodland.

10) Social value – requirement for applicant / developer, future developer partners and occupants of employment floorspace to provide package of training, apprenticeships and other social value measures.

11) Masterplanning – No ransom scenarios to be created at points where new roads meet other development parcels / phases.

12) Monitoring – £80,000 monitoring fee.

All contributions are to be index-linked.

In the circumstances where the Section 106 agreement has not been completed within three months of the date of the Committee's resolution then the Head of Planning and Development shall consider whether permission should be refused on the grounds that the proposals are unacceptable in the absence of the mitigation and benefits that would have been secured; if so, the Head of Planning and Development is authorised to determine the application and impose appropriate reasons for refusal under Delegated Powers.

1.0 INTRODUCTION

1.1 This application is presented to the Strategic Planning Committee at the request of Cllr Cathy Scott and Cllr Habiban Zaman, and due to the number of recent representations, many of which specifically requested that the application be brought to committee for reconsideration.

1.2 This application relates to land at Heybeck Lane, the smaller of the two Chidswell sites within site allocation MXS7.

1.3 At its meeting of 08/12/2022, the Strategic Planning Committee resolved to approve this application. Following the completion of an appropriate Section 106 agreement, the council's decision was issued on 23/10/2024. However, that decision was quashed by the High Court on 04/09/2025.

1.4 This report sets out a timeline of events, explains the decision of the High Court, updates Members regarding conditions and the Section 106 agreement, and again recommends approval of outline planning permission. This report is accompanied by the following appendices:

Appendix 1 – Fully-worded conditions

Appendix 2 – Draft Section 106 agreement

Appendix 3 – Minutes of Strategic Planning Committee meeting of 08/12/2022

Appendix 4 – High Court ruling of 04/09/2025

Appendix 5 – Previous committee report

Appendix 6 – Previous committee update

2.0 TIMELINE OF EVENTS

2.1 The following key dates are noted:

11/07/2019 – Pre-application report considered by the Strategic Planning Committee.

22/07/2020 – Application received.

17/11/2020 – Position statement considered by the Strategic Planning Committee.

06/10/2022 – Position statement considered by the Strategic Planning Committee.

08/12/2022 – Strategic Planning Committee resolved to approve the application, with authority delegated to officers to prepare conditions and Section 106 agreement.

17/10/2024 – Section 106 agreement completed.

23/10/2024 – Outline planning permission issued subject to conditions and a Section 106 agreement.

29/11/2024 – Chidswell Action Group (CAG) sought judicial review on four substantive grounds relating to:

- 1 – Agricultural land classification
- 2 – Environmental Impact Assessment
- 3 – Ecology conditions
- 4 – Biodiversity Net Gain

19/12/2024 and 27/02/2025 – Supplemental deeds agreed between the council and applicant in response to CAG's concerns.

11/02/2025 – Deputy High Court judge refused permission for CAG to bring grounds 1 and 2 (on the grounds that they were not arguable), but granted permission to challenge on grounds 3 and 4.

16/04/2025 – Greenfields judgement issued (Court of Appeal). This judgement confirmed that proposed Section 106 agreements should be published prior to the grant of planning permission, rather than only when completed and dated.

28/04/2025 – Prompted by the Greenfields case, CAG sought permission to include a further ground (ground 5) regarding the council's procedural breach (as confirmed by Greenfields) in not publishing a draft Section 106 agreement in advance of issuing the planning permission.

24/06/2025 – CAG's claim heard at the High Court.

04/09/2025 – High Court allowed CAG's claim on ground 5, but dismissed grounds 3 and 4. The judge therefore quashed the council's grant of planning permission of 23/10/2024.

3.0 UPDATES SINCE 08/12/2022

Planning legislation, case law, policy and guidance

- 3.1 Relevant planning policy and guidance is referred to in the previous committee report at Appendix 5. Whilst policy and guidance have continued to evolve since 2022, no new considerations have arisen that would necessitate a change to the previous recommendation to grant planning permission.

- 3.2 The evolving policy and guidance landscape has included further versions of the National Planning Policy Framework (the most recent having been published on 12/12/2024, amended 07/02/2025). The council has also published the Kirklees Interim Housing Position Statement to Boost Supply (2023).
- 3.3 Planning legislation of relevance to this application has not significantly changed since 08/12/2022. Biodiversity Net Gain has become mandatory under the Environment Act 2021, however the statutory requirement does not apply to this application.
- 3.4 On 16/04/2025, the Court of Appeal handed down its judgment in the Greenfields case. In that case, Isle of Wight Council had resolved to grant planning permission for a development of 473 dwellings and associated infrastructure. A Section 106 agreement was completed, and planning permission was granted in August 2023. After the grant of planning permission, the council published the Section 106 agreement and decision notice on its register. Greenfields (IOW) Ltd (a local residents' association) challenged the decision on the basis that the grant of planning permission was invalid because the council had failed to publish the Section 106 agreement prior to granting planning permission in accordance with Article 40(3)(b) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (the DMPO). The High Court (on 23/08/2024) did not rule that the decision to grant permission was unlawful on those grounds, however the Court of Appeal disagreed, and subsequently held that the purpose of the publication requirement in Article 40(3)(b) of the DMPO was to enable the public to know the terms of a proposed or agreed Section 106 agreement (and to comment on it if they choose to do so), and that in this case the public had not been afforded that opportunity. The decision was quashed on that basis. The decision has had ramifications for local planning authorities up and down the country, as it was not common practice for draft versions of Section 106 agreements to be published prior to being agreed. Kirklees Council now publishes draft Section 106 agreements prior to the grant of planning permission, to enable the public to comment in the event that they wish to do so.

Housing need and delivery

- 3.5 The 2023 update of the five-year housing land supply position for Kirklees shows 3.96 years supply of housing land, and the 2023 Housing Delivery Test (HDT) measurement which was published on 12/12/2024 demonstrated that housing delivery for Kirklees for the past three years has fallen below the 75% pass threshold.
- 3.6 As the council is currently unable to demonstrate a five-year supply of deliverable housing sites, and as delivery of housing has fallen below the 75% HDT requirement, it is necessary to consider planning applications for housing development in the context of NPPF paragraph 11. This paragraph triggers a presumption in favour of sustainable development. For decision making this means:

“where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

1. the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed; or

2. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.”

- 3.7 Footnote 8 of the NPPF clarifies that for applications involving the provision of housing, the presumption applies to situations whereby the local planning authority cannot demonstrate a five-year supply of deliverable housing sites, or where the Housing Delivery Test has fallen below the 75% pass threshold.
- 3.8 The council's inability to demonstrate a five-year supply of housing land or pass the Housing Delivery Test weighs in favour of housing development. Nonetheless, this must be balanced against any adverse impacts of granting the proposal.
- 3.9 It remains the case that a residential development of up to 181 dwellings would make a significant contribution towards meeting identified needs, that this attracts significant weight in the balance of material planning considerations relevant to the current application, and that full weight can be given to site allocation MXS7 (which allocates the application site for mixed use (employment and housing) development).

Site context

- 3.10 The site's physical context has not significantly changed since 08/12/2022, although work has continued on the nearby development sites at Owl Lane and Soothill Lane.

High Court decision regarding Heybeck Lane

- 3.11 The High Court's ruling of 04/09/2025 is attached to this report at Appendix 4.
- 3.12 As noted above, the grant of planning permission (dated 23/10/2024) was quashed by the High Court on 04/09/2025 on a single ground (ground 5) relating to the council's failure to publish a draft of the Section 106 agreement in advance of issuing that planning permission. This was the council's standard practice at the time, and the council has now updated its procedures with regard to all planning applications which are accompanied by a Section 106 agreement.
- 3.13 As detailed later in this report, a draft of a Section 106 agreement has been published and interested parties (including the Chidswell Action Group and the Yorkshire Wildlife Trust) have now commented on the draft. The applicant and officers have considered and responded to these comments and, where appropriate, have agreed certain minor amendments to the form of the Section 106 agreement in response. A further draft of the Section 106 agreement has since been published.

- 3.14 The relevant procedural issue (the failure to publish a draft of the Section 106 agreement in advance of issuing planning permission) has been rectified prior to this committee meeting, and the High Court ruling does not raise any other matter that needs to be addressed in this report. Indeed, regarding this matter the council has sought the opinion of a planning barrister (opinion of Killian Garvey dated 22/10/2025) who has advised as follows:

For the avoidance of doubt, the High Court's judgment quashing the Council's decision should in no way inform how the Council ultimately determine the application going forward. The Court were critical of the process undertaken by the Council. Plainly the Council needed to rectify this error by publishing the draft Section 106 agreement henceforth, and I am instructed that the draft has indeed been published on the Council's planning portal since 23 September 2025. But the Court were not seeking to indicate how the application should be determined otherwise. Indeed, the Court's role is not to determine planning applications or indicate whether applications should be granted or not. The Court's reasoning should not be interpreted in this way (indeed it would be a separate error of law if the Council thought the High Court were telling the Council whether to grant or refuse the application).

- 3.15 Accordingly, officers are satisfied that there is nothing further in the High Court's ruling of 04/09/2025 which now prevents or warrants a delay in the making of a further decision by Members.

Representations

- 3.16 Regarding the need for this application to be brought back to the Strategic Planning Committee, in light of the High Court's ruling, on 22/09/2025 officers advised the Chidswell Action Group that "At this stage the council considers that there is nothing in the High Court's ruling, or otherwise, that necessitates bringing the application back to Strategic Planning Committee". However, following the receipt of a significant number of representations (many of which specifically requested that the application be brought to committee for reconsideration), on 09/10/2025 officers advised the Chidswell Action Group that "Given the degree of interest in the application (2020/92350), we are now of the view that it would be appropriate to bring it back to Strategic Planning Committee".
- 3.17 In the weeks since the High Court's ruling of 04/09/2025 was handed down, 115 representations were received in relation to this application. These included representations submitted by Cllr Cathy Scott, Cllr Habiban Zaman, the Chidswell Action Group, Just Transition Wakefield, Keep Our Rural Spaces, the Upper Dearne Valley Environmental Trust, the Woodland Trust and the Yorkshire Wildlife Trust. These representations are summarised later in this report.
- 3.18 Further submissions were also made by the applicant in response to these representations. These took the form of a letter (Deloitte, 06/11/2025) and a technical response (Lucion, received 17/11/2025) regarding the adjacent ancient woodland.

Secretary of State

- 3.19 On 05/05/2023, the Secretary of State for Levelling Up, Housing and Communities decided not to call in the application.

Corrections

- 3.20 As noted in the previous committee update (Appendix 6), at paragraph 10.41 of the previous committee report (Appendix 5), the second sentence regarding committed schemes was included in error, and should be disregarded.
- 3.21 The minutes at Appendix 3 erroneously omit “(vi)” from the list of Section 106 matters. This was simply an error in the text (the items should have been numbered (i) to (xii)), and no provisions were omitted from the committee resolution or from the draft Section 106 agreement as a result.

Revised recommendation

- 3.22 The recommendation now before Members is, again, for approval of outline planning permission, however elements of the recommendation now differ to those of the recommendation considered by Members on 08/12/2022. The differences are as follows:
- Revised list of conditions – see section 4.0 below and Appendix 1.
 - Revised list of Section 106 obligations – see section 5.0 below, Appendix 2, and the summary at the first page of this report.
 - Approval need not be subject to Secretary of State call-in – see paragraph 3.19 above.

4.0 CONDITIONS

- 4.1 Fully-worded conditions are provided at Appendix 1. These have been agreed with the applicant, and are largely as per the list considered by the Strategic Planning Committee on 08/12/2022, but with changes where appropriate. Additional conditions have been drafted regarding:
- Highway condition surveys and remediation (condition 7);
 - Ancient woodland protection during construction (condition 10);
 - Protection of the ancient woodland from artificial light (condition 27);
 - Flood routing (condition 23);
 - Bird nesting and vegetation removal (condition 25); and
 - Details of residential units (condition 26).
- 4.2 In the table below, the left hand column repeats the summary of conditions set out in the committee resolution of 08/12/2022. The right hand column sets out where the committee resolution has been captured in the drafted conditions at Appendix 1, and details deviations from the committee resolution (with – where applicable – explanation as to why, or where/how alternative provision is to be secured). The references below to the “Leeds Road” development relate to the scheme proposed under application 2020/92331. The references to “Section 278” refer to that section of the Highways Act 1980.

Conditions listed in committee resolution of 08/12/2022	Where captured in final list of conditions (with – where applicable – commentary on deviations from committee resolution, and/or where/how alternative provision is to be secured)
1) Standard outline condition (approval of reserved matters prior to commencement).	Condition 1
2) Standard outline condition (implementation in accordance with approved reserved matters).	Condition 2
3) Standard outline condition (reserved matters submission time limits – first reserved matters application to be submitted within three years of outline approval, last to be submitted within five years).	Condition 3
4) Standard outline condition (reserved matters implementation time limit – within two years of reserved matters approval).	Condition 4
5) Development in accordance with plans and specifications.	Included in condition 2.
6) Details of phasing to be submitted.	Condition 5.
7) Implementation of junction improvement schemes when required, in accordance with details (including road safety audits and arrangements for implementation under Section 278) to be submitted.	Details of site access scheme to be considered under Section 278, implementation of off-site junction works to be secured under conditions of the Leeds Road permission.
8) Submission of interim and final details of Heybeck Lane site entrance (including road safety audits and arrangements for implementation under Section 278), and subsequent implementation.	Condition 12 secures implementation, details to be considered under Section 278.
9) Assessment of potential for decentralised energy scheme to be carried out prior to submission of Reserved Matters applications.	Instead, condition 13 requires details of space for pipework if the Leeds Road development includes an energy network.
10) Flood risk and drainage – full site-wide scheme to be submitted.	Condition 21.
11) Flood risk and drainage – detailed drainage proposals to be submitted for each parcel / phase.	Condition 22.
12) Separate systems of foul and surface water drainage to be provided.	Details to be submitted pursuant to conditions 21 and 22 will need to demonstrate separate provision.
13) Ecological mitigation and enhancement details (including an Ecological Design Strategy, measures to address impacts on birds including ground-nesting farmland birds), and details of mitigation and delivery measures to be submitted.	Condition 24 and Section 106 Schedule 5 (including measures that would achieve what an Ecological Design Strategy would).

14) Air quality mitigation measures to be submitted.	Not necessary for this entirely-residential development, given other measures secured.
15) Further noise assessment and mitigation measures to be submitted.	Condition 14.
16) Contaminated land – phase II intrusive site investigation report to be submitted.	Condition 15.
17) Contaminated land – remediation strategy to be submitted.	Condition 16.
18) Contaminated land – remediation strategy to be implemented.	Condition 17.
19) Contaminated land – validation report to be submitted.	Condition 18.
20) Coal mining legacy – details of intrusive site investigation (and, where necessary, remediation) to be submitted.	Conditions 19 and 20.
21) Archaeological site investigation.	Condition 11.
22) Site-wide placemaking strategy to be submitted prior to Reserved Matters applications, and to include design principles, coding and other arrangements to ensure high quality, co-ordinated development that appropriately responds to existing guidance including Housebuilders Design Guide Supplementary Planning Document.	Not necessary for a development of this size, and given a single Reserved Matters application is likely.
23) Bus stop infrastructure audit and improvement plan to be submitted, with timeframes for implementation.	Audit and plan already submitted, implementation to be funded by contribution secured under Section 106 Schedule 1.
24) Construction (Environmental) Management Plan to be submitted.	Condition 6.
25) Tree protection measures to be approved and implemented.	Condition 9.
26) Temporary (construction phase) drainage measures to be approved and implemented.	Condition 8.
27) Site-wide open space strategy to be submitted prior to Reserved Matters applications (or with the first Reserved Matters application), and to include proposals for on-site provision with reference to existing local provision and the six open space typologies of the Open Space Supplementary Planning Document.	Not necessary for a development of this size, and given a single Reserved Matters application is likely. Public Open Space Scheme (Section 106 Schedule 3) and assessment of proposals at Reserved Matters stage further obviate the need for a site-wide strategy.

5.0 SECTION 106 AGREEMENT

5.1 A full draft of a Section 106 agreement is provided at Appendix 2. This addresses the Heads of Terms considered by the Strategic Planning Committee on 08/12/2022, but differs in the following respects:

- Highway capacity / improvement works – Precise figures for junction improvement contributions now included, and contributions no longer conditional.
- Sustainable transport – Bus route contribution, and precise figure for bus stop upgrade contribution, now included.
- Open space – Site-wide strategy no longer included.
- Air quality – Obligations no longer required or recommended.
- Biodiversity – Reference to contribution no longer included.
- Ancient woodland – Provisions added regarding management and maintenance of buffer, and monitoring of impacts on ancient woodland.
- Monitoring – Additional obligation, including monitoring fee.

5.2 The Bus Stop Infrastructure Contribution (of £62,000) was arrived at following an area walkover (attended by officers, WYCA, and the applicant’s transport consultant) on 26/09/2023, and the applicant’s submission of a Bus Stop Infrastructure Audit (appended to the draft Section 106 agreement).

5.3 The Bus Route Contribution (of £120,000) is this development’s share of the £1,072,000 contribution (to be split between the two sites) that would be put towards pump-priming a Dewsbury-Leeds bus route through the Chidswell site.

5.4 Regarding air quality, the applicant submitted information (letters dated 27/10/2023 and 14/02/2024, and a Technical Note (Delta-Simons, dated 13/02/2024) relating to both sites (Heybeck Lane and Leeds Road). For the Heybeck Lane site, the applicant calculated a damage cost value of £93,557.37, and a mitigation proposals value of £198,667. Those mitigation proposals (such as travel planning and the provision of electric vehicle charging points) are to be secured via conditions and the Section 106 agreement. There is, therefore, no need for further obligations regarding air quality to be included in the Section 106 agreement. In addition, on 19/06/2024, KC Environmental Health confirmed that no condition regarding air quality was needed for the Heybeck Lane site.

5.5 In the table below, the left hand column repeats the committee resolution of 08/12/2022. The right hand columns set out where the committee resolution has been captured in the draft Section 106 agreement, and details deviations from the committee resolution (with – where applicable – explanation as to why, or where/how alternative provision is to be secured). Again, the reference below to the “Leeds Road” development relates to the scheme proposed under application 2020/92331.

Section 106 items listed in committee resolution of 08/12/2022	Where captured in the draft Section 106 agreement (with – where applicable – commentary on deviations from committee resolution, and/or where/how alternative provision is to be secured)
(i) Highway capacity / improvement / other works:	
a) contributions towards junction improvement schemes (applicable should schemes secured by condition prove to be more appropriately delivered via a Section 106 provision).	Section 106 Schedule 1. Contributions are not conditional.

b) contribution towards Shaw Cross junction scheme.	Section 106 Schedule 1. Contribution is not conditional.
(ii) Sustainable transport:	
a) Bus stop upgrade contribution (applicable if bus stop audit demonstrates the need).	Section 106 Schedule 1.
b) Framework Travel Plan (and subordinate plans) implementation and monitoring including fees – £15,000 (£3,000 for five years).	Section 106 Schedule 2.
(iii) Education:	
a) £300,000 contribution towards interim primary provision.	Section 106 Schedule 1.
b) Secondary education contribution of £223,957.	Section 106 Schedule 1.
(iv) Open space, including sports and recreation and playspaces – contribution based on Open Space SPD methodology / formulae, taking into account on-site provision (to be confirmed at Reserved Matters stage). Site-wide strategy required to ensure provision across all phases / parcels / Reserved Matters applications is co-ordinated.	Section 106 Schedule 3. Public Open Space Scheme (and assessment of proposals at Reserved Matters stage) obviates need for a site-wide strategy.
(v) Affordable housing – 20% provision.	Section 106 Schedule 4.
(vii) Air quality – contribution (amount to be confirmed, and subject to applicant / developer measures which may render contribution unnecessary) up to the estimated damage cost to be spent on air quality improvement projects within the locality.	Not necessary – applicant proposes adequate mitigation measures which obviate the need for a contribution.
(viii) Biodiversity:	
a) Contribution (amount to be confirmed) or off-site measures to achieve biodiversity net gain (only applicable if 10% can't be achieved on-site);	Section 106 Schedule 5 (with net gain to be achieved onsite and offsite in the Ancient Woodlands Buffer, not via a contribution).
b) Securing other off-site measures (including buffers to ancient woodlands, and provision of skylark plots).	Section 106 Schedules 3 and 5.
(ix) Management – the establishment of a management company for the management and maintenance of any land not within private curtilages or adopted by other parties, and of infrastructure. May include street trees if not adopted.	Section 106 Schedule 3.
(x) Drainage – management company to manage and maintain surface water drainage until formally adopted by the statutory undertaker. Establishment of drainage working group (with regular meetings) to oversee implementation of a site-wide drainage masterplan.	Section 106 Schedule 3.

(xi) Ancient woodland – management plan (and works, if required) for public access to Dum Wood and Dogloitch Wood (outside application site, but within applicant's ownership).	Section 106 Schedule 3 (refers only to Dum Wood – Dogloitch Wood is detached from the Heybeck Lane site, and is to be covered under Leeds Road Section 106).
(xii) Social value – requirement for applicant / developer, future developer partners and occupants of employment floorspace to provide package of training, apprenticeships and other social value measures.	Section 106 Schedule 6.
(xiii) Masterplanning – No ransom scenarios to be created at points where new roads meet other development parcels / phases.	Section 106 Schedule 3.

5.6 In accordance with Article 40(3)(b) of the Town and Country Planning (Development Management Procedure) (England) Order 2015, a draft Section 106 agreement, in a form agreed with the applicant, was uploaded to the council's planning register, and was viewable online from 23/09/2025.

5.7 To enable easier submission of comments on the draft Section 106 agreement, the online facility for making representations via the council's website was reopened. Of note, the requirement to publish proposed Section 106 agreements (as confirmed by the Greenfields ruling) is not a requirement for reconsultation (in full or in part) of the public on applications (including this application, 2020/92350). Instead, the Greenfields case has confirmed that the purpose of publication (of Section 106 agreements prior to issuing a planning permission) is required so as to enable members of the public to know the terms of a Section 106 agreement, and to enable them to comment on it if they choose to do so. For application 2020/92350, the facility for submitting comments online via the council's website was reopened from 24/09/2025 to 09/10/2025 inclusive. All comments received online or by email prior to the date of this report in relation to the draft Section 106 agreement have been considered by officers.

5.8 A further draft Section 106 agreement, in a form agreed with the applicant, was uploaded to the council's planning register, and was viewable online from 07/11/2025. This is the version now at Appendix 2 of this report.

6.0 REPRESENTATIONS

6.1 The previous committee report and the previous committee update (Appendices 5 and 6 of this report) summarise the representations received prior to the Strategic Planning Committee meeting of 08/12/2022.

6.2 113 representations were received shortly before and during the 16-day period referred to at paragraph 5.7 above. These included representations submitted by Cllr Cathy Scott, Cllr Habiban Zaman, the Chidswell Action Group, Just Transition Wakefield, Keep Our Rural Spaces, the Upper Dearne Valley Environmental Trust, the Woodland Trust and the Yorkshire Wildlife Trust. All 113 representations objected – some in specific respect to the wording of the draft Section 106 agreement and others in relation to matters not relating to the Section 106 agreement. All 113 representations have been posted online.

6.3 Cllr Cathy Scott and Cllr Habiban Zaman commented as follows:

I am writing formally to request that the following application relating to the Heybeck site be referred back to the Strategic Planning Committee (SPC) for determination: Application 2020/92350.

As you will be aware, the High Court (Hon. Mr Justice Kerr, 4 September 2025) quashed the outline planning permission previously issued under delegated authority for 2020/92350 due to the unlawful failure to publish the section 106 agreement prior to the decision being made. The Judge described this as an “unexplained flagrant breach” and highlighted a “serious want of transparency” in the Council’s approach.

Since that ruling, officers have indicated an intention to proceed under delegated authority with issuing planning permission following completion of an amended section 106 agreement. I believe that it would be inappropriate for this decision to be taken without scrutiny by the SPC for the following reasons:

- Relevant Considerations – Members were not informed that the developer intended to rely upon the adjacent ancient woodland to deliver biodiversity net gain (BNG). At committee in December 2022, assurances were given that BNG would be delivered onsite. The amended section 106 agreement now allows BNG to be delivered predominantly offsite, including within the ancient woodland, which raises significant ecological concerns.*
- Transparency and Openness – The High Court found a serious lack of transparency. To rebuild public trust, it is essential that Members—not officers alone—scrutinise the final agreement and consultation responses.*
- Consultation – Consultees such as Yorkshire Wildlife Trust and members of the public are currently commenting on the amended section 106 agreement. Their feedback should be considered by the SPC in an open meeting.*
- Proportionality and Options – The proportional course of action is to allow the SPC to consider the amended section 106 agreement and to decide whether the mitigation and BNG provisions are acceptable. There is no material disadvantage in bringing this back to committee, whereas delegating it risks further legal challenge and costs to the Council.*
- Lawfulness and Financial Propriety – Chidswell Action Group has received legal advice that failing to return this matter to committee could again be unlawful. A further judicial review would expose the Council to unnecessary financial and reputational risk.*

Given the Judge’s criticisms and the substantive changes in the proposed section 106 obligations, it is clear that the applications should not be determined under delegated powers. The SPC exercises a broad planning judgment, and Members should have the opportunity to consider whether predominantly offsite BNG and the proposed ancient woodland management plan are acceptable in planning terms.

For these reasons, I respectfully request that application 2020/92350 is brought back before the Strategic Planning Committee for determination.

6.4 Comments submitted by organisations are summarised below.

Chidswell Action Group – Objection.

- Legal advice (dated 29/09/2025) forwarded. This stated, inter alia:
 - The application should be brought to the Strategic Planning Committee.
 - Council's constitution and Kides case support a return to committee.
 - There are strong prospects of success in a claim for judicial review of an outline planning permission re-issued under delegated authority.
 - Section 106 definitions confirm the "Offsite BNG Land" is the "Ancient Woodland Land" (i.e. Dum Wood) – this means that any BNG which cannot be achieved on-site will need to be achieved within the ancient woodland.
 - Members did not know that the Section 106 agreement would allow for the 10% BNG to be achieved primarily off-site, would allow the ancient woodland to be used to achieve the BNG which could not be achieved on site, or allow the ancient woodland to be developed and managed for public access. These are material planning considerations that have arisen since 08/12/2022.
 - Questionable whether officers can consider the consolidated Section 106 with an open mind.
 - It may well be that Members find the consolidated Section 106 to be acceptable and resolve to issue the decision notice granting planning permission.
- Material planning considerations have arisen since 08/12/2022. Grounds 3 and 4 of judicial review are material considerations.
- Deputy judge did not consider first supplementary deed satisfactory.
- Ruling of High Court noted. Judge stated that ground 3 would have succeeded were it not for the second supplementary deed.
- Planning permission quashed on ground 5.
- Judge commented on likelihood of Strategic Planning Committee requiring updated biodiversity work.
- Section 106 agreement and two supplementary deeds have not been considered by committee.
- Section 106 agreement allows BNG to be achieved off-site, however on 08/12/2022 Members were advised that the intention was for BNG to be achieved on site.
- Section 106 agreement does not include a percentage requirement for any BNG to be completed on-site, contrary to information given to committee on 08/12/2022. This is a material change.
- Unclear how BNG would be achieved off-site.
- Section 106 agreement defines "Offsite BNG Land" as "the Ancient Woodland Land", meaning that any BNG that cannot be achieved on site will need to be achieved within the ancient woodland.
- Strategic Planning Committee were not told that off-site BNG land would be Dum Wood. This is a significant and material change.
- Application should be brought to committee, given the material changes, quashing of the permission, previous procedural/legal failings, public interest in the application, importance of transparent decision-making and a fair hearing, openness, scrutiny, good governance, accountability expected of authorities, public confidence

and trust. Controversial applications are normally called in to committee under standard practice.

- Risk of further, successful judicial review if application is not brought to committee. Reputational and financial risk to council.
- Dum Wood is:
 - Protected by TPO 01/87/w2.
 - Ancient woodland.
 - Lowland deciduous woodland that is a UK Habitat of Principal Importance.
 - A Local Wildlife Site (due to extensive bluebell cover), and therefore a locally designated site of importance for biodiversity.
 - Part of the strategic Kirklees Wildlife Habitat Network.
 - Within the Kirklees Pennine Foothills Biodiversity Opportunity Zone.
 - Irreplaceable (and therefore some of the country's most ecologically valuable habitat).
 - Home to two veteran and two notable trees recorded in the Ancient Tree Inventory.
 - An established and unique ancient ecosystem, developed over hundreds of years.
 - Not a park.
 - Highly valued and loved by local communities.
 - Home to, or visited by, breeding birds, mammals, insects and fungi, including protected species
- Dum Wood has unique characteristics and ecosystem. Its natural character and ecology should be retained. Its ability to self-sustain must not be diminished.
- Tree cover in Kirklees is below the national average. North Kirklees woodland is depleted.
- Existing woodlands should be preserved and conserved for health, wellbeing, habitat, ecology, nature and climate resilience at a time of a nature and climate emergency.
- BNG is mandatory. This requires a development to result in more or better quality natural habitat than there was before development.
- BEMP is inadequate and gives no indication how the uplift in BNG is to be achieved.
- There is no commitment to remediate for loss of biodiversity on site.
- Irreplaceable features such as ancient woodlands and historic hedgerows cannot be compensated for or traded.
- Ancient woodland cannot be used for BNG compensation, and BNG cannot be produced through the use of areas of existing high value. BNG compensation must be targeted at lands of minimal existing biodiversity value. Dum Wood is not an appropriate habitat for offsetting lost biodiversity, and should not be disturbed.
- Shifting BNG obligations to Dum Wood detaches responsibility from the development, allowing environmental harm locally.
- The proposal to shift BNG obligations onto ancient woodland risks giving the impression it can be "traded" for development loss, which undermines its protected status in planning policy.
- Biodiversity gains in ancient woodlands would be extremely difficult to quantify and measure, and any proposed enhancements cannot realistically balance losses of habitat at the development site. Risk of undermining confidence in credibility of measuring and the process.

- Unacceptable that Section 106 agreement only prevents occupation of more than 90% of dwellings until habitat creation/enhancement works have been completed.
- Numerous BNG issues remain unaddressed.
- Unclear how public access and associated works would be done.
- Any management plan must take into account endangered and protected species. Many such species would be impacted by the developments, and these have not been considered. Unacceptable to grant permission without consideration of mitigation against harm to protected and endangered species.
- Ancient woodlands have been developing their ecology for hundreds of years. There is evidence of a request to undertake works dated 1309-1310.
- Presence of bats has been downplayed by applicant. Bats need to be properly considered. Woodland layer habitats are vital for fledging and roosting.
- Dum Wood contains rare deadwood, which is vital for the ecology, integrity and sustainable life cycle of woodlands. Removal of deadwood would be harmful to the woodland's ecology, soil, self-sustainability, quality and species.
- Both ancient woodlands are essential natural capital and fulfil a green infrastructure role. They provide habitat, recreation and wellbeing, flood storage and protection, urban cooling, air cleaning and water filtration.
- New planting is important, however the role of older trees cannot be replaced.
- Reducing quality of woodlands reduces quality of broader environment that is important for community health and combatting climate change.
- Developer's agents carried out tree works (in Dum Wood in 2024) that had been refused permission. Oak tree may have been over 120 years old. Suspected bat roost in a standing dead oak which was felled. Other living and dead standing wood was felled after permission had been refused. Felling was reported to council and to police as a potential wildlife crime.
- Requirements of Natural Environment and Rural Communities Act 2006, Wildlife and Countryside Act 1981, European Protected Species legislation and Habitats Regulations referred to.
- Unclear how proposed work would be undertaken and enforced. No parameters set out in BEMP. Risk of irreversible harm.
- All protections for Dum Wood and hedgerows should be enforced.
- Applications for approval should be made for any works. Any works must be evaluated on their own merits. Approval should not be interpreted as blanket approval for all works.
- Ancient woodlands' role in maintaining air, soil and water quality, and in climate resistance and cooling, has not been addressed.
- Desiccation of the woods has not been addressed.
- Proposed SuDS may not be possible.
- Landscape is only considered in the context of SuDS. There is no agreement regarding landscape.
- Applicant's documents stated that it is impossible to mitigate damage to ancient woodlands.
- Applicant's documents stated there will be toxic pollution of watercourses.

- Section 106 agreement is inadequate regarding public open space, risking reducing community benefits, local services, air quality, flood management, green recreation, health and wellbeing. BEMP does not adequately address loss of green space for green recreation, health and wellbeing, and access to public open space. Green open space would be removed.
- Chidswell is currently a destination for green recreation, and a highly-valued amenity. Well-used public rights of way traverse the site.
- Any development should directly contribute to ecological and community value, and not take it away.
- Unclear how surrounding communities would be protected from noise, dust, vibration and construction operations.

Just Transition Wakefield – Objection.

- Application must be brought back to committee.
- New draft Section 106 agreement is materially different to the original.
- Use of existing ancient woodland for BNG is not legal. Land for BNG must be of low ecological value. Ancient woodland should not be felled to create new grassland. Important local biodiversity sites should not be trashed.
- A nature and climate emergency is occurring.

Keep Our Rural Spaces – Objection.

- Agree with Chidswell Action Group's concerns.
- Section 106 agreement should be brought to committee and not left to unscrutinised opinion of officers, otherwise risks to council regarding democracy, transparency and disrepute, especially if further legal action is taken.
- BNG proposals inadequate.
- Proposals could be more green, with on-site BNG, tree-lined streets and open spaces.
- Ancient woodlands buffer zone inadequate. 200m buffer suggested to avoid light and noise pollution and provide protection from inappropriate use.
- Off-site BNG works inappropriate within ancient woodland. Unlikely to benefit wildlife.
- Concern regarding loss of agricultural land in light of current economic needs and climate situation.

Upper Dearne Valley Environmental Trust – Objection.

- Application involves matters of principle which could affect how other applications are handled.
- Application is of great public interest.
- Beyond belief that Section 106 agreement would not be brought to committee. Publishing online with a short comment period is inadequate. Undemocratic practice should be examined by Governance. Application should not be determined behind closed doors. Further judicial review would bring council into disrepute, incurring costs and eroding public confidence.
- May be appropriate to fully reconsider application in light of current SPDs and recent environmental strategies.

- Committee had understood BNG would be provided on-site, however ancient woodlands would be used for mitigation – this is a marked, serious change that requires public and committee examination.
- Object to use of ancient woodlands for BNG offsetting. Ancient woodlands should be preserved and not damaged. Damage has previously been caused by owners.
- 15m ancient woodland buffer inadequate and unofficial. 200m buffer would address light and noise, provide room for natural expansion, contribute towards council's tree canopy cover target, and renew Kirklees's reputation as a green district.
- BNG should be provided wholly or largely on-site. This could be achieved if officers implement and enforce SPDs. This would provide a biodiverse area, and increased attractiveness, amenity value and wellbeing.
- Council's statutory duties and local policies to protect biodiversity and environment noted.

Woodland Trust – Objection.

- Applicant has not provided any supporting analysis to demonstrate that it will be possible to mitigate impacts on the ancient woodlands. Unclear whether Section 106 can secure suitable mitigation. It is not sufficient to demonstrate that the proposals will "limit harm". Applicant should demonstrate impacts arising from development of this scale can be mitigated, including regarding:
 - Deterioration of ancient woodlands associated with intensified public activity within and adjacent to the woodlands.
 - Fragmentation and loss of adjacent semi-natural habitats, such as small wooded areas and wetland habitats, impacting the ancient woodlands and their wildlife.
 - Noise pollution and emissions from increases in traffic impacting the ecological condition of the ancient woodlands.
 - Hydrological impacts on ancient woodland from changes to surface or groundwater flows associated with drainage and SUDs provision.
- Application is contrary to NPPF paragraph 193c, as there are no wholly exceptional reasons for the proposed developments at this location. The test under paragraph 193c is whether there would be a negative impact, not whether the magnitude of the impact is acceptable.
- Absence of objections from Natural England and Forestry Commission should not be taken to indicate there are no adverse impacts on ancient woodland.
- Design of the proposals has significant potential to give rise to indirect impacts on ancient woodland such as noise, disturbance, vegetation damage, trampling, litter, removal of deadwood, fire damage, cat predation, and pollution and disturbance from dog walking.
- Adequacy of 20m buffer has not been evidenced. Buffer of at least 50m recommended.
- Buffer should be safeguarded and not regarded as functioning open space. Access should be discouraged for a minimum of 15m adjacent to ancient woodland. Details of access into buffers required.
- No modelling of likely intensified use of ancient woodland provided. Cannot be concluded that controlling woodland access could be

managed to avoid harm to ancient woodland. Greater access to the woodlands could increase adverse impacts.

- Provision of buffers outside application site makes assessment more difficult.
- Details of planting of buffers required.
- Impact of works within ancient woodland need to be considered. Clarity needed regarding works anticipated within woodlands.
- Proposed developments would result in ancient woodlands being increasingly separated from adjacent semi-natural habitat and from each other. Many proposed green spaces would be partially urbanised. Potential impact on habitat connectivity and integrity, affecting the dispersal, feeding and nesting of species relying on woodland edge habitats and species using adjacent open ground. Lack of clarity and consistency in the application with regard to measures to enhance green connections.
- Applicant should clarify if a wildlife corridor is proposed outside the site (in addition to the 15m corridor shown).
- If intended to mitigate fragmentation, adequacy of 15m corridor needs to be demonstrated.
- Increased traffic noise and emissions can lead to deterioration of the ecological condition of the ancient woodland.
 - Impact of emissions on ancient woodland has not been assessed.
 - Noise contour maps indicate noise at levels affecting suitability of ancient woodland habitat for woodland species.
- Submitted hydrology and drainage assessments have not considered the potential impact on ancient woodland arising from alterations to drainage patterns. Applicant needs to demonstrate that drainage strategy will not lead to deterioration of the ancient woodlands by altering the hydrological conditions in surrounding habitats.
- Approval of application would need to be referred to Secretary of State.
- Application has significant potential for indirect impacts on ancient woodland that will contribute to the long-term deterioration of the ancient woodlands, contravening national planning policy. Application should be refused unless applicant is able to provide clear and robust assessment to demonstrate that deterioration can be avoided.

Yorkshire Wildlife Trust – Objection.

- Reference made to Yorkshire Wildlife Trust's previous comments.
- Application is contrary to NPPF paragraph 193, as there are no wholly exceptional reasons for the proposed development, and no suitable compensation strategy is proposed.
- High Court ruling of 04/09/2025 noted. Judge ruled that Yorkshire Wildlife Trust should be given opportunity to comment on application.
- Shortcomings in applicant's biodiversity reporting.
- Based on level of information provided by applicant to date, concern regarding adequacy of measures to protect Dogloitch Wood and Dum Wood from negative impacts from construction and upon completion.
- Areas of priority habitat (such as ancient woodland) can be used for offsite BNG, however the proposed uplifts must be a quantitative gain upon the existing baseline condition of the habitat.
- Without baseline conditions of the ancient woodland assessed, it is unclear how 10% BNG would be achieved within the woodlands.

- BNG enhancements must be in addition to compensatory measures related to other impacts.
- Applicant should publish revised BNG calculations and condition assessment for ancient woodlands. Accurate baseline is needed for transparency, in line with BNG best practice.
- Concern regarding lack of an Ancient Woodland Management Plan for the two ancient woodlands. Concern that the management plan, when produced, will not fully address the impacts to ancient woodlands.
- As well as addressing impacts from increased use of the ancient woodlands, the management plan should consider impact from all phases of development, from enabling works to post-completion. Management plan should be put to consultation prior to approval.
- Mitigation hierarchy not being followed.
- Section 106 agreements do not go far enough to ensure harm is avoided.
- Design of both developments does not adequately mitigate harm to ancient woodland.
- 20m buffers to ancient woodlands are insufficient and unjustified. Woodland Trust guidance recommends a minimum of 50m.
- Committee should be able to form a view on whether the Ancient Woodland Management Plan is acceptable.
- Yorkshire Wildlife Trust would like to be consulted on Ancient Woodland Management Plan and subsequent revisions of the Section 106 agreement in advance of the applications being considered for approval.
- Insufficient information regarding (and justifying) the proposed mitigation and compensatory strategies in relation to ancient woodlands.

6.5 Other comments made in the representations are summarised below:

- Proposal is contrary to NPPF and Local Plan policies.
- Development not wanted by local community.
- Recently-built homes in area are unsold.
- CPRE and Woodland Trust have raised objections. These have not been responded to, and officers redacted names of organisations.
- Socio-economic benefits of development are not evidenced.
- Development not sustainable.
- A nature and climate emergency is occurring.
- Development would add to urban sprawl of other developments of recent years.
- Loss of separation between Kirklees, Leeds and Wakefield. Three local authorities have not shown insight into significance of site and development.
- Brownfield sites should be prioritised. Grey belt should be used first. Other sites are available.
- Harm to landscape. Rural / semi-rural character would be altered.
- Loss of green belt land. Loss of green space. Site is a green lung. Site is used for recreation and connecting with nature.
- Loss of productive agricultural land. Agricultural land surveys not provided. Council previously identified land as best and most versatile. Adverse impact on food security. Grade 3 soil would be lost. Soil is a non-renewable resource.

- Increase in traffic. Recent developments have increased traffic locally. Roads do not have capacity for proposed development. Increased commuting time. Impact on junction including at M62.
- Increased road accident risk. Heybeck Lane / Leeds Road junction will become an accident black spot. Risks to pedestrians and cyclists.
- Junction improvement works and public transport contribution inadequate.
- Impact on local infrastructure. Schools, surgeries and public amenities unable to cope with increased future demand. No plan to build new schools. Area does not have capacity to accommodate proposals.
- Education contribution inadequate.
- Cumulative impacts of developments.
- Impacts regarding downstream flood risk. Development would undermine flood mitigation. Proposed drainage and water management is unsuitable given local geology and former coal workings.
- Loss of woodlands.
- Harm to ancient woodlands, which are irreplaceable and subject to significant protection. Isolation and hydrological impacts on woodlands resulting in long-term desiccation. Unnecessary and damaging over-management of trees. Increased human recreational use, trampling, use of off-road bicycles, semi-motorised bikes and scooters. Absence of a funded plan and mechanism for issues to be managed, and local authority has no ability to provide management.
- Earlier works have not benefitted the woodlands.
- No effective assessment of woodland heritage and archaeology carried out.
- Fragile ecosystems would be damaged.
- Harm to wildlife and habitats. Increased cat and dog population affecting mammals, ground-nesting birds and deer.
- Ecological reports are out of date or inaccurate. 2022 walkover was limited. Survey over 12 months required. Officers haven't secured updated surveys. Reliance on 9-year-old information would be perverse.
- Streams and watercourses have been incorrectly classified as "poor".
- Members were not told that enabling works could commence before ecological surveys are carried out.
- Independent ecological review needed.
- Area is a haven for wildlife. Many species are present, including otters, bats, hedgehogs, badgers, deer, and barn owls. Site is home to "red list" endangered species. Animals will die.
- Includes no commitment to complete any biodiversity work until 90% occupancy, by which time there won't be any wildlife.
- Applicant stated residual impacts cannot be mitigated.
- Planting of trees and creating new green spaces could never replace precious existing ecosystem.
- Proposed skylark plots would be ineffective.
- Management of habitat only covered for 30 years.
- 10% BNG now mandatory.
- Errors in applicant's BNG calculations.

- BNG proposals are unrealistic, unevidenced and over-optimistic.
- Section 106 agreement does not detail how BNG would be achieved.
- Dum Wood is subject to protections and designations, has unique ecosystem and character, and should not be allowed to become a park. Dum Wood provides benefits for health, wellbeing, quiet restoration and green recreation. Woodlands are home to many species. Dum Wood provides habitat, recreation and wellbeing, flood storage and protection, urban cooling, air cleaning and water filtration. Woodland has a carbon sequestration role.
- Dum Wood is protected, and permission for development resulting in loss or deterioration should be refused unless wholly exceptional reasons exist.
- Tidying up of Dum Wood would be harmful.
- Objection to footpaths and litter bins in Dum Wood.
- Woodland is scarce in north Kirklees.
- Applicant previously proposed harmful felling in ancient woodlands, and despite refusal still carried out felling (including of a suspected bat roost). Applicant's approach to managing woodlands is inappropriate. Blanket approval would be given for harmful work.
- Section 106 agreement would not prevent impacts to Dum Wood from noise, vibration, light, heat, desiccation, increased predation, invasive species, littering and fouling. Health of woodland, ecosystem and air quality would consequently be affected.
- Irreplaceable features such as ancient woodlands and historic hedgerows cannot be compensated for or traded. Ancient woodland inappropriate for offsetting damage. Ancient woodland cannot be used for BNG compensation, and BNG cannot be produced through the use of areas of existing high value. BNG compensation must be targeted at lands of minimal existing biodiversity value. Use of ancient woodland is not legally permitted. Cannot be legal or moral to fell ancient woodland to create new grassland. Ancient woodlands are of extremely high value to local communities.
- On 08/12/2022 Members were advised that BNG was achievable on-site.
- There is no commitment to remediate biodiversity loss on-site. No commitment to deliver biodiversity on-site.
- BNG should not be deferred to Reserved Matters stage.
- Section 106 agreement includes more information regarding bus shelters than BNG.
- Unclear how buffer would be used. Previously appeared that no works were proposed here.
- Harm to watercourses. Streams will be polluted.
- Public open space access proposals are vague.
- Impact on Leeds Country Way.
- Loss of natural light to neighbouring property.
- Loss of view of fields from rear gardens/windows.
- Air quality would deteriorate. No air quality mitigation in Section 106 agreement. Increased pollution.
- Increased noise.
- Light pollution.
- Adverse impact on mental health, quality of life and wellbeing.
- Impact on property value.
- Proposals were previously rejected.

- Objection to approval of a new Section 106 agreement.
- Section 106 agreement and two supplementary deeds have not been considered by committee.
- Section 106 agreement is materially different to the original.
- Section 106 agreement was kept from public.
- Deputy judge did not consider first supplementary deed satisfactory.
- Ruling of High Court noted. Judge stated that ground 3 would have succeeded were it not for the second supplementary deed.
- Planning permission quashed on ground 5.
- High Court judge noted that biodiversity issues had not been adequately addressed at the time the Heybeck Lane decision was made, and that the committee might well have asked for updated biodiversity work to be done before deciding whether to proceed.
- Public consultation period should be extended.
- Application should be brought back to committee. Delegated decision inappropriate, would be contrary to good governance, and would represent conflict of interest. Strategic Planning Committee is being bypassed. Development is being pushed through. Scant regard for local democracy. Evasion of due democratic process, and lack of oversight. Gross misconduct and breach of Kides case law alleged. Independent procedural review needed.
- New material considerations apply, necessitating reconsideration by committee.
- Council constitution requires major applications subject to significant objections to go to committee.
- Legal advice of 29/09/2025 referred to.
- High Court ruling is being ignored and overturned. Judicial review lost at cost to taxpayers.
- Council has failed to fully acknowledge or address concerns. Public trust in planning process eroded.
- Those pushing for development should be behind bars. Underhand tactics. Objectors were lied to and deceived. Council are a disgrace.
- Proposals are motivated by profit, greed and gain.

6.6 Following the publication of a further draft Section 106 agreement (viewable online from 07/11/2025), comments were submitted by the Chidswell Action Group (in the form of a further legal opinion, dated 11/11/2025), and by the Woodland Trust (comments dated 11/11/2025). These representations have been posted online.

6.7 The further legal opinion forwarded by the Chidswell Action Group stated, inter alia, that:

- The version of the Section 106 agreement viewable online from 07/11/2025 did not appear to address all the concerns raised by the Yorkshire Wildlife Trust and the Woodland Trust.
- The Strategic Planning Committee is not bound by its 08/12/2022 resolution to grant outline planning permission.
- The High Court decision of 04/09/2025 has no bearing on whether the committee should grant outline planning permission now.
- The Strategic Planning Committee must consider the impact of the Section 106 agreement which is relied on to make the development acceptable.

- There is no evidence that providing the required BNG (by using the ancient woodland buffers) is achievable.
- It has not been clarified what part of the 10% BNG would be provided on-site, and what part would be off-site. It remains the case that 9.99% BNG could be provided off-site (in theory, if not in reality).
- The Strategic Planning Committee may wish to consider whether the now substantially reduced size of the land available for off-site BNG is realistically capable of achieving the offsite BNG requirements for both developments.
- The previous committee report briefly mentioned public access to the woods, but there was no indication that extensive works including path surfacing, signage and dog waste bins, were contemplated.
- The Strategic Planning Committee may wish to refer to the Woodland Trust's comments regarding the lack of mitigation evidence and the likely deterioration of the ancient woodland.
- The Ancient Woodland Management Plan would not be submitted until the first Reserved Matters application is submitted, and is therefore not an integral part of the development's design.
- The weight to be accorded to any consideration is a matter for the Strategic Planning Committee.
- NPPF paragraph 193c states that development resulting in the deterioration of ancient woodland should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists.

6.8 In their further comments of 11/11/2025, the Woodland Trust maintained their objection, stating that the applicant had not provided any additional information to address their concerns. The Woodland Trust added:

- The applicant has not provided adequate supporting analysis to demonstrate that it will be feasible to mitigate impacts on the ancient woodlands.
- The application is therefore contrary to NPPF paragraph 193c and does not reflect Natural England and Forestry Commission's standing advice.
- In the absence of assessment to demonstrate the feasibility of mitigating impacts it is not possible to determine what may be appropriate to include in a Section 106 agreement in relation to ancient woodland.
- There are no wholly exceptional reasons for these developments and as such in their current form these applications do not comply with national planning policy.

7.0 RESPONSE TO REPRESENTATIONS

Matters previously considered

7.1 Many of the comments made in the 115 representations relate to matters previously considered by officers (as set out in the committee report of 08/12/2022) and by the Strategic Planning Committee, and/or do not relate to the provisions of the draft Section 106 agreement. Although officers have considered these representations carefully, they do not give rise to any new or altered material considerations over and above those previously considered by officers and reported upon to the Strategic Planning Committee. These comments therefore need not be given further consideration here. The paragraphs below respond to the main issues raised in the 115 representations.

Biodiversity Net Gain

- 7.2 The application was submitted prior to 12/02/2024 when Biodiversity Net Gain (BNG) become mandatory under the Environment Act 2021. However, the applicant has proposed 10% BNG nonetheless, having regard to Local Plan policy LP30 and the council's Biodiversity Net Gain Technical Advice Note, and the application was previously considered by officers and the Strategic Planning Committee on this basis.
- 7.3 The Chidswell Action Group have stated that, at the meeting held on 08/12/2022, "SPC Members were directed that it was presented the intention was for BNG to be achieved on site". The committee report of 08/12/2022 (paragraphs 10.67 and 10.68, and the summary of the planning obligations listed twice in the report), however, made it clear that some of the proposed BNG would or could be achieved off-site.
- 7.4 The version of the draft Section 106 agreement that was viewable online from 23/09/2025 allowed for the expected BNG to be delivered on-site, within the Ancient Woodlands Buffer, or within the Ancient Woodlands (Dum Wood). The Ancient Woodlands Buffer and the Ancient Woodlands were clearly defined in that version of the Section 106 agreement at Schedule 3 and the plan at Appendix 5. A further term, Ancient Woodland Land, was defined as (together) the Ancient Woodlands Buffer and the Ancient Woodlands. For any part of the BNG that – with the council's agreement – was not to be delivered on-site, the wording of the Section 106 agreement allowed this to be delivered within the Ancient Woodland Land. The assertion (in some representations) that "any BNG which cannot be achieved on site will need to be achieved within the ancient woodland" (i.e., that all off-site BNG would have to be delivered within the Ancient Woodlands) was therefore incorrect, as some or all of that off-site BNG could have been provided within the Ancient Woodlands Buffer.
- 7.5 Contrary to assertions made in some representations, enhancement of ancient woodlands can contribute to towards a development's BNG requirement. This is acknowledged in the Yorkshire Wildlife Trust's comments of 03/10/2025. Again, any such enhancement would be subject to the approval of officers.
- 7.6 However, notwithstanding the above, in response to the comments made regarding BNG provision within Dum Wood, the applicant proposed amendments to the Section 106 agreement. The version that has been viewable online since 07/11/2025 now only allows off-site BNG to be delivered within the Ancient Woodlands Buffer, and none would be delivered within the Ancient Woodlands. This addresses that specific concern expressed in the earlier representations.
- 7.7 Crucially, as per the draft Section 106 agreement, officers of the council would retain the right to approve the details of the BNG, including the split between on-site BNG and that part of the BNG to be provided in the Ancient Woodlands Buffer, as well as the type and typologies of the BNG.
- 7.8 A further representation (the legal advice provided to the Chidswell Action Group, dated 11/11/2025) queries the practical achievability of 10% BNG. However, officers are satisfied that, taken together, the developed site and the Ancient Woodlands Buffer are able to accommodate the required 10% BNG. Given its significant size (a buffer of 15,486sqm is proposed adjacent to Dum

Wood), it is intended by the applicant and considered likely by officers that a large part of the BNG could be provided within the buffer, if needed. These assertions additionally take into account the intended requirements relevant to the Leeds Road site, where 10% BNG would also be achieved within that site and the adjacent buffers.

- 7.9 Of relevance to the above points, the applicant, in a response letter dated 06/11/2025, noted:

The BNG Assessment submitted with the planning application states, in demonstrating that the site can comfortably achieve a 10% net gain, that “Dum Wood has not been considered within this assessment...” (paragraph 17). Only land within the application site boundary and the Ancient Woodlands Buffer were included in the assessment. There was therefore no reliance on improving biodiversity in the ancient woodland to achieve a 10% net gain.

- 7.10 The legal advice to CAG, dated 11/11/2025, also raises concerns that 9.99% BNG could, in theory, be provided within the Ancient Woodlands Buffer. However, the precise split between on- and off-site BNG would be approved by officers at the detailed design stage, having regard to the Government's Biodiversity Gain Hierarchy which prioritises the enhancement and creation of habitat on-site over the delivery of off-site gains. Any suggestion that officers would approve a scheme with 9.99% BNG provided in the Ancient Woodlands Buffer is not credible.

- 7.11 Concern has been expressed that the draft Section 106 agreement (at paragraph 4 of Schedule 5) only prevents occupation of more than 90% of dwellings until habitat creation/enhancement works have been completed. However, it is considered that this provision is reasonable and sufficiently incentivises the completion of the habitat creation/enhancement works, while ensuring housing delivery is not unnecessarily obstructed and delayed, and ensuring that early habitat creation/enhancement works are not put at risk from ongoing construction work.

Ancient woodland

- 7.12 The importance and value of the ancient woodland of Dum Wood is acknowledged. This has a high biodiversity value (although this does not mean enhancements are not possible), and is an irreplaceable habitat.

- 7.13 Officers previously advised Members that controlled public access to the ancient woodlands would be the most preferable and realistic way forward at the Chidswell sites, and the committee report of 08/12/2022 (in the summary of the planning obligations listed twice in the report) made it clear that this public access would be managed via provisions of the Section 106 agreement.

- 7.14 Many representations include concerns regarding risks of harm to the ancient woodlands, and these concerns are understood, however the Section 106 agreement would not permit harmful works to the woodlands. The council as Local Planning Authority would maintain control over what works could be carried out to trees within Dum Wood. Provisions of the Section 106 agreement do not override the need for tree works consent. Tree works such as felling are not expected in connection with the biodiversity enhancements or public access works secured via the Section 106 agreement. However, if any such works were proposed, these would still require consent. Proposals for works to trees would continue to be assessed using the council's expertise (KC Trees, and where appropriate, KC Ecology).

7.15 Regarding other concerns related to physical works (within Dum Wood) associated with managing the potential impacts of public access, officers have been consistent in stating that some works are likely to be required. Paragraph 10.74 of the previous committee report refers to the accompanying committee report for application 2020/92331 which, at paragraph 10.262, stated:

Officers are of the view that controlled access to the woodlands would be the most preferable and realistic way forward. This controlled access could be managed in accordance with details submitted pursuant to Section 106 obligations. These may include details of permissive routes through the woodlands (possibly following the already-trodden routes, unless there are biodiversity and arboricultural reasons for not doing so), and details of any necessary signage and fencing. No-go areas, dog waste bins and interpretation may also be appropriate.

7.16 Any such works within Dum Wood would be subject to officer approval. No harmful works to Dum Wood are proposed, and officers would not approve harmful works.

7.17 One representation has asked for the scope of the Ancient Woodlands Management Plan (AWMP) to be expanded. Although this plan was previously intended to detail arrangements for the management of controlled public access to the Ancient Woodlands and Ancient Woodlands Buffers, the applicant has agreed to expanding its scope, and the AWMP is now to be a holistic management and maintenance plan for Dum Wood and its buffer, encapsulating all management and maintenance responsibilities. These include those relating to biodiversity, the management of controlled public access and the monitoring of any impacts of public access and the development upon the ancient woodlands. It would also address any remedial measures that may prove necessary.

7.18 In addition, condition 10 secures an Ancient Woodland Protection Plan for the construction period, and condition 27 secures the protection of the ancient woodland from artificial light.

7.19 Allegations regarding previous unauthorised tree works in 2024 are not considered to be a reason for amending the Section 106 agreement or withholding outline planning permission. Regarding the allegations of unauthorised tree works, the applicant, in a response letter dated 06/11/2025, stated:

It has been confirmed by the Church Commissioners' agent that all works to trees in the ancient woodland that have been carried out have been in accordance with relevant consents or following the statutory 5-day notice period process, and take account of the need for the Church Commissioners to consider the safety of those accessing their land. The proposed ancient woodland management plan will provide transparency as to management proposals going forwards. Should any future works to the trees be necessary, these will continue to need the consent of the Council as they fall outside the red line application boundary.

7.20 There are currently no planning enforcement investigations underway in relation to tree works in Dum Wood. The most recent tree work approvals relating to Dum Wood were:

- 2025/90781 – Works to trees – part granted, part refused 20/06/2025
- 2025/91300 – Five-day notification regarding works to a dangerous tree – accepted 12/05/2025

- 7.21 The width of the Ancient Woodlands Buffers was previously assessed and the council did not identify a need for these to be wider than the 20m proposed.
- 7.22 Concerns regarding potential desiccation of the ancient woodlands were previously considered in the accompanying committee report for application 2020/92331 which, at paragraph 10.263, stated:

Concern has been expressed regarding the risk of the proposed development lowering the area's water table, drying out the land beneath the adjacent ancient woodlands, and harming them and their biodiversity. While it is accepted that this could occur where extensive development involves introducing hard surfaces to previously-permeable land (and where geology and topography are factors), at the Chidswell site the applicant is proposing 20m buffers adjacent to the ancient woodlands, as well as significant areas of green space. Furthermore, although Dum Wood is already on slightly elevated land, the adjacent ancient woodlands would not be left perched on higher land while land around it is lowered and hard surfaced.

- 7.23 Furthermore, conditions relating to hydrology and site drainage are recommended. Condition 8 concerns temporary site drainage during construction. Conditions 21 to 23 require approval of surface water and land drainage schemes, and it is noted that – in accordance with the drainage hierarchy – soakaways would need to be used where possible. Condition 10 requires the Ancient Woodland Protection Plan to address surface water run-off during construction and the AWMP referred to above concerns all potential impacts arising from the development.
- 7.24 The applicant's technical response (Lucion, received 17/11/2025) addresses this matter, stating that there is not expected to be any negative impact upon the current regime for groundwater recharge and groundwater flows, and adding that the construction and operational phases of the proposed development are not expected to involve direct or indirect impacts or effects on the ancient woodland from a flood risk or drainage perspective. Officers concur with these conclusions, and additionally note that this matter will be given further consideration at Reserved Matters stage, when more is known regarding the extent and locations of hard surfaces and soft landscaping proposed, and when a detailed drainage strategy is submitted pursuant to the recommended conditions and the Section 106 agreement.
- 7.25 It is not considered likely that any impact of the development associated with increased traffic would adversely affect the ancient woodlands in terms of noise. The applicant's technical response addresses this matter, stating that existing noise levels adjacent to Dum Wood exceed 40dB and are therefore high, and that the levels of additional traffic expected to be generated by the proposed development are not expected to materially impact existing noise levels within Dum Wood. The technical response goes on to conclude that no adverse effects on the ancient woodland are anticipated as a result of noise arising during operation of the proposed development. Officers also note that, in addition to the Construction (Environmental) Management Plan secured by recommended condition 6, the Ancient Woodland Protection Plan secured by recommended condition 10 would need to include measures to protect Dum Wood from dust, noise and other pollution during construction. Furthermore, the AWMP referred to above concerns all potential impacts arising from the development.

- 7.26 It is also not considered likely that any impact of the development associated with increased traffic would adversely affect the ancient woodlands in terms of air quality. Referring to earlier findings regarding emissions during the construction phase, the applicant's technical response asserts that the risk of ecological impacts arising from dust is considered to be low. For the operational phase, the applicant's technical response anticipates no adverse impacts on Dum Wood resulting from changes to air quality arising during operation of the proposed development. The protective provisions of the recommended conditions and Section 106 agreement are again noted.

Other matters raised in representations

- 7.27 Concerns have again been raised regarding shortcomings in the applicant's biodiversity reporting. This matter was previously considered at paragraphs 10.65 and 10.69 of the committee report dated 08/12/2022, and paragraphs 10.240 to 10.253 of the accompanying committee report for application 2020/92331. It remains the position that further ecological surveys are not needed before outline planning permission is granted, and that further survey and any mitigation would appropriately be provided and secured at the Reserved Matters stage. The relevant provisions of the recommended conditions and the Section 106 agreement address this matter.
- 7.28 It is also noted that the High Court ruling of 04/09/2025 effectively confirmed that the two supplemental deeds (the provisions of which have now been incorporated into the more recent drafts of the Section 106 agreement) made adequate provision regarding ecological survey work being carried out prior to works (including enabling works) commencing. Similarly, the ecological surveys that would inform the faunal enhancements secured by recommended condition 24 would need to be carried out prior to the commencement of enabling works.
- 7.29 One representation states that the approval of the application would necessitate referral to the Secretary of State under The Town and Country Planning (Consultation) (England) Direction 2024. However, that direction only applies to applications received on or after 26/01/2024.
- 7.30 The Yorkshire Wildlife Trust have asked to be consulted on the Ancient Woodland Management Plan (AWMP) and subsequent revisions of the Section 106 agreement in advance of the applications being considered for approval. The AWMP has not yet been drafted (and is not required to be drafted at this stage – it would be submitted to the council and considered alongside Reserved Matters application(s)). In the meantime, it is considered that the Yorkshire Wildlife Trust and other parties have been given an appropriate opportunity to comment on the drafts of the Section 106 agreement.
- 7.31 The Upper Dearne Valley Environmental Trust have suggested that the application be reconsidered "in the light of current, Council approved Supplementary Development Policies (SPDs) and recently approved Environmental Strategies". However, no such policies or strategies (of relevance to this application) have been adopted since 08/12/2022. Section 3.0 of this report provides an update regarding relevant planning legislation, case law, policy and guidance.

8.0 CONCLUSION AND RECOMMENDATION

- 8.1 The application site is allocated for mixed use development under site allocation MXS7, and the principle of residential development at this site is considered acceptable.
- 8.2 The applicant has satisfactorily addressed relevant policy requirements in relation to masterplanning, infrastructure provision, affordable housing, highway impacts, landscape impacts, biodiversity, sustainability and other planning matters.
- 8.3 The site has constraints in the form of adjacent residential development (and the amenities of these properties), access, topography, drainage, ecological considerations, and other matters relevant to planning. These constraints have been sufficiently addressed by the applicant, or would be addressed at Reserved Matters and conditions stages.
- 8.4 The proposed development complies with the development plan, and no new or previously-assessed material considerations now indicate that planning permission should not be granted. In fact, the worsened housing supply situation now applicable in Kirklees further supports approval of planning permission. The Strategic Planning Committee previously resolved to grant outline planning permission on 08/12/2022 and the only ground on which the High Court quashed the subsequent permission of 23/10/2024 was related to the council's failure to publish the Section 106 agreement before the grant of permission. This matter has been remedied. Officers do not consider that there are any new or different material planning considerations which indicate that a different decision should now be taken.
- 8.5 Given the above assessment and having particular regard to the up to 181 homes (20% of which would need to be affordable homes) that would be delivered by the proposed development at this allocated site, approval of outline planning permission is again recommended, subject to the conditions listed at Appendix 1 of this report and planning obligations to be secured via a Section 106 agreement in the form of the draft included at Appendix 2 of this report.
- 8.6 The NPPF 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. The proposed development has been assessed against relevant policies in the development plan and other material considerations. Subject to conditions, officers remain of the view that the proposed development would constitute sustainable development (with reference to paragraph 11 of the NPPF) and the application is therefore recommended for approval.

Appendix 1 – Fully-worded conditions

1. Prior to the commencement of development (save for enabling works which for the purposes of this condition shall comprise site preparation, remediation works, provision of construction and temporary access roads, diversion and/or laying of strategic site-wide utilities, and works associated with archaeological surveys) of any phase or sub phase of the development hereby approved, details of appearance, landscaping, layout and scale (hereinafter called the “Reserved Matters”) of that phase or sub phase shall be submitted to and approved in writing by the Local Planning Authority. For the purposes of this permission, all references to a “phase” or “phase of development” shall be interpreted as being a reference to a phase as defined on a phasing plan to be submitted pursuant to outline condition 5 below and all references to a “sub phase” are to be a part or component of such a phase as defined in an application submitted pursuant to a condition of this permission. A standalone Reserved Matters application relating only to infrastructure may be made to the Local Planning Authority.

Reason: No details of the matters referred to having been submitted, they are reserved for the subsequent approval in writing of the Local Planning Authority.

This pre-commencement condition is necessary to ensure that sufficient detail is provided and agreed at an appropriate stage of the development process.

2. The development hereby approved shall be implemented within the Site as defined by the Site Location Plan (00-501 rev B) in accordance with the Parameter Plan (00-211 rev C) and in accordance with the plans and particulars of the Reserved Matters referred to in outline condition 1 above, except as may be specified in the conditions attached to this permission or attached to future approvals of Reserved Matters, which shall in all cases take precedence.

Reason: For the avoidance of doubt as to what is being permitted and in the interests of visual amenity, residential amenity and other matters relevant to planning and to accord with the Kirklees Local Plan and the National Planning Policy Framework.

3. The first Reserved Matters application relating to the development hereby approved shall be made to the Local Planning Authority before the expiration of three years from the date of this permission. All applications for the approval of Reserved Matters for the development hereby approved shall be made to the Local Planning Authority before the expiration of five years from the date of this permission.

Reason: Pursuant to section 92 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

4. Implementation of the first phase or sub phase of the development hereby approved shall commence either before the expiration of two years from the final approval of Reserved Matters relating to that phase or sub phase or in the case of approvals of different dates, the final approval of the last such matter to be approved. Subsequent phases or sub phases of development shall be begun no later than:

a) Seven years beginning with the date of the grant of this outline planning permission; or

b) if later than a) above, two years from the final approval of the Reserved Matters for the relevant phase or sub phase or, in the case of approval on different dates, the final approval of the last such matter to be approved.

Reason: Pursuant to section 92 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

5. If the development hereby approved is to be delivered in phases, prior to or contemporaneously with the submission of the first application for the approval of Reserved Matters, a plan showing the phases of the development hereby approved

shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented in accordance with the approved phasing plan, unless an amended phasing plan is submitted to and approved in writing by the Local Planning Authority.

Reason: To define the scope of this permission and to provide clarity in relation to the progression of development across the site.

6. Prior to the commencement of development (including ground works) of any phase or sub phase of the development hereby approved, a Construction (Environmental) Management Plan (C(E)MP) for that phase or sub phase shall be submitted to and approved in writing by the Local Planning Authority. The C(E)MP shall include a timetable of all works, and details of:

- Hours of works (including times of deliveries);
- Point(s) of access and routes for construction traffic (which shall avoid Chidswell Lane);
- Construction vehicle sizes;
- Numbers and times of construction vehicle movements;
- Locations of HGV waiting areas and details of their management;
- Parking for construction workers;
- Loading and unloading of plant and materials;
- Storage of plant and materials;
- Signage;
- Measures to be taken to minimise the deposit of mud, grit and dirt on public highways by vehicles travelling to and from the site, including the provision of adequate wheel washing facilities within the site;
- Street sweeping;
- Measures to control and monitor the emission of dust and dirt during construction;
- Site waste management, including details of recycling/disposing of waste resulting from construction works;
- Mitigation of noise and vibration arising from all construction-related activities;
- Artificial lighting used in connection with all construction-related activities and security of the construction site;
- Site manager and resident liaison officer contacts, including details of their remit and responsibilities;
- Engagement with local residents and occupants or their representatives; and
- Engagement with the developers of nearby sites to agree any additional measures required in relation to cumulative impacts (should construction be carried out at nearby sites during the same period).

The development hereby approved shall be carried out strictly in accordance with the C(E)MP so approved throughout the period of construction and no change therefrom shall take place without the prior written consent of the Local Planning Authority.

Reason: In the interests of amenity, to ensure the highway is not obstructed, in the interests of highway safety, to ensure harm to biodiversity is avoided, and to accord with Policies LP21, LP24, LP30 and LP52 of the Kirklees Local Plan.

This pre-commencement condition is necessary to ensure measures to avoid obstruction to the wider highway network, to avoid increased risks to highway safety, and to prevent or minimise amenity and biodiversity impacts are devised and agreed at an appropriate stage of the development process.

7. Prior to the commencement of development (including ground works) of any phase or sub phase, a survey of the existing condition of the highway (the extent of highway to be surveyed to be agreed in writing by the Local Planning Authority in advance, but limited to the highways shown in drawing A13398-T-063 rev B) shall be carried out jointly with the Local Highway Authority and submitted to and approved in writing by the Local Planning Authority. The survey shall include carriageway and footway surfacing, verges, kerbs, edgings, street lighting, signing and white lining. Upon completion of the relevant phase or sub phase of the development hereby approved (or at any earlier stage to be agreed with the Local Planning Authority in advance) a post-construction survey of the agreed extent of highway shall be carried out and the post-construction survey and a scheme of remedial works shall be submitted to and approved in writing by the Local Planning Authority. The approved remedial works shall be carried out prior to the occupation of no more than 90% of the dwellings of the relevant phase or sub phase of the development hereby approved unless otherwise agreed in writing by the Local Planning Authority. Should any highways defects (affecting highway safety) attributable to the construction traffic of the relevant phase or sub phase of the development hereby approved be identified during the construction period, remediation of these shall also be implemented in accordance with details to be submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of highway safety, to ensure the effective maintenance of the highway and to accord with Policy LP21 of the Kirklees Local Plan.

This pre-commencement condition is necessary to ensure highways surrounding the site are appropriately surveyed prior to works commencing, and to ensure responsibility for remedial works can be fairly assigned with reference to evidence.

8. Prior to the commencement of development (including ground works) of any phase or sub phase of the development hereby approved, a scheme detailing temporary surface water drainage for that phase or sub 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 (if known);
- Include details of any excavation or levelling that may be required prior to or as part of the implementation of temporary drainage works;
- Include methods of preventing silt, debris and contaminants entering existing drainage systems and watercourses and details of how flooding of adjacent land would be prevented; and
- Include methods of preventing contamination of watercourses once the new drainage has been installed.

The temporary works shall be implemented in accordance with the approved scheme and phasing. No phase or sub phase of the development shall be commenced until the temporary works approved for that phase or sub 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 ensure the risk of flooding does not increase during the construction phase, to limit the siltation of any on- or off-site surface water features, and to accord with Policy LP27 of the Kirklees Local Plan.

This pre-commencement condition is necessary to ensure measures to avoid increased flood risk are devised and agreed at an appropriate stage of the development process.

9. Prior to the commencement of development (including ground works and enabling works) of any phase or sub phase of the development hereby approved, a Tree Protection Plan shall be submitted to and approved in writing by the Local Planning Authority for that phase or sub phase. The Tree Protection Plan shall include protection measures relating to any trees (that are to be retained) located along construction traffic routes to/from the relevant phase or sub phase. The development shall be carried out in accordance with the documents so approved.

Reason: To protect trees in the interests of visual amenity and biodiversity and to accord with Policy LP33 of the Kirklees Local Plan.

This pre-commencement condition is necessary to ensure that details of tree protection are agreed at an appropriate stage of the development process.

10. Prior to the commencement of development (including ground works and enabling works) of any phase or sub phase of the development hereby approved within 500m of Dum Wood, an Ancient Woodland Protection Plan shall be submitted to and approved in writing by the Local Planning Authority. The Ancient Woodland Protection Plan shall include measures to protect Dum Wood from dust, light, surface water run-off, noise and other pollution throughout the period of construction. The development hereby approved shall be carried out strictly in accordance with the Ancient Woodland Protection Plan so approved throughout the period of construction and no change therefrom shall take place without the prior written consent of the Local Planning Authority.

Reason: To protect ancient woodlands in the interests of visual amenity and biodiversity and to accord with Policy LP33 of the Kirklees Local Plan.

This pre-commencement condition is necessary to ensure that details of ancient woodland protection are agreed at an appropriate stage of the development process.

11. Prior to the commencement of development (including ground works) of any phase or sub phase of the development hereby approved, a written scheme of archaeological investigation (WSI) for the phase or sub phase shall be submitted to and approved in writing by the Local Planning Authority. For land that is included within the WSI, no development shall take place other than in accordance with the agreed WSI, which shall include:

- A statement of significance and research objectives;
- A programme and methodology of site investigation and recording and the nomination of (a) competent person(s) or organisation to undertake the agreed works; and
- A programme for post-investigation assessment and subsequent analysis, publication and dissemination and deposition of resulting material. This part of the condition shall not be discharged until these elements have been fulfilled in accordance with the programme set out in the WSI.

Reason: To ensure buried heritage assets are appropriately recorded and protected and to accord with policy LP35 of the Kirklees Local Plan and chapter 16 of the National Planning Policy Framework.

This pre-commencement condition is necessary as intrusive works on site have the potential to damage or disturb buried heritage assets.

12. Means of access to and from the site shall be consistent with the principles illustrated in drawing A13398-T-002 rev E and shall be provided prior to first occupation of the development and thereafter retained and maintained for the lifetime of the development.

Reason: To ensure suitable access is provided, in the interests of highway safety and amenity, to achieve a satisfactory layout, and to accord with Policies LP20, LP21, LP24 and LP67 of the Kirklees Local Plan and the National Planning Policy Framework.

13. Unless it is approved under a condition of planning permission ref: 2020/92331 (should that permission be granted) that a district energy network will not be provided under that permission, each relevant application for the approval of Reserved Matters shall include details (including road layout plans and sections) demonstrating how the development hereby approved shall be capable of accommodating pipework of a district energy network.

Reason: To ensure the development's housing is capable of being connected to a district energy network in the event that a local decentralised energy scheme is to be implemented, and to accord with Policy LP26 of the Kirklees Local Plan and the National Planning Policy Framework.

14. Each application for the approval of Reserved Matters shall include a noise assessment which shall specify the measures to be taken to protect the new residential units and curtilages from noise from all significant noise sources (including noise from road traffic, commercial uses and community uses) and shall:

- Determine the existing noise climate;
- Predict the noise climate in living rooms and gardens (daytime), bedrooms (night time) and other habitable rooms of the development; and
- Detail the attenuation/design necessary to protect the amenity of the occupants of the new residences (including ventilation if required).

Prior to the first occupation of any dwelling to which the relevant Reserved Matters application relates, all works specified for that dwelling in the approved noise assessment shall be carried out in full and such works shall thereafter be retained.

Reason: In the interests of amenity and to accord with Policies LP24 and LP52 of the Kirklees Local Plan and the National Planning Policy Framework.

15. Prior to the commencement of development (save for enabling works which for the purposes of this condition shall comprise site preparation and site investigation) of any phase or sub phase of the development hereby approved, a Phase II Intrusive Site Investigation Report for that phase or sub phase shall be submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure unacceptable risks to human health and the environment are identified, and to ensure that the development is safely completed in accordance with the requirements of Policy LP53 of the Kirklees Local Plan and the National Planning Policy Framework.

This pre-commencement condition is necessary to ensure that contamination is identified at an appropriate stage of the development process.

16. Where site remediation is recommended in the Phase II Intrusive Site Investigation Report approved pursuant to outline condition 15 above, a Remediation Strategy for that phase or sub phase shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development for that phase or sub phase. The Remediation Strategy shall include a timetable for the implementation and completion of the approved remediation measures.

Reason: To ensure unacceptable risks to human health and the environment are identified and removed, and to ensure that the development is safely completed in accordance with the requirements of Policy LP53 of the Kirklees Local Plan and the National Planning Policy Framework.

This pre-commencement condition is necessary to ensure that contamination is identified and suitable remediation measures are agreed at an appropriate stage of the development process.

17. Remediation of the site (which can include remediation on a phase or sub phase basis) shall be carried out and completed in accordance with the Remediation Strategy approved pursuant to outline condition 16 above. In the event that remediation is unable to proceed in accordance with the approved Remediation Strategy or contamination not previously considered is identified or encountered on site, all works in the affected area (other than site investigation works) shall cease immediately and the Local Planning Authority shall be notified in writing within two working days. Unless otherwise agreed in writing with the Local Planning Authority, works in the affected area shall not recommence until proposed revisions to the Remediation Strategy have been submitted to and approved in writing by the Local Planning Authority. Remediation of the site shall thereafter be carried out in accordance with the approved revised Remediation Strategy.

Reason: To ensure unacceptable risks to human health and the environment are identified and removed, and to ensure that the development is safely completed in accordance with the requirements of Policy LP53 of the Kirklees Local Plan and the National Planning Policy Framework.

18. Following completion of any measures identified in the approved Remediation Strategy or any approved revised Remediation Strategy, a Validation Report relating to that phase or sub phase shall be submitted to the Local Planning Authority. Unless otherwise agreed in writing with the Local Planning Authority, no part of that phase or sub phase shall be brought into use until such time as the remediation measures for that phase or sub phase have been completed in accordance with the approved Remediation Strategy or the approved revised Remediation Strategy and a Validation Report in respect of those remediation measures has been approved in writing by the Local Planning Authority. Where validation has been submitted and approved in stages for different phases and/or sub phases of the whole site, a Final Validation Summary Report shall be submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure unacceptable risks to human health and the environment are identified and removed, and to ensure that the development is safely completed in accordance with the requirements of Policy LP53 of the Kirklees Local Plan and the National Planning Policy Framework.

19. Prior to or contemporaneously with the submission of the first application for the approval of Reserved Matters relating to a phase or sub phase of the development hereby approved, the findings of a scheme of intrusive investigations carried out on site to establish the risks posed to that phase or sub phase of the development hereby approved by past coal mining activity shall be submitted to and approved in writing by the Local Planning Authority. Should any remediation works and/or mitigation measures to address land instability arising from coal mining legacy prove necessary in light of the findings of the intrusive investigations, details of these works and/or measures (which may include designation of zones of influence of mine entries, the definition of no-build zones, the capping or other treatment of mine entries and/or remedial works related to shallow coal workings) shall be submitted to and approved in writing by the Local Planning Authority, and these works and/or measures shall be implemented on a phase by phase basis prior to the commencement of any development of the relevant phase or sub phase (including ground works, other than those required as part of the approved remediation works). Proposals submitted under the accompanying and subsequent Reserved Matters applications shall adhere to the findings of the approved assessment and the approved remediation works and/or mitigation measures.

Reason: To enable assessment and minimisation of the risks associated with the area's mining legacy in accordance with Policy LP53 of the Kirklees Local Plan.

This pre-commencement condition is necessary to ensure that details of remedial and/or mitigatory measures related to the site's coal mining legacy are agreed at an appropriate stage of the development process.

20. Prior to any phase or sub phase of the development hereby approved being brought into first use, in respect of which works were required pursuant to outline condition 19 above, a validation statement/declaration related to coal mining legacy affecting that phase or sub phase shall be submitted to and approved in writing by the Local Planning Authority. The statement/declaration shall be prepared and signed by a suitably competent person, shall confirm that the phase or sub phase is, or has been made, safe and stable for the phase or sub phase of the development hereby approved, and shall confirm the methods and findings of the intrusive site investigations and the completion of any remedial works and/or mitigation necessary to address the risks posed by past coal mining activity.

Reason: To minimise risk associated with the area's mining legacy in accordance with Policy LP53 of the Kirklees Local Plan.

21. If the development hereby approved is to be delivered in phases, prior to or contemporaneously with the submission of the first application for the approval of Reserved Matters, a site-wide foul and surface water and land drainage strategy shall be submitted to and approved in writing by the Local Planning Authority in consultation with the Lead Local Flood Authority. The strategy shall set out the overarching principles and parameters (including in relation to the co-ordination and integration of drainage across phases and sub phases within the development hereby approved) which shall inform detailed proposals subsequently devised for specific phases and sub phases of the development hereby approved.

Reason: To ensure the effective disposal of foul and surface water from the development so as to avoid an increase in flood risk and to accord with Policies LP27 and LP28 of the Kirklees Local Plan and chapter 14 of the National Planning Policy Framework.

22. Prior to or contemporaneously with the submission of the first application for the approval of Reserved Matters relating to each phase or sub phase, a scheme detailing foul and surface water and land drainage for that phase or sub phase (including off site works, outfalls, balancing works with discharge rates approved in writing by the Local Planning Authority in consultation with the Lead Local Flood Authority, plans and longitudinal sections, hydraulic calculations, details of phasing of drainage provision, details of existing drainage to be maintained / diverted / abandoned, and details of water quality improvements) shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall adhere to the overarching principles and parameters of the strategy approved pursuant to condition 21. No part of that phase or sub phase of the development hereby approved shall be occupied until the drainage scheme so approved for that phase or sub phase has been implemented.

Reason: To ensure the effective disposal of foul and surface water from the development so as to avoid an increase in flood risk and to accord with Policies LP27 and LP28 of the Kirklees Local Plan and chapter 14 of the National Planning Policy Framework.

23. Prior to or contemporaneously with the submission of an application for the approval of Reserved Matters relating to each phase or sub phase, an assessment of the effects of 1 in 100 year storm events, with an additional allowance for climate change, exceedance events and blockage scenarios, on drainage infrastructure and surface water run-off pre- and post-development between the relevant phase or sub

phase of the development hereby approved and the surrounding area shall be submitted to and approved in writing by the Local Planning Authority. No part of the relevant phase or sub phase of the development hereby approved shall be brought into first use until the works comprising the approved scheme (avoiding property and curtilage) have been completed and the approved scheme shall be retained thereafter.
Reason: To ensure the effective disposal of surface water from the development so as to avoid an increase in flood risk and to accord with Policies LP27 and LP28 of the Kirklees Local Plan and chapter 14 of the National Planning Policy Framework.

24. Each application for the approval of Reserved Matters shall include details of faunal enhancement measures (together with arrangements for their maintenance and management). The measures for each phase or sub phase shall be informed by up-to-date and comprehensive ecological surveys for that phase or sub phase (including surveys of protected species) prepared prior to enabling works (as defined in outline condition 1 above) commencing, and the surveys shall be submitted by the developer to and approved in writing by the Local Planning Authority. Following approval in writing by the Local Planning Authority, the measures (which may include the provision of bird and boxes, and provisions relating to hedgehogs and badgers) shall be implemented on a phase-by-phase basis in accordance with the details so approved. No phase or sub phase of the development hereby approved shall be first occupied prior to the implementation of the faunal enhancement measures so approved for that phase or sub phase, unless the approved details include alternative proposals for the timing of installation of the measures (in which case those alternative proposals shall be complied with). The measures shall be maintained and managed in accordance with the approved details for a minimum period of 30 years thereafter.

Reason: To secure mitigation, enhancement and compensation for the ecological effects resulting from loss of habitat and to accord with policy LP30 of the Kirklees Local Plan and chapter 15 of the National Planning Policy Framework.

25. No removal of hedgerows, trees or shrubs shall take place between 1st March and 31st August inclusive, unless authorised in writing by the Local Planning Authority in response to evidence to be submitted in writing to the Local Planning Authority demonstrating that no birds will be harmed and/or that there are appropriate measures in place to protect nesting bird interest on site.

Reason: To prevent significant ecological harm to birds, their eggs, nests and young and to accord with Policy LP30 of the Kirklees Local Plan and chapter 15 of the National Planning Policy Framework.

26. Each application for the approval of Reserved Matters relating to residential use shall include floor plans (providing details of internal layouts of the residential accommodation) and a schedule of accommodation (providing unit size mix information and gross internal floorspace figures in sqm) for all residential units.

Reason: To enable the quality, amenities and housing mix of the residential accommodation to be assessed in accordance with policies LP11 and LP24 of the Kirklees Local Plan and chapter 5 of the National Planning Policy Framework.

27. Prior to or contemporaneously with the submission of the first application for the approval of Reserved Matters, a lighting design strategy for biodiversity referring to the ancient woodland and Local Wildlife Site at Dum Wood and to the Kirklees Wildlife Habitat Network shall be submitted to and approved in writing by the Local Planning Authority. The strategy shall:

- a) Identify those areas or features that are ecologically sensitive and where external lighting may cause disturbance in or around breeding sites and resting places or along important routes used to access key areas of territory used, for example, for foraging; and

b) Illustrate how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent wildlife using their territory or having access to their breeding sites and resting places.

All external lighting shall be installed in accordance with the specifications and locations set out in the strategy, and the external lighting so approved shall be maintained thereafter in accordance with the strategy. Under no circumstances shall any other external lighting be installed without prior written consent from the Local Planning Authority.

Reason: To prevent significant ecological harm and to safeguard the ancient woodland and the Kirklees Wildlife Habitat Network in accordance with chapter 15 of the National Planning Policy Framework and Policy LP30 of the Kirklees Local Plan.

For the avoidance of doubt, the following terms (used in the above conditions) are defined as follows:

Site preparation comprises the installation of temporary facilities, installation of Heras or other fencing, installation of temporary construction compounds, and removal of existing structures and vegetation. Site preparation does not include ground works which are defined as excavation, remediation, grading and other activities related to the modification of the ground surface or subsurface.

Strategic site-wide utilities comprise the diversion of existing utilities or laying of new utilities which serve the entirety of the site or multiple phases.

Sub phase means a part or a component of a phase.

The above definitions shall be regarded as forming part of the wordings of the above conditions.

Appendix 2 – Draft Section 106 agreement

Dated _____ **2025**

THE COUNCIL OF THE BOROUGH OF KIRKLEES

and

C. C. PROJECTS

**Deed of Agreement under Section 106 of the Town
and Country Planning Act 1990**

Land South of Heybeck Lane, Chidswell, Dewsbury

Application Ref: 2020/60/92350/E

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THIS DEED is dated

2025

BETWEEN

- (1) **THE COUNCIL OF THE BOROUGH OF KIRKLEES** of Town Hall, Huddersfield, West Yorkshire HD1 2TA (**the Council**); and
- (2) **C.C. PROJECTS** (CRN: 01765782) (an unlimited company) of 29 Great Smith Street, London, SW1P 3PS (**the Owner**).

BACKGROUND

- (A) For the purposes of the 1990 Act the Council is the local planning authority for the area in which the Site is situated and by whom the Planning Obligations in this Deed are enforceable.
- (B) The Owner is the registered freehold proprietor of the Site registered under Title Numbers WYK187209 and WYK64771, the Ancient Woodland Land and the Skylark Land each of which is registered at HM Land Registry under Title Number WYK187209.
- (C) The Owner has submitted the Application to the Council seeking planning permission for the Development.
- (D) The Council's Strategic Planning Committee resolved on 8 December 2022 to grant Planning Permission for the Development subject to the prior completion of the Original Agreements.
- (E) The Council thereafter granted the Planning Permission on 23 October 2024. That decision to grant the Planning Permission was subsequently quashed by way of an order of the High Court dated 4 September 2024 on account of a breach by the Council of Article 40(3)(b) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.
- (F) The Council has now remedied such breach and intends to re-grant the Planning Permission subject to the prior completion of this Deed
- (G) The parties by entering into this Deed do so to create planning obligations in respect of the Site, the Ancient Woodland Land and the Skylark Land pursuant to section 106 of the 1990 Act and agree to be bound by and to observe and perform the covenants agreements conditions and stipulations hereinafter contained.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1. In this Deed the following expressions shall have the following meanings:

- | | |
|------------------------------|---|
| 1990 Act | the Town and Country Planning Act 1990; |
| Ancient Woodland Land | the land shown edged green and shown hatched green on the plan attached to this Deed at Appendix 5; |
| Application | the application for outline planning permission for the Development which was validated by the |

Council on 22 July 2020 under reference number 2020/60/92350/E;

Commencement of Development	the date upon which the Development is begun by the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act SAVE THAT for the purposes of this Deed the term material operation shall not include any operations undertaken in connection with or associated with demolition, site clearance, archaeological investigations, ecology survey or works, investigations for the purpose of assessing ground conditions, remediation works, environmental investigation, site and soil surveys, diversion and/or laying of services, erection of a contractor's work compound, erection of a site office, erection of fencing to the site boundary and/or the temporary display of site notices or advertisements and Commence Development shall be construed accordingly;
Commence Construction	the commencement of the foundations of any Dwelling;
Condition	the condition with the specified number on the Planning Permission granted pursuant to Application reference 2020/60/92350/E (and any equivalent condition in a subsequent Planning Permission to which this Deed relates);
Construction Contributions	the Bus Route Contribution, Bus Stop Infrastructure Contribution, Interim Primary School Contribution, Off Site POS Contribution, Rein Road Junction Contribution, Secondary School Contribution, Shaw Cross Junction Contribution and Soothill Lane Junction Contribution;
Contributions	together the Construction Contributions, Monitoring Fee and the Travel Plan Monitoring Fee;
Default Interest Rate	4% per annum above the base rate from time to time of the Bank of England;
Designated Body	the Church Commissioners for England or alternative body notified to the Council either for the purposes of this definition or for the purposes of a particular obligation of this Deed;
Development	the development of the Site comprising residential development (Use Class C3) of up to 181 dwellings, engineering and site works, demolition of existing property, landscaping, drainage and

	other associated infrastructure as described in the Application pursuant to the Planning Permission;
Dwelling	a residential unit that may be built on the Site as part of the Development;
Expert	a person appointed in accordance with clause 11 to determine a dispute;
GIA or Gross Internal Area	gross internal area measured in accordance with the latest edition of the RICS Code of Measuring Practice as at the relevant date;
Index	the Index BCIS in respect of the Construction Contributions or Index CPI in respect of the Travel Plan Monitoring Fee and Monitoring Fee and any reference to index at a specified date shall be the last finally approved index published at that date;
Index BCIS	the Building Cost Information Service All in Tender Price Index issued by the Royal Institution of Chartered Surveyors or any successor organisation;
Index CPI	the all Items Index of Consumer Price issued by the Office for National Statistics or any successor organisation;
Index Linked	<p>increased in accordance with the following formula:</p> <p>Amount payable = the figure specified in this Deed x (A/B) where:</p> <p>A = the figure for the Index that applied immediately preceding the date the payment is due or is paid if earlier; and</p> <p>B = the figure for the Index that applied when that index was last published prior to the date of the Planning Permission (or prior to the date of calculation where this Deed provides for a figure to be calculated at a later point in time);</p>
Leeds Road Agreement	the planning agreement to be entered into pursuant to section 106 of the 1990 Act between (1) the Council and (2) the Owner to be entered into in connection with the Leeds Road Development;
Leeds Road Development	the development of the Leeds Road Site comprising the demolition of existing dwellings and development of phased, mixed use scheme comprising residential development (up to 1,354 dwellings), employment development (up to 35 hectares of B1(part a and c), B2, B8 uses), residential institution (C2) development (up to 1

hectare), a local centre (comprising A1/A2/A3/A4/A5/D1 uses), a 2 form entry primary school including early years provision, green space, access and other associated infrastructure pursuant to the Leeds Road Permission

Leeds Road Permission	planning permission to be granted under application reference 2020/60/92331/E or subsequent permission granted for the Leeds Road Development or relevant part;
Leeds Road Site	the land east of Leeds Road, Chidswell, Dewsbury against which the Leeds Road Agreement may be enforced;
Local Plan	Kirklees Local Plan adopted February 2019;
Mineral Rights	rights to exploit, mine, or produce minerals and other extractive resources lying below the surface of the Site;
Monitoring Fee	the sum of eighty thousand pounds (£80,000) to be paid by the Owner to the Council towards the monitoring of the obligations contained in this Deed
New Deed	a planning obligation under Section 106 and/or Section 106A of the 1990 Act relating to a New Permission and binding all or part of the Site.
New Permission	a planning permission for the development of all or part of the Site.
NPPF or National Planning Policy Framework	the national planning policy framework dated December 2023 or (where the context so requires) any amended or successor national policy;
Occupy	to occupy for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration, marketing, display or security of the Development and 'Occupied' and like expressions shall be construed accordingly;
Original Agreements	the section 106 agreement dated 17 October 2024, the supplemental deed dated 19 December 2024 and the second supplemental deed dated 27 February 2025 each entered into by (1) the Council and (2) the Owner in respect of the Application;
Plan 1	the plan titled "Site Location Plan – Heybeck Lane" with drawing Ref: 00-501 Rev B annexed to this Deed at Appendix 1;

Planning Obligations	the obligations, restrictions, conditions and stipulations on the part of the Owner set out in Schedule 1 to Schedule 6 of this Deed
Planning Permission	a planning permission granted by the Council pursuant to the Application substantively in the form attached to this Deed at Appendix 2;
Phase	a phase of the Development to which a Reserved Matters Approval relates or other phase of the Development approved by the Council for the purposes of compliance with a provision of this Deed;
Practical Completion	the practical completion of the Development or specified part as evidenced by the issue of a certificate of practical completion by the architect or project manager;
Reserved Matters Application	an application for the approval of all matters reserved pursuant to Condition 1 of the Planning Permission;
Reserved Matters Approval	an approval pursuant to a Reserved Matters Application;
Secretary of State	the Secretary of State for Housing, Communities and Local Government from time to time appointed and includes any successor to the relevant function specified in this Deed (and any planning inspector appointed to determine an appeal);
Site	the land within the freehold ownership of the Owner shown edged red on Plan 1 against which the obligations contained in this Deed may be enforced and which is referred to in Recital B of this Deed;
Skylark Land	the land shown edged black on the plan titled "Skylark Land Plan" prepared by Brooks Ecological attached to this Deed at Appendix 4;
Statutory Undertaker	any company corporation board or authority at the date of this Deed authorised by statute to carry on an undertaking for the supply of telephone or television or other electronic communications, electricity, gas, water, sewerage or drainage or other public services and any authorised successor to any such undertaking;
Use Class	a use class as set out in the Schedule to the Town and Country Planning (Use Classes) Order 1987 prior to its amendment on 1 September 2020;

Wider Site the Site, the Ancient Woodland Land and the Skylark Land;

Working Day any day from Monday to Friday inclusive which is not Christmas Day, Boxing Day, Good Friday, Easter Monday or a Statutory Bank Holiday.

- 1.2. In addition to the definitions set out in Clause 1.1 above each of Schedules 1 to 6 contains further definitions to aid the interpretation of that Schedule and (unless stated to the contrary) such additional definitions shall apply throughout this Deed where applicable.
- 1.3. Unless specified to the contrary and save for reference to the Town and Country Planning (Use Classes) Order 1987, any reference in this Deed to an enactment shall be construed as a reference to that enactment as amended extended or re-enacted by or under any other enactment and shall include all instruments orders and regulations for the time being made, issued or given under that enactment.
- 1.4. References to clauses paragraphs parts and schedules are references to clauses paragraphs parts and schedules in this Deed.
- 1.5. References to paragraphs within specific parts of the schedules are references to the corresponding paragraphs within that specific part of the schedule in this Deed unless this Deed specifies otherwise.
- 1.6. Words importing one gender shall be construed as importing any gender and words importing the singular shall be construed as importing the plural and vice versa.
- 1.7. Any words denoting natural person shall include legal persons and vice versa.
- 1.8. The expression “the Owner” shall include its successors in title and assigns.
- 1.9. The expression “the Council” shall include any successor authority to its statutory functions under the 1990 Act.
- 1.10. Where a covenant, restriction or requirement is expressed to be given by more than one party, or where (from time to time) a party is comprised of more than one person, liability for such covenant, restriction or requirement shall be joint and several.
- 1.11. Clause headings and the contents list shall not affect the construction of this Deed.
- 1.12. Any phrase introduced by the terms ‘including’ ‘include’ ‘in particular’ or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.13. Any covenant by the Owner or the Council not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 1.14. Where any details, scheme, strategy or plan is required to be submitted for approval under this Deed and such approval is obtained, unless expressly stated otherwise nothing in this Deed shall prevent such details, scheme, strategy or plan from being resubmitted or amended by agreement between the Owner and the Council.

2. STATUTORY BASIS

- 2.1. This Deed is made pursuant to section 106 of the 1990 Act and binds the Site and (to the extent set out in clause 4.2) the Ancient Woodland Land and Skylark Land, and as such is enforceable pursuant to section 106(3) of the 1990 Act against the Owner and any person claiming or deriving title to the Site (or any part or parts thereof) and (to the extent set out in clause 4.2) the Ancient Woodland Land (or any part or parts thereof) and Skylark Land (or any part or parts thereof), through or under the Owner as if that person had been an original covenanting party to this Deed subject to the terms of this Deed.
- 2.2. This Deed is enforceable by the Council as the local planning authority for the purposes of the 1990 Act.
- 2.3. To the extent that the covenants, restrictions and requirements in this Deed are not made under section 106 of the 1990 Act they are made under section 1 of the Localism Act 2011 and section 111 of the Local Government Act 1972 and all other powers so enabling.

3. CONDITIONS PRECEDENT

- 3.1. This Deed is conditional upon the grant of the Planning Permission.
- 3.2. The Schedules to this Deed are further conditional upon the Commencement of Development (save any obligations which are required to be complied with prior to Commencement of Development which shall be conditional only upon the grant of Planning Permission and which for the avoidance of doubt includes Schedule 5 paragraph 2).

4. COVENANTS & DECLARATIONS

- 4.1. The Owner covenants with the Council so as to bind the Site to comply with the Planning Obligations.
- 4.2. The Owner covenants with the Council:
 - 4.2.1. so as to bind the Ancient Woodland Land to comply with the obligations contained in paragraph 6.6, paragraph 7.3 and paragraph 8 of Schedule 3 and paragraph 5.2 of Schedule 5; and
 - 4.2.2. so as to bind the Skylark Land to comply with the obligations contained in paragraph 6.2 of Schedule 5

in each case to the extent that any such obligations are in effect pursuant to the specified paragraphs of this Deed.

- 4.3. The Council covenants with the Owner to comply with the obligations on its part in Schedule 1 to Schedule 6.

5. EXCLUSIONS & RELEASE

- 5.1. No party shall be bound by the terms of this Deed or be liable for the breach of any Planning Obligation:

- 5.1.1. after it has parted with its interest in the Wider Site or the part in respect of which such breach occurs (but without prejudice to liability for any subsisting breach prior to parting with such interest);
 - 5.1.2. if its interest in the Wider Site or relevant part thereof is solely as the owner of the subsoil of adopted highway and/or of Mineral Rights;
 - 5.1.3. if it is a Statutory Undertaker which has an interest in any part of the Wider Site for the purposes of its undertaking; or
 - 5.1.4. if that party is an owner or occupier of an individual Dwelling (save in respect of the provisions of paragraphs 4 and 5 of Part 3 of Schedule 4 (which shall be binding on any First Home Owner) and the provisions of paragraphs 9.8 to 9.12 of Part 2 of Schedule 4 (which shall be binding on any DMS Owner)).
- 5.2. If the Planning Permission expires before the Commencement of Development or is at any time modified (without the consent of the Owner), quashed or revoked this Deed shall determine and cease to have effect.
- 5.3. No obligation in this Deed shall be binding on or enforceable against any chargee or mortgagee from time to time who shall have the benefit of a charge or mortgage of or on any part of the Wider Site (or any receiver appointed by such chargee or mortgagee) unless and until such chargee, mortgagee or receiver (or any person appointed by them) has taken or entered into possession of the Wider Site or part thereof in which case it will also be bound by the covenants, restrictions and obligations in this Deed as if it were a person deriving title from an original covenanting party.
- 5.4. As a consequence of the quashing of the order of the High Court (referred to in Recital E above) the Original Agreements determined and ceased to have effect on 4 September 2024 and the Parties agree and declare that the provisions of the Original Agreements shall not apply to or be enforceable against the Wider Site or any party with an interest in the Wider Site from time to time.

6. REGISTRATION

- 6.1. This Deed is a local land charge and may be registered as such by the Council.
- 6.2. Following either:
- 6.2.1. the performance and satisfaction of all the Planning Obligations contained in this Deed; or
 - 6.2.2. the determination of this Deed in accordance with Clause 5.2;

the Council shall as soon as reasonably practicable upon the written request of the Owner effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

7. NON-FETTER & WAIVER

- 7.1. Nothing in this Deed restricts or is intended to restrict the proper exercise at any time by the Council of any of its statutory powers, functions or discretions.

7.2. No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants, terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

7.3. Nothing in this Deed shall prohibit or limit the right to develop any part of the Wider Site in accordance with a planning permission (other than the Planning Permission) granted before or after the date of this Deed.

8. **VAT**

8.1. All payments given in accordance with this Deed shall be exclusive of any value added tax properly payable.

9. **SEVERABILITY**

9.1. If any provision in this Deed shall in whole or in part be held to be invalid, illegal or unenforceable under any enactment or rule of law such provisions shall to the extent required be severed from this Deed and shall not affect the validity, legality or enforceability of the remaining provisions of this Deed.

10. **CHANGE OF OWNERSHIP**

10.1. The Owner agrees with the Council to give written notice to the Council within 20 Working Days of any change in ownership of any of its interests in the Wider Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site purchased by reference to a plan **PROVIDED THAT** this obligation shall not apply to a sale or disposal of an individual Dwelling or to the disposal of part of the Wider Site to a Statutory Undertaker for the purposes of its undertaking or to the grant of an agricultural or farm business or similar tenancy.

11. **DISPUTES**

11.1. Any dispute or disagreement arising under this Deed which has been identified by notice in writing by one party to the other(s) and which has not been resolved within 20 Working Days (or such lesser period as may be agreed) of the date of receipt by the other party(s) of such written notice may be referred at the instance of any party for determination by an Expert whose decision (except in cases of manifest error or fraud) shall be final and binding on the parties.

11.2. The following provisions and terms of appointment shall apply to such disputes or disagreements:-

11.2.1. the Expert shall be agreed between the parties or, in default of agreement within 10 Working Days of receipt of the notice in Clause 11.1 above, shall be appointed or identified on application by any party by the following persons:

11.2.1.1. in the case of disputes relating to land or valuation matters the President of the Royal Institution of Chartered Surveyors;

- 11.2.1.2. in the case of disputes relating to planning or design matters the President of the Royal Town Planning Institute; or
- 11.2.1.3. in the case of any other dispute the President of the Bar Council;
- 11.2.2. the Expert shall act as an expert and not as an arbitrator;
- 11.2.3. the Expert shall be required to give notice of their appointment to each of the parties (**Expert's Notice**) and thereafter:
 - 11.2.3.1. the parties to the dispute shall make written submissions to the Expert and the other parties within 20 Working Days of receipt of the Expert's Notice;
 - 11.2.3.2. the parties shall have 20 Working Days from the receipt of original written submissions (or such extended period as the Expert shall allow) to respond;
 - 11.2.3.3. the Expert shall disregard any representations made out of this time;
 - 11.2.3.4. the Expert may request further information or documentation and the parties shall comply with any requests by the Expert for further information or documentation within a reasonable time; and
 - 11.2.3.5. to the extent not provided for by this clause the Expert may in their reasonable discretion determine such other procedures to assist with the conduct of the determination as they consider just or appropriate including (to the extent considered necessary) instructing professional advisers to assist them in reaching their determination;
- 11.2.4. the Expert shall make his decision within 20 Working Days of the close of the period for submissions of written representations;
- 11.2.5. the Expert's decision shall be in writing and shall give reasons for the decision; and
- 11.2.6. each party shall bear its own costs and the Expert's costs will be payable in the determination of the Expert.
- 11.3. The decision of the Expert shall be binding on the parties save in the case of manifest error and/or fraud.
- 11.4. If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause then:
 - 11.4.1. either party may apply to the relevant body as per Clause 11.2.1 to discharge the Expert and appoint a replacement Expert with the required expertise; and
 - 11.4.2. Clause 11.2 shall apply to the new Expert as if they were the first Expert appointed

12. **FUTURE PERMISSIONS**

12.1. In the event that an application is made pursuant to Section 73 or Section 73B of the 1990 Act for an amendment to the Planning Permission and planning permission is granted by the Council in respect of that application then:

12.1.1. references to "Application", "Planning Permission" and "Development" in this Deed shall thereafter be deemed to include the application made pursuant to Sections 73 or 73B, the new planning permission granted pursuant to Section 73 or 73B of the 1990 Act and the development permitted by that permission respectively; and

12.1.2. this Deed shall apply to and remain in full force in respect of both the Planning Permission and that new planning permission without the need for a further agreement to be entered into pursuant to Section 106 of the 1990 Act unless required to do so by the Council.

in each case **PROVIDED THAT:**

12.1.3. nothing in this Clause 12 shall fetter the discretion of the Council in determining any application(s) under Section 73 or 73B of the 1990 Act or in requiring new or varied planning obligations whether by way of a new or supplemental deed pursuant to Section 106 and/or Section 106A of the 1990 Act; and

12.1.4. to the extent that any of the Planning Obligations have been discharged in respect of the original Planning Permission nothing shall require the Owner to comply with that obligation again in respect of a planning permission granted under Section 73 or 73B of the 1990 Act.

12.2. The Council and the Owner each acknowledge that it is foreseeable that part of the Site may be developed pursuant to a New Permission and in the event that a New Permission is granted which is materially inconsistent with the Planning Permission the parties to this Deed intend that a New Deed is entered into which (at the Council's and the Owner's respective discretion) specifies (inter alia):

12.2.1. which obligations contained in this Deed bind the land and development subject to the New Permission; and

12.2.2. which parts of the Site are intended to be developed pursuant to the New Permission and which parts are intended to be developed pursuant to the Planning Permission and on what terms; and / or

12.2.3. any consequential variations or modifications to this Deed;

and notwithstanding the implementation of any New Permission, any part of the Site which is not developed pursuant to a New Permission may be developed or continue to be developed pursuant to the Planning Permission in accordance with this Deed as may be varied or modified by the New Deed and subject to any contrary provision in such New Deed.

13. **DUTY TO ACT REASONABLY**

13.1. All parties to this Deed acknowledge that they are under a duty to act reasonably and (without prejudice to generality) if any agreement, consent, confirmation, notification,

specification, approval or expression of satisfaction is due by one party to another under the terms of this Deed the same shall not be unreasonably withheld or delayed.

- 13.2. The Council covenants that where any details, scheme, strategy or plan is submitted for its approval under this Deed it shall act reasonably and not unreasonably withhold or delay its approval.

14. **INDEXATION**

- 14.1. The Monitoring Fee, Travel Plan Monitoring Fee and Construction Contributions (or for the avoidance of doubt any tranche of the Construction Contributions) payable to the Council shall be Index Linked.

- 14.2. Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council shall advise the Owner in writing.

15. **INTEREST ON LATE PAYMENTS**

- 15.1. Any amount due from the Owner to the Council under the terms of this Deed which is not paid on or prior to the date due shall accrue interest at the Default Interest Rate accruing from the date such payment was due to the date of actual payment.

16. **THIRD PARTY RIGHTS**

- 16.1. No person who is not a party to this Deed may enforce any terms hereof pursuant to the Contracts (Rights of Third Parties) Act 1999 **PROVIDED THAT** this clause shall not affect any right of action of any person to whom this Deed has been lawfully assigned or becomes vested in law including successors in title to the Wider Site.

17. **NOTICES**

- 17.1. Any notice given to a party under or in connection with this Deed shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).

- 17.2. Any notice shall be deemed to have been received and served:

- 17.2.1. if delivered by hand, at the time the notice is left at the proper address (unless received after 5pm or on a non Working Day in which case it shall be deemed received and served on 9am on the next Working Day); or

- 17.2.2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting.

- 17.3. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

18. COSTS

- 18.1. The Council acknowledges that the Owner has prior to the date of this Deed paid the reasonable legal costs of the Council incurred in the preparation, negotiation and completion of this Deed.
- 18.2. The Owner will:
- 18.2.1. pay to the Council forty thousand pounds (£40,000.00) of the Monitoring Fee on or prior to the Commencement of Development; and
 - 18.2.2. pay to the Council the remaining forty thousand pounds (£40,000.00) of the Monitoring Fee on or prior to the Practical Completion of the final Dwelling.

19. JURISDICTION

- 19.1. This Deed is governed by and interpreted in accordance with the law of England and the parties submit to the exclusive jurisdiction of the courts of England.

20. RECEIPT OF CONTRIBUTIONS

- 20.1. The Council shall issue separate receipts on request for any Contributions paid to it pursuant to this Deed.
- 20.2. The Council will place all sums received pursuant to this Deed in an interest bearing account (or in separate interest bearing accounts as the Council shall at its discretion decide).
- 20.3. The Council will not apply any sums received pursuant to this Deed for any purpose other than as described in this Deed.
- 20.4. The Council shall on reasonable request by the Owner provide details of the sums collected and retained, the interest accrued, the sums expended and the purposes for which the sums have been expended.
- 20.5. The Council shall repay any Contributions or parts thereof paid to it under this Deed (plus any interest accrued) to the Designated Body if not expended within 10 years from the date of payment unless an alternative date is specified for a particular Contribution in the Schedules to this Deed.

21. PERFORMANCE

- 21.1. The Council shall on reasonable request by the Owner issue written confirmation that a Planning Obligation(s) has been performed.
- 21.2. In the event that the Council is satisfied that all of the Planning Obligations have been performed, the Council will thereafter cancel all relevant entries in the register of local land charges.

THE PARTIES HEREBY WITNESS that this document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

**Schedule 1
Financial Contributions**

1. **Definitions**

1.1. In this Schedule 1 the following terms have the following meaning:

Bus Route Contribution	the sum of £120,000.00 (one hundred and twenty thousand pounds) to be paid to the Council by the Owner as a contribution towards the cost of pump-priming a Dewsbury-Leeds bus route via the development permitted by the Leeds Road Permission;
Bus Stop Infrastructure Audit	an audit undertaken of the works required to upgrade the bus infrastructure to serve the Development by Pell Frischmann dated 24 January 2024 and attached to this Deed at Appendix 3;
Bus Stop Infrastructure Contribution	the sum of £62,000 (sixty two thousand pounds) to be paid to the Council by the Owner as a contribution towards the cost of improving bus stop infrastructure in accordance with the Bus Stop Infrastructure Audit;
Interim Primary School Contribution	a sum of £300,000.00 (three hundred thousand pounds) to be paid by the Owner to the Council to be used as a contribution towards the provision of primary school places to serve the Development;
Rein Road Junction Contribution	the sum of £27,360.74 (twenty-seven thousand and three hundred and sixty pounds and seventy four pence) to be paid by the Owner to the Council as a contribution towards the costs of delivering the Rein Road Junction Improvement Works;
Rein Road Junction Improvement Works	the works to improve the junction of the A653 Dewsbury Road / Syke Road / Rein Road substantially in the form of those shown drawing Ref: A13398-T-049 Rev A annexed to this Deed at Appendix 6 (or such other drawing as may be approved by the Council pursuant to the Leeds Road Permission);

Secondary School Contribution	a sum of £223,957.00 (two hundred and twenty three thousand nine hundred and fifty seven pounds) to be paid by the Owner to the Council to be used as a contribution towards the provision of secondary school places to serve the Development;
Shaw Cross Junction Contribution	the sum of £48,204.38 (forty eight thousand two hundred and four pounds and thirty eight pence) to be paid by the Owner to the Council as a contribution towards the costs of delivering the Shaw Cross Junction Improvements Works;
Shaw Cross Junction Improvement Works	the works to improve the junction of Leeds Road / Challenge Way / John Ormsby VC Way substantially in the form of those shown on drawing Ref: PC2558-RHD-PD-SD-DR-D-0100 S3 Rev P01 annexed to this Deed at Appendix 6 (or such other drawing as may be approved by the Council pursuant to the Leeds Road Permission);
Soothill Lane Junction Contribution	the sum of £51,222.42 (fifty one thousand two hundred and twenty two pounds and forty two pence) to be paid by the Owner to the Council as a contribution towards the costs of delivering the Soothill Lane Junction Improvement Works;
Soothill Lane Junction Improvement Works	the works to improve the junction of Leeds Road / Heybeck Lane / Soothill Lane substantially in the form of those shown on drawing Ref: A13398-T-048 Rev B annexed to this Deed at Appendix 6 (or such other drawing as may be approved by the Council pursuant to the Leeds Road Permission).

2. **Local Highway Improvements**

2.1. The Owner shall pay:

- 2.1.1. the Rein Road Junction Contribution to the Council prior to Occupation of more than 175 Dwellings;
- 2.1.2. the Soothill Lane Junction Contribution to the Council prior to Occupation of more than 175 Dwellings; and

- 2.1.3. the Shaw Cross Junction Contribution to the Council prior to Occupation of more than 175 Dwellings;

PROVIDED ALWAYS THAT in the event that any of the Rein Road Junction Improvement Works, Soothill Lane Junction Improvement Works and Shaw Cross Junction Improvement Works are being delivered pursuant to the Leeds Road Permission, then the parties agree that the Rein Road Junction Contribution, Soothill Lane Junction Contribution and/or Shaw Cross Junction Contribution (as applicable) shall be passed to the relevant developer to secure such works.

3. **Sustainable Transport**

- 3.1. The Owner shall not permit Occupation of more than 119 Dwellings until the Bus Route Contribution has been paid to the Council.
- 3.2. The Owner shall not permit Occupation of more than 50 Dwellings until the Bus Stop Infrastructure Contribution has been paid to the Council.

4. **Education**

- 4.1. The Owner shall not permit Occupation of more than 119 Dwellings until the Interim Primary School Contribution has been paid to the Council.
- 4.2. The Owner shall not permit Occupation of more than 119 Dwellings until the Secondary School Contribution has been paid to the Council.

Schedule 2 Travel Plan

1. Definitions

1.1. In this Schedule 2 the following terms have the following meaning:

Travel Plan	a plan which identifies long-term management strategies for integrating proposals for sustainable travel into the Development and which shall (as a minimum) contain: <ul style="list-style-type: none">(a) measures to encourage the use of alternative modes of transport to the private car;(b) measures to reduce single occupancy car use;(c) details of targets for (a) and (b);(d) details for monitoring for five years from first Occupation and reporting and liaison with the Travel Plan Officer;(e) details for enforcement and penalties; and(f) a timetable for implementation;
Travel Plan Coordinator	a person(s) to be appointed by the Owner for a minimum period of five (5) years who shall coordinate the implementation of, and compliance with, the Travel Plan and who shall be responsible for liaising with the Travel Plan Officer;
Travel Plan Monitoring Fee	a sum of £15,000.00 (fifteen thousand pounds) to be paid by the Owner to the Council as a contribution towards the cost of monitoring compliance with the Travel Plan;
Travel Plan Officer	a person to be appointed by the Council (and notified to the Owner in writing) who shall be responsible for monitoring and reviewing the Owner's compliance with the Travel Plan.

2. Travel Plan

2.1. At least three months prior to the intended date of first Occupation of the Development the Owner shall submit for approval in writing to the Council the Travel Plan which shall include the details and confirmation of the appointment by the Owner of a Travel Plan Coordinator.

2.2. From such date as is two weeks prior to the intended date of first Occupation of the Development, the Owner shall use reasonable endeavours to undertake the actions contained in, and to meet the targets and obligations set out in, the Travel Plan and will continue to use reasonable endeavours to observe and perform any requirements of the approved Travel Plan unless otherwise agreed in writing by the Council.

2.3. Any changes to the Travel Plan must be submitted to the Travel Plan Officer for its written approval.

3. **Travel Plan Monitoring**

3.1. As soon as reasonably practicable following the first anniversary of first Occupation of the Development the Owner shall send a report to the Travel Plan Officer setting out the progress the Owner has made in complying with the Travel Plan and the Owner shall thereafter send an updated report to the Travel Plan Officer on the second, third, fourth and fifth anniversary of the submission of the first report.

3.2. In the event that the Travel Plan Officer (acting reasonably) is not satisfied with the Owner's progress in connection with the obligations in paragraph 2.2 of this Schedule the Owner shall use reasonable endeavours to implement any reasonable recommendations the Travel Plan Officer makes in response to the progress reports required under paragraph 3.1.

4. **Travel Plan Monitoring Fee**

4.1. The Owner shall pay to the Council £3,000.00 (three thousand pounds) of the Travel Plan Monitoring Fee to the Council within 20 Working Days of the Occupation of the 90th Dwelling and shall thereafter pay a further £3,000.00 (three thousand pounds) of the Travel Plan Monitoring Fee to the Council every annual anniversary thereafter for a period of 4 (four) years.

Schedule 3
Public Open Space, Drainage & Masterplanning

1. **Definitions**

1.1. In this Schedule 3 the following terms have the following meaning:

Ancient Woodlands the ancient woodlands known as Dum Wood shown edged green and labelled accordingly on drawing Ref: 00-207 attached to this Deed at Appendix 5;

Ancient Woodlands Buffer the buffer to the Ancient Woodlands shown hatched green on drawing Ref: 00-207 attached to this Deed at Appendix 5 (but not for the avoidance of doubt the buffer for Dogloitch Wood);

Ancient Woodlands Management Plan a plan detailing arrangements for the management and maintenance of the Ancient Woodlands and Ancient Woodlands Buffer including for the management of controlled public access to the Ancient Woodlands and Ancient Woodlands Buffer and including (but not limited to) details of the following (for the avoidance of doubt (d) and (e) do not apply to the Ancient Woodlands Buffer):

- (a) the management and maintenance responsibilities in respect of the Ancient Woodlands and Ancient Woodlands Buffer (including in respect of biodiversity);
- (b) any areas where public access will not be permitted;
- (c) details of the Ancient Woodlands Permissive Works;
- (d) the means by which information relating to the Ancient Woodlands (and their protection) would be disseminated to residents of the Development; and
- (e) arrangements for the monitoring of impacts of public access and the Development upon the Ancient Woodlands together with a mechanism for agreeing and implementing remedial measures as required;

Ancient Woodlands Permissive Works improvement works within the Ancient Woodlands and Ancient Woodlands Buffer to be approved as part of the Ancient Woodlands Management Plan and which shall include:

- (a) the provision, surfacing and other treatments of permissive routes through and within the

	Ancient Woodlands and Ancient Woodlands Buffer; and
	(b) associated signage, fencing, interpretation, and dog waste bins.
Construction (Environmental) Management Plan	the construction management plan approved under Condition 6;
Estate Roads	any road within the Development excluding roads agreed by the Council not to be public highway;
Off Site POS Contribution	a sum to be determined by the approved Off Site POS Contribution Calculation and to be paid by the Owner to the Council as a contribution towards the costs of providing off-site public open space (which may include sports and recreation and play spaces) in the vicinity of the Development.
Off Site POS Contribution Calculation	the calculation to determine the Off Site POS Contribution to be made in accordance with the Open Space SPD and based on the details to be submitted pursuant to paragraph 2.1 of this Schedule 3;
Open Space SPD	the Council's supplementary planning document entitled "Open Space Supplementary Planning Document" adopted June 2021;
Public Open Space	those parts of the Site which are to be made available for recreation by the general public;
POS Management Company	a limited company or companies registered at Companies House (including a residents management company) or (at the discretion of the Owner but subject to the approval of the Council) an alternative body such as a charity or trust which (in either case) may already be in existence or may be formed by the Owner for the purposes of the management and maintenance of the Public Open Space and/or the Ancient Woodlands and/or the Ancient Woodlands Buffer in accordance with this Schedule 3 and: <ul style="list-style-type: none"> (a) which is/are incorporated in England and Wales; and (b) which has/have its/their registered office in England, and Wales; and (c) whose primary objects permit it/them to maintain and renew the Public Open Space

and/or the Ancient Woodlands and/or the Ancient Woodlands Buffer.

Public Open Space Management Scheme	<p>a scheme for the maintenance and management of the Public Open Space (including any play features and/or street furniture within the Public Open Space) and the Residual Land which shall include details (to the extent relevant) of:</p> <ul style="list-style-type: none">(a) the ongoing maintenance regime including management objectives, maintenance operations, and the timing and frequency of such operations;(b) the identity of any POS Management Company proposed to be responsible for the ongoing management and maintenance of the Public Open Space and Residual Land which shall include details of the structure and voting rights of the POS Management Company (where relevant);(c) the arrangements and timing for the transfer of the responsibility for the management and maintenance of Public Open Space and Residual Land from the Owner to the POS Management Company which may include a transfer, lease or other arrangement;(d) the funding arrangements for the management and maintenance of the Public Open Space and Residual Land;(e) a commitment (where applicable) to the management of the SuDS in accordance with the SuDS Maintenance and Management Plan approved under paragraph 5 of Schedule 3.
Public Open Space Scheme	<p>a scheme prepared by the Owner detailing:</p> <ul style="list-style-type: none">(a) the location, size(s) and typolog(y/ies) of the Public Open Space;(b) the details of the Public Open Space Works; and;(c) the timetable for the delivery of the Public Open Space Works relative to the Occupation of the Dwellings;
Public Open Space Works	<p>the works for the laying out and landscaping of the Public Open Space;</p>

Residual Land	<p>those parts of the Site which following completion of the Development:</p> <p>(a) are not buildings (including common parts) or land associated with such buildings, or other land retained for private purposes or transferred to third parties;</p> <p>(b) have not been (and are not intended to be) adopted or otherwise owned or maintained by a Statutory Undertaker or public authority;</p> <p>(c) does not form part of the Public Open Space</p> <p>and which shall include any estate roads and SuDS unless and until adopted.</p>
Site-Wide Drainage Strategy Working Group	<p>a forum comprising representatives of the Owner and the Council (to include separate representatives of the Council in its capacities as Lead Local Flood Authority, and Local Planning Authority) which shall be invited to meet every twelve months (or more or less often as required) for the purposes of ensuring co-ordinated and effective drainage and flood risk management across the Site and surrounding land;</p>
SuDS	<p>the sustainable urban drainage systems to be provided by the Owner as part of the Development;</p>
SuDS Maintenance and Management Plan	<p>a detailed management plan or plans setting out measures to be undertaken as part of the Development to ensure SuDS are properly maintained and managed, which shall include the information set out in paragraph 5.1 of this Schedule 3, or such other or revised plan as may be agreed in writing with the Council from time to time.</p>
Way	<p>a highway, footpath, bridleway or other way within the Development.</p>

2. **Public Open Space**

- 2.1. The Owner shall not Commence Development unless and until the Owner has submitted to the Council and the Council has approved the Public Open Space Scheme.
- 2.2. The Owner shall not permit Occupation of any Dwelling until the Public Open Space Management Scheme and any Off Site POS Contribution Calculation has been approved by the Council.

3. **Public Open Space Works**

- 3.1. The Owner shall provide the Public Open Space Works in accordance with the details and timescales in the approved Public Open Space Scheme and shall notify the Council in writing when such works have been completed.
- 3.2. The Owner shall ensure that the Public Open Space Works are carried out in a proper and workmanlike manner with sound and good quality planting and materials in accordance with good horticultural and ecological practice to adoptable standards and to the reasonable satisfaction of the Council.
- 3.3. Within 1 (one) month of the Council receiving the notice pursuant to paragraph 3.1 (or paragraph 3.4.2 as the case may be) of this Schedule 3 the Council shall inspect the Public Open Space Works and if those Public Open Space Works have been carried out to its reasonable satisfaction the Council shall confirm as such in writing to the Owner within two weeks of inspection.
- 3.4. If following the inspection pursuant to paragraph 3.3 of this Schedule 3 the Council considers (acting reasonably) the Public Open Space Works as carried out by the Owner are not to its satisfaction:
 - 3.4.1. it shall notify the Owner within two weeks of the inspection specifying the measures necessary to complete the Public Open Space Works to its reasonable satisfaction; and
 - 3.4.2. the Owner shall as soon as reasonably practicable carry out those works and notify the Council (and the procedure in paragraphs 3.3 and 3.4 shall be repeated as often as is necessary until such time as the Council confirms completion of those works to its reasonable satisfaction).
- 3.5. Following written confirmation by the Council of the completion of the Public Open Space Works to its reasonable satisfaction pursuant to paragraphs 3.3 and 3.4 of this Schedule 3 the Owner will thereafter maintain the Public Open Space in accordance with the approved Public Open Space Management Scheme until such time as the Public Open Space has been transferred or leased to a POS Management Company.

4. Transfer of the Public Open Space to a POS Management Company

- 4.1. No part of the Public Open Space shall be transferred or leased to any POS Management Company other than in accordance with an approved Public Open Space Management Scheme.
- 4.2. The Owner shall ensure that the Council is provided with up to date contact details (including a contact name, address, telephone number and email address) of any third party or person who is engaged or contracted to carry out any material maintenance or management works in respect of the Public Open Space.
- 4.3. Within 6 months (or within such other period of time that may be agreed in writing by the Council or set out in an approved Public Open Space Management Scheme) of receipt of written approval by the Council of the satisfactory completion of the Public Open Space Works pursuant to paragraph 3 of this Schedule 3 the Owner shall put into place the arrangements for the transfer of the responsibility for the management and maintenance of the Public Open Space and Residual Land to the POS Management Company in accordance with the approved Public Open Space Management Scheme.

- 4.4. Any transfer or lease entered into pursuant to paragraph 4.1 shall contain covenants so as to bind the Public Open Space into whomsoever hands the same may be transferred or leased:
- 4.4.1. to maintain the Public Open Space in accordance with the approved Public Open Space Management Scheme;
 - 4.4.2. not to permit it to be used for anything other than open space; and
 - 4.4.3. to allow the public reasonable access to the relevant Public Open Space, subject only to paragraph 8 of this Schedule 3
- 4.5. Responsibility for the Public Open Space shall not at any time be transferred to an alternative POS Management Company unless the Council has been given a minimum of one month's written notice that such a transfer is to take place and has issued its approval in writing.
- 4.6. On transfer or lease of the Public Open Space (or other transfer of responsibility) to a POS Management Company such POS Management Company shall thereafter maintain the Public Open Space in accordance with the approved Public Open Space Management Scheme.

5. **Provision of Sustainable Drainage Systems**

- 5.1. Prior to Commencement of the Development the Owner shall submit to the Council for approval the SuDS Maintenance and Management Plan in respect of the SuDS such SuDS Maintenance and Management Plan to contain:
- 5.1.1. details and a programme for the long term management and maintenance works to cover all aspects of the SuDS to include:
 - 5.1.1.1. a detailed maintenance schedule and methodology for all individual SuDS components to maintain the functionality of the SuDS, water storage and treatment;
 - 5.1.1.2. a detailed schedule and methodology for the inspection, maintenance and replacement as required of engineering features including inlet and outlet structures, flow controls tanks and channels and any other SuDS features;
 - 5.1.1.3. a schedule for litter and debris removal, landscape and grass cutting, weeding and sediment removal;
 - 5.1.1.4. details of the procedure in place for dealing with extreme rainfall events (both prior and post event);
 - 5.1.1.5. plans at 1:200 scale which show the extent of the SuDS features, the extent of the landscape features, details of connections to Yorkshire Water sewers and details of whether the SuDS feature is a designated asset under the Flood & Water Management Act 2010;

and any maintenance schedules to include details of the frequency of all actions and routine maintenance activities, the timing of all inspections

(including annual inspections) and the timing of management works arising from inspections;

- 5.1.2. details of the maintenance of the shared surface water drainage network, connected to the SuDS, and the shared foul drainage network within the Site as part of the Development prior to their adoption by Yorkshire Water if applicable;
 - 5.1.3. details of the maintenance regime that will be adopted during the construction phase up until the point that the SuDS is signed off as complete in accordance with the approved design; and
 - 5.1.4. details of vehicular and pedestrian access arrangements relating to the inspection and maintenance of SuDS.
- 5.2. In the event that the Council considers that it is unable to approve the submitted version of the SuDS Maintenance and Management Plan the Owner shall submit a revised version to the Council, taking into account any comments that the Council has provided for their approval (such procedure to be repeated as often as is necessary until the Council approves the SuDS Maintenance and Management Plan).
- 5.3. The Owner covenants to fully comply with the approved SuDS Maintenance and Management Plan from the Commencement of Development and at all times thereafter to manage and maintain the SuDS in accordance with the details set out in the relevant SuDS Maintenance and Management Plan unless and until the SuDS have been adopted by a statutory undertaker or transferred to a POS Management Company pursuant to this Schedule.

6. **Ancient Woodlands**

- 6.1. Paragraphs 6.3 to 6.5 (inclusive) below shall apply save to the extent that any of the Ancient Woodlands Permissive Works have been completed to the Council's satisfaction pursuant to the requirements of paragraph 6 of Schedule 4 of the Leeds Road Agreement and in such case the relevant obligations shall be deemed to have been complied with for the purposes of this Deed.
- 6.2. The Owner shall submit the Ancient Woodlands Management Plan to the Council for its approval before or alongside the submission of the first Reserved Matters Application.
- 6.3. The Owner shall not Occupy the Development until the Ancient Woodlands Permissive Works have been completed to the Council's satisfaction and shall notify the Council in writing when such works have been completed.
- 6.4. Within 1 (one) month of the Council receiving the notice pursuant to paragraph 6.3 (or paragraph 6.5.2 as the case may be) of this Schedule the Council shall inspect the Ancient Woodlands and Ancient Woodlands Buffer and if any works undertaken pursuant to the Ancient Woodlands Management Plan have been carried out to its reasonable satisfaction the Council shall confirm as such in writing to the Owner within two weeks of inspection.
- 6.5. If following the inspection pursuant to paragraph 6.4 of this Schedule the Council consider (acting reasonably) any works undertaken pursuant to the Ancient Woodlands Management Plan as carried out by the Owner are not to its satisfaction:

- 6.5.1. it shall notify the Owner within two weeks of the inspection specifying the measures necessary to complete the works pursuant to the Ancient Woodlands Management Plan to its reasonable satisfaction; and
 - 6.5.2. the Owner shall as soon as reasonably practicable carry out those works and notify the Council (and the procedure in paragraphs 6.4 and 6.5 shall be repeated as often as is necessary until such time as the Council confirms completion of those works to its reasonable satisfaction).
- 6.6. From the date of the first Occupation of the Development the Owner shall manage and maintain the Ancient Woodlands and Ancient Woodlands Buffer in accordance with the approved Ancient Woodlands Management Plan for the lifetime of the Development.

7. **Compliance**

- 7.1. The Council may enter the Public Open Space, Residual Land and/or the Ancient Woodlands and/or the Ancient Woodlands Buffer at all reasonable times and on reasonable notice in order to monitor compliance with the Public Open Space Management Scheme and/or the Ancient Woodlands Management Plan and/or the SuDS Maintenance and Management Plan (as applicable).
- 7.2. In the event that the Council considers that the requirements of the Public Open Space Management Scheme and/or the Ancient Woodlands Management Plan and/or the SuDS Maintenance and Management Plan (as applicable) are not being complied with then the Council may serve a notice on the Owner (being the owner of the relevant Public Open Space or Residual Land or Ancient Woodlands or Ancient Woodlands Buffer from time to time and which may include a POS Management Company) requiring such Owner to undertake reasonable remedial steps as may be specified in the notice.
- 7.3. The Owner (being the owner of the relevant Public Open Space or SuDS or Residual Land or Ancient Woodlands or Ancient Woodlands Buffer from time to time and which may include a POS Management Company) shall comply with the terms of any notice served pursuant to paragraph 7.2 above within 28 days of the date of service by the Council of such notice (or such longer period as may be agreed in writing with the Council).

8. **Public Access**

- 8.1. The Owner (being the owner of the Public Open Space and/or the Ancient Woodlands and/or the Ancient Woodlands Buffer as appropriate from time to time and which may include a POS Management Company) shall allow public access to the Public Open Space, the Ancient Woodlands and the Ancient Woodlands Buffer (once required to do so by this Schedule) **SUBJECT ALWAYS** to the following provisions:
 - 8.1.1. access to the Public Open Space, the Ancient Woodlands and the Ancient Woodlands Buffer may be subject to such requirements and regulations as may from time to time be imposed by the relevant Owner or POS Management Company (as applicable) having regard to overriding reasons of safety, security and prudent estate management (including any reasonable requirement to keep access to specified Ways) **PROVIDED THAT** such requirements and regulations shall not be imposed without the Council's prior approval (whether pursuant to this Deed or the Leeds Road Agreement);

- 8.1.2. the relevant Owner or POS Management Company (as appropriate) may close the Public Open Space or the Ancient Woodlands or the Ancient Woodlands Buffer or any part thereof for reasonable periods by reason of:
- 8.1.2.1. emergency;
 - 8.1.2.2. cleansing, maintenance and repair;
 - 8.1.2.3. at the direction of the emergency services or other lawful authority;
 - 8.1.2.4. construction activities whilst the Development is being carried out or maintained; and
 - 8.1.2.5. other purposes reasonably required by the relevant Owner or POS Management Company;
- 8.1.3. the relevant Owner or POS Management Company may erect notices on the Public Open Space, the Ancient Woodlands and the Ancient Woodlands Buffer and access to the Public Open Space, the Ancient Woodlands and the Ancient Woodlands Buffer may be denied by the relevant Owner or POS Management Company for one day each year in order to prevent public rights of way or common rights coming into being.

9. **Off Site POS Contribution**

- 9.1. Upon receipt of the Public Open Space Scheme pursuant to paragraph 2.1 above the Council shall carry out the Off Site POS Contribution Calculation and shall notify the Owner of the Off Site POS Contribution as part of the approval of the Public Open Space Scheme (and for the avoidance of doubt any dispute regarding the amount of the Off Site POS Contribution shall be addressed under clause 11 of this Deed).
- 9.2. The Owner shall not Occupy more than 150 Dwellings until the Off Site POS Contribution has been paid to the Council.

10. **Site Wide Drainage Strategy**

- 10.1. The Owner or its appointed representatives shall use reasonable endeavours to attend meetings of the Site-Wide Drainage Strategy Working Group during the construction of the Development.

11. **Development and Wider Development Masterplanning**

- 11.1. In the event that a Reserved Matters Approval requires a Way to be constructed to the boundary of a Phase or of the Site so as to connect into another Phase or to adjacent land the Owner shall (unless the Council agrees in writing to the contrary):
- 11.1.1. Construct that Way to the boundary of the Phase or of the Site;
 - 11.1.2. Following opening for use of the Way, allow free vehicular, cycle and/or pedestrian access (but only as applicable to that Way) over that Way to and from the adjacent Phase or land; and
 - 11.1.3. Not create or allow any ransom scenario to come into being

PROVIDED THAT this paragraph 11.1 shall not prevent the Owner from imposing reasonable requirements on any person seeking to connect into and / or use any such Way and their successors in title including a reasonable contribution as to the maintenance of the Way (prior to adoption).

- 11.2. The Owner shall offer to enter into an agreement under Section 38 Highways Act 1980 (and / or other appropriate powers) to dedicate any Estate Road within a Phase (to the boundary of the adjacent Phase or adjacent land where paragraph 11.1 applies) as public highway on terms whereby it will be adopted by the Council (in its capacity as local highway authority) as maintainable at public expense.
- 11.3. In submitting any Construction (Environmental) Management Plan and/or an application for a Reserved Matters Approval the Owner shall ensure that appropriate construction access to all future Phases of the Development can be accommodated whether through public highway, Estate Roads or alternative accesses.
- 11.4. The Owner of any Phase shall not prevent connection to the SuDS by the Development of any other Phase where the relevant SuDS has been designed to accommodate drainage from that other Phase of the Development provided that this paragraph shall not prevent the Owner from imposing reasonable requirements on any person seeking to connect into and/ or use any such SuDS and their successors in title including a reasonable contribution as to the maintenance of the SuDS (prior to adoption).

Schedule 4
Affordable Housing

Part 1
(Definitions)

1. **Definitions**

1.1 In this Schedule 4 the following terms have the following meaning:

“Additional First Homes Contribution” (in circumstances where a sale of a First Homes Unit other than as a First Home has taken place in accordance with paragraphs 3.8 or 3.9 of Part 3 of this Schedule 4) the lower of the following two amounts:

- (a) 30% of the proceeds of sale; and
- (b) the proceeds of sale less the amount due and outstanding to any First Homes Mortgagee of the relevant First Homes Unit under relevant security documentation which for this purpose shall include all accrued principal monies, interest and reasonable costs and expenses that are payable by the First Home Owner to the First Homes Mortgagee under the terms of any mortgage but for the avoidance of doubt shall not include other costs or expenses incurred by the First Home Owner in connection with the sale of the First Homes Unit

and which for the avoidance of doubt shall in each case be paid to the Council following the deduction of any SDLT payable by the First Home Owner as a result of the disposal of the First Homes Unit other than as a First Home;

“Administration Charge” one percent (1%) of the applicable Affordable Housing Contribution to be paid by the Owner to the Council as a contribution towards the reasonable and proper costs incurred by the Council in consideration of the following:

- (a) the calculation of the Affordable Housing Contribution;
- (b) the consideration of the evidence supplied by the Owner pursuant to paragraphs 4.2 – 4.6 of Part 2 of this Schedule 4;
- (c) the receipt and administration of the Affordable Housing Contribution itself; and

		(d) the provision of any confirmation or certification that the Owner is entitled to dispose of the relevant Affordable Housing Unit pursuant to paragraphs 4.6.2 of Part 2 of this Schedule 4;
“Affordable Housing”		housing provided to eligible households whose needs are not met by the market in accordance with the definition of “affordable housing” in Annex 2 of the NPPF or any additional tenures of affordable housing contained in the definition of “affordable housing” in any successor policy;
“Affordable Contribution”	Housing	the payment to be made in lieu of the provision of on-site Affordable Housing Units (or a full complement thereof) calculated in accordance with paragraph 4.6.1 of Part 2 of this Schedule 4;
Affordable Housing Plan		a plan detailing the provision of Affordable Housing Units within the Development to include the following: <ul style="list-style-type: none"> (a) a layout plan to identify the location of the Affordable Housing Units and tenure; and (b) a schedule setting out the tenure, number of bedrooms per Dwelling by plot number, Dwelling type, number of storeys and the GIA of each Dwelling type proposed;
“Affordable Housing Unit”		a Dwelling so identified in an approved Affordable Housing Plan and to be provided as Affordable Housing in accordance with this Schedule 4;
“Affordable Rent”		a rent which is no more than 80% of the local market rent (including service charges, where applicable) calculated using RICS approved valuation methods;
“Affordable Dwellings”	Rented	an Affordable Housing Unit provided by a Registered Provider at an Affordable Rent;
“Affordable Price”		a sum to be paid by the Registered Provider to the Owner based on the following minimum transfer values set out in the SPD; <ul style="list-style-type: none"> (a) in the case of each Rented Dwelling - £861.00 (eight hundred and sixty one pounds) per square metre; and (b) in the case of each Intermediate Dwelling - £1,292.00 (one thousand two hundred and ninety two pounds) per square metre

or for the avoidance of doubt such other value as may be agreed in writing between the Owner and the Registered Provider and **PROVIDED THAT:**

- (a) in the event that the Council adopts or publishes any revised higher transfer value then the transfer values at (a) and (b), those transfer values shall be updated accordingly; and
- (b) in the case of (a) and (b) above the applicable sum shall be increased in proportion to any increase in the BCIS All-in Tender Price Index from March 2023 (or from the date on which any increased transfer value applies) to the date of the applicable Contract;

“Armed Services Member”

a member of the Royal Navy the Royal Marines the British Army or the Royal Air Force or a former member who was a member within the 5 (five) years prior to the purchase of the First Home or DMS Unit, a divorced or separated spouse or civil partner or a spouse or civil partner of a deceased member or former member whose death was caused wholly or partly by their service;

“Build to Rent”

purpose built housing to be provided in accordance with the definition of “build to rent” in Annex 2 of the NPPF or otherwise agreed with the Council to comprise purpose built housing for rent;

“Build to Rent Guidance”

guidance contained within the NPPF and any other national and local planning guidance that relates to the provision of Affordable Housing as part of a Build to Rent scheme;

“Build to Rent Notice”

a notice which may be served by the Owner on the Council pursuant to paragraph 3.4 of Part 2 of this Schedule notifying the Council of its intention to implement a Phase as Build to Rent;

“Build to Rent Affordable Scheme”

a scheme detailing the provision of Affordable Housing within a Phase to be provided as Build to Rent which includes the following:

- (a) a plan to identify the location of the Dwellings to be provided as Affordable Housing;
- (b) details of the rent levels of the Dwellings to be provided as Affordable Housing which shall be no more than 80% of the local market rent (including service charges,

where applicable) calculated using RICS approved valuation methods;

- (c) details setting out the number of bedrooms per Dwelling by plot number, number of storeys and the GIA of each Dwelling in respect of each of the Dwellings to be provided as Affordable Housing;
- (d) details of the proposed management of the Dwellings to be provided as Affordable Housing; and

and any other details as may be required in accordance with Build to Rent Guidance;

“Chargee”

any mortgagee or chargee or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a **“Receiver”**) of the Affordable Housing Units or any part thereof or any persons or bodies deriving title through such mortgagee or chargee or Receiver;

“Chargee’s Duty”

the duty upon a Chargee as set out in paragraph 12.2 of Part 2 of this Schedule 4;

“Close Family”

a spouse, civil partner, partner, parent, son, daughter, sibling, grandparent;

“Compliance Certificate”

the certificate issued by the Council confirming that a Dwelling is being disposed of as a First Homes Unit to a purchaser meeting the First Homes Eligibility Criteria (National) and unless paragraph 3.2 of Part 3 of this Schedule 4 applies the First Homes Eligibility Criteria (Local);

“Contract”

a contract or contracts with a Registered Provider(s) for the construction and subsequent transfer at the Affordable Price of the unencumbered freehold or long-leasehold interest in the relevant RP Dwellings;

“Developer”

the owner of the First Homes Unit at the date prior to the Initial Disposal of such a First Homes Unit;

“Discounted Price”

a price which does not exceed 80% of the Market Value provided that in any event the price shall not exceed £250,000.00 (two hundred and fifty

		thousand pounds) unless the Council agrees otherwise;
"DMS Charge"	Administration	<p>the reasonable and proper costs incurred by the Council in consideration of the following:</p> <ul style="list-style-type: none"> (a) consideration of the DMS Unit's Market Value and Discounted Price; and (b) the issuing of any approvals required pursuant to paragraph 9 of Part 2 of this Schedule 4 to this Deed in respect of that DMS Unit;
"DMS Owner"		the owner(s) of an individual DMS Unit pursuant to a disposal completed in accordance with paragraph 9 of Part 2 of this Schedule;
"DMS Unit"		an Affordable Housing Unit which shall be sold to one or more Qualifying Resident at a price equal to 80% (eighty per cent) of the Market Value;
"DMS Unit Commuted Sum"		(if applicable) the sum to be paid by the Owner to the Council in lieu of the provision of a DMS Unit(s) which shall be calculated at 20% (twenty per cent) of the Market Value of the relevant DMS Unit as at the date of calculation pursuant to paragraph 9.6 of Part 2 of this Schedule 4;
"Eligible Persons"		an individual who is unable to afford to purchase a home that meets their needs on the open market;
"First Home" or "First Homes"		a Dwelling which may be disposed of as a freehold or (in the case of flats only) as a leasehold property to a First Time Buyer at the First Homes Discount Market Price and which on its first First Home Disposal does not exceed the First Home Price Cap;
"First Home Owner"		<p>the person or persons having the freehold or leasehold interest (as applicable) in a First Homes Unit other than:</p> <ul style="list-style-type: none"> (a) the Developer; or (b) another developer or other entity to which the freehold interest or leasehold interest in a First Homes Unit or in the land on which a First Homes Unit is to be provided has been transferred before that First Homes Unit is made available and is disposed of for occupation as a First Home; or

	(c) a tenant or sub-tenant of a permitted letting under paragraph 4 of Part 3 of this Schedule 4;
“First Home Price Cap”	the amount for which a First Homes Unit is sold after the application of the First Homes Discount Market Price which on its first First Homes Disposal shall not exceed Two Hundred and Fifty Thousand Pounds (£250,000) or such other amount as may be published from time to time by the Secretary of State;
“First Homes Administration Charge”	the reasonable and proper costs incurred by the Council in consideration of the following: <ul style="list-style-type: none"> (a) the consideration of the evidence supplied by any purchaser of meeting the First Homes Eligibility Criteria (National) and First Homes Eligibility Criteria (Local); (b) the consideration of the evidence supplied by the Owner of the First Home in relation to the First Homes Discount Market Price; and (c) the provision of any Compliance Certificate;
“First Homes Discount Market Price”	a sum which is the Market Value discounted by at least 30%;
“First Homes Disposal”	a transfer of the freehold or (in the case of a flat only) the grant or assignment of a leasehold interest in a First Home other than: <ul style="list-style-type: none"> (a) a letting or sub-letting in accordance with paragraph 4 of Part 3 of this Schedule 4; (b) a transfer of the freehold interest in a First Homes Unit or land on which a First Homes Unit is to be provided before that First Homes Unit is made available for occupation except where the transfer is to a First Home Owner; or (c) a First Homes Exempt Disposal <p>and Disposal and Disposed and Disposing shall be construed accordingly in provisions relating to First Homes;</p>
“First Homes Eligibility Criteria (National)”	criteria which are met in respect of a purchase of a First Homes Unit if:

		<ul style="list-style-type: none"> (a) the purchaser is a First Time Buyer (or in the case of a joint purchase each joint purchaser is a First Time Buyer); and (b) the purchaser's annual gross income (or in the case of a joint purchase, the joint purchasers' joint annual gross income) does not exceed the Income Cap (National);
"First Homes Criteria (Local)"	Eligibility	<p>criteria published by the Council in the document entitled "First Homes Provision Statement Kirklees Council December 2021" which are met in respect of a First Homes Disposal of a First Home if:</p> <ul style="list-style-type: none"> (a) the purchaser's annual gross income (or in the case of a joint purchase, the joint purchasers' joint annual gross income) does not exceed the Income Cap (Local) (if any); and (b) either or both of criteria (i) and (ii) below are met: <ul style="list-style-type: none"> (i) the purchaser meets the Local Connection Criteria (or in the case of a joint purchase at least one of the joint purchasers meets the Local Connection Criteria); and/or (ii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) an Armed Services Member;
"First Homes Disposal"	Exempt	<p>the Disposal of a First Homes Unit in one of the following circumstances:</p> <ul style="list-style-type: none"> (a) a Disposal to a spouse or civil partner upon the death of the First Home Owner; (b) a Disposal to a named beneficiary under the terms of a will or under the rules of intestacy following the death of the First Home Owner; (c) Disposal to a former spouse or former civil partner of a First Home Owner in accordance with the terms of a court order, divorce settlement or other legal agreement or order upon divorce, annulment or dissolution of the marriage or civil partnership or the making of a nullity, separation or presumption of death order; (d) Disposal to a trustee in bankruptcy prior to sale of the relevant Dwelling (and for the

avoidance of doubt paragraph 5 of Part 3 of this Schedule 4 shall apply to such sale);

PROVIDED THAT in each case other than (d) the person to whom the disposal is made complies with the terms of paragraph 4 of Part 3 of this Schedule 4;

- “First Homes Mortgagee”** any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority to provide facilities to a person to enable that person to acquire a First Home including all such regulated entities which provide Shari’ah compliant finance for the purpose of acquiring a First Home;
- “First Homes Unit”** a Dwelling identified as a First Home on an approved Affordable Housing Plan and which shall be provided as a First Home in accordance with Part 3 of this Schedule 4;
- “First Time Buyer”** means a first time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003;
- “Homes England”** means the Homes and Communities Agency (which trades as Homes England) being a body corporate created by Section 1 of the Housing and Regeneration Act 2008 or its successor to the functions relevant to this Schedule 4;
- “Income Cap (Local)”** £80,000.00 (eighty thousand pounds) or such other local income cap as may be published from time to time by the Council and is in force at the time of the relevant disposal of the First Home it being acknowledged at the date of this agreement that the Council has not set an Income Cap (Local);
- “Income Cap (National)”** £80,000.00 (eighty thousand pounds) or such other sum as may be published for this purpose from time to time by the Secretary of State and is in force at the time of the relevant disposal of the First Home;
- “Initial Disposal”** means the first Disposal of a First Homes Unit following its Practical Completion;
- “Intermediate Dwellings”** means together the DMS Units, Rent to Buy Units and Shared Ownership Units;
- “Local Connection Criteria”** criteria which are met by a person who satisfies one or more of (a) to (g) below:
- (a) currently lives in Kirklees as their primary residence and has done so for the past 3 years;

- (b) previously lived in Kirklees as their primary residence for at least 5 years cumulatively within the past 10 years;
- (c) has Close Family ordinarily resident in Kirklees and that Close Family has been ordinarily resident in the locality for the past 3 years;
- (d) needs to move to Kirklees to receive or provide care or support;
- (e) is employed full time on a permanent basis for more than 16 hours per week in Kirklees or is about to take up an offer of permanent full-time employment in Kirklees;
- (f) needs to move to Kirklees to be close to local facilities because of a specific identified need;
- (g) has some other connection to Kirklees as approved by the Council in writing;

OR

such other local connection criteria as may be published by the Council from time to time as its “First Homes Local Connection Criteria” (or equivalently so titled) and which is in operation at the time of the relevant disposal of the First Home and for the avoidance of doubt any such replacement criteria in operation at the time of the relevant disposal of the First Home shall be the “Local Connection Criteria” which shall apply to that Disposal;

“Locality”

means the district of Kirklees;

“Market Dwellings”

means a Dwelling which is not an Affordable Housing Unit;

“Marketing Strategy”

means the strategy to be approved by the Council pursuant to paragraph 3.13 of Part 3 of this Schedule 4 and to detail the marketing measures to be undertaken to dispose of the First Home to Qualifying Person upon a first disposal;

“Market Value”

means the open market value as assessed by a Valuer in accordance with the RICS Valuation - Professional Standards (as applicable at the date of assessment or any such replacement guidance issued by the Royal Institution of Chartered Surveyors) and agreed between the Council and the Owner as being the open market value of an

Affordable Housing Unit, being the price at which the sale of an interest in the Affordable Housing Unit would have been completed unconditionally for cash consideration on the date of the valuation assuming:

- (a) a willing seller;
- (b) that any restrictions imposed on the Dwelling by reason of this Deed are disregarded;
- (c) that there are no restrictions as to the persons who may occupy the Affordable Housing Unit or to whom a transfer or lease may be granted or assigned; and
- (d) that both parties to the transaction had acted knowledgeably prudently and without compulsion;

"Nominations Agreement"

an agreement between the Council and the Owner detailing the selection and prioritisation of tenants and occupiers of the Affordable Rented Dwellings or Social Rented Dwellings (as applicable);

"Protected Tenant"

any tenant who:

- (a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit;
- (b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit;
- (c) has been granted a shared ownership lease (or similar arrangement where a share of the Affordable Housing Unit is owned by the tenant and a share is owned by the Registered Provider) by the Registered Provider in respect of an Affordable Housing Unit and has subsequently purchased all the remaining shares so that the tenant owns the entire Affordable Housing Unit; or
- (d) any successor in title to any of (a) (b) or (c) above;

"Qualifying Person"

a person who meets the First Homes Eligibility Criteria (National) and the First Homes Eligibility Criteria (Local);

"Qualifying Resident"	<p>a person(s) who:</p> <ul style="list-style-type: none"> (a) is a first-time buyer (or in the case of joint purchasers, each joint purchaser is a first-time buyer) and 'first-time buyer' shall have the meaning given by paragraph 6 of Schedule 6ZA to the Finance Act 2003; (b) has an annual household income (or in the case of a joint purchase, the joint purchasers' combined annual gross income) which does not exceed £80,000.00; and (c) will Occupy the DMS Unit as their sole or main residence <p>or who satisfies such other criteria as may be published by the Council or agreed in writing between the Owner and the Council from time to time and which is in operation at the time of the relevant disposal;</p>
"Registered Provider"	a registered provider of social housing as defined in the Housing and Regeneration Act 2008 or any company or other body approved by Homes England for receipt of social housing grant as may be proposed by the Owner and approved by the Council;
"Rented Dwellings"	together the Social Rented Dwellings and the Affordable Rented Dwellings;
"Rent to Buy Landlord"	the landlord of a Rent to Buy Tenancy and its successors in title;
"Rent to Buy Tenancy"	in relation to a Rent to Buy Unit any assured shorthold tenancy entered into between a Rent to Buy Landlord and a Rent to Buy Tenant in respect of that Rent to Buy Unit;
"Rent to Buy Tenant"	a person to whom a Rent to Buy Unit is let pursuant to the provisions of Part 2 of this Schedule 4;
"Rent to Buy Units"	the Affordable Housing Units to be provided pursuant to a Rent to Buy Tenancy;
"RP Dwelling"	together Social Rented Dwellings, Affordable Rented Dwellings, Shared Ownership Units and/or Rent to Buy Units (and for the avoidance of doubt shall not include any Affordable Housing Units being provided through a Build to Rent Affordable Scheme other than through a Registered Provider);

“SDLT”	Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing it of like effect;
“Shared Ownership Lease”	such lease as shall from time to time be in accordance with the Homes England model form of shared ownership lease or such other successor bodies model form of lease;
“Shared Ownership Units”	the Affordable Housing Units to be sold on the basis of a Shared Ownership Lease;
“Social Rent”	a rent set in line with the Government’s rent policy for social rented affordable housing to be owned and let by a Registered Provider;
“Social Rented Dwellings”	the Affordable Housing Units to be made available for letting at a Social Rent;
“SPD”	the Council’s Affordable Housing and Housing Mix SPD dated March 2023;
“Valuation”	an independent assessment of the Market Value of a Rent to Buy Unit prepared by a Valuer;
“Valuer”	a Member or Fellow of the Royal Institution of Chartered Surveyors being a Registered Valuer appointed by (in the case of a Rent to Buy Unit) the Rent to Buy Landlord, (in the case of a First Homes Unit) the First Home Owner and (in the case of a DMS Unit) the person disposing of that DMS Unit and (in each case) acting in an independent capacity.

Part 2
(Affordable Housing Units)

1. General Provisions

- 1.1. The Owner shall construct the Affordable Housing Units in accordance with the Reserved Matters Approval and all applicable regulatory requirements relating to the construction of Affordable Housing.
- 1.2. The Owner shall notify the Council of the Practical Completion of each Affordable Housing Unit within 10 Working Days thereof.

2. Quantum of Affordable Housing

- 2.1. The Owner shall provide or procure that not less than 20% (twenty percent) of the total number of Dwellings forming part of the Development shall be provided as Affordable Housing Units.
- 2.2. Subject to paragraph 4.6, the Owner shall not Occupy more than:
 - 2.2.1. 25% of the Market Dwellings in the Development until 15% of the Affordable Housing Units have been Practically Completed;
 - 2.2.2. 50% of the Market Dwellings in the Development until 50% of the Affordable Housing Units have been Practically Completed;
 - 2.2.3. 75% of the Market Dwellings in the Development until 88% of the Affordable Housing Units have been Practically Completed; and
 - 2.2.4. 90% of the Market Dwellings in the Development until all of the Affordable Housing Units have been Practically Completed.
- 2.3. (Without prejudice to paragraph 2.2 above) nothing in this Schedule 4 shall prevent any of the Market Dwellings from being voluntarily provided as Affordable Housing in addition to the Affordable Housing Units and in such case such Market Dwellings:
 - 2.3.1. may comprise Affordable Housing for the purposes of the National Planning Policy Framework and/or a 'qualifying dwelling' for the purposes of Regulation 49(2) of the Community Infrastructure Levy Regulations 2010; and
 - 2.3.2. shall not comprise Affordable Housing Units for the purposes of this Deed

PROVIDED ONLY that the Owner notifies the Council in writing prior to the first Occupation of any such Market Dwellings as Affordable Housing.

3. Affordable Housing Plan

- 3.1. Subject to paragraphs 3.4 and 3.5, the first Reserved Matters Application for the Dwellings shall be accompanied by an Affordable Housing Plan.
- 3.2. Any Affordable Housing Plan shall comply with the following tenure mix requirements in respect of the Affordable Housing Units (to the nearest whole Dwelling):

- 3.2.1. 25% (twenty five percent) as First Homes;
- 3.2.2. 55% (fifty five percent) as Social Rented Dwellings or Affordable Rented Dwellings; and
- 3.2.3. 20% (twenty percent) as Intermediate Dwellings

unless otherwise agreed in writing between the Owner and the Council.

- 3.3. The Owner shall not Commence Construction of any Dwellings unless and until the Council has approved in writing the Affordable Housing Plan or Build to Rent Affordable Scheme for the relevant Dwellings.
- 3.4. The Owner may at any time prior to the submission of a Reserved Matters Application for any Dwellings serve a Build to Rent Notice on the Council notifying the Council of its intention to construct all or part of the Dwellings as Build to Rent.
- 3.5. Where the Owner serves a Build to Rent Notice, the Owner shall prepare and the Owner and Council shall cooperate so as to agree a Build to Rent Affordable Scheme relating to the relevant Dwellings.
- 3.6. The Build to Rent Affordable Scheme pursuant to paragraph 3.5 shall be in accordance with Build to Rent Guidance and shall not impose any requirements for Affordable Housing which are more onerous than the requirements contained in Part 2 of this Schedule.

4. **Contract**

- 4.1. Before the Commencement of Development the Owner shall offer to enter into negotiations with one or more Registered Provider(s) and thereafter use reasonable endeavours to enter into a Contract in respect of the RP Dwellings.
- 4.2. In the event that:
 - 4.2.1. the Owner has marketed the RP Dwellings to at least three Registered Providers and used reasonable endeavours to enter into a Contract for a minimum of 6 (six) calendar months; and
 - 4.2.2. the Owner has not entered into a Contract with a Registered Provider in respect of one or more of those RP Dwellings,

the Owner may notify the Council of such fact in writing ("**Notification**") providing details of the relevant RP Dwellings ("**First Stage Non-contracted Units**") and evidence of attempts to successfully enter into a Contract with at least three Registered Providers.

- 4.3. The Council may within 20 Working Days of receipt of a Notification nominate up to three additional Registered Providers and thereafter the Owner shall use reasonable endeavours to enter into a Contract with those additional Registered Providers (or any other Registered Providers) in respect of the First Stage Non-contracted Units.
- 4.4. If at the expiry of a three month period beginning with the date of the Notification (or shorter period agreed with the Council) any of the First Stage Non-contracted Units are not yet the subject of a Contract ("**Second Stage Non-contracted Units**") then (provided the Owner has complied with paragraph 4.3):

- 4.4.1. the Owner shall be permitted to enter into a Contract in respect of the Second Stage Non-contracted Units with any Registered Provider of its own choosing;
- 4.4.2. if requested by the Owner, the Owner and the Council shall enter into negotiations for an alternative arrangement to satisfy the Owner's obligation for the provision of Affordable Housing in respect of the Second Stage Non-contracted Units which may include (but shall not be limited to) one or more of the following mechanisms:
 - 4.4.2.1. a variation of the approved Affordable Housing Plan; and/or
 - 4.4.2.2. the payment of an Affordable Housing Contribution in lieu of provision.
- 4.5. If at the expiry of a six month period beginning with the date of the Notification (or shorter period agreed with the Council) any of the Second Stage Non-contracted Units are not the subject of a Contract then the Owner may pay an Affordable Housing Contribution in lieu of provision.
- 4.6. In the event that the Owner is entitled to pay an Affordable Housing Contribution pursuant to either paragraph 4.4.2.2 or paragraph 4.5 above:
 - 4.6.1. the Affordable Housing Contribution in respect of each applicable Second Stage Non-contracted Unit shall be calculated by multiplying the GIA of the applicable Second Stage Non-contracted Unit(m²) by the most recent median build costs for Kirklees published by the RICS Build Cost Information Service (BCIS) (£/m²) plus 15% (fifteen percent); and
 - 4.6.2. upon receipt by the Council of payment of both (i) the Affordable Housing Contribution and (ii) the Administration Charge in respect of any Second Stage Non-contracted Unit the Owner shall be free to dispose of that Second Stage Non-contracted Unit on the open market free of the provisions in this Schedule 4 (and the relevant Affordable Housing Unit will be deemed to be Practically Completed for the purposes of paragraph 2.2).

5. **Affordable Rented Dwellings**

- 5.1. The following provisions of this paragraph 5 shall apply to any Affordable Housing Units that are to be provided as Affordable Rented Dwellings in accordance with an approved Affordable Housing Plan.
- 5.2. The Owner shall not let or otherwise permit the letting of any Affordable Rented Dwellings to any person(s) other than in accordance with the following:
 - 5.2.1. at an Affordable Rent; and
 - 5.2.2. the rent at each re-letting shall be calculated prior to the grant of any new tenancy to ensure that it is an Affordable Rent.
- 5.3. The Owner shall not Occupy any Affordable Rented Dwellings other than by an Eligible Person(s) in accordance with a Nominations Agreement to be agreed with the Council.

6. **Social Rented Dwellings**

- 6.1. The following provisions of this paragraph 6 shall apply to any Affordable Housing Units that are to be provided as Social Rented Dwellings in accordance with an approved Affordable Housing Plan.
- 6.2. The Owner shall not let or otherwise permit the letting of any Social Rented Dwellings to any person(s) other than at a Social Rent.
- 6.3. The Owner shall not Occupy any Social Rented Dwellings other than by an Eligible Person(s) in accordance with a Nominations Agreement (unless otherwise agreed in writing by the Council).

7. **Shared Ownership Units**

- 7.1. No Shared Ownership Unit shall be Occupied otherwise than by an Eligible Person pursuant to a Shared Ownership Lease.
- 7.2. Every time a Shared Ownership Unit shall become available for Occupation again in the future it shall be allocated to Eligible Persons on the same terms as expressed in paragraph 7.1 above.

8. **Rent to Buy Units**

- 8.1. No Rent to Buy Units shall be Occupied otherwise than pursuant to the terms of a Rent to Buy Tenancy.
- 8.2. In the event that a Rent to Buy Tenant has remained a tenant of the same Rent to Buy Unit for a continuous period of five years then following the expiry of that five year period:
 - 8.2.1. the Rent to Buy Tenant may submit a request to the Rent to Buy Landlord to purchase the applicable Rent to Buy Unit;
 - 8.2.2. (save only in exceptional circumstances (to be agreed in writing between the Rent to Buy Landlord and the Council)) in the event that the Rent to Buy Tenant submits such a request then the Rent to Buy Landlord shall make an offer in principle to sell the Rent to Buy Unit to the Rent to Buy Tenant at a price equal to the Market Value of the Rent to Buy Unit at the date of the proposed sale to be established via the Valuation referred to in paragraph 8.2.3;
 - 8.2.3. in the event that the Rent to Buy Tenant accepts an offer in principle to purchase the Rent to Buy Unit pursuant to paragraph 8.2.2 above the Rent to Buy Landlord shall obtain a Valuation and provide a copy of the Valuation to the Rent to Buy Tenant together with a detailed offer to sell the Rent to Buy Unit to the Rent to Buy Tenant at a purchase price reflecting the Valuation and subject to such matters and upon such reasonable terms and conditions as the Rent to Buy Landlord is advised by its legal advisers should be included in such sale and purchase documentation.
- 8.3. Following the expiry of the initial five year period referred to in paragraph 8.2 above, in the event that the Rent to Buy Tenant has not purchased the Rent to Buy Unit, the Rent to Buy Landlord may at its discretion:

- 8.3.1. retain the Rent to Buy Unit and continue to let the Rent to Buy Unit on a Rent to Buy Tenancy;
- 8.3.2. retain the Rent to Buy Unit and let the same at either an Affordable Rent or open market rent or on a Shared Ownership Lease; and/or
- 8.3.3. sell the Rent to Buy Unit on the open market **PROVIDED ALWAYS** that the current Rent to Buy Tenant at that time shall be given the right of first refusal.

9. **Discount Market Sale Units**

- 9.1. The Owner shall provide the Council with notice of sales release dates not less than 6 (six) weeks prior to the date upon which the Owner proposes to release each DMS Unit(s) for disposal.
- 9.2. Prior to the first disposal of any DMS Unit the Owner shall submit to the Council for approval details of that DMS Unit's Market Value and Discounted Price and shall not dispose of the DMS Unit unless the Market Value and Discounted Price have been approved in writing by the Council.
- 9.3. The Owner shall not dispose of any DMS Unit otherwise than at the Discounted Price and to a person who at the date of their first Occupation is a Qualifying Resident.
- 9.4. The first disposal of a DMS Unit shall contain a restriction that subject to paragraph 9.5 and 9.6 of this Part 2 of Schedule 4 no further disposal to a third party shall take place other than to a Qualifying Resident at a price not exceeding the Discounted Price applicable as at that time and further that no such transfer shall be registered at the land registry without the inclusion of a restriction in the following terms:

"no disposition of the registered estate (other than by a chargee) by the proprietor of the registered estate is to be registered without a certificate signed by the Council's Affordable Housing Officer (or such other Officer duly authorised by the Council to give such a certificate) confirming that the provisions of paragraph [] of Part 2 of Schedule 4 of the Deed dated [] and made between [] have been fully complied with".

and the Owner shall provide evidence to the Council that such restriction has been entered no later than 28 days following the date of disposal.

- 9.5. No first or subsequent disposal of a DMS Unit shall be completed and no such disposal shall be registered at the Land Registry unless the Council has provided its approval in writing to such registration **PROVIDED THAT** such consent shall be given forthwith upon receipt by the Council of:
 - 9.5.1. evidence that the donee is (or in the case of joint donees both of the donees are) a Qualifying Resident;
 - 9.5.2. certification by the solicitor or licenced or other authorised conveyancer acting for the donee(s) that any consideration expressed to be given for the DMS Unit by the donee did not exceed the Discounted Price **PROVIDED ALWAYS THAT** in the case of a subsequent disposal the Discounted Price the certificate given by a Valuer is dated not more than 6 (six) months before the date of such disposal; and
 - 9.5.3. payment of the DMS Administration Charge.

- 9.6. In the event that:
- 9.6.1. despite using reasonable endeavours to do so the Owner:
- 9.6.1.1. (on the first disposal of a DMS Unit) has not exchanged a binding contract for the sale of a DMS Unit within a period of 9 (nine) calendar months from the date the DMS Unit was first offered for disposal; or
- 9.6.1.2. (by a successor in title to a DMS Unit) has not exchanged a binding contract for the sale of a DMS Unit within a period of 6 (six) calendar months from the date the DMS Unit was first offered for disposal and
- 9.6.2. the Owner has produced evidence in writing to the reasonable satisfaction of the Council that it has used such reasonable endeavours throughout the 9 (nine) / 6 (six month period (as applicable)

the Owner may offer such DMS Unit for sale on the open market free from the restrictions in this schedule but the provisions of paragraph 9.7 of this Schedule shall apply **PROVIDED ALWAYS** that it has first paid the applicable DMS Unit Commuted Sum to the Council.

- 9.7. Upon receipt of a DMS Unit Commuted Sum the Council shall:
- 9.7.1. within 20 Working Days of such receipt provide such reasonable written consent as is necessary to accompany an application to remove the restriction on the title set out in paragraph 9.4;
- 9.7.2. apply such DMS Unit Commuted Sum towards the provision of Affordable Housing within the Council's administrative area.
- 9.8. Each DMS Unit shall be used only as the main residence of the DMS Owner and shall not be let or otherwise disposed of other than in accordance with the terms of this paragraph 9 **PROVIDED THAT** the letting of a DMS Unit shall be permitted only in accordance with paragraphs 9.9 and 9.10 below.
- 9.9. The DMS Owner may let that DMS Unit for a fixed term of no more than two (2) years **PROVIDED THAT:**
- 9.9.1. the DMS Owner gives prior notice in writing to the Council before the DMS Unit is Occupied by the prospective tenant; and
- 9.9.2. the DMS Owner may let the DMS Unit pursuant to this paragraph more than once during that DMS Owner's period of ownership but the aggregate of such lettings during an Owner's period of ownership may not exceed two (2) years.
- 9.10. In addition to paragraph 9.9, a DMS Owner may let or sub-let their DMS Unit for any period provided that the DMS Owner first notifies the Council and the Council consents in writing to the proposed letting **PROVIDED THAT** the Council shall not withhold such consent in any of the circumstances below:

- 9.10.1. the DMS Owner is reasonably required to live in accommodation other than their DMS Unit for the duration of the letting or sub-letting for the purposes of employment;
 - 9.10.2. the DMS Owner is an active Armed Services Member and is to be deployed elsewhere for the for the duration of the letting or sub-letting;
 - 9.10.3. the DMS Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm;
 - 9.10.4. the DMS Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown;
 - 9.10.5. the DMS Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; and
 - 9.10.6. the DMS Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to provide care or assistance to any person.
- 9.11. A letting or sub-letting permitted pursuant to paragraph 9.9 or 9.10 must be by way of a written lease or sub-lease (as the case may be) of the whole of the DMS Unit on terms which expressly prohibit any further sub-letting other than in accordance with this Deed.
- 9.12. Nothing in this paragraph 9 prevents an DMS Owner from renting out a room within their DMS Unit or from renting out their DMS Unit as temporary sleeping accommodation provided that the DMS Unit remains at all times the DMS Owner's main residence.
10. **First Homes Units**
- 10.1. The Owner shall not Dispose of or Occupy any Affordable Housing Units that are to be provided as First Homes Units in accordance with an approved Affordable Housing Plan other than in accordance with Part 3 of this Schedule 4.
11. **Build to Rent**
- 11.1. The Owner shall comply with any approved Build to Rent Affordable Scheme.
12. **Exclusions to this Part 2 of Schedule 4**
- 12.1. The obligations in Part 2 of this Schedule 4 shall not be binding on:
- 12.1.1. any Protected Tenant (or any mortgagee or chargee, receiver or administrative receiver of the Protected Tenant);
 - 12.1.2. any Chargee (subject only to compliance with the Chargee's Duty); or
 - 12.1.3. any purchaser of an individual Affordable Housing Unit from a Chargee or any mortgagee or person deriving title from that purchaser; or
 - 12.1.4. any tenant of an Affordable Housing Unit comprised in a Build to Rent Affordable Scheme save as may be specified in that Build to Rent Affordable Scheme.
- 12.2. This Schedule 4 shall not be binding on a Chargee **PROVIDED THAT:**

- 12.2.1. such Chargee has first given written notice to the Council of its intention to dispose of the relevant Affordable Housing Unit(s) and thereafter has used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the relevant Affordable Housing Unit(s) to a Registered Provider or to the Council (or in the case of a DMS Unit to a Qualifying Resident) for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and
- 12.2.2. if such disposal has not completed within the three month period, the Chargee shall be entitled to dispose of the Affordable Housing Unit(s) free from the obligations in this Schedule 4 which thereafter will determine absolutely in respect of such Affordable Housing Unit(s).

13. **Council Covenants**

- 13.1. The Council covenants that if any of the sums received pursuant to this Schedule or any part thereof have not been expended within 12 months of the date of receipt in respect of each Administration Charge then the Council shall within 20 Working Days repay the unspent balance to the Designated Body together with any interest accrued thereon from the date of payment by the Owner to the Council to the date of repayment by the Council to the Owner.

Part 3 **First Homes**

1. **First Homes Standards**

- 1.1 The First Homes Units shall not be visually distinguishable from the Market Dwellings based upon their external appearance.
- 1.2 The internal specification of the First Homes Units shall not by reason of their being First Homes be inferior to the internal specification of the equivalent Market Dwellings **PROVIDED THAT** (subject to that requirement) variations to the internal specifications of the First Homes Units shall be permitted.

2. **Type and Distribution**

- 2.1. The mix of First Homes Units provided within the Development shall be in accordance with the approved Affordable Housing Plan.

3. **Delivery Mechanism**

- 3.1. The First Homes Units shall be marketed for sale and shall only be sold (whether on a first or any subsequent sale) as First Homes to a person or person(s) meeting:
 - 3.1.1. the First Homes Eligibility Criteria (National); and
 - 3.1.2. the First Homes Eligibility Criteria (Local).

- 3.2. If after a First Homes Unit has been actively marketed for 3 months (such period to expire no earlier than three (3) months prior to its Practical Completion) it has not been possible to find a willing purchaser who meets the First Homes Eligibility Criteria (Local) (if any), paragraph 3.1.2 shall cease to apply.
- 3.3. Subject to paragraphs 3.6 to 3.10, no First Homes Unit shall be Disposed of (whether on a first or any subsequent sale) unless not less than 50% of the purchase price is funded by a first mortgage or other home purchase plan with a First Homes Mortgagee.
- 3.4. No First Homes Unit shall be Disposed of (whether on a first or any subsequent sale) unless and until:
- 3.4.1. The Council has been provided with evidence that:
- 3.4.1.1. the intended purchaser meets the First Homes Eligibility Criteria (National) and unless paragraph 3.2 applies meets the First Homes Eligibility Criteria (Local) (if any);
- 3.4.1.2. the First Homes Unit is being Disposed of as a First Home at the First Homes Discount Market Price; and
- 3.4.1.3. the transfer of the First Homes Unit includes:
- i) a definition of the "Council" which shall be "the Council of the Borough of Kirklees of Town Hall, Huddersfield, West Yorkshire"
- ii) a definition of "First Homes Provisions" in the following terms:
- "means the provisions set out in Part 3 of Schedule 4 of the Section 106 Agreement a copy of which is attached hereto as the Annexure."
- iii) A definition of "Section 106 Agreement" in the following terms:
- "means the agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 dated [DATE OF THIS DEED] made between (1) the Council of the Borough of Kirklees and (2) C. C. Projects;"
- iv) a provision that the First Homes Unit is sold subject to and with the benefit of the First Homes Provisions and the transferee acknowledges that it may not transfer or otherwise Dispose of the First Homes Unit or any part of it other than in accordance with the First Homes Provisions;
- v) a copy of the First Homes Provisions in an Annexure; and
- vi) the First Homes Administration Charge has been paid to the Council by the Owner, being the

Developer in respect of the Initial Disposal and the First Homes Owner on all subsequent disposals;

- 3.4.2. the Council has issued the Compliance Certificate and the Council hereby covenants that it shall issue the Compliance Certificate within twenty eight (28) days of being provided with evidence sufficient to satisfy it that the requirements of paragraphs 3.3 and 3.4.1 have been met.
- 3.5. On the first Disposal of each and every First Homes Unit the Owner shall apply to the Chief Land Registrar pursuant to Rule 91 of and Schedule 4 to the Land Registration Rules 2003 for the entry on the register of the title of that First Homes Unit of the following restriction:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by The Council of the Borough of Kirklees of Town Hall, Huddersfield, West Yorkshire or their conveyancer that the provisions of clause XX (the First Homes provision) of the Transfer dated [Date] referred to in the Charges Register have been complied with or that they do not apply to the disposition"
- 3.6. The owner of a First Homes Unit (which for the purposes of this paragraph shall include the Developer and any First Home Owner) may apply to the Council to Dispose of it other than as a First Home on the grounds that either:
 - 3.6.1. the First Homes Unit has been actively marketed as a First Home for six (6) months in accordance with paragraphs 3.1 and 3.2 (and in the case of a first Disposal the six (6) months shall be calculated from a date no earlier than six (6) months prior to Practical Completion) and reasonable endeavours have been made to Dispose of the Dwelling as a First Home but it has not been possible to Dispose of that Dwelling as a First Home in accordance with paragraphs 3.3 and 3.4.1; or
 - 3.6.2. requiring the First Home Owner to undertake active marketing for the period specified in paragraph 3.6.1 before being able to Dispose of the Dwelling other than as a First Home would be likely to cause the First Home Owner undue hardship.
- 3.7. Upon receipt of an application served in accordance with paragraph 3.6 the Council shall have the right (but shall not be required) to direct that the relevant Dwelling is disposed of to it at the First Homes Discount Market Price.
- 3.8. If the Council is satisfied that either of the grounds in paragraph 3.6 above have been made out it shall confirm in writing within twenty eight (28) days of receipt of the written request made in accordance with paragraph 3.6 that the relevant Dwelling may be Disposed of:
 - 3.8.1. to the Council at the First Homes Discount Market Price; or
 - 3.8.2. (if the Council confirms that it does not wish to acquire the relevant Dwelling) other than as a First Home;

and on the issue of that written confirmation the obligations in this Schedule 4 which apply to First Homes shall cease to bind and shall no longer affect that Dwelling apart from paragraph 3.10 which shall cease to apply on receipt of payment of the Additional

First Homes Contribution by the Council where the relevant Dwelling is disposed of other than as a First Home.

- 3.9. If the Council does not wish to acquire the relevant First Homes Unit itself and is not satisfied that either of the grounds in paragraph 3.6 above have been made out then it shall within twenty eight (28) days of receipt of the written request made in accordance with paragraph 3.6 serve notice on the owner of the First Homes Unit setting out the further steps it requires the owner to take to secure the Disposal of a Dwelling as a First Home and the timescale (which shall be no longer than six (6) months) **PROVIDED THAT** if at the end of that period the owner of the First Homes Unit has been unable to Dispose of the Dwelling as a First Home he may serve notice on the Council in accordance with paragraph 3.6 following which the Council must within 28 days issue confirmation in writing that the Dwelling may be Disposed of other than as a First Home.
- 3.10. Where a First Homes Unit is Disposed of other than as a First Home or to the Council at the Discount Market Price in accordance with paragraphs 3.8 or 3.9 above the Owner of the First Homes Unit shall pay to the Council forthwith upon receipt of the proceeds of sale the Additional First Homes Contribution.
- 3.11. Upon receipt of the Additional First Homes Contribution the Council shall:
- 3.11.1. within 20 Working Days of such receipt provide a completed application to enable the removal of the restriction on the title set out in paragraph 3.5 where such restriction has previously been registered against the relevant title; and
- 3.11.2. apply all monies received towards the provision of Affordable Housing within the Council's administrative area.
- 3.12. Any person who purchases a First Homes Unit free of the restrictions in this Schedule 4 pursuant to the provisions in paragraphs 3.8 and 3.9 shall not be liable to pay the Additional First Homes Contribution to the Council.
- 3.13. Prior to the Initial Disposal of a First Home the Owner shall submit to the Council the Marketing Strategy for the Council's approval and thereafter the First Homes shall be disposed of according to the terms of the Marketing Strategy.

4. **Use of the First Homes**

- 4.1. Each First Homes Unit shall be used only as the main residence of the First Home Owner and shall not be let, sub-let or otherwise Disposed of other than in accordance with the terms of this Deed **PROVIDED THAT** letting or sub-letting shall be permitted in accordance with paragraphs 4.1.1 – 4.1.4 below.
- 4.1.1. A First Home Owner may let or sub-let their First Homes Unit for a fixed term of no more than two (2) years, provided that the First Home Owner notifies the Council in writing before the First Homes Unit is Occupied by the prospective tenant or sub-tenant (and a First Home Owner may let or sub-let their First Homes Unit pursuant to this paragraph more than once during that First Home Owner's period of ownership **PROVIDED THAT** the aggregate of such lettings or sub-lettings during a First Home Owner's period of ownership may not exceed two (2) years).

- 4.1.2. In addition, a First Home Owner may let or sub-let their First Homes Unit for any period provided that the First Home Owner notifies the Council and the Council consents in writing to the proposed letting or sub-letting and in such case the Council covenants not to unreasonably withhold or delay giving such consent and not to withhold such consent in any of the circumstances (4.1.2.1 – 4.1.2.6) below:
- 4.1.2.1. the First Home Owner is required to live in accommodation other than their First Home for the duration of the letting or sub-letting for the purposes of employment;
 - 4.1.2.2. the First Home Owner is an active Armed Services Member and is to be deployed elsewhere for the for the duration of the letting or sub-letting;
 - 4.1.2.3. the First Home Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm;
 - 4.1.2.4. the First Home Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown;
 - 4.1.2.5. the First Home Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; and
 - 4.1.2.6. the First Home Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to provide care or assistance to any person.
- 4.1.3. A letting or sub-letting permitted pursuant to paragraph 4.1.1 or 4.1.2 must be by way of a written lease or sub-lease (as the case may be) of the whole of the First Home on terms which expressly prohibit any further sub-letting.
- 4.1.4. Nothing in this paragraph 4 prevents a First Home Owner from renting a room within their First Home or from renting their First Homes Unit as temporary sleeping accommodation provided that the First Homes Unit remains at all times the First Home Owner's main residence.

5. **Exclusions and Release**

- 5.1. The obligations in paragraphs 1 to 4 of Part 3 of this Schedule 4 in relation to First Homes Units shall not apply to any First Homes Mortgagee or any receiver (including an administrative receiver appointed by such First Homes Mortgagee or any other person appointed under any security documentation to enable such First Homes Mortgagee to realise its security or any administrator (howsoever appointed (each a 'FH Receiver')) of any individual First Home or any persons or bodies deriving title through such First Homes Mortgagee or FH Receiver **PROVIDED THAT:**
- 5.1.1. such First Homes Mortgagee or FH Receiver shall first give written notice to the Council of its intention to Dispose of the relevant First Homes Unit; and

- 5.1.2. once notice of intention to Dispose of the relevant First Homes Unit has been given by the First Homes Mortgagee or FH Receiver to the Council the First Homes Mortgagee or FH Receiver shall be free to sell that First Homes Unit at its full Market Value and subject only to paragraph 5.1.3; and
- 5.1.3. following the Disposal of the relevant First Homes Unit the First Homes Mortgagee or FH Receiver shall following the deduction of the amount due and outstanding under the relevant security documentation including all accrued principal monies, interest and reasonable costs and expenses pay to the Council the Additional First Homes Contribution; and
- 5.1.4. following receipt of notification of the Disposal of the relevant First Homes Unit the Council shall:
 - 5.1.4.1. forthwith issue a completed application to the purchaser of that Dwelling to enable the removal of the restriction on the title set out in paragraph 3.5; and
 - 5.1.4.2. apply all such monies received towards the provision of Affordable Housing.
- 5.2. Paragraphs 1 and 2 of Part 3 of this Schedule 4 shall not apply to a First Home Owner.
- 5.3. Paragraphs 3, 4 and 5 of Part 3 of this Schedule 4 apply as set out therein but and for the avoidance of doubt where a First Homes Unit is owned by a First Home Owner they shall apply to that First Home Owner only in respect of the First Home owned by that First Home Owner.

Schedule 5 Biodiversity

1. Definitions

1.1. In this Schedule 5 the following terms have the following meanings:

“BEMP”	a biodiversity management and enhancement plan detailing: (a) details of the biodiversity habitat creation and/or enhancement proposed; and (b) a detailed management and maintenance regime to secure such biodiversity habitat for a period of 30 years;
“Biodiversity Assessment”	together: a) an assessment (including Biodiversity Metric calculations) which sets out details of the predevelopment biodiversity value of the Site (being the biodiversity value of the Site prior to the earlier of (i) the beginning of the Development (within the meaning of Section 56 of the 1990 Act), (ii) the undertaking of any works associated with the Development including the works identified as “enabling works” in Condition 1 of the Planning Permission, and (iii) the commencement of the clearance of hedgerows, trees and shrubs, or any other features of potential ecological importance within the Site); b) details of measures to protect any habitats to be retained within the Site during construction works (including site clearance and enabling works); and c) up to date and comprehensive ecological surveys (including surveys of protected species) as required by Condition 24 of the Planning Permission
“Biodiversity Metric”	the DEFRA biodiversity metric as applicable at the time of the Biodiversity Assessment;
“Biodiversity Net Gain Requirement”	a 10% gain in the number of Biodiversity Units based on the values set out within the Biodiversity Assessment;
“Biodiversity Unit”	the product of the size of an area and the distinctiveness and condition of the habitat it comprises to provide a measure of ecological value, calculated using the Biodiversity Metric;

“Offsite BEMP”	a biodiversity management and enhancement plan detailing the biodiversity habitat creation or enhancement proposed on all or part of the Offsite BNG Land (as identified in the Offsite BEMP by reference to a plan) such plan to include a detailed management and maintenance regime to secure such biodiversity habitat for a period of not less than 30 years;
“Offsite BNG Land”	the Ancient Woodlands Buffer (as defined in Schedule 3);
“Skylark Plots”	2 plots located in accordance with the Skylark Plot Plan to be prepared and maintained for skylarks in accordance with the Skylark Plot Requirements
“Skylark Plot Plan”	a plan showing the proposed location of the Skylark Plots on the Skylark Land to accord with the Skylark Plot Requirements
“Skylark Plot Requirements”	<p>the following requirements for the Skylark Plots:</p> <p>(a) plots to be a minimum of 16 square metres in area and 3 metres wide (e.g. 4x4m, or 3x6m)</p> <p>(b) plots to be at a minimum density of 2 plots per ha.</p> <p>(c) plots to be at least 50m from field boundaries and margins, and not connected to tramlines; and</p> <p>(d) plots to be created by switching off or lifting up the drill to create undrilled patches (or, if necessary, by spraying of herbicide after drilling)</p> <p>or such other requirements as may approved in writing by the Council from time to time.</p>

2. **Biodiversity Assessment**

- 2.1. On or before the earlier of:
- 2.1.1 the date on which the Development is begun (within the meaning of Section 56 of the 1990 Act);
 - 2.1.2 the date on which any works associated with the Development including the works identified as “enabling works” in Condition 1 of the Planning Permission are begun;
 - 2.1.3 the commencement of clearance of hedgerows, trees and shrubs, or any other features of potential ecological importance within the Site; or
 - 2.1.4 the submission of the first Reserved Matters Application

the Owner shall submit the Biodiversity Assessment to the Council and the Owner shall not begin the Development (within the meaning of Section 56 of the 1990 Act) or undertake any works associated with the Development including the works identified as “enabling works” in Condition 1 of the Planning Permission or commence the clearance of hedgerows, trees and shrubs, or any other features of potential ecological importance within the Site until the Biodiversity Assessment has been approved in writing by the Council.

- 2.2 The Owner covenants with the Council to comply with the measures to protect any habitats to be retained within the Site during construction works (including site clearance and enabling works) approved as part of the Biodiversity Assessment.

3. **BEMP & Offsite BEMP**

- 3.1. The Owner shall not Commence Construction until a BEMP and (if applicable having regard to the mitigation hierarchy and endeavouring to meet the Biodiversity Net Gain Requirement by way of BEMP in preference to an Offsite BEMP where reasonably practicable) an Offsite BEMP (together to satisfy the Biodiversity Net Gain Requirement) have each been submitted to the Council by the Owner and approved in writing by the Council.

4. **On-Site Biodiversity Net Gain**

- 4.1. The Owner shall not Occupy more than 90% of the Dwellings (or comply with such other requirement for timing of provision as may be contained in the BEMP) until the Owner has completed the works of habitat creation and/or enhancement set out in the BEMP and has served notice on the Council confirming completion of such works.
- 4.2. From the date of notice served pursuant to paragraph 4.1, the Owner covenants to comply with the requirements of the BEMP (or any amended BEMP submitted by the Owner to the Council and approved by the Council) for a period of 30 years.

5. **Off-Site Biodiversity Net Gain**

- 5.1. Where an Offsite BEMP applies, the Owner shall not Occupy more than 90% of the Dwellings (or comply with such other requirement for timing of provision as may be contained in the Offsite BEMP) until the Owner has completed the works of habitat creation and/or enhancement set out in the Offsite BEMP and has served notice on the Council confirming completion of such works.
- 5.2. From the date of notice served pursuant to paragraph 5.1, the Owner covenants so as to bind the relevant part of the Offsite BNG Land identified in the relevant Offsite BEMP only to comply with the requirements of the Offsite BEMP (or any amended Offsite BEMP submitted by the owner of the relevant Offsite BNG Land from time to time to the Council and approved by the Council) for a period of 30 years.

6. **Skylark Plots**

- 6.1 The Owner shall not Occupy any of the Dwellings until:
- 6.1.1. the Skylark Plot Plan has been submitted to and approved in writing by the Council; and
- 6.1.2. the Skylark Plots have been provided in accordance with the approved Skylark Plot Plan and Skylark Plot Requirements; and

- 6.1.3. notice has been served on the Council confirming completion of the works pursuant to paragraph 6.1.2.
- 6.2 From the date of Occupation of the first Dwelling, the Owner covenants so as to bind the Skylark Land only to maintain and manage the Skylark Plots for a period of 30 years in accordance with the approved Skylark Plot Plan (or any amended Skylark Plot Plan as may be submitted by the owner of the Skylark Land from time to time to the Council and approved by the Council) and the Skylark Plot Requirements.

**Schedule 6
Employment, Skills and Social Value**

1. Definitions

1.1. In this Schedule 6 the following terms have the following meaning:

Construction Phase the period between the Commencement of Development and the Practical Completion of the final Dwelling;

Construction Phase Employment, Skills and Social Value Plan a plan relating to the construction of the Development which shall set out the measures by which the Development shall contribute towards the objectives of Local Plan Policy LP9 in relation to employment, skills and social value and which may include the following (or other measures at the Owner's discretion):

- a) the provision of training, work placements and apprenticeships;
- b) engagement protocols with the Council and Jobcentre Plus regarding recruitment and targeted recruitment towards specific groups; and
- c) education initiatives which may include partnerships with local colleges;

or any amended plan submitted to the Council by the Owner and approved by the Council from time to time;

Monitoring Report a written report setting out the measures taken by the Owner to comply with the Construction Phase Employment, Skills and Social Value Plan.

2. Construction Phase Employment, Skills and Social Value Plan

2.1. The Owner shall not Commence Development unless and until the Council has approved in writing the Construction Phase Employment, Skills and Social Value Plan.

2.2. At all times during the Construction Phase the Owner shall implement and promote (and where necessary take reasonable step to procure the implementation and promotion of) the approved Construction Phase Employment, Skills and Social Value Plan (or any revised plan submitted to the Council by the Owner and approved by the Council).

3. Monitoring

3.1. During the Construction Phase, the Owner shall submit a Monitoring Report to the Council every six months.

- 3.2. In the event that a Monitoring Report submitted pursuant to paragraph 3.1 above demonstrates that the principles and objectives of the approved Construction Phase Employment, Skills and Social Value Plan are not being achieved the Owner shall take into account any reasonable comments, recommendations and/or suggestions which are provided by the Council and the subsequent Monitoring Report shall demonstrate how such comments have been taken into account.

Executed as a Deed (but not delivered
Until the date of it) by the affixing of
THE COMMON SEAL of
THE COUNCIL OF THE BOROUGH OF
KIRKLEES

Authorised Sealing Officer
(A permanent Officer of the Council)

Executed as a deed by
C. C. PROJECTS

acting by two directors:

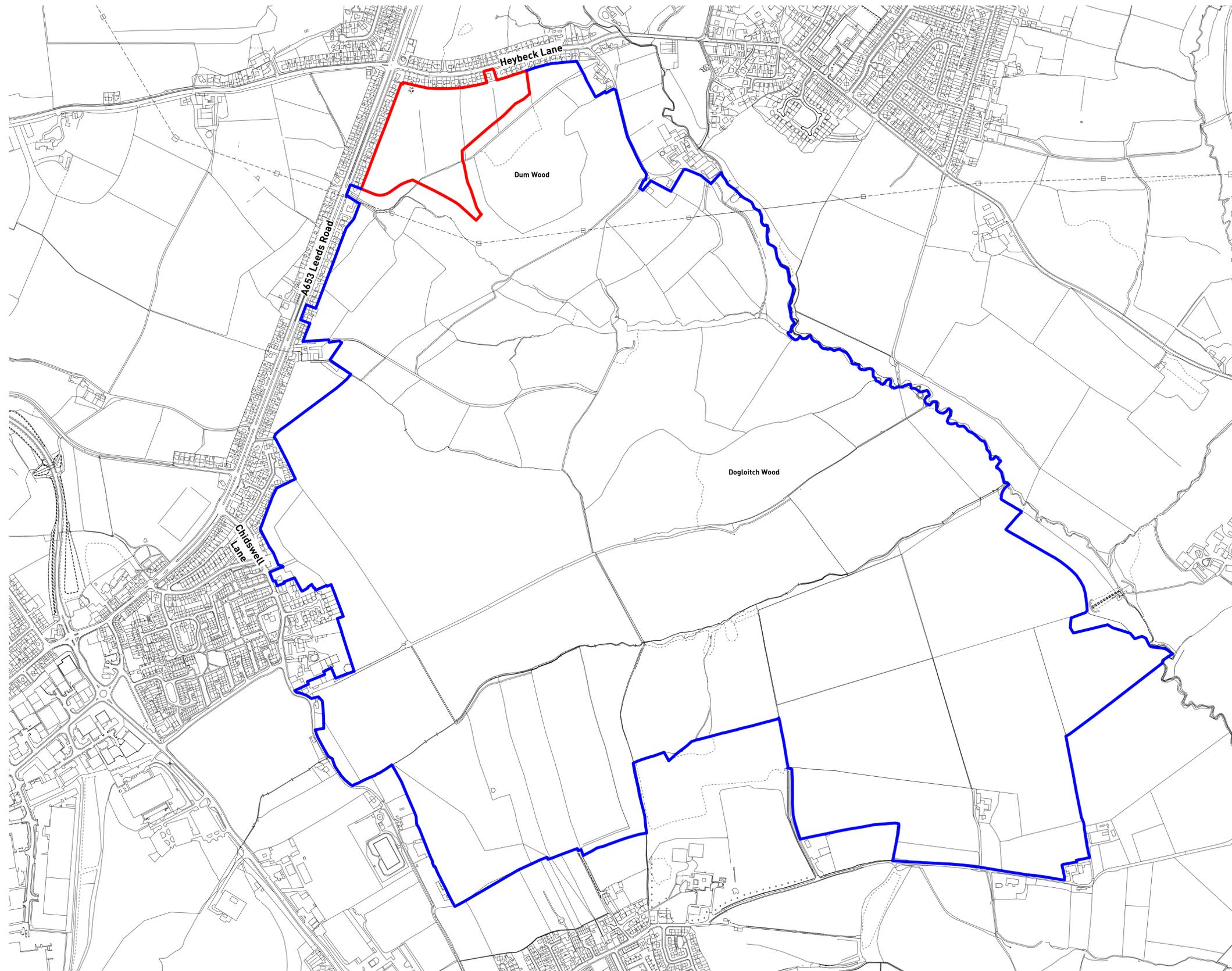
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Signature of Director

.....

Signature of Director

Appendix 1 – Plan 1



Notes.

- Application boundary
- Extents of land under applicants ownership



Contractor must verify all dimensions on site before commencing any work or shop drawings. If this drawing exceeds the quantities taken in any way the Architects are to be informed before the work is initiated. Only figured dimensions to be taken from this drawing. Do not scale off this drawing. Drawings based on Ordnance Survey and / or existing record drawings - design and drawing content subject to Site Survey, Structural Survey, Site Investigations, Planning and Statutory Requirements and Approvals. Authorised reproduction from Ordnance Survey Map with permission of the Controller of Her Majesty's Stationery Office. Crown Copyright reserved. Enjoy Design Ltd.

B	Red line boundary updated;	DH	15/10/19	RG
A	Red line boundary updated;	DH	09/10/19	RG
Rev.	Des.	By	Date	Ch.

DH	15/10/19	RG
DH	09/10/19	RG
By	Date	Ch.

PLANNING
Status:

The Old Brewery
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Leeds
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Client:	The Church Commissioners	Job No:	18,006
Project:	Chidswell Masterplan		
Title:	Site Location Plan - Heybeck Lane		
Date:	04/09/19	Scale:	1 : 5000@A1
Checked by:	RG	Drawn By:	DH
Revision:	B		

ENJOY
DESIGN

Appendix 2 – Planning Permission

Conditions and reasons:

1. Prior to the commencement of development (save for enabling works which for the purposes of this condition shall comprise site preparation, remediation works, provision of construction and temporary access roads, diversion and/or laying of strategic site-wide utilities, and works associated with archaeological surveys) of any phase or sub phase of the development hereby approved, details of appearance, landscaping, layout and scale (hereinafter called the "Reserved Matters") of that phase or sub phase shall be submitted to and approved in writing by the Local Planning Authority. For the purposes of this permission, all references to a "phase" or "phase of development" shall be interpreted as being a reference to a phase as defined on a phasing plan to be submitted pursuant to outline condition 5 below and all references to a "sub phase" are to be a part or component of such a phase as defined in an application submitted pursuant to a condition of this permission. A standalone Reserved Matters application relating only to infrastructure may be made to the Local Planning Authority.

Reason: No details of the matters referred to having been submitted, they are reserved for the subsequent approval in writing of the Local Planning Authority. This is a pre-commencement condition to ensure that sufficient detail is provided and agreed at an appropriate stage of the development process.

2. The development hereby approved shall be implemented within the Site as defined by the Site Location Plan (00-501 rev B) in accordance with the Parameter Plan (00-211 rev C) and in accordance with the plans and particulars of the Reserved Matters referred to in outline condition 1 above, except as may be specified in the conditions attached to this permission or attached to future approvals of Reserved Matters, which shall in all cases take precedence.

Reason: For the avoidance of doubt as to what is being permitted and in the interests of visual amenity, residential amenity and other matters relevant to planning and to accord with the Kirklees Local Plan and the National Planning Policy Framework.

3. The first Reserved Matters application relating to the development hereby approved shall be made to the Local Planning Authority before the expiration of three years from the date of this permission. All applications for the approval of Reserved Matters for the development hereby approved shall be made to the Local Planning Authority before the expiration of five years from the date of this permission.

Reason: Pursuant to section 92 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

4. Implementation of the first phase or sub phase of the development hereby approved shall commence either before the expiration of two years from the final approval of Reserved Matters relating to that phase or sub phase or in the case of approvals of different dates, the final approval of the last such matter to be approved. Subsequent phases or sub phases of development shall be begun no later than:

- a) Seven years beginning with the date of the grant of this outline planning permission; or
- b) if later than a) above, two years from the final approval of the Reserved Matters for the relevant phase or sub phase or, in the case of approval on different dates, the final approval of the last such matter to be approved.

Reason: Pursuant to section 92 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

5. If the development hereby approved is to be delivered in phases, prior to or contemporaneously with the submission of the first application for the approval of Reserved Matters, a plan showing the phases of the development hereby approved shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented in accordance with the approved phasing plan, unless an amended phasing plan is submitted to and approved in writing by the Local Planning Authority.

Reason: To define the scope of this permission and to provide clarity in relation to the progression of development across the site.

6. Prior to the commencement of development (including ground works) of any phase or sub phase of the development hereby approved, a Construction (Environmental) Management Plan (C(E)MP) for that phase or sub phase shall be submitted to and approved in writing by the Local Planning Authority. The C(E)MP shall include a timetable of all works, and details of:

- Hours of works (including times of deliveries);
- Point(s) of access and routes for construction traffic (which shall avoid Chidswell Lane);
- Construction vehicle sizes;
- Numbers and times of construction vehicle movements;
- Locations of HGV waiting areas and details of their management;
- Parking for construction workers;
- Loading and unloading of plant and materials;
- Storage of plant and materials;
- Signage;
- Measures to be taken to minimise the deposit of mud, grit and dirt on public highways by vehicles travelling to and from the site, including the provision of adequate wheel washing facilities within the site;
- Street sweeping;
- Measures to control and monitor the emission of dust and dirt during construction;
- Site waste management, including details of recycling/disposing of waste resulting from construction works;
- Mitigation of noise and vibration arising from all construction-related activities;
- Artificial lighting used in connection with all construction-related activities and security of the construction site;
- Site manager and resident liaison officer contacts, including details of their remit and responsibilities;
- Engagement with local residents and occupants or their representatives; and
- Engagement with the developers of nearby sites to agree any additional measures required in relation to cumulative impacts (should construction be carried out at nearby sites during the same period).

The development hereby approved shall be carried out strictly in accordance with the C(E)MP so approved throughout the period of construction and no change therefrom shall take place without the prior written consent of the Local Planning Authority.

Reason: In the interests of amenity, to ensure the highway is not obstructed, in the interests of highway safety, to ensure harm to biodiversity is avoided, and to accord with Policies LP21, LP24, LP30 and LP52 of the Kirklees Local Plan.

This pre-commencement condition is necessary to ensure measures to avoid obstruction to the wider highway network, to avoid increased risks to highway safety, and to prevent or minimise amenity and biodiversity impacts are devised and agreed at an appropriate stage of the development process.

7. Prior to the commencement of development (including ground works) of any phase or sub phase, a survey of the existing condition of the highway (the extent of highway to be surveyed to be agreed in writing by the Local Planning Authority in advance, but limited to the highways shown in drawing A13398-T-063 rev B) shall be carried out jointly with the Local Highway Authority and submitted to and approved in writing by the Local Planning Authority. The survey shall include carriageway and footway surfacing, verges, kerbs, edgings, street lighting, signing and white lining. Upon completion of the relevant phase or sub phase of the development hereby approved (or at any earlier stage to be agreed with the Local Planning Authority in advance) a post-construction survey of the agreed extent of highway shall be carried out and the post-construction survey and a scheme of remedial works shall be submitted to and approved in writing by the Local Planning Authority. The approved remedial works shall be carried out prior to the occupation of no more than 90% of the dwellings of the relevant phase or sub phase of the development hereby approved unless otherwise agreed in writing by the Local Planning Authority. Should any highways defects (affecting highway safety) attributable to the construction traffic of the relevant phase or sub phase of the development hereby approved be identified during the construction period, remediation of these shall also be implemented in accordance with details to be submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of highway safety, to ensure the effective maintenance of the highway and to accord with Policy LP21 of the Kirklees Local Plan.

This pre-commencement condition is necessary to ensure highways surrounding the site are appropriately surveyed prior to works commencing, and to ensure responsibility for remedial works can be fairly assigned with reference to evidence.

8. Prior to the commencement of development (including ground works) of any phase or sub phase of the development hereby approved, a scheme detailing temporary surface water drainage for that phase or sub 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 (if known);
- Include details of any excavation or levelling that may be required prior to or as part of the implementation of temporary drainage works;
- Include methods of preventing silt, debris and contaminants entering existing drainage systems and watercourses and details of how flooding of adjacent land would be prevented; and

- Include methods of preventing contamination of watercourses once the new drainage has been installed.

The temporary works shall be implemented in accordance with the approved scheme and phasing. No phase or sub phase of the development shall be commenced until the temporary works approved for that phase or sub 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 ensure the risk of flooding does not increase during the construction phase, to limit the siltation of any on- or off-site surface water features, and to accord with Policy LP27 of the Kirklees Local Plan.

This pre-commencement condition is necessary to ensure measures to avoid increased flood risk are devised and agreed at an appropriate stage of the development process.

9. Prior to the commencement of development (including ground works and enabling works) of any phase or sub phase of the development hereby approved, a Tree Protection Plan shall be submitted to and approved in writing by the Local Planning Authority for that phase or sub phase. The Tree Protection Plan shall include protection measures relating to any trees (that are to be retained) located along construction traffic routes to/from the relevant phase or sub phase. The development shall be carried out in accordance with the documents so approved.

Reason: To protect trees in the interests of visual amenity and biodiversity and to accord with Policy LP33 of the Kirklees Local Plan.

This pre-commencement condition is necessary to ensure that details of tree protection are agreed at an appropriate stage of the development process.

10. Prior to the commencement of development (including ground works and enabling works) of any phase or sub phase of the development hereby approved within 500m of Dum Wood, an Ancient Woodland Protection Plan shall be submitted to and approved in writing by the Local Planning Authority. The Ancient Woodland Protection Plan shall include measures to protect Dum Wood from dust, light, surface water run-off, noise and other pollution throughout the period of construction. The development hereby approved shall be carried out strictly in accordance with the Ancient Woodland Protection Plan so approved throughout the period of construction and no change therefrom shall take place without the prior written consent of the Local Planning Authority.

Reason: To protect ancient woodlands in the interests of visual amenity and biodiversity and to accord with Policy LP33 of the Kirklees Local Plan.

This pre-commencement condition is necessary to ensure that details of ancient woodland protection are agreed at an appropriate stage of the development process.

11. Prior to the commencement of development (including ground works) of any phase or sub phase of the development hereby approved, a written scheme of archaeological investigation (WSI) for the phase or sub phase shall be submitted to and approved in writing by the Local Planning Authority. For land that is included within the WSI, no development shall take place other than in accordance with the agreed WSI, which shall include:

- A statement of significance and research objectives;

- A programme and methodology of site investigation and recording and the nomination of (a) competent person(s) or organisation to undertake the agreed works; and
- A programme for post-investigation assessment and subsequent analysis, publication and dissemination and deposition of resulting material. This part of the condition shall not be discharged until these elements have been fulfilled in accordance with the programme set out in the WSI.

Reason: To ensure buried heritage assets are appropriately recorded and protected and to accord with policy LP35 of the Kirklees Local Plan and chapter 16 of the National Planning Policy Framework.

This pre-commencement condition is necessary as intrusive works on site have the potential to damage or disturb buried heritage assets.

12. Means of access to and from the site shall be consistent with the principles illustrated in drawing A13398-T-002 rev E and shall be provided prior to first occupation of the development and thereafter retained and maintained for the lifetime of the development.

Reason: To ensure suitable access is provided, in the interests of highway safety and amenity, to achieve a satisfactory layout, and to accord with Policies LP20, LP21, LP24 and LP67 of the Kirklees Local Plan and the National Planning Policy Framework.

13. Unless it is approved under a condition of planning permission ref: 2020/92331 (should that permission be granted) that a district energy network will not be provided under that permission, each relevant application for the approval of Reserved Matters shall include details (including road layout plans and sections) demonstrating how the development hereby approved shall be capable of accommodating pipework of a district energy network.

Reason: To ensure the development's housing is capable of being connected to a district energy network in the event that a local decentralised energy scheme is to be implemented, and to accord with Policy LP26 of the Kirklees Local Plan and the National Planning Policy Framework.

14. Each application for the approval of Reserved Matters shall include a noise assessment which shall specify the measures to be taken to protect the new residential units and curtilages from noise from all significant noise sources (including noise from road traffic, commercial uses and community uses) and shall:

- Determine the existing noise climate;
- Predict the noise climate in living rooms and gardens (daytime), bedrooms (night time) and other habitable rooms of the development; and
- Detail the attenuation/design necessary to protect the amenity of the occupants of the new residences (including ventilation if required).

Prior to the first occupation of any dwelling to which the relevant Reserved Matters application relates, all works specified for that dwelling in the approved noise assessment shall be carried out in full and such works shall thereafter be retained.

Reason: In the interests of amenity and to accord with Policies LP24 and LP52 of the Kirklees Local Plan and the National Planning Policy Framework.

15. Prior to the commencement of development (save for enabling works which for the purposes of this condition shall comprise site preparation and site investigation)

of any phase or sub phase of the development hereby approved, a Phase II Intrusive Site Investigation Report for that phase or sub phase shall be submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure unacceptable risks to human health and the environment are identified, and to ensure that the development is safely completed in accordance with the requirements of Policy LP53 of the Kirklees Local Plan and the National Planning Policy Framework.

This pre-commencement condition is necessary to ensure that contamination is identified at an appropriate stage of the development process.

16. Where site remediation is recommended in the Phase II Intrusive Site Investigation Report approved pursuant to condition 15 above, a Remediation Strategy for that phase or sub phase shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development for that phase or sub phase. The Remediation Strategy shall include a timetable for the implementation and completion of the approved remediation measures.

Reason: To ensure unacceptable risks to human health and the environment are identified and removed, and to ensure that the development is safely completed in accordance with the requirements of Policy LP53 of the Kirklees Local Plan and the National Planning Policy Framework.

This pre-commencement condition is necessary to ensure that contamination is identified and suitable remediation measures are agreed at an appropriate stage of the development process.

17. Remediation of the site (which can include remediation on a phase or sub phase basis) shall be carried out and completed in accordance with the Remediation Strategy approved pursuant to outline condition 16 above. In the event that remediation is unable to proceed in accordance with the approved Remediation Strategy or contamination not previously considered is identified or encountered on site, all works in the affected area (other than site investigation works) shall cease immediately and the Local Planning Authority shall be notified in writing within two working days. Unless otherwise agreed in writing with the Local Planning Authority, works in the affected area shall not recommence until proposed revisions to the Remediation Strategy have been submitted to and approved in writing by the Local Planning Authority. Remediation of the site shall thereafter be carried out in accordance with the approved revised Remediation Strategy.

Reason: To ensure unacceptable risks to human health and the environment are identified and removed, and to ensure that the development is safely completed in accordance with the requirements of Policy LP53 of the Kirklees Local Plan and the National Planning Policy Framework.

18. Following completion of any measures identified in the approved Remediation Strategy or any approved revised Remediation Strategy, a Validation Report relating to that phase or sub phase shall be submitted to the Local Planning Authority. Unless otherwise agreed in writing with the Local Planning Authority, no part of that phase or sub phase shall be brought into use until such time as the remediation measures for that phase or sub phase have been completed in accordance with the approved Remediation Strategy or the approved revised Remediation Strategy and a Validation Report in respect of those remediation measures has been approved in writing by the Local Planning Authority. Where validation has been submitted and

approved in stages for different phases and/or sub phases of the whole site, a Final Validation Summary Report shall be submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure unacceptable risks to human health and the environment are identified and removed, and to ensure that the development is safely completed in accordance with the requirements of Policy LP53 of the Kirklees Local Plan and the National Planning Policy Framework.

19. Prior to or contemporaneously with the submission of the first application for the approval of Reserved Matters relating to a phase or sub phase of the development hereby approved, the findings of a scheme of intrusive investigations carried out on site to establish the risks posed to that phase or sub phase of the development hereby approved by past coal mining activity shall be submitted to and approved in writing by the Local Planning Authority. Should any remediation works and/or mitigation measures to address land instability arising from coal mining legacy prove necessary in light of the findings of the intrusive investigations, details of these works and/or measures (which may include designation of zones of influence of mine entries, the definition of no-build zones, the capping or other treatment of mine entries and/or remedial works related to shallow coal workings) shall be submitted to and approved in writing by the Local Planning Authority, and these works and/or measures shall be implemented on a phase by phase basis prior to the commencement of any development of the relevant phase or sub phase (including ground works, other than those required as part of the approved remediation works). Proposals submitted under the accompanying and subsequent Reserved Matters applications shall adhere to the findings of the approved assessment and the approved remediation works and/or mitigation measures.

Reason: To enable assessment and minimisation of the risks associated with the area's mining legacy in accordance with Policy LP53 of the Kirklees Local Plan. This pre-commencement condition is necessary to ensure that details of remedial and/or mitigatory measures related to the site's coal mining legacy are agreed at an appropriate stage of the development process.

20. Prior to any phase or sub phase of the development hereby approved being brought into first use, in respect of which works were required pursuant to condition 19, a validation statement/declaration related to coal mining legacy affecting that phase or sub phase shall be submitted to and approved in writing by the Local Planning Authority. The statement/declaration shall be prepared and signed by a suitably competent person, shall confirm that the phase or sub phase is, or has been made, safe and stable for the phase or sub phase of the development hereby approved, and shall confirm the methods and findings of the intrusive site investigations and the completion of any remedial works and/or mitigation necessary to address the risks posed by past coal mining activity.

Reason: To minimise risk associated with the area's mining legacy in accordance with Policy LP53 of the Kirklees Local Plan.

21. If the development hereby approved is to be delivered in phases, prior to or contemporaneously with the submission of the first application for the approval of Reserved Matters, a site-wide foul and surface water and land drainage strategy shall be submitted to and approved in writing by the Local Planning Authority in consultation with the Lead Local Flood Authority. The strategy shall set out the

overarching principles and parameters (including in relation to the co-ordination and integration of drainage across phases and sub phases within the development hereby approved) which shall inform detailed proposals subsequently devised for specific phases and sub phases of the development hereby approved.

Reason: To ensure the effective disposal of foul and surface water from the development so as to avoid an increase in flood risk and to accord with Policies LP27 and LP28 of the Kirklees Local Plan and chapter 14 of the National Planning Policy Framework.

22. Prior to or contemporaneously with the submission of the first application for the approval of Reserved Matters relating to each phase or sub phase, a scheme detailing foul and surface water and land drainage for that phase or sub phase (including off site works, outfalls, balancing works with discharge rates approved in writing by the Local Planning Authority in consultation with the Lead Local Flood Authority, plans and longitudinal sections, hydraulic calculations, details of phasing of drainage provision, details of existing drainage to be maintained / diverted / abandoned, and details of water quality improvements) shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall adhere to the overarching principles and parameters of the strategy approved pursuant to condition 21. No part of that phase or sub phase of the development hereby approved shall be occupied until the drainage scheme so approved for that phase or sub phase has been implemented.

Reason: To ensure the effective disposal of foul and surface water from the development so as to avoid an increase in flood risk and to accord with Policies LP27 and LP28 of the Kirklees Local Plan and chapter 14 of the National Planning Policy Framework.

23. Prior to or contemporaneously with the submission of an application for the approval of Reserved Matters relating to each phase or sub phase, an assessment of the effects of 1 in 100 year storm events, with an additional allowance for climate change, exceedance events and blockage scenarios, on drainage infrastructure and surface water run-off pre- and post-development between the relevant phase or sub phase of the development hereby approved and the surrounding area shall be submitted to and approved in writing by the Local Planning Authority. No part of the relevant phase or sub phase of the development hereby approved shall be brought into first use until the works comprising the approved scheme (avoiding property and curtilage) have been completed and the approved scheme shall be retained thereafter.

Reason: To ensure the effective disposal of surface water from the development so as to avoid an increase in flood risk and to accord with Policies LP27 and LP28 of the Kirklees Local Plan and chapter 14 of the National Planning Policy Framework.

24. Each application for the approval of Reserved Matters shall include details of faunal enhancement measures (together with arrangements for their maintenance and management) informed by up-to-date and comprehensive ecological surveys (including surveys of protected species) prepared and submitted by the developer. Following approval in writing by the Local Planning Authority, the measures (which may include the provision of bird and boxes, and provisions relating to hedgehogs and badgers) shall be implemented on a phase-by-phase basis in accordance with the details so approved. No phase or sub phase of the development hereby

approved shall be first occupied prior to the implementation of the faunal enhancement measures so approved for that phase or sub phase, unless the approved details include alternative proposals for the timing of installation of the measures (in which case those alternative proposals shall be complied with). The measures shall be maintained and managed in accordance with the approved details for a minimum period of 30 years thereafter.

Reason: To secure mitigation, enhancement and compensation for the ecological effects resulting from loss of habitat and to accord with policy LP30 of the Kirklees Local Plan and chapter 15 of the National Planning Policy Framework.

25. No removal of hedgerows, trees or shrubs shall take place between 1st March and 31st August inclusive, unless authorised in writing by the Local Planning Authority in response to evidence to be submitted in writing to the Local Planning Authority demonstrating that no birds will be harmed and/or that there are appropriate measures in place to protect nesting bird interest on site.

Reason: To prevent significant ecological harm to birds, their eggs, nests and young and to accord with Policy LP30 of the Kirklees Local Plan and chapter 15 of the National Planning Policy Framework.

26. Each application for the approval of Reserved Matters relating to residential use shall include floor plans (providing details of internal layouts of the residential accommodation) and a schedule of accommodation (providing unit size mix information and gross internal floorspace figures in sqm) for all residential units.

Reason: To enable the quality, amenities and housing mix of the residential accommodation to be assessed in accordance with policies LP11 and LP24 of the Kirklees Local Plan and chapter 5 of the National Planning Policy Framework.

For the avoidance of doubt, the following terms (used in the above conditions) are defined as follows:

Site preparation comprises the installation of temporary facilities, installation of Heras or other fencing, installation of temporary construction compounds, and removal of existing structures and vegetation. Site preparation does not include ground works which are defined as excavation, remediation, grading and other activities related to the modification of the ground surface or subsurface.

Strategic site-wide utilities comprise the diversion of existing utilities or laying of new utilities which serve the entirety of the site or multiple phases.

Sub phase means a part or a component of a phase.

The above definitions shall be regarded as forming part of the wordings of the above conditions.

Informatives

NOTE: The granting of planning permission does not authorise the carrying out of works within the highway, for which the written permission of the Local Highway Authority is required.

You are required to consult the Local Highway Authority Design Engineer (Kirklees Street Scene: 01484 221000) at the earliest opportunity in the development process to obtain approval of the design details, agree the mechanism for delivery, and obtain the necessary permissions / permits to enable the delivery of the site access(es).

This process will involve entering into a Section 38 or 278 agreement of the Highways Act 1980 or other appropriate agreement to enable delivery of the works. The applicant is advised to make early contact with the Local Highway Authority Design Engineer, to ensure that the delivery of the works does not delay occupation of the development.

Please also note that the construction of vehicle crossings within the highway is deemed to be major works for the purposes of the New Roads and Street Works Act 1991 (Sections 84 and 85). Interference with the highway without such permission is an offence which could lead to prosecution.

Appendix 3 - Bus Stop Infrastructure Audit



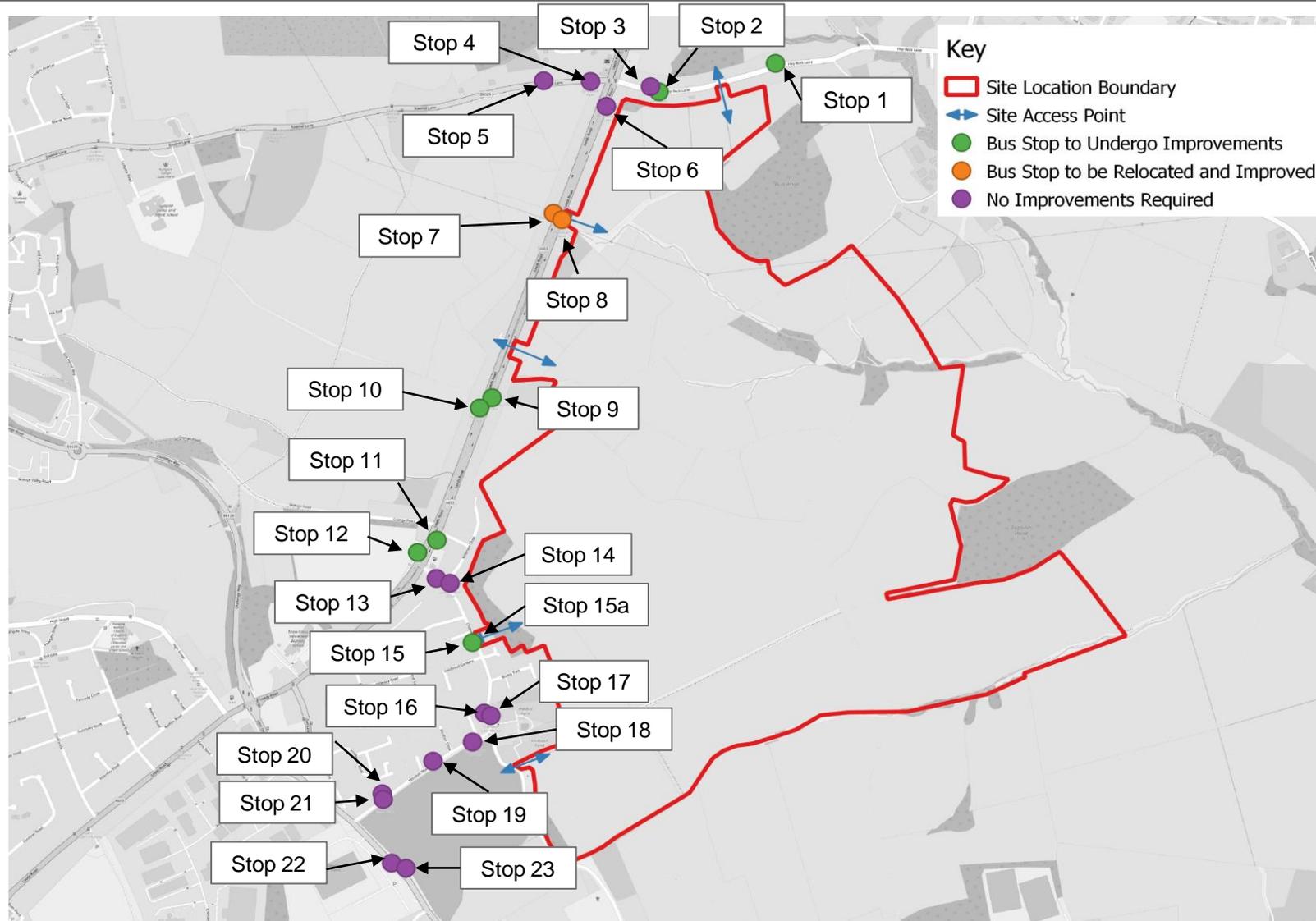
Pell Frischmann

CC Projects

**Land South of Heybeck Lane and
Land East of Leeds Road,
Chidswell, Dewsbury**

**Bus Stop Infrastructure Audit:
Summary of Existing Infrastructure
and Proposed Improvements**

Revised Final Issue (F02) – 24 January 2024

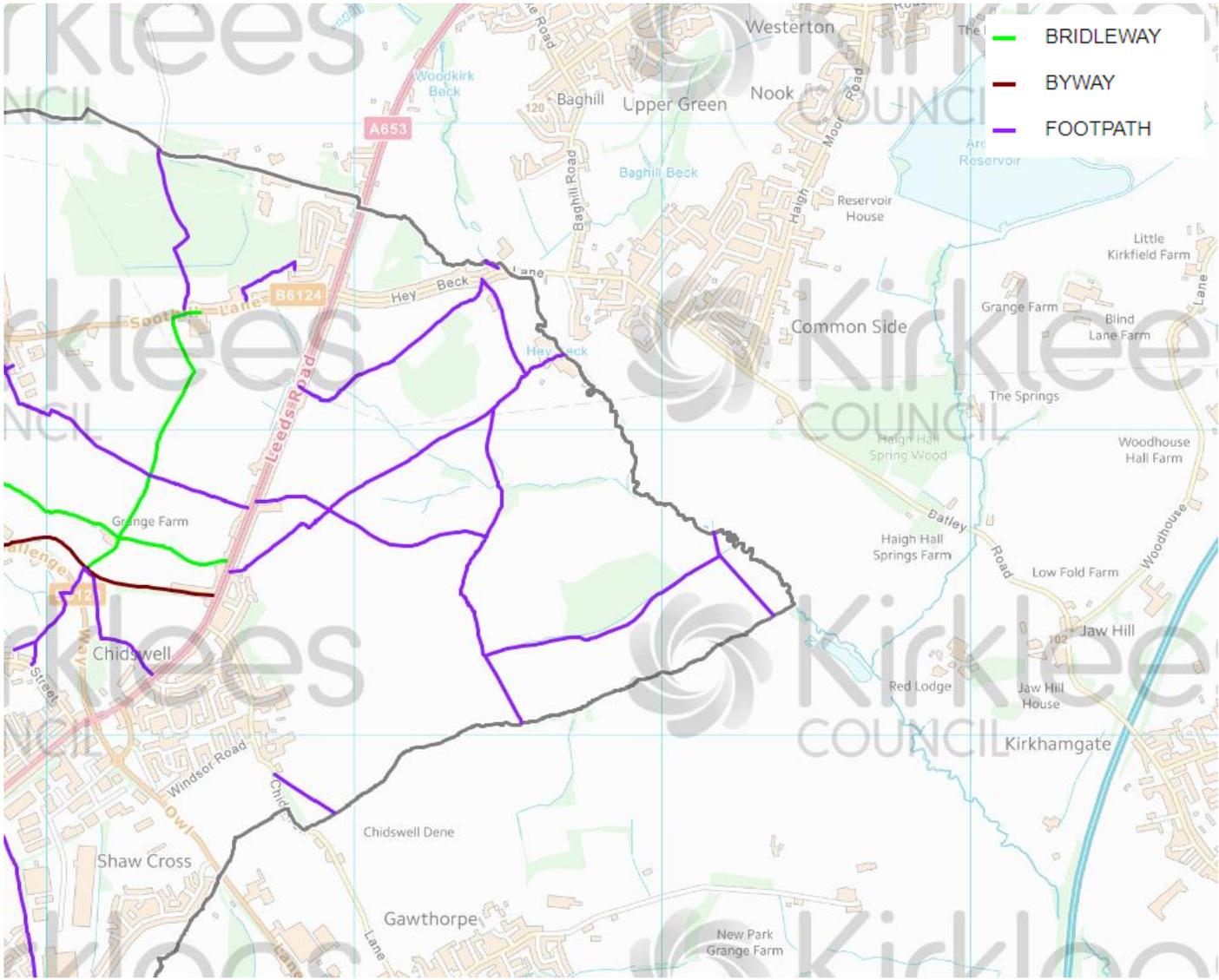


A bus stop infrastructure audit was carried out on Tuesday 26 September 2023, attended by Pell Frischmann (on behalf of CC Projects), Kirklees Council (KC) Planning and Highways officers, and West Yorkshire Combined Authority (WYCA).

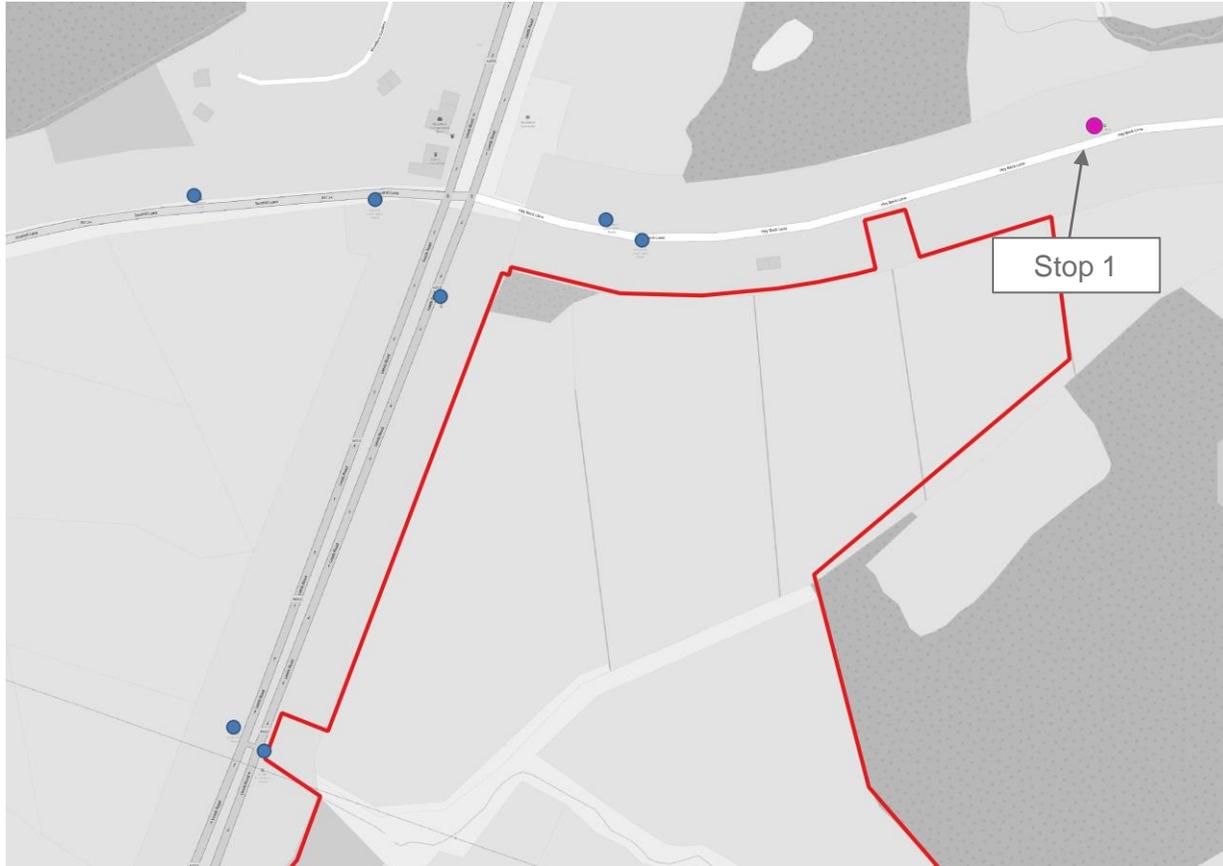
This document sets out the existing and proposed infrastructure at each of the 23 bus stops as agreed to be included within the scope, as discussed during the audit. It also considers an additional bus stop, on Chidswell Lane ('Bus Stop 15a'), that was raised by KC and WYCA as needing relocation and new infrastructure following the audit.

Pell Frischmann has subsequently identified high-level estimated costs for the provision of the proposed new infrastructure at all 24 bus stops, based on professional experience and understood assumed typical industry-standard costs.

It is agreed in-principle that infrastructure delivery should be tied to the nearest development parcels / phases within the proposed development sites.



Bus Stop 1 – Existing Conditions



Bus Stop Name	Heybeck Lane
Stop ID	45016306
Road Name	Heybeck Lane
Coordinate Location	53.716066, -1.587958
Timetable Information	Display frame provided but empty
Shelter	No
Seating	No
Bus flag	Yes
Bus cage	No

Bus Operator	Route Number	Origin / Destination
Arriva Yorkshire	203 MAX	Leeds - Huddersfield
A Lyles and Son	205	Mirfield - Dewsbury
Arriva Yorkshire	212	Dewsbury – Wakefield

Bus Stop 1 – Proposed Conditions



Improvements needed?	Yes
Relocation needed?	No
Proposed improvements	<ul style="list-style-type: none"> ➤ New 3m Cantilever shelter (positioned back of footway) with seating ➤ Realtime timetable screen
Reason(s)	Shelter needed as there is not an existing one and users of the stop may need to wait for reasonable periods of time. Positioned at the back of footway, as agreed on-site, so the stop is not an obstruction to pedestrians passing.
Likely improvement cost(s)	New Shelter £20,000, Realtime timetable mounted in shelter £10,000 Total £30,000

Bus Stop 2 – Existing Conditions



Bus Stop Name	Heybeck Lane Leeds Road (westbound)
Stop ID	45016307
Road Name	Heybeck Lane
Coordinate Location	53.715467, -1.591846
Timetable Information	Yes
Shelter	No
Seating	No
Bus flag	Yes
Bus cage	No

Bus Operator	Route Number	Origin / Destination
Arriva Yorkshire	203 MAX	Leeds - Huddersfield
A Lyles and Son	205	Mirfield - Dewsbury
Arriva Yorkshire	212	Dewsbury – Wakefield

Bus Stop 2 – Proposed Conditions



Improvements needed?	Yes
Relocation needed?	No
Proposed improvements	<ul style="list-style-type: none"> ➤ New 2m Cantilever shelter (positioned back of footway) with seating ➤ Realtime timetable screen ➤ Power for lighting
Reason(s)	<p>Shelter needed as there is not an existing one and users of the stop may need to wait for reasonable periods of time. Positioned at the back of footway, as agreed on-site, so the stop is not an obstruction to pedestrians passing.</p> <p>Currently there is no existing lighting within the stop's vicinity. This is needed for bus and pedestrian visibility and safety.</p>
Likely improvement cost(s)	<p>New Shelter £20,000 including lighting, Realtime timetable mounted in shelter £10,000 Lighting £2,000 Total £32,000</p>

Bus Stop 3 – Existing Conditions



Bus Stop Name	Heybeck Lane Leeds Road (eastbound)
Stop ID	45016308
Road Name	Heybeck Lane
Coordinate Location	53.715619, -1.592056
Timetable Information	Yes
Shelter	No
Seating	No
Bus flag	Yes
Bus cage	No

Bus Operator	Route Number	Origin / Destination
Arriva Yorkshire	203 MAX	Leeds - Huddersfield
A Lyles and Son	205	Mirfield - Dewsbury
Arriva Yorkshire	212	Dewsbury – Wakefield

Bus Stop 3 – Proposed Conditions



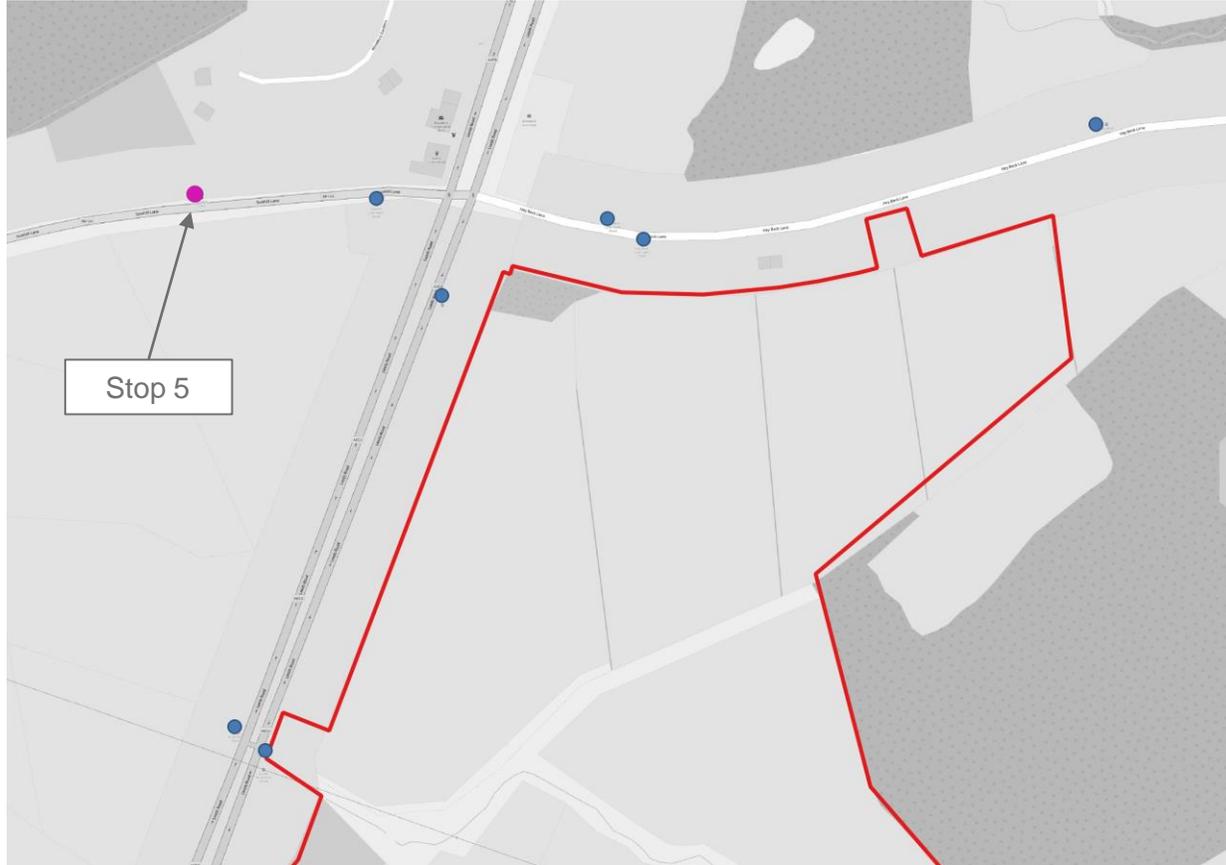
Improvements needed?	No
Relocation needed?	No
Proposed improvements	N/A
Reason(s)	No improvements required as stop is expected to be predominantly used for alighting from nearby centres such as Leeds and Huddersfield.

Bus Stop 4 – Proposed Conditions



Improvements needed?	No
Relocation needed?	No
Proposed improvements	N/A
Reason(s)	No improvements needed as site is better served by the stops along Heybeck Lane.

Bus Stop 5 – Existing Conditions



Bus Stop Name	Babes In The Wood Soothill Lane (eastbound)
Stop ID	45016134
Road Name	Soothill Lane (B6124)
Coordinate Location	53.715741, -1.595627
Timetable Information	Yes
Shelter	No
Seating	No
Bus flag	Yes
Bus cage	No

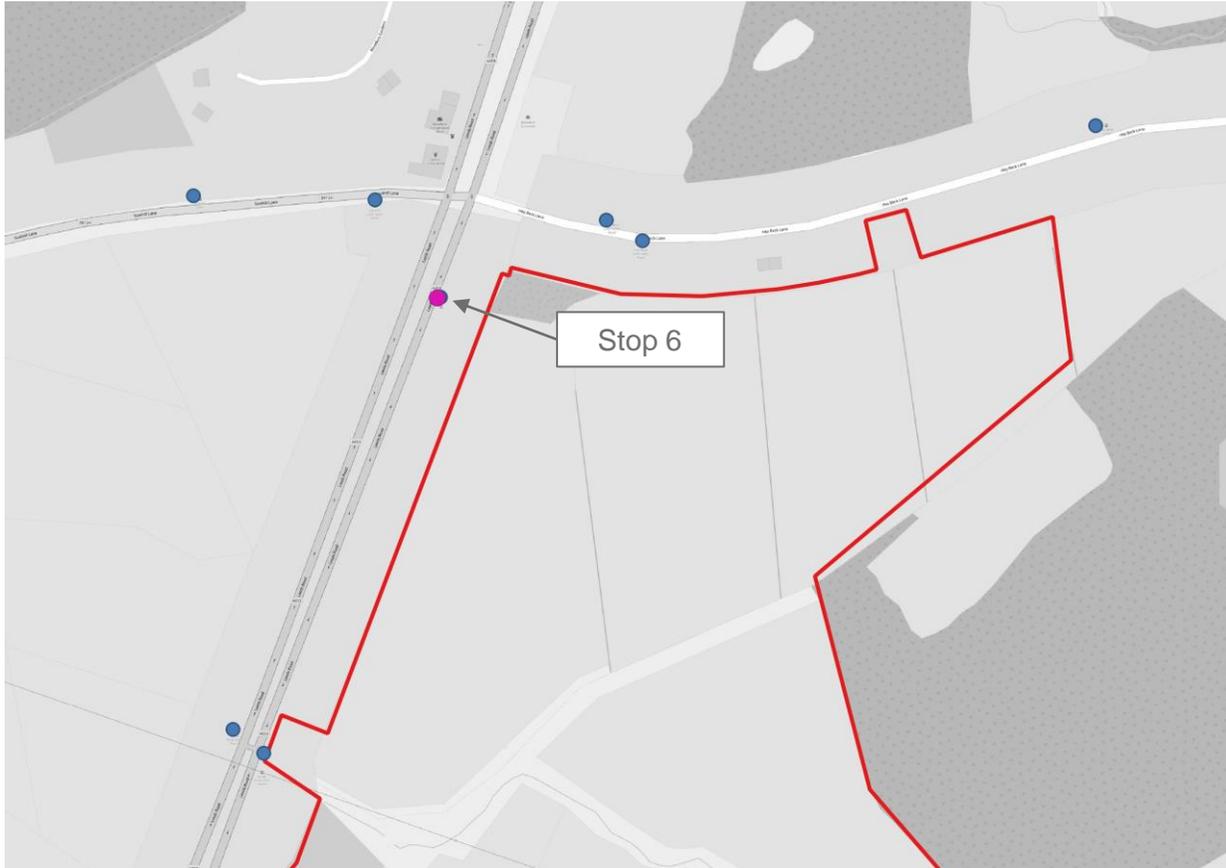
Bus Operator	Route Number	Origin / Destination
Arriva Yorkshire	WA2	Batley Hick Lane – Woodkirk Academy
Arriva Yorkshire	212	Dewsbury – Wakefield
A Lyles and Son	AL2	Batley Bus Station – St John Fisher Academy
A Lyles and Son	AL3	Soothill Lane – St John Fisher Academy

Bus Stop 5 – Proposed Conditions



Improvements needed?	No
Relocation needed?	No
Proposed improvements	N/A
Reason(s)	No improvements needed as the site is better served by stops along Heybeck Lane.

Bus Stop 6 – Existing Conditions



Bus Stop Name	Leeds Road Heybeck Lane
Stop ID	45015095
Road Name	Leeds Road (A653)
Coordinate Location	53.715153, -1.593556
Timetable Information	Yes
Shelter	No
Seating	No
Bus flag	Yes
Bus cage	Yes

Bus Operator	Route Number	Origin / Destination
Station Coaches	116	Leeds - Wakefield
Arriva Yorkshire	202 MAX	Leeds – Huddersfield
Arriva Yorkshire	203 MAX	Leeds - Huddersfield
A Lyles and Son	205	Mirfield – Dewsbury
A Lyles and Son	AL2	Batley Bus Station – St John Fisher Academy
A Lyles and Son	AL3	Soothill Lane – St John Fisher Academy

Bus Stop 6 – Proposed Conditions



Improvements needed?	No
Relocation needed?	No
Proposed improvements	N/A
Reason(s)	No improvements needed as the site is better served by stops along Heybeck Lane.

Bus Stop 7 – Existing Conditions



Bus Stop Name	Leeds Road Dum Wood (northbound)
Stop ID	45015111
Road Name	Leeds Road (A653)
Coordinate Location	53.713102, -1.595318
Timetable Information	Yes
Shelter	No
Seating	No
Bus flag	Yes
Bus cage	Yes

Bus Operator	Route Number	Origin / Destination
Station Coaches	116	Leeds - Wakefield
Arriva Yorkshire	202 MAX	Leeds – Huddersfield
Arriva Yorkshire	203 MAX	Leeds - Huddersfield
A Lyles and Son	205	Mirfield – Dewsbury

Bus Stop 7 – Proposed Conditions



Improvements needed? Yes

Relocation needed? Yes

Proposed improvements

- New 3m Cantilever shelter positioned back of footway) with seating
- Realtime timetable screen
- Power for lighting

Reason(s)

Shelter needed as there is not an existing one and users of the stop may need to wait for reasonable periods of time. Positioned at the back of footway so the stop is not an obstruction to pedestrians passing. Currently there is no existing lighting within the stop's vicinity. This is needed for bus and pedestrian visibility and safety.

Bus stop is to be relocated away from the proposed site access which is located directly opposite the stop. The stop is to be relocated to the south of its existing position (rather than to the north) as it will be better connected with the rest of the bus network.

Likely improvement cost(s)

Relocation Costs £15,000
 New Shelter £20,000,
 Realtime timetable mounted in shelter £10,000
 Lighting £2,000
Total £47,000

Bus Stop 8 – Existing Conditions

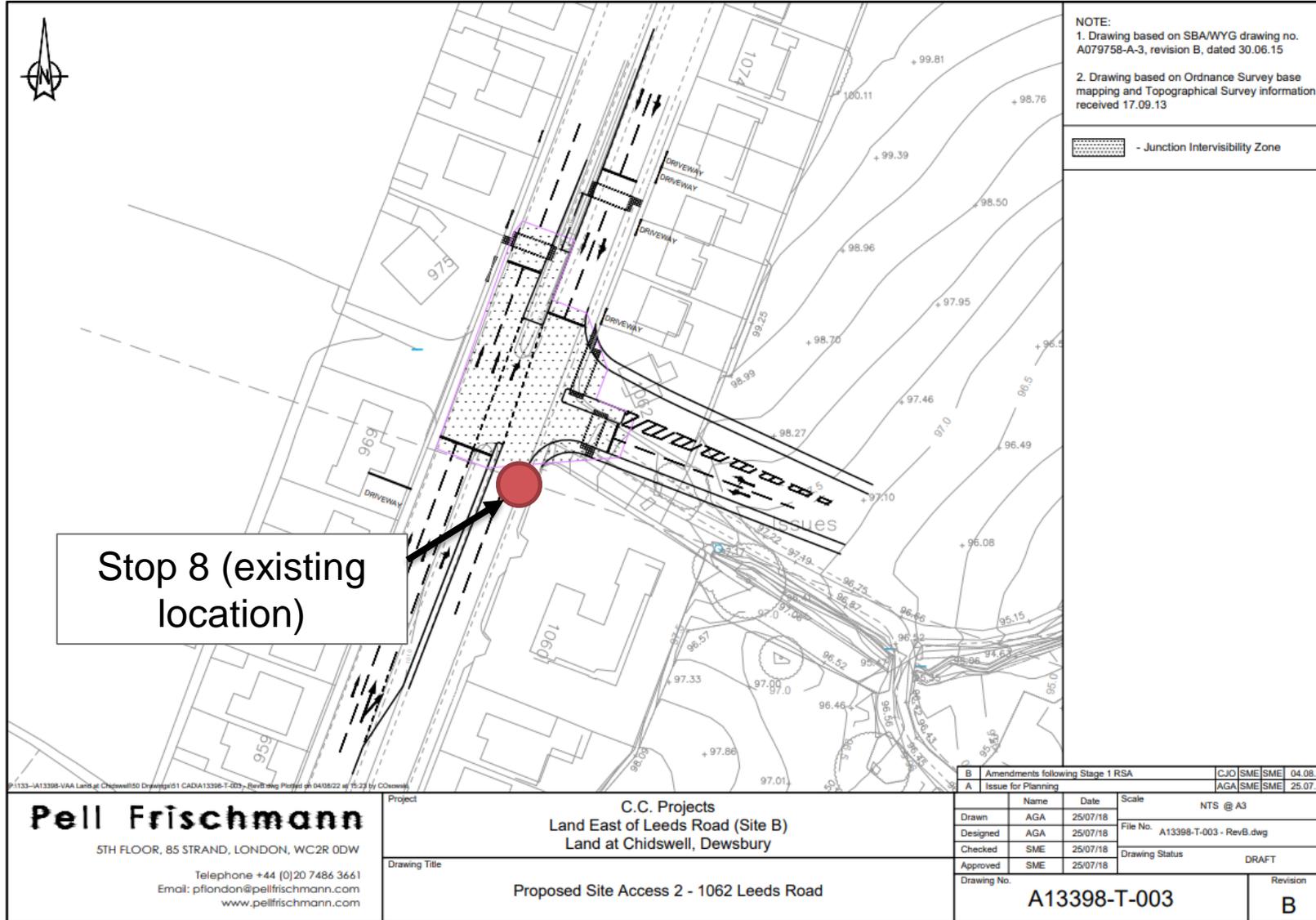


Bus Stop Name	Leeds Road Dum Wood (southbound)	
Stop ID	45015096	
Road Name	Leeds Road (A653)	
Coordinate Location	53.712876, -1.595082	
Timetable Information	Yes	
Shelter	No	
Seating	No	
Bus flag	Yes	
Bus cage	Yes	
Bus Operator	Route Number	Origin / Destination
Station Coaches	116	Leeds - Wakefield
Arriva Yorkshire	202 MAX	Leeds – Huddersfield
Arriva Yorkshire	203 MAX	Leeds - Huddersfield
A Lyles and Son	205	Mirfield – Dewsbury
A Lyles and Son	AL2	Batley Bus Station – St John Fisher Academy
A Lyles and Son	AL3	Soothill Lane – St John Fisher Academy

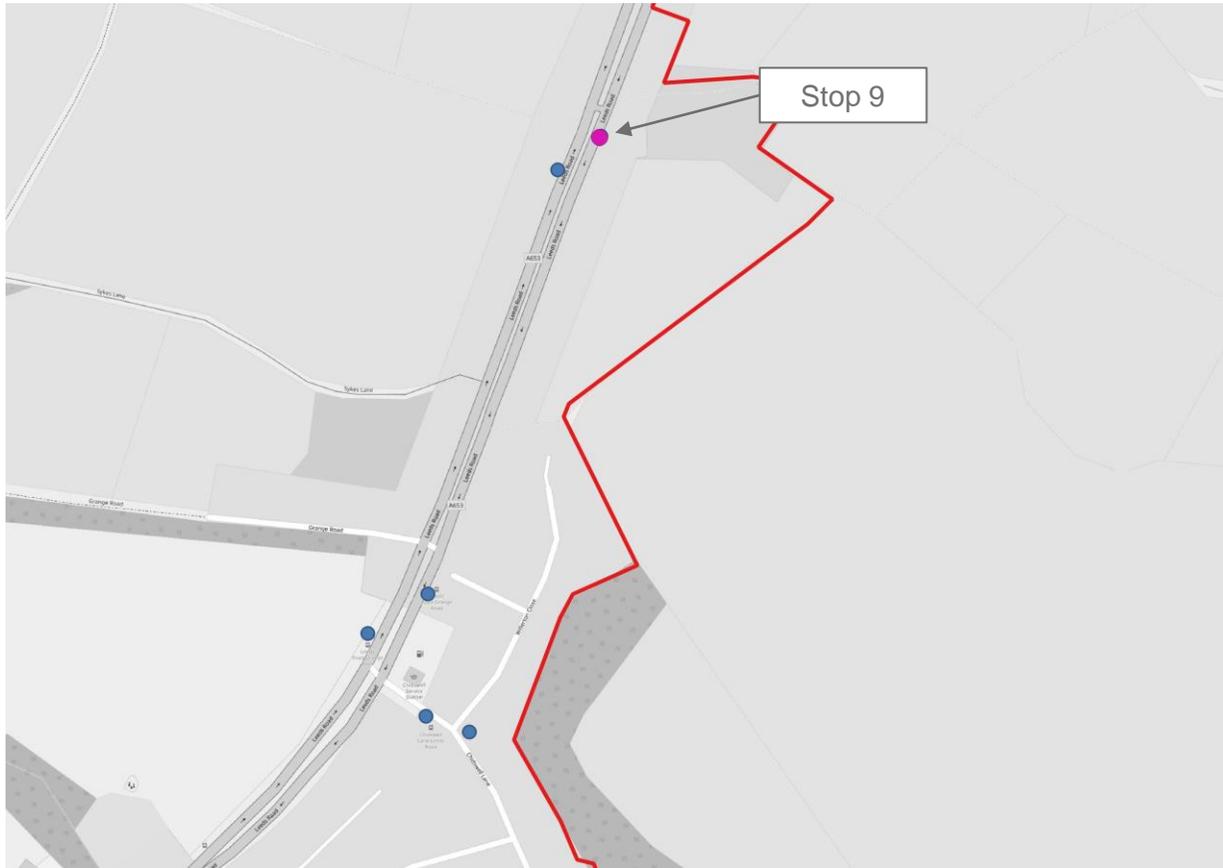
Bus Stop 8 – Proposed Conditions



Improvements needed?	Yes
Relocation needed?	Yes
Proposed improvements	<ul style="list-style-type: none"> ➤ New 3m Cantilever shelter positioned back of footway) ➤ Realtime timetable screen ➤ Power for lighting
Reason(s)	<p>Shelter needed as there is not an existing one and users of the stop may need to wait for reasonable periods of time. Positioned at the back of footway so the stop is not an obstruction to pedestrians passing. Currently there is no existing lighting within the stop’s vicinity. This is needed for bus and pedestrian visibility and safety.</p> <p>Bus stop is to be relocated away from the proposed site access. The stop is to be relocated to the south of its existing position (rather than to the north) as it will be better connected with the proposed pedestrian infrastructure</p>
Likely improvement cost(s)	<p>Relocation Costs £15,000 New Shelter £20,000, Realtime timetable mounted in shelter £10,000 Lighting £2,000 Total £47,000</p>



Bus Stop 9 – Existing Conditions



Bus Stop Name	Leeds Road Sykes Lane (southbound)
Stop ID	45015097
Road Name	Leeds Road (A653)
Coordinate Location	53.709419, -1.597287
Timetable Information	Yes
Shelter	No
Seating	No
Bus flag	Yes
Bus cage	Yes

Bus Operator	Route Number	Origin / Destination
Station Coaches	116	Leeds - Wakefield
Arriva Yorkshire	202 MAX	Leeds – Huddersfield
Arriva Yorkshire	203 MAX	Leeds - Huddersfield
A Lyles and Son	205	Mirfield – Dewsbury
A Lyles and Son	AL2	Batley Bus Station – St John Fisher Academy
A Lyles and Son	AL3	Soothill Lane – St John Fisher Academy

Bus Stop 9 – Proposed Conditions



Improvements needed?	Yes
Relocation needed?	No
Proposed improvements	<ul style="list-style-type: none"> ➤ New 3m Cantilever shelter with seating ➤ Realtime timetable screen ➤ Power for lighting
Reason(s)	<p>Shelter needed as there is not an existing one and users of the stop may need to wait for reasonable periods of time. Positioned at the back of footway so the stop is not an obstruction to pedestrians passing.</p> <p>Currently there is no existing lighting within the stop's vicinity. This is needed for bus and pedestrian visibility and safety.</p>
Likely improvement cost(s)	<p>New Shelter £20,000, Realtime timetable mounted in shelter £10,000 Lighting £2,000 Total £32,000</p>

Bus Stop 10 – Existing Conditions



Bus Stop Name	Leeds Road Sykes Lane (northbound)
Stop ID	45015110
Road Name	Leeds Road (A653)
Coordinate Location	53.709106, -1.597861
Timetable Information	Yes
Shelter	No
Seating	No
Bus flag	Yes
Bus cage	Yes

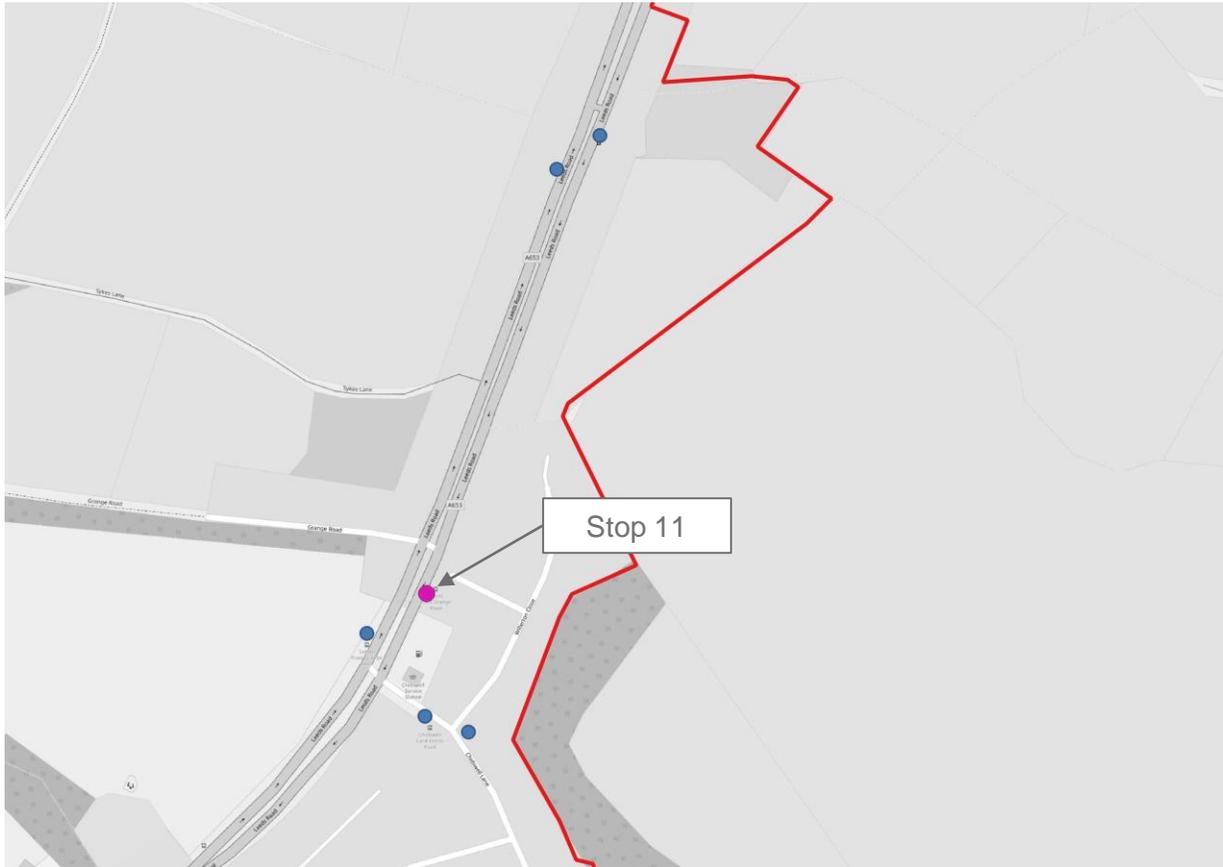
Bus Operator	Route Number	Origin / Destination
Station Coaches	116	Leeds - Wakefield
Arriva Yorkshire	202 MAX	Leeds – Huddersfield
Arriva Yorkshire	203 MAX	Leeds - Huddersfield
A Lyles and Son	205	Mirfield – Dewsbury
A Lyles and Son	AL2	Batley Bus Station – St John Fisher Academy
A Lyles and Son	AL3	Soothill Lane – St John Fisher Academy

Bus Stop 10 – Proposed Conditions



Improvements needed?	Yes
Relocation needed?	No
Proposed improvements	<ul style="list-style-type: none"> ➤ New 3m Cantilever shelter with seating ➤ Realtime timetable screen ➤ Power for lighting
Reason(s)	<p>Shelter needed as there is not an existing one and users of the stop may need to wait for reasonable periods of time. Positioned at the back of footway so the stop is not an obstruction to pedestrians passing.</p> <p>Currently there is no existing lighting within the stop's vicinity. This is needed for bus and pedestrian visibility and safety.</p>
Likely improvement cost(s)	<p>New Shelter £20,000, Realtime timetable mounted in shelter £10,000 Lighting £2,000 Total £32,000</p>

Bus Stop 11 – Existing Conditions



Bus Stop Name	Leeds Road Grange Road (southbound)
Stop ID	45015098
Road Name	Leeds Road (A653)
Coordinate Location	53.706521, -1.599151
Timetable Information	Yes
Shelter	Yes
Seating	Yes
Bus flag	Yes
Bus cage	Yes

Bus Operator	Route Number	Origin / Destination
Station Coaches	116	Leeds - Wakefield
Arriva Yorkshire	202 MAX	Leeds – Huddersfield
Arriva Yorkshire	203 MAX	Leeds - Huddersfield
A Lyles and Son	205	Mirfield – Dewsbury
A Lyles and Son	AL2	Batley Bus Station – St John Fisher Academy
A Lyles and Son	AL3	Soothill Lane – St John Fisher Academy

Bus Stop 11 – Proposed Conditions



Improvements needed?	Yes
Relocation needed?	No
Proposed improvements	<ul style="list-style-type: none"> ➤ New 3m Cantilever shelter (replaces existing shelter) with seating ➤ Realtime timetable screen
Reason(s)	Shelter needed as users of the stop may need to wait for extended periods of time. Positioned at the back of footway so the stop is not an obstruction to pedestrians passing.
Likely improvement cost(s)	New Shelter £20,000, Realtime timetable mounted in shelter £10,000 Total £30,000

Bus Stop 12 – Existing Conditions



Bus Stop Name	Leeds Road Grange Road (northbound)
Stop ID	45015109
Road Name	Leeds Road (A653)
Coordinate Location	53.706217, -1.599868
Timetable Information	Yes
Shelter	Yes
Seating	Yes
Bus flag	Yes
Bus cage	Yes

Bus Operator	Route Number	Origin / Destination
Station Coaches	116	Leeds - Wakefield
Arriva Yorkshire	202 MAX	Leeds – Huddersfield
Arriva Yorkshire	203 MAX	Leeds - Huddersfield

Bus Stop 12 – Proposed Conditions



Improvements needed?	Yes
Relocation needed?	No
Proposed improvements	<ul style="list-style-type: none"> ➤ New 3m Cantilever shelter (replaces existing shelter) with seating ➤ Realtime timetable screen
Reason(s)	Shelter needed as users of the stop may need to wait for extended periods of time – potentially increased passenger demand due to proximity to nearby playing fields. Positioned at the back of footway so the stop is not an obstruction to pedestrians passing.
Likely improvement cost(s)	New Shelter £20,000, Realtime timetable mounted in shelter £10,000 Total £30,000

Bus Stop 13 – Existing Conditions



Bus Stop Name	Chidswell Lane Leeds Road (northbound)
Stop ID	45020483
Road Name	Chidswell Lane
Coordinate Location	53.705682, -1.599183
Timetable Information	Yes
Shelter	No
Seating	No
Bus flag	Yes
Bus cage	Yes

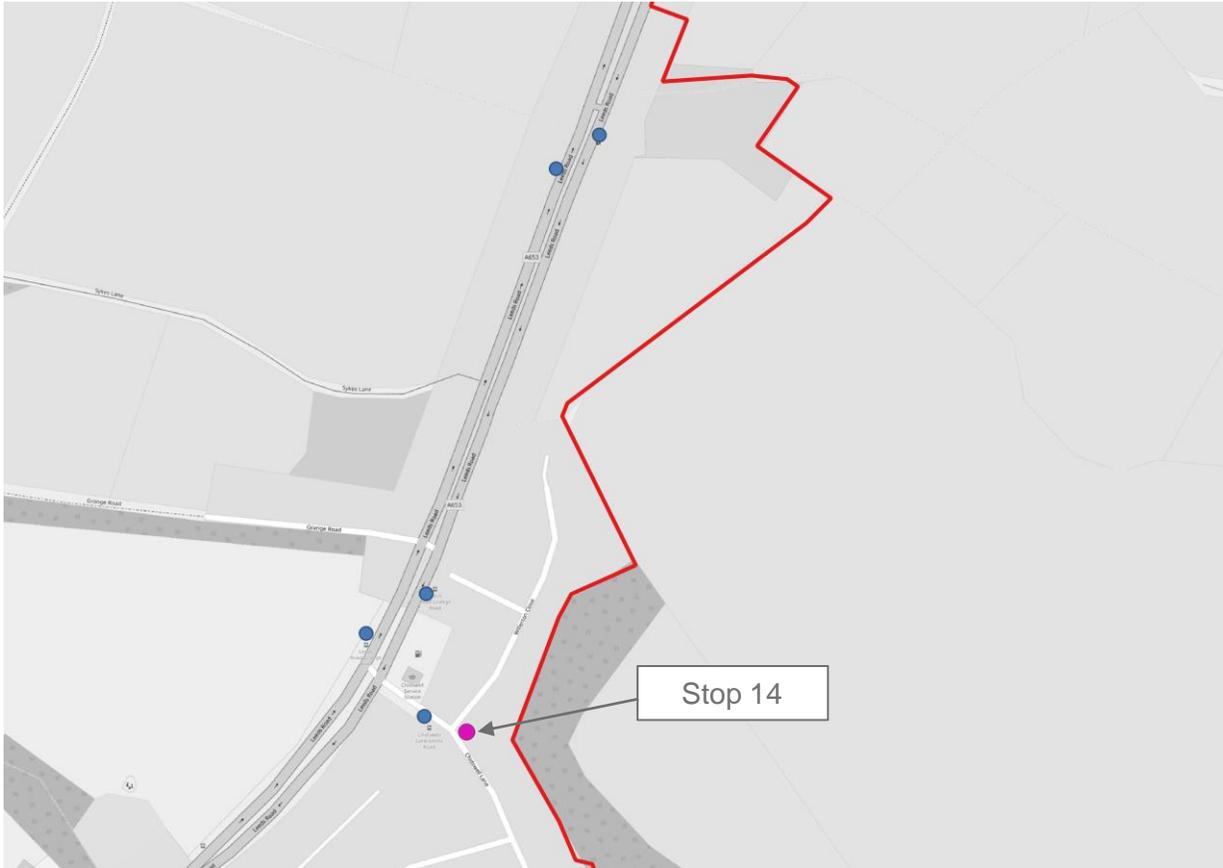
Bus Operator	Route Number	Origin / Destination
Station Coaches	112	Ossett - Batley
Arriva Yorkshire	202 MAX	Leeds – Huddersfield
A Lyles and Son	205	Mirfield – Dewsbury

Bus Stop 13 – Proposed Conditions



Improvements needed?	No
Relocation needed?	No
Proposed improvements	N/A
Reason(s)	The existing bus stop infrastructure is considered to be sufficient, therefore no improvements are required.

Bus Stop 14 – Existing Conditions



Bus Stop Name	Chidswell Lane Leeds Road (southbound)
Stop ID	45020482
Road Name	Chidswell Lane
Coordinate Location	53.705640, -1.598783
Timetable Information	Yes
Shelter	No
Seating	No
Bus flag	Yes
Bus cage	Yes

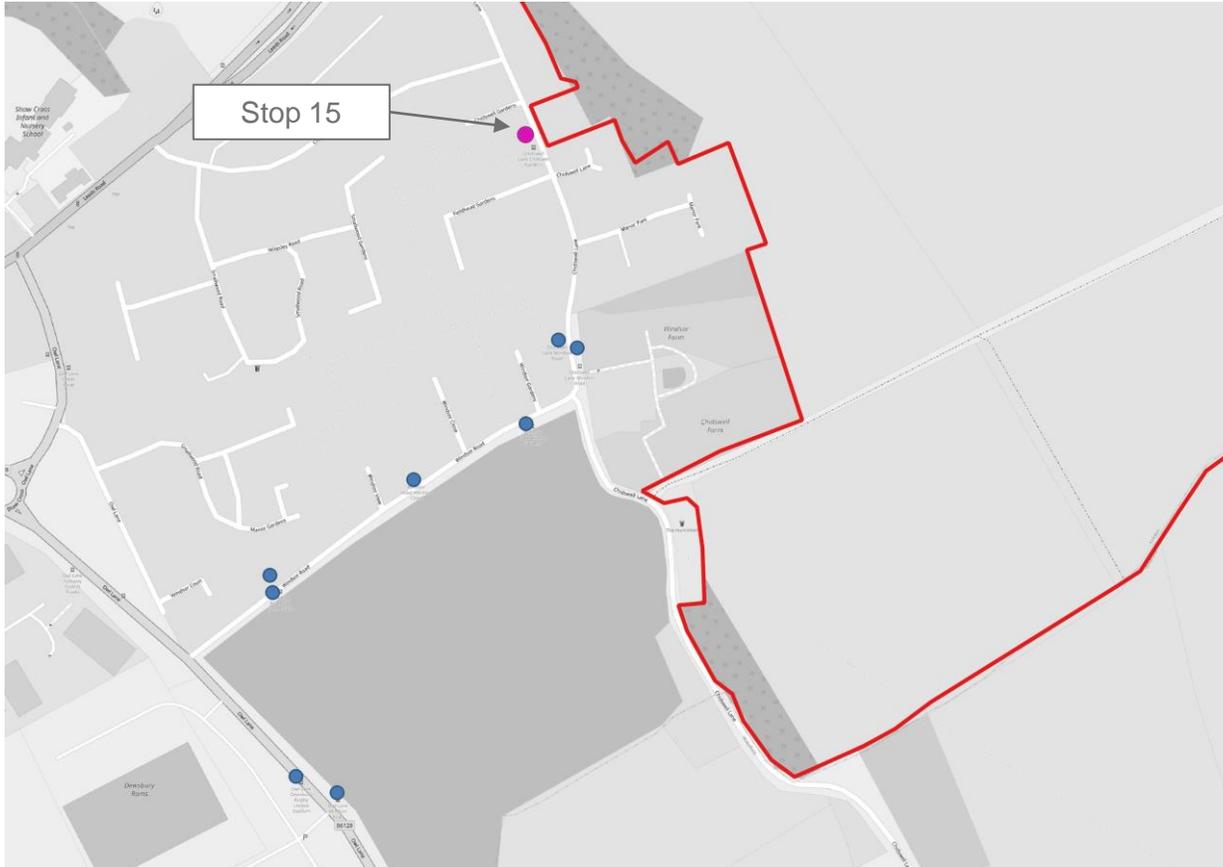
Bus Operator	Route Number	Origin / Destination
A Lyles and Son	205	Mirfield – Dewsbury

Bus Stop 14 – Proposed Conditions



Improvements needed?	No
Relocation needed?	No
Proposed improvements	N/A
Reason(s)	The existing bus stop infrastructure is considered to be sufficient, therefore no improvements are required.

Bus Stop 15 – Existing Conditions



Bus Stop Name	Chidswell Gardens (northbound)
Stop ID	45020481
Road Name	Chidswell Lane
Coordinate Location	53.704354, -1.597978
Timetable Information	Yes
Shelter	No
Seating	No
Bus flag	Yes
Bus cage	No

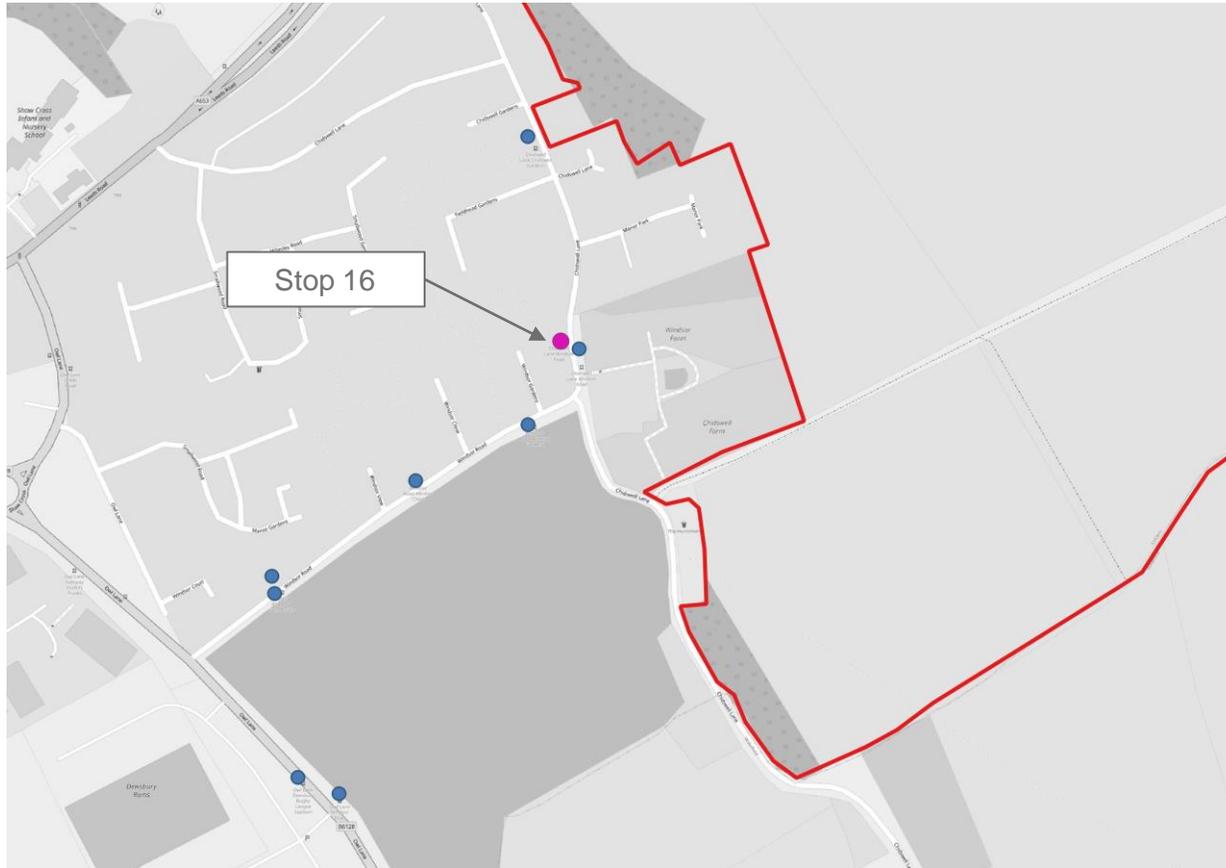
Bus Operator	Route Number	Origin / Destination
Station Coaches	112	Ossett - Batley
Arriva Yorkshire	202 MAX	Leeds – Huddersfield
A Lyles and Son	205	Mirfield – Dewsbury

Bus Stop 15 – Proposed Conditions



Improvements needed?	Yes
Relocation needed?	No
Proposed improvements	➤ New Cantilever shelter (at edge of kerb)
Reason(s)	Shelter needed as there is not an existing one and users of the stop may need to wait for reasonable periods of time. It is also predicted that this will be an important stop for bus by parents and children travelling to and from the proposed new primary school within the proposed development site. Positioned at the front of footway (at edge of kerb), as agreed on-site, so the stop is not an obstruction to pedestrians passing.
Likely improvement cost(s)	New Shelter £20,000, Total £20,000

Bus Stop 16 – Existing Conditions



Bus Stop Name	Chidswell Lane Windsor Road (northbound)
Stop ID	45020480
Road Name	Chidswell Lane
Coordinate Location	53.702986, -1.597722
Timetable Information	Yes
Shelter	No
Seating	No
Bus flag	Yes
Bus cage	Yes

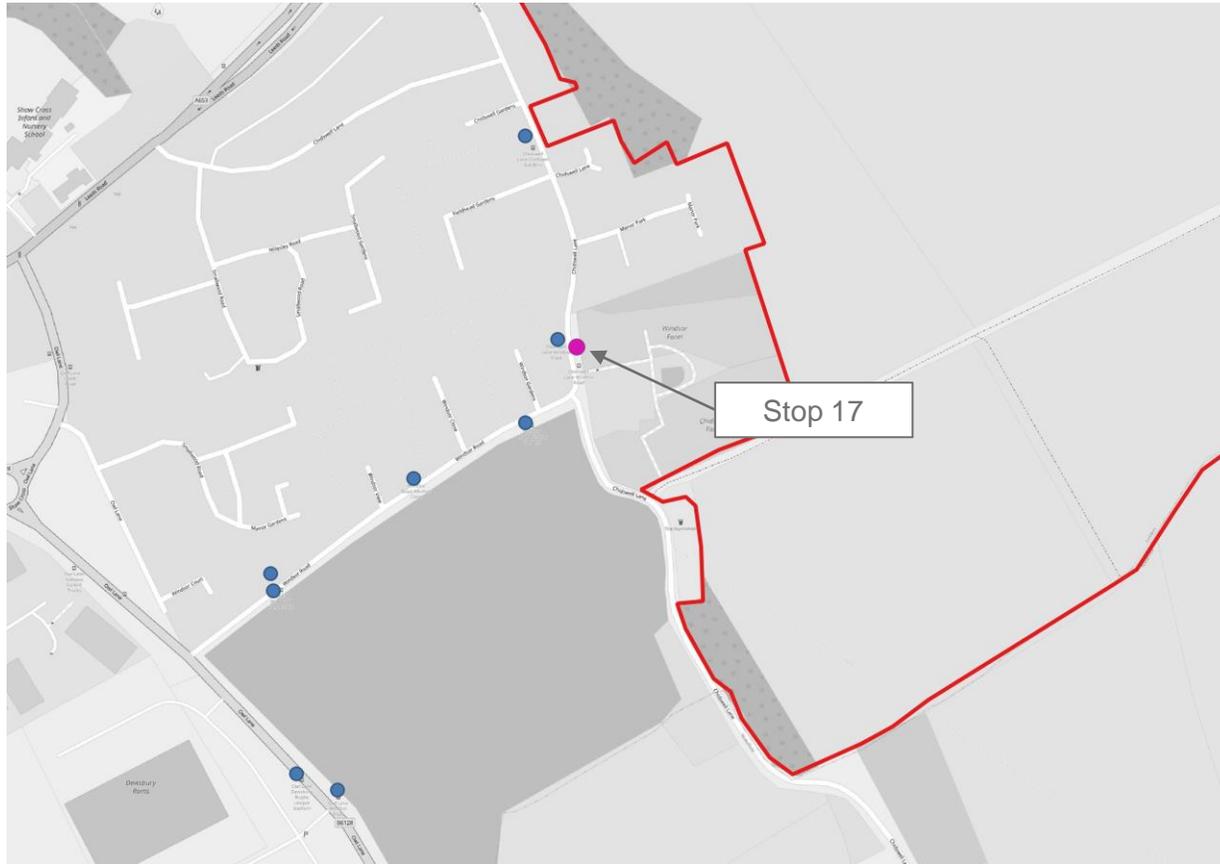
Bus Operator	Route Number	Origin / Destination
Station Coaches	112	Ossett - Batley
Arriva Yorkshire	202 MAX	Leeds – Huddersfield
A Lyles and Son	205	Mirfield – Dewsbury

Bus Stop 16 – Proposed Conditions



Improvements needed?	No
Relocation needed?	No
Proposed improvements	N/A
Reason(s)	No improvements needed as stop is mainly used for alighting, from nearby centres such as Dewsbury.

Bus Stop 17 – Existing Conditions



Bus Stop Name	Chidswell Lane Windsor Road (southbound)
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Stop ID	45020479
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Road Name	Chidswell Lane
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Coordinate Location	53.702841, -1.597466
---------------------	----------------------

Timetable Information	Yes
-----------------------	-----

Shelter	Yes
---------	-----

Seating	Yes
---------	-----

Bus flag	Yes
----------	-----

Bus cage	No
----------	----

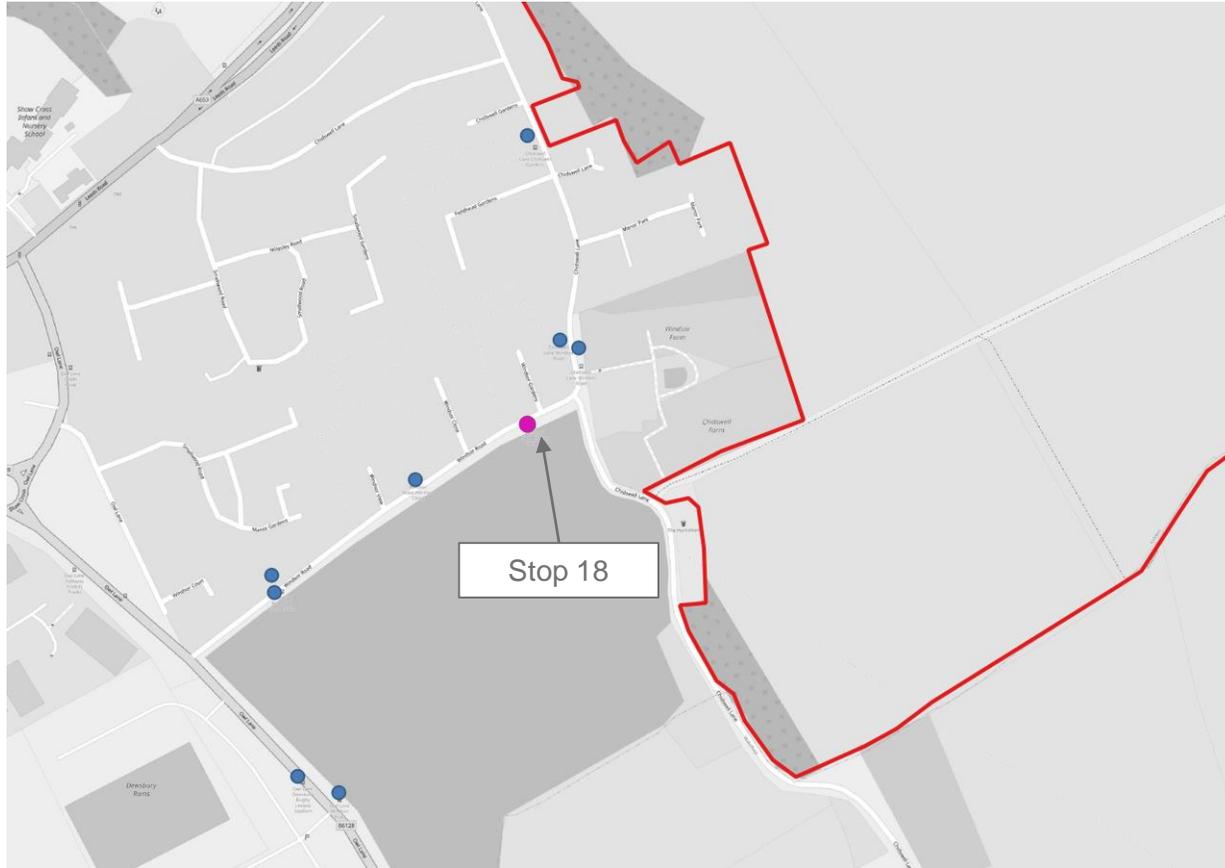
Bus Operator	Route Number	Origin / Destination
A Lyles and Son	205	Mirfield – Dewsbury
TLC Travel Ltd	ML2	Dewsbury Moor – Shaw Cross

Bus Stop 17 – Proposed Conditions



Improvements needed?	No
Relocation needed?	No
Proposed improvements	N/A
Reason(s)	The existing bus stop infrastructure is considered to be sufficient, therefore no improvements are required.

Bus Stop 18 – Existing Conditions



Bus Stop Name	Windsor Road Windsor Gardens
Stop ID	45020478
Road Name	Windsor Road
Coordinate Location	53.702452, -1.597998
Timetable Information	Yes
Shelter	No
Seating	No
Bus flag	Yes
Bus cage	Yes

Bus Operator	Route Number	Origin / Destination
A Lyles and Son	205	Mirfield – Dewsbury
TLC Travel Ltd	ML2	Dewsbury Moor – Shaw Cross

Bus Stop 18 – Proposed Conditions



Improvements needed?	No
Relocation needed?	No
Proposed improvements	N/A
Reason(s)	It is noted that other bus stops are closer to the proposed development site. This bus stop is closer to the Barratt David Wilson proposed development at Owl Lane.

Bus Stop 19 – Existing Conditions



Bus Stop Name	Windsor Road Windsor Close
Stop ID	45023778
Road Name	Windsor Road
Coordinate Location	53.702069, -1.599402
Timetable Information	No
Shelter	No
Seating	No
Bus flag	Yes
Bus cage	No

Bus Operator	Route Number	Origin / Destination
A Lyles and Son	205	Mirfield – Dewsbury
Station Coaches	112	Ossett - Batley
Arriva Yorkshire	202 MAX	Leeds – Huddersfield

Bus Stop 19 – Proposed Conditions



Improvements needed?	No
Relocation needed?	No
Proposed improvements	N/A
Reason(s)	It is noted that other bus stops are closer to the proposed development site. This bus stop is closer to the Barratt David Wilson proposed development at Owl Lane.

Bus Stop 20 – Existing Conditions



Bus Stop Name	Windsor Road Owl Lane (northbound)
Stop ID	45020477
Road Name	Windsor Road
Coordinate Location	53.701398, -1.601090
Timetable Information	Yes
Shelter	Yes
Seating	Yes
Bus flag	Yes
Bus cage	Yes

Bus Operator	Route Number	Origin / Destination
A Lyles and Son	205	Mirfield – Dewsbury
Station Coaches	112	Ossett - Batley
Arriva Yorkshire	202 MAX	Leeds – Huddersfield

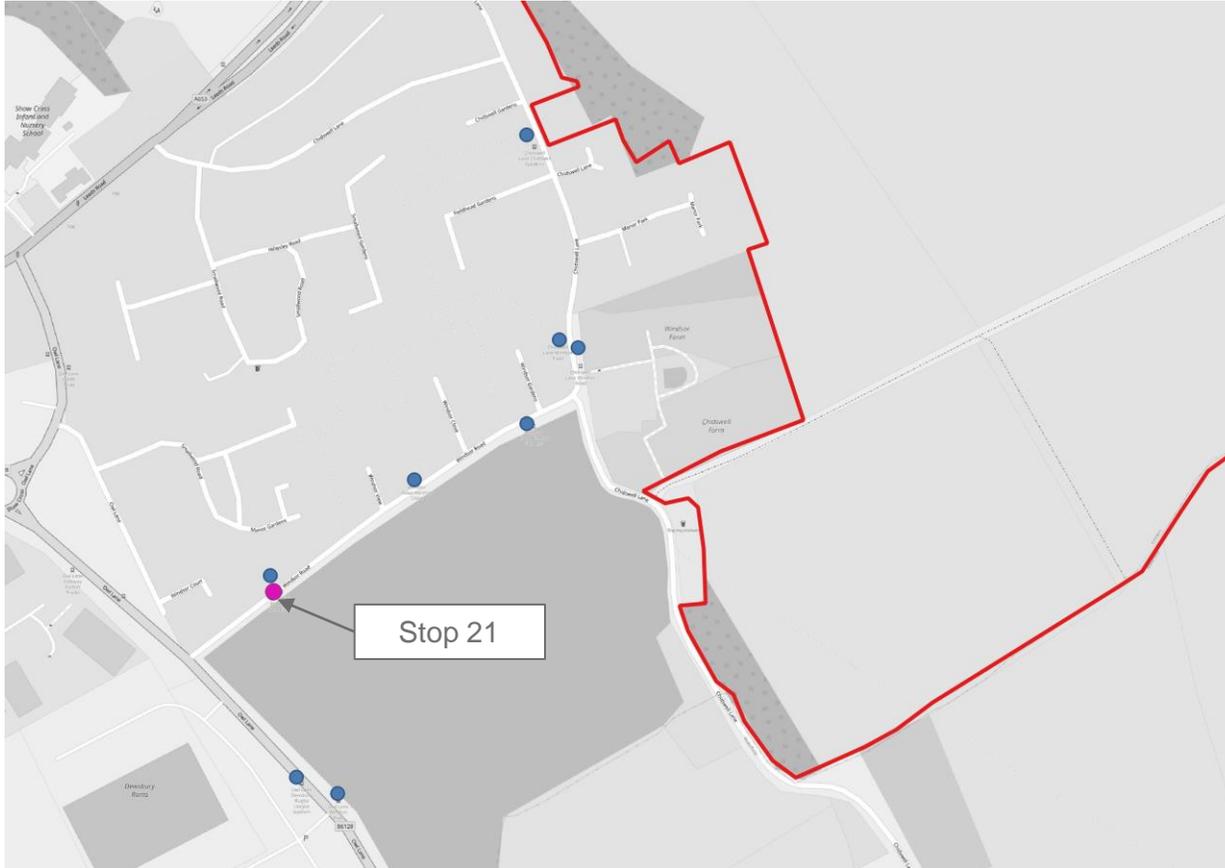
Bus Stop 21 – Proposed Conditions



Improvements needed?	No
Relocation needed?	No
Proposed improvements	N/A

Reason(s) It is noted that other bus stops are closer to the proposed development site. This bus stop is closer to the Barratt David Wilson proposed development at Owl Lane.

Bus Stop 21 – Existing Conditions



Bus Stop Name	Windsor Road Owl Lane (southbound)
Stop ID	45020476
Road Name	Windsor Road
Coordinate Location	53.701312, -1.600977
Timetable Information	No
Shelter	No
Seating	No
Bus flag	Yes
Bus cage	No

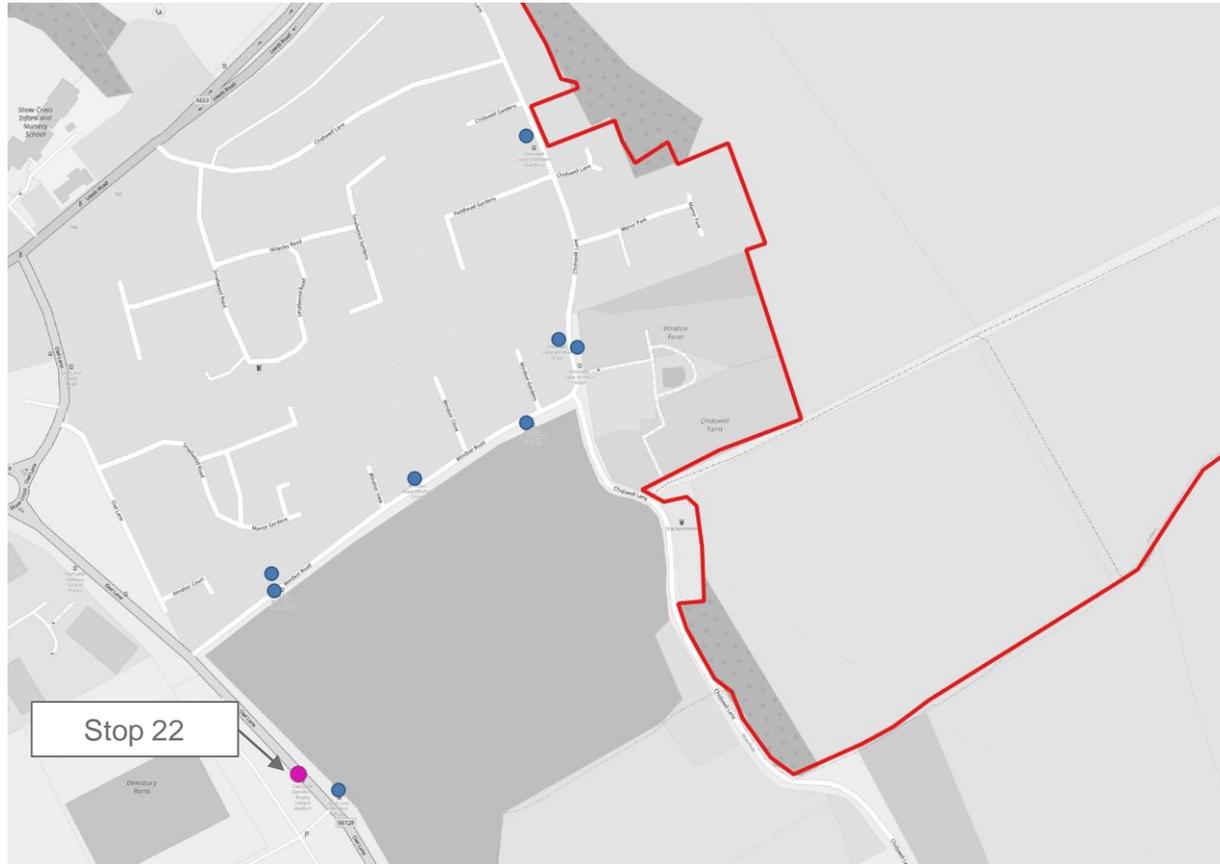
Bus Operator	Route Number	Origin / Destination
A Lyles and Son	205	Mirfield – Dewsbury
TLC Travel Ltd	ML2	Dewsbury Moor – Shaw Cross

Bus Stop 21 – Proposed Conditions



Improvements needed?	No
Relocation needed?	No
Proposed improvements	N/A
Reason(s)	It is noted that other bus stops are closer to the proposed development site. This bus stop is closer to the Barratt David Wilson proposed development at Owl Lane.

Bus Stop 22 – Existing Conditions



Bus Stop Name	Dewsbury Rugby League Stadium (northbound)
Stop ID	45020484
Road Name	Owl Lane (B6128)
Coordinate Location	53.699989, -1.600702
Timetable Information	No
Shelter	No
Seating	No
Bus flag	Yes
Bus cage	No

Bus Operator	Route Number	Origin / Destination
Station Coaches	116	Leeds - Wakefield
Station Coaches	112	Ossett - Batley

Bus Stop 22 – Proposed Conditions



Improvements needed?	No
Relocation needed?	No
Proposed improvements	N/A

Reason(s)	It is noted that other bus stops are closer to the proposed development site. This bus stop is closer to the Barratt David Wilson proposed development at Owl Lane.
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Bus Stop 23 – Existing Conditions



Bus Stop Name	Dewsbury Rugby League Stadium (southbound)
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Stop ID	45024024
---------	----------

Road Name	Owl Lane (B6128)
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Coordinate Location	53.699869, -1.600272
---------------------	----------------------

Timetable Information	No
-----------------------	----

Shelter	No
---------	----

Seating	No
---------	----

Bus flag	Yes
----------	-----

Bus cage	No
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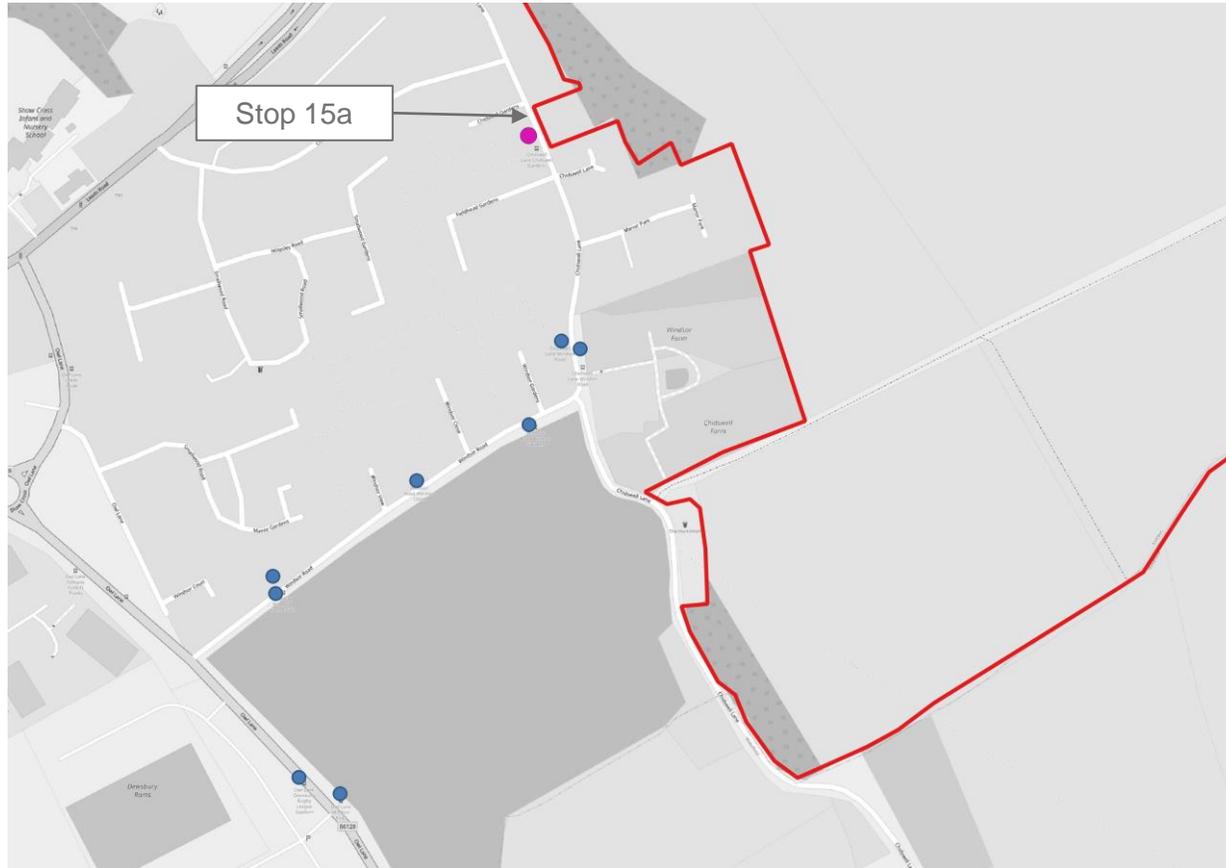
Bus Operator	Route Number	Origin / Destination
Station Coaches	116	Leeds - Wakefield
Station Coaches	112	Ossett - Batley

Bus Stop 23 – Proposed Conditions



Improvements needed?	No
Relocation needed?	No
Proposed improvements	N/A
Reason(s)	It is noted that other bus stops are closer to the proposed development site. This bus stop is closer to the Barratt David Wilson proposed development at Owl Lane and has been relocated as a result of that proposed development's new site access arrangements.

Bus Stop 15a (additional bus stop opposite Bus Stop 15) – Existing Conditions



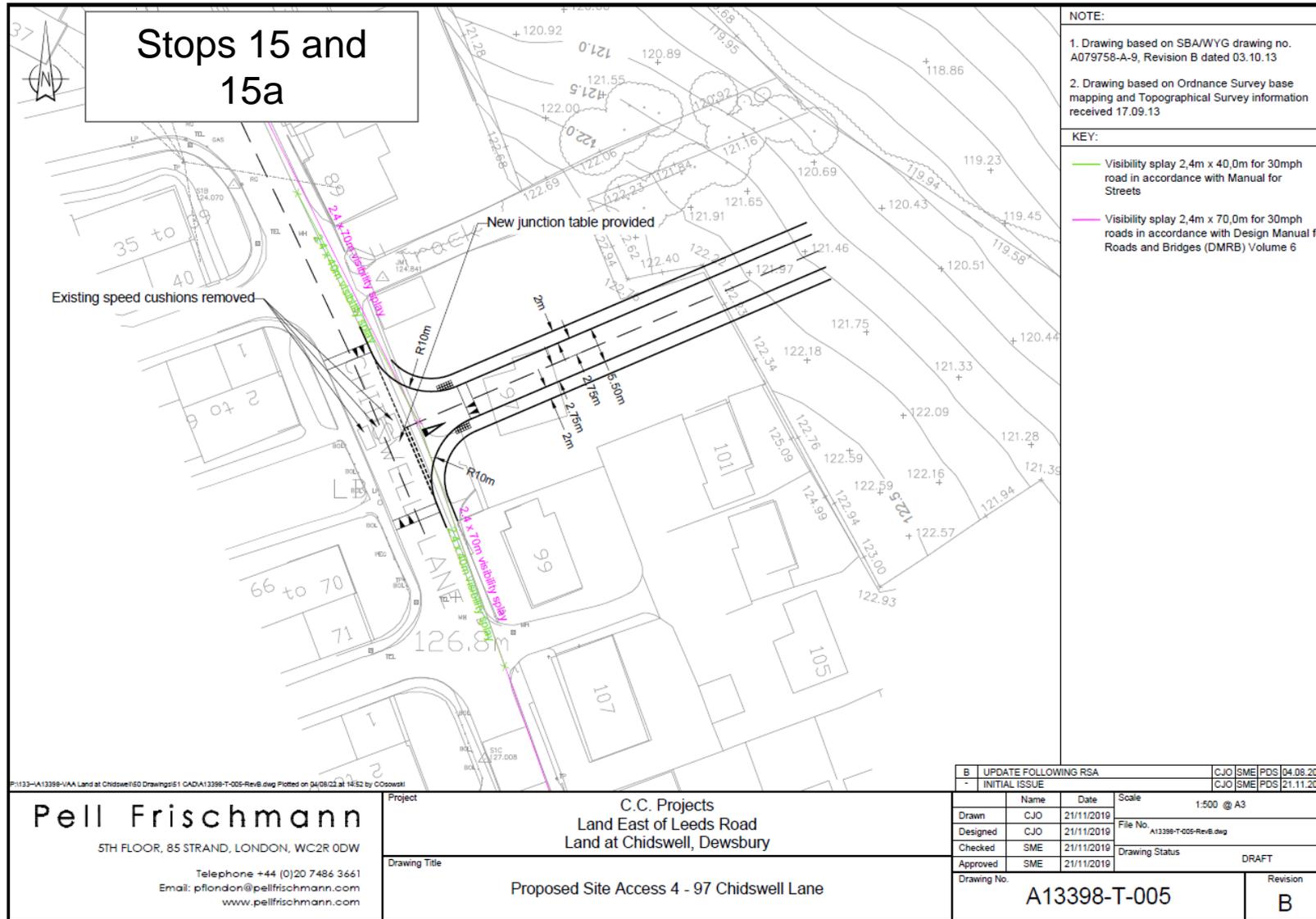
Bus Stop Name	Chidswell Gardens (southbound)
Stop ID	45050952
Road Name	Chidswell Lane
Coordinate Location	53.704421, -1.597886
Timetable Information	No
Shelter	No
Seating	No
Bus flag	No
Bus cage	No

Bus Operator	Route Number	Origin / Destination
A Lyles and Son	205	Mirfield – Dewsbury
TLC Travel Ltd	ML2	Dewsbury Moor - Staincliffe

Bus Stop 15a (additional bus stop opposite Bus Stop 15) – Proposed Conditions



Improvements needed?	Yes
Relocation needed?	Yes
Proposed improvements	<ul style="list-style-type: none"> ➤ New bus flag to be mounted to existing lighting column outside No. 97 Chidswell Lane (subject to detailed design of new site access junction) ➤ New 'Bus Stop' bus cage markings on carriageway
Reason(s)	<p>This is an existing unmarked bus stop on the eastern (southbound) side of Chidswell Lane, approximately opposite Bus Stop 15 on the western (northbound) side. This additional bus stop, referred to as 'Bus Stop 15a,' was raised by KC and WYCA as needing new infrastructure following the audit. Bus Stop 15a will also need to be relocated away from its existing position, currently in front of the proposed site access junction at No. 97 Chidswell Lane.</p> <p>Photograph to the left (looking south) shows Bus Stop 15 on the right-hand side in the distance, together with the proposed relocation for Bus Stop 15a (as recommended by KC and WYCA) on the left-hand side in the foreground (existing lamp column). Positioning of new bus flag and bus cage markings subject to detailed design of new site access junction</p>
Likely improvement cost(s)	New bus flag and bus cage markings £5,000, Total £5,000



Stops 15 and 15a

NOTE:
 1. Drawing based on SBA/WYG drawing no. A079758-A-9, Revision B dated 03.10.13
 2. Drawing based on Ordnance Survey base mapping and Topographical Survey information received 17.09.13

KEY:
 — Visibility splay 2,4m x 40,0m for 30mph road in accordance with Manual for Streets
 — Visibility splay 2,4m x 70,0m for 30mph roads in accordance with Design Manual for Roads and Bridges (DMRB) Volume 6

B	UPDATE FOLLOWING RSA			CJO	SME	PDS	04.08.2022
-	INITIAL ISSUE			CJO	SME	PDS	21.11.2019
Drawn	CJO	21/11/2019	Scale	1:500 @ A3			
Designed	CJO	21/11/2019	File No.	A13398-T-005-Rev6.dwg			
Checked	SME	21/11/2019	Drawing Status	DRAFT			
Approved	SME	21/11/2019					
Drawing No.	A13398-T-005					Revision	B

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 5TH FLOOR, 85 STRAND, LONDON, WC2R 0DW
 Telephone +44 (0)20 7486 3661
 Email: pflondon@pellfrischmann.com
 www.pellfrischmann.com

Project: C.C. Projects
 Land East of Leeds Road
 Land at Chidswell, Dewsbury
 Drawing Title: Proposed Site Access 4 - 97 Chidswell Lane

P:\133-A\13398-VA\Land at Chidswell\60 Drawings\61 CAD\A13398-T-005-Rev6.dwg Plotted on 04/08/22 at 14:52 by C050wsk1

Appendix 4 – Skylark Land



Skylark Land Plan

KEY

 Skylark mitigation

 Red Line Boundary

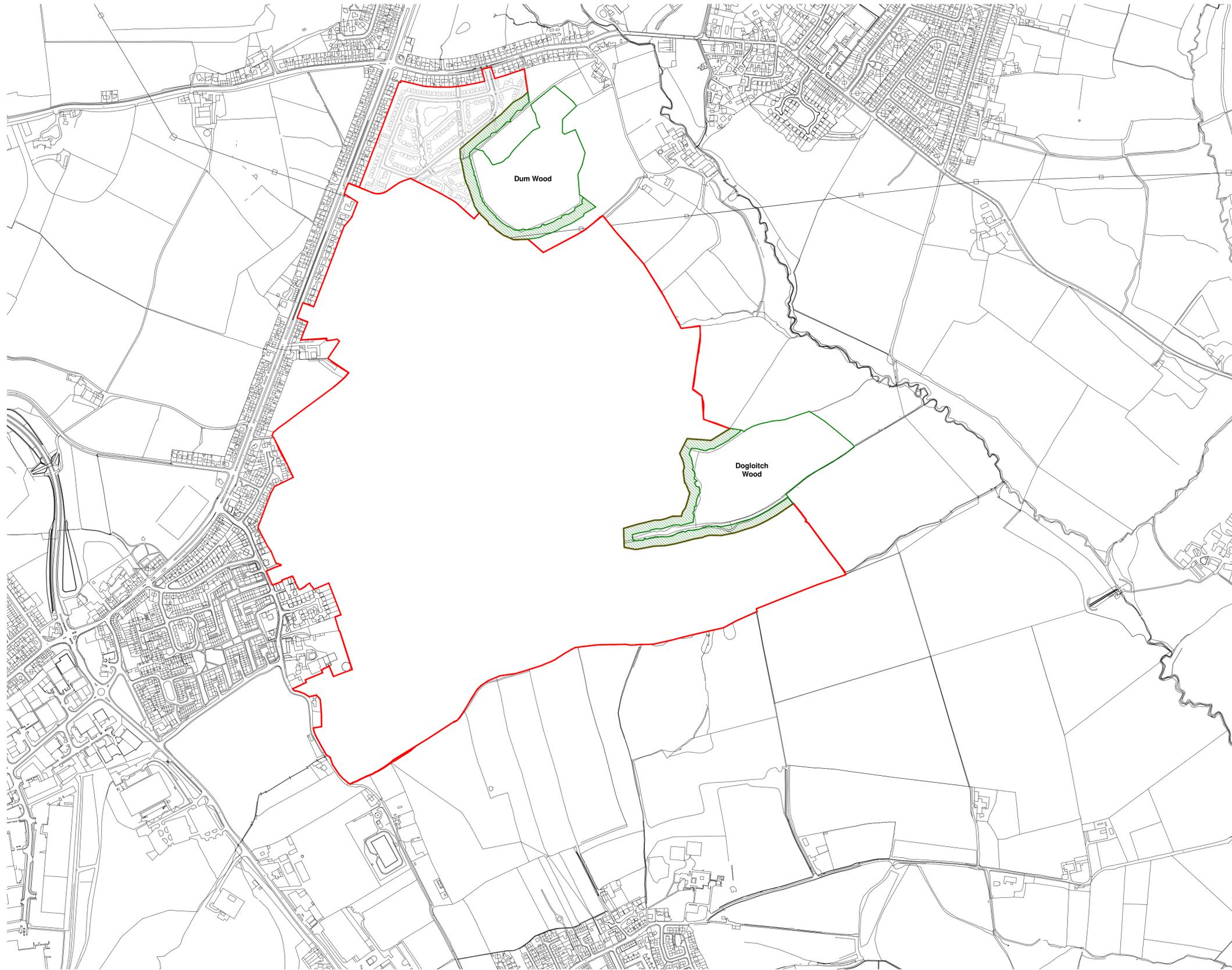
Brooks
Ecological
Grounded advice

Brooks Ecological Ltd
Unit A, 1 Station Road
Guisley
LEEDS, LS20 8BX
Tel: 01943 884451

Appendix 5 – Ancient Woodland Land

BNG Legend

- Ancient woodland
- Ancient woodland buffer zone
- Application boundary



Notes.

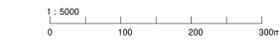
00 Series General Arrangement Notes

1. Any areas indicated on the plans are approximate. They relate to the likely areas of the building at the current state of the design and are calculated using the stated eg(NIA) method from the Code of Measuring Practice 5th Edition RICS/BSVA. Any decision to be made on the basis of these predictions, whether as to project viability, pre-letting, lease agreements or the like, should include due allowance for design development and building tolerances. Floor areas are subject to Planning, Building Control and other statutory approvals.

2. Any structural, services or fit out detail shown is for coordination only, refer to relevant Consultants/Clients information for details.

3. Refer to Enjoy NBS for full outline performance specification of Architectural Elements.

4. THE CONTENT OF THIS DRAWING IS FOR DESIGN INTENT AND REQUIRES FURTHER DESIGN DEVELOPMENT AND COORDINATION WITH ALL RELEVANT CONSULTANTS, SUB-CONTRACTORS, SPECIALIST DESIGNERS AND STATUTORY AUTHORITIES.



Contractor must verify all dimensions on site before commencing any work or shop drawings. If this drawing exceeds the quantities taken in any way the Architects are to be informed before the work is initiated. Only figured dimensions to be taken from this drawing. Drawings based on Ordnance Survey and/or existing record drawings - design and drawing content subject to Site Survey, Structural Survey, Site Investigation, Planning and Statutory Requirements and Approvals. Authorized reproduction from Ordnance Survey Map with permission of the Controller of Her Majesty's Stationery Office. Crown Copyright reserved. Enjoy Design Ltd.

Rev. Des.

By Date Ch

PLANNING

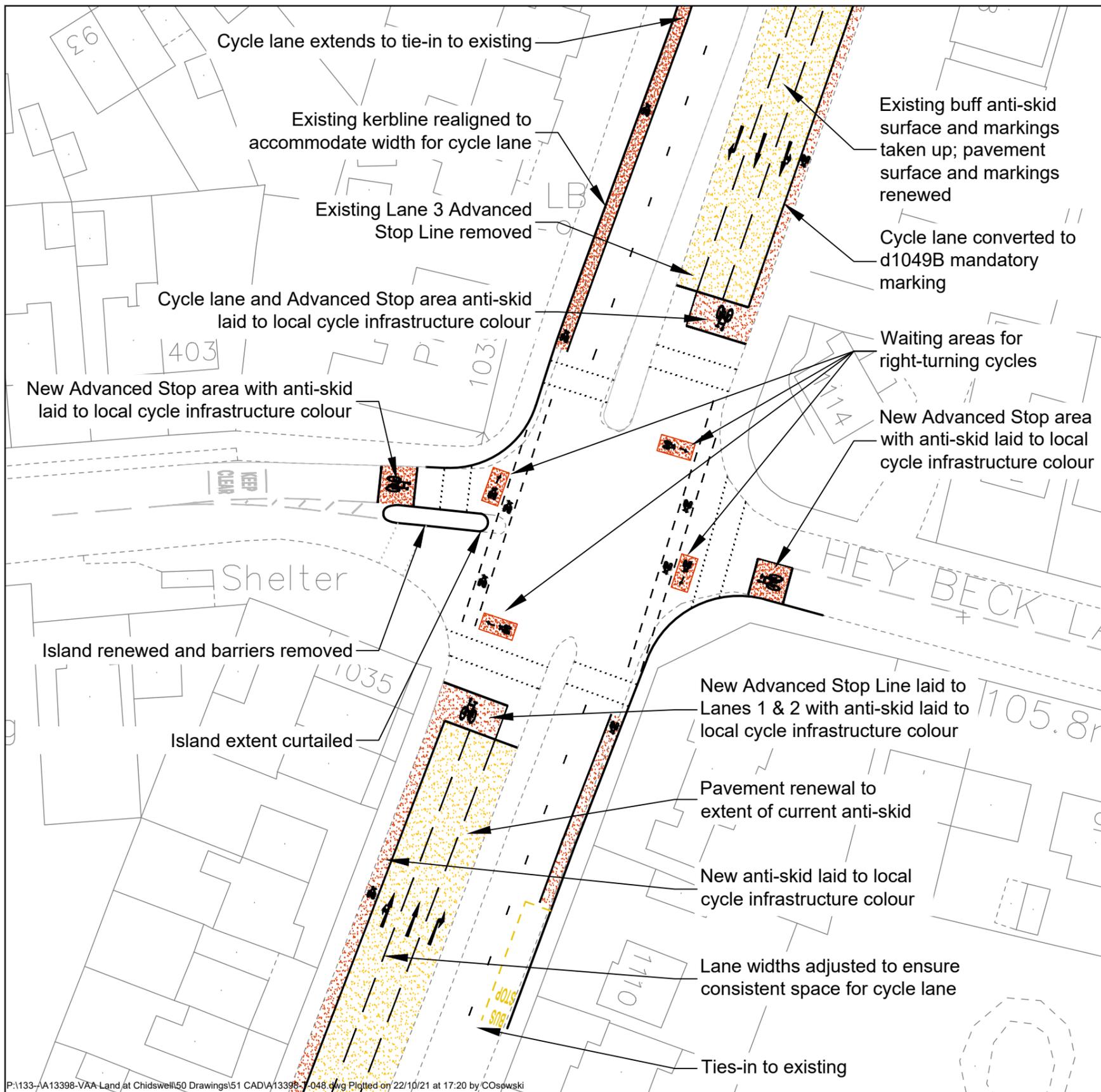
Status:

The Old Brewery
High Court
Leeds
LS2 7ES
Tel: 0113 242 3622
www.enjoy-design.co.uk

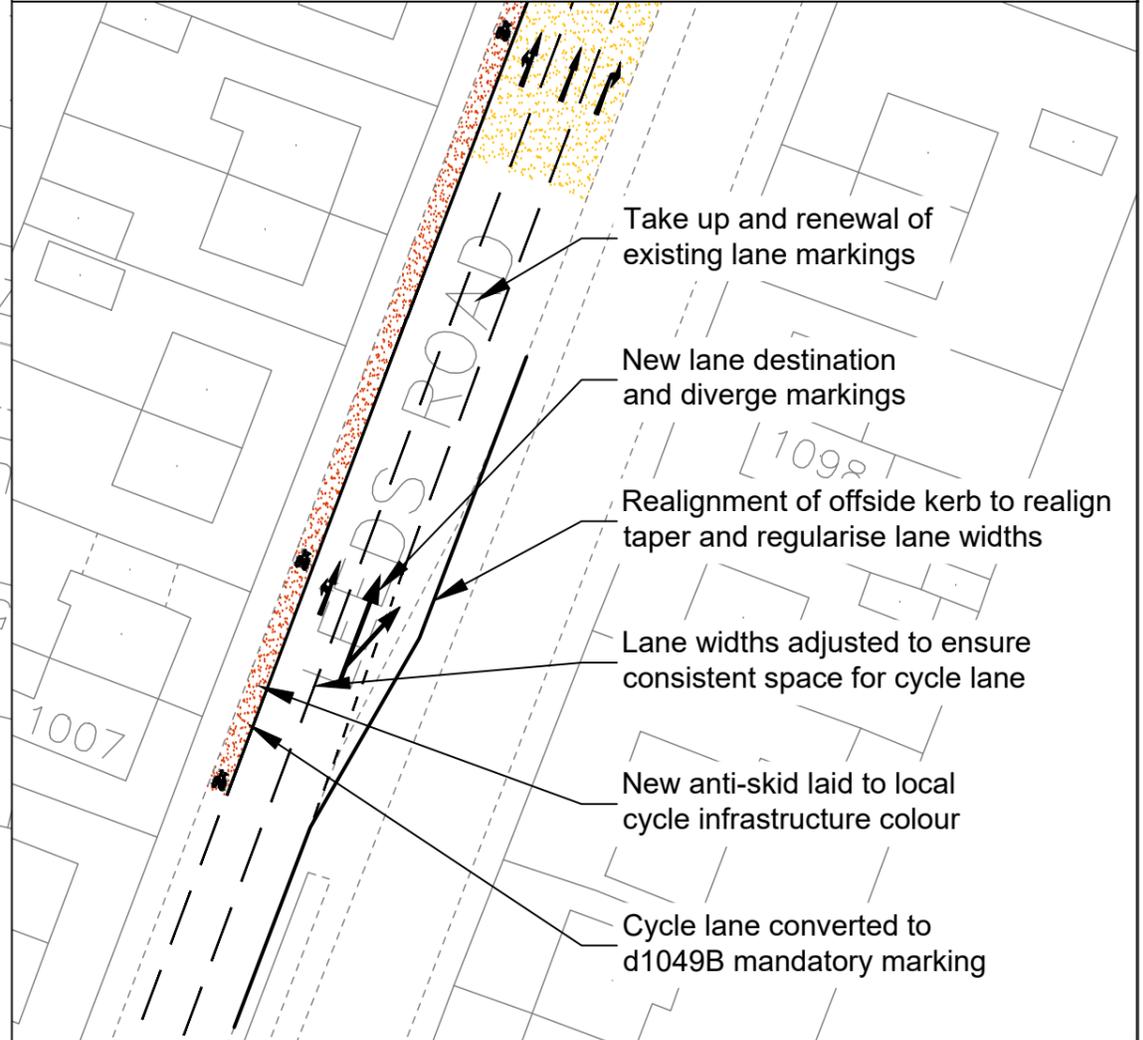
Client:	The Church Commissioners	Job No:	18.006
Project:	Chadswell Masterplan		
Title:	Off Site BNG Area Plan		
Date:	22/03/19	Scale:	As indicated@A1
Checked by:	RG	Drawn By:	DH
Drawing No:	00-207	Revision:	



Appendix 6 – Indicative Local Highway Improvement Plans



- ### Key Aspects
- Northbound A653 Leeds Road approach: pavement renewed, new lane markings laid to regularise lane widths (1.5m mandatory cycle lane, 3.0m Lane 1, 3.0m Lane 2, 2.7m Lane 3) and ensure consistent space for cycling, new Advance Stop Line, Lane 3 entry taper kerbline adjusted.
 - Southbound A653 Leeds Road approach: pavement, anti-skid surface and markings renewed, Lane 3 Advanced Stop Line removed.
 - Soothill Lane minor adjustments to pedestrian island.
 - Advanced Stop Lines added to both Soothill Lane and Heybeck Lane.
 - Cycle right-turn waiting areas added to all arms to introduce new safer two-stage right turns for cyclists.
 - All cycle space provided with anti-skid surface to local cycle infrastructure colour (and contrast to buff anti-skid general lanes)
 - Waiting restrictions omitted for clarity; no changes proposed.



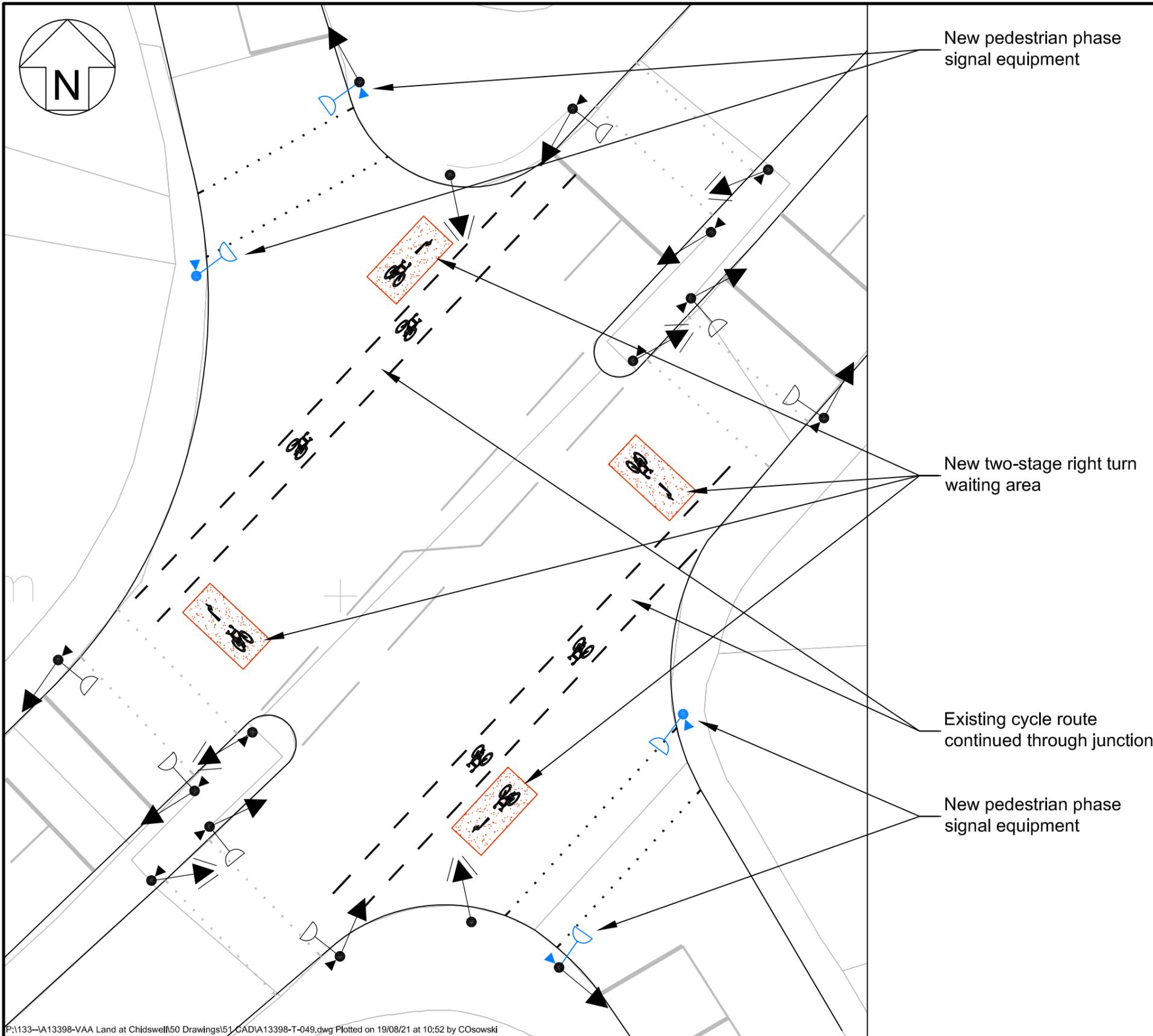
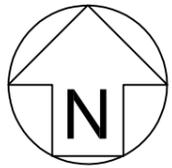
P:\133-AA13398-VAA Land at Chidswell\50 Drawings\51 CAD\A13398-T-048.dwg Plotted on 22/10/21 at 17:20 by COsewski

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 www.pellfrischmann.com

Project **LAND AT CHIDSWELL, DEWSBURY C.C. PROJECTS (KC REF: 2020/60/92331/E)**

Drawing Title **JUNCTION IMPROVEMENT PROPOSAL ILLUSTRATIVE GENERAL ARRANGEMENT A653 LEEDS ROAD x SOOTHILL LANE x HEYBECK LANE ('JUNCTION 3')**

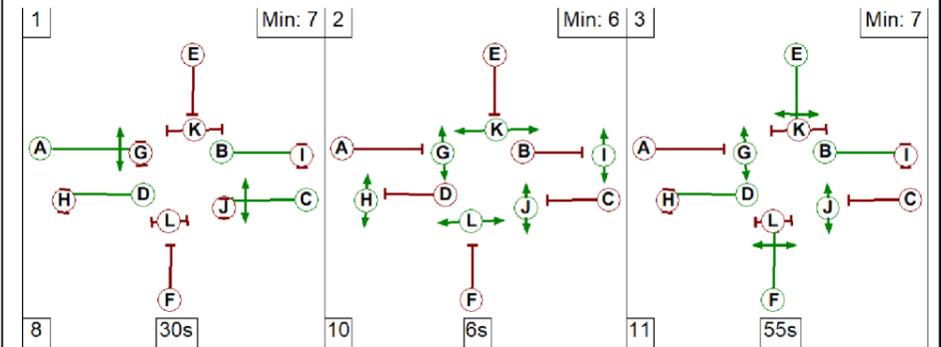
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Designed	CJO	06.08.2021	File No.	A13398-T-048.dwg
Checked	SME	06.08.2021	Drawing Status	FOR DISCUSSION
Approved	PDS	06.08.2021	Drawing No.	A13398-T-048
				Revision
				B



Key Aspects

- Introduction of new pedestrian phases on Rein Road and Syke Road, renew crossing extent markings, replace existing buff tactiles with new red tactiles (not shown).
- Existing cycle route on A653 continued through junction.
- Cycle right-turn waiting areas added to all arms to introduce new safer two-stage right turns for cyclists.
- Waiting restrictions and some existing lane destination markings omitted for clarity; no changes proposed.

New Signal Stage Arrangement



New pedestrian phase signal equipment

New two-stage right turn waiting area

Existing cycle route continued through junction

New pedestrian phase signal equipment

P:\1133-VA13398-VAA Land at Chidswell\50 Drawings\51 CAD\A13398-T-049.dwg Plotted on 19/08/21 at 10:52 by COsowski

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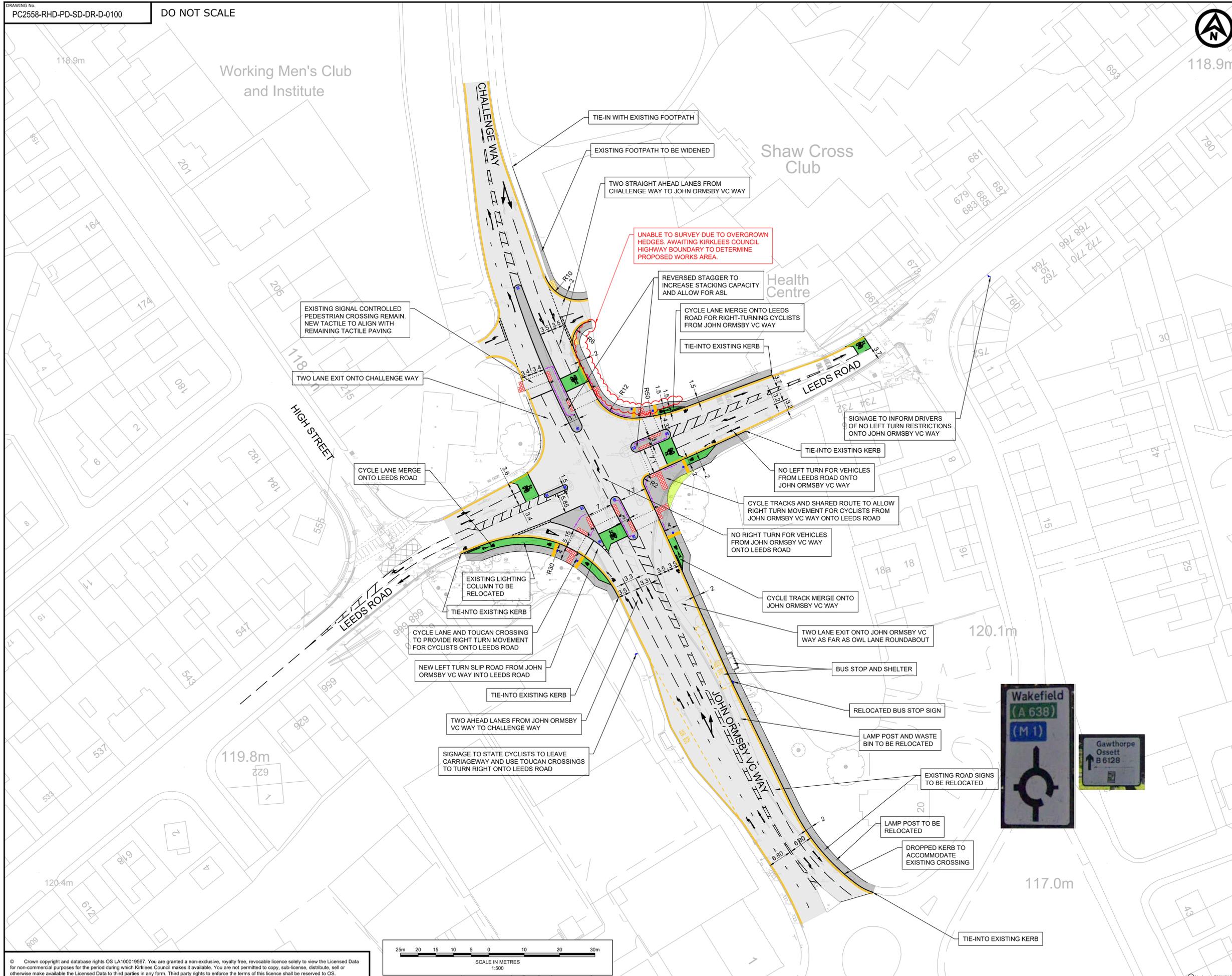
5 MANCHESTER SQUARE LONDON W1U 3PD

Telephone +44 (0)20 7486 3661
 Email: pflondon@pellfrischmann.com
 www.pellfrischmann.com

Project **LAND AT CHIDSWELL, DEWSBURY**
C.C. PROJECTS
 (KC REF: 2020/60/92350/E & 2020/60/92331/E)

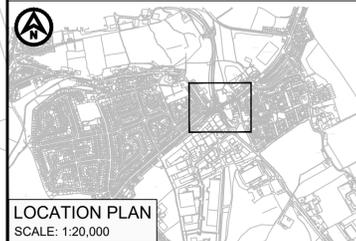
Drawing Title **JUNCTION IMPROVEMENT PROPOSAL**
ILLUSTRATIVE GENERAL ARRANGEMENT
A653 DEWSBURY ROAD x REIN ROAD x SYKE ROAD ('JUNCTION 11')

Drawn	CJO	12.08.2021	Scale	1:200 @ A3
Designed	CJO	12.08.2021	File No.	A13398-T-049.dwg
Checked	SME	12.08.2021	Drawing Status	FOR DISCUSSION
Approved	PDS	12.08.2021	Drawing No.	A13398-T-049
				Revision
				A



- NOTES**
1. ALL DIMENSIONS ARE IN METRES UNLESS NOTED OTHERWISE.
 2. ALL LEVELS ARE IN METRES ABOVE CHART DATUM UNLESS NOTED OTHERWISE.
 3. THIS DRAWING HAS BEEN BASED UPON SURVEY INFORMATION SUPPLIED BY SURVEY SOLUTIONS. ROYAL HASKONINGDHV SHALL NOT BE LIABLE FOR ANY INACCURACY OR DEFICIENCIES ARISING FROM THIS INFORMATION.
 4. THIS DRAWING IS TO BE READ IN CONJUNCTION WITH ALL RELEVANT ENGINEERS DRAWINGS AND PROJECT SPECIFICATION.
 5. WORKS TO BE UNDERTAKEN IN ACCORDANCE WITH THE SPECIFICATION FOR HIGHWAYS WORKS (SHW) UNLESS NOTED OTHERWISE.
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 7. ANY DISCREPANCIES TO OR OMISSIONS ARE TO BE REPORTED TO THE PROJECT MANAGER FOR FURTHER INSTRUCTIONS BEFORE COMMENCEMENT OF WORKS.

- KEY**
- PROPOSED KERB LINE
 - EXISTING ORDNANCE SURVEY / TOPOGRAPHICAL SURVEY
 - PROPOSED GUARDRAIL
 - EXISTING GUARDRAIL TO BE RETAINED
 - BUFF COLOURED CYCLEWAY CORDUROY TACTILES
 - RED COLOURED BLISTER TACTILES
 - BUFF COLOURED BLISTER TACTILES
 - PROPOSED WHITE / YELLOW ROAD MARKINGS
 - PROPOSED 'KEEP LEFT' / PLAIN FACED BOLLARD
 - PROPOSED SHARED / SEGREGATED ROUTE SIGN BOLLARD
 - PROPOSED TRAFFIC SIGN
 - PROPOSED TRAFFIC LIGHT WITH PUSH BUTTON (INDICATIVE LOCATION)
 - PROPOSED CARRIAGEWAY CONSTRUCTION / RESURFACING
 - PROPOSED FOOTWAY / SHARED ROUTE
 - PROPOSED CYCLE LANE / TRACK / ADVANCED STOP LINE
 - PROPOSED VERGE



REV	DATE	DESCRIPTION	BY	CHK	APP
P01	17.03.22	S3 - FIRST ISSUE	NKS	MS	PJ



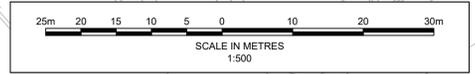
PROJECT
MIRFIELD TO DEWSBURY TO LEEDS (M2D2L) CORRIDOR IMPROVEMENTS

TITLE
GENERAL ARRANGEMENT SECTION D CHALLENGE WAY A653/B6128



DRAWN	CHECKED	APPROVED
NKS	MS	PJ
DATE	SCALE @ A1	REF.
27/01/2022	1:500	PC2558-RHD-PD-SD-DR-D-0100.dwg
DRAWING No.	SUITABILITY	REVISION
PC2558-RHD-PD-SD-DR-D-0100	S3	P01

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Appendix 3 – Minutes of Strategic Planning Committee meeting of 08/12/2022

Contact Officer: Sheila Dykes or Andrea Woodside

KIRKLEES COUNCIL

STRATEGIC PLANNING COMMITTEE

Thursday 8th December 2022

Present: Councillor Steve Hall (Chair)
Councillor Ammar Anwar
Councillor Carole Pattison
Councillor Mohan Sokhal
Councillor Mark Thompson
Councillor Andrew Pinnock

Apologies: Councillor Paul Davies
Councillor Bill Armer

1 Membership of the Committee

Councillor Anwar substituted for Councillor P Davies and Councillor Gregg substituted for Councillor Armer.

2 Minutes of the Previous Meeting

Resolved – That the minutes of the meeting of the Committee held on 3rd November 2022 be approved as a correct record.

3 Declaration of Interests and Lobbying

Councillors Gregg, Hall, Pattison, Pinnock, Sokhal and Thompson advised that they had been lobbied in respect of Applications 2020/92331 and 2020/92350.

Councillors Hall, Pinnock and Sokhal advised that they had been lobbied in respect of Application 2020/92307.

4 Admission of the Public

It was noted that all items were to be considered in public session.

5 Public Question Time

No questions were asked.

6 Deputations/Petitions

No deputations or petitions were received.

7 Site Visit - Application No. 2020/92307

Site visit undertaken.

8 Planning Application - Application No. 2020/92331

The Committee considered Application 2020/92331, an outline planning application for the demolition of existing dwellings and development of a phased, mixed use scheme comprising residential development (up to 1,354 dwellings), employment

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development (up to 35 hectares of B1(part a and c), B2, B8 uses), residential institution (C2) development (up to 1 hectare), a local centre (comprising A1/A2/A3/A4/A5/D1 uses), a 2 form entry primary school including early years provision, green space, access and other associated infrastructure (amended and further information received) on land east of Leeds Road, Chidswell, Shaw Cross, Dewsbury.

Under the provisions of Council Procedure Rule 36(3), the Committee received a representation from Councillor Aleks Lukic.

Under the provisions of Council Procedure Rule 37, the Committee received representations from Mark Eastwood MP, Duncan Smith, Sally Naylor, Duncan Mounsey and Sandy Mounsey (local residents/Chidswell Action Group) and Nolan Tucker (on behalf of the applicant).

Resolved -

- 1) That, subject to the Secretary of State not calling in the application, approval of the application and issue of the decision notice be delegated to the Head of Planning and Development in order to:
 - a) complete the list of conditions, including those contained within the report and the update, as set out below:
 - 1) Standard outline condition (approval of reserved matters prior to commencement, including allowance for an infrastructure-only reserved matters application to be submitted).
 - 2) Standard outline condition (implementation in accordance with approved reserved matters).
 - 3) Standard outline condition (reserved matters submission time limits – first reserved matters application to be submitted within three years of outline approval, last to be submitted within 12 years).
 - 4) Standard outline condition (reserved matters implementation time limit – within two years of reserved matters approval).
 - 5) Development in accordance with plans and specifications.
 - 6) Details of phasing to be submitted.
 - 7) Floorspace of employment element to comprise a maximum of 65% B8 use and a maximum of 50% B1c and B2 uses, and all B1a floorspace to be ancillary to a B1c, B2 and/or B8 use.
 - 8) Floorspace of the local centre to include no more than 500sqm of A1 use.
 - 9) D1 floorspace within the local centre shall not be used as a museum or exhibition hall.
 - 10) Implementation of a traffic mitigation scheme at the Shaw Cross junction when required, in accordance with details (including road safety audits and arrangements for implementation under Section 278) to be submitted.
 - 11) Implementation of other junction improvement schemes when required, in accordance with details (including road safety audits and arrangements for implementation under Section 278) to be submitted.

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- 12) Submission of interim and final details of spine road (including road safety audits and arrangements for implementation under Section 38), and subsequent implementation.
- 13) Submission of interim and final details of Leeds Road and Chidswell Lane site entrances (including road safety audits and arrangements for implementation under Section 278), and subsequent implementation.
- 14) Primary school to be provided (or alternative provision made) prior to occupation of more than 700 dwellings.
- 15) Assessment of potential for decentralised energy scheme to be carried out prior to submission of Reserved Matters applications.
- 16) Flood risk and drainage – full site-wide scheme to be submitted.
- 17) Flood risk and drainage – detailed drainage proposals to be submitted for each parcel / phase.
- 18) Separate systems of foul and surface water drainage to be provided.
- 19) Ecological mitigation and enhancement details (including an Ecological Design Strategy, measures to address impacts on birds including ground-nesting farmland birds), and details of mitigation and delivery measures to be submitted.
- 20) Air quality mitigation measures to be submitted.
- 21) Further noise assessment and mitigation measures to be submitted.
- 22) Further odour assessment and mitigation measures to be submitted, and odour constraint on developable areas to be considered prior to submission of Reserved Matters applications.
- 23) Contaminated land – phase II intrusive site investigation report to be submitted.
- 24) Contaminated land – remediation strategy to be submitted.
- 25) Contaminated land – remediation strategy to be implemented.
- 26) Contaminated land – validation report to be submitted.
- 27) Coal mining legacy – details of intrusive site investigation (and, where necessary, remediation) to be submitted.
- 28) Archaeological site investigation.
- 29) Site-wide placemaking strategy to be submitted prior to Reserved Matters applications, and to include design principles, coding and other arrangements to ensure high quality, co-ordinated development that appropriately responds to existing guidance including Housebuilders Design Guide Supplementary Planning Document.
- 30) Bus stop infrastructure audit and improvement plan to be submitted, with timeframes for implementation.
- 31) Construction (Environmental) Management Plan to be submitted.
- 32) Tree protection measures to be approved and implemented.
- 33) Temporary (construction phase) drainage measures to be approved and implemented.
- 34) Site-wide open space strategy to be submitted prior to Reserved Matters applications (or with the first Reserved Matters application), and to include proposals for on-site provision with reference to existing local provision and the six open space typologies of the Open Space Supplementary Planning Document.
- 35) M62 junction 28 monitoring strategy to be submitted, approved and implemented, and mitigation to be implemented if monitoring demonstrates the need (condition to be worded to allow for an

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- alternative scheme to be approved, for a contribution to be made via a Section 106 agreement, and for the developer to implement phase 1 of the scheme).
- 36) M1 junction 40 monitoring strategy to be submitted, approved and implemented, and mitigation to be implemented if monitoring demonstrates the need (condition to be worded to allow for an alternative scheme to be approved, and for a contribution to be made via a Section 106 agreement).
- b) secure a Section 106 agreement to cover the following matters (with all contributions being index-linked):
- (i) Highway capacity / improvement / other works:
- a) Contribution towards M62 junction 28 mitigation (if details submitted pursuant to condition 35 demonstrate this is appropriate).
 - b) Contribution towards M1 junction 40 mitigation (if details submitted pursuant to condition 36 demonstrate this is appropriate).
 - c) Monitoring of left-turn movements into Chidswell Lane from spine road, Traffic Regulation Order and implementation of works if signed restriction proves ineffective (contributions totalling £23,500).
 - d) Contributions towards junction improvement schemes (applicable should schemes secured by condition prove to be more appropriately delivered via a Section 106 provision).
- (ii) Sustainable transport:
- a) Pump-priming of a Dewsbury-Leeds bus route along spine road, triggered by occupation of 1,000 homes across both sites, contribution to be agreed, duration of pump-priming to be agreed, and provision for contributions to cease if bus service becomes self-financing.
 - b) Bus stop upgrade contribution (applicable if bus stop audit demonstrates the need).
 - c) Framework Travel Plan (and subordinate plans) implementation and monitoring including fees – £15,000 (£3,000 for five years).
- (iii) Education:
- a) £700,000 contribution towards interim primary provision to be paid in two tranches (£350,000 upon first occupation, £350,000 upon occupation of 119 homes).
 - b) Primary school (including early years and childcare) provision cascade:
 - i) Applicant / developer to decide on whether to build school on site or pay contribution no later than point of occupation of 200 homes;
 - ii) If the former, applicant / developer to provide land and build school on site to the Council's specification for use no earlier than when required and no later than point of occupation of 700 homes;
 - iii) If the latter, contribution amount to be reviewed at the time of payment, contribution to be paid in instalments between the occupation of 229 and 919 homes, Council to put contribution towards on-site school or alternative provision.
 - c) Secondary education contribution of £2,257,029.00
- (iv) Open space, including sports and recreation and playspaces – contribution based on Open Space Supplementary Planning Document methodology /

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formulae, taking into account on-site provision (to be confirmed at Reserved Matters stage). Site-wide strategy required to ensure provision across all phases / parcels / Reserved Matters applications is co-ordinated.

- (v) Affordable housing – 20% provision.
 - (vi) Local centre (including community facilities) – arrangements to ensure buildings / floorspace is provided, and details of size, timing, uses and location to be clarified.
 - (vii) Air quality – contribution (amount to be confirmed, and subject to applicant / developer measures which may render contribution unnecessary) up to the estimated damage cost to be spent on air quality improvement projects within the locality.
 - (viii) Biodiversity
 - a) Contribution (amount to be confirmed) or off-site measures to achieve biodiversity net gain (only applicable if 10% can't be achieved on-site);
 - b) Securing other off-site measures (including buffers to ancient woodlands, and provision of skylark plots).
 - (ix) Management – the establishment of a management company for the management and maintenance of any land not within private curtilages or adopted by other parties, and of infrastructure. May include street trees if not adopted.
 - (x) Drainage – management company to manage and maintain surface water drainage until formally adopted by the statutory undertaker. Establishment of drainage working group (with regular meetings) to oversee implementation of a site-wide drainage masterplan.
 - (xi) Ancient woodland – management plan (and works, if required) for public access to Dum Wood and Dogloitch Wood (outside application site, but within applicant's ownership).
 - (xii) Social value – requirement for applicant / developer, future developer partners and occupants of employment floorspace to provide package of training, apprenticeships and other social value measures.
 - (xiii) Masterplanning – No ransom scenarios to be created at points where new roads meet other development parcels / phases.
- 2) In the circumstances where the Section 106 agreement has not been completed within three months of the date of the Committee's resolution (or of the date the Secretary of State for Levelling Up, Housing and Communities confirms that the application will not be called in) then the Head of Planning and Development shall consider whether permission should be refused on the grounds that the proposals are unacceptable in the absence of the mitigation and benefits that would have been secured and, if so, the Head of Planning and Development be authorised to determine the application and impose appropriate reasons for refusal under delegated powers.

A recorded vote was taken, in accordance with Council Procedure Rule 42(5), as follows:

For: Councillors Anwar, Hall, Pattison and Sokhal (4 votes)

Against: Councillors Gregg, Pinnock and Thompson (3 votes)

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The Committee considered Application 2020/92350, an outline application for residential development (Use Class C3) of up to 181 dwellings, engineering and site works, demolition of existing property, landscaping, drainage and other associated infrastructure (amended and further information received) on land south of Heybeck Lane, Chidswell, Shaw Cross, Dewsbury.

Under the provisions of Council Procedure Rule 37, the Committee received representations from Mark Eastwood MP, Duncan Smith, Sally Naylor, Duncan Mounsey and Sandy Mounsey (local residents/Chidswell Action Group) and Nolan Tucker (on behalf of the applicant).

Resolved –

- 1) That, subject to the Secretary of State not calling in the application, approval of the application and issue of the decision notice be delegated to the Head of Planning and Development in order to:
 - a) complete the list of conditions, including those contained within the report and the update, as set out below:
 - 1) Standard outline condition (approval of reserved matters prior to commencement).
 - 2) Standard outline condition (implementation in accordance with approved reserved matters).
 - 3) Standard outline condition (reserved matters submission time limits – first reserved matters application to be submitted within three years of outline approval, last to be submitted within five years).
 - 4) Standard outline condition (reserved matters implementation time limit – within two years of reserved matters approval).
 - 5) Development in accordance with plans and specifications.
 - 6) Details of phasing to be submitted.
 - 7) Implementation of junction improvement schemes when required, in accordance with details (including road safety audits and arrangements for implementation under Section 278) to be submitted.
 - 8) Submission of interim and final details of Heybeck Lane site entrance (including road safety audits and arrangements for implementation under Section 278), and subsequent implementation.
 - 9) Assessment of potential for decentralised energy scheme to be carried out prior to submission of Reserved Matters applications.
 - 10) Flood risk and drainage – full site-wide scheme to be submitted.
 - 11) Flood risk and drainage – detailed drainage proposals to be submitted for each parcel / phase.
 - 12) Separate systems of foul and surface water drainage to be provided.
 - 13) Ecological mitigation and enhancement details (including an Ecological Design Strategy, measures to address impacts on birds including ground-nesting farmland birds), and details of mitigation and delivery measures to be submitted.
 - 14) Air quality mitigation measures to be submitted.
 - 15) Further noise assessment and mitigation measures to be submitted.
 - 16) Contaminated land – phase II intrusive site investigation report to be submitted.
 - 17) Contaminated land – remediation strategy to be submitted.

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- 18) Contaminated land – remediation strategy to be implemented.
 - 19) Contaminated land – validation report to be submitted.
 - 20) Coal mining legacy – details of intrusive site investigation (and, where necessary, remediation) to be submitted.
 - 21) Archaeological site investigation.
 - 22) Site-wide placemaking strategy to be submitted prior to Reserved Matters applications, and to include design principles, coding and other arrangements to ensure high quality, co-ordinated development that appropriately responds to existing guidance including Housebuilders Design Guide Supplementary Planning Document.
 - 23) Bus stop infrastructure audit and improvement plan to be submitted, with timeframes for implementation.
 - 24) Construction (Environmental) Management Plan to be submitted.
 - 25) Tree protection measures to be approved and implemented.
 - 26) Temporary (construction phase) drainage measures to be approved and implemented.
 - 27) Site-wide open space strategy to be submitted prior to Reserved Matters applications (or with the first Reserved Matters application), and to include proposals for on-site provision with reference to existing local provision and the six open space typologies of the Open Space Supplementary Planning Document.
- b) secure a Section 106 agreement to cover the following matters (with all contributions being index-linked):
- (i) Highway capacity / improvement / other works:
 - a) contributions towards junction improvement schemes (applicable should schemes secured by condition prove to be more appropriately delivered via a Section 106 provision).
 - b) contribution towards Shaw Cross junction scheme.
 - (ii) Sustainable transport:
 - a) Bus stop upgrade contribution (applicable if bus stop audit demonstrates the need).
 - b) Framework Travel Plan (and subordinate plans) implementation and monitoring including fees – £15,000 (£3,000 for five years).
 - (iii) Education:
 - a) £300,000 contribution towards interim primary provision.
 - b) Secondary education contribution of £223, 957.
 - (iv) Open space, including sports and recreation and playspaces – contribution based on Open Space SPD methodology / formulae, taking into account on-site provision (to be confirmed at Reserved Matters stage). Site-wide strategy required to ensure provision across all phases / parcels / Reserved Matters applications is co-ordinated.
 - (v) Affordable housing – 20% provision.
 - (vii) Air quality – contribution (amount to be confirmed, and subject to applicant / developer measures which may render contribution unnecessary) up to the estimated damage cost to be spent on air quality improvement projects within the locality.
 - (viii) Biodiversity:

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- a) Contribution (amount to be confirmed) or off-site measures to achieve biodiversity net gain (only applicable if 10% can't be achieved on-site);
 - b) Securing other off-site measures (including buffers to ancient woodlands, and provision of skylark plots).
- (ix) Management – the establishment of a management company for the management and maintenance of any land not within private curtilages or adopted by other parties, and of infrastructure. May include street trees if not adopted.
- (x) Drainage – management company to manage and maintain surface water drainage until formally adopted by the statutory undertaker. Establishment of drainage working group (with regular meetings) to oversee implementation of a site-wide drainage masterplan.
- (xi) Ancient woodland – management plan (and works, if required) for public access to Dum Wood and Dogloitch Wood (outside application site, but within applicant's ownership).
- (xii) Social value – requirement for applicant / developer, future developer partners and occupants of employment floorspace to provide package of training, apprenticeships and other social value measures.
- (xiii) Masterplanning – No ransom scenarios to be created at points where new roads meet other development parcels / phases.
- 2) In the circumstances where the Section 106 agreement has not been completed within three months of the date of the Committee's resolution (or of the date the Secretary of State for Levelling Up, Housing and Communities confirms that the application will not be called in) then the Head of Planning and Development shall consider whether permission should be refused on the grounds that the proposals are unacceptable in the absence of the mitigation and benefits that would have been secured and, if so, the Head of Planning and Development be authorised to determine the application and impose appropriate reasons for refusal under delegated powers.

A recorded vote was taken, in accordance with Council Procedure Rule 42(5), as follows:

For: Councillors Anwar, Hall, Pattison and Sokhal (4 votes)

Against: Councillors Gregg, Pinnock and Thompson (3 votes)

10 **Planning Application - Application No. 2020/92307**

The Committee considered Application 2020/92307, an outline application, including the consideration of access, for the erection of residential development (up to 75 units) at Penistone Road/, Rowley Lane, Fenay Bridge, Huddersfield.

Under the provisions of Council Procedure Rule 36(3), the Committee received a representation from Councillor McGuin.

Under the provisions of Council Procedure Rule 37, the Committee received representations from Alison Munro and Gerald Newsome (local residents), Steve Noble (Green Alert in Lepton) and Chris Creighton (agent).

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RESOLVED –

1) That authority be delegated to the Head of Planning and Development to approve the application, issue the decision notice and complete the list of conditions including matters relating to;

1. Standard OL condition (submission of Reserved Matters)
2. Standard OL condition (implementation of Reserved Matters)
3. Standard OL condition (Reserved Matters submission time limit)
4. Standard OL condition (Reserved Matters implementation time limit)
5. Full technical details of the proposed access to be submitted, approved and implemented
6. Full technical details of the proposed footway along the southside of Rowley Lane to be submitted, approved and implemented
7. Full technical details of the proposed highway improvements to the Rowley Lane / Penistone Road junction to be submitted, approved and implemented
8. Full technical details of internal road to adoptable standard to be submitted, approved and implemented
9. Structural details provided for retaining walls adjacent to the highway
10. Archaeology investigation works to be undertaken and details of how the findings have informed the design, to be submitted with layout and/or landscape
11. Contaminated land investigation and appropriate remediation pre-commencement conditions
12. Full drainage scheme to be provided prior to commencement
13. Overland flow routing plan to be provided prior to commencement
14. Temporary surface water drainage plan to be provided prior to commencement
15. Noise mitigation measures to be submitted with layout and/or appearance
16. Details of secure cycling to be provided at layout
17. Construction Environmental Management Plan
18. Construction Environmental Management Plan: Ecology
19. Construction Management Plan
20. EV Charging Points to be provided
21. Arboricultural Survey, Impact and Methodology assessments to be submitted with layout and/or landscape
22. Ecological Impact Assessment, to include 10% net gain, to be submitted with layout and/or landscape
23. Repeat Ecological Surveys for the stand-alone tree and north boundary to be submitted with layout and/or landscape
24. Fully detailed Travel Plan to be provided
25. Public sewer easement
26. Tree protection

2) That authority be delegated to the Head of Planning and Development to secure a S106 Agreement to cover (i) Affordable housing: 20% of dwellings to be affordable with a split of 55% social or affordable rent to 45% intermediate housing (inc. 25% First Homes) (ii) Open space: Contribution to off-site open space to be calculated at Reserved Matters stage based upon final number of units and the level of on-site provision at that time (iii) Education: additional places would be required at Rowley Lane Junior, Infant and Nursery School and King James's School with the contribution to be calculated at Reserved Matters stage based upon final number of

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units and the projected student numbers at that time (iv) Bio-diversity: Contribution (amount to be confirmed) towards off-site measures to achieve bio-diversity net gain in the event that it cannot be delivered on site (v) Travel plan: Monitoring of £10,000 (£2,000 per year, for five years) (vi) Metro / Sustainable travel: £10,000 for Real Time Information display plus Residential Metro Cards (vii) Roundabout contribution: £285,000 with overage clause if the identifies cost is exceeded and (viii) Management and maintenance: POS, Drainage, and Ecological features.

3) That, pursuant to (2) above, in circumstances where the S106 Agreement has not been completed within three months of this decision, the Head of Planning and Development shall be authorised to consider whether permission should be refused on the grounds that the proposals are unacceptable in the absence of the benefits that would have been secured, and would therefore be permitted to determine the Application and impose appropriate reasons for refusal under delegated powers.

A recorded vote was taken, in accordance with Council Procedure Rule 42 (5), as follows;

For: Councillors Anwar, Gregg, S Hall, Pattison, A Pinnock, Sokhal and Thompson (7 votes)

Against: (no votes)

11 **Planning Application - Application No. 2021/90800**

The Committee considered Application 2021/90800 relating to the redevelopment and change of use of a former mill site to form 19 residential units (within a Conservation Area) at Hinchliffe Mill, Water Street, Holmbridge, Holmfirth.

Under the provisions of Council Procedure Rule 37, the Committee received representations from Charles Pogson (in objection), Mark Lee and Alison Dumville (on behalf of the applicant)

RESOLVED -

1) That authority be delegated to the Head of Planning and Development to approve the application, issue the decision notice and complete the list of conditions including matters relating to;

1. TCPA Standard 3 Year Time Limit for Commencement;
2. Development in Accordance with Approved Document List;
3. Restrictions on occupation of the development to ensure Mill Conversion is completed;
4. Material Samples, Fenestration Detailing, Heritage Feature Retention Report (Prior to Commencement);
5. Archaeological Recording (Prior to Commencement);
6. Boundary Treatment Plan;
7. Obscure Glazing for Protection of Privacy of Water Street Residents;
8. Installation of Heritage Information Boards ;
9. Environment Agency Flood Risk Mitigation Measures;
10. Detailed Foul and Surface Water Drainage Design (Prior to Commencement);
11. Exceedance Event Assessment and Overland Flow Routing (Prior to Commencement);

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12. Temporary Drainage Design (Prior to Commencement);
13. Lighting Design Strategy for Biodiversity;
14. Submission of a Phase II Intrusive Site Investigation Report for Contaminated Land (Prior to Commencement);
15. Submission of a Remediation Strategy for Contaminated Land (Prior to Commencement);
16. Implementation of Site Remediation for Contaminated Land;
17. Submission of Validation Report for Contaminated Land;
18. Protection of Private Water Supplies (Prior to Commencement);
19. Electric Vehicle Charging Points;
20. Construction Management Plan (Prior to Commencement);
21. Submission of Structural Retaining Wall Details (Prior to Commencement);
22. Submission of Highway Structure Details within the Carriageway (manholes etc) (Prior to Commencement);
23. Submission of Retaining Wall Facing Materials;
24. Submission of Tree Protection Plan;
25. Submission of Waste Management Plan;
26. Submission of Temporary Waste Management Plan;
27. Submission of Pre and Post Development Highway Condition Survey (Prior to Commencement);
28. Private Access Road Surfacing Details (Prior to Commencement);
29. Submission of the details relating to the Parking Layby proposed on Spring Lane/Dam Head (Prior to Commencement);
30. Parking Area Surfacing;
31. Construction Environmental Management Plan: Biodiversity (Prior to Commencement);
32. Landscape Ecological Design Strategy (Prior to Commencement);
33. Public Open Space Details;
34. Removal of Invasive Plant Species;
35. Protected Species Licence (Prior to Commencement);
36. PROW Alignment, Construction and Safety Details.

2) That authority be delegated to the Head of Planning and Development to secure a S106 Agreement to cover (i) financial contribution of £62,330 towards off-setting the loss of Biodiversity on the development site with supplementary management details in accordance with the Biodiversity Technical Advice Note (ii) the provision of management companies for the purpose of maintaining shared spaces and drainage infrastructure serving the site and (iii) to enter into a viability review no later than the point at which 75% of on-site units have been sold. The agreed developer profit is to be 15% of Gross Development Value and any profits in excess of this shall be paid to the council to meet identified planning policy contributions (Affordable Housing/Sustainable Travel/Public Open Space/ 10% BNG).

3) That, pursuant to (2) above, in circumstances where the S106 Agreement has not been completed within three months of this decision, the Head of Planning and Development shall be authorised to consider whether permission should be refused on the grounds that the proposals are unacceptable in the absence of the benefits that would have been secured, and would therefore be permitted to determine the Application and impose appropriate reasons for refusal under delegated powers.

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A recorded vote was taken, in accordance with Council Procedure Rule 42 (5), as follows;

For: Councillors Anwar, Gregg, S Hall, Pattison, A Pinnock, Sokhal and Thompson (7 votes)

Against: (no votes)

12 **Planning Application - Application No. 2022/92718**

The Committee considered Application 2022/92718 in respect of the demolition of fire training building, extension and landscaping of RTC yard, including erection of fuel pump and tank, bin store and dog kennels, recladding of the BA building and erection of an enclosed link between BA and TRTC, provision of a new sub-station and new boundary treatments, retaining and landscaping works at Oakroyd Hall, West Yorkshire Fire and Rescue Service Headquarters, Bradford Road, Birkenshaw.

Under the provisions of Council Procedure Rule 37, the Committee received representations from Clare Plant (on behalf of the applicant).

RESOLVED - That authority be delegated to the Head of Planning and Development to approve the application, issue the decision notice and complete the list of conditions including matters relating to;

- 1) In accordance with the approved plans
- 2) Commencement with 3 years
- 3) Development shall not commence until works to remediate shallow coal mine workings has been carried out.
- 4) Prior to the occupation of the development, a signed statement or declaration confirming that the site has been made safe shall be submitted.
- 5) Development in accordance with the submitted Flood Risk Assessment and foul and surface water drainage strategy
- 6) Prior to development commencing a Construction Environmental Management Plan (CEMP) to be submitted.
- 7) Development in accordance with the Arboricultural Method Statement contained within the arboricultural impact assessment
- 8) Submission of Remediation Strategy
- 9) Implementation of the Remediation Strategy
- 10) Submission of Verification Report relating to any site remediation prior to site being bought in to use (If applicable).
- 11) Noise from Fixed Plant & Equipment to be controlled to not exceed background sound level.
- 12) Before the installation of external artificial lighting commences a lighting scheme shall be submitted to and approved in writing by the Local Planning Authority.
- 13) In accordance with BNG design stage report.
- 14) In accordance with landscape plans
- 15) Brick to link for BA room to match existing BA & Command building

A recorded vote was taken, in accordance with Council Procedure Rule 42 (5), as follows;

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For: Councillors Anwar, Gregg, S Hall, Pattison, A Pinnock, Sokhal and Thompson
(7 votes)

Against: (no votes)

13 **Planning Application - Application No. 2022/92651**

The Committee considered Application 2022/9261 for the use of land as a 'glamping site' with 6 glamping pods with decking, alterations to access to Moor Lane with formation of access road and parking areas, change of use of stables to form gym and Class E shop and café, and installation of package treatment system at Moorgate Farm, Moor Lane, Netherthong, Holmfirth.

RESOLVED – That the application be refused on the grounds that;

1. The proposed development is inappropriate in principle within the Green Belt since buildings for holiday or visitor accommodation do not fall within the definition of "appropriate facilities for outdoor recreation" nor any of the other categories listed in paragraphs 149-150 of the National Planning Policy Framework (NPPF). It is considered that the development would cause significant harm to the openness of the Green Belt and undermine the purpose of including land within it as set out in paragraph 138(c) of the NPPF in that it would represent an encroachment of built development into open countryside. Very special circumstances that clearly outweigh the harm the development would cause to the Green Belt by reason of inappropriateness or other harm have not been demonstrated by the applicant. The development is therefore contrary to Chapter 13 of the NPPF, Policy 10 of the Kirklees Local Plan and Policy 7 of the Holme Valley Neighbourhood Development Plan.

2. The proposed visibility splay to the west crosses land that is outside the red line boundary and appears to be in third party ownership. It is therefore not possible to guarantee that a sufficient visibility splay to the west can be provided or retained in perpetuity. Consequently, the use of the access by the proposed development would give rise to a material increase in risks to highway users, and therefore due to impacts upon highway safety, the proposal is contrary to the aims of Policy LP21 of the Kirklees Local Plan and Policy 11(4&5) of the Holme Valley Neighbourhood Development Plan.

3. The application has not been supported by an Arboricultural Survey or Impact Assessment formally appraising the value of the trees on site, explaining how they would be affected and what mitigation or compensation could be undertaken. The provision of visibility splays as shown on drawing 220430-01-11 would appear to require the removal of a number of mature trees that are the subject an Area Tree Preservation Order, reference 66/92/g1. The development therefore does not accord with the aims of Policy LP33 the Kirklees Local Plan or those of Holme Valley Neighbourhood Development Plan Policy 2(3) which state that any significant trees should be retained.

4. The Kirklees Biodiversity Net Gain Technical Advice Note requires that a 10% net gain should be achieved on sites over 0.5ha. The proposal has not been supported by a baseline ecological survey or impact assessment. It is therefore not possible to assess the value of any existing semi-natural habitat that would be lost (including,

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but not restricted to, mature trees) nor establish how the appropriate biodiversity net gain would be achieved. The proposal therefore does not accord with the aims of Policy LP30(ii) of the Kirklees Local Plan and Policy 13 of the Holme Valley Neighbourhood Development Plan.

A recorded vote was taken, in accordance with Council Procedure Rule 42 (5), as follows;

For: Councillors Anwar, Gregg, S Hall, Pattison, A Pinnock And Sokhal (6 votes)

Against: Councillor Thompson (1 vote)

Appendix 4 – High Court ruling of 04/09/2025

IN THE HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

PLANNING COURT

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

BEFORE : The Hon Mr Justice Kerr

BETWEEN :

R (ON THE APPLICATION OF CHIDSWELL ACTION GROUP)

Claimant

-and-

KIRKLEES COUNCIL

Defendant

-and-

(1) C. C. PROJECTS

(2) HARWORTH ESTATES (AGRICULTURAL LAND)

Interested Parties

ORDER

UPON HEARING Ms N Byrd as counsel for the claimant, Mr M Carter as counsel for the defendant, and Mr A Booth KC and Mr J Welch as counsel for the first interested party

IT IS ORDERED THAT

1. Permission to proceed on Ground 5 is granted.
2. The claim is allowed on Ground 5.
3. The defendant's grant of outline planning permission under application number 2020/60/92350/E is quashed.

4. The court makes no order in respect of Grounds 3 and 4 on the basis that they are academic.
5. The defendant shall pay the claimant's costs in the sum of £20,500 within 14 days.

Dated: 4 September 2025

Observation on costs:

The claimant's submissions on costs are have force but I do not think the local taxpayers should have to pay the *whole* of the difference (£111 and £40) between the guideline hourly rate and the actual hourly rate for the Grade A and Grade C fee earners.



Case No: AC-2024-LDS-000251

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
PLANNING COURT
[2025] EWHC 2256 (Admin)

Leeds Combined Court Centre,
1, Oxford Row, Leeds LS1 3BG

Date: 4 September 2025

Before :

THE HON MR JUSTICE KERR

Between :

**THE KING on the application of CHIDSWELL
ACTION GROUP**

Claimant

- and -

KIRKLEES COUNCIL

Defendant

- and -

(1) CC PROJECTS (an unlimited company)
(2) HARWORTH ESTATES (AGRICULTURAL LAND) LIMITED

Interested Parties

Noémi Byrd (instructed by **Direct Access**) for the **Claimant**
Martin Carter (instructed by **Ward Hadaway LLP Solicitors**) for the **Defendant**
Alexander Booth KC and **Jonathan Welch** instructed by **Charles Russell Speechlys LLP** for
the **First Interested Party**
The **Second Interested Party** did not appear and was not represented

Hearing date: 24 June 2025

Approved Judgment

This judgment was handed down remotely at 10am on 4 September 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....
MR JUSTICE KERR

The Hon Mr Justice Kerr:

Introduction

1. This judicial review, brought by the claimant action group against the defendant local planning authority, proceeds by leave of Ms Karen Ridge, sitting as a deputy High Court judge. Ms Ridge is a former planning inspector with extensive experience in this field. I gratefully summarise the nature of the claim from her order of 11 February 2025, granting limited permission:

“1. The challenge relates to a grant of outline planning permission (OPP) on 23 October 2024 for residential development of up to 181 dwellings on a 7-hectare site at Heybeck Lane, Dewsbury. The site forms part of a larger 120-hectare parcel of land (MXS7) which was allocated for residential development in the Defendant’s Local Plan adopted in 2019. The remainder of the allocation, being by far the larger site, is known as the Leeds Road site and was subject to a contemporaneous application for OPP.

2. Applications relating to OPP in relation to both sites were determined by the Defendant’s Strategic Planning Committee (SPC) at a meeting on 8 December 2022. Both applications were the subject of resolutions to approve the proposals (subject to the SSHCLG not calling them in) and subject to the delegation of the issue of the decision notice to the Head of Planning on completion of a set of conditions and execution of a section 106 agreement.

3. The Officer’s Report in relation to the Heybeck Lane application cross refers to the Leeds Road report given that both sites dealt with similar issues and were being considered at the same meeting. The final list of conditions was completed and the section 106 agreement executed in relation to the claim site and OPP granted in relation to Heybeck Lane in October 2024. The OPP in relation to the Leeds Road site has not been issued but the claimant has indicated its intention to judicially review that grant of OPP as well.”

2. Ms Ridge granted permission on the third and fourth of four grounds of challenge. The third is, in her summary, that “the Defendant erred by taking future ecological surveys into account without sight of the relevant condition or that the ecology conditions which were imposed were ineffective”. The fourth is that “that when it made the decision the Defendant took into account an inaccurate Biodiversity Net Gain (BNG) assessment and/or it issued a decision notice without legally adequate provision to secure BNG”.
3. The claimant now seeks permission to add a fifth ground of challenge, admittedly out of time, by application made on 28 April 2025. The proposed

fifth ground is: “[f]ailure to publish the section 106 agreement¹ in accordance with Article 40(3)(b) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 [(the **2015 DMP Order**)], rendering the grant of planning permission invalid.”

4. The defendant (**the LPA**) and the first interested party (**the developer**) oppose permission to rely on the fifth ground. It is for me to determine the application and I heard submissions on that issue at the hearing, as well as submissions on the third and fourth grounds of challenge. I shall address all three grounds of challenge in this judgment, I need say no more about the first and second grounds, for which the deputy judge refused permission.

The Facts

5. The LPA in its 2019 Local Plan allocated the whole 120 hectares of the “MXS7” land for residential development. The Strategic Planning Committee of the LPA (**the committee**) met on 8 December 2022 to consider applications made in July 2020 in respect of the two linked sites, the smaller Heybeck Lane site (the subject of this claim) and the larger Leeds Road site. The officer’s report relating to the Heybeck Lane site included references to the corresponding report relating to the Leeds Road site.
6. The proposals were controversial and divided local opinion. Needless to say, the court takes no view regarding the merits of the proposals. The applicant for outline planning permission was the developer. The agenda item was, as stated at the start of the officer’s report:

“Planning Application 2020/92350 Outline application for residential development (Use Class C3) of up to 181 dwellings, engineering and site works, demolition of existing property, landscaping, drainage and other associated infrastructure (amended and further information received) Land south of, Heybeck Lane, Chidswell, Shaw Cross, Dewsbury.”

7. The officer’s report recommended that approval be delegated to the LPA’s head of planning and development to complete “the list of conditions including those

¹ For anyone not familiar with planning procedures, this is shorthand for a binding agreement between an applicant for planning permission and the local planning authority, under section 106 of the Town and Country Planning Act 1990, whereby the applicant undertakes planning obligations enforceable by the local planning authority.

contained within this report and to secure a Section 106 agreement” within three months. All matters apart from access to the site were “Reserved Matters”. The section 106 agreement was to cover a list of 12 matters, including, seventh on the list:

“Biodiversity

a) Contribution (amount to be confirmed) or off-site measures to achieve biodiversity net gain (only applicable if 10% can’t be achieved on-site

b) Securing other off-site measures (including buffers to ancient woodlands, and provision of skylark plots).”

8. The officer’s report pointed out the following. Most of the application site was greenfield land in arable agricultural use. Only one significant building is on the site (paragraph 2.3). The overall MX7 site was allocated for mixed use (housing and employment) in the Local Plan (2.8). The many representations in opposition to the development, from the claimant among others, were summarised (7.1 to 7.8). Among the many grounds for objecting was (at 7.6):

“Claimed biodiversity net gain not accepted. Earlier independent assessment identified a 14% net loss.”

9. The position of various statutory and non-statutory consultees was summarised in section 8. At 8.23, the author explained that “KC Trees”, an entity within the LPA, supported the “[g]eneral principle” of the proposal but identified one hedgerow on the site as “important”. The impact on it would need “mitigating”, possibly by “translocation”, i.e. moving it elsewhere. More detail would be required at “Reserved Matters” stage.

10. The proposed development, on its own, was not “EIA development”, i.e. it was not a development requiring a prior environmental impact assessment; but the impacts were taken into account in the EIA for the much larger Leeds Road site. Section 10 of the report was an assessment of the “[m]ain [i]ssues”. They were many, among them “[e]cological considerations” (10.64-10.69):

“Ecological considerations

10.64 Chapter 15 of the NPPF and Local Plan policy LP30 apply. Of particular note, paragraph 174 of the NPPF requires the proposed development to achieve a biodiversity net gain.

10.65 Much of the commentary set out in the accompanying committee report for application ref: 2020/92331 is also relevant to the Heybeck Lane site. The same ecological surveys appended to chapter 14 of the ES submitted with application ref: 2020/92331 have also been submitted in support of the Heybeck Lane application. Similarly, a letter regarding bat surveys of lofts (dated 23/08/2022) was submitted. Of specific relevance to the Heybeck Lane site, that letter noted that the loft of 39 Heybeck Lane has previously been converted and there is therefore no accessible loft space to inspect for bat presence. A High-Level Biodiversity Net Gain Assessment (01/11/2022), including findings of a walkover survey undertaken in October 2022, was also submitted.

10.66 At the Heybeck Lane site, the applicant's biodiversity net gain calculation (using the Biodiversity Metric 3.1) confirms the proposed development would achieve the following net gains (post-intervention):

- Habitat units: 10.03%
- Hedgerow units: 10.61%

10.67 Of note, no net gain in river units is proposed, as the existing river unit baseline was found to be zero. It is also noted that the proposed 10.03% net gain in habitat units is partly reliant upon off-site interventions.

10.68 The proposed net gains are considered achievable. Delivery of the proposed off-site interventions would need to be secured via the recommended Section 106 agreement.

10.69 As with application ref: 2020/92331, the council is able to make an informed decision on the current outline application. Further surveys would be required at Reserved Matters stage (if outline permission is granted). The applicant has proposed a policy-compliant biodiversity net gain, and has met other requirements of relevant planning policies. Conditions and provisions (secured via a Section 106 agreement) can be applied to mitigate the ecological impacts of the proposed development."

11. The next part of the section concerned "[t]rees, ancient woodlands and hedgerows (10.70-10.75):

"10.70 Several Tree Preservation Orders protect trees and groups of trees within and adjacent to the application site, and an ancient woodland (Dum Wood) is designated to the east of the site. Local Plan policy LP33 states that planning permission will not be granted for developments which directly or indirectly threaten trees or woodlands of significant amenity, and proposals should normally retain any valuable or important trees where they make a contribution to public amenity or have other benefits.

10.71 The applicant's Hedgerow Assessment and Report (July 2018) at appendix 14.9 of the ES submitted with application ref: 2020/92331 states that three of the MXS7 site's hedgerows can be defined as "important" under the Hedgerow Regulations 1997, and that a further five hedgerows just fall short of being classified as "important", due to there being either one too few woody species or associated features, or by not being adjacent to a public right of way. One of the "important" hedgerows is within the Heybeck Lane site.

10.72 The proposed development (as illustrated indicatively) largely retains existing trees and hedgerows, and an appropriate buffer is proposed adjacent to the ancient woodland. The applicant’s landscaping proposals are currently indicative, however they illustrate potential biodiversity connections across the site.

10.73 The applicant’s illustrative layout and supporting arboricultural impact assessment demonstrates that the site can be developed while incorporating the existing important trees, woodlands and hedgerows into the, and avoiding adverse impact on these features. Significantly more detail would, of course, be required at Reserved Matters stage, including details of how the site’s hedgerows would be retained.

10.74 Further assessment regarding impacts on Dum Wood is set out in the accompanying committee report for application ref: 2020/92331.

10.75 As noted by KC Trees, the hedgerow identified as “important” appears to be impacted by the proposals. This would need to be considered further at Reserved Matters stage when, if the hedgerow is not to be retained and worked around, mitigation would be required, possibly in the form of translocation of the hedgerow to a new site more associated with the adjacent ancient woodland.”

12. At 10.82, under the sub-heading “[p]lanning obligations and financial viability”, the report continued (so far as I need quote it here):

“A development of this scale would have significant impacts requiring mitigation. The following planning obligations securing mitigation (and the benefits of the proposed development, where relevant to the balance of planning considerations) would need to be included in a Section 106 agreement:

....

7) Biodiversity

a) Contribution (amount to be confirmed) or off-site measures to achieve biodiversity net gain (only applicable if 10% can’t be achieved on-site);

b) Securing other off-site measures (including buffers to ancient woodlands, and provision of skylark plots).

....

10) Ancient woodland – management plan (and works, if required) for public access to Dum Wood (outside application site, but within applicant’s ownership).”

13. Under the sub-heading “[r]epresentations, reference to the claimant’s position was made, as follows (10.89):

“The request made by the Chidswell Action Group to delay determination of the application is noted, but is not supported. As part of the recent reconsultation, letters and emails were sent to everyone who had previously been consulted and everyone who had previously commented on the application, and four new site notices were posted on 02/11/2022. This greatly exceeds the consultation effort

required by the relevant legislation, and would have ensured a good level of local awareness regarding the application and the reconsultation.”

14. The report recommended 26 conditions for the outline planning permission, at 11.1, among them conditions 13 and 24:

“13) Ecological mitigation and enhancement details (including an Ecological Design Strategy, measures to address impacts on birds including ground-nesting farmland birds), and details of mitigation and delivery measures to be submitted.

...

24) Construction (Environmental) Management Plan to be submitted.”

Objections to the proposals

15. The claimant objected to both planning applications concerning the MXS7 land, i.e. the Leeds Road and Heybeck Lane sites. Its 19 page document is not dated but was prepared in advance of the meeting on 8 December 2022. I need only mention a few points from it. It began by voicing strong objections to both applications, supported by several of the LPA’s elected members, two MPs, the Yorkshire Wildlife Trust, the Council for the Protection of Rural England, the Woodland Trust and the LPA’s ecology officers.
16. The claimant advocated deferring the applications, not for further public consultation but to obtain up to date Agricultural Land Classification (ALC) assessment, up to date ecological surveys and an up to date biodiversity net gain (BNG) assessment, which would be dependent on the provision of up to date ecological surveys. Essentially the claimant was saying the LPA did not have adequate and reliable environmental information and that it was wrong and perhaps unlawful to leave the gaps to be filled as “Reserved Matters”.
17. The document addressed ecological impacts. The claimant observed that the developer had engaged ecological consultants, called Brooks Ecological, to conduct surveys in 2018. This had noted an adverse effect on the “red listed” yellowhammer and skylark birds, which would be “negative at District scale”, “major” and “largely irreversible”. The developer’s wildlife surveys dated back to 2018; the wildlife profile had changed since then.

18. A design strategy document dating from 2021 based on observations in 2020 had failed, said the claimant, to mention yellowhammers and skylarks. The claimant had also pointed to other adverse impacts on wildlife, but its communications had been ignored or dismissed by Brooks Ecological, without justification. An outdated ornithological survey report had wrongly stated that there were no protected “Schedule 1” species on the site. The position of bats had also been misrepresented, the claimant contended.
19. The claimant argued that the further survey evidence would not be ready in time for the committee meeting on 8 December 2022. More attention needed to be given to protected species and that would not be possible in time for the meeting. That would lead to disregard of a mandatory relevant consideration, according to the claimant. The authors of the document then went on to consider the issue of biodiversity.
20. The claimant referred to objections to both developments from “Kirklees Ecology”, the LPA’s ecology officers, and the Yorkshire Wildlife Trust, going back to 2020, on the ground that there was insufficient up to date detail on protection of wildlife and achieving a “measurable net gain for biodiversity” (BNG), which must be “secured at the early stages of design” (paragraph 58). The Yorkshire Wildlife Trust had also identified “flaws in the 2020 Biodiversity Net Gain (BNG) metrics supplied by the [developer]” (59).
21. Brooks Ecological had, the claimant objected, assumed the headwater streams on the sites in October 2022, following a prolonged drought, as “in poor condition” and “choked with scrub vegetation and supporting invasive weeds” (60). Heavy rain followed and those same streams were now “flowing freely with crystal clear water throughout the site and into Hey Beck” (65).
22. The watercourses were therefore unjustly downgraded when measuring BNG. Further, the claimed BNG of plus 10 per cent had initially been said to be “achievable on-site”, which had proved to be false; subsequent calculations had incorporated off-site gains, with the on-site achievable gain now said to be only 3.53 per cent (68-69). The LPA itself recognised that local residents had

“expressed disbelief that a [BNG] would be achieved by the proposed development”.

23. The decision should be deferred “given the bias and flaws with the Brooks Ecological reporting)” (71-72), the claimant contended. The conclusion in relation to BNG was (73):

“material considerations are being left to be dealt with as Reserved Matters. Without an accurate baseline survey, the [committee] will not be able to determine whether 10% BNG is actually achievable, because the BNG achievable onsite is uncertain – leaving a grant of Outline Planning permission vulnerable to a legal challenge.”

24. The claimant’s overall conclusions (84-87) included the complaint that the developer should not be allowed to “mark their own homework” with the LPA allowing them to do so unchallenged and supporting the developer’s unsound approach, ignoring or downplaying legitimate grounds of objection. The decision should be deferred so that “Material Considerations are given proper scrutiny and proper mitigation can be put in place”.
25. It was not enough that the site land was designated for mixed use development in the Local Plan. The claimant asked rhetorically (at 86): “[w]ithout accurate baseline information, how can the [committee] determine whether the proposal will avoid/mitigate significant loss or harm to biodiversity? Or what compensatory measures will be appropriate?” The section 106 agreement should be made before, not after, the grant of outline planning permission.

The 8 December 2022 committee meeting

26. At the public meeting of the committee on 8 December 2022, its seven members were present, as were numerous objectors and other members of the public. The debate must have been lively, but the transcript records only the members’ contributions. The chair and two other councillors spoke in favour of the proposals; three other councillors spoke against them.
27. The LPA’s head of planning and development, Mr Matthias Franklin, spoke near the end in favour of the proposals, insisted that biodiversity was “a matter very close to my heart” and expressed a commitment “to ensuring we get 10%

net gain on all development sites”. The reserved matters scheme would “ensure that there are planning conditions that deliver this”. The developer had been “very clear that their intention is to secure that on-site”.

28. Councillor Pinnock was among the three who had spoken against accepting the recommendations in the report. He responded that the proposal should be deferred until relevant questions had been answered: “[o]ne of the problems with having the list of conditions like this is that it summarises the conditions doesn’t tell you what’s in them”. He cited the example of condition 19 on ecological mitigation; they did not appear to be up to date enough, he said.
29. Mr Victor Grayson, the LPA’s development management masterplanner, responded at the chair’s invitation, arguing that in relation to “ecological mitigation and enhancement, those details really should come forward at reserved matters stage when we know more about the layout and other aspects of the proposals”. It would not be appropriate to specify “where bat and bird boxes go until we know where the buildings would precisely go...”.
30. He accepted that some of the survey information was out of date but not that the vote should be delayed on that account:

“... yes the applicant surveys ecological survey information is now fairly old it's over four years old it has been supplemented by a walkover survey carried out in October of this year which is of some use but, officers and the applicants as well do accept that full detailed surveys would need to be redone to inform the proposals brought forward at reserved matters stage and that would be an appropriate point to do it, you would then have bang up-to-date information that will take into account all the information that we have so far - new on-site observations, if need be the council's biodiversity officer can accompany the applicant’s consultants on site, if there's any disagreement as to how certain ecological features need to be categorised in as an input into the biodiversity net gain calculations, if that needs to happen that can be done. And of course, reference can be made to the significant volumes of information that local residents have gathered regarding sightings of it was mentioned Kingfishers and Red Kites and other species that have been seen on site that there is evidence of.”

31. The vote was to adopt the officers’ recommendations, by four votes to three. Broadly, the majority accepted the arguments in the report, while the minority accepted the arguments of the objectors, were dissatisfied with the absence of up to date information or believed the site should remain as a working farm. The resulting resolutions relating to both sites were lengthy. The head of

planning and development was given delegated power to complete the list of reserved matters conditions and secure an appropriate section 106 agreement.

Events after the meeting of 8 December 2022

32. The claimant did not cease its opposition to the development. The Secretary of State decided on 5 May 2023 not to call in the application. Mr Grayson was in contact with the claimant in 2023. He sent an email on 15 May but I do not have a copy of it. In response, the claimant emailed back on 18 June 2023:

“... we request details of all outstanding agreements being drafted and discussed prior to the decision date on Chidswell & Heybeck.

Specifically, the S106 / S278 / Reserved Matters - and any other details which need to be agreed prior to determination.

It's our understanding these draft documents should already be published on the Planning Portal so we'd appreciate a timely response to this request.

We would also ask if you have a target completion date for these outstanding matters.”

33. The next day Mr Grayson replied:

“Thanks for your email.

To clarify – it is only the Section 106 agreements (one for each application: 2020/92350 and 2020/92331) that need completing prior to the council's decisions (on the two applications) being released. Section 278 agreements relate to works to the highway. Reserved matters would be addressed in later applications which would be put to public consultation.

Section 106 agreements are being drafted. Their provisions will secure the Heads of Terms set out in the committee reports for the two applications. No drafts of the agreements are in the public domain (nor are they required to be). The completed agreements will be posted online along with the council's decisions, when issued. As to when that will happen, I can't confirm precisely, however later this summer is likely.”

34. But by March 2024, no section 106 agreements or drafts thereof had been published on the LPA's planning portal; nor the delegated officer's decision. On 13 March 2024, Ms Sally Naylor on behalf of the claimant left a voice message for Mr Grayson and then followed up with an email the same day:

“Further to my voice message left on your Kirklees' extension today, we would be grateful to know why applications 2020/92350 and 2020/92331 are no longer present on Kirklees' planning portal. We would be grateful to know:

The target date for completion of the S106 agreements and the release of the Council's decision; If you will be updating Kirklees' planning portal immediately at the point of completion of S106 agreements and release of the Council's decision?

We would request you to please notify ourselves to the CAG email as soon as the S106 agreements are completed and the Council's decision is going to be released.”

35. Mr Grayson responded the same day:

“Thanks for your messages.

Yes – there has been a problem with the council’s website today, affecting access to several applications. The council’s IT people are trying to resolve the matter.

As regards the Section 106 agreements, we had hoped to complete these by the end of this month. Whether or not that happens depends on various factors, including progress with National Highways.

Once the Section 106 agreements are completed, planning permissions are usually issued within a few days. For both applications, the decision letter and the Section 106 agreement should appear online at the same time (the day after the decision is issued, as the council’s website updates overnight).”

36. Extensive exchanges (as they were described in a later LPA officer’s note) took place between the LPA and the developer on the subject of the pre-commencement conditions. These were not made public. A final list of conditions was submitted to the developer by the LPA on 5 July 2024.

The Greenfields case at first instance

37. On 23 August 2024, His Honour Judge Jarman KC gave judgment in *R (Greenfields (IOW) Ltd. v. Isle of Wight Council* [2024] EWHC 2107 (Admin). He refused permission to bring a judicial review claim insofar as it was based on failure to publish a section 106 agreement, contrary to article 40(3)(b) of the 2015 DMB Order. He reasoned that it was highly likely the outcome would not have been substantially different had the failure to publish not occurred; and that permission must therefore be refused.

The section 106 agreement

38. On 14 October 2024, the final list of conditions was agreed. On 17 October, the section 106 agreement was entered into between the LPA and the developer. As is usual, it was lengthy and, rightly, not all of it was before the court. Schedule

3 dealt with public open space, drainage and masterplanning, including arrangements for access to and management of the ancient woodlands known as Dum Wood, which forms part of the Heybeck Lane site.

39. Schedule 5 on biodiversity imposed a “Biodiversity Net Gain Requirement”: to achieve “a 10% gain in the number of Biodiversity Units based on the values set out in the Biodiversity Assessment”. The “Biodiversity Assessment” was defined as “an assessment (including Biodiversity Metric calculations) which sets out details of the pre-development diversity value of the Site”. A “Biodiversity Metric” is “the DEFRA biodiversity metric as applicable at the time of the Biodiversity Assessment”.

40. There would need to be a “BEMP”, i.e.:

“a biodiversity management and enhancement plan detailing:

(a) details of the biodiversity habitat creation and/or enhancement proposed; and

(b) a detailed management and maintenance regime to secure such biodiversity habitat for a period of 30 years”

41. There would also be an “Offsite BEMP”, namely:

“a biodiversity management and enhancement plan detailing the biodiversity habitat creation or enhancement proposed on all or part of the Offsite BNG Land [*i.e. the ancient woodland*] (as identified in the Offsite BEMP by reference to a plan) such plan to include a detailed management and maintenance regime to secure such biodiversity habitat for a period of not less than 30 years... .”

42. The development of the site could not begin until the LPA had approved the Biodiversity Assessment (Schedule 5, paragraph 2.1). Construction could not commence until the LPA had approved the BEMP and the Offsite BEMP which, together, would have to satisfy the Biodiversity Net Gain Requirement (paragraph 3.1). The following provisions would then apply:

“4. On-Site Biodiversity Net Gain

4.1. The Owner shall not Occupy more than 90% of the Dwellings (or comply with such other requirement for timing of provision as may be contained in the BEMP) until the Owner has completed the works of habitat creation and/or enhancement set out in the BEMP and has served notice on the Council confirming completion of such works.

4.2. From the date of notice served pursuant to paragraph 4.1, the Owner covenants to comply with the requirements of the BEMP (or any amended BEMP submitted by the Owner to the Council and approved by the Council) for a period of 30 years.

5. Off-Site Biodiversity Net Gain

5.1. Where an Offsite BEMP applies, the Owner shall not Occupy more than 90% of the Dwellings (or comply with such other requirement for timing of provision as may be contained in the Offsite BEMP) until the Owner has completed the works of habitat creation and/or enhancement set out in the Offsite BEMP and has served notice on the Council confirming completion of such works.

5.2. From the date of notice served pursuant to paragraph 5.1, the Owner covenants so as to bind the relevant part of the Offsite BNG Land identified in the relevant Offsite BEMP only to comply with the requirements of the Offsite BEMP (or any amended Offsite BEMP submitted by the owner of the relevant Offsite BNG Land from time to time to the Council and approved by the Council) for a period of 30 years.”

The decision challenged

43. Then on 23 October 2024 the LPA granted outline planning permission for the development of the Heybeck Lane site, under the delegated powers conferred by the committee at the meeting in December 2022. This is the decision challenged in this claim, recorded in two documents that left certain matters to be resolved later. The first was entitled “Outline Planning Permission”; the second, “Delegated Decision to Determine Planning Applications”.

44. It is necessary to set out some extracts from these decision documents. The Outline Planning Permission was said to be subject to a section 106 agreement. The permission is for “residential development ... of up to 181 dwellings, engineering and site works, demolition of existing property, landscaping, drainage and other associated infrastructure.” It was granted subject to 26 conditions, of which I need to mention a few.

45. Condition 1 states in part as follows:

“1. Prior to the commencement of development (save for enabling works which for the purposes of this condition shall comprise site preparation, remediation works, provision of construction and temporary access roads, diversion and/or laying of strategic site-wide utilities, and works associated with archaeological surveys) of any phase or sub phase of the development hereby approved, details of appearance, landscaping, layout and scale (hereinafter called the “Reserved Matters”) of that phase or sub phase shall be submitted to and approved in writing by the Local Planning Authority”

46. There was a definition of “site preparation” which in turn is part of the definition of “enabling works” in condition 1:

“*Site preparation* comprises the installation of temporary facilities, installation of Heras or other fencing, installation of temporary construction compounds, and removal of existing structures and vegetation. Site preparation does not include ground works which are defined as excavation, remediation, grading and other activities related to the modification of the ground surface or subsurface.”

47. Thus, the developer could make a start by doing “enabling works” before obtaining approval for “Reserved Matters”, i.e. for “details of appearance, landscaping, layout and scale” of a phase or sub-phase of the development. It could remove existing structures and vegetation and instal temporary facilities, fencing and construction compounds. It could do “remediation works”, build access roads and divert utilities; though it could not do “ground works” involving “modification of the ground surface or subsurface”; unless, perhaps, these were “works associated with archaeological surveys”.

48. Condition 6 concerned plans for construction work. In part, it provides, with the explanatory “reason” following:

“6. Prior to the commencement of development (including ground works) of any phase or sub phase of the development hereby approved, a Construction (Environmental) Management Plan (C(E)MP) for that phase or sub phase shall be submitted to and approved in writing by the Local Planning Authority. The C(E)MP shall include a timetable of all works, and details of:

- Hours of works (including times of deliveries);
- Point(s) of access and routes for construction traffic (which shall avoid Chidswell Lane);
- Construction vehicle sizes;
-
- Measures to control and monitor the emission of dust and dirt during construction;
- Site waste management, including details of recycling/disposing of waste resulting from construction works;
- Mitigation of noise and vibration arising from all construction-related activities;
- Artificial lighting used in connection with all construction-related activities and security of the construction site;

- Site manager and resident liaison officer contacts, including details of their remit and responsibilities;
- Engagement with local residents and occupants or their representatives; and
- Engagement with the developers of nearby sites to agree any additional measures required in relation to cumulative impacts (should construction be carried out at nearby sites during the same period).

The development hereby approved shall be carried out strictly in accordance with the C(E)MP so approved throughout the period of construction and no change therefrom shall take place without the prior written consent of the Local Planning Authority.

Reason: In the interests of amenity, to ensure the highway is not obstructed, in the interests of highway safety, to ensure harm to biodiversity is avoided, and to accord with Policies LP21, LP24, LP30 and LP52 of the Kirklees Local Plan.

This pre-commencement condition is necessary to ensure measures to avoid obstruction to the wider highway network, to avoid increased risks to highway safety, and to prevent or minimise amenity and biodiversity impacts are devised and agreed at an appropriate stage of the development process.”

49. Conditions 9 and 10 required the developer before starting any enabling works to obtain the LPA’s approval of a “Tree Protection Plan” (condition 9) and an “Ancient Woodland Protection Plan” (condition 10). Conditions 24, 25 and 26, and the stated reasons for them, then provide as follows:

“24. Each application for the approval of Reserved Matters shall include details of faunal enhancement measures (together with arrangements for their maintenance and management) informed by up-to-date and comprehensive ecological surveys (including surveys of protected species) prepared and submitted by the developer. Following approval in writing by the Local Planning Authority, the measures (which may include the provision of bird and boxes, and provisions relating to hedgehogs and badgers) shall be implemented on a phase-by-phase basis in accordance with the details so approved. No phase or sub phase of the development hereby approved shall be first occupied prior to the implementation of the faunal enhancement measures so approved for that phase or sub phase, unless the approved details include alternative proposals for the timing of installation of the measures (in which case those alternative proposals shall be complied with). The measures shall be maintained and managed in accordance with the approved details for a minimum period of 30 years thereafter.

Reason: To secure mitigation, enhancement and compensation for the ecological effects resulting from loss of habitat and to accord with policy LP30 of the Kirklees Local Plan and chapter 15 of the National Planning Policy Framework.

25. No removal of hedgerows, trees or shrubs shall take place between 1st March and 31st August inclusive, unless authorised in writing by the Local Planning Authority in response to evidence to be submitted in writing to the Local Planning Authority demonstrating that no birds will be harmed and/or that there are appropriate measures in place to protect nesting bird interest on site.

Reason: To prevent significant ecological harm to birds, their eggs, nests and young and to accord with Policy LP30 of the Kirklees Local Plan and chapter 15 of the National Planning Policy Framework.

26. Each application for the approval of Reserved Matters relating to residential use shall include floor plans (providing details of internal layouts of the residential accommodation) and a schedule of accommodation (providing unit size mix information and gross internal floorspace figures in sqm) for all residential units.

Reason: To enable the quality, amenities and housing mix of the residential accommodation to be assessed in accordance with policies LP11 and LP24 of the Kirklees Local Plan and chapter 5 of the National Planning Policy Framework.”

50. In the second document, the “Delegated Decision to Determine Planning Applications”, the LPA’s authorised officer recorded that she authorised approval of the application for the reasons set out in the report to the committee in December 2022 and “the Committee Decision Authorisation annexed below”, which was the December 2022 resolution.

51. There followed an explanatory section called “Officer Notes” which dealt in tabulated form with “Section 106 matters”. The issue numbered 13 was:

“Ecological mitigation and enhancement details (including an Ecological Design Strategy, measures to address impacts on birds including ground-nesting farmland birds), and details of mitigation and delivery measures to be submitted.”

That was said, in the right hand column (dealing with capture in the final list of conditions or in the section 106 agreement) to be secured by condition 24 and in Schedule 5 to the section 106 agreement, “including measures that would achieve what an Ecological Design Strategy would”.

52. The issue of biodiversity and the need for a “[c]ontribution (amount to be confirmed) or off-site measures to achieve biodiversity net gain (only applicable if 10% gain can’t be achieved on-site) was addressed in the right hand column thus: “Section 106 Schedule 5 (with net gain to be achieved not via a contribution”. The need to secure “other off-site measures (including buffers to ancient woodlands, and provision of skylark plots”, was addressed by “Section 106 Schedules 3 and 5”.

Publication of the section 106 agreement

53. Ms Naylor had been checking the LPA’s planning portal each morning to see when any decision and other relevant information would be published. It is common ground that the outline planning permission and the section 106 agreement were both published on the portal on 24 October 2024.

Pre-action correspondence

54. Solicitors for the claimant wrote a pre-action protocol letter to the LPA, dated 1 November 2024. The four proposed grounds of challenge mirror those subsequently pleaded in this judicial review. No point was taken that the LPA had failed to publish a copy of any planning obligation proposed or entered into in connection with the application, in breach of article 40(3)(b) of the 2015 DMP Order.

55. The LPA’s solicitors replied on 15 November 2024. They complained that the claimant was wrongly treating the Heybeck Lane and Leeds Road sites as if they were one and the same. They confidently explained – correctly, as the deputy judge later found – that the first two grounds had “no merit”. The LPA did not accept that there was any merit in the third ground but added that:

“any potential for dispute about the scope of the ecology and biodiversity conditions could easily be remedied by the [developer] entering into a simple supplementary planning obligation to undertake to conduct surveys prior to any work that could potentially adversely affect any features of ecological interest on the site”.

56. Similarly, in relation to the fourth proposed ground of challenge, the LPA’s solicitors asserted that while there was no merit in that ground, any potential dispute about the effect of Schedule 5 to the section 106 agreement could be remedied by a supplementary planning obligation on the developer:

“to carry out, submit and have approved the Biodiversity Assessment prior to any work that could ... adversely [sic] the relevant habitats within the site”.

The present challenge

57. This challenge, apart from the proposed new fifth ground, was then brought on about 25 November 2024. Ms Noémi Byrd of counsel had by then been instructed and settled the four grounds of challenge, in line with the pre-action

protocol letter. Supporting evidence included a statement of the financial resources available to the claimant, this being an Aarhus Convention claim.

58. On 19 and 20 December 2024, the LPA and the developer filed their acknowledgement of service and summary grounds of resistance. These largely reiterated the position of the LPA in its response to the pre-action protocol letter, adding that the developer had entered into a supplementary planning obligation along the lines suggested in the LPA's response.

The first supplementary planning obligation

59. That first supplementary planning obligation is dated 19 December 2024 (**SPO (1)**). It is a further section 106 agreement. Clause 3 contains supplemental covenants of the developer, as follows:

“3.1. The Owner [*developer*] covenants with the Council [*LPA*] that notwithstanding Clause 3.2 of the Original Agreement the Owner shall not begin the Development (within the meaning of Section 56 of the 1990 Act) or otherwise commence clearance of hedgerows, trees and shrubs, or any other features of potential ecological importance within the Site, until:

3.1.1. up to date and comprehensive ecological surveys (including surveys of protected species) as required by condition 24 of the Planning Permission have been carried out and submitted to the Council; and

3.1.2. details of measures to protect any habitats to be retained within the Site during construction works (including site clearance and enabling works) have been submitted to and approved in writing by the Council; and

3.1.3. the Biodiversity Assessment required by paragraph 2.1 of Schedule 5 of the Original Agreement has been undertaken and submitted to the Council and approved by the Council in writing.

3.2. The Owner covenants with the Council to comply with the measures approved pursuant to paragraph 3.1.2 of this Deed.”

The order granting permission on the third and fourth grounds

60. Such was the state of the papers when the matter came before Ms Ridge who as I have explained, on 12 February 2025 granted partial permission, on the third and fourth grounds only. She did not accept that SPO (1) overcame the difficulties the LPA and the developer faced, commenting at paragraph 21:

“... Condition 1 defines the enabling works for the purposes of this condition as site preparation, remediation works, provision of construction and temporary

access roads, diversion and/or laying of strategic site-wide utilities, and works associated with archaeological surveys. The covenants in the supplemental planning obligation are not to begin development or otherwise commence clearance of hedgerows, trees and shrubs, or any other features of potential ecological importance within the Site until the updating ecological surveys and other measures have been completed. The covenant does not promise that the Owner will not commence the enabling works carved out in condition 1 prior to the submission of matters set out in clause 3. For these reasons ground 3 is arguable.”

61. In relation to the fourth ground, Ms Ridge found it arguable that the LPA had taken into account an inaccurate BNG assessment or issued a decision notice without legally adequate provision to secure BNG; adding, however, at paragraph 23:

“I am not convinced that the BNG figures were inaccurate. The officer’s statement that an updating assessment would be required was effectively an update to the baseline assessment. However, for similar reasons to those set out under ground 3, it is arguable that the BNG requirements were not properly secured by condition or otherwise and I am not convinced that the supplementary planning agreement saves the Defendant.”

The second supplementary planning obligation

62. The LPA and the developer responded to those observations by entering into a second supplementary planning obligation on 27 February 2025 (SPO (2)) and relying on it in their detailed grounds of resistance. Again, it is itself a further section 106 agreement. Clause 3 of SPO (2) provides as follows:

“3.1 The Owner [*developer*] and the Council [*LPA*] agree that the first paragraph of clause 3.1 of the Supplemental Deed [*SPO (1)*] shall be deleted and replaced with the following paragraph:

‘The Owner covenants with the Council that notwithstanding Clause 3.2 of the Original Agreement the Owner shall not begin the Development (within the meaning of Section 56 of the 1990 Act) or otherwise undertake any works associated with the Development including the works identified as "enabling works" in Condition 1 of the Planning Permission or otherwise commence clearance of hedgerows, trees and shrubs, or any other features of potential ecological importance within the Site, until:’

3.2. The Owner and the Council agree that a new Clause 3.3 shall be inserted into the Supplemental Deed as follows:

‘3.3 For the avoidance of any doubt the Owner and the Council agree that the reference to "the pre-development biodiversity value" in the definition of "Biodiversity Assessment" in paragraph 1.1 of Schedule 5 of the Original Agreement is and shall be interpreted as a reference to the biodiversity value of the Site prior to the earlier of i) the beginning of the Development (within the

meaning of Section 56 of the 1990 Act), ii) the undertaking of any works associated with the Development including the works identified as "enabling works" in Condition 1 of the Planning Permission, and, iii) the commencement of the clearance of hedgerows, trees and shrubs, or any other features of potential ecological importance within the Site."

The combined provisions of SPO (1) and SPO (2)

63. From 27 February 2025 onwards, therefore, the combined effect of SPO (1) and SPO (2) is to provide as follows:

“3.1 The Owner covenants with the Council that notwithstanding Clause 3.2 of the Original Agreement the Owner shall not begin the Development (within the meaning of Section 56 of the 1990 Act) or otherwise undertake any works associated with the Development including the works identified as ‘enabling works’ in Condition 1 of the Planning Permission or otherwise commence clearance of hedgerows, trees and shrubs, or any other features of potential ecological importance within the Site, until:

3.1.1 up to date and comprehensive ecological surveys (including surveys of protected species) as required by condition 24 of the Planning Permission have been carried out and submitted to the Council; and

3.1.2 details of measures to protect any habitats to be retained within the Site during construction works (including site clearance and enabling works) have been submitted to and approved in writing by the Council; and

3.1.3 the Biodiversity Assessment required by paragraph 2.1 of Schedule 5 of the Original Agreement has been undertaken and submitted to the Council and approved by the Council in writing.

3.2 The Owner covenants with the Council to comply with the measures approved pursuant to paragraph 3.1.2 of this Deed.

3.3 For the avoidance of any doubt the Owner and the Council agree that the reference to ‘the pre-development biodiversity value’ in the definition of ‘Biodiversity Assessment’ in paragraph 1.1 of Schedule 5 of the Original Agreement is and shall be interpreted as a reference to the biodiversity value of the Site prior to the earlier of i) the beginning of the Development (within the meaning of Section 56 of the 1990 Act), ii) the undertaking of any works associated with the Development including the works identified as ‘enabling works’ in Condition 1 of the Planning Permission, and, iii) the commencement of the clearance of hedgerows, trees and shrubs, or any other features of potential ecological importance within the Site.”

The Greenfields case in the Court of Appeal

64. On 16 April 2025, the Court of Appeal gave its judgment reversing the decision of HHJ Jarman KC in *R (Greenfields (IOW) Ltd. v. Isle of Wight Council*: see [2025] EWCA Civ 488. Lewis LJ gave the leading judgment (Singh LJ concurring), allowing the appeal on the first ground, namely that “the judge was

wrong to refuse permission on the ground that the grant of planning permission was unlawful because of the failure to publish the section 106 agreement” (see at [6(1)]).

65. Lewis LJ dealt with this ground at [53] ff. At [58] he said:

“The purpose of article 40(3)(b) of the Order appears from its wording and statutory context. Certain documents must be placed on the planning register in the period before an application for planning permission is finally disposed of. They include a copy of a planning obligation (or a highways agreement) which it is proposed to enter into or which has been entered into. The purpose of publication is to enable members of the public to know the terms of a proposed or agreed planning obligation, and to enable them to comment on the proposed or agreed planning obligation if they choose to do so. The article envisages that members of the public may comment on the subject matter of the planning obligation. Publication of the section 106 agreement is not intended to provide an opportunity to make comments on wider issues to do with the desirability or otherwise of the grant of planning permission. Those matters will have been dealt with by the planning committee which resolved to grant the planning permission.”

66. And at [63], considering the question whether the admitted failure to comply with article 40(3)(b) meant that the relevant subsequent decision was invalid, he held:

“This is not a case where the intention underlying article 40(3) of the Order was that any failure to comply would result in the invalidity of a decision taken following such a failure. A breach of article 40(3) could occur in a wide range of factual circumstances, from situations where the content of a proposed section 106 agreement was not known to situations where, even though the agreement was not placed on the planning register, the content may in fact be in the public domain. The impact of the failure on the ability of members of the public to comment on the subject matter of a proposed section 106 agreement will, likewise, vary depending on the facts of a particular case. In those circumstances, I do not consider that the intention, or the purpose, underlying article 40(3) requires that any failure to comply renders a subsequent decision invalid. It is necessary to evaluate the consequences of non-compliance on the facts of the case.”

67. In *Greenfields*, the omission to publish did result in invalidity of the subsequent decision to grant planning permission. The consequence of non-compliance was (see at [66]) “to deprive the appellant of the opportunity to comment upon the contribution”, i.e. the financial contribution of the developer which was not known until after the grant of planning permission and which fell short of what was required to carry out relevant highway works. It was obvious that the appellant “might well have wanted to comment on the amount of the financial contribution”.

68. The Court of Appeal rejected the proposition that it was highly likely that the outcome would not have been substantially different if the section 106 agreement had been published, as it should have been. It was not possible to predict what the outcome would have been. Lewis LJ was therefore provisionally of the view (subject to hearing further argument on remedy) that the court should quash the unlawfully issued planning permission.

The application to add a fifth ground of challenge

69. Encouraged by the Court of Appeal's decision, on 28 April 2025 the claimant in the present case made an avowedly out of time application to add the proposed fifth ground of challenge: failure to publish the section 106 agreement in accordance with Article 40(3)(b) of the 2015 DMP Order, rendering the grant of planning permission invalid. The claimant argued in the written application that the facts in *Greenfields* and the Court of Appeal's reasoning and decision supported the same outcome in this case.
70. The claimant relied on Ms Naylor's June 2023 request, denied by the LPA, for "all outstanding agreements being drafted or discussed prior to the decision date ...", including the section 106 agreement and "any other details which need to be agreed prior to determination. Ms Naylor had said in her email that "these documents should already be published on the Planning Portal".
71. The claimant in its application complained that neither it nor the wider public had any opportunity to comment on the agreement prior to the issue of the decision notice. The gist of the argument on the fifth ground was that the claimant and others could have commented on the Biodiversity Assessment and the concern that the biodiversity baseline could be artificially lowered; the same arguments as made in this judicial review but in a timely manner on a merits basis, not a judicial review basis after the event.
72. The claimant contends that it could have drawn the attention of the LPA's attention to the defects in the section 106 agreement which the LPA and the developer have since sought to remedy after the issue of proceedings, by means of SPO (1) and SPO (2). Had the claimant or others been able to comment on the section 106 agreement as it stood prior to those amending SPOs, the

claimant could have commented in the appropriate forum without recourse to judicial review. There had been no substantial compliance with article 40(3)(b) and the outcome could well have been substantially different.

73. The developer filed a preliminary response on 14 May 2025 objecting to the new fifth ground being allowed to proceed: it was well out of time, without any adequate reasons being advanced; the Court of Appeal’s decision in *Greenfields* had not changed the law; it was a decision on its facts. The new ground had not arisen out of any disclosure or pleadings. The time estimate would be longer and the hearing date imperilled (it has in the event been kept). The LPA supported the developer’s position in a letter of 19 May 2025.

The Issues, Reasoning and Conclusions

Applicable law, legal principles and policy

74. The relevant law set out in the parties’ skeleton arguments is not controversial. By section 70(2) of the Town and Country Planning Act 1990 (**the 1990 Act**) and section 38(6) of the Planning and Compulsory Purchase Act 2004 (**the 2004 Act**) a decision on planning permission of this kind must be made having regard to the Local Plan and other mandatory material considerations including the National Planning Policy Framework (**NPPF**); which, at the relevant time and now, included paragraph 186 (now 193):

“a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused; ...”

75. Policy LP30 of the Local Plan headed “Biodiversity and geodiversity” includes provision that development proposals will be required to:

“(i) result in no significant harm or loss to biodiversity in Kirklees through avoidance, adequate mitigation or, as a last resort, compensatory measures secured through the establishment of a legally binding agreement;

(ii) minimise impact on biodiversity and provide net biodiversity gains through good design by incorporating biodiversity enhancements and habitat creation where opportunities exist;

(iii) safeguard and enhance the function and connectivity of the Kirklees Wildlife Habitat Network at a local and wider landscape-scale unless the loss of the site

and its functional role within the network can be fully maintained or compensated for in the long term;

(iv) establish additional ecological links to the Kirklees Wildlife Habitat Network where opportunities exist; and

(iv) incorporate biodiversity enhancement measures to reflect the priority habitats and species identified for the relevant Kirklees Biodiversity Opportunity Zone.”

76. The “Policy justification” supplementing that text, not forming part of Policy LP30 but relevant to its interpretation, includes at paragraph 13.19:

“All development in Kirklees, as set out in national policy and the policies described in this document, will be expected to not result in significant loss or harm to biodiversity through avoidance, mitigation and compensatory measures and seek opportunities to enhance biodiversity value and ecological links. ... In order to safeguard and enhance the function and connectivity of the Kirklees Wildlife Habitat Network, the council will also seek to ensure that development proposals do not result in the fragmentation of the network and provide improved ecological links, particularly to the Kirklees Wildlife Habitat Network, where opportunities exist.”

77. Section 72(1) of the 1990 Act provides for conditions to be imposed on a planning permission:

“(a) for regulating the development or use of any land under the control of the applicant (whether or not it is land in respect of which the application was made) or requiring the carrying out of works on any such land, so far as appears to the local planning authority to be expedient for the purposes of or in connection with the development authorised by the permission;”

78. Clear and precise reasons for each condition imposed must be given in the decision notice where permission is given for planning permission or approval of reserved matters: article 35(1)(a) of the 2015 DMP Order.

79. The Planning Court must not indulge in excessive legalism. Reports are written for councillors with local knowledge and must be read without undue rigour. The question is whether officers materially misled members on a relevant matter that is more than minor or insignificant and the error has gone uncorrected before the decision is made. Lack of advice on a material issue may be an error of law: *R. (Mansell) v. Tonbridge and Malling Borough Council* [2019] PTSR 1452 per Lindblom LJ at [41], [42(2)] and [42(3)].

80. Decisions on planning permission should not be subjected to “hypercritical scrutiny” or “laboriously dissected in an effort to find fault”: per Lindblom LJ

in *St Modwen Developments Ltd v. Secretary of State for Communities and Local Government* [2017] EWCA Civ 1643 at [7]. The requirement to treat advice with benevolence applies with even greater force to such advice given orally at a committee meeting: *Lisle-Mainwaring v. Royal Borough of Kensington and Chelsea* [2024] EWHC 440 (Admin) per Neil Cameron KC (sitting as a deputy High Court judge) at [27].

81. When assessing an officer's report, the court should "focus on the substance" of the report to see if it has sufficiently drawn councillors' attention to relevant matters "rather than to insist upon an elaborate citation of underlying background materials": *Maxwell v. Wiltshire DC* [2011] EWHC 1840 (Admin) at [43] per Sales J, as he then was.
82. As for interpretation of planning conditions, Lord Hodge DPSC observed in *DB Symmetry Ltd v. Swindon BC* [2023] 1 WLR 198, SC, at [66]:

"... [t]here are no special rules for the interpretation of planning conditions. They are to be interpreted in a manner similar to the interpretation of other public documents. The court asks itself what a reasonable reader would understand the words to mean when reading the condition in the context of the other conditions and of the consent as a whole. This is an objective exercise in which the court will have regard to the natural and ordinary meaning of the relevant words, the overall purpose of the consent, any other conditions which cast light on the purpose of the relevant words, and common sense. . . . As a planning permission is a document created within the legal framework of planning law, the reasonable reader is to be treated as being equipped with some knowledge of planning law and practice . . ."
83. While people may reasonably differ about what amounts to common sense, references to common sense such as those of Lord Hodge DPSC in *DB Symmetry Ltd* "are really pointing to the planning purpose of the permission or condition" per Lieven J in *UBB Waste Essex Ltd v. Essex County Council* [2019] EWHC 1924 (Admin), at [53].
84. A planning obligation can put right a defect in conditions originally imposed; see the *obiter* observations of Lindblom J, as he then was, in *R. (TWS) v. Manchester City Council* [2013] EWHC 55 (Admin) at [86]; and of HHJ Jarman KC in *R. (Whiteside) v. Croydon LBC* [2022] EWHC 3318 (Admin) at [24]-[26].

85. The courts will not determine academic or hypothetical disputes, absent exceptional circumstances (*R. v. Secretary of State for the Home Department ex p. Salem* [1999] 1 AC 450, HL, per Lord Slynn at 457A-B, and *R. (Zoolife International Ltd) v. Secretary of State for Environment, Food and Rural Affairs* [2007] EWHC 2995 per Silber J at [36]).

Third ground: taking future ecological surveys into account without sight of the relevant condition; or that the ecology conditions which were imposed were ineffective

86. The two existing grounds (the third and fourth) and the proposed new fifth ground are interlinked. A high level summary of the claimant's case overall is stated thus in its skeleton argument:

“the [committee], even if not actively or deliberately misled, were given material advice in the [officer's report] and orally which transpired to be incomplete or inaccurate to a significant degree when the decision notice was issued and the section 106 agreement published. That error of law is compounded by the Defendant's failure to publish the section 106 agreement in time for public comment, prior to issuing the decision (additional Ground 5).

... paragraph 10.69 of the [officer's report] ... states that the ‘council is able to make an informed decision’ (i.e. without deferral for updated ecological reports or BNG assessment) because ‘Further surveys would be required at Reserved Matters stage [...] the applicant has proposed a policy-compliant biodiversity net gain [...] Conditions and provisions (secured via a Section 106 agreement) can be applied to mitigate the ecological impacts of the proposed development’. ... That statement should be read as advice to members that conditions will be applied, and an agreement will be finalised, which mitigates ecological impacts as far as possible and achieves at least 10% biodiversity net gain. For the reasons set out in the Grounds 3 and 4, this did not happen.

.... The consequences of the [committee]'s reliance on officer advice is that outline planning permission was issued without the effective ecological conditions and ‘policy compliant’ biodiversity net gain provision which the SPC took into account as material when resolving to grant it. Due to the timing of publication of the section 106 agreement, and the supplemental deeds, the SPC were deprived of expert comment on the agreement's implications for the ecological protection of the site.”

87. In the third ground, the claimant says the committee was told the appropriate time for further ecological surveys was at reserved matters stage; but was not told that significant works would be “carved out” of reserved matters with significant preceding works, a material consideration the committee could not take into account. The exclusion in condition 1 of “enabling works” from the

definition of reserved matters permitted ecologically damaging works before any further ecological survey evidence would be obtained.

88. The deputy judge had rightly agreed and had noted that SPO (1) does not cure the defect because the developer could still “commence the enabling works ... prior to the submission of reserved matters set out in clause 3”. The claimant accepts that SPO (1) and (2) together do prohibit “enabling works” until up to date ecological surveys, details of protection for habitats to be retained during construction works, and the Biodiversity Assessment, have been carried out; but says this does not meet the point that “the required output from the surveys does not fulfil the stated purpose of Conditions 6 (CEMP) and 24.”
89. Conditions 6 and 24, the claimant submits, do not mitigate the ecological harm from the development as far as possible. Those conditions do not require avoidance or mitigation measures to be informed by the updated ecological surveys now required by SPO (1) and (2) to be done before enabling works are started. This issue, says the claimant, is properly pleaded in the grounds (paragraphs 72-82, predating the permission decision) and is within the scope of the unrestricted permission to advance the third ground.
90. Further, says the claimant, no measures are required to protect habitats outside the site, such as the adjacent ancient woodland at Dum Wood; nor are any measures required to protect species despite their acknowledged presence on the site. Any ecological surveys will therefore be largely “performative”, the claimant says; they will not feed into avoidance, mitigation or compensation measures, besides “faunal enhancement measures”.
91. That means the requirements of conditions 6 and 24 will fall short of the advice to members that ecological impacts would be mitigated by condition, as required under Policy LP30 and paragraph 186(a) of the NPPF. If the full proposed conditions and draft section 106 agreement had been available to the public and the committee before its resolution, it is unlikely, the claimant submits, that the committee would have resolved to grant permission.
92. For the LPA, Mr Martin Carter submitted that the claimant’s points went beyond its pleaded case and beyond what the deputy judge had permitted to proceed.

For example, the advanced age of the survey evidence before the committee was the territory of the second ground for which permission had been refused. Further, the grant of permission on the third and fourth grounds should be viewed as restricted to the points raised under those grounds.

93. The LPA accepted that condition 1 allows enabling works, as defined, to be done before reserved matters are determined; and that the definition of enabling works included “site preparation”, as defined; and that condition 24 does not, on its face, state when the relevant surveys must be carried out and approved. But, Mr Carter submitted, it would be “contrary to common sense” to interpret it so that the surveys could take place too late, after ecological damage had been done.
94. Conditions 1 and 24 read together meant that adverse ecological impacts could not occur before the relevant surveys were complete. It would be an “improper ruse or device if their effect was to adversely affect ecological interests”, Mr Carter submitted. Alternatively, any defect was cured by SPO (1) or, in the further alternative, by SPO (1) and (2), read together so that enabling works could not start until up to date and comprehensive ecological surveys had been done and approved in compliance with condition 24.
95. As for condition 6 (providing for the Construction (Environmental) Management Plan (CEMP), said Mr Carter, it adds nothing to the claimant’s case. If, which the LPA does not accept, reliance on it is permissible under the permission granted for the third ground, condition 6 does fulfil its stated purpose. Condition 6 does not seek to identify ecological mitigation or compensation measures. It requires specified topics to be addressed in the CEMP to avoid ecological harm among other kinds of harm.
96. Condition 6 concerning the CEMP thus specifies methods to be used, not outcomes to be achieved. Further, condition 6 does not include any “carve out” for “enabling works”; the CEMP must be approved prior to the commencement of development. If the CEMP were approved after provision of the relevant up to date ecological survey evidence, no issue under condition 6 could arise. If

those up to date surveys had not yet been provided, the LPA could refuse to approve the developer's CEMP until they were provided.

97. For the developer, Mr Alexander Booth KC submitted that the third ground lacked merit but was in any case academic as it was superseded by SPO (1) and SPO (2) and any defect (none being accepted) is now cured, if not by SPO (1), then by SPO (1) and (2) read together. The developer's submissions largely chimed with those of the LPA and need not all be repeated.
98. Further, disagreeing respectfully with the deputy judge's analysis, Mr Booth submitted that the section 106 agreement as supplemented by SPO (1), i.e. as it stood at permission stage, required the developer not to carry out enabling works, including site preparation work, in advance of relevant surveys and LPA approval of appropriate measures, if such work involves "clearance of any ... features of potential ecological importance" (SPO (1), clause 3.1).
99. That is sufficient to allay any concerns that enabling works could be carried out prematurely. Even if that was wrong, or to avoid any forensic doubt on the point, SPO (2) has put the issue beyond doubt, rendering the third ground of challenge wholly academic, Mr Booth submitted. There are no exceptional circumstances that would impel the court to determine the academic question.
100. While the claimant says that "features of potential ecological importance" is not a sufficiently clear criterion for protecting plants and weeds supporting insect and bird life, that is not pleaded and is not open to the claimant; and, even if it were, the high threshold of irrationality would have to be reached to impugn the use of that criterion and cannot arguably be surmounted. The current agricultural use of the site already permits alternations that could affect insect and bird life; the site cannot be "ecologically frozen".
101. As I have noted above, the claimant's two grounds and one potential ground are interlinked. In my judgment they are best considered and assessed together and I will therefore return to this ground when assessing the parties' submissions overall. I turn to the fourth ground of challenge next.

Fourth ground: taking into account an inaccurate Biodiversity Net Gain (BNG) assessment and/or issuing a decision notice without legally adequate provision to secure BNG

102. There was some discussion about the scope of the permission granted by the learned deputy judge in respect of the fourth ground. She was not convinced that the BNG figures presented to the committee were inaccurate. Nonetheless she granted permission to proceed on the fourth ground, without any limit. It follows that the permission is to make the case pleaded in the statement of facts and grounds (SFG), which is at paragraphs 88 to 100 of the SFG.
103. The gist of the case in those paragraphs is as follows. The officer's report (at 10.66) stated that the Heybeck Lane site BNG calculation by the developer using the Biodiversity Metric 3.1 "confirms the proposed development would achieve the following net gains (post-intervention)": 10.03 per cent for habitat units and 10.61 per cent for hedgerow units. However, officers conceded orally that an updated BNG assessment would be needed.
104. Despite that concession, BNG was not the subject of a condition. It was addressed in Schedule 5 to the section 106 agreement which would proceed from "the pre-development biodiversity value of the site". However, the "pre-development" value could be affected adversely by "enabling works" which could degrade the biodiversity value and thus cause it to proceed from a lower baseline than the baseline at the time the BNG figures in the officer's report were notified to the committee in December 2022.
105. The claimant's concern is that the committee was not told that the developer could degrade the biodiversity value of the site by enabling works and then measure the required 10 per cent gain in a post-enabling works Biodiversity Assessment measuring the gain from a lower baseline. The claimant says the committee was thereby misled or erred in law by taking into account as a material consideration the prospect of achieving the stated BNG.
106. It is no answer, the claimant pleads at SFG paragraph 88, for the LPA to point to paragraph 5(a) of Schedule 7A to the 1990 Act, requiring pre-development biodiversity to be measured as at the date of the planning application and not

later. While members may be expected to have some knowledge of planning law and practice, the existence of that provision cannot by itself entail that the committee members were confident the baseline would not be lowered in the updated biodiversity assessment or were aware of the issue.

107. In Ms Byrd's skeleton argument, she repeated the simple point that members were not told the developer could do significant works before the updated Biodiversity Assessment was carried out. The claimant does however accept that the definition of the "pre-development biodiversity value of the site" is now clearer in the new clause 3.3 introduced in SPO (2).
108. But, Ms Byrd submits, the developer could arguably still carry out "ground works" before complying with the covenants at clauses 3.1.1 to 3.3.3, i.e. before the updated Biodiversity Assessment. Ground works are not clearly included in "any works associated with the Development" in replacement clause 3.1. "[G]round works" are referred to in condition 6 and may not be done before approval of the CEMP. They are excluded from the definition of "[s]ite preparation" in condition 1. That excluded works are:
- "excavation, remediation, grading and other activities related to the modification of the ground surface or subsurface".
109. The claimant then says that even if the timing issue is resolved by SPO (1) and (2), three points remain under the fourth ground. First, ground cover on the site that is not a "feature of potential ecological importance" can be cleared; for instance, grassland and field margins. Second, further ecological surveys may impact on the achievement of the BNG of 10 per cent. The prediction of a 10 per cent BNG was not accurate. Third, the committee was told that the BNG would be achieved on-site or primarily on-site; while the section 106 agreement did not distinguish between on- and off-site interventions.
110. The LPA and developer say the second and third points are unpleaded and not open to the claimant and in any event devoid of merit. As to the first point, Mr Carter points out that Schedule 5 to the section 106 agreement defines the "Biodiversity Assessment" as one including Biodiversity Metric calculations and which sets out "details of the pre-development biodiversity value of the

site”; and that “Biodiversity Metric” is in turn defined as: “the DEFRA biodiversity metric as applicable at the time of the Biodiversity Assessment”.

111. Thus, says the LPA, the assessment must comply with the latest DEFRA metric, which itself must comply with the requirements for BNG in Schedule 7A to the 1990 Act. Paragraph 5(1) of Schedule 7A defines the pre-development biodiversity value of the onsite habitat as its biodiversity value as at the “relevant date”; which, (by paragraph 5(2)(a)) is the date of the planning application, here in July 2020. Thus, the baseline for BNG must be true to the latest DEFRA metric, which must require it to be calculated as at July 2020.
112. Further, Mr Carter submits, any relevant “ground works” would be caught by clause 3.1.3 of SPO (1), providing for the biodiversity assessment to be carried out, submitted and approved by the LPA before commencement of development and before clearance of any hedgerows, trees and shrubs or any other features of potential ecological importance within the site. Any ground works that did not affect a feature of potential ecological importance would have no ecological impact and can therefore be disregarded.
113. Furthermore, SPO (2) puts the matter further beyond any doubt because it provides in terms that the pre-development biodiversity value of the site refers to the ecological site at the earliest of three points in time, all of which must necessarily have fallen before the carrying out of any works that could affect the ecological value of the site. There is thus no prospect of the BNG baseline being artificially lowered.
114. The developer’s submissions were to similar effect. In the original section 106 agreement, said Mr Booth KC, the pre-development biodiversity value (“development” not being capitalised and not caught by definitions including that word) can only mean “the value as assessed prior to any works connected with the scheme whatsoever, be they clearance works such as the ‘enabling works’, or any other works.” The baseline must therefore be “the ... state of the site, prior to any works connected with the scheme.”
115. The developer’s submissions then mainly echoed those of the LPA. The fourth ground was answered by SPO (1) and the deputy judge was wrong to grant

permission in respect of it. Alternatively, the matter was put beyond any doubt by SPO (2) and the fourth ground should be dismissed. The point about “ground works” was without merit. The additional matters relied on went beyond the pleaded case and did not benefit from permission. The accuracy of the BNG forecasts in the officer’s report was a matter of planning judgment which could not be impugned save on *Wednesbury* grounds.

Fifth ground (subject to permission to amend): failing to publish the section 106 agreement in accordance with article 40(3)(b) of the 2015 DMP Order, rendering the grant of planning permission invalid

116. In her skeleton argument, Ms Byrd adopted the points made in her application. She submitted that it was self-evident that the LPA had failed to comply with its obligation under article 40(3)(b) of the 2015 DMB Order to publish the draft and final section 106 agreement. Had it complied with that obligation, it is likely that expert comment on the timing of ecological surveys would have influenced the committee and it is “unlikely that the decision notice and agreement would have been issued in the same terms”.
117. While the Court of Appeal’s decision in *Greenfields* may not technically have changed the law, comment in the White Book (2025, vol. 1, 54.15.1) states that a proposition of law not previously open could become “maintainable” where, for example, the Court of Appeal had reversed a first instance decision. Here, permission to proceed on the issue would probably have been refused when the claim was brought, but the Court of Appeal had since clarified that breach of article 40(3)(b) may lead to the quashing of a planning permission.
118. In oral argument, Ms Byrd added that developments since the claim was brought and permission was granted justified reliance on the new fifth ground, which had not led to any procedural difficulties. The application was made promptly after the decision of the Court of Appeal and the other parties had been able to respond to it; there was no prejudice. If necessary, Ms Byrd said, the claimant sought relief from sanctions. Applying a *Denton* approach to the issue should lead to the application being granted, she submitted.

119. On the substance of the fifth ground, Ms Byrd submitted that there had been no indication at the committee meeting in December 2022 that “enabling works” would be carved out of reserved matters. The defects in the draft and final section 106 agreement leading to SPO (1), the comments of the deputy judge and then SPO (2), were not, as they should have been, put in the public domain before the decision to issue the planning permission.
120. In consequence, objectors like the claimant, the Yorkshire Wildlife Trust and others had no opportunity to comment on the defects in the section 106 agreement, from their perspective of addressing the merits of the planning application. Instead, the claimant was reduced to commenting in court after the event, constrained by the rigorous higher judicial review standard. That was no substitute for the public debate that would have followed compliance with the obligation to publish the draft and final section 106 agreements.
121. The consequence of the breach should, Mr Byrd submitted, be invalidity of the planning permission, as it was in the *Greenfields* case, where the facts were similar. If the consequence of debate following publication would have been entering into supplemental deeds such as SPO (1) and (2) or something like them, the committee would have been asked to approve the supplemental obligations, following the reasoning in *R (Kides) v. South Cambridgeshire DC* [2003] 1 P&CR 19, CA; and may well not have approved them.
122. For the LPA, Mr Carter submitted that the claimant had unjustifiably failed to plead the fifth ground when the claim was made; and that it is, in any case, unarguable and devoid of merit. While the LPA had breached its obligation to publish under article 40(3)(b) of the 2015 DMP Order, the extent of its obligation had been clear at least since Ouseley J’s decision in *Midcounties Co-Operative Ltd v. Wyre Forest DC* [2009] EWHC 964 (Admin) (dealing with the predecessor provision): see at [83]-[116].
123. Mr Carter submitted that the Court of Appeal’s decision in *Greenfields* had not altered the law; it established no new principle. The practice direction PD 54A, at paragraph 12.2, requires a claimant seeking to add a new ground to do so promptly and to explain any delay in making the application. There was no

justification for adding a new ground so late in the proceedings, he said. Ms Naylor of the claimant had known since March 2024 that the LPA did not intend to publish the section 106 agreement in advance of the decision.

124. Ms Naylor did not object or comment at the time. Nor did this ground feature in the pre-action protocol correspondence. The application to rely on the fifth ground had not been made promptly. Further, the LPA submitted that permission to amend should be refused because the fifth ground was devoid of arguable merit. While breach of the obligation to publish is accepted, the breach here adds nothing to the claimant's case, said Mr Carter.
125. That is because, he explained, the only point made is that the claimant did not see what approach was being taken to biodiversity issues in the section 106 agreement and the risk of premature works affecting ecological interests prior to any requirement for further surveys. That is the subject of the third and fourth grounds already; the failure to publish point does not add anything of substance to what is already contended in the two existing grounds. The fifth ground stands or falls with the other two grounds.
126. Furthermore, had the section 106 agreement been published in draft and the claimant had commented on it, that would have made no difference to the LPA's decision given that, Mr Carter submitted, the approach it adopted in the draft section 106 agreement was adequate and lawful. Permission should be refused under section 31(3C) and (3D) of the Senior Courts Act 1981 (**SCA 1981**) or, if permission is granted, the claim dismissed under section 31(2A).
127. The developer made submissions to the same effect on the Court of Appeal's decision in *Greenfields*. It had not changed the law; and, Mr Booth KC submitted, "there is no good reason why the court should entertain a ground of challenge brought significantly late and which could and should have been brought earlier". The claimant had been legally advised during the process and had not complained in March 2024 when Mr Grayson wrote that the section 106 agreement would be published at the same time as the decision.
128. The amendment should be treated in the same way as a judicial review brought out of time. The test of arguability also applies (*R. (Wingfield) v. Canterbury*

CC [2019] EWHC 1975, per Lang J at [87]-[88). The factual position in *Greenfields* is distinguishable because in that case, the section 106 agreement secured a highways contribution about £350,000 lower than suggested in the officer's report.

129. Here, Mr Booth submitted, there was no similar prejudice to the claimant. Like other objectors, it had the opportunity and took the opportunity to make very detailed representations to the LPA ahead of the committee meeting. The claimant's points about biodiversity lacked merit at the time those representations were made and still do. Even if the section 106 agreement was defective, the defects have been remedied by SPO (1) and (2).
130. Mr Booth, like the LPA, also relied on the "highly likely" test in section 31(3C) and (3D) or, if permission is granted, (2A) of the SCA 1981. The outcome would not have been substantially different for the claimant if the obligation to publish draft and final versions of the section 106 agreement had been complied with, he submitted.

Reasoning and Conclusions

131. First, I do not accept that the conditions must, as a matter of "common sense", be interpreted to mean that enabling works cannot be carried out until after the required updated ecological survey evidence has been obtained and approved. The wording of conditions 1 and 24 provides that adverse ecological impacts could occur before the relevant surveys were complete. The submission was that it would be an "improper ruse or device" (in Mr Carter's words) to carry out ecologically damaging enabling works prematurely.
132. That submission is not in accordance with the wording of conditions 1 and 24 and the definition of site preparation. The developer carrying out enabling works would be able to point to the words of the conditions to rebut any suggestion that doing those works was premature and was an improper ruse or device. I agree with Ms Ridge, the deputy High Court judge who granted permission, that condition 1 "permits extensive site preparation works prior to submission of reserved matters approval" (paragraph 20 of her order).

133. I also agree with the deputy judge that the difficulty is not removed by the words of SPO (1), read with the section 106 agreement. I do not accept the submission of the developer that the site was adequately protected against adverse ecological impacts by the requirement that enabling works, including site preparation work, must not be done in advance of relevant surveys and LPA approval of appropriate measures, if such work involves “clearance of ... any ... features of potential ecological importance” (SPO (1), clause 3.1).
134. That is not an answer to the deputy judge’s point that “the covenant does not promise that the [developer] will not commence the enabling works carved out in condition 1 prior to the submission of matters set out in clause 3” (paragraph 21 of her order). Enabling works preceding the start of the development could damage the ecology of the site by doing work that is alleged not to involve “features of potential ecological importance within the [s]ite”, not being hedgerows, trees and shrubs, the only examples recited of features that definitely qualify as having “potential ecological importance”.
135. However, I do agree with the LPA that SPO (2) adequately addresses the issue of timing. Condition 6 is, as the LPA submits, a requirement for an approved method statement, not a document stating required ecological outcomes. I reject the claimant’s proposition in argument that the required output from the ecological surveys does not fulfil the stated purpose of conditions 6 (the CEMP) and 24. That goes beyond the claimant’s pleaded third ground in SFG, paragraphs 72-82, for which permission has been granted. The attack there was on the timing and the pleading has not been amended to attack the rationality of the putative CEMP requirements.
136. For those reasons, I would not have upheld the third ground if it had stood alone. I would have decided, in respectful agreement with the deputy judge’s reasoning, that the decision to issue the planning permission was unlawful in October 2024 when it was made, but that the defect had been cured by the combined effect of SPO (1) and (2) bringing the developer’s obligations into line with the advice the committee was given by officers in December 2022.

137. I therefore would not have granted any substantive relief on the third ground, had it stood alone. The third ground was well-founded but is now academic. I come next to the fourth ground. I see some force in the claimant’s point that the “pre-development biodiversity value of the site” could be distorted by the carrying out of enabling works before the start of the development proper.
138. But the LPA says that cannot happen because it would not be lawful: it would conflict with the mandatory regime enacted in Schedule 7A to the 1990 Act which requires the baseline to be ascertained as at July 2020, when the application was made and the site remained pristine and untouched. There is force also in that point.
139. If the mandatory baseline is the baseline calculated using the relevant DEFRA metric as at July 2020, there is no difficulty arising from the claimant’s further point that the developer could carry out “ground works” – i.e. “excavation, remediation, grading and other activities related to the modification of the ground surface or subsurface” – before the updated Biodiversity Assessment which is required to confirm the 10 per cent BNG. The impact on the BNG of any such ground works would be measured from the July 2020 baseline.
140. The same reasoning applies to any other ecological damage that might be done to the site and which could affect the achievability of the 10 per cent BNG. Thus, the claimant says, ground cover on the site such as grassland and field margins that is not a feature of ecological importance could be cleared. But any damage thereby done would be factored into the measurement of the 10 per cent BNG, provided it is measured from the proper July 2020 baseline.
141. The updated Biodiversity Assessment might, as the claimant suggests, fail to support the achievability of a 10 per cent BNG. Or it could produce a requirement for substantial off-site interventions as well as on-site ones, to achieve the 10 per cent gain. But I share the concerns of the LPA and the developer that these latter points are not embraced within the claimant’s pleaded case on the fourth ground.
142. They would, in any case, be for officers and if necessary the committee to consider once the updated Biodiversity Assessment has been obtained. If the

10 per cent BNG, measured from the July 2020 baseline, were manifestly not achievable, or not without substantial off-site interventions, the LPA might well, at officer level, decline to bestow its approval of the Biodiversity Assessment, or it might decide to refer the BNG issue back to the committee.

143. None of these possibilities persuades me that the way in which the 10 per cent BNG issue was presented to members in December 2022 was misleading, provided that the proper BNG baseline was to be used. In my judgment, absent any contrary indication, the LPA should be treated as intending to comply with its legal obligation not to allow the BNG baseline to become artificially lowered by post-July 2020 enabling works or ground works.
144. I agree with the LPA and the developer that the wording of clause 3.3 of the covenant, as introduced by SPO (2), removes any residual doubt about this. The final clause 3.3 defines “pre-development biodiversity value”, i.e. the BNG baseline, as the earliest of (i) the start of “development” within section 56 of the 1990 Act, or (ii) the undertaking of any works including enabling works, or (iii) the start of clearance of hedgerows, trees, shrubs or other features of potential ecological importance.
145. That is, presumably, intended to allay any concern that the BNG baseline could be artificially lowered in the manner the claimant fears. I agree that the words of clause 3.3 introduced by SPO (2) are a sufficient safeguard against that occurring. It would have been simpler and clearer to define the baseline by reference to the statutory language in Schedule 7A to the 1990 Act, but the wording of clause 3.3 introduced by SPO (2) has the same effect.
146. There is therefore no basis, in my judgment, for granting any relief on the fourth ground of challenge. I also do not think there was any basis for doing so at the time the challenged decision was taken, in October 2024. I do not think the members were given any advice in December 2022 that conflicts with the decision as issued in October 2024. Even if they were, the difficulty is resolved by SPO (2) which clarifies that the BNG baseline will not be set at too low a level.

147. I would therefore not have granted any relief on the fourth ground, if it had stood alone. The third and fourth grounds are, viewed in isolation from the proposed fifth ground, both academic and do not need to be decided. I have had to go into their merits at the time of the decision to some extent, as a necessary precursor to explaining why, ultimately, they are both academic. My decision is, strictly, that both the third and fourth grounds are academic and that there are no special reasons to decide them; and I do not do so.
148. However, there remains the application to advance the new fifth ground, to which I turn next and finally. I have to decide, first, whether to allow this ground to proceed; and second, if I allow it to proceed, whether the claim should succeed on that ground, not having succeeded on either of the two existing grounds taken on their own or with each other.
149. I accept the submission of the LPA and the developer, accepted also by the claimant, that the fifth ground of challenge is brought late, i.e. more than six weeks after the decision challenged. The six week period expired on 3 December 2024. The challenge had by then already been brought, on or about 25 November 2024. The point was not raised in pre-action correspondence.
150. In seeking to rely on the fifth ground, the claimant has followed the correct procedure by making a written application, explaining the basis of the challenge and including its explanation for the lateness. The written application was made in late April 2025. The application caused the LPA to disclose the email exchange in March 2024.
151. Mr Grayson had earlier in his email of 19 June 2023 contradicted the assertion of the claimant’s “understanding these draft documents [including the draft section 106 agreement] should already be published on the planning portal.” Not so, Mr Grayson responded: “No drafts of the agreements are in the public domain (*nor are they required to be* [my italics])”.
152. When the application to add the fifth ground was made, the LPA disclosed the March 2024 correspondence confirming that the decision letter and section 106 agreement “should appear online at the same time”. When Mr Grayson made his witness statement following the application, he did not give any explanation

for his earlier assertion that the draft section 106 agreement was not *required* to be published.

153. The LPA pointed out that the claimant was advised by solicitors at the time. The LPA too has access to lawyers. The hearing date was fixed to take place nearly two months after the application was made, on 24 June 2025. The one day time estimate was maintained and the hearing completed within the day. The LPA and the developer opposed the application on the ground that it was made late without good cause and was in any case not arguable.
154. Mr Carter pointed to PD 54A, at paragraph 12.2, requiring a claimant seeking to add a new ground to do so promptly and to explain any delay in making the application. The claimants have done that. I would add that paragraph 12.4 of PD 54A then provides that “[f]or the purpose of determining an application to rely on additional grounds, rules 17.1 and 17.2 shall apply”.
155. Rule 17.1 is the ordinary rule applying to amendment applications in private law cases, stating at 17.1(2)(b) simply that a party may amend “with the permission of the court”. The criteria for allowing amendments are set out in numerous cases, many of them conveniently grouped in the notes to the White Book, vol. 1, 2025, at 17.3.8, including in particular cases where the amendment is made late, is prejudicial to the other party, could imperil a trial date, and so forth. The considerations are too well known to need repeating.
156. In private law proceedings, the court will not normally allow an amendment unless the point has a real chance of success. Similarly, in public law proceedings such as these, the court would not grant permission to amend if the point were not properly arguable, such that permission to advance it would be refused. The court must also take into account the lateness of the application to amend, including by reference to the unusually short limitation period in judicial review proceedings, even shorter in planning challenges.
157. In my judgment, the claimant should be permitted to rely on the fifth ground of challenge. I reject the submission of the LPA and developer that the point is unarguable. That is a difficult submission given the admission that the LPA failed to comply with its obligation to publish any draft section 106 agreement

at any time prior to the issue of planning permission. It is clear that the court has discretion to allow the amendment out of time.

158. I am not persuaded that I should refuse leave to rely on the new fifth ground under section 31(3C) and (3D) of the SCA 1981. I will explain a little later why I do not consider it highly unlikely the outcome would not have been substantially different for the claimant had the conduct complained of (failing to publish the draft section 106 agreement before issuing the decision under challenge) not occurred.
159. In my judgment, this is a proper case for exercising the discretion in the claimant's favour. First, the point is arguable as I have just said. Next, it is common ground that publication of a draft section 106 agreement at some point was mandatory and not done. I accept that the claimant could and should have challenged that failure earlier than it did; but I bear in mind that Ms Naylor is not a lawyer. Ms Byrd was not instructed until after the decision challenged, though solicitors were, at times, assisting the claimant.
160. Ms Naylor was conducting the correspondence herself. It did not come from solicitors. The claimant's financial position is documented as being such as to justify limiting its costs exposure to the Aarhus Convention cap and, correspondingly, its likely costs recovery to £35,000. Mr Grayson too is not a lawyer and there is no indication that he consulted lawyers. He is, though, an experienced planning officer who should have known of the obligation to publish, if he did not; a point on which the LPA is silent.
161. In my judgment, in all the circumstances here the LPA ought to held potentially accountable for its admitted breach of article 40(3)(b) of the 2015 DMP Order. It is unattractive for a public body such as this one to avoid the consequences of an unexplained flagrant breach on purely procedural grounds, without asserting that it or the developer has suffered any prejudice arising from the lateness of the application to amend; and where the decision at issue affects such a major and controversial development.
162. It is inescapable that there was no prejudice to the LPA or developer. They were able to resist the application articulately. There were only two relevant short

emails of additional evidence. The hearing date was unaffected. The time estimate was unaffected. They were able to address the fifth ground fully and intelligently in their skeleton and oral arguments. They did not suggest they were hampered in doing so by the lateness of the application.

163. Further, the application to amend was made promptly after the Court of Appeal's decision in the *Greenfields* case. The first instance decision of HHJ Jarman KC had dealt with the issue in a cursory way because the judge did not, unlike the Court of Appeal, accept that the failure made any difference to the outcome. The earlier decision of Ouseley J in *Midcounties Co-Operative v Wyre Forest DC* [2009] EWHC 964 (Admin) did not examine the obligation to publish in the same depth as Lewis LJ did in *Greenfields* on appeal.
164. Lewis LJ's approach was more expansive because he addressed the purpose of the provision and made general observations about the fact sensitive consequences of any breach of the obligation. The first instance judges had not done that. While it is true that the Court of Appeal did not say the law was being changed, its decision did develop the law and lend impetus to a factual analysis of the circumstances of a breach of the obligation.
165. Further, I bear in mind that the subject matter of ground 5 is closely related to the factual position arising from the third and fourth grounds. Though neither would independently have succeeded for reasons I have given above, the supervening SPO (1) and (2), particularly (2) lent focus to the absence of prior publication of the draft section 106 agreement which would have exposed to public scrutiny the very defects addressed in SPO (1) and (2).
166. So, while those two supplemental deeds and then the Court of Appeal's decision may not have altered the law in any technical sense, the new fifth ground of challenge acquired sharper edges than it could have had if relied on at the time the claim was brought in November 2024. It is even possible that Ms Byrd is right when she suggests permission for the fifth ground would not have been given if it had been included at the time the claim was made; though I prefer not to speculate about that.

167. Standing back and looking at the matter in the round, I think it comes ill from the LPA and developer to complain of a moving target when they have themselves twice moved the claimant's target. While the fifth ground of challenge could have been made from the outset, so could the section 106 agreement have included the provision in SPO (1) and (2) from the outset.
168. For completeness, if the issue were relief from sanctions, applying a *Denton* approach, I would reach the same conclusions. The default, i.e. the lateness of the fifth ground, is quite minor, the reasons for it have been explained and are respectable, the limitation period is unusually short and the other parties are not prejudiced. The points already made would also lead me to the conclusion that any relief from sanctions needed should be granted.
169. Turning to the merits of the fifth ground, it is not disputed that the breach of article 40(3)(b) occurred. It was significant because a major issue at the time of the committee's resolution in December 2022 was the extent of the gaps in available information about biodiversity issues that would need to be addressed at reserved matters stage. They had not been adequately addressed, in my judgment, at the time the decision under challenge was made; hence the third ground of challenge would have succeeded, were it not for SPO (2).
170. Publication of the draft section 106 agreement would have enabled objectors, including the claimant, to comment intelligently and advocate restoring the matter to the committee for further consideration and public debate about the adequacy of the biodiversity safeguards and the achievability of the 10 per cent BNG. There is, I think, quite a strong likelihood that the issue would have gone back to the committee; cf. the reasoning in the *Kides* case, in the judgment of Jonathan Parker LJ at [125]-[126].
171. If opponents of the scheme had not been denied access to the draft section 106 agreement before the decision became effective, they could have commented on the shortcomings of that draft agreement, with their comments directed at the merits of the proposals. They would not have been constrained by the narrow legal basis for objecting in the course of judicial review proceedings, applying the strict judicial review standard, in court after the event.

172. A draft of the section 106 agreement should have been placed on the planning portal well before 23 October 2024, leaving sufficient time for intelligent comment from interested parties such as the claimant and other objectors. A request from Ms Naylor of the kind made in June 2023 and March 2024 should not have been necessary. The obligation to publish is not conditional on a prior request to do so. Ms Naylor was checking the portal each day.
173. I accept Ms Byrd’s submission that non-publication has caused real prejudice. I am not willing to withhold relief in respect of the failure to publish the draft section 106 agreement, in breach of the statutory obligation to do so. There was a serious want of transparency in the period leading to the decision challenged, while the developer and the LPA were negotiating with each other and shielding the product of their negotiations from the public.
174. I also bear in mind that those sceptical about the environmental aspects of the proposals included not just objectors but three of the seven committee members who voted against the resolution because they thought the committee lacked sufficient information about the gaps to be filled at reserved matters stage. It is likely that those three members, at least, would have wished to reconsider the proposals with the benefit of a draft section 106 agreement; especially one not including the provision later added by SPO (1) and (2).
175. By the same reasoning, I am far from persuaded that if the draft section 106 agreement had been published, it is highly likely (SCA 1981, section 31(2A)) the outcome for the claimant would not have been substantially different. The provision has been considered in many cases; see e.g. Hill J’s useful summary at [161]-[168] in *R. (HPSPC Ltd) v. Secretary of State for Education* [2022] EWHC 3159 (Admin), where earlier cases are reviewed. The “outcome” includes the practical consequences, i.e. what would have actually happened.
176. It is an open question what the outcome would have been. There is, at least, a strong possibility that if the conduct complained of (non-publication) had not occurred the outcome would have been substantially different. The section 106 obligations would probably have been improved, at least, in the way they now

have been. The committee might well have asked for updated biodiversity work to be done before deciding whether to proceed.

177. For those reasons, the application for judicial review succeeds on the fifth ground. The LPA's decision, in admitted breach of article 40(3)(b) of the 2015 DMP Order, not to publish the section 106 agreement until after the decision to grant planning permission, renders the planning permission invalid. I therefore propose, subject to any further observations, to quash the decision to grant planning permission and to award the claimant its costs against the LPA, limited to £35,000, and to make no other order as to costs.

NOTE: The committee report for application 2020/92331 can be viewed online at: https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/filedownload.aspx?application_number=2020/92331&file_reference=964237

LOCATION PLAN



Maps not to scale – for identification purposes only

Electoral wards affected: Batley East

Ward Councillors consulted: Yes

Public or private: Public

RECOMMENDATION:

Subject to the Secretary of State not calling in the application, DELEGATE approval of the application and the issuing of the decision notice to the Head of Planning and Development in order to complete the list of conditions including those contained within this report and to secure a Section 106 agreement to cover the following matters:

- 1) Highway capacity / improvement / other works
 - a) contributions towards junction improvement schemes (applicable should schemes secured by condition prove to be more appropriately delivered via a Section 106 provision).
 - b) contribution towards Shaw Cross junction scheme.
- 2) Sustainable transport
 - a) Bus stop upgrade contribution (applicable if bus stop audit demonstrates the need).
 - b) Framework Travel Plan (and subordinate plans) implementation and monitoring including fees – £15,000 (£3,000 for five years).
- 3) Education
 - a) £300,000 contribution towards interim primary provision.
 - b) Secondary education contribution of £223,957.

4) Open space, including sports and recreation and playspaces – contribution based on Open Space SPD methodology / formulae, taking into account on-site provision (to be confirmed at Reserved Matters stage). Site-wide strategy required to ensure provision across all phases / parcels / Reserved Matters applications is co-ordinated.

5) Affordable housing – 20% provision.

6) Air quality – contribution (amount to be confirmed, and subject to applicant / developer measures which may render contribution unnecessary) up to the estimated damage cost to be spent on air quality improvement projects within the locality.

7) Biodiversity

a) Contribution (amount to be confirmed) or off-site measures to achieve biodiversity net gain (only applicable if 10% can't be achieved on-site);

b) Securing other off-site measures (including buffers to ancient woodlands, and provision of skylark plots).

8) Management – the establishment of a management company for the management and maintenance of any land not within private curtilages or adopted by other parties, and of infrastructure. May include street trees if not adopted.

9) Drainage – management company to manage and maintain surface water drainage until formally adopted by the statutory undertaker. Establishment of drainage working group (with regular meetings) to oversee implementation of a site-wide drainage masterplan.

10) Ancient woodland – management plan (and works, if required) for public access to Dum Wood (outside application site, but within applicant's ownership).

11) Social value – requirement for applicant / developer, future developer partners and occupants of employment floorspace to provide package of training, apprenticeships and other social value measures.

12) Masterplanning – No ransom scenarios to be created at points where new roads meet other development parcels / phases.

All contributions are to be index-linked.

In the circumstances where the Section 106 agreement has not been completed within three months of the date of the Committee's resolution (or of the date the Secretary of State for Levelling Up, Housing and Communities confirms that the application would not be called in) then the Head of Planning and Development shall consider whether permission should be refused on the grounds that the proposals are unacceptable in the absence of the mitigation and benefits that would have been secured; if so, the Head of Planning and Development is authorised to determine the application and impose appropriate reasons for refusal under Delegated Powers.

1.0 INTRODUCTION

1.1 This application is presented to the Strategic Planning Committee as the proposal is for a major residential development of more than 60 dwellings.

1.2 This report relates to an application for outline planning permission (ref: 2020/92350) which accompanies another outline application (ref: 2020/92331) relating to adjacent land. Both applications were submitted by the same applicant, and both relate to allocated site MXS7.

- 1.3 Position statements relating to these proposals were considered by the Strategic Planning Committee on 11/07/2019 at pre-application stage (refs: 2018/20078 and 2018/20077), and on 17/11/2020 and 06/10/2022 at application stage.
- 1.4 This committee report provides comprehensive assessment of all planning issues relevant to this application (referring to commentary in the accompanying committee report for application ref: 2020/92331, where appropriate). It draws together assessment and commentary from the earlier position statements (updated where necessary), and includes responses to queries raised by Members on 06/10/2022. The officer presentation on 08/12/2022 will include further illustrative information.
- 1.5 The council has been informed that the Secretary of State for Levelling Up, Housing and Communities (SoS) has received a request from a third party to call in the current application. Officers have given an undertaking to the SoS not to issue the decision notice should the Strategic Planning Committee resolve to approve the application – this is to give the SoS an opportunity to decide whether or not to call in the application, which he would only do if the Strategic Planning Committee resolved to grant permission. The position regarding the SoS is reflected in the officer recommendation.

2.0 SITE AND SURROUNDINGS

- 2.1 The application site is 7 hectares in size. It lies behind existing residential properties at 1064 to 1110 Leeds Road and 1a to 53 Heybeck Lane. Its northeastern tip comes within 110m of the Kirklees / Leeds borough boundary. To the east is the ancient woodland of Dum Wood. Further to the east are fields in agricultural use. To the south is application site ref: 2020/92331. High-level overhead power lines run east-west to the south.
- 2.2 The application site generally slopes downhill from northwest to southeast. The application site's lowest point is approximately 90m AOD at its southernmost point.
- 2.3 Most of the application site is currently in agricultural (arable) use, and is greenfield. No significant buildings exist within the site's boundaries, other than 39 Heybeck Lane.
- 2.4 The application site has no existing direct vehicular access points off Leeds Road or Heybeck Lane, however it can be accessed via the public rights of way network. Public footpath BAT/49/10 passes through part of the application site. There are also public rights of way to the south, and informal paths through the adjacent woodland.
- 2.5 No part of the application site is within a conservation area, and there are no listed buildings within the site. The nearest designated heritage assets within Kirklees are the Grade II listed toll gates on Grange Road to the west. Within Wakefield borough, the Gawthorpe Water Tower to the south is Grade II listed.
- 2.6 Several Tree Preservation Orders protect trees and groups of trees within and close to the application site.

- 2.7 Parts of the application site are within a Development High Risk Area as defined by the Coal Authority. Most of the site is within the Development Low Risk Area.
- 2.8 The application site includes part of site MXS7, which is allocated for mixed use development (housing and employment) in the Local Plan.
- 2.9 Relevant information regarding the wider context of site MXS7 is provided in the accompanying committee report for application ref: 2020/92331.

3.0 PROPOSALS

- 3.1 The applicant proposes the demolition of an existing dwelling at 39 Heybeck Lane, and a residential development of up to 181 dwellings, engineering and site works, landscaping, drainage and other associated infrastructure.
- 3.2 This is an outline application. Access is the only matter not reserved.
- 3.3 A single vehicular entrance is proposed off Heybeck Lane. Other connections (for pedestrians and cyclists) would be created to the south and east.
- 3.4 The applicant has submitted a parameter plan showing maximum building heights, a 20m wide woodland buffer zone and a sewer easement.
- 3.5 The applicant's indicative plan shows public open spaces, a playspace, treeplanting and soft landscaped areas. An existing public right of way would be retained, and new footpaths, footways and cycle routes would be created throughout the site.
- 3.6 Development proposed under application ref: 2020/92331 is described in the accompanying committee report.

4.0 RELEVANT PLANNING HISTORY

- 4.1 See accompanying committee report for application ref: 2020/92331.

5.0 HISTORY OF NEGOTIATIONS

- 5.1 See accompanying committee report for application ref: 2020/92331 regarding pre-application masterplanning work, Member and officer engagement, and public consultation.
- 5.2 On 22/05/2018 the council issued an Environmental Impact Assessment (EIA) Screening Opinion, stating that the proposed development of the smaller, northern (Heybeck Lane) part of the MXS7 site did not constitute EIA development (ref: 2018/20077).
- 5.3 During the life of the application, the applicant has provided further information, including in relation to:
- Phasing and delivery;
 - Section 106 and viability matters;
 - Highway impacts and mitigation, including in relation to local junctions;
 - Biodiversity (bat survey, biodiversity net gain calculation and related assessment submitted); and
 - Public consultation (responses to comments made by the Chidswell Action Group submitted).

6.0 PLANNING POLICY AND GUIDANCE

6.1 See accompanying committee report for application ref: 2020/92331.

7.0 PUBLIC / LOCAL RESPONSE

7.1 The application was advertised as a major development that affects Public Rights of Way. Four site notices were posted on 27/08/2020. A press notice was published on 13/08/2020. Letters were sent to addresses close to the application site. This is in line with the council's adopted Statement of Community Involvement. The end date for publicity was 20/09/2020.

7.2 183 representations were received in response to the council's consultation on application 2020/92350. These have been posted online. Many of the representations referred to both applications, and the summary of the comments set out at paragraph 7.2 of the accompanying committee report for application ref: 2020/92331 relates to both applications.

7.3 Comments submitted by Mark Eastwood MP in relation to both applications are summarised at paragraph 7.5 of the accompanying committee report for application ref: 2020/92331.

7.4 In addition to the five further representations from the Chidswell Action Group (referred to at paragraph 7.6 of the accompanying committee report relating to application ref: 2020/92331), a representation was received from a local resident, raising concerns regarding the use of heavy machinery at the application site.

7.5 Further information was submitted by the applicant after the council carried out its consultation in late 2020. Reconsultation was therefore considered necessary before the council makes a decision on the application. On 27/10/2022 reconsultation letters were sent or emailed to all who were previously consulted on the application, and all who had previously commented. Four further site notices were posted on 02/11/2022, and a further press notice was published on 03/11/2022.

7.6 116 representations were received in response to this reconsultation, including representations from the Chidswell Action Group and the Kirklees Cycling Campaign. The following is a summary of the comments made:

- Amendments and further information do not address concerns.
- Proposal is contrary to Local Plan policies and relevant guidance.
- Proposal is contrary to NPPF.
- Investment zone should not be created.
- Loss of green belt land.
- Loss of green fields.
- Site should still be green belt.
- Loss of space separating Leeds, Wakefield and Kirklees.
- Urban sprawl.
- Site is an area of outstanding natural beauty.
- Green space has proven valuable during Covid pandemic and is a free resource of increasing importance due to inflation and recession.
- Walkers' enjoyment would be affected.
- Brownfield land and infill sites should be used instead / first.

- Many existing warehouses and industrial units are empty.
- Loss of agricultural land. Unclear if site includes best and most versatile land. Assessment requested by Natural England hasn't been provided. Housing and employment need does not outweigh loss of agricultural use. War in Ukraine and Brexit have highlighted need for the UK to produce its own food. Irresponsible to allow loss.
- Farmer will lose his living.
- Human population growth should be limited.
- Overdevelopment.
- Too many developments in the area.
- Increased congestion.
- No mitigation proposed at M62 junction 28.
- National Highways have objected.
- Risk to highway safety. Roads are already dangerous. Drivers regularly speed. Accidents regularly happen. Danger to children.
- Applicant's traffic survey was carried out during lockdown.
- Traffic assessment doesn't take into account approved developments.
- Inadequate provision for walking and cycling, including along routes in the surrounding area.
- Spine road / Chidswell Lane junction would not prioritise pedestrians or active travel.
- Inadequate travel planning measures.
- Development would be car-dependant. Opportunities to reduce car dependence are not being pursued.
- Loss of public rights of way.
- Harm to Leeds Country Way.
- Increased flood risk. Site becomes waterlogged.
- Detailed drainage plan required.
- Climate change and wetter winters will increase flood risk at the site.
- Residents will not be able to obtain insurance due to increased flood risk.
- Increased pollution. Air quality impacts.
- Increase in noise.
- Loss of natural light.
- Light pollution.
- Loss of privacy.
- Loss of views.
- Harm to mental health.
- Impact on wellbeing.
- Applications have caused stress.
- Respiratory illness will increase.
- General amenity impact.
- Amenity impacts of 20 years of construction.
- Loss of wildlife.
- Protected species are present at the site.
- Harm to bats and other species.
- Harm to ground-nesting farmland birds.
- Wildlife surveys inadequate and out-of-date. Several species have been missed. Independent assessment required. Single walkover after a drought provided an inadequate update.
- Yorkshire Wildlife Trust comments have been ignored.

- Claimed biodiversity net gain not accepted. Earlier independent assessment identified a 14% net loss.
- Ancient woodland at risk. Buffer planting is inadequate. Contamination, new residents and changes to water levels will harm woodland.
- Adverse impact on trees.
- Site currently contributes to climate change resilience. Watercourses, woodlands and fields contribute to cooling.
- Approval would be contrary to Kirklees Council's declaration of a climate emergency.
- Renewable energy measures not proposed.
- Unsustainable development.
- A Biodiversity Management Plan, Construction Environmental Management Plan and Invasive Weed Management Plan have not been provided.
- Lighting strategy has not been provided.
- Harm to setting of a listed building.
- Destruction of archaeology.
- Landscape impacts. Applicant's assessment of existing landscape is erroneous.
- Harm to character of the area.
- Geotechnical survey results have not been submitted.
- Insufficient local infrastructure.
- Local schools are already oversubscribed.
- Unwise to build additional primary school when existing schools are unviable.
- Lack of high school provision.
- Local doctors and dentists have no capacity.
- Inadequate local electricity supply.
- The need for the development should be reviewed in five years' time.
- Development is for profit.
- Houses will not be affordable.
- Impact on property values.
- Council should not have redacted representations.
- Some local residents were not reconsulted.
- Local MPs have objected.
- Previous planning applications have been refused.
- Decision should be deferred.
- Applications should be refused.

7.7 Kim Leadbeater MP made the following comments in relation to application 2020/92350:

I write to express concern at the size, impact and effect of this proposed development for 181 homes on a site within my constituency of Batley and Spen. The application forms part of a larger plan to create almost 1,600 homes over a 20-year period. The Heybeck Lane element, within Batley and Spen, is anticipated to be delivered early in the development plan.

Local residents have raised a number of concerns with me about this application, which is an allocated site within the Local Plan and forms part of the council's programme of works to deliver thousands of homes across Kirklees.

There are several aspects of the application that disturb them including:

- *the scale of the development*
- *the effects of increased traffic, which may exacerbate congestion on local roads due to their inability to cope with extra capacity*
- *the risk of pollution and noise*
- *the loss of agricultural land and consequent environmental impact*

Among the fears expressed to me were that the amount of affordable housing on the site might be reduced after approval, that house designs could alter, and that house sizes and numbers might be increased. I would be grateful for reassurance on these issues, along with confirmation that contributions towards primary and secondary schools will go ahead.

In my view, individual planning applications cannot be considered wholly in isolation when the cumulative impact on the transport infrastructure in particular can be so damaging. I would be concerned, therefore, if determination on the Heybeck Lane site were made without taking into account the larger Chidswell site with which it is linked.

As you will know, the Chidswell Action Group are particularly exercised at the loss of high-quality agricultural land and the impact on the rich and complex biodiversity of the area. I would add to that my own concerns about the impact of such large developments on the health and wellbeing of local people.

I would be grateful if you would take on board these concerns, and to address them as the application moves forward through the planning process.

7.8 To date, a total of 305 representations have been received in relation to the application.

7.9 Any further representations received after 24/11/2022 and before the committee meeting of 08/12/2022 will be reported in the committee update or verbally.

8.0 CONSULTATION RESPONSES

8.1 Where a consultee has submitted a single response relating to both outline applications (or the same responses relating to both), reference is made to the response summarised in the committee report for application ref: 2020/92331.

8.2 Statutory

8.3 Coal Authority – No objection, subject to conditions. Coal Authority concurs with the recommendations of the applicant's Coal Mining Risk Assessment, and the conclusion that there is currently a high risk to the proposed development from coal mining legacy. In order to mitigate the risk and inform the extent of remedial or mitigatory measures that may be required to ensure that the development is safe and stable, intrusive site investigations should be undertaken prior to commencement of development.

8.4 National Highways – Recommend that conditions be attached to any grant of planning permission.

- 8.5 KC Lead Local Flood Authority – No objection. Maintenance and management of sustainable drainage systems must be incorporated into a Section 106 agreement. More detailed flood risk assessment and drainage strategy (required at Reserved Matters stage) should address concerns. Discharge rate of 32.4l/s is not accepted. Conditions recommended.
- 8.6 Non-statutory**
- 8.7 Leeds City Council (Planning Services) – See committee report for application ref: 2020/92331.
- 8.8 Leeds City Council (Transport Development Services) – See committee report for application ref: 2020/92331.
- 8.9 Wakefield Council – See committee report for application ref: 2020/92331.
- 8.10 West Yorkshire Combined Authority – See committee report for application ref: 2020/92331.
- 8.11 West Yorkshire Police Designing Out Crime Officer – No objection in principle. Meeting requested. Condition should be applied, requiring incorporation of measures to minimise the risk of crime. Comments provided on indicative layout.
- 8.12 Yorkshire Water – 300mm public combined sewer crosses the site – development's design will need to take this into account. Conditions recommended regarding building above or near public sewer, separate foul and surface water drainage, and completion of surface water drainage works.
- 8.13 Yorkshire Wildlife Trust – See committee report for application ref: 2020/92331.
- 8.14 KC Education – Secondary school contribution of £223,957 required.
- 8.15 KC Environmental Health – Regarding air quality, applicant's methodology is acceptable, however omissions (relating to monetary costs and sensitivity testing) mean report cannot be fully accepted, and condition requiring air quality assessment is necessary. Condition recommended regarding construction-phase dust. Condition requiring electric vehicle charging facilities recommended. Regarding site contamination, applicant's Phase I report is satisfactory, and conditions are recommended. Construction Environmental Management Plan required by condition. Condition recommended requiring details of noise mitigation measures.
- 8.16 KC Highways Development Management – No objection subject to conditions and Section 106 agreement.
- 8.17 KC Highways Structures – See committee report for application ref: 2020/92331.
- 8.18 KC Landscape – Comments made on indicative layout. Measured areas required for each open space typology. 181 dwellings triggers the need for a Local Equipped Area of Play (LEAP). Details of landscaping, management and maintenance, street trees and ecological measures would be required at Reserved Matters stage.

- 8.19 KC Public Health – See committee report for application ref: 2020/92331.
- 8.20 KC Public Rights of Way – See committee report for application ref: 2020/92331.
- 8.21 KC Strategic Housing – Council seeks 20% affordable housing provision in developments of 11 or more dwellings. On-site provision is preferred, however a financial contribution in lieu of on-site provision can be accepted. A mix of housing that reflects local need and will contribute towards a balanced and sustainable development is required. Affordable homes must be distributed throughout the development (not in clusters), and must be indistinguishable from market housing both in terms of quality and design. A 55% social or affordable rent / 45% intermediate tenure split is required. In the Batley and Spen Sub-Area there is a significant need for affordable one-, two-, three-bedroom (and larger) homes, along with one- and two-bedroom homes for older people. 36 affordable homes required. 20 social or affordable rented dwellings and 16 intermediate dwellings would be appropriate.
- 8.22 KC Strategic Waste – According to council records, there are no closed or operational landfill sites within 250m of the application site address.
- 8.23 KC Trees – General principle of the outline proposal and the access on this site is supported. The illustrative layout and supporting arboricultural impact assessment demonstrates that the site can be developed while incorporating the existing important trees, woodlands and hedgerows into the design and avoiding adverse impact on these features. However, a hedgerow identified as “important” appears to be impacted – this will need mitigating, possibly by translocation to a new site more associated with the adjacent ancient woodland (this matter can be conditioned). Significantly more detail required at Reserved Matters stage. Effects on ancient woodland, and woodland management, should be considered.
- 8.24 KC Waste Strategy (Refuse and Cleansing) – See committee report for application ref: 2020/92331.

9.0 SUMMARY OF MAIN ISSUES

9.1 The main planning issues relevant to this application are:

- Environmental Impact Assessment
- Land use and principle of development
- Employment, skills and social value
- Masterplanning
- Quantum and density
- Phasing and delivery
- Sustainability and climate change
- Urban design matters
- Heritage assets
- Landscape impacts
- Infrastructure requirements and delivery
- Residential quality and amenity
- Affordable housing
- Highway and transportation issues
- Flood risk and drainage issues

- Environmental and public health
- Site contamination and stability
- Ecological considerations
- Trees, ancient woodlands and hedgerows
- Open space, sports and recreation
- Planning obligations and financial viability
- Representations
- Other planning matters

10.0 MAIN ISSUES – ASSESSMENT

Environmental Impact Assessment (EIA)

- 10.1 Although the proposed development, on its own, does not constitute EIA development, its impacts have been taken into account in the Environmental Statement (ES) submitted with the accompanying planning application (ref: 2020/92331), and in officers' assessments of that application.

Land use and principle of development

- 10.2 Planning law requires applications for planning permission to be determined in accordance with the development plan, unless material considerations indicate otherwise. The NPPF is a material consideration in planning decisions.
- 10.3 Full weight can be given to site allocation MXS7, which allocates the application site for mixed use (employment and housing) development.
- 10.4 A residential development of up to 181 dwellings would make a significant contribution towards meeting identified needs. This attracts significant weight in the balance of material planning considerations relevant to the current application.
- 10.5 For further assessment of land use matters and the principle of development, see the accompanying committee report for application ref: 2020/92331.

Employment, skills and social value

- 10.6 As set out in the accompanying committee report for application ref: 2020/92331, Local Plan policy LP9 and the council's Social Value Policy are relevant.
- 10.7 The applicant has not yet identified developer partners, however it is recommended that provisions be secured (via a Section 106 agreement) requiring the applicant to, in turn, require those future partners to actively participate and engage with the council in delivering social value measures of benefit to the people of Kirklees, and in particular those resident in the areas surrounding the application site. This engagement may take the form of entering into an appropriate Employment and Skills Agreement, to include provision of training and apprenticeship programmes. Given the scale of development proposed, there may also be opportunities to work in partnership with local colleges to provide on-site training facilities during the construction phase.

Masterplanning

- 10.8 As per the commentary set out in the accompanying committee report for application ref: 2020/92331, the proposed development is considered acceptable in masterplanning terms. Local Plan policy LP5 and the relevant requirements of site allocation MXS7 would be complied with.

Quantum and density

- 10.9 Site allocation MXS7 sets out indicative capacities of 1,535 dwellings and 122,500sqm of employment floorspace.
- 10.10 The proposals (across the two outline applications) meet these headline expectations of site allocation MXS7.

Phasing and delivery

- 10.11 Of relevance to delivery, the applicant chose to submit two applications for outline planning permission – one for the larger (Leeds Road) part of the site, and one for up to 181 dwellings proposed at the north (Heybeck Lane) end of the site. This was intended to respond to a query raised by the Local Plan Inspector as to whether early delivery of housing at part of the site could be demonstrated.
- 10.12 During the life of the application, the applicant has additionally confirmed that the proposed Heybeck Lane development is likely to be delivered early in the development programme, due to this phase being less reliant on key infrastructure proposed elsewhere within the allocated site and outside it. However, the applicant still seeks a degree of flexibility in relation to delivery, and would not wish the precise phasing of development to be fixed at this outline stage.
- 10.13 A condition requiring the submission of a phasing plan is recommended.
- 10.14 Provisions in the recommended Section 106 agreement would be worded to ensure mitigation is provided when required (i.e., when the impacts of the proposed Heybeck Lane development necessitate it).

Sustainability and climate change

- 10.15 Assessment regarding sustainability and climate change (in relation to mixed use (including residential) development within the MXS7 site) is provided in the accompanying committee report for application ref: 2020/92331.

Urban design matters

- 10.16 Local Plan policies LP2, LP5, LP7 and LP24 are of particular relevance to this application in relation to design, as is the text of site allocation MXS7 and the council's Housebuilders Design Guide SPD. Chapters 11 and 12 of the NPPF and the National Design Guide are also relevant.
- 10.17 The current proposals are illustrated by an indicative site layout plan (which would not be listed on the council's decision letter, if outline planning permission is granted), and a parameter plan showing maximum building heights, a 20m wide woodland buffer zone and a sewer easement. This parameter plan has been submitted by the applicant for approval, and would be listed on the council's decision letter.

- 10.18 The submitted parameter plan appropriately shows 10m maximum building heights immediately adjacent to the rear of existing properties on Leeds Road and Heybeck Lane, and 12m maximum building heights elsewhere. Actual building heights would be determined at Reserved Matters stage, having regard to neighbour amenity and other considerations. No development or developable area is shown over an existing foul sewer, which runs southwest-northeast across the application site. A single vehicular access point is shown at 39 Heybeck Lane (which would be demolished). Outside the application site red line boundary, a 20m deep planted buffer zone is shown adjacent to the ancient woodland of Dum Wood.
- 10.19 It is accepted that the level of detail normally submitted at outline application stage is limited. Further information would need to be submitted at Reserved Matters stage to demonstrate that relevant design objectives have been met. That later detail would need to confirm the perimeter block approach (which is indicatively suggested in the applicant's submission), retention of TPO-protected trees and important hedgerows, retention and appropriate treatment of the existing public footpath, dementia-friendly design, and compliance with the council's Highway Design SPD, among other considerations. At the current outline stage, however, the applicant's parameter plan, illustrative layout and supporting information provide enough assurance at this stage that sufficient and careful thought has gone into the proposals for which outline approval is sought.
- 10.20 Regarding density, with up to 181 dwellings proposed in a site of 7 hectares, a density of only 26 dwellings per hectare would be achieved. While it is acknowledged that site constraints would limit the application site's developable area, this matter will require further consideration at Reserved Matters stage, given the need for efficient and effective use of land, and Local Plan policy LP7 which refers to a net density of at least 35 dwellings per hectare (where appropriate).

Heritage assets

- 10.21 There are few designated heritage assets close to the site (including in Leeds and Wakefield boroughs). Undesignated heritage assets include field layouts and boundaries, and the nearby ancient woodlands which are of historic (as well as arboricultural and ecological) interest.
- 10.22 Given the scale, location and relative containment of the proposed development, significant impacts upon heritage assets are not anticipated.

Landscape impacts

- 10.23 Local Plan policy LP32 states that proposals should be designed to take into account and seek to enhance the landscape character of the area considering in particular the setting of settlements and buildings within the landscape; the patterns of woodland, trees and field boundaries; and the appearance of rivers, canals, reservoirs and other water features within the landscape.
- 10.24 The application site has some landscape sensitivity resulting from its location, surrounding topography and visibility from surrounding locations (including in longer views) and from public footpaths. Public footpaths (and informal paths) in and around the application site are well-used, and representations received in response to the council's consultation on the application demonstrate that the visual and other amenities of this landscape are highly valued by local residents.

- 10.25 This sensitivity is, however, limited to an extent by the enclosure of the site to the north and west by existing development on Leeds Road and Heybeck Lane. The nearby Dum Wood also provides a degree of enclosure to the site.
- 10.26 The applicant has not proposed to radically reshape the application site with extensive excavation and retention. As with the proposals for the larger part of the MXS7 site, green spaces have been illustrated, and a planted buffer is proposed adjacent to Dum Wood. These aspects of the proposed development would help limit its visual and landscape impact, as would landscaping measures that can be proposed and secured at Reserved Matters stage.
- 10.27 It is accepted that development of the application site would inevitably be transformative. This is unavoidable, given the majority of the site is currently undeveloped. Soft landscaping – however carefully designed – would not hide the proposed development. However, given the above assessment, the proposed development's landscape impacts are considered acceptable.

Infrastructure requirements and delivery

- 10.28 These matters are considered in the accompanying committee report for application ref: 2020/92331, however it is noted (in relation to the proposed Heybeck Lane development) that certain contributions towards infrastructure-related mitigation would not be applicable, while other contributions would need to be proportionate to the scale of the development and its impacts.
- 10.29 Planning obligations (recommended to be secured under a Section 106 agreement) are listed later in this committee report.
- 10.30 The provision of social infrastructure, including in relation to GP and education provision, is considered elsewhere in this committee report.

Residential quality and amenity

- 10.31 The commentary set out in the accompanying committee report for application ref: 2020/92331 is also relevant to the Heybeck Lane site.

Affordable housing

- 10.32 The commentary set out in the accompanying committee report for application ref: 2020/92331 is also relevant to the Heybeck Lane site, however 20% of 181 dwellings is 36.
- 10.33 It is recommended that the required 20% affordable housing provision be secured via a Section 106 agreement, to ensure the development complies with Local Plan policy LP11.

Highway and transportation issues

- 10.34 Local Plan policy LP21 requires development proposals to demonstrate that they can accommodate sustainable modes of transport and can be accessed effectively and safely by all users. The policy also states that new development will normally be permitted where safe and suitable access to the site can be achieved for all people, and where the residual cumulative impacts of development are not severe.

- 10.35 Paragraph 110 of the NPPF states that, in assessing applications for development, it should be ensured that appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, that safe and suitable access to the site can be achieved for all users, and that any significant impacts from the development on the transport network (in terms of capacity and congestion), or highway safety, can be cost-effectively mitigated to an acceptable degree. Paragraph 111 of the NPPF adds that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highways safety, or if the residual cumulative impacts on the road network would be severe.
- 10.36 Existing highway conditions around the application site must be noted. To the west of the application site, Leeds Road (the A653) is a dual carriageway with marked cycle lanes, double yellow lines and a central strip with soft landscaping in places. To the north, Heybeck Lane has double yellow lines close to its junction with Leeds Road, but is subject to on-street parking further east. Bus services are available from both Leeds Road and Heybeck Lane. The junction of these two roads is signalled with pedestrian crossings. The application site has no existing direct vehicular access points off Leeds Road or Heybeck Lane, however it can be accessed via the public rights of way network. Public footpath BAT/49/10 passes through part of the application site. Parts of the Core Walking, Cycling and Riding Network passes along this public right of way. There are also public rights of way to the south, and informal paths through the adjacent woodland.
- 10.37 Future infrastructure improvement projects are relevant to the consideration of the applications for outline planning permission. As noted earlier in this committee report, work has commenced on the Transpennine Route Upgrade, which is intended to deliver faster, more frequent and more reliable services along the route that serves Dewsbury and Batley stations (the two stations nearest to the application site).
- 10.38 Under the current application, access is the only matter not reserved. For the avoidance of doubt, and given that relevant legislation defines “access” as “the accessibility to and within the site, for vehicles, cycles and pedestrians in terms of the positioning and treatment of access and circulation routes...” (therefore, it can include access through a site), the applicant’s parameter plan only includes confirmation of the proposed point of access. This drawing would be approved at this outline stage. Other details of access through the site are only illustrated indicatively.
- 10.39 The applicant’s proposals for the Heybeck Lane site are co-ordinated with (and are not entirely separable from) those for the larger Leeds Road site (application ref: 2020/92331). The Heybeck Lane site does, however, benefit from a degree of self-containment, as it could be served via an independent vehicular access from Heybeck Lane.

Trip generation and traffic modelling

- 10.40 The Transport Assessment (TA) submitted with the application, and the TA provided at chapter 13 of the ES submitted with application ref: 2020/92331, include trip generation figures for the developments of both outline applications (the trips of a total of 1,535 new dwellings are set out). The headlines figures are set out in the in the accompanying committee report for application ref: 2020/92331.

- 10.41 The applicant's proposed trip generation rates and predicted background traffic growth rates are considered acceptable. The list of committed schemes (taken into account by the applicant in traffic modelling) is considered appropriate.

Strategic Road Network junctions

- 10.42 Site allocation MXS7 notes that additional mitigation on the wider highway network will be required in connection with the proposed development, as there is potential for significant impacts upon the Strategic Road Network. The proposed development would contribute towards additional traffic at junction 28 of the M62 and junction 40 of the M1. Highways England (later National Highways) initially submitted (and subsequently renewed) a holding objection, noting that work was ongoing to assess the cumulative impacts of this and other major developments (including schemes in Leeds), and that outline planning permission should not be granted until this work was completed. However, on 11/11/2021 National Highways withdrew their holding objection to the application, and recommended that conditions be applied in relation to construction traffic management and travel planning. National Highways are comfortable with the impact that the proposed Heybeck Lane development (on its own) would have on the Strategic Road Network, and do not require this development to contribute towards capacity improvements at junction 28 of the M62 and junction 40 of the M1.

Other junctions

- 10.43 Given the modelling results submitted by the applicant, officers are satisfied that the proposed Heybeck Lane development (on its own) would not necessitate capacity improvement works at some of the nearby junctions. However, where the proposed (up to) 181 units – considered in isolation – would not cause highway impacts requiring mitigation, their contribution towards cumulative impacts must still be addressed. As with the Bradley Villa Farm application (ref: 2021/92086, recently considered by the Strategic Planning Authority, where a 277-unit development did not necessitate mitigation at some junctions but would contribute towards cumulative impacts as and when the rest of the HS11 allocated site is developed), the development proposed at the Heybeck Lane site would similarly be expected to make a proportionate contribution towards mitigation at certain junctions. That contribution would be calculated with reference to the (up to) 181-unit development's share of the cumulative impact. In addition, the Heybeck Lane development would need to mitigate any highway impacts it directly causes.
- 10.44 As detailed in the accompanying committee report for application ref: 2020/92331 works are proposed at local junctions. The applicant proposes road safety works and improvements for pedestrians and cyclists at the Shaw Cross junction, at the Leeds Road / Heybeck Lane / Soothill Lane junction, and at the Dewsbury Road / Syke Road / Rein Road junction. The applicant's development appraisal for the Heybeck Lane development allows for these works. Appropriate delivery mechanisms are proposed for these works (or, in the case of the Dewsbury Road / Syke Road / Rein Road junction, an appropriate delivery mechanism will need to be agreed with Leeds City Council).

- 10.45 No other junction improvement works are proposed within the adjacent boroughs (Leeds and Wakefield). Wakefield Council have raised a late concern regarding impacts at the Owl Lane / Chancery Road / Leeds Road / Ossett bypass roundabout, however this was received after highways assessments had been concluded, and it was not considered reasonable to request the applicant to provide further highway mitigation.

Site entrance

- 10.46 The applicant has completed a road safety audit for the site entrance proposed off Heybeck Lane, and a designer's response has been prepared. The applicant has advised that the road safety audit has identified no need for significant amendments, and that previous junction modelling would not be affected by the minor amendments that will need to be made.
- 10.47 The submitted parameter plan and illustrative layout do not suggest an internal vehicular connection would be made between the Heybeck Lane and larger sites. This is considered appropriate, as such a connection risks being used as a shortcut by drivers moving between Leeds Road and Heybeck Lane and wishing to avoid the existing signalised junction.

Highway safety

- 10.48 Relevant commentary is set out in the accompanying committee report for application ref: 2020/92331.

Public transport

- 10.49 Relevant commentary is set out in the accompanying committee report for application ref: 2020/92331. It is considered that the Heybeck Lane development need not make a proportionate contribution towards bus service pump priming, as all of that site is within a 400m walking distance of existing bus stops on Leeds Road and Heybeck Lane, and the Heybeck Lane site is likely to be developed before a new or diverted bus service is needed to serve the larger site.

Walking and cycling

- 10.50 The applicant's indicative layout makes good provision for pedestrians and cyclists. Connections to the south (to the on-site primary school, local centre, public transport facilities and employment uses) are proposed. An existing public right of way would be retained, and new footpaths, footways and cycle routes would be created throughout the site. Further consideration of these routes and provisions would be appropriate at Reserved Matters stage, if outline permission is granted.

Travel planning

- 10.51 Comprehensive and effective travel planning would be required in connection with all of the proposed development's uses, in compliance with Local Plan policy LP20. An appropriate Framework Travel Plan (with subordinate plans subsequently prepared at later stages) would be secured via Section 106 planning obligations, however a draft has been submitted at this outline application stage.

Other highways and transport matters

- 10.52 Parking provision would be considered at Reserved Matters stage, and would need to reflect anticipated need (balanced against aesthetic, street scene, safety and sustainability considerations), having regard to likely vehicle ownership and the council's adopted Highway Design Guide SPD.
- 10.53 The indicative internal layout submitted by the applicant raises no fundamental highway concerns at this stage, however further assessment would be necessary at Reserved Matters stage, should outline planning permission be granted.

Flood risk and drainage issues

- 10.54 The site is within Flood Zone 1, and is larger than 1 hectare in size, therefore a site-specific Flood Risk Assessment and Drainage Strategy has been submitted. This states that discharge to watercourses is likely to be the most appropriate option of surface water management at the site, and that gravity outfall to nearby watercourses would be achievable. The applicant goes on to note that a more detailed surface water strategy plan would be produced at the Reserved Matters stage once the proposed layout has been fixed.
- 10.55 The requirements of chapter 14 of the NPPF, and Local Plan policies LP27, LP28 and LP29, apply.
- 10.56 In relation to drainage and flood risk, the applicant's outline-stage proposals are considered acceptable. Subject to conditions, the Lead Local Flood Authority (LLFA) have not objected to either application, but have confirmed that a fully detailed drainage masterplan would be required prior to Reserved Matters submissions, to ensure an integrated drainage approach is followed. The LLFA have also recommended that a working group be set up to ensure successful masterplanning in relation to drainage, and officers. Across the entire MXS7 site, discharge restrictions based on a greenfield run-off of 5l/s/ha would be appropriate. For the Heybeck Lane site, a discharge rate of 32.4l/s would not be accepted (this is suggested at paragraph 5.11 of the applicant's Flood Risk Assessment and Drainage Strategy). The ongoing maintenance and management of sustainable drainage systems would need to be secured via a Section 106 agreement.

Environmental and public health

- 10.57 The applicant's information regarding the health impact of the development must be considered in accordance with Local Plan policy LP47 and chapter 8 of the NPPF. A Health Impact Assessment has been submitted.
- 10.58 Development at this site would be required to assist in promoting healthy, active and safer lifestyles in accordance with the above planning policies. This can be achieved in many ways – air quality mitigation and improvement, facilitation and encouragement of on-site and local outdoor activity, inclusive design, providing opportunities for inter-generational interaction, new and enhanced public footpath and cycle path connections, careful construction management (including dust control) and other measures can be proposed by the applicant and future developers of the site. As per the comments of KC Public Health and other consultees, however, it is noted that many of these matters would be assessed in detail at Reserved Matters stage.

- 10.59 It is noted that local medical provision has been raised as a concern in representations made by local residents. Although health impacts are a material consideration relevant to planning, there is no policy or supplementary planning guidance that requires a proposed development to contribute specifically to local health services. Furthermore, it is noted that funding for GP provision is based on the number of patients registered at a particular practice and is also weighted based on levels of deprivation and aging population. Direct funding is provided by the NHS for GP practices and health centres based on an increase in registrations.
- 10.60 Regarding environmental health matters (specifically noise, air quality and construction phase impacts), similar comments have been made by consultees in relation to both outline applications. Accordingly, similar conditions regarding these matters are recommended.

Site contamination and stability

- 10.61 Site allocation MXS7 notes the potential presence of contamination at the site. Local Plan policy LP53 states that development on land that is currently contaminated or suspected of being contaminated due to its previous history would require the submission of an appropriate contamination assessment. Where there is evidence of contamination, measures to remediate the land would be required to ensure the contamination does not have the potential to cause harm to people or the environment.
- 10.62 Regarding site contamination, commentary set out in the accompanying committee report for application ref: 2020/92331 is relevant. KC Environmental Health are satisfied with the Phase I report submitted by the applicant, and have recommended appropriate conditions.
- 10.63 Regarding the application site's coal mining legacy, the Coal Authority concurs with the conclusion and recommendations of the applicant's Coal Mining Risk Assessment, and agrees that there is currently a high risk to the proposed development from coal mining legacy. In order to mitigate the risk (i.e., to confirm the exact ground conditions present within the application site and inform the extent of remedial or mitigatory measures that may be required to ensure that the development is safe and stable), intrusive site investigations will need to be undertaken prior to commencement of development. Appropriate conditions are recommended accordingly.

Ecological considerations

- 10.64 Chapter 15 of the NPPF and Local Plan policy LP30 apply. Of particular note, paragraph 174 of the NPPF requires the proposed development to achieve a biodiversity net gain.
- 10.65 Much of the commentary set out in the accompanying committee report for application ref: 2020/92331 is also relevant to the Heybeck Lane site. The same ecological surveys appended to chapter 14 of the ES submitted with application ref: 2020/92331 have also been submitted in support of the Heybeck Lane application. Similarly, a letter regarding bat surveys of lofts (dated 23/08/2022) was submitted. Of specific relevance to the Heybeck Lane site, that letter noted that the loft of 39 Heybeck Lane has previously been converted and there is therefore no accessible loft space to inspect for bat presence. A High-Level Biodiversity Net Gain Assessment (01/11/2022), including findings of a walkover survey undertaken in October 2022, was also submitted.

- 10.66 At the Heybeck Lane site, the applicant's biodiversity net gain calculation (using the Biodiversity Metric 3.1) confirms the proposed development would achieve the following net gains (post-intervention):
- Habitat units: 10.03%
 - Hedgerow units: 10.61%
- 10.67 Of note, no net gain in river units is proposed, as the existing river unit baseline was found to be zero. It is also noted that the proposed 10.03% net gain in habitat units is partly reliant upon off-site interventions.
- 10.68 The proposed net gains are considered achievable. Delivery of the proposed off-site interventions would need to be secured via the recommended Section 106 agreement.
- 10.69 As with application ref: 2020/92331, the council is able to make an informed decision on the current outline application. Further surveys would be required at Reserved Matters stage (if outline permission is granted). The applicant has proposed a policy-compliant biodiversity net gain, and has met other requirements of relevant planning policies. Conditions and provisions (secured via a Section 106 agreement) can be applied to mitigate the ecological impacts of the proposed development.

Trees, ancient woodlands and hedgerows

- 10.70 Several Tree Preservation Orders protect trees and groups of trees within and adjacent to the application site, and an ancient woodland (Dum Wood) is designated to the east of the site. Local Plan policy LP33 states that planning permission will not be granted for developments which directly or indirectly threaten trees or woodlands of significant amenity, and proposals should normally retain any valuable or important trees where they make a contribution to public amenity or have other benefits.
- 10.71 The applicant's Hedgerow Assessment and Report (July 2018) at appendix 14.9 of the ES submitted with application ref: 2020/92331 states that three of the MXS7 site's hedgerows can be defined as "important" under the Hedgerow Regulations 1997, and that a further five hedgerows just fall short of being classified as "important", due to there being either one too few woody species or associated features, or by not being adjacent to a public right of way. One of the "important" hedgerows is within the Heybeck Lane site.
- 10.72 The proposed development (as illustrated indicatively) largely retains existing trees and hedgerows, and an appropriate buffer is proposed adjacent to the ancient woodland. The applicant's landscaping proposals are currently indicative, however they illustrate potential biodiversity connections across the site.
- 10.73 The applicant's illustrative layout and supporting arboricultural impact assessment demonstrates that the site can be developed while incorporating the existing important trees, woodlands and hedgerows into the, and avoiding adverse impact on these features. Significantly more detail would, of course, be required at Reserved Matters stage, including details of how the site's hedgerows would be retained.

- 10.74 Further assessment regarding impacts on Dum Wood is set out in the accompanying committee report for application ref: 2020/92331.
- 10.75 As noted by KC Trees, the hedgerow identified as “important” appears to be impacted by the proposals. This would need to be considered further at Reserved Matters stage when, if the hedgerow is not to be retained and worked around, mitigation would be required, possibly in the form of translocation of the hedgerow to a new site more associated with the adjacent ancient woodland.

Open space, sports and recreation

- 10.76 Local Plan policy LP63 states that the council will seek to secure well designed new and improved open space, sport and recreation facilities in the district to encourage everyone in Kirklees to be as physically active as possible and promote a healthy lifestyle for all. New housing developments will be required to provide or contribute towards new open space or the improvement of existing provision in the area, unless the developer clearly demonstrates that it is not financially viable for the development proposal.
- 10.77 The council’s Open Space SPD was adopted during the life of the current application, on 29/06/2021.
- 10.78 The applicant’s illustrative masterplan shows an area of open space (including a play space) within the Heybeck Lane site, as well as other green spaces around retained trees and hedgerows.
- 10.79 As noted in the accompanying committee report for application ref: 2020/92331, Sport England advised that a £1,676,111 (in total for both sites) sports contribution would be required. This, however, was based on Sport England’s formula and the likely population of the proposed development, if no on-site provision was made.
- 10.80 The council’s own guidance (as set out in the Open Space SPD) is considered more appropriate in this instance, as it is more nuanced and is tailored to reflect the needs of the borough. Furthermore, calculations carried out in accordance with the SPD note existing nearby provision, and the needs of the relevant wards. It is also again noted that significant on-site provision has been illustrated by the applicant across the two outline applications.
- 10.81 With reference to the SPD, more detailed information regarding the typologies of the on-site provision would be needed before a further calculation could be carried out. As much of this detail would not become available until further design work is carried out prior to Reserved Matters applications being submitted, at the current outline stage it is recommended that the relevant Section 106 provision secures a contribution based on the relevant formula, with no figure specified.

Planning obligations and financial viability

- 10.82 A development of this scale would have significant impacts requiring mitigation. The following planning obligations securing mitigation (and the benefits of the proposed development, where relevant to the balance of planning considerations) would need to be included in a Section 106 agreement:

- 1) Highway capacity / improvement / other works
 - a) contributions towards junction improvement schemes (applicable should schemes secured by condition prove to be more appropriately delivered via a Section 106 provision).
 - b) contribution towards Shaw Cross junction scheme.
- 2) Sustainable transport
 - a) Bus stop upgrade contribution (applicable if bus stop audit demonstrates the need).
 - b) Framework Travel Plan (and subordinate plans) implementation and monitoring including fees – £15,000 (£3,000 for five years).
- 3) Education
 - a) £300,000 contribution towards interim primary provision.
 - b) Secondary education contribution of £223,957.
- 4) Open space, including sports and recreation and playspaces – contribution based on Open Space SPD methodology / formulae, taking into account on-site provision (to be confirmed at Reserved Matters stage). Site-wide strategy required to ensure provision across all phases / parcels / Reserved Matters applications is co-ordinated.
- 5) Affordable housing – 20% provision.
- 6) Air quality – contribution (amount to be confirmed, and subject to applicant / developer measures which may render contribution unnecessary) up to the estimated damage cost to be spent on air quality improvement projects within the locality.
- 7) Biodiversity
 - a) Contribution (amount to be confirmed) or off-site measures to achieve biodiversity net gain (only applicable if 10% can't be achieved on-site);
 - b) Securing other off-site measures (including buffers to ancient woodlands, and provision of skylark plots).
- 8) Management – the establishment of a management company for the management and maintenance of any land not within private curtilages or adopted by other parties, and of infrastructure. May include street trees if not adopted.
- 9) Drainage – management company to manage and maintain surface water drainage until formally adopted by the statutory undertaker. Establishment of drainage working group (with regular meetings) to oversee implementation of a site-wide drainage masterplan.
- 10) Ancient woodland – management plan (and works, if required) for public access to Dum Wood (outside application site, but within applicant's ownership).
- 11) Social value – requirement for applicant / developer, future developer partners and occupants of employment floorspace to provide package of training, apprenticeships and other social value measures.
- 12) Masterplanning – No ransom scenarios to be created at points where new roads meet other development parcels / phases.

10.83 All contributions are to be index-linked. For certain contributions, a relevant index (such as the BCIS Tender Price Index) may be appropriate.

10.84 The above obligations are potentially significant, and together with the costs associated with on-site infrastructure, drainage and addressing the application site's topography and coal mining legacy, would need to be given careful consideration by the applicant prior to the sale of (parts of) the site to developers. These costs would need to be reflected in the application site's purchase price, to ensure that any future developer will not overpay for the

site and then attempt to argue that these costs were unanticipated and that affordable housing or other necessary mitigation is not viable. The application site was promoted for allocation and development by the current applicant, and such development at this site can reasonably be assumed to be viable at this stage. Therefore, and given what is known regarding the application site's development costs, and having regard to consultee responses (which any developer should make themselves aware of before purchasing the site or parts of it), the council is unlikely to entertain a future argument that development at this site is unviable. Should any such argument be made in the future, the council can and will have regard to paragraph 58 of the NPPF, which states that the weight to be given to a viability assessment is a matter for the decision maker.

- 10.85 Commentary regarding the applicant's viability testing of the proposed developments (across both sites within MXS7) is set out in the accompanying committee report for application ref: 2020/92331.
- 10.86 Given that many of the required contributions would be put towards schemes that may only become necessary several years in the future, it is recommended that the required Section 106 agreement should allow the council to retain moneys for longer periods than is normally secured. Of note, the Department for Education's "Securing developer contributions for education" guidance recommends (at paragraph 6) that planning obligations should allow enough time (often 10 years, or no time limit) for developer contributions to be spent.

Representations

- 10.87 The representations received in response to the council's consultation and reconsultation are responded to throughout this committee report.
- 10.88 The volume of objections and their content is noted. These, and the representations made by elected representatives, are material considerations that must be given due weight when the current applications are determined.
- 10.89 The request made by the Chidswell Action Group to delay determination of the application is noted, but is not supported. As part of the recent reconsultation, letters and emails were sent to everyone who had previously been consulted and everyone who had previously commented on the application, and four new site notices were posted on 02/11/2022. This greatly exceeds the consultation effort required by the relevant legislation, and would have ensured a good level of local awareness regarding the application and the reconsultation.
- 10.90 Earlier comments regarding the adequacy and timing of the outline applications (and the council's initial consultation on them) are noted, however additional time was added to the initial consultation period in light of the Covid-19 epidemic, and the council's application publicity went further than the statutory requirements and the commitments set out in the council's adopted Statement of Community Involvement.

Other planning matters

- 10.91 See commentary provided in the accompanying committee report for application ref: 2020/92331.

11.0 CONDITIONS

11.1 The conditions listed below (in summary) are recommended at this outline application stage. It is recommended that authority to finalise the wording of the conditions, and to amend and add to this list, be delegated to the Head of Planning and Development.

- 1) Standard outline condition (approval of reserved matters prior to commencement).
- 2) Standard outline condition (implementation in accordance with approved reserved matters).
- 3) Standard outline condition (reserved matters submission time limits – first reserved matters application to be submitted within three years of outline approval, last to be submitted within five years).
- 4) Standard outline condition (reserved matters implementation time limit – within two years of reserved matters approval).
- 5) Development in accordance with plans and specifications.
- 6) Details of phasing to be submitted.
- 7) Implementation of junction improvement schemes when required, in accordance with details (including road safety audits and arrangements for implementation under Section 278) to be submitted.
- 8) Submission of interim and final details of Heybeck Lane site entrance (including road safety audits and arrangements for implementation under Section 278), and subsequent implementation.
- 9) Assessment of potential for decentralised energy scheme to be carried out prior to submission of Reserved Matters applications.
- 10) Flood risk and drainage – full site-wide scheme to be submitted.
- 11) Flood risk and drainage – detailed drainage proposals to be submitted for each parcel / phase.
- 12) Separate systems of foul and surface water drainage to be provided.
- 13) Ecological mitigation and enhancement details (including an Ecological Design Strategy, measures to address impacts on birds including ground-nesting farmland birds), and details of mitigation and delivery measures to be submitted.
- 14) Air quality mitigation measures to be submitted.
- 15) Further noise assessment and mitigation measures to be submitted.
- 16) Contaminated land – phase II intrusive site investigation report to be submitted.
- 17) Contaminated land – remediation strategy to be submitted.
- 18) Contaminated land – remediation strategy to be implemented.
- 19) Contaminated land – validation report to be submitted.
- 20) Coal mining legacy – details of intrusive site investigation (and, where necessary, remediation) to be submitted.
- 21) Archaeological site investigation.
- 22) Site-wide placemaking strategy to be submitted prior to Reserved Matters applications, and to include design principles, coding and other arrangements to ensure high quality, co-ordinated development that appropriately responds to existing guidance including Housebuilders Design Guide SPD.
- 23) Bus stop infrastructure audit and improvement plan to be submitted, with timeframes for implementation.
- 24) Construction (Environmental) Management Plan to be submitted.
- 25) Tree protection measures to be approved and implemented.
- 26) Temporary (construction phase) drainage measures to be approved and implemented.

- 11.2 Given the size of the developments proposed across the MXS7 site and the likely delivery programme, it is considered appropriate to allow a longer period for the submission of Reserved Matters applications.
- 11.3 Of note, a significant volume of further information is expected to be submitted later at Reserved Matters stage (if outline permission is approved), and further conditions could be applied at that stage (for example, in relation to boundary treatments and electric vehicle charging).
- 11.4 Conditions would need to be worded to allow for phased implementation of the proposed development.

12.0 CONCLUSION

- 12.1 The application site is allocated for mixed use development under site allocation MXS7, and the principle of residential development at this site is considered acceptable.
- 12.2 The applicant has satisfactorily addressed relevant policy requirements in relation to masterplanning, infrastructure provision, highway impacts, landscape impacts, biodiversity, sustainability and other planning matters.
- 12.3 The site has constraints in the form of adjacent residential development (and the amenities of these properties), access, topography, drainage, ecological considerations, and other matters relevant to planning. These constraints have been sufficiently addressed by the applicant, or would be addressed at Reserved Matters and conditions stages.
- 12.4 Given the above assessment and having particular regard to the up to 181 homes (20% of which would need to be affordable homes) that would be delivered by the proposed development, approval of outline planning permission is recommended, subject to conditions and planning obligations to be secured via a Section 106 agreement.
- 12.5 The NPPF 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. The proposed development has been assessed against relevant policies in the development plan and other material considerations. Subject to conditions, it is considered that the proposed development would constitute sustainable development (with reference to paragraph 11 of the NPPF) and is therefore recommended for approval.

Background Papers:

Application and history files.

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2020%2f92350>

Certificate of Ownership – Certificate B signed.

Appendix 6 – Previous committee update

KIRKLEES METROPOLITAN COUNCIL

PLANNING SERVICE

**UPDATE OF LIST OF PLANNING APPLICATIONS TO BE DECIDED BY
STRATEGIC PLANNING COMMITTEE**

8 DECEMBER 2022

Planning Application 2020/92331

Item 9 – Page 13

Outline planning application for demolition of existing dwellings and development of phased, mixed use scheme comprising residential development (up to 1,354 dwellings), employment development (up to 35 hectares of B1(part a and c), B2, B8 uses), residential institution (C2) development (up to 1 hectare), a local centre (comprising A1/A2/A3/A4/A5/D1 uses), a 2 form entry primary school including early years provision, green space, access and other associated infrastructure (amended and further information received)

Land east of, Leeds Road, Chidswell, Shaw Cross, Dewsbury

Revised recommendation

The following additional conditions are recommended:

- 34) Site-wide open space strategy to be submitted prior to Reserved Matters applications (or with the first Reserved Matters application), and to include proposals for on-site provision with reference to existing local provision and the six open space typologies of the Open Space SPD.
- 35) M62 junction 28 monitoring strategy to be submitted, approved and implemented, and mitigation to be implemented if monitoring demonstrates the need (condition to be worded to allow for an alternative scheme to be approved, for a contribution to be made via a Section 106 agreement, and for the developer to implement phase 1 of the scheme).
- 36) M1 junction 40 monitoring strategy to be submitted, approved and implemented, and mitigation to be implemented if monitoring demonstrates the need (condition to be worded to allow for an alternative scheme to be approved, and for a contribution to be made via a Section 106 agreement).

The following rewording of the first two items listed in the Section 106 Heads of Terms is recommended:

- 1) Highway capacity / improvement / other works
 - a) Contribution towards M62 junction 28 mitigation (if details submitted pursuant to condition 35 demonstrate this is appropriate)
 - b) Contribution towards M1 junction 40 mitigation (if details submitted pursuant to condition 36 demonstrate this is appropriate)

Of note, the above changes regarding junction 28 of the M62 and junction 40 of the M1 are a result of further discussions with National Highways, who had raised concerns regarding the earlier intention to address relevant matters entirely via the recommended Section 106 agreement (which National Highways would not be a signatory to). Essentially, the above changes move the requirements from the recommended Section 106 agreement into recommended conditions 35 and 36 to address National Highways' concerns, however related provisions would still be required in the recommended Section 106 agreement, to enable contributions to be collected in the event that this proves more appropriate.

Representations

Mark Eastwood MP made the following comments:

I write today to express my concerns regarding the Proposed Chidswell Development Ref: 2020/60/92331/E. I have been involved in the Chidswell Action Group since 2011 and strongly support their work to oppose this development which would have significant impact on the local biodiversity, ancient woodlands, traffic, and congestion on local roads. Specifically, in relation to the current application I would like to raise several concerns:

Despite Natural England's requests for site-specific surveys to assess the quality of the land, this has not been completed. The Landowner states that the need for new housing and employment outweighs the loss of agricultural land. A Land Assessment Survey is required to ensure the Planning Department are provided with clear indication if this land is of better agricultural value than the Landowner claims.

The Ecological Survey is outdated, in the previous report it was acknowledged that species such as Skylarks and Yellow Hammers would be permanently displaced. Reports indicate that regular sightings have been reported of Schedule 1 species such as Kingfisher, Red Kite and Barn Owl. Evidence of this is recorded multiple times over 2 seasons, clearly indicating they are not "passing by" as indicated by the landowners. The Ecological Impact Assessment carried out states "with a development of this scale, some impacts remain significant and are very hard to mitigate" A full and up to date Ecological Survey is required. The latest reports from Biodiversity Net Gain states that the waterways have dried up and does not classify as being part of KWHN. There are clear indications that this is not correct. A report based on the October Ecologist walk-over, claims the development will deliver 10% more biodiversity than in its current state. A previous Biodiversity Net Gain report, based on exact same conditions, was assessed at 14% Net Loss this creates a disparity of 24%? The net loss in 2020 was advised independently by Yorkshire Wildlife Trust. In addition to this, the Forestry Commission has issued its advice in relation to the ancient woodlands and the Woodland Trust have strongly objected.

Many local residents have expressed their concerns with me about this application, specifically around the impact, two development sites, Chidswell and Heybeck, will have on local transport networks, and on the health and wellbeing of local people.

I would be grateful if you would consider these concerns and address them as the application progresses, specifically conducting a new Ecological Survey, a reassessment of the Biodiversity New Gain figures, and a Land Assessment Survey.

Simon Lightwood MP relayed the concerns of the Chair of the Chidswell Action Group, stating:

As you will note, my constituent has expressed the following concerns in relation to these applications:

- *Impact to local traffic leaving Wakefield via A638*
- *Pollution flowing into Wakefield owned areas including Fenton Dam*
- *Impact on J40 of the M1*
- *Impact on local community of gawthorpe due to increased traffic and pollution as vehicle numbers are shown to increase with no mitigation due to being in Wakefield.*
- *Increased flooding risk in Wakefield.*

I understand that both application 2020/92350 and 2020/92331 are both allocated sites within the Kirklees Local Plan and form part of the council's programme of works to deliver thousands of homes across Kirklees.

However, I note that the Chidswell Action Group are particularly concerned that the above applications will lead to a loss of agricultural land. In addition, I understand that there is concern that the amount of affordable housing on the site might be reduced after approval, thus not addressing the significant issues faced regarding the demand for affordable housing.

On 05/12/2022, the Chidswell Action Group directly emailed Members, including Members of the Strategic Planning Committee, requesting deferral of the council's decision to enable the following information to be obtained:

- An up-to-date Agricultural Land Classification assessment;
- Up-to-date ecological surveys; and
- An up-to-date biodiversity net gain assessment.

Without this information, the Chidswell Action Group are of the view that a grant of outline permission would be made on an incomplete assessment of the proposal's impacts.

Further to section 7.0 of the committee report, a further 125 representations have been received, including from Cllr Jim Aveyard (Morley Town Councillor, Woodkirk ward). The following is a summary of the additional comments made:

- Separate applications should not have been submitted.
- Applicant has refused to assess the site's agricultural quality.

- Site is used for growing potatoes, wheat and barley.
- Green belt should be sacrosanct.
- Objection to designs of houses.
- More homes are needed.
- Carcinogens would be released into the air.
- Two or three thousand vehicles would be added to Leeds Road.
- 22,000 vehicle journeys per day would occur.
- Junctions are over capacity.
- Objection to monitoring approach instead of “predict and provide”.
- Lack of parking for tradespeople.
- 32 homes would only be accessible via Windsor Road, where visibility is poor.
- Concern regarding vehicular access to rear of 919 to 929 Leeds Road.
- Unrealistic travel plan.
- Residents would not cycle in such a hilly area.
- Residents would have to rise early to commute by bus.
- Existing bus services are regularly cancelled and delayed.
- Regarding drainage, proposed 30% allowance for climate change is inadequate. 40% should be allowed.
- Lack of a drainage layout.
- Unclear where surface water would be stored.
- UK suffers from a lack of tree cover.
- Existing trees store carbon.
- Forestry Commission have commented.
- Woodland Trust have objected.
- Site forms part of the Kirklees Wildlife Habitat Network.
- Peregrine falcons visit the site from Ossett church.
- Independent bat survey required.
- Council can't be part of the White Rose Forest initiative if the proposed development is approved.
- Environmental disaster would occur.
- Noise from vehicles pulling away from new signalised junctions.
- Proposed school provision is a misnomer and a smokescreen.
- Pupils from outside Kirklees would be able to attend the proposed school.
- Unsafe to build on mined land.
- Applicant's consultants' findings can't be relied on.
- Applicant's site photographs are not representative.
- Vulnerable people in Gawthorpe would be affected.
- Houses would be overpriced.
- Livelihood of an AirBnB property owner would be affected.
- Much has changed since the Local Plan was adopted in 2019.
- Development is not wanted or needed.
- No benefits to local people.

To date, a total of 830 representations have been received in relation to the application.

Consultation responses

Yorkshire Wildlife Trust – Unclear how applicant's assumptions regarding river condition were reached. Inappropriate to make such assumptions. Request that river metric calculations are undertaken prior to determination of the application. The relevant river forms part of the Kirklees Wildlife Habitat Network and therefore should be assessed as the highest strategic significance criteria in the biodiversity metric. Amending the metric spreadsheet would alter the baseline units from 12.77 to 14.69 and consequently would reduce the overall river net

gain percentage from 10.20% to 7.76%. It is therefore critical that the baseline river condition is properly assessed as just small variations in the assessment will affect the overall score. It is also necessary to demonstrate how the project complies with the ten good practice principles of net gain. Other earlier comments may be outstanding.

Corrections

At paragraph 10.156 of the committee report, the first two sentences regarding committed schemes were included in error, and should be disregarded. As set out at paragraph 10.153 of the committee report, at pre-application stage, when discussing the scope of the applicant's Transport Assessment, the council advised the applicant to use the council's SATURN (Simulation and Assignment of Traffic to Urban Road Networks) model to determine future traffic growth. This model was developed to support the Local Plan and included committed and future development sites, and was considered to better reflect detailed changes to traffic assignment and growth. Given the use of this model, a list of committed schemes did not need to be agreed with the applicant.

In the third sentence of paragraph 10.218 of the committee report, the words "(and developable areas would not be set if outline permission is granted)" were included in error, and should be disregarded. Developable areas would in fact be fixed at outline stage (as noted at paragraph 10.96). Regarding the odour issue discussed at paragraph 10.218, officer advice otherwise remains unchanged. Although developable areas would be fixed at outline stage, the precise locations of new dwellings within those areas would not be fixed until Reserved Matters stage. At that stage, a further assessment of odour (and its influence on dwelling locations) would be considered.

Land use and principle of development

The application site is within a wider mineral safeguarding area relating to surface coal resource (SCR) with sandstone and/or clay and shale. Local Plan policy LP38 therefore applies. This states that surface development at the application site will only be permitted where it has been demonstrated that certain criteria apply. Criterion c of policy LP38 is relevant, and allows for approval of the proposed development, as there is an overriding need (in this case, housing and employment need, having regard to Local Plan delivery targets) for it.

Ecological considerations

The comments of the Yorkshire Wildlife Trust (YWT) are noted, however officer advice is unchanged. It is again noted that further survey work would be required prior to the submission of Reserved Matters applications. This would in turn inform a revised biodiversity net gain calculation.

The applicant has also responded to the YWT's comments as follows:

The information on the headwater stream was collected as part of the updated walkover survey in October 2022 by Chris Shaw, principal ecologist, and discussed with his colleague who is trained and accredited in modular physical survey river condition assessments (MoRPh), which returned the score of poor for the stream. We would expect a MoRPh,

along with any other updated surveys needed, to be undertaken at RM stage, to inform individual phases of development coming forward.

Furthermore, [the case officer has recommended] a condition which requires the achievement of 10% net gain across the site. So the metric will need updating as part of discharging this condition, and any specific points on the metric can be addressed when more information is available about the scheme details and the specifics of mitigation.

The Chartered Institute for Ecology and Environmental Management guidance referred to at paragraph 10.244 of the committee report can be viewed online at: <https://cieem.net/wp-content/uploads/2019/04/Advice-Note.pdf>

Other planning matters

Illustrative visualisations of the proposed development have been submitted by the applicant. These have been posted online, and will be included in the case officer's presentation on 08/12/2022.

On 17/11/2022 the Chidswell Action Group contacted the case officer, stating that many residents had not been contacted as part of the council's reconsultation. Two local residents have subsequently stated that they weren't reconsulted. These concerns were investigated. In one case, the council had not received an earlier representation (and, therefore, the resident was not logged as an interested party who would be reconsulted). In the other case, although the resident's email address appears to have been logged incorrectly by the council, a reconsultation letter was sent to that resident's address on 27/10/2022.

As noted in the committee reports, a total of 13 new site notices were posted on 02/11/2022, in addition to the reconsultation letters posted and emailed in October 2022.

The Chidswell Action Group's email of 17/11/2022 requested an extension to the reconsultation period. This, in turn, would have resulted in a delay to the determination of the application, hence the reference in paragraph 10.285 of the committee report.

Planning Application 2020/92350

Item 10 – Page 95

Outline application for residential development (Use Class C3) of up to 181 dwellings, engineering and site works, demolition of existing property, landscaping, drainage and other associated infrastructure (amended and further information received)

Land south of, Heybeck Lane, Chidswell, Shaw Cross, Dewsbury

Revised recommendation

The following additional condition is recommended:

27) Site-wide open space strategy to be submitted prior to Reserved Matters applications (or with the first Reserved Matters application), and

to include proposals for on-site provision with reference to existing local provision and the six open space typologies of the Open Space SPD.

Representations

The comments relayed by Simon Lightwood MP (see above) also relate to application 2020/92350.

On 05/12/2022, the Chidswell Action Group directly emailed Members, including Members of the Strategic Planning Committee (see above).

Further to section 7.0 of the committee report, a further 91 representations have been received, including from Cllr Jim Aveyard (Morley Town Councillor, Woodkirk ward). Most of these representations also related to application 2020/92331. The above summary of the additional comments made includes those comments made in relation to application 2020/92350.

To date, a total of 396 representations have been received in relation to the application.

Corrections

At paragraph 10.41 of the committee report, the second sentence regarding committed schemes was included in error, and should be disregarded (see above information regarding SATURN modelling).

Land use and principle of development

The application site is within a wider mineral safeguarding area relating to surface coal resource (SCR) with sandstone and/or clay and shale. Local Plan policy LP38 therefore applies. This states that surface development at the application site will only be permitted where it has been demonstrated that certain criteria apply. Criterion c of policy LP38 is relevant, and allows for approval of the proposed development, as there is an overriding need (in this case, housing need, having regard to Local Plan delivery targets) for it.

Planning Application 2020/92307

Item 11 – Page 123

Outline application, including the consideration of access, for erection of residential development (up to 75 units)

Penistone Road / Rowley Lane, Fenay Bridge, Huddersfield, HD8 0JS

Updated comments from Cllr Munro

Local ward councillor Alison Munro has provided further comments on the scheme, as detailed below.

The following comments were received on the 2nd of December.

Air Pollution - Air Quality

I have recently visited the website AddressPollution.org

HD8 0AW which is around the Whitegates Grove area in Fenay Bridge and HD8 0AP which covers houses along Penistone Rd in Fenay Bridge both show a high reading for air pollution which exceeds WHO (World Health Organisation) limits. " DEMAND ACTION"

In addition there was a recent report in the media concerning" air pollution cancer breakthrough will rewrite the rules" as scientists have discovered that air pollution actually triggers damaged cells in the human body which then mutate to cause cancer.

www.bbc.co.uk/news/health-62797777?

The impact from the housing developments will lead to an increase in traffic which ultimately will increase air pollution on the Penistone Rd corridor, increase air pollution up Rowley Lane by the school and increase air pollution on the Wakefield Rd corridor. Many people live along these corridors. School children attend Rowley Lane School and Lepton Cof E which will also be impacted.

Scientists have now found a direct link between toxic air pollution and cancer, so allowing these houses to be developed will impact upon the wider area in terms of air pollution. According to the report undertaken by WHO the limit for PM2.5 should be a maximum of 5mcg, but the level on Penistone Rd is already double that at 10mcg. Almost 20% of strokes can be attributed to exposure of this pollutant over a period of a year- yet this Cabinet only seeks to encourage many more unnecessary houses in our area which means more vehicles on our roads and more pollution.

Officer Response: The air quality impacts of the proposal have been assessed in accordance with local and national policy, using relevant planning guidance.

Roundabout

In the meantime I understand that the Applicant will be liable for the costs towards the roundabout of £285,000 for Phase 1 I seek clarification on which applicant this refers to? Is it the applicant seeking outline planning permission or the applicant who will make an application for full planning permission. What happens in relation to further phases which may or may not be built in which case a roundabout would never transpire and who would be liable for the costs of further phases?. I wonder how much the actual cost of building a roundabout will be when it actually comes to building one? Could it be the costs will have increased again so the developer can use that to wriggle out of building affordable houses?

Officer Response: While it remains to be detailed by K.C. Legal, it is expected that 'the applicant' expected to pay will be the final developer. This may, or may not, be the current applicant for this application, or a new party. If later phases (3 and 4, as per the masterplan) are not built, the roundabout would not be needed or come forward. The cost is to be index linked, and an overage clause included allowing the Planning Authority to seek additional funds, if required.

Affordable housing

In this country and across the world we are currently experiencing instability and economic turmoil. How can we be assured that approving the site for outline permission that the affordable houses will ever be built as we have a similar site in Fenay Bridge formerly k/a HS1 where outline planning approval was given for 68 houses which includes 20% affordable housing, but recently we have now been led to believe that it would never have been viable to build 20% affordable housing on that site.

The site being determined to day is once more for outline planning for 75 new houses to include 20% affordable, it's a similar scenario. In this current economic time, it is important more than ever that affordable houses are built, and that section 106 monies are paid in full to the Council.

Officer Response: Each application is assessed on its own merits. The default position, as per the Local Plan, is to consider housing allocations to be viable and able to contribute S106 obligations, including affordable homes. Should the applicant content this is not the case, as per 2022/93154 a viability assessment process will be undertaken in accordance with local and national policy.

Creating a sense of Place

I do not believe that developing the sites known as HS 2 and HS3 in a piecemeal fashion will create a sense of place as stated by the developers. What it does mean is that there will be a housing estate of 75 houses leading off narrow Rowley lane and lying close to a main road. That's it! These houses are not close to any amenities so people will inevitably drive to where they need to be. Simply offering a bus pass helps no one when the bus service is unreliable and infrequent. Offering a bus pass is merely a gesture and achieves nothing.

Officer Response: Developing allocations with an indicative capacity of 598 dwellings across several phases is not considered unreasonable. The point of access for phase 1 has been considered and found to be acceptable in the report. Paragraphs 10.44 – 10.51 detail officers' consideration of the site's accessibility and proximity to services.

Fenay Beck/ Beldon Brook

How can the developers assure us that no contaminants will seep into Fenay Beck as a result of building these houses? Additionally how can we be assured that any additional water entering Fenay Beck from the site will not increase its flood risk which is currently 1:30 years chance of happening in Fenay Bridge and what is being done to reverse this risk to what it was formerly of 1:100 years. I do know that allowing additional water into the Beck will not help reverse the flood risk.

Officer Response: It is an offence to cause or knowingly permit a water pollution discharge activity. The offences cover pollution of all watercourses, including streams and rivers. Such pollution events, being covered by separate legislation, would be outside the remit of planning. Nonetheless, a condition has

been recommended for a temporary drainage flood routing plan, to demonstrate how any surface water discharge during construction will be managed.

The impact of flood risk and drainage is assessed in paragraphs 10.115 – 10.121 of the officer's report.

The following comments were received on the 5th of December.

Affordable housing

In the light of the earlier concerns I highlighted in relation to affordable housing and site HS1, Isn't it pointless in asking this committee to approve this planning application which provides for 20% affordable housing due to the economic downturn, falling house prices sharp hikes in timber and delays to supply chains for building materials and rising costs of those? How can we be assured that such houses will be built?

I do wonder that this application is premature from several perspectives, not least being the Masterplan and the aspects already highlighted.

Officer Response: If approved the application will include a s106 legal agreement to cover the provision of 20% affordable units (to be detailed at reserved matters stage). Should the applicant seek to change this in the future it would have to go through due process, including an independently assessed viability process.

In relation to the Master Plan point 6 Policy LP5f

I believe it is wrong for the Applicants to refer to the former railway line in the way they have as this line is privately owned. Were the views/consent of the owners of that land all taken before the Applicants used this line as part of their application to try to persuade us all their plans are sustainable?

Officer Response: The masterplan refers to the potential ability for the development to connect onto the Huddersfield-Kirkburton Railway Line, which is noted as a proposed future cycle/ walking path. This was included on the request of officers. The railway line is identified in the Local Plan as a 'Core Walk / Cycle Proposed' route and it is an ambition for it to be developed into such a cycle / walking way. However, as identified by Cllr Munro the split ownership makes this currently difficult. Nonetheless, officers welcome its inclusion and note the a potential link.

In reference to the Masterplan I note that in relation to green space that eventually once all the houses are sold that the house owners who will be shareholders in the management companies and will take over maintenance of the site and the play area once all the houses are sold? This is concerning- will individual house owners have a choice as to whether they become shareholders? Will they feel compelled to be a shareholder? A shareholder in land they will not own, but be forced to maintain to make profit for the over- arching company that owns the land in order to maintain the environment they live in? This proposal is unacceptable and places a heavy burden upon people buying houses on these sites and could cause arguments to break out between home

owners who are shareholders and those who chose not to be if that is possible. In the long term it will be detrimental to our area and the people who live there. Why not sell the individual home owners the land? It is simply not right to place such a heavy burden upon house owners. And the proposal should be rejected by this Council.

Officer Response: The establishment of a resident management and maintenance company is typical for modern housing estates. By spreading the cost across all land owners, the price of management and maintenance is kept to a minimal.

In relation to the Masterplan

The committee cannot be certain that the whole site HS2 and HS3 can be delivered in a way that complies in full with the requirements of the NPPF and council policies. It is simply not right to determine this site in isolation as there are no guarantees the other sites will ever be delivered as stated this site is to be situated at the side of the Penistone Rd corridor, away from local amenities. Parents who may buy these houses will jump in their cars to take their children to the local Primary schools which are both up steep hills and the local secondary school again by driving there. They will jump into their cars to travel to work as the bus service is unreliable and insufficient and they will use their cars to go shopping. All this will increase the toxicity of the air in our area and overburden the Penistone Rd corridor and Rowley Lane where the local school is located.

This application must not be approved.

Officer Response: While the masterplan is relevant to this application, for the avoidance of doubt this application relates to the redline area only – phase 1 as detailed within the masterplan. Subsequent applications for later phases of HS2 and HS3 will be assessed on their own merits, against relevant policy and the parameters established by the masterplan, when they are submitted.

Paragraphs 10.44 – 10.51 detail officers' consideration of the site's accessibility and proximity to services.

On the 6th of December Cllr Munro sent an email to officers and members of the committee. This re-iterated many of the above matters.

Access

secondary access then (in the context of the wider plan) is again immediately below a bend but close to the junction with Penistone Rd where traffic queues at peak times. Additionally as outlined in the wider plan there will be two access points off Rowley Lane, (the other being Woodsome Park) within a few metres of each other and this will be combined with access to Woodsome Drive on the opposite side of the road. Vehicles back up, at the junction with Rowley Lane and Penistone Rd at peak times and this is likely to impact upon traffic flow due to the accumulative increase in houses in the area and therefore increase in vehicles. I have been in queuing traffic here myself often. If this outline plan is approved with access as currently proposed, this will result in the

site access being frequently blocked.” This comment does not seem to figure in the Report but this application concerns access so it is therefore important to underline the issue.

Officer Response: The distances between the site’s access, Woodsome Park, and Penistone Road junctions, both as proposed by this application and indicatively shown for phase 3 (when the roundabout comes forward) are considered acceptable. The proposal includes works to improve the capacity of the Rowley Lane / Penistone Road junction, as detailed in paragraphs 10.33 – 10.39.

Historic Environment

I refer to 10.93 of the Report the delivery of a residential development at a time of national crisis is a substantial public benefit- The houses planned for this site are within a sensitive historic environment which while it is noted will cause less than substantial harm to the setting of Woodsome Hall Grade 1 listed– this is debateable – the houses are not needed, so I question the public benefit.

The population in Kirklees has declined by circa 16,000 people since the census in 2011, I have highlighted several times that the Local Plan provides for too many houses, approximately 10,000 plus that are planned to be built on former green belt land- I seriously question the public benefit in this case?

Officer Response: The Local Plan’s housing target figures were based on Government methodologies. The calculated housing requirement was reviewed by the Government appointment inspector and found to be acceptable. There are considered no grounds to deviate from the Local Plan.

Trees

I note that some mature trees will have to be felled to improve visibility and enable a 2m wide footpath to be implemented leading out of the estate up Rowley Lane. I must object to any mature trees being felled in relation to access to the site. Mature trees sequester CO2 and there are many residents living along Rowley Lane. Due to an increase in traffic as a result of the housing development, there will be an inevitable increase in air pollution, it is therefore important that the trees remain in situ.

Officer Response: The felling of the trees along the site’s west boundary has been identified as necessary to form any acceptable access, due to the need to secure sightlines. The provision of a 2m footpath is also a benefit of the proposal. Nonetheless, at Reserved Matters stage officers expect a proportionate level of mitigatory replanting, in addition to the standard level of tree planting which would be expected. Air pollution is considered within paragraphs 10.127 – 10.131 (as well as in the above response).

Representation from Green Alert in Lepton (GAIL)

Since the officer's committee report was published an additional representation has been received, submitted by representatives of the local community group GAIL. This brings the total representations to 107. This letter raises the following matters (summarised):

Historic England and KC Conservation and Design

- Historic England make it clear in their recommendations they maintain concerns and require the Authority to assess the proposal against 199 and 202 of the NPPF.
- Historic England have failed to mention no. 1 Woodsome Road (Grade 2) and their response on Woodsome Hall (Grade 1) is not definitive.
- The Council have failed to demonstrate that there is a convincing business case that shows there is a need for housing in the area and this specific site. As such, the required public benefits to outweigh the identified harm to heritage assets (providing housing), are called into question.
- In their comments, the Conservation Officer describes Woodsome Hall as Grade 2, not the correct Grade 1.
- Both Conservation and Design and Historic England agree the proposal will harm the setting of Woodsome Hall; the Council and applicant have failed to clearly lay out the benefits.
- The roundabout has been removed from the proposal: GAIL expect Conservation and Design and Historic England to be more robust and direct in their response when a scheme including it comes forward.
- Documents recommended by Historic England (Zones of Theoretical Visibility and Visual Impact Assessments) have not been provided and the development cannot be fully assessed.
- The impact assessment fails to consider other Listed Buildings, outside of 1 Woodsome Road and Woodsome Hall.

Officers Response: The comments from GAIL are noted but are not considered to affect officers' assessment detailed within the report (paragraphs 10.63 – 10.95).

As per the report, it is accepted that the development will be visible from Woodsome Hall and no. 1 Woodsome Road and would affect them. The submitted documents to include Viewshed assessments which are considered sufficient to understand the visibility at outline stage. However, it has been determined that the harm would not intrinsically be greater than less than substantial. As noted within the report, careful design would be required at Reserved Matters stage to ensure the harm does not exceed less than substantial. The public benefit of provision of housing at a time of need is sufficient to outweigh the identified harm.

While GAIL dispute the housing need for the area, this has been established through the Local Plan process and verified by the Planning Inspectorate.

Officers Response:

Noise and vibration

- The matter of noise pollution and vibration between the new development and Reliance Precision should be resolved now; any later is too late.
- Failing to do so risks the operation of a major employer and the living standard of future residents.

Officers Response: Noise and vibration documents have been provided and reviewed by K.C. Environmental Health. This is detailed within paragraphs 10.102 – 10.114. Based on the information provided, subject to condition and appropriate standards at Reserved Matters stage officers are satisfied that there would be no prohibitive impact to either residents or adjacent business.

The masterplan

- GAIL contends that the masterplan is inadequate to address the requirements of LP5.
- There is no signed guarantee that the sites will ever be delivered, including the railway line owners.

Officers Response: Officers consider the masterplan within paragraphs 10.16 to 10.27 of the committee report and conclude it to be acceptable. A signed contract obligating a landowner to develop a site would not be reasonable, however the masterplan sets out a strategic overview from the relevant landowners of how development on the site should be approached.

Planning Application 2022/92718

Item 13 – Page 213

Demolition of fire training building, extension and landscaping of RTC yard, including erection of fuel pump and tank, bin store and dog kennels, recladding of the BA building and erection of an enclosed link between BA and TRTC, provision of a new sub-station and new boundary treatments, retaining and landscaping works.

Oakroyd Hall, West Yorkshire Fire and Rescue Service Headquarters, Bradford Road, Birkenshaw, BD11 2DY

Contaminated Land

A remediation strategy has been submitted to officers and is currently under consideration by KC Environmental Health. If it is deemed acceptable, officers will seek a compliance only condition for this matter.
