

Delegated Report

Planning Ref: 25/01131/FUL

Applicant: Megan Spence (Bark Park)

Ward: Earl Shilton



Hinckley & Bosworth
Borough Council

Site: Land South of Leicester Road, Earl Shilton, Leicestershire

Proposal: Change of use from agricultural use to an outdoor dog park (sui generis use) (retrospective) and erection of a timber field shelter and a 2 metre high fence

1. Recommendations

- 1.1. Grant planning permission subject to:
 - Planning conditions outlined at the end of this report

2. Planning application description

- 2.1. This application is a full, (part retrospective) application for a change of use of agricultural land to an outdoor dog park, provision of a timber field shelter (which is not yet installed) and a 2 metre high mesh wired fencing to the boundary (installed).
- 2.2. The total area of the site measures approximately 0.647 Hectares.
- 2.3. There is an existing vehicular access to the field which is located off Leicester Road (A47).
- 2.4. The application is accompanied by the following reports and documents:
 - Application Form
 - Site Location/Block Plan
 - Planning Statement
 - Site Plan/Field Shelter
 - Fencing Sheet
 - Dog Management Plan

3. Description of the site and surrounding area

- 3.1. The site lies to the north of Earl Shilton outside of the settlement boundary within open countryside.
- 3.2. The site is bounded by Leicester Road (A47) to the north and east of the site.
- 3.3. The application site bisects the Public Right of Way Footpath T86 which briefly crosses the eastern end of the parking zone near Gate 2 – the entrance to the secure dog exercise area.
- 3.4. Part of the site falls within the boundary of Blaby District Council.

4. Relevant planning history

- 4.1. 22/00727/OUT - Outline Planning Application for the development of 14 x B2 employment units and 10 x traveller pitches with access from the Leicester Road, with landscaping, parking and associated works – APPROVED (adjacent to and bordering the site)

5. Publicity

- 5.1. A site notice was posted within the vicinity of the site and advertised in the local press.
- 5.2. No comments have been received from local residents or third parties.

6. Consultation

6.1. No objection has been received from the following consultees:

- LCC Minerals and Waste
- HBBC Environmental Health
- LCC Highways – subject to conditions
- HBBC Drainage
- Blaby District Council
- LLFA – No comment
- Environment Agency

6.2. LCC Ecology – Holding Objection. Further information required in respect of Biodiversity Net Gain.

Further response received – no objection subject to conditions including Biodiversity Net Gain Condition.

6.3. HSE Web App – Does not advise against the granting of planning permission.

6.4. No comments have been received from Earl Shilton Parish Council, National Grid or the Council's Waste Team.

7. Policy

7.1. Core Strategy (2009)

- Policy 2: Development in Earl Shilton

7.2. Site Allocations and Development Management Policies DPD (2016)

- Policy DM1: Presumption in Favour of Sustainable Development
- Policy DM4: Safeguarding the Countryside and Settlement Separation
- Policy DM6: Enhancement of Biodiversity and Geological Interest
- Policy DM7: Preventing Pollution and Flooding
- Policy DM10: Development and Design
- Policy DM17: Highways and Transportation
- Policy DM18: Vehicle Parking Standards

7.3. National Planning Policies and Guidance

- National Planning Policy Framework (NPPF) (2024)
- Planning Practice Guidance (PPG)
- National Design Guide (2019)

7.4. Other relevant guidance

- Good Design Guide (2020)
- National Design Guide (2019)
- Landscape Character Assessment
- Leicestershire Highway Design Guide
- Leicestershire Minerals and Waste Local Plan

8. Appraisal

8.1. The following represent the key issues in this case:

- Principle of development
- Design and Character
- Impact upon highway safety

- Residential amenity
- Flood Risk and Drainage
- Ecology and Biodiversity
- Minerals
- Planning balance

Principle of development

- 8.2. Paragraph 2 of the National Planning Policy Framework (NPPF) states that planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise and that the NPPF is a material consideration in determining applications. Paragraph 12 of the NPPF confirms that the presumption in favour of sustainable development does not change the statutory status of the Development Plan as the starting point for decision making.
- 8.3. Paragraph 11 of the National Planning Policy Framework (NPPF) and Policy DM1 of the Site Allocation and Development Management Policies Development Plan Document (SADMP) set out a presumption in favour of sustainable development, and state that development proposals that accord with the development plan should be approved unless other material considerations indicate otherwise. The development plan in this instance consists of the adopted Core Strategy (2009) (CS) and the Site Allocations and Development Management Policies DPD (2016) (SADMP).
- 8.4. The Emerging Local Plan for 2024-45 reached Regulation 18 stage (July-September 2024) and thus can only be given limited weight at this stage as it has not been tested through examination in public. Since the Regulation 18 consultation, revised affordability ratios have been published, the Standard Housing Method housing figure for the Borough has changed, and the plan period has been extended. As set out in the Local Development Scheme, further Regulation 18 consultation took place in September 2025 with Regulation 19 Consultation taking place March/April 2026 with submission to the Secretary of State being November 2026. Therefore, as highlighted above little weight can be attached to the current Regulation 18 Local Plan.
- 8.5. The Core Strategy (CS) sets out the settlement hierarchy for the Borough. The application site is located on land within open countryside to the north of Earl Shilton, bordering Leicester Road/A47.
- 8.6. Policy DM4 of the Site Allocations and Development Management Policies DPD 2016 is applicable in this case. This policy allows for sustainable development within the countryside provided that it meets criteria. The criterion considered to be applicable in this case is:
 - It is for outdoor sport or recreation purposes (including ancillary buildings) and it can be demonstrated that the proposed scheme cannot be provided within or adjacent to settlement boundaries
- 8.7. Whilst the submission does not clearly set out why the use cannot be provided within or adjacent to settlement boundaries, it is clear that the proposed use is one which could cause noise/disturbance to residential properties if it were within close proximity to settlements. Therefore, in principle the proposal is acceptable subject to other material considerations set out below.

Design and Character

- 8.8. Policy DM4 of the SADMP requires that development in the countryside does not have an adverse effect on the intrinsic value, beauty, open character and landscape character of the countryside, does not undermine the physical and perceived separation and open character between settlements and does not create or exacerbate ribbon development. Policy DM10 of the SADMP seeks to ensure that new development complements or enhances the character of the surrounding area with regard to scale, layout, density, mass, design, materials and architectural features.
- 8.9. The site is not a 'valued landscape' for the purposes of Paragraph 170 of the NPPF, does not have any national or local designations and is not unique or remarkable for any landscape purposes.
- 8.10. The application seeks a change of use from agricultural land to an exercise area for dogs. It borders the A47/Leicester Road and very little in the way of development is proposed e.g. car parking/hardstanding area, a timber field shelter and boundary fencing for security purposes. However, the form and scale of development proposed across this 0.647 hectare site would introduce minimal built form to this site.
- 8.11. This application also borders a site that was granted outline planning permission for 14 x B2 employment units and 10 x traveller pitches. Whilst this development has not yet commenced or progressed – it is a consideration from a design and character perspective that other forms of development have been found to be acceptable in this location.
- 8.12. Whilst the proposal would extend development into this area of open countryside, it is considered that the proposal would result in a very minimal degree of harm to the character and appearance of the area and would not amount to a significant adverse effect on the intrinsic value, beauty, open character and landscape character of the countryside. It is considered that the provision of an exercise area for dogs in this type of location meets criterion as set out within Policy DM4 of the SADMP.

Impact upon highway safety

- 8.13. Policy DM17 of the SADMP supports development that makes best use of public transport, provides safe walking and cycling access to facilities, does not have an adverse impact upon highway safety. All proposals for new development and changes of use should reflect the highway design standards that are set out in the most up to date guidance adopted by the relevant highway authority (currently this is the Leicestershire Highway Design Guide (LHDG)).
- 8.14. Paragraph 116 of the NPPF outlines that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
- 8.15. The local highway authority has been consulted on this application.
- 8.16. Access to the site is proposed off an existing entrance/exit point off Leicester Road/A47.
- 8.17. The LHA is satisfied that the applicant has demonstrated on the Proposed Site Plan – Sheet 1, drawing number AVD-LRE-PL04, Rev C that the access drive and parking area will be surfaced with tarmacadam or similar hard bound material for a distance of at least 5 metres behind the highway boundary. The Applicant has also demonstrated visibility splays of 2.4m by 160m to the west and 2.4m by 110m to the east on the Location and Block Plans, drawing number AVD-LRE-PL01, Rev A.
- 8.18. The LHA have confirmed that the proposal would not adversely impact upon the Public Right of Way that runs through the eastern part of the site.

- 8.19. Subject to conditions, this application is considered to be acceptable in highway safety terms and compliant with relevant development plan policies and the requirements of the NPPF.

Impact Upon Residential Amenity

- 8.20. Policy DM10 (a) and (b) of the SADMP states development will be permitted provided that it would not have a significant adverse effect on the privacy and amenity of nearby residents and occupiers of adjacent buildings, including matters of lighting and noise and that the amenity of occupiers would not be adversely affected by activities within the vicinity of the site.
- 8.21. Paragraph 135 (f) of the NPPF states that decisions should create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.
- 8.22. Paragraph 198 of the NPPF states that decisions should ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development.
- 8.23. The application details state that the dog park would have opening hours depending on the time/season of the year. In Spring/Summer it would be open between 6am and 8pm and in the Autumn/Winter between 730am and 5pm.
- 8.24. The Council's Environmental Health Team have been consulted on the application and raise no objections.
- 8.25. Therefore, subject to conditions, this application is considered to be acceptable in amenity terms and in compliance with Policy DM7, Policy DM10 a and b of the SADMP and the requirements of the NPPF.

Flood Risk and Drainage

- 8.26. Policy DM7 of the SADMP seeks to prevent development from resulting in adverse impacts on flooding by ensuring that development does not create or exacerbate flooding.
- 8.27. Paragraph 181 of the NPPF states that when determining planning applications local planning authorities should ensure that flood risk is not increased elsewhere.
- 8.28. The majority of the site is located in an area at low risk of fluvial flooding but part of the triangular section of the site (within the remit of Blaby District Council) lies within Flood Zone 2. A small section of the site is also at risk of surface water flooding. Development within Flood Zone 2 requires a Flood Risk Assessment.
- 8.29. The applicant has submitted a Flood Risk Assessment.
- 8.30. The Council's Drainage officer and the Environment Agency have been consulted on the application and have not objected to the scheme.
- 8.31. The LLFA notes that the 0.6ha greenfield site is located partially within Flood Zone 2 being at low to medium risk of fluvial flooding and a low risk of surface water flooding. They have no comments on the application as submitted.

- 8.32. Therefore, the proposal is considered to satisfy Policy DM7 of the SADMP and the requirements of the NPPF with respect to drainage and flood risk considerations.

Ecology and Biodiversity

- 8.33. Policy DM6 of the SADMP states that development proposals must demonstrate how they conserve and enhance features of nature conservation and geological value including long term future management.
- 8.34. Paragraph 187 of the NPPF states that planning decisions should contribute to and enhance the natural environment by minimising impacts on and providing net gains for biodiversity.
- 8.35. LCC Ecology were consulted on the application. It is noted that a Biodiversity Net Gain Plan condition is applicable for this proposal. They initially requested further information.
- 8.36. The site consists of predominately agricultural land and therefore likely offers limited ecological value, whilst the proposals include the retention of the majority of the onsite habitats. However, due to the site's connectivity to valuable habitat in the wider landscape, the Ecology Team recommend that an informative for general good practice mitigation is applied to any consent to mitigate the residual risk to mobile species which may pass through the site during construction of the proposed field shelter and track.
- 8.37. After re-consultation with the Ecology Team, they are now satisfied that there is sufficient information available to support determination of this application subject to conditions. They also conducted a desktop study including local records (accessed under licence) and aerial imagery to help assess the site.
- 8.38. Therefore, subject to conditions, this application is considered to be acceptable with respect to ecological matters and is considered to be in compliance with Policy DM6 of the Site Allocations and Development Management Policies DPD 2016 and the requirements of the NPPF.

Minerals

- 8.39. The Minerals and Waste Team at LCC were consulted on this application as part of the consultation process and raise no objections. They stated that the development site lies within a mineral consultation area for sand and gravel. However, the proposal is a change of use application and heavily constrained by existing residential development to the north which could impact the viability of extraction.
- 8.40. No conditions have been requested by the Minerals Team in this case. As such, the application is considered to be acceptable in this regard and compliant with Development Plan Policy and the requirements of the NPPF.

Other Matters

- 8.41. Due to the proximity of the site to Gas pipelines, the LPA assessed the application against the Health and Safety Executive Web App for clarification on whether further information was required or whether they considered there to be any risks. The outcome was that the HSE did not advise against the granting of planning permission in this case. National Grid were also consulted but have not responded to the application.
- 8.42. Part of this application site falls within the boundary of Blaby District Council. Therefore, whilst HBBC can make a decision on this application, the applicant would also need to make a separate planning application to Blaby District Council as well.

Planning Balance

- 8.43. Section 38(6) of the Planning and Compulsory Purchase Act 2004 and S70(2) of the Town and Country Planning Act 1990 require that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
- 8.44. The proposal accords with development plan policy in all other regards and is considered to be a suitable and acceptable form of development.
- 8.45. There are not considered to be any material planning considerations to warrant refusal of this application.

9. Equality implications

- 9.1 Section 149 of the Equality Act 2010 created the public sector equality duty. Section 149 states:-

A public authority must, in the exercise of its functions, have due regard to the need to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

- 9.2. Officer have taken this into account and given due regard to this statutory duty in the consideration of this application.
- 9.3. There are no known equality implications arising directly from this development.
- 9.4. The decision has been taken having regard to all relevant planning legislation, regulations, guidance, circulars and Council policies, including General Data Protection Regulations (2018) and The Human Rights Act (1998) (HRA 1998) which makes it unlawful for the Council to act incompatibly with Convention rights, specifically Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

10. Recommendation

- 10.1 **Approve Planning Permission subject to Conditions.**

Conditions and Reasons

1. The use hereby permitted shall be carried out in accordance with the following approved details:
- Site Location, Block Plan Drawing number AVD-LRE-PL01
 - Proposed Site Plan Sheet 1 Drawing number AVD-LRE-PL04 Rev C
 - Proposed Field Shelter Sheet 2 Drawing Number AVD-LRE-PL05
 - Dog Walking Field Management Plan

Reason: To ensure a satisfactory form of development in accordance with Policies DM1, DM4 and DM10 of the Site Allocations and Development Management Policies DPD 2016.

2. Within 6 months of the date of decision the access arrangements shown on Proposed Site Plan - Sheet 1, drawing number AVD-LRE-PL04, Rev C shall be implemented in full.

Reason: To ensure that vehicles entering and leaving the site may pass each other clear of the highway, in a slow and controlled manner, in the interests of general highway safety and in accordance with Policy DM17 of the Site Allocations and Development Management Policies DPD 2016 and the requirements of the NPPF.

3. Within 6 months of the date of decision the vehicular visibility splays of 2.4m by 160m to the west and 2.4m by 110m to the east shall be provided at the site access as shown on Location and Block Plans, drawing number AVD-LRE-PL01. These shall thereafter be permanently maintained with nothing within those splays higher than 0.6 metres above the level of the adjacent footway/verge/highway.

Reason: To afford adequate visibility at the access to cater for the expected volume of traffic joining the existing highway network, in the interests of general highway safety, and in accordance with Policy DM17 of the Site Allocations and Development Management Policies DPD 2016 and the requirements of the NPPF.

4. Within 6 months of the date of this decision the access arrangements shown on Proposed Site Plan - Sheet 1, drawing number AVD-LRE-PL04 Rev C shall be implemented in full.

Reason: To ensure that vehicles entering and leaving the site may pass each other clear of the highway, in a slow and controlled manner, in the interests of general highway safety and in accordance with Policy DM17 of the Site Allocations and Development Management Policies DPD 2016 and the requirements of the NPPF.

5. Within 6 months of the date of decision the parking and turning facilities shall be implemented in accordance with Proposed Site Plan - Sheet 1, drawing number AVD-LRE-PL04, Rev C. Thereafter the onsite parking and turning provision shall be kept available for such uses in perpetuity.

Reason: To ensure that adequate off-street parking provision is made to reduce the possibility of the proposed development leading to on-street parking problems locally and to enable vehicles to enter and leave the site in a forward direction in the interests of highway safety and in accordance with Policy DM17 of the Site Allocations and Development Management Policies DPD 2016 and the requirements of the NPPF.

6. Within 6 months of the date of decision the access drive and any turning space has been surfaced with tarmacadam, or similar hard bound material not loose aggregate for a distance of at least 5 metres behind the highway boundary as shown on Proposed Site Plan - Sheet 1, drawing number AVD-LRE-PL04, Rev C. Once provided, shall be so maintained in perpetuity.

Reason: To reduce the possibility of deleterious material being deposited in the highway (loose stones etc.) in the interests of highway safety and in accordance with Policy DM17 of the Site Allocations and Development Management Policies DPD 2016 and the requirements of the NPPF.

7. The site owners must ensure their boundary hedges are maintained and kept thoroughly cut back to ensure visibility around the Gate 1 vehicular entrance, and access and visibility at both the kissing gate and the stile where the public footpath enters and exits the site.

Reason: In the interests of protecting and enhancing Public Rights of Way and access in

accordance with Paragraph 105 of the National Planning Policy Framework 2024.

8. All biodiversity enhancements and/or works shall be carried out in accordance with the details contained in the Biodiversity Net Gain Report (Elite Ecology, February 2026) as already submitted with the planning application and agreed in principle with the local planning authority prior to determination. This should include the appointment of an appropriately competent person e.g. an ecological clerk of works (ECoW) to provide on-site ecological expertise during construction. The appointed person shall undertake all activities, and works shall be carried out, in accordance with the approved details.

Reason: To conserve and enhance protected, priority and threatened species in accordance with Policy DM6 of the Site Allocations and Development Management Policies DPD 2016 and allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 (as amended) and the requirements of the NPPF.

8. A Habitat Management and Monitoring Plan (HMMP) for significant on-site enhancements, prepared in accordance with the approved Biodiversity Gain Plan, shall be submitted to, and approved in writing by the local authority, within 6 months of the date of decision including:
- a) a non-technical summary;
 - b) the roles and responsibilities of the people or organisation(s) delivering the HMMP;
 - c) the planned habitat creation and enhancement works to create or improve habitat to achieve the on-site significant enhancements in accordance with the approved Biodiversity Gain Plan;
 - d) the management measures to maintain habitat in accordance with the approved Biodiversity Gain Plan for a period of 30 years from the completion of development;
 - e) the monitoring methodology in respect of the created or enhanced habitat to be submitted to the local planning authority; and
 - f) details of the content of monitoring reports to be submitted to the LPA including details of adaptive management which will be undertaken to ensure the aims and objectives of the Biodiversity Gain Plan are achieved.

Notice in writing shall be given to the Council when the:

- initial enhancements, as set in the HMMP, have been implemented; and
- habitat creation and enhancement works, as set out in the HMMP, have been completed after 30 years.

The created and/or enhanced habitat specified in the approved HMMP shall be managed and maintained in accordance with the approved HMMP.

Unless otherwise agreed in writing, monitoring reports shall be submitted in years 1, 3, 5, 10, 15, 20, 25, and 30 to the Council, in accordance with the methodology specified in the approved HMMP. The Council shall only issue approval of the habitat creation and enhancement works until:

- the habitat creation and enhancement works set out in the approved HMMP have been completed; and
- a completion report, evidencing the completed habitat enhancements, has been submitted to, and approved in writing by the Local Planning Authority.

Reason: To satisfy the requirement of Schedule 7A, Part 1, section 9(3) of the Town and Country Planning Act 1990 that significant on-site habitat is delivered, managed, and monitored for a period of at least 30 years from completion of development.

Informatives:

Planning Permission does not give you approval to work on the public highway. Therefore, prior to carrying out any works on the public highway you must ensure all necessary licences/permits/agreements are in place. For further information, please telephone 0116 3050001. It is an offence under Section 148 and Section 151 of the Highways Act 1980 to deposit mud on the public highway and therefore you should take every effort to prevent this occurring.

Prior to construction, measures should be taken to ensure that users of the Public Right of Way are not exposed to any elements of danger associated with construction works. Public Rights of Way must not be re-routed, encroached upon, or obstructed in any way without authorisation. To do so may constitute an offence under the Highways Act 1980. If there are any Public Rights of Way which the applicant considers impracticable to retain on their existing lines, a separate application for diversion is required. It should be submitted under the Town and Country Planning Act 1990 to the Local Planning Authority. The applicant is not entitled to carry out any works directly affecting the legal line of a Public Right of Way until a Diversion Order has been confirmed and become operative.

If the developer requires a Right of Way to be temporarily diverted, for a period of up to six months, to enable construction works to take place, an application should be made to networkmanagement@leics.gov.uk at least 12 weeks before the temporary diversion is Required.

Public Rights of Way must not be further enclosed in any way without undertaking discussions with the Highway Authority (0116) 305 0001.

Any damage caused to the surface of a Public Right of Way, which is directly attributable to the works associated with the development, will be the responsibility of the applicant to repair at their own expense to the satisfaction of the Highway Authority. No new gates, stiles, fences, or other structures affecting a Public Right of Way, of either a temporary or permanent nature, should be installed without the written consent of the Highway Authority. Unless a structure is authorised, it constitutes an unlawful obstruction of a Public Right of Way, and the County Council may be obliged to require its immediate removal.

IMPORTANT: Biodiversity Net Gain Plan Condition

The development is subject to the mandatory "biodiversity gain condition". A Biodiversity Gain Plan must be submitted to and approved in writing by Hinckley and Bosworth Borough Council prior to commencement of this development.

(a) a Biodiversity Gain Plan has been submitted to the planning authority, and

(b) the planning authority has approved the plan.

There are statutory exemptions and transitional arrangements which mean that the biodiversity gain condition does not always apply, these are listed below. However, based on the information available this permission is considered to be one which will require the approval of a biodiversity gain plan before development is begun because none of the statutory exemptions or transitional arrangements listed below are considered to apply.

You should submit an application to discharge the Biodiversity Gain Plan condition to Hinckley and Bosworth Borough Council using a discharge of conditions application form. The current application fee is £145.

Further guidance on the submission of the Biodiversity Gain Plan can be found [here](#).

Statutory exemptions and transitional arrangements in respect of the biodiversity gain condition.

1. The application for planning permission was made before 12 February 2024.
2. The planning permission relates to development to which section 73A of the Town and Country Planning Act 1990 (planning permission for development already carried out) applies.
3. The planning permission was granted on an application made under section 73 of the Town and Country Planning Act 1990 and

(i) the original planning permission to which the section 73 planning permission relates* was granted before 12 February 2024; or

(ii) the application for the original planning permission* to which the section 73 planning permission relates was made before 12 February 2024.

4. The permission which has been granted is for development which is exempt being:

4.1 Development which is not 'major development' (within the meaning of article 2(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015) where:

- i) the application for planning permission was made before 2 April 2024;
- ii) planning permission is granted which has effect before 2 April 2024; or
- iii) planning permission is granted on an application made under section 73 of the Town and Country Planning Act 1990 where the original permission to which the section 73 permission relates* was exempt by virtue of (i) or (ii).

4.2 Development below the de minimis threshold, meaning development which:

- i) does not impact an onsite priority habitat (a habitat specified in a list published under section 41 of the Natural Environment and Rural Communities Act 2006); and
- ii) impacts less than 25 square metres of onsite habitat that has biodiversity value greater than zero and less than 5 metres in length of onsite linear habitat (as defined in the statutory metric).

4.3 Development which is subject of a householder application within the meaning of article 2(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015. A "householder application" means an application for planning permission for development for an existing dwellinghouse, or development within the curtilage of such a

dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse which is not an application for change of use or an application to change the number of dwellings in a building.

- 4.4 Development of a biodiversity gain site, meaning development which is undertaken solely or mainly for the purpose of fulfilling, in whole or in part, the Biodiversity Gain Planning condition which applies in relation to another development, (no account is to be taken of any facility for the public to access or to use the site for educational or recreational purposes, if that access or use is permitted without the payment of a fee).
- 4.5 Self and Custom Build Development, meaning development which:
- i) consists of no more than 9 dwellings;
 - ii) is carried out on a site which has an area no larger than 0.5 hectares; and
 - iii) consists exclusively of dwellings which are self-build or custom housebuilding (as defined in section 1(A1) of the Self-build and Custom Housebuilding Act 2015).
- 4.6 Development forming part of, or ancillary to, the high speed railway transport network (High Speed 2) comprising connections between all or any of the places or parts of the transport network specified in section 1(2) of the High Speed Rail (Preparation) Act 2013.

* "original planning permission means the permission to which the section 73 planning permission relates" means a planning permission which is the first in a sequence of two or more planning permissions, where the second and any subsequent planning permissions are section 73 planning permissions.

Irreplaceable habitat

If the onsite habitat includes irreplaceable habitat (within the meaning of the Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024) there are additional requirements for the content and approval of Biodiversity Gain Plans.

The Biodiversity Gain Plan must include, in addition to information about steps taken or to be taken to minimise any adverse effect of the development on the habitat, information on arrangements for compensation for any impact the development has on the biodiversity of the irreplaceable habitat.

The planning authority can only approve a Biodiversity Gain Plan if satisfied that the adverse effect of the development on the biodiversity of the irreplaceable habitat is minimised and appropriate arrangements have been made for the purpose of compensating for any impact which do not include the use of biodiversity credits.

The effect of section 73D of the Town and Country Planning Act 1990

If planning permission is granted on an application made under section 73 of the Town and Country Planning Act 1990 (application to develop land without compliance with conditions previously attached) and a Biodiversity Gain Plan was approved in relation to the previous planning permission ("the earlier Biodiversity Gain Plan") there are

circumstances when the earlier Biodiversity Gain Plan is regarded as approved for the purpose of discharging the biodiversity gain condition subject to which the section 73 planning permission is granted.

Those circumstances are that the conditions subject to which the section 73 permission is granted:

- i) do not affect the post-development value of the onsite habitat as specified in the earlier Biodiversity Gain Plan, and
- ii) in the case of planning permission for a development where all or any part of the onsite habitat is irreplaceable habitat the conditions do not change the effect of the development on the biodiversity of that onsite habitat (including any arrangements made to compensate for any such effect) as specified in the earlier Biodiversity Gain Plan.