

Officer Report

Application No.	25/1504/FH
Site Address	Sandgate Manor, 46 Military Road, Sandgate, CT20 3BH
Officer Name	Robert Allan
Proposal	Erection of two single-storey detached lodges to provide three self-contained assisted living residential annexes (C2 use class)

Recommendation

Report Number	RD-438725
Recommended Decision	Recommended to be Approve with Conditions
Recommendation Date	04 November 2025

Report

Site

The application site is located on the northeastern side of Military Road and is within the grounds of Sandgate Manor, an established residential care home providing residential care and support services for adults with learning and physical disabilities. The site comprises the large main care home facility, as well as three detached assisted living lodges that are located to the north. The site has a separate in and out vehicle access, with entrance from Military Road in the southeast corner of the site and exit via Bybrook Way to the north of the site. On-site vehicle parking is provided in front of the main building and in the northern part of the site.

The site has a range of established vegetation and trees, with the site protected by Tree Preservation Order No 03 of 1978. It is in an area of land instability.

Relevant Site History

Y06/1044/SH - Formation of new pedestrian access off Military Road. Approved with conditions.

Y05/0144/SH - Formation of a new vehicular access together with erection of refuse storage area (re-submission of Y04/1532/SH). Approved with conditions.

Y04/1532/SH - Formation of a new vehicular access together with erection of refuse storage area. Refused.

Y01/0155/FH - Erection of 3 no. two bedroom lodges. Approved with conditions.

Y01/0274/SH - Formation of additional car parking spaces and turning area. Approved with Conditions.

95/0102/SH - Erection of a single storey extension to the north elevation. Approved with conditions.

89/0695/SH - 8 new flats. Approved with conditions.

89/0386/SH - Construction of fire escape and bedrooms to rear at ground floor level. Approved with conditions.

87/1092/SH - Change of use from a nursing home to a care home. Approved with conditions.

86/1272/SH - Erection of a two-storey extension. Approved with conditions.

84/1012/SH - Change of use to nursing home. Approved with conditions.

84/0388/SH - Erection of a metal fire escape. Approved with conditions

Proposal

Planning permission is sought for the erection of two single storey detached lodges to provide three units of assisted living residential annexe accommodation. One building would contain one self-contained annexe, the other building would contain two self-contained annexes. The proposed lodges would be located behind and to the east of the main care building and would be connected to the wider site via proposed and existing footpaths.

The proposed lodges would be prefabricated lightweight structures on a concrete base. The lodges would be single storey structures with a pitched roof and gable ends, measuring approx. 2.1m to eaves level and approx. 4.1m to the ridge, finished in a mix of render and vertical timber cladding with aluminium fenestration.

The supporting information states that each lodge / annexe would provide self-contained living accommodation built to wheelchair and Care Quality Commission's Fundamental Standards, with a single bedroom, open plan living/kitchen area and a bathroom. The internal floor area of each annexe would be circa 41sqm.

No additional staff are stated to be required.

Consultation Responses

Sandgate Parish Council – No objection. Observations relating to accessing the site, damage to road surface, poor communication with neighbours. Suggest conditions for traffic management and tree inspection and maintenance.

Arboriculture Officer – No objection subject to conditions.

KCC Highways – Outside of consultation protocol.

KCC Ecology – No objection subject to conditions

Building Control – proposed works are single story small buildings that will not impose a significant load to the site. There appears to be no significant excavation to the site for the works. There are no structures that would appear to be affected by the works. I would therefore suggest the works are low risk regarding landslip and the standard condition is not needed.

Representations

Six representations received. Four objecting to the proposal, two supporting the proposal. These comments have been summarised below:

Objection

- Car parking inadequate
- Care of trees in site
- Concern regarding foundations
- Traffic uses Bybrook Way
- Too close to boundary with houses
- Staffing levels would increase
- Increased surface water runoff
- Land stability

Support

- efficient and sustainable use of land

- supports flexible living arrangements
- addresses demand
- subordinate to main residence
- sensitive to context
- Close to boundary – potential impact upon hedge
- Land stability

Relevant Policies

NPPF Paragraphs: 11, 39, 48, 124, 135, 136, 187, 193

Places and Policies Local Plan (2020): HB1, HB8, HB12, NE2, NE6, T2

Core Strategy Review (2022): SS1, SS3

Appraisal

Principle

The site is within the defined settlement boundary of Folkestone and in a sustainable location that accords with the principles of Core Strategy Review policies SS1 and SS3, which directs development toward existing sustainable settlements with opportunity for increased densities.

PPLP policy HB12 deals with C2 uses. This use covers residential institutions which provide care as defined within Article 2 of the Use Classes Order 1987 as “personal care for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder, and in class C2 also includes the personal care of children and medical care and treatment”.

The site currently falls within Use Class C2. The proposed units would be associated with this existing use and would offer self-contained accommodation—including a living room, kitchen, bathroom, and bedroom—but would remain dependent on the main building, as occupants would be in ‘need of care’. The main building would continue to provide administrative areas, staff support, and shared facilities.

The lodges are stated to be for residents who are hoping to move away from residential care and into a more independent way of living. It is considered reasonable to secure the use by condition to maintain the facility as such and avoid doubt over the use to be carried out within the lodges.

The lodges are considered to be in a sustainable location with access to local services, leisure and community facilities, including shops, healthcare and public transport, with the Sandgate centre located to the south, within walking distance.

It is noted that the promotion of an effective use of land in meeting need for uses is part of the NPPF at para. 124.

Design, Visual Appearance

The area is one characterised by residential development of a wide variety of architectural styles and eras. The site itself is relatively visually self-contained as a consequence of its large plot and the well-established vegetation around it. There are existing structures within the site that have little visual presence in the wider area, whilst the proposed location of the proposed structures is at a lower level and behind the main building, meaning that the topography, vegetation and existing built form will restrict any views.

Design-wise, the structures are a contemporary contrast to the main building but align with the diminutive visual identity of the other structures (detached assisted living lodges) within the site and would be both subservient to the main structure and would not intrude into the street scene. Materials proposed are timber cladding and render with aluminium fenestration.

Overall, subject to the securing of acceptable materials via condition, the proposed structures would have no detrimental impact upon the character appearance of the existing structure or wider street scene, in accordance with Places and Policies Local Plan policy HB1 and National Planning Policy Framework paragraph 135.

Amenity

Future occupants

Policy HB3 of the PPLP relates to new build residential development and what are usually C3 dwellings. These units will be self-contained and provide all facilities necessary for day-to-day living. They would exceed the minimum internal area standards for a one-bedroom, single storey structure, although there would be no designated garden area. However, given the need for care that is implicit with the wider site, as well as the wider gardens and grounds that are available for future occupants, it is considered that external amenity standards would be acceptable.

Policy HB12 requires accommodation to be designed and built to the Care Quality Commission's Fundamental Standards, which it is stated would be the case. It is noted that these are not standards that control minimum floor areas, or such quantifiable indicators, and are administered by the CQC themselves in relation to the service provided at a facility. In this regard, it would be imprecise to apply a condition restricting occupancy until a rating has been achieved, given that the rating could apply to the wider facility. There is no evidence to suggest that this would not be forthcoming and the accommodation is considered to be acceptable.

Overall, there would be no adverse impact on the amenity of future occupiers taking account of Places and Policies Local Plan policy HB1 and HB3, and National Planning Policy Framework paragraph 135.

Existing occupiers

Concerns in representations have been noted.

In respect of noise and disturbance from traffic, this would not be likely to increase, given that occupants would not have access to private vehicles and as it is a function of the existing use at the site. No additional staff are stated to be required, so there would be no additional comings and goings in this regard. Movement associated with construction would be temporary and hours of construction could reasonably be controlled by condition.

The proposed lodges would be set adjacent to, but not right upon, the shared boundary to safeguard the amenities of the neighbouring properties. The single storey nature of the proposals, plus the pitched roofs sloping away from the garden areas would mean that there would be unlikely to be any detrimental overshadowing, enclosing or overbearing effect upon neighbouring residential uses.

The windows adjacent to the common boundary would look toward the boundary treatment and hedging, so there would be no loss of privacy.

Overall, the proposed development would have no detrimental impact upon the amenity of neighbouring occupiers, in accordance with policies HB1 and paragraph 135 of the National Planning Policy Framework.

Arboriculture

The application site is covered by a tree preservation order, and the application has been accompanied by an Arboricultural Impact Assessment (AIA) produced by Down to Earth Trees Ltd in March 2023. The Council's Arboriculture Officer has reviewed the document and noted that a specific Tree Protection Plan (TPP) and an Arboricultural Method Statement (AMS) have not been included, relying instead on generic detail, so there will be insufficient tree protection measures put in place for the development.

However, the details provided within the tree report demonstrate that the site constraints have been considered and it is considered reasonable and acceptable to secure additional detail via suitably worded conditions.

With these in place, the aims of Places and Policies Local Plan policy HB1, and National Planning Policy Framework paragraphs 135 and 136 would be safeguarded.

Highway safety, parking

As discussed previously in the amenity section, the existing access and parking arrangements would be maintained with no requirement for additional parking, as staffing levels would remain constant and the occupants of the units would be unlikely to have their own motor vehicles. There are no likely issues in respect of highway safety and amenity, and the proposal would be in accordance with policy T2.

Ecology

Whilst the site is not within an area designated for protected species or their habitats, a preliminary ecological appraisal has been submitted which sets out that:

- It is unlikely that great crested newts would be present on site.
- The habitat is considered unsuitable for common reptile species.
- There is high potential to support breeding birds within the adjacent trees, hedges and scrub.
- There is negligible potential to support the hazel dormouse.
- No setts or signs of badgers were identified during the survey.
- None of the trees present on site offered suitability for roosting bats. But the surrounding area is likely to be used by foraging and commuting bats.
- The surroundings have potential to support hedgehogs.

Any effects are proposed to be mitigated by:

- undertaking any vegetation clearance outside of the nesting season or only after a survey has confirmed the absence of nesting birds. New hedgerow/trees/scrub planted, and bird nesting boxes erected as part of the proposed development can replace the habitat lost.
- a pre-commencement of works badger survey is recommended if they works take place less more than one year after the date of the site visit of the submitted report.
- the recommendations from the Bat Conservation Trust and the Institution of Lighting Professionals, titled 'Guidance Note 8 Bats and Artificial Lighting', should be considered when designing any lighting scheme for the proposed development.
- any areas where mammals could be sheltering should be hand searched prior to disturbance. Excavations should be backfilled, covered overnight, or ramps placed in to allow any animals to escape.

Additional species enhancements within buildings, such as:

- Provision of integrated 'swift bricks' in new buildings
- Provision of integrated bat boxes on new buildings or bat boxes on retained mature trees
- Establish climbing plants on walls and other vertical structures

KCC Ecological Advice Service accept the findings of the report and suggest conditions relating to:

- precautionary working practices
- sensitive lighting design for biodiversity

Overall, with the conditions in place, there would be no harm to any ecological considerations at the site, in accordance with PPLP policy NE2 and NPPF paragraph 193.

Biodiversity Net Gain

In relation to Biodiversity Net Gain, there would be a net loss of 0.1422 habitat units (- 57.39%). A total of 0.1670 habitat units are required to achieve a 10% gain, this will likely be offset through offsite habitat units. A Biodiversity Gain Plan will be required by condition, and additional enhancements can be secured through the production and implementation of a Biodiversity Enhancement Plan.

Land Instability

The application is in an area where land instability issues are known to exist, and the Council's Building Control Officers were consulted. They have commented that as the buildings proposed are single storey that would not impose a significant load to the site, with no significant excavation required for works, they are at low risk in relation to landslip and the Council's standard condition is not required.

Surface Water Drainage

Concerns regarding surface water runoff from the site have been received. Whilst property owners have a common law duty to use their land in a way that does not increase the risk of flooding on neighbouring property, and Building Regulations are governed by the Flood and Water Management Act 2010, the National Planning Policy Framework highlights that applications which could affect drainage on or around the site should incorporate sustainable drainage systems to control flow rates and reduce volumes of runoff, and which are proportionate to the nature and scale of the proposal (para. 182).

The application form has identified that surface water drainage will be disposed of via the main sewer. In this regard, it is considered that there would not be a need to impose a planning condition to secure details of surface water drainage, as it is, in this instance, to be dealt with via other legislation.

Human Rights

I have also taken into account the human rights issues relevant to this application. In my view, the Assessment section above and the recommendation represents an appropriate balance between the interests and rights of the applicant (to enjoy his land subject only to reasonable and proportionate controls by a public authority) [and the interests and rights of those potentially affected by the proposal (to respect for private life and the home and peaceful enjoyment of their properties)] and the wider public interest.

Public Sector Equality Duty

In determining this application, regard has been had to the Public Sector Equality Duty (PSED) as set down in section 149 of the Equality Act 2010, in particular with regard to the need to:

- Eliminate discrimination, harassment, victimisation, and any other conduct that is prohibited by or under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it. It is considered that the application proposals would not undermine objectives of the Duty.

Duty to Cooperate

In accordance with paragraph 38 of the National Planning Policy Framework 2023 the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service and, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application.

Local Finance Considerations

Section 70(2) of the Town & Country Planning Act 1990 (as amended) provides that a local planning authority must have regard to a local finance consideration as far as it is material. Section 70(4) of the Act defines local finance considerations as a grant or other financial assistance that has been, that will, or that could be provided to a relevant authority by a Minister of the Crown (such as New Homes Bonus Payments), or sums that a relevant authority has received, or will or could receive, in payment of the Community Infrastructure Levy. This development would be CIL-liable.

Recommendation

The proposed development is a sustainable development that would comply with development plan policy and the NPPF and is therefore recommended for approval.

Recommended Conditions (15)

1

The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which the permission is granted.

Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2

The development hereby permitted shall not be carried out except in complete accordance with the following approved drawings and documents:

Proposed Site Plan 1490/00/A

Site Plan as Proposed 0000/00

Floor Plans as Proposed 1490/10

Roof Plans as Proposed 1490/20

Lodge 1 - Elevations and Section As Proposed 1490/30

Lodge 2 - Elevations As Proposed 1490/40

Lodge 2 - Section As Proposed 1490/50

Reason: For the avoidance of doubt and in order to ensure the satisfactory implementation of the development in accordance with the aims of Places and Policies Local Plan.

3

No development beyond the construction of foundations shall take place until details of the external finishing materials to be used on the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details.

Reason: In the interest of visual amenity.

4

No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

i. the parking of vehicles of site operatives and visitors.

ii. loading and unloading of plant and materials.

iii. storage of plant and materials used in constructing the development.

iv. wheel washing facilities.

v. measures to control the emission of dust and dirt during construction.

Reason: In the interests of the amenities of the area and highway safety and convenience.

5

No construction work in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times:

Monday to Friday 0730 – 1900 hours

Saturdays 0730 – 1300 hours

unless in association with an emergency or with the prior written approval of the Local Planning Authority.

Reason: In the interests of residential amenity.

6

The premises hereby permitted shall be used in connection with the existing C2 use and for no other purpose whatsoever of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) and any other use whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking or re-enacting that Order) or not.

Reason: In the interests of the amenities of the area.

7

Prior to the commencement of the development hereby approved (including demolition and all preparatory work), a scheme for the protection of the retained trees, in accordance with BS 5837:2012, including a tree protection plan(s) (TPP) and

an arboricultural method statement (AMS) shall be submitted to and approved in writing by the Local Planning Authority. Specific issues to be dealt with in the TPP and AMS:

- a) Location and installation of services/ utilities/ drainage.
- b) Methods of demolition within the root protection area (RPA as defined in BS 5837: 2012) of the retained trees.
- c) Details of construction within the RPA or that may impact on the retained trees.
- d) Detailed levels and cross-sections to show that the raised levels of surfacing, where the installation of no-dig surfacing within Root Protection Areas is proposed, demonstrating that they can be accommodated where they meet with any adjacent building damp proof courses.
- e) A specification for protective fencing to safeguard trees during both demolition and construction phases and a plan indicating the alignment of the protective fencing.
- f) a specification for ground protection within tree protection zones.
- g) Tree protection during construction indicated on a TPP and construction and construction activities clearly identified as prohibited in this area.
- h) details of site access, temporary parking, on site welfare facilities, loading, unloading and storage of equipment, materials, fuels and waste as well concrete mixing and use of fires.
- i) Methodology and detailed assessment of root pruning if required.
- j) Arboricultural supervision and inspection by a suitably qualified tree specialist.
- k) Reporting of inspection and supervision.
- l) Specification for access facilitation pruning.

The development thereafter shall be implemented in strict accordance with the approved details.

Reason: Required prior to commencement of development to satisfy the Local Planning Authority that the trees to be retained will not be damaged during demolition or construction and to protect and enhance the appearance and character of the site and locality, in accordance with Places and Policies Local Plan policy HB1, National Planning Policy Framework paragraph 136 and pursuant to section 197 of the Town and Country Planning Act 1990.

Before any development or construction work begins, a pre-commencement meeting shall be held on site and attended by the developers appointed arboricultural consultant, the site manager/foreman and a representative from the Local Planning Authority (LPA) to discuss details of the working procedures and agree either the precise position of the approved tree protection measures to be installed OR that all tree protection measures have been installed in accordance with the approved tree protection plan. The development shall thereafter be carried out in

accordance with the approved details, or any variation as may subsequently be agreed in writing by the LPA.

Reason: Required prior to the commencement of development in order that the Local Planning Authority may be satisfied that the trees to be retained will not be damaged during development works and to ensure that, as far as is possible, the work is carried out in accordance with the approved details pursuant to section 197 of the Town and Country Planning Act 1990 and BS5837.

9

All facilitation pruning for the sole purpose to allow access for high sided vehicles shall be confirmed within the AMS and completed under the supervision of the project arboriculturist and must always conform to the BS3998 Tree work – Recommendations.

All works within the Root Protection Area of any trees on site, including, but not limited to, the installation of the base for Lodge 2, shall be completed under arboricultural supervision.

Reason: To ensure the long-term health and retention of protected trees within the site.

10

No retained tree shall be cut down, uprooted, destroyed, pruned, cut or damaged in any manner during the development phase and thereafter within 5 years from the date of occupation of the site for its permitted use, other than in accordance with the approved plans and particulars or as may be permitted by prior approval in writing from the local planning authority.

Reason: To safeguard and enhance the character and amenity of the area, to provide ecological, environmental and biodiversity benefits and to maximise the quality and usability of open spaces within the development, and to enhance its setting within the immediate locality in accordance with Places and Policies Local Plan policies HB1 and NE2.

11

During development:

1. Any hedgerow and trees to be retained, including its roots, shall be protected from damage in line with The British Standard "Trees in Relation to Design, Demolition and Construction to Construction - Recommendations" (BS 5837) (2012);
2. Any required clearance of tall/dense vegetation with potential to support reptiles should be undertaken in two stages, with a first cut to 150mm, followed by a second cut several days later to ground level;
3. Brash, rubble and log piles to be relocated shall be dismantled by hand. Where these are suitable for hibernating reptiles/hedgehog, removal shall be conducted outside of the hibernation period (November – February);
4. Backfilling of trenches and other excavations shall be undertaken before nightfall, or a ramp shall be left to allow any animals to easily exit;
5. All excavations and trenches shall be checked each morning throughout the construction period and prior to infilling;
6. All temporarily stored building materials (that might act as temporary resting places) shall be isolated within hardstanding areas and raised off the ground, e.g. on pallets.
7. Any work to vegetation/structures that may provide suitable nesting habitats should be carried out outside of the bird breeding season (1st March to 31st August inclusive) to avoid destroying or damaging bird nests in use or being built. If vegetation/structures need to be removed during the breeding season, mitigation measures need to be implemented. This includes examination by a suitably qualified and experienced ecologist immediately prior to starting work. If any nesting birds are found, works must cease until after the birds have finished nesting.
8. If at anytime a protected species is discovered within the works area all works must stop while a suitably qualified ecologist and/or Natural England are consulted. Works shall not resume until any required surveys and/or mitigation are completed.

Reason: In the interests of safeguarding biodiversity.

12

No external lighting, whether temporary or permanent, shall be installed on the site unless details are first submitted to and approved in writing by the local planning authority.

Details of any proposed external lighting shall accord with the Bat Conservation Trust/Institute of Lighting Professionals 'Guidance Note 08/23: Bats and Artificial Lighting at Night' and demonstrate that no impacts to bat foraging/commuting activity will result.

Such details to be submitted shall include a layout plan with beam orientation and a schedule of light equipment proposed (luminaire type; mounting height; aiming angles and luminaire profiles) as well as an ISO lux plan showing light spill. The details shall be implemented as approved and retained thereafter.

Reason: To limit the impact of light pollution from artificial light in accordance with the National Planning Policy Framework 2025, paragraph 198 and in consideration for bats and other nocturnal wildlife in accordance with paragraph 187.

13

The Biodiversity Gain Plan shall be prepared in accordance with the baseline information within the Small Sites Biodiversity Net Gain Metric (KB Ecology, July 25).

Reason: To ensure the proposals are in accordance with details submitted and considered as part of the planning application.

14

Prior to any works above slab level, a Biodiversity Enhancement Plan (BEP) shall be submitted to and approved in writing by the local planning authority. The plan shall include full details of biodiversity enhancements and shall include a detailed, scaled soft landscaping plan, planting / implementation schedule and habitat management measures.

Details may also include (as appropriate) provision of durable and suitably-placed bat/bird boxes, native wildflower sowing (with details of seed mixes/preparation and management measures), tree planting, the creation of hedgehog highways (by

creating small 13×13cm gaps in close board fencing), the provision of bee bricks and/or the provision of log piles/artificial refugia for reptiles and amphibians.

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

Reason: To protect and enhance biodiversity in accordance with paragraph 193 of the National Planning Policy Framework, Places and Policies Local Plan NE2 and in order for the Council to comply with Part 3 of the Natural Environment and Rural Communities Act 2006.

15

Within twelve months of first use of the development hereby approved, photographic evidence of the implementation of the approved biodiversity enhancement measures as required by condition 14 (the BEP condition) shall be submitted to the local planning authority for approval. The approved measures shall be thereafter retained.

Reason: To protect and enhance biodiversity in accordance with paragraphs 193 of the National Planning Policy Framework , Places and Policies Local Plan policy NE2, and in order for the Council to comply with Part 3 of the Natural Environment and Rural Communities Act 2006.

Suggested Informatives (1)

1

Biodiversity Net Gain

The effect of paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990 is that planning permission granted for the development of land in England is deemed to have been granted subject to the condition “(the biodiversity gain condition)” that development may not begin unless:

- (a) a Biodiversity Gain Plan has been submitted to the planning authority, and
- (b) the planning authority has approved the plan.

The planning authority, for the purposes of determining whether to approve a Biodiversity Gain Plan if one is required in respect of this permission would be Folkestone & Hythe District Council.

There are statutory exemptions and transitional arrangements which mean that the biodiversity gain condition does not always apply. These are listed below.

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.

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.

