

**TOWN AND COUNTRY
PLANNING ACT 1990**

**Planning Proof of Evidence on
behalf of High Peak Borough
Council**

**Appeal by Wain Homes
(North West) Limited**

**'Proposed residential
development comprising 92
dwellings including areas of
public open space, landscaping,
and associated works'**

**Land at, Dinting Vale
Dinting
Glossop
Derbyshire SK13 6PA**

**PINS Ref:
APP/H1033/W/24/3339815**

**LPA Ref:
HPK/2022/0456**

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May 2024**

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1. EXECUTIVE SUMMARY

- 1.1 This document is the Proof of Evidence, of Mr. B O'Brien MSC MRTPI, acting as planning witness on behalf of High Peak Borough Council (HPBC). Mr O'Brien is to give evidence at a public inquiry in relation to an appeal made by Wain Homes against the decision of HPBC to refuse a full planning application for 92 dwellings on Land at Dinting Vale, Dinting, Glossop, Derbyshire SK13 6PA. Appeal Reference: APP/H1033/W/24/3339815.
- 1.2 The key matters within this proof of evidence are that despite some reasons for refusal contained within the original planning decision being withdrawn by the Council, there remain two matters in disagreement, those being the capability of the appeal scheme to provide policy-compliant levels of affordable housing and replacement of lost trees.
- 1.3 The proof of evidence contains an overview of the relevant planning policies an analysis of the main issues when assessed against the context of the Local Plan, and a consideration of the planning balance.
- 1.4 Based upon the analysis of the evidence I conclude that the harm that would be caused by the proposed scheme would outweigh any benefits; the proposal is contrary to the Local Plan, and the appeal should be dismissed.

2. PERSONAL BACKGROUND

- 2.1 My name is Bruce O'Brien, and I am a Senior Planning Consultant with Aitchison Raffety, Chartered Town Planning Consultants. I have a master's degree in Town Planning and a Certificate of Higher Education in Historic Buildings Conservation from Cambridge University. I am a Member of the Royal Town Planning Institute.
- 2.2 Following a career background in construction and development, I now have 8.5 years' of experience in the planning and development management sector; having worked in both the public and private sectors. I have acted for housebuilders, private individuals, local authorities, Parish Councils, and resident groups on a wide spectrum of planning work for both major and minor residential, commercial, energy and mixed-use schemes. This has included involvement with numerous planning appeals.

- 2.3 The evidence provided in this Statement, is true and is given in accordance with the guidance of my professional institution, The Royal Town Planning Institute. I confirm the opinions expressed are my true professional opinions.
- 2.4 High Peak Borough Council instructed Aitchison Raffety to act on their behalf as planning witness on 10.04.2024, and I have been involved in the appeal since then. I visited the appeal site on 05.05.2024 and attended the case Management Conference on 10.05.2024.

3. INTRODUCTION

- 3.1 I am instructed by the Local Planning Authority (LPA), High Peak Borough Council ('the Council'), to act as planning witness for this appeal made pursuant to Section 78 of the Town and Country Planning Act 1990 in respect of Land at Dinting Vale, Glossop, Derbyshire.
- 3.2 The appeal is made by Wain Homes (North West) Limited ('the Appellant') against the decision made by the Council to refuse a full planning application for '*Proposed residential development comprising 92 dwellings including areas of public open space, landscaping, and associated works*' (HPK/2022/0456).
- 3.3 The appeal site is a greenfield site that lies within the built-up area and settlement boundary of Glossop. The site is located to the south of a road called Dinting Vale (the A57), which is approximately 1 mile to the west of Glossop Town Centre.
- 3.4 The appeal site comprises an irregular shaped area of land (4.71 hectares) which has adjacent dwellings and woodland. The site has land levels sloping towards the north with a steeper downward gradient within the northern section of the site, to the north of Adderley Place, a Public Right of Way, which dissects the site.
- 3.5 Details of the existing site and the surrounding area are provided within the Council Statement of Case at Section 2.



Location Plan



Appeal Site as viewed from Adderley Place



Appeal Site as viewed from the South East

- 3.6 The appeal proposal seeks planning permission for the construction of 92 market dwellings with access taken from the A57 Dinting Vale to the north of the site.
- 3.7 No affordable housing is proposed.
- 3.8 Specific details of the proposed site layout, including the access point and routes through the site are provided within core documents (CD- 2.85, Colour Site Layout - WH_DV_CSL_01 rev M; and CD- 2.86, Proposed Site Layout - WH_DV_PSL01 rev N).
- 3.9 A Case Management Conference was held on 10.05.2024. As a result of the discussion during the conference and the CMC summary note, this proof of evidence will address the main issues of:
- the effect of the proposed development on trees, and;
 - whether the proposed development satisfies policy requirements for provision of, or contributions towards, affordable housing, having regard to financial viability.
- 3.10 Since the original decision on the planning application, some reasons for refusal have been withdrawn by the Council. The matters within the refusal reasons related to air quality, civil

engineering/access, ecology, and highways, are addressed in this proof of evidence as matters of agreement.

- 3.11 My remit is to provide evidence on planning matters only; I shall rely upon statutory consultee comments as evidence in relation to arboriculture matters.

4. PLANNING POLICY

The Adopted Development Plan

- 4.1 The Development Plan comprises the High Peak Local Plan, adopted in December 2016. (CD 4 -The Development Plan (Extracts)). Supplementary guidance produced by the Local Planning Authority, are not part of the Development Plan but supplement the Local Plan and are important material considerations.

Key Local Plan Policies

- 4.2 The key policies in respect of this appeal are set out below.

DS4 – Adderley Place, Glossop (CD- 4.4)

The appeal site is part of an allocation in the High Peak Local Plan (2016) under site-specific Policy DS4. The appeal site comprises approximately two thirds of the allocated development site. Specific requirements of DS4 are the provision of 30% affordable housing and contributions towards infrastructure, services and other community needs as required.

EQ9 – Trees, woodland, and hedgerows (CD- 4.7)

Policy EQ9 states that the Council will protect existing trees, woodlands, and hedgerows, and requires that new developments where appropriate should provide tree planting, including where possible the replacement of any trees that are removed at a ratio of 2:1.

H3 – New housing development (CD- 4.9)

Through the implementation of policy H3, the Council aims to ensure the meeting of the housing needs of local people by providing affordable housing in line with Local Plan policy H4, by promoting a sustainable and inclusive community through the provision of a range of

market and affordable housing types, and the provision of a proportion of housing suitable for newly forming local households.

H4- Affordable Housing (CD- 4.10)

Policy H4 aims to maximise the delivery of affordable housing across the plan area including a 30% affordable housing provision on sites of 25 houses or more. Should the provision be lower, then the developer must provide evidence by way of a financial appraisal to justify a lower level of provision.

Key Supplementary Planning Document

Developer Contributions SPD (October 2023) (APPENDIX 1-Extract).

- 4.3 The SPD advises an approach to affordable housing as set out in Policy H4 of the Local Plan and its supporting text. The SPD also points ‘First Homes’ provision which should be the priority for delivery to meet the minimum requirement of at least 25% affordable housing. High Peak’s affordable housing requirement will be 25% First homes and the remaining units delivered in line with the adopted local plan, 80% affordable rent and 20% shared ownership.
- 4.4 Affordable housing should be provided on site, unless in exceptional circumstances when off-site commuted sums may be considered.

National Planning Policy Framework (2023)

- 4.5 The following paragraphs of the National Planning Policy Framework (NPPF, 2023) are relevant to the appeal.
- Section 1: Introduction – paragraphs 2 and 3.
 - Section 2: Achieving sustainable development – paragraphs 7, 8, 9, 11 (c) and 12.
 - Section 3: Plan Making – paragraphs 15 and 34.
 - Section 4: Decision making – paragraphs 47, 55, 57 and 58.
 - Section 5: Delivering a sufficient supply of homes – paragraphs 60, 64, 66, 69.
 - Section 12: Achieving well-designed and beautiful places – paragraph 136.
 - Section 15: Conserving and enhancing the natural environment – paragraphs 180 and 186.

5. MAIN ISSUES

Matters of Dispute

- 5.1 The matters which remain in disagreement are contained within Refusal Reason 3 of the Decision Notice (CD- 3.4).
- 5.2 Those issues are that the proposed section 106 package does not achieve a policy compliant level of affordable housing provision and fails to fully mitigate for a substantial loss of trees. It is the Council's view that the residual harm arising from the development would outweigh the benefits contrary to Policies DS4, EQ9, H3 and H4 of the adopted High Peak Local Plan (2016) and the NPPF.

Refusal Reason 3- Proposal contrary to policies DS4; H3; H4 and EQ9

Policy DS4 (Adderley Place, Glossop)

- 5.1 Two requirements of Local Plan Site Allocation policy DS4 remain unmet by the appellant.
- 5.2 There is a requirement for 30% affordable housing to be delivered on the appeal site which would equate to 28 affordable homes. Policy DS4 makes no express provision for viability appraisals to reduce the required 30% affordable housing provision. The 30% requirement is consistent with Local Plan policies H3 and H4 which also require a 30% affordable housing contribution. The proposed development offers a nil contribution towards affordable housing.
- 5.3 Policy DS4 requires that contributions be made towards infrastructure, services and other community needs as required. It is accepted that Local Plan policy DS4 requires that access to the appeal site is taken from the north, Dinting Vale and it is inevitable that some mature trees must be lost to make way for the access to the site. However, the application fails to make adequate contributions, towards the replacement planting of trees that would be lost.

Policy EQ9 (Trees, woodland, and hedgerows)

- 5.4 The proposed development requires access through the northern part of the appeal site; an area of land that is dense with trees. The site is currently subject to a temporary Tree Protection Order (TPO) (CD 6.9).
- 5.5 Local Plan policy EQ9 applies to the protection of trees, woodlands, and hedgerows. Policy EQ9 states that new developments should provide tree planting and, where appropriate and possible, provide the replacement of any lost trees at a ratio of 2:1.
- 5.6 The supporting text to Local Plan policy EQ9 (Paragraph 5.76) advises that because many newly planted trees do not survive, new developments are required to replant twice the number of trees that are removed; this will ensure adequate replacement tree growth.
- 5.7 The appellant has submitted a Tree Survey and an Arboriculture Impact Assessment (AIA) (Core Documents- 1.30 and 2.65). The AIA states that the '2:1 replacement planting rate is interpreted...as a canopy cover target rather than a count of individual trees. The AIA demonstrates that *'a shortfall of 0.9818ha of tree canopy cover is anticipated against the council's stated objective of 2:1 tree replacement (1.9778ha).'*' The report suggests that this is the equivalent of 125 large trees.
- 5.8 The proposed access along the indicated lines and as per the requirements identified in the Local Plan, would traverse a wooded area, and the loss of some mature trees would be inevitable.
- 5.9 The appellant proposes a tree replacement scheme consisting of a commuted sum of £92,240 (£72,400 for tree planting plus £19,840 for maintenance) to cover replanting at a ratio of new planting to lost trees and their subsequent maintenance (Core Document- Appellant Grounds of Appeal and Statement of Case, Table 2, pg.36. APPENDIX 2).
- 5.10 The HPBC Arboricultural Officer was consulted on revised plans for tree removal and replanting and made final comments on 16/08/2023 (APPENDIX 3).

- 5.11 The HPBC Arboricultural Officer objected to the proposed scheme and recommended that any section 106 agreement for trees to be planted off-site should not be restricted to the appellants suggested 125 large trees but rather a mix of species and sizes.
- 5.12 The officer concluded that a Section 106 agreement should include a commitment to tree replacement based on the planting of 80 small trees, 84 medium sized trees and 84 large trees, giving a total figure of 248 trees to be planted.
- 5.13 The HPBC Arboricultural Officer considered that this planting could be achieved for £136,800 with a further £39,680 as a commuted sum to cover the first 20 years of management.
- 5.14 It is accepted that within the text of policy EQ9, there are caveats to the 2:1 ratio requirement, those caveats being *'when appropriate'* and *'where possible'*.
- 5.15 In my view, it is reasonable that tree replacement should be regarded as appropriate in this scenario, and if the site allocation was built out to its full capacity, it would be possible for increased financial benefits to provide a policy-compliant tree replacement scheme.

Policy H3 (New Housing Development)

- 5.16 The policy details of H3 provide solid foundations as to the importance of providing an adequate level of affordable housing within High Peak.
- 5.17 Items (b, c, and d) of policy H3 require that new housing developments promote sustainable and inclusive communities through the provision of a range of market and affordable housing types, and the provision of a proportion of housing suitable for newly forming local households.
- 5.18 Furthermore, when policy H3 is read in conjunction with policy H4, paragraph 5.149 of the Local Plan, which supports policy H4, identifies that Affordable Housing is a key issue in the Local Plan area and there is a significant need to increase the overall level of affordable housing provision.

- 5.19 The identification of affordable housing need is shown within the recent High Peak Housing and Economic Land Needs Assessment (2022) report (HELNA) (CD- 6.26).
- 5.20 The HELNA calculated the net affordable housing need over the whole Local Plan period. Based on the analysis of the report, it was found that the need arising from then current data over the period 2021 to 2041, amounts to between 129 and 189 homes for affordable/social rent net per annum with the strongest levels of affordable housing rental need being identified for Glossop.
- 5.21 When combined with a need for net annual affordable housing need for sale, of between 81 and 99, the total affordable needs are in the range between 228 (129+99) and 270 (189+81) affordable homes per annum required between 2021 to 2041.
- 5.22 Annual Monitoring Report (APPENDIX 4- Extract) covers the period from 1st April 2022 to 31st March 2023. Tables 13 and 14, pg. 26 show the amount of affordable housing delivery since 2016 and in the most recently monitored period 2022-2023.
- 5.23 Given the published required figures for affordable housing delivery (Paragraphs 5.20-5.21 above), taking a mean figure of 249 affordable homes being required per year, the most recent monitoring shows a significant shortfall in the delivery of affordable housing within the plan area; a trend which has been ongoing since 2016.
- 5.24 Therefore, within this context, it is reasonable to expect that provision within new housing developments would include a significant proportion of affordable housing including 'First Homes'. The proposed development makes no attempt to meet the criteria of policy H3 and in turn fails to meet the affordable housing composition, including 'First Homes', as stated in the Developer Contributions SPD.
- 5.25 Policy H3 requires that affordable housing is provided in line with the contents of Local Plan policy H4; there is a viability element to affordable housing provision within the details of H4.

Policy H4 (Affordable Housing)

- 5.26 Local Plan policy H4 shapes the policy requirements for affordable housing within the Borough.
- 5.27 The policy seeks to maximise affordable housing delivery across the Local Plan area.
- 5.28 The site is an allocated site as part of the Local Plan area where the requirement of policy H4 is for 30% affordable housing provision on sites of 25 units or more.
- 5.29 Policy H4 contains a 'viability' element; where the provision of affordable housing is below 30%, applicants can justify a proposed lower provision by way of a testable financial viability appraisal.
- 5.30 However, the supporting text to policy H4 (Paragraphs 5.150 and 5.151) underpins why viability testing was introduced into Local Plan policy H4.
- 5.31 Paragraph 5.150 of the Local Plan states that the provision of affordable housing can impact upon the viability of housing development and that, a 30% affordable housing provision may not be possible on all sites, because of the possible impacts of the introduction of a Community Infrastructure Levy (CIL) being imposed on development, which was a possibility at the time of the inception of the Local Plan.
- 5.32 Paragraph 5.151 of the Local Plan continues that Policy H4 includes the flexibility for a financial viability test to justify any reduced provision of affordable housing due to the impacts that will be created in certain instances by the introduction of CIL.
- 5.33 High Peak Borough Council has not adopted a CIL scheme. Thus, the foundation of the policy was never laid, CIL has not been adopted, and thus the weight given to financial viability testing within this policy is questioned.
- 5.34 The Council accepts that the appellant has provided financial justification for a provision of affordable housing which is below requirements. However, although it is agreed that the



appellant takes a valid viability stance in terms of the provision of 92 dwellings and meeting the policy wording relating to financial justification (SPD, H3 and H4), the viability of the full site allocation and maximisation of affordable housing provision are relevant the overall planning balance.

- 5.35 The site is an allocated Strategic Development Site for approximately 130 dwellings (CD- 6.1), the Inspectors Report in the Examination of the High Peak Local Plan (2016) described the allocated site as being for 130 dwellings, where the matter of the provision of a new access was a crucial one. The inspector concluded that the Viability Test Report (VTR) (High Peak Local Plan Viability Test Incorporating Site Viability and Deliverability Test Appraisal (2014), CD- 6.12) demonstrates that the provision of the new access had been accounted for, and the allocation of the site was sound. The ownership of part of the allocated site, by the Council, was cited.
- 5.36 Given the Inspector's appraisal of the allocated site, it is reasonable to say that the site allocation was judged based on the provision of 130 dwellings and the VTR was material in forming the Inspector's opinion of the soundness of the allocation.
- 5.37 The VTR assumes that the provision of on-site affordable housing would be provided across 1-, 2- and 3-bedroom house types at 7%, 33% and 60% respectively, based on dwellings for both social and affordable rent.
- 5.38 The VTR was carried out in 2014 but is the current available evidence. Of course, some variables may have changed and the VTR points out that the viability of the site is considered 'marginal', where small variations in viability may make the scheme unviable, putting social rental housing provision at risk.
- 5.39 However, at Adderley Place, where 130 dwellings would be provided, the VTR states that the site could provide 39 affordable units at a provision of 30% (Table 8.2, pg. 105).
- 5.40 The appellant has not provided evidence as to whether the development of the whole of the allocated site for its full housing allocation of 130 dwellings would produce an adequate financial uplift to provide the required affordable housing contributions.

- 5.41 Were the whole of the site allocation to be brought forwards, with the policy-compliant provision of 130 dwellings, such a scheme would provide affordable housing at a rate of 30%, or 39 affordable dwellings.
- 5.42 Were the remainder of the site to be brought forwards in isolation, for 38 dwellings, and the development was to provide a policy-compliant level of affordable housing, then 11 dwellings would be achieved.
- 5.43 Therefore, the proposed development, with a nil contribution of affordable housing, would only allow for the provision of a further 11 affordable units on an allocated site, where 39 affordable dwellings is the policy expectation.
- 5.44 This matter is a material consideration; the site is not being treated in line with the Local Plan allocation, and the proposed development breaches the requirement of Local Plan policy H4 in that it fails to maximise affordable housing delivery across the Local Plan area.

Matters of Agreement

Refusal Reasons Withdrawn

- 5.45 Following a meeting of the High Peak Development Control Committee on 23rd October 2023, a decision notice was issued (27 October 2023) refusing planning permission for application LPA Ref: HPK/2022/0456.
- 5.46 The application was refused for four refusal reasons relating to (1) Air Quality Management, (2) Highways access and road safety, (3) lack of compliance with local plan policies in relation to planning contributions, and (4) impacts on the public right of way across the site. The full refusal reasons are in core document (CD- 3.4, Decision Notice).
- 5.47 Following receipt of the appellant's statement of case on the 29th February 2024, legal advice was sought and considered by the High Peak Development Control Committee on 22.04.2024,

- 5.48 Following consideration of advice before them the Committee resolved:
“That, for the reasons as set out in the report and on the update sheet, not to pursue a defence in respect of reasons for refusal 1 (Air Quality), 2 (Highway safety at the junction with the A57) & 4 (Access onto Simmondley Lane/Public Right of way (PROW)) at the forthcoming public inquiry and instead put forward conditions and/or planning obligations where necessary to mitigate the effect of the proposed development”.
- 5.49 The Committee decision to withdraw refusal reasons 1, 2 and 4 were made after legal advice, further consideration of evidence and statutory consultee comments.
- 5.50 Following further submissions from the appellant in regard to loss of biodiversity at the site and the provision of appropriate mitigation, it was further agreed by the Council on the 7th May 2024 that the Council is content that the appellant is now proposing to provide full mitigation for the biodiversity element of refusal reason 3 and so the Council are no longer alleging any conflict in respect of Policy EQ5 in relation to biodiversity.

6. PLANNING BALANCE

- 6.1 The planning appeal is judged from an ‘even balance’ (not tilted) starting point.
- 6.2 There are merits to the proposed scheme. The proposal is for 92 dwellinghouses; the scheme would provide a boost to Regional and National housing supply. The Council can demonstrate a forward housing supply of 6.4 years, but it is recognised that there is not a ceiling on development numbers. Therefore, the proposed market housing provision is afforded moderate weight in the planning balance.
- 6.3 Further, the proposed development will make a host of other contributions toward local infrastructure and community benefits by way of a Section 106 agreement. Those contributions include payments towards air quality, health services, libraries, sustainable travel and monitoring, open and public open spaces plus on and off-site biodiversity. Such contributions would be expected of a major housing development and are in part mitigation of the impacts of the proposal. Thus, the Section 106 contributions carry neutral weight in the planning balance.

- 6.4 The proposal offers a nil contribution to the delivery of affordable housing and is therefore in breach of Local Plan policy DS4. This matter is considered to carry a weighting of significant harm in the planning balance.
- 6.5 The proposed tree replacement scheme fails to provide the replacement of a sufficient number of lost trees at the required ratio of 2:1 and breaches the requirements of Local Plan policy EQ9. This matter is considered to carry a weighting of significant harm in the planning balance.
- 6.6 The site is not being treated in line with the Local Plan allocation, and the proposed development breaches the requirement of Local Plan policy H4 in that it fails to maximise affordable housing delivery across the Local Plan area; a matter which carries significant weight.
- 6.7 The scheme makes no provision to meet the criteria, or overriding ethos of Local Plan policy H3 and in turn fails to contribute towards meeting the Council’s affordable housing requirements, at a time when published data demonstrates a strong need for affordable housing within the plan area and identifiably in Glossop. The conflict with Local Plan policy H3 is given moderate weight in the planning balance.

MATERIAL CONSIDERATION	BALANCE WEIGHTING
Provision of 92 market dwellings	Moderate Benefit
Other Section 106 Contributions	Neutral
Contrary to LP policy DS4	Significant Harm
Contrary to LP policy EQ9	Significant Harm
Contrary to LP policy H4	Significant Harm
Conflict with LP policy H3	Moderate Harm

Harm v Benefits

- 6.8 Overall, the proposed development is contrary to the Local Plan, identified harm outweighs any benefits, and the planning balance falls towards the dismissal of this appeal.

7. CONCLUSION

- 7.1 The harm that would be caused by way of the non-policy-compliant lack of affordable housing and insufficient tree replacement would outweigh the benefits of the scheme by way of market housing provision. Therefore, the council respectfully asks that the appeal be dismissed.