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TOWN & COUNTRY PLANNING ACT 1990 (AS AMENDED)

PLANNING APPEAL BY WAIN HOMES (NORTH WEST) LIMITED

AGAINST THE REFUSAL OF FULL PLANNING PERMISSION

BY HIGH PEAK BOROUGH COUNCIL

**FOR A RESIDENTIAL DEVELOPMENT OF LAND AT DINTING VALE, DINTING,
GLOSSOP, DERBYSHIRE**

PROOF OF EVIDENCE OF MARC HOURIGAN BA(HONS) BPL MRTPI

RELATING TO PLANNING ISSUES

PINS REFERENCE: APP/H1033/W/24/3339815

LPA REFERENCE: HPK/2022/0456

20 MAY 2024



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1. INTRODUCTION

RELEVANT EXPERIENCE & QUALIFICATIONS

- 1.1 My name is Marc Hourigan BA (Hons) BPI MRTPI.
- 1.2 I am a Chartered Town Planner. I have 27 years professional experience in the planning and development industry.
- 1.3 I am the Managing Director of the Chartered Town Planning Practice known as Hourigan Planning; based in Manchester and operating across the UK. In 2023 the Practice was a finalist in the RTPI's Awards for Planning Excellence (2023) in the National Small Planning Consultancy Category. On 20 May 2024 the Practice reached the final in the RTPI's Awards for Planning Excellence (2024) in the North West England Small Planning Consultancy Category.
- 1.4 Prior to establishing the Practice in 2009 I held senior positions, up to Director level in a number of international property consultancies including CBRE and Colliers International. Part of my career has also been spent client side where I worked at a senior level at David McLean Homes Group.
- 1.5 My work now involves assisting clients with major housing and employment developments across the UK.
- 1.6 I have previously been called to give expert witness evidence in the field of town planning at numerous Planning Inquiries across the UK and in relation to major housing developments. In the Borough of High Peak notable Planning Inquiry cases have concerned land at North Road, Glossop¹ and Forge Works, Chinley².
- 1.7 For the past 18 years I have lived within 5km of the appeal site. I am therefore familiar with the town of Glossop, the immediate area surrounding the appeal site and the appeal site itself (which I have visited on numerous occasions).

¹ PINS Reference: APP/H1033/A/12/2205644 – up to 150 dwellings – allowed on appeal by Decision Letter dated 12 June 2014.

² PINS Reference: APP/H1033/A/13/2189819 – up to 182 dwellings, 1,672 sq. m of business floorspace and up to 279 sq. m of non-residential institution floorspace – allowed on appeal by Decision Letter dated 29 May 2013.



- 1.8 My Proof of Evidence (PoE) has been prepared in accordance with the guidelines and standards of the Royal Town Planning Institute and is therefore produced irrespective of the identity of my client. I confirm that the opinions expressed in my PoE are my true and professional opinions irrespective of by whom I am instructed.

BACKGROUND

- 1.9 To assist the Inquiry I set out below relevant background evidence in relation to this appeal.

THE APPELLANT

- 1.10 The Appellant Company is experienced in delivering major housing schemes across the UK and in the High Peak in particular. In that respect the Appellant is delivering the Forge Works site in Chinley (now known as Forge Manor) I refer to above as well as a scheme for 96 new homes at Hayfield Road in New Mills. These are some of the largest housing developments in the Borough.

THE DEVELOPMENT PLAN

- 1.11 At the outset it is material to note that the appeal site forms part of a larger parcel of land that is allocated for 130 dwellings in the Council's Local Plan (LP) (Policy DS 4 refers). The LP was adopted in April 2016. The balance of the allocation is owned by the Council and is currently being advertised for sale by CBRE (**CD6.2** refers) on the instructions of the Council. Page 5 of **CD6.2** claims that the Council's land has capacity for the delivery of 45-60 dwellings notwithstanding the significant level of vegetation in situ as outlined on Page 2 of the document.
- 1.12 At the time of writing the principle of developing the appeal site had been firmly established for over 8 years. Moreover the Council reviewed the Local Plan, just two years ago, in June 2022 and the report presented to the Council's Executive on 23 June 2022 (**CD 4.12**) concluded that part of the Local Plan was out-of-date (Policies S3 (Strategic Housing Development), S4 (Maintaining & Enhancing An Economic Base) and Policy H4 (Affordable Housing)). However Policy DS 4 relating to allocation of the appeal site for housing was not deemed to be out of date.



THE PLANNING APPLICATION

- 1.13 The Appellant signed a Planning Performance Agreement (PPA) with High Peak Borough Council (hereafter referred to as HPBC or the Council) on 2 November 2022 following pre-application discussions on the scheme. The full planning application was validated on 3 November 2022 and given the planning application reference number HPK/2022/0456.
- 1.14 Much constructive work was undertaken between the Appellant, its consultancy team, Officers of the Council, its professional advisers³ and statutory consultees during consideration of the application. Whilst this resulted in numerous amendments to the proposals during consideration of the application (including a reduction in the number of dwellings proposed from 100 to 92) by working collaboratively through the issues the professional Planning Officers of the Council were able to recommend that full planning permission be granted at the Council's Development Control Committee on 23 October 2023 (Committee report at **CD3.1 & CD3.3**). However Members voted to refuse the application contrary to the professional advice of Officers (Minutes at **CD3.2**).
- 1.15 I gave a presentation, in support of the proposals to the Members of the Development Control Committee and listened to the discussion and submissions made by Members that followed thereafter.
- 1.16 Notwithstanding what is recorded in the minutes for the meeting (**CD3.2**) both I and the Appellant were somewhat confused as to what the actual Reasons for Refusal (RfR) were once the Members had resolved to refuse the application. That is because the RfR were not clearly read out as the basis for the motion upon which Councillors voted. In fact the application was moved for refusal after the Chair of the Planning Committee, Councillor R McKeown⁴ stated that the applicant stood to make £30,000,000 from the development, that the Council was being offered £793,000 (that being the sum noted in Paragraph 8.1.4 of the Officer's report (**C3.1**) which external viability consultants acting on behalf of the Council had advised could be directed to the planning obligation) and that such a sum was unacceptable. As is evident from the viability documentation that was before the Council during the application Councillor McKeown was clearly incorrect in his assertion and his position is contrary to the professional advice given to the Council by its qualified viability consultants.

³ Including staff of White Peak Planning who were appointed by the Council to handle the full planning application under the direction of the Head of Planning.

⁴ Councillor R McKeown represents Hadfield South Ward which lies to the north west of the appeal site.



1.17 The Decision Notice (DN) materialised four days after the Development Control Committee (**CD3.4**) which confirmed the following four RfR:

"1. The A57 Dinting Vale is already designated as an Air Quality Management Area (AQMA) and there is potential for the level of air pollution in the area to be further increased due to increased traffic levels, leading to concerns around the impact on health of people, in particular children, in the area. Whilst it is acknowledged that the developer proposes Section 106 Contributions towards Air Quality Monitoring in the area and sustainable travel feasibility studies, this will not mitigate the actual impact of the development. As such the proposal is contrary to Policy EQ10 of the adopted High Peak Local Plan 2016 and the NPPF.

2. The position of the proposed highway access road from the A57, part of which lies outside the Local Plan allocation, in close proximity to the school, would result in an unacceptable risk to road safety. The proposal therefore fails to achieve safe and suitable access contrary to Policy CF6 of the adopted High Peak Local Plan 2016 and the NPPF.

3. The proposed section 106 package fails to achieve a policy compliant level of affordable housing and fails to fully mitigate for the substantial tree loss and loss of biodiversity on the site. Whilst the viability issues are noted, in the absence of a policy compliant Section 106 package the residual harm arising from the development is considered to outweigh the benefits of delivering this allocated housing site contrary to Policies DS4, EQ9, EQ5, H3 and H4 of the adopted High Peak Local Plan 2016 and the NPPF.

4. There is potential for the public right of way onto Simmondley Lane to be used as a "rat-run" for vehicle access, and the absence of any detailed and workable proposals for preventative measures within the application, which would also allow the access rights for existing residents to be maintained, the proposal is considered to pose a risk to the safety of users of the right of way and a highway safety risk at the junction with Simmondley Lane contrary to Policies EQ6 and CF6 of the adopted High Peak Local Plan 2016 and the NPPF."



THE APPEAL

- 1.18 The Appellant submitted the appeal on 29 February 2024 and on the same day sent a copy of the appeal and draft Statements of Common Ground (SoCG) to the Council.
- 1.19 In relation to RfR4 (and notwithstanding that Officers had suggested a condition would be appropriate to deal with the matter - a position which the Appellant had accepted during the course of the application) the Appellant produced a scheme at Appendix 4 (hereafter referred to as the Adderley Place Vehicle Discouragement Scheme) of its Grounds of Appeal and Full Statement of Case (SoC) and the matter is discussed from Paragraph 8.74 onwards of that document.
- 1.20 The Planning Inspectorate (hereafter referred to as PINS) issued the start date letter for the appeal on 15 March 2024 which *inter alia* set out the appeal timetable.
- 1.21 The Appellant received the Council's Questionnaire on 22 March 2024 in line with the appeal timetable; however it was not furnished with the supporting documentation which had been issued to PINS. The documentation was provided to the Appellant by electronic transfer on 2 April 2024.
- 1.22 As per the start date letter a deadline of 19 April 2024 had been set for receipt of the Council's SoC and the agreed SoCG. The Council's SoC was not issued by 19 April 2024. In respect of SoCG the Appellant asked the Council for feedback on the draft SOCG on 19 and 28 March 2024, 5 and 16 April 2024, and 1 and 7 May 2024. The first comments on the SoCG materialised by email dated 9 May 2024.

THE COUNCIL'S SUBSTANTIAL CHANGE IN POSITION

- 1.23 The Council's Development Control Committee met on 22 April 2024 to consider the appeal. It is noted that no report was published on the Council's web site in advance of the meeting as the matter had been categorised as legally privileged and was therefore considered to be exempt from publication by the Council.
- 1.24 An email to PINS, from the Council's solicitor, on the afternoon of 22 April 2024, confirmed that the following resolution had been passed earlier that day by the Council in relation to the RfR, using the numbering as set out in the DN:

"1. The Council will offer no evidence at inquiry relating to this reason for refusal subject to a s106 contribution of £13,800 (£150 per proposed property) to support and implement actions associated with the revised air quality action plan for the



area, namely the real time monitoring of NOx and PM10 data and, if funds remain, to support a further feasibility study into local sustainable travel in the area together with travel plan contribution and conditions relating to electric vehicle charging, secure cycle shelter provision and travel plan.

2. The Council will offer no evidence at inquiry relating to this reason for refusal subject to appropriate highways conditions recommended by the Highways Authority, and to be agreed with the appellant if possible, for the inspector to determine if the appeal is allowed.

3. The Council will set out further detail in its statement of case regarding this reason for refusal to be submitted shortly.

4. Members were satisfied that the appellant had put forward a workable solution to their concerns as set out in this reason for refusal. Accordingly the Council will offer no evidence at inquiry relating to this reason for refusal subject to conditions, to be agreed with the appellant if possible, for the inspector to determine if the appeal is allowed, requiring implementation of the scheme as shown on plan SCP/210087/SK04 RevC. Conditions should also require submission of a detailed scheme to be submitted prior to commencement of development dealing with signage (to be in general accordance with plan SCP/210087/SK04.1), materials to be used for the surfacing at the junction of FP 50 and the proposed access road, and the height and materials to be used for the proposed bollards. In addition the scheme should deal with safety measures needed during implementation of the works and time frame for completion".

1.25 It is understood, from the Council's email that the minutes of the above-mentioned meeting are to be published as part of the agenda of the Development Control Committee scheduled to take place on 20 May 2024.

1.26 By email dated 26 April 2024 my colleague Mr Mellan contacted PINS to comment on *inter alia* the Council's resolution made on 22 April 2024; an extract from that email appears below:



"As the Inspector will be aware none of the documents considered by the Council's Development Control Committee on 24 April 2024 are in the public domain. The reason given for the non-disclosure has been cited as legal privilege. In that respect the Appellant considers that the background documents considered by Members should be disclosed with any legally privileged advice redacted. Through you, and by copy of this email to the Council the background documents are respectfully requested as is a copy of the formal resolution of the Council withdrawing RfR1, 2 and 4.

The Appellant also respectfully requests a copy of the formal resolution of the Council authorising the submission of the SoC in the format that has been deposited with PINS. At present there is no publicly available evidence that the SoC provided to the public inquiry is the lawfully resolved position of the LPA in respect of the appeal".

- 1.27 By email dated 7 May 2024 the Council provided the reports to Committee (**CD6.13 & CD.14**) and the draft minutes (**CD6.19**) appeared on the Council's web site on 10 May 2024 for consideration at the Development Control Committee meeting on 20 May 2024.

RFR1 & RFR2

- 1.28 At this juncture it is worthy of note that the appeal was submitted on 29 February 2024 and a copy of the appeal was provided to the Council on the same day. It was nearly two months later when the Council stated that it would offer no evidence in respect of 3 of the 4 RfR (note that is a material different position to what is said in the Council's SoC - see below).

- 1.29 At Paragraphs 8.30 and 8.47 of its SoC the Appellant stated that the Council's decision in respect of RfR1 and 2 relied on vague, generalised or inaccurate assertions about the proposal's impact, which were unsupported by any objective analysis when Members determined the application contrary to the advice of its professional officers. That, in my view, is clearly the case here. The behaviour of Members of the Council was unreasonable and has directly caused the Appellant to incur unnecessary and wasted expense in the appeal process.

RFR4

- 1.30 In respect of RfR4 it is material to record that Officers (in the report to Committee and verbally at the Committee meeting) had advised Members that they and statutory consultees were satisfied



that this matter could be dealt with by way of condition. However, that was not accepted by Members, contrary to the advice of statutory consultees and Officers of the Council. I am not aware of any contrary evidence being made available that contradicted the views of Officers and statutory consultees.

1.31 In response to RfR 4 the Appellant outlined in its SoC (see Paragraphs 8.74 onwards) that the matter ought to have been the subject of a condition. However in response to the Council's RfR the Appellant was forced to actually design a scheme which was appended to its SoC at Appendix 4. That scheme was then the subject of discussions with Officers from Derbyshire County Council and, with some minor amendments, was found to be acceptable. The agreed scheme appears in the SoCG. In the circumstances, the position of the professional Officers of the Council, statutory consultees and the Appellant that this matter was capable of being dealt with by way of a condition was well founded.

1.32 In the circumstances, I fully agree with the Appellant's SoC at Paragraph 8.79 wherein it is stated that the Development Control Committee's refusal of planning permission on a planning ground capable of being dealt with by a condition amounts to unreasonable behaviour.

RFR3 - BIODIVERSITY

1.33 The Council's SoC was received on 24 April 2024. On 25 April 2024, my colleague Mr Mellan wrote to the Council seeking clarification on the Council's position in respect of the biodiversity element of RfR3. That was because on initial review of the Council's SoC the Appellant was somewhat confused with regards to the Council's case in relation to the issue of biodiversity. In the Appellant's SoC (Paragraph 8.59 onwards) it was made clear *inter alia* that:

"The Appellant is proceeding with the appeal on the basis that conditions and a Planning Obligation will be advanced to pay for the full suite of biodiversity mitigation measures required (as opposed to the reduced contribution suggested by Officers) hence there will be no conflict with Policy DS 4 as any harm will be mitigated for".

1.34 The Appellant's SoC then went on to look at Policy EQ 5 noting no conflict in light of the commitment replicated above.

1.35 In Section 6.11 of the Council's SoC the following is stated:



“The Council conclude that without adequate contributions there would be a harmful effect in terms of the non-policy-compliant lack of provision of affordable housing and tree loss mitigation. Local Plan Policy H4 requires that market-led housing schemes (on sites of 25 units or more) provide 30% as affordable housing. This requirement is not met”.

- 1.36 From the above it was assumed that the Council’s position was that harmful effects only materialise in relation to tree loss and affordable housing. However later at Section 6.15 of the Council’s SoC the following is then stated (my emphasis added):

*“In summary, the Council will refer to Local Plan Policies, National Guidance and Case Law to demonstrate and support that the amount to **resolve biodiversity**, other mitigation and affordable housing matters specifically resulting from the proposed development is not compliant with policies and thus inadequate. The requirement for adequate contributions for the above matters is supported by Development Plan policies DS4, H3, H4 **EQ5**, EQ6, EQ9 and Supplementary Planning Document Developer Contributions (October 2023)”.*

- 1.37 Given that the Appellant committed to dealing with the biodiversity issue in its SoC deposited with both PINS and the Council on 29 February 2024 Mr Mellan asked the Council on 25 April 2024 to urgently clarify its position on this discrete point so as to prevent any further abortive work in relation to this matter by the Appellant and its advisers.

- 1.38 On 30 April 2024 the Council's solicitor sought further clarification from the Appellant on the number of biodiversity units necessary to mitigate the impacts of the development and associated costs. The Appellant, via Mr Mellan, responded to the Council the following day, 1 May 2024.

- 1.39 In response to the exchange of correspondence the Council finally confirmed its position on the biodiversity element of RfR3 on 7 May 2024 effectively withdrawing this element of RfR3 as it is satisfied that the effects of the development in respect of biodiversity will be mitigated for.

THE COUNCIL'S SoC

- 1.40 The language used in the Council's SoC is somewhat different to that used in the Council's email of 22 April 2024. In the latter it is said that the Council would offer no evidence in respect of RfR1, 2 and 4 but in the former (Paragraph 1.2 of the SoC) these RfR are withdrawn. The two positions are



subtly but importantly different. The Appellant is therefore proceeding on the basis of the position set out in the Council's formal SoC submitted to PINS and that RfR1, 2 and 4 are withdrawn.

1.41 Having reviewed the Council's SoC it was also evident that the Council was attempting to introduce a new RfR relating to viability. This is recorded in detail in the email dated 26 April 2024 to PINS (copy sent to the Council) from my colleague Mr Mellan. There is no need to revisit the detail of that email here but in summary terms, the position advanced in the Council's SoC is that the allocation in its entirety should have been considered when assessing viability. Given that it bears no resemblance to the resolved position of the Council and was not a matter raised at any point prior to determination of the application the Council was invited to withdraw this element of its case. In an email of 7 May 2024 the Council has stated that it stands by the points made. Accordingly, this is now considered to be a live matter before the Inquiry and is covered in the evidence of Mr Heathcote.

1.42 Other matters raised in the Council's SoC relating to housing land supply (another new matter raised by the Council and not mentioned anywhere in its DN), affordable housing and trees are dealt with in the evidence submitted on behalf of the Appellant.

STATEMENTS OF COMMON GROUND

1.43 Following submission of the appeal and in light of the Council's substantial change in position on the RfR the Appellant and Council were able to agree on a SoCG.

MATTERS IN DISPUTE

1.44 The only matters remaining dispute between the Council and Appellant relate to RfR3 and specifically issues relating to:

- Trees.
- Affordable housing.

1.45 Whilst not a matter covered in the Council's DN viability is also a matter in dispute.

CONCLUDING REMARKS ON THE BACKGROUND TO THE APPEAL IN ADVANCE OF THE EXCHANGE OF EVIDENCE

1.46 Firstly, I consider it is worth outlining the Secretary of State's expectations in respect of decision taking in relation to sites allocated for residential development in an adopted LP These expectations



were most recently recorded in a letter, dated 8 September 2023, which was sent to all Councils in England and notes *inter alia*:

"... development should proceed on sites that are adopted in a local plan with full input from the local community unless there are strong reasons why it cannot"

1.47 Moreover the Secretary of State went on to note the following about LPs:

"Second, we know that local plans are the best way to ensure the right homes are built in the right places".....

1.48 In this case it is fairly evident that 3 of the Council's RfR (RfR1, 2 and 4) and part of RfR3 did not constitute strong reasons for resisting the development by Members of the Council. That much is evident as the Council has withdrawn them.

1.49 As noted above I was at the Development Control Committee on behalf of the Appellant. In 27 years practice I have to say it is rare to see elected Members deviate so far from the professional advice of well-respected and appropriately qualified Officers when considering an allocated site. It is clear to me that that in respect of RfR1, 2 and 4 the Committee's position was based on vague, generalised or inaccurate assertions about the proposal's impact, which were unsupported by any objective analysis and/or should have been the subject of a condition.

1.50 Furthermore, I do not consider that the Council acted promptly in reassessing its case as asserted in the email of 12 April 2024 from the Council to PINS. In that respect it is material to note that the appeal was lodged on 29 February 2024 (a copy was sent to the Council on the same day). The Council held a Development Control Committee almost a month later on 25 March 2024 which the matter could possibly have been reported to or a special Development Control meeting could have been convened (which was a suggestion made to the Appellant by Officers for dealing with the application as a single item during the determination period). Instead, the Appellant had to wait the best part of two months for the Council to confirm its position and withdraw 75% of its case. By that time the Appellant had expended significant resources. Moreover it wasn't until 7 May 2024 that the Council withdrew part of RfR3 relating to biodiversity when the Appellant had signalled its intention to fully mitigate the biodiversity impacts of the development in its original appeal submission on 29 February 2024.



CASE MANAGEMENT CONFERENCE (CMC)

1.51 A CMC was held on 10 May 2023 and in preparing my evidence I have followed the requirements outlined by the Inspector.

FORMAT OF EVIDENCE

1.52 My evidence aims to assist the Inquiry with regard to planning matters. I also draw together the conclusions made by other experts acting on behalf of the Appellant in order to test the proposals against the provisions of the Development Plan and other material considerations. My evidence also deals with the concerns raised during the appeal by third parties and cross refers to the conclusions (where necessary) made by other experts acting on behalf of the Appellant (and which subjects are outside the scope of my expertise).

1.53 Accordingly, in relation to the Council's remaining RfR3 my PoE should therefore be read alongside the PoE prepared by:

- Mr Tavendale - Arboriculture.
- Mr Heathcote - Viability.

1.54 In light of the Council's substantially changed position following the submission of the appeal, there are a number of witnesses which Counsel for the Appellant will call in order to address points made by third parties. These are detailed as follows:

HIGHWAYS & TRANSPORTATION

1.55 A PoE has been prepared by prepared by Mr Roberts a Director of SCP. Mr Roberts is an Incorporated Engineer of the Engineering Council, a Fellow of the Institute of Highway Engineers, and a Fellow of the Chartered Institution of Highways and Transportation. SCP produced the highways and transportation work on behalf of the Appellant during the application.



CIVIL ENGINEERING RELATING TO ACCESS

- 1.56 A PoE has been prepared by prepared by Mr Nicholas a Director of Betts Hydro. The evidence covers matters relating to civil engineering and the gradient of the access road serving the proposed development. The PoE is appended to Mr Roberts' PoE.

AIR QUALITY

- 1.57 A PoE has been prepared by Ms Whittall. Ms Whittall is a Senior Environmental Consultant with Royal Haskoning DHV and was responsible for the production of the air quality work produced on behalf of the Appellant during the application. The evidence deals with matters relating to air quality.

BIODIVERSITY

- 1.58 A PoE has been prepared by Ms Kerr a Technical Director of Tetra Tech Europe. Ms Kerr led the ecology team who produced the biodiversity work on behalf of the Appellant during the application. The evidence deals with matters relating to biodiversity and will also assist the Inquiry in relation to the bespoke mitigation proposed at the Appellant's site in Chinley and the matter of off-site biodiversity credits.



2. THE APPEAL SITE & SURROUNDING AREA

SITE LOCATION

- 2.1 The appeal site is located to the south of Dinting Vale (A57) approximately 1.6km to the west of Glossop town centre and approximately 21km east of the centre of Manchester.
- 2.2 The general location of the appeal site is provided below:

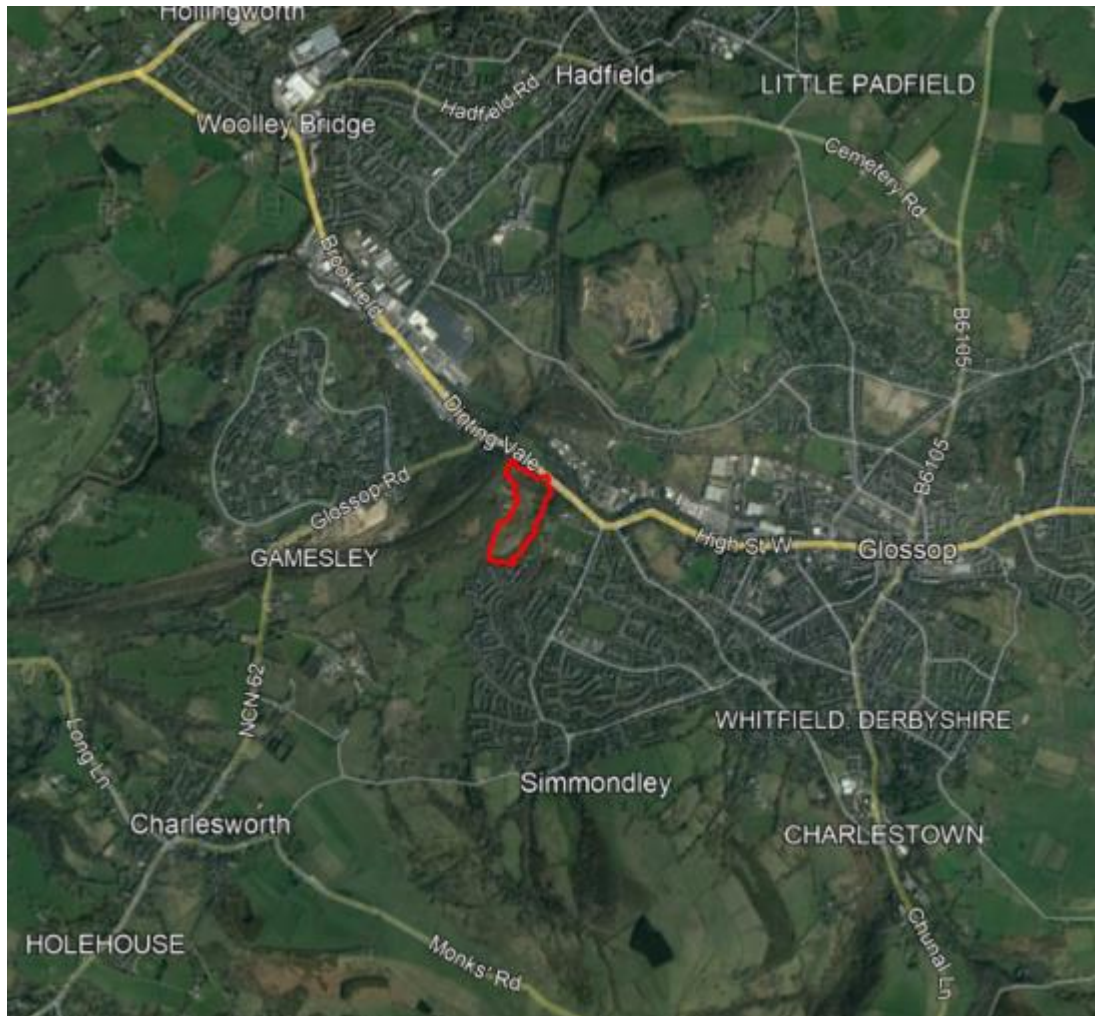


Figure 2.1 - General Location Of The Site.



APPEAL SITE DESCRIPTION

- 2.3 The appeal site extends to approximately 4.7 hectares. It is currently accessed from Adderley Place, which is unadopted road (part of Adderley Road) and Public Right of Way (PROW) which comes off Simmondley Lane and traverses the appeal site in roughly an east west direction. Adderley Road serves a Scout Centre and a limited number of houses.
- 2.4 The northern section of the appeal site (north of Adderley Place) is overgrown with trees and shrubs. The topography within this area is sloping with ground levels falling northwards towards Dinting Vale (A57).
- 2.5 The southern portion of the appeal site (south of Adderley Place) is generally open grassland where the levels slope from west to east. It is unremarkable in terms of its appearance. The land does include some trees within the appeal site but generally speaking, these are located around the periphery and along the access track.
- 2.6 The appeal site was last used for horse grazing.
- 2.7 An aerial photograph of the appeal site is provided below showing the approximate appeal site boundary and showing the proposed point of access for the development from Dinting Vale (A57).



Figure 2.2 - Aerial Image of the Appeal Site and Surrounding Area - See Submitted Location Plan WH_DV_LP_01 Rev B (CD 344) for Official Appeal Site Boundaries.

SURROUNDING AREA

- 2.8 Immediately to the north and west of the appeal site are existing residential dwellings which are accessed from Dinting Vale (A57) and Adderley Place respectively.
- 2.9 Dinting Church of England Primary School and Holy Trinity Church are located on the northern side of Dinting Vale (A57) with the buildings lying to the north east of the proposed access point to the development. It should also be noted that in the vicinity of the school and church is a traffic light controlled pedestrian crossing.
- 2.10 A further woodland area is located to the east of the appeal site and within this is a stream, beyond this is Dinting Cricket Club.
- 2.11 Further housing is located beyond the appeal site to the south.



2.12 To the west of the appeal site is the Gamesley Sidings woodland area and beyond this the Glossop to Manchester railway line.

ACCESSIBILITY

2.13 The appeal site is situated within an accessible location in Dinting Vale approximately 1.6 km away from the town centre of Glossop where there are a variety of shops and services to meet-day-to-day needs.

2.14 There are a significant number of local facilities within close proximity of the appeal site and these include:

- Dinting Vale Primary School (50m from site).
- Gamesley Convenience Store (700m from site).
- Bluebell Wood Public House (700m from site).
- Co-op Supermarket, Pennine Road (also has ATM) (850m from site).
- Post Office, Pennine Road (850m from site).
- Moorland Pharmacy (850m from site).
- Simmondley Dental Practice (850m from site).
- Tesco Supermarket, Wren Nest Road (850m from site).
- Tesco Pharmacy, Wren Nest Road (850m from site).
- ATM - Tesco, Wren Nest Road (850m from site).
- Hot Food Takeaway Pennine Road (850m from site).
- Doctors Simmondley Medical Practice (900m from site).
- Simmondley Primary School (950m from site).
- Nursery - Gamesley Early Excellence Centre (1.2km from site).
- Londis Convenience Store (1.2km from site).
- St Philip Howard Catholic Voluntary Academy Secondary School (1.2km from site).



- Aldi Supermarket Arundel Street (1.3km from site).
- Glossop Swimming Pool (1.4km from site).
- Howard Park (1.4km from site).
- A'bout Thyme Coffee Lounge/Café (1.4km from site).
- St Luke's C Of E Primary School (1.5km from site).
- Glossopdale School (High School and Sixth Form 1.8km from site).

2.15 In terms of public transport there are bus stops suitably located on both sides of the A57 in close proximity to the proposed appeal site access and these bus stops are served by services 237, 341, 384 and the X57 which in combination provide regular services, seven days a week to numerous locations including Ashton-under-Lyne, Stalybridge, Mottram, Hollingworth, Hyde, Hattersley, Hazel Grove, Manchester, and Sheffield, amongst others.

2.16 Dinting Railway Station is located 700m north of the appeal site access and is therefore, within easy walking distance of the appeal site via the footpath adjacent to the viaduct to the west of the appeal site. Dinting Railway Station offers regular direct services throughout the week, including services approximately every 30 minutes out of Glossopdale to Hattersley, Guide Bridge and Manchester Piccadilly, amongst others.

2.17 Further details relating to accessibility are to be found in the Transport Assessment that was submitted in support of the application (**CD1.15**).

STATUTORY DESIGNATIONS

2.18 In relation to statutory and other designations the following is worth noting:

- The appeal site is located within Flood Zone 1, an area with a low probability of flooding. Flood Zones 2 and 3 are located directly adjacent to the north eastern appeal site boundary, following the route of Glossop Brook.
- A Public Right of Way (Glossop FP 50) runs through the appeal site along the existing unadopted access road (Adderley Place).
- A temporary Tree Preservation Order (TPO) was made on the site on 1 February 2024 which covers the whole site. The Appellant has objected to the TPO (**CD6.11**).

- The appeal site is not subject to any statutory ecological related designations. Gamesley Sidings Local Wildlife Site (LWS) is adjacent to the western site boundary.
- Part of Dinting Vale (A57) to the north of the appeal site is located within an Air Quality Management Area.
- The appeal site does not include any listed buildings and is not within a Conservation Area. There are no Scheduled Ancient Monuments within the site boundaries and the appeal site is not within a designated World Heritage Site. Holy Trinity Church just east of the proposed site access is a Grade II Listed Building.
- The appeal site lies within the 'Settled Valleys Pastures Landscape Character Area' as defined within the Council's adopted Landscape Character Supplementary Planning Document noting however that the site is also allocated for housing.

SUMMARY

- 2.19 The appeal site lies in an accessible location, with good access to existing local amenities, facilities and public transport all of which are within walking and cycling distance of the appeal site and there are no statutory or other designations that should prevent a residential development from coming forward.

3. PLANNING HISTORY

APPEAL SITE - PLANNING APPLICATIONS/APPEALS HISTORY

- 3.1 A search of the Council's online interactive planning map has identified no relevant history on the appeal site apart from the planning application which the appeal relates to.

APPEAL SITE - LOCAL PLAN HISTORY

- 3.2 It is material to note however the appeal site was assessed by a Local Plan Inspector when it was put forward as a proposed allocation in the now adopted Local Plan. In that respect (and in response to duly made objections) Paragraph 187 of Inspector Moore's report (**CD6.1**) notes the following in respect of the site specific policy (Policy DS 4):

"Adderley Place, Glossop, (Policy DS 4) is a greenfield site on the edge of Glossop where approximately 130 new dwellings are proposed. It is adjacent to existing properties and woodland and has a generally low visual impact in the wider landscape. A crucial issue is creating a new access to the site from the A57 and the additional traffic. The evidence does not indicate that these matters are insurmountable and the VTR has taken the access in account. The Council owns part of the site, which the trajectory shows as coming forward in the middle of the plan period. Subject to the addition of a requirement for a wildlife survey (MM81), the site is sound."

NEARBY PLANNING DECISIONS OF RELEVANCE

ADDERLEY PLACE

- 3.3 In relation to the surrounding area the Council granted planning permission on 23 August 2023 for 8 dwellings at the former Zion Methodist Church site (reference HPK/2022/0353) which is located at the eastern end of Adderley Place at its junction with Simmondley Lane. The Officer's report, Decision Notice and approved layout can be found in **CDs 2.75-2.77**. Whilst the Council has withdrawn RfR4 relating to issues associated with Adderley Place it is noted in passing that the Council did not have any issues with vehicles associated with the former Zion Methodist Church development using Adderley Place for access and egress.



LAND AT DINTING ROAD, GLOSSOP

3.4 The Council's Development Control Committee met on 22 January 2024 to consider an application for reserved matters approval by Seddon Homes for 101 dwellings and associated development north of Dinting Road, Dinting Glossop (Committee reports enclosed as **CD6.6 and CD6.7**). The Committee's consideration of these applications followed a site visit. Page 7 of **CD6.6** records the Tree Officer's concerns about the scheme which state *inter alia*:

"Concerns are raised that more trees are going to be lost at the site than will be replaced. 85 trees are proposed to be removed and 98 trees are proposed as replacements in Site B. Policy EQ9 requires a 2:1 replacement for any trees lost and which would require 170 trees to be planted. "

3.5 The replanting ratio noted above is 1:1.15.

3.6 Paragraph 7.41 onwards of **CD6.6** provides the Planning Officer's assessment of landscape and tree issues and whilst reference is made to Policy EQ9 (Paragraph 7.42) no reference is made to the Tree Officer's concerns over lack of 2:1 replacement planting. Furthermore Section 8 (Page 25 onwards) contains the Officer's assessment of the Planning Balance and her conclusions. It is noted that no reference is made to the Tree Officer's concerns over the lack of 2:1 replacement planting with the Officer concluding that the proposal complies with Policy EQ9.

3.7 It is noted that Members approved the above-mentioned application despite the Tree Officer's concerns with regard to replacement tree planting. Notably this is not a site with any viability issues unlike the appeal site.

3.8 The above matter is relevant in considering the Council's remaining RfR relating to trees and it is a matter to which I return to later in my evidence in dealing with the substance of the Council's objection to the development in respect of trees. However, on the face of it, I consider that an inconsistent approach to decision taking with regard to trees has been made by Members of the Council's Development Control Committee.

4. THE PROPOSAL

OVERVIEW

4.1 The original application was for a proposed residential development comprising 100 dwellings including areas of public open space, landscaping and associated works as recorded in the validation letter for the application. However, following the input of consultees and with the agreement of Officers the description of development was amended when further information was submitted to the Council on 19 May 2023 which resulted in the dwelling numbers being reduced from 100 to 92 (CD2.2 refers).

4.2 The Appellant subsequently sought full planning permission for the following development (as amended):

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

4.3 The application was subsequently reported to the Council's Development Control Committee using the above-mentioned description of development (see **CD3.1 & CD3.3**). Detailed elements of the proposal are set out below.

ACCESS

4.4 Access to the appeal site is proposed from Dinting Vale (A57) in line with the site's allocation (Policy DS 4). This was recognised to involve a substantial engineering operation given the existing levels. Furthermore, the formation of the new junction with the adopted highway will necessitate the relocation of the existing western bound bus stop at Dinting Vale (A57) which would be dealt with via a condition/Section 278 Agreement under the Highways Act of 1990.

HOUSING MIX

4.5 The appeal scheme comprises a range of house types (9 in total), made up of 1 to 4 bedroom dwellings which include a block of apartments along with terraced, semi-detached and detached dwellings.

4.6 The proposed mix of housing is illustrated below:



Table 1 - The Proposed Mix of Dwellings

Dwelling Size	Total
1 bedroom	6 (7%)
2 bedroom	21 (23%)
3 bedroom	50 (54%)
4 bedroom	15 (16%)
Total	92

- 4.7 The appeal scheme was carefully considered to not only respond to current market demands but to also to reflect the character of the neighbouring residential areas.
- 4.8 47no. of the dwellings (51%) meet the National Described Space Standards (NDSS) and the M4(2) standards of the Building Regulations.
- 4.9 It is understood that the Council is satisfied that the mix of dwellings proposed broadly complies with the requirements of the Housing & Economic Land Needs Assessment (HELNA) (September 2022) (**CD6.26**) (which they consider to be a successor document to the SHMA referred to in Policy H3). This is recorded in the Officer's report to Planning Committee at Paragraph 7.3.12 of **CD3.1** and it is noted that the remaining element of RfR3 as set out in the Council's DN does not deviate from this assessment. The Appellant is therefore proceeding on the basis that the proposed mix of dwellings is broadly acceptable to the Council and that this issue forms no part of the Council's case to resist the appeal.

SCALE

- 4.10 The majority of the proposed dwellings are two storeys with one house type (Juniper) being 2.5 storeys (11 no.) positioned at key locations to add variety to the street scene. The maximum heights of the proposed dwellings is approximately 9.5 metres.

APPEARANCE

- 4.11 The dwellings would be finished with buff reconstructed stone walls and grey roof tiles. Dwellings located on corner plots would be provided with additional windows to side elevations to add interest and increase surveillance. The appearance of the dwellings would reflect the design cues from the local vernacular and would complement the character of the surrounding area. A



comprehensive description of the design approach is provided within the Design and Access Statement which was submitted in support of the application (CD2.92).

LAYOUT

4.12 The layout has incorporated the following features:

- An overall outward facing development. Active frontages are proposed to front the proposed public open spaces where possible.
- Existing vegetation boundaries retained and protected as much as possible.
- A clear road hierarchy formulated with different road widths, shared surfaces and materials.
- Retention of the PROW with the adjacent land being enhanced with street trees and a swale.
- An ecological buffer to the western boundary with dwellings orientated towards this area, therefore, removing any impacts on the trees which are located in the Gamesley Sidings site to the west.
- Street trees throughout the layout.
- Children's play areas in areas south of the PROW and the southern part of the appeal site.
- Substantial area of public open space (1.85 hectares) which would serve the development and would also be of benefit to surrounding residents.
- A 3 metre wide footway/cycleway along the western boundary connecting to the PROW to the Gamesley Sidings site to the south west.
- Significant planting to the north on either side of the appeal site access. This will help mitigate for some of tree loss and also helps screen the development and access road from Dinting Vale.



LANDSCAPING

- 4.13 The appeal scheme would provide for significant tree, hedgerow and shrub planting throughout the appeal site as shown on the planting plans (**CDs 2.105 - CD2.110**). There are a significant number of existing mature trees around the perimeter of the appeal site of varying quality and these are proposed to be retained. This will of course help to screen the appeal site and reduce the visual impact on the surroundings.

FLOODING & DRAINAGE

- 4.14 A Flood Risk Assessment (FRA) (**CD2.6**) was submitted with the application which deals with the SuDS hierarchy that aspires to achieve reductions in surface water runoff rates to greenfield sites. Based on the information obtained from the ground investigations, infiltration-based SuDS are not considered a feasible method of surface water disposal from the appeal site. Therefore, surface water from the development will be attenuated in underground storage chambers and an above ground tiered swale before being discharged at appropriate rates to the nearby watercourses.

5. THE DEVELOPMENT PLAN

INTRODUCTION

5.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that:

“Where in making any determination under the planning Acts, regard is to be had to the Development Plan, the determination shall be made in accordance with the plan unless material consideration indicates otherwise”.

5.2 In this instance, the Development Plan comprises the High Peak Local Plan which was adopted on 14 April 2016 (relevant extracts in **CD4**).

HIGH PEAK LOCAL PLAN

5.3 According to the adopted Proposals Map (extract at **CD4.11**) the appeal site is within the built-up area of Glossop and is allocated for housing in Policy DS 4 (Adderley Place, Glossop).

5.4 The appeal site is not located within the Green Belt nor subject to any other allocations/designations in the Development Plan.

5.5 Notwithstanding the Council's substantially changed position since submission of the appeal have identified what I consider to be the most important policies for determining the appeal and these are set out below:

- Policy S 1 – Sustainable development principles.
- Policy S 1a – Presumption in favour of sustainable development.
- Policy S 2 – Settlement hierarchy. This policy states that development will be directed towards the most sustainable locations in accordance with the settlement hierarchy. The policy defines Glossop as a Market Town which is an area where there will be a focus for housing amongst other things.
- Policy S3 - Strategic housing development. This policy sets out the supply and distribution of dwellings and requires provision to be made for at least 7,000 dwellings over the Plan period 2011 - 2031 at an overall annual average rate of 350 dwellings per annum. The appeal site is an important component of the Plan led supply being an allocated housing site.



- Policy S 5 – Glossopdale Sub-area Strategy. This policy states that the Council will seek to promote the sustainable growth of Glossopdale whilst promoting and maintaining the distinct identity of its settlements, provide an increasing range of employment opportunities, promoting the growth of a sustainable tourist economy and meeting the housing needs of the local community.
- Policy EQ 1 – Climate change.
- Policy EQ 2 – Landscape character.
- Policy EQ 5 – Biodiversity.
- Policy EQ 6 – Design and place making.
- Policy EQ 7 – Built and historic environment.
- Policy EQ 8 – Green Infrastructure.
- Policy EQ 9 – Trees, woodland and hedgerows.
- Policy EQ 10 – Pollution control and unstable land.
- Policy EQ 11 – Flood risk management.
- Policy H 1 – Location of housing development. Policy H1 sets out *inter alia* that the Council will support the development of specific sites through new site allocations in the Local Plan.
- Policy H 2 – Housing allocations. The appeal site is listed as part of a housing allocation referred to as Adderley Place which is expected to deliver approximately 130 dwellings. The policy also sets out an indicative phasing strategy noting that the appeal site was planned to come forward in the middle phase (2021-2026) of the Plan period.
- Policy DS 4 – Adderley Place, Glossop. Policy DS 4 allocates the appeal site and land to the east of it (owned by the Council and which is currently being marketed on its behalf by CBRE for housing development) for approximately 130 dwellings (**CD 435**). The policy lists 7 requirements that the Council expects proposals to comply with which the appeal scheme has addressed.
- Policy H 3 – New housing development.



- Policy H 4 – Affordable housing. Notably Policy H 4 has a viability element to it which allows for less than the prescribed amount of affordable housing required under the policy where viability is an issue.
- Policy CF 3 – Local infrastructure provision.
- Policy CF 4 – Open space, sports and recreation facilities.
- Policy CF 5 – Provision and retention of local community services and facilities.
- Policy CF 6 – Accessibility by public transport.
- Policy CF 7 – Planning obligations and community infrastructure levy.

HIGH PEAK LOCAL PLAN REVIEW

- 5.6 The Council reviewed the Local Plan in June 2022 and the report presented to the Council's Executive on 23 June 2022 (**CD 449**) concluded that part of the Local Plan was out-of-date (Policies S3 (Strategic Housing Development), S4 (Maintaining & Enhancing An Economic Base) and Policy H4 (Affordable Housing)). However, Policy DS 4 relating to the allocation of the appeal site was not deemed to be out of date and neither were any of the other policies mentioned above.
- 5.7 In my view the appeal proposal and the development of the site for residential purposes therefore accord with the most important policies for determining the appeal application when the Development Plan is considered as a whole.



6. OTHER MATERIAL CONSIDERATIONS - POLICY & GUIDANCE

INTRODUCTION

- 6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the Development Plan unless material considerations indicate otherwise.
- 6.2 In this case, other material considerations include national planning policies and other supplementary planning documents/supplementary planning guidance.

NATIONAL PLANNING POLICY FRAMEWORK

- 6.3 The most recent revision of the National Planning Policy Framework (the Framework) was published on 19 December 2023
- 6.4 The relevant paragraphs are as follows:
- Paragraph 7 – seeks to achieve sustainable development including the provision of homes in a sustainable manner.
 - Paragraph 11 – seeks to achieve a presumption in favour of sustainable development. For decision taking this means:
 - "c) approving development proposals that accord with an up-to-date development plan without delay; or*
 - d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:*
 - i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*
 - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole".*



Paragraph 11 c) and d) is subject to Footnotes 7 and 8. In respect of Footnote 7 none of the matters listed in the Footnote apply to the appeal site. In respect of Footnote 8 this concerns matters relating to housing land supply and the failure to demonstrate a four/five year supply of deliverable housing sites (as relevant) or pass the Housing Delivery Test.

- Paragraph 58 - discusses viability and states *inter alia* that "*The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force.....*"
- Paragraph 60 – supports the Government’s objective of significantly boosting the supply of homes, noting that it is important that a sufficient amount of land can come forward where it is needed. .
- Paragraph 109 - locating development in sustainable locations thereby limiting the need to travel and offering a genuine choice of transport modes so as to reduce congestion and emissions and improve air quality and public health.
- Paragraph 115 – requires that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety or residual cumulative impacts on the road network would be severe.
- Paragraph 123 - requires *inter alia* that planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses.
- Paragraph 135 – discusses the importance of achieving well designed places.
- Paragraph 180- deals with minimising impacts on and providing net gains for biodiversity (criterion d) and unacceptable levels of air pollution *inter alia* (at Criterion e).
- Paragraph 186 – notes that significant harm to biodiversity should be avoided or adequately mitigated.
- Paragraph 192 - air quality.



PLANNING PRACTICE GUIDANCE

6.5 On 6 March 2014 the Department for Communities and Local Government launched the online National Planning Practice Guidance (NPPG) as a web-based resource to further simplify and bring together planning practice guidance for England in an accessible and usable way. The PPG on Design echoes the policy and advice set out within the Framework. The guidance provides detailed advice on what issues should be considered in relation to layout (the way in which buildings and spaces relate to each other), form (the shape of buildings), scale (the size of buildings), detail (the important smaller elements of buildings and spaces) and appearance/materials (how a building looks/what a building is made from).

6.6 The PPG advises that distinctiveness is what makes a place special and valued and relies on physical aspects such as the local pattern of street blocks and plots, building forms, details and materials, style and vernacular, landform and gardens, parks, trees and plants and wildlife habitats and micro-climates. It goes on to state that a well-designed place should be functional, support mixed uses and tenures, include successful public places, be adaptable and resilient, have a distinctive character, be attractive and encourage ease of movement.

NATIONAL DESIGN GUIDE

6.7 The National Design Guide was published in January 2021 and this document notes that the Framework makes clear that creating high quality buildings and places is fundamental to what the planning and development process should achieve. The National Design Guide illustrates how well-designed places that are beautiful, healthy, greener, enduring and successful can be achieved in practice.

SUPPLEMENTARY PLANNING DOCUMENTS (SPD's)

6.8 The following SPDs are acknowledged:

- Developer Contributions SPD (October 2023).
- High Peak Design Guide SPD (Feb 2018).
- Glossop Design and Place Making Strategy (Dec 2011).
- Housing Needs in the High Peak SPD (Nov 2007).
- Landscape Character SPD (March 2006).



- Adopted Residential Design SPD (Dec 2005).
- Designing out Crime SPD (June 2005).

LOCAL PLAN REVIEW

6.9 The Council has started a review of its Local Plan and consulted on an "Early Engagement Document" in January 2023 (**CD5.1**). According to the Council's Local Development Scheme 2022 a draft Plan is expected to be published in 2025. In November 2023 the Council published its Statement of Five Year Housing Land Supply (as at 1st April 2023) (**CD6.3**) which claims the Council has a 6.4 year supply. The appeal site is part of the deliverable supply identified by the Council and this is a matter I return to later in my evidence.

7. RESPONSE TO THE COUNCIL'S OBJECTION TO THE PROPSALS - GENERAL PRINCIPLES

GENERAL PRINCIPLES

THE COUNCIL'S POSITION

- 7.1 At the start of the appeal the Council relied on 4 RfR.
- 7.2 By the time the Council's SoC had been received there was just 1 tri-faceted RfR (RfR3) remaining.
- 7.3 On 7 May 2024 the Council confirmed that it would not contest that element of RfR3 relating to biodiversity as any harm would be fully mitigated for as set out in the Appellant's SoC.
- 7.4 The Appellant's team have therefore prepared evidence on the reasonable assumption that save for the position outlined in its SoC and its email of 7 May 2024 the Council considers that the scheme is acceptable in all other respects.
- 7.5 In effect there are two areas of dispute remaining stemming from the RfR relating to trees and affordable housing provision which account for 17% of the issues raised in the Council's original RfR as set out in its DN. A further matter relating to viability arises from the Council's SoC in relation to viability and testing of the site wide allocation and housing land supply.

WEIGHT TO BE GIVEN TO DEVELOPMENT PLAN POLICIES

- 7.6 The Council identifies that the Local Plan is up to date except for two policies relating to the appeal scheme (Policy S3 (Strategic Housing Development) and partly Policy H4 (Affordable Housing) (see Paragraphs 7.1.3, and 8.1.3 of the Committee Report (CD3.1)).
- 7.7 Save for the foregoing policies it is worth highlighting that Policy DS 4 (relating to the allocation of the appeal site) was not deemed to be out of date and neither were any of the other policies I identify as being the most important for determining the appeal when the Council reviewed the Local Plan in June 2022 (see report presented to the Council's Executive on 23 June 2022 (CD4.12)).
- 7.8 In respect of a Development Plan where some of the policies have been deemed to be out of date the principles established in *Wavendon Properties Ltd v Secretary of State of Housing Communities And Local Government & Anor* [2019] EWHC 1524 (Admin) (14 June 2019) (CD6.5) are relevant



- 7.9 As I understand it and in summary terms the Judge, (The Hon. Mr Justice Dove) in the Wavendon case agreed with the Secretary of State that the tilted balance did not apply only because one or two of the relevant policies were out of date. Rather, having identified the most important policies for determining the application, they should be examined individually and then considered in the round to decide whether the policies all together should be considered out of date. The fact that the Secretary of State did not apply the tilted balance to the decision in this case is that his evaluation of all of the policies that were most important for the application, when examined individually and in the round, led to the conclusion they were not to be considered out of date.

VIABILITY

- 7.10 The Council's Decision Notice (**CD3.4**) does not dispute the viability issues associated with bringing forward this allocated site.
- 7.11 Having reviewed the Council's SoC it is noted that Paragraph 1.9 confirms that the Council does not dispute the details of the viability assessment submitted by the Appellant.
- 7.12 It is therefore the undisputed case that the Council agrees that there is no more than £793,000 in total available for Planning Obligation matters (this being the position advanced by its professional advisers as noted in the Officers' Report to the Development Control Committee).
- 7.13 It should be noted that Officers of the Council unilaterally decided how the £793,000 available for Planning Obligations should be apportioned (Paragraph 7.20 onwards of the Development Control Committee report refers - **CD3.1**). However, that apportionment was not generally in accordance with the Appellant's wishes which are set out in **CD2.73** and which outlined that the Appellant wished priority ought to be given to biodiversity mitigation. That is not a criticism of Officers as they were seeking to apportion the funds available in a manner they considered was appropriate and equitable having regard to all relevant matters.
- 7.14 When it came to preparing for the appeal biodiversity costs had increased (because the Appellant had managed to obtain a firm quotation for the off-site bespoke works at Chinley and in order to meet the DEFRA Metric Trading rules further Biodiversity Net Gain credits would need to be purchased. These matters were outlined in the Appellant's SoC.



APPLICATION OF PARAGRAPH 11 OF THE FRAMEWORK

- 7.15 The Appellant's principal case as set out in its SoC is that the proposed development complies with the provisions of the Development Plan and as a consequence Paragraph 11 (c) of the Framework applies. For decision taking this means approving development proposals that accord with an up-to-date Development Plan without delay. In that respect the appeal site is allocated for housing in the Development Plan, the Development Plan has been reviewed and there is no indication that housing will not be required or that the allocation should be rescinded.
- 7.16 However, if in the alternative during consideration of the appeal the Council think the review of the Local Plan materially affects whether its policies are up to date then Paragraph 11 (d) of the Framework would apply as would the Wavendon principles described above.
- 7.17 The prospect of a Local Plan review is at an extremely early stage and can carry no weight in the determination of the appeal proposals. The Council does not allege that the appeal proposals are "premature" pending the prospect of any Local Plan review.



8. RESPONSE TO THE COUNCIL'S REMAINING RFR - RFR3 TREES

INTRODUCTION

- 8.1 As noted in Chapter 1 this part of my evidence needs to be considered in the context of the evidence of Mr Tavendale who is the appropriately qualified expert in relation to arboriculture. I also raise some inter-related points below in relation to hedgerows which are to be considered in the context of Ms Kerr's evidence.
- 8.2 In this chapter of my PoE I will deal with the planning aspects of the Council's objection to the proposal in relation to trees (as stated in RfR3) and the relevant LP policy tests.
- 8.3 At the outset it is worth noting that the RfR 3 states that the Council's objection is in relation to the proposed Section 106 Agreement package which it is claimed fails to mitigate for the substantial tree loss arising from the development. I take that as meaning there isn't any objection to the development itself in terms of tree loss and new tree planting rather it is the off-site tree contribution, that was proposed by Officers, at the application stage which is considered by the Council, to be insufficient to mitigate for the losses as set out in the DN and that as a consequence harm arises that outweighs the benefits of the scheme.
- 8.4 As an aside I note there is no objection to hedgerow loss on the Council's part and no allegation that hedgerow removal is not adequately mitigated for. In that respect it is worthy of note that Ms Kerr's evidence illustrates that the post development the scheme would result in a 447.22% increase in hedgerow units (and a 16.23% increase in watercourse units). As I understand it there is no dispute with regard to these matters which are a benefit of the scheme.
- 8.5 The Officer's report to Committee (**CD3.1**) summarised the position on tree contributions at Paragraph 7.18.10 (Page 57 of the pdf) onwards. It tells us that the Council's arboriculturist had sought £136,800 for off-site planting plus £39,680 for maintenance (£176,660 in total) to secure 2-for-1 tree replacement elsewhere in the Glossop area. However, in light of the agreed viability constraint Planning Officers took the view that 1:1 replacement planting could justifiably be sought resulting in a planting contribution of £72,400 plus a maintenance sum of £19,840 (£92,240 in total). This is the sum that the Appellant has allowed for in the Section 106 Agreement for the appeal.



RELEVANT LP POLICIES

8.6 In respect of trees the Council, in its DN, cites a conflict between the proposals and the following LP policies which can be found in **CD3.4**:

- Policy DS 4 – Adderley Place, Glossop.
- Policy EQ 9 – Trees Woodland & Hedgerows.

RELEVANT NATIONAL POLICY

8.7 In respect of trees the Council, in its DN, cites a conflict with the Framework although it did not cite any relevant section or paragraph. Having reviewed the Council's SoC I cannot identify any paragraph of that document where a conflict with the Framework is articulated.

ASSESSMENT

POLICY DS 4

8.8 The delivery of this allocated housing site was inevitably going to necessitate the removal of a significant number of trees, woodland and hedgerows to enable the appeal site to be accessed from the A57 in accordance with Policy DS 4. These features were present when the site was first considered for allocation.

8.9 Moreover given the local topography it is fairly obvious that a major engineering operation would be required (through an area of trees) to form an access from the A57 to the development platform to the south given that there is no other way of accessing the land.

8.10 Within the supporting text to Policy DS4 (Paragraphs 6.31 and 6.32) development constraints are acknowledged:

... "It is largely flat, but slopes steeply on the northern boundary down to the A57"

"The site will require substantial access improvements on to the A57"

8.11 In terms of the policy itself the introductory paragraph states that development will be subject to compliance with other relevant LP policies so again Policy DS 4 is not a policy to be read in isolation.

8.12 In terms of the constituent criteria of Policy DS 4 dealing with trees Criterion 5 is relevant and sets out the following requirement:



"Provision of a comprehensive landscaping plan, including the retention of mature trees".

8.13 My reading of the above criterion is that there is no requirement in the policy for all mature trees to be retained. Given the practicalities of developing the appeal site that simply would not be possible.

8.14 Neither does Policy DS 4 deal specifically with any aspect of compensatory tree planting; rather as noted above the introductory paragraph to the policy notes that development will be subject to compliance with other LP policies. I therefore deal with LP Policy EQ 9 below.

POLICY EQ 9

8.15 Policy EQ 9 states that *inter alia* (my emphasis added):

*"Requiring new developments **where appropriate** to provide tree planting and soft landscaping, including **where possible** the replacement of any trees that are removed at a ratio of 2:1".*

8.16 In this case Planning Officers were clearly of the view (given the agreed financial viability constraint which is undisputed by the Council) that 2:1 replacement tree planting would not be possible or appropriate (see Paragraphs 7.18.10 to 7.18.12 of the Committee report (**CD3.1**)). In my view, such an assessment sits squarely with the relevant wording of Policy EQ9. The Appellant is therefore proceeding with the appeal on the basis that a contribution in respect of tree planting (£72,400) and maintenance (£19,480) (£92,240 in total) will be embodied within the Planning Obligation and as a consequence there will be no conflict with Policy DS 4 or Policy EQ 9 as any harm will be mitigated for.

THE OFF SITE CONTRIBUTION

8.17 The level of tree removal necessary to deliver the proposed development is outlined in Mr Tavendale's evidence together with his observations on how the compensatory off site contribution had been calculated.

8.18 I wish to comment on the exclusion of the proposed in plot trees and proposed street trees (126 in aggregate) from the Officer's calculations for off-site planting. Mr Tavendale notes that both these types of new trees would have arboricultural benefits, but it is also material to note that the provision of tree-lined streets, wherever possible, is a matter of national planning policy (Paragraph 136 of the Framework refers). It there seems to me to be somewhat of an arbitrary approach and



inconsistent with national planning policy to give these trees no credit in the Officer's overall assessment. Consequently, I invite the Inspector in this case, in determining the appeal to weigh this matter into the overall planning balance.

CONSISTENCY OF DECISION TAKING

8.19 As highlighted in the Planning History Chapter of my evidence the Council's Development Control Committee met on 22 January 2024 to consider an application for reserved matters approval by Seddon Homes for 101 dwellings and associated development north of Dinting Road, Dinting Glossop (Committee reports enclosed as **CD6.6 and CD6.7**). The Committee's consideration of these applications followed a site visit. Page 7 of **CD6.6** records the Tree Officer's concerns about the scheme which state *inter alia*:

"Concerns are raised that more trees are going to be lost at the site than will be replaced. 85 trees are proposed to be removed and 98 trees are proposed as replacements in Site B. Policy EQ9 requires a 2:1 replacement for any trees lost and which would require 170 trees to be planted. "

8.20 The replanting ratio noted above is 1:1.15.

8.21 Paragraph 7.41 onwards of **CD6.6** provides the Planning Officer's assessment of landscape and tree issues and whilst reference is made to Policy EQ9 (Paragraph 7.42) no reference is made to the Tree Officer's concerns over lack of 2:1 replacement planting. Furthermore, Section 8 (Page 25 onwards) contains the Officer's assessment of the Planning Balance and her conclusions. It is noted that no reference is made to the Tree Officer's concerns over the lack of 2:1 replacement planting with the Officer concluding that the proposal complies with Policy EQ9.

8.22 It is noted that Members approved the above-mentioned application despite the Tree Officer's concerns with regard to replacement tree planting. Notably, this is not a site with any viability issues unlike the appeal site.

8.23 The above matter is relevant in considering the Council's remaining RfR relating to trees and it points to a wholly inconsistent approach being taken to major development proposals just 3 months apart. In light of the Seddon Homes decision, the only reasonable conclusion in applying Policy EQ9 is that 1:1 replacement planting is acceptable. There simply is no logic, in my view for resisting the appeal scheme and then 3 months later permitting a larger housing development that adopts the same replacement ratio.

9. RESPONSE TO THE COUNCIL'S REMAINING RFR - RFR3 AFFORDABLE HOUSING

9.1 In this chapter of my PoE I will deal with the Council's objection to the proposal in relation to affordable housing.

RELEVANT LP POLICIES

9.2 In respect of affordable housing the Council, in its DN, cites a conflict between the proposals and the following LP policies which can be found in **CD4**:

- Policy DS 4 – Adderley Place, Glossop (**CD4.4**).
- Policy H 3 – New housing development (**CD4.9**).
- Policy H 4 – Affordable housing (**CD4.10**).

9.3 Additionally, I consider that it is also relevant to have regard to the following LP policy in considering affordable housing provision:

- Policy CF 7 – Planning obligations and community infrastructure levy (**CD4.3**).

RELEVANT NATIONAL POLICY

9.4 In respect of affordable housing the Council, in its DN, cites a conflict with the Framework although it did not cite any relevant section or paragraph. Having reviewed the Council's SoC I cannot identify any paragraph of that document where a conflict with the Framework is articulated. Rather the Council, in its SoC at Paragraph 6.15 refers to a conflict with National Guidance which from the proceeding text is presumably a reference to the PPG and the new RfR that emerged in its SoC relating to consideration of viability across the whole of the site allocation rather than the site in question. As that is effectively a new RfR it is not dealt with here, rather it is dealt with in Chapter 10.

ASSESSMENT

9.5 POLICY H4

9.6 In relation to affordable housing Policy H4 (which is out of date as acknowledged by the Council⁵) states *inter alia* that:

“Where the provision of affordable houses proposed is below the requirements set out above, the Council will require applicants to provide evidence by way of a financial appraisal to justify a reduced provision”.

9.7 I am of the view that reduced affordable provision (below the 30% requirement in this case) could constitute a nil contribution where financially justified in accordance with Policy H 4. In my view there is no conflict with Policy H 4 because the financial viability position has been accepted by the Council and which when considered with all other contributions considered necessary to mitigate the impact of the development and make the development acceptable in planning terms, means that it is not viable to provide affordable housing on this site.

9.8 In the context of the agreed viability issue Officers had suggested a maximum affordable housing contribution of £193,000 for off-site provision and opined that this would equate to a 3 bed house for rent. Whilst this would clearly be a benefit of the scheme it would only really benefit one household in affordable housing need. As it happens that was not even acceptable to Councillors despite the undisputed viability position.

POLICY H3

9.9 Policy H3 (a) states that residential developments are to meet the requirements for affordable housing within the overall provision as set out in Policy H4. This policy should not be read in isolation as it cross references Policy H4 and that policy has a viability aspect therefore if the appeal scheme is compliant with Policy H4, (which the Appellant's position is that it is), then there is no conflict with Policy H3.

⁵ **CD4.12** does not explain why the Policy H 4 is out of date. The Appellant is proceeding on the basis that it is out of date because it contravenes the threshold requirement in Paragraph 65 of the Framework with regard to the delivery of affordable housing on sites which are not classed as major development.



POLICY DS 3

9.10 I also recognise that Policy DS 4 has a requirement *inter alia* for the:

"Provision of the required proportion of affordable housing (currently 30%)."

9.11 However that is just one aspect of the policy and notably other requirements *inter alia* include:

"Provision of new access and a transport assessment;

"Contributions towards infrastructure, services and other community needs as required;

Provision of a comprehensive landscaping plan, including the retention of mature trees;

An archaeological evaluation.

A wildlife survey should be undertaken following consultation with Derbyshire Wildlife Trust"

9.12 All of the above matters affect development viability.

9.13 Again, this policy should not be read in isolation (the introductory paragraph to the policy confirms this clearly by stating that *"Development will be subject to compliance with other relevant Local Plan policies..."*) as the main LP Policy relating to affordable housing is Policy H4 and that explicitly allows for viability to be taken into account when providing a reduced (or nil) provision and as the viability position is agreed there can be no conflict with Policy DS4 with regard to affordable housing either.

POLICY CF 7

9.14 Whilst not contested by the Council, Policy CF 7 also contains references to considering development viability as a valid planning consideration.

HARM

9.15 The Council's position appears to be that:

- Residual harm arises because the proposals do not provide 30% affordable housing.
- The harm outweighs the benefits of the proposals.

- 9.16 However, the Council's position appears to ignore the relevant Development Plan policies relating to affordable housing which are inter-related as I have shown above and importantly have a viability element allowing for reduced or indeed nil provision. Put simply if a scheme is shown to be compliant with Policy H4 in relation to viability it ought to be considered acceptable when considering other policies which *inter alia* concern affordable housing provision (Policies H3 and DS4 which are in dispute and Policy CF 7 which is not disputed by the Council).
- 9.17 Additionally, I fundamentally disagree that harm arises here from an absence of affordable housing provision given viability is an agreed constraint.
- 9.18 Regulation 122 (2) of the Community Infrastructure Regulations requires that:
- "A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is—*
- (a) necessary to make the development acceptable in planning terms;*
- (b) directly related to the development; and*
- (c) fairly and reasonably related in scale and kind to the development".*
- 9.19 Notably planning obligations are necessary to meet all of the above tests and failure to meet one of the tests renders the obligation failed against the test as a whole.
- 9.20 Affordable housing is unique when considering planning obligations because the provision of affordable housing is a planning requirement that aims to address pre-existing conditions (i.e. the affordable housing needs of a Borough). In that respect prior to the application being made the Borough was already in an affordable housing deficit. The provision of any new affordable homes clearly leaves the community better off than it was before but providing no affordable housing (due to the agreed viability constraint) leaves the community no worse off.
- 9.21 The above is in stark contrast for example to off-site highways works funded by a developer which are necessary to mitigate the impact of a development.
- 9.22 Hence harm does not arise in my view when affordable housing is not provided due to an agreed viability constraint because to require such provision would fail the Regulation 122 (2) (c) test. Rather no positive weight can be ascribed to the provision of affordable housing when making a decision because obviously none is provided.



SUMMARY

- 9.23 To summarise, there is an agreed viability constraint, limited funds are available to deal with planning obligations, the level of funds to deal with planning obligations are, in aggregate agreed, the proposals comply with Policy H4 as the viability constraint is agreed and therefore there cannot be any conflict with other related affordable housing policies cited by the Council, notably Policy H3, DS4 all of which are inter related and are not to be considered in isolation. Furthermore Policy CF7 which whilst not contested by the Council is relevant in considering the suit of planning policies concerned with planning obligations; but there is no conflict with this policy.
- 9.24 In summary the proposals comply with relevant LP policies relating to affordable housing.
- 9.25 In terms of other material considerations harm does not arise in my view when affordable housing is not provided due to an agreed viability constraint because to require such provision would fail the Regulation 122 (2) (c) test. Rather no positive weight can be ascribed to the provision of affordable housing when making a decision because obviously none is provided.



10. RESPONSE TO NEW MATTERS RAISED IN THE COUNCIL'S STATEMENT OF CASE

10.1 There are two new matters, raised in the Council's SoC and I deal with these below:

ALLOCATION WIDE VIABILITY

10.2 Having reviewed the Council's SoC it was evident that the Council was attempting to introduce a new RfR relating to viability. This is recorded in detail in the email dated 26 April 2024 to PINS (copy sent to the Council) from my colleague Mr Mellan. There is no need to revisit the detail of that email here but in summary terms, the position advanced in the Council's SoC is that the allocation in its entirety should have been considered when assessing viability. Given that statement bears no resemblance to the resolved position of the Council in its DN and was not a matter raised at any point prior to determination of the application (including at the Development Control Committee meeting) the Council was invited to withdraw this element of its case. In an email of 7 May 2024 the Council has stated that it stands by the points made. Accordingly, this is covered in the evidence of Mr Heathcote who demonstrates that inclusion of the wider allocation, although not a planning policy or guidance requirement at the application stage, would still result in an unviable scheme. Mr Heathcote also outlines the changes in circumstances since the allocation as a whole was viability tested as part of the adopted Local Plan making process which began in 2012 with the associated Viability Test Report (**CD6.12**) being produced in April 2014, i.e. over 10 years ago.

HOUSING LAND SUPPLY

10.3 In Section 7 of its SoC the Council invites the Inspector to afford the delivery of this allocated housing site modest weight (when weighed against the harms) because it says it can demonstrate a 6.4 year supply of deliverable housing sites (**CD6.3**) and removing the 39 deliverable dwellings it has allocated to the site in the document would result in a 6.25 year supply of dwellings.

10.4 In response to the Council's position I would respectfully ask the Inspector to note the following:

10.5 This is yet another new RfR that has been slipped into the Council's case via its SoC. It was not raised by any Members during consideration of the scheme and reference to it is conspicuous by its absence in the Council's DN.

- 10.6 The base date of the Council's housing land supply position is 1 April 2023 (and the 5 year period runs to 31 March 2028) although the document wasn't published until November 2023. In other words the position is not up-to-date because we have now passed the base date for the 2024/2025 monitoring year, i.e. 1 April 2024. Net completions for the 2023/2024 monitoring year and additions to the deliverable supply would need to be accounted for in order to bring the position up-to-date and to the 1 April 2024 base date. That information is not before the Inquiry.
- 10.7 Furthermore the 39 dwellings the Council has allocated to the site in its 5 year supply document is based on average lead in times and build out rates (refer to Page 27 of **CD6.3**). However, that does not properly account for the 3 year build programme stated in the Appellant's original viability assessment deposited with the application (Page 4 of **CD1.6** refers). Moreover at the time of publication of the housing land supply statement the entry for the appeal site noted that that the full application was due to be determined at the Development Control Committee in October 2023.
- 10.8 Taking all the above into account signals that the appeal site would be delivered in full within the 5 year period covered by either the current or the next iteration of the Council's housing land supply document. It is a matter to which I ask the Inspector to afford significant weight to for delivery of this allocated housing site.
- 10.9 Finally, I am not aware that there is any basis either in policy or guidance for the Council to suggest that the site should be removed from the deliverable supply because a site is either deliverable or it is not having regard to the definition of such sites in Annex to the Framework. In that respect it should be noted that a) the site is available now (it is in the control of a developer experienced in delivering high volumes of homes in the Borough); and b) subject to the receipt of planning permission all 92 dwellings are achievable within the 5 year period.
- 10.10 During the course of the appeal the Council asked for the HELNA (**CD6.26**) to be added to the Core Document lists which the Appellant was happy to agree to notwithstanding that neither its DN nor its SoC refers to this document nor alleges any breach with this document. Having introduced the document to the appeal the Appellant has considered it.
- 10.11 I consider it is material to draw the Inspector's attention to Table 9.11 of **CD6.26** which records housing completions in the Borough between 2011 and 2021 against the LP housing requirement of 350 dwellings per annum. The figures speak for themselves and record that by the end of the 2020/21 monitoring period the Council was 1,088 dwellings behind the cumulative annual LP requirement 10 years into the LP's lifespan or in other words it was 31% behind.



10.12 Whilst I recognise that the Council is no longer using the LP requirement for calculating the 5 year supply position the above data adequately illustrates the point that this authority performed particularly poorly against the LP requirement up to 31 March 2021. In contrast the appeal site is proposed to be delivered promptly should planning permission be granted thereby contributing to the Plan led approach for delivering housing which I established at the outset of my evidence as being one of the priorities for the government.

11. RESPONSE TO THIRD PARTIES

11.1 I am conscious that this appeal contains a substantial amount of documentation much of which is highly technical.

11.2 To assist the Inquiry and the third parties who have raised concerns about the proposals I have produced Table 2 below which I am hopeful will assist in identifying where concerns raised are addressed. Generally speaking the responses are dealt with on a topic basis, unless indicated otherwise:

Table 2 - Thematic Response To Third Parties.

Topic	Response/Location Of Response
Objections in principle. No need for housing. Over population LP does not meet needs of the area. Site is not needed.	This PoE - the appeal site is an allocated housing site in the adopted LP. The LP has been reviewed and the allocation covering the appeal site was found by the Council to be up-to-date.
Air quality.	PoE of Ms Whittall and the SoCG between the Council and Appellant. The Council has withdrawn RfR1 relating to air quality.
Lack of affordable housing.	This PoE.
Biodiversity issues	PoE of Ms Kerr and the SoCG between the Council and Appellant. The Council has withdrawn RfR3 in part relating to air quality.



Table 2 - Thematic Response To Third Parties Continued.

Topic	Response/Location Of Response
Loss of trees.	This PoE and the PoE of Mr Tavendale.
Adderley Place (FP50) rat run concerns. Traffic concerns (including safety).	PoE of Mr Roberts and the SoCG between the Council and Appellant. The Council has withdrawn RfR4 relating to this issue.
Access gradient below recommended standards for pedestrians.	PoE of Mr Roberts. PoE of Mr Nichols (appended to the PoE of Mr Roberts).
Loss of bus stop.	PoE of Mr Roberts - please note the bus stop is not being lost just relocated.
Inadequate social infrastructure.	This PoE and the SoCG between the Council and the Appellant. The Appellant is including mitigation in the Section 106 Agreement for all of the social infrastructure requirements sought by the Council.
Loss of Green Belt.	The site is not within the Green Belt.
Loss of greenspace.	The land is allocated for housing development. Improvements are being made to the paths across the site connecting to the wider countryside beyond and the TPT.



Table 2 - Thematic Response To Third Parties Continued.

Topic	Response/Location Of Response
<p>Mr & Mrs Wilson - Objections to the position of the access road in proximity to an existing dwelling (Woodside View) and that the Appellant should be required to provide an acoustic fence.</p>	<p>It is understood that the planning permission for the neighbouring dwelling (granted on appeal by DL dated 2 July 2019⁶) contains Condition 6:</p> <p><i>"Within 3 months of the commencement of development on site, a plan indicating the positions, design, materials and type of boundary treatment to be erected shall be submitted to and approved in writing by the Local Planning Authority. The approved boundary treatment shall be completed before the building is occupied or in accordance with a timetable agreed in writing with the Local Planning Authority".</i></p> <p>Paragraph 18 of the DL confirms that:</p> <p><i>"Conditions requiring details of hard and soft landscaping and boundary treatment are also necessary to ensure a satisfactory appearance. Conditions are imposed in respect of tree protection; ecological enhancement; constructions hours; and dust emissions. These are necessary in the interest of the health and amenity of trees, to safeguard and enhance ecology and to protect the living conditions of neighbouring occupiers".</i></p>

⁶ PINS Reference: APP/H1033/W/18?3219099 – HPBC Reference HPK/2018/0320) (CD6.21).



Table 2 - Thematic Response To Third Parties Continued.

Topic	Response/Location Of Response
Response to Mr & Mrs Wilson continued.	<p>I can find no evidence that this condition has been discharged by the Council and failing that evidence being provided the neighbour is in breach of the condition.</p> <p>Moreover given that installation of a fence to protect amenity was the neighbour's responsibility under the terms of the condition I would respectfully suggest that the requirement to erect a fence lies squarely with them. I would also note that there is no objection to the proposed development in relation to noise and adverse effects on any neighbours from any statutory consultee and furthermore a landscape and planted buffer is proposed between the neighbours' property, the proposed pedestrian/cycleway and the proposed highway beyond that (refer to CD2.107), all of which will help in protecting amenity.</p>



Table 2 - Thematic Response To Third Parties Continued.

Topic	Response/Location Of Response
Increased risk of flooding.	<p>The application was accompanied by a Flood Risk Assessment (CD2.6) and Drainage Strategy (CD2.27). Additionally, during the course of the application Mr Nicholas and his colleagues responded to points raised by the Lead Local Flood Authority (LLFA) in CD2.7, CD2.26 and CD2.37. In summary terms the proposed surface water solution for the site utilises a mixture of swales, oversized underground storage systems and permeable paving. Due to existing ground conditions this site is not suitable for infiltration drainage. The LLFA's final comments are summarised in the Officer's report to Committee (CD3.1 - page 13 of the .pdf) and notes no objection subject to conditions). In light of the foregoing the Appellant is of the view that the development will not increase the risk of flooding on site or elsewhere.</p>

12. PLANNING OBLIGATION

- 12.1 Draft agreed heads of terms for a planning obligation were included in the Appellant's SoC (Table 2) and are included in the SoCG.
- 12.2 The final agreed draft Section 106 Agreement is to be dispatched to PINS together with a Community Infrastructure Levy compliance schedule completed by the Council in line with the direction given by the Inspector at the CMC.
- 12.3 The Appellant looks to the Council to justify the obligations it has sought as part of the application/appeal process. The Section 106 Agreement includes a "blue pencil clause" which will allow obligations to be struck out if the Inspector finds that they do not meet all of the tests set out in Regulation 122(2) of the Community Infrastructure Regulations 2010 (As amended); these being that a planning obligation may only constitute a reason for granting planning permission for the development if the obligation is:
- (a) necessary to make the development acceptable in planning terms;
 - (b) directly related to the development; and
 - (c) fairly and reasonably related in scale and kind to the development.



13. CONDITIONS

- 13.1 A list of conditions was put forward by Officers of the Council in the report to the Development Control Committee (**CD3.1 & CD3.2** refer).
- 13.2 Following direction from the Inspector at the CMC on 10 May 2024 the parties are working on a composite list of conditions should the appeal be allowed.

14. PLANNING BALANCE

- 14.1 In my view the appeal proposals comply with the provisions of the Development Plan when considered as a whole. Furthermore, I do not consider that there are any material considerations which indicate that full planning permission planning ought to be refused.
- 14.2 In considering the appeal proposals I have tabulated what I believe the effects of the development will be as follows:
- Table 3 - Positive Effects.
 - Table 4 - Neutral Effects⁷.
- 14.3 Having considered the proposals holistically I do not believe that the development will result in anything more than short term adverse effects during the construction phase but such effects can be mitigated for through standard planning conditions regulating construction activity etc.
- 14.4 As demonstrated below the effects of the proposed development are overwhelmingly positive and on the basis of my evidence in previous Chapters there is certainly no harm as is alleged by the Council in its remaining RfR.

⁷ Generally speaking I would consider mitigation secured to ensure that a development is made acceptable in planning terms to carry neutral weight; although there are inevitable some matters that whilst being neutral (insofar as they leave the community no worse off than it was before the development) which have a passive benefit to the wider community. Where appropriate I identify such matters in Table 2 with *.



Table 3 - Positive Effects

Topic	Matter
Housing	Delivery of a Local Plan led allocated site comprising 92 dwellings in line with Secretary of State's aspirations set out on 8 September 2023 to ensure allocated sites (comprising " <i>the right homes in the right places</i> ") are delivered (CD6.4).
Housing	Delivery of the appeal site in full within 3 years (refer to Viability Assessment CD1.6 for development programme) as opposed to only 39 dwellings in 5 years as shown in the Council's 5 year housing land supply document (CD6.3) which has a base date of 1 April 2023 and does not reflect changing circumstances in the past monitoring year (1 April 2023 - 31 March 2024).
Housing	A mechanism in the Section 106 Agreement to secure access to the balance of the allocation in the Council's ownership.
Housing	Delivery of 1, 2, 3 and 4 bed dwellings and 9 different house types which will be attractive to a broad section of society.
Design	Delivery of a high quality housing development.
Energy Efficiency	Energy efficient homes built to exceed current Building Regulations (see CD1.30).
Biodiversity	<p>11% BNG to be delivered for a proposal which is only required to deliver no net loss or ideally a net gain and which is not required to deliver the mandatory 10% BNG now in force in England. Within the calculations as outlined in Ms Kerr's evidence a 447.22% increase in hedgerow units and a 16.23% increase in watercourse units is noted.</p> <p>Additionally off-site tree planting secured through the Section 106 Agreement would have positive biodiversity benefits and these benefits are in addition to the 11% BNG mentioned above but cannot be quantified by the DEFRA Metric.</p>



Table 3 - Positive Effects Continued

Topic	Matter
Economic	Generation of full-time equivalent (FTE) jobs on site within the construction phase which would be a benefit to the economy of the local area.
Economic	Support for local suppliers during the construction phase thereby supporting local businesses and jobs.
Economic	Generation of additional expenditure within the local economy, supporting local shops, services and businesses which would in turn support jobs in the Borough
Active Travel	The site is located in close proximity to shops and services thereby promoting sustainable means of travel.
Active Travel	The proposals are accompanied by a Travel Plan to encourage sustainable modes of travel.
Active Travel	Provision made within the development layout to encourage cycling and walking with links to the wider countryside (Trans Pennine Trail) being funded by the development through the Section 106 Agreement (£61,920). Provision made for cycle storage throughout the development.
Trees	The active management of retained trees on the site together with new tree planting as opposed to the current situation where there is no active management to ensure the long term health of trees.



Table 4 - Neutral Effects

Topic	Matter
Sustainable Travel Monitoring	Travel Plan Monitoring fee as per Section 106 Agreement (£6,325).
Section 106 Agreement Monitoring	Monitoring fee as per Section 106 Agreement (£5,000).
Air Quality Monitoring	£13,800 as per Section 106 Agreement for revised Action Plan for the area plus feasibility study*.
Healthcare	£82,800 as per Section 106 Agreement for an extension to an existing site in the area*.
Libraries	£6,460 as per Section 106 Agreement for a stock only contribution*.
Off Site Tree Planting (Excluding the Biodiversity Benefit)	£72,400 planting and £19,840 maintenance for off site provision in the Glossop area secured through the Section 106 Agreement; although it is notable that the Council's calculation gives no credit for the 126 new in plot and street trees proposed.
No affordable housing provision	Prior to the application being made the Borough was already in an affordable housing deficit. The provision of any new affordable homes clearly leaves the community better off than it was before but providing no affordable housing (due to the agreed viability constraint) leaves the community no worse off and hence I have placed this matter in the neutral category.
Public transport	Relocation of the existing bus stop at the Appellant's expense.



- 14.5 In relation to the positive effects of the scheme I consider these to be indivisible from one another insofar as they all materialise if the appeal is allowed and they don't materialise at all if is dismissed. Taken in aggregate I consider that the positive effects of the scheme should carry significant weight in the determination of the appeal.
- 14.6 Having regard to the foregoing I am of the opinion that the planning balance lies firmly in favour of allowing the appeal and granting planning permission without delay.



15. CONCLUSIONS

THE PLAN LED APPROACH

- 15.1 At the outset of my evidence I noted that the appeal site forms part of a larger parcel of land that is allocated for 130 dwellings in the LP (Policy DS 4 refers). The LP was adopted in April 2016 and hence the principle of developing the appeal site has been established for 8 years. The LP was recently reviewed and the allocation for the appeal site was to be found to be up to date.

THE APPLICATION

- 15.2 Much constructive work was undertaken between the Appellant and the Officers of the Council during consideration of the application. All involved were fully aware that this is a technically challenging site to develop but through collaborative working a solution was found that enabled the professional Officers of the Council to recommend that full planning permission be granted. That was in the full knowledge that viability was a constraint (and had been independently tested) meaning that the full suite of planning obligations sought could not be delivered.

DETERMINATION OF THE APPLICATION

- 15.3 When it came to the determination of the full planning application I am firmly of the view that the elected Members of the Council's Development Control Committee acted unreasonably and relied on vague, generalised or inaccurate assertions about the proposal's impact, which were unsupported by any objective analysis. That much is evident because nearly two months after receiving a copy of the appeal the Council on 22 April 2024 withdrew RfR1 (relating to air quality) and RfR2 (relating to highway safety). At the same point the Council also withdrew RfR4 (relating to alleged rat running concerns along Adderley Place) but as noted by the Officers of the Council and the Appellant this matter was capable of forming the basis of a condition.
- 15.4 Moreover, over 2 months after receiving a copy of the appeal the Council withdrew RfR3 in part relating to biodiversity on 7 May 2024; that is despite the Appellant stating at the outset of the appeal in its SoC, deposited with the Council on 29 February 2024, that biodiversity was to be mitigate for in full.



REMAINING ISSUES BETWEEN THE MAIN PARTIES

15.5 As recorded in the Inspector's note of the CMC there are just two issues remaining in dispute between the main parties and these are as follows:

TREES

15.6 In respect of trees my evidence when taken with that of Mr Tavendale shows that having regard to relevant Development Plan Policies the proposals comply with Policies DS4 and EQ9 and that the proposed on site and off site planting will mitigate the impact of the development. Attention has also been drawn in my evidence to a decision made by the Council in relation to a proposal by Seddon Homes for 101 dwellings at Dinting Road in Glossop and which was considered just 3 months after refusal of the appeal proposal. In that case (and on a site with no viability constraints) Councillors approved a scheme with a replanting ratio of 1:1.15 whereas it expected my clients to adhere to a 2:1 ratio. The two positions are wholly inconsistent in respect of the decision taking in the Borough.

AFFORDABLE HOUSING

15.7 To summarise the position with regards to affordable housing: there is an agreed viability constraint, limited funds are available to deal with planning obligations, the level of funds to deal with planning obligations are, in aggregate agreed, the proposals comply with Policy H4 as the viability constraint is agreed and therefore there cannot be any conflict with other related affordable housing policies cited by the Council, notably Policy H3, DS4 all of which are inter related and are not to be considered in isolation. Furthermore Policy CF7 which whilst not contested by the Council is relevant in considering the suit of planning policies concerned with planning obligations; but there is no conflict with this policy.

15.8 In summary the proposals comply with relevant LP policies relating to affordable housing.

15.9 In terms of other material considerations harm does not arise (as the Council allege) when affordable housing is not provided due to an agreed viability constraint because to require such provision would fail the Regulation 122 (2) (c) test. Rather no positive weight can be ascribed to the provision of affordable housing when making a decision because obviously none is provided.



OTHER MATTERS

- 15.10 Two further matters were raised in the Council's SoC relating to site wide viability testing and housing land supply. Neither bore any relation to the Council's resolved position having regard to its DN. In relation to the former issue the evidence of Mr Heathcote illustrates that allocation wide viability testing is not required at this stage and in any event the scheme would not be viable even if it was tested in this way. In relation to the later issue the Council's housing land supply document is now dated, does not reflect events of the past monitoring year and in any event significantly underplays the contribution this deliverable site would make to the 5 year housing land supply position as all 92 dwellings would be delivered in the period thereby delivering significant benefits.

THIRD PARTIES

- 15.11 The concerns of third parties have been adequately addressed by the Appellant's witness team

PLANNING BALANCE

- 15.12 I have considered the effects of the development through a planning balance exercise. The effects of the proposed development are overwhelmingly positive and there is certainly no harm as is alleged by the Council in its remaining RfR.

CONCLUDING REMARKS

- 15.13 I am firmly of the view that the proposed development complies with the provisions of the Development Plan and as a consequence Paragraph 11 (c) of the Framework applies. For decision taking this means approving development proposals that accord with an up-to-date Development Plan without delay.
- 15.14 Applying the statutory tests of Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that:

"Where in making any determination under the planning Acts, regard is to be had to the Development Plan, the determination shall be made in accordance with the plan unless material consideration indicates otherwise".

- 15.15 I have already noted that the scheme is compliant with the Development Plan and I have identified no material considerations which indicate that planning permission ought to be refused. Rather



there are a host of positive benefits identified in my evidence which support the grant of planning permission.

15.16 In light of the foregoing the Inspector is respectfully requested to allow the appeal and grant conditional full planning permission for the proposed development.