

Land to south of Dinting Vale, Glossop, SK13 6NY

Appeal against a refusal by High Peak Borough Council of an application for full planning permission for residential development comprising 92 dwellings including areas of public open space, landscaping and associated works.

OPENING STATEMENT ON BEHALF OF THE LOCAL PLANNING AUTHORITY

1. The planning application which is now the subject of the appeal was reported by officers to the Council's planning committee meeting on 23 October 2023 with a recommendation that the committee grant planning permission [CD3.1 & 3.3]. After hearing from their officers, the applicant and objectors, the committee resolved [CD3.2] not to grant permission but to refuse it. Four days later the Council issued the formal 'Decision Notice' [CD3.4]; that notice is the formal decision of the Council and it raised the following issues:
 - a. The impact on local air quality caused by increased traffic generated by the development (RfR1).
 - b. The road safety impact of the proposed access to the A57 (RfR2).
 - c. The failure to achieve a policy compliant level of affordable housing (RfR3).
 - d. The failure to fully mitigate the loss of trees (RfR3).
 - e. The failure to fully mitigate the loss of biodiversity (RfR3).
 - f. The risk to the users of Simmondley Lane (RfR4).

2. The appeal was lodged on 29 February 2024. On 15 March 2024 PINS issued its 'start date' letter, setting in train the timetable leading to today's inquiry. In this appeal planning officers had already given their professionally held opinion on the matters raised in the decision notice. They plainly could not therefore offer the opposite opinion and support the members' decision notice in the appeal. By mid-April the Council had appointed a planning agent (Mr O'Brien) who had agreed to act in the appeal as he felt professionally able to support the members' position. However, following further discussion with and advice from environmental health and transport professionals, he was not able to continue to

support RfR1 or 2. In respect of RfR4, the appellant designed a scheme that addressed the members' concerns. Following the submission of this scheme Mr O'Brien took the view that it was no longer possible to support RfR4 either.

3. On Mon 22 April 2024 the Council's officers reported to planning committee [CD6.13 & 6.14] recommending that RfR 1, 2 & 4 not be pursued. The committee agreed.
4. The Council filed its Statement of Case on 24 April 2024. In it the Council:
 - a. Withdrew RfR1, 2 and 4.
 - b. Noted that the appeal site was two-thirds of a larger local plan allocation under policy DS4.
 - c. Accepted the appellant's viability assessment as it applied to the proposed development on the appeal site. It was agreed that £793,000 was available for s106 contributions (for mitigation / off-site affordable housing contributions).
 - d. But did not accept that it had been shown that a housing development on the wider allocation site could not viably deliver the required level of affordable housing and fully mitigate the loss of trees and biodiversity. The Council's starting point was that when the site was allocated, the local plan evidence base was that it was viable.
 - e. Without this evidence, the Council did not accept that the benefits of the proposed development outweighed the harm to trees, biodiversity and the failure to maximise the delivery of affordable housing from the allocation site. It was judged to be inherently probable that a scheme of 130 houses on the allocation site would be likely to be more profitable than 92 houses on the smaller application site given that the access road infrastructure was largely common to both and would therefore be likely to deliver increased affordable housing / environmental mitigation.
 - f. The proposed development was therefore judged to be contrary to the development plan taken as a whole.
5. On 7 May 2024, the Council informed the Appellant that it was now satisfied with the further proposals to mitigate for the loss of biodiversity on the site and that it would no longer rely on this element of RfR3.

6. The main parties exchanged their proofs of evidence 21 May. The Appellant's viability evidence responded to the Council's Statement of Case. It considered the Council's case that the scheme could be more viable (and therefore delivered more affordable housing or mitigation) had the whole allocation site come forward. It concluded (taking into account increased building, materials and finance costs combined with a static or even slightly falling housing market) that not only would it not have been viable, a reassessment of the appeal proposal could result in the scheme being even less viable than it is now.
7. The Council sent this evidence to its own viability consultants (retained from the planning application phase). On Thursday 6 June 2024 the consultants advised that they broadly agreed with the Appellant's conclusions.
8. In the light of his duties under the Royal Town Planning Institute Code of Conduct, and as an expert witness, to present only his true and professional opinion to the inquiry, the Council's planning witness Mr O'Brien advised on the afternoon of Friday 7 June 2024 that he could no longer support RFR3 and that in his opinion the planning balance now indicated allowing the appeal and granting planning permission. On Monday 10 June after further internal discussion, PINS and the Appellants were informed of the new situation.
9. As can be seen, throughout the Council has followed national planning practice guidance and kept its case under regular review as part of active ongoing case management.
10. The position is now this. Planning law and policy require that appeals are determined in accordance with the development plan unless other material considerations indicate otherwise. Applying that approach (as one must) leads inexorably to the following conclusion:
 - a. The appeal site is on a wider parcel of land allocated for approximately 130 houses. In principle, therefore, the starting point is that housing is an acceptable form of development.
 - b. Policy DS4 in the local plan requires that access is taken from the A57. The opportunities for doing so are limited to the relatively narrow gap between numbers 41 and 35 Dinting Vale. The highway authority has

advised that the geometry of the proposed access in that location is safe and acceptable. However, the topography of the access (in particular the gradient of the slope) means that at present the highway authority have declined to adopt the access and estate roads. The Council does not advance this as a reason for refusal.

- c. Policy DS4 and CF6 seek to integrate development into existing transport networks. To the southwest of the appeal site is a network of public rights of way including the Trans Pennine Trail. A s106 'sustainable travel' contribution to link the appeal site to this network at Gamesley Sidings is proposed. However, this is going to need further discussion at the inquiry.
- d. Policy EQ5 requires that there should not be significant harm to biodiversity as a result of development. The Council is now satisfied that mitigation secured will result in this requirement being satisfied.
- e. Policy H4 seeks to maximise the delivery of affordable housing across the plan area. Policy DS4 requires 30% affordable housing on this allocation site. Policy H4 requires 30% affordable housing from the appeal proposal. But is also allows for a lower percentage where justified by a financial appraisal. The Appellant has shown the appeal proposal cannot viably deliver 30% affordable housing. The appellant has now also shown that the allocation site cannot deliver 30% affordable housing as the plan-making process assumed in 2014. It follows that there is no longer a sound reason to resist the appeal on the grounds of a lack of affordable housing or prejudice to the delivery of affordable housing.
- f. Policy DS4 requires that mature trees on the allocation site be retained as part of a comprehensive landscaping plan that also delivers approximately 130 houses. Policy EQ9 requires that "where possible" trees that are removed as part of new development should be replaced at a ratio of 2 to 1. It is not possible to do so on the appeal site. Therefore the Appellant has agreed to make a financial contribution for off-site planting. It is not possible for viability reasons to make any further contribution even though (which is disputed by the Appellant) the 2:1 replacement ratio has not been achieved.

11. This means that the only outstanding harm (which is disputed) is some unmitigated tree loss. The Council accepts that this level of harm is not sufficient

to outweigh the benefits of delivering 92 market houses on land allocated for residential development in the adopted local plan.

12. The Council's position in this matter was made public on 14 June and reported to the Council's planning committee on 17 June 2024.
13. For these reasons, and those set out in the signed Statement of Common Ground dated 12 June 2024, the Council as local planning authority no longer resists this appeal. For the avoidance of any doubt, the Inspector must continue to conscientiously consider the objections of local interested parties.

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