

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**

**THE APPELLANT'S POSITION STATEMENT IN RESPONSE TO THE INSPECTOR'S
COMMENTS (20 JUNE 2024) ON THE DRAFT SECTION 106 AGREEMENT (ID9)**

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

LPA REFERENCE: HPK/2022/0456

24 JUNE 2024

1. INTRODUCTION

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- 1.1 On 20 June 2024 the Appellant received comments from the Inspector on the draft Section 106 Agreement (ID9) currently before the Inquiry.
- 1.2 This Position Statement (PS) has been prepared by the Appellant to set out its response in relation to queries raised by the Inspector concerning the sustainable travel contribution and provisions in the Section 106 Agreement relating to access to adjoining land.
- 1.3 Legal queries raised by the Inspector will be addressed by solicitors acting on behalf of the main parties.
- 1.4 This PS takes the format of setting out the Inspector's query and the Appellant's response thereafter.

2. SUSTAINABLE TRAVEL CONTRIBUTION

2.1 The Inspector's queries are as follows:

"This will require further discussion at the round table session, focussed around the questions below:

Are the grounds for this approach the finite residual value for planning obligations in viability terms, whereby an additional contribution to tree replacement becomes possible in the context of Policy EQ9 (bullet point 2) if the sustainable travel contribution is not delivered?

Taking account of Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and paragraph 57 of the National Planning Policy Framework, would there be harm and/or conflict with policies of the development plan or national policy if the upgrades associated with the sustainable travel contribution were not delivered? If there would be no harm as a result, why has such a contribution been requested?"

2.2 The Appellant's Response is as follows:

2.3 The sustainable travel contribution was raised by Derbyshire County Council (DCC) in a consultation response issued on 28.11.22 (Document 366 in the original appeal bundle and a relevant extract is provided below for ease of reference):

7) Sustainable Travel

We are seeking assistance from developers on an appropriate scale, to contribute to the development of shared walking and cycling routes to allow access to and from their site. It is requested that the developer considers the benefits of meeting the aspirations of new homeowners who want to walk and cycle more, to enable them to access the adjacent wider countryside. The attached map shows the existing bridleway network in blue, available for horse riders, cyclists and pedestrians with proposed routes in orange. It highlights the importance of cycling and horse riding currently taking place in the area and the importance to the link this current network to the proposed development.

We would like to see within the development, shown in red, provision of a route for non-motorised green travel of a continuous, pedestrian/cycle/horse riding route linking the access point in the southwest corner and along the south and eastern edge of the development site following the route with the least gradient. This should be provided at a width of at least 3 metres and preferably segregated away from vehicular access within an overall 5 metre corridor. Current guidance specifies a smooth, sealed solid surfaces, such as asphalt or macadam, which offers the best conditions for everyday cycling and walking. The route should seek to enhance accessibility for all wherever possible.

The south-west corner of the site lies approximately 240m from Gamesley Sidings, with purpose-built paths for horse riders, cyclists and pedestrians linking directly to the long-distance Trans Pennine Trail and once fully developed the Pennine Bridleway, one of seventeen National Trails. We request that the developer might assist the evolving cycle network and contribute towards the delivery of a shared route linking Gamesley Sidings to the proposed development, also shown in red on the map. The length of this missing section of path between the development and the wider network is approximately 240m and it is recommended that a smooth gravel surface should be provided such as 'Ultitrec' at a minimum width of 3 metres to link the two sites. We would welcome discussions with the developer for the delivery of this connection. This could be undertaken by the developer during construction of the site by direct agreement with Derbyshire County Council as landowner, or by S106 agreements. By using a calculation of £258/m for a 3m wide shared use walking and cycling path, the cost estimate would be £61,920.

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We would therefore wish to request a contribution from the developer to meet these costs to link the two sites to promote green travel.

Figure 2.1 - Extract From Appeal Document 336.

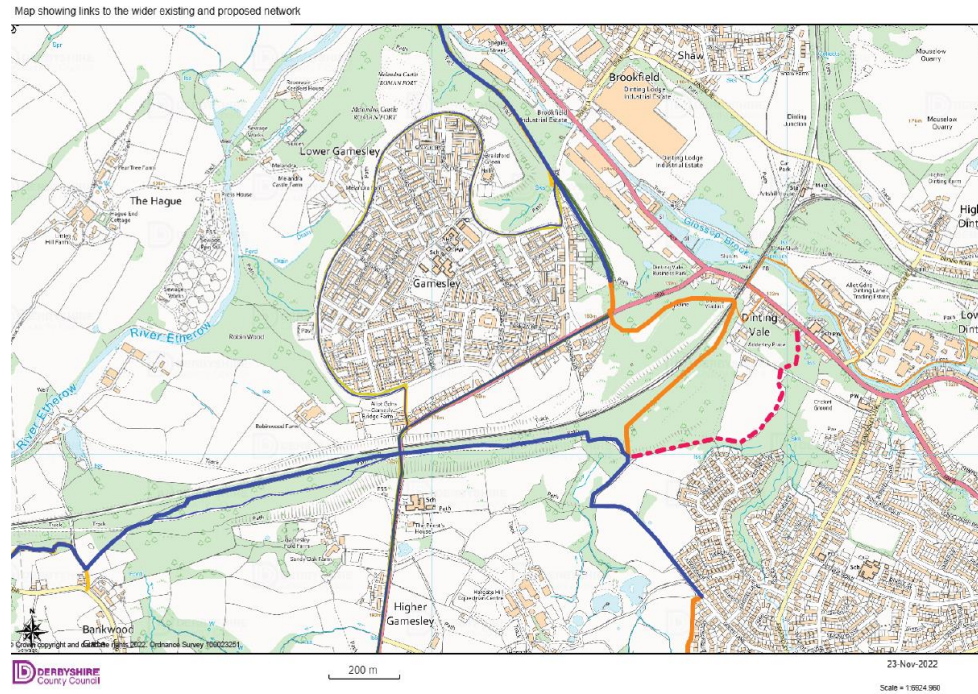


Figure 2.2 - Map Referred to In Appeal Document 366 Extract.

- 2.4 It will be noted that the DCC response does not allege that any harm would materialise if the link was not financed by the Appellant. The response simply asks if the developer would assist in financing the link – it is put no higher than that.
- 2.5 The Appellant has raised concerns about the CiL compliance of the requested sustainable travel contribution with Officers of the LPA (as recorded in the Statement of Common Ground (SoCG) Chapter 17, Paragraph 17.9 and FN1. Notably FN1 cross refers to CD2.28 that being a letter of 7 July 2023 from Mr Mellan of Hourigan Planning to the Council and Page 2 of that letter sets out the Appellant’s concerns with regard to the CiL Regulations).
- 2.6 The Local Planning Authority (LPA) included provision for financing sustainable travel contribution (£61,920) in the suite of obligations it recommended to Members in the report to the Development Control Committee (CD3.1).

- 2.7 The Appellant considers that delivery of the off-site link (which is now a footpath) would be a benefit in providing access to the countryside for both new and existing residents¹ (given that only permissive rights exist across third party land (including that owned by DCC and which the Inspector saw at the accompanied site visit). The Appellant has therefore made provision for the financial contribution in the Section 106 Agreement in line with the Council's request but it still remains concerned as to the CIL compliance of the contribution for the reasons set out in Paragraph 2.5 above.
- 2.8 In considering this matter it is noted that DCC has not responded to the Appellant's Explanatory Note of 7 June 2024 and has not attended the Inquiry to make representations or submissions on the matter of the sustainable travel contribution – and specifically sought to justify them as being compliant with the CIL Regulations.
- 2.9 The question as to delivery of the link only arises because of DCC's position on adoption of highways within the development (see Explanatory Note submitted to the Inquiry dated 7 June 2024) and latterly because DCC sought additional conditionality (post submission of the Explanatory Note) in respect of the Appellant entering into a Section 25 Agreement under the Highways Act 1980. This was very late in the process and the conditionality by way of a Section 25 Agreement was not acceptable to the Appellant as it could necessitate changes to the scheme post approval of planning permission which could adversely affect the implementation of the planning permission.
- 2.10 Notwithstanding the position of DCC the Appellant and Officers LPA have worked constructively to try and find a way forward and that is reflected in the obligation and its provisions with regard to the sustainable travel contribution.
- 2.11 Notwithstanding the foregoing the Inspectors asks the key question that needs to be addressed in the context of the 2010 CIL Regulations:
- "... would there be harm and/or conflict with policies of the development plan or national policy if the upgrades associated with the sustainable travel contribution were not delivered? If there would be no harm as a result, why has such a contribution been requested?"***
- 2.12 The Appellant's position is that no harm would arise without the sustainable travel contribution. This is because the community would be in a no worse off position than it finds itself in now, i.e. the permissive rights to the wider PROW network are still in place and even if these were closed (which seems unlikely given DCC's stated objectives of supporting connections to the countryside) then new residents could access the countryside by way of other routes in the local area; most notably

¹ Mr Hourigan's Proof of Evidence - Table 3 Page 58 refers.

via the end of Green Lane to the south of the site. There is nothing in the Development Plan that recognises there is a need to achieve wider PROW connections. Furthermore, seeking such upgrades cannot be seen as:

- Necessary to make the development acceptable in planning terms.
- Directly related to the development.
- Fairly and reasonably related in scale and kind to the development.

2.13 With regard to the provisions of the Development Plan attention is drawn firstly to the Council's CIL Compliance Statement and Paragraphs 4.7 and 4.8 of that statement:

4.7 Local Plan policy CF6 seeks to ensure that development can be safely accessed in a sustainable manner by providing (amongst other criteria) that additional growth within the Market Towns and larger villages is managed and where possible accompanied by accessibility improvement. The linkage of the site with Gamesley Sidings to achieves that aim and also allows of future upgrade to a cycle path if possible.

4.8 Policy DS4 also requires contributions towards infrastructure, services and other community needs as required; it is required in order to link the site to the public rights of way network to the south west.

Figure 2.3 - Extract From LPA's CIL Compliance Statement (Our Emphasis Added In Yellow Highlight)

2.14 With reference to Policy CF6 (CD4.2) attention is drawn to the Council's justification which replicates in part the first paragraph to the policy and the first criterion of the policy. Notwithstanding the Appellant's points about CIL compliance attention is drawn to the term "*where possible*" noting that accessibility improvements may not be possible in every situation.

2.15 The Council also relies on Policy DS4 (CD4.4) to justify the sustainable travel contribution. Notably there is no specific requirement in that policy to fund the link identified by DCC. Rather there is a generic statement as follows in criterion 3 of the policy:

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

2.16 Attention is drawn to the term "*as required*" and in that respect the Appellant (consistent with its position during the application) considers that the link is **not** required; although as requested by the Council it has made provision for it in the Section 106 Agreement.

2.17 Finally with regard to the Inspector's question

"Are the grounds for this approach the finite residual value for planning obligations in viability terms, whereby an additional contribution to tree replacement becomes possible in the context of Policy EQ9 (bullet point 2) if the sustainable travel contribution is not delivered?"

- 2.18 The simple answer is "yes". The Appellant made provision for sustainable travel contribution when the appeal was submitted. During the course of discussions with the Council during the Inquiry it suggested that if the sustainable travel contribution was not paid then the sums previously identified for it could be utilised elsewhere. In that respect off-site tree planting is included in the draft Section 106 Agreement notwithstanding the overall viability point which has been agreed.

3. ACCESS TO ADJOINING LAND

3.1 The Inspector's queries are as follows:

"Is this compatible with the planning obligations relating to the trim trail given its location seemingly abutting the shared boundary?"

3.2 The Appellant's Response is as follows:

3.3 The proposed obligation was put forward by the LPA.

3.4 The link to the land to the east is not yet defined or agreed and would need to be subject to separate commercial negotiations/agreement and a future planning application. Any implications for the approved scheme (if the appeal were to be allowed) could be considered at that time.

3.5 However, having regard to the landscape masterplan (CD2.105) there are a number of points between the following nodes on the trim trail where access to the east might be formed and without affecting the equipped areas of the trim trail itself:

- Between P1 and P4.
- Between P5 and P6.

Ends.