

7th October 2019

HPBC DEVELOPMENT CONTROL COMMITTEE

UPDATES SHEET

DOC/2017/0071 – Land at Linglongs Road, Whaley Bridge

Highway Authority – The amendments have been successfully incorporated into the revised document and it is now acceptable to discharge condition 23.

An email from Whaley Bridge Matters to the MP has been received, stating:

The Discharge of Conditions application DOC/2017/0071, which was deferred in September at the councillors' request to allow for the production of a simple technical explanation of the different positions taken by Barratts and GWP Consultants, is currently listed for Monday 7th October.

Unbelievably, this "explanation", which is apparently acceptable to the HPBC officer and DCC, has been delegated to Barratts for drafting! This is getting ridiculous - the councillors asked for clarity, but the LPA and its 'statutory consultee' have delegated this task to the developer! This cannot provide clarity on the competing arguments before them.

What we feel is needed now is for HPBC to engage its own hydrologist to get an impartial appraisal on the positions, so that HPBC's evaluation is reasonable and meets legitimate expectations. **Is there anything you can do to intervene in this situation? We have copied Simon Baker so that he is aware of what his staff are doing.**

Other points raised state:

1. The officer's report has misquoted our e-mail to the officer of 27th September, and what Ms Colley has written does not make sense! The full e-mail and its attachment are therefore being forwarded to you with this message - please take a look. The key point is that Barratts wrote to DCC in 2018 (attached), stating that, to adopt the correct approach being put forward by GWP, "will be almost impossible to achieve without a significant replan and change in the drainage strategy". As this is the proper approach, you have the power (indeed, duty) to require this! Why shouldn't Barratts need to replan and change their drainage strategy to ensure compliance?
2. The "technical summary" that you have now been provided with by the officer, ostensibly to explain the issues, has been written by Barratts! You asked at the previous meeting for a clear explanation of the technical positions; instead, you have just been given more Barratts propaganda! How can this help you weigh the arguments? Are Barratts more impartial than GWP? But both HPBC and DCC appear to be content to allow Barratts to write their

conclusion for them - without them having their own independent opinion! Why will HPBC not seek its own independent expert advice, as other councils do across the country?

A further email and a photograph showing Hockerley Tunnel and recent flooding has been received from Whaley bridge Matters on 2.10.2019. The email states that HPBC planners made the mistake of approving drainage plans for the Hockerley estate without regard to consequential flood risk elsewhere and it therefore seems that the lesson hasn't been learned and the same mistake will happen at Linglongs.

Officer Response:

The comments of Whaley Bridge Matters are noted, however the Lead Local Flood Authority have reviewed the submitted technical summary, which has been prepared by the applicant and confirm that they are satisfied with the approach taken to the proposed drainage strategy. The Lead Local Flood authority are the statutory body responsible for advising the Borough Council on surface water drainage matters, therefore it is not necessary to seeks independent advice.

Members will recall from the September meeting that officers have received confirmation from the Ministry of Housing, Communities & Local Government that a request has been made to the Sectary of State that he consider calling in this application for his own consideration. If the Committee resolve to approve this application, the Secretary of State will determine if he wishes to call in this application. Until a decision is made by the Secretary of State, the Council cannot issue the decision notice. However this does not prevent the Committee resolving to approve this application.

DOC/2018/0110 – Land at Linglongs Road, Whaley Bridge

No updates to report.

HPK/2018/0551 - Howard Town Brewery

Public Comment

We are writing in support of this proposal for enterprise.

Howard Town Brewery creates sustainable local employment and skills opportunities, and continues to demonstrate local leadership towards a resilient low carbon economy, alongside many other businesses in the area.

We experienced a safe, family-friendly environment suitable for all ages on our recent visits to the Tap Room.

HPK/2018/0143 – Forge Works

County Archaeologist

I confirm that the stand-off plan is acceptable with regard to conserving the significance of the Peak Forest Tramway, and that the proposals thereon should be enacted during the construction phase of the development.

Environment Agency

We have reviewed the plans sent as part of the email and they relate purely to surface water matters, and therefore our position is the same as our response dated 19th November 2018. As noted in that response, if there is any amendment to the FRA then we wish to be re-consulted.

Developer

Sums Requested

I note that Derbyshire County Council (DCC) has requested a financial contribution of £33,624.48 in respect of primary school provision at Chinley Primary School and £50,665.78 in respect of secondary school provision at Chapel-en-le-Frith High School.

Principles

This application raises similar education contribution issues to those raised with you by my client and its agent in relation to the residential scheme at Hayfield Road, New Mills (LPA Reference: HPK/2017/0534). In that case you have received detailed submissions on the subject and the principles set out in those submissions are equally relevant here; in the interests of brevity there is no need for me to rehearse them all again in detail in this letter but some key points are set out below.

In this case we would also question whether the education contributions sought by the County Council meet the Regulation 122 tests set out in the Community Infrastructure Levy (CIL) Regulations or the relevant provisions of the Framework and PPG relating to planning obligations.

In considering the matter it is also relevant to have regard to the provisions of the Development Plan, notably policies CF3 and CF7.

Other material policy considerations include the Council's Supplementary Planning Document (SPD) on Planning Obligations. The SPD is clear that the assessment of spare school capacity (and any resulting need for additional provision) should relate to "local schools" rather than the "normal area" school only.

It is also necessary to consider DCC's Derbyshire Developer Contributions Protocol although this does not accord with the Council's SPD (which refers to an assessment of local schools), as the Protocol refers to schools in the normal area which has a different meaning.

The approach taken in the Protocol is also inconsistent with multiple appeal decisions which have been highlighted to you previously in the New Mills case. Those appeal decisions confirm that the availability of spaces within local schools is

a relevant material consideration in determining the need for contributions towards education provision¹.

I note also that Officers of the Council commented on DCC's approach in the report to the Development Control Committee of 8 May 2017 in respect of planning application reference: HPK/2016/0648. Paragraphs 3.4 and 3.5 of the report states:

"Whilst DCC maintain their position, planning officers now accept the Appellant's argument that High Peak Borough Council's SPD on planning obligations makes it clear that the relevant consideration in determining the need for a developer contribution to education provision is whether there is 'spare capacity in local schools' as opposed to consideration of the normal school area (formerly known as the catchment area).

Such an approach is supported by numerous Appeal decisions which have been provided by the Applicant. In contrast, there do not appear to be any Appeal decision which support DCC's method of only assessing the normal area school in isolation, without any due regard for the wider local area. Furthermore, there is no legal requirement for primary schools to take pupils from their normal area irrespective of capacity, as previously suggested by DCC, and this is made clear in DCC own admissions rules."

Assessment

In view of the above, the current and projected future availability of primary school places within the statutory walking distance (2 miles) of the site is clearly a material factor in determining whether an education contribution meets the CIL Regulation 122 tests in relation to this planning application for 12 new homes.

Information obtained from DCC is enclosed and in that respect the following is noteworthy:

- Chinley Primary School has 39% of pupils on roll from outside of the normal area.
- Chinley Primary School is currently over capacity.
- Buxworth Primary School has 60% of pupils on roll from outside of the normal area.
- Buxworth Primary School has a capacity of 105 pupils and 100 pupils on roll.

Clearly being a "local school" in the context of the Council's SPD there is capacity at Buxworth Primary to accommodate the 2 primary school places DCC state this development will generate. On that basis the request for a financial contribution towards primary school provision fails the CIL Regulation 122 tests.

In relation to secondary schools, information obtained from DCC is enclosed and in that respect the following is noteworthy:

- Chapel-en-le-Frith High School has 23% of pupils on roll from outside of the normal area.
- Chapel-en-le-Frith High School is currently over capacity.

- New Mills High School has 17% of pupils on roll from outside of the normal area.
- New Mills High School has a capacity of 1,038 pupils and only 524 pupils on roll.

Clearly being a “local school” in the context of the Council’s SPD there is significant capacity at New Mills High School to accommodate the 2 secondary school places DCC state this development will generate. On that basis the request for a financial contribution towards primary school provision fails the CIL Regulation 122 tests.

It is also material to consider the number of pupils attending schools from outside of the normal area of the schools mentioned above. A number of planning appeals have established that where a school has a significant proportion of children who come from outside of the school’s normal area, it is unreasonable to require a developer to provide financial contributions for school expansion. That principle is also relevant when the schools in question are already over capacity or are projected to become over capacity².

Other Matters

In respect of the report to Committee I would also like to raise the following points with you.

- Paragraph 4.3 – the planted buffer lies on the western boundary of the site rather than the eastern boundary.
- DCC Highways response – I appreciate that abbreviated conditions are set out in the report and that should a resolution of approval be forthcoming we will deal with the detailed wording at a later date. However proposed conditions 7, 8 and 9 in the DCC Highways response refers to an older version of the site layout the latest drawing being Revision N. We also need to ensure no conflict between the surface water condition (number 13) proposed by DCC Highways and the conditions proposed by the DCC acting in its capacity as the Lead Local Floodrisk Authority (LLFA).
- DCC LLFA response – The position is as set out in the response from the LLFA of 18 July 2019 which confirms that the LLFA does not object to the scheme. My client is keen to ensure that Members are not confused by the subsequent response of 23 September 2019 but no doubt this will be covered in your presentation.
- HPBC Conservation Officer response – Looking at the dates of the response reported the comments pre-date the substantial changes made to the scheme. Notably the buffer to the south of the site between the proposed dwellings and Tramway has increased in the latest iteration of the proposals.
- Paragraph 7.7 – it is also worth noting that there is no residential development proposed along Forge Road due to flood risk which would mean that residential development fronting the highway would be inappropriate.

- Paragraph 7.14 – it should be clarified that the statutory requirement quoted in the last sentence is in relation to the Conservation Area not the area generally.
- Paragraph 7.27 – reference to ownership of the land to form the Scouts car park is now out of date. That is because the amendments made to the scheme more recently have necessitated using land owned by our client. Accordingly, the car park can only be delivered in the manner proposed using land in two ownerships for which there is an agreement in place between the parties.
- Paragraph 7.41 – I note that a pre commencement condition is proposed in respect of Land Drainage Consent. The PPG3 notes that:

“Conditions requiring compliance with other regulatory regimes will not meet the test of necessity and may not be relevant to planning. Use of informatives to remind the applicant to obtain further planning approvals and other consents may be more appropriate”.

Our client would have no objection to the use of an informative but in light of the six tests set out in Paragraph 55 of the Framework and replicated in the PPG the proposed Land Drainage Consent condition should not be imposed.

Officer Comment & Amended Recommendation

The developers submissions in respect of the education contribution are noted. These have been passed to DCC for comment but at the time of update report preparation no response had been received. It is therefore recommended that the committee delegate authority to the Head of Development Services, in conjunction with the Chairman to consider the developers recommendation and the DCC response and to determine whether, under the circumstances, the requested contribution is compliant with the CIL Regulations and to agree the final Section 106 package.

HPK/2019/0097 – Rockhead Spring Pump Building, Bakewell Road, Buxton

An email has been forwarded onto members stating:

1. The route of the pipeline will disturb both an SSSI and a SAC - both protected and special areas for wildlife/biodiversity
2. The Council has a legal duty to both protect and enhance biodiversity in its area.
3. The proposed sinking of the pipeline will disturb and likely enable the spreading of invasive species such as Japanese Knotweed - which is against the law and which the Council has a duty to uphold.
4. The pipeline has no benefit to anyone other than Nestle and its desire for greater profits. It will take water away from some of our special areas and the River Wye and its wildlife downstream, purely to produce needless bottled water in millions of plastic bottles

5. Nestle's original application was criticised by statutory bodies for not having considered alternative routes for the pipeline, which would not require damage to protected areas. It seems that they have since given cursory consideration to 2 other routes, but that the primary reasons for dismissing them relate to cost, inconvenience, delay and the need to submit a new planning application.
6. Nestle is a massively rich organisation and we would encourage you, therefore, to ask them to go back to the drawing board on alternative routes, asking simply that they pay development costs commensurate with an environmentally friendly route and the massive profits they will make on using our water, rather than being allowed to damage protected wildlife areas purely because it is expedient for them so to do.
7. If, despite all of the above, you are still minded to approve this application, then please can you, again, bear in mind both Nestle's extreme wealth and its very mixed reputation on whether it adheres to planning processes and requirements (for example locally when it sunk boreholes at Lightwood without planning permission). In view of this, if you do approve, then please could we ask you to attach a condition that, **at all times**, throughout the laying of the pipeline, there is, on site, a full time qualified environmental professional, paid for by Nestle, who will ensure that Nestle and its contractors abide by both the letter and spirit of the conditions placed on it in respect of protecting wildlife and ensuring that invasive species are not facilitated by the work

Officer Response:

1. The Officer report acknowledges that the route of the pipeline will disturb both an SSSI and a SAC. The report also explains the Council's responsibilities in respect of these designations as a Competent Authority and processes and tests associated with dealing with the application under the Habitat Regulations. The Council has been through these tests in accordance with the legislation and concluded that following mitigation there would be no adverse effect on the integrity of the sites in question.
2. There is no objection from the Environment Agency in terms of impact on water levels.
3. The alternative routes have been carefully considered by Nestle and officers and found to be not only less practical and still harmful in ecological terms. Furthermore, as noted above the ecological impacts on the preferred route can be adequately mitigated.
4. The recommended conditions which have been suggested by Natural England and DWT require strict adherence to the submitted and approved ecological management plan.