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 Our reference: ES04.COX0365-0001.CF
 Direct email: eshield@hcrlaw.com



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FAO Tom Hiles
 High Peak Borough Council
 Planning team
 Buxton Town Hall
 Market Place, Buxton
 Derbyshire
 SK17 6EL

Overross House
Ross Park
Ross-on-Wye
HR9 7US
 Telephone: 01989 562 377
 Fax: 01989 565 961
 DX: 22485 Ross-On-Wye
 Direct Line: 01989 561 438
**REAL ESTATE COMMERCIAL
 PROP**

BY EMAIL: planning@highpeak.gov.uk; planning@highpeak.gov.uk

Dear Tom

Re. OBJECTION: Application reference HPK/2021/0607 - Planning permission for the construction of a replacement spillway and associated dam infrastructure, replacement sailing club facilities including new access, replacement play equipment and park landscaping

We are instructed by Ms Anna Cox to submit an objection to planning application reference HPK/2021/0607 (the Application) validated by High Peak Borough Council (the Council) on 22 October 2021. Planning permission is being sought via the Application for '*construction of a replacement spillway and associated dam infrastructure, replacement sailing club facilities including new access, replacement play equipment and park landscaping*' (the Proposal) on land at Toddbrook Reservoir, Reservoir Road, Whaley Bridge (the Site).

Ms Cox has a property located in full view of the current slipway and adjacent to the proposed construction vehicle access route. More information is provided below.

Our client's main concerns relating to the Proposal are as follows;

- i) Impact of noise and vibration emanating from the development during construction and operation;
- ii) Ground stability and other impacts of vehicle movements during construction; and
- iii) Visual impact and loss amenity during both the construction and operation phases

Each of these issues is discussed in turn below.

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Noise and vibration impacts

High Peak Borough Council Adopted Local Plan (2016) ('the HPBC Local Plan') policy EQ 6 is clear that development should be well designed and respond positively to its environment. This is stated to be achieved by a number of factors including;

- *Requiring development to be well designed to respect the character, identity and context of High Peak's townscapes and landscapes*
- *Requiring that development on the edge of settlement is of high quality design that protects, enhances and / or restores landscape character, particularly in relation to the setting and character of the Peak District National Park*
- *Requiring that development contributes positively to an area's character, history and identity in terms of scale, height, density, layout, appearance, materials, and the relationship to adjacent buildings and landscape features*
- *Requiring that development achieves a satisfactory relationship to adjacent development and does not cause unacceptable effects by reason of visual intrusion, overlooking, shadowing, overbearing effect, noise, light pollution or other adverse impacts on local character and amenity*

My client is concerned that this policy will not be complied with by the Proposal, particularly during the construction phase. Although construction impacts are not usually a material consideration, in cases where construction will take place over several years (2 years in this case) and the impacts will be felt for a long period; it is my client's contention that the construction impacts should be material to the final decision. This is especially so when construction impacts are required to be assessed within an EIA in accordance with Paragraph 5 of Schedule 4 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017.

Specifically, my client is concerned that the building work and vehicle movements during construction will generate an unacceptable level of noise, compared to the surroundings she currently experiences. My client considers that, from the project description, noise may be caused by beeping lorries, crane movements, general vehicle movements and controlled explosions. Chapter 6 of the Environmental Statement appears to support this view. In particular, table 6.10 of the Environmental Statement sets out the baseline levels for location 4 which is the location closest to my client's property. It is noted that the baseline noise levels in this location are some of the lowest experienced at the assessed locations (at 39Db background noise and 50Db ambient daytime noise). This is the reason my client chose to live in this property as she works from home and has sensitivities to noise so needed somewhere quieter than the average home to live comfortably and healthily and to generate an income.

Table 6.11 of the Environmental Statement shows that the ABC criterion (set out in section 6.3 of the Environmental Statement) will be exceeded during the construction phase in a number of locations. At R5 (as it is shown on figure 6.2 – the closest assessed receptor to my client's property) there appears to be an increase during the construction phase of 15Db compared to the baseline ambient daytime noise assessment at location 4 as shown on figure 6.1 (50Db). Whilst 65Db may not exceed the ABC threshold, this represents a significant increase compared to baseline levels. This is even more so when it is considered that the background noise assessment at location 4 was 39Db thereby representing an increase of 26Db at this location compared to pre-construction.

Relevant to this, HPBC Local Plan Policy EQ 10 'Pollution Control and Unstable Land' confirms that the Council will only permit developments which are deemed to result in pollution (which includes noise and vibration and light intrusion) **if** the developer ensures that potential adverse effects are mitigated to an acceptable level.

It has already been demonstrated that the noise levels as the scheme is designed result in an unacceptable increase in noise at my client's property. Despite significant effects being identified, only embedded mitigation is being considered (as confirmed in the ES, paragraph 6.7) and these measures are as follows:

The construction noise and vibration assessment assume that the works would be undertaken using best practicable means (BPM). BPM is therefore assumed as incorporated mitigation to control construction noise in the form of low noise emission plant and processes, as specified in BS5228-1 Annex B.

BPM would include:

- *informing residents prior to any particularly noisy or high vibration works;*
- *the selection of quiet and low vibration equipment;*
- *the use of low vibration piling methods (if practicable) such as CFA piling and the 'press in' method for sheet piling;*
- *for vibratory rollers, avoiding switching on or off the vibration mechanism when close to dwellings as the transient frequency sweep as the mechanism starts up and reaches the operating frequency can be particularly intrusive;*
- *review of construction programme and methodology to consider quieter methods (including non-vibratory compaction plant, where required);*
- *location of equipment on site away from dwellings;*
- *control of working hours;*
- *the provision of acoustic enclosures;*
- *the use of less intrusive alarms, such as broadband vehicle reversing warnings;*
- *a reduction in the amount of plant operating simultaneously in one area to mitigate any significant effects identified;*
- *screening including local screening of equipment, perimeter hoarding or the use of temporary stockpiles; and*
- *through further dialogue with High Peak Borough Council a Section 61 (of the Control of Pollution Act 1974) agreement for prior consent to carry out the works is expected to be utilised to ensure contractors use BPM to control construction noise.*

Embedded mitigation is generally taken to have formed part of the project as assessed by the EIA, being an integral part of the project design. Therefore, as the noise assessment has been conducted already taking into account the embedded design and project features, these embedded measures alone should not be considered to make the Proposal acceptable. The lack of additional measures to prevent, reduce and offset likely adverse effects which could not be avoided through design, mean that the Proposal is currently contrary to policy EQ 10. It is my client's view that the Council should compel the developer to reconsider its noise mitigation measures and to prepare a more detailed set of measures prior to determination of the application (to be secured by condition), otherwise the Proposal should be refused.

Measures which could be considered in addition to the above (which should be secured by the Council by way of condition as a minimum) include a condition for continuous noise monitoring which should be based on the need to minimise the increase in noise experienced at my client's property compared to baseline levels (it is suggested this is in location 4 as shown on figure 6.1 of the Environmental Statement). Limits should be placed on the number of vehicle movements and the times when they are permitted to travel to and from the site to minimise the duration of noise each day.

In terms of operational impacts, the Environmental Statement confirms at paragraph 6.3.2.1 that;

"There are no existing prediction methods to calculate noise from spillways in operation (once construction is complete). To enable an assessment of noise level from the spillway for the proposed Scheme, reference has been made to a noise and vibration assessment for a similar shaped spillway¹⁴. This assessment includes measurements of spillway noise for receptors at a similar distance to the nearest receptors to the proposed Scheme."

Then at paragraph 6.6.2.3, the overall operational impact is assessed as follows;

"Therefore, there is likely to be a direct, permanent effect which is moderate adverse. Considering the small number of receptors affected, the change in noise exposure between the existing and proposed spillway and the variability of noise levels throughout the year, this effect has been assessed as not significant, when utilising professional judgement."

We do not question the professional judgement of someone who has worked in the industry for a number of years and has significant experience however, my client considers that this professional judgement (even though properly exercised) may come from the wrong starting point. It is considered that a worst-case scenario should be used for the purposes of assessment where the impacts cannot be fully assessed quantitatively. This may have been done here but the Environmental Statement does not make that clear. Without certainty that a worst-case scenario has been used, my client is

anticipating significant impacts, and this is causing her anxiety.

It is agreed that ordinarily the individual private/personal circumstances of an interested party would not be a material consideration. However, the EIA is required to take into account sensitive receptors and my client considers that her circumstances call for additional sensitivity. Relevant to this is the recent High Court case of G, R (On the Application Of) v Thanet District Council [2021] EWHC 2026 (Admin) where planning permission was quashed due to a failure to adequately assess the construction and operational impact of noise, highway safety and air quality on the pupils at a school for children with special educational needs. The key point made repeatedly by the judge was that those affected by the scheme (i.e. the pupils with special educational needs) were particularly sensitive and vulnerable, raising concerns for the adequacy of the overall assessment of the scheme's environmental impacts. It is submitted that the same considerations should be taken into account in this case. Should the Council require further information on this point, please contact me and I will discuss with my client whether information can be provided privately.

Although not related to noise; my client is also concerned about dust and fumes during construction and considers that these should be assessed with appropriate conditions put in place to control this to ensure compliance with policies EQ 6 and EQ 10 of the HPBC Local Plan.

In terms of construction traffic impacts, we have reviewed the Construction Traffic Management Plan prepared by Kier in addition to the Environmental Statement. This primarily reinforces my client's concerns. In particular it is noted that the proposed construction hours are as follows;

- *Monday to Friday, between the hours of 08:00 to 18:00.*
- *Should Saturday working be necessary, prior approval will be sought from the local authority.*
- *No working is anticipated on Sundays or bank holidays.*

Whilst this is fairly standard for noisy working, it is submitted that, given the sensitivity of the location and the potential increase in noise compared to baseline levels, the Council could consider conditioning more restrictive hours than this, with enforced quiet periods during the day if possible. Notice should be given to surrounding residents of any peak vehicle movement times. In line with above suggestions, numbers of vehicles could be restricted by condition as well.

Finally, on the subject of noise, it does not appear as though the development is capable (at present) of complying with the requirements of paragraph 185 of the National Planning Policy Framework (NPPF) which states;

"185. Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:

- a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life*
- b) identify and protect tranquil areas which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason;*
and
- c) limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation".*

Paragraph (c) is relevant to the matters discussed below in respect of amenity and visual impact.

Paragraph 174 (e) is also relevant to the issues of noise and other matters discussed in this letter and the Proposal is arguably not able to comply with this policy;

"e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans".

Ground Stability and additional vehicle impacts

Additionally, my client has concerned that lorries travelling past her house daily will potentially damage the foundations of the house and could cause subsidence/ cracks. It is submitted that the path the vehicles are travelling on is not made for lorries – it is a pedestrian footpath. There did not appear to be any assessment within the submitted application relation to the suitability of the path for lorries and therefore there is nothing at present to reassure my client that the development will not harm the character and appearance of her property, and her use and enjoyment of it.

This matter is covered by HPBC Local Plan policy EQ10 which confirms that; *“the Council will protect people and the environment from unsafe, unhealthy and polluted environments. This will be achieved by:*

...Ensuring that sites are suitable for their proposed use taking account of ground conditions and land instability, including from natural hazards such as radon gas, former activities such as mining, or pollution arising from previous uses.”

In light of this, it is considered that this Proposal should not be granted permission until these impacts are assessed and it is confirmed that there will be no adverse impact on the stability of the path or my client's property (or indeed any other properties which may be affected along the lorry route).

Furthermore, it is considered that there will be significant disruption to the traffic flow in and out of Reservoir Rd which will negatively impact residents' ability to travel to and from their homes.

Amenity and visual impact

HPBC Local Plan policy EQ6 seeks to guard against; *unacceptable effects by reason of visual intrusion, overlooking, shadowing, overbearing effect, noise, light pollution or other adverse impacts.*

My client is concerned that light pollution emanating from the development both during the construction and operational phases will affect her ability to sleep. If lights are constructed to light the Site this will impact significantly on her quality of life as many of the main windows overlook the Site (including the bedroom window). My client has particular sensitivities in this regard due to her health conditions and this sensitivity should be taken into account (see above). Again, she purchased this particular property because of the dark conditions it offered at night.

In the HPBC Local Plan explanatory notes, paragraph 5.85 states; *“Light pollution refers to the effect of excessive or intrusive lighting arising from poor or insensitive design. The Council will seek to reduce light pollution by encouraging the installation of appropriate lighting and only permitting lighting proposals which would not adversely affect High Peak Local Plan - Adopted 91 Development management policies 5 amenity or public safety. Lights should be appropriately shielded, directed to the ground and sited to minimise any impact on adjoining areas, and of a height and illumination level of the minimum required to serve their purpose.”* The Council are asked to take this into account when assessing compliance with HPBC Local Plan policies.

The development is also contrary to policy EQ6 in that the construction hoardings will be overbearing and will block the natural day light into my client's kitchen significantly and ruin my client's view from the large windows from her sitting room for at least two years. This will harm her amenity and enjoyment of her property. To resolve this we would suggest that, if they cannot be moved away from my client's property entirely; the duration that the hoardings will be present should be limited and this fixed by condition, and more investigation should be made into their positioning to prevent or reduce the harmful impact.

Additionally, my client is concerned about the visual impact of the development more generally both during construction and operational phases. Part of this impact relates to the loss of trees in the vicinity of her property (between the property and the development) which currently enhance the view. Whilst some tree planning is proposed and many trees will be retained, there are some trees of good quality which are to be lost. With this in mind, the Council should consider the proposals in light of HPBC Local Plan policy EQ 9 which states (my emphasis);

The Council will protect existing trees, woodlands and hedgerows, in particular, ancient woodland, veteran trees and ancient or species-rich hedgerows from loss or deterioration. This will be achieved

by:

- **Requiring that existing woodlands, healthy, mature trees, and hedgerows are retained and integrated within a proposed development unless the need for, and benefits of, the development clearly outweigh their loss**
- *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*
- *Resisting development that would directly or indirectly damage existing ancient woodland, veteran trees and ancient or species-rich hedgerows.*

In this case, it is considered that more could be done to retain and integrate the existing trees, particularly as the loss of trees in the vicinity of my client's property will primarily be for construction purposes and therefore not directly related to the development itself (which it is accepted there is a need for). In this case, it is suggested that the developer reconsiders their construction routing, laydown, and parking areas to minimise loss of trees.

Additionally, my client requests that the visual impact assessment includes consideration of the views she will experience during both construction and operation and that planning permission is not granted until this has been completed and limited visual impact is found.

Summary/Conclusions

At present, the Proposal is contrary to a number of HPBC Local Plan policies including those discussed above, and policy S1 which confirms;

"Policy S 1 Sustainable Development Principles The Borough Council will expect that all new development makes a positive contribution towards the sustainability of communities and to protecting, and where possible enhancing, the environment; and mitigating the process of climate change, within the Plan Area. This will be achieved by: ...Seeking to secure developments provide a high standard of amenity for all existing and future occupants of land and buildings, ensuring communities have a healthy, safe and attractive living and working environment and the risks from potential hazards are minimised".

Whilst there is no doubt that some solution needs to be found for the Spillway, my client asserts that the scheme is not yet acceptable in planning terms and more needs to be done to make it so, and to reassure the Council and interested parties of this fact.

Once this has been done, the Council is asked to use its powers to impose appropriate conditions to control the various impacts of the development outlined above (including noise, ground stability and impact on amenity).

We would be grateful if you could advise us of your likely recommendation prior to making a decision, if possible. Please also provide us with details of any further information which is submitted by the applicant in respect of this Proposal and provide us with an opportunity for further comment in respect of any such information. Should the application fall to be determined by the Council's planning committee; please inform us of this at the earliest opportunity. Our contact details are at the top of this letter.

Yours sincerely

Elizabeth Shield
For and on behalf of
HARRISON CLARK RICKERBYS INC SHAWCROSS