

# ADDENDUM REPORT

(REVISED & UPDATED 27.08.22)

## HIGH PEAK BOROUGH COUNCIL DEVELOPMENT CONTROL COMMITTEE

Date 12<sup>th</sup> September 2022

<b>Application No:</b>	HPK/2020/0064	
<b>Location</b>	Land off Trenchard Drive, Buxton	
<b>Proposal</b>	Application to vary planning condition 2 attached to Full Application Ref: HPK/2018/0315	
<b>Applicant</b>	Persimmon Homes	
<b>Agent</b>	Persimmon Homes	
<b>Parish/ward</b>	Buxton	<b>Date registered</b> 28/02/2020
<b>If you have a question about this report please contact:</b> Ben Haywood; email: <a href="mailto:ben.haywood@highpeak.gov.uk">ben.haywood@highpeak.gov.uk</a> Tel: 01298 38400 Ext: 4924		

### REFERRAL

The application is referred to committee as it is a major development and is contentious.

The Application was deferred at the December 2021 meeting of the committee for a site inspection and pending receipt of Lead Local Flood Authority (LLFA) comments.

The application was deferred again at the 14<sup>th</sup> February meeting of the committee to enable the applicant to provide the LLFA with the outstanding details in relation to the discharge of the surface water drainage conditions (DOC/2019/0074) as set out in the update sheet.

### 1. SUMMARY OF RECOMMENDATION

**APPROVE, subject to conditions**

### 2. BACKGROUND

2.1 Members will recall that full planning permission for the erection of 153 dwellings with associated access, public open space and landscaping was granted on 3<sup>rd</sup> July 2019 (HPK/2018/0315 refers) on the former college campus.

2.2 Members will further recall that application HPK/2020/0064 was submitted to seek approval for, material amendments to approved planning and approved landscape masterplan. In addition, the application sought approval for minor amendments to the following plots to account for raised ground levels in those areas:

- Plot 39 changed to a Warwick house type and removal of detached garage and turning head associated with the private drive.
- Plot 143 changed to a Thirlmere house type, bringing this plot away from the boundary to provide for more opportunities for landscaping
- Plot 119 and 118 amended to bungalow semi's (Heartwood bungalow). The bungalows would sit on the same foundations and at the same FFL as previously proposed. The developer could not reduce the FFL of these plots as drainage wouldn't be achievable. The ridge heights have been reduced significantly. A drawing has been provided showing the comparison of the height of the Stafford v's the now proposed Heartwood.
- Plot 77 amended to a larger Warwick in order to recoup lost sq ft.
- Plot 70 and 62 amended in order to recoup lost sq ft. Persimmon have replaced these plots with a 2.5 storey house type (the Earlswood)

2.3 The Committee resolved at it's meeting on 22<sup>nd</sup> February 2021 to grant planning permission for the proposed amendments subject to the LLFA confirming that they have no objection to the revised landscaping / drainage plans and subject to the same conditions as previously with the a number of changes / amendments as set out in the report. A copy of the previous report to committee is attached at Appendix A along with the previous update Sheet at Appendix B, which is also pertinent to the consideration of the matters dealt with in this report.

2.4 Since the Committee resolution to approve in February 2021 whilst we were awaiting LLFA comments in accordance with the resolution, development continued to progress on site and it was brought to our attention that development had not been carried out in accordance with the plans which the committee resolved to approve. The deviations from the approved plans were as follows:

- The retaining wall adjacent to plot 119, alongside 75 Burlow Road was shown on the plan approved by Committee as being 0.75m in height with a 1.8m fence on top. The garden level however, has been increased by a further 0.25m meaning that the retaining wall is now proposed at 1m. To compensate the developer proposes to reduce the height of the fence on top to 1.5m. This will reduce the overall height of the combined wall / fence when viewed from no.75 by 5cm
- A similar situation has occurred in respect of the retaining wall adjacent to Plot 30, alongside 40 Burlow Road where the garden level is 0.15m higher than on the approved plans. As a result the proposed amendment is a 1.65m retaining wall and 1.5m fence where previously a 1.5m retaining wall and 1.8m fence were proposed. This will reduce the overall height of the structure alongside the boundary by 20cm

2.5 A report was placed before the committee on 14<sup>th</sup> February 2022 to consider the acceptability of the proposed changes. The application was deferred at that meeting to allow further time to satisfy queries from the LLFA in relation to the discharge of surface water drainage conditions (details submitted under application reference DOC/2019/0074). Further to those outstanding queries, the developer has been in consultation with the LLFA and we have recently received confirmation from them these surface water conditions can now be discharged. Therefore, those matters which necessitated deferment from the last committee have now been

resolved and there are no further outstanding matters which would preclude the progression of the application to planning committee.

2.6 Whilst negotiations have been taking place with the LLFA the developer has further reviewed the scheme and it is no longer their intention to seek all of the plot substitutions listed above and therefore the application can now be refined to only seek the following amendments to housetypes:-

- Plot 39 – Substitution of approved Witton housetype with detached garage to Warwick Housetype and removal of detached garage and turning head associated with the private drive;
- Plot 143 – Substitution of approved Kendal Housetype to Thirlmere housetype
- Plots 118 and 119 – Substitution of 2 no. approved Stafford housetypes to 2 no. Heartwood Bungalow housetypes.

These amendments were all considered in the February 2021 report (Appendix A) and have previously been found by the committee to be acceptable.

2.7 All associated engineering works and changes to levels as detailed at paragraph 2.4 above remain as part of the application. The purpose of this report is to consider the acceptability of those proposed levels changes.

### **3. CONSULTATIONS CARRIED OUT**

#### **Lead Local Flood Authority**

##### Initial Response (February 2022)

Thank you for consulting the Lead Local Flood Authority (LLFA) in relation to the revised proposals for the above planning application.

The LLFA does not object to the further raising of ground levels beyond that which was already proposed. However, we would like to re-emphasise the importance of careful design of the surface water drainage/ soakaways to ensure that there is no increase in surface water runoff or in the wetness of the ground in the vicinity of the retaining walls, and we are currently awaiting further information from the applicant in relation to the discharge of the surface water drainage conditions (DOC/2019/0074).

##### Further Comments (July 2022)

Derbyshire County Council as the Lead Local Flood Authority (LLFA) has reviewed the information submitted for this application, which was received on 27 May 2020, with additional information received in February and June 2021 and May, June and July 2022. The LLFA has received information that satisfies conditions 4, 5 & 6 and can therefore recommend its/their discharge, this is subject to the sustainable drainage scheme being constructed and maintained as set out in the documents

#### **Neighbouring Occupiers**

Both affected neighbours have been consulted on the proposed amendments. Their comments are as follows:

#### 75 Burlow Road (Adj. Plot 119)

- We are still extremely concerned about the overall height and how imposing a boundary of over 4m in height will be, the reduction proposed is minimal at only 5cm and therefore we are not satisfied that this is all that can be done to improve the situation.
- The garden level will be 2.5 meters higher than our garden level, with only a fence of 1.5m to provide privacy. Is there no option to lower the garden level, we understand the arguments surrounding the draining and the requirement for the housing heights but surely a garden could be lower with steps down from the house into it?
- Our concerns regarding the overgrown areas are not relating just to plot 119, the area of trees to the north-west of our garden were supposedly going to be landscaped and hasn't been, despite all properties bordering the area are now fully occupied. The trees now need big attention as they are significantly overhanging our property.

#### 49 Burlow Road (Adj. Plot 30)

- We do not agree to the wall height as is and are still awaiting its removal as per correspondence with HPBC in April 2021.
- We have had no contact from either yourselves or Persimmon since our last email 11 June 2021.
- We have **NEVER** had a meeting with Persimmon Homes regarding this wall.
- **NO** attempt has been made to arrange a meeting regarding the wall.
- We want the wall removed as discussed with yourselves in April 2021 and cannot believe that this has still not been done some 4 months later. We do not agree with these drawings and do not believe this matter has been dealt with satisfactorily either by HPBC planning or Persimmon Homes, we feel we should have been part of a consultation and that none of this has happened. The as built height of the retaining wall, we believe is not as per this drawing and believe HPBC planning should visit site and measure the wall and take levels as previously requested by ourselves. We do not want this retaining wall at this height.
- We believe this affects our visual amenity, our privacy and the enjoyment of our garden. I have photos before and after to show how this has affected our right to light. The property to the side is already too close and then to bring a fence directly to the side and rear at this height would tower

over our garden. Not to mention the risk that emissions bring from vehicles parking above our garden and greenhouse.

- The total height will be over 3m, the fence on top of the wall will act effectively as a sail so when the wind blows the fence, this will put load on the wall, therefore this needs to be considered as part of the structure. Where is the information regarding the structural safety of this wall? This has not been built as per the plans provided by to us Persimmon Homes in January and we have proof of this. We raised the issue of the wall prior to the planning meeting in February and it was not discussed in that meeting, which we believe was a very important detail and should not have been passed over.
- If HPBC proceed with this proposal we will be seeking advice regarding the legalities of this process.
- I cannot stress how dissatisfied I am with our treatment by HPBC and Persimmon Homes throughout this whole process. Our concerns have been ignored, not put to planning agendas when we believe they should of, not raised in meetings, not kept updated (we are still awaiting a response regarding the flooding concerns), Persimmon have been allowed to deflect regarding the issues in planning meeting to the planning committee without being corrected, we have been lied to and about and key issues have not been raised and dealt with as they should have.

#### Additional Neighbour Comments

The response we received last February from William Treves of DCC flood team, explains the risks posed to our property by the design of the attenuation crates to the side, in plot 30.

In regards to the retaining wall, our understanding is that at 2m high a retaining wall will need planning permission as a structure in itself, we believe that the reason Persimmon Homes are attempting to falsify the ground levels on the design (hence why we have asked HPBC to take new levels and measurements), is to ensure that the retaining wall structure remains under the 2m high level.

We have a report from a structural engineer stating that the wall would be prone to toppling and that the fence would act as a sail putting pressure on that wall, we have now seen how the fence is attached and this is a real concern, they have actually bolted it to the wall using upright posts, so I totally understand what the structural engineer is stating, again I will email over his report later.

The concerns are several fold:

- Our property can become flooded by the design of the surface water drainage and the attenuation crates.
- The flooding issue alone could affect the structure of the retaining wall, the pressure the water puts on the wall and the risk of toppling the wall poses.
- The flooding could further undermine the wall structure, causing its integrity to be compromised as time goes on.

- The wall itself is prone to toppling according to a structural engineer.
- The manner in which the fence has been attached to the wall is putting pressure from force in high winds (which are regular in Harpur Hill).
- The wall is holding back the hardcore which was used to raise the ground level to 2m above original level.

We have repeatedly raised these issues with HPBC and they have never been taken seriously, but they need to be, they are making decisions which come with extreme risk.

What happens if my son or daughter is in the back garden playing a game of football together, as they do most days and that wall fails?

This is not about the look of the wall, the positioning of the wall, the property to the side, this is so much more than that and HPBC don't seem to want to acknowledge the huge risks they are taking, by proceeding along this path, so determined are they to get this planning done and dusted and move on to the next, it's a risk and according to experts it is a real risk. We have had no guarantees or evidence to prove that the structure is safe.

The way we have been ignored and treated in raising these issues, the way my families safety has been ignored, I don't think anything will change the path HPBC have decided to take, I sincerely hope they don't live to regret it.

#### **4. OFFICER COMMENTS**

##### **Main Issues**

4.1 The site already benefits from full planning permission for the erection of 153 dwellings with associated access, public open space and landscaping which is currently being implemented (HPK/2018/0315 refers). The acceptability of the changes to the approved scheme proposed under HPK/20200064 has also been established by virtue of the committee's previous resolution in February (as detailed at Appendix A). The purpose of this report, therefore is purely to consider the increased garden levels of plots 119 and 30 and the associated changes to retaining walls and boundary treatments.

4.2 The main issues in the consideration of the matter are amenity, design, and drainage.

##### **Design**

4.3 It is considered that the marginal increase in ground levels of 5cm and 20cm on plots 119 and 30 respectively will not have any discernible impact in terms of design, character and appearance. With regard to the boundary treatment, the approved scheme involves construction of retaining walls with fences on top. This will remain the case, the only difference being a slight increase in the heights of the retaining walls, equivalent to the increase in ground level and a corresponding decrease in the height of the fencing so that the overall height of the structure will be

marginally lower in both cases. Again, this will not impact on the overall character and appearance of the development.

4.4 On this basis it is deemed to be acceptable in design terms and in accordance with Policy EQ6 in this regard.

### **Amenity**

4.5 Given that the combined overall height of the wall and fence in both cases will be lower than approved (5cm and 20cm in respect of plots 119 and 30 respectively) it is not considered that the retaining / boundary structures will have any greater impact on light or outlook to the gardens of numbers 75 and 49 Burlow Road.

4.6 The raising of the garden areas themselves has the potential to create a greater level of overlooking of the neighbouring properties but the degree of the increase in ground level will be marginal. It will also be largely mitigated by the proposed fencing. It is acknowledged that the height of the fencing is to be reduced from 1.8m to 1.5m. In the UK, the average height of a man, according to the Office of National Statistics is 175.3cm and a woman is 161.6cm. This would mean that theoretically the top of the fence would be below eye-level for the average person standing in the raised gardens, where previously it would have been above eye level. Nevertheless, views into the neighbouring gardens would only be possible by deliberately standing immediately alongside the fence, which would screen out almost all casual overlooking and any sustained overlooking from a sitting position within the gardens.

4.7 Furthermore, in the case of 49 Burlow Road, the property benefits from a large rear garden containing mature planting meaning that the separation between the retaining / boundary structure and the raised garden to Plot 30 and the dwelling itself would be over 25m from the dwelling itself. Whilst the relationship between Plot 119 and 75 Burlow Road is much more intimate, overall and on balance, in both cases, the amenity impacts of the proposed changes are considered to be marginal and acceptable. The proposals is, as a result in accordance with Policy EQ6 in this regard.

### **Drainage**

4.8 It is noted that the occupant of 49 Burlow Road has previously raised drainage concerns with regard to the increase in the ground levels adjacent to their boundary. The additional increase now proposed is marginal. However, as noted above, the previous resolution was to approve subject to no objections from the LLFA. The revised drawings were supplied to the LLFA who commented that they did not object to the further raising of ground levels beyond that which was already proposed. However, they stated that they were currently awaiting further information from the applicant in relation to the discharge of the surface water drainage conditions (DOC/2019/0074). On this basis Members decided to defer the application until this outstanding issue had been resolved.

4.9 The Council has now received written confirmation dated 21<sup>st</sup> July 2022 from the LLFA that they have reviewed the information submitted for this application,

which was received on 27 May 2020, with additional information received in February and June 2021 and May, June and July 2022. The LLFA has received information that satisfies conditions 4, 5 & 6 which were the subject of application DOC/2019/0074 and can therefore recommend its/their discharge.

### **Other Matters**

4.10 With regard to other matters raised by neighbouring occupiers. Overhanging trees are a civil matter between adjoining landowners, and the structural safety of the wall would be a matter for building control. Emissions from vehicles parking alongside a domestic garden / greenhouse are not considered to be a material consideration. Such arrangements and proximities are common in suburban situations.

4.11 Planning permission is required for the wall / fence and is being sought through the application which is under consideration on this agenda

4.12 Structural integrity of the wall is a matter for the Building Regulations but 2m retaining walls with fences on top are commonplace on new residential development and can be found at a number of sites across the Borough where they have been installed without safety or structural issues arising.

### **Nutrient Neutrality**

4.13 The site lies within the catchment of the River Wye which forms the Peak District Dales Special Area of Conservation (SAC). The Council has been notified that action must be taken to address exceedances of phosphorus in the River. As such, the Council cannot grant consent for development unless it can rule out “likely significant effects” on the SAC. A Habitats Regulations Assessment (HRA) will be required when the plan or project creates a source of water pollution or has an impact on water quality and when it is within the catchment of the SAC. Initially, a screening assessment will be required to consider if “likely significant effects” (alone or in-combination) on the SAC can be ruled out. If not, this will be followed by an “Appropriate Assessment” where the impact of the plan or project is considered in detail.

### **Screening Assessment**

4.14 The proposal is not directly connected with or necessary for the conservation management of a European site. The proposal will not increase overnight stays or surface water run-off from the site over and above that which is already the case as a result of the extant planning permission HPK/2018/0315, which has now been largely implemented. Therefore this revised application will not risk having a significant negative effect on the SAC either on its own or in combination with other proposals and therefore it is not necessary to carry out an Appropriate Assessment.

## **5. PLANNING BALANCE & CONCLUSION**

5.1 The determination of a planning application is to be made pursuant to section 38(6) of the Planning and Compulsory Purchase Act 2004, which is to be read in conjunction with section 70(2) of the Town and Country Planning Act 1990.

5.2 Section 38(6) requires the local planning authority to determine planning applications in accordance with the development plan, unless there are material circumstances which 'indicate otherwise'. Section 70(2) provides that in determining applications the local planning authority "shall have regard to the provisions of the Development Plan, so far as material to the application and to any other material considerations." The Development Plan currently consists of the High Peak Local Plan 2016.

5.3 The site already benefits from full planning permission for the erection of 153 dwellings with associated access, public open space and landscaping which is currently being implemented (HPK/2018/0315 refers). The acceptability of the changes to the approved scheme proposed under HPK/20200064 has also been established by virtue of the committee's previous resolution in February (as detailed at Appendix A). The purpose of this report, therefore, is purely to consider the increased garden levels of plots 119 and 30 and the associated changes to retaining walls and boundary treatments.

5.4 For the reasons detailed above it is concluded that the proposed further amendments, are acceptable in terms of the impact on amenity in accordance with the relevant local plan policies including Policy EQ6 (Design and Place Making ) and the relevant sections of the NPPF which deal with design and amenity considerations. The LLFA have also confirmed that they have no objection to the amendments, including land raising, on drainage and flooding grounds. Moreover, they have confirmed that the drainage details submitted in respect of conditions attached to the previous consent are acceptable. Therefore, the reason for Members deferral of the application in February this year has now been satisfactorily addressed. In the absence of any other material considerations to indicate otherwise and having due regard to all other matters raised, it is recommended that the committee resolve to approve the variation to the approved plans subject, as previously.

## **6. RECOMMENDATIONS**

**A. It is recommended that approval be GRANTED, and subject to the same conditions as previously with the following changes / amendments:**

- 1. Amendment to condition 2 to reflect the changes to the approved list of plans**
- 2. Conditions which have been previously discharged to be positively worded to require compliance with previously approved details / plans**
- 3. Submission, approval and implementation of updated arboricultural method statement**

4. Provision of 1m closed boarded fence to the edge of driveway to plot 143 and provision of 2m closed boarded fence on the boundary with 31 Kirkstone Road.
5. Compliance with the approved level plans.

**B. In the event of any changes being needed to the wording of the Committee's decision (such as to delete, vary or add conditions/informatives/planning obligations or reasons for approval/refusal) prior to the decision being issued, the Head of Development Services has delegated authority to do so in consultation with the Chairman of the Committee, provided that the changes do not exceed the substantive nature of the Committee's decision.**

### Site Plan

