

**HIGH PEAK BOROUGH COUNCIL
DEVELOPMENT CONTROL COMMITTEE**

17th June 2024

Application Nos:	HPK/2022/0495 and HPK/2023/0323	
Location	Land At Linglongs Road, Whaley Bridge, Derbyshire	
Proposal	HPK/2022/0495: Variation of conditions 04 and 24 in relation to HPK/2017/0694 & HPK/2023/0323: Variation of condition 14 attached to planning permission HPK/2017/0247	
Applicant	BDW Trading operating as Barratt Homes	
Agent	Emery Planning Partnership	
Parish/ward	Whaley Bridge	Date registered 4 th January 2018
If you have a question about this report please contact: Rachael Simpkin, rachael.simpkin@highpeak.gov.uk Tel: 01298 28400 ext. 4122		

REFERRAL

The s.73 submissions seeking variations in relation to the approved outline and reserved matters consents are categorised as major planning applications.

1. SUMMARY OF RECOMMENDATION

<p>HPK/2022/0495</p> <p>APPROVE, subject to conditions and Deed of Variation.</p> <p>HPK/2023/0323</p> <p>APPROVE, subject to conditions.</p>

2. SITE DESCRIPTION / AREA

- 2.1 The 6.3ha hectare application site lies to the southwest edge of Whaley Bridge on land which slopes downwards in an easterly direction from the western boundary and adjacent to Linglongs Road. To the east, there are a number of mature trees, which serve to screen the site from the industrial estate known as Botany Business Park. To the north, are residential properties along Macclesfield Road. A large number of trees, protected by a tree preservation order (TPO 262) dissect the site and form a landscaped backdrop to the site when viewed from the south.
- 2.2 Vehicular access is taken from Linglongs Road via Macclesfield Road. The site is broadly divided into three development parcels, positioned within the north west, northeast and southeast. The land is currently being built out for

residential development in relation to the relevant consent for 107 dwellings and is occupied in parts in relation to those completed aspects of the scheme.

- 2.3 The Goyt Way - Midshires Way long distance recreational trail runs through the site in a north-south direction and provides pedestrian access from Taxal along Linglongs Road to Macclesfield Road to the north and beyond onto Reddish Lane.

3. PROPOSAL

- 3.1 The applicant seeks to vary the availability trigger in relation to the dedicated Macclesfield Road residents parking scheme to the site's north eastern boundary (to the rear of 74-84 Macclesfield Road) as secured by the relevant outline and reserved matters consents as detailed below.

- HPK/2017/0694 - Variation of conditions 5, 24 and 31 relating to HPK/2014/0119 at Land off Linglongs Road, Whaley Bridge. Approved 3rd October 2018.
- HPK/2017/0247 - Reserved matters application for 107 dwellings and associated works at Land off Linglongs Road, Whaley Bridge. Approved 3rd October 2018

- 3.2 Accordingly, for planning application ref. HPK/2022/0495, the applicant proposes to vary the wording of conditions 04 and 24 in relation to ref. HPK/2017/0694 as follows:

Condition 04 (original wording)

Prior to commencement of development a scheme outlining the phasing of development, including a site layout plan identifying land uses such as formal and informal open space and infrastructure, in general accordance with the details set out on the Development Framework Plan drawing no. 466/P/DF/01 Rev C, shall be submitted to and approved in writing by the Local Planning Authority. In particular the layout shall provide for the retention of the existing trees on the site where this is justified. The development shall be carried out in accordance with the approved phasing scheme.

Condition 04 (proposed wording)

The proposed development shall be carried out in accordance with the approved phasing scheme as shown on plan refs 466-ED-CMS1 Plan 1 Rev C, 466/ED/76 Rev H and in general accordance with the details set out on the Development Framework Plan ref 466/P/DF/01 Rev C.

Condition 24 (original wording)

Prior to the commencement of development a scheme to provide dedicated car parking provision to serve residents along Macclesfield Road shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall

include the location, number of parking spaces and the finished surface details. Thereafter the approved details shall be made available for use prior to the occupation of the development in any phase hereby approved and retained solely for the parking of vehicles.

Condition 24 (proposed wording)

The proposed dedicated car parking provision to serve residents along Macclesfield Road shall be carried out in accordance with plan refs 466-ED-CMS2 Rev E and 466/P/HLL/01 Rev J, as agreed under DOC/2017/0071. The approved car parking provision shall be made available for use upon completion of Zone 11 hereby approved under condition 4 and retained solely for the parking of vehicles.

- 3.3 For planning application ref. HPK/2023/0323, the applicant proposes to vary the wording of conditions 14 in relation to ref. HPK/2017/0247 as follows:

Condition 24 (original wording)

Within 6 months of the commencement of works, a scheme for the signage, management arrangements and timetable for installation of the car parking spaces to the north eastern boundary (to the rear of 74-84 Macclesfield Road) as shown on plan ref 466/P/PL/01 Rev Q shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the car parking spaces shall be installed in accordance with the approved timetable and managed in accordance with the approved details.

Condition 24 (proposed wording)

The scheme for the signage, management arrangements and timetable for installation of the car parking spaces to the north eastern boundary (to the rear of 74-84 Macclesfield Road) as shown on plan ref 466/P/PL/01 Rev Q shall be carried out in accordance with the details shown on plan refs 466/ED/CMS2 Rev E 466/ED/76 Rev J, 466/P/MP01 Rev E, 466/P/HLL/01 Rev J, Landscape Management Schedule – Rev D and 466//P/PL/01 Rev A1. Thereafter the car parking spaces shall be installed following the completion of Zone 11 as indicated on plan ref. 466/ED/76 Rev J and managed in accordance with the approved details.

- 3.4 The applications and details attached to them, including the plans, supporting documents, representations, consultee responses and revisions can be found on the Council's website at:

HPK/2022/0495:

<http://planning.highpeak.gov.uk/portal/servlets/ApplicationSearchServlet?PKID=257991>

HPK/2023/0323:

4. RELEVANT PLANNING HISTORY

HPK/2021/0304	Proposed signs	Approved 15 th July 2021
HPK/2021/0265	Retention of 3no. flag poles	Approved 10 th September 2021
HPK/2021/0053	Proposed signs & flag poles	Withdrawn.
HPK/2020/0411	Proposed signage	Approved 20 th November 2020
HPK/2017/0694	Variation of conditions 5, 24 and 31 of HPK/2014/0119	Approved 3 rd October 2018
HPK/2017/0247	Reserved matters for 107 dwellings and associated works	Approved 3 rd October 2018
HPK/2014/0119	Proposed outline permission for up to 107 dwellings including landscaping and public open space	Approved 7 th May 2015

5. PLANNING POLICIES RELEVANT TO THE DECISION

Adopted High Peak Local Plan 2016

- S1 Sustainable Development Principles
- S1a Presumption in Favour of Sustainable Development
- EQ6 Design and Place Making
- CF6 Accessibility and Transport
- CF7 Planning Obligations and Community Infrastructure Provision

Supplementary Planning Guidance (SPDs)

Planning Obligations SPD 2023

National Planning Policy Framework

National Planning Policy Guidance

6. CONSULTATION RESPONSES

Expiry:

Site notice	Expired
Press notice	Expired
Neighbours (Revised)	24 th April 2024

HPK/2022/0495: Variation of conditions 04 and 24 in relation to HPK/2017/0694:

CONSULTEE	RESPONSE	REPORT SECTION
County Highways	No comments	Refer to Other Matters Section
<p>08.04.24</p> <p>There are no further comments to make to this application over those submitted in the previous response of 18th November 2022.</p> <p>18.11.22</p> <p>The introduction of the parking provision as detailed in condition 24 was not required by the highway authority in the assessment of the original application, therefore, the highway authority would have no grounds for objection to the rewording of the condition to provide the parking provision at an alternative time frame, as proposed.</p>		
HPBC Health	Environmental	No objections.
		Refer to Other Matters Section
<p>30.11.22</p> <p>This application appears to vary a condition related to parking provision in the construction phase, a condition that was not requested by EH and is very low risk from a public health / nuisance perspective. If you have any specific concerns not otherwise addressed, please let me know.</p>		

Whaley Bridge Matters (HPK/2022/0495):

16.04.23

“We write in respect of the above planning application. The public consultation period in relation to this application ended on 22 December 2022. The application has yet to be heard by the planning committee and we can see, from viewing the planning portal, that it is currently listed to be heard on 22 May 2022 - this will be 5 months after public consultation concluded. We do not need to remind you that the developer is currently operating in breach of planning permission. Your delay is allowing their actions in breach to persist - causing ongoing harm to local residents. Please provide an update and explanation for the delay by return”.

22.12.22

“We write in response to the public consultation in relation to planning application HPK/2022/0495.

We object to this application. We have set out below some of our reasons for objecting:

1. There is a knock-on impact on condition 14 of HPK/2017/0247 which set out the timetable for the completion of construction of the car-parking spaces and relied on the same phasing plan as condition 24 did in its original form (showing the parking spaces being constructed directly following construction of the roads and sewers in the NW field). This has not been taken into account as part of this application, or at all.

2. The provision of car-parking for residents of Macclesfield Road was a condition of the developer being permitted to develop this contentious site. The timing for the provision of operational car-parking spaces was clear: they should be constructed and operational prior to first occupation. They have been in material breach for many months now as residents have occupied dwellings on the development since last Spring. This breach was only brought to HPBC's attention by a local resident - casting doubt on the quality of HPBC's oversight of this contentious development (and not for the first time!). This application does not just seek retrospective approval of the breach in terms of occupation (which, although frustrating, would probably be a request which should not be denied - given the harm which would be done to residents if they were to be required to leave their homes whilst the parking was constructed). It goes much, much wider than this - asking for an amendment to provide that the spaces do not have to be provided until (it would appear) *all* dwellings have been constructed and all but 17 are occupied. The developer should not be allowed to "move the goalposts" and present something completely different to the bargain it reached with HPBC to secure permission. Their position is not reasonable.

3. The condition is still workable in its current form (with a small amendment to allow for partial occupation to date). The developer could situate its site office and compound in a location which would allow safe access to the car-parking spaces. They have the whole of the NE and SE fields to play with and work within. Secure fencing and gates could be used as appropriate. The position the developer is taking is lazy - if they have already placed their site office in an inappropriate place then that is their choice - they will just need to move it (it has already been moved several times during the course of development). They located their site office in full knowledge of the terms of condition 24.

5. The application itself is unclear. We have drafted this reply on the basis that the reference to "final phase" in the proposed revised wording refers to phase 12 of housing construction. However, the terminology is unclear as "phasing" is a term which is also used in relation to roads and sewers and in relation to the wider 'parcels' of development which split across what were the separate fields on this site. Clarification is required on this point. The wording needs to be far, far tighter. HPBC should demand this before the application is considered any further.

6. The timing of the provision of these car-parking spaces was not arbitrary. It was grounded in highways safety issues on Macclesfield Road (condition 24 of 0694) and loss of amenity/privacy for residents on Macclesfield Road (condition 14 of 0247) - both of which are occurring already. Pushing the requirement to provide operational car-parking for Macclesfield Road residents to a time when the development is almost complete will lead to harm. There is also the related issue that the "final phase" (which includes most of the 'affordable housing') may never be completed to

the point of being ready for occupation - making the condition in its currently proposed revised form completely worthless. They are needed *now* because of the harm being caused by the development *now*!

7. The supporting letter provided by the developer's agent includes absolutely no reference to 'planning balance' or evaluation of the harm caused to others by reason of their proposed change. This evaluation should have been carried out. HPBC should demand it.

We object to this application. It should be refused in its current form. Although we are frustrated that lax enforcement by HPBC allowed the developer to effect partial occupation of the site in breach of condition 24 in its original form prior to providing parking for Macclesfield Road residents, we would reluctantly accept that an amendment is necessary to reflect this unfortunate reality (allowing for current occupancy levels only). No further amendment should be agreed. The parking spaces should now be completed and put into operation without any further delay or breach by the developer.

We reserve the right to make further representations on this application”.

27.11.22

“We have been made aware that the developer has submitted the above application (through its agents, Emery Partnership) seeking permission to amend Condition 24 of HPK/2017/0694.

The amended wording proposed by the developer makes direct reference to Condition 4 of HPK/2017/0694 and the plans submitted in relation to this Condition with regard to phasing. Condition 4 and its relevant supporting documents are not provided as part of the application. In order for consultees to be able to effectively respond to the proposed variation we believe that it is important that the document containing the wording of Condition 4 (and the supporting documents on phasing which the applicant is referencing in its proposed variation) should be added to the planning portal against this application for public viewing without delay.

We look forward to hearing from you on this point by return. The duty of consultation cannot be fairly or effectively discharged if key documents are not easily available for review”.

Public Comments

HPK/2022/0495

Objections (2):

07.02.24

“Public consultations only work if it can be clearly seen that decisions taken have practical and technical credibility. In the case of these conditions I can see no reason why the original condition was not satisfied in the first place it was simply a

matter of phasing the works correctly to satisfy the condition. This did not happen so I would have thought it was then incumbent on the contractor to meet with local residents to explain the reasons why and to try to mitigate that loss.

This would have also given all parties an opportunity to find a satisfactory long term solution to the parking and safety issues on Macclesfield Road.

As I have said previously these conditions greatly affect my future so I am happy to meet with anyone to discuss (technical proposals) at any time”.

“This application relates to the agreed provision of car parking for the residents of Macclesfield Road, to be “made available for use prior to the occupation of the development in any phase”. This requirement was put in place to mitigate highways safety issues highlighted and acknowledged during the planning process. As you are aware, residents moved into properties on the development earlier this year without the agreed car parking for Macclesfield Road residents being in place, and therefore the developer has been in ongoing material breach of the agreed permission since then (This has been confirmed to me by Neil Rodgers in his e-mail of 29th September 2022).

You have been on notice that the developer was proceeding otherwise than in accordance with the approved contiguous phasing of road construction (specified in the Construction Method Statement) since at least my e-mail of 9th April 2022, which was sent to you, Ben Haywood and Planning Enforcement. In that message I made specific reference to condition 24 which is now under consideration for variation.

Since that time, you will also be aware that I have escalated the LPA’s handling of this matter through the HPBC internal complaints process, which has now been exhausted without adequate resolution in my opinion. I am therefore planning to pass this matter to the Local Government Ombudsman for investigation, subject to the LPA’s further handling and the eventual outcome of this application to vary condition 24.

I object to this application. In summary:

1. The application is incomplete.

The application concerns the variation of condition 24 of HPK/2017/0694. However, the subject matter of the proposed variation also impacts condition 14 of HPK/2017/0247. This states that, “within 6 months of the commencement of works, a [...] timetable for installation of the car parking spaces to the north eastern boundary (to the rear of 74-84 Macclesfield Road) as shown on plan ref 466/P/PL/01 Rev Q shall be submitted to and approved in writing [sic] by the Local Planning Authority”.

The discharge of this condition under application DOC/2018/0110 relied upon plan reference 466/ED/CMS2 Rev E, which shows the completion of the parking spaces and associated access road in the NE field being phased immediately following completion of roads and sewers in the NW field. The justification for this condition was grounded in Local Plan Policy EQ6, which requires “that development achieves

a satisfactory relationship to adjacent development and does not cause unacceptable effects by reason of [...] other adverse impacts on local character and amenity”; and, “that developments are designed to [...] promote safe living environments”.

Condition 24 of HPK/2017/0694 cannot be considered in isolation, without also taking account of condition 14 of HPK/2017/0247 and the requirements of Local Plan Policy EQ6.

The applicant is requesting that condition 24 of HPK/2017/0694 be amended to require only that “the approved car parking provision [for residents of Macclesfield Road] shall be made available for use prior to the occupation of the development in the final phase hereby approved under condition 4”, with reference to plan 466/ED/CMS1 Rev C Plan 3. The wording “final phase” is not defined and is ambiguous in the context of the referenced plan. This wording could refer either to the housing areas associated with the four broad phases of road construction (NW field; parking access/spaces in NE field; SE field; and remainder of NE field), or to the 12 numbered phases of housing zone construction. This needs to be clarified and an appropriate amendment made to the proposed wording in the application.

2. The conditions are there for a reason, and they should not be amended unnecessarily at the whim of the developer.

Condition 24 of HPK/2017/0694, and condition 14 of HPK/2017/0247 (which is also relevant, as explained in point 1 above), were introduced for specific reasons. As the appointed planning officer in relation to all relevant applications, you indicated that these arrangements were required to ease the burden of parking on Macclesfield Road.

The wording of condition 24 for HPK/2017/0694 states that it is required in the interests of “highways safety” (regardless of any separate position of DCC Highways now or previously). These highways issues already exist: parking was already at a premium on and around Macclesfield Road, even prior to the occupation of dwellings on the development site. To allow the developer to delay in providing these crucial additional parking spaces (the direct effect of this proposed variation) would cut across this legitimate and important planning objective.

The wording of condition 14 of HPK/2017/0247 was also rooted in sound planning objectives which were aligned with Local Plan Policy EQ6. The proposed change of plan within this application will therefore lead to further harm in this regard.

The applicant has made this proposal to vary the conditions with a justification based only on an unsubstantiated claim that “it is impossible from a Health and Safety aspect”. I would have expected that detailed investigations should have been made into options which would have allowed construction to continue, as approved, in a safe way. The absence of this expert input suggests that no meaningful investigations have been made, and that the unjustified proposal is therefore based solely on the developer’s preference and commercial interests. Furthermore, no regard has been taken in the application of the adverse impact of this proposed variation on those whom the original conditions were intended to benefit and protect.

These omissions alone are sufficient justification to refuse this application in its current form when the appropriate assessment of planning balance is made.

3. This variation is not necessary (other than to deal with the ongoing breach in relation to occupancy).

The requirements of condition 24 were not impossible to fulfil at the point that planning permission was passed. If they were, then the developer should not have proposed them to secure permission in the first place, and HPBC should never have approved them!

It seems perfectly possible for the developer to have situated its site compound in a location whereby it could be made safe and secured from the route of the road leading to the NE corner of the site, using fencing and gates. This would have allowed the road to be constructed according to the approved phasing (immediately following completion of the roads and sewers in the NW field), and opened as planned to provide access to the residents' parking spaces at an early stage (prior to any occupation). The developer made a choice not to do this, and has instead spent many months working within the SE and NE fields without focusing on the agreed objectives.

It is still not too late to require the developer to operate within its original permission regarding condition 24 (albeit with an appropriate amendment to acknowledge the current breach in relation to unapproved occupation). The developer can locate its site office and works compound anywhere else in the NE or SE fields, behind secure fencing as described above. Any works vehicle movements on or across the road to the parking spaces can take place perfectly safely while it is open, with use of chaperones: as previously demonstrated on the Midshires Way, and as is already necessary for similar movements on Linglongs Road or the new estate road in the NW field.

4. This proposed amendment by the developer is not reasonable.

There is no guarantee of when the "final phase" (however it is defined) will be completed, if ever! The specifics of the applicant's proposed amendment are therefore open to future abuse by the developer. Assuming that the "final phase" reference is to the 12th zone of housing construction, the applicant's proposed wording would allow them to construct and occupy 11 of the 12 housing zones/phases (90 of the 107 dwellings) without the parking being in place, then defer the construction and/or occupation of the final 17 dwellings indefinitely according to their own whims and commercial interests!

However, the highways safety issue, which condition 24 in its original form was introduced to mitigate, is current and ongoing, exacerbated by the unauthorised occupation of new properties. The objectives of Local Plan Policy EQ6 are still applicable and being ignored. Mitigation should have been provided months ago, and needs to be implemented and made operational urgently – as soon as practicable – not merely deferred to some arbitrary time in the future.

I also note that, if the “final phase” reference is indeed to the 12 numbered zones of housing construction, the applicant’s proposed wording goes further even than their own unjustified position in their supporting letter. They indicate in their letter that it will be possible to construct the parking spaces and provide safe access after the completion of “circa 80 dwellings”, not the 90 dwellings that would actually be completed within the first 11 phases of housing.

And finally, if it is genuinely the case that there are health and safety constraints associated with the agreed phasing which cannot be mitigated, an alternative solution would be to re-order the phasing to complete the development in the NE field prior to the SE field, to expedite the provision of the agreed parking spaces.

5. Given a technical variation is necessary to deal with the ongoing material breach of permission, this should be effected with a specified correction to errors in the current signage proposal.

Obviously a technical variation to the existing permission is required. It isn’t reasonable for those occupants who have been allowed by the developer to occupy the new properties, in breach of the approved permission, to be evicted!

Condition 24 requires the creation of “dedicated car parking provision to serve residents along Macclesfield Road”. I note that the associated signage wording has been submitted and approved pursuant to the discharge of condition 14 of HPK/2017/0247. This wording erroneously states that the parking is for ‘visitors’ of Macclesfield Road residents, and that parking should be limited to a maximum of 24 hours in duration. This approved signage clearly fails to reflect the intention of condition 24, as it does not actually ‘serve’ the residents of Macclesfield Road to a satisfactory degree. It is perfectly reasonable that residents of Macclesfield Road and their visitors might need to leave a car parked for longer than 24 hours.

The signage wording should therefore be amended to something more appropriate alongside this technical variation. It must be made clear that the parking is intended for use by residents of Macclesfield Road, not just by their visitors, and allow a more sensible and reasonable maximum duration of stay (e.g. 14 days) to provide the intended value and avoid introducing new highways safety issues through unnecessary vehicle movements.

In the meantime, given that this clear ongoing breach has been identified, I suggest that the developer should be immediately compelled to continue their overdue work on the construction of the parking spaces and access road in the NE field, according to the agreed conditions currently in place. There is no impediment (related to health and safety or anything else) to this work being progressed to completion at the current time.

6. To approve this application would be disproportionately detrimental to nearby residents, given the way the affected area is being used, and how it would continue to be used during the remainder of the period of construction.

The condition in its existing form, had the developer complied with its requirements, would have meant that the area in question (to the rear of 74-84 Macclesfield Road)

would now be set aside for residents' parking, with an associated access road for domestic access to the parking spaces. It would likely be causing little disturbance to existing residents on Macclesfield Road, apart from very occasional domestic vehicle movements associated with the new parking spaces. The effective boundary of the construction area would now be at the opposite side of the new road and pavement, at least approximately 18 metres away from the rear boundaries of Macclesfield Road residences. Instead, this area is still being actively used for construction work, with movements of heavy plant, and the dumping, storage and utilization of heaps of building materials, in close proximity to the dwellings on Macclesfield Road. To approve the proposed variation of this condition would enable the developer to continue with this ongoing nearby disturbance (in breach), for an unspecified future period, when it should already have finished (according to the protections put in place alongside the original permission). This is unacceptable and unreasonable on the basis of its detrimental impact on privacy and amenity.

19.12.22

Public consultations only work if it can be clearly seen that decisions taken have practical and technical credibility. In the case of these conditions I can see no reason why the original condition was not satisfied in the first place it was simply a matter of phasing the works correctly to satisfy the condition. This did not happen so I would have thought it was then incumbent on the contractor to meet with local residents to explain the reasons why and to try to mitigate that loss.

This would have also given all parties an opportunity to find a satisfactory long term solution to the parking and safety issues on Macclesfield road.

As I have said previously these conditions greatly affect my future so I am happy to meet with anyone to discuss (technical proposals) at any time.

Objections (2):

"I do not accept that any part of the above condition should have been changed or rescinded.

Insofar as my comments below are relevant to the latest application HPK/2023/0323, please treat these comments as an objection to this application. For the reasons outlined in my messages below, I am not persuaded that it is impossible to provide the parking spaces and associated access now, using some access route via completed estate roads, while construction work is continuing safely in nearby areas - securely separated by appropriate fencing.

Furthermore, it is unclear why plots in Zone 11 (as shown on plan 466/ED/76 Rev H) need to be occupied in order for safe access to the parking spaces to be provided, as suggested by the applicant.

Finally, I would like to reiterate my point 5 below, and note that the applicant has not taken this opportunity to request any correction to the erroneous signage wording for this parking area - please could you work with the applicant to ensure that this is done".

Support (0):

None.

HPK/2023/0323 (Variation of condition 14 attached to planning permission HPK/2017/0247)

Consultee	Response	Report Section
County Highways	No comments	Refer to Other Matters Section
15.08.23 There are no objections to the variation of condition 14 included in the consent for application reference HPK/2017/0247 as stated in the application and supporting information.		

Public Comments

HPK/2023/0323

Whaley Bridge Matters

HPK/2022/0495 & HPK/2023/0323:

12.04.24

“This email should be read alongside our earlier comments on these applications. The two applications are closely related. They are the applicant's attempt to vary conditions to 'move the goalposts' and make what has been an on-going planning breach 'go away'. High Peak Borough Council have sat on the original application dealing with this (HPK/2022/0495) for a ridiculous amount of time. If this had been an application that the applicant actually wanted to be determined then there is no way that such a delay would have been tolerated.

As it is the applicant only made the application because HPBC told them to - and, as HPBC allowed them to continue to breach until such time as the planning application was determined the applicant was hardly likely to push for determination. We are disgusted with the behaviour of HPBC in this matter.

We strongly believe that both applications should be refused. The applicant should be held to the original conditions as imposed by the development control committee. The parking spaces should be provided without any further delay. The applicant has already had over 18 months to get its house in order and facilitate access to the spaces. It has chosen, instead, to focus efforts on continuing to develop the field adjoining the Taxal Lodge boundary - presumably because lots of the more expensive houses are found there. The 'phasing' could easily have been altered to

expedite the building of houses adjacent to the car-parking spaces and/or the site could have been managed using fencing to make sure that construction was kept safe and separate. It has been the applicant's choice not to do these things to date. The committee should hold them to the provisions that they imposed - the residents of Macclesfield Road who have already been massively detrimentally affected by the building works deserve this at the very least.

On a wider point, the wording of the proposed amendment of the relevant conditions is of grave concern to us. The amendments state that car-parking will be provided 'following the completion of Zone 11'. The word 'completion' is ambiguous. Clearer wording is required. This ambiguity is shown in Emery Planning's supporting letter where, after setting out the proposed revised wording they state that Zone 11 will only be completed once all the residences in Zone 11 'are occupied'. If the word 'completion' is sufficiently ambiguous that it could be taken to include 'occupation' then the revised wording needs to be changed.

It is not appropriate for provision of the spaces to only be required following occupation of what are otherwise 'completed' dwellings. Such an approach could lead to unreasonable and unnecessary additional delay to what is already a sub-optimal position. The proposed variation should be amended to make absolutely clear that the spaces should be provided as soon as construction works in Zone 11 are completed. The only reason the applicant has given for not providing the spaces in line with their own original conditions is one of health and safety. Any health and safety issues are removed once construction is complete. There is no need to wait for occupation. Taking an extreme view - if 'completion' means 'occupation' (Emery Planning seem to think that it does) then you could have a situation where one of the flats in Zone 11 is not occupied (for whatever reason) - the applicant could use this vacant unit to justify further delay in providing access to the parking spaces - and would be acting within the revised condition wording in doing so. OR, what if the housing market takes a dip - one of the houses is struggling to sell - again, the current proposed revised wording would potentially allow the applicant to continue to deny residents access to the parking until the market picked up and they managed to sell the house. It is clearly not right and the wording needs to be clarified and made tighter before it is put to committee.

The above point is, of course, without prejudice to our primary position that these applications should be refused (even if the wording is tweaked as we suggest)".

Neither (1)

“Condition 14

All construction work is carried out to a “construction programme”. Prior to that a “procurement programme” is drawn up which times the arrival of labour and materials on site to carry out a particular part of the works or “activity” at a particular time. Both these programmes carry “critical activity” times and “bench mark” dates the “schedule of works” identifies the content and order of the works. All these documents are well known in the industry and are “enmeshed” and reviewed by senior management on a regular basis. The date for occupation of the “dedicated parking” was a “bench mark” date. It is highly unlikely that this date was overlooked or forgotten... it is a fundamental part of the process.

DISABLED DISCRIMINATION ACT COMPLIANCE

Part M of the Building regulation requires new construction works to be accessible to disabled people. Where new works interface with the existing then it is normal practise to upgrade the existing to reflect the need and new demand to the latest standards. The only caveat to that is where it is physically impossible to do so. For example it is not, in my view, unreasonable to assume that a partially sighted or physically disadvantaged person should be able to travel alone (by choice in safety from the new "social" dwellings to the new "tactile paving" installed at the "Midshires Way" pedestrian crossing point to the latest D.D.A standards.

PEDESTRIAN SAFETY

The increased road traffic on Macclesfield road generated by the new development has undoubtedly made Macclesfield Road more hazardous for local residents. The original permission given by the authority was on the basis of a "unilateral undertaking" to ... improve safety on Macclesfield Road? Until I (with local residents) can establish what exactly was intended by "Gladman" and how this was interpreted by the authority I would respectfully ask for all matters pertaining to be deferred.

ACCESS TO RESIDENT "DEDICATED" PARKING

I do not accept current access proposal to the dedicated parking is safe or fair and reasonable. Again I would respectfully ask if matters could be deferred until I am able to establish a consensus with the local residents.

MIDSHIRES WAY

Once again I would respectfully ask for matters to be deferred until I am able to establish with local walking groups and relevant parties that the path is a safe access for all who are required to use it and any who may use it for leisure purposes".

Objections (2)

30.08.23

I do not accept that any part of the above condition should have been changed or rescinded.

I submitted comments on related planning application HPK/2022/0495, as copied below, in December 2022 and February 2023, and note that over the intervening period of more than 6 months you have not been able to progress that application to its Committee consideration or determination.

Insofar as my comments below are relevant to the latest application HPK/2023/0323, please treat these comments as an objection to this application. For the reasons outlined in my messages below, I am not persuaded that it is impossible to provide the parking spaces and associated access now, using some access route via completed estate roads, while construction work is continuing safely in nearby areas - securely separated by appropriate fencing. Furthermore, it is unclear why plots in Zone 11 (as shown on plan 466/ED/76 Rev H) need to be occupied in order for safe

access to the parking spaces to be provided, as suggested by the applicant. Finally, I would like to reiterate my point 5 below, and note that the applicant has not taken this opportunity to request any correction to the erroneous signage wording for this parking area - please could you work with the applicant to ensure that this is done.

07.02.23

I am following up on my previous submission copied below to add one further point of objection, to be taken into account in your consideration of this application to vary condition 24 of HPK/2017/0694 at Linglongs Road in Whaley Bridge.

2. To approve this application would be disproportionately detrimental to nearby residents, given the way the affected area is being used, and how it would continue to be used during the remainder of the period of construction.

The condition in its existing form, had the developer complied with its requirements, would have meant that the area in question (to the rear of 74-84 Macclesfield Road) would now be set aside for residents' parking, with an associated access road for domestic access to the parking spaces. It would likely be causing little disturbance to existing residents on Macclesfield Road, apart from very occasional domestic vehicle movements associated with the new parking spaces. The effective boundary of the construction area would now be at the opposite side of the new road and pavement, at least approximately 18 metres away from the rear boundaries of Macclesfield Road residences. Instead, this area is still being actively used for construction work, with movements of heavy plant, and the dumping, storage and utilization of heaps of building materials, in close proximity to the dwellings on Macclesfield Road. To approve the proposed variation of this condition would enable the developer to continue with this ongoing nearby disturbance (in breach), for an unspecified future period, when it should already have finished (according to the protections put in place alongside the original permission). This is unacceptable and unreasonable on the basis of its detrimental impact on privacy and amenity.

Support (0):

None.

7. POLICY AND MATERIAL CONSIDERATIONS AND PLANNING BALANCE

Decision Making Framework

7.1 Section 38(6) requires the Local Planning Authority to determine planning applications in accordance with the development plan, unless there are material considerations which 'indicate otherwise'. Section 70(2) provides that in determining applications the Adopted 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 for the Borough consists of the Adopted High Peak Local Plan dated April 2016.

- 7.2 Achieving sustainable development sits at the heart of the NPPF. Paragraph 8 of the NPPF outlines that achieving sustainable development requires the consideration of three overarching and mutually dependant objectives being: economic, social and environmental where they are to be applied to local circumstances of character, need and opportunity of each area. These objectives are interdependent and should be pursued in mutually supportive ways and comprise;
- a) an economic objective – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;
 - b) a social objective – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of the present and future generations; and by fostering well designed, beautiful and and safe places, with accessible services and open spaces that reflect current and future needs and support communities’ health, social and cultural well being; and,
 - c) an environmental objective – to protect and enhance our natural, built and historic environment; including making the effective use of land, improving biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.
- 7.3 LP (Local Plan) Policy S1a establishes a presumption in favour of sustainable development as contained within NPPF paragraph 11. It requires decision makers to apply a presumption in favour of sustainable development. For decision makers this means that when considering development proposals which accord with the development plan they should be approved without delay or where the development plan is absent, silent or relevant policies are out of date, grant planning permission unless:-
- I. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
 - II. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
- 7.4 On 23rd June 2022, the Council Executive agreed High Peak Local Plan Policies S3 ‘Strategic Housing Development’, S4 ‘Maintaining and enhancing an economic base’ and Policy H4 ‘Affordable Housing’ were deemed out of date for development management purposes, meaning less weight can be given to them when determining planning applications. For the avoidance of doubt, all other polices within the High Peak Local Plan should continue to be

given full weight until further notice. New evidence informing the Local Plan review is also available.

- 7.5 The purpose of this report is to advise Members on the proposed changes to the timings of the operational (availability) trigger in relation to the provision of dedicated parking for those residents along Macclesfield Road as proposed by the applicant as sought by the applicant to regularise the current breach of the relevant consents.

Background

- 7.6 For the land off Linglongs residential site, outline planning permission ref. HPK/2014/0119 for 107 dwellings was granted on the 7th May 2015 and latterly amended through planning permission ref. HPK/2017/0694 in relation to the variation of planning conditions 05, 24 and 31 of the outline consent as approved on the 3rd October 2018. The reserved matters consent ref. HPK/2017/0247 for 107 dwellings and associated works was also approved on the 3rd October 2018.

- 7.7 Condition 24 of the outline consent states:

24. Prior to the commencement of development a scheme to provide dedicated car parking provision to serve residents along Macclesfield Road shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include the location, number of parking spaces and the finished surface details. Thereafter the approved details shall be made available for use prior to the occupation of the development in any phase hereby approved and retained solely for the parking of vehicles.

Reason:- To ensure that adequate provision is made for parking within the site in the interests of highway safety, in accordance with Policy CF6 of the High Peak Local Plan 2016 and the National Planning Policy Framework.

- 7.8 For condition 24, the dedicated parking provision scheme was approved by the Council on the 13th March 2020 under condition discharge application ref. DOC/2017/0071 and approved plan refs. 466-ED-CMS2 Rev E and 466/P/HLL/01.

- 7.9 Condition 14 of the reserved matters consent ref. HPK/2017/0247 requires:

14. Within 6 months of the commencement of works, a scheme for the signage, management arrangements and timetable for installation of the car parking spaces to the north eastern boundary (to the rear of 74-84 Macclesfield Road) as shown on plan ref 466/P/PL/01 Rev Q shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the car parking spaces shall be installed in accordance with the approved timetable and managed in accordance with the approved details.

Reason:- To safeguard the privacy of the occupants of adjacent properties, in accordance with Policy EQ6 of the High Peak Local Plan 2016 and the National Planning Policy Framework.

- 7.10 For condition 14, the scheme for the signage, management arrangements and timetable for the installation of the car parking spaces was approved by the Council on the 10th October 2018 under condition discharge application ref. DOC/2018/0110 in relation to approved drawing refs: 466/ED/CMS2 Rev E, 466/P/MP01 Rev E, 466/P/HLL/01 Rev J, Landscape Management Schedule – Rev D and 466//P/PL/01 Rev A1. In these regards, Condition 24 of the outline consent requires the approved car parking area to be made available for use prior to the occupation of the development in any phase.
- 7.11 An enforcement complaint was received by the Council stating that properties were being occupied without the parking provision having been made available in accordance with condition 24 above. On the 27th September 2022, the applicant was contacted by the Council advising them that an alleged breach of condition 24 of planning permission HPK/2017/0694 had occurred.
- 7.12 Subsequently, the applicant responded as follows: “Whilst Barratt Homes are fully committed to providing the parking for the existing residents, it has now become clear that due to the location of the parking bays and approved phasing, it is impossible from a Health and Safety aspect to allow safe access for members of the public through the construction site/zone to access the parking bays when constructed.”
- 7.13 On this basis, an application has been submitted ref. HPK/2022/0495 to vary condition 24 of the outline consent to allow the parking to be provided prior to the first occupation of the final phase of the development. In addition, to the variation of condition 24 of the outline consent, the applicant is also required to vary condition 14 of the reserved matters consent in order to amend the ‘approved timetable’ for the provision of residents parking scheme.
- 7.14 Accordingly, the following applications are currently under consideration by the Council:
- HPK/2022/0495: Variation of conditions 04 and 24 in relation to HPK/2017/0694
 - HPK/2023/0323: Variation of condition 14 attached to planning permission HPK/2017/0247
- 7.15 In addition, Condition 4 of the outline consent states:

04. Prior to commencement of development a scheme outlining the phasing of development, including a site layout plan identifying land uses such as formal and informal open space and infrastructure, in general accordance with the details set out on the Development Framework Plan drawing no. 466/P/DF/01 Rev C, shall be submitted to and approved in writing by the Local Planning Authority. In particular the layout shall provide for the retention of the existing trees on the site where this is justified. The development shall be carried out in accordance with the approved phasing scheme.

Reason:- To secure the programming and phasing of, and an orderly pattern to the development, in accordance with Policies EQ6 of the High Peak Local Plan 2016 and the National Planning Policy Framework.

- 7.16 Consequently, the consideration of application ref. HPK/2022/0495 to vary condition 24 of the outline consent, would also require a variation of condition 04 to reflect the proposed changes to the approved phasing scheme.
- 7.17 Accordingly, a revised description of development has been submitted for application ref. HPK/2022/0495, along with the latest phasing plan which shows the location of the resident parking provision relative to the proposed phases of the proposed residential build out at the Linglongs site.

Procedural

- 7.18 The Planning Practice Guidance (PPG) sets out guidance in relation to amending the conditions attached to a permission (an application under Section 73 of the Town and Country Planning Act 1990) as follows:
- 7.19 An application made under section 73 of the Town and Country Planning Act 1990 can be used to make a material amendment by varying or removing conditions associated with a planning permission. There is no statutory limit on the degree of change permissible to conditions under s73, but the change must only relate to conditions and not to the operative part of the permission.
- 7.20 Provisions relating to statutory consultation and publicity do not apply. However, local planning authorities have discretion to consider whether the scale or nature of the change warrants consultation, in which case the authority can choose how to inform interested parties.
- 7.21 Planning permission cannot be granted under section 73 to extend the time limit within which a development must be started or an application for approval of reserved matters must be made. Section 73 cannot be used to change the description of the development.
- 7.22 Permission granted under section 73 takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or amended conditions. The new permission sits alongside the original permission, which remains intact and unamended. It is open to the applicant to decide whether to implement the new permission or the one originally granted.
- 7.23 A decision notice describing the new permission should clearly express that it is made under section 73. It should set out all of the conditions imposed on the new permission, and, for the purpose of clarity restate the conditions imposed on earlier permissions that continue to have effect.
- 7.24 As a section 73 application cannot be used to vary the time limit for implementation, this condition must remain unchanged from the original permission. If the original permission was subject to a planning obligation then this may need to be the subject of a deed of variation.

7.25 A section 73 application is considered to be a new application for planning permission under the 2017 Environmental Impact Assessment (EIA) Regulations. An Environmental Statement must be submitted with a section 73 application for an EIA development. An EIA is not considered to be necessary for the submissions.

Dedicated Residents (Macclesfield Road) Parking Scheme

7.26 Overarching Condition 24 of the outline consent requires the provision of dedicated car parking provision to serve residents along Macclesfield Road in accordance with the approved scheme for use prior to the occupation of the development in any phase. It was imposed to ensure adequate provision was made for parking within the site to alleviate on street vehicle parking on Macclesfield Road, in the interests of highway safety and in accordance with LP Policy CF6 and the NPPF.

7.27 In these regards, LP Policy CF6 'Accessibility and Transport' seeks to ensure new development can be safely accessed in a sustainable manner and minimise the need to travel, particularly by unsustainable modes. Of relevance, it aims to ensure that all new development would not lead to an increase in on street parking to the detriment of the free and safe flow of traffic.

7.28 Of relevance, NPPF paragraph 115 advises: "Development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe".

7.29 The applicant has set out their reasoning for the proposed alteration to relevant condition wording summarised as follows:

"Whilst Barratt Homes is fully committed to providing the parking for the existing residents, it has now become clear that due to the location of the parking bays and approved phasing, it is impossible from a Health and Safety aspect to allow safe access for members of the public through the construction site/zone to access the parking bays when constructed. The location of the bays dictates that circa 80 dwellings would need to be completed prior to occupation of the first dwelling in order to comply with the condition.

Preventing occupation of a significant number of dwellings due to limited access to a small number of parking bays is not necessary to make the proposed development acceptable in planning terms.

The revised wording would reflect that proposed for condition 14 of the reserved matters consent and refers to completion of Zone 11, rather than its occupation. The word 'completion' is already present within the decision notices for the consents and can be taken on its natural and ordinary meaning. Therefore, in our opinion further definition is not required.

We would also reiterate that the main purpose of the proposed amendments is to ensure the residents of Macclesfield Road can safely access the parking. The changes allow for construction works to be safely completed and access to the parking spaces provided at the same time that the dwellings in Zone 11 are completed and safe to pass through.

For clarity, the number of parking spaces and their location will remain as previously approved. It is only the timetable for implementation which is proposed to be amended. Once plots in Zone 11 as shown on plan 466/ED/76 Rev J are occupied, the parking bays will be safe to open to the existing residents on Macclesfield Road”.

7.30 By means of an update, the applicant has recently confirmed that the dedicated parking spaces for the residents of Macclesfield Road has now been constructed and will be made open and accessible to the public from the 1st July 2024 (or earlier) following the completion of all plots within Zone 11. Accordingly, and to ensure the operational trigger is robust, a time clause amendment to the relevant condition is recommended.

7.31 In these circumstances, the relevant condition wording should be amended to secure appropriate management of the dedicated Macclesfield Road residents parking area to prevent inappropriate car parking, including a scheme of security collapsible bollards and improved signage as per the amendments below.

7.32 Consequently, for planning application ref. HPK/2022/0495, officers recommend the wording of Conditions 04 and 24 in relation to ref. HPK/2017/0694 should be varied as follows:

Condition 04

The proposed development shall be carried out in accordance with the approved phasing scheme as shown on plan refs. 466-ED-CMS1 Plan 1 Rev C (Construction Method Statement), 466/ED/76 Rev H (Site Execution Plan) and in general accordance with the details set out on the Development Framework Plan ref. 466/P/DF/01 Rev C. In particular, the layout shall provide for the retention of the existing trees on the site where this is justified.

Reason:- To secure the programming and phasing of, and an orderly pattern to the development, in accordance with Policies EQ6 of the High Peak Local Plan 2016 and the National Planning Policy Framework.

7.33 In relation to Condition 04 above, the Site Execution Plan ref. 466/ED/76 Rev H, confirms the internal estate road accessing the residents parking area would be delivered as a Phase 2 release (with road phases 3 and 4 to follow on) within the wider scheme. Whilst the Construction Method Statement ref. 466-ED-CMS1 Plan 1 Rev C shows the Phase 2 roads and sewers to be delivered in conjunction with the Macclesfield Road residents dedicated parking area.

Condition 24

The proposed dedicated car parking provision to serve residents along Macclesfield Road shall be carried out in accordance with plan refs 466-ED-CMS2 Rev E and 466/P/HLL/01 Rev J. The approved car parking provision shall be made available for use by the 31st July 2024 and retained solely for the parking of vehicles.

Reason:- To ensure that adequate provision is made for parking within the site in the interests of highway safety, in accordance with Policy CF6 of the High Peak Local Plan 2016 and the National Planning Policy Framework.

7.34 Following recent complaints received, it is understood that the parking area appears to be accessible and is being utilised for vehicle parking by occupants of the new residential estate. The applicant has been contacted for comment and Members are directed to the Updates Report in these regards.

7.35 Consequently, for planning application ref. HPK/2023/0323, officers recommend the wording of Condition 14 in relation to ref. HPK/2017/0247 be varied as follows:

Within one month of the date of the decision, a detailed scheme for the signage, security collapsible bollards and management arrangements for the proposed dedicated car parking provision to serve residents along Macclesfield Road as secured by Condition 24 of planning permission ref. HPK/2022/0495 (and in accordance with the principles established by plan refs. 466/ED/CMS2 Rev E 466/ED/76 Rev J, 466/P/MP01 Rev E, 466/P/HLL/01 Rev J, Landscape Management Schedule – Rev D and 466//P/PL/01 Rev A1) shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented within 3 months of the date of the decision and thereafter maintained in accordance with the approved details.

Reason:- To safeguard the privacy of the occupants of adjacent properties and to ensure that adequate provision is made for parking within the site in the interests of highway safety, in accordance with Policies EQ6 and CF6 of the High Peak Local Plan 2016 and the National Planning Policy Framework.

7.36 Notwithstanding no objections raised from County Highways to the proposed amendments, the above conditions, as would be varied, are considered to be appropriate, particularly given the construction stage and occupation level of the residential development scheme to meet with relevant local and national planning policy, as well as satisfying 3rd party concerns in relation to trigger points and the inappropriate use of the dedicated car parking.

7.37 The amended wording for these conditions would meet the tests identified at paragraph 56 of the NPPF, being necessary, relevant to planning, enforceable, precise and reasonable.

Other Matters

7.38 A Deed of Variation (DoV) would be required for the s.73 application ref. HPK/2022/0495 to bind the original s106 legal agreement as varied to the new consent if Members are minded to approve the scheme proposals.

7.39 In relation to the formal complaint, which has been referred to in the objections from local residents, this was pursued through the Council's internal complaints procedure and thereafter referred to the Ombudsman. The Ombudsman's decision concluded as follows: *"Mr X complained the Council failed to take planning enforcement action against a developer who was in breach of planning conditions. The planning decision making process to consider a variation of a planning condition is ongoing. We did not investigate further because we were unlikely to find fault, recommend a remedy or any other meaningful outcome"*.

7.40 With regard to 3rd party comments received in respect of the Disability Discrimination Act (DDA) and the Midshires Way Crossing point, the application is seeking to alter the operational trigger of the Macclesfield Road dedicated residents parking area and does not propose any further amendments in relation to the wider residential estate as consented. Therefore these comments are not material to the decision in hand.

8. PLANNING BALANCE AND CONCLUSIONS

8.1 In conclusion, the development proposals accord with the provisions of the development plan as a whole, relevant supplementary planning documents / guidance as well as the National Planning Policy Framework and should be approved.

9. RECOMMENDATIONS

A. That approval be GRANTED subject to:

HPK/2022/0495:

- 1. A Deed of Variation to the Existing Section 106 Undertaking attached to outline consent ref. HPK/2014/0119 to reference the new consent,**
- 2. Repetition of the same conditions attached to outline consent HPK/2017/0694, however positively worded where appropriate and excluding time limits, and,**
- 3. Amendment to conditions 04 and 24 of outline consent HPK/2017/0694 as outlined.**

HPK/2023/0323:

- 4. Amendment to conditions 14 of reserved matters consent HPK/2017/0247 as outlined, and,**

5. Repetition of the same conditions attached to outline consent HPK/2017/0247, however positively worded where appropriate and excluding time limits.

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 Development Control Committee, provided that the changes do not exceed the substantive nature of the Committee's decision.

Site Plan

