1. **Reason for the Report:** To inform members of appeals lodged and decided since the last meeting of the Development Control Committee.

2. **Recommendation**
   
   2.1 That the report be noted.

3. **APPEALS LODGED**
   
   None

4. **APPEAL DECISIONS RECEIVED**

   **Application No.** HPK/2016/0589

   **Location:** Land between 11 & 13 Small Knowle End, Peak Dale, Derbyshire

   **Proposal:** construction of two new houses with associated car parking & landscaping

   **Level and Date of Decision:** Delegated 19th January 2017

   **Recommendation:** Refusal
**Decision**: Refused

**Appeal Decision and Date**: Appeal Allowed 22\textsuperscript{nd} September 2017

**Method of Decision**: Written Representations

**Main Issues**: 

- Whether the site represents a suitable site for new housing having regard to policies for housing in the open countryside; and
- The effect of the proposal on the living conditions of nearby residents with particular regard to privacy.

**Conclusions**: 

The Inspector concluded:

- The site was previously occupied by two houses. No indication has been given as to when these were demolished, but whilst some of the site is overgrown with vegetation, the foundations and hardstanding of the previous houses are clearly visible on the site. The Council’s evidence indicates that in the recent past the site was more overgrown, and the remains of the previous use less obvious, but I understand that since then the appellant has cleared some of the undergrowth that has enabled the remains to be seen more clearly. Given this, based on what I saw at my site visit, the remains of the former houses have not blended into the landscape over the time since they were demolished. In the light of this, I consider that the site would accord with the definition of previously developed land given in Annex 2 of the National Planning Policy Framework (the Framework).

- Therefore, I consider that as the proposal would represent the redevelopment of a previously developed site, which would not have an adverse impact on the character and appearance of the countryside, it would accord with Policy EQ3 of the HLP.

- The gable of No 10 facing the site contains no windows and so the proposal would not cause any loss of privacy to rooms within this house, and I observed that the provision of adequate boundary treatment to the proposed gardens would prevent any overlooking of the rear gardens of the adjacent terrace from these gardens. Whilst it is likely that some views of the adjacent rear gardens would be possible from the first floor windows in the rear elevation of the house closest to No 13, this would be no greater than that which already occurs from the windows in the rear elevations of No 13 -16. Consequently, I am satisfied that the proposal would not result in any unacceptable increase in the overlooking of the rear gardens of the adjacent terrace.

**Application No.** HPK/2017/0040
Location: Nut Farm Cottage, Highgate Road, Hayfield, Derbyshire, SK22 2JL.

Proposal: a proposed detached dwelling and new vehicular access

Level and Date of Decision: Delegated – 23rd March 2017

Recommendation: Refusal

Decision: Refused

Appeal Decision and Date: Appeal Dismissed 3rd October 2017

Method of Decision: Written Representations

Main Issues:

- The character and appearance of the countryside including the setting of the adjacent Hayfield Conservation Area; and
- The living conditions of nearby residents with particular regard to privacy.

Conclusions:

The Inspector concluded:

- The proposed development of the site would erode its open nature, and the contribution it makes to the setting of the conservation area. In addition, the dwelling and the large parking/turning area to the side would result in a significant and adverse change in the appearance of the site from a natural open green space with a rural character, to a much more urban environment, even if the parking area was to be landscaped. This would be to the detriment of the more rural character of this part of Highgate Road.
- Whilst the flat green roof design would help to maintain views of Nut Farm Cottage from Kinder Road, it would be out of keeping with the built form of the village which is dominated by houses with pitched roofs.
- In addition, the semi-subterranean nature of the dwelling, with very limited windows to Highgate Road would also be alien to the locality, as although many houses are adapted in various ways to their hillside locations, they do this in ways that mean they still make a positive contribution to the street scene, rather than trying to hide from it. Moreover, although the dwelling would use traditional materials, the extensive area of glazing on the rear elevation, which would be visible in views from Kinder Road, would not respect the solid to void ratio found on properties within the vicinity. As such the dwelling would appear as an incongruous feature within the area.
- Given this, my own observations of what can be seen from the site of neighbouring properties, and the evidence on the site sections plan which shows that no line of sight to the existing properties would be possible from either the proposed windows or the roof terrace, I am satisfied that no significant overlooking would result from the proposed dwelling.

**Application No.** HPK/2016/0414

**Location:** 17 Marple Road, Charlesworth, Derbyshire, SK13 5DA.

**Proposal:** erection of 1 no. detached dwelling and associated works including new vehicular access

**Level and Date of Decision:** Delegated 28th April 2017

**Recommendation:** Refusal

**Decision:** Refused

**Appeal Decision and Date:** Appeal Dismissed 4th October 2017

**Method of Decision:** Written Representations

**Main Issues:**

- Whether or not the proposed development would preserve or enhance the character or appearance of Charlesworth Conservation Area and the surrounding countryside, and whether in the light of this the proposal would represent a sustainable form of development;

**Conclusions:**

The Inspector concluded:

- The dwelling would have a considerable scale and mass. Although the eaves height is lower than on some houses, the overall height of the building would be 2m higher than No 17, and with the difference in levels the rear section would appear significantly higher than this. I accept that due to the hillside location, adjacent properties are often higher than the previous one, but observed that the difference is their respective heights is generally quite limited. This would not be the case here, and as a result the proposal would have uncharacteristically dominant relationship with the host property.
- The significant height of the building, together with its overall mass and bulk, which due to its split nature would include 2 gables facing the road, would make the dwelling an unduly prominent building within the street scene, despite the methods used to try and reduce its impact. I accept that there are both 2 and 3 storey buildings...
within the conservation area, but the mass and bulk of these buildings is generally much less than proposed here, and so they do not appear to have the same overbearing impact on the street scene, as the proposal would. Moreover, the limited number of windows within the gables facing the road would present a somewhat ‘dead’ frontage to the street that would be out of keeping with the general pattern of development in the area.

- The appeal scheme would erode the open nature of the site, and the proposed dwelling and parking area to the front would result in a significant adverse change in the appearance of the site from an open green space, to a much more urban environment, even if there would be some planting to the front of the site. The distance the house, and particularly the higher rear section, would be set back from the road, would restrict the views of it. However, when approaching the village, it would still be visible from a considerable stretch of Marple Road, even if views of it from within the conservation area itself would be limited. In the views along Marple Road the considerable scale and mass of the dwelling would detract from, and be detrimental to, the open and more rural setting of this entrance to the conservation area.

Application No. HPK/2015/0436

Location: Land at Hogs Yard, Buxton Road, Whaley Bridge, High Peak SK23 7LY.

Proposal: residential development comprising 23 apartments with associated works to include car parking

Level and Date of Decision: Committee 29th July 2015

Recommendation: Refusal

Decision: Refused

Appeal Decision and Date: Appeal Dismissed 19th October 2017

Method of Decision: Hearing.

Main Issues:

- The effect of the proposed development on the character and appearance of the area; and
- Whether or not the proposed development would provide adequate living conditions for future occupiers with particular regard to private outdoor space and outlook.

Conclusions:
The Inspector concluded:

- the height, scale and mass of the proposed apartment blocks would be such that they would be totally out of keeping with the general character and form of residential development within the town. Although a busy transport corridor into and out of the town, the limited visibility of the existing Tesco store and the industrial estate, the sporadic nature of residential development along it, and the heavy tree cover in the area, give it an attractive green character. The dominant nature of the blocks, especially as seen from the adjacent towpath, and the density of the residential development proposed on the site, would be in marked contrast to this.

- the regular pattern of the fenestration, the horizontal emphasis of many of the windows, and the glazed balconies and balustrades, would all contribute to giving the blocks a strong urban character and appearance that would not respect the rural market town context of the site. As a result, and contrary to the guidance in the SPD, the scheme would detract from, rather than contribute to, the local distinctiveness of Whaley Bridge. Although visually the site is separated from the town centre by the canal basin and woodland areas, its close proximity to this and its location within the built up boundaries means, in my view, it should still reflect the local residential character.

- the large amount and layout of parking and turning areas around the blocks, and the limited amount of amenity space, is far more characteristic of a commercial scheme. Not only would this layout be inappropriate for a residential development, but it means that overall the scheme would lack legibility.

- Therefore, I consider that the proposed development would unacceptably harm the character and appearance of the area.

- the majority of the apartments would be provided with little or no private external space.

- The site layout plan does not identify any communal outdoor space for either block. Given the characteristics, outlined above, of the remaining land on the site, I am not persuaded that useable and private communal outdoor space would be able to be provided on the site for future occupiers, especially as much of the site is overlooked from the canal towpath.

- given the difference in levels between the site and the canal and the access road into the wider site, many of the ground floor windows on the rear elevations of the blocks would be in close proximity to steeply sloping embankments. As these windows would generally be the only windows that serve the rooms, the presence of the embankments would have an overbearing impact and dominate the outlook from these rooms.

- Overall, I consider that the proposed development would not provide acceptable living conditions for future occupiers with particular regard to outdoor space and outlook.
Costs Decision:

The Appellant made an application for costs against the Council on the basis that the Council has prevented development that clearly should have been permitted having regard to its accordance with the development plan, national policy and other material considerations, and has made vague, generalised and inaccurate assertions about the impact of the proposal. It is also claimed that the Council has failed to grant a further planning permission for a scheme that is the subject of an extant or recently expired permission where there has been no material change in circumstances, and that they have acted contrary to, or not followed, well established case law. The PPG indicates that, in all such circumstances, costs may be awarded against an authority.

The Inspector concluded:

- Character and appearance and living conditions are proper planning considerations, and both the evidence, and the reason for refusal, set out the policies within the development plan to which the Council considers the scheme would be contrary. Thus, whilst the appellant may not agree with the Council’s conclusion in regard of these matters, it does not mean that the Council have acted unreasonably in coming to a different conclusion.

- the Officer's report sets out why overall the Council considers the scheme would have a detrimental visual impact. I also understand that members of the committee determining the application visited the site before making the decision, and so would have been able to make an assessment for themselves on matters such as the benefits of the scheme with regard to surveillance of the towpath, and the ease of access from the site to the town centre.

- the similarities and differences between the extant and proposed scheme have formed part of the decision making process. The different uses of the two schemes represents a material change in circumstances between them. As such, I do not consider that the Council acted unreasonably in determining the two applications differently.

- Moreover, the appellant’s own evidence clearly indicates that although the site has been allocated within the local plan, and marketed for a considerable period of time, it has not come forward for commercial development, and is unlikely to do so. Case law indicates that when considering a potential fallback position, the decision maker first needs to establish whether the fallback is a material consideration and then the weight that should be given to it. These are matters of judgement for the decision maker which will vary on a case by case basis.

Officer Comment:
This is a very good decision for HPBC and sends a clear message to developers in terms of the standards of design that are required in the Borough. Also it is a further decision where the Inspector has not concluded that the Borough cannot demonstrate a 5 year supply of housing despite representations by the Appellant. The Inspector has again found that the 5 year supply is not determinative in the Appeal.

The appellant and the Council differ over the availability of a deliverable 5 year housing land supply, but have agreed that the issue is not determinative in this case, and so the matter was not discussed in depth at the hearing. I accept that the issue is not critical to the outcome of the appeal. As a windfall site within the town of Whaley Bridge, the principle of residential development would be supported by Policy S3 of the HPLP, but the proposal would still need to show compliance with the other policies outlined above. However, even if I were to conclude that there is a shortfall in the 5 year housing land supply of the scale suggested by the appellant, and that relevant policies for the supply of housing should not be considered up to date, thereby triggering the tilted balance defined by paragraph 14 of the Framework, the adverse impacts of granting permission, I have outlined above would significantly and demonstrably outweigh the benefits. As such, that balance would not indicate that planning permission should be granted. This means it is not necessary to consider the matter of housing land supply further.

Therefore the 5 year supply remains intact and unsuccessfully challenged which means that the Council remains in a strong position in terms of defending future Appeals, the 5 year supply and the Local Plan.

It is also a particularly good outcome for the Council as the Costs application was successfully defended and the Inspector agreed that the Council had acted entirely reasonably in refusing the application.