



WHITE PEAK Planning

Planning Proof of Evidence on behalf of High Peak Borough Council

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Appeal by Mr Garie Bevan against the decision by High Peak Borough Council to refuse to grant outline planning permission for residential development at land at Manchester Road, Tunstead Milton (ref: HPK/2015/0351).

Appeal Ref: APP/H1033/W/16/3147726

November 2016

Ref: 2016.008.002b

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High Peak Borough Council

Land at Manchester Road, Tunstead Milton

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Authorised for and on behalf of White Peak Planning Ltd.

A handwritten signature in black ink, appearing to read 'Rob White', written over a faint, light blue rectangular stamp.

**Rob White
Director**

This report takes into account the particular instructions and requirements of our client. It is not intended for and should not be relied upon by any third party. Any such party relies on this report at their own risk.



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1.0 Introduction and Scope of Evidence

1.1 Professional Background

- 1.1.1 My name is Robert White, I am a Director of White Peak Planning Limited, an independent Planning and Sustainable Development consultancy. I am a full member of the Royal Town Planning Institute (RTPI), a full member of the Institute of Environmental Management and Assessment (IEMA) and a Chartered Environmentalist.
- 1.1.2 I have been asked to provide planning evidence in support of the refusal of High Peak Borough Council (HPBC) to grant planning permission for application HPK/2015/0351.
- 1.1.3 I have been appointed by HPBC following determination of the application. I have therefore, reviewed the application afresh and sought to identify relevant material considerations in order that they can be considered at appeal.
- 1.1.4 The evidence which I have prepared and provided for this appeal (reference APP/H1033/W/16/3147726) is true and has been prepared and given in accordance with appropriate guidance. I confirm that the opinions expressed are my true and professional opinions.

1.2 Scope of Evidence

- 1.2.1 I will consider how the appeal proposals do not accord with Policies C1, H1 and H2 of the Chapel-en-le-Frith Neighbourhood Plan.
- 1.2.2 I will also consider how the appeal proposals do not accord with relevant policies contained in the High Peak Local Plan (2011-31), which was adopted in April 2016 and became part of the development plan following determination of the original planning application.
- 1.2.3 On the basis of the above I will then review the planning balance that needs to be considered in determining the appeal and whether the adverse impacts of allowing the appeal outweigh the benefits.
- 1.2.4 I will provide an up-to-date position on the third reason for refusal which was a lack of planning obligations.
- 1.2.5 Evidence on the Council's up-to-date five year housing land supply position is provided separately within the Proof of Evidence by Mr Massie.

2.0 Background to Planning Decision

2.1 Introduction

- 2.1.1 The planning application subject to this appeal was submitted on 23rd June 2015. It was validated on 30th June 2015 and given application reference HPK/2015/0351. The application was determined by delegated decision on 9th October 2015.
- 2.1.2 The following sections set out the background to the determination of the application, describing the changes to the Development Plan and material considerations from the time of submission in June 2015 to its determination in October 2015.

2.2 Planning Position at the time of Submission

- 2.2.1 The planning application was submitted in June 2015 whilst examination of the High Peak Local Plan was still ongoing, the Chapel Neighbourhood had yet to be 'made' and the Council could not demonstrate a five year supply of housing land (5yr HLS).
- 2.2.2 Examination of the High Peak Local Plan had adjourned while further work was being undertaken by HPBC on its Objectively Assessed Need (OAN) for housing following the publication of the Department for Communities and Local Government (DCLG) 2012-based sub-national household projections. It was proposed through correspondence in March 2015 that this work would be undertaken, considered and consulted upon by the week commencing 3rd August 2015.
- 2.2.3 Examination of the Chapel Neighbourhood Plan was carried out in December 2014 and the Examiner published her report in January 2015. The report recommended several modifications prior to proceeding to a referendum. On 20th April 2015, HPBC issued its Decision Statement on the Chapel Neighbourhood Plan stating that the modifications to the plan had been accepted and a referendum would take place on 16th July 2015.
- 2.2.4 In summary, at the time of submission of the application, the Development Plan was limited to the adopted High Peak Local Plan Saved Policies 2008. The emerging Local Plan and Neighbourhood Plan documents would not be given full weight in the decision making process, due to their stages of preparation and the Council could not demonstrate a 5yr HLS.

2.3 Planning Position at the time of Determination

- 2.3.1 A referendum on the Chapel Neighbourhood Plan was held on 16th July 2015 to decide on the following question:

‘Do you want High Peak Borough Council and the Peak District National Park Authority to use the Neighbourhood Plan for Chapel-en-le-Frith Parish to help it decide planning applications in the neighbourhood area?’

- 2.3.2 Out of 6,919 registered voters in the Neighbourhood Plan area, 2,220 people voted (32.1%), with 2,123 voting in favour of a Yes vote and 95 voting in favour of a No vote.
- 2.3.3 A Decision Statement was published by HPBC on 13th August 2015 [CD 4.11] confirming that the Chapel Neighbourhood Plan had been ‘made’ and forms part of the Development Plan.
- 2.3.4 Following HPBC’s consultation on the revised OAN for housing, an additional examination hearing session for the High Peak Local Plan (2011-31) to include the topic of housing need was held on 3rd September 2015. The examination of the Local Plan was ongoing at the time of determination.
- 2.3.5 The planning application was refused by delegated decision dated 9th October 2015 and the reasons for refusal are set out in *Section 2.4*. The officer’s report and Decision Notice are included at CD1.2 and 1.1.

2.4 Reasons for Refusal

- 2.4.1 This section sets out the reasons for refusal of the planning application and the evidence to support these reasons is provided in *Sections 4 and 5* of this proof.
- 2.4.2 Due to the High Peak Local Plan (2011-31) being adopted in April 2016, full weight can now be attributed to it in the determination of this appeal. Therefore, regarding the second reason for refusal, namely conflict with the Development Plan, rather than assessing the conflict with the High Peak Local Plan Saved Policies 2008, *Section 4* assesses the proposed development against relevant policies of the High Peak Local Plan (2011-31), which do not directly compare to the saved policies in all cases.

Reasons 1 and 2 - Conflict with the Development Plan

- 2.4.3 The first two reasons for refusal provided by HPBC are due to the proposed development’s conflict with the Development Plan:

‘The site is allocated as a Local Green Space within the Chapel-en-le-Frith Neighbourhood Plan. The development of the site for 6 residential dwellings is considered to be inappropriate development within the Local Green Space for which there have been no very special circumstances demonstrated. Approval of the development would be contrary to Policy C1 of the Chapel-en-le-Frith Neighbourhood Plan and paragraphs 78 and Section 9 of the National Planning Policy Framework.’

‘The site is located within an area of open countryside as defined by the High Peak Saved Local Plan Policies 2008. In principle and by virtue of its siting, scale and indicative appearance the proposed development would represent an inappropriate and undesirable urban intrusion which would adversely affect the character and distinctiveness of the immediate area and surrounding countryside. As such the proposal would comprise an unsustainable form of development

and is contrary to High Peak Saved Local Plan Policies GD4, OC1, OC4, Chapel-en-le-Frith Neighbourhood Plan policy H1 and H2, High Peak Emerging Plan Policy S1, S1A, S6, EQ2 and EQ3 and Paragraphs 17, 55 and Section 11 of the National Planning Policy Framework 2012.'

Reason 3 - Lack of Planning Obligations

- 2.4.4 The third reason for refusal relates to the lack of planning obligations secured through a Section 106 Agreement:

'No s106 Obligation has been submitted for consideration or has been agreed therefore there is no mechanism in place to secure the required affordable housing which is necessary and required to support the proposed development. The development is therefore contrary to Policy CNP1 of the Chapel-en-le-Frith Neighbourhood Plan, Policy H9 of the adopted High Peak Saved Local Plan Policies 2008, Planning Obligations SPD 2005 and advice contained within the National Planning Policy Framework.'

3.0 The Appeal Site, Common Ground and Policy Framework

3.1 The Appeal Site

- 3.1.1 The appeal site is approximately 1 hectare (ha) in area and is located to the west of Chapel-en-le-Frith, south of the built up area of the village of Tunstead Milton (see *Figure 3.1 Site Location in Appendix A*).
- 3.1.2 As shown in *Figure 3.2 Site and Surroundings (Appendix A)*, the site is bounded by;
- North:** B5470 Manchester Road;
- East:** Tom Lane;
- South:** An open area containing trees and scrub with the canal feeder watercourse adjacent to the south of this open area;
- West:** A Public Right of Way (Footpath 51) to Buxton via Combs Valley, and beyond this, a parcel of land containing an agricultural barn type building, some landscaping and a pond.
- 3.1.3 The site is currently undeveloped, comprising a grassed field with trees and scrub and is in agricultural use for sheep grazing. The site is relatively flat along Manchester Road, but slopes steeply to the south beyond the area proposed for housing.
- 3.1.4 The boundary of the site fronting Manchester Road is formed by a continuous line of mature trees with hedgerows between the trees.
- 3.1.5 A similar line of mature trees with hedgerows forms the eastern boundary to Tom Lane. There is an area of trees running north to south towards the western boundary of the site. According to the Appellant's Design and Access Statement, five trees in total will be removed from the site, four of which are along the road frontage to facilitate access.
- 3.1.6 Along and beyond the southern boundary of the site are a number of mature and semi-mature trees in an informal arrangement.
- 3.1.7 The western boundary with the Buxton footpath is formed by a low post and wire fence towards the southern part, becoming a low post and wooden rail fence towards Manchester Road. The nature of the boundary treatment along the footpath allows for uninterrupted open views across the site to the countryside beyond.
- 3.1.8 From within the site there are views out towards Ladder Hill to the south, Combs Reservoir and Combs Edge to the south east and Eccles Pike to the north.
- 3.1.9 The site can be viewed from the path that runs alongside the western boundary of Combs Reservoir, observed to be frequently used by dog walkers.
- 3.1.10 Photographs of the site and surroundings are provided at *Appendix B*.

3.2 Surrounding Area

- 3.2.1 Tunstead Milton is a small settlement comprising a linear row of detached houses and bungalows on the north side of Manchester Road, together with the agricultural barn type building, a single dwelling and an agro-industrial business 'Mortens Yard' on the south side.
- 3.2.2 There are no services or community facilities in Tunstead Milton except for a phone box, two bus stops west of the site (circa 250m) either side of Manchester Road beyond the industrial business and a request stop 65m to the east of the site on the south side of Manchester Road.
- 3.2.3 The bus stops are served by the High Peak Skyline 199 service providing two buses an hour during the daytime Monday-Saturday, hourly on Sundays and Bank Holidays, between Buxton (approx. 20mins), Stockport (approx. 50mins) and Manchester Airport (approx. 1 hour 10mins).
- 3.2.4 There is no footpath on the south side of Manchester Road along the site frontage or to the east or west.
- 3.2.5 It is understood that the Appellant intends to provide a footpath east of the site to the request stop (which has no shelter or waiting area).
- 3.2.6 There are no pedestrian crossing points along Manchester Road.

3.3 Common Ground

- 3.3.1 We are agreeing a Statement of Common Ground with the appellant setting out points of agreement and disagreement between the parties that will be submitted prior to inquiry.

3.4 Policy Framework and Material Considerations

The Development Plan

- 3.4.1 In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004, the Development Plan for this appeal comprises the High Peak Local Plan (2011-31), adopted in April 2016 [CD2.1] and the Chapel-en-le-Frith Neighbourhood Development Plan 2013-2028 [CD2.2], 'made' in August 2015.
- 3.4.2 The High Peak Saved Local Plan policies referred to in the reasons for refusal have been superseded by policies contained within the High Peak Local Plan (2011-31).
- 3.4.3 For clarity, *Table 3.1* shows which new policies contained in the High Peak Local Plan (2011-31) supersede the saved policies referred to in the second reason for refusal.

Table 3.1 – Superseded Saved Local Plan Policies (2008)	
Saved Policies (2008)	New Local Plan Policies (April 2016)
Policy GD4 – Character, Form and Design	Policy S1 – Sustainable Development Principles Policy EQ6 – Design and Place Making
Policy OC1 – Countryside Development	Policy EQ3 – Rural Development
Policy OC4 – Landscape Character and Design	Policy EQ2 – Landscape Character

- 3.4.4 It should also be noted that all references to the policies contained in the emerging Local Plan are still relevant, except for Policy EQ3, which was titled ‘Countryside and Green Belt Development’ in the submission version of the Local Plan, but is titled ‘Rural Development’ in the adopted version.
- 3.4.5 In addition there are a number of new policies in the Local Plan which are relevant to the application, but for which there were no equivalent saved policies.

Material Considerations

- 3.4.6 Material considerations in the determination of this appeal include the following:
- National Planning Policy Framework (‘the Framework’) [CD 7.1]
 - National Planning Practice Guidance (‘PPG’) [CD7.2];
 - Relevant case law;
 - Relevant Secretary of State Appeal Decisions and Statements

Five Year Housing Land Supply Position

- 3.4.7 During examination of the High Peak Local Plan (2011-31), the Council could demonstrate a five year supply of housing land (5yr HLS) and this was accepted by the Local Plan Inspector.
- 3.4.8 On this basis, the Council’s current position is that it can demonstrate a housing land supply of 6.7 years.
- 3.4.9 Further information on the calculation of the Council’s 5yr HLS is provided in the Proof of Evidence prepared by Mr Massie.

4.0 Conflict with the Development Plan

4.1 Introduction

4.1.1 As set out previously, when determining the planning application, the Development Plan comprised the High Peak Borough Local Plan saved policies (March 2008) and the Chapel-en-le-Frith Neighbourhood Plan (CNP) ('made' in August 2015).

4.1.2 Subsequently the High Peak Local Plan (2011-31) was adopted in April 2016 and along with the CNP now comprises the Development Plan.

4.1.3 It is considered that the appeal proposals conflict with or are not supported by the following Local Plan and Neighbourhood Plan policies:

High Peak Local Plan:

- S2 - Settlement Hierarchy
- S3 - Strategic Housing Development
- S6 - Central Sub-area Strategy
- EQ3 - Rural Development
- H1 - Housing
- H2 - Housing Allocations
- H4 - Affordable Housing
- CF4 - Open Space, Sports and Recreation Facilities

Chapel-en-le-Frith Neighbourhood Plan

- C1 - Local Green Spaces
- H1 - Housing Allocations
- H2 - Smaller Sites

4.1.4 The following sections set out how the appeal proposals conflict with the Development Plan and provide justification for the first two reasons for refusal.

4.2 Conflict with the High Peak Local Plan (2011-31)

4.2.1 It is considered that the appeal proposals conflict with the High Peak Local Plan (2011-31) for the reasons set out in the following sections.

Policy S2 – Settlement Hierarchy

- 4.2.2 Tunstead Milton is listed as a ‘Smaller Village’ in the settlement hierarchy. The policy states:

‘only limited development to meet local rural needs may be acceptable consistent with maintaining and enhancing their distinctive character or appearance.’

New development should be focussed within the settlement boundaries of the Market Towns, Larger Villages and Smaller Villages in accordance with their scale, role and function unless otherwise indicated in the Local Plan.’

- 4.2.3 The proposed development is not located within or immediately adjacent to the settlement boundary for Tunstead Milton, which is located to the north of Manchester Road and includes none of the land to the south.
- 4.2.4 In addition, it will not maintain or enhance the distinctive character or appearance of Tunstead Milton, instead causing significant harm to the locally important Local Green Space (LGS) by replacing part of the site with residential development, to the detriment of existing residents and users of the Buxton footpath (Footpath 51). Therefore, the appeal proposals conflict with the policy for smaller villages.
- 4.2.5 Policy S2 also states *‘In all other areas outside of the settlement boundary of settlements...development will be strictly limited to that which has an essential need to be located in the countryside or comprises affordable housing in accordance with policies EQ3 and H5.’*
- 4.2.6 There is no essential need for the proposed development to be located in the countryside and it does not comprise a scheme of affordable housing.

Policy S3 - Strategic Housing Development

- 4.2.7 Policy S3 states that *‘For the Chapel Neighbourhood Plan a minimum of 850 dwellings should be delivered over the plan period in addition to the small sites allowance but this may be exceeded to help meet the needs of the borough.’*
- 4.2.8 The site is not allocated for development under Policy H1 of the CNP and does not meet the criteria for smaller sites in Policy H2 of the CNP. It is therefore, not supported by this policy.
- 4.2.9 It should be noted that although Policy S3 states that the delivery of 850 dwellings is a minimum requirement and that this can be exceeded, the Neighbourhood Plan area is already delivering a far greater level of residential development than is set out in the policy.
- 4.2.10 The following section provides further information on the development of the housing target for the Neighbourhood Plan area and subsequent delivery against this target.

Chapel Neighbourhood Plan Housing Target and Delivery

- 4.2.11 The CNP was brought forward alongside and with due recognition to the emerging High Peak Local Plan. The Neighbourhood Plan area was established in April 2013 and at that time the Preferred Options Local Plan set a housing target for the Neighbourhood Plan of 400 new units in total.
- 4.2.12 At the same time, the Manchester Road site (app ref HPK/2011/0282 and APP/H1033/A/11/2159038) in Chapel-en-le-Frith had been granted planning permission on appeal for 104 units along with a number of other small schemes totalling 152 committed units in Chapel at that time (see Appendix 2 of Examination version of Neighbourhood Plan at *Appendix C* of this proof).
- 4.2.13 Subsequently various planning permissions were granted either by HPBC or on appeal including HS1 Federal Mogul (164 units), HS2 Former Dorma site (182), the 'Hallsteads' sites (total 200 in trajectory), Forge Works (162) units HS5 Long Lane (66) and Long Lane south (105).
- 4.2.14 These permissions together with the committed 152 units and other smaller sites, totalled 813 units at October 2013 (source as above), mainly on brownfield sites, and then became counted in the 'commitments' in the Local Plan such that when changes to the Local Plan were considered by HPBC in December 2013 and subsequently consulted upon, the target for the Chapel Neighbourhood Plan became 850 units, plus an allowance for small sites of 100 units.
- 4.2.15 Following Examination of the Neighbourhood Plan in December 2014 and publication of the Examiner's Report in January 2015 (see Appendix D of HPBC Statement of Case), the Referendum Version of the Neighbourhood Plan was published [CD2.1] which at Appendix 2 details the Housing Commitments as at December 2014 totalling 927 units.
- 4.2.16 In addition to the 927 units already committed, the Neighbourhood Plan at Policy H1 allocates a further two town centre sites (HS3 and HS4 being the only sites as yet without planning permission) totalling 42 units meaning that the Neighbourhood Plan in effect will deliver 969 new dwellings, plus 100 units from small sites that have not been allocated and hence is already considerably above the 850 target set in the Local Plan. For ease of reference a summary table of the above figures is presented at *Appendix D*.
- 4.2.17 It should be noted that the 850 unit target set in the Local Plan was done so at a time when the OAN for the plan was 360pa and not the revised lower figure of 350pa. If this circa 3% reduction was retrospectively applied to the Neighbourhood Plan figure then the target for the Neighbourhood Plan would reduce to circa 825 units.
- 4.2.18 Hence, it is clear that the Neighbourhood Plan is more than delivering against both its housing target figure and its proportionate contribution to the Local Plan OAN. Allowing further housing outside of the CNP allocations would be contrary to Policy S3 and result in piecemeal development in unsustainable locations.

Policy S6 – Central Sub-area Strategy

- 4.2.19 Policy S6 states that the Council will seek to meet the housing needs of the local community by *‘supporting the development of new housing on sustainable sites within the built up area boundary primarily in Chapel-en-le Frith, New Mills and Whaley Bridge.’*
- 4.2.20 The policy does not identify Tunstead Milton as a focus for new development and the site is not located within the Chapel-en-le-Frith or Tunstead Milton built up area boundaries.
- 4.2.21 The appeal site was assessed by HPBC in the 2014 update to the 2009 Strategic Housing Land Availability Assessment (SHLAA) [CD3.9]. The site reference was TM001 and map reference AS080 (noting the reference is not shown on the map). The site was assessed as being ‘not currently developable’, with an acknowledgement that Tunstead Milton is a small settlement with no facilities.
- 4.2.22 The proposed development therefore, does not accord with Policy S6 as it is not within the built up area boundary and is not considered a sustainable site.

Policy EQ3 – Rural Development

- 4.2.23 Policy EQ3 states that *‘Outside the settlement boundaries and sites allocated for development as defined on the Policies Map, including the Green Belt, the Council will seek to ensure that new development is strictly controlled’.*
- 4.2.24 The proposed development is located outside of a settlement boundary in an area designated as LGS and is not allocated for development in the Local Plan. The site is considered to comprise rural development and therefore, conflicts with this wording of Policy EQ3.
- 4.2.25 Policy EQ3 includes the following list of the forms of new development that will be allowed in rural areas outside of settlement boundaries.
- *A replacement dwelling provided it does not have a significantly greater impact on the existing character of the rural area than the original dwelling nor result in the loss of a building which is intrinsic to the character of the area.*
 - *Affordable housing in accordance with Local Plan Policy H5.*
 - *To meet an essential local need, such as a farm worker’s or rural enterprise dwelling, where the need for such accommodation has been satisfactorily demonstrated and that need cannot be met elsewhere.*
 - *Re use of redundant and disused buildings and/or the redevelopment of a previously developed site, where it does not have an adverse impact on the character and appearance of the countryside. Where the existing building is in an isolated location the development should lead to an enhancement of the immediate setting.*
 - *Limited infilling of a small gap capable of accommodating no more than 2 dwellings of a similar size and scale to the surrounding dwellings in an otherwise continuously built frontage.*
 - *Extensions to existing dwellings provided they are subsidiary to the building and do not have an adverse impact on the character of the landscape.*

- *A gypsy and traveller site in accordance with Policy H6.*
- *Development in accordance with Policy H1.[of the Local Plan]*

4.2.26 The appeal proposal does not comprise a type of development contained within the above list and therefore, does not accord with this policy.

Policy H1 – Housing

4.2.27 Policy H1 of the Local Plan includes the following:

'The Council will give consideration to approving sustainable sites outside the defined built up area boundaries, taking into account other policies in this Local Plan, provided that:

- *The development would adjoin the built up area boundary and be well related to the existing pattern of development and surrounding land uses and of an appropriate scale for the settlement; and*
- *The development would not lead to prominent intrusion into the countryside or have a significant adverse impact on the character of the countryside; and*
- *It would have reasonable access by foot, cycle or public transport to schools, medical services, shops and other community facilities; and*
- *The local and strategic infrastructure can meet the additional requirements arising from the development.'*

4.2.28 The appeal proposals conflict with Policy H1 of the Local Plan as the site does not adjoin the built up area boundary of Tunstead Milton, which is located to the north of Manchester Road. The proposals are not well related to the existing pattern of residential development in Tunstead Milton which with the exception of a single dwelling is to the north of Manchester Road.

4.2.29 In addition, the proposals would have a significant adverse impact on the character of the countryside at the local level through the development of part of a locally important area of Local Green Space.

4.2.30 Tunstead Milton is a small settlement with no services or community facilities and a limited public transport connection to settlements that provide these. It does not therefore, have reasonable access as required by the policy and is not considered to be a sustainable location for new housing development.

Policy H2 – Housing Allocations

4.2.31 The site is not allocated for residential development under Policy H2 and is therefore, does not accord with this policy.

Policy H4 – Affordable Housing

4.2.32 Policy H4 requires 20% affordable housing on sites of 5-24 units which equates to 1.2 affordable dwellings for the appeal proposals. The application did not

include for affordable housing although a letter received by the Appellant prior to determination confirmed that affordable housing would be provided.

- 4.2.33 However, it is understood that the Appellant will provide a contribution to the delivery of affordable housing off-site and will enter into a S106 obligation to secure this.

Policy CF4 – Open Space, Sports and Recreation Facilities

- 4.2.34 Policy CF4 states that *‘Development that would harm the openness and/or special character of a Local Green Space or its significance and value to the local community will not be permitted unless there are very special circumstances which outweigh harm to the Local Green Space.’*
- 4.2.35 As described in Section 4.3, the proposed development would result in the direct loss of part of the Local Green Space (LGS), that can be viewed by the community of Tunstead Milton either from the footway along Manchester Road, from the Buxton footpath (Footpath 51) at the western boundary of the site and which also continues to the south of the site, or from the footpath along Combs Reservoir to the east of the site.
- 4.2.36 The proposed development will harm the openness, significance and value of the remaining part of the LGS for the local community as it will create a visual barrier to the current views across and into the site from the various surrounding footpaths and countryside.
- 4.2.37 Therefore, the proposals conflict with this policy.

Conclusions

- 4.2.38 The previous sections demonstrate that the appeal proposals conflict with the Local Plan and that refusal of the planning application on this basis is justified.

4.3 Conflict with the Chapel Neighbourhood Plan

- 4.3.1 The NPPF makes clear that considerable weight should be given to Neighbourhood Plans. The decision by HPBC to refuse the application was taken in accordance with Paragraph 198 of the Framework which states that *‘Where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted.’*
- 4.3.2 The following sections provide evidence as to how the appeal proposals conflict with the Chapel Neighbourhood Plan (CNP).

Policy C1 – Local Green Spaces

- 4.3.3 Policy C1 of the CNP designates the appeal site as Local Green Space (LGS). The LGS is given ‘Map Ref 6’ in Table 1 on page 32 of the CNP and is titled ‘Land around Combs Reservoir’.

- 4.3.4 The LGS boundary is shown in Figure 6 of the CNP and functions to protect locally important areas of open space around Combs Reservoir, adjacent to the villages of Tunstead Milton, Combs and Cockyard.
- 4.3.5 Paragraph 76 of the NPPF states that *'By designating land as Local Green Space local communities will be able to rule out new development other than in very special circumstances.'* Paragraph 78 also states that *'Local policy for managing development within a Local Green Space should be consistent with policy for Green Belts.'*
- 4.3.6 The appeal proposals, which would comprise inappropriate development in the Green Belt, will result in the direct loss of part of the LGS, causing significant harm to its openness, significance and value to the local community of Tunstead Milton.
- 4.3.7 Although public access is proposed to the remaining undeveloped part of the site south of the proposed dwellings which will remain as LGS, the development will essentially form a barrier between this part of the site, the existing built up area of Tunstead Milton and part of the Buxton footpath (Footpath 51).
- 4.3.8 Most significantly, development is proposed on the most prominent part of the LGS and the area across which views are afforded to the countryside beyond from the Buxton footpath, southwards from Tunstead Milton towards Ladder Hill and into the site from the footpath alongside Combs Reservoir to the east.
- 4.3.9 The area of LGS proposed to be retained is steeply sloping and of limited recreational value and would be backed onto by the rear gardens of the proposed development.
- 4.3.10 Therefore, the appeal proposals conflict with Policy C1 of the CNP.
- 4.3.11 As described in *Section 6*, 'very special circumstances' have not been demonstrated here that would clearly outweigh the harm to the Local Green Space and hence refusal of the application on this basis is justified.

Policy H1 – Housing Allocations

- 4.3.12 Policy H1 of the CNP allocates land for a minimum of 454 new homes on five sites, three of which were granted planning permission in 2013 (refs HS1, HS2 and HS5).
- 4.3.13 The Appeal site is not included in Policy H1 and hence does not accord with this policy.

Policy H2: Smaller Sites

- 4.3.14 As the appeal site is not allocated for development under Policy H1, the next stage in the determination process is to assess it against Policy H2 of the Neighbourhood Plan, as this policy also relates to the delivery of new housing.
- 4.3.15 Policy H2 of the Neighbourhood Plan states that *'permission will be granted for small residential developments of fewer than 6 units on infill and redevelopment*

sites within the Parish that lie outside the Peak District National Park' [emphasis added].

- 4.3.16 The appeal proposal does not accord with this policy as it comprises six units and in any event is not located on an infill or redevelopment site. The appeal site is located outside of the built up area boundary and is currently undeveloped agricultural land.

Conclusion

- 4.3.17 The previous sections demonstrate that the appeal proposals conflict with the CNP and that refusal of the planning application on this basis is justified.
- 4.3.18 Although HPBC maintains that it can now demonstrate a 5yr HLS and that all of the CNP policies relating to the supply of housing are relevant to this appeal, should the Inspector be of the opinion that it cannot and therefore, that policies are 'out of date', appropriate weight should still be given to the conflict with the CNP and hence the Council's decision to refuse the application was justified.
- 4.3.19 The Council's decision to refuse the application, despite not having a 5yr HLS at that time is supported by the High Court decision in *Crane v SSCLG*¹ [CD6.1]. The Crane case is very similar to this appeal, whereby the Appellant applied for a site that was not allocated in a Neighbourhood Plan and at the time of determination, the LPA did not have a 5yr HLS.
- 4.3.20 In the Crane case, in his decision letter under the heading 'Overall balance and conclusion', the Secretary of State wrote:

25. 'However, in view of [the NPPF] policy that neighbourhood plans will be able to shape and direct sustainable development, he places very substantial negative weight on the conflict with the Neighbourhood Plan even though this is currently out of date in terms of housing land supply ahead of its review in 2018.

26. The Secretary of State considers that the adverse impacts of the appeal proposal, especially in terms of the conflict with the Broughton Astley Neighbourhood Plan, would significantly and demonstrably outweigh the benefits in terms of increasing housing supply. He therefore concludes that there are no material circumstances that indicate the proposal should be determined other than in accordance with the development plan.'

- 4.3.21 The Crane case confirms that it is perfectly reasonable and proper for the decision maker to give appropriate weight to the Neighbourhood Plan. This can outweigh the need to provide housing, as it did in Crane, albeit in this instance HPBC is now meeting its housing needs, does have a 5yr HLS and furthermore the site is designated as Local Green Space.
- 4.3.22 PPG Para 083 (reference ID: 41-083-20160211) published on 11th February 2016, confirms the importance of Neighbourhood plans and clarifies that where a 5yr housing land supply is absent and paras 49 and 14 have effect, the adverse effects of granting planning permission should include the policies of the

¹ *Crane v Secretary of State for Communities and Local Government* [2015] EWHC 425 (Admin) (23 February 2015)

Framework '*taken as a whole*' including an assessment against those policies that deal with Neighbourhood Planning including paras 69, 183-185 and 198 of the Framework.

4.3.23 Since the Para 083 was published there have been a number of appeals recovered for the Secretary of State's determination where a qualifying body has submitted a neighbourhood plan proposal to the local planning authority or where a neighbourhood plan has been made.

4.3.24 Some example decision letters issued on behalf of the Secretary of State are provided at Appendix E, including five issued recently by the new Communities Secretary, as follows:

- Broad Road, Hambrook, Chichester (APP/L3815/W/15/3004052) – dismissed by SoS based on NP conflict.
- Cappards Road, Bishop Sutton (APP/F0114/A/14/2217216) – No 5yr HLS, dismissed by SoS based on conflict with NP and LP.
- Ford Lane, Yapton (APP/C3810/A/14/2228260) – No 5yr HLS, appeal dismissed by SoS based on conflict with the NP.
- Broyle Gate Farm, Lewes Road, Ringmer, East Sussex (APP/P1425/W/15/3133436) - dismissed by SoS based on LP and NP conflict.
- Land off Coate Road and Windsor Drive, Devizes, Wiltshire (APP/Y3940/A/13/2206963) - dismissed by SoS based on LP and NP conflict.
- Land west of Walton Farm, Banbury Road, Kineton, Warwickshire (APP/J3720/W/15/3132123 – dismissed by SoS based on LP and emerging NP.

4.3.25 Some consistent themes which emerge from these decision letters from the SoS include that:

- Very substantial negative weight should be given to conflicts with the development plan and its constituent Neighbourhood Plans;
- Granting permission for schemes not in accordance with Neighbourhood Plans would fundamentally undermine confidence in neighbourhood planning;
- Once made Neighbourhood Plans should be upheld to shape and direct development in the neighbourhood planning area in question, and in particular that development beyond settlement boundaries should not be allowed;

4.3.26 Given the Crane decision, the PPG guidance and the themes emerging from applicable SoS decisions it is clear that conflict with CNP should be given very substantial negative weight and the appeal dismissed accordingly.

5.0 Lack of Planning Obligations

- 5.1.1 As set out in Section at Section 2.4, the second reason for refusal relates to the lack of planning obligations secured through a Section 106 Agreement, contrary to policies in the Saved Local Plan and the 2005 Planning Obligations SPD.
- 5.1.2 At the time of writing the S106 agreement has not been finalised and there remains disagreement between the parties with regards to the provision of maintenance of the open space and its management in perpetuity.
- 5.1.3 Therefore, this reason for refusal remains, albeit it is hoped that this can be resolved prior to the Inquiry closing.

6.0 Planning Balance

6.1.1 In this proof of evidence I have demonstrated how the proposed development subject to this appeal conflicts with, or is not supported by, relevant policies included in the High Peak Local Plan (2011-31) and the Chapel-en-le-Frith Neighbourhood Plan (CNP) and the and that this conflict with the Development Plan justifies the first two reasons for refusal.

6.1.2 In addition the proposals are in conflict with the NPPF and NPPG.

6.1.3 In assessing the planning balance, my main considerations are:

- The potential benefits of the scheme and whether they are significantly and demonstrably outweighed by the adverse impacts of granting planning permission; and
- Conflict with the Development Plan.

Assessment of Potential Benefits

6.1.4 In their amended Statement of Case, the Appellant identifies the potential benefits of the appeal proposals that are purported to comprise very special circumstances to justify the granting of planning permission despite the conflicts with Policy C1 of the CNP and CF4 of the High Peak Local Plan (2011-31).

6.1.5 The potential benefits of the appeal proposals as described by the Appellant are:

- The retention of part of the site as a 'Nature Reserve' / public open space (POS) together with the implementation of a management plan in perpetuity (paras 2.4 and 6.13);
- A net positive impact for wildlife and walking/recreation (para 6.13) and a net positive gain for biodiversity (para 6.13);
- The provision of open market and affordable housing (para 6.5)
- Provision of a new footway between the site and the existing bus stop to the east on Manchester Road (para 6.13); and
- Adoption of energy efficiency standards equivalent to Level 5 of the Code for Sustainable Homes.

6.1.6 The following sections describe how these purported benefits do not constitute very special circumstances and therefore, why in balance, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits.

Public Open Space

6.1.7 The appeal site is currently designated as Local Green Space for the benefit of the local community. The Buxton footpath (Footpath) 51 runs along its western boundary from Manchester Road, from which users can currently enjoy views

across the site towards Combs Reservoir and countryside to the east. South of the site, Footpath 51 then connects to Footpath 52, which along with Footpaths 53 and 54 allow users to walk around the periphery of Combs Reservoir.

- 6.1.8 The Appellant's proposal to retain part of the site as Public Open Space (POS) for the benefit of the local community is not considered 'very special', particularly as it currently serves this purpose as LGS and a significant part of it will be lost to residential development. Existing views to the east from Footpath 51 south of Manchester Road will be screened by new hedgerow and tree planting adjacent to the westernmost new dwelling (see indicative Proposed Site Plan ref 1207.PL03).
- 6.1.9 In addition the proposed POS is quite steeply sloping, has a number of trees and scrub vegetation on it with further tree planting suggested on the indicative site layout plan.
- 6.1.10 Given that this area will purportedly also function as a managed Nature Reserve and hence assumed to be 'wild' as opposed to 'parkland' it is hard to see what additional value the POS will be to the local community.
- 6.1.11 To access the POS, members of the public will have to cross Manchester Road opposite the site, walk down a fenced access track between two of the proposed new houses and straight onto a steep slope leading to an enclosed area of land.
- 6.1.12 Given that at present the public can walk down the Buxton footpath enjoying views east, before joining a footpath along the Canal Feeder watercourse and through a flatter open area before crossing Tom Lane and accessing the footpaths around Combs Reservoir the usefulness and attractiveness of the proposed POS is questionable.
- 6.1.13 In addition, in order for the POS to function effectively as a "Nature Reserve", public access should be limited to avoid damage and disturbance to flora and fauna, so there is a potential conflict between the proposed uses of the POS.

Biodiversity Enhancements and Adoption of a Management Plan

- 6.1.14 The appeal proposals would result in the development of approximately 50% of the appeal site, which is currently undeveloped and contains existing mature trees and hedgerows, along with open areas of grassland and scrub vegetation.
- 6.1.15 Regarding the potential enhancements to biodiversity and that will be subject to a management plan, it should be noted that the NPPF specifically refers to the role of the planning system in conserving and enhancing the natural environment.
- 6.1.16 Para. 109 of the NPPF states that *'the planning system should contribute to and enhance the natural and local environment'* and para. 118 of the NPPF states that *'when determining planning applications, local planning authorities should aim to preserve and enhance biodiversity'*.
- 6.1.17 Some of the existing mature trees and hedgerows will be lost to enable construction of the proposed development and hence, some of the proposed planting will be required to mitigate the loss of existing habitats.

- 6.1.18 It is noted that detailed plans for 'Nature Reserve' would be conditioned, so at present it is not possible to comment on the credentials of the proposed biodiversity enhancements.
- 6.1.19 However, given that the area already contains a number of trees and is purportedly also to function as Public Open Space, it is expected that the proposed enhancements to biodiversity on the remaining area of land would be limited and are therefore, not considered 'very special'.
- 6.1.20 Conversely increasing public access, allowing direct access from the rear gardens of the proposed properties (see Section 6 of the Design and Access Statement) and the potential increase in domestic pets, notably cats, which could predate birdlife in particular then it is possible that the existing wildlife will incur increased disturbance and predation.
- 6.1.21 Biodiversity enhancements would be expected to be delivered through a planning application and the adoption of a management plan to ensure their success is a standard procedure, so again is not considered to be 'very special'.

The Provision of Open Market and Affordable Housing

- 6.1.22 In the context of either the Local Plan or the Neighbourhood Plan housing requirement, judged against the total, five-year or annual supply targets the provision of six new dwellings is not considered to be significant.
- 6.1.23 As set out in Section 3 of this proof of evidence the Council considers it has a 7 year supply of housing, and that as set out in Section 4 the proposals conflict with the recently examined and adopted Local Plan policies in relation to Settlement Hierarchy and housing delivery, therefore, the provision of additional housing in Tunstead Milton outside of the settlement boundary is not considered to be a benefit.
- 6.1.24 The affordable housing proposed is simply in accordance with planning policy requirements and not a benefit when compared to the policy and not therefore, considered to be 'very special'.

New Footway to Bus Stop

- 6.1.25 The provision of a new footway on the southern side of Manchester Road between the site and the existing request bus stop would be primarily for the benefit of future residents of the proposed development.
- 6.1.26 Although this footway could be used by the existing community of Tunstead Milton, there is already an existing footpath running along the northern side of Manchester Road where the existing dwellings are located. There is a dropped kerb opposite the existing bus stop to enable access.
- 6.1.27 There is an existing footway adjacent to the bus stop for pedestrians to wait safely, with a dropped kerb to enable access.
- 6.1.28 Therefore, as there is an existing footway along the northern side of Manchester Road providing existing residents of Tunstead Milton with pedestrian access to the existing bus stop, the inclusion of a footway to the south of Manchester Road

is not considered 'very special'. It is merely a requirement generated by the proposed development.

Energy Efficiency

- 6.1.29 The Appellant proposed in the planning application that the dwellings would meet the requirements of Level 5 of the Code for Sustainable Homes. However, the Code for Sustainable Homes was withdrawn in March 2015, before the application was submitted.
- 6.1.30 It is also noted that the Appellant's Statement of Case now refers to the dwellings meeting only the energy efficiency standards equivalent to Code Level 5, rather than the full requirements.
- 6.1.31 I am mindful of the proposed amendment to the Planning and Energy Act 2008 set out in Section 43 of the Deregulation Act which once commenced, would prevent HPBC from imposing a condition requiring the developer to comply with energy efficiency standards that exceed the requirements of building regulations.
- 6.1.32 As the application is currently in outline, there is no guarantee that future dwellings could be required to meet the requirements of Code Level 5 as part of a future approval of reserved matters.
- 6.1.33 Overall, the proposed improvements to energy efficiency, whilst welcomed, would only benefit the future residents and there is no guarantee that this requirement could be secured in the future. Therefore, this is not considered to constitute a very special circumstance.

Summary

- 6.1.34 For the reasons set out in the previous sections, none of the purported benefits included in paragraph 6.4 of the Appellant's Statement of Case are considered to constitute very special circumstances that justify the conflicts with the Development Plan, in particular, Policy C1 of the CNP and Policy CF4 of the High Peak Local Plan (2011-31).
- 6.1.35 The substantial harm that would be caused to the Local Green Space by the granting planning permission is not considered to be clearly outweighed by the very limited purported benefits of the appeal proposals. Therefore, the proposals fail the test set out at para 88 of the NPPF and the appeal should be dismissed.
- 6.1.36 The Secretary of State's conclusion at para 35 of the Ford Lane, Yapton appeal (APP/C3810/A/14/2228260 – see *Appendix E*) is informative in relation to how to consider the purported benefits, whereby the SoS considered that '*benefits which should flow from conditions and the obligation should more properly be considered as mitigation*'.

Conflict with the Development Plan

- 6.1.37 As set out at *Sections 4.2 and 4.3*, the proposals conflict with both the Local Plan and Chapel Neighbourhood Plan and I consider that this conflict should attract very significant negative weight.

- 6.1.38 The conflict with the Chapel Neighbourhood Plan must be considered in terms of the planning balance as it forms part of the statutory development plan.
- 6.1.39 Reinforcing the strong support for Neighbourhood Plans at para 69 of the Framework and the opportunity they provide for communities to create a shared vision for their area, paragraph 183 of the Framework states that:
- ‘Neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need. Parishes and neighbourhood forums can use neighbourhood planning to set planning policies through neighbourhood plans to determine decisions on planning applications’.*
- 6.1.40 The local community has been preparing the Neighbourhood Plan since 2011. As set out in Paragraphs 26 and 27 of the Examiner’s report (HPBC Statement of Case *Appendix D*), this has included extensive consultation and in Paragraph 28, the Examiner states:
- ‘The consultation and publicity went well beyond the requirements and it is clear that the qualifying body went to considerable lengths to ensure that local residents, retailers and businesses and other interested parties were able to engage in the production of the Plan. I suspect that numerous hours have been spent on the production of this Plan by many people. I congratulate them on their efforts’.*
- 6.1.41 The Examiner in Paragraph 201 recommended that the Neighbourhood Plan should proceed to Referendum and the Plan was subsequently ‘Made’ on 5th August 2015. As previously stated and as required in Paragraph 184 of the Framework, the Neighbourhood Plan is considered to be in general conformity with the strategic policies of the emerging Local Plan.
- 6.1.42 The Neighbourhood Plan is now an adopted Development Plan document setting out what development the local community wants in its area and where they want it to be.
- 6.1.43 The community’s opposition to the proposed development was evident during consultation on the planning application, receiving 35 letters of objection, which in the context of Tunstead Milton represents a significant proportion when compared to the number of residents.
- 6.1.44 Therefore, to allow this appeal would be to deny a community with a ‘made’ Neighbourhood Plan that is in general conformity with the Local Plan, the power to decide where, or in what form, development should take place in their area. This would undermine the Government’s Localism Agenda and the value and process of neighbourhood planning.
- 6.1.45 The Framework is quite clear at paras 150 and 198 that Planning decisions must be taken in accordance with the development plan unless material considerations indicate otherwise, and that where a planning application conflicts with a Neighbourhood Plan planning permission should not normally be granted.
- 6.1.46 This position has been supported in the courts through the Crane case, has been clearly set out in the recent update to the PPG at Para 083 (see *Section 4.3* above) and is evident from recent recovered appeals that have considered conflict with a Neighbourhood Plan.

Conclusion

- 6.1.47 Due to the conflicts with the CNP and the High Peak Local Plan (2011-31), I consider that the significant cumulative negative impacts of the proposed development to the Development Plan process and the Neighbourhood Plan in particular, significantly and demonstrably outweigh the very limited potential benefits of the proposed development.
- 6.1.48 The benefits are not considered to comprise 'very special circumstances' which clearly outweigh the harm to the designated Local Green Space.
- 6.1.49 Therefore, in conclusion, the appeal should be dismissed to allow development in Tunstead Milton and the Chapel-en-le-Frith Neighbourhood Plan area to be brought forward in a way that is in accordance with the Neighbourhood Plan and High Peak Local Plan (2011-31) as set out in national planning policy and guidance.