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## Appeal Decision

Hearing Held on 23 January 2018

Site visits made on 22 January 2018 and 24 January 2018

**by G J Fort BA PGDip LLM MCD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 22 February 2018**

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**Appeal Ref: APP/H1033/W/17/3177730**

**Land at Longclough Drive, Glossop SK13 8HN**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by AM (2004) Limited against the decision of High Peak Borough Council.
  - The application Ref HPK/2016/0416, dated 15 July 2016, was refused by notice dated 13 December 2016.
  - The development proposed is the erection of 6 dwellings and the provision of an area of public open space.
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of 6 dwellings and the provision of an area of public open space at Land at Longclough Drive, Glossop SK13 8HN in accordance with the terms of the application, Ref HPK/2016/0416, dated 15 July 2016, subject to the conditions in the schedule to this decision below.

### Procedural Matters

2. The application that led to the appeal was in outline with only access for detailed consideration at this stage. I have assessed the appeal on this basis.
3. In the banner heading above I have used an abbreviated form of words for the description of development to that given on the application form<sup>1</sup>. I have used this amended form of words as the outline nature of the proposal is clear from elsewhere within the heading.
4. At the hearing I was supplied with a certified copy of a planning obligation to secure landscaped open space at the site. As a copy had previously been submitted to me electronically, and both parties had signed this document, I consider that no prejudice would occur as a result of me taking it into account in my consideration of the planning merits of the appeal.
5. At the hearing I was supplied with a list of up-to-date conditions, which had been seen by both the appellant and Council, a copy of the Council's *Designing Out Crime* Supplementary Planning Guidance and Advice (adopted March 2004) (the Designing Out Crime SPG); and an annotated map showing the

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<sup>1</sup> Which is: "Outline application for the erection of 6 dwellings and the provision of an area of public open space (with access considered)."

approximate position of the Long Clough site included in the Council's *Open Space Study Update Report*<sup>2</sup> (dated September 2017) (the Open Space Study). The documents were discussed at the hearing and the parties did not make any objections to me taking them into account in an assessment of the planning merits of the appeal. Consequently, I consider that no prejudice would occur to any party as a result of me taking these documents into account.

## **Main Issues**

6. I consider the main issues in this case to be firstly, the effect of the proposed development on the provision of amenity space; secondly, the effect of the proposed development on the character and appearance of the area including its effect on protected trees; thirdly, the effects of the proposed development on crime and anti-social behaviour on the site; and fourthly, whether it is necessary for the appeal scheme to make provision for affordable housing in the context of national and local policy.

## **Reasons**

### *Site, surroundings and proposed development*

7. Situated within the settlement of Glossop, the roughly C-shaped appeal site is a wooded clough which slopes down from Longclough Drive to a meandering brook. Set within a broadly residential area, with differing scales and styles of property, including the short terraces of Longclough Drive and the detached houses of Brookside, the appeal site is a verdant open area. The mature trees present at the site contribute to the character and appearance of its surroundings, in combination with trees elsewhere within the gardens, and to the rear of the surrounding houses. The contribution of the trees on the appeal site to its visual amenity and that of its surroundings is reflected in the inclusion of several of them within a Tree Preservation Order<sup>3</sup>.
8. The proposed development seeks to secure a residential use of part of the appeal site to supply up to 6 dwellings, and provide publically accessible space on the remainder. An agreed planning obligation has been submitted which, amongst other things, would secure the use of the remaining open space for this purpose. Vehicular access would be taken to two parcels of land on the appeal site's frontage across from 1 to 3 Brookside, and in the corner of the site adjacent to 2 to 12 Longclough Drive. Indicative plans show two detached dwellings adjacent to Brookside and two pairs of semi-detached dwellings on Longclough Drive.

### *Planning Policy Background*

9. The approach to the delivery of the Borough's housing requirement is set out in the High Peak Local Plan (adopted April 2016) (the Local Plan). Taken together, and amongst other things, Policies S2 and S3 of the Local Plan direct development to the most sustainable locations in accordance with a settlement hierarchy within which Glossopdale is identified as a focus for housing growth, with 27% to 35% of the Borough's overall housing requirement to be located there.

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<sup>2</sup> Produced by Knight, Kavanagh and Page

<sup>3</sup> The High Peak Borough Council (Longclough Drive, Glossop) Tree Preservation Order 2001

10. In addition to sites allocated within the Local Plan, Policy H1 supports housing development on unallocated sites within defined built up areas of towns, subject to other policies in the plan. Policy S3 sets a requirement of 250 units to be developed on such sites over the plan period within Glossop.
11. Consequently, as the appeal site is not allocated and is within the built-up area of Glossop, I consider, subject to other policies in the plan, that it could constitute a smaller 'windfall' site for the purposes of the Local Plan. In reaching this view, I have taken into account the Inspector's conclusions on this matter in their decision<sup>4</sup> relating to a site elsewhere in the Borough, which has been drawn to my attention by the Council. Moreover, it is clear that the housing requirement of the Borough more widely, and Glossopdale in particular, relies to some extent on the delivery of dwellings on such sites.

### *Amenity Space*

12. Amongst other things, Policy CF4 of the Local Plan seeks to protect, maintain, and where possible enhance existing open spaces. The policy restricts development that involves the loss of amenity greenspace except where it can be demonstrated that alternative facilities of equal or better quality would be provided in an equally accessible location.
13. The appeal site is unallocated for the purposes of the local plan and, aside from the TPO, has no formal designation regarding its use or status. However, I am mindful of references in the submitted material to a condition on the 1973 planning permission<sup>5</sup> for the wider residential development, which aimed to ensure that the appeal site remained open. In previous appeal decisions<sup>6</sup> focussed on outline applications for residential development related to the appeal site, the Inspectors found that the land, whilst privately owned, constituted a local recreational facility as a result of its informal use.
14. I note that the appeal site is used by the residents of dwellings in its surroundings, particularly children, for a variety of informal activities; and indeed I saw informal paths and accesses on to the site at my visits. I have also taken into account references to educational activities at the site, community events, and the informal maintenance and clearing undertaken by local residents. Moreover, I have had regard to the contents of the letter supplied to me by Longclough Residents' Association<sup>7</sup>, which makes reference to an agreement to "dedicate [the appeal site] to the local authority as an open space". Whilst mindful that the appellant has sought clarifications from the Council regarding its adoption by the Council as public open space<sup>8</sup>, I am aware of no firm commitments by the Council in these regards. Consequently, I have no evidence before me to suggest that the private ownership of the site is liable to change and this arrangement means that its use for informal recreation could cease at any time- and indeed the potential for enclosing the space through implementing permitted development rights arising by virtue of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) has been drawn to my attention.

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<sup>4</sup> APP/H1033/W/16/3149003 Decision Date: 19 October 2017

<sup>5</sup> GLO/373/9

<sup>6</sup> T/APP/H1033/A/92/204954/P4 Decision date: 23 October 1992; and APP/H1033/A/02/1087319 Decision date: 16 September 2002

<sup>7</sup> Letter to Mr D Phillips from Albert McLellan Ltd dated 22 October 1981

<sup>8</sup> Letters from JRA Moorhouse to the Director of Housing and Planning High Peak Borough Council dated 13 November 2001 and 11 January 2002

15. At the hearing the findings of the recently published Open Space Study were discussed. The appeal site was not assessed as part of the Open Space Study, and so there is no formal identification of the site within it, or how it would fit into the open space typologies given in Table 1.1 of the Study, which include, amongst other categories, natural and semi-natural greenspace, and amenity greenspace. In terms of these typologies, the Statement of Common Ground and several responses of residents focus on the appeal site's semi-natural character. However, I am also mindful of the Council's view, expressed at the hearing, that the opportunities for informal activities at the appeal site combined with its contribution to the character of its surroundings, mean that it could also be classified as amenity greenspace. Whereas the Open Space Study identifies a healthy amount of natural and semi-natural greenspace in the Glossopdale area, it finds that there is a marginal undersupply of amenity greenspace.
16. I readily accept that the flexibility of the Open Space Study typologies allows some overlap between them and that sites could fulfil more than one function. However, whilst I am aware that the Council consider natural and semi-natural greenspaces to be on the whole larger than amenity greenspaces, the scale of such a space does not form part of the relevant typology definition given in Table 1.1 of the Open Space Study. Consequently, due to these factors, I consider that it has not been conclusively established that the appeal site comprises amenity greenspace for the purposes of the Open Space Study-or that the development as proposed would detrimentally affect the supply of such space in Glossopdale. Indeed as the site is not included in the Open Space Study, the proposals as presented could improve the level of provision in the Glossopdale area against the baseline of marginal undersupply presented within that document.
17. The proposed development would undoubtedly reduce the amount of open space present at the appeal site. However, I am mindful of the agreed planning obligation in this respect, which, through securing the use of the site as outlined in the description of development would clearly be necessary to make the development acceptable in planning terms. Given my conclusions in this regard, and that the measures it would secure are integral to the development as proposed, I consider that the obligation would be directly related to the development and fairly and reasonably related in scale and kind to it. Consequently, I conclude that the planning obligation would meet the tests given in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010, paragraph 204 of the National Planning Policy Framework (the Framework), the requirements of Policy CF7 of the Local Plan, and the Council's Planning Obligations Supplementary Planning Document-SPD1 (adopted December 2005). As a consequence, the obligation is a consideration to which I attach considerable weight.
18. Under the terms of the obligation the bulk of the site (some 4325 SqM) would remain undeveloped, including considerable elements of its street frontages offering opportunities for access. Moreover, submitted details and the description of development indicate the appellant's intention to maintain this remaining open area as public space, with access, biodiversity and maintenance improvements. As the submitted planning obligation introduces a legally enforceable mechanism to secure these measures, I give considerable weight to this aspect of the appeal scheme in my consideration of its merits.

19. Whilst I am conscious of comments regarding the efficacy of service charges levied on future occupants of the proposed dwellings to fund the appeal site's ongoing maintenance, I am also mindful that such charges are far from unusual in developments of this type, and that no other viable or feasible alternatives have been introduced by other parties to secure either public access to or maintenance of the appeal site. Consequently, I consider that the qualitative improvements that the appeal scheme could bring about would outweigh the quantitative reduction that it would cause, particularly as the private ownership of the site means that, as things currently stand the informal access to it could cease at any time.
20. Consequently, on this main issue I find that the proposed development would cause no material harm to the provision of amenity space, and would therefore not conflict with Policies CF4 and CF7 of the Local Plan insofar as, amongst other matters, they seek to ensure that where possible open spaces are enhanced and that alternative facilities of equal or better quality would be provided to offset the loss of local green space and that provision is made for subsequent maintenance of facilities secured through planning obligations.
21. In reaching this view, I am mindful of the previous appeal decisions related to the site. However, there was evidence of considerable unmet need for recreation space in the local area pertaining at the time of those previous appeals—a position not supported by the current Open Space Study. Moreover, the Inspectors in those cases were not presented with finalised planning obligations to secure the use, access and biodiversity improvements, or management and maintenance of the open space, as I have been in this case. In both cases the amount of space left open would have been less than the amount secured in the agreed planning obligation in this instance.
22. Moreover, in the case of the latter appeal the Borough had an oversupply of housing at that time. On the contrary, in this instance the Borough's housing requirement and the development plan reliance on windfalls, such as the appeal site, to meet this requirement are material considerations of considerable weight which did not pertain at the time of the formerly dismissed appeals. In any event each proposal needs to be considered on its own planning merits.

#### *Character and Appearance*

23. The immediate surroundings of the appeal site are characterised by residential development, at varying levels due to the underlying topography of the area, which, whilst plot sizes and types of dwelling vary are in well-vegetated surroundings, to which the appeal site contributes. The appeal scheme could introduce a development pattern which could readily assimilate with this surrounding character, and could be responsive to both the street and its more open environs. Whilst detailed design, scale and appearance matters are for consideration at subsequent planning stages, the proposed development could involve dwelling types that responded to the character of the surrounding streetscene. Ample open space and mature vegetation would remain, along the appeal site's frontages, and within, which would ensure that the wider appeal site continued to contribute to the character and appearance of its surroundings in terms of the visual relief it offered. As a consequence, the proposed development would not read as a harmful intrusion, or result in

restricted and tunnelled views that would erode the visual amenity aspect of the appeal site.

24. In arriving at this view, I am mindful that the access aspects of the proposed development are for detailed consideration at this stage, and that the planning obligation relates to a proposed area of open space corresponding to the area not shown as houses and their grounds on the indicative layout plan. Whilst the Council consider that these aspects of the proposed development mean that the layout on the submitted plans is more than simply indicative, I consider that there would be still opportunity at the relevant reserved matters stages to firm these aspects up in more detail. Consequently, I consider that it has not been demonstrated at this stage that excessive engineering works requiring the installation of retaining walls and raised decks as a platform for the houses would be necessary, or the extent to which such aspects of any design would harm the character of the site and its surroundings.
25. The proposed development would remove several trees including some specimens protected by the TPO<sup>9</sup>. However, I note from the Statement of Common Ground and the Council's Appeal Statement on the scheme that the loss of these trees could be mitigated by management measures including additional planting, which taken together could have positive effects in these regards, and would allow adequate space to accommodate replacement trees. Furthermore, I am mindful that whilst the Inspector in their 2002 decision found harmful effects arising as a result of the removal of protected trees, this related to an indicative layout with a more intensive development pattern at the corner of Longclough Drive and Brookside, which could have removed more of the trees on that frontage than the indicative layout in the current instance. Moreover, conditions could ensure that retained trees are adequately protected during any construction activity related to the proposed development.
26. My attention has been drawn to a balsam poplar protected by the TPO of a large scale and some maturity<sup>10</sup>, which due to its presence in the streetscene and the overall symmetry of its crown is a specimen of considerable amenity value contributing to the character and appearance of its surroundings. This tree whilst not scheduled for felling in the submitted proposals is sited roughly to the south-west of the indicative plots at the corner of Brookside and Longclough Drive.
27. The appellant submitted an Arboricultural Appeal Statement<sup>11</sup> which assesses the shading implications of the poplar on the dwellings and gardens annotated on the submitted layout plans as Plots A and B. The shading assessment is based on the methodology set out in the relevant British Standard document<sup>12</sup> and whilst I am aware of the Council's concerns regarding the limitations of this methodology, I consider it to be a reasonable standard to use to assess potential effects at this stage in the planning process.
28. The Arboricultural Appeal Statement found that the shading impacts of the poplar on the gardens of indicative Plots A and B would, during the spring and summer months, be most marked during the mid-afternoon, with direct sunlight available in the morning and evening. Moreover, ambient light

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<sup>9</sup> The Officer Report references Trees T9 and T10 of the TPO

<sup>10</sup> T8 of the TPO

<sup>11</sup> Produced by Cheshire Woodlands dated 13 June 2017

<sup>12</sup> BS5837

- penetration to these plots could be further improved by selective pruning and works to the crown, progressed as part of an agreed management plan at reserved matters stage.
29. In my assessment of this aspect of the appeal scheme I am mindful of the references to research regarding complaints about trees *Management of Tree Populations*<sup>13</sup> in the Council's statement, which was further discussed at the hearing. This research found that complaints were likely to be triggered in response to trees within 20 to 25m of houses, and that shading impacts in the afternoons to early evenings were most likely to trigger complaints. However, I am mindful that the layout for the appeal scheme is merely indicative at this stage, and that detailed design elements such as fenestration and internal layouts are yet to be assessed.
30. The research's findings that a relatively small proportion of the population complain about a relatively small percentage of trees were also drawn to my attention at the hearing, along with its conclusions regarding the low proportion of complaints relating to poplars. Whilst I note the Council's view, expressed at the hearing, that leaf and branch fall could also lead to post-development pressure to progress works to the poplar, I have been supplied with no evidence of the likelihood of such an outcome given the tree's distance from the proposed plots and the indicative nature of the layout. Taking these matters together with the findings of the Arboricultural Appeal Statement leads me to the view that it has not been conclusively established at this stage that the poplar would lead to adverse impacts to the living conditions of the future occupants of the appeal scheme sufficient to trigger any irresistible pressure for excessive pruning or felling.
31. In terms of the other trees, not covered by the TPO to the north of the indicative Plots A and B, the Arboricultural Appeal Statement finds that any effects to ambient lighting to the rear of dwellings could be addressed by selective pruning and removal in a future management plan, and that planting of replacement trees could be progressed to avoid any unduly harmful shading effects. Whilst I note that this could have implications for the assessment of any future management and maintenance plan, I consider that it has not been demonstrated, due to the outline nature of the scheme, that the shading effects of these trees would be of a severity sufficient to justify works that would cause material harm to the character and appearance of the site.
32. Consequently, taking these aspects of the appeal scheme together, I consider that the proposed development would not lead to material harm to the character and appearance of the area, and would not have an unduly adverse effect on protected trees. In arriving at this view, I have taken into account the extracts of appeal decisions<sup>14</sup> referred to me by the Council in respect of tree matters. Whilst mindful of their conclusions on the shading effects of the trees and post-development pressures, the site specific aspects of the appeal scheme, taken together with the outline nature of the proposal in this case, are aspects which constitute clear material differences and consequently, these other appeal decisions, whilst material, do not alter my conclusions in this regard.

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<sup>13</sup> Hopcraft IJ (2012) Arboricultural Journal 34 160-168

<sup>14</sup> APPP/H2835/A/11/2144635; APP/R3325/A/09/2103333; APP/L235/A/13/2190478; APP/L3245/A/13/2204965

33. For these reasons, I find no conflict with Policy EQ6 of the Local Plan insofar as it seeks, amongst other matters, to ensure that development contributes to local distinctiveness and a sense of place

#### *Crime and Anti-social Behaviour*

34. The indicative layout plan shows footpaths on the site that would skirt the rear of the proposed dwellings. Whilst I am mindful of the Council's view regarding the relative fixity of the layout given the detailed consideration of access and the contents of the planning obligation at this stage, I saw that elements to the rear of the plots that could front Longclough Drive are already overlooked by 2 to 4 Longclough Drive and some natural surveillance also exists from the extensive glazed elements to the rear of 44a Primrose Lane set across the Brook at an elevated position from the appeal site. Moreover, detailed design matters at the reserved matters stage, including the layout of the path, the landscaping and boundary treatment of the proposed dwellings, and their fenestration and lighting arrangements could all, taken together, lead to natural surveillance of the proposed space. In these terms the appeal site could create a reasonably safe and overlooked environment and could thus avoid harm in these respects to its occupants and those of adjacent dwellings, and the users of the open space.
35. Consequently, whilst the proposed development's indicative layout in siting public space behind private rear gardens would be at variance to the advice given in the *Residential Design* Supplementary Planning Document- SPD2 (adopted December 2005) and the *Designing Out Crime* SPD, the site specific aspects of the appeal scheme, outlined above, justify a departure from this guidance in this instance.
36. Accordingly, taking these matters together with the lack of substantive evidence supplied in relation to incidences of crime and anti-social behaviour at the appeal site or within its environs, I conclude that it has not been demonstrated that the proposed development would lead to any adverse crime and anti-social behaviour effects. I therefore can find no conflict with Policy EQ6 of the Local Plan insofar as it seeks, amongst other matters, to ensure that development provides safe public and private spaces.

#### *Affordable Housing*

37. Policy H4 of the Local Plan sets out the local approach to securing affordable housing contributions. For development proposals including between 5 and 24 units the policy requires a 20% provision of onsite affordable housing- which in the case of the appeal proposal would equate to one dwelling.
38. My attention has also been drawn to the Government's Planning Practice Guidance (PPG), which<sup>15</sup>, expands on the national policy expressed in the Written Ministerial Statement of 28 November 2014 (the WMS). This outlines the specific circumstances where contributions for affordable housing should not be sought, including from developments of 10 units or less or which have a maximum combined floorspace of no more than 1,000 SqM. Whilst a lower threshold of 5-units applies to designated rural areas, the Council confirmed that the appeal site is not within one of these. As the WMS and the related PPG constitute clear and unequivocal statements of national policy on this

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<sup>15</sup> At Paragraph: 031 Reference ID: 23b-031-20161116

matter they are considerations to which I attach very considerable weight in the overall planning balance.

39. Although I note that the adoption of the Local Plan post-dates the issue of the WMS, it was adopted at a point where a Declaration order of the High Court quashed the contents of the WMS. However, that order was overturned by the Court of Appeal on 13 May 2016, and from that date the national policy expressed in the WMS once again constitutes a material planning consideration.
40. It is clear that the contents of the WMS and the PPG do not automatically displace the statutory primacy of the development plan in the assessment of the planning merits of a proposal. However, I have been supplied with no substantive evidence in this case to demonstrate the specific circumstances pertaining in the Borough that justify a departure from the unambiguous and most up to date expression of national policy on this matter expressed in the WMS. Consequently, in this instance I consider that the national policy expressed in the WMS and related advice in the PPG are matters that justify a departure from Policy H4 of the Local Plan, and therefore find that the necessity of an affordable housing contribution has not been established in this instance.

### **Other Matters**

41. The proposed development would make adequate arrangements for off-street parking, and I note that the local highway authority tendered no objection to the appeal scheme subject to appropriately-worded planning conditions. Whilst I note comments about parking along Longclough Drive narrowing the effective width of the highway, and the potential for this to restrict access for emergency service and refuse vehicles, I consider that the limited reduction in on-street parking that would come about as part of the proposed development would not exacerbate this to any material degree. Neither do I consider that the parking implications of the appeal scheme, given appropriate splays from the proposed accesses, would lead to any harmful highway safety implications.
42. I am mindful that children cross the road to access the appeal site, including persons with autism. In my assessment of this aspect of the appeal, I have had due regard to the Public Sector Equality Duty (PSED) established by section 149 of the Equality Act 2010 (the Act), which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Consequently, whilst autism constitutes a protected characteristic for the purposes of the Act, as I have found that the proposed development would not lead to any material increase in on-street parking, and would make acceptable arrangements for off-street parking in highway safety terms, I find that it would not impede the safe access to the site for children with or without these characteristics.
43. Consequently, taking these matters together leads me to the conclusion that the proposed development could enable safe and suitable access to the site for all people; and as a consequence these aspects of the proposal would not weigh against the appeal scheme in the overall planning balance.
44. The precise layout, scale, fenestration, landscaping, lighting and boundary treatments of the proposed development are reserved matters. Moreover, the

proposed dwellings could be adequately separated from their surrounding buildings. Consequently, I consider that it has not been demonstrated at this stage that the appeal scheme would cause harmful effects to the amenity of the occupants of adjacent dwellings and the adjacent bed and breakfast accommodation on Primrose Lane in terms of noise and disturbance, overlooking or privacy. Therefore whilst I am conscious of comments from the owner of the bed and breakfast in this regard, it has not been established that the proposed development would result in a negative impact on the holiday accommodation available in Glossop, or be at variance with the Local Plan's objectives relating to tourism.

45. I am mindful of the comments pertaining to part of the appeal site being within Flood Zone 2, that some houses in the immediate surroundings have had difficulties in securing insurance because of the local flood situation, and the photographic evidence showing pooling of water on Longclough Drive itself. However, the planning application was accompanied by a flood risk assessment (FRA)<sup>16</sup>, which recommends measures and design details for the proposed dwellings including finished floor levels and drainage arrangements. No objections were received from the Lead Local Flood Authority or other statutory consultees in regard the potential flood implications of the scheme, subject to appropriately worded conditions in respect of amongst other things, drainage matters, being attached to any permission. Consequently, due to these latter considerations, I consider it has not been demonstrated that the proposed development would lead to an increase in flood risk elsewhere, or would not be appropriate development in context of the flood risk status of the appeal site.
46. The appellant's submitted Ecology Report<sup>17</sup> and Update Protected Species Appraisal<sup>18</sup> found no evidence of protected species on the site- and found that invasive species, including Japanese Knotweed were present. Moreover, the appellant's Biodiversity Management Plan<sup>19</sup>, and planning obligation would secure biodiversity enhancements, including, amongst other things, the removal of invasive species, the introduction of wildflower meadows, the deployment of bat and bird boxes, and the placement of hedgehog shelters. I note also that Derbyshire Wildlife Trust offered no objections to the proposed development. Consequently, whilst noting the anecdotal evidence submitted in respect of the presence of protected and other species on the site, I consider that it has not been demonstrated that the proposed development would have any adverse effects in these regards; and to the contrary could improve the level of biodiversity present on the site. In these respects, the appeal scheme would meet the requirements of Policy EQ5 of the Local Plan insofar as it seeks to ensure, amongst other matters, that developments include measures to contribute positively to the overall biodiversity of the plan area.
47. I have had regard to comments regarding the potential effects of noise and disturbance during construction of the proposed development. However, I consider that an appropriately worded condition regarding construction management would ensure that development would be progressed in a way to minimise its effects in these regards.

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<sup>16</sup> Produced by Peter Mason Associates February 2016

<sup>17</sup> Longclough Drive- Preliminary Ecological Appraisal by Arc Ecology- Prepared December 2014

<sup>18</sup> Longclough Drive, Glossop- Updated Protected Species Appraisal by Arc Ecology- Prepared February 2016

<sup>19</sup> Produced by Avian Ecology Date 16 June 2016

48. I note assertions from residents regarding the potential effects of the proposed development on the house prices of properties in its surroundings. However, this is a matter that the UK Courts have consistently established is not a determinative factor in the assessment of the planning merits of such a case. Consequently, this matter has not weighed against the proposed development in the overall planning balance.
49. Consequently, none of these other matters, either taken individually or together alters my conclusions in respect of the main issues, or is of a sufficient weight to tip the planning balance against the appeal scheme.

### **Conditions**

50. I have assessed the list of conditions supplied to me by the Council and appellant against the tests set out in paragraph 206 of the Framework, which states that they should only be attached where they are necessary, relevant to planning and the development to be permitted, enforceable, precise and reasonable in all other respects. I have made amendments to the wording of suggested conditions, where necessary, in the interests of clarity.
51. As the appeal is in outline I have attached the standard suite of conditions in respect of approval of reserved matters and implementation. In the interests of certainty, I have attached a condition which specifies the approved plans, in relation to the access arrangements and the red line boundary of the site.
52. In order that the development is delivered in line with its description, and following my conclusions in respect of the quantity of dwellings and residential space at the site not leading to a requirement for affordable housing, it is both necessary and reasonable to attach a condition which sets the parameters of the appeal scheme. Consequently, due to this condition, and for the reasons set out above, it is not necessary to attach a condition requiring the delivery of an affordable housing unit on the site.
53. As access is for detailed consideration at this stage I have attached conditions requiring the submission of further details in this regard for the Council's approval, for implementation prior to the occupation of the dwellings. I have amalgamated and simplified the various conditions suggested by the Council and appellant to secure these aims. In order that the proposed development makes acceptable arrangements for parking I have attached a condition requiring the approval and implementation of off-street space prior to occupation of the proposed dwellings.
54. In order that the development makes acceptable arrangements for drainage, and to avoid increasing flood risk, I have attached an amalgamated condition in respect to the submission of drainage details to the Council for its approval, and securing the implementation of these measures prior to the first occupation of the approved dwellings. Elements of this condition necessarily require compliance with them prior to commencement to ensure that the proposed development makes appropriate arrangements in these regards.
55. Also in order to ensure that the proposed development makes adequate arrangements to minimize flood risk for its future occupants, a condition is attached requiring the details of finished floor levels to be approved prior to the construction of the dwellings. This is by necessity a pre-commencement

condition to ensure that the proposed development makes adequate arrangements in these regards.

56. I have attached a condition requiring the submission of a construction management plan to the Council for its approval prior to the commencement of development on the site. This is necessarily a pre- commencement condition to ensure that development progresses in line with the approved details and that the living conditions of the occupants of adjacent dwellings, and the highway safety effects of the construction process are acceptable. As I have attached this condition, it is not necessary to attach the suggested condition in relation to the hours of construction, as this matter can be handled in the management plan.
57. As the landscaping of the scheme is a matter for detailed approval at a future reserved matters stage, I have not attached the conditions in respect of the removal of trees, shrubs or hedgerows, or in respect of tree protection measures at this stage. Similarly, as the planning obligation secures the implementation of a biodiversity and landscape management plan, I consider that any further details in these regards would be more properly required as part of a reserved matters application related to the landscaping aspects of the site. Similarly, it is not necessary at this stage to include the conditions requiring the removal of invasive species or relating to tree felling.
58. However, as an undeveloped buffer zone adjacent to the Brook would be a guiding principle of any landscaping scheme I consider it necessary to attach a condition requiring this aspect to be taken into account prior to commencement of the development. This is necessary in the biodiversity and water quality interests of the Brook and its immediate surroundings.
59. In order that the proposed development avoids harmful effects to nesting birds, and in the light of the appellant's submitted Ecology Report, I consider it both reasonable and necessary to attach a condition requiring any activity leading to the loss of trees, shrubs, hedgerows or site clearance to avoid taking place during the bird nesting season. For similar reasons, I have attached a condition requiring the submission of Reasonable Avoidance Measures in terms of reptiles to take effect pre-commencement to ensure that the development avoids any harm in these respects.
60. As matters of detailed design, layout and landscaping are reserved for future consideration, it is not necessary at this stage to attach a condition requiring the submission of details of a lighting scheme for the proposed development.
61. I have been supplied with no evidence to suggest that any contaminative uses have taken place on the appeal site. Nevertheless as residential developments are sensitive to the effects of contaminated land I have found it necessary to attach a condition relating to the submission of a risk assessment in this regard to the Council for its approval. This condition of necessity requires compliance with it prior to the commencement of development to ensure that any harmful effects to future occupants of the scheme, or the environmental quality of the appeal site and its surroundings are avoided. Given the scale of the proposal, I have amalgamated and simplified the requirements of the suggested conditions.

## **Conclusion**

62. Whilst I have found that the national policy expressed in the WMS outweighs the Local Plan policy relating to affordable housing, in other respects the appeal scheme would comply with the aforementioned policies of the development plan. Furthermore, as the appeal scheme would lead to clear and considerable benefits firstly, through the qualitative improvement of the open space in terms of access and biodiversity; and secondly, as a result of the delivery of additional housing to assist in meeting the Borough's requirements, it would also accord with Policies S1, S1a and EQ9 of the Local Plan. These policies, amongst other things, require all new development to make a positive contribution to the sustainability of communities and protect and where possible enhance the environment; that proposals secure development that improves the economic, social and environmental conditions in the area; and that existing woodlands, healthy mature trees and hedgerows are retained and integrated within a proposed development unless the need for, and benefits of, the development clearly outweigh their loss.
63. Accordingly, for the reasons set out above, and taking into account all other matters raised, I conclude that the appeal should succeed.

*G J Fort*

INSPECTOR

## Appearances

### FOR THE APPELLANT

Rawdon Gascoine BA(Hons) MRTPI

Una Maginn BSc(Hons) MSc MCIEEM

Ben Pycroft BA(Hons) Dip TP MRTPI

Glyn Thomas DipArb (RFS) FICFor FArborA

Director

Emery Planning

Technical Director

Avian Ecology

Emery Planning

Cheshire Woodlands

### FOR THE LOCAL PLANNING AUTHORITY

Monica Gillespie BSc(Hons) MSc MArborA

Chartered Biologist

Ben Haywood BA(Hons) MA MBA MRTPI MCMi

Rachael Simpkin BA(Hons) DTP MRTPI

High Peak Borough Council

Development Services Manager

High Peak Borough Council

Senior Planning Officer

High Peak Borough Council

### INTERESTED PERSONS

David Phillips

Ray Wrynne

Longclough Residents'

Association

Longclough Residents'

Association

## DOCUMENTS submitted at the Hearing

1. List of suggested conditions
2. Certified copy of completed section 106 agreement dated 22 January 2018 between High Peak Borough Council and AM (2004) Ltd
3. High Peak Borough Council's *Designing Out Crime Supplementary Planning Guidance and Advice*
4. Annotated Google Map showing location of Derbyshire Wildlife Trust's Long Clough site

### **Schedule of Conditions**

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Nos 1218.01 (Location Plan); 1218.04 Rev B (Proposed indicative site plan) but only in respect of those matters not reserved for later approval.
- 5) No more than six (6) dwellinghouses or 1,000 SqM of residential floorspace shall be provided on the site.
- 6) Notwithstanding condition No (4) no development shall take place until details of the access arrangements for each individual plot have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details, and implemented prior to the first occupation of the dwellings hereby approved.
- 7) Notwithstanding condition No (4) no development shall take place until details of the parking spaces for each individual plot have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details, and implemented prior to the first occupation of the dwellings hereby approved. The approved parking spaces shall thereafter be kept available at all times for the parking of vehicles.
- 8) No development shall take place, including any works of demolition, until a Construction Management Plan has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
  - i) the provision of turning facilities for and parking of vehicles of site operatives and visitors;
  - ii) loading and unloading of plant and materials;
  - iii) storage of plant and materials used in constructing the development;
  - iv) wheel washing facilities;
  - v) measures to control the emission of dust and dirt during construction;
  - vi) a scheme for recycling/disposing of waste resulting from demolition and construction works;
  - vii) delivery, demolition and construction working hours.

The approved Construction Management Plan shall be adhered to throughout the construction period for the development.

- 9) No development (including any works of site clearance, and removal of trees, shrubs and hedgerows) shall take place during the bird nesting season (1 March to 31 August inclusive) unless the local planning authority approves in writing the findings of a suitably qualified ecological consultant that affected trees, shrubs or hedgerows are not in use by nesting birds. If nested birds are located, work shall cease on that part of the site until nesting has completed and fledged young have departed the site.
- 10) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 21 days of the works being completed and approved in writing by the local planning authority.
- 11) The approved development shall make provision for separate systems of drainage for foul and surface water. Prior to the commencement of development, a surface water drainage scheme, based on the hierarchy of drainage options in the National Planning Practice Guidance (or any subsequent national guidance that replaces this) with evidence of an assessment of the site conditions shall be submitted to and approved in writing by the Local Planning Authority.  
The surface water drainage scheme must be in accordance with the Non-Statutory Technical Standards for Sustainable Drainage Systems (March 2015) or any subsequent replacement national standards and unless otherwise agreed in writing by the Local Planning Authority, no surface water shall discharge to the public sewerage system either directly or indirectly.  
The development shall be completed in accordance with the approved details prior to the first occupation of the dwellings hereby approved.
- 12) No development shall take place until details of all finished site and floor levels have been submitted to and approved in writing by the local planning authority. The development shall take place in accordance with the approved scheme.

- 13) No development shall take place until a scheme for Reasonable Avoidance Measures with regard to reptiles, based on the recommendations set out within the Arc Ecology *Longclough Drive, Glossop-Update Protected Species Report* (dated February 2016), has been submitted to and agreed in writing by the local planning authority. Development shall take place in accordance with the approved Reasonable Avoidance Measures.
- 14) No development shall take place until a scheme for the provision of an undeveloped buffer zone adjacent to the Brook has been submitted to and agreed in writing by the local planning authority. Development shall take place in accordance with the approved scheme thereafter.