

LPA Statement of Case

*2 Phoenix View, Chapel Road, Hayfield, SK22 2JN -
APP/H1033/W/23/3330649*

CONTENTS

1.0 Introduction

2.0 LPA Defence of Appeal

3.0 Summary and Close

1.0 Introduction

- 1.1 An appeal has been lodged by Emery Planning on behalf of the appellant Mr Daniel Knight, against the decision of High Peak Borough Council (herein referred to as the LPA) to refuse full planning permission for development described on the Application Form as *“Parking area, access to track to create a safe means of access to existing house, change of use of part of the field into access track, parking area for 2 Phoside View”*, under application reference HPK/2023/0009.
- 1.2 This Statement has been prepared by James Stannard (MRTPI), acting Planning Officer for the LPA, who was responsible for assessing the planning application and finalising a report and recommendation, leading to the decision being issued by the signing Officer.
- 1.3 The application was assessed and determined under delegated powers with the decision being issued on 4th April 2023.
- 1.4 The application was refused on two grounds:
1. *The proposed development and engineering operations by virtue of siting, scale and visual appearance, would fail to preserve the openness of the Green Belt and the purposes of assisting in safeguarding the Green Belt from encroachment into the open countryside, and thus constitutes inappropriate development in the Green Belt. There are no Very Special Circumstances that outweigh the substantial harm to the Green Belt by reason of inappropriateness and any other harm (openness) contrary to Local Plan Policy EQ4, and relevant restrictive policies relating to the Protection of the Green Belt Land contained under Chapter 13 of the National Planning Policy Framework.*
 2. *The proposed development and engineering operations, by virtue of its highly sensitive and prominent location, and its siting, scale and visual appearance, would result in the introduction of urban and man made features to a naturally open steeply sloping parcel of agricultural land, thereby resulting in significant harm to the immediate and wider rural landscape character, contrary to Local Plan Policies S1, EQ2, EQ3 and EQ6, the Landscape Character Assessment SPD (2006), Design Guide SPD (2018) and relevant paragraphs under Chapter 12 of the National Planning Policy Framework.*
- 1.5 The application was refused in connection with the following plans:
- Location Plan
 - Site Plan
 - Swept Path Analysis
 - Visibility Splays
 - Proposed Side Levels
 - Proposed Track Cross Section

- Proposed 'Turn in off main road onto Track'

1.6 In the interests of unnecessary repetition, the LPA wish to rely primarily on the analysis contained within the Delegated Report. The purpose of this Statement is therefore to respond directly and specifically to the appellant's Statement of Case and grounds for appeal.

2.0 LPA Defence of Appeal

2.1 This section aims to respond directly to specific statements made within the appellant's Statement of Case. The following paragraphs therefore show a statement made by the appellant (in black) quoting relevant paragraphs, followed by the LPA response and rebuttal in green.

2.2 The Statement contends three propositions:

1. *The proposal does not constitute inappropriate development in the Green Belt*
2. *Notwithstanding proposition 1, Very Special Circumstances exist which clearly outweigh any perceived harm to the Green Belt by reason of inappropriateness or any other harm*
3. *The proposed development would not result in significant harm to the immediate and wider rural landscape*

2.3 Before turning to the appellant's case in relation to these three propositions, we wish to respond to claims made under 'Section 2.0 – The Appeal Proposal' as follows.

2.4 At paragraph 2.4, it is submitted that the appellant was advised that the proposal would constitute engineering operations that would be an acceptable form of development in the Green Belt, so long as highway safety issues are addressed.

2.5 As set out in the Delegated Report, there is no written or verbal record of the (informal) advice given by the Planning Officer on duty. Neither myself as the Officer responsible for defending this appeal or the agent acting on behalf of the appellant has the facts as to what proposal was on the table at the time of this informal enquiry. In any event (as the agent is well aware) positive informal or indeed formal advice does not automatically imply that a forthcoming planning application will be supported, as a formal assessment is required taking account of all material considerations that are relevant at the time.

2.6 At paragraphs 2.7 and 2.8, the Statement refers to historic applications that have been determined at the neighbouring property No.1 Phoenix View.

2.7 Reference is made to an application for alterations to an existing access to highway and increase width of drive area approved under HPK/2001/0566 on 4th February 2002.

- 2.8 For the Inspector's benefit, a screenshot of the Existing and Proposed Site Plan that was subject to this decision, which of course pre-dated the current Local Plan, relevant Supplementary Planning Documents, and the National Planning Policy Framework, is set out below (Fig 1):

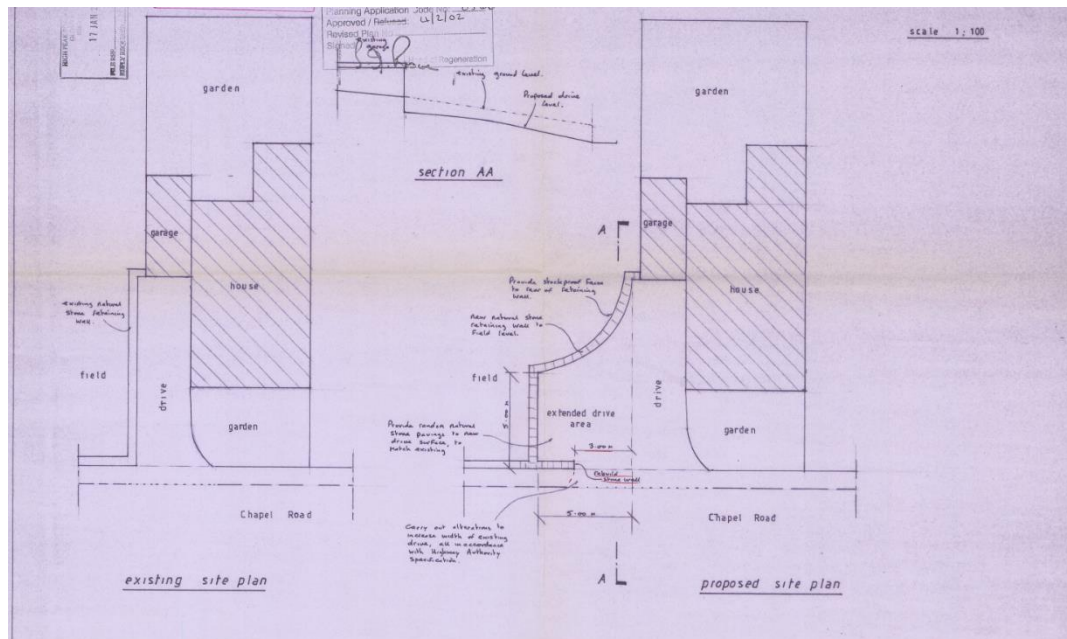


Fig 1: Screenshot of Existing and Proposed Site Plan approved under HPK/2001/0566 on 4th February 2002 at neighbouring property No.1 Phoenix View.

- 2.9 Crucially, this neighbouring property already benefited from some form of private driveway at the time the LPA considered the merits of this historic application, and is therefore materially different to the appeal proposal, that benefits from no driveway.
- 2.10 The following paragraphs respond directly to the appellant's case in respect of these three propositions set out under 'Section 6.0 – Planning Considerations':

Proposition 1 - The proposal does not constitute inappropriate development in the Green Belt

- 2.11 In light of the recent changes to the NPPF (Dec 2023), the relevant paragraphs cited within the appellant Statement at paragraphs 6.4 and 6.5 have now changed (paragraph 155) although the wording remains unchanged.
- 2.12 The LPA acknowledge and accept the relevant case law set out at paragraph 6.7 of the appellant Statement which states that the term 'Openness' has both a spatial and a visual aspect.
- 2.13 We fundamentally disagree with the appellant's assertion that there would be no spatial harm to the openness of the Green Belt. It is claimed at paragraph 6.8 of their Statement that the proposal would be two dimensional. However, this conflicts with the fact that the proposal would result in a (significant) amount of

cut and fill operations, which would essentially create a small valley with the track running either side of earth banking.

- 2.13 In assessing the application, the LPA were not presented with any information regarding engineering calculations that demonstrated the specific volume of earth that would be required to be removed in order to facilitate the development.
- 2.14 However, it is clear from the proposed plans that the amount of earth to be removed would be significant given the change in levels evident from site photos taken by Officers at the time of assessing the application and similar photos contained within the appellant submission.
- 2.15 **In light of the above, we submit that the proposed engineering operations and associated development would clearly and obviously relate in harm to the spatial aspect of openness.**
- 2.16 Turning to visual impact, the appellant acknowledges at paragraph 6.16 that the proposal would be visible from public footpaths. As such, it follows that whilst the degree of visual harm is a matter of judgement, there would, by virtue of the development being seen, be some visual harm to the openness.
- 2.17 The application site is located on the side of a steep valley with clear and prominent views from a number of public footpaths, most notably the public footpath (HP/15/12/1) that is located approximately 100m distant from the main house and just a few metres from the proposed access (see Fig 2 below).

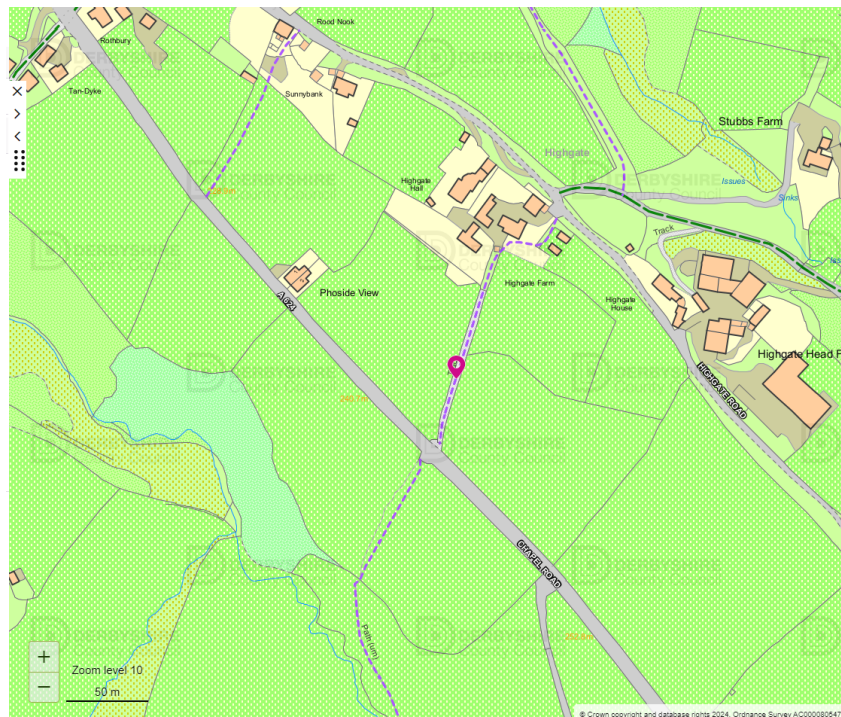


Fig 1: Screenshot showing public footpath HP/15/12/1 that runs a short distance to the east of the site.

- 2.18 The landscape of the site is typical of the wider site on the northern slopes of the valley, with open agricultural fields sloping steeply in a northerly direction away from the public highway.
- 2.19 Given the close proximity of the public footpath to the site, notwithstanding views of the proposal from the same footpath on the southern slopes of the valley, the significant excavations (engineering operations) required to facilitate the proposal, and the resultant visual impacts that would be experienced from the public footpath as a result, there would be a clear and obvious degree of harm to the visual aspect of openness.
- 2.20 **The LPA therefore fundamentally refute the submission from the appellant and submit that the proposal would result in harm to both spatial and visual aspects of openness, and as such amounts to inappropriate development in the Green Belt.**
- 2.21 It is acknowledged that the appellant makes reference to other appeals. However, we would simply state in response that every application (or appeal) has to be determined on its own individual merits having regards to the very specific characteristics of the site and facts of the case and therefore these appeal decisions (which were not even determined in the same LPA) should be given no weight in the determination of this appeal.

Proposition 2 – Notwithstanding proposition 1, Very Special Circumstances exist which clearly outweigh any perceived harm to the Green Belt by reason of inappropriateness or any other harm

- 2.22 Firstly, we would state that demonstrating Very Special Circumstances (VSC) to justify inappropriate development in the Green Belt is a 'high bar' to clear. In the event that the Inspector agrees with the LPA that the proposal is (1) inappropriate development in the Green Belt by definition, **and** (2) results in harm to the visual and spatial aspect of openness, then the VSC to outweigh such harm would need to be so unique and of benefit to the public as to be acceptable in policy terms.
- 2.23 Even in the event that it is concluded that the VSC does outweigh the harm to the Green Belt by reason of inappropriateness and harm to openness, the proposal must also be found to not give rise to any adverse landscape and visual impacts by virtue of its design and appearance (Proposition 3).
- 2.24 The appellant refers to the previous application approved by the LPA to widen an existing access at the neighbouring property No.1 Phoenix View.
- 2.25 It is not disputed that the LPA took the view that in that specific case, the benefits arising from a wider access would result in a benefit that would outweigh the harm to the Green Belt.
- 2.26 The direct comparison between the proposal subject of this appeal and this neighbouring application is flawed for the following reasons:

- The property (No.1 Phoenix View) already benefited from a private driveway and thus the minor extension of an existing development and modest engineering works will always be considered in an entirely different manner to the introduction of a new and much larger access at No.2 Phoenix View
- The degree of harm to the Green Belt (in particular to the openness of the Green Belt) associated with a minor extension of an existing driveway, is clearly significantly less than the significant excavation of a neighbouring agricultural field that lies in a prominent location, alongside the introduction of a new access and new 50m track, which is currently characterised by uninterrupted sloping agricultural field.
- This application was considered and determined long before the current adopted Local Plan, relevant Supplementary Design Guidance, and the National Planning Policy Framework were material to decision making.

2.27 It is therefore submitted that this historic application determined at No.1 Phoenix View which was for the modest extension of an existing driveway, which amounted to a very minor departure from the existing residential curtilage and resulted in limited harm to the openness of the Green Belt, should be given limited weight in the overall planning balance.

2.28 A Highways Assessment prepared by SCP accompanies this appeal which was not submitted with the application and therefore introduces new evidence that was not considered at the time that the application was determined. We therefore would question whether it is reasonable for the appellant to submit this (new) information in support of the appeal.

2.29 Notwithstanding the above, the Statement states that the VSC are contained within the Highways Assessment. A review of the Highways Assessment appears to highlight the following:

- *5-year accident record does not demonstrate any significant accident issues in the immediate vicinity of the site, however it does evidence the potential for severe conflicts on A624 Chapel Road with 3no. serious severity incidents and two fatal accidents recorded south of the appellants house, three of which involved cyclists.*
- *Absence of any formal pedestrian footpath to access property on A624 Chapel Road.*
- *Kerbed area of hardstanding south of A624 heading towards Hayfield is uneven, unsteady and sometimes obstructed by telegraph poles and road signs.*
- *Safety of appellant compromised trying to access property on foot on a busy road that has a 50mph speed limit*

- 2.30 In response to the above and to statements made under paragraphs 6.47-6.50 of the appellant's Statement, we simply submit that there are no Very Special Circumstances that apply to this proposal that outweighs the harm to the Green Belt by reason of inappropriateness and the other identified harm to the spatial and visual aspects of openness.
- 2.31 By their own admission, there have been no fatal accidents within the proximity of the site, and the majority of accidents within the wider vicinity on Chapel Road have involved cyclists.
- 2.32 Contrary to the appellant submission, the safety benefits are indeed private and not public, as they apply to any current or future occupiers of the (private) residential dwellinghouse. We fundamentally refute the notion that a new access would improve highway safety for users of the A624 Chapel Road (as set out at paragraph 6.50). The VSC claimed under Section 6.0 of the appellant statement should be afforded limited weight in the overall balance.
- 2.33 There are occasions, particularly in rural areas, where standard modern living arrangements including off-street parking provision, can often not be accommodated in association with (typically older) properties due to the resultant impacts that can occur – which in this case are significant in relation to Landscape and Visual impacts.
- 2.34 Whilst the LPA are entirely sympathetic to the current and any future owner of the property with regards to a lack of off-street parking provision, it is the case that this inconvenience does not amount to VSC that outweigh the identified harm to the Green Belt, let alone any adverse harm to the immediate and wider rural landscape (Proposition 3).
- 2.35 We therefore submit that the Appeal Statement and supporting (newly introduced) Highways Assessment fails to demonstrate that VSC occur which clear the 'high bar' necessary to outweigh the substantial harm to the Green Belt by reason of inappropriateness and other identified harm to the openness of the Green Belt.

Proposition 3 - The proposed development would not result in significant harm to the immediate and wider rural landscape

- 2.36 The site lies within a sensitive and prominent location on the northern slopes of a steep valley and within the 'Settled Valley Pastures' Landscape Character Area, as identified in the Landscape Character Assessment SPD (2006).
- 2.37 The Delegated Report contains the relevant guidance contained within the Landscape Character Assessment SPD and the more recently adopted Design Guide SPD.
- 2.38 The appellant statement contends that the LPA were wrong to state that the proposal would be clearly visible from public footpaths and that these views are limited.

- 2.39 The last photograph under Appendix EP4 of the appellant statement provides a very clear indication of how prominent the proposal (which consists of significant engineering operations that would create two significant elements of banking to facilitate a 50m track and associated access) would be within the wider landscape.
- 2.40 The appellant seems to have ignored potential more immediate and severe visual impacts from the nearest public footpath (see Fig 2) that lies a short distance to the east of the proposed access. From this footpath, that rises northwards away from the public highway, the proposal would result undeniably in the introduction of a development that would by virtue of its highly sensitive and prominent location, and its siting, scale and visual appearance, would result in the introduction of urban and manmade features to a naturally open steeply sloping parcel of agricultural land, thereby resulting in significant harm to the immediate and wider rural landscape character.
- 2.41 It is therefore submitted that the introduction of this significant engineering operation would result in clear and obvious adverse landscape and visual harm to the immediate and wider rural landscape.**

3.0 Summary and Close

- 3.1 The key ‘headline’ arguments that the LPA wish to present to the Inspector, are as follows:
1. There are clear material differences between this proposed development and the minor and modest widening of an existing private driveway which amounts to a very minor departure away from the existing domestic curtilage, to the neighbouring property at No.1 Phoenix View under HPK/2001/0556. This application should be afforded limited weight in the overall planning balance.
 2. There would be clear, obvious, objective substantial harm to both the spatial and visual aspects of the openness of the Green Belt. As such, the application amounts to inappropriate development in the Green Belt.
 3. The Very Special Circumstances submitted in support of this application are considered to fail to clear the ‘high bar’ that is required to outweigh the identified substantial harm to the Green Belt by reason of inappropriateness and other identified harm to openness. The benefits presented are private benefits to the current or future occupiers of the (private) dwelling and can not with any credibility be seen to benefit the safety of users of the public highway.
 4. The last photograph in the Appendix EP4 of the supporting statement perfectly highlights the visual impacts and harm to the immediate landscape character that would occur as a result of the proposed development. The appellant appears to have ignored potential impacts from the nearest public footpath located just a few metres from the

proposal, that due to its elevated position from the north, would experience significant visual impacts. It is therefore submitted that the introduction of this significant engineering operation would result in clear and obvious adverse landscape and visual harm to the immediate and wider rural landscape.

- 3.2 For the reasons set out on the Decision Notice, read in accordance with the analysis contained within the Delegated Report and this Statement of Case, the Inspector is politely requested to dismiss the appeal.