

From:
To:
Cc: Response to planning application HPK/2022/0495 (variation of condition 24 in relation to HPK/2017/0694)
19 December 2022 20:56:23
Subject:
Date:

Dear Ms Colley,

This is my response to planning application HPK/2022/0495 concerning variation of condition 24 of HPK/2017/0694 at Linglongs Road in Whaley Bridge.

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

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

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

I object to this application. In summary:

<!--[if !supportLists]-->1. <!--[endif]-->The application is incomplete.

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

The discharge of this condition under application DOC/2018/0110 relied upon plan reference 466/ED/CMS2 Rev E, which shows the completion of the parking spaces and associated access road in the NE field being phased immediately following completion of roads and sewers in the NW field. The justification for this condition was grounded in Local Plan Policy EQ6, which requires "that development achieves a satisfactory relationship to adjacent development and does not cause unacceptable effects by reason of [...] other adverse impacts on local character and amenity"; and, "that developments are designed to [...] promote safe living environments".

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

The applicant is requesting that condition 24 of HPK/2017/0694 be amended to require only that "the approved car parking provision [for residents of Macclesfield Road] shall be made available for use prior to the occupation of the development in the final phase hereby approved under condition 4", with reference to plan 466/ED/CMS1 Rev C Plan 3. The wording "final phase" is not defined and is ambiguous in the context of the referenced plan. This wording could refer either to the housing areas

associated with the four broad phases of road construction (NW field; parking access/spaces in NE field; SE field; and remainder of NE field), or to the 12 numbered phases of housing zone construction. This needs to be clarified and an appropriate amendment made to the proposed wording in the application.

<!--[if !supportLists]-->2. <!--[endif]-->The conditions are there for a reason, and they should not be amended unnecessarily at the whim of the developer.

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

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

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

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

<!--[if !supportLists]-->3. <!--[endif]-->This variation is not necessary (other than to deal with the ongoing breach in relation to occupancy).

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

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

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

<!--[if !supportLists]-->4. <!--[endif]-->This proposed amendment by the developer is not reasonable.

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

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

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

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

<!--[if !supportLists]-->5. <!--[endif]-->Given a technical variation is necessary to deal with the ongoing material breach of permission, this should be effected with a specified correction to errors in the current signage proposal.

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

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

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

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

I trust that you will take full account of my points above. Please let me know if you require any additional clarification.

Yours sincerely,

Dr Benjamin Read

80 Macclesfield Road, Whaley Bridge