

DELEGATED DECISION REPORT

HPK/2024/0501
Valid 12/12/2024

LAND EAST OF
LINGLONGS ROAD
WHALEY BRIDGE

VARIATION OF CONDITION 5
RELATING TO HPK/2017/0160

(FULL - MINOR)

MAIN ISSUES

- Amenity
- Highway Safety

DESCRIPTION OF SITE

The application relates to a parcel of land east of Linglongs Lane, at the fringes of Whaley Bridge which is used for the growing of bonsai trees. The site contains a greenhouse and storage shed approved under HPK/2017/0160.

The site is accessed via a bell mouth junction from the adopted public highway, which has a single track. The site is accessed via a gate, but owing to the growing of trees there is no provision for off-street parking and turning within the site.

PROPOSAL

The application seek to vary Condition 5 that was applied to HPK/2017/0160, which read as follows:

5. There shall be no retail sales to the public from the site unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interest of highway safety and in order to protect the amenities of the area.

As submitted on the Application Form, the proposed variation to this condition reads as follows:

5. Retail sales to the public from the site shall only be undertaken via prior appointment unless otherwise agreed in writing by the Local Planning Authority.

Further to initial comments from the Highways Authority, the application is supported by a revised Site Plan ('Entrance Site Plan' – Drawing No. 2303) which shows two allocated parking spaces measuring 2.4m x 4.8m positioned within the mouth of the entrance, with visibility splays of 43m in each direction.

RELEVANT LOCAL AND NATIONAL PLANNING POLICIES

Section 38(6) of the Planning and Compulsory Act 2004 requires proposals to be determined in accordance with the Development Plan taking into consideration any material considerations relevant to the determination of the application.

The Local Development Plan for this site comprises the Whaley Bridge Neighbourhood Plan (2024) and the High Peak Local Plan (2016). Adopted Supplementary Planning Guidance documents and the National Planning Policy Framework (NPPF) are also material considerations in determining applications.

Whaley Bridge Neighbourhood Plan 2024

No relevant policies

High Peak Local Plan 2016

S1 Sustainable Development Principles
S1a Presumption in Favour of Sustainable Development
EQ3 Rural Development
EQ6 Design and Place Making
EQ10 Pollution and Unstable Land
CF1 Retail and Town Centres
CF6 Accessibility and Transport

National Planning Policy Framework 2024

Achieving Sustainable Development	Chapter 2
Promoting Sustainable Transport	Chapter 9
Achieving Well Designed Places	Chapter 12
Conserving and Enhancing the Natural Environment	Chapter 15

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS

HPK/2015/0016	Proposed Access with a Gate from Field (Approved 19/06/2015)
HPK/2017/0160	Removal of two unauthorised greenhouses and retention of a greenhouse and timber storage shed (Approved 26/07/2017)
DOC/2017/0081	Discharge of conditions 3, 4, 5 & 6 of Planning Permission HPK/2017/0160 (Approved 14/02/2018)
DET/2023/0011	Permission is requested to trade and run occasional specialist workshops from the site at weekend by appointment only (Withdrawn)

CONSULTATIONS

Publicity

Site Notice expiry date: 6th February 2025

Neighbour consultation period ends: 7th January 2025
Press Advert: N/A

Public Comments

1no neutral comment has been received in relation to this application that notes the following:

- Concerns relating to parking, where will clients park?
- Lane is narrow and not suitable for parking at the side of the road
- Small entrance is usually occupied, assume by the owners and can only accommodate cars, not larger vehicles of the type likely to collect trees

2no objections have been received in connection with this application, which present the following concerns:

- Lack of sufficient time to offer comments on details of proposal
- Insufficient level of detail within the application
- Applicant has repeatedly ignored planning restrictions ever since purchase
- Visitors frequently park on the very narrow single track causing obstruction
- Difficult for other vehicles (Tractors, milk tanker, animal feed deliveries, funeral corteges) to pass
- Not possible to differentiate between existing traffic to and from their site from vehicles there by appointment

Whaley Bridge Town Council

No comments received at time of writing

Derbyshire County Council Highways

Initial Comments

Application HPK/2017/0160 is seeking the variation of condition 5 imposed on planning application HPK/2017/0160, which was for the removal of two unauthorised greenhouses and erection of a greenhouse and timber storage shed at Land East Of Linglongs Road, Whaley Bridge.

Condition 5

There shall be no retail sales to the public from the site unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interest of highway safety and in order to protect the amenities of the area.

The applicant is seeking to vary Condition 5 to permit the retail sale of trees and plants, specifically bonsai trees, from the site to members of the public on a strictly appointment only basis. This would allow for customer collection of bonsai trees directly from the site.

The applicant has stated that bonsai trees are sold infrequently due to the extensive time required for their cultivation and development to a suitable standard for sale. As such, it is anticipated that sales will occur, on average, no more than once per week across the year. It should be noted that no robust evidence has been provided to demonstrate that this would be the case.

Nevertheless, while this represents only a modest increase in activity, it still introduces a new retail use at the site and will generate occasional trips by members of the public, in addition to those already associated with the site's horticultural operations.

Whilst acknowledging the proposed development represents a minor intensification of use, placing a specific restriction on the frequency of sales through a planning condition may present challenges in terms of enforceability and reasonableness.

Given that the proposal introduces an additional retail element and a degree of intensification, it is necessary to ensure that appropriate access and on-site parking arrangements are in place. In the absence of such measures, there is a risk of vehicles stopping or parking on Linglongs Road, which is a rural, unclassified adopted highway subject to a 30mph speed limit, with a narrow single carriageway and no formal footways.

The road has limited passing opportunities, and on-street parking could compromise highway safety and disrupt the free flow of traffic.

It is understood that there is currently no formal parking or turning provision on site. Access is provided via an existing field gate set back several metres from the carriageway, forming an informal driveway arrangement. This access is currently used by the applicant when operating the horticultural activities on site, including the growing of trees and plants.

The applicant has submitted a site access plan; however, it lacks key dimensions, particularly towards the rear of the access near the gate and does not demonstrate any dedicated parking provision within the site. This omission makes it difficult to assess whether the proposed arrangement can safely and adequately accommodate visiting vehicles.

The Local Highway Authority (LHA) undertook a site visit on Friday 4th April and can confirm that current parking appears to be confined to the informal field gate access area.

This space appears limited to accommodating a single vehicle and may involve partial encroachment onto the highway verge or carriageway.

At present, the informal field gate access effectively functions as an access drive. Given that the proposed variation would result in a modest increase in vehicular movements, the LHA would, in principle, be satisfied with the formalisation of the access to provide a suitable driveway arrangement.

This should include parking provision for a minimum of two vehicles, enabling vehicles to enter the access and park clear of the carriageway, ideally by reversing into the site.

However, the suitability of this arrangement cannot be confirmed without further information. As such the LHA request the following revised plans are submitted for review:

- Site access plan(s) should be submitted, which demonstrate vehicular visibility splays of 43 metres in each direction at a setback distance of 2.4 metres (measured along the centre-line of the access) back from the near edge of the carriageway. Visibility splays should be located entirely within the applicant's land, or within the public highway. It is noted this is likely to require some vegetation to be cut back.
- Vehicles must be parked completely off the highway and at approximately right angles to the carriageway. The minimum depth of parking space shall be 5.5 metres.
- Parking spaces should be demarcated on any updated plans with dimensions on the site plan, which should measure a minimum of 2.4 metres by 5.5 metres each.
- Driveways should be no steeper than 1 in 10 (10%)

Subject to the applicant submitting the above information, and it being deemed acceptable and in accordance with relevant design guidance, the Local Highway Authority would be in a position to withdraw its objection to the proposed variation of Condition 5.

Further Comments

Following the lengthy discussions and submission of additional information and plans indicating the access and parking arrangements, it is now considered that the application meets the necessary LHA requirements, as indicated on the attached plan, and as such there are now no objections to the application to vary condition 5 of application reference HPK/2017/0160.

Based on the analysis of the information submitted and a review of Local and National policy the Highway Authority concludes that there would not be an unacceptable impact on Highway Safety or a severe impact on congestion. There are no justifiable grounds on which an objection could be maintained.

It is recommended that the following condition is included in any consent granted:

1. The development hereby approved shall not be brought into use until the access and parking have been provided as shown on the revised submitted drawing(s).

Reason: To ensure conformity with submitted details.

2. Visibility splays shall be provided and maintained from a point 0.6m above carriageway level at the centre of the access to the application site and 2.4 metres back from the near side edge of the adjoining carriageway, (measured perpendicularly), for a distance of 43 metres in each direction measured along the nearside edge of the adjoining carriageway and offset a distance of 0.6 metres from the edge of the carriageway. These splays shall thereafter be permanently kept free of all obstructions to visibility over 0.6m in height above carriageway level.

Reason: In the interests of highway safety.

OFFICER COMMENTS

Principle of Development

The use of the site for the growing of trees does not in its own right require planning permission. The buildings that are in situ on site have been erected further to permission being granted under HPK/2017/0160.

Whilst the principle of using the site for horticulture supported by ancillary buildings has been established, the previous application for such ancillary buildings prevented the site being used as a commercial enterprise that is accessible to the general public, by way of Condition 5.

By seeking the proposed variation to Condition 5, the applicant is seeking permission to allow visitors to travel to the site, by way of an appointment to allow retail sale from the site.

Local Plan (LP) Policy EQ3 refers to all developments located outside of the built-up area boundaries of the towns and villages and seeks to ensure that development in these areas are strictly controlled in order to protect the landscape's intrinsic character and distinctiveness. The policy goes on to set out the types of development that will be supported in principle. Importantly, this list does not include support for new retail operations.

LP Policy CF1 refers to retail and town centre uses and whilst there is no specific reference to retail uses in the open countryside, the overarching aim of the policy is to ensure that such uses are confined to and ensure the vitality of, the town centres, unless a sequential test has demonstrated a justified need.

When considering the above policies together, there is no support in principle for any retail element (however small) to operate from the site, whereby members of the public can travel to and from the site to purchase and/or collect a product (bonsai trees).

Amenity

LP Policy EQ6 requires all new development to have a satisfactory relationship with existing land and buildings and protects the amenity of the area, which includes residential amenity of neighbouring properties.

Paragraph 135 of the NPPF states that planning should create places with a high standard of amenity for existing and future users.

In considering the original application (HPK/2017/0160), the Council were satisfied that the residential amenity of neighbouring properties would not be adversely affected, owing to the nearest dwelling being located some 80m distant from the site.

The proposed variation to the condition, as per the suggested re-wording of the condition, would see members of the public visit the site to purchase and collect trees on an 'appointment only' basis.

Whilst it is acknowledged that there is a likelihood of the number and frequency of vehicle movements would be limited, the Council are not satisfied that the proposed variation to the wording of Condition 5 would either adequately control the number and frequency of vehicles, and would neither be enforceable.

As a consequence, the Council cannot be certain that as a result of introducing a retail element to the site for visiting members of the public, along what is a narrow road, that could result in a degree of harm to the amenity of local residents, as a result of the uncontrolled 'comings and goings' to and from the site, thereby conflicting with LP Policy EQ6 and relevant paragraphs under Chapter 12 of the NPPF.

Highway Safety

LP Policy CF6 seeks to ensure that development can be safely accessed in a sustainable manner and that all new development is located where it can be satisfactorily accommodated within the existing highway network and provides suitable off-street parking provision in accordance with guidelines set out under Appendix 1 of the Local Plan.

Paragraph 115 of the NPPF states that in assessing sites for specific applications, it should be ensured that safe and suitable access to the site can be achieved for all users. Paragraph 116 of the NPPF goes on to state that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impact impacts on the road network would be severe.

The site lies adjacent to Linglongs Road and benefits from an existing bell mouth junction defined by a dry stone wall, with a gate separating the access from the field used to grow trees. Given that the entirety of the field (other than ancillary buildings) are used for horticulture, there are no opportunities for vehicles to enter, park and turn within the site.

In assessing the original application, Officers presented the following analysis within the Delegated Report:

"The applicant confirms that they do not intend to take vehicles onto the land and they will undertake all journeys to and from the site with no need for service delivery

vehicles. There is parking for one vehicle at the site entrance and the applicant states that no more parking is required.

“Whilst parking and turning for all associated vehicles should ideally be taking place within the site curtilage. It is considered that the small scale nature of the horticultural business would not give rise to any significant impact on highway safety, particularly in view of the applicant’s assurances that they will undertake all journeys to and from the site with no additional services or delivery vehicles. Additionally, there will be no retail operation from the site and it will not be open to the public or trade. This can be conditioned by way of appropriate condition.”

Further to original concerns raised by the Highways Authority in connection with this proposed variation, the applicant has submitted a scaled Site Plan (Ref: 2303) showing the provision of 2no parking spaces measuring 4.8m x 2.4m in the mouth of the access, within the ownership boundary, showing an exit visibility of 43m in both directions. This plan has been considered and found to be acceptable by the Highways Authority.

It is acknowledged that in light of the latest Highways Authority comments, there are no grounds for refusal with regards to highway safety, having regard to LP Policy CF6 and relevant paragraphs under Chapter 9 of the NPPF.

However, this does not alter the Council’s position that as a consequence of there being no way of enforcing the number and frequency of vehicles to and from the site through planning conditions, this is likely to result in a level of intensification that is neither desirable nor acceptable for its rural location.

Other Matters

Comments have been received that raise concerns regarding the lack of time given to provide comment on the application. The Council have gone beyond its statutory duties under the GMPO by notifying neighbours as well as erecting a site notice, and are always willing to take account of any representation until the point at which the application is determined.

The reference to the applicant ignoring planning restrictions is not material to the outcome of this application and is a matter for the Council’s Enforcement Team to investigate and take action where a breach has been identified.

CONCLUSION / PLANNING BALANCE

LP Policy S1a reflects the presumption in favour of sustainable development contained within the National Planning Policy Framework.

Paragraph 11 of the NPPF sets out the presumption in favour of sustainable development. For decision-taking this means:

- approving development proposals that accord with an up-to-date development plan without delay; or

- where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date⁸, granting permission unless:
 - i) the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed; or
 - ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination

The application seeks the variation of a condition relating to an existing operational business to allow such retail sales to take place on the land.

Whilst the growing on bonsai trees (horticulture) does not require planning permission, and the ancillary buildings used in connection with the horticultural use have been the subject of planning permission under HPK/2017/0160, this decision specifically restricted the use of any retail element.

Given the sites rural and somewhat isolated location outside the built-up area boundary of any town or village, there is no support in principle for the introduction of a retail element on this site (irrespective of scale), having regard to LP Policies EQ3 and CF1, and therefore the proposed variation of Condition 5 relating to HPK/2017/0160 to allow members of the public to visit the site is not supported as a matter of principle.

Moreover, whilst there are no grounds for refusal on highway safety, in light of the latest parking plan and comments from the Highways Authority, the Council take the view that there is no way in which either the number or frequency of vehicle movements to and from the site can be enforced by planning condition. As a consequence, any variation that would allow the public to travel to and from the site could result in a level of intensification (comings and goings) that would be prejudicial to the amenity of local residents, contrary to LP Policy EQ6 and relevant paragraphs under Chapter 12 of the NPPF.

For the reasons set out above and on the Decision Notice, the application is considered to be in conflict with the Local Plan and thus constitutes an unsustainable form of development, contrary to Paragraph 11 of the NPPF. The application is therefore recommended for refusal.

OFFICER RECOMMENDATION : Refuse

Case Officer: James Stannard

Recommendation Date: 12th August 2025

X 

Signed by: Jane Colley Signature

On behalf of High Peak Borough Council