

LAND EAST OF LINGLONGS ROAD, WHALEY BRIDGE, DERBYSHIRE, SK23 7DU

**VARIATION OF CONDITION 5 RELATING TO HPK/2017/0160 TO ALLOW FOR
THE OCCASIONAL COLLECTION OF TREES AND PLANTS SALES FROM
THE SITE TO THE PUBLIC (BY APPOINTMENT ONLY)**

COUNCIL REFERENCE HPK/2024/0501

STATEMENT FOR THE APPELLANTS ~ OCTOBER 2025

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APPENDIX 1 – Highway Officer response dated 23 June 2025

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1 INTRODUCTION

- 1.01 This statement is submitted on behalf of the appellants, Mr and Mrs Brooks. The appeal is made against the decision of High Peak Borough Council to refuse planning application reference HPK/2024/0501 to vary a condition attached to a previous consent to enable the occasional collection of items by customers on an appointment only basis rather than all items being sent via the post.
- 1.02 This document, along with its appendices and the wider appeal package, present the case in favour of granting planning permission.

2 THE APPEAL SITE

- 2.01 The appeal site is located on the eastern side of Linglongs Road, which is a dead-end lane serving a limited number of dwellings and spanning for a length of around 1.5 km past the site to the south. A location plan to show the position of the site edged by a red line is provided below at Figure 1, with a view of the front of the site taken from the west side of the road illustrated in Figure 2.

Figure 1: Location Plan



Figure 2: View of the Appeal Site from the West



- 2.02 The site has been utilised by the appellants for a number of years as a low-key enterprise for the growing of bonsai trees, which by their nature take a considerable time to grow to the stage where they are ready for sale. This in turn dictates that the turnover of products is very low, and at present all of the trees sold are delivered to customers through the post, which can be an expensive and sometimes damaging to the trees which are fragile due to their size and scale.

3 PLANNING HISTORY

3.01 The site has a previous consent ref HPK/2017/0160 which granted planning consent on 26 July 2017 for the erection of a greenhouse and timber storage shed in connection with the existing use of the site for the growing of Bonsai trees.

3.02 The condition which is the subject of this appeal was number 5 of the 2017 consent, and reads 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.

4 THE APPEAL PROPOSAL

4.01 The appeal scheme seeks consent to vary condition 5 of planning consent ref HPK/2017/0160 in order to allow customers to collect their purchases (if they wish to) rather than them having to be sent through the post, given the delicate nature of the product being transported. All such sales would only be done via appointment and by one customer at a time, and the nature of the business dictates that such collections would be occasional only as the product is not something which can be 'mass produced'.

4.02 The variation to the condition which was proposed reads as follows:

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.

4.03 The basis for seeking to vary the condition (not to remove it) is simply to allow customers to collect their trees when they are ready, rather than having to send such delicate living bonsai specimens through the post. The sales would only be undertaken between 0900 hours and 1800 hours each day and simply enable the collection of trees by customers via prior appointment. Given that bonsai trees are only sold very occasionally due to the lengthy time required for their cultivation and growth to a sufficient size, it is not envisaged that the number of collections would exceed more once each week on average across the year.

4.04 The variation would not propose any intensification of the current horticultural use with the same applicants remaining employed as they currently are, and the extremely low and infrequent number of visiting customers as described will ensure that there is no discernible difference to highway safety or amenity.

5 DETERMINATION OF THE APPLICATION

5.01 The submission was lodged on 2 December 2024, and was eventually refused by the Council on 29 August 2025 for the following two reasons:

- 1. The site lies within the open countryside whereby development is strictly controlled to protect the landscape's intrinsic character and distinctiveness. The proposed variation of condition 5 would introduce a retail element to the use of the site, which in principle, is not supported by Policies EQ3 and CF1 of the High Peak Local Plan 2015. The development would undermine the strategy of the Local Plan which seeks to concentrate retail development in existing towns and villages to support the sustainability of those communities.*
- 2. The proposed variation would not adequately or satisfactorily control the number and frequency of vehicle movements that could arrive and depart from the site at any one time, which is therefore likely to lead to a level of intensification that would be prejudicial to local amenity, contrary with LP Policy EQ6 and relevant paragraphs contained under Chapter 12 of the National Planning Policy Framework.*

5.02 A dialogue was held with the planning officer across the determination period, including the agreement of a number of Extensions of Time to enable a positive decision to be issued, including confirmation via email on 2 July 2025 that the issue of highways had been resolved via an appropriate plan to show parking in the entrance to enable the consent to be forthcoming. Regrettably, at the end of the discussions it was announced that a line manager held a different opinion.

5.03 Whilst accepting that any views offered by an officer during the course of an assessment are not binding until a final decision has been made by a local planning authority, the appellants are understandably upset that the case officer confirmed that a positive report had been written and the proposal was with a line manager to be signed off as an approval. To subsequently have a refusal issued was extremely distressing and has led to this appeal being necessary.

6 LEGISLATIVE BACKGROUND

- 6.01 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 states that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the development plan unless material considerations indicate otherwise.
- 6.02 It is considered by the decision issued by High Peak Borough Council fails to adhere to the requirements of the Act and is unreasonable.

7 LOCAL PLANNING POLICIES AND GUIDANCE

The Adopted Development Plan

7.01 The current planning policy framework for the Borough is comprised of the High Peak Local Plan (LP) of April 2016.

7.02 It is noted that the Council have relied on three policies of the LP in their reasons for refusal as follows:

Policy EQ3 'Rural Development'

Policy EQ6 'Design and Place Making'

Policy CF1 'Retail and Town Centres'

7.03 The content of the above policies is reviewed as follows.

Policy EQ3 'Rural Development'

7.04 This policy informs that outside the settlement boundaries and sites allocated for development as defined on the Policies Map, including the Green Belt, the Council will seek to ensure that new development is strictly controlled in order to protect the landscape's intrinsic character and distinctiveness, including the character, appearance and integrity of the historic and cultural environment and the setting of the Peak District National Park whilst also facilitating sustainable rural community needs, tourism and economic development.

7.05 Policy EQ3 confirms that the Council will support rural employment in the form of home working, commercial enterprises and live-work units where a rural location can be justified, along with proposals for agriculture and related development which help sustain existing agricultural enterprises, including small scale farm shops selling local produce, complementary farm diversification and new agricultural buildings that maintain the landscape quality and character of the countryside.

Policy EQ6 'Design and Place Making'

- 7.06 Policy EQ6 has the objective of requiring all development should be well designed and of a high quality that responds positively to both its environment and the challenge of climate change, whilst also contributing to local distinctiveness and sense of place. This policy sets out a total of 11 criteria against which development will be assessed, none of which appear relevant to the subject appeal.

Policy CF1 'Retail and Town Centres'

- 7.07 Policy CF1 states that the Council will seek to maintain and enhance the vitality and viability of town centres and local centres as defined on the Policies Map in accordance with their function and scale and identified development needs.

8 NATIONAL PLANNING POLICY FRAMEWORK

- 8.01 It is noted that the Council have utilised Chapter 12 'Achieving well-designed places' of the National Planning Policy Framework (NPPF) of December 2024 in their second reason for refusal, albeit not specifically cross-referenced to any particular paragraph. It is therefore difficult to clarify exactly to which elements of Chapter 12 the Council consider that the appeal proposal is contrary given the vague reference made in the second reason for refusal.
- 8.02 The NPPF confirms at Paragraph 131 that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. Being clear about design expectations, and how these will be tested, is essential for achieving this, and so too is effective engagement between applicants, communities, local planning authorities and other interests throughout the process.
- 8.03 Paragraph 135 of the NPPF informs that planning policies and decisions should ensure that developments adhere to a set of six objectives, of which criterion (f) states that they should create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience. This appears to be the only paragraph of Chapter 12 which uses the word 'amenity' on which the second reason for refusal is based.
- 8.04 The appellants would contend that of much greater relevance to the appeal scheme is the section of the NPPF which aims to support a Prosperous Rural Economy, where Paragraph 88 advocates that planning policies and decisions should enable:

- a) the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed, new buildings;
- b) the development and diversification of agricultural and other land-based rural businesses;
- c) sustainable rural tourism and leisure developments which respect the character of the countryside; and
- d) the retention and development of accessible local services and community facilities, such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship.

8.05 Paragraph 89 of the NPPF leads on from the above presumptions in favour of supporting the rural economy, adding that planning policies and decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport.

9 ANALYSIS OF ISSUES

- 9.01 It is considered that the key issues to be addressed as contained within the reasons for refusal can be summarised as:

Reason 1 – Retail impact on existing towns and villages

Reason 2 – Traffic generation and impact on local amenity

- 9.02 These issues are addressed as follows.

Reason 1 – Retail impact on existing towns and villages

- 9.03 The first reason is based on the Council's opinion that the variation of the condition as sought would introduce a retail element to the site, which would undermine the Local Plan that seeks to focus retail uses in towns and villages.
- 9.04 The Council's view unfortunately demonstrates a lack of understanding of the proposal which will simply allow customers already purchasing bonsai trees via the online website to collect their purchases rather than risk them being damaged when sent through the post. The collections will be very infrequent and strictly via an appointment only, with the sale of the products coming directly from where they are carefully grown over many years. As such, it is nonsensical to suggest that such a low volume of collections would represent any form of 'traditional' retail use or to infer that such a use should be located in a town or village as advocated by Policy CF1, which is demonstrably aimed at more standard retail functions understandably being located in existing centres.
- 9.05 It is consequently the case that rather than endorsing a refusal, the Council's Policy EQ3 actually lends support to the appeal proposal as its wording aims to support commercial enterprises where a rural location can be justified, along with proposals for related development which help sustain existing rural enterprises, including small scale farm shops selling local produce.

9.06 At a national level, Paragraphs 88 and 89 of the NPPF aim to support the rural economy, again therefore providing backing to the appeal proposal which will enable customers to visit the site to collect their purchases.

9.07 It is therefore shown that the variation of the condition to enable occasional visits to the existing use of the site for collections of purchases is entirely appropriate and would not result in any harmful retail impact as suggested in the Council's first reason for refusal.

Reason 2 – Traffic generation and impact on local amenity

9.08 The Council's second reason infers that the variation of the condition as sought would result in an increased level of traffic to the extent that it would result in harm to local amenity.

9.09 Such a decision is entirely contrary to the stated confirmation of no objection provided by the County Highway Officer by email on 23 June 2025, a copy of which is provided at **Appendix 1** to this statement and includes the following text:

"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."

9.10 For the Council to have included a highways reason for refusal is entirely without foundation, given that their own officer verifies that the application will not have an adverse impact.

- 9.11 Accordingly, any reliance on Policy EQ6 or Chapter 12 of the NPPF to justify the perceived highways impact is wholly incorrect. The amount of traffic generated by at the most one customer per week visiting the site for a short time to collect their purchases and parking clear of the highway where two cars can stand side by side cannot possibly represent an 'intensive' level of traffic generation that can be considered harmful as purported by the second reason for refusal.

Other Material Considerations

- 9.12 Despite stressing the nature of the proposed variation from the outset of discussions with the Council, to allow a very limited number of collections from the site and controlled by appointment to one collection at a time, it is evident that the Council have treated the proposal as a form of intensive out of town retail use which would result in traffic chaos on the road due to the sheer number of visitors to the site that would suddenly be attracted. Such a viewpoint is irrational, as the site can only produce a very limited number of products per year which are grown at the site by the appellants more on the basis of their love of their work more than for any significant financial gain. This is demonstrated by an email worded by Mr and Mrs Brooks issued to the Council on 24 July 2025 which read as follows:

"This has never been about launching a big business or creating something that would draw high volumes of people. We're not planning any major advertising or promotional activity - this is very much a small-scale, personal project. I'm 61, my partner is 60, and for us this is a way to enjoy the land we've cared for while earning just enough to keep it going.

When we purchased the land, it was essentially just a field. Since then, we've invested time and energy into planting trees and making real environmental improvements. We feel we've made a positive impact already, and we're keen to continue that work without disrupting the community in any way.

We'd be more than happy to make reasonable adjustments if it would help address the traffic concern and we hope that when looked at in context, our project can be seen for what it is: something small, environmentally thoughtful, and run with care.

All visits to the site will be strictly via appointment only and one person at a time, making no discernible difference to the current level of activity and avoiding any impact."

- 9.13 Overall, allowing the purchases to be collected rather than being despatched through the post is the simple aim of the variation sought and the wording to be used which, along with the finite number of products that can be offered per annum, will not result in any harm by way of retail use or traffic.
- 9.14 The appellants are also happy for the condition to be varied as requested but to include making it only for the collection of products and/or personal to them should this be considered necessary by the Inspector.

10 CONCLUSIONS

- 10.01 This statement and the accompanying appeal documentation have demonstrated that the appeal scheme is in full accordance with the relevant paragraphs of the National Planning Policy Framework, along with the requirements of the Development Plan.
- 10.02 The granting of permission for the appeal development is consequently entirely in accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004 as the planning balance in favour of the scheme includes prevailing material considerations which support the proposal.
- 10.03 The appeal scheme seeks a simple variation of an existing condition to allow trees and plants to be occasionally collected rather than posted which is entirely acceptable and will not result in any discernible change to the existing use or its setting. The Council's consideration that the change sought would be harmful is out of all proportion to the reality of the matter.
- 10.04 The Council's unreasonable refusal of the application does not bear close scrutiny and is without foundation in any of the quoted policies relied upon in the reasons for refusal.
- 10.05 Accordingly, it is respectfully requested that this appeal be allowed.