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## Appeal Decision

Inquiry held on 14 to 17 March 2017 and 3 May 2017

Site visits made on 13 and 16 March 2017 and 2 May 2017

by **J Dowling BA(Hons) MPhil MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

**Decision date: 26 July 2017**

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**Appeal Ref: APP/H1033/W/16/3155484**

**Land off Brown Edge Close, Buxton, Derbyshire SK17 7AF**

- 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 Ms Markella Mikkelson & Mr Glenn Armstrong (Glenmark Trading Ltd) against the decision of High Peak Borough Council.
  - The application Ref HPK/2015/0471, dated 21 August 2015, was refused by notice dated 23 February 2016.
  - The development proposed is residential development including demolition of 70 and 72 Brown Edge Road.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. Although the Council's decision notice states that the application was for full planning permission the application was in fact made in outline with all detailed matters other than access reserved for future consideration. Furthermore, at the first day of the Inquiry the appellant confirmed that all the plans with the exception of the location plan and plan SCP/15118/FO3 B were indicative, albeit that they were not marked as such. I have therefore considered the appeal on this basis.
3. Two Statements of Common Ground (SoCG) were submitted prior to the start of the Inquiry which set out the position with regards to housing land supply and the policy context along with matters of agreement and those in dispute.
4. A signed and dated agreement under Section 106 of the Town and Country Planning Act 1990 was submitted to an agreed timetable after the Inquiry closed. The agreement contains obligations in respect of affordable housing and the payment of financial contributions towards the provision of off-site play space.

### Application for costs

5. At the Inquiry an application for costs was made by both the appellant and the Council. These applications are the subject of separate Decisions.

### Main Issue

6. The main issue is the effect of the proposal on the character and appearance of the local area with particular regard to the effect on the open countryside.
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7. The Council also refused planning permission due to concerns relating to affordable housing and financial contributions to the provision of off-site play space but this was addressed, to the Council's satisfaction, by the submission of the planning obligation referred to in paragraph four. Much of the inquiry was also taken up with the issue of five year housing land supply. However, for the reasons I explain below, it is not necessary for me to reach a conclusion on that matter.

## **Reasons**

### *Policy Background*

8. The application was determined by the Council on the basis of the saved policies contained within the High Peak Local Plan (2008) and the emerging policies contained within the High Peak Local Plan Submission Version (2014). Subsequent to the Council refusing planning permission the High Peak Local Plan was adopted in April 2016 replacing both the saved policies of the 2008 Local Plan and the emerging policies of the submission version.
9. As a consequence the policies cited by the Council in their decision notice are no longer applicable. The Council and the appellant in their SoCG agreed that the relevant replacement policies for the determination of this appeal are policies H 1, H 4, S 7, EQ 2, EQ 3, EQ 6 and CE 7 of the High Peak Local Plan (2016) (the Local Plan). As this is the adopted development plan for the area I have considered the appeal on this basis.

### *Character and Appearance*

10. Brown Edge Road is a long no through road that extends out from the edge of Buxton into open countryside. I observed on my site visit that at the southern end of the road development is denser and more suburban in character with housing extending back from the road down to the boundary with the railway line. Continuing north along the road, development becomes confined to a ribbon either side of the road and gaps begin to develop between the houses as the road takes on a more rural character. The appeal site is located approximately half way along the road at the point where the character becomes more rural and where development is more limited.
11. From my site visit I observed that the site is bounded to the south and west by housing and the railway line to the east. Consequently, from a number of localised viewpoints I agree with the appellant that the site appears as a back land site on the edge of the urban fringe. However, the site is located on the flank of a steeply sided valley. Whilst I agree with the appellant that it is not the focus of any specific views, when viewed from the valley bottom and a number of viewpoints on the public footpaths on the western and northern sides of the valley, the site is clearly visible and appears as part of the moorland/countryside setting that provides the context for the ribbon development that characterises the upper part of Brown Edge Road and the wider setting for Buxton.
12. The appeal scheme is in outline. However, indicative plans have been provided which show how the site could be laid out. It was clear from the evidence given at the Inquiry that due to the significant drop in levels from west to east across the site and the proposed location of the access road that there would be very limited, if any, alternative options for different layouts. Both parties

- accepted that due to the site's gradient a significant amount of engineering works would be needed to enable the development.
13. Given the topography of the area I acknowledge that terracing of sites is not unusual within Buxton. However, due to the site's gradient a significant amount of restructuring would be needed. This would result in the creation of substantial retaining structures including a series of sizeable retaining walls, some of which would include access steps which, combined with the bulk and mass of up to twenty units, would result in the introduction of a considerable quantum of built form and the extensive reworking of the natural topography at the site. As a consequence, through the loss of these features, the proposal would adversely affect the character of the landscape.
  14. I accept that from most viewpoints the proposal would be seen against the backdrop of existing housing. However, I observed at my site visit that most of the properties in this section of Brown Edge Road, except for those units in Brown Edge Close, are two storeys and appear to have been designed using the natural contours which has minimised the need, if any, for terracing. Consequently, the natural contours of the hillside are maintained and the buildings sit more comfortably within the landscape.
  15. At the Inquiry my attention was drawn to the Brown Edge Close development which is an infill development located to the rear of Brown Edge Road adjacent to the appeal site. However, unlike the appeal proposal, Brown Edge Close is a smaller scheme located at the top of the slope where the drop in levels is much less. While it does include elements of terracing these are relatively limited compared with those which appear to be necessary at the appeal site. As a consequence I accept that this development has less of an impact than the appeal proposal would. However, having viewed it from various locations I consider that it is still prominent within the wider landscape and as a result this confirms to me the adverse visual impact the proposal, which is a much larger scheme, would have on the character and appearance of the area.
  16. I accept that some landscaping treatment could be incorporated into the scheme to mitigate the impact of the development. However, given the retaining works that would be required, the limited size of the site and the restrictions by the railway network regarding planting within the vicinity of the railway line I consider that the opportunities for landscaping within the site are fairly limited. Furthermore, I observed at my site visit that whilst there are trees within the wider landscape and in particular along the valley floor, for the site and the surrounding area the landscape is characterised by its openness and lack of trees. As a result I consider that even if the introduction of extensive planting was possible it would appear out of character in this relatively open landscape.
  17. In conclusion I consider that due to the significant engineering works and quantum of development proposed the scheme would result in the urbanisation of the site. It would lead to the introduction of a different layout and urban grain to the established pattern of development which, given the site's location, would be prominent and out of character with the surrounding area. Furthermore, it would erode the moorland/countryside setting of Brown Edge Road and would be visually dominant in views of this side of the valley.

18. Under a District wide assessment<sup>1</sup> the site is included within Moorland Fringe Landscape Character Type which is, amongst a number of things, characterised by its moderate to steep upland slopes fringing the open moors; distinct absence of trees and open and exposed landscape with expansive views elements of which are present at the appeal site.
19. The appellant commissioned a Landscape and Visual Impact Assessment (LVIA) which judged that these features were not particularly notable and considered that the site had more in common with the adjoining settlement than with the countryside to the north. As a consequence the LVIA concluded that the impact of the proposed development on the Moorland Fringe would be 'minor adverse'.
20. Furthermore the appellant advocated that the potential future development of the adjoining Hogshaw site would strengthen the site's relationship with the adjoining settlement. I acknowledge that the development of Hogshaw would extend the edge of Buxton further northwards to effectively line through with the northern boundary of the appeal site. However, based on the evidence given at the Inquiry an area of open space is likely to be located on the northern part of the site which, when combined with the proposed development of the railway sidings would mean that any new development on the Hogshaw site would be set away from the appeal site boundary. Consequently, it is by no means clear that this would alter the setting of the appeal site to such an extent that the proposal would be able to integrate and reflect the character and appearance of the area.
21. The site has no specific landscape designation or protection in adopted planning policy terms and both parties agreed that the proposal would not affect the setting of the Peak District National Park. However, the Council advocate, and I agree, that a lack of a formal designation or protection does not necessarily mean that a site's landscape is without worth or value. Based on the evidence I have read and heard I consider that to a large extent, the site's value stems from the fact that it is open and undeveloped and provides the setting of Brown Edge Road and this edge of Buxton.
22. Policy H 1 of the Local Plan states that, subject to a number of criteria, the Council will consider approving sustainable sites outside the defined built up area boundaries. Although the proposal would meet a number of these criteria, for the reasons I have outlined above I do not consider that it would be well related to the existing pattern of development (criteria 1) and believe that it would have a significant adverse impact on the character of the countryside (criteria 2). I therefore conclude that the proposal would fail to comply with the requirements of this policy.
23. Policy EQ 3 also accepts new residential development outside of settlement boundaries. However, this is subject to compliance with policy H 1. Given that I have already found that the proposal would be contrary to that policy it follows that it cannot accord with policy EQ 3. Due to the harm that I have identified I consider that the proposal would also be contrary to policy EQ 2, which resists development which would be detrimental to the character of the local and wider landscape and policy S7 which seeks to protect and enhance the unique character of Buxton's townscape and natural environment.

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<sup>1</sup> High Peak Borough Council Local Development Framework Landscape Character Supplementary Planning Document SPD5 (March 2006)

24. Policy EQ 6, in addition to requiring that development on the edge of settlements is of a high quality that protects landscape character, advocates that new development should contribute positively to an area's character in terms of scale and layout and its relationship to the landscape. For the reasons I have already outlined, I disagree with the appellant's view that the proposal would result in localised character improvements by consolidating the existing development at Brown Edge Road and Close and therefore the proposal would be contrary to the requirements of this policy.
25. Finally, while I accept that the proposal would not be a valued landscape for the purposes of the Framework<sup>2</sup>, it would be contrary to paragraphs 17 and 58 of the Framework in that it would be harmful to the intrinsic beauty of this part of the countryside and would not appropriately respond to local character.

#### *Planning Obligation*

26. In order to comply with the Framework and policy H 4 of the Local Plan a percentage of the proposed units would need to be affordable. The appellant has submitted a completed Section 106 agreement (the S106). Under the terms of the S106, no less than 30% of the units on-site would be affordable. In addition the S106 would also deliver financial contributions to off-site play space.
27. Policies H 4 and CF 7 of the Local Plan require the delivery of affordable housing on schemes for five or more units and seeks contributions towards the provision of off-site facilities where they would be necessary to mitigate the impact of the development. The number of affordable housing units and the quantum of financial contributions have been calculated in accordance with these policies and the relevant Council guidelines. As a consequence based on the evidence I have read and heard I am satisfied that the obligations within the S106 are necessary to make the development acceptable in planning terms; are directly related to the development and are fairly and reasonably related in scale and kind to the development.
28. Therefore, I consider that they meet the tests within Regulations 122 and 123 of the Community Infrastructure Regulations (2010) and the Framework<sup>3</sup>. I am therefore satisfied that the issues raised by the Council in their second reason for refusal have been adequately addressed. I attach weight to the S106 and to the benefits of the new affordable housing it would deliver.

#### *Other Matters*

29. There was significant local concern raised in relation to the potential effect of the proposed development on the capacity of the local road network and highway safety. However, based on all the evidence before me and the observations during my site visits, I am satisfied that any increase in traffic from the proposed development would not result in harm to highway safety. Moreover, this is consistent with the Highways Authority who raised no objection in relation to capacity or highway safety subject to a number of suitably worded conditions.
30. Similarly the Council do not have concerns regarding land stability and consider that drainage/flooding matters could be dealt with by the use of appropriate

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<sup>2</sup> Paragraph 109 of the National Planning Policy Framework (2012)

<sup>3</sup> Paragraph 204 of the National Planning Policy Framework (2012)

conditions. Having read their original committee report and the evidence submitted with the appeal nothing leads me to a different conclusion on these matters.

31. A number of additional issues were raised by local residents, including viability; access for the collection of refuse; noise and disturbance from building work and future occupiers; overlooking and overshadowing; the need to import/export waste and material; loss of the dry stone wall; effect on wildlife and access to the site in bad weather. However, no technical or substantive evidence was presented on these matters and as a result I can only give them limited weight when reaching my conclusions.

### **Planning Balance**

32. In conclusion due to the topography of the site and the amount of reworking of levels and retaining structures that would be required I consider that the proposed development would be visually prominent and out of character with the prevailing pattern of development to the detriment of the character and appearance of Brown Edge Road and the wider setting of Buxton and the countryside around the town. Consequently, I conclude that the proposal is contrary to the Local Plan as a whole, specifically policies H 1, S 7, EQ 2, EQ 3 and EQ 6, and the guidance contained within the Framework.
33. I accept that the proposal would deliver several social and economic benefits. The delivery of new housing is a clear benefit of the scheme which reflects one of the key objectives of the Framework. Moreover, the scheme would secure the delivery of affordable housing in an area where there is an acknowledged local need. There would also be contributions to off-site play space that would be accessible to the wider public and financial considerations such as the New Homes Bonus and increased council tax receipts which would result from the delivery of the proposed units. As a result I accept that the scheme would deliver a number of positive benefits. However, when these benefits are weighed against the impacts to the character and appearance of the area I do not consider that they outweigh the harm that I have identified above.
34. The appellants accepted the Council's Objectively Assessed Housing Need (OAN) figure and acknowledged that the Council could potentially deliver the number of units required by the OAN over the plan period. However, they considered that, although the Local Plan was only recently adopted, the Council could not demonstrate that they could provide the five years-worth of deliverable housing sites that are required by the Framework<sup>4</sup>. Consequently, they advocated that the relevant policies within the Local Plan should be considered out-of-date and that the presumption in favour of sustainable development<sup>5</sup> or the 'tilted balance' should be applied.
35. However, even if I were to conclude that there is a shortfall in the five year supply of housing as suggested by the appellant and that the relevant policies for the supply of housing should not be considered up to date, the adverse impacts to the character and appearance of the area of granting planning permissions that I have identified would significantly and demonstrably outweigh the benefits. Consequently, material considerations do not indicate that planning permission should be granted. In these circumstances it is

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<sup>4</sup> Paragraph 49 of the National Planning Policy Framework (2012)

<sup>5</sup> Paragraph 14 of the National Planning Policy Framework (2012)

therefore not necessary for me to consider the question of housing land supply further.

**Conclusion**

36. For these reasons and having regard to all other matters raised I conclude that the appeal should be dismissed.

*Jo Dowling*

INSPECTOR

Richborough Estates

**APPERANCES**

**FOR THE LOCAL PLANNING AUTHORITY:**

**Giles Cannock, of Counsel**

He called

<b>Robert White</b>	White Peak Planning Ltd
<b>Paul Beswick</b>	Enzygo, Environmental Consultants
<b>Melissa Kurihara</b>	Urban Vision

**FOR THE APPELLANT:**

**John Hunter, of Counsel**

He called

<b>Ben Pycroft</b>	Emery Planning
<b>Caroline Payne</b>	Emery Planning
<b>Jonathan Berry</b>	Tyler Grange

**INTERESTED PERSONS**

<b>Mr Petronzi</b>	Local resident
<b>Cllr Tony Kemp</b>	Ward Councillor for Corbar

Richborough Estates



## **DOCUMENTS SUBMITTED AT THE INQUIRY**

- ID 1.1** Signed Planning Statement of Common Ground
- ID 1.2** Summary proofs for Mr R White and Mr P Beswick
- ID 1.3** Note prepared by HPBC regarding Hogshaw allocation
- ID 1.4** Letter dated 10 February 2017 to HPBC from the new owner of part of the Hogshaw site
- ID 1.5** CIL compliance statement
- ID 1.6** Set of agreed draft conditions
- ID 1.7** Proposed site visit itinerary
- ID 1.8** Indicative Inquiry timings for the appellant's witnesses
- ID 1.9** Mr Cannock's opening statement
- ID 1.10** Mr Hunter's opening statement
- ID 1.11** Mr Petronzi's statement
- ID 2.1** High Peak Local Plan – Total and small site completions since March 2011
- ID 3.1** Windfall Calculation clarification
- ID 3.2** Clarification note on CD3.15 SNLAA Maps
- ID 3.3** Rebuttal of Mr Massie's Evidence and Supplementary Proof of Evidence of Ben Pycroft in relation to housing land supply for appeal ref: APP/H1033/W/16/3147726
- ID 3.4** List of disputed sites prepared by the Inspector for the round table discussion
- ID 3.5** Monitoring completions note prepared by HPBC
- ID 3.6** Written version of Cllr Tony Kemp's oral evidence given on day 1
- ID 3.7** Draft agreed S106 agreement
- ID 4.1** Topographical survey submitted by the appellant
- ID 4.2** Land stability issues note prepared by HPBC
- ID 4.3** Email from Joanna Bagnall of HPBC dated 16 March 2017 to Lucy Grange at Tyler Grange
- ID 4.4** Buxton Advertiser article of 16 March 2016 regarding Harpur Hill site

## **DOCUMENTS SUBMITTED WHILE THE INQUIRY WAS ADJOURNED**

- AD 1.1** Agreed list of plan numbers
- AD 1.2** Draft note on housing completions prepared by the Council and agreed by the appellant

- AD 1.3** Map provided by appellant showing sites within Buxton where terracing has been used
- AD 1.4** Revised list of suggested conditions agreed by both the Council and the appellant
- AD 1.5** Revised draft S106 agreement
- AD 1.6** Costs application by the appellant
- AD1.7** Cost application by the Council
- AD 1.8** Email dated 27 April 2017 from Caroline Payne to PINS and copy of judgment in R v Basildon District Council

**DOCUMENTS SUBMITTED WHEN THE INQUIRY RE-OPENED**

- ID 5.1** Closing submissions on behalf of the LPA
- ID 5.2** Closing submissions on behalf of the appellant
- ID 5.3** Email correspondence between Nicola de Bruin on behalf of the Council to Caroline Payne on behalf of the appellant dealing with the issue of the dissolving of the appellant's company and the implications that this had for the appeal

**DOCUMENTS SUBMITTED AFTER THE INQUIRY CLOSED**

- PID 1.1** Certified copy of the signed S106 agreement

Richborough Estates