

**HIGH PEAK BOROUGH COUNCIL
DEVELOPMENT CONTROL COMMITTEE**

Date 28th September 2023

Application No:	HPK/2023/0182		
Location	Land opposite Alderbrook Day Centre, Buxton Road, Chinley		
Proposal	Removal of Condition 25 relating to HPK/2016/0692		
Applicant	Urban Group Ltd		
Agent	Kirsty Medcraft, Bowker Sadler Partnership		
Parish/ward	Chinley Buxworth and Brownside PC/ Blackbrook Ward	Date registered	12 th May 2023
If you have a question about this report please contact: James Stannard Tel. 01298 28400 extension 4298, james.stannard@highpeak.gov.uk			

1. SUMMARY OF RECOMMENDATION

Resolve to Grant Variation of Condition subject to Deed of Variation to S106 Agreement

1. REASON FOR COMMITTEE DETERMINATION

- 1.1 This application has been brought before the Development Control Committee by Cllr Capper in light of significant local interest and to fully consider the impacts on biodiversity.

2. DESCRIPTION OF THE SITE AND ITS SURROUNDINGS

- 2.1 The application relates to a parcel of land spanning approximately 0.9ha at the eastern fringes of Chinley north of Buxton Road. The Alderbrook School is situated to the south, with the Sheffield-Manchester railway line to the north, and the Alders Meadow housing development to the west.
- 2.2 The site was subject to an Outline Planning Permission for residential development totalling 25no. dwellings under HPK/2016/0692 which was granted in November 2017 subject to a number of conditions. A Reserved Matters application was later received and granted under HPK/2020/0261 granted in December 2020.
- 2.3 The Decision Notice for the Outline Permission included Condition No.25, which is set out in full below, and was applied having regard to comments made by Derbyshire Wildlife Trust:
25. *Prior to commencement of development, a detailed scheme for ecological mitigation, compensation and enhancement shall be*

submitted to and agreed in writing by the Local Planning Authority.

The scheme shall include:

- 1. Proposals for on-site mitigation and/or off-site offsetting;*
- 2. A methodology for the identification of any receptor site(s) for offsetting measures;*
- 3. The identification of any such receptor site(s);*
- 4. The provision of arrangements to secure the delivery of any offsetting measures and/or environmental compensation agreements with the Environment Bank for the minimum agreed credits.*

The scheme shall include a timetable for implementation relative to the completion of dwellings hereby approved. Thereafter the approved ecological mitigation, compensation and enhancement scheme shall be implemented in full in accordance with the approved timetable and retained as such thereafter.

- 2.4 The authority has received and determined two separate Discharge of Conditions applications – DOC/2022/0012 dealt with conditions relating to the Reserved Matters application, whilst DOC/2023/0013 dealt with conditions relating to the Outline permission.
- 2.5 All pre-commencement conditions have been satisfactorily discharged with the exception of Condition 25, that was subject to a Non-Material Amendment application under NMA/2022/0015. This amendment sought to change the wording of the condition to read as “Prior to first occupation” rather than “Prior to commencement” in order to allow development to start and to give the applicant more time to prepare and submit a suitable scheme, and was approved (subject to compliance with all other conditions) on 14th September 2022.

3. DESCRIPTION OF THE PROPOSAL

- 3.1 The application seeks to remove Condition 25 relating to HPK/2016/0692, which is set out in full below:

25. Prior to commencement of development, a detailed scheme for ecological mitigation, compensation and enhancement shall be submitted to and agreed in writing by the Local Planning Authority.

The scheme shall include:

- 1. Proposals for on-site mitigation and/or for off-site offsetting;*
- 2. A methodology for the identification of any receptor sites(s) for offsetting measures;*

3. *The identification of any such receptor site(s);*
4. *The provision of arrangements to secure the delivery of any offsetting measures and/or environmental compensation agreements with the Environment Bank for the minimum agreed credits*

The scheme shall include a timetable for implementation relative to the compensation and enhancement scheme shall be implemented in full in accordance with the approved timetable and retained as such thereafter.

Reason:- To mitigate against the loss of existing biodiversity and nature habitats, in accordance with Policy EQ5 of the High Peak of the High Peak Local Plan 2016 and paragraph 17 and Section 11 of the National Planning Policy Framework.

- 3.2 For clarity, the NPPF has been through a series of revisions since the original application was determined. Chapter 15 of the current NPPF contains the relevant national policies relating to the Conservation and Enhancement of the Natural Environment.
- 3.3 The Application Form submitted with the application contains an explanation and justification for the removal of this condition, which is summarised as follows:
 - Proposals for on site mitigation have been explored with an ecologist
 - Unable to achieve the required amount of mitigation within the site constraints
 - Explored off-site mitigation, where there are no Habitat Banks within the High Peak.
 - An opportunity was provided for a site in the Bolton area, 40 miles away, but at a cost that would have made this affordable housing project financially unviable
- 3.4 The application is accompanied by various correspondence between the developer and Derbyshire Wildlife Trust.

4. RELEVANT PLANNING HISTORY

- 4.1 The site has been subject to the following planning history:

HPK/2016/0692	Outline planning permission with all matters reserved for proposed residential development (Approved 10/11/17)
HPK/2020/0261	Reserved Matters application for Access, Appearance, Landscaping and Scale in relation to HPK/2016/0692 (Approved 23/12/20)

DOC/2022/0012	Discharge of Conditions 2, 3, 4, 5, 6, 7, 9 and 12 relating to HPK/2020/0261 (Approved)
DOC/2022/0013	Discharge of Conditions 6, 7, 9, 10, 11, 18, 20(a)-(c), 23, 24 relating to HPK/2016/0692 (Approved)
NMA/2023/0015	Non Material Amendment relating to HPK/2016/0692 to change trigger from “pre-commencement” to “pre-occupation” for Condition No.25 (Approved 14/09/22)

5. LOCAL AND NATIONAL PLANNING POLICIES

High Peak Local Plan 2016

S1 Sustainable Development	Principles
EQ5 Biodiversity	

National Planning Policy Framework 2021

Achieving Sustainable Development	Chapter 2
Conserving and Enhancing the Natural Environment	Chapter 15

6. CONSULTATIONS CARRIED OUT

Site notice	Expiry date for comments: 29 th June 2023
Neighbour letters	Expiry date for comments: 8 th June 2023
Press Notice	Expiry date for comments: N/A

6.1 The following comments have been received from relevant consultees:

Chinley Buxworth and Brownside Parish Council	<u>Initial Comments</u>
	OBJECT – suggest that the developers, High Peak Borough Council and Derbyshire Wildlife Trust work with the Parish Council to explore if a local solution to the mitigation and enhancement of ecological habitats in the area could be met within Chinley Park Local Nature Reserve and/or Buxworth Recreation Ground, so enabling the developers to comply with the condition.
	<u>Further Comments</u>
	At the meeting of the Parish Council on 25 th June 2023, the strength of feeling from local residents

	<p>about the application to remove Condition 25 became even clearer. On top of their very well articulated concerns about the loss of habitat and the importance of protecting and enhancing biodiversity both now and into the future, concerns were expressed about the developers trying to ride roughshod over conditions that were included for sound planning reasons, and originally accepted by the developers, together with some cynicism over the timing of the application so soon before the legal requirement to provide 10% biodiversity nett gain (BNG) comes into force.</p> <p>The Parish Council supports the views of local residents and confirms and strengthens its previous objection to the removal of Condition 25, and reiterates its offer to work with High Peak Borough Council the developers and DWT to try and find a solution to mitigate and enhance ecological habitats within the local area on Parish Council land at Chinley Park LNR or Buxworth Recreation Ground (both familiar to DWT) so enabling Condition 25 to be met.</p>
<p>Derbyshire Wildlife Trust</p>	<p><u>Initial Comments</u></p> <p>Condition 25 was intended to secure compensation for the loss of onsite habitat resulting from development of the site. The condition was accepted at the time of approval, indicating that the requirements and feasibility of the condition had been confirmed. If it was not considered feasible to compensate for the habitat loss, then this may have had a bearing on the decision.</p> <p>Removing the condition would mean that High Peak Borough Council would have to accept that the nett loss would result from this particular development. This must be considered against relevant local and national planning policy.</p> <p>As per the details in the application form, at the time of approval the requirements of the NPPF 2012 were less exacting than the current 2021 version and whilst they required impacts on biodiversity to be minimised, they only required nett gain 'where possible'.</p>

	<p>Policy EQ5 of the Local Plan requires mitigation to avoid no nett loss of compensation where impacts cannot be avoided but only when dealing with development on locally, designated sites, of which this is not.</p> <p>However, local policy also states that it will encourage development to include measures to contribute positively to the overall biodiversity of the Plan Area and work with partners to help meet the objectives and targets of the Peak District Biodiversity Action Plan or its successor.</p> <p>On balance, the Trust would still encourage some level of compensation to be delivered, considering the original intention of the condition and the long-standing principles of the mitigation hierarchy – avoid-mitigate-compensate.</p> <p>We note that the applicant has explored the habitat banking approach with the Environment Bank and Derbyshire Wildlife Trust, however no local habitat exist at this time. Keeping in mind the latter points of Local Plan Policy EQ5 we have identified two other options which could be considered prior to removing the condition.</p> <p>(1) We are aware of a Local Nature Reserved relatively close to the site in Chinley – Stubbins Park LNR. The site comprises unimproved grassland. It may be possible to make a contribution to either the ongoing management of this site or with a view to extending the site. It would be worth exploring this option to see if suitable mechanisms exist to facilitate this as a means to discharge the condition</p> <p>(2) We are also aware of a local scheme at Sunart Fields in the High Peak which may be able to accept contributions towards habitat creation/enhancement works. This site is further away and we do not know if there are similar habitats on site which could compensate for the grassland to be lost. However, this could be explored by the applicant and their ecologists.</p> <p><u>Latest Comments</u></p> <p>Further to our letter of 13th July, I am pleased to see that our suggestion of a contribution to</p>
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	<p>manage and enhance Stubbins Park Local Nature Reserve (LNR) is considered an acceptable solution to address biodiversity net gain at the above site.</p> <p>With regards to the financial sum, we currently advise between 20 and 25k per unit, based on other nearby local authority charges. Given that this contribution would be used for an existing site and may not need to be spent on land purchase (although it could be), the lower end would be acceptable. If we use the unit figures previously quoted by the applicant to the Environment Bank and Derbyshire Wildlife Trust, the calculation would be 2.51 (units) x 20,000 = £50,200.</p> <p>We recommend that the sum should be paid as early as possible upon approval to realise the net gain, particularly as I understand that some works have started on site.</p> <p>Your proposal to recommend approval of the application to remove Condition 25, subject to a Deed of Variation (i.e. an amendment) to the S106 Agreement, that would secure a specific figure of off-site financial contributions to be paid by the developer directly to the Parish Council to facilitate projects relating to the Local Nature Reserve is acceptable to the Trust. I would be happy to discuss the specific wording of the Section 106 Agreement further, if necessary.</p> <p>I attended a meeting today with representatives from the Parish Council and the Friends of the Nature Reserved Group, who have confirmed their willingness to accept the contribution. We discussed the initial options for works at the reserve and whether there would be a timescale in which to spend the contribution.</p> <p>Again, I would be happy to take part in further discussions, if helpful. It is the intention that the existing Management Plan for the site would be updated and that further details of specific works/projects would be developed from there.</p>
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6.2 2 x neutral comments (including one from Cllr Capper) have been received in connection with the application which makes the following points:

- Consideration must be given to the environment when developing housing sites
- Concerns about loss of ecological habitat shared by a large number of local residents

6.3 7 x representations objecting to the application have been receive asks the authority to consider the following:

- Development poorly executed and has not delivered public benefit
- Imperative that loss of ecological assets are compensated for
- National policy now has specific requirement for ecological enhancement and thus removing condition would be contrary to policy
- Condition plays a vital role in ensuring long term sustainability of the natural environment and therefore its removal is unacceptable

6.4 A petition with 54 signatures objecting to this application has also been submitted by a local resident.

7. OFFICER ASSESSMENT

Principle of Development

7.1 The principle of residential development has been established by virtue of previous Outline and Reserved Matters applications being granted. Following the discharge of all pre-commencement conditions, development has commenced on site.

7.2 The Condition which the applicant is seeking to remove relates to matters of biodiversity and the natural environment. The principle of development is thus acceptable subject to compliance with Local Plan (LP) Policy EQ5 and relevant paragraphs under Chapter 15 of the NPPF.

Biodiversity

7.3 LP Policy EQ5 relates specifically to Biodiversity stating that the biodiversity and geological resources of the Plan Area and its surroundings will be conserved and where possible enhanced, achieved by (amongst other things) encouraging development to include measures to contribute positively to the overall biodiversity of the Plan Area, and working with partners in the public, private and voluntary sectors to develop and secure the implementation of projects to enhance the landscape and create or restore habitats of nature conservation value, and to secure the more effective management of land in the Plan Area and its surroundings.

7.4 Chapter 15 of the NPPF contains the relevant national planning policies relating to biodiversity and nature conservation. Paragraph 180

states that when determining applications, local planning authorities should apply a number of principles which includes the following:

- (a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;

7.5 The application was approved on the basis that a detailed and comprehensive package of mitigation measures to off-set the loss of biodiversity on site would be achieved.

7.6 The level of objection to the removal of this condition is fully acknowledged. Officers fully agree that some form of mitigation must be retained as part of the development, having regard to LP Policy EQ5 and relevant policies under Chapter 15 of the NPPF.

7.7 During the consultation process, it has become clear via the Parish Council and Derbyshire Wildlife Trust that there are 2no. Local Wildlife Sites within the Parish that could directly benefit through off-site financial contributions from the developer. Derbyshire Wildlife Trust has recommended a total contribution of £50,200 to be paid by the developer based on previous biodiversity off-setting calculations which have been carried out for this site.

7.8 In light of the positive discussions that have taken place between DWT and the Parish Council, Officers consider that the most appropriate way of securing mitigation to the loss of biodiversity on site, is to approve the removal of Condition 25 relating to HPK/2016/0692, on the basis that the developer and all relevant parties sign a Deed of Variation (i.e. an amendment) to the current S106 Agreement.

7.9 The Deed of Variation would legally secure the figure of £50,200 which would fund works associated with ecological enhancement in the Parish. Officers consider that the appropriate 'trigger' for the payment to be made would be 'prior to the first occupation of any dwellinghouse'.

7.8 Subject to this Deed of Variation, Officers are satisfied that the development would not result in any unacceptable loss of biodiversity and that the loss of habitat on site has been satisfactorily compensated, in accordance with Local Plan Policy EQ5 and relevant paragraphs under Chapter 15 of the NPPF.

8. RECOMMENDATIONS

- A. APPROVE the application to remove Condition 25 relating to HPK/2016/0692 subject to a Deed of Variation to the S106 Agreement to secure £50,000 towards biodiversity enhancements within Chinley Buxworth and Brownside Parish**

