

**PLANNING COMMITTEE****10<sup>TH</sup> OCTOBER 2023****CORRESPONDENCE RECEIVED AFTER PREPARATION OF THE AGENDA****ITEM 5.4 - 23/00535/FUL - ERECTION OF 27 NO. AFFORDABLE DWELLINGHOUSES, OPEN SPACE, LANDSCAPING, HIGHWAY IMPROVEMENTS AND ASSOCIATED WORKS AT LAND NORTH OF OLD HACKNEY LANE, HACKNEY, MATLOCK.**

Derbyshire Wildlife Trust have provided further comments

Further to our comments dated 8th August 2023 (DWTDAL1007), a response letter has been issued by the applicant (Rachel Hacking Ecology, 11/09/2023), which we have reviewed.

**GCN**

The applicant has confirmed that the issue of GCN will be dealt with through district level licensing (DLL). A copy of the IACPC signed by the applicant has been submitted. This approach is acceptable and can be secured via condition, requiring the submission of the IACPC when signed by Natural England.

**BNG Metric**

Our original queries are provided below in italics, with our response to recent clarifications added as a bullet point:

*The existing onsite scrub does not appear to be included within the habitat baseline.*

- An explanation for this has now been provided. This query could be avoided in future by mapping the grassland with secondary code for scrub, rather than as a separate polygon. No further work is required.

*Whilst this was not clarified in Metric 3.1, Metric 4.0 confirms that gardens should be inputted as vegetated garden and only trees in public open space should be counted separately. We advise that this approach should be taken.*

- Our position is that once guidance is issued that provides greater clarity on the use of metrics, this should be implemented as best practice. The use of vegetated garden and the omission of separate tree planting within gardens, reflects the uncertainty surrounding the future of such trees and the difficulty in monitoring this planting in a private setting. However, after investigating what difference this would make to the calculations ourselves, we conclude that it would not have a significant bearing on the figures and therefore we will not labour this point. No further work is required.

*When calculating the area using the tree helper tool, post-development trees should be categorised based on their projected diameter at 30 years after planting. See Section 7.11 of the Metric 3.1 User Guide. Table 7.2 lists the diameters. It is highly unlikely that any trees will reach >90 cm (large) after only 30 years. Again, Metric 4.0 clarifies that proposed trees should be categorized as small unless justification is provided.*

- Justification of the predicted tree sizes has been provided, as per the metric guidance, and it has been confirmed that a net gain of 8.2 % would still result from proposals. The updated metric (V2) should be submitted to the LPA but we do not need to be re-consulted

*Currently, whilst an overall gain is predicted, the trading rules of the metric are not met. This is due to a net loss of medium distinctiveness habitat (other neutral grassland). The trading rules are fundamental to the function of the metric and to ensure real gain is achieved. The BNG Best Practice Guidelines (CIRIA C776a, 2019) state that, "A BNG design should improve the extent or condition of biodiversity affected by a project. It should not result in lost or damaged features being replaced by features of lower biodiversity value. This is regardless of whether a metric shows an increased amount of biodiversity after a project compared with the baseline".*

- We acknowledge that the onsite grassland is not of particularly good quality and is borderline between 'modified' (low distinctiveness) and 'other neutral' (medium distinctiveness), when classified using UKHabs. However, the predicted net loss of 2.46 units of 'other neutral grassland' should be recognised as part of the decision-making process. We have highlighted the best practice guidance and the LPA should decide whether, on balance, not satisfying the trading rules in this instance is considered acceptable or whether a solution will be required, such as a financial contribution to a local habitat bank or site.

Conditions are recommended in terms of GCNs and the Natural England District Level Licensing, Nesting birds and submission of a Landscape and Biodiversity Enhancement and Management Plan (LBEMP).

The agent has provided a response on the BNG Metric:

To confirm, emails were exchanged back in August between my client's ecological consultant and the DWT to verify that the use of metric V3.1 was acceptable because metric v4.0 was not available when the report was written. Given that that email confirmed acceptability it was not considered to therefore be appropriate to make comments based on Defra v4.0 parameters. That said however, we have completed the metric v4 calculation and has now been submitted (along with an updated Annex 1). You should note that the BNG results are identical to those of version 3.1 and still result in an 8.2% net gain in biodiversity.

#### Agent's Letter to LPA dated 4<sup>th</sup> October 2023

The agent has submitted a letter to the Case Officer and another to all members of the committee. The letter to the Case Officer is summarised below:-

They are disappointed with the recommendation and lack of communication during the application.

The highways improvements which would form part of a Section 278 Agreement:

- The construction of a bell mouth junction to Old Hackney Lane, with new uncontrolled
- pedestrian crossing points/tactile paving (all to DCC standard highway details).
- New footway provision on Old Hackney Lane fronting the application site of a minimum width of 2 metres in accordance with drawing ref: P23010-001.
- Speed limit (yellow backing) signage, high friction surface treatment (in buff) with speed limit roundel road markings (all to DCC standard highway details) locations to be agreed.

- Reinstatement of 'Give Way' markings at the junction of Old Hackney Lane/Bakewell Road.

The Housing Mix in Paragraph 2.3 of the report sets out an incorrect mix of properties. The correct mix is as follows, as shown on the most recent Proposed Site Layout drawing 2202 - P- 02N which was submitted to the Council on 23 May 2023:

- 4 x 1 bedroomed apartments (Types 1A, 1B).
- 4 x 1 bedroomed dwellings (Type 1C).
- 12 x 2 bedroomed dwellings include 2 no. bungalows (which are M4(2) compliant) (Types 2A, 2B, 2C).
- 5 x 3 bedroomed dwellings (Types 3A, 3B, 3C).
- 2 x 4 bedroomed dwellings (Type 4A).

The conclusions of the submitted

- The development of the site will be consistent with the adjoining settlement edge and will not be seen as an incongruous feature within the landscape.
- The development of the site will introduce additional built form into a landscape in a location which is already influenced by human activity and development and is a site which is seen in the context of the existing settlement edge.
- The proposals will be contained within the existing field boundary and will respond to both the settlement grain to the south and west, and to the pastoral landscape beyond the allocation boundary to the north. The incorporation of a landscape buffer along the northern edge of the site will ensure the pastoral land to the north of the allocation boundary will remain as a visible tract of open land in long distance views from the south-west, including views from the edge of the Peak District National Park.
- The landscape has been assessed of Local Value, Medium susceptibility and Low to Medium sensitivity to development. Adverse effects are limited to the loss of part of an agricultural field managed as pasture, set within the settlement edge context.
- The primary characteristics and distinctive features within the landscape, including the stone walls, the existing trees, the sloping nature of the site and the settlement grain of Lower Hackney will be retained. Any effects will be localised and limited to the site itself and the immediate context along Old Hackney Lane to the south.
- The landscape character of the Peak District National Park to the south-west of the site, will remain unaffected.

## Response

Pre-application advice was given prior to the application being submitted together with the previous application for 18 dwellings being refused on the site. Due to there being a principle issue that could not be overcome it was not considered expedient to request changes to the layout, however, the agent has been given the opportunity to seek to overcome the technical issues in relation to Ecology and Drainage.

The Highways improvements relate specifically to the formation of the new access on Old Hackney Lane which are standard for adoption which is approved by the Highways Authority and covered by their requested condition.

The Housing Mix provided in the committee report was only not accurate in terms of the split between one bedroom apartments and one bedroom dwellings. It is noted that Type 1C is a one bedroom dwelling. Otherwise the mix is correct.

The submitted LVIA was reviewed as part of the assessment of the application and assessed against the landscape sections in the SHLAA172 assessment which identified landscape sensitivity and localised harm to landscape.

### S106 Contributions

#### POS

As stated in paragraph 7.10 and 7.11 it is noted that the POS provision is sufficient in terms of its amount and due to the proximity of allotments this requirement is not required in this case. If the Committee is minded to approve the application, it is not considered that any financial contributions are required.

#### Education

The Education Authority have responded to the submitted Education Infrastructure Assessment as follows:-

Derbyshire County Council (DCC) provided the most up to date position regarding school capacity in their letter dated 15/06/2023 in response to the consultation on 23/00535/FUL. The DCC response sought contributions towards the expansion of the normal area secondary school, Highfields School, to mitigate the impact of the proposed development of 27 dwellings (discounting 8 number one bedroom dwellings). It is noted from the Flinders Chase report that number of one bedroom dwellings has now reduced to 6. For clarification a development of 21 dwellings of 2 bedrooms and above would generate 6 secondary phase (with post 16) pupils. The DCC response is in line with the County Council's published approach as detailed in their Developer Contributions Protocol (2023) (DCP). This approach has been subject to Counsel opinion that it is CIL compliant.

There are a number of areas where the Flinders Chase report is factually incorrect, which therefore has a direct impact on their assessment. These are listed below:

- 1) Paragraph 4.5 states that in the DCC DCP the following sentence is included regarding the DCC parameters for seeking contributions 'Education contributions will be sought from a developer if there will be a deficit in school places within the statutory travelling distance for primary and secondary schools, including post-16 provision'. The analysis for primary education in Chapter 5 of the Flinders Chase report is predicated on this erroneous principle. Nowhere in the DCP is this wording included. The County Council's methodology for seeking contributions is based on the normal area school, with the DCP categorically stating in Appendix 2 that 'as the Local Education Authority, has a statutory duty to make education provision available for each young person and elects where possible to provide a school place for each child at their normal area school'. Further information is provided regarding the use of normal areas in DCP Appendix 2 paragraphs 1.14, 1.15 and 1.16. In addition, please note no request was made for contributions towards primary education as sufficient projected capacity exists within the in the normal area primary school to accommodate the primary aged children arising from the proposed development. As no request for contributions to primary

education has been made, alongside the incorrect methodology, renders the analysis regarding primary education in Chapter 5 immaterial.

- 2) Paragraphs 5.8 and 6.4 of the Flinders Chase report, both state that the figures used in their analysis are pupil place forecasts which 'include demand expected to be generated by housing developments in the borough including the Old Hackney Lane Project' this again is factually incorrect. The SCAP returns published by Government report the projected number on roll but do not include the yield of pupils expected from approved planning permissions, an approach which is accepted by DfE. The SCAP figures therefore do not provide the full picture as they do not take into account the future impact of approved development on schools.
- 3) Paragraph 6.3 – the County Council conducts a school census survey every January. As such the data used for the planning application consultation response is the most up to date available, being from the January 2023 school census. The Flinders Chase report uses data from January 2022.
- 4) Paragraph 7.2 again notes that 'Education contributions will be sought from a developer if an investigation highlights a deficit in school places within the statutory travelling distance for primary and secondary schools, including post-16 provision' This again is incorrect. The DCP methodology is based on normal area schools and firmly states 'The normal area is the most appropriate and fairest spatial unit for assessing whether sufficient local capacity exists within the education system for new and existing residents'.

A significant amount of the report considers the drop in birth rates and it is acknowledged that the birth rate has reduced. The County Council is only requesting contributions for secondary provision and as such the figures provided in the DCC response take account of existing pupils currently progressing through the primary and secondary school system within the normal area of Highfields School. This coupled with the School Census from 2023, which is the most up to date information, allows the County Council to project the numbers on roll with some accuracy. As you will note, the consultation response uses projected data, which shows that irrespective of any approved planning applications within the normal area, Highfield Schools is projected to be over capacity by 2027. Application 23/00535/FUL is a full application which if approved would likely include a condition requiring a start on site within 3 years, therefore long term birth rate does not mitigate the short to medium term need.

The County Council pupil yields i.e. the number of pupils arising from 100 dwellings are based on the 2011 census data. The relevant census data has not yet been published to enable these yields to be updated. It is noted that this is a small development for affordable homes. The County Council has submitted its request for contributions in line with the methodology contained within the DCP. Other education authorities may have different approaches. Should there prove to be issues with the viability of the scheme, this would be assessed by the local planning authority in its consideration of the application.

### Agent's Response

Having reviewed the comments in light of the application being reported to Planning Committee this evening, I am instructed to advise the Council that in this particular case we do not agree with the County Council's position. That said however, I have taken

instructions from my client to confirm to the Council that if Members were to seek to approve the application at this evening's committee and a positive decision is made locally, then my client agrees to the contributions to education in full, that being £182,656.74. However, if the application is refused at Planning Committee for whatever reason(s), then my client will be advancing a viability case as well as a non-compliance with CIL regulations in relation to this education request, in the event that they decide to appeal the refusal decision.

**ITEM 5.6 - 23/00855/FUL – ERECTION OF 11 NO. DWELLINGS WITHIN CASTLE GROUNDS, CONVERSION OF EXISTING OUTBUILDINGS AND GATEHOUSE TO FORM 7NO. DWELLINGS, RECONSTRUCTION OF GATEHOUSE TO FORM 2NO. DWELLINGS, ERECTION OF ORANGERY AND COVERED PARKING AREA AT RIBER CASTLE, RIBER ROAD, RIBER, MATLOCK.**

There is a typo within the recommendation section of the front page of the report and section 8.0. This application is for full planning permission and therefore the reference to 'outline' is in error and is omitted from the report.

**ITEM: 5.8 - 23/00460/FUL - CHANGE OF USE OF AGRICULTURAL FIELD FOR USE AS A DRIVER TRAINING FACILITY FOR EXCAVATORS AND CONVERSION OF MOBILE CHICKEN SHED TO FORM CLASSROOMS AT BROOKLANDS HOUSE, GROVE LANE, DOVERIDGE**

1. The following representations have been received from a nearby resident on the 10<sup>th</sup> October 2023, following notification of the consideration of the item at planning committee:

I am shocked and horrified that the application is already identified as to be approved with conditions. As set out in my response to the application, it has no relevance or fit with its setting or purpose. I cannot understand what criteria would permit this application given its setting, and the extreme proximity of meters to a formalised Conservation area.

Please pass this on to the planning committee. I am unable to be there given the short notice.

Further I have become aware that the neighbours I know in the vicinity have not been made aware of the application. No mailings have been performed. The system of public notice via newspapers is not sufficient or appropriate for such a significant development in such a rural and agricultural area. It is archaic and does not serve its purpose. We have not seen planning notices at the site.

I understand my neighbours of the village of Somersal Herbert will be making complaints. Please ensure that the committee are aware of this. This is not an application that will be lightly accepted.

Officer response:

Officers advise that members note the comments. At least one week advance notice of the planning committee is given to consultees and contributors in accordance with the committee rules. In the case of this item, notification emails were sent on the 29<sup>th</sup> September 2023.

2. At the time of preparing the late representations sheet, the applicant has not submitted a detailed archaeological desk-based assessment, which would inform the need for any further investigation and recording.

Officer response:

It is recommended that should members be minded to approve the application, that delegated authority is given to officers to do so, provided that in conjunction with the Development Control Archaeologist the findings of a detailed archaeological desk based assessment are found to be robust and sufficiently identify any below archaeology potential and the need for recording through condition or otherwise (and that conditions are imposed where recommended).

3. The wording of recommended condition 3.

The applicant explained at the site visit that they were looking to enter into a temporary 5 year lease arrangement with the training centre operator to use the land as a HGV training facility. Given the unique circumstances set out and the temporary need for the facility to help supplement the farming income to minimise the effects of avian influenza, members may wish to consider granting a temporary five-year permission for the facility on this basis, given that it will operate independently of the farm. This would be a reasonable compromise and ensure that the development would help support the existing enterprise in the short term and can be reviewed going forward to prevent the establishment of an unrelated employment use in an otherwise unsustainable location.

The following replacement condition is suggested (this would replace recommended condition 3 and require the removal of condition 1):

*The use hereby permitted shall be cease on or before (insert 5 years in advance of the date of the decision) and the land reinstated to its former condition unless prior to that date the Council, has, on an application made to it, approved the retention of the use of the land / buildings and associated infrastructure for a further period.*

*Reason:*

*Based on the case put forward, the development is only considered acceptable as a temporary arrangement to help ensure the viability of farming on the wider holding in the short term. Unrestricted and undefined use would be contrary to the aims of policies S4 and EC10 of the Adopted Derbyshire Dales Local Plan (2017).*

**ITEM: 5.9 - 23/00832/OUT - OUTLINE PLANNING APPLICATION FOR THE ERECTION OF UP TO 3NO. DWELLINGHOUSES WITH APPROVAL BEING SOUGHT FOR ACCESS (RESUBMISSION) AT LAND TO THE WEST SIDE OF DERBY LANE, EDNASTON**

The following comments have been received from the Local Highway Authority, following the receipt of addition information relating to available visibility:

I refer to the amended details and comment as follows.

There are no highway objection to the details submitted, I would ideally to prefer to see all the visibility splay included within the red line of the application site but providing you are happy the visibility be can controlled within the blue outline.

The following condition and advisory footnote are recommended:

1. The development hereby approved shall not be occupied until visibility splays are provided 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 the northern direction and 39m in the southern 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.

The following informative should also be attached to any consent granted.

1. The Local Highway Authority has no objection to the above subject to the applicant obtaining a section 184 license. The construction of a new access will require the extension of a verge and/or footway crossing from the carriageway under the Highways Act 1980 - Section 184 and the Applicant is required to obtain the permission of Derbyshire Highways details can be found at [www.derbyshire.gov.uk/transport-roads/roads-traffic/licences-enforcements/vehicular-access/vehicle-accesses-crossovers-and-dropped-kerbs.aspx](http://www.derbyshire.gov.uk/transport-roads/roads-traffic/licences-enforcements/vehicular-access/vehicle-accesses-crossovers-and-dropped-kerbs.aspx) or email [highways.hub@derbyshire.gov.uk](mailto:highways.hub@derbyshire.gov.uk) before commencing any works on the highway.

#### Officer response

Members are advised to note the above and necessity of conditions should they be minded to approve the application.