

RESIDENTIAL DEVELOPMENT OF LAND AT DINTING VALE, DINTING, GLOSSOP,
DERBYSHIRE - APPEAL AGAINST THE REFUSAL OF FULL PLANNING
PERMISSION BY HIGH PEAK BOROUGH COUNCIL

High Peak Borough Council Ref: DWTHPK679c

Applicant Ref: HPK/2022/0456

Proof of Evidence of Rachel Kerr BSc (Hons) MSc CEcol CEnv MCIEEM on
Ecology Matters

For Wain Homes (Northwest Ltd)

May 2024

Prepared on Behalf of Tetra Tech Limited. Registered in England number:
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SUMMARY

- E1 The Appeal Site is assessed as presently having a complex of woodland, scrub, individual trees and grassland communities, the latter of which supports two priority habitats.
- E2 The following key matters are raised in respect of ecology:
1. Do the Appeal proposals result in overall net loss to biodiversity value in contradiction to the requirement to demonstrate no net loss and where possible a net gain (Policy EQ5).
 2. Do the Appeal proposals result in a failure of 'trading-rules' whereby grassland habitat is not adequately enhanced/created or mitigated to satisfy the loss of unit.
 3. Do the Appeal proposals result in unacceptable harm to two identified Habitats of Principal Importance without providing adequate and bespoke compensation.
- E3 Impacts to the site arising from the development will be partially mitigated on site through the adoption of a sensitive landscape design, a biodiversity net gain strategy & 30-year management plan, plus pre-construction inspections.
- E4 Off-site locations have been selected to complete the habitat mitigation package following adequate testing to provide bespoke compensation and improved net biodiversity following interventions.
- E5 The selected areas are located at Chinley High Peak and are in the ownership of the Appellant. The Chinley locations will undergo habitat interventions to form a mosaic of neutral grassland, scrub, swamp and woodland habitats. Bespoke compensation will comprise of the translocation of lowland dry acid grassland and purple moor-grass and rush pasture from the development site.
- E6 With the inclusion of offsite provisions, the collective scheme will return a net loss to biodiversity with respect to habitat units.
- E7 However, Biodiversity Net Gain (BNG) permits purchase of habitat units to address a BNG deficit. In that respect 18.94 units of Tier 1 Medium distinctiveness habitats are to be purchased to satisfy BNG Trading Rules.
- E8 Whilst this is not a scheme that is required to deliver 10% BNG under the provisions of the Environment Act (because the application which is now the subject of the appeal was submitted before 10% BNG became mandatory in England), having satisfied the BNG Trading Rules with the purchase of 18.94 Tier A1 habitat units, the actual outcome is that this scheme would deliver circa 11% increase in BNG.
- E9 Moreover it is noted that the BNG calculations do not account for the replacement trees being planted by the Council via the off-site contribution of £72,400 for planting and £19,840 for maintenance which once completed will have biodiversity benefits for the local area.

1.0 INTRODUCTION

1.1 QUALIFICATIONS AND EXPERIENCE

- 1.1.1 My name is Rachel Kerr. I am a Technical Director (Ecology) at the multi-disciplinary consultancy Tetra Tech, based in the Manchester office. I have over 18 years' professional experience in ecological consultancy. At Tetra Tech I lead the Northwest regional ecology team based across Manchester / Cumbria.
- 1.1.2 I hold a Master's degree in Pollution and Environmental Control from the University of Manchester where I graduated in 2005, and an Undergraduate degree in Environmental Science from the University of Manchester where I graduated in 2003. I have been a full member of the Chartered Institute of Ecology and Environmental Management (CIEEM) since 2010 and became a Chartered Environmentalist (CEnv) in 2010 and a Chartered Ecologist (CEcol) in 2022. As a Full member of CIEEM I am bound to uphold a Professional Code of Conduct.
- 1.1.3 I began my career as a Graduate Ecologist at Hyder Consulting, where over 4 years I gained experience in a wide range of ecological surveys, including obtaining European Protected Species Survey licences for bats, great crested newts and medicinal leech. I joined Tetra Tech (formerly WYG) in 2010 as a Senior Ecologist, before being promoted to Principal Ecologist and team leader in 2014, Associate Ecologist and regional team lead 2017, Associate Director 2022 and Technical Director in 2024. During my career at Tetra Tech, I have provided ecological consultancy services for over 300 projects across a wide range of sectors including energy, defence, infrastructure and residential development.
- 1.1.4 As Technical Director I provide leadership and support to both my regional ecology team (24 members) as well as the national ecology team (over 90 permanent ecologists across 13 offices). This requires a broad ecological knowledge and technical expertise to be able to undertake and support project work. As a member of the ecology Senior Leadership Team (SLT) I am required to set and uphold standards. I am also responsible for quality control of team outputs.
- 1.1.5 I have provided advice to developers, private clients and Local Authorities.
- 1.1.6 In 2020 I provided technical expertise to CIEEM's *Competency Standard for Great Crested Newt Survey, Mitigation and Management*.
- 1.1.7 The evidence that I have prepared and provide for this planning inquiry in this proof of evidence is true. I confirm that the opinions expressed are my true and professional opinions, irrespective of by whom I am instructed.

1.2 SCOPE OF EVIDENCE, INVOLVEMENT AND INSTRUCTION

1.2.1 This evidence has been prepared to address the ecological issues in respect of the appeal made by Wain Homes Limited against the High Peak Borough Council's (HDBC) refusal of the full planning application (reference HPK/2022/0456) for the '*Proposed residential development comprising 92 dwellings including areas of public open space, landscaping and associated works*' (HPK/2022/0456) at the site known as 'Land at Dinting Vale, Dinting'.

1.2.2 The agreed description of development for the Appeal is:

'Construction of a residential development comprising 92 dwellings, including areas of public open space, landscaping and associated works'

1.2.3 The application was validated by High Peak Borough Council (HPBC) on the 3rd of November 2022.

1.2.4 A decision notice was issued by the Council on 27 October 2023 refusing planning permission for the following (biodiversity) reasons:

*3. The proposed section 106 package fails to achieve a policy compliant level of affordable housing and fails to fully mitigate for the substantial tree loss and **loss of biodiversity** on the site. Whilst the viability issues are noted, in the absence of a policy compliant Section 106 package the residual harm arising from the development is considered to outweigh the benefits of delivering this allocated housing site contrary to Policies **DS4**, EQ9, **EQ5**, H3 and H4 of the adopted High Peak Local Plan 2016 and the NPPF.*

1.2.5 However, by email dated 7 May 2024 the Council confirmed that it was satisfied with the Appellant's proposed ecological mitigation and the biodiversity element of the refusal was withdrawn. This was subsequently confirmed by the Council's advocate at the Case Management Conference held on 10 May 2024.

1.2.6 Tetra Tech was originally appointed in 2022 to undertake ecological survey work and assessments for the site in support of the planning application and subsequently I have been appointed by the Appellant to provide evidence on ecology and biodiversity matters at the Inquiry. Tree loss will be addressed by Mr Tavendale in his evidence. My evidence for ecology and biodiversity is structured as follows:

- Introduction
- Relevant Policy and Legislation
- Ecological Background
- The Council's Reasons for Refusal

- Third Party Responses
- Summary and Conclusions

2.0 RELEVANT POLICY AND LEGISLATION

2.1 POLICY AND LEGISLATION WHICH ARE MATERIAL CONSIDERATIONS

2.1.1 A full list of relevant policy, legislation and guidance which are material considerations is given in Section 6 of the Planning Proof of Evidence. Here I summarise the policy and legislation which is of particular relevance to ecological matters which are in dispute and provide the framework for my evidence.

2.2 NATIONAL POLICY

2.2.1 Paragraph 180 of the NPPF sets out requirements for ecological enhancement and relates to both policy and decision making (in particular parts A and D) stating:

‘Planning policies and decisions should contribute to and enhance the natural and local environment by:

- a. protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);*
- d. minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.’*

2.2.2 Paragraph 186 addresses the protection of ecological features in decision making (parts A, C and D) stating:

‘When determining planning applications, local planning authorities should apply the following principles:

- 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;*
- c. development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists; and*
- d. development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate.’*

2.3 LOCAL POLICY

2.3.1 The appeal site is allocated for residential development. **Policy DS4** of The High Peak Local Plan (2016) sets out the requirements of developments in relation to Adderley Place, Glossop. Of relevance to ecology is the requirement:

- A wildlife survey should be undertaken following consultation with Derbyshire Wildlife Trust.

2.3.2 **Policy EQ5** of The High Peak Local Plan (2016) is the primary local planning policy in respect of ecology, setting criteria which must be met for planning permission to be granted. Stated criteria have been summarised as follows:

- Conserving and enhancing sites of international, European, and national importance.
- Conserving and enhancing any Sites of Special Scientific Interest.
- Conserving and enhancing regionally and locally designated sites. The Council will not permit any development proposal which would directly or indirectly result in significant harm to geological and biodiversity conservation interests, unless it can be demonstrated that:
 - There is no appropriate alternative site available.
 - All statutory and regulatory requirements relating to any such proposal have been satisfied.
 - **Appropriate conservation and mitigation measures are provided, such mitigation measures should ensure as a minimum no net loss and wherever possible net gain for biodiversity.**
 - If it can be demonstrated that no net loss is not possible, the need for, and benefit of, the development is demonstrated to clearly outweigh the need to safeguard the intrinsic nature conservation value of the site and compensatory measures are implemented.
- Encouraging development to include measures to contribute positively to the overall biodiversity of the Plan Area.
- Working with partners to help meet the objectives and targets in the Peak District Biodiversity Action Plan and protect watercourses.
- Identifying local ecological networks and supporting their establishment and protection, preferentially creating biodiversity sites where they have the potential to develop corridors between habitats.
- 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.

2.4 LEGISLATION

2.4.1 The Environment Act 2021 makes provision for the delivery of mandatory biodiversity gain as a condition of planning permission (Section 98). However, as I discuss in my evidence, the

mechanisms to implement these provisions (via changes to the Town and Country Planning Act 1990 an) were not mandated at the time of initial submission of the planning application (30th September 2023).

3.0 ECOLOGICAL BACKGROUND

3.1 BASELINE DATA COLLECTION

3.1.1 Consultation with Derbyshire Wildlife Trust was undertaken to agree scope of ecological baseline surveys (in accordance with policy DS4) in June 2022.

3.1.2 The assessment of ecological effects is presented in a series of Ecological Reports which were submitted to HDBC in support of the planning application for the Appeal Site. These were subject to a series of updates with the most up to date versions comprising (Core Document Ref CDX):

- Tetra Tech (2022) Bat Survey Report (Activity) - Dinting Vale, Glossop. CD2.1
- Tetra Tech (2022) Bat Survey Report V2 (Trees) - Dinting Vale, Glossop. CD1.37
- Tetra Tech (2022) eDNA Results Letter Report V2- Dinting Vale, Glossop. CD1.40
- Tetra Tech (2022) Invasive non-native species report V2 – Dinting Vale, Glossop. CD1.38
- Tetra Tech (2022) Reptile Report V3- Dinting Vale, Glossop. CD2.15
- Tetra Tech (2022) Badger Report V3 – Dinting Vale, Glossop. CD1.39
- Tetra Tech (2023) Biodiversity Net Gain Assessment (Rev7) - Dinting Vale, Glossop. Appendix 2 of the Appellant’s Statement of Case
- Tetra Tech (2023) LWS Criteria Letter Report V2– Dinting Vale, Glossop. CD2.24
- Tetra Tech (2023) Breeding Bird Survey Report V2 - Dinting Vale, Glossop. CD2.14
- Tetra Tech (2023) National Vegetation Classification Survey Report V2. Dinting Vale, Glossop. CD2.25
- Tetra Tech (2024) Biodiversity Net Gain Strategy and 30 Year Management Plan V4. Dinting Vale, Glossop. Appendix 2 of the Appellant’s Statement of Case
- The Environment Partnership (2022) Ecological Appraisal – Dinting Vale, Glossop. CD1.28
- Baker Consultants (2023) Dinting Vale, Glossop Invertebrate Survey Report. CD2.23

3.2 SUMMARY OF FINDINGS

3.2.1 The development site is located south of A57 Dinting Vale, Glossop, Derbyshire and centred at Ordnance Survey National Grid Reference SK 01926 94214. The site includes plantation broadleaved woodland in the north, with scattered broadleaved trees throughout. The southern area of the site is dominated by neutral and marshy grassland with areas of dense/continuous scrub and tall ruderal. To the north of the site is a pocket of semi-improved neutral grassland and a tarmac road, which provides access to existing adjacent residential properties. An area of running water is present to the northeastern and southern corners of the site. The site itself is of ecological value supporting a mosaic of semi-natural communities

including two priority habitats¹; purple moor-grass and rush pasture (PMRP) and lowland acid grassland.

3.2.2 The site does not lie within any statutory or non-statutory designated wildlife site of international, national, or local recognition, although it lies immediately to the west of Gamesley Sidings Local Wildlife Site.

3.2.3 The site was found to support a good assemblage of breeding birds, particularly for passerines, with one red list species and 6 amber listed species (BOCC5)² considered to be breeding onsite. Additionally, the habitat complex supported an assemblage of invertebrates considered to be of District value and included large garden bumblebee and alder beetle, which are Nationally Scarce and Nationally Rare respectively. No roosts supporting bats were identified in either buildings or trees, whilst otter and water vole were considered likely absent from the site, given paucity of suitable habitats. Likewise, no reptiles were recorded on site and a sweep of eDNA surveys targeted at great crested newts provided negative results.

3.3 SUMMARY OF MITIGATION AND ENHANCEMENT

3.3.1 Impacts to the site arising from the development will be mitigated through the adoption of a sensitive landscape design, a biodiversity net gain strategy & 30-year management plan, and pre-construction inspections. Prescribed measures have been developed with consideration to the species identified onsite, and include:

- Retention of a 30m strip along the western boundary to buffer the woodland edge.
- A relaxed mowing schedule to promote a more varied sward structure.
- Inclusion of foxgloves, comfrey, marsh woundwort, honeysuckle and yellow-flag iris in the wildflower grassland margins, in favour of the large garden bumblebee. This would also have wider benefits to other invertebrates.
- Creation of three Sustainable Urban Drainage (SUD) ponds with marginal vegetation.
- Production of precautionary working methods, including phased vegetation clearance and pre-works inspections to avoid harm to nesting birds.
- Provision of a bat and bird box layout to support various species including tawny owl, starling, house martin, and bat species.
- Production of a sensitive lighting strategy and bat friendly planting to retain foraging habitat around the site boundaries.

3.3.2 With reference to faunal components, significant impacts upon ecological features are avoided or suitably mitigated.

3.4 SUMMARY OF COMPENSATION

3.4.1 Impacts to habitats arising from the development are not appropriately mitigated in the measures listed above. Of key consideration is the direct loss to the grassland mosaic,

¹ Habitats of Principal Importance as listed under Section 41 of the Natural Environment and Rural Communities (NERC) Act 2007

² Birds of Conservation Concern 5

including impacts to the two priority habitats: lowland acid grassland and PMRP. As both priority habitats require bespoke compensation an off-site receptor site has been identified following adequate testing to make sure habitats can suitably re-establish. These off-site enhancements have also been used in Biodiversity Net Gain calculations, as discussed in section 3.5.

3.4.2 The receptor site is located at Chinley High Peak, centred at Ordnance Survey National Grid References SK 04616 82268 and SK 04417 82058. This site includes a parcel of wet woodland and grazed modified grassland with areas of blackthorn and hawthorn scrub and a hedgerow with ditch. Chinley lies approximately 12km south of the site but within the same local authority area. The land in question is in the ownership of the Appellant.

3.4.3 The Chinley locations will undergo habitat interventions to form a mosaic of neutral grassland, scrub, swamp and woodland habitats. Bespoke compensation will also be undertaken and comprise of the translocation of lowland dry acid grassland and PMRP from the development site.

3.4.4 A BNG strategy and 30-year management plan for habitats and the two priority habitats will be implemented off site at Chinley.

3.5 BIODIVERSITY NET GAIN

3.5.1 The provision of a minimum 10% Biodiversity Net Gain (BNG) was not a mandatory requirement under the Environment Act 2021 when the application was submitted on 30 September 2023 but a requirement of no-net-loss was required by HPBC Policy EQ5.

3.5.2 A BNG Assessment was undertaken by Tetra Tech using the Statutory Biodiversity Metric to provide a quantitative assessment of the predicted change in the biodiversity value of the site. This assessment demonstrated that the Appeal site, in-combination with off-site provisions, was not capable of delivering no-net-loss. The assessment showed a combined change of -12.62 habitat units, which equates to a 22.07% decrease in biodiversity from baseline.

3.5.3 Furthermore, Trading Rules within the Statutory Metric are not met with regards to Medium distinctiveness habitats.

3.5.4 To satisfy Trading Rules the number of habitat units required increases from 12.62 to 18.94 (a combination of Tier A1 habitats as follows: 16.04 Medium distinctiveness grassland and 2.9 Medium distinctiveness heathland & shrub).

3.5.5 The Appellant will secure 18.94 credits through a habitat bank to satisfy BNG Trading Rules, in doing so the site will score +11% increase in BNG and in doing so will:

- be in accordance with, and exceed the requirements of, EQ5 *no net loss, wherever possible a net gain; and,*
- NPPF paragraphs 180d, 186a & 186d (i.e. mitigate, compensate and provide net gains): and,

- exceed the recently enacted Environment Act mandated 10% (notwithstanding the appeal application is not subject to the legislation) .

3.5.6 The post-intervention enhancement and creation of hedgerows and watercourses, will however, result in a combined change of 2.47 hedgerow units and 0.09 watercourse units. This equates to a 447.22% increase in hedgerow units and 16.23% increase in watercourse units.

3.5.7 Moreover, it should be noted that the BNG calculations do not account for the replacement trees being planted by the Council via the off-site contribution of £72,400 for planting and £19,840 for maintenance which once completed will have further biodiversity benefits for the local area.

4.0 THE PLANNING APPLICATION AND THE COUNCIL'S REASONS FOR REFUSAL

4.1.1 The appeal has been submitted to the Planning Inspectorate against the Council's refusal of application HPK/2022/0456/A.

4.1.2 The appeal was made on 15 March 2024, with a public inquiry to be held from 18 June 2024 in response to four contested matters outlined in the refusal decision, one of which relating to ecology (biodiversity) was withdrawn by the Council on 7 May 2024 as confirmed by the Council's advocate on 10 May 2024 at the Case Management Conference:

*"The proposed section 106 package fails to...fully mitigate for the substantial tree loss and **loss of biodiversity** on the site. Whilst the viability issues are noted, in the absence of a policy compliant Section 106 package the residual harm arising from the development is considered to outweigh the benefits of delivering this allocated housing site contrary to Policies **DS4**, **EQ9**, **EQ5**, **H3** and **H4** of the adopted High Peak Local Plan 2016 and the NPPF."*

5.0 THIRD PARTY COMMENTS AND RESPONSE

5.1.1 Third party comments received which are relevant to ecology have been summarised as follows (note that comments relating to trees addressed by Mr Tavendale in his evidence):

- *Site used by deer and owls, no consideration for wildlife.*
- *Fails to fully mitigate for loss of biodiversity on the site.*
- *Wildlife and deer reside at site.*
- *Important green space for wildlife.*
- *Site is hive of activity for deer, barn owls, ducks, herons, rabbits, foxes, badgers.*
- *Biodiversity impact, the development would eradicate large swathes of habitat.*
- *High biodiversity site will be lost. Site was identified by DWT as having habitats of very high importance. Loss of woodland and rare fauna. Negative BNG. There have been invertebrates and grasses that have been found on the fields that require very specific and*

unique conditions to live and thrive. To move habitats of this nature to a lower value site without the specific habitat required will mean the loss of such flora and fauna.

- *A breeding deer family in this area, utilizing the trees for cover during their movements. Beyond the deer, nocturnal badgers, buzzards, owls, and during the summer months swallows, pheasants, and bats contribute to the area's biodiversity.*
- *Ducks with ducklings in the small pond that has formed. Also seen herons and recently in one of the trees a tawny owl.*

5.1.2 The Appeal Site has been subject to extensive ecological survey and assessment in accordance with relevant best practice guidance and in consultation with Derbyshire Wildlife Trust (“DWT”). The survey has adequately addressed all protected species and habitat requirements, and findings have been accepted by DWT the Council’s ecology adviser. The third parties raise no additional issues to those that have been covered in the numerous biodiversity related documents before the Inquiry.

5.1.3 By implementing the proposed sensitive landscape design, BNG strategy, 30-year management plan and pre-construction inspections the impacts upon faunal features are avoided or suitably mitigated consistent with statutory and policy requirements.

5.1.4 As set out above through securing 18.94 credits via a habitat bank to satisfy Trading Rules, the site will score +11% increase to biodiversity thereby securing biodiversity gains in accordance with both NPPF Paragraph 180 and 186 and which exceed the requirements of Policy EQ5 of the High Peak Local Plan.

6.0 CONCLUSIONS

6.1.1 The Appeal Site has been subject to extensive ecological survey and assessment in accordance with relevant best practice guidance and in consultation with Derbyshire Wildlife Trust. This has demonstrated that the Appeal Site is of ecological value, with a complex of habitats, including two priority grassland communities, which support a good assemblage of breeding birds and invertebrates.

6.1.2 The key matter raised in respect of ecology is whether the Appeal proposals fully mitigate the loss of biodiversity in accordance with Policy EQ5 and whether sufficient survey effort has been undertaken in accordance with Policy DS 4.

6.1.3 I am firmly of the view that adequate surveys have been undertaken. The Council’s own ecological advisers agree.

6.1.4 In respect of biodiversity loss and gains I conclude my evidence as follows.

6.1.5 By implementing the proposed sensitive landscape design, BNG strategy and 30-year management plan, and pre-construction inspections, impacts upon faunal features are avoided or suitably mitigated in line with statutory requirements.

6.1.6 The site at Chinley has had extensive survey and a detailed plan developed to support establishment of priority habitats. Therefore, the inclusion of the Chinley locations will satisfy

the requirement for bespoke compensation associated with lowland dry acid grassland and PMRP.

6.1.7 Through securing 18.94 credits via a habitat bank to satisfy Trading Rules, the site will score +11% increase to biodiversity thereby securing biodiversity gains in accordance with both NPPF Paragraph 180 and 186 and which exceed the requirements of Policy EQ5 of the High Peak Local Plan.

6.1.8 Moreover, it is noted that the BNG calculations do not account for the replacement trees being planted by the Council via the off-site contribution of £72,400 for planting and £19,840 for maintenance which once completed will have further biodiversity benefits for the local area.

6.1.9 I therefore conclude that the Appeal proposals fully accord with the High Peak Local Plan Policy EQ5 and portion relevant to ecology of DS4 as well as national policy.