



## Statement of Case

Appeal against Enforcement Notice reference:

APP/H1033/C/22/329785 – Taxal Edge, Macclesfield Road,  
Whaley Bridge, SK23 7DR

for Mr Gary Cullen

Emery Planning project number: 22-166

PI ref: APP/H1033/C/22/329785

LPA ref: HPE/2019/00014

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Project : 22-166  
Site address : Taxal Edge, Macclesfield  
Road, Whaley Bridge, SK23  
7DR  
Client : Mr Gary Cullen  
Date : 29 June 2022  
Author : Rawdon Gascoigne

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## 1. Introduction

- 1.1 Emery Planning, on behalf of Mr Cullen (The Appellant), submits this Statement of Case in support of their appeal against Enforcement Notice reference HPE/2019/00014, issued by High Peak Borough Council on 31 March 2022. The alleged breach of planning control is:

*“Without planning permission, the alteration of a building (“the classroom block”) comprising the raising of the roof and steepness of the pitch of the roof, the insertion of three dormer windows on the eastern roof slope and changes to the fenestration on the eastern elevation.”*

- 1.2 The classroom block is identified on Plan reference EN01 which accompanies the notice.
- 1.3 The LPA’s reasons for issuing the notice indicate that the alleged changes to the building comprise building operations for the purposes of Section 55 (1A) of the Town and Country Planning Act and materially alter the external appearance of the building. It is asserted that the raising of the roof height, pitch of the roof and inclusion of dormer windows results in a dominant form of development which adversely harms the landscape setting of the site and wider area; and that the alterations to the fenestration on the East elevation with reference to the window openings, fails to respond to and reflect the character of surrounding development, to the detriment of the visual appearance of the building in the landscape.

## Background

- 1.4 The appeal site is located on the Southwest edge of Whaley Bridge. It forms part of, but is in separate ownership to, a wider site that was once a children’s home, but which now has permission for residential use; a number of planning applications having been granted for its partial demolition, conversion and re-use. The main building at Taxal Edge (which falls outside of the red edge for the enforcement notice) was constructed in the early 20<sup>th</sup> century but has been subject to various alterations and additions over the years, some of which have been demolished.
- 1.5 One of the approved planning permissions for conversion/redevelopment of Taxal Edge (ref. HPK/2009/0689) included provisions for the conversion of a late 20<sup>th</sup> century, detached two storey classroom block, to a residential dwelling. The classroom block is situated to the South of the main building at Taxal Edge. The works were commenced by the previous owner who subsequently occupied the building in accordance with the timescales set out in the planning

permission and the property is now occupied as a dwelling by the appellant and his family. The classroom conversion is the subject of the current enforcement appeal.

- 1.6 The appellant first became aware of the LPA's concerns regarding the lawfulness of the building during the determination of application reference HPK/2020/0301. This application was submitted by Treville Properties (a local house building company, owned and run by the appellant's family) in July 2020. The application sought planning permission for demolition of the main building and garage building at Taxal Edge, and for the erection of 7 no. dwellings. While the classroom conversion itself (the subject of this enforcement appeal) was excluded from the red edge, the application included proposals for a new garage to serve the property. Planning permission was refused on 19 April 2021 and an appeal lodged against the refusal (reference APP/H1033/W/21/3272745).
- 1.7 As noted above, during the course of determining the application, the LPA raised concerns over the lawfulness of the classroom conversion but did not enter dialogue with the owner of the property to establish the facts of the case or to confirm whether there had indeed been a breach of planning control. It should be noted that the property owner (the appellant for this enforcement appeal) contacted the LPA to clarify the council's concerns and the position in respect of enforcement investigations, including the submission of a request for disclosure of details under the Freedom of Information Act. This request was submitted to the LPA in February 2021, over a year in advance of the hearing for appeal reference APP/H1033/W/21/3272745. However, no response was received from the LPA in advance of the hearing in March 2022.
- 1.8 Notwithstanding the apparent lack of any formal enforcement investigations prior to the appeal hearing on 15 March 2022, the LPA introduced late evidence during the hearing, relating to the fallback position and the lawfulness of the classroom building (the lawfulness of the classroom building is relevant to the S78 appeal in terms of the context for the proposed development). As a result of the late evidence and the need to test the information through formal cross examination and/or under oath, the appeal was relisted for determination via the inquiry procedure.
- 1.9 Shortly after the close of the hearing, an enforcement notice (the subject of this appeal) was issued on 31 March 2022. The alleged breach of planning control is set out in the introductory section of this statement. It is of note that the alleged breach of planning control relates to operational development only and that there is no suggestion that the use of the property as a

dwelling is unlawful; that planning permission reference HPK/2009/0689 was not implemented; nor that there was a breach of the conditions relating to that permission. Instead, the drafting of the notice simply implies that unauthorised alterations to the dwelling have been made since the approved change of use to a dwelling took place.

- 1.10 The council have confirmed by email that notwithstanding the 2019 reference number on the enforcement notice, formal enforcement investigations into the alleged breach of planning control in respect of the classroom conversion did not commence until after the service of the enforcement notice on 5 April 2022 and a site visit to establish what works had been carried out was not undertaken until 4<sup>th</sup> May 2022.
- 1.11 This is contrary to the LPA's Enforcement Policy. As noted in the grounds of appeal, this states that the LPA will

*"Negotiate with those responsible for a breach of planning control" and "give them the opportunity to resolve the matter prior to taking formal action, unless the breach is so serious it would harm amenity and public safety (e.g. failure to comply with contamination conditions), or if discussions have become protracted with limited chance of success".*

- 1.12 The Enforcement Policy also states that:

*"If a complaint is received that affects you or your property then the Council will attempt to contact you... or the site in question will be visited by an Enforcement Officer... You will be given the opportunity to explain your side of the case."*

- 1.13 This did not occur prior to the service of the notice and as a result, the appellant has incurred significant expense that could otherwise have been avoided, as the evidence that will be presented through this appeal will show that there was no basis for the LPA taking enforcement action. The expense is not just limited to this appeal itself as the events that led up to the service of the notice in terms of introducing the allegation of unauthorised works at the appeal hearing referenced above, have led to that hearing being adjourned, re-listed for Inquiry and an as yet undetermined date for all this to be heard by way of conjoined appeals. Additionally, the Council's position on investigations only being undertaken recently is contradictory and disingenuous given the 2019 enforcement reference number and the reference to the alleged unauthorised reconstruction of the classroom building within 2020 committee reports in respect of the residential development application.

1.14 The appellant lodged an appeal against the enforcement notice on 28 April 2022 under grounds C, D, A, F and G. The appeal has been co-joined with the aforementioned S78 planning appeal (reference APP/H1033/W/21/3272745) and both will be determined by means of a public inquiry. At the time of writing the event date has not been confirmed.

## 2. Relevant planning history

2.1 The following applications are of relevance to the appeal:

- HPK/2008/0069 – Change of use of Taxal Edge from a boarding hostel and associated ancillary residential accommodation to use as a single dwelling – approved 28<sup>th</sup> March 2008
- HPK/2009/0689 – Conversion of Taxal Edge to provide 7 no. apartments and the conversion of the classroom block and disused garage to 2 no. detached houses – approved 29<sup>th</sup> March 2010
- HPK/2013/0503 – Proposed conversion of Taxal Edge to 5 no. apartments and construction of 2 no. semi-detached houses where the gymnasium is located – approved 25<sup>th</sup> November 2013
- HPK/2020/0301 - Demolition of the existing building known as "Taxal Edge" and the detached garage building and the erection of 7 no. dwellings

### **3. Planning policy context**

#### **Local Planning Policy**

3.1 Reference will be made to the policies of the adopted development plan. For the purposes of this appeal the development plan comprises the High Peak Borough Local Plan (HPLP) adopted in 2016.

3.2 The only policies referred to by the council in their reasons for issuing the notice are EQ2 (Landscape Character), EQ3 (Rural Development) and EQ6 (Design and Placemaking). Notwithstanding this (and emphasising that the council has not identified harm or conflict in respect of other policies), reference will be made to a range of relevant development plan policies. The key policies are as follows:

- Policy S 1: Sustainable Development Principles
- Policy S 1a: Presumption in Favour of Sustainable Development
- Policy EQ2: Landscape Character
- Policy EQ 3: Rural Development.
- Policy EQ 6: Design and Place Making.

#### **National Planning Policy**

3.3 Reference will also be made to the National Planning Policy Framework (the Framework), National Planning Practice Guidance (NPPG), and the Government's technical guidance in Permitted development rights for householders (2019).

#### **Other material considerations**

3.4 The following supplementary planning documents are also relevant:

- High Peak Design Guide SPD (February 2018);
- Adopted residential design SPD (December 2005); and
- Landscape Character SPD (March 2006).



## 4. The case for the appellant

4.1 The case for the appellant will be advanced with reference to the propositions below.

### **Proposition 1: That there has not been a breach of planning control (Ground C)**

4.2 It will be shown that a number of the matters alleged in the Notice do not constitute a breach of planning control as they either do not involve material changes to the building, or else fall within the scope of permitted development rights under Schedule 2, Part 1 of the Town and Country Planning General Permitted Development England Order 2015 as amended.

4.3 It will be shown that the appellant moved into the appeal property in 2016 and constructed the three dormer windows on the eastern roof slope in 2017, at the time believing that they were relying on rights under Schedule 2, Class 1, Part B of the General Permitted Development Order 2015. The appellant inserted the dormers within the existing roof slope that existed at the point he moved into the property and made no changes to the height of the roof or the steepness of the pitch. However, it is understood that the previous owner steepened the pitch to allow the use of a more traditional roof covering and design.

4.4 The appellant has not enlarged the window openings within the Eastern elevation as suggested at part 4.2 of the enforcement notice which states:

*“alterations to the fenestration on the Eastern elevation, comprising large window openings, with full height windows of varying sizes”*

4.5 It will be shown that new windows were inserted within the existing openings in the building's façade. However, it will be shown that the replacement windows did not materially affect the external appearance of the building as per section 55(2)(a) of the Town and Country Planning Act 1990. Notwithstanding this, it will also be shown that even if the replacement windows did comprise operational development, such development would be permitted development under Part 1A of Schedule 2 of the General Permitted Development Order 2015.

**Proposition 2 – that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters (Ground D)**

- 4.6 As noted in the grounds of appeal, the appellant's case under this proposition is that the relevant time limit for enforcement action in respect of operational development is 4 years from the date of the breach (section 171B(1) of the Town and Country Planning Act 1990 (as amended)).
- 4.7 Unequivocal evidence will be presented to show that the alleged breaches of planning control were substantially complete more than 4 years prior to the service of the Enforcement Notice and that as a result they are immune from enforcement action due to the passage of time.
- 4.8 Evidence will be presented in the form of glazing invoices dated September 2017; dated photographs, including photographs from 4 November 2017; aerial imagery; and witness accounts which confirm that every element of the alleged breach of planning control was substantially complete more than 4 years prior to the service of the enforcement notice. The LPA is already in receipt considerable evidence, which has been provided in connection with the live planning appeal and in correspondence relating to enforcement investigations. This will be supplemented through our Proof of Evidence.

**Proposition 3 – That planning permission should be granted for the matters alleged in the notice (Ground A)**

- 4.9 It will be shown that changes to the property referred to in the alleged breach of planning control accord with the requirements of relevant local planning policy, including policies EQ2, EQ3, and EQ6.
- 4.10 In particular, it will be shown that the works involve alterations to a dwelling that are acceptable in principle in relation to the requirements in the second part of Policy EQ3, which permits

*"Extensions to existing dwellings provided they are subsidiary to the building and do not have an adverse impact on the character of the landscape"*

- 4.11 Section 4.2 of the notice states that the LPA consider the changes to the roof of the property referred to in the alleged breach of planning control have resulted in a dominant form of development that harms the landscape and that the fenestration on the East elevation of the building fails to respond to and reflect the character of surrounding development.

- 4.12 However, it will be shown with reference to photographs, drawings, relevant planning decisions, and planning policy/guidance, that the alterations to the dwelling are in keeping with design features of other local properties in the vicinity of the appeal site, are sympathetic to the character of the local area and do not give rise to unacceptable visual impacts in terms of the prominence of the building and/or roof. The works to the building have improved the general appearance of the classroom conversion, with no material alterations to the scale and form of the building and no harm to the wider landscape setting in line with the requirements of Policy EQ2.
- 4.13 It will be shown that the more traditional form of the roof with a steeper pitch and the use of materials that reflect local vernacular, and the removal of unsympathetic modular window panels directly accords with the requirements and priorities of Local Plan Policy EQ6. It will also be shown that the changes to the dwelling do not give rise to any issues with overlooking or residential amenity (although none are alleged).
- 4.14 It will also be shown that in the event the appeal is unsuccessful, and the works required by the notice are undertaken, the appellant would still benefit from permitted development rights, which could then be utilised to provide additional space within the roof of the property and to undertake other alterations to the building. This would involve changes to the appearance of the dwelling that could be more harmful than the alleged breach of planning control in policy terms. It will be shown with reference to relevant appeal decisions and case law, that this fallback position is a material consideration which further supports the case for granting permission under Ground A.
- 4.15 Furthermore, the requirements at part 5.3 of the notice would result in the insertion of windows which do not fill the openings within the blockwork. These openings have not been enlarged in comparison with those on the building prior to conversion. It will be shown with reference to photographs and other evidence that the drawings attached to the enforcement notice are misleading as they do not show the materials of the façade and the presence of panels beneath the windows which were part and parcel of modular windows, but which are not indicated on the drawings. The current requirements of the notice would result in a building with ill-fitting windows, that would not be weathertight, appeared unsightly and failed to comply with local planning policies relating to amenity, design and sustainability. As a result, dismissal of the appeal would cause far more harm in policy terms, than granting permission under Ground A.

**Proposition 4 - that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach (Ground F)**

- 4.16 The appellant's case under Ground F was clearly set out within the grounds of appeal. In the event that the appeals under grounds A-D are not wholly successful and without prejudice to the appellant's case that the notice should be quashed, it will be shown that the steps required by the notice exceed what is necessary to remedy the alleged breach of planning control, as elements of the works are clearly lawful and acceptable in planning terms.
- 4.17 It will be shown that even if the inspector considers that some of the alleged operations are unlawful and is unable to grant permission for the works in their entirety, the steps of the Notice could be amended to exclude the elements that are immune from enforcement and/or comply with relevant planning policy.
- 4.18 As noted earlier in this statement, the notice does not currently require the existing window openings on the East elevation to be partially filled in prior to the replacement of the East facing windows under 5.3 of the notice. This may be the LPA's intention, however, the required methodology is currently unclear. The appellant's position on this matter is that it would be wholly unreasonable and excessive for the notice to require pre-existing window openings to be built up in stone to the height of the horizontal glazed panels shown on EN5 of the notice. Evidence will be presented to show that these openings have always contained modular windows with integrated panels. It will be shown that reinstatement of the dated panels would be detrimental to the property in visual terms. The alternative of installing higher quality cladding within the openings will be presented and assessed for consideration by the inspector. However, it will be shown that the current windows are preferable in design terms and that further alterations to the windows/openings are excessive would not address the reasons for issuing the notice.

**Proposition 5 – that the time given to comply with the notice is too short (Ground G)**

- 4.19 Once again, the appellant's case under this proposition was clearly set out within the grounds of appeal.

- 4.20 It will be shown the period of 6 months for compliance with the requirements of the notice is insufficient due to the fact that the house is currently occupied by the appellants family and would require them to find alternate accommodation whilst the work is taking place (if the works to the roof are required). It is also insufficient due to issues with the availability of labour; supply chain issues in the construction industry; and uncertainty over whether suitable materials could be sourced and delivered to enable completion of the works within the required timeframe.
- 4.21 The potential requirement for protected species surveys (prior to proceeding with certain elements of the works) will be discussed, including the implications this has for the appellant's ability to comply with the Notice within the required timeframe.
- 4.22 It will be shown that if the Enforcement Notice is upheld, a period of at least 12 months would be required for compliance.

## **Other Matters**

- 4.23 The appellant's grounds of appeal also indicated that the steps required by the notice are imprecise and unclear as they require the building to be altered to accord with the dimensions of images EN04 and EN05 (attached to the Notice). However, the images are not to scale and do not include any dimensions. It is therefore impossible to understand what the notice requires or to enforce compliance. Furthermore, there is no clear evidence that these images reflect the condition/appearance of the property prior to the breach of planning control as they are not dated and contain no information to describe what is shown in the images. It will be shown (as outlined above), that the requirements at 5.3 of the notice and the image at EN05 do not reflect the fact that the structural openings for the windows have always been much larger. The appellant will show that to uphold the notice in these circumstances would cause significant prejudice which could not be overcome through an amendment to the enforcement notice.
- 4.24 The Appellant reserves the right to add to or introduce further elements to their case, when the Council's Statement of Case and comments from third parties are received or should material considerations change.
- 4.25 A number of appeal decisions and case law will be referenced in support of the above propositions.

## 5. Document list

5.1 A list is provided below of the key policy and technical documents that the Appellant intends to refer to. Non-technical evidence including witness statements will also be relied upon and other documents may be referred to in light of matters raised in the Council's Statement of Case or by other parties.

### National documents

- Planning Legislation
- National Planning Policy Framework (the Framework)
- National Planning Practice Guidance (NPPG)
- Permitted development rights for householders – Technical guidance (MHCLG, 2019)

### Development plan documents

- High Peak Borough Local Plan (HPLP) 2016

### Other documents

5.2 In addition to the above, the Appellant will refer to the following:

- The High Peak Enforcement Policy
- Supplementary Planning Documents and Guidance
- Design guides
- Landscape character assessments
- Relevant applications and/or appeal decisions and court judgements
- Other plans, drawings, photographs and information pertaining to the appeal site