

Town and County Planning Act 1990

Appeal by Mr Gary Stephen Cullen, Treville Properties Ltd

Land at 184 Taxal Edge, Macclesfield Road, Whaley Bridge, Derbyshire,  
SK23 7DR

Appeal ref: APP/H1033/C/22/3297854 and Linked Case  
APP/H1033/W/21/3272745

Statement of Case on behalf of High Peak Borough Council

29<sup>th</sup> June 2022

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## 1. The Appeal Site and its surroundings

1.1 The appeal site lies to the west of the market town of Whaley Bridge in open countryside, as defined by the High Peak Local Plan 2016. It is positioned 1.6km from the town centre boundary. The building known as the “former classroom block” forms part of the wider Taxal Edge site, which contains a large property, a former boarding school, which ceased operating in 2000.

1.2 The former classroom block and large residential property, are set in spacious grounds, sylvan in character. Access is gained via a single width private track from the junction with Macclesfield Road (B5470) some 150m in length.

1.3 Public Right of Way HP/23/56/1 runs along the track at the entrance to the site from Macclesfield Road and then along the south eastern boundary of the application site and demarcates the edge of the Whaley Bridge settlement to its northwest edge.

1.4 The classroom block sits on elevated land and was formerly two storeys in height with no dormers on the roof, with openings on all elevations. Views of the building can be gained in numerous locations from across the valley, for example from Old Road, Rock Bank and Eccles Road.

## 2. Reasons for issuing the enforcement notice

2.1 As set out in the enforcement notice, the pitch of the roof has increased, resulting in an increase in the overall height of the building when compared to the original building. This has enabled the installation of three dormer windows on the eastern roof slope.

2.2 Changes to the fenestration on the eastern elevation include the installation of dormer windows, the installation of full height windows at both ground and first floor, along with changes to the proportion all other windows. This has resulted in a much more prominent building than previously existed, and which fails to respect the character of the area and surrounding built development.

2.3 This poor design is compounded by the location of the property and the property's visual prominence in the landscape. The property is located outside the settlement boundary on the edge of open countryside, set back from the rear of the houses at the end of the village, and close to greenbelt. It's immediate surrounds are wooded and that is the context in which the property is viewed.

2.4 From longer range views the property can be seen above the level of the ridgelines of the houses below and it is also visually prominent in close range views from the public footpath running close by. Views of the property stand out as incongruous to the wooded backdrop.

2.2 In summary the Council considers that the changes made to the pitch of the roof, inclusion of dormer windows and changes to the fenestration on the eastern elevation fails to respond to and compliment the character of the landscape and character of surrounding development, resulting in poor design and adverse impact on landscape character. Evidence will be brought to demonstrate the same.

### 3. Planning History

3.1 The appeal site, along with the wider site has been the subject of a number of planning applications, these are:

HPK/2015/0518 – Outline planning application for 2 no. semi-detached dwellings – Refused 11.12.15.

HPK/2013/0503 – Proposed Conversion Of Taxal Edge 184 Macclesfield Road To Form 5 Apartments And To Construct 2 New Semi Detached Houses In The Area Of The Existing Gymnasium. Approved 25/11/2013

HPK/2009/0689 – Conversion Of Single Dwelling House To Provide Seven Apartments And Conversion Of Classroom Block And Disused Garage Into Two Detached Houses. Approved 29/03/2010.

HPK/2009/0209 – Change Of Use From Single Dwelling To Ten Apartments Involving Internal Alterations Only. Withdrawn 26/06/2009.

HPK/2008/0069 – Change Of Use Of Taxal Edge From Boarding Hostel And Associated Ancillary Residential Accommodation To Use As Single Family Dwelling. Approved 28/03/2008

HPK/0002/5081 – Additional Car Parking Provision Adjacent To Main Driveway. Approved 06/04/1987

#### 4. Planning Policy and guidance

4.1 The development plan for the area comprises the adopted High Peak Local Plan 2016. The following policies will be referred to:

Policy EQ2 – Landscape Character

Policy EQ3 – Rural Development

Policy EQ6 – Design and Place Making

4.2 The following adopted Supplemental Planning Documents will be referred to:

High Peak Design Guide 2018

Residential Design Guide 2005

Landscape Character Assessment 2006

4.3 The following sections of the National Planning Policy Framework (July 2021) together with associated Guidance will be referred to:

Section 2 – Achieving sustainable development

Section 12 – Achieving well designed places

Section 15 – Conserving and enhancing the natural environment

## 5. The Council's case

5.1 The appellant has lodged this appeal on the following grounds:

- a) that planning permission should be granted for what is alleged in the notice
- c) that there has not been a breach of planning control
- d) that, at the date when the notice was issued, no enforcement action should be taken in respect of any breach of planning control which may be constituted by those matters
- f) 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 may be the case, to remedy any injury to amenity which has been caused by the breach
- g) that the time given to comply with the notice is too short.

5.2 The enforcement notice sets out the alleged breach of planning control and the steps considered necessary to resolve the breach. From initial information gathering, the notice was served on the 31<sup>st</sup> March 2022, due to concerns that the works may have become immune from action and that it was expedient to do so. The Council will rely on google earth images from June 2017 and June 2018. The Council's case in relation to the grounds of appeal are as follows:

a) that planning permission should be granted for what is alleged in the notice

5.3 Reasons for issuing the notice are set out in the notice itself and in further detail in section 2 of this statement. The Council will demonstrate that the works do not comply with Policies EQ2, EQ3 and EQ6 of the adopted High Peak Local Plan 2016, along with the relevant supplementary planning documents. The works fail to reflect the character of the surrounding area and the visual impact of the building is stark and incongruous when viewed from both close range views and the wider landscape as set out above. It is considered that planning conditions could not overcome these planning objections to the development.

c) that there has not been a breach of planning control

5.4 The appellant sets out at ground c) that the matters alleged in the notice do not constitute a breach of planning control because there has not been a material change of use to the building, or the works fall within permitted development rights under Schedule 2, Part 1 of the General Permitted Development Order 2015, as amended. However, the grounds of appeal fail to explain on what basis these assertions are made. The Council reserves the right to respond to further information given in the appellant's statement of case.

5.5 The Council accepts that on occasion it is necessary, where it is expedient to do so and it is considered that immunity from action may be imminent, to issue notices quickly and in those circumstances it may not be possible to make initial enquiries, that is regrettable, nevertheless that does not affect the validity of the notice. The appellant has had several months since issue of the notice to show that the works are lawful or are immune from action and has not done so.

5.6 The Council has not alleged a material change of use of the building, in principle the Council has already determined that conversion of the building to residential is acceptable, see consent HPK/2009/0689. However, the Council will show that this consent has not been lawfully implemented, because some conditions precedent were not discharged, or if the appellant can show that those conditions were discharged, that the conversion that has in fact taken place was not in accord with that consent. This consent did not approve any external alterations to the classroom block. In the absence of any lawful conversion of the classroom to a dwelling permitted development rights do not apply (Town and Country Planning (General Permitted Development) (England) Order 2015 (SI 2015/596) as amended Articles 3(4) or 3(5) (a)).

5.7 Even if it accepted that permitted development rights may be relied upon, raising the ridge height of the roof and the use of materials would not comprise permitted development in any event (Town and Country Planning (General Permitted Development) (England) Order 2015 (SI 2015/596) as amended, by Schedule 2, Part 1, Class A.1(d)) or Class B.1 b) and A.3 (a).



Ground (d) – 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.

5.8 Prior to service of the notice the Council was aware that images on Google Earth showed that in April 2018 the property the subject of this appeal could be seen without dormer windows. Since the issuing of the enforcement notice, the appellant has submitted a screen shot showing a photograph dated 4<sup>th</sup> November 2017 of the eastern elevation of the building. The photograph shows the works to the roof, including the raising of its overall height and pitch of roof and the insertion of three dormer windows which look as though they may have been substantially completed by this date, although building materials can be seen hanging down from the eaves so further information is still required in order to determine this.

5.9 The Council, noting the discrepancy in dates further interrogated the Google Earth system and are now aware that the image shown on the time bar in April 2018 was not an accurate date. By scrolling into the image it can be seen that the image of the property without the dormers was in fact taken on the 18<sup>th</sup> June 2017. The next image, in which the dormers can be seen is 29<sup>th</sup> June 2018. These images will be produced by the Council in its evidence.

5.10 However, this photograph also confirms that works, in particular, to the fenestration to the eastern elevation as set in paragraph 5.3 of the enforcement notice, do not appear to have been substantially completed. The appellants photograph shows that on the eastern elevation, works to amend the window opening sizes were underway at this date, but no window frames had been installed, indeed the window openings are blocked up with boarding and breeze blocks. Moreover, it appears from this photograph that works to add stone to the outer skin of the eastern elevation only occurred on the ground floor, in part, with the first floor devoid of stone work round the windows. As the work appears to be ongoing at this date, and the Council concludes that the fenestration works to the eastern elevation were not substantially complete by the 4<sup>th</sup> November 2017. However, from photographic evidence held by the Council, the works were substantively complete by August 2020.

5.11 The Council has not seen any evidence from the appellant regarding the changes to the fenestration on the eastern elevation, supporting the appellants

contention that the works are immune from enforcement action and has asked to see an original copy of the photograph dated 4<sup>th</sup> November 2017 so the date can be verified. It is noted that the appellant, at ground d) sets out that evidence in the form of photographs, invoices and witness accounts will be provided. The Council would welcome receipt of this factual evidence, to conclude, or otherwise, the facts relevant to this appeal.

5.12 The Council considers that the breaches form part of the same conversion works and should be dealt with as a whole. The Council will refer to the case of Ewen Developments Ltd v Secretary of State for the Environment [1980] JPL 404 and Sage v Secretary of State for the Environment, Transport and the Regions [2003] 1 W.L.R. 983, both in relation to the 4 year rule and also application of permitted development rights. If the appellant produces evidence which, on the balance of probability, shows that all the building work specified in the enforcement notice were substantially completed more than 4 years before the service of the notice, the Council will withdraw the notice. However, in the event that insufficient evidence is provided, the Council will maintain that the building works were not substantially complete more than 4 years from the date of the notice, and therefore not immune from enforcement action.

(f) 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 may be the case, to remedy any injury to amenity which has been caused by the breach

5.13 In respect of ground f) it is noted that the appellant considers that the notice could be amended and intends to present some alternative options in their statement of case. The Council will comment on any alternative options presented by the appellant.

5.14 The plans EN04 and EN05 (submitted pursuant to HPK/0002/5081) are sufficiently clear to enable the works to be carried out, in short they show the building as it was prior to the unauthorised works carried out by the appellant. Alternative schemes could be considered on a planning application to enable proper consultation to be carried out.

g) that the time given to comply with the notice is too short.

5.15 The appellant contents that the time period of six months to comply with the notice is too short. The Council considers that 6 months is ample to carry out the works required, however, would accept a longer period of no more than 12 months in the discretion of the inspector if they considered it appropriate.

#### 6. List of documents which the Council will refer to

- The adopted High Peak Local Plan 2016
- The National Planning Policy Framework (as at July 2021)
- The National Planning Policy Guidance
- Google Earth images
- Photographs of the site and its surroundings
- Plans and documents from planning application HPK/0002/05081
- Plans and documents from HPK/2009/0689
- Plans and documents submitted in relation to linked appeal no. APP/H1033/W/21/3272745 where relevant to the premises the subject of this appeal
- Relevant Planning Acts and Statutory instruments
- Caselaw as referred to in this statement
- Documents required to rebut submissions made by the appellant if required