Summary Proof of Evidence of Rawdon Gascoigne

For Treville Properties Ltd and Gary Cullen | Appeals ref. APP/H1033/W/21/3272745 & APP/H1033/C/22/3297854

Taxal Edge, Macclesfield Road, Whaley Bridge, SK23 7DR

emery
PLANNING

Project: 19-429 & 22-166

Site Address: Taxal Edge, Macclesfield Road, Whaley Bridge, SK23 7DR

Client/Appellant: Treville Properties Ltd and Gary Cullen

Date: 20 October 2022

Author: Rawdon Gascoigne

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1. Introduction

1.1 This summary proof of evidence is submitted on behalf of Treville Properties Ltd. and Mr Gary Cullen in support of two appeals:

- Appeal A: Appeal against Enforcement Notice reference HPE/2019/00014, which alleges unauthorised changes to the roof and fenestration of a dwelling referred to in this Proof of Evidence as 'the classroom conversion' (ref. APP/H1033/C/22/3297854)

- Appeal B: Appeal against the refusal of High Peak Borough Council to grant planning permission for the demolition of the existing building known as "Taxal Edge" and the associated detached garage building, and the erection of 4 no. semi-detached and 3 no. detached dwellings (ref. APP/H1033/W/21/3272745)

1.2 This summary and my main Proof of Evidence should be read alongside the Proof of Evidence of Mr Nic Folland in relation to landscape matters.

Qualifications

1.3 I am Rawdon Edward William Gascoigne. I have a Bachelor of Arts with Honours in the subject of Town and Country Planning, from the University of Newcastle-upon-Tyne. I am a Chartered Town Planner with over 30 years' experience in local government and private practice, 10 of which were as a senior planning officer dealing with development control and enforcement matters for the Lake District and subsequently, Peak District National Park Authority which I left in 2002 to take up my current position.

1.4 I am a director in the firm of Emery Planning Partnership Limited (EPP), chartered town planners and development consultants, based in Macclesfield, Cheshire where I deal with a range of developments across the UK. This has included planning and enforcement matters covering a diverse range of development. I am therefore familiar with the tests applied in such cases.

1.5 The evidence which I have prepared and provide for these appeals (references: APP/H1033/W/21/3272745 & APP/H1033/C/22/329785) is true and has been prepared and given in accordance with the guidance of my professional institution and I confirm that the opinions expressed are my true and professional opinion.

1.6 I am instructed by the appellants in these cases and am familiar with the sites and the details of the cases.

Context

1.7 The background, site description, planning history and planning policy context for the appeals is set out in the Statement of Case for the appellant and within the Statement of Common Ground.

1.8 With regard to the planning history of the site and the fallback position, I have reached the following conclusions:

1.9 As set out in those documents, I consider that in the event that Appeal B is dismissed, the appellant has the ability to fall back on the following extant planning permissions:

- 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 29th 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 25th November 2013.

1.10 It should be noted that 5 no. apartments from the 2013 permission would be completed in place of the 7 no. apartments approved by HPK/2009/0689.

1.11 I have reached the above conclusion on the basis that the evidence at CD9.3t, CD9.3u, CD9.3w and within the Statutory Declaration of Mr Ray Butler (Appendix EP5 to my Proof of Evidence) indicates that all relevant conditions precent were discharged and because the permission was lawfully implemented through the conversion/change of use of the classroom building. Although the declaration of Mr Butler indicates that the conversion took place and that he moved into the property prior to the pre-commencement conditions being discharged, this does not mean that the permission was not lawfully implemented, as confirmed in Whitley & Sons v Secretary of State for Wales and Clwyd County Council [1992] 3 PLR 72.

1.12 Whilst Condition 2 was not fully discharged, the required details related to only a small part of the development and which did not go to the heart of the overall consent and is not a true

condition precedent as per the findings in Hart Aggregates Ltd., R (on the application of) v Hartlepool Borough Council [2005] EWHC 840 (CD8.7).

1.13 With regard to HPK/2013/0503, a legal opinion by Hugh Richards dated 8 March 2022 was submitted by the LPA to the Planning Inspectorate in connection with Appeal B. This indicates that the scheme permitted by HPK/2013/0503 was implemented by the demolition of the gymnasium. Evidence has also been presented by the appellant, to show that the footings of the semi-detached dwellings approved by the planning permission were built within the relevant timescales. Building regulations documents including the initial notice served to the Council in July 2016 from the approved inspector can be found at CD10.

1.14 My main Proof of Evidence sets out my professional opinion that the two permissions are compatible with each other to the extent that applicant was seeking to amend the proposals for the central part of the site (in the area of the main building). The letter at Appendix EP6 of my main Proof of Evidence makes it is clear that at the time application reference HPK/2013/0503 was submitted, the LPA were also of the view that both the classroom conversion and garage conversion would continue to be permitted irrespective of any further permission that was granted for the central part of the site.

2. Appeal A

2.1 Enforcement Notice reference HPE/2019/00014 was issued by High Peak Borough Council on 31 March 2022 following the close of the hearing for the S78 Appeal related to application ref: HPE/2019/00014. As outlined, 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."

2.2 The classroom block is identified on Plan reference EN01 which accompanies the notice.

2.3 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. No part of the Enforcement Notice specifies the extent to which the LPA consider the roof height and pitch have been altered. The only Local Plan 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).

2.4 The steps set out at Section 5 of the Notice require the appellant to lower the height and pitch of the roof to that shown on the drawings that accompanied the Notice; remove 3 dormer windows on the eastern roof slope and replace with roof tiles to match the existing roof; and remove the East ground and first floor windows and replace with windows of the size, height and position shown in EN05. A period of 6 months is given for compliance with the requirements of the Notice.

2.5 The appellant lodged an appeal against the enforcement notice on 28 April 2022 under grounds A, C, D, F and G and the appeal was conjoined with the aforementioned S78 planning appeal (reference APP/H1033/W/21/3272745).

Propositions

2.6 I set out the case for the appellant with reference to a number of propositions which correspond to the grounds of appeal referred to above and which are summarised below. I also consider that the notice is a nullity as the images at EN04 and EN05 (with which the Notice requires compliance) lack any scale or dimensions that would enable the appellant to understand how the roof should be altered and/or to be sure they undertake the work to the satisfaction of the LPA. The images also give rise to issues with enforceability as without specified measurements or dimensions for the required works, the LPA would not be able to check that the roof had been altered correctly. Dudley Bowers Amusements Enterprises Ltd v Secretary of State for the Environment (1986) 52 P. & C.R. 365 makes it clear that if a notice is ambiguous in stating what the recipient must do to comply, and that ambiguity is incapable of resolution, the notice will be a nullity. I consider this applies in this case and the Enforcement Notice should be quashed on this basis.

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

2.7 I consider that raising the maximum height of the building through alterations to the pitch of the roof (or indeed any other means), would require planning permission as a result of B.1(b) of Schedule 2, Part 1 of the GPDO (2015)

2.8 Consequently, I do not consider that this element of the alleged breach of planning control is immune from enforcement under Ground C. Similarly, I consider that the dormer windows could not lawfully be retained under Ground C. However, I consider that both the changes to the height and pitch of the roof and the insertion of the dormer windows are immune from enforcement action due to the passage of time.

2.9 With regard to the alleged changes to the fenestration on the eastern elevation of the building, the appellant has not enlarged the window openings. The previously existing modular windows (including unglazed panels) were simply removed, and new windows were inserted within the existing openings in the building's façade, which were not altered in size. The only exception to this was the southernmost first floor window on the East elevation, where there was previously not a modular window and where the opening was extended to floor level, to mirror the length of the opening on the northern bay of the East elevation.

2.10 I consider 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.

2.11 Notwithstanding this, even if the inspector disagrees and finds that the replacement of the windows involved operational development, I consider it would constitute permitted development under Part 1A of Schedule 2 of the General Permitted Development Order 2015 as the replacement of windows is an improvement or other alteration to a dwelling house which does not fall within any of the exceptions at A.1 of Part 1, Schedule 2. Condition A.3(a) indicates that in order to be permitted development, the materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwelling house. Given that they are not required to be identical and given that the requirement relates to the existing dwelling house as a whole, I consider this requirement to be met.

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)

2.12 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)).

2.13 While the LPA suggest that each element of the breach of planning control should be bundled together, such that the 4 year period for immunity will not commence until the last of the individual/distinct alterations is substantially complete, I do not agree that this is the correct approach with reference to relevant legislation, appeal decisions and case law. I consider that the judgements the LPA rely on at paragraph 5.12 of their Statement of Case are not directly applicable in the current case as there are clear differences in the nature of the alleged breaches of planning control. In particular, the cases the LPA refer to involved operations for a single purpose.

2.14 At Taxal Edge, the individual elements of the alleged breach were to achieve different purposes. The alterations to the roof were extensions undertaken by successive owners. Whereas the replacement of the modular windows on the front elevation was an 'alteration'. The different elements of the alleged breach were not component parts of the same operation and were carried out at different times and for different purposes.

2.15 In this case, there is clear evidence in the form of dated photographs, aerial photography and other documentary evidence that the dormer windows and alterations to the height and pitch of the roof were all complete by no later than 4 November 2017. Therefore (and in light of the above) I conclude that these elements of the alleged breach of planning control are immune from enforcement action.

2.16 I do not consider that the alleged changes to the fenestration on the East elevation of the building are immune from enforcement action due to the passage of time as I am advised that the frames and glazing was not installed until 2019.

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

2.17 In the event that the appeals under grounds C and D are either wholly, or partly unsuccessful, I consider that the matters which constitute the alleged breach of planning control accord with the Development Plan, with National Planning Policy and with relevant local and national design guidance. Planning permission should therefore be granted for what is alleged in the Notice in accordance with the presumption in favour of sustainable development at paragraph 11 (c) of the Framework.

2.18 I consider that the alterations to the building referred to in the alleged breach of planning control comply with Policy EQ3 as they comprise alterations or extensions to existing dwellings which are subsidiary to the building and which have have no effect on the setting of the Peak District National Park. The resulting building is of a quality design and is more in keeping with the local vernacular than it was prior to the alleged breach of planning control.

2.19 In relation to Local Plan Policy EQ6, I consider the proposals to be well designed and to respect and contribute positively to the character, identity and context of the High Peaks townscapes, in terms of scale, height, density and layout. The alleged unauthorised development involves only minimal changes to the scale and height of a dwelling and the works have used locally appropriate materials consistent with the Dark Peak and with associated material/colour recommendations within the Residential Design Guide SPD.

2.20 I also consider that if the requirements of the notice were upheld either in full or in part, there would be a detrimental effect on the character of the area as it would reintroduce features that are not characteristic of local building traditions. In addition, the requirements at part 5.3 of the notice would result in the insertion of windows which do not fill the pre-existing openings within the blockwork.

2.21 The alterations to the property comply with all other local and national planning policy requirements and there are no material considerations that indicate planning permission should not be granted.

2.22 However, even in the event that some conflict is identified with the Development Plan and/or other policy considerations (I consider there is none) my evidence shows that there is a permitted development fallback position which I consider to be of significant weight.

2.23 If the requirements of the Notice were upheld, I consider the appellant would be able to utilise permitted development rights to build an alternate form of dormer window in the reinstated roof of the building, which would be more harmful than the existing unauthorised additions to the roof in terms of character and design. The appellant has confirmed that in the event the Notice is upheld and following the reinstatement of the roof, they would undertake this work in order to create additional accessible space for storage and other purposes. As a result of the above, I consider this alternate development meets relevant legal tests relating to fallback and further indicates that planning permission should be granted for the matters alleged in the Notice.

2.24 I conclude that planning permission should be granted for the matters alleged in the Notice.

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)

2.25 In the event that the inspector considers 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 which comply with relevant planning policy (if the appeal under Ground A succeeds only in part).

2.26 Similarly, if the legal grounds of appeal fail, it would within the Inspector's powers to grant planning permission for any part of what is alleged in the notice, for example by granting planning permission for some of the new windows on the East elevation, albeit I do not consider this should be necessary.

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

2.27 The Statement of Common Ground indicates that the LPA have no objection to extension of the period for compliance to a period of 12 Calendar months.

3. Appeal B

3.1 The decision notice for the application states that the proposal would be contrary to 8 policies of the High Peak Local Plan. However, I consider that the development would comply with all of these policies and with supplementary planning guidance and the National Planning Policy Framework.

3.2 The appeal site is a brownfield site on the Edge of Whaley Bridge. The settlement is identified as a main focus for housing in Local Plan Policy S2. I consider that the development would make an efficient use of land and provide a mix of quality homes in a sustainable location where there is access to a broad range of jobs, services and facilities in accordance with Local Plan Policy S1 and the penultimate bullet point of Policy H1. There would be no conflict with Policies S1a or S6.

3.3 The appeal development involves the provision of housing through the redevelopment of previously developed land and through infill development, both of which are permitted (and indeed encouraged) under the first part of Local Plan Policy H1. It also complies with the criteria in the second part of Policy H1, relating to residential development outside of the built up area boundary, as the site adjoins the boundary both physically and in accordance with the definition set out in recent planning case law in Corbett & Cornwall Council and Wilson [2021]. The development would also be located within the perceived extent of the settlement; would be well related with the existing pattern of development; would not harm the character of the settlement or the wider countryside, or be visually prominent; and is of an appropriate scale for Whaley Bridge.

3.4 In respect of HPLP policies EQ2, EQ3 and EQ6, I consider that the development would maintain the aesthetic and biodiversity qualities of the landscape and would be sympathetic to the distinctive character of the area. The Proof of Evidence of Mr Nic Folland with regards to landscape matters, demonstrates that the site can accommodate the proposed development without harm to the landscape character of the area and that the design is entirely appropriate and accords with relevant local design guidance.

3.5 The development would provide high standards of residential amenity. It incorporates suitable separation distances (for existing and proposed dwellings) and does not give rise to any amenity issues in respect of overlooking. A daylight and shading study has been undertaken which demonstrates that all of the properties would have access to amenity space which meets relevant

BRE standards in terms of daylight and shading and that the interiors of the properties would have adequate daylight.

3.6 Notwithstanding the above, I also consider that the applicant has the lawful ability to complete a fallback development, which in the event the appeal is dismissed, has a real prospect of occurring. The fallback would be more harmful than the appeal development in respect of the reasons for refusal of application reference HPK/2020/0301.

3.7 In light of this (and notwithstanding our view that the proposed development is policy compliant), even if it is found that the appeal development would give rise to a degree of conflict with the Development Plan, it is clear that the fallback is a material consideration that indicates planning permission should be granted for the development.

3.8 Further weight is added to the case for granting planning permission as the development would contribute to the 3 objectives of sustainable development at paragraph 8 of the Framework. The economic benefits of the development include job creation and generating additional spending in the local area. Social benefits include high quality design; meeting the housing needs of the immediate and wider area; and providing closure in respect of the negative social history of the site. Environmental benefits include high quality design; making efficient use of previously developed land; and the provision of ecological benefits through the sensitive landscaping of the site and additional tree planting.

3.9 In light of the above and the lack of any other site specific or policy considerations which would prevent planning permission from being granted in accordance with the guidance in paragraph 11 of the NPPF, it is respectfully requested that Appeal B is upheld and planning permission granted.

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