APPEAL A: APP/H1033/C/22/3297854 by Mr Gary Stephen Cullen
APPEAL B: APP/H1033/W/21/3272745 by Treville Properties Ltd

LOCAL PLANNING AUTHORITY: High Peak Borough Council

APPEAL A against an enforcement notice alleging, 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 fenestration on the eastern elevation.

APPEAL B against the non-determination of an application for planning permission for the demolition of the existing building known as "Taxal Edge" and the detached garage building and the erection of 7 no. dwellings.

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

CLOSING SUBMISSIONS ON BEHALF OF THE APPELLANT

RG	Rawdon Gascoigne
NF	Nic Folland
GC	Gary Cullen
RS	Rachel Simpkin
SGR	Steven Gunn-Russell
AC	Anton Cannell
MM	Mary McGuire

INTRODUCTION

1. These Closing Submissions are structured to follow the eight issues identified in the Inspector's CMC Summary. Substantial evidence has been heard during the course of the Inquiry. We do not propose to rehearse all aspects of the respective parties' cases but rather to focus on the salient issues.

The Enforcement Notice ("EN")

2. It is important to note the considerable change of position during the course of the Inquiry. At the time of writing these Closing Submissions it is anticipated that some further common ground may be reached and the Inquiry will be updated if it is. The current state of play is as follows:

    a. The Plans marked EN04 and EN05 attached to the EN can be jettisoned. They are not to scale and have caused considerable confusion;
    b. Three of the six windows on the front elevation can remain and wording can be provided to make this clear;
    c. The eaves height of the current Classroom can remain as it is;
    d. The replacement roof will not be described by reference to a plan but rather in words: *I.e.* a roof pitch with a particular angle of pitch will be prescribed;
    e. The time for compliance can be extended to 12 or 18 months.

3. It should be made clear that references to 'Classroom' (capital 'C') are to the building formerly used as a classroom linked to the benighted Taxal Edge children's home and now in use as the Cullens' home.

4. We shall return to these variations, as well as those suggested by the App, under the Ground (f) submissions.

5. One also needs to recognise that there are various permutations depending on the conclusions reached by the Inspector. *E.g.* it may be concluded that the pitch of the roof and the front elevation windows are acceptable under Ground (a) but the dormers are not. The Inspector might find that the roof and dormers are immune from enforcement action *per* Ground (d) but that the windows not covered by the varied EN should not be granted planning permission. We do not for one moment recommend these outcomes but it would be sensible to bear in mind the fact that Grounds relied upon by the App do not result in a binary choice. Our recommended approach is as follows: (i) to allow the retention of the raised roof and dormers under Ground (d); and (ii) to allow the retention of the replacement windows under Ground (c). As we shall set out below, these recommendations follow the evidence.

6. The App relies on Grounds (a), (c), (d), (f) and (g). He only needs to be successful on either Ground (a) or (c) or (d) in order for the appeal to be allowed and the EN quashed.

Issue (i): whether the matters alleged constitute a breach of planning control. This is pertinent to the ground (c) appeal on Appeal A.

7. Ground (c) is narrowly defined: it applies only to the windows on the eastern elevation. The App's case is put on two alternatives bases: either the replacement windows did not materially affect the external appearance of the Classroom and were therefore not development *per* s.55(2)(ii) TCPA; or, if they did comprise development, they benefitted from PD rights under Class 1A GPDO.

8. Despite this relatively narrow issue, the LPA have sought to erect obstacles in the App's path, the main one being the allegation that the Classroom is not lawfully in use as dwelling and therefore cannot benefit from PD rights: see SGR evidence and Article 3(5) GPDO. It is common ground that the Classroom can benefit from PD rights if: (i) the original planning permission authorising its change of use to a dwelling was implemented lawfully; or if it was not; (ii) if the change of use from Classroom to dwelling house took place more than 4 years prior to the service of the EN: *i.e.* in or before March 2018. It is instructive to note that in XC SGR believed that the relevant immunity period was 10 years. That basic misunderstanding of planning law must diminish the weight that one can place on his evidence.

9. Before addressing the position regarding PD rights, the Inspector needs to reach a conclusion about whether the replacement windows comprised 'development' at all. If this operation did not constitute development under s.55 TCPA then the lawfulness of the residential use is irrelevant. This assessment depends on whether the alteration of the windows materially affected the external appearance of the Classroom.

10. We accept entirely that this issue is a matter of planning judgement on which the Inspector needs to reach a view, albeit within the proper legal framework. In ***Burroughs Day v Bristol City Council*** [1996] Lexis Citation 3354 the Court held as follows:

    a. it was not sufficient merely for the exterior surface to be affected, the external appearance had to be changed;

b. the change had to be visible from a number of normal vantage points and was not limited to aerial views or those from a single building;

c. the material nature of the alteration depended on the type of building. A change to a factory might not be material but if the building was an 18th century house the same change would have a different effect.

11. In ***Burroughs Day*** substantial internal works to a listed building were carried out, including a lift shaft, together with works to the roof and replacement windows. The Court held that these works did not materially affect the external appearance of the building and therefore did not constitute development: see p.13 of the transcript.

12. The following matters should therefore be borne in mind:

a. Overall, there was no material difference between extent of glazing visible to public view as between the 'before' and 'after' positions: see XC GC;

b. Especially in longer distance views, it would be difficult to discern a difference between the windows in the 'before' and 'after' scenarios;

c. The Council's latest position is that 3 of the 6 windows can stay exactly as they are at the moment; an implicit acceptance that half of the existing windows do not materially affect the external appearance of the Classroom despite them also being changed in a similar fashion to the windows that the council do still take issue with;

d. In the context of the building as it appeared prior to the replacement windows being provided, it is difficult to conclude that the alterations to the windows had a material effect on the appearance on the building overall.

13. The replacement windows did not comprise development.

14. If we are wrong, the LPA's position on the App's ability to rely on PD rights is entirely misguided:

a. Planning permission HPK/2009/0689 authorised the change of use of the Classroom to a dwelling and it was lawfully implemented. Mr Butler's statutory declaration ("stat dec") confirms that the permission was implemented lawfully: see RG App p.164 and GC's stat dec and oral evidence under oath. The LPA have

no evidence to contradict this evidence, merely SGR's cynicism. It should therefore be accepted; and in any event

b. Even if the original planning permission was not implemented lawfully, the conversion works necessary to allow the residential occupation of the Classroom and its use as a dwellinghouse commenced more than 4 years prior to the issue of the EN. GC was unequivocal in his oral evidence that he moved into the Classroom in 2017 in order to carry out works to adapt the Classroom to his family's needs. The Butlers did live in the Classroom but were apparently content with a standard of living below that which GC wanted for his loved ones. As GC explained, being 'on site' meant that he could complete the works to the roof, install the dormers, change the windows and make internal alterations much more easily whilst living in the property. As such, the Classroom was in use as a dwelling for at least 4 years prior to the service of the EN. The LPA is likely to say that the Cullen family, including GC, did not move into the Classroom permanently until March 2020 when the local authority's Council Tax Department was informed about the move. The Council Tax records are entirely consistent with GC's evidence. First, the remainder of his family moved into the Classroom in March 2020 when the first Covid lockdown took place. That tallies with the Council Tax Department being informed about the move. Second, given that GC left matters such as Council Tax to other family members, it is hardly surprising that he did not inform the Council about his occupation prior to March 2020; and

c. The EN is not directed at the <u>use</u> of the Classroom as a dwelling. Indeed, if the Council was serious about this point then surely it would have sought to prevent the use of the Classroom as a dwelling. It can continue to be occupied as such.

15. The App's evidence both as to the implementation of the original planning permission for the Classroom conversion and GC's testimony relating to his occupation of the Classroom <u>as a dwelling</u> was clear and unambiguous. The high water mark of the LPA's case was SGR's apparent scepticism about the quality of the evidence but he had no evidence to contradict GC's account; nor when pressed did he assert that GC should be disbelieved. That really should be the end of the matter.

16. As such, when the EN was issued the Classroom had benefited from PD rights for a number of years.

17. As RG explained in evidence, the replacement of windows would fall within Class A, Sch. 2 to the GPDO: enlargement, improvement or other alteration of a dwellinghouse. The works do not fall foul of the prohibitions in para. A.1. Indeed, SGR did not seem to take a different view, preferring to concentrate on Class AA (upwards extensions), which (i) did not apply at the time the windows were replaced; (ii) is irrelevant to whether the replacement of windows is PD; and (iii) was not a PD right relied upon by the App.

Issue (ii): if the matters alleged do constitute a breach of planning control, whether it is too late for enforcement action to be taken. This is pertinent to the ground (d) appeal on Appeal A.

18. It is common ground that the relevant immunity period for operational development is 4 years *per* s.171B(1) TCPA. This would be the case irrespective of whether the use of the Classroom as a dwelling is immune from enforcement action.

19. During XX of SGR, it became clear that that the Council's only argument relies upon the Inspector concluding that the raising of the roof, the insertion of dormers and the replacement windows on the eastern elevation all comprised (as a minimum) a single project that was not substantially completed more than 4 years prior to March 2022 when the EN was issued. As SGR confirmed, if the only elements attacked by the EN were the roof and dormer windows, the Ground (d) appeal would be successful. This much is apparent from the photo of the completed works dated 4th November 2017: see RG proof p.23.

20. The LPA have put all of their eggs in the 'single project' basket when, in truth, there were several baskets.

21. **First**, whilst the Council will point to Ray Butler's stat dec (RG p.165) which included reference to 'replacement windows', we have no idea which and how many windows Mr Butler apparently wanted to replace. In any event, GC's oral evidence was clear: Mr Butler did not ask him to replace the windows. On the contrary, Mr Butler's priority was to repair the roof and raise it to provide some storage space in the loft (GC XC). Additionally, Mr Butler had mentioned to GC that he wanted ultimately to insert Velux windows in the eastern elevation of the raised roof. Mr Butler also wanted to use Marley tiles rather than

the natural slate with which GC replaced those tiles in 2018: see Fig 3, p.25 RG proof, which shows the exposed roof in June 2018.

22. Put simply, if Mr Butler had a 'project' in mind in 2015, GC certainly did not progress with that project after he took ownership of the Classroom in 2016.

23. **Second**, having heard GC give evidence at the Inquiry, one can quite easily form the view that he did work to the Classroom 'as and when' he had the time and resources. Given that he was doing most of the work himself whilst also project managing the commercial developments of his family's company, Treville, there was no overarching plan but rather a series of individual projects that we done when he was able to carry them out.

24. **Third**, the fact that there were no drawings or anything in writing which outlined a comprehensive scheme for the renovation and alteration of the Classroom is entirely consistent with GC's evidence.

25. **Fourth**, and perhaps most tellingly, was the obvious separation in time between seeking a quote for the dormer glass and the replacement windows on the front elevation. The quote for the dormer glass was dated 22nd September 2017 (RG p.210) and the price for the front windows from the same supplier was dated 24th November 2017. We know from the 4th November 2017 photo (RG p.208) that the dormers had been installed and had glass in them some time before GC even sought a quote for the front windows. We also know that the front windows were not replaced until 2018, the following year. If the replacement windows were part of a single project, it would have been very odd indeed if GC had not sought quotes for all of the glazing elements at the same time. The fact that he did not strongly indicates that the replacement windows were a different and self-contained project.

26. We have already accepted that the question of substantial completion is a matter of judgement for the Inspector, having heard the evidence (see HR Opening §17). Nonetheless, we should recall that the case of *Sage* [2003] 1 W.L.R. 983, the leading case on substantial completion, involved the partial erection of a dwelling which was uninhabitable when the works stopped for several years. The context here is very different indeed: the Classroom was already habitable and in use as a dwelling before the EN works started. The works carried out by the App were distinct acts of alteration and improvement,

not dissimilar to the sorts of improvements that homeowners across the country carry out from time to time.

27. Having properly understood the context and the evidence led by the App, one is driven to only one conclusion: the raising of the roof and insertion of the dormers are immune from enforcement action.

28. It is accepted that the replacement of the windows took place within less than 4 years prior to the issue of the EN. However, for the reasons set out above they are not unauthorised.

29. The operational development, save for the replacement of the windows, is immune from enforcement action.

Issue (iii): whether the appeal site is an appropriate location for residential development having regard to local and national planning policy. This is pertinent to Appeal B

30. This issue frames the remaining considerations, especially whether the impact on the character and appearance of the area is acceptable. It is therefore critically important that the policy framework is properly understood.

31. As RS accepted in XX, we should proceed on the basis that only those policies cited in the RfRs are said to be breached: *i.e.* there is compliance with all other policies in the development plan.

32. Dealing with each policy in turn:

33. Policy **S1** is a generic development management policy. The Scheme meets most of the 'principles'. When asked to identify those principles that are said to be breached, RS referred to the following principles which are said to be breached: 4th, 5th, 14th and 15th bullet points. They relate to landscape effects, design and amenity. Importantly, RS did not refer to the first bullet point, which states that most development needs will be met "*within or adjacent to existing communities*". This was a sensible concession given that the Appeal Site is plainly adjacent to an existing community, comprises previously developed land ("PDL") and is accessible to the services and facilities offered by Whaley Bridge.

34. **S1a**: this enshrines the previous version of the presumption in favour of sustainable development into the Local Plan. As RS accepted in XX, this is not a development management policy and therefore does not advance the Council's case.

35. **S2**: this policy directs development to the most sustainable settlements. As RS accepted, Whaley Bridge is in the highest tier of settlements and is therefore one of the most sustainable locations for additional housing. The Appeal Scheme accords with this objective. The policy also says that "*New development should be focused within the settlement boundaries of the Market Towns, Larger Villages and Smaller Villages in accordance with their scale, role and function unless otherwise indicated in the Local Plan*." In this case, the "*otherwise indicated in the Local Plan*" requires a cross reference to H1, which allows development outside settlement boundaries as well as to S1, which contemplates development adjacent to settlements.

36. **S6**: the only possible relevance of this policy is the apparent requirement to protect and/or enhance landscape character and the setting of the National Park. There is no claim of harm to the setting of the National Park: see RS XX. There can therefore be no possible breach of policy S6.

37. **EQ2** is a generic landscape policy.

38. **EQ6**: an overlap with EQ2 but with a greater focus on detailed design. Again, there is reference to the setting of the National Park, a point not taken by the LPA.

39. **EQ9**: this policy relates to trees, woodland and hedgerows. Again, it is difficult to see how this policy is breached given the detailed landscaping scheme and the fact that the design and layout of the housing is landscape-led.

Locations for Housing

40. The App's primary case is that the Scheme complies with the development plan taken as a whole, with policies EQ3 and H1 being especially relevant.

Previously Developed Land ("PDL")

41. A number of the most relevant policies support the redevelopment of PDL. Accordingly, the Inspector will need to make a finding on this issue. The starting point is that the LPA accept that those parts of the Appeal Site on which buildings and structures currently stand are PDL. In fact, RS's evidence appeared to suggest that the Appeal Site is PDL save for a 'triangle' of land between the "Main Building" of Taxal Lodge and the Classroom.

42. The entirety of the Appeal Site comprises PDL for the because, irrespective of the more recent planning history of the Site, the historic photos (RG Fig. 6, p.40) demonstrate that the area of the Site between the Classroom and the Main Building, which was clearly maintained as part of the curtilage and includes garden structures and landscaping to the right-hand side of the house. Parts of the walls and hedgerow within the photo are still evident on site today.

43. RS attempted to suggest that 'mature woodland' had developed in the gap between the Main Building and the Classroom, implying that it had returned to nature. This characterisation was entirely wrong, as the 2009 tree survey demonstrated: the trees in the 'Simpkin Triangle' were insignificant and therefore not mature – CD9.3(w), §4.17. Moreover, this areas was identified as residential amenity land on the location plan which accompanied the 2013 planning application (CD9.4(a)).

44. The entirety of the Appeal Site should be treated as PDL.

45. We acknowledge entirely that "*it should not be assumed that the whole of the curtilage should be developed*" (NPPF p.70) but the obvious policy imperative is that previously developed land should be prioritised in favour of purely greenfield sites. In the present case it is important to bear in mind the fact that the Appeal Site itself will not only be subject to new planting and future management but that the App, who owns a substantial area of woodland adjoining the Appeal Site, will manage that area and make it accessible to future residents. As such, the 'whole of the curtilage' will not be developed and in any event the verdant backdrop of the Appeal Site will be managed and reinforced.

46. The Inspector can therefore conclude with some confidence that the Appeal Site is PDL. Such a conclusion will necessarily have policies implications, which we explore next.

EQ3 (CD6.1 p.75)

47. This policy applies to all areas outside settlement boundaries irrespective of their landscape value or sensitivity: see RS XX. In that sense it is not a landscape protection policy but a spatial policy.

48. It is essential that this policy is read correctly. Although the overarching aim is to protect the 'landscape's intrinsic character', the policy goes on to say that 'this' will be achieved in a number of different ways, including the "*Re-use of redundant and disused buildings and/or the redevelopment of a previously developed site, where it does not have an adverse impact on the character and appearance of the countryside*". Thus, if Appeal B Scheme involves the redevelopment of a previously developed site, then it will be acceptable provided that it does not have an adverse impact on the countryside. This latter judgement must be struck in the knowledge that the policy expressly allows development outside settlement boundaries on PDL: *i.e.* there must be an assumed level of landscape change built in to the policy, otherwise the policy would be rather toothless.

H1 (CD6.1, p.113)

49. A sensible reading of H1 indicates a number of routes to compliance:

    a. The LPA are meant to "*ensure provision is made for housing*" by doing a number of things including "*promoting the effective reuse of land by encouraging housing development including redevelopment, infill, conversion of existing dwellings and the change of use of existing buildings to housing, on all sites suitable for that purpose*". If the Appeal Site involves either or both 'redevelopment' or 'infill' then it will satisfy this criterion. The only other requirement is that the site is 'suitable'. Neither the policy nor its reasoned justification provides assistance with what this means. However, given that the Appeal Site is (i) sustainable in terms of its location; (ii) builds on previously developed land; (iii) the LPA have signalled their acceptance that new build is appropriate on this site as a matter of principle; and (iv) that the landscape and visual effects are not <u>significantly</u> harmful then the Scheme must be 'suitable'; or
    b. The Council will 'give consideration to approving sustainable sites outside the defined built up area' provided that a number of criteria are satisfied:

i. **Adjoining the built up area and well related with the existing pattern of development**. The LPA originally accepted that this requirement was satisfied but changed their tune in the April 2021 OR. Under XX, RS accepted that her professional view in October 2020 was that the Site adjoined "the built up area boundary to the east" (§7.12, RG p.111) and that H1 was engaged. Her explanation as to why she changed her mind was far from convincing. The policy framework did not change in the intervening period nor did the site move further away from the settlement boundary. Be that as it may, the LPA's latest position accepts that the Site adjoins (at least in part) the settlement boundary. That should be sufficient: H1 does not say that all parts of a development site should adjoin the settlement boundary. However, the LPA appear to maintain their position that some physical connection is required. This is not correct: the requirement to 'adjoin' refers to the spatial relationship between an existing settlement and the Site so that isolated proposals in the open countryside are not inadvertently allowed: see also need the *Cornwall* case [§19 – 26 CD8.10], which provides a useful guide to assessing whether a site 'adjoins' an existing settlement. Any sensible reading of the Court's guidance leads inexorably to the view that the Appeal Site is 'next to' the settlement of Whaley Bridge and therefore adjoins it. RS and the Council's witnesses attempted to draw attention to the difference in levels between the Appeal Site and the Linglongs estate, presumably to emphasise the separation between the settlement and the Appeal Site. However, this would be to ignore the organic growth of Whaley Bridge from the valley bottom towards the 240/250 AOD contour. In the context of Whaley Bridge, the Appeal Site will read as part of the natural extension of the settlement;

ii. **Appropriate scale for the settlement**: this is a relatively small scheme compared to the existing settlement within a self-contained area. It is hard to imagine that the scale is inappropriate, especially given the LPA's previous acceptance of residential development on the Site. RS agreed;

iii. **Prominent intrusion into the countryside**: 'countryside' in this context can have two meanings: either that it is land outside the settlement boundary or that it is countryside in a landscape sense. On either basis, the policy simply cannot work if an overly restrictive approach is adopted. H1

presupposes that some development in the 'countryside' (*i.e.* outside the settlement) will be acceptable; that is the starting point. In the present case, even the Council accepts that the Site is (in part) PDL. It is not a prominent intrusion from a landscape perspective given the limited visibility. From a spatial perspective, it is not prominent because it is redevelopment of a Site with existing built development;

iv. **Significant adverse impact on the character of the countryside**: similar points can be made but the key argument is that it is only where the harm is 'significant' that this criterion will be breached. Although the Council's evidence talks about harm, it does not seem to argue that there will be a *significant* adverse impact;

v. **Reasonable access**: this criterion is met;

vi. **Local and strategic infrastructure:** this criterion is met.

50. The Scheme unlocks both of the potential routes to policy compliance through policy H1.

51. Consequently, the Appeal B Scheme benefits from a presumption in its favour through the correct application of policies EQ3 and H1. It is only where there is <u>significant</u> landscape harm that permission should be refused. As we shall explain next, the landscape change is not significantly harmful.

Issue (iv): the effect of the matters alleged and the proposed development on character and appearance of the site and surrounding area. This is pertinent to the ground (a) appeal on Appeal A and Appeal B

52. This issue has already been addressed through a combination of the Inspector's site visits and the landscape witnesses' evidence. It is rarely of much assistance to explain to an Inspector what she can and cannot see from a given viewpoint.

53. However, we should underline a number of points to assist the Inspector when reviewing the evidence.

54. **First**, The LPA's reliance on the Areas of Multiple Sensitivity ("AMES") is wholly misguided. The AMES work was only ever meant to be high level and cannot represent a substitute for a more fine grained assessment. Moreover, it was criticised by the Council's consultants who produced the landscape evidence base for the local plan. Under XX, AC accepted that the AMES study was high level and not a substitute for a site specific and fine grained analysis. He did also point to Wardell Armstrong's views about "Areas of Search which could not accommodate development without significant harm on visual amenity, landscape character and the purposes of the Green Belt and National Park" (CD6.5 p.73). Importantly, WA's opinion about these Areas of Search is not explained further and their work does not descend to the level of detail provided by BF in his careful analysis. Further, for the reasons explained by NF in Re-X the Appeal Scheme does not breach the vast majority of the features identified in the Whaley Bridge 'box'.

55. Equally importantly, any assessment of landscape impact has to be seen through the prism of H1 and EQ3, which implicitly accepts a level of adverse landscape impact in order to achieve a ready supply of housing in sustainable locations such as the Appeal Site. These policies were found sound by the Local Plan Inspector and adopted by the LPA **after** the results of the AMES study and the Wardell Armstrong Landscape Impact Study. *I.e.* not only were these studies high level but they cannot possibly be seen as preventing development outside settlement boundaries where the other elements of policies H1 and EQ3 are satisfied.

56. **Second**, we would invite the Inspector to treat the Council's evidence with caution for a number of reasons:

a. MM explained in XX that she had not considered the effects of NF's landscape layout in reaching her judgements about the design of Appeal B, preferring to leave that assessment to AC. To *only* assess the unmitigated impact of development is quite extraordinary. This omission means that when MM says things like "*the proposed development does not relate well to the existing pattern of development and surrounding land uses*" (MM §6.2) she has reached this judgement without considering how the landscaping scheme will assimilate the Appeal Scheme into the already wooded backdrop;
b. AC's photo viewpoints cannot properly be relied upon. As he explained in XX, the photos were taken on a phone and certainly not to the standards expected by the

Landscape Institute. In some instances the photos were 'zoomed in' so that it was easier to see the Appeal Site (AC XX). In contrast, NF's photos were produced to the appropriate standard and were not manipulated to make a specific point;

c. Neither LPA witness provided an independent assessment of the landscape character and visual impacts in the way that NF did in writing and in oral evidence.

57. **Third**, much time was spent in issue (iv) in poring over the detail of the Residential Design Guide SPD (CD6.3). As MM accepted in XX, it is guidance and not a set of rules. There is no requirement to adhere slavishly to the typologies set out in the SPD. As §5.7.1 (p.28) explains, "the scale and character of new housing developments should ideally have regard to that which is established in its locality" and "this guide seeks the reinterpretation of these forms in the context of today's housing market, meeting modern residential requirements within a built form which has a resonance and relevance to High Peak". P.29 provides examples of such modern reinterpretations.

58. The design solution for Appeal B does find its inspiration in the typologies found in the area, taking cues from both the Grand Villa and Small Scale Villa. That is an entirely acceptable approach "in the context of today's housing market", with which the App is well familiar. Moreover, it is difficult to see how one or two Grand Villas on a previously developed site could be considered to be an efficient use of land. Edwardian ladies and gentlemen commissioning Grand Villas in spacious grounds were less concerned about the efficient use of land. The LPA's response to the design of Appeal B is overly formulaic and – despite accepting that the SPD is a guide – appears to expect a pastiche.

59. The Appeal B proposals respond effectively to their context, blend elements of residential development that are commonly found in the local area and produce a scheme that not only makes efficient use of PDL but results in a high quality scheme. It certainly will not result in a significant adverse impact on the character and appearance of the area.

60. Exactly the same conclusion should be reached in relation to Appeal A. As XX of AC and MM progressed, it became apparent that their principal concern related to the dormer windows rather than to the raised roof and replacement windows. The Inspector will reach her own view but it is hard to reach the conclusion that the provision of 3no dormers, which in another context would comprise PD, are so harmful that they should give rise to the refusal of planning permission. From the overwhelming majority of viewpoints, most

of which are from medium to longer distances, the difference in the Classroom 'before' and 'after' will have been barely discernible. If (and this is big 'if') the Inspector reaches the point where Ground (a) under Appeal A needs to be considered, planning permission should be granted for those elements of the Classroom the require planning permission.

Issue (v): the effect of the proposed development on the residential amenity of future occupiers. This is pertinent to Appeal B.

61. The key points to note are:

a. The Council's concerns are limited to Plots 1 -3, and insofar as Plot 3 is concerned it is only the qualitative aspect of overshadowing rather than absolute space that appears to be the issue;
b. The LPA wholly ignore the fact that future residents will have access to the woodland to the west of the Appeal Site, to the extensive network of rural PRoWs and to the amenities offered by the wider area including the highly accessible reservoir;
c. There are no adopted amenity standards in High Peak;
d. There is no specific requirement that amenity space should be provided at the rear of properties;
e. Under the 2010 planning permission, the levels of amenity would have been demonstrably worse for occupiers of the apartments or the residents of the converted garage: see RG XC;
f. The daylight/sunlight study shows that these houses will have sufficient natural light;
g. Insofar as any trees *may* be lost, their loss will more than adequately be compensated for by the tree planting as part of the landscaping proposals.

62. In truth, the LPA through RS have fallen into the trap envisaged by Voltaire: that the perfect becomes the enemy of the good. Put another way, the Council thinks it knows better than a longstanding a respected local developer who has done his homework about the marketability of Plots 1 – 3. It is not the function of the planning system to dictate to prospective buyers what they should or should not purchase. As RG so eloquently explained, 3/4 bedroom properties have become increasingly attractive to couples who work from home but who do not want the responsibility of tending to a large garden. The App has identified Plots 1 – 3 as appealing to this sector of the market. It is not for HPBC to say otherwise.

Issue (vi): whether or not there are 'other considerations' that exist and the weight that should be afforded to them, regarding what, if any, fallback position is being relied upon, what basis any fallback position has, the contribution to boosting the supply of housing, and any other potential benefits. This is pertinent to Appeal B.

Fallback

63. The 'fallback' position in this case has become unnecessarily complicated. Indeed, HR appears to recognise this in his Opening: see §26 and 27. The starting point now appears to be an acceptance by the LPA that residential development of the Appeal Site would be acceptable; as such it is a material consideration that must weigh in favour of the Appeal Schemes. Indeed, the only difference between the parties relates to the erection of 2no semi-detached houses in place of the now demolished gymnasium: see HPK/2009/0689.

64. The fallback or baseline is 7 dwellings: 5 in the main building and 2 new semi-detached houses.

65. Irrespective of the status of the 2010 and 2013 permissions, the LPA have accepted that the construction of new dwellings (including 2no semi-detached houses closer to existing houses and therefore far more dominant of the public footpath than the proposed dwellings) in this location is acceptable. As such, there can be no 'in principle' objection to residential development on the Appeal Site nor to 7no dwellings. Indeed, that much has been confirmed during the course of the Inquiry.

66. RS did downgrade the weight to be attached to the delivery of 7 new build homes on the Appeal Site. However, during XX of RG it became apparent that the LPA have now removed from their housing trajectory the 7 units that the baseline position would produce. As RG noted, the Appeal B scheme is the most likely source of new homes from Taxal Edge given that there is no planning permission for the baseline position, the fact that the Main Building will not be redeveloped due to its horrific past and its general state of repair. Consequently, substantial weight should be attached to the delivery of 7no new homes.

67. For these reasons and those set out above and in evidence, Appeal B should be allowed and planning permission granted subject to reasonable and necessary conditions.

Issue (vi): whether the steps required to be taken by the notice exceed what is necessary to remedy the breach of planning control, or as the case may be, the injury to amenity. This is pertinent to the ground (f) appeal on Appeal A.

68. There is now considerable common ground reached through productive discussions outside the Inquiry.

Windows

69. The App does not abandon the argument that the front windows are not development; or are PD; or should be granted planning permission. However, the starting point for the Inspector is the Council's acceptance that 3 of the windows can remain as they are and that the remaining 3 do not have to slavishly mirror the modular windows that existed prior to the original conversion works. As a minimum therefore, the EN should be varied under Ground (f) to reflect this position.

Roof

70. The EN as currently worded is confused, confusing and unenforceable. The Council's intention was, apparently, to reduce the eaves height of the Classroom as well as to replace the existing roof with a pitch that was difficult, if not impossible, to assess accurately. Thankfully, sense has prevailed and the Council now accepts that (i) the current eaves height may remain; and (ii) that a new roof with a pitch of 24 degrees provided. As with the front windows, these are the bare minimum of variations to the EN that should additionally be made under Ground (f).

71. However, as GC explained during his second stint in the witness box, the weather conditions at Taxal Edge would mean that the most effective roof covering is natural slate set at the more appropriate angle, as currently exists. Not only is natural slate more appropriate for the Peak District weather, it is the preferred material according to Ms McGuire and the LPA's Residential Design Guide SPD. Accordingly, the App's recommendation is that the EN should be varied so that the replacement roof pitch is at least 30 degrees but more effectively the current circa 40 degrees which mirrors that of the

original house on site and widespread elsewhere in WB and that natural slate is used. It should also be borne in mind that both Mr Cannell and Ms McGuire focused almost exclusively on the dormer windows in their critique of the Appeal A scheme rather than the roof pitch *per se*. This is also unsurprising given the current pitch and covering are far more reflective of local vernacular and building traditions.

Issue (vii): whether the length of time to complete the steps required by the EN are excessive. This is pertinent to the ground (g) appeal on Appeal A.

72. Although SGR thought that the ultimate decision as to the period for compliance should be left to the Inspector, he did support an extra 6 months in light of GC's evidence that the works would require upheaval of his family. As such, 18 months is the minimum reasonable period for compliance.

21st November 2022

JONATHAN EASTON
COUNSEL FOR THE APPELLANTS
KINGS CHAMBERS
MANCHESTER-LEEDS-BIRMINGHAM