

Application by: Treville Properties Ltd
Land to the rear of Elmwood House & Penlee, Church Lane, New Mills, High Peak, SK22 4NP

PLANNING, DESIGN AND ACCESS STATEMENT

EPP reference: PS1-9002-RG-bp

August 2013

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1. INTRODUCTION

- 1.1 This planning, design and access statement is submitted in support of a full planning application by Treville Properties Ltd for 21 no. residential dwellings at land to the rear of Elmwood House and Penlee, Church Lane, New Mills, SK22 4NP.
- 1.2 This statement should be read alongside the following submission documents:
- site location plan (drawing no. 211080 00 P2);
 - proposed site plan (drawing no. 211080 10 P2);
 - proposed floor plans (drawing no. 211080 11 P2);
 - proposed elevations plots 1 to 5 (drawing no. 211080 12 P2);
 - proposed elevations plots 6 to 13 (drawing no. 211080 13 P1);
 - proposed elevations plots 14 to 21 (drawing no. 211080 14 P1);
 - street and valley elevations (drawing no. 211080 15 P2);
 - site sections (drawing no. 211080 16 P1); and
 - landscape assessment prepared by The Plant Room.

2. THE APPLICATION

- 2.1 The proposed development is for 21 no. dwellings. Sixteen dwellings would be semi-detached houses located to the east of the site. These units would be three storeys in height and have three bedrooms. There would also be 5 no. terraced houses to the west of the site. These would be affordable houses. They would be three storey and have two bedrooms.
- 2.2 Extensive landscaping is proposed to the north of the site following the advice of the applicant's landscape consultant, The Plant Room. The existing stream is to be re-diverted and a new pond is proposed to encourage biodiversity. The area would be managed for the benefit of the residents of the proposal.

3. CONTEXT

Site location and description

- 3.1 The site is approximately 1.08 ha in area. Part of the site is used as a cattery. The applicant owns a number of properties adjacent to the site. These are shown edged blue on the submitted site location plan.
- 3.2 It should be noted from the outset that the site is not greenfield. It is a brownfield site. This was recognised by the Inspector in the appeal decisions dated 5 January 2007 (PINS

refs: APP/H1033/C/06/2016649 and 2016650). This decision notice confirms that the lawful use of the site is a cattery and is appended at EPP1.

Accessibility

- 3.3 The site is in a highly sustainable location, being within walking distance of New Mills Town Centre, schools, health facilities, the leisure centre and other sports and recreation facilities. The nearest bus stops to the site are located on Church Lane. New Mills Railway Station is also within walking distance to the south west of the site.
- 3.4 The site is adjacent to the Sett Valley Trail which links open countryside to the north with the Torrs Riverside walk to the south. There is a vast array of recreational areas and open spaces in the form of sports fields, trails, public footpaths and parks within walking distance of the site.

Relevant planning history

- 3.5 The application site has an extensive planning history. In addition to the appeal decisions described above and appended at EPP1, the most relevant recent planning history is detailed below:

- HPK/2011/0547 – 3 no. 4 bedroom detached houses with access and parking – refused 14th December 2011. This application was refused due to the impact on the character of the area and because the council considered that it was a Greenfield site.
- HPK/2012/0686 – resubmission of HPK/2011/0547 for 3 no. 4 bedroom detached houses with access and parking – refused 4th February 2013. This application was refused for the following reason:

"The proposed development, by virtue of the layout, siting and required engineering works would be out of keeping with the established pattern of development within the area and would adversely affect the visual amenities of the locality. As such the proposed development fails to comply with Policies GD4 and H11 of the High Peak Saved Local Plan Policies 2008, guidance contained within the adopted SPD Residential Design 2005 and the National Planning Policy Framework."

- 3.6 A copy of the committee report for this application is appended at EPP2.
- 3.7 The reasons for refusal of the previous applications have been addressed in this application as discussed in section five of this statement.

Consultation and background

- 3.8 Following the refusal of the above planning applications, we met with the council's planning officers (Jane Colley, Sue Ashworth and Hilary Senior) on 24th May 2013. Two proposals were presented at the meeting; one showing 12 dwellings and one showing 28 dwellings. Following the meeting, it was agreed that the applicant would consider redesigning the 28 dwelling scheme by reducing the number of dwellings and therefore the density, the use of staggered semi-detached houses, tandem parking and potentially a relaxation in the space standards. The layout would be more reflective of the initial layout for 12 dwellings but with the potential to provide affordable housing.
- 3.9 Following a revision of the scheme, a further meeting was held on 9th July 2013 to discuss the revised plans. This scheme was for 20 dwellings, including 4 affordable houses. As set out above, the submitted scheme is for 21 dwellings, including 5 affordable houses.

4. POLICY CONTEXT

- 4.1 Section 38 of the Planning and Compulsory Purchase Act (2004) requires applications for planning permission to be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework (NPPF) is a material consideration in planning decisions. The emerging plan is also a material consideration, although it carries limited weight at this stage.

National Planning Policy Framework (NPPF)

- 4.2 The NPPF was published on 27th March 2012. The relevant sections of the NPPF are discussed in the following section of this planning, design and access statement. However, from the outset it should be noted that the NPPF states that there is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan making and decision taking. For decision taking, this means approving development proposals that accord with the development plan without delay.

Development plan

- 4.3 The development plan for the site comprises the saved policies of the High Peak Local Plan (adopted March 2005). The NPPF takes priority where policies are not in accordance with it.
- 4.4 On the proposals map, the site is located within the built up boundary of New Mills. It is also adjacent to the Sett Valley Trail
- 4.5 The following saved policies of the local plan are relevant and are discussed in section 5 of this statement:

- GD2 – Built-up Area Boundaries
- GD4 – Character, Form and Design
- GD5 – Amenity
- GD6 – Landscaping
- GD7 – Crime Prevention
- BC1 – External Materials
- H1 – Principles of Housing Provision
- H5 – Housing Within the Built-Up Area Boundaries
- H9 – Affordable Housing for Local Needs
- H11 – Layout and Design of Residential Development
- H12 – Public Local Open Space
- TR1 – Transport Implications of New Development
- TR5 – Access, Parking and Design
- TR13 – Long Distance and Local Trails
- TR14 – The Protection and Construction of Trails

Weight attached to the existing local plan

- 4.6 Paragraph 215 of Annex 1 of the NPPF confirms that due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF (the closer the policies in the plan to the policies in the NPPF, the greater the weight that may be given).
- 4.7 It should also be noted that in accordance with paragraph 49 of the NPPF, as the council cannot demonstrate a five year housing land supply, its relevant housing supply policies are out of date. Within the context of paragraph 14 of the NPPF, there is a presumption in favour of sustainable development. This means that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits or specific policies within the NPPF indicate development should be restricted.

Other material considerations

Residential Design Guide SPD (December 2005)

- 4.8 This document supplements the relevant local plan policies to raise awareness of design issues in the High Peak for new residential development.

Emerging development plan

- 4.9 Paragraph 216 of Annex 1 of the NPPF confirms that decision-takers may give weight to relevant policies in emerging policies according to:

- the stage of preparation of the emerging plan (the more advanced the preparation, the greater weight that may be given);
- the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater weight that may be given); and
- the degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).

4.10 The council consulted on its local plan preferred options between February and March 2013 and consultation on the publication draft was due in September 2013. However, at a meeting of the Full Council on 1st July 2013, members agreed to a revised timetable for the production of the local plan to allow for a number of technical studies to be undertaken.

4.11 The latest timetable for the production of the local plan is as follows:

- Publication Consultation – March 2014;
- Submission to Secretary of State – July 2014;
- Examination Hearings – October 2014; and
- Adoption – February 2015.

4.12 Consequently, the emerging plan carries very limited weight in accordance with the NPPF due to the stage that this has reached.

5. PLANNING CONSIDERATIONS

Housing land supply

5.1 From the outset, it should be noted that the council cannot demonstrate a five year housing land supply. The council's view, as set out in the report to the Full Council on 1st July 2013 is that its five year supply as at 31st May 2013 is 4.1 years.

5.2 In addition, paragraph 47 of the NPPF states that an additional buffer of 5% should be identified. Where there has been a record of persistent under delivery, the buffer is increased to 20%. Depending on which buffer is applied, the council's view is that its five year supply is reduced to 3.9 or 3.5 years.

5.3 Recent appeal decisions have also considered the council's five year housing land supply position.

- 5.4 At the Inquiry in April 2013 in relation to an appeal for up to 182 dwellings as part of a mixed use scheme at Forge Works, Forge Road, Chinley (LPA ref: HPK/2012/0323, PINS ref: APP/H1033/A/13/2189819), the council accepted that it had a 2.8 year housing land supply.
- 5.5 In the appeal decision relating to land at Manchester Road/Crossings Road, Chapel-en-le-Frith, High Peak, Derbyshire SK23 9TP (LPA ref: HPK/2011/0282, PINS ref: APP/H1033/A/11/2159038), the Inspector concluded that the council's housing land supply falls "significantly" short of what is required by the NPPF.
- 5.6 We have not undertaken an assessment of the council's supply at this stage. However, we note that the council's methodology seeks to address the shortfall in delivery, which has built up since 2006 over the remainder of the RSS period to 2026. We disagree. We consider that the shortfall (of 371 dwellings from April 2006 to March 2013) should be made up in the first five years in accordance with the NPPF's requirement to significantly boost housing supply. We also consider that the council has persistently under delivered against its requirement and therefore the 20% buffer applies. This would mean that the council's supply is the equivalent of 3.1 years.
- 5.7 Paragraph 49 of the NPPF states that housing applications should be considered within the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing are out of date if the local planning authority cannot demonstrate a five year housing land supply.
- 5.8 It follows therefore that paragraph 14 of the NPPF is engaged. This paragraph states that where relevant policies are out of date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, (in this case of providing much needed housing) or where specific policies in the NPPF indicate development should be restricted.
- 5.9 Within the context of the council's housing land supply, it should be noted that the application site is suitable, available and achievable for development in accordance with footnote 11 of the NPPF. The landowner and developer are committed to delivering the site. Johnnie Johnson Housing are also supportive of the affordable housing element of the scheme.

Principle of development

Local plan considerations

- 5.10 As stated in paragraph 4.4 above, on the proposals map of the local plan, the site lies within the built up area boundary as defined by policy GD2.

- 5.11 As demonstrated by the planning history set out in section 3 of this planning, design and access statement, the site is previously developed land.
- 5.12 Policy H1 states that planning permission will be granted for new housing, with priority given to the redevelopment of previously developed land in built up areas. Policy H5 also confirms that planning permission will be granted for residential development on previously developed land within the built up area provided that the development would not unduly prejudice existing or proposed adjoining land uses.
- 5.13 Part of the application site is used as a cattery. The other part of the site is the garden of Penlee. Therefore, it is common ground with the council that at least part of the application site is previously developed. The redevelopment of the cattery would be in accordance with policies H1 and H5 of the local plan.
- 5.14 Notwithstanding this, as the council cannot demonstrate a five year housing land supply, policies H1 and H5 are out of date in the context of paragraph 49 of the NPPF and therefore the presumption in favour of sustainable development set out in paragraph 14 of the NPPF applies. This position was recognised in the consideration of the previously refused scheme for the 3 dwellings (LPA ref: HPK/2012/0686). Please see paragraphs 4, 5 and 6 of case officer's report to committee for this application, which is appended at EPP2.

Emerging plan considerations

- 5.15 Map 24 of the High Peak Local Plan Preferred Options Consultation (February 2013) included the application site within a proposed green wedge. Policy S6 of the consultation document stated that the open character of the green wedge will be maintained.
- 5.16 As set out above, within the context of paragraph 216 of the NPPF, the emerging local plan is at an early stage in its production and therefore carries limited weight. This position was recognised by the council in the consideration of the previous application at the site (see paragraph 7 of EPP2).
- 5.17 Notwithstanding this, EPP made the following representations against the proposed green wedge during the preferred options consultation.
- 5.18 Firstly, the consultation document was unclear as to what the justification for including this land as a green wedge is.
- 5.19 Secondly, as stated above and agreed with the council, at least part of the application site is previously developed land.
- 5.20 Thirdly, the application site is not an attractive semi-rural area of land used for amenity. The site is in private ownership and is not accessible as amenity space by the public.

- 5.21 Fourthly, we consider the potential adoption of a green wedge policy, and in particular its use at Church Lane, New Mills or the wider High Peak to be misconceived. The use of a “green wedge” policy is normally associated with urban areas where access to greenspace is both limited and likely to involve travelling over some distance. In this case there is ample opportunity to access greenspace within at most a couple of minutes’ walk of the site and in addition New Mills is surrounded by open, publicly accessible countryside.
- 5.22 Finally, if designation is related to biodiversity rather than some form of amenity benefit, we consider any biodiversity interest can be protected and potentially enhanced through any development of the site.

Affordable housing

- 5.23 Policy H9 of the local plan states that the council will negotiate with developers to ensure the provision of a proportion of affordable housing on developments of 15 dwellings or more.
- 5.24 The proposed development includes 5 no. affordable houses (24%). This level of provision has been agreed with the council at the pre-application stage. This approach is appropriate within the context of policy H9 of the local plan.
- 5.25 It is of note that according to the various monitoring reports, the council delivered 205 affordable homes in the period 2006 to 2011. As set out in the following table, 16 of these were in the Central Area:

Table 1: Delivery of affordable housing in the Peak Park April 2006 – March 2011

Monitoring year	Glossopdale	Central Area	Buxton	Peak Park	Total
2006/07	28	1	34	0	63
2007/08	33	1	29	0	63
2008/09	11	8	9	4	32
2009/10	2	0	14	0	16*
2010/11	3	6	22	0	31
Total	77	16	108	4	205

* The AMR for 2009/10 does not provide a breakdown per sub-area other than to state that 2 affordable housing units were provided at Wren Nest in Glossop. It is assumed that the remainder would have been delivered in Buxton.

- 5.26 There is an annual shortfall of housing need of 317 dwellings. As illustrated in the table above, the annual shortfall has not been met in any of the five monitoring years since 2006. In fact, the annual housing shortfall of 317 has not even been met by affordable housing delivery in all five monitoring years put together.

- 5.27 It is therefore considered that the provision of 5 affordable housing is a significant benefit of this scheme. As stated above, Jonnie Johnson Housing are supportive of the affordable housing element proposed.

Design considerations

- 5.28 Policy GD4 states that planning permission will be granted for development, provided that its scale, siting, layout, density, form, height, proportions, design, colour and materials of construction, elevations and fenestration and any associated engineering, landscaping or other works will be sympathetic to the character of the area, and there will not be undue detrimental effects on the visual qualities of the locality or the wider landscape.

- 5.29 We discuss the elements set out in this policy below.

Layout

- 5.30 Policy H11 of the local plan states that planning permission will be granted for residential development, provided it will:

- incorporate good design that reflects its setting and local distinctiveness; and
- make efficient use of available land; and
- promote safe and accessible living environments which include a mix of housing types and sizes; and
- protect amenity.

- 5.31 The proposed development would be in accordance with this policy for the following reasons.

- 5.32 Firstly, the predominant character of the surrounding area is road frontage and linear development. This has been reflected in the layout of the scheme, which proposes to locate the dwellings along new internal roads.

- 5.33 Secondly, the density of the developed area of the site (approximately 0.6 ha) is 34 dwellings per hectare. This is considered to be entirely appropriate within the context of the surrounding area and the location of the site in proximity to the town centre.

- 5.34 Thirdly, the proposed development seeks to promote safe and accessible living environments. Home zones are proposed off the internal access road.

- 5.35 Fourthly, the proposed development includes a mix of housing types and sizes as follows:

- 2 no. 3 storey 3 bedroom houses at 136 sq m;
- 6 no. 3 storey 3 bedroom houses at 129 sq m;
- 8 no. 3 storey 3 bedroom houses at 110 sq m; and
- 5 no. 3 storey 2 bedroom houses at 91 sq m.

5.36 Impact on residential amenity is discussed below.

Impact on residential amenity

5.37 Policy GD5 of the local plan states that planning permission will be granted for development as long as it will not create unacceptable loss of, nor suffer from unacceptable levels of privacy or general amenity, particularly as a result of:

- overlooking;
- loss of daylight and sunlight;
- overbearing effects of development;
- air, water, noise, light and other pollution;
- risk from hazardous substances and processes; and
- traffic safety and generation.

5.38 The application scheme has been designed to take into account the amenity of existing residents. Appropriate amenity distances would be achieved.

External materials

5.39 Policy BC1 of the local plan states that planning permission will be granted for development, provided that the type, colour and specification of all external materials and the way they are applied will be sympathetic to the character and appearance of the immediate surroundings and the wider area.

5.40 The proposed materials would be as follows:

- External walls – coursed natural grit stone with quoins to external corners
- Roofs – blue grey natural slate
- Window frames – grey steel
- Doors – composite door

5.41 The proposed external materials are therefore considered to be appropriate within the context of the surrounding and wider area.

Crime prevention

5.42 The proposed development has been designed to create a safe and secure environment and minimise the opportunities for crime to be committed. This is in accordance with policy GD7 of the local plan.

Landscaping

- 5.43 Policy GD6 of the local plan states that planning permission will be granted for development provided that, where appropriate it will contain a high standard of hard and / or soft landscape treatment in keeping with the character of the area, including the integration of existing features and the use of native species suitable to the location.
- 5.44 The landscape assessment prepared by the Plant Room has been submitted in support of the planning application. In summary, the proposed landscaping has been designed to be in keeping with the surrounding area.

Open Space

- 5.45 Policy H12 of the local plan states that planning permission will be granted for residential development, provided that the development will provide or have access to sufficient areas of public open space to adequately serve residents of the site.
- 5.46 As set out above, the proposed development includes the improvement of the area of open space to the north of the site. This would be of the benefit to the proposed residents as well as existing residents in the area.

Highways considerations

Reducing the need to travel

- 5.47 Policy TR1 of the local plan states that planning permission will be granted for new development provided that it seeks to:
- reduce the need to travel;
 - widen transport choice for people and goods; and
 - integrate land use.
- 5.48 As stated above, the site is in a highly sustainable location, being within walking distance of a range of services, facilities and public transport facilities. Residential development at the application site would therefore meet the criteria set out in policy TR1 of the local plan.

Access, Parking and Design

- 5.49 Policy TR5 states that planning permission will be granted for development, provided that:
- it will make safe and appropriate provision for access and egress by pedestrians, cyclists, public transport users and the private car; and

- it includes a high standard of design and layout having regard to the parking, access, manoeuvring, servicing and highway guidelines

5.50 The proposed development includes safe and appropriate provision for pedestrians and road users in accordance with this policy.

5.51 The proposed development also makes appropriate provision for off street parking. Visitor spaces have also been accommodated within the proposed layout.

Sett Valley Trail

5.52 As set out in section 4 of this statement, the application site is adjacent to the Sett Valley Trail. Policy TR13 of the local plan seeks to maintain and where appropriate improve the Sett Valley Trail.

5.53 Policy TR14 of the local plan states that planning permission will be granted for development in close proximity to the routes of the trails identified on the proposals map, provided that:

- the development will not prejudice construction or upgrading of the trail; and
- the development will not unduly obstruct or prejudice the enjoyment of the trail due to its use, siting, scale, design, external appearance, boundary treatment or environmental effects.

5.54 The proposed development would not prejudice the Sett Valley Trail. The proposed development would improve access to the Sett Valley Trail from within the application site, including to and from the area of informal open space.

Other material considerations

Education provision

5.55 It is of note that both St George's Primary School to the east of the site and New Mills School Business and Enterprise College to the south of the site are under capacity. The development of family housing at the application site within close proximity would therefore help maintain these schools.

6. DESIGN AND ACCESS

Amount / size

6.1 Section 2 of this statement sets out the amount of development proposed.

Use

- 6.2 The proposed uses would be residential and open space.

Layout

- 6.3 The layout of the site has been designed to reflect the surrounding area and protect residential amenity. Please refer to paragraphs 5.28 to 5.36 above.
- 6.4 The layout has been designed following the pre-application discussions with the council's planning officers.

Scale

- 6.5 Whilst the proposed dwellings would be three storey, due to the levels, they would appear to be single or two storey from the valley. This is shown on the proposed section and elevation plans.

Landscaping

- 6.6 Details in relation to landscape are set out in the landscape assessment. In summary, the proposed landscaping reflects the local area.

Appearance

- 6.7 Details in relation to the external appearance of the dwellings are set out in paragraphs 5.37 to 5.39 above. In summary, the materials proposed would be sympathetic to the character and appearance of the immediate surroundings and the wider area.

Access

- 6.8 The existing vehicular access to the site will remain. There would be improved pedestrian access with footpaths and the creation of home zones.
- 6.9 As stated in section 3 of this statement, the application site is well located in relation to a range of different modes of transport. It is within walking distance of a range of different services and facilities within New Mills town centre.

7. SUMMARY AND CONCLUSIONS

- 7.1 This planning, design and access statement is submitted in support of a full planning application for 21 residential dwellings at land to the rear of Elmwood House and Penlee, Church Lane, New Mills, SK22 4NP.
- 7.2 The site is within the built up area of New Mills. It is common ground between the council and the applicant that at least part of the application site is previously developed land.

Therefore the proposed development, in part, would be in accordance with policies H1 and H5 of the local plan.

7.3 Notwithstanding this, the council accepts that it cannot demonstrate a five year housing land supply, its housing supply policies (i.e. H1 and H5) are out of date and therefore there is a presumption in favour of sustainable development. The NPPF states that this means that planning permission should be granted unless any adverse impacts of doing so would significantly or demonstrably outweigh the benefits, when assessed against the policies in the NPPF as a whole.

7.4 The benefits of the scheme are as follows:

- the provision of new, family, open market housing in a sustainable location within the urban area and on previously developed land. This would assist the council in addressing the meeting its five year housing supply requirement. At best, by the council's own calculation, the council can only demonstrate a 4.1 year supply;
- the provision of 5 affordable houses. It is of note that only 16 affordable dwellings have been delivered in the Central Area in the four year period 2006/07 to 2010/11. This compares to an annual affordable housing shortfall of 317 dwellings across the borough. We have confirmation that Johnnie Johnson Housing Association would be supportive of this element of the proposal;
- the landscape and biodiversity enhancements discussed above and in the landscape assessment; and
- improved access to the Sett Valley Trail.

7.5 This statement addresses all of the site specific considerations in relation to the proposals and concludes that there are no adverse impacts, which would significantly or demonstrably outweigh the benefits of the scheme. It is therefore respectfully requested that planning permission is granted without delay.

8. APPENDICES

EPP1. Appeal decisions notice (PINS ref: APP/H1033/C/06/2016649 and 2016650)

EPP2. Committee report for LPA ref: HPK/2012/0686

EPP 1



Appeal Decisions

Inquiry opened on 21 November 2006

Site visit made on 23 November 2006

by David Rusdale BA DipTP MRTPI

**an Inspector appointed by the Secretary of State for
Communities and Local Government**

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Date

05 Jan 2007

Appeals A-D: Ref. APP/H1033/C/06/2016645; /2016646; /2016647; and /2016648 Land at 6 St Georges Road, New Mills SK22 4JT

- The appeals are made by Mr G and Mrs G Cullen and Mrs P and Mr B J Dolan, respectively, against an enforcement notice issued by High Peak Borough Council alleging without planning permission, the change of use of the land from use as a residential vehicular access within the curtilage of 6 St Georges Road to use as a vehicular access serving both 6 St Georges Road and the area to the south of the southern boundary of the land.

Summary of Decisions: The appeals are allowed, and the enforcement notice is quashed.

Appeals E-F: Ref. APP/H1033/C/06/2016649 and /2016650 Land between Church Lane and St Georges Road, New Mills

- The appeals are made by Mrs G and Mr G Cullen, respectively, against an enforcement notice issued by High Peak Borough Council alleging without planning permission, the change of use of the land from (a) unused open land and use as a cattery to (b) unused open land, use as a cattery and use for the parking and storage of vehicles.

Summary of Decisions: Appeal F is allowed subject to the enforcement notice being corrected in the terms set out below in the Formal Decision. No further action is taken on Appeal E.

Appeals G-H: Ref. APP/H1033/C/06/2016651 and /2016652 Land between Church Lane and St Georges Road, New Mills

- The appeals are made by Mrs G and Mr G Cullen, respectively, against an enforcement notice issued by High Peak Borough Council alleging without planning permission, the carrying out of the following operations in the area of the cattery extension:
 - (i) the raising of site levels by the deposit of spoil and rubble;
 - (ii) the construction of a track;
 - (iii) the erection of fencing 2.5m in height..

Summary of Decisions: Appeal H succeeds in part and permission for that part is granted, but otherwise the appeals fail, and the enforcement notice as varied is upheld as set out below in the Formal Decision.

Full details of the above appeals can be found in Annex A to this decision.

Procedural Matters

1. The Inquiry sat for two days, 21 and 22 November 2006.
2. At the Inquiry, the evidence given by Mr Cullen, Mr Beebe, Mrs Cohen and Councillor Bell was given on oath.

3. At the Inquiry, an application for costs was made by Mr and Mrs Cullen and Mr and Mrs Dolan against High Peak Borough Council. This application is the subject of a separate Decision.

APPEALS A-D

Appeals A-D – Ground (b)

4. The enforcement notice is not aimed at any specific user of the access on the appeal site, and as a matter of fact the appeal site is used to gain vehicular access to the area to the south of the southern boundary of the land. The appeals on ground (b) must therefore fail.

Appeals A-D – Ground (c)

5. In assessing whether there has been a breach of planning control as a result of a material change of use, it is necessary to consider the primary use of the land in question. The enforcement notice refers to use as a residential vehicular access. But the primary lawful use of the appeal site is simply residential, in association with the occupation of 6 St Georges Road. The planning permission for the drive on this land [ref.no.HPK/2001/0607] was for operational development, not a change of use, and the use of the vehicular access on the land is incidental to the lawful primary residential use. The Council has not taken formal enforcement action against the unauthorised operational development that appears to have taken place to link the drive permitted by HPK/2001/0607 to the land to the south.
6. The Council does not claim that the use of the access on the appeal site by the occupiers of 6 St Georges Road is not in connection with their residential occupation of their dwelling, and I have no evidence to the contrary. The land to the south of the appeal site which is used by the residents of No.6 to park their vehicles may fall outside the lawful residential planning unit of No.6, but it is not subject to the enforcement notice. The passing of vehicles over the appeal site by residents of and visitors to No.6 in connection with the residential use of No.6, even if the vehicles carry on beyond the southern boundary of the site, is a use that is incidental to the lawful primary residential use of the site. It does not constitute a material change of use of the appeal site.
7. The use of the appeal site by vehicles unconnected with the residential use of No.6 to gain access to the land to the south would only be in breach of planning control if it was to an extent that resulted in a material change in the use of the site from its lawful primary residential use. Mr Cullen testified that the appeal site has been used to access his land to the south on one occasion only since he acquired his land, when an employee had in November 2005 gathered burnable waste from the land. He did accept, though, that his contractors had helped to construct the drive, including its link to the land beyond its southern boundary, and that this had involved non-residential vehicles using the appeal site during construction. The resident of St Georges Road who appeared at the Inquiry disputed Mr Cullen's version of events, stating that the appeal site had been regularly used by dumper trucks in 2002 and 2003 to help clear away trees from the land to the south and on a number of occasions since. She stated that she had also seen a flat bed lorry use the drive on at least one occasion. Her testimony is supported by the small number of letters that have been submitted in connection with these appeals, although some of these are silent as to the number of occasions that the appeal site has been used to access the land to the south other than by the occupants of 6 St Georges Road.

8. In terms of the testimonies at the Inquiry, I prefer that of the local resident to that of Mr Cullen, as I found her evidence to be more convincing and her testimony is supported by the letters referred to above. I have little doubt that the appeal site has been used to access the land to the south by vehicles unconnected with the residential use of No.6. However, the local resident who appeared at the Inquiry admitted that neither she nor others had kept a record of the occasions when the appeal site had been so used, a fact that she now regretted. It seems to me from the evidence that I have heard and seen that there was some non-residential use of the appeal site when trees were cleared from the land to the south in 2002/3, but since then there has been much less or little activity. The local resident who appeared at the Inquiry stated that the last such use was probably in November 2005, and this may correspond to the occasion mentioned by Mr Cullen, which was simply to collect burnable rubbish from the land.
9. I consider that the non-residential use of the appeal site in 2002/3 was in the nature of a temporary phenomenon in connection with the clearance of trees from the land to the south. This use was related to the maintenance of the land and was not directly for cattery, residential or other purposes. In my view, this did not materially change the primary lawful residential use of the appeal site to what would have been a mixed use. And I have insufficient evidence to indicate that any non-residential use of the appeal site since that time has been so extensive and regular so as to have resulted in a material change of use. I find, as a matter of fact and degree, that the use of the appeal site to access the land to the south has not resulted in a material change of use of the land from its primary residential use. The appeals on ground (c) therefore succeed. This conclusion does not, of course, preclude such a change of use occurring in the future if any non-residential use of the appeal site became part of a primary mixed use of the site.

APPEALS E and F

Preliminary Matter

10. The Council confirmed that the area in which the parking and storage of vehicles subject to the enforcement notice has taken place is to the rear of 12, 14 and 16 St Georges Road.

The Alleged Breach of Planning Control

11. It is common ground that the land subject to the enforcement notice includes the appellants' dwelling and that this needs to be accounted for. The parties stated that the land subject to the enforcement notice identified the correct planning unit and that this unit had a lawful use for cattery and residential purposes. However, the Council maintained that the lawful residential use did not extend over the entire site; in particular, it claimed that the area where the parking and storage of vehicles has taken place lay outside the residential land. Given the lack of clarity in the Council's position, it is necessary for me to consider the situation from scratch and come to my own conclusions on the status of the appeal site.
12. Planning permissions 032002, dated 28 October 1992, and HPK/2004/0532, dated 1 September 2004, are for cattery developments and incorporate all of the land subject to the enforcement notice within the red lines denoting the boundaries of the developments permitted. As the former permission was implemented and the latter is in the course of implementation, all of the current appeal site has a lawful use for cattery purposes, subject to the conditions imposed on the latter planning permission.

13. Any residential use of the appeal site has been in association with the dwelling that lies within the site. Currently, that is Elmwood House. This dwelling was erected under the provisions of planning permission HPK/2003/0061 granted on 25 March 2003. The land subject to the permission was limited to that part of the site close to Church Lane, and the land used for parking and storage of vehicles lies outside that area. It seems to me that by demolishing the former bungalow on the site and implementing this permission any previous residential use of the rest of the land in association with previous dwelling was abandoned; that is, the implementation of permission HPK/2003/0061 began a new chapter in the history of the appeal site.
14. Even if I am wrong on this, I am concerned about the imprecision of the appellants' evidence relating to the residential use of the appeal site before they purchased the land in 2002. This evidence is principally the affidavit of Mr Buckley, the previous owner, and photographs. The affidavit refers to the land adjacent to the dwellinghouse being used as a formal garden when he purchased the site in 1983 and, according to Mr Cullen's testimony, this does not appear to have changed by the time the appellants acquired the site. Mr Buckley refers to the land to the north of the formal garden area as being divided into plots and overgrown when he purchased the land in 1983. He states that during his occupation he used 'the area between the dwelling and 6, 12, 14 and 16 St Georges Road at various times as an orchard, vegetable patch, formal and informal garden with trees and shrubs and a winter paddock for our horses, vehicles were also parked in this area'. Some of these uses, such as orchard and winter paddock, are not uses that are necessarily incidental to residential use and the affidavit does not specify which particular uses took place where on this large area of land or for what periods. The affidavit also refers to recreational activities taking place on the land, but again fails to state the frequency of these, their specific location and the periods over which they took place. Much of the land is steeply sloping and at that time was covered in trees, and would have been unsuitable for some of the activities referred to, such as football, volleyball and badminton. The affidavit refers to the area to the rear of 6, 12, 14 and 16 St Georges Road being used to park his horse trailer and Land Rover, friends occasionally using it as an overflow parking area and the land being used as an access to his dwelling. But once again the frequency of these activities and the periods when they took place are not specified. The proposed stable block referred to in the letter from the Council was to be located close to the rear of the former dwelling and does not establish the use of the wider area. In any event, this letter was from 2001, less than 10 years before the issue of the enforcement notice.
15. I find that the affidavit is imprecise as to the claimed residential use of the land lying outside the formal garden adjoining the previous dwelling, and its author was not available for questioning at the Inquiry. The photographs submitted are not dated and do not show any material residential use of this land. I also have the testimony of the resident of St Georges Road who stated that the land in question had never been used as gardens. I consider that the appellants have failed to establish, on the balance of probabilities, that the part of the appeal site to the north of the land subject to the 2003 planning permission was materially used for residential purposes for a period of ten years prior to the implementation of this permission or for ten years prior to the issue of the enforcement notice.
16. In light of the above, I consider, as a matter of fact and degree, that the appeal site comprises two planning units: the land subject to the 2003 planning permission has a lawful mixed use for residential and cattery purposes [the land being included in the planning

permissions for these uses and the access through this land being jointly used for these purposes]; and the remainder of the site has a lawful use for cattery use and open land [the latter being relevant because much of the land has not been actively used for cattery purposes], as stated in the enforcement notice. As the land used for the parking and storage of vehicles is located in the latter, I shall, therefore, correct the enforcement notice by substituting a plan deleting the area comprising the first of these planning units. This should not cause injustice to any party as the alleged breach of planning control described in the enforcement notice remains the same.

Appeals E and F- Ground (c)

17. The parking and storage of the motor vehicles would not be in breach of planning control if it was incidental to the lawful use of the land. On the basis of Mr Cullen's testimony, three of the five vehicles that had been parked or stored behind 12, 14 and 16 St Georges Road, namely, a Citroen, a Rover and a Jaguar, had not been used in connection with the use of the appeal site as a cattery or open land, they being, in effect, domestic vehicles. Consequently, the parking and storage of vehicles has not been incidental to the lawful use of the site as a cattery and open land, and this parking and storage has been in breach of planning control. The appeals on ground (c) fail.

Appeals E and F- Ground (d)

18. I have little doubt that the land to the rear of 12, 14 and 16 St Georges Road has been used for the parking and storage of vehicles unconnected with the lawful use of the land before the appellants acquired the site. But in the absence of any evidence to establish the extent or frequency of this use, I am not persuaded that such usage was material and had become lawful by the time the appellants acquired the land. And the appellants' use did not commence until 2002 at the earliest. I consider, on the balance of probability, that the appellants have failed to establish that the use of the appeal site for the parking and storage of vehicles unconnected with the lawful use of the site subsisted for more than ten years before the issue of the enforcement notice. This use, therefore, is not immune from enforcement action, and the appeals on ground (d) fail.

Appeal F – Ground (a)

19. The land on which the parking and storage of vehicles has taken place has a lawful use as a cattery and open land, and there are no planning conditions that prevent parking associated with the cattery use taking place on any part of the appellants' land. Consequently, any parking and storage that is ancillary to the lawful use would itself be lawful and would not be in breach of planning control. This ground (a) appeal is only concerned with the parking and storage of vehicles that is not ancillary to the lawful use of the land.

Main Issues

20. There are two main issues in this ground of appeal. Firstly, the impact of the parking and storage of vehicles on the character and appearance of the area; and, secondly, the effect of this use on adjoining residents in terms of noise and disturbance.

Planning Policy

21. Policy GD4 of the adopted High Peak Borough Local Plan (LP) states that planning permission will be granted for development provided that it is sympathetic to the character

of the area and has no undue detrimental effect on the visual qualities of the landscape or the wider landscape. LP Policy GD5 provides that planning permission will be granted for development provided it, amongst other matters, does not create unacceptable loss of general amenity from noise.

Reasons

22. In considering the main issues, I am aware that the land to the rear of 12, 14 and 16 St Georges Road has in the past been used as a vehicular access to the rear of dwellings on this road and that some vehicle parking and storage has taken place in connection with the former bungalow fronting Church Lane, albeit I have found that there is insufficient evidence to establish that this was a lawful use.
23. The land on which the parking and storage of vehicles has recently taken place lies within the generally attractive Sett Valley. However, it lies in the valley bottom, which is screened to a large extent from public viewpoints and many nearby houses, including the ground floor and gardens of 12, 14 and 16 St Georges Road. This part of the land is seen in the context of nearby houses and their garages and outbuildings, and any additional parking and storage would also be seen in conjunction with vehicles used ancillary to the lawful use of the site. Provided the additional parking and storage was limited by area and type and there were no scrap vehicles, I consider that it would not materially harm the character and appearance of the area.
24. With regard to noise, the area currently used for parking and storage adjoins the rear boundaries of 12, 14 and 16 St Georges Road. However, it is at a lower level than these properties and the rear boundaries are formed by substantial fences and outbuildings which will help to screen noise from use of the adjoining land. In a committee report on a 2002 planning application to provide a hard surface for parking in the general location of the current parking and storage area, which was subsequently withdrawn, Council officers did not object to the proposal, opining that the siting of parking areas adjacent to domestic rear gardens was not uncommon and often considered to be acceptable. I agree, and provided that the additional parking and storage was limited by area and type, and no repairs of vehicles took place, I consider that it would not significantly harm nearby residents in terms of noise.
25. Subject to the conditions discussed below, I consider that the parking and storage of vehicles would not materially conflict with LP Policies GD4 and GD5, and the appeal on ground (a) succeeds.

Conditions

26. In the interests of the appearance of the area and residential amenity, I accept the need for the imposition of conditions relating to the type of vehicles to be parked and stored [no HGVs and no scrap vehicles], and that no repairs should be undertaken. The appellants have not claimed any need for additional vehicle parking or storage other than in connection with their residential occupation of Elmwood. It was, therefore, agreed that any parking and storage use not ancillary to the lawful cattery use of the land should be restricted to that associated with the residential occupation of the appellants dwelling. Bearing in mind that any ancillary use of the land for the parking and storing vehicles in connection with the cattery use would be lawful, I consider that the extent of the land suggested by the appellants is excessive and would harm the appearance of the area and residential amenity.

In this respect, I favour the Council's suggestion, although I shall increase the depth of this land slightly for practical reasons as the land currently shown is only 6 metres deep and abuts a stone wall which will prohibit parking close to it.

APPEALS G-H

Appeals G and H- Ground (c)

27. The basis of the appeals on this ground is that the operational developments subject to the enforcement notice are permitted by planning permission HPK/2004/0532. On this, there are no planning conditions attached to the planning permission that specifically relate to the three developments cited; namely, the raising of site levels, the construction of a track and the erection of 2.5m high fencing. The description of the development granted by the planning permission also does not refer to any of these particular developments. However, the decision notice, by specifically referring to 'the submitted application, details and accompanying plans', incorporates into the permission by reference the details shown on the plans. The decision notice does not list the 'accompanying plans', but it is clear that they include drawing nos. 04.6/1 and 04.6/2 and plan BD1 dated 1 September 2004. In this ground of appeal the determining factor in each case is whether the development that took place before the issue of the notice was reasonably undertaken to implement the details shown on the plans subject to planning permission HPK/2004/0532.
28. Considering, firstly, the raising of the levels, the appellants argue that this was necessary to provide the 2 metre wide path and to level the land on which the proposed rabbit hutches would stand. Drawing no.04.6/2 shows the rabbit hutches standing on level ground. This would require some alterations to the sloping land which previously existed in this location. However, leaving the path aside, this could be achieved as readily by excavating the land as by raising its levels. I accept the appellants' argument that to provide the 2 metre wide path it is practically necessary to raise the level of the land adjoining the existing concrete retaining wall because of the presence of an inspection chamber. However, the chamber was not shown on the plans accompanying the permitted application and the works required to accommodate it are considerable. The plan section submitted by the appellants, drawing no.04.6/3, shows that the land to be raised to provide the path and a level surface for the rabbit hutches has a width of some 4 metres and a maximum depth of fill of 1 metre, and drawing no.04.6/1 shows this land to be some 25 metres long. Additionally, the appellants state that gabions to a depth of 1 metre would be provided above the top of the retaining wall. It was the appellants' responsibility to incorporate details of these operations in the planning application and it would not have been obvious to the local planning authority that such extensive works would have been practically necessary to implement the proposed development.
29. I consider as a matter of fact and degree that the absence of any indication in the planning application and its accompanying plans that the land in the vicinity of the retaining wall would have to be raised to such an extent results in these works lying outside the terms of planning permission HPK/2004/0532. Even if I had found for the appellants on this point, I have insufficient evidence to establish that the amount of rubble and soil that has been deposited on the site does not exceed what is necessary to raise the levels to provide the path and level area for the rabbit hutches as shown on drawing no.04.6/3.

30. Turning to the track, this generally follows the line of the feature noted 'existing steps increased in width (max. 2.00m)' on drawing no. 04.6/1. In practice a track some 2.8 m wide, covered in stone chippings, with just one small step has been provided. The appellants claim that the width of the track was determined by the size of the shovel on their excavator. But, whilst the appellants are property developers and have access to their own plant and equipment, this did not preclude them hiring an excavator with a 2 metre wide shovel. Additionally, I see no practical need for providing chippings such a significant distance beyond the permitted 2m width of the steps shown on the approved drawing. I consider as a matter of fact and degree that the track that has been provided is materially different to the path shown in drawing no. 04.6/1 and has not been reasonably undertaken to implement the details shown on the plans subject to planning permission HPK/2004/0532.
31. The fencing subject to the enforcement notice is in the location on drawing no. 04/6.1 which states 'provide new mild steel guarding to edge of retaining wall extending to 1100 above path...'. Whilst the fencing has not been completed, the fence posts that have been erected stand some 2.3m above the height of the retaining wall. I find that fence posts so tall cannot reasonably have been erected to provide a guard rail 1.1m high above the top of the retaining wall. I consider as a matter of fact and degree that the fencing that has been erected has not been reasonably undertaken to implement the details shown on the plans subject to planning permission HPK/2004/0532.
32. As I have found that there is no planning permission for the three operations subject to the enforcement notice, they are in breach of planning control and the ground (c) appeal in respect of these operations fails.

Appeal H – Ground (a)

Main Issue

33. The main issue in respect of each of the operations is their effect on the character and appearance of the area.

Planning Policy

34. Policy GD4 of the adopted High Peak Borough Local Plan (LP) is relevant to this ground of appeal.

Reasons

35. I will consider the raising of levels and the fencing together as they form part of a distinct element of the unauthorised development. I have already indicated that, practically, it is necessary to raise the level of the land to provide the 2m wide path above the concrete retaining wall because of the presence of the inspection chamber. To leave the top of the chamber standing above the level of the path would be unsafe for persons visiting the rabbit hutches, which presumably would include customers. Having accepted the need to raise the levels of the land on which the path would be situated, it would be logical and practical to level the land on which the rabbit hutches would stand to tie in with the raised level of the path, as shown on drawing no.04.6/3. I also consider it advisable to provide fencing at least 1.1 metres high along the top of the raised land above the retaining wall to prevent persons falling over the edge.

36. These practical requirements will increase the visual impact of the developments, particularly from the rear of the dwellings on St Georges Road. However, the fence and raised land will be seen in the context of the other elements of the development permitted by planning permission HPK/2004/0532. From the rear of the dwellings on St Georges Road, the fencing and raised levels will be seen against a backcloth of the rising ground behind, on which will be positioned the cat units. Views of the developments from the dwellings on Church Lane and the Sett Valley Trail to the west are and would be limited. Provided the fencing is coloured green and any surplus spoil and rubble is removed from the site, I consider that providing the raised levels and fencing as shown on drawing no.04.6/3 would not materially harm the character and appearance of the area. Thereby, these unauthorised developments would accord with LP Policy GD4.
37. Turning to the track, this needs to be considered on the basis of its current characteristics, as it is materially different to the steps that are permitted by planning permission HPK/2004/0532. Notwithstanding the officer report to the relevant Council Committee, I consider that the track is significantly wider than the permitted steps and its extensive hard surfaced area materially detracts from the appearance of the otherwise pristine grassed slope that forms an important part of the attractive valley between Church Lane and St Georges Road. This impact is apparent from the rear of nearby dwellings and significantly harms the character and appearance of the area, contrary to LP Policy GD4.
38. In view of my findings above, the ground (a) appeal succeeds in terms of the raising of levels and the fencing but fails in respect of the construction of the track.

Conditions

39. It was agreed that the raising of levels and fencing should generally be carried out in accordance with drawing no.04.6/3, but that details of these should be submitted to and approved by the Council. It was also agreed that any spoil or rubble not required to raise the levels should be removed from the site. I agree that conditions in these respects are necessary in the interests of the character and appearance of the area.

Appeals G and H – Ground (g)

40. This ground of appeal now only relates to the construction of the track. The alternative part of requirement (ii) of the notice which requires the restoring the land to its previous condition will need to be carried out in reasonably dry conditions. Consequently, I accept the appellants' argument that, given the date of this decision, three months would be an unreasonably short period to complete this. However, I am not persuaded that the appellants' suggestion of eight months is necessary. I consider that six months should be sufficient to comply with requirement (ii) and I shall vary the enforcement notice accordingly. To this extent, the appeals on ground (g) succeed.

Conclusions

41. For the reasons given above and having regard to all other matters raised, I conclude that:
- Appeals A-D should succeed on ground (c). Accordingly the enforcement notice will be quashed. In these circumstances the appeals made under grounds (a) and (f) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not need to be considered.

- b. Appeal F should succeed on ground (a) and I will grant planning permission in accordance with the application deemed to have been made under section 177(5) of the 1990 Act as amended, which will now relate to the corrected allegation. In the circumstances, there is no need for me to consider the appeals on ground (f) or to take any further action on Appeal E;
- c. Appeal H should succeed in part only, and I will grant planning permission for one part of the matter the subject of the enforcement notice, but otherwise I will uphold the notice with variations and refuse to grant planning permission on the other part. As there is no ground (a) appeal or deemed planning application in Appeal G, I shall uphold the enforcement notice with variations. Under the provisions of section 180 of the Act, the notice will cease to have effect insofar as it is inconsistent with the planning permission granted under Appeal H.

Formal Decisions

Appeals A-D: Ref. APP/H1033/C/06/2016645; /2016646; /2016647; and /2016648

42. I allow the appeals and direct that the enforcement notice be quashed.

Appeal E: Ref. APP/H1033/C/06/2016649

43. No further action is taken.

Appeal F: Ref. APP/H1033/C/06/2016650

44. I direct that the enforcement notice be corrected by:

- a. the deletion of the words "edged red" and the substitution of the words "edged and hatched black" in paragraph 2; and
- b. the substitution of Plan A annexed to this decision for the plan attached to the enforcement notice;

45. Subject to these corrections I allow the appeal, and direct that the enforcement notice be quashed. I grant planning permission, on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the change of use of the land from (a) unused open land and use as a cattery to (b) unused open land, use as a cattery and use for the parking and storage of vehicles on the land between Church Lane and St Georges Road, New Mills shown edged and hatched black on the plan annexed to this decision, subject to the following conditions:

- 1) The parking and storage of vehicles unrelated to the use of the land as open land and as a cattery shall be restricted to the area shown edged and hatched black on Plan B attached to this decision.
- 2) The parking and storage of vehicles unrelated to the use of the land as open land and as a cattery shall only be undertaken in association with the residential use of Elmwood, Church Lane, New Mills.
- 3) The vehicles parked and stored on the land unrelated to the use of the land as open land and as a cattery shall not include Heavy Goods Vehicles or scrap vehicles.

- 4) There shall be no repairs or maintenance on any of the vehicles parked or stored on the land unrelated to the use of the land as open land and as a cattery.

Appeal G: Ref. APP/H1033/C/06/2016651

46. I direct that the enforcement notice be varied by the substitution of 'six months' for 'three months' as the period for compliance.
47. Subject to these variations I dismiss the appeal and uphold the enforcement notice.

Appeal H: Ref. APP/H1033/C/06/2016652

48. I allow the appeal on ground (a) insofar as it relates to (i) the raising of site levels by the deposit of soil and rubble; and (iii) the erection of fencing 2.5m in height, and I grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for these developments on land between Church Lane and St Georges Road, New Mills subject to the following conditions:
 - 1) Within 6 weeks of the date of this decision, details of the raised levels and fencing, to be generally in accordance with drawing no. 04.6/3, shall be submitted to the Local Planning Authority for approval.
 - 2) The raised levels and fencing shown on the approved details required by condition 1 shall be provided in their entirety within 5 months of their approval in writing by the Local Planning Authority.
 - 3) Any soil and rubble on the site that is not required to raise the levels of the land in accordance with the approved details shall be removed from the land within one month of the completion of the approved scheme.
49. I direct that the enforcement notice be varied by the substitution of 'six months' for 'three months' as the period for compliance.
50. I dismiss the appeal and uphold the enforcement notice as varied insofar as it relates to (ii) the construction of a track on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

David Rusdale

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr J Hunter	Of Counsel, instructed by Emery Planning Partnership
He called	
Mr R Gascoigne BA(Hons) MRTPI	Associate Director, Emery Planning Partnership
Mr G Cullen	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr D Hainsworth	Solicitor instructed by Chief Legal Officer
He called	
Mr I Turkington AMIHIE	Assistant Engineer, Development Control, Derbyshire County Council
Mr C Beebe BA(Hons) DipTP MRTPI	Senior Planning Officer, High Peak Borough Council

INTERESTED PERSONS:

Mrs P Cohen	Of 38 St Georges Road, New Mills
Councillor A Bell	Borough Councillor
Mr L Dowson	Chairman of New Mills Town Council
Mr S McAllister	Of 34 High Street, New Mills

DOCUMENTS submitted at the Inquiry

Document 1	List of persons present on each day of the inquiry
Document 2	Letter of notification of the Inquiry and list of persons notified
Document 3	Correspondence relating to the disclosure of information
Document 4	Development Control Committee Minutes of 18 July and 19 December 2005
Document 5	Tables 6 and 8 of the Council's Constitution
Document 6	Letter from Mr Cullen dated 3 February 2003 relating to trees
Document 7	Land Registry entry DY251594
Document 8	Letter from Lea and Company of 14 July 2006 submitted by Mr Cullen
Document 9	Planning permissions 032002 and HPK/2003/0061
Document 10	Correspondence from the Council relating to access at 6 St Georges Road
Document 11	Letter from Mrs Cohen, with other signatories, dated 10 August 2003
Document 12	E-mails between Mrs Cohen and the Council
Document 13	Letter from Councillor Mrs L Leather submitted by Councillor Bell
Document 14	Minutes of meeting at Howard Town Hall held on 15 May 2006
Document 15	Suggested Conditions
Document 16	Case law submitted by the appellants

PLANS submitted at the Inquiry

Plan A	Plan attached to Land Registry Title Number DY263176
Plan B	Plan submitted by the appellant showing suggested parking and storage area for Appeal F
Plan C	Plan submitted by the Council showing suggested parking and storage area for Appeal F

PHOTOGRAPHS submitted at the Inquiry

Photo 1 Photographs submitted by Mrs Cohen

ANNEX A

Appeals A-D: Ref. APP/H1033/C/06/2016645; /2016646; /2016647; and /2016648

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr G and Mrs G Cullen and Mrs P and Mr B J Dolan, respectively, against an enforcement notice issued by High Peak Borough Council.
 - The Council's reference is PI/400/5.
 - The notices were issued on 21 April 2006.
 - The breach of planning control as alleged in the notice is without planning permission, the change of use of the land from use as a residential vehicular access within the curtilage of 6 St Georges Road to use as a vehicular access serving both 6 St Georges Road and the area to the south of the southern boundary of the land.
 - The requirements of the notice are:
 - i) Stop using the land as a means of vehicular access to the area to the south of its southern boundary; and
 - ii) Permanently close all openings in the southern boundary of the land that provide vehicular access to the area to the south of its southern boundary.
 - The period for compliance with the requirements is 6 weeks.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (c) and (f) of the Town and Country Planning Act 1990 as amended.
 - Appeals B-D are proceeding on the grounds set out in section 174(2)(b), (c) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees In Appeals B-D have not been paid within the specified period, the applications for planning permission deemed to have been made under section 177(5) of the Act as amended do not fall to be considered.
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Appeals E-F: Ref. APP/H1033/C/06/2016649 and /2016650

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mrs G and Mr G Cullen, respectively, against an enforcement notice issued by High Peak Borough Council.
 - The Council's reference is PI/400/5.
 - The notices were issued on 21 April 2006.
 - The breach of planning control as alleged in the notice is without planning permission, the change of use of the land from (a) unused open land and use as a cattery to (b) unused open land, use as a cattery and use for the parking and storage of vehicles.
 - The requirements of the notice are:
 - i) Stop using the land for the parking and storage vehicles not associated with the cattery;
 - ii) Stop using the land for the parking and storage of vehicles associated with the cattery, except within those areas of the cattery that have planning permission for those purposes.
 - The period for compliance with the requirements is one month.
 - Appeal E is proceeding on the grounds set out in section 174(2)(c), (d) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees in Appeal E have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.
 - Appeal F is proceeding on the grounds set out in section 174(2)(a), (c), (d) and (f) of the Town and Country Planning Act 1990 as amended.
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Appeals G-H: Ref. APP/H1033/C/06/2016651 and /2016652

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mrs G and Mr G Cullen, respectively, against an enforcement notice issued by High Peak Borough Council.
- The Council's reference is PI/400/5.
- The notices were issued on 21 April 2006.
- The breach of planning control as alleged in the notice is without planning permission, the carrying out of the following operations in the area of the cattery extension:
 - (i) the raising of site levels by the deposit of spoil and rubble;
 - (ii) the construction of a track;
 - (iii) the erection of fencing 2.5m in height.
- The requirements of the notice are:
 - (i) restore the site to its condition before its levels were raised, by removing the spoil and rubble from the land, re-soiling the area affected and seeding it with grass seed;
 - (ii) either (a) restore the area of the track to its condition before the track was constructed, by removing the materials used in its construction from the land, re-soiling the area affected and seeding it with grass seed or (b) make the track comply with the terms of planning permission HPK/2004/0532 by constructing the steps and path shown on the approved drawing no.04.6/1; and
 - (iii) either (a) remove the 2.5m high fencing from the land or (b) make the fencing comply with the terms of planning permission HPK/2004/0532 by constructing the guarding shown on the approved drawing no.04.06/1.
- The period for compliance with the requirements is three months.
- Appeal G is proceeding on the grounds set out in section 174(2)(c) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees in Appeal G have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.
- Appeal H is proceeding on the grounds set out in section 174(2)(a), (c) and (g) of the Town and Country Planning Act 1990 as amended.

EPP 2

HPK/2012/0686	MILLERS VALE DEVELOPMENT CHURCH LANE NEW MILLS	PROPOSED DEVELOPMENT OF 3NO. 4 BEDROOM 7 PERSON DETACHED HOUSES WITH ACCESS ROAD, INTEGRATED PARKING & WASTE/RECYCLING AREA & ASSOCIATED EXTERNAL WORK. (FULL - MINOR)
07/12/2012		

TREVILLE PROPERTIES

This application has been brought before the Development Control Committee, at the request of Councillor Barrow due to concerns over the impact of the development on the local environment, the site being identified as a “Green Wedge” in the new Local Plan and the extensive planning history associated with the site.

HPBC INTEREST: None known.

SITE LAYOUT / DESCRIPTION:

The application site relates to a plot of land located between Church Lane and St Georges Road in New Mills on steeply sloping land. It is positioned to the rear of residential properties, which face onto Church Lane, and the rear of a number of properties which face onto St Georges Road. Part of the site has an extant planning permission for a Cattery, which has been partly implemented with an access road and some hardstanding and what appear to be equestrian buildings of a semi-permanent nature. A brook runs through the bottom of the site with horses grazing on this part of the site. The wider site is largely undeveloped and forms a small valley with substantial changes in land levels over the site. The wider valley is adjoined on all sides by residential development and by St George’s Primary School to the south east.

Beyond the application boundary and the east of the site is Public Right of Way New Mills 177, and to the west PROW New Mills 179 and the Sett Valley Trail.

The site is currently used for the storage of a number of builder items along the southern boundary which give the land a visually poor appearance.

THE APPLICATION:

This application is identical in all respects when compared to an earlier application refused planning permission in 2011, ref HPK/2011/0547.

Consent is being sought for the erection of three four bedroom detached properties located to rear of Penlee, Green Hills and Ivy Ridge, which all face onto Church Lane. Access would be provided from the existing vehicle access point on Church Lane into the site and wrap round the rear garden boundaries of Elmwood House, Briardene, Harmar, Ivy Ridge and Green Hills.

Due to the significant changes in ground levels it is proposed to install a retaining wall to the north of the houses.

PLANNING HISTORY:

HPK/2011/0547 – 3no. four bedroom detached houses, with access road, integrated car parking and waster/recycling are and associated external works – Refused 13.12.11
HPK/2002/0022 – Application to erect 10 dwelling - Refused March 2002
HPK/2002/0338 – Detached dwelling – Approved March 2002
HPK/2002/0637 – Application for 14 Houses refused planning permission on the basis that housing not required on Greenfield sites (October 2002) Decision upheld at appeal
HPK/2002/0732 – Application for 10 Houses refused planning permission on the basis that housing not required on Greenfield sites (October 2002) Decision upheld at appeal
HPK/2003/0922 – Application for 9 Houses refused planning permission on the basis that housing not required on Greenfield sites (December 2004)
HPK/2003/0061 - Detached dwelling - Approved March 2003
HPK/2004/0532 – Permission to extend cattery – Approved August 2004
HPK/2004/0890 – Landscape area, division of stream – Refused 09.06.2005.
HPK/2004/0891 – Two Category 1 bungalows – Refused 09.06.2005.
HPK/2004/0892 – Nine Category 1 bungalows – Refused 09.06.2005.
HPK/2004/0893 – 17 x 2 bed affordable houses, 6 houses – Refused 09.06.2005.
Hpk/2004/0894 – 42 units extra care residential accommodation – Refused 09.06.2005.
HPK/2004/0953 – Two Category 2 bungalows – Refused 09.06.2005.
HPK/2004/08911 - Two No. One bedroom retirement bungalows providing category one special needs sheltered housing - Refused August 2006
HPK/2006/0447 for residential care facility - Refused August 2006
HPK/2006/0448 - Two category one special needs retirement bungalows, access from Church Lane – Refused August 2006
HPK/2006/0445 - Nine categories one special needs retirement bungalows access from Church Lane – Refused August 2006
HPK/2006/0442 - 17 two bed affordable apartments and six open market houses access from St Georges Road – Refused August 2006
HPK/2006/0446 - Extra care (category 2 and 2.5) elderly persons accommodation 42 Units access from Church Lane – Refused August 2006
HPK/2006/0444 - Two category one special needs retirement bungalows, access from Church Lane – Refused August 2006
HPK/2006/0447 - Residential care facility 25 – 30 – previous access from Church Lane – Refused August 2006

PUBLICITY EXPIRY DATES:

Site Notice – 28th January 2013
Neighbours – 3rd January 2013
Newspaper – N/A

REPRESENTATIONS / NEIGHBOURS:

Eleven letters of objection have been received raising the following concerns:

- The site is a Greenfield site which has been tested at two appeals previously, and with two planning inspectors agreeing with this.
- The proposed access will cause problems and compromise safety especially with the school opposite, and significant on street parking.
- The increase in hard standing will cause additional surface water to run off into the valley and cause flooding in the Brook which will increase flood risk elsewhere.
- Existing residents have been affected by noise, disturbance as a result of the activities on the site.
- The site is a dumping ground and eyesore.
- The ground levels at the site are considerable, therefore significant groundwork's will be required.
- Trees have previously been removed to support the large number of planning applications on the site.
- The site is not used as a cattery.
- The site provides a natural corridor for wildlife, running between the Sett Valley trail and the open moorland to the east.
- This is clearly part of a series of forthcoming application.
- Brownfield sites should be developed first, before any greenfield site which is prone to flooding.
- Recently a substantial retaining wall has been built.
- The previous application in 2011 was refused, there are no new grounds to accept this proposal.
- The proposed turning and refuse collection area will cause a loss of privacy and noise disturbance to properties which back onto the site and positioned on Church Lane.
- Noise disturbance and vibrations from heavy machinery during construction.
- Impact on existing trees.
- The site is shown as a green wedge in the new local plan.

CONSULTATIONS:

New Mills Town Council – awaiting comments

Highway Authority – awaiting comments

United Utilities – No objection, a public sewer crosses the site and therefore permission will not be granted to building over it. A 3m strip either side of the line of the sewer will need to be provided for access. No surface water will be permitted to be discharged either directly or indirectly into the sewer network. Only foul drainage should be connected into the foul sewer. A water supply can be made available to the proposed development. A separate metered supply to each unit will be required at the applicant expense.

Environmental Health Officer - The proposed development is in an area historically subject to industrial activity, and the end use is sensitive. Therefore recommend conditions relating to contaminations investigation and remediation, constriction times, and details of any proposed piling.

Crime Prevention Officer – No comments to make.

Tree Officer – The tree report refers to the old BS5837: 2005, and should refer to BS5837:2012. It might be that it is an old report (its not dated) that they have just appended to this application. Also it is just a survey and it doesn't deal with the impact of the proposals on the trees. However the trees aren't a critical issue as they can't be seen from the highway and therefore the proposals should not be refused for aboricultural reasons. However we need tree conditions (tree protection) and also possibly advise that the development may have an impact on the neighbours trees and that it is for the developer to consider the legal implications of this and liaise with the tree owner.

RELEVANT POLICIES:

High peak Local Plan Saved Policies

BC1 - External Materials
GD2 - Built up area boundaries
GD4 - Character Form and Design
GD5 - Amenity
H1 - Principles of Housing Provision
H5 - Housing within the Built up Area Boundaries
H11 - Layout and Design of residential development
TR5 - Access, parking and design

National Planning Policy

Paragraphs 11, 12, 13, 14, 15, 17, 49, 53, 56-58, 60, 61, 63 and 64.

MAIN ISSUES AND COMMENT:

Introduction

1. As detailed above, the site has a long and varied history, and has also been subject of numerous enforcement investigations. Officers over the years have also engaged in several pre-application discussions, primarily concerning the development of the land for residential purposes, and the status of the site, whether greenfield or brownfield.

2. The most recent application, ref HPK/2011/0547, sought planning permission for identical proposals to the current application, but was refused consent for the following reasons:

1.The proposed development, by reason of it's position and form, would constitute inappropriate development on a greenfield site, contrary to policy H1 of the Adopted High Peak Local Plan, Saved Policies.

2. The proposed urbanization of the site, which constitutes an attractive semi - rural area of land would be detrimental to both the amenity levels and the historic character of New Mills. The proposal is therefore contrary to Adopted High Peak Local Plan Policy GD.4 and the provisions of PPS 3 "Housing" and PPG 17 "Planning for open space sport and recreation"

3. Since this time, the National Planning Policy Framework (the framework) has come into force, and therefore the applicant is seeking to establish whether the development proposals

comply with this new guidance and the status of the various policies within the adopted Local Plan.

Policy Considerations

4. The previous application was refused on the grounds of Policy H1, due to concerns over the partial status of the site as Greenfield. Policy H1 of the adopted Local Plan relates to the provision of new housing to meet housing land targets, with priority given over to the use of previously developed land within built up areas. At the present time, the Council does not have a 5 year housing land supply, therefore this policy has now been superseded by the provisions of the National Planning Policy Framework.

5. Paragraph 14 of the Framework places a presumption in favour of sustainable development, and directs Local Authorities to approve proposals that accord with the development plan, or where policies are absent, silent or out of date grant planning permission unless any adverse impact would demonstrably outweigh the benefits of a scheme.

6. The site lies within the built up area boundary for New Mills and in a sustainable location being within walking distance of the local primary and secondary schools, and other local services and facilities. The presumption in favour of sustainable housing development (whether on greenfield or brownfield sites), now overrides Policy H1, and therefore the principle of development cannot be challenged. However as set in paragraph 14 of the framework, it is relevant to consider whether the development would cause any adverse impact, which would outweigh the benefits of delivering new housing.

7. A number of Local residents have referred to the site being designated a “green wedge” in the emerging Local Plan, and consider that the development would harm the character of the area. At the present time, a “green wedge” policy is currently under consideration by the Council for inclusion within the Local Plan. However, as this policy will not be the subject of further public consultation until the end of February 2013, the weight that can be attributed to this emerging policy is very limited.

Impact on character of the area

8. Policy GD4 seeks to ensure that new development does not harm the visual qualities of the locality and wider landscape, taking into account matters such as siting, layout, density, height, design, materials and any associated engineering works. Policy H11 states that residential development should incorporate good design that reflects its setting and local distinctiveness, promote safe and accessible living environments which include a mix of housing types and protect residential amenity. The adopted SPD Residential Design 2005, also provides guidance on the approach to new residential development, and the factors which contribute toward local distinctiveness.

9. The application site lies within a natural valley, with residential properties along Church Lane and St Georges Road overlooking the site. The character of the area is therefore informed predominantly by road frontage and linear development, with the wider site, and its immediate surroundings following the contours of the land down towards the brook, and which dissects the site. The site, despite its poor visual appearance, does form an open and semi rural gap in between the established pattern of residential development within

the area. As such it forms an important open and visual gap between residential development in Church Lane and St Georges Lane.

10. The new properties would be positioned behind Penlee, Green Hills and Ivy Ridge, which face onto Church Lane and accessed via a track taken from Church Lane. As such the proposed development, having no road frontage, positioned to the rear of a number of established properties and accessed via a long track would be a backland form of development. It is considered that this form of development would be at odds with the prevailing pattern of development in the locality. The applicant argues that Beech Cottage and 12-16 St Georges Road (which sit back from St Georges Road, but still face onto the road) to the west, are similar forms of backland development, to those proposed. However these examples are the exception, and do not form the dominant pattern of residential development in the area, which is primarily road frontage development.

11. As with the previous application in 2011, the proposed development comprises three four bedroomed houses accessed via a partly constructed access track. The properties would be constructed in random coursed gritstone with slate roofing and are split level. In design terms the works are conventional in design and are largely acceptable in this regard.

12. The steep topography of the site will necessitate large scale engineering works and retaining structures to facilitate the development, particularly to the north of the dwellings. Accordingly to the information submitted, it appears that the retaining wall proposed to the rear of plots 2 and 3, will extend nearly 60m in length and in some parts will extend as high as 4m. Due to the steeply sloping site, these large scale engineering works will be required to support the development, and the visual impact needs to be taken into account. As a result the scheme when viewed from properties to the north and wider area will be an overly dominantly built form, and significantly urbanise the open and semi rural character of the locality. Furthermore, public footpaths runs to the east and west of the site, and therefore although the proposals will be immediately apparently to residents in St Georges Road, will be noticeable from the wider locality.

13. To the rear of Plots 2 and 3, the proposed garden areas range from 5-7m in depth and adjoin the proposed retaining wall. A 5m rear garden depth is not particular generous considering that the size of the dwellings are typical family housing. Given the overall height of the retaining wall, fencing will be required in order to provide a safe private amenity area. The fencing, in addition to the retaining wall will exacerbate the visual impact of the engineering works required to support the dwellings, given the gradient of the land.

14. It is therefore considered that the development would cause harm to the visual amenities and character of the open setting of the surrounding green area. The site has a visual amenity value to residents either side of the valley, and the proposed development would cause harm to the character of the green space as a whole and the amenity value in visual terms would be lost. As such it is considered that the siting, layout, scale and engineering works required for the development would harm visual amenity, and be at odds with the character of the area.

Impact on residential amenity

15 .In accordance with Policies GD5 – Amenity and Policy H11 – Layout and Design of residential development, new development proposals should not harm residential amenity taking into account matters such as overlooking, privacy, sunlight and daylight and the overbearing effects of development.

16. The proposed layout would meet the minimum privacy distances between the new development and existing residents in St Georges Road and Church Lane. Although the access road would effectively wrap round the rear gardens of properties in Church Lane, the dwellings are positioned nearly 30m from the road, with intervening landscaping. It is therefore considered that the proposed development would not give rise to any adverse impact on residential amenity.

Highway and parking considerations

17. The proposed access arrangements are the same as those previously considered under HPK/2011/0547. Previously the Highway Authority raised no objection to the proposals, consequently it is considered unlikely that a highway objection will be raised. The comments of the Highway Authority will be reported on the update sheet.

18. The houses would be served by a double garage, with Plot 2 having driveway parking. Parking in front of the garages at Plots 1 and 3 would be limited as this would block the access road and conflict with access into Plot 2. Whilst the proposed level of parking is not considered to be unacceptable, the arrangement demonstrates the difficulties which new residents may experience once in occupation of the units.

Other Matters

19. The site does not lie within floodplain as the brook within the valley bottom is not classified as a main river by the Environment Agency. As such despite flooding concerns raised by local residents, the Council is unable to address this matter. With respect to the comments provided by United Utilities, the garden areas, patios area and part of the proposed retaining wall would be positioned within the required 3m access strip. Further clarification is being sought on this matter and will be provided on the update sheet.

20. Despite a number of objection letters referring to the site being classified as Greenfield land, and which was previously agreed by a Planning Inspector in 2003 (refs HPK/2002/0637 & HPK/2002/0732), the current policy position does not prevent the use of greenfield sites for housing, taking account of the Council's housing position, if a proposal involves the delivery of a sustainable housing site, and where no other material considerations outweigh the benefits. However, in this case, the harm to visual amenity and the established pattern of development in the locality outweighs the delivery of new housing.

Conclusion

The proposed development whilst being positioned in a sustainable location, fails to respond to the established character of the locality and would harm the visual amenities of the wider area. The harm caused is considered to outweigh the benefits of the delivery of sustainable housing and therefore fails to comply with the above relevant policies of the adopted Local Plan and guidance contained within the National Planning Policy Framework.

RECOMMENDATION: that planning permission be refused for the following reason:

1. The proposed development, by virtue of the layout, siting and required engineering works would be out of keeping with the established pattern of development within the area and would adversely affect the visual amenities of the locality. As such the proposed development fails to comply with Policies GD4 and H11 of the High Peak Saved Local Plan Policies 2008, guidance contained within the adopted SPD Residential Design 2005 and the National Planning Policy Framework.

INFORMATIVE

Although the applicant has not engaged in formal pre-application discussion on the current scheme, the proposals are identical in all respect to the previous application. The Council has had discussions with the applicants about outstanding issues in line with the requirements of the NPPF, although no agreement has been reached.

SITE PLAN

