



## Statement of Case

Appeal against non-determination of planning  
application reference HPK/2020/0301 – Taxal Edge, 184  
Macclesfield Road, Whaley Bridge, SK23 7DR

for Treville Properties Ltd

Emery Planning project number: 19-429

LPA ref: HPK/2020/0301

Project : 19-429  
Site address : Taxal Edge, 184  
Macclesfield Road,  
Whaley Bridge, SK23  
7DR  
Client : Treville Properties Ltd  
Date : 5 April 2021  
Author : Rawdon Gascoigne

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## 1. Introduction

- 1.1 This statement has been prepared to support an appeal against the non-determination by High Peak Borough Council, of a full planning application made by Treville Properties Ltd in relation to a proposal for the demolition of the existing building known as "Taxal Edge" and the detached garage building, and the erection of 4 no. semi-detached and 3 no. detached dwellings at land at Taxal Edge, 184 Macclesfield Road, Whaley Bridge.
- 1.2 The application has twice been placed on the agenda for the High Peak Development Control Committee with a recommendation of refusal. The LPA removed the application from the agenda for the October 2020 meeting, to consider additional representations by Emery Planning, including the written opinion of Jonathan Easton (counsel for the applicant). A revised officer report was subsequently prepared and the application was placed on the agenda for the November 2020 Committee. However, members voted to defer consideration of the application to a future meeting to enable more time to be given for members to consider the issues raised within the officer reports and to receive appropriate legal advice.
- 1.3 Following deferral of the application in November 2020, Emery Planning entered discussions with the LPA to establish whether the proposals could be amended to overcome the officer's objections to the development. However, it was not possible to reach agreement on a viable scheme and in early January 2021, Emery Planning requested that the application be progressed and determined at the next available meeting of the Development Control Committee. This has not occurred and as a result of the apparent lack of progress towards a decision, an appeal against non-determination has been lodged.
- 1.4 This statement sets out the basis of the appellant's case that planning permission should be granted for the proposed development and responds to the case officer's recommended reasons for refusal in their most recent report to the Development Control Committee.
- 1.5 The appellant reserves the right to respond to any additional matters and/or further details that are raised by the LPA during the course of the appeal

## 2. The appeal application

2.1 The appeal application was received by High Peak Borough Council on 24 July 2020. It sought planning permission for demolition of the existing building known as "Taxal Edge" and the detached garage building, and the erection of 4 no. semi-detached and 3 no. detached dwellings. All of the dwellings would be 2.5 storeys in height, each would have an integral garage and all except one of the properties would have 4 bedrooms (the remaining dwelling having six bedrooms).

2.2 Each house would be constructed of reclaimed natural gritstone facing, grey aluminium windows and a blue/grey natural slate roof.

2.3 The initial submission documents for the application comprised:

- Application forms and certificates;
- Planning, Design and Access Statement (Emery Planning, July 2020);
- Site Location Plan (TADW drawing no. 411179 10 P4);
- Existing Site Plan (TADW drawing no. 411179 19 P4);
- Proposed Site Plan (TADW drawing no. 411179 20 P14);
- House Type A – Floor Plans and Elevations (TADW drawing no. 411179 21 P8);
- House Type B – Floor Plans and Elevations (TADW drawing no. 411179 22 P7);
- House Type C – Floor Plans and Elevations (TADW drawing no. 411179 23 P7);
- Garage Plan – Floor Plan and Elevations (TADW drawing no. 411179 24 P3);
- Landscape Works - General Arrangement Plan (The Plant Room drawing no. PR/0/GC04/GA/01);
- Street scene images 1, 2 and 3;
- Extended Phase 1 Habitat Survey Report (NLG, April 2020);
- Phase 1 Site Investigation Report (Peak Environmental, May 2020); and
- Arboricultural Report – Tree Condition Update (Thompson Tree Services, June 2020).

2.4 Site sections were submitted on 1 September in response to comments received through consultation on the application.

- 2.5 As noted above, the application was placed on the agenda for the October 2020 meeting of the Development Control Committee but was removed from the agenda following submissions on behalf of the appellant, which responded to the recommended reasons for refusal and officer concerns relating to the proposed mix of house types. Copies of the submissions (including the written opinion of counsel) are included with the appeal documents. An extension of the determination period was agreed until 13 November 2020 to allow consideration of the submissions and further discussions between LPA and Emery Planning (on behalf of the applicant).
- 2.6 The application was then included on the agenda for the 9<sup>th</sup> November 2020 meeting of the Development Control Committee. The reports pack for that meeting included a revised officer report and amended/new recommended reasons for refusal of the application.
- 2.7 Prior to the committee meeting, additional information was finalised and submitted by Emery Planning, including:
- Landscape design statement;
  - Tree schedule, tree constraints plan and arboricultural impact assessment;
  - Arboricultural method statement and tree protection plan;
  - Letter from Emery Planning dated 30<sup>th</sup> October 2020 addressing the implementation of planning permissions reference HPK/2009/068 and HPK/2013/0503, and compliance with Local Plan Policy H1;
  - Additional information on the proposed mix of house types; and
  - Further written opinion of Jonathan Easton (counsel for the appellant) dated 4<sup>th</sup> November 2020.
- 2.8 A committee update report was issued by the LPA in advance of the meeting, advising members in relation to the above documents and confirming that the suggested arboricultural reason for refusal had been withdrawn. The remaining suggested reasons for refusal were as follows:

*1. The proposed development, in principle, would comprise a form of development which would encroach into, and erode the open countryside and be detrimental to the Settled Valley Pastures Character Area. The development of the site would cause harm to its distinct and intrinsic woodland character and form a visually prominent development which would be inappropriate in its setting. The development therefore fails to comply with Policies S1, S1a, S2, S6, H1, EQ2, EQ6, EQ7 and EQ9 of the Adopted High Peak Local Plan, the Adopted High Peak Design Guide, the Adopted Residential Design Guide and the Adopted Landscape Character Assessment*

*Supplementary Planning Document 2006 and the National Planning Policy Framework.*

*3. The overall scheme would not provide for an appropriate range and mix of housing types that can reasonably meet the requirements and future needs of a wide range of household types including for the elderly and people with specialist housing needs based on evidence from the Strategic Housing Market Assessment or successor documents. The development therefore fails to comply with Policies S1, S1a, S6, H1, H3 and EQ6 of the Adopted High Peak Local Plan, and the National Planning Policy Framework.*

*4. The proposal would not provide for an appropriate level of outdoor amenity space to ensure that the scheme secures a good standard of amenity for future occupants is reflected within Adopted High Peak Local Plan policy EQ6 'Design and Place Making', the Council's 'Residential Design Guide' SPD and the National Planning Policy Framework.*

## 3. Context

### Site and area description

- 3.1 The site is located to the south west of Whaley Bridge. To the North East are residential properties, including “Brewood” and “Hill Top” and beyond this is Macclesfield Road. To the east there is a public footpath and beyond this existing residential development located off Linglongs Road, including residential properties on Beech Rise and Linglongs Avenue which are set at a lower level than the appeal site. To the south is the former classroom, which has been converted to a residential dwelling and beyond this woodland and open countryside. Rising land to the rear (West) of the site is also formed by woodland, with open countryside beyond.
- 3.2 Located on the site is the property known as “Taxal Edge”. It was originally used as a house and then as a children’s home and is currently used as a single residential dwelling albeit that the appearance remains that formed by its previous use. Whilst the original building was constructed in 1918, it has been extended on several occasions since. Additions include a gymnasium building changing rooms and external fire escapes. Elements of these additions have been demolished as part of the implementation of planning permission reference HPK/2013/0503 (discussed below). Immediately to the North of Taxal Edge is a detached garage and to the south between Taxal Edge and the converted classroom building is tarmac used as car parking.

### Relevant planning history

- 3.3 The following applications are of relevance to the appeal application:
- HPK/2008/0069 – Change of use of Taxal Edge from a boarding hostel and associated ancillary residential accommodation to use as a single dwelling – approved 28<sup>th</sup> March 2008;
  - HPK/2009/0209 – Change of use from a single dwelling to 10 apartments involving internal alterations only – withdrawn 26<sup>th</sup> June 2009;
  - HPK/2009/0689 – Conversion of Taxal Edge to provide 7 no. apartments and the conversion of the classroom block and disused garage to 2 no. detached houses – approved 29<sup>th</sup> March 2010. The permission has been part implemented through the conversion of the classroom block to a residential dwelling, and work on the conversion of the building to apartments and work on the conversion of the garage building;
  - HPK/2013/0503 – Proposed conversion of Taxal Edge to 5 no. apartments and construction of 2 no. semi-detached houses where the gymnasium is located – approved 25<sup>th</sup> November 2013. This is also extant because the gym has been



demolished for the 2 no. semi-detached dwellings and work has commenced on the conversion of the building to apartments;

- HPK/2015/0518 – Outline planning application for 2 no. semi-detached dwellings – refused 11<sup>th</sup> December 2015. The application was refused for one reason:

*“The proposed dwellings would comprise of residential development outside of the established settlement hierarchy and as such would represent an unsustainable form of development which would suburbanise and harm the character and appearance of the open countryside and the rural landscape in which the proposal is set. Furthermore the proposal fails to demonstrate that adequate space would be available to accommodate the proposed dwellings and any necessary amenity areas.*

*The proposals are therefore contrary to Saved Policies OC1, 3 & 4, H1 and GD5 of the Adopted High Peak Local Plan 2008 and Policies H1, EQ2, EQ3, EQ5 of the emerging High Peak Local Plan Submission Version April 2014 as well as guidance contained within Paragraph 55 of the National Planning Policy Framework.”*

- 3.4 Application HPK/2015/0518 was refused before policy H 1 of the HPLP was amended to allow residential development beyond settlement boundaries (main modification MM59). The amendments to policy H1 followed a consultation on proposed main modifications, which took place between 10<sup>th</sup> December 2015 and 28<sup>th</sup> January 2016 and were added as a means of ensuring a more robust approach to maintaining housing land supply in the borough. The examining Inspector's report was published on 24<sup>th</sup> March 2016 and found the HPLP sound subject to its modification including by main modification MM59.

## 4. Planning policy context

4.1 Section 38(6) 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 (the Framework) is a material consideration in planning decisions.

### Development plan context

4.2 Reference will be made to the policies of the adopted development plan for the site, which is the High Peak Local Plan (HPLP adopted 2016).

4.3 The proposals maps shows the site as adjacent to, but outside of the built up boundary of Whaley Bridge. It falls within an area countryside between the built up area boundary and the Green Belt.

4.4 The following policies of the HPLP are relevant:

- Policy S 1: Sustainable Development Principles;
- Policy S 1a: Presumption in Favour of Sustainable Development;
- Policy S 2: Settlement Hierarchy;
- Policy S 3: Strategic Housing Development;
- Policy S 6: Central Sub-area;
- Policy EQ 1: Climate Change;
- Policy EQ 2: Landscape Character;
- Policy EQ 3: Rural Development;
- Policy EQ 5: Biodiversity;
- Policy EQ 6: Design and Place Making;
- Policy EQ 7: Built and Historic Environment;
- Policy EQ 8: Green Infrastructure;
- Policy EQ 9: Trees, Woodland and Hedgerows;
- Policy EQ 10: Pollution Control and Unstable Land;

- Policy EQ 11: Flood Risk Management;
- Policy H 1: Location of Housing Development;
- Policy H 2: Housing Allocations;
- Policy H 3: New Housing Development;
- Policy H 4: Affordable Housing;
- Policy CF 3: Local Infrastructure Provision;
- Policy CF 4: Open Space, Sports and Recreation Facilities;
- Policy CF 6: Accessibility and Transport; and
- Policy CF 7: Planning Obligations and Community Infrastructure Levy.

4.5 The following supplementary planning documents are also relevant:

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

4.6 Reference will also be made to the Strategic Housing Market Assessment and Housing Needs Study (April 2014).

### **National planning policy and guidance**

4.7 The National Planning Policy Framework (the Framework) and National Planning Practice Guidance (NPPG) will be referred to.

## 5. The Case for the Appellant

5.1 The Appellant's case will be presented through the following propositions:

### **Proposition 1 – The proposed development would be fully compliant with Policy H 1 of the HPLP**

5.2 It will be shown that the proposed development would comply with the second bullet point of policy H 1, which states that the council will ensure provision is made for housing by:

*“Promoting the effective reuse of land by encouraging housing development including redevelopment, infill, conversion of existing dwellings and the change of use of existing buildings to housing, on all sites suitable for that purpose.”*

5.3 It will also be shown that the development complies with all of the requirements in the second part of policy H 1.

5.4 In particular, it will be demonstrated that contrary to the views of the LPA, the site adjoins the built up area boundary. The access to the site from Macclesfield Road directly coincides with the built up area boundary shown on the proposals map and the eastern boundary of the site is also immediately next to the built up area of Whaley Bridge. The site complies with the relevant criteria both in definition and in spirit, the requirement having been included to avoid development that is removed from settlements and which may be harmful to landscape character as a result.

5.5 It will be demonstrated that the proposed development is well related to the settlement, would be read as part of the settlement, is of an appropriate scale for the settlement and would not be harmful to landscape character.

5.6 In regard to the remaining criteria of policy H 1, it will be shown that the location of the site in combination with local topography and existing/proposed tree cover ensures that the development would not appear as a prominent intrusion into the countryside. The high quality and sensitive design would further ensure that it would not have a significant adverse impact on the character of the countryside.

5.7 The final two criteria of Policy H 1 are satisfied and have not been suggested as reasons for refusal of the application.

**Proposition 2 – There are extant planning permissions for residential development at the site that provide a fallback position which is highly relevant when considering the acceptability of the proposed development. The proposed development would cause no greater harm than the fallback and is preferable to the fallback in planning terms**

- 5.8 As far as we are aware, the LPA has not come to a definitive view as to whether there is a realistic fallback involving development authorised by permissions reference HPK/2009/0689 and HPK/2013/0503. The first two committee reports did not provide a comparative assessment of the proposed development against the fallback and the LPA continues to maintain that the fallback is irrelevant to the consideration of the appeal application.
- 5.9 The committee update report dated 9 November 2020 notes that even if it were found that the fallback position could legitimately be implemented and is a material consideration, the proposed development would have a far more harmful and intrusive effect on the countryside. However, no detailed assessment is provided to support this finding. In contrast, the appellant has submitted comparative drawings/overlays and images, showing that the proposed development would have a reduced visual impact in comparison with the fallback position, and is preferable to it in design and amenity terms.
- 5.10 The appellant will advance a case that the LPA's assessment of the application is flawed. Evidence will be presented to confirm the correct manner of assessment and the availability of a relevant fallback position with a real prospect of being completed.
- 5.11 It will be shown that the proposed development would cause no greater harm than the fallback and is preferable to the fallback in planning terms.

**Proposition 3 – The development would not harm the character and distinctiveness of the area**

- 5.12 A case will be advanced to demonstrate that the proposed development, would not be visually prominent and would not be detrimental to the Settled Valley Pastures Character Area. The proposed development draws from and directly reflects patterns of development adjacent to the site in terms of its form and scale, and has taken design cues from local properties in the immediately surrounding area. Additionally, it will be shown that the proposals offer an enhancement to the character and appearance of the area when compared with the existing buildings on site.

- 5.13 There would be no incursion of the development beyond what is currently perceived as the developed part of the site.

**Proposition 4 – The proposed mix of house types does not conflict with the requirements of the development plan and is entirely appropriate**

- 5.14 The LPA have asserted that the development would not provide an appropriate range and mix of house types to meet the requirements and future needs of a wide range of household types and as such, that it fails to comply with a number of local plan policies including Policy H3.
- 5.15 It will be shown that the elements of the policy with which the LPA finds conflict, are not relevant to the proposed development and that the policy cannot be rigidly applied due to the small scale of the development. Furthermore, the evidence upon which the council has based their requested housing mix, is out of date and in any event, was intended to be applied flexibly by the LPA (which has been the case in other applications that have been granted since the HPLP has been adopted).
- 5.16 Evidence will be presented to show that there is a high level of demand for detached family homes (of the nature proposed) in Whaley Bridge and that the proposed housing mix takes account of the characteristics of the existing housing stock in the surrounding locality as per the requirements of Local Plan Policy H 3(c).

**Proposition 5 - The proposal would provide a good standard of amenity for future occupants and would accord with the requirements of the HPLP policy EQ 6, the Council's 'Residential Design Guide' SPD and the National Planning Policy Framework**

- 5.17 Notwithstanding that the development plan and associated design guidance contain no specific standards for private outdoor amenity space, it will be shown that the proposed development would provide good standards of residential amenity, including adequate outdoor space to serve each of the proposed dwellings. It will also be shown that the location of the development is such that residents would have good access to the countryside, public rights of way, and public open spaces within Whaley Bridge and the nearby Peak District National Park.

**Proposition 6 – The proposal represents a high quality development in a sustainable location which would deliver a range of social, economic and environmental benefits in accordance with paragraph 8 of the Framework**

- 5.1 The proposal would comprise a number of significant benefits that will be set out through the appeal, including, but not limited to removing evidence of the former social history and past use of the buildings. It will be demonstrated that the proposal comprises sustainable development pursuant to the Framework with due regard for the economic, social and environmental objectives.

**Proposition 7 - There are no other site specific or policy considerations which would prevent planning permission from being granted in accordance with the guidance in paragraph 11 of the Framework**

- 5.2 It will be demonstrated that the proposals comply with the relevant policies of the development plan in respect of both the principle and detail of the development. As the proposals are in accordance with the development plan, permission should be granted without delay in line with the presumption in favour of sustainable development at paragraph 11c of the Framework and section 38(6) of the Planning and Compulsory Purchase Act 2004.

## 6. Document list

6.1 A list is provided below of the key policy and technical documents that the Appellant intends to refer to. Other documents may be referred to in light of matters raised in the Council's Statement of Case or by other parties.

### National documents

- National Planning Policy Framework (the Framework);
- National Planning Practice Guidance (NPPG).

### Local documents

- High Peak Local Plan (2016)
- Supplementary Planning Documents and Design Guidance

### Technical documents

- Technical reports, documents and other evidence prepared by professionals on behalf of the appellant

6.2 In addition to the above, the Appellant will refer to various correspondence with the LPA and to other planning applications, appeal decisions and court judgements where similar issues to those emerging from this case have been considered. Evidence to support the lawful use of the site and the appellant's ability to fall back on extant planning permissions will also be provided.