



Appeal Statement

Demolition of the existing building known as Taxal Edge and the detached garage building and the construction of 7 dwellings – Taxal Edge, Macclesfield Road, Whaley Bridge, SK23 7DR

for Treville Properties Ltd

Emery Planning project number: 19-429

PI ref: APP/H1033/W/21/3272745

LPA ref: HPK/2020/0301

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unlocking development opportunities

Project : 19-429
Site address : Taxal Edge, Macclesfield
Road, Whaley Bridge,
SK23 7DR
Client : Treville Properties Ltd
Date : 27 July 2021
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1. Executive Summary

- 1.1 This statement supports an appeal against the refusal of High Peak Borough Council to grant planning permission for the demolition of the existing building known as “Taxal Edge” and the associated detached garage building, and the erection of 4 no. semi-detached and 3 no. detached dwellings. A separate Landscape Statement by Barnes Walker has been submitted and forms part of the appellant's Statement of Case.
- 1.2 The decision notice for the application states that the proposal would be contrary to 8 policies of the High Peak Local Plan. However, it is shown that the development would comply with all of these policies and with supplementary planning guidance and the National Planning Policy Framework.
- 1.3 The appeal site is a brownfield site on the Edge of Whaley Bridge. The settlement is identified as a main focus for housing in Local Plan Policy S2. It is shown that the development would make an efficient use of land and provide a mix of quality homes in a sustainable location where there is access to a broad range of jobs, services and facilities in accordance with Local Plan Policy S1 and the penultimate bullet point of Policy H1. It is also shown that there would be no conflict with Policies S1a or S6.
- 1.4 The appeal development involves the provision of housing through the redevelopment of previously developed land and through infill development, both of which are permitted (and indeed encouraged) under the first part of Local Plan Policy H1. It also complies with the criteria in the second part of Policy H1, relating to residential development outside of the built up area boundary, as the site adjoins the boundary both physically and in accordance with the definition set out in recent planning case law in *Corbett & Cornwall Council and Wilson [2021]*. The development would also be located within the perceived extent of the settlement; would be well related with the existing pattern of development; would not harm the character of the settlement or the wider countryside, or be visually prominent; and is of an appropriate scale for Whaley Bridge.
- 1.5 In respect of HPLP policies EQ2, EQ3 and EQ6, it has been shown that the development would maintain the aesthetic and biodiversity qualities of the landscape and would be sympathetic to the distinctive character of the area. The Landscape Statement by Barnes Walker, demonstrates that the site can accommodate the proposed development without harm to the landscape

character of the area and that the design is entirely appropriate and accords with relevant local design guidance.

- 1.6 The development would provide high standards of residential amenity. It incorporates suitable separation distances (for existing and proposed dwellings) and does not give rise to any amenity issues in respect of overlooking. A daylight and shading study has been undertaken which demonstrates that all of the properties would have access to amenity space which meets relevant BRE standards in terms of daylight and shading and that the interiors of the properties would have adequate daylight.
- 1.7 Notwithstanding the above, it is also shown that the applicant has the lawful ability to complete a fallback development, which in the event the appeal is dismissed, has a real prospect of occurring. The fallback would be more harmful than the appeal development in respect of the reasons for refusal of application reference HPK/2020/0301.
- 1.8 In light of this (and notwithstanding our view that the proposed development is policy compliant), even if it is found that the appeal development would give rise to a degree of conflict with the Development Plan, it is clear that the fallback is a material consideration that indicates planning permission should be granted for the development.
- 1.9 Further weight is added to the case for granting planning permission as the development would contribute to the 3 objectives of sustainable development at paragraph 8 of the Framework. The economic benefits of the development include job creation and generating additional spending in the local area. Social benefits include high quality design; meeting the housing needs of the immediate and wider area; and providing closure in respect of the negative social history of the site. Environmental benefits include high quality design; making efficient use of previously developed land; and the provision of ecological benefits through the sensitive landscaping of the site and additional tree planting.
- 1.10 In light of the above and the lack of any other site specific or policy considerations which would prevent planning permission from being granted in accordance with the guidance in paragraph 11 of the NPPF, it is respectfully requested that the appeal is upheld and planning permission granted.

2. Introduction

2.1 This statement supports an appeal against the refusal of High Peak Borough Council to grant planning permission for the demolition of the existing building known as "Taxal Edge" and the associated detached garage building, and the erection of 4 no. semi-detached and 3 no. detached dwellings at land at Taxal Edge, 184 Macclesfield Road, Whaley Bridge. A separate Landscape Statement by Barnes Walker has been submitted alongside this planning appeal statement. Taken together the two documents comprise the appellants full Statement of Case for the appeal.

Propositions

2.2 The case for the appellant in respect of the appeal will be set out with reference to a number of propositions. These have been revised since submission of the appellant's initial statement of case as, at the time the appeal was submitted, the LPA's final Committee report had not been written and the reasons for refusal of the application were not known, the appeal originally being submitted against non-determination. The propositions are as follows:

- Proposition 1: There is no conflict with the Development Plan Policies referred to in the reason for refusal of the application and the proposal is specifically in accordance with policy H1 which seeks to deliver housing on the edge of the settlement.
- Proposition 2: 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.
- Proposition 3: 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.
- Proposition 4: 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
- Proposition 5: 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.

3. The appeal proposal

The application

- 3.1 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 associated 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).
- 3.2 Each house would be constructed of reclaimed natural gritstone facing, grey aluminium windows and a blue/grey natural slate roof.
- 3.3 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).
 - Arboricultural Report – Tree Condition Update (Thompson Tree Services, June 2020).

- 3.4 Site sections were submitted on 1 September 2020 in response to comments received through consultation on the application.
- 3.5 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. A copy of the October 2020 committee report is attached at Appendix EP1. 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 the LPA and Emery Planning (on behalf of the applicant).
- 3.6 The application was then included on the agenda for the 9th 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.
- 3.7 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 30th 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.
 - Further written opinion of Jonathan Easton (counsel for the appellant) dated 4th November 2020.
- 3.8 These documents were included with the appeal submission.
- 3.9 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.*

- 3.10 At the committee meeting, members voted to defer consideration of the application. A copy of the committee report and update from November 2020 is attached at Appendix EP2.
- 3.11 In the weeks after the November committee meeting, Emery Planning entered discussions with the LPA to establish whether the proposals could be amended to overcome the officer's objections. That included, amongst other things, reducing the number of units proposed on the basis that Officers remained of the opinion that areas of the application site between the main building and former classroom building did not constitute previously developed land. When it became apparent that agreement could not be reached, it was requested that the application be taken to the next available meeting of the Development Control Committee for determination. However, the LPA failed to progress the application and ultimately, an appeal against non-determination was lodged on 8 April 2021.
- 3.12 Prior to validation of the appeal, the LPA took the application to committee where planning permission was refused for the development. Copies of the committee report and update report are attached at Appendix EP3. Copies of additional written submissions made by Emery Planning in advance of the committee meeting are attached at appendix EP4.

3.13 The decision notice is attached at Appendix EP5. The appeal is now progressing as an appeal against the refusal of planning permission.

3.14 The decision notice cites one reason for refusal which has multiple strands:

"The scheme would not be well related to the existing pattern of development and surrounding land uses or be of an appropriate scale for this aspect of the Whaley Bridge settlement. In addition, the scheme would constitute poor design and fails to understand the site's defining characteristics. Furthermore, the scheme's design / layout would result in overbearing and shading impacts to an unacceptable level of amenity to be enjoyed by the future occupiers of Plots 1 and 2. The development therefore fails to comply with Policies S1, S1a, S2, S6, H1, EQ2, EQ3 and EQ6 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."

3.15 Article 35 (b) of the General Management Procedure Order 2015 requires authorities to state clearly and precisely their full reasons for refusal specifying all policies and proposals in the development plan which are relevant to the decision. The previously suggested reasons for refusal in relation to house type mix and arboricultural impacts do not appear on the decision notice. There can therefore be no dispute in relation to these matters.

4. Site and area description

Site and area description

- 4.1 The site is located to the South West of Whaley Bridge. To the North East of the site are residential properties, including “Brewood” and “Hill Top” and beyond this is Macclesfield Road. To the east there is a public footpath (along which there is a right of access to parts of the wider site) and adjoining 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, a two-story building of more modern construction, 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.
- 4.2 Located on the site is the property known as “Taxal Edge”. It was originally used as a house set in extensive grounds, then as a children’s home and is currently used for residential purposes albeit that the appearance remains that formed by its previous use. Whilst the original building was constructed in in the early part of the 20th Century, 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. Whilst the former classroom building lies outside the application/appeal site, it would benefit from provision of a garage building which forms part of the appeal scheme, and the appeal scheme has evolved with the former classroom building forming an integral part of the wider site and setting.

5. Relevant planning history

5.1 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 28th March 2008;
- HPK/2009/0209 – Change of use from a single dwelling to 10 apartments involving internal alterations only – withdrawn 26th 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 29th 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 25th November 2013. This is also extant because the gym has been demolished for the 2 no. semi-detached dwellings, their footings have been constructed, 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 11th 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."

5.2 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 10th December 2015 and 28th 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 24th March 2016 and found the HPLP sound subject to its modification including by main modification MM59.

6. Planning policy context

6.1 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

6.2 The development plan comprises the High Peak Borough Local Plan (HPLP) adopted in 2016.

6.3 There are 8 policies referred to on the decision notice as follows:

- Policy S 1: Sustainable Development Principles.
- Policy S 1a: Presumption in Favour of Sustainable Development.
- Policy S 2: Settlement Hierarchy.
- Policy S 6: Central Sub-area.
- Policy H 1: Location of Housing Development.
- Policy EQ2: Landscape Character
- Policy EQ 3: Rural Development.
- Policy EQ 6: Design and Place Making.

6.4 Other relevant policies comprise:

- Policy S 3: Strategic Housing Development;
- Policy EQ 1: Climate Change;
- Policy EQ 5: Biodiversity;
- 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 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.

National planning policy and guidance

- 6.5 The National Planning Policy Framework sets out the Government's planning policies for England and how these should be applied.
- 6.6 It is a material consideration in the determination of planning applications and appeals. The elements of the Framework that are of most relevance to this appeal - in terms of the overall method of assessing the application and the key areas of dispute – are summarised below.
- 6.7 Paragraph 7 states that the purpose of the planning system is to contribute to the achievement of sustainable development. The economic social and environmental objectives of sustainable development are set out at paragraph 8.
- 6.8 Paragraph 11 of the document sets out a presumption in favour of sustainable development:

For decision-taking this means:

c) approving development proposals that accord with an up-to-date development plan without delay; or

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

i. the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

6.9 The “areas or assets of particular importance” are set out in footnote 7 for the Framework. There is no potential for these to be negatively impacted by the proposed development and the LPA has not asserted this.

6.10 Paragraph 38 of the Framework states that,

“Local planning authorities should approach decisions on proposed development in a positive and creative way. They should... work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.”

6.11 Paragraph 60 confirms the Government's objective of “significantly boosting the supply of Homes”. It states that and the need for a sufficient amount and variety of land to come forward (for that purpose) where it is needed.

6.12 At paragraph 69, the document makes it clear that, “small and medium sized sites can make an important contribution to meeting the housing requirement of an area, and are often built-out relatively quickly”.

6.13 Paragraph 119 states that:

“planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions.”

6.14 Paragraph 120 states that planning policies and decisions should

“promote and support the development of under-utilised land and buildings, especially if this would help to meet identified needs for housing where land supply is constrained and available sites could be used more effectively.”

6.15 Paragraph 125 states that:

“Area-based character assessments, design guides and codes and masterplans can be used to help ensure that land is used efficiently while also creating beautiful and sustainable places.”

6.16 While criteria a) to c) of paragraph 125 apply specifically in circumstances where there is an existing or anticipated shortage of land to meet identified housing needs, criterion c) makes it clear that authorities should take a flexible approach in applying policies or guidance relating to

daylight and sunlight, where they would otherwise inhibit making efficient use of a site (as long as the resulting scheme would provide acceptable living standards).

6.17 Chapter 12 of the Framework sets out the Government's design related expectations and guidance. Paragraph 126 states that

"The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development".

6.18 Paragraph 130 requires development to comply with the following criteria:

a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;

b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;

c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);

d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;

e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and

f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users⁴⁹; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

6.19 Paragraph 131 requires planning decisions to ensure that new streets are tree-lined and that opportunities are taken to incorporate trees elsewhere in developments.

6.20 Paragraph 134 States that:

Development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes. Conversely, significant weight should be given to

- a) *development which reflects local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes; and/or*
- b) *outstanding or innovative designs which promote high levels of sustainability, or help raise the standard of design more generally in an area, so long as they fit in with the overall form and layout of their surroundings.*

6.21 Chapter 15 of the Framework sets out the importance of conserving and enhancing the natural environment, including by protecting and enhancing valued landscapes.

Other material considerations

6.22 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).

6.23 These are appended to the Landscape Statement by Barnes Walker

7. Proposition 1

There is no conflict with the Development Plan Policies referred to in the reason for refusal of the application and the proposal is specifically in accordance with policy H1 which seeks to deliver housing on the edge of the settlement.

- 7.1 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 and section 70 (2) of the Town and Country Planning Act 1990 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
- 7.2 The development plan comprises the High Peak Borough Local Plan 2016 (HBLP). The decision notice states that the proposal would be contrary to 8 policies which are discussed below.

Policies S1 and S1a

- 7.3 Policy S 1: “*Sustainable Development Principles*” states that the Council will expect all new development to make a positive contribution towards the sustainability of communities, and where possible, enhancing the environment; and mitigating the process of climate change within the Plan Area. The proposed development would achieve the following objectives set out in this policy:
- Meeting most development needs within or adjacent to existing communities;
 - Making effective use of land (including the remediation of contaminated land and reuse of brownfield land), buildings and existing infrastructure;
 - Making effective use of land by ensuring that the density of the proposals is appropriate (and informed by the surrounding built environment);
 - Providing for a mix of types and tenures of quality homes to meet the needs and aspirations of existing and future residents in sustainable locations; and
 - Minimising the need to travel by promoting development in locations where there is access to a broad range of jobs, services and facilities, which are accessible by foot, cycle or public transport with minimal reliance on the private car.
- 7.4 Policy S 1a of the HBLP: “*Presumption in Favour of Sustainable Development*” largely reflects paragraph 11 of the Framework. There is no conflict with this policy.

Policies S2 and S6

- 7.5 Policy S2 states that development will be directed towards the most sustainable locations in accordance with the settlement hierarchy set out in the policy. Whaley Bridge is identified as one of five market towns which are the main focus for housing, employment and service growth, consistent with maintaining and where possible enhancing their role, distinctive character, vitality and appearance.
- 7.6 Policy S6 of the adopted Local Plan then deals with the Central Sub-area. It states that the council will seek to promote the sustainable growth of the Central Area such that it reflects the historic character of the settlements, provides an increasing range of employment opportunities, promotes the growth of a sustainable tourist economy and meets the housing needs of the local community.
- 7.7 The explanatory text to the policy states at paragraph 4.115 that Whaley Bridge is one of the main settlements in the sub-area.
- 7.8 The second part of the policy states that it will provide for the housing needs of the community by planning for sustainable housing and mixed-use developments in four ways:

Allocating a range of suitable, deliverable housing sites sufficient to meet the requirements of the central sub-area, including the delivery of appropriate levels of affordable housing.

- 7.9 There is no conflict with this part of the policy. The council relies on small scale windfall sites through the plan period to meet its needs which would be complementary to the larger housing allocations.

Supporting the development of new housing on sustainable sites within the built-up area boundary primarily in Chapel-en-le-Frith, New Mills and Whaley Bridge.

- 7.10 The appeal site is adjacent to but not within the built-up area boundary. This criterion does not preclude development outside the built-up area but is positively worded to support development within it. We refer to the more detailed consideration of development outside settlement boundaries set out in Policies EQ3 and H1 below.

Supporting the development of new housing within the mixed redevelopment of industrial legacy sites including Britannia Mill at Buxworth

- 7.11 There is no conflict with this part of the policy.

Ensuring that residential development avoids the adverse impact on the integrity of the Peak District Moors (South Pennine Moors Phase 1) Special Protection Area, the South Pennine Moors Special Area of Conservation (SAC) and the Dark Peak Site of Special Scientific Interest (SSSI) – a component part of this European site

7.12 The site is not in close proximity to these designations and would have no impact upon them.

Policy H1

7.13 Policy H 1: “Location of Housing Development” explains that the Council will ensure provision is made for housing through a number of measures, including:

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

7.14 Although the committee report asserts that only part of the site can be considered as previously developed land and that plots 5, 6 and 7 fall outside of the previously developed area, the definition of previously developed land within the Framework includes:

“Land which is or was occupied by a permanent structure, including the curtilage of the developed land...” (our emphasis)

7.15 The land on which these plots are situated forms part of the approved curtilage for the dwelling authorised by planning permission reference HPK/2008/0069, which has been occupied since 2008, and prior to that, was part of the planning unit for the children's home/used for purposes incidental to it (a copy of the decision notice and location plan for HPK/2008/0069 is attached at Appendix EP6). Prior to that it was part of the wider grounds when the house was originally constructed. It is not agricultural land and has not been any time recently as evidenced by the extensive tree cover and is clearly part and parcel of a previously developed site.

7.16 Historic photographs show that the land in question was used in connection with the house as part of its curtilage and gardens. The image below shows the area of the site between the Classroom Conversion and the main building at Taxal Edge, which the council assert is not previously developed but which was clearly maintained as part of the curtilage and includes garden structures and landscaping to the right-hand side of the house. Parts of the walls and hedgerow within the photo are still evident on site today. Garden pathways have been uncovered by the appellant in this area, whilst undertaking routine maintenance of the grounds,

reinforcing the view that the land is part of the curtilage of Taxal Edge and constitutes previously developed land.

Figure 1: Taxal Edge circa 1946



7.17 As noted above, while some of the plots for the appeal development include areas that are not currently occupied by buildings, that does not prevent the land from being classified as previously developed. Furthermore, the second bullet point of H1 is also permissive of infill development. As plots 5,6 and 7 are situated between the Classroom Conversion and the main building at Taxal Edge (the main building actually overlaps the footprint of the proposed dwelling on plot 5), there can be no question that the principle of development is acceptable under the second bullet of H 1.

7.18 The second part of Policy H 1 states that the Council will give consideration to approving sustainable sites outside the defined built-up area boundaries, provided that:

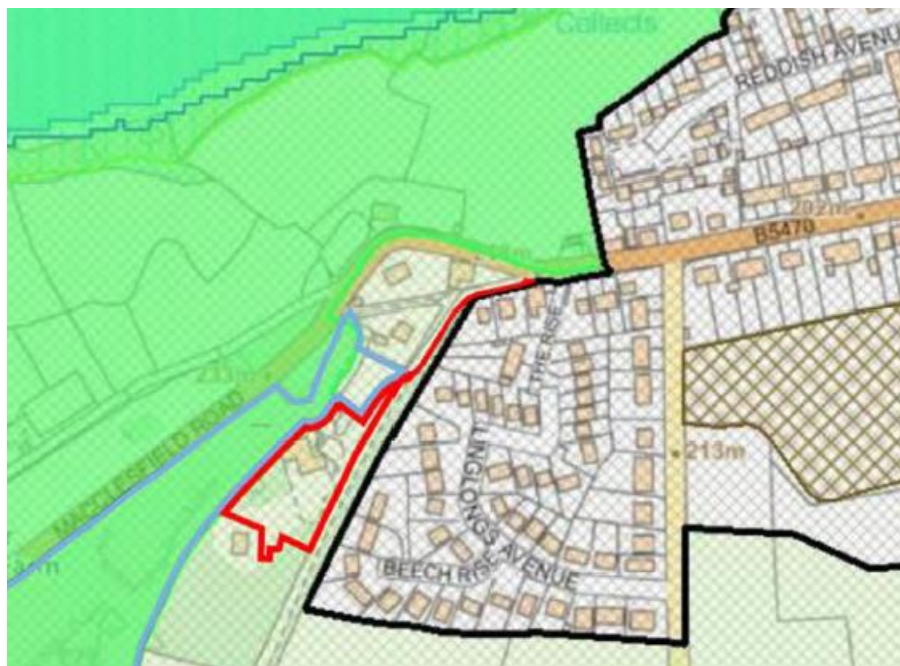
- The development would adjoin the built-up area boundary and be well related with the existing pattern of development and surrounding land uses and of an appropriate scale for the settlement; and
- the development would not lead to prominent intrusion into the countryside or have a significant adverse impact on the character of the countryside; and
- it would have reasonable access by foot, cycle or public transport to schools, medical services, shops and other community facilities; and
- the local and strategic infrastructure can meet the additional requirements arising from the development.

7.19 We address each of the four listed criteria in Policy H1 below:

Relationship to the built-up area boundary, pattern of development and settlement of Whaley Bridge

7.20 The relationship of the appeal site (shown in red) to the settlement boundary can be seen on the extract from the Local Plan proposals map below.

Figure 2: Proposals map extract with appeal site



7.21 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 remainder of the eastern boundary of the red line is only separated from the built-up area boundary line as shown on the proposals map by a footpath, along which there is a right of access to the site, not just on foot. Adjacent to the footpath are dwellings which front onto the Rise, Beech Rise and Linglong Avenue. The site clearly adjoins this part of Whaley Bridge and is well located with the existing pattern of development and surrounding land uses.

7.22 There is no requirement for the site to adjoin the built-up area boundary on all sides as clearly no site on the edge of a settlement would and nor does policy require a certain proportion of the site to adjoin the boundary.

7.23 Paragraphs 7.15 to 7.19 of the committee report set out the council's case that the site would not adjoin the built-up area boundary other than at its access track where it joins with Macclesfield Road. This conclusion differs from that of the DCC Urban Designer who states in his/her response set out in the committee report (no paragraph number or page number) that:

"On the proposals map, the site is located adjacent to but outside of the built-up boundary of Whaley Bridge"

7.24 It also differs from the view of the case officer for application reference HPK/2013/0503,. Page 3 of the delegated report for that application (Appendix EP12) states:

*"Whilst the site does lie in an area of countryside as defined by the High Peak Saved Local Plan Policies 2008 it lies outside of the Green Belt and **adjoins** the built up area of Whale Bridge. It is on a bus route and close to the local primary school and sports facilities. The site is a brownfield site..."*

7.25 Furthermore, when considering compliance with H 1, the initial assessment by the planning officer for the appeal application (set out in their report for the October 2020 Development Control Committee, also states that:

The site adjoins the built up area boundary to the east. Therefore, it is necessary to consider whether the site complies with the remaining three criteria. (paragraph 7.12)

7.26 The council's current assertion that the appeal development cannot comply with H 1 because it does not adjoin the built up area boundary therefore represents a departure from the council's previous assessments.

7.27 The case officer for the appeal application cites two appeal decisions (Long Lane, Chapel-en-le-Frith, 2015 and Tunstead Milton, 2017) to support their revised position and which they consider results in a change in circumstances since 2013. However, in the first appeal decision, the inspector did not actually opine on whether an intervening road (or in the case of the appeal application, a path over which the applicant has access rights) would prevent a site from adjoining a settlement boundary. Furthermore, the second appeal decision allows for a wider definition of 'adjoin', having regard to whether the site would be well related with the existing pattern of development (within the settlement) and whether it would lead to prominent intrusion into the countryside.

7.28 Neither of the appeal decisions alter the manner in which the site falls to be assessed and it is wholly unclear why the officer considers that the introduction of Policy H 1 should lead to a stricter assessment.

7.29 We refer to the judgment of *Corbett & Cornwall Council and Wilson [2021] EWHC 1114 (ADMIN)* (Appendix EP7) which related to a single ground of challenge to the committee's decision in interpreting 'immediately adjoining the settlement' as meaning (or perhaps more accurately including) a development which was physically separated from the settlement by a main road and a driveway. The judgment makes the following points which are of relevance to this appeal:

- the phrase "immediately adjoining" must be given a "sensible meaning", which includes "next to" and "very near". The decision that the site fell within that definition represented a reasonable exercise of planning judgment (paragraph 19).
- There is no dispute that the interpretation of the policy is a matter of law, but it does not follow that the issue as to the meaning of 'immediately adjoining' must be answered by some strict definition (paragraph 25).
- The judge noted that the full online Oxford English Dictionary makes no distinction between the meaning of "adjoining" and "adjacent". The definition of the latter word includes "next to or very near something else" (paragraph 26 and 27).
- A sensible reading of the policy is one in which the question of whether the development site was immediately adjoining the settlement would involve an element of judgment and not one in which the physical divider necessarily rendered the site not 'immediately adjoining' (paragraph 46).

7.30 The assessment in the case of *Corbett & Cornwall Council and Wilson [2021]* addresses the requisite test as to whether a site was 'immediately adjoining the settlement'. In the case of High Peak, the judgment to be made is whether the development 'would adjoin the built-up area boundary', not that the development 'would immediately adjoin the built up area boundary'. The approach in High Peak is therefore less restrictive than that in Cornwall and the only logical conclusion is that the development adjoins the built-up area boundary, particularly as the footpath is perceived as part of the settlement as it runs between the houses that form the settlement, even though it outside of the boundary on the proposals map.

7.31 The question of whether the appeal site would be well related to the existing pattern of development is also addressed in the Landscape Statement which forms part of the appellant's Statement of Case. This finds that the development would be located within the perceived extent of the settlement, would be in keeping with the transitional wooded character of the site

and responds sympathetically to the topography of the site, to local design traditions and to development in the immediately surrounding area. No concerns have been raised by officers regarding the interface or relationship between the proposed dwellings and existing development on Beech Rise and Linglongs Avenue. In landscape terms the assessment has therefore concluded that the site could be viewed as part of the settlement itself rather than adjoining it but at the very least it does adjoin, a view consistent with the Council's own urban design advisor.

7.32 Indeed and as outlined later in this Statement in relation to proposition 3, it is considered that the proposed design and layout of the appeal scheme is a more contextually appropriate response than the fallback development when considering the relationship with the existing pattern of development.

7.33 Turning to issues of scale, the scale of development proposed is entirely commensurate with the scale and nature of Whaley Bridge. According to the 2011 Census, there are 2,974 dwellings in Whaley Bridge. The adopted Local Plan seeks to direct new growth to the main market towns of which Whaley Bridge is one. The 7 houses proposed on this site represents a low proportion of the number of existing properties within the settlement. There can be no question that the scale of the development proposed is appropriate for the existing settlement.

7.34 The proposed development satisfies the first bullet point of the windfall policy outlined through Policy H1 of the adopted local plan.

Impact on the character of the countryside and landscape impact

7.35 The second criterion requires that development would not lead to **prominent** intrusion into the countryside or have a **significant adverse** impact on the character of the countryside.

7.36 We refer to the appeal statement of Barnes Walker, regarding landscape matters and the potential impact on the character of the countryside. Further detail is also provided below in relation to policy EQ 2, where the findings of that assessment are applied directly to the criteria within the councils Landscape Character Policy.

7.37 In summary, the Landscape Statement makes it clear that the appeal development would not harm the character of the settlement or the wider countryside, nor would it be visually prominent.

- 7.38 The proposed development draws from and directly reflects patterns of development found in the immediately surrounding area in terms of its form and scale, and has taken design cues from local properties. In this instance there can be no doubt that the site would be read as part of Whaley Bridge. The nature of the site and its containment by trees and topography also means that the development could never appear as a prominent intrusion into the countryside. The ridgeline to the West of the site forms the perceived extent of Whaley Bridge and the site is already developed, with extant planning permission for further development.
- 7.39 For these reasons, the development would not appear as a prominent intrusion into the countryside and the high quality and sensitive design would further ensure that it would not have a significant adverse impact on the character of the countryside. Indeed the Landscape Statement submitted with this appeal shows that the development would not have any degree of adverse impact on the character of the countryside.
- 7.40 The proposed development satisfies the second bullet point of the windfall policy outlined through Policy H1 of the adopted local plan.

Accessibility to schools, medical services, shops and other community facilities

- 7.41 The site is situated immediately adjacent to the settlement boundary of Whaley Bridge which has a full range of services and facilities available in the town centre. The reason for refusal of the application does not assert that the location is unsustainable.
- 7.42 Indeed the contrary is true. The site is in a sustainable location and can be accessed by a range of transport modes (i.e. public transport, walking and cycling). It is within walking distance of the bus stops on Macclesfield Road, which provide access to the 60 / 60A bus services which run between Hayfield and Macclesfield with stops in New Mills, Newtown, Furness Vale and Whaley Bride. The proposed development is therefore in accordance with paragraph 112 of the Framework and policy EQ 1 of the HPLP. The location has been accepted as sustainable through both the previous approvals on this site and those nearby off Linglongs Road for residential development.
- 7.43 In light of the above, it is clear that the proposed development relates to a sustainable edge-of-settlement site and would be fully compliant with Policy H1.

Policy EQ2

- 7.44 Policy EQ2 relates to Landscape Character. As noted above, the landscape impacts of the development have been assessed by Nic Folland of Barnes Walker. His assessment is submitted alongside this Planning Appeal Statement and forms part of the appellant's Statement of Case. The findings of that assessment are applied to the relevant criteria of EQ2 below.
- 7.45 By way of context, at national level, paragraph 174 of the Framework requires development to contribute and enhance the natural and local environment by protecting and enhancing valued landscapes amongst other things.
- 7.46 Paragraph 175 of the Framework states that plans should distinguish between the hierarchy of international, national and locally designated sites. This site is not subject to any national, international or local designation. Nor has the landscape been identified as a 'valued landscape'.
- 7.47 The 2016 Local Plan no longer has areas of special landscape value but instead sets out landscape character types for the entire borough in accordance with the council's Landscape Character Supplementary Planning Document. The site falls within the Settled Valley Pastures character area.
- 7.48 Policy EQ2 states that the council will seek to protect, enhance and restore the landscape character of the Plan area for its own intrinsic beauty and for its benefit to the economic, environmental and social well-being of the Plan Area.
- 7.49 This will be achieved by:

Requiring that development has particular regard to maintaining the aesthetic and biodiversity qualities of natural and man-made features within the landscape, such as trees and woodlands, hedgerows, walls, streams, ponds, rivers, ecological networks or other topographical features.

- 7.50 As shown on the site layout plan, natural features such as the trees and woodland located beyond the site boundary would be maintained and managed ultimately leading to an enhancement in the immediate surroundings. The design of the development has also had regard to the topography of the site and responds directly to this, drawing on advice within the council's Residential Design SPD in terms of the orientation and positioning of both the access road and the dwellings in relation to the contours of the site and existing tree cover.

Requiring that development proposals are informed by, and are sympathetic to the distinctive landscape character areas as identified in the Landscape Character Supplementary Planning Document and also take into account other evidence of historic landscape characterisation, landscape sensitivity, landscape impact and the setting of the Peak District National Park and where appropriate incorporate landscape mitigation measures.

- 7.51 The site (together with the majority of Whaley Bridge) is located within the “Settled Valley Pastures” Character Area, as shown on the map on page 12 of the Landscape Character Supplementary Planning Document (adopted March 2006). Details of the characteristics of the ‘Settled Valley Pastures’ are set out in the Landscape Statement by Mr Folland of Barnes Walker, which supports this appeal. However, in that statement, it is noted that the SPD’s description of the Character Area and the resulting guidance on development, is of limited relevance to the built-up area of Whaley Bridge, as it relates to built form in rural areas, rather than built form in settlements. Page 5 of the Landscape Character SPD confirms this, stating that the guidance in the document relates “solely” to rural areas and that the Residential Design Guide (SPD 2) addresses design in urban areas.
- 7.52 The Landscape Statement by Barnes Walker considers historic mapping and the influences that have shaped the character of the appeal site over time, including quarrying, and the incremental development of Whaley Bridge. It goes on to identify that the local topography and the relationship of the appeal site to the adjacent urban edge means that the ridgeline to the immediate West of the appeal site currently represents the perceived extent of the settlement.
- 7.53 As a result, the character of the appeal site is influenced by its proximity to the settlement and the key characteristics of the Settled Valley Pastures Landscape Character Type (as defined by the DCC’s Landscape Character of Derbyshire and HPBC’s Landscape Character SPD5), are not wholly consistent with the character of the appeal site. The appeal site is identified as a transitional area between the urban edge and the countryside where land rises towards the ridgeline to the West; where there is a higher proportion of tree cover than in the main settlement area; and where a visible and physical presence of built form prevails.
- 7.54 The landscape statement sets out how the appeal scheme responds to this distinctive character, respecting the aspects of the Landscape Character SPD that are relevant, whilst acknowledging the role that the site plays as an area of transition.

7.55 It also confirms that the detailed design of the development directly draws upon key themes and guidance in the council's Design SPDs. This is outlined in more detail below in relation to the fourth bullet points of EQ2 and the design requirements of EQ6.

7.56 In terms of landscape mitigation measures, the application was accompanied by a landscaping scheme and landscape design statement. The landscaping proposals have subsequently been enhanced and a new landscaping scheme has been produced by Barnes Walker, which directly responds to the comments of the Landscape Officer and the Arboricultural Officer in connection with the application. Paragraphs 6.41 to 6.45 of the Landscape Statement summarised the proposed measures, which include additional native tree and shrub planting to provide improved levels of screening and containment to the site. The assessment by Barnes Walker confirms that the proposals will restore and enhance the wooded character of the site and assimilate the development into the wooded, settlement edge.

Requiring that development proposals protect and/or enhance the character, appearance and local distinctiveness of the landscape and landscape setting of the Peak District National Park

7.57 The development would be sited in a location where buildings are already present. Furthermore, the topography of the site and surrounding area, together with the woodland setting, would restrict views of the development from the wider area. Longer range views would be restricted to elevated locations to the East and South East where changes would be limited; would be viewed in the context of the wooded edge of the settlement and where the appeal site would form a very small part of expansive views.

7.58 The landscape setting of the Peak District National Park would be preserved. There are no objections from the Peak District National Park Authority and no suggestion from the LPA that the development would be harmful to the setting or purposes of the National Park.

Resisting development which would harm or be detrimental to the character of the local and wider landscape or the setting of a settlement as identified in the Landscape Impact Assessment.

7.59 The proposals offer an enhancement to the character and appearance of the area when compared with the existing buildings on site.

7.60 We refer to the appeal statement of Barnes Walker with respect of landscape matters. At paragraph 7.6, this concludes that the development will be:

“well related to the existing pattern of development and surrounding land uses and will be of an appropriate scale for this aspect of Whaley Bridge.”

7.61 It goes on to state that the scheme constitutes,

“good design that accords with many aspects of HPBC’s Residential Design Guide SPD 2 and thus represents an appropriate design response to the appeal site’s defining characteristics.”

7.62 The assessment finds that along with an appropriate scheme of landscape works, the site can accommodate the proposed development without harm to the character of the settlement or the wider countryside ie the Settled Valley Pastures (paragraph 6.18).

7.63 Further detail on the design considerations that have led to this conclusion are set out in relation to policy EQ6 below. There is no reason why the proposals would not be compliant with Policy EQ2.

Policy EQ3

7.64 Policy EQ3, Rural Development, states that outside the settlement boundaries and sites allocated for development, the council will seek to ensure that new development is strictly controlled in order to protect the landscape’s intrinsic character and distinctiveness including the character, appearance and integrity of the historic and cultural environment and the setting of the Peak District National Park whilst also facilitating sustainable rural community needs, tourism and economic development. The policy lists 8 forms of residential development that would be allowed which includes development in accordance with Policy H1.

7.65 We have shown that the proposal is in full accordance with Policy H1 and by extension Policy EQ3.

Policy EQ6

7.66 The reason for refusal states that the scheme would constitute poor design and fails to understand the site’s defining characteristics but without explaining how the proposal comprises ‘poor design’ or identifying the site’s ‘defining characteristics’.

7.67 Policy EQ6 requires all development to be well designed and of a high quality that responds positively to both its environment and the challenge of climate change, whilst also contributing

to local distinctiveness and sense of place. The Council appear to take issue with the first three bullets points within Policy EQ6 and these are addressed below:

Requiring development to be well designed to respect the character, identity and context of High Peak's townscapes and landscapes

- 7.68 The design of the development has been developed to reflect the character and identity of the area in terms of layout, form and detailing.
- 7.69 The proposed layout shows how a linear form of development could be accommodated, which would reflect the approach taken to detached and semi-detached larger Victorian houses in Whaley Bridge, incorporating elements of the 'small scale villa' and 'grand villa' dwelling types described in the Residential Design Guide SPD. Both of these dwelling types often include front gables and the grand villas include dormer windows. These features are also evident on existing dwellings in the vicinity of the appeal site along Macclesfield Road (photographs are included at Appendix 1 of the Landscape Statement by Barnes Walker).
- 7.70 Although the Landscape Character SPD suggests that dormer windows are not appropriate in the Settled Valley Pastures, as noted earlier in this statement, the guidance in the document relates solely to rural areas and given the site's transitional character and edge of settlement location, we consider it appropriate that design inspiration be drawn from the character of properties and built form in the vicinity of the appeal site, including design features commonly found on properties within Whaley Bridge. The existing property at Taxal Edge is also considered to fall within the Grand Villa typology and incorporates dormer windows. In that context (and notwithstanding that the existing building would be demolished), the proposed design features are not at odds with the character of the site or the surrounding area.
- 7.71 The scale of the development is similarly appropriate in relation to the dwelling typologies referred to above and in the context of existing built form at the site (illustrated on the site cross sections submitted at the application stage). It provides an efficient use of land, whilst respecting and retaining the woodland setting and retaining a sense of spaciousness to the front of the properties and around the access road.
- 7.72 The High Peak Residential Design Guide SPD states that:

The undulating nature of the land in High Peak is such that building methods have evolved to cope with the low availability of flat ground. This distinct

topography has resulted in the varied and interesting roofscape of many High Peak settlements and designers will be expected to further contribute to this.
(paragraph 5.7.2 a)

7.73 The document goes on to list the following principles when building up hill:

- i. Tiering will work best when elevations are not too wide.*
- ii. Tiering should be on an individual basis or in small groups.*
- iii. Chimneys and other vertical lines will enhance the tiered effect.*
- iv. Run roofs parallel to the slope if it is established in the local vicinity.*
- v. The approach chosen will depend on the local context.*

7.74 The statement by Barnes Walker confirms that properties in the surrounding area are often positioned along the contour lines on rising ground and are often stepped to accommodate localised changes in level. The appeal scheme reflects that traditional pattern of development, and the principles set out in the Residential Design SPD.

7.75 The development also follows the suggested approach at paragraph 5.7.4 a) of the Residential Design SPD, of Setting houses back from the road to improve views out from the dwellings, which in turn, enables balance in the provision of private rear amenity spaces, with good sized front gardens that would benefit from a more sunny aspect. It is considered to be an entirely appropriate and well considered design response which has been tailored to the specific characteristics and features of the site.

7.76 It is envisaged that views from the front of the properties would be framed by ornamental trees, with native tree species planted along the Southeast boundary of the site to enhance the woodland setting and containment of the development. The additional planting will also provide amenity benefits and enhance the setting of existing properties on Beech Rise and Linglongs Avenue.

7.77 The proposed materials of the development (gritstone and slate) are in keeping with local building traditions and the use of dark gutters and drainpipes is also consistent with the recommendations in the Residential Design SPD and the Landscape Character SPD.

Requiring that development on the edge of settlement is of high quality design that protects, enhances and / or restores landscape character, particularly in relation to the setting and character of the Peak District National Park

7.78 This has been addressed in relation to policy EQ2 and the criterion above.

Requiring that development contributes positively to an area's character, history and identity in terms of scale, height, density, layout, appearance, materials, and the relationship to adjacent buildings and landscape features

7.79 This has also been addressed under the analysis for EQ2 and the first criterion of policy EQ6. We consider that the development would strengthen local character by removing a building that is dominated by unsympathetic additions; by enhancing the appearance of a somewhat 'tired' site; and by creating a high quality, contextually appropriate residential development.

7.80 In addition, it should be noted that the proposed demolition of the former children's home would remove a building with negative associations due to links with child abuse in the 1970s and early 1980s. Further information on this aspect of the site's history (which has been publicised in the Press), was submitted on a private and confidential basis with the application documents). In light of the history of the buildings at the site, it is considered that the development would provide benefits through creating a new chapter in the history of the site and removing traces of its former use.

7.81 The appeal development is fully compliant with this element of the policy and with EQ6 as a whole.

Summary of Proposition 1

7.82 The proposal would comply with policies S1, S1a, S2, S6, H1, EQ2, EQ3, and EQ6 and H1.

8. Proposition 2

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.

8.1 The reason for refusal states that the scheme's design/layout would result in overbearing and shading impacts leading to an unacceptable level of amenity to be enjoyed by the future occupants of Plots 1 and 2.

8.2 Policy EQ6 on 'Design and Place Making' requires new development to achieve a satisfactory relationship to adjacent development and should not cause unacceptable effects by reason of visual intrusion, overlooking, shadowing, overbearing or other adverse impacts on local character and amenity.

8.3 The committee report states:

"There would be sufficient space between the scheme properties to safeguard privacy standards in respect of neighbouring residential development with a good level of amenity space for the majority of plots."

"On matters of overshadowing, the guidance states that this 'can be particularly important in tall developments and in laying out external amenity spaces, which should avoid shady (and north facing) locations.'" For Plots 1 and 2, the site plan and section information both serve to demonstrate that an inadequate and limited rear amenity space would be provided in view of site constraints. The proposed retaining walls with tree embankment above, together with orientation and scheme design/layout would result in overbearing and shading impacts to an unacceptable level of amenity to be enjoyed by the future occupiers of Plots 1 and 2 as confirmed by the Council's Arboricultural Officer above."

8.4 The development plan and associated design guidance contain no specific standards for private outdoor amenity space. However, all properties would benefit from external areas that would enable occupants to sit outside and undertake typical leisure and social activities within their curtilages.

8.5 As well as having good standards of residential amenity commensurate with or better than those approved under permissions reference HPK/2009/0689 & HPK/2013/0503 (discussed in proposition

3 of this statement), 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.

- 8.6 The design of the scheme has sought to balance the provision of rear and front gardens in order to make the most of the Southeast facing frontages. This directly accords with the guidance referred to in the officer report above (paragraphs 8.8.5 (Overshadowing) and 5.7.3 (Uphill arrangements) of the Residential Design Guide) and has been further informed by the appellant's understanding of the prevailing housing market preferences from their long association of building and delivering successful housing schemes within High Peak.
- 8.7 Although the decision notice states that the scheme's design and layout "*would result in overbearing and shading impacts to an unacceptable level of amenity of amenity to be enjoyed by the future occupiers of Plots 1 and 2*", a daylight and shading study has been undertaken in connection with this appeal, which assesses the development against the Building Research Establishment's good practice guidelines and non-mandatory targets for levels of daylight and sunlight within existing and proposed development (BR209). This was not undertaken at the application stage as it was not requested by the council, nor did it form one of the suggested reasons for refusal when the application was taken to the November meeting of the Development Control Committee.
- 8.8 The study concludes that the requirements of BR209 are met or exceeded for all of the dwellings with the exception of the rear amenity areas for plots 1, 2 and 3. However, it notes that the front amenity areas to these plots exceed the recommended target values set in BR209, therefore all plots have access to an amenity space with adequate sunlight levels, complying with BR209 guidance. A copy of the assessment is attached at Appendix EP14. It also confirms that all habitable rooms of the proposed 7 dwellings, would exceed the average daylight factors (ADF) recommended in BR 209 and BS 8206-2, in both summer and winter months, complying with BR 209 guidance. In addition, all 7 dwellings of the proposed development would have access to a window within 90 degrees due south and exceeds 25% Annual Probable Sunlight Hours and 5% Winter Probable Sunlight Hours, complying with BR 209 guidance.
- 8.9 It is therefore clear that the development would provide an acceptable standard of living accommodation and outdoor space. This is particularly the case, given advice at paragraph 125 of the Framework that local authorities should take a flexible approach in applying policies

or guidance relating to daylight and sunlight, where they would otherwise inhibit making efficient use of a site, as long as the resulting scheme would provide acceptable living standards.

8.10 Furthermore, the location of plots 1 and 2 on the appeal development correspond with the location of a dwelling that was approved by the council in 2010 without any concerns over the availability of, or shading of rear external amenity areas (the garage conversion). The approved garage conversion (which can lawfully be completed), was approved with virtually no rear/private amenity space. It is therefore unclear how the council could deem that development to be acceptable, whilst finding that the appeal development would provide *“inadequate and limited rear amenity space”*.

8.11 This raises issues in relation to consistency in decision taking. It is well established in case law that previous planning decisions are capable of being material considerations and may need to be taken into account by local planning authorities in determining subsequent applications for permission.

8.12 It was stated by Mann LJ in *North Wiltshire District Council v Secretary of State for the Environment (1993) 65P & CR137* that:

“One important reason why previous decisions are capable of being material is that like cases should be decided in a like manner so that there is consistency...Consistency is self-evidently important to both developers and development control authorities. But is also important for the purpose of securing public confidence in the operation of the development control system.”

8.13 Singh J stated in the case of *R (Midcounties Co-Operative Limited) v Forest of Dean District Council [2017] EWHC 2050* that:

‘Although the authorities demonstrate that a local planning authority is not bound by its earlier decision, nevertheless it is required to have regard to the importance of consistency in decision-making’.

8.14 To summarise:

- The council accept that the development incorporates suitable separation distances (for existing and proposed dwellings), and does not give rise to any amenity issues in respect of overlooking;

- A daylight and shading study has been undertaken which demonstrates that all of the properties would have access to amenity space which meets relevant BRE standards in terms of daylight and shading.
- The daylight and shading study also confirms that the interiors of the properties would have adequate daylight;
- There are no adopted local or national standards that require a specific quantum of outdoor amenity space;
- Similarly there is no policy requirement for external space to be provided on a specific side of a dwelling;
- The proposed arrangement of front and rear gardens provides a good level of outdoor space for each dwelling and takes advantage of the Southeast facing frontages in line with local guidance in the Residential Design SPD;
- residents would also have good access to the countryside, public rights of way, and public open spaces within Whaley Bridge and the nearby Peak District National Park.
- The council have approved a dwelling in the same location as the plots with which they take issue in respect of shading impacts. This would have less private/rear amenity space than is proposed for plots 1 and 2. As the proposed dwellings would provide more private space than the approved scheme, whilst retaining sunny front gardens, it is clear that the appeal scheme is a betterment in amenity terms.

8.15 In light of the above, it is clear that the appeal development is acceptable in amenity terms.

9. Proposition 3

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.

9.1 The appellant's case under proposition 3 is set out without prejudice to our view that the proposed development complies with the Development Plan and is acceptable, even in the absence of the fallback.

9.2 The weight to be attributed to the fallback is determined in accordance with the legal principles set out in case law: *R v Secretary of State for the Environment and Havering BC [1998] Env LR 189*. This established 3 elements to the fallback test:

- Whether there is a fallback (i.e. a lawful ability to undertake the development);
- Whether there is a likelihood or real prospect of it occurring; and if so
- A comparison must be made between the proposed development and the fallback.

9.3 This test is referred to in the recent judgment in *Mansell v Tonbridge and Malling [2016] EWHC 2832 (Admin)* (subsequently upheld in the Court of Appeal) attached at Appendix EP8.

9.4 In this case, the site benefits from a number of planning permissions. The fallback being relied upon is as follows:

- Garage conversion to 1 detached dwelling – application reference HPK/2009/0689 (substantial start); and
- Conversion of the main building to 5no. apartments and the construction of a pair of semi-detached dwellings - application reference 2013/0503 (Substantial start, 1 apartment completed).

9.5 Copies of the approved drawings, decision notices and officer reports for these applications are attached at Appendices 9-14 of this statement.

9.6 The above would be completed in conjunction with the classroom conversion (1 detached dwelling) approved under application reference HPK/2009/0689. This is located next to the

appeal site and has been occupied for some time, notwithstanding some of the more recent improvement works.

- 9.7 The committee report for application ref: 2013/0503 (which proposed conversion of the main building to 5no. apartments and the construction of a pair of semi-detached dwellings) states:

“The proposal is to demolish the later additions to the original dwelling on the site, including the gymnasium. The original dwelling would then be converted into 5 apartments and two semi-detached properties would be constructed on the site where the previous gymnasium exists. The total number of dwellings thus being 7 plus the two already permitted in the converted buildings on the site.”

- 9.8 It is therefore our understanding that the council accept the appellant's lawful ability to undertake the quantum of development referred to above.

- 9.9 While the committee report and update report for the appeal application note that there is an enforcement investigation into the classroom conversion, that property falls outside of the appeal site and does not impact the development that could lawfully be undertaken on the appeal site if the appeal is dismissed. Furthermore, the occupant (who is related to the appellant company) of that property has not been contacted by the council in relation to this matter, despite numerous attempts to establish the basis of the allegations of unauthorised development, and no evidence has been presented by the LPA to suggest that the classroom conversion is not lawful.

- 9.10 Unless the LPA formally change their position on this matter and present substantiative evidence to support such a change of position, we consider it is reasonable to proceed on the basis set out by the planning officer in the delegated officer report for 2013/0503. Namely that the full quantum of the above development can lawfully be completed.

- 9.11 There is therefore a fall-back position and the first strand of the legal test is met.

- 9.12 The second strand of the test relates to the prospect of the development being carried out. There can be no doubt that the appellant wishes to maximise the development potential of the site. This is demonstrated by the past applications/permissions, by the fact that the classroom conversion and one of the apartments has been completed and by the current appeal application.

- 9.13 In *Mansell* the weighting to be attributed to a fallback development was considered. In that case the LPA had granted planning permission for redevelopment of an agricultural building and a bungalow, with 4 large dwellings, justified by a fallback potential to undertake alternative development, including converting the agricultural building using PD rights. The decision was challenged by a neighbour on various grounds. In particular we refer to paragraphs 11 - 41 of the judgment.
- 9.14 The substance of the challenge in relation to the fallback issue is summarised paragraph 28, including that it had not been shown that there was any real prospect of the alternative development occurring as no application for prior approval had been submitted; and the fallback scheme would additionally involve development requiring planning permission, for which no application had been submitted either. Consequently it was claimed to be no more than a theoretical prospect.
- 9.15 The judge stated that it was crystal clear from discussions between the council and the applicant's planning agent that the intention was to develop the site in one way or another. He found it wholly unrealistic to imagine that if permission was refused, the owner would not take advantage of PD rights to the fullest extent possible. In fact, he determined it would have been unrealistic to conclude that the interested party would do nothing to develop the site. The implication is clear – the fallback was more than a theoretical prospect, as the site had clear development potential, even though the details had not been approved.
- 9.16 Similar conclusions must be reached in this case. The existing site 'underachieves' in terms of the site's potential. A consideration of the fall-back is entirely absent from the landscape and urban design officers' assessments, which forms the basis of the case officer's conclusions on character and appearance. The fall-back position cannot be disregarded or attributed little weight without good reason. The second strand of the test relating to fall-back is therefore met.
- 9.17 The third part of the test requires a comparison between the proposed development and the fall-back. This is set out below with reference to each key element of the reason for refusal.

Relationship to the existing pattern of development and surrounding land uses

- 9.18 The proposed development would have a better relationship with existing pattern of development than the fallback. The development approved under application reference

HPK/2013/0503 includes a pair of semi-detached properties and car parking along the full extent of the South East boundary of the site, with a poorer relationship to the existing dwellings beyond that boundary.

- 9.19 In contrast, the appeal development (and in particular the revised landscaping scheme prepared by Barnes Walker) would strengthen the wooded and transitional character of the site through native tree planting along the full length of that boundary. The dominance of car parking would be reduced through a combination of driveways and garages, interspersed with further landscaping and trees. This would be more in keeping with the woodland setting than a continuous line of cars along the boundary adjoining the public footpath and existing residential development to the South East.
- 9.20 The sensitive landscaping of the site and the additional tree planting proposed in connection with the appeal development would also provide ecological benefits in comparison with the fallback and in preferable in that regard.

Scale

- 9.21 It has been shown under propositions 1 and 2 that the scale of the appeal development would be entirely acceptable and would not have a detrimental effect on the character or appearance of the area, nor would it be overbearing or give rise to amenity issues.
- 9.22 The cross sections submitted at the application stage also show that the appeal development would generally be situated at a lower level within the landscape than the fallback (which comprises the existing buildings at Taxal Edge and an additional pair of semi-detached dwellings that are yet to be constructed).
- 9.23 The fallback scheme also brings buildings closer to the public footpath and to residential properties to the South East, increasing the perception of scale from public and private locations.
- 9.24 The bulk of the appeal development would be further reduced by the incorporation of a sensitive landscaping scheme which would break up and soften the appearance of the development in contrast with the fallback, where built form would not be interspersed by trees and where soft landscaping would largely be restricted to the gardens of the semi-detached properties. The lack of planting along the South East boundary in the fallback development would again increase the prominence and the perceived scale of the development.

9.25 For these reasons, the appeal development would appear less dominant than the fallback. It would represent a betterment in terms of scale and massing.

Design

9.26 The council's Urban Design Officer raises concerns relating to:

- The use of retaining walls and proposed level changes
- The scale of the development (addressed above)
- The landscaping proposals

9.27 Having regard to the 2013 planning permission, this also incorporates level changes and retaining walls, as does the existing arrangement at the site, which uses them to create level areas for parking and built form. The Landscape Statement by Barnes Walker notes that the existing site levels are unlikely to be natural as remodelling would have occurred when the existing development was constructed (as has inevitably occurred on sloping sites throughout the Borough). Retaining walls are not an uncharacteristic feature of the local area. The appeal scheme responds directly to the characteristics of the site by setting the dwellings back against the slope of the land in accordance with advice in the Residential Design Guide.

9.28 When Compared with the fallback, the proposed levels and use of retaining walls would have no greater impact. The levels and positioning of the dwellings for the appeal scheme more closely reflects the advice of the Residential Design Guide and therefore is favourable to the fallback in design terms.

9.29 The image below shows the approved site for the semi-detached dwellings authorised by 2013/0503.

Figure 3: Approved location for semi-detached dwellings (viewed from the public footpath)



9.30 The former gym building that is present in the photograph has now been demolished, but gives an indication of how visible and prominent the pair of semi-detached properties would be when viewed from the public footpath to the South East of the site. These dwellings would also be taller, much closer to and have more of an impact on existing residential properties to the South East than the development proposed in the appeal application.

9.31 As noted above, in addition to these dwellings, almost the entirety of the South East boundary of the site would be occupied by parking and by the access road to the properties. In contrast, the appeal scheme would provide a softer edge to the development and the appearance of an enhanced woodland setting, which once again, is favourable to the fallback in design terms. Trees and green amenity areas would be present along the full length of the access road, providing a more sensitive landscape treatment than the fallback development which involves extensive areas of tarmac and hard/paved surfaces, with minimal soft landscaping.

Overbearing and shading impacts in respect of plots 1 and 2

- 9.32 The overbearing and shading impacts referred to in the reasons for refusal are included on the basis that they would result in unacceptable levels of residential amenity.
- 9.33 Under proposition 2 of this statement, we show that each of the proposed dwellings would enjoy good levels of residential amenity and that there would be no overbearing or shading impacts that would result in unacceptable levels of amenity for the future occupiers (including plots 1 and 2). This will be evidenced with reference to a daylight and shading study that has been undertaken to assess the daylight and sunlight that would be available to different parts of the properties. Notwithstanding that the study finds that the appeal development would meet the relevant BRE/best practice standards in respect of daylight and shading, it is also clear that it would provide a better and higher quality arrangement of outdoor amenity space than the fallback development.
- 9.34 The location of plots 1 and 2 on the appeal development correspond with the location of a dwelling that was approved by the council in 2010 without any concerns over the availability or quality of rear external amenity areas (the garage conversion). The only outdoor amenity area for the approved garage conversion (which can lawfully be completed), would be located alongside the access road and fronting an area of parking area serving the wider site. There would be virtually no private outdoor amenity space to the rear of the dwelling. This is illustrated below on the approved layouts for HPK/2009/0689 and HPK/2013/050.
- 9.35 The second image also shows that there would be no garden area for the apartments, which would be served by a yard, half of which would also be sited along the more shady northern boundary and further enclosed by an outbuilding. Furthermore, the garden area for the more southern of the semi-detached dwellings would not be visible from that property, reducing its amenity value and the suitability of the property as a family home, due to lack of surveillance of children utilising the space.
- 9.36 All of these factors lead me to conclude that the outdoor amenity space for the appeal development is far superior to the fallback in amenity terms, as it balances the provision of private rear areas, with sunnier front gardens, all of which would be subject to natural surveillance by the host properties

Figure 4: Site layout for garage conversion approved under HPK/2009/0689

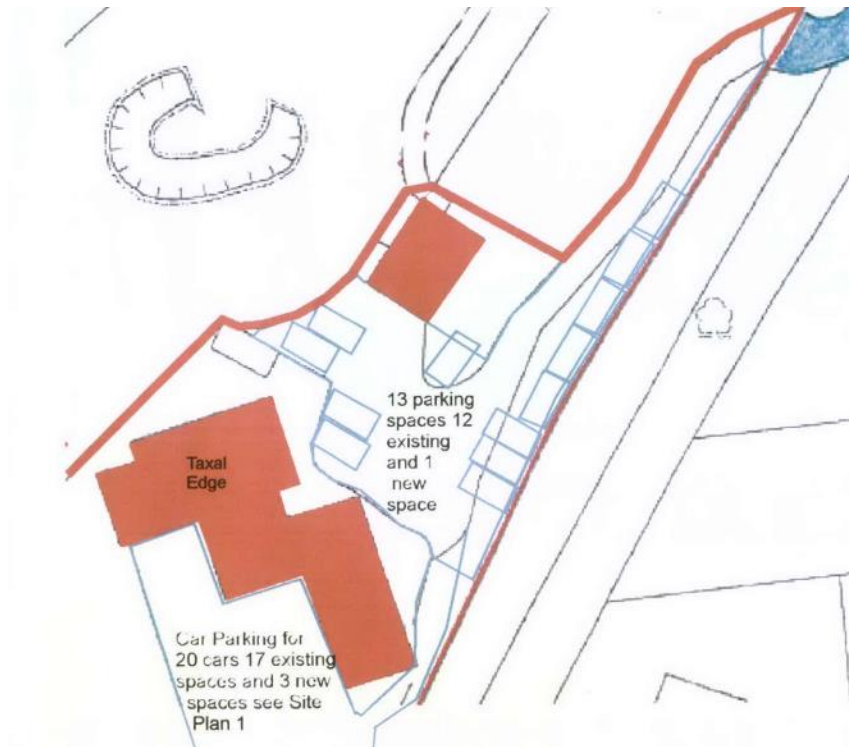
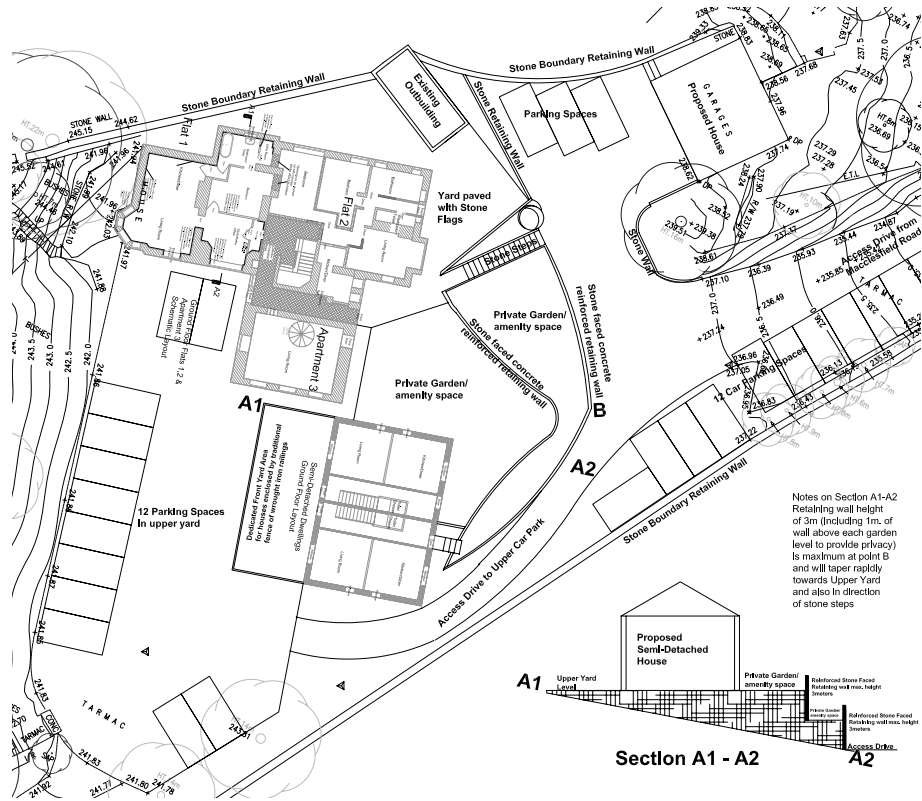


Figure 5: Approved site layout for permission reference HPK/2013/0503



9.37 Having regard to the above, significant weight should be given to the fallback option as it is a realistic and viable alternative to the development proposed, which is less favourable than the appeal scheme in relation to each strand of the reasons for refusal of the application.

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

10. Proposition 4

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

- 10.1 Paragraph 11 of the Framework states that plans and decisions should apply a presumption in favour of sustainable development.
- 10.2 Paragraph 8 of the Framework explains that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives) These are addressed below in the context of the current application.

a) an economic objective

- 10.3 Paragraph 8 of the Framework explains that the economic objective is:

“to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure”

- 10.4 The proposed development would meet this objective as discussed below.
- 10.5 During the build programme of the whole site, construction related jobs and indirect jobs would be created. The appellant is a local development company, with a local labour force, which seeks to support other local businesses by sourcing materials from High Peak and immediately surrounding areas wherever possible. This would benefit local contractors and suppliers.
- 10.6 The proposed development would help contribute to ensuring the Borough has a stable workforce in terms of ability and age. This is especially the case here where the applicant is a local developer with a proven track record in delivering high quality development which responds to the needs of the local market. Once occupied, the residents of the scheme would spend money in Whaley Bridge and other towns in the High Peak. The proposed development would therefore generate spending in the Borough, which would help create full time jobs in the

local retail and leisure sectors. In addition to the above, the proposed development would deliver a New Homes Bonus and Council Tax income for the Council.

b) a social objective

10.7 Paragraph 8 of the Framework explains that the social objective is:

“to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering well-designed, beautiful and safe places, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being;”

10.8 There are three strands to this criterion: design and accessibility; the provision of houses where required; and supporting strong, vibrant and healthy communities.

10.9 Design has been comprehensively dealt with earlier in this appeal statement. It has been shown that the development respects and responds to the local context. It is architecturally appropriate and would be set within carefully considered landscaping that would strengthen the character of the area. In terms of accessibility, the site is located immediately adjacent to Whaley Bridge, one of the key towns and focus for development in the adopted and emerging development plan.

10.10 Whilst it is of note that the Council claims it can demonstrate a deliverable five year housing land supply in accordance with paragraph 73 of the Framework, Policy H 1 of the HPLP allows for residential development beyond existing built up area boundaries as long as specific criteria are met even when the Council can demonstrate a five year supply of land i.e. being able to demonstrate a deliverable five year supply is a minimum requirement, it is not a ceiling.

10.11 Regardless on the position regarding the Council's five year supply, the site would contribute to meeting the housing needs of Whaley Bridge, the Central Area and the Borough as a whole. Whaley Bridge is identified as one of five market towns. Policy S 2 of the HPLP: “*Settlement Hierarchy*” states that the market towns will be the main focus for new housing.

10.12 Policy S 3 of the HPLP: “*Strategic Housing Development*” explains that the housing requirement between 2011 and 2031 is 7,000 dwellings. It identifies a residual housing requirement of 3,549 dwellings (as at December 2014). This residual requirement is set out in table 2 of the HPLP (page 38), which also explains that 2,976 dwellings were on committed sites at December 2014. These

sites are listed in appendix 4 of the HPLP. Included as a commitment are the 7 no. dwellings at Taxal Edge approved under permission HPK/2013/0503 (page 222 of the HPLP). Table 4 of policy S 3 then explains that 100 dwellings will be delivered on small sites in Whaley Bridge excluding the sites which already had planning permission at December 2014.

10.13 Consequently, the delivery of housing at the site is a significant benefit. The Applicant is an active house builder in the High Peak, with sites across the Borough but specifically in the Central Area. They have an excellent track record of delivering sites. Subject to the approval of the current application, the Applicant is keen to make a start on the dwellings as soon as possible.

10.14 In addition, policy H 3 of the HPLP: “*New Housing Development*” states that the Council will require all new residential development to address the housing needs of local people. The proposed development would be in accordance with this policy for the following reasons:

- It would provide housing types that would meet the requirements and future needs of a wide range of household types;
- It would assist in providing a mix of housing that contributes positively to the promotion of a sustainable and inclusive community taking into account the characteristics of the existing housing stock in the surrounding locality;
- It would include a proportion of housing suitable for newly forming households; and
- It would provide flexible accommodation which is capable of future adaptation.

10.15 Lastly, and as referred to earlier in this statement, the redevelopment of this site would lead to a clear break from the past history of this particular site and essentially take on a social responsibility of giving closure to the unfortunate experiences of some of the previous residents of the site during its time as a residential school.

10.16 The social role of sustainable development is met.

c) an environmental objective

10.17 Paragraph 8 of the Framework explains that the environmental objective is:

“ to protect and enhance our natural, built and historic environment; including making effective use of land, improving biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.”

10.18 The proposed development would result in the redevelopment of a previously developed site and would represent an efficient use of land. The site is in flood zone 1 and therefore not at risk of flooding or at risk of flood from rivers or reservoirs. The recommendations of the arboricultural report are followed in the design; and the landscaping of the site, and additional proposed tree planting would result in ecological benefits in comparison with both the current position and the fallback. The replacement of an old building with dwellings of modern construction and which accord with current building regulations, will provide benefits in terms of energy efficiency and climate change.

11. Proposition 5

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.

11.1 There are no other planning, environmental or technical considerations that would prevent planning permission being granted. The matters addressed below did not form part of the reason for refusal.

Ecology

11.2 Policy EQ 5 of the HPLP states that the biological and geological resources of the Plan Area and its surroundings will be conserved and where possible enhanced.

11.3 An extended phase 1 habitat survey and bat emergence survey were prepared by NLG Ecology.

11.4 They noted that as the site was within the SSSI Impact Zone for Toddbrook Reservoir SSSI, consultation could be required with Natural England. This consultation was undertaken by the LPA and Natural England confirmed they had no objection to the development.

11.5 NLG also recommended the following:

- Vegetation clearance should be avoided within 'priority' habitat areas and where possible, should be kept to a minimum.
- Overnight lighting should be avoided.
- Specific methods should be implemented when removing areas of rhododendron to prevent further spread, including the use of herbicides and re-treatment/cutting of new growth on treated stumps.
- The main building was assigned high bat roosting potential; other buildings had a moderate and low roosting potential; and trees and woodland were also identified to have roosting potential. Two dusk emergence surveys and one dawn re-entry survey were undertaken and confirmed a small number of summer and occasional summer day roosts for single pipistrelle bats, all of which were within the main building. The assessment advised that as there was limited hibernation potential for bats, works to the identified roost areas should be undertaken during the months that the summer roosting bats are least likely to be there, which is October to March inclusive and could be done under a Low Impact Class License.

- The site's habitats offer nesting opportunities to a range of common bird species. If removal of any suitable vegetation is required, this should take place outside of the main nesting season.
- A precautionary working method statement is required in respect of reptiles.
- A desk study returned over 30 records of badger within 2Km of the survey area. As a precaution, if any holes suspected to be badger sett entrances are unexpectedly discovered during the works, work must cease and an ecologist must be contacted for advice.
- If removal of dense scrub or brush pile is required then it should be done by hand taking care to look out for hedgehogs. If hedgehogs are found they should be safely relocated.

11.6 All of the above can be dealt with through the use of suitable working methods and the use of planning conditions as necessary.

Trees, woodland and hedges

11.7 Policy EQ 9 of the HPLP states that the Council will protect existing trees, woodlands and hedgerows.

11.8 The phase 1 ecology report confirmed that to compensate for loss of woodland habitats the appellant was undertaking tree planting of 1,500 whips of hawthorn (*Crataegus monogyna*), blackthorn (*Prunus spinosa*), field maple (*Acer campestre*), hazel (*Corylus avellana*) and crab apple (*Malus sylvestris*) along the boundaries of the woodland (outside of the appeal site), to provide woodland edge habitat and diversify the woodland structure. A detailed woodland management plan is also being developed by NLG Ecology on behalf of Treville Properties for the area indicated in blue surround on Figure 4 of the phase 1 report: Ownership Boundaries. The aim of the woodland management plan is to enhance and ensure the longevity of the surrounding priority woodland habitats for the future through sensitive woodland management practices.

11.9 Arboricultural reports (comprising tree schedule, constraints plan, arboricultural impact assessment, method statement and tree protection plan) were prepared by Thompson Tree Services and submitted to support the application. The documents were prepared in close consultation with the council's Tree officer and responded to their feedback on the scheme.

11.10 Thompspon Tree Services concluded that:

"The overall impact of the proposed development on the tree population of the development site and wider local environment is minor.

...with...well- considered replacement planting, and the development of a woodland management plan, the development can be viewed as an opportunity to enhance the arboricultural value of the area, the resilience and sustainability of its tree population and to provide net benefit in the long-term.

...provided that the demolition and construction is carried out in accordance with the recommendations detailed within this report, the Arboricultural Method Statement, and the Construction Method Statement, then there is no arboricultural reason as to why the proposal cannot be implemented."

11.11 Following the submission of the additional tree reports and information from Thompson Tree Services, the LPA confirmed that the development was acceptable from an arboricultural perspective. The officer report to the April 2021 meeting of the Development Control Committee states:

"On balance therefore the scheme would accord with LP EQ9 in particular subject to the imposition of appropriate planning conditions to secure site landscaping and mitigation / management." (paragraph 7.45)

Amenity

11.12 The amenity related reasons for refusal have been addressed under proposition 2. However, these were focused on the amenity of the future occupants of the proposed dwellings.

11.13 In addition to providing a high standard of accommodation and living conditions for future residents, the development would also protect the amenity of existing residents in the immediately surrounding area in accordance with Local Plan Policy EQ6. This requires development to achieve a satisfactory relationship to adjacent development and not to cause unacceptable effects by reason of visual intrusion, overlooking, shadowing, overbearing or other adverse impacts on local character and amenity.

11.14 The LPA received a number of comments from third parties following consultation on the application. The responses included both objections and positive letters of support.

11.15 The appellant and Emery Planning have also received direct letters of support for the scheme from local residents and enquiries from prospective purchasers that are interested in buying the dwellings if permission is granted. An example of correspondence received from a local resident

and prospective purchaser is attached at Appendix EP15. It makes a number of observations, including:

- A new build would improve the road and access.
- They would like to see full redevelopment of the site , to make it safe , including the perimeter wall and stop it being an eye sore .
- The current unit is completely environmentally unfriendly and a modern build will have benefits for climate change.

11.16 The objections at the application stage were comprehensively addressed in correspondence with the LPA, which has been submitted as part of the appeal documentation. It should be noted that allegations regarding access and ownership rights are not planning matters that would provide a basis for refusal of the application, as acknowledged by the absence of reference to this within the reason for refusal of the application.

11.17 While concerns were raised by a small number of local residents regarding the potential for overlooking of gardens and dwellings to the South East of the site, the separation distances where new dwellings would directly face the rear elevations of existing dwellings, are in the region of 60m. Although this would drop to nearer 40 at the northern end of the site, those properties would be situated at an angle to the existing dwellings on Linglongs and Beech Rise, and the set backs are still far in excess of the guidelines in the Residential Design Guide SPD. The dwellings would also be partially screened by existing and proposed trees within and beyond the site. Furthermore, the front gardens to the proposed dwellings would be sited further from the rear gardens of existing adjacent properties than those of the approved semi-detached dwellings (the fallback development - application reference HPK/2013/0503).

11.18 The visual effects of the development have been considered earlier in this statement and are addressed in detail within the Landcape Statement by Barnes Walker. However, it is clear that the layout, scale and detailed design of the development in combination with a sensitive landscaping scheme would ensure the proposed dwellings did not have an overbearing effect on existing properties at Beech Rise and Linglongs Avenue. The development would also be less dominant than the fallback scheme in views from existing dwellings.

11.19 As noted above, a number of residents in the local area have written letters in support of the application, praising the design and confirming they consider the development would be, *"a big improvement on the original building"* and *"huge improvement to this area"*.

11.20 Overall, it is considered that the development is entirely acceptable in amenity terms.

11.21 In the April 2021 committee report, the case officer concludes:

There would be sufficient space between the scheme properties to safeguard privacy standards maintain in respect of neighbouring residential development with a good level of amenity space for the majority of plots. (Paragraph 7.47)

Highways

11.22 Derbyshire County Council Highways has confirmed that subject to the imposition of conditions, the development would not have any unacceptable impacts on highway safety and that the the proposed access arrangements are acceptable, with adequate parking and turning areas provided within the site. The April 2021 Committee report for the application confirmed that all highways matters could be dealt with by suitably worded planning conditions and that accordingly, *“the proposal is in accordance with LP Policy CF6 and the NPPF and with the relevant aspects of LP Policy H1”*.

Affordable housing and housing mix

11.23 Local Plan Policy H3 states that the Council will require all new residential development to address the housing needs of local people by:

a) Providing affordable housing in line with Policy H4 (this policy details criteria regarding affordable housing which include references to site size and number of dwellings)

11.24 In line with national planning policy, there is no requirement for affordable housing as the site does not constitute a major development and is not located in a designated rural area to trigger the requirement for affordable housing provision

b) Providing a range of market and affordable housing types and sizes 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.

11.25 Detailed justification for the proposed mix of house types was submitted at the application stage, including reference to other relevant applications and appeal decisions. The justification confirms that the housing needs survey relied upon by the SHMA is out of date; the policy advice

in the SHMA is to be applied flexibly; up to date information from estate agents in Whaley Bridge shows a high level of demand for 3 and 4 bedroom detached family homes; and the proposed house mix takes into account the characteristics of the existing housing stock in the surrounding locality in accordance with criterion c of Policy H3.

11.26 In light of the above and the limited scale of the development (meaning that any deficit of smaller properties would be unlikely to cause harm in terms of the overall balance of housing stock), the LPA accept that that the proposed house mix is acceptable in relation to Policy H3 and does not constitute a reason to refuse planning permission.

Pollution control and unstable Land

11.27 Policy EQ 10 of the HPLP states that the Council will protect people and the environment from unsafe, unhealthy and polluted environments.

11.28 A Phase 1 Site Investigation report has been prepared by Peak Environmental Solutions and has been submitted in support of the application. The report concludes by identifying a moderate to very low risk from the limited sources of potential contamination at the site. It recommends a phase 2 report which can be secured by planning condition.

11.29 There is no conflict with policy EQ 10.

Flood risk management

11.30 Policy EQ 11 of the HPLP states that the Council will support proposals that avoid areas of future flood risk, and which do not increase the risk of flooding elsewhere, where this is viable and compatible with other policies aimed at achieving a sustainable pattern of development.

11.31 The site is in flood zone 1. It is not at risk of flooding or at risk of flood from rivers or reservoirs.

11.32 There is no conflict with Policy EQ 11.

Summary

11.33 It has been shown under the earlier propositions that the reasons given for refusing planning permission are unfounded. Under this proposition it has been demonstrated that the

development is acceptable in all other respects and complies with other relevant planning policies in the Development Plan.

12. Summary and conclusions

- 12.1 This statement supports an appeal against the refusal of High Peak Borough Council to grant planning permission for the demolition of the existing building known as “Taxal Edge” and the associated detached garage building, and the erection of 4 no. semi-detached and 3 no. detached dwellings at land at Taxal Edge, 184 Macclesfield Road, Whaley Bridge. A separate Landscape Statement by Barnes Walker has been submitted alongside this planning appeal statement. Taken together the two documents comprise the appellants full Statement of Case for the appeal.
- 12.2 The appeal application sought planning permission for demolition of the existing building known as “Taxal Edge” and the associated detached garage building, together with the erection of 4 no. semi-detached and 3 no. detached dwellings. Planning permission was refused on 19 April, shortly after the submission of an appeal against non-determination.
- 12.3 The decision notice cites one reason for refusal which is set out in Section 3 of this statement.
- 12.4 The case for the appellant has been set out with reference to a number of propositions. A summary of these are provided below.

Proposition 1: There is no conflict with the Development Plan Policies referred to in the reason for refusal of the application and the proposal is specifically in accordance with policy H1 which seeks to deliver housing on the edge of the settlement.

- 12.5 The development plan comprises the High Peak Borough Local Plan 2016 (HBLP). The decision notice states that the proposal would be contrary to 8 policies. However it has been shown that the appeal development fully accords with these policies.
- 12.6 The development would meet a number of the sustainability objectives set out in Policy S1 of the Local Plan including by making efficient use of land and providing a mix of quality homes in a sustainable location where there is access to a broad range of jobs, services and facilities in Whaley Bridge. Whaley Bridge is identified one of five market towns which are the main focus for housing, employment and service growth under Policy S2. There is no conflict with these policies or with policy S1a of the HPLP, which reflects the presumption in favour of sustainable development at paragraph 11 of the Framework. Nor is there conflict with Policy S6.

- 12.7 Local Plan Policy H1 seeks to encourage 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.
- 12.8 It has been shown that the appeal development constitutes both redevelopment and infill development. The site is already in residential use and has permission for further residential development. It is clearly a suitable location for housing.
- 12.9 The second part of Policy H1 sets out the circumstances under which the council will consider granting permission for residential development outside of the built-up area boundary. It has been shown that the appeal development would comply with each the criteria under this part of the policy.
- 12.10 It would adjoin built up area boundary both physically and in accordance with the definition set out in recent planning case law in *Corbett & Cornwall Council and Wilson [2021]* which includes "next to" and "very near".
- 12.11 Notwithstanding the built-up area boundary on the proposals map, the Landscape Statement by Barnes Walker actually finds that the development would be located within the perceived extent of the settlement. It also demonstrates that:
- the development would be in keeping with the transitional character of the site and would be well related with the existing pattern of development; and
 - The appeal development would not harm the character of the settlement or the wider countryside, nor would it be visually prominent.
- 12.12 In terms of the remaining requirements of the policy, the scale of the development is very modest in relation to the scale of Whaley Bridge and is clearly appropriate; there is no dispute that the development would have reasonable access by sustainable means, to the various services and facilities in Whaley Bridge; and the local and strategic infrastructure is capable of meeting the requirements arising from the development. The requirements of Policy H1 are fully met.
- 12.13 In respect of HPLP policies EQ2, EQ3 and EQ6, it has been shown that the development would maintain the aesthetic and biodiversity qualities of the landscape and would be sympathetic to the distinctive character of the area.

12.14 The Landscape Statement by Barnes Walker provides a detailed assessment of the sites defining characteristics and relationship to the wider landscape and settlement of Whaley Bridge. It has been shown that the appeal development would respond to this distinctive character; respect the aspects of the Landscape Character SPD that are relevant to the site; and would reflect the key themes and guidance in the council's Design SPDs. The proposed native tree and shrub planting would provide improved levels of screening and containment to the site which would restore and enhance the wooded character and assimilate the development into the wooded, settlement edge.

12.15 It is concluded that the site can accommodate the proposed development without harm to the character of the settlement or the wider countryside i.e. the Settled Valley Pastures and that the design is entirely appropriate and accords with relevant local design guidance. There would be no impact on the landscape setting of the Peak District National Park.

Proposition 2: 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.

12.16 The council accept that the development incorporates suitable separation distances (for existing and proposed dwellings), and does not give rise to any amenity issues in respect of overlooking.

12.17 A daylight and shading study has been undertaken which demonstrates that all of the properties would have access to amenity space which meets relevant BRE standards in terms of daylight and shading.

12.18 The daylight and shading study also confirms that the interiors of the properties would have adequate daylight.

12.19 There are no adopted local or national standards that require a specific quantum of outdoor amenity space.

12.20 Similarly, there is no policy requirement for external space to be provided on a specific side of a dwelling.

12.21 The proposed arrangement of front and rear gardens provides a good level of outdoor space for each dwelling and takes advantage of the Southeast facing frontages in line with local guidance in the Residential Design SPD.

12.22 residents would also have good access to the countryside, public rights of way, and public open spaces within Whaley Bridge and the nearby Peak District National Park.

12.23 The council have approved a dwelling in the same location as the plots with which they take issue in respect of shading impacts. This would have less private/rear amenity space than is proposed for plots 1 and 2. As the proposed dwellings would provide more private space than the approved scheme, whilst retaining sunny front gardens, it is clear that the appeal scheme is a betterment in amenity terms.

12.24 The appeal development is acceptable in amenity terms.

Proposition 3: 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.

12.25 Notwithstanding our view that the appeal development is acceptable in its own right, this appeal statement has set out the legal principles relating to fallback development as a material consideration and shown that each of the three tests established in *R v Secretary of State for the Environment and Havering BC [1998] Env LR 189* has been satisfied.

12.26 The fallback being relied upon is as follows:

- Garage conversion to 1 detached dwelling – application reference HPK/2009/0689 (substantial start); and
- Conversion of the main building to 5no. apartments and the construction of a pair of semi-detached dwellings - application reference 2013/0503 (Substantial start, 1 apartment completed).

12.27 The above development has been shown to lawful; to have a real prospect of occurring; and to be more harmful than the appeal development in respect of the reasons for refusal of application reference HPK/2020/0301.

12.28 The appeal development is preferable to the fallback for the following reasons:

- It retains a greater set back from existing dwellings beyond the South East boundary of the site and has a better relationship with development beyond that boundary.
 - It would strengthen the wooded and transitional character of the site through native tree planting along the full length of South East boundary and would break up the dominance of car parking in comparison with the fallback
 - It would be situated at a lower level within the landscape than the fallback and be perceived as having reduced scale, bulk and prominence from public and private locations.
 - When Compared with the fallback, the proposed site levels and use of retaining walls would have no greater impact. However, the positioning of the dwellings for the appeal scheme more closely reflects the advice of the Residential Design Guide and therefore is favourable to the fallback in design terms.
 - The appeal scheme would provide a more sensitive landscape treatment and softer edge to the development than the fallback, which involves extensive areas of tarmac and hard/paved surfaces, with minimal soft landscaping.
 - The outdoor amenity space for the appeal development balances the provision of private rear areas, with sunnier front gardens, all of which would be subject to natural surveillance by the host properties. In contrast, the fallback development provides no gardens for the apartments and there are limitations with some of the other properties in terms of the relationship of the external spaces to the host dwellings.
- In light of this (and notwithstanding our view that the proposed development is policy compliant), even if it is found that the appeal development would give rise to a degree of conflict with the Development Plan, it is clear that the fallback is a material consideration that indicates planning permission should be granted for the development.

Proposition 4: 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

12.29 The development would contribute to the 3 objectives of sustainable development.

12.30 It would support the economic objective through the provision of construction related jobs and indirect jobs and help contribute to ensuring the Borough has a stable workforce in terms of ability and age. The residents of the scheme would spend money locally, which would help create full

time jobs in the local retail and leisure sectors. In addition to the above, the proposed development would deliver a New Homes Bonus and Council Tax income for the council.

12.31 It would contribute to the social objective through high quality design and would contribute to meeting the housing needs of Whaley Bridge, the Central Area and the Borough as a whole. Redevelopment of the site would also lead to a clear break from the past history of this particular site and essentially take on a social responsibility of giving closure to the unfortunate experiences of some of the previous residents of the site during its time as a residential school.

12.32 The development would support the environmental objective of sustainable development by making efficient use of land through the use of a previously development site; by creating a sensitively design high quality environment; and through a planting scheme that would provide ecological benefits.

Proposition 5: 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.

12.33 Our planning appeal statement demonstrates that all other site specific and policy considerations including ecology, trees, contamination and highways can be addressed through the use of planning conditions.

12.34 While concerns have been raised by a small number of local residents regarding the potential for overlooking of gardens and dwellings to the South East of the site, the separation distances are well in excess of the guidelines in the Residential Design Guide SPD and the dwellings would be partially screened by existing and proposed trees within and beyond the site.

12.35 The site is not at risk of flooding and the LPA accept that that the proposed house mix is acceptable in relation to Policy H3 and does not constitute a reason to refuse planning permission.

12.36 It is therefore clear that 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 NPPF.

Conclusion

12.37 This appeal statement has demonstrated that the appeal proposal complies with the relevant policies in the Development Plan. The reasons for refusal given in the decision notice dated 19 April 2021 are unfounded and there are no other material considerations to indicate that planning permission should not be granted.

12.38 It is therefore requested that the appeal is upheld, and planning permission granted for the development in accordance with paragraph 11 of the Framework and the presumption in favour of development.

13. Appendices

- EP1. October 2020 committee report
- EP2. November 2020 committee report and update report
- EP3. April 2021 committee report and update report
- EP4. Written submissions by Emery Planning re: April 2021 development control committee
- EP5. Decision Notice - appeal application
- EP6. Decision notice and location plan ref. HPK/2008/0069
- EP7. Corbett & Cornwall Council and Wilson [2021] EWHC 1114 (ADMIN)
- EP8. Mansell v Tonbridge and Malling [2016] EWHC 2832 (Admin)
- EP9. Decision notice ref. HPK/2009/0689
- EP10. Drawings approved under application ref. HPK/2009/0689
- EP11. Decision notice ref. 2013/0503
- EP12. Officer report ref. 2013/0503
- EP13. Drawings approved under application ref. 2013/0503
- EP14. Daylight and Sunlight Assessment dated 28.05.2021
- EP15. Local resident email of support/interest