

Planning Statement

For Treville Properties Ltd | 22-166

Application for domestic garage - Taxal Edge, Macclesfield Road, Whaley Bridge, SK23
7DR

Project: 22-166
Site Address: Taxal Edge, Macclesfield Road, Whaley Bridge, SK23 7DR
Client: Treville Properties Ltd
Date: 18 April 2023
Author: Lynn Jones
Approved by: Rawdon Gascoigne

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1. Introduction

- 1.1 This statement supports an application for a detached outbuilding containing garaging and office space, to serve a residential dwelling at Taxal Edge, Macclesfield Road, Whaley Bridge. It assesses the development against the relevant requirements of the development plan and national planning policy and demonstrates that the proposals are acceptable in planning terms.

The proposed development

- 1.2 The proposed development comprises a garage and office building which would be of single-story construction. It would measure approximately 12.1m x 7m but would be set into the existing slope to the front of the host dwelling such that only part of the building would be visible above ground level. It would have a flat roof, which would sit at a similar level to the front entrance of the property, enabling the roof of the structure to be used as amenity space. The design incorporates a glazed barrier at roof level to define the edge of the space and minimise the visual mass of the structure in comparison with a solid boundary wall. Internally the building would be split into a double garage and a home office space that could be used flexibly for other purposes depending on the needs of future residents. Access to the garage would be taken off the existing driveway, with space provided to the front of the garage to enable vehicles to turn.



2. Site description

- 2.1 The application site comprises land associated with a detached two-storey dwelling at Taxal Edge.
- 2.2 The site is located on a wooded slope on the edge of the settlement of Whaley Bridge and within the grounds of a former children's home which has been partially converted to apartments. The dwelling is a former classroom building which has been converted to residential use. It is clad in stone, with a traditional slate roof and dormer windows. There is currently no garaging for the property.
- 2.3 The planning history for the host dwelling and the wider site is detailed in Section 3 of this statement below.
- 2.4 In a recent appeal relating to the wider site (ref. APP/H1033/W/21/3272745, Appendix EP1), the Inspector described the site context as follows:

“9. The site lies outside the defined built-up area boundary, within what is technically ‘countryside’, but which forms an integral part of a collection of residential properties located on the periphery of this market town. While separated from the defined built-up area by a public right of way, visually and spatially, the site sits within the established pattern of development.

10. The site is occupied by substantial buildings, originally erected as what is now identified as a Grand Villa, it has been used as a children's home and more recently conversion works commenced to provide up to 7 flats. The land surrounding the buildings would have been formal landscaped gardens and associated woodland.

- 2.5 In terms of the pattern of development in the surrounding area, the inspector noted that:

“...Terraces and estates of houses are in the main located on the lower slopes, with larger detached dwellings set in substantial grounds located higher up. Existing development on the site, in conjunction with adjacent developments, demonstrate this intrinsic landscape characteristic.”



3. Background and planning history

- 3.1 A summary of the planning history for the site is set out at appendix EP2.
- 3.2 As noted above, the host property was originally a classroom block that formed part of a children's home at Taxal Edge. It was converted to a dwelling by the former owner following planning permission being granted for its change of use as part of a wider application to convert the main building into seven apartments and for the conversion of a disused garage (planning permission reference HPK/2009/0689). Although the classroom was occupied as a dwelling, the works to the main house and disused garage were not completed and in December 2013, further planning permission was granted for an alternative scheme of development comprising 5 apartments within the main building and 2 new semi-detached houses in the area of the existing gymnasium (planning permission reference HPK/2013/0503).
- 3.3 Elements of development were undertaken in accordance with the plans approved under HPK/2013/0503. However, not all of the pre-commencement conditions were discharged and the development was not completed.
- 3.4 A further planning application (reference HPK/2020/0301) was submitted in July 2020 seeking permission for demolition of the existing building known as "Taxal Edge" and the detached garage building and the erection of 7 no. dwellings. This application included proposals for a detached garage building to serve the former classroom, which was the same as that shown on the drawings for the current application. An appeal against non-determination was lodged in April 2021 and ultimately determined by means of a Public Inquiry after being conjoined with an enforcement appeal (reference APP/H1033/C/22/3297854, appendix EP3) relating to unauthorised operational development at the former classroom.
- 3.5 The alleged unauthorised development was described as: *"the raising of the roof and steepness of the pitch of the roof, the insertion of three dormer windows on the eastern roof slope and changes to fenestration on the eastern elevation"*. The enforcement appeal was allowed under ground A (that planning permission should be granted for the matters alleged in the notice). As a result, those works now benefit from planning permission and the dwelling as it currently stands has been confirmed to be acceptable in planning terms. While the enforcement appeal was successful, the S78 appeal (ref. APP/H1033/W/21/3272745) was dismissed as the Inspector considered that,

"The scale, massing and spread of the proposed development across the site would... be out of keeping with the established pattern of development in this location. It would also be visually incongruous, resulting in significant harm to the intrinsic character and appearance of the landscape..."



- 3.6 As a result of the above, the inspector found conflict with Local Plan Policies S1, S6, H1 & EQ2. However, the decision made it clear that the harm related to the cumulative effects of the entirety of the residential development proposed rather than its constituent parts, which when taken individually, accorded with local building typologies and incorporated high quality design features. The issues identified with the development related to the small separation distances between the new dwellings, together with the orientation of the proposed buildings, which the inspector felt would appear a single built mass when viewed from a number of locations within and beyond the boundaries of the site. No issues were identified with the proposed garage for the converted classroom.
- 3.7 The inspector also found that there would be an unacceptable level of amenity for future occupiers of two of the units (located furthest away from the former classroom) as a result of the arrangement of gardens and retaining walls, leading to conflict with Local Plan Policies S1 and EQ6. No conflict was identified by the inspector with any other Local Plan Policies.

The baseline for assessment of the development

- 3.8 The above appeals established that the applicant is no longer able to fall back on/complete the developments authorised by permissions reference HPK/2009/0689 and HPK/2013/0503 largely as a result of the incompatibilities of the differing permissions and doubt around which permission could be said to have been lawfully implemented. However, as outlined at paragraph 6 of the appeal decision, it was accepted by all parties at the inquiry that the following ‘in principle’ forms of development are acceptable in planning terms:
- Conversion of the main building into up to 7no apartments;
 - The extension of the main building to provide further apartments, or alternatively the erection of 2 semi-detached dwellings on the site of the former gymnasium;
 - Residential conversion of the remaining outbuilding (the garage);
 - A garage for the former classroom block;
 - The residential use of the classroom block (which by virtue of the successful enforcement appeal can be retained as existing).
- 3.9 A copy of the appeal decisions are attached at Appendix EP1 and EP3. This application seeks permission for the erection of the garage referred to in the above list. As well as being found to be acceptable in principle, the Inspector did not identify any harm in respect of the design of this element of the development.



4. Planning Policy Context

- 4.1 Section 38(6) of the Planning and Compulsory Purchase Act (2004) requires applications for planning permission to be determined in accordance with the development plan, unless material considerations indicate otherwise. In this case, that is the High Peak Borough Local Plan (HPLP), which was adopted in 2016. The National Planning Policy Framework (the Framework) is also a material consideration in planning decisions.

The Development Plan

- 4.2 The HPLP policies of most relevance to this application are listed below:

- Policy S 1: Sustainable Development Principles;
- Policy S 1a: Presumption in Favour of Sustainable Development;
- Policy EQ 2: Landscape Character;
- Policy EQ 3: Rural Development;
- Policy EQ 6: Design and Place Making;
- Policy EQ 9: Trees, Woodland and Hedgerows;
- Policy CF 6: Accessibility and Transport

- 4.3 As noted above, the decision for appeal reference APP/H1033/W/21/3272745 accepted that the proposed garage was acceptable in principle and provided some useful analysis with regard to the design. This statement draws upon that commentary and sets out the compliance of the proposals with relevant planning policy.

Other material considerations

- 4.4 In addition to the above policies, the following supplementary planning documents are relevant to the application:
- High Peak Design Guide (2018)
 - High Peak Residential Design SPD (2005)
 - Landscape Character SPD (2006)



National Planning Policy

4.5 The National Planning Policy Framework (the Framework) sets out the government's planning policies for England and how these should be applied. Paragraph 11 outlines 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 this 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 this Framework taken as a whole.

4.6 Chapter 12 of the Framework emphasises the importance of high-quality design. Paragraph 130 indicates that development should achieve a number of objectives, including creating places that are *“safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.”*

4.7 134 states that development that is not well designed should be refused. Conversely, it indicates that 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 which use visual tools such as design guides and codes



5. Planning merits

- 5.1 The provision of a garage for the classroom conversion accords with relevant planning policy requirements in respect of the principle of development. The site is located outside of the settlement boundary of Whaley Bridge (but is not within the Green Belt), where Local Plan Policy EQ3 states that only certain types of new residential development will be allowed. These include:

Extensions to existing dwellings provided they are subsidiary to the building and do not have an adverse impact on the character of the landscape.

- 5.2 It should be noted that the Planning Inspector for appeal reference APP/H1033/W/21/3272745 did not find any conflict with this policy as a result of the proposed garage or any other aspect of the development proposed under application reference HPK/2020/0301.
- 5.3 The garage would have a floorspace of approximately 87m², but would be set back into the slope, such that the above ground volume of the building would be just 127m³. This represents less than 15.7% of the volume of the main house, which has an above ground volume of well over 800m³ (807m³ excluding the dormer windows).
- 5.4 In terms of the impact of the proposed garage on landscape character and the requirements of Local Plan Policy EQ2, the garage has been designed to reflect the style and design of the host property, which the Inspector for appeal reference APP/H1033/C/22/3297854 noted was, *“of high quality design and materials”*. The Inspector went on to state that:

“The dwelling’s current design and appearance is reflective of the older properties in the locality, while the additional glazing meets the modern aspiration of bringing the outside in to the home.”

- 5.5 The proposed office space within the garage building would benefit from a similar arrangement, with windows to ‘bring the outside in’ and provide a quiet workspace with a degree of separation from the main living spaces within the dwelling.
- 5.6 In terms of existing features, Local Plan Policy EQ2 requires:

...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.

- 5.7 The development would comply with this requirement as it would be restricted to the area in front of the existing dwelling, with the garage being situated downslope and within the curtilage of the existing



property. It would be set back into the hillside and make use of the existing site levels such that the roof of the building would tie in with the ground levels immediately in front of the dwelling and enable continued use of the area above the garage and study, as outdoor amenity space. Although there is a beech tree in relatively close proximity to the site for the proposed garage, a tree survey has been undertaken in connection with proposals for the site which confirms this can be retained. Indeed, no tree removal is required to facilitate the development and there would be no removal of any other important natural or manmade features.

5.8 The council's Residential Design Guide notes that:

"Parking within the plot can include garages, driveways and hard standing curtilage parking."

5.9 It goes on to advise that:

"Garages are most successful in reducing the impact of parked vehicles but their scale and location needs to be treated with care. House types where the garage dominates the building's frontage are to be avoided and as matter of principle double length garages as preferable to double width garages to minimize visual intrusion within the plot."

5.10 In this instance, the proposed garage would not dominate the building's frontage as it would be situated downslope of the dwelling and set back into the hillside. When approaching the dwelling from the access road and when travelling along the public footpath adjacent to the site, it would be viewed from the side, where only the front portion of the building would protrude from the slope, resulting in a more subservient appearance than if the building were constructed as a double length/depth garage. In this way, the design of the building has taken account of relevant local guidance, but has also been informed by the specific characteristics of the site which mean that a double width garage is visually preferable.

5.11 Due to the small scale of the proposals, the well wooded setting and the fact that the property forms part of an established pattern of development that climbs the hillside, the proposed development would have no impact on the setting of the Peak District National Park or the character of the local or wider area and would be well related to the settlement. It would also be entirely in keeping with the design, form and scale of existing development in the vicinity.

5.12 The development would provide a flexible arrangement for home working in response to changing patterns of employment and would accord with other sustainable development principles outlined in Local Plan Policy S1 as follows:

- The density of development would be in keeping with the existing built form at Taxal Edge and that within the surrounding area. Appeal decision reference APP/H1033/W/21/3272745 noted that dwellings on the higher slopes around Whaley Bridge are larger detached dwellings



set in substantial grounds. The nature of these properties is such that they are typically served by garages and/or outbuildings commensurate with their scale.

- It would not impact the landscape or townscape of the Peak District or the natural and historic environment or roles and setting of areas and settlements in the High Peak;
- The development would meet the needs and aspirations of existing and future residents and reduce the need to travel through the provision of secure garaging and flexible ancillary space that enables home working and which could also be used for other ancillary purposes (e.g. studio or home gym) depending on the requirements of future residents;
- It would comprise high quality, locally distinctive and inclusive design;
- The development would provide a high standard of amenity for all existing and future occupants of the property and would not affect the amenity of any existing local residents in the surrounding area (as confirmed by the Inspector in the recent appeal decisions for the site).

5.13 In accordance with the requirements of the council's Residential Design Guide, the scale and position of the proposed garage and office building would ensure the amenity of the nearest residential properties is preserved (as confirmed by appeal decision reference APP/H1033/W/21/3272745). There would no issues relating to overlooking or overshadowing.



6. Conclusion

- 6.1 The proposed garage building would comply with all relevant requirements of the development plan. Planning permission should therefore be granted in accordance with the presumption in favour of sustainable development set out in Policy S1a of the Development Plan and paragraph 11c) of the Framework.



EP1



Appeal Decisions

Inquiry held on 15 November 2022

Site visits made on 14 and 18 November 2022

by M Madge Dip TP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 February 2023

Appeal Ref: APP/H1033/W/21/3272745

Taxal Edge, 184 Macclesfield Road, Whaley Bridge, HIGH PEAK SK23 7DR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Treville Properties Ltd against High Peak Borough Council.
 - The application Ref HPK/2020/0301, is dated 22 July 2020.
 - The development proposed is demolition of the existing building known as "Taxal Edge" and the detached garage building and the erection of 7 no. dwellings.
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Decision

1. The appeal is dismissed, and planning permission is refused for demolition of the existing building known as "Taxal Edge" and the detached garage building and the erection of 7 no. dwellings.

Preliminary Matters

2. This appeal is travelling with appeal reference APP/H1033/C/22/3297854. While a joint event took place, separate decisions have been made.
3. A pre-inquiry accompanied site visit was held on 14 November 2022. The inquiry sat for 4 days as a physical event and concluded on day 5 as a virtual event. An unaccompanied site visit took place on 18 November 2022.
4. The appeal, against the Council's failure to issue a decision within the statutory time period, or such extension as had previously been agreed, was submitted to and accepted by the Planning Inspectorate on 8 April 2021. The Council presented the proposed development to its Planning Committee on 19 April 2021. It resolved that planning permission should be refused. A 'decision notice' ('DN') was issued by the Council on 19 April 2021. However, as the appeal had already been accepted, jurisdiction had passed to the Secretary of State. The DN therefore has no legal standing. The main issues will however be taken from the putative reasons set out in the Council's DN.
5. The Council did not have a 5-year housing land supply at the time the DN was issued. It is now agreed that the Council has a 5-year housing land supply, and that the development plan is therefore up to date.
6. The appellant and Council also agree that there is no longer a legal fallback position. A 'baseline' attributed to the development potential of the site, having regard to relevant planning policy, is however agreed. The 'baseline' includes the following 'in principle' forms of development:
 - Conversion of the main building into up to 7no apartments;

- The extension of the main building to provide further apartments, alternatively the erection of 2 semi-detached dwellings on the site of the former gymnasium;
 - Residential conversion of the remaining outbuilding (the garage);
 - A garage for the former classroom block;
 - The classroom block (whether as altered by the requirements of the enforcement notice or as existing).
7. This agreed 'baseline' represents a material consideration to which I will have regard.

Main Issues

8. The main issues are the effects of the development on:
- the character and appearance of the local landscape; and
 - the living conditions of future occupiers of plots 1 and 2.

Reasons

9. The site lies outside the defined built-up area boundary, within what is technically 'countryside', but which forms an integral part of a collection of residential properties located on the periphery of this market town. While separated from the defined built-up area by a public right of way, visually and spatially, the site sits within the established pattern of development.
10. The site is occupied by substantial buildings, originally erected as what is now identified as a Grand Villa, it has been used as a children's home and more recently conversion works commenced to provide up to 7 flats. The land surrounding the buildings would have been formal landscaped gardens and associated woodland.
11. The site is occupied by a permanent structure, its associated curtilage and fixed surface infrastructure. The site is therefore previously developed land ('PDL'). Relevant planning policies offer support for the redevelopment of PDL, including sites outside built-up areas, where it would not lead to a significant adverse impact on the character and appearance of the countryside. Redeveloping the site for residential purposes is therefore acceptable in principle.

Character and appearance

12. The site is located on the periphery of the settlement, on a steeply sloping site just below the valley's ridge line. Although extending up the valley sides, the higher up existing development is located, the more spread out it becomes. Terraces and estates of houses are in the main located on the lower slopes, with larger detached dwellings set in substantial grounds located higher up. Existing development on the site, in conjunction with adjacent developments, demonstrate this intrinsic landscape characteristic.
13. The proposal includes the demolition of the existing buildings, significant excavations and changes of land level within the site as well as the erection of 7 no dwellings, 3 of which would be detached and 4 of which would be semi-detached, and 2 detached garage/ study buildings. The properties would be

served off a new access road, located adjacent to the public right of way but divorced from it by a drystone boundary wall and existing trees.

14. The proposed house types incorporate a variety of fenestration details, including bay windows, forward facing gables, greater window to wall ratio, and recessed porches. These are all features identified as being synonymous with 'Grand Villas' and 'Small Scale Villas'. These features, coupled with the proposed materials palette, would deliver a high-quality design and finish to the proposed dwellings. Given the location of the site, on the upper valley slope, the appearance of the proposed dwellings would accord with relevant design guidance.
15. The site constraints are such that the proposed dwellings would all be located along one side of the proposed access road, with the houses stepping up the site, parallel to the ridge line. To reduce the perceived height of the development, the plots would be excavated to varying degrees. Given the site constraints and the number of dwellings proposed, there would be little separation space between the individual buildings. No significant landscaping could be achieved between the proposed buildings.
16. Upon entering the development by road, when viewed from the adjacent public right of way or from elsewhere within the valley, the proposed development would appear a single built mass. While this would be broken to a degree by the stepped design, the buildings' height and prominent architectural features would maintain its significant visual prominence.
17. While the redevelopment of PDL is encouraged, it should not be assumed that the whole of the curtilage could be developed. Given the site's peripheral location, it provides a transition between the defined built-up area and the countryside. The scale, massing and spread of the proposed development across the site would therefore be out of keeping with the established pattern of development in this location. It would also be visually incongruous, resulting in significant harm to the intrinsic character and appearance of the landscape.
18. The number of dwellings proposed may be like that which could be delivered by the baseline position. However, the baseline would provide a considerably different form of development, namely the conversion of the existing buildings with a small element of new build. Large areas of the site would remain free of development, thereby maintaining the intrinsic character of the landscape.
19. For these reasons, the development conflicts with policies S1, S6, H1, EQ2, EQ3 and EQ6 of the High Peak Local Plan, which seek to deliver an appropriate density of development that protects the aesthetic and intrinsic character of the landscape, amongst other things. The development also fails to accord with guidance in the High Peak Design Guide, the Residential Design Guide and Landscape Character Assessment Supplementary Planning Documents 2006, which seek to deliver new development that positively contributes to maintaining strong local character.

Living conditions

20. The semi-detached houses proposed for plots 1 and 2 are family homes with living accommodation on the ground and first floors. While living areas would have south-easterly aspects, looking out from the front of the dwellings over the valley, their kitchens and 2 of their bedrooms would aspect north-westerly.

These 2 plots would have private rear garden depths of approximately 4 – 5 metres and front garden depths of approximately 6 – 8 metres. Although Plot 2 does also have a side garden that extends to the rear.

21. There are established areas of woodland to the north and north-west of the proposed dwellings on plots 1 and 2. The site section plans show that the existing land level would be reduced to accommodate these dwellings and their gardens. Given the difference in land level that would be created, retaining walls of more than 4 metres in height are proposed adjacent to the private rear garden areas. The proximity of these adjacent features would significantly restrict the availability of natural light, as confirmed by the Daylight and Sunlight Assessment. Furthermore, outlook from the rear facing windows would be dominated by the retaining wall.
22. Future residents may not want large gardens, but what garden space is available should provide facilities for every day domestic activities, such as sitting out, hanging out washing and children's play. The limited size and orientation of these private garden spaces, coupled with the scale of adjacent retaining wall and over shadowing trees, would provide an unacceptable level of amenity for future occupiers.
23. Plots 1 and 2 would also have garden and driveways to the front. These front garden spaces, while larger than the rear gardens, are still of limited size. They would also be adjacent to the access road. Even with the provision of landscape screening, residents are unlikely to use them in the same way as they would use a private rear garden space. Furthermore, as front gardens are required to establish a visual relationship with the street, they are not the best place to locate the largest amount of private amenity space.
24. Even if I were to accept that the totality of garden space for each of these 2 plots was adequate, this does not overcome my concerns relating to the visual dominance and overbearing nature of the retaining wall resulting from its proximity to the dwellings' rear elevations or the lack of natural light.
25. For these reasons, the proposal conflicts with policies S1 and EQ6 of the High Peak Local Plan, which seek to deliver a high standard of amenity for future residents through good design, amongst other things.

Other Matters

26. Amendments to the access road layout are required to provide for refuse vehicles and fire engines to be able to turn. The access width may also need to be widened in places. Such amendments could be accommodated within the site and without encroaching into identified tree protection areas.
27. Taxal Beeches, a deciduous woodland, lies beyond the site boundaries. The topography of the site is such that the development would have no significant effect on the adjacent woodland. The appellant has already carried out additional tree planting within the site and upon other surrounding land in their ownership. The proposal is informed by an Arboricultural Impact Assessment, which includes a Trees Constraints Plan. Any potential harm to trees within the site could be addressed through the imposition of appropriate conditions requiring the provision of tree protection fencing and the development being carried out in accordance with the recommendations of the report.

Conditions

28. A schedule of suggested conditions is set out in the agreed Statement of Common Ground. The conditions relate to controlling the development in detail, and securing appropriate access, drainage, landscaping, waste disposal, means of enclosure, and maintenance of dry-stone walls, and the removal of permitted development rights. These suggested conditions do not address the landscape character harms or the harm to future residents' living conditions identified above. The imposition of conditions would not therefore make the development acceptable in planning terms.

Conclusion

29. For the reasons given above, I conclude that the appeal should be dismissed.

M Madge

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Jonathon Easton of Counsel

He called: Mr Gary Cullen
Mr Rawdon Gascoigne
Mr Nicholas Folland

FOR THE LOCAL PLANNING AUTHORITY:

Mr Hugh Richards of Counsel

He called: Ms Mary McGuire
Ms Rachael Simkins
Mr Anton Connell

DOCUMENTS

- ID1 - Appellants' opening statement
- ID2 - Council's opening statement
- ID3 - Signed Joint Statement of Common Ground
- ID4 - Signed annex to ID3
- ID5 - Signed Joint Statement of Common Ground in relation to landscape matters
- ID6 - Plan highlighting land above 240m contour
- ID7 - Council Tax record
- ID8 - Plan showing 1.839m difference in ridge height
- ID9 - Plan showing 1.630m difference in ridge height
- ID10 - Site Visit navigation details for location of LPS's View Points
- ID11 - Technical data of example Blue-Black Cromleigh Graphite roof tile
- ID12 - Plan to be attached to the Enforcement Notice as "EN06" as replacement for EN04 & EN05
- ID13 - Cedral Ireland fibre cement slates fixing guide
- ID14 - Burroughs Day v Bristol City Council 1996 Lexis Citation 3354
- ID15 - Closing Submissions on behalf of the Council
- ID16 - Closing Submissions on behalf of the Appellant

EP2

Application reference	Detail	Decision
APP/H1033/C/22/3297854	Raising of the roof and steepness of the pitch of the roof, the insertion of 3 dormer windows on the eastern roof slope and changes to the fenestration on the eastern elevation on land at 184 Taxal Edge, Macclesfield Road, Whaley Bridge SK23 7DR	Deemed application approved at appeal under section 177(5) of the 1990 Act as amended - 3 rd February 2023
HPK/2020/0301	Demolition of the existing building known as "Taxal Edge" and the detached garage building and the erection of 7 no. dwellings.	Refused 19 th April 2021 (Appeal dismissed)
HPK/2015/0518	Outline planning application for 2 no. semi- detached dwellings.	Refused 11th December 2015
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
HPK/2009/0689	Conversion of Taxal Edge to provide 7 no. apartments and the conversion of the classroom block and disused garage to 2 no. detached houses.	Approved 29th March 2010
HPK/2009/0209	Change of use from a single dwelling to 10 apartments involving internal alterations only.	Withdrawn 26th June 2009
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/0002/5081	Additional car parking provision adjacent to the main driveway.	Approved 6th April 1987

EP3



Appeal Decisions

Inquiry held on 15 November 2022

Site visits made on 14 and 18 November 2022

by M Madge Dip TP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 February 2023

Appeal Ref: APP/H1033/C/22/3297854

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

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Gary Stephen Cullen against an enforcement notice issued by High Peak Borough Council.
- The notice, numbered HPE/2019/00014, was issued on 31 March 2022.
- The breach of planning control as alleged in the notice is without planning permission, the alteration of a building ("the classroom block") comprising the raising of the roof and steepness of the pitch of the roof, the insertion of three dormer windows on the eastern roof slope and changes to fenestration on the eastern elevation. For the avoidance of doubt the classroom block is in the position on the attached plan marked EN01 with an X and shown in photographs EN02 and EN03.
- The requirements of the notice are to restore the land to its condition before the breach took place by:
 1. Lowering the overall height and pitch of roof to the classroom block to that shown on EN04 and EN05.
 2. Remove three dormer windows on eastern roof slope and replace with roof tiles to match the existing roof.
 3. Remove the east facing ground and first floor windows and replace with windows of the size, height and position as shown in EN05.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is allowed on ground (a), the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Preliminary Matters

1. This appeal is travelling with appeal reference APP/H1033/W/21/3272745. While a joint inquiry took place, separate decisions have been made.
2. A pre-inquiry accompanied site visit was held on 14 November 2022. The inquiry sat for 4 days as a physical event and concluded on day 5 as a virtual event. An unaccompanied site visit took place on 18 November 2022.
3. The appellant gave his evidence to the inquiry under affirmation.

Matters concerning the notice

4. Planning permission was granted for the use of the building as a dwelling¹. It is a matter of common ground that the planning permission did not include any physical changes to the external appearance of the building. The notice is therefore directed at the alterations that have occurred to the external appearance of the building, not its use as a dwellinghouse.
5. While the requirements are aimed at restoring the land to its condition before the breach took place, the Council accepts that some of the alterations, such as the stone façade and the use of a natural slate roof covering, are an improvement to the building's appearance. The steps to be taken therefore only include lowering the overall height and pitch of the roof, the removal of the 3 dormer windows and replace with tiles to match the existing roof, and the removal of the east facing ground and first floor windows. The roof height, roof pitch and the windows are required to be changed to those shown in images EN04 and EN05 attached to the notice.
6. Images EN04 and EN05 are not to scale and fail to provide dimensions. They do not therefore show the appellant what works need to be carried out with the necessary precision. There was considerable debate as to how the requirements could be corrected and the appellant and Council agreed, what they considered to be a suitable form of words. I am satisfied that the requirements can be corrected to provide clarity without causing injustice. I shall deal with the corrections under the ground (f) appeal.

Appeal on Ground (c)

7. There is no dispute that the matters alleged have occurred as a matter of fact. An appeal on this ground is that those matters, that have occurred, do not constitute a breach of planning control. It is for the appellant to show that the matters alleged are either not development or benefit from planning permission. The relevant test is the balance of probability.
8. Section 55(2)(a) of the 1990 Act confirms that the carrying out of operations for maintenance, improvement or other alteration purposes are not development providing, they '*(ii) do not materially affect the external appearance of the building*'. Raising the roof pitch has increased the overall height of the building and constructing 3 dormer windows has changed the roof's shape. The windows installed in the eastern elevation have increased the amount of glazing and removed the wooden panels, along with changing the colour and materials used for the frames. These alterations, singularly and collectively, have materially changed the external appearance of the building and are, therefore, development by virtue of s55(2) of the 1990 Act.
9. While the notice is not directed at the use of the building as a dwellinghouse, the lawfulness of this use needs to be established to determine what, if any, permitted development rights exist.

Use as a dwellinghouse

10. Mr Raymond Butler's Sworn Declaration confirms that he moved into the classroom '*within a few months of permission being granted*'. While a specific date is not given, the 2009 PP was granted in March 2010 and a 'few' is

¹ HPK/2009/0689

normally taken to be a small number. It would not therefore be unreasonable to conclude that residential occupation had occurred by the end of the summer 2010 and certainly no later than the end of 2010. Mr Butler goes on to state that *'In 2014, me and my partner vacated the property and moved into a flat in the main building leaving my 2 sons...in the converted former classroom block.'* and *'The transaction of the sale completed on 31/03/2016. Shortly after completion both my sons vacated the home'.*

11. The appellant's sworn declaration also states that *'the property was purchased as a family residence in need of refurbishment and it was understood that the conversion of the building had already been completed by Mr Butler when we purchased the property. Mr Butler had moved in there sometime in 2010 with his family and then his sons continued to live there until we completed the sale'*. This corroborates Mr Butler's version of events and clarifies the appellant's understanding of the status of the building at the time of his purchase.
12. The appellant's own evidence, or that of interested parties, does not need to be independently corroborated, unless the Council has evidence of its own or from others to make the appellant's version of events less than credible. Council Tax registration and/or history of payments does not demonstrate occupation of a dwellinghouse. Similarly, the lack of such registration or payments does not demonstrate a lack of residential occupation.
13. The Council has no evidence of its own, or from others, to show that the classroom block was not converted and permanently occupied by Mr Butler and his family from a few months after March 2010 until March 2016. While the exact date that occupation commenced is unknown, even taking occupation from the end of 2010 to March 2016 would provide a continuous period of over 5 years. It has therefore shown that, on the balance of probability, the use as a single dwellinghouse had become lawful by the end of 2014 at the latest.
14. The lawful use of the classroom as a dwellinghouse could not therefore be lost unless it was abandoned. There is no claim that the residential use of the former classroom block has been abandoned.

Permitted Development Rights

15. Buildings lawfully used as a single dwellinghouse benefit from permitted development rights as set out in Part 1 of Schedule 2 of the GPDO². Article 3(5), however states that *'the permission granted by Schedule 2 does not apply if – (a) in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful'*.
16. The appellant has confirmed the sequence of events relating to the dwellinghouse's renovation to be: (i) raising of the roof pitch, installation of roof lights and reinstatement of concrete roof tiles in early 2016, (ii) removal of the concrete roof tiles, construction of 3 dormer windows and installation of natural slate roof covering, and (iii) installation of replacement windows in 2017. It is unclear as to when works commenced on the stone cladding.
17. Class B, Part 1 of Schedule 2 of the GPDO makes provision for the enlargement of a dwellinghouse consisting of an addition or alteration to its roof, subject to

² Town and Country Planning (General Permitted Development) (England) Order 2015 as amended

limitations and conditions. Development is not permitted by Class B if '*(b) any part of the dwellinghouse would, as a result of the works, exceed the height of the highest part of the existing roof*'. By increasing the original roof's pitch, the highest part of its roof was exceeded. The first element of the sequence of works was not therefore permitted development and required express planning permission, which has not been granted. The building therefore became unlawful at the time the roof pitch was increased.

18. The subsequent construction of the 3 dormer windows occurred by the end of 2017 and the installation of the replacement windows occurred sometime after 31 March 2018. These works were carried out within 4 years of the roof pitch being altered. The building was therefore unlawful at the time of the further works being completed. The deemed planning permission granted by Class A or Class B, Part 1 of Schedule 2 would not therefore apply.
19. The appellant does not dispute that the 3 dormer windows need planning permission. That planning permission was not granted, and they constitute a breach of planning control.
20. While the replacement windows could have benefitted from deemed planning permission granted by Class A, Part 1 of Schedule 2 of the GPDO, the building was unlawful at the time they were installed. Planning permission was therefore required for the replacement windows and that planning permission was not granted. The replacement windows therefore constitute a breach of planning control.
21. For these reasons, the appeal on ground (c) fails.

Appeal on Ground (d)

22. An appeal on this ground is that, at the time the notice was issued, it was too late to take enforcement action. The onus of proof is on the appellant and the relevant test is the balance of probability. The appellant would need to show that the operational development was substantially completed on or before 31 March 2018, the material date.
23. The renovations of the dwellinghouse initially envisaged by Mr Butler, as set out in his Statutory Declaration, included works to the cracked pillar, raising the roof pitch, adding the natural stone outer leaf and replacement windows. Works to the roof had commenced by the time the appellant purchased the property in March 2016, but the totality of the works envisaged by Mr Butler were not substantially complete.
24. While the appellant changed the alterations to the roof to include the 3 dormer windows and the provision of a natural slate roof covering, he still intended to add the natural stone outer leaf and install replacement windows. It is clear from the appellant's evidence that, following his purchase of the property, he intended to complete the totality of the property renovations envisaged by Mr Butler, with additions, to provide a home for his family.
25. The occupier of a property may carry out a succession of renovation works to their home. That succession of renovation works being influenced, for example, by the availability of funds, suitable trades people and time. It would not be unusual for such a succession of renovation works to be carried out over several years, and therefore each element of the works to be considered a separate building operation.

26. In the appellant's case he carried out much of the work himself as and when time and funds allowed. To speed the completion of the works along he occupied the dwellinghouse, while his family lived elsewhere. The appellant's occupation of the dwellinghouse while he was undertaking these renovations does not change the fact that it was the culmination of these works that would secure his family moving into their new home. As such the succession of works in this case formed a single building operation, which would not have been substantially complete until the replacement windows were installed, and the natural stone outer leaf completed.
27. The appellant conceded that, while the east facing windows were ordered in November 2017, they were installed less than 4 years before the notice was served. His statutory declaration also confirms that the natural stone outer leaf was not completed until these windows were installed.
28. Substantial completion did not therefore occur on or before the material date. The appellant has not shown, on the balance of probability that, at the date the notice was issued, it was too late to take enforcement action.
29. For these reasons, the appeal on ground (d) fails.

Appeal on Ground (a)

30. An appeal on this ground is that planning permission should be granted for the matters alleged, namely the raising of the roof and steepness of the pitch of the roof, insertion of 3 dormer windows on the eastern roof slope, and changes to the fenestration on the eastern elevation. The **main issue** is the effect of the development on the character and appearance of the locality, having regard to landscape and design.
31. The dwellinghouse is a detached two-storey building, which sits on a wooded slope located towards the edge of the settlement. As originally constructed, the building had a buff brick façade, concrete tiles on a low pitched roof, and windows with painted panels below. While constructed as a classroom block, its original appearance was not dissimilar to that of a dwelling erected in the 1960's.
32. The alterations to the external fabric of the building have provided it with an outer skin of natural stone and a slate roof. The roof pitch has been increased to that usually associated with this quality roofing material. The 3 dormer windows break up the mass of the roof plane. Several of the east facing windows have larger areas of glazing and this is a result of removing the painted panels. Where those former panels have not been replaced by glazing, the natural stonework has been built up. The overall effect of the works is to deliver a dwellinghouse of high-quality design and materials. The dwelling's current design and appearance is reflective of the older properties in the locality, while the additional glazing meets the modern aspiration of bringing the outside in to the home.
33. Given the setback position of the property from Macclesfield Road, short distance views are only available from the public footpath located to the south of the site. Long distance views are however available from various points across the valley. The dwellinghouse is viewed against the wooded backdrop. The building has been visible in this context since it was erected. Its footprint has not been increased, and while the alteration to the roof pitch has increased

the building's height, this is not significantly discernible when looking up at the property through the trees from the public footpath or when looking at it from across the valley.

34. At night, light emissions from the increased areas of glazing in the east facing elevation may be visible. However, it would not be seen in isolation as the property is an integral part of the established pattern of development that climbs the hillside. As such, it would not cause significant harm to the character and appearance of the locality.

Conclusion on ground (a)

35. For the reasons given above, the development does not conflict with policies EQ2, EQ3 and EQ6 of the High Peak Local Plan (April 2016), which seek to protect, enhance and restore the intrinsic character and distinctiveness of the landscape. Furthermore, the development complies with guidance set out in the High Peak Design Guide (February 2018), the Residential Design Guide (December 2005) and the Landscape Character SPD (March 2006), which seek to deliver high quality design that respects traditional built forms, amongst other things.

36. The appeal on ground (a) succeeds.

Overall Conclusion

37. I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice.
38. The appeals on grounds (f) and (g) do not fall to be considered.

Formal Decision

39. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the raising of the roof and steepness of the pitch of the roof, the insertion of 3 dormer windows on the eastern roof slope and changes to the fenestration on the eastern elevation on land at 184 Taxal Edge, Macclesfield Road, Whaley Bridge SK23 7DR.

M Madge

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Jonathon Easton of Counsel

He called: Mr Gary Cullen
Mr Rawdon Gascoigne
Mr Nicholas Folland

FOR THE LOCAL PLANNING AUTHORITY:

Mr Hugh Richards of Counsel

He called: Ms Mary McGuire
Ms Rachael Simkins
Mr Anton Connell
Mr Steven Gunn-Russell

DOCUMENTS

- ID1 - Appellants' opening statement
- ID2 - LPA's opening statement
- ID3 - Signed Joint Statement of Common Ground
- ID4 - Signed annex to ID3
- ID5 - Signed Joint Statement of Common Ground in relation to landscape matters
- ID6 - Plan highlighting land above 240m contour
- ID7 - Council Tax record
- ID8 - Plan showing 1.839m difference in ridge height
- ID9 - Plan showing 1.630m difference in ridge height
- ID10 - Site Visit navigation details for location of LPS's View Points
- ID11 - Technical data of example Blue-Black Cromleigh Graphite roof tile
- ID12 - Plan to be attached to the Enforcement Notice as "EN06" as replacement for EN04 & EN05
- ID13 - Cedral Ireland fibre cement slates fixing guide
- ID14 - Burroughs Day v Bristol City Council 1996 Lexis Citation 3354
- ID15 - Closing Submissions on behalf of the Council
- ID16 - Closing Submissions on behalf of the Appellant

