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STATEMENT OF CASE

41 Union Road, New Mills, Derbyshire, SK22 3EL

January 2025

Contents

Section	Page
1. Introduction	3
2. The Appeal Site and its Surroundings	4
3. Planning History	6
4. Development subject of Appeal	7
5. Relevant Planning Policy	8
6. Grounds of Appeal – Appellant's Case	10
7. Summary and Conclusions	13

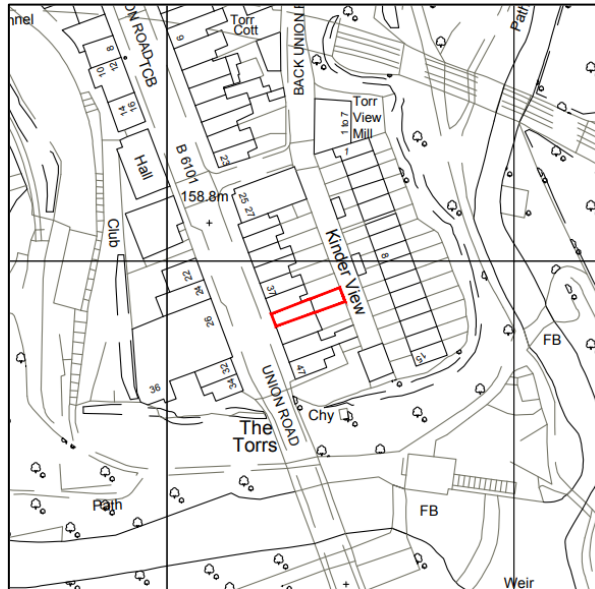
1. Introduction

- 1.1 This Appeal Statement has been prepared by RA Design & Project Management Ltd, on behalf of the Appellant, in respect of the decision by High Peak Borough Council to refuse planning application ref: HPK/2024/0369.
- 1.2 Application HPK/2024/0369 was validated on 30/08/2024 and was refused by notice dated 23/10/2024.
- 1.3 The Decision Notice lists 1no. reason for refusal, which reads as follows:

“Policy H3 of the High Peak Local Plan 2016 requires all new residential dwellings to meet the Nationally Described Space Standard. The dwelling does not meet the Nationally Described Space Standard for a one bedroom, two-person property, it only meets the Nationally Described Space Standard for a one bedroom, one person property. The proposal to remove condition 2 would result in the dwelling being overcrowded and is therefore contrary to High Peak Local Plan policy H3 of the High Peak Local Plan 2016 and paragraph 135 of the National Planning Policy Framework”.

2. The Appeal Site and its Surroundings

- 2.1 The appeal site relates to a two-storey property, located within a terraced row and fronting onto a main commercial street in New Mills. The appeal property sits between number 39 and number 43 Union Road, both mixed commercial/residential properties.



Appeal Site Location

- 2.2 At ground floor level, a shop front serves the permitted Class E shop use.



Appeal Site Frontage

- 2.3 The appeal site is bounded to the rear by a service road area used for parking and back yards associated to neighbouring residential/commercial properties. A staircase leads to the first-floor apartment.



Rear Elevation

3. Planning History

Application Ref	Description of Development	Decision	Date
HPK/2023/0124	Application for Removal of Condition 2	Refused	23/10/2024
HPK/2023/0124	Retention of use of first floor as 1 bedroomed flat	Approved with conditions	16/06/2023
HPK/2023/0123	Retrospective permission for erection of rear access staircase, and replacement external door at first floor	Approved with conditions	31/08/2023
HPK/0003/2798	Conversion to meeting rooms and offices for new mills volunteer centre	Approved with conditions	18/08/1993
HPK/0003/2393	Conversion of first floor into flat	Approved with conditions	20/04/1993
HPK/0002/9197	Projecting illuminated sign	Refused	04/05/1990
HPK/0002/7404	Shop Sign	Approved	10/01/1989
HPK/0002/6924	New shop window and entrance, new toilet to rear of shop	Approved	17/08/1988

4. Development subject of Appeal

- 4.1 The appeal proposals relate to a S73 application which proposes the deletion of condition 2 attached to planning permission HPK/2023/0124.

5. Relevant Planning Policy

- 5.1 Planning applications should be determined in accordance with the Development Plan unless material considerations indicate otherwise. In this case, the Development Plan comprises the:
- High Peak Local Plan 2016.
- 5.2 A revised version of the NPPF was published December 2024. This replaced the December 2023 version of the NPPF. It is a material consideration in the determination of planning applications, particularly where policies contained therein conflict with or supersede parts of the Development Plan.

Local Planning Policy

- 5.3 The High Peak Local Plan was adopted in April 2016.
- 5.4 Policy H3 (New Housing Development) supports new dwellings that are designed to provide flexible accommodation which is capable of future adaptation by seeking to achieve adequate internal space for the intended number of occupants in accordance with the Nationally Described Space Standard.

National Planning Policy

- 5.5 A revised version of the NPPF was published in December 2024. It states that the “purpose of the planning system is to contribute to the achievement of sustainable development.”
- 5.6 Para 56 states that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.
- 5.7 Para 57 states that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Agreeing conditions early is beneficial to all parties involved in the process and can speed up decision making. Conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification.

National Planning Practice Guidance (NPPG)

- 5.8 On 6th March 2014, the Department for Communities and Local Government (DCLG) launched the National Planning Practice Guidance (NPPG), which seeks to make planning guidance easier and simpler for practitioners and the public and is to be read in conjunction with national policy contained within the NPPF. The guidance is regularly updated, and the guidance in the NPPF is supported by relevant paragraphs in the on-line guidance.

5.9 Para 57 of the National Planning Policy Framework makes clear that planning conditions should be kept to a minimum, and only used where they satisfy the following tests:

- necessary;
- relevant to planning;
- relevant to the development to be permitted;
- enforceable;
- precise; and
- reasonable in all other respects.

5.10 These are referred to in this guidance as the 6 tests, and each of them need to be satisfied for each condition which an authority intends to apply. (Paragraph: 003 Reference ID: 21a-003-20190723 Revision date: 23 07 2019).

6. The Case for the Appellant

6.1 The Council's reason for refusal reads as follows:

"Policy H3 of the High Peak Local Plan 2016 requires all new residential dwellings to meet the Nationally Described Space Standard. The dwelling does not meet the Nationally Described Space Standard for a one bedroom, two-person property, it only meets the Nationally Described Space Standard for a one bedroom, one person property. The proposal to remove condition 2 would result in the dwelling being overcrowded and is therefore contrary to High Peak Local Plan policy H3 of the High Peak Local Plan 2016 and paragraph 135 of the National Planning Policy Framework"

6.2 Para 56 of the NPPF states that Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations.

6.3 PPG Paragraph: 003 Reference ID: 21a-003-20190723 states that planning conditions should be kept to a minimum, and only used where they satisfy the following tests:

1. necessary;
2. relevant to planning;
3. relevant to the development to be permitted;
4. enforceable;
5. precise; and
6. reasonable in all other respects.

6.4 The condition in question, condition 2 of planning approval ref: HPK/2023/0124, reads as follows:

"The development hereby permitted shall be occupied solely by one person and shall not be used by any other persons as their sole or main residence".

6.5 For the purpose of this appeal, the condition is assessed under the 6no. planning conditions tests as follows:

Necessary

6.6 It is noted from the Officer Report that:

"[the condition subject of this appeal] is necessary and relevant to make the development acceptable, without the imposition of this condition on the recent planning permission (HPK/2023/0124) it would have been refused on the grounds of it being non-compliant with the NDSS".

6.7 It is asserted that planning permission would not have to be refused if condition 2 were not imposed. The site history demonstrates that the first floor has been in use

as a flat previously and historically, without such a restrictive condition relating to occupancy.

- 6.8 The Nationally Described Space Standards are now in place, this is acknowledged, and Local Plan policy H3 requires compliance with the standards. It is not however necessary to prescribe occupancy by condition based on the standards. It is asserted that any contradiction in relation to occupancy, with the described standards, is not a matter for the local planning authority to control but rather one for housing standards, or their equivalent.

- 6.9 The condition fails to meet the test of 'necessary'.

Relevant to Planning

- 6.10 A condition which has no relevance to planning is ultra vires.

- 6.11 It is accepted that the Council's intention, based on the nationally described space standards, was to restrict the occupancy to one person on the basis of protecting amenity. However, it is asserted that any contradiction with the described standards, in relation to occupancy, is not a matter for the local planning authority to control but rather one for housing standards, or their equivalent.

- 6.12 The condition fails the test of being 'relevant to planning'.

Relevant to the Development to be Permitted

- 6.13 Unless a condition fairly and reasonably relates to the development to be permitted, it will be ultra vires.

- 6.14 In terms of its imposition, the condition can be considered relevant to the development permitted, even though the appellant considers that it fails other tests.

Enforceable

- 6.15 A condition should not be imposed if it cannot be enforced.

- 6.16 Whilst Circular 11/95 has been cancelled and replaced by the planning practice guidance (other than for Appendix A), it is still noteworthy that at para 6 of Appendix B it states:

"To require that flats, for example, should not be occupied by more than persons. This condition is unsatisfactory in enforcement terms since it would be difficult to monitor and require an intolerable degree of supervision (paragraphs 26 and 27)".

- 6.17 The condition is asserted to be unenforceable. The second part of condition 2 is particularly problematic in enforceability terms, which requires that the flat shall not be used by any other persons as their sole or main residence. It appears that this would be very difficult to monitor and enforce, particularly given that anyone else residing in the flat may be able to justify that it is not their sole or main residence.

- 6.19 Whilst the Council have noted that they consider the condition to be enforceable, as checks can be made to Council tax and electoral services to review occupation levels, this would only give an indication of occupancy levels and would not be conclusive. The appellant considers that enforceability checks would also have to include visits and monitoring, all of which would still not establish whether or not more than one occupant is a guest of the main occupant and not using the dwelling as their sole or main place of residence. An intolerable degree of supervision would be required from an enforcement perspective to identify a breach of planning control.
- 6.20 The condition therefore fails the test of being 'enforceable'.

Precise

- 6.21 A condition which is not sufficiently precise for the appellant to be able to ascertain what must be done to comply with it is ultra vires and cannot be imposed. Conditions should be not only precise but also clear.
- 6.22 Condition 2 is imprecise. On one hand it requires that the development permitted shall be occupied solely by one person, but then states that it shall not be used by any other persons as their sole or main residence.
- 6.23 On the one hand, the condition allows for occupation solely by one person but then allows the apartment to be used by another, so long as it is not their sole or main place of residence. In this respect, one person could occupy the flat but so could another if stated that it is not their sole or main place of residence. The intention of restricting the occupancy to one person is therefore flawed.
- 6.24 The condition therefore fails the test of being 'precise'.

Reasonable in all Other Aspects

- 6.25 The condition fails the applicable tests outlined above. There is no further identified conflict, other than previously stated.

7. Summary and Conclusion

- 7.1 This Statement sets out the Appellant's grounds for the planning appeal, brought against the refusal of application HPK/2024/0369 by High Peak Borough Council.
- 7.2 For the reasons outlined within this statement, the Inspector is respectfully requested to allow the appeal.