

Plan:8 Town Planning Ltd

PLANNING STATEMENT

Application under Section 73 of the Town and Country Planning Act 1990

Amendment to Planning Permission HPK/2025/0018

SITE ADDRESS: Storage Buildings to the West of High Hill Road, New Mills,
Derbyshire, SK22 4HQ

APPLICANT: Mr Neil Houlihan, Detail Homes Ltd, Hillside Farm, Werneth Low
Road, Romiley, Stockport, SK6 4PY



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SUMMARY

- 1 This statement supports a Section 73 application to vary Conditions 2 and 6 of planning permission HPK/2025/0018 (granted 29th May 2025) by substituting approved drawing 082-006 Rev F by amending the internal layout of Unit 3 at first floor level. The amendment is necessary as the approved layout has implications on viability and deliverability of 6 houses. The proposed plans are attached to this submission and are listed below:
 - DETAIL-082-003 Rev-K - Proposed Site Plan. At three scales: 1:200 (A2), 1:200 (A3), and 1:100 (A1)
 - DETAIL-082-006 Rev-G - Proposed First Floor (Block) Plan Scale: 1:100 (A3)
 - DETAIL-082-007 Rev-F - Proposed Roof Plan Scale: 1:100 (A3)
 - DETAIL-082-008 Rev-E - Proposed Elevations Scale: 1:100 (A1) Shows Front (South) Elevation, Rear (North) Elevation (Street Scene), Side (East) Elevation (Unit-1), and Side (West) Elevation (Unit-6)
 - DETAIL-082-009 Rev-C - Typical Section (Unit-1) Scale: 1:50 (A3)
- 2 The amendment replaces the approved "Home Office" at first floor rear with "Bed-2", relocating all three bedrooms to first floor level and removing the loft conversion. There are no external changes whatsoever- the development remains six two-storey dwellings with identical external appearance. We also request that as a consequence condition 6 is amended to remove the requirement for a home office to be obscure glazed.
- 3 The amendment is justified by compelling material considerations: (1) support from neighbouring occupiers at 12 Watford Bridge Road; (2) SPD paragraph 8.8.6 requiring flexibility where high quality design is demonstrated; (3) the extension at No.12 is unbuilt- the window does not exist; (4) High Peak has only 2.85 years housing land supply, engaging the tilted balance; (5) NPPF paragraph 130(c) requires flexibility for efficient use of brownfield sites.

SITE DESCRIPTION AND PLANNING HISTORY

- 4 The site comprises previously developed land west of High Hill Road, New Mills, formerly containing 39 storage garages with lawful B8 use since 1966 (Certificate HPK/2021/0120). The site lies within the built-up area of New Mills (a Market Town) with no statutory constraints.

- 5 Pre-application advice (PAD/2022/0040) confirmed residential development was acceptable subject to achieving 21m separation distances, high quality design with natural stone, and careful consideration of loft accommodation.
- 6 Planning application HPK/2025/0018 was submitted in January 2025 with drawing 082-006 Rev A showing all six dwellings with three bedrooms at first floor- no loft conversions. During determination, the officer raised concerns that the separation distance between Unit 3's proposed rear bedroom window and an approved but unbuilt extension at 12 Watford Bridge Road would be less than 21m when measured on an oblique angle.
- 7 To avoid refusal and appeal costs, the applicant reluctantly agreed to amend Unit 3's layout (Rev F) showing a "Home Office" at first floor rear with Bedroom 2 relocated to the loft. Permission was granted in May 2025. However, the applicant's position remains that the original Rev A layout was acceptable. This Section 73 application seeks to reinstate it.

THE APPROVED AND PROPOSED DEVELOPMENT

- 8 Planning permission HPK/2025/0018 approved six two-storey dwellings in natural stone with pitched roofs, PV panels, and private gardens. Condition 2 lists approved plans including "Proposed First Floor Plan 082-006 Rev F".
- 9 Approved Rev F layout (Unit 3): Ground floor: open-plan living/kitchen/dining, WC. First floor: Bed-1 (12.4m²), Home Office (6.8m²) facing rear, Bed-3 (7.5m²), bathroom. Loft: Bed-2 (13.2m²). Condition 6 requires the Home Office window to be obscure glazed.
- 10 Proposed Rev A layout (Unit 3): Ground floor: unchanged. First floor: Bed-1 (11.5m²), Bed-2 (11.5m²) facing rear, Bed-3 (7.5m²), bathroom. No loft conversion. The rear window would be clear glazed as it achieves 21m separation distance.
- 11 The approved elevations (082-008 Rev D) remain entirely unchanged. There are no external differences between Rev F and Rev A- identical footprint, height, massing, fenestration, and materials.

LEGAL FRAMEWORK- SECTION 73 AND THE ARMSTRONG CASE

- 12 Section 73 allows applications to vary or remove conditions attached to a planning permission. In R (Armstrong) v Secretary of State [2023] EWHC 176 (Admin), the High Court fundamentally clarified the scope of Section 73.
- 13 The Armstrong case involved a Section 73 application to change an approved dwelling design from modern to chalet-style with different siting.

The Council and Inspector refused it as a "fundamental variation" beyond Section 73's scope. Deputy High Court Judge James Strachan KC quashed this decision, holding:

- First: Section 73 contains no restriction limiting it to "minor material amendments" or preventing "fundamental variations". If Parliament intended such limits, it would have expressed them.
 - Second: If an application doesn't conflict with the operative part of the permission, it's difficult to see why it should be objectionable.
 - Third: Section 96A is expressly limited to "non-material amendments" but applies to any part of a permission. By contrast, Section 73 applies only to conditions but has no express limitation on scale. This shows Parliament intended no size limit for Section 73.
 - Fourth: Allowing applications that don't conflict with the operative part doesn't dictate the outcome- it means the application can be entertained and determined on planning merits.
- 14 Following Armstrong, the Government amended Planning Practice Guidance (July 2023, para 013): "There is no statutory limit on the degree of change permissible to conditions under s73, but the change must only relate to conditions and not to the operative part of the permission."
- 15 Applying Armstrong to this application: the operative part of HPK/2025/0018 is "erection of six two-storey dwellings". The proposed amendment doesn't conflict with this- Unit 3 remains a two-storey dwelling with three bedrooms. The change relates solely to Condition 2, substituting one floor plan for another. This is precisely what Section 73 accommodates. Following Armstrong, even if someone considers the change "material", it must be entertained and determined on planning merits.

PLANNING POLICY

Development Plan

- 16 The High Peak Local Plan (2016) is the Development Plan. The amendment complies with all relevant policies including:
- Policy S1/S1a: Presumption in favour of sustainable development- the amendment accords with the Development Plan and should be approved without delay.
 - Policy H3: Nationally Described Space Standards- Rev A fully complies (Bed-1: 11.5m², Bed-2: 11.5m², Bed-3: 7.5m², total floor area ~100m²).

- Policy EQ6: Design and amenity- the amendment maintains high quality design and achieves 21m separation distance to all existing habitable room windows.

High Peak Residential Design Guide SPD (2005)

- 17 Paragraph 8.8.3 establishes a 21m guideline between habitable room windows. However, paragraph 8.8.6 is of relevance:
- "Standards for separation distances are only a starting point for housing layout. The Council adopts a more flexible approach where high quality design can be demonstrated and where adequate amenity and privacy are evident."*
- 18 The Rev A layout demonstrates high quality design (as confirmed in the officer's report) and provides adequate amenity (21m achieved to all existing windows). The SPD's flexibility provisions directly support approval.

National Planning Policy Framework (2024)

- 19 Paragraph 11(d)- Tilted Balance: High Peak can demonstrate only 2.85 years housing supply (February 2025). The tilted balance is engaged: permission should be granted unless adverse impacts significantly and demonstrably outweigh benefits. There are no adverse impacts from this amendment.
- 20 Paragraph 130(c)- Efficiency: Authorities must "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."
- 21 This paragraph applies directly. The rigid application of the 21m guideline to an unbuilt window resulted in a less efficient layout (loft conversion with restricted headroom). Rev A provides acceptable living standards with all bedrooms at first floor, achieving 21m separation, and is a more efficient use of the dwelling.

PLANNING APPRAISAL

- 22 Before the decision was issued, I wrote to the planning officer, on 17th April 2025 (copy attached), setting out arguments for why Rev A should be acceptable. In that email, I made five key points that remain the basis for this Section 73 application. My position on this is unchanged and I have provided the same arguments here.

Firstly, Support from 12 Watford Bridge Road

- 23 The owners and occupiers of 12 Watford Bridge Road (Mr Kinnar and Ms Simpson) wrote to the Council in support of the application. They have no objection to the development including the bedroom window at Unit 3's first floor rear.
- 24 This is highly significant. The very property that gave rise to the officer's concern has confirmed its occupiers have no objection. It is difficult to see how an amenity objection can be sustained when the affected neighbours explicitly support the proposal.

Secondly, SPD Flexibility Provisions Apply

- 25 We refer to the two SPD's paragraph 8.8.6 of the 2018 Design Guide and 8.6.1 of the 2015 Housing design and layout SPD. The guidance requires flexibility where high-quality design and adequate amenity to existing and proposed houses are demonstrated. The bullet points in 8.8.6 must apply to situations like this, especially when there is less than a five-year supply of housing. The design is high quality. Adequate amenity is provided, there is no loss of amenity from shadow, no loss of light to any nearby houses. A 21metre distance is maintained to all existing windows. The guidance within 8.6.1 states that "As a guide a distance of 21 metres between habitable room windows of adjacent properties will provide an acceptable level of amenity." There is no suggestion or requirement in policy or guidance to pay regard to an unbuilt extension or a window in an unbuilt extension. The guidance is based around the amenity of new and existing dwellings. The guidance in 8.6.1 does not require application of a strict distance of 21 metres in any situation as *"Strict application of these standards can however restrict a creative response to site layout and frustrate designers; the Council is therefore open to applicants with a more flexible approach based upon design principles rather than standards."* (8.6.1 of the 2015 SPD). The proposal complies with the guidance to provide 21m between the existing dwelling and the proposed dwelling; the application as submitted is policy compliant.

Thirdly, The Extension is Not Built- The Window Does Not Exist

- 26 Planning permission HPK/2022/0552 for the extension at No.12 was granted in April 2022 and expires April 2026. Over two and a half years later, no

works have commenced. The bedroom window that raised concerns does not physically exist and may never be built.

- 27 The extension is not built, and the window does not exist. The planning permission at number 12 is capable of being implemented such as any other permission granted by a development order such as the GPDO would be. Applying guidelines strictly to development that is not built does not align with the Government's growth agenda for new housing.
- 28 Applying rigid separation standards to protect a theoretical window in an unbuilt extension is contrary to: (a) the SPD's flexibility provisions; (b) NPPF paragraph 130(c)'s requirement for efficient use of land; and (c) the Government's growth agenda. If the extension is never built, the entire rationale for the LPA requesting Rev F disappears. Even if the extension were built the guidance is very clear that "the Council is therefore open to applicants with a more flexible approach based upon design principles rather than standards." The applicant's approach is that the layout as proposed complies with the guidance of 21 metres separation between an existing dwelling and the proposed dwellings.

Fourth, Lack of Five-Year Housing Land Supply- Tilted Balance Engaged

- 29 Following the December 2024 NPPF update imposing the standard methodology, High Peak can demonstrate only 2.85 years supply. As a result, High Peak have now only a 2.85-year supply. As such the tilted balance is engaged within paragraph 11(d).
- 30 Under the tilted balance, permission should be granted unless adverse impacts significantly and demonstrably outweigh benefits. There are no adverse impacts from this amendment (external appearance unchanged; 21m achieved; neighbours support it). The benefits are clear (more efficient layout; better living standards; facilitates housing delivery). The tilted balance strongly supports approval.

Fifth, NPPF Paragraph 130(c) Requires Flexibility

- 31 Paragraph 130(c) requires flexible application of daylight/sunlight guidance where this would inhibit efficient use of a site, provided acceptable living standards result. The Rev A layout provides acceptable living standards (NDSS compliant; 21m achieved) and is more efficient than Rev F: all bedrooms at first floor; no restricted headroom; no complex loft

construction; and importantly a planning permission that will be delivered with 6 family houses built and jobs created as a result of construction.

PLANNING BALANCE AND CONCLUSION

- 32 The proposed amendment falls comfortably within Section 73 as confirmed by the Armstrong judgment. There is no conflict with the operative part (remains six two-storey dwellings) and the amendment must be determined on its planning merits.
- 33 On planning merits, the case for approval is clear and compelling:
- Policy compliance – there is no harm caused:
- Complies with Local Plan Policies S1, S1a, H3, EQ6
 - Accords with SPD para 8.8.6 (high quality design + adequate amenity = flexibility)
 - Accords with NPPF para 11 (tilted balance) and para 130(c) (efficiency)
- 34 Material considerations in favour:
- Neighbour support from 12 Watford Bridge Road
 - Extension at No.12 unbuilt- window doesn't exist
 - 2.85-year housing supply- tilted balance engaged
 - More efficient use of Unit 3 (no loft conversion)
 - Better living standards for occupiers
 - No external changes
 - 21m separation maintained to all existing windows – the proposal is policy compliant
- 35 Material considerations against: None
- No harm to amenity, character, or any other consideration
- 36 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires determination in accordance with the Development Plan unless material considerations indicate otherwise. The amendment accords with the Development Plan. All material considerations support approval. None weigh against it.
- 37 Under NPPF paragraph 11(d), permission should be granted because there are no adverse impacts that would significantly and demonstrably outweigh

the benefits. Applications that accord with the Local Plan should be approved without delay.

- 38 The application is respectfully recommended for approval. The proposed amendment to substitute the approved plans with those listed in this application. We also request the change to condition 6 to remove the requirement for obscure glazing to a home office window. We request these changes as they are policy-compliant, cause no harm to amenity of occupiers of existing or proposed dwellings, provides better accommodation for occupiers, and makes more efficient use of this brownfield site. It will enable the development of 6 family houses to proceed and for employment, both direct and indirect, to be created during construction.
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