

**APPEAL A: APP/H1033/C/22/3297854 &  
APPEAL B: APP/H1033/W/21/3272745**

**APPEAL A against an enforcement notice alleging, 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.**

**APPEAL B against the non-determination of an application for planning permission for the demolition of the existing building known as “Taxel Edge” and the detached garage building and the erection of 7 no. dwellings.**

**Land at Taxel Edge, 184 Macclesfield Road, Whaley Bridge SK23 7DR**

#### **CASE MANAGEMENT CONFERENCE SUMMARY**

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1. The case management conference was led by the Inquiry Inspector, Melissa Madge. The Inquiry is to be held at the Leewood Hotel, Manchester Road, Buxton SK17 6TQ, opening at 1000 hours on Tuesday 15 November 2022.
2. The advocates were confirmed as Anthony Easton, of counsel, for the appellant, and Hugh Richards, of counsel, for the Local Authority.
3. The inquiry is currently scheduled to sit for 4 days (15 to 18 November 2022). Once the parties’ positions are finalised in relation to the main issues set out below, and with a better idea of timings for each element of the parties’ cases following submission of proofs of evidence, a more informed timetable can be prepared.
4. The Council is encouraged to draw the attention of interested parties to this Note, including posting a copy on its web site.

#### **Main statement of Common Ground**

5. The existing statement of common ground (SoCG) does not include any reference to the enforcement appeal. The Council’s 5-year housing land supply position has also been updated. It was agreed that the Council’s current 5-year housing land supply position would not be challenged. The suggested conditions also need work.
6. The advocates are to discuss whether Appeal B is proceeding on the basis of an appeal against non-determination or against the Council’s refusal of planning permission. The agreed position is to be confirmed in a revised SoCG.

7. A revised SoCG, which would be a single document covering both appeals, will be submitted **by 18 October 2022**. It was also agreed that separate annexes to the revised SoCG, relating to landscape and urban design, would be prepared if necessary, and these would be submitted **by 25 October 2022**.

### **Main issues**

8. It was agreed that the main issues in this case are likely to relate to:
  - whether the matters alleged constitute a breach of planning control. This is pertinent to the ground (c) appeal on Appeal A;
  - if the matters alleged do constitute a breach of planning control, whether it is too late for enforcement action to be taken. This is pertinent to the ground (d) appeal on Appeal A;
  - whether the appeal site is an appropriate location for residential development having regard to local and national planning policy. This is pertinent to Appeal B;
  - the effect of the matters alleged and the proposed development on character and appearance of the site and surrounding area. This is pertinent to the ground (a) appeal on Appeal A and Appeal B;
  - the effect of the proposed development on the residential amenity of future occupiers. This is pertinent to Appeal B;
  - whether or not there are 'other considerations' that exist and the weight that should be afforded to them, regarding what, if any, fallback position is being relied upon, what basis any fallback position has, the contribution to boosting the supply of housing, and any other potential benefits. This is pertinent to Appeal B;
  - whether the steps required to be taken by the notice exceed what is necessary to remedy the breach of planning control, or as the case may be, the injury to amenity. This is pertinent to the ground (f) appeal on Appeal A; and
  - whether the steps required to be taken by the notice exceed what is necessary to remedy the breach of planning control, or as the case may be, the injury to amenity. This is pertinent to the ground (g) appeal on Appeal A.

### **Dealing with the evidence**

9. With the agreement of the parties, the evidence relating to the enforcement notice appeal on grounds (c) and (d) will be tested first. This will be followed by the testing of evidence relating to the ground (a) and planning merits of the enforcement and s78 appeals. The testing of evidence in relation to the enforcement notice appeal on grounds (f) and (g) will take place last.

10. It was agreed that the advocates will liaise and provide a draft programme for the Inquiry, based on time estimates to be provided once proofs of evidence have been provided. Their draft programme to be submitted by **25 October 2022**.

11. All evidence will be dealt with through the formal presentation of evidence in chief and cross-examination.

### **Conditions**

12. An agreed schedule of suggested planning conditions and the reasons for them, including references to any policy support, is to be submitted as part of the revised SoCG. The Council should take the lead on preparing that list, in discussion with the appellant. The agreed schedule of suggested planning conditions to be supplied **by 18 October 2022**.

### **Planning Obligation**

13. It was agreed that a planning obligation is not required.

### **Core Documents/Inquiry Documents**

14. You will need to discuss and agree a list of core documents in advance of preparing your proofs so that they can be properly referenced in the proofs. That list is to be co-ordinated by the Council and should be submitted **by 7 November 2022**. A template for that list was provided in Annex 5 of the Pre-CMC Note. The core documents and the core documents list should be published on the Council's website by **7 November 2022**.

15. The Core Documents should comprise **only** those documents to which you will be referring and do not need to include a copy of the National Planning Policy Framework or deal with areas where there is no dispute. Any Appeal Decisions and/or legal authorities on which any party intends to rely will need to be prefaced with a note explaining the relevance of the document to the issues arising in the Inquiry case, together with the propositions on which you are seeking to rely, with the relevant paragraphs flagged up.

16. Where any documents on which it is intended to rely are lengthy, only **relevant extracts** need to be supplied, as opposed to the whole document. Such extracts should, however, be prefaced with the front cover of the relevant document and include any accompanying relevant contextual text.

17. It was agreed that the appellant in conjunction with the Council will supply two hard copy sets of the Core Documents, one for the witness table and one for the Inspector, to be provided at the Inquiry. Interested parties at the event should be advised that an Inquiry library (containing the Core Documents) is accessible via the internet. The appellant and Council will be provided with an electronic set of the documents, and it will be for them to print out what elements they need in hard copy.

18. Any documents submitted once the Inquiry has opened will be recorded as Inquiry Documents on a separate list, overseen by the Inspector.
19. A minimum of two copies of any new documents produced at the Inquiry will be required - one for the other main party and one for the Inspector. - with extra copies to be made available to assist interested parties if necessary.

### **Inquiry Running Order**

20. In general, the Inquiry is expected to finish each day no later than around 1700 hours and, with the exception of the first day, will resume on subsequent days at 0930 hours.
21. In terms of running order, following the Inspector's opening comments on the first day of the Inquiry, she will invite opening statements from the main parties (appellant first, followed by the Council) which will set the scene. She will then hear from any interested parties who wish to speak, which often suits those who have taken time out from work, or who may have other commitments.
22. The presentation of evidence in chief and cross-examination, which will be dealt with in accordance with the agreed programme to follow. With regards to issues concerning the legal grounds of the enforcement notice appeal, the appellant will present its evidence first, which will be cross examined and re-examined if necessary, followed by the corresponding evidence of the Council on the same basis. With regards to issues concerning the ground (a) and the planning merits of the s78 appeal, the Council will present its evidence first, which will be cross-examined and re-examined if necessary, followed by the corresponding evidence of the appellant on the same basis. The appellant's evidence should also address any other matters raised by interested parties at application and appeal stage.
23. On conclusion of that, the Inspector will lead the usual round table discussion on conditions, if necessary. That will be followed by closing submissions (Council, then appellant) which should set out your respective cases as they stand at the end of the Inquiry, with a written copy handed up at the time, appropriately cross-referenced where evidence is relied on, for the avoidance of doubt.

### **Pre-Inquiry Site Visit**

24. It was agreed that the Inspector will carry out an accompanied pre-inquiry site visit. This will take place at 1400 hours on Monday 14 November 2022. Representatives for the appellant and the Council are expected to be present. The purpose of the site visit is for the Inspector to familiarise herself with the site and its surroundings. She will not listen to any representations/arguments during the visit, but both parties can point out physical features, so it is important that you give some thought to where you wish her to see the site from. It is likely that access will be required to at least some of the buildings on site, which will need to be facilitated.
25. It was agreed that, if necessary, the Inspector would be provided with details of other viewpoints beyond the site from which the main parties would like the Inspector to view the site prior to the opening of the Inquiry. The Inspector would not expect to be accompanied when looking from these viewpoints.

## Document Submission Dates

26. The main Statement of Common Ground is due no later than 18 October 2022.
27. All proofs are to be submitted no later than 18 October 2022. Details of the preferred format and content of proofs and other material were Annexed to the pre-CMC note. The topic specific statements of common ground are to be submitted by 25 October 2022.
28. The Council is to ensure that a copy of the Inquiry notification letter and a list of those notified is sent into the Planning Inspectorate no later than 1 November 2022. The Inquiry notification letter should make it clear that the event will not be live streamed or accessible virtually, therefore interested parties will need to attend in person. It may also be helpful if it includes details of the link to the Inquiry library.
29. There is no reference in the Rules or the Procedural Guide to supplementary or rebuttal proofs and the Inspectorate does not encourage the provision of such. However, where they are necessary to save Inquiry time, copies should be provided no later than 1 November 2022. It is important that any rebuttal proofs do not introduce new issues. As an alternative to a rebuttal, it may be that the matter could more succinctly be addressed through an addendum statement of common ground.
30. The advocates are to work collaboratively on the time estimates for each stage of their respective cases, with final timings for openings and closings, evidence in chief and cross-examination to be submitted no later than 25 October 2022. Other than in exceptional circumstances, you are expected to take no longer than the timings indicated, which will require the cooperation of both advocates and witnesses.

18 October 2022	Deadline for submission of: <ul style="list-style-type: none"><li>• all proofs</li><li>• any statutory declarations</li><li>• main signed statement of common ground</li><li>• suggested planning conditions (Council to lead)</li></ul>
25 October 2022	Deadline for submission of: <ul style="list-style-type: none"><li>• Draft Inquiry programme</li><li>• Annexes to the statement of common ground</li></ul>
1 November 2022	Deadline for submission of: <ul style="list-style-type: none"><li>• copy of Inquiry notification letter and list of those notified</li><li>• any rebuttals</li></ul>
7 November 2022	Deadline for submission of Core Documents list and publication of Inquiry library on Council's website
15 November 2022	Inquiry opens 1000 hours

## Costs

31. No application for costs is currently anticipated by any party at this stage, although positions were reserved.

32. If the appellant is to make an application relating to the issuing of the enforcement notice or the adjournment of the Hearing and change in procedure, the Planning Practice Guidance makes it clear that it should be made in writing before the Inquiry.
33. Costs can be awarded in relation to unreasonable behaviour which may include not complying with the prescribed timetables. You are also reminded in this regard, that in order to support an effective and timely planning system in which all parties are required to behave reasonably, the Inspector has the ability to initiate an award of costs, although hopefully she won't have to use it.

*M Madge*  
INSPECTOR

4 October 2022