

Registry / Scanning Team
The Planning Inspectorate
3/01 Kite Wing
Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6PN

1 – 4 South Park Court
Hobson Street
Macclesfield
Cheshire
SK11 8BS

Macclesfield: 01625 433881
Chester: 01244 732447

support@emeryplanning.com
www.emeryplanning.com

28 April 2022

EP ref: 22-166

Rawdon Gascoigne
T: 01625 442 796
rawdongascoigne@emeryplanning.com

Dear Sir or Madam

Re: Town and Country Planning Act 1990 (as amended)
Enforcement Appeal by: Gary Stephen Cullen
Enforcement Notice reference: HPE/2019/00014
Site: Taxal Edge, Macclesfield Road, Whaley Bridge

We write to lodge an appeal against the above Enforcement Notice issued by High Peak Borough Council on 31 March 2022. The following have been submitted today via The Planning Inspectorate Appeals Casework Portal website:

- Appeal form
- Grounds of appeal
- Enforcement notice HPE/2019/00014

A fee of £468 has been paid to the Local Planning Authority for the appeal under ground A, in line with the fee amount stipulated in the Enforcement Notice. However, we are unsure how this has been calculated as the if the works referred to in the alleged breach of planning control required planning permission, a householder planning application would have attracted a fee of £206 (resulting in an appeal fee of £412). We therefore request clarification of the category of development the LPA consider has taken place with reference to the those set out in The Town and

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Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 (as amended).

Appeal procedure

With regard to the appeal procedure we request that the appeal is co-joined with planning appeal reference APP/H1033/W/21/3272745 which relates to a wider parcel of land at Taxal Edge, and is related to the land subject to this Enforcement Notice. The hearing for that appeal opened on 15 March 2022, but was closed early, with the case relisted to be considered by means of a public inquiry, scheduled to open on 13 September 2022. One of the reasons for the change in procedure was that during the hearing it became apparent that there was a need for evidence relating to the lawfulness of works to the former classroom building (the subject of the current Enforcement Notice) to be tested under oath and through formal questioning by an advocate as part of the wider consideration of the fallback position. The matters related to the enforcement appeal are not therefore live and were already anticipated to be dealt with in the context of the planning appeal.

The Planning Inspectorate's '*Criteria for determining the procedure for planning, enforcement, advertisement and discontinuance notice appeals*' (April 2022) indicates that these are specific circumstances in which an inquiry would be appropriate, specifically referencing enforcement appeals where witnesses are giving factual evidence about how long the alleged unauthorised use has been taking place.

The need for an inquiry on this basis was accepted by the inspector for appeal reference APP/H1033/W/21/3272745. Furthermore, as the outcome of this enforcement appeal is of relevance to case reference APP/H1033/W/21/3272745, we consider the most efficient means of proceeding is to co-join the cases and deal with them together at the inquiry in September, which has already been scheduled for 4 days. We suggest that in terms of the timetable, statements of case for the enforcement appeal could be submitted ahead of combined proofs of evidence for both appeals.

We consider this is appropriate as the matters under consideration in the enforcement case will need to be addressed through the inquiry for the S78 appeal at any rate. Therefore, combining the two appeals will save preparation and inquiry time for all parties involved in the appeals. It will also avoid subjecting the appellant to further potential delays and costs, which have arisen throughout the application and appeal stages for the development being considered under appeal reference APP/H1033/W/21/3272745. In the event the appeals are not co-joined, we are concerned that the inspector for appeal reference APP/H1033/W/21/3272745 would not want to pre-judge the outcome of the enforcement case and there is a danger of the inquiry for the S78 appeal being opened and adjourned. The event date for that appeal has already been delayed for approximately a year since the original suggested event date (as a result of the LPA refusing suggested dates and due to the appellant's original request for an inquiry being rejected by the Planning Inspectorate in favour of a hearing which was later deemed to be inappropriate). The set Inquiry date for September allows adequate time for the enforcement appeal to be added and we would re-iterate that the matters raised by the enforcement notice were matters which were the reason for the planning appeal being changed to an Inquiry. Consequently there is no basis for all matters not proceeding as currently set in September.

We trust that the above is acceptable and look forward to receiving confirmation of the approach and timetable as soon as possible following validation of the appeal.

Yours sincerely
Emery Planning

Rawdon Gascoigne

Rawdon Gascoigne BA (Hons), MRTPI
Director

The Planning Inspectorate

ENFORCEMENT NOTICE APPEAL FORM (Online Version)

WARNING: The appeal **must** be received by the Inspectorate **before** the effective date of the local planning authority's enforcement notice.

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

A. APPELLANT DETAILS

Name Mr Gary Stephen Cullen

Address C/O agent - Emery Planning
Unit 2-4 South Park Court Business Centre, Hobson Street
MACCLESFIELD
CHESHIRE
SK11 8BS

Preferred contact method

Email ☒ Post ☐

A(i). ADDITIONAL APPELLANTS

Do you want to use this form to submit appeals by more than one person (e.g. Mr and Mrs Smith), with the same address, against the same Enforcement notice?

Yes ☐ No ☒

B. AGENT DETAILS

Do you have an Agent acting on your behalf?

Yes ☒ No ☐

Name Sir / Ma Emery Planning

Company/Group Name Emery Planning

Address Units 2-4 South Park Court Business Centre
Hobson Street
MACCLESFIELD
Cheshire
SK11 8BS

Phone number 01625 433 881

Fax number 01625 511 457

Email support@emeryplanning.com

Your reference 22-166:RG:LJ

Preferred contact method

Email ☒ Post ☐

C. LOCAL PLANNING AUTHORITY (LPA) DETAILS

Name of the Local Planning Authority

LPA reference number (if applicable)

Date of issue of enforcement notice

Effective date of enforcement notice

D. APPEAL SITE ADDRESS

Is the address of the affected land the same as the appellant's address? Yes ☐ No ☒

Does the appeal relate to an existing property? Yes ☒ No ☐

Address

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

Are there any health and safety issues at, or near, the site which the Inspector would need to take into account when visiting the site? Yes ☐ No ☒

What is your/the appellant's interest in the land/building?

Owner ☒

Tenant ☐

Mortgagee ☐

None of the above ☐

E. GROUNDS AND FACTS

Do you intend to submit a planning obligation (a section 106 agreement or a unilateral undertaking) with this appeal? Yes ☐ No ☒

(a) That planning permission should be granted for what is alleged in the notice. ☒

The facts are set out in

☒ see 'Appeal Documents' section

(b) That the breach of control alleged in the enforcement notice has not occurred as a matter of fact. ☐

(c) That there has not been a breach of planning control (for example because permission has already been granted, or it is "permitted development"). ☒

The facts are set out in

☒ see 'Appeal Documents' section

(d) That, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice. ☒

The facts are set out in

☒ see 'Appeal Documents' section

(e) The notice was not properly served on everyone with an interest in the land. ☐

(f) The steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections. ☒

The facts are set out in

☒ see 'Appeal Documents' section

(g) The time given to comply with the notice is too short. Please state what you consider to be a reasonable compliance period, and why. ☒

The facts are set out in

☒ see 'Appeal Documents' section

F. CHOICE OF PROCEDURE

There are three different procedures that the appeal could follow. Please select one.

1. Written Representations ☐

2. Hearing ☐

3. Inquiry ☒

You must give detailed reasons below or in a separate document why you think an inquiry is necessary.

The reasons are set out in

☒ see 'Appeal Documents' section

(a) How long do you estimate the inquiry will last?

3 day(s)

(b) How many witnesses do you intend to call?

2

(c) Is there any further information relevant to the inquiry which you need to tell us about?

Yes

☐ No

☒

G. FEE FOR THE DEEMED PLANNING APPLICATION

1. Has the appellant applied for planning permission and paid the appropriate fee for the same development as in the enforcement notice? Yes ☐ No ☒

2. Are there any planning reasons why a fee should not be paid for this appeal? Yes ☐ No ☒

If no, and you have pleaded ground (a) to have the deemed planning application considered as part of your appeal, you must pay the fee shown in the explanatory note accompanying your Enforcement Notice.

H. OTHER APPEALS

Have you sent other appeals for this or nearby sites to us which have not yet been decided? Yes ☒ No ☐

Please give details, including our reference number(s), if known.

We request that the appeal is co-joined with planning appeal reference APP/H1033/W/21/3272745 which relates to a wider parcel of land at Taxal Edge, and is related to the land subject to this Enforcement Notice, scheduled to open on 13 September 2022.

I. SUPPORTING DOCUMENTS

01. Enforcement Notice:

☒ see 'Appeal Documents' section

02. Plan (if applicable and not already attached)

☒ see 'Appeal Documents' section

J. CHECK SIGN AND DATE

I confirm that all sections have been fully completed and that the details are correct to the best of my knowledge.

I confirm that I will send a copy of this appeal form and supporting documents (including the full grounds of appeal) to the LPA today.

Signature

Sir / Ma Emery Planning

Date

28/04/2022 17:26:51

Name

Sir / Ma Emery Planning

On behalf of

Mr Gary Stephen Cullen

The gathering and subsequent processing of the personal data supplied by you in this form, is in accordance with the terms of our registration under the Data Protection Act 2018.

The Planning Inspectorate takes its data protection responsibilities for the information you provide us with very seriously. To find out more about how we use and manage your personal data, please go to our [privacy notice](#).

K. NOW SEND

Send a copy to the LPA

Send a copy of the completed appeal form and any supporting documents (including the full grounds of the appeal) to the LPA.

To do this by email:

- open and save a copy of your appeal form
- locating your local planning authority's email address:
<https://www.gov.uk/government/publications/sending-a-copy-of-the-appeal-form-to-the-council>
- attaching the saved appeal form including any supporting documents

To send them by post, send them to the address from which the enforcement notice was sent (or to the address shown on any letters received from the LPA).

When we receive your appeal form, we will write to you letting you know if your appeal is valid, who is dealing with it and what happens next.

You may wish to keep a copy of the completed form for your records.

L. APPEAL DOCUMENTS

We will not be able to validate the appeal until all the necessary supporting documents are received.

Please remember that all supporting documentation needs to be received by us within the appropriate deadline for the case type. If forwarding the documents by email, please send to **appeals@planninginspectorate.gov.uk**. If posting, please enclose the section of the form that lists the supporting documents and send it to Initial Appeals, Temple Quay House, 2 The Square, Temple Quay, BRISTOL, BS1 6PN.

You will not be sent any further reminders.

Please ensure that anything you do send by post or email is clearly marked with the reference number.

The documents listed below were uploaded with this form:

Relates to Section:	GROUPS AND FACTS
Document Description:	Facts to support that planning permission should be granted for what is alleged in the notice.
File name:	Grounds of Appeal - Enforcement ref. HPE-2019-00014 - Taxal Edge.pdf
Relates to Section:	GROUPS AND FACTS
Document Description:	Facts to support that there has not been a breach of planning control (for example because permission has already been granted, or it is "permitted development").
File name:	Grounds of Appeal - Enforcement ref. HPE-2019-00014 - Taxal Edge.pdf
Relates to Section:	GROUPS AND FACTS
Document Description:	Facts to support that, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice.
File name:	Grounds of Appeal - Enforcement ref. HPE-2019-00014 - Taxal Edge.pdf
Relates to Section:	GROUPS AND FACTS
Document Description:	Facts to support that the steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections.
File name:	Grounds of Appeal - Enforcement ref. HPE-2019-00014 - Taxal Edge.pdf
Relates to Section:	GROUPS AND FACTS
Document Description:	Facts to support why the time given to comply with the notice is too short. Also state what you consider to be a reasonable compliance period, and why.
File name:	Grounds of Appeal - Enforcement ref. HPE-2019-00014 - Taxal Edge.pdf
Relates to Section:	CHOICE OF PROCEDURE
Document Description:	Document containing detailed reasons why an inquiry is necessary.
File name:	Letter enclosing enforcement appeal - HPE-2019-00014 - 28.04.22 RG_1.0.pdf
Relates to Section:	SUPPORTING DOCUMENTS
Document Description:	01. The Enforcement Notice.
File name:	Enforcement Notice HPE-2019-00014 (29-04-2022)_1.0.pdf
Relates to Section:	SUPPORTING DOCUMENTS
Document Description:	02. The Plan.
File name:	Enforcement Notice HPE-2019-00014 (29-04-2022)_1.0.pdf

Completed by SIR / MA EMERY PLANNING

Date 28/04/2022 17:26:51

Grounds of Appeal
Enforcement reference: HPE/2019/00014
Site: Land at 184 Taxal Edge, Macclesfield Road, Whaley Bridge,
Derbyshire SK23 7DR

Ground (a) - that planning permission should be granted for what is alleged in the notice (or that the condition or limitation referred to in the enforcement notice should be removed).

The appellant's case is that the alleged breach of planning control does not conflict with the development plan policies and supplementary planning guidance referred to in Section 4.5 of the Enforcement Notice. It also accords with relevant national planning policy.

The alterations to the building, have improved the appearance of the classroom conversion and do not harm the landscape setting of the wider area as alleged in the Notice. The alterations have not materially altered the building in scale and form having regard to its setting and previous appearance.

Ground (c) - that there has not been a breach of planning control.

A number of the matters alleged in the Notice do not constitute a breach of planning control as they either do not involve material changes to the building, or else fall within the scope of permitted development rights under Schedule 2, Part 1 of the Town and Country Planning General Permitted Development England Order 2015 as amended.

Prior to the service of the Enforcement Notice, the LPA did not engage with the appellant regarding the alleged breach of planning control or provide the opportunity for the appellant to explain why they did not consider there had been breach of planning control. This is despite the appellant directly requesting confirmation from the Council of what concerns they had in respect of unauthorised development at the former classroom building to which they did not receive a clear response. This is contrary to the LPA's Enforcement Policy which states that the LPA will:

"Negotiate with those responsible for a breach of planning control" and "give them the opportunity to resolve the matter prior to taking formal action, unless the breach is so serious it would harm amenity and public safety (e.g. failure to comply with contamination conditions), or if discussions have become protracted with limited chance of success".

The Enforcement Policy also states that:

"If a complaint is received that affects you or your property then the Council will attempt to contact you... or the site in question will be visited by an Enforcement Officer... You will be given the opportunity to explain your side of the case."

If the appellant had been afforded this opportunity, it is considered the service of a Notice and the resultant appeal could have been avoided.

Ground (d) – that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters.

The relevant time limit for enforcement action in respect of operational development is 4 years from the date of the breach (section 171B(1) of the Town and Country Planning Act 1990 (as amended)).

Evidence including dated photographs, invoices and witness accounts demonstrates that the alleged breaches of planning control were substantially complete more than 4 years prior to the service of the Enforcement Notice. Consequently, all of the matters comprising the alleged breach of planning control are immune from enforcement action due to the passage of time.

The evidence in respect of the appeal under Ground (d) is clear and unequivocal. If the LPA had followed their Enforcement Policy and the appellant been given the opportunity to explain their side of the case, it would have been clear there was no basis for issuing the Enforcement Notice. The LPA has acted unreasonably in this regard.

Ground (f) - that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.

In the event that the appeals under grounds A-D are not wholly successful and without prejudice to the appellant's case that the notice should be quashed, it will be shown that the steps required by the notice exceed what is necessary to remedy the alleged breach of planning control, as elements of the works are clearly lawful and acceptable in planning terms.

Even if the inspector considers that some of the alleged operations are unlawful and is unable to grant permission for the works in their entirety, the steps of the Notice could be amended to exclude the elements that are immune from enforcement and/or comply with relevant planning policy. The appellant will set out some suggested amendments to the detail of the alleged unauthorised works within their statement of case that will address and concerns over appearance should that be considered necessary.

The steps required by the notice are also imprecise and unclear as they require the building to be altered to accord with the dimensions of images EN04 and EN05 (attached to the Notice). However, the images are not to scale and do not include any dimensions. It is therefore impossible to understand what the notice requires or to enforce compliance.

Ground (g) – that the time given to comply with the notice is too short.

The time given to comply with the requirements of the notice is 6 months. This is insufficient due to the fact that the house is currently occupied by the appellants family and would require them to find alternate accommodation whilst the work is taking place if the works to the roof are required. It is also insufficient due to issues with the availability of labour; supply chain issues in the construction industry; and uncertainty over whether suitable materials could be sourced and delivered to enable completion of the works within the required timeframe. Advice also needs to be taken to confirm whether protected species surveys are required prior to proceeding with certain elements of the works. This has the potential to further impact the appellant's ability to comply with the Notice within the required timeframe.

If the Enforcement Notice is upheld, it is considered that a period of at least 12 months would be required for compliance.