Alysia Davidson

From: Rawdon Gascoigne <
Sent: 06 January 2021 17:07
To: Simpkin, Rachael.; Ben Pycroft; Haywood, Ben; Colley, Jane
Cc: Gary Cullen; Samantha-Jane Cullen
Subject: RE: HPK/2020/0301 ref. Taxal Edge, Macclesfield Road, Whaley Bridge
Attachments: Taxal Edge Opinion (Nov 2020).pdf; Taxal Edge Opinion (September 2020)(final)(002).pdf; location plan 2008.pdf; location plan stamped 2009.pdf; location plan 2013.pdf; 2008 decision notice.pdf; application form 2008.pdf; Birds eye view cut out.jpg; Drone image with proposed development.jpg; Original Drone photo taken dec 2020.jpg

Dear Rachel,

We refer to our previous correspondence in this matter and in particular our previous Counsel's opinions, the meeting in November and your subsequent email of the 7th December. I have responded as, as you are aware, Ben is currently tied up with a Public Inquiry. We have referred to Counsel's opinion again as we are very disappointed that officers have once again sought to justify a negative position based on isolated assessments and snapshots from previous applications despite the overwhelming evidence that supports the grant of planning permission. We would refer you back to those earlier opinions which remain completely relevant to the assessment of this case and, with respect, still contradict the position you have sought to take within your email of the 7th December.

Turning to your email, you now appear to be suggesting that 3(2?) units would need to be deleted from the proposed scheme to make it acceptable rather than the 1 that was potentially identified at our meeting, notwithstanding the extant permissions for the site allow for up to 11, 7 of which have already been accounted for in the Council's housing land supply figures as set out in the appendix to the adopted Local Plan. This is a significant reduction and change to the proposed scheme which is simply not acceptable or viable to our client at this stage and nor, we consider, justified by policy or any other material considerations such as detailed design, layout and impact on trees etc. which we address in a bit more detail below. Fundamentally, we request that the application is now dealt with on the basis of the submitted layout and the additional detail submitted since the application was made up to and including that contained within and attached to this email.

Your response of the 7th December has focussed on an approach which seeks to restrict the extent of what can be consider the previously developed part of the site for the purposes of policy allowing the redevelopment of previously developed sites in the open countryside. However, that ignores the still relevant consideration that Local Plan Policy H1 allows the use of greenfield land adjacent to settlements and that remains a relevant consideration as rehearsed in detail in the Counsel's opinions previously submitted. Whilst the discussion in our meeting focused on an approach more closely related to the site being redevelopment of PDL that was without prejudice to our view that it could also still be viewed as a site adjoining the settlement and we consider that the information submitted has demonstrated that point. As explained at the meeting we do not accept that the footpath between the site and the neighbouring residential area means that the site is not adjacent to the settlement. The comparison with the Tunstead Milton appeal is unjustified because in that case the Inspector concluded the site did not adjoin the settlement due to it being on the opposite side of Manchester Road. The focus on PDL was led by a belief that officers were leading consideration in that direction to seek a positive outcome for the scheme broadly as drafted which now appears not to be the case. Notwithstanding, we consider that your approach to restricting the site based on the information attached to your email is flawed as it does not properly take into account all the documents associated with the 2009 and 2013 permissions as well as that from 2008 which show that various different red edges were taken into account and that the land between the former school building and the detached classroom was to be used for residential purposes and included as curtilage and/or amenity land. We attach the further documents which demonstrate that to be the case. In addition, given that the site was never previously in a greenfield use, it is clear that the ground of what was previously a school facility extended to the entirety of that shown as blue edged land on the various plans as that was the entity that was purchased by the previous and current owners. That forms the planning unit and whist we would concur that Policy advice is that it may not be

appropriate to develop the site to its full extremity, that is not what is being proposed here and we cannot accept that infilling between existing buildings in this context raises concerns over the use of that area. The planning unit is part and parcel of what should be consider as the developable site and we would remind you that the Council were recently suggesting that the relevant current lawful use was in fact the school use which extended over the entirety of the blue edged area as the grounds were used by residents for amenity purposes and that is the clear intention of the previously approved residential schemes as well. The land was not to be in agricultural use or similar and that is the only way it could be considered greenfield or not previously developed.

Turning to the matter of landscape impact and character which we understand still remains a point on which you await further consultation responses, we do not agree that the proposed scheme is either out of character with the area nor has any greater impact on the character of the area or the surrounding landscape. We have enclosed aerial digital images which illustrate the existing site and proposed schemes(including the proposed landscaping) and the context of the surrounding area. The Images clearly show that the site:

- Forms part of the established built up area of Whaley Bridge;
- Reflects the crescent and linear patterns of existing residential development adjacent to the site;
- The mix in scale and form of dwellings in the vicinity of the site including 3 storey dwellings as proposed;
- The presence of dormer windows as a feature of the surrounding area
- The containment of the site in terms of its appearance in the wider landscape through the existing and proposed landscaping in and around the site.;
- The scale of existing built form on site reflective of the scale of built form proposed with no incursion beyond what is currently perceived as the developed part of the site.
-

With regards matters of amenity, we have previously submitted sections which demonstrate that the proposed scheme meets or exceeds the relationship that has previously been found acceptable when approving the extant permissions for the residential development of the site. The limited number of letters that refer to matters of residential amenity, some of which do not actually object but merely pass comment, need to be viewed in the context of their varying relationships to the site, the extant scheme and the letters that have been submitted in support of the proposals. We do not consider there to be any material objections on amenity grounds to the scheme. If you consider there are, we would ask that this is explicitly set out with reference to the submitted sections and supporting information and where you consider there are deficiencies.

We discussed housing mix at the meeting. Our view is that we have already addressed this point by providing you with the report we prepared for Barratt Homes on their site in close proximity to this site and the latest information from the one estate agent in Whaley Bridge. If officers are minded to change their recommendation to approval and an extension of time is agreed as set out below then we will formalise this into a report.

Finally, with reference to the trees on site, we understand that Monica Gillespie and Ruth Baker are now satisfied that the proposals will not have any adverse impact on the existing trees and that the landscape and tree management scheme will lead to the long term management and enhancement of the trees on site. The one area that may still be of concern with regards trees was the proximity of the proposed garage serving the former classroom to the adjacent tree. We consider this matter can be controlled by condition requiring an adjustment to the location of the proposed garage or otherwise a condition preventing the construction of that garage as part of this proposal.

We trust that the above has summarised our client's position and that the application will proceed to planning committee on the 18th January. Given the scheme essentially remains as submitted there should be no reason to delay consideration. We remain firmly of the view as previously articulated through Counsel's advice that there is no justifiable reason to refuse this application and the additional information submitted with this email addresses the concerns that were raised in your previous committee reports and your email of the 7th December. Our client is clear that they wish the scheme as now drafted to be considered so that they have the option of having the matter considered at appeal if that proves necessary. Any further amendments will be considered by way of an alternate application.

We note that you have asked for an agreement on a formal extension to the time for considering the application. Our client will be happy to agree this to allow a positive recommendation to be made and the details of conditions to be agreed, however, if you remain of the view that the proposals are unacceptable we will not agree an extension to the determination period and ask that the matter goes to the first available committee. In the absence of these two alternates our client will be forced to consider a non determination appeal with the obvious implication of additional costs arising from that which they will have to recover through the appeal process

Kind regards,

Rawdon Gascoigne BA (Hons) MRTPI
Director

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Emery Planning
2-4 South Park Court
Hobson Street
Macclesfield
SK11 8BS

Registered
office as above

Emery Planning Partnership Ltd trading as
Emery Planning
Registered in England No. 4471702

From: Simpkin, Rachael. <
Sent: 07 December 2020 17:51
To: Ben Pycroft <; Haywood, Ben <; Colley, Jane <
Cc: Gary Cullen <Samantha-Jane Cullen Rawdon Gascoigne <>
Subject: HPK/2020/0301 ref. Taxal Edge, Macclesfield Road, Whaley Bridge

Hi Ben,

In response, please find points raised as follows:

- Plots 5 and 6 clearly fall within the greenfield, wooded area of the site (refer to NPPF definition previously developed land).
- Furthermore, there will be a clear distinction between property curtilage and planning unit.
- This wooded area was excluded from the red edge of the 2009 and 2013 permissions – noting the annotation 'Existing Mature Trees to be Protected (see Tree Survey).
- The proposed garage / study and widened access to the classroom 'conversion' (the conversion being subject to enforcement investigation) partly falls outside of the red edge.
- Two aerial photographs as well as the 2009 approved site plan are attached which assist in illustrating these points.
- Matters of character / appearance, amenity and tree protection require further plan information before the LPA can comment any further.

Accordingly, the proposed sketch scheme does not attract support in these regards. Any further discussion should be done within the context of an agreed time extension as we have previously advised.

The current scheme is scheduled for the 18th January 2021 DC Committee Meeting with a print deadline of the 8th January.

Kind regards,

Rachael Simpkin
Senior Planning Officer (Majors & Commercial)
Development Services

High Peak Borough Council and Staffordshire Moorlands District Council

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From: Ben Pycroft <
Sent: 25 November 2020 15:11
To: Simpkin, Rachael. <>; Haywood, Ben
; Colley, Jane <
Cc: Gary Cullen <; Samantha-Jane Cullen <; Rawdon Gascoigne <
Subject: RE: Taxal Edge, Macclesfield Road, Whaley Bridge - Residential application

Dear Rachael / All

We agreed at our meeting last week that we would consider sketching up a revised scheme at the site, which we would send to you on an informal basis for comment to see if it is something Council officers could support before we would then consider amending the current scheme formally.

Our client's architect is busy this week, but Gary has provided a sketch. Without prejudice to the scheme that is currently before you, please find this sketch attached, which shows the following potential amendments:

1 – Removal of plot 7 - this is the detached dwelling next to the converted classroom
2 – Removal of plot 1 – instead the conversion of the garage to a dwelling under the extant permission would be built out – this could have a potential benefit on tree routes in this location. Plot 2 would become detached.
3 – The remaining plots (shown as 2, 3, 4, 5 and 6) could all be moved forward 1 to 2m. This would increase the garden area to the rear and change the layout slightly
4 – The garages would be moved back and would have green roofs, again to increase amenity. This would also remove the balconies.

5 – the garage for the converted classroom would be moved back to protect the tree roots – albeit there is permission in the location it is currently proposed for a retaining wall anyway.

We would like to know is this is something officers could support as soon as possible. Could you reply by the end of the week so that we can advise our client and subsequently get back to you in terms of potential extensions of time?

Many thanks

Ben Pycroft BA (Hons) Dip TP MRTPI
Director

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Emery Planning
1-4 South Park Court
Hobson Street
Macclesfield
SK11 8BS

Registered office as above

From: Simpkin, Rachael. <
Sent: 25 November 2020 11:14
To: Ben Pycroft <>; Haywood, Ben <>; Colley, Jane <
Cc: Gary Cullen >; Samantha-Jane Cullen <>; Rawdon Gascoigne
Subject: RE: Taxal Edge, Macclesfield Road, Whaley Bridge - Residential application

Hi Ben,

Following our TEAMS meeting last week, would you kindly update me and by return as to whether the applicant intends to submit a revised sketch scheme within the context of an agreed time extension, which I suggest should be the 18th January 2021 DC Meeting.

Kind regards,

Rachael Simpkin
Senior Planning Officer (Majors & Commercial)
Development Services

High Peak Borough Council and Staffordshire Moorlands District Council

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From: Ben Pycroft
Sent: 17 November 2020 11:03
To: Haywood, Ben < Colley, Jane >; Simpkin, Rachael. <; de Bruin, Nicola <
Cc: Gary Cullen <>; Samantha-Jane Cullen <; Rawdon Gascoigne
Subject: Taxal Edge, Macclesfield Road, Whaley Bridge - Residential application

Hi All

To assist our discussion tomorrow, please find attached:

1 – A plan which shows how our red line and the built up area boundary as shown on the proposals map to aid our discussions re: policy H1; and
2 – An e-mail from the only estate agent in Whaley Bridge (Gascoigne Halman) which supports the need for family homes to aid our discussions on housing mix.

Kind regards

Ben Pycroft BA (Hons) Dip TP MRTPI
Director

Emery Planning
1-4 South Park Court
Hobson Street
Macclesfield
SK11 8BS

Registered office as above

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www.highpeak.gov.uk

High Peak Borough Council

working for our community

TOWN AND COUNTRY PLANNING ACT 1990
PLANNING AND COMPENSATION ACT 1991
TOWN AND COUNTRY PLANNING GENERAL DEVELOPMENT ORDER 1995

FULL PLANNING APPLICATION

PERMISSION

Applicant Ray Butler
C/O Ray Butler & Sons
Station Road Eccles Road
Chapel-en-le-Frith
SK23

Agent Peter Dalton
53 Long lane
Chapel-en-le-Frith
SK23 0TA

Application no. HPK/2008/0069

Registered on 04/02/2008

Determined on 28/03/2008

High Peak Borough Council hereby **PERMIT** this application for **FULL PLANNING PERMISSION** for

Change of use of Taxal Edge from boarding hostel and associated ancillary residential accommodation to use as single family dwelling at Taxal Edge Macclesfield Road Whaley Bridge

in accordance with the submitted application, details and accompanying plans listed below because having regard to the existing development in the area and the provisions of the development plan the proposal would be in accordance with the plan, would not materially harm the character or appearance of the area or the living conditions of neighbouring occupiers subject to the following conditions and reasons:-

Conditions

1. The development to which this permission relates must be begun not later than the expiration of three years from the date of this permission unless some other specific period has been indicated in other conditions given.

……..
Adrian Fisher
Head of Planning & Development

High Peak Borough Council Planning and Development Services, Municipal Buildings, Glossop, Derbyshire SK13 8AF
Tel 0845 129 77 77 Fax 01457 860290 Minicom 0845 129 48 76
E-mail planning@highpeak.gov.uk Website www.highpeak.gov.uk

2. Notwithstanding the provisions of Classes A, B,C, D, E, F, G and H of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking or re-enacting that Order) no extensions, buildings, means of enclosure or external alterations or works shall be erected without the prior written approval of the local planning authority.

3. Prior to the commencement of development and notwithstanding the details provided on the submitted plans a plan showing the extent of the residential curtilage relating to the residential unit shall be submitted in writing to the Local Planning Authority within 28 days of the date of this consent. The development shall thereafter be implemented in accordance with the approved plan.

Reasons

1. The time limit condition is imposed in order to comply with the requirements of sections 91, 92, 93 and 56 of the Town and Country Planning Act 1990 and section 51 of the Planning and Compulsory Purchase Act 2004.

2. To enable the Council to exercise control over future developments at the site. In accordance with Policy GD4 and GD5 of the Adopted High Peak Local Plan 2005.

3. In order to restrict the incursion of the residential curtilage into open countryside in accordance with policy OC2 of the Adopted High Peak Local Plan

Notes to Applicant

Plans

The plans to which this Notice refers are listed below:

Location Plan 1
Location Plan 2

……..
Adrian Fisher
Head of Planning & Development

NOTES

1. If the applicant is aggrieved by the decision of the local planning authority to refuse permission or approval for the proposed development, or to grant permission or approval subject to conditions, he may appeal to the Office of the Deputy Prime Minister in accordance with Section 78 & 79 of the Town and Country Planning Act 1990. **PLEASE NOTE the time period for appeal has changed.** If your application was registered as received before 14th January 2005 you can appeal within 3 months of the date of this decision. **If your application was registered on or after 14th January 2005 you can appeal within 6 months of the date of this decision**. The Office of the Deputy Prime Minister has power to allow a longer period for the giving of a notice but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The First Secretary of State is not required to entertain an appeal, if it appears to him that permission for the proposed development could not have been granted by the local planning authority, or could not have been so granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements, to the provisions of the development order, and to any direction given under the order.

2. If permission to develop land is refused or granted subject to conditions, whether by the local planning authority or by the Office of the Deputy Prime Minister, and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of development which has been or would be permitted, he may serve on the Council of the county district in which the land is situated, a purchase notice requiring that council to purchase his interest in the land in accordance with the provisions of Section 137 & 138 of the Town and Country Planning Act 1990.

3. In certain circumstances, a claim may be made against the local planning authority for compensation, where permission is refused or granted subject to conditions by the First Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in Section 114 of the Town and Country Planning Act 1990.

4. This permission relates to planning control only. Approval under the Building Regulations may also be required from this authority. Any other statutory consent necessary must be obtained from the appropriate authority.

5. If it is intended to give notice of appeal in accordance with Paragraph 1 above, this should be done on the appropriate form obtainable from: The Planning Inspectorate, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN, tel. 0117 3728000, fax. 0117 – 3728624.

6. Where a vehicle is often driven across a grass verge or kerbed footway to and from premises adjoining a highway, the occupier of the premises may, be required to pay the cost of construction of a crossing, and/or the strengthening of a footway, as the Authority considers necessary, or may be required to comply with conditions, imposed by the Authority. You should contact the Highway Authority, Derbyshire County Council at County Hall, Matlock, Derbyshire, tel. 01629 580000.

7. Developers should be aware of their statutory obligations with regard to access to buildings

and their surroundings, in particular:

Building Regulations 2000 Approved Document M, 2004 Edition
The Work Place (Health, Safety & Welfare) Regulations 1992
The Disability Discrimination Act 1995
The Disability Discrimination (Employment) Regulations 1996

8. Developers should also be aware of the provisions of the Gas Safety Regulations 1972 and Gas Safety (Installation and Use) Regulations 1984. It is possible that the existing gas service pipe which lies within the area of the proposed extension of alterations which will contravene the provisions of these Regulations. It is necessary that you contact British Gas, North West House, Gould Street, Manchester, M4 4DJ, who will advise if the existing gas service pipe requires alterations.

Planning Application Form

HPK/2008/0069

Please read the attached guidance notes
Please complete in block letters or tick the box as appropriate and return
Four copies of the form to the address on the back.

1 **Name & address of applicant**

Ray Butler c/o Ray Butler & Sons
Station Yard, Eccles Road, Chapel-en-le-Frith

Postcode: SK23 0
Tel: ....

Name & address of agent

Peter Dalton BA(Hons) MRTPI
53 Long Lane, Chapel-en-le-Frith SK23 0TA

Tel: .... Contact: Peter Dalton
Fax: ....

2 **Proposed development**

A. Location or address of proposed development (outline in red on all site plans)
Taxal Edge, Macclesfield Road, Whaley Bridge, High Peak

B. Description of proposed development (if housing state number of units)
Change of Use of the Building and Property of Taxal Edge shown in solid red and edged red on the Location Plan from Boarding Hostel and associated ancillary residential accommodation to use as single family dwelling

C. Is the proposal for a temporary period? YES ☐ NO ☑ How long for? ....

D. Size of site (outline in red on all site plans) 0.8 hectares

E. Do you own or control any adjoining land? YES ☐ NO ☑ If YES outline in blue on all site plans

Type of application

Please tick one box

A. This is an **outline** application ☐

B. This is a **reserved matter** application ☐
Outline application number....
Date of permission ....

C. This is a **full** application for:
- i) Building or engineering operations only ☐
- ii) Change of use without any building or engineering operations ☑
- iii) Change of use and building or engineering operations ☐
- iv) Renewal of temporary permission ☐
  (if so, number of existing application) ....
- v) Removal or variation of a condition of a previous planning application ☐
  Condition No. .... Application No. ....

HIGH PEAK BOROUGH COUNCIL
GLOSSOP SITE
RECEIVED
04 FEB 2008
REPLY REQUIRED

4 **Applications**

If you have ticket A or B in question 3, please tick the relevant boxes. If you ticked C, please go to Question 5.

Do you wish to seek approval for any of the following matters as part of this application? YES ☐ NO ☐

If YES tick the relevant box or boxes

SITING ☐ DESIGN ☐ LANDSCAPE ☐ EXTERNAL APPEARANCE ☐ MEANS OF ACCESS ☐

5 Roads and Public Rights of Way

A. Do you propose to create a new access to a highway? YES ☐ NO ☑

B. Do you propose to alter an existing access to a highway? YES ☐ NO ☑

C. Do you propose to alter, close or divert a public right of way? YES ☐ NO ☑

If YES to A, B or C show on the submitted plans

6 Existing, previous use and demolition

A. Existing use Boarding School/ Hostel and ancillary residential use

B. Previous use Private Dwelling

C. Are any buildings to be demolished? YES ☐ NO ☑
If YES show them on the submitted plan

7 Levels

A. Does the development change land levels? YES ☐ NO ☑

If YES clearly illustrate the change on plan, with sections showing adjoining land or properties

8 Trees and landscaping

Do you intend to lop, top or fell any trees as part of the proposed development? YES ☐ NO ☑
If YES show them on the submitted plans

9 Materials

Type and colour of materials to be used for:-

The roof Not Applicable

External walls Not Applicable as no change

10 Parking

How many vehicle parking spaces will be provided?

Existing 6 New Spaces 0 Total 6

11 Drainage

A. How will surface water be disposed of? (e.g. main drain, soakaway, watercourse)

Not applicable since no change

B. How will foul sewage be disposed of? (main sewer, septic tank, etc.)

Nor Applicable since no change

If the proposed development includes industrial, commercial, retail or leisure uses, please complete questions 12-19.

If not, please proceed to Section 20.

12 Related Development

Not Applicable

Is the proposed development related to:

A. An existing use near the site? YES ☐ NO ☐

B. A larger scheme for which permission is not yet sought? YES ☐ NO ☐
If YES to A or B please give details

.....

C. Existing premises which are no longer satisfactory? YES ☐ NO ☐
If YES please give details

.....

13 Floorspace in square metres

Please state the size of each use.

A. What is the current floorspace? Industrial..... Office..... Retail..... Warehousing.....

B. How much new floorspace is to be provided? Industrial..... Office..... Retail..... Warehousing.....

14 Employment

A. How many staff are currently employed on the site? .....

B. How may staff will be transferred to the site? .....

From where?

C. How many new staff will be employed by the proposal? .....

15 Hours of working Hours of Delivery; working hours may be longer and include Sunday & some Public Holidays

Please state hours of working./delivery

Monday ..... Friday .....

Tuesday ..... Saturday .....

Wednesday ..... Sunday .....

Thursday ..... Public Holidays .....

16 Parking and servicing for commercial vehicles

A. How many parking spaces are to be provided for commercial vehicles on the site?

Cars ..... Commercial vehicles .....

Please show them on your plans.

B. What provision is made for loading/unloading and turning vehicles on the site?

.....

17 Traffic

How many vehicles will visit the site during a normal working day? (exclude employees' vehicles)

A. Goods vehicles .....

B. Other vehicles .....

18 Industrial development

A. Describe any processes and products.
Attach sheet if necessary

NOT APPLICABLE

B. What type of plant or machinery will be installed/used?

19 Hazardous Substances

Will the proposal involve the use of, or storage of any substances of the type and quantity referred to in the Hazardous Substances Regulations.

YES ☐ NO ☐

If YES state the substances and quantities.

NOT APPLICABLE

20 Please Complete

I/We submit this application and attach four copies of al plans, showing the application site outlined in red, and any neighbouring land in my/our ownership or control in blue. The attached plans:-

Please list: Location Plans showing extent of Taxal Edge at 1/1250

AND

I/We attach a completed ownership certificate (and details of services of notices where applicable)

AND

I/We enclose a fee of £ 265

Signed

on behalf of: Ray Butler Date: 28th January 2008

Please return four copies of this form and your plans to:

Regeneration Service
High Peak Borough Council
Municipal Buildings
Glossop
Derbyshire
SK13 8AF

For further information :

Phone 0845 129 77 77 Fax 01457 860290 Textphone 0845 129 48 76
e-mail "planning@highpeak.gov.uk"

CERTIFICATE OF OWNERSHIP

Certificate A

HPK/2008/0069

TOWN AND COUNTRY PLANNING ACT 1990
TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE) ORDER 1995
CERTIFICATE UNDER ARTICLE 7

I certify that:-

1. At the beginning of the period of 21 days ending with the date of the accompanying application nobody except the applicant was the owner of any part of the land to which the application relates.

2a. None of the land to which the application relates is, or is part of, an agricultural holding. ☑

2b I have/the applicant has given notice to every person other than *my/him/herself who, at the beginning of the period of 21 days ending with the date of the application, was a tenant of an agricultural holding on all or part of the land to which the application relates:- ☐

Please tick 2a or 2b * Delete where inappropriate

Tenants name: _____

Address at which notice was served: Not Applicable

Date on which notice was served: 30/1/08 On behalf of: Ray Butler

Certificate B

TOWN AND COUNTRY PLANNING ACT 1990
TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE) ORDER 1995
CERTIFICATE UNDER ARTICLE 7

I certify that:

1. *I have/the applicant has given the required notice (i.e. Notice No. 1) to everyone else who, at the beginning of the period of 21 days ending with the date of the accompanying application, was the owner of any part of the land to which the application relates, as listed below:

Owner's name: _____

Address at which notice was served: _____

Date on which notice was served: _____

2a None of the land to which the application relates is, or is part of, an agricultural holding. ☐

2b *I have/the applicant has given the required notice to every person other than *my/him/herself who, at the beginning of the period of 21 days ending with the date of the application, was a tenant of an agricultural holding on all or part of the land to which the application relates: ☐

Please tick box 2a or 2b * Delete where inappropriate

Tenant's name: _____

Address at which notice was served: _____

Date on which notice was served: _____

Signed: _____ Date: _____ On behalf of: _____

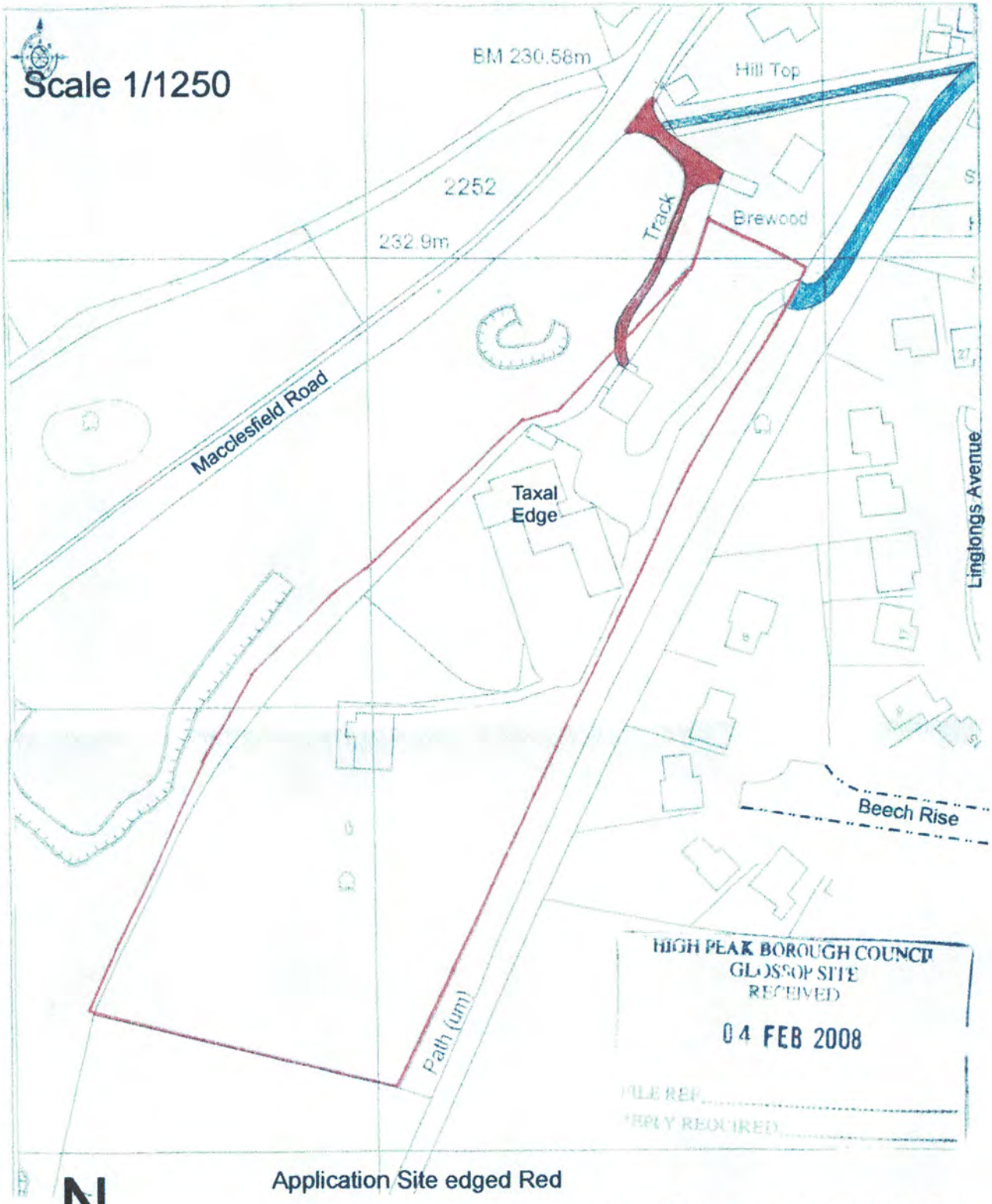
HIGH PEAK BOROUGH COUNCIL
GLOSSOP STE
RECEIVED
04 FEB 2008
FILE REF:
REPLY REQUIRED:


Winter Image, December 2020
Barratt Homes Site

Location Plan 1

HPK/2008/0069

Taxal Edge, Macclesfield Rd., Whaley Bridge



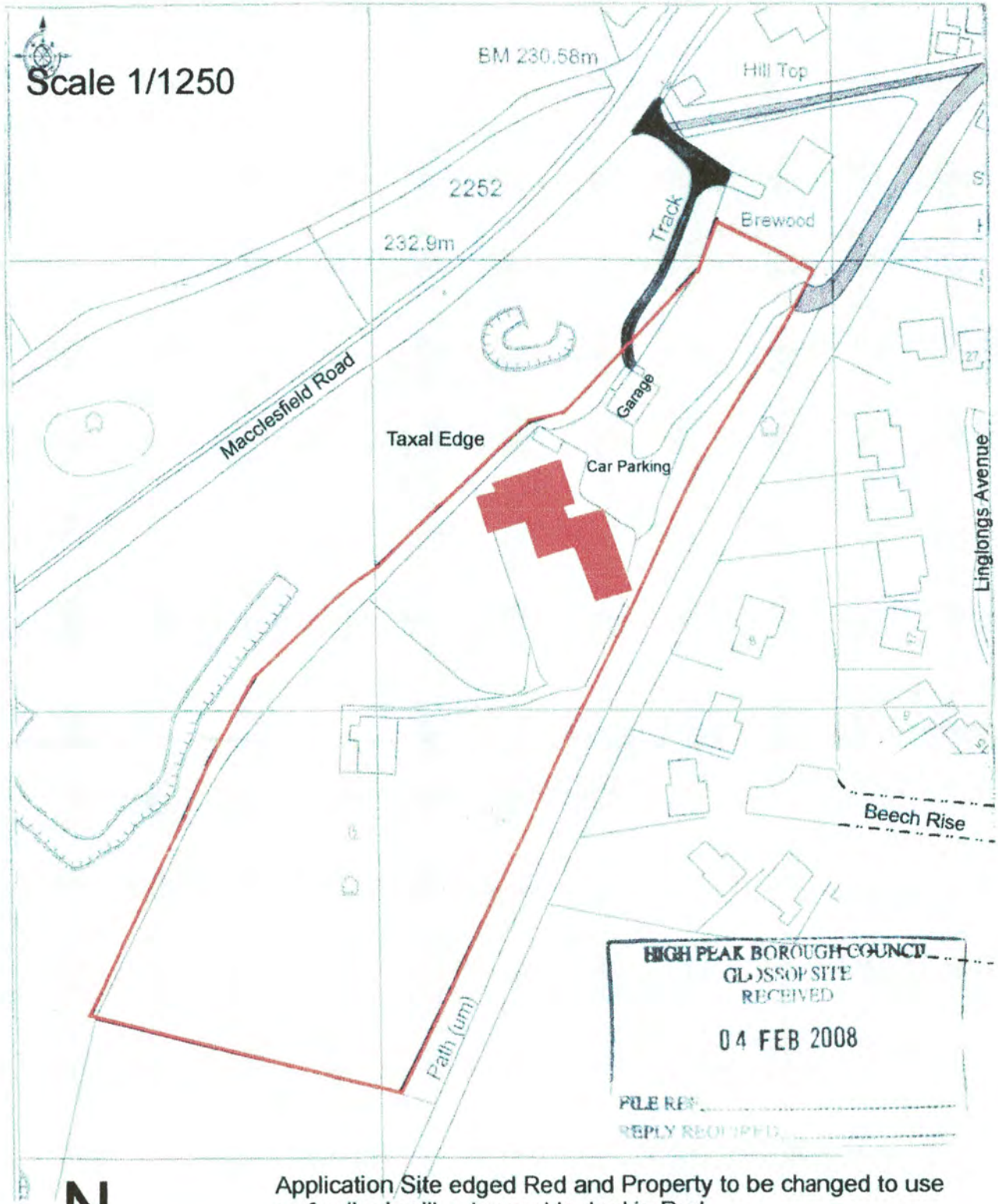
Application Site edged Red

Routes of Vehicular Access into the Property, Blue, Green & Red

HPK/2008/0069

Location Plan 2

Taxal Edge, Macclesfield Road, Whaley Bridge

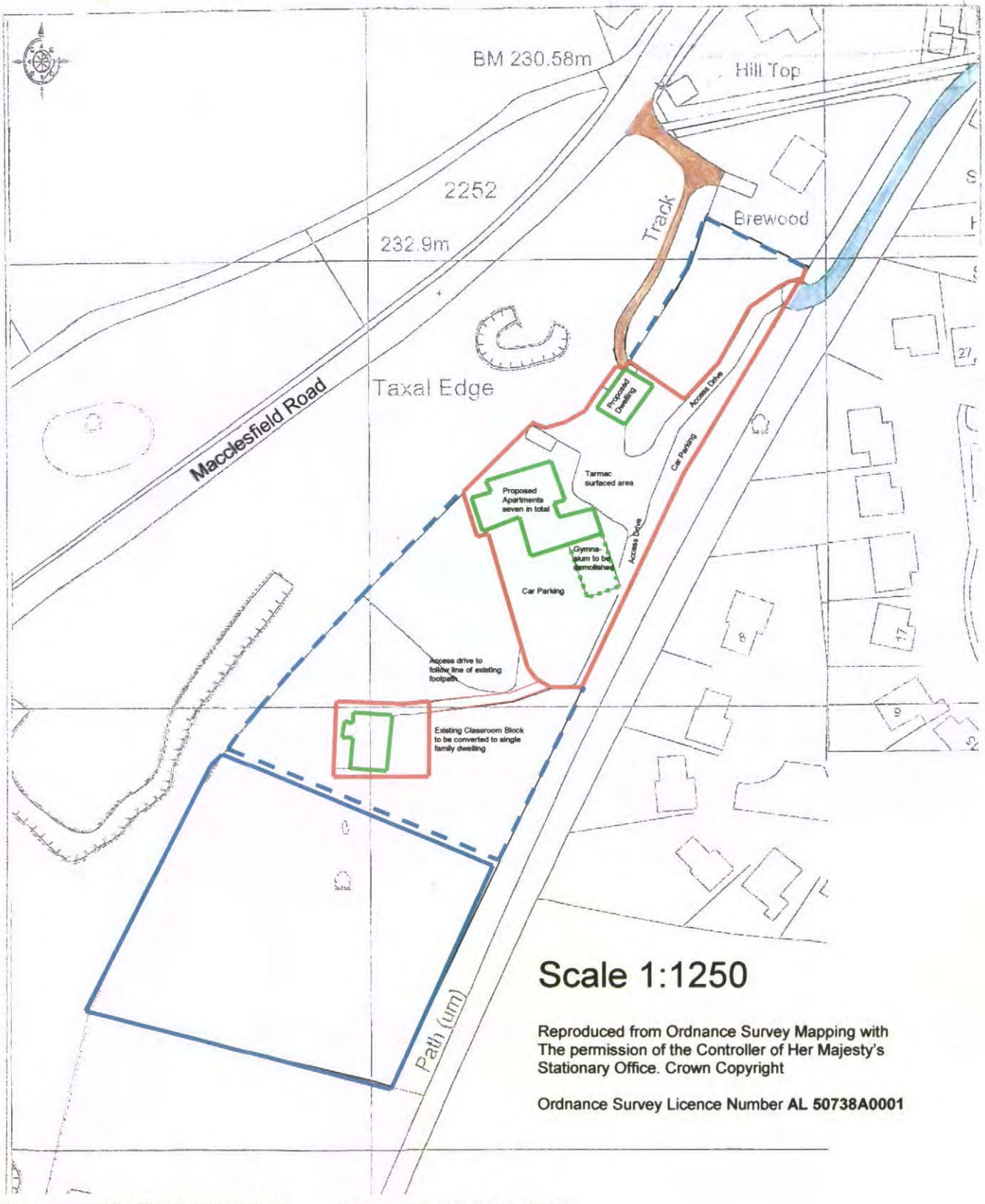


Application Site edged Red and Property to be changed to use as family dwelling house blocked in Red

HPK/2009/0689

Taxal Edge, Macclesfield Road, Whaley Bridge : Application Site edged Red

02 FEB 2010

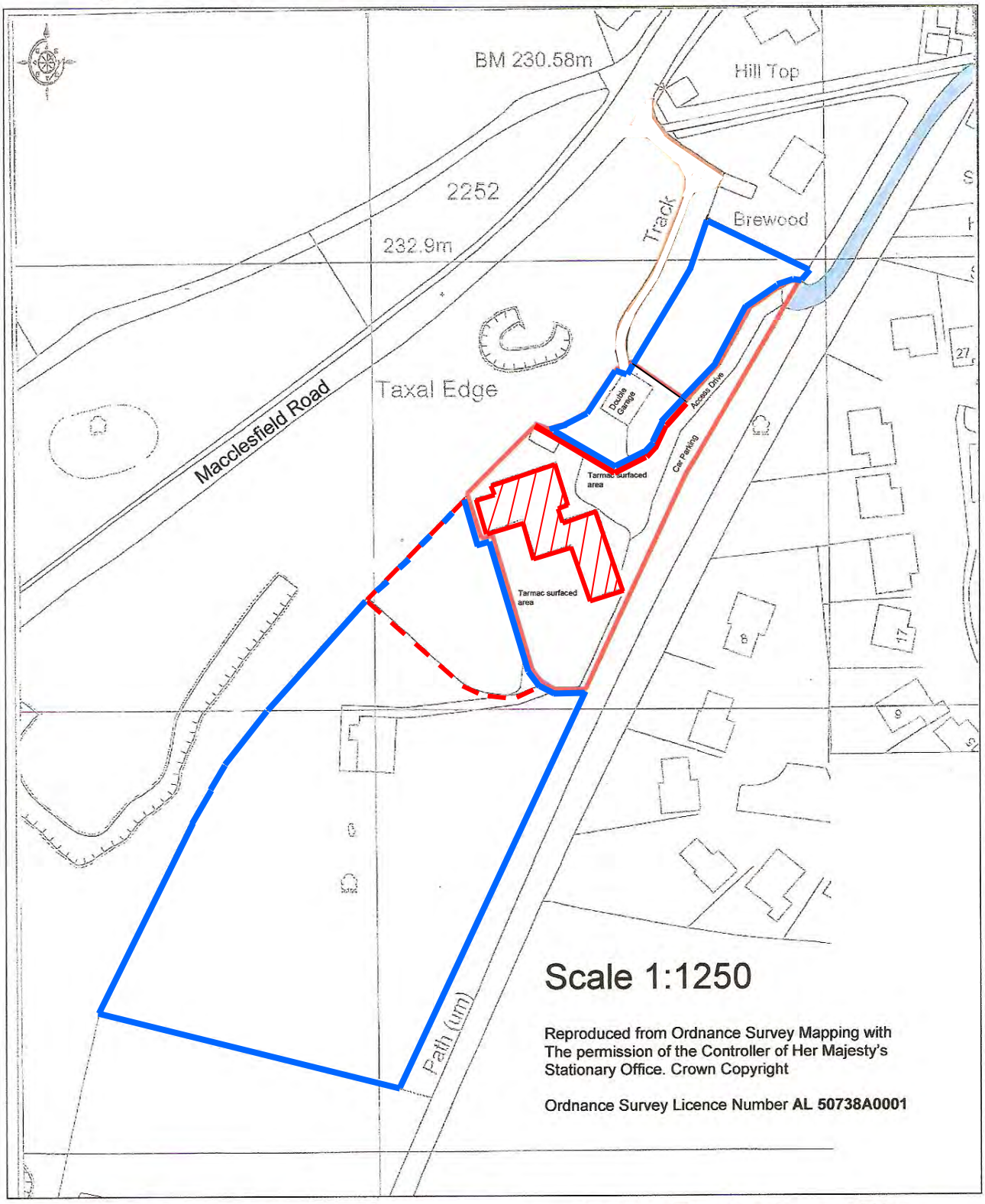


Scale 1:1250

Residential Curtilage edged Red
Application Buildings edged Green
Other land in applicants ownership edged blue

Access Road coloured Blue
Gymnasium to be demolished edged with broken green line

Taxal Edge, Macclesfield Road, Whaley Bridge : Location Plan



Application Site hatched Red

Access Road coloured Blue

Domestic curtilage of proposed dwellings edged Red

Other land owned by Applicant- edged Blue

Additional amenity area available to proposed residential properties edged with broken red line

IN THE MATTER OF

LAND AT TAXAL EDGE, MACCLESFIELD ROAD, WHALEY BRIDGE

OPINION (November 2020)

INTRODUCTION

1. I have previously advised on a number of issues arising out of a planning application submitted by Treville Properties Ltd for the demolition of an existing building known as Taxal Edge and its replacement with 7 dwellings ("the Application"): see Opinion dated 30th September 2020, which focused principally on whether Treville Properties enjoyed a fallback position which should be taken into account in determining the Application.

2. As a consequence of my previous Opinion, High Peak Borough Council ("the Council") withdrew consideration of the Application from its Planning Committee. Further discussions have taken place between my instructing consultants and officers of the Council but it appears that officers are set on recommending refusal of the Application. In this respect, I have been provided with an Officer's Report ("OR") to be presented to Planning Committee on 14th November 2020.

3. The OR recommends that the Application is refused for 4no reasons. In summary, they are as follows:

    a. Conflict with policies designed to protect the countryside;
    b. Impact on trees;
    c. Inappropriate housing mix;
    d. Inadequate outdoor amenity space.

4. I am bound to observe that the OR takes a different position on a number of important issues compared to the withdrawn OR.

5. I have also been provided with copies of correspondence passing between my instructing consultants and the Council. I have paid particular regard to the letter dated 30th October 2020.

6. There are various issues, such as design and layout, in the most recent OR which call principally for the application of planning judgement. I do not propose to offer a view on those matters since they fall outside the scope of my expertise but I will consider whether the approach adopted in the OR is legally sound. Members should be aware that without a lawful decision taking framework, the planning judgements they reach are likely to be legally flawed.

7. For the avoidance of doubt, nothing I have read in the latest OR causes me to alter my Opinion from 30th September 2020. On the contrary, my instructing consultants letter dated 30th October 2020 further supports the conclusion that there is highly material fallback position in the present case.

THE ISSUES

8. I have been asked to address four principal issues, two of which are entirely new points raised by the Council's case officer. Whilst I appreciate that officers are entitled to change their minds I cannot help but recall the injunction in the NPPF that decision takers should "*work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area*"[1]. The officer in the present case does not seem to have followed that clear guidance and appears intent on identifying problems rather than discussing solutions.

[1] NPPF §38.

(1) Policy H1

9. At §7.11 of the OR, policy H1 of the High Peak Local Plan (2016) ("HPLP") is mentioned by the case officer. Policy H1 provides (so far as relevant) as follows:

> "*The Council will give consideration to approving sustainable sites outside the defined built up area boundaries, taking into account other policies in this Local Plan, provided that*
> - *The development would adjoin the built up area boundary and be well related with the existing pattern of development and surrounding land uses and of an appropriate scale for the settlement; and*
> - *the development would not lead to prominent intrusion into the countryside or have a significant adverse impact on the character of the countryside; and*
> - *it would have reasonable access by foot, cycle or public transport to schools medical services, shops and other community facilities; and*
> - *the local and strategic infrastructure can meet the additional requirements arising from the development.*"
>
> (my emphasis)

10. At OR §7.12 the officer offers the following comment:

> "*In turn, the PROW and its associated land create a distinct c.12.0m wide channel of countryside between the Built up Area Boundary and the application site. Accordingly, the application site cannot adjoin the built up area boundary to the northwest of the Whaley Bridge Settlement and categorically fails the first element of the H1 LP Policy test as set out above*."

11. Despite the Application having been submitted many months ago, it is quite amazing that the officer has raised this point for the first time, never having mentioned it previously.

12. There are two fundamental problems with the officer's approach: one of interpretation of the policy; the other relating to the decision-making process.

13. Before addressing these points, I should consider the factual position. It is summarised neatly in my instructing consultants' letter dated 30th October 2020 as follows:

"*The access to the site from Macclesfield Road directly coincides with the built up area boundary. The remainder of the eastern boundary of the red line is only separated from the built up area boundary line as shown on the proposals map by a footpath. Beyond the footpath are dwellings which front onto the Rise, Beech Rise and Linglongs Avenue.*"

Interpretation of Policy H1

14. Members (and officers) will know that the interpretation of planning policy is a matter of law. The classic statement is contained in *Tesco Stores Ltd v Dundee*: "*policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context.*"[2]. Importantly for current purposes "*planning authorities do not live in the world of Humpty Dumpty: they cannot make the development plan mean whatever they would like it to mean*"[3].

15. In the present case, the issue of interpretation turns on the meaning of the following expression: *"the development would adjoin the built up area boundary"*. Although the term "built up boundary" is not defined in the HPLP, it seems to be common ground that the "built up area boundary" is that defined by the HPLP proposals map, delineating the edge of Whaley Bridge. There is no other logical meaning.

16. The OR opines that a "*PROW and its associated land create a distinct c.12.0m wide channel of countryside between the Built up Area Boundary and the application site*" and, as such, creates a barrier between the application site and the settlement boundary. As I have already said, this is a view expressed for the first time in the November OR.

17. The word "adjoin", is commonly held to describe something that is "very near, next to, or touching"[4]. Given that the application site is separated from the boundary of Whaley Bridge only by a footpath, it is undoubtedly the case that it is 'very near' to that boundary. Indeed, it is difficult to conceive how one could reach the conclusion that it is not 'next to' the built-up area. The interpretation offered in the OR suggests that there should be some physical connection between the development site and the settlement boundary, without which the policy H1 test cannot be satisfied. This is plainly incorrect and fails to recognise the multiplicity of situations where proposed development sites are physically

[2] [2012] UKSC 13 at §18
[3] *Tesco* at §19
[4] https://dictionary.cambridge.org/dictionary/english/adjoin.

separated from a settlement boundary by a road or a path yet they will be read as part of the settlement once developed.

18. Further, one must properly understand the context in which policy H1 should be read. The relevant part of H1 recognises that there may be circumstances in which it will be appropriate to accept housing development outside settlement boundaries; technically development in the countryside. However, in order to maintain a spatial relationship between the proposed development and the existing built up area policy H1 requires that such sites should 'adjoin' the built up area. I can readily understand the rationale behind that approach since it avoids development in the open countryside away from the settlement, which may well be harmful to landscape character.

19. Once this context is appreciated, policy H1 becomes easier to interpret. The issue, in planning terms, is whether there is a close spatial relationship between an application site and the proposed development site. Put another way, will the proposed development site be read as an extension to the existing settlement once completed? If the issue is expressed in such terms it becomes absolutely obvious that our client's development will be read spatially as forming an expansion to the built up area of Whaley Bridge.

20. For the above reasons I consider that the interpretation of policy H1 in the November 2020 OR is wrong. In this next section I shall identify two other occasions in which it has been concluded that the application site 'adjoins' the built up area of Whaley Bridge.

Consistency in Decision Taking

21. It is a trite principle of planning law that there should be consistency in decision taking in order to secure public confidence in the development management system[5]. This does not mean that all like cases must be decided alike but a decision taker must have regard to the general principle of consistency and, if departing from a consistent approach, must give reasons for a departure[6].

22. In the present case, the case officer's view expressed in the previous OR dated 5th October 2020 was that the scheme would satisfy the criterion relating to the site adjoining the built

[5] *North Wiltshire DC v Secretary of State for the Environment* [1993] 65 P&CR 137.
[6] *Ibid.*

up area boundary[7]. Similarly, in recommending planning permission be granted for a previous proposal (Ref: HPK/2013/0503) the Council concluded that the site fell within the countryside but acknowledged that it adjoined the built up area of Whaley Bridge. Thus, the consistent position until the most recent OR was that the development site adjoins the settlement boundary. There have not been any material physical changes since 2013 or since October 2020 that might cause one to reach a different conclusion.

23. The officer ends §7.12 of the most recent OR with the statement that "*This matter represents a correction of the earlier published 5th October DC Committee officer report*". With respect, it is not a correction but a diametrically opposite conclusion from that reached by the same officer only one month ago. This change in opinion calls for an explanation. The only reasoning in the OR relates to the rather strained "*c.12.0m wide channel of countryside*" which has been relied upon to defeat reliance on policy H1. With respect to the officer and for the reasons I have already given, that is an incorrect approach to that policy.

24. The OR fails to have proper regard to the principle of consistency and is flawed for that reason.

(2) Housing Mix (H3)

25. Policy H3 requires residential development to provide:

"*.. a range of market and affordable housing types and sizes that can reasonably meet the requirements and future needs of a wide range of household types including for the elderly and people with specialist housing needs, based on evidence from the Strategic Housing Market Assessment or successor documents.*"

26. At OR §7.16 – 7.19 the officer considers that the Application fails to meet the housing mix requirements identified in the HPLP policy. I offer a few comments on this conclusion but would align myself entirely with the views on this issue expressed by my instructing consultants in their email dated 1st October 2020:

    a. Read sensibly, policy H3 cannot apply to all residential proposals of whatever size. OR §7.15 accepts that the scheme does not breach the threshold for the provision of affordable housing. Given that policy H3 is aimed at ensuring a mix of both

[7] 5th October OR §7.12 and 8.1.

market and affordable housing, it must follow that the same or similar thresholds should apply for housing mix purposes under this policy. By way of illustration, the Council's approach in the OR would entitle it to refuse planning permission for 1 – 2 house schemes on the basis they did not reflect the housing mix identified in the Strategic Housing Market Assessment ("SHMA"). It would therefore be nonsensical to apply H3 at all in the present circumstances or at least with the degree of rigour outlined in the November OR;

b. The SHMA upon which the Council has based its housing mix request dates from 2014 but is based on a housing needs survey which is now over 10 years old. I am not aware that this piece of evidence has been updated to reflect changing circumstances or delivery of certain house types and sizes. It is out of date and must be afforded reduced weight.

27. I do not consider that refusal relying on policy H3 would be justified in the circumstances.

(3) <u>Amenity Space</u>

28. §7.45 OR expresses the following view:

"The site plan and more limited section information both serve to demonstrate that an inadequate and limited rear amenity space would be provided for each family dwelling house. Resultant overbearing and shading impacts would be exacerbated by the proposed retaining walls with tree embankment above."

29. It is then alleged that there is conflict with HPLP Policy EQ6, the Residential Design SPD and the NPPF. My first point is that a generalised assertion of conflict with the NPPF is virtually meaningless. In any event, policy EQ6 makes no express reference to private amenity space, less still any standards that must be applied. There can therefore be no breach of policy EQ6. Similarly, I have read the Residential Design SPD and cannot find any measurable standards for gardens (front or rear). There is no breach of the SPD. This proposed reason for refusal is also misguided.

30. To the extent that the size of the proposed gardens is relevant, I would make the following points. **First**, the location of the Application site means that future residents would have ready and easy access to public rights of way and countryside as well as existing public

open space in Whaley Bridge. It is hardly a location where access to land for recreation is in scarce supply. **Second**, the site layout shows that the properties will benefit from substantial front gardens. The location of the site, the relatively small overall scale of development together with the disposition of houses on the plots all indicate very strongly that the amount of amenity space associated with the proposed dwelling will be more than adequate. I note in passing that the OR mentions only the rear gardens of the properties.

(4) The Fallback Position

31. §7.36 of the November OR sets out the officer's view on the fallback position, which was the focus of my September Opinion and which caused the Application to be removed from the Planning Committee:

"*Turning to the fallback position regarding the 2009 and 2013 permissions. Officers have requested the applicant to evidence in detail the works undertaken to implement either of these schemes including the classroom 'conversion'. Notwithstanding this, however, even if a robust fallback position can be established for the 2009 and 2013 schemes (i.e. conversion of existing buildings without significant engineering works can be demonstrated), it is clear that the proposed scheme is fundamentally different. As such it should be assessed on its own merits, including against the provisions of Policy H1. Accordingly it is not considered that the fallback position carries any weight as a material consideration in the planning balance or sets any precedent to overcome such LP Policy H1 objections.*" (emphasis added)

32. It is highly regrettable that the latest OR fails to grapple with the issues raised by my instructing consultants and by my September Opinion. There are a number of serious flaws in the November OR.

33. **First**, at §3.5 OR the officer comments that a legal Opinion was submitted in relation to the fallback position but then singularly fails to address any of the points raised in that Opinion from an evidential or legal perspective. We therefore have no idea what view the officer takes as to the lawful use of the site.

34. **Second**, the officer concludes that the fallback position would be irrelevant even if a "robust" fallback position could be established in relation to the 2009 and 2013 planning

permissions. That is the wrong test. In *Mansell v Tonbridge and Malling BC and others*[8] (a case I cited in my September Opinion), having reviewed the legal authorities, the judge held that "*for a prospect to be a real prospect, it does not have to be probable or likely: a possibility will suffice*"[9]. The OR sets the bar too high.

35. **Third**, the effect of the OR is to discount entirely the fallback position as a material consideration in determining the Application. This is a fatal flaw. The Officer's objection to the Applicant's development rests on an assertion that it will be a prominent and harmful intrusion into the countryside. By omitting any consideration of the fallback position, the OR deprives Members of making a fair and proper comparison between what is proposed by the Application and what could be developed under the 2009 and/or 2013 planning permissions. Ultimately a decision maker may be able to conclude that a fallback position is less harmful than a new proposal but he or she cannot lawfully come to that conclusion without drawing a proper comparison between the two. The OR fails to make that comparison.

36. **Fourth**, the effect of the officer's rejection of the fallback position suggests that the entirety of the application site is treated as countryside in a landscape sense, as opposed to a policy designation. This is illustrated by the fact that the OR makes no reference whatsoever to the fact that the majority of the site should be treated as previously developed land. The OR consequently ignores an important plank of national planning policy, which enjoins developers and local authorities to make "*as much use as possible of previously-developed or 'brownfield' land*"[10].

37. **Finally** and in any event, it is entirely unclear against which benchmark the officer has judged the impact of the proposed scheme. When reading the OR, it is quite impossible to know whether the officer considers the lawful use of the site to be as a children's home (as in the October 2020 OR) or for some other use.

[8] [2017] EWCA Civ 1314
[9] See judgment §27.
[10] NPPF §117.

CONCLUSIONS AND NEXT STEPS

38. The Council's consideration of the current planning application, as set out in the OR, is deeply flawed. The approach to the fallback position is wrong in law and fails to take into account clear and convincing evidence that the land may be used for residential purposes. This creates a fault line running through the entire OR.

39. If Members refuse planning permission on the grounds set out in the OR, a number of things will happen:

    a. The Applicant will have a strong case for an award of costs on an appeal;
    b. Given that the starting point for the Council's assessment of the application is wrong, its evidence is likely to carry substantially reduced weight with an Inspector.

40. I advise accordingly but please do not hesitate to contact me if any matters require clarification or if anything further arises.

4th November 2020

JONATHAN EASTON
KINGS CHAMBERS
MANCHESTER-LEEDS-BIRMINGHAM

IN THE MATTER OF

LAND AT TAXAL EDGE, MACCLESFIELD ROAD, WHALEY BRIDGE

OPINION

INTRODUCTION

1. Next week a planning application submitted on behalf of Treville Properties Ltd for the demolition of an existing building known as Taxal Edge and its replacement with 7 dwellings ("the Application") is due to go before the Planning Committee of High Peak Borough Council ("the Council"). The Officer's Report ("OR") recommends the refusal of the Application for three reasons.

2. I am asked to advise on the lawfulness and merits of the proposed reasons for refusal ("RfR"). I shall address the RfRs broadly in reverse order.

3. In coming to my conclusions I have considered the wealth of material provided with my instructions, including the supporting documentation for the current planning application and details of the site's previous planning history. I have also read carefully the OR.

PREVIOUS LAWFUL USE (RfR3)

4. RfR 3 reads as follows:

> "*The definitive lawful use of the site appears as a children's home, where no definitive evidence has been provided that the existing use is no longer financially or commercially viable and that there are no other means of maintaining the facility, or an alternative facility of the same type is available or can be provided in an accessible location. As a consequence the proposal fails to accord with Policy CF5 of the Adopted High Peak Local Plan and the National Planning Policy Framework.*"

5. This RfR contains a number of elements:

   a. That the 'definitive' lawful use of the site 'appears' to be as a children's home; and as such
   b. Policy CF5 of the High Peak Local Plan ("HPLP") in relation to community assets applies; and
   c. The Applicant is required to demonstrate that the 'existing use' is no longer financially or commercially viable in order to gain planning permission for an alternative use.

6. By way of an introductory remark, my instructing consultants wrote to the Council on 18th September 2020 addressing the fallback position and the current lawful use in considerable detail. There is no attempt in the OR to engage with the points raised in this letter, which is one of many flaws in the report. For the avoidance of doubt – and as will become clear – I agree with the conclusions in Emery Planning's letter.

7. Policy CF5 can only possibly apply where the 'existing use' of a building or site is for community purposes. Self-evidently, if the site is in a different, non-community use it policy CF5 cannot apply.

8. It is clear to me that the current lawful use of the site is residential, not that of a children's home.

9. **First**, as the OR acknowledges, planning permission was granted on 29th March 2010 for the following development:

"*Conversion of single dwelling house to provide seven apartments and conversion of classroom block and disused garage into two detached houses at 184 Taxal Edge Macclesfield Road Taxal Edge Whaley Bridge*".

10. It is obvious from the description of development that the Applicant considered the then use of the main building to be a 'single dwelling house'. In granting planning permission the Council plainly accepted that the use of the main building was as a single dwellinghouse. I have read the delegated report. Although the report does mention the *former* use as a children's home, there is no analysis of the current lawful use. Importantly however, there is no suggestion that the description of the proposed development ("single dwellinghouse") was incorrect.

11. Moreover, although the OR for the current scheme acknowledges that planning permission was granted under HPK/2008/0069 for a change of use from a boarding hostel to use as a single family dwelling, there is absolutely no analysis of whether that planning permission was ever implemented. The 2008 planning application was made on the basis that the existing use was as a residential institution. However, the 2010 application was made on the basis that the then existing use was as a dwellinghouse. In my judgement, one can draw a plain inference that the Council accepted that (i) the 2008 permission was implemented; and (ii) when the 2010 application was submitted, the lawful use of the site was for residential purposes. The OR completely ignores this obvious point.

12. These conclusions point strongly to the lawful use of the site being residential, not a children's home.

13. **Second**, at §2.5 OR the Officer makes the following comment:

"… *this permission has not yet been lawfully proven to be extant to be considered as a fall-back position in the event of refusal of the current application. This would require a Certificate of Existing Lawful Use or Development as the applicant has been advised.*"

14. The notion that a fallback use can only be considered where a Lawful Development Certificate ("LDC") exists is a fundamental misunderstanding of the legal position and a rather extraordinary error for an officer to make. A LDC issued under s.191 TCPA merely certifies the lawfulness of a particular use as at the date of the LDC application[1]. It confirms an existing state of affairs; it does not create one. If it is too late to take enforcement action by virtue of s.171B TCPA, a use is lawful irrespective of whether a LDC exists.

15. The Officer's error is to conclude that in the absence of a LDC that the only lawful use of the site is as a children's home. To illustrate the fallacy of this position there appears to be no LDC confirming the former use of the site as a children's home. Taking the Officer's approach, the absence of a LDC for that use would be fatal to establishing its lawfulness. This is plainly incorrect.

16. Given this flawed approach the OR wholly ignores the wealth of evidence demonstrating that the site can lawfully be used for residential purposes.

17. **Third**, the evidence already available to the Council demonstrates unequivocally that the current lawful use of the site is for residential purposes:

    a. In accepting the description of the existing use as a 'single dwellinghouse' in 2010, the Council must have been satisfied that that use was lawful. Given that it was the 2008 planning permission which authorised the change from a residential institution to dwellings, the only tenable conclusion is that the Council considered that that permission had been implemented lawfully;
    b. I am instructed that Mr Butler has been living in Taxal Edge as a dwelling since 2008 and that he has been paying Council Tax on the property since then. Indeed, §1.4 of the Design and Access Statement ("DAS") supporting the current proposals states categorically that the main building has been in use as a single dwelling since 2008. It is therefore quite extraordinary that the OR makes no reference to this evidence nor attempts any sort of analysis of the evidential and legal position. I also understand that there has been little, if any, engagement by the case officer. This may provide an explanation for the lack of rigour in the Council's approach. If the Applicant's evidence is correct, the main building has been used as a dwelling for in excess of 4 years and is therefore immune from

[1] *M & M (Land) Ltd v SSCLG* [2007] EWHC 489 (Admin) §20

enforcement action under s.171B(2) TCPA[2]. This is the position irrespective of whether the 2008 planning permission was lawfully implemented;

c. Planning permission under HPK/2009/0689 was granted in March 2010. Although the OR makes a passing reference to alleged breaches of planning control[3], my understanding is that no enforcement action has been taken or even threatened. On the contrary, the careful analysis in Emery Planning's letter of 18th September 2020 supports the conclusion that the conditions attached to the 2010 permission were discharged and that permission was implemented lawfully. The OR does not even begin to engage with these points;

d. A further planning permission was granted in 2013 under HPK/2013/0503 for the conversion of Taxal Edge to form 5no apartments and to construct 2no semi-detached dwellings on the site of the existing gymnasium. I have read the delegated report into this proposal, which confirms that work had started on the measures necessary to implement the 2010 planning permission and that the permission was 'extant'. Whilst there is no analysis of the lawful existing use, reading the delegated report as a whole it is clear that the officer considered it to be residential.

18. Although we are not concerned with a LDC application here, I consider that the guidance in the PPG is of some relevance. The PPG gives the following advice as to the evidential burden on applicants:

"*In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.*"[4]

19. In this case, the evidence from the Applicant as to Mr Butler's occupation of the main building, the Council's approach to planning applications in 2010 and 2015 and the complete absence of any contrary evidence persuades me that this test is more than satisfied. Thus, if a LDC application seeking confirmation of the residential use of the site was made, it would be impossible for the Council to refuse it:

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[2] "*Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.*"
[3] OR §2.5
[4] Paragraph: 006 Reference ID: 17c-006-20140306

a. The occupation of the main dwelling has taken place continuously since 2008 and is therefore immune from enforcement action under s.171B(2) TCPA; and
b. The works to the former classroom and some conversion works in the main building have taken place. There is no evidence that any conditions precedent have been breached and, as such, it must be taken that the 2008 and 2010 planning permissions were implemented and may still be relied upon; and
c. To the extent that any of the operational development associated with the conversion works to the main building were unauthorised[5], it seems that these works took place more than 4 years ago and are therefore immune from enforcement action in any event[6].

20. **Fourth**, and independent of my conclusions above, the existence of the 2010 and 2013 planning permissions are material considerations in their own right. The Council considered in 2010 and 2013 that the use of the site for residential development (including new buildings) was acceptable in planning terms. The OR wholly ignores this factor as a material consideration.

21. Drawing matters together I am able to conclude that RfR3 is unfounded, unreasonable and is based upon a complete misunderstanding of the legal position concerning established uses. Policy CF5 of the HPLP **does not and cannot apply** in this case. Indeed, if the Council continues to rely upon this policy, it will have adopted an unreasonable position that is likely to sound in costs if our client appeals any refusal of planning permission.

22. To illustrate the extremely poor analysis set out in the OR, we should consider the requirements of policy CF5. The third criterion resists proposals involving the loss of community assets unless it can be demonstrated that they are "*no longer financially or commercially viable and there are no other means of maintaining the facility*." Applying this criterion to Taxal Edge, I draw the following conclusions:

[5] OR §2.4
[6] S.171B(1) TCPA

a. There would be no loss of a community asset. Since 2008 the main building has been in use (lawfully) as a dwellinghouse. In its consideration of subsequent planning applications the Council has accepted as much;
b. Stockport Metropolitan Borough Council, which owned and operated the site as a children's home plainly reached the decision that that operation was not financially or commercially viable and sold it. There is really no need to delve further into that issue;
c. The Officer's application of CF5 means that some 12 years after the children's home was sold and despite the fact that it has been used as someone's home during that time, it is nonetheless necessary to apply this criterion in CF5. That is an astonishing approach.

23. Finally on this issue, I conclude that the Applicant benefits from a fallback position in the following terms:

a. The main building can lawfully be used as a single dwellinghouse or as 7no or 5no apartments (depending upon whether the 2010 or 2013 planning permission is relied upon);
b. The former classroom block can be used as a dwellinghouse given its conversion;
c. The erection of 2no semi-detached dwellings can lawfully be completed since the former gymnasium was demolished in accordance with the 2013 planning permission.

Encroachment into the countryside (RfR1)

24. Having established the fallback/lawful position, it is now possible to consider properly RfR1 which asserts that the scheme is unacceptable in principle because it "*would comprise a form of development which would encroach into, and erode the open countryside*". It is apparent that this RfR has been influenced strongly by the Officer's erroneous opinion that the only lawful use of the site is for a children's home on the current footprint.

25. The evidential burden for establishing a fallback position is slight; there must be a real prospect of the fallback being initiated. In *Mansell v Tonbridge and Malling BC and others*[7],

[7] [2017] EWCA Civ 1314

having reviewed the legal authorities, the judge held that "*for a prospect to be a real prospect, it does not have to be probable or likely: a possibility will suffice*"[8]. Drawing these matters together, the task for the decision maker is to consider (i) whether there is a real prospect of the fallback scheme being implemented; and if so (ii) to consider the level of harm caused by the fallback scheme in comparison with the proposed scheme. The comparison is **not** to be made between the existing development and the proposed scheme.

26. My instructions are that the Applicant will seek to complete either the 2010 or 2013 developments (or both, providing that they are not incompatible with each other). From a commercial perspective one can readily understand why the Applicant would take this approach. Consequently, there is a real prospect of the fallback position(s) being implemented.

27. In the circumstances, the Council should have drawn a comparison between the fallback position and the proposed scheme but palpably failed to do that. One of the most useful tools to make this comparison is the comparative site sections shown in Drawing 411179/25/P1. These sections compare the outline of the approved scheme (in 2010) and the proposed development. Whilst I appreciate that this comparative exercise and the conclusions to be drawn from it depend upon planning judgement, I would make the following points:

    a. In general, the proposed development sits lower than the approved development, reducing ridge heights and minimising the visual impact on the wider countryside;
    b. In each of the sections the approved scheme appears bulkier and more dominant than the proposed scheme.

28. As such, the notion that the proposed development would encroach into and erode the open countryside appears fallacious when compared to the fallback position.

29. There are a number of additional difficulties with this RfR.

30. **First**, policy H1 of the HPLP expressly contemplates residential development outside settlement boundaries on sustainable sites. There can be no 'in principle' objection to the

[8] See judgment §27.

application site, which directly abuts the Whaley Bridge settlement boundary. Policy H1 lays out a number of criteria for development of this type:

a. The relationship to the existing settlement. The OR accepts that this criterion is satisfied[9];
b. Whether there would be a prominent intrusion into the countryside or significant adverse impact on the character of the countryside. I note that the OR considers that this criterion is not met. However, the OR does not carry out any comparison between the proposed and fallback positions and on that basis the analysis is flawed and cannot be relied upon;
c. Reasonable accessibility to services and facilities by sustainable modes of transport. In concluding that the scheme meets the requirements of HPLP policy CF6 (sustainable access)[10], the OR must be satisfied that this criterion is met;
d. Whether local and strategic infrastructure can meet the requirements of the new development. There is little, if any, analysis of this criterion in the OR. However, in the concluding section of the OR it is only the second criterion which is said to be breached[11].

31. **Second**, policy EQ3 of the HPLP applies to the site given that the Plan designates land outside settlement boundaries as 'countryside'. There is no substantive consideration of EQ3 in the OR, nor is there any alleged breach of EQ3 in the RfRs. This is curious to say the least given that the policy is plainly relevant.

32. In certain circumstances new residential development is permitted under EQ3 including:

"*Re use of redundant and disused buildings and/or the redevelopment of a previously developed site, where it does not have an adverse impact on the character and appearance of the countryside. Where the existing building is in an isolated location the development should lead to an enhancement of the immediate setting.*"

33. The site is not 'isolated', nor has the Council ever suggested that it is.

[9] OR §7.12
[10] OR §7.36
[11] OR §8.1 and 8.2

34. However, given its history and the disposition of buildings and hardstandings the site is unquestionably 'previously developed'. Thus, the only issue is whether the proposed development would have an adverse impact on the character and appearance of the countryside **compared to the fallback position**. Whilst this is a matter of planning judgement, it is difficult to see how the proposed development would have a materially worse impact than the approved scheme(s).

35. Policy EQ3 does not set up an 'in principle' objection to these proposals. On the contrary, it is strongly arguable that the requirements of EQ3 are satisfied. The failure to consider policy EQ3 properly in the OR is yet another of its weaknesses.

36. **Third**, the other policies listed in RfR1 (or the relevant parts of them) relate to the impact of the development on the character of the area:

    a. Policy S1a is a local plan policy of its time. It does not more than enshrine the NPPF presumption in favour of sustainable development in the HPLP. I do note however that S1a includes a promise that the Council "*will always work pro-actively with applicants jointly to find solutions which mean that proposals can be approved wherever possible*". Given the lack of engagement by officers in this case, that promise has not been honoured;
    b. S1 is an overarching policy that encourages sustainable development. Although the Council relies upon those aspects of policy which protect character and appearance, consideration of matters such as the re-use of PDL[12], making efficient use of land[13] or the sustainability of location[14] is singularly lacking in the OR. There is no balanced consideration of this policy;
    c. Other than the Council's erroneous conclusion that the proposals fail to comply with policy H1, it is difficult to see how policy S2 is breached;
    d. The only possible breach of policy S6 relates to the impact on landscape character;
    e. EQ6 is a general design and place making policy and does not advance matters much further. However, it is notable that the OR does not allege any harm to residential amenity[15];

[12] Bullet point 2.
[13] Bullet point 3
[14] Bullet point 8
[15] OR §7.36

f. EQ7 seeks to prevent the loss of buildings and features that make a positive contribution to character of an area, albeit with a clear focus on protecting heritage assets. The development does not affect any heritage assets.

37. I have listed these policies to illustrate the following point: the Officer's objection to the Applicant's development rests on an assertion that it will be a prominent and harmful intrusion into the countryside. This point could have been made by reference to any one of the policies listed in RfR1 but the Council has chosen to stack the deck with eight development plan policies. If, as I have concluded, a decision maker considers the fallback position in this case and concludes that the proposed scheme does not have a significantly greater adverse impact than the fallback on the character of the area, RfR1 and all of the referenced policies fall away.

Trees (RfR2)

38. RfR2 reads as follows:

"*By damage caused to existing mature trees, inadequate proposed replanting, and insufficient information provided regarding planting of new trees, the proposal fails to ensure tree protection on the application site. Furthermore the development fails to ensure that healthy, mature trees and hedgerows are retained and integrated within the proposed development. As a consequence the proposal fails to accord with Policy EQ9 of the Adopted High Peak Local Plan and the National Planning Policy Framework.*"

39. The issues identified in this RfR are perfectly capable of being resolved through discussions with the Applicant and the team: the alleged insufficiency of information can be addressed through the Council stating precisely what it requires and the Applicant providing it. In any event, a robust landscaping condition requiring details of species, location and longer term management would ensure that a replanting scheme is acceptable.

40. Further, my understanding is that the Council's arboricultural officer may not have visited the site. During Covid restrictions this may be understandable but a desk-based assessment is no substitute for a site visit.

41. It is also apparent that there has been no comparison with the fallback position(s).

CONCLUSIONS AND NEXT STEPS

42. The Council's consideration of the current planning application, as set out in the OR, is deeply flawed. The approach to the fallback position is wrong in law and fails to take into account clear and convincing evidence that the land may be used for residential purposes. This creates a fault line running through the OR, infecting RfR1 and 2.

43. The only option for the Council is to withdraw the application from Committee, to engage proactively with the Applicant's team (as promised by HPLP policy S1a) and to reconsider the application. If Members refuse planning permission on the grounds set out in the OR, a number of things will happen:

    a. The Applicant will have a strong case for an award of costs;
    b. Given that the starting point for the Council's assessment of the application is wrong, its evidence is likely to carry substantially reduced weight with an Inspector.

44. The Council has the opportunity to respond sensibly and appropriately to this Opinion and is well advised to do so.

45. I advise accordingly but please do not hesitate to contact me if any matters require clarification or if anything further arises.

30th September 2020

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