

**Appeal B Reference: APP/H1033/W/21/3272745**

**184 Taxal Edge, Macclesfield Road, Whaley Bridge, High Peak, SK23 7DR.**

**The appeal was made on the 8<sup>th</sup> April 2021 under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.**

**The appeal is made by Treville Properties Ltd against High Peak Borough Council.**

**The application reference is HPK/2020/0301 dated 22<sup>nd</sup> July 2020.**

**The development proposed is the demolition of the existing building known as “Taxal Edge” and the erection of 7 no. dwellings.**

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**HIGH PEAK BOROUGH COUNCIL**

**OCTOBER 2022**

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## **1. Experience**

- 1.1 I am employed as a Senior Planning Officer working across the Alliance (High Peak Borough Council and Staffordshire Moorlands District Council) within the Development Services Section since 2007.
- 1.2 This proof of evidence relates to the refusal of planning permission reference HPK/2020/0301.
- 1.3 The evidence provided for Appeal B (reference APP/ H1033/W/21/3272745) within this Proof of Evidence is given in accordance with the guidance of my professional institution, the Royal Town Planning Institute (RTPI). I confirm the opinions expressed within my evidence are both true and professional.

## **2. Executive Summary**

- The appeal scheme would not be well related with the existing pattern of development and surrounding land uses or be of an appropriate scale for the settlement of Whaley Bridge;
- It would also lead to prominent intrusion into the countryside and have a significant adverse impact on the character of the countryside;
- Only part of the appeal site constitutes previously developed land and the appeal scheme would not meet with the Adopted Local Plan definition of “limited infilling”;
- As a consequence, there would be conflict with Policies: S1 ‘Sustainable Development Principles’, S2 ‘Settlement Hierarchy’; S6 ‘Central Area Sub Area Strategy’, EQ2 ‘Landscape Character’, EQ3 ‘Rural Development’, EQ6 ‘Design and Place Making’ and H1 ‘Location of New Housing Development’ of the Adopted Local Plan, relevant Supplementary Planning Documents and the NPPF (National Planning Policy Framework). There would also be potential conflict with Policy EQ7 ‘Trees, Woodlands and Hedgerows’ of the Adopted Local Plan given unknown implications to trees in relation to parking and turning requirements;

- Some appeal properties have inadequate private amenity space overshadowed by woodland and proposed high stone retaining walls, which would not be acceptable to the amenity standards of future residents creating further conflict with Policy EQ6 'Design and Place Making' relevant Supplementary Planning Guidance and the NPPF. There would also be potential conflict with Policy EQ7 'Trees, Woodlands and Hedgerows' of the Adopted Local Plan given the implications of shading arising from the appeal scheme to protected woodland trees in the longer term;
- The Council does not agree with the appellant's alleged fallback position to be afforded any weight in the planning balance, and,
- The Council have put forward reasons for opposing the development, which establishes that harm would clearly outweigh the appeal scheme benefits. Therefore, the conflict with the development plan as a whole is not outweighed by other material considerations and it follows that the appeal should be dismissed.

### **3. Introduction and Scope of Evidence**

#### **3.1 My evidence considers the following matters:**

- The decision notice dated 19<sup>th</sup> April 2021 at CD3.4;
- Adopted Local Plan Policies and Supplementary Planning Guidance considered relevant to this appeal are listed at Section 4 of the Joint Statement of Common Ground for Appeals A and B at CD10.5;
- Council's Landscape Statement Proof of Evidence dated October 2022;
- Council's Urban Design Statement Proof of Evidence dated October 2022;
- Other material considerations, including the NPPF (National Planning Policy Framework), and,
- Aerial and other photographs.

#### **4. Site Description / Area and Planning History**

4.1 The site description / area and summary of planning history are set out in Sections 2 and 4 of the Joint Statement of Common Ground.

4.2 A list of approved plans and related planning application documents (including any condition discharge) for relevant planning history is contained at Appendix 1 for the following applications:

- HPK/0002/5081 – Additional car parking provision adjacent to the main driveway – approved 6th April 1987
  
- HPK/2008/0069 – Change of use of Taxal Edge from a boarding hostel and associated ancillary residential accommodation to use as a single dwelling – approved 28th March 2008
  
- HPK/2009/0689 – Conversion of Taxal Edge to provide 7 no. apartments and the conversion of the classroom block and disused garage to 2 no. detached houses – approved 29th March 2010.
  
- HPK/2013/0503 – Proposed conversion of Taxal Edge to 5 no. apartments and construction of 2 no. semi-detached houses where the gymnasium is located – approved 25th November 2013

#### **5. Main Issues**

5.1 The main issues in relation to the appeal scheme are:

- a) whether the appeal site is an appropriate location for residential development having regard to local and national planning policy;
  
- b) the effect on the character and appearance of the appeal site and surrounding area;
  
- c) the effect on the residential amenity of future occupiers; and,

- d) whether or not there are 'other considerations' that exist and the weight that should be afforded to them, regarding any fallback position and the appeal scheme's contribution to boosting the supply of housing and any other potential benefits.

**a) Suitability of Location**

- 5.2 The appeal scheme proposes residential development on land within the open countryside (outside of the defined settlement boundary) as designated by the Adopted High Peak Local Plan 2016. It is also identified as falling within the landscape character type of Settled Valley Pastures as identified in the Landscape Character Supplementary Planning Document. The scheme for its majority would not adjoin the built up area boundary of Whaley Bridge other than where its access track meets with the shared driveway to Woodside and entrance to Macclesfield Road to the north-west of the settlement boundary.
- 5.3 The LP (Local Plan) Spatial Strategy through LP Policy S2 'Settlement Hierarchy' directs development towards the most sustainable locations in the following order: Market Towns, Larger Villages and Smaller Villages and for Other Rural Areas (outside of the settlement boundary of settlements) it states "*development will be strictly limited to that which has an essential need to be located in the countryside or comprises affordable housing*" (in accordance with LP Policies EQ3 'Rural Development' and H5 'Affordable Housing'). LP Policy S6 'Central Sub-area Strategy' confirms "*the promotion of the sustainable growth of the Central Area such that it reflects the historic character of the settlements*".
- 5.4 LP Policy EQ3 'Rural Development' seeks to ensure new development is strictly controlled in order to protect the landscape's intrinsic character and distinctiveness. It identifies those circumstances where new residential development would be permitted, including development involving re-use of redundant and disused buildings and / or redevelopment of a previously developed site, where it would not have an adverse impact on the character and appearance of the countryside and meet with LP Policy H1 'Location of New Housing Development'. LP Policy H1 further promotes the effective reuse of land by encouraging residential development on all sites suitable for that purpose.

### *Previously Developed Land*

- 5.5 The appellant considers appeal scheme plots 5, 6 and 7 to be situated on land which forms part of the approved curtilage for the dwelling authorised by consent HPK/2008/0069 (and stated as occupied since 2008).
- 5.6 The approved red edge with reference to Location Plans 1 and 2 (CD9.2 b & c) encompass an 0.8 ha (hectare) application site. Condition 3 of the 2008 consent (CD9.2 d) requires the extent of the residential curtilage relating to the application site edged red to be submitted to and approved in writing within 28 days of the consent (dated 28<sup>th</sup> March 2008) prior to the commencement of development. No application for approval of details, however, reserved by condition 3 for the 2008 consent appears to have been received or discharged by the Council. As a consequence, there is no approved curtilage for the dwelling consented by HPK/2008/0069, which can be safely relied upon by the appellant. It is plain that the 'red edged' area on Location Plans 1 and 2 were not intended to be the curtilage to 184 Taxal Edge.
- 5.7 The Council's viewpoint is the 0.8 red edge application site forms the planning unit for HPK/2008/0069 given the imposition of the curtilage condition to it. Thereafter, the approved location and site plans in relation to planning consents HPK/2009/0689 (CD9.3 a to c) and HPK/2013/0503 (CD9.4 a & b) clearly and consistently define the 'residential curtilage' of 184 Taxal Edge (and individual curtilage for the classroom block in relation to the 2009 consent) as edged in red and together with the triangular block of woodland between the classroom block and 184 Taxal Edge shown as 'Existing Mature Trees to be protected (see Tree Survey)' (accommodating appeal scheme plots 5, 6 and 7) was accepted by the Council as the approved location and site plans for the 2009 and 2013 consents.
- 5.8 If the 2009 and 2013 consents cannot be relied on to define the curtilage of 184 Taxal Edge, then the appellant's reference to the historic image for Taxal Edge c.1946 (CD4.3 pg. 19) does not convince the Council otherwise given its limited viewpoint of the relevant part of the appeal site. The approved 2009 consent 'Tree Constraints Plan North (CD9.3 o) broadly encompasses the triangular woodland block of land required for appeal scheme plots 5, 6 and 7 showing some 'limited' retaining walling sections set within mature tree cover.

5.9 The current state of the relevant part of the appeal site in relation to plots 5, 6 and 7 appears contrived being brought about artificially through engineering / operational works and tree topping / felling evident in images at Appendix 2. Despite issues of lawful implementation, both the 2009 and 2013 consents reasonably define the curtilage of 184 Taxal Edge given site characteristics of the wider planning unit. Any land falling outside of the defined red edge curtilage of these consents in relation to the appeal site should therefore fall to be excluded from the NPPF definition of PDL (Previously Developed Land), which further states “*it should not be assumed that the whole of the curtilage should be developed*”. Fundamentally, the presence of any PDL does not justify the appeal site being developed, which requires a consideration of the relevant policies in the Adopted Local Plan (and other material considerations).

#### *Limited Infilling*

5.10 The appellant also considers appeal scheme plots 5, 6 and 7 situated between the former classroom building and 184 Taxal Edge to be ‘infill development’ with reference to LP Policy H1. LP Policy EQ3 in relation to new residential development outside of the settlement boundary and site allocations, however, only permits the “*limited infilling of a small gap capable of accommodating no more than 2 dwellings of a similar size and scale to the surrounding dwellings in an otherwise continuously built frontage*”. Clearly, the appeal scheme would not meet with the LP definition of ‘limited infilling’ given its siting and scale, which requires the demolition of 184 Taxal Edge and the provision of a linear row of 7 large dwellings with outbuildings with only the former classroom building to the south of the appeal site in situ (subject to Enforcement Appeal A).

#### *Settlement Pattern*

5.11 Outside of defined settlements, LP Policy H1 will consider sustainable development sites, in consideration of other LP policies, provided: (1<sup>st</sup> bullet) “*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 (2<sup>nd</sup> bullet) “*the development would not lead to prominent intrusion into the countryside or have a significant adverse impact on the character of the countryside ...*”.

5.12 The Council’s Landscape Statement evidence has considered whether the appeal scheme would be well related with the existing pattern of development and surrounding

land uses, including whether it would be of an appropriate scale for the Whaley Bridge settlement in consideration of LP Policy H1 and local and national landscape policies and guidance. It confirms a distinctive change between the built-up character of the Whaley Bridge settlement against the woodland ridgeline landscape character of the appeal site. The mature woodland character of Taxal Edge ridgeline is said to be a defining feature in the landscape and distinctly separate to the built settlement area below by displaying key ridgeline characteristics. Whereas existing built development within the settlement of Whaley Bridge is considered to be set low down, recessive and nestled amongst a well wooded landscape. Commentary regarding the existing appeal site at 184 Taxal Edge considers stone walling, unmade footpath surfaces, mature trees and a development pattern of individually spaced out buildings all combine to create a character, which integrates with the countryside rather than built settlement of Whaley Bridge.

5.13 PROW (Public Right of Way) HP/23/56/1 (Taxal Beeches) runs along the lane at the entrance to the appeal site from Macclesfield Road and then along the south-eastern boundary of the appeal site. The PROW and associated land create a distinct c.12.0 metre tract between the built up area boundary of Whaley Bridge and appeal site. The Council's Landscape Evidence considers the stonewall below PROW HP/23/56/1 to the south-east of the appeal site (and north-west boundary to rear gardens of Beech Drive and Linglongs Avenue) to be the defining edge of the Whaley Bridge settlement. This viewpoint has considered the distinctive separation from the built settlement edge created by the strong horizontal line of the stonewall at the base of the ridgeline and clear change in character to either side of it (excepting the first part of the entry from Macclesfield Road, where it is shared driveway). The three existing houses (Woodside, Hilltop and Brewood), however, are not considered solid enough as a group to represent the defining edge of the built settlement at this point.

5.14 The Council's Landscape Statement evidence considers the appeal site to be set back and visually separate from the rear of the properties at the north-west edge of Whaley Bridge whereby the extent of built development within the settlement is well below the Taxal Edge ridgeline and not dominant in views towards it. Furthermore, the character of the existing appeal site comprises of a development pattern of individually spaced out buildings set amongst a well wooded landscape and as a result is more closely aligned with open countryside.



## **b) Character and appearance**

- 5.15 Overarching LP Policy S1 'Sustainable Development Principles' requires development to take *"account of the distinct Peak District character, landscape, townscape, roles and setting of different areas and settlements in the High Peak"* amongst other matters.
- 5.16 In further detail, LP Policy EQ2 'Landscape Character' requires development proposals to: (1<sup>st</sup> bullet point) maintain *"... the aesthetic and biodiversity qualities of natural and man-made features within the landscape, such as trees and woodlands ... or other topographical features ..."* (2<sup>nd</sup> bullet point) be *"... informed by, and are sympathetic to the distinctive landscape character areas as identified in the Landscape Character Supplementary Planning Document and also take into account other evidence of historic landscape characterisation, landscape sensitivity, landscape impact ..."* and *"... (3<sup>rd</sup> bullet point) protect and/or enhance the character, appearance and local distinctiveness of the landscape and (4<sup>th</sup> bullet point) "Resisting development which would harm or be detrimental to the character of the local and wider landscape or the setting of a settlement as identified in the Landscape Impact Assessment"*.
- 5.17 The preamble to LP Policy EQ3 'Rural Development' states: *"Wherever development is permitted in the countryside, particular care will be needed to ensure that it is integrated sympathetically into the landscape and that its impact on landscape quality ... is minimised. Development, both individually and the cumulative impact of successive small developments, thus needs to be viewed in the context of landscape character"* in accordance with LP Policy EQ2 'Landscape Character'.
- 5.18 For rural housing, the NPPF at para 79 states *"Planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply:" ... e) the design is of exceptional quality, in that it: is truly outstanding or innovative, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas; and would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area"*.
- 5.19 The Council's Landscape Statement evidence further considers whether the appeal scheme would lead to a prominent intrusion into the countryside or have a significant adverse impact on the character of the countryside in consideration of LP Policy H1,

together with local and national landscape policies and guidance. The appeal site is stated as forming part of the wooded ridge of Taxal Edge, an important wooded backdrop to this aspect of Whaley Bridge, a distinctive local natural feature as part of the wider landscape and a recreational resource. It is also confirmed as a sensitive landscape by the Areas of Multiple Environmental Sensitivity (AMES) study carried out by Derbyshire County Council.

- 5.20 For these reasons, the landscape evidence considers the appeal site to be of 'landscape value' whereby the appeal scheme would not be consistent with the characteristic existing settlement pattern along the lower slopes and valleys of Whaley Bridge. Paragraph 174 of the NPPF states decisions should contribute to and enhance the natural and local environment by: "*protecting and enhancing valued landscapes ... (in a manner commensurate with their statutory status or identified quality in the development plan ...*". The Council's Urban Design Statement evidence also considers the character of Whaley Bridge to be closely linked to its setting within the Peak District landscape, with Taxal Edge forming a distinctive landscape ridge and identity to the settlement whereby the appeal scheme would lead to the erosion of this strong landscape feature.
- 5.21 The appeal scheme proposing an elevated and exposed development of the appeal site, is considered by the Council's Landscape Statement evidence to be inconsistent with the Settled Valley Pastures landscape character type. The evidence further confirms the scheme's elevated ridgeline position on Taxal Edge would provide for highly visible views from the east and south-east whereby existing mature trees form a backdrop to the appeal scheme rather than screening it, to significantly impact on the landscape view of a wooded skyline.
- 5.22 The Council's Landscape Statement evidence also confirms the most prominent and visible positions of the appeal site in various photographic receptor viewpoints (of mostly high sensitivity). These viewpoints have appropriately been taken during winter months when trees are not in leaf given the evident increased visibility of the appeal site. The wooded ridge of Taxal Edge is stated as dominating the skyline creating a pleasant backdrop to the town of Whaley Bridge by softening the built environment.
- 5.23 Generally, the selected viewpoints confirm the appeal scheme would be highly visible and prominent as an isolated, linear development form interrupting the continuity of the wooded Taxal Edge ridge, starkly contrasting against the built settlement of Whaley

Bridge below as stated within the Council's Landscape Statement evidence. The former classroom building (Enforcement Appeal A) is stated as forming a visible and prominent standalone building set amongst woodland appearing out of character within its context. The significant visual impacts of the appeal scheme are said to be heightened should the former classroom building (Appeal A) be upheld.

- 5.24 LP Policy EQ6 'Design and Place Making' in relation to the appeal scheme requires edge of settlement development to be of high quality design which protects, enhances and / or restores landscape character and is well designed to respect the character, identity and context of High Peak's townscapes and landscapes.
- 5.25 The Council's Urban Design Statement evidence has considered the appeal scheme in the context of local and national design policies and guidance. Paragraph 134 of the NPPF states for development which is not well designed, it should be refused particularly where it would not reflect local design policies and guidance. She states as urban design considerations are holistically linked with setting and context, and the appeal site is located within a woodland setting and beyond the settlement boundary within open countryside, there will be a degree of overlap in commentary with the Council's Landscape Statement evidence.
- 5.26 Her evidence considers the appeal scheme to be a standalone development of repetition townhouse (with multiple elevations) within its own woodland setting, which would not integrate well into the existing settlement. The separation between the settlement edge and appeal site is said to be exacerbated by the high walled boundary and driveway arrangement of the appeal scheme. As well, she considers the setting back of the appeal properties further towards the ridgeline would have the effect of increasing the separation from the settlement edge. As a consequence, the appeal scheme is confirmed as not adding to the overall quality of the built environment whilst detracting from the wooded ridge of the backdrop to the settlement of Whaley Bridge.
- 5.27 The appeal scheme is considered by the Council's Urban Design Statement evidence to have a strong sense of enclosure and dwelling facades, with a layout dominated by hard surfaces, including the access and individual driveways thereby distracting from the sense of place of Whaley Bridge and its landscape setting. As well, the impacts of car parking are seen to be highly visible with no opportunity to reduce their prominence within the street scene whilst integral garages would give a suburban property character

contrary to the rural setting. County Council Highways requirements (CD10.4) for an access driveway (and turning head) wider than the appeal scheme layout plan would be expected to result in greater hard surfacing and retaining walling with steeper gradients on driveways, which is discussed as leading to a greater loss of the landscape character of the appeal site (including potential tree loss).

5.28 The Council's Urban Design Statement evidence also considers the proposed hybrid grand villa typology in a contemporary style within an elevated siting to be out of character with existing built development and the landscape setting. The size and scale of nearby housing is said to be more integral and nestled within the valley whereby residential estates maintain a domestic scale of mostly two storey properties, which do not appear prominent within the landscape setting. Whereas the appeal scheme overlooking the valley set out as a tight group of large properties is discussed as giving it an intensity, which amounts to overdevelopment within the woodland context.

5.29 The appeal scheme property types are set out as follows:

- *Plots 1 to 4*: House Type A, 4-bedrooms @ 172.0sqm (Overall Ridge Height = 10.0m) plus garage 16.0sqm (CD1.6)
- *Plot 5 & 6*: House Type B, 4 bedrooms @ 208.0sqm (Overall Ridge Height =10.0m) plus garage 28.0sqm (CD1.7)
- *Plot 7*: House Type C, 6 bedrooms @ 257.0sqm (Overall Ridge Height = 9.4m) plus detached garage / study with terrace @ 73sqm (CD1.8)

5.30 The appeal property rooflines are stated as being dominated by large dormers and together with excessive level changes would not achieve a traditional housing ridgeline whilst dormer windows to the semi-detached property types would give the appearance of a 3.0 storey dwelling. As well, elevations with numerous window openings and styles combined with numerous property step changes would provide for an unbalanced property facade. She further considers the use of glass balconies and integral garages to be unsympathetic to local character. In addition, the undercroft garage / study outbuildings with podium terraces and glass balustrades are confirmed as resulting in a hard alien built environment within the natural landscape setting of the appeal site. Whilst the chimney stacks are said to appear incongruous in the absence of more simple elevations. In these regards, there is significant concern as a result of appeal properties positioned on Taxal Edge ridgeline, which would be prominently visible in lower views

and across the valley, which would also be viewed during darker hours when appeal properties are lit up by proposed large window openings thereby exacerbating the urbanising effects of the appeal scheme as highlighted in her statement.

5.31 The appeal scheme is confirmed by the Council's Urban Design Statement evidence as failing to recognise the intrinsic character of the countryside in this location by increasing the loss of existing trees and green space. The resultant street frontage arrangement is considered to be poor due to the number and length of driveways, limitations of shapes of garden spaces, the poor termination at the end of the driveways of the two large subterranean outbuilding structures and split boundary retaining walls to give an engineered effect to the appeal site. The appellant's 3-D images of the proposed appeal scheme at Appendix 3 clearly illustrate such concerns.

5.32 Furthermore, the grain of the appeal scheme is said to be large and close within a strong curved dominant building line, which provides a different character in contrast to the relevant aspect of the Whaley Bridge settlement, which is rectilinear, smaller and more densely laid out. Significantly, the appeal scheme would be set back and more elevated leading to the loss of the wooded gap separating the two elements of existing development onsite, which the Council's Urban Design Statement evidence considers would overall increase the visual impact of built development along the wooded ridge. The appeal properties are considered to increase in scale and massing towards the former classroom building and have an appearance of being cumulatively 3 stories in height to dominate the space in front of them thereby relating poorly to the woodland setting of the appeal site.

5.33 Overall, the Council's Urban Design evidence considers the bulk and density of the appeal scheme properties with double frontages and perceived three storey heights to be an overdevelopment of the appeal site and out of context with its landscape character. In addition, she states built up property frontages along the length of the appeal site provide for open, overlooked amenity spaces as a result of tight disproportionate spaces to the rear, as will be discussed within the section below. This arrangement is confirmed as failing to address the appeal site's woodland setting whilst imposing a structure of blocks into the site, requiring significant remodelling contrary to the appeal site and its landscape setting. New planting is considered as not mitigating against the dominant effect of appeal properties with frontage residential gardens imposing their own character thereby altering the nature of the woodland setting to a

significant degree. The appeal scheme would appear disconnected from the built settlement and the woodland character of the appeal site would be lost as highlighted within her evidence. Furthermore, the views at varying levels across the appeal site are confirmed as demonstrating the appeal scheme's prominence above the existing settlement of Whaley Bridge.

5.34 In conclusion, the Council's Landscape and Urban Design Statement evidence robustly demonstrates the appeal scheme would not be well related with the existing pattern of development and surrounding land uses or be of an appropriate scale for this aspect of the Whaley Bridge settlement. In addition, the appeal scheme would also constitute poor design and fails to understand the site's defining ridgeline, woodland characteristics. Accordingly, the appeal scheme fails to comply with Policies S1, S1a, S2, S6, H1, EQ2, EQ3, EQ6 and EQ7 of the Adopted High Peak Local Plan, the Adopted High Peak Design Guide, the Adopted Residential Design Guide SPD, the Adopted Landscape Character Assessment and National Planning Policy Framework.

### **c) Amenity of future occupiers**

5.35 LP Policy EQ6 'Design and Place Making' in relation to the appeal scheme's impact on future occupiers stipulates development should not cause unacceptable effects by reason of visual intrusion, overlooking, shadowing or overbearing effects. Similarly NPPF para 137(f) requires a high standard of amenity for existing and future users. The Council's Residential Design SPD provides further guidance on amenity matters.

5.36 The appellant stipulates each appeal scheme dwelling would enjoy good levels of residential amenity, with particular regard to overbearing or shading impacts (including plots 1 and 2). Furthermore, the appeal scheme would meet relevant guidance in respect of daylight and shading as per the submitted Daylight and Sunlight Assessment May 2021 (CD4.4 pg. 278). The report concludes: "*All proposed amenity areas apart from the rear amenity areas of plots 1, 2 and 3 exceed the recommended target values set in BR 209 guidance with opaque trees modelled. Although the rear amenity areas of Plots 1, 2 and 3 do not meet BR 209 guidance. The front amenity areas to all 3 plots exceed the recommended target values set in BR 209, therefore all plots have access to an amenity space with adequate sunlight levels, complying with BR 209 guidance*".

5.37 In contrast, the Council's Residential Design SPD advises "*Since front gardens are*

*required to establish a visual relationship with the street they are not the best place to locate the largest amount of private amenity space*" (CD6.3 para 8.7.2). In the appeal scenario, there would be significant overlooking of frontage garden areas. The SPD states: "*The rear of properties is a more appropriate location for garden areas*" (CD6.3 para 8.7.2).

5.38 The Council's Urban Design Statement evidence considers the relationship of appeal plot boundaries to be poor at the rear whereby properties would have small rear gardens overshadowed by woodland and proposed high stone retaining walls. In addition, the SPD states: "*Over shadowing can be particularly important in tall developments and in laying out external amenity spaces*" they "*should avoid shady (and north facing) locations*" (CD6.3 8.7.2).

5.39 The protected ridgeline trees (CD10.3) would effectively form a continuous line of elevated vegetation along the north-western boundary of the appeal site during the summer months with a restriction on daylight and sunlight, particularly in relation to the rear of appeal plots 1, 2 and 3 and compounded by retaining walling and restricted space to the rear. There are concerns arising from the impact on the preserved trees on the living environment of future occupiers in relation to those rear garden plots identified above. Moreover, the oppressive environment created by the trees would further lead to the long term pressures for cutting back or removal of trees as a result of the poor living environment created.

5.40 The appellant further confirms the appeal scheme would provide a higher quality arrangement of outdoor amenity space in relation to the alleged fallback position "*as it balances the provision of private rear areas, with sunnier front gardens, all of which would be subject to natural surveillance by the host properties*". Yet the guidance above considers the rear of properties to be a more appropriate location for garden areas.

5.41 The appellant's reference to Figures 4 and 5 have been discounted as follows: The referred to plan at '*Figure 4: Site layout for garage conversion approved under HPK/2009/0689*' (CD4.3 pg. 43) does not appear to relate to the approved site plans for the 2009 consent (CD b & c) and '*Figure 5: Approved site layout for permission reference HPK/2013/0503*' (CD4.3 pg. 44) relates to a lapsed consent to be excluded from the appeal scheme's fallback position. Of relevance to the 2009 consent, the appellant states there would no garden area for the apartments and the outdoor amenity area for

the approved garage conversion would be located alongside the access road to the wider scheme.

5.42 The alleged 2009 fallback position, however, would deliver broadly 2-bedroom, modest accommodation (excepting Flat 7 and the former classroom building). Whereas the appeal scheme would provide for generous family accommodation with a disproportionate amount of private outdoor amenity space to size of dwelling with shading impacts to some plots as noted above. Whilst there are no specific standards for private amenity space within the SPD, LP Policy EQ6 and the NPPF require a good standard of residential amenity to be provided in all new developments for future residents. The lack of a specific standard in planning policy terms means the assessment becomes a matter of planning judgement.

5.43 Accordingly, the appeal scheme would not provide a suitable living environment for future occupiers to conflict with LP Policy EQ6 and the NPPF. There would also be some conflict with LP Policy EQ9 relating to tree protection and the implications of shading arising from the appeal scheme to protected woodland trees in the longer term.

#### **d) Other considerations**

5.44 The appellant considers "*There are extant planning permissions for residential development at the site that provide a fallback position which is highly relevant when considering the acceptability of the proposed development*" (CD4.3 pg. 59).

5.45 Where there is a lawful fallback position to be taken into account, then a comparison is made between the impact of the appeal scheme and the impact of the fallback position as a material planning consideration.

5.46 The appellant's fallback position is confirmed as follows:

- The main building can lawfully be used as a single dwellinghouse or as 7 or 5 apartments (depending upon whether consent reference HPK/2008/0069, HPK/2009/0689 or HPK/2013/0503 is relied upon),
- The former classroom building can be used as a dwellinghouse, and,



- The erection of 2 semi-detached dwellings can lawfully be completed.

*HPK/2008/0069 – Change of use of Taxal Edge from a boarding hostel and associated ancillary residential accommodation to use as a single dwelling – approved 28th March 2008 (CDa & b).*

5.47 The Council does not accept that the main building, 184 Taxal Edge can be lawfully used as a single dwelling house in accordance with consent HPK/2008/0069. Firstly, pre-commencement condition 03 does not appear to have been received or discharged by the Council as discussed in paragraph 4.5 above. Secondly, a single ground floor apartment (Flat 1) has been broadly created in accordance with consent HPK/2009/0689 and building regulation submission (CD10.1) as received by the Council on the 28<sup>th</sup> September 2011. As a consequence, 184 Taxal Edge would appear to consist of one dwelling and an apartment (Flat 1), which may be immune from enforcement action to equate to at least a single dwelling of accommodation within the main building given Council tax records.

*HPK/2009/0689 – Conversion of Taxal Edge to provide 7 no. apartments and the conversion of the classroom block and disused garage to 2 no. detached houses – approved 29th March 2010 (CDa to w).*

5.48 The Council does not believe it has sufficient information to demonstrate whether the former classroom block dwelling has been converted in accordance with HPK/2009/0689 for a lawful consent to exist and is subject to Enforcement Appeal A (reference APP/H1033/C/22/329785). The enforcement notice does not, however, require domestic occupation of the former classroom block to cease.

5.49 For the alleged fallback position of consent HPK/2009/0689, the former classroom and main building already provide for two dwellings within the approved site edged red. The remaining elements of the 2009 consent would provide for a further 6 apartments within the main building and together with the conversion of garage to single dwelling would provide no net change in dwellings units against the appeal scheme for 7 dwellings.

HPK/2013/0503 – Proposed conversion of Taxal Edge to 5 no. apartments and construction of 2 no. semi-detached houses where the gymnasium is located – approved 25th November 2013 (CD a to n).

- 5.50 The submitted Approved Inspectors Ltd Initial Notice dated 12<sup>th</sup> July 2016 (CD10.2) does not provide any clarity as to the works alleged to have been undertaken to implement consent HPK/2013/0503 despite falling within the prescribed three year period from the decision notice date (25<sup>th</sup> November 2013). Notwithstanding this, no application for approval of details reserved by condition (including condition precedent 3, 8, 9, 11 and 13) for consent HPK/2013/0503 appears to have been received by the Council to allow such conditions to be discharged by the Council.
- 5.51 In these circumstances, the Council considers consent HPK/2013/0503 to have lapsed and cannot safely be relied upon by the appellant as a fallback. Accordingly, the 2013 consent should be excluded from the appellant's fallback position, including any comparison between it and the appeal scheme. Noting appeal scheme drawing reference 'Site Sections drawing reference 411179 25 P2' would be deemed to be out of date, with particular reference to Section 2 and the red line of approved developed, which appears to relate to the pair of semi-detached dwellings in relation to the lapsed 2013 consent.
- 5.52 Theoretically, the Council considers consents HPK/2008/0069 for a single dwellinghouse and HPK/2009/0689 for 7 apartments within the main building, 184 Taxal Edge cannot coexist.
- 5.53 The appellant's alleged fallback position at proposition 3 states "*The proposed development would cause no greater harm than the fallback and is preferable to the fallback in planning terms*" (CD4.3 pg. 59). They consider "*the proposed design and layout of the appeal scheme is a more contextually appropriate response than the fallback development when considering the relationship with the existing pattern of development*".
- 5.54 Should consent HPK/2009/0689 be deemed to have lapsed, the Council consider retention, renovation and reuse of the main building in relation to the previously developed elements of the appeal site would preserve the existing landscape setting and

overall character of the appeal site as robustly demonstrated by the Council's Landscape and Urban Design Statement evidence.

- 5.55 Of relevance, the officer delegated report for the 2009 consent set out clear in principle policy support for the approved scheme as follows: *"The development sits within open countryside and as such is covered by policy OC3. The works will involve minimal physical changes as conversion is possible without material physical alteration including existing parking and landscaping. In this regard the works can be considered to be an appropriate form of development as it will enable a reuse of the building without impact on the wider landscape"*. The Council is therefore content to accept the sub-division of the main building into apartments as a 'baseline' against which to compare the appeal scheme, however, it is not a lawful 'fallback' position.
- 5.56 As opposed to the appeal scheme, which would demolish the large detached Edwardian Villa and its garage with a wholesale site redevelopment of 7 new build dwellings, together with outbuildings would result in a development form, which is not well related with the existing pattern of development / surrounding land uses leading to a prominent intrusion into the countryside and resultant landscape harm as demonstrated within the Council's Landscape Statement and Urban Design Statement evidence.

## **6. Planning Balance & Conclusions**

- 6.1 The relevant legislation requires the appeal to be determined in accordance with the statutory development plan unless material considerations indicate otherwise. The NPPF states proposals should be considered in the context of the presumption in favour of sustainable development, which is defined by economic, social, and environmental dimensions and the interrelated roles they perform.
- 6.2 Paragraph 11 of the NPPF explains how the presumption in favour of sustainable development applies. The Council can currently demonstrate 6.28 years supply of housing land (as at 1st April 2022). Accordingly, for decision makers this means approving development proposals that accord with an up-to-date development plan without delay (NPPF para 11c).
- 6.3 In this case, the additional housing would be a benefit for the area, by introducing private housing for local people. It would therefore boost the supply of housing in accordance

with the NPPF. A contribution to housing delivery represents a public benefit of substantial weight, however, this weight would be dependent on the net amount of housing proposed by the appeal scheme.

- 6.4 There would also be material weight to be given to the economic and social benefits of the appeal scheme, which would accrue through its construction and the use of the proposed houses, as would any demonstrable scheme fallback. Given the small scale of the appeal scheme for a net change of 6 dwellings, however, these benefits attract more modest weight. Such weight is further reduced because the main building (184 Taxal Edge) could deliver additional residential units if it was subdivided further. The alleged fallback position of consent HPK/2009/0689 or the Council's 'baseline' would provide no net change in dwellings units against the appeal scheme for 7 dwellings to attract limited weight in these regards.
- 6.5 The Council has objected to the demolition of the large, detached Edwardian Villa and its garage with a wholesale site redevelopment of 7 new build dwellings and outbuildings, which are not well-related with the existing pattern of development or surrounding land uses and would lead to a prominent intrusion into the countryside. The Council therefore objects to the appeal scheme in terms of its harmful effect on the character and appearance of the area and its effect on the surrounding landscape. In addition, the Council has objected to the appeal scheme regarding the provision of poor quality private amenity space in relation to some plots and potential impact to protected trees owing to shading concerns.
- 6.6 The Council acknowledges that the appeal site is a location with reasonable access to public transport and other essential shops and services within the town of Whaley Bridge to accord with LP Policy CF6 'Accessibility and Transport'. This is a scheme benefit which can be taken into account.
- 6.7 No highway safety objections have been raised by the Council subject to appropriately worded planning conditions. As well, ecology matters in relation to protected species 'bats' are found to be acceptable.
- 6.8 The Council have put forward reasons for opposing the development, which establishes harm would clearly outweigh appeal scheme benefits. Therefore, the conflict with the development plan as a whole is not outweighed by other material considerations and it

follows that the appeal scheme should be dismissed.

## **APPENDICES**

**Appendix 1 – Relevant Planning History (List of Approved Plans / other related documents)**

**Appendix 2 – Photographs and Aerial Images ‘Woodland Triangle’ & Surrounding Appeal Site Area**

**Appendix 2 – Appellant’s 3-D image Proposed Site Plan(s)**

**Appendix 1 – Relevant Planning History (List of Approved Plans / other Documents, including Condition Discharge)**

***HPK/0002/5081 – Additional car parking provision adjacent to the main driveway – approved 6th April 1987***

Core document reference CD9.1 a to c.

- a. 1452/21 School Building Scheme Drawing dated 4<sup>th</sup> January 1985
- b. 1452/22 School Building Scheme Drawing dated 4<sup>th</sup> January 1985
- c. Decision Notice



**HPK/2008/0069 – Change of use of Taxal Edge from a boarding hostel and associated ancillary residential accommodation to use as a single dwelling – approved 28th March 2008**

Core document reference CD9.2 a to d.

- a. Application Form, Location Plan 1 and Location Plan 2
- b. Decision Notice

Pre-commencement Condition 03 does not appear to have been discharged by the Local Planning Authority.

***HPK/2009/0689 – Conversion of Taxal Edge to provide 7 no. apartments and the conversion of the classroom block and disused garage to 2 no. detached houses – approved 29th March 2010.***

The plans listed on the decision notice (Core document reference CD9.3 a to w)

**a. Location Plan Scale 1:1250 ‘Application Site Edged Red’ rec. Feb 2010**

- Residential Curtilage edged Red
- Application Buildings edged Green
- Other land in the applicant’s ownership edged blue
- Access Road coloured Blue.
- Gymnasium to be demolished edged with a broken green line

**b. Site Plan 1, Taxal Edge Macclesfield Road, Whaley Bridge ‘Residential Curtilage Edged Red’ rec. Feb 2010**

Plan annotation:

- Residential Curtilage edged Red
- Application Buildings edged Green
- Other land in the applicant’s ownership edged blue
- Access Road coloured Blue.
- Gymnasium to be demolished edged with a broken green line
- Existing and Proposed Parking Spaces marked with broken blue line (refer to Site Plan 2 for details of parking alongside main access drive)

**c. Site Plan 2 rec. Feb 2010**

**d. 10/358/01A Proposed Apartments at Taxal Edge Ground Floor Plan Proposed Layout dated 19<sup>th</sup> March 2010**

*\* Note: No revision A is demarcated on the plan, however, the electronic file states ‘Ground Floor Rev 10\_353\_01’ and is dated 19<sup>th</sup> March 2022 and received with the revised bundle*

*and correspondence dated 19<sup>th</sup> March 2022.*

- e. 09/358/02A Proposed Apartments at Taxal Edge 1<sup>st</sup> and 2<sup>nd</sup> Floor Plans Layout dated 19<sup>th</sup> March 2010 \***
  - f. 10/358/03A Proposed Apartments at Taxal Edge Existing and Proposed West Elevations dated 19<sup>th</sup> March 2010 \***
  - g. 10/358/04A Proposed Apartments at Taxal Edge Existing and Proposed South Elevations dated 19<sup>th</sup> March 2010 \***
  - h. 10/358/05A Proposed Apartments at Taxal Edge Existing and Proposed East Elevations dated 19<sup>th</sup> March 2010**
  - i. 10/358/06A Proposed Apartments at Taxal Edge Existing and Proposed North Elevations dated 19<sup>th</sup> March 2010**
  - j. 10/358/07 - Garage Conversion to Dwelling Proposed Floor Plans dated 15<sup>th</sup> January 2010**
  - k. 09/358/08 – Garage Conversion to Dwelling Existing Elevations dated 5<sup>th</sup> November 2009**
  - l. 09/358/6 – Conversion / Change of Use to House Proposed Floor Plans dated 5<sup>th</sup> November 2009**
- Note: the decision notice plan reference 09/358/6 appears as a typographical error as the drawing reference is 09/358/06.*
- m. 09/358/09A - Garage Conversion to Dwelling Proposed Elevations dated 15<sup>th</sup> January 2010**
  - n. Taxal Lodge Tree Protection Plan South**
  - o. Taxal Lodge Tree Constraints Plan North**
  - p. Design and Access Statement received 2<sup>nd</sup> February 2010**
  - q. An appraisal of trees at Taxal Edge, Whaley Bridge dated September 2009**
  - r. Delegated Report**
  - s. Decision Notice dated 29<sup>th</sup> March 2010**

**t. Application for approval of details reserved by condition dated 22<sup>nd</sup> November 2012 for Conditions 3, 4, 6, 7, 8, 9 and 12.**

**u. HPBC Condition Discharge Letter dated 19<sup>th</sup> December 2012**

- Confirms that Conditions 3, 4, 6, 7 are discharged.
- Condition 9 is subject to the approved details in Condition 4 for a post and wire fence to prevent vehicles from the site from Macclesfield Road and is to be erected prior to the commencement of development to meet with the provisions of Condition 9
- Confirms that Condition 8 is not discharged.

It requires:

*8. Before any other operations are commenced, the existing access to Macclesfield Road (B5470) shall be modified in accordance with the (revised) application drawings, laid out, constructed and provided with [dimensions] visibility splays in either direction, the area in advance of the sightlines being maintained clear of any object greater than 1m in height (0.6m in the case of vegetation) relative to adjoining nearside carriageway channel level.*

- In addition, pre-commencement Condition 12 does not appear to have been discharged by the Local Planning Authority.

It requires:

*12. Prior to the commencement of development full details of the construction of the access track to the upper parking area, including any necessary engineering works, shall be submitted for approval to the Local Planning Authority. The works shall thereafter be implemented in accordance with the approved plans.*

**v. Application for approval of details reserved by condition dated 6<sup>th</sup> March 2013 for Condition 2**

**w. HPBC Condition Discharge Letter dated 15<sup>th</sup> April 2013**

- Confirms Condition 2 is not discharged.

***HPK/2013/0503 – Proposed conversion of Taxal Edge to 5 no. apartments and construction of 2 no. semi-detached houses where the gymnasium is located – approved 25th November 2013***

Core document reference CD9.4 a to n.

**a. Location Plan 1:1250 (electronic file date 23/09/13)**

Plan annotation:

- Domestic curtilage of proposed dwellings edged Red
- Other land owned by Applicant edged Blue

**b. Site Plan 1:500 Taxal Edge Macclesfield Road, Whaley Bridge ‘Residential Curtilage Edged Red’(electronic file date 23/09/13)**

Plan annotation:

- Residential Curtilage edged Red
- Application Buildings edged Green
- Other land in the applicant’s ownership edged blue
- Access Road coloured Blue.
- Gymnasium to be demolished edged with a broken green line
- Existing and Proposed Parking Spaces marked with broken blue line

**c. 13/382/01A Rev A Taxal Edge Main House Alt. & Semi Detached Ground Floor Proposed dated 7<sup>th</sup> August 2013**

**d. 13/382/02A Taxal Edge Main House Alt. & Semi Detached First Floor Proposed dated 7<sup>th</sup> August 2013**

**e. 13/382/03 Taxal Edge Main House Alt. & Semi Detached Second Floor Proposed dated 7<sup>th</sup> August 2013**

**f. 13/382/04 Taxal Edge Main House Alt. & Semi Detached Existing North and South Elevations dated 7<sup>th</sup> August 2013**

- g. 13/382/05 Taxal Edge Main House Alt. & Semi Detached Existing (East and West) Elevations dated 26<sup>th</sup> July 2013**
- h. 13/382/06 Taxal Edge Main House Alt. & Semi Detached Proposed North and South Elevations dated 7<sup>th</sup> August 2013**
- i. 13/382/07A Rev A Taxal Edge Main House Alt. & Semi Detached Proposed (East and West Elevations) dated 26<sup>th</sup> July 2013**
- j. 13/382/09 Taxal Edge Main House Alt. & Semi Detached First Floor Proposed & Existing dated 7<sup>th</sup> August 2013**
- k. 13/382/010 Taxal Edge Site Plan 2 Semi-detached Dwellings Amenity Space dated 7<sup>th</sup> August 2013**
- l. (Tree Constraints) Document 4**
- m. Delegated Report dated 25<sup>th</sup> November 2013**
- n. Decision Notice 25<sup>th</sup> November 2013**

The following conditions are considered to be pre-commencement conditions:

- Condition 3 (Sample of Materials External Surfaces)
- Condition 8 (Full details of construction of the access track to the upper parking area)
- Condition 9 (Boundary Detail)
- Condition 11(a) (Tree Protection Scheme)
- Condition 13 (Arboricultural Method Statement)

**Appendix 1 - Photographs and Aerial Images 'Woodland Triangle' & Surrounding Appeal Site Area**

**a) Land between Classroom Block and 194 Taxal Edge, Appraisal of Trees September 2009 (CD9.3 q)**



**b) HPBC Council Aerial Photo 2011**





c) Aerial Photo Google Earth 18<sup>th</sup> June 2017



d) Aerial Photo Google Earth 29<sup>th</sup> June 2018





**e) Photograph August 2020**



**f) Photograph August 2020**





**g) Photograph August 2020**



**h) Photograph August 2020**





**i) Photograph April 2021**



**j) Photograph April 2021**





**k) Photograph April 2021**



**l) Photograph September 2022**





m) Photograph September 2022



n) Photograph September 2022



**Appendix 2 - Appellant's 3-D Image Proposed Site Plan (2021)**



