



WHITE PEAK Planning

**Town and Country Planning Act 1990 as
amended by the Planning and Compensation
Act 1991 Appeal under Section 174**

APP/H1033/C/22/3297854

184 Taxal Edge, Macclesfield Road, Taxal Edge,
Whaley Bridge, Derbyshire, SK23 7DR

Appellant: Mr Gary Stephen Cullen

Summary Proof of Evidence on Matters of
Enforcement

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1.0 Summary Proof of Evidence

1.1 Introduction and Scope of Evidence

- 1.1.1 This summary and main Proof of Evidence has been prepared by Steven Gunn-Russell and relates to matters of enforcement with respect to Appeal APP/H1033/C/22/3297854 relating to Land at Taxal Edge.
- 1.1.2 This Proof of Evidence relates to matters of planning and enforcement. It responds to the appellants appeal in response to High Peak District Council's (the Council) Enforcement Notice (31/03/2022).

1.2 Qualifications

- 1.2.1 I am a Senior Planning Consultant at White Peak Planning (WPP), an independent Planning and Sustainable Development consultancy. I am a Chartered Town Planner and have 20 years of experience working in local government since 2002. My breadth of experience includes assessment of a wide range of planning application types including assessment of planning applications, providing policy advice, dealing with planning appeals, and supporting enforcement work.
- 1.2.2 The evidence which I have prepared and provide for this Appeal (ref: APP/H1033/C/22/3297854) in this Proof of Evidence is true and has been prepared and is given in accordance with the guidance of the Royal Town Planning Institute for which I have held chartered membership since 2005. I confirm that the opinions expressed are my true and professional opinions.

1.3 Site Description and Planning History

- 1.3.1 The Enforcement Appeal relates solely to the "classroom block".
- 1.3.2 The site description and planning history are set out in Section 2 and Section 4 of the Statement of Common Ground (**CD5.7**).

1.4 Description of the Enforcement Case

- 1.4.1 The description of development, as stated on the Enforcement Notice (HPE/2019/00014), is:

'Description: "the alteration of a building ("the classroom block") comprising the raising of the roof and steepness of the pitch of the roof, the insertion of three dormer windows on the eastern roof slope and changes to fenestration on the eastern elevation".'

1.5 Reasons for Enforcement

- 1.5.1 The reasons for the Council's decision to undertake enforcement action is set out in the Enforcement Notice dated 31/03/2022 (**CD5.1**).

1.6 Grounds of Appeal

- 1.6.1 The appeal is submitted under Section 174 of the TCPA 1990 (as amended) against the Enforcement Notice HPE/2019/00014 by the Council.

1.7 The Main Issues

- 1.7.1 The main issues in this appeal are:
1. whether the matters alleged constitute a breach of planning control. This is pertinent to the ground (c) appeal;
 2. if the matters alleged do constitute a breach of planning control, whether it is too late for enforcement action to be taken. This is pertinent to the ground (d) appeal;
 3. the effect of the matters alleged and the proposed development on character and appearance of the site and surrounding area. This is pertinent to the ground (a) appeal;
 4. whether the steps required to be taken by the notice exceed what is necessary to remedy the breach of planning control, or as the case may be, the injury to amenity. This is pertinent to the ground (f) appeal; and
 5. whether the steps required to be taken by the notice exceed what is necessary to remedy the breach of planning control, or as the case may be, the injury to amenity. This is pertinent to the ground (g) appeal, although the Council has agreed that 12 months would be acceptable.

1.8 Planning Policy and Material Considerations

- 1.8.1 National Planning policies, Local Plan policies and associated Supplementary Planning Documents relevant to this appeal are set out in the Enforcement Notice.
- 1.8.2 Other material considerations are listed in Section 5 of the Statement of Common Ground (CD5.7).

1.9 Analysis of the Main Issues

Issue One: Whether the matters alleged constitute a breach of planning control.

- 1.9.1 The Council's view is the works as described in the notice constitute development, does not have planning permission and is not permitted development under the GPDO.
- 1.9.2 It should be noted that the Council did not enforce against other breaches it considered had taken place, namely a small extension to the rear (not considered to be expedient) and use as a dwelling house as it considered that the principle of residential use of the classroom building had previously been accepted.

Definition of development

- 1.9.3 From section 55(1) and 55(1A) of the TCPA 1990 it can be construed that the works which have taken place on the site constitutes development.

Permitted Use

- 1.9.4 The appellant contended that the change of use to residential took place before they acquired the property. However, no evidence has been submitted.
- 1.9.5 Even if the residential use is accepted, the conversion approved in HPK/2009/0689 has not been done in accordance with the consent which specifically restricts any extensions or external alterations. Photographic evidence shows how the original building looked, and there have been no further planning consents since then that allow any external changes.
- 1.9.6 There are no permitted development exemptions for change of use from non-residential development to residential, and this requires that any change of use must be within the conditions of the approved planning application.
- 1.9.7 Therefore occupation of the property was not lawful by way of consent or by permitted development rights. The educational use remains the extant legal use of the Classroom Block

Permitted development rights

- 1.9.8 Permitted development exemptions of relevance to residential development that have been carried out to the classroom building are specified in the GPDO 2015-2021 Schedule 2, Part 1, Classes A, AA, B, and C.
- 1.9.9 The roof pitch, eaves, and materials of the current building are substantially different.
- 1.9.10 The works extends beyond the plane of the original roof on the principal elevation fronting a public highway (the PROW), and has an increase in cubic volume of the roof estimated at 213m³ which exceeds the current roof space well in excess of 50m³.
- 1.9.11 Taking into account the Classroom Block having never completed any change of use, Part 7 Class M allows permitted development rights for schools. However, even if the Classroom Block is considered to still have a school use the appellant has no recourse to permitted development under Class M.

Current Usage

- 1.9.12 The appellant contends that the Classroom Block is currently in use as a dwelling. A site visit on 23/09/2022 suggests this appears to be the case.
- 1.9.13 However, the classroom block has never been registered for Council Tax, never been registered on the Elections Register, and never received a Building Regulations completion certificate. All utilities appear to be registered not to the Classroom Block but to the adjacent 184 Taxal Edge. The Council has not received any evidence otherwise, nor any application for a Certificate of Lawfulness for the current building. As such there is no evidence that the building is legally recognised as a domestic property.

- 1.9.14 The development which has taken place therefore requires planning permission and even if it can be shown that use of the classroom block is lawful there are no permitted development rights available to the appellant because the development that has taken place does not comply with the conditions set out in the GPDO.

Issue Two: If the matters alleged do constitute a breach of planning control, whether it is too late for enforcement action to be taken.

- 1.9.15 Operational development is immune from enforcement action 'after the end of the period of four years beginning with the date on which the operations were substantially completed' (Section 171(b) (1) TCPA 1990).
- 1.9.16 The Council's view is that it was not too late to take enforcement action as the building works were not substantially complete before four years of the date on which the enforcement notice was issued being the 31st March 2022.

Roof height, slope, dormer windows

- 1.9.17 The original roof (no dormer windows) was visible on 18/06/2017 and height estimated to be 7.19m. The roof had been raised (including three dormer windows) by 04/11/2017 and height estimated to be 10.39m. This represents an increase of 3.20m which is equivalent to an extra storey in height. The roof ridge has clearly been increased from an equivalent two-storey building to an equivalent three-storey building. The roof volume has increased from 77m³ to 290m³, representing an increase of 213m³.

Walls

- 1.9.18 The original walls were visible in September 2009 and comprised brick, basic windows, and panels beneath. The appellant's own photo shows that the walls on the front//East elevation and South elevation were still under construction on 04/11/2017. Further photographic evidence from site visits shows this remained the case on 19/04/2021 and 14/03/2022.
- 1.9.19 Current materials are predominantly yellow stonework. The building has been 'reskinned' with an additional layer added to all external elevations of the building approximately doubling the thickness of the walls and increasing its overall volume.

Window fenestration

- 1.9.20 The original windows were visible in September 2009. The appellant's photo shows that the window fenestration on the front/main/East elevation and South elevation was still under construction on 04/11/2017. This remained the case on 14/03/2022.

Rear porch

- 1.9.21 The single-storey rear porch did not exist in 2009, but was visible by 04/08/2020.

Ongoing building work

- 1.9.22 Building work was still ongoing during numerous site visits between 24/04/2020 and 23/09/2022. It was observed that along the north elevation there is a large area

of exposed breeze blocks with the erection of trellis fencing, plus an exposed lintel (red) above the doorway together with clearly incomplete stonework leaving gaps in the external wall, plus breeze blocks partially built in a perpendicular position.

- 1.9.23 The position of the breezeblocks suggests that the appellant has plans for further building work. As such the works are still ongoing, and not complete greater than 4 years prior to the enforcement notice.

Building project incomplete

- 1.9.24 The Council's view is that the works comprise a single project and not a series of projects acquiring immunity at different times.

- 1.9.25 The appellant has not provided any contemporaneous documentary evidence to show when the works were completed such as receipts for materials; building regulations; registration for council tax and utilities metering. The appellant's evidence is neither specific nor compelling.

Substantial completion

- 1.9.26 Case law shows that any operational development carried out more than 4 years prior to the issue of an enforcement notice, would not be immune from enforcement action, unless the development as a whole was substantially completed at least 4 years prior to the issue of the notice.

- 1.9.27 The Council's view is that the insertion of windows on the South elevation are an integral part of the development by providing a building capable of heating, safety, and security. The windows are considered to be a component part of a single or overall operation, carried out over a period of time, in order to facilitate the habitable use of the building.

- 1.9.28 The appellants' photograph taken on 04/11/2017 shows substantial parts of the building as incomplete/ under construction with extensive building work in progress including exposed sections including part of the roof visible under the eaves, a long steel beam, wooden boards, steel beams, brick columns and steel columns, plus chipboard or plasterboard.

- 1.9.29 The Council contends that the operations comprising the installation of windows which was not completed until August 2020, and ongoing building work which is still in progress are a single operation and that the enforcement action was taken well within the required 4-year period.

Conclusion

- 1.9.30 The works was not substantially complete by 06/03/2022 and were in fact still under construction by 23/09/2022. As such the building project was still under construction within 4-year prior to the submission of the Enforcement Notice.

Issue Four: The effect of the matters alleged and the proposed development on character and appearance of the site and surrounding area.

1.9.31 The Council's view the development has a detrimental impact on the character of the area contrary to the Development Plan. Planning permission for the development would be refused.

1.9.32 The site is located outside the Whaley Bridge built-up-area but outside the Green Belt, and within the 'Settled Valley Pastures' Landscape Character Type Area.

Landscape and Design

1.9.33 It is considered that the development is not sympathetic to the distinctive landscape character by virtue of the insensitive scale and dominance of the roof height, slope, and dormers in relation to the context of the surrounding area both in terms of the wooded area around Taxal Edge, the nearby residential streets, and views from across the valley.

1.9.34 Although the development would appear to support the reuse of a vacant former school building it has an adverse impact on the character and appearance of this rural area by virtue of its failure to satisfy the policies in the Council's Landscape Character Assessment SPD, further supported by the Landscape Statement.

Character

1.9.35 The immediate area around the Classroom Block is considered to have a very strong countryside and woodland character which is seriously harmed by the height of the current building and associated dormer windows.

1.9.36 Surrounding buildings within this rural area are almost entirely bungalows and two storey dwellings, none of which have a significant increase in roof height or slope. Additionally, the siting of the building is elevated on a hillside on a highly prominent position visible from significant views across the valley.

Design and Visual Amenity

1.9.37 It is considered that the development is of poor quality with its dominant height, large dormer windows, mismatched arrangement of windows on all elevations, lack of symmetrical presentation, absence of a main front door on the main front elevation, and low solid to void ratio.

1.9.38 Dormer windows are considered to be unacceptable in this location in an area outside Buxton. Although the three dormers' windows themselves have a degree of consistency there is a poor relationship between these and the rest of the dwelling and the left-hand side dormer is considered to be disproportionately over dominant in relation to smaller windows directly below at ground and first floor level.

1.9.39 The development is effectively a three storey property, substantial in scale, exceeds the original roofline, plus lacks adequate proportion and symmetry. Development that is not well designed should be refused, especially where it fails to reflect local policies and government guidance on design.

1.9.40 Overall, the current building is considered to have a significant, harmful impact on the character and appearance of the property and the surrounding area. The development is therefore considered to be not in accordance with local policies and national guidance.

Impact on Residential Amenity

- 1.9.41 The overall scale of the building is relatively large (particularly the height), compounded by its location elevated on a hillside. In terms of residential amenity on balance the proposal is therefore considered unlikely to have a significant, harmful impact on the amenity of the neighbouring properties.

Recommendation

- 1.9.42 It is considered that the current building is unacceptable in terms of the design and scale of this development. The development fails to accord with the relevant policies contained in the High Peak Local Plan and associated SPD guidance. As such the development is recommended for refusal and the dismissal of the ground (a) appeal.

Issue Seven: Whether the steps required to be taken by the notice exceed what is necessary to remedy the breach of planning control, or as the case may be, the injury to amenity.

- 1.9.43 The Council's view is that the required steps are relevant, reasonable, and realistic with reference to the Local Plan. The purpose is to ensure that any harm caused by the unapproved development is mitigated to a satisfactory level.
- 1.9.44 The Enforcement Notice states the applicant should restore the land to its condition before the breach took place by completing three specific steps **(CD5.1)**.
- 1.9.45 The Council considers the proposed steps will satisfactorily mitigate the harm caused, alongside ensuring that the planning system is seen to be properly backed up by an effective enforcement system.
- 1.9.46 During the site visit conducted on 23/09/2022 observations were made as to whether there was any mitigation by the applicant in response to the three requirements put forward by the Council's Enforcement Notice. However, it was evident that no improvements or mitigation has taken place.

Issue Eight: Whether the time for compliance is reasonable.

- 1.9.48 The appellant submitted a Ground (g) appeal Proposition 5 - The time given to comply with the notice (6 months) is too short.
- 1.9.49 Agreed, the Council concedes that increasing the time to comply with the notice from 6 months to 12 months is acceptable for the reasons given in the appellants statement.

2.0 Summary and Conclusions

- 2.1.1 This Proof of Evidence is prepared on behalf of High Peak District Council in response to the appellant's appeal against the Council's enforcement action which commenced on 31/03/2022.
- 2.1.2 The Council's position has been set out with regard to local and national planning policy.
- 2.1.3 The Council considers that the works which has already taken place constitutes development and requires planning permission but no permitted development exceptions are available to the appellant.
- 2.1.4 The last approved application for change of use was from an educational use to residential. No permission was granted for any physical alterations to the exterior of the building. It is not clear whether the approved change of use was ever lawfully implemented.
- 2.1.5 If the lawful use of the building is residential, then the appellant has exceeded the permitted developments as set out in the GPDO 2015.
- 2.1.6 If the lawful use of the building is non-residential then there is no permitted development allowance for the works.
- 2.1.7 The works are not a simple conversion but include substantial material alterations to the external appearance of the building, which do not amount to permitted development.
- 2.1.8 The works have a detrimental impact on the character of the site and the surrounding area. In the event that a planning application was submitted to formalise the building works, planning permission would be refused.
- 2.1.9 Building work is still ongoing as recently as 23/09/2022.
- 2.1.10 It is therefore concluded that the appeal should be dismissed subject to the variation of the enforcement notice to allow 12 months for compliance.