

APPEAL A: APP/H1033/C/22/3297854 by Mr Gary Stephen Cullen¹

APPEAL B: APP/H1033/W/21/3272745 by Treville Properties Ltd²

LOCAL PLANNING AUTHORITY: High Peak Borough Council

APPEAL A against an enforcement notice alleging, without planning permission, the alteration of a building ("the classroom block") comprising the raising of the roof and steepness of the pitch of the roof, the insertion of three dormer windows on the eastern roof slope and changes to fenestration on the eastern elevation.

APPEAL B against the non-determination of an application for planning permission for the demolition of the existing building known as "Taxal³ Edge" and the detached garage building and the erection of 7 no. dwellings.

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

CLOSING SUBMISSIONS BY THE LOCAL PLANNING AUTHORITY

Introduction

1. These closing submissions should please be read together with those made in opening [ID2]. We have not repeated all matters here in the interests of brevity. However, where parts of the opening are no longer relevant, we have indicated that this is so.
2. Since the opening submissions were drafted there have been a number of agreements between the parties:
 - a. Three signed Statements of Common Ground (ID3 to 5).
 - b. A "baseline" against which to make planning judgments in respect of the landscape and visual impact of the Appeal B scheme (Main Issue 4).
 - c. That the inspector should assume, while making planning judgments that depend on the reduction in the roof ridge height as required by the Enforcement Notice ("EN") (as varied), that the new ridge height of the former classroom block will be between 1.6m to 1.8m (perhaps 1.7m?) lower that it is now.
 - d. As a result of the "baseline", it is agreed that there is no longer a legal "fallback" position relied on (see further under Main issue 6).

¹ His wife, Gail Cullen is also an owner of the property, but is not an appellant.

² The company's officers are members of Mr Gary Cullen's family.

³ In some places it incorrectly spelled "Taxel".

- e. Variations to the EN (see further under "Nullity" below).
3. The inspector's post-CMC note identified 8 main issues in this case. These submissions are structured to deal with each in turn.

Appeal A preliminary issue – is the EN a nullity?

4. Mr Rawdon Gascoigne's ("RG") proof at #2.8 alleges the EN [CD5.1] is a nullity.
5. An EN is a "nullity" if it is so defective on its face that it is without legal effect. The EN in this case contains everything required by s173. There is no internal conflict between its requirements. An EN which is "flawed" in some way can be corrected or varied under s176 so long as that does not cause injustice to an appellant.
6. RG complains about the requirements to alter the roof so "to its condition before the breach took place by lowering the overall height of the roof to the classroom block to that shown on EN04 and EN05". He says they lack any scale or dimensions that would enable the appellant how the roof should be altered and that the LPA would not be able to check whether the roof had been altered correctly.
7. The parties are now agreed that the requirements at paragraphs 5 and 6 of the EN should be varied to delete the whole of current paragraphs 5 and 6 and insert new details that better describes what it is to do and by when. A new drawing [ID12 – to become EN06] is also agreed in place of existing plans EN04 and EN05 attached to the EN.
8. Since the Council has also agreed during the inquiry to further variations under grounds (f) and (g), the detailed wording of the variations will be set out below.
9. That is sufficient to dispose of the "nullity" point.

Main issue 1: whether the matters alleged constitute a breach of planning control. This is pertinent to the ground (c) appeal on Appeal A.

10. Please read-in paragraphs 3 to 7 of the Council's Opening Statement [ID2].
11. The Council's position remains that:
- a. The Appellant accepts that there is no express permission and none under the GPDO for the works to the roof and the insertion of dormers.

- b. The Council submits that both the alterations (roof and façade considered either individually or collectively) made a material alteration to the external appearance of the building and were therefore development for the purpose of s55 of the 1990 Act. The Appellant's case (RG#6.8) that the window openings were not enlarged is simply not tenable. That is the case applying the approach in the *Burroughs Day v Bristol City Council* case from 1996 (see pages 9 and 10 of the transcript produced by the Appellant) – it is a matter of fact and degree for the inspector's judgment.
- c. The alterations to the windows on the eastern elevation / façade were not permitted development under the GPDO.

12. The Appellant's case (RG#6.10) is that the new windows were permitted under Class A of Part 1 to the GPDO and did not fall within any of the exceptions in Class A.1 and complied with the conditions in Class A.3.

13. Class A rights attach to dwellinghouses. Although there was a planning permission to change the use of the former classroom block to a dwellinghouse, the Council is not satisfied that such a use took place within the lifetime of the permission HPK/2009/0689 [CD9.3s] dated 29/3/10, or if it took place thereafter, it was not lawful (as being immune from enforcement) at the time the new windows were inserted:

- a. Mr Butler's evidence in his statutory declaration is insufficiently precise, self-serving and is not supported by any documentary evidence at all that supports or corroborates the fact of his residency prior to 29/3/13. This lack of evidence is frankly astonishing in the context of a planning appeal with this history. Surely, the Council asks rhetorically, there must be something? As there is nothing, the evidence of Mr Butler is no more than a bare assertion and not worthy of significant evidential weight
- b. The only (literally) evidence before the inquiry (written or oral) as to when the windows were inserted is at RG#6.18 – he was "advised" that it was "around mid-late 2019". It would therefore be necessary to show that any unlawful use of the building as a dwellinghouse was immune by that time – i.e. that it commenced in around mid-late 2015. At that time Mr Butler still owned the building. On Mr Cullen's case [#7] (even if it is accepted) he did not move in until he purchased the building in March 2016.
- c. Mr Cullen's evidence in his statutory declaration is insufficiently precise, self-serving and is not supported by any documentary evidence that supports or corroborates the fact of his residency prior to his family moving to Taxal Edge. ID7 (p7 of 11) gives a date of 23/3/20 for the family move.

14. Class A.3, conditions, provides that "(a) the materials used in any exterior work ... must be of a similar appearance to those used in the construction of

the exterior of the existing dwelling". In this case the enlarged area of glass is materially different from the solid 'panels' which previously existed. There is therefore a breach of condition A.3(a) and the development is therefore not permitted.

15.The appellant has failed to make good his ground (c) appeal.

Main Issue 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 on Appeal A

16.Please read in paragraphs 9 to 17 of the Council's opening statement [ID2].

17.The evidence shows the following facts:

- a. Mr Butler said he purchased and moved into the 'main building' at Taxal Edge in 2007.
- b. He then says he moved into the classroom block together with his partner and his son "within a few months of permission [HPK/2009/0689] being granted." The permission was granted on 29/3/10 [CD9.3(s)]. However, there is (again) no independent corroborating evidence for this. The classroom building has never been registered for Council tax, registered as an address on the electoral register, registered as a postal address or registered as an address for utilities.
- c. But if he did do so, then this was the date of the change of use of the classroom block to a dwellinghouse. Whether the change of use was lawfully undertaken in accordance with the planning permission depends on the discharge of conditions precedent. The Appellant has provided no evidence that this occurred.
- d. In 2014 Mr Butler says that he and his partner moved out of the classroom block and moved into a flat in the main building leaving his two sons William and Jason in the classroom block. Again, there is no corroborating evidence that this occurred as a matter of fact.
- e. Towards the end of 2015 he decided to carry out alterations to the roof and repairs to the classroom block as well as installing a "natural stone outer leaf" to the building and replacement windows.
- f. He obtained a quote from Gary Cullen who was then instructed to carry out the works. Gary Cullen (#5) describes this as "quite a big job".
- g. He then says that as Gary Cullen was carrying out the works "discussions started ... about him buying the property and some grounds for garden. Upon agreeing a price for the sale and the extent of grounds, I instructed works to stop and informed Mr Cullen I was happy for him to continue any works he wanted to do but it was at his own cost and his own risk in the event of the sale didn't happen." This is confirmed by Gary Cullen (#6).

- h. He sold the former classroom block and its grounds to Gary and Gail Cullen on 31/3/16 (This accords with the Land Registry title at RG p194. The title plan (p196) shows the extent of the land sold). He says that his sons vacated the classroom block and moved back into the main building.
- i. Gary Cullen says (#7) "I immediately moved in" and decided to insert dormers into the roof. He does not say his family moved in. It sounds as though he claims to have been staying there overnight while carrying out the works. It is not credible that this became his main residence during the works; his family home (ID7, p3 of 11) was only about 20 mins drive away. There is no corroborating evidence such as Council Tax records for his 'move-in' at this time.
- j. Mr Butler says that he sold the remaining parts of Taxal Edge to Treville Properties Ltd on 30/8/19. Gary Cullen (p188, #1) says this is his son's company and he is "project manager"), but also says (#9) that the sale was a year earlier. The Land Registry title (p216) states 30/8/19 as Mr Butler avers.
- k. There are no building control records produced to show 'what happened when'.

18. Facts relating to the raising of the roof and alteration of the pitch.

- a. As a matter of fact the current ridge height is about 1.7m higher than the original classroom block (ID8 and 9).
- b. RG avers this work was carried out in 2016 (proof #6.16) – but he is plainly reporting what he has been instructed.
- c. But (#6.17) an air photo dated 17/6/17 (Fig 3) shows that the "final roof coverings" were not present.
- d. It cannot be the case as Gary Cullen suggests (#6) that the works to add loft storage had been completed before he purchased the property – indeed he accepts that "final finishes" to the roof had not been completed.
- e. RG opines (end #6.16) that the roof (and dormers) were complete by 4/11/17 (based on a photograph of this date). The Council has no evidence to disagree. The photo corroborates what RG says.

19. Insertion of dormers in the roof.

- a. They were not present on the air photo dated 17/6/17 (proof, Fig 3).
- b. A quote was obtained for the glass for the dormers on 22/9/17 (RG p211).
- c. The appellant avers they were installed in November 2017 (proof #6.16) as shown by the photo at Fig 1 (see also Image 1 produced by Gary Cullen at p207).
- d. The photo at Fig 5 (RG p032) cannot have been taken in "early 2016".
- e. They are shown installed in the air photo of 29/6/18.

20. Insertion of new (elevational) windows.

- a. RG proof p032, Fig 4 and Fig 5 show the fenestration changes to the east and north elevation.
- b. The original windows appear to have been removed before the photo at RG Fig 1 (p023) was taken on 4/11/17. The openings are boarded up.
- c. RG (#6.18) says a quote was obtained for the glass on 24/11/17 which is produced by Mr Cullen (RG p210). There is a quote of this date for 3 windows (RG p212) but no other documentary evidence for the order or delivery of the elevation windows.
- d. Gary Cullen (p189, #8) does not say when they were installed, just that it took longer than he would have wanted.
- e. RG (proof #6.18) is "unable to confirm the precise date the windows were installed, but am advised it was around mid-late 2019". This is the only evidence as to when they were installed.
- f. The earliest photo with the new elevational windows in place is 4/8/20 (SG-R, appx A, Fig 15).
- g. The evidence available indicates, therefore, that the windows were inserted in mid-late 2019.

21. Were these operations part of a single project?

- a. RG's Proof of Evidence avers:
 - i. The period of immunity for operational development is 4 years from when the works were substantially complete (#6.12). This is agreed.
 - ii. The individual items of work should be treated individually⁴ (#6.13-14) on the basis that they were carried out to achieve different purposes and constituted different / separate building operations. This is not agreed.
- b. What was the purposes of the works? There was planning permission for a change of use, but the classroom building plainly needed improvement works to bring it up to a modern standard for a dwelling. This was the "purpose" of the building project.
- c. As noted above there was a change of ownership on 31/6/16 during the period when the works to the classroom block were being carried out. On the sale to the Cullens the building project was not complete.
- d. Gary Cullen carried out all the works to the property; some as a contractor and some as owner. He is plainly a professional builder.
- e. After he became the owner Gary Cullen decided to add dormer windows to the roof. These additional works then became part of the overall building project and not a new separate project.

⁴ RG says (#6.15) "At the very least, there can be no doubt that all the works to the roof and dormer windows were complete in excess of 4 years prior to the serve of the [EN]".

- f. Therefore, there was one project, albeit a project that was amended or revised during its implementation.
22. The project was not substantially complete at the date of the issue of the EN. This needs to be judged as a matter of fact and degree from the photographic evidence, in particular the condition of the site and the (still) unfinished elements on the northern elevation.
23. Alternatively, if that argument is not accepted, then the project was not substantially complete 4 years before the EN was issued – i.e. by 31/3/18:
- a. The windows were not inserted until mid-late 2019 (see above).
 - b. There is evidence on on-going building work on the air photo of 24/4/20 (Fig 14 in SG-R appx A).
 - c. Work clearly remains to be done in the photo at Fig 15 of 4/8/20.
24. The ground (d) appeal is not made out.

Main issue 3: whether the appeal site is an appropriate location for residential development having regard to local and national planning policy. This is pertinent to Appeal B.

25. The judgments reached on Main Issue 4 will go some way to resolving the issues on this Main Issue. On reflection, it might well be advisable or convenient for the inspector to consider Main Issue 4 first in the decision-taking matrix.
26. There is no dispute that Whaley Bridge is, in principle, an appropriate location for development. Indeed, local plan policies S2 and S6 direct housing development towards it.
27. This issue requires an analysis of the planning policy. In particular:
- a. The “effective” and “suitability” issues in policy H1.
 - b. The “adjoining” issue in policy H1.
 - c. The “scale” issue in policy H1.
 - d. The previously developed land (“PDL”) / curtilage issue in policies H1 and EQ3.
 - e. The ‘limited infilling’ issue in policy EQ3.
28. Policy H1 *Location of Housing Development* [CD6.1, p113] supports:
- a. Promoting the **effective** reuse of land by encouraging housing development including redevelopment, infill, conversion of existing dwellings and the change of use of existing buildings to housing, on all sites **suitable** for that purpose.

- b. Development of sustainable sites outside the defined built up area boundaries, taking account of other policies in the local plan, provided that:
 - i. 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
 - ii. the development would not lead to prominent intrusion into the countryside or have a significant adverse impact on the character of the countryside;
 - iii. it would have reasonable access by foot, cycle or public transport to schools, medical services, shops and other community facilities

29. Policy H1 does not specifically mention "PDL", but PDL is mentioned in SO12 (set out above the policy section) which the policy addresses. Policy EQ3 supports the reuse of PDL "where it does not have an adverse impact on the character and appearance of the countryside."

30. NPPF defines PDL as including the curtilage of the developed land; but it adds that it is not necessarily the case that the whole curtilage should be redeveloped. This chimes with the H1 policy wording to make "effective" and "suitable" reuse of land and EQ3's caveat.

31. The Council's case is that the "scale" of the development proposed results in an "intrusion" and "impact" on the character of the area that does not make the site "suitable" for the development proposed and therefore does not make "effective" re-use of the previously developed land on the appeal site.

32. There is a requirement in part of policy H1 that outside defined built up area boundaries the development (not an appeal / application site) must "adjoin" the built up area. The word used is not "adjacent" and the two are not necessarily the same. It is a matter of planning judgment whether the development adjoins the built up area boundary on the proposals map [CD6.1a and RG p041, Fig 7]. In making that planning judgment the drone montage at CD2.5d is relevant. The separation will be clearer with the trees in leaf. For the reasons explained by RS (#5.12-14) and AC (#3.6-3.9), the Council does not judge that it does. RG (#7.20) avers that it does. That is the dispute the inspector has to resolve.

33. Whether the development would lead to a prominent intrusion or a significant adverse impact on the character and appearance of the area is considered under Main Issue 4.

34. So far as policy EQ3 is concerned, "limited infilling" is supportive 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." The appeal scheme cannot sensibly be described as this.

35. There is no issue on the accessibility of the site to services, shops or facilities or the ability of local and strategic infrastructure to meet the additional requirements arising from the development.

36. For these reasons the appeal site is not an appropriate location for residential development having regard to local and national policy.

Main issue 4: the effect of the matters alleged and the proposed development on character and appearance of the site and surrounding area. This is pertinent to the ground (a) appeal on Appeal A and Appeal B.

37. The inspector will visit the site and its surroundings. However, the appellant's scheme described and illustrated in the documents will also provide assistance, if only as an *aide memoire*; in particular:

- a. The drone images without [CD2.5c] and with the proposed development [CD2.5d] and the "bird's eye view" [CD2.5e]
- b. The 3-D images (RS appx 2)
- c. The layout plan [CD1.5] and revised landscape layout [NF appx 6].
- d. While bearing in mind that there is now a need for widened access road and/or turning head [CD10.4 and MMcG#4.6] which will be secured by condition.
- e. The site sections [CD2.4c].

Appeal A.

38. This issue requires a comparison of the impact of the 'as now' dwelling with that of the former classroom building. Does the raised height of the building, its new roof including dormers, and the new fenestration have an acceptable or harmful impact on the character and appearance of the area? The Council does not require the new stone surface material to be removed.

39. The appeal scheme is unacceptably more visually prominent (see Cannell proof photos from viewpoints B to F). The east elevation replacement windows are prominent and out of character (photo viewpoint E) as are the dormers (photo viewpoint E to H).

40. The inspector will also see from walking PROW FP56 that the dormer windows are highly visible within the raised roof and would undermine the existing woodland character by introducing distinctly urban features.

41. Does its design chime with the local vernacular? The Council says "no" in reliance on the evidence of MMcG. While there may be examples of other

dormers to be seen in the area, there are none at this size, scale and intensity.

Appeal B.

42. A comparison with current position should be made. What was / is a large single building in a woodland setting with a garage outbuilding will become a residential estate of 7 large dwellings in a large clearing.

43. Both the Council's and Appellant's experts have produced a 'narrative' assessment rather than a more formal structured LVIA. Neither has been criticised for doing so.

44. There will be a further tree removal to facilitate the development.

45. This ground of appeal also relies on the former classroom block appearance setting part of the local vernacular. The Appellants obviously take some "architectural cues" from it in order to justify the mass / design of the new dwellings [see CD2.5e].

46. The landscape character of the appeal site needs to be established. It is situated within an area of "Primary Significance" in the Areas of Multiple Sensitivity study [NF appx 7 & 8] which "are considered to be the most sensitive areas of landscape, which are most likely to be negatively affected by change or development and will attract a strong focus on the **Protection** (Conservation) of their environmental assets." (p5, #2.5).

47. The Appellant criticises the relevance of the AMES study and instead prays in aid the Wardell Armstrong report [CD6.5p] ("the WAR"). However, this does not assist the Appellant - indeed it underpins the Council's case; in particular:

a. Although the WAR (p42 – Summary) notes that the Settled Valley Pastures is the only LCT which allows for extensive development, it is also the case that all development should not erode landscape character. This must mean that even in the SVP careful consideration needs to be given to where and what development is proposed.

b. In the plan-making context WA identified through surveys distinct parts of the Central Sub-Area (#7.3.2):

i. Table 5 – land with potential to Accommodate development; individual plots were identified in the open countryside and the Green Belt.

ii. Table 6 – Area of Search which could not accommodate development without significant harm. At Whaley Bridge (p73) the study concludes (emphasis added):

"As a valley-bottom settlement, most land on the periphery is

elevated with high visual prominence and potential impact on the setting of the National Park. The north of the settlement has a strong existing settlement edge that should not be breached and development could cause potential physical and visual coalescence with the settlement of Furness Vale. **Land to the east and west has a strong existing settlement edge that should not be breached, is highly elevated and is visually prominent.** Land to the south is elevated, visually prominent and includes historic parkland. Open Countryside to the west could be included within the Green Belt to prevent urban sprawl.”

iii. This precisely describes the appeal site.

48.(LSocG #2.7) In the Landscape Character of Derbyshire [NF appx 2] the site and surrounding landscape lie within the Dark Peak Landscape Character Area and within Landscape Character Type ‘Settled Valley Pastures’. The applicable Planting and Management Guidelines emphasise conservation and restoration. Built environment is spread out along lower valley slopes. The Landscape Character SPD [NF appx 3] contains “development principles” including that new buildings should respond to their landscape character by following design principles and, when developing at the urban edge, considering rural landscape character.

49.Taxal Edge is a distinctive local natural feature in the landscape with public footpaths links to residential areas; it makes a positive contribution to the local and wider landscape (AC #2.2).

50.The appeal site is part of the wooded Taxal Ridge. The appeal proposal does not fall within the guidelines for this part of the landscape. It is not consistent with the settlement pattern along lower slopes and valleys, it being high up and exposed development; it is not consistent with the landscape character type in which it sits (AC#3.4). The appeal development will be separate from the defined settlement area by PROW FP56, the change in level, stone wall and vegetation. NF (at #4.5, 6.10, 6.13 and 6.14) is simply wrong on this matter.

51.The mature woodland character of the site is more closely aligned with open countryside than with the urban area of Whaley Bridge (AC#3.5). The ridgeline is a defining feature in the landscape that makes the appeal site separate from the urban area (AC#3.7-9).

52.The appeal B site is highly visible from the east and southeast (AC#4.2). From viewpoint B the Appeal A building can be clearly seen on the skyline and its dormer appear out of character (AC#5.3). The effect will be magnified with the introduction of the Appeal B development. The same is true from viewpoint C on what is now a largely wooded skyline viewed from a well-used local recreational walk (AC5.45). The effect from viewpoint E would be to

create a “prominent line of development from the former classroom building along the ridge at a high level that is out of character with the existing settlement pattern” (AC#5.65). It is also similarly prominent from viewpoints B, C, F, G and H. The ‘gap’ between the classroom building and the main house will be filled in. The night-time effect of light from the large expanse of window glazing on the eastern elevation needs to be considered as well as the day-time effect.

53. The proposed development will cause harm to the character and appearance of the area. There will be a conflict with local plan policies H1, EQ2, EQ3

54. In urban design terms, the appeal B proposals will result in a standalone development which will not integrate well into the existing settlement (MMcG#4.2). The fenestration proposed does not relate well to the local vernacular (#4.4). The dormers which dominate the rooflines are not in character (#4.4). The ‘grand villa’ vision is out of character (#4.5). The development will not respect the domestic scale of that nearby (#4.5). While there are grand villas in a woodland setting locally (see on the far side of the reservoir in CD2.5d) the appeal proposals do not reflect this – the ‘grounds’ of the villas on the appeal site are simply not extensive enough.

55. The appeal B development buildings are not well designed and NPPF #134 indicates that permission for such development should be refused (MMcG#4.9). MMcG sets out the reasons for her judgments (#4.15-19). There is little opportunity taken to relate directly to the proportions of neighbouring buildings; the ‘grand house’ historic form was singular and not a repetitive series of that style that the Appeal B scheme presents and which is inappropriate (#4.46). The linear pattern is out of character (#4.49). The scheme does not achieve a sense of place (#4.51). The scale proposed is substantial and presents as a modern townhouse development unsuited to a woodland rural edge which is an unsuitable design response (#5.21). The designers of this appeal scheme have simply not taken appropriate advantage of the opportunities presented for a sympathetic woodland setting development.

56. It also fails to reflect local design policies and guidance (MMcG #4.10, 4.41+).

57. Overall, the proposed development is unacceptable. A clear development plan policy breach is established.

Main issue 5: the effect of the proposed development on the residential amenity of future occupiers. This is pertinent to Appeal B.

58. There are no quantitative standards laid down for amenity space. HPLP policy EQ6 [CD6.1 p82] requires that they be “well-designed, safe, attractive [and]

complement the built form". The Council's Residential Design Guide SPD [NF appx 4] states that the focus of private amenity space should be in back gardens (#8.7.2, 8.6.6iii) should be "high quality" and "adequate" (#8.6.6ii) and "appropriate" (#8.14). "Shady" spaces should be avoided (#8.8.5).

59. The appeal scheme at plots 1, 2 and 3 fails on all counts as is evident from:
- a. The plans and sections [CD2.4c]. Garden depth is inadequate; the rear boundary is a 4.1m retaining wall.
 - b. These are big family dwellings with insubstantial back gardens.
 - c. They are prone to shade not only from nearby trees (see the study at RG appx 10, #2.3.2-5 and Fig 2 & 3).
 - d. The front gardens are no compensation.

60. There is therefore a clear breach of policy EQ6, the NPPF #137(f), and the Residential Design Guide SPD.

Main issue 6: whether or not there are 'other considerations' that exist and the weight that should be afforded to them, regarding what, if any, fallback position is being relied upon, what basis any fallback position has, the contribution to boosting the supply of housing, and any other potential benefits. This is pertinent to Appeal B.

61. Although the Appellant's case on a fallback position was set out in its Statement of Case [CD4.2] and Appeal Statement July 2021 [CD4.3] (under Proposition 3) its pre-inquiry position was set out in RG's proof of evidence. Under 'Planning History' (p011, #4.1-2) RG avers that both HPK/2009/0689 and HPK/2013/0503 remain extant and can be relied on (#4.1).

62. The legal requirements for establishing a fallback position are well known:

- a. Works permitted by planning permissions were carried out sufficient to commence development.
- b. But having discharged pre-commencement conditions.
- c. The permission can continue to be relied on having regard to, in particular, the lawful implementation of any later permission on the same site and whether it is physically possible for the two permissions to co-exist.

63. The existence of a legal "fallback" was hotly disputed, but the Council accepted in opening (#26 & 27) that if Appeal B is dismissed the prospect of re-development of the site remains and ought to be taken into account as a material consideration and as part of the baseline against which the acceptability of the Appeal B scheme is judged. During the inquiry the parties have agreed:

“Having regard to the planning history of the Appeal Site and in particular to Local Plan policies EQ3 and H1, which support the conversion of buildings for residential use outside settlement boundaries and the re-use of previously developed land, HPBC would not, subject to detailed design, resist further planning applications for:

- a. Conversion of the main building into up to 7 apartments;
- b. The extension of the main building to provide further apartments, alternatively the erection of 2 semi-detached dwellings on the site of the former gymnasium;
- c. Residential conversion of the remaining outbuilding (the garage);
- d. A garage for the classroom block;
- e. The classroom block (whether as altered by the requirements of the EN or as existing).

This baseline is a material consideration to which the parties agree the Inspector should have regard.”

64. As witnesses on both sides have pointed out, the principle of redevelopment is accepted, the approval of any particular scheme of redevelopment will depend on the detailed design presented. It is also fair to point out that MMcG expressed some support for a ‘mill workers cottages’ scheme.

65. So far as boosting housing land supply is concerned:

- a. This is not a case where the Council cannot show a 5YHLS.
- b. The Appeal B scheme would contribute 6 units to the supply.
- c. The current contribution of the Appeal B site appears to be 3 units.
- d. But the ‘alternative’ redevelopment in the baseline would see 8 or 10 units created.
- e. The Council therefore submits that very little weight should be given to the benefit of boosting the supply of land for housing in Appeal B.

66. The other benefits in the planning balance are acknowledged. But, again, there would be likely to be economic and environmental benefits of any redevelopment of the Appeal B site were the Appellant to bring forward an acceptable scheme. The Council submits that this tempers the weight to be given to these benefits.

Main issue 7: whether the steps required to be taken by the notice exceed what is necessary to remedy the breach of planning control, or

as the case may be, the injury to amenity. This is pertinent to the ground (f) appeal on Appeal A.

67. Of course, this issue only arises in the event that the ground (c), (d) and (a) appeals have failed.

68. The Council's case at the inquiry has evolved from the blanket "no" set out at paragraph 38 of the Opening Statement [ID2].

69. The Council's position now is that:

- a. The current roof and dormers must be removed. A replacement roof with a pitch of 24 degrees and without dormers should be installed, but no alteration to the supporting walls (and therefore eaves height) is required.
- b. The fenestration arrangement on the east façade / elevation should be altered:
 - i. The top and bottom central windows can remain as they are.
 - ii. The bottom left window can remain as it is now.
 - iii. The width of top left window can remain as it is now. But its height should be reduced (top line remains as it is now) to mirror that of the bottom left.
 - iv. The width and top lines of the top and bottom right windows should remain as they are now. But their height should be reduced to mirror that of the current bottom left window.
- c. The surface 'space' thus created between and beneath the left and right windows should be 'filled' by stone that matches that used on the rest of the façade.

70. The EN should accordingly be varied before it is upheld (see above) by deleting paragraphs 5 and 6 on the existing EN and replacing them with:

"5. WHAT YOU ARE REQUIRED TO DO:

Carry out the following works to the classroom block (as defined in paragraph 3 above):

5.1 Remove the current roof and dormer windows. For the avoidance of doubt, no change to the external supporting walls is required.

5.2 Install a new roof (a) with a pitch of 24 degrees measured from horizontal, and (b) whose outer surface is tiles which are the colour of natural slate, and (c) which contains no dormer windows.

5.3 In respect of the 6 windows on the eastern elevation / façade make the following changes to achieve the result shown on drawing EN06:

(a) Upper right – remove the existing window and replace with a window with a colour and width of existing upper right window, with the top level with the top of the existing upper central window, but with a height matching the existing lower left window. Fill the space between the upper and lower right windows with the same surface material as on the existing façade.

(b) Upper left - remove the existing window and replace with a window with a colour and width of existing upper left window, with the top level with the top of the existing upper central window, but with a height matching the existing lower left window. Fill the space between the upper and lower left windows with the same surface material as on the existing façade.

(c) Lower right – remove the existing window and replace with a window with a colour and width of existing lower right window, with the top level with the top of the existing lower left window, and with a height matching the existing lower left window. Fill the space between the lower right window and floor level with the same surface material as on the existing façade.

For the avoidance of doubt, no changes to the existing upper central, lower central and lower left windows are required.

6. TIME FOR COMPLIANCE

In respect of all requirements at section/paragraph 5 above, the time for compliance is 12 months.”

71. There is one issue in the ground (f) appeal that has not been resolved. The Appellant continues to contend that the pitch of roof should be increased (from 24 degrees) to 30 degrees to allow the use of natural slate. The Council disagrees:

- a. There are now tiles with a similar colour and appearance of natural slate – an example was shown to the inquiry. The technical data specification [ID11] indicates that it can be used on roof slopes of 24 degrees.
- b. It has been used successfully in other developments in the Borough (RS in XiC and XX).
- c. The Council prioritises the reduction in the pitch of the roof in order to reduce ridge height.
- d. The original roof was not slate. A tiled roof would simply reinstate the former appearance of the roof.

Main issue 8: whether the steps required to be taken by the notice exceed what is necessary to remedy the breach of planning control, or as the case may be, the injury to amenity. This is pertinent to the ground (g) appeal on Appeal A.

72. Before the inquiry the Council agreed to amending the 6 months compliance period to 12 months.

73. At the inquiry SG-R accepted that a further extension might be required to 18 months to recognise the fact that it is likely that the family would need to vacate the premises while the works required are carried out. In order to cause the least disruption to, in particular, children's education it should be assumed that the works would take place during the summer school holidays. In the event that the inspector decides that insufficient time would be available between the date of the decision notice and July/August 2023, then an 18-month period would be indicated. But the Council cannot see any problem with the summer of 2023. The Appellant in Appeal A has close connection with a building firm and is a professional builder.

74. The EN should be further varied accordingly before it is upheld if the inspector is minded to allow 18 months for compliance.

Conditions

75. The discussion of conditions at the inquiry has resolved the issues on those which were not agreed in the SoCG.

Conclusions Appeal A

76. The EN should be varied as set out above. The ground (c), (d) and (a) appeals should be dismissed. Save as set out above the ground (f) appeal should be dismissed. In the ground (g) appeal the matter of whether the time for compliance should be 12 or 18 months is left to the inspector.

Conclusions Appeal B

77. The development plan clearly indicates that the appeal should be dismissed, even when assessed against the 'baseline' agreed by the Council. Allowing the appeal will not materially add to the housing land supply. Economic benefits and the potential for biodiversity net-gain are acknowledged. However, these other material considerations do not, collectively, outweigh the development plan objection.

78.The Council therefore submits that Appeal B should be dismissed.

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