



Appeal Decisions

Inquiry held on 15 November 2022

Site visits made on 14 and 18 November 2022

by M Madge Dip TP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 February 2023

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

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

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Gary Stephen Cullen against an enforcement notice issued by High Peak Borough Council.
- The notice, numbered HPE/2019/00014, was issued on 31 March 2022.
- The breach of planning control as alleged in the notice is 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. For the avoidance of doubt the classroom block is in the position on the attached plan marked EN01 with an X and shown in photographs EN02 and EN03.
- The requirements of the notice are to restore the land to its condition before the breach took place by:
 1. Lowering the overall height and pitch of roof to the classroom block to that shown on EN04 and EN05.
 2. Remove three dormer windows on eastern roof slope and replace with roof tiles to match the existing roof.
 3. Remove the east facing ground and first floor windows and replace with windows of the size, height and position as shown in EN05.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is allowed on ground (a), the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Preliminary Matters

1. This appeal is travelling with appeal reference APP/H1033/W/21/3272745. While a joint inquiry took place, separate decisions have been made.
2. A pre-inquiry accompanied site visit was held on 14 November 2022. The inquiry sat for 4 days as a physical event and concluded on day 5 as a virtual event. An unaccompanied site visit took place on 18 November 2022.
3. The appellant gave his evidence to the inquiry under affirmation.

Matters concerning the notice

4. Planning permission was granted for the use of the building as a dwelling¹. It is a matter of common ground that the planning permission did not include any physical changes to the external appearance of the building. The notice is therefore directed at the alterations that have occurred to the external appearance of the building, not its use as a dwellinghouse.
5. While the requirements are aimed at restoring the land to its condition before the breach took place, the Council accepts that some of the alterations, such as the stone façade and the use of a natural slate roof covering, are an improvement to the building's appearance. The steps to be taken therefore only include lowering the overall height and pitch of the roof, the removal of the 3 dormer windows and replace with tiles to match the existing roof, and the removal of the east facing ground and first floor windows. The roof height, roof pitch and the windows are required to be changed to those shown in images EN04 and EN05 attached to the notice.
6. Images EN04 and EN05 are not to scale and fail to provide dimensions. They do not therefore show the appellant what works need to be carried out with the necessary precision. There was considerable debate as to how the requirements could be corrected and the appellant and Council agreed, what they considered to be a suitable form of words. I am satisfied that the requirements can be corrected to provide clarity without causing injustice. I shall deal with the corrections under the ground (f) appeal.

Appeal on Ground (c)

7. There is no dispute that the matters alleged have occurred as a matter of fact. An appeal on this ground is that those matters, that have occurred, do not constitute a breach of planning control. It is for the appellant to show that the matters alleged are either not development or benefit from planning permission. The relevant test is the balance of probability.
8. Section 55(2)(a) of the 1990 Act confirms that the carrying out of operations for maintenance, improvement or other alteration purposes are not development providing, they '*(ii) do not materially affect the external appearance of the building*'. Raising the roof pitch has increased the overall height of the building and constructing 3 dormer windows has changed the roof's shape. The windows installed in the eastern elevation have increased the amount of glazing and removed the wooden panels, along with changing the colour and materials used for the frames. These alterations, singularly and collectively, have materially changed the external appearance of the building and are, therefore, development by virtue of s55(2) of the 1990 Act.
9. While the notice is not directed at the use of the building as a dwellinghouse, the lawfulness of this use needs to be established to determine what, if any, permitted development rights exist.

Use as a dwellinghouse

10. Mr Raymond Butler's Sworn Declaration confirms that he moved into the classroom '*within a few months of permission being granted*'. While a specific date is not given, the 2009 PP was granted in March 2010 and a 'few' is

¹ HPK/2009/0689

normally taken to be a small number. It would not therefore be unreasonable to conclude that residential occupation had occurred by the end of the summer 2010 and certainly no later than the end of 2010. Mr Butler goes on to state that *'In 2014, me and my partner vacated the property and moved into a flat in the main building leaving my 2 sons...in the converted former classroom block.'* and *'The transaction of the sale completed on 31/03/2016. Shortly after completion both my sons vacated the home'*.

11. The appellant's sworn declaration also states that *'the property was purchased as a family residence in need of refurbishment and it was understood that the conversion of the building had already been completed by Mr Butler when we purchased the property. Mr Butler had moved in there sometime in 2010 with his family and then his sons continued to live there until we completed the sale'*. This corroborates Mr Butler's version of events and clarifies the appellant's understanding of the status of the building at the time of his purchase.
12. The appellant's own evidence, or that of interested parties, does not need to be independently corroborated, unless the Council has evidence of its own or from others to make the appellant's version of events less than credible. Council Tax registration and/or history of payments does not demonstrate occupation of a dwellinghouse. Similarly, the lack of such registration or payments does not demonstrate a lack of residential occupation.
13. The Council has no evidence of its own, or from others, to show that the classroom block was not converted and permanently occupied by Mr Butler and his family from a few months after March 2010 until March 2016. While the exact date that occupation commenced is unknown, even taking occupation from the end of 2010 to March 2016 would provide a continuous period of over 5 years. It has therefore shown that, on the balance of probability, the use as a single dwellinghouse had become lawful by the end of 2014 at the latest.
14. The lawful use of the classroom as a dwellinghouse could not therefore be lost unless it was abandoned. There is no claim that the residential use of the former classroom block has been abandoned.

Permitted Development Rights

15. Buildings lawfully used as a single dwellinghouse benefit from permitted development rights as set out in Part 1 of Schedule 2 of the GPDO². Article 3(5), however states that *'the permission granted by Schedule 2 does not apply if – (a) in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful'*.
16. The appellant has confirmed the sequence of events relating to the dwellinghouse's renovation to be: (i) raising of the roof pitch, installation of roof lights and reinstatement of concrete roof tiles in early 2016, (ii) removal of the concrete roof tiles, construction of 3 dormer windows and installation of natural slate roof covering, and (iii) installation of replacement windows in 2017. It is unclear as to when works commenced on the stone cladding.
17. Class B, Part 1 of Schedule 2 of the GPDO makes provision for the enlargement of a dwellinghouse consisting of an addition or alteration to its roof, subject to

² Town and Country Planning (General Permitted Development) (England) Order 2015 as amended

limitations and conditions. Development is not permitted by Class B if '*(b) any part of the dwellinghouse would, as a result of the works, exceed the height of the highest part of the existing roof*'. By increasing the original roof's pitch, the highest part of its roof was exceeded. The first element of the sequence of works was not therefore permitted development and required express planning permission, which has not been granted. The building therefore became unlawful at the time the roof pitch was increased.

18. The subsequent construction of the 3 dormer windows occurred by the end of 2017 and the installation of the replacement windows occurred sometime after 31 March 2018. These works were carried out within 4 years of the roof pitch being altered. The building was therefore unlawful at the time of the further works being completed. The deemed planning permission granted by Class A or Class B, Part 1 of Schedule 2 would not therefore apply.
19. The appellant does not dispute that the 3 dormer windows need planning permission. That planning permission was not granted, and they constitute a breach of planning control.
20. While the replacement windows could have benefitted from deemed planning permission granted by Class A, Part 1 of Schedule 2 of the GPDO, the building was unlawful at the time they were installed. Planning permission was therefore required for the replacement windows and that planning permission was not granted. The replacement windows therefore constitute a breach of planning control.
21. For these reasons, the appeal on ground (c) fails.

Appeal on Ground (d)

22. An appeal on this ground is that, at the time the notice was issued, it was too late to take enforcement action. The onus of proof is on the appellant and the relevant test is the balance of probability. The appellant would need to show that the operational development was substantially completed on or before 31 March 2018, the material date.
23. The renovations of the dwellinghouse initially envisaged by Mr Butler, as set out in his Statutory Declaration, included works to the cracked pillar, raising the roof pitch, adding the natural stone outer leaf and replacement windows. Works to the roof had commenced by the time the appellant purchased the property in March 2016, but the totality of the works envisaged by Mr Butler were not substantially complete.
24. While the appellant changed the alterations to the roof to include the 3 dormer windows and the provision of a natural slate roof covering, he still intended to add the natural stone outer leaf and install replacement windows. It is clear from the appellant's evidence that, following his purchase of the property, he intended to complete the totality of the property renovations envisaged by Mr Butler, with additions, to provide a home for his family.
25. The occupier of a property may carry out a succession of renovation works to their home. That succession of renovation works being influenced, for example, by the availability of funds, suitable trades people and time. It would not be unusual for such a succession of renovation works to be carried out over several years, and therefore each element of the works to be considered a separate building operation.

26. In the appellant's case he carried out much of the work himself as and when time and funds allowed. To speed the completion of the works along he occupied the dwellinghouse, while his family lived elsewhere. The appellant's occupation of the dwellinghouse while he was undertaking these renovations does not change the fact that it was the culmination of these works that would secure his family moving into their new home. As such the succession of works in this case formed a single building operation, which would not have been substantially complete until the replacement windows were installed, and the natural stone outer leaf completed.
27. The appellant conceded that, while the east facing windows were ordered in November 2017, they were installed less than 4 years before the notice was served. His statutory declaration also confirms that the natural stone outer leaf was not completed until these windows were installed.
28. Substantial completion did not therefore occur on or before the material date. The appellant has not shown, on the balance of probability that, at the date the notice was issued, it was too late to take enforcement action.
29. For these reasons, the appeal on ground (d) fails.

Appeal on Ground (a)

30. An appeal on this ground is that planning permission should be granted for the matters alleged, namely the raising of the roof and steepness of the pitch of the roof, insertion of 3 dormer windows on the eastern roof slope, and changes to the fenestration on the eastern elevation. The **main issue** is the effect of the development on the character and appearance of the locality, having regard to landscape and design.
31. The dwellinghouse is a detached two-storey building, which sits on a wooded slope located towards the edge of the settlement. As originally constructed, the building had a buff brick façade, concrete tiles on a low pitched roof, and windows with painted panels below. While constructed as a classroom block, its original appearance was not dissimilar to that of a dwelling erected in the 1960's.
32. The alterations to the external fabric of the building have provided it with an outer skin of natural stone and a slate roof. The roof pitch has been increased to that usually associated with this quality roofing material. The 3 dormer windows break up the mass of the roof plane. Several of the east facing windows have larger areas of glazing and this is a result of removing the painted panels. Where those former panels have not been replaced by glazing, the natural stonework has been built up. The overall effect of the works is to deliver a dwellinghouse of high-quality design and materials. The dwelling's current design and appearance is reflective of the older properties in the locality, while the additional glazing meets the modern aspiration of bringing the outside in to the home.
33. Given the setback position of the property from Macclesfield Road, short distance views are only available from the public footpath located to the south of the site. Long distance views are however available from various points across the valley. The dwellinghouse is viewed against the wooded backdrop. The building has been visible in this context since it was erected. Its footprint has not been increased, and while the alteration to the roof pitch has increased

the building's height, this is not significantly discernible when looking up at the property through the trees from the public footpath or when looking at it from across the valley.

34. At night, light emissions from the increased areas of glazing in the east facing elevation may be visible. However, it would not be seen in isolation as the property is an integral part of the established pattern of development that climbs the hillside. As such, it would not cause significant harm to the character and appearance of the locality.

Conclusion on ground (a)

35. For the reasons given above, the development does not conflict with policies EQ2, EQ3 and EQ6 of the High Peak Local Plan (April 2016), which seek to protect, enhance and restore the intrinsic character and distinctiveness of the landscape. Furthermore, the development complies with guidance set out in the High Peak Design Guide (February 2018), the Residential Design Guide (December 2005) and the Landscape Character SPD (March 2006), which seek to deliver high quality design that respects traditional built forms, amongst other things.

36. The appeal on ground (a) succeeds.

Overall Conclusion

37. I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice.

38. The appeals on grounds (f) and (g) do not fall to be considered.

Formal Decision

39. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the raising of the roof and steepness of the pitch of the roof, the insertion of 3 dormer windows on the eastern roof slope and changes to the fenestration on the eastern elevation on land at 184 Taxal Edge, Macclesfield Road, Whaley Bridge SK23 7DR.

M Madge

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Jonathon Easton of Counsel

He called: Mr Gary Cullen
Mr Rawdon Gascoigne
Mr Nicholas Folland

FOR THE LOCAL PLANNING AUTHORITY:

Mr Hugh Richards of Counsel

He called: Ms Mary McGuire
Ms Rachael Simkins
Mr Anton Connell
Mr Steven Gunn-Russell

DOCUMENTS

- ID1 - Appellants' opening statement
- ID2 - LPA's opening statement
- ID3 - Signed Joint Statement of Common Ground
- ID4 - Signed annex to ID3
- ID5 - Signed Joint Statement of Common Ground in relation to landscape matters
- ID6 - Plan highlighting land above 240m contour
- ID7 - Council Tax record
- ID8 - Plan showing 1.839m difference in ridge height
- ID9 - Plan showing 1.630m difference in ridge height
- ID10 - Site Visit navigation details for location of LPS's View Points
- ID11 - Technical data of example Blue-Black Cromleigh Graphite roof tile
- ID12 - Plan to be attached to the Enforcement Notice as "EN06" as replacement for EN04 & EN05
- ID13 - Cedral Ireland fibre cement slates fixing guide
- ID14 - Burroughs Day v Bristol City Council 1996 Lexis Citation 3354
- ID15 - Closing Submissions on behalf of the Council
- ID16 - Closing Submissions on behalf of the Appellant