



Appeal Reference No: APP/M9496/C/21/3279072

LPA Reference No: 21/0034

Date: March 2022

PEAK DISTRICT NATIONAL PARK AUTHORITY

Town and Country Planning Act 1990 (as amended) (“the 1990 Act”)

Appeal by Mrs Emma Harrison against an Enforcement Notice relating to the carrying out of operational development, consisting of the construction of driveways, a car park, laying of hardsurfacing, construction of a building and the erection of fences, including gateways and stiles, on land at Thornbridge Hall, Baslow Road, Ashford-in-the-Water, DE45 1NZ

**Amended Statement on behalf of Peak District National Park Authority
as Local Planning Authority**

1. Introduction

1.1 This appeal relates to a Planning Enforcement Notice, reference No: 21/0034 ('the Notice') that was issued by the Peak District National Park Authority ('the Authority') on 15 June 2021. Details of the Notice are as set out below.

1.2 The breaches of planning control alleged in the Notice are:

(i) Without planning permission, the carrying out of operational development, consisting of the construction of a driveway (including the formation of adjacent soil bunds), the approximate location of which is shown cross-hatched black and denoted as 'Driveway A' on the attached plan (drawing no. ENF21-0034(1)); and

(ii) Without planning permission, the carrying out of operational development, consisting of the construction of a driveway, the approximate location of which is shown hatched black and denoted as 'Driveway B' on the attached plan (drawing no. ENF21-0034(2)); and

(iii) Without planning permission, the carrying out of operational development, consisting of the construction of a car park (including the formation of adjacent soil bunds), the approximate location of which is shown hatched black and denoted as 'Car Park' on the attached plans (drawing nos. ENF21-0034(1) and ENF21-0034(2)); and

(iv) Without planning permission, the carrying out of operational development, consisting of the laying of hardsurfacing, the approximate location of which is shown shaded grey and denoted as 'Hardsurfacing' on the attached plan (drawing no. ENF21-0034(2)); and

(v) Without planning permission, the carrying out of operational development, consisting of the construction of a building, the approximate location of which is shown cross-hatched black and denoted as 'Building' on the attached plan (drawing no. ENF21-0034(2)); and

(vi) Without planning permission, the carrying out of operational development, consisting of the erection of fences, including gateways and stiles, the approximate location of which are shown as a solid green line on the attached plans (drawing nos. ENF21-0034(1) and ENF21-0034(2)).

1.3 The steps required by the Notice, and the time periods for compliance are as follows:

a) Remove the driveway denoted as 'Driveway A', including the adjacent soil bunds, from the Land, avoiding any damage to the roots or rooting area of trees; remove all of the materials used in the construction from the Land and reinstate the Land to its former levels and condition and matching its appearance to the adjoining grassland.

TIME FOR COMPLIANCE: 6 months after this Notice takes effect

b) Remove the driveway denoted as 'Driveway B' from the Land, avoiding any damage to the roots or rooting area of trees; remove all of the materials used in the construction from the Land and reinstate the land to its former levels and condition.

TIME FOR COMPLIANCE: 6 months after this Notice takes effect

- c) *Remove the car park, including the adjacent soil bunds, from the Land, avoiding any damage to the roots or rooting area of trees; remove all of the materials used in the construction from the Land and reinstate the land to its former levels and condition and matching its appearance to the adjoining grassland..*

TIME FOR COMPLIANCE: 6 months after this Notice takes effect

- d) *Remove the hardsurfacing from the Land, remove all of the materials used in the construction from the Land and reinstate the land to its former levels and condition.*

TIME FOR COMPLIANCE: 6 months after this Notice takes effect

- e) *Remove the building, including the adjoining decking, from the Land; remove all of the materials used in the construction from the Land and reinstate the land to its former levels and condition.*

TIME FOR COMPLIANCE: 6 months after this Notice takes effect

- f) *Remove the fences, including gateways and stiles, from the Land; remove all of the materials used in their construction from the Land and reinstate the land to its former condition.*

TIME FOR COMPLIANCE: 6 months after this Notice takes effect

- 1.4 The appeal against the Notice is proceeding on grounds (a), (c), (e), (f) and (g).

2. Site and Surroundings

- 2.1 Thornbridge Hall is a country house located to the west of the A6020 road in open countryside between the villages of Ashford in the Water and Great Longstone. The Hall is a grade II listed building and a number of free-standing buildings and other architectural features within the gardens are also listed. Many of the listing entries cover more than one structure. In total, 17 listings cover over 60 individual buildings, structures and garden features. Many other buildings and structures are within the curtilage of the listed buildings/structures and will therefore have the same statutory protection. The Hall sits within approximately 48 hectares of parkland and formal gardens, which are included on the Historic England Register of Historic Parks and Gardens (Grade II), one of only four such designations within the National Park. The Hall, gardens and parkland also lie within the Thornbridge Conservation Area, the boundary of which almost matches the extent of the Registered Park and Garden. The Hall stands at the highest part of the site, with the gardens and parkland falling away to the south east.
- 2.2 There are numerous trees within the gardens and parkland, including blocks of woodland around most of the perimeter of the property and individual specimen trees within the otherwise open parkland. Many of them are either mature or veteran trees. The boundary of the formal gardens is demarcated from the parkland by trees, with breaks and terracing that afford fine views across the parkland.
- 2.3 The Monsal Trail, formerly a railway line but now a recreational route popular with walkers, cyclists and horse riders, runs east-west along the northern boundary of the property and a public footpath runs over the Trail and continues southwards through the parkland approximately 200m to the east of the Hall. The public footpath is also directly accessible from the Monsal Trail.
- 2.4 The main vehicular access is approximately 500 metres south of the Hall on the A6020 next to a dwelling known as South Lodge. The Lodge (previously known as

East Lodge) and gates (including the gate piers and walls), which are both grade II listed buildings, create a formal and decorative gateway feature and from here there is an established hard-surfaced driveway running up through the parkland to the Hall. The driveway terminates near a car park a short distance south-west of the Hall. This car park has 36 parking spaces, with an overflow parking area for approximately 20 vehicles immediately to the south, adjacent to the driveway. There is a secondary access point immediately west of the Hall on Longstone Lane.

3. Planning History

- 3.1 There is a lengthy history of planning applications and applications for listed building consent but these are not directly relevant to this appeal. A summary of the Authority's recent involvement is set out in paragraph 11 of the Delegated Enforcement Report dated 17 May 2021. **(Document1)**

4. Response to the Ground (a) appeal

- 4.1 The appeal on ground (a) is that planning permission should be granted for what is alleged in the enforcement notice.

- 4.2 The appellant's position on ground (a) is as follows:

1. There is less than substantial harm to the designated heritage assets.
2. There are public benefits that weigh in support of the development that will be set out in full.
3. The test in paragraph 196 of the Framework, whereby the public benefits are weighed against less than substantial harm to the significance of a designated heritage asset, is met;
4. The development will lead to the conservation and enhancement of the heritage assets through securing an optimum viable use to ensure their long term future.
5. The landscape and visual effects of the development are not unacceptable. In particular, it will be shown that through mitigation works and landscaping such effects can be reduced.
6. The development is acceptable in terms of its relationship with trees. This will be demonstrated by the provision of an arboricultural statement.
7. Ecological interests have not been harmed by the developments. An ecological assessment will be provided.
8. The development is acceptable in terms of impacts on the local transport network.
9. There has been no obstruction of the public footpath.
10. The development meets with the objectives of the National Park to promote opportunities of the public understanding and enjoyment of the special qualities of the Park and its environment in particular by minority and disadvantaged groups.
11. The development is acceptable in all other regards.
12. If, which is not accepted, there are any conflicts with policies in the development plan then the benefits of the appeal scheme outweigh those conflicts such that planning permission should be granted.

- 4.3 The Authority's case on ground (a) is essentially as summarised in section 4 of the Notice headed 'Reasons for issuing this Notice' and is set out in more detail below. Firstly, the relevant national and local planning policies are set out and, secondly, these are applied to the alleged unauthorised developments as described in section 3 of the Notice. For clarity and ease of reference, the application of policies is considered under the headings of Landscape Character and Appearance, Conservation Area, Setting of Listed Buildings, Archaeology, Trees, Ecology, Highway Safety, Public Footpath and Public Benefits.

Statutory Purposes

4.4 The 1995 Environment Act establishes the statutory purposes of national park designation, as:

(i) to conserve and enhance the natural beauty, wildlife and cultural heritage of the national parks; and

(ii) to promote opportunities for the understanding and enjoyment of the special qualities [of the parks] by the public.

4.5 Section 62 of the Act also places a general duty on all relevant authorities, including the National Park Authorities, statutory undertakers and other public bodies, to have regard to these purposes. In pursuing these purposes, section 62 also places a duty on the National Park Authorities to seek to foster the economic and social well-being of their local communities.

The National Planning Policy Framework

4.6 The National Planning Policy Framework (“NPPF”) was first published in March 2012 and most recently revised on 20 July 2021. It sets out the Government’s planning policies for England and how these should be applied. The NPPF is a material consideration which must be taken into account in planning decisions.

4.7 Paragraph 59 of the NPPF says that effective enforcement is important to maintain public confidence in the planning system; that enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. It states that they should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.

4.8 Paragraph 84 of the NPPF states that planning policies and decisions should enable, amongst other things, the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed new buildings.

4.9 Paragraph 85 of the NPPF states that planning policies and decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. In these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable (for example by improving the scope for access on foot, by cycling or by public transport). The use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist.

4.10 Paragraph 100 of the NPPF states that planning policies and decisions should protect and enhance public rights of way and access, including taking opportunities to provide better facilities for users, for example by adding links to existing rights of way networks including National Trails..

4.11 Paragraph 113 of the NPPF states that all developments that will generate significant amounts of movement should be required to provide a travel plan, and the application should be supported by a transport statement or transport assessment so that the likely impacts of the proposal can be assessed.

- 4.12 Paragraph 130 of the NPPF states that planning policies and decisions should ensure that developments: a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development; b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping; c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities); d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit; e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.
- 4.13 Paragraph 154 of the NPPF states that new development should be planned for in ways that: a) avoid increased vulnerability to the range of impacts arising from climate change. When new development is brought forward in areas which are vulnerable, care should be taken to ensure that risks can be managed through suitable adaptation measures, including through the planning of green infrastructure; and b) can help to reduce greenhouse gas emissions, such as through its location, orientation and design. Any local requirements for the sustainability of buildings should reflect the Government's policy for national technical standards.
- 4.14 Paragraph 155 of the NPPF states that in determining planning applications, local planning authorities should expect new development to: a) comply with any development plan policies on local requirements for decentralised energy supply unless it can be demonstrated by the applicant, having regard to the type of development involved and its design, that this is not feasible or viable; and b) take account of landform, layout, building orientation, massing and landscaping to minimise energy consumption.
- 4.15 Paragraph 174 of the NPPF states that planning policies and decisions should contribute to and enhance the natural and local environment by, amongst other things: protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan); recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland; and minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.
- 4.16 Paragraph 176 of the NPPF states that great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to these issues. The conservation and enhancement of wildlife and cultural heritage are also important considerations in these areas, and should be given great weight in National Parks and the Broads. The scale and extent of development within all these designated areas should be limited, while development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas.
- 4.17 Paragraph 177 of the NPPF states that when considering applications for development within National Parks, the Broads and Areas of Outstanding Natural

Beauty, permission should be refused for major development, other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. Consideration of such applications should include an assessment of: a) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy; b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and c) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.

- 4.18 Paragraph 189 of the NPPF states that heritage assets range from sites and buildings of local historic value to those of the highest significance, such as World Heritage Sites which are internationally recognised to be of Outstanding Universal Value. These assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations.
- 4.19 Paragraph 194 of the NPPF states that in determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary. Where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation.
- 4.20 Paragraph 195 of the NPPF states that local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this into account when considering the impact of a proposal on a heritage asset, to avoid or minimise any conflict between the heritage asset's conservation and any aspect of the proposal.
- 4.21 Paragraph 199 of the NPPF states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.
- 4.22 Paragraph 200 of the NPPF states that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Substantial harm to or loss of grade II listed buildings, or grade II registered parks or gardens, should be exceptional.
- 4.23 Paragraph 201 of the NPPF states that where a proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply: a) the nature of the heritage asset prevents all reasonable uses of the site; and b) no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and c) conservation by grant-funding or some form of not

for profit, charitable or public ownership is demonstrably not possible; and d) the harm or loss is outweighed by the benefit of bringing the site back into use.

4.24 Paragraph 202 of the NPPF states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

4.25 Paragraph 203 of the NPPF states that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

The Local Development Framework Core Strategy

4.26 The National Park Authority's Core Strategy was formally adopted on 7 October 2011 and sets out the vision, objectives and spatial strategy for the National Park, and core policies to guide development and change in the National Park to 2026. **(Document 2)**

4.27 Policy GSP1 (Securing national park purposes and sustainable development) states, amongst other things, that all policies must be read in combination; all development shall be consistent with the National Park's legal purposes and duty; and where there is an irreconcilable conflict between the statutory purposes, the Sandford Principle will be applied and the conservation and enhancement of the National Park will be given priority.

4.28 Policy GSP2 (Enhancing the National Park) states, amongst other things, that when development is permitted, a design will be sought that respects the character of the area, and where appropriate, landscaping and planting schemes will be sought that are consistent with local landscape characteristics and their setting, complementing the locality and helping to achieve biodiversity objectives.

4.29 Policy GSP3 (Development management principles) requires all development to respect, conserve and enhance all valued characteristics of the site that are subject to the development proposal. The policy also states that particular attention will be paid to, amongst other things, impact on the character and setting of buildings; scale of development appropriate to the character and appearance of the National Park; siting, landscaping and building materials; design in accordance with the National Park Authority Design Guide; impact on access and traffic levels; use of sustainable modes of transport; use of sustainable building techniques; and adapting to and mitigating the impact of climate change, particularly in respect of carbon emissions, energy and water demand.

4.30 Policy L1 (Landscape character and valued characteristics) says that all development must conserve and enhance valued landscape character as identified in the Landscape Strategy and Action Plan and other valued characteristics.

4.31 Policy L2 (Sites of biodiversity or geodiversity importance) states that development must conserve and enhance any sites, features or species of biodiversity importance and where appropriate their setting.

4.32 Policy L3 (Cultural heritage assets of archaeological, architectural, artistic or historic significance) states that development must conserve and where appropriate enhance or reveal the significance of archaeological, architectural, artistic or historic assets and their settings, including statutory designations and other heritage assets of international, national, regional or local importance or special interest. Other than

in exceptional circumstances development will not be permitted where it is likely to cause harm to the significance of any cultural heritage asset of archaeological, architectural, artistic or historic significance or its setting, including statutory designations or other heritage assets of international, national, regional or local importance or special interest. Proposals for development will be expected to meet the objectives of any strategy, wholly or partly covering the National Park, that has, as an objective, the conservation and where possible the enhancement of cultural heritage assets. This includes, but is not exclusive to, the Cultural Heritage Strategy for the Peak District National Park and any successor strategy.

4.33 Policy RT1 (Recreation, environmental education and interpretation) states that proposals for recreation, environmental education and interpretation must conform to the following principles:

A. The National Park Authority will support facilities which enable recreation, environmental education and interpretation, which encourage understanding and enjoyment of the National Park, and are appropriate to the National Park's valued characteristics. Opportunities for access by sustainable means will be encouraged.

B. New provision must justify its location in relation to environmental capacity, scale and intensity of use or activity, and be informed by the Landscape Strategy. Where appropriate, development should be focused in or on the edge of settlements. In the open countryside, clear demonstration of need for such a location will be necessary.

C. Wherever possible, development must reuse existing traditional buildings of historic or vernacular merit, and should enhance any appropriate existing facilities. Where this is not possible, the construction of new buildings may be acceptable.

D. Development must not on its own, or cumulatively with other development and uses, prejudice or disadvantage peoples' enjoyment of other existing and appropriate recreation, environmental education or interpretation activities, including the informal quiet enjoyment of the National Park.

4.34 Policy CC1 (Climate change mitigation and adaptation) states that in order to build in resilience to and mitigate the causes of climate change all development must:

A. Make the most efficient and sustainable use of land, buildings and natural resources.

B. Take account of the energy hierarchy by:
I. reducing the need for energy;
II. using energy more efficiently;
III. supplying energy efficiently; and
IV. using low carbon and renewable energy.

C. Be directed away from flood risk areas, and seek to reduce overall risk from flooding within the National Park and areas outside it, upstream and downstream.

D. Achieve the highest possible standards of carbon reductions.

E. Achieve the highest possible standards of water efficiency.

4.35 Policy CC5 (Flood risk and water conservation) states, amongst other things, that development which increases roof and hard surface area must include adequate measures such as Sustainable Drainage Systems to deal with the run-off of surface water. Such measures must not increase the risk of a local water course flooding.

- 4.36 Policy E2 (Businesses in the countryside) states, amongst other things, that proposals to accommodate growth and intensification of existing businesses will be considered carefully in terms of their impact on the appearance and character of landscapes.
- 4.37 Policy T3 (Design of transport infrastructure) states, amongst other things, that transport infrastructure (including roads) will be carefully designed and maintained to take full account of the valued characteristics of the National Park.
- 4.38 Policy T6 (Routes for walking, cycling and horse riding, and waterways) states, amongst other things, that the rights of way network will be safeguarded from development, and wherever appropriate enhanced to improve connectivity, accessibility and access to transport interchanges.

Development Management Policies Document

- 4.39 The Development Management Policies (“DMPD”) was adopted by the Authority on 24 May 2019. It builds on the strategic principles set out in the Core Strategy and contains a written statement of policies for the positive management and control of development and the use of land. **(Document 3)**
- 4.40 Policy DMC1 (Conservation and enhancement of nationally significant landscapes) states that in countryside beyond the edge of settlements listed in Core Strategy policy DS1, any development proposal with a wide scale landscape impact must provide a landscape assessment with reference to the Landscape Strategy and Action Plan. The assessment must be proportionate to the proposed development and clearly demonstrate how valued landscape character, including natural beauty, biodiversity, cultural heritage features and other valued characteristics will be conserved and, where possible, enhanced taking into account:
- (i) the respective overall strategy for the Landscape Strategy and Action Plan character areas; and
 - (ii) any cumulative impact of existing or proposed development including outside the National Park boundary; and
 - (iii) the effect of the proposal on the landscape and, if necessary, the scope to modify it to ensure a positive contribution to landscape character.
- 4.41 Policy DMC3 (Siting, design, layout and landscaping) states:
- A. Where development is acceptable in principle, it will be permitted provided that its detailed treatment is of a high standard that respects, protects and where possible enhances the natural beauty, quality and visual amenity of the landscape, including the wildlife and cultural heritage that contribute to the distinctive sense of place.
- B. Particular attention will be paid to:
- (i) siting, scale, form, mass, levels, height and orientation in relation to existing buildings, settlement form and character, including impact on open spaces, landscape features and the wider landscape setting which contribute to the valued character and appearance of the area; and
 - (ii) the degree to which buildings and their design, details, materials and finishes reflect or complement the style and traditions of the locality as well as other valued characteristics of the area such as the character of the historic landscape and varied biodiversity assets; and
 - (iii) the use and maintenance of landscaping to enhance new development, and the degree to which this makes use of local features, colours, and boundary treatments and an appropriate mix of species suited to both the landscape and biodiversity interests of the locality; and

- (iv) access, utility services, vehicle parking, siting of services, refuse bins and cycle storage; and
- (v) flood risk, water conservation and sustainable drainage; and
- (vi) the detailed design of existing buildings, where ancillary buildings, extensions or alterations are proposed; and
- (vii) amenity, privacy and security of the development and other properties that the development affects; and
- (viii) the accessibility or the impact on accessibility of the development; and
- (ix) visual context provided by the Landscape Strategy and Action Plan, strategic, local and other specific views including skylines; and
- (x) the principles embedded in the design related Supplementary Planning Documents and related technical guides.

4.42 Policy DMC5 (Assessing the impact of development on designated and non-designated heritage assets and their settings) states:

A. Planning applications for development affecting a heritage asset, including its setting must clearly demonstrate:

- (i) its significance including how any identified features of value will be conserved and where possible enhanced; and
- (ii) why the proposed development and related works are desirable or necessary.

B. The supporting evidence must be proportionate to the significance of the asset. It may be included as part of a Heritage Statement or Design and Access Statement where relevant.

C. Proposals likely to affect heritage assets with archaeological and potential archaeological interest should be supported by appropriate information that identifies the impacts or a programme of archaeological works to a methodology approved by the Authority.

D. Non-designated heritage assets of archaeological interest demonstrably of equivalent significance to Scheduled Monuments will be considered in accordance with policies for designated heritage assets.

E. If applicants fail to provide adequate or accurate detailed information to show the effect of the development on the significance, character and appearance of the heritage asset and its setting, the application will be refused.

F. Development of a designated or non-designated heritage asset will not be permitted if it would result in any harm to, or loss of, the significance, character and appearance of a heritage asset (from its alteration or destruction, or from development within its setting), unless:

(i) for designated heritage assets, clear and convincing justification is provided, to the satisfaction of the Authority, that the:

a) substantial harm or loss of significance is necessary to achieve substantial public benefits that outweigh that harm or loss; or

b) in the case of less than substantial harm to its significance, the harm is weighed against the public benefits of the proposal, including securing its optimum viable use.

(ii) for non-designated heritage assets, the development is considered by the Authority to be acceptable following a balanced judgement that takes into account the significance of the heritage asset.

4.43 Policy DMC7 (Listed Buildings) states that, amongst other things:

Planning applications for development affecting a Listed Building and/or its setting should be determined in accordance with policy DMC5 and clearly demonstrate:

- (i) how their significance will be preserved; and
- (ii) why the proposed development and related works are desirable or necessary.

Development will not be permitted if applicants fail to provide adequate or accurate detailed information to show the effect on the significance and architectural and historic interest of the Listed Building and its setting and any curtilage listed features.

In particular, development will not be permitted if it would, directly, indirectly or cumulatively lead to, amongst other things, inappropriate impact on the setting of the Listed Building unless justified to the satisfaction of the Authority, that the proposed addition of new features to its setting are:

- a) less than substantial in terms of impact on the character and significance of the Listed Building and its setting; and
- b) off-set by the public benefit from making the changes, including enabling optimum viable use, and net enhancement to the Listed Building and its setting.

4.44 Policy DMC8 (Conservation Areas) states:

A. Applications for development in a Conservation Area, or for development that affects its setting or important views into, out of, across or through the area, should assess and clearly demonstrate how the character or appearance and significance of the Conservation Area will be preserved or enhanced. The application should be determined in accordance with policy DMC5 and the following matters should be taken into account:

- (i) form and layout of the area including views and vistas into and out of it and the shape and character of spaces contributing to the character of the historic environment including important open spaces as identified on the Policies Map;
- (ii) street patterns, historical or traditional street furniture, traditional surfaces, uses, natural or manmade features, trees and landscapes;
- (iii) scale, height, form and massing of the development and existing buildings to which it relates;
- (iv) locally distinctive design details including traditional frontage patterns and vertical or horizontal emphasis;
- (v) the nature and quality of materials.

B. Development will not be permitted if applicants fail to provide adequate or accurate detailed information to show the effect of their proposals on the character, appearance and significance of the component parts of the Conservation Area and its setting. Where an outline application is submitted the Authority reserves the right to request additional information before determining the application.

C. Proposals for or involving demolition of existing buildings, walls or other structures which make a positive contribution to the character or appearance or historic interest of the Conservation Area will not be permitted unless there is clear and convincing evidence that:

- (i) the condition of the building (provided that this is not a result of deliberate neglect) and the cost of repairing and maintaining it in relation to its significance and to the value derived from its continued use, is such that repair is not practical; or

(ii) the demolition is to remove an unsightly or otherwise inappropriate modern addition to the building where its removal would better reveal buildings, walls or structures that make a positive contribution to the character or appearance or historic interest of the Conservation Area.

D. Where development is acceptable, a record of the current site, building or structure and its context will be required, prior to or during development or demolition.

E. Plans for re-use of an area where demolition is proposed must be agreed and a contract for redevelopment signed before the demolition is carried out.

F. Felling, lopping or topping of trees in a Conservation Area will not be permitted without prior agreement. This may require their replacement, and provision for their future maintenance.

4.45 Policy DMC9 (Registered Parks and Gardens) states:

A. Planning applications involving a Registered Park and Garden and/or its setting will be determined in accordance with policy DMC5.

B. When considering the impact of a development proposal on Registered Parks and Gardens, including individual garden buildings or landscape features within them, or on their settings, their significance will be assessed by reference to the National Register compiled by Historic England and to other historic, botanical or ecological information.

4.46 Policy DMC11 (Safeguarding, recording and enhancing nature conservation interests) states:

A. Proposals should aim to achieve net gains to biodiversity or geodiversity as a result of development. In considering whether a proposal conserves and enhances sites, features or species of wildlife, geological or geomorphological importance all reasonable measures must be taken to avoid net loss by demonstrating that in the below order of priority the following matters have been taken into consideration:

- (i) enhancement proportionate to the development;
- (ii) adverse effects have been avoided;
- (iii) the 'do nothing' option and alternative sites that cause less harm;
- (iv) appropriate mitigation; and
- (v) in rare cases, as a last resort, compensation measures to offset loss.

B. Details of appropriate safeguards and enhancement measures for a site, feature or species of nature conservation importance which could be affected by the development must be provided, in line with the Biodiversity Action Plan and any action plan for geodiversity sites, including provision for the beneficial future management of the interests. Development will not be permitted if applicants fail to provide adequate or accurate detailed information to show the impact of a development proposal on a site, feature or species including:

- (i) an assessment of the nature conservation importance of the site; and
- (ii) adequate information about the special interests of the site; and
- (iii) an assessment of the direct and indirect effects of the development; and
- (iv) details of any mitigating and/or compensatory measures and details setting out the degree to which net gain in biodiversity has been sought; and
- (v) details of provisions made for the beneficial future management of the nature conservation interests of the site. Where the likely success of these measures is uncertain, development will not be permitted.

C. For all sites, features and species development proposals must also consider:

- (i) cumulative impacts of other developments or proposals; and
- (ii) the setting of the development in relation to other features of importance, taking into account historical, cultural and landscape context.

4.47 Policy DMC13 (Protecting trees, woodland or other landscape features put at risk by development) states

A. Planning applications should provide sufficient information to enable their impact on trees, woodlands and other landscape features to be properly considered in accordance with 'BS 5837: 2012 Trees in relation to design, demolition and construction – Recommendations' or equivalent.

B. Trees and hedgerows, including ancient woodland and ancient and veteran trees, which positively contribute, either as individual specimens or as part of a wider group, to the visual amenity or biodiversity of the location will be protected. Other than in exceptional circumstances development involving loss of these features will not be permitted.

C. Development should incorporate existing trees, hedgerows or other landscape features within the site layout. Where this cannot be achieved the onus is on the applicant to justify the loss of trees and/or other features as part of the development proposal.

D. Trees, woodlands and other landscape features should be protected during the course of the development.

4.48 Policy DME7 (Expansion of existing industrial and business development not involving farm diversification) states, amongst other things, that outside Core Strategy policy DS1 settlements, expansion of existing industrial and business development will only be permitted where:

- (i) it is of a modest scale in relation to the existing activity and/or buildings; and
- (ii) the scale and type of development can be accommodated without adversely affecting the residential amenity and valued characteristics of the area or traffic safety and circulation;
- (iii) it does not adversely affect, and wherever possible, secures the enhancement of the site as well as the future management of the valued characteristics of the site and adjoining land; and
- (iv) proper consideration has been given to the possibilities of conserving and enhancing landscape character by using, modifying or extending existing buildings.

In all cases, the impacts on residential amenity and valued characteristics from operating hours, lighting and noise will be considered.

4.49 Policy DMT3 DMT3 (Access and design criteria) seeks to ensure that new transport related infrastructure is developed to the highest standards of environmental design and materials and requires that development which requires a new or improved access onto a public highway, will only be permitted where, having regard to the standard, function, nature and use of the road, a safe access that is achievable for all people, can be provided in a way which does not detract from the character and appearance of the locality and where possible enhances it. Other measures relate to the retention and enhancement of roadside trees and providing sympathetic measures to mitigate wildlife severance.

4.50 Policy DMT5 (Development affecting a public right of way) states that where a development proposal affects the route of a public right of way, either the definitive

line of the public right of way should be retained, or, in exceptional circumstances, where retention of the definitive line is not possible, the developer will be required to provide an alternative route that:

- (i) is of equal, or preferably, of an improved quality compared to the original; and
- (ii) has similar or improved surface appropriate to its setting; and
- (iii) wherever appropriate, is of benefit to users with special needs, including those with disabilities; and
- (iv) is available before the definitive route is affected or, if this is not possible, until the development is complete, a suitable temporary route is available before the definitive route is affected; and
- (v) is as convenient and visually attractive as the original.

4.51 Policy DMT7 (Visitor parking) states:

A. New or enlarged car parks will not be permitted unless a clear, demonstrable need, delivering local benefit, can be shown.

B. Where new or additional off-street visitor parking is permitted, an equivalent removal of on-street parking will usually be required. This will be delivered through Traffic Regulation Orders to restrict on-street parking.

C. In considering proposals for new or enlarged car parks in the Natural Zone and in Conservation Areas, the developer is expected to have assessed alternative sites located in a less environmentally sensitive location, capable of being linked to the original visitor destination either by a Park & Ride system or right of way.

Landscape Strategy and Action Plan

4.52 The Peak District Landscape Strategy and Action Plan (2009), is one of several strategies which set out in more detail how the National Park Management Plan will be delivered. **(Document 4)** It is underpinned by a Parkwide Landscape Character Assessment. Although the Strategy and Action Plan are not formally part of the Development Plan, the Core Strategy states (in paragraph 9.4) that they form a strong material consideration when making planning decisions. The Development Management Policies document introduces a 'landscape first' approach, using the Landscape Strategy and Action Plan to guide an assessment as to whether the character and quality of the landscape will be conserved and enhanced by a development. In this case the site is within the Derwent Valley Landscape Character Area and the Landscape Character Type is defined as Estatelands - an enclosed estate landscape with nucleated villages and historic halls, surrounded by parkland and discrete blocks of woodland. The Strategy and Action Plan states that the priority is to protect the historic estate character of the landscape, and maintain and enhance parkland and veteran trees whilst seeking opportunities to create broadleaved woodland where compatible with the historic designed pattern.

Peak District National Park Design Guide

4.53 The Authority published a Design Guide in 2007. **(Document 5)** This describes the kind of design detailing that individual property owners and businesses should aim to follow, in order to enable positive changes and adaptations to buildings that respond well to the built heritage of the National Park. The Guide is a material consideration in all planning decisions which involve building work in the Park. It carries considerable weight in decision making, having been subject to scrutiny and amendment through wide public consultation.

4.54 Paragraph 3.11 of the Design Guide states that new buildings should be in harmony with the earlier buildings around them. Historic buildings are important in setting the

context for new development. The aim is to create a pleasing visual relationship between new and old. Detailed guidance on how to achieve this is set out in paragraphs 3.12 to 3.33.

- 4.55 Paragraph 4.1 states that new buildings should ideally be constructed from the same palette of materials used traditionally in the area. This means for the most part natural stone for walling and slate or tile for roofs.
- 4.56 In paragraph 4.13 it states that there is no tradition of external timber boarding in the Peak District. There is therefore only a limited place for external timber on Peak District buildings, particularly when the development is seen in the context of traditional buildings or open landscape.
- 4.57 Paragraph 6.1 of the Design Guide states that principles of sustainable design should guide all stages of the design process from orientation of the building, its use of energy and water, to the selection of materials for construction and decoration.
- 4.58 In 2019 the Authority also adopted a Transport Design Guide providing detailed advice to guide the provision of transport infrastructure (such as new access roads and car parks), seeking sensitive solutions appropriate to the National Park's valued characteristics. **(Document 6)** The use of the Guide is intended to inform the design of such schemes, ensuring that regard to National Park purposes and the National Park's special qualities is integral to the process. In Chapter 1, it states that the guiding principles for transport design include taking a minimalist approach, recognising this is least likely to have impacts on the special qualities of the National Park; and consideration of appropriate design for the National Park being at the forefront when developing a scheme.

Biodiversity Action Plan

- 4.59 The Natural Environment and Rural Communities Act 2006 imposes a duty on public authorities to have regard to the conservation of biodiversity in England when carrying out their normal functions. The Authority has produced a Biodiversity Action Plan ("BAP") for the National Park which is based largely on the three National Character Areas, including the White Peak, within which Thornbridge Hall and parkland are located. **(Document 7)** The BAP identifies important species and habitats and sets out a broad vision, objectives and detailed targets for their management, protection and enhancement. The Biodiversity Action Plan, which is available as an online resource, is a material consideration under the NPPF and 'Biodiversity 2020: A Strategy for England's Wildlife and Ecosystem Services'. New development should contribute to the aims of the Biodiversity Action Plan.

Local Enforcement Plan

- 4.60 The National Planning Policy Framework states that Local Planning Authorities (LPAs) should consider publishing a Local Enforcement Plan to manage enforcement proactively, in a way that is appropriate to their area. In March 2014 the Authority published a Local Enforcement Plan ("LEP"), which sets out what breaches of planning control are, how potential breaches can be reported to the Authority, what matters may or may not be investigated and our priorities for investigation and action. It also outlines the tools that are available to us to resolve any breaches. **(Document 8)**
- 4.61 Chapter 5 of the LEP sets out what our priorities are and states that high priority will be given to, amongst other things, unauthorised building, mining or other operations that are having a serious detrimental impact on the valued characteristics of the National Park; and potential threats to trees that are in a Conservation Area. It also states in Chapter 5 that for planning enforcement purposes the key 'valued

characteristics' to consider include the impact of the breach of planning control on, amongst other things, landscape character; biodiversity; trees and woodlands; historic buildings; and registered parks and gardens. The Plan states that as a general rule, the greater the impact on these things, the greater priority we will give to the enforcement case.

- 4.62 With regard to formal action, it states in Chapter 8 that where the Authority considers the breach has significant harmful effects enforcement action will usually be taken.

Application of Policies

Issue 1: Landscape Character and Appearance

- 4.63 The inclusion of Thornbridge on the Register of Historic Parks and Gardens demonstrates that the site holds special interest and is of national significance. The designation does not confer statutory protection, but its significance is a material consideration in planning decisions. The wider parkland was created to provide an informal designed setting for the Hall and its more formal pleasure grounds and gardens; it is an integral part of the whole property.
- 4.64 The new driveway leaves the established driveway at the southern end of the parkland and passes north, sweeping through the parkland and looping around to join the north-eastern corner of the formal gardens. The driveway is around 6m wide, and bounded on its western side by a soil bund measuring at least 1m in height, extending to over 2m in height at the northern end. Post and wire fences have also been erected along both sides of the driveway for the vast majority of its length. The driveway represents a significant intrusion in a designed landscape and causes significant harm to the appearance and character of the Registered Park and Garden. The bund, which is in itself a large intrusive earthwork, and fencing exacerbate this harm. The purpose of the bund appears to be to screen the driveway when viewed from the house and formal gardens but vehicle movements are still visible over the top of the bund providing an additional, moving, visual intrusion in the landscape on top of the visual impact of the new driveway itself. Footpath users have to cross the new driveway further downslope as they approach the lakes; the unauthorised driveway disrupts the previously open and attractive views from the footpath and harms the enjoyment of footpath users.
- 4.65 The large new car park that has been created within the open parkland is also surrounded by high soil bunds. The car park now incorporates the public right of way; people now using the footpath approach the site from the adjacent Monsal Trail, and emerge into a large car park with high soil bunds partially obstructing views, instead of into open parkland with much more open views to the east and south. The car park is also visible to users of the Monsal Trail and both the car park and driveway through the parkland are seen from the A6020 road. In both cases this is particularly the case during late Autumn, Winter and early Spring when the trees alongside the Trail and the road are not in leaf.
- 4.66 The new driveway cuts through the tree belt (noted as Area B, garden shelter belt in the Conservation Area Appraisal) and continues into the formal gardens. The new building has been built within the formal gardens close to the Hall, on land that was formerly open and was part of the Productive Garden in earlier times. Whilst there are other structures in the northern part of the gardens, the new building is of entirely different materials and design, and bears no relation to, nor takes any design cues from, the existing garden structure and design. The decking to the south side of the building, extensive new areas of tarmac surfacing and new fencing and gates exacerbate its harmful impact.

- 4.67 As well as being seen at close quarters from within the garden, the new building is also visible from the terrace that currently forms the main visitor entrance to the gardens. i.e. it is seen as soon as one steps into the formal gardens. It is also visible from the public footpath where it crosses a footbridge over the Monsal Trail.
- 4.68 In conclusion, the character of the wider landscaped parkland, and the formal gardens, has been harmed by the size, form and character of the unauthorised developments which take no account of the boundaries between these two distinct zones, nor of their character and scale. **When the enforcement notice was issued, the Authority considered that the level of harm caused to the significance of the registered park and garden was 'substantial'. However, the Authority has recently reviewed its position in relation to the level of harm caused and as a result of this has concluded that it should regard the level of harm as less than substantial owing to the fact that there is no overall or total loss of the heritage asset, and that the significance of the asset has not been completely lost. However, in common with the written representations made by the Gardens Trust and Historic England, the Authority considers that the level of harm is nevertheless at the top end of harm within this bracket.** The developments are thus in conflict with the relevant government guidance and planning policies, notably paragraphs 83, 127, 170, 172, 184 and 193 – 199 of the NPPF; Core Strategy policies GSP1, GSP2, GSP3, L1, L3, RT1, E2 and T3; and Development Management policies DMC1, DMC3, DMC5, DMC9, DME7 and DMT3.

Issue 2: Conservation Area

- 4.69 The Conservation Area follows, almost entirely, the boundary of the Registered Park and Garden. In the Conservation Area appraisal, the parkland is noted as 'important open space' which should be protected from development. The appraisal also annotates 'wide views' across much of the parkland from a number of vantage points. Good views into the parkland from the Monsal Trail (during the winter) are also noted in the appraisal.
- 4.70 Most of the wide views across the parkland have been harmed by the new driveway, including key views from the main southern garden terrace adjacent to the Hall (denoted as 'Area E, south garden' in the appraisal). Its construction has thus harmed the historic interest of the Conservation Area, including its character and appearance. For the same reasons as set out under the previous heading, the car park, building and associated works have also caused harm to the character and appearance of the Conservation Area. **When the enforcement notice was issued, the Authority considered that the level of harm caused to the significance of the conservation area was 'substantial'. However, the Authority has recently reviewed its position in relation to the level of harm caused and as a result of this has concluded that it should regard the level of harm as less than substantial owing to the fact that there is no overall or total loss of the heritage asset, and that the significance of the asset has not been completely lost. However, in common with the written representations made by the Gardens Trust and Historic England, the Authority considers that the level of harm is nevertheless at the top end of harm within this bracket.** The unauthorised developments are thus in conflict with the relevant government guidance and planning policies, notably paragraphs 184 and 193-197 of the NPPF; Core Strategy policy L3; and Development Management policies DMC5 and DMC8.

Issue 3: Setting of Listed Buildings

- 4.71 The parkland forms an integral element of the setting of the principal listed building and its associated gardens and pleasure grounds, many parts of which are listed in their own right. The parkland provides the more informal and naturalistic (albeit designed) setting for the formal gardens and the Hall, which sits in a dominant

position overlooking the parkland. Everything about the parkland and approach to the Hall was carefully designed to impress the visitor. For this reason the contribution that the setting makes to the significance of the listed buildings and structures is very high. This contribution to significance has been greatly diminished by the addition of a long new driveway, car park and associated earth bunds in the previously open parkland through the erosion of its naturalistic and rural character.

4.72 The new building, hard-surfacing and fencing have also adversely affected both the setting of the Hall and the contribution that the garden setting makes to the significance of some of the garden objects; for example the listed north temple that is situated approximately 35 metres south-east of the new building. The temple was placed at the end of a long path, functioning as an 'eye catcher', drawing the eye along the gardens and creating an impression of space and depth. This function has been significantly eroded by the new building, and associated works, as they now draw the eye away from the listed temple.

4.73 **The harm caused by the unauthorised developments to the setting of the principal listed building and other buildings/structures was initially judged to be 'substantial'. However, the Authority has recently reviewed its position in relation to the level of harm caused and as a result of this has concluded that it should regard the level of harm as less than substantial owing to the fact that there is no overall or total loss of the heritage asset, and that the significance of the asset has not been completely lost. However, in common with the written representations made by the Gardens Trust and Historic England, the Authority considers that the level of harm is nevertheless at the top end of harm within this bracket.** The unauthorised developments are thus in conflict with the relevant government guidance and planning policies, notably paragraphs 184 and 193-197 of the NPPF, Core Strategy policy L3; and Development Management policies DMC5 and DMC7.

Issue 4: Archaeology

4.74 The parkland was surveyed by the National Park Authority in 1995 and 2004 and a number of features were recorded. **(Documents 9 and 10)** Of at least regional importance were large areas of earthwork features relating to the former medieval open field system of Ashford in the Water – these were found in the southern and western parts of the parkland. Other features relating to the later layout of the parkland and gardens were also noted.

4.75 Feature 12 identified in the 1995 archaeological survey was a lynchet (a bank formed by agricultural activity often of medieval date but sometime prehistoric). This appears to have been located in the area that is now covered by the new car park; this feature of local significance will have been destroyed.

4.76 The buried archaeological potential of a site is hard to determine without further investigative works, which is why pre-determination investigations are often required during the planning process. cursory examination of aerial photographs shows that there are some sub-surface features of uncertain form creating 'crop marks' within the parkland. The first edition Ordnance Survey map (1879) show a numbers of 'stones' in the parkland – whether these relate to former field boundaries is not certain. **(Document 11)**

4.77 We do not have sufficient information to judge the impact of the development on the below-ground archaeology, but the previous surveys and aerial photographs demonstrate that the site has archaeological potential and contains features that pre-date the parkland, some of national or regional importance. The extent of the works for the new driveway, car park and other areas of surfacing might well have completely destroyed any buried features that were present.

- 4.78 Although the construction of the building appears to have involved less ground disturbance, we do not know the full details of the methods used so the potential impact is hard to determine. It is understood that utility services have been connected to the new building, involving below-ground pipework, for example, but the full extent of these is not known. However, features relating to garden archaeology can be very shallow and therefore very fragile and vulnerable to disturbance. The site may have held important archaeological evidence for the design and former uses of this space which could have been destroyed.
- 4.79 The NPPF, at paragraph 194, states that where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation. Policy DMC5 of the Authority's Development Management Policies document sets out a similar requirement to provide appropriate information that identifies the impacts or a programme of works to a methodology approved by the Authority. In relation to planning applications, policy DMC5 states that applications will be refused if adequate or accurate detailed information is not provided. In this case, there is no evidence that the owners commissioned any such assessments or evaluation before the unauthorised works were carried out or that any watching brief was conducted during the construction phase.
- 4.80 The unauthorised developments are thus in conflict with the relevant government guidance and planning policies, notably paragraphs 189, 194 and 203 of the NPPF, Core Strategy policy L3 and Development Management policy DMC5.

Issue 5: Trees

- 4.81 Trees are an important part of the overall design in the formal gardens and the wider parkland. Screening tree belts along edge of the parkland create a sense of seclusion, shielding the Hall and grounds from surrounding roads and settlements, providing privacy and emphasising the parkland boundary.
- 4.82 The new driveway across the parkland passes within 4 metres of up to six mature parkland trees so is likely to have encroached within the primary rooting areas of these trees, a mixture of open grown lime and chestnut trees. The driveway passes within 1 metre of at least two of these six parkland trees, which will definitely have caused damage to their primary roots, negatively affecting the structural integrity of the trees, as well as having a significant negative impact on the physiological health and condition of the trees.
- 4.83 The appellant has stated that no trees were removed in the process of constructing the car park. We acknowledge that two large free-standing trees have been left with an area of undisturbed soil and grass around the base, which should safeguard their future health. However the northern edge of the car park is very close to a number of semi-mature trees and within their rooting areas. Experience has shown that this is likely to compromise the health and condition of those trees and threaten their long-term future.
- 4.84 The access road which runs from the car park to the new building has encroached into the rooting areas of up to 40 semi-mature and mature trees. The road passes within 1 metre of up to 10 of these trees, which will definitely have caused damage to their primary roots, negatively affecting the structural integrity of the trees, as well as having a significant negative impact on the physiological health and condition of the trees.
- 4.85 For the above reasons the unauthorised developments are in conflict with the relevant government guidance and planning policies, notably paragraph 174 of the

NPPF, Core Strategy policies GSP3 and L1 and Development Management policy DMC13.

Issue 6: Ecology

- 4.86 Although we have no evidence of any specific ecological interests that may have been harmed by the unauthorised developments, the fact that the works have been carried out without any apparent ecological assessments or surveys means that the opportunity to assess the nature conservation importance of Thornbridge and its parkland, obtain information about the special interests of the site and mitigate any potential harm to those interests has been lost. The unauthorised developments are thus in conflict with the relevant planning policies, notably Core Strategy policy L2 and Development Management policy DMC11.

Issue 7: Highway Safety

- 4.87 We have consulted the Highways Authority (Derbyshire County Council) who note that the provision of a new café, together with any potential increase in wedding events, has the potential to result in an intensification in use associated with the site. The Highways Authority would need more information regarding the sites extant use and that proposed to see if a material increase was likely. In terms of traffic generation, details comparing existing trip generation (i.e. prior to the unauthorised developments) to proposed trip generation should be provided in order to make an informed assessment on traffic impact.
- 4.88 The Highways Authority observes that at the existing access the A6020 road is subject to a 50mph speed limit and that any intensification in use of the site should be supported by 85th percentile speed readings with commensurate visibility splays being demonstrated within controlled land. Based on the speed limit of 50 mph this would equate to visibility splays measuring 149 metres in both directions along the nearside carriageway edge, taken from a setback distance of 2.4m from the centre of the access. It is presumed that the appellant is in control of the frontage either side of the access with the existing boundary wall appearing to be relatively low already from a desktop study. The Highways Authority would look for the land in advance of the sightlines being maintained in perpetuity clear of any object greater than 1m in height (0.6m in the case of vegetation) relative to the adjoining nearside carriageway channel level. The Highways Authority notes that whilst the fronting footway margin appears narrow, in view of the boundary walls height, and depending on what land is in the control of the appellant, achievable visibility from the existing access may be and in terms of the access width, there would appear to be sufficient space for two vehicles to pass one another either side of the gates.
- 4.89 In view of the above, the Highways Authority has advised that there are no major highway safety concerns although it should not be construed that the generated traffic resulting from the unauthorised developments is regarded as having no effect on the adjacent highway as, without additional information, it is difficult to make an informed assessment.
- 4.90 Given the nature and scale of the unauthorised developments and the potential for a material increase in traffic generation, the Authority would normally require the submission of a travel plan to allow an informed assessment to be made and the potential impacts on the local transport network to be addressed. This approach is endorsed in paragraphs 104 and 113 of the NPPF. There is no evidence that a travel plan was produced or such an assessment was made before the unauthorised developments were carried out.
- 4.91 For the above reasons, the unauthorised developments are in conflict with the relevant government guidance and planning policies, notably paragraphs 104 and

113 of the NPPF, Core Strategy policy GSP3 and Development Management policy DMT7.

Issue 8: Public Footpath

- 4.92 The installation of a new gateway and stile at the southern end of the new car park has caused an obstruction of the public footpath. Similarly, an obstruction has been caused by the installation of a gateway and stile in the new fence line where the public footpath crosses the new driveway through the parkland. These obstructions have detrimentally affected users of the definitive line of the public right of way, especially those with special needs, including those with disabilities. This is contrary to the relevant government guidance and planning policies, notably paragraph 100 of the NPPF, Core Strategy policy T6 and Development Management policy DMT5.

Issue 9: Public Benefits

- 4.93 **As stated above, we consider that the unauthorised developments have resulted in less than substantial harm being caused to the designated heritage assets. Paragraph 202 of the NPPF states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.**

- 4.94 A similar process of assessment is set out in policy DMC5 of the Development Management Policies. Here it states, in sub-paragraph F, that development of a designated or non-designated heritage asset will not be permitted if it would result in any harm to, or loss of, the significance, character and appearance of a heritage asset (from its alteration or destruction, or from development within its setting), unless:

(i) for designated heritage assets, clear and convincing justification is provided, to the satisfaction of the Authority, that the:

a) substantial harm or loss of significance is necessary to achieve substantial public benefits that outweigh that harm or loss; or

b) in the case of less than substantial harm to its significance, the harm is weighed against the public benefits of the proposal, including securing its optimum viable use.

(ii) for non-designated heritage assets, the development is considered by the Authority to be acceptable following a balanced judgement that takes into account the significance of the heritage asset.

- 4.95 In this case, the appellant has suggested that although the unauthorised developments have caused harm to the heritage assets this is offset by resulting public benefits. Specific reference has been made to an increase in public visitor access and an increase in funds being available for the maintenance and repair of the listed buildings and the registered park and garden. We acknowledge that there is potential for such public benefits to be realised. However, it is not possible to quantify these without detailed information being made available. Normally, this information would form part of a Heritage Statement which would be prepared and submitted prior to development taking place.

- 4.96 It is also important to recognise that public access and use of the site and gardens was already possible via the existing driveway, car park and Thornbridge buildings prior to the unauthorised works. Moreover, the property has been used to host weddings, and provide access to the gardens, for a number of years. **As such, it is**

considered that the weight to be given to these public benefits, as set out in paragraph 202 of the NPPF, should be relatively limited. Indeed the new works indicate an intent to separate the operation of the site to allow for a new and expanded business model, namely an expansion of the wedding business in the Hall buildings and function suites, and a separate, new public access (via the driveway and car park) to the gardens and a new café for the general public. This negates an argument that the unauthorised works are essential to the future of the site, as alternative methods already existed, offering viable uses across the site without the significant harm to the heritage asset as currently caused by the unauthorised works.

- 4.97 The purposes of a National Park Authority are contained in sections 61 and 62 of the Environment Act 1995. This provides that it is the Authority's statutory purpose to conserve and enhance the natural beauty wildlife and cultural heritage of the National Park, and to promote opportunities for understanding and enjoyment of the special qualities of the National Park by the public. In pursuing its purposes national parks must "seek to foster the economic and social well-being of local communities within the National Park, but without incurring significant expenditure in doing so.....". The Act further provides that in the exercise of its functions it must have regard to its purposes but if a conflict arises between the purposes it must attach "greater weight to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area".
- 4.98 So while the appellant considers that the recent developments will result in benefit nationally and locally through greater public access and improved upkeep of the Hall and its parkland, it is clear that any development must be done in a way that respects and conserves the Park's valued characteristics. In the absence of a Heritage Statement and on the basis of the available evidence, we consider it unlikely that any public benefits resulting from the unauthorised developments would outweigh the substantial harm that has been caused, especially to the designated heritage assets, as described earlier in this report.

5. Response to the Ground (c) appeal

- 5.1 The appeal on ground (c) is that there has not been a breach of planning control.
- 5.2 The appellant's case on ground (c) is that the fences, including gateways and stiles, that comprise part of the alleged breach of planning control specified in section 3 of the enforcement notice, are permitted development by virtue of Schedule 2, Part 2, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- 5.3 Class A permits the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. However, development is not permitted by this class if it falls within one or more of the exceptions, (a) to (d), as set out in paragraph A.1. The Authority accepts that the fences, including gateways and stiles, do not fall within the exceptions in (a) to (c). However, we consider that they do fall within the exception in (d), as the erection of the fences, including gateways and stiles, has involved development within the curtilage of a listed building, namely Thornbridge Hall.
- 5.4 It is noted that in her grounds of appeal the appellant states that the fences etc, are not within the curtilage of or surrounding a listed building, that none of the fences or indeed the café are within the formal garden and that listed building consent has not previously been required for development in this area.
- 5.5 The Authority considers that the curtilage of Thornbridge Hall encompasses all of the gardens and parkland which clearly have a strong historical association with the

Hall. The main phase of garden development took place between 1896 and 1914, when the then owner, George Marples, commissioned significant alterations to the Hall and grounds, with a Dutch flavour and built garden terraces, including a 'Dutch Garden'. Marples also introduced numerous garden features including fruit gardens, promenades, cascades, pools, tufa grottos, dells and rockwork. He also created the surrounding parkland from farmland, with the large scale planting of mature trees creating an instant and impressive landscaping effect. The parkland was created to provide an informal designed setting for the Hall and its more formal pleasure grounds and gardens; it is an integral part of the whole property. The gardens were further embellished by Henry Boot who purchased the Hall in 1929/30, bringing a more Italianate style.

- 5.6 As the gardens and parkland form the curtilage of the Hall, the fences, including gateways and stiles, identified in the enforcement notice are not permitted development and thus constitute a breach of planning control. Whether or not listed building consent was required for previous development is not relevant. For these reasons it is considered that the ground (c) appeal must fail.

6. Response to the Ground (e) appeal

- 6.1 The appeal on ground (e) is that the enforcement notice was not properly served on everyone with an interest in the land.
- 6.2 The appellant's case is that the trustees of the charitable trust, 'Thornbridge 4 Everyone Foundation', should have been served as the Foundation is a direct beneficiary of proceeds from the café and other activities on site. The appellant states that the enforcement notice will impact upon the ability of the charity to fulfil its stated charitable outcomes.
- 6.3 Section 172(2) of the 1990 Act sets out the legislative requirements for service of enforcement notices. It requires that a copy of an enforcement notice shall be served on the owner and on the occupier of the land to which it relates; and on any other person having an interest in the land, being an interest which, in the opinion of the [local planning] authority, is materially affected by the notice.
- 6.4 In this case, the Authority has not been provided with any information to show that the Foundation has an interest in the land (such as a lease), as opposed to some apparent expectation in the proceeds of the café or from other activities. In these circumstances, the Authority maintains that the requirements in section 172(2) of the 1990 Act do not apply to the Foundation and thus there was no requirement to serve the enforcement notice on the Foundation. For these reasons the appeal on ground (e) should fail.

7. Response to the Ground (f) appeal

- 7.1 The appeal on ground (f) is that the steps required to comply with the requirements of the Notice are excessive, and lesser steps would overcome the objections.
- 7.2 The appellant asserts that the alleged harm resulting from the breach in planning control (which the appellant disputes) could be remedied through lesser steps than the notice requires, for example, by granting a temporary planning permission for the café and undertaking remedial works to the bunds.
- 7.3 Section 173 of the 1990 Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first, set out in section 173(4)(a), is to remedy the breach of planning control which has occurred.

The second, set out in section 173(4)(b), is to remedy any injury to amenity which has been caused by the breach. In this case, the purpose of the Notice is to remedy the breach by removing the unauthorised developments and reinstating the land to its condition before the breaches took place. The Authority maintains that the steps required are consistent with that purpose and are not excessive. They are necessary to achieve the removal of the unauthorised developments and the restoration of the land to its previous condition. No lesser steps would remedy the breaches of planning control that have occurred. The examples suggested by the appellant would not be appropriate as they would not remedy the breach. The appeal on ground (f) must, therefore, fail.

8. Response to the Ground (g) appeal

- 8.1 The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable.
- 8.2 The appellant claims that the period of six months specified for removal of the unauthorised developments is too short but does not suggest what a reasonable period would be.
- 8.3 The Authority considers that the periods for compliance set out in the enforcement notice would allow sufficient time for the removal of the developments and reinstatement of the land and are, therefore, reasonable. The appellant states that a schedule will be provided to show the various stages that would need to be undertaken prior to the removal of the operational development. In the Authority's view, the appellant cannot rely on things that may need to be done prior to the removal of the unauthorised developments.
- 8.4 For these reasons, the ground (g) appeal should fail.

9. Conclusion

- 9.1 In respect of **ground (a)**, the Authority submits that there are clear and substantial reasons, based on national and local policies, why permission should not be granted for the alleged unauthorised developments. In particular, the developments have caused substantial harm to the heritage assets identified above and represent a serious visual intrusion into the landscape.
- 9.2 In addition, the driveways and car park have encroached into the rooting zones of several trees, negatively affecting the structural integrity of the trees, as well as compromising their physiological health and condition and threatening their long-term future.
- 9.3 As the unauthorised works have been carried out without any apparent ecological assessments or surveys, the opportunity to assess the nature conservation importance of the site and mitigate any potential harm has been lost.
- 9.4 Given the nature and scale of the unauthorised developments and the potential for a material increase in traffic generation, the Authority would normally require the submission of a travel plan to allow an informed assessment to be made and the potential impacts on the local transport network to be addressed. There is no evidence that a travel plan was produced or that such an assessment was made before the unauthorised developments were carried out.
- 9.5 The erection of fences, including gateways and stiles, has obstructed the line of the

public footpath which crosses the appeal site. These obstructions have detrimentally affected users of the public right of way.

- 9.6 Finally, in respect of ground (a), while the appellant claims that the unauthorised developments will result in benefit nationally and locally through greater public access and improved upkeep of the Hall and its parkland, it is clear that any development must be done in a way that respects and conserves the Park's valued characteristics. We consider it unlikely that any public benefits resulting from the unauthorised developments would outweigh the substantial harm that has been caused.
- 9.7 On **ground (c)**, the Authority considers that the curtilage of the Hall encompasses all of the gardens and parkland, so the fences, including gateways and stiles, are not permitted development and thus constitute a breach of planning control.
- 9.8 In respect of **ground (e)**, the Authority maintains that the requirements in section 172(2) of the 1990 Act do not apply to the Foundation and thus there was no requirement to serve the enforcement notice on the Foundation. For these reasons the appeal on ground (e) should fail.
- 9.9 With regard to the appeal on **ground (f)**, the Authority maintains that the steps required are necessary to achieve the removal of the unauthorised developments and the restoration of the land to its previous condition. No lesser steps would remedy the breaches of planning control that have occurred.
- 9.10 For **ground (g)**, the Authority considers that the periods for compliance set out in the enforcement notice would allow sufficient time for the removal of the developments and reinstatement of the land and are, therefore, reasonable.

List of Documents

1. Delegated Enforcement Report dated 17 May 2021
2. Peak District National Park Authority Core Strategy adopted on 7 October 2011
3. Peak District National Park Authority Development Management Policies adopted on 24 May 2019
4. Peak District National Park Authority Landscape Strategy and Action Plan (2009)
5. Peak District National Park Authority Design Guide (2007)
6. Peak District National Park Authority Transport Design Guide (2019)
7. Peak District Biodiversity Action Plan (2011)
8. Peak District National Park Local Enforcement Plan (2014)
9. Thornbridge Hall Park Archaeological Survey – Peak National Park Archaeology Service (1995)
10. Thornbridge Education Centre Archaeological Field Survey – Peak District National Park Authority Cultural Heritage Team (2004)
11. Extract from 1879 Ordnance Survey Map – National Library Scotland