

Appeal against enforcement notice reference ENF: 21/0034  
Thornbridge Hall and Estate, Ashford in the Water, DE45 1NZ

for Mrs Emma Harrison CBE

PINS ref: APP/M9496/C/21/3279072

LPA ref: ENF: 21/0034

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## OPENING POINTS ON BEHALF OF THE APPELLANT

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### **INTRODUCTION**

1. The Peak District National Park Authority (“NPA”) has served an Enforcement Notice (“EN”) in relation to a new access road, car park, café and some limited fencing at Thornbridge Hall. The Appellant would say immediately that it would have been preferable to have sought planning permission for this development. That is accepted. However, an accumulation of unusual circumstances, which included the Covid-19 lockdowns, unsuccessful attempts to engage with the NPA as to the future of the Thornbridge Estate and a fervent desire to open up the Hall, Gardens and wider Estate to the general public led to the works being carried out without planning permission.
2. This is not a case in which a landowner has sought to run roughshod over the controls imposed by the planning system for personal financial gain. On the contrary, since purchasing the Estate in 2004, Mr and Mrs Harrison have embarked on committed and costly programme of conservation and enhancement of the various heritage assets under their care. They take their responsibility as custodians of the Hall and the Estate very seriously. Indeed, that commitment was the catalyst for the works identified in the EN. The access road, car park and café facilitate and encourage public access to the heritage assets when such access was previously extremely limited. Not only does this allow more people to enjoy the building and grounds, it creates a revenue stream to fund restoration and ongoing repairs. The development provides a secure future for the Hall and the Estate

when in recent memory they were unloved and falling into disrepair. It is against this backdrop that we invite the Inspector to determine the Appeal.

### **THE ISSUES**

3. The issues arise from the Grounds of Appeal: (a), (c), (f) and (g). It is convenient to consider the 'legal' ground first (in this case Ground (c)) before addressing the planning merits.

#### **Ground (c)**

4. This is a narrow point. Section 3 (vi) of the EN refers to operational development consisting of the erection of fences, including gateways and stiles within the curtilage of a listed building. Unhelpfully, the EN fails to specify which listed building is relevant or which gateways and stiles are the subject of the enforcement action, although it now appears that the building in question is the Hall.
5. There are two sub-issues:
  - a. Whether the fences, gateways and stiles are within the curtilage of a listed building. If they are not, they would be 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). Planning permission is not therefore required;
  - b. If the fences, gateways and stiles are within the curtilage of a listed building then it is accepted that planning permission would be required for them. As such, for the same reasons outlined below on Ground (a), planning permission should be granted for this operational development.
6. The Inspector has helpfully drawn attention to the CofA's judgment in *Hampshire CC v Blackbushe Airport Limited* on the question of curtilage. To be within the curtilage of a building, land must be so intimately connected with the building as to lead to the conclusion that the former is in truth part and parcel of the latter (judgment §138). The NPA's position appears to be that the gardens and parkland all fall within the curtilage of the Thornbridge Hall. This is precisely the argument rejected in *Blackbushe Airport*.

7. As will become apparent in the Round Table Session, the operational development in question falls outside the properly defined curtilage of Thornbridge Hall and is therefore permitted development.
8. If that submission is rejected, it is difficult to see how the fences, gateways and stiles can possibly be objectionable in planning terms.

**Ground (a): the planning merits**

9. The written evidence presented by both parties is detailed and voluminous. We intend only to highlight the salient points in Opening by way of a number of propositions.
10. Before addressing the propositions, we should recognise that the NPA has revised its position from one of ‘substantial harm’ to the relevant heritage assets to ‘less than substantial harm’. For a LPA that has allowed significant development at Chatsworth House, this overly officious approach does not sit well.

**(1) The development subject to the EN does not cause harm to the designated heritage assets within the Appeal Site.**

11. In *City and Country Bramshill Ltd v Secretary of State for Housing, Communities and Local Government* [2021] EWCA Civ 320 it was confirmed that §202 NPPF allows for an internal heritage planning balance: *i.e.* comparing the heritage harms with the heritage benefits. If the net outcome is that there is no heritage harm then the provisions of §202 NPPF are satisfied.
12. In the present case, the NPA’s approach consider that any change will be harmful to the Hall, the Gardens and the Parkland. Therein lies a fundamental misunderstanding of the policy position, which is concerned with conservation rather than preservation in aspic. The history of Thornbridge Hall and Estate is one of evolution not stasis. The proposals before the Inspector are simply an example of the way in which heritage assets respond to different demands and adapt to change.
13. The evidence led by the Appellant will show that the overall level of harm caused to the heritage assets including listed buildings, Conservation Area and Registered Park and

Garden (“RPG”) is more than outweighed by the heritage benefits that wider public access and recycling of income will generate.

**(2) Mitigation proposals reduce any harm to the heritage assets.**

14. The landscape mitigation proposals prepared by the Appellant’s expert landscape architect will mitigate harm to the heritage assets through development within their setting.
15. The landscape works can be secured by condition.

**(3) The level of harm to archaeological assets is low.**

16. Mr Hanna concludes that there has been less than substantial harm to the non-designated heritage assets. The value of assets is low to medium and magnitude of impact is also low to medium.

**(4) There are considerable public benefits that outweigh any heritage harm.**

17. If the Inspector considers that the net position results in less than substantial harm to the designated heritage assets, the public benefits associated with the Appeal Scheme are compelling.
18. The wider public benefits of the Appeal Scheme include:
  - a. Public access to gardens 7 days a week;
  - b. Public access to the house;
  - c. The creation of a parkland walk;
  - d. Support for the Thornbridge 4 Everyone Foundation;
  - e. Access to the Monsal Trail;
  - f. Highways benefits;
  - g. Job creation of more than 35 FTE jobs;
  - h. Securing optimum viable use of the heritage assets;
  - i. Avoiding overflow parking to the front of the Hall;
  - j. Succession tree planting;
  - k. Biodiversity enhancements;

- (5) **There are no other interests of acknowledged importance that are adversely affected to an unacceptable degree.**

19. Importantly, there is no basis for resisting planning permission on the following grounds:
- a. **Landscape.** There have been some localised, low level landscape effects in the short to medium term but with mitigation in the longer term this will reduce to a negligible landscape effect;
  - b. **Highways.** Derbyshire County Council (“DCC”) have not raised any concerns about highway safety or the free flow of traffic. The NPA have belatedly (1 working day before the Inquiry) sought to raise a point in relation to increased visitor numbers but misunderstand the data and are wrong;
  - c. **Trees.** There may be some long-term impact on trees but no trees are rendered immediately unstable and none have characteristics that make them stand out from other trees on the estate. There is also opportunity for succession planting, which would outweigh any arboricultural harm;
  - d. **Flooding and drainage.** A comprehensive drainage plan has been submitted to DCC as the relevant authority. They raised no objections to the drainage plan but the NPA have seen fit, on the Friday before the Inquiry opens, to express concerns about the archaeological, heritage and arboricultural impacts of the drainage scheme. The NPA have been in possession of substantially the same scheme for 6 months. In any event, none of their very recent concerns hold water.
20. For all of the above reasons, which include mitigation works secured by condition and a reliable income stream to restore and repair the Estate (s.106 obligations), planning permission should be granted for the Appeal Scheme.

### **Ground (f) appeal**

21. The Appellant asserts that the alleged harm could be remedied through lesser steps as a result of the grant of a temporary planning permission for the café and a condition requiring the driveway and car park to be removed if the use ceases (**Proof 11.1-11.4**).

**Ground (g) appeal**

22. A period of 12 months is requested to allow (a) further archaeological assessment to be undertaken (3-5 months) and (b) a sufficient period of dry weather (Spring/Summer 2023).

11<sup>th</sup> October 2022

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