

**LAND AT THORNBRIDGE HALL BASLOW ROAD ASHFORD IN THE WATER
DE45 1NZ**

Planning Inspectorate Ref: APP/M9496/C/21/3279072

**OPENING SUBMISSIONS ON BEHALF OF
PEAK DISTRICT NATIONAL PARK AUTHORITY**

Introduction

1. The Peak District National Park Authority strongly opposes the appeal brought by Mrs Emma Harrison against the enforcement notice dated 15th June 2021, served due to the unauthorised works at the gardens and parkland surrounding Thornbridge Hall.
2. Thornbridge Hall is a historic designed landscape of national importance. Its significance derives from its archaeological, architectural, artistic and historic interest as well as its designation as a Registered Park and Garden. The significance of the landscape is greatly increased by the sum of its component parts and what Anna Badcock refers to as the “nested” designations.
3. Whilst this case does not concern the Hall itself (a Grade II listed building), the wider estate includes a number of designated heritage assets, notably several listed buildings and a registered park and garden. The area affected by the works is in close proximity to the Main Entrance, the Monsal Trail and a public footpath. The property is also within a Conservation Area. As a result this is considered to be a

particularly sensitive location. The parkland forms an integral element of the setting of the principal listed building and its associated gardens and of the setting of the other listed buildings and structures.

4. The breaches of planning control alleged in the enforcement notice are set out below for ease of reference, but in summary relate to the construction of two driveways- one through the parkland, a large car park, hardsurfacing, a building (being used as a café) and the erection of fences, gateways and stiles, all without first troubling to seek planning permission:

- (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 (drawings nos. ENF21-0034(1) and ENF21-0034(2)).

5. The breaches thus all concern operational development. The enforcement notice requires it all to be removed within a time limit of six months.
6. As the enforcement notice explains, the gardens and parkland in question are included on Historic England's Register of Historic Parks and Gardens, but the character of the formal gardens and the wider landscaped parkland "...has been substantially harmed by the unauthorised developments, which take no account of the boundaries between these two distinct zones".
7. The Authority has clarified that in legal/policy terms, the harm caused is "less than substantial" but at the very highest end of that range of harm.
8. The unauthorised developments are also within the Thornbridge Conservation Area. It is noted in the Conservation Area appraisal that the parkland is 'important open space' which should be protected from development, and that there are 'wide views' across much of it from a number of vantage points.
9. The settings of the listed buildings and structures are fundamental to their significance, and are considered to have been harmed by the unauthorised developments.
10. The installation of new gateways and the stile at the southern end of the new car park have caused obstructions of the public footpath. In her representation of 30th July 2022, Ms. Ann Haden, a Peak and Northern Footpaths Society inspector of

public rights of way, set out her experience and assessment of the changes resulting from the unauthorised works (specifically the new driveway).

The ground (c) appeal:

11. Under ground (c) the Appellant argues that the fences, including gateways and stiles, are not within the curtilage of or surrounding a listed building, that none of the fences, nor the café, are within the formal garden, and that listed building consent has not previously been required for development in that area. It is argued that they would be permitted development within Class A of Part 2 of Sch 2 to the GPDO.
12. Class A ‘gates, fences, walls etc’ of Part 2 ‘Minor Operations’ of Sch 2 to the GPDO 2015/596 provides at para A.1 at sub-para (b) that it is not permitted development if the height of the fence exceeds 2 metres and sub-para (d) provides that the development is not permitted by Class A if it would be development within the curtilage of a listed building.
13. The inspector will therefore have to make an assessment as a matter of fact and degree as to whether the land on which the fences, etc has been constructed should be considered to form part and parcel of the building to which it was related, such as to be its ‘curtilage’.
14. The Authority’s position is that the planning unit in this case is the Hall together with the parkland and the gardens. The farm landscape was adapted to form the parkland around the Hall, and the relationship between the parkland and Hall is very strong. Clearly, the fencing in this case only exists because of the rest of the unauthorised development, it would be very strange to leave it in place in the absence of the road (and other unauthorised operational development).
15. The many authorities relevant to the issue of a curtilage were considered by the Court of Appeal in *R (Hampshire CC) v Blackbushe Airport Ltd* [2021] EWCA

Civ 398, affirming the judgment of Holgate J. It was noted that Parliament had never defined the word and that whilst it was to be given its ordinary and natural meaning, that meaning was not completely provided by the dictionary. The size of the land was relevant, but that might vary with the nature and size of the building (and even then proportionality might not be definitive).

16. The Court noted that in *Methuen-Campbell v Walters* [1979] QB 525 Buckley LJ had provided as good an expression of the concept of curtilage as one was likely to find; the test required the land to be *so intimately associated with the building* as to lead to the *reasonable conclusion* that the land was *part and parcel of the building*. That approach was not the same as treating the land and building together as forming part of a single unit. The conclusion in that case that the land and building together constituted ‘an integral whole’ was the consequence of applying the ‘part and parcel’ test, and was not another way of articulating that test.
17. The test is not whether the building could function without the rest of the land, or whether the land was necessary for the functioning of the building. Nor is the test whether the land and the building together formed one part of an operational unit or whether they fell within a single enclosure. The expression ‘part and parcel’ was figurative and meant that a reference to the building would be *understood to include, or extend to*, that other land. It was also noted that another Court of Appeal decision in *Attorney General ex rel Attorney General ex rel Sutcliffe v Calderdale MBC* (1983) 46 P & CR 399 (a case doubted by Martin Goodall in his blog post) had not applied any different test and did not treat *Methuen-Campbell* as distinguishable. Similarly, although the House of Lords in *Debenhams Plc v Westminster City Council* [1987] AC 396, [1986] 12 WLUK 44 did not accept the width of the reasoning in *Calderdale*, it did not suggest that *Calderdale* was laying down some special test for curtilage or giving it an extended meaning in the listed building context.

18. It is important to focus on whether it is a specific building or something else, such as an institution, whose curtilage had to be ascertained. Just as it would be inadvisable to try and define ‘curtilage’, there were obvious dangers in attempting to be too prescriptive about what factors were relevant to determining the curtilage in a given case, or in trying to create an exhaustive list.
19. The authorities illustrated different applications of the same test to the facts and circumstances of specific cases and the curtilage in a given case was a question of fact and degree. It was noted that the approach in *Methuen-Campbell* had been adopted and followed in all the different statutory contexts in which the concept of ‘curtilage’ had been considered, albeit perhaps with a slightly greater degree of latitude in *Calderdale*. The Court followed *Methuen-Campbell* and *Debenhams* and applied *Calderdale*, *Barwick v Kent CC* (1992) 24 HLR 341, *Dyer v Dorset CC* [1989] Q.B. 346, *Skerritts of Nottingham Ltd v Secretary of State for the Environment, Transport and the Regions (No.1)* [2001] Q.B. 59 and *Challenge Fencing Ltd v Secretary of State for Housing, Communities and Local Government* [2019] EWHC 553 (Admin). This case has therefore done much to settle the law in this area.
20. In this case, the main phase of garden development at Thornbridge Hall took place between 1896 and 1929, when George Marples commissioned significant alterations to the Hall and grounds, introducing numerous garden features. He also created the surrounding parkland from farmland, with the large scale planting of mature trees, 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. Both the gardens and the parkland form the curtilage of the Hall. The fences, gates and stiles have therefore been placed within the curtilage of the Hall and are not permitted development and thus constitute a breach of planning control.

The ground (f) appeal:

21. Whilst the Appellant argues that the harm resulting from the breach of planning control could be remedied by ‘lesser steps’ than the requirements of the enforcement notice, such as granting a temporary permission for the café building and the undertaking of remedial work the large bunds, in the Authority’s view the steps required in the notice are consistent with the purpose of remedying the breach of planning control and the injury that it has caused, and are not excessive. The lesser steps referred to by the Appellant would not remedy the breach and in any event are relevant instead to the ground (a) appeal.

The ground (g) appeal:

22. The Appellant notably does not suggest what period of time *would* be reasonable, simply objecting to the 6 months specified in the enforcement notice. Given that the unauthorised works appeared in only 2 months, it is considered reasonable to require their removal within six. It is not accepted that the works could not from a practical point of view be removed within that time.

The ground (a) appeal:

23. Planning permission for the works, even with the proposed mitigation, should not be granted. There are clear and substantial reasons why the unauthorised developments are in conflict with relevant national and local policy, as explained by Andrew Cook.

24. The heritage harm to the assets within the Site has been correctly judged, as explained by Deborah Evans and Anna Badcock, to be at the highest end of the range of ‘less than substantial’ harm. The Gardens Trust and Historic England- the Government’s expert adviser on English heritage- concur. The public benefits on which the Appellant seeks to rely do not begin to outweigh that harm and in any event should be given little weight in the overall planning balance.

25. Neither is the significance of the extensive heritage assets sustained by the unauthorised development; on the contrary very significant harm has been caused to them. The very significant harm is set out in detail by Ms. Evans and Ms. Badcock and is not repeated here, but will be revisited in the Authority's closing arguments.
26. Neither does the Authority accept that the unauthorised developments are necessary to secure the 'optimum viable use' of the heritage assets in support of their longterm conservation; the property was used for many years for income-generating uses (there was a café with outdoor seating and weddings and events took place).
27. The Conservation Management Plan that is now proposed as a public benefit to be weighed against the harm that has been caused could have been undertaken at any time, rather than in an attempt to justify the unauthorised development. Had the Plan been developed in *advance* of development as the Authority would have expected, its contents could have helped inform the works. It is entirely inappropriate that a Conservation Management Plan is proposed only as a condition of permission; as Anna Badcock explains, such a document should be produced well *before* any designs for new development are even drawn up, so that areas of significance and sensitivity can be identified as well as areas where potential change could possibly be accommodated on a site.
28. All of the 'community benefits' relied on could be provided or achieved regardless of the unauthorised development and so should not be given any significant weight. In particular, the parkland walk and succession tree planting are independent of the unauthorised development and could be undertaken anyway.
29. The new parkland driveway is exceptionally poorly constructed and introduces a poorly engineered structure into a previously undeveloped area of the landscape. Regular vehicle movements have been introduced into an area of the park where none have been experienced, diminishing the pastoral quality of the landscape. Crude in its design and execution, the new unauthorised driveway strongly contrasts with the narrower, smoother and superior engineering of the historic drive which *does* contribute to the overall high design quality realised by Marples. As Deborah Evans points out, it also infers inferior status, being used by general visitors and servicing

rather than the higher income generating clients who will continue to use the historic driveway.

30. The bund next to the drive is not planted and apparently not stabilised, and its levels are not consistent so that it dips and rises along its length. The drainage is inadequate, causing water to stand on or flow across the carriageway and surrounding land. The poor construction of the bund has combined with the effects of the weather to result in erosion along its crest and east face. Whilst the intention may have been to screen views of the now regular vehicle movements along the unconsented drive and reduce the impact of the drive upon the landscape, the result is the opposite; it draws attention and its height is in any case insufficient to hide the view of the cars. Whereas views of the A6020 were historically minimised by the park wall and woodland belts, the new unconsented drive brings traffic into the park and the continuous noise and movement during opening hours severely compromises Marples' achievements. The effect will be magnified in winter when the drive will effectively be experienced as a parallel road to the A6020 above it.
31. The utilitarian agricultural post and wire beside the new drive further emphasises the intervention of the drive into the park. The modern metal field gates in turn accentuate the utilitarian character of the fencing, and the colourful signage along the way introduces clutter and confusion into a landscape that was previously clearly expressed and orientated by good design. It further detracts from the elegant and pastoral character of the landscape and of the historic drive.
32. Driveway 'B' is assessed to impinge upon the Root Protection Areas of trees and is a direct physical intervention into the fabric and character of the RPG. The removal of planting (trees and shrubs) to facilitate this drive breaches what was previously an intact garden boundary and permanently changes the relationship between the park and the garden.
33. The car park is large and steep, again with inadequate drainage, and enclosed by very substantial soil bunds which again are not planted and do not appear to be stabilised. The car park does not complement the surrounding landform and the scale and form of the bunds is alien within the landscape; there are no historic bunds within the park.

On the contrary, great effort was made at the end of the 19th Century to create smooth and naturalistic forms.

34. The robustly utilitarian café building lacks any sense of context or relationship with other elements of the site; its character and immediate environment is confused and at odds with the coherent design of the house, gardens and park. It is detached from, and distracts from, the site it seeks to serve, and overall it compromises the character and significance of the RPG.
35. Clearly, the Appellant has been forced to accept that the unauthorised development is harmful. However, the proposed mitigation and remediation proposals do not reduce the harm caused but would continue to draw attention to the negative effects of the unauthorised works.
36. The Authority is also concerned about the fact that the works were carried out without first conducting ecological assessments or surveys (such that the opportunity to obtain information about the special interests of the Site and provide for the mitigation of any harm thereto has already been lost) and that the inadequacy of the tree survey means that the ecological impacts cannot be fully assessed. The impact of the new driveway on the wood pasture and parkland priority habitat has not been fully assessed.
37. Similarly the archaeological resource was not adequately assessed by the Appellant. The nature of any below-ground archaeological interest was not established through evaluation groundworks, or non-intrusive prospecting techniques such as geophysical survey. At least one known feature of archaeological interest has been impacted and likely destroyed. Anna Badcock and Tony Hanna, for the Appellant, agree that the unauthorised development has removed, truncated or damaged buried archaeological deposits to some degree. To what degree, it is not possible to be certain because the Appellant did not afford the opportunity to examine the area through controlled archaeological evaluation and nor are there any records of construction depth.
38. Trees are an important part of the overall design at Thornbridge Hall, creating a sense of seclusion and providing privacy as well as emphasising the parkland boundary. In

Dr Felicity Stout's view, the unauthorised works have involved significant groundworks which has resulted in the disturbance of and, most likely, damage to the rooting areas of up to 6 open-grown, mature trees and up to 10 mature woodland trees, as well as likely damage to the rooting area of up to 40 woodland trees and possible damage to 3 mature and semi-mature individual trees. This can negatively affect the structural integrity of the trees as well as have a significant negative impact on their physiological health and condition and their longterm prospects, reducing their lifespan and potential retention span, or cause root death and ultimately the death of the tree. In short the unauthorised development has not respected, conserved or enhanced trees and woodland cover on the Site, and has caused damage to a valued characteristic of the Site. It has not conserved the natural beauty of trees and woodlands on the Site as landscape assets but has put those features at risk of damage and a shortened life expectancy. They were not protected during the course of construction.

Conclusion

39. These hastily and poorly constructed works go against Marples' vision and challenge the integrity of the original intent: beauty and tranquillity. The fact for example that it is intended to screen the large and unfeasibly steep car park does not mean that it is not there, simply that one will see the screen. The same applies to the badly constructed driveway which disrupts and fragments the parkland and the accompanying bunds which have threatened the topsoil.
40. As the Site now presents, with a car park and large café and the mushrooming of urbanising blue signs- evidence of commercialism and blatant disregard for local planning approval, ancestral lands, and English heritage, the communal good is clearly in a state of imbalance. This should not be allowed to stand. If this violation is not stopped, and reversed, then on its current trajectory (complete with games of plastic ducks in the foundation) Thornbridge Hall can take its place among so many important places in English heritage that are in danger of degradation and loss. There can be no greater, nor clearer, commands than those given by the former owners of these rare, restful grounds: this valued expanse of lands should only be used in true stewardship for the betterment of all- for generations.

41. In due course therefore, the inspector will be respectfully requested to dismiss this appeal on all grounds.

Kate Olley
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11th October 2022