

Committee Report

Item No: 1

Reference: DC/18/00929

Case Officer: John Davies

Ward: Bures St Mary.

Ward Member/s: Cllr Lee Parker.

RECOMMENDATION – REFUSE S73 APPLICATION

Description of Development

Application under Section 73 of the Town and Country Planning Act - Erection of 6 no. two-storey dwellings, following demolition of existing commercial buildings and hard standing, and construction of private access driveway (scheme to utilise existing vehicular access to public highway) - Variation of condition 2 of planning permission B/14/01103 as amplified by submission of covering letter from agent dated 26/3/18 and annotated Proposed Setting Out and Landscaping Plan (1471.21E) and Existing Site Survey Plan (1471.06) all received 26/3/18. As further amended in by submission of revised layout plan 1471/21F and additional cross-section plan 1471/22.

Location

The Slaughter House and Land Adjacent, Cuckoo Hill, Bures St Mary, Suffolk

Parish: Bures St Mary

Expiry Date: 28/04/2018

Application Type: FUW - Full App Without Compliance of Condition

Development Type: Minor Dwellings

Applicant: The Stemar Group Ltd

Agent: Mr John Jackson

PART ONE – REASON FOR REFERENCE TO COMMITTEE

The application is referred to committee for the following reason/s:

The Head of Economy considers the application to be of a controversial nature having regard to the planning reasoning expressed by the Parish Council; the extent and planning substance of comments received from third parties and the location, scale and nature of the application.

Details of Previous Committee / Resolutions and any member site visit

Planning permission for the original development was granted by Planning Committee at its meeting in February 2015.

A Member site visit took place on 23 May 2018.

PART TWO – APPLICATION BACKGROUND, POLICIES AND CONSULTATION SUMMARY

History

- B/11/01553/FUL – Planning permission refused for the erection of 6 no. dwellings with associated garages and bin store and private drive served by existing access (following demolition of existing commercial buildings and hard standing) -Refused on grounds of conflicts between residential use and garage use, lack of affordable housing and contribution to open space.
- B/11/01555/CAC – Conservation area consent granted for the demolition of buildings.
- B/86/00115/FUL – Planning permission granted for change of use of buildings to form 7 industrial starter units, construction of parking areas and ground water storage tanks.
- B/84/00537/FUL –Planning permission refused for the erection of three two-storey dwellings, garages and access
- B/80/00975/FUL – Planning permission granted for alterations and extension to slaughterhouse

Planning permission was granted on 13 February 2015 under reference B/14/01103 for the erection of 6 no. two-storey dwellings, following demolition of existing commercial buildings and hard standing, and construction of private access driveway (scheme to utilise existing vehicular access to public highway). The Applicant was R. Matthews and the agent was David Butt Associates Ltd. It was approved at a Planning Committee meeting on 11/2/15.

The report to Planning Committee included the following table setting out details of each dwelling:

Plot No.	Dwelling Type	Max. Ridge Height	Max. Eaves Height	Max. Width	Max. Depth	Garage
1	2 bedroom Semi-detached	8.5 Metres	5 Metres	4.7 Metres	6.7 Metres	No
2	2 bedroom semi-detached	8.5 Metres	5 Metres	4.7 Metres	6.7 Metres	No
3	3 bedroom detached	8.5 Metres	5 Metres	*9.8 Metres	*8.6 Metres	Yes
4	3 bedroom detached	8.5 Metres	5 Metres	*12.9 Metres	*9.9 Metres	Yes
5	3 bedroom attached via garage	8.5 Metres	5 Metres	*9.8 Metres	*8.5 Metres	Yes
6	3 bedroom attached via garage	8.5 Metres	5 Metres	*9.8 Metres	*8.5 Metres	Yes

*Does not include attached garage.

The decision notice listed the following approved plans :

- Site levels drawing- 3368:24 (received 27 August 2014)- (This plan was entitled 'Sections thro' site existing and proposed')
- Site Location Plan -received 13 November 2014
- Plots 1 and 2 drawing 3368:22 - received 13 November 2014
- Plot 3 drawing 3368:21 Rev.B -received 2 January 2015
- Revised Site Layout Drawing- 3368:18 Rev.G received 27 January 2015
- Plot 4 drawing – 3368:20 Rev.A received 27 January 2015
- Plot 5 drawing – 3368:21 Rev.B received 27 January 2015
- Plot 6 drawing- 3368:21 Rev.A received 27 January 2015

It is relevant to note that the approved Site Layout Plan (3368:18 Rev.G) did not include any proposed ground or finished floor levels. The only drawing which showed levels was 3368:24 (existing and proposed site section).

The approval was subject to conditions covering the following matters:

Condition 1- Time limit; Condition 2- Approved plans listing; Condition 3- Facing materials to be agreed; Condition 4- Access design comply with plans; Condition 5- Access surfacing; Condition 6- Drainage onto highway; Condition 7- manoeuvring and parking of vehicles; Condition 8- parking provision; Condition 9- contamination; Condition 10- contamination; Condition 11- contamination; Condition 12- contamination; Condition 13- surface water management; Condition 14- archaeology.

Those conditions requiring submissions to be agreed by the LPA were approved as follows:

Condition 3- 15/12/17; Condition 6- 16/10/17; Condition 9 – 15/5/17 and 8/2/18; Condition 13- 16/10/17; Condition 14- 15/5/17.

In March 2017 (2/3/17) a Non Material Amendment application was submitted describing the proposal as 'Minor Changes to windows and internal layouts to conform to building regulations.' The application was submitted by Mr John Jackson of Architectural Design Associates on behalf of the Stemar Group.

The application was accompanied by 6 drawings as follows:

Proposed Site Plan/Proposed Landscaping Plan 1471.07

Plots 1 and 2 -Proposed Plans and Elevations- 1471.01

Plot 3- Proposed plans and Elevations- 1471.02

Plot 4- Proposed plans and Elevations- 1471.03

Plot 5- Proposed plans and Elevations- 1471.04

Plot 6- Proposed plans and Elevations- 1471.05

The application described in the decision letter as minor amendments to layout and design of dwellings previously approved.

The plans depict minor revisions to the layout of the site – to delete some of the landscaping to provide additional room for the parking and manoeuvring of vehicles; to add or reposition garden sheds for each of the plots; and, to change the bay windows of Plots 5 and 6 from the front elevation to a side elevation. The submitted Site Plan 1471.07 did not include any proposed ground or finished floor levels details.

The minor amendment application was approved by letter dated 12 May 2017.

Summary of Policies

BABERGH CORE STRATEGY 2014

CS01 - Applying the presumption in Favour of Sustainable Development in Babergh
CS02 - Settlement Pattern Policy
CS03 - Strategy for Growth and Development
CS11 - Core and Hinterland Villages
CS15 - Implementing Sustainable Development
CS18 - Mix and Types of Dwellings

BABERGH LOCAL PLAN (ALTERATION NO.2) 2006

CN01 - Design Standards
CN06 - Listed Buildings - Alteration/Ext/COU
CN08 - Development in/near conservation areas
CR04 - Special Landscape Areas
HS28 - Infilling/Groups of dwellings
TP15 - Parking Standards - New Development

SUPPLEMENTARY PLANNING DOCUMENTS

None relevant

List of other relevant legislation

- Human Rights Act 1998
- Town & Country Planning (Listed Buildings & Conservation Areas) Act 1990
- Natural Environment and Rural Communities (NERC) Act 2006 (any rural site)
- The Conservation of Habitats and Species Regulations 2010
- Localism Act
- Consideration has been given to the provisions of Section 17 of the Crime and Disorder Act, 1998, in the assessment of this application but the proposal does not raise any significant issues.

Details of Previous Committee / Resolutions and any member site visit

A Member site visit took place on 23 May 2018

Details of any Pre Application Advice

Officers advised the Applicant to apply for a material variation of the approved plans under S.73 but did not offer any view on whether such an application would be recommended for approval.

Consultations and Representations

During the course of the application Consultation and Representations from third parties have been received. These are summarised below.

A: Summary of Consultations

Bures St Mary Parish Council

Comments

"The Parish Council objected to this plan when the application was first made.

The development has an adverse effect on the residential amenity of neighbours and the failure to work to plan has added to the adverse impact by increasing the overlooking and loss of privacy.

The visual impact of the houses has increased through the levels of the development not being to the agreed plan. This is totally unacceptable and destroys the character of the neighbourhood which is one of low level mainly Victorian buildings. The development is overbearing and out-of-scale with the surroundings. All this is in a Conservation area adjacent to listed property White Horse House and close to Spout House, another listed property.

In addition to the increased impact of this development, issues have been raised which should be addressed by Babergh Planning Department and District Council as a matter of grave concern and urgency. The developer has provoked neighbours by claiming that planning for the site had been agreed many years prior to this application and that a payment had been made to allow the social housing element of the plan to be removed. Whilst it is understood that there is no evidence of these claims there is clear defamation of the name of Babergh District Council adding to a lack of confidence in the local authority planning department. Therefore the Parish Council is strongly opposed to this planning application."

Further Comments:

Further to Bures St. Mary Parish Council's comments of the 22nd March I submit the following survey to give additional weight to the Parish Council's objection to planning application DC/18/00929.

This survey has been undertaken by Randall Surveys LLP on behalf of residents whose properties are adjacent to the development site.

Ref : Height Survey of New Build Properties known as Apple Tree Mews

We have undertaken a precise remote survey of the adjacent properties. The level datum used has been tied in to the existing site levels as shown on Dwg. 3368.18 Rev E

We reference one further drawing

Dwg 3368.24 Sections thro Site existing and proposed submitted with original planning application B/14/01103

This drawing from the original planning application provides a direct level/height comparison between the new build (Plot 6) and White Horse House

The results of our survey observations are as follows.

Existing roof pitch level of White Horse House = 39.76m

Existing as-built level of roof pitch for Plot 6 = 42.36m

Existing as-built level of roof pitch for Plots 1 & 2 = 42.40m

Existing roof pitch of existing dwelling (Byron House) adjacent to Plots 1 & 2 = 39.77m

Dwg No. 3368.24 shows the Roof pitch of Plot 6 in relation to the roof pitch of White Horse House.

Plot 6 roof pitch is 2.60m higher than the roof pitch of White Horse House.

This conflicts with the information shown on Dwg No. 3368.24.

The Parish Council trusts that this survey will be given full consideration when the planning application DC/18/00929 is determined."

"The Parish Council considers that the latest information is still materially and substantially inaccurate and misleading. The applicant has failed in its response to the agenda items raised by Babergh District Council Planning Committee members at the recent Cuckoo Hill site meeting of 23rd May. The Agent's submitted drawings for re-consultation are considered a possible misrepresentation or incompetence at best. We list our findings of inaccuracies against the 7 agenda items of the site meeting held at Cuckoo Hill.

1. Clarification of proposed boundary works – the drawings misleadingly show a separate boundary between White Horse House and Plot 6 where there is none. Part of the wall of White Horse House is the boundary between this property and the development and it is currently being used as a retaining wall with the increased ground level of hard core and soil against it. The garden gate of White Horse House is not shown on the drawings. Drawing a gap between White Horse House and the boundary and failing to show the garden gate to the access road is misleading and serves to diminish the actual effect of this new development on the Grade II listed property.
2. Clarity of 'step' – this has not been addressed. Photographs previously taken by Alan Beales and submitted by Mrs Clare Frewin show that the levels have been built up. This was not permitted under the planning permission. With the increased ground level a new party retaining wall needs to run the full length of the south boundary to be fully effective.
3. Provide N-S section through White Horse House and Plots 6 and 3 - the size and height of Plot 6 and 3 as shown on the drawings do not reflect a correct representation of size and height of the buildings. White Horse House is a smaller lower building than the house on plot 6. The drawing is deceptive.
4. Provide N-S and W-E sections through Byron House and Plots 1 and 2 – the new drawings show steps leading up to Plots 1 and 2 which were not shown on the original drawings. The existence of steps on the drawings now gives clarity to all previous concerns that the house levels have been raised. St Edmunds Lane is inaccurately shown on the drawings in relation to Byron House.
5. Measures to address overlooking concerns – the laurel hedging will not address this owing to the excessive heights of the houses.
6. Clarity that on-site surface water drainage measures implemented – although the Agent has confirmed in his statement that measures have been implemented, the Parish Council has grave concerns regarding on site water drainage at Cuckoo Hill.
7. Future timetable – The schedule of works has not been provided to the neighbouring properties either in the past or since the site meeting.

We also include a further letter from Randall Surveys LLP outlining their recent height survey of the new build properties and the adjacent properties. We trust that this and all previous objections will be given full consideration when planning application DC/18/00929 is determined."

Extract from Randall Survey letter:

"Dwg 3368.24 – Sections thro' Site existing and proposed submitted with original planning application B/14/01103

Dwg No. 1471.22 – Proposed Site Sections submitted with planning application DC/18/00929

DWG 3368.24 from the original planning application provides a direct level/height comparison between the new build (Plot 6) and White Horse House as does Dwg No 1471.22

The results of our survey observations are as follows.

Existing roof pitch level of White Horse House = 39.76m

Existing as-built level of roof pitch for Plot 6 = 42.36m

Existing as-built level of roof pitch for Plots 1 & 2 = 42.40m

Existing roof pitch of existing dwelling (Byron House) adjacent to Plots 1 & 2 = 39.77m

Dwg No. 3368.24 shows the Roof pitch of Plot 6 in relation to the roof pitch of White Horse House.

Dwg No. 1471.22 shows the Roof pitch of Plot 6 in relation to the roof pitch of White Horse House.

Plot 6 roof pitch is 2.60m higher than the roof pitch of White Horse House.

This conflicts with the information shown on Dwg No. 3368.24 and on the most recently submitted drawing Dwg No.1471.22”

Heritage Team

“The scheme was approved under reference B/14/01103 with very scant Heritage Team comments, in support of the proposals. However, I am concerned that the scheme is an overdevelopment of the site, and seriously imposes upon the setting of White Horse House, on Cuckoo Hill and compromises the character and appearance of this part of the Conservation Area - primarily because of the increase in land levels across the site, west to east, and from south to north, from Cuckoo Hill to the northern edge of the site. Therefore, the apparent increase in ridge height amplifies the inappropriately scaled development, to the further detriment of this part of the Conservation Area, and the setting of the House, which has been severely damaged by this scheme. Anything that amplifies the scale and bulk of these properties, particularly that on plot 6, only serves to diminish the setting, and therefore the significance, of White Horse House, contrary to the requirements of the P(LBCA)A1990 and the policies within both the NPPF and the Local Plan. The Heritage Team therefore objects to the apparent increase in height of the property at plot no.6.”

The Heritage team further clarified their position on the 12/6/18 stating that the scale of the development causes a high level of ‘**less than substantial**’ harm. In regard to the NPPF, **less than substantial** harm is a very high bar. Such developments are notably harmful to the significance of a property, and this harm must be weighed against any public benefit – which in this instance is the increase in the height of the ridge of the property.

SCC - Highways

The Highway Authority has no objection to the variation of Condition 2 as the change of drawing does not have any highway impact.

Natural England

Natural England currently has no comment to make on the variation of condition 2.

SCC - Archaeological Service

No response.

Suffolk Wildlife Trust

No response.

Environmental Health - Land Contamination

No objection raised from perspective of land contamination.

Historic England

On the basis of the information available to date, we do not wish to offer any comments. We suggest that you seek the views of your specialist conservation and archaeological advisers, as relevant.

B: Representations

The following comments were received in objection to the original application:

- Houses as built are not in accordance with the approved plans (exceeded by 8 feet) and have an adverse impact on privacy of neighbours in Cuckoo Hill.
 - The case should be referred to Planning Committee as they took the original decision and not delegated powers.
 - Developers should not be allowed to benefit from their actions and houses should be lowered in height.
 - Houses are too tall for the site and ruins the SLA and Conservation Area.
 - Loss of part of hedge along St Edmunds Lane
 - Adverse impact on Grade 2 listed building should be protected
 - How were developers allowed to get away with this breach of planning permission?
 - Enforcement action should be taken against the increase in height. Increase is greater than in case where enforcement action was taken in East Bergholt and therefore in interest of consistency action must be taken
 - There should be a Members' visit to see the site before any decision
 - Increase in heights in excess of 1 metre are completely out of character and dominate the surrounding homes
 - Harm to a country land (St Edmunds Terrace) and conservation area due to loss of hedge and increase in height of dwelling.
 - Development dwarfs the surrounding houses including listed buildings and in the conservation area due to developer not excavating the site properly for financial gain.
 - Loss of affordable housing in the scheme- needed in the village.
 - Development should be enforced to comply with the approved scheme.
 - S.73 application is not appropriate where fundamental changes are made to a permission.
 - Submitted plans do not provide amended levels nor accurately represent the development as it presently stands.
 - Address of the site is incorrect.
 - Development causes harm to setting of Grade II listed building, the conservation area and SLA.
 - Plot 6 in particular looms over White Horse House and is both overbearing and over-powering and is also sited too close.
 - Countryside views from top of Cuckoo Hill are blighted by new roofs and houses and style of new building is not in keeping or harmony with surrounding properties.
 - Why is there no social housing provided in the scheme?
 - There are highway concerns about the safety of the access in Cuckoo Hill.
 - Construction on site has caused considerable disruption to residents as a result of contractors' vehicles constructing driveways and parking on verges, generating litter in the street, abusive behaviour, working on Saturdays and Sundays .
 - Site is in an elevated position and any increase in height affects listed building and character of the conservation area.
 - Why have there not been any checks on the build to avoid this situation?
 - Dwellings stand out from other properties around them and ruin this area of the village
 - White Horse House (Formerly the Old White Horse pub) has a modern roof looking over its roof top
 - None of the former buildings on the site were as large as these houses
 - Style and size of these properties are completely out of character with surrounding area and take no account of existing buildings, parking and traffic.
 - Developer should not be allowed to get away with these changes to the approved plans
 - Why were footings 2 metres higher than approved plans allowed to be laid?
 - Application under s.73 should not be allowed to be considered as Applicant seeks to change the layout of the development and the site levels.
 - If this development is allowed other developers will also 'flout' the rules.
 - Development is 2 metres higher than the accepted plans and therefore the houses dominate the neighbouring properties.
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- Development is too high and affects view from my house (Old Manse, High Street).
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Further notifications were carried out in response to the revised /additional plans received in June 2018 and the following comments were received:

- Increase of approximately a metre in height as described in Applicant's letter is not acceptable to describe an increase of 1260mm
 - Reference to Byron House being in the wrong place does not excuse the misleading impression those drawings gave
 - Planning Committee should take a hard line on this
 - The developer made a big mistake in how the development was laid out and Council should have acted faster to stop it
 - Laurel hedge planting could be removed, may not stop overlooking and roots could damage walls
 - Correct amount of soil and rubble should have been removed in first place to create the correct levels
 - Houses behind White Horse House and 7 Cuckoo Hill built higher than original ground level
 - Laurel hedge as proposed will not provide privacy
 - Houses are not in keeping with the village
 - Ongoing problem of unfinished, partly demolished former Slaughter house building walls on southern boundary.
 - Development of Plots 1 and 2 remain incorrectly sited in relation to Byron House
 - Proposed section drawing between Plot 6 and White Horse House is misleading in showing similar ridge heights
 - Laurel hedge will not mitigate overlooking of White Hall House which is overlooked by 8 windows
 - Need for a retaining wall along southern boundary wall as old building walls have been compromised and could collapse
 - White Horse House side gate not shown on plans
 - The end wall of White Horse House is being used without permission as the site boundary and has been damaged during the works on site, sections of brick have been removed.
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PART THREE – ASSESSMENT OF APPLICATION

1. The Site and Surroundings

- 1.1. The site is that of a former animal slaughter house on the edge of the village of Bures St Mary. It is 0.24 hectares in size and formerly contained a number of commercial buildings, which prior to demolition were last in Class B1 commercial use (light industrial). The bulk of the site is set back from and served by an access road onto Cuckoo Hill. The site is positioned behind existing frontage residential buildings onto Cuckoo Hill namely White Horse House and 6 and 7 Cuckoo Hill. The eastern boundary adjoins land forming part of the curtilage of 8 Cuckoo Hill. The site backs onto St Edmunds Lane and adjoins in the north-west corner a two storey dwelling known as Byron House. Adjoining the access road to the west of the site and fronting Cuckoo Hill is Pilgrims Garage, which is a car repair business.
 - 1.2 Land levels rise northward across the site from Cuckoo Hill such that the application site is on a higher level than the frontage buildings. Ground levels also rise across the site from west to east.
 - 1.3 Vehicular and pedestrian access is taken via a private access road located in-between Pilgrim's Garage and White Horse House. The site backs onto St Edmunds Lane, but is banked up from it and site levels rise steeply to a height of approximately 2.5 metres above road level and there is no direct means of access from this side.
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- 1.4 The site is situated within the Built Up Area Boundary (BUAB) of Bures St Mary, a Core Village as defined in the Babergh Local Plan 2011-2031, Core Strategy & Policies (2014).
- 1.5 The entire site and its surrounds are situated within the Bures St Mary Conservation Area. White Horse House is a Grade II listed building. The front portion of the site (including the access and land immediately to the rear of neighbouring dwellings fronting the road) is also within a designated site of archaeological interest.
- 1.6 The site (and the Village as a whole) is situated within a Special Landscape Area (SLA).
- 1.7 The approval of 6 dwellings commenced on site in late 2017 and works have continued to a position where all the dwellings have been constructed to roof level and are being fitted out internally. The dwellings closest to Cuckoo Hill are Plots 6 and 5, whose frontages face northwards into the site and whose rear elevations face White Horse House and 6/7 Cuckoo Hill respectively. Plots 1/2 are a semi-detached pair in the north-west corner of the site adjacent to Byron House. Plot 3 is a detached dwelling facing south next to plots 1/2 which is in turn next to Plot 4 in the north-east corner of the site.

2. The Proposal

- 2.1 The submitted application under S.73 is for a minor material amendment and was given reference DC/18/00929. The application form was accompanied by a plan entitled 'Proposed Setting Out and Landscaping Plan' and numbered 1471.21E. The applicant sought approval to substitute drawing number 3368.24 (approved under B/14/01103) by a new drawing numbered 1471.21E.
 - 2.2 The Application seeks approval for a minor material amendment relating to site levels. Planning Practice Guidance advises there is no statutory definition of a material minor amendment, but states that it is likely to include an amendment where its scale and /or nature results in a development which is not substantially different from the one which has been approved. It is therefore a matter of planning judgment to assess the differences between the scheme as built and what was expected to have been built based on the approved plans.
 - 2.3 The variation in the approved plans relates to the site levels on which the development has been constructed. However, it should be noted that the Section 73 application relates to the entirety of the development as under construction.
 - 2.4 On the 23/3/18 the agent submitted a covering letter and additional plans comprising:
 - o Updated Plan number 1471.21E marked up with additional information showing the existing floor levels, proposed ground levels and finished ground floor levels of the properties under construction.
 - o A copy of an existing levels survey plan from which 'existing' spot levels were taken. (This plan was originally produced by David Butt Associates Ltd and numbered 430-01 dated July 2003. It was re-numbered by John Jackson as 1471.06 and titled 'Existing Site Survey Plan'. This plan was not listed as part of the approved drawings on the decision notice of 20.2.2015, but was a submitted plan at the time as it is on the website.
 - 2.5 In May 2018 the Applicant submitted a covering letter and site plan (reference 1471.21F) stating that the applicant had commissioned a full site survey by J Taylor Site Surveying Ltd to cross check the permitted finished floor levels, as against the built floor levels and the existing ground levels of the site as set out in the following table.
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Plot Number	Existing Floor Levels	Finished Floor Levels App Ref: 18/00929 Dwg 1471.21F (surveyed)	Height to Eaves soffit from FFL (surveyed)	Height to Ridge from FFL (Surveyed)
Plot 1	34.06	33.907 (7mm high)	4783mm	8444mm
Plot 2	34.21	33.907 (7mm high)	4783mm	8444mm
Plot 3	34.10	34.490 (10mm low)	4728mm	8412mm
Plot 4	34.38	35.094 (6mm low)	4765mm	8433mm
Plot 5	34.18	34.499 (1mm low)	4737mm	8441mm
Plot 6	32.65 - 32.99	33.909 (9mm high)	4733mm	8452mm

2.6 The letter concluded as follows:

“It is demonstrated by the site survey and drawing attached for approval that there are very minor variations in finished floor levels from the permitted scheme and now sought to be regularised in this s73 application. The millimeter variations are unlikely to be discernible to the eye and will have no material impact on adjacent residential amenity as already permitted by planning permission B/14/01103. The final storey heights correspond with the permitted drawings of the same permission.”

2.7 In June 2018 the Applicant submitted a letter enclosing a revised site plan (1471.21F) which showed details of boundary works to the southern boundary comprising retained boundary walls and new 1.8m fences, proposed planting in the form of a 2.6m high laurel screen hedge in the gardens of Plots 5 and 6, clarifying stepped entrances and re-positioning Byron House on the site plan. An additional Proposed Site Sections plan was also submitted (ref.1471.22) showing three site sections one of which supersedes the approved site section drawing 3368.24. The letter also included a table as follows setting out for each plot differences in ground levels, permitted and surveyed ridge heights:

House Number	Permitted House Levels – Indicative Drwgs 3368.24G and 3368.24	Surveyed House Levels – Actual May 2018	Difference	Permitted Ridge Heights NMA Drwgs 1471.01-1471.07	Surveyed Ridge Heights May 2018
Plots 1 and 2	Not shown	33.907		8.5m	8444mm
Plot 3	33.40	34.490	+1.09m	8.5m	8412mm
Plot 4	Not shown	35.094		8.5m	8433mm
Plot 5	34.15	34.499	+0.349	8.5m	8441mm
Plot 6	32.65- 32.99	33.909	+0.919-1.26m	8.5m	8452mm

The covering letter states that the survey establishes that all house heights (to ridge) are within millimetres less than the height of the permitted dwellings. The plots are erected in the approved locations. The final house levels are at most approximately a metre higher than indicated on pre-survey drawings but are appropriate to the context of the development, the hillside location, the technical drainage requirements for a sloping site and adjacent residential properties.” The letter also points out that the developer constructing the approved development was not responsible for the original approved scheme drawings which included some inaccuracies.

- 2.8 In early June the Enforcement Team commissioned Survey Solutions to carry out a full measured survey of the site including measurements of current ground levels, building ridge heights, distances between houses and to boundaries. At the same time Enforcement Officers carried out further surveys of building heights and separation distances. The report setting out the results and conclusions of these surveys is appended to this report.
- 2.9 This report reviews the plans submitted by the Applicant for the current application in relation to the approved plans (the 2014 approved plans and the 2017 non-material amendment and summarises the results of the recent surveys carried out by external surveyors on behalf of the Council and the results of Enforcement Officers' surveys. These are referred to hereafter collectively as the 'BDC Survey'. It is acknowledged that the layout plan referred to in the report 1471/21F has been superseded by Revision G, however the levels data on both plans is the same. This report will then go on to look at the implications of those results particularly with regard to their impact on matters notably the character and appearance of the surrounding area, the setting of the listed building and on the Conservation Area, together with impacts on the residential amenity of neighbours.

3. Assessment of Amendments to Approved Plans

Assessment of Ground Levels

- 3.1 The BDC Survey found that levels within the site access are consistent with the 2003 survey indicating that those areas of the site which have not changed in the period between the surveys have been measured as having the same levels now as previously, which gives confidence that the baseline datum point is consistent across both surveys and that both sets of measurements are equally reliable.
- 3.2 Comparisons of levels in 2003 (when the buildings were still in place) and now show that there has been some 'cut and fill' to make the site more level than it was previously. The Report's view is that the 'cut' has been taken from the north- western area of the site – the location of Plots 1 and 2, as well as Plot 3 – with the 'fill' being in and around the location of Plots 4 and 6. There may also be some 'fill' in and around the location of Plot 5 but it is not possible to be conclusive due to the absence of useable data on the 2003 survey for the area which were at the time occupied by buildings.

Site Sections Drawing 3386/24

- 3.3 The 'site sections' drawing submitted with and approved under the 2014 planning application showed a section north-south through the site and the 'Proposed' section showed White Horse House together with Plots 6 and 3. It indicated that ground levels were to be raised slightly to the south of Plot 6 (by 170mm, from 32.75m to 32.92m) and lowered slightly to the north of Plot 6 (by 70mm, from 32.99m to 32.92m), and lowered significantly for the area of Plot 3 (by 700mm, from 34.10m to 33.40m).
- 3.4 Comparison of the spot heights on the 2014 'site sections' drawing with appropriate spot heights on the BDC survey indicates levels for Plot 3 have been lowered by between 80mm (from 34.09 down to 34.01) and 510mm (from 34.10 down to 33.59), whereas levels for Plot 6 have been increased by approximately 470mm (from 32.99 up to 33.46) at the front (north) elevation and approximately 630mm (from 32.75 up to 33.38) at the rear (south) elevation.
- 3.5 The indication on the site sections drawing was to level the gradient on site for the areas to be occupied by Plot 6 and Plot 3, and for the levelling works to marginally raise ground levels for the area to be occupied by Plot 6 and provide a reduction in ground levels for the area to be occupied by Plot 3.
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The BDC survey shows that ground levels for the area occupied by Plot 3 have actually been lowered by *less* than indicated on the site sections plan, whilst the ground levels for the area occupied by Plot 6 have actually been *raised* significantly instead of marginally.

3.6 Summary of Findings on Ground Levels:

- The approved 2014 plans indicated ground levels would be significantly reduced for the area of Plot 3 and marginally increased across the area of Plot 6. Proposals in the current application are to retain existing ground levels at the front of Plot 3 and marginally increase levels at the rear, whilst reducing levels marginally to the rear of Plot 6 and retaining them at the front – essentially, to build on the site without any significant adjustment to the ground levels.
- The layout drawing submitted with the current application proposes different ground levels to those on the 2014 site sections drawing – such that Plot 3 would be built at levels up to 1.2m above those proposed on the 2014 plan, and Plot 6 would be constructed on ground levels 0.3m lower at the rear and up to 0.4m higher at the front.
- The BDC survey confirms that the proposed ground levels for Plot 3 – depicted on Dwg. Ref. 1471.21F – have been achieved on site, but those proposed for Plot 6 have not – the building being on ground levels between 410mm and 650mm higher than indicated on the current (proposed) layout plan.
- Concerns raised by local residents in relation to levels at the southern boundary are not substantiated by the survey – the indication being that levels are lower (albeit, marginally) than before the site was redeveloped, though it should be noted that there are limited comparable reference points due to the absence of data on the 2003 survey (due to presence of buildings).

Building Dimensions

- 3.7 The approved scheme included a site sections drawing 3368/24 and the ‘Proposed’ section through the site showed White Horse House at a ridge height of 7.64m and the ridges of Plots 6 and 3 at 7.24m and 7.09m respectively. In contrast, the submitted elevation drawings for these plots showed the ridge heights at 8.57m and 8.68m, which were 1.33m and 1.59m higher than the section drawing for each plot. The ridge heights shown on the plans the subject of the 2017 NMA application were consistent with the approved elevation plans. It can be concluded that the ‘proposed’ section drawing submitted with the 2014 application was inaccurate and misleading in its representation of the heights of Plots 3 and 6 of the proposed development.
- 3.8 The BDC survey measured the ridge and eaves heights of all the units and compared them with the approved NMA drawings and found that the dwellings, as built on site, are higher to the ridge than indicated on the drawings approved under the 2017 NMA application by between 190mm (Plot 1) and 440mm (Plot 4). There were also differences in eaves heights of between 470mm and 650mm.
- 3.9 The above results were based on measurements from ground to ridge level. However, it is normal practice to measure heights from a fixed dpc level normally 150mm above the ground which is normally more reliable. Such measurements were taken on site by Enforcement Officers and the Report made adjustments to the surveyed measurements and the Officers measurements to check their consistency. The results confirmed that the measurements were broadly comparable and an accurate assessment of the heights of the buildings as built.
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- 3.10 These measurements show up significant differences in levels with the site sections drawing . The difference between the height of Plot 6 indicated on the proposed sections drawing and the height of the dwelling as measured by the survey is 1.64m, whilst the difference between the height of Plot 3 indicated on the proposed sections drawing and the height of the dwelling as measured by the survey is 1.95m. The conclusion to be drawn from this additional analysis must be that the sections drawing is highly inaccurate and, as a result, the dwellings now appear to be over 1.5 metres taller than was indicated on the 'proposed' site sections drawing submitted in 2014.

Independent survey commissioned by local residents and the Parish Council

- 3.11 Surveyors contracted by residents neighbouring the development have analysed levels data from the 2003 survey submitted with the 2014 application, and building heights as indicated on the site sections drawing accompanying the 2014 application. The analysis focusses on the height of Plot 6 relative to White Horse House and indicates that the roof ridge of Plot 6 is 2.60 m higher than the ridge of White Horse House and the roof ridge of Plots 1 and 2 is 2.63m above the ridge of Byron House.
- 3.12 The survey commissioned by the Council also included readings of the ridge heights of both White Horse House and Byron House. Analysis of the survey results in respect of these neighbouring dwellings showed that the ridge heights of Plot 6 and Plots 1 and 2 were 2.61m and 2.61 m higher than White Horse House and Byron House respectively. The Council's survey therefore concurs with that of the residents.
- 3.13 As detailed earlier, measurements scaled off the site sections drawing indicate White Horse House as being between 7.49m and 7.64m in height (existing section and proposed section respectively). Measurements of Plot 6 scaled off the proposed site sections drawing provide a ridge level of 7.24m. With the rise in ground levels within the site, the indication from the site sections drawing is that the ridges of White Horse House and Plot 6 would be approximately equal in height. However, elevations drawings submitted with the 2014 application – accompanying the site sections drawing – show the dimensions of Plot 6 to be 8.57m to the ridge, 1.33m taller than shown on the site sections drawing.
- 3.14 Data from the survey commissioned by the Council indicates the height of White Horse House, from ground level to ridge, to be 7.41m, whilst the height from ground level to ridge of Plot 6 is 9.58m – a difference of 2.17m. The difference between the ground levels for White Horse House and those for Plot 6 (0.44m) brings the difference between ridges up to the 2.6m suggested by the survey commissioned by the residents.

Summary of Findings on Dimensions:

- The 'proposed' section drawing submitted with the 2014 application was inaccurate and, importantly, misleading in its representation of the heights of Plots 3 and 6 of the proposed development. The elevations drawings submitted with the 2014 application showed the ridge heights of the dwellings to be over 8.5 metres, whilst the sections drawing showed the ridge for Plot 3 to be around 7.1 metres and the ridge for Plot 6 to be approx. 7.24 metres.
 - The BDC survey concurs with the residents' survey that Plot 6 is 2.6m higher than White Horse House, but taking account of differences in ground level between the sites the actual difference is 2.17m
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- The BDC survey shows floor levels of the dwellings are accurate (max. +30mm) compared to the indication on Dwg. 1471.21F – the only exception is Plot 3, where the floor level is approx. 220mm lower than indicated on the plan.
- Ground levels are shown by the Council's survey to be mostly accurate (max. +/-80mm) compared to the indication on Dwg. 1471.21F – several exceptions exist in this case: Plot 3 ground levels are 230mm lower at the front of the building, and 270mm lower at the rear, than indicated on the drawing; Plot 4 ground levels are 340mm lower at the rear of the building than indicated on the drawing; and, ground levels for Plot 6 are 640mm higher at the front of the building, and 510mm higher at the rear, than shown on the drawing.
- From floor level to ridge, the Council's survey reveals the buildings to be between 40mm and 250mm lower in height than indicated by the elevations drawings submitted with the 2017 NMA application. However, the NMA drawings give no indication of DPC, so it is assumed they depict the dimensions of the buildings from ground level. In that case, the dwellings are between 190mm and 440mm higher than shown on the NMA plans.

Setting Out Dimensions of Layout

- 3.15 Officers have carried out a comparative assessment of the approved layout drawing (3368/18G) and the approved layout drawing when the NMA was determined in 2017 (1471/07). Anomalies in the positions of some buildings were identified which could not be explained by an increase in the size of the building and were put down to a reduction in the overall size of the site. It was concluded that, comparison of the layout plan submitted with the 2014 application and the drawing provided with the 2017 NMA application indicates a number of differences in terms of the position of the dwellings relative to the site boundaries. Where comparison can be made between the 2017 and 2018 layout plans (all measurements bar those to the northern boundary) the results are closely comparable.
- 3.16 The results show that the greatest differences in site dimensions are those with reference to the northern boundary. That being the case it may be that the position of the northern boundary on the 2017 drawing is closer to the southern boundary than on the original 2014 plan. That change means Plots 1 to 4 appear closer to the northern boundary, whilst also pushing their position closer to the southern boundary. In contrast, the position of Plot 6, relative to the southern boundary, remains consistent across both the 2014 and 2017 drawings.
- 3.17 The report now sets out a tabulated assessment of levels, dimensions and layout changes for each plot based on the submitted plans and documents and the BDC Survey.

Plot No. 1	
Existing ground level(s) on plot (2003 Survey)	34.06m
Proposed Ground Levels (s.73 Application)	33.60m (rear) and 33.50m (front)
BDC Survey of Ground Level(s) (Tables 1.1 and 1.2)	33.54m to 33.62m
Officer comment:	Surveyed ground levels on site are below former levels.
Approved levels (Drawing 3368/24) (If shown)	n/a

Proposed FFLs (s.73 Application)	33.90m
BDC Survey FFL (Table 2.6)	33.91m
Officer Comment:	FFL built on site accords with proposed plans
Ground to Ridge height from NMA approval plans (Table 2.5) (A)	8650mm
Ground to Ridge height from BDC Survey (Table 2.5) (B)	8840mm
Difference in height between (A) and (B)	+190mm
FFL to Ridge height (Applicant's survey)	8550mm
Applicant's ridge height above FFL + DPC (BDC Survey Table 2.6) (C)	8550mm+370mm= 8920mm above GL
Difference in height between (A) and (C)	+270mm
Officer comments:	The building has been constructed to a ridge height between 190 and 270mm above the approved elevation on the NMA approval.
Eaves height from NMA approval plans	4860mm
Eaves height above Ground Level (Table 2.5)	5330mm
Officer comment:	The eaves height is 470mm higher than the approved plan.
Setting Out Differences compared to S.73 Site Plan (Tables 3.5-3.8)	180mm and 460mm further from West boundary 130mm closer to south 380mm further from North boundary The south-west corner of the building is shown on Plan 1471.21G as 3.5m forward of the rear elevation of Byron House.
Officer comments:	The surveys indicate that Plot 1 has moved south but only by a margin of less than 1 metre. Byron House has been repositioned further north on its plot as it was deemed to be incorrectly sited on the approved plans. The impact of Plot 1 on Byron House will be assessed later in the report.

Plot No. 2	
Existing ground level(s) on plot (2003 Survey)	34.21m
Proposed Ground Levels (s.73 Application)	33.60m (rear) and 33.60m (front)
BDC Survey of Ground Level(s) (Tables 1.1 and 1.2)	33.43 to 34.21
Officer comment:	Surveyed ground levels on site are at/below former levels.
Approved levels (Drawing 3368/24) (If shown)	n/a

Proposed FFLs (s.73 Application)	33.90m
BDC Survey FFL (Table 2.6)	33.91m
Officer Comment:	FFL built on site accords with proposed plans
Ground to Ridge height from NMA approval plans (Table 2.5) (A)	8650mm
Ground to Ridge height from BDC Survey (Table 2.5) (B)	8920mm
Difference in height between (A) and (B)	+270mm
FFL to Ridge height (Applicant's survey)	8550mm
Applicant's ridge height above FFL + DPC (BDC Survey Table 2.6) (C)	8550mm+ 450mm=9000mm above GL
Difference in height between (A) and (C)	+350mm
Officer comments:	The survey suggests the building has been constructed to a ridge height between 270 and 350mm above the approved elevation on the NMA decision. However as Plot 2 is a semi-detached dwelling with the same ridge height as Plot 1 this is corrected to the same increase as Plot 1 i.e. an increase between 190 and 270mm.
Eaves height from NMA approval plans	4860mm
Eaves height above Ground Level (Table 2.5)	5420mm
Officer comment:	The eaves height is 560mm higher than the approved plan. This is corrected to 470mm higher given the same eaves line as Plot 1.
Setting Out Differences compared to S.73 Site Plan (Tables 3.5-3.8)	No significant differences identified.
Officer comments:	No comments

Plot No. 3	
Existing ground level(s) on plot (2003 Survey)	34.10m
Proposed Ground Levels (s.73 Application)	33.60 to 34.6m (front); 34.30 (rear)
BDC Survey of Ground Level(s) (Tables 1.1 and 1.2)	33.92m to 35.03m
Approved levels (Drawing 3368/24) (If shown)	33.40
Officer comment:	BDC Survey found levels to be approx. 610mm higher at the front and 850mm higher at the back than the 2014 approval.
Proposed FFLs (s.73 Application)	34.5
BDC Survey FFL (Table 2.6)	34.28
Officer Comment:	FFLs built on site accord with proposed plans

Ground to Ridge height from NMA approval plans (Table 2.5) (A)	8680mm
Ground to Ridge height from BDC Survey (Table 2.5) (B)	9040mm
Difference in height between (A) and (B)	+360mm
FFL to Ridge height (Applicant's survey)	8585mm
Applicant's ridge height above FFL + DPC (BDC Survey Table 2.6) (C)	8585mm+ 400mm= 8985mm
Difference in height between (A) and (C)	+305mm
Officer comments:	The building has been constructed to a ridge height up to 360mm above the approved elevation on the NMA approval.
Eaves height from NMA approval plans	4860mm
Eaves height above Ground Level (Table 2.5)	5510mm
Officer comment:	The eaves height is 650mm higher than the approved plan
Setting Out Differences compared to S.73 Site Plan (Tables 3.5-3.8)	No significant differences identified
Officer comments:	None

Plot No. 4	
Existing ground level(s) on plot (2003 Survey)	34.38m
Proposed Ground Levels (s.73 Application)	34.60 (side); 34.90 (rear)
BDC Survey of Ground Level(s) (Tables 1.1 and 1.2)	34.09
Approved levels (Drawing 3368/24) (If shown)	n/a
Officer comment:	Surveyed ground levels on site are below former levels.
Proposed FFLs (s.73 Application)	35.1
BDC Survey FFL (Table 2.6)	35.08
Officer Comment:	FFL built on site accords with proposed plans
Ground to Ridge height from NMA approval plans (Table 2.5) (A)	8670mm
Ground to Ridge height from BDC Survey (Table 2.5) (B)	9110mm
Difference in height between (A) and (B)	+440mm
FFL to Ridge height (Applicant's survey)	8585mm
Applicant's ridge height above FFL + DPC (BDC Survey Table 2.6) (C)	8585mm+ 590mm= 9175mm
Difference in height between (A) and (C)	+505mm

Officer comments:	The building has been constructed to a ridge height up to 505mm above the approved elevation on the NMA approval.
Eaves height from NMA approval plans	4850mm
Eaves height above Ground Level (Table 2.5)	5470mm
Officer comment:	The eaves height is 620mm higher than the approved plan
Setting Out Differences compared to S.73 Site Plan (Tables 3.5-3.8)	Between 130 and 140mm closer to east boundary.
Officer comments	Plot 4 is marginally closer to east boundary.

Plot No. 5	
Existing ground level(s) on plot (2003 Survey)	n/a
Proposed Ground Levels (s.73 Application)	34.00 (front); 32.200 (rear)
BDC Survey of Ground Level(s) (Tables 1.1 and 1.2)	n/a
Approved levels (Drawing 3368/24) (If shown)	n/a
Officer comment:	No existing survey levels as plot formerly a building.
Proposed FFLs (s.73 Application)	34.5
BDC Survey FFL (Table 2.6)	34.47
Officer Comment:	FFL built on site accords with proposed plans
Ground to Ridge height from NMA approval plans (Table 2.5) (A)	8670mm
Ground to Ridge height from BDC Survey (Table 2.5) (B)	8950mm
Difference in height between (A) and (B)	+280mm
FFL to Ridge height (Applicant's survey)	8585mm
Applicant's ridge height above FFL + DPC (BDC Survey Table 2.6) (C)	8585mm+ 430mm= 9015mm
Difference in height between (A) and (C)	+345mm
Officer comments:	The building has been constructed to a ridge height up to 345mm above the approved elevation on the NMA approval.
Eaves height from NMA approval plans	4860mm
Eaves height above Ground Level (Table 2.5)	5360mm
Officer comment:	The eaves height is 500mm higher than the approved plan
Setting Out Differences compared to S.73 Site Plan (Tables 3.5-3.8)	Building up to 1 m closer to south boundary. Up to 170mm closer to east boundary.

Officer comments	Plot 5 is significantly closer to south boundary at a distance of around 14.0m.
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Plot No. 6	
Existing ground level(s) on plot (2003 Survey)	32.65 to 32.99
Proposed Ground Levels (s.73 Application)	34.60 (rear); 33.07 (front)
BDC Survey of Ground Level(s) (Tables 1.1 and 1.2)	32.97-33.69 (rear); 32.92-33.82 (front)
Approved levels (Drawing 3368/24) (If shown)	32.92
Officer comment:	Surveyed ground levels on site are well above former levels. Applicant acknowledges increase of ground level up to 1.26m. The BDC survey indicates the levels implemented on site for Plot 6 to be between approximately 410mm and 650mm higher than those proposed on the layout drawing submitted with the current (2018) application.
Proposed FFLs (s.73 Application)	33.9
BDC Survey FFL (Table 2.6)	33.9
Officer Comment:	FFL built on site accords with proposed plans
Ground to Ridge height from NMA approval plans (Table 2.5) (A)	8670mm
Ground to Ridge height from BDC Survey (Table 2.5) (B)	8880mm (NB: Para. 2.27 refers to ridge height of 9580mm based on ground level of 32.76m)
Difference in height between (A) and (B)	+210mm (+910mm)
FFL to Ridge height (Applicant's survey)	8585mm
Applicant's ridge height above FFL + DPC (BDC Survey Table 2.6) (C)	8585mm+ 420mm= 9005mm
Difference in height between (A) and (C)	+335mm
Officer comments:	The building has been constructed to a ridge height up to 910mm above the approved elevation on the NMA approval.
Eaves height from NMA approval plans	4750mm
Eaves height above Ground Level (Table 2.5)	5340mm
Officer comment:	The eaves height is 590mm higher than the approved plan.
Setting Out Differences compared to S.73 Site Plan (Tables 3.5-3.8)	Rear cross wing is up to 280mm closer to south boundary.
Officer comment	Plot 6's rear wing is closer to south boundary but not the main range.

4. Impacts on the Surrounding Area

- 4.1 Saved policy CN01 (Design standards) states that all new development is required to be of appropriate scale, form, detailed design and materials having regard to its location with particular attention to the scale, form and nature of adjacent development. This is echoed in Policy HS28 which deals with infill development and states that development should be refused where the proposal represents over-development or is of a scale, density or form out of keeping with adjacent dwellings. These policies are particularly relevant to the current application given its 'backland' and infill nature with adjoining development on at least two sides.
- 4.2 The approved plans were judged acceptable as a regeneration of a brownfield site by a scheme which was of a traditional Suffolk vernacular design and submitted plans, most notably section drawing 3368:24, which misleadingly showed the dwellings to be respectful in scale and separation of neighbouring properties. Notwithstanding the sloping nature of the site in two directions the proposed development was shown as consistent in height with frontage properties and less intrusive than the existing commercial buildings on the site which they replaced.
- 4.3 The development, as constructed to date, is larger than what the decision makers expected as can be seen in the above tables and this is a combination of a misleading plan which didn't show the true heights of the buildings and construction of the site on raised levels and to building heights in excess of what had been approved. Given this scenario it considered that the development does not accord with saved policies CN01 or HS28 nor the design statements in the NPPF.

5. Heritage Issues Including The Impact On The Character And Appearance Of The Conservation Area And On The Setting Of Neighbouring Listed Buildings

Setting of Listed Building

- 5.1. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that in considering whether to grant planning permission for development which affects a listed building or its setting, special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
 - 5.2 Case law has indicated that decision makers should give 'considerable importance and weight' to the desirability of preserving the setting of a listed building when carrying out the balancing exercise as set out at Paragraph 134 of the NPPF between a proposal considered to give rise to less than substantial harm as against the public benefits of the proposal.
 - 5.3 Government guidance on the conservation and enhancement of the historic environment is set out under Paragraphs 126-141 of the NPPF.
 - 5.4 Para. 128. states that in In determining applications, LPAs should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting and Para 129. States that LPAs 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) . They should take this assessment into account when considering the impact of a proposal on a heritage asset, to avoid or minimise conflict between the heritage asset's conservation and any aspect of the proposal. Para 132. Notes 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. Significance can be harmed through, inter alia, development within the setting of a heritage asset.
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- 5.5 Para. 134 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 securing its optimum viable use.
- 5.6 Saved Policy CN06 states that proposals for new work within the setting of a listed building should among other things:
- be of an appropriate scale, form, siting and detailed design to harmonise with the existing building and its setting; and
 - retain a curtilage area and/or setting which is appropriate to the listed building and the relationship with its surroundings;
- 5.7 White Hall House is a Grade 2 listed building. According to the Listing description it was formerly the White Horse Inn and dates from sometime in the 17th to 18th Centuries and comprises a two storey timber framed and plastered house faced in red brick on the south front.
- 5.8 At the time of the original planning approval for the development the advice of the Heritage Team was to commend the development as it resulted in the removal of industrial buildings which would improve the setting of White Horse House. This was echoed in the Committee report which stated as follows: *"It is considered that the demolition of several of the former industrial buildings on the site has significantly enhanced the setting of 'White Horse House'. The proposed dwellings are set back from the listed building (Plot 6 being the closest at approximately 9 metres from the rear wall of 'White Horse House') and their construction is considered to create an appropriate special setting for the listed building."*
- 5.9 The Applicant has commented on the impact of the s.73 application on the setting of the listed building as follows: "This S73 application and particularly the siting and details of Plot 6, which are not altered by it, do not alter the appropriate special setting created for the listed building. This application must be considered in relation to the impact of the buildings that previously occupied the site and not lost by the removal of these harmful buildings and their proximities to a designated heritage asset. This S73 application only seeks to clarify the final finished floor levels in respect of details that were at best 'light' at the determination of the application and does not alter any other approved detail of the scheme."
- 5.10 The Heritage Team comments on the impact of the works, the subject of the application, on the setting of White Horse House are as follows:
- "the scheme is an overdevelopment of the site, and seriously imposes upon the setting of White Horse House...primarily because of the increase in land levels across the site...Therefore, the apparent increase in ridge height amplifies the inappropriately scaled development, to the further detriment of this part of the Conservation Area, and the setting of the House, which has been severely damaged by this scheme. Anything that amplifies the scale and bulk of these properties, particularly that on plot 6, only serves to diminish the setting, and therefore the significance, of White Horse House, contrary to the requirements of the P(LBCA)A1990 and the policies within both the NPPF and the Local Plan. The Heritage Team therefore *objects* to the apparent increase in height of the property at plot no.6. "
- 5.11 The Heritage Team has also confirmed that the scale of the development causes a high level of 'less than substantial' harm to the setting of the listed building.
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In assessing the impact on the setting of the listed building it is important to have regard to the precise relationship of the development to the listed building at White Horse House. The main impact on setting arises from the nearest new dwelling which is Plot 6, the rear of which faces the rear elevation of White Horse House. The approved site section drawing (3368/24) showed the ridge height of Plot 6 as being broadly at the same level as White Horse House. The Applicant's recently submitted cross section drawing (1471.22) which superseded the previous section shows Plot 6 as 0.5m higher than White Horse House. However, this is not representative of the actual position visible at the site nor is it in any way consistent with the BDC and Resident Survey results.

- 5.12 The recent BDC survey has shown that both the original and more recent section drawings are not accurate, and both show the height of Plot 6 as less than it really is. The latest section also shows White Horse House as having a ridge height of over 8.5 metres when the BDC survey shows it as being 7.41m (Paragraph 2.26). In fact, the recent surveys on behalf of residents and the Council have shown the height of Plot 6 to be 2.6m higher than White Hall House. However, of this increase 1.43m is the difference in height between the height of Plot 6 on the proposed section (7.24m) and the height as approved on the elevation drawing of the NMA application (8.67m) and has to be discounted as it has already been approved. This leaves an increase of around 1.17m as the increase derived from raised ground levels and an increase in building height as identified in Table 2.5 of the Enforcement Report. Whilst Plot 6 is the closest dwelling to the listed building being directly behind it, Plot 5 to the right of Plot 6 is also in the backdrop of views and makes a contribution to the adverse impact on White Horse House. The rest of the development is also within its rear setting albeit further back and therefore to a lesser degree. Accordingly, the main impacts on White Horse House are Plots 6 and 5 and it is considered that these units by reason of their close relationship and height are over-bearing and dominating to a degree which is considered to cause unacceptable harm to the setting of the listed building. The LPA is required under Paragraph 134 of the NPPF to weigh the above expressed harm against the public benefits of the development. The public benefits of the regeneration of a disused, former commercial site and the provision of new housing weighed heavily in favour of the development when it was approved in 2015 and it was judged that the new dwellings would create an appropriate special setting for the listed building. However, in carrying out this exercise again it is considered that the height and oppressive relationship of Plot 6 and Plot 5 to the rear of the listed building are such as to outweigh the public benefits of the development particularly noting that considerable importance and weight should be given to the desirability of preserving the setting of a listed building when carrying out the balancing exercise.

Impact on the Conservation Area

- 5.13 A conservation area is an area of special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance (Section 69 of the 1990 Planning (Listed Buildings and Conservation Areas) Act). As a designated heritage asset the guidance set out the heritage section of the NPPF apply to conservation areas as well as listed buildings.
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- 5.14 A conservation area is an area which has been designated because of its special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance. Decision-takers should be mindful of the specific legal duties of the local planning authority with respect to the special attention which shall be paid to the desirability of preserving or enhancing the character and appearance of the Conservation Area, as set out in section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
- 5.15 In the report to Committee for application B/14/01103 the development was described as being of 'traditional' form and appearance using materials from the local palette. The design with their simple forms, narrow roof spans and detailing including chimneys, steeply pitched roofs and natural materials were deemed reflective of the local vernacular and considered acceptable within the village conservation area. The proposed layout of the site was considered acceptable and respected the pattern of existing development in the vicinity of the site. Accordingly, it was considered that the proposed re-development of the site (which includes the demolition and removal of the remnants of the commercial buildings and hard standing on the site) would enhance the character of the Bures St Mary Conservation Area.
- 5.16 The comments of the Heritage Team on the impact of the current proposals on the Conservation Area are that the increase in land levels and consequential raised ridge levels constitutes an over-development and compromises and causes detriment to the character and appearance of this part of the Conservation Area. They have also indicated that the scale of the development causes a high level of 'less than substantial' harm to the Conservation Area.
- 5.17 The Cuckoo Hill development is in a 'backland' location set well back from Cuckoo Hill and, as originally approved, it should have been largely screened by existing frontage buildings. The main views are therefore from the access in Cuckoo Hill and other viewpoints above and in between the front buildings. There are limited street views of the development from points higher up or lower down Cuckoo Hill. The plot which has the most significant impact on views is Plot 6 as it is the closest house to Cuckoo Hill and closest to the access and most prominent in views from that opening in the street scene. However, Plot 5 can also be seen to the right of Plot 6 as well as the units towards the rear of the site (Plots 1-4). The increase in height of Plots 5 and 6 is considered to be the most significant in relation to impact on the Conservation Area most notably because of the way these units 'dominate' the frontage buildings and appear uncomfortably oppressive in height in their backdrop. The increased height of Plot 6 together with Plot 5 are therefore judged to be harmful to the character and appearance of the Conservation Area. The LPA is required under Paragraph 134 of the NPPF to weigh the above expressed harm to the Conservation Area against the public benefits of the development.
- 5.18 The LPA is required under Paragraph 134 of the NPPF to weigh the above expressed harm against the public benefits of the development. The public benefits of the regeneration of a disused, former commercial site and the provision of new housing weighed heavily in favour of the development when it was approved in 2015 and it was judged that the new dwellings would enhance the conservation area. However, in carrying out this exercise again it is considered that the increased height and oppressive relationship of Plot 6 and Plot 5 to the street scene in Cuckoo Hill and wider area are such as to outweigh the public benefits of the development.
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6. Impacts on Residential Amenity

- 6.1 Paragraph 17 of the NPPF sets out a number of core planning principles to underpin decision-taking, including, seeking to secure a good standard of amenity for all existing and future occupants of land and buildings. The proposals have been assessed having regard to impacts on the living conditions or residential amenity of immediate neighbours including impacts on sunlight, daylight, privacy and outlook.
- 6.2 **White Horse House** is a two storey dwelling with a small rear yard at the back leading to a side garden. The rear elevation and side garden formerly faced a commercial site yard and driveway respectively before the commercial use ceased and the buildings were demolished. White Horse House has a rear ground floor kitchen window which faces onto a rear boundary wall and there are no other openings on the rear of the building.
- 6.3 The impact of the approved development on the residential amenity of White Horse House is mainly related to Plot 6, which is sited behind the dwelling. The original Committee Report referred to Plot 6 as being the closest at approximately 9 metres from the rear wall of 'White Horse House' and the 'proposed' cross section on plan 3368/24 showed the height of Plot 6 as being broadly similar to the ridge height of White Horse House.
- 6.4 The Committee report stated with regard to the general impact of the development that:
- "the six dwellings have been carefully positioned and designed within the proposed development such that there would be no unacceptable overlooking between the existing (neighbouring) and proposed dwellings (including private garden areas) and there would be no dominating impacts or overshadowing as a result of the proposals."
- 6.5 The siting and separation distance of Plot 6 in relation to the southern boundary with White Horse House has been found, following on-site surveys to be within a reasonable tolerance of the approved plans and no demonstrable breach to have taken place in this respect.
- 6.6 The assessment of building and ground level heights reviewed earlier in this report as part of the BDC Survey indicated that the ground level of Plot 6 was over a metre higher than the expected level and the building has been constructed at least 120mm higher than approved.
- 6.7 The impact of these changes on the amenity of White Horse House comprises increased potential overlooking from rear facing windows in Plot 6 towards the rear elevation and side garden of White Horse House. This includes potential overlooking from raised ground floor patio doors from the living room as well as rear facing first floor bedrooms.
- 6.8 The increased height of Plot 6 to White Horse House also gives rise to visual intrusion and loss of outlook impacts particularly experienced from the side garden area which would not have been so intense and significant if the development had been implemented in accordance with the proposed cross-section or to a lower overall height in accordance with the NMA plans.
- 6.9 As noted earlier in the report the 'proposed' cross-section drawing was not accurate as it did not show the true height of Plot 6, which was in reality significantly higher than it was represented. The increase in height is significant given the close relationship between the buildings and which can be clearly seen on site. The windows in the rear elevation of Plot 6 on ground and first floor levels potentially give views into the kitchen and side garden of White Horse House.
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To mitigate this potential the Applicant proposes 1.8m fences and additional planting in the form of a 2.6m high laurel hedge to be planted 1 metre in from the southern and western garden boundaries. At first floor level windows facing White Horse house and garden are to bedrooms and have been approved in the original permission albeit at a level of around 1 metre lower. The proposed laurel hedge boundary screening would provide a degree of enclosure to the neighbours' privacy. However, it would still not fully mitigate the impact of the height and visual intrusion that Plot 6 would have on the outlook and amenity of the neighbours. In addition, concerns have been raised by neighbours regarding the efficacy of this measure given the need to retain and maintain it in place and possible impacts of root damage to walls. Therefore it is judged, notwithstanding the proposed hedge, that there would be material harm to neighbour amenity.

- 6.10 **6 and 7 Cuckoo Hill**- These are a pair of semi-detached two storey buildings, the rear of which face the rear elevation of Plot 5. Both dwellings have only very narrow rear yards and only very small window openings facing towards the development none of which serve habitable rooms. Prior to the demolition of the former slaughterhouse buildings on the site these properties faced the gabled end elevation of one of the buildings which rose to an apex of 7m in height.
 - 6.11 The re-positioning of the footprint of Plot 5 one metre closer to the southern boundary as found in the BDC Survey is a significant alteration. However, given the separation of Plot 5 from the southern boundary with Nos 6 and 7 and the lack of garden areas and windows to any habitable rooms it is considered that there would be no adverse impact on amenity.
 - 6.12 **'Eversley'** – this is a chalet bungalow set back from the road which has a rear elevation and patio garden which is positioned to the south-east of Plot 5. There is an oblique angled relationship between the sites. Prior to the development the former slaughterhouse building abutted the side boundary to a ridge height of 7 metres and there were windows on the boundary. Whilst noting that Plot 5 is 1 metre closer to the southern boundary and higher than approved, it is not considered that it is visually intrusive given the former presence of buildings on the boundary.
 - 6.13 **Byron House** is a one and a half storey dwelling with access from St Edmunds Lane and it is located immediately to the west of the semi-detached dwellings (Plots 1 and 2) . The rear garden of Byron House is adjacent to the frontage of Plot 1 and is enclosed by timber fencing.
 - 6.14 The approved layout plan and all layout plans subsequently submitted until the latest plan Revision G showed the siting of Plots 1/2 as sitting wholly within the limits of the side elevation of Byron House. However, as constructed, the front elevation of Plots 1/2 is approximately 3 metres forward of the back wall of Byron House. The relocation of Byron House on the latest plan further north and closer to St Edmunds Lane rectifies the mapping error as the BDC Survey has not found that Plots 1/2 have been set out to such an incorrect degree within the parameters of the development site. The development of Plots 1/2 as constructed gives rise to potential visual intrusion/loss of outlook to the occupiers of Byron House which was not evident to the decision-makers at the time the original application was determined. In addition, the ridge height of these units has been found to have been increased by up to 270mm. However, Plots 1/2 were approved as full two storey houses and Byron House is a one and a half storey house so there was always going to be a significant difference in height between the dwellings and the submitted cross-section drawing 1471.22 shows the height difference between Plots 1/2 and Byron House to be nearly 3 metres. Officers appreciate the concerns raised by the occupiers of Byron House and it is regrettable that the mapping error was not identified before the development
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commenced. However, it is not an impact that has been directly caused by changes to the siting of the dwellings within the development site albeit the surveys have indicated the dwellings were positioned further south by a small margin.

- 6.15 Officers have assessed the impact of Plots 1/2 on the neighbours' amenity and find that the only harm that could be judged to have been caused is a loss of outlook and visual intrusion arising from the height and massing of the flank elevation of Plot 1 which extends at least 3 metres behind Byron House but at a distance rising from 2 to 3 metres from the boundary. Notwithstanding that this is not an impact directly arising from the implementation of the development it is not considered that the harm arising would have been so harmful as to justify refusal of the application.

7. Planning Obligations/CIL

- 7.1 The original application was approved prior to the adoption of the CIL charging regime.

PART FOUR – CONCLUSION

8. Planning Balance and Conclusion

- 8.1 The purpose of this application is to seek approval under S.73 for amended plans on the basis that they constitute a minor material amendment to the approved development. The development comprises 6 dwellings on a brown field, former commercial site which is adjacent to a listed building, forms part of the Bures Conservation Area and is adjacent to existing residential neighbours. The site is also on a hill where land levels rise to the north and west. Following the discharge of relevant conditions work started on site in late 2017 and it became apparent that the development was not being constructed in accordance with approved plans with respect to ground levels and the Enforcement Team investigated complaints on these grounds.
- 8.2 The S.73 application was submitted to regularise the differences in levels and plans showing existing and proposed ground levels and finished floor levels were submitted. Officers have assessed the submission and have carried out extensive surveys of the development under construction to assess ground levels, building dimensions and site layout. This included an independent survey the results all of which are set out in the appended Enforcement Report.
- 8.3 The results of the assessments lead Officers to conclude that raised ground levels and building heights and amended layout variously with respect to Plots 5 and 6 give rise to material detrimental harm to the setting of a Grade 2 listed building known as White Hall House. It is also considered that those same changes together with other changes in the heights of other plots, albeit to a lesser degree given their location further north on the site, give rise to a material adverse impact on the character and appearance of the Bures Conservation Area. These impacts are judged to give rise to a high level of less than substantial harm within the meaning of Paragraph 134 of the NPPF and are not justified by public benefits related to the regeneration of the site.
- 8.4 Given the close relationship of the development to adjacent residential neighbours', consideration has been given to adverse impacts on amenity arising from unauthorised changes to the approved development. It has been found that the development of Plots 5 and 6 have an adverse impact on the amenity of the residents of White Hall House with particular regard to overlooking, loss of outlook and visual intrusion.
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8.5 As described above this Section 73 application relates to the entirety of the development as under construction and to be completed. The various elements of that cannot be split away where there are both acceptable and unacceptable elements of the development. It is therefore necessary to make a decision in the round on the application before you. Mindful that the NPPF requires planning authorities to place significant weight on the need to support economic growth, which housebuilding activity represents, and to look for solutions working with applicants it is appropriate to note that the application as presently framed is of such unacceptable impact that it cannot be considered sustainable development in the round. With that national guidance in mind it will be open to the applicant to seek to put forward a revised proposal or proposals which might allow for distinct consideration of the various elements on their own merits. The impacts of the present application are, nonetheless, of such clear import that a decision and any expedient follow up steps to safeguard the heritage environment and local amenity are now appropriate in order to progress towards a resolution.

8.6 For the above reasons it is recommended that the application be refused.

RECOMMENDATION

That authority be delegated to the Corporate Manager - Growth & Sustainable Planning to Refuse the s.73 Application for the following reasons:-

In determining this planning application the Council has not only had regard to the NPPF and its own Adopted Core Strategy and Policies but has been able to experience its physical impacts by virtue of the fact that it has been largely constructed. The retrospective nature of the application has afforded the unusual opportunity to gauge such impacts not theoretically from drawings but from seeing the development 'as built' within the context of surrounding existing development.

In assessing that impact the Council has concluded that the application would not have been approved in the form it has now been built had a planning application for a development in this form been submitted ahead of construction.

In determining this application, the Council has noted and had full regard to the earlier planning permission [ref; B/14/14/01103] granted on 13 February 2015. That development was not implemented in accordance with the approved drawings and it is the current application that seeks to regularise that breach.

The Council finds the current application unacceptable and consequently refuses it for reasons that will now be explained.

In summary the two storey detached houses as built on plots 5 and 6 and as shown on drawing number 1471/21G and 1471.22 are unacceptable for the significant harm they cause to:

- (i) the residential amenity enjoyed by the property known as White Horse House immediately to the south; and
- (ii) the character of the Conservation Area; and,
- (iii) the setting of the adjacent Grade II listed building – 'White Horse House'

Specifically:

Harm to Residential Amenity

As a result of:

- (a) the ground level on plot 6 being raised beyond those previously approved; and,
- (b) the consequent rise in finished floor level of the plot ; and,
- (c) the overall increase in height of the buildings on plots 5 and 6 beyond that previously approved.

The house on plot 6 as well as Plot 5 immediately to the east now have an unacceptably overbearing and over-scaled relationship with the adjacent modest-sized traditional vernacular property 'White Horse House'. They now loom over White Horse House and result in a significant and unacceptable level of harm to the outlook experienced from the rear of that property and its associated private garden space. The increase in height of the position of first floor windows to the rear of the house on plot 6 now results in an unacceptable perception from White Horse House of being overlooked and of the privacy of its amenity space being infringed.

The unacceptable harm identified above is contrary to paragraphs 17, 56, 57 & 64 of the NPPF in so far as the houses on plots 5 and 6 as built [in the opinion of the Council]:

- does not secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings; does not contribute positively to making the place better (56);
- has not achieved high quality (57);
- does not establish a strong sense of place, using streetscapes and buildings to create attractive and comfortable places to live, work and visit (58);
- does not respond to local character and history, and reflect the identity of local surroundings and materials (58)

and therefore, as advised in paragraph 64 the Council is refusing the development on the ground, inter alia, of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

The development is considered to be contrary to saved policies CN01, CN06, CN08, HS28 of the Babergh Local Plan (Alteration No.2) 2006 and Policy CS15 of the Babergh Core Strategy and Policies (2014).

Failure to preserve or enhance the character of the Conservation Area

The house on plot 6 when viewed from Cuckoo Hill is unduly prominent within the street scene rising as it does above White Horse House which forms part of a charming group of properties within the heart of the Conservation Area. In addition, the houses on plots 5 and 6 will be even more prominent and intrusive during the autumn and winter months when the trees that in part currently soften its impact are bare. This level of visual dominance harms the character of the conservation area which currently can be defined as comprising predominantly small scale linear frontage development on Cuckoo Hill.

The unacceptable harm identified above is contrary to paragraph 131 of the NPPF in so far as the houses on plots 5 and 6 as built in the opinion of the Council:

- do not sustain and enhance the significance of the heritage asset that is a Conservation Area; (131)
- do not make a positive contribution to local character and distinctiveness. (131)

In carrying out the balancing exercise under Paragraph 134 of the NPPF it is considered that the increased height and oppressive relationship of Plot 6 and Plot 5 to the street scene in Cuckoo Hill and wider area are such as to outweigh the public benefits of the development.

The development is considered to be contrary to saved policy CN08 of the Babergh Local Plan (Alteration No.2) 2006 and Policy CS15 of the Babergh Core Strategy and Policies (2014) .

Harm to the Setting of the listed White Horse House

White Horse House is a 2 storey C17-C18 timber -framed house, formerly a public house, with an asymmetrical plain tile roof. The roof to the rear has a long raking sweep from the ridge reflecting the fact that it has its eaves over the single storey element.

The house on plot 6 has been constructed in ways described in (a) – (d) [incl.] above that have resulted in significant and unacceptable harm being caused to the setting of the adjacent listed building as a result of the new houses unduly overbearing scale and juxtaposition in relation to White Horse House. Whilst intimate relationships between buildings can be found in the conservation area these tend to be visually harmonious. In this particular case the new house dwarfs the older listed building significantly detracting from its place in the street disturbing and disrupting the composition of the properties that line Rd in the heart of the Conservation Area. This dominance is something that would not have been an issue with the previously approved scheme where the relationship between it and its listed neighbour had been carefully considered when approving that scheme.

The unacceptable harm identified above is contrary to paragraphs 131 & 134 of the NPPF in so far as the house on plot 6 as built in the opinion of the Council:

- does not sustain and enhance the significance of the heritage asset that is the Grade II listed building – White horse House (131)
- does not result in sufficient public benefits to the overall housing stock in Babergh District and the regeneration of a former commercial site to outweigh the less than substantial harm caused to the setting of the Grade II listed White Horse House particularly noting that considerable importance and weight should be given to the desirability of preserving the setting of a listed building when carrying out the balancing exercise.

The development is considered to be contrary to saved policy CN06 of the Babergh Local Plan (Alteration No.2) 2006 and Policy CS15 of the Babergh Core Strategy and Policies (2014) .
