

Committee Report

Reference: DC/21/00745

Case Officer: Vincent Pearce

Item No: 6A

Ward: Bures St. Mary & Nayland

Ward Members: Councillor Melanie Barrett

RECOMMENDATION:

GRANT conditional planning permission subject to first securing a Unilateral Undertaking to secure:

1. An agreed partial demolition schedule
2. An agreed partial demolition, rebuild commencement and completion timetable that also enables the Council by way of licence the right of entry to undertake and complete works. Such works in default to become a charge on the land title to enable recovery of such costs as reasonable if unable to otherwise secure them.
3. A secure financial bond that the Council can draw down to undertake such work as may be required itself to implement the planning permission in the event of the applicant/developer defaulting or failing to follow the agreed timetable. *[any additional reasonable costs to be recoverable]*

Description of Development¹

Variation of condition 2 attached to the planning permission reference B//14/01103/FUL for:

'The erection of 6 no. two-storey dwellings, demolition of existing commercial buildings and hard-standing and construction of private access driveway [scheme to utilise existing vehicular access to public highway.]'

..to allow for amended designs for dwellings on plots 5 and 6.

The variation specifically seeks permission for the substitution of drawings no. 1471.04 [plot 5] and 1471.05 [plot 6] with new drawings.

¹ The description of development remains unchanged by this proposal i.e., the nature of the development permitted has not changed. What the application seeks, in effect, is to vary the current permission to enable a reconfigured development for Plots 5 and 6, under the currency of that permission.

Location

Former Slaughterhouse and land adjacent, Cuckoo Hill , Bures St.Mary

[address now named Apple Tree Mews following residential redevelopment]



figure 1: **Site Location Plan** *[plots 5 & 6 coloured red]*

Expiry Date: extension of time agreed

Application Type: S73 Variation of Condition

Development Type: Minor residential

Applicant: Stemar Group Ltd.

Agent: Whymark Moulton Ltd – Barry Whymark

Parish: Bures St. Mary

Has the application been subject to Pre-Application Advice: Yes

PART ONE – REASON FOR REFERENCE TO COMMITTEE

The application is referred to committee for the following reasons:

- The Chief Planning Officer is aware of the controversial nature of the recently undertaken development on this site. Development on plots 5 and 6 has already been the subject of enforcement related appeal². The appeal resulted in the Inspector determining that the dwellings that have been constructed on plots 5 and 6 are not in accordance with the approved drawings and that as a result of the harm³ they are causing they must be demolished.

The current S73 application seeks to radically amend the appearance of the existing buildings on plots 5 and 6 sufficient to overcome the issues identified by the Inspector and thereby avoid complete demolition of the buildings. Were the application to be approved both of the existing buildings would need to be partially demolished and rebuilt to a different design. The Chief Planning Officer is of the opinion that it is in the public interest for this application to be debated ‘in public’ and determined by the Planning Committee.

Discussion of the merits of this proposal will inevitably raise questions about the purpose and effectiveness of enforcement action and the appeal process if a developer can adapt an unauthorised development to avoid having to demolish something that has been shown to be causing unacceptable harm.

The public may understandably question *“Where is the deterrent and public confidence in the planning process from agreeing a compromise?”*

This report must as a result consider the nature of the English planning system and the role of the Council as local planning authority.

Members will be very familiar with the basic tenet that underpins the role of the planning committee, that being - every application must be determined on its individual merits having regard to all material planning considerations.

In essence this means the current application must be looked at afresh and determined on its own merits. Clearly the appeal decision is relevant insofar as it has identified serious issues that are causing such harm as to warrant the demolition of the existing unauthorised dwellings. Members will want to consider whether the proposed modifications to the design will overcome those issues such as to warrant an approval. The modified design may of course raise new issues that may or may not be capable of suitable mitigation.

² See appeal history section of this report at the end of PART TWO

³ Adverse impact on residential amenity, character of Bures St Mary Conservation Area and setting of the listed property - White Horse House [Grade II]

Members must, as with any other application, approach the determination of this application with an open mind.

If Members are of the view that the proposed development is, in and of itself acceptable, then they should approve it.

If, however, Members are of the view that having regard to all material planning considerations the application is unacceptable for sound reasons then they can reasonably refuse it.

It must be acknowledged that there is an extant and commenced planning permission on this site for 2 x two storey dwellings on plots 5 and 6 and that these could be built/rebuilt as originally approved following demolition of the present dwellings on plots 5 and 6 [following the appeal]. The Enforcement Notice does not require the dwellings on plots 5 and 6 to be rebuilt but with an extant commenced permission the original 'a- approved dwellings could be built/rebuilt without further planning permission.

Vincent Pearce appeared as one of the expert witnesses for the Council at the related Public Inquiry.

PART TWO - POLICY AND CONSULTATION SUMMARY

Summary of Policies

The Development Plan

Under section 38 of the Planning and Compulsory Purchase Act 2004, development should be determined with regard to the development plan, unless material considerations indicate otherwise. In accordance with s38(2), the development plan comprises:

- Babergh Local Plan Alteration No.2 'Saved Policies' (June 2006, saved May 2009):

Most important policies for this application are:

- CN01 (*Design Standards*);
- CN06 (*Listed Buildings – Alteration/Extension/Change of Use*);
- CN08 (*Development in or near conservation areas*);
- HS28 (*Infilling / Groups of Dwellings*);

- Core Strategy & Policies (February 2014):

Most important policies for this application are:

- CS1 (*Applying the presumption in Favour of Sustainable Development in Babergh*);
- CS15 (*Implementing Sustainable Development in Babergh*);

Other material considerations in the determination of this application include:

- The National Planning Policy Framework (NPPF) (February 2019);

- National Planning Practice Guidance (PPG) (regularly updated);
- Rural Development and Core Strategy Policy CS11 SPD (August 2014); and
- Bures St Mary Conservation Area Appraisal (November 2007).
- Suffolk Adopted Parking Standards (2015)

Draft Babergh Mid Suffolk Joint Local Plan – Submission Document –(Reg 22) 31 March 2021.

The Submission Document [Draft Joint Local Plan] March 2021 is now a material planning consideration. It is afforded limited weight, and plays no determinative role in the assessment of this application, however.

Neighbourhood Plan Status

There is no Neighbourhood Plan for Bures St Mary and nor is there one in progress⁴

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](#)

received 09 March 2021: Objection

please note:

The Parish Council's [Bures St Mary] comments are reproduced verbatim and **in bold blue text**. The report provides officer comments after each key concern raised by the Parish Council and therefore readers attention is drawn to the fact that the Parish Council's full comments are those reproduced in blue. In the interest of transparency in what is a highly charged atmosphere it is considered important to begin dealing with the Parish Council's concerns here rather than subsume them into the wider technical assessment

***“It is imperative that the conditions of the 2015 planning permission regarding contamination and drainage must be proven to be completed by the developer, Stemar, and approved by Babergh District Council before any decision is made on the future of plots 5 and 6.*”**

⁴ <https://www.babergh.gov.uk/planning/neighbourhood-planning/neighbourhood-planning-in-babergh/>
14.04.21

Officer comment:

This point is noted and it is expected that the contamination condition will be satisfactorily discharged by way of a concurrent discharge of condition submission. A verbal update will be provided at the meeting.

The Parish Council's concern in respect of drainage is understood but drainage is also a matter that is the subject of a concurrent discharge of condition application.

Understandably the concern here is that if the current proposed modified buildings for plots 5 and 6 are not approved by the Committee then the existing buildings are required to be demolished by the upheld Enforcement Notice. Currently the drainage regime for plots 5 and 6 is based on the ground level being higher than originally approved.

Consequently, if the existing buildings are demolished and the ground level reduced then the drainage system serving plots 5 and 6 will need to be modified and it is likely that water will need to be pumped up hill to the drainage tank or the drainage tank lowered - but this also serves plots 1, 2, 3 and 4.

If the modified buildings are approved then the drainage system as installed will not require modification. [assuming that all other aspects of the system are satisfactory].

Members are advised that current drainage arrangements are considered acceptable and will continue to be so if the modified house types are approved and implemented.

If the existing buildings are demolished then the present drainage system for plots 5 and 6 will need to be modified and the relevant condition discharged with new arrangements.

The Bures St Mary Parish Council objects to the Application No. DC/21/00745. Members maintain that the enforcement notice should be upheld as stated in point 194 in the Appeal Decision of the Inquiry held 6-9 October and 20-21 October 2020 (APP/03505/C/19/3237898) because they find that the proposed plans do not remedy the significant issues clearly and repeatedly identified by the Inspector throughout the Decision Report,

Officer comment:

In the introduction to this report members are reminded of the context within which a decision must be made and it is not intended to repeat that here.

The Parish Council in effect quite rightly asks will the proposed modifications remedy the breach of planning and they go on to cite reasons why they believe it does not. Certainly that is one of the central questions. Members will also be anxious to ensure that they look at the question to what extent will the proposed modifications remedy or suitably mitigate the planning harm identified by the Inspector. The answers to these two fundamental questions may not be the same.

This is a planning application that must be judged on its own planning merits.

[The Parish Council then sets out why it believes the modified buildings will not remedy the breach]

these being:

Point 40 'There is no justification for the underbuild of between 0.5 and 0.7 on plot 5'

Point 43 'I conclude that an underbuild of between 0.5 to 0.7m is not in accordance with the approved details or otherwise justified.'

The Parish Council does not believe this situation has been resolved in the new plans as even with lower ridges, the underbuild causes the windows to be wrongly placed in the buildings.

Officer comment:

The Parish Council rightly identifies the issue of underbuild [moving soil to adjust slope levels to create a flat plane upon which to build] as being at the heart of the Enforcement Case in so far as the Inspector did agree with the Council that ground levels had been raised without permission. It is this unauthorised activity that has resulted in the buildings on plots 5 and 6 being higher than approved because the ground level from which the build started had been raised.

It is correct to say that the modified buildings will not result in existing ground levels [and therefore floor levels] being reduced. This can only be achieved by the full demolition of both houses [as required by the upheld Enforcement Notice].

That is not however necessarily the whole picture. The proposed modifications will [if approved and implemented] result in buildings that do not exceed the overall height expected had the correct ground levels been used. If the overall height was the key issue, then the modifications do resolve the matter in that sense but by a different route. This issue will be explored in much greater depth later in this report.

Point 66: 'The position of the house is approximately 0.81 m further south than it should be, as a minimum. The siting of the house on plot 5 does not comply with the approved site layout plan.'

The Inspector found this was not a reasonable construction tolerance. (Point 79)

Consequently, the unauthorised siting of Plot 5 remains unresolved in the proposed plans.

The report also identifies in Point 128 that the position of Plot 6 is now considerably different to what was expected and that these changes have been for the worse and serious harm is caused by the incremental change.

The proposed plans alone cannot remediate these breaches of planning control.

Officer comment:

The Parish Council is absolutely correct when it states that the present proposal does not include any adjustment to the ground floor footprints of the existing dwellings plots 5 and 6. The position of the dwelling on Plot 5 drew particular comment from the Inspector with regard to a 0.81m difference between the approved position [closer to the rear garden boundary with the neighbouring dwellings on Cuckoo Hill]

Members will need to consider what harm arises from this unauthorised proximity and whether or not the benefits associated with the current proposed modifications outweigh that harm when compared against demolition of the dwellings and subsequent rebuilding in line with the approved drawings.

Officers suggest the key amenity issues [for neighbouring properties] that need to be considered in terms of the proximity question include [in no particular order]:

To what extent does the 0.81 retained proximity within the latest proposal [compared to the 'as approved' situation] -

- 1. Unacceptably prejudice the outlook from neighbouring dwellings;*
- 2. Unacceptably prejudice sunlight and daylight levels to neighbouring dwellings*
- 3. Cause unacceptable additional overshadowing of gardens*
- 4. Result in unacceptable overlooking/loss of privacy*

These will be explored in this report.

On a visit to the WHH garden, the Inspector reports 'I experienced a strong sense of overlooking and in my judgement a loss of privacy would be keenly felt'.

The Inspector considers in point 139 that such is the sense of intrusion and enclosure, that 'the impact is greatest for White Horse House because of the very direct relationship of the new build to that home and the serious harm to the enjoyment of their garden'.

Officer comment:

Once again, the Parish Council has identified another of the key issues that sat at the heart of the Council's case at the Inquiry. This concern was supported by the Inspector.

Officers believe that the proposed modified buildings will actually improve the levels of privacy within the garden of White Horse House by a reduction in the ability of occupiers of the house on plot 6 to overlook from first floor rear windows even compared to the original permission and with dwellings built at the correct levels. Why so?

The modified buildings will not have rear facing sash windows at first floor level. It was views from these windows that provided the vantage point from which to overlook. A rebuilt dwelling on plot 6 at a reduced ground level following demolition will not produce this benefit to amenity because first floor rear facing windows would remain.

As the proposed dwelling on plot 5 will also have first floor rear windows removed similar amenity benefits will arise in respect of the relationship with 6 and 7 Cuckoo Hill and Eversley.

The report also maintains that any form of soft landscaping would be oppressive and would fail to mitigate the 'strongly perceived sense of overlooking' (point 142).

Officer comment:

It is suggested that this matter be dealt with by condition. Please also see residential amenity section of this report

Point 144: the effect on amenity for existing and future residents of the neighbouring homes on Cuckoo Hill remains unacceptable.

Officer comment

The exploration of all material planning considerations at the meeting and accompanying material will enable Members to assess whether they agree or not with the Parish Council's conclusion and why that is.

Point 162: the house on plot 5 has resulted in overlooking and a harmful loss of privacy for the occupiers of Eversley. The new build also is unneighbourly by reason of its overbearing nature in relation to the outlook and general amenity of residents of the row of dwellings fronting Cuckoo Hill.

Officer comment:

Addressed above

In her overall balance and conclusion, the Inspector highlights the failure of the development to meet the policy aims of the Framework and the Core Strategy. (Point 165)

Lowering the roofs alone, repositioning windows and the insertion of opaque glazing will not address these significant conflicts. The Inspector describes the nature of the scale of the development as overbearing and oppressive. The members agree with the Inspectors findings that this is increased by the lack of appropriate separation distance between the new and the old (Point 126). This lack of respect for the historical setting of White Horse House results in further damage and considerable harm. The proposed plans do nothing to alleviate this identified harm.

Furthermore, to approve this plan, Babergh District Council would be acting counter to their own Refusal of Planning Permission DC/18/00929 which identified the harm resulting from the as built dwellings. This is an extract from that document.

Officer comment:

In drawing her conclusions, the Inspector was comparing the levels of harm between the as built dwellings and the as approved dwellings. The Inspector took the view that there was additional harm created by the as built dwellings over and above that associated with the approved dwellings. Officers do not share the opinion of the Parish Council when it says [the plans] 'do nothing to alleviate this identified harm'. Both Development Management and Heritage Officers agree that the proposed modifications do appropriately reduce harm and in some ways actually improve the situation when compared to the original permission [with the approved ground levels.]

Again the officer comment here will be expanded and supported with evidence within the assessment part of this report.

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; and,

(d) the relocation of Plot 5 closer to the southern boundary”

Officer comment:

As this summarises the Parish Council's position no additional comments will be included here.

Internal Consultees

Heritage Team: 13.04.21

“This application is made under Section 73 of the Town and Country Planning Act and concerns the ‘Variation of Condition 2 (Approved Documents) of planning permission B/14/01103/FUL dated 13/02/2015 - 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). To allow alterations to Plots 5 and 6.

The reduction in finished heights as illustrated in the comparison elevations drawing, reference 20/256-07A reduce the buildings to the level initially approved under the 2014 application. The proposal drawings also alter the fenestration of the rear of both properties on plots 5 and 6. This reduction in ridge heights and the simplification of openings, lend the rear elevations of both these properties a more vernacular proportion and character which is considered appropriate in the immediate environment – and given that the Heritage Team raised no concerns with the form or materials proposed under the 2014 application, the harm to the settings of the listed and unlisted buildings adjacent, and to the character and appearance of the Bures St Mary Conservation, Area has now been removed. We therefore raise no objection.”

Enforcement Manager [Simon Bailey] 30.06.2021 [Simon appeared at the related Public Inquiry as one of the expert witnesses for the Council]

“The purpose of the Enforcement Notice issued by the Council against the development of Plots 5 and 6 was to remedy a breach of planning control.

The proposals put forward in the current application are sufficient to overcome the reasons for taking formal enforcement action through the service of an Enforcement Notice and offer a remedy to the breach of planning control identified.

The reasons for issuing the Notice were:

- The works that have been carried out in relation to ‘Plot 5’ and ‘Plot 6’ do not accord with the approved plans, and the Local Planning Authority considers that these works are materially different to those approved.
- data ... indicates the difference between ground level and ridge to be materially higher than the dimensions indicated on the approved elevations drawings.
- data ... indicates the ground levels around the buildings has been materially increased, resulting in the dwellings constructed being substantially higher than indicated on the approved plans.
- Coupled with the difference between the dimensions indicated on the approved elevations drawing, ... the altered ground levels give rise to a difference in the overall height of the dwellings, ..., and that difference results in a materially different overall development which gives rise to adverse impact on the immediate neighbours, the amenity of the area, and the character of the Bures Conservation Area.
- The development as built does not benefit from planning permission, and results in unacceptable harm to the character and nature of the surrounding residential development, the amenity of the area, and the character of the Bures Conservation Area.

At the Inquiry during October 2020, the Inspector agreed with the Council's interpretation of the planning permission granted (ref. B/14/01103) and it's detailed analysis and assessment of the development 'as built'. Notwithstanding that, in the subsequent formal decision the Inspector indicated, at para.188, that the developer could exercise the option to put forward an alternative scheme. That scheme - the current proposals - addresses the concern set out in the Enforcement Notice regarding the height of the dwellings at plots 5 and 6. If approved and implemented, the application scheme would render the two dwellings no higher than that approved under the original approval, ref. B/14/01103. On that basis, the 'harm' arising from the development would therefore be no greater than that which would have occurred had the buildings been constructed in accordance with the approved plans - that degree of 'harm' having been considered acceptable by the Council during the determination of the original application in 2014/15.

The scheme does not address the issue of the position of Plot 5, though that is not specifically referred to in the Enforcement Notice. The positioning of the building was an integral part of the Council's case at the Inquiry and is a breach of planning control which requires appropriate remedy. However, it must be accepted that there is no way to make such an adjustment short of total demolition of the building. It is in this regard that the positioning of Plot 5 differs from the height issue of both plots - the height can be remedied by way of alterations to the properties (an example of which is set out in the current proposals) whereas the location of the buildings cannot be readily adjusted to achieve an appropriate amelioration of the identified 'harm'.

However, other aspects of the proposals serve to further mitigate the planning 'harm' considered to exist from the 'as built' development, including that arising from the incorrect position of Plot 5. The movement of windows from the rear elevations of the two dwellings to side elevations will mitigate overlooking and loss of privacy for existing dwellings. In addition, the reduction in the height of the ridges of the associated garages reduces the mass and bulk of the built form on site and thus improves the overall impact of the development.

On balance, the proposals put forward as an alternative scheme are sufficient, in their totality, to remedy the effects of the breach of planning control identified in the Notice, and the positioning of the Plot 5 building.

Whilst there may be a preference for the two dwellings to be totally demolished, ground levels reduced, and the buildings rebuilt to accord with the original permission, the long-term benefits of the proposals currently presented should not be overlooked in favour of punitive measures.”

Environmental Health – Land Contamination 06 April 2021

Offers no objection, subject to a condition requiring land contamination remediation.

Environmental Health – Noise/Light/Smoke/Odour 11 March 2021

Offers no objection.

County Council Responses

SCC Highways 25 February 2021

Offers no objection.

Members attention is drawn to the fact that whilst SCC as local highway authority has not raised an objection to the proposal from a development management perspective it appears that surface water connections may have

be made from the development into the highway drainage system. This connection was not agreed by SCC as local highway authority and the developer has been required to remove the connection and make alternative arrangements for the disposal of surface water.

Suffolk County Council's Asset Manager [Drainage and Soft Estate] in an email of 16 June 2021 stated:

"It's still not 100% [certain] if this is a purely highway drain or a piped watercourse, but given the amount of connections into the 300mm pipe its likley (sic) to be the latter. However if the site has a pre-existing connection that's irrelevant.

As previously advised we are not accepting new connections into highways drain, but where there is an historic connection into any of our systems we accept or at least tolerate those unless they are foul water or clearly recent unauthorised connections.

As you will be manging the flow rate down as well I can foresee no increased risk of the system being overwhelmed. Jason are you happy for the site to use the existing connection?"

On 17 June 2021 SuDs responded

"If the applicant can provide evidence that no alternative means to discharge exists based on the drainage hierarchy, then [the SudS authority] is happy."

Officer comment:

This suggests that the site is capable of being satisfactorily drained from a technical perspective even though the highway authority will have to accept attenuated flows.

B: Representations

The Council's normal neighbour notification process [97 letters] has triggered a total of 96 letters of objection from 62 properties.

Concerns expressed are summarised thus: [please note all correspondence received can viewed in full on the Council's planning website under the application reference].

Objections

- Overlooking/Loss of Privacy [76]

Officer Comment:

This point is addressed within the officer comments to the Parish Council's comments and is explored in great detail within the assessment part of this report. Officers do however believe the present proposal

includes a significant improvement in terms of reducing the risk of overlooking even compared with the as approved buildings

- Development too high [70]

Officer Comment:

The 'as built' dwellings on plots 5 and 6 have been held to be higher than approved. The original approval now sets the bar in terms of ridge height. The modified buildings will not exceed that height. Objections to the as approved height cannot now influence that decision.

- The plans do not address key issues confirmed by the planning inspector [48]

Officer Comment:

Whilst the proposal does not include a reduction in ground level and does not include adjusting the footprint of the dwelling on plot 5 [both identified as issues by the Inspector] it does provide design benefits to offset these issues such that the end result required by demolition is reached by a different means. This statement will be explored in detail within this report.

If Members are of a mind to see the existing buildings being demolished knowing that the dwellings will then be rebuilt as approved rather than approving the modified proposal with such benefits to amenity as it may include [or not as Members may consider] then the outcome would result in a development on plots 5 and 6 that would directly address the matters identified by the Inspector as causing harm. The resultant development would then be as expected. Having been built, albeit not in accordance with the approved drawings, it has become clear that certain aspects of the approved development will not be welcomed by neighbours. The current modified proposal affords an opportunity to tackle those issues in a way that implementation of the approved scheme cannot.

- Dominating/overbearing [47]

The dwelling on plot 6 will if the modifications are approved have a ridge height that will match that of the approved dwelling at the approved ground level. [rather than the higher ground level and therefore ridge height of the existing 'as-built' version]. On this basis and in view of the significantly reduced eaves height and removal of first floor rear windows the present proposed modified building is not considered to be dominating/overbearing by comparison to the originally approved building.

Whilst the dwelling on Plot 5 is [as built] 0.81m closer to the rear boundary than approved the combination of present separation distance, the lower than as built ridge height and reduced eaves height and lack of first floor rear windows is considered to mean the overall impact will not be dominating/overbearing compared to the as-approved version.

Indeed, officers are of the opinion that the proposed modifications will reduce the presence of the dwellings on plots 5 and 6 on neighbouring dwellings and from Cuckoo Hill.

- Impact to listed buildings [45]

The Council's Heritage Team is satisfied that the modifications of approved and implemented will be acceptable as evidenced when they state:

"..given that the Heritage Team raised no concerns with the form or materials proposed under the 2014 application, the harm to the settings of the listed and unlisted buildings adjacent, and to the character and appearance of the Bures St Mary Conservation, Area has now been removed. We therefore raise no objection"

- Impact to Conservation Area [34]

As above

- Out of character [32]

As above

- Potentially contaminated land [29]

Not an issue with Contaminated Land Officer. Condition 7 resolved for plots 1-4 and new condition recommended.

- Buildings are too close to existing neighbours [26]

Implications discussed above and in report

- Drainage [26]

Please see report

- Landscape impact [24]

The modifications presently proposed will have no greater impact on landscape hereabouts than the approved buildings. The fact that the modified buildings if approved and implemented will have ridge heights compatible with the approved versions and a lower ridge than those 'as-built' may actually permit slightly enhanced sight of tall trees behind the development from certain viewpoints.

- Overdevelopment [21]

Officer comment:

If approved the modifications will not alter the overall approved number of units within Apple Tree Mews. Gardens and parking to plots 5 and 6 remain satisfactory. A refusal on the grounds of overdevelopment cannot therefore be reasonably sustained.

- Inappropriate design [20]

The design is supported by the Heritage Team as appropriate in the context of the as approved development.

- Loss of outlook [19]

Dealt with in the report and earlier.

- Scale [17]

Officer comment:

It is difficult to support a refusal based on inappropriate scale as the as approved buildings were permitted as two storey dwellings. Effectively what is now proposed are 1½ storey dwellings which have a reduced scale. If the criticism is that 1½ storey dwellings are inappropriate in scale compared to the approved and as built two storey dwellings then that is not a view supported by officers.

- Boundary issues [17]

Please see report

- Conflict with Neighbourhood Plan [16]

Bures St Mary does not have a Neighbourhood Plan

- Loss of light [16]

Will be considered under residential amenity section of this report.

- Conflict with District Plan [13]

How? Policy implications will be explored in this report and summarised within the planning balance and conclusions.

- Inadequate Access [13]

No highway objection and the same as originally approved. Access cannot therefore reasonably be used a reason for refusal.

- Building work [12]

The original planning permission resulted in inevitable disturbance, nuisance and disruption for existing nearby residents and road users.

The complete demolition of the buildings on plots 5 and 6 will result in disturbance, nuisance and disruption.

If approved and implemented the proposed modifications may well result in a modicum of less disturbance, nuisance and disruption compared to full demolition and full build as less work will be required.

Clearly had the permission been implemented in accordance with the approved drawings in the first place this subsequent disturbance, nuisance and disruption would not have been required. With the upholding of the Enforcement Notice that is now inevitable at least in the short-term if the problems with the as built dwellings are to be resolved.

- Contrary to NPPF [10]

This point is not accepted in the light of the extant planning permission.

- Residential Amenity [9]

Fully considered in this report.

- Application is lacking information [9]

Officers are satisfied that adequate information has been presented since the submission of the application.

- Health and Safety [9]

A condition requiring the submission of a demolition and construction method statement is recommended if Members are minded to grant planning permission.

- Increased traffic and highways issues [7]

No highway objection.

- Light pollution [7]

No new implications compared to as approved situation.

- Inadequate parking provision [6]

The proposed off-street parking for the buildings on plots 5 and 6 meet current standards.

- More open space needed [5]

The proposal cannot now be required to provide additional open space beyond that previously approved. There was no public open space requirement.

- Loss of open space [4]

The proposal results in no loss of open space over that previously approved.

- Increase danger of flooding [3]

Please see drainage sections.

- Increase in pollution [1]

Demolition and construction works will result in additional noise and dust but the demolition method statement and conditions on construction hours and dampening down of dust will minimise the extent.

- Loss of parking [1]

Not applicable.

- Noise [1]

See above.

Relevant Planning History

B/14/01103/FUL/AS: Approved 13.02.2015

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)

Non-Material Amendment B/14/01103/FUL/AS: Approved 12.05.2017

Alterations to the approved dwellings, which essentially comprised additional windows and roof lights, bin enclosure details and garden sheds.

DC/18/00929: Refused 02.08.2018

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 to show the existing [prior to development] and proposed ground and floor levels to properties by substituting drawing number 3368.25 and replace it with new drawing 1471.21e 'Proposed Setting-Out and Landscaping'.

The reason for refusal were based around the following summarised issues resulting from the buildings [as built] not being in accordance with the approved drawings:

1. The harmful effect upon the residential amenity afforded to the occupants of White Horse House, due to the scale of dwellings on plots 5 and 6 [as built] and the proximity between those plots and neighbouring dwellings; and,
2. The harm caused by the dwellings on plots 5 and 6 [as built] to the character of the Bures St Mary Conservation Area; and,
3. The harm to the significance of White Horse House by virtue of the impacts the dwellings on plots 5 and 6 [as built] are having on the setting of that listed heritage asset.

*[summary taken from Council's Statement of Case from the S78 Inquiry [2020]
[Heritage Witness]*

DC/19/01422:

Application under section 73 of the Town and Country Planning Act B/14/01103 without compliance with condition 2 (Approved plans and documents) to allow amendments to plots 1 & 2.

DC/19/01427:

Application under section 73 of the Town and Country Planning Act B/14/01103 without compliance with condition 2 (Approved plans and documents) to allow amendments to plot 3.

Five CLEUD [Certificate of Lawfulness of Existing Use or Development] applications were submitted on 19 September 2018, for each of the permitted six house plots of the implemented permission (Plots 1&2 submitted as one), relevant to planning permission granted in 2015 (B/14/01103/FUL/AS).

Two were refused on 20th December 2018 (Plots 3 and 6) and three were refused on 31st January 2019 (Plots 1&2, 4 and 5).

DC/19/01428:

Application under section 73 of the Town and Country Planning Act B/14/01103 without compliance with condition 2 (Approved plans and documents) to allow amendments to plot 4.

Enforcement Action History

The Council served an enforcement notice, reference 17/00439/NFP, with regard to Plots 5 & 6 on 29th August 2019 immediately following the Planning Committee to determine the separate S73/73A applications for Plots 1-4, on the grounds that Plots 5 & 6 remained unauthorised for not following approved plans and increase in ground levels.

APPEAL History

	Application Description	Babergh DC References	Appeal References	Appeal Decision	
1.	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 amended by agent's letter dated 21/6/18 and revised plans 1471.21G and 1471.22.	DC/18/00929	APP/D3505/W/18/3215428	<p>The applicant withdrew the planning appeal submitted under S78 against the refusal of planning permission on day 5 of the Inquiry</p> <p>A costs award was made against the appellant in favour of the Council.</p>	
2	Lawful Development Certificate Plots 1&2 Erection of 2 No Houses with gardens and parking	DC/18/04204	APP/D3505/X/19/3221853	<p>The applicant withdrew all five of the lawful Development Certificate appeals also on day 5 of the Inquiry.</p> <p>A costs award was made against the appellant in favour of the Council.</p>	
3	Lawful Development Certificate Plot 3, One three bedroom house with garden and parking, constructed in accordance with permitted drawings 3368:18 Rev G and 3368:21 Rev B	DC/18/04205	APP/D3505/X/19/3221710		
4	Lawful Development Certificate Plot 4 Erection 1No. dwelling with gardens and parking.	DC/18/04206	APP/D3505/X/19/3221857		
5	Lawful Development Certificate Plot 5 Erection 1No. bedroom house with gardens and parking.	DC/18/04231	APP/D3505/X/19/3221927		
6	Lawful Development Certificate Plot 6 One three bedroom house with gardens and parking, constructed in accordance with permitted drawings 3368:18 Rev G and 3368:21A Rev A	DC/18/04208	APP/D3505/X/19/3221712		
7.	Enforcement Notice Plots 5 & 6 – Breach of planning control not following approved plans – increase in ground levels.	17/00439/NFP	APP/D3505/C/19/3237898		<p>This appeal was dismissed and the Enforcement Notice UPHeld.</p>

The Appeal Decision

In her decision dated 27 November 2020 the Inspector appointed to hear the Inquiry and determine the appeals, Diane Lewis BA[Hons] MCD MA LLM MRTPI, dismissed the remaining appeal and upheld the Enforcement Notice requiring demolition of dwellings on plots 5 and 6. [with corrections and a variation].

The following extracts from the Inspector's report are considered relevant to the application now before Members in ways that will be explained subsequently.

- "34. *In conclusion, the site levels plan provides a means of control of the ground levels on the development site and in turn, when read alongside the other approved plans and documents, the finished height of the dwellings on plots 5 and 6. Contrary to the appellant's view, the site levels plan does provide an additional restriction to the height of dwellings above ordnance datum (AOD). The 2015 permission, whether through the description of the development or the approved documents, does not authorise engineering or building operations to materially raise ground levels over and above the adjusted levels shown on the approved plan. The permission does not authorise engineering operations to raise ground levels across the wider site.*
40. *There is no justification for an underbuild of between 0.5 to 0.7 m on plot 5.*
43. *I conclude an underbuild of between 0.5 to 0.7 m on plot 6 is not in accordance with the approved details or otherwise justified.*
72. *On plot 5 the ridge of the house is 1.07 m too high primarily due to an unnecessary increase in ground level and the house is sited too far south by a minimum of 0.81 m.*
73. *On plot 6 the ridge of the house is 0.92 m too high by reason of an unjustified increase in ground level over and above the adjusted level on the approved site levels plan.*
89. *I conclude as a matter of fact and degree that the development is substantially different from the one which has been approved. The dwelling and associated garage does not fall within the scope of the 2015 permission and as a result the development has been built without planning permission.*
119. *The less than substantial harm to the significance of the heritage asset is not outweighed by the public benefits. The failure to preserve the character and the appearance of the Conservation Area is a strong presumption against the development.*
130. *The fabric of the listed building would not be directly affected. The development causes less than substantial harm to the significance of the heritage asset, particularly the architectural value. This harm has*

considerable importance and weight. The public benefits of the development are the contribution to housing needs and associated beneficial use of the land and the slight positive economic effect generated by future residents. Economic benefit during the temporary period of construction is also acknowledged. I attach only a small amount of weight to the public benefits for the reasons set out above. The less than substantial harm to the significance of the heritage asset is not outweighed by the public benefits. A strong consideration against the development results from the detrimental effect on the setting and the significance of the listed building, with the consequent failure to comply with policy.

143. *In conclusion the development does not comply with the broad objective of respecting local context expressed in Policy CS15. There is conflict with Policy CN01 in that the new houses are not of an appropriate scale and form in relation to adjacent development. In the terms of Policy HS28 they represent overdevelopment to the detriment of residential amenity. The identified harm is not able to be overcome by use of planning conditions.*

145. *The appellant suggested that it would be possible to amend the roof design by lowering its height. Rear windows could be lowered or partly frosted to overcome any concerns of overlooking. No details were provided to demonstrate how this would be done and the implications for the internal layout, the design and appearance of the dwellings and the associated garages. The appellant chose not to pursue the matter in evidence at the inquiry through the ground (a) appeal. As accepted by the planning witness an alternative scheme would have to be the subject of a new planning application. There is no obvious alternative scheme for consideration.*

165. *Overall balance and conclusion. The erection of a two storey dwelling and associated garage on plot 5 fails to comply with Policies CN01, CN06, CN08 and HS28 of the Local Plan. There is conflict with Policy CS15 of the Core Strategy. The development fails to improve social and environmental conditions, does not secure sustainable development and is not supported by Policy CS1. The development is not in accordance with the development plan when read as a whole. The scheme is not supported by the Framework by reason of the harm to the significance of designated heritage assets and the failings in design.*

166. *The provision of a new home does not outweigh the conflict with the development plan and the Framework. Consideration of the fallback, the incremental change and other matters do not alter this conclusion. The development is unable to be made acceptable by the use of planning conditions. Planning permission should not be granted for this part of the Land.*

167. *Plot 6 is the more sensitive of the two plots because of the more prominent position on a corner at the entrance to the wider residential site and the very close proximity to White Horse House. Achieving high quality design is essential.*
168. *The residential development on plot 6 relates well to the development on plots 1-4 in terms of use and building design. The traditional type of building elements and use of materials also shows consistency with typical architectural features on residential buildings in the historic core. However, it is the very important relationship to the frontage development on Cuckoo Hill and settlement form where the increase in ground levels and resulting building height have a harmful impact. The new house and garage have an over-dominant presence within the street scene and in local views, even in the absence of development of plot 5.*
169. *The character and appearance of the Conservation Area would not be preserved. Requirements of Policies CN01, CN08, HS28 and CS15 are not met. Less than substantial harm is caused to the architectural and historic significance of the designated heritage asset and this harm is not outweighed by the identified public benefits.*
170. *Similarly, whilst the amount of built form close to the listed building would be less through the development on a single plot, the plot 6 development sits Directly to the north and has the greatest effect on how the listed building is seen within its setting. The conclusion remains that the new build is not of an appropriate scale, form and siting to harmonise with the listed building and its setting, nor would it respect the space and views of the listed building that contribute positively to its setting. There is conflict with Policies CS15 and CN06.*
171. *The development on plot 6 causes less than substantial harm to the significance of the heritage asset. This harm has considerable importance and weight and is not outweighed by the limited public benefits identified. The policy aim in the Framework to protect and enhance the historic environment is not upheld.*
172. *The loss of privacy for the occupiers of White Horse House is primarily due to the potential for overlooking from development on plot 6. In addition, the new dwelling because of its elevated position and relatively substantial scale has a serious impact on outlook and enjoyment of this neighbouring home. The overbearing form and undue enclosure is not so acute for the occupiers of 6 and 7 Cuckoo Hill but nevertheless the amenity for residents of these homes has suffered. Therefore, conflicts with Policies CS15, CN01 and HS28 remain. The objectives in the Framework, to achieve good design and ensure development adds to the quality of the area, are not met.*
173. *Considering plot 6 alone, the differences to the 2015 approved dwelling result in significant harm on all three main issues. The 2015 fallback would be preferable and does not weigh in favour of the development*

that has taken place. The reasons underlying the unacceptable form of development and outcomes are unable to be resolved through the use of planning conditions.

174. *Overall balance and conclusion. The erection of a two storey dwelling and associated garage on plot 6 fails to comply with Policies CN01, CN06, CN08 and HS28 of the Local Plan and conflicts with Policy CS15 of the Core Strategy. The development fails to improve social and environmental conditions, does not secure sustainable development and is not supported by Policy CS1. The development is not in accordance with the development plan when read as a whole.*
175. *The scheme is not supported by the Framework by reason of the harm to the significance of designated heritage assets and the failings in design. Other considerations, including the provision of a new home, are not sufficient to outweigh the serious harm and policy conflicts identified. The development on this part of the Land is unacceptable.*

Conclusion on individual plots

176. *The unauthorised development on each plot is unacceptable and planning permission should not be granted in respect of part of the appeal site or part of the development enforced against.*
177. *This conclusion is reinforced by another possible scenario involving the retention of the as-built house and garage on one plot with subsequent development of the adjacent plot in accordance with the 2015 permission. In order to achieve a high standard of design, development should not be dealt with in a piecemeal fashion but through consideration of a design solution for both plots.*
186. *The issue is whether the compliance period of 6 months is reasonable.*
187. *The appellant is seeking a period of 12 months, primarily to enable an alternative scheme to be prepared, submitted and approved and bearing in mind uncertainties and pressure related to the pandemic.*
- 188. *I agree with the Council that 6 months would be a reasonable time to carry out the necessary works to demolish the two dwellings. Nevertheless, there are factors that indicate extension of the compliance period would be justified and the Council did not resist a period of 9 months. The likelihood is that the appellant would at the least wish to explore options to total demolition by considering alternative schemes. Whilst the possible need for an alternative new scheme for the two plots dates back to the refusal of the section 73 application in August 2018, the appellant would have hoped for success in the appeal(s). In the event a new proposal is to be pursued a period of six months would be sufficient to allow for all statutory procedures to be followed in determining a new application. Additional time would be necessary to carry out remedial works.***

189. *On the other side of the balance serious harm to the local environment and residents' living conditions continues. The harms should be brought to an end as soon as reasonably possible, which argues against doubling the length of the compliance period.*
190. *I conclude that a period of nine months strikes the right balance and the appeal on ground (g) succeeds to this extent.*

Officer comment:

What is clear from the decision and the extracts cited above is that the Inspector did accept that the dwellings on plots 5 and plots 6 [as built] are causing unacceptable harm to Amenity and heritage assets [CA LB] as a result of being materially higher than they should be and that a serious breach of planning control has occurred.

Her decision accepts the remedy is for both properties to be demolished leaving the developer then free to re-build both dwellings but in accordance with the planning permission. It is clear that there is no impediment to the developer implementing the permission he has for 2 x two storey dwellings on plots 5 and 6 that will to all intent and purpose have the same general external appearance as that built albeit from a reduced ground level.

Interestingly the Inspector at paragraph 188 of her report in extending the compliance period for the properties to have been demolished from 6 to 9 months has potentially opened a small window to the developer to 'explore options to total demolition by considering alternative schemes'. The current application is the developers suggested alternative.

This brings us all back to the starting point of judging the present application on its own individual planning merits but with the knowledge that the developer can rebuild in accordance with the extant planning permission. [provided it is built strictly in accordance with that permission]

This in turn then brings the same planning issues that dominated the Public Inquiry:

Namely:

- ***Impact on residential amenity***
- ***Impact on setting of the listed building 'White Horse House'***
- ***Impact on the character of the Bures St Mary's Conservation Area.***

PART THREE – ASSESSMENT OF THE APPLICATION

1.0.1 Introduction

1.0.2 In considering the merits of the latest proposal Members will, amongst other things, want to explore :

- ***Impact on residential amenity***
- ***Impact on setting of the listed building 'White Horse House'***
- ***Impact on the character of the Bures St Mary's C conservation Area.***

1.1.1 Site and Surroundings

1.1.2 The site is located within the village of Bures, within the Parish of Bures St Mary. It falls within the Built-Up Area Boundary (BUAB) of Bures St Mary, as defined in the BDC Core Strategy and Policies (2014).

1.1.3 The site is located to the north of Cuckoo Hill, a key artery through Bures. Bures Train Station is approximately 650m to the west of the site, which provides regular services in the direction of Sudbury and Marks Tey. Regular bus services to Sudbury and Colchester are available from the bus stop adjacent to St Mary's Church, approximately 350m to the west of the site.

1.1.4 Access to the site is from the south via Cuckoo Hill, located to the west of White Horse House and east of Pilgrim's Garage. St Edmunds Lane, a single lane country road, forms the northern boundary to the site. To the west, is Byron House. To the east is Eversley, a two-storey detached building and what appears to be a scrap merchants and 9 Cuckoo Hill. To the south is White Horse House and 6 and 7 Cuckoo Hill.

1.1.5 Prior to its redevelopment for residential purposes the former use of the site was an animal slaughterhouse, which closed in 1980 but continued as a meat processing plant until 1984, and contained a number of commercial buildings which operated for this purpose. Following its closure, the buildings were converted for business use which also eventually closed circa 2009 when the site was put up for sale.

1.1.6 The area surrounding the site comprises primarily residential dwellings interspersed with other uses such as a garage, scrap yard and church. Bures is a small village, bound on all sides with open fields and woodland areas. Houses are typically between one and three storeys and are a mix of traditional and more recent constructions.

1.1.7 Currently plots 5 and 6 are occupied by unauthorised dwellings that have not been built in accordance with the approved details. They are the subject of an Enforcement Notice requiring their demolition.

1.1.8 The appearance, scale and mass of the existing buildings on plots 5 and 6 are as shown in the images below.



figures 2: **Images of the existing dwelling on plot 5**



figures 3: **Images of the existing dwelling on plot 6**

- 1.1.8 The site is within the Bures St Mary Conservation Area.
- 1.1.9 The adjacent property [to the south] named ‘*White Horse House*’ is a Grade II listed building
- 1.1.10 Plots 5 and 6 are adjoining to the south by existing older properties, a commercial garage to the west and new dwellings built as part of the wider six unit ‘*Apple Trees Mews*’ development – of which plots 5 and 6 are part

1.2.1 The Nature of the Application

- 1.2.2 The application is submitted as follows:

“Variation of Condition 2 (Approved Documents) of planning permission B/14/01103/FUL dated 13/02/2015 - 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). To allow alterations to Plots 5 and 6.”

- 1.2.3 As an application under s73 of the principal Act, the description of development has not changed. The application seeks to vary condition no. 2 in order to amend the permitted designs for Plots 5 and 6. Members are therefore only being asked to consider the proposed alterations to the dwellings on plots 5 and 6 and nothing else. It is reminded that the permission was implemented and is extant; plots 5 and 6 are capable of being completed, lawfully, in accordance with the permission that exists. This application proposes an alternative to that permitted scheme (for those plots) but with current ground levels retained.

- 1.2.4 Thus, the proposed modifications, the subject of this application, will retain the present buildings in their current positions in terms of:

- location,
- footprint and
- height of slab/finished floor level

- 1.2.5 An overall reduction in present ‘*as built*’ height will be achieved [if approved] by

- removal of the current roof
- removal of parts of the existing first floor structure.

- 1.2.6 A new roof with a reduced ridge height and pitch will be constructed and parts of the first-floor structure rebuilt and remodelled including the removal of some existing first floor windows and a reduction in chimney heights. The ridge height of rear/front gables will also be lowered to maintain the relationship with the main ridge and the eaves height around the building will be lowered. The consequent reduction in head height at first floor will mean the rooms inside at that level become smaller. Small dormer windows will be built into the slope of the pitched roof to the rear gable. These will replace what are [recently] full

height windows in the rear wall of what is presently a two- storey rear elevation. As a result the current ability to look southwards directly towards existing properties [eg White Horse House, 6&7 Cuckoo Hill and Eversley] from rear first floor windows in the dwellings on plots 5 and 6 will be removed. Impact on residential amenity will be discussed in greater detail later in this report.

1.2.7 The current application also includes a significant reduction in the existing garage roof ridge height [and consequently roof pitch] to plots 5 and 6.

1.2.8 The proposed elevations are shown below.



figure 4: **Proposed rear elevation [south]- plot 5**



figure 5: **Proposed side elevation [east] - plot 5**

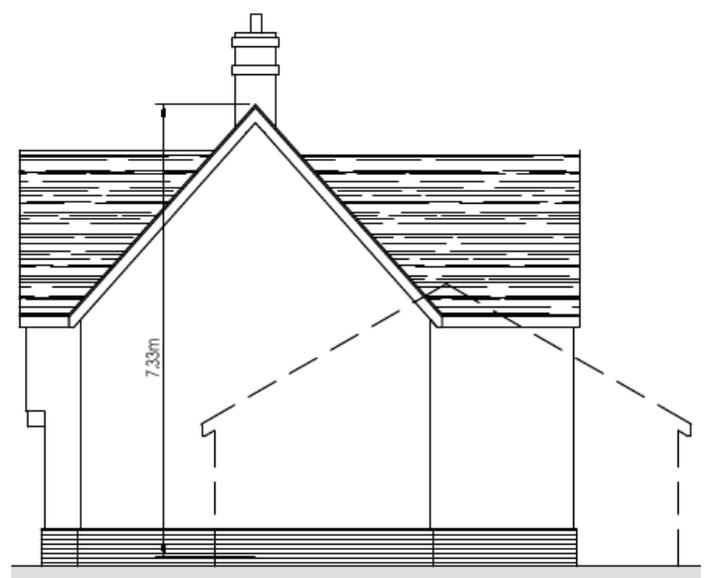


figure 6: **Proposed side elevation [west] - plot 5**



figure 7: **Proposed front elevation [north] - plot 5**

PLOT 6



figure 8: **Proposed rear elevation [south]- plot 6**

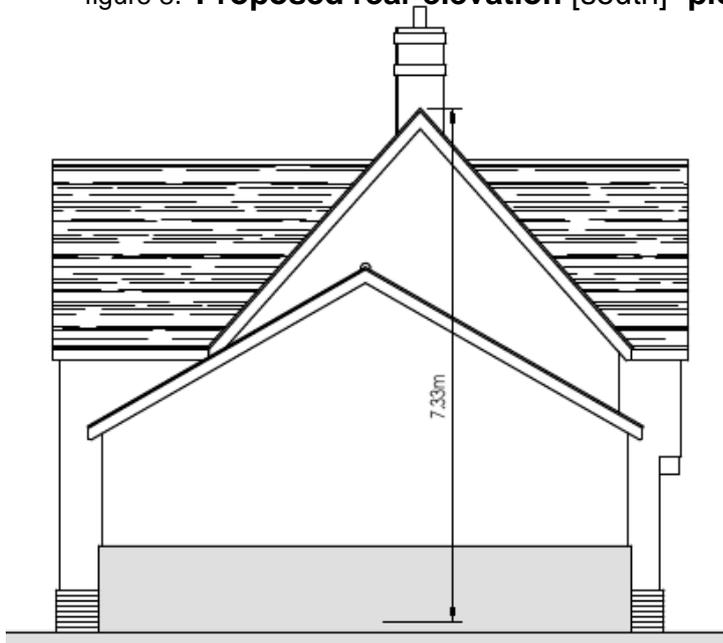


figure 9: **Proposed side elevation [east] - plot 6**



figure 10: **Proposed side elevation [west] - plot 6**



figure 11: **Proposed front elevation [north] - plot 5**

1.2.9 Members will inevitably want to compare what is currently proposed with what has been built and what was approved if for no other reason than to establish a comparison with what can be seen as the ‘fall- back position⁵’

1.3.0 Residential Amenity

1.3.1 Overlooking

1.3.2 As can be seen from figures 13 and 16 below the proposed modifications to the rear elevations result in a reduction in overlooking compared to the as built versions and even the as approved versions as a result of the removal of two sash windows at first floor level in each.

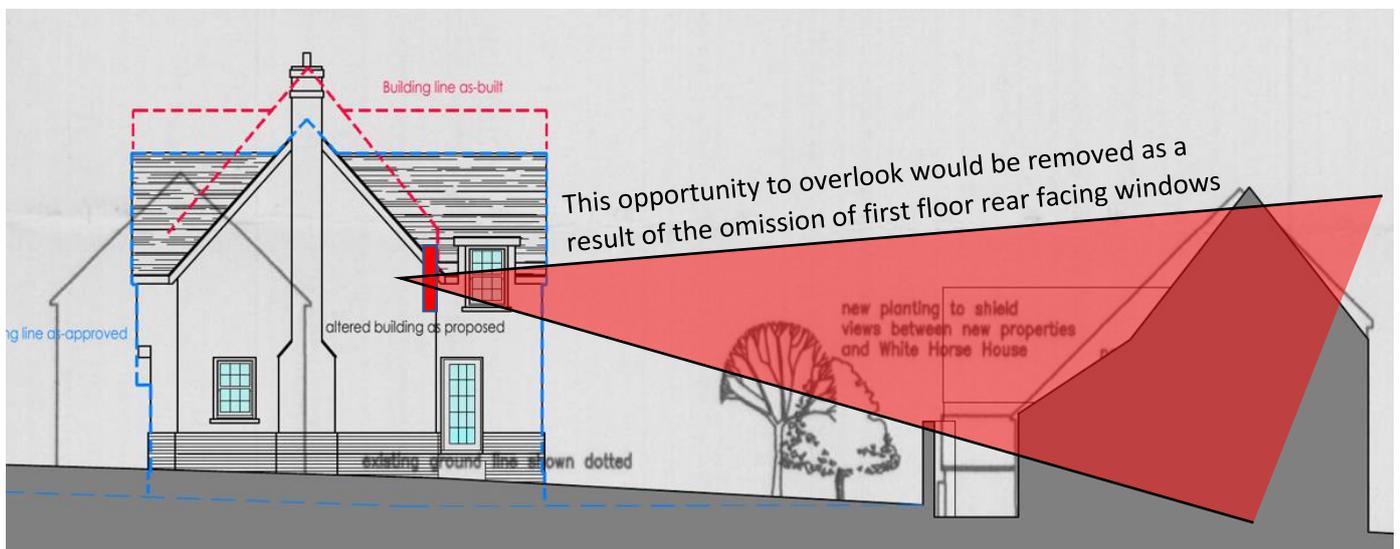


figure 12: **Overlooking reduction. Plot 6 and White Horse House**

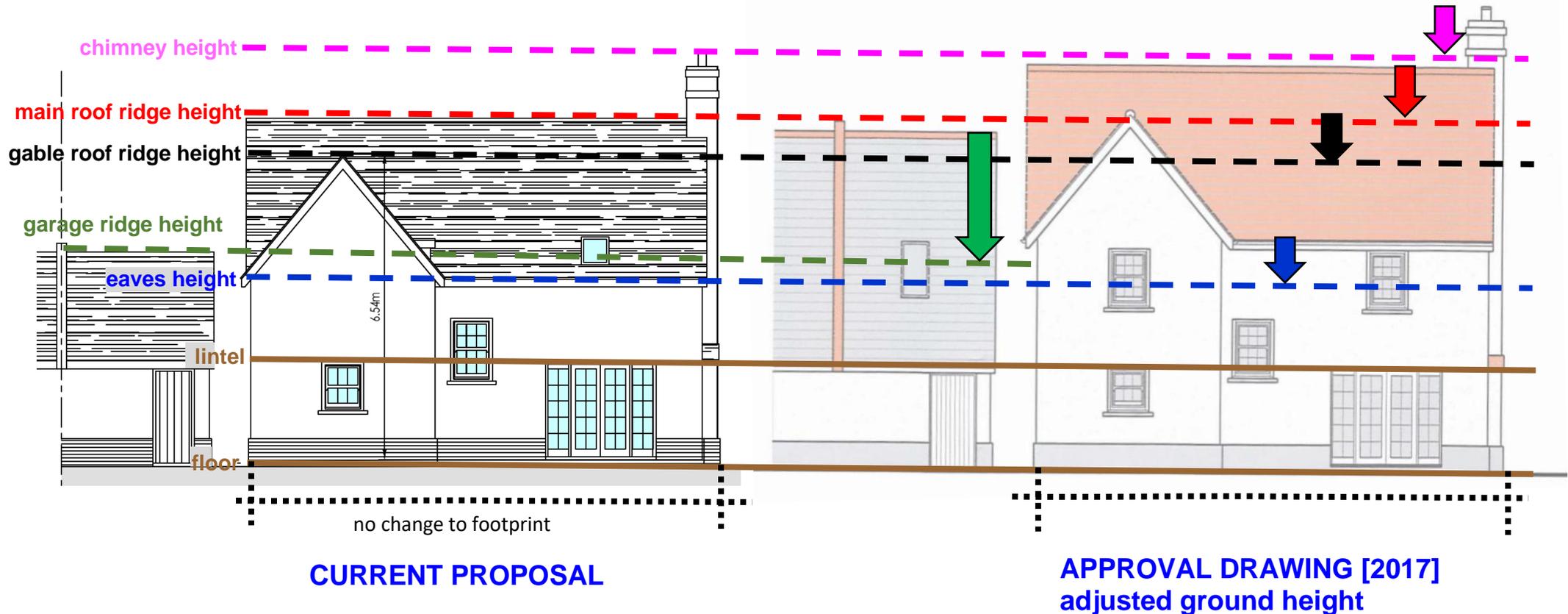
1.3.3 The same benefit applies to those living behind plot 5.

⁵ The extant planning permission for 2 x two storey detached dwellings

figure 13: Comparative Analysis - Rear Elevation - HEIGHTS

note: BDC annotations on submitted/approved drawings

Plot 5



Commentary:

With the proposal to retain the current ground floor structure the finished floor level will not change. The architect is proposing to reduce the ridge height of the main roof to the building on plot 5 to accord with the ridge height expected had the current building on plot 5 been constructed at the required ground level. The proposed modifications go well beyond simply lowering the ridge height of the main roof [red arrow]. The diagram above demonstrates the full extent of remodelling/rebuilding that will be required to achieve the appearance now proposed. The diagram on the following page highlights the 'knock-on' changes necessitated by dropping the eaves height [blue arrow] by the equivalent ridge height reduction. The rear gable height is also dropped [black arrow] to retain the relationship with the adjusted main roof ridge height. The [green arrow] reveals just how dramatically the garage roof height is to be reduced if this S73 application is approved.

figure 14: Comparative Analysis - Rear Elevation - **WINDOWS**

note: BDC annotations on submitted/approved drawings

Plot 5

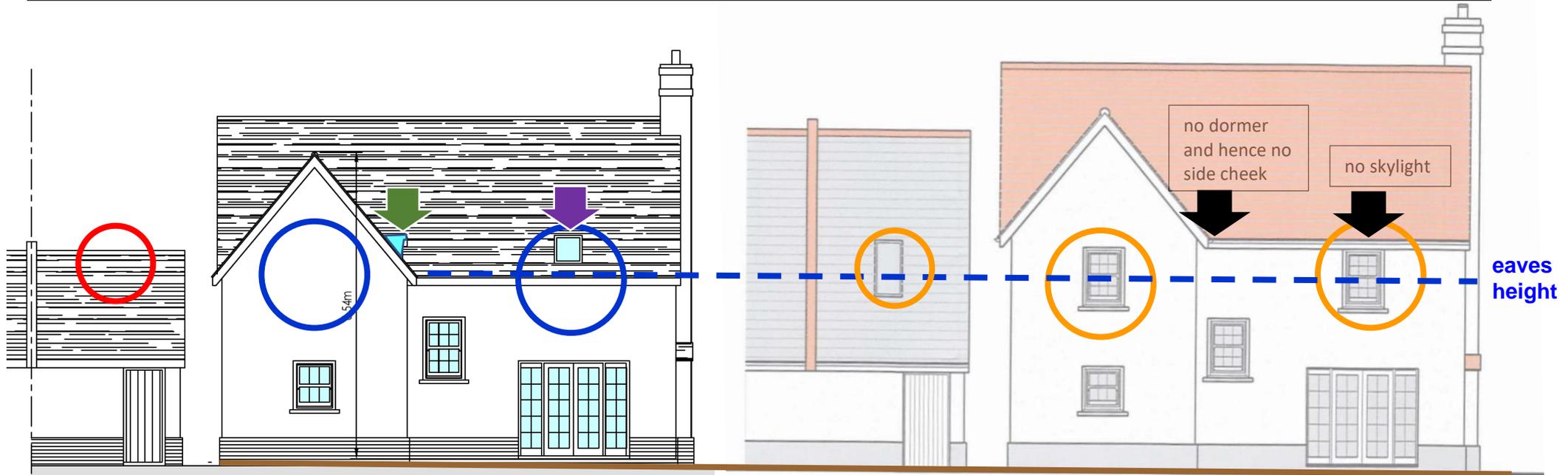


figure x: **Comparative analysis - plot 5** (currently proposed modification [left] and 2017 approval [right])

CURRENT PROPOSAL

**APPROVAL DRAWING [2017]
adjusted ground height**

Commentary:

The proposed re-modelling of the rear elevation now includes the removal of two existing prominent full height rear facing sliding sash windows at first floor in the positions shown **[blue circles]**.

Daylight to rooms within what will effectively become attic space in a 1½ storey [from 2 full storeys] at the rear of the dwelling will be provided by a small skylight **[purple arrow]** fixed within the re-modelled roof slope and a modest dormer **[green arrow]** positioned in east facing slope of the re-modelled gable roof. Within the re-modelled garage roof a skylight **[red circle]** has also been removed.

figure 15: Comparative Analysis – Side Elevations - HEIGHTS and WINDOWS [SIDE]

note: BDC annotations on submitted/approved drawings

Plot 5

CURRENT PROPOSAL

APPROVAL DRAWING [2017] adjusted ground height

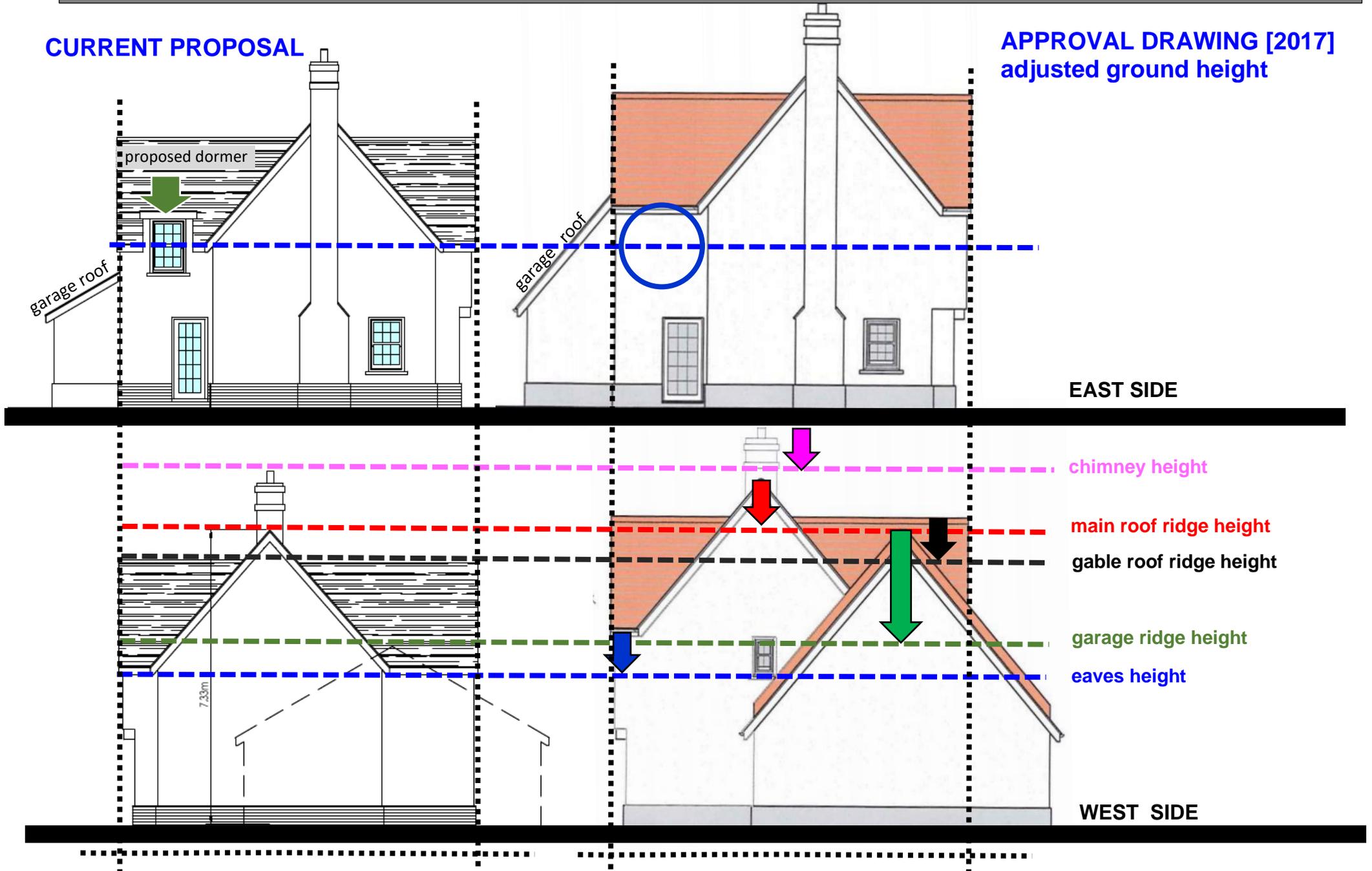
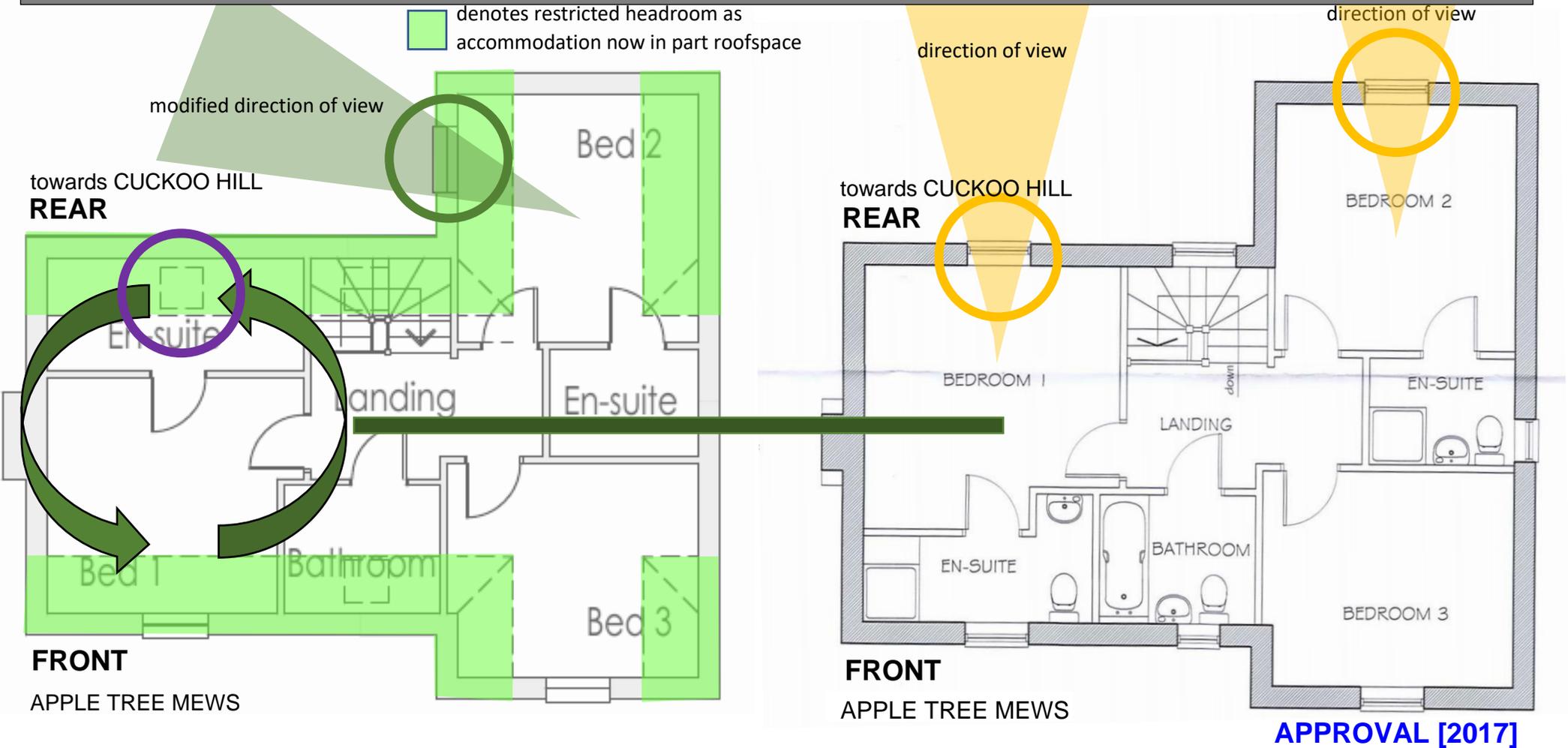


figure 16: Comparative Analysis – Side Elevations - FIRST FLOOR PLAN

note: BDC annotations on submitted/approved drawings

Plot 5



Commentary:

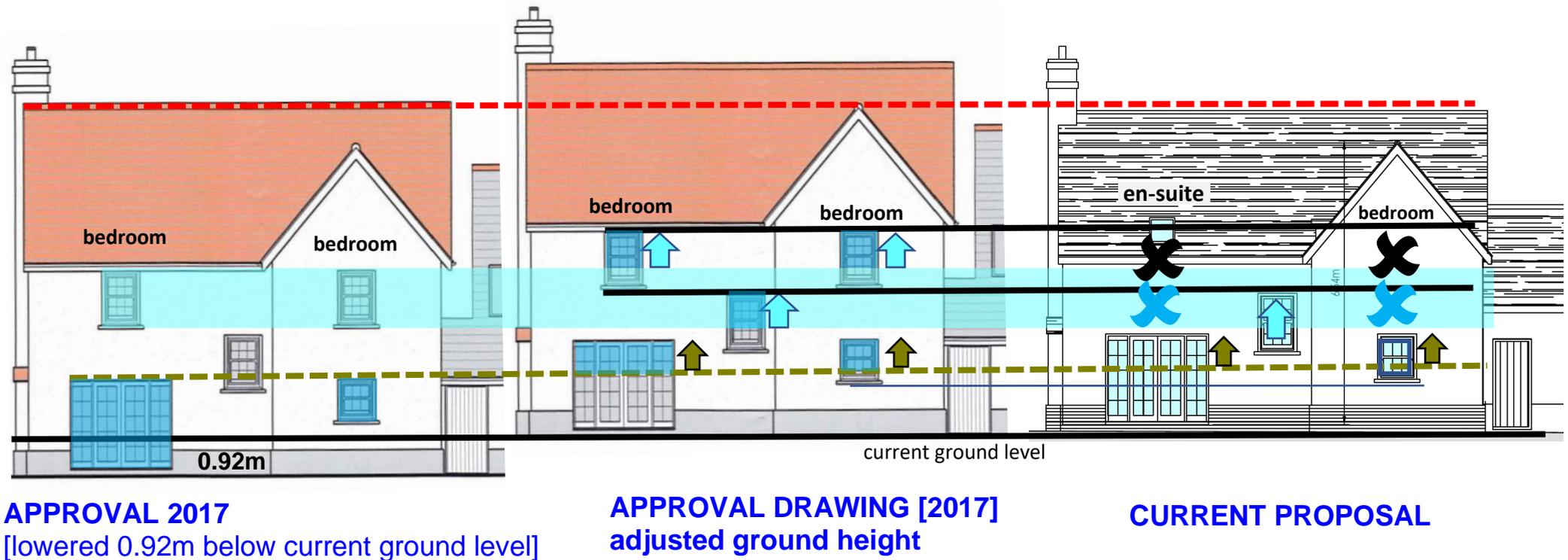
The proposed re-modelling of the first floor plan / layout results in two existing prominent full height rear facing sliding sash windows being removed **[orange circles]**.

Daylight to rooms within what will effectively become attic space in a 1½ storey [from 2 full storeys] at the rear of the dwelling will be provided by a small skylight **[purple circle]** fixed within the re-modelled roof slope and a modest dormer **[green circle]** positioned in east facing slope of the re-modelled gable roof. Swapping the approved position of bedroom 1 from the rear to the front and placing the bathroom at the rear avoids a habitable room looking towards Cuckoo Hill. The skylight replaces the full height window in what is now proposed as the bathroom.

figure 17: Comparative Analysis - Rear Elevation – HEIGHTS and WINDOWS including as built approved version set 0.92m below present ground level

Plot 6

note: BDC annotations on submitted/approved drawings



Commentary:

It is proposed to modify the dwelling on plot 6 in the same way as plot 5. It should be noted that dwelling on plot 6 is already a handed version of the dwelling on plot 5.

The three scenarios above describe the building as it should have been built [0.92m below what is now ground level] [LEFT]; the building as approved in 2017 set at the present ground level [0.92m above what it should have been] [MIDDLE] and as now proposed by way of partial demolition, re-build and re-modelling but with the present ground floor accommodation and ground level unchanged [RIGHT]. The striking features to note are the removal of existing first floor rear windows in the current proposal and the reduction in ridge height.

figure 18: Comparative Analysis – CROSS SECTION

Plot 6

note: applicant's architect's drawing

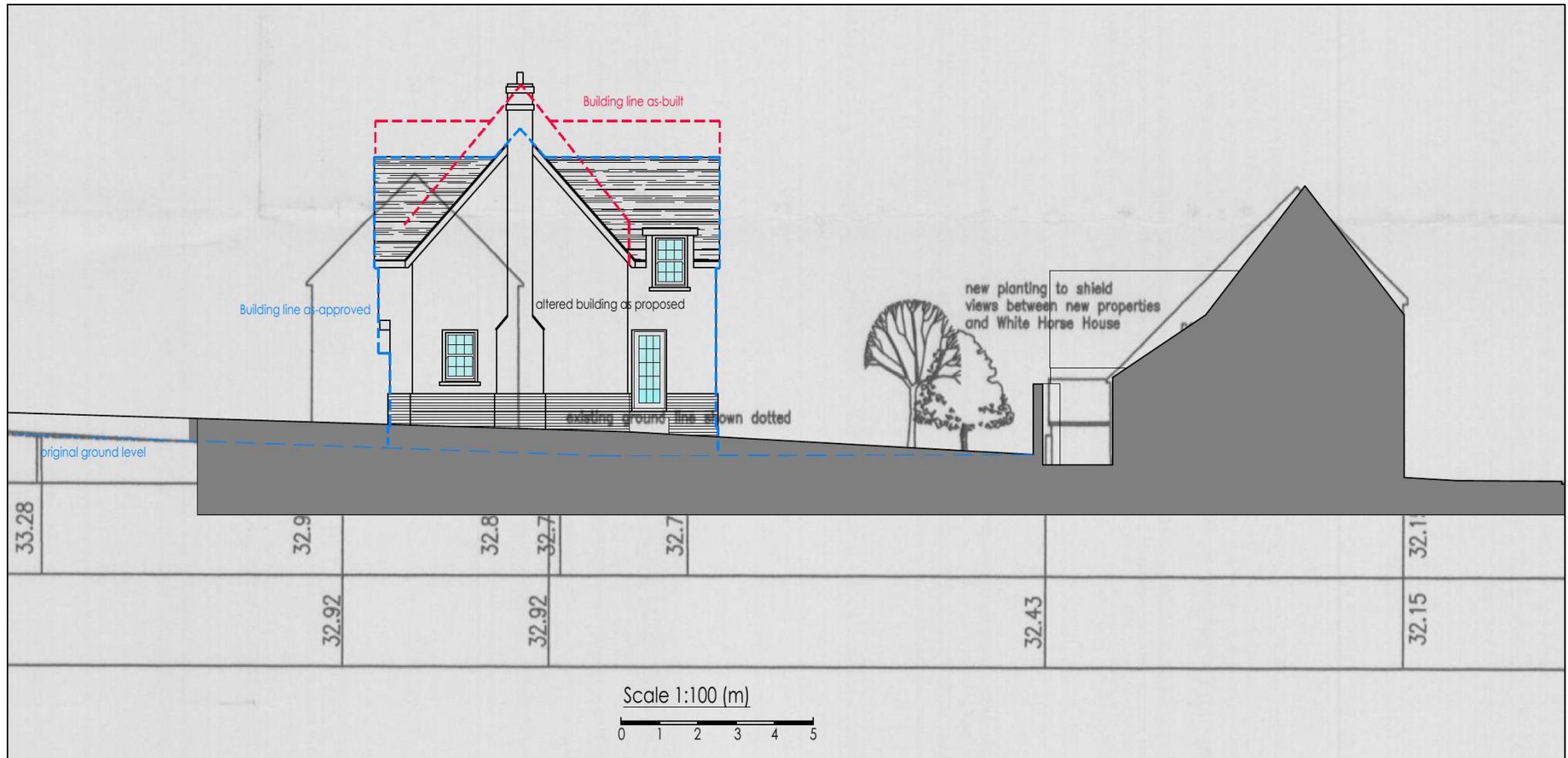


figure 19: Comparative Analysis – CROSS SECTION

Plot 6

note: applicant's architect's drawing

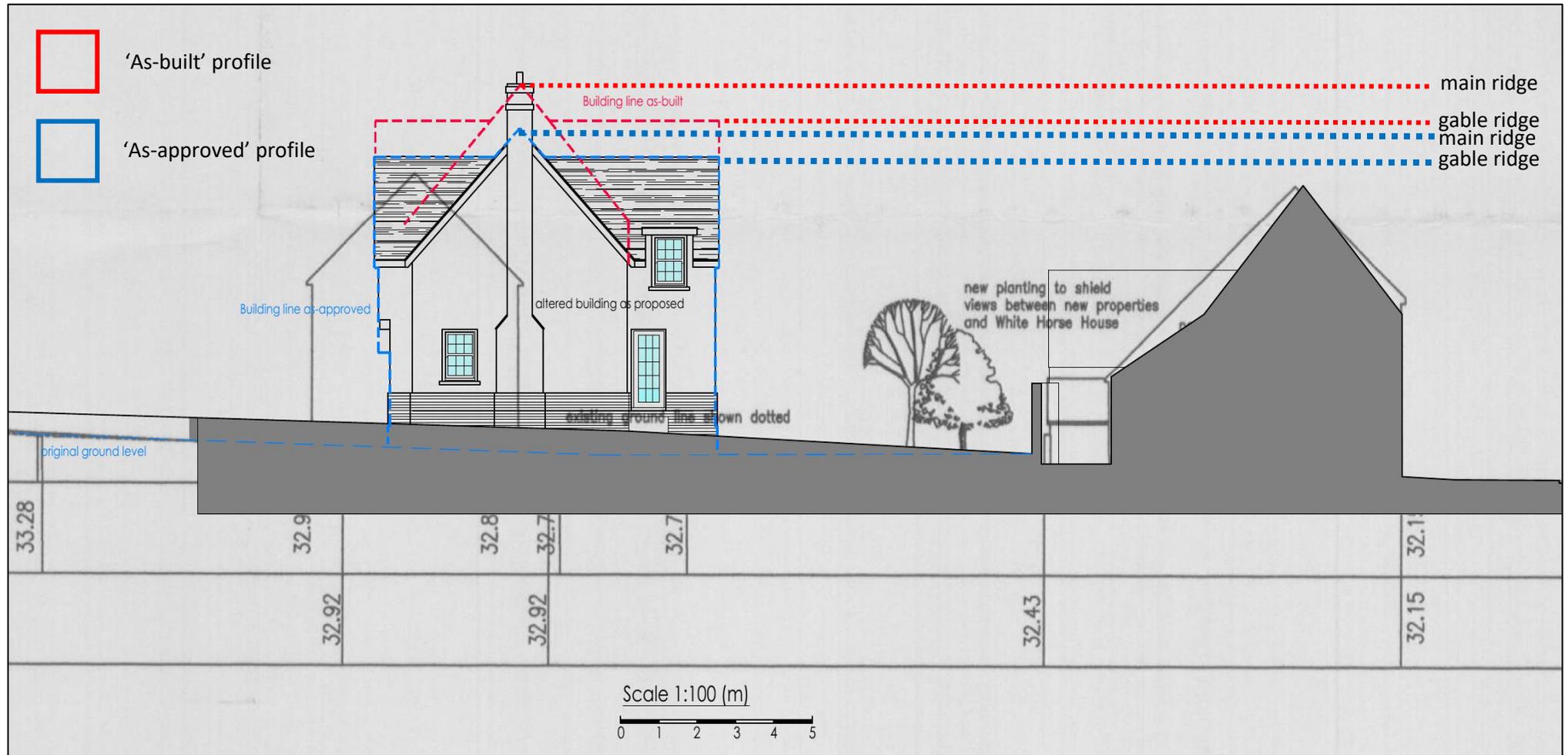


figure 20: Comparative Analysis – CONTEXT

note: applicants architects drawing

Plots 5 & 6

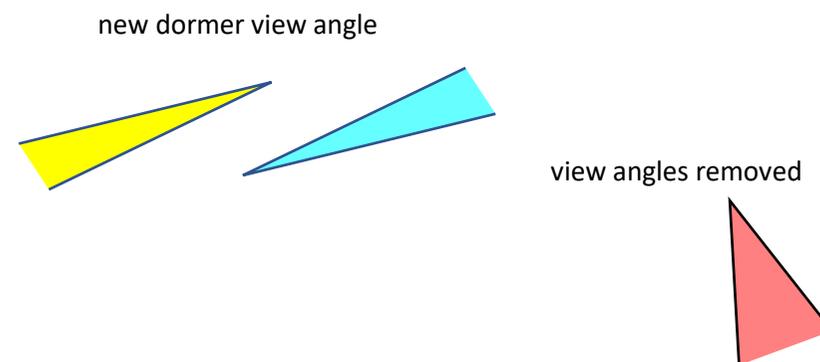


figure 21: Comparative Analysis – As marked up on site

Plot 5

note: applicants architects drawing



figure 22: Comparative Analysis – As marked up on site

Plot 6

note: applicants architects drawing



This mock-up includes removal of first floor rear window

figure 23: **Comparative Analysis – As built and as modified [proposed]**

Plot 6

note: applicants architects drawing



figure 24: Comparative Analysis – As built and as modified [proposed]

Plot 6

note: applicants architects drawing



1.3.4 Relationship between garden level on plot 6 and garden to White Horse House

1.3.5 In considering this element Members will be aware that the occupiers of White Horse House have objected to the height of the boundary fence that has been erected at the foot of the garden to plot 6 and to what appears to be the ability of people within the garden of plot 6 to look directly into the private garden of White Horse House despite the fence which is seen as too oppressive.

1.3.6 The fence in question sits above the existing blockwork boundary wall to White Horse House [albeit slightly set back rather than being directly on top of the blockwork wall] and is therefore considerably higher from the White Horse House side of the boundary than it is above garden level within plot 6.

1.3.7 An images was provided which appeared to show the problem [see below]. Upon closer investigation it is likely that the person in the image was standing on part of the cherry picker in the photograph which provided additional artificial elevation.



figure 25: **Garden boundary from White Horse House**

1.3.8 Officers are looking to arrange a site meeting with the interested parties and the Council to definitively measure the actual height of the fence above respective garden levels and secure agreement as to what those figures are.

1.3.9 Whatever the outcome it is reasonable to expect the garden level adjacent to the top of the fence as measured from within plot 6 to be 1.8m. This can be conditioned.

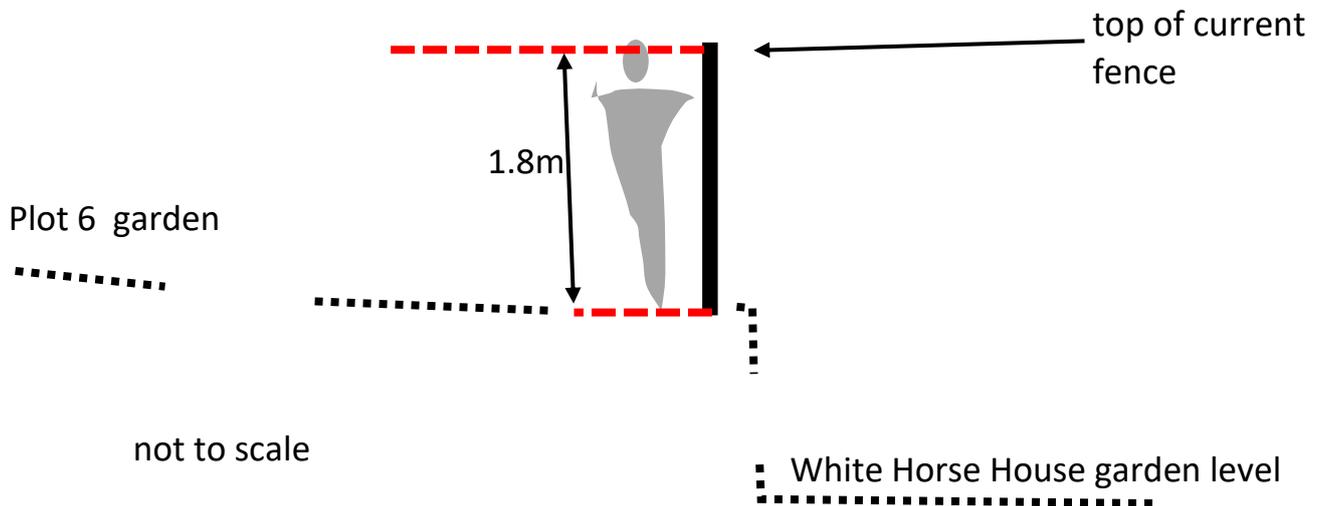


figure 26: **Indicative requirement to ensure privacy to White Horse House garden**

1.3.10 Whether this requires additional garden lowering and some terracing within the garden of plot 6 or not will be reported verbally after accurate current measurements have been taken. The purpose being to get the most recent readings rather than rely on those previously gathered just in case there have been recent adjustments.

1.3.11 In this way it is considered amenity will be protected albeit with a higher boundary fence than might normally be expected where ground levels are broadly similar.

1.3.12 Cracked wall

1.3.13 It appears that the building work on plot 6 may have caused the blockwall boundary wall at White Horse House to crack. The applicant has agreed to resolve this issue. A condition is suggested to help bring about this resolution



figure 27: **The cracked boundary wall plot 6 / White Horse House**

1.3.5 Outlook

- 1.3.6 In terms of the impact of the modified buildings on the outlook from adjacent existing dwellings there will be an improvement in the quality of outlook as compared to the as-built situation.

1.4.0 Setting of White Horse House

1.4.1 Members will have noted the comments of the Council's Heritage Team in respect of the proposed modifications, particularly their unequivocal conclusion:

"....the harm to the settings of the listed and unlisted buildings adjacent, and to the character and appearance of the Bures St Mary Conservation, Area has now been removed. We therefore raise no objection."

1.4.2 Having been an expert witness at the Inquiry for the Council the author of this Committee report concurs with that opinion.

1.4.3 At the Public Inquiry it was a central component of the Council's heritage case that the key adverse impact on the significance of the heritage asset was:

"5.24 The ridge line of the dwelling on plot 6 is now substantially higher than approved and therefore expected. Simon Bailey in his evidence has measured this discrepancy to be as much as 0.92m. This is significant in heritage impact terms because it now means the dwelling on plot 6 which was expected to be concealed from view from the south now rises above the ridge line of White Horse House and is clearly visible from some views and more prominent from others. It is the fact that it is now visible and more prominent that has increased the level of harm from moderate to high within the less than substantial spectrum. White Horse House no longer reads as a traditional house within a thin string of dwellings on the outskirts of Bures St Mary because it is now clear that backland development exists beyond it. Moreover, that development now clearly encroaches upon the setting of White Horse House and the fact that it rises [in part] above it results in visual domination. This overpowering relationship is brought into sharp view when both properties are viewed together from the side, particularly from the footway on Cuckoo Hill when travelling out of the village. This adverse highly harmful impact is evidenced in the material at appendix....."

[Statement of Case: Vincent Pearce 2020 for BDC]

1.4.4 This unacceptable impact can be seen clearly in the image on the following page.

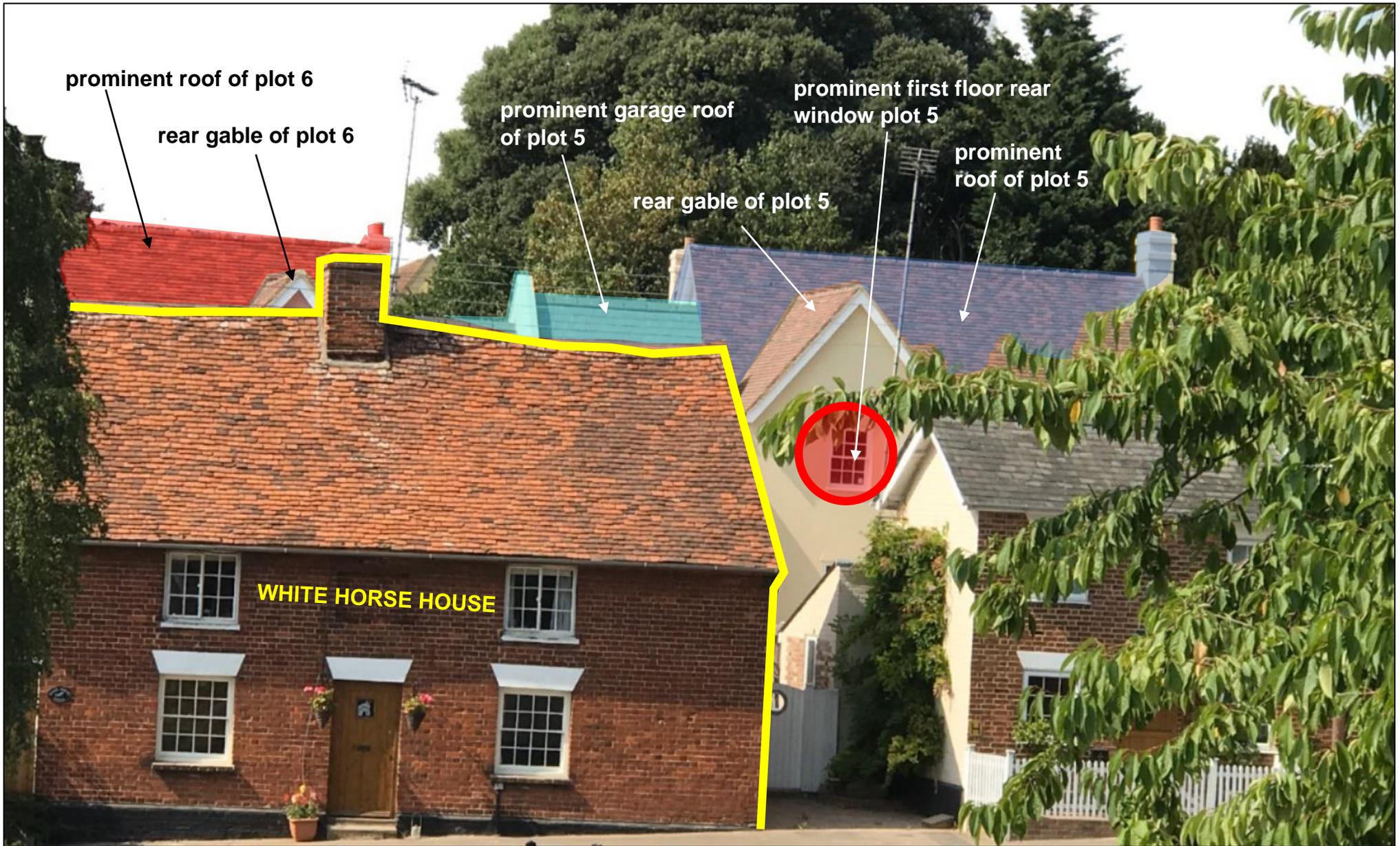


figure 28: **View Towards White Horse House with 'as-built' dwellings on plots 6 and 5 intruding from behind**

- 1.4.3 The modified alternative proposed to replace the dwelling to be demolished on plot 6 will respond positively to the criticism above in that the lowered ridge line will mean the currently exposed roof top of the dwelling would now drop down behind the ridge line of White Horse House from the key vantage points opposite. This will restore White Horse House's backdrop of sky and will immediately conceal the presence of the new dwelling behind. This will certainly result in a far less dominant relationship when viewed from the front of White Horse House which is the key viewpoint for experiencing the original character of White Horse House and its historic edge of village setting.
- 1.4.4 Whilst vital this will not be the only benefit in terms of the setting of the listed building as we shall now explore.
- 1.4.5 The modified alternative proposed to replace the dwelling to be demolished on plot 6 will also impose itself less dominantly on the setting of White Horse House than the approved version and even more so than the 'as built version' largely as a result of the lowering of the eaves line and removal of the first-floor rear windows, and additionally in the case of the as 'built version' the reduction in ridge height and gable heights.



figures 29: **Comparative as built and as now proposed**



figures 30: **Elevations as now proposed**



1.4.6 The dramatic modifications have been extended to include the garage roofs to the dwellings of plots 5 and 6 which are now proposed to be removed and significantly lowered. This lowering will effectively mean there is no room to create habitable floorspace inside the roof space. The visual impact of this on the setting of the listed building and its neighbours will be striking.

1.4.7. With so much of the buildings on plots 5 & 6 being demolished to accommodate the modifications [if approved] it is likely that the properties will need to be re-rendered. If this is the case then it will provide then opportunity to change the render colour of the dwelling of plot 6 from its current pink. It is felt that the

present shade of pink which closely resembles that on the end flank wall of White Horse House actually creates undesirable visual competition that actually draws attention away from White Horse House in views from Cuckoo Hill. This in itself further adds to the apparent dominance of the as built dwelling on the setting of White Horse House. [please see photograph below]



figure 31: **View Towards White Horse House from Pilgrim's Garage with 'as-built' dwelling on plots 6 intruding from behind**

1.5.0 Character of Bures St Mary Conservation Area

1.5.1 Again, the Heritage Team's comments are pivotal when they state:

"...the harm to the settings of the listed and unlisted buildings adjacent, and to the character and appearance of the Bures St Mary Conservation, Area has now been removed. We therefore raise no objection."

1.5.2 Having undertaken his assessment in line with best practice [GPA2] the Council's Heritage witness at the Public Inquiry described the essential components contributing to the overall character of this part of the Bures St Mary Conservation Area thus:

"4.34 Views east along Cuckoo Hill, towards White Horse House from its western end are, as described earlier, considered to be one of a suite of important vistas. This is because it conveys the viewer [whether walking, cycling or driving] in one continuous 'take' from the heart of Bures St Mary with its dense and intimate urban grain and mix of buildings and former uses out along what would have been a finger of linear development that in part straddled Cuckoo Hill for the early part

of its length as it pushed out towards the open countryside and farmland. Therefore, in one short trip you can understand how Bures St Mary developed as a place. Along this route there are a rich collection of listed buildings and all within a designated conservation area. With additional interpretation there is a most wonderful story to tell about life in a traditional Suffolk village over the past 300 years [and more]. The fact that White Horse House is a grade II listed building is important in itself and when one understands its relationship with the land around it then it is not surprising that the designated conservation area extends as far outwards as it does.

4.35 The range of red brick cottages along the road, which includes White Horse House and 7 additional, non-designated assets⁶ to its east, are a positive part of the CA, as are the dynamic views which greet the visitor either as he leaves the village on his way up the hill, or approaches it from the east, down the hill. These properties and their spatial relationship contribute to the character and appearance of the CA and indeed were probably one of the reasons the CA boundary was drawn beyond them, to the east. Furthermore, the appreciation of this range of properties, and their role in the character and appearance of the CA, can be well appreciated from the road perpendicular to Cuckoo Hill, known as Friends Field. A view north from this road allows for an appreciation of the scale and character of White Horse House, as well as the relative status and scale of the adjacent red brick houses

- 1.5.3 So what is it about the proposed modifications that would reduce the adverse impact of development on the character of the conservation area?
- 1.5.4 The answer lies in reducing the prominence of the dwellings on plots 6 and 5 in the street scene.
- 1.5.5 Clearly the permission as approved [and amended later by way on a non-material amendment] were likely to make an impact on the character of the conservation area but at that time the then conservation officer believed the wider benefits of tidying up what was a range of derelict and unsightly industrial building justified the grant of permission in terms of the wider heritage benefits and consequent impacts.
- 1.5.6 Having removed the said industrial buildings to make way for the approved development comprising 6 dwellings including plots 5 and 6 the Inspector at the Public Inquiry rightly dismissed those earlier benefits as the planning permission had been implemented. The test for her and the parties at the Inquiry was “To what extent does the unauthorised development cause greater harm [or not] than the approved development to the character of the conservation area” and is that harm sufficient to justify a refusal and enforcement action?”

⁶ 6, 7, 8, 10, 11, 12 &13 Cuckoo Hill

- 1.5.7 As can be seen from her decision and from the extracts from her decision included earlier she did believe the harm was significant and did fall within the 'less than substantial' category as was the Council's opinion [the appellant described there to be no harm] and that in terms of the test prescribed by paragraph 196 of the NPPF there were no public benefits to outweigh the harm caused by the unauthorised development.
- 1.5.8 What the proposed modifications will achieve [if approved and if built following the demolition of the existing dwellings] is a material reduction in the prominence of these buildings in the street scene.
- 1.5.9 This is true for both plots.
- 1.5.10 It can be argued reasonably that not only will the proposed modifications improve the position in respect of the impact of the current as-built context but also in terms of comparison with the approved scheme.
- 1.5.11 The collective impact of reducing the ridge height of the main roof [compared to as-built], the gable ridge heights, the eaves heights, the garage roof heights and removing first floor rear windows will all help to make the dwellings recede into the background to a greater degree than the as built dwellings and the as approved dwellings. Effectively what is not proposed is not 2 x two storey dwellings but what in reality will be 2 x 1½ storey dwellings.
- 1.5.12 This is clearly illustrated by comparing front elevation drawings.

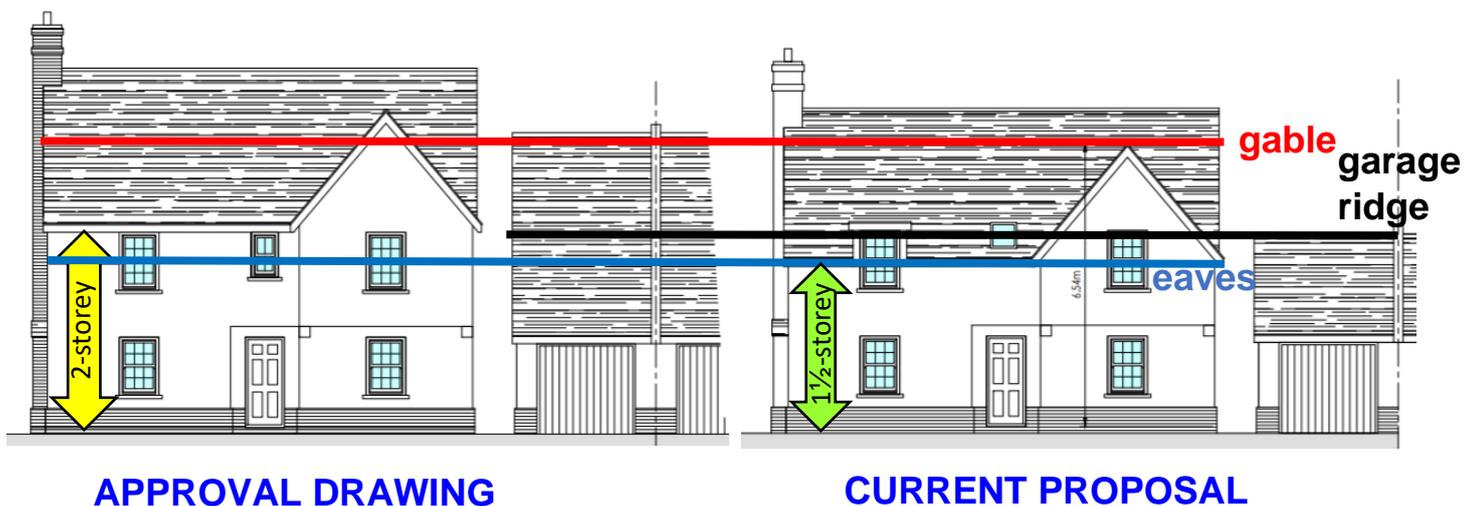


figure 32: **Front elevation Comparisons [plot 5]**

1.6.0 Other Matters

1.6.1 Access

1.6.2 It is not intended to change the access arrangements previously agreed and therefore this is not a matter for the Committee.

1.6.3 Materials

1.6.4 Traditional vernacular materials are to be used.

1.6.5 Boundary Treatment

1.6.6 Subject to a condition requiring:

- the submission and approval of a boundary treatment schedule for the boundary between plot 6 and White Horse House that addresses the need to resolve cracking issues in the existing blockwork: [such detail as shall have been agreed being required to be implemented in accordance with a pre-agreed timetable] and,
- notwithstanding such detail as may have been submitted, [previously approved [or constructed] further details of the final garden levels to the rear of plot 6 being further agreed and implemented prior to occupation; and,
- notwithstanding such detail as may have been submitted [or constructed] further details of the fence between plot 6 and White Horse House being further agreed and implemented prior to occupation; and,
- notwithstanding such detail as may have been submitted, [previously approved [or constructed] further details of the boundary treatment between plot 6 and the access road being further agreed and implemented prior to occupation.

1.6.7 Planting

1.6.8 A final landscaping scheme is required and a condition controlling this is recommended

1.6.9 Timetable

1.6.10 Section 180 of the principal Act provides that on the grant of planning permission (should Members accept this recommendation) the current Enforcement Notice shall cease to have effect so far as inconsistent with that permission. Thus, it is considered that the Council must be reasonably satisfied that in granting permission that the new proposal is carried out in full, and expeditiously. This is both a) to ensure that the harmful current situation is remedied; and b) to ensure that the new permission is both implemented and carried through to completion.

To enable the Council to be satisfied the Applicant is to provide a Unilateral Undertaking, prior to any grant of permission, to secure:

1. An agreed partial demolition schedule
2. An agreed partial demolition, rebuild commencement and completion timetable that also enables the Council by way of licence the right of entry to undertake and complete works. Such works in default to become a charge on the land title to enable recovery of such costs as reasonable if unable to otherwise secure them.
3. A secure financial bond that the Council can draw down to undertake such work as may be required itself to implement the planning permission in the event of the applicant/developer defaulting or failing to follow the agreed timetable. *[any additional reasonable costs to be recoverable]*

This approach is considered satisfactory where the Council can enforce the terms of that legal agreement if there is a breach of its terms; if necessary, by way of injunction. Furthermore, the submission of a bond is a suitable “insurance” that would provide the Council with the funds necessary to complete the development itself by way of direct action should the Applicant fail to meet the terms of the legal agreement for whatever reason.

Members can therefore hold confidence that should the submitted scheme be accepted, it will be completed.

1.6.12 Contamination

- 1.6.13 Remediation details have been agreed for the remainder of the site via discharge of condition application. In terms of plots 5 and 6 it is appropriate to require additional contamination/remediation sign off conditions as reconstruction will mean that the site has yet to be completed [unlike plots 1-4 which are now occupied]

1.6.13 Drainage

- 1.6.14 Drainage is a matter already controlled by condition but it is prudent to require a further condition on plots 5 and 6 to ensure that once complete the properties are appropriately connected to an approved system.

- 1.6.15 members will have noted the comments of the highway authority in respect of their views towards connecting the surface water system to the highway drainage system. The addition of a condition will allow this issue to be properly resolved

2.0. CONCLUSIONS AND PLANNING BALANCE

- 2.1 Without doubt there is a considerable controversy within the village and considerable pent-up anger and frustration around the unauthorised construction that has occurred. Indeed, many see the complete demolition of these two dwellings as a valuable deterrent which may re-establish public confidence in the planning process.
- 2.2 Despite this the Council is required to judge the present proposal on its individual merits. There is an extant planning permission and Plots 5 and 6 are capable of being lawfully constructed in accordance with the currently approved plans. The application is submitted under s73 of the principal Act where alternative schemes have been put forward for those plots, making use of the site as it currently exists. There is nothing inherently “wrong” in that approach and the application must be judged on that basis, the legal requirement being to consider only the question of the conditions sought to be varied – in this case the approved drawings – and nothing else. The nature of the development remains unchanged.

The proposed changes have been considered against the development plan as a whole and other material considerations including the NPPF.

- 2.3 Officers are convinced that if approved and implemented the significantly modified dwellings on plots 5 and 6 will represent a better alternative than the ‘as approved’ versions had they been built as approved for the reasons set out in detail in this report. The proposals accord with the most important policies relevant to the determination of this application. The application accords with the development plan as a whole where the new proposals are of a high-quality design that would safeguard amenity and preserve the historic environment.

Where the application accords with an up-to-date development plan (on account of the most important policies for its determination being up to date) the NPPF directs that planning permission should be granted without delay, as per paragraph 11.c). Compliance with the policies of the NPPF when taken as a whole reinforces this position.

- 2.5 Therefore officers are recommending that the current application be approved subject to the prior completion of a Section 106 Unilateral Undertaking as described.

Planning conditions are also recommended, and in accordance with the PPG those relevant conditions from the existing planning permission (as amended by the NMA) should be carried over.

3.0. RECOMMENDATIONS

That delegated authority be given to the Chief Planning Officer to GRANT conditional planning permission subject to the prior receipt of a Section 106 Unilateral Undertaking that in his opinion satisfactorily secures:

- 1. An agreed partial demolition schedule**
- 2. An agreed partial demolition, rebuild commencement and completion timetable.**
- 3. Appropriate and absolute rights to enter, carry out and complete such work in the event that the applicant / developer fails to do so in accordance with the timetable**
- 4. A secure financial bond that the Council can draw down to undertake such work as may be required itself to monitor and implement the planning permission in the event of the applicant/developer defaulting or failing to follow the agreed timetable. *[any additional reasonable costs to be recoverable]***
- 5. An appropriate charge upon the Land Register title to require the consent of the LPA to any transfer of either plot subject to the recovery of its costs in monitoring and carrying out / complete works to implement the planning permission**

Conditions shall include (and having regard to those existing conditions which would need to be reimposed where relevant):

1. Implementation in line with Unilateral Undertaking timetable where agreed with BDC
2. The submission [prior to commencement of rebuilding work] of an inspection protocol that requires the developer to give the Council 10 days advanced written notice of roof construction commencement and that requires the Council's Enforcement Service to visit the site, measure ridge height and other key measurements and that development only continue once the Council has

notified the developer in writing that the construction heights accord with the planning permission

3. Materials to be agreed
4. Contamination reporting
5. Surface water drainage details
6. Removal of Permitted Development
7. the submission and approval of a boundary treatment schedule for the boundary between plot 6 and White Horse House that addresses the need to resolve cracking issues in the existing blockwork;[such detail as shall have been agreed being required to be implemented in accordance with a pre-agreed timetable] and,
8. notwithstanding such detail as may have been submitted, [previously approved [or constructed] further details of the final garden levels to the rear of plot 6 being further agreed and implemented prior to occupation; and,
9. notwithstanding such detail as may have been submitted [or constructed] further details of the fence between plot 6 and White Horse House being further agreed and implemented prior to occupation; and,
10. notwithstanding such detail as may have been submitted, [previously approved [or constructed] further details of the boundary treatment between plot 6 and the access road being further agreed and implemented prior to occupation.
11. Planting details on boundaries with existing dwellings