

CLEY-NEXT-THE-SEA - RV/21/2583 – Variation of the wording of Condition 2 (Approved Plans) amended site location plan scaled at 1:2500, and drawings 2260-01, 2317-02z1, 2317-03e, 2317-05f and 2317-11b. Approved on Appeal Ref: APP/Y2620/A/13/2205045 relating to Planning Application Ref: PF/12/1219 for Replacement House and Studio - Date of Decision: 05/02/2014 at Arcady; Holt Road, Cley-Next-The-Sea.

Replace plan 2317-11b with Plan 1660-00-008 as it has been established that the original plan 2317-11b is considered to be inaccurate

Minor Development

Target Date: 24.11.2021

Extension of Time: 31.03.2022

Case Officer: Phillip Rowson

Full Planning Permission (Section 73 - Variation of condition)

RELEVANT SITE CONSTRAINTS

Designated Open Countryside NNDC Core strategy

Within the Cley Conservation Area

Norfolk Coast AONB

Within the drained Coastal Marshes (DCM2) Landscape Character Area as designated within the North Norfolk Landscape Character Assessment

RELEVANT PLANNING HISTORY

PF/12/1219

Erection of two-storey replacement dwelling and detached studio/annexe – Refused

APP/Y2620/A/13/2205045 – Planning Appeal - Approved

ENF/18/0164

Enforcement Notice requiring demolition of unauthorised dwelling

Appeal lodged – scheduled as appeal hearing June 21, 2022.

PF/21/0882

Erection of dwelling and associated external works and landscaping.

Pending Consideration

RV/21/2923

Variation of the wording of Condition 2 (Approved Plans) amended site location plan scaled at 1:2500, and drawings 2260-01, 2317-02z1, 2317-03e, 2317-05f and 2317-11b. Approved on Appeal Ref: APP/Y2620/A/13/2205045 relating to Planning Application Ref: PF/12/1219 for Replacement House and Studio - Date of Decision: 05/02/2014.

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This application – pending consideration.

THE APPLICATION

Site description:

The appointed inspector for case APP/Y2620/A/13/2205045 (“the Appeal Decision”) described the site and surrounds in detail in his decision letter:

‘The appeal site is located on the southern edge of the village of Cley-next-the-Sea, in an area known as Newgate Green. The site comprises an existing single storey dwelling and its garden, and extends to approximately 0.3 hectare. It is adjoined to the west by a detached house, to the south and east by open fields, and to the north, on the opposite side of Holt Road, by the grounds of St Margaret’s Church (a Grade I listed building). The site occupies an elevated position relative to Holt Road, with ground levels rising from north to south and west to east. The appeal site falls within the Cley Conservation Area and the Norfolk Coast Area of Outstanding Natural Beauty (the AONB), and is designated as countryside in the North Norfolk Core Strategy and Development Control Policies Development Plan Document (2008) (NNCS).

The Cley Conservation Area includes most of the built up area of the village, together with some areas of adjoining countryside. Development in the centre of the village is characterised by a dense and intricate pattern of development, with narrow streets lined with brick and flint cottages and more substantial houses. In the vicinity of the appeal site, development is more loose-knit and sporadic, and includes both older brick and flint properties together with some newer dwellings. Areas of open land, including the grounds of St Margaret’s Church and the village green to the west, create significant breaks in the pattern of built development, affording views across open countryside and giving the area an open and rural character.’

At the time of the appeal decision the site itself was described as follows:

The existing bungalow on the appeal site is largely hidden from view, unremarkable architecturally and does not contribute materially to the significance of the Conservation Area.

Subsequently to the grant of planning permission made by that decision, the applicant has demolished the modest traditional bungalow and replaced the dwelling with a contemporary development, which officers consider substantively departs from the plans approved under the appeal decision APP/Y2620/A/13/2205045, and is thus unlawful. The Council has issued an Enforcement Notice requiring its demolition, which has been appealed; the appeal is stayed pending a mediation but is due to be heard later this year. The applicant has added landscape planting but otherwise the site and its context to key features remains essentially the same as described by the Inspector in the Appeal Decision.

Proposal:

The applicant seeks planning permission, pursuant to Section 73 of the Town & Country Planning Act to develop the site without complying with that part of condition to the planning permission granted by the Appeal Decision which requires compliance with drawing 2317-11b. In effect the application is to replace an approved, but inaccurate, plan relating to the historic appeal decision (2317-11b), which gave sectional details showing the context of the proposed dwelling in relation to its immediate near neighbour. It appears to be acknowledged that it is not possible to comply with the condition in respect of development in accordance with that plan, because of its inaccuracy. The application proposes to replace 2317-11b with an accurate sectional drawing correctly depicting the relationship of the proposed building with its surrounding context. All other approved plans remain unaltered by these proposals:

- Site Survey - Existing Plan Ref: 2260-01
- Site Plan - Proposed Plan Ref: 2317-05f
- Proposals – General Arrangement (included Elevations) Plan Ref: 2317- 02z1
- Plans/Elevations Annexe Plan Ref: 2317-03e

The applicant recognises that the approved drawing 2317-11b is inaccurate, and is (in effect) seeking to substitute that approved drawing with (new) drawing number 1660-00-008 as a means of ensuring accurate approved drawings are in place to support the historic planning permission and any future build out of the planning permission. Development on site is currently considered to be unauthorised and in breach of the planning permission granted.

The applicant considers the application is being submitted on the basis that *“I understand that your Council is no longer prepared to adhere to the mediation agreement entered into on the 27th January 2021.”* Members are requested to note that any mediation agreement is an independent matter which stands apart from the planning process. The Assistant Director - Planning does not understand the suggestion of any departure from the mediation agreement reached in the course of that mediation, which continues to be adhered to.

REASONS FOR REFERRAL TO COMMITTEE

At the discretion of the Assistant Director - Planning, to enable democratic engagement with wider interested parties within the decision making process.

CONSULTATION

Cley Parish Council: Original Consultation comment: Objects to the proposal.

Raise concerns on the grounds that the unacceptable design of the building and impact on the heritage of Cley, particularly Saint Margaret’s Church.

The proposals are contrary to NPPF para 15 & 16, failing to conserve or enhance the natural or historic environment. They are also contrary to policy H08 (replacement dwellings), the replacement dwelling is out of character and is a large dominant building with little screening, and imposing height. The proposal is significantly larger in height and scale and impacts on the nearby countryside and listed heritage assets. The building is considered to be a disproportionately large increase under policy H08. Similarly the scale of the building is considered contrary to policy EN4. The development creates harm to this sensitive area, particularly the heritage assets, local landscape. The application should be refused.

Amended plans comment: comment only

The size of Arcady and the huge impact it has on Newgate Green is not disputed by Cllrs, it was during the build that Cllrs first raised concerns regarding the height and sheer scale of the building which was contrary to the permission granted. The Parish Council have gone on to receive many complaints about the building from parishioners, who all reference the negative impact it has on Newgate Green and Saint Margaret’s Church, Cllrs acknowledge that the building has been built far bigger than anticipated and was done so without the required planning consent.

The enforcement case has been a long drawn out and complex process, Cllrs have attempted to follow the ongoing case but now feel that it has got to a stage which is beyond their expertise

and remit. Cllrs were unable to settle on a preferred outcome for the case and as such voted on a majority vote to respond to the above planning applications with a neutral stance.

Landscape officer: Objection

The authors of plan 2317 – 11b concede that the drawing is incorrect in relation to relationships to Holly House, the adjacent dwelling, and the height of proposed dwelling. The submitted plan 1660-00-008-b titled *As Built Holt Road Street Elevation (North) & Site Section* shows the proposed dwelling set at a higher level than Holly House and presenting significantly greater mass within the site than suggested by 2317-11b. This is out of keeping with local context and this part of the Cley Conservation Area.

Had the amended plan (1660-00-008-b) been considered by the Inspector, then the Landscape section consider that he could not have formed the same conclusions. That decision was based on drawings showing that *'the proposed dwelling would not appear overly dominant or out of scale with its surroundings'* (Para 8). The decision was also based on his assumption that *'the new dwelling would be only marginally taller than the existing bungalow and lower than the adjacent house to the west'* (para. 7). This amended plan demonstrates that this is clearly not the case.

As such the proposed development (as described by the proposed replacement drawing) creates an unacceptably harmful relationship with the wider AONB and Heritage assets, to the detriment of landscape character.

Conservation and Design Officer: Objection

Initial objections and refusal noted in 2012, the Local Planning Authority were of the opinion that the proposed building would fail to preserve or enhance the character and appearance of the Cley Conservation Area. The subsequent appeal was granted, the Inspector at the time referred to the *"secluded nature of the site"* and to the new build being *"largely hidden from view from the Holt Road"*. He therefore anticipated that the dwelling *"would not intrude into any significant views of the Church"* and that it *"would preserve the character and appearance of the Cley Conservation Area"*.

Had the Inspector been asked to consider the latest amended plan (1660-00-008-b), it is difficult to conceive of him reaching the same conclusion based upon what we now know to be the real impact upon heritage assets. Instead Conservation & Design are firmly of the view that the appeal would have been dismissed rather than allowed. Accordingly, no support can be given to this variation.

REPRESENTATIONS

21 letters of **objection** raising comments on the application were received at the time of reporting this case. The comments received included amongst other the following:

- The application should not be valid, variation of conditions application should only be used to make minor changes to approved schemes.
- The submitted plans are inaccurate, in terms of reference to the historic bungalow height and levels, the proposed relationship of the proposed dwelling to it near neighbour.
- There is no survey drawing of the existing bungalow.
- The original plans were misleading, the permission is a nullity

- The plans show the building as built not as approved under the appeal, elevations do not match the approved plans.
- The height of the proposed building is higher than previously approved, standing 2.1 to 2.9M above the height of the original bungalow.
- As a replacement building for the original bungalow it is grossly disproportionate in height, scale and mass to the original bungalow and fails to meet the requirements of local plan policy. The proposals have a significantly greater impact by virtue of their height and massing on views from the Green, and are harmful to the heritage assets St Margaret's Church and Cley Next the Sea Conservation Area.
- The proposals are contrary to the Conservation Area Appraisal.
- The site has limited seasonal screening, dependent on deciduous planting.
- The proposals are contrary to policy HO8, ENV1, 2, 3, 4 & 8 and also NPPF para 176,199 & 200.
- The application is one of the many attempts to avoid enforcement action.
- The application challenges public confidence in the planning process
- The application should be refused and the enforcement process allowed to continue.

HUMAN RIGHTS IMPLICATIONS

Art. 8: The right to respect for private and family life.

Art. 1 of the First Protocol: The right to peaceful enjoyment of possessions

Having considered the above matters, refusal of this application as recommended is considered to be justified, proportionate and in accordance with planning law.

STANDING DUTIES

Due regard has been given to the following duties:

Equality Act 2010

Crime and Disorder Act, 1998 (S17)

Natural Environment & Rural Communities Act 2006 (S40)

The Conservation of Habitats and Species Regulations 2010 (R9)

Planning Act 2008 (S183)

Human Rights Act 1998

Rights into UK Law – Art. 8 – Right to Respect for Private and Family Life

Planning (Listed Buildings and Conservation Areas) Act 1990 (S66(1) and S72)

RELEVANT POLICIES

North Norfolk Core Strategy (September 2008):

HO8: House Extensions and Replacement Dwellings in the Countryside.

EN1: Norfolk Coast Area of Outstanding Natural Beauty and The Broads

EN2: Protection and Enhancement of Landscape and Settlement Character

EN4: Design

EN8: Protecting and Enhancing the Historic Environment

Supplementary Planning Documents and Guidance:

North Norfolk Design Guide
North Norfolk Landscape Character Assessment
North Norfolk Landscape Sensitivity Assessment
Cley next the Sea Conservation Area Appraisal

National Planning Policy Framework (July 2021)

Chapter 2: Achieving sustainable development
Chapter 4: Decision-making
Chapter 5: Delivering a sufficient supply of homes
Chapter 11: Making effective use of land
Chapter 12: Achieving well-designed places
Chapter 14: Meeting the challenge of climate change, flooding and coastal change
Chapter 15: Conserving and enhancing the natural environment
Chapter 16: Conserving and enhancing the historic environment

OFFICER ASSESSMENT

Main Issues:

- 1. Validation of application**
- 2. Fallback position**
- 3. Material planning matter**
- 4. Other Miscellaneous Matters**
- 5. Conclusion**

1. Validation of application

It is a fair and reasonable request to understand how, after an appeal decision in 2014, a Local Planning Authority (LPA) can validate a variation of plans application such as in this case?

In the first instance validation of applications is driven by Section 70 of the Town & Country Planning Act (1990 as amended), specifically in this matter Section 70C gives the Council powers (which are discretionary) to refuse to determine retrospective applications. The application seeks to vary condition 2 of the original appeal decision reference (APP/Y2620/A/13/2205045), to substitute drawing 2317-11b with a new plan. Officers consider that s.70C of the TCPA is applicable, but on this occasion consider that an application under Sections 73 / 73a (S.73 / 73a) is an important consideration within the wider context of the enforcement case. This application will allow a decision to be reached as to the legacy of the historic appeal decision, albeit potentially with updated and accurate supporting plans and could inform any arguments around a potential fall-back position in the current live case PF/21/0883.

Consideration of S.73/ 73a applications in these circumstances is informed by two case law decisions, *Lambeth LBC v Secretary of State for Housing, Communities and Local Government (2019)* & *Lawson Builders Ltd v Secretary of State for Communities and Local Government (2015)*.

It is entirely proper for a S.73 application to be made retrospectively, i.e. after development has commenced / been completed. However, such a retrospective approach leaves open the effect of granting a new permission on the conditions that have already taken effect following the earlier permission. Advice in *Lambeth* is that, if minded to grant, the LPA... "*Should also repeat the relevant conditions from the original planning permission*".

In essence there is no legal reason that the LPA should invalidate such an application, the passage of time is not necessarily an impediment to such a submission, nor is its retrospective nature. Further, the impact of the changes proposed is in any event a matter of planning judgement for the decision maker, i.e. the central issue is whether planning permission is justified without complying with the (inaccurate) drawing.

As such the decision has been made not to exercise powers under s.70C to refuse to validate this application, and to deal with it substantively.

2. Fallback position

It is not relevant – or possible to know – what the intentions behind this application are. Nonetheless, officers note that at present, the planning permission granted by the Appeal Decision is likely not to be considered a fall-back position in the extant enforcement appeal in large part because of the inaccurate drawing, and condition requiring compliance with it, which is impossible¹. Should the application be granted, that reason for not treating the planning permission granted by the Appeal Decision as a fallback in the enforcement case would fall away. However, the effect of granting permission for the present application is unlikely to be relevant and the application has been assessed on its merits, rather than with regard to the potential effect of a grant of permission on other proceedings.

Subsequently to the issue of the appeal decision and commencement of works on site, it has been a matter of local concern that the originally approved section drawing 2317-11b was inaccurate and that this inaccuracy in terms of the relationship to the adjacent dwelling Holly House may have misled the originally appointed Planning Inspector to grant permission based on the skewed perceptions as to those relationships. Similar concerns were held by officers at NNDC and raised with the applicants. The applicant's advisers have agreed that the section drawing is inaccurate and by this application, submit a revised version for consideration.

Officers consider that it is important to the assessment of the parallel application PF/21/0882 that a clear fall-back position is known, i.e. whether or not the original appeal approval may be built out. This matter turns on recent case law; *Choiceplace Properties Ltd v Secretary of State for Housing, Communities and Local Government (2021)*. It is thus important that this application be determined prior to the parallel application, because its outcome is likely to materially affect the determination of that application.

In “Choiceplace”, the developer had planning permission for the erection of a three-storey block of flats, subject to a condition that the development be carried out in accordance with approved plans, could not be lawfully implemented when the approved plan showing a street scene drawing had not been drawn to the correct scale. The drawing inaccurately showed that the proposed development would be lower in height than neighbouring buildings, when in fact it would be higher. The drawing could not be regarded as only illustrative when it was intended to show the relationship of the proposed development to the existing heights of adjacent buildings. If built, the development would not be in accordance with the plan.

The similarities with “Choiceplace” and our current case are stark. Officers consider the accuracy of the approved sectional plan – with which compliance is explicitly required by condition – is highly likely to have been central to the inspector's contextual consideration of the proposals: it is clear from the Appeal Decision that matters such as layout, levels, height,

¹ *Choiceplace Properties Ltd v Secretary of State for Housing, Communities and Local Government [2021] EWHC 1070 (Admin)*

scale and massing, and landscaping, are considered on the basis (at least in part) of the sectional plan.

Inaccuracy in the sectional plan therefore impacts substantively on the Inspector's assessment of the appropriateness of the replacement within the context of the original bungalow, context with the adjacent dwelling and impacts on the heritage assets. In the Appeal Decision, the inspector determined that the proposed building would be only marginally taller than the existing bungalow and that it would not appear overly dominant or out of scale with its surroundings.

The Inspector's decision letter concludes:

"...that the overall form and design of the proposed development would be compatible with its surroundings, and that the proposal would preserve the character and appearance of the Cley Conservation Area. Additionally, I find that the proposal would preserve the open setting of the nearby listed church, and would not detract from the appearance of the surrounding rural landscape."

The present application requires consideration of the proposals without reference to the inaccurate plan, and in particular whether the proposed replacement drawing would lead officers to a different conclusion to that reached by the inspector in the Appeal Decision.

3. Material planning matters

A. The proposed elevations – continuity

The approved plan 2317-11b shows elevations which mirror dimensions (etc) shown elsewhere across the approved plans; Site Plan - Proposed Plan Ref: 2317-05f; Proposals – General Arrangement (included Elevations) Plan Ref: 2317- 02z1; Plans/Elevations Annexe Plan Ref: 2317-03e.

The proposed revised plan 1660-00-008 appears to lack this clear consistency with the approved plans, and in particular the tree screen superimposed over the main elevations obscures a number of the key considerations, e.g. what is called 'block 2', and the fenestration over a significant part of the elevation. It appears to describe a different building to that described in the approved plan bundle in terms of the detailed design; for example:

- Block 3 is shown with a large square window above the vestibule, rather than narrow landscape window as shown on the approved plans.
- Block 4 is show with a split narrow portrait window rather than single narrow portrait window as shown on the approved plans.
- Block 4 has an external rainwater down pipe and hopper, internal fittings as shown on the approved plans
- Cladding to Block 3 & 4 is shown as horizontal, approved is vertical cladding.

The proposed plan 1660-00-008 must be consistent with the existing approved plans, but it is not and is discordant over the features noted. The Council cannot mix and match plans in this way: all approved plans must be consistent one with the others, arguably even more so in this case given the historical inaccuracies, multiple breaches and pending enforcement appeal.

B. Appearance of amended section

The drawing 1660-00-008-b is plainly different to the approved drawing 2317-11b (as acknowledged by the application). The discrepancies are detailed below

B (i) Relationship to near neighbour Holly House:

When making his decision the Inspector understood that the proposed dwelling would be lower than, and therefore subservient to and not dominate, the adjacent Holly House, as indicated on approved drawing 2317-11b. The relationship between Holly House and the As Built Dwelling (Arcady) is substantially different to that which was presented during the application process and subsequent appeal process on approved drawing 2317 – 11b. The approved drawing 2317 – 11b effectively shows Holly House to be taller than the Proposed Dwelling (a matter specifically mentioned by the Inspector granting permission). We now know this is to not be correct. We know through field survey work of both the As Built Dwelling (Arcady) and the existing Holly House, that spot heights on the roof of the As Built Dwelling (Arcady) are at its highest point 18.20m with the ridge of the adjacent Holly House surveyed to be 16.67m. Therefore, the As Built Dwelling is 1.53m taller than Holly House.

Given the lack of spot heights or levels information shown on approved drawing 2317 – 11b the Inspector would only have had the ridge height of Holly House as it was viewed on site to mentally visualise the position of the Proposed Scheme. Standing on site, on Holt Road or within the local surroundings, including from the village green, the Inspector would have had approved drawing 2317 – 11b to visualise the Proposed Scheme alongside the adjacent Holly House. The approved drawing 2317 – 11b clearly shows the ridge of the Proposed Dwelling to be lower than that of the adjacent Holly House and occupying a more discreet location within its plot with less built form visible and therefore less imposing on its surroundings. This is a fundamental mistake, as it is clear that it was this relationship (Arcady being lower than Holly House) that the Inspector relied upon in making his decision.

However, this application is directed at whether the *as permitted* dwelling should be re-permitted without having to comply with the condition making reference to the inaccurate plan. As such, the question is whether the height of the as-permitted dwelling – as now shown on the proposed replacement drawing – and its relationship with its neighbours and context, can be said to be acceptable.

Further, the approved drawing shows a subordinate relationship to Holly House, the approved dwelling shown as sitting below the ridgeline of Holly House. The approved Annex sat at the same height as the first floor windows of Holly House. The proposed replacement drawing shows the proposed dwelling to sit above the ridgeline of Holly House, the proposed Annex now sits above the eaves of Holly House, at a mid-point on the gablet of Holly House.

B (ii) Relationship to original bungalow:

It is not possible to accurately relate the proposed building to any scale elevation drawings of the bungalow it replaced. The bungalow has long since been demolished, as the unauthorised development progressed, and no scale drawings of it exist. However, the officer presentation shows photographs which afford a good understanding of the nature of that bungalow, and as such the extent of change.

The Inspector considered that as a result of the “flat roofed design and the excavation of the lower levels of the property into the hillside, the new dwelling would be only marginally taller than the existing bungalow and would be lower than the adjacent house to the west².”

Photographic evidence shows that the building as built more than marginally exceeds the height of the bungalow; and the same is true of the photomontages of the proposed dwelling. Members are directed that the decisions in this matter relates solely to the photomontages

² A reference to Holly House

available, which depict the form of the development in fact proposed (which is materially different to the as-built dwelling)..

B (iii) Outline sections:

The applicants have provided a sectional plan showing outline “Wire frames” of the proposed house; original bungalow, proposed annex, garage / workshop to bungalow and Holly House. From this plan, it is clear that the proposed dwelling remains above the height of the bungalow (green outline against red), and also Holly House (green against blue).

C. Impact

Consideration of the impact of these changes should appropriately consider the effect of a large contemporary dwelling standing to a full building height at the eaves of its flat roof. By contrast, the bungalow and Holly House are pitched gable traditional dwellings whose roofscapes form a subservient component of the relationship. The effect of the height difference along with bulk “at height” is significantly impactful. When this is added to the substantial increase in floor space created by the proposed dwelling then the effect is one of over dominance in relation to its immediate context, and a disproportionate impact on its immediate setting.

This impact is exacerbated further by the proposed annex which sits at a greater height than shown on the approved (inaccurate) section and imposes further on the views across the Green and Holt Road into the site. The view would be one of a wall of development that sits at height with a bulk and massing set apart from the simple character of its surroundings, dominating its context.

The supporting section 1660-00-008 revised plan gives rise to a dwelling that is highly visually intrusive both within the conservation area and in the surrounding landscape setting when viewed from the south west (Bridgefoot Lane) .The main impact is on Newgate Green where the vista south to Holt Road is dominated by the elevated presence and bulk of the building. Its long street frontage and positioning on a bank presents a fortress like appearance to the Green. Far from not intruding visually on any significant views within the conservation area the building will become a dominant and intrusive focal element to the Green and wider landscape.

The prominence of the building is considered to be harmful given that the height and mass of the building as now proposed does not reflect the vernacular scale of the historic houses and cottages which otherwise front the green. The revised plan results in a building which causes harm to the significance of the Conservation Area, including the ability to appreciate that significance.

The supporting section 1660-00-008 proposes a dwelling which visually competes with the principal historic building in the locality – the Church of St Margaret’s. The views between the church and the appeal site are, as the Inspector identified, part filtered by the mature trees lining Holt Road. However, the elevated form as now presented results in a visually dominant building in the main views where the significance of the church is appreciated. The Inspector assessed the open setting of the church to be preserved. This is simply not the case with the revised supporting section.

The harm, while ‘less than substantial’, is not at the lower end of that scale and would require convincing justification. Paragraph 199 of the NPPF requires great weight to be given, proportionate to the importance of the identified heritage assets, irrespective of whether the harm amounts to substantial or less than substantial to the significance.

The building as shown on the supporting section 1660-00-008 is significantly different and more harmful than that shown on the approved (but inaccurate) section. Properly understood, it invalidates a number of the conclusions reached by the Inspector, and an independent analysis of its impact shows that the proposed dwelling would be over-dominant within its context, and considerably more harmful than initially assessed (by reference to an inaccurate and misleading plan).

For the reasons outlined above it is more impactful on the local relationships with Holly House, the Conservation Area and views from the South across the application site to St Margaret's Church. The proposed dwelling is no longer "largely hidden" from Holt Road approaches to the east, the roof and upper sections intrude more greatly. Views of the front elevation are more obtrusive, they are no longer "glimpsed" when viewed from the Green, open space adjacent or walking Holt Road. The enhanced prominence of the building no longer assimilates as part of the established views from the Green and to the South, the proposals now dominate those views.

The acknowledged inaccuracy of the approved plan effectively undermines the position arrived at by the Inspector in the historic appeal. The proposals – properly understood - are not considered compliant with policies EN2 (AONB), EN4 (Design), or EN8 (Historic Environment), and will have a disproportionately significant height scale and mass to the bungalow it replaced, contrary to policy H08. The proposals are not consistent with NPPF requirements to promote good design, enhancement and preservation of heritage assets and fail to preserve or enhance the landscape and scenic beauty of the AONB.

4. Other Miscellaneous Matters

Accuracy of plans:

The submitted plans have been questioned by a number of consultees in terms of their accuracy: the height of the proposed dwelling, site levels and continuity with the approved plans has been raised.

Concerns are raised regarding the true height and relationship of the bungalow that was to be replaced by the proposed dwelling. Photographic evidence shows that the height of the unauthorised building that eventually replaced the bungalow is significantly taller than the bungalow. However, in the absence of detailed survey plans of the bungalow then it is not possible to accurately quantify the difference, rather a qualitative view is that the building is taller and has more impact. The same is true, albeit to a marginally lesser extent, of the relationship of the proposed dwelling as shown on the proposed replacement drawing, and the former bungalow.

As part of the appeal process the Council commissioned a separate site survey. That survey has been reviewed in light of the current applications. The Council's surveyor has concluded that the spot heights detailed in the 2020 NNDC survey are within reasonable tolerances to the plans submitted by the applicant. Decisions may be reliably made upon the plan submitted in relation to the proposed dwelling as shown on plan 1660-00-008-b for the proposed replacement dwelling.

Mediation process:

The mediation process stands apart from the planning application process. In the case of this specific application then there is no direct relationship with the mediation agreement.

Progression of application PF/21/0882 – full details application

Reference is made to the overlapping matter of the weight to be afforded to the Fallback position in terms of its role in the appeal proceedings and/or the 'parallel' planning application.

The recommendation and decision reached on this current application has the potential to effect that issue in those other matters, but is not relevant to the determination of this present application.

Continuity with enforcement case:

The enforcement notice appeal is scheduled to be heard on 21 June 2022.

Conclusion

This application requires a consideration of the acceptability, in planning terms, of permitting the building otherwise described in the approved plans listed in the Appeal Decision, without compliance with the inaccurate plan 2317-11b (and, in effect, in reliance on a substitute for that plan). Because a s.73 permission is a new planning permission, that requires an assessment of the merits of the building so described, including an assessment – on an accurate basis – of its likely relationship with its neighbouring buildings, heritage assets and context.

Officers consider that, if drawing 1660-00-008-b had been used by the Inspector when making his decision, it is inconceivable that he could have formed the same conclusions as those in fact reached on the basis of approved drawing 2317 – 11b. Drawing 1660-00-008-b would have given the Inspector a greater appreciation of the true scale and mass of the proposed building, its eventual relationship with the adjacent Holly House and how it would have been viewed from within the surrounding Conservation Area and village green.

Irrespective of whatever view the Inspector may have arrived at we must consider the proposals as they are presented today. Officers consider that the inaccurate and misleading drawing 2317 – 11b, forms part of the approved plan bundle has some significance. Buildings are misrepresented against their neighbours. The proposals under revised plan 1660-00-008-b, properly understood, would have a materially greater impact than that described in the Appeal Decision, and that impact is unacceptable. The delicate balance is tipped, policies are no longer complied with. The proposal would fail to comply with policies EN2 (AONB), EN4 (Design), EN8 (Historic Environment), and H08 (replacement dwellings), and with the development plan read as a whole.

No overriding public benefit is identified to offset the harm arising to the heritage assets or Norfolk Coast AONB, as such the significant weight to be afforded under the Listed Buildings and Conservation Areas) Act 1990 and National Planning Policy Framework 2021 dictates that the proposals should be refused in accordance with Development Plan provisions.

RECOMMENDATION: - Refusal

It is considered that the proposals shown by the proposed replacement plan (and thus the proposed revision to the condition) fail to satisfy concerns raised in relation to the excessive and harmful height, scale mass & prominence of the proposed dwelling. The impact of the proposed development – which is a replacement dwelling of a disproportionate height scale and mass to the bungalow it replaced. The proposed plan shows this development will lead to unacceptable harm to the Cley Conservation Area, listed church and the wider AONB.

The proposals are considered to be contrary to policies H08, EN1, EN2, EN4 & EN8 of the adopted North Norfolk Core Strategy, paragraphs 135, 174, 176, 199, 200 & 202 of the National Planning Policy Framework 2021, and Section 66(1) of the of the Planning (Listed Buildings and Conservation Areas) Act 1990.