



Appeal Decisions

Hearing Held on 24, 25 and 26 January 2023

Site visit made on 26 January 2023

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 May 2023

Land at Arcady, Holt Road, Cley-next-the-Sea, Holt NR25 7TU Appeals A and B Refs: APP/Y2620/C/19/3236385 and APP/Y2620/C/19/3236386

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Adam Spiegel (Appeal A) and Mrs Charlotte Spiegel (Appeal B) against an enforcement notice issued by North Norfolk District Council.
- The enforcement notice, numbered ENF/18/0164, was issued on 5 August 2019.
- The breach of planning control as alleged in the notice is Without the benefit of planning permission:
 - i. The erection of a two-storey replacement dwelling and detached annexe
 - ii. The creation of a swimming pool and associated structure
 - iii. Engineering works to alter land levels across the site and to provide an area of hardstanding in front of the North elevation.
- The requirements of the notice are
 - i. Demolish the two-storey dwelling and permanently remove it from the Land.
 - ii. Demolish the studio/annexe and permanently remove it from the Land.
 - iii. Permanently remove the swimming pool, and infill, returning that part of the Land to its original level.
 - iv. Permanently remove the structure associated with the swimming pool.
 - v. Remove the hard standing on the North elevation.
 - vi. Return land levels to those levels detailed in the Inspector approved plan (drawing no: 2260-01) of planning approval PF/12/1219.
- The period for compliance with the requirements is 6 months for steps (i), (ii) and (v), 3 months for steps (iii) and (iv) and 9 months for step (vi).
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
- Appeal B is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decisions: The appeal on ground (a) succeeds in part and permission for that part is granted, otherwise the appeals fail and the enforcement notice as corrected and varied is upheld as set out below in the Formal Decisions.

Appeal C Ref: APP/Y2620/W/22/3299404

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with

- conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Adam Spiegel and Mrs Gay Spiegel against the decision of North Norfolk District Council.
 - The application Ref RV/21/2583, dated 28 September 2021, was refused by notice dated 31 March 2022.
 - The application sought planning permission for replacement house and studio without complying with a condition attached to planning permission granted on appeal Ref APP/Y2620/A/13/2205045, dated 5 February 2014.
 - The condition in dispute is No 2 which states that: The development hereby permitted shall be carried out in accordance with the following approved plans: amended site location plan scaled at 1:2500, and drawings 2260-01, 2317-02z1, 2317-03e, 2317-05f and 2317-11b.
 - The reason given for the condition is to define the permission and in the interests of the satisfactory appearance of the development.

Summary of Decision: The appeal is dismissed.

Appeal D Ref: APP/Y2620/W/22/3299405

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Adam Spiegel and Mrs Gay Spiegel against the decision of North Norfolk District Council.
- The application Ref PF/21/0882, dated 26 March 2021, was refused by notice dated 31 March 2022.
- The development proposed is dwelling and associated external works and landscaping.

Summary of Decision: The appeal is dismissed.

Background to the Appeals

1. The appeal site is on the southern edge of the village of Cley-next-the Sea and formerly comprised a single storey dwelling and its garden.
2. In 2014 planning permission was granted on appeal for a house and detached studio, which was to be a replacement dwelling for the bungalow that then existed on the land (the 2014 permission). In December 2016 the appellants acquired the land. Development commenced in January 2017 with demolition of the bungalow and excavation works. During the course of the building works the Council investigated whether the development was being carried out in accordance with the approved plans. An enforcement notice was issued on 5 August 2019¹.
3. In order to try and secure an acceptable development the Council and the appellants entered into a formal mediation process. A planning application was made in March 2021 but after due process planning permission was refused in March 2022 (Appeal D).
4. During this period, the parties concluded that the 2014 planning permission could not be lawfully implemented applying the principle established through the *Choiceplace* judgement². In summary, the approved plan 2317-11b showing the relationship between the replacement dwelling at Arcady and the neighbouring two storey dwelling Holly House was inaccurate. The appellants

¹ The statement of common ground 24 June 2022 outlines the factual history of the investigation.

² *Choiceplace Properties Ltd v Secretary of State for Housing, Communities and Local Government* [2021] EWHC 1070 (Admin)

applied to vary condition 2 of the 2014 permission in order to substitute an accurate plan. The application was unsuccessful, leading to Appeal C.

5. The common theme to the appeals is that planning permission is sought for a replacement dwelling at Arcady. To avoid repetition, the following sections set out the main issue for consideration in Appeals A, C and D, the relevant planning policies and matters related to the site and its context.

Main Issue

6. The site is within Cley Conservation Area, Glaven Valley Conservation Area and the Norfolk Coast Area of Outstanding Natural Beauty (the AONB). In land use policy terms the site is within the countryside.
7. The main issue is whether the existing development or the development proposed is of a high standard of design that reinforces local distinctiveness, taking particular account of its effect on the historic environment, landscape character and the AONB. Considerations will include the use of planning conditions to mitigate or overcome any identified harms and the environmental sustainability credentials of the schemes.
8. Arcady is the appellants' family home. Under the Human Rights Act 1998 they have a right to respect for their private and family life, their home and their correspondence (the Article 8 right). Article 8 is a qualified right that requires a balance between the private right and the public interest. To respect the appellants and their family, any decision must be necessary and proportionate.
9. Much of the documentation is directed towards comparison and assessment of the approved dwelling with the as built dwelling. The appeal decision and the 2014 permission are considerations in all appeals. However, the appellants now accept the built development is unlawful and there has been a breach of planning control. My approach, as explained at the hearing, is to focus on the planning merits of the developments, rather than comparing in detail the existing development or current proposals with the development approved in 2014. The appellants did not disagree with this stated intention.

Planning Policy

10. The development plan is the North Norfolk Local Development Framework Core Strategy, adopted in 2008, which includes development management policies. Policy EN 1 protects the special qualities of the AONB. Policies EN 2 and EN 8 require the conservation of settlement and landscape character, heritage assets and their setting. Policies EN 4 and EN 6 require high quality design and minimisation of resource consumption. To comply with Policy HO 8 a proposed replacement dwelling in the countryside should not result in a disproportionately large increase in the height or scale of the original building, or materially increase the impact on the surrounding countryside.
11. These policies are generally consistent with the equivalent topic policies in the National Planning Policy Framework (the Framework).
12. The development plan policies are supported by guidance contained in Supplementary Planning Documents (SPD). The North Norfolk Design Guide (2008) aims to raise the quality of design in the District. The North Norfolk

Landscape Character Assessment SPD (2021) is intended to inform the determination of planning applications and the management of future change.

13. Cley-next-the-Sea Conservation Area Appraisal and Management Plan adopted on 8 July 2019 (not as a SPD) is a source of detailed information that all parties relied on.
14. The Council accepted that currently a five year housing land supply is not demonstrated. In these circumstances the Framework's 'tilted balance' should be applied unless the application of policies that protect areas or assets of particular importance provide a clear reason for refusing the development proposed³.
15. When applying national policy in respect of designated heritage assets public benefits could be anything that delivers economic, social or environmental objectives as described in the Framework and should flow from the proposed development. They should be of a nature or scale to be of benefit to the public at large and not just be a private benefit. However, benefits do not always have to be visible or accessible to the public in order to be genuine public benefits⁴.

Appeal site

16. The Inspector in 2014 referred to the "highly secluded nature of the existing property". The site was "generally well screened" and occupied an elevated position relative to Holt Road, with ground levels rising from north to south and west to east.
17. The Council's evidence includes a number of photographs of the old bungalow on the Arcady site⁵. The front elevation faced west and a side gable faced Holt Road. The red brick building had a pitched roof covered in red pantiles. The front porch and small bay windows to front and south elevations added some degree of visual interest. A single storey flat roofed extension adjoined the rear (east elevation) and, to the side, low outbuildings were sited close to the Holt Road boundary. The bungalow was in an elevated position above Holt Road, with a low vegetated embanked area sloping down to the highway. A narrow driveway off Holt Road provided access to a flat roofed single garage just inside the gateway. In a short distance view from the corner of Newgate Green⁶ the roof of the bungalow was glimpsed through the trees and vegetation when in full leaf. The gateway entrance was low key and discrete. From the east the roof was visible above the roadside hedge.
18. These descriptions are reflected on the site survey plan ref 2260-01 cited in condition 2 of the 2014 permission and relied on in Appeal C. The plan shows a bank along the Holt Road frontage and the gentle increase in ground levels within the site towards the south and east (based on spot heights). The bungalow was sited centrally, towards the front of the site approximately

³ The Framework paragraph 11 - permission should be granted for the development proposal, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

⁴ Planning Practice Guidance Paragraph: 020 Reference ID: 18a-020-20190723

⁵ Appendix NNDC 19 and Appendices NNDC 15a and NNDC 15b

⁶ Newgate Green was the name used at the hearing. The open space is referred to as Cley Green in the Conservation Area Appraisal and other documents

11.9m back from Holt Road at its closest point⁷. The base of the dwelling possibly was around 1.5m to 2.0m above the level of the highway. A gravel path led up from the front gate to the entrance into the bungalow with its porch step. At the back of the dwelling were retaining walls and a raised lawn stepping up to a grassed area. To the east a brick and flint wall separated the lawn from an area described as 'original lawn left uncut'. A number of trees were indicated on the plan, both on the frontage and embankment and within the garden.

19. The design and access statement dated October 2012 described the site as seen from outside as sylvan in appearance. The bungalow was not visible in the photographs of the site from the south and the east or from Holt Road looking toward the site entrance from the west.
20. Arcady marked the edge of built development, with open fields adjoining the southern and eastern boundaries of the site.

The Historic and Natural Environments

Designated heritage assets and their significance

21. The submitted appraisals from the appellants and the Council indicate the appeal proposals have the potential to affect the significance⁸ of two designated heritage assets, the Conservation Area and St Margaret's Church.
22. The Conservation Area covers almost the entire built settlement of Cley village and the southern boundary follows the rear boundary to the appeal site. The pattern of settlement and the stock of historic buildings reflect its history and fortunes as a port town. Originally the village centre was around St Margaret's Church and the village green. After a devastating fire in 1612 rebuilding of the port and the main core of the village took place further to the north. Hence the linear pattern, the separation of the Church and village green from the core and the contrast in density of built form seen today. Some of the historic buildings incorporate the influences of international trade through their style or use of materials but more characteristic is the consistent use of local building traditions and materials, especially flint and red clay pantiles. Nevertheless, there are now successful buildings of modern design that add to the richness of the Conservation Area.
23. Newgate Green and the churchyard have importance as open spaces within the Conservation Area. They are dominated by St Margaret's Church, one of the two principal historic buildings in the village. The distinct sense of place is enhanced by the small scale vernacular buildings enclosing two sides of the green that include the grade II listed building Well Cottage and the locally listed Swallows Public House, Glaven House and Newgate Cottage. The Conservation Area Appraisal refers to mostly small-scale, historic buildings on the south side of the green with slightly larger and more polite cottages on the north side.
24. The Conservation Area extends east to take in Newgate Farm House and Barn (grade II listed) and the row of cottages on the northern side of Holt Road. All

⁷ The June 2022 statement of common ground paragraph 6

⁸ The Framework Annex 2: Glossary states Significance (for heritage policy) is the value of a heritage asset to this and future generations because of its heritage interest. The interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence but also from its setting.

are constructed in the local building traditions and materials to form a visually coherent and harmonious historic group, now in residential use. A strong sense of enclosure is created by the siting of buildings close to the highway and the mature hedgerow opposite. This pocket of development is a reminder of the rural influences and the importance of agriculture to the history of the settlement.

25. The Conservation Area Appraisal considers in some detail the setting of the Area and the importance of views both in their contribution to the setting and to the heritage value of the designated asset. In views across Newgate Green the dominance of the Church is highlighted, towering over the low buildings along the edge of the space. The Church also features in panoramic views that take in the river valley to the west and the views towards the settlement from Wiveton churchyard lying to the south west.
26. The natural landscape setting is recognised as a key part of the character of the village and extends over the salt marshes and reed beds, the River Glaven Valley and the agricultural landscape. These areas have all contributed to the economy and growth of Cley. The physical relationship with Wiveton and Blakeney, parts of the Blakeney Haven, is captured in views that take in all three churches together. The broad Norfolk skies are also a key element of its setting, both during the day and at night when the dark skies can be appreciated.
27. The Church of St Margaret is a very fine parish church. Built of stone and flint, the standing fabric dates to the 14th and 15th centuries. The fine tracery to the windows is unusual in Norfolk churches. The description in the Conservation Area Appraisal is of a "magnificent stone church elevated on a rise above the green". The size and quality of embellishment reflects the wealth of the settlement in the late Medieval period.
28. The special historic interest of the Church is associated with its role in society and village life, the function of the settlement and its development. The building is very impressive for the scale of its structure and the Church is a distinctive local landmark. The grade 1 listing confirms its very high architectural and historic interest. Within its setting the relative openness of Newgate Green and the largely undeveloped character of the river valley and farming landscape reinforce the pre-eminence of the Church and its special place in the history of the village.
29. The Framework explains the setting of a heritage asset is the surroundings in which a heritage asset is experienced⁹. Based on my visits to the site and locality, I have no doubt the Arcady site is within the setting of the Church, taking account of intervisibility, range of views and the importance of the character of Newgate Green to the asset's significance and visual dominance.

AONB and landscape character¹⁰

30. The AONB is very varied in character containing a wide variety of landscapes, seascapes and locally distinctive features, including variation in geology and

⁹ The Framework Annex 2: Glossary The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral

¹⁰ The content of this section is derived primarily from Documents 4A, 4B and 4C

topography, land use, field and settlement patterns, the character of settlements, buildings and materials. The links between the land and sea are an essential part of its unique character. The natural beauty of the scenery is closely linked with the wildlife, historic and cultural heritage.

31. Within the AONB, Cley is within the Large Valleys landscape type and the Wiveton to Letheringsett landscape character area. The rural undeveloped character and views to historic settlements are among the inherent landscape sensitivities.
32. More specifically, the River Glaven is a rare chalk river flowing northwards to the sea. The historic settlements of Cley and Wiveton, with views of the churches and the small older cottages, give a strong character to the lower regions of the valley. A strong sense of historical continuity and views of the churches within and across the valley are among the valued features. The overall character is of a rural wooded enclosed pastoral landscape.
33. The appeal site has an inland location, on the southern edge of Cley. For my assessment the most relevant key qualities of the AONB's natural beauty are the diversity and integrity of landscape, seascape and settlement character and the sense of remoteness, tranquillity and wildness.

Conclusion

34. The appeal site is located in an area high in significance and with unique historic and natural environments. This review indicates that a new dwelling on the appeal site should be designed to conserve and enhance settlement and landscape character, and which demonstrates an understanding of its context, reinforces local distinctiveness and the special qualities of the designated areas. These requirements may be achieved through a contemporary design built sustainably and which incorporates similar design elements to the existing buildings and design cues from its surroundings.

APPEALS A AND B

35. At the hearing the appellants confirmed that they did not question the validity of the enforcement notice. The appeals are on ground (a) (Appeal A only), ground (f) regarding the requirements of the notice and ground (g) in respect of the length of the compliance period.
36. In June 2022 the Council stated¹¹ it was minded to withdraw reference in the enforcement notice to the annexe (paragraphs 3(i) annexe, 5(ii) and 6(ii)) and had no objection in principle to a swimming pool as located. The Council's position was discussed further and clarified at the hearing, which has informed my assessment and conclusions on these elements of the breach.

Appeal A: appeal on ground (a)

37. The deemed planning application is derived directly from the description of the breach of planning control. Therefore planning permission is being sought for the erection of a two-storey replacement dwelling and detached annexe, the creation of a swimming pool and associated structure, and the engineering works to alter land levels across the site and to provide an area of

¹¹ Council's response dated 24 June 2022 to pre-hearing note 1

hardstanding in front of the North elevation. The development under consideration is as built.

38. Section 177(1) of the 1990 Act provides that planning permission may be granted in respect of the matters constituting a breach of planning control whether in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates. Therefore permission may be granted for all the developments identified in the breach or for one or more of them. I will assess each element of the development, having in mind the considerable degree of overlap existing in the matters raised.

Replacement dwelling

The dwelling

39. The dwelling is sited fairly centrally within the site. The structure is a series of interconnected blocks clad in timber and with a red brick base. Roofs are flat with slight variation in height across the blocks and with a slightly more pronounced increase in height to the feature 'tower'. Windows are slightly inset, of varying size and shape, with and without glazing bars. There are three floors. The lower ground floor is not as extensive as the two floors above and it houses a gym/playroom and a boiler room. The ground floor accommodates the entrance hall, bedrooms, bathrooms and other facilities. The first floor is primarily the main daytime living accommodation. The kitchen and dining area and the rooms facing south have doors leading onto an elevated terrace. Recognising that there are three floors, I intend to correct the notice by deleting 'two storey' from the description of the dwelling. This very minor correction will not cause injustice to any party.
40. Access from Holt Road is by the main driveway, which leads to a parking area adjacent to the lower ground floor. There is also a steep ramp and a flight of steps adjacent to the north elevation, providing access to the front door and an additional parking area. The removal of trees and vegetation as part of the construction process opened up and made the frontage of the site and building more visible.

Summary of main points from the appellant's statements

41. The appellant explained that the design concept was to integrate landscape and building design. The concept finds expression in the choice of silvery grey timber as the dominant external material. The building was described as a high quality piece of architecture, representing the expression of a number of different but balanced and integrated cubic forms. Harmony is achieved between the forms, which include planes of timber with artistically composed fenestration patterns in the facades. The building sits comfortably in its landscape facing open fields to the south. There is acceptance that the dwelling appears as a single and larger scale building than it actually is. This is said to be particularly so when poor light excludes shadows, giving rise to a more continuous silhouette. However, the experience in movement reveals the different forms and interplay between them, even in poor light conditions. This momentary phenomenon would become less apparent as the landscaping matures and the site returns to its secluded condition.

42. In the context of the Conservation Area and historic environment the appellant considered the development a contemporary and honest dwelling that avoids imitation but still resonates with its setting. The appraisal explains that the structure is read as a series of interconnecting blocks similar in height to surrounding dwellings and which does not intrude on any views of the Church. There are no elements of the scheme's materiality, form or design that could be considered incongruous with the character and appearance of the conservation area.

Reasons

43. In order to carry out the development enforced against the bungalow was demolished first and then the replacement dwelling was built. The Policy HO 8 test is that any increase in the height and scale of a replacement dwelling should not be disproportionately large. The photographic and plan-based evidence indicates that the bungalow was a small single storey dwelling of a very domestic scale. The footprint was compact with all accommodation on the ground floor and with no use of the roof space. The quite steeply pitched roof increased the ridge height but significantly reduced the building mass when viewed from all sides. The appearance was of a simply designed and functional dwelling which in turn emphasised the small scale. The bungalow made little contribution to its surroundings, both in terms of architectural merit and visually.
44. In comparison with the bungalow the new dwelling is much larger in size. It is a two and three storey, four bedroom building having generous space standards throughout. The use of flat roof forms constrains overall building height but there are implications for building scale in terms of the form and height of the building blocks. The walls forming the elevations are much more extensive, in height, width and depth. Scale is also increased by the elevated terraces and the two storey element on the western side of the main blocks. There is no doubt that the new building displays a large increase in both height and scale.
45. To determine whether this represents 'a disproportionately large increase' account must be taken of the size of the bungalow, the extent to which it had previously been extended or could be extended under permitted development rights and the prevailing character of the area.
46. The bungalow probably had been extended. Permitted development rights were limited by the size and siting of the bungalow and its location in a conservation area and AONB. Consequently, the focus centres on the effect of the new building on area character.
47. The underlying themes to the design concept are (i) the use of a series of interconnecting blocks to form and shape the structure, and (ii) the relationship between the building and landscape, through the choice of cladding materials and the treatment of external space.
48. Interconnecting blocks have the potential to provide cohesion, legibility and identity to the building design and to achieve a well-proportioned composition as a whole. The blocks appear to result in an efficient use of space and ease of movement internally. The internal planning and the design response to the site orientation and levels strongly influence the external appearance. The site

faces north towards Holt Road and the view southwards is across the open countryside. The south elevation reflects this with its large picture windows, the staggered building line and interplay between the terrace and principal rooms. The position of a large lounge, kitchen/dining room and the terrace on the south side at the upper level make the most of the sun and views. A consequence is that the upper storey has the greater prominence and the ground floor appears more recessive. The two storey building height is restrained and this element of the building blocks appears to sit comfortably and relate well to the level of the rear garden.

49. The north, west and east elevations present a rather different appearance. The main blocks show little variation in the height of the roof line and display little articulation and subtlety. The mass of the building is accentuated, particularly given the elevated position of the site, the marked change in levels and the formation of a lower ground floor. There is no obvious front or principal elevation and the main entrance to the house is very much understated. The lack of a clear focal or reference point does not assist in establishing an identity. The timber cladding as the primary external material is extensive and limits the ability to introduce detailing. The application of the timber vertically and horizontally, to accentuate blocks or features and provide visual separation or variation, is not readily distinguishable. If anything, vertical cladding emphasises building height. The pattern of windows does not show an easily understood or coherent logic from the outside and the artistic composition of the fenestration is not obvious. On the east elevation, in particular, the solid to void ratio is high.
50. The two storey side extension to the principal blocks is set into the ground but this element contributes quite significantly to the overall perception of size and mass and it detracts from the well-defined and simple shapes of the main blocks. The wrap round of the terrace, with its glazed panels and the introduction of an elevated outdoor living space is unduly conspicuous and is not a common feature within the village. Overall, my initial view is that the design qualities aimed at creating a building that is subservient to and blends in with its surroundings are frustrated by the size and scale of the development. Conversely, the building design does not incorporate the quality of detail and visual expression to stand out as an exemplar of a modern design that sits comfortably within its neighbours.
51. The North Norfolk Design Guide draws attention to the importance of the size of a new residential building relative to its surroundings and how the overall shape and massing of a building does much to influence how it is perceived by the public. I would add that these considerations have increased relevance here because the site is within a conservation area, close to and within the setting of a landmark listed building and in an AONB.
52. The design of the new building, using interconnecting blocks to create the structure and form of the dwelling, is a bold departure from and contrast to the residential development characteristic of the Conservation Area. The appearance is very different to traditional building groups around Newgate Green and along Holt Road to the east. As noted above, the size, number, regularity and quite regimented appearance of the blocks produce a building form of considerable mass. The height of the blocks may well be similar to the ridge lines of nearby dwellings, as referenced by the appellant, but the ridge of

a pitched roof is not a like for like comparison. A more appropriate comparison would be the eaves height because the height and extent of the solid forms are critical in determining the bulk of the building. Arcady appears higher than the adjacent Holly House and the set back within the site is not sufficient to reduce its visual dominance. The blocking of views to the side and around the building denies the sense of space and openness, especially at a higher level, that is important to local character in this part of the Conservation Area.

53. In terms of building materials a reference point is the red pantile roofs and grey flint walls seen in the surrounding structures. In contrast at Arcady the palette of materials, particularly on the most publicly visible elevations, is dominated by the timber cladding. Unlike the appellant, I find the smooth texture and hue of the timber is quite different to the flint. The red brick at the base of the building is used in a very different way in the structure of the building and hence does not readily echo the pantiles, notwithstanding the similarity in colour. The panels of flint and red brick used on the lower ground floor elevations are confined to walls enclosing the service parking area and make little contribution to the appearance of the building as a whole. As explained, the choice of timber for the external cladding was an essential element of the design concept to assist in blending the building into its setting.
54. Within the southern part of the Conservation Area the more open, rural character of the settlement pattern enables views of the site when approaching from the north near to and around the Green, leading to the immediate views from outside the site. Before the new development, by all accounts the bungalow was inobtrusive and trees and vegetation dominated. However, the position has substantially changed. Arcady is a very imposing and conspicuous building by reason of the elevated position, its block form and scale, the long street frontage and use of materials. The visual dominance of the building is out of keeping with and detracts from the harmonious composition of the smaller scale, 'polite' buildings nearby at Newgate Green. The concentration of built form, not only of the principal house but also the annexe, is especially apparent from close by. The steep ramp and steps to the entrance and the elevated parking area are additional strident features. Spaciousness and rural character are eroded.
55. To the east of the site, the linear development of cottages and farm buildings on the north side of Holt Road reinforces the character of the village by their scale, form and use of traditional materials. The elevated eastern elevation of the new build displays little that is compatible with its near neighbours. The timber clad two storey wall of the block is box-like, lacking in any visual interest or detail. The reliance on the use of timber to provide the visual link to trees and to integrate the building within its landscape setting does not work successfully because of the basic block-like form and the size and extent of the blocks.
56. Arcady does not rival the special architectural qualities and magnificence of the Church or change its major contribution to and place in the cultural role and history of the village. The open space to the front of the Church provides physical separation between the Church and the site and Newgate Green adds to the open character. Partly because of the openness, the site and new dwelling feature in views of the Church. The house sits uncomfortably within the building group around Newgate Green because of its visual dominance and

atypical appearance. It does not have the same visual subservience or continuity as the older properties. Consequently Arcady is a distraction from and competes with the heritage asset. The development affects in a negative way the ability to appreciate and experience the physical glory of the Church. The new dwelling fails to harmonise with its surroundings and harm is caused to the setting and significance of the grade 1 listed Church. This negative outcome also is harmful to the significance of the Conservation Area remembering the importance of the Church to its character and appearance.

57. The position of the site on the rural edge of the settlement requires a design that is respectful of the tranquil landscape setting and the important views across the Glaven Valley and the AONB. The viewpoint locations identified are at quite wide gaps in the roadside hedgerow along Bridgefoot Lane and from the public footpath to the west of Old Woman's Lane¹².
58. In views from Bridgefoot Lane the south elevation of the new dwelling is eye-catching, identifiable by its distinctive profile and tower feature. A distracting element is introduced to the soft landscaped edge to the settlement because of the block forms, cladding materials, fenestration and large windows. The use of extensive glazing to the upper floor, for the reasons explained above, also gives rise to the potential for light pollution and harm to the valued dark skies.
59. Of even greater concern is the relationship of the dwelling to the Church in these views from the south, bearing in mind the importance of setting. The interplay between the topography and vegetation focuses the view onto the Church and the nearby dwelling. As a result of the lack of visual separation and the incongruous appearance of the new building, Arcady competes for attention and is unduly conspicuous. The visual dominance and pre-eminence of the Church is diluted, which in turn negatively impacts on its history in the development of the village. The new dwelling is harmful to aspects of significance and the ability to appreciate this outstanding heritage asset. The development, because of its proximity and appearance, is distinct from the glimpses of pitched tiled roofs of the older properties along Holt Road to the east which have very clear visual separation from the Church. I found that submitted photographs do not always fully convey the actual visual harm, notwithstanding the informality of views.
60. From the public footpath Arcady is reasonably well integrated into views of the landscape setting and the linear development along Holt Road, helped by the timber cladding. In a few places the block form of the dwelling sits uncomfortably in relation to the pitched pantile roofs but overall the visual harm is small from this location.

Building and landscape

61. When first built the new house appeared radically different and understandably was regarded by many as being visually intrusive within its surroundings. The photographic evidence is a record of the early position. The appellants rely heavily on the role of landscaping to support the design concept and to ensure the development conserves the essential qualities of the surrounding built and natural environments.

¹² Document 10 viewpoint locations 11, 12 and 8.

62. A landscape scheme has been implemented based on a scheme approved in compliance with condition 4 of the 2014 permission. The appellant considers this scheme would restore the secluded character and further assimilate the as-built development into the surrounding landscape over a period of 10 to 15 years. They maintain implementation of the now proposed landscape masterplan would remove the majority of views immediately and remove all views of built form over short period of time (5 to 10 years). A series of visualisations, based on identified viewpoints, form part of the evidence. The enhanced landscape scheme also has been described as a means of replacing those trees lost in a more timely manner, not an attempt to hide alleged issues in relation to architectural quality of the built development.
63. Carrying out the development inevitably meant the clearance of much vegetation and the loss of some trees, including a large sycamore tree on the site frontage. The hedgerows along the rear and eastern boundary and some of the mature trees within the site have been retained and provide a degree of continuity and means of assisting the new building to relate to its surroundings. There is considerable scope to supplement and improve the on-site planting to enhance the relationship with the building.
64. The potential of trees to provide 'instant' screening through an enhanced landscape scheme was put forward as an option as a means of mitigating any identified harm. This objective has little support from national and local guidance. Referring to the National Design Guide, the landscape scheme should have the purpose of enhancing or protecting the amenities of the site, the area in which it is situated and the natural environment. The North Norfolk Design Guide advises that new planting should be used only as a means to soften or ameliorate acceptable developments. It should not be used to screen buildings which are either poorly designed or which are sited in sensitive locations, such as the AONB¹³. Screening is acceptable in a protective sense – whether as a shelter belt or to screen the dwelling from its surroundings. Neither role was identified as relevant in this case.
65. Within the setting of heritage assets Historic England's good practice advice has a range of options for reducing harm arising from development¹⁴. Screening is one possible option but because this measure may only mitigate negative impacts screening ought never to be regarded as a substitute for well-designed developments.
66. The other factors to bear in mind are that with the use of native deciduous species the effect of the planting would vary during the seasons. Longevity also requires consideration. Future owners of Arcady may not be so committed to maintaining the tree stock and other vegetation and the success of any planting scheme is subject to weather conditions. Heavy planting would give rise to additional shading of the garden and would affect natural light to habitable rooms but little consideration has been given to such effects. For instance, along the rear southern boundary the Landscape Masterplan proposes to allow the hedgerow to grow to over 4m in height and for new tree planting. An existing walnut tree already provides tree cover within this area of the garden. The boundary planting probably would not be compatible with

¹³ North Norfolk Design Guide paragraph 9.2.2

¹⁴ The Setting of Heritage Assets Historic Environment Good Practice Advice in Planning Note 3 (Second Edition) paragraphs 39 and 40

enjoyment of the swimming pool. The visualisations show that even with the proposed landscape to the boundary the unacceptable relationship between the dwelling and the Church would not be resolved.

67. The ability of landscape to soften the appearance of the development is apparent now that the development has been completed for about three years. The frontage is less stark. In views of the east elevation the mature roadside hedgerow and the boundary hedgerow to the site provide screening to the lower part of the building. The profile of the flat roof and the timber cladding to the upper part of the block still presents an uneasy contrast to the nearby cottages along Holt Road, even though the planting reduces the harmful visual impact.
68. To conclude, landscaping has an important role, not least to enhance the site and improve biodiversity. Time is needed for planting to mature and for the full benefits to be appreciated. However, the building must be of a high standard of design in its own right. A landscape dominated appearance, to echo the seclusion pre-development and offer continuity, suggests changes to the design of the building rather than reliance on visual screening.
69. Based on the proposals a reasonable expectation is that as trees and new planting mature the building would be viewed within a more leafy setting of varying effectiveness during the year. Screening out the building is not the answer. A landscape scheme would provide mitigation but would not overcome the identified harm.

Other considerations

Sustainable construction and energy efficiency

70. The appellant states the house is well-built of local construction materials for use and re-use as a family home. The development is well insulated and highly sustainable. Particular reference is made to the use of sustainable heating technologies, including the use of a wood pellet heating system and heat exchanger, to achieve District wide and national carbon offsetting objectives. Heating materials are sourced from a local supplier.
71. These statements are not supported by evidence that would confirm the standards achieved, although seeing the boiler room on the site visit was informative. The Council raised no concerns and did not question the development's compliance with Policy EN 6. I conclude this consideration is neutral in the planning balance.

Residential amenity and related matters

72. Little adverse effect has been identified to the residential amenity of nearby occupiers, although the development has impinged on the outlook from Northfield. There is no doubt the new dwelling provides acceptable residential amenity for its occupiers. On these matters compliance is achieved with Policy EN 4.
73. The internal layout responded to family requirements at the time. Welfare of the children living at Arcady is a primary consideration. Their best interests would be served by stability in home life and the current planning issues being resolved with minimum disruption.

Use of planning conditions

74. As set out in Planning Practice Guidance conditions can enhance the quality of development and enable development to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects. Proposed conditions cover landscaping of the site (considered above) permitted development rights and lighting.
75. The removal of permitted development rights for future enlargements or alterations to the dwelling would not address the fundamental concerns about the existing building.
76. The carrying out of an approved lighting design strategy is proposed as a means of limiting any harmful effects on the AONB and Conservation Area from light transmission and pollution between dusk and dawn. A specific requirement is the use of smart glass designed to block 99.5% of light that passes through windows to which it would be applied. To require the submission and approval of a strategy within one month of the date of the decision is not fully within the control of the appellant. As it stands the wording of the condition would require amending because it is not reasonable or enforceable.
77. A lighting scheme is aimed at resolving a problem that is designed into the building. The application of smart glass to windows would be directed at preventing light transmission from within the rooms and would not be effective when windows are open or in dealing with any external lighting introduced to facilitate use of the terrace areas. To exclude such lighting through a strategy would not be reasonable given that the terraces are a major feature of the design.
78. To date very little evidence about or details of a lighting design strategy have been produced, with reliance to date on the draft condition. The approach indicated by the condition indicates a moderate benefit may be achieved but the acceptability of the development is not dependent on this mitigation. In the Kelling Park appeal decision, the Inspector recognised the AONB is celebrated for the quality of its night skies and the relative lack of artificial lighting away from the main roads and towns. The use of technology and design techniques and the control of such features through a planning condition were not supported by the Inspector¹⁵.
79. To conclude, the use of planning conditions would not change the height, mass or size of the building. Landscaping and a well-considered lighting scheme would reduce the harm but would insufficiently mitigate the identified adverse effects.

Fallback and 2014 decision

80. It is common ground between the parties that the development granted permission in 2014 could not now be lawfully built and it cannot be considered a fallback. Moving on, Appeal C, for the reasons explained later in this decision document, will not be successful and there continues to be no fallback of any weight.

¹⁵ Document 5 paragraphs 36, 40 and 41

81. The Inspector's decision in 2014 was informed by the erroneous plan. The dwelling as built is not lower than Holly House. A correct understanding of the height, mass and scale of the dwelling and how it would sit within its surroundings probably would have informed other key conclusions on the treatment of elevations, use of materials, proportions and other aspects of the overall design. Also, a number of changes have been made to site conditions and the layout of the house, which are catalogued at length in the evidence. A single change may not be significant but the cumulative change is considerable. The development is significantly different to that assessed before and has been subject to greater scrutiny. After due consideration, the Inspector's reasoning and conclusions have limited relevance to my assessment and decision-making.

Conclusions on the dwelling as built

82. The design concept, as conveyed in the evidence, was to create a building of its time that blended into its built and natural surroundings and which would function as a home with a high standard of living accommodation. By reason of the internal layout and generous space standards a comfortable home has been achieved. From my analysis the external expression is much less successful especially given the size and number of the blocks, the sensitive location of the site and the site characteristics. The size and scale of building on this elevated site has resulted in a development that does not achieve fundamental objectives in relation to the built and natural environments. In the planning balance I must attach considerable importance and weight to the harm to the Conservation Area and the harm to the setting and significance of the Church.
83. The development detracts from the special qualities of the AONB taking account of the effect on views across the valley to the historic settlement and the Church. Policy EN 1 is not met. When tested against Policy EN 2, the development has not demonstrated that the scale, design and materials will protect and conserve the distinctive settlement character, and the special qualities and local distinctiveness of the area, including its nocturnal character. Turning to Policy EN 4, the development does not reinforce local distinctiveness and does not preserve or enhance the character and quality of the area. More specifically the building is not suitably designed for its context. The scale and massing do not relate sympathetically to the surrounding area. On the positive side, residential amenity requirements are met. Considerations raised by Policy EN 6 are neutral in the planning balance.
84. The character and appearance of the Conservation Area and the setting of the Church are not preserved. I give considerable weight to the presumption that preservation is desirable. By reason of the adverse impact on their special historic and architectural interest Policy EN 8 directs that the development should not be permitted. The development results in a disproportionately large increase in the height and scale of the original dwelling and there is a material increase in the impact of the dwelling on the appearance of the surrounding countryside. The criteria of Policy HO 8 are not met.
85. The Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset,

the greater the weight should be)¹⁶. This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

86. The development proposal causes less than substantial harm to the significance of the Conservation Area and less than substantial harm to the significance of St Margaret's Church. The Church, being grade 1 listed, is an asset of the highest significance. The Framework requires the harm to be weighed against the public benefits of the development. The appellant considered a number of public benefits flow from the development¹⁷.
87. The 'benefits' can be grouped into (a) those related to environmental objectives, (b) those related to construction and resource efficiency and conservation, and (c) the delivery of social objectives. I have concluded that the development does not deliver conservation objectives for the built environment and it fails to conserve and enhance landscape and scenic beauty in the AONB. The new planting and its future management probably would deliver ecological enhancement and biodiversity gain on a scale sufficient to provide a degree of public benefit. Measures have been incorporated to support the transition to a low carbon future in a changing climate, but in the absence of evidence on their performance and energy saving potential they have not been shown to deliver a public benefit of any significance. Retention of the development would avoid potential demolition and energy expended in restoration of the site but the savings would primarily be a private as opposed to a public benefit. The addition of a family home to the housing stock of Cley is a small public benefit.
88. I conclude the less than substantial harm to the significance of the Conservation Area is not outweighed by the small public benefit. The outcome of the balance is the same in respect of the Church. Accordingly there is a clear reason for refusing the development and the tilted balance does not apply
89. Drawing all these conclusions together, the development does not comply with the development plan when read as a whole. There also is conflict with the policies in the Framework. My initial conclusion, subject to a proportionality assessment, is that the development is unacceptable and planning permission should not be granted.

Alternatives

90. Alternatives were first identified in the appellant's statement of case (dated 2 September 2019), with a view to differentiate the blocks within the design to create an increased emphasis on the perceptual breakdown of the building's mass. The statement of common ground (dated 22 June 2022) set out the agreed position with regard to the alternatives for consideration under the appeal together with a list of conditions. It was agreed at the hearing that Alternative 5 is the development proposed in Appeal C. Following the discussion at the hearing a revised list of conditions was submitted (1 February 2023) that was agreed between the appellant, the Council and the Parish Council. In this schedule the works associated with each alternative are set out, which I have taken to represent the most up-to-date proposals.

¹⁶ The Framework paragraph 199

¹⁷ Document 16

91. Each of the alternatives would involve the carrying out of additional work to a greater or lesser degree. Nevertheless, I am satisfied that the alternatives relate either to the whole or to part of the matter enforced against and can be considered as part of the ground (a) appeal.

Alternative 1: post November 2017 departures removed

92. This proposal would involve reversing the works carried out after November 2017 and is the preferred option of the appellant as it would involve the least disturbance and cost. The initial rationale behind this proposal was linked to the Council's visit to the site in September 2017 and the subsequent confirmation on 27 November 2017 that the Council did not consider it expedient to take enforcement action at that time. The Council rejected this explanation, stating that the build was not significantly advanced to warrant enforcement action and it was expected that the Appellants would seek to regularise the situation with a planning application.
93. The proposed works to the dwelling are replacement of the vertical flue toward the eastern end of the dwelling with a full height metal flu, removal of the metal staircase and infilling of glass balcony balustrading, and replacement of the sliding four light door at basement level by a traditional timber garage door.
94. The proposed external landscape works are the replacement of the vehicular access ramp with a pedestrian ramp, the removal of the elevated parking and turning area, brick and slate entrance steps replaced with steps formed of reclaimed sleepers, replacement of brick planting boxes with boxes formed of reclaimed sleepers, resize planting beds and boxes in front of the eastern and northern end of the dwelling.
95. The proposed works to the dwelling would be relatively minor elements and would not alter the height, mass or scale of the building, the pattern of fenestration or the use of materials to the walls. The main reasons for the identified harms would not be addressed. The landscape works would be an improvement in that the parking would be more discreetly accommodated within the site, although accessibility to the dwelling would be reduced, particularly for people who are less mobile. Policy EN 4 requires car parking to be discreet and accessible and that building and places are accessible to all. The changes to the materials for steps and planting boxes would make this part of the garden appear less formal and be a 'softer' approach but again the fundamentals would not be tackled.

Alternative 2: charred timber cladding to part of eastern block

96. Alternative 2 would involve the works identified in alternative 1 plus areas of the existing timber cladding would be removed, heat charred and reinstated. When first proposed in September 2019 the charring included the timber cladding on the south elevation but this has been omitted from the current option.
97. The appellants considered that the proposed charring would visually suppress the more prominent parts of the dwelling. By creating more contrast in the main elevations a more vertical emphasis would be introduced into the public viewpoints that would reduce the visual impact and mass of the dwelling.

98. The use of charred timber cladding would not alter the height, mass or scale of the building or the pattern of fenestration or degree of articulation in the structure. The illustrative impressions, from two quite similar viewpoints, suggests that the rear block may appear to recede or be less visually prominent in some light conditions. However, the contrast in colour would do little to add quality in finish to the building and would detract from the lightness that may have been intended with the silvery grey colour. In views at the Church Lane junction and further east along Holt Road, the dark cladding may well have the opposite effect and serve to emphasise the mass of the building. The creation of a more vertical emphasis is not an objective I support given that the height of the building is a problem already.
99. This alternative probably would be a retrograde step and does not offer an acceptable solution.

Alternative 3: copper metal cladding to part of eastern block

100. Alternative 3 would involve the works identified in alternative 1 plus the substitution of copper sheet for the timbers used to clad the north and east elevations of the easternmost block of the dwelling. The justification for this proposal was to increase the variety of the materials used, add visual interest and to reduce the visual impact of the building. In addition, the introduction of a high quality material was intended to develop the special qualities, local distinctiveness and character of this part of the village.
101. Copper sheet is not a material associated with the Conservation Area. When allowed to weather the material would turn a blue-green colour (as indicated on the illustrative impressions) which is likely to make the building more eye catching and out of character. The additional visual interest would be negative, not positive. This is not the site or location to use this material to clad prominent two storey elevations.

Alternative 4: green wall to part of eastern block

102. Alternative 4 would involve the works identified in alternative 1 plus the replacement of the cladding timbers on the northern and eastern elevations of the easternmost block with a planted green walling system. The stated aim is to provide a greater degree of relief and visual interest in the main elevations should the copper wall not be considered appropriate. The option is intended to reinforce, complement and improve the contemporary design of the dwelling.
103. As with alternatives 1 to 3 the basic structure of the dwelling would remain the same. The introduction of this cosmetic treatment would not resolve the primary concerns over height, mass and scale. Furthermore, I have serious concerns about the resource efficiency, maintenance and longevity of this proposal, raised in the outline information on the installation of the green wall. I note it was the least preferred option of the appellant.

Alternative 6: Further alternative scheme

104. This alternative would involve extensive darkening of the main elevations through in-situ charring of the existing timbers (if practical) and /or staining to reduce the visible mass of the dwelling and to introduce a greater degree of verticality into the elevations when viewed from Holt Road. The alternative also includes landscape works in the area leading to the front door of the house and

works to the dwelling similar to those proposed in alternative 1. Finally, a roof light would be inserted into the roof slope of the annexe.

105. The proposals to reduce the visible mass of the dwelling, based on the evidence of the photomontage¹⁸, would not achieve their aim. The effect appears to be negative, with the dark colour throughout making for a lifeless and heavy appearance which in turn does nothing to reduce the visible mass. An increase in verticality would do little to resolve the issue of excessive height.

Combination of Alternatives

106. The possibility of options combining the alternatives with the use of charred cladding on the south elevation would not tackle my concerns on building height, mass and scale and do not offer a way forward.

Planning conditions

107. The list of agreed conditions makes appropriate provision for submission of a schedule and timescale of works, for tree protection and a construction management plan. These conditions would be in addition to those regarding landscaping of the site, permitted development rights and lighting, considered in respect of the as built development. Provision is made for archaeological supervision of any excavation works in view of the possibility buried archaeological remains may be present at the site.

Conclusions on Alternatives

108. At the hearing the building was described as a complex structure based on a steel frame and block and beam methods of construction. The services, ducts and heating system have implications for the height of the building. These are major constraints to making major physical changes and are said to limit the range of elevational treatment options. None of the proposed alternatives would successfully mitigate the fundamental issues of building height, mass and scale.
109. Alternative 1 would offer small improvements but the changes go nowhere near far enough to overcome the policy conflicts to enable a grant of planning permission.
110. Alternatives 2, 3, 4 and 6 would, if anything, bring about negative change. Consideration of these proposed alternatives suggests that the existing cladding system is preferable to them. In fact the appellant's Design Review (May 2022) concludes there is no need for changes to the timber facades.
111. To conclude, the proposed alternatives raise the same development plan and national policy conflicts as apply to the built dwelling. Adverse effects would not be mitigated sufficiently to allow permission to be granted.

Engineering works

112. Plan 2260-01 (listed as an approved plan in condition 2 of the 2014 permission) provides information on the land levels of the site before

¹⁸ A photomontage of these proposals was submitted in February 2019 and is included in the statement of common ground

development, through the detailed spot heights. Ground levels and changes in them are very relevant and significant to the finished height of the dwelling compared to its surroundings.

113. During the enforcement investigations land surveys were undertaken on behalf of the Council and the appellants. It was established that care is required in understanding the correct datum point and that an adjustment has to be applied to ensure all levels are consistent¹⁹. A comparison between the site levels of the development as built with those of the development as permitted shows a large measure of agreement exists between the appellants and the Council after the necessary adjustments were made²⁰. Differences between the parties where they exist are for most part small. An exception (highlighted at the hearing) is the site levels of the parking and turning area.
114. As a matter of fact engineering works were carried out to alter land levels across the site and to provide an area of hardstanding in front of the north elevation, as stated in the alleged breach of planning control. At the minimum, the creation of a lower ground floor would have required a significant amount of excavation. The appellant has not provided before and after cross sections, a method statement, schedule of works or estimation of the amount of material removed or redistributed across the site.
115. The land levels affect the visibility and prominence of the dwelling, how it relates to neighbouring dwellings and hence its appearance within its surroundings. Much of the evidence is focused on the comparison between the as built and the permitted development. The appellant's figures²¹ indicated an overall increase in the as built height of between 300mm and 480mm compared to the 2014 permitted dwelling. The roof changes through construction the phase also resulted in an increase in height to the middle section of the building by some 1.05m.
116. To gain an understanding of the engineering works that took place the more relevant comparison is of pre-development to the existing position. The evidence from survey information indicates the bungalow's ground level was 1.66m below and the floor level was around 1.3m below the equivalent levels of as built dwelling²². An increase of about 1.5m in ground levels is also indicated by a comparison of levels of Holt Road and the hardstanding. The probability is the ground floor level of the new dwelling is significantly above the former level of the bungalow.
117. An increase in ground level is supported by photographic evidence, including the photographs submitted by interested parties (dated January 2017 and May 2018). The photos were taken during the construction process from a similar viewpoint on Holt Road and illustrate that the base of the bungalow sat significantly lower than the ground floor of the new build. The Council's photos also bring out the additional height of the roadside embankment and the higher

¹⁹ The appellants rebuttal at Appendix 2 of the September 2020 response to the Council's statement of case and third party comments explains the position. Paragraphs 3.1 to 3.8 of the Council's position statement dated June 2022 also comment on the site surveys and levels and explains the required adjustment.

²⁰ Appendix 6 to the statement of common ground dated 24 June 2022 and Document 7

²¹ Rebuttal (op cit) paragraphs 1.8, 1.9

²² Council's Statement of Case (Appeals C+D) Table 1 on page 11

apparent ground floor level of the new dwelling, despite its set back further from the frontage²³.

118. The engineering works and consequent changes in land levels are very closely related to the design and erection of the dwelling. The excavation enables the lower ground floor to be created and results in additional building height to block 5 and the two storey block with the elevated terrace to the side. These elements add to the size and mass of the dwelling. The ramp and hard standing to the front of the north elevation are a response to the marked change in land levels between the site entrance and front doorway. These means of access are not in keeping with the soft landscaping of the gardens, although a proposal is to enclose the parking area by planting a native species hedge. A vehicle parked at the higher level has a stronger visual presence than on-street parking on Holt Road. This arrangement is visually intrusive when seen from outside the site, not least because it is so out of keeping in this historic village. The appellant has commented the feature would have been required in the permitted 2014 scheme to align with Building Regulations, but an internal lift was included in that design.
119. In conclusion, the engineering works and the area of hardstanding contribute to the over-dominance of the dwelling within its surroundings. The works do not have sufficient regard to local context and do not preserve the character and appearance of the conservation area. This part of the development conflicts with Policies EN 4 and EN 8 and is not acceptable.

The Annexe

120. At the hearing it was agreed that there is no up-to-date plan of the annexe and the appeal would proceed on the basis of the structure as built.
121. The reasons for issuing the enforcement notice do not identify specific harm arising from the unlawful erection of the annexe. The Council accepted in the statement of common ground that the enforcement notice should not require the demolition of the annexe and confirmed at the hearing it has no objections to this building.
122. The annexe is sited prominently at the entrance into the Arcady site on the common boundary with Holly House. The building has pitched roofs covered in pantiles and the walls are faced in flint, red brick and timber. The floor plan²⁴ shows that internally the accommodation would be on two floors, utilising space within the roof, to provide all necessary facilities for a small dwelling unit. The building has a more significant physical presence than the flat roofed single garage related to the bungalow. The annexe adds to the site coverage and mass of built development. When seen together with the main house in views from around Newgate Green the annexe contributes to the loss of the former sylvan and spacious character of the Arcady site²⁵. However, removal of the annexe would not make the principal dwelling acceptable.
123. The appearance of the annexe is in keeping with buildings in the Conservation Area, reflecting local building traditions and materials. The proposed landscaping scheme would include tree planting to the front and side

²³ Appendix NNDC 19 photos 5, 6, 13 and 14

²⁴ Pike drawing 2317-03e

²⁵ Indicated in appellants' landscape and visual impact hearing statement in Appendix 2 viewpoint 5

of the annexe along the edge of the driveway to supplement the hedge. Planting would provide a relatively high degree of enclosure and softening of the building.

124. Any adverse effects on the residential amenity of the occupiers of Holly House by reason of its siting would be limited by reason of the scale of the new building and the absence of any windows in the west elevation.
125. With the above factors in mind, the annexe as a building in its own right reinforces local distinctiveness. The building preserves the character and appearance of the Conservation Area and the setting of the Church. The development complies with Policies EN 1, EN 4 and EN 8.
126. The annexe would provide additional residential accommodation to that in the main dwelling. A planning condition was attached to the 2014 permission requiring the studio building to be occupied for purposes ancillary to the residential use of the approved dwelling. A condition with the same wording was proposed in the list of planning conditions in the statement of common ground. This condition was not included in the final list of agreed conditions.
127. The annexe has never been proposed as a separate dwelling unit. The development granted permission through the deemed planning application cannot be for a different development. If permission is granted for a detached annexe and not the principal house, the question is raised - annexe to what? Occupation as an independent and separate planning unit would raise issues including amenity space and car parking. A planning condition would be necessary.
128. Unless planning permission is granted for the house, the same wording cannot be used as proposed at first. As an alternative, the use of the annexe should be related to the residential use of the Land as a means of ensuring it is used as part of the residential use of the existing planning unit.

Swimming pool and associated structure

129. When issuing the enforcement notice the Council reasoned that because the house itself was unlawful the swimming pool and associated structure did not benefit from permitted development rights and they should be removed. At the hearing the Council confirmed that the objection to the pool was no longer maintained.
130. The swimming pool is in the south eastern corner of the rear garden and is incidental to the enjoyment of the dwelling. The siting of the pool would not unduly constrain additional planting to the site boundaries as indicated on the landscape plan, although the proximity of trees and other vegetation probably would have implications for pool maintenance. The pool is set into the ground and is not visible from outside the site because of its siting at the back of the house and the enclosure provided by the boundary hedgerows and supplementary planting. The position on visibility would be similar even if the house was removed. In that scenario a dwelling in all probability would be built on the plot at some future date. The retention of the pool would be a matter for how a future occupier would wish to use and landscape the garden space.

131. No policy has been identified that specifically applies to domestic swimming pools. More generally, there is no conflict with Policies EN1, EN 2, EN 4 and EN 8 and the swimming pool is acceptable. No planning conditions were proposed and none are necessary.

Human rights and proportionality

132. By way of background, the appellants say they were unfamiliar with the development control process. At an early stage they appreciated the approved development did not meet their needs. The changes instigated largely involved internal reconfiguration, some of which led to external changes. They believe they acted in good faith and were poorly advised initially on permitted development rights.
133. The planning history and the existence of the 2014 permission are very relevant. Nevertheless, the appellants were fully aware of the enforcement investigations by the local planning authority. In September 2017 a temporary stop notice was issued. A planning application was invited to regularise the breach, none was made. The local planning authority did advise enforcement action was not considered expedient but development continued to depart from the approved scheme. In July 2018 the local planning authority notified the appellant enforcement action was under consideration and after due process the notice was issued in August 2019. There was a failure to seek authorisation of the scheme and development continued to completion and occupation. Even allowing for the explanation of the chain of events this is not a situation where a home was lawfully established. The circumstances do not weigh against the legitimacy of requiring the appellants to move.
134. The failure to secure a planning permission for the principal dwelling and ground works through the ground (a) appeal will result in the enforcement notice being upheld. The notice requires demolition of the dwelling. Consequently the appellants and their family would lose their current home and they would have to find an alternative place to live. Article 8 rights are engaged and the interference with home and family life would be serious, not least from the unwanted upheaval and the emotional effects.
135. Interference with fundamental rights would arise from exercising a statutory function and be in accordance with the law. The interference would be in pursuit of a legitimate aim to protect the environment through the regulation of land use. The proposed alternatives, which would reduce the scale of action necessary, would not be sufficient to overcome the identified harm or offer an acceptable solution. A temporary permission would not be a way forward in this case because of the permanent nature of the development. Also, the prolonged uncertainty would not be satisfactory for either the appellants or the community. The required remedy of the breach of planning control is necessary to achieve the planning objectives of the development plan and the Framework, bearing in mind the location of the site within designated areas that enjoy a high level of policy protection. These assets are regarded as an irreplaceable resource that should be conserved appropriately, so that they can be enjoyed for their contribution to the quality of life of existing and future generations.
136. The appellants indicated they would be able to find an alternative place to live, which would reduce the seriousness of the interference to some extent.

They are unlikely to become homeless. However, the effects of an unfavourable outcome on wellbeing and on mental health were specific considerations highlighted in relation to respect for private and family life and the home, and where the intrusion through social media could be damaging. Disruption to education is another important aspect when thinking of the best interests of the children. In terms of community interest, there are residents who support the appellants and who like the new Arcady. They described the house as an example of modern architecture that is not out of place within the Conservation Area and AONB. To require its demolition would be vexatious and disproportionate. I heard at the hearing the family are well liked and bring warmth to the community and that to deprive them of their home would be senseless.

137. The development has prompted differing opinions and professional judgements. Within the local community the weight of opinion was negative, based on the information from the Parish Council and written representations on the applications and on the appeals. A lot of effort on all sides has been made to find a solution but the proposals to date have been constrained by the means of construction of the existing structure of the principal building. As seen from my reasoning on this appeal and Appeal D no acceptable solution has been produced when assessed against adopted local policies and guidance and national planning policies. Achieving sustainable development not only responds to present needs but also looks to the future when fulfilling social and environmental objectives. The design of the new house focussed on then current family requirements with insufficient attention to the site context, wider and longer term community interests.

138. Weighing all the various interests I conclude that the refusal of planning permission for the dwelling and engineering works and upholding the requirements of the notice would strike a fair balance and would not be disproportionate to the appellants and their family. Consideration of the reasonableness of the compliance periods is the remaining available step to ensure a necessary and proportionate outcome.

Conclusion on ground (a)

139. For the reasons given above, the appeal on ground (a) should succeed in part only and planning permission will be granted for the detached annexe and the swimming pool. Otherwise the enforcement notice will be upheld and planning permission will be refused for the erection of the dwelling and the carrying out of engineering works. The interference with the Article 8 rights of the appellant and their family is necessary and proportionate in the public interest.

Appeals on ground (f): requirements

140. The issue is whether the requirements are excessive, having regard to the purpose of the notice.

141. The Council confirmed that the purpose of the notice is not confined to remedying injury to amenity but is to remedy the breach of planning control²⁶. I consider this purpose is clearly demonstrated through the reasons and

²⁶ Council's response to pre-hearing note 1

requirements set out in the notice. A ground (f) appeal cannot be used to argue an enforcement notice should have a different purpose. It follows steps (i) to (vi) are not excessive because essentially their purpose is to restore the land to its condition before the development was carried out and hence remedy the breach.

142. As part of their initial ground (f) case the appellants requested the requirements be amended to facilitate the granting of planning permission for one of the proposed alternatives or that the steps be amended to require the alteration of the development on the site to that permitted in the 2014 permission.
143. The appropriate ground to consider the proposed range of Alternatives is the ground (a) appeal because planning permission can only be granted through that ground of appeal. The 2014 permission cannot be lawfully implemented and therefore cannot be cited as an alternative approved development to remedy the breach of planning control.
144. The requirements of the notice relating to the acceptable part of the development will not be deleted to avoid any grant of unconditional planning permission being made through section 173(11). At the hearing there was discussion on whether step (vi) requires variation to ensure land levels do not have to be restored where the swimming pool, associated structure and annexe are sited. However, planning permission will be granted through ground (a), rather than under-enforcing against these developments. Through section 180(1) the notice will cease to have effect insofar as it is inconsistent with the planning permission. No variation is necessary. Similarly, no variation is required in respect of the time for compliance.
145. For these reasons the appeals on ground (f) do not succeed.
146. The final matter regarding the requirements is step (v) which requires the removal of the hard standing 'on the North elevation'. This wording does not exactly repeat the wording in the allegation, although the meaning was generally understood. Amended wording was agreed at the hearing. I will correct the wording to ensure the requirement is clearly expressed and consistent with the description of the breach.

Ground (g) appeals: compliance period

147. The issue is whether the compliance periods are reasonable and proportionate. The duties in respect of Article 8 and the public sector equality duty are highly relevant.
148. The appellants initially requested an increase in the period for compliance to at least 12 months for each action because Arcady is the home for themselves and their children. Also, from a practical perspective, there was concern the time periods may be inadequate to mobilise contractors to carry out the extensive work, particularly if over the winter season. At the hearing 18 months was requested for the demolition and 21 months to restore the levels, to allow breathing space and to take full account of the welfare and education of their children.
149. The Council initially considered the stated periods were sufficient. At the hearing the Council stated they had no strong views on extending the

compliance period, while drawing attention to the harm to designated heritage assets.

150. The policy context is provided by the Framework and Planning Practice Guidance, which state that effective enforcement is important to maintain public confidence in the planning system and to tackle breaches of planning control which would otherwise have an unacceptable impact on the amenity of an area. In this case the main harm is to the character and appearance of the Conservation Area, the setting of a grade 1 listed building and the special qualities of the AONB.
151. As a general rule a compliance period should not exceed 12 months, unless exceptional circumstances justify a longer period. The compliance periods must take account of what the recipients of the notice must do in practice to carry out the steps, namely, to demolish the dwelling, remove the hardstanding and restore the land levels to those that existed before the development took place. The requirements to demolish the annexe and remove the swimming pool will not need to be fulfilled as a result of the grant of planning permission. The only aspect of the operation highlighted by the appellants is mobilisation of contractors. I would expect that a certain length of time would be required for pre-planning, the appointment of contractors and preparation of a schedule of works. No estimate has been given for the period of demolition but the structure is quite substantial and a proportion of materials may be able to be salvaged. Ground works would have to follow.
152. Apart from the physical works, a different yet very important consideration is the severe impact on the appellants and their family. Whilst this consideration was not sufficient to justify a planning permission, the compliance period would be a very challenging time for them, as indicated at the hearing. They would have to come to terms with the outcome, find alternative accommodation and oversee arrangements. The period would be one of considerable strain on family life.
153. The appellants and the Council spent much time in trying to find a solution short of demolition to provide an acceptable remedy to the breach of planning control. None of the proposed alternatives are acceptable. The process may be exhausted. However, as will be explained below, the dismissal of Appeal C is based primarily on the submitted plans and the planning merits of the proposed scheme are not considered. The appellants may wish to pursue this proposal, which would have implications for the compliance period.
154. I conclude the time for compliance falls short of what is reasonable and proportionate. A period of 15 months to demolish the dwelling and remove the hardstanding with an additional 3 months to restore land levels strikes a fair balance. I shall vary the enforcement notice accordingly prior to upholding it. The appeals on ground (g) succeed to that extent.

Conclusions on Appeals A and B

155. For the reasons given above Appeal A should succeed in part only, and I will grant planning permission for the erection of the detached annexe and the creation of a swimming pool and erection of associated structure but otherwise I will uphold the notice with corrections and variations and refuse to grant planning permission in respect of the erection of a replacement dwelling and

engineering works to alter land levels across the site and to provide an area of hardstanding in front of the North elevation. By virtue of section 180 of the 1990 Act as amended the requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant.

156. In respect of Appeal B the periods for compliance should be increased. The notice will be varied accordingly prior to being upheld. The appeal on ground (g) succeeds to that extent.

APPEAL C

157. Section 73 allows planning permission to be granted for the development of land without complying with conditions attached to an earlier permission. It does not confer power to amend the description of development. The local planning authority is required to consider only the question of the conditions subject to which planning permission should be granted (s73(2)). The outcome of a successful application is a new planning permission. That being so case law has established that an application must be determined in accordance with the development plan and taking into account other material considerations. In granting permission a local planning authority may impose new conditions, provided the conditions could have been imposed on the earlier permission and do not materially alter the development that was subject to the original permission.
158. The planning application was made under section 73 of the 1990 Act to develop land without complying with condition 2 of the 2014 permission. Condition 2 required the development to be carried out in accordance with the approved plans identified in the condition. Approved plan ref 2317-11b showed a north elevational view of the proposed dwelling from Holt Road, where the roofs of the new dwelling would be lower in height than the neighbouring Holly House. The plan also had an outline view from the west to show the position of the proposed house in relation to the 'existing house' and area of excavation. This view showed the new house would be very slightly higher than the bungalow and lower than Holly House. Survey work has established plan 2317-11b is incorrect in that the relationship between the proposed dwelling and existing dwellings was inaccurate. The 2014 permission could not be lawfully implemented applying the principle in the *Choiceplace* judgment.
159. A purpose of this current proposal is to gain a planning permission for the 2014 scheme that could be lawfully carried out. The proposed scheme also is intended to provide a fallback position for consideration in the determination of the enforcement appeal and the mediation appeal. The proposal as submitted was to replace the approved but inaccurate drawing 2317-11b with an accurate sectional and street scene plan to correctly depict the appearance and relationship of the proposed dwelling with Holly House. No changes were proposed to any of the other approved drawings listed in condition 2. The Council determined the application on the basis of a substitute plan ref 1660-00-006 Rev C. This plan superseded two earlier plans submitted with the application.
160. During the course of the appeal the Council explained why the Rev C plan was not accurate and was misleading as to the relationship between the former bungalow, Holly House and the proposed dwelling. In summary, the actual ground levels of the bungalow were significantly lower than depicted on plans

2317-11b and 1660-00-006 Rev C. The ground levels of the bungalow and the 2014 appeal scheme differed by almost a metre. The bungalow and Holly House continued to be wrongly represented when compared with the approved dwelling. The Council concluded a planning permission based on the Rev C plan could not be lawfully implemented and would not provide a fallback.

161. The appellants submitted further revised plans and their final solution was amended plan ref 1660-00-006 Rev F ²⁷. This plan is of the north elevational view from Holt Road to show the relationship between the proposed dwelling and Holly House. The house design continues to be that considered by the Inspector in 2014.
162. The 2014 planning permission was lawfully begun within the three year time limit, even though as built the development does not accord with the approved plans. This matter is common ground between the parties²⁸. Therefore the 2014 permission has not lapsed. Section 73 allows for an application to be made for non-compliance with any planning condition which is not in conflict with the operative part of permission. The 2014 permission describes the development as 'replacement house and studio'. The proposal would not change the operative part of the permission. The application was appropriately made under section 73 and the appeal can be entertained. The appeal will be determined on its planning merits. In the event the appeal is successful a new planning permission would be granted.
163. Since the appeal decision was issued in February 2014 no changes have been made to the development plan. In terms of national policy, the current Framework was issued in July 2021. The updated Planning Practice Guidance draws attention to the tools available to help assess and improve the design of development and to ensure the final outcome is of good quality. The National Design Guide was first published in October 2019 and was updated in January 2021. At the local level The North Norfolk Landscape Character Assessment SPD (2021) and the Cley-next-the-Sea Conservation Area Appraisal and Management Plan (2019) post-date the 2014 decision. This local guidance is important in understanding the history and special qualities of the area.
164. The appellants stated the section 73 development includes the annexe and the swimming pool²⁹. However, there are no details of the swimming pool. The pool was not included in the scheme granted permission in 2014 and was one of the departures from the approved development identified in the enforcement investigations. Therefore the annexe forms part of the proposal but not the swimming pool. The plan of the annexe 2317-03e is as originally proposed.

The 2014 appeal Decision

165. As a general principle, consistency in the planning process is important and like cases should be decided in a like manner. However, a highly significant change is that the approved drawing 2317-11b was inaccurate and did not show correctly the proposed dwelling in its proper context. The Inspector's

²⁷ Document 1A plan 1660-00-008 Rev D, Document 1B plan 1660-00-008 Rev E and Document 15 plan 1660-00-008 Rev F.

²⁸ The legal principles of the s73 application and appeal were addressed by the appellants., the Council and the Parish Council in Document 14 and subsequent addendum dated 2 February 2023 that takes account of *Armstrong v Secretary of State for Levelling Up, Housing and Communities* [2023] EWHC 142 (KB)

²⁹ Statement of case May 2022 paragraph 3.1

finding that “the new dwelling would be only marginally taller than the existing bungalow and lower than the adjacent house to the west” is an error of fact. There is no certainty the Inspector would have concluded the new dwelling would not appear overly dominant or out of scale with its surroundings or that its impact on the wider scene would be limited if the application had been supported by accurate plans. The planning balance probably would have been affected. No reliance can be placed on the conclusion the proposal would comply with development plan and national policy. The decision has little weight and I am not bound to come to the same conclusion as the Inspector in 2014.

The Proposal

166. The plans submitted for approval are the site location plan ref 1660-00-001, drawings 2260-01, 2317-02z1, 2317-03e, 2317-05f and the amended plan ref 1660-00-006 Rev F.
167. Site location plan. Condition 2 of the 2014 permission states “amended site location plan scaled at 1:2500.” Plan ref 1660-00-001 outlines a larger site than shown on the 2014 location plan submitted in the documents by both the appellants and the Council. The site extends further to the east and includes additional land along the frontage especially by the site entrance.
168. Plan 2260-01 site survey includes spot levels, the position of the bungalow, outbuildings and garage and an indication of trees, vegetation and other site features. As already noted, the site levels are not referenced to Ordnance Datum level and require an adjustment of -1.071 to give the ‘real world’ height. This qualification is not noted anywhere on the submitted plan.
169. Plan 2317-02z1 shows the elevations of the new dwelling and floor plan layouts. The lower ground floor plan is of a garage, workshop and possibly storage space with the side extension accommodating a platform lift and refuse storage. On the ground floor the main hall gives access to a day room, kitchen and dining area, a bedroom, office and snug and other facilities. The first floor accommodates the main living area opening out onto a verandah and terrace, bedrooms and related space. The appellants describe the dwelling as a contemporary, high-quality design of interconnected blocks, using modern proportions and forms, in a material palette that complements the surrounding vernacular.
170. Plan 2317-03e is of the plans and elevations of the annexe. The plan does not include the as-built changes, such as the omission of the rooflight and changes to the brick and flint detailing.
171. Plan 2317-03f is a site plan showing spot levels, the footprint of the bungalow/outbuildings and the footprint of the proposed house. The plan also details the proposals for access, parking and turning arrangements and indicates trees, new planting and boundary treatments. The same observation regarding land levels applies as with Plan 2260-01.
172. The drawing title of Plan 1660-00-006 Rev F is Holt Road Street Elevation (North). The view of the elevation on plan shows the roofline of the main blocks of the new dwelling at a similar height to the ridge line of Holly House and the tower slightly higher. The length of elevation between the main

gateway and the eastern boundary of the site is annotated "information extracted from Pike Partnership Drawing 2317-11b" whereas the length of elevation between the gateway and Holly House is annotated "information taken from survey by Parish Land Surveys undertaken in 2020". Neither of these plans form part of the submission and plan 2317-11b was found to be inaccurate. The elevational view of the buildings is cluttered by outlines and colouring of trees and vegetation. The elevation of the annexe is inconsistent with the equivalent elevation on plan 2317-03e, and the outline of Holly House is incomplete. The view of the land to the front of the proposed wall does not represent what is on the ground. The plan provides a static view from a position along Holt Road. However, the relationship and appearance of the various building elements change quite significantly in over a short distance in views near the site frontage. Accordingly, at the least the plan should be interpreted and considered with caution.

173. Additionally, the proposed set of revised conditions refers to a Landscape Masterplan 1660-00-501 which has levels across the site derived from the Parish Land Surveys information 2020, not the site survey information shown on plans 2260-01 and 2317-03f.

Conclusion on plans

174. This application/appeal is intended to resolve the inaccuracies in the plans describing the proposal, and in particular plan 2317-11b. The appellant is now seeking a permission based on the set of plans described above. The replacement plan on which the appellants now rely is the sixth version of the plan since the application was made. The final deletion of the 'outline view from the west' has resulted in the loss of a section with information on the level of the proposed dwelling in relation to Holt Road and the extent of excavation. The comparison with the bungalow has also been deleted.
175. Case law has confirmed the principles in interpreting planning permissions, which are neatly summarised in the *Armstrong* judgement³⁰. The exercise is an objective one, concerned not with what the maker of the document subjectively intended or wanted to convey but with what a reasonable reader would understand the words used, considered in their particular context, to mean. Because a planning permission is not personal to the applicant and enures for the benefit of the land, it cannot be assumed that the holder of the permission will be aware of all the background facts known to the person who applied for it. Furthermore, a planning permission is a public document on which third parties are entitled to rely. These characteristics dictate that the meaning of the document should be ascertainable from the document itself, other public documents to which it refers such as the planning application and plans and drawings submitted with the application, and physical inspection of the land to which it relates. The reasonable reader of the permission cannot be expected to have regard to other material such as correspondence passing between the parties.
176. The main issue is the effect of the proposed variation of condition 2 on the historic environment, landscape character and the AONB. An important consideration is the level of the land which would form the ground floor

³⁰ *Armstrong v Secretary of State for Levelling Up, Housing and Communities* [2023] EWHC 142 (KB) at paragraph 53

platform for the dwelling and how this level relates to the land and buildings outside the site, together with the depth of excavation. Accurate, clear and reliable information on these matters is essential in assessing how the proposed dwelling would sit on the site and relate to its surroundings. As it currently stands the information on land levels on the submitted plans is derived primarily from the original Pike survey drawings. As has been discovered through the enforcement investigations and preparation of appeal evidence, the levels have to be interpreted in the knowledge of the datum.

177. A planning permission runs with the land and, as happened before, new land owners may seek to carry out a permission. The meaning of the plans is not easy to interpret and apply to the current position especially without the background knowledge that has emerged through the appeal process. The position is now further complicated because of the development of the land and probable changes in land levels. I have serious concern that if a permission was granted with a condition requiring development to be carried out in accordance with the submitted set of plans similar problems could arise during the course of development as has happened in the recent past. The proposed varied condition 2 would not be enforceable and would not meet one of the six tests.

Conclusions

178. A condition confirming the plans approved as part of any grant of planning permission would be necessary to avoid any doubt and to ensure the development is of a suitably high standard of design that reinforces local distinctiveness taking particular account of the historic environment, landscape character and the AONB. Such a condition must be reasonable, enforceable and precise, as well as being relevant to planning and to the development to be permitted and reasonable in all other respects.
179. The set of submitted plans do not adequately correct the inaccuracy of plan 2317-11b. The plans contain inconsistencies and provide insufficient detail on site levels. A permission cannot be granted based on the current set of plans. In view of the matters raised, related to the reason for the application and the enforcement proceedings, I do not intend to assess the planning merits of the proposed development to avoid any possibility of injustice to the appellants and the Council.
180. For the reasons given above the appeal will be dismissed.

APPEAL D

181. The planning application sought to retain and modify the built dwelling in line with the principles set out in a Mediation Agreement entered into by the appellant and the Council on 27 January 2021. The Mediation scheme is put forward as an alternative to regularise the planning position on the appeal site, without prejudice to the appellants' contention the as built development is acceptable and should be granted planning permission through the enforcement appeal. In effect in Appeal D planning permission is being sought for development already carried out and the new works to modify the existing structure.
182. The statement of case describes the proposal as including the annexe/studio building and swimming pool. However, the planning application made no direct

reference to the annexe and the pool in the description of the proposed development. The submitted plans do not provide elevations or floor plans of the annexe, although the footprint of the building and the position of the pool is outlined on the site plan and landscape plan. The covering letter with the application made no specific mention of the annexe or pool and the text was directed at the main dwelling. The Council made no assessment of the merits of the annexe in determining the application or in its statement of case. I will determine the appeal in accordance with the original description of the proposed development for a dwelling and the associated external works and landscaping.

183. The application did not include details of engineering or ground works identified in the breach of planning control in the enforcement notice. None of the submitted plans, including the site plan, has any information on ground levels or contours. To rely on the landscape masterplan (ref 1660-00-501) cited in a proposed planning condition, but which formed no part of the application, is not adequate.
184. The reasons for refusal do not cite Policy HO 8 (house extensions and replacement dwellings in the countryside). The Committee report commented that Policy HO 8 strictly cannot be applied because the bungalow has long since been demolished, although similar considerations to those raised in the policy still do apply. I consider that given the background to the current proposal Policy HO 8 remains relevant, with the bungalow being the dwelling replaced.

The Proposal

185. The Design and Access Statement (February 2021) sets out the parameters for the development and explains the design approach to the proposed alterations to the existing building. The concept is to further the articulation, visual interest and appearance of the building that is formed from a series of interconnected blocks. This approach is to support the conclusions of the Inspector in the 2014 appeal decision, to improve on the design and landscaping associated with the development permitted in 2014 and to respond to the concerns raised by the Council in line with the Mediation Agreement. The proposals were further amended after submission of the application.
186. The proposals for operational development are accompanied by a landscape strategy. The key principles of the strategy are (a) to remove the existing ramp and turning area adjacent to the front door to create an additional area for soft landscaping and tree planting, and (b) to provide additional screening by tree planting and boundary reinforcement.
187. The agreed list of draft conditions covers matters including landscaping, removal of permitted development rights, submission of a lighting design strategy, an arboricultural method statement and a construction management plan.

Main Issue

188. As with Appeal A, the main issue is whether the development proposed is of a high standard of design that reinforces local distinctiveness, taking particular account of its effect on the historic environment, landscape character and the

AONB. The following assessment should be read within the context of my consideration and conclusions on the deemed planning application in Appeal A.

Reasons

189. The construction of the building limits the scope to carry out structural works and change the configuration of the interconnecting blocks. There are no proposals to alter the existing finished floor levels of the dwelling. My conclusion on the development as built (Appeal A) is simply that the replacement dwelling is too big on this sensitive site, taking account of the ground levels. A design based on a series of interconnected blocks does not work successfully by reason of the size and mass of the blocks.
190. The introduction of positive aspects of the design identified by the Inspector in the 2014 decision is not necessarily the solution, now it is understood that the comparisons of the new dwelling to the former bungalow and to Holly House were inaccurate. Whilst the scale of the existing building is too great, there is a simplicity and coherence which was brought out and explained in the appellants' evidence for the hearing. There is a risk that the introduction of articulation, visual interest and new materials to the basic structure would add unnecessary complexity and make the building more dominant in its setting. The tension between the dwelling blending into its landscape setting and asserting its own special identity then would become greater.
191. The appellants have made the point that the proposed dwelling is similar in overall height to the dwelling approved in 2014. They say the set of elevations and plans of the house alone would have been adequate for the Inspector to understand in spatial terms how big the proposed house would be, without reliance on the street scene plan. Accordingly, their evidence refers extensively to the Inspector's reasoning and conclusions.
192. I consider plan 2317-11b was an essential part of the application. As stated earlier, the Inspector's conclusions were informed by that inaccurate plan and can no longer be relied on.

Alterations to the dwelling

193. Summarising the proposals for each elevation:
- North elevation: creation of additional elevational bays and introduction of a stepped profile, one bay reduced in height and recessed in the vertical plane, red brick to replace timber cladding in the block containing the entrance door, use of smart glass in two first floor windows, insertion of an enamelled glass panel between two windows in place of timber cladding, window replaced to remove glazing bar.
 - East elevation: the introduction of a full height recessed brick panel to the central section and addition of enamelled glass panel to replicate window.
 - South elevation: addition of profile to roof line with use of dark grey aluminium fascia, timber louvres over side glazing panels, dark stained vertical timber cladding on the central section and the colour of the balcony fascia cladding to match the tones of the timber cladding.

- West elevation: the addition of eaves overhang and profile detail, insertion of an enamelled glass panel between windows in place of timber cladding and use of smart glass in one window.
194. The internal layout and use of rooms is similar, with the bedrooms on the ground floor and kitchen/living rooms on the first floor. The proposals are directed primarily at improving the articulation to the elevations of the house. I note the appellants' design review considers the proposed architectural solution unnecessary if the enhanced landscaping is realised.
195. The most significant alterations would be to the north elevation, which would become more distinctive as a principal elevation and individual blocks would have greater definition. However, the elevation would appear rather over-busy and the existing coherence would be diminished. The measures to recess the central blocks would have limited effect on the apparent height and mass of the dwelling because no alterations are proposed to the book-end blocks to the elevation and the connecting blocks.
196. The proposals for the east, south and west elevations would be largely cosmetic and do little to address the main and fundamental concerns over size, mass and scale. The strong linear feature of the wrap around terrace is unchanged. The potential light pollution from the use of the extensive terrace, linked to the internal room layout and the large windows on the south elevation would not be satisfactorily addressed. The introduction of smart glass to reduce light emissions is shown in windows on the less sensitive north and west elevations. In views from the south the dwelling's uncomfortable siting and relationship to the Church would not change. The greater variation in use of materials and finishes possibly would add visual interest but at the expense of coherence and would not be a positive change. The better definition of the roofline of the blocks would be a relatively minor improvement.
197. All in all, the building as a whole would be a very similar height and mass as the existing building. The appellants have acknowledged this too. The landscape evidence confirms the mediation scheme does not have a greater scale or mass than the scheme as built and the same set of model views are relied on³¹. The differences are described as being so subtle they would not sway the balance between effects.
198. Following on from this conclusion the proposed development's visual dominance on this elevated site would see little change from the existing development. Consequently, the proposed dwelling would detract from the harmonious group of buildings around Newgate Green. The concentration of built form and the solid block form at 'normal' roof height would detract from the more open settlement pattern in this part of the Conservation Area. A key characteristic, reflecting the history of the village, would be adversely affected. The strong physical and visual presence of Arcady and the sharp contrast in built form to the older historic properties would mean the proposed dwelling would distract from and compete for attention with the Church. This intrusion into the setting of the grade 1 listed building would be harmful to its historic and visual significance.

³¹ Landscape and Visual Impact Hearing Statement paragraph 3.1.16 (with reference to As Built 3D Model View with Lanpro Landscaping Appendix 4) and paragraph 4.1.6

199. The lack of harmony in the relationship between the block form and mass of the east elevation and the traditional development to the east on the north side of Holt Road would not be resolved, even allowing for the 'screening' of the ground floor element provided by boundary hedgerows.
200. Based on these considerations the appearance of the Conservation Area would not be preserved in the views from the area around Newgate Green. Furthermore, in views towards the edge of the settlement and the Church from the south, I am not satisfied that the proposed alterations to the details of the treatment of the south elevation are sufficient to reduce the unduly conspicuous presence of the new dwelling. As such harm would be caused to the ability to appreciate the pre-eminence of the Church. The rural edge to the Conservation Area and the quality of views across the landscape of the AONB would not be preserved.

Landscape strategy

201. The appellants' estimated periods of time for mitigation planting to have full effect varies from 10-15 years, 10-12 years and 8-10 years, depending on the size of nursery stock planted. Reference is made to the offer of extra mature tree planting to provide an immediate screen to development.
202. The proposals are similar to those put forward in Appeal A and so my concerns are also similar. To summarise, the building must be of a high standard of design in its own right. Screening through landscaping is not supported by national and local guidance. The removal of the ramp and turning area and their replacement by soft planting would enhance the setting of the building. On the negative side, the main living space of the dwelling would become less accessible and inclusion would not be promoted.
203. The planting mix indicates the inclusion of evergreens, especially on the site frontage, with the eventual height of the trees expected to be 5 to 7 metres. The use of planting as screening is somewhat inconsistent with the proposed alterations to add visual interest and articulation. Also, evergreen planting probably would increase the shading and reduce natural light to living rooms on the northern side of the house. The mix of species could be further considered in compliance with a landscaping condition but in turn the appellants' rationale would be reduced in weight.
204. The carrying out of the proposed building works would delay new planting, particularly on the frontage and may lead to loss of some recent planting. The notion of 'immediate' screening has little weight. Seasonal change and longevity are important considerations to build into an assessment. An approved management and maintenance plan could not reasonably be extended beyond 10 years. In conclusion, planting of trees and hedging as indicated on the landscape plan would soften the appearance of the development over time and restore a more sylvan appearance to the site than existed at the end of the construction period. Landscaping would reduce the harm but would not make the principal dwelling acceptable.

Other considerations

205. I refer back to my reasoning in Appeal A. No significant change to the scheme's sustainability credentials is proposed. The internal space standards

and amenity for occupiers would satisfy Policy EN 4 requirements. The effect on neighbours living conditions would not substantially change, with some benefit from the landscaping proposals. The 2014 permission does not provide a fallback of any weight.

206. Planning conditions. There was discussion about the necessity of a planning condition requiring completion of the development, bearing in mind the requirements and compliance periods of the enforcement notice. Planning Practice Guidance indicates such a condition would not be reasonable and would be difficult to enforce. The proposed alternative, to require a timetable for carrying out the works, would be reasonable in the circumstances. Removal of permitted development rights, whilst introducing a control on any proposed future enlargements or alterations, would not make any difference to the size and design of the dwelling currently proposed. An approved lighting design strategy would attempt to mitigate effects on night skies from built-in design features but the likely effectiveness is questionable for the reasons stated previously. Provision is made for archaeological supervision of any excavation works in view of the possibility buried archaeological remains may be present at the site.

Human rights and proportionality

207. Throughout I have been very conscious that the development is a valued family home and, as stated at the hearing, the appellants would be devastated if their appeals are not successful. They very much wish to stay in their present home. This appeal was seen as an alternative to the existing development, to provide a realistic way forward and a means to avoid demolition if the enforcement notice was upheld. The appellants indicated they would be able to find somewhere else to live but even so substantial disruption would be inevitable by compliance with the notice. The interests of their children would be best served by stability in home life and by continuing to enjoy their home at Arcady. The dismissal of this appeal would raise the prospect of severe interference with home and family life. The consequences would be of sufficient gravity to engage Article 8. Such an interference would be in accordance with the law and be necessary to protect the environment through the regulation of land use.
208. Balanced against the private interests, the public interest arguments are very strong. The site is within designated areas which have a high degree of policy protection to conserve their special interest and quality for existing and future generations.

Conclusions

209. The proposed alterations to the building and the landscaping strategy, and the use of planning conditions, would not satisfactorily overcome the harm resulting from the height, mass and scale of the dwelling as constructed and as enabled by the engineering works to alter the land levels of the site.
210. A high priority of the development plan is to protect, conserve and enhance settlement and landscape character. New development is required to be well-designed to help sustain townscapes and landscapes with a strong sense of place and local identity.

211. By reason of the scale, design and materials the development would not protect and conserve the distinctive settlement character and the special qualities and local distinctiveness of the area, including its nocturnal character. The development would detract from the special qualities of the AONB. The requirements of Policies EN 1, EN 2 and Policy EN 4 are not met, notwithstanding the good quality residential amenity for its occupiers and the use of sustainable construction principles.
212. The character and appearance of the Conservation Area and the setting of the Church are not preserved. These are matters of considerable importance and weight. By reason of the adverse impact on their special historic and architectural interest Policy EN 8 directs that the development should not be permitted. The development results in a disproportionately large increase in the height and scale of the original dwelling and there is a material increase in the impact of the dwelling on the appearance of the surrounding countryside. The criteria of Policy HO 8 are not complied with.
213. Applying the policies of the Framework, the development proposal causes less than substantial harm to the significance of the Conservation Area and less than substantial harm to the significance of St Margaret's Church. The public benefits identified by the appellants relate to environmental objectives, construction and resource efficiency, and the delivery of social objectives. I consider the development does not deliver on conservation objectives for the built environment and it fails to conserve and enhance landscape and scenic beauty in the AONB. The proposed new planting and a management plan probably would deliver ecological enhancement and biodiversity gain on a scale sufficient to provide a degree of public benefit. The measures to support the transition to a low carbon future in a changing climate have not been shown to deliver a public benefit of any significance. Retention of the development would avoid potential demolition and restoration of the site but the resource savings would be primarily a private as opposed to a public benefit. The addition of a family home to the housing stock of Cley is a small public benefit.
214. I conclude the less than substantial harm to the significance of the Conservation Area is not outweighed by the small public benefit. Similarly, the less than substantial harm to the significance of the Church is not outweighed by the small public benefit. There is a clear reason for refusing the development and the tilted balance does not apply.
215. The proposal does not comply with the development plan when read as a whole. There is also conflict with the policies in the Framework. There are no other considerations sufficient to outweigh the failure to comply with the development plan and national planning policy. The interference with the Article 8 rights of the appellants and their family is necessary and proportionate in the public interest.
216. For the reasons given above the proposal is not acceptable and the appeal will be dismissed.

DECISIONS

Appeal A Ref APP/Y2620/C/19/3236385

217. It is directed that the enforcement notice is corrected in paragraphs 3(i) and 5(i) by the deletion of the words "two-storey" and in paragraph 5 by the deletion of the wording of step (v) and substitution of the wording "Remove the vehicular ramp and the parking and turning area located adjacent to the front door on the northern elevation of the dwelling, as shown marked 'parking area (not used) and ramp' on Plan 1 annexed to this decision."
218. The appeal is allowed in so far as it relates to the detached annexe and the swimming pool and associated structure, sited in the approximate positions on the Land shown on Plan 2 annexed to this decision. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the erection of the detached annexe and the creation of a swimming pool and associated structure, subject to the following condition: The annexe hereby approved shall not be occupied for residential purposes at any time other than in conjunction with the residential use of the Land, as outlined in red on Plan 2 annexed to this decision.
219. It is directed that the enforcement notice be varied in paragraphs 6(i) and 6(v) by the substitution of 15 months as the period for compliance and in paragraph 6(vi) by the substitution of 18 months as the period for compliance.
220. The appeal is dismissed in so far as it relates to the erection of a replacement dwelling and the carrying out of engineering works to alter land levels across the site and to provide an area of hardstanding in front of the North elevation and the enforcement notice is upheld as corrected and varied. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act for the erection of a replacement dwelling and the carrying out of engineering works to alter land levels across the site and to provide an area of hardstanding in front of the North elevation at Arcady Holt Road, Cley-next-the-Sea NR25 7TU.

Appeal B Ref APP/Y2620/C/19/3236386

221. It is directed that the enforcement notice is corrected in paragraphs 3(i) and 5(i) by the deletion of the words "two-storey" and in paragraph 5 by the deletion of the wording of step (v) and substitution of the wording "Remove the vehicular ramp and the parking and turning area located adjacent to the front door on the northern elevation of the dwelling, as shown marked 'parking area (not used) and ramp' on Plan 1 annexed to this decision."
222. The appeal is allowed on ground (g) and it is directed that the enforcement notice be varied in paragraphs 6(i) and 6(v) by the substitution of 15 months as the period for compliance and in paragraph 6(vi) by the substitution of 18 months as the period for compliance. Subject to the corrections and these variations the enforcement notice is upheld.

Appeal C Ref APP/Y2620/W/22/3299404

223. The appeal is dismissed.

Appeal D Ref APP/Y2620/W/22/3299405

224. The appeal is dismissed.

Diane Lewis

Inspector



Plan

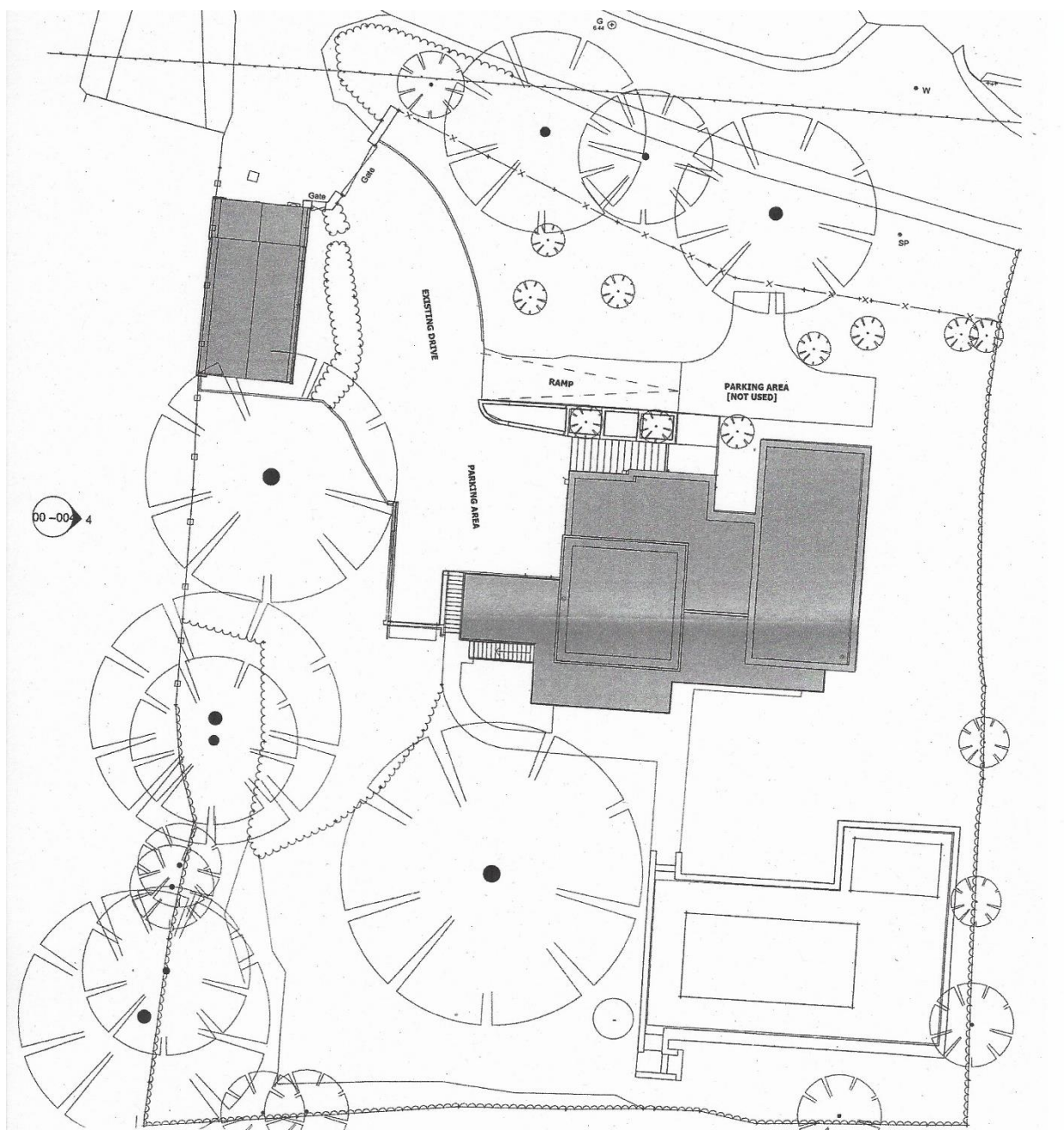
This is Plan 1 referred to in my decision dated: 17 May 2023

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

Land at: Arcady, Holt Road, Cley-next-the Sea, North Norfolk NR25 7TU

Reference: APP/Y2620/C/19/3236385, 3236386

Scale: NTS





Plan

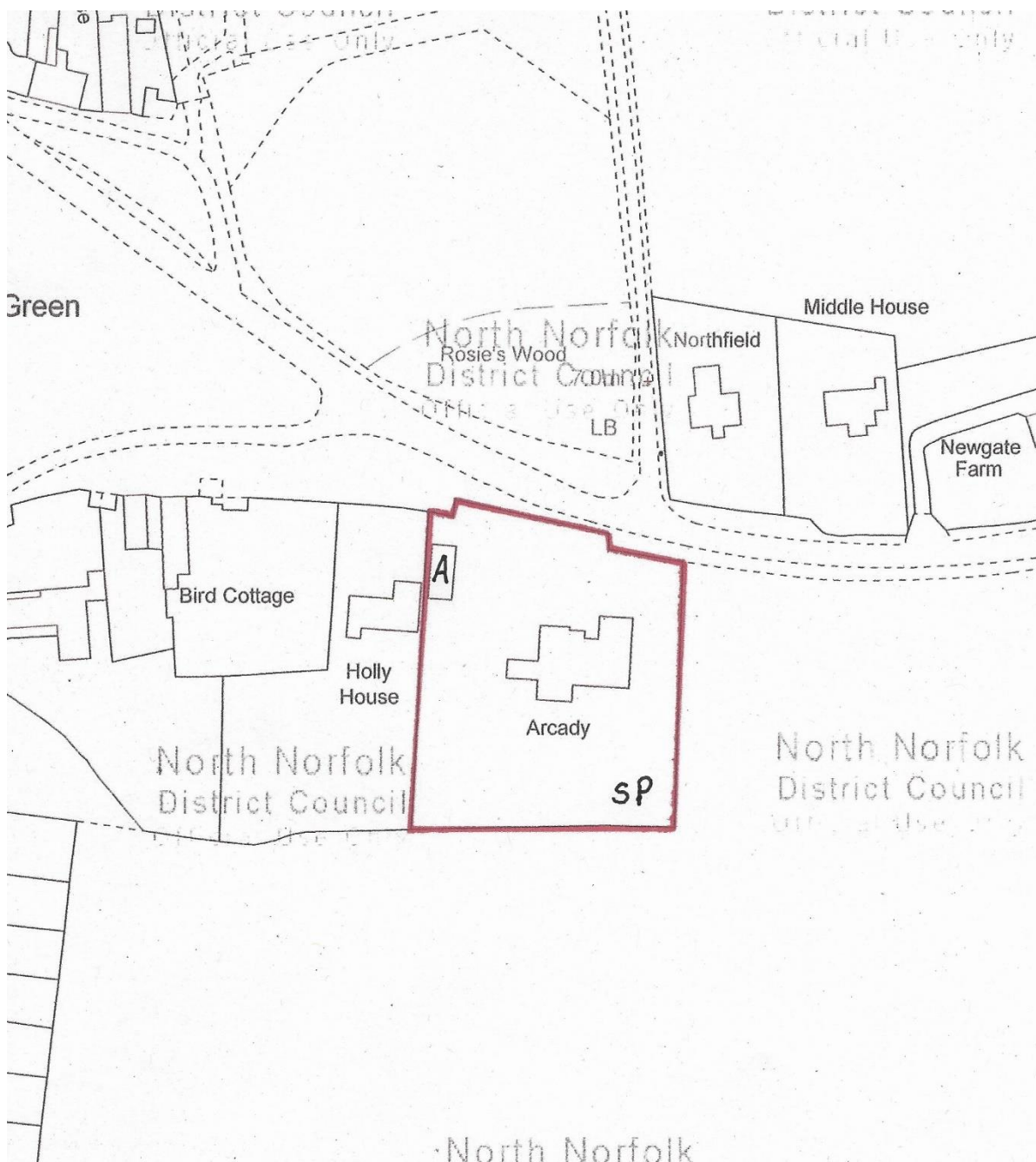
This is Plan 2 referred to in my decision dated: 17 May 2023

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

Land at: Arcady, Holt Road, Cley-next-the-Sea, North Norfolk NR25 7TU

Reference: APP/Y2620/C/19/3236385

Scale: NTS



APPEARANCES

THE APPELLANTS:

Robert Walton KC	Instructed by Howes Percival LLP
Jamie Childs	Director Howes Percival LLP
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Mark Topping CMLI	Director of Landscape Architecture and Urban Design, Lanpro
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Daniel Orford BA(Hons) MArch PGDip RIBA	Chartered Architect, Lanpro
Charlotte Spiegel	Appellant
Adam Spiegel	Appellant

THE LOCAL PLANNING AUTHORITY:

Josef Cannon, Barrister	
Charmain Hawkins BA MA MIHBC MRTPI	Director, Brighter Planning
Alison Hutchinson MRTPI	Partner, Hutchinsons
Christopher Jackson CMLI MALA BSc(Hons)	Senior Associate, Liz Lake Associates

CLEY PARISH COUNCIL:

John Pugh-Smith of Counsel	
Gemma Harrison	Parish Clerk
Richard Allen	Vice-Chair
Dr Victoria Holliday	Chair of Cley Parish Council and Ward Councillor, North Norfolk District Council

INTERESTED PARTIES:

Mrs Carter	Resident
Mr C Lamont	Resident
Ms Leeper	Resident
James Henderson	Resident
Mr Hudson	Resident

DOCUMENTS submitted at the hearing

- 1A Appeal C amended plan ref 1660-00-008 D
- 1B Appeal C amended plan ref 1660-00-008 E
- 2 Minutes of Cley Parish Council Arcady briefing 20 January 2023
- 3 Plan of viewpoints Appendix 4 to Mr Coleman's Statement
- 4A Norfolk Coast AONB Management Plan Strategy 2014-19

- 4B Norfolk Coast AONB – Integrated Landscape Guidance Large Valleys
- 4C North Norfolk Landscape Character Assessment 2021 River Valleys
- 5 Appeal Decision ref APP/Y2620/W/21/3272150 dated 12 October 2022
- 6 Proposed development at Holly House Decision Notice ref PF/22/0429 dated 25 August 2022 + plans
- 7 Bundle of plans detailing levels
- 8 Landscaping schedule for Arcady November 2016 and plan 2317-05f
- 9 Quayside judgement *Council of the City of Newcastle upon Tyne v Secretary of State for Levelling Up, Housing and Communities and others* [2022] EWHC 2752 (Admin)
- 10 Plan of agreed viewpoint locations
- 11 Visualisations for Alternatives
- 12 Consultation comments on Archaeology, including conditions
- 13 Statement of Common Ground re Appeal C
- 14 Signed Statement of Common Ground re Appeal C dated 26 January 2023
- 15 Amended plan for Appeal C ref 1660-00-008 F
- 16 Public benefits submitted by the appellants
- 17 Plan for requirement 5(v) ref 1660-00-002
- 18 Draft planning conditions