



Appeal Decision

Inquiry Held on 6 to 9 October and 20, 21 October 2020

Site visit made on 13 October 2020

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 November 2020

Appeal Ref: APP/D3505/C/19/3237898

Land known as Plot 5 and Plot 6 The Slaughterhouse and Land Adjacent, Cuckoo Hill, Bures St Mary, Suffolk CO8 5JH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by the Stemar Group Ltd against an enforcement notice issued by Babergh District Council.
- The enforcement notice was issued on 29 August 2019.
- The breach of planning control as alleged in the notice is Without planning permission, the erection of 2 no. two-storey dwellings and associated garages, referred to on the drawings approved under planning permission ref. B/14/01103 as 'Plot 5' and 'Plot 6', not in accordance with the drawings approved under that planning permission, following demolition of existing commercial buildings and hardstanding.
- The requirements of the notice are:
 - a) Demolish the dwellings and garages constructed on the land, referred to on drawing ref. 3368:18 Rev G approved under planning permission ref. B/14/01103 dated 13 February 2015, and drawing ref. 1471.21 Rev F submitted with the Non-Material Amendment of planning permission ref. B/14/01103 dated 12 May 20017, as "Plot 5" and "Plot 6";
 - b) Remove all resultant materials and debris arising from the demolition of the dwellings from the land and dispose of such materials at a properly authorised waste management facility.
- The period for compliance with the requirements is six (6) months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (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 as amended.
- An application for costs was made by the Stemar Group Ltd against Babergh District Council. An application for costs also was made by Babergh District Council against the Stemar Group Ltd. These applications are the subject of separate Decisions.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and a variation.

Procedural matters

1. On 13 February 2015 the Council granted planning permission for a development of six dwellings and the construction of a private access driveway (ref. B/14/01103/FUL and subsequently referred to in this Decision as the 2015 permission). The development site included the Land to which the enforcement notice relates.

2. The appeal against the enforcement notice was linked to earlier appeals related to the wider development site. These appeals were:
 - An appeal under section 78¹ against the refusal of planning permission to vary condition 2 attached to the 2015 permission (ref. APP/D3505/W/18/3215428) (the 78 appeal);
 - Appeals under section 195 against the Council's refusal to issue a certificate of lawfulness of existing use or development in respect of Plots 1 & 2 (APP/D3505/X/19/3221853), Plot 3 (APP/D3505/X/19/3221710), Plot 4 (APP/D3505/X/19/3221857), Plot 5 (APP/D3505/X/19/3221927) and Plot 6 (APP/D3505/X/19/3221712) (the LDC appeals).
3. On day five of the inquiry the appellant withdrew the section 78 appeal and the LDC appeals and therefore I will take no further action on them.

Enforcement notice

4. The enforcement notice states that the alleged breach of planning control falls within section 171A(1)(a), the carrying out of development without the required planning permission and not section 171A(1)(b), failing to comply with any condition or limitation subject to which planning permission has been granted. That being so and to avoid repetition with the reasons for issuing the notice, the wording of the allegation should read "Without planning permission, the erection of 2 no. two storey dwellings and associated garages on the Land (referred to as Plot 5 and Plot 6 on plan ref. 3368:18 Rev G approved under planning permission ref B/14/01103 dated 13 February 2015)." It follows the wording of step (a) in the requirements should be corrected to ensure consistency.
5. The appellant did not challenge the section 171A(1)(a) basis of the enforcement notice when I raised the matter during the course of the appeal and at the inquiry. The appellant indicated that the proposed correction to the wording of the allegation would resolve the appeal on ground (b). Concerns were expressed about the expediency of issuing the notice. With reference to the *Britannia Assets* judgement², I have no jurisdiction to determine whether the local planning authority had complied with its obligation under section 172. Such a challenge can only be made by way of judicial review.
6. The plan attached to the notice outlines an area in red and an adjacent area in blue. The Reasons state that the site of the 2015 permission incorporates both areas. As a matter of fact the approved site plan for the 2015 permission incorporates slightly more land than outlined in blue. I agreed with the Council that the plan attached to the notice need not show the blue land. The appellant raised no objection. An amended plan was submitted and the relevant sentence in the Reasons will be deleted.
7. I am satisfied that these corrections to the enforcement notice would not cause prejudice to either the appellant or the local planning authority.

¹ All references in this Decision are to sections within the Town and Country Planning Act 1990 as amended unless otherwise stated.

² *Britannia Assets v Secretary of State for Communities and Local Government & Medway Council* [2011] EWHC 1908 Admin

Reasons

The Land

8. A residential development (known as Apple Tree Mews) has taken place on a backland site between Cuckoo Hill and St Edmunds Lane. The six houses front onto an estate road, with a spur leading down to Cuckoo Hill. On the northern part of the site are a pair of semi-detached houses on plots 1 and 2 and two detached houses with garages on plots 3 and 4. All these houses are occupied. On 29 August 2019 planning permissions were granted by the Council under section 73A for the dwellings as built.
9. Plots 5 and 6 comprise the land to the south of the access road (the Land). According to the appellant's timeline³ the detached houses were built and internal fit out was underway by September 2018. At the time of the accompanied site visit that remained the position - the houses and garages were built, internal fitting out was not completed and the garden areas were not cleared of building materials.
10. The frontage development on Cuckoo Hill, outside but adjacent to the site, comprises Pilgrims Garage to the west of the site access and to the east White Horse House, a grade II listed building and the cottages at 6 and 7 Cuckoo Hill. The site is within Bures St Mary Conservation Area.

Appeal on ground (b)

11. The issue is whether the matters stated as constituting the alleged breach of planning control have occurred.
12. As a matter of fact 2 no. two storey dwellings and associated garages have been erected on the Land.
13. The appellant confirmed at the inquiry that this ground of appeal was not being pursued. I will not consider it further.

Appeal on ground (c)

14. In order to succeed on this ground of appeal the onus is on the appellant to show that the erection of the two dwellings and associated garages was not a breach of planning control. The standard of proof is the balance of probability.
15. The main issues for consideration are whether what has been built accords with the 2015 permission and, if not, whether the development substantially deviates from the approved plans such that the development as whole is without planning permission.

Site development: the 2015 permission

16. The description of the development granted planning permission on 13 February 2015 under ref. B/14/01103/FUL is "Erection of 6 no. two storey dwellings, following demolition of existing commercial buildings and hard standing, and construction of private access driveway (scheme to utilise existing vehicular access to public highway)". The permission is subject to fourteen planning conditions. Condition 1 requires the development to begin within three years of the date of the permission. Condition 2 requires the

³ Inquiry Doc 5

development to be carried out in accordance with the approved documents set out in the condition, or such other drawings/documents as may be approved by the local planning authority.

17. The approved documents set out in condition 2 are:

- The planning application forms; the design and access statement; site levels drawing no. 3368:24, all received 27 August 2014;
- The site location plan; the environmental and land contamination report produced by Argyll Environmental dated 27 October 2014; Plots 1 & 2, drawing no. 3368:22, all received 13 November 2014;
- The CS11 checklist; the preliminary Ecological Appraisal, produced by Ecology Consultancy, dated 28 November 2014, all received on 2 December 2014;
- Revised Plot 3 drawing no. 3368:21 Rev B, received 2 January 2015;
- Revised site layout drawing no. 3368:18 Rev G; revised Plot 4 drawing no. 3368:20 Rev. A; revised Plot 5 drawing no. 3368:21B Rev. A; revised Plot 6 drawing no. 3368:21A Rev. A, all received 27 January 2015.

18. The reason for the condition is "For the avoidance of doubt and in the interests of the proper planning of the development". The purpose of the approved plans and drawings is to show the detail of the building operations that have been permitted and make the grant of full planning permission complete.

19. The remaining conditions cover matters related to external materials, access and parking, remediation of the site from contamination, disposal of surface water and a programme of archaeological work. There is no condition to control finished floor levels of the ground floor(s) of the proposed buildings in relation to existing ground levels above ordnance datum (AOD). Condition 9 on site remediation and condition 14 on archaeological works are the only true conditions precedent. Following receipt of the relevant application and information the Council discharged these conditions on 15 May 2017⁴.

20. Non-material amendments to the scheme were approved on 12 May 2017. The minor changes shown on the approved plans were to details of doors and windows and to the design of the garages. No reference was made to site levels or finished floor levels.

21. The appellant acquired the site in early spring 2017. The appellant has confirmed that construction started in May 2017 with site clearance/demolition, contamination remediation and the digging of trenches for services and pile foundations.

22. For the purposes of section 56, development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out. A material operation includes any work of demolition of a building, the digging of a trench which is to contain the foundations or part of the foundations of a building and the laying of any underground main or pipe to the foundations (section 56(4)). The site was cleared of most of the buildings in July/August 2014 but a limited amount of demolition still needed to

⁴ Inquiry Doc 5

be carried out. The probability is that the demolition work undertaken by the appellant in May 2017 was in order to start commencement of work on the 2015 permission. Consequently the 2015 permission was begun within the time limit set out in condition 1 and the permission is extant. It has been no part of the Council's case that the 2015 permission has lapsed.

Development of Plot 5 and Plot 6

23. In summary, the appellant's case is that the two houses, as built on plots 5 and 6, conform to the 2015 permission in that the height of the houses accord with the dimensions scaled from the approved drawings, the levelling that has occurred is within acceptable parameters when constructing on a sloping site and that any differences between the as-built houses and the approved development are immaterial in planning terms and are in any event within normal construction tolerances.
24. The main points of the Council's case are that the house on plot 5 is sited 0.81 metre (m) further south and is 1.07 m higher than approved. Even on current ground levels the ridge height is 0.58 m higher than it should be. On plot 6 the ridge height of the house is too high by 0.92 m. Even if the site levels plan is not followed the house is too high by 0.49 m. There is no permission to raise the levels of the land on the plots and underbuild was unnecessary. The errors are substantial and are too high to be de minimis.

The site and ground levels

25. The topographic survey of the wider development site dated July 2003 (ref 430-1) showed that the land sloped down from north east to south west. The highest levels and steepest part of the land were in the north, particularly near the boundary with the cemetery. However, within the main body of the site, where the buildings and concrete yards were sited, the changes in levels were much less pronounced whether looked at from east to west (for example 34.38 to 34.06) or from north to south (for example 34.38 to 32.77). The levels on the southern part of the site where plots 5 and 6 would be developed showed a similar pattern. The variation north to south of 8 m to 9 m or so highlighted by the appellant has to be treated with caution and placed within context because the figure does not sufficiently take account of or reflect the detail of the site topography.
26. The topographic survey plan (ref 430-1) was one of the plans included in the 2014 application⁵. The plan was reproduced within the design and access statement, which was one of the approved documents in the 2015 permission. The plan was also within the ground investigation report commissioned by the appellant and submitted to the Council in March 2017. This report described the site as largely comprised of concrete hardstandings, associated with former structures, and accessways, with an area of open soft land near the northern boundary. The slope downward was given as approximately 4 m. In all probability the appellant would have been aware of the topography of the land before commencing development. With no evidence to the contrary, the probability is that the topography of the land and ground levels did not significantly change between the date of the topographic survey and the commencement of development.

⁵ See the list of plans in the second part of section 9 of the application form

27. The approved site levels drawing no. 3368:24 has the title 'sections through site existing and proposed'. The date at the bottom of the plan is September 2004. The line of the section X-X is not illustrated on the site layout or any other plan. However, the approximate section line is easily identifiable by cross referencing the existing ground levels to the topographic survey plan and White Horse House. The line is shown on one of the Council's topographic survey plans⁶. On the section there is no doubt that the proposed dwelling to the rear of White Horse House is the dwelling on plot 6. The section shows existing ground levels (north to south) adjacent to the new dwelling of 32.99, 32.82, 32.75 and 32.77 and adjusted ground levels of 32.92 and 32.92, falling gently to 32.43 to the rear of White Horse House. Therefore the approved proposal is for a very slight reduction of ground level to the front and a slight increase in ground level to the rear to provide a level platform for the building on Plot 6.
28. The site levels drawing no. 3368:24 is listed as one of the approved plans by Condition 2 of the 2015 permission. On closer inspection there are inconsistencies between this plan and other approved plans. Inaccuracies have been highlighted by the appellant and acknowledged by the Council. The main points are:
- a. The height of the dwelling on plot 6 scales as 7.24 m from ground level to ridge compared to a height of 8.50 m on the approved elevations plan (no. 3368:21A rev A);
 - b. The cross wing on the plot 6 dwelling is not shown and consequently the front to back width of the building on the site levels plan is 5.60 m as opposed to 8.60 m on the approved layout plan (no. 3368:18 rev G);
 - c. The distance between plot 6 and the boundary of White Horse House is shown as 13.95 m compared to 10.50 m on the approved layout plan;
 - d. The space between the house on plot 6 and the house on plot 3 scales as 10.10 m compared to 12.20 m on the approved layout plan.
29. I agree that the site levels drawing no. 3368:24 is not accurate in relation to every element of the proposed scheme and in showing how the dwelling on plot 6 would relate to White Horse House. Nevertheless, the plan is not an illustrative plan. The plan was submitted as one of a suite of plans to describe the development that was the subject of the planning application. The plan was approved when permission was granted and condition 2 requires the development to be carried out in accordance with the plan. The purpose of the plan is to show the adjusted, that is the proposed, site levels. The information on levels distinguishes this plan from the other approved plans. I prefer the reasonable interpretation of the Council that when the conditioned plans are read alongside each other, the site levels plan can be construed as being accurate for site levels but with deference to other plans which more accurately show site layout and elevations of the buildings. The Council's construction also has the merit of being consistent with the validity principle, taking a realistic view to avoid a void situation⁷.
30. The September 2004 date of the plan, regarded as a flaw by the appellant, is the same date as that on the site layout plan (no. 3368:18 rev G). The

⁶ Appendix 4C in Mr Bailey's bundle

⁷ *DB Symmetry v Swindon Borough Council & Secretary of State for Housing, Communities and Local Government* [2020] EWCA Civ 1331

probability is that the site levels plan was prepared in respect of an earlier 6 dwelling proposal for the site drawn up by the architects, which was refused planning permission in May 2012. The site layout plan was subject to various amendments (A to G) which included amendments to the siting of plots 5 and 6. Significantly, the details of the site levels remained constant throughout the development of the scheme. The 2004 date is not a reason for considering the plan to be unreliable or irrelevant.

31. On the basis of the identified inaccuracies the appellant argued that no reliance can be given to the site levels plan, it is irrelevant and should be discarded⁸. In closing the case was developed somewhat differently⁹. The purpose of the plan was described as showing how the land would be opened up and was simply a drawing comparing what had been there (the commercial buildings) and how the site would appear once those buildings were removed.
32. I find this later explanation improbable. In the planning application and the 2015 permission the description of the proposed development includes demolition of existing commercial buildings. The commentary and photographs in the design and access statement, the site survey plan, the site layout plan and the elevations plans provide a before and after comparison in a more informative way. The purpose of the site levels plan, through the use of a cross section, is to provide details on how the existing ground levels would be adjusted or changed to accommodate the residential development. It is not a plan to illustrate and compare site coverage and space between buildings.
33. The appellant acquired the site with the benefit of the 2015 permission and relies on that permission to authorise the development. If as the builder or developer the appellant either did not understand or decide that it was not possible to comply with the approved site levels plan, the solution was not to ignore or discard the plan. An alternative course of action, to resolve any uncertainty or to promote a scheme with different proposed levels, would have been to work within the statutory framework and before commencement of development to apply for a minor material amendment under section 73. Another option would have been to seek a new planning permission. It has been no part of the appellant's case that the 2015 permission could not be implemented.
34. In conclusion, the site levels plan provides a means of control of the ground levels on the development site and in turn, when read alongside the other approved plans and documents, the finished height of the dwellings on plots 5 and 6. Contrary to the appellant's view, the site levels plan does provide an additional restriction to the height of dwellings above ordnance datum (AOD). The 2015 permission, whether through the description of the development or the approved documents, does not authorise engineering or building operations to materially raise ground levels over and above the adjusted levels shown on the approved plan. The permission does not authorise engineering operations to raise ground levels across the wider site.

Need for underbuild

35. Underbuild is the term used to describe the use of material to fill and remove a slope in order to create a level slab or surface for the construction of a

⁸ Statement of case paragraphs 1.24, 6.1, 7.1; Proof of evidence of Ms Power, including paragraphs 3.6 and 4.4

⁹ Inquiry DOC 19 paragraphs 14 to 18

dwelling. The appellant maintains that because there is no specific slab height restriction specified by a planning condition (i) there was no restriction on the level of underbuild permitted on the development site (and hence plots 5 and 6), and (ii) the builder was entitled to prepare the site to lay out the building plots on level ground according to what best suited the site. To support this position, reference was made to two appeal decisions where underbuild was found to be acceptable. In addition, reliance was placed on the need to ensure gardens were level on new build schemes in order to be user-friendly and to avoid surface water run off onto neighbouring land.

36. The Council did not disagree with the use of underbuild in general terms. However, on the appeal site the Council's case is that underbuild, to build up ground levels in order to provide a level slab for the dwelling on plot 5 and on plot 6, was not necessary.

Plot 5

37. The appellant states underbuild of between 0.5 to 0.7 m took place as part of the construction and that underbuild was needed because of the sloping nature of the site. No further information or explanation is provided to relate the amount of underbuild to the ground levels specific to the plot. There is no reference to a change in the pre-development ground level being required in connection with approved remediation works on the plot.
38. The site levels plan does not provide specific details of existing and proposed ground levels for plot 5. However, as the Council's site survey plans show, the footprint of the proposed dwelling, garage and immediately adjoining land occupy an area that was previously the site of one of the commercial buildings and concrete yard. The spot levels on the original site survey plan indicate that before demolition and redevelopment the ground level in this area showed little significant variation around a level of 33.40. A reasonably level site would be consistent with build requirements and the appellant has not produced evidence to the contrary. The evidence does not show that the land where plot 5 was to be constructed was an uneven and sloping site such as to require underbuild of between 0.5 to 0.7 m.
39. Furthermore, the data from the Council's site survey carried out in 2018 shows that the area of plot 5 was levelled, raising the ground some 0.59 m above the 2003 surveyed ground levels. That being so, raising the ground a further 0.5 m or more through underbuild was not necessary.

40. There is no justification for an underbuild of between 0.5 to 0.7 m on plot 5.

Plot 6

41. The appellant submits that account should be taken of the underbuild of 0.5 and 0.7m. In contrast the approved site levels plan allows a very slight reduction of ground level to the front and a minor increase in ground level to the rear to provide a level platform for the building on Plot 6. There is no evidence, including the information on the 2003 site survey plan, to indicate on the balance of probability that construction based on the approved levels would not be realistic and achievable.
42. Furthermore the existing pre-construction ground levels of the plot indicate the site was reasonably level, between 32.99 and 32.77 north to south. As the land was not significantly sloping it was not necessary to create a level platform

through underbuild of between 0.5 and 0.7m. Photographic evidence and representations from residents indicate fill was used to raise levels of an already flat site.

43. I conclude an underbuild of between 0.5 to 0.7 m on plot 6 is not in accordance with the approved details or otherwise justified.

Level gardens and surface water

44. The garden justification is severely weakened by what has actually happened on the wider development site. There are very considerable level changes in the back gardens of the completed and occupied houses on plots 1 to 4. On the site visit access was possible into the garden of plot 4 where at the back of the house a flight of steps provided access onto an upper garden platform. The retaining wall was measured at 1.93 and 1.90 m. At the back of the platform the land sloped upwards to the boundaries with St Edmunds Lane and the cemetery. Views were possible across the neighbouring plots where very significant changes in level were visible, with the incorporation of steps and fences at varying levels. The Council also demonstrated with reference to its topographical survey that the garden of plot 6 sloped more after construction of the dwelling than if the adjusted levels on the site sections plan were followed.
45. The appellant provided no evidence specific to surface water run-off and did not explain how the site levels in early 2017 would preclude satisfactory drainage or how the levels incorporated into the development on plots 5 and 6 facilitated site drainage. The design and access statement outlined arrangements for surface water disposal and gave no indication of potential difficulties. At the inquiry it was indicated that the approved surface water scheme associated with the 2015 permission was not carried out and a different scheme was installed for which approval remains outstanding. No reliance was placed by the appellant on any Building Regulations approvals.

Appeal decisions

46. A number of factors distinguish the Earls Colne appeal decision¹⁰ from the current case. The enforcement notice was alleging non-compliance with a planning condition requiring the development to be built in accordance with the specified plans. Regarding the content of the plans, one purported to show a street scene, one was described as crudely drawn and no levels of any description were specified. Neither of the two plans had the purpose of specifying existing and proposed ground levels. The difference between the as built height and approved height was up to 0.5 m and therefore less than in the current appeal. The Inspector's conclusion that the development fell within the scope of the permission was attributed to several matters, not underbuild alone. The fact no material difference was found by officers with plans submitted for Building Regulations was considered significant. The dpc/slab level chosen for the building corresponded to the highest ground level within the footprint and no excavation of original ground would be needed. In this respect the Inspector concluded the freedom to choose the starting point of building work (when there was no planning condition controlling the slab level) was not abused.

¹⁰ Appeal decision dated 12 September 2003 ref APP/Z1510/C/02/1097375 Appendix 9 to appellant's statement of case

47. The Penwerris Rise appeal decision¹¹ turned very much on the facts of the site. The use of excavated material to raise the level of the plot appeared to be a particular issue. The Inspector concluded that construction of the dwelling with a level ground floor as opposed to a split level was justified on the sloping site and there was no evidence of the dwelling being raised a metre in height through use of excavated material. I find this decision is of little assistance, which was reflected in the lack of reference to it at the inquiry where emphasis was placed on the Earls Colne decision.
48. The Council drew attention to appeal decisions where Inspectors did not agree builders had free rein to adjust site levels. In the Stray Club appeal¹² a fall across the site presented a design problem that required resolution. The Inspector concluded that the developer was not awarded a free hand as a result and that there was no compelling physical reason to adopt the level chosen by the appellants. The circumstances were distinguished from the *Martin Grant Homes* case where the Council's Building Control Department had approved the houses being built at a higher level than originally permitted in order that connections could be made to the public sewer. In the Raisbeck Road appeal decision¹³, the enforcement notice alleged 'the construction of a raised earth mound in an area of open space which should be level'. The Inspector concluded the lack of a specific planning condition did not enable works that were not part of the approved plans where these were not required to implement the permission.
49. All appeal decisions show the importance of explaining and justifying works to ground levels as part of the site development. At Cuckoo Hill, the appellant has not related the level of underbuild to site conditions or a specific reference point on either plot. No substantive description or explanation has been provided of the site, the site preparation works carried out by the builder, the problems encountered if any and how the site levels impeded construction. The onus is on the appellant to make a case. All in all the Earls Colne appeal decision provides little to assist the appellant, apart from the recognition of underbuild as an accepted practice.

Comparison between the 'as built' development and the 2015 permission

50. There are two main points of dispute. Firstly, whether the two dwellings are higher than approved under the 2015 permission. It is the height of each dwelling AOD that is the issue, rather than the actual building height from ground to ridge. The second matter is the siting of the dwelling of plot 5. The dispute here concerns the distance between the rear of the house and the southern boundary and/ or with 6 and 7 Cuckoo Hill.

Plot 5

51. Height. The appellant's position in the statement of case dated 26 February 2020, and referenced in Ms Power's proof of evidence, is summarised as:

¹¹ Appeal decision dated 19 September 2014 ref APP/D0840/C/14/2215422 & 2215423 Appendix 9 to appellant's statement of case

¹² Appeal decision dated 27 February 2015 ref APP/X5210/C/14/2214983 Appendix 9b to Mr Bailey's proof

¹³ Appeal decision dated 11 October 2018 ref APP/C4235/C/18/3199560 Appendix 9c to Mr Bailey's proof

Plot 5	Plan ref	Measurement	Survey: JTSS ¹⁴ September 2019	Difference
Height to ridge	3368:21B rev A	8.6 m (scaled)	8.44 m (from Finished Floor Level)	-0.16 m
Site levels	430-1 (2003 site survey plan)	34.18 AOD	34.49 m	+0.31 m
Underbuild			0.5-0.7 m	

52. The statement of common ground updates the position. The height to ridge is agreed as 8.5 m (scaled from plan 3368:21B rev A¹⁵). The height to ridge as built is 42.97 AOD.
53. The Council's case is that the original ground level of plot 5 was 33.40 m. The ridge height as surveyed is 42.97 AOD. The approved building height is 8.5 m from ground level. Accordingly, the house is built 1.07 m higher than it should be if no permission was given to raise the ground levels. Even based on an existing (2018 post development) surveyed ground level of 33.99 m (south west corner) or 33.89 m (south east corner) the ridge height is 0.48 m-0.58 m higher than it should be on the rear elevation.
54. The site survey AOD height used by the appellant was a spot height to the east and outside of the site. The base figure used by the Council was a spot height within the site, which probably better represented the previous pre-development ground level. There is no dispute over the surveyed ridge height 42.97 AOD. The height of the dwelling is 8.50 m from the ground when scaled from the approved elevation plan, taking the thick black line at the base of the house to represent ground level. The JTSS figure is a finished floor level, not a ground level. I have concluded that the necessity for underbuild based on the original ground levels has not been demonstrated and hence the 0.5 to 0.7 m allowance should be discounted. Therefore the ridge of the dwelling as built is about 1 m higher than approved. Even adopting the existing (2018) surveyed ground level, the ridge height is around 0.5 m higher than approved, which on the evidence cannot be justified by underbuild.
55. In closing the appellant introduced a further version and application of the figures, which had not been presented by the planning witness or put to the Council's witness. The outcome of the exercise is a height difference of 0.295 m, which the appellant considered to be the sort of tolerance that might be acceptable where the local planning authority did not seek to control slab heights¹⁶.
56. The exercise adopts an existing ground level. In my view the more appropriate base ground level is pre-commencement of development, consistent with the

¹⁴ J Taylor Site Survey September 2019 (JTSS) superseded the J Taylor Site Survey dated August 2018

¹⁵ The Table at paragraph 5.1(iv) (b) actually states 3368:21B but the approved plan in the 2015 permission is 3368:21B rev A

¹⁶ DOC 19 paragraph 24

approach followed at the outset by the appellant (even though, as explained above, the chosen level was not the relevant one). That being so the result has very little weight. Even based on existing ground levels, the ridge height is not an actual surveyed height and departs from the agreed height to ridge in the statement of common ground. The introduction of a new explanation at such a late stage in the appeal proceedings is itself an indication that the interpretation of the evidence is stretched to the limit and is not one that easily came to mind.

57. Siting. The appellant's case prior to the inquiry was that the dwelling is located in or very near to its approved location and in any event behind 6/7 Cuckoo Hill. To support this conclusion reference was made to the scaled measurements of 11.4 m and 12 m from the approved site layout plan 3368:18 rev G. These measurements, at each rear corner of the cross wing, are compared to the 11.11 m and 11.57 m distances from the JTSS plan giving a difference of between 0.29 and 0.43 m¹⁷.
58. This position was updated during the inquiry by the witness and also at the end of the inquiry¹⁸. In the final explanation, a distance of 12 m to the boundary wall is scaled off the approved site layout plan. Based on measurements to the site boundary wall taken on the accompanied site visit, a difference of 0.662 m is accepted (12m - 11.338 m). The appellant considered this distance, whilst possibly not 'de minimis', is within a reasonable tolerance. I will proceed on the basis that this represents the appellant's case on the matter and not the figures based on the JTSS plan.
59. The Council's case, which was consistent throughout, is that plot 5 has been built 0.81 m closer to 6 Cuckoo Hill than permitted. This conclusion is based on the distance between the rear elevation of the cross wing of the dwelling and the rear elevation of 6 Cuckoo Hill. The distance when scaled from its topographical survey plan is 13.19 m compared to a scaled distance of 14 m on the approved layout plan.
60. My starting point is the approved site layout plan for the 2015 permission. Plot 5 is to the north of the pair of cottages at 6 and 7 Cuckoo Hill. A distance of 14 m is annotated on the plan, being a straight line distance between the centre of the rear cross wing of the new dwelling and the rear elevation of the building 6 Cuckoo Hill. Even though the figure involves land outside the application site the cottage is a permanent building and as such provides a firm reference point. There is no evidence that the position of the rear elevation has changed or been affected by any alterations. When considering spacing between buildings for planning purposes it is common practice to take a building to building distance, even if one of the buildings is outside the application site. The Council's topographical survey plan is probably accurate as to the position of the Cuckoo Hill building, given its close proximity to a GPS Survey Coordinate. For these reasons the use of the rear elevation of the cottage is a good reference point. The scaled measurement of 13.19 m was agreed in the statement of common ground.
61. All matters considered a distance of 13.19 m provides a reasonably reliable and accurate figure for current purposes. It follows on from this analysis that the

¹⁷ Statement of case dated 26 February 2020 Table 14 and paragraph 6.16, also relied on in Ms Power's proof of evidence paragraphs 5.3, 5.6, 5.18.

¹⁸ DOC 19 paragraphs 25 and 26

siting of the new dwelling is not in accordance with the approved layout in that the building is 0.81 m further south than it should be.

62. The alternative is to consider the distance between the cross wing and the southern boundary of the plot with 6 Cuckoo Hill. The scaled measurement in the statement of common ground is 12.00 m, based on the approved site layout plan 3368:18 rev G. It became clear that the distance is sensitive to two factors. The first is the position taken on the cross wing – whether the south east or south west corner or the mid-point. I consider the mid-point of the cross wing is appropriate because this is consistent with the position of the marked dimension on the site layout plan.
63. The second factor is the choice of boundary structure - whether the close boarded fence, the near or the far side of the wall south of the fence. The Council’s survey plan is the only plan to provide detail of the fence and wall¹⁹. The set of measurements taken on the site visit provides the best information available because of the clarity as to the boundary feature and they are agreed between the parties. The appellant’s figure above of 0.662 m further south is based on the far side of the wall. If the near side is used, the difference becomes 1.012 m. The measurement to the fence results in the siting being out by 1.141 m. Not all measurements/distances cited in evidence have been boundary specific. Oral evidence was not entirely consistent on the matter. No confirmation was provided as to ownership of the wall. The fence was erected as part of the development.
64. My interpretation of the approved plan is that a 12 m scaled distance probably equates to the near side of the boundary wall, having considered all the views expressed on what represents what on the various plans and the detail on the plans. On that understanding the dwelling is sited about 1 m further south within the plot than it should be.
65. Conclusions on siting. The use of the building to building distance has the advantage of being based on two fixed buildings and it avoids potential confusion over which boundary structure is involved.
66. The position of the house is approximately 0.81 m further south than it should be, as a minimum. The siting of the house on plot 5 does not comply with the approved site layout plan.

Plot 6

67. The appellant’s position, based on the statement of case dated 26 February 2020, is summarised as:

Plot 6	Plan ref	Measurement	Survey: JTSS September 2019	Difference
Height to ridge	3386:20 Rev A	8.5 m (scaled)	8.43 m (from FFL)	-0.07 m
Site levels	430-1	32.99 – 33.08 AOD	33.90 AOD (FFL)	+ 0.82 to 0.91 m

¹⁹ Appendix 4b to Mr Bailey’s proof

Underbuild			0.5 – 0.7 m	
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68. In the statement of common ground the height to ridge of the dwelling is agreed as 8.5 m. The height to ridge as built is 42.34 AOD.
69. The Council’s case is that the adjusted ground level from the approved site sections plan is 32.92 m. The approved building height is 8.5 m from ground level, giving a proposed ridge height of 41.42 m. The ridge height as built and surveyed is 42.34 AOD, resulting in a variance of +0.92 m.
70. I have concluded that the approved site sections plan can be relied on and that being so there is a specific approved ground level of 32.92 m. As with plot 5, the height of the dwelling is 8.50 m from the ground when scaled from the approved elevation plan, taking the thick black line at the base of the house to represent ground level. There is no reason to use the JTSS finished floor level (FFL) because the information on ground levels show that there was no necessity to significantly raise the land to create a level slab. The underbuild of 0.5 to 0.7 m has not been justified. Therefore the ridge of the dwelling as built is 0.92 m higher than approved. It is not adequate to say, as the appellant has done, that the dimension of the dwelling is less than approved (using the JTSS figure of 8.43 m above FFL).
71. In closing the appellant introduced a similar new line of argument for plot 6 as had been done for plot 5. The conclusion is that the ridge height of 8.43 m is 0.07m below the permitted height, well within any reasonable tolerance²⁰. This exercise, which takes no account of the approved site levels plan, has very little weight.

Conclusions

72. On plot 5 the ridge of the house is 1.07 m too high primarily due to an unnecessary increase in ground level and the house is sited too far south by a minimum of 0.81 m.
73. On plot 6 the ridge of the house is 0.92 m too high by reason of an unjustified increase in ground level over and above the adjusted level on the approved site levels plan.

Significance of the identified differences

74. The next question is whether, as a matter of fact and degree, these differences from the approved plans on building height and additionally siting in the case of plot 5 are within a reasonable tolerance of the approved plans and, if not, whether they depart from the permitted scheme to such an extent that the development is without planning permission.
75. In deciding whether the building operations were comprised within the development allowed by the 2015 permission involves consideration of the differences between what has been built and what was approved and also the significance of the differences. Similarities and the degree of compliance with the approved plans are also highly relevant, together with the degree to which the works are substantially usable in the permitted building. The assessment

²⁰ DOC 19 paragraph 27

involves looking at what has been done as a whole and reaching a matter of fact and degree judgement upon that whole.

Plot 5

76. The 2015 permission was for a three bedroom detached house and a garage detached from the house but attached to the garage at plot 6. The basic maximum dimensions of the house are 8.5 m ridge height, 5 m eaves height, 9.8 m width and 8.5 m depth²¹. The design adopts a traditional form, incorporating quite a steeply pitched roof, a cross wing with gables front and back, a jettied first floor, use of clay roof tiles, render and colourwash to external walls, a brick plinth and timber doors and windows. The garage is shown to be 3 m x 7m (internal) with a steeply pitched roof and set back behind the house to allow parking on the driveway. The siting of the dwelling, forward of the house on plot 6, allows for a shallow front garden, a gap of 2.5 m to the eastern boundary and a longer back garden.
77. A non-material amendment, dated 12 May 2017, approved minor changes to windows and internal layouts. In so far as the approval applied to plot 5, it allowed for an additional window on the rear and side elevations and a roof light in the rear roof of the garage²². The approved plan also shows windows of a different size and shape on the rear elevation, changes to the detailing of the door and windows on the front elevation, an increase in the height of the garage roof and the use of red brick on edge to define the ridge line and edge of the roof slope.
78. The plot is in a sensitive location in a Conservation Area and within the setting of a grade II listed building. The overall scheme design adopted a tight knit layout with the dwellings grouped around an internal access road. Plot 5 is at the eastern end of the development. Unlike plot 3, it has common boundaries with existing residential properties and lies immediately to the north of the cottages at 6 and 7 Cuckoo Hill. The back garden to plot 5 has a depth significantly less than plots 3 and 4. It is the only plot where a dimension has been annotated on the site layout plan relating to a separation distance between the proposed house and neighbouring development. This indicates the importance of the siting of the dwelling within the plot. The approved design and access statement stated that the scale of the development would be "relatively low key and of a domestic scale".²³
79. Taking account of these factors, the increase in the ridge height of the dwelling by 1.07 m and siting of the house further south by 0.81 m cannot be considered reasonable construction tolerances.
80. The house that has been constructed on the plot has the same design elements as the approved house (including the non-material amendment) in terms of plan form, roof form, position of doors and windows and use of external materials. The garage size and form are the same. However, the change in ground levels and the implications for the height of the dwelling is very significant, as is the change in siting, in relation to matters of character and appearance and residential amenity. The changes to the approved development would have occurred very early on in the construction process when

²¹ Dimensions from the 2015 Committee report (reproduced in the statement of common ground paragraph 5.1)

²² Statement of common ground Appendix 1 Table 2

²³ Design and access statement paragraph 10.1

undertaking ground preparation and laying foundations and slabs. The change is to the platform the house and garage is built on, which in turn could not be remedied without demolition of the buildings.

81. I conclude that as a matter of fact and degree the development is substantially different from the one which has been approved. The dwelling and associated garage does not fall within the scope of the 2015 permission and as a result the development has been built without planning permission.
82. Even a difference in ridge height of 0.48/0.58 m and a difference in siting of 0.662 m would fall outside being reasonable construction tolerances in the site specific circumstances. The changes would be to fundamental elements of the scheme. In turn the implications as to how the development responds to its context would be significant. The development would be outside the scope of the 2015 permission.

Plot 6

83. The permission was for a three bedroom detached house and attached garage. The maximum dimensions of the house are 8.5 m ridge height, 5 m eaves height, 9.8 m width and 8.5 m depth²⁴. The design adopts a traditional form, incorporating a steeply pitched roof, a cross wing with gables front and back, a jettied first floor, use of clay roof tiles, render and colourwash to external walls, a brick plinth and timber doors and windows. The garage is shown to be 3 m x 7m (internal) with a steeply pitched roof and sited to allow parking on the driveway. The siting of the dwelling on a corner plot allows for a garden at the front, rear and side.
84. The 2017 non-material amendment approved plan for plot 6 shows an additional window on the side elevation of the house, windows of different size and shape on the rear elevation, changes to the detailing of the door and windows on the front elevation. The amendments to the garage include detaching it from the house at the upper level, a rooflight and side window, an increase in the height of the roof and the use of red brick on edge to define the ridge line and edge of the roof slopes.
85. The plot is in a sensitive location, in a Conservation Area and immediately to the north of and within the setting of a grade II listed building, White Horse House. Plot 6 is a corner plot adjacent to the access road into the main body of the site and as a result it is more exposed to public view from near the site entrance on Cuckoo Hill. The overall scheme design adopted a compact layout with the dwellings grouped around the internal access road. The approved objective was for the development to be of relatively low key and of a domestic scale.
86. In the Council's evidence on heritage the effect of a 0.92 m increase in ridge height is illustrated, indicating how a reduction in ridge height and the associated reductions in eaves height and position of the windows would change the appearance of the dwelling²⁵. This illustration of a single elevation then has to be considered in a three dimensional form of the building as a whole.
87. With these considerations in mind, the increase in the ridge height of the dwelling ridge by 0.92 m is not within reasonable construction tolerances.

²⁴ Dimensions from the Committee report (reproduced in the statement of common ground paragraph 5.1)

²⁵ Appendices 44 and 45 to Mr Pearce's proof of evidence.

88. The house as built has the same design elements as the approved house (including the non-material amendment) in terms of plan form, roof form, position of doors and windows and use of external materials. The garage size and form are the same. However, the change in ground levels and the implications for the height of dwelling is very significant in relation to matters of character and appearance and residential amenity. The changes to the approved development would have occurred very early on in the construction process when undertaking ground preparation and laying foundations and slabs. The change is to the platform of the house, which in turn could not be remedied without demolition of the house.
89. I conclude as a matter of fact and degree that the development is substantially different from the one which has been approved. The dwelling and associated garage does not fall within the scope of the 2015 permission and as a result the development has been built without planning permission.

Conclusions on ground (c)

90. The approved site levels plan (ref 3368:24) is not irrelevant. The entitlement to rely on underbuild has not been supported with evidence or justified. The identified variations in building heights on plots 5 and 6 and siting on plot 5 are materially different and are beyond reasonable tolerances when compared to approved dimensions in the 2015 permission.
91. The erection of the two dwellings and associated garages do not accord with and substantially deviate from the approved plans such that the development is not authorised by the 2015 permission. The development does not benefit from the necessary planning permission and a breach of planning control has occurred.
92. The appeal on ground (c) in relation to the development on plot 5 and plot 6 does not succeed.

Ground (a)/deemed planning application

93. The deemed planning application is derived directly from the description of the breach of planning control (as proposed to be corrected) and is for the erection of 2 no. two storey dwellings and associated garages on the Land. The deemed planning application is for what has been built. Under section 177(1)(a) permission may be granted for part of the development enforced against, or in respect of part of the appeal site. Applying the power to this case, planning permission could be granted for the development on one plot and not the other. Also, because section 177(1)(a) gives power to grant planning permission in respect of any part of the matters alleged, a permission is not confined literally to the development as it existed at the time of issue.
94. It follows that the deemed planning application is not just for the identified increase in building heights and on plot 5 the discrepancy in the siting of the dwelling. The application is not in terms of proposed amendments to the development granted permission in 2015, as would be the case with an application under section 73. The application is for the development as a whole, as described in the notice.
95. The main issues concern the effects of the residential development on Plots 5 and 6 on:

- a) The character and appearance of Bures St Mary Conservation Area;
- b) The setting of White Horse House and the significance of this designated heritage asset;
- c) The living conditions of adjoining occupiers, particularly in respect of privacy, amenity and outlook.

Planning policy

96. The development plan for the area comprises the Babergh Local Plan 2011-2031 Core Strategy and Policies adopted in February 2014 (the Core Strategy) and the saved policies of the Babergh Local Plan Alteration No. 2 adopted in June 2006 (the Local Plan). The most important policies for determining the application are, from the Core Strategy, Policy CS1 and Policy CS15 on sustainable development. In respect of the Local Plan they are Policies CN01 high standards of design, CN06 listed buildings, CN08 conservation areas and HS28 infilling or groups of dwellings.
97. The National Planning Policy Framework (the Framework), Planning Practice Guidance and the National Design Guide are material considerations.
98. The development plan policies were adopted before the publication of the Framework in February 2019. Nevertheless, the set of policies identified above as being most important has a high level of consistency with the Framework and is not out-of-date. The Council is also able to demonstrate a five year supply of deliverable housing sites²⁶. The 'tilted balance' in paragraph 11 d) of the Framework does not apply in this case.

Planning history

99. I have concluded that the 2015 permission, covering the wider site, is extant. The approved plans need to be read in conjunction with the plans approved through the non-material amendment. The 2015 permission is a material consideration.
100. The dwellings that have been built on plots 1 to 4 are now authorised by planning permissions granted under section 73A by the local planning authority on 29 August 2019²⁷. The developments incorporate significant differences from the 2015 approved scheme for the northern part of the wider site. As a result it is important to bear in mind that the immediate surroundings to the appeal plots are not exactly the same as would be the case if the 2015 permission had been built out. The probability is that the ground levels have been raised, leading to an increase in the ridge height of the dwellings to varying degrees. I have the benefit of being able to assess the houses on the appeal site against the backdrop of the recently developed land.
101. At the inquiry time was spent exploring the Planning Committee determination in 2015 and whether the 2015 scheme would cause harm. The fact is planning permission was granted for the proposed 6 dwelling development. As noted above circumstances have changed and moved on. A relevant consideration now is how much weight should be attached to the 2015

²⁶ Statement of common ground paragraphs 3.7-3.9 and 5.1 (v) where it is agreed has a housing land supply of 5.67 years.

²⁷ Appendix 3 to the statement of common ground; Plots 1 & 2 ref DC/19/01422, Plot 3 DC/19/01427 and Plot 4 ref DC/19/01428

permission, for plots 5 and 6, as a fallback in justifying the development that has taken place on the two plots and in providing a benchmark against which to assess the unauthorised development. Just because a planning permission is extant does not necessarily mean that the approved development would be carried out. There should be a “real prospect” of a fallback development being implemented.

102. The Council accepted that if the ground (a) appeal is unsuccessful the appellant would be likely to build back to the extant scheme or promote a scheme that was no more harmful than the permitted scheme. The appellant indicated that rather than revert to the 2015 permission a design would come forward that avoided the demolition of the dwellings.
103. In order to build out the 2015 permission on plots 5 and 6 the existing dwellings would have to be demolished and ground levels would have to be reduced. The relationship to the existing development on plots 1 to 4, the estate road and other technical matters would need to be resolved because the details of the as built development on plots 1 to 4 do not accord with the 2015 permission. The issue of compliance with the planning conditions would need to be resolved, bearing in mind plots 1-4 are now authorised by the 2019 permissions. Therefore a more probable initial course of action would be for the appellant to seek to alter the existing dwellings to overcome any identified objections. No alternative scheme has been prepared and given the history of the site and the design challenges it is not possible to say whether this approach would be found acceptable. In the event the notice is upheld the least likely outcome would be for the site to remain vacant. Residential development of some form would take place.
104. Bearing all these factors in mind the design for plots 5 and 6 in the 2015 permission provides the available alternative as the fallback. I also have in mind that the evidence of the main parties was directed towards the incremental change between the 2015 approved scheme and the unauthorised development, which was referred to as the delta.

Historic environment

*Bures St Mary Conservation Area*²⁸

105. The Conservation Area is extensive and includes not only the historic core of the village but also the meadow land and open countryside to the north and south (part of the Stour Valley Special Landscape Area). The Conservation Area Appraisal describes the ‘quality of place’ of this designated heritage asset.
106. The historic core is characterised by tightly developed buildings and spaces, with the main streets fronted by a number of fine historic buildings, of which a number are listed buildings. The buildings dating back to the 16th and 17th century are predominantly rendered timber frames with steep pantile roofs. Those dating to the 18th and 19th centuries are of brick construction with slate roofs. The Church (listed Grade I) is a focal point. The High Street has a high degree of enclosure and a number of intimate lanes lead off its northern side. Greenery is limited and is found mainly in and around the churchyard, and this lack of green space contributes to the urban feel.

²⁸ The Conservation Area Appraisal is at Appendix 13 to the appellant’s statement of case

107. North of the junction with Sudbury Road the road continues as Cuckoo Hill where there is linear development and a more spacious, open character. Development is mainly on its northern side, including the appeal site. 1 Cuckoo Hill and White Horse House are distinguished as grade II listed buildings. Outbuildings and yards have become established to the rear of Eversley and the Almshouses but the frontage buildings continue to be the distinctive form. North of the junction with Friends Field views southwards out of the Conservation Area are across the countryside.

108. The heritage interest of the Conservation Area is architectural, from the quality of the buildings, use of materials and hierarchy of spaces; historic, through the reflection of the development of the village involving agricultural based industries, the provision of local services, trades and transport; and archaeological, mainly associated with the significance of the Church and its surroundings.

White Horse House

109. This grade II listed building is a two storey 17th to 18th century timber framed and plastered house faced in red brick on the south front. The principal architectural features on the front elevation are the central doorway with a recessed brick panel above and the two casement windows to each side. The ground floor windows and doorway have stuccoed flat arches. The roof is clay tiled and with a central rectangular brick chimney stack (rebuilt). The appearance of the back of the house is dominated by a long catslide roof and there are few other features. The front of the building is very much the elevation of significance with its pleasing composition, domestic scale and proportions and use of materials.

110. Part of the public value of a heritage asset is the contribution it can make to understanding and interpreting the past. The listed building has had an interesting history in that it was formerly White Horse Inn and became a dwelling probably in the first part of the 20th century. A thatched cottage, the village butcher's shop, was attached at the western side. Following the demolition of the cottage²⁹ the land became the garden to White Horse House.

111. White Horse House was one of the properties forming the frontage development leading north out of the village up Cuckoo Hill. Into the 20th century the land to the north provided a predominantly open setting, possibly gardens and an orchard, with fields beyond St Edmunds Lane. Photographs dated early 1900s show that low agricultural sheds and yards were present on the land to the side and behind White Horse House and the adjoining cottage. It is recorded that in 1920 the owner of the cottage and White Horse House built a new abattoir on the land behind, known as Slaughterhouse Yard. Over the years the yard and buildings became established, ownership changed and eventually the commercial units became vacant. The very recent history is the residential redevelopment of the land.

112. In summary, the significance of this heritage asset is its architectural value and also its history within the life and development of the village. The appeal site, as part of its setting, has a visual and historical relationship to the listed building, where the land use and character has changed over time. The visual

²⁹ In the Council's documents the date is given as unknown. The appellant dates the demolition to about 1955 DOC 13 paragraph 1.14

relationship is appreciated particularly in views from Cuckoo Hill and Friends Field.

Effect on the Conservation Area

113. The residential development on plots 1-4 has strengthened the built-up residential character of this part of the Conservation Area. The linear pattern of frontage development on the edge of the village and the relationship with the countryside has become less strong. The development on plots 5 and 6 would complete the creation of a compact group of houses fronting the central access road, reflecting a degree of enclosure and urban character seen in and around the historic core. The traditional type of building elements and use of materials would continue the theme seen on plots 1-4 and be in keeping with typical architectural features on residential buildings in the village.
114. Building form and scale have a very important effect on how the development relates to its surroundings, where the respectful domestic scale of the cottages fronting Cuckoo Hill and the spaces around dwellings in this part of the Conservation Area are essential considerations. Along the northern side of Cuckoo Hill leading to the entrance to the Cemetery the range of red brick cottages, together with the roadside hedgerow and backdrop of trees, enhance views within and into the Conservation Area.
115. The dwellings and associated garages on plots 5 and 6 are of a larger scale than the older development along the Cuckoo Hill frontage, a principal factor being the height of the buildings. As seen through consideration of the ground (c) appeal, the ground levels on these plots has been significantly raised over the previous ground levels. The space between the new buildings and the frontage dwellings is not generous, remembering that the dwellings at White Horse House and 6 and 7 Cuckoo Hill are sited very close to the rear common boundaries. As a result of the combination of these factors the new dwellings are over-dominant in relation to the frontage development in this edge of settlement location. They are harmful to the character and appearance of the street scene within the Conservation Area and to short distance local views from within and into the Conservation Area.
116. The development of plots 5 and 6 as part of the scheme approved through the 2015 permission also would have introduced residential built form to the rear of the Cuckoo Hill frontage properties. However, the relationship would not have been so acute by reason of the lower ridge heights and, in the case of plot 5, a slightly greater separation distance. The fallback position would be less harmful and hence is not a factor that weighs in favour of the development.
117. The development is not of an appropriate scale and form for its location and consequently it is out of keeping with adjacent and nearby dwellings. For these reasons there is conflict with Policy CN01 and HS28. The development fails to preserve the character of the Conservation Area and is contrary to Policy CN08. The failure to respect local context and character, streetscape and heritage assets results in non-compliance with Policy CS15.
118. The Framework aims to protect and enhance the historic environment. Applying the relevant policy, the development causes less than substantial harm to the architectural and historic significance of the heritage asset. This harm has considerable importance and weight. Any harm has to be weighed against the public benefits of the proposal. Public benefits should flow from the

development and be of a nature and scale to benefit the public at large. In this case they are the contribution to housing needs and associated beneficial use of the land and the economic effects generated by future residents. Economic benefit during the temporary period of construction is acknowledged. The removal of the former industrial buildings is not a public benefit of this deemed application, which was accepted in oral evidence by the appellant's witness. The site was largely cleared of buildings before the application was made and the 2015 permission was granted. No attempt was made to quantify the economic benefits and the probability is that from two dwellings the benefit would be minor. It is common ground that the Council can demonstrate a housing land supply of 5.67 years. I attach a small amount of weight to the public benefits.

119. The less than substantial harm to the significance of the heritage asset is not outweighed by the public benefits. The failure to preserve the character and the appearance of the Conservation Area is a strong presumption against the development.

Effect on listed building

120. Plots 5 and 6 are within the setting of White Horse House and the development forms the backdrop to this listed building.
121. Former industrial buildings on the land to the north were sited along the eastern boundary and those buildings that were within the main body of the site were set well back from White Horse House. Land immediately behind the listed building was to a large extent an open concrete yard, with a low outbuilding near the western corner. This relationship enabled the principal elevation and profile of the listed building to act as a focal point and stand proud when viewed from the east. From Cuckoo Hill near the site entrance the backdrop of buildings and yards were visible but the spacing and scale were respectful and ensured the development did not crowd or dominate the listed building. The evidence, including plans, maps and photographs, do not support the appellant's description of unsightly industrial scaled buildings constructed hard up against the boundaries of White Horse House³⁰.
122. In summary, traditionally and in more recent years there were no nearby buildings of scale to detract from and compete with the appearance of the designated heritage asset and it was clearly identifiable as the most important building addressing Cuckoo Hill at this point.
123. The dwelling on plot 6 is sited directly behind the listed building and is on ground that now is at a significantly higher level than previously. On the site visit the rear gable wall of the cross wing was measured to be 8.1 m from the rear boundary fence on the plot. The rear wall of the main part of the new house was 9.965 m to the fence at the rear. The distance between the rear wall of White Horse House and the wall along its rear boundary with plot 6 was 1.601 m. These measurements confirm how close the new dwelling is to the listed building.
124. In addition, the new dwelling on plot 5 is sited to the north east of the listed building, adjacent to plot 6. The construction has resulted in a significant

³⁰ Ms Power's proof of evidence paragraphs 5.12, 6.15

increase in ground levels on the plot. The house is sited some 11 m from the rear boundary wall.

125. The two storey dwellings are similar in form and dominant scale, incorporating a cross wing and gables. The eaves line is higher when compared to that on the listed building. The main elevations extend across much of the width of the plots and the height of the pair of garage roofs effectively closes the gap between the houses. The development is of a relatively substantial scale.
126. As a result, the new build rises above and partly encloses the listed building. The overbearing and oppressive nature of the scale is increased by the lack of appropriate separation distance between the new and the old. The perception of the level of harm varies depending on the viewpoint but is severe in views from the east towards the principal elevation and from the south, near the garage entrance from where the difference in ground levels is clear. The visual and historical relationship of the setting to the listed building has not been respected, causing damage and considerable harm to the significance of the designated heritage asset.
127. When the permission was granted in 2015 the Council's assessment was that: the proposed buildings would be set back from the listed building, plot 6 was the closest at approximately 9 m from the rear wall of White Horse House and that the development would create an appropriate special setting for the listed building. The local community understood that the height of the new dwelling would not exceed the ridge height of White Horse House to the front.
128. The position now is considerably different, bearing in mind the sensitivity of the location and the changes that have increased the presence and scale of the development on plots 1-4. The ridge heights of the new dwellings on plots 5 and 6 are significantly higher and, as demonstrated by the Council's evidence, this change has serious implications for the visual relationship with White Horse House. The siting of the dwelling on plot 5 further south within its plot has altered in a negative way the relationship to the built development on plot 6 and to the listed building. These changes have been for the worse. Consequently the development on plots 5 and 6 in the approved 2015 scheme would not cause the same level of harm to the setting and hence the significance of the designated heritage asset. Harm, if any, associated with the fallback position undoubtedly would be considerably less and hence the fallback is not a factor that weighs significantly in favour of the development.
129. In conclusion, the development within the setting of the listed building conflicts with Policy CN06 in that it would not be of an appropriate scale, form and siting to harmonise with the listed building and its setting, nor would it respect the space and views of the listed building that contribute positively to its setting. The erection of the two dwellings and associated garages would not respect the heritage asset and so fails to comply with Policy CS15.
130. The fabric of the listed building would not be directly affected. The development causes less than substantial harm to the significance of the heritage asset, particularly the architectural value. This harm has considerable importance and weight. The public benefits of the development are the contribution to housing needs and associated beneficial use of the land and the slight positive economic effect generated by future residents. Economic benefit during the temporary period of construction is also acknowledged. I attach only

a small amount of weight to the public benefits for the reasons set out above. The less than substantial harm to the significance of the heritage asset is not outweighed by the public benefits. A strong consideration against the development results from the detrimental effect on the setting and the significance of the listed building, with the consequent failure to comply with policy.

Living conditions

131. On the site visit I was able to have access to the garden of White Horse House as well as access into the new houses on plots 5 and 6 to both the ground and upper floors. This access has been helpful in assessing the effect on the occupiers of White Horse House, 6 and 7 Cuckoo Hill and the neighbouring detached house, known as Eversley. These are the nearest residential properties to the development and the most likely to experience change to outlook and privacy.
132. The former industrial building occupying the land that now forms plot 5 was side on and faced inwards to the yard. The land immediately north of and adjacent to the common boundary with White Horse House was an open yard to a large extent. A photograph from the occupiers of White Horse House shows the yard that was behind their house, with a low outbuilding near the corner. The concrete yard was flat, probably at a slightly higher ground level than the residential land adjacent. This interpretation would be consistent with the levels on the site survey plan. A second 'before' photograph from the garden indicates that the curved roof of one of the east-west commercial buildings was visible in the near distance above their boundary.
133. At the back of White Horse House there is a kitchen with a window facing the boundary wall, otherwise windows to living accommodation face towards the front and side. Because of the limited depth of the plot the garden is confined to the side of the home and is enclosed by boundary walls that assist in ensuring a good amount of privacy and protection from comings and goings outside. A patio has been formed outside the living room and it was clear that the garden is a well-used and valued amenity and play space for the family home.
134. From what I could see 6 and 7 Cuckoo Hill have no windows to habitable rooms on the rear elevation and very little garden at the back. However, at the back of Eversley the occupiers have an outlook over their garden and there is direct access onto the patio by way of patio doors. The appearance was of a well-used and enjoyed amenity space outside the living area of the home.
135. The newly erected close boarded fencing along the rear boundaries to the new dwellings effectively prevents overlooking from ground floor windows. The effect on privacy concerns the upper floor rear windows. The internal layout of the new houses is designed so that on the upper floor two of the three bedrooms have their principal and only window in the rear elevation facing towards the existing dwellings. There is no evidence to indicate the former industrial buildings had windows at upper level or that overlooking of nearby houses was a problem.
136. I found that from plot 5 Eversley was the dwelling most affected. Even though this property is not directly to the south, it is set further back within its own plot, reducing the separation distance between dwellings. The back of the

house, including the patio, was very overlooked particularly from bedroom 1, albeit views are slightly oblique. The relationship between the two dwellings causes a harmful loss of privacy.

137. The house on plot 6 is sited almost directly to the north of White Horse House. From the upper bedroom windows I was able to see the garden, including the patio, the kitchen window and the paved space outside. In the garden of White Horse House I experienced a strong sense of overlooking and in my judgement a loss of privacy would be keenly felt. The first floor windows in the plot 6 house were easily seen from the garden and the elevated position of the house increased the sense of being overlooked from the upper floor. The appellant's suggestion to erect a short piece of trellis and suitable planting within the garden of plot 6 would not resolve the problem from overlooking from first floor windows.
138. In terms of the effect on outlook and general amenity, the new dwellings are built as family homes. The buildings, including the garages, have a strong physical presence by reason of their scale and mass and strong features, such as the gable to the cross wing and steeply pitched roofs. They are orientated so that the built form extends across almost the entire width of the plots. The raising of ground levels as part of the construction process has led to the dwellings being elevated significantly above the residential properties to the front, the effect being accentuated by the relatively small separation space.
139. The consequence for the existing occupiers is a very overbearing development. The sense of enclosure, intrusion into their outlook and loss of general amenity around the home is severe. The impact is greatest for White Horse House because of the very direct relationship of the new build to that home and the serious harm to the enjoyment of their garden.
140. In the event plots 5 and 6 had been developed in accordance with the 2015 permission I consider the dwellings would not have been neighbourly because of their scale in close proximity to the frontage residential properties. However, the lower ground levels would have made a beneficial difference to the effect on privacy and outlook. One indication on the site visit was measuring the position of the bedroom window 0.92 m below the existing level, which illustrated how significant the difference would be. The siting of the dwelling on plot 5 further to the north in particular would ease the relationship with Eversley and help in staggering the block of built form over the two plots. Without doubt the fallback would represent a considerable improvement and emphasises the development's unacceptable effect on living conditions. Serious harm is caused by the incremental change.
141. The representations from the occupiers of White Horse House described the dramatic change the development has brought about and the huge impact it has had on the enjoyment of their home. The reality of the impact was evident on the site visit and the statement lends support to my own conclusions.
142. The proposed mitigation is screen planting of a laurel hedge within the erected close boarded fence along the southern boundary to the site. I consider that this or any other form of soft landscaping would have very little if any benefit, particularly when account is taken of the height and elevation of the new dwellings and the constraints on introducing any type of appropriate tree/shrub planting. Tall screen planting would be oppressive to neighbouring residents and its long term retention would not be reasonable or enforceable

within a private domestic setting. Partly frosted rear windows was mentioned by the appellant but this proposal was not pursued in a suggested planning condition. I consider that this change to the only window to a bedroom would have an unreasonable effect on the living conditions of future occupiers of the new dwellings and for neighbours the strongly perceived sense of overlooking would not be overcome.

143. In conclusion the development does not comply with the broad objective of respecting local context expressed in Policy CS15. There is conflict with Policy CN01 in that the new houses are not of an appropriate scale and form in relation to adjacent development. In the terms of Policy HS28 they represent overdevelopment to the detriment of residential amenity. The identified harm is not able to be overcome by use of planning conditions.
144. With reference to the Framework's aim to create high quality buildings and places, the development is not visually attractive and has a negative effect on the quality of the residential environment for existing residents. I do not take issue with the standard of amenity for the occupiers of the new homes. Applying the same yardstick of a high standard of amenity, the effect on amenity for existing and future residents of the neighbouring homes on Cuckoo Hill is unacceptable.

Alternative proposal

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

Other matters

Means of access

146. The means of access off Cuckoo Hill was considered unacceptable by the Parish Council by reason of the lack of visibility and the narrow width of the drive between the commercial garage and White Horse House. These concerns were shared by local residents.
147. When the 6 dwelling development was determined in 2015 the proposed access arrangements were acceptable to the highway authority, having considered visibility against adopted standards and taken account of the adjacent garage business. The Council also concluded that the proposed package would be an improvement on historic access arrangements when the commercial premises on the site were occupied. The approved layout plan specified details of visibility and other design details. Planning conditions were attached to the 2015 permission that required the approved arrangements to be completed and the vehicular access to be surfaced before first occupation of any of the dwellings. Similar conditions were imposed on the August 2019 planning permissions for plots 1 and 2, plot 3 and plot 4.

148. At the time of the site visit the access off Cuckoo Hill and the improvements at the 'gateway' into the housing site had not been completed, even though dwellings were occupied. The standard of the means of access was very unsatisfactory and the Parish Council's concern is understandable. Having regard to the original advice from the highway authority I accept that a suitable means of access can be achieved provided that the necessary works are carried out. The issue is capable of being dealt with by planning condition.

Planning conditions

149. The suggested planning conditions would require the submission of and the implementation of approved schemes for landscaping, surface water drainage and remediation of contamination. Additional conditions are proposed to secure appropriate car parking and means of access. The removal of certain permitted development rights for any future proposed development within the curtilages would also be justified because of the specific site characteristics, the form of the development and the relationship to adjoining residential properties.

150. However, the use of these planning conditions would not be able to address the factors causing the identified harm and which are integral to the development carried out, namely the site levels and the form and scale of the dwellings and garages as built. The use of planning conditions would not mitigate the adverse effects and therefore would not enable the development to be allowed.

Overall balance two dwelling development

151. The erection of 2 two storey dwellings and associated garages fails to comply with Policies CN01, CN06, CN08 and HS28 of the Local Plan. There is conflict with Policy CS15 of the Core Strategy. The development fails to improve social and environmental conditions, does not secure sustainable development and is not supported by Policy CS1. The development is not in accordance with the development plan when read as a whole.

152. The tilted balance in the Framework does not apply. The harm to the significance of designated heritage assets and the failings in design far outweigh the positive aspects, primarily the provision of two new homes. The scheme is not supported by the Framework.

Individual plots

153. Referring back to the ability to grant permission for part of the development enforced against or part of the Land, I will now consider the development on each of the plots in isolation, on the basis that a split decision would result in the demolition of the house and garage on the other plot.

154. The main issues are the same and centre on the effects of the residential development of a single plot on the character and appearance of the Conservation Area, the setting and significance of White Horse House and the living conditions of adjoining occupiers. To avoid unnecessary repetition the assessment of each plot needs to be read within the context of the detailed reasoning for the two dwelling development.

Plot 5

155. Historic Environment. The development on plot 5 would harmonise with the character and appearance of the residential development that has been granted permission on plots 1 to 4. The incorporation of traditional types of building elements and materials into the design also is in keeping with buildings found in the historic core of the village.
156. The main objections to the design of the dwelling on plot 5 are (i) the height and scale of the principal building associated with the increase in ground levels, and (ii) the siting of the dwelling and garage within the plot. For these reasons the new building is over-dominant in relation to the distinctive linear development along the northern side of Cuckoo Hill, particularly the cottages at 6 and 7 Cuckoo Hill and White Horse House. The less intensive edge of settlement character is eroded to a harmful degree. Harm is caused to the character and appearance of the street scene and short distance views within and into the Conservation Area.
157. The development is not of an appropriate scale and form for its location and consequently it is out of keeping with adjacent and nearby dwellings. The result is conflict with Policies CN01 and HS28. The failure to preserve the character of the Conservation Area is contrary to Policy CN08. The failure to respect local context and character, streetscape/townscape and heritage assets results in non-compliance with Policy CS15.
158. The less than substantial harm to the architectural and historic significance of the designated heritage asset has considerable importance and weight. The social and economic public benefits flowing from the development have little weight. Therefore the less than substantial harm to the significance of the heritage asset is not outweighed by the public benefits.
159. Plot 5 is not directly to the north of this listed building but it is still within its setting. Taking into account the elevated position of the new dwelling, its scale and siting, plus the ridge height of the associated garage, the development is not of a design that harmonises with the listed building and its setting. The features that contribute positively to the setting, namely the space and views from and to the listed building, are not sufficiently respected. For these reasons there is conflict with Policy CN06 and Policy CS15.
160. The degree of harm would not be as great as the two dwelling development but even so plot 5 causes less than substantial harm to the significance of the designated heritage asset, harm which is not outweighed by the limited public benefits.
161. The house and garage for plot 5 approved through the 2015 permission would have achieved a better relationship with the settlement pattern characterising this part of Cuckoo Hill. A development at a lower ground level and further north into the plot would have a different and improved visual relationship to the listed building. The fallback position would be better and therefore does not weigh in favour of the development that has been carried out. The effect of the incremental change is sufficiently harmful to make the unauthorised development of plot 5 unacceptable.
162. Living conditions. I have found that the house on plot 5 has resulted in overlooking and a harmful loss of privacy for the occupiers of Eversley. The

new build also is unneighbourly by reason its overbearing nature in relation to the outlook and general amenity of residents of the row of dwellings fronting Cuckoo Hill.

163. By confining built development to a single plot, the sense of enclosure would be less and the development would not be so overbearing. However, the development would be more intrusive when compared to the dwelling approved in the 2015 permission. The increased height and revised siting make a significant difference to its acceptability on this issue. Landscaping along the southern boundary or use of frosted glass in the upper floor bedroom windows would not be appropriate or effective forms of mitigation.
164. Therefore, conflicts with Policy CS15, CN01 and HS28 remain. The objectives in the Framework, to achieve good design and ensure development adds to the quality of the area, are not met.
165. Overall balance and conclusion. The erection of a two storey dwelling and associated garage on plot 5 fails to comply with Policies CN01, CN06, CN08 and HS28 of the Local Plan. There is conflict with Policy CS15 of the Core Strategy. The development fails to improve social and environmental conditions, does not secure sustainable development and is not supported by Policy CS1. The development is not in accordance with the development plan when read as a whole. The scheme is not supported by the Framework by reason of the harm to the significance of designated heritage assets and the failings in design.
166. The provision of a new home does not outweigh the conflict with the development plan and the Framework. Consideration of the fallback, the incremental change and other matters do not alter this conclusion. The development is unable to made acceptable by the use of planning conditions. Planning permission should not be granted for this part of the Land.

Plot 6

167. Plot 6 is the more sensitive of the two plots because of the more prominent position on a corner at the entrance to the wider residential site and the very close proximity to White Horse House. Achieving high quality design is essential.
168. The residential development on plot 6 relates well to the development on plots 1-4 in terms of use and building design. The traditional type of building elements and use of materials also shows consistency with typical architectural features on residential buildings in the historic core. However, it is the very important relationship to the frontage development on Cuckoo Hill and settlement form where the increase in ground levels and resulting building height have a harmful impact. The new house and garage have an over-dominant presence within the street scene and in local views, even in the absence of development of plot 5.
169. The character and appearance of the Conservation Area would not be preserved. Requirements of Policies CN01, CN08, HS28 and CS15 are not met. Less than substantial harm is caused to the architectural and historic significance of the designated heritage asset and this harm is not outweighed by the identified public benefits.
170. Similarly, whilst the amount of built form close to the listed building would be less through the development on a single plot, the plot 6 development sits

directly to the north and has the greatest effect on how the listed building is seen within its setting. The conclusion remains that the new build is not of an appropriate scale, form and siting to harmonise with the listed building and its setting, nor would it respect the space and views of the listed building that contribute positively to its setting. There is conflict with Policies CS15 and CN06.

171. The development on plot 6 causes less than substantial harm to the significance of the heritage asset. This harm has considerable importance and weight and is not outweighed by the limited public benefits identified. The policy aim in the Framework to protect and enhance the historic environment is not upheld.
172. The loss of privacy for the occupiers of White Horse House is primarily due to the potential for overlooking from development on plot 6. In addition, the new dwelling because of its elevated position and relatively substantial scale has a serious impact on outlook and enjoyment of this neighbouring home. The overbearing form and undue enclosure is not so acute for the occupiers of 6 and 7 Cuckoo Hill but nevertheless the amenity for residents of these homes has suffered. Therefore, conflicts with Policies CS15, CN01 and HS28 remain. The objectives in the Framework, to achieve good design and ensure development adds to the quality of the area, are not met.
173. Considering plot 6 alone, the differences to the 2015 approved dwelling result in significant harm on all three main issues. The 2015 fallback would be preferable and does not weigh in favour of the development that has taken place. The reasons underlying the unacceptable form of development and outcomes are unable to be resolved through the use of planning conditions.
174. Overall balance and conclusion. The erection of a two storey dwelling and associated garage on plot 6 fails to comply with Policies CN01, CN06, CN08 and HS28 of the Local Plan and conflicts with Policy CS15 of the Core Strategy. The development fails to improve social and environmental conditions, does not secure sustainable development and is not supported by Policy CS1. The development is not in accordance with the development plan when read as a whole.
175. The scheme is not supported by the Framework by reason of the harm to the significance of designated heritage assets and the failings in design. Other considerations, including the provision of a new home, are not sufficient to outweigh the serious harm and policy conflicts identified. The development on this part of the Land is unacceptable.

Conclusion on individual plots

176. The unauthorised development on each plot is unacceptable and planning permission should not be granted in respect of part of the appeal site or part of the development enforced against.
177. This conclusion is reinforced by another possible scenario involving the retention of the as-built house and garage on one plot with subsequent development of the adjacent plot in accordance with the 2015 permission. In order to achieve a high standard of design, development should not be dealt with in a piecemeal fashion but through consideration of a design solution for both plots.

Conclusions on ground (a)/deemed planning application

178. The erection of 2 no. two storey dwellings and associated garages on the Land is not in accordance with the development plan when read as a whole. There are no material considerations to indicate that the direction provided by the development plan should not be followed.
179. Similarly, development on part of the Land, whether on plot 5 or plot 6, is contrary to the development plan when read as a whole. There are no material considerations to indicate that the direction provided by the development plan should not be followed.
180. For the reasons given above the appeal on ground (a) should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed planning application.

Appeal on ground (f)

181. The issue is whether the requirements are excessive, taking into account the purpose of the notice.
182. The purpose of the notice is to remedy the breach of planning control. The breach is the erection of two dwellings and associated garages. To require their demolition to remedy the breach is not excessive. The appellant did not specify wording for any alternative steps. The appellant's claim that demolition would be excessive does not appear to have been based on an understanding that consideration of ground (f) would follow only if the cases on grounds (c) and (a) were unsuccessful.
183. The Council ruled out a requirement that the development be made to comply with the scheme granted planning permission in 2015, an option not requested by the appellant. I agree with the Council's conclusion because the dwellings would have to be demolished in order to return ground levels to their pre-construction level, the raised ground levels and additional underbuild being fundamental to the unacceptable increased height of the dwellings as built. The house on plot 5 is also incorrectly sited, which again can only be remedied by its demolition in view of the purpose of the notice. In the circumstances to now include an alternative option requiring the development to comply with the terms of the 2015 permission would be more onerous and therefore prejudicial to the appellant.
184. The requirements of an enforcement notice cannot be used to grant planning permission. The appellant's closing submissions on ground (f) raise the possibility of carrying out an alternative scheme with a lower roof but accepts this option would have to be through a planning application to the local planning authority. The point taken by the appellant on the timing of any necessary demolition is more appropriately considered in the appeal on ground (g).

185. For these reasons the appeal on ground (f) fails.

Appeal on ground (g)

186. The issue is whether the compliance period of 6 months is reasonable.

187. The appellant is seeking a period of 12 months, primarily to enable an alternative scheme to be prepared, submitted and approved and bearing in mind uncertainties and pressure related to the pandemic.
188. I agree with the Council that 6 months would be a reasonable time to carry out the necessary works to demolish the two dwellings. Nevertheless, there are factors that indicate extension of the compliance period would be justified and the Council did not resist a period of 9 months. The likelihood is that the appellant would at the least wish to explore options to total demolition by considering alternative schemes. Whilst the possible need for an alternative new scheme for the two plots dates back to the refusal of the section 73 application in August 2018, the appellant would have hoped for success in the appeal(s). In the event a new proposal is to be pursued a period of six months would be sufficient to allow for all statutory procedures to be followed in determining a new application. Additional time would be necessary to carry out remedial works.
189. On the other side of the balance serious harm to the local environment and residents' living conditions continues. The harms should be brought to an end as soon as reasonably possible, which argues against doubling the length of the compliance period.
190. I conclude that a period of nine months strikes the right balance and the appeal on ground (g) succeeds to this extent.

Overall Conclusion

191. For the reasons given above, the appeal should not succeed. I shall uphold the enforcement notice with corrections and a variation and refuse to grant planning permission on the deemed application.

DECISION

192. It is directed that the enforcement notice is corrected by:
- Delete the description of the alleged breach of planning control in section 2 and substitute "Without planning permission, the erection of 2 no. two storey dwellings and associated garages on the Land (referred to as Plot 5 and Plot 6 on plan ref. 3368:18 Rev G approved under planning permission ref B/14/01103 dated 13 February 2015)."
 - Delete the third sentence in paragraph 1 of section 3 Reasons for Issuing this Notice and substitute the plan annexed to this Decision for the plan attached to the enforcement notice.
 - Delete the wording of step (a) in section 4 and substitute "Demolish the 2 no. two storey dwellings and associated garages constructed on the Land (referred to as Plot 5 and Plot 6 on plan ref. 3368:18 Rev G approved under planning permission ref B/14/01103 dated 13 February 2015)."
 - In section 4 step (b) delete "land and dispose of such materials at a properly authorised waste management facility;" and substitute "Land."
193. It is directed that the enforcement notice is varied in section 5 by deleting the period six (6) months and substituting nine (9) months as the time for compliance.

194. Subject to these corrections and variation the appeal is dismissed and the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Diane Lewis

Inspector

APPEARANCES

FOR THE APPELLANT:

Kevin Leigh, Counsel

He called

Mary Power BSc MSc CHE Director of Powerhaus Consultancy
MRICS MRTPI

FOR THE LOCAL PLANNING AUTHORITY:

Richard Ground QC

He called

Simon Bailey BA(Hons) MA Team Leader – Heritage and Planning
LRTPI Compliance, Babergh and Mid Suffolk District
Councils

Vincent Pearce BA(Hons) Principal Planning Officer Strategic Projects and
MRTPI Delivery Team, Babergh and Mid Suffolk District
Councils

Steven Stroud BA(Hons) Strategic Projects and Delivery Manager,
LLB(Hons) MA MRes MSc Babergh and Mid Suffolk District Councils
MRTPI

INTERESTED PERSONS:

Mr A Dodman

Resident

Mrs Gill Jackson

Bures St Mary Parish Council

Mr K Butcher

Resident

Mrs Clare Frewin

Resident

DOCUMENTS submitted at the inquiry

- 1 Draft Schedule of Planning Conditions
- 2 Corrected plan for the enforcement notice
- 3 Photograph of development (from the Council)
- 4 Photograph rear of plot 4 (from the appellant)
- 5 Timeline of development
- 6 Photographs to go with timeline
- 7 Photograph rear of plots 1-4 (from a resident)
- 8 Email correspondence from Mr Dodman
- 9 Statement from the Parish Council
- 10 Statement from Mr Butcher
- 11 Statement from Mrs Frewin with before and after photographs and survey information
- 12 HM Land Registry plan from Mrs Frewin
- 13 Appellant's response to interested parties' statements
- 14 Email dated 20 October withdrawing appeals
- 15 Authorities submitted by the Council: *DB Symmetry v Swindon Borough Council & Secretary of State for Housing, Communities and Local Government* [2020] EWCA Civ 1331; *East Northamptonshire District Council & others v Secretary of State for Communities and Local Government and another* [2014] EWCA Civ 137; *Wood v Secretary of State for Communities and Local Government and The Broads Authority* [2015] EWHC 2368 (Admin)

- 16 Schedule of Planning Conditions v1 and v2
- 17 Closing comments from the Parish Council
- 18 Closing submissions on behalf of the Council
- 19 Closing submissions on behalf of the appellant
- 20 Replacement costs application on behalf of the appellant
- 21 Council's response to costs application on behalf of the appellant
- 22 Council's revised costs application



Plan

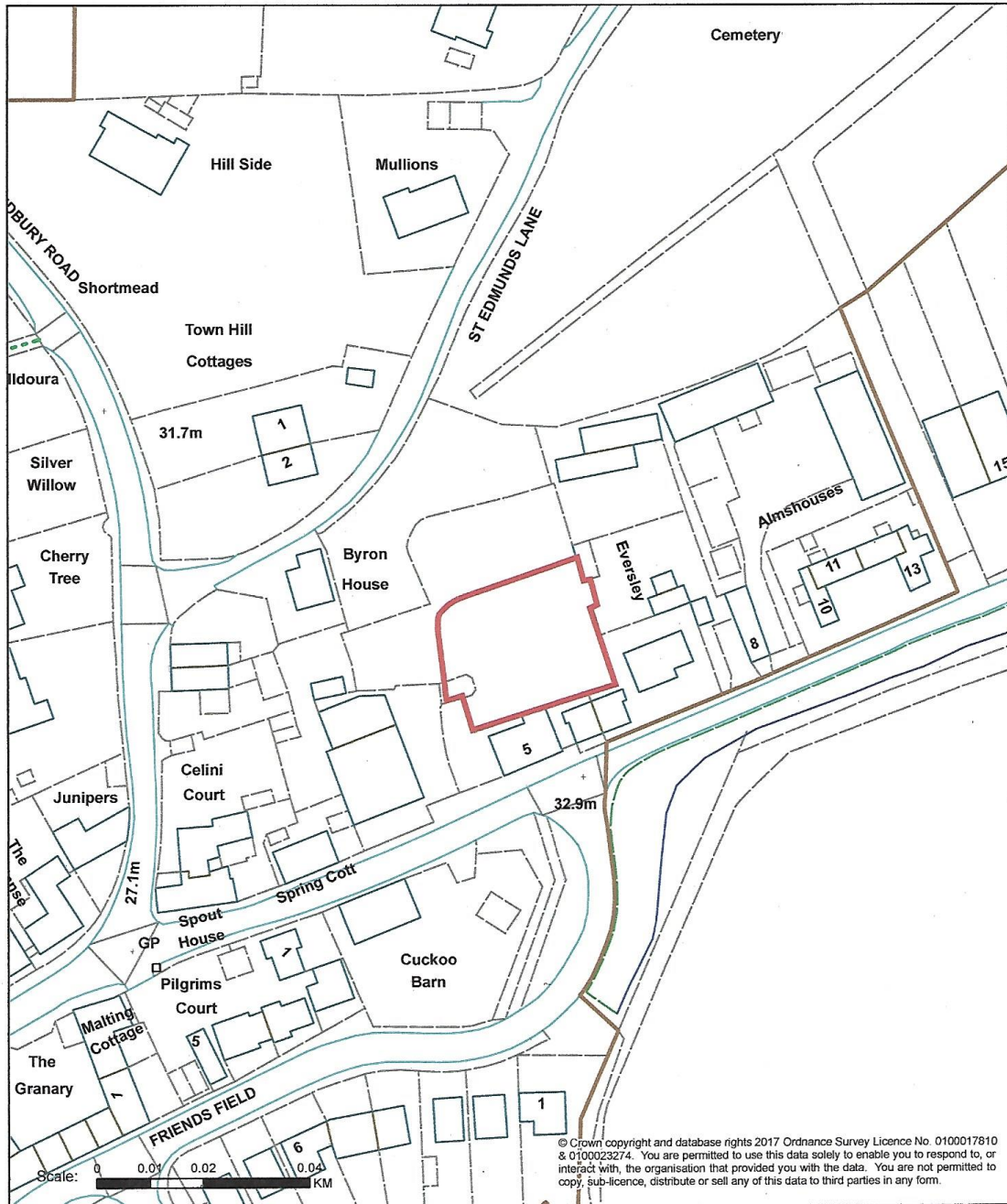
This is the plan referred to in my decision dated: 27 November 2020

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

**Land at: Plot 5 and Plot 6, The Slaughterhouse and Land Adjacent, Cuckoo Hill,
Bures St Mary, Suffolk CO8 5JH**

Reference: APP/D3505/C/19/3237898

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Enforcement Notice

Slaughterhouse & Land Adjacent, Cuckoo Hill, Bures St Mary



Date: 28/08/2019

