

**Planning Control Committee**

**15<sup>th</sup> May 2019**

**REPORT OF THE DEVELOPMENT CONTROL MANAGER**

**ENFORCEMENT INVESTIGATION**

**SITE: 64 New Penkrige Road**

This application was on the agenda for the meeting of Planning Committee held on 11<sup>th</sup> July 2018, when it was resolved to defer consideration of the report so that

- (A) A further site visit be undertaken by the Committee in respect of the Enforcement Investigation related to 64 New Penkrige Road, Cannock (Application CH/17/073): Residential development, erection of a five bedroom detached house. The site visit to be undertaken prior to the meeting of the Committee scheduled for 12 September, 2018.

Reason:

To fully comply with the resolution of the Committee made on 20 June, 2018, concerning this matter (Minute no. 15 refers).

- (B) An independent person be appointed by the Council to undertake new measurements of the application site for consideration by the Committee.

Reason:

To provide the Committee with measurements of the application site produced independently of any previous measurements undertaken by the complainant or applicant.

Members are advised that although it was initially intended to bring the application back to Planning Committee at its meeting on 12 September 2018 it has taken longer to do so than initially envisaged.

Members are also advised that an independent survey and drawing has been compiled by Neil Bowen Architects of Wakefield, West Yorkshire. The drawings prepared by Neil Bowen Architects of the dwelling 'as- approved' and 'as-built' are shown in Appendices 1 and 2. In Appendix 2(a) the respective drawings in Appendices 1 and 2 have been overlaid in order to demonstrate the differences between the two sets of drawings.

Both the complainant (Mr Suman) and the owner of the property at No64 (Mr Kilgallon) were sent a letter, dated 15<sup>th</sup> November 2018 accompanied by the drawings prepared by Neil Bowen and asked to provide comments within 21 days of the date of the letter.

The response from the representatives of Mr Kilgallon are provided in Appendix 3(a). Representations from Mr Suman are provided in Appendix 3(b).

The drawings have subsequently been amended in order to address points made by Mr Kilgallon's representative.

## **1.0 PURPOSE OF REPORT**

- 1.1 In light of allegations of breaches of planning control in relation to the above site, to:
  - a) Investigate and set out the details of such alleged breaches of planning control and enquiries;
  - b) Advise on whether or not any of the alleged breaches of planning control are enforceable, and;
  - c) Recommend what if any further action is necessary, and:
- 1.2 Other matters have been raised by the complainant. These matters do not directly relate to the above determinative issues.

## **2.0 SITE AND SURROUNDINGS**

- 2.1 The site is known as 64 New Penkridge Road and comprises a detached dwelling and associated curtilage, which has been recently constructed to replace a former brick built detached dormer bungalow which stood on the site.
- 2.2 The dwellings on either side comprise No. 66 which is a dormer bungalow and 62, which is a two storey dwelling. There is a dwelling to the rear, called "Whitemead", which is a considerable distance from the application because of the extensive rear garden of the application and to Whitemead.
- 2.3 The property is located within the mature suburb of New Penkridge Road which is characterised by generally large dwelling set in extensive plots and typically set well back from the highway and benefiting from varying degrees of screening by trees and shrubs in the front gardens. In addition to the above there is a great variety of house types in the immediate streetscene, including bungalows and two storey dwellings of various heights, facing materials and architectural detailing, such that it appears that no two dwellings are exactly the same.

## **3.0 POLICY IMPLICATIONS**

### **3.1 National Planning Policy Framework (NPPF)**

- 3.2 The NPPF sets out the Government's position on the role of the

planning system in both plan-making and decision-taking. It states that the purpose of the planning system is to contribute to the achievement of sustainable development, in economic, social and environmental terms, and it introduced a “presumption in favour of sustainable development”.

3.3 On the matter of enforcement Paragraph 58 of the NPPF states:

“Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so.”

### 3.4 Planning Practice Guidance (PPG)

3.5 The Planning Practice Guidance was issued on the 14<sup>th</sup> March 2014 and is regularly updated. As the title suggests this provides practical guidance to support the NPPF. It contains a section on enforcement entitled ‘Ensuring Effective Enforcement’. This provides an overview of enforcement, enforcement advice and enforcement remedies available to Local Planning Authorities.

3.6 Extracts that are of particular relevance are set out below:

#### Who can take enforcement action?

Local planning authorities have responsibility for taking whatever enforcement action may be necessary, in the public interest, in their administrative areas.

Paragraph: 002 Reference ID: 17b-002-20140306

Revision date: 06 03 2014.

#### When should enforcement action be taken?

There is a range of ways of tackling alleged breaches of planning control, and local planning authorities should act in a proportionate way.

Local planning authorities have discretion to take enforcement action, when they regard it as expedient to do so having regard to the development plan and any other material considerations. This includes a local enforcement plan, where it is not part of the development plan.

In considering any enforcement action, the local planning authority should have regard to the National Planning Policy Framework, in particular paragraph 58:

Can breaches of planning control be addressed without formal enforcement action, such as an enforcement notice?

Addressing breaches of planning control without formal enforcement action can often be the quickest and most cost effective way of achieving a satisfactory and lasting remedy. For example, a breach of control may be the result of a genuine mistake where, once the breach is identified, the owner or occupier takes immediate action to remedy it. Furthermore in some instances formal enforcement action may not be appropriate.

It is advisable for the local planning authority to keep a record of any informal action taken, including a decision not to take further action.

Paragraph: 010 Reference ID: 17b-010-20140306

Revision date: 06 03 2014

When might formal enforcement action not be appropriate?

Nothing in this guidance should be taken as condoning a willful breach of planning law. Enforcement action should, however, be proportionate to the breach of planning control to which it relates and taken when it is expedient to do so. Where the balance of public interest lies will vary from case to case.

In deciding, in each case, what is the most appropriate way forward, local planning authorities should usually avoid taking formal enforcement action where:

there is a trivial or technical breach of control which causes no material harm or adverse impact on the amenity of the site or the surrounding area;

development is acceptable on its planning merits and formal enforcement action would solely be to regularise the development;

in their assessment, the local planning authority consider that an application is the appropriate way forward to regularise the situation, for example, where planning conditions may need to be imposed.

Paragraph: 011 Reference ID: 17b-011-20140306

Revision date: 06 03 2014.

#### 4.0 BACKGROUND AND REPORT DETAIL

4.1 The Council is in receipt of a series of complaints alleging breaches of planning control at the above address and other matters. Whilst officers have investigated these complaints; the complainants remain dissatisfied with the Council's responses and lack of action. To this end, the purpose of this report is to investigate and set out the details and context of the alleged breaches of planning control and recommend whether or not to pursue enforcement action in respect of these. The report also addresses other matters raised by the complainant.

4.2 In summary, the complaint and alleged breaches of planning control relate to: -

- (a) The reasoning behind the decision granting approval of the proposal was unlawful.
- (b) That the development, as built, does not conform to the approved plans and that it causes additional harm over and above that of the approved plans and of the original situation.

4.3 Other matters raised by the complainant include:

1. The developer has not acted in a positive and proactive manner.
2. The developer has damaged property in the ownership of the complainant, moved the boundary line to the property, not served a party wall notice, trespassed on the complainant's property, set fire trees on the complainant's property and not answered the complainant's telephone calls.
3. The developer has lit fires in the garden of the application property.
4. The applicant had not put all dimensions on the drawing leaving the matter open to assumption and open for the applicant to build as he goes along.
5. The complainant considers that the property is not built in the correct position and is in closer proximity to his property. There is a clear and distinct difference between the original and new plans and the applicant would have been aware of this at the early stages of the build yet the applicant continued to build.
6. The new building blocks natural light to the complainant's property because of its closeness and mass. The complainant's architect has explained that the new build has in excess 4 reception rooms to the complainant's 1 lounge. Mr Aqbal (the previous case officer) stated that when a room has front and rear facing windows the Council does not consider this [reduction in light] to be an issue.
7. The complainant questions whether the applicant needs a balcony and that the balcony could have been built in the centre of the property to avoid overlooking of the complainant's garden.
8. External lights placed on the new structure result in glare and dis-amenity to the complainant.
9. Not all the land shown in the red line boundary on the approved plans is in the ownership of the applicant.
10. The applicant indicated on the application form that no trees or hedges were to be removed but the hedge on the side boundary was removed.

#### 4.4 Planning History

4.4.1 On 18<sup>th</sup> June 2015 a planning application (ref CH/15/0295) was received for the "Proposed Demolition of Existing A Two Storey Dwelling To Construct New 5 Bedroom Dwelling House" at The orchard, 64 New Penkridge Road, Cannock. The plans were accompanied by a Tree Survey Report, dated 12<sup>th</sup> August 2015. The application was advertised by neighbour letter and site notice. Following comments received from the Landscape and Tree Officer an Arboricultural Impact Assessment, dated 16<sup>th</sup> October 2015, and amended plans were received. The Landscape and Tree Officer recommended approval subject to a suite of conditions.

4.4.2 No representations were received from third parties and the application was approved under delegated powers subject to conditions, which included the following condition: -

3. "No trees or hedges shall be cut down, topped, lopped, uprooted or removed without the prior written permission of the Local planning Authority nor shall they be willfully damaged or destroyed.

Any trees or hedges which, within a period of 5 years from completion of the development are cut down, topped, lopped or uprooted without permission of the Local planning Authority or become seriously damaged or diseased or die shall be replaced in the next planting season with similar size and spaces unless the Local Planning Authority gives written permission.

##### Reason

The existing vegetation makes an important contribution to the visual amenity of the area. In accordance with Local plan Policies CP3, CP14, CP12 and the NPPF.

4. No part of the development hereby approved shall commence or any actions likely to interfere with the biological function of the retained trees and hedge shall take place, until details for tree and hedge protection have been submitted to and approved by the Local Planning Authority. Details shall include the position and construction of all fencing and the care and maintenance of the trees and hedges within.

##### Reason

The existing vegetation makes an important contribution to the visual amenity of the area. In accordance with Local Plan Policies CP3, CP14, CP12 and the NPPF.

5. Prior to the commencement of any construction or site preparation works including any actions likely to interfere with the biological function of the retained trees and hedges, approved protective fencing shall be erected in the positions shown on the approved Tree and Hedge Protection Layout Drawing pursuant to condition 4 above shall

be erected to the approved layout.

Within the enclosed area known as the Tree Protection Zone, no work will be permitted without written consent of the Local Planning authority. No storage of material, equipment or vehicles will be permitted within this zone. Service routes will not be permitted to cross the tree protection Zone unless written consent of the Local Planning Authority is obtained.

Reason

The existing vegetation makes an important contribution to the visual amenity of the area. In accordance with Local Plan Policies CP3, CP14, CP12 and the NPPF.

4.4.3 Subsequent to the granting of the planning permission and commencement of construction works a complaint was received from the owner of the adjacent property at No.66 New Penkridge Road which raised several matters, some detailing that the development was not in accordance with the approved plans and some relating to the planning merits of the case. Mr Aqbal informed the complainant that having reviewed the 'as-built' development in the light of the approved planning permission he was of the opinion that the applicant had not properly implemented his planning permission and therefore the development was unauthorized. As such Mr Aqbal went on to state that he would be requesting that the applicant submit a new application and that should a new application be submitted that the complainant would be consulted.

4.4.4 Mr Aqbal wrote to the applicant on 3 February 2017 informing him that the development was unauthorized and that a new application would be required to seek to regularize the situation.

4.4.5A second application (reference CH/17/073) for a "Residential Development: Erection of a five bedroom detached house" was received on 16 February 2017. The application was advertised by neighbour letter and site notice.

4.4.6A letter of objection was received from the complainant, dated 27<sup>th</sup> March 2017.

4.4.7 The application was approved under delegated powers subject to conditions and the decision notice was issued on 13 April 2017. This permission was subject to the conditions set out below: -

- (1) The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which this permission is granted.
- (2) No materials shall be used for the external surfaces of the development other than those specified on the application, except with the written approval of the Local Planning Authority.

(3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Amendment) Order 1995 (or any Order revoking and re-enacting that Order with or without modification), no development within Part 1 of Schedule 2 to the Order shall be carried out without an express grant of planning permission, from the Local Planning Authority, namely:

- The enlargement, improvement or other alteration of the dwellinghouse;
- The enlargement of the dwellinghouse consisting of an addition or alteration to its roof;
- Any other alteration to the roof of the dwellinghouse;
- The erection or construction of a porch outside any external door of the dwelling;
- The provision within the curtilage of the dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure;
- The provision within the curtilage of the dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such;
- The erection or provision within the curtilage of the dwellinghouse of a container for the storage of oil for domestic heating; or
- The installation, alteration or replacement of a satellite antenna on the dwellinghouse or within the curtilage of the dwellinghouse.

(4) Before the development hereby approved is brought into use, a bat roost shall be provided in accordance with the details and specifications set out in the Bat and Bird Survey dated 20th July 2015.

(5) The development hereby permitted shall be carried out in accordance with the following approved plans and documents:

Drawing Titled - Proposed Amendments to Previously Approved Dwelling House at the Orchard (Location Plan, Site Plan, Elevations and Floor Plans)

Bat and Bird Survey dated 20 July 2015

4.4.8 Subsequently correspondence has been received from the complainant that the development is not in accordance with the approved plans, reiteration of some of the issues raised in the letter of representation and raising several new issues and raising a complaint into how the two applications were processed and determined.

## 5.0 Matters for Consideration



5.1 The substantive issues in respect to the determination as to whether it is expedient to take enforcement action are: -

- (i) whether there are discrepancies between the drawing of the dwelling as shown in the plans approved under planning permission CH/17/073 and the drawing of the dwelling as-built, and if so,
- (ii) if there are any differences the extent of those, whether they are material and whether they cause material harm or adverse impacts on amenity when compared with what was approved, and
- (iii) whether the conditions attached to planning approval CH/17/073 would equally apply to the dwelling as-built.
- (iv) How the situation can be remedied.

**5.2 Whether there are Discrepancies Between the Drawing of the Dwelling as Shown on the Plans Approved Under Planning Permission CH/17/073 and the Drawings of the Dwelling as-built**

5.2.1 In order to obtain an understanding of how the dwelling 'as-built' relates to the approved drawing Members' attention is drawn to the plans in Appendices 1, 2 and 2(a) which show the dwelling as-approved compared to the drawing as-built, which have been prepared by Neil Bowen Architects.

5.2.2 Mr Bowen has stated

"Due to the complex shape of the roof i.e being hipped and therefore not so easy to determine the height accurately via tape measure, we opted to appoint an independent surveying company;

Stamford Geomatics Ltd is based just outside Wakefield West Yorkshire to undertake the actual on site survey, which they did on the 5<sup>th</sup> August 2018.

I have worked with Stamford Geomatics Ltd for many years on both large and small projects and they utilise laser technology for accuracy"

5.2.3 On comparing the digital image prepared by Neil Bowen Architects with a print of the original drawing prepared by Sueshire Services a number of differences can be seen, including: -

1. The main roof ridge on the "as-built" drawings is approximately 400mm higher at the front than that shown on the "as approved drawing".
2. The first floor windows on the "as built" drawings are approximately 100mm taller than those shown on the "as approved" drawings.
3. The eaves are around 250mm higher on the "as Built" drawings than indicated on the "as-approved" drawings.
4. There is a course of bricks above the first floor windows below the eaves, whereas on the "as-built" drawings the eaves line through the top of the windows.

5. The roof lights are at a higher level 'as-built' than those on the approved drawings and there is one less and they are smaller.
6. The width of the roof of the main part of the building "as-built" is 200mm less than that shown on the as-approved drawing.
7. The windows on the rear elevations, in particular the two middle windows at first floor level, though broadly the same size as the "as approved" drawings are in slightly different locations on the "as-built" plans.
8. The central first floor window above the main entrance has its own pitched roof which is not indicated on the "as approved" drawing.
9. The width of the top of the roofs over the two front bay windows is considerably wider but not as high in the "as-built" drawing compared to those indicated on the "as approved" drawing.
10. There are pronounced brick arches/ window heads over the first floor windows on the "as Built" drawing which are not indicated on the "as approved" drawings.
11. Cosmetic differences in brickwork detailing.
12. The two windows in side elevation 'C' as shown in the "as-built" drawing are approximately 200mm longer and 350mm to the left of those on the "as approved" drawing.
13. Differences in the design and position of the dormer on the side roof.

5.2.4 In respect to comparing the details between the as-approved and as-built drawings the architect Neil Bowen has commented that this is not a very useful comparison for the following reasons:

- a) You should never scale off any submitted drawings, if in doubt ask the designer to determine it. Most architectural drawings actually advise not to scale off , though in this case this designer appears not to have done so but clearly it is very bad practice to do so and fraught with dangers.
- b) The application drawings are drawn by hand and quite poorly so. They are inherently inaccurate and inconsistent. There are very few dimensions indicated and those that do exist often do not equate to the unit that they are dimensioning, even some of the shorter dimensions appear to be up to 50mm out but to emphasize this point the longer one at the front (14.840) is actually 210mm longer than actually built.
- c) Because the application drawings are hand drawn the lines used i.e. the thickness of pencil all add to the possibility of accumulative errors being built in to the drawing so it is very dangerous scaling this type of drawing.

Coupled with the fact that the building materials used on projects like this are far from being precise and that builders will normally round up to or down to the nearest useful level i.e. say to the nearest half brick for example.

It is quite common for buildings to be out by at least 100mm in height or length just to make the building look tidy and to aid construction.

Yes it is possible to get the tolerances really tight but, on site, the easy option usually prevails.”

5.2.5 Given the above it is clear that there are several discrepancies between drawings “as approved” and those “as-built” and therefore the dwelling has not been built in accordance with the approved plans.

### 5.3 **Whether the Differences Are Material and Whether They Have Cause d Material Harm or Adverse Impacts on Amenity**

5.3.1 There is no statutory definition of what constitutes a change being ‘non-material’. This is because whether a change is material or non-material depends on the context of the overall scheme-an amendment that is non-material in one context may be material in another (Paragraph: 002 (Reference ID: 17a-002-20140306) of the Planning Practice Guidance.

5.3.2 The two interests that could be potentially impacted on by any difference in the dwelling ‘as-built’ as compared to ‘as-approved’ are the impact on the character of the area and the impact on residential amenity. These will be considered in turn.

#### Impact on the Character of the Area

5.3.3 In respect to issues in relation to design Policy CP3 of the Local Plan requires that, amongst other things, developments should be: -

- (i) well-related to existing buildings and their surroundings in terms of layout, density, access, scale appearance, landscaping and materials; and
- (ii) successfully integrate with existing trees; hedges and landscape features of amenity value and employ measures to enhance biodiversity and green the built environment with new planting designed to reinforce local distinctiveness.

5.3.4 Relevant policies within the NPPF in respect to design and achieving well-designed places include paragraphs 124, 127, 128 and 130. Paragraph 124 makes it clear that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve.

5.3.5 Paragraph 127 of the NPPF, in so much as it relates to impacts on the character of an area goes on to state: -

Planning policies and decisions should ensure that developments:

- a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;
- b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;

- c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);
- d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;

- 5.3.6 Finally Paragraph 130 states planning permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account any local design standards or style guides in plans or supplementary planning documents. Conversely, where the design of a development accords with clear expectations in plan policies, design should not be used by the decision taker as a valid reason to object to development.
- 5.3.7 Therefore any difference between the approved plans and the dwelling, as-built, should be considered having had regard to this policy context.
- 5.3.8 In looking at the difference in dimensions between the dwelling 'as approved' and 'as built' it is noted that the increase in height ranges from between 300mm and 400mm in respect to the front elevation. For a building with an overall height of 8.450m this equates to an increase in height of between 3.55% and 4.7%.
- 5.3.9 Given that the dwelling is set back from the highway by approximately 18m and is located within a streetscene where there is a great variety of house types, of substantially differing heights it is considered that this increase in height is not be readily discernible and that the differences between the dwelling as-approved to as-built has had no material impact on the character of the street scene.
- 5.3.10 Other discrepancies identified in paragraph 5.2.3 of this report are within the magnitude of 100mm to 250mm. In order to allow these differences to visualized it should be noted that most bricks in the UK are made to a standard brick size of 215mm long, 102.5mm wide and 65mm high and laid with a nominal 10mm mortar joint. Similarly the standard dimensions of a pantile are 342mm in length, 252mm in width and 69mm in depth. As such the differences in size are of the order of magnitude of the size of a modern brick or tile. A such comparing the differences between the two sets of plans in the context of the overall height of the building and having regard to the impact of the difference within the context of the wider street scene it is considered that the differences are trivial, non material in extent or nature and therefore do not cause material harm.
- 5.3.11 In respect to the roof lights it is noted that in the 'as built' drawing they are at a higher level than those on the approved drawings, there is one less window

and they are smaller. As such they would have much less impact than those of the consented scheme and in this respect this difference would not be material in extent or nature and therefore do not cause material harm.

5.3.12 In respect to alterations to the front elevation including the pitched roof over the central first floor, the width of the top of the roofs over the two front bay windows and the brick arches/ window heads over the first floor windows it is noted that these relate to minor variations in the detail of the design and do not materially alter the overall appearance of the dwelling. It is worth noting that outside of listed buildings or conservation areas brick detailing, such as the bond (i.e. the orientation of bricks between headers or stretchers) are not normally shown on plans or controlled by condition other than to specify material type. The same point also applies to down pipes, gutters and electric boxes which are again often not shown on approved plans or controlled by condition. In addition to these points the differences between the scheme 'as -approved' to 'as-built' are not readily discernible to the ordinary man on the street and only become apparent on intense scrutiny.

5.3.13 These details would be viewed within the context of a building that is set back 18m from the public highway and situated on a long suburban road which is characterised by a wide variety of house types wherein every house has its own architectural detailing, height and materials and benefitting from varying degrees of screening by trees and shrubbery within the large front gardens.

5.3.14 Within the above context it is considered that the differences referred to in paragraph 5.2.3 would generally only be noticeable to the most discerning of observers who would be specifically looking for the details with the benefits of the two sets of plans. As such it is considered that they constitute non-material changes which are trivial in nature and extent and which do not result in material harm.

#### Impact on the Standard of Amenity

5.3.15 Policy CP3 of the Local Plan states that the following key requirements of quality design will need to be addressed in development proposals and goes on to include [amongst other things] the protection of the 'amenity enjoyed by existing properties'. This is supported by the guidance as outlined in Appendix B of the Design SPD which sets out guidance in respect to space about dwellings and garden sizes.

5.3.16 In addition to the above Paragraph 127(f) of the NPPF states that planning policies and decisions should ensure that developments [amongst other things] create places with a high standard of amenity for existing and future users.

5.3.17 In respect to the issue of the differences in dimensions and the resultant impact on the standard of amenity of the neighbouring properties it is noted that 300mm difference in roof height on the side roof adjacent to No66 is of the scale of brick length and that the increase in height of the main roof of 400mm would be at a distance of 10m from the shared boundary.

- 5.3.18 As such it is considered that the difference in dimensions are so slight that they would not have a discernible impact on the outlook or loss of light to the occupiers of the adjacent properties and therefore have no material impact over and above that which would occur from the consented scheme on the standard of amenity of the occupiers of the adjacent properties.
- 5.3.19 In addition it is considered that the changes to the fenestration details, by virtue of their size, scale and location would not have any material impact on the level of overlooking onto neighbouring properties over and above that of the consented scheme. In fact given that the velux windows in the roof of the dwelling 'as-built' are at a higher level than those approved they have a reduced level of overlooking.
- 5.3.20 As such it is concluded that there would be no material adverse impact on the standard of amenity of the occupiers of the neighbouring dwellings over and above that of the dwelling 'as approved'.
- 5.3.21 Having had regard to all of the above it is considered that the differences between the dwelling 'as-approved' and 'as-built' are so trivial that they do not cause any adverse impact on the amenity of the occupiers of the adjacent properties.

#### 5.4 How the Situation can be Remedied

- 5.4.1 In *Singh v Secretary of State for Communities and Local Government* the issue of non-material amendments was dealt with. In the judgement that was handed down the judge Hickinbottom J stated: -

“on application by a person with an interest in the relevant land, section 96A of the 1990 Act (enacted in the light of the decision in *Sage*) gives a planning authority express power to change a planning permission if they are satisfied that that change is not material. Such a provision would be otiose if they could make such (immaterial) changes in any event. Whether a change is material or not is a matter of fact and degree for the authority, which must have regard to the effect of the change in making that decision. If the change is material, then it requires the consent of the planning authority following an application under section 73, which, for self-evident reasons, requires a more sophisticated procedure. However, any change — material or not — requires the consent of the planning authority under section 73 or 96A.

- 5.4.2 If members conclude that the differences are trivial so that they are non-material and have had no material adverse impact on amenity the applicant could be invited to submit an application under section 96A of the Town and Country Planning Act 1990 (as amended) for the approval of non-material changes to the planning permission. This would ensure that the conditions attached to planning permission CH/17/073 would continue to remain in force.
- 5.4.3 The decision in respect to a section 96A application only relates to the non-

material amendments sought and the notice of the decision should describe these. It is not a reissue of the original planning permission, which still stands. The two documents should be read together. As such any conditions attached to the original planning permission, including the removal of permitted development rights would remain in force.

5.4.4 Given the trivial nature of the discrepancies it is officer's view that they are non-material and hence would recommend that Planning Committee resolves to invite the owner of 64 New Penkrigde Road to make an application under section 96A to seek to obtain consent for a non-material amendment to Planning Permission CH/17/073 to ensure that the conditions attached to the planning approval continue to apply.

## 6.1 Other Issues Raised by the Complainant

6.1 In the course of dealing with the complaint, the complainant has forwarded a large amount of correspondence, some of which relates to the breach of planning control, some reiterating comments made during the application stage and some relating to complaints as to how the application was determined. These issues will now be set out together with the response from officers.

6.2 The developer has not acted in a positive and proactive manner.

6.2.1 Officers would comment that the duty to act in a positive and proactive manner relates to how the local planning authority should act in the determination of a planning application. It does not apply to the conduct of a developer and therefore has no bearing on this case.

6.2.2 The developer has damaged property in the ownership of the complainant, moved the boundary line to the property, not served a party wall notice, trespassed on the Complainant's property, set fire trees on the complainant's property and not answered the complainant's telephone calls.

6.2.3 Officers would comments that the above matters are private and civil in nature. Furthermore the granting of planning permission does not confer any right of access onto third party property or to damage or destroy property held by a third party. These issues therefore have no material bearing on this case.

6.2.4 The developer has lit fires in the garden of the application property.

6.2.5 Should fires cause nuisance there is potential for redress under the Environmental Health legislation and controls should it be expedient to do so. Ultimately the fact that a person has lit a fire on land owned by a third party without permission is a civil matter.

6.2.6 The complainant questions whether the applicant needs a balcony and that the balcony could have been built in the centre of the property to avoid overlooking of the complainant's garden.

6.2.7 Officers would comment that the issue of the balcony was looked at when the application was determined. It is not for the local planning authority to question why an applicant requires a balcony but it does need to address whether any particular proposal would cause significant harm. In this case officers noted that the balcony was provided with a screen wall along that side of the balcony facing No66 and considered that this was sufficient to protect the amenity of the occupiers. However, it is recognized that what may be acceptable in planning terms and what a private individual may find objectionable can be quite different.

Notwithstanding the above the property does benefit from a lawful consent for the balcony under planning permission CH/17/073.

6.2.8 External lights placed on the new structure result in glare and dis-amenity to the complainant.

6.2.9 Officers would refer members to the photograph in the Appendices showing the lamp in situ and the glare resulting to No66. This could readily be dealt with by blackening out the panel facing the window at No66. The owner of No64 has been requested to do this. The applicant has stated that he has removed the bulb from this lamp.

6.2.10 Not all the land shown in the red line boundary on the approved plans is in the ownership of the applicant.

6.2.11 Officers would comment that the applicant has signed Certificate A stating that he owns all the land shown in red. In addition it is not for the local planning authority to adjudicate in matters of land ownership.

6.2.12 The applicant indicated on the application form that no trees or hedges were to be removed but the hedge on the side boundary was removed, despite the applicant stating on the application form that there were no trees or hedges that would be removed and contrary to the conditions attached to the original consent (CH/15/0295).

6.2.13 Officers can confirm that the applicant did not state on the application form whether there were trees or hedges on or adjacent to the development site. However, officers can confirm that the issue of trees and hedges was looked at during the determination of the application with the Tree and Landscape Officer being consulted, an arboricultural impact assessment being submitted and conditions in respect to the protection of the hedgerow being attached to planning permission CH/15/0295. However, it would appear that the hedgerow was taken out before the development had lawfully commenced.

6.2.14 As such at the time of the second application (CH/17/073) the hedgerow was no longer in existence and hence there was no longer a need to attach a condition for its protection during the construction period. If, indeed the hedgerow belongs to the complainant then he could seek redress through the courts for damage to his property.



- 6.2.15 The applicant has made reference to a case in another authority. Care must be exercised in considering other cases, especially in other authorities where the full matters of the case are not available. In the case referenced by the complainant although the local authority resolved to take enforcement action the case as yet has not gone to appeal. As such the outcome of the local authority's decision has not been tested and it is therefore difficult to draw any firm conclusions from this case.
- 6.2.16 In relation to the issues of overlooking, overshadowing, over-massing raised by the complainant these relate to the planning issues that were taken into consideration when the application was determined. They have little or no bearing on whether enforcement action should be pursued as this issue relates to whether there are differences between the building 'as -built' compared to approved plans and whether these differences are material or non-material.
- 6.2.17 Any representations made by the complainant in respect to the 'independent survey' do not provide substantial material fact in respect to the issue of the differences between the building 'as-built' compared to the approved plans and therefore do not alter the overall conclusions reached in this report.

## **7.0 CONCLUSION**

- 7.1 The substantive issue in this case is whether the building 'as-built' materially differs from that 'as-approved' under planning permission CH/17/073. It is clear from an examination of the approved plans and the independent drawings commissioned by the Council of the dwelling 'as-built' that there are a number of differences when compared to the approved drawings.
- 7.2 However, having had regard to the size, scale and nature of the differences within their immediate and wider contexts it is considered that they are so trivial as to be non-material and furthermore would cause no material harm or adverse impacts on amenity. This being the case it is concluded that the situation could be satisfactorily remedied by inviting the owner of 64 New Penkridge Road to submit an application under Section 96A for a non-material minor amendment to planning permission CH/17/073. Subject to such an approval the situation would be remedied and the conditions attached to the original planning permission would still remain in force.
- 7.3 The other issues raised by the complainant do not alter the above conclusion.

## **8.0 LEGAL IMPLICATIONS**

- 8.1 As set out in this report.

## **9.0 RECOMMENDATION**

- 9.1 It is recommended that the owner of 64 New Penkrige Road be invited to submit an application under Section 96A of the Town and Country Planning Act 1990 for a non- material change to planning permission CH/17/073.
- 9.2 That subject to such an application being submitted no enforcement action be taken.