

Location:           **The Gables  
High Street  
Barley  
Royston  
Hertfordshire  
SG8 8HY**

Applicant:           **Mr & Mrs J Winstanley**

Proposal:           **Relating to Application 18/03349/S73 granted on  
15/03/2019 - Variation of Condition 2 (Approved Plans)  
to facilitate relocation of parking at plots 5 and 6,  
change of external material at plot 5 and variations to  
the dwelling type, scale and appearance of plots 3 and  
8.**

Ref. No:             20/03072/S73

Officer:             **Tom Allington**

**Date of expiry of Statutory period**

18<sup>th</sup> February 2019

**Reason for delay**

An extension to the statutory period for determining this application expired on 26<sup>th</sup> February 2021. This application is now the subject of an appeal against a non-determination, to be dealt with via the written representations procedure.

**1.0 Background to report and Reason for referral to Planning Control Committee**

1.1 The case officer informed the applicant, via an email dated 26<sup>th</sup> February 2021, that *'I have now discussed this s73 application with my manager and I have also discussed it with the Council's Senior Conservation Officer. We are all of the view that the current application is not acceptable and I will therefore be recommending it for refusal'*. The applicant was also informed that the earliest the application could go to Committee was in April 2021.

1.2 On 16<sup>th</sup> March 2021 the Council was notified by the Planning Inspectorate that an appeal against non-determination had been received and the start date of the appeal was confirmed on 6<sup>th</sup> April 2021. The appeal reference is APP/X1925/W/21/3271157 and the appeal will be determined through the written representations procedure

- 1.3 As part of the appeal procedure the Planning Inspectorate requires the LPA to provide a Statement of Case which must include what decision it would have taken on planning application ref: 20/03072/S73.
- 1.4 The purposes of this report is therefore to seek the Committee's views on what decision the LPA would have arrived at on application 20/03072/S73 and to make a recommendation in respect of the submitted appeal. For clarity, the Committee is informed that it is the Planning Inspectorate who will now determine planning application ref: 20/03072/S73, rather than the LPA

## 2.0 **Site History**

- 2.1 16/02760/1 - Residential development of nine dwellings, garages, parking and landscaping. New access road, car park for existing surgery, relocation of existing electricity substation and double garage and store attached to existing garage for 'Chadwick'. Withdrawn prior to determination.
- 2.2 17/00638/1PRE – Pre-application for 9 residential units. No formal/ written advice provided.
- 2.3 17/02316/1 - Residential development of eight dwellings, garages, parking and landscaping. New access road, car park for existing surgery, relocation of existing electricity substation and double garage and store attached to existing garage for 'Chadwick' (as amended by drawings received 7<sup>th</sup> November 2017, 11<sup>th</sup> January 2018, 9<sup>th</sup> February 2018 and 19<sup>th</sup> March 2018). Approved by Planning Control Committee 24<sup>th</sup> May 2018 (Decision notice issued/ dated 30<sup>th</sup> May 2018).

This is the 'original approval' for this site and the approved site plan is provided at **Appendix A**, along with the plans and elevations for plots 3 and 8.

- 2.4 18/02299/FP - Erection of 10no. residential dwellings and provision of car parking area with all associated landscaping and ancillary works (as a revision to application 17/02316/1 approved on 30/05/18) (as amended by drawings received 8<sup>th</sup> November 2018). Refused by Planning Control Committee 13<sup>th</sup> December 2018 for the following reason:

*1. The principle of residential development on this site would harm the character and appearance of the Barley Conservation Area as it would result in the loss of the existing open land which represents a transitional area from the village fringe to the rural countryside and which commands an important role in providing the rural setting of the Barley Conservation Area.*

*The proposal would therefore harm the special character of the Barley Conservation Area and to a lesser extent, the setting of 'White Posts' a grade II listed building. The in-principle harm would be further exacerbated by the poor standard of design included as part of this proposal, which would be at odds with the semi-rural, edge-of-village context and which would fail to provide a cohesive appearance and form of development. Although the degree of harm is considered to be less than substantial, the public benefits of the proposal do not outweigh the harm that has been identified and which has been afforded significant weight. As a consequence the proposed development is contrary to Policies 6 and 57 of the North Hertfordshire District Local Plan No. 2 - with Alterations, Policies SP5, SP9, SP13, D1, CGB1 and HE1 of the Emerging North Hertfordshire Local Plan 2011-2031 as Modified and Sections 12 and 16 of the National Planning Policy Framework 2018.*

The subsequent appeal was dismissed on 24<sup>th</sup> September 2019, owing to the harm to the Barley Conservation Area. A copy of the Appeal decision is attached at **Appendix C** of this committee report.

- 2.5 19/00003/S73 – Section 73 Application: Relating to Application 17/02316/1 granted on 30/05/2018 - Variation of Condition 2 (Approved Plans) to facilitate a change of design and appearance of plot 7 and variations to the dwelling type, scale and appearance of Plots 1, 2, 3 and 8 (as amended by drawings received 22/02/2019). Approved by Planning Control Committee 14<sup>th</sup> March 2019 (Decision notice issued/ dated 15<sup>th</sup> March 2019).
- 2.6 18/03349/S73 - Section 73 Application: Relating to Application 17/02316/1 granted on 30/05/2018 - Variation of Condition 2 (Approved Plans) to facilitate a relocation and change of appearance of plot 7, switching it with the location of approved plots 4-6 and variations to the dwelling type, scale and appearance of Plots 1, 2, 3 and 8 (as amended by drawings received 22/02/2019). Approved by Planning Control Committee 14<sup>th</sup> March 2019 (Decision notice issued/ dated 15<sup>th</sup> March 2019).

It is this previously 'Approved s73 amendment' (amendment to 17/02316/1) which this current application is now seeking to further amend/ vary. The plans previously approved are provided at **Appendix B** of this report.

- 2.7 21/01376/NMA - Amendment to Plots 1-3 internal layout (as non-material amendment to planning permission 18/03349/S73 granted on 15.03.2019). Ongoing/ remains under consideration.

### 3.0 **Policies**

#### 3.1 **North Hertfordshire District Local Plan No.2 with alterations**

Policy 6 – Rural Areas beyond the Green Belt

Policy 7 – Selected Villages beyond the Green Belt

Policy 16 – Areas of Archaeological Significance and other Archaeological Areas

Policy 55 - Car Parking Standards

Policy 57 - Residential Guidelines and Standards

### 3.2 **National Planning Policy Framework (2019)**

In general and with regard to:

Section 2: Achieving sustainable development

Section 5: Delivering a sufficient supply of homes

Section 6: Building a strong, competitive economy

Section 8: Promoting healthy and safe communities

Section 9: Promoting sustainable transport

Section 12: Achieving well-designed places

Section 14: Meeting the challenge of climate change, flooding and coastal change

Section 15: Conserving and enhancing the natural environment

Section 16: Conserving and enhancing the historic environment

Specifically paragraphs 11, 77 and 78 ('Rural Housing'), 127 and 130 ('Achieving well designed places'), 163 ('Planning and Flood Risk'), 192 and 193 and 194 and 196 ('Conserving and enhancing the historic environment')

### 3.3 **North Hertfordshire Draft Local Plan 2011-2031**

The Emerging Local Plan (ELP) has now been through the re-scheduled examination hearings in November and December 2020 and further additional hearings were held on 1<sup>st</sup> and 2<sup>nd</sup> February 2021. The Inspector has stated that the hearings are now closed and he does not intend to hold any further hearings. The inspectors Schedule of Further Main Modifications was received by the Council on 10<sup>th</sup> March 2021 and these were published on the Council's website on 11<sup>th</sup> March 2021. The main modifications were presented to the Council's Cabinet meeting on 16<sup>th</sup> March 2021 and approval was granted to proceed with the consultation on the modifications, due to commence the week after the Local Elections due to take place on 6<sup>th</sup> May 2021. As such, the public consultation on the latest modifications to the ELP are likely to be taking place at the time this item is presented to committee on 27<sup>th</sup> May 2021. The policies of relevance in this instance are as follows:

#### Strategic Policies

SP1: Sustainable development in North Hertfordshire

SP2: Settlement Hierarchy

SP5: Countryside and Green Belt

SP8: Housing

SP9: Design and sustainability

SP10: Healthy Communities

SP12: Green infrastructure, biodiversity and landscape

SP13: Historic environment

#### Development Management Policies

T2: Parking

D1: Sustainable design

D3: Protecting living conditions

CGB1: Rural Areas beyond the Green Belt

CGB2: Exception sites in rural areas

HS2: Affordable Housing  
HS3: Housing Mix  
NE1: Landscape  
NE8: Sustainable drainage systems  
NE11: Contaminated land  
HE1: Designated heritage assets  
HE4: Archaeology

#### 4.0 **Representations**

4.1 As part of the appeal process all representations received as a result of consultation on the planning application ref. 20/03072/S73 will be sent to the Planning Inspectorate and all interested parties will be provided with an opportunity to make further comments to PINs.

4.2 **Barley Parish Council** – No objection.

4.3 **Members of the public** – Two letters in support of the proposals have been received, from those who wish to purchase the amended plots 3 and 8. These are summarised as follows:

- Mr Robert and Mrs Sue Prosser (of 55 Melton Gardens, Edwalton, Nottingham) – the location in Barley would enable us to be closer to our daughters (one of which whilst lives independently in rented accommodation, does has a medical condition) and to be able to better support my parents, who are elderly and one who suffers from arthritis.. The design of Plot 3 allows us to use one bedroom or the ground floor as an office space, for working from home, leaving 3 bedrooms for us, our daughter and any visitors. The office could be converted to accommodation for elderly parents.
- Claire Cattermole (no address provided) – The site is ideally located being near my husbands family and being located between my work in Stevenage and his in Clavering and being close to family – my husband suffers from Hydrocephalus, which means he sometimes needs family support and cannot drive. We are also expecting our first child and we wish to build a property that will accommodate us for the foreseeable future. We have sought to create a home that has provision for home working and space to raise our children. We have also included a downstairs shower for three reasons: washing our dog Oscar, my brother is a quadriplegic so it provides. We have also included a downstairs shower to meet our personal and family needs.

4.4 **NHDC Conservation Officer** – Objection. Whilst formal written comment have not been provided, discussions have been held with the Council's Senior Conservation Officer who has made it clear to the case officer that they maintain their objections to the development of this site, within the Barley Conservation Area. The proposed amendments to that previously approved, most notably the increase in scale to Plots 3 and 8, would diminish the loose-knit character of the proposals as previously approved, to the detriment and increased harm to the Conservation area.

- 4.5 **HCC Highways** – No objections.
- 4.6 **HCC Herts Ecology** – No objection
- 4.7 **HCC Growth and infrastructure** – No objection
- 4.8 **HCC Historic Environment (Archaeology)** – No objection
- 4.9 **HCC Lead Local Flood Authority** – Objection. We note in the proposed site plan submitted alongside this application doesn't show the surface water balancing pond shown in the previous proposed site plan submitted with the 18/03349/S73 application. If there has been changes in the Surface Water Drainage Strategy these amendments should be submitted for review. We therefore advise the LPA that we object to the proposed Section 73 application until the clarification required above has been submitted

## 5.0 **Planning Considerations**

### 5.1 **Site and Surroundings**

- 5.1.1 The site is located towards the north-western edge of the village of Barley. The main portion of the site is made up of the large rear garden of the residential property 'The Gables' and the adjoining paddock land immediately to the north of this. This land sits behind properties along the west side of the High Street (B1368), including the Barley GP Surgery and the 'White Posts' Grade II Listed Building. The application site area shown within the red edge also includes the access road which leads from the High Street to the Surgery car park, around the northern side of the GP Surgery and leads to the paddock land and provides access to two further properties on the High Street, Chadwick and Barley Croft. The application site also includes the car park to the front of the surgery and the land immediately to the rear of the surgery building (however, the application site does not include the surgery building itself).
- 5.1.2 Under the saved policies of the North Hertfordshire Local Plan 1996 the main portion of the site (The Gables garden and the paddock) is located outside of the Barley village boundary (the access road and land at the surgery is within the village boundary). However, the village boundary is proposed to be altered under the Emerging NH Local Plan 2011-2031, which is currently under consideration by the Planning Inspectorate as part of the Examination in Public (this has not been altered/ amended under the Main Modifications). The Emerging Local Plan shows that the land within the curtilage of The Gables would be included within the village boundary, which accounts for approximately one half of the main part of the site, with only the paddock land remaining outside of the village boundary. The site is also located within the Barley Conservation Area, which also extends over the fields/ paddocks to the west of the site.

### 5.2 **Proposal subject of appeal**

- 5.2.1 This is an application under Section 73 of the Town and Country Planning Act 1990, seeking to amend Condition 2 of planning approval reference 18/03349/S73 (approved by committee on 14<sup>th</sup> March 2019). Condition 2 required that:

*The development hereby permitted shall be carried out wholly in accordance with the details specified in the application and supporting approved documents and plans listed above.*

5.2.2 Hence, this application, now subject of an appeal, seeks to make amendments to the previously approved amended scheme and alter the approved plans. The proposed amendments are listed as follows:

- Garage serving 'Chadwick' – surveys have found that the existing garage has a lower roof-line than that shown on previously approved plans and so plans now show a lower roof to reflect this
- Parking layout – parking spaces for Plots 5 and 6 are now shown 'on-plot', replacing those at the central green area of the site, in order to provide on-plot charging points for electric vehicles
- Plots 5-7 – the row of all three terraced plots was shown on previous plans to be finished in render. It is now proposed that Plot 5 be finished in brick
- Plot 3 – Originally approved as a modest detached two-bedroom dwelling under reference 17/02316/1 (see appendix A). Previously approved amendment changed this to a three-bedroom property, of a different design (see appendix B). This application now seeks to amend this to a substantial four-bedroom property with a realigned driveway and the addition of a detached single garage.
- Plot 8 – Again, originally approved as a modest detached two-bedroom dwelling under reference 17/02316/1 (see appendix A). Previously approved amendment changed this to a three-bedroom property, of a different design (see appendix B). This application now seeks to amend this to a substantial four-bedroom property with a realigned double-driveway, requiring a widening of the plot. The floor plans show 4 large double bedrooms, however given the size of the property, this could easily accommodate 5 bedrooms (for example, Bedroom 1 would be served by a large 'dressing-room' which, with some minor re-alignment of bedroom 2, could become a 5<sup>th</sup> bedroom).

5.2.3 The only other change not listed above would be that Plot 4 would be served by a larger double driveway with decreased landscaping. All other aspects of the proposal would remain as previously approved.

### 5.3 Key Issues

5.3.1 Firstly, it should be made clear to members that Planning Control Committee cannot determine this application, as it is now subject of an appeal against non-determination.

Owing to the size of the site (more than 0.5ha), under the Council's constitution and scheme of delegation the proposals must be considered by Planning Control Committee. As such, this report is being presented to gain the committee's position/ stance on the proposals and the appeal. This report will therefore outline the officer's recommendations with regard to the proposals but will also serve as the Council's appeal 'Statement of Case' (subject to the agreement of Committee) to be submitted to the appeal inspector and so this report will also address the matters raised in the Appellants Statement of Case, which is provided at **Appendix D** of this report.

5.3.2 The key planning consideration of the development relates to the principle of the development, taking account of the location of the proposed development on the edge of/ partially within the Barley village boundary, the impact on the character, appearance and setting of both the Barley Conservation Area and the White Posts Listed Building and any public benefits arising from the proposed development.

5.3.3 **Principle of the proposed development, impacts on the Barley Conservation Area and wider public benefits**

5.3.4 It is noted that this application, now subject of an appeal, is a re-submission of application reference 18/03349/S73 (which was a re-submission/ amendment in itself, to approval ref. 17/02316/1), which was for 8 dwellings and which was approved by planning committee, following a recommendation of approval by the officer. The previous recommendation was on the basis that in the officers view, whilst it was finely balanced, the various public benefits outweighed the identified harm to the setting of the conservation area and to the Grade II Listed White Posts. Therefore, a tilted balance was applied in favour of the development, in accordance with former paragraph 14 of the older NPPF (now paragraph 11 of the revised NPPF 2019). The tilted balance was applied as the Council at that time could not demonstrate a 5 year supply of housing land and that therefore the provision of 8 dwellings was considered to carry significant weight, in addressing the Council's shortfall of housing.

5.3.5 This current application/appeal now needs to be considered on the basis of its own merits and circumstances, and taking into consideration the current, up-to-date policy situation but also with reference to the previously approved scheme.

5.3.6 Paragraph 11 of the NPPF sets out a presumption in favour of sustainable development for decision makers on planning applications as follows:

*d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:*

*i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*



- 5.3.7 The key test in this instance is where paragraph 11 refers to 'the application of policies in this framework that protect areas of particular importance', namely in this instance paragraph 196 of the NPPF which refers to development affecting a heritage asset.
- 5.3.8 Paragraph 196 of the NPPF states that "*Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use*".

#### Impact on heritage assets

- 5.3.9 Firstly, with regard to the harm caused, it is noted that the Council's Senior Conservation Officer raised objections to both the original approval and the previously approved amended scheme, as the loss of this land to residential development would result in 'less than substantial harm' to the Barley Conservation Area and to a lesser extent, harm to the setting of the Grade II Listed White Posts property, which is located on the eastern edge of the application site. The main part of the application/ appeal site currently provides a transitional aspect of the conservation area, between the village core and the open rural countryside to the west and north. The open, rural nature of the site would be lost as a result of the proposed development and in turn this would have an adverse impact on the setting of the conservation area and the setting of White Posts.
- 5.3.10 When a scheme for 10 dwellings on this site was dismissed at appeal (see Appendix C), the inspector noted that '*The appeal site provides a largely undeveloped buffer to the adjacent rural land. I find the BCA (Barley Conservation Area) to display and open and loose knit character that is reinforced by the open layout of development along High Street which is complemented and softened by the presence of mature landscaping....I find the openness to be a defining part of the significance of the BCA*'.
- 5.3.11 It is worth noting at this stage that the originally approved scheme for 8 dwellings (see appendix A) was redesigned and amended under the instruction of the Council's Conservation Officer, to achieve what was considered to be the best scenario and to therefore reduce the harm as much as possible (despite his continued objection to the principle of the proposals given the loss of the rural setting of the conservation area and listed building). The previously approved amended scheme (see Appendix B) under reference 18/03349/S73 did allow for some variations to the original scheme and it was noted in the officers committee report that although the amendments were not preferable (compared to the original approval), these were not so harmful so as to warrant a reason for refusal, however it represented changes which would diminish the design quality of what was already a marginal, on-balance decision.
- 5.3.12 It is the officers view that the less significant amendments now proposed, such as the changes to the garage at Chadwick, are not contentious and the re-location of some of the parking spaces away from the central green area would provide some marginal benefits to the scheme. However, the substantial changes in terms of the increased scale and bulk of the dwellings at Plots 3 and 8 would further diminish the design quality of the scheme and therefore increase the level of harm to the BCA.

- 5.3.13 As noted above, the as originally approved scheme included plots 3 and 8 as matching modest detached two-bedroom properties (the design lead by the Council's Conservation Officer). As part of the previously approved amended scheme under 18/03349/S73, these were both altered to three-bedroom properties of differing designs, but remaining of a suitable scale and design, within their respective plots and in keeping with the overall, loose-knit character of the site as a whole. However, both plot 3 and plot 8 are now proposed as particularly substantial four-bedroom properties and in the case of Plot 8, this is of a scale more akin to a five-bedroom property. Together with Plot 4, this part of the site would become overly dominated by large, imposing properties which would dominate and fill the frontages of their plots to the increased detriment of the character and appearance of the site and which would be out of keeping with the open, rural and transitional character of this part of the BCA.
- 5.3.14 Referring to Plot 3 in the first instance, the appellants have sought to justify the change in scale and design in their submitted Statement of Case (SoC) (See Appendix D) by providing plans showing the outline of the frontage of the previously approved Plot 3 compared to that now proposed. This shows that the dwelling now proposed would be of a reduced height. However, officers contend that this is only one aspect of the property and it is the overall scale, bulk and in particular the overall depth of the property which would be increased under the current proposals. Referring to the site plan now proposed, it can be seen that the larger dwelling, together with the proposed garage outbuilding would now overly dominate the relatively small plot, leaving a relatively small garden to the rear and resulting an overly cramped form of development which again, would be detrimental to the character of the development and which would result in increased harm to the character and setting of the BCA.
- 5.3.15 Plot 3 is also set along the northern boundary of the site, where it would back-onto the sunken footpath running along the north of the site. The increased scale and bulk of the property now proposed at Plot 3 would be readily visible from this footpath, thus increasing its prominence and the harm caused.
- 5.3.16 Turning now to the amended dwelling proposed at Plot 8, this is now proposed to be a substantial four/ five-bedroom detached dwelling, which would be significantly larger than that previously approved. Again, as part of the appellants SoC they have provided drawings showing a comparison of the front elevations of that previously approved and that now proposed and in this case, it is the officer's view that these only serve to highlight the significant increase in scale and bulk of that now proposed. The dwelling now proposed at Plot 8 would represent very large dwelling of an increased width and which would be within close proximity to the access road, with minimal set-back and thus would have an overly dominant and imposing impact on this part of the site and the street-scene at the entrance to the site.

- 5.3.17 A key aspect of the proposed scheme, in seeking to achieve a loose-knit development in keeping with the character of the BCA is the central green area. Under the current proposals, this would become surrounded (on three sides) and dominated by three large four-five bedroom properties at plots 3, 4 and 8. The amended dwelling previously approved at plot 8 under 18/03349/S73 would have had a relatively minimal depth of 8.3m for the main two storey aspect (including the forward projecting front gable element which would only be to the north side of the house and away from the green space) with an additional single storey rear element of an additional 4.4m in depth. The substantial dwelling now proposed would have a significantly increased depth (as well as an increased width) of 11.8m for the main two storey element, which would be full width with a double gable rear projection, with an additional single storey rear element adding a further 3.65m to the depth. This increased depth and bulk of the dwelling at plot 8 would be in full view from the central green space, to the detriment of the loose-knit character of the site.
- 5.3.18 The increase in depth of Plot 8 would also result in the dwelling beginning to encroach into the rear outlook from White Posts, to the east of the site, which is a Grade II listed property. As such, the impact the current proposals would have on this heritage asset would also be increased compared to that previously approved.
- 5.3.19 With reference to the appellants SoC, at page 8 under paragraph 4.9 they have included plans which show the extensions they consider to be possible under permitted development rights to both the previously approved Plot 3 and Plot 8. Indeed, PD rights have not been removed as part of the previous permissions and in this instance, the appellants are seeking to use PD rights as a 'fall-back' position as justification for the increased scale and bulk of the dwellings now proposed. However, members and the planning inspector should be made aware that although the plans in the SoC are not to scale, having compared these to the approved plans these appear to show single storey extensions at a depth of 8m, under Class A (g) of the General Permitted Development Rights. However, extensions of a depth of 8m under (g) are not permitted for properties in 'Article 2(3) land', which includes conservation areas. As such, because these properties would be located within the BCA, PD rights would be limited to single storey rear extensions not exceeding 4m in depth and so the plans put forward by the appellants are not a true and accurate reflection of what would be possible under PD rights. In any case, the eventual occupants of plots 3 and 8 may not wish to maximise PD rights and PD rights would not take effect until the properties had been occupied. In light of this, it is the officers view that only very limited weight can be attributed to this argument.
- 5.3.20 In summary and for reasons outlined above, it is considered that the dwellings now proposed at Plot 3 and Plot 8, would not be in keeping with the loose-knit character and appearance of the site as originally approved and would result in increased harm to the character and setting of the BCA and the Grade II listed building at White Posts, due to the significantly increased scale and bulk of these dwellings compared to that originally approved and previously amended.

5.3.21 Section 72 (1) of the Act requires that in making decisions on planning applications and appeals within a Conservation Area, special attention is paid to the desirability of preserving or enhancing the character and appearance of the area. In this instance, as outlined above, the proposals subject of this application/ appeal would result in increased harm to the Barley Conservation Area, but which remains of a 'less than substantial' nature. In any case, great weight is afforded to this harm in the overall planning balance.

#### Public Benefits

5.3.22 The original approval and the subsequent amended schemes were approved on the basis that under paragraph 196 of the NPPF, the public benefits were considered to outweigh the identified harm to heritage assets. As already outlined above, it is considered that the current proposal would result in increased harm.

5.3.23 In terms of the public benefits, it is noted that two of the 8 proposed dwellings would remain affordable units and the same benefits would still be afforded to the Doctors surgery; namely the provision of a new car park and the re-location of an existing electrical substation, which would then allow for the potential future expansion of the surgery, if required. At paragraph 11 of the previous appeal decision on this site (see Appendix C), relating to the proposed 10 dwellings, the inspector notes that:

*'In this case the development would make a modest contribution to housing provision. The surgery would also benefit from the relocation of the electricity sub-station to assist in its potential expansion, along with the provision of additional parking for customers. However, none of these amount to more than moderate weight either individually or collectively. I attach significant weight to the provision of affordable dwellings which would result in social and economic benefits from the proposal.'*

5.3.24 It is officers view that, for the most part, these benefits remain as previously considered. However, at paragraph 12 of the appeal decision, the inspector goes on to state that:  
*'Nevertheless, given the harm I have identified to the setting of the BCA as a designated heritage asset, the benefits do not outweigh the great weight that the Framework requires at paragraph 193 to be given to the conservation of heritage assets'*

5.3.25 In terms of housing supply, it is the officers view that this benefit has decreased since the previous approvals were granted for this site. At the time of reporting this matter, the Council's submission plan (ELP) is due to go out for public consultation on the second round of main modifications and the ELP is therefore well advanced.

5.3.26 In addition, it is noted that at the time the previous permissions were granted, the provision of 8 dwellings was 'new' and could be added to the Council's housing supply, to address the housing deficit. However, at the time of considering this current application/ appeal, there are already three extant permissions for the site (the original approval and two subsequent s73 amendments). As such, whereas 'significant weight' was attributed to the provision of 8 dwellings as part of the previous decisions at this site, windfall housing such as that now proposed, which already benefits from permission, can only be afforded limited weight in this instance.

- 5.3.27 The appellants state that in their view the public benefits of the current proposals are increased compared to the previous approvals, as they suggest that Plot 3 and Plot 8 now constitute 'Self build' units, as these have been designed to meet the requirements and specifications of the potential buyers. In the officers view, this is considered to be somewhat disingenuous and not in the spirit of self-build legislation. These are not new plots and these make up part of a previously designed scheme, designed to be in keeping with the Barley CA. As mentioned previously in this report, these plots were originally approved as modest two-bedroom properties and then amended to suitable three-bedroom dwellings. The appellants are now seeking to change both plots to two very large, substantial four or five-bedroom homes, on the basis that they have been designed by prospective buyers.
- 5.3.28 Firstly, it is the officers view that the priority in this instance is the BCA and it is suggested that a sensitive location within a conservation area is not a suitable site for self-build properties. Any dwellings to be located within a CA should be designed sensitively and in keeping with the character, appearance and setting of the CA and should not be of a design which is lead by the wishes-and-wants of a prospective buyer. As outlined in detail above, it is the officers view that the dwellings proposed at Plots 3 and 8 are not in keeping with the rural, loose-knit character of the site as a whole and the BCA, thus causing increased harm to the heritage asset.
- 5.3.29 In addition, it is noted that whilst letters of support have been received from the prospective buyers of these plots, it is not explained or outlined why the dwellings as already approved would not be suitable for their needs or why dwellings of a similar scale to that approved could not meet their needs. As such, this does provide sufficient justification or reasoning to allow two such substantial dwellings, particularly when it is found that by way of the increased scale and bulk, these would result in increased harm to the BCA.
- 5.3.30 Lastly, the appellants have not provided a draft s106 legal agreement, required to ensure that these plots would be restricted to self-build units and that they would be for the specific prospective buyers who had an input into the design of these plots. In light of this and the reasoning above, it is the officers view that little additional weight is afforded to the public benefits by way of these units potentially being considered self-build units. Should the Inspector be minded to disagree and consider that the provision of two self-build units carried increased weight, it is officers view that even if this were the case, this would not be sufficient to outweigh the harm which has been identified to the BCA and to a lesser extent harm to the Grade II Listed White Posts.

#### Summary on planning balance

- 5.3.31 In weighing the harm to the heritage assets, as identified above, it is noted that paragraph 193 of the NPPF states *'When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance'*. Modified Policy SP13: Historic Environment states that *'The Council will balance the need for growth with the proper protection and enhancement of the historic environment.... We will pursue a positive strategy for the conservation and enjoyment of the historic environment through: a. Maintaining a strong presumption in favour of the retention, preservation and enhancement of heritage assets and their setting according to their significance.* Lastly, I note that modified Policy HE1 of the ELP states that *'Where substantial harm to, or loss of significance, of a designated heritage asset is proposed the Council shall refuse consent unless it can be demonstrated that the scheme is necessary to deliver considerable public benefits that outweigh the harm or loss'*.
- 5.3.32 Paragraph 130 of the NPPF states that *'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.... Local planning authorities should also seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme (for example through changes to approved details such as the materials used)'* (emphasis added). This proposal now before planning committee is now the 4<sup>th</sup> variation for a residential scheme on this site since the original permission was granted (and is the 6<sup>th</sup> scheme submitted to the council overall, including the approved scheme and the proposals for 9 houses which was withdrawn). This proposal seeks a variation to an existing variation to the original approval. As mentioned previously, the original approval was already considered to be very much on balance and a marginal decision. The previously approved variation was not preferable (compared to the original) and would have seen the design quality diminish, however it was considered that it was not so detrimental so as to justify a refusal of permission. However, this application seeks to yet further depart from that original permission, resulting in a poorer quality of design and therefore increased harm to the BCA. The proposals are therefore also considered to be contrary to 130 of the NPPF.
- 5.3.33 As outlined above, the previously approved schemes were, in the officer opinion, finely balanced in favour of these schemes, when weighing the harm against the public benefits. However, in comparison, the current proposal would result in increased harm, owing to the poorer quality of the design the subsequent increased impact on the conservation area.

In addition, the benefits are also decreased, owing to the change in the policy situation, as only limited weight can now be afforded to the provision of 8 new dwellings, bearing in mind permission already exists for this site. In light of this, it is my view and my recommendation that on balance the harm to the Barley Conservation Area and to a lesser extent to the setting of the neighbouring listed building outweigh the public benefits. Therefore, the proposal is not acceptable in principle, and is contrary to paragraphs 11, 130 and 196 of the NPPF and contrary to Saved Policy 6 of the existing Local Plan and contrary to Policies SP5, SP13, CGB1 and HE1 of the Emerging Local Plan as Modified.

#### 5.3.34 **Further considerations**

##### 5.3.35 **The living conditions of adjoining and future occupiers**

As the layout of the site is to remain largely as originally approved, the impact on the amenity of existing and future residents would not be materially changed. Each of the proposed plots would still benefit from a suitable level of amenity and there would not be any adverse impacts on the amenity of existing properties which are in close proximity to the site.

##### 5.3.36 **Access and Highway safety**

As clarified by the HCC Highway Officer, the number of units would remain at eight, as originally approved and so there would be no material impact on the highway safety and no material impact on the local and wider highway network.

#### **Environmental Impacts**

5.3.37 As above, given that the number of units is not being altered, the general form and layout of the site is remaining as approved, there would be no material alteration to the impact on the remaining areas of consideration, such as Archaeology, Ecology, Surface Water Drainage and Land contamination.

#### 5.3.38 **Conditions**

5.3.39 The previously approved s73 amendment, reference 18/03329/S73, included 21 conditions. Standard Condition 1 would no longer be relevant (requiring a commencement of works within 3 years of the original permission), as works have commenced on site in implementing permission reference 18/03349/S73. In addition, all of the 'pre-commencement conditions' have been satisfied and have been discharged via separate applications. However, all of these conditions remain relevant. As such, should the Appeal Inspector be minded to allow the appeal, it is respectfully requested that the 20 conditions still relevant to the proposals be included, as amended to reflect the details as approved in the case of the pre-commencement conditions. If the inspector is minded to allow the appeal and is of the view that a condition would be sufficient in order to secure the two 'self-build' units (rather than requiring a s106 legal agreement), this should also be added to the conditions. Lastly, given the increased scale of the dwellings currently proposed, in order to protect the Conservation Area from further increases in built form, it is considered reasonable to include an additional condition which would remove permitted development rights from the 8 dwellings. The list of recommended updated conditions is provided at **Appendix E**.

## 5.4 **Conclusion**

- 5.4.1 The proposed development would be sited wholly within the Barley Conservation Area and by way of the inappropriate scale, bulk and massing of Plots 3 and Plots 8 of the proposed amended development, the proposals would result in increased harm to the conservation area and to a less extent to the setting of the Grade II Listed White Posts which is immediately to the east of the site. Whilst the proposals would result in various public benefits, it is the officer's view that this would not outweigh the harm as identified to the heritage assets. In addition, when comparing the current scheme with that previously approved at this same site, not only is the harm increased by way of the poor design, the public benefits are also decreased, as the Emerging Local Plan has now advanced to modifications stage and the site already benefits from permission for 8 dwellings. Subsequently, the benefits of providing 8 houses as part of this windfall site can now only be afforded limited weight.
- 5.4.2 In applying the key planning balance in this instance, it is the officers view that the identified harm outweighs the public benefits and so the proposal represents an inappropriate form of development.

## 5.5 **Alternative Options**

- 5.5.1 The scheme presented is affectively a re-submission of two alternative schemes which were found to be acceptable. As such, the applicable alternatives are considered to be those which have already been granted has permission under reference 17/02316/1, 18/03349/S73 and 19/00003/S73.

## 6.0 **Legal Implications**

- 6.1 In making decisions on applications submitted under the Town and Country Planning legislation, the Council is required to have regard to the provisions of the development plan and to any other material considerations. The decision must be in accordance with the plan unless the material considerations indicate otherwise. Where the decision is to refuse or restrictive conditions are attached, the applicant has a right of appeal against the decision.

## 7.0 **Recommendation**

- 7.1 That the Planning Control Committee resolve the following in relation to the submitted appeal against non-determination of application ref: 20/03072/S73:
- 7.2 **A) That North Hertfordshire District Council advise the Planning Inspectorate that had it determined planning application ref: 18/01622/FP it would have resolved to refuse planning permission for the following reason and therefore wishes to contest the appeal ref. APP/X1925/W/21/3271157:**



The principle of residential development on this site would harm the character and appearance of the Barley Conservation Area as it would result in the loss of the existing open land which represents a transitional area from the village fringe to the rural countryside and which commands an important role in providing the rural setting of the Barley Conservation Area. The proposal would therefore harm the special character of the Barley Conservation Area and to a lesser extent, the setting of 'White Posts' a grade II listed building. The in-principle harm would be further exacerbated by the excessive scale, bulk and massing of both Plot 3 and Plot 8 hereby proposed, which would be at odds with the semi-rural, edge-of- village context and which would fail to provide a cohesive appearance and form of development. Although the degree of harm is considered to be less than substantial, the public benefits of the proposal do not outweigh the harm that has been identified and which has been afforded significant weight. As a consequence the proposed development is contrary to Policies 6 and 57 of the North Hertfordshire District Local Plan No. 2 - with Alterations, Policies SP5, SP9, SP13, D1, CGB1 and HE1 of the Emerging North Hertfordshire Local Plan 2011-2031 as Modified and Sections 12 and 16 and paragraph 130 of the National Planning Policy Framework 2018.

## 8.0 **Appendices**

- 8.1 Appendix A i) – 'Original approval' 17/02316/1 - Site Plan  
Appendix A ii) – 'Original approval' 17/02316/1 - Plots 3 and 8
- 8.2 Appendix B i) - 'Approved s73 amendment' 18/03349/S73 - Site Plan  
Appendix B ii) - 'Approved s73 amendment' 18/03349/S73 - Plot 3  
Appendix B iii) - 'Approved s73 amendment' 18/03349/S73 - Plot 8
- 8.3 Appendix C – Appeal Decision (Dismissed) ref. APP/X1925/W/19/3228265 (18/02299/FP)
- 8.4 Appendix D – Appellants Statement of Case ref. APP/X1925/W/21/3271157 (current appeal subject of this committee item).
- 8.5 Appendix E – List of suggested Conditions