

WELWYN HATFIELD BOROUGH COUNCIL  
DEVELOPMENT MANAGEMENT COMMITTEE – 18 AUGUST 2016  
REPORT OF THE DIRECTOR (GOVERNANCE)

N6/2016/0391/VAR

45 NORTHAW ROAD EAST, CUFFLEY, POTTERS BAR, EN6 4LU

VARIATION OF CONDITION 1 (APPROVED PLANS) ON PLANNING PERMISSION 6/2015/2223/HOUSE FOR THE 'ERECTION OF SINGLE STOREY SIDE/REAR EXTENSION, INCLUDING EXTENDING THE ROOF TO FORM HABITABLE ACCOMMODATION'

APPLICANT: Mrs K Anklesaria

(Northaw and Cuffley)

**1 Site Description**

- 1.1 The site is located on the east side of Northaw Road East. The topography of the site is such that the land slopes away from Northaw Road East. The site contains a bungalow style dwelling hosting 3 dormer windows within both the north facing roof slope and 3 dormer windows within the south facing roof slope. To the front of the dwelling, the roof is part-hipped part-gabled, whereas the rear of the dwelling hosts a gable end. The bungalow benefits from a single storey side projection to the south which hosts a parapet wall. The materials used in the construction of the dwelling are white render and grey slate tiles.

**2 The Proposal**

- 2.1 The application is for the variation of the plans conditioned within application referenced 6/2015/2223/HOUSE which approved the *“Erection of single storey side/rear extension, including extending the roof to form habitable accommodation”*.
- 2.2 Section 73 of the Town and Country Planning Act 1990 (as amended) allows the determination of applications to develop land without compliance with conditions previously attached. In this case, the applicant has failed to comply with condition 1 of planning approval referenced 6/2015/2223/HOUSE which specified development be in accordance with the plans and details submitted to support that application. The application is made to vary this condition to include a new drawing, showing some variations to the previously approved development.
- 2.3 Following careful consideration of extant plan reference nor/plan/15 01 and proposed plan referenced nor/plan/16 01 in association with this application, the variations consist of the erection of a 0.2m parapet wall along the south flank of the ground floor flat roof side addition; variations in the fenestration detailing within the proposed dormers and an increase in the height of eaves of the dwelling by approximately 0.3m throughout; as well as an increase in the height of the flat roof side addition by approximately 0.2m.

- 2.4 Following the receipt of neighbour representations claiming an increase in height of the proposed development, measurements have been made from all angles of the extant and proposed drawings. The dormers have been found to be identical in terms of width and depth, and the height of the proposed dwelling in the proposed drawings has also been found to match the drawings in the extant permission. It is noted that the eaves height of the dwelling has increased by approximately 0.3m as proposed, and a lower roof pitch angle has resulted in the matching ridge height. The height of the dormers from ground level has remained consistent; resulting in the dormer height from the outside wall closest to the eaves being reduced from approximately 2.25m to approximately 1.96m.

### **3 Reason for Committee Consideration**

- 3.1 This application is presented to the Development Management Committee because both Northaw and Cuffley Parish Council and Councillor George Michaelides have objected to the proposed development.

### **4 Relevant Planning History**

- 4.1 Application Number: 6/2015/2223/HOUSE      Decision: Granted      Decision Date: 23 December 2015

Proposal: Erection of single storey side/rear extension, including extending the roof to form habitable accommodation

- 4.2 Application Number: S6/2008/0322/FP      Decision: Granted      Decision Date: 15 April 2008

Proposal: Erection of two storey rear extension and loft conversion including five dormer windows

- 4.3 Application Number: S6/2007/1547/LU      Decision: Granted      Decision Date: 02 January 2008

Proposal: Certificate of lawfulness for conversion of loft, including side elevation dormer window to first floor

- 4.4 Application Number: S6/2007/1545/FP      Decision: Granted      Decision Date: 17 December 2007

Proposal: Conversion of loft, including dormer window and erection of two storey rear extension

- 4.5 Application Number: S6/2007/0333/FP      Decision: Granted      Decision Date: 26 April 2007

- 4.6 Proposal: Single storey rear extension

### **5 Planning Policy**

- 5.1 National Planning Policy Framework

- 5.2 Welwyn Hatfield District Plan 2005

- 5.3 Supplementary Design Guidance, February 2005 (Statement of Council Policy)

- 5.4 Supplementary Planning Guidance, Parking Standards, January 2004
- 5.5 Interim Policy for Car Parking Standards and Garage Sizes, August 2014

## **6 Site Designation**

- 6.1 The site lies within the specified settlement of Cuffley as designated in the Welwyn Hatfield District Plan 2005.

## **7 Representations Received**

- 7.1 The application was advertised through neighbour notification. 4 representations have been received from 43, 47 and 38 Northaw Road East as well as Northaw and Cuffley Residents Association. Their comments may be summarised as:

- Significant loss of amenity through overlooking
- Loss of light
- The boundary wall has encroached onto privately owned land of the adjoining property
- The house and ground floor wall has been raised in height by nearly 900mm
- The height of the boundary wall in the previously approved plans was 3.5m and the new plans received show a 4m high wall, where in reality it is 5m in height
- The size of the dormers are not in-keeping with the surrounding area
- The height of the new guttering is a direct consequence of breaches to planning permission
- The proposed variation, with specific reference to additional bulk and mass, as well as loss of privacy, would exacerbate the dominant and disproportionate addition to the street scene
- The original permission omitted a condition for obscured glazing, and, notwithstanding the objections, should be conditioned to be obscured glazed if the variation were to be permitted
- The intent all along was to apply for retrospective planning for a building which would not have been allowed and would set a precedent for other parties to commit blatant contravention of planning approvals

## **8 Town / Parish Council Representations**

- 8.1 Northaw and Cuffley Parish Council have objected to the proposed development as follows:

*“We refer to Colin Haigh's letter of 11th March 2016 to Mr & Mrs Lima at 43 Northaw Road East, Cuffley, within which inter alia, it is accepted that the development onsite is materially different to the existing planning consent. In particular the dormers have been extended towards the boundaries and the roof height is higher than proposed. It is our opinion that an amended application should be submitted. We OBJECT to the development as constructed and the fact that this is being dealt with as a condition variation rather than a material amendment to an existing consent.”*

## 9 Analysis

9.1 The main planning issues to be considered are:

1. **Are the variations proposed minor material amendments which are suitable for an application under Section 73 of the Town and Country Planning Act 1990 (as amended)**
2. **With specific reference to the variations from the approved drawings on application referenced 6/2015/2223/HOUSE, does the proposal feature high quality design which incorporates the design principles of the plan and Supplementary Design Guidance (GBSP1, GBSP2, D1)**
3. **With specific reference to the variations from the approved drawings on application referenced 6/2015/2223/HOUSE, does the proposal respect and relate to the character and context of the area, as a minimum maintaining and where possible enhancing or improving the character of the existing area (D2)**
4. **With specific reference to the variations from the approved drawings on application referenced 6/2015/2223/HOUSE, does the proposal maintain the amenity of the occupiers of adjoining premises (D2)**
5. **Any other consideration**

1. **Are the variations proposed minor material amendments which are suitable for an application under Section 73 of the Town and Country Planning Act 1990 (as amended)**

9.2 Northaw and Cuffley Parish Council objected to the proposed development on the basis of the application *“being dealt with as a condition variation rather than a material amendment to an existing consent”*. Paragraph 17 of the National Planning Practice Guidance (NPPG) refers to there being no statutory definition of ‘minor material amendment’. The paragraph continues to state that the amendment should not be of such a scale that it would result in a development which is substantially different from the one which has been approved. Having undertaken an assessment as to the variations noted within the extant and proposed drawings, it is considered that the variation would represent a ‘minor material amendment’ and the assessment of the proposal under Section 73 of the Town and Country Planning Act 1990 (as amended).

9.3 At this stage, it is noted that the response received from Northaw and Cuffley Parish Council implies that an admission is made in the letter from Colin Haigh that the *“dormers have been extended towards the boundaries and the roof height is higher than proposed”*. Having read through the whole letter, no such direct statement as to the specifics of the deviations was made.

2. **With specific reference to the variations from the approved drawings on application referenced 6/2015/2223/HOUSE, does the proposal feature high quality design which incorporates the design principles of the plan and Supplementary Design Guidance**

9.4 Before continuing with the assessment of the proposal, it is important to note the weight of the extant permission in relation to the recommendation. The extant permission, referenced 6/2015/2223/HOUSE, holds significant weight in favour of the proposed development. For this reason, the following assessments concentrate on the variations, and how those variations alter the quality of design

of the resultant dwelling, the resultant dwelling's relationship with the character and context of the surrounding area and the impact of the development upon the amenity of the occupier of the adjoining premise. In this light, while the neighbour response received from representatives of the occupiers of No.43 Northaw Road East is acknowledged, the level of compliance with planning policies and supplementary guidance of the extant permission holds little weight against this variation of condition proposal.

- 9.5 The increase in the height of eaves of the dwelling by approximately 0.3m throughout the property does not result in an incongruous addition to the dwelling. The resultant alteration to the angle of the roof pitch is largely imperceptible. The change in the fenestration detailing within the dormers has a limited impact on the way the resultant dwelling would be viewed. The use of a side facing parapet wall, as opposed to a small section of flat roof, has a very limited impact on the design of the overall building.
- 9.6 Taking full consideration of the extant planning permission, the extensions complement the design and character of the dwelling, remain subordinate in scale, be constructed of acceptable materials and the dormer windows would be contained within, and subordinate to, the roof space of the resultant dwelling.
- 9.7 Accordingly, the cumulative impacts of the proposed variations, as described and assessed above, has not fundamentally altered the design of the resultant dwelling to the extent where it would be considered of poor quality in relation to the extant permission or in relation to adjoining premises.

**3. With specific reference to the variations from the approved drawings on application referenced 6/2015/2223/HOUSE, does the proposal respect and relate to the character and context of the area, as a minimum maintaining and where possible enhancing or improving the character of the existing area**

- 9.8 The variations noted between the extant and proposed drawings are largely undetectable from public vantage points. It is considered that the most discernible variation, being the side facing parapet wall, does not result in an incongruous addition to the area. While a change in the height of eaves of the property potentially impacts the character of the area, by virtue of the topography of the area and the relatively limited increase, the relationship between the host and adjoining premises in this regard has not be fundamentally altered. No.43 still has a greater eaves height than the host dwelling, and No.47 a lower eaves height, in accordance with the sloping topography from north to south, as well as west to east.
- 9.9 It is considered that none of the proposed variations impact the key considerations in regards to the impact of the development upon the character and context of the area. The variations do not add significant bulk to the resultant dwelling, and retain the spacing of the dwelling in terms of width. Accordingly, the resultant dwelling, when factoring the weight given to the extant permission, does not look cramped upon its site, represent over-development across plot widths and respects the spacing of the dwellings within the locality.

**4. With specific reference to the variations from the approved drawings on application referenced 6/2015/2223/HOUSE, does the proposal maintain the amenity of the occupiers of adjoining premises**

- 9.10 The principal issues in regards to the amenity of the occupiers of adjoining premises relates to the additional loss of light, unduly dominant form and loss of privacy as a result of the variations. Most representations received make reference to these issues, and a discussion in this light follows.
- 9.11 No.47 Northaw Road East is sited to the south of the host dwelling. The extant permission allowed a flat roof single storey side addition along the south boundary. The difference between the extant and proposed boundary wall is, when measured from the two plans, approximately 0.4m in height.
- 9.12 Whilst a neighbour representation questions the accuracy of the drawings in relation to height, this assessment can only take note of the measurements of the proposed drawings. In the case of any approval of this proposed variation, that approval will be conditioned to be in accordance with the proposed drawings from which the measurements are taken. Equally any refusal if appealed would be assessed by an inspector on the basis of the submitted drawings.
- 9.13 In regards to loss of light, shadows cast by built form are predominately cast to the north, as well as west to east throughout the day. Whilst it is acknowledged that, by virtue of the proximity and limited spacing between the boundary wall the adjoining premise, there would be a tunnelling affect in regards to light, it is felt that the additional 0.4m in height indicated within the proposed plans, would not greatly exacerbate the impact. This consideration, combined with the siting of the adjoining premise to the south of the host dwelling and boundary wall, results in the variations, including the increase in eaves height of the resultant dwelling, having a largely neutral impact in terms of loss of light.
- 9.14 In terms of unduly dominant form, reference was made to the presence of a blank wall in proximity to the side windows of No.47 Northaw Road East within the neighbour representation. It is felt that the additional 0.4m in height, altering the height from 4m to 4.4m at its tallest point indicated within the drawings provided would not alter the relationship between the ground floor windows on the adjoining premise and the boundary wall. Accordingly, taking into consideration the weight given to the extant position, the variations would have a neutral impact on the relationship between the two dwellings in terms of resulting in an unduly dominant outlook.
- 9.15 In regards to the relationship between the host dwelling and No.47 Northaw Road East, the variations relate to the size of window openings and fenestration design within the dormer windows. The officer report for the extant permission suggests that the south facing windows should be conditioned to be obscured glazed and non-opening unless 1.8m above the floor level of the room which they serve in order to respect the privacy of the adjoining occupier. Having the benefit of a site visit with the windows in situ, it is clear that there would be an issue in regards to privacy from both the front and middle un-obscured fenestration detailing. Accordingly, it is recommended that a condition to ensure obscure glazing is fitted to the fenestration detailing detailed above is applied in order to ensure compliance with Policy D2 in regards respecting the living conditions of adjoining occupiers.
- 9.16 Paragraph 15 of the NPPG states that *“the effect is the issue of a new planning permission, sitting alongside the original permission, which remains intact and unamended”*. Furthermore, paragraph 31 states that *“In granting permission under section 73 the local planning authority may also impose new conditions –*

*provided the conditions do not materially alter the development that was subject to the original permission and are conditions which could have been imposed on the earlier planning permission".* Accordingly, the addition of a condition to install obscure glazing to the windows within the south facing dormer windows would not materially alter the development that was subject to the original permission, and it is felt would meet the six tests of conditions laid out within the National Planning Policy Framework (NPPF).

- 9.17 No.43 Northaw Road East is located to the north of the host dwelling. In terms of the amendments requested within this variation of condition, the raising of the height of eaves of the dwelling as well as the fenestration detailing within the dormer windows are to be considered in the context of impact on living conditions. In regards to loss of light or unduly dominant form, the physical increase of the building in the north facing elevation is limited, and as such, would have a largely neutral impact. The increase in the height of eaves by approximately 0.3m with no associated increase in ridge height due to the resulting shallower roof pitch would not have a substantial additional impact on loss of light or unduly dominant form.
- 9.18 In regards to loss of privacy, upon the site visit, it was found that the front dormer within the north facing roof slope gives some oblique downward views into the skylight at No.47 Northaw Road East. With the benefit of hindsight as a result of this retrospective application, and whilst acknowledging that the case officer for the previous application considered that loss of privacy would not result from the dormer closest to the front elevation within the north facing roof slope, this fenestration detailing does cause some loss of privacy to the adjoining occupier in its current un-obscured state.
- 9.19 Within the middle dormer, two window openings are present, one to give light to a hallway and stairwell, and the other, smaller opening for a dressing room. The windows within the middle dormer are considered to have potential to cause overlooking and loss of privacy. Neither of the spaces to which these windows give light are living spaces. It is acknowledged that No.43 benefits from extant permission to install a dormer within an extended south facing roof slope, giving light into living space. The position of this dormer window would be to the rear of the resultant dwelling on No.43's plot. By virtue of the above discussion, it is not considered necessary to condition the windows within the proposed middle dormer window within the north facing roofslope to be obscure glazed and non-opening. To condition as such, based on the existing, and potential, circumstances and relationships between dwellings, would fail to meet the six tests of the conditions described within the NPPG and NPPF.
- 9.20 In accordance with the above discussion, subject to a condition requiring the insertion of obscure glazing within the north facing dormer closest to the front elevation of the host dwelling, the proposed variations would not unduly harm the amenity to the occupiers of adjoining premises. As the built form, and resultant harm on neighbouring amenity, is already in place, the condition shall include a timeline to which this glazing shall be installed. A reasonable period of time is considered to be 3 months.

## **5. Any other consideration**

- 9.21 Elements of the neighbour representation and consultation responses received have been dealt with and discussed above in accordance with the relevant

planning policies. Those which do not form material planning considerations above shall be discussed in turn below.

- 9.22 The extant permission indicates that the eaves of the resultant building would encroach over the land of the adjoining premise, to the same extent as the detached garage which was present prior to the development. The plans supplied with this application do not indicate any eaves encroachment as a result of the parapet wall being used. Notwithstanding this, land ownership and encroachment issues between private land owners are not an issue to be considered within a planning application.
- 9.23 With reference to the Parish's comment regarding their objection to the application being dealt with as a condition rather than a material amendment, this application by virtue of being a variation is a full application requiring consultation compared to non material amendments which are not subject by legislation to any consultation.
- 9.24 In regards to setting a precedent for large development, the extant permission holds significant weight in favour of the proposed variations. The variations do not greatly increase the physical dimensions of the resultant building. Notwithstanding this, each case is determined on its own merits, and given the very context specific considerations within this proposal, it is not considered that a precedent would be set. In terms of the nature of the way the build has been managed, building in variation to approved drawings is not endorsed by the local planning authority. The building, as it exists, has been built at the owner's risk, and if it were to be found to be in conflict with any planning policies, may be enforced against to be rectified.

## **10 Conclusion**

- 10.1 Having regards to the limitations in terms of the assessment of an application for the variation of a condition in regards to the extant permission, the proposed variations, subject to conditions, would be acceptable in regards to design, maintain the character and context of the area and respect the amenity of the occupiers of adjoining premises. Accordingly, the proposal complies with policies D1, D2 and GBSP2 of the Welwyn Hatfield District Plan 2005, the Supplementary Design Guidance Statement of Council Policy 2005 and relevant parts of the National Planning Policy Framework 2012.

## **11 Recommendation**

- 11.1 It is recommended that planning permission be approved subject to the following conditions:
1. The development/works shall not be started and completed other than in accordance with the approved plans and details:  
  
3774-E01 & 3774-OS1 Revision B & 3774-OS2 Revision B received and dated 6th May 2016 & 3774-P01 received and dated 27 July 2016.  
  
REASON: To ensure that the development is carried out in accordance with the approved plans and details.
  2. All first floor windows within the south facing roof slope; windows serving the dormer closest to the west elevation of the host dwelling and the



dormer closest to the east elevation of the host dwelling, both within the north facing roof slope, hereby approved, shall be glazed with obscured glass and shall be fixed so as to be incapable of being opened below a height of 1.8 metres above floor level. All of these works shall be installed within 3 months of the date of this decision and shall be retained in that form thereafter.

REASON: To protect the residential amenity of adjoining occupiers in accordance with Policy D1 of the Welwyn Hatfield District Plan 2005.

### **Summary of reasons for grant of permission**

The decision has also been made taking into account, where practicable and appropriate the requirements of paragraphs 186-187 of the National Planning Policy Framework and material planning considerations do not justify a decision contrary to the development plan (see Officer's report which can be inspected at these offices).

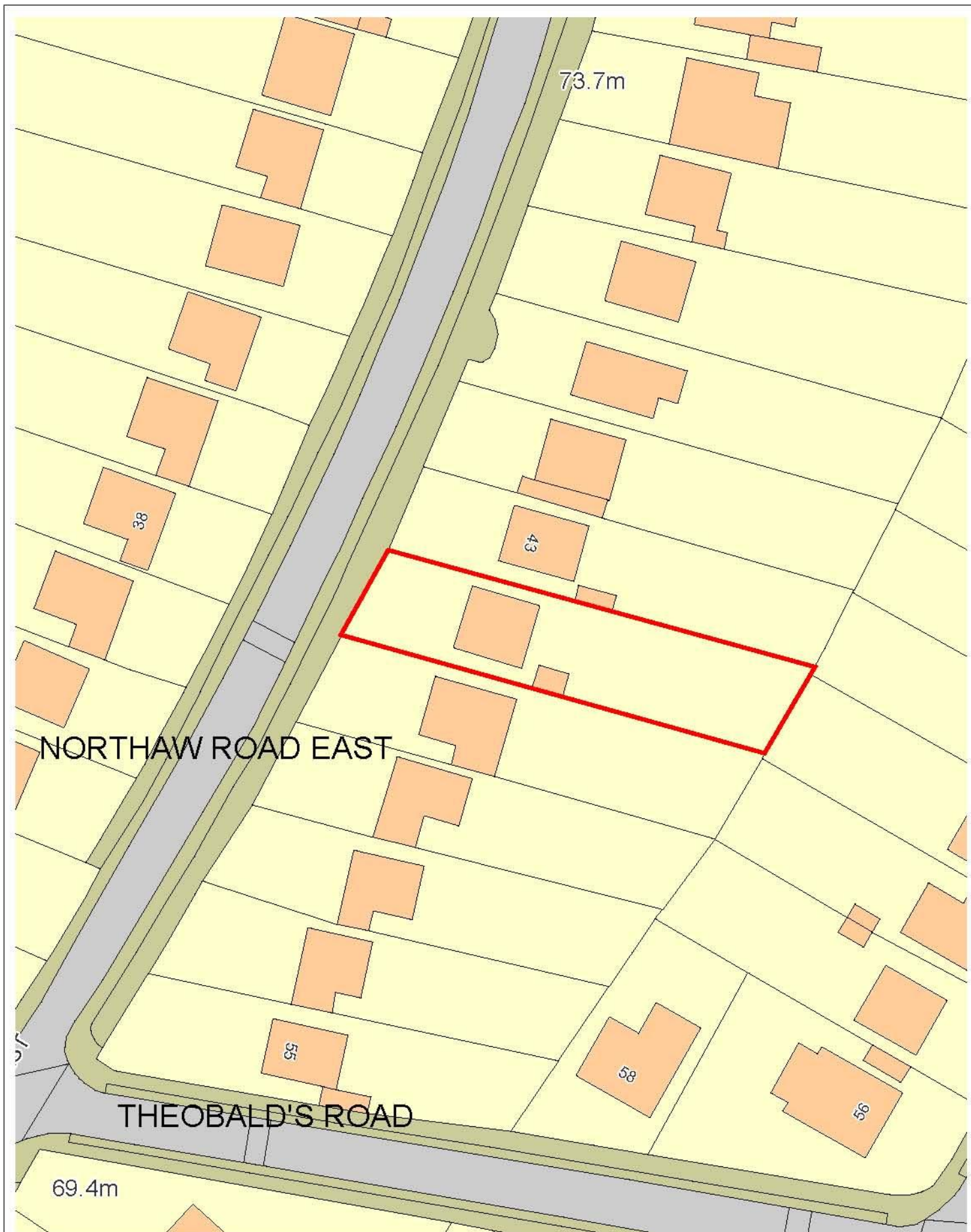
### **Informatives**

1. The granting of this permission does not convey or imply any consent to build upon or access from any land not within the ownership of the applicant.

*Sam Dicocco*, (Strategy and Development)

Date 29 July 2016

Expiry date 18 May 2016



Council Offices, The Campus,  
Welwyn Garden City, Herts. AL8 6AE

Title: 45 Northhaw Road East, Cuffley

Scale: DNC

Date: 2016

Project: DMC Meeting

Drawing Number:  
6/2016/0391/VAR

Drawn: Baras Mast-Ingle