

## **ITEM**

<b>Application Reference</b>	<b>DC/082748</b>
<b>Location:</b>	168 Ack Lane East Bramhall Stockport SK7 2AA
<b>PROPOSAL:</b>	Minor Material Amendment under S73 of the Town and Country Planning Act 1990 to vary condition 1 of DC068779 to facilitate the retention of the development as constructed.
<b>Type Of Application:</b>	Minor Material Amendment
<b>Registration Date:</b>	29.11.2021
<b>Expiry Date:</b>	20220124
<b>Case Officer:</b>	Jane Chase
<b>Applicant:</b>	Mr N A Tahir
<b>Agent:</b>	Summit Planning Associates Ltd

## **DELEGATION/COMMITTEE STATUS**

Area Committee - Called up by Cllr Bagnall

## **DESCRIPTION OF DEVELOPMENT**

Planning permission was approved for the demolition of a previously existing bungalow on this site and the erection of a pair of three storey semi-detached houses in May 2018 (DC068779 refers). The houses would comprise 2 floors of accommodation with bay windows to the front rising through ground and first floor level. Gable roofs over these bays would project into the roof space above and here, at second floor level, a 3<sup>rd</sup> floor of accommodation would be served by windows in the projecting gables and roof lights to the front roof plane together with small dormers to the rear roof plane. The main roof would have a ridge running parallel to Ack Lane East with gable ends to either side. To the rear would be a projection with a ridge line running at 90 degrees to that of the main dwelling with accommodation at ground and first floor level; that at second floor level would be contained within the roof space. This projection would be set in from the side elevations of the main building projecting 6m to the rear with a pitched roof over with a ridgeline slightly lower than that of the main development and a gable end facing the rear gardens. The development would be positioned 1.09m off each side elevation extending to 2.2m adjacent to the rear projections. The front garden would be laid out with a centrally positioned driveway with 2 parking spaces either side and soft landscaped areas to the front and rear of the forecourt either side of the driveway.

Attached to that planning permission was a condition requiring the development to be carried out in accordance with a list of drawings which included amongst others, proposed floor plans, proposed elevations and a proposed street scene (which showed the proposed development in the context of that existing to either side of the site).

In relation to 166 Ack Lane East this proposed street scene showed that the development would be virtually the same height to eaves (when measured to the base of eaves level) and 0.96m higher to ridge.

In relation to 170 Ack Lane East the proposed street scene showed that the development would be 0.2m higher to the base of the eaves, 1.76m higher than the lower ridge to the application site and 1.66m higher than the higher ridge away from the application site. Ground levels between 166, 168 and 170 Ack Lane East were shown as being equal. The approved proposed elevations and floor plans were annotated to confirm that the pair of houses would be 9.66m to ridge, 5.479m to eaves and 14.5m.

When work on implementing that planning permission commenced, the Council received complaints that the development was too high and that land levels on the site had been raised in relation to those at 166 Ack Lane East (November 2020). Since those initial visits by Enforcement Officers it has been established that whilst the development has largely been constructed in accordance with the plans and elevations approved by DC068779 (with some minor variations, see below), there is a greater differential in height between that constructed and the houses to either side of the site. These visits also revealed a difference in ground levels between the application site and 166 Ack Lane East.

It has been established that the reason for this differential in height, such that the development as constructed appears higher in relation to the houses either side than shown on the approved proposed street scene, is because this drawing which was approved as part of DC068779 has been drawn incorrectly. In this respect the height of the neighbouring houses on this drawing have been shown as being higher than they actually are. 166 Ack Lane East and the garage attached to it is also shown on the approved street scene as being wider than it actually is, as is 170 Ack Lane East.

In terms of site levels, the plans submitted and approved with application DC068779 showed no changes in ground levels and illustrated that the site was and would as a result of the proposed development, be level with those to either side. Currently however, the ground level of the application site whilst still remaining level with 170 Ack Lane is actually 0.27m higher than that of 166 Ack Lane East when measured at a point flush with the front elevation of the development increasing to circa 40cms higher at a point flush with the front elevation of the garage to 166 Ack Lane East as the drive to this neighbouring property falls away from the front boundary (NB: this fall of circa 40cms has not been measured on site and is estimated) . It is important to note that despite objections that levels have been raised on the site, the applicant is adamant that they have not. This matter is explored further in the analysis section of this report below.

As constructed, the development is in the same position, width and distance off the side boundaries as approved. The dwellings however measure 9.3m high to ridge and 5.44m to the base of the eaves (a reduction in the ridge height from that shown on the approved elevations by 0.36m and a reduction in the eaves height by 0.039m).

Given however that the proposed street scene elevation was wrong in relation to the height of the neighbouring houses, when the true height of 166 Ack Lane East is taken into account and the difference in ground levels between that property and the application site, the development as constructed is actually 1.98m higher to ridge than this neighbouring property (an increase of 1.02m from the approved street

scene) and 0.788m higher to the base of the eaves (an increase of 0.788m from the approved street scene).

In relation to 170 Ack Lane East, having regard to the true height of this property, the development is actually 1.89m higher to ridge than the highest ridge of this neighbouring property (an increase of 0.29m from the approved street scene), 2.3m higher than the lower ridge (an increase of 0.54m from the approved street scene) and 0.42m higher to the base of the eaves (an increase of 0.24m from the approved street scene).

Amongst the drawings appended to this agenda, are one that shows the existing and proposed street scene as approved together with the street scene as constructed (5<sup>th</sup> drawing) and another that shows the street scene as constructed with the approved street scene overlaid on it in a red dashed line (6<sup>th</sup> drawing). These illustrate the comparison made in the report above.

As the planning permission was approved subject to a condition requiring the development to be constructed in accordance with specified plans (which included the proposed elevations, floorplans and street scene) it is now clear that it is not capable of lawful implementation on account of the proposed street scene being inaccurate in terms of the height of the neighbouring houses and showing them lower than they actually are. To accord with the relationship as shown on the proposed street scene, the height of the proposed development would have to be reduced however it would then not accord with the approved elevations.

Work on site has largely halted and whilst the pair of houses are complete (save for the erection of canopies over the front doors) all that remains to do is essentially the landscaping of the site. An application to discharge conditions imposed on DC068779 in relation to materials, landscaping, boundary treatments and drainage was submitted to the Council in December 2020 (DC079238). This was however returned to the applicant undetermined in September 2021 as clearly the development approved by DC068779 is not capable of lawful implementation and that being the case, the Council cannot discharge conditions imposed upon that planning permission.

A breach of planning control is defined in Section 171A(1) of the Town and Country Planning Act 1990 as:

- (a) the carrying out of development without the required planning permission; or
- (b) failing to comply with any condition or limitation subject to which planning permission has been granted.

It is the Council's clear position that the developer cannot comply with condition 1 of DC068779 which requires the development to be carried out in accordance with a list of drawings. In this respect the proposed street scene drawing referenced in condition 1 of DC068779 is inaccurate in that it shows the neighbouring houses higher and wider than they actually are. As such, the development if constructed in accordance with the approved elevations, it can never accord with the proposed street scene drawing and, as has been demonstrated through the construction of the houses to date, will project higher above the neighbouring houses than shown on this approved drawing.

By attempting to implement the planning permission, the developer is in breach of condition 1 and limb (b) above applies. This position is supported in the recent High Court decision in Choice Place Properties Ltd v Secretary of State for Housing

Communities And Local Government [2021] EWHC 1070 (Admin) [4 March 2021] which affirms the Council's position and sits closely with the facts of the current case.

This application therefore seeks what is commonly referred to as Section 73 minor material amendment to planning permission DC068779. In this respect the variation of condition 1 attached to planning permission DC068799 is sought to allow for the retention of the development in accordance with a revised/corrected street scene drawing that shows the proposal in the context of existing development either side together with plans and elevations. The application is accompanied by a Planning Statement in support of the application.

Permission granted under Section 73 takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or amended conditions. The new permission sits alongside the original permission, which remains intact and unamended. Whilst it is usually open to the applicant to decide whether to implement the new permission or the one originally granted in this instance it is noted that the originally granted permission (DC068779) is incapable of lawful implementation for the reasons set out above.

### **SITE AND SURROUNDINGS**

The application site is located on the north east side of Ack Lane East and now accommodates the pair of semi-detached houses that this application seeks to retain. At the time of writing this report, the external works approved by DC068779 in terms of the provision of canopies to the front doors and the laying out/landscaping of the front and rear garden remain incomplete. There is also no enclosure to the front garden to the front boundary. To the rear garden of each dwelling is an outbuilding intended to provide cycle and garden storage which were approved by the grant of DC071687.

To either side of the application site on Ack Lane East are 2 storey detached houses as there are generally opposite (although there is a pair of semi-detached houses diagonally opposite). Notably, that to the right (166 Ack Lane East) has a detached garage positioned to the rear of the house, on the boundary with the application site whilst that to the left (170 Ack Lane East) has a staggered ridge height with that closest to the application site being slightly lower than that further away. To the rear of this adjacent house is a single storey flat roofed extension. To the rear of the application site on Deneway are detached 2 storey houses.

The character of the area is mixed, houses are typically detached however there are examples of semi-detached houses as well. Houses are generally 2 storeys high however there is evidence of accommodation at second floor level served by dormers and roof lights; bungalows are also present on Ack Lane East. There is a variety in terms of styles, materials and roof forms however projecting gables and bays to front elevations, hipped and pitched roofs and red brick, render and grey or red tiled roofs are common place. Houses are on the whole set back from the street behind maturely landscaped front gardens that accommodate varying degrees of hard surfacing to facilitate off street parking.

### **POLICY BACKGROUND**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 ("PCPA 2004") requires that planning applications be determined in accordance with the development plan unless material considerations indicate otherwise.

## **The Development Plan includes-**

- Policies set out in the Stockport Unitary Development Plan Review adopted 31<sup>st</sup> May 2006 which have been saved by direction under paragraph 1(3) of Schedule 8 to the Planning and Compulsory Purchase Act 2004; &
- Policies set out in the Stockport Local Development Framework Core Strategy Development Plan Document adopted 17<sup>th</sup> March 2011.

### **Saved policies of the SUDP Review**

EP1.7 Development and Flood Risk

L1.1 Land for Active Recreation

L1.2 Children's Play

MW1.5 Control of Waste from Development

### **LDF Core Strategy/Development Management policies**

CS1 Overarching Principles: Sustainable Development – Addressing Inequalities and Climate Change

SD1 Creating Sustainable Communities

SD3 Delivering the Energy Opportunities Plans – New Development

SD6 Adapting to the Impacts of Climate Change

CS2 Housing Provision

CS3 Mix of Housing

CS4 Distribution of Housing

H1 Design of Residential Development

H2 Housing Phasing

CS8 Safeguarding and Improving the Environment

SIE1 Quality Places

SIE2 Provision of Recreation and Amenity Open Space in New Development

SIE3 Protecting, Safeguarding and Enhancing the Environment

CS9 Transport and Development

CS10 An Effective and Sustainable Transport Network

T1 Transport and Development

T2 Parking in Developments

T3 Safety and Capacity on the Highway Network

### **Supplementary Planning Guidance**

Supplementary Planning Guidance does not form part of the Statutory Development Plan; nevertheless it does provide non-statutory Council approved guidance that is a material consideration when determining planning applications.

Design of Residential Development

Open Space Provision and Commuted Sum Payments

Transport in Residential Areas

Sustainable Design and Construction

### **National Planning Policy Framework**

A Revised National Planning Policy Framework (NPPF) issued by the Secretary of State for Housing, Communities and Local Government (MHCLG) on 20th July 2021 and replaced the previous NPPF (originally issued 2012 & revised 2018 and 2019). The NPPF has not altered the fundamental legal requirement under Section 38(6) of the Planning and Compulsory Purchase Act 2004 that decisions must be made in

accordance with the Development Plan unless material considerations (such as the NPPF) indicate otherwise.

The NPPF representing the governments up-to-date planning policy which should be taken into account in dealing with applications focuses on achieving a lasting housing reform, facilitating the delivery of a greater number of homes, ensuring that we get planning for the right homes built in the right places of the right quality at the same time as protecting our environment. If decision takers choose not to follow the NPPF, then clear and convincing reasons for doing so are needed.

N.B. In respect of decision-taking the revised NPPF constitutes a “material consideration”.

*Para.1 “The National Planning Policy Framework sets out the Government’s planning policies for England and how these should be applied”.*

*Para.2 “Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The NPPF must be taken into account in preparing the development plan and is a material consideration in the determination of planning applications.”*

*Para.7 “The purpose of the planning system is to contribute to the achievement of sustainable development. At a very high level the objective of sustainable development can be summarised as meeting the needs of the present without comprising the ability of future generations to meet their own needs”.*

*Para.8 “Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives):*

- a) an economic objective – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;*
- b) a social objective – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering well-designed, beautiful and safe places, with accessible services and open spaces that reflect current and future needs and support communities’ health, social and cultural well-being; and*
- c) an environmental objective – to protect and enhance our natural, built and historic environment; including making effective use of land, improving biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.”*

*Para 10. “So that sustainable development is pursued in a positive way, at the heart of the Framework is a presumption in favour of sustainable development.”*

*Para.11 “Plans and decisions should apply a presumption in favour of sustainable development. For decision-taking this means:*

- c) approving development proposals that accord with an up-to-date development plan without delay; or*

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
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole”.

Para.12 “.....Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed”.

Para.38 “Local planning authorities should approach decisions on proposed development in a positive and creative way..... Decision-makers at every level should seek to approve applications for sustainable development where possible”.

Para.47 “Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. Decisions on applications should be made as quickly as possible, and within statutory timescales unless a longer period has been agreed by the applicant in writing”.

Para .55 “Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.”

Para.56 “Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Agreeing conditions early is beneficial to all parties involved in the process and can speed up decision-making. Conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification.”

Para.57 “Planning obligations must only be sought where they meet all of the following tests:

- a) necessary to make the development acceptable in planning terms;
- b) directly related to the development; and
- c) fairly and reasonably related in scale and kind to the development.”

Para.58 “Where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage.”

Para.59 “Effective enforcement is important to maintain 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.”

Para.60 *“To support the Government’s objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay.”*

Para.69 *“Small and medium sized sites can make an important contribution to meeting the housing requirement of an area, and are often built-out relatively quickly. To promote the development of a good mix of sites local planning authorities should:*  
*c) support the development of windfall sites through their policies and decisions – giving great weight to the benefits of using suitable sites within existing settlements for homes;”*

Para.104 *“Transport issues should be considered from the earliest stages of plan-making and development proposals, so that:*  
*a) the potential impacts of development on transport networks can be addressed;*  
*b) opportunities from existing or proposed transport infrastructure, and changing transport technology and usage, are realised – for example in relation to the scale, location or density of development that can be accommodated;*  
*c) opportunities to promote walking, cycling and public transport use are identified and pursued;*  
*d) the environmental impacts of traffic and transport infrastructure can be identified, assessed and taken into account – including appropriate opportunities for avoiding and mitigating any adverse effects, and for net environmental gains; and*  
*e) patterns of movement, streets, parking and other transport considerations are integral to the design of schemes, and contribute to making high quality places.”*

Para.105 *“The planning system should actively manage patterns of growth in support of these objectives. Significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. This can help to reduce congestion and emissions, and improve air quality and public health. However, opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making.”*

Para.110 *“In assessing sites that may be allocated for development in plans, or specific applications for development, it should be ensured that:*  
*a) appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;*  
*b) safe and suitable access to the site can be achieved for all users;*  
*c) the design of streets, parking areas, other transport elements and the content of associated standards reflects current national guidance, including the National Design Guide and the National Model Design Code; and*  
*d) any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.”*

Para.111 *“Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.”*

Para.112 *“Within this context, applications for development should:*  
*a) give priority first to pedestrian and cycle movements, both within the scheme and with neighbouring areas; and second – so far as possible – to facilitating access to high quality public transport, with layouts that maximise the catchment area for bus*



or other public transport services, and appropriate facilities that encourage public transport use;

b) address the needs of people with disabilities and reduced mobility in relation to all modes of transport;

c) create places that are safe, secure and attractive – which minimise the scope for conflicts between pedestrians, cyclists and vehicles, avoid unnecessary street clutter, and respond to local character and design standards;

d) allow for the efficient delivery of goods, and access by service and emergency vehicles; and

e) be designed to enable charging of plug-in and other ultra-low emission vehicles in safe, accessible and convenient locations.”

Para.119 “Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or ‘brownfield’ land.”

Para.120 “ Planning policies and decisions should:

c) give substantial weight to the value of using suitable brownfield land within settlements for homes and

d) promote and support the development of under-utilised land and buildings, especially if this would help to meet identified needs for housing where land supply is constrained and available sites could be used more effectively.”

Para.124 “Planning policies and decisions should support development that makes efficient use of land, taking into account:

a) the identified need for different types of housing and other forms of development, and the availability of land suitable for accommodating it;

b) local market conditions and viability;

c) the availability and capacity of infrastructure and services – both existing and proposed – as well as their potential for further improvement and the scope to promote sustainable travel modes that limit future car use;

d) the desirability of maintaining an area’s prevailing character and setting (including residential gardens), or of promoting regeneration and change; and

e) the importance of securing well-designed, attractive and healthy places.”

Para.125 “Where there is an existing or anticipated shortage of land for meeting identified housing needs, it is especially important that planning policies and decisions avoid homes being built at low densities, and ensure that developments make optimal use of the potential of each site. In these circumstances:.....

c) local planning authorities should refuse applications which they consider fail to make efficient use of land, taking into account the policies in this Framework. In this context, when considering applications for housing, authorities should take a flexible approach in applying policies or guidance relating to daylight and sunlight, where they would otherwise inhibit making efficient use of a site (as long as the resulting scheme would provide acceptable living standards).”

Para.126 “The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. Being clear about design expectations, and how these will be tested, is

essential for achieving this. So too is effective engagement between applicants, communities, local planning authorities and other interests throughout the process.”

Para.130 “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;
- e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and
- f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users<sup>49</sup>; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.”

Para.131 “Trees make an important contribution to the character and quality of urban environments, and can also help mitigate and adapt to climate change. Planning policies and decisions should ensure that new streets are tree-lined, that opportunities are taken to incorporate trees elsewhere in developments (such as parks and community orchards), that appropriate measures are in place to secure the long-term maintenance of newly-planted trees, and that existing trees are retained wherever possible.”

Para.134 “Development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes. Conversely, significant weight should be given to:

- a) development which reflects local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes; and/or
- b) outstanding or innovative designs which promote high levels of sustainability, or help raise the standard of design more generally in an area, so long as they fit in with the overall form and layout of their surroundings.”

Para.152 “The planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change. It should help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure.”

Para.154 “New development should be planned for in ways that:

- a) avoid increased vulnerability to the range of impacts arising from climate change. When new development is brought forward in areas which are vulnerable, care should be taken to ensure that risks can be managed through suitable adaptation measures, including through the planning of green infrastructure; and

*b) can help to reduce greenhouse gas emissions, such as through its location, orientation and design. Any local requirements for the sustainability of buildings should reflect the Government's policy for national technical standards."*

Para.157 states *"In determining planning applications, local planning authorities should expect new development to:*

- a) comply with any development plan policies on local requirements for decentralised energy supply unless it can be demonstrated by the applicant, having regard to the type of development involved and its design, that this is not feasible or viable; and*
- b) take account of landform, layout, building orientation, massing and landscaping to minimise energy consumption".*

Para.167 *"When determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood-risk assessment. Development should only be allowed in areas at risk of flooding where, in the light of this assessment (and the sequential and exception tests, as applicable) it can be demonstrated that:*

- a) within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location;*
- b) the development is appropriately flood resistant and resilient such that, in the event of a flood, it could be quickly brought back into use without significant refurbishment;*
- c) it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate;*
- d) any residual risk can be safely managed; and*
- e) safe access and escape routes are included where appropriate, as part of an agreed emergency plan."*

Para.174 *"Planning policies and decisions should contribute to and enhance the natural and local environment by:*

- a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);*
- d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;*
- e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans; and*
- f) remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate."*

Para.180 *"When determining planning applications, local planning authorities should apply the following principles:*

- a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;"*

Para.183. *"Planning policies and decisions should ensure that:*

a) a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination. This includes risks arising from natural hazards or former activities such as mining, and any proposals for mitigation including land remediation (as well as potential impacts on the natural environment arising from that remediation);

b) after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990; and

c) adequate site investigation information, prepared by a competent person, is available to inform these assessments.”

Para.185 “Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:

a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life;

b) identify and protect tranquil areas which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason; and

c) limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.”

Para.219 “existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)”.

### **Planning Practice Guidance**

The Planning Practice Guidance (NPPG) is a web-based resource which brings together planning guidance on various topics into one place (launched in March 2014) and coincided with the cancelling of the majority of Government Circulars which had previously given guidance on many aspects of planning.

### **RELEVANT PLANNING HISTORY**

DC068779 - Demolition of existing dwelling and erection of two semi-detached three storey houses. Approved 3<sup>rd</sup> May 2018. Conditions imposed to secure details of materials, landscaping, means of enclosure, removal of PD rights in relation to extensions and roof extensions, obscure glazing to side facing bathroom windows, the provision of pedestrian visibility splays at the access, the reconstruction of the footway, restricting the erection of gates to the access, details of the drainage to the driveway and parking areas, the provision of cycle stores and the drainage of the wider site.

DC071687 – Minor Material Amendment to DC068779 to facilitate the retention of a cycle store/outbuilding in the rear garden of each dwelling (in a different position to that approved by DC068779). Approved January 2019

DC079238 – Discharge of conditions 2 (materials), 3 (landscaping), 5 (means of enclosure), 11 (drainage and surfacing of driveway and parking areas) and 13 (surface water drainage) of planning permission DC068779. Application returned to applicant undetermined 12<sup>th</sup> January 2021 on the grounds that as the parent

permission cannot be lawfully implemented, the LPA cannot discharge conditions imposed upon that permission.

### **NEIGHBOUR'S VIEWS**

The occupiers of 8 neighbouring properties were notified in writing of the receipt of this application. 3 letters have been received objecting on the following grounds:-

- The houses are much higher than originally drawn.
- The damp proof course has been installed at the wrong height which impacts on the path levels. This does not accord with the Building Regulations.
- Gutters and lintels have been installed incorrectly.
- The state of the site and fencing to the front boundary has been a disgrace which hasn't helped with the tolerance of the neighbours as this has also gone on for three and a half years.
- Based on the plans and the specifically the "street view" that was originally submitted I was surprised that the number of floors and the overall height of the building would be able to be achieved. It became clear after the building of the walls supporting the roof that building would not in any way resemble the view we were led to believe we would have from the front of our home. The building appears far too high by comparison to what was initially presented to us and all the main visual reference points between it and the buildings either side make it look completely out of proportion on the road. Had the street view that was initially presented to us been correct I would have objected immediately when the initial planning notice was sent to us.
- The buildings on either side appear to have been scaled disproportionately on the initial view presented to us giving us the impression that the new building would be far less obtrusive and fit into the view from my home much more sympathetically than it does. The house that is immediately to the right of the development from my perspective now looks ridiculously small by comparison and the house to the left does not appear much better (that may be because it is slightly up hill).
- While I did not initially object to the plans I feel the whole development was misrepresented to me from the outset and I feel that the property needs to be much lower to fit in with the surrounding buildings.
- The building even appears to have a higher ground level than the buildings either side when looking at it from my front bedroom window.

### **ANALYSIS**

As set out in the description of development at the start of this report, when planning permission is granted, development must take place in accordance with the permission, conditions attached to it, and with any associated legal agreements. New issues may however arise after planning permission has been granted, which require modification of the approved proposals.

Where these modifications are fundamental or substantial, a new planning application under S70 of the Town and Country Planning Act 1990 will need to be submitted. Where less substantial changes are proposed, an application seeking a minor material amendment under S73 of the Town and Country Planning Act 1990 can be submitted to vary or remove the conditions imposed on the original planning permission.

Permission granted under S73 takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or

amended conditions. The new permission sits alongside the original permission, which remains intact and unamended.

This current application seeks a variation of condition 1 of planning permission DC068779 to allow for the retention of the development in accordance with a revised drawing showing the relationship of that proposed with the neighbouring properties together with revised elevations and floor plans. These are not considered to be fundamental or substantial modifications to the planning permission already approved, that the application still seeks the erection of a pair of dwellings of the same form, design, position and width as that approved. As such it is appropriate that the revisions be considered under S73 of the Act.

As confirmed by S.38(6) of the Planning and Compulsory Purchase Act 2004, this application must be determined in accordance with the development plan (that being the UDP Review and Core Strategy) but in making a decision, consideration also needs to be given to national or local policies or other material considerations which may have changed significantly since the original grant of permission, as well as the changes sought. It is important to note that the consideration of the application relates to the development as a whole and not just the changes sought. This is especially relevant given that the site does not benefit from a planning permission capable of lawful implementation.

At the heart of the NPPF is a presumption in favour of sustainable development (para 10). Para 11 reconfirms this position and advises that for decision making this means:-

- approving developments that accord with an up to date development plan or
- where the policies which are most important for the determination of the application are out of date (this includes for applications involving the provision of housing, situations where the LPA cannot demonstrate a 5 year supply of housing), granting planning permission unless:
- the application of policies in the Framework that protect areas or assets of importance provides a clear reason for refusing planning permission or
- any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.

In this respect, given that the Council cannot demonstrate a 5 year deliverable supply of housing, the relevant elements of Core Strategy policies CS4 and H2 which seek to deliver housing supply are considered to be out of date. There are no assets or areas of importance material to the consideration of this application so that being the case, the tilted balance as referred to in para 11 of the NPPF directs that permission should be approved unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. This assessment is set out below.

#### Principles of Development

Policy CS2 of the Core Strategy seeks to ensure that a wide range of homes are provided to meet the needs of existing and future Stockport households. The focus will be on providing housing through the effective and efficient use of land within accessible urban areas.

In terms of housing need, the NPPF requires Local Planning Authorities to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement. The supply of specific deliverable sites should in addition, include a buffer of 20% where there has been significant under delivery of housing over the previous three years, to improve the prospect of achieving the planned supply. In response to this it should be noted that the Council is in a continued position of housing undersupply and only has a 2.6 year supply vs the 5 year supply plus 20% as required by the NPPF.

Having regard to this continued undersupply, not only is the titled balance in favour of residential development as set out in para 11 of the NPPF invoked but to help reduce pressure for development in the Green Belt, it is also important that the development potential of sites within accessible urban and suburban locations are explored.

Policy CS3 of the Core Strategy seeks to secure a mix of housing in terms of tenure, price, type and size to meet the requirements of new forming households, first time buyers, families with children, disabled people and older people. Developments in accessible suburban locations may be expected to provide the full range of houses however they should still achieve a density of 30dph.

That proposed in delivering family accommodation within an accessible suburban location accords with the position set out in policy CS3. The density of the development equates to only 18dph which is significantly below the minimum 30dph set out in policy CS3. Notwithstanding this, the consideration of density is not simply the application of a numerical figure and regard must also be paid to how the development reflects the character of the locality, impacts on residential amenity and provides for parking and safe access. In this instance it is also noted that the site is relatively narrow but is very deep (in excess of 60m) and this will influence the redevelopment potential of the site. Subject to a satisfactory assessment in relation to all other matters, the density of the development would not be considered unacceptable.

Policy CS4 of the Core Strategy directs new residential development towards the more accessible parts of the Borough identifying 3 spatial priority areas (Central Housing Area; Neighbourhood Priority Areas and the catchment areas of District and Large Local Centres; and other accessible locations). This policy confirms that the focus is on making effective use of land within accessible urban locations with the priority for development being previously developed land in urban areas.

The provision of 1 additional dwelling on this site over and above that which previously existed will not make a significant contribution to the undersupply of housing within the Borough however collectively applications of this nature do assist in addressing this shortfall. Being within the catchment distance of Bramhall District Centre), the proposal accords with policy CS4.

The principle of the residential redevelopment of this site therefore remains acceptable and in compliance with the above mentioned Core Strategy policies. The proposal also accords with para's 60 and 69 of the NPPF in terms of the use of a small site to boost the supply of homes as well as para 120 in terms of the development of underutilised land to meet identified needs for housing.

### Impact on the Character of the Area

Policy H1 of the Core Strategy confirms that development should be of a high quality and respond to the character of the area within which they are located. This is reinforced in Core Strategy policy CS8 which welcomes development that is designed and landscaped to a high standard and which makes a positive contribution to a sustainable, attractive, safe and accessible built and natural environment. Policy SIE-1 of the Core Strategy also confirms that development which is designed to the highest contemporary standard, paying high regard to the built/and or natural environment within which it is sited, will be given positive consideration. Specific regard should be paid to the use of materials appropriate to the location and the site's context in relation to surrounding buildings (particularly with regard to height, density and massing of buildings).

The NPPF at Chapter 12 sets out the Government's most up to date position on planning policy and confirms that the Government attaches great importance to the design of the built environment. The creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.

Planning decisions should ensure that developments function well and add to the overall quality of the area; are visually attractive as a result of good architecture, layout and appropriate and effective landscaping; 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); establish or maintain a strong sense of place, using spaces, building types and materials to create attractive, welcoming and distinctive places to live; optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development and create places that are safe, inclusive and accessible.

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-maker as a valid reason to object to development.

The Council's SPD Design of Residential Development acknowledges that In common with many other areas, Stockport has experienced pressure to redevelop existing properties by replacing the original houses with larger ones, dividing large plots into two or more smaller ones and redeveloping single/multiple dwelling plots for flats. The result of such redevelopments can have a 'cramming' effect on the immediate environment, eroding its character. The main areas of focus should therefore be the maintenance of a reasonable garden size, the maintenance of established spacing between dwellings and the maintenance of appropriate scale and massing. Consideration should also be given to the plot size in relation to the adjacent plots, respecting the frontage building line, rear garden size, space between the proposed development and its neighbours to each side as well as the scale and mass development which must respect that existing.



Dealing first with site levels, the Council is in receipt of complaints that compared to that previously existing, levels within the site have been increased with particular reference to 166 Ack Lane East. Certainly at present, whilst levels adjacent to the front boundary are generally the same in relation to 166 and 168 Ack Lane East, those further within the site rise above the driveway to 166 Ack Lane East such that at a position adjacent to the front of the houses there is a difference of 0.27m and increasing to circa 40cms adjacent to the garage of this neighbouring house. The applicant however is adamant that levels have not been increased across the site beyond those previously existing.

No topographical survey was submitted with DC068779. Whilst it is a useful drawing to include in an application, submission of such is not a validation requirement. Such a drawing would however confirm levels across an entire application site as existing prior to the commencement of development as well as usually some from outside. Notwithstanding that, the applicant has confirmed through their response to a Planning Contravention Notice and other documentation submitted with this application including photos and images from Google Street View taken before the development commenced that levels have not been increased. To support their complaints that levels have been increased, objectors have also submitted numerous photographs taken before, during and after the commencement of development.

Having considered the submissions from the applicant and objectors, the conclusion has been reached that it is not possible with any degree of accuracy to establish what the site levels were across the site prior to the commencement of the development nor how they correlated to those adjoining the site. The existence of a pre development topographical survey of the site would certainly have confirmed this but in the absence of such, it is not possible to corroborate the position asserted by the applicant or the objectors. For the Council to pursue this and maintain a position that levels have been increased and should be lowered, they would clearly have to evidence what such levels were pre development across the entire site (and thus what they should be returned to by way of an enforcement notice). In the absence of a topographical survey the Council cannot do this.

For these reasons Members are advised that objections relating to the raising of ground levels cannot be sustained. The main issue therefore is how the development impacts upon the character of the locality in terms of its size, siting and design. The consideration of this issue is largely subjective in that there is no technical guidance to inform development or judgement of it. Rather, it is for the decision maker to reach a judgement on this having regard to the prevailing character of development in the locality (its siting, spacing, height, width, scale and form together with materials of construction and landscaping) and how the development proposed reflects this established character.

In terms of the impact on the character of the area, the main consideration is of the development as viewed from the public realm in the street scene. As described earlier in this report, the character of the area is mixed, houses are typically detached however there are examples of semi-detached houses as well. Houses are generally 2 storeys high however there is evidence of accommodation at second floor level served by dormers and roof lights thus affording a higher form of development; single storey dwellings are also evident. There is also variety in terms of styles, materials and roof forms however projecting gables and bays to front elevations, hipped and pitched roofs and red brick, render and grey or red tiled roofs are common place. Houses are on the whole set back from the street behind

maturely landscaped front gardens that accommodate varying degrees of hard surfacing to facilitate off street parking. In contrast to this however there are instances where houses are positioned closer to the front boundary and in places are positioned almost on the back edge of the footway.

The images below show the development as constructed to date when viewed from the north, south and directly opposite. Attached to this report, along with the plans, are a variety of additional photographs that show the development as constructed in the context of the street scene. Whilst some of these photographs are embodied within this report, Members are invited to view these additional photographs alongside the plans in their consideration of this application.





The main front elevation is positioned approximately level with the front bay to 166 Ack Lane East, 0.6m forward of the front elevation of that neighbouring house. The bays to the front elevation of the development project a further 1m such that they are 1.6m forward of the main elevation of 166 Ack Lane East and 1m forward of the bay to that house. In relation to 170 Ack Lane East the main front elevation of the development projects 1.4m forward of that adjacent to the boundary but is 0.4m behind the remaining front elevation of this neighbouring house. The bays to the front elevation project a further 1m such that they are 2.4m forward of the front elevation of 170 Ack Lane East adjacent to the boundary and 0.7m forward of the remaining front elevation of this neighbouring house. This relationship is the same as that previously approved as is that relating to the siting of the development 1.09m from each side boundary. In this respect it is considered that the development as constructed causes no harm to the character of the street scene or wider locality noting that there are variations in the positioning of dwellings relative to the highway as well as that relative to side boundaries.

The front garden serving both dwellings will be landscaped with areas of hard surfacing kept to the minimum required to facilitate safe and practical access. Two parking spaces are proposed to either side of a centrally positioned driveway and pedestrian access into and around the houses. Four large planted beds are proposed, two to either side of the driveway and parking spaces, which will soften the appearance of the hard surfaced areas. No details of how the front garden will be enclosed are included in this application however this along with the materials of hard surfacing and planting could be secured by the imposition of a condition. Trees and hedging to front gardens are characteristic of development along Ack Lane East and form an integral part of the verdant character of the area. As such it is considered that any landscaping of the front garden, especially that between the parking spaces and front boundary, should include tree planting as well as hedging to the front boundary. Subject to the satisfactory resolution of these matters by way of a condition, it is considered that the siting of the development and treatment of the front garden would respect the character of the area.

The proposed houses are constructed in an off white render with projecting bays to the front elevation through ground and first floor level with gabled roofs



extending into the grey tiled roof space above. The roof over has a ridgeline parallel to the road with gable ends to either side elevation. To the front are small roof lights positioned just below the eaves. Although not yet installed, the proposed elevations show that canopies would be positioned over each front door. The architectural design of the development is considered reflective of the character of the area. Here features such as projecting bays to front elevations and the use of pitched roofs with gable ends are common place. Some houses have utilised the second floor roof space for accommodation and like that proposed, have roof lights and windows in the projecting gables to the front elevation together with small dormers to the rear. In terms of materials, most properties comprise a mix of brick and render, there are however some that are wholly rendered or comprise painted brickwork.

The consideration of impact on the character of the area however also extends to the scale of the development, including its height, width and massing, and how that impacts on the street scene and wider locality. There exists a variation in roof heights on Ack Lane East and certainly, as identified by the applicant, there are examples of houses (14 instances) that are not only higher than that constructed on this site but that also present a greater differential in height with their neighbours than that proposed by this application (that being 1.98m in relation to 166 Ack Lane East, 1.89m in relation to the higher ridge of 170 Ack Lane East and 2.3m higher than the lower ridge). The most notable example of this is evident in relationship of 78 Ack Lane East with the neighbouring properties where there is a differential in ridge height of 4.7m between 76 and 78 Ack Lane East and 5.6m between 78 and 80 Ack Lane East which is illustrated in the photograph below. It should be noted however that the difference in height evident at 76, 78 and 80 Ack Lane East is not commonly found on Ack Lane East and it is more typically the case that ridge heights are closer together. It is also noted that the construction of the higher dwelling, that at 78 Ack Lane East significantly predates the construction of those to either side to a time well before the advent of the current planning system. It, along with the other examples presented by the applicant, do however demonstrate that there is a variety to development on Ack Lane East in terms of the height of development.



In assessing this issue however, regard must not be had simply to the height of the development and its relationship with the neighbouring properties but its form and scale together with the degree of separation from the neighbouring properties to either side.

As is evident from the photographs within and attached to this report, from the south east, the development projecting slightly forward of 166 Ack Lane East is clearly visible as is the side elevation rising up into the apex of the roof as it projects above this neighbouring property. In longer range views however it is not considered that the property is unduly prominent noting the variety in roof heights and forms and the presence of development significantly closer to the road beyond it to the north west. In closer range views from the south east, the development obviously becomes more prominent as the field of vision reduces but still, it is not considered harmful having regard to its relationship with the wider street scene.

On viewing the development from a position directly opposite the site, the differential in height and scale between that constructed and that immediately adjacent is however most apparent. Here, the presence of the development in the street scene is exacerbated by not only by its height to eaves and ridge level but also on account of its width and the steeply pitching roofs to the front elevation rising to a point almost level with the main ridge. The development is nearly twice the width of the dwelling at 166 Ack Lane East and considerably wider than at 170 Ack Lane East and it is considered that this, together with its height and the vertical emphasis afforded by the projecting gables and gable end roof, results in a development that is of a scale out of keeping with that of the neighbouring properties. In this respect it is considered that the proposal is visually obtrusive and causes harm to the character of street scene.

It is accepted that in approving the proposed street scene forming part of DC068779, the development would also have been higher than the neighbouring properties (by 0.96m in relation to 166 Ack Lane East and 1.5m to 1.76m in relation to 170 Ack Lane East), however, as is evidenced by that street scene which is appended to this report, the differential height was significantly less than that which in reality is the case particularly in relation to the ridge height. Furthermore, the eaves line as shown on that approved street scene is more comparable to those of the neighbouring houses (being the same as that to 166 Ack Lane East and only 0.2m higher than that to 170 Ack Lane East). The depiction of 166 and 170 Ack Lane East as being higher and wider than they actually are on this approved street scene (particularly so in relation to 166 Ack Lane East) gave the impression that the proposed development would be in proportion to them, of a similar eaves level and not excessively higher. As such it was considered appropriate within the street scene on account of its scale. Given however that in reality those neighbouring houses are lower in height and smaller in scale, the relationship of the proposed development with that adjacent changes to the extent that it is not considered to be of similar height or scale.

Whilst the increase in eaves height to 166 Ack Lane East beyond that approved is only be 0.788m and 1.02m in relation to the ridge height and to 170 Ack Lane East is only 0.24m to eaves and 0.29m to 0.54m higher to ridge, it is considered that this increase results in a different impact to that presented by DC068779. For the reasons stated above it is therefore considered that the development when viewed in the immediate context of the neighbouring houses is of an excessive height and scale that causes harm to the street scene in this vantage point.

From the north west, the development is not considered prominent in the street scene. Here there is a slight bend in the road and the dwelling at 172 Ack Lane East

is positioned almost adjacent to the front boundary, significantly forward of the neighbouring properties. There is also screening afforded by a high hedge between 170 and 172 Ack Lane East as well as by a very large tree on the side boundary and smaller trees along the front boundary of 170 Ack Lane East. Closer to, the development is viewed against the backdrop of houses further down Ack Lane East which are positioned forward of 170, 168, 166 and 164 Ack Lane East and therefore does not intrude upon the street scene.

Having regard to the above, it is considered that whilst the development causes no harm to the street scene in views from the south east and north west, there is harm when viewed from directly opposite in comparison to the lower, smaller scale houses to either side. In this respect the proposal is considered contrary to policies H1, CS8 and SIE1 of the Core Strategy together with advice contained with the Council's SPD 'Design of Residential Development' and Chapter 12 of the NPPF.

It is however accepted that the development is not complete and that, in particular there is no landscaping of the front garden nor enclosure to the street. As such, the proposed development is currently more exposed within the street scene than other existing development or than is eventually intended and indeed expected. Whilst provision of landscaping will clearly not obscure the development it will, if carefully considered and designed, have a material impact upon the street scene in terms of softening and to an extent, screening the development. As mentioned above, front gardens to Ack Lane East are typically enclosed to the front boundaries by hedges and in many instances these are circa 1.5m high if not greater. Tree planting is also prevalent and this along with the hedging to front gardens affords a verdant character to the locality. If the front garden of the application were landscaped in a similar manner with a hedge to the front boundary of a similar height to those either side and with tree planting behind, 2 or 3 trees (depending on species) to either side of the driveway then the development will take on a different appearance and have a reduced impact upon the street scene especially when viewed from close range, opposite the site. This in turn will lessen the harm arising from the development to the street scene.

The impact of the development upon the character of the locality is however just one element of the assessment of the proposal and must be weighed against all other material considerations having regard to the tilted balance in favour of sustainable development enshrined within para 11 of the NPPF. This balanced judgement is set out in the conclusions below.

#### Impact on Residential Amenity

Policy SIE1 of the CS DPD confirms that specific account should be had to the provision, maintenance and enhancement (where suitable) of satisfactory levels of access, privacy and amenity for future, existing and neighbouring users and residents. Core Strategy policy H1 confirms that development should provide for good standards of amenity. The NPPF echoes this position confirming at para 130 that planning decisions should create spaces with a high level of amenity for existing and future users.

Guidance contained within the Council's SPD Design of Residential Development is also relevant to the consideration of this application. In this respect the SPD includes spaces standards to inform the siting of development relative to neighbouring properties and the size of gardens relative the size of the dwelling proposed.

To the south east of the site, the dwelling at 166 Ack Lane East is positioned off the boundary with the application site by 2.5m, some 5.5m from the side elevation of the development with the driveway to that house being in between. There are windows in the side elevation of this neighbouring house which appear to serve a habitable room at ground floor, staircase and bathroom at first floor. A conservatory extends across the entire rear elevation of this house. Positioned just beyond the rear of this neighbouring house is a detached garage on the boundary with the application site and beyond that a shed. The rear garden is separated from the application site by a hedge circa 3m high behind which is a 1.8m high close boarded fence.



The development projects approximately 4m beyond the rear elevation of 166 Ack Lane East and is set in further from the boundary than the main element facing Ack Lane East such that it is 2.2m off the side boundary. Clearly however when assessing the previous application, the height of the development relative to the neighbouring occupiers would have been judged having regard to the relationship as shown on the proposed street scene submitted with that application. Noting that this drawing has now been established to be incorrect and that in fact that development is of a greater height above the neighbouring properties than indicated on the street scene, the impact of the development when viewed from the rear is greater than that which was envisaged to be the case when determining that previous application.

As can be appreciated in the photograph above, when viewed from the rear garden of this neighbouring house, the development is clearly visible and is considered to have a greater presence than assessed in the determination of DC068779. Notwithstanding this, due to the presence of the garage and shed in this adjacent garden (which project circa 7.3m beyond the rear elevation of the development) its visual prominence is reduced to the extent that it is not considered to be unduly obtrusive or overbearing.

Being in a suburban location, a certain degree of mutual overlooking of rear gardens areas is characteristic of the area. A number of windows at upper level in the side and rear elevations are clearly visible from this adjacent garden. In the main body of the development, that which sits alongside the dwelling at 166 Ack Lane East, are a small ensuite window and a bedroom window. This bedroom is also served by a second window in the rear elevation, just visible above the garage. The ensuite window should be obscurely glazed and this can be controlled by condition. Noting the height and depth of the garage, any views from the bedroom windows will not give rise to an unacceptable overlooking of this adjacent garden. In the side elevation of the rear projection is a bathroom window, the glazing of which should be obscure and can be controlled by condition. Beyond that in the rear elevation of the rear projection at first and second floor level are further bedroom windows; a small dormer window is also present above in the main rear roof plane. Any overlooking from these windows will be directed down the rear garden of the application site and whilst they will afford oblique sideways views of the garden to 166 Ack Lane East as well, this is not considered out of keeping with the established character of the area.

To the north west of the site is 170 Ack Lane East. This property is positioned 2.4m off the boundary with the application site, 3.4m from the adjacent side elevation of the development. To the rear this property has a flat roofed single storey extension adjacent to the boundary with the application site and a flat roofed conservatory adjacent. The boundary to the rear garden is formed from a 1.8m high close boarded fence. The main, wider body of the development aligns with the rear of 170 Ack Lane and where the rear projection extends 6m beyond the rear extensions to this neighbouring house, it is positioned 2.2m from the boundary. As mentioned above in relation to the impact upon 166 Ack Lane East, when assessing the previous application, the height of the development relative to the neighbouring occupiers would have been judged having regard to the relationship as shown on the proposed street scene submitted with that application. Noting that this drawing has now been established to be incorrect and that in fact that development is of a greater height above the neighbouring properties than indicated on the street scene, the impact of the development when viewed from the rear is greater than that which was envisaged to be the case when determining that previous application.

As can be seen from the photographs below, the development is clearly visible from the rear garden of this neighbouring house and is considered to have a greater presence than that assessed in the determination of DC068779 due to the inaccuracies in the proposed street scene drawing submitted with that application. Whilst it is undoubtedly prominent in views from this neighbouring garden, that prominence is generally contained to the part of the garden immediately adjacent to the development itself, adjacent to the rear elevation of this neighbouring house. Noting that this adjacent rear garden extends for a depth of circa 45m, it is considered that the impact lessens when viewed from parts of the garden further away from the house. It is also considered that the rendering of the development in an off white colour and pitching of the roof to the rear projection away from the boundary assists in reducing the impact of the development from this rear garden such that it is not considered that an unacceptable impact has arisen in terms of visual amenity.



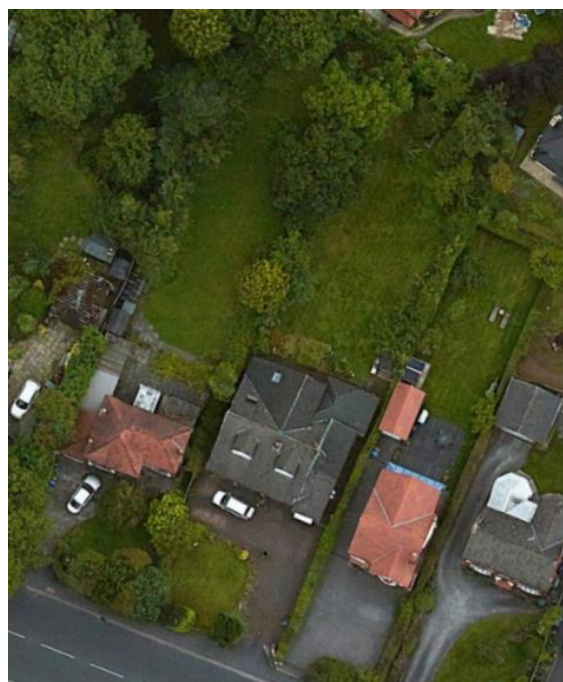


A number of windows at upper level in the side and rear elevations are clearly visible from this adjacent garden. In the main body of the development, that which sits alongside the dwelling at 170 Ack Lane East, are a small ensuite window and a bedroom window. This bedroom is also served by a second window in the rear elevation. The ensuite window should be obscurely glazed and this can be controlled by condition. In previously granting permission for the development on this site, no condition was imposed requiring the side facing bedroom window to be obscurely glazed. At that time it was envisaged that this

bedroom window would face the blank side elevation of 170 Ack Lane East and as such it was considered that an unacceptable impact in relation to overlooking would not arise. That however is clearly not the case and the position of this window is such that it affords views directly towards and across the rear garden of 170 Ack Lane East. This, it is considered, will result in an unacceptable overlooking of this rear garden area and as such it is considered that this side facing bedroom window should be obscurely glazed. Noting that this room is also served by another window in the rear elevation, the obscure glazing of it will not have an unacceptable impact on the use or amenity afforded from its use. This can be secured by condition.

Beyond that in the rear elevation of the rear projection at first and second floor level are further bedroom windows; a small dormer window is also present in the main rear roof plane above. Any overlooking from these windows will be directed down the rear garden of the application site and whilst they will afford oblique sideways views of the garden to 170 Ack Lane East as well, this is not considered out of keeping with the established character of the area.

Material also to the consideration of residential amenity is the impact that the previously existing development had on the amenities of the neighbouring occupiers. It is accepted that this now carries little weight given that it is long since demolished and replaced with that which this application seeks to retain, however, it offers an insight as to the acceptability of the development in the consideration of that consented development. As can be seen from the aerial image below, the previously existing dwelling occupied a large footprint extending beyond the rear elevations of both neighbouring properties. The outline of this is also shown on the proposed site plan submitted with this current application. The consented development and that which this application seeks to retain whilst projecting beyond the rear of both neighbouring properties does not do so to the same extent as that previously existing nor, where it projects beyond the rear elevations of the neighbouring properties, does it occupy the full width of the site, as that previously existing did. It is of course acknowledged that the consented and proposed development is considerably higher than that which previously existed however it is important to note the consideration of this particularly in relation to the consideration of the consented development.



Opposite the application site are residential properties whose front elevations directly face the application site. For a 3 storey development the Council's SPD requires a separation of 24m across the street between front elevations. That existing, like that already approved, at circa 41m significantly exceeds this requirement. As such it can be concluded that there will not be unacceptable levels of overlooking or loss of privacy arising. In terms of visual amenity, whilst it is considered that there is some harm to the street scene as set out above in relation to the impact of the development upon the character of the area, it does not follow that the residential amenities of these neighbours opposite the site are unacceptably harmed as well. Clearly the development is visible from these properties as is its height and scale in relation to the neighbouring properties but this does not result in the development being overbearing to the extent that the amenities afforded by the occupiers of these properties are harmed. Furthermore, the landscaping of the site as suggested in the report above will soften the appearance of the development thus ensuring that the amenities of these neighbouring occupiers are not unacceptably harmed.

The consideration of amenity also extends to that of the future occupiers of the development. In this respect the Council's SPD requires that for dwellings or 4 or more bedrooms, a minimum of 100m<sup>2</sup> of private amenity space is provided. That proposed to the rear of each dwelling totals in the region of 280m<sup>2</sup> for each dwelling and thus not only reflects the character of development in the locality but also significantly exceeds that required by the SPD.

For the above reasons it is considered that the development complies with Core Strategy policies H1 and SIE1 together with para 130 of the NPPF and advice contained within the Council's SPD 'Design of Residential Development.'

#### Parking and Highway Safety

Core Strategy policies CS9, T1, T2 and T3 all seek to ensure that development is in accessible locations and those which reduce the need to travel by car will be supported. Development should provide parking (car and cycle) in accordance with the Council's standards. Development should be of a safe and practical design with safe and well designed access arrangements, internal layouts and parking.

The NPPF at Chapter 9 confirms that in considering applications it should be ensured that appropriate opportunities to promote sustainable transport modes can be or have been taken up given the type of development and its location. Applications for development should be designed to enable charging of plug-in and other ultra-low emission vehicles in safe, accessible and convenient locations. Safe and suitable access to the site should be achieved for all users. Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

As with the approved development, that proposed is considered acceptable in highway terms. The site is within an accessible location being within the catchment area of Bramhall District Centre which assists in reducing the need to travel by car. Cycle parking is provided within a rear garden store and parking in accordance with the Council's maximum standards is proposed to the front garden. To ensure that the development promotes sustainable transport choices and to reflect para 112 of the NPPF, details of electric vehicle charging points can be secured by condition.

The application proposes an access and layout to the forecourt that is safe and practical to use. Subject to the imposition of conditions to secure details of the drainage and surfacing of the forecourt together with the retention of appropriate sightlines to the access, there will be no harm to highway safety.

For the above reasons the proposals accord with Core Strategy policies CS9, T1, T2 and T3 together with Chapter 9 of the NPPF and advice contained within the Council's SPD 'Transport in Residential Areas'.

#### Other Matters

The application site is not identified on the UDP Proposals Map as being in an area liable to flood and the Environment Agency identify the site as being within Flood Zone 1. Having regard to the size of the site and scale of the proposed development there is no requirement for the application to be accompanied by a Flood Risk Assessment. Notwithstanding this, policy SD6 requires all development to be designed in such a way as to avoid, mitigate or reduce the impacts of climate change. In this respect development is required to incorporate sustainable drainage systems so as to manage run off water from the site. To secure compliance with this policy position a condition can be imposed to ensure that the development is not occupied until a surface water drainage scheme has been installed in accordance with details that have been submitted and approved by the Planning Authority. This requirement remains the case regardless of the fact that the development including the drainage, has largely been constructed.

Noting also that site levels are in places raised above those of the neighbouring property, details of how the soft landscaped beds and paving to the front garden areas together with the pathways down the side of the houses will be enclosed and constructed can be secured by condition. This along with the drainage details secured by condition should ensure that there are no issues with regard to run off into neighbouring property.

Objections have been made that the development does not comply with Building Regulations in relation to the position of the damp proof course. Members are reminded that compliance with the Building Regulations is not a material consideration and cannot be taken into account in the determination of this planning application. Noting however that the position of the damp proof course has implications for external levels within the site, Members are advised that Building Control Officers have confirmed that hard surfaced areas must finish a minimum of two brick courses (150mm) below the damp proof course with the exception of the door thresholds to the front and rear of the which will be level with an Aco drain (which will ensure that surface water run-off is picked up). The applicant advises that the development has been constructed in accordance with this guidance and indeed the Building Control Officer has confirmed that the proposal is compliant with the Regulations in this respect.

Policy SD3 requires development to demonstrate how it will assist in reducing carbon emissions through its construction and occupation through the submission and approval of an energy statement. Compliance with this policy can be secured by way of condition to secure the submission and approval of an energy statement demonstrating what measures have been employed to reduce carbon emissions arising from the construction and occupation of the development. On this basis the proposal is compliant with policy SD3.

As mentioned earlier in this report, S.38(6) of the Planning and Compulsory Purchase Act 2004 confirms that this application must be determined in

accordance with the development plan (that being the UDP Review and Core Strategy) but in making a decision, consideration also needs to be given to national or local policies or other material considerations which may have changed significantly since the original grant of permission, as well as the changes sought. As advised previously it is important to note that the consideration of the application relates to the development as a whole and not just the changes sought. This is especially relevant given that the site does not benefit from a planning permission capable of lawful implementation.

When planning application DC068779 was considered and approved, the national planning practice guidance (NPPG) in place at that time was such that the Authority was not able to secure by way of S106 agreements, tariff style payments in relation of open space provision, as required by saved UDP Review policies L1.1 and L1.3 together with SIE3 of the Core Strategy on developments of 10 or less dwellings. As such the proposal was not required to make a contribution in this respect. Since the consideration of that application the NPPG has however changed such that the Authority is now able to secure such contributions.

In this respect saved UDP Review policies L1.1 and L1.2 together with policy SIE2 of the Core Strategy confirm that there is an under provision of children's play facilities and formal sports provision relative to the resident population of the Borough. All residential development is therefore expected to make a contribution to the provision and/or enhancement of such facilities in accordance with a formula set out the supporting SPD 'Open Space Provision and Commuted Sum Payments'.

For a development of the small scale proposed, this contribution is by way of a commuted sum payment secured by a S106 attached to the grant of planning permission. Based on the accommodation proposed and discounting that which previously existed, this sum would equate to £7480. In accordance with the SPD that secured in relation to children's play would be invested at the Thorn Grove play area; that in relation to formal recreation would be allocated to the Council's Formal Sport Priority List to be spent at a facility within the Borough as identified by Cabinet Members. Subject to a S106 agreement the proposal would accord with UDP Review policies L1.1 and L1.2 together with Core Strategy policy SIE2 and the Council's SPD.

Core Strategy policy CS8 confirms that development will be expected to make a positive contribution to the protection and enhancement of the Borough's natural environment and biodiversity. This is reiterated in policy SIE3 which confirms that planning applications should provide alternative habitats to sustain at least the current level of population. Para 174 of the NPPF confirms that decisions should contribute to and enhance the natural and local environment by minimising impacts on and providing net gains for biodiversity. Compliance with this policy position can be secured by condition requiring the placing of bat and bird boxes in locations on the building or other locations, if suitable, within the site.

In response to objections not addressed in the report above Members are advised accordingly:

The installation of gutters and lintels is not a matter for the planning system to regulate in that there are no planning requirements as to how they should be installed. This matter is therefore more relevant to the Building Regulations.



It is agreed that the state of the site and fencing to the front boundary is poor however given that it has been an active construction site for several years, this is not unexpected. Obviously when complete the site will be tidied up and landscaped and this will include the enclosure of the front boundary.

### Conclusions

Members are referred back to the presumption in favour of sustainable development set out in para 10 of the NPPF. Given that there is a continued undersupply of housing within the Borough such that there is not a 5 year deliverable supply as required by the NPPF, it must be concluded that there are elements of policies CS4 and H2 (the primary policies securing the delivery of housing within Stockport) that are out of date. That being the case the NPPF directs in para 11 that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.

The phrase 'significantly and demonstrably' is crucial in coming to a view on this tilted balance. The fact that a proposal causes harm does not by default mean that permission should be refused. Rather, it has to be demonstrated that any harm arising from the proposal is so great that it 'significantly and demonstrably' outweighs all the benefits when assessed against the Framework (that being the NPPF) as a whole. In coming to a position on this tilted balance the following should be taken into consideration in favour of the proposal:

The redevelopment of this site for residential purposes accords with para's 60, 62 and 69 of the NPPF that seek to deliver a sufficient supply of homes and support the redevelopment of small sites and windfall sites such as this in meeting the housing requirement of an area. The proposal also accords with para's 119, 120 and 124 of the NPPF which confirm that decisions should promote an effective use of land in meeting the need for homes; support the development of underutilised land especially if this would help meet identified needs for housing where land supply is constrained; and support development that makes efficient use of land taking into account the identified need for different types of housing and the availability of land suitable for accommodating it. The proposal also accords with Core Strategy policies CS2, CS4 and H2 in terms of housing supply. Whilst the provision of an additional dwelling on this site will have a negligible impact upon the undersupply of housing, collectively applications of this nature assist.

The proposal in terms of its impact upon views from the south east and north west of the site is considered to cause no harm to the character of the street scene nor wider locality. In this respect the proposal accords with para's 119, 120 and 124 of the NPPF which promote the effective use of land whilst safeguarding the environment together with para's 124, 126 and 130 which seek to achieve well designed places that are sympathetic to local character and the surrounding built environment. The proposal would also accord with Core Strategy policies H1, CS8 and SIE1 and advice contained within the Council's SPD 'Design of Residential Development' which seek to ensure that development safeguards the character of the area within which it is located.

The redevelopment of the site is considered to safeguard the amenities of the neighbouring occupiers and provide the future occupiers of the site with an acceptable level of amenity. The proposal therefore complies with para 130 of the NPPF which confirms that developments should seek a high standard of amenity for existing and future users. The proposal would also accord with Core

Strategy policies H1 and SIE1 and advice contained in the Council's SPD 'Design of Residential Development' which seek to secure good standards of amenity for existing and future residents.

It is considered that the development delivers access and parking that is safe and practical for all users and will promote the use of sustainable transport modes through the provision of cycle parking and electric vehicle charging points in accordance with para's 104 and 110 of the NPPF. The development through the level of parking provision and its layout also accords with Core Strategy policies CS9, T1, T2 and T3 together with advice contained within the Council's SPD 'Transport in Residential Areas'.

Subject to the imposition of conditions, it is considered that the effective landscaping of the site can be secured together with net gains to biodiversity. In this respect the proposal is compliant with para's 126, 130, 131 and 174 of the NPPF which seeks to achieve well designed places and conserve/enhance the natural environment.

Subject to the imposition of a condition requiring the submission of an energy statement outlining the measures incorporated in the development to reduce carbon emissions, the proposal will accord with para 154 of the NPPF and policy SD3 of the Core Strategy.

Subject to the imposition of conditions, the effective drainage of the site can be secured in accordance with para 167 of the NPPF and policy SD6 of the Core Strategy DPD.

Weighing against the proposed development is the harm that is considered to arise in relation to the differential in height and scale between that constructed and that immediately adjacent. As set out in the report above, it is considered that the visual prominence of the development arising from the height to eaves and ridge level in relation to the neighbouring occupiers is exacerbated by its width and the steeply pitching roofs to the front elevation rising to a point almost level with the main ridge. Compared with the smaller scale of the development to either side, it is considered that when viewed from opposite the site the proposal is visually obtrusive and causes harm to the character of street scene. In this respect the proposal fails to accord with para's 119, 126 and 130 of the NPPF which confirm that development should safeguard the environment, create high quality buildings and places, be sympathetic to local character, create better places to live and add to the overall quality of an area. The proposal in this respect is also contrary to Core Strategy policies H1, CS8 and SIE1 together with advice contained within the Council's SPD 'Design of Residential Development'.

In considering this harm, it is accepted that to an extent it will be mitigated by the landscaping of the site which can be secured by condition in the event that this application is approved. Irrespective of this, it is still considered that there will be a degree of harm. In accordance with para 11 of the NPPF this harm has to be weighed against all the benefits arising from the development and permission should only be refused if that harm 'significantly and demonstrably' outweighs the benefits.

The submission of this application together with the raft of supporting information, which was not available to the Authority in the immediate period after the receipt of complaints, has enabled the full and accurate consideration of the development constructed in terms of its variation from that approved and impact.

Having regard to the additional information submitted some of the concerns regarding the acceptability and impact of the proposals previously expressed by the Local Planning Authority have been addressed. Whilst it is concluded that there is harm arising from the development, that harm is, in the opinion of Officers, limited to one view only, that being opposite the site where the height and scale of the development in relation to the neighbouring properties is most evident. When weighed against all the other benefits, it is not considered that the harm caused in this respect significantly and demonstrably outweighs the benefits.

To refuse this application would lead to an enforcement notice being served to demolish the entire development. Comprising a single building there are no other alternative enforcement routes that would be available to the Council noting also that there is no alternative consented development capable of lawful implementation.

The NPPG confirms that 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. In considering any enforcement action, the local planning authority should have regard to the National Planning Policy Framework, in particular paragraph 59. This confirms that effective enforcement is important to maintain 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.

Having regard to the application of the tilted balance, which Members are reminded is crucial to the determination of this application, and the conclusion that whilst there is some harm arising from the proposed development, it does not significantly and demonstrably outweigh the benefits, it is considered that the refusal of planning permission and commencement of enforcement proceedings would be disproportionate to the harm that has arisen from the construction of the development. In accordance with para 11 of the NPPF it is therefore recommended that planning permission be approved subject to conditions as set out in this report together with others considered reasonable and necessary (such as those previously imposed on the grant of DC068779), and subject to a S106 agreement to secure compliance with saved policies L1.1 and L1.2 of the UDP Review and SIE2 of the Core Strategy in relation to formal recreation and children's play.

**RECOMMENDATION** GRANT SUBJECT TO CONDITIONS AND S106 AGREEMENT