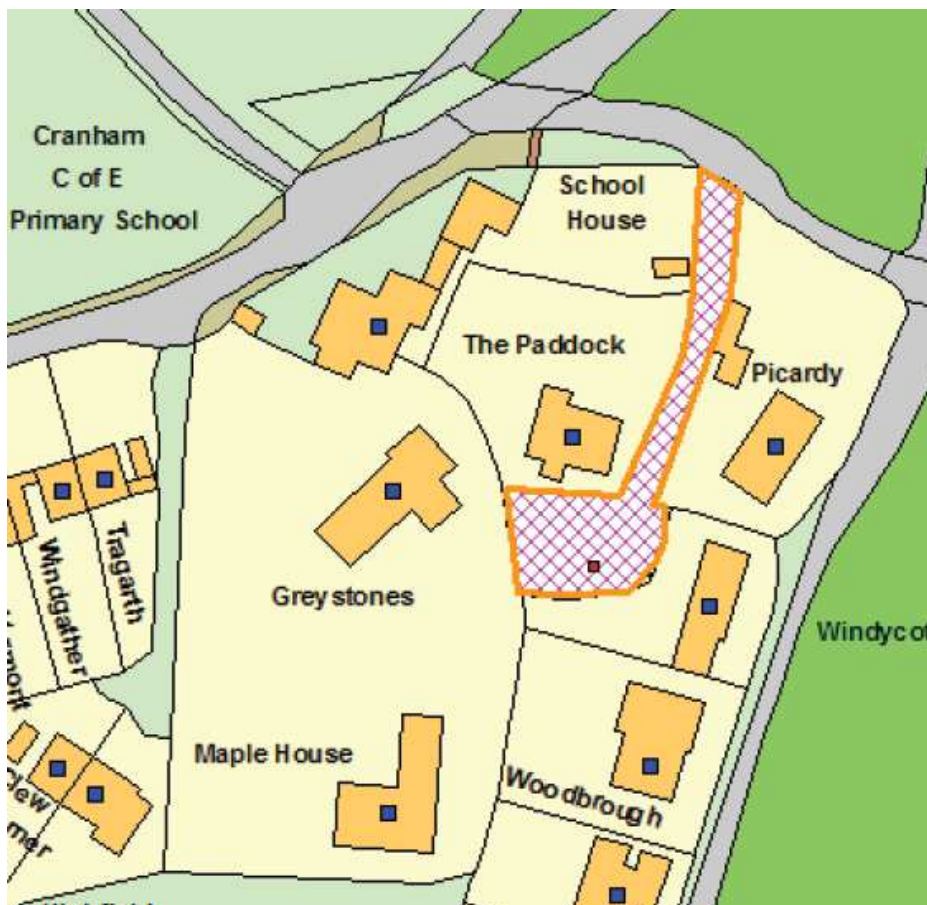




Development Control Committee Schedule

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| Item No: | 03 |
| Application No. | Enforcement Report |
| Site Address | New building still under construction called Cherry Tree House, Cranham, |
| Town/Parish | Cranham Parish Council |
| Grid Reference | 389370,212489 |
| Proposal | To inform Members of a breach of planning control that is occurring on the site. |
| Recommendation | <p>1. That it is expedient to take Enforcement Action for the reasons outlined in this report and by virtue of adopted Local Plan Policies CP14(7) and ES3 (1) and the NPPF paragraph 58.</p> <p>If an Enforcement Notice is served, then the site will be monitored to ensure compliance.</p> |
| Call in Request | Director of Development Services |





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| Constraints | Area of Outstanding Natural Beauty Settlement Boundaries (LP) Site of Special Scientific Interest |
| | OFFICER'S REPORT |

DESCRIPTION OF SITE

This is a new development site that was given planning permission in 2015 for a one and a half story building. The site is a garden plot which is enclosed by Maple House, Greystones, The Paddock, Picardy and Windycot. The site is within the settlement boundary located at the north eastern end of Cranham. Access to the site is by way of a shared drive which is wholly within the grounds of the house called The Paddock. The property lies within the Cotswold Area of Outstanding Natural Beauty (AONB).

This matter is brought before the committee as the recommendation, if accepted, would result in the **demolition of the property** which has not been built in accordance with the approved plans.

PLANNING HISTORY

Permission was granted on the 6th July 2015 for:

“Proposed three bedroom chalet bungalow (resubmission after refusal S.14/2115/FUL)”

The application was subject to planning conditions including:

1. 3 years implementation
2. Construction hours
3. Control of dust scheme
4. Permitted Development Rights removal
5. Approved plans list

ENFORCEMENT ISSUE

This site was brought to the Enforcement Officers notice in June/July 2017 as a result several complaints from residents regarding the location of the building within the plot and the building not being built in accordance with the approved plans, specifically the height. Enforcement Officers visited the site and found that the building as been built was in the wrong location within the site. They also found that the roof was too high and constructed differently to the approved plans. A revised planning application was requested.

The Planning Agent submitted a minor amendment application (S.17/1345/MINAM) to change the roof height and the fenestration. This was refused on 19 July 2017 for the following reason:



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“The proposed changes are considered to materially affect the scheme as approved under reference S.15/0917/FUL and as such cannot be considered as a non-material amendment to that application.”

As a result of further complaints stating that work was continuing on site, a visit on 26 September 2017 by the Enforcement Officer found that the building was still not being built in accordance with the approved plans and as such was an entirely unauthorised building which is not covered by the extant planning permission.

Correspondence was sent to the owner’s planning agent inviting him to submit a full revised application for the current changes and giving him 28 days to undertake this. By the 26 October 2017 no application had been received. A letter and email was sent to the planning agent explaining again that this site required a fully revised application for the reasons mentioned previously. Correspondence was also sent to the owners of the property on 8 November 2017 pointing out the problems that have arisen and that this needed to be addressed by the end of November 2017. It was suggested to them that all the building works stop until permission had been approved, or otherwise, and that to continue work on the development they did so at their own risk.

On 28 November a planning application was submitted (S.17/2695/VAR) to vary Condition 5 from the original permission in 2015, to amend the design of the 2015 permission. Condition 5 of the approved planning permission states; ***“the development hereby permitted shall be carried out in all respects in strict accordance with the approved plans listed below”***. This referred to proposed plans and elevations of 15 April 2015, plan number 14.766.05. This was withdrawn on 1 February 2018.

A further application was submitted (S.18/1093/VAR) on 16 May 2018 by a new planning agent employed by the owners to again vary Condition 5 of the 2015 permission (S.15/0917/FUL). This application was refused on 3 July 2018 for the following reason:

“The built out dwelling by virtue of its increased height and position within close proximity to the adjacent neighbouring property known as The Paddocks, results in an unacceptable overbearing impact, thereby causing a detrimental impact on the amenities enjoyed by neighbouring residents, contrary to Policies CP14 (7) and ES3 (1) of the adopted Stroud District Local Plan, November 2015 and NPPF paragraph 123.”

ENFORCEMENT LEGISLATION

A breach of planning control is defined in section 171A of the Town and Country Planning Act 1990 as:

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

Any contravention of the limitations on, or conditions belonging to, permitted development rights, under the Town and Country Planning (General Permitted Development) (England)



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Order 2015, constitutes a breach of planning control against which enforcement action may be taken.

Part VII of the Town and Country Planning Act 1990 is the primary legislation for dealing with enforcement matters.

Section 172 relates to the power to issue an enforcement notice.

Section 173 relates to the contents of an enforcement notice.

Paragraph (2) of Section 173 requires an enforcement notice to specify any steps the LPA require to be taken in order to remedy any breach.

Paragraph (3) of Section 173 defines the steps to be taken in order to remedy the breach;

- (a) the option of restoring the land to its condition before the development took place; or
- (b) securing compliance with the conditions or limitations subject to which planning permission was granted, including:
 - I. The demolition or alteration of any building or works;
 - II. The discontinuance of any use of land; and
 - III. The carrying out on land of any building or other operations.

NATIONAL AND LOCAL PLANNING POLICIES

National Planning Policy Framework.

Available to view

at:<http://www.communities.gov.uk/documents/planningandbuilding/pdf/2116950.pdf>

Paragraph 58 states 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. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.”

Stroud District Local Plan.

Policies together with the preamble text and associated supplementary planning documents are available to view on the Councils website:

https://www.stroud.gov.uk/media/1455/stroud-district-local-plan_november-2015_low-res_for-web.pdf

Local Plan policies considered for this application include:

CP14 – High quality sustainable development.

HC1 – Meeting small-scale housing need within defined settlements.

ES3 – Maintaining quality of life within our environmental limits.



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ES7 – Landscape character.

The most recent refused application (S.18/1093/VAR) which sought to regularise the as built amendments, as noted above, considered the proposal to be contrary to Local Plan Policies CP14(7) and ES3(1).

PROPOSED ACTION AND EXPEDIENCY

Under the latest refused application (S.18/1093/VAR), the Case Officer considered the impact of the proposed (as-built) dwelling in terms of its design, appearance and impact on the area. The Officer stated that:

“The original scheme granted permission for a dwelling measuring approximately 5.9m to ridge and approximately 3m to eaves at a datum point of 202.400. Planning permission was granted for the scheme on the basis that the dwelling would sit lower than most of the properties around it and the footprint was smaller than the refused scheme under reference S.14/2115/FUL. In addition, it was also concluded that the scheme would not result in material harm to the residential amenities enjoyed by adjacent occupiers.

The built out property measures approximately 6.5m to ridge and approximately 3.9m to eaves at a datum point of 202.700. As such, the floor level of the property has been raised by approximately 300mm, the eaves of the building by approximately 900mm and the overall height by approximately 600mm. The built out scheme now results in the building being much taller than that of the adjacent neighbouring property known as 'The Paddocks.' A hipped roof has been constructed at an attempt to protect the neighbouring property to the east. This alteration has resulted in the plane of the roof slope being approximately 850mm further away from the neighbouring property. The agents justification for the alterations was due to concern over undermining adjacent house structures. No evidence regarding this matter has been provided.

The alterations to the building results in the wall to roof ratio being at odds and the building appearing out of proportion. The built out dwelling has a greater emphasis on the walling which results in the building appearing ill-proportioned and stretched. Where as, the previously approved scheme is a well proportioned dwelling with the wall and roof ratio totalling approximately half.”

This property is nearing completion. The Enforcement Officer informed the agent/owners numerous times to stop all building work on the site but the development has continued. This property has been subject to several failed applications for the clear reasons mentioned above. Officers have confirmed from site visits that the building has been built in the wrong location and its appearance does not conform to the original approved plans. Accordingly, the only resolution available to Officers is to request total demolition of the unauthorised dwelling.

Paragraph 58 of the National Planning Policy Framework states that Local Planning Authorities should act proportionately in responding to suspected breaches of planning control. Enforcement action is discretionary, however on this occasion it is considered that



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the alleged breach of an unauthorised dwelling is worthy of action due to the detrimental impact on neighbouring amenities by virtue of the overbearing impact of the dwelling.

The as-built dwelling is unauthorised; no less than substantial alterations would make it acceptable in planning terms. Due to the harm caused to neighbours amenity by virtue of the overbearing nature and proximity of the building, the development is contrary to the requirements of Stroud District Local Plan Policies CP14(7) and ES3(1).

Officers consider that it would be expedient to progress enforcement action for the demolition of the existing structure under Paragraph (3) of Sections 172 and 173 of Part VII of the Town and Country Planning Act 1990.

Accordingly authorisation is sought from Members for Officers to progress enforcement action for the total demolition of the existing building.

RECOMMENDATION

Officers request delegated authority to serve an enforcement notice for the total demolition of the unauthorised building for the reasons as outlined above.

A breach of condition notice will be served requiring a 6 month compliance period.

HUMAN RIGHTS

In compiling this recommendation we have given full consideration to all aspects of the Human Rights Act 1998 in relation to the applicant and/or the occupiers of any neighbouring or affected properties. In particular regard has been had to Article 8 of the ECHR (Right to Respect for private and family life) and the requirement to ensure that any interference with the right in this Article is both permissible and proportionate. On analysing the issues raised by the application no particular matters, other than those referred to in this report, warranted any different action to that recommended.