

AGENDA ITEM NO: 9/3(a)

Parish:	Brancaster	
Proposal:	VARIATION of condition 2 and REMOVAL of condition 7 attached to planning permission 24/01167/F: Extensions, alterations & remodelling of dwelling and proposed outbuilding.	
Location:	3 Saw Mill Road Brancaster King's Lynn Norfolk PE31 8AJ	
Applicant:	N Barley	
Case No:	25/00865/F (Full Application)	
Case Officer:	Mrs Jade Calton	Date for Determination: 17 July 2025

Reason for Referral to Planning Committee – Called in by Councillor de Winton

Neighbourhood Plan: Yes

Case Summary

The application site relates to a detached bungalow; No.3 Saw Mill, Brancaster.

The application seeks consent for variation of condition 2 (approved plans) and removal of condition 7 (foundation design and construction methodology) through s73 of the TCP Act in relation to planning permission 24/01167/F for 'extensions, alterations & remodelling of dwelling and proposed outbuilding'.

Brancaster is classified as a Key Rural Service Centre within the Settlement Hierarchy of the Core Strategy and Tier 4 (Key Rural Service Centre) under the new Local Plan.

Key Issues

Principle of Development

History

Form and Character and Impact on the Character and Appearance of the Conservation Area

Neighbour Amenities

Highway Safety

Arboricultural Impacts

Other Material Considerations

Recommendation

APPROVE

THE APPLICATION

The application site relates to a detached bungalow; No.3 Saw Mill, Brancaster.

Members may recall that a previous application (24/01167/F) was determined by the Planning Committee on the 7th April of this year where it was resolved to approve the extensions and alterations to the dwelling.

The current application seeks to vary condition 2 (approved plans) and removal of condition 7 (foundation design and construction methodology) through s73 of the TCP Act in relation to the previously approved planning permission (24/01167/F - 'extensions, alterations & remodelling of dwelling and proposed outbuilding').

The proposed changes to condition 2 include: -

- Removal of the attached garage.
- Amendment to the demolition plan to include removing additional walls.
- Amendments to the form and design of the detached summer house.

The reason for revising the demolition plan is due to the fact that four small sections of wall (two within the front elevation and two within the rear elevation) were demolished on site that were originally shown to be retained. The two full side walls have been retained as originally shown.

Condition 7 - The removal of condition 7 is sought as this relates to the foundation design of the previously approved garage, which they are seeking to omit from the scheme.

SUPPORTING CASE

There is no supporting case accompanying the application.

PLANNING HISTORY

24/01167/F: PERMITTED (Committee) 07/04/25 - Extensions, alterations & remodelling of dwelling and proposed outbuilding at 3 Saw Mill Road, Brancaster.

RESPONSE TO CONSULTATION

Parish Council: REMOVAL OF CONDITION 2 INCREASES THE OVERDEVELOPMENT OF THE PLOT.

Conservation Team: NO OBJECTION

Arboricultural Officer: NO OBJECTION to the removal of condition 7.

REPRESENTATIONS

ONE letter of **OBJECTION** received from a Third Party raising the following concerns: -

- Section 73a provides a mechanism for regulating unauthorised works.
- The Surveyor advised that the existing foundations were only 4" deep.

- Despite this, the owner still proceeded to attempt to build a two storey house with the existing foundations.
- The builder then demolished the northern and southern walls, in breach of condition 2.
- Requests that committee members / planning officers carefully look at the demolition plan dated 2025 where it clearly shows the areas of the northern and southern walls to be retained.
- A full application was requested by Planning Enforcement.
- Does not agree that the breach of condition can be regularised through a section 73A.
- The original dwelling was timber framed which is not capable of supporting two storeys.
- The eastern and western elevations are being propped up timber stanchion.

KING'S LYNN AND WEST NORFOLK LOCAL PLAN 2021-2040

LP13 - Transportation (Strategic Policy)

LP14 - Parking Provision in New Development

LP18 - Design & Sustainable Development (Strategic Policy)

LP19 - Environmental Assets - Green Infrastructure, Landscape Character, Biodiversity and Geodiversity (Strategic Policy)

LP20 - Environmental Assets- Historic Environment (Strategic Policy)

LP21 - Environment, Design and Amenity (Strategic Policy)

NEIGHBOURHOOD PLAN POLICIES

Policy 1 - Appropriate Housing

Policy 2 - Design, Style and Materials

Policy 3 - Footprint for New and Redeveloped Dwellings

Policy 4 - Parking Provision

Policy 5 - Replacement and Extended Dwellings

Policy 8 - Protection of Heritage Assets and Views

Policy 10: Protection and Enhancement of the Natural Environment and Landscape

NATIONAL GUIDANCE

National Planning Policy Framework (NPPF)

Planning Practice Guidance (PPG)

National Design Guide 2021

PLANNING CONSIDERATIONS

The main considerations in the determination of this application are:

- Principle of Development
- History
- Form and Character and Impact on the Character and Appearance of the Conservation Area
- Neighbour Amenity
- Highway Safety
- Arboricultural Impacts
- Other Material Considerations

Principle of Development:

The principle of the development; extensions, alterations and remodelling of the existing dwelling and construction of a summer house has been established through the granting of planning permission 24/01167/F, which is extant.

This application relates to S73A of the Town and Country Planning Act 1990, which allows for retrospective planning application to be made for development carried out without planning permission or in breach of its conditions.

As such, the only matters for consideration under this application are the changes proposed, which includes the removal of the attached garage, and subsequent removal of associated condition 7; amendment to the demolition plan to include the demolition of additional sections of wall; and amendments to the design of the summer house.

History:

The 2024 application was supported by a demolition plan which demonstrated that the majority of the existing external walls of the dwelling would be retained which allowed the application to be validated as householder development - extensions and alterations.

During the commencement of works on site, it became apparent that two small sections of wall to the front elevation and two small sections to the rear which were punctured with fenestration could not be retained and were therefore also demolished. Two full external walls to the east and west elevations have been retained.

As the demolition plan formed part of the approved plans condition, the Applicant was therefore in breach of that condition. A legal opinion was sought to establish whether or not the breach would result in the need to submit a fresh new full application for a replacement dwelling as opposed to extension and alterations.

It was advised that the LPA proceeds with this matter by way of a Section 73A Application to vary the approved / demolition Plans. This judgement had been made on a fact and degree basis taking into account the specific circumstances of this case i.e. the level of demolition involved (with two full walls and foundations retained), the fact that a demolition plan was conditioned within the original consent relevant Case Law and appeal decisions.

For clarity, whilst demolition of walls which were marked as being retained can result in a planning permission not being implemented and instead an unlawful development, this is a

matter of fact and degree on a case-by-case basis, taking into account any conditions and the description of the development, which in this case does include 'remodelling'.

Form and Character and Impact on the Character and Appearance of the Conservation Area:

In the interests of brevity, this report does not intend to repeat the general considerations relating to the acceptability of the overall scheme as that was considered appropriate and approved at Planning Committee in April. This report will focus on the proposed revisions in accordance with S73A.

However, in summary, the Planning Committee previously considered that notwithstanding the fact that the proposed extensions and alterations would result in a dwelling which differs in scale and appearance to the existing dwelling on the site, the overall design, mass and use of materials would not harm the mixed character of the area, in accordance with the Development Plan and the general provisions of the NPPF.

In respect of the proposed variations, the removal of the garage would cause no visual harm to the street scene, wider Conservation Area and National Landscape. Paragraph 189 of the NPPF states that "Great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads, and National Landscapes." Arguably, this would reduce the overall mass of development, with a footprint of 200 square meter (as approved) to 162 square meters (as proposed), a reduction of approximately 38 square meter, which could be seen as a positive alteration to the scheme and would not be overdevelopment of the site, contrary to the Parish Council's comment.

The amendment to the demolition plan is more of a technicality rather than causing a direct impact on the form and character / adjacent Conservation Area. As although additional sections of wall have been demolished and will therefore have to be re-built, they would become internal walls and ultimately the end result, i.e. the extended and altered dwelling, would appear exactly the same as previously approved.

As such, this element of the application would cause no more impact upon the character and appearance of the area over and above that of the previously approved development.

With regard to the final change to the scheme, amendments are sought to the form and design of the proposed summer house, which introduces a small gable projection to the front (south) elevation, creating an 'L-shape' configuration as opposed to a rectangular shaped pitched roof building.

The previous use of the summer house included an outdoor kitchen / dining area and store / gym. The amendments now include a smaller outdoor kitchen / dining area, a games room (instead of a gym) and a larger store. Double doors are now shown to the southern gable elevation to serve the store.

The footprint of the previously approved summer house measured approx. 62 sqm, and the proposed footprint of the summer house would measure approx. 64 sqm, which is a very modest increase in size. Its overall height to both eaves (2.3m) and ridge level (4.1m) remains the same, as does its position within the plot and distances from boundaries.

Whilst the design and form of the proposed summer house would alter, it would not be overly visible from the public domain due to its position to rear of the private garden and as such, the changes proposed are not considered to cause any harm to the character and appearance of the area or wider National Landscape, in accordance with Neighbourhood Plan Policies 2, 3, 4, 5, 8 and 10; Local PLAN Policies LP18, LP19, LP20 and LP21.

Impact on Neighbour Amenity:

Taking particular care to consider the relationships between the original scheme and the neighbouring dwellings at No.2 to the west and No.4 to the east, it was previously considered that the proposed development would not adversely affect the amenities of surrounding residents, in terms of overlooking, overshadowing, loss of light or overbearing impact, in accordance with the Development Plan and the provisions of the NPPF.

In taking the variations into account, the removal of the garage will improve the relationship with the neighbouring property to the west as it offers more separation between the properties. The dwelling would now be sited approximately 5.1m from the west boundary. Albeit the impact was previously considered acceptable.

The variation to the demolition plan does not affect neighbour amenity.

The proposed change in form and design to the summer house is not considered to adversely affect neighbour amenity, particularly those to the west, given that the overall height (2.3m to eaves and 4.1m to ridge level) and position within the plot (between 2.9m and 3.11m from the western boundary) is the same as previously approved.

The exception is the addition of the forward projecting gable, however, whilst this arguably increases the bulk / massing of the summer house when viewed from its front elevation, this bears no adverse impact upon those residents. The ridge of the gable runs parallel to the western boundary, thus the roof pitches away from the neighbour's amenity space and would not result in a material increase in overshadowing or overbearing impact.

Overall, it is considered that the proposed changes to the development accord with Neighbourhood Plan Policy 5; Local Plan Policies LP18 and LP21; and the general provisions of the NPPF, but in particular paragraph 130.

Highway Safety:

The proposed development continues to provide adequate on-site parking and turning for a dwelling of this scale in accordance with adopted standards.

The proposal therefore accords with Neighbourhood Plan Policy 4; Local Plan Policies LP18, LP13 and LP14; and the general provisions of the NPPF.

Arboricultural Impacts:

It was previously noted that a large number of trees had been removed from both the front and the rear garden prior to the submission of the application. However, the site and neighbouring land is not within the Conservation Area where the trees would be protected. Neither are there any Tree Preservation Orders on the site.

The Council's Arboricultural Officer previously requested a condition requiring the foundation design for the garage given that it would overlap the root protection zone of two medium sized Leylandii Cypress Trees on Third Party land to the west, to ensure there would be no adverse impact upon those trees.

However, the Applicant no longer wishes to construct the garage and therefore seeks to remove condition 7 relating to the foundation design.

The Council's Arboricultural Officer raises no objection to the removal of the condition as those the remainder of the development would have no impact upon the adjacent tree.

The proposal therefore accords with the general aims and objectives of the Neighbourhood Plan; Local Plan Policy LP19 and the general provisions of the NPPF.

Other Material Considerations:

Ecology - Under the previous application the existing dwelling on the site was assessed to have features suitable to support roosting bats. As such, an Ecology Assessment report was submitted which concluded the bungalow as negligible suitability for roosting bats.

However, ecological enhancements were conditioned.

BNG - This application is exempt from having to provide the mandatory net gain as it is a householder. That said, the abovementioned enhancement measures will help towards securing measurable net gains for biodiversity in accordance with paragraph 192 of the NPPF and Development Plan Policy LP19.

Third Party and Parish Council Concerns - The Third party and Parish Council comments have been noted and taken into consideration in making a recommendation for this application. Some of the issues raised have been discussed and addressed in the relevant sections above.

Regarding the existing foundations, this does not fall within the scope of planning management per se. The Applicant provided a demolition plan suggesting that the foundations are adequate to accommodate the additional load. Building Control would inspect foundations and advise the Applicant if there is a requirement to underpin them to support the additional load.

With reference to the Parish Council concerns that the 'variation of condition would increase the overdevelopment of the plot', this would not be the case. There are only minor changes to the summer house, which mostly affects its form and external appearance and a very limited increased in footprint (from approximately 62 square meters to 64 square meters). There are no changes to the main resulting dwelling, with the exception of the removal of the garage, which would reduce the footprint of the dwelling creating more separation between the site and the neighbouring dwelling to the west. The proposed development is not considered to be overdevelopment of the plot.

Crime and Disorder - Section 17 of the Crime and Disorder Act 1998 requires Local Authorities to consider the implications for crime and disorder in the carrying out of their duties. The application before the Committee will not have a material impact upon crime and disorder.

CONCLUSION:

The principle of the proposed extensions, alterations and remodelling of the existing dwelling and construction of a detached summer house were established and deemed acceptable at the April 2025 Planning Committee.

The current application seeks to vary and remove conditions through S73A, which is a legitimate mechanism to regularise development which has started on site and breaches conditions on the planning permission. This regime was introduced to allow Applicants to

correct issues with approved development by applying for a new permission that amends the original conditions.

It is only the proposed changes which should be considered as part of this application given that the previous scheme was deemed acceptable.

The removal of the garage and subsequent removal of condition 7 is considered acceptable as this causes no harm to visual or neighbour amenity and arguably improves the relationship with the neighbour to the west and removes any impact upon their trees.

The variation to the demolition plan is a process issue. Ultimately, consideration should be given to what additional harm would result from that already approved in the specific circumstances of this case. The outcome of the development would be exactly the same as previously approved. Notwithstanding the fact that small sections of wall shown to be retained have been demolished, case law suggests that as long as the development uses the same surface materials and the overall profile and footprint are exactly the same when complete (with the exception of the other amendments - garage and summer house) it would conform to the permission that had been granted.

With regard to the summer house, its use, footprint, positing within the plot and overall height are the same or very similar and as such it is not considered that the changes to its form and design would cause any additional harm to visual or neighbour amenities over and above that of the previously approved scheme.

Taking the above into consideration, the proposed development accords with Neighbourhood Plan Policies 1, 2, 3, 4, 5, 8 and 10; Local Plan Policies LP18, LP13, LP14 LP19, LP20 and LP21; and the provisions of the NPPF.

RECOMMENDATION:

APPROVE subject to the imposition of the following condition(s):

- 1 Condition The development hereby approved shall be carried out in accordance with the following approved plans drawing nos:

24017 02 Revision I: Proposed Floor Plans,
24017 03 Revision I: Proposed Elevations, Sun Room and Site Plan, and
24017 04 Revision B: Demolition Plan.
- 1 Reason For the avoidance of doubt and in the interests of proper planning.
- 2 Condition Prior to the first use of the development hereby permitted the proposed on-site car parking/turning area shall be laid out, levelled, surfaced and drained in accordance with the approved plan and retained thereafter available for that specific use.
- 2 Reason To ensure the permanent availability of the parking/manoeuvring areas, in the interests of satisfactory development and highway safety, in accordance with Neighbourhood Plan Policy 4; Core Strategy Policies CS08 / LP18 and CS11 / LP13; SADMPP Policies DM15 / LP21 and DM17 / LP14; and the provisions of the NPPF.
- 3 Condition No development shall commence on any external surface of the development until a sample panel of the materials to be used for the external surfaces of the building(s) and/or extension(s) hereby permitted has been erected on the site for

the inspection and written approval of the Local Planning Authority. The sample panel shall measure at least 1 metre x 1 metre using the proposed materials, mortar type, bond and pointing technique. The development shall be constructed in accordance with the approved details.

- 3 Reason To ensure a satisfactory external appearance and grouping of materials in accordance with Neighbourhood Plan Policy 2; Core Strategy Policies CS08 / LP18 and CS12 / LP20; SADMPP Policy DM15 / LP21; and the general principles of the NPPF.
- 4 Condition Construction or development work on site, along with collections and deliveries of waste products, material and equipment, shall only be carried out between the hours of 0800 and 1800 weekdays, and 0900-1300 on Saturdays, with no work allowed on Sundays and Bank/Public Holidays. Piling, where applicable, shall only be carried out weekdays between the hours of 0900-1700.
- 4 Reason In the interests of the amenities of local residents, in accordance with Core Strategy Policy CS08 / LP18; SADMPP Policy DM15 / LP21; and the provisions of the NPPF.
- 5 Condition On-site parking for construction workers must occur for the duration of the works until the development is completed.
- 5 Reason In the interests of the amenities of local residents, in accordance with Core Strategy Policy CS08 / LP18; SADMPP Policy DM15 /LP21; and the provisions of the NPPF.
- 6 Condition The use of the summerhouse hereby approved shall be limited to purposes incidental to the needs and personal enjoyment of the occupants of the dwelling and shall at no time be used for business or commercial purposes.
- 6 Reason For the avoidance of doubt and to ensure that the building is not used for unrelated purposes that would be incompatible with the provisions of the NPPF and Development Plan Policies CS08 / LP18 and DM15 / LP21.
- 7 Condition The Mitigation of Construction Impacts and Ecological Enhancements and Opportunities set out in paragraphs 7.9 – 7.11 of the Ecological Assessment prepared by Hopkins Ecology, dated 21 November 2024, shall be adhered to during the course of the construction, and in relation to enhancement measures, shall be carried out prior to the first occupation of the development hereby approved, and retained thereafter as such.
- 7 Reason In the interests of ecology and biodiversity, in accordance with Neighbourhood Plan Policy 10; Core Strategy Policy CS12; SADMPP Policy DM15 and the provisions of the NPPF.