

Item No 05:-

15/02907/FUL (CD.6972/C)

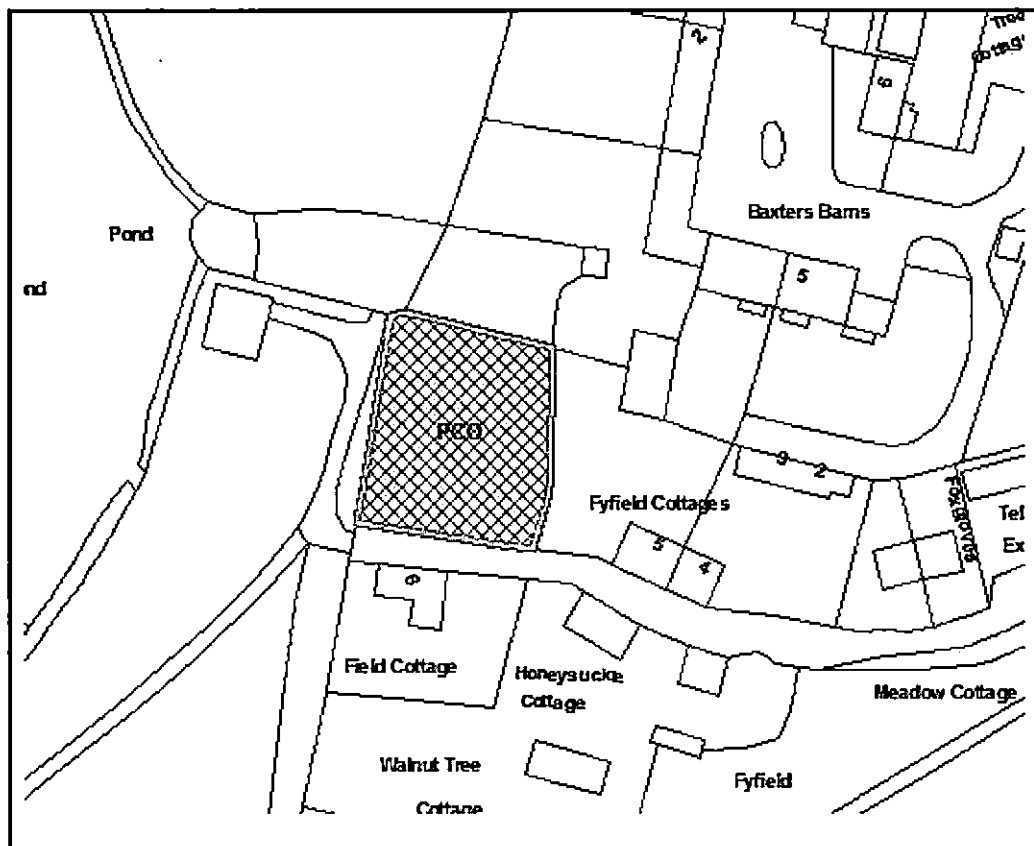
**Land Parcel North Of Field Cottage
Fyfield
Lechlade
Gloucestershire
GL7 3NT**

Item No 05:-

**Erection of a new detached dwelling and double garage with accommodation over
at
Land Parcel North Of Field Cottage
Fyfield Lechlade**

Full Application 15/02907/FUL (CD.6972/C)	
Applicant:	Mr Mark Hall-Digweed
Agent:	Spirit Architecture
Case Officer:	Claire Baker
Ward Member(s):	Councillor Ray Theodoulou
Committee Date:	8th June 2016

Site Plan



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RECOMMENDATION: REFUSE

UPDATE: A DECISION ON THIS APPLICATION WAS DEFERRED AT THE MAY COMMITTEE IN ORDER THAT THE OFFICER'S REPORT COULD BE UPDATED DUE TO THE NEED FOR A RE-ASSESSMENT FOLLOWING RECENT APPEAL DECISIONS WHICH IN PARTICULAR ADDRESSED THE ACCESSIBILITY ISSUES OF SUSTAINABILITY. MEMBERS ALSO RESOLVED TO UNDERTAKE AN ALL MEMBERS SIB SO THAT THEY COULD ASSESS THE PROPOSAL.

Main Issues:

- (a) Background
- (b) The Principle of Development and sustainability of the location
- (c) 5-Year Land Supply
- (d) Scale and Design, impact on the Area of Outstanding Natural Beauty and setting of listed buildings
- (e) Highway Safety
- (f) Impact on residential amenity
- (g) Biodiversity
- (h) Trees and landscaping
- (i) Other Matters

Reasons for Referral:

The application has been referred to Committee by Councillor Theodoulou due to concerns that the proposal would give rise to highway safety issues.

1. Site Description:

The application site is located at the end of a narrow lane that provides access to several residential properties in Fyfield. The settlement consists of mainly Cotswold style houses with several converted agricultural buildings. There are two listed buildings, Walnut Tree Cottage and Honeysuckle Cottage, within the vicinity of the site. There is evidence that at one time the site was occupied by a residential property but for many years it been an open space. To the west of the site is an open field and public footpath and to the north, east and south there are residential properties. The site is not within a conservation area but it is within the Cotswolds Area of Outstanding Natural Beauty.

2. Relevant Planning History:

CD. 6972 Erection of 2 detached cottages and 1 detached house. Alteration to existing vehicular and pedestrian access. Refused 29 July 1987.

CD6972.B Erection of a pair of 3 bedroomed cottages with off road parking. Refused 15 March 2001.

3. Planning Policies:

NPPF National Planning Policy Framework
 LPR09 Biodiversity, Geology and Geomorphology
 LPR10 Trees, Woodlands and Hedgerows
 LPR38 Accessibility to & within New Development
 LPR39 Parking Provision
 LPR42 Cotswold Design Code
 LPR46 Privacy & Gardens in Residential Development
 LPR19 Development outside Development Boundaries

4. Observations of Consultees:

Public Protection Officer: No objection subject to condition
 Biodiversity Officer: No objection subject to condition
 Tree Officer: No objection subject to condition
 County Highway Officer: No objection subject to conditions
 Drainage Engineer: No objection subject to condition

5. View of Town/Parish Council:

Objects: there is a history of refused applications; the access is inadequate and congested; there have been ongoing issues with sewerage and drainage; possible flooding issue; proposed garage is disproportionate in scale.

6. Other Representations:

18 letters of objection raising the following issues:

- (i) previous applications for a dwelling were refused on highways grounds
- (ii) the access to the lane is a blind spot and the lane is congested with nowhere for vehicles to turn around
- (iii) it would be impossible for construction traffic to access the site
- (iv) the site is next to a watermeadow which regularly floods each winter
- (v) there is not the capacity to deal with sewage from an additional dwelling
- (vi) the garage is out of keeping and could be converted to a further dwelling
- (vii) the mature Ash tree should not be lost
- (viii) any increase in traffic would add to congestion
- (ix) the hamlet should not grow any bigger
- (x) the development would spoil the character of the hamlet
- (xi) the site has not been residential for many years
- (xii) many buildings are listed or of traditional stone and the ancillary building would be out of keeping
- (xiii) there are inaccuracies in the application
- (xiv) lack of privacy to 3 Baxters Barns
- (xv) loss of uninterrupted view from 3 Baxters Barns
- (xvi) Fyfield has been identified as unsuitable for further housing due to lack of facilities
- (xvii) it would be situated adjacent to a public right of way
- (xviii) there has been enough residential development in Lechlade and Fairford
- (xix) it is contrary to the current Local Plan
- (xx) the traffic survey was not carried out properly
- (xxi) the garage would be visible from Field Cottage
- (xxiii) the scale and materials of the proposed garage are out of keeping
- (xxiv) introduction of more vehicles would be dangerous for, in particular, animals and children
- (xxv) it would adversely affect the setting of listed buildings in the vicinity
- (xxvi) the site has significant wildlife
- (xxvii) there is a septic tank in the plot which belongs to Field Cottage
- (xxviii) the site is within the Area of Outstanding Natural Beauty
- (xxiv) the development would take away parking spaces and the option to turn
- (xxv) the proposed concrete roofing tiles for the garage are unacceptable
- (xxvi) the rooflights for the house and garage do not match
- (xxvii) construction traffic will would cause disturbance to residents
- (xxviii) the biodiversity report is incorrect as bats, owls and grass snakes are on the site
- (xxix) there is no existing hard standing as shown on the plans
- (xxx) access is required for agricultural vehicles to the field at the end of the land and a further dwelling would make this more difficult
- (xxxii) the dwelling could be used as a holiday let which would exacerbate congestion
- (xxxiii) the applicant would be likely to apply for a bigger house if this is granted
- (xxxiii) there is no vehicular right of access to the site
- (xxxiv) a garage similar to that proposed was refused and dismissed at appeal at 6 Baxter's Barns.

7. Applicant's Supporting Information:

Design and Access Statement
Ecology Report
Speed Survey

8. Officer's Assessment:

(a) Background

There have been two refusals of planning permission for the development of two dwellings at the application site. The decision notices are attached to this report. However, it is important to note that both refusals pre-dated the introduction of the National Planning Policy Framework in the light of which all new development must be assessed.

(b) Principle of Development and sustainability of the location

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions to be made in accordance with the development plan unless material considerations indicate otherwise. The development plan is therefore the starting point. In this case the development plan is the adopted Cotswold District Local Plan 2001 - 2011 and is referred to herein as the 'Local Plan'.

As shown on the Proposals Map to the Local Plan, the application site is located outside of an adopted development boundary. The correct local policy to apply in terms of the principle of the proposed development is therefore Local Plan Policy 19 (Development Outside Development Boundaries).

Local Plan Policy 19 is positively written in that it supports development appropriate to a rural area provided that the proposals relate well to existing development, meets the criteria set out in other relevant local plan policies and results in development that does not significantly compromise the principles of sustainable development. However, Local Plan Policy 19 does explicitly exclude the development of new-build open market housing outside of adopted development boundaries.

The NPPF is a material consideration in the determination of planning applications. The NPPF requires local planning authorities to 'boost significantly the supply of housing' (NPPF, paragraph 47) and requires planning decisions for housing to be considered in the context of the 'presumption in favour of sustainable development' (NPPF, paragraph 14 and 49).

Paragraph 14 of the NPPF states that in decision taking the presumption in favour of sustainable development means:

approving development proposals that accord with the development plan without delay; and

where the development plan is absent, silent or relevant policies are out-of-date, granting planning permission unless:

- 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, or
- specific policies in this Framework indicate development should be restricted. (Guidance in this respect is provided by footnote 9.)

With regard to footnote 9 (page 4 of the NPPF), the site is within the Cotswolds Area of Natural Beauty. There are therefore specific policies in the NPPF that indicate that development should be restricted. A recent High Court Decision in March this year between Forest of Dean District Council, the Secretary of State for Communities and Local Government and Gladman Development Ltd confirmed that the first consideration should be given to the impact on heritage assets and the Area of Outstanding Natural Beauty and if it is considered that there is harm, planning permission should be refused unless public benefits outweigh that harm.

The NPPF states that "there are three dimensions to sustainable development: economic, social and environmental. These dimensions give rise to the need for the planning system to perform a

number of roles". These are an economic role whereby it supports growth and innovation and contributes to a strong, responsive and competitive economy. The second role is a social one where it supports "strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations". The third role is an environmental one where it contributes to protecting and enhancing the natural, built and historic environment. Paragraph 8 of the NPPF states that the three "roles should not be undertaken in isolation, because they are mutually dependent". It goes on to state that the "planning system should play an active role in guiding development to sustainable solutions."

To this end, the assessment of the application will have full regard to economic, social and environmental considerations. Since the Local Plan is 'out-of-date' in terms of its housing strategy it is the case that all housing applications that engage local plan policy have to be determined by applying the modified balancing test in paragraph 14 of the NPPF, unless the circumstances as described by Footnote 9 are applicable.

As the NPPF does not replace the adopted Development Plan it is necessary to consider in the planning balance, the weight to be accorded to any conflict with the adopted development plan. In accordance with Paragraph 215 due weight should be accorded to local plan policies according to their degree of consistency with the Framework. In respect of Local Plan Policy 19 the Mickleton Inspector concluded that:

'15. It follows that the appeal scheme must contravene the requirements of policy 19. But, the policy is time-expired, conforms to a superseded strategy, fails to reflect the advice in the Framework (NPPF) in severely restricting rather than significantly boosting the supply of housing and conflicts with the emerging strategy now identifying Mickleton as one of 17 settlements in the District (other than Cirencester) suitable to accommodate additional dwellings. Moreover, adhering to the provisions of policy 19 in relation to the appeal proposal cannot be consistent with the recent permissions allowing 80 dwellings at Canada Lane and 70 homes at Arbour Close. In those circumstances, policy 19 can only be regarded as out-of-date. And, of course, the emerging Local Plan has not yet reached a stage where its mooted policies might reasonably serve as 'replacements'.

16. The 'legal' suggestion that policy 19 (or some of it) remains 'up-to-date' because elements chime with the Core Principles or other advice in the Framework is, I think, flawed. First, the policy criteria must logically be applied in the context of the policy, rather than as independent requirements unfettered by the carefully scripted scope of the policy itself. Second, the content of those criteria (requiring schemes for open market housing to relate well to existing patterns of development, to add little to car-borne commuting and to be 'sustainable', for example) has relevance not because it relies on the remnants of policy 19, but because it chimes with, and is endorsed by, the guidance in the Framework. Third, I disagree that the policy must imply open market housing to be appropriate to a rural area in order to engage with such development at all. The policy, as written, does engage with open market housing. But it insists that for such development to be 'appropriate to a rural area' it must be created by the replacement, subdivision or conversion of existing buildings; everything else is intended to be encumbered by some form of occupancy condition or to be offered as affordable housing.

17. Given that policy 19, the only policy cited as relevant, is 'out-of-date', the Development Plan can have little direct bearing on the determination of this appeal. Instead, as paragraph 14 of the Framework indicates, the proposal must be considered in the context of the presumption in favour of sustainable development and permission granted unless tests derived from specific policies in the Framework (or material considerations) indicate otherwise or any adverse impact of granting permission would significantly and demonstrably outweigh the benefits of the scheme when assessed against the Framework taken as a whole. Those are the tests that I apply here.'

It is therefore the Council's position that little weight can be accorded to Local Plan Policy 19 in the specific circumstances of this case.

The NPPF confirms that, in order to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Paragraph 55 states that where there are groups of smaller settlements, development in one village may support services in a village nearby. Whilst Fyfield itself has no facilities, it is located only 0.725 miles by road and 0.590 miles as the crow flies from the village of Southrop which has a school, pub, post office a part time shop and a village hall. However, since the writing of the report that was placed before Members at the May Committee, there have been two appeal decisions that are relevant to the assessment of whether Fyfield can be considered to be a sustainable settlement. In both decision letters, which are attached to this report, the Inspectors considered whether the appeal sites were well located for access to local facilities and services other than by car. They concluded that they were not due to the nature of the roads and footpaths which linked the application sites with the service centres. In the light of these decisions Officers have reassessed the current proposal. The application site is linked to Southrop by a narrow winding A road that has neither footpaths nor street lights and is subject to the National speed limit. There is also a PRoW over fields. Officers are of the view that walking and cycling to Southrop may be hazardous particularly after dark and in bad weather and this would discourage access on foot or by bicycle. The public footpath passes through countryside which would also discourage use particularly after dark. Officers therefore conclude that future occupiers of the proposed dwelling would be far more likely to rely on the use of a car to gain access to services and facilities contrary to Paragraph 17 of the NPPF which requires that the fullest possible use is made of public transport, walking and cycling. Officers are therefore of the view that the application site would be an unsustainable location for the erection of a single dwelling.

(c) Five Year Housing Land Supply

Paragraph 47 of the NPPF states that Councils should identify a supply of deliverable sites sufficient to provide five years' worth of housing. It also advises that an additional buffer of 5% or 20% should be added to the five year supply 'to ensure choice and competition in the market for land'. In instances when the Council cannot demonstrate a five year supply of deliverable housing sites, Paragraph 49 states that the 'relevant policies for the supply of housing should not be considered up-to-date'.

In May 2015 an updated five year housing land supply report was published as part of the Council's annual monitoring. The May 2015 report identifies that the Council is able to demonstrate a five year housing land supply between 7.74 and 8.85 years dependent on the buffer applied. This latest position has been tested at appeal and attention is drawn to the aforementioned Mickleton appeal decision (Ref: APP/F1610/A/14/2228762). In this decision the Planning Inspector confirmed that he preferred 'the estimate, at 380dpa, put forward by the Council as the 'objective assessment of housing need' (paragraph 30) and found that it is 'inappropriate to apply the 20% buffer' (paragraph 33); concluding that:

'With a 5% buffer the agreed supply of housing would be sufficient to satisfy the 'objectively assessed housing need' of 380dpa over almost the next 9 years and the 500dpa requirement suggested by the appellants over a little more than the next 5 years. Hence, I consider that a 5-year supply of deliverable housing land is demonstrated.'

This position has been corroborated by the more recent appeal decision at Land South of Collin Lane, Willersey (CDC Ref: 14/04854/OUT and PINS Ref: APP/F1610/W/15/3121622) published on 23rd February 2016.

Since the issuing of the above appeal decisions the Council has also reviewed the Objectively Assessed Need (OAN) for housing in Cotswold District. The review indicates an increase in the housing requirement for the District from 7,600 to 8,400 dwellings over the period of the emerging Local Plan (2011-2031). In order to meet this additional requirement the Council will need to increase supply from 380 to 420 dwellings per annum. Whilst this increase has an impact on the Council's 5 year supply recent completion rates have been in excess of the 420dpa figure meaning that the Council can still demonstrate a supply in excess of 7 years. It is therefore

considered that the Council can demonstrate a robust 5 year supply of deliverable housing land in accordance with Paragraph 49 of the NPPF.

The Council's positive land supply position is a material consideration in the determination of this application. However, it is accepted by the District Council that the fact that a 5 year housing land supply can be demonstrated is not, in itself, a reason to prevent granting planning permission for housing in light of the NPPF requirement to boost significantly the supply of housing. It is however, relevant to consider the weight to be accorded to the provision of housing in the planning balance.

(d) Scale and Design, impact on the Area of Outstanding Natural Beauty and setting of listed buildings

The application site is within the Cotswolds Area of Outstanding Natural Beauty and there are two listed buildings, Walnut Tree Cottage and Honeysuckle Cottage, in close proximity. Section 11, paragraph 115 of the NPPF states that : 'Great weight should be given to conserving landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty.' Section 12 of the National Planning Policy Framework asks that Local Planning Authorities should take account of the desirability of sustaining or enhancing the significance of heritage assets. Paragraph 132 states that when considering the impact of the proposed works on the significance of a designated heritage asset, great weight should be given to the asset's conservation. It also states that significance can be harmed through alteration or development within the setting. Paragraph 134 states that where proposals will cause harm to the significance of a designated heritage asset that is less than substantial harm, that harm should be weighed against the public benefits of those works.

The application site is within the settlement of Fyfield. There is evidence that in the past it was occupied by a dwelling. The current proposal is for a single two storey, two bedroomed house with a single garage and store with accommodation over. The proposed dwelling would be of a traditional design and use of materials. The walling would be natural Cotswold stone with some timber boarding on the rear elevation and the roofing would be reconstructed stone tiles. The doors and windows would also be of timber. The proposed garage would be of timber construction with reconstructed stone tiles to the roof. Since the original submission, the height of the garage has been reduced from 5.5 metres to 5 metres. The timber garage/store would be located to the rear of the site and would therefore not be prominent in the street scene. Officers have carefully considered the impact of the development on the character and appearance of the settlement, the Area of Outstanding Natural Beauty and the setting of the listed cottages. The proposed dwelling is considered to be of a scale, design and use of materials that would not detract from the character and appearance of the settlement or the Area of Outstanding Natural Beauty or adversely affect the setting of the listed cottages. In the view of Officers, the proposal would give rise to neither substantial nor less than substantial harm to the significance of the two designated heritage assets

(e) Highway Safety

The development of a single dwelling on a non-classified road would normally be dealt with by the Local Planning Authority under the County Highways Standing Advice. However, due to the objections received on Highway safety grounds County Highways were consulted and it was requested that a speed survey be undertaken. Following the results of the speed survey County Highways raised no objection subject to the provision of an adequate visibility splay and provision of parking and turning being required by condition. Local Plan Policy 38: Accessibility to and Within New Development states that traffic arising from development should not have an unacceptably detrimental effect" on the highway network in respect of the movement of traffic and road safety. Similarly, paragraph 32 of the NPPF maintains that "development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe". The impact of the proposed new access and traffic movements arising from the development of a single dwelling are not considered to be unacceptably detrimental or severe.

Thus, the proposed vehicular access would not contravene the relevant local or national planning policies in this regard. The comment of the Highway Officer is attached to this report.

(f) Impact on residential amenity

An objection has been received on the grounds that the proposal would have an adverse impact on 3 Baxters Barns in term of noise, privacy and loss of a view. Officers do not consider that the proposed development would give rise to the overlooking of or be overbearing on the adjacent residential properties including 3 Baxters Barn. The rear elevation of the proposed dwelling would be approximately 42 metres from the nearest elevation of 3 Baxter's Barn and the garage would be located approximately 27 metres from the nearest elevation. As this is an existing residential area, Officers do not consider that an additional dwelling would give rise to significant noise or disturbance. In addition there is no right to a view.

(g) Biodiversity

An ecological report was submitted with the application. The Biodiversity Officer has raised no objection subject to condition. The report includes mitigation in respect of grass snakes. As a result of third parties raising the issue of owls and bats at the site, the Biodiversity Officer requested that boxes for owls and bats be shown on the submitted plans and accordingly amended plans have been received.

(h) Trees and landscaping

The Tree Officer has considered the Ash tree that is proposed for removal and does not consider that it is worthy of a Tree Preservation Order. It could therefore be removed at any time. He has therefore raised no objection subject to a landscaping condition to provide details of the proposed trees and boundary hedgerow reinforcement.

(i) Other Matters

There is a septic tank belonging to a neighbouring property on the site and third parties have referred to the lack of main sewer capacity. The applicant has discussed possible options with the owner of the septic tank including installing a new septic tank for the neighbour away from the proposed dwelling, installing a new septic tank that would have the capacity to serve the neighbouring and new dwelling and to connect the neighbouring dwelling and new dwelling to the main sewer. The applicant has confirmed with Thames Water that the main sewer has capacity. Officers are satisfied that a satisfactory solution to the issue of sewerage can be achieved, however it is considered reasonable to attach a condition requesting details of the sewage arrangements prior to the commencement of development.

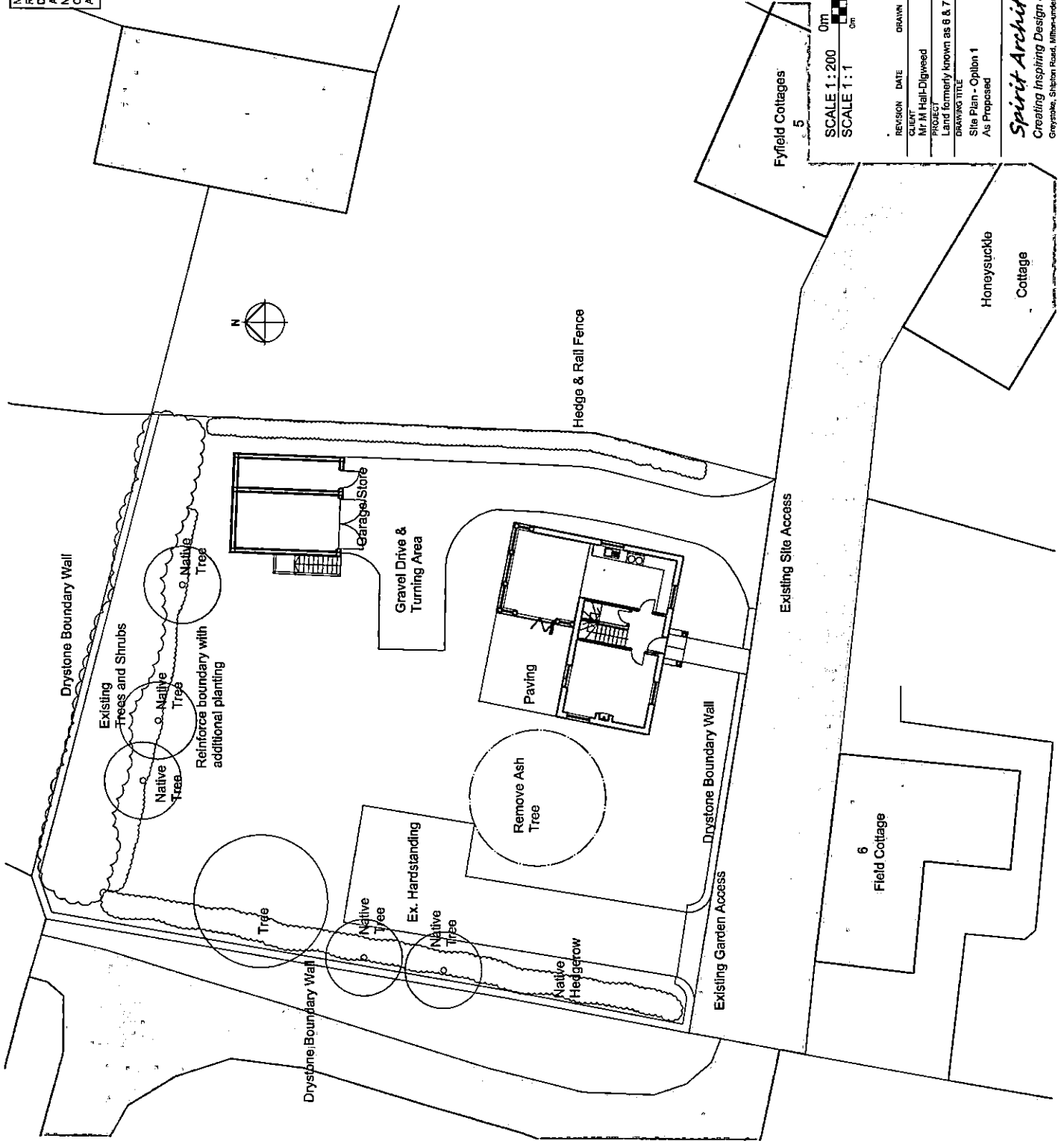
9. Conclusion:

Whilst it is recognised that the provision of a dwelling has some public benefit, the application is recommended for refusal as the site is considered to be an unsustainable location for a new dwelling. Officers, however, remain of the view that the dwelling would not detract from the character or appearance of the settlement, the Cotswolds Area of Outstanding Natural Beauty nor the setting of nearby listed buildings. It is also considered that the proposal would not have a severe impact on highway safety nor would it adversely impact on the residential amenity of the occupiers of adjacent properties.

10. Reason for Refusal:

1. The proposed development would result in the erection of a new-build open market house outside an established Development Boundary and in a settlement which does not benefit from services, facilities, amenities and good public transport links. Whilst the nearby settlement of Southrop does have some facilities, the road connection between Southrop and the application site is not considered to be safe enough to realistically encourage non-car use. The application site therefore represents an unsustainable location for new residential development and would result in future occupiers of the proposed dwellings having to rely on the use of the private motor car to undertake day to day activities. The proposal will therefore increase reliance on the use of the private motor car and increase car borne journeys contrary to guidance contained in the National Planning Policy Framework, in particular paragraphs 17 and 55.

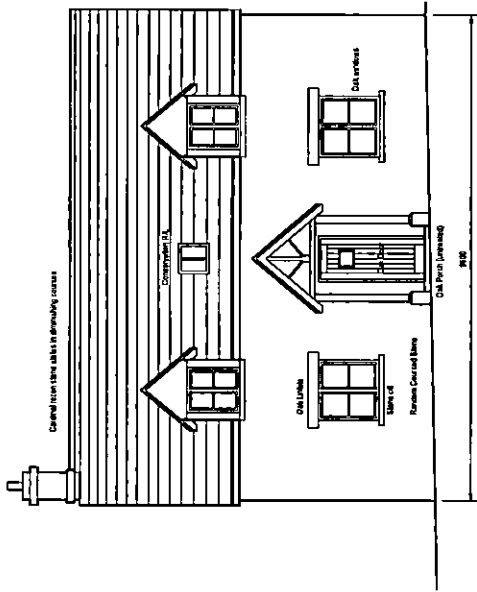
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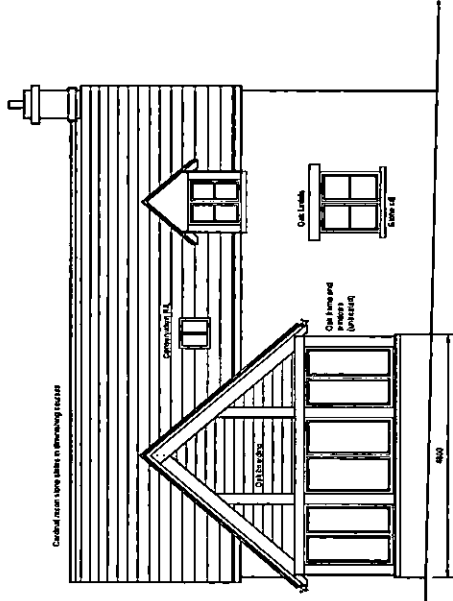
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Spirit Architecture
 Creating Inspiring Design & Sustainable Architecture
 Grayshale, Station Road, Mitham-Under-Hywood, Chipping Norton, OX7 5UT. Tel: 01655 549512 E: enquiries@spiritarchitecture.co.uk

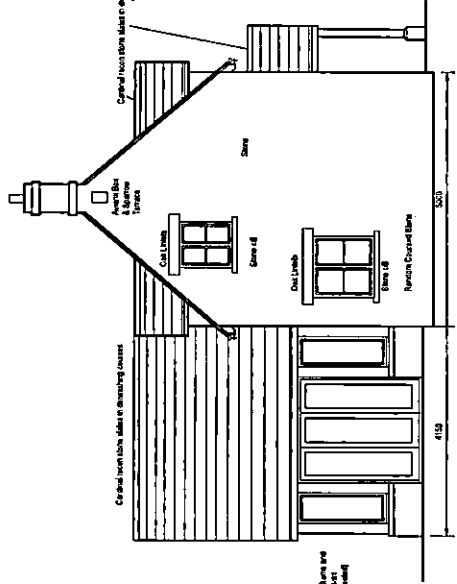
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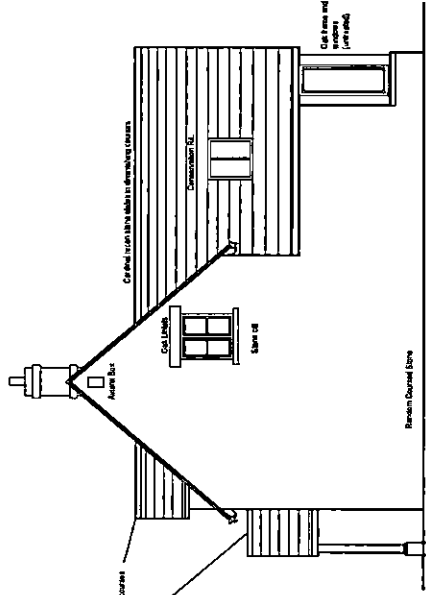
South Elevation



North Elevation



West Elevation



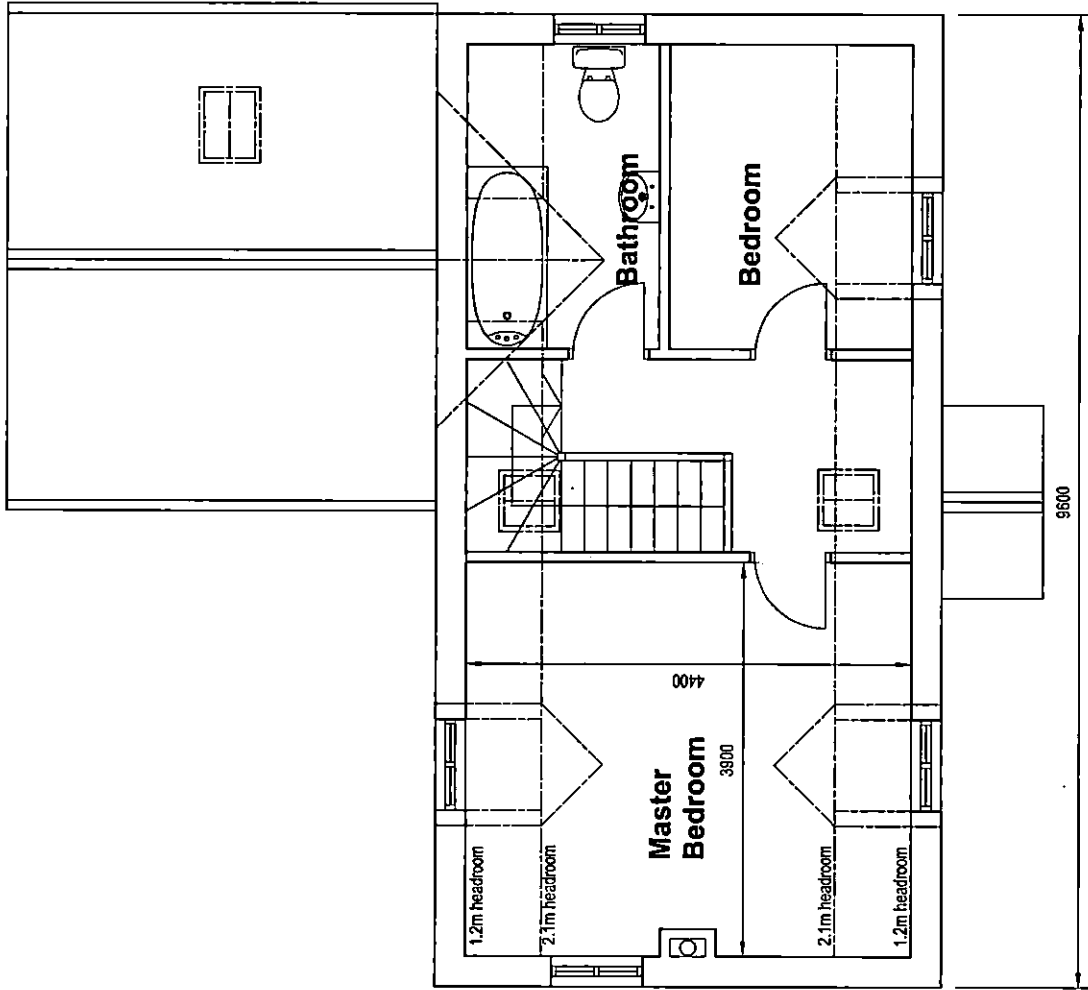
East Elevation

REVISION	DATE	DRAWN	CHECKED	DESCRIPTION
CLIENT		SCALE		DATE
Mt M Hall-Digweed		1:100 @ A3		January 2014
PROJECT		DRAWN		CHECKED
Land formerly known as 6 & 7 Fyfield Cottages		MH		MH
DRAWING TITLE		JOB NUMBER		DRAWING NO.
Elevations		1293		07
AS Proposed				B

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108



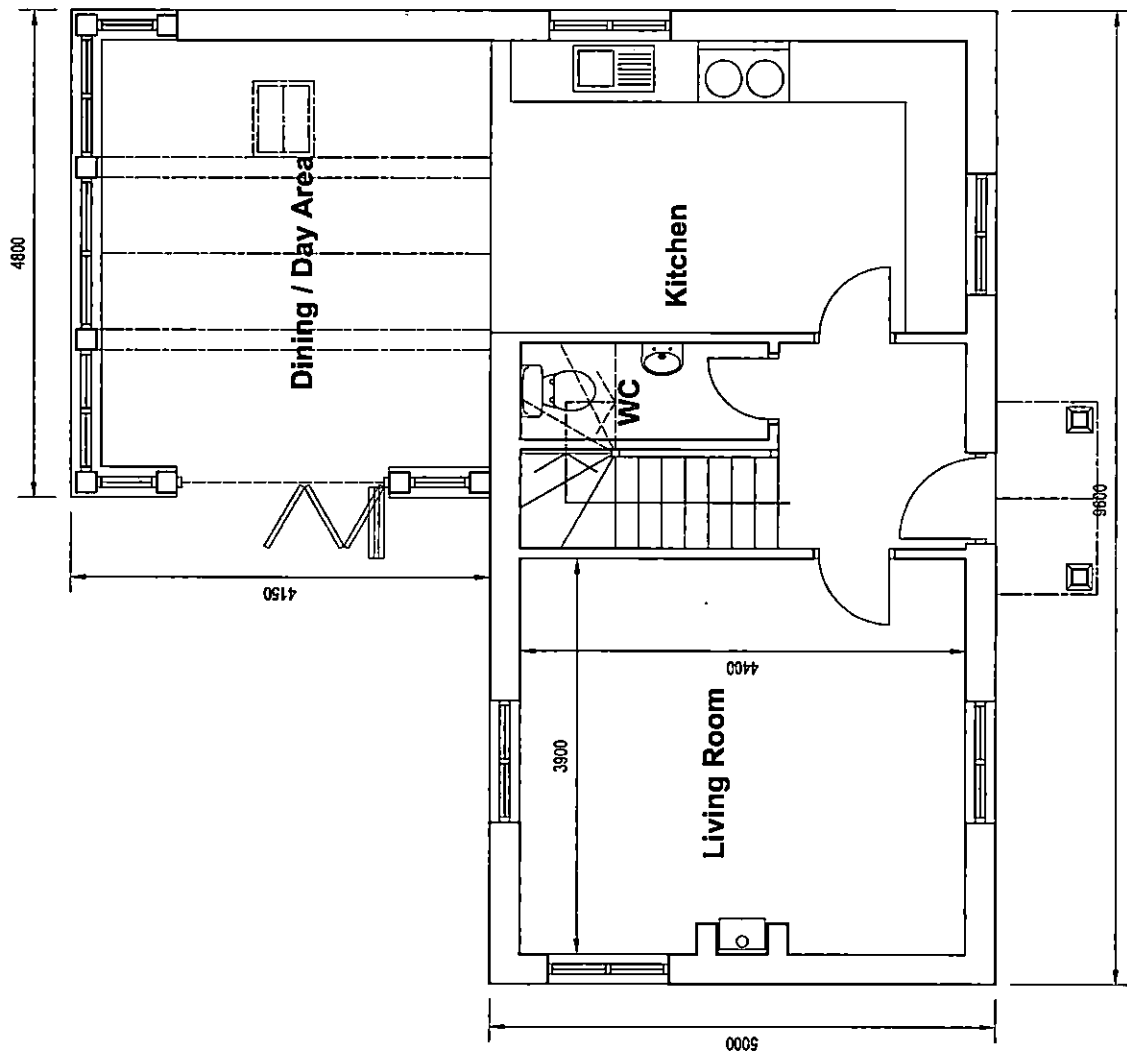
First Floor Plan
39.6 sqm



REVISION	DATE	DRAWN	CHECKED	DESCRIPTION
SCALE	1:50 @ A3			
CLIENT	Mr M Hall-Digweed			DATE January 2014
PROJECT	Land formerly known as 6 & 7 Fyfield Cottages			DRAWN CSH/MS
DRAWING TITLE	First Floor Plan			MH
	As Proposed			REVISED
JOB NUMBER	1293			DRAWING NO.
				06

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Ground Floor Plan
 57sqm



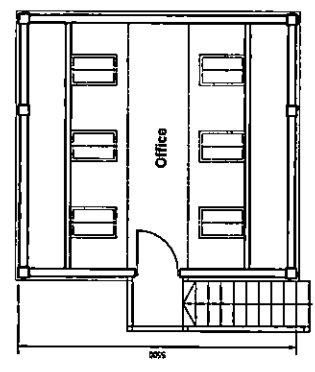
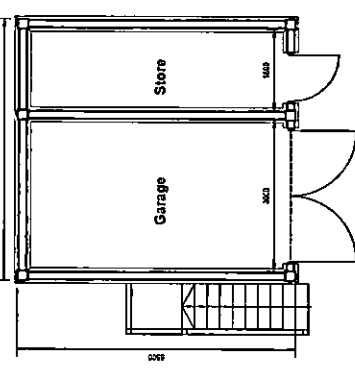
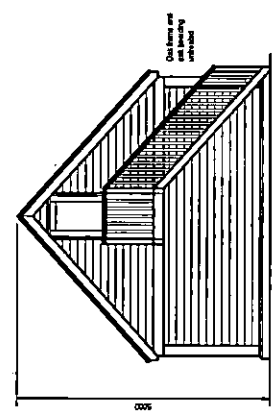
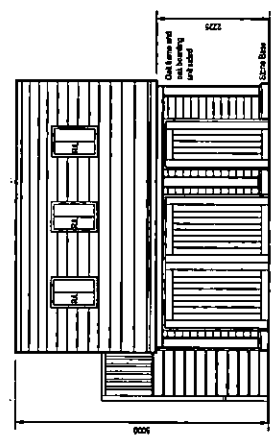
REVISION	DATE	DRAWN	CHECKED	DESCRIPTION	
CLIENT	Mr M Hall-Digweed	SCALE	1:50 @ A3	DATE	January 2014
PROJECT	Land formerly known as 6 & 7 Fyfield Cottages	DRAWN	MH	CHECKED	MH
DRAWING TITLE	Ground Floor Plan	JOB NUMBER	1293	DRAWING NO.	05
	As Proposed	REVISION			

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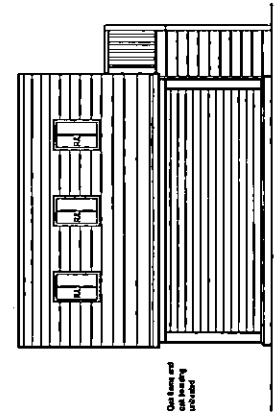
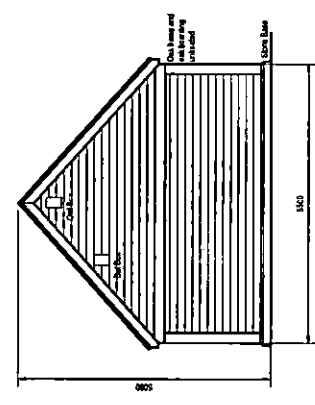


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Central elevations (side elevations) (cont.)



Central elevations (side elevations) (cont.)



110

REVISION	DATE	DRAWN	CHECKED	DESCRIPTION
		Mr. M. Hall-Digweed		
				SCALE 1:100 @ A3
				DATE January 2014
				CHECKED
				DRAWN MH
				PROJECT Land formerly known as 6 & 7 Fyfield Cottages
				DRAWING TITLE
				JOB NUMBER
				DRAWING NO.
				REVISION
				As Proposed
				1293 08 B

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**COTSWOLD DISTRICT COUNCIL
TOWN AND COUNTRY PLANNING ACT 1990**

REFUSAL OF PLANNING PERMISSION

Agent
Wood Frampton
Aylesford House
70-72 Clarendon Street
Leamington Spa
CV32 4PE

Applicant
Mrs G H Kinch
C/o Agent

Erection of a pair of three bedroomed cottages with off road parking at Former Site Of 6 And 7 Fyfield Cottages Fyfield Lechlade Gloucestershire

APPLICATION REF: CD.6972/B

DATE OF DECISION: 15th March 2001

A copy of this decision has been sent to the following Parish Council/Meeting or Town Council: Eastleach

DECISION NOTICE

In pursuance of their powers under the above Act, the Council **REFUSES** permission for the above development for the following reason(s):

- 1 The site is located at the end of a narrow lane which provides access to several residential properties within Fyfield. Fyfield consists of a small cluster of residential properties, remote from community facilities without employment opportunities and not well served by public transport. The settlement has a rural atmosphere, consisting of traditional Cotswold style houses and several converted agricultural buildings. Open spaces within the settlement and the countryside which provides its setting, contribute to the character of Fyfield. Due to the lack of facilities, the character of the settlement and the quality of its landscape setting, the Cotswold District Local Plan does not identify Fyfield as a settlement suitable for further housing development. The development of the application site would result in the loss of a pleasant open area on the edge of the settlement to the detriment of its character and appearance and that of the landscape. Furthermore, development within the settlement would reinforce scattered patterns of development which is incompatible with the Government objective of providing more sustainable forms of development. The proposal is therefore contrary to PPG3, PPG7, PPG13, Structure Plan Policies NHE1, NHE4, NHE6, H6, S4, S6, T1 and Cotswold District Local Plan Policies 2 and 19.

Cotswold District Council

REFUSAL OF
PERMISSION FOR
DEVELOPMENT

TOWN AND COUNTRY PLANNING ACT, 1971

In pursuance of their powers under the above mentioned Act and Order the Council a Local Planning Authority hereby REFUSE TO APPROVE the development described hereunder.

TO:-

H E Kinch
Baxters Farm
Fyfield
Southrop
Glos

AGENT Woodminster Ltd
29 Castle Street
Cirencester
Glos

PLANNING REFERENCE No.
AND DATE OF APPLICATION

CD.6972/A
. 28.01.88

Description of Land

End of Telephone Exchange Road, Fyfield.

Description of Development

Erection of one detached cottage. Construction of a new vehicular and pedestrian access.

REASONS :

- a) The proposed site is in the Cotswold Area of Outstanding Natural Beauty, where priority is given to the protection of the landscape, in accordance with General Policy L5 of the County Structure Plan, and development of the type proposed would be likely to prove detrimental to the visual amenity of the area.
- b) The site lies outside the anticipated limits of the groups of buildings known as Fyfield which is not an identified settlement in the Council's Adopted Rural Settlement Policy of April 1984, and is therefore contrary to the approved Gloucestershire County Structure Plan. The proposed development does not comprise either infilling or rounding off.
- c) In accordance with General Policy H7 of the County Structure Plan it is considered that sufficient land has been identified so as to ensure a five year supply of land available for house building within the Policy Area of :-
[North Cotswolds]
- d) The grant of planning permission would set a precedent for further development adjoining this site to the detriment of the existing rural character of the area.
- e) In the opinion of the Local Planning Authority there is no overriding reason for treating exceptionally an application which would be open to objection on the general planning grounds above referred to.

11.04.88

Dated

K P COOPER
DIRECTOR OF PLANNING
duly authorised in that behalf

113

Cotswold District Council

TOWN AND COUNTRY PLANNING ACT, 1971

**REFUSAL OF
PERMISSION FOR
DEVELOPMENT**

In pursuance of their powers under the above mentioned Act and Order the Council as Local Planning Authority hereby REFUSE to approve the development described hereunder.

TO:-

H E Kinch
Baxters Farm
Southrop
Glos.

AGENT Woodminster Ltd.
29 Castle Street
Cirencester
Glos.

PLANNING REFERENCE No.
AND DATE OF APPLICATION

CD.6972
29.07.87

Description of Land

End of telephone exchange road, Fyfield.
Description of Development

Erection of two detached cottages and one detached house and garage. Alteration to existing vehicular and pedestrian access.

REASONS :

- a) The proposed site is in the Cotswold Area of Outstanding Natural Beauty, where priority is given to the protection of the landscape, in accordance with General Policy L5 of the County Structure Plan, and development of the type proposed would be likely to prove detrimental to the visual amenity of the area.
- b) The site lies outside the anticipated limits of the groups of buildings known as Fyfield which is not an identified settlement in the Council's Adopted Rural Settlement Policy of April 1984, and is therefore contrary to the approved Gloucestershire County Structure Plan. The proposed development does not comprise either infilling or rounding off.
- c) In accordance with General Policy H7 of the County Structure Plan it is considered that sufficient land has been identified so as to ensure a five year supply of land available for house building within the Policy Area of :- (North Cotswolds)
- d) In the opinion of the Local Planning Authority there is no overriding reason for treating exceptionally an application which would be open to objection on the general planning grounds above referred to.

T. Ridge.

DIRECTOR OF PLANNING
duly authorized in that behalf

Dated
04.11.87

IMPORTANT—SEE NOTES OVERLEAF

Appeal Decision

Site visit made on 12 April 2016

by Nick Palmer BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 22 April 2016

Appeal Ref: APP/V2635/W/15/3141346

Cooks Cottage, St Pauls Road South, Walton Highway, Norfolk PE14 7DD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Ms S Adams against the decision of King's Lynn & West Norfolk Borough Council.
- The application Ref 15/00747/F, dated 11 May 2015, was refused by notice dated 8 July 2015.
- The application sought planning permission for change of use and conversion of redundant agricultural building to 3 residential holiday units including creation of new access without complying with a condition attached to planning permission Ref 2/03/2072/CU, dated 26 November 2003.
- The condition in dispute is No 5 which states that: "The accommodation hereby permitted shall provide for holiday lets only and shall not be occupied as permanent residential dwellings by any individual."
- The reason given for the condition is: "To clarify the terms of the consent."

Decision

1. The appeal is dismissed.

Background

2. The 2003 planning permission authorised the conversion of two former agricultural buildings to holiday accommodation in three separate units. The smaller of the two buildings has been converted to a single unit in accordance with that permission and the other building remains unconverted. I shall consider whether the condition should be removed in respect of just the converted unit and in respect of the three units to which the planning permission relates.
3. The application seeks the removal of condition 5 to enable the use of the units as unrestricted dwellings. The converted unit is occupied by a tenant as a permanent residence and so I shall consider the appeal under s73A of the Town and Country Planning Act 1990 as an application to remove a condition which has been breached.

Main Issue

4. The main issue in the appeal is whether the condition is necessary to ensure the sustainability of the development having regard to the economic, social and environmental dimensions of sustainable development.

Reasons

5. The appeal buildings are to the rear of two frontage dwellings and have a separate drive to the side of those dwellings. The buildings are in the open countryside and separated from Walton Highway by the A47 road. The site is outside the development boundaries as defined in the development plan.
6. West Walton and Walton Highway are together identified as a Key Rural Service Centre in policy CS02 of the Core Strategy¹. As such those settlements include local facilities and are considered suitable to accommodate further housing. However the Council says that the site is 2km from the village.
7. I saw on my visit that St Pauls Road South is a narrow road without footpaths or street lighting and is subject to the national speed limit. For these reasons walking between the site and the village may be hazardous, particularly after dark or in bad weather. This would discourage access on foot to local services and facilities including public transport services. Paragraph 17 of the National Planning Policy Framework (the Framework) requires that the fullest possible use is made of public transport, walking and cycling. The use of the buildings as unrestricted dwellings would require reliance on the car to gain access and would not accord with the Framework in this respect.
8. Paragraph 55 of the Framework allows for rural housing in circumstances where this would enhance or maintain the vitality of rural communities. The site is isolated from the village and there is no evidence that the proposal would be of community support.
9. The approved use of the buildings as tourist accommodation would also require the use of the car. However tourists would not be reliant on local services to the extent that permanent residents would. They would also contribute economically to the local tourist industry.
10. The Council accepts that it cannot demonstrate a five year supply of deliverable housing sites. Paragraph 49 of the Framework provides that policies for the supply of housing should be considered out of date where this is the case. Paragraph 14 of the Framework states a presumption in favour of sustainable development. Where relevant policies are out of date, 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.
11. Policy CS06 of the Core Strategy restricts housing development in the countryside and is a policy for the supply of housing. The lack of a five year supply means that its generally restrictive approach to rural housing is out of date.
12. Policy CS06 allows for the conversion of buildings to residential use, subject to a number of criteria. The fourth criterion requires the building to be easily accessible to existing housing, employment and services. That requirement is in accordance with the Framework and the presumption in favour of sustainable development. Although the weight to be given to the restrictive approach of policy CS06 is tempered by it being out of date in terms of housing supply, the requirement in terms of accessibility should be given full weight. For the

¹ King's Lynn & West Norfolk Core Strategy (2011)

reasons given the proposal would not accord with policy CS06 of the Core Strategy.

13. The proposal would not accord with policy DM2 of the Site Allocations and Development Management Policies Pre-Submission Document which restricts new development in the countryside. However little weight can be given to that policy on the basis that it is not yet adopted and may be subject to modification and given also the lack of housing land supply.
14. The housing land supply has recently been assessed at 1.9 years. This is a significant shortfall and while the provision of three unrestricted dwellings would be beneficial in this regard the scale of provision in relation to the scale of the shortfall would be minor and therefore only limited weight can be given to that benefit.
15. The provision of unrestricted housing would meet the social dimension of sustainable development to some extent but against this the isolation of the site from local services and facilities would not accord with the social dimension.
16. The loss of the converted unit as tourist accommodation as well as the two other potential units would not be in the interest of the tourism industry and the local economy. Although unrestricted residential accommodation would also contribute to the local economy to some extent I find that the proposal would not meet the economic dimension of sustainable development for the reasons given. Furthermore the reliance on the car to gain access to services and facilities would not accord with the environmental dimension of sustainable development.
17. For the reasons given, the lack of sustainability weighs significantly against the proposal and significantly and demonstrably outweighs the limited weight that I have given to the benefit of the proposal. For these reasons, considered in total the condition is necessary to ensure the sustainability of the development, whether considered singly or in relation to the three approved units.
18. The appellant has referred to permitted development rights that allow for the change of use of agricultural buildings to dwellings. The existence of those rights does not alter my conclusion on the main issue.

Conclusion

19. For the reasons given I conclude that the appeal should be dismissed.

Nick Palmer

INSPECTOR



Appeal Decision

Hearing held on 26 January 2016

Site visit made on 28 and 29 January 2016

by R J Marshall LLB DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 22 April 2016

Appeal Ref: APP/D3830/W/15/3138211

**Land at South Place, Beauport House, Carrsfarm Cottage and Hurst House,
Cophorne Common Road, Cophorne, West Sussex, RH10 3LG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Henry Lee (Denton Homes Limited) against Mid-Sussex District Council.
 - The application Ref. DM/15/1039 is dated 6 March 2015.
 - The development proposed is Demolition of land at South Place, Beauport House, Carrsfarm Cottage and Hurst House, and the construction of 75 no. new dwellings with associated access, car parking, landscaping and open space.
-

Decision

1. The appeal is dismissed and planning permission for Demolition of land at South Place, Beauport House, Carrsfarm Cottage and Hurst House, and the construction of 75 no. new dwellings with associated access, car parking, landscaping and open space is refused.

Background

2. It is agreed between the parties that the Council has no 5 year Housing land supply and I address the implications of this for my decision largely in my concluding paragraphs. The Council has indicated the grounds on which permission would have been refused had it been in time. My main issues are largely drawn from this, together with local concerns on Strategic Gap grounds.
3. Following the close of hearing the appellant submitted a Section 106 Agreement on the provision of on site-affordable housing and the infrastructure that the Council seeks in association with the development. I have had regard to this along with the observations of the parties on it. The terms of the Agreement are acceptable to the Council. However, it has not been completed as it lacks the signature of the District Council and one interested party, a mortgagee, and has not been dated. It would thus have no force.
4. The site is located in the countryside well beyond any settlement boundary. Policy C1 of the Mid Sussex Local Plan (2004) (LP) on protecting the countryside directs development towards the built up areas for all but a limited range of development, such as agriculture or forestry, where a countryside location is essential. The proposed development is not one of the limited forms of development listed as acceptable in the countryside. The proposal is thus, as is common ground between the parties, contrary to LP Policy C1. However,

correctly in my view, the Council raises no in principle objection to the proposed development under this Policy head given the absence of a 5 year housing land supply and the need thereby for some housing in areas delineated as countryside.

5. The site lies within the East Grinstead and Crawley Strategic Gap. LP Policy C2 has the objective of preventing coalescence and retaining the separate identity and amenity of settlements. There are some local concerns that such harm would arise. However, the Council has raised no objection on this ground. Correctly so, in my view, given the limited impact of the proposal on the gap given its setting. Moreover, Policy C2 is of limited weight given that, in terms of the National Planning Policy Framework (the Framework) it should not, as a Policy that may be construed as relevant to the supply of housing, be regarded as up-to-date.

Main Issues

6. The main issues in this appeal are: **first**, whether the site is well located for access to local facilities and services other than by car; **second**, the effect of the proposed development on highway safety and the free flow of traffic; **third**, whether the proposed development constitutes good design and its effect on the character and appearance of the area; **fourth**, the effect of the proposed development on matters of nature conservation importance with special reference to loss of woodland habitat and impact on bats; **fifth**, whether the absence of a completed Section 106 Agreement would prevent the financial contributions on infrastructure and affordable housing sought by the Council and should stand against the proposal; and **sixth**, the benefits of the proposed development and whether any adverse impacts would significantly and demonstrably outweigh the benefits of granting permission.

Reasons

Location of site to facilities and services

7. The appeal site is located off the A264. It lies in countryside east of the village of Copthorne and north-west of the village of Crawley Down. Both villages have schools and doctor's surgeries and a limited range of shops. In both cases these facilities are around 1.6 to 1.8 km from the appeal site. The appellant's estimate that it would take between 18 – 20 minutes to access these facilities from the appeal site by foot and around 4 – 6 minutes by bicycle has not been contested and from what I saw appears broadly correct.
8. However, access by foot from the site to both Copthorne and Crawley Down is poor. To reach Copthorne on made up paths would require a fairly lengthy walk on a narrow footpath alongside the busy A264 along which traffic moves quickly. This alone would make it an uncomfortable walk for many. And some, especially at night or in the evenings, could well be intimidated by the fact that this path has extensive woodland to one side. To access Crawley Down by a made up path would be little better as it would involve a lengthy walk through countryside along a main road.
9. The appellant referred to the existence of other footpaths through the countryside and woodland that may be taken from the appeal site to Copthorne and Crawley Down. The footpaths to both villages are through a mix of woodland and countryside which would discourage many, especially in the hours of darkness to use them. And in addition the path to Crawley Down

when I saw it was, due to ground conditions, impassable other than with walking boots and even then with some difficulty. As things stand these footpaths do not provide a realistic means of obtaining access to the 2 villages on foot. If completed the Section 106 Agreement would have provided a TAD contribution which could have been used to improve some of these footpaths. However, I have been given little detail on what could be achieved and given the countryside the paths run through it is difficult to conceive of schemes that would make their use significantly more likely.

10. A further improvement, which the County Council would be agreeable to undertake, is a widening of the footpath alongside the A264 towards Copthorne. Both parties agree that a condition could be imposed requiring the submission, approval and implementation of such a scheme. The footpath could be widened in accordance with standards in the Design Manual for Roads and Bridges. However, even with such an improvement I am not convinced that a footpath alongside such a busy road and flanked by woodland would be greatly more attractive to use. Moreover, widening the footpath and cutting back vegetation would have an increasingly urbanizing effect to the detriment of the rural character and appearance of the rural area along this length of road.
11. In terms of travel times Copthorne and Crawley Down are within reasonable cycling distance. However, in both cases this would involve cycling along main roads which could well put off many, especially the young and elderly. It is intended that consideration be given to the proposed widening of the path along the A264 incorporating a cycling lane. If such a scheme was achievable it could potentially increase cycle usage to some degree. However, the need still to cycle quite close to a busy road, and with a wooded backdrop, could still be off-putting to many especially in hours of darkness.
12. In terms of access to local facilities the appellant refers to a small convenience shop linked to a petrol filling station on the southern side of the A264 opposite the site. However, although this may provide for some emergency shopping such a relatively small facility is unlikely to result in a reduced demand generally to travel further afield for most provisions. Moreover, crossing the A264 at this point, although statistically likely to be safe, given a widened pedestrian refuge that would be created, would still given the amount and speed of traffic be likely to be intimidating to children and the elderly. In appeal decision APP/D3830/A/14/2215289 for housing development at Pease Pottage the Inspector referred to the proximity to that site of a motorway service station and that this would provide convenience shopping. However, I have been given no substantial evidence on the size of this facility or the safety of pedestrian access to it, all of which is likely to be crucial to its usage. It thus offers little guidance for consideration of the proposal before me.
13. Turning to access obtainable to facilities by bus there are bus stops close to the appeal site on both sides of the A264. From these stops frequent bus services are available to Copthorne and Crawley Down and further afield to Crawley and East Grinstead. There is thus the availability of public transport for use to access facilities locally and further afield, and this may be to a greater extent than in some other areas. However, even with these services available, in this rural location well beyond any settlement boundary and with poor footpath links to the 2 nearest settlements the added convenience of using a car is likely to be the overriding determining factor for most in terms of the form of

transport used. Moreover, the necessity to cross the A264 to get to one of the bus stops could well limit its usage, especially by children and the elderly.

14. One of the documents submitted at application stage refers to proposals for a travel plan, covering such matters as car sharing and travel welcome packs. However, the appellant's case makes little reference to this and no means are suggested of ensuring compliance with any travel plan. I therefore accord little weight to the suggestions of such a plan.
15. It is concluded that the site is poorly located in relation to access to local facilities and services other than by car. As such it would be contrary to LP Policies G2 and T4 which seek to minimise private car trips and Policy DP19 of the Mid Sussex District Plan 2016-2031 Pre-Submission Draft (the emerging plan) in so far as it has the same objective.

Highway safety

16. The Council had initially been concerned about the impact of the proposed development on the capacity of the Dukes Head roundabout to the east of the site. This is also a concern of many locally who have referred to the situation as it exists at present. It is common ground between the 2 main parties that development of the appeal site would need to be linked to improvements to the roundabout to increase its capacity. This is needed to ensure that queues and delays would not be worsened.
17. There is a scheme for such improvements, involving the widening of 3 of the 4 approach roads to the roundabout. Its provision is linked to a substantial residential development permitted to the west of Copthorne. The Council now accepts that its concerns on the capacity of the Dukes Head roundabout to accommodate the increase in traffic arising from the current proposal could be overcome by a Grampian condition linking the improvements to the roundabout with occupancy of the proposed houses. I have been given no substantial technical evidence to justify a contrary view.
18. The Council's concerns on highway safety are now limited to: the safety of pedestrians walking on the footpath alongside the A264 and crossing this road to get to the convenience store on the opposite side of the road; and safety for cyclists on the A264. Although not providing an attractive and pleasant route to walk to Copthorne the adjoining footpath would provide sufficient segregation between traffic and pedestrians for no undue danger in practice to arise. A proposed pedestrian refuge on the A264, although not perceived by many as providing a safe crossing given the volume and speed of traffic would, though complying with appropriate standards, at least be safe in objective terms. Given the volume and speed of traffic on the A264 it is a potentially dangerous route for cyclists. However, it is so apparently dangerous that little harm is likely to arise in practice as the danger would be a substantial disincentive to cycle along it. Moreover, the suggested cycleway along the A264 would provide a safe cycle route albeit, for reasons already given, not a very attractive or pleasant one for those using it.
19. There are some additional concerns from third parties on the location of the proposed access being onto a busy road close to the entrance to a petrol filling station. However, detailed discussions between the highway authority and the appellant following the submission of the application resulted in the provision of an access design and improvements to the highway that have satisfied the

Council that an acceptable access would be provided. All that I saw indicated that this would be so and no technical evidence to the contrary has been given. Adequate car parking is proposed and provided the communal car parking is well designed in detail there is no reason why it should not be used and lead to parking on the public highway.

20. It is concluded that the proposed development would have no detrimental effect on highway safety and the free flow of traffic. Thus there would be no conflict with LP Policy T4 and emerging plan Policy D19 in so far that they seek to ensure safe pedestrian and cycle safety and prevent harm generally in terms of highway safety and congestion.

Good design/character and appearance

21. The appeal site contains 4 large detached houses in substantial gardens that are generally quite well wooded. Clearly the proposed development would constitute a most substantial increase in housing density. However, the proposed layout would retain significant open undeveloped areas and enable the retention of trees of good condition and significance in the landscape. From what I saw the Council is correct to have no objection, on character and appearance grounds, to the tree loss that would occur.
22. There have been extensive discussions between the Council and appellant on the layout of the proposed development and the design of the dwellings. This has led to a proposal before me which the Council finds broadly acceptable with the following key exceptions. It remains concerned about the size and design of the proposed flats 58-66, the relationship of the bin and cycle store to these flats and the proximity of parking at the rear of 67 to the highway.
23. The flats at 58-66 would be 3 storeys high. They would be located at the far western edge of the site with a side elevation facing Copthorne Road. Although a crown roof would reduce the overall height of the building it would given its height to eaves level be significantly taller than the other proposed dwellings in similar proximity to the main road. Given that this building would be on boundary of the site and the countryside the degree to which it would intrude over and above the other proposed development in views from Copthorne Road would be detrimental to the rural quality of the area. I am of this view notwithstanding the existing development on the opposite side of the road.
24. I do not share the Council's concerns on the detailed design of the flats at 58-66. The varied eaves heights and widow designs would add interest to the building rather than detract from its architectural integrity. Seen from within the site there would be sufficient open space around the building and in its vicinity for it not to appear unduly cramped on its plot. The proposed bin and cycle store would be poorly located in relation to the flats. However, an acceptable re-location could be provided by a modifying condition. The parking spaces at the rear of 67 would be set back sufficiently from the highway to enable an acceptable degree of screen planting to be provided.
25. Drawing together my views on this issue the proposed development is generally well designed. However, the intrusion of the flats 58-66 in views from beyond the site would cause some harm to the rural quality of the area.
26. It is concluded that whilst the proposed development in the main constitutes good design there would for the reasons given be some, albeit small, harm to

the character and appearance of the area. As a result there would be conflict with LP Policy B1 and emerging plan Policy DP24 in so far that they require new development to respect the character of the locality.

Loss of woodland habitats and impact on bats

27. The appellant's ecological report says that there is semi-natural broadleaved woodland on 50% of the site. This is a Habitat of Principle Biodiversity Importance in England (HPBIE) under Section 41 of the Natural Environment and Rural Communities Act (NERC) 2006. Some of this woodland would be retained in the centre of the site and around its perimeter. However, substantial amounts of this woodland habitat would be lost. The ecological report says that the loss of and damage to this habitat would constitute a moderate adverse ecological impact.
28. The Council says, and this was undisputed, that a HPBIE is effectively the same as a Priority Habitat (PH) referred to in *Biodiversity 2020: A Strategy for England's Wildlife and Ecosystems Services (2011)* which has as an objective no net loss of priority habitat and an increase in its overall extent. The appellant's ecological report says that the harm identified to the HPBIE should be compensated by replacement native tree planting across the site.
29. New planting is proposed. However, it appears primarily landscape planting to relatively small gardens rather than the re-establishment of the larger woodland areas that exist at present. I am not satisfied that such new planting would function properly as woodland, with the same ground flora and shrubs, and have the ecological value of such areas. The appellant says that being on existing gardens the current woodland on site could be cut down now. However, there is no substantial evidence that this would occur and if the Council considered there to be such a threat it could serve a Woodland Tree Preservation Order.
30. The appellant has had 2 reports prepared on bats, a protected species. The latter being a more detailed report following an initial survey. This later report found small non-breeding bat roosts of common species present in roofs of 3 of the 4 houses to be demolished and also in one oak tree to be removed.
31. The appellant says that compensation for the loss of the bat roosts may be provided by the incorporation of bat boxes on the external walls of the new dwellings. Without more substantial evidence to the contrary from the Council I have no reason to conclude that this would not be possible.
32. However, a further concern of the Council in relation to bats is that the loss of the HPBIE would lead to a loss of foraging habitat for the bats on site. Some HPBIE would remain on site, to a reduced degree, and the site is surrounded by woodland which may potentially provide foraging habitat. However, the appellant has provided no substantial evidence to support a view that this, or the new planting, would provide an acceptable alternative foraging habitat for bats roosting on the site.
33. It is concluded that the proposed development would, in relation to loss of woodland habitat and potential harm also thereby to bats, have a detrimental effect on matters of nature conservation importance. This would conflict with LP Policy C6 and emerging plan Policy DP37 which seek respectively to reduce

the loss of woodland important as a natural habitat and, as required by the Framework, protect and enhance biodiversity.

Absence of Section 106 Agreement

34. One of the reasons permission was refused was the absence of a completed legal agreement to ensure affordable housing on site, in accordance with the Council's requirements, and infrastructure improvements required to make the development acceptable in planning terms.
35. The agreement, had it been complete would have provided 22 affordable dwellings on site along with ensuring its provision and setting out nomination rights. In addition it would, amongst other things, have made financial contributions towards additional school and library space and improvements to various local community facilities. Both parties say that these requirements meet the tests in the Community Infrastructure Levy (CIL) Regulations: that is that they must: be necessary to make the development acceptable in planning terms; be directly related to the development; and be fairly and reasonably related to it in scale and kind. All that I have read and heard suggests that this would be so. This being the case an absence of the means of achieving the above must stand against the proposal.
36. The appellant is critical of the Council for not signing the Agreement, in the absence of mortgagee's signature, saying that the risk of signing the document would be theoretical and unlikely to arise. However, normally all persons with an interest in the land should sign an obligation. Thus I consider the Council's cautious approach to be justified.
37. It is said by the appellant that the absence of a completed agreement may be resolved by imposing a Grampian condition worded as follows: "No development may commence until the developer has confirmed to the planning authority's reasonable satisfaction that all parties with an interest in the land (the subject of the Planning Permission) have completed or are bound by a Planning Obligation under Section 106 of the Town and Country Planning Act 1990 in the same form as the Planning Obligation completed by the parties prior to the Planning Permission being granted".
38. Planning Practice Guidance (PPG) on conditions says that a "it may be possible to use a negatively worded condition to prohibit development authorised by the planning permission until a specified action has been taken (for example the entering into of a planning obligation requiring the payment of a financial contribution towards the provision of supporting infrastructure). However, I consider that this must be read in light of a later paragraph which expands upon this saying that such conditions are unlikely to be appropriate in the majority of cases. It goes on to say that in exceptional circumstances such conditions may be appropriate in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk.
39. In this case, however, the amount of housing proposed is relatively modest and as such, even though it would assist in providing additional housing in an area where there is an absence of a 5 year housing land supply, it is not of a scale which makes it strategically important. Nor, in terms of the main issues in this appeal, and the necessity to obtain the signatures of all those with an interest in the site, is the case more complex than many other applications. The

wording of the Guidance imposes a high bar on the acceptability of imposing a negative condition to secure a planning obligation and that bar has not been met in this case.

40. It is concluded that the absence of a completed Section 106 Agreement would prevent the financial contributions on infrastructure and affordable housing sought by the Council and should stand against the proposal. This would result in conflict with LP Policies G3, R3, R4 and H4 and emerging plan Policy DP18 which take together require, where appropriate, financial contributions to infrastructure made necessary by the development and affordable housing.

Other 3rd party concerns

41. Given the amount of traffic on the main road past the site additional traffic from development of this relatively modest scale would not be harmful to the living conditions of those nearby through noise and disturbance. On one boundary the proposed development would abut existing housing. However, the distance of the proposed houses from this neighbouring housing, and boundary screening, would prevent any unacceptable loss of privacy. Although the proposal would bring new housing adjacent to existing development I see no reason why this should add to the likelihood of crime. I note that the Police have no major concerns on the proposal. Although there is a major development permitted for housing on the western boundary of Copthorne it is clear that there remains a need for more housing in the District. Whilst I note the concerns about a precedent being created for further housing in the area planning applications should be considered, as I have done in this case, on their own individual merits.

Material considerations in favour of proposal

42. The housing requirement set out in the now revoked South East Plan is no longer relevant. And the Council acknowledges that the objectively assessed housing need figure for the District in the emerging District Plan has yet to be tested through the District Plan examination. As such it is common ground between the parties that the Council is unable to demonstrate a 5 year supply of deliverable housing sites. In these circumstances relevant policies for the supply of housing should not be considered up-to-date according to paragraph 49 of the the Framework. Where policies are out of date paragraph 14 of the Framework says that 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 taken as a whole.
43. A key benefit of the proposed development would be the provision of good quality new housing of a wide mix and type and size. Though in the absence of a legal agreement no means has been suggested whereby the provision of needed affordable housing would be guaranteed. There would be benefits to the local economy from: having more people in the area; the work provided for the construction of the housing; the new homes bonus and additional Council tax receipts. In environmental terms there would be some benefit in having new housing outside any nationally designated areas, such as Areas of Outstanding Natural Beauty. And being on land at least partly containing housing the visual impact would be slightly less than would otherwise be the case. Although poorly located in relation to local facilities other than by car the site is quite well located with regard to the motorway network and rail links for long distance travel.

Final balancing

44. Drawing together my views substantial weight may be attached to the provision of housing, albeit tempered by the absence of an agreed means of guaranteeing the provision of affordable housing. For the reasons set out above there would be some economic benefit to the area, albeit limited given the scale of the proposed development. There would be some modest to slight advantage in environmental grounds from the provision of housing outside nationally designated areas, on land at least partly previously developed, and located reasonably well to the motorway network and rail links. I have found that there would be no harm to highway safety and nor in relation to the third party concerns raised additional to those of the Council. With the absence of a 5 year housing land supply the Council was correct not to have refused permission in principal on the grounds of conflict with LP Policies C1 and C2. Accordingly I attach little weight these conflicts.
45. To set against the above would be the poor location of the site for access to local facilities other than by car. I attach substantial weight to this given the requirement in the Framework on ensuring the use of natural resources prudently, minimising waste and pollution, moving to a low carbon economy and creating a built environment with accessible local services. I also attach substantial weight to the absence of a legal agreement to secure the affordable housing and the financial contributions required to provide additional school and library space along with improvements to various local community facilities. I attach moderate weight to the loss of semi-natural broadleaved woodland, added to which is the potential thereby for the loss of bat habitat. Although I have found the layout and design of the development to be acceptable the proposed flats 58-66 would lead to some, albeit limited, harm to the character and appearance of the area.
46. Weighty though the benefit of new housing would be, and notwithstanding the other more modest benefits referred to, I find that taken overall, and with particular regard to the harms identified in the first and fifth issues, the harm found is of a degree that would significantly and demonstrably outweigh the benefits of the proposal when assessed against the Policies in the Framework taken as a whole.
47. The Framework says that housing applications should be considered in the context of the presumption in favour of sustainable development. It identifies 3 dimensions to such development, an economic role, a social role and an environmental role. From my findings above it is clear that in some respects these roles would be met by the proposed development. However, the harm identified means that there would be conflict with the social and environmental roles to a degree which means that, seen in the round, the proposal would not be sustainable development.

Conclusions

48. For the reason given above it is concluded that the appeal should be dismissed.

R J Marshall

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr A Black MRTPI	Of PRP Planning
Mr A Wittingham BSc Eng MSc CEng MIC	
Mr H Lee	Of Denton Homes
Mr M Jux	Of Amasia Architects

FOR THE LOCAL PLANNING AUTHORITY:

Mr S King DipTP MRTPI	Team Leader Planning Appeals
Mr W Dorman BArch BA DipUrb	Urban Design Officer
Mr M Bartle MSc MCILT MCIHT	West Sussex County Council (WSSCC)
Mr M Bird BSc Hons MSc MCIEEM	Calex Environmental Ltd.
Mrs E Clarke	Community liason officer
Miss E Munns	WSSCC Strategic planning

INTERESTED PERSONS:

Mr G Staines	Local resident
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DOCUMENTS

1. Statement of Common Ground.
2. Extract from Design manual for Roads and Bridges.
3. Dukes Head roundabout improvements.
4. Plan of proposed development with suggested alterations.
5. Proposed pedestrian refuge – hazard identification and risks.
6. LDF inset map.
7. Local facilities and public transport map.
8. Plan extract.
9. Community Infrastructure Levy Regulations.
10. Decision Notice on DM/15/1339.
11. Draft Section 106 Agreement.
12. Suggested conditions.