

Item No 01:-

17/02086/FUL

**Highview House (formerly Orchard Rise)
Charingworth Road
Charingworth
Ebrington
Chipping Campden
Gloucestershire
GL55 6NR**

Item No 01:-

Alterations to as-built dwelling, including lowering of existing house, removal of basement, rebuilding of roof and changes to fenestration, reposition of doors to garage (approved as part of 12/04267/FUL) to allow for use as garden store, associated landscape works (part retrospective).' at Highview House (formerly Orchard Rise) Charingworth Road Charingworth Ebrington Chipping Campden Gloucestershire GL55 6NR

Full Application 17/02086/FUL	
Applicant:	Stephanie Ayres
Agent:	
Case Officer:	Martin Perks
Ward Member(s):	Councillor Mrs Sue Jepson
Committee Date:	13th September 2017
RECOMMENDATION:	PERMIT

Main Issues:

- (a) Size and Scale of Dwelling
- (b) Impact on Character and Appearance of Cotswolds Area of Outstanding Natural Beauty

Reasons for Referral:

This application has been referred to Planning and Licensing Committee by the Case Officer and Cllr Jepson. It is considered appropriate that Committee Members determine the application given the history of the site and the ongoing enforcement process.

1. Site Description:

The application site is located approximately 1km to the east of the village of Ebrington. It is located within the Cotswolds Area of Outstanding Natural Beauty. The site occupies a roadside position adjacent to the northern side of Charingworth Lane.

The front of the site lying adjacent to the lane is occupied by a Dutch barn and a converted former cold store building. The latter is now utilised as holiday let accommodation. A recently constructed (but unauthorised) detached dwelling (Highview House (formerly Orchard Rise)) is set back behind the aforementioned buildings approximately 40m from the lane. The land to the east, west and north of the dwelling consists of agricultural fields.

A Grade II* Listed Building (Charingworth Manor Hotel) lies on the southern side of the lane opposite the application site.

The application site is located outside a Development Boundary as designated in the Cotswold District Local Plan 2001-2011.

2. Relevant Planning History:

Application Site

CD.3314 Erection of a detached dwelling Granted 1963

07/03238/FUL Erection of replacement dwelling and garage Granted 2008

11/05844/FUL Demolition of existing dwelling house and Dutch barn, and erection of replacement dwelling house, storage building and stable block, together with landscaping and associated works Refused 2012

12/04267/FUL Demolition of an existing dwelling and the erection of a replacement dwelling and new garage together with new ancillary stables and demolition of existing Dutch barn and erection of replacement barn Granted 2012

15/02096/FUL Amendments to dwelling and ancillary domestic stable building approved under permission

12/04267/FUL, including the erection of a basement, insertion of roof lights and dormers into roof void to convert loft space to provide 3 bedrooms and an en-suite, erection of new entrance porch, together with minor amendments and associated works and alterations to outbuilding (retrospective) Refused and Enforcement Notice upheld at appeal. Enforcement Notice requires demolition of dwelling. Period for compliance with the Enforcement Notice expired on the 20th May 2017.

15/05322/CLOPUD Certificate of Lawful proposed use or development under S192 of the Town and Country Planning Act 1990 for the erection of a replacement dwelling and new garage together with new ancillary stables and demolition of existing Dutch barn and erection of replacement barn approved under permission 12/04267/FUL following the implementation of the aforementioned permission, including confirmation of the change of use of the land within the red line from mixed residential (Use Class C3)/agricultural to residential (Use Class C3) and confirmation that the permitted garage, stables and replacement barn could be used for residential purposes ancillary to the proposed dwelling at Orchard Rise following the completion of the aforementioned buildings fully in accordance with the plans approved under permission 12/04267/FUL Issued 2015.

16/03852/FUL Variation of Condition 2 (plan numbers) of permission 12/04267/FUL to enable installation of rooflights in north elevation and internal alterations to approved dwelling. Granted 2016

Adjacent Building - The Apple Store

07/03222/FUL Conversion of barn into one holiday let Granted 2008

11/02760/FUL Conversion of Cold Store Barn to create one holiday let (amendment to permission 07/03222/FUL) Granted 2011

13/01666/FUL Variation of Condition 3 (holiday let occupation) of permission 11/02760/FUL to allow the use of the unit by a person mainly or fully employed at Orchard Rise or by family members of the occupants of Orchard Rise Granted 2013

15/03143/FUL Removal of Condition 2 (occupancy restriction) of permission 13/01666/FUL to allow use of building as an open market dwelling Refused 2015

3. Planning Policies:

NPPF National Planning Policy Framework
 LPR19 Develop outside Development Boundaries
 LPR22 Replacement dwellings in Rural Areas
 LPR42 Cotswold Design Code
 LPR45 Landscaping in New Development
 LPR46 Privacy & Gardens in Residential Deve

4. Observations of Consultees:

Historic England: 'On the basis of the information available to date, we do not wish to offer any comments.'

5. View of Town/Parish Council:

'Ebrington parish councillors support this planning application voting 3 for, 2 against and 1 abstention, with the following two conditions:

1. If approved the complete building works as detailed in the application must be completed within eighteen months of the approval notice.
2. The CDC planning/building inspectors should make fortnightly visits (minimum) to the site to ensure that the works are being carried out in accordance with the approval and the timetable.'

6. Other Representations:

None

7. Applicant's Supporting Information:

Planning Statement

8. Officer's Assessment:

Background and Proposed Development

Planning permission was granted in 2007 (07/03238/FUL) for the demolition of a 1960's 1.5 storey dwelling and the erection of a new 1.5 storey dwelling in natural stone in its place. The original dwelling was located approximately 60m back from Charingworth Lane. The approved dwelling was to occupy the site of the original 1960's dwelling.

In 2011 a new scheme was submitted (11/05844/FUL) which sought to demolish the 1960's dwelling and erect a new detached dwelling approximately 20m to its south east. The site of the original dwelling was to be returned to fields/meadow land. The application was refused by Planning Committee in accordance with the Officer recommendation due to concerns about the size and scale of the proposed dwelling. The internal floor area was over 120% larger than the approved dwelling.

Following the refusal of the 2011 application, the applicant submitted a revised application in 2012 (12/04267/FUL) which sought to reduce the overall size of the proposed dwelling. The internal floor area of the revised dwelling was similar to that approved in 2007. In combination with the relocation of the dwelling to an area closer to existing buildings and the restoration of the site of the original dwelling to fields/meadow it was considered that were reasonable grounds to support the revised scheme.

The applicant commenced work on the approved scheme in 2013. In late 2014 the Council received a complaint about the works that were being undertaken. An Enforcement Officer visited the site in November of that year and advised the applicant that the works that had been undertaken were not in accordance with the approved plans and that if they continued it would be at their own risk. Notwithstanding this, the applicant continued to work on the development and subsequently occupied the dwelling. The completed dwelling was materially different from the approved scheme in terms of its size, scale and design.

In May 2015 a planning application (15/02096/FUL) was submitted for 'Amendments to dwelling and ancillary domestic stable building approved under permission 12/04267/FUL, including the erection of a basement, insertion of roof lights and dormers into roof void to convert loft space to provide 3 bedrooms and an en-suite, erection of new entrance porch, together with minor amendments and associated works and alterations to outbuilding (retrospective)'. The application was refused by Planning and Licensing Committee in August 2015 due to concerns about the size and scale of the development and its impact on the character and appearance of the Cotswolds Area of Outstanding Natural Beauty (AONB). The Council subsequently served an Enforcement Notice which sought the demolition of the unauthorised dwelling and the reinstatement of the land. The applicant appealed against the Enforcement Notice. The appeal hearing was held in June 2016 with a decision being issued on the 21st July 2016. The Planning Inspectorate dismissed the applicant's appeal and upheld the Enforcement Notice (see attached appeal decision).

The requirements of the Enforcement Notice are;

- i) Demolish the unauthorised building at Orchard Rise, Charingworth Road, Charingworth, Ebrington, Chipping Campden, Gloucestershire GL55 6NR and its associated features such as retaining walls and steps;
- ii) Permanently remove from the land the material resulting from such demolition;
- iii) Reinststate the land where the unauthorised dwelling stood to its original levels and profile.

The period for compliance with the requirements is within 10 months of the date that the Notice takes effect for requirement i; within 11 months of the date that the Notice takes effect for requirement ii; and within 12 months of the date that the Notice takes effect for requirement iii.

The Enforcement Notice required the unauthorised dwelling to be demolished by the 20th May 2017.

In September 2016 the applicant submitted an application (16/03852/FUL) for the Variation of Condition 2 (plan numbers) of permission 12/04267/FUL to enable installation of rooflights in north elevation and internal alterations to approved dwelling. The application sought to amend the dwelling approved in 2012 through the installation of 8 rooflights in the rear roofslope of the approved scheme and by converting the loft space into three bedrooms. The proposed alterations were works that could have been undertaken under the applicant's permitted development rights following the construction of the approved dwelling. The proposals did not increase the size or scale of the approved dwelling. Permission was granted for the proposed amendments in October 2016.

In March 2017 the applicant submitted a planning application for the 'Retrospective planning permission for the retention of Orchard Rise, Charingworth and alterations to a garage approved by 12/04267 as a garden store' (17/01211/FUL). The Council declined to determine the application in accordance with S70C of the Town and Country Planning Act 1990.

Section 70C of the Town and Country Planning Act 1990 states;

- (1) A local planning authority in England may decline to determine an application for planning permission for the development of any land if granting planning permission for the development would involve granting, whether in relation to the whole or any part of the land to which a pre-existing enforcement notice relates, planning permission in respect of the whole or any part of the matters specified in the enforcement notice as constituting a breach of planning control.
- (2) For the purposes of the operation of this section in relation to any particular application for planning permission, a 'pre-existing enforcement notice' is an enforcement notice issued before the application was received by the local planning authority.'

The submitted application sought to lower the floor level of the unauthorised dwelling by 1m thereby lowering the ridgeline by a similar amount. The lowering of the floor level would also reduce the height of the basement from 2.5m to 1.5m. The external appearance of the dwelling would otherwise remain unchanged. The Council considered that the proposed changes did not address the fundamental issues raised by the Inspector in the July 2016 appeal decision. The proposed development was still considered to have an adverse impact on the character and appearance of the Cotswolds AONB contrary to Local Plan Policies 22 and 42 and guidance in Paragraphs 17, 109 and 115 of the NPPF. It would also fail to accord with the requirements of Local Plan Policy 22: Replacement Dwellings in Rural Areas insofar as it would not be 'of a similar size and scale' to the extant permission for a dwelling on the site. In light of the pre-existing enforcement notice that is currently in effect the Council invoked S70C and declined to determine the application.

The applicant subsequently applied to the High Court to challenge the Council's decision to decline to determine the application. The High Court issued a decision on the 18th August 2017 (see attached) stating that there was no arguable basis for a judicial review and that permission to challenge the decision was refused. In response to the decision the applicant lodged a Notice of Renewal of Claim for Permission to apply for Judicial Review on the 25th August 2017. The outcome of the claim is awaited.

On the 18th May 2017 the applicant submitted this planning application. The application was submitted two days before the enforcement compliance deadline.

The current application seeks to lower the ground floor of the dwelling by 1m. The height of the basement will therefore be reduced from 2.5m to 1.5m. In addition, the applicant is proposing to alter the exterior of the dwelling so that it matches that approved in 2012. The submitted plans show that the ridge height of the main body of the dwelling will be reduced by 1.7m, the ridge of the western wing by 2.35m and the ridge of the eastern wing by 2.17m. The proposed alterations are considered to represent a serious attempt to address the issues raised by the appeal decision and it has therefore been deemed reasonable to accept the planning application. The applicant has also provided a proposed timetable of works (see attached) with the application which sets out a schedule of future building operations.

In addition to the proposed amendments to the existing dwelling, this application also includes a proposal to revise the design of the approved garage building located to the eastern side of the dwelling. The proposed building will be the same size as the approved (approximately 9m long by 5m high). However, due to the drop in land levels to the front (south) of the building, the applicant is seeking to use the building as a garden store rather than a garage. The garage doors have therefore been re-positioned in the north elevation rather than the south elevation as shown in the 2012 permission. A pedestrian door and window will therefore be located in the southern elevation of the building rather than the garage doors originally agreed.

Notwithstanding the outcome of this application, the existing Enforcement Notice requiring the demolition of the existing dwelling will remain in force. As the time period for compliance has now expired the applicant is in breach of the notice and the Council can therefore take the applicant to court to secure compliance with the requirements of the Enforcement Notice.

(a) Size and Scale of Dwelling

The erection of replacement dwellings outside Development Boundaries is primarily covered by Local Plan Policy 22: Replacement Dwellings in Rural Areas. Of particular relevance to this proposal is criterion 1 (c) which states that the replacement dwelling should be of a 'similar size and scale to the existing building.'

The scheme now proposed seeks to lower the floor level of the dwelling by 1m. The existing basement will be reduced from 2.5m to 1.5m in height. In addition to these changes, the applicant is also proposing to replace the upper floors and roof of the dwelling so that they match the approved scheme. The internal room layout will also match the scheme approved in 2016 (16/03852/FUL). The ground level/patio area around the existing dwelling will also be reduced in level by approximately 1m. In terms of the above ground elements of the proposal it is considered that the proposed amendments will result in a development that is similar in size and scale to the extant permission. Notwithstanding this, the proposal is also proposing to retain part of the existing basement. The floor area of the basement will remain. However, its height will be reduced to 1.5m. The proposed amendment will therefore prevent the basement being used as a habitable space. Officers have concerns that the retention of the basement area, even in a reduced form, could still potentially be altered or enlarged in the future in a way that could allow its use as habitable accommodation. As a consequence, Officers consider it appropriate that, if permission is granted, that a condition should be attached removing permitted developments for extensions to the dwelling and any enlargement of the basement area now proposed.

Overall, it is considered that the amended scheme is similar in terms of its size and scale to the approved dwelling and as such the proposal is considered to accord with Local Plan Policy 22.

(b) Impact on Character and Appearance of Cotswolds Area of Outstanding Natural Beauty

The site is located within the Cotswolds Area of Outstanding Natural Beauty (AONB) wherein the Council is statutorily required to have regard to the purpose of conserving and enhancing the natural beauty of the landscape.

Paragraph 17 of the NPPF states that planning should recognise 'the intrinsic character and beauty of the countryside'

Paragraph 109 states that the planning system should contribute to and enhance the natural and local environment by 'protecting and enhancing valued landscapes'.

Paragraph 115 states that 'great weight should be given to conserving landscape and scenic beauty in ... Areas of Outstanding Natural Beauty.'

Local Plan Policy 42 advises that 'Development should be environmentally sustainable and designed in a manner that respects the character, appearance and local distinctiveness of Cotswold District with regard to style, setting, harmony, street scene, proportion, simplicity, materials and craftsmanship'

From Charingworth Lane the site is partly screened by existing buildings and vegetation. However, the dwelling is far more visible when viewed from a lane to the north east of the application site. The rear and eastern elevations of the dwelling are readily visible from an open stretch of lane lying approximately 250m to the north east of the development. The rear of the building is visible from the lane with the result that it appears as a very prominent and obtrusive feature within the landscape. The Planning Inspector in his appeal decision considered that the as built dwelling had an adverse impact on the character and appearance of the AONB. The scheme now proposed seeks to reduce the height of the existing dwelling. The alterations proposed to the upper floors of the building also help to reduce its mass and scale. The proposed amendments will result in a form of development that is similar to that previously approved. In landscape and visual terms it is considered that the amendments will address the concerns previously raised by both Officers and the Planning Inspector.

The applicant has provided a schedule (see attached) setting out a timetable of works should permission be granted. The applicant has therefore provided a substantive document which can be used to ensure that the proposed works are carried out in a reasonable period of time.

Overall, it is now considered that the proposed amendments address the concerns previously raised about the landscape and visual impact of the proposal. The application is therefore considered to accord with Local Plan Policy 42 and guidance in paragraphs 17, 109 and 115 of the NPPF.

Other Matters

The proposed dwelling is considered not to have an impact on the setting of Grade II* Charingworth Manor Hotel by virtue of the degree of separation between the two developments and the presence of buildings and vegetation between the completed house and the heritage asset. There is no visual or historic interconnectivity between the two buildings and as such the proposal is considered not to conflict with Section 12 of the NPPF or S66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

9. Conclusion:

Overall, it is now considered that the proposed amendments address the concerns previously raised about the size and scale of the dwelling and the landscape and visual impact of the proposal. The application is therefore considered to accord with Local Plan Policies 22 and 42 and guidance in paragraphs 17, 56, 64, 109 and 115 of the NPPF.

10. Proposed conditions:

By the 1st March 2018 works to alter the existing dwelling shall have commenced in accordance with the details shown in 'Estimate of man hours required to carry out lowering house, alterations to roof and changes to fenestration' and the works shall be undertaken fully in accordance with the timescales therein unless otherwise agreed in writing by the Local Planning Authority.

Reason: In order to ensure that measures are put in place to ensure that the adverse impact of the existing dwelling is addressed in a timely manner in order to ensure that the development accords with Local Plan Policies 22 and 42 and guidance in paragraphs 17, 56, 64, 109 and 115.

This decision relates to drawing numbers: 16102.101 E, 17-116-100A, 17-116-07.

Reason: For purposes of clarity and for the avoidance of doubt, in accordance with paragraphs 203 and 206 of the National Planning Policy Framework.

The entire landscaping scheme shall be completed by the end of the planting season (1st October to 31st March the following year) immediately following the first occupation of the dwelling hereby approved.

Reason: To ensure that the landscaping is carried out and to enable the planting to begin to become established at the earliest stage practical and thereby achieving the objective of Cotswold District Local Plan Policy 45.

Any trees or plants shown on the approved landscaping scheme to be planted or retained which die, are removed, are damaged or become diseased, or grassed areas which become eroded or damaged, within 5 years of the completion of the approved landscaping scheme, shall be replaced by the end of the next planting season. Replacement trees and plants shall be of the same size and species as those lost, unless the Local Planning Authority approves alternatives in writing.

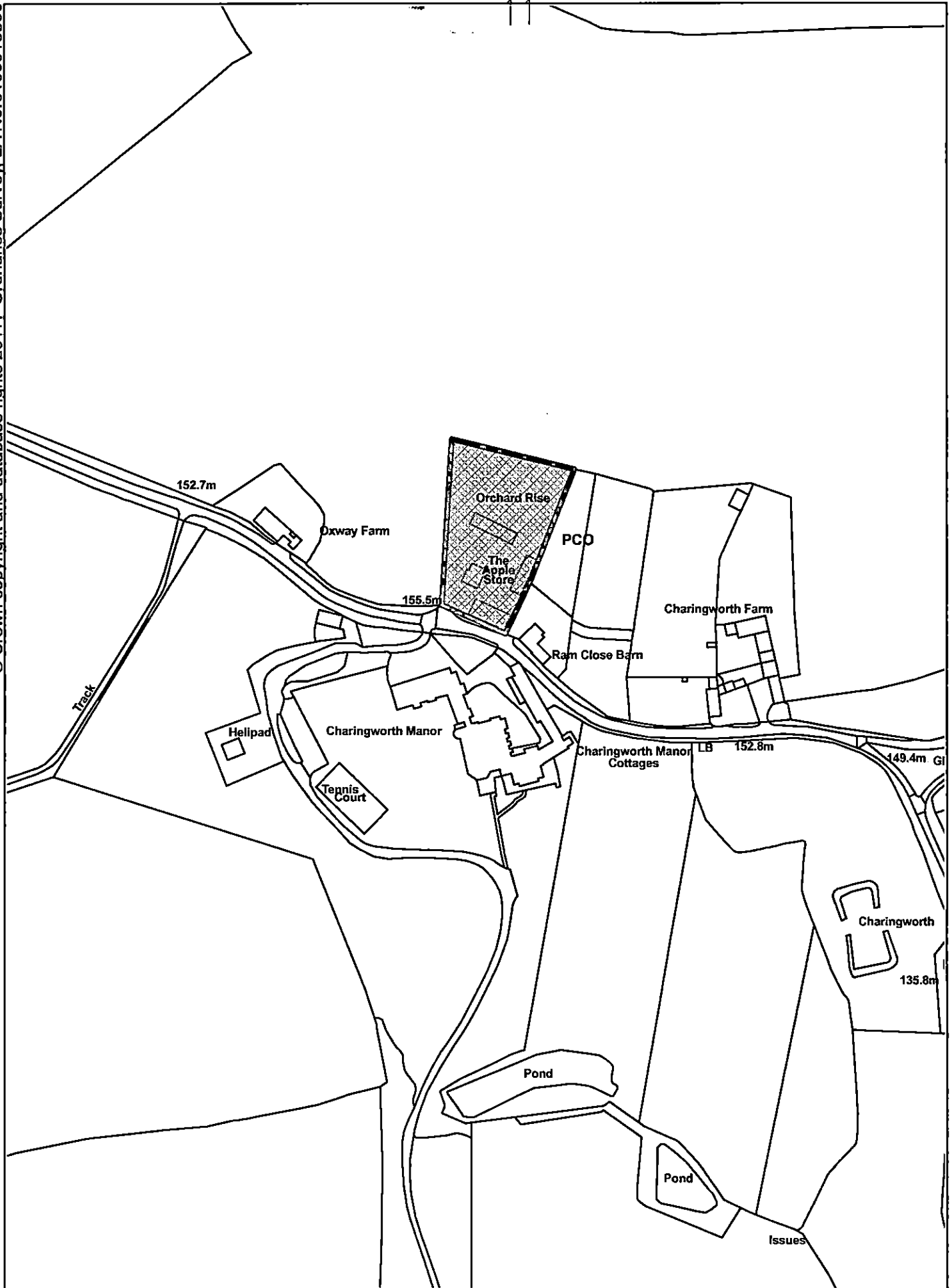
Reason: To ensure that the planting becomes established and thereby achieves the objective of Cotswold District Local Plan Policy 45.

The materials to be used for the external walls and roof of the development hereby permitted shall match those used in the existing building and shall be permanently retained as such thereafter.

Reason: To ensure that, in accordance with Cotswold District Local Plan Policy 42, the development hereby permitted is completed in a manner appropriate to the site and its surroundings.

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any other statutory instrument amending or replacing it, no extensions shall be added to the dwelling hereby approved, the basement enlarged or buildings, fences, walls, gates or other means of enclosure erected, constructed or sited in the application site other than those approved by this decision notice.

Reason: The site is located within the Cotswolds Area of Outstanding Natural Beauty wherein the Council is statutorily required to the purpose of conserving or enhancing the natural beauty of the landscape. It is important that careful consideration is given to future development to ensure that the character and appearance of the locality is preserved. In addition, this permission relates to a replacement dwelling which is approved only on the basis that the new dwelling is of a similar size and scale to the existing dwelling. This condition is imposed having regard to Cotswold District Local Plan Policies 19, 22 and 42.



COTSWOLD
DISTRICT COUNCIL

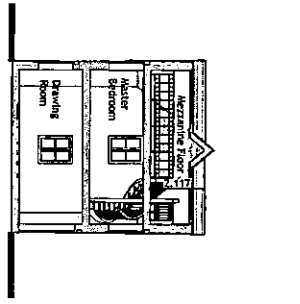
HIGHVIEW HOUSE (FORMERLY ORCHARD RISE) CHARINGWORTH 1:2500

Organisation: Cotswold District Council

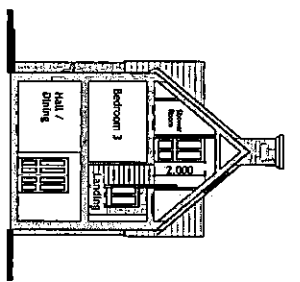
Department:

Date: 31/08/2017

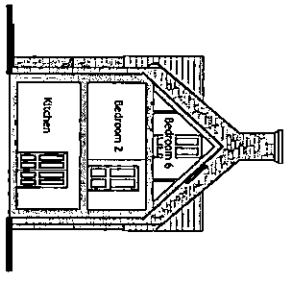




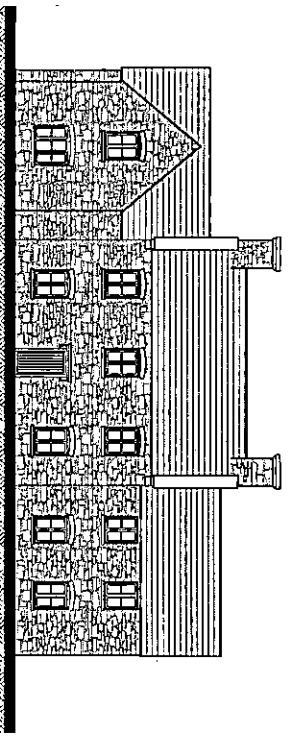
Section A-A 1:100



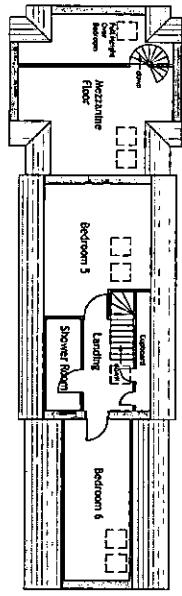
Section B-B 1:100



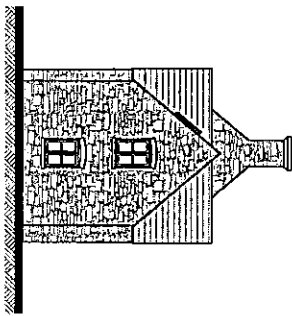
Section C-C 1:100



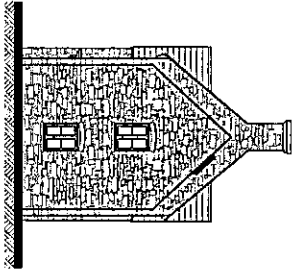
South Elevation 1:100



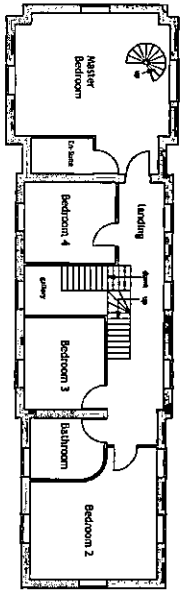
Second Floor Plan 1:100



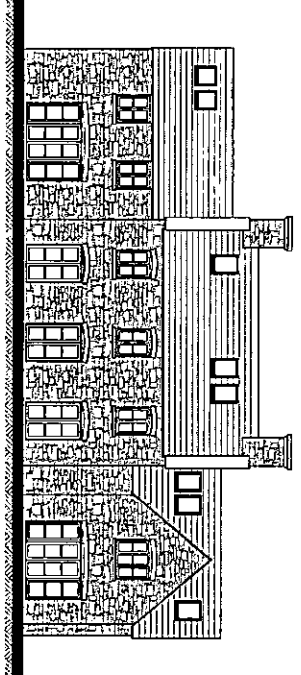
West Elevation 1:100



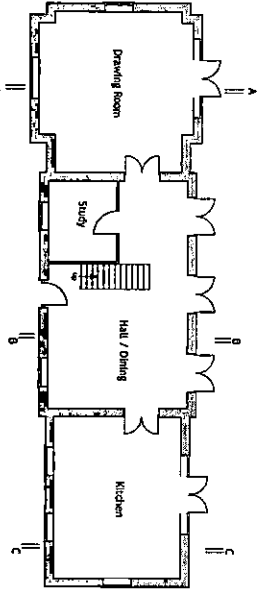
East Elevation 1:100



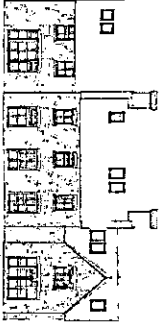
First Floor Plan 1:100



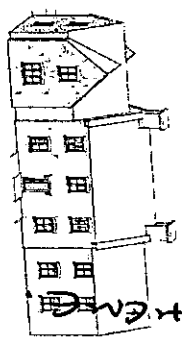
North Elevation 1:100



Ground Floor Plan 1:100



North View 3D



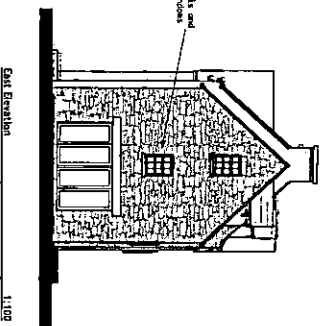
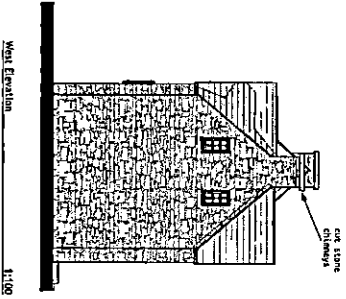
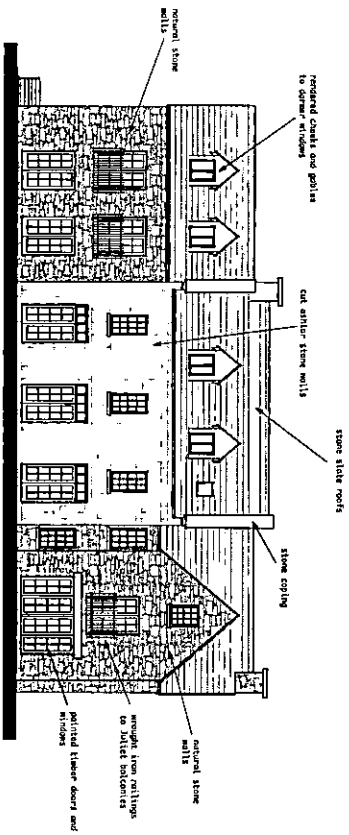
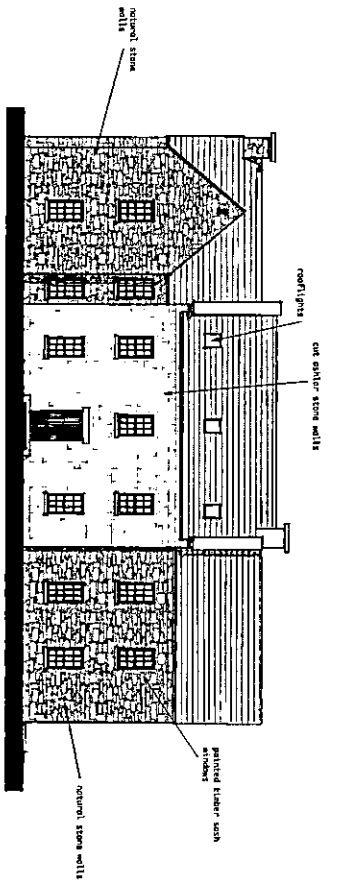
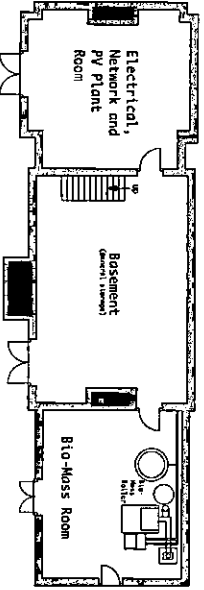
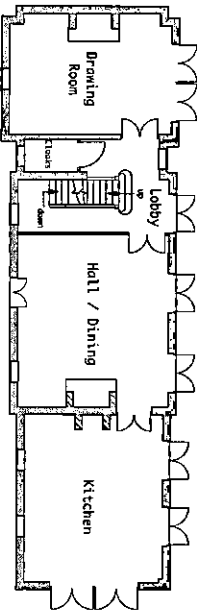
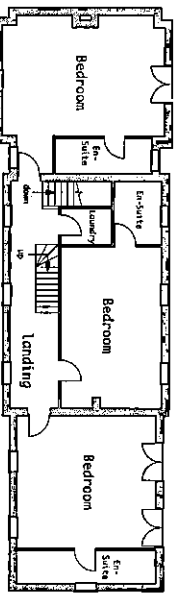
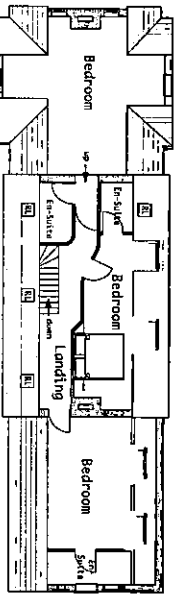
South View 3D

APPROVED
16/03852/ALL

Arch Wildfish
 Residential Planning
 15, Gifford Street, London
 W1P 3JH
 07728 37993

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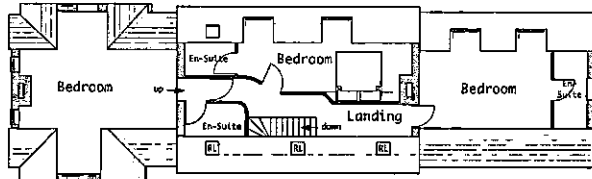
15/02096/Full
AS BUILT DWELLING

Archwispish
General Room
15/02096/Full
07528 57393
mick@archwispish.co.uk

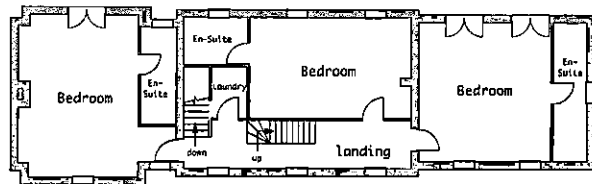
Approved Homeowners
Approved Scheme 12/04/13/7/01

Archwispish
Oxford Blue
Chipping
Chippenham
Gloucestershire

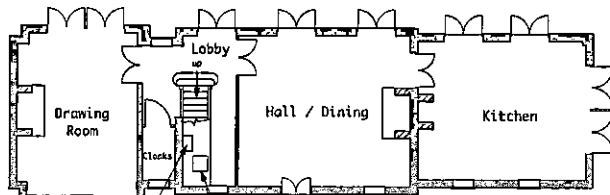
15/02096/Full
March 2013
1:100
1:100



Second Floor Plan 1:100

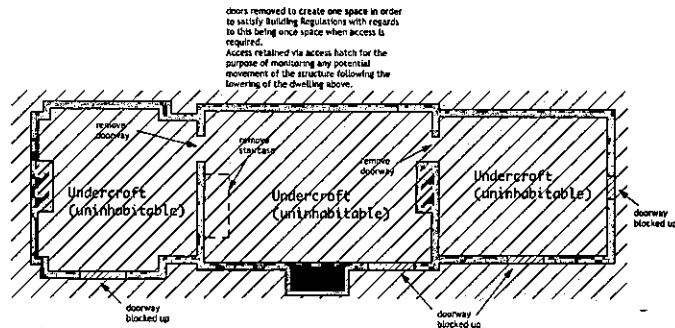


First Floor Plan 1:100



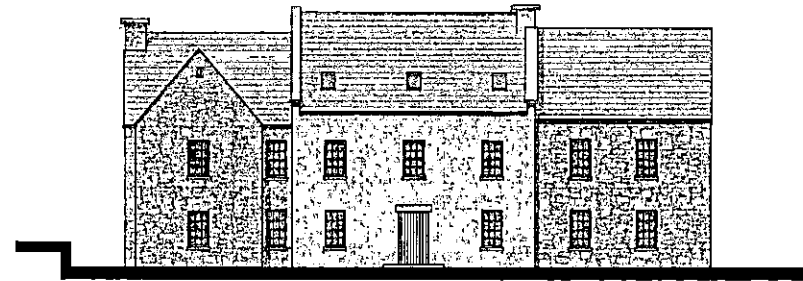
Ground Floor Plan 1:100

boiler and electric to be relocated to area under existing stairs up to the first floor
 remove existing stairs down into basement and cover over stair well leaving access hatch for maintenance only



Basement Plan 1:100

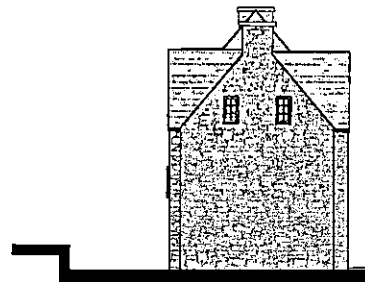
doors removed to create one space in order to satisfy building regulations with regards to this being one space when access is required.
 Access retained via access hatch for the purpose of monitoring any potential movement of the structure following the lowering of the dwelling above.



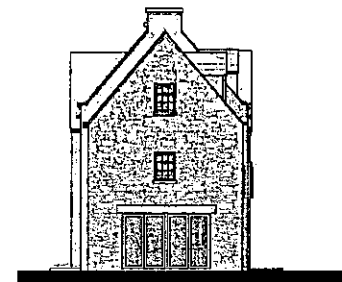
South Elevation 1:100



North Elevation 1:100



West Elevation 1:100



East Elevation 1:100

Note: Ground Levels and Landscaping detail around the dropped dwelling to be in accordance with MHP landscaping proposals.

17/01/21/Full APPLICATION RETURNED

Wildish
 Traditional with a modern twist

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 M: 07528 377993

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Client: Mrs C S Ayres

Project: Proposed Amendments to Regularise As Built Scheme

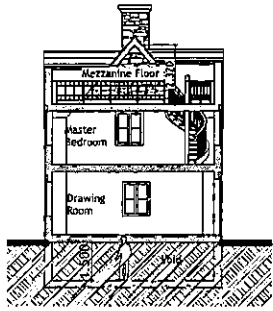
Site Address: Drove Rise, Charltonworth, Chipping Campden, Gloucestershire

Scale: 1:100 Paper Size: A1

Date: February 2017

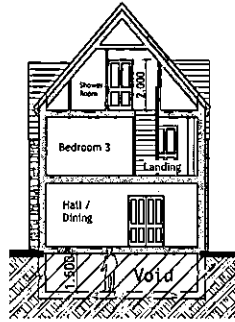
Project Number: 17-116-06

CIAT
 Registered Practitioner



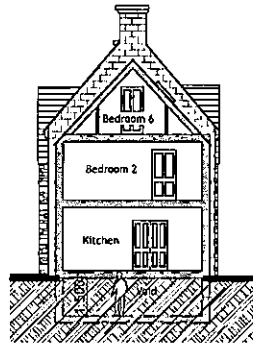
Section A - A

1:100



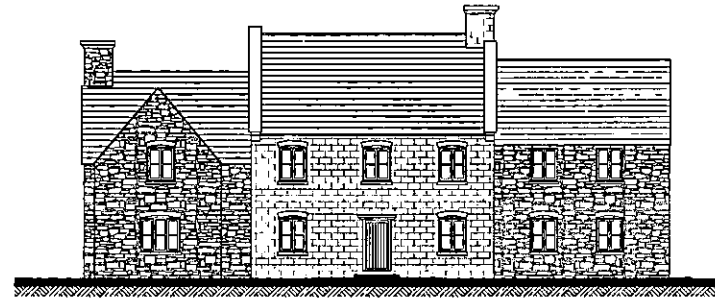
Section B - B

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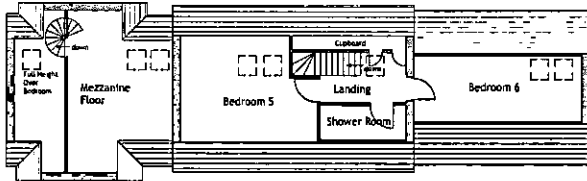
Section C - C

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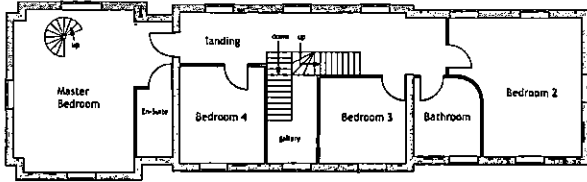
South Elevation

1:100



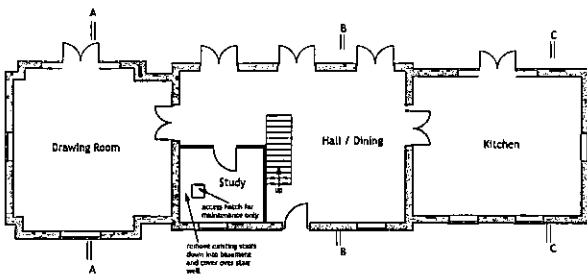
Second Floor Plan

1:100



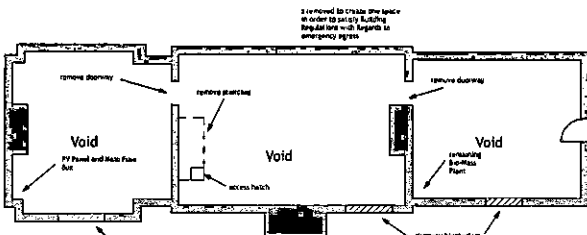
First Floor Plan

1:100



Ground Floor Plan

1:100



Services / Void Plan

1:100

is removed to create the space in order to satisfy Building Regulations with regards to emergency egress

height of door reduced to accommodate house steel and returned for maintenance access over garage access point only to accord with Building Regulations



North View 3D



South View 3D

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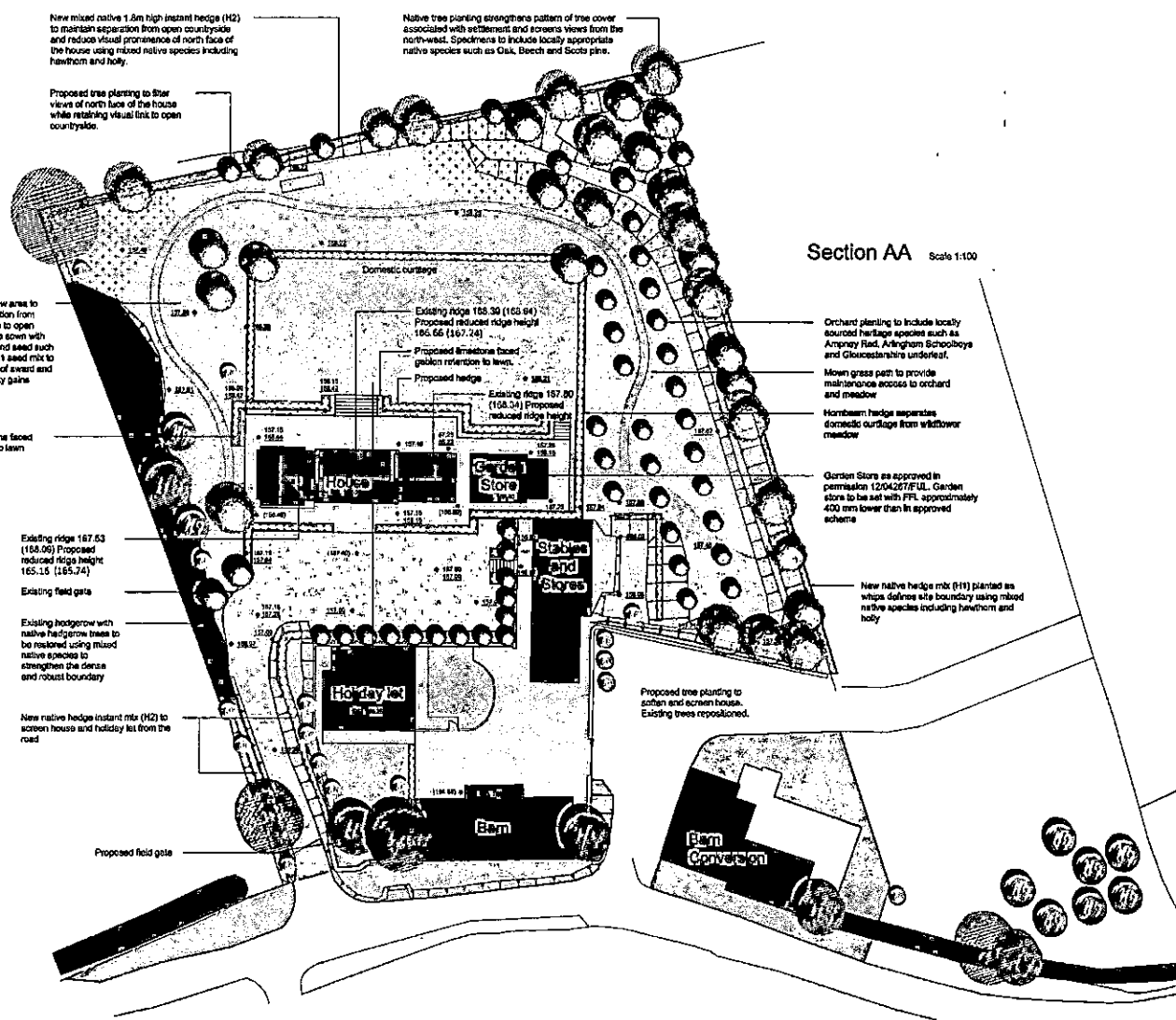
17/02086/RUC
CURRENT APPLICATION

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Client
Mrs. S. Ayres

Project
17/02086/RUC - 01/2017
Proposed Alterations to An Built House

The Address
Orchard Rise
Chippingworth
Chipping Campden
Gloucestershire



Section AA Scale 1:100

New mixed native 1.8m high instant hedge (H2) to maintain separation from open countryside and reduce visual prominence of north face of the house using mixed native species including Hawthorn and holly.

Proposed tree planting to blur views of north face of the house while retaining visual link to open countryside.

Wildflower meadow area to provide soft transition from domestic outillage to open countryside. To be sown with wildflower grassland seed such as Emingto EM1 seed mix to increase diversity of sward and provide biodiversity gains.

Proposed limestone faced gabion retention to lawn.

Existing ridge 167.63 (166.96) Proposed reduced ridge height 165.15 (165.74)

Existing field gate.

Existing hedgerow with native hedgerow trees to be restored using mixed native species to strengthen the dense and robust boundary.

New native hedge instant mix (H2) to screen house and holiday let from the road.

Proposed field gate.

Native tree planting strengthens pattern of tree cover associated with settlement and screens views from the north-west. Specimens to include locally appropriate native species such as Oak, Beech and Scots pine.

Domestic outillage

Existing ridge 165.30 (163.64) Proposed reduced ridge height 160.66 (167.24)

Proposed limestone faced gabion retention to lawn.

Proposed hedge

Existing ridge 167.80 (168.04) Proposed reduced ridge height

House

Garden Store

Shed

Shed

Barn

Barn Conversion

Barn

Holiday let

Orchard planting to include locally sourced heritage species such as Ameyra Rad, Arnhem Schooboye and Gloucestershire Underleaf.

Mown grass path to provide maintenance access to orchard and meadow.

Horizontal hedges separates domestic outillage from wildflower meadow.

Garden Store as approved in permission 1204267/FUL. Garden store to be set with FFL approximately 400 mm lower than in approved scheme.

New native hedge mix (H1) planted as whips defines site boundary using mixed native species including Hawthorn and holly.

Proposed tree planting to soften and screen house. Existing trees repositioned.

Key

- Existing trees
- Proposed trees
- Existing hedges and vegetation
- Proposed native hedge planting
- Bush planting incorporating daffodils, snowdrop and bluebells
- Grass lawn
- Meadow grass including wildflower species.
- Proposed level with existing (undisturbed).
- Levels from Cotswold District Council survey
- Existing hard surfacing
- Cotswold stone faced retaining wall

Notes

- 1) Do not scale directly from this drawing.
- 2) Existing site levels shown are approximate.
- 3) Foundation design is to be approved by engineers in regards to existing and proposed trees locations next to building.
- 4) This drawing is illustrative only.

1. Standard title block		16102.101	
2. Plan and section symbols		16102.101	
3. Revision		16102.101	
Project: Orchard Rise, Charingworth			
Client: Mrs S Ayres			
Title: Landscape Proposals			
Drawn by:	Checked by:	Date:	Scale:
DB	PH	24/11/18	1:250

Orchard Rise, Charingworth
Landscape Proposals



16102.101 - Cotswold Stone 1:100 24/11/18 1:250

CURRENT APPLICATION

Estimate of man hours required to carry out lowering house, alterations to roof and changes to fenestration

Action required

Lower house

	man hours	no/men	days
<u>External work required to prepare house for lowering</u>	80 - 96	2	5.0 - 6.0
Secure site	80 - 96	2	5.0 - 6.0
Remove plants, wisteria etc from outside of house	32 - 40	2	2.0 - 2.5
remove cotswold chippings from terrace and parking area	16 - 32	2	1.0 - 2.0
remove stone flags from terrace	18 - 24	2	1.1 - 1.5
Remove beam and block terrace floor and steel supports and store in secure place for re-use (mobile crane may be required)	144 - 160	2	9.0 - 10.0
install temporary access ramps to house over void	10 - 20	2	0.6 - 1.3
Remove or disconnect sewer and rainwater pipe work under terrace and store in for re-use	40 - 64	2	2.5 - 4.0
construct new rainwater soakaway	80 - 96	2	5.0 - 6.0
remove or disconnect any electrical plant from under terrace and store for re-use	8 - 16	2	0.5 - 1.0
remove heating duct and heating pipes from under terrace and store for re-use	32 - 40	2	2.0 - 2.5
excavate and construct spot foundations 1-2m apart to support steel framework for lowering house	120 - 144	2	7.5 - 9.0
Lower retaining terrace walls, retaining stone materials where possible and store in secure place for re-use	80 - 96	2	5.0 - 6.0
Remove turf for path for groundworks machinery access (around house and to stable)	32 - 40	2	2.0 - 2.5
widen path at back of house to 1m wide to allow for access for lowering equipment	80 - 96	2	5.0 - 6.0
Remove 1m soil from gable end of house nearest to stable - store soil for re-use	32 - 40	2	2.0 - 2.5
Brace windows and doors above ground	24 - 32	2	1.5 - 2.0
Open holes along length and width of external basement walls at 1-2 m intervals for hydraulic jacks, install temp supports	80 - 96	2	5.0 - 6.0
Open holes along length and width of external basement walls at 1-2 m intervals for temporary support steelwork	40 - 64	2	2.5 - 4.0
Block up external doors to basement to 1.5m	80 - 96	2	5.0 - 6.0

Lower house

Lowering contractor to install jacks and supporting steel framework, set up sensors, etc	216 - 240	3	9.0 - 10.0
Lower house by 1m	64 - 96	4	2.0 - 3.0
Remove jacks	20 - 32	2	1.3 - 2.0
Pack joints and grout	40 - 64	2	2.5 - 4.0
Block in holes	80 - 96	2	5.0 - 6.0
Remove support steelwork, bracing etc	10 - 24	2	0.6 - 1.5

Making good after lowering

alter or remove retaining walls to terrace	160 - 240	2	10.0 - 15.0
Replace steel supports to terrace	40 - 64	2	2.5 - 4.0
Replace beam and block	160 - 240	2	10.0 - 15.0
slurry over beam and block	16 - 32	2	1.0 - 2.0
Replace cotswold chippings	16 - 32	2	1.0 - 2.0
Built new stone retaining walls above ground at back and sides of house	240 - 400	2	15.0 - 25.0
Replace stone flags	96 - 120	2	6.0 - 7.5
Replace turf	16 - 32	2	1.0 - 2.0
make good landscaping	160 - 200	2	10.0 - 12.5

Internal work required to prepare house for lowering

Clear basement of stored items	40 - 80	2	2.5 - 5.0
Remove pellets from pellet store and store for re-use	24 - 32	2	1.5 - 2.0
Remove pellet store - retain materials for re-use	24 - 32	2	1.5 - 2.0
Drain heating system	8 - 16	2	0.5 - 1.0
Disconnect or remove electric plant	16 - 32	2	1.0 - 2.0
Disconnect or remove AV plant	8 - 16	2	0.5 - 1.0
Disconnect or remove heating plant	32 - 64	2	2.0 - 4.0
Disconnect or remove water and sewage plant	24 - 32	2	1.5 - 2.0
Remove stairs	8 - 16	2	0.5 - 1.0
remove internal doors	4 - 6	2	0.3 - 0.4
excavate and construct foundations for temporary steel work	96 - 144	2	6.0 - 9.0

Internal work required to make good after lowering

Install trap door access to basement	16 - 24	2	1.0 - 1.5
Fill in over staircase opening	24 - 32	2	1.5 - 2.0
Re-connect electric plant	24 - 32	2	1.5 - 2.0
Re-connect AV plant	8 - 16	2	0.5 - 1.0
Re-connect heating system	80 - 96	2	5.0 - 6.0
Re-connect water and sewage	24 - 32	2	1.5 - 2.0
Make good any internal cracking to plasterwork	16 - 32	2	1.0 - 2.0

Alter roof

Internal preparation work required to alter roof

Remove items stored in attic space	8 - 12	2	0.5 - 0.8
Remove sanitaryware from bathrooms	32 - 48	2	2.0 - 3.0
Remove furniture, carpet etc from attic rooms	16 - 24	2	1.0 - 1.5
Remove oak floor from attic rooms	24 - 32	2	1.5 - 2.0
Remove stairs to attic rooms	8 - 16	2	0.5 - 1.0
Remove plasterboard from ceilings	32 - 48	2	2.0 - 3.0
Remove partition walls from attic space	8 - 16	2	0.5 - 1.0
Remove electric light sockets, plug sockets etc	16 - 24	2	1.0 - 1.5
Remove audio visual items	8 - 16	2	0.5 - 1.0
Remove insulation below trusses	24 - 32	2	1.5 - 2.0
Remove electric wiring	16 - 24	2	1.0 - 1.5
Remove plumbing and heating pipes	24 - 32	2	1.5 - 2.0

External preparation work required to alter roof

Erect scaffolding	64 - 96	4	2.0 - 3.0
Remove gutters and rainpipes	16 - 24	2	1.0 - 1.5
Remove tiles and store for re-use or sale	80 - 96	2	5.0 - 6.0
Remove lead and store for reuse	16 - 24	2	1.0 - 1.5
Remove rooflights for reuse	16 - 24	2	1.0 - 1.5
Remove dormers	16 - 24	2	1.0 - 1.5
Remove battens and for reuse where possible	32 - 48	2	2.0 - 3.0
Remove felt and store for re-use	8 - 16	2	0.5 - 1.0
Remove roof insulation above trusses	8 - 16	2	0.5 - 1.0
Remove roof trusses and roof fixings	32 - 48	2	2.0 - 3.0
Remove wall plates and store fir re-use	16 - 24	2	1.0 - 1.5

Alterations to roof

Lower stone walls to required height	80 - 96	2	5.0 - 6.0
Replace wall plates	16 - 24	2	1.0 - 1.5
Alter trusses	96 - 120	3	4.0 - 5.0
Replace trusses	96 - 120	3	4.0 - 5.0
Replace felt	24 - 32	2	1.5 - 2.0
Replace batten	32 - 48	2	2.0 - 3.0
replace insulation	32 - 48	2	2.0 - 3.0
Install roof lights	48 - 64	2	3.0 - 4.0
Re-lead	32 - 48	2	2.0 - 3.0
Lay tiles	240 - 400	2	15.0 - 25.0
Replace gutters and rain pipes	32 - 48	2	2.0 - 3.0

Internal

Partition walls	32 - 48	2	2.0 - 3.0
Refit insulation	48 - 64	2	3.0 - 4.0
Reconnect electrics	32 - 48	2	2.0 - 3.0
Reconnect av	16 - 24	2	1.0 - 1.5
Reconnect plumbing and heating	64 - 96	2	4.0 - 6.0
Replace plasterboard	48 - 64	2	3.0 - 4.0
Plaster	64 - 96	2	4.0 - 6.0
re-install sanitary ware	72 - 96	2	4.5 - 6.0
Redecorate	128 - 240	2	8.0 - 15.0
re-place oak floor	96 - 128	2	6.0 - 8.0
replace furniture and soft furnishings	48 - 64	2	3.0 - 4.0

Fenestration

Remove sash window	64 - 96	2	4.0 - 6.0
remove stone lintels	64 - 96	2	4.0 - 6.0
Infill window openings where necessary	64 - 96	2	4.0 - 6.0
Increase size of window opening for casements	64 - 96	2	4.0 - 6.0
Install timber lintels	64 - 96	2	4.0 - 6.0
Make new openings for windows	48 - 64	2	3.0 - 4.0
Install casement windows	128 - 240	2	8.0 - 15.0
Decorate windows	96 - 128	2	6.0 - 8.0
Install glazing	48 - 64	2	3.0 - 4.0
repair internal plasterwork	32 - 48	2	2.0 - 3.0
re-decorate	128 - 240	2	8.0 - 15.0
Remove scaffolding	24 - 36	3	1.0 - 1.5
Garden store	480 - 640	2	30.0 - 40.0

Total	6118	8754	369.4	530.4
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Appeal Decision

Hearing held on 28 June 2016

Site visit made on 28 June 2016

by A R Hammond MSc MA CEng MIET MRTPI

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

Decision date: 21 July 2016

Appeal Ref: APP/F1610/C/15/3140907

**Land at Orchard Rise, Charingworth Road, Ebrington, Chipping Campden
GL55 6NR**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mrs Stephanie Ayres against an enforcement notice issued by Cotswold District Council.
- The enforcement notice, reference 16/00002/EAP, was issued on 17 November 2015.
- The breach of planning control as alleged in the notice is without planning permission, the erection of an unauthorised dwelling in the approximate position shown edged red on the attached plan.
- The requirements of the notice are:-
 - i. Demolish the unauthorised building at Orchard Rise, Charingworth Road, Charingworth, Ebrington, Chipping Campden, Gloucestershire GL55 6NR and its associated features such as retaining walls, steps and land areas;
 - ii. Permanently remove from the land the material resulting from such demolition;
 - iii. Reinstate the land where the unauthorised dwelling stood to its original levels and profile.
- The period for compliance with the requirements is within 10 months of the date that the Notice takes effect for requirement i; within 11 months of the date that the Notice takes effect for requirement ii; and within 12 months of the date that the Notice takes effect for requirement iii.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) & (g) of the Town and Country Planning Act 1990 as amended.

Decision

1. The enforcement notice is corrected by the deletion of the words "steps and land areas" from the allegation and their replacement by the words "and steps". Subject to this correction the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The Enforcement Notice

2. The requirements of the notice include the demolition of "land areas". Both parties understood this to refer to the lowering of any raised areas but the wording of the notice does not make this clear. However, the notice also requires the land to be reinstated to its original levels and therefore no injustice would be caused to either party by the deletion of the requirement to "demolish land areas".

Reasons**Main Issues**

3. The main issues in the ground (a) appeal are the effects on the stock of smaller size dwellings within Cotswold District and the effect on the character and appearance of the Cotswold Area of Outstanding Natural Beauty (AONB).

The Permitted Dwelling

4. The original dwelling on the site was a 1.5 storey 3 bedroom dwelling constructed in artificial stone. Policy 22 of the Cotswold District Local Plan 2001-2011 (LP) states that replacement dwellings will be permitted on a one-for-one basis when all of a number of criteria, including that the replacement dwelling is of a similar size and scale to the existing building, are met.
5. In 2007 planning permission 07/03238/FUL was granted for a replacement 1.5 storey 4 bedroom dwelling constructed in natural stone. A further application (11/05844/FUL) for a replacement dwelling approximately 20m south east of the original dwelling was refused in accordance with officer recommendation due to concerns with regard to the size and scale of the proposed dwelling, which would have been approximately 9.8m high.
6. Subsequently, planning permission 12/04267/FUL was granted for the demolition of an existing dwelling and the erection of a replacement dwelling and new garage together with new ancillary stables and demolition of existing Dutch barn and erection of replacement barn at Orchard Rise, Charingworth Road, Charingworth, Ebrington. The internal floor area would have been similar to that approved in 2007 and the proposal would have 3 bedrooms as per the original dwelling.

The "As Built" Dwelling

7. There is no dispute between the parties that the as built dwelling sits on substantially the same sized footprint as the permitted scheme, albeit that the Council suggest that the precise location has been changed. There are nevertheless a number of significant variations to that permitted.
8. The approved house consists of a central core with a subservient wing either side. The western wing extends very slightly forward of the central portion to both the front and rear and has a gable end to each of its three elevations. The eastern wing has a simple gable ended roof and both wings have a ridge and eaves set down from those of the central core.
9. The as built dwelling differs in appearance to that approved in that the central core of the building has been faced in ashlar stone as opposed to the approved rubble stone. The eaves and ridge heights of all three elements have been raised. To the front and side elevations casement windows have been replaced by larger sash windows with two additional windows to the front elevation, with rooflights also added to the central core. To the east elevation the ground floor two-light single casement window has been replaced by a set of four plain glazed patio doors and the casement window to the first floor has been replaced by a sash window and a further sash window has been inserted into the gable end of the roofspace.

10. To the west elevation, casement windows to the ground and first floors have been omitted but two sash windows have been inserted into the raised gable end (roofspace).
11. To the rear (north) elevation, modest first floor casement windows to the side wings have been replaced by a total of three large "Juliette balconies" with railings, the three casement windows to the first floor of the central core have been replaced by larger sash windows, two additional sash windows have been inserted into the wall between the central core and the western wing and an additional sash window has been inserted into the rear facing gable of the western wing. Two dormer windows and a rooflight have been added to the central core and a further two dormer windows have been added to the eastern wing.
12. The raised eaves and ridge heights, together with the additional fenestration, have facilitated the insertion into the roofspace of three additional bedrooms and three en-suite bathrooms.
13. There is no dispute between the parties that the height of the central ridge is some 9.2m above ground floor level. However, the Council contend that the ground floor level is 168.94m above ordnance datum compared to 168.39 indicated by the appellant's survey. The appellant's datum was the floor level of the Dutch barn at 156.0m whereas the Council's survey utilised an Ordnance Survey benchmark on an adjacent building, Ram Close Barn, crosschecked against known points off site. The appellant contends that the benchmark was moved during reconstruction of the corner of Ram Close Barn during its conversion to residential use. Conversely, the Council contend that the floor level of the Dutch barn was never conclusively established and also referred to photographic evidence that the quoin on which the benchmark is displayed remains unmoved from its position pre-conversion of the building.
14. From the above, the Council infer that the ground levels on that part of the appeal site upon which the dwelling stands have been raised and that the ground floor level is some 0.5m higher than as approved. In support of that argument the Council draw attention to changes in level between the finished site level and the hedgerows to the north-west corner and rear of the site.
15. Whilst there is no unequivocal evidence that the ground level has been raised, there is a distinct drop in the level to the rear of the property in the north-west corner of the plot and along part of the rear boundary. The front of the property is raised above the parking area although it is unclear whether this is due to the dwelling being raised up or the parking area being lowered/levelled. However, the effect is to give the property a more imposing frontage with an elevated narrow terrace along the front with steps up, none of which features on the approved drawings.
16. Even discounting the potential raised ground level, the overall result of the increase and changes to fenestration in the ground and first floor; the elevated roof ridges and eaves, with consequent increase in the area of brickwork to each of the end elevations; together with the dormer windows and roof lights add substantially to the apparent bulk and mass of the building giving it an commanding and dominant appearance.
17. Furthermore, the dwelling as built has six bedrooms with en-suite bathrooms as opposed to the permitted three-bedroomed replacement house and the

three-bedroomed original dwelling. The dwelling also incorporates a full height basement area currently utilised as plant rooms and storage space.

18. The resultant building is, therefore, of substantially greater mass and bulk than that permitted and is no longer a "smaller dwelling", thus eroding the stock of such properties, contrary to LP Policy 22.
19. With its ashlar central core, Juliette and sash windows, dormer windows and raised terrace along the frontage the property is also considerably more imposing, dominant and obtrusive in the landscape than would have been the approved dwelling.
20. The appellant suggests that, as a fallback, the dwelling as approved could be constructed and subsequently additional habitable space could be provided in the roofspace, without the need for planning permission. Additional ancillary accommodation could also be provided by conversion of the stables and barn. However, even were the approved dwelling constructed following demolition of the unauthorised building and subsequently extended, it would still result in a building of substantially reduced mass than that existing. The fallback as suggested is therefore of limited weight in the determination of the appeal.
21. The differences between the approved dwelling and that constructed therefore result in a building that conflicts with LP Policy LP22 and, by virtue of its dominant and obtrusive appearance, fails to respect the character, appearance and local distinctiveness of the immediate area and of the Cotswold Area of Outstanding Natural Beauty.
22. The appellant has drawn attention to other replacement dwellings which are substantially larger than the buildings they replaced. The precise circumstances of these other developments are not fully known and each case must be considered on its individual merits.
23. The appellant has also described, in some detail, the circumstances under which the various deviations from the approved drawings came about. These circumstances, however, do not justify the grant of planning permission.

Ground (a) Conclusion

24. The dwelling as built has a substantial detrimental effect on the character and appearance of the area, which is within the Cotswold AONB, and fails to preserve the stock of smaller houses eroding the supply of such properties, contrary to development plan policies.
25. For the reasons given above, and taking account of all material planning considerations, the appeal on ground (a) fails.

The Ground (f) Appeal

26. Under ground (f) the appellant pleads that lesser steps would overcome the Council's objections and has produced a number of alternative schemes for consideration.
27. In support of the ground (f) appeal the appellant drew attention to her current personal and financial situation and the high costs incurred in demolition or in implementing schemes 2 to 5 below.

28. Under alternative scheme 1 the appellant offers a completed planning obligation not to cause or permit the construction of the barn conversion and garage block (parts of the original planning permission). The roof ridges would remain as constructed but the dormer windows would be removed.
29. Under alternative scheme 2 the ridge heights of the two side wings would be reduced by 0.5m, the dormer windows would be removed and replaced by roof lights; the Juliette windows and French doors would be replaced by windows; and a new chimney would be inserted to the eastern elevation gable end.
30. Alternative scheme 3 would be identical to alternative scheme 2 aside from a reduction in the ridge height of the central element by 0.5m.
31. Alternative scheme 4 would result in a reduction in ridge heights of the western wing by a further 1m and of the eastern wing by a further 0.5m, along with a reduction in eaves heights.
32. Alternative scheme 5 would develop scheme 4 by a reduction of the eaves height of the central section by a further 0.5m.
33. The appellant's Hearing Statement suggests that the enforcement notice should be amended to require works to the, as built dwelling to bring it into line with one of the proposed alternatives should that be acceptable.
34. However, the council confirmed at the Hearing that the enforcement notice was issued both to remedy the breach of planning control and to remedy the breach to amenity. Therefore, the appropriate requirements of the notice are either to require the demolition of the dwelling OR to require its alteration to comply with all the terms and conditions of the planning permission. As the Council rightly pointed out the latter is not technically feasible given the addition of the basement to the development as permitted.
35. Any lesser requirement, introduced solely under ground (f) would result in under enforcement in that section 173(11) of the Act provides that where an enforcement notice in respect of any breach of planning control could have required buildings or works to be removed, or an activity to cease, but has stipulated some lesser requirement, (under-enforcement), which has been complied with, then, so far as the notice did not so require, planning permission shall be deemed to be granted under s73A for that operation or use. The result of compliance with an enforcement notice amended or varied as suggested would have the effect of granting an unconditional planning permission whereby, following compliance, the appellant would benefit from all permitted development rights in respect of extensions and alterations. Clearly this would defeat the purpose of the enforcement notice.
36. Nevertheless, at the hearing, the appellant suggested that it would be possible to grant planning permission under section 177(1) of the Act for one of the alternative schemes in combination with a simultaneous and consistent variation of the requirements of the enforcement notice pursuant to ground (f). This matter was subject to written submissions by the parties after the close of the Hearing. In support of the appellant's contention attention was drawn to the judgements in *Tapecrown*¹; *Ahmed*² and *Moore*³.

¹ *Tapecrown Ltd v First Secretary of State* [2006] EWCA Civ 1744, [2007] 2 P&CR 7

² *Secretary of State for CLG v Ahmed* [2014] 2 E.G.L.R 197

³ *Moore v Secretary of State for CLG* [2013] J.P.L 192

37. The power to grant planning permission under s177(1) in respect of the matters stated in the notice as constituting a breach of planning control is linked to the appeal under ground (a) rather than under ground (f). Although the ground (a) appeal sought permission only in respect of the development as built, which constituted the whole of the matters stated in the notice, the power under s177(1) is to grant planning permission "in relation to the whole or any part of those matters".
38. The Ahmed case applies where there is both a ground (a) and a ground (f) appeal. If there is an alternative to the notice requirements which would overcome the planning difficulties, at less cost and disruption it should be considered. If there is such an alternative, planning permission may be granted providing it is "part" of the development enforced against.
39. The alternative schemes 2 to 5 put forward by the appellant under ground (f) would each require significant material demolition and new construction works to be carried out to the "as built", and hence as enforced against, development to bring them about. They cannot, therefore, be properly described as "part" of the matters alleged in the enforcement notice and it is concluded that planning permission could not be granted for any one of them by virtue of s177(1) of the Act.
40. Notwithstanding the above, any of the schemes 2 to 5 would result in a dwelling significantly larger than that approved and would not remedy the breach of planning control or remedy the harm to amenity.
41. With regard to alternative scheme 1, the appellant had provided a completed Planning Obligation by Deed not to cause or permit the construction of the garage, or to demolish any part of the garage that has been constructed; and not to cause or permit the construction of the barn, or to demolish any part of the barn that has been constructed, in the event of the Inspector allowing the appeal on ground (a) by granting permission for alternative scheme 1.
42. The enforcement notice, as corrected, requires the demolition of the unauthorised building at Orchard Rise, Charingworth Road, Charingworth, Ebrington, Chipping Campden, Gloucestershire GL55 6NR and its associated features such as retaining walls and steps. There is no mention of the barn and garage, although that would be expected as their construction had not commenced at the time the enforcement notice was issued. In seeking planning permission for alternative scheme 1 the appellant is, therefore, seeking planning permission for the whole of the development enforced against with the exception of the dormer windows.
43. The reasons for issuing the enforcement notice are to remedy the breach of planning control and to remedy the harm to amenity. Alternative scheme 1 would marginally reduce the visual mass and bulk of the dwelling but it would still, by virtue of its still enlarged bulk and its dominant and obtrusive appearance, fail to respect the character, appearance and local distinctiveness of the immediate area and of the Cotswold Area of Outstanding Natural Beauty. Furthermore, it would remain a substantial 6-bedroomed property in conflict with LP Policy 22.
44. Alternative scheme 1 would not, therefore, "overcome the planning difficulties".

Conclusion on Ground (f)

45. For the reasons given above, the ground (f) appeal fails.

The Ground (g) Appeal

46. Under ground (g) the appellant pleads that 10 months to demolish the dwelling allows insufficient time to find alternative accommodation and to finance that and the demolition, particularly given the appellant's personal and financial circumstances. However, given that the appellant pleads that there is no existing or envisaged income to finance the demolition, it is difficult to see how an extension of time would change the situation and extending the period for compliance would blunt the urgency and could call into question the expediency of issuing the enforcement notice in the first place.

Conclusions on Ground (g)

47. For the reasons given above the appeal on ground (g) fails.

Overall Conclusion

48. It is acknowledged that dismissal of the appeal would result in the loss of the appellant's home and also, in all likelihood, serious financial hardship. The outcome of this appeal therefore engages the appellant's rights under Article 8 of the European Convention on Human Rights. However, those rights are qualified and any interference with those rights should be in accordance with the law and necessary in a democratic society, applying the principle of proportionality. A decision to dismiss the appeal will result in the appellant and her family losing their home but in this case the harm to the character and appearance of the Cotswold Area of Outstanding Beauty and in relation to development plan policy aimed at maintaining a stock of smaller homes is such that dismissal of the appeal is a necessary and proportionate response.

49. For the reasons given above the appeal is dismissed and the enforcement notice as corrected is upheld.

Andrew Hammond

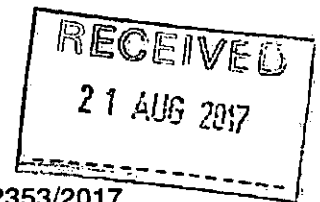
Inspector



**In the High Court of Justice
Queen's Bench Division
Planning Court**

CO Ref:

CO/2353/2017



In the matter of an application for Judicial Review

The Queen on the application of

**(1) STEPHEN AYRES
(2) STEPHANIE AYRES**

Claimants

versus

COTSWOLD DISTRICT COUNCIL

Defendant

**Application for permission to apply for Judicial Review
NOTIFICATION of the Judge's decision (CPR Part 54.11, 54.12)**

Following consideration of the documents lodged by the Claimant and the Acknowledgement of service detailed grounds of defence filed by the Defendant

Order by His Honour Judge Waksman QC sitting as a Judge of the High Court

Permission is hereby refused.

Reasons:

1. While the power to decline consideration of a planning permission application under s70C of the TCPA 1990 ("the Act"), it is, as noted in *Wingrove* a discretion to decline to consider the planning merits where the grant of permission (in respect of all or part of the land to which the previous enforcement notice ("the EN") related, would involve granting permission for matters specified in the EN as being a breach of planning control; not a discretion to consider them. I do not accept that there is any rule of law that in effect the LPA can only refuse to decline consideration where the planning merits are incapable of being different. There is no express provision in the Act to this effect and any such fetter would allow applicants to force the LPA to consider a new application even where the differences from the building enforced against were minor.
2. A consideration of all the evidence shows that the Defendant in writing: (a) fully explained to the Claimants what sort of changes would be needed in any new application so as to avoid it being declined under s70C – with particular reference to the overall size and scale and appearance of the development – (b) when the application was made, gave very full consideration to it before making the decision and then (c) although under no legal obligation to do so, explained why that decision had been taken – which in reality can have come as no surprise to the Claimants. See in particular the long letter from the Defendant (Mr Field) dated 28 April 2017. Other more brief statements of reasons must be looked at in that context and that of the correspondence as a whole including those documents exhibited to Mr Field's witness statement of 7 June 2017.

lodge a certified Application for Fee remission may result in the claim being struck out. The form for Application for Remission of a Fee is obtainable from the Justice website <http://hmctsformfinder.justice.gov.uk/HMCTS/FormFinder.do>

3. Although the Article 8 points had been fully ventilated to and considered by the Inspector when dismissing the EN Appeal on 21 July 2016, and although those points now articulated in this challenge are really concerned with the effect of the EN on the Claimants personally as opposed to the Defendant's declining to consider the new planning application, the evidence shows that they were considered in any event. There is no basis to interfere with the balancing of factors (including Article 8) carried out by the Defendant.
4. There is no basis in respect of the "fallback" argument based on the 2016 permission which was only relevant if the original 2012 permission (as modified) were implemented. The position of the Claimants as articulated is that this would not happen because they could not afford to demolish the present building and so there would be no opportunity to build now what had been permitted originally.
5. The differences (such as they were) between the new scheme and the development as built were taken into account. The significance of these was pre-eminently a matter for the Defendant. Equally the Defendant was entitled to take account of the Policy 22 points in the way that it did. Again, there is no basis for interfering with the Defendant's reliance upon the development's location in the AONB and the local development plan especially when they formed part of the backdrop to earlier refusals of permission and the decision to issue the EN.
6. Finally the breach of legitimate expectation argument is hopeless. There is no real evidence of a clear and unequivocal expectation, the scope for which in planning cases is limited and which in the wide form alleged (that the Defendant would in any event consider any new application) was inconsistent with what the Defendant expressly told the Claimants in the pre-application correspondence.
7. Otherwise the detailed grounds of defence are adopted.
8. Accordingly, there is no arguable basis for a judicial review.
9. The costs of preparing the Acknowledgment of Service are to be paid by the Claimant to the Defendant. The full costs are assessed summarily in the sum of £10,489. Such costs shall be paid within 21 days of receipt of this Order upon the Claimants.

Signed:

For completion by the Planning Court

Sent / Handed to the claimant, defendant and any interested party / the claimant's, defendant's, and any interested party's solicitors on (date):

Solicitors:

Ref No.

18 AUG 2017

Notes for the Claimant

If you request the decision to be reconsidered at a hearing in open court under CPR 54.12, you must complete and serve the enclosed FORM 86B within 7 days of the service of this order; a fee is payable on submission of Form 86B. **For details of the fee please see the Court website.** Failure to pay the fee or



Above: View from lane to north east

Below: Existing dwelling

