

Item No 09:-

17/02598/FUL

**Close Hill
Naunton
Cheltenham
Gloucestershire
GL54 3AA**

Item No 09:-**Erection of replacement garage with two additional rooflights (Retrospective). Resubmission of 16/01577/FUL at Close Hill Naunton Cheltenham Gloucestershire GL54 3AA**

Full Application 17/02598/FUL	
Applicant:	Mr Kendrick
Agent:	Tyack Architects Ltd
Case Officer:	Hannah Minett
Ward Member(s):	Councillor Richard Keeling
Committee Date:	13th December 2017
RECOMMENDATION:	PERMIT

Background and Main Issues:

The application is seeking retrospective planning permission for the erection of a replacement garage that has not been built in accordance with the approved plans permitted under reference 16/01577/FUL. Two additional rooflights have been inserted, one to the front and one to the rear. It should be noted that planning permission would not be required if the rooflights were inserted after the garage was completed.

The main issues to consider are:

- (a) Character and Appearance
- (b) Amenity
- (c) Ecology
- (d) Use
- (e) Loss of Trees

Reasons for Referral:

Councillor Keeling has requested that the application is determined at Planning Committee "in view of the changed use in the garage and the loss of the bat loft".

The application was deferred at the September Planning Committee to allow additional objections to be fully considered. The description of development has also changed from "*insertion of two rooflights to garage building (Retrospective)*" to "*replacement garage with two additional rooflights (Retrospective) Resubmission of 16/01577/FUL*" in order to consider the development as a whole. Bat mitigation measures are now proposed and a new consultation period has been carried out.

1. Site Description:

Close Hill is a detached dwelling located within the Naunton Conservation Area. It is located down a private track on the southern side of the village and is sited alongside the River Windrush. The original building dates from the mid C20, is constructed of artificial stone with a concrete tile roof and is not of historic interest. The dwelling has been extended and altered quite significantly and is now finished in a mixture of artificial stone and untreated larch cladding.

2. Relevant Planning History:Planning Applications

16/01577/FUL - Proposed alterations to dwelling and replacement garage. Permitted July 2016.

12/03755/FUL - Erection of porch, insertion of dormer and first floor gable windows and roof alteration. Permitted October 2012

04/02557/MINAM - Alterations to fenestration on south and east elevations permitted October 2004

04/01032/FUL - Alterations and extensions. Permitted June 2004

Tree Applications

16/03214/TCONR - Works detailed in submitted schedule 190 Tree mapping. No objection August 2016

12/00778/TCONR - T2 - Lawson Cypress - reduce height, T3 - Norway Spruce - fell, T4 - Tulip Tree reduce height by approx 50% and bring the sides in to match, T5 - 3 x Norway Spruce and 1 x Lawson Cypress - fell by sections to near ground level. No objection March 2012

12/00172/TCONR - Cut down and remove conifer tree from garden (location shown on submitted plan). Permitted January 2012

10/01647/TCONR - 1) Three Norway Spruce - fell. 2) Lawson Cypress and one Norway Spruce - fell. Permitted May 2010

07/02033/TRECON - Large Cherry tree - reduce the height to 2m above the top of the wall, Large Cherry tree beside the house. Fell to near ground level. Permitted August 2007

3. Planning Policies:

NPPF National Planning Policy Framework
 LPR09 Biodiversity, Geology and Geomorphology
 LPR15 Conservation Areas
 LPR42 Cotswold Design Code
 LPR46 Privacy & Gardens in Residential Deve

4. Observations of Consultees

Biodiversity Officer: No objection subject to condition. Full comments can be found in the main body of the report.

5. View of Town/Parish Council:

Naunton Parish Council : "The plan supplied with the original planning application (16/01577/FUL) clearly shows a store and bat loft, not the ancillary accommodation which is now being proposed. Naunton Parish Council would like to see the original plan implemented, rather than the over development which is proposed with resulting loss of bat habitat."

6. Other Representations

The occupier of Hatters Cottage objected to the application originally submitted, raising the following concerns (summarised, comments can be read in full online):

- i. Loss of provision for bats for which specific provision was made in 16/01577/FUL;
- ii. Change of use of room from store to bedroom which is not admitted in the application;
- iii. Loss of vegetation in contravention of PPS 7 A39 and A40 and absence of appropriate consultation under 16/03214/TCONR where there were material planning consequences;
- iv. Extreme loss of privacy in contravention of PPS 7 A27, A28 and A30;

- v. Inappropriate visual appearance in a Conservation Area which has arisen as a consequence of tree removal in gross contravention of the National Planning Policy Framework (NPPF) and PPS 7 A20 and A24, and A25; and
- vi. Increased fire risk due to the amount of timber cladding.

Following the change of description, introduction of mitigation measures and subsequent re-consultation, the occupier of Hatter Cottage has objected again, in summary:

"Objections based on loss of conservation value and privacy, and on matters of principle. The development was not completed in accordance with the Approved Plans, contrary to a strict requirement of the Decision Notice. Additional roof windows were installed.

Following a Bat Survey carried out in April 2016 (which was not disclosed until September 2017), a Bat Loft was included in Application 16/01577, and is shown on the Approved Plans. The Bat Loft is a Wildlife and Countryside Act 1981 (WCA 1981) use. The Bat Loft and Storeroom respectively were replaced by a bedroom and bathroom, which are material changes, including change of use. Application 17/012598 seeks to rectify this by a retrospective application and is stated to be a "resubmission of 16/01577/FUL"; the latter is not in accordance with planning law/practice. A resubmission procedure should not have been used for material changes. Application 17/02598 does not admit to nor apply for a change of use. A single bat box has been proposed in place of the Bat Loft. The proposed mitigation provides negligible habitat compared to the previous garage and the Bat Loft. The bat box is to be located next to a well-used footpath and is only 2m high; it is unlikely that bats will use it. Legal requirements prior to and during demolition of the previous garage were not carried out. The Applicant cannot install additional roof windows under General Permitted Development (GPD) rights. We object to the inclusion of roof windows which overlook our property and do not meet requirements for this context. The Applicant has not dealt with CDC in a sufficiently open and transparent manner; such behaviour should be discouraged. Any permission granted would be vulnerable to legal challenge. The application should be refused."

The occupier of Elm Tree Cottage has also objected on the grounds that the development does not accord with the plans and recommendations of the original bat report.

7. Applicant's Supporting Information

N/A

8. Officer's Assessment

(a) Character and Appearance

The site is located in a Conservation Area whereby the Local Planning Authority is statutorily obliged to pay special attention to the desirability of preserving or enhancing the character or appearance of the area, in accordance with Section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990.

Section 12 of the National Planning Policy Framework (NPPF) asks that local planning authorities take account of the desirability of sustaining or enhancing the significance of heritage assets. In particular, paragraph 132 states that when considering the impact of the proposed works on the significance of a designated heritage asset, such as a Listed Building or Conservation Area, great weight should be given to the asset's conservation. Local Plan Policy 15 reflects this in that development must preserve or enhance the character or appearance of the area as a whole, or any part of that area. It states that development will be permitted unless new or altered buildings are out-of-keeping with the special character or appearance of the area in general or in a particular location (in siting, scale, form, proportions, design or materials).

Section 7 of the NPPF requires good design. Local Plan Policy 42 requires development to be 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.

The replacement garage is acceptable in scale, form and design and would respect the character and appearance of the existing building and setting of Naunton Conservation Area. Naunton Parish Council raise concern that the additional rooflights result in overdevelopment however the rooflights match those approved on the garage. The addition of one rooflight to the front and rear roof slope is not considered to appear cluttered or overdeveloped. Officers therefore consider the rooflights to be in keeping with the character and appearance of the site and sympathetic to Naunton Conservation Area.

(b) Amenity

Section 7 of the NPPF requires good design and a good standard of amenity for all existing and future occupants of land and buildings. Local Plan Policy 46 states the design and layout of residential development should provide adequate areas of open space around dwellings, so as to ensure reasonable privacy, daylight, and adequate private outdoor living space.

The occupiers of Hatters Cottage have raised concern that the additional rooflights result in a loss of privacy, stating that the rooflights are inappropriate as they are "installed less than 1.7m above floor level, can be opened and are not obscure glazed. These windows create a loss of privacy to the occupants of Hatters Cottage, and do not meet required standards." The standards referred to are for windows in side facing elevations when being installed under permitted development rights. There is no requirement for the roof lights in the windows to the front of a building to meet these standards.

Officers acknowledge that Close Hill is in an elevated position to Hatters Cottage; however there is a 25 metre separation distance between the garage and Hatters Cottage which is considered adequate to avoid an unacceptable level of overlooking.

(c) Ecology

Section 40 of the Natural Environment and Rural Communities Act 2006 places a duty on all public authorities in England and Wales to have regard, in the exercise of their functions, to the purpose of conserving biodiversity.

Not only is the presence of "European Protected Species" (EPS) a material consideration when a planning authority is considering a development proposal, but additional obligations are imposed on local planning authorities and developers by the Habitats Directive and the Conservation of Habitats and Species Regulations 2010 ("the 2010 Regulations"). The 2010 Regulations provide, in reg. 9(3), that "a competent authority, in exercising any of their functions, must have regard to the requirements of the [Habitats Directive] so far as they may be affected by the exercise of those functions". That being said, it is the function of Natural England, and not of the planning authority, to grant and to ensure compliance with a European protected species licence."

Paragraph 118 in Section 11 of the NPPF requires consideration of the potential biodiversity gains that can be secured within developments, stating that "opportunities to incorporate biodiversity in and around developments should be encouraged".

Policy 9 of the Cotswold District Local Plan does not support development that harms, either directly or indirectly, a site supporting any legally protected species or its habitat unless safeguarding measures can be provided through conditions. It also identifies that opportunities should be taken, where possible, to enhance, or create habitats and populations of species. The Policy also requires that where development is permitted, the Council will require the retention and management of any significant species, habitats, and features. Policy EN8 of the emerging Local Plan reflects this.

The garage has replaced a smaller, recon stone building in its place. In usual circumstances, the Council would not have requested a bat survey for the application to demolish and re-build a garage. The bat loft incorporated into the roof space in the approved scheme was likely to have been welcomed as a biodiversity enhancement of the site for roosting bats rather than as compensation for the loss of a bat roost at the time the consent was granted.

Officers requested justification for the loss of the bat loft in response to the objections received at the start of the application. The bat survey report was subsequently submitted to demonstrate that while there were bat droppings belonging to a single brown long-eared bat in the garage (which is believed to have been present for just two days), the use of the previous building was purely opportunistic while the garage doors remained open overnight.

The Council's Biodiversity Officer has confirms that the previous garage building had no potential for roosting bats. The survey concludes that there is negligible potential for roosting bats as there are no suitable access points into the building, for example, close-fitting soffits/bargeboards and no loose or slipped roof tiles.

An email from the ecological consultant to the architect (dated 7th December 2016) was also submitted as part of the current application to confirm that a low impact class licence was not required because of the opportunistic use of the building by one bat. Despite the objectors' claims and concerns, the Council's Biodiversity Officer confirms that no offence would have been committed during demolition and no licence was required. This is sufficient and Natural England do not need to be involved. The applicant received advice from a professional, licensed and experienced bat ecologist and the demolition was therefore carried out in compliance with the legislation. As no license was required, the Council do not need to consider whether the three derogation tests are likely to be met as a part of the determination of the planning application.

The Brown long-eared bat has a common status. An opportunistic roost used by a single individual brown long-eared bat for a few nights would have low conservation significance (in line with the Bat Mitigation Guidelines 2004 and Bat Surveys Good Practice Guidelines 2016). The provision of a bat loft within the new garage building that was previously granted consent would therefore be considered as over-mitigation, which is disproportionate to the level of use of the previous garage building by roosting bats (or it could be viewed as enhancement as mentioned above). In this instance, the Council's Biodiversity Officer is satisfied with the provision of a Rocket bat box manufactured by *Habibat* and its location close to existing vegetation/trees and the river, in a part of the site that is not illuminated (the brown long-eared bat is a particularly light-sensitive species). Despite the objectors concerns, the bat box is considered to be an enhancement of the site for roosting bats, providing a permanent roost site that is not affected by disturbance (i.e. associated with the regular use of the garage) and external security lighting.

(c) Use

The neighbours occupying Hatters Cottage have raised concern over the use of the room above the garage being used as a bedroom and bathroom and claim that they would have objected to the use of the garage as a bedroom if it were described as such in the previous application. The objector raises concern that a change of use has taken place and has not been assessed.

The plans do not specify the use of the first floor, however the garage is on residential land and a householder application has been submitted. Using the room above the garage either as a store room or bedroom is considered to be incidental to the enjoyment of the main dwellinghouse, and as such, no material change of use has taken place.

(d) Other Issues

The occupier of Hatters Cottage has also objected as a matter of principle and to the planning procedures taking place, claiming that the resubmission of this application is not in accordance with planning law or practice, and that planning permission 16/01577/FUL cannot be amended by this procedure because it has already been determined.

This application is not an amendment to a previous application; it is a stand-alone householder application for a replacement garage to be considered retrospectively. The description of development originally read, "Insertion of two rooflights to garage building (Retrospective)", referring to just to additional rooflights that had been installed that were not in accordance with the plans. This was incorrect because (due to the additional rooflights) the replacement garage had not been built in accordance with the plans. The description of development was then changed (upon agreeing with the applicant) to read "Erection of replacement garage with two additional rooflights (Retrospective) Resubmission of 16/01577/FUL" in order to regularise the construction of the building as a whole. This is a lawful planning procedure.

It may also be worth noting that the applicants could have submitted a retrospective, non-material minor amendment application for the rooflights, however chose to submit a full planning application which has allowed for an assessment of the planning merits.

In regards to objecting to the application principle. Retrospective planning applications are considered on their planning merits in the same way as other applications and are not more likely to be approved or refused because they are submitted after the development has taken place.

9. Conclusion:

The proposal is considered to comply with national legislation, guidance and the relevant policies of the Development Plan. As such, planning permission should be granted.

10. Proposed conditions:

The development hereby approved shall be implemented in accordance with the following drawing number(s):

2531 PL13B received on 17/10/2017 and Habitat Double Chambered Rocket Box Specification and Dimensions received 20/10/2017

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 Habitat Double Chambered Rocket Box shall be erected on a suitable pole in the position shown on drawing no. 2531_PL13 Rev B (proposed block plan) submitted with the application within 6 months of the date of consent, and thereafter permanently retained and maintained in that position (and replaced when necessary).

Reason: To ensure that compensation is provided for brown long-eared bats in accordance with The Conservation of Habitats and Species Regulations 2010, the Wildlife and Countryside Act 1981 as amended, Circular 06/2005, the National Planning Policy Framework (in particular section 11), Policy 9 of the Cotswold Local Plan 2011 and Policy EN8 of the emerging Local Plan 2031, and in order for the Council to comply with Part 3 of the Natural Environment and Rural Communities Act 2006.



CLOSE HILL NAUNTON GLOS

Scale: 1:2500

Organisation: Cotswold District Council

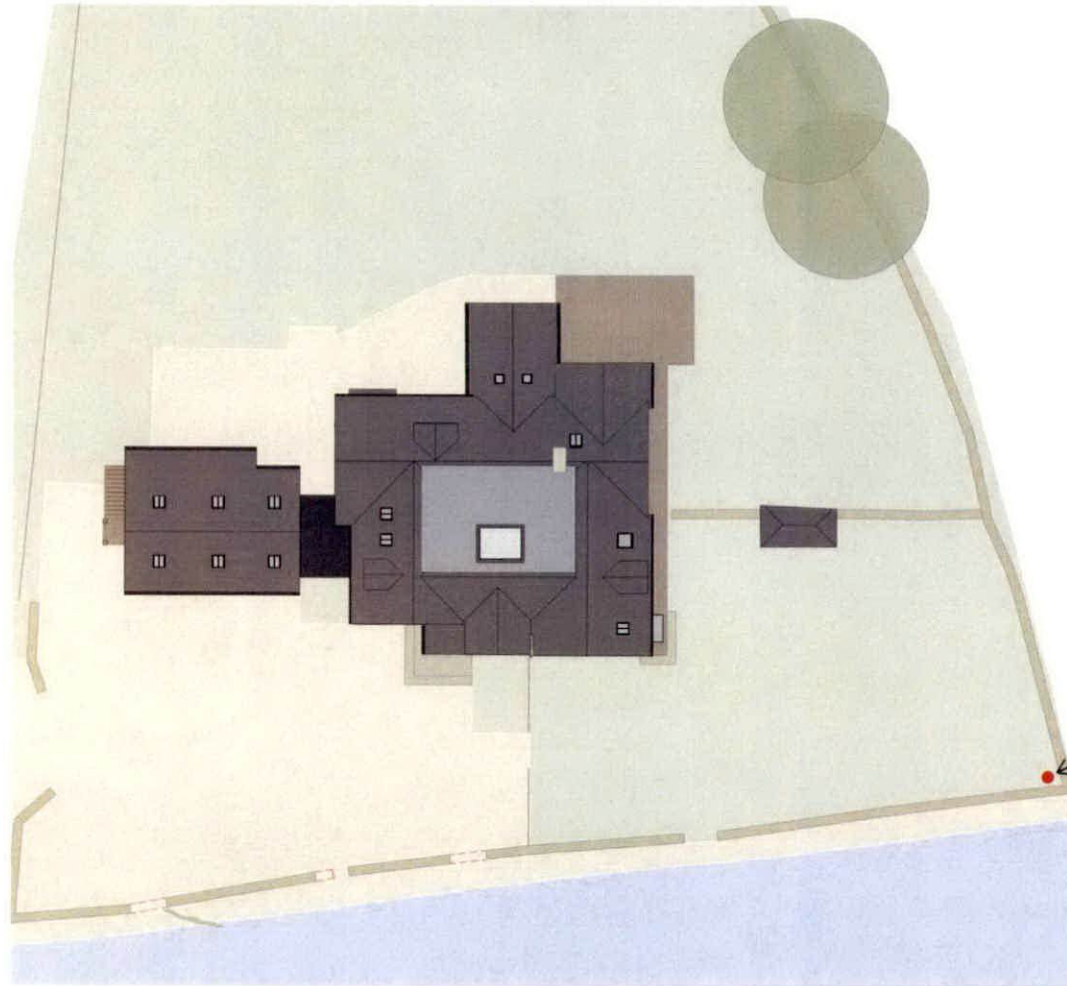
Department:

Date: 30/11/2017



COTSWOLD
DISTRICT COUNCIL





Position of Habibat Double Chambered Rocket Box

Proposed Block Plan

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Planning

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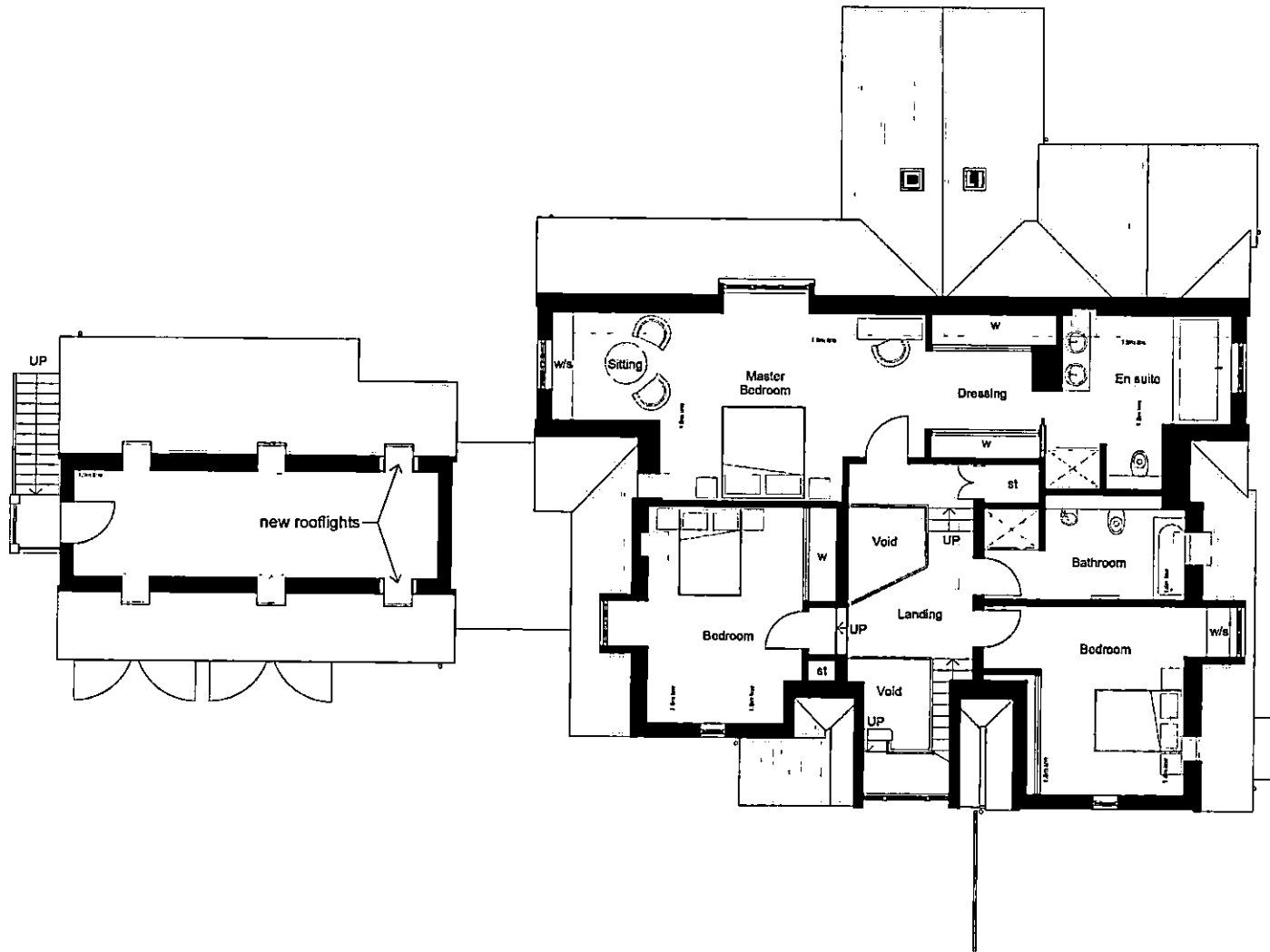
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Planning

Proposed Block Plan
Close Hill, Naunton
Mr & Mrs Kendrick
Scale: 1:250@A3
Drawn/Checked: SB

Date: Oct 2017
Drg No: 2531_PL13 Rev: B



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title **Plan**

project **Close Hill, Naunton**

client **Mr & Mrs Kendrick**

date **June 2017**

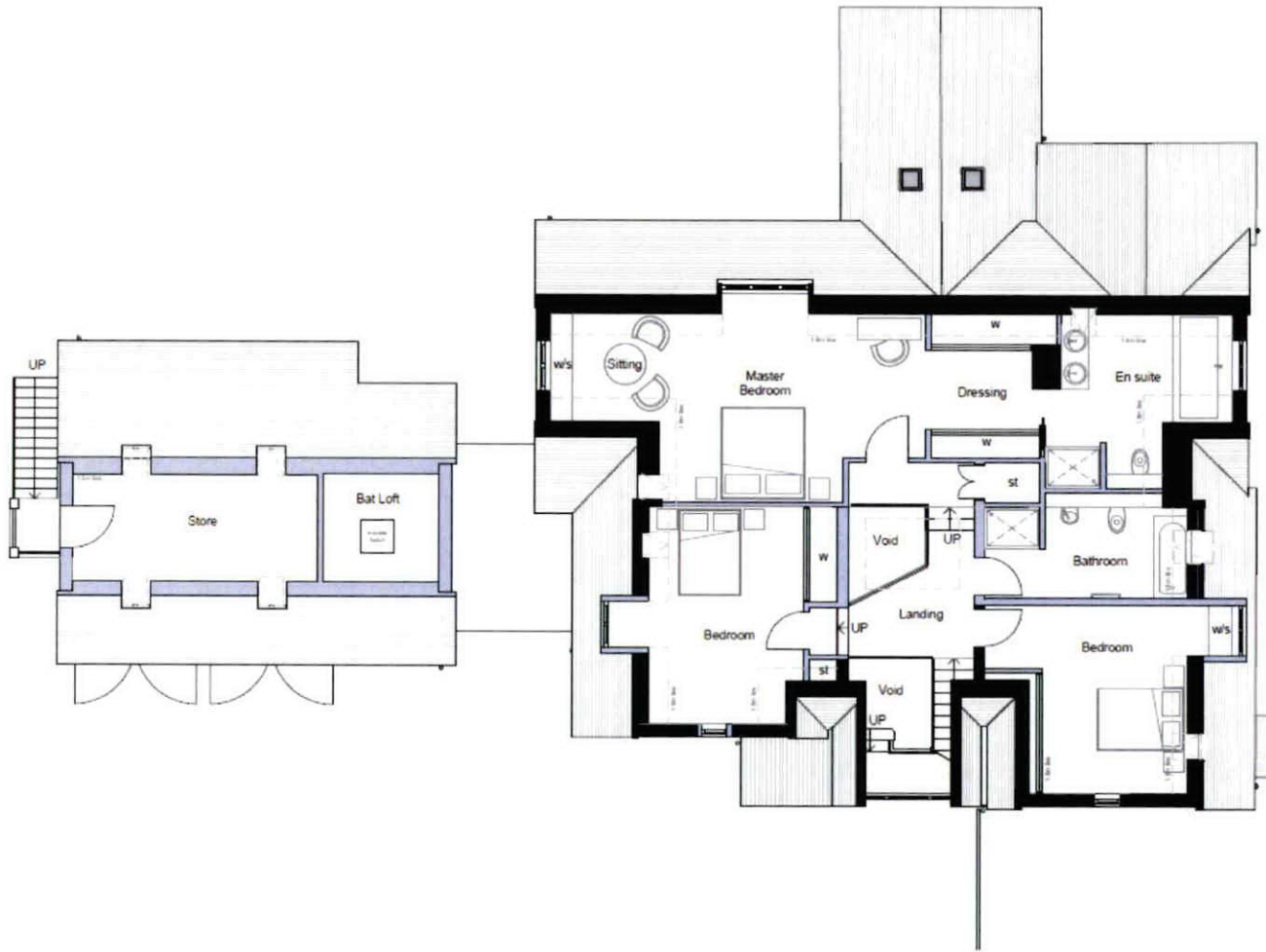
drawn **SB** scale (@ A3) **1:100**

drawing status **(3) Developed Design**

drawing number **2531_PL12**

rev

Officer Note 30/11/2017: Previously approved floor plan under 16/01577/FUL



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title Plan - Proposed First

project Close Hill, Naunton

client Mr & Mrs Kendrick

date April 2016

drawn SB scale (@ A3) 1:100

checked

drawing status (3) Developed Design

drawing number 2531_PL06

rev