

**Item No 02:-**

**17/04451/FUL**

**Withy Way  
Dog Lane  
Charingworth  
Ebrington  
Chipping Campden  
Gloucestershire  
GL55 6NU**

**Item No 02:-****Demolition of existing dwelling and domestic outbuildings, and erection of a replacement dwelling plus associated works at Withy Way Dog Lane Charingworth Ebrington Chipping Campden Gloucestershire GL55 6NU**

<b>Full Application 17/04451/FUL</b>	
<b>Applicant:</b>	Mr & Mrs A and C Warren
<b>Agent:</b>	Stansgate Planning
<b>Case Officer:</b>	Martin Perks
<b>Ward Member(s):</b>	Councillor Mrs Sue Jepson
<b>Committee Date:</b>	10th January 2018
<b>RECOMMENDATION:</b>	<b>REFUSE</b>

**Main Issues:**

- (a) Size and Scale of Proposed Replacement Dwelling
- (b) Impact on Character and Appearance of Cotswolds Area of Outstanding Natural Beauty
- (c) Other Material Considerations

**Reasons for Referral:**

This application has been referred to Planning and Licensing Committee at the request of Cllr Jepson in light of the local support for the application, the applicant's personal circumstances and having regard to the long planning/enforcement relating to Orchard Rise, Charingworth which is located approximately 400m from the application site.

**1. Site Description:**

This application relates to a detached single storey dwelling located on the south eastern edge of the hamlet of Charingworth.

The application site measures approximately 0.3 hectares in size. It lies alongside the eastern side of a single carriageway lane which extends from the centre of Charingworth in the north to the B4035 in the south. The existing dwelling is located in the south west corner of the site. The western (roadside), eastern and northern boundaries of the site are defined by trees and hedging. The southern boundary is more open and faces across an agricultural field. A group of converted agricultural buildings are located to the north of the application site. The barns are currently in residential use.

The site is located within the Cotswolds Area of Outstanding Natural Beauty.

A Public Right of Way (HEB35) extends diagonally across the field to the south of the application site. Access to the Right of Way is via an entrance located in the roadside field boundary immediately to the south of the application site. A second Right of Way (HEB36) extends in a north south direction approximately 75m to the east of the site.

**2. Relevant Planning History:**

CD.6116 Single storey extension to side of dwelling Granted 1979  
 CD.6116/A 2 ground floor extensions to existing dwelling Granted 1989  
 11/04067/FUL Erection of storage barn, stables and tack room and change of use of land from agriculture to equestrian Granted 2011  
 15/01284/FUL Erection of single storey rear extensions, insertion of two rear dormer windows and six roof lights. Granted 2015

### **3. Planning Policies:**

NPPF National Planning Policy Framework  
 LPR09 Biodiversity, Geology and Geomorphology  
 LPR10 Trees, Woodlands and Hedgerows  
 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:**

Biodiversity Officer: Views incorporated in report.

Tree Officer: Views incorporated in report.

### **5. View of Town/Parish Council:**

'Ebrington Parish Council supports this application with the observation that they feel an opportunity has been missed in the design of the new building to design it in a way that denotes AONB and Cotswold features and the surrounds, particularly the bland design of the windows on the south elevation of the building, which will be visible from the nearby footpath. Councillors would suggest possibly using a variety of different window shapes and sizes and the possible addition of a gable.'

### **6. Other Representations:**

3 letters of support received.

i) We believe that the proposed replacement dwelling will be a significant improvement for the village compared to the existing property. As long as the choice of bricks used in the construction is a good match to the nearby brick barn structures, the house will fit in well with the neighbouring properties. The additional on-site parking will also remove the need for vehicles to be parked on the grass verge of Dog Lane, which will further improve this aspect of the village. The proposed Orchard planting is particularly welcomed.

ii) I am the most immediate neighbour to this property. I wholly support this application as it would deliver a very necessary improved home for this local family, much valued by their community. I have seen the plans and think the referencing of the barn properties including my home will be an asset to Dog Lane. The current bungalow suffers from damp and requires considerable improvement; an option that I believe has already been explored. The proposed project can be implemented with minimal effect on our small community in Charingworth and I don't know anyone who would offer anything other than support for a project which replaces an unsatisfactory bungalow with an attractive family home that is in fact completely removed from even its most immediate neighbour, my family at Field Cottage. I do hope their application can be approved.

### **7. Applicant's Supporting Information:**

Landscape and Visual Impact Assessment  
 Tree Report  
 Design and Access Statement  
 Biodiversity letter  
 Planning Statement  
 Landscaping Proposal

## 8. Officer's Assessment:

### Proposed Development

The applicant is seeking to demolish an existing stone dwelling and replace it with a part two storey/part single storey dwelling. The existing dwelling is linear in form and contains 3 bedrooms. It measures approximately 5.2m in height. The proposed replacement dwelling will be two storey in height and will have 4 bedrooms on the first floor and an accessible guest room/bedroom on the ground floor. It will have an L-shaped footprint. The main body of the proposed dwelling will be linear in form and will extend in a roughly east west direction. This element of the proposed dwelling will measure approximately 25m long by 6.7m in depth and will have a maximum ridge height of approximately 8.7m. The principal elevation of the dwelling will face to the south. To the rear (north) of the principal part of the dwelling will be a further two storey element measuring approximately 9.5m long by 6m wide by 7.8m high. It will be attached to the main part of the dwelling by a subsidiary link measuring approximately 3m in length by 6m in height.

The external walls of the proposed dwelling will be constructed in a red brick. The roofs of the two storey elements of the scheme will be covered in a red clay tile. The roofs of the single storey elements and the subsidiary link extension will be covered in a metal standing seam roof. Windows will be aluminium.

The proposed dwelling will be located approximately 5m to the north east of the existing dwelling.

The applicant is also proposing to introduce new hornbeam hedgerows along the eastern and western boundaries of the application site. Orchard planting is also proposed on a triangular piece of land lying adjacent to the eastern boundary of the site. A mix of apple, pear and cherry trees are proposed. In addition the applicant has indicated that they intend to undertake further tree and hedgerow planting in and around two fields lying to the south and south east of the application site. The aforementioned fields are in the ownership of the applicant.

#### (a) Size and Scale of Proposed Replacement Dwelling

Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that 'if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.' The starting point for the determination of this application is therefore the current development plan for the District which is the Cotswold District Local Plan 2001-2011.

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' and the final sentence of criterion 1 which states that the 'proposed replacement would not result in an adverse impact on the landscape.'

Paragraph 3.4.26 of the Local Plan states that 'from time to time, a planning application is made to replace a dwelling in the countryside. This is generally where the existing dwelling is substandard and not suitable for improvement, either because it would be uneconomic, or because the existing building is unsightly'.

Paragraph 3.4.27 states that 'if smaller dwellings are replaced with properties that are much larger, then, over time, the District's stock of smaller properties in the countryside will diminish'.

The status of Policy 22 was considered recently in connection with an Enforcement appeal (APP/F1610/C/15/3140907) at another property in Charingworth. The Council issued an Enforcement Notice to secure the demolition of an unauthorised replacement dwelling located at Orchard Rise approximately 400m to the north west of the current application site. The as-built dwelling was approximately twice the size of the approved and the Inspector gave full weight to Policy 22. It is considered that significant weight can still be given to the Policy having regard to

guidance in paragraph 215 of the National Planning Policy Framework (NPPF) which advises that the weight that should be given to Local Plan policies should be consistent with their degree of consistency with the NPPF. A copy of the aforementioned appeal decision is attached to this report.

In terms of size, the existing dwelling has a gross external area of approximately 240 sq metres and a volume of 700 cubic metres. It has a roof height of approximately 5.2m. If the extensions approved in 2015 (but not yet implemented) are taken into consideration, the gross external area and volume of the dwelling would be approximately 293 sq metres and 902 cubic metres respectively. The applicant states that the gross external area of the proposed dwelling will be 426 sq metres and the volume will be 1388 cubic metres (not including the external canopies). If the canopies are included the volume would be 1481 cubic metres. The maximum roof height will be 8.7m.

The proposed external floor area of the proposed dwelling would be approximately 77% larger than existing and 45% larger than existing plus approved extensions. The volume of the proposed dwelling would be approximately 98% larger than existing and 54% larger than existing plus approved extensions. It is evident that the proposed dwelling is substantially larger than the existing dwelling. In terms of size, it is considered that the proposed development cannot be considered to be similar to the existing building.

With regard to scale, the proposed scheme will replace the existing 5.2m high dwelling with an 8.7m high two storey building. The proposed dwelling also incorporates a number of design elements which increase the scale of the building. These include higher eaves, larger windows and a large chimney. The proposed dwelling is considered to be of a grander scale than the existing and not to meet the similar scale criterion set out in Policy 22.

Overall, it is considered that the proposed development is not of a 'similar size and scale to the existing building' and therefore fails to accord with criterion 1(c) of 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 (S85(1) of the Countryside and Rights of Way Act 2000).

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'

The existing dwelling lies in the south western corner of the application site. The principal elevation of the dwelling faces south over an adjacent agricultural field. The field is crossed by a Public Right of Way (HEB35). The southern elevation of the existing dwelling is readily visible from the aforementioned Right of Way. In addition to the existing dwelling, a detached timber stable building lies on the field approximately 50m to the east of the existing dwelling. The stable building is also visible from the Right of Way. The existing dwelling is also partly visible from Public Right of Way HEB36 which extends across a section of land located approximately 75m to the east/north east of the application site. From the aforementioned Right of Way, the existing

dwelling is viewed partly in conjunction with existing dwellings/converted agricultural buildings located approximately 65m to the north of the existing dwelling. The existing dwelling forms the southern extent of the hamlet of Charingworth. Land to the south, east and west of the application site is characterised by agricultural fields and hedgerows.

The existing dwelling is largely screened from the lane passing to the west of the application site by a mix of trees and hedging.

At present, the existing dwelling, by virtue of its single storey appearance is considered to have a limited landscape and visual impact. The existing property has many of the characteristics of a converted outbuilding and is considered to have a neutral impact on the character and appearance of the area. It is a relatively low key building which is considered not to be out of character with its edge of settlement location. In contrast, the proposed dwelling will be more visible from both Rights of Way and will have a more discernible impact on the character and appearance of the landscape when viewed from the Rights of Way to the south and east. Notwithstanding this, the proposed dwelling will be located within an established garden area and is viewed in context other residential development. The proposal will not appear as an isolated development in the open countryside. The proposed dwelling will also be set further back into the site than the existing dwelling thereby helping to reduce its visual impact when viewed from the south.

The proposed design is considered to represent a contemporary interpretation of local building styles. The use of red brick and clay tiles is consistent with other traditional buildings in the locality. The proportions of the proposed dwelling are also consistent with local building styles. The use of a metal clad roof is reflective of functional agricultural buildings. A number of the dwellings to the north of the site were created through the conversion of former farm buildings. Converted buildings are therefore a characteristic feature of the local area. The Cotswold Design Code also states that 'the introduction of a modern interpretation of the Cotswold style will, in some instances, be perfectly acceptable'.

The comments of Ebrington Parish Council regarding window design are noted. In response, the windows themselves are considered not to be excessively large. Their visual presence is potentially increased by the omission of glazing bars. However, the lack of such features is consistent with the simple and plain design approach being pursued by the applicant. It is considered that the window design fits comfortably with the overall design approach.

Overall, it is considered that the proposed dwelling could be introduced onto the site without having an adverse impact on the character or appearance of the AONB and in accordance with S85(1) of the CROW Act 2000, Local Plan Policy 42 and guidance contained in Paragraphs 17, 109 and 115 of the NPPF.

### **(c) Other Material Considerations**

It is considered that the proposed replacement dwelling will fail to accord with the requirements of Local Plan Policy 22 which seeks to protect the District's stock of smaller dwellings. In order to be able to support the scheme, it will be necessary to demonstrate that other material considerations outweigh the conflict with established Development Plan policy.

In the case of this particular site, it is evident that the existing dwelling and site are not in a condition that have a negative impact on the character and appearance of the AONB. The proposal will not therefore be removing an inappropriate or unattractive form of development that has a negative impact on the character and appearance of the designated landscape. It is noted that additional landscape planting will be introduced in and around the site. However, this is considered not to justify the erection of a dwelling which is in conflict with Policy 22. The design of the proposed dwelling is also considered not to be so exceptional that it would merit a deviation from the similar size and scale restriction. It would be possible to introduce a more modest contemporary design onto the site without conflicting with Policy 22.

The personal circumstances of the applicant are noted (see attached letter). Whilst Officers have sympathy for the applicant's situation, it is considered that there are no reasonable means of securing the use of the new building for the sole purposes of the applicant. There would be no guarantee that the applicant would not sell the property once the permission had been implemented. The applicant's personal circumstances will also change in the future. Officers therefore have to look beyond the current situation. An approval would result in the erection of a permanent dwelling on the site. The dwelling would remain in place for longer than the applicant's current situation. With regard to personal permissions, the Government's Planning Practice Guidance states that 'a condition used to grant planning permission solely on grounds of an individual's personal circumstances will scarcely ever be justified in the case of permission for the erection of a permanent building'. It is considered that the applicant's current circumstances would not justify a departure from existing Local Plan policy.

### **Other Matters**

The applicant has submitted an ecology statement with the application. The statement indicates that there are no protected species on the site or present in the existing building. The Council's Biodiversity Officer has examined the proposal and raises no objection to the application. The proposal is considered to accord with Local Plan Policy 9 and guidance in Paragraphs 109 and 118 of the NPPF.

The applicant has also submitted a Tree Report with the application. A total of 24 trees were identified on the site. Of these, 2 (a Leyland Cypress and a Holly) are proposed for removal. Other trees lie around the periphery of the site and will not be directly affected by the proposed development. A silver birch will be affected by a new parking area. However, it is proposed to use a non-invasive drive construction to minimise impact on the tree. The Council's Tree Officer has assessed the proposal and raises no objection to the proposal on arboricultural grounds.

### **9. Conclusion:**

Overall, it is considered that the proposed dwelling is not of a similar size and scale to the existing building and is therefore contrary to the requirements of Local Plan Policy 22. There are no other material considerations that outweigh the conflict with the aforementioned policy. It is therefore recommended that the application is refused.

### **10. Reasons for Refusal:**

The proposed dwelling is substantially larger in size and scale than the existing dwelling. The proposed development therefore fails to accord with Cotswold District Local Plan Policy 22 which seeks to restrict the size and scale of replacement dwellings.

### **Informatives:**

This decision relates to drawing numbers: 349 - P 211 - P02, 349 - P 212 - P02, 349 - S 001 - P01, 349 - P 011 - P03, 349 - P 101 - P03, 349 - P 102 - P02, 349 - P 103 - P02, 349 - P 201 - P02, 349 - P 202 - P02, 349 - P 203 - P02,



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**COTSWOLD**  
DISTRICT COUNCIL

**WITHY WAY DOG LANE CHARINGWORTH EBRINGTON CHIPPING CAMPDEN**

Organisation: Cotswold District Council  
 Department:  
 Date: 20/12/2017



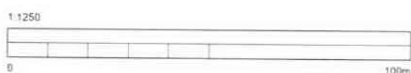


Drawing Key

- Ownership Boundary
- Site Boundary



SITE LOCATION PLAN

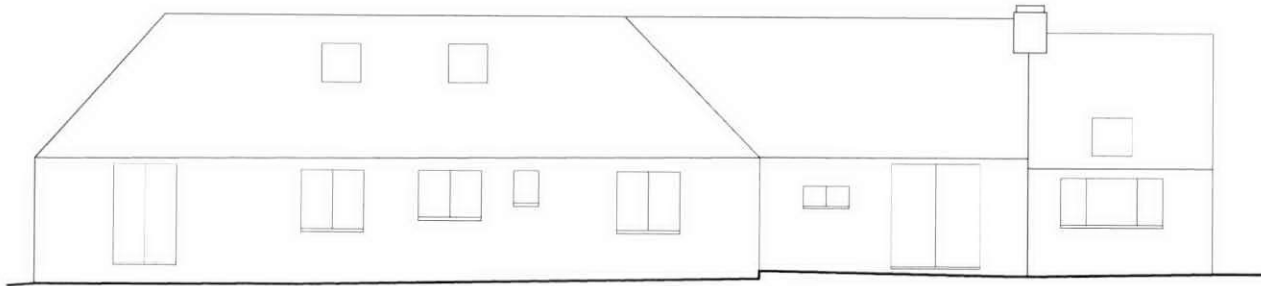


Rev:	Date:	Description:
P01	20/10/2017	Issued for Planning
S01	01/11/2016	First Issue for Pre App

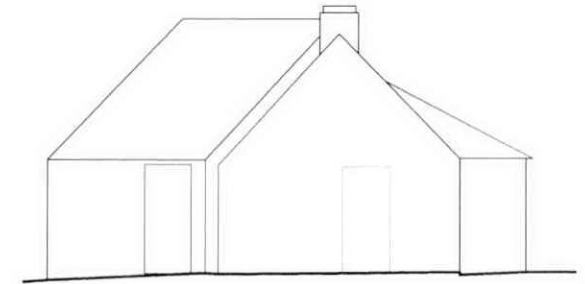
JOB NO - DRAWING NO. - REVISION  
**349 - S 001 - P01**



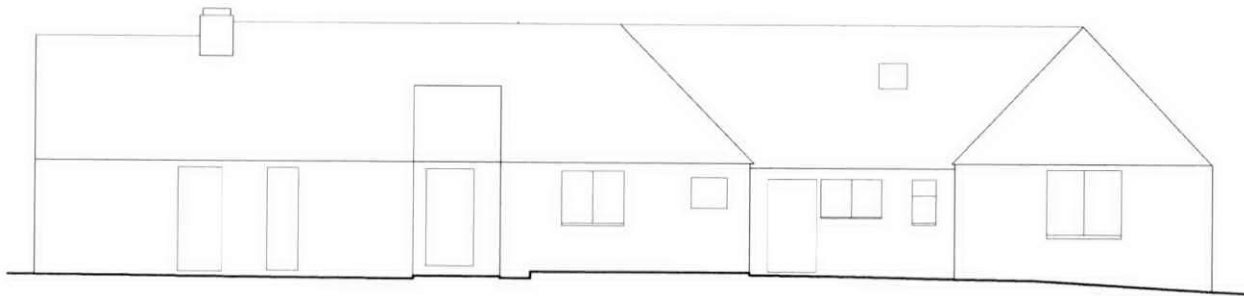
Mr & Mrs Warren DRAWN BY: JD  
 Withy Way, GL55 6NU November 2016  
 Site Location Plan 1:1250@A3



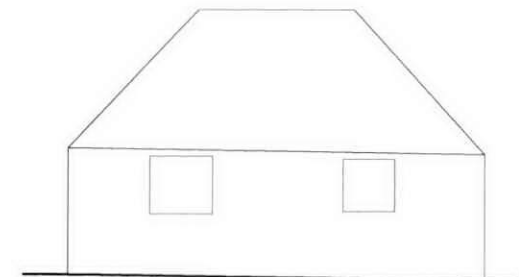
North Elevation 1/100



East Elevation 1/100



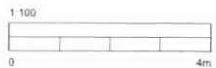
South Elevation 1/100



West Elevation 1/100

20

EXISTING  
DRAWINGS



Rev:	Date:	Description:
P01	07/11/2017	Issued for Planning

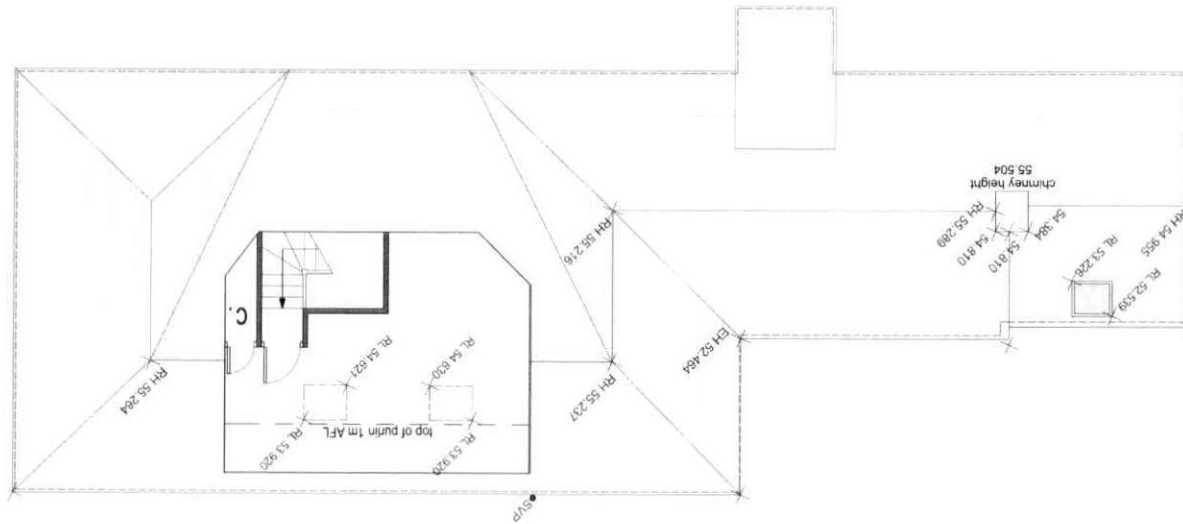
**CaSA** Architects

JOB NO - DRAWING NO - REVISION  
**349 - S 201 - P01**

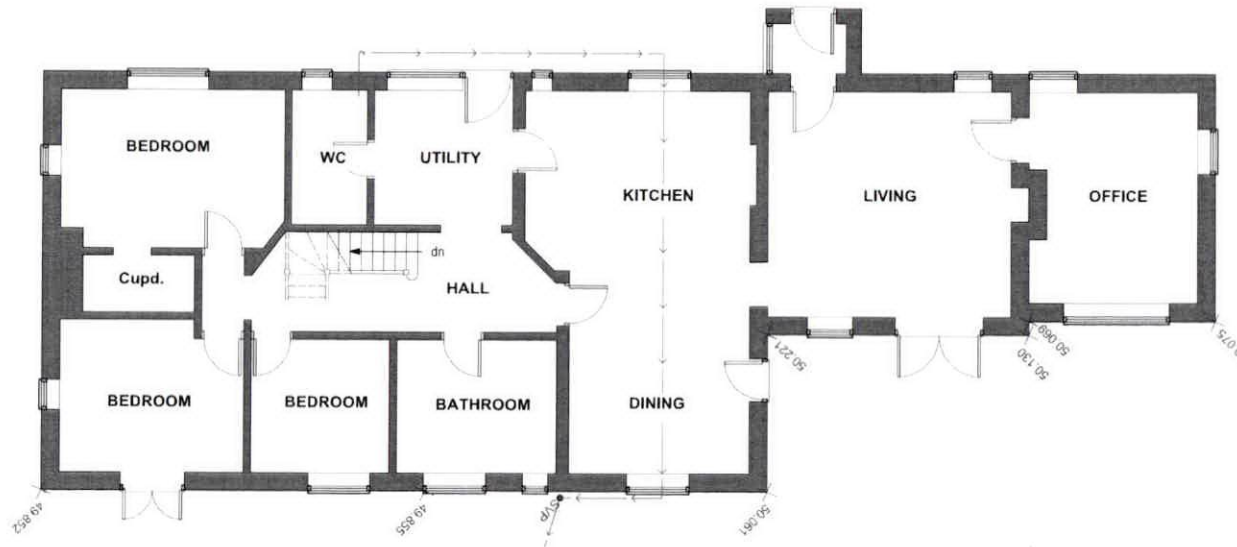
Mr & Mrs Warren  
 Wilby Way, GL55 6NU  
 SURVEY - Existing Elevations

03/2016  
 1/100

Bath Street, Toll Bridge Road, Bath BA1 1DE | 01225 801611 | 01225 801884 | [k.will@casarchitects.com](mailto:k.will@casarchitects.com)



As Existing  
First Floor Plan 1/100



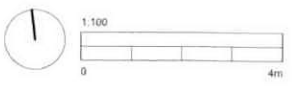
As Existing  
Ground Floor Plan 1/100

21

*EXISTING  
DUSTING*

Rev: P01 Date: 07/11/2017 Description: Issued for Planning

JOB NO - DRAWING NO - REVISION	
349 - S 101 - P01	
Mr & Mrs Warren	03/2016
Withy Way, GL55 5NU	1/100
SURVEY - Existing Floor Plans	
Bath Brewery Toll Bridge Road Bath BA1 7JG • 01222 891884 • <a href="mailto:sales@casarchitects.com">sales@casarchitects.com</a>	

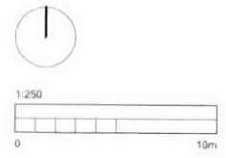




**Drawing Key**

Root Protection Area	—————
Site Boundary	- - - - -
Foul Drainage Proposed	—————▶
Foul Drainage Existing	- - - - -▶

22



**PROPOSED SITE PLAN**

Rev.	Date	Description
P03	24/10/2017	Landscape updated for Planning
P02	20/10/2017	Revised for Planning
P01	30/06/2017	Issued for Planning
Preliminary	01/11/2016	First Issue for Pre App

JOB NO - DRAWING NO. - REVISION

**349 - P 011 - P03**

Mr & Mrs Warren DRAWN BY: KS

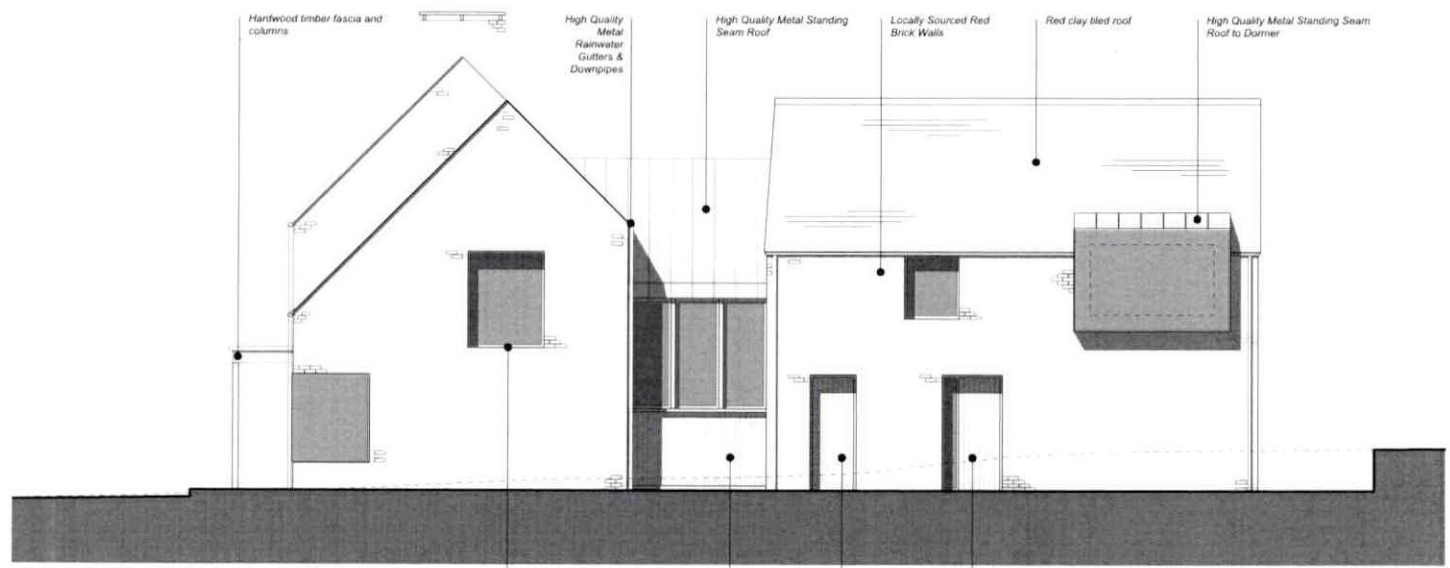
Witby Way, GL55 6NU November 2016

Proposed Site Plan 1:250@A3

Bull Brewery 1st Bridge Road Sudb. GAT. DE. | 01225 811811 | 01225 811884 • info@casarchitects.com



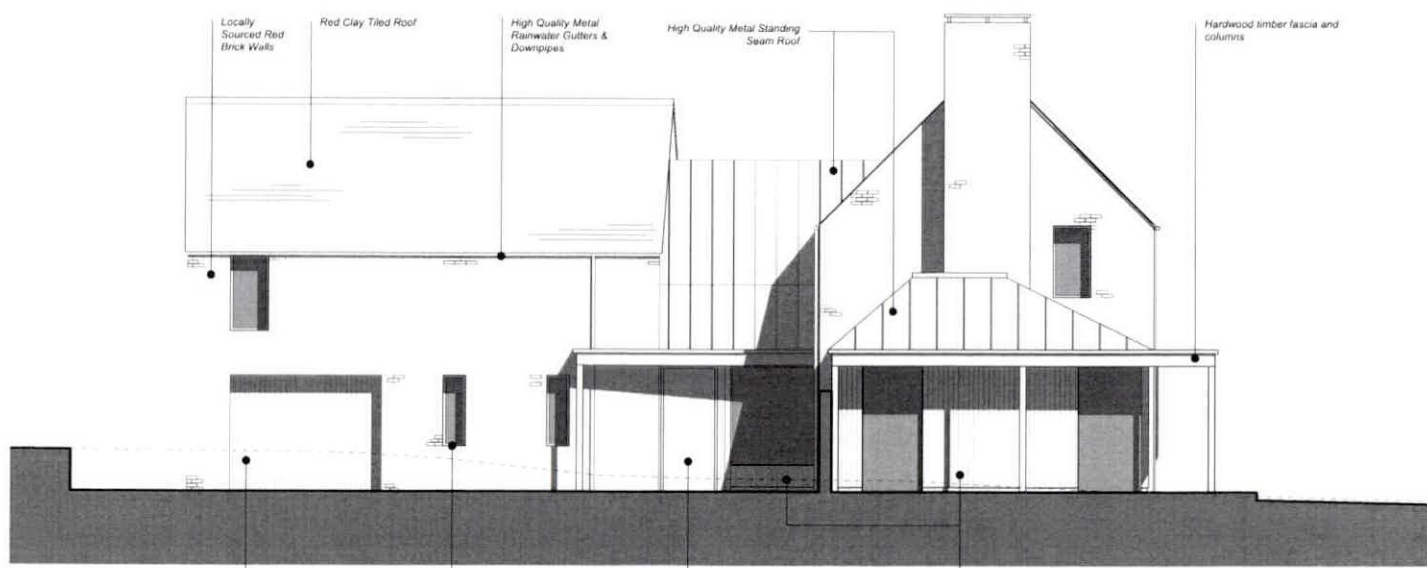
+141.370 - Primary Ridge Datum  
 +140.680 - Secondary Ridge Datum



**EAST ELEVATION**

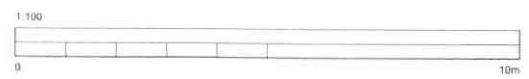
Aluminum / Timber Composite Window Frames. External Colour TBC  
 Naturally Durable timber cladding  
 Hardwood timber door

+141.370 - Primary Ridge Datum  
 +140.680 - Secondary Ridge Datum



**WEST ELEVATION**

Naturally Durable timber garage door  
 Aluminum / Timber Composite Window Frames. External Colour TBC  
 Hardwood Timber Door  
 Naturally Durable Timber Cladding



23

*Proposed  
 elevations*

Rev: P02 P01 Date: 20/10/2017 30/06/2017 Description: Revised for Planning Issued for Planning

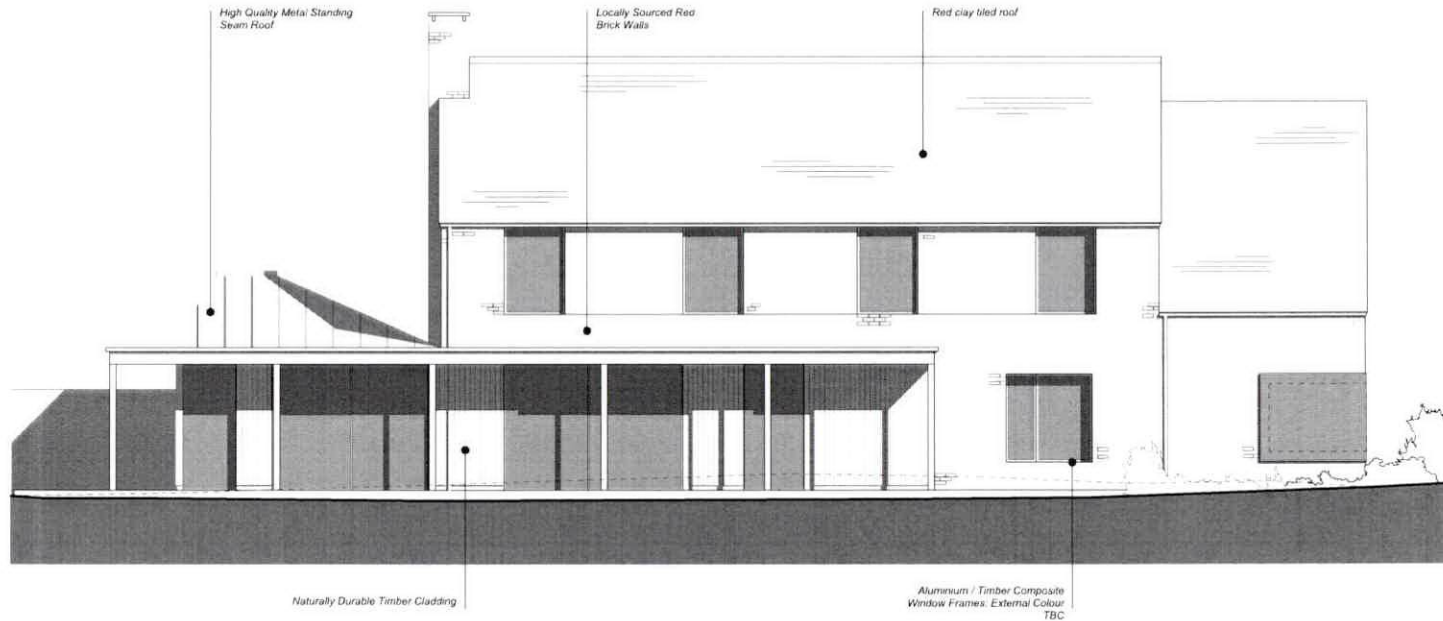
JOB NO - DRAWING NO. - REVISION  
 349 - P 211 - P02



Mr & Mrs Warren  
 Witty Way, GL55 6NU  
 AS PROPOSED - Elevations  
 1:100@A3

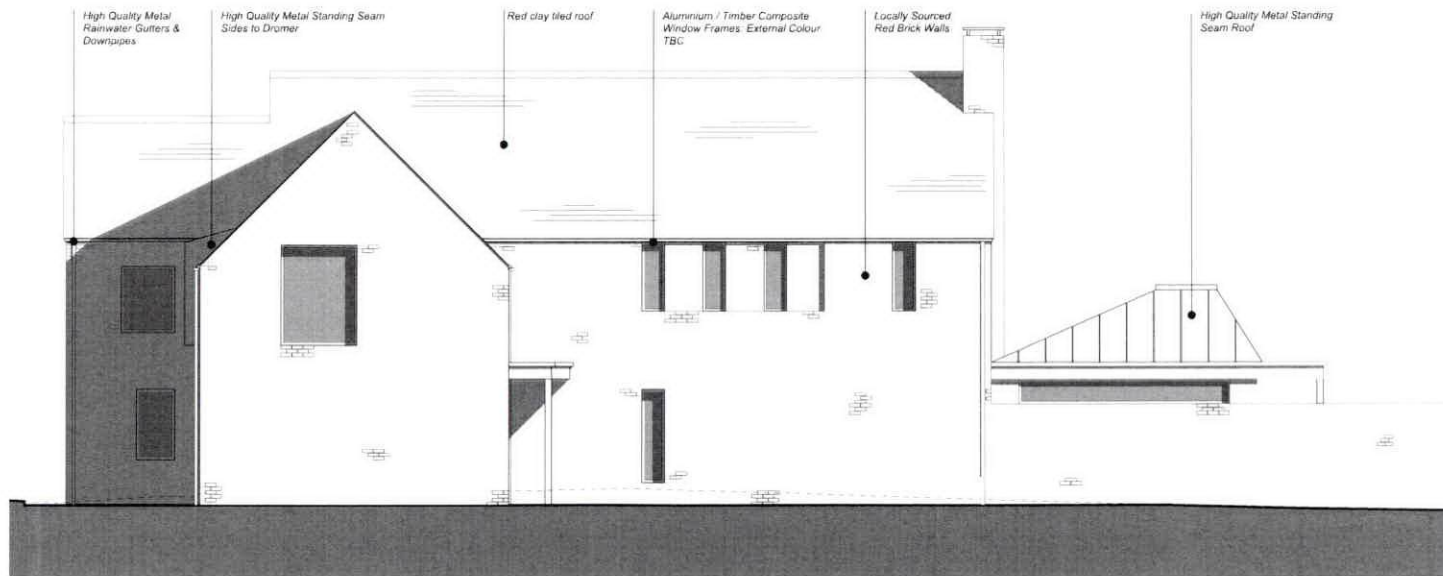
Ball Brewery, 148 Bridge Road, Bath BA1 7DE. T: 01223 851811. F: 01223 851864. e: info@casarchitects.com

+141.570 - Primary Ridge Datum  
 +140.580 - Secondary Ridge Datum



**SOUTH ELEVATION**

+141.570 - Primary Ridge Datum  
 +140.580 - Secondary Ridge Datum



**NORTH ELEVATION**



24  
 PAPER SEALS  
 DUSTINGS

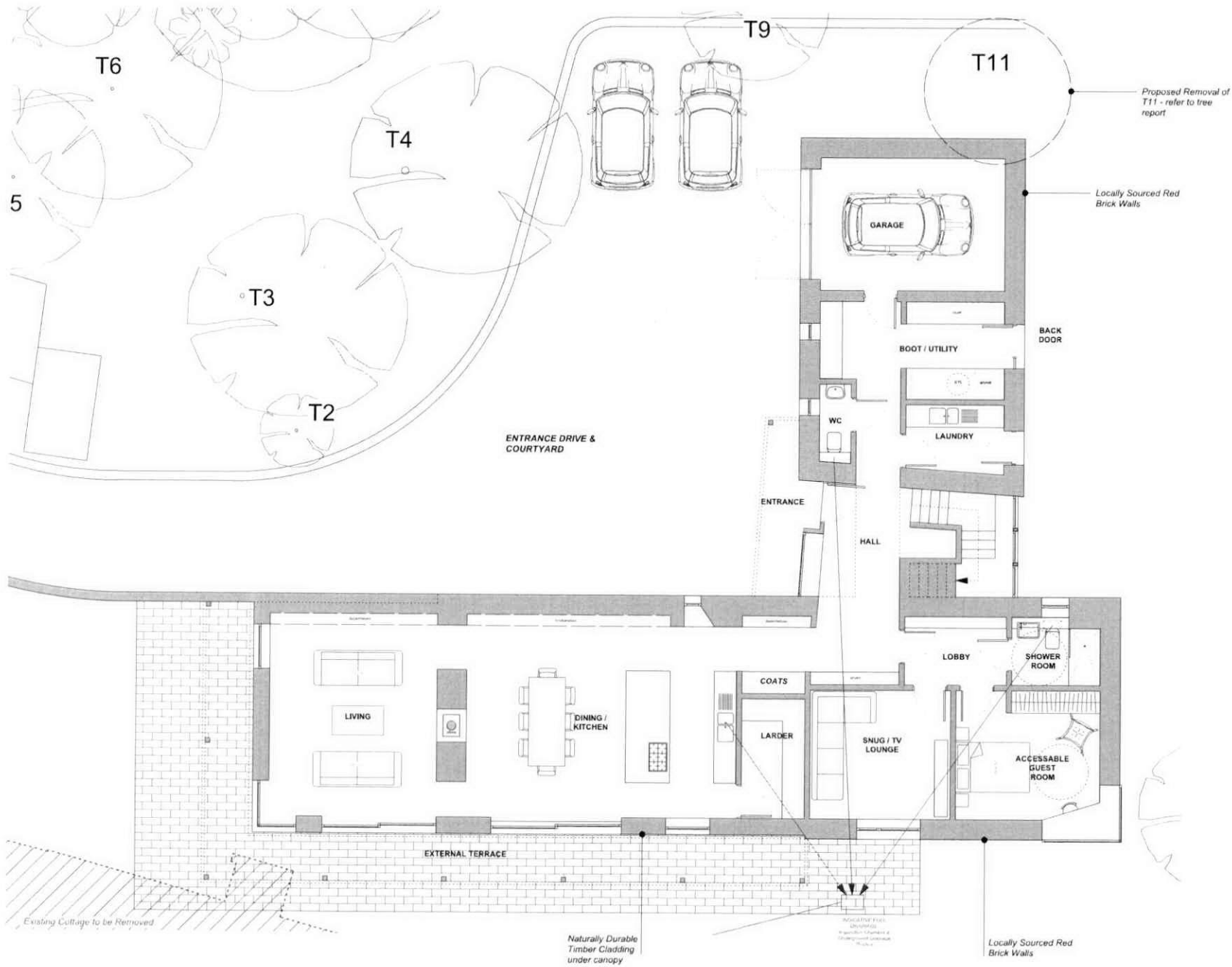
Rev:	Date:	Description:
P02	20/10/2017	Revised for Planning
P01	30/06/2017	Issued for Planning

JOB NO - DRAWING NO - REVISION  
 349 - P 212 - P02

Mr & Mrs Warren	09/05/2017
Withy Way, GL55 5NU	30/06/2017
AS PROPOSED - Elevations	1:100@A3

Bath Brewery Toll Bridge Road Bath BA1 1DE | 01225 81101 | 01225 811881 | info@casaarchitects.com





**GROUND FLOOR PLAN**

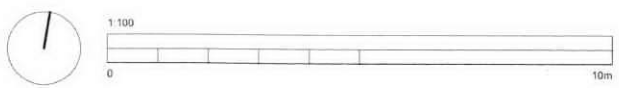
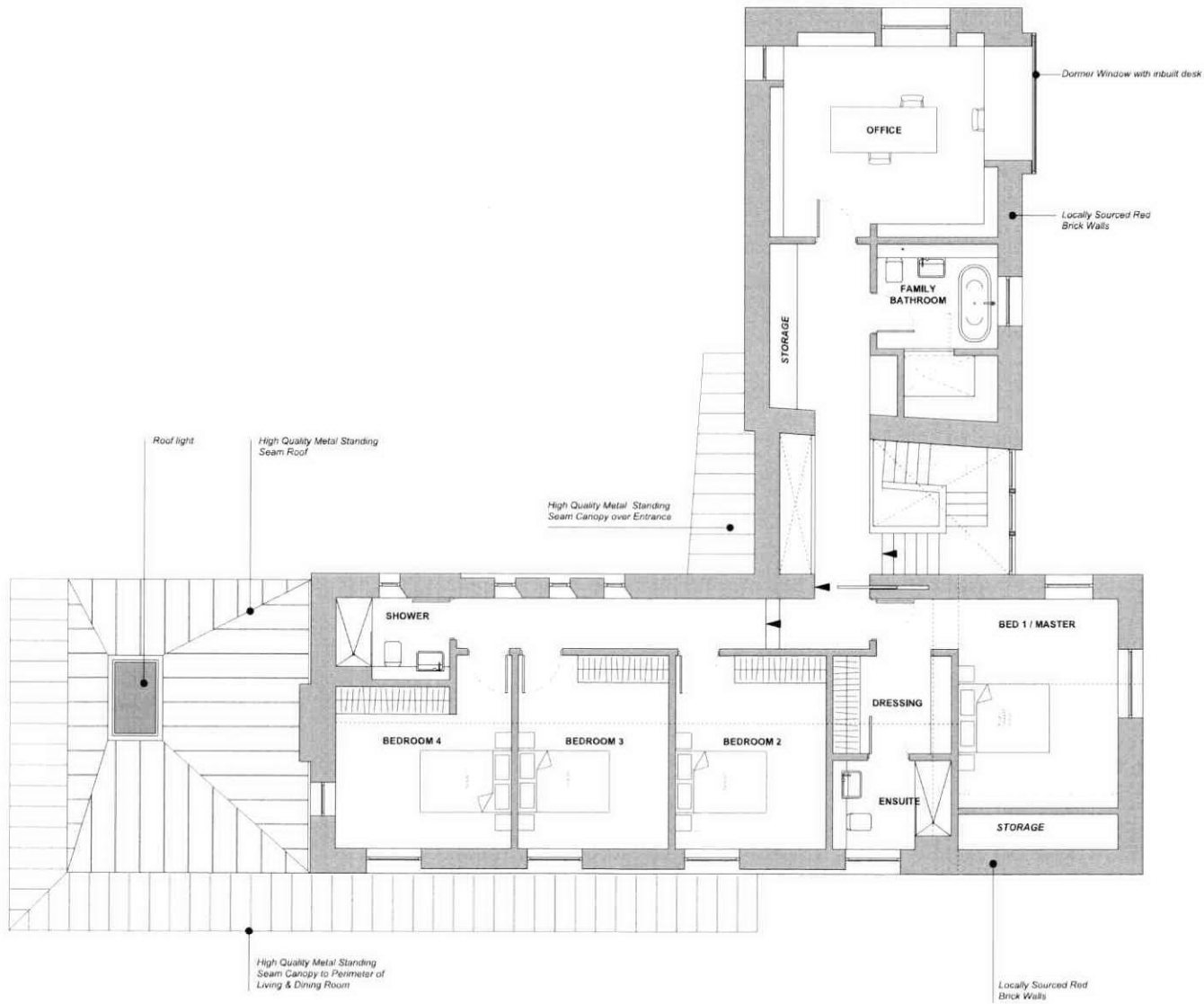
25

Rev:	Date:	Description:
P03	24/10/2017	Landscape Updated for Planning
P02	20/10/2017	Revised for Planning
P01	30/06/2017	Issued for Planning
Preliminary	01/11/2016	First Issue for Pre App

JOB NO - DRAWING NO - REVISION  
**349 - P 101 - P03**

Mr & Mrs Warren DRAWN BY: G  
 Withy Way, GL55 6NU November 2016  
 As Proposed Ground Floor Plan 1:100 @ A3  
 Sun Brewery Toll Bridge Road Bath BA1 1DE | 01225 811611 | 01225 811684 | [info@casaarchitects.com](mailto:info@casaarchitects.com)





FIRST FLOOR PLAN

Rev:	Date:	Description:
P02	20/10/2017	Revised for Planning
P01	30/06/2017	Issued for Planning

JOB NO - DRAWING NO. - REVISION  
**349 - P 102 - P02**

Mr & Mrs Warren DRAWN BY: **ED**  
 Withy Way, GL55 6NU 30/06/2017  
 As Proposed First Floor Plan 1:100 @ A3  
Bath Brewery Toll Bridge Road Bath BA1 1DE | 01225 811671 | 01225 851884 | [info@casaarchitects.com](mailto:info@casaarchitects.com)







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Rev:	Date:	Description:
P03	20/10/2017	Revised for Planning
P02	11/07/2017	Revised for Planning
P01	30/06/2017	Issued for Planning

JOB NO. - DRAWING NO. - REVISION

349 - P 401 - P03

Mr & Mrs Warren DRAWN BY: JE

Withy Way, GL55 6NU 30/06/2017

AS PROPOSED - North Facing Distant View 1:100@A3

Bath Brewery Toll Bridge Road Bath BA1 1DE 15125 811611 15125 861884 • studio@casarchitects.com



Architects



Above: View from Right of Way to south

Below: Existing dwelling





# stansgate

PLANNING

9 The Courtyard, Timothy's Bridge Road, Stratford-upon-Avon, CV37 9NP

Our Ref: KW/K/8142  
Your Ref: 17/04451/FUL

7 December 2017

Mr Martin Perks  
Senior Planning Officer  
Development Management  
Cotswold District Council  
Trinity Road  
CIRENCESTER  
GL7 1PX

**BY EMAIL ONLY**

Dear Martin

**DEMOLITION OF EXISTING DWELLING AND DOMESTIC OUTBUILDINGS, AND  
ERECTION OF REPLACEMENT DWELLING PLUS ASSOCIATED WORKS AT WITHEY  
WAY, DOG LANE, CHARINGWORTH, EBRINGTON, CHIPPING CAMPDEN, GL55 6NU**

I have now had time to consider the content of your email dated 28 November in respect of the above application, and to discuss the issues with our clients.

Firstly, I wish to confirm that our clients wish you to progress the application to its determination by the District Council. This will give them, if necessary, the option to appeal against the Council's decision.

Clearly our clients are extremely disappointed to read your comments and the fact that you indicate you are unable to recommend approval of the application. As explained in the submitted planning statement and design and access statement our clients wish to remain living within the local community where they have a strong and well-established social and support network, as well as from where they operate a successful environmental consultancy (Cotswold Wildlife Surveys). The size and layout of the proposed dwelling meets their future family needs, and provides for them to continue working from home.

With regard to the needs of the applicants I feel I need to point out that Mr and Mrs Warren have three children, one of whom has Down syndrome and associated learning disability and he is likely to be a dependant living at home for much longer than would usually be expected, possibly for life. Further, Mrs Warren's father has Parkinson's Disease and associated dementia, and her mother who is 76 desperately needs respite. The applicants would dearly like to be able to offer this respite by having Mrs Warren's father to stay, therefore giving her mother a well-earned rest. Furthermore, the applicants would like to be able to offer some care for Mr Warren's father, who is 88, and thereby help relieve other family members. As you will acknowledge, it is becoming increasingly important for there to be care in the community and for families to make arrangements for looking after dependant relatives at

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home. At the moment, this cannot happen since there is insufficient accommodation in the existing house.

Due to her family commitments, Mrs Warren has had to give up full time employment and now works from home. Mr Warren also works from home and the existing home office is not big enough for both of them. It means one or the other needs to work at the kitchen table, which is not at all satisfactory from a business or family perspective. A larger home office is planned in the proposed development.

The existing dwelling, which incidentally extends to 1.5 storeys in height and is not just single storey, is of poor construction and not of a high design quality. They have found that it cannot be viably altered and extended, for which planning permission has been granted, and furthermore that such works would not create a sustainable dwelling meeting their family needs, as explained above. It is a fact that the current proposal involves the erection of a two-storey dwelling and that the new build is larger than the existing one. However, there is nothing inappropriate or unacceptable about the introduction of a two-storey dwelling in this location and, of course, the District Council has already agreed to making the existing dwelling larger.

The explanation to Policy 22 notes that there are occasions when an existing dwelling is substandard and not suitable for improvement, either because it would be uneconomic, or because the existing building is unsightly. Both of these circumstances apply in this case, and I am pleased to learn that you have no objection in principle to the demolition of the existing dwelling and its replacement with a new one. The explanation notes the need to protect a stock of smaller properties in the countryside but that is not an issue in this case. The existing dwelling is not a 'smaller property' since it has four bedrooms, bathroom, dining/kitchen, utility room, living room, and office. Further, as already noted planning permission has been granted for extensions to the existing building, including the enlargement of two of the bedrooms, the living room and office.

Apart from maintaining a stock of smaller properties, the other principal objective of Policy 22 is to prevent unacceptable impacts on the landscape. As demonstrated in the submitted landscape and visual impact assessment, the proposed development would not have an adverse impact on the local landscape. In designing the proposed dwelling our clients have worked hard with the project architects to create a new building which reflects and respects the characteristics of the locality, and which does not intrude into or otherwise adversely affect the local landscape. Thus, the proposals do not prejudice the two principal objectives of Policy 22.

I have now looked at the appeal decision in respect of Orchard Rise (now known as Highview House), and at the planning history of that site. Interestingly, I see that planning permission for alterations to the 'as-built' dwelling was granted by the District Council as recently as 14 September 2017 (17/02086/FUL). I note the approved scheme includes the lowering of the house, removal of the basement, rebuilding the roof, and changes to the fenestration, and that it is now more akin to the development which was approved by the Council in November 2012 (12/04267/FUL), as amended in October 2016 (16/03852/FUL). The approved dwelling however is still a lot larger and greater in scale and massing than the original chalet type dwelling which was on the site (you will recall that I had some involvement in earlier proposals for the site).

Evidently each application must be treated on its own merits but, actually, I believe the Council's decisions in respect of Orchard Rise (Highview House) as supporting the grant of planning permission for the scheme at Withy Way, rather than refusal. The decisions demonstrate that the Council is prepared to grant planning permission for larger dwellings in appropriate circumstances. Moreover, I contend that you cannot equate the proposals at

Withy Way with the 'as built' scheme at Orchard Rise (Highview House) and therefore the appeal decision is of no assistance to you in seeking to refuse the Withy Way proposals. For it is clear, that the size, scale and massing of the 'as built' scheme considered by appeal inspector was substantially larger than the original dwelling (and the scheme approved in 2012, as amended in 2016), and that the scheme was much 'grander' by far. Further the inspector found it was much higher, on higher land in a prominent position, and it had a commanding and dominant appearance. He concluded that the 'as built' scheme, by virtue of its dominant and obtrusive appearance, failed to respect the character, appearance and local distinctive of the immediate area and of the AONB. I submit that none of these attributes apply to the Withy Way proposals.

In summary, I remain of the view that you can reasonably grant planning permission for the Withy Way proposals under Policy 22, and if there are any residual concerns, that there are other material considerations to be taken into account. These are set down in the submitted planning statement but include the following social and environmental benefits:

- improved housing stock, enhancing the place in which the applicants' family lives its life, replacing a poorly built and ugly dwelling;
- a more sustainable building, well insulated and fuel efficient;
- improvement to the landscape of the AONB through a better looking dwelling and woodland and orchard planting;
- the scale and form of the new building is more in keeping with the surrounding building stock than the existing; and
- high quality design from award winning architects making a positive contribution to the area and AONB.

I request that you take the above comments into account in drafting your report and recommendation to the Committee. Please contact me if you wish to discuss the proposals.

Yours sincerely

Keith Willian.  
Director

## 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. 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 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*<sup>1</sup>; *Ahmed*<sup>2</sup> and *Moore*<sup>3</sup>.

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

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

<sup>3</sup> *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".
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**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

