

## Appeals Lodged

May/June 2022

Address	Proposal	Decision Type	Appeal Type	Anticipated Appeal Determination Date	Reference
The Paddocks Swindon Lane Cheltenham	Demolition of the existing property and the construction of two 2 storey dwellings.	Delegated Decision	Written Representation	July 2022	Appeal ref: 22/00006/PP1 Planning ref: 21/02505/FUL
The Bungalow 9 All Saints Villas Road Cheltenham GL52 2HB	Proposed demolition of existing bungalow and replacement with a pair of semi-detached properties and associated works and infrastructure	Delegated Decision	Written Representation	July 2022	Appeal ref: 22/00007/PP1 Planning ref: 21/01891/FUL
3 Suffolk Road Cheltenham GL50 2AG	Replacement to sash windows & entrance door on grade 2 listed building	N/A	Written Representation	Aug 2022	Appeal ref: 22/00008/ENFAPP 21/00022/DCALLB
27 Cleeve View Road Cheltenham GL52 5NJ	Part first floor side extension, change roof from hip to gable and extend loft conversion	N/A	Written Representation (HAS)	Aug 2022	Appeal ref: 22/00009/PP1 Planning ref: 22/00262/FUL

## Appeals Determined

January to June 2022

Please find appended the appeal decisions from this period.

Authorised By: Liam Jones, Head of Planning 06.06.2022





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## Appeal Decision

Site visit made on 4 January 2022

**by Stuart Willis BA Hons MSc PGCE MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 07 January 2022**

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**Appeal Ref: APP/B1605/W/21/3281489**

**1 Loweswater Road, Cheltenham, Gloucestershire GL51 3AZ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Adam Russell against the decision of Cheltenham Borough Council.
  - The application Ref 21/00505/COU, dated 28 February 2021, was refused by notice dated 20 May 2021.
  - The development proposed is change of use to land at the rear to extend garden land.
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### Decision

1. The appeal is allowed, and planning permission is granted for change of use to land at the rear to extend garden land at 1 Loweswater Road, Cheltenham, Gloucestershire GL51 3AZ in accordance with the terms of the application, Ref 21/00505/COU, dated 28 February 2021, subject to the conditions in the attached schedule.

### Preliminary Matters

2. Although referenced on the application form and other appeal documents by the appeal parties, unlike the proposed fence, a summer house is not shown on the submitted plans. In addition, it is not included in the description of development on the decision notice that the appellant has confirmed they are satisfied with. Therefore, I have not included this as part of the development being sought.
3. As such, I have taken the description of development from the decision notice. Although different to that given on the application form, it is more precise. It is also the description upon which notification took place.
4. Following the refusal of the application the new National Planning Policy Framework (Framework) has been published. Where comments have been received in relation to this, they have been taken into consideration in my decision.

### Main Issues

5. The main issues of the appeal are the effect of the proposed development on:
  - the character and appearance of the area; and
  - biodiversity.

## Reasons

### *Character and Appearance*

6. Although said to have been part of the original estate layout, the evidence before me indicates that the appeal site is not designated as open green space in the development plan.
7. It is an area of undeveloped land between Loweswater Road and Winton Road with a pedestrian path alongside it linking the streets with garden areas to two sides. There are several pockets of undeveloped land within the surrounding streets that vary in terms of their size, shape and greenery. These act as a break in the built form and along with landscaping within plots softens the appearance of the streetscene.
8. The appeal site is of a small size with limited greenery. It is located at the end of a cul-de-sac adjacent to gardens and enclosed by boundary treatments to 2 sides. Parking was taking place in front of the site and along the road at the time of my visit which also partly obscured views of the site. As a result, the site is largely screened in longer range views and while visible from them, is not prominent from many of the nearby properties. While it previously contained mature landscape features, it is currently overgrown and unkempt.
9. Consequently, it is not a key feature in the streetscene and makes a limited contribution to the character and appearance of the area at present.
10. The proposed development would remove the vegetation on the site. Nonetheless, hard surfacing and parked vehicles would be low level and would not be discordant given the presence of the adjacent roads and paths. Existing boundary treatments would aid in screening the area and part of the site would remain open. A condition is imposed preventing further structures being added. In addition, although not large, an area of planting is proposed in one corner of the site that would act as a buffer between and be visible from both streets.
11. The site is partly enclosed, and the remainder could be enclosed by some boundary treatments under permitted development rights. There are walls and fencing along the cul-de-sac of varying appearance. Therefore, the fencing off of part of the site would not be discordant with the existing site and its context. A condition is imposed requiring details of the proposed fencing to be agreed.
12. Even if I were to agree that the site was an existing open space in the context of paragraph 99 of the Framework, due to its small size, its loss would have a minimal effect on the level of provision in the area and is of limited public value at present.
13. Therefore, the proposed development would not harm the character and appearance of the area. It would comply with Policy INF3 of the JCS<sup>1</sup> along with Policy D3 of the Cheltenham Plan. These, amongst other things, seek to prevent the development of private green areas and open space that make a significant contribution to the townscape and environmental quality and protect green infrastructure in a manner that reflects its contribution to landscape/townscape quality. It would also accord with the Framework where it requires schemes to be sympathetic to local character.

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<sup>1</sup> Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011 - 2031

### *Biodiversity*

14. I acknowledge third party references to slow worms, dormice and other fauna at the site. Notwithstanding this, while overgrown at the time of my visit the information before me indicates that there are no records or biodiversity alerts for the site from the Gloucestershire Centre for Environmental Records.
15. There is little connectivity to other habitats and previous landscape features have been removed. There is no compelling evidence that there is a reasonable likelihood of protected species being present on or near the site or that they may be adversely affected by the proposal. As a result, and in light of the condition of the site at the time of my visit, further information, such as ecological surveys of the site, are not necessary.
16. Landscape features have previously been removed at the site and areas would be hard surfaced. Nevertheless, an area of planting is proposed and secured by condition.
17. Therefore, the proposed development would not harm biodiversity. It would accord with the biodiversity protection aims of SD9 and INF3 of the JCS.

### **Other Matters**

18. Whether the removal of landscape features at the site required separate consents is not a matter for this appeal. I saw there were streetlights nearby and the relocation of the existing one in front of the site is a matter for the Council. That previous applications and enforcement action at the site have taken place do not alter my findings on the scheme before me.
19. While any contribution towards reducing climate change is worthwhile, given the size of the site, the loss of the remaining greenery at the site would be small. The individual circumstances of this proposal mean it would not set a precedent. I have concluded that the proposal would be acceptable, and I can see no reason why it would lead to harmful developments on other sites. Moreover, each case should be assessed on its own merits, as would any future proposals at the site.
20. There is unrestricted parking near the site and much of the surrounding streets with some properties have parking within their plots. This would provide sufficient space to accommodate any displaced by the appeal scheme. The Highways Planning Liaison Officer concluded that there would not be an unacceptable impact on highway safety or a severe impact on congestion. I have reached the same finding.
21. Parking already takes place near the site a comparable distance from the surrounding properties and their gardens. Therefore, the presence of parked vehicles in the outlook from nearby dwellings, and any noise or disturbance associated with vehicle movements or activities within the enlarged garden area, would not be unexpected or significant.

### **Conditions**

22. In addition to the standard time limit condition, I have imposed one requiring that the development is carried out in accordance with the approved plans. This is in the interest of certainty.

23. In order to protect the character and appearance of the area, I have also imposed a condition requiring details of the proposed fence, a landscape scheme and one removing permitted development rights for further structures or buildings at the site.

### **Conclusion**

24. For the reasons given, and having considered all matters raised, I conclude that the appeal should be allowed, subject to the conditions below.

*Stuart Willis*

INSPECTOR

### **Schedule of Conditions**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location and Existing Block Plan Drawing No SK 001 and Proposed Layout Plan.
- 3) Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and/or re-enacting that order with or without modification), no plant, structures, buildings, walls, fences or other means of enclosure, other than those expressly authorised by this permission, shall be erected, constructed or installed at the site.
- 4) Prior to their beneficial use of the development hereby approved boundary treatments at the site shall be erected in accordance with details, including material(s), finish/colour(s) and dimensions, that have first been submitted to and approved in writing by the local planning authority and thereafter retained as such.
- 5) Prior to the beneficial use of the development hereby approved, details of both hard and soft landscape works shall be submitted to and approved in writing by the local planning authority. These details shall include:
  - i. Planting plans,
  - ii. Written specification of planting and cultivation works to be undertaken,
  - iii. Schedule of plants giving species, plant sizes, and proposed numbers/densities where appropriate,
  - iv. existing and proposed finished levels,
  - v. vehicle parking layout,
  - vi. materials for hard surface areas that shall be permeable or drained to a permeable area, and
  - vii. an implementation programme.

Thereafter, the development shall be carried out and maintained in full accordance with the approved details.

Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.







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## Appeal Decision

Site visit made on 21 December 2021

by **Oliver Marigold BSc DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14<sup>th</sup> January 2022

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### Appeal Ref: **APP/B1605/D/21/3282970**

### **35 Naunton Crescent, Cheltenham, GL53 7BD**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Simon North against the decision of Cheltenham Borough Council.
  - The application Ref 21/00998/FUL, dated 27 April 2021, was refused by notice dated 24 June 2021.
  - The development is proposed two storey rear extension, loft conversion and new dormer at rear.
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### Decision

1. The appeal is dismissed.

### Main Issue

2. The main issue is whether the proposed development would preserve or enhance the character or appearance of the Cheltenham Central Conservation Area.

### Reasons

3. Cheltenham's Central Conservation Area (CA) is large and diverse, including the town centre and residential areas of different eras. As a part of the CA, the Leckhampton Character Area (LCA) includes large areas of compact 19<sup>th</sup> Century artisan terraced housing. The houses contribute to the LCA and the CA as a whole because of their distinctive character, including as a cohesive group.
4. The Leckhampton Character Area Appraisal and Management Plan (LCAMP) identifies the terraces at Naunton Crescent, including the appeal site, as being positive buildings that contribute to the area's character and appearance. It identifies important characteristics of historic terraces such as those here as being the unity and cohesion of their built form.
5. Number 35 Naunton Crescent retains much of its original form as an artisan terraced house. This includes its two-storey mono-pitch rear wing, and its simple roof. The overall form of the property contributes to the wider terrace and makes a positive contribution to the CA due to this form, integrity and as a part of the coherent whole of the terrace in which it sits.
6. The proposal seeks to construct a two-storey rear extension and dormer in an overall cohesive approach. The Council does not object to the ground floor rear extension element and given its subservience I see no reason to disagree. At first floor level, however, the proposed rear extension would encompass the

- whole width of the property and so would physically and visually remove much of the existing rear wing.
7. The appellant considers that the street only has uniformity when viewed from the front elevation, and that any uniformity to the rear that may have existed previously has been eroded over time by subsequent development. They also note that the LCAMP does not make specific reference to the importance of the rear elevations of properties on Naunton Crescent, and that there are only limited public views of the rear of the property, from Naunton Terrace.
  8. While there may have been a loss of uniformity at ground floor level, from the evidence before me and my own observations of the area, and while noting that the LCAMP does not make specific reference to the importance of rear elevations, many properties in Naunton Crescent have kept their mono-pitch rear projections at first floor level, even after redevelopment at ground floor, thus retaining a rhythm to the street that enables their historic form to be clearly read. I therefore consider that the loss of the rear wing as proposed would be harmful to the property's appearance.
  9. The appellant has drawn my attention to a number of other properties in the terrace that have had their rear projections infilled or removed, in a manner described by the appellant as 'less considerate'. I have limited information on these properties and do not know the background of these extensions but in any case, they do not justify the harm identified. Furthermore, they represent a small proportion of the terrace as a whole.
  10. The proposal also includes a rear dormer. The appellant argues that its position above the ridgeline would not be visible from Naunton Crescent, given the perspective required to see it. Even so, the height of the dormer and its width, covering much of the rear roofslope, would be uncharacteristic of the property's simple design and that of the street as a whole.
  11. Concerns have been raised about the consistency of the Council's decisions and examples of other dormers nearby have been drawn to my attention. While the dormers referred to in Naunton Lane and Naunton Way may be viewable from within the CA, they are outside this designation and built on dwellings with a different design to those at Naunton Crescent, limiting the comparison that can usefully be drawn from them. I also viewed the dormer at 8 Leckhampton Road, within the CA. While this development is reasonably prominent in the CA, the dwelling has a very different appearance to the appeal proposal, and I find little similarity between the two. Furthermore, few if any of the other examples cited involve the extent of changes proposed here across the whole rear elevation and roof. I have considered the appeal proposal on its own merits.
  12. Overall, I consider that both the first-floor extension and the dormer would result in significant harm to the property's integrity and to its character and appearance, and to that of the CA.
  13. The statutory duty in Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 is a matter of considerable importance and weight. The proposal would have a negative effect on the significance of a designated heritage asset and would result in 'less than substantial' harm in the words of the National Planning Policy Framework ('the Framework'). While I

recognise the benefits of the proposal to the appellant, no public benefits have been put forward to weigh against this harm.

14. The proposal would therefore be contrary to policies SD4 and SD8 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (December 2017), and policy D1 of the Cheltenham Plan (July 2020), which require that proposals conserve and enhance heritage assets and make a positive contribution to local character and distinctiveness. For the same reasons the proposal is contrary to the LCAMP (July 2008), the Residential Alterations and Extensions SPD (November 2008) and to the Framework.

### **Other Matters**

15. I am aware of the appellant's stated willingness to amend the dormer element of the scheme. I note that plans have been submitted to demonstrate this. However, these plans were not formally submitted as part of the application, and as such have not been considered by the Council or other parties. Consequently, in the interests of fairness to all parties I have made my decision on the basis of the plans that were before the Council when it reached its decision.

### **Conclusion**

16. Given the above, the proposal would not preserve or enhance the character or appearance of the Cheltenham Central Conservation Area. It would not accord with the development plan as a whole and there are no other considerations to outweigh that finding. I therefore conclude that the appeal should be dismissed.

*Oliver Marigold*

INSPECTOR





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## Appeal Decisions

Site visit made on 13 January 2022

by **Stephen Hawkins MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19<sup>th</sup> January 2022

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**Appeal A Ref: APP/B1605/C/21/3283541**

**Appeal B Ref: APP/B1605/C/21/3283542**

**Land at 11 Welland Drive, Cheltenham, Gloucestershire GL52 3HA**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Andrew Mukori (Appeal A) and Mrs Gamuchirai Mukori (Appeal B) against an enforcement notice issued by Cheltenham Borough Council.
- The enforcement notice was issued on 25 August 2021.
- The breach of planning control as alleged in the notice is without planning permission the erection of a timber fence in excess of 1 m, adjacent to a highway used by vehicular traffic.
- The requirements of the notice are to reduce the height of the fence to no more than 1 m and remove the resulting waste from the site.
- The period for compliance with the requirements is two months.
- The appeals are proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period for either Appeal A or Appeal B, the appeals on ground (a) and the applications for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

**Summary of Decisions: The appeals succeed in part and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.**

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### Preliminary Matter

1. The matters set out by the appellants in support of their appeals, including references to other boundary enclosures in the locality, largely relate to the planning merits of the fence. However, as no fee was paid there is no deemed application arising from a ground (a) appeal. Therefore, planning merits considerations are not before me.

### Appeals A and B

#### Ground (f) appeals

2. The ground of appeal is that the requirements of the enforcement notice are excessive.
3. An enforcement notice can have two purposes. Firstly, it can remedy the breach of planning control, including by making the development comply with the terms of any planning permission granted in respect of the land, or by restoring land to its condition prior to the breach taking place. Secondly, a notice can remedy any injury to amenity caused by the breach.
4. The notice attacks a timber fence around 2 m high, erected adjacent to the street at a residential property. Although the notice gives no indication as to

whether one or both of the above purposes are relevant, it does not require total removal of the fence. Reduced to 1 m high, the fence would not be dissimilar in height to the wall it replaced. Moreover, reducing the fence to 1 m high would bring it within the terms of the planning permission granted for a fence adjacent to a highway in the GPDO<sup>1</sup> at Article 3, Schedule 2, Part 2, Class A. Therefore, the purpose of the notice must be to remedy both the breach and the injury to amenity caused by the height of the fence.

5. Simply painting the fence would not remedy the breach. Varying the notice to retain the fence at its existing height would fall outside the scope of what can be achieved under ground (f); where there is an appeal on ground (f) but not on ground (a) and the purpose of the notice is to remedy the breach, the notice cannot be varied to attack its substance. In any event, painting the fence alone would not remedy the injury to amenity identified in the notice. Therefore, the above does not represent an obvious alternative to what the notice requires. The appellants did not suggest another alternative and to my mind, there is none that would also achieve the purpose of the notice. Therefore, in my view reducing the fence to 1 m high is a proportionate way in which to remedy the breach and the injury to amenity.
6. Accordingly, what is required by the notice is not excessive and the ground (f) appeals fail.

### **Ground (g) appeals**

7. The ground of appeal is that the time for complying with the requirements of the notice falls short of what should reasonably be allowed.
8. The compliance period is described in the notice as beginning from the date of issue, rather than the date the notice takes effect. Consequently, if I were to dismiss these appeals and uphold the notice as issued the appellants would then straight away be in breach of the notice. It must follow that the compliance period specified in the notice as issued is unreasonably short.
9. In the absence of anything to suggest otherwise, I have assumed that what the Council actually meant was for the compliance period to be two months from the date the notice takes effect. I recognise that reducing the fence to 1 m high is likely to be a straightforward matter to arrange and have carried out by a suitable contractor within a couple of months or so. Nevertheless, I am also mindful that by the end of August this year it is likely that recent planting behind the fence would have had a full growing season in which to mature and thereby act as a more effective screen from the street. Furthermore, there is still ongoing uncertainty regarding the potential reintroduction of restrictions on movement to manage the spread of COVID-19. Given that is the case, it would seem sensible to maintain an opportunity for the appellants' children to access suitably private and secure outdoor space at their property as far as possible. A compliance period which took these factors into account would therefore strike a more appropriate balance between remedying the planning harm identified in the notice as soon as is practicable, whilst also enabling a reasonable degree of privacy and security to continue to be provided at the property.

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<sup>1</sup> The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

10. Accordingly, in my view eight months is a reasonable period for compliance. The ground (g) appeals succeed to that extent.

**Conclusion**

11. For the reasons given above I conclude that the period for compliance falls short of what is reasonable. I shall vary the notice prior to upholding it.

**Formal Decisions**

12. Appeals A and B: It is directed that the enforcement notice is varied by at paragraph 5 substituting "*two months from the date of the notice*" with "*eight months from the date the notice takes effect*" as the period for compliance. Subject to this variation the enforcement notice is upheld.

*Stephen Hawkins*

INSPECTOR







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## Appeal Decision

Site visit made on 13 January 2022

by **Stephen Hawkins MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 26 January 2022

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**Appeal Ref: APP/B1605/C/21/3284424**

**Land at 156 Hesters Way Road, Cheltenham GL51 0RY**

- 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 Mr Miroslaw Michalecki against an enforcement notice issued by Cheltenham Borough Council.
- The enforcement notice was issued on 9 September 2021.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of the land to the front of 156 Hesters Way Road, Cheltenham, GL51 0RY for the operation of a hot food takeaway business from a catering trailer.
- The requirements of the notice are to cease trading of the hot food takeaway business and remove the trailer from which the business is operating from (*sic*) at land known as 156 Hesters Way Road, Cheltenham GL51 0RY.
- The period for compliance with the requirements is six weeks.
- The appeal is proceeding on the grounds set out in section 174(2)(b) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

**Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections in the terms set out below in the Formal Decision.**

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### Preliminary Matters

1. The enforcement notice alleges a material change of use of land to a hot food takeaway. The attached plan shows an area of hardstanding at the front of a terraced dwelling, not including the dwelling or its rear garden. However, it is highly likely that the area shown on the plan is also in use for purposes associated with the dwelling; the appellant confirmed that this was the case and the Council did not seek to argue otherwise.
2. There is little physical separation between the area allegedly used as a takeaway and the rest of the land occupied by the appellant. In my view, as a matter of fact and degree, use as a hot food takeaway is materially different in character to a use as a dwelling. This is because of the probable nature and scale of a takeaway use and the resulting significant increase in the number and frequency of comings and goings. It is highly likely therefore that any use as a takeaway is not ancillary to the use of the dwelling but is a primary use. Relevant case law has established that there is a mixed use where two or more primary uses are within the same planning unit and the uses are not ancillary to one another.
3. Therefore, if the alleged takeaway use has occurred the land shown on the plan is not in one primary use but forms part of a larger area of land occupied by

the appellant and in a single mixed use comprising both primary uses as a dwelling and a takeaway. Where an alleged breach of planning control is a material change of use and more than one primary use is taking place within a planning unit, the allegation should specify all the components of that use, even if it is considered expedient that only one of its components should cease. The Courts have held that where there is a mixed use, it is not open to the Council to decouple elements of it<sup>1</sup>. The use will be a single mixed use with all its component activities.

4. At s176(1)(a), the Act provides for correcting a defect, error or misdescription in an enforcement notice. The power is wide, the only test being whether injustice would be caused to the appellant or the Council. After seeking the views of both main parties, I shall correct the notice to include the residential component of the mixed use in the allegation. In addition, I shall substitute the plan with one which properly reflects the unit of occupation, also making a consequential correction to paragraph 2. As the notice would not be more onerous, no injustice would be caused by making these corrections.
5. There is no deemed planning application arising from a ground (a) appeal. Therefore, planning merits considerations are not before me.

#### **Ground (b) appeal**

6. The ground of appeal is that the matter alleged in the notice has not occurred as a matter of fact. It is for the appellant to show that their appeal should succeed on this ground, the relevant test of the evidence being on the balance of probability.
7. A mobile catering trailer is stationed on part of the hardstanding. The available evidence, which includes extracts from Council records as well as representations from interested local residents, clearly shows that the trailer was used at the appeal site for the preparation, cooking and sale of hot food which is taken away by customers and consumed off the premises, prior to the issuing of the notice. The trailer was not simply parked or stored at the site. Although it appears that the appellant has recently started operating their business from another location, that does not change the fact that the use as a hot food takeaway has occurred at the site.
8. Therefore, the available evidence does not support the appellant's case and the ground (b) appeal fails.

#### **Conclusion**

9. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice as corrected.

#### **Formal Decision**

10. It is directed that the enforcement notice is corrected by:
  - Substitution of the plan attached to the enforcement notice by the plan attached to this decision.
  - Substitution of the words "*edged red*" by the words "*edged and cross-hatched in grey*" in paragraph 2.

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<sup>1</sup> *R (oao) East Sussex CC v SSCLG & Robins & Robins* [2009] EWHC 3841.

- Substitution of the allegation in paragraph 3 with the following allegation: "*Without planning permission, the material change of use of the land to a mixed use as a dwelling and a hot food takeaway*".

Subject to these corrections, the appeal is dismissed and the enforcement notice is upheld.

*Stephen Hawkins*

INSPECTOR



## Plan

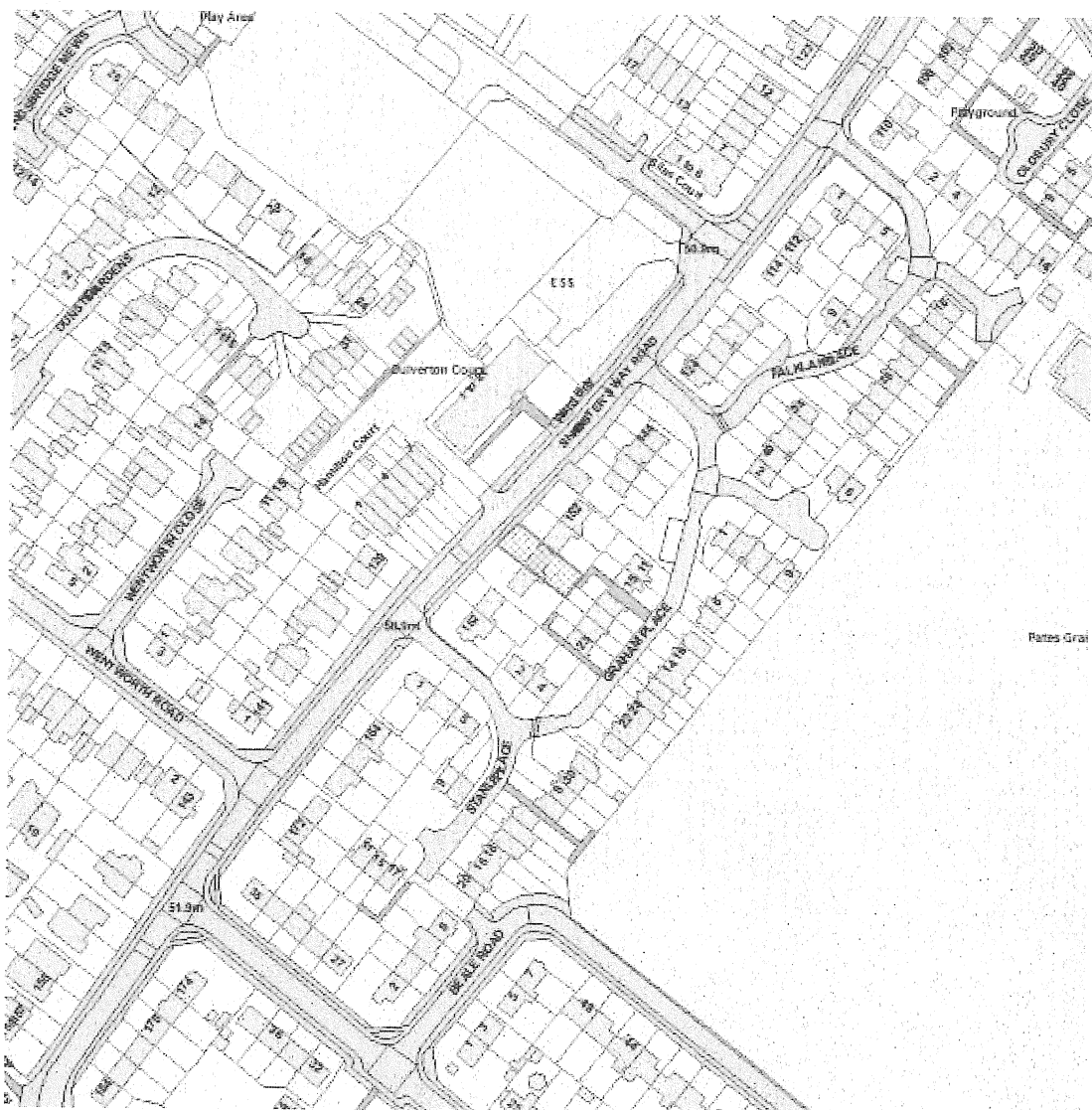
This is the plan referred to in my decision dated: 26 January 2022

by **Stephen Hawkins MA MRTPI**

**Land at: 156 Hesters Way Road, Cheltenham GL51 0RY**

**Reference: APP/B1605/C/21/3284424**

Scale: Not to scale





## Appeal Decision

Site visit made on 15 February 2022

by **Oliver Marigold BSc DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 4<sup>th</sup> March 2022.

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**Appeal Ref: APP/B1605/W/21/3286594**

**35 Hicks Beach Road, Cheltenham GL51 0JL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mrs K Johnson against the decision of Cheltenham Borough Council.
  - The application Ref 21/00184/FUL, dated 14 January 2021, was refused by notice dated 17 May 2021
  - The development proposed is the erection of a new dwelling.
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### Decision

1. The appeal is dismissed.

### Main Issue

2. The main issue is the effect of the proposal on the character and appearance of the area.

### Reasons

3. The appeal site lies within a residential suburban part of Cheltenham. Dwellings locally take a variety of forms, including low-density semi-detached houses and bungalows, such as those opposite the appeal site on Hesters Way Road and Wentworth Road.
4. That said, the terraces on Hicks Beach Road and Hesters Way Road form part of a housing development with a distinct character. The pattern of development here is denser with terraces laid out in a planned and ordered way. Dwellings are set back from the road using straight lines and right angles, giving strong building lines.
5. The appeal site is an end-of-terrace dwelling, located on a corner plot. The proposed dwelling's location would be consistent with the building line on Hicks Beach Road but would significantly exceed that formed by the terrace behind on Hesters Way Road.
6. I am mindful of the guidance in the Council's Supplementary Planning Document 'Development on Garden Land and Infill Sites in Cheltenham', adopted 2009 (the SPD). In particular, it advises that "where there is a predominant building line, new frontage development which departs from this will not normally be accepted".
7. The new dwelling would have its side elevation facing Hesters Way Road. This would reflect the existing situation and the fact that side elevations on corners are prominent in the street scene. Therefore, I do not consider it necessary for

the dwelling to 'turn the corner' by having a second primary frontage, as suggested by the Council. Nevertheless, the side elevation still constitutes a secondary frontage development to Hesters Way Road. By departing from the established building line on Hesters Way Road, the proposal conflicts with the SPD's advice.

8. The appeal site is bounded by tall hedging that would remain following completion of the development. This makes the plot more enclosed than others and would soften the proposal. Even so, the proposed dwelling's necessary size and height means that it would appear prominent, incongruous and out of place in the street scene, significantly harming its character and appearance particularly from the junction between both roads, and when viewed along Hesters Way Road.
9. The appellant has drawn my attention to examples of what they consider to be similar development in Cheltenham, that the Council has approved. These are at 15 Waterloo Street<sup>1</sup> and 18 Wentworth Road<sup>2</sup>. The background to these cases has been provided to me and I saw the sites on my visit.
10. In the case of 15 Waterloo Road, the approved dwelling is an extended terrace perpendicular to the adjacent road, so in that respect is similar to the appeal proposal. However, I saw that the surrounding area is not the same as the appeal site, with the relevant building line being much less consistent. In respect of 18 Wentworth Road, as I have described above, this area has a different character to the appeal site, being less dense, which limits the extent of useful comparison that can be drawn. Neither example convinces me that the harm I have identified is justified and, in any case, I have considered the appeal proposal on its own merits.
11. I recognise that the dwelling's roof line and materials would reflect the existing terrace row on Hicks Beach Road itself. I also appreciate that the site would make efficient use of land within the Principal Urban Area, and that the principle of a new dwelling here is not at issue.
12. Nevertheless, I conclude that the proposal would harm the character and appearance of the area. As such, it would be contrary to the Development Plan, specifically adopted Policy D1 of the Cheltenham Plan, and adopted Policy SD4 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011-2031, as well as the SPD, all of which require that development respects the character of the site and its surroundings. For similar reasons it would also conflict with the advice in the National Planning Policy Framework (the Framework) that development is sympathetic to local character.
13. The Council accepts that it cannot currently demonstrate a five-year housing land supply. As such, it is necessary for me to determine whether the adverse impacts of the development would significantly and demonstrably outweigh the benefits inherent in providing an additional dwelling to assist the Council in addressing its undersupply, as set out in paragraph 11 of the Framework.
14. The proposal would make a positive contribution to the supply of housing in the area and its future occupants would make positive social and economic contributions. However, due to the proposal being for only a single dwelling,

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<sup>1</sup> Reference 18/00746/FUL

<sup>2</sup> Reference 20/02242/FUL

such benefits would be very limited. Given the harm that I have identified, I consider that the adverse impacts of granting permission, with regard to the harm it would have on the character and appearance of the area, would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.

**Conclusion**

15. For the reasons given above, having considered the Development Plan as a whole and all material considerations, including the Framework, the appeal should be dismissed.

*Oliver Marigold*

INSPECTOR







## Appeal Decision

Site visit made on 8 February 2022

by **Mrs H Nicholls FdA MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 April 2022

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**Appeal Ref: APP/B1605/W/21/3283565**

**Clarence Court Hotel, 45 Clarence Square, Cheltenham GL50 4JR**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Ms Elaine Cross of Clarence Court Hotel against the decision of Cheltenham Borough Council.
  - The application Ref: 21/00583/FUL, dated 11 March 2021, was refused by notice dated 19 August 2021.
  - The development proposed is construction of a pergola (retrospective).
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### Decision

1. The appeal is dismissed.

### Preliminary and Procedural Matters

2. Whilst I observed that the pergola was in situ at the time of my site visit, the concise description of the proposal, taken from the Council's decision notice, is relevant insofar as it refers to the act of development, not its retrospective nature.
3. The Council has also confirmed that no elevation plans were submitted with the appeal application due to the fact that the pergola was already in place. From the submitted photographs, it appears that the structure I saw was that originally constructed.
4. The Council refused permission, in part, on the basis that the proposal would be harmful to the significance of the Grade II listed building under Section 16(2) of the Listed Building and Conservation Areas Act (LBCAA) 1990. However, the proposal is one for which planning permission is sought, not listed building consent, and does not involve any attachment or alteration to the listed building itself. As such, the proposal has been assessed against section 66(1) which requires special regard be given to the desirability of preserving the building or its setting, or any features of special architectural or historic interest which it possesses. Given the site's location within the Central Conservation Area, the proposal has also been assessed under Section 72(1) of the LBCCA, which requires that I pay special attention to the desirability of preserving or enhancing the character or appearance of that area.

### Main Issues

5. The main issues are:
  - whether the proposal has preserved the setting of the Grade II listed building known as 'Lisle House and Wellesley Court Hotel';

- whether it has conserved or enhanced the Central Conservation Area (CA); and
- whether the proposal is harmful to the living conditions of neighbouring occupiers, with particular regard to noise and disturbance.

## **Reasons**

### *The listed building*

6. The Grade II listed building, 'Lisle House and Wellesley Court Hotel' (now Clarence Court Hotel) were originally two houses and are listed together as one building. The listing description refers to the building as having been built in 1837-8 and comprising of 3 storeys with basement, 4 bays, with service range to rear. The buildings are stucco over brick with concealed roof and stucco end and ridge stacks. The stucco detailing on the building includes horizontal rustication drawn into voussoirs over windows to ground-floor outer bays; first-floor banding surmounted by fluted Ionic pilasters through ground and first floors, architrave, frieze and dentil cornice; above which are pilasters with frieze and cornice and blocking course. There are sash windows throughout the building. The entrances are set to the side elevations, with Ionic columned porches, and similar window surround detailing on the sides.
7. The listing description also notes that the building was constructed as part of the development of this area undertaken for Joseph Pitt in 1825-42. In this historic context, the listed building marks the prosperity of the area and how housing to accommodate the professional classes was deliberately planned. The building retains stylistic and fabric evidence important to its significance.

### *The Central Conservation Area (CA)*

8. The CA includes the whole of Cheltenham town centre and most of the Victorian, Edwardian and later 20th century suburbs. The appeal site lies within the 'Pittville' sub-area of the CA which encompasses the early 19th century estate planned by Joseph Pitt, which whilst principally residential in nature also includes the large, formal Pittville Park with the landmark Grade I listed Pittville Pump Room building. Pittville Park largely establishes Pittville's character and appearance and is a quintessential component of the area. The surrounding large areas of planned Regency development and early Victorian housing formally laid within spacious tree-lined streets give the area its distinctiveness. There are extensive areas of open space, Victorian terraced housing predominating to the south of the area with some interspersed villas, but generally larger detached buildings and villas to the north of the Pittville character area. Narrow service lanes are also contrasting features to the spacious streets and squares.
9. The built form of the streets and spaces, and the individual buildings, all combine to contribute to the character, appearance and distinctive identity of the Pittville sub-area of the CA. Its significance is therefore the way in which the buildings, spaces and streets combine to create a deliberately-planned, grand, coherent, high-class speculative development.

### *The Development*

10. The appeal scheme involves the retention of the pergola structure which has been constructed in the back corner of the site. The structure is single storey in

height, has timber supports through the sides and middle which hold up its flat, trellised roof, also made from timber. The floor beneath it is covered with loose chippings and large paving slabs. The pergola sits to the rear and right-hand side as you face the host building, with a row of cars often parked along the side boundary wall in front of it. As the site is open on the right-hand side to enable servicing and parking, the structure is visible from the street.

#### *Effect on the Listed Building*

11. The significance of the listed building derives from its elegant form, proportions and detailing, which are key characteristics of Georgian properties of this type.
12. The pergola has a utilitarian design. This, combined with the use of unrefined materials and the proportions of the structure are at odds with the elegant design of the listed building. Moreover, the structure is sizeable and visually strident in an open area to the side of the listed building and appears rudimentary and visually jarring in contrast with the building's finer detailing. Its siting in such close proximity and its functional design detract from the setting of the listed building, and so harms its significance.
13. In view of the above, the proposal fails to preserve the setting of the Grade II listed building known as 'Lisle House and Wellesley Court Hotel', contrary to the expectations of the Act. However, the harm does not amount to substantial harm under the terms of the Framework. I must therefore consider this harm in the context of the public benefits, which I will do below.

#### *Effect on the Conservation Area*

14. Due to its basic form, unrefined materials and absence of finesse or detailing, the pergola appears rustic and inelegant. It does not reflect the grandiose qualities of buildings or features within this part of the CA, nor appear as if it were designed with regard to such.
15. Though the pergola affects a relatively small part of the CA within a functional space and is often partially obscured from public view by cars, I do not regard this as sufficient justification to overlook the significant mismatch between the quality of the structure and that of the host building and surrounding, high quality environment. The suggestion that the space was previously overgrown and unkempt is not reflected in the evidence and of itself does not justify this harmful structure in any event.
16. I therefore conclude that the proposed development has neither preserved nor enhanced the character or appearance of the Central Conservation Area, contrary to the expectations of the Act. For these reasons, the proposal also conflicts with Policy SD8 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (2017) (JCS).
17. As with the listed building, under the terms of the Framework the harm to the significance of this heritage asset is 'less than substantial'. Paragraph 202 of the Framework sets out that less than substantial harm should be weighed against the public benefits of the proposal. I return to this below in my planning balance.

### *Living Conditions*

18. The pergola is situated towards a back corner of the site, enclosed by high, brick boundary walls and is not visible from ground level from the adjoining lane, though neighbouring dwellings have views from first floor level over it.
19. Whilst the pergola inevitably increases the amount of people and activity within the relevant part of the site, given the built-up nature of the area, I do not consider that any harmful overlooking occurs.
20. The pergola and the moveable furniture placed within it provides an increased capacity to offer al fresco drinking and dining, with an ability to accommodate around 24 seated guests. Whilst it is within the grounds of a licenced premises which has outdoor space for drinking and eating, the area previously available for such was limited to a small area in front of the building. The pergola is much larger, is in a different location and is capable of being made more comfortable during inclement weather through the use of patio heaters and foliage or covering for the roof. This could lead to an increase of its use during the later evening hours, creating harmful noise and disturbance.
21. Whilst I note the suggestion that a condition could prevent the use of the pergola beyond 2100 hours, in reality, this would be onerous on the premises to manage and, should anyone raise complaints about its misuse, even more difficult for the Council to enforce.
22. In view of the above, the development harms the living conditions of neighbouring occupiers, with particular regard to noise and disturbance. It therefore conflicts with Policy SL1 of the Cheltenham Plan (2020) and Policy SD14 of the JCS which together seek to ensure that developments do not harm the living conditions of neighbouring residents.

### **Other Matters**

23. I have considered the prospect of conditions being used to mitigate the harmful effects of the proposal. The suggested conditions of the Council include a plans condition, though in the absence of any elevation plans, there would be insufficient certainty that what has been constructed would remain without further alteration. Furthermore, notwithstanding that six Cypress trees appear to have been planted against the rear boundary wall, I do not have confidence that any other landscaping, including the hanging and trailing plants proposed, would mitigate the harm from the development to the appearance of the area, particularly given the likely seasonality of such.
24. I note the reference to a lapsed permission for an additional bedroom wing building on the site of the pergola. Though I have limited details on which to base my findings, the appeal proposal is very different in nature to a substantially constructed bedroom wing and, consequently, any such permission that may have existed does not lead me to an alternative conclusion in this case.

### **Planning Balance and Conclusion**

25. The proposal harms the living conditions of neighbouring occupiers and is incrementally harmful to the significance of both the listed building and the CA. In these regards, the proposal conflicts with the development plan when

considered as a whole. Whilst these harms are less than substantial, they are nevertheless of considerable importance and weight.

26. The appellant refers to the impacts of the COVID-19 Pandemic on the hospitality trade and the need to provide outdoor spaces for guests as a measure of business sustainability and safety for patrons. The appellant also refers to significant public benefits, through additional employment or likely additional guest expenditure as a result of the proposal, but I have limited evidence about how such effects have been forecast or their value. I am also not satisfied that the appeal proposal is the only means to secure such outcomes. The public benefits of the proposal are therefore minimal, and do not outweigh the identified harms.
27. In view of the above, and having regard to all other matters raised, including by supportive interested individuals, the proposal does not accord with the expectations of sections 66(1) or 72(1) of the LBCAA, the development plan or the Framework. The anticipated benefits do not lead me to a conclusion that a decision should be taken other than in accordance therewith.
28. Consequently, the appeal is dismissed.

*Hollie Nicholls*

INSPECTOR

