
Appeal Decision

Hearing Held on 27 September 2022

Site visit made on 27 September 2022

by Roy Curnow MA BSc(Hons) CMS MRTPI

An Inspector appointed by the Secretary of State

Decision date: 6 February 2023

Appeal A Ref: APP/C1625/C/19/3231937

Appeal B Ref: APP/C1625/C/19/3231938

**Land at Northend Barn, Leathern Bottle, Bristol Road, Cam Dursley,
Gloucestershire GL11 5LD**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mr Kostas Karapetsas against an enforcement notice issued by Stroud District Council ('the Notice').
 - Appeal B is made by Miss Elena Karapetsas against an enforcement notice issued by Stroud District Council ('the Notice').
 - The enforcement notice, numbered S.19/0119/UNCHU, was issued on 29 May 2019.
 - The breach of planning control as alleged in the notice is Without planning permission: (a) The selling of food from a mobile canteen on the land; (b) The erection of a permanent marquee on the land; and (c) The erection of a wooden structure used in connection with (a).
 - The requirements of the notice are (i) Cease the unauthorised use of food retail from the land; (ii) Permanently remove the marquee and associated materials from the land; and (iii) Permanently remove the wooden log store and all associated materials and paraphernalia in connection with the unauthorised food retail use from the land.
 - The period for compliance with the requirements is one calendar month.
 - The appeals are proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended ('the Act').
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Appeal C Ref: APP/C1625/W/21/3270422

**Land at Northend Barn, Leathern Bottle, Bristol Road, Cam Dursley,
Gloucestershire GL11 5LD**

- 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 Miss Elena Karapetsas against the decision of Stroud District Council.
 - The application Ref S.20/1617/FUL, dated 6 August 2020, was refused by notice dated 13 November 2021.
 - The development proposed is the erection of a permanent farm shop and pizzeria building.
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Decisions

1. In respect of Appeals A and B:

It is directed that the enforcement notice is corrected by deleting the alleged breach of planning control in Section 2 of the Notice, 'The matters which appear to constitute the breach of planning control', and replacing it with the words "Without planning permission, the material change of use of land for

the sale of hot food for consumption on and off the premises” and replacing the Plan attached to the Notice with that which I have appended to this decision.

It is also directed that the ‘Time for compliance’ in Section 3 of the Notice is varied through the deletion of the words “One calendar month” and their replacement with the words “six calendar months”.

Subject to the corrections and variation the appeals are dismissed, 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.

2. In respect of Appeal C: The Appeal is dismissed.

Procedural Matters

3. The Appellant in Appeal B also made an appeal, under s78 of the Act, against the refusal of the Council to grant planning permission for the erection of a permanent farm shop and pizzeria building on the land. This appeal was also heard at the Hearing. Given that there were areas of commonality between Appeals A and B and Appeal C, their decisions are written in a single decision letter. However, the reasoning for each decision is set out separately.

The Enforcement Notice

4. Prior to the Hearing, I suggested some changes might be made to the Notice and the plan attached to it. These were discussed at the Hearing and the parties agreed that the alleged breach of planning control could be simplified by changing this to “Without planning permission, the material change of use of land for the sale of hot food for consumption on and off the premises”. As this change would not affect the requirements of the Notice, nor would it be prejudicial to either party, I will correct the Notice in this regard.
5. The Notice refers to the breach of planning control having occurred in ‘the last four years’. The parties agreed that this should have read ten years, as this is the correct period for the reasons set out in s171B of the Act. As there would be no injustice, my decision on Appeals A and B is made on this basis.
6. The Plan originally attached to the Notice covered the entirety of the Appellants’ landholding between the A38 and the Bristol to Birmingham railway line. Within this land is a dwellinghouse and an area that seems to be used for the storage and parking of vehicles. As this land was not used for the purposes alleged in the Notice, its actual use there was not formally discussed at the Hearing.
7. However, it appeared to me that the Plan was wrong to encompass such a large area, as the evidence pointed to the alleged use being undertaken on a far smaller area of land. On 3 March 2022, the Council submitted a revised Plan omitting the dwelling and ‘storage/parking’ area.
8. In the Hearing, I drew attention to Drawing Number ‘Ionian PL-02’ that was attached as Appendix Two to the Appellant’s Appeal Statement. It appeared to me that this reflected more accurately what the written evidence

demonstrated. The parties agreed that this was the case, with the Council expressing a preference for the smaller area shown on drawing Ionian PL-02.

9. Given the length of time that passed between the issuing of the Notice and the Hearing, the parties were invited to make written representations on a limited number of issues.
10. In its response, the Council changed its position on the area of land that the Notice affects. It attached a revised plan that included all of the Appellants' land between the A38 and the railway line, save for that associated with the dwellinghouse. In support of its position, it said that the land behind the bund, that I describe as a 'storage and parking area', should be included as "This forms part of the agricultural unit and does not have any other use". Whilst this may be the case, the Notice does not make reference to agricultural use in its allegation. The agreed revised wording of the alleged use is being undertaken, and has been undertaken, from the area described in drawing 'Ionian PL-02'.
11. Furthermore, as stated by the Appellants in response, the Council's proposal to add to the land covered by the Notice might mean that other parties should have been served with a copy of the Notice. Therefore, I cannot be sure that using the larger area of land, as the Council proposes, would not be prejudicial.
12. Notwithstanding that last point, after visiting the site and taking all discussions on the matter into account, I find that none of the Council's Plans reflect where the alleged breach has occurred, and that the area defined by Ionian PL-02 does. Following established case law¹ on the matter, I find that the area it identifies forms the planning unit where the alleged breach has occurred – both as originally written, and in my correction. I attach a Plan to replace that issued by the Council.

Reasons

Ground (a)

13. The Appellants' land at Northend Barn lies in the open countryside. An access from the A38 gives on to a drive leading to the dwelling and parking/storage area that I refer to, above. The drive is largely flanked by agricultural land.
14. The exception to this is where the hot food retail use occurs. This is fenced off from the agricultural land. On the east side of the drive, a short distance from the A38, is a lorry back that has been converted into what I shall call a kitchen area. Attached on its south side is what is referred to as a marquee in the Notice. This is used for the consumption of food with a smaller area used for sales of goods not all of which has been produced on the holding.
15. On the A38 side of these structures is an area with tables for outdoor eating. To their north is land that is used for parking and storage, including wood storage, associated with the pizzeria. Opposite, on the west side of the drive, a smaller area is fenced off from the agricultural land and is used for purposes associated with the pizzeria.

¹ *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207

16. The remaining land between the A38 and the railway is used for agriculture, for residential purposes and for storage and parking purposes. I note the Council's point that the storage and parking use is not lawful; however, as it does not have relevance to my decision, and this would not confer any lawfulness upon that use, I need not comment further on the matter.

Main Issues

17. At the Hearing I outlined the Main Issues as:

- i) Whether this is an appropriate location for the sale of hot food for consumption on and off the premises; and
- ii) The effect of the development on the character and appearance of the area

Location

18. The general thrust of the Council's policies is to direct development towards locations in a hierarchical manner. Locations in the open countryside are at the bottom of this hierarchy.
19. In terms of the business case, a two-fold approach has been made. These were not made in a mutually exclusive manner. Essentially, they are: that it is a farm diversification project; and that it is a rural attraction.
20. The principal policy in the Stroud District Local Plan, adopted November 2015, ('LP') in respect of farm diversification is Policy EI15. Amongst its terms is that proposals will be permitted where the proposal can demonstrate the viability of farming through helping to support, rather than replace or prejudice, farming activities on the rest of the farm.
21. When the Notice was issued, the Appellants' agricultural holding was the land that I have referred to between the A38 and the railway line. Since that time, they have purchased a larger area of land on the south side of the A38 opposite their original landholding. The two areas are contiguous, save for the road, and are farmed as a single unit. I was told in the Hearing that, following an application to the Council, it has been agreed that they would not require prior notification for the erection of an agricultural building on the land south of the A38.
22. I did not walk the recently purchased land, and the parties agreed that I did not need to do so as I could see its character from the A38. It is grazing land, similar to that on the Appellants' original landholding.
23. At the time of the Hearing, the land supported 40 sheep 'breeding units'. The Appellants intend to increase the number of sheep to 200, including 10 breeding rams. Whilst they have no beef cattle presently, they have had 5 in the past. They intend to reintroduce cattle, with a hope that the number would be greater than before.
24. A fairly large polytunnel is located between the dwelling and the railway line. This is intensively used to produce fruit such as tomatoes, chillies and aubergines, which are used in the business.

25. The business employs 5.5 full-time equivalent jobs, as well as Elena Karapetsas. One of these jobs is solely in the kitchen in food preparation and cooking. The others work across the unit, in the restaurant, shop, polytunnel and helping with farm activities such as feeding sheep.
26. The agricultural activities on the holding are small-scale. Save for work in the polytunnel and the feeding of the relatively small number of sheep on the holding, little evidence of farming activity was provided.
27. To me, this goes to the heart of the argument regarding farm diversification. Paragraph 5.42 of the supporting text to LP Policy EI15 is key to understanding how this should be assessed. It states that "The [diversification activity] should be a secondary activity to the main farm enterprise and ideally will complement the daily farm activity". Here, the evidence shows that whilst it is complementary, inasmuch as food produced on the holding is used in the retail business, the latter use dominates. It is not a secondary activity.
28. I accept the point made by the Appellants, that there is nothing in LP Policy EI15 to state that diversification activities have to be financially subservient to the farming activities. However, the financial evidence that has been provided reflects my finding that agriculture plays a minor part in the activities on the holding. What is carried out supports the pizzeria/farm shop, rather than vice-versa.
29. The counterpart to Policy EI15, in respect of the development of rural attractions, is LP Policy EI10. It does not rule out open countryside locations for these. As it gives support to such development in lower tier settlements "in exceptional cases", it is axiomatic that it gives, at most, a similar level of support in open countryside locations. Support from Policy EI10 is subject to five criteria.
30. My reading of this policy is that its key requirement is set out in the first criteria; that "there is evidence that the facilities are in conjunction with a particular countryside attraction and it is demonstrated how the proposal could assist rural regeneration and the well being of communities". Where a development accords with this criterion, it is then subject to the other four that deal with issues such as design, effect on the character and appearance of the area and accessibility.
31. The business is not used in conjunction with a countryside attraction. The evidence shows that it has become more of an attraction in its own right. I recognise that there are benefits in terms of some local employment and from the workshops that Elena Karapetsas has run. However, it was not demonstrated how this equated to development assisting rural regeneration and the well-being of communities.
32. The effects of the development on the character and appearance of the area, one of the criteria in LP Policy EI10, is assessed in my second main issue. The access from the A38 to the site has good width and there is good visibility available to drivers leaving and entering that road. I saw that buses passed the site and that there was a cycle lane on the A38. Notwithstanding these, I have little doubt that, given its rural location, most people visiting the pizzeria did so using private cars.

33. My finding is that, whilst it is no doubt popular, as evidenced in comments from customers, the pizzeria/farm shop is not a rural attraction that is supported by LP Policies EI15 and EI10.

Character and Appearance

34. The structures associated with the use are clearly visible from the A38. They stand alone roughly a third of the way between the site access and the large dwelling on the land.
35. The marquee is formed from a metal arched frame on which is stretched a plastic 'skin'; it is not dissimilar to a polytunnel. The plastic skin on the side elevation facing the drive has been removed and replaced by a cut and planed timber boarded wall with an entrance door and windows. The skin remains on its elevation facing the A38, but a more rustic timber 'wall' has been erected in front of it that runs up roughly half of the elevation.
36. The lorry back adjoins the marquee. A further building, clad with a different form of timber boarding, appeared to be attached to this. There are further smaller wooden structures used for storage to the northwest of the main structures. Areas on both sides of the drive have wooden picnic type benches allowing for outdoor eating.
37. Although of an appropriate scale, these structures by reason of their designs and combination of materials result in a makeshift appearance. They are unsightly and cause harm to the character and appearance of the area. They are, therefore, contrary to the terms of Policies EI15(2) and EI10(2). The Notice also refers to LP Policy CP15(2) and (6) in this regard, but as they are not germane to arguments regarding character and appearance, I do not use them as reason for refusing permission.
38. No reason was given as to why the structures could not have been erected closer to the dwelling and polytunnel, in a manner that would accord with the terms of LP Policy EI15(3) and is similarly expressed in Policy EI10. Therefore, the siting is contrary to these policies.
39. This is clearly a successful business that is very popular with its customers. That it supports 6.5 full-time equivalent posts is also a factor that weighs in its favour. I also note the support for its retention that is given by businesses, including those that supply such items as flour. It has a close relationship with the farming activities but they support it, rather than the retail use supporting them. The business would only gain policy support in this location in particular circumstances, and those have not been demonstrated here. Allowing the appeal, even on a temporary basis, would undermine the Council's approach to sustainable development set out in the LP. It would also be harmful to the character and appearance of the area. Therefore, I find that the benefits of the development do not outweigh the identifiable harm.

Conclusion on Ground (a)

40. For the above reasons, the appeal under Ground (a) fails.

Ground (g)

41. An appeal under Ground (g) is that 'any period specified in the notice in accordance with s173(9) falls short of what should reasonably be allowed'. The key here is setting a time for compliance that is reasonable in respect of the circumstances of the case.
42. In their initial submissions, the Appellants requested 3 months, rather than the 1 month allowed by the Notice. In their Statement of Case, this had changed to 6 months. The reasons had remained the same, however: that it would take longer than a month to find another location, negotiate a lease on that property and move all equipment and production there. It was essential, they say, to extend the period to enable a successful relocation of the established business and maintain the workforce.
43. At the Hearing, the Appellants clarified that a period of six months was sought. The Council, for its part, said that three months would be sufficient to comply and was, therefore, reasonable.
44. Both one and three months would provide sufficient time to carry out the physical operations required by the Notice. However, it has been demonstrated that in addition to those works the effects on the business and its employees need to be taken into account. Therefore, my finding is that the period for compliance specified in the Notice falls short of what is reasonable. I will vary this to six months, and to this extent, the Ground (g) is successful.

Conclusion on Appeals A and B

45. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections and the replacement of the Plan that was attached to the Notice with that appended to this decision, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal C – Section 78

Main Issues

46. The Main Issues are:
 - i) Whether this is an appropriate location for the sale of hot food for consumption on and off the premises;
 - ii) The effect of the development on the character and appearance of the area; and
 - iii) The effect of the proposal on the vitality and viability of nearby centres

Reasons

47. The appeal site lies close to the railway line, between it and the dwelling on the land at Leathern Bottle. The proposal would be served by the existing access from the A38 and the drive to the rear of the site. The main part of the site is on the west side of the drive and would accommodate a parking area,

wood store, a fairly large building housing a farm shop and kitchen, timber pergola, outdoor seating area and foul drainage system.

48. The drawings show that the farm shop and kitchen building would be a little under 14m wide by a little more than 18m long. It would have a fairly low-pitched roof, with a ridge height shown as just over 4m and an eaves height of just under 2.5m. Its walls would be finished in timber boarding and its roof would be of profiled steel sheets. Doors and window openings would be found on three elevations with just a single pedestrian door on its rear, northeast elevation.

Location of the Proposed Development

49. Given the similarities between the two developments, many of the arguments made by the parties in respect of the location of the proposed building in Appeals A and B are germane here.
50. As I said there, the general thrust of the Council's policies is to direct development towards locations in a hierarchical manner, with locations in the open countryside at the bottom of this hierarchy.
51. Again, the Appellant makes the two-fold approach in her case for planning permission: that it is a farm diversification project; and that it is a rural attraction.
52. As was the case in Appeals A and B, the principal policy in terms of farm diversification is LP Policy EI15. Amongst other things, it requires a proposal to demonstrate the viability of farming through helping to support, rather than replace or prejudice, farming activities on the rest of the farm.
53. As it has already been set out, I need not rehearse the nature of farming at Leathern Bottle in any great detail. In the light of this, my finding is the same as in Appeals A and B. What is proposed would not presently represent the diversification of the main farm enterprise scheme, as envisaged by LP Policy EI15, as it would be the dominant activity, rather than a secondary activity, on the holding.
54. In reaching this position, I have taken account of the Appellant's plans for the holding, as set out in her written and oral cases. The family has purchased additional land and has received prior notification from the Council that would allow the erection of a farm building. These, together with the intentions and hopes to increase sheep numbers and introduce beef cattle and chickens, show intent for the future. However, as the building has not been erected and stock numbers are presently low, I give them limited weight in my assessment. Had these been carried out, it is likely they would have carried significant weight in my assessment in relation to farm diversification.
55. However, as it stands, for the above reasons I find that the proposed development would not amount to a farm diversification scheme that is supported by LP Policy EI15.
56. Given the nature of the proposed building and how it is proposed to be used, the Appellant's arguments in respect of a rural attraction differ from those in Appeals A and B. I have little doubt that it would represent a more attractive destination than the present pizzeria. Even with the restrictions on non-farm

sales that were discussed in the Hearing, the retail element would be likely to attract more people. Furthermore, there would be greater space for what were described as incidental activities run by the Appellant, such as exhibitions and cookery classes.

57. Again, the terms of LP Policy EI10 are relevant. This sets out that to be allowed in this location, it would need to be demonstrated that what was proposed would be an exceptional case. Although I understand the arguments that there would be a "sense of destination" associated with the development, I do not agree that this could not be carried out in a village or town setting and little information was brought forward in this respect.
58. LP Policy EI10 requires evidence that the development would be undertaken in conjunction with a particular countryside attraction and it is demonstrated how the proposal could assist rural regeneration and the well-being of communities. There is no such attraction here, nor was sufficient evidence brought forward of how the development would assist rural regeneration. The exhibitions and classes that would be held would benefit the well-being of the local community, and I do attach some weight to this. However, this is insufficient to overcome the failings in respect of the requirements of LP Policy EI10.
59. I heard that there was a limited bus service along the A38, and that this might be upgraded. There is also a cycle lane along that road. To my mind, these offer very limited opportunities for those wishing to access the site without using private car travel. I accept that over time more people will use electric vehicles and that this will result in a reduction in emissions. Notwithstanding this, people visiting the site will be reliant on the use of private car transport.
60. In the light of the above, I find that the exceptional case required by LP Policy EI10 to support the proposal in this location have not been demonstrated. The proposed development is, therefore, contrary to its terms.

Character and Appearance

61. The farm shop and kitchen building is proposed to be sited towards the northern boundary of the land at Leathern Bottle. It would lie between the railway line and the converted barn, being close to this building and the polytunnel used to grow fruit and vegetables for the pizza business. The area of land used for the parking and storage of vehicles lies a short distance away.
62. The proposed building would be fairly large. However, I saw a number of large buildings nearby, used for agricultural or commercial purposes, and its scale and massing would not be out of keeping or harmful in the landscape.
63. Its simple form would also be in keeping, as would its palette of materials that are commonplace in the countryside. This includes its proposed use of solar panels, which are increasingly seen on large rural buildings and were seen on buildings in the area. Although the building would have quite extensive areas of glazing, these would not cause harm to the character or appearance of the area and would be appropriate to, and expected of, a building in this use.

64. Around the building, it is proposed to undertake development incidental to its use. Although no elevations or floor plans were submitted, the Landscaping Plan EKFK PL-04 shows the location for a log store as well as a new timber pergola. The latter would be to the southeast of the farm shop and kitchen building in close proximity to areas of outdoor seating. Again, I have no details of these seating areas, nor of a proposed septic tank. However, these are matters that could be suitably controlled through the use of conditions.
65. The parties agreed at the Hearing that the only public vantage points of the site were from along the short length of the A38 and, in particular, from the access to the site from that road. I saw this to be the case, and did not need to assess the scheme from points to the north of the railway line.
66. A fundamental element of LP Policies EI5, EI10 and CP15 is that they aim to preclude unnecessary or unjustified development in the open countryside that would be harmful to its character or appearance. Where need and justification is proven, their support is conditional upon appropriate siting and design. As I have found that the case for the location of the development was not made by the Appellant, what would result is an unnecessary and unjustified development in the open countryside that would be harmful to its character and appearance. It would, therefore, be contrary to these policies.

Effects on nearby centres

67. The floor plan in the submitted drawings does not refer to a retail area, *per se*. It shows what might be termed a kitchen area at one end, along with stores, a wc and counter. This takes up about one-third of the building's internal floor area. The remainder of this area is simply annotated 'seating'. The application form states that 'A1 - Shops Net Tradable Area' floorspace would be 235sqm. This figure would represent the overwhelming majority of the building's internal floorspace.
68. It was confirmed in the Hearing that the Appellant did not propose to use the whole of the area as a farm shop, a position which reflects the description of development. Discussion in the Hearing centred around how this might be controlled through the use of a suitably worded condition. This might be addressed by way of a restriction on sales value or floor space utilised for this purpose.
69. In the submissions made by the Appellant after the Hearing, the Appellant proposed a condition that stated that "The mixed use hereby permitted shall include no more than 40% retail use (under Class A1 of the Schedule of the Town and Country Planning (Use) Classes Order 1987 as amended or any Order revoking or re-enacting that Order) with a minimum of 80% of the retail use's turnover comprising of sales of produce from [Mushroom Farm]. The sale of products sourced, manufactured and processed from other locations shall be limited to a maximum of 20% of the retail use's turnover".
70. In respect of the stated "no more than 40% retail use", given what Mr Plant said at the Hearing, I take this as being that no more than 40% of the 'seating' area marked on the plan would be in use as a farm shop. The Council suggested that this would equate to 62sqm, a figure that was not challenged, and that this would be excessive. It went on to say that it would be difficult to fill with produce in the proposed manner. This comment was based on the

Appellants earlier position that they would be happy with a restriction of 80% of goods sold being from the holding.

71. Under the terms of LP Policy EI9, the threshold at which a retail impact assessment is required is where the floor area is 500sqm. It was agreed that this did not apply here. Policy EI9 is not to be read as saying where the floor area is below that figure that there would be no harm. Each case has to be assessed on its merits.
72. The Council clarified in the Hearing that the centres it felt would be affected were Berkeley and Cam-Dursley. However, save for it opining that there was not enough information to justify the size of the proposed building, it provided little evidence of what the harm would be. For their part, the Appellants referred to the lack of objection to the scheme and that there was support from local businesses.
73. The Council's Retail Hierarchy is set out in LP Policy CP12. This does not rule out locations within the open countryside. When read with Policies CP15 and EI15, it is clear that the Council's approach is that in certain circumstances there would be policy support for development, including retail units, in the open countryside.
74. Although I have found against the scheme in terms of its location, it does not necessarily follow that there would be harm to nearby centres. Whilst it would be a fairly large building, based on the evidence before me I find that restricting the size of the retail element by way of conditions would ensure that there would be no harm to Berkeley or Cam-Dursley. For this reason, the scheme would accord with the terms of LP Policy CP12.

Conclusion

75. The proposed development lies in a location in the open countryside where such development will only be allowed in certain circumstances. Those circumstances have not been demonstrated. As such, it would be contrary to the Council's policy aims to control development in the open countryside, with consequent harm to its character and appearance. Whilst I find the scheme would not cause harm to the vitality and viability of nearby centres, neither this nor the other considerations raised, including employment opportunities, outweigh the harm that I have identified. For the above reasons, the appeal is dismissed.

Roy Curnow

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr Fred Quatermain	Thrings Solicitors, Bristol
Mr Phil Plant	Mid West Planning Limited, Shifnal
Miss Elena Karapetsas	Appellant
Emma Clarke	Triquest Solutions
Sam Longmore	Thrings Solicitors, Bristol

FOR STROUD DISTRICT COUNCIL:

Ceri Porter	Principal Planner, Stroud District Council
Tara Lang	Senior Enforcement Officer, Stroud District Council



Plan

This is the plan referred to in my decision dated: 6 February 2023

by Roy Curnow MA, BSC(Hons) CMS MRTPI

**Land at: Land at Northend Barn, Leathern Bottle, Bristol Road, Cam Dursley,
Gloucestershire GL11 5LD**

References: APP/C1625/C/19/3231937 and APP/C1625/C/19/3231938

Not to Scale

