
Appeal Decision

Site visit made on 16 September 2025

by Mr D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 October 2025.

Appeal Ref: APP/F1610/W/25/3364914

Land South of Upton Lodge, Tetbury Upton, Gloucestershire GL8 8LP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant permission in principle.
 - The appeal is made by Mr Gareth Phillips against the decision of Cotswold District Council.
 - The application Ref is 24/03291/PLP.
 - The development proposed is described as Erection of a maximum of three residential dwellings.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs is made by Mr Gareth Phillips against Cotswold District Council. This application is the subject of a separate decision.

Preliminary Matters

3. Permission in principle has 2 stages, the first of which is permission in principle (herein PIP) that establishes whether a site is suitable in-principle. The second Technical Details Consent stage (TDC) is when detailed proposals are assessed. This appeal relates to the first stage. I have considered the plans indicating the options for potential site layouts and access arrangements, as indicative only.
4. The scope of considerations for PIP is limited to location, land use and amount of development. All other matters are considered as part of a subsequent TDC application if a PIP is granted. I have determined this appeal accordingly.
5. An unsigned Draft Statement of Common Ground accompanies the appeal submission. While I have had regard to its contents, as it is unsigned, I have not treated it as common ground between the parties. During the appeal process the appellant provided a signed Unilateral Undertaking (UU), which the Council has provided comments upon, and I have had regard to in determining this appeal.

Main Issues

6. The main issues are whether or not the location, land use and amount of development would be acceptable with particular regard to:
 - the effect upon the setting and significance of designated heritage assets;
 - the character and appearance of the area including the Cotswold National Landscape (CNL);
 - policies for the location of new development; and,

- biodiversity.

Reasons

Designated heritage assets

7. The appeal site lies within the same ownership boundaries as the Grade II Listed Upton Lodge to the north, is opposite the Grade II Listed 8, 9 and 10 Upton Cottages, and nearby is 11 and 12 Upton Cottages. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCAA) requires special regard is had to the desirability of preserving a listed building, its setting or any features of special architectural or historic interest it possesses. It was amended by the Housing and Planning Act 2016 to refer to PIP. The location and relationship with Listed Buildings can be a determinant of whether or not the location of a proposal is acceptable in principle.
8. Paragraph 202 of the National Planning Policy Framework (2024) (the Framework) highlights designated heritage assets are an irreplaceable resource. Paragraph 212 requires when considering the impact upon the significance of a designated heritage asset, great weight should be given to the asset's conservation. Harm to significance, including from development within its setting, should require clear and convincing justification (paragraph 213).
9. Upton Lodge is a late C17th rubble building, formerly 3 cottages, now one house, restored and enlarged in 1934. The listing description references various attributes of its construction and architectural features that I was able to observe at my visit. It originated as farmstead dwellings, surrounded by some outbuildings and ranges. It was then integrated into the Upton House Estate in the late C19th – early C20th and evidence indicates the appeal site formed parkland, but they were separated and sold-off in the 1980s, and came to form a private dwelling.
10. The special architectural and historic interest of Upton Lodge and its significance derives principally from its age, historic physical fabric, form, character, evolution and legibility as a vernacular domestic building, which has since been remodelled. This includes its earliest fabric, Cotswold stone masonry and roofing slates. The modern alterations and additions illustrate its ongoing function and adaptation although make little contribution to its heritage significance.
11. Its setting includes garden areas, surfaces, outbuildings and other structures in its ownership, enclosing boundary treatments, Upton House, and some settlement buildings on the western side of the lane. The immediate surrounding garden, gravelled yard, and historic ancillary outbuilding to its northeast, give legibility to the historic farmstead, and longstanding residential use. The lane and some buildings to the west give legibility to its historic hamlet context. The drystone wall and hedging around the appeal site perpetuate an agricultural character that contributes to the significance of Upton Lodge.
12. Though it may not appear have designed views to or from the appeal site, it is visually part of Upton Lodge, there is proximity intervisibility which varies with seasonality, and it has remained largely free of built development for a long period of time and the surrounds evolved as such. Though the trees might not be a direct survival of it and domestication could increase, the lawn and trees have similarities in characteristics to its past agricultural and probable past park land

character¹. It is next to some Upton House land with some intervisibility with it. The site as I saw it still appears reflective of the way in which Upton Lodge has been historically viewed, experienced and evolved. Its visibility and open rural character do contribute in a positive way to the way which Upton Lodge is experienced, to the setting and significance of Upton Lodge.

13. Existing trees could be retained, design adhere to principles in the Cotswold Design Guide (CDG), and a variety of configurations are possible in terms of dwelling/building numbers, scale, design, layout and landscaping. However, from the evidence it is inevitable that one or more dwellings, associated parking, subdivision, enclosure and domestication would markedly alter the appeal site and erode its current character and appearance. It would result in harm to the contribution of the appeal site to the setting, significance and the way in which Upton Lodge is experienced. If needed, some form of widened or new access would exacerbate the harm. The harm would be visible from the appeal site, some of Upton Lodge's grounds, and limited parts of the lane.
14. Nos 8, 9 and 10 Upton Cottages are three rubble cottages in one building of mid-late C17th with later additions to the right (No. 10, probably of C18th), as well as a C19th steep gabled porch across the junction of the oldest part and addition to right. It was recorded as a farm homestead with a dispersed landholding and later Dutch Barns on it. A timber clad car port and pool building have been recently constructed. The listing description sets out attributes of its construction and architectural features such as its window, stack, door and roof forms.
15. The appellant agrees Long Cottage would be covered by the listing by virtue of it being fixed to the principal listed building. Collectively the asset reads as an amalgamation of different vernacular stone-built structures belonging to various phases, with a mix of mullion, casement and dormer windows. Its significance derives principally from its historic physical fabric and its historic interest is from its age, form and character, as a collection of vernacular cottages that have evolved. Its architectural interest is mostly in its early fabric, such as the Cotswold stone masonry, roofing slates and prominent, irregular gable arrangement.
16. Its setting includes the front and rear garden areas that give important views and legibility to the long-standing residential use and former farmstead layout. Historic outbuildings also give legibility to the domestic use and former farmstead context. It was originally sited in relation to and admired from the lane and other historic elements of the settlement in the vicinity can be readily experienced in conjunction with the asset and give legibility to its historic context.
17. The traditional stone wall and barn allow for the historic association between the asset and appeal site to be appreciated. The wall and hedging channel and limit the intervisibility from the land, but not all of it. Though the appeal site may have ceased to have been associated with the asset by the later C19th, the proximity and intervisibility means it is within the setting and its open verdant nature makes a positive contribution to the way in which the asset is experienced, its setting and significance. There is varying intervisibility from limited sections of the lane due north and south, within the appeal site, and from some first floor windows.
18. Existing trees could be retained, design adhere to principles in the CDG, and a variety of different site configurations are possible as referenced above, including

¹ Plates 5 and 7 of the Statement of Heritage by Dr Jonathan Turnock.

to perpetuate the sense of enclosure and channelled views. However, it is inevitable that one or more dwellings, associated parking, subdivision, enclosure and domestication would markedly alter the appeal site and erode the current contribution of the appeal site to the setting, significance and the way in which is experienced. If needed, a new or widened access would exacerbate the harm. The harm would be visible from the appeal site, some windows and garden areas of the asset, and limited parts of the lane.

19. Nos 11 and 12 Upton Cottages is described as being a late C17th or early C18th rubble building that was subdivided into two cottages. Evidence suggests it was the primary dwelling associated with quite a small farmstead with landholdings to the west, with associated ranges constructed that remain today. Its special architectural and historic interest and its significance derives principally from its historic physical fabric such as its Cotswold stone masonry and roof slates and its general age, form and character and legibility as a domestic building but with some more modern alterations and additions.
20. Its principal elevation is perpendicular to the lane. Its setting includes northern garden area as a longstanding residential building, the western yard giving legibility as a former farmstead, the outbuildings and ranges that give legibility to the former farmstead, the lane to the east in which it was sited in relation to and other historic elements of the settlement which can be readily experienced in conjunction with the asset and give legibility to its hamlet context.
21. The western boundary wall and hedge of the appeal site are most readily experienced with it, contributing to settlement character and channelling views, contributing to the setting. Though the appeal site is part of the rural landscape setting, there is no evidence of a functional or ownership link. The visibility with first-floor windows appears well screened, with views to much of the site incidental and not focal point views. Intervisibility with much of the site is very limited. Overall, the appeal site makes quite a minor positive contribution to the way in which the asset is experienced, its setting, and its significance.
22. Having had regard to existing and hedging trees, designs that could adhere to the CDG, and variety of different scheme configurations that would be possible, it would appear possible that a scheme could be designed so as to ensure a negligible effect upon the setting, significance and the way in which No 11 and 12 Upton Cottages would be experienced.
23. Though I could see Upon House from the immediate surrounds of Upton Lodge, having considered the extent and position of the appeal site in relation to it, I could not gain any intervisibility between the site and Upton House.
24. The appellant refers to an absence of conflict with Policies EN1 and EN11 of the Cotswold District Local Plan (2018 (CDLP) not referred to in the reasons for refusal. Even if I were to agree, the site is in a sensitive location close to and within the setting of designated heritage assets. Its particular location would result in harmful effects for reasons set out above. While the Council's reason for refusal refers to Policy EN2, it has not referred to a specific paragraph of the Cotswold Design Guide, which appears to mainly deal with the detailed design and not the principle of development in relation to historic buildings. The remainder of EN2 relates to character and design, so is of less relevance to this issue than the other policies referred to in the reason for refusal.

25. To some degree, it is true the full extent of any effects cannot be clearly defined at the PIP stage. However, from the evidence before me, the proposal would inevitably change the appeal site and it would be inherent in the proposals for one or more new dwellings and associated development could not avoid harm to the setting and significance of designated heritage assets. It is simply not demonstrated that any configuration of matters to be considered at the TDC stage could sufficiently mitigate the harmful effects. That there may be precedent for previously undeveloped land on the lane being developed, does little to demonstrate an absence of harmful effects from this proposal.
26. For the reasons set out above the location, land use and amount of development would result in harm to the setting and significance of Grade II Listed designated heritage assets. Having considered the potential effects of a sufficiently high-quality sensitive scheme, based upon the evidence before me the harm could be a limited level of less than substantial harm. I return to this matter and policies cited in the reason for refusal below.

Character and appearance

27. The appeal site is within the CNL. In addition to the statutory duties² in respect of the NL, Framework paragraph 189 states that great weight should be given to conserving and enhancing landscape and scenic beauty in National Landscapes, which have the highest status of protection in relation to these issues.
28. The site is within National Character Area (NCA) 107 Cotswolds, and locally in the Dip-slope Lowland Landscape Character Types, under Character Area 11 under 11A (South and Mid Cotswolds Lowlands). Notable characteristics sensitive to new development include ancient woodland, species rich grassland and parkland landscapes. Key guidelines for development include maintaining the open, sparsely settled character of the Dip-slope Lowland by limiting new development to existing settlements avoiding intrusion into open landscapes, and ensuring new development does not adversely affect settlement character and form
29. Appeal site characteristics include stone boundary walls, hedging, trees, and open grassed lawn that are reflective of elements of the wider landscape. However, the hedging and walling, surrounding buildings and tree cover means that it has a very limited wider visibility. Consequently, it makes little discernible contribution to the attributes of the wider landscape and scenic beauty of the CNL, and the Council has provided little substantiating evidence in response to the appellant's appeal submissions in this regard.
30. Nevertheless, its verdant rural appearance, is in keeping with and makes a positive contribution to the character and appearance of the area. Though wider visibility is limited, even within the village, it is visible from receptors such as the buildings to the west, Upton Lodge, and some areas along the lane within the vicinity of the site such as from three gate openings, and open land to the south, albeit some is partly filtered by walling, hedging and trees.
31. Its largely undeveloped appearance is also a contributor to the morphology and settlement pattern of Tetbury Upton. The settlement has evolved with in a strongly linear pattern, some as a result of some infill development on its western

² Section 85 of the Countryside and Rights of Way Act 2000, as amended by Section 245 of the Levelling-Up and Regeneration Act 2023.

side around designated heritage assets. However, there is little development along the eastern side of the lane which has extensive garden areas and other open land between occasional buildings of which the appeal site is part.

32. I see no reason to disagree that in principle, the appeal scheme would be in proportion to the village. There is the potential for the retention of key site features to be retained such as moderate to high quality trees, stone walling and hedging, and the enclosure of the site would limit awareness from the lane. However, with any number of dwellings, the proposal would have some urbanising effect through new buildings, subdivision, hardstanding, parking areas, activity, lighting and domestic paraphernalia. It would erode the existing rural, open and verdant character of the appeal site and its contribution to the character and appearance of the area, so it seems inevitable the proposal would have some albeit fairly limited adverse effect upon the existing settlement character.
33. I do not agree with the Council that the appeal scheme would detract from the rural setting of the village, because from what I saw, experienced and what is before me, it is within the village. However, it would be at odds with the existing grain of development, and the appeal proposal would not therefore perpetuate the existing pattern of development, and the location and amount of development would harmfully disrupt the existing settlement pattern.
34. The Council has provided little substantive case in respect of the effect upon the special qualities of the CNL. It would seem that subject to careful and sufficiently high-quality detailed design and landscaping, some development could be accommodated on the site without resulting in harmful change to the special qualities and important aspects of the CNL, resulting in an overall neutral effect upon it. For these reasons, based upon the substantive evidence before me, I find that it would not conflict with, Policy EN5 of the CDLP insofar as it seeks the conservation and enhancement of the natural beauty of the CNL and character and special qualities of the CNL, or conflict with the legislative duties, or the Framework in this regard.
35. However, for the reasons set out above, the land use, location and amount of development would be harmful to the character and appearance of the area. It would conflict with Policies EN1, EN2 and EN4 of the CDLP, which amongst other things require proposals promote the protection, conservation and enhancement of the natural environment, the settlement pattern, and the character and distinctive appearance of the locality. It would conflict with Framework paragraph 135c) which expects proposals are sympathetic to local character and history including the surrounding built environment and landscape setting.

Location

36. In seeking to promote sustainability by focussing growth at certain settlements, Policy DS4 of the CDLP states that new-build open market housing will not be permitted outside Principal, and Non-Principal Settlements (herein NPSs), unless it is in accordance with other policies that expressly deal with residential development in such locations. Tetbury Upton is not classed as a Principal settlement and the proposal is not of the type within policies in paragraph 6.4.3.
37. Supporting paragraph 6.4.4 of DS4 explains that while it precludes development not needed for strategic reasons in the countryside, it does not preclude development of market housing in some rural locations. It gives examples of

development, which the development does not fall within, but as they are listed as examples, it does not read as a closed list.

38. When it determined the application, the Council took the view its housing land supply position (HLS) meant it did not need to consider releases at settlements referenced in Policies DS2 and DS3 of the CDLP. However, its officer report provides little substantiating evidence as to why Tetbury Upton does not fall within the definition of an NPS, where small scale development is permitted subject to certain criteria being met. Based upon the substantive evidence before me, I cannot conclude the appeal site is precluded from development by Policy DS4 of the CDLP, and consideration should be given to whether or not the proposal is contrary Policy DS3 of the CDLP in respect of development within NPSs.
39. The supporting text of Policy DS3 states that it applies to those rural settlements that have reasonable access to everyday services, facilities and/or employment opportunities, either within the settlement itself, at a Principal Settlement, or at a neighbouring rural settlement. Though there is reference to sustainable transport in the subtext, the key test of 'reasonable access' does not appear to be restricted only to sustainable transport. Therefore, the Highway Authority (HA) view the residents would be entirely reliant upon a private car, would not necessarily prevent Tetbury Upton being an NPS, and the Framework recognises that sustainable transport solutions will vary between urban and rural settings.
40. The site is within around a 20-minute walk from Tetbury and cycling would take less time. Much of the journey would be along quite narrow footways that are largely unlit, along roads with part 40mph and part 60mph limits. I accept that it would not appeal to all, and the route would lack appeal to those with young children or reduced mobility, and after dark. However, there is little of substance to suggest it is a heavily trafficked route and it appeared a relatively comfortable and appealing route to some that would be physically able.
41. There is also a short and regular bus service a limited distance away from the site to services and facilities in Tetbury and Avening, and it also goes onward to Stroud. Tetbury and Stroud both appear to have a good range of services and facilities. Tetbury would also be a very short drive in the private car. Though I note the HA view in respect of the proposal conflicting with certain accessibility and safety policy objectives, considering all the transportation options as a whole, this suggests the appeal site would have reasonable access to everyday services, facilities and employment opportunities at neighbouring settlements.
42. Based upon the evidence before me, the overall level of accessibility appears equivalent to or better than other cases permitted³ referred to me by the appellant in the district, and the location, scale of the proposal, and support to local services and facilities does have some parallels with other cases⁴ I am referred to. I am also informed the CDLP examining Inspector considered DS3 applies to any sites that could reasonably be considered to be any village or hamlet in the district, and what is important is that proposals comply with the stated policy criteria.
43. Based upon its Glossary definition of comprising any stand-alone settlement, the number of buildings, their relationship and proximity to the site, the Council has not substantiated that Tetbury Upton is not an NPS. Its relationship with

³ Refs. 20/03022/FUL, 18/02603/FUL, 24/00416/FUL.

⁴ Refs. 24/01694/PLP, 22/00688/FUL, 19/03003/OUT, 19/03380/OUT,

surrounding buildings would suggest to me, that on the ground the appeal site can be considered to lie within it.

44. The appellant has set out why it is considered the proposal meets criteria a) – d) of Policy DS3, of which all four must be met. Though not specifically advanced by the Council, in-light of my findings in respect of the second main issue, I cannot ignore the fact the appeal scheme would not meet criterion c) to complement the form and character of the settlement, given the harm and adverse effects I have found. Therefore, even were I to agree with the appellant in respect of criteria a), b) and d) the proposal would not comply with Policy DS3 read as a whole.
45. Therefore, for the reasons set out above, the location and amount of development would not be compliant with policies for the location of development. While, for the reasons set out above, I cannot find the appeal scheme conflicts with Policy DS4, it would conflict with Policy DS3 of the CDLP, the relevant provisions of which I have set out above.

Biodiversity

46. The Council's third reason for refusal is divided into two parts, the second of which specifically asserts it considers there is insufficient survey information submitted to enable an assessment of the impacts on biodiversity. There is a reference to the views of the biodiversity officer in its delegated report in this regard. It highlights that habitats on site and in its vicinity are likely to provide suitable opportunities for great crested newts, badger, nesting birds, roosting bats and reptiles, and so a Preliminary Ecological Appraisal is necessary.
47. The Planning Practice Guidance (PPG) explains that the issues relevant to 'in principle' matters should be considered at the permission in principle stage and other matters at the TDC stage. The granting of TDC has the effect of granting planning permission for development and other statutory requirements may apply at this stage, such as those relating to protected species.
48. Circular 06/2005 advises that it is essential that the presence or otherwise of protected species, and the extent that they may be affected is established before planning permission is granted, otherwise all relevant material considerations may not have been addressed in making a decision. However, protected species surveys should not be required unless there is a reasonable likelihood of them being present and affected by a development.
49. Habitats on or close to the appeal site include grassland, stone walling, buildings, hedgerows and trees of varying maturity, and are connected to similar such habitats. Though noting the advice in the PPG, the appellant provides no other substantive evidence to substantiate a case as to why there is not a reasonable likelihood of protected species being present and affected by the development, or that there is sufficient scope for mitigation at the TDC stage. Therefore, based upon the very limited cases of both parties in this regard, it has not been adequately demonstrated that the land use, location and amount of development would be acceptable in principle with regard to the effects upon protected species, and that harm from any development could be satisfactorily avoided or mitigated.
50. Therefore, for the reasons set out above I cannot be certain the land use, location and amount of development would not result in unacceptable harm to biodiversity. It would conflict with Policy EN8 of the CDLP, which amongst other things states

that development that has a detrimental impact upon protected species will not be permitted unless adequate provision can be made to ensure the conservation of the species.

Other Matters

51. The Council's reason for refusal and delegated report refers to an outbuilding at the southeastern corner of the site that it asserts is curtilage listed as part of Upton Lodge due to inclusion within an application for repair works with the main house. However, it does not state there will be harm to that particular building it its reason for refusal. In-light of my findings above, as it is not advanced there would be an overall benefit to the setting and significance of that building, and it is not determinative in this appeal, I have not considered the matter further.
52. The appeal site is within a Zone of Influence of the Cotswolds Beechwoods Special Area of Conservation (SAC) which is a designated habitats site, and the absence of contribution to mitigate recreational effects formed part of the Council's second reason for refusal. I am provided with a copy of a signed UU and Section 111 agreement. From what is before me contributions are only necessary to mitigate the effects of the proposal and it is not put to me that it would result in any overall beneficial effects weighing in favour of the scheme. Therefore, in-light of my conclusions upon the main issues, I have not considered this matter further. On the assumption the obligation secures mitigation measures, this would be a neutral matter.
53. I have noted the HA consultation response expresses concerns in respect of the effect of the principle of the development upon highway safety, although this matter does not feature in the Council's reasons for refusing the proposal. Were I to have found the appeal proposal otherwise acceptable, this is a matter I would have pursued further with the main parties. Were I to assume there would be no detrimental effects upon highway safety, this would be a neutral matter.

Heritage and Planning Balance

54. The land use, location and amount of development could be sensitively designed to result in a limited level of less than substantial harm to the setting and significance of Grade II listed buildings as designated heritage assets. Framework paragraph 215 states where a development would lead to less than substantial harm to the significance of a designated heritage asset, it should be weighed against the public benefits. Paragraph 212 states that great weight should be given to an asset's conservation, so less than substantial harm should not be equated with a less than substantial planning objection.
55. The proposal would result in modest temporary economic benefits during TDC submission, design and construction and once complete some on-going benefits such as support to local services and facilities, contributing to the vitality of local rural communities. It would contribute to meeting demand for local housing and could be designed to meet a range of differing needs. In-light of revisions to how the standard method is calculated the Council can only demonstrate an approximately 1.8-year HLS. In this context the benefits to the supply attract moderate weight. It is possible through the TDC stage the appeal scheme could secure net benefits to biodiversity, further landscaping, and potentially some overall benefits to flood risk and drainage, attracting limited weight in favour of the appeal scheme.

56. Were I to agree the appeal scheme would or subject to suitable schemes at the TDC stage could be made compliant with policies and standards in respect of matters such as highway and access matters, the living conditions of future and neighbouring occupiers, and resource and energy efficient design and construction, these would be neutral matters in the balance.
57. The public benefits of the appeal scheme attract moderate weight. When giving great importance and weight to the special regard I must have to the desirability of preserving the setting and significance of Listed Buildings, the harm that would arise from the appeal scheme would not be outweighed by its public benefits. Accordingly, it would conflict with Framework paragraph 213 of and Policy EN10 of the CDLP as the harm to designated heritage assets is not outweighed by the public benefits, so it would not have a clear and convincing justification as required by paragraph 213. The harm attracts great weight. This provides a strong reason for refusing the proposal and so the tilted balance does not apply.
58. The proposal would result in harmful effects to the setting and significance of Grade II Listed Buildings, which are not outweighed by the public benefits. It would also be harmful to the character and appearance of the area which attracts moderate weight against the scheme. The harm to the character and appearance of the area results in a conflict with Policy DS3, albeit noting the HLS position I attribute the conflict with Policy DS3 limited weight. I also cannot be satisfied that the proposal would not result in harmful effects upon protected species. Overall, the harm from the appeal scheme, significantly outweighs the benefits of it, therefore the appeal should be dismissed.

Conclusion

59. For the reasons set out above, the proposal is contrary to the development plan read as a whole, the Framework read as a whole, and section 66 of the LBCAA. There are no material considerations advanced that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, the appeal should not succeed.

Mr D Szymanski

INSPECTOR