

Appeal Decision

Site visit made on 15 October 2025

by **C McDonagh BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 04 November 2025

Appeal Ref: APP/F1610/W/25/3360024

The Folly, West End Gardens, Fairford, Gloucestershire GL7 4JB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Tim Embley (Fairford Consulting Ltd) against the decision of Cotswold District Council.
 - The application Ref is 24/00998/FUL.
 - The development proposed is 'demolition of existing house / outbuildings and erection of 7 new houses and associated garages.'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Amended plans for plots 4, 5 and 6 were submitted with the appeal. The appellant's statement of case advises that these changes include smaller dormer windows and fenestration across those dwellings. The Planning Appeals: Procedural Guide (the PG) sets out that the appeal process should not be used to evolve a scheme. It is important that what is considered by the Inspector at appeal is essentially the same scheme that was considered by the Local Planning Authority (the LPA) and by interested parties at the application stage. The PG goes on to state that in deciding whether to exceptionally accept the proposed amendment, as per the judgement in Holborn¹, which refined the 'Wheatcroft principles'², consideration must be given to the substantive test and procedural test.
3. The substantive test is whether the proposed amendment involves a 'substantial difference' or a 'fundamental change' to the application that would ultimately result in a 'different application.' A 'substantial difference' or a 'fundamental change' could also be as a result of a series of small, incremental changes to a scheme. If it is concluded that the amendment would result in a 'different application', then it is unlikely that it could be considered as part of the appeal.
4. The procedural test is whether, if accepted, the proposed amendment would cause unlawful procedural unfairness to anyone involved in the appeal and, if so, whether such unfairness could be cured, for example by re-consultation.
5. The proposed amendments could cause unlawful procedural unfairness to anyone involved in the appeal, including the Council and interested parties who have objected on grounds of design. I have therefore assessed the proposal on the basis of the originally refused drawings for the avoidance of doubt.

¹ Holborn Studios Ltd v The Council of the London Borough of Hackney (2018)

² Bernard Wheatcroft v Secretary of State for the Environment (1982)

Main Issues

6. The main issues in the appeal are as follows:

- The effect of the proposal on the character and appearance of the area.
- Whether the proposal would provide suitable living conditions for existing residents and future users.
- Whether a biodiversity net gain of at least 10% can be achieved.
- Whether an affordable housing contribution is required.
- Whether a safe and suitable vehicular access can be achieved.

Reasons

Character and Appearance

7. The appeal site currently comprises a detached dwelling which sits in a relatively large plot on the edge of Fairford. The site is largely formed of a mature and extensive garden area which is bound by another residential property to the east, the 'Welsh Way' road to the south and by open countryside to the north and west. There are a number of trees within the site and along boundaries.
8. Adjacent houses on the north side of Welsh Way sit in similar large and long plots that are generally set well back from the road until the Longlands cul-de-sac introduces built form closer to the road. On the south side of Welsh Way, built form is more varied and includes a mix of single and two storey dwellings with a less consistent building line.
9. My attention is drawn to the Cotswolds Design Code (the CDC) which advises that in designing new development, close attention to the site and its setting should work at all levels, from the overall principle, density and grain to the scale, form, roofscapes, elevations and detailed features of the buildings.
10. The CDC discusses 2 general design approaches: the Cotswold vernacular and contemporary. The former seeks to reinforce and encourage the continuation of distinctive features of architecture in the Cotswolds and can include a general simplicity of form and design, often giving buildings an understated appearance, with any ornamentation usually limited to architectural features, window openings well-spaced and fairly small, with sizeable areas of wall in between, and the use of local limestone for walling, and split limestone slates for roofs.
11. A contemporary design should make strong local references and respect elements of the Cotswold vernacular. This can include the massing and the elevations of contemporary buildings which should usually be broken, especially in historic settings, to avoid overly horizontal proportions and a monolithic or brutal appearance. It goes on to advise that the use of modern, non-local materials may contribute towards a successful contemporary design, including timber cladding or the use of traditional local materials, most notably natural stone. Furthermore, appropriate proportions and a high standard of workmanship will help to ensure that contemporary developments are harmonious with their surroundings.
12. The appeal proposal includes 7 dwellings with associated garden spaces, off-street parking and an access road. The dwellings would vary in form, size, height, layout

and general design features, with 4 detached and a terrace of 3 dwellings. Plots 1 and 7 would front Welsh Way to the south with broad 'r' and 'T' shapes respectively. The proposed street elevation drawing shows that the overall height of plot 7 would fall slightly below the house on plot 1. Plot 2 is a detached bungalow with asymmetric projections to either side while plot 3 is by far the largest dwelling, of two-storey height with extensions to either side of different widths and a single storey extension to the rear at one side. Plots 4, 5 and 6 are formed of a terrace of 3 dwellings of two-storey scale.

13. The local area includes bungalows, terraces and detached properties and as such I agree that the individual use of detached, terraced, bungalows and two-storey forms are not incongruous in and of themselves. However, there is little explanation or rationale for the approach in any of the appellant's evidence, including the Design and Access Statement (DAS) (March 2024). For example, the bungalows to the east which the appellant refers to are formed around the head of a cul-de-sac but are of very simple form, as are the terraces which front Welsh Way to the east.
14. The dwellings in the appeal scheme would be offset slightly from the access road. As such, the forms and layouts of the proposed dwellings other than plots 4, 5 and 6 would appear overly convoluted and incongruous to the local area. Moreover, the dwellings are positioned tight to their plot boundaries with the notable exception of plot 3 which is much larger. Along West End Gardens, where houses are also tight to side boundaries, this mass is offset by large front and rear gardens. The proposed dwellings would mostly appear cramped within their plots, leading to an overdeveloped character with little green space within the site to offset this mass. This would be particularly stark set against the layout of West End Gardens and in general with regards to the north side of Welsh Way.
15. This would be particularly stark with regards to plots 1 and 7 which face Welsh Way. The recent development at Sunhill Close includes properties with a setback from the road behind a grass verge. This contributes to a transitional character when entering the town from the west before built form becomes notably more dense and closer to the road. Plots 1 and 7 of the proposal would have little setback from the road and would erode the sense of space on the edge of town by introducing large amounts of mass and bulk in a prominent position.
16. There is further disagreement with regards to architectural features incorporated into the proposal. As the appellant points out, many of these are present in the area such as half dormers on the terraced properties to the east. However, their use in the proposal is somewhat irregular, with the front elevation of plot 7 facing Welsh Way including them but the same facing elevation of plot 1 does not. They are also present on the terraces and large detached dwelling to the north but not on the bungalow where dormers would perhaps be more commonplace.
17. Furthermore, the spread of fenestration across the proposed development differs greatly, with vast areas of different types and sizes of windows covering all elevations of plot 3 contrasting with a more typical spread and proportionate approach to the terrace. However, the Juliet balconies and bi-folding doors of plots 1 and 7 further complicate the general appearance of both plots and while they would face into the development and would thereby not be prominent from much of the public domain, they further contribute to a confusion between the vernacular and contemporary approaches to design.

18. I understand that all trees would be removed from the site to facilitate the development. I have had regard to the Arboricultural Report³ which advises that most of these are categorised as 'low' in value or should be felled regardless. However, at the proposed site entrance there are 6 Norway Spruce which are categorised as 'desirable' to be retained. The report advises that in time they could grow to be unsuitable, although it is unclear as to whether this means they would become unsafe. There is nothing before me to indicate that they require felling at this present time. From my observations on the site visit, they contribute in a meaningful and positive way to the character and appearance of the area, regardless of whether they are indigenous. Their removal from the site would be harmful to the character and appearance of the area, while any replacement landscaping would take considerable time to mature.
19. I note the further concerns of the Council regarding some of the materials and solar panels. To my mind these could have been resolved through the imposition of conditions in the event that planning permission was granted and as such I have not considered these further.
20. Based on the foregoing, the proposal would harm the character and appearance of the area. This would conflict with policies EN1, EN2 and EN4 of the Cotswold District Local Plan 2011 – 2031 (LP) (adopted August 2018) and policy FNP12 of the Fairford Neighbourhood Plan 2020 – 2031 (NP) (adopted June 2023). These seek, among other things, to ensure that proposals for new development, including extensions to existing buildings, should be of the highest design standards, in accordance with the Cotswold Design Code. The proposal would also conflict with paragraph 135 of the National Planning Policy Framework (the Framework) which advises that development should be sympathetic to local character and history, including the surrounding built environment and landscape setting.

Living Conditions

21. The CDC advises at paragraph D.67 that to ensure adequate privacy, the minimum distance between facing windows of one and two storey dwellings should be no less than 22 metres (m). The Council also advises that half of that distance would be required between a window to a habitable room and a neighbouring garden. I am informed that there are several instances where the proposal would fall short of these requirements.
22. Due to the orientation of the dwelling of plot 7, the northern first floor window would face towards the side and rear garden areas of plot 6. Although there is a detached garage proposed for plot 7 and a parking area for plot 6, given the proximity of the window to the side and rear areas of plot 6 I share the concerns of the Council that future occupiers would be overlooked leading to reduced privacy. Moreover, the same window of plot 7 would evidently be less than the 22m advised separation distance in the CDC from a bedroom window of plot 6. This would lead to a loss of privacy for each occupier in turn through mutual overlooking of habitable room windows.
23. My attention is also drawn to the existing property to the east. I observed that the boundary between the appeal site and garden of that property was formed of a mature hedge and while there are existing views from the footpath into that garden area, these were at ground level. The proposal would introduce new views from

³ Andrew Day Arboricultural Consultancy – 22 August 2024.

first floor rear windows of plots 4-6 which would overlook that garden area. As such, this would reduce the privacy for users of this amenity space and harm the living conditions of the occupiers accordingly. While it is suggested that a condition could be attached to any forthcoming permission to obscure glaze these windows, this would in turn reduce the quality of living conditions for future occupiers of the proposed dwellings by removing their outlook. This would therefore not be a suitable approach in this case.

24. Moreover, the amenity areas for plots 4-6 appear very small from the proposed site plan. This is particularly stark for plot 5, which would have no space to either side and a very limited rear garden area. Plots 4 and 6 have areas to the side although these are seemingly taken in part by off-street parking spaces, leaving little in the way of external amenity space for occupiers of any of those 3 dwellings.
25. I am informed that there are footpaths nearby in the area. However, I am not informed of their locations, and while being able to walk in the countryside is undoubtedly a positive aspect of living in rural areas, they would be supplementary rather than a suitable substitute for private space for domestic activities such as sitting outside or drying clothes.
26. I note the further concern of the Council with regards to overlooking from the first-floor front windows of plot 4 overlooking plot 3. However, as the appellant points out, the CDC advises that windows on front elevations are excluded and given the lack of response to this matter from the Council at appeal stage, I conclude that this instance would not cause harm from overlooking to plot 3.
27. The north facing window to the first floor of plot 1 would look out over the parking spaces for plot 2 and any views past there would be of the front garden area. Given the orientation of the respective properties in their plots, there would be no views to the rear or more secluded areas of plot 2. The front garden area is open to the street and as such I agree that there would be no loss of privacy to that area.
28. Taken together, the proposal would not offer suitable living conditions to potential future occupiers of the proposal with regards to mutual overlooking leading to a loss of privacy, and inadequate external amenity space for plots 4, 5 and 6. There would also be a loss of privacy through overlooking for occupiers of the existing property to the east. This would conflict with policy EN2 of the LP, which seeks to ensure adherence with the design principles of the CDC. The proposal would also be contrary to the advice in paragraph 135 of the Framework, which seeks to ensure a high standard of amenity for existing and future users.

Biodiversity Net Gain (BNG)

29. The appellant advises that because of the amount of development proposed for the appeal site, it was not possible to provide a 10% net gain for biodiversity as required by Schedule 7A of the Town and Country Planning Act 1990 (inserted by the Environment Act 2021) (the Act) on the site itself. As such, I am informed that this gain would be provided off-site by a registered provider. I have a screenshot of the site details evidently taken from the Government's gain sites register, including grid reference and the end date in 30 years for the provision of this off-site gain.
30. However, while the appellant advises that a legal agreement has been secured by the provider of the off-site gains, I do not have this before me or any other type of agreement to ensure the gains are delivered. The letter provided from the same

company is a quote for the delivery of the gains and as such, I cannot be sure based on the evidence before me that the required net gain for biodiversity can be secured. This would be contrary to the provisions of schedule 7A of the Act.

Affordable Housing

31. Policy H2 of the LP states that all housing developments that provide 11 or more new dwellings (net) or have a combined gross floorspace of over 1,000sqm will be expected to contribute towards affordable housing provision to meet the identified need in the district and address the Council's strategic objectives on affordable housing. On eligible site this should be up to 40% of new dwellings.
32. However, paragraph 65 of the Framework advises that the provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas. The Framework uses a consistent definition of major development given in the glossary as, where it relates to housing, 10 or more homes or the site has an area of 0.5 hectares or more. The site would not meet either of these thresholds. As such, policy H2 is not entirely consistent with the Framework in this approach.
33. Paragraph 232 of the Framework states that in this scenario, due weight should be given to policies according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).
34. Policy H2 seeks to secure affordable housing, although its thresholds are much lower than those given in the Framework, under which the proposal would be exempt from providing affordable housing. However, the Framework does not change the status of the development plan, nor are its provisions no longer applicable. Policy H2 therefore carries little weight in this decision due to its lack of consistency with the Framework.
35. I have had regard to the Financial Viability Appraisal⁴ (FVA) submitted with the appeal which concludes that the total profit of the development would fall significantly below the 20% target identified if affordable housing was required to be included. I note that the Council has not responded to these findings and as such I see no reason to disagree with the appraisal.
36. Based on the foregoing, the proposal would not be able to deliver affordable housing and remain viable. There would be no conflict with the requirements of the Framework in this regard as the proposal would not be considered major development. Moreover, due to viability, the weight afforded to conflict with Policy H2 of the LP would be minimal.

Access

37. The proposal includes an access road which would be taken from Welsh Way. The road would run north towards plot 3 before turning east and finishing at the parking space provided for plot 5 in a broad 'r' shape. Given the width of the road and lack of a turning head, the Council's highways consultee has concerns that a refuse or other larger vehicle would therefore not be able to manoeuvre and leave the site in a forward gear.

⁴ S106 Management – 3 February 2025

38. I have had regard to the letter⁵ relating to this matter which advises that the road does not require adopting by the Council as per an addendum to the Manual for Gloucestershire Streets which has increased the threshold for the number of dwellings provided before the need to adopt a road is triggered. Moreover, due to the dimensions of the site, it is demonstrated that a bin collection vehicle could access all storage areas within 25m and therefore it would be acceptable to reverse along the road to collect bins and then leave in a forward gear.
39. There is no updated response in the Council's appeal statement to this matter. Therefore, based on the evidence before me, I see no reason to dispute that the access would be safe and suitable. This would accord with policy INF4 of the LP which seeks to ensure that development provides safe and suitable access, as does paragraph 115 of the Framework.

Other Matters

40. The footpath which runs along West End Gardens currently passes through the appeal site from the east before turning south to meet Welsh Way. The entrance to the site from the east at present is in the approximate location of the rear of proposed plots 4 and 5. Due to the proposed site layout, it is clear that the PRoW would be lost to facilitate the proposal. The appellant advises that the footpath is seldom used and the section to be removed would be short in length. While there may be no evidence to demonstrate intensive or regular use, nor is there anything before me to show that it is not of continuing value to local residents or visitors. Indeed, I note the comments of objectors on this basis.
41. I am referred to Section 257(1A) of the Act which states that subject to section 259, a competent authority may by order authorise the stopping up or diversion of any footpath, bridleway or restricted byway if they are satisfied that an application for planning permission in respect of development has been made under Part 3 and if the application were granted it would be necessary to authorise the stopping up or diversion in order to enable the development to be carried out. However, given I am dismissing the appeal, planning permission has not been granted and stopping up or otherwise is not necessary. I have not considered this matter further as a result.

Planning Balance

42. My attention is drawn to an appeal decision⁶ which advises that as of the date of that decision, the Council was '*exploring the implications of the revised Framework and the effect the application of the standard methodology will have on its identified housing need. It has also indicated that its housing land supply figures may now be out of date.*' There is little further information since this date, although the appellant has drawn my attention to extracts from the Council's Residential Land Monitoring Statistics (August 2024) which advises that house building in Fairford has been minimal in the period 2021-2024 and that they therefore consider the titled balance should be engaged.
43. Paragraph 11(d) of the Framework advises that in this scenario permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, having particular regard to key policies for directing

⁵ GTA Civils & Transport – 17 September 2024

⁶ APP/F1610/W/24/3344275

development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.

44. As such, the Council's actual housing supply position is unclear, although the Framework continues to highlight the aims of the Government to significantly increase the supply of homes nationwide. The proposal would contribute 7 dwellings to the Council's supply. This is worthy of some positive weight, albeit the number of dwellings would mean this is limited. There would be further limited benefits from the construction process including materials, supplies and job creation. There may also be a small boost to local services and facilities.
45. However, I have identified harm to the character and appearance of the area. The proposal has also failed to demonstrate that it could provide suitable living conditions to future and existing residents, while it has also not been adequately demonstrated that a 10% biodiversity net gain would be secured. These matters weigh against the proposal considerably, particularly with regards to paragraph 11(d)(ii) of the Framework which emphasises the importance of well-designed places through paragraphs 135 and 139. While I have found that affordable housing would not be required in this instance and that the proposed access would be suitable, a lack of harm would be neutral in the planning balance.
46. The benefits of the proposal therefore would be significantly and demonstrably outweighed by the harm when assessed against the policies in the Framework taken as a whole regardless.

Conclusion

47. The proposal would conflict with the development plan as a whole and the advice in the Framework and CDC. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal is dismissed.

C McDonagh

INSPECTOR