

**OUTLINE APPLICATION FOR 43 DWELLINGS INCLUDING ACCESS, LAYOUT AND SCALE, WITH ALL
OTHER MATTERS RESERVED FOR FUTURE CONSIDERATION**

(APPLICATION REF: 20/00683/OUT)

TRANSCRIPT OF ONLINE COMMITTEE MEETING 17th SEPTMBER 2020

(EXCERPT PERTAINING TO REASONS FOR REFUSAL)

Councillor Barnes acting as Chair; Councillor Baker as Vice Chair.

[TRANSCRIPT BEGINS AT 01:47:26 IN RECORDING]

01:47:26 Chair Thank you. I'm grateful for that clarification, I think it's, that's appropriate. Before I go to the vote, can I ask the Planning Officer, Emma, if she has any other comments that she would like to make as a result of the debate? If she doesn't, I will go to the vote.

01:47:50 E Pickernell I think it's all been covered off in previous questions, thank you, Chair.

01:47:54 Chair Thank you. I was hoping you would say that because I thought it was also. So, I will now, then, move to the vote and I'll ask the Legal Officer to do the normal process on conducting the vote on the application. So, I'll hand over to Nick.

01:48:14 Legal Officer Thank you very much, Chair. If Members did not hear all deliberations and presentation, you are advised to abstain. By voting either for or against you will be confirming that you have heard the presentation

and deliberations. I will now proceed to take the vote for the motion in favour of the application subject to the 106 – obviously with the addition of the conditions that David has outlined and the request for the 106 to be viewed. Please could all Members indicate their vote for, against or abstain. Councillor Barnes?

01:48:49	CLlr Barnes	For.
01:48:51	Legal Officer	Councillor Baker?
01:48:53	CLlr Baker	For.
01:48:55	Legal Officer	Councillor Barrell?
01:48:57	CLlr Barrell	For.
01:48:59	Legal Officer	Councillor Fisher?
01:49:00	CLlr Fisher	Against.
01:49:02	Legal Officer	Councillor McCloskey?
01:49:04	CLlr McCloskey	Against.
01:49:07	Legal Officer	Councillor Oliver?

01:49:09	CLlr Oliver	Against.
01:49:11	Legal Officer	Councillor Payne?
01:49:13	CLlr Payne	For.
01:49:15	Legal Officer	Councillor Secombe?
01:49:16	CLlr Secombe	Against.
01:49:18	Legal Officer	Councillor Wheeler?
01:49:21	CLlr Wheeler	Against.
01:49:23	Legal Officer	So, that's 5 against and 4 for. So, that is refusal and we'll now need to discuss some reasons and take the vote on the refusal. Thank you, Chair.
01:49:44	Chair	Thank you very much indeed. Yes, so, now I think we need to clarify what conditions, why we are refusing it, so, I don't know if Councillor Fisher, who did partially suggest a refusal at the start of this debate was to put ...
01:50:12	CLlr Fisher	I'll make an exception, Chair.
01:50:15	Chair	I'm sorry, I was ... I'm getting some feedback ...

01:50:16 Cllr Fisher I think, I think ...

01:50:20 Chair I'm getting some feedback ...

01:50:21 Cllr Fisher NPPF paragraph 193/194 ...

01:50:24 Chair Sorry, Councillor Fisher, could you repeat that, please?

01:50:27 Cllr Fisher Para, NPPF paras 193/194; doesn't comply to the Local Plan; it's too many; the 106 – any 106 Agreement should come before not after. Perhaps that doesn't really, but it should come with the 106. Design – we need a full detailed design because of the sensitivity of the area. I think that's something we can ask for. And, of course, just as a comment, when the Highways man says torturous is more desirable to Highways in some cases, I now understand why Gloucestershire roads are in the state they're in. But, I think we should put the access to an extent because the Highways are admitting that it is torturous, and, and the Inspectors have commented, and, of course, the two, and also we should put in that one of the reasons is that two Inspectors have said that 25 is the right number. That's something to, obviously others would want any input in, of course.

01:51:55 Chair Sorry, Councillor Fisher, they are your main reasons for refusal, then? The NPPF 193/194, design, access and density? Is that it?

01:52:09 Cllr Fisher [silence]

01:52:11 Chair Okay, well I take that as a yes then. Are there other Members?
Councillor McCloskey?

01:52:18 Cllr Fisher Sorry, Chair.

01:52:24 Cllr McCloskey Sorry, I thought Bernie was going to say something else. I just think we perhaps ought to look at the diversity argument because, whatever the benefits of this proposal, if you had a proposal for 25, there would be more biodiversity benefits.

01:52:46 Chair Bearing in mind that we have to take these, these issues as a refusal, clearly the Applicant may well want to challenge that and take us to appeal on it. We have to be pretty strong on what our reasons are. All our Officers, all our advisors, have been advising against the current refusal issues I've got listed. So we need to be, if you're going to have a chance of getting this through appeal without costs being applied, then we need to make sure that we have proper reasons for refusal. So, Councillor Baker has come in. Would you like to comment?

01:53:43 Cllr Baker Well, clearly, I regret the vote, but we've now got to give ourselves a robust chance of defending an appeal, which is going to be tricky. So, obviously, Policy HD4 is going to come into here. We do need to draw on the comments of Historic England because of the impact of the tree

screen and everything else will have on the buildings, so that does clearly need to be in there. We clearly need to draw on the other comments of the Inspector about the loss of mature trees because this application is going to result in the loss of mature trees and hedgerow. I know that goes back to biodiversity, but it's something that we need to be including. I still haven't ever had an answer about "safe, easy and convenient cycle links within the site and to its key centres". I don't know how we'll ever address that, but that clearly is an issue and that was in HD4 and I don't think that's been addressed, other than by giving people electric scooters. Yeah, that's it for me.

01:54:45 Chair Okay, I'll go back to David just to comment on those particular refusal issues to try and firm up a proper comment to put forward at the end of this.

01:55:04 D Oakhill Thank you, Chair. I might need a few minutes to reflect, but I can give you my initial reflections. So, if you're thinking about compliance with Policy HD4, the policy is very unequivocal – it says a minimum of 25 dwellings. So, using the number as a reason for refusal would, in my opinion, not be a safe reason for refusal. The inability, or otherwise, to see the 106 before making a decision is not a reason for refusal. It's not uncommon for this Council and other Councils, well, certainly, in my experience, it is common for decisions to be made by Committee which say subject to a S106, so, in my opinion, and our Legal Officer can obviously intervene, that is not a reason for refusal. This is an outline application and the matters that are up for approval are clear.

Design is not one of them and we cannot insist on design. So, that is not a reason for refusal in my view. We've heard from our independent expert that there will be a biodiversity net gain from this development. Unless Members prefer the evidence provided by the objectors, there is no evidence to support that. Historic England have clearly objected to the proposal. They have undertaken a subjective assessment and haven't weighed up the various benefits of the proposal. Councillor Fisher talked about paragraph 193 and 194. It might be helpful, Chair, if we flesh out that a little more on heritage, so that we're clear what the harm is and the extent of that harm, because, I suppose the safe and easy access for pedestrians, we've still got Highways on the line, but we certainly haven't had any objection from our independent highway expert and, to be fair, there's no evidence to the contrary. So, well, I suppose, I'm here to give you my professional advice, and my professional advice is that **the** matter that seems to be in dispute is probably heritage, but we would benefit from that being fleshed out a little through debate, if that's okay, Chair? Thank you.

01:57:38 Cllr Fisher

If you look at page 31 and heritage's recommendation, there's a fair bit in there which is what I based my objection to it on as well. As regards the HD4, yes, we do say a minimum, but we surely must be able to say that we consider that the number on the application is not, is too high, bearing in mind that we won an appeal for 60 odd. You know, as Councillor McCloskey said, it was 70% of the 60 odd – I think that was the figure quoted, but I, the head is nodding, good – so,

obviously, I think there is some validity there that, although we say a minimum, we don't mean, you know, we don't mean what you fancy, really. It's got to be a reasonable number that absolutely minimises the impact and the Inspector did say that 25 would minimise the impact on the site. So, there's going to be an impact on the site with 25, there's going to be a greater impact with the number that we have rejected.

01:59:04 Cllr Fisher It's 72%, Bernie, 72% increase on 25.

01:59:09 Chair Can I interrupt this cross-Councillor discussion and just bring in Nick, our Legal Advisor, because I think that he might have some helpful comments?

01:59:22 Legal Officer Thank you, Chair. It was only really briefly to reiterate what David had said regarding the Section 106 Agreement. It's not something that we could use as a reason for refusal. It's very, very common – in fact, more common than not – to have a resolution to grant which is still subject to a 106 Agreement. I think, on occasion, we get Unilateral Undertakings provided to us in advance of a decision, but, in this instance, because we're securing affordable housing, that's a bilateral Agreement, and I mean I don't have a Section 106 Agreement at the moment which doesn't already, or sort of, is pre-resolution, if that makes sense, so it's perfectly common – more common than not – to resolve to grant planning permission and then the Section 106

Agreement is negotiated at a later date than that resolution, so I just thought I'd clarify on that one. Thank you.

02:00:33 Chair Thank you very much. At the moment it's, it seems to be that there was design, density and diversity mentioned originally in the refusal. I think David clearly stated that all our advice has been, you know, against that, so I would suggest that we take those out, unless any specific individual wants to keep them in – bearing in mind that, if we do, we could be in a very difficult situation with the, with any appeal, so can I, HD4 Historic England has been mentioned. The NPPF on heritage, which we haven't really fleshed out yet, has been mentioned as a possibility, and perhaps we can do something with that, but the other ones, I think, we would be in danger, very much, of damaging our case by going forward with the other points. So ...

02:01:48 Cllr Fisher What about the ones that Councillor Baker has suggested?

02:01:52 Chair I've taken that – HD4 Historic England. I don't know about the mature trees and whether or not that's – Chris, could we use mature trees as an issue?

02:02:10 C Chavasse All the TPO'd trees are to be retained anyway and there's only two category B trees, which are the only to be retained – the only ones to be removed. The other ones are of lesser quality, so I think you'd be on very thin ice.

02:02:28 Chair Okay. So ...

[sound cuts out at 02:02:33 until 02:02:53]

02:02:53 Chair ... when it says. Oh, I'm on. Sorry – having trouble with the mute button here. As I say, if I'm reading the situation right, we are really down now to two perhaps qualifying reasons for refusal, which is HD4 Historic England and, if we can flesh out some heritage issues – harm – they seem to be the two main issues. The others all seem to have been discounted by various experts and, unless we can find a way around that, you know, I don't see that we have any chance of getting an appeal through using those points. So, oh, Councillor Wheeler, have you got some point on the refusal reasons?

02:04:00 Cllr Wheeler I beg your pardon – I forgot to take my hand down.

02:04:03 Chair Right. Okay.

02:04:05 Cllr Baker Chair?

02:04:06 Chair Councillor Baker. Yes, I've got Councillor Baker.

02:04:08 Cllr Baker Just on mature trees, HD4 does refer to long term protection of mature trees and hedges and also protection of key biodiversity assets and mature trees. So, there are two references to mature trees. They may not be Chris' singing and dancing specialist trees, but

nevertheless they are mature trees. I just think we've got ourselves in a real mess on this now, and I would ask that you and I perhaps afterwards need to have a look at the reasons that we come up with. This is going to be really difficult in my view.

02:04:45 Chair I mean, we have done this on previous occasions where the Vice Chair and the Chair have got together with the Officers to work out a suitable reason for refusal based on the discussion that we've had. I don't know if Members would see that as a possible way forward? Councillor McCloskey, you've asked to speak.

02:05:15 Cllr McCloskey Yes, it was just thinking back to the previous application, that we started with five reasons for refusal, and that was whittled down, and then, in the appeal, the Inspector commented on all five of those reasons anyway because he had the benefit of the Minutes that were present. And he didn't discount any of the five reasons, you know, he was the one who pointed out that Oakhurst Rise was less than ideal. So, I think there is some scope for the two of you to sit down in conjunction with the Minute writer to get the best of both worlds, so without actually using some of those other reasons for the appeal you can convey the sense of disquiet about some of these other issues, but, I don't know – we are where we are. But, I think, going back to what I was saying about the Environment Bill, I think that is emergent policy – quite well advanced Government policy – which has put an increased emphasis on that, so we certainly shouldn't discount

biodiversity. In fact, I think the weight that it would get is more than it would have done when the appeal was heard last time round.

02:06:45 Chair Thank you. Yes, but having said that, our experts would not be supporting us on these issues so I think, you know, that we would be in a very difficult position to try and argue the case on those cases. The suggestion has been made that you trust the Officers and the Vice Chair and Chair to get their heads together to – ah, right, okay – just bear with me for ...

[silence from 02:07:25 until 02:07:43]

02:07:43 D Oakhill Thank you, Chair. Look, I've got to be honest, I'm really concerned that, as Officers, we need to be very clear on what the reasons for refusal are. They need to be based in evidence, and they need to be sound and consistent. So, last time we made a decision, we had five reasons. We dismissed two of them because we reported back to Members that they were not sound, and Members agreed. The proposal has got smaller. It's unlikely, given that the proposal has got smaller, that those effects will have got worse – particularly from what we've heard from our experts today. Councillor Baker, we've talked about the protection of mature trees. Again, we do need to take our expert advice on that. Chris being our expert. Protecting the tree for its own sake, I suppose that there is some merit in it, but, if they are of low value, and replanting is proposed, clearly we, as Officers, think that is fair mitigation. It seems to me, Chair, that the key issues that

Members need to flesh out is the heritage issue, and the effects of this proposal on heritage – as per the Historic England request. Now, if that is the reason for refusal, then, clearly, we can flesh that out with the Chair and Vice Chair, but if there are a variety of other reasons, I really need to be clear on what those reasons are in order that I can advise on whether I think we’re making a sound decision or not. So, heritage, noted. We can definitely work with Chair and Vice on a reasonable reason for heritage. But I won’t, it may be me being a bit slow, but I’m struggling to understand the link between some of the concerns we’ve got and the evidence that is before us.

02:09:42 Cllr Fisher Surely, David ...

[sound broke up between 02:09:44 and 02:09:50]

02:09:51 Chair Just, just, hold a second, please. I don’t think David had actually completed his comments. Oh, yes, okay. Right, so. Was that Councillor Fisher talking at that point?

02:10:09 Cllr Fisher Sorry, yes. Surely HD4 must be part of it when the Inspector who, who found our Local Plan refers to it in her report and says that 25 is the number, which is, I know that you later spoke to her and the word “minimum” came in. It would have been better if it had been maximum, but it wasn’t, so we are where we are. The word minimum, there must be a maximum, and who knows? We were sceptical last time whether we’d win the appeal, and we did. I really think that the

number 43 is too high in comparison with, as part of HD4. And I think perhaps Councillor McCloskey agrees with me on that? I don't know. But, and perhaps others do as well who voted against it?

02:11:15 Chair We have Officers around the table, we have experts who are here to give us their best advice and we don't seem to be taking it at the moment, and I ...

02:11:28 Cllr Fisher Experts told us last time to take highways out, but the Inspector commented on it and said it wasn't good.

02:11:34 Chair He didn't refuse it on that basis, though. So, I, you know, we have an obligation here to make sure that we provide the best kind of evidence if we're going to appeal and I, otherwise we, you know the consequences of not doing so, and I'm not sure at the moment we have that. And, if we're going to try and muddy the waters with aspects that we feel we're not going to win on because we don't have a leg to stand on, then you know we probably would lose the appeal, so we need to be as strong as we possibly can on the grounds that we think are our best ways of supporting it, and I don't think arguing about whether or not we could add other refusal grounds which have been patently turned by our experts. So, I am in a difficult position here because I don't want to go round and round in circles discussing this and whether or not we take this out of Committee, as we have said, but clearly David is unhappy with the level of concern that we've

got and whether or not it's sufficient to support us in any appeal. So, do you want to come back, David?

02:13:21 D Oakhill Thank you, Chair. I think, so, if we look back at the previous reasons for refusal, there's one that is clearly relevant here, which is reason number three, and I'll read it for the benefit of those that haven't got it in front of them. So, one of the reasons that we refused it last time was "The proposed development would have a significant impact on the setting of nearby listed buildings, particularly Ashley Manor, an important grade II* listed villa of more than special interest. The resultant 'less than substantial' harm to these designated heritage assets must be afforded significant weight, and this harm would fail to be outweighed by the public benefits arising from the proposal in the overall planning balance. The development would therefore be in conflict with Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, adopted policy SD8 of the Joint Core Strategy (2017), and paragraphs 193, 194 and 196 of the National Planning Policy Framework (2019)." And we could add to that and Policy HD4 of the recently adopted Cheltenham Local Plan. Now, that would be a reason.

02:14:32 Cllr Fisher That's fairly sensible, yeah.

02:14:36 D Oakhill But, as far as I can see it, well, I suppose ..

- 02:14:40 Chair That does, yes, that does seem to cover a lot of Members' concerns without pulling in the issues that we're not particularly happy with, so, would you be happy for us to go ahead on that basis? And I think I will take that with, okay. With that reason as specified by David at the moment, and with consultation with Chair and Vice Chair afterwards to ensure that we have got the grounds adequately covered, would you be happy to take the vote on that at the moment?
- 02:15:36 Various Cllrs Yes/I would.
- 02:15:38 Chair Councillor Baker, do you want to speak?
- 02:15:43 Cllr Baker I just want to be clear that we're not precluding using HD4 in this? And, David, also on the previous decision to refuse, number two, I think it would be legitimate to argue that "The proposed development would result in the loss of a number of trees within the application site, and hedgerow. The scale of the development on this valuable site would also be likely to result in the deterioration of" – just take out the "Veteran" because I, there is still a significant loss of trees, habitat and hedgerows on the site. Now, the Inspector there just talks about trees, not necessarily veteran trees. I just want that when we have our, I don't support this decision at all, but I think that when, I just think that might be something ...

02:16:35 Chair No, I understand, Paul, where you are coming from on that, but I think, I think those are the fine details that we can perhaps discuss amongst ourselves ...

02:16:48 Cllr Baker Okay

02:16:49 Chair ... to see whether or not we have a considerable argument to take forward. Would you be happy with that?

02:16:57 Cllr Baker Yep.

02:16:58 Chair Okay, well, in that case, I'm not going to reiterate what David has already said. You've heard his comments for refusal. Based on the fact that we will have a discussion outside of Committee with the Chair, Vice Chair and necessary Officers to put forward the refusal, would all those in favour, well, I'm sorry – I need to go through the Legal Officer to clarify that that everyone is happy with that decision to refuse on that basis.

02:17:39 Legal Officer Thank you, Chair. Yes, so, obviously, now we'll turn to the motion to refuse the application for the reasons that have been outlined and agreed by David. So, at the top we've got Councillor Barnes.

02:18:05 Cllr Barnes Bearing in view my original vote and my necessity to comment on this later, I will abstain.

02:18:17	Legal Officer	Councillor Baker?
02:18:21	CLlr Baker	Refuse.
02:18:25	Legal Officer	Councillor Barrell?
02:18:29	CLlr Barrell	Refuse.
02:41:33	Legal Officer	Councillor Fisher?
02:18:36	CLlr Fisher	For.
02:18:38	Legal Officer	Councillor McCloskey?
02:18:42	CLlr McCloskey	Sorry, I've missed my, for.
02:18:45	Legal Officer	Councillor Oliver?
02:18:46	CLlr Oliver	For.
02:18:47	Legal Officer	Councillor Payne?
02:18:49	CLlr Payne	Refuse.
02:18:52	Legal Officer	Councillor Secombe?

02:18:55 Cllr Secombe I'm in favour of the proposal, so I'm not sure whether we're refusing or for, but I'm in favour of the proposal put forward by the Chairman.

02:19:03 Legal Officer Yes, so we're voting on that so it's for.

02:19:08 Cllr Secombe For, thank you, right.

02:19:10 Legal Officer Councillor Wheeler?

02:19:12 Cllr Wheeler For.

02:19:14 Legal Officer Thank you. So, that's five for, three against, one abstention.

02:19:20 Chair Okay, so that has been refused on the discussion that we've just had so we will take that forward out of the Committee and form up the refusal at a later, at a later date. In that case, that concludes that very lengthy and torturous debate. Almost as torturous as the access to the site, I think. But thank you all very much indeed for your attendance. I don't know if we want a short comfort break at this point to prepare ourselves for the other two applications, so 10 minutes? We'll resume at ten past five. Thank you.

[RECORDING ENDS at 02:20:14]