

Our Ref: PJF/gp/PF/10093
(Please reply to Banbury office)

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26th June 2020

Ms E Pickernell
Senior Planning Officer
Cheltenham Borough Council
Municipal Offices
Promenade
Cheltenham
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Dear Emma

**TOWN AND COUNTRY PLANNING ACT 1990
APPLICATION REF: 20/00683/OUT
LAND OFF OAKHURST RISE, CHELTENHAM**

I write to set out the Applicants' response to the consultation responses which have been received on this application.

CBC Tree Officer

In response to the detailed comments, these are all matters which can be addressed within the provision of reasonable planning conditions. In respect of the suggestion for planting of landmark trees, it seems to me that there should be some consultation with Chris Morris (Heritage Officer) so that a settled approach is reached between the two environmental interests.

Historic England (HE)

The position of HE on housing development extending beyond the western field has been properly examined by the Local Plan Inspector and not accepted. The Local Plan that is now awaiting formal adoption has allocated the entire site for housing development. Policy HD4 requires the development management process to address the criteria which are attached to this policy.

The comparison of Ashley Manor with Palladio's *Villa Rotunda* is considered to be misconceived – as is evident from the accompanying drawing and photograph. I am aware that this is not the first reference to the *Villa Rotunda* by HE. This comparison was addressed in the Heritage Statement prepared by AHC dated 11th October 2018 (para 3.2). Professor Mowl and Dr Fry made reference to the distinguishing fact that '*Palladio's Veneto villas were rural farms set within extensive agricultural land, rather than suburban villas*'. Such a spatial setting is clearly quite distinct to Ashley Manor.

Whilst recognising that you have consulted HE as a statutory consultee, the weight to be given to the consultation should perhaps be considered in this context.

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Gloucestershire Highways

I refer to my letter and enclosures dated 10th June 2020. I anticipate that all matters of detail relating to layout are now agreed with the Highways Authority. The Highway Authority has no objection to the quantum of development proposed in this application. I am aware that many respondents from the local community contend that the proposal will have an unacceptable highways impact. The planning test is provided at Framework 109. A residual cumulative impact on the road network arising from 43 dwellings cannot be substantiated as being 'severe' when considered against the issues identified at Framework 108.

Minerals and Waste Policy Team

The imposition of the suggested planning condition is considered appropriate.

Severn Trent Water

The suggested planning condition to address foul and storm water flows is considered appropriate.

Lead Local Flood Authority

The suggested planning condition is considered appropriate.

County Archaeology

The acknowledgement that no further archaeological investigation or recording is required is noted.

Cheltenham Flood and Drainage Panel (CFDP)

It is alleged that the FRA is '*not fit for purpose*'. Severn Trent Water does not object to the development. The LLFA does not object to the development. I attach a response to the criticism raised by the CFDP. In my submission, the LPA can place reliance upon the consultation responses provided by the consultees with responsibility for advising the LPA on flood risk matters, namely STW and the LLFA.

Gloucestershire Badger Trust

The provision of a Badger Survey (as a restricted document) is considered to be good practice in the context of badgers being protected against cruelty or harm to setts, rather than an issue of rarity. The contention that this arrangement is a '*serious attempt to minimise the presence of a major protected species on site*' is rejected. I attach correspondence from the Applicants' consultant, dated 29th May 2020, which addresses comments made in this consultation.

County Ecology

In the consultation response, reference is made to funding and aftercare management. The Applicants are content that funding for aftercare management should be dealt with via a Section 106 Planning Obligation. The County Ecologist also refers to Section 106 as a means to achieve the biodiversity net gain. It seems to me that this is a matter that is capable of being addressed, and should be addressed as a matter of policy preference, by the imposition of a reasonable planning condition that requires the development to be undertaken in accordance with the provisions of the Ecological Appraisal and the Mitigation Strategy. I welcome your comments thereon.

The County Ecologist recommend a condition (2) relating to details of a lighting scheme. In my opinion, such a condition does not need to be a pre-commencement condition, and reasonably could be prior to the first occupation of the first dwelling. I welcome your comments.

Similarly, I consider that the suggested condition (4) relating to a Landscape and Ecological Management Scheme could be actionable prior to the construction of the first dwelling.

Civic Society

The Civic Society state that there is no indication in the application of the management of the non-developed green areas. The intention is that these areas are subject to private management.

Management will be addressed in the S106 Agreement. This application deals with the principle of development for 43 dwellings, not the details of external appearance. Matters relating to energy conservation can be addressed by conditions.

Woodland Trust and Ancient Tree Forum

The Applicants response to the two consultations received is set out by FLAC in the accompanying statements.

Comments from Friends of Charlton Kings (FoCK)

The basic premise of FoCK is misconceived. Through a democratic process – in the interests of the Borough-wide community – Cheltenham Borough Council, as a development plan making authority, has concluded the site is in principle suitable for residential development – and should be allocated to meet the needs for new homes – set in a balance with the environmental interests of the site. The site lies within the Principle Urban Area (PUA) as defined in the Joint Core Strategy. Its development for housing is consistent with the provisions of the adopted development plan. The Cheltenham Local Plan awaiting adoption identifies criteria to achieve an appropriate form of development. It is not necessary to rely on the weight to be given to this Plan for the suitability of this site as a matter of principle.

Development is a right and should only be denied if there are sound and clear cut reasons for refusal – based upon cogent evidence. Applications for development in this County are not determined by a ‘court of local opinion’. Indeed, FoCK ask CBC planning to ‘*assess the evidence, not the history*’.

The objection focusses upon the alleged impact of development on biodiversity. Reference is made to surveys undertaken by residents. If such presence has occurred, then this has been achieved by trespass. No authority has been given for residents to enter onto grounds occupied by the School. I attach correspondence dated 12th June 2020 from Dan Walker, Principal Ecologist at Aspect Ecology, in response to two broad headings:

- Quality of the Grassland and Qualification as a Gloucestershire Key Wildlife Site; and
- Fauna: Presence and Mitigation Proposed (with specific reference to Badgers, bats, herptiles; and birds)

In response to the ‘*Detailed Objections*’ within the objection from FoCK, I make the following comments:

A – This is not plan led

Response:

In my submission, this proposal is both consistent with the policies of the adopted plan and consistent with the Cheltenham Local Plan which is awaiting adoption. To suggest that this application is objectionable because it is not plan-led is not tenable as a reason for refusal of planning permission as a matter of principle.

B – It causes unnecessary heritage harm, in contravention of CBC’s statutory duties

Response:

The Applicants have accepted that there is a low level of ‘*less than substantial harm*’ to the significance of the heritage assets. This feature is determinative of the overall merits of the application. The level of harm has to be given ‘*considerable weight*’ in the planning balance. In my submission, the merits of this proposal firmly outweigh this low level of harm.

C – Biodiversity is permanently and significantly reduced, including unacceptable impact on protected species

Response:

The scheme achieves a net biodiversity gain – so the claim is erroneous.

D – This application requires the removal of mature TPO'ed trees and important hedgerow

Response:

As the Arboricultural Survey makes clear, the removal of Tree No. 3004 (an Ash, identified as T6 in the 1981 TPO) is not required to accommodate the development. Rather, its removal is required for sound arboricultural reasons – given its prevailing condition (category 'U').

E – This application increases flood risk and has not addressed surface water flooding, the presence of springs, or sewerage limitations

Response:

This objection reveals a misunderstanding of the proposals for storm water attenuation. The development will achieve an enhancement to the properties situated at a lower level to the site – as storm water run-off is to be attenuated.

F – Development of the site at this level is the definition of unsustainable development. It cannot be accessed other than by car. In a COVID-19 world, that makes it unsafe – for our community and for residents. It is a car only development and runs completely counter to the CBC commitment to become carbon neutral.

Response:

The site is allocated for development in a development plan (awaiting adoption) which has been found to be 'sound' in achieving sustainable patterns of development. I attach correspondence from Adam Padmore, Managing Director at Cotswold Transport Planning Ltd, dated 17th June 2020, which responds to the concerns raised by FoCK on pages 11 – 13 of their consultation response.

G – Concerns over S106 conflicts in the current climate

Response:

It is not necessary for the purposes of submitting a planning application for an Applicant to have to demonstrate 'viability'. Upon the grant of planning permission, the site will be marketed to a housebuilder. There is no evidence to suggest that this site will not be fully developed within five years. Indeed, it is likely that all the 43 houses will be built sooner.

H – Contradictions inherent in the design

Response:

Open spaces can provide a range of purposes. No conflict arises from this statement.

I – Visual Impact

Response:

This has been addressed in the LVIA. Visualisations that accompany the submitted Landscape and Visual Impact Assessment accord with the Landscape Institute's Technical Guidance and, as such, reliance can be placed upon this Assessment.

I attach correspondence from Ben Davies, Associate Director at MHP Design, dated 15th June 2020, which responds to three broad headings, namely:

- Views and Visual Assessment Methodology
- Views from the Cotswolds AONB; and
- Views from the Charlton Kings Conservation Area.

J – Loss of amenity and impact on health inequality

Response:

As submitted at the Appeal Inquiry, the extension of Oakhurst Rise provides the opportunity for an ambulance serving this dwelling to enter Oakhurst Rise and leave in a forward gear. There is no evidence that the proposed development would unacceptably impede the attendance of an ambulance to this property.

Comments from the public

I have read all the letters that have been received from local residents. There are, of course, those who like it as it is, and hold a ‘root and branch’ objection to the delivery of new homes on this site. With respect to them, the principle of this site providing a source of new homes to meet the housing needs of the Borough has been addressed through the Cheltenham Local Plan – which now only awaits formal adoption.

The issue for determination is the detail of the specific scheme when considered against the provisions of the development plan, and, in the context of the weight that may now reasonably be given to the Cheltenham Local Plan – in particular the provisions of Policy HD4 and its accompanying criteria.

The concerns raised by some members of the public appear to be grouped into matters affecting:

- access and highways;
- biodiversity;
- surface water drainage/flooding;
- foul water drainage;
- trees;
- heritage assets.

In so far as the suitability of the access to serve 43 dwellings is raised against the development, the Borough Council accepted within the Statement of Common Ground (for the 68 dwellings scheme which was appealed, Appeal Ref: APP/B1605/W/19/3227293) *‘that the provision for highway access and transportation in the original layout is compliant with the relevant policies in the JCS and the emerging Local Plan’*. With respect to the respondents, there has been no material change in circumstances which now could provide cogent evidence to the contrary in respect of the current proposal for 43 dwellings.

Matters relating to biodiversity, trees, surface water drainage/flooding are subject to assessment by professional consultees. No objections have been raised on matters relating to:

- biodiversity;
- surface water drainage/flooding; and
- trees.

In respect of the concern regarding surface water flooding, there is a popular misconception that, because a development site comprises impermeable surfaces (such as roads, paths and roofs), the development must, inevitably, give rise to increased rates of storm water run-off – thus potentially exacerbating flood risk beyond the site. This is not correct. This development (as is the case with almost all developments)

includes provision for storm water attenuation so that the run-off from hard surfaces is collected in an attenuation facility (in this case, subterranean crates), which holds the storm water and releases it at a rate no greater than occurs at present as a greenfield site. Indeed, the calculations for storm water run-off have accounted for a 40% increase in rainfall as a consequence of climate change. So, whilst it may appear counterintuitive, the prospect for off-site flooding is reduced with this development when compared to the site remaining in its undeveloped state – because, without attenuation, increased rainfall due to climate change would not be controlled from this site.

Severn Trent Water is the competent Authority for the disposal of foul water and raises no objection to this development. As such, objections on the basis the foul sewage network cannot cope with this development are, with respect, unsupported assertion.

A comment is raised by the occupiers of 27 Oakhurst Rise concerning the potential for mud on the road during construction. The requirement for a Construction Management Plan (as a planning condition) is intended to minimise disturbance to existing residents during the construction process. As with all development sites, residents' aspiration that development takes place without any disturbance cannot realistically be met. The propensity for disturbance will be minimised by a Construction Management Plan and is, of course, of a short duration only.

Several respondents allege that the development would have a negative impact on the Area of Outstanding Natural Beauty (AONB). The LPA has accepted that the earlier scheme of 69 dwellings would not have an adverse impact upon the AONB. Indeed, the Council withdrew such a reason for refusal prior to the Inquiry and this matter was agreed within the Statement of Common Ground. With respect, this objection has no substance.

The comments made as to the adequacy of local social infrastructure to accommodate the needs arising from the residents of 43 new homes are to be addressed within the application of CIL and any S106 Planning Obligations.

Reference is made to the dwelling number referred to in Policy HD4 of the Cheltenham Local Plan. The modification to the Policy is that the site should accommodate '*a minimum of 25 dwellings*'. As a matter of proper interpretation of the Local Plan, there is no upper limit to the number of dwellings for this site as a matter of principle. It is a matter for the development management process to determine the precise capacity of any allocated site because the plan-making process does not extend to such detailed considerations. Indeed, if it did, there would be little purpose in attaching criteria to the policy which are to be applied within the development management process. Accordingly, the judgment is as to the overall merit of the details as submitted – and not the quantum of development – as a matter of policy.

Criticism as to the potential form of affordable housing is not justified when the arrangements for the provision of affordable housing have been settled with the Borough Council.

Conclusions

I hope that above summary is of assistance to you in the preparation of your Report to the Committee, and sets out the Applicants' response to matters raised by both Consultees and members of the local community. While I am aware that there have been significant levels of correspondence to the LPA, public opposition to any development is not a reason, in itself, for the refusal of planning permission. The material issue is whether the basis of the objections amounts to coherent and substantial land use planning objections to the development when considered in the context of development plan policy and the views as expressed by informed consultees, particularly those whom the Planning Authority rely upon for specialist consideration on both technical and environmental issues. This application, as all applications, should be considered with the overall public interest of the Borough. As often occurs, the voices of those who will welcome the provision of new homes, and particularly those who will secure affordable homes to address their housing needs, typically remain silent within the planning process (I am

aware that there are a number letters of support for this proposal). Whilst there may be angst amongst the local community because, fundamentally, they do not want change to their local environment, the new community will quickly be assimilated into the existing community with new friendships and community respect being established.

Yours sincerely

A handwritten signature in black ink, appearing to be "P J Frampton".

Mr P J Frampton

- Enc: MHP Response re Landscape and Visual Impact matters in FoCK consultation
Aspect Response re Badger Trust consultation
Aspect Response re Ecology matters in FoCK consultation
CTP Response re Transport matters in FoCK consultation
Simpson Engineering Response re Cheltenham Flood and Drainage Panel consultation
FLAC Response to ATF consultation
FLAC Response to FoCK consultation
Villa Rotunda Commentary
- CC: Mr H Evans, William Morrison (Cheltenham) Ltd
Mr J Smith, William Morrison (Cheltenham) Ltd
Mr G Lawrence, William Morrison (Cheltenham) Ltd
Mrs G Parle, Framptons, for monitoring