



TOWN AND COUNTRY PLANNING ACT 1990

**AGAINST THE DECISION OF CHELTENHAM BOROUGH
COUNCIL TO REFUSE PLANNING PERMISSION FOR**

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

AT LAND AT OAKHURST RISE, CHARLTON KINGS, CHELTENHAM

**ON BEHALF OF WILLIAM MORRISON (CHELTENHAM LTD)
AND THE TRUSTEES OF THE CARMELITE CHARITABLE TRUST**

LPA REF: 20/00683/OUT

OUR REF: PF/10093

APPELLANTS' STATEMENT OF CASE

OCTOBER 2020

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1.0 INTRODUCTION

1.1 Cheltenham Borough Council in its capacity as a Local Planning Authority has the statutory power to regulate the development of land. With power comes responsibility.

1.2 The appointed Planning Inspector is invited to listen to the oral submissions made at the Planning Committee on 17th September 2020 – particularly:

- (i) the presentation by the Planning Officer, Ms Pickernell (00:05:38 – 00:21:35 on the accompanying recording – **Appendix 1** to this Statement); and
- (ii) the subsequent debate by Members of the Planning Committee (00:21:40 – 01:47:54 on the recording) – which includes emphasis being placed upon a factually incorrect application of the dominant policy that is relevant to the proposed development (Cheltenham Local Plan Policy HD4).

1.3 Members of the Planning Committee voted to refuse planning permission 5:4. Thereafter there was an unedifying spectacle of Members trying to establish a reason for refusal. The transcript of this part of the Committee (01:48:14 – 02:20:14 on the recording) is attached as **Appendix 2** to this Statement.

1.4 The difficulty for the Committee was only relieved by the intervention of the Chief Planning Officer, who postulates a basis for refusal. Even then, the Committee could not formulate the wording for the reason for refusal and this is left to be established following the Committee. The decision notice is received some eight days later (25th September 2020).

- 1.5 The Appellants will submit that the LPA has failed to act responsibly – amounting to unreasonable behaviour. Regrettably, the establishment of such behaviour will have consequences for the public purse – at a time when public resources are seriously constrained.
- 1.6 It is understood that no professional Officer of the Council will provide evidence in alignment with the Council's decision-taking.
- 1.7 The Appellants will submit that this proposal accords with the development plan. Planning permission should have been granted without delay (Framework 11c).

2.0 THE REASON FOR REFUSAL

2.1 The application as refused planning permission for a single reason, namely:

'The proposed development would have a significant impact on the setting of nearby listed buildings. 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.

Policy HD 4 of the Adopted Cheltenham Plan suggests a minimum of 25 dwellings can be accommodated on this site subject to a list of criteria. The proposal for 43 dwellings against the policy requirement of 25 has led to a layout which does not respect the character significant and setting of heritage assets. The proposal is therefore in conflict with Policy HD4 of the adopted Cheltenham Plan.

The development would also 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).'

2.2 The decision notice is attached as **Appendix 3**.

2.3 The Planning Officer's Report to the Committee is attached as **Appendix 4**. The Officer's Supplementary Report, dated 16th September, is attached as **Appendix 5**.

2.4 The Appellants will submit that the dominant policy from the development plan which is relevant to this proposal is Policy HD4 from the recently adopted Cheltenham Local Plan July 2020. Policy HD4 (attached as **Appendix 6**) states as site specific criteria:

- *‘A minimum of 25 dwellings, subject to masterplanning (in accordance with Policy SD4 of the JCS) which demonstrates that the development can be achieved whilst accommodating:*
- *Safe, easy and convenient pedestrian and cycle links within the site and to key centres*
- *A layout and form that respects the existing urban characteristics of the vicinity*
- *A layout and form of development that respects the character, significance and setting of heritage assets that may be affected by the development*
- *Protection to key biodiversity assets and mature trees*
- *New housing should be located away from the setting of the west elevation of Ashley Manor. There should be no development south of a straight line westwards from the rear of the northernmost school building. In addition, to provide an undeveloped buffer between the rear garden boundary of Charlton Manor and the new development a landscaping buffer should be provided for 30 metres west of the rear boundary with Charlton Manor.*
- *Long term protection of mature trees and hedges*
- *Any development on the site should secure improvements to the Ice House’*

2.5 While the LPA has refused the planning application for a single reason relating to heritage, the Appellants consider that it will be necessary to present evidence as to the compliance of the development with all the criteria attached to Policy HD4 – in view of the considerable public interest in this application, which has included the submission of professional reports on behalf

of the Friends of Charlton Kings (who appeared as a Rule 6 Party at the Inquiry into an earlier proposal for 68 dwellings (Application Ref: 18/02171/OUT).

2.6 The Appellants propose to present evidence on the following matters:

- Arboriculture
- Ecology
- Technical matters relating to access and drainage

2.7 The Appellants seek to reserve the right to present further evidence in response to any Statement of Case issued by a Rule 6 Party.

2.8 The Appellants will also present evidence as to the compliance with other important policies in the development plan, including:

- Gloucestershire, Cheltenham and Tewkesbury Joint Core Strategy, adopted November 2017
 - SD9: Biodiversity and Geodiversity
 - SD10: Residential Development
 - SD12: Affordable Housing
- Cheltenham Local Plan, adopted July 2020
 - HE1: Buildings of Local Importance and Non-Designated Heritage Assets
 - H1: Land Allocated for housing Development
 - GI2: Protection and Replacement of Trees
 - GI3: Trees and Development

- CI1: Securing Community Infrastructure benefits

2.9 The Appellants, through planning evidence, will address all relevant planning policies from the development plan and other material considerations.

2.10 The Appellants will refer to:

- i) the professional advice provided to the Planning Committee by the Council's Heritage and Conservation Officer, wherein he advised:

'Where less than substantial harm has been identified it is considered to be caused to limited aspects of the heritage significance of the affected heritage assets and their settings. The proposal has been significantly amended since the previous proposals to address the reasons for refusal. Notable is the decrease in the number and location of dwellings, and the proposed extensive landscaping measures to reduce and mitigate the visual impact of the development proposal on the heritage assets and their settings. Cumulatively these measures, and the acceptance of the public benefits of the proposal, are considered to result in a proposal that, on balance, should not be objected to in heritage terms.'

To accord with Paragraph 196 of the NPPF the case officer will need to carry out a separate exercise to weigh the public benefits of the proposal against the great weight that needs to be given to the conservation of the affected heritage assets.'

- ii) the consultation response from Historic England, dated 12th May 2020, with an objection to the development on the basis that:

‘the quantum, location and screening of the development would result in harm to the heritage significance as defined by its setting’

2.11 The Appellants acknowledge that the views expressed by Historic England, as the Government’s adviser on heritage matters, should be given due consideration. Nevertheless, it is the role of the decision-taker to determine the precise level of harm – which is to be given ‘*considerable importance and weight*’ – and then to determine whether this level of harm is outweighed by the public benefits.

2.12 Historic England expresses an opinion in relation to the specific criterion attached to Policy HD4 relating to heritage matters, which states:

‘A layout and form of development that respects the character, significance and setting of heritage assets that may be affected by the development.’

2.13 Historic England opines in the letter of consultation that :

‘While we acknowledge the emerging housing allocation for this site, it must respect the setting of heritage assets. We do not consider that the current proposals achieve an acceptable level of respect to the setting of heritage assets. We therefore advise that significant adjustments are made to demonstrate how allocation HD4 can be delivered in a way that the setting is not harmed to this extent.’

- 2.14 The Appellants will submit that, interpreting this policy statement '*objectively in accordance with the language used, read as always in its proper context*' (Tesco v Dundee), '*respect*' does not mean the development must preserve the significance of the heritage assets.
- 2.15 '*Respect*' in the context of the overall provision of Policy HD4 means a scheme that minimises the harm to the significance of the designated heritage assets to such a degree that, even when considerable weight is attached to the residual harm to significance, that level of harm is outweighed by the public benefits as required to be considered in the planning balance provided by the Framework paragraph 196.
- 2.16 This interpretation is considered entirely consistent with the provisions of the Framework (193 – 196). The evidential basis to the consideration of the soundness of Policy HD4 in the examination of the Local Plan will be addressed in the planning evidence. Had the Planning Authority or the Examining Inspector concluded that Oakhurst Rise was only suitable as a housing allocation providing the significance of the heritage assets was preserved (i.e. no harm), the 'heritage' criterion to Policy HD4 would have stated this requirement.
- 2.17 The Appellants will present specialist evidence on heritage matters. The planning balance will be conducted within the planning evidence.
- 2.18 The Appellants will submit that the provision under Policy HD4 for a '*minimum of 25 dwellings*' is properly to be understood as recognition that a design of the development would have to have regard to a range of environmental and technical considerations. As such, at the plan-making stage of the planning system, the precise capacity could not be identified. The Appellants will submit that it is the function of the development management system to determine the

capacity of any allocated site, having regard to a detailed consideration of all relevant land use matters.

2.19 The Appellants will submit that the presumption in favour of sustainable development applies to this development proposal. The proposal complies with Framework paragraph 11(c) – in satisfying the requirements of Policy HD4 and other main planning policies from the development plan.

2.20 The Appellants will submit that there are no material considerations that indicate a decision should be taken otherwise than in accordance with the Development Plan. Planning permission should have been granted without delay.

3.0 OTHER MATERIAL CONSIDERATIONS

- 3.1 The Appellants will make further submissions in response to the acknowledgement by the LPA that, notwithstanding the adoption of the Cheltenham Local Plan in July 2020, the Council is incapable of demonstrating a genuinely available 5 year supply of housing.
- 3.2 The Appellants will refer to the Council's acknowledgement that housing land supply now stands at 3.7 years – compared to 4.6 years when the previous appeal (Ref: APP/B1605/W/19/3227293, August 2019) was heard.
- 3.3 The Appellants will submit that, despite the Government's commitment to boost housing land supply, this Council is seriously failing to achieve the minimum housing supply requirement – even after a Local Plan has been recently adopted.
- 3.4 The Appellants will present evidence as appropriate to challenge the extent of housing land supply as to its genuine availability. The Appellants will notify the Council promptly if the conceded position of a 3.7 years supply is accepted. The Appellants submit that the severity of the shortfall in housing land supply is, in itself, a matter that is to be taken into the planning balance.
- 3.5 The Appellants will submit that the Council's performance in the delivery of affordable housing to meet housing needs is woeful. Evidence will be presented as to the seriousness of the housing crisis in Cheltenham. The Appellants will say that the planning system is intended to be a mutually inclusive land management system, and that substantial weight should be given to the provision of market housing, and substantial weight should be given to the provision of affordable housing.

3.6 The Appellants will submit that, in these circumstances, the presumption in favour of sustainable development may also be taken in accordance with the second limb of the Framework paragraph 11, namely 11(d). Under this policy matrix, the development plan policy for the provision of housing is to be treated as not being up-to-date. In undertaking the planning balance required by the Framework 196, it will be submitted that the planning benefits (referred to below) outweigh the very low level of harm to the significance of the heritage assets, giving this level of harm *'considerable importance and weight'*. The low level of less than substantial harm to the significance of the heritage assets (Heritage Impact Assessment paragraph 5.3), weighed in the balance with the public benefits from allowing the development, does not amount to a clear reason for the refusal of the development.

3.7 The Appellants will therefore submit that the provision for decision-taking set out at the Framework paragraph 11(d)(i) is **not** engaged. The decision-taking should then be undertaken pursuant to the provisions of paragraph 11(d)(ii). It will be submitted that the 'tilted balance' in favour of a grant of planning permission is engaged. There are no adverse impacts arising from a grant of planning permission that would *'significantly and demonstrably outweigh the benefits when assessed against the policies in this Framework taken as a whole'*.

3.8 The Appellants will submit that the development will procure the following public benefits:

- The provision of market housing in circumstances of a serious shortfall in the genuine availability of market housing. This benefit should be given substantial weight.

- The provision of affordable housing in the circumstances of a serious and worsening situation for the provision of affordable housing. This benefit should be given substantial weight.
- The provision of new employment opportunities during construction and as a consequence of new homes being occupied. This benefit should be given moderate weight.
- The provision of management plans for existing trees and retained grassland to maintain and enhance the arboricultural and biodiversity interests on the site. The Appellants submit that, as veteran trees are '*irreplaceable habitat of exceptional value*', their preservation, husbandry and safeguarding is of great importance. This position is considered consistent with the underlying policy basis of the Framework Paragraph 175(c). This benefit should be given substantial weight.
- The achievement of a net biodiversity gain through the provisions of the scheme. This benefit should be given moderate weight.
- The provision of a positive surface water drainage system including storm water attenuation which will reduce surface water run-off beyond the site. As post-development the proposed impermeable areas will be positively drained to the public surface water sewer in Charlton Court Road, there will hence be a reduction in undrained land and therefore a reduction in surface water runoff beyond the site boundary. The proposed drained impermeable areas (7,500m²) equates to approximately 18% of the total site area. The drained impermeable areas are proposed to be restricted to the sites equivalent greenfield runoff rate (QBar), with

excess surface water flows attenuated on site for the 1 in 100 year event, plus a 40% allowance for climate change. These proposals were reviewed by both the LLFA and Severn Trent Water with no adverse comments. This benefit should be given moderate weight.

- 3.9 The Appellants will submit that these benefits are all public benefits which firmly outweigh the low level of less than substantial harm to the significance of the designated heritage assets.

4.0 PLANNING OBLIGATIONS

- 4.1 The Appellants will enter planning obligations that meet the statutory requirements of Regulation 122 CIL Regulations 2010. A Section 106 Planning Obligation Agreement is well advanced with the Local Planning Authority, and will be submitted to the Inspectorate upon completion – and at least four weeks prior to the Inquiry date. The draft version of the S106 is attached as **Appendix 9**. It is anticipated by both Cheltenham Borough Council and the Appellants that the final signed version will be little different from the attached draft version.
- 4.2 The Appellants will submit a Unilateral Undertaking for the payment of contributions towards education which have been discussed with Gloucestershire County Council as the County Education Authority.
- 4.3 Since the presentation of the Report to the Planning Committee, evidence has been assembled to the effect that the financial contribution sought to meet the requirements for primary education and the library contributions is not reasonable in scale and kind to the development for which planning permission is sought.
- 4.4 A draft Unilateral Undertaking accompanies this Statement of Case as **Appendix 10**. The Appellants will endeavour to reach agreement with Gloucestershire County Council, and will submit the finalised Unilateral Undertaking to the Inspectorate upon completion – and at least four weeks prior to the Inquiry date.
- 4.5 In the event the Appellants are not able to reach agreement with the County Council, the Unilateral Undertaking as drafted will be completed. The Unilateral Undertaking contains a so-

termed 'blue pencil clause' as to the amount of financial contribution that would be considered by the Appellants to be compliant with Regulation 122.

- 4.6 The Appellants will present expert evidence from Mr Kinsman, Consultant at Educational Facilities Management Partnership Ltd, to explain the approach taken to establish the level of financial contribution that is necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development.
- 4.7 The 'blue pencil clause' will enable the Inspector to determine the amount of financial contribution which may be lawfully demanded.

APPENDIX 1

Audio recording of Cheltenham Borough Council Planning Committee, 17th September 2020

(separate audio file)

APPENDIX 2

Transcript of extract of Planning Committee, 17th September 2020 – Votes & Reasons for Refusal

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

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 bi-lateral 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]

APPENDIX 3

20/00683/OUT Decision Notice



W Morrison (Chelt) Ltd & Trustees APPLICATION NO: 20/00683/OUT
Carmelite Charitable Trust

c/o Frampton Town Planning Ltd

FAO Mr Peter Frampton

Oriel House

42 North Bar

Banbury

OX16 0TH

DATE 29th April 2020

REGISTERED:

17th September 2020

DECISION DATE:

REFUSAL OF OUTLINE PLANNING PERMISSION

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2010

In pursuance of its powers under the above mentioned Act and Order Cheltenham Borough Council, as the Local Planning Authority, hereby **REFUSES TO PERMIT** the following development:-

Outline application for 43 dwellings including access, layout and scale, with all other matters reserved for future consideration

AT : Land Adjacent To Oakhurst Rise Cheltenham

in accordance with the reasons specified hereunder:-

- 1 The proposed development would have a significant impact on the setting of nearby listed buildings. 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.

Policy HD 4 of the Adopted Cheltenham Plan suggests a minimum of 25 dwellings can be accommodated on this site subject to a list of criteria. The proposal for 43 dwellings against the policy requirement of 25 has led to a layout which does not respect the character significant and setting of heritage assets. The proposal is therefore in conflict with Policy HD4 of the adopted Cheltenham Plan.

The development would also 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).

David Oakhill : Head of Planning

Appeals to the Secretary of State

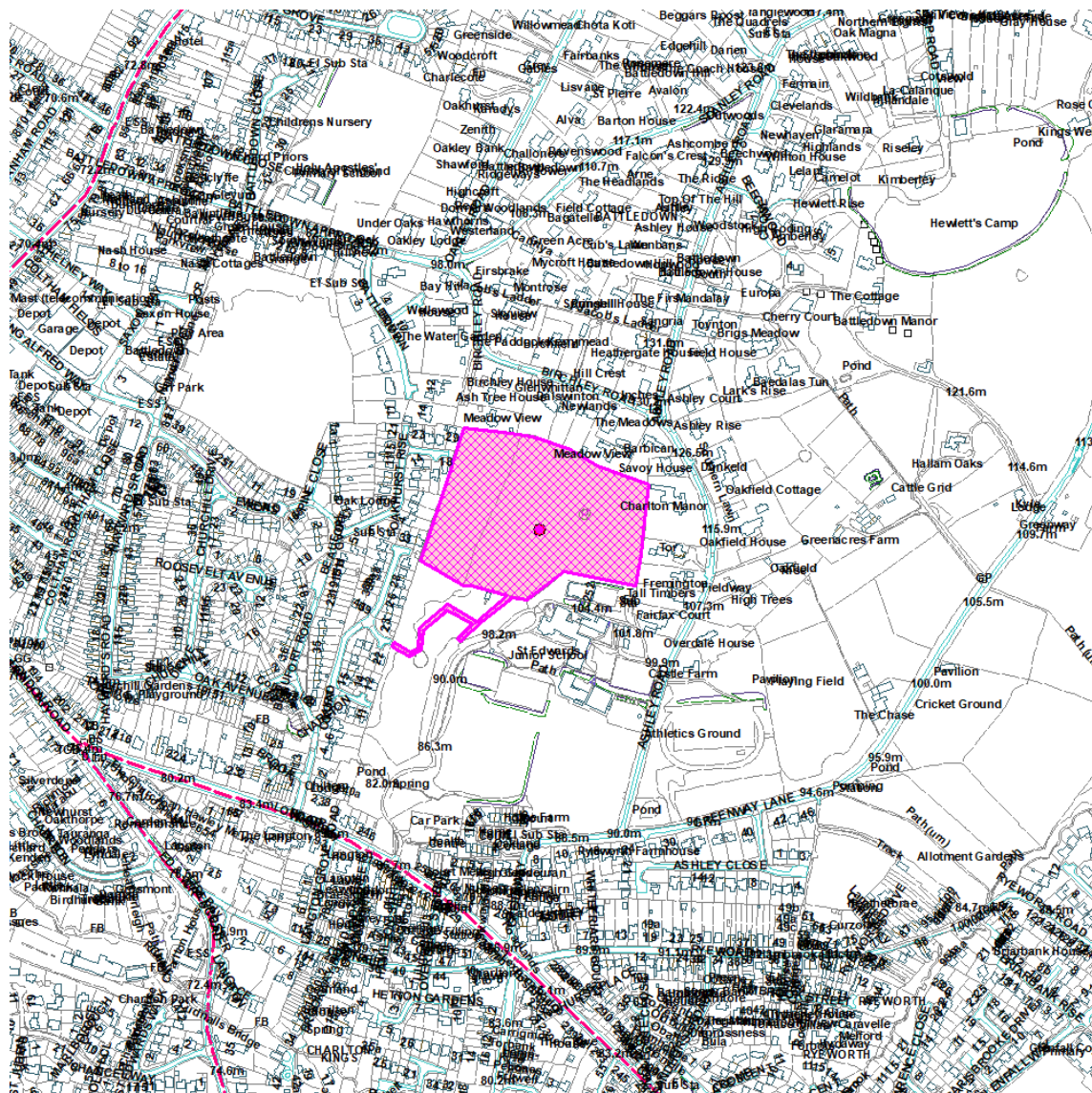
- If you are aggrieved by the decision of your local planning authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the Secretary of State under section 78 of the Town and Country Planning Act 1990.
- If you want to appeal against your local planning authority's decision then you must do so within 6 months of the date of this notice.
- Appeals must be made using a form which you can get from the Planning Inspectorate at Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN or online at www.planningportal.gov.uk/pcs.
- The Secretary of State can allow a longer period for giving notice of an appeal, but he will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.
- The Secretary of State need not consider an appeal if it seems to him that the local planning authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.
- In practice, the Secretary of State does not refuse to consider appeals solely because the local planning authority based their decision on a direction given by him.

APPENDIX 4

20/00683/OUT Planning Officer's Report to Committee

APPLICATION NO: 20/00683/OUT		OFFICER: Mrs Emma Pickernell
DATE REGISTERED: 29th April 2020		DATE OF EXPIRY: 29th July 2020 Extended by agreement with the applicant to 25 th September 2020.
DATE VALIDATED: 29th April 2020		DATE OF SITE VISIT: 24th June 2020
WARD: Battledown		PARISH: Charlton Kings
APPLICANT:	W Morrison (Chelt) Ltd & Trustees Carmelite Charitable Trust	
AGENT:	Frampton Town Planning Ltd	
LOCATION:	Land Adjacent To Oakhurst Rise, Cheltenham	
PROPOSAL:	Outline application for 43 dwellings including access, layout and scale, with all other matters reserved for future consideration	

RECOMMENDATION: Approval subject to s.106



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1. DESCRIPTION OF SITE AND PROPOSAL

- 1.1 The application site is a large, undeveloped parcel of land, approximately 4.3 hectares, located to the east of the borough within the Principal Urban Area (PUA), in an elevated position above the town. The site comprises two fields of grassland separated by a mature hedge and trees, and is largely bound by hedging and trees.
- 1.2 Residential properties in Birchley Road and Ashley Road are located to the north and east of the site, and Oakhurst rise to the west; St Edwards Preparatory School is located to the south.
- 1.3 The site is heavily constrained due to the presence of a number of protected trees; the sloping nature of the site; the presence of protected wildlife species; the presence of an historic Ice House; and its close proximity to listed buildings.
- 1.4 Currently the site forms part of the wider St Edwards Preparatory School site but is owned by The Carmelite Charitable Trust who lease the land to the school.
- 1.5 Two previous planning applications for this site have been refused by the Planning Committee. Application ref 17/00710/OUT was an application for the erection of 90 dwellings and was refused in July 2018. There were 5 reasons for refusal which, to briefly summarise, related to 1) loss of trees, (2) impact on the setting of listed buildings, (3) unacceptable impact on highway network due to access via Oakhurst Rise, (4) Impact on protected species, (5) Impact on landscape character and AONB.
- 1.6 Application ref 18/02171/OUT was an application for up to 69 dwellings. This was refused on 22nd March 2019 for the following reasons:

1) *The proposed development fails to adequately address the constraints and site specific requirements set out within emerging Cheltenham Plan Policy HD4 which identifies the site as a potential land allocation for housing. Although the Cheltenham Plan is currently under examination and has not yet been formally adopted, and there are significant unresolved objections to the policy, paragraph 48 of the NPPF (2019) does allow the Local Planning Authority to afford some weight to this policy in the emerging plan.*

2) *The proposed development would result in the loss of a number of trees within the application site, including a significant TPO'd tree which has some valuable characteristics and features of a veteran tree. The scale of the development on this valuable site would also be likely to result in the deterioration of the retained Veteran trees, which would fail to be outweighed by wholly exceptional reasons.*

The development would therefore be contrary to saved policies GE5 and GE6 of the Cheltenham Borough Local Plan (2006), adopted policy INF3 of the Joint Core Strategy (2017) and paragraph 175 (c) of the National Planning Policy Framework (2019).

3) *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).

4) *The application site is host to a number of protected species which would be affected by the proposed development. Most notably, a large badger sett is located to the north of*

the site which the application proposes to be relocated as part of the development. Paragraph 175 (a) of the NPPF and Natural England's standing advice sets out a three stage approach to addressing impacts on biodiversity, and that compensation measures such as replacing setts that would be destroyed should be employed as a last resort. Alternative measures to avoid or mitigate harm to the badger sett do not appear to have been fully explored. Additionally, insufficient information has been submitted to demonstrate the future success of the relocated sett. The development would have a negative impact upon this valuable habitat of hedgerows and pasture, and biodiversity across the site generally.

The proposed development would therefore be contrary to adopted policy SD9 of the Joint Core Strategy (2017), paragraph 175 (a) of the National Planning Policy Framework (2019) and Natural England's Standing Advice.

- 5) *The application site is located in an elevated position above the town, outside of, but in close proximity to, the Cotswolds Area of Outstanding Natural Beauty (AONB). The scale of the proposed development in this tranquil location would have a negative impact on existing landscape character, and on views into and out of the AONB.*

The proposal would therefore be contrary to saved policy CP3 of the Cheltenham Borough Local Plan (2006), and adopted policy SD6 of the Joint Core Strategy (2017).

- 1.7 Following the refusal of the planning application an appeal was made to the Planning Inspectorate which was dealt with by Public Inquiry which was held on 20 - 23 August 2019. On 20th September 2019 the appeal was dismissed.
- 1.8 Prior to the Inquiry the authority withdrew the fourth and fifth reasons for refusal in relation to ecology and visual impact. The appeal Inspector did not consider that the appeal proposal would cause harm to the appearance and character of the AONB.
- 1.9 The full text of the appeal decision will be provided to members as **appendix 1**, however the 'overall assessment' of the appeal decision is as follows:

"120. It is established above that the less than substantial harm to designated heritage assets that would be caused by the proposed development carries considerable weight. In my judgement, for the reasons explained above, this harm is of a very significant level and both Listed Buildings whose settings would be harmed are themselves of very high significance. I therefore consider that the less than substantial harm identified amounts to the requisite clear reason to dismiss this appeal, in terms of Framework paragraph 11d(i).

121. However, very considerable weight is also to be afforded to the contribution the development would make to the supply of affordable housing in the face of an acute shortage. The contribution to market housing also carries significant weight, in the absence of a current overall five year housing land supply for Cheltenham. These are the net total of benefits identified in favour of the amended proposal now at appeal.

122. In my overall judgement, the adverse impact by way of the less than substantial harm to the significance of designated heritage assets in this case would alone outweigh these benefits to housing. I therefore consider that dismissal of the appeal is warranted on that ground with respect to Framework paragraph 11d (ii).

123. Moreover, it is also appropriate to take account of the harms I have identified by way of the loss of a protected tree and the degree of long-term risk to those trees to be retained, the potential net loss of biodiversity and the disadvantage due to the less than ideal nature of the highway access to the appeal site. I do not consider that these further adverse effects would, either individually or jointly, outweigh the significant benefits to the supply of affordable and market housing. Nevertheless they do further support the case for dismissal of this appeal.

124. Finally, the weight to be ascribed to the benefit to housing supply is fairly to be regarded as being constrained by the prospect that, even if the present proposal is rejected, there is still potential for the site to be development in line with an emerging local plan allocation, albeit for a lesser scheme, as well as by the likelihood that, within the foreseeable future the Cheltenham Plan, currently under examination, will be adopted, with a resultant increase in housing supply for Cheltenham to above five years. These prospects too, although conjectural and not determinative, still militate against the approval of the current proposal.”

- 1.10** This application is now seeking outline planning permission for a revised scheme which proposes the erection of 43 dwellings (40% affordable). As with previous applications this current application is seeking approval for the access, layout, and scale with matters relating to appearance and landscaping reserved for future consideration, should the principle of developing the site be considered acceptable. Access would be via Oakhurst Rise as previously proposed. The proposed housing mix comprises:

4 no. 1 bed maisonettes
2 no. 2 bed maisonettes
1 no. 1 bed house
8 no. 2 bed house
9 no. 3 bed house
19 no. 4 bed house

- 1.11** The principal changes between the 2018 planning application that was dismissed at appeal and the current proposal are:

- Revised layout of the site
- 26 fewer dwellings
- Revised indicative landscaping and tree planting proposals
- Revised arrangements for relocating badgers

- 1.12** In addition to drawings, the application has been accompanied by a number of detailed reports and statements, all of which have been available to view on the Council's website.

- 1.13** The Cheltenham Plan, with the site allocated for housing development (HD4) was adopted by the Council on the 20th July 2020.

- 1.14** The application is at committee at the request of Councillors Harvey, Fisher and Savage.

- 1.15** Due to the Covid 19 outbreak a group site visit will not be arranged in respect of this application. Whilst this Authority ordinarily organises a 'planning view' this is by no means essential and is not required by any legislation. Most members of planning committee have visited the site twice when considering previous applications on the site. Photographs and other illustrative will be made available through the officer presentation.

- 1.16** Relevant Officers have visited the site on a number of occasions.

2 CONSTRAINTS AND RELEVANT PLANNING HISTORY

Constraints:

Airport Safeguarding over 45m
Landfill Sites boundary
Principal Urban Area
Residents Associations

Relevant Planning History:**CB15569/00****WITHDRAWN****28th August 1981**

Land to the west side of Whitefriars School – Outline application for residential development

CB15568/01**REFUSED****29TH October 1981**

Land to west side of Whitefriars School – outline application for residential development of 6.5 acres of land including new highway access from London Road – refused on highway grounds

CB16992/00**REFUSED****25TH October 1984**

Land to west side of Whitefriars School – Outline application for residential development including the construction of new estate roads, footpaths, landscaping and all associated drainage works – refusal reasons related to policy contraventions; loss of tree; surface water drainage; and highway/traffic implications

Note: Although the above planning history has been included for completeness, given the significant period of time that has since passed, the decisions are not relevant to the determination of this application which must be determined in accordance with the current development plan and national policies.

17/01736/SCREEN**ISSUED****8th September 2017**

Request for a screening opinion under Part 2, Regulation 6 of The Town and Country Planning (Environmental Impact Assessment) Regulations 2017

17/00710/OUT**REFUSED****30th July 2018**

Outline application for residential development of 90 dwellings including access, layout and scale, with all other matters reserved for future consideration

17/01778/FUL**WITHDRAWN****5th July 2018**

Provision of a dropped kerb

18/02171/OUT**REFUSED****22nd March 2019**

Outline application for residential development of up to 69 dwellings including access, layout and scale, with all other matters reserved for future consideration (revised scheme following refusal of application ref. 17/00710/OUT)

3 POLICIES AND GUIDANCE

National Planning Policy Framework

Section 2 Achieving sustainable development

Section 3 Plan-making

Section 4 Decision-making

Section 5 Delivering a sufficient supply of homes

Section 8 Promoting healthy and safe communities

Section 9 Promoting sustainable transport

Section 11 Making effective use of land

Section 12 Achieving well-designed places

Section 14 Meeting the challenge of climate change, flooding and coastal change

Section 15 Conserving and enhancing the natural environment

Section 16 Conserving and enhancing the historic environment

Adopted Joint Core Strategy Policies

SP1 The Need for New Development
SP2 Distribution of New Development
SD3 Sustainable Design and Construction
SD4 Design Requirements
SD6 Landscape
SD7 The Cotswolds Area of Outstanding Natural Beauty
SD8 Historic Environment
SD9 Biodiversity and Geodiversity
SD10 Residential Development
SD11 Housing Mix and Standards
SD12 Affordable Housing
SD14 Health and Environmental Quality
INF1 Transport Network
INF2 Flood Risk Management
INF3 Green Infrastructure
INF6 Infrastructure Delivery
INF7 Developer Contributions

Adopted Cheltenham Plan Policies

D1 Design
D3 Private Green Space
L1 Landscape Setting
HE1 Buildings of Local Importance and Non-Designated Heritage Assets
HE2 National and Local Archaeological Remains of Importance
BG1 Cotswold Beechwoods Special Area of Conservation Recreation Pressure
H1 Land Allocated for Housing Development
HD4 Land off Oakhurst Rise
SL1 Safe and Sustainable Living
G12 Protection and Replacement of Trees
G13 Trees and Development
C11 Securing Community Infrastructure Benefits
C12 Sports and Open Space Provision in New Residential Development
C14 Broadband Provision

Supplementary Planning Guidance/Documents

Development on garden land and infill sites in Cheltenham (2009)
Flooding and sustainable drainage systems (2003)
Landscaping in new development (2004)
Planning obligations (2003)
Planning obligations: transport (2004)
Play space in residential development (2003)
Public art (2004)
Security and crime prevention (2003)
Sustainable buildings (2003)
Sustainable developments (2003)
Travel plans (2003)

4 CONSULTATIONS

Social Housing

17th June 2020

See **Appendix 2**

Building Control

20th May 2020

The application will require Building Regulations approval. Please contact Cheltenham and Tewkesbury borough council on 01242 264321 for further information.

Parish Council

2nd July 2020

Further to the CKPC Planning Committee Meeting of 5/11/18, we object to the above application with the following comments:

It is disappointing that except for a reduction in the number of dwellings proposed, this application does little to address any of the Committee's concerns raised about the previous applications for this site.

Drainage and Flood Risk:

The Committee note the concerns raised by the Cheltenham Flood & Drainage Panel and note that again, despite the matter being previously raised, there is no detail as to how the attenuation systems will be maintained in the future. If the drainage and attenuation systems are not maintained then the development would in time become a substantial flood risk to properties downhill of it.

Ecology:

Even if the re-location of the badger sett is successful, this development would convert what is currently the foraging area for the badgers into hard landscaping and gardens. This will bring badgers into conflict with residents, both in terms of accidents with cars and damage to gardens.

There seems to be some confusion between the various documents as to whether or not all the mature trees on the site would be retained or not.

Local services:

There are shortages in capacity in both Primary and Secondary schools in the Parish, with some children unable to gain entry to schools within the Parish.

Similarly, prior to the current exceptional circumstances, there were substantial waiting times to access local GP services.

This proposal will increase demand for these already stretched services.

Heritage:

The development would be detrimental to the setting of both Ashley Manor and Charlton Manor and we note Historic England's continued objection to the development on these grounds.

Transport:

As with all the previous applications, the suggestion that there is easy access to local facilities and bus services by bicycle or on foot is simply nonsense. The severity and length of the climb from the bottom of Charlton Court Road to the entrance to the development (32m of climb over 460m) means that almost all journeys to and from the site would be by private car. The Residential Travel plan simply ignores this obstacle to sustainable transport. The offer of an e-bike to each household is merely a marketing gimmick. If this development has a design life of 100 years, what happens when the e-bike reaches the end of its working life, or if the original property owner moves? The fact is that only extremely dedicated cyclists will cycle to or from this development and people will not walk to local shops if they have a car available.

We understand that the Travel Plan quotes bus timetables from 2018 that no longer run as evidence of access to bus services.

Community Cohesion:

As almost all movements to and from the site will be by private car, the site will effectively be socially isolated from the surrounding residential areas, severely restricting Community development and integration with the wider Parish.

Social Housing:

While Charlton Kings (as everywhere else) has a shortage of social housing, given the access difficulties other than by private car, social housing tenants without access private cars would be very isolated.

Local Plan:

The suggestion (which this Committee strongly disagreed with) in the Local Plan was that the site could possibly accommodate around 25 dwellings, yet this application is for 43, almost double the (disputed) amount suggested.

Winter Access:

Residents of Oakhurst Rise have previously reported that in snow and icy conditions it is necessary to leave cars in Charlton Court Road as Oakhurst Rise becomes dangerous and even impassable. As the only access to the development would be Oakhurst Rise, adding the cars from a further 43 households either risking Oakhurst Rise or being abandoned in Charlton Court Road would be foolhardy.

Existing Residents:

The existing residents of Oakhurst Rise enjoy the amenity of living on a quiet cul-de-sac. The road becoming a through route for this development will be detrimental to their quality of life. This is especially true of the resident who relies on the Community mini-bus to take her out. The operator of the bus has said they may well not be able to continue providing the service if the development takes place. The bus blocks the end of the cul-de-sac that would form the access to the site while her wheelchair is loaded and unloaded as the road is not wide enough to carry out this operation and maintain a through route. While the impact on residents is reduced with the reduction from 69 to 43 dwellings, it is still unreasonable. Sustainable development is meant to enhance people's quality of life, not degrade it.

Cheltenham Civic Society

4th June 2020

OBJECT.

Before commenting on the merits of the current scheme (see below), the Civic Society Planning Forum agreed that the history of this case was evidence of poor planning.

As noted by the inspector in the appeal decision of 19 August 2019, the site lies within the defined Principal Urban Area of Cheltenham but is not allocated for any form of development. However, neither is the site subject to any policy restriction on development. So, there is no objection to the principle of residential development and some development is inevitable. But the way in which this is being resolved is wrong.

This application is now the third in the past 2 ½ years. Each time the number of new homes proposed has been reduced (91, 68 and now 43). The developer aims to maximise the number approved; the planners and the appeal inspector cut them back. Greater emphasis on placemaking rather than just numbers of dwellings might have been more

constructive on such a sensitive site. A great deal of expenditure has been incurred, and much public anxiety, even anger, has been generated as result.

In our view, some 25 or so homes could be built on part of the site, as the council itself has indicated (Policy HD4 in the emerging local plan). The site also has important environmental values, including veteran trees, wildlife, heritage assets and fine views which should be protected. However, little public benefit is being derived from this at present.

The public interest would best be served if those parts of the site that cannot be developed with housing were to be dedicated as public open space, to be managed in order to retain their environmental qualities.

We conclude that a plan-led approach should have been adopted here rather than an appeal-led one. Once it became clear that there were pressures for development, Cheltenham Borough Council should have worked with the landowners, the developer and the local community to draw up a master plan for the whole site. This should have indicated in broad terms where development would be acceptable and where it would not, and what form it should take. It should have also ensured lasting public and environmental benefits by dedicating most of the site as public open space.

We ask that the Council learn the lessons from this expensive, time-consuming and divisive experience.

As to the current proposal, the architectural quality of the proposed buildings is poor, and they will date badly. Given local concern about the site and its environmental importance we should expect better. On this site, the aim should be an outstanding development, which could relate to the density and style guidelines of the adjacent Battledown estate.

There is no indication in the application of what will happen to the non-developed green area and what the plans are for the management of the green spaces. There is also no mention of energy conservation.

Gloucestershire Centre For Environmental Records

22nd May 2020

Biodiversity report received.

Gloucestershire Wildlife Trust

14th August 2020

Regarding the proposal for Local Wildlife Site status on land at St Edwards Prep School, Charlton Kings (Site under planning application 20/00683/OUT).

In order to achieve the goal of a balanced and useful Local Sites system, the Gloucestershire Wildlife Sites Partnership uses minimum habitat and species thresholds that fit the unique biodiversity of the county into a wider context, and a set of general criteria based on the DEFRA-recommended version of the Ratcliffe criteria.

The proposed site does meet the criteria set out in the Key Wildlife Sites (now referred to as Local Wildlife Sites [LWS]) handbook (2015), being greater than 0.5 ha (site is approximately 3.5 ha), confirmed as MG1 grassland habitat by NVC survey carried out by Aspect Ecology in July 2019 and Aug 2020 and by Bioscan in July 2019 and recording, through combination of all of the above surveys 22 species from the grassland list. However, MG1 can cover a wide range of grassland condition, from very high grass cover

and few herbs through to much lower grass density and significant herb cover. As it stands at the moment, the proposed site is of borderline LWS quality and the LWS process requires it to be examined by the LWS selection panel to determine whether it should be adopted as a LWS or not. The panel may be unable to convene before the planning application goes to committee.

The site lies within a gap in grassland ecological network connectivity. Enhancement to grassland habitat within this area would benefit the ecological network and with appropriate management the quality of the grassland on this site could be enhanced within a relatively short time. Irrespective of the LWS selection panel decision, it is Gloucestershire Wildlife Trusts view that any development on this site should provide a strong commitment to biodiversity net gain and a strong management and maintenance plan for both the grassland and veteran tree features on the site.

2nd September 2020

The Local Wildlife Site (LWS) Selection Panel met on 01/09/2020 to consider the proposal for St Edwards Prep School Meadow to be a LWS.

In addition to me providing secretariat, the LWS Selection Panel consists of a representative from each of the following:

Gloucestershire Naturalists' Society
Gloucestershire Wildlife Trust
A Gloucestershire Local Planning Authority

The Panel agreed that the site passes the Gloucestershire Local Wildlife Site Selection Criteria 2015 under point 9. Value for learning - "c. the site is exceptionally well-placed to offer educational opportunities either by its proximity to a school or other place of learning, or its easy accessibility for study of the species and habitats present without causing unacceptable damage or disturbance". The site is part of the land currently leased to the St Edwards Prep School and therefore by its proximity to the school and range of habitats and species on the site, it is exceptionally well placed to provide accessibility for study. Whether the school currently uses the site for nature study or not, is not a decision point as the LWS criteria aim to protect sites to maintain benefit into the future and changes in curriculum or personnel could easily result in change of attitude towards use of the site. LWS may be selected purely on the grounds of excellence for the understanding of biodiversity, even where other criteria are not met.

The Panel also consider that the site may also pass the criteria for MG1 grassland plant species. Two sets of plant species data that were provided for the site by Aspect Ecology (applicants representative) and Bioscan (Friends of Charlton Kings representative) differ but between them provide a match for 22 species from table H5c of the LWS criteria. Under normal circumstances we would conduct our own independent survey at the correct time of year to decide whether the grassland passes the criteria based on plant species. However due to the timescale associate with the planning application this is not possible.

The site will be recorded on the LWS database as St Edwards Prep School Meadow.

2nd September 2020

I am writing to provide Gloucestershire Wildlife Trust's (GWT) comments regarding the biodiversity mitigation proposed in application 20/00683/OUT.

The grassland on site has been assessed in the applicant's ecological report as of poor quality semi natural grassland. However, there are as they mention, a number of indicators

of unimproved neutral grassland, a resource for which we only have 1677ha recorded in the county (0.6% of the county by area). Though these indicators are in some cases infrequent in the sward, they and the historic of lack of agricultural improvement of the site, do suggest that if the site were to be more appropriately managed, e.g. appropriately timed annual hay cut and removal of the arisings, the site would be likely to develop to a more unimproved grassland quality.

The ecological report enhancement measure EE2 talks of grassland creation, however, in the response to Friends of Charlton Kings (20_00683_OUTECOLOGY_BRIEFING_NOTE_ON_BEHALF_OF_THE_APPLICANT-1076642.pdf) the consultant clarifies that existing grassland will be retained and enhanced. GWT would endorse the retention of the grassland intact and enhancement of the sward through local provenance seed. The ladies bedstraw is not widespread across the site, being mainly in a couple of large patches to the north west of the ice house. Attempt should be made to preserve this in situ.

The largest area of retained grassland, being retained for school use, will not have public access. This gives greater confidence that under enhancement and correct management a more species rich sward should develop. It should be made clear to residents that this area has no public access and fencing should be such to ensure it is not easy to gain access. Management should consider the requirements of both the enhancement of plant species diversity but also the maintenance of invertebrate species recorded on the site such as chimney-sweeper moth and five spot burnet moth.

The site has been confirmed to pass the Local wildlife Site (LWS) selection criteria by the Gloucestershire LWS selection panel (01/09/2020) on the grounds of Value for Learning, being a good selection of habitats and species exceptionally wellplaced to offer educational opportunities by its proximity to a school. The mitigation plan will enable the continuation of part of the site to meet the same criteria, however, GWT would like to see conditions in place such as a conservation covenant to ensure the undeveloped area of the site is secured for biodiversity in perpetuity.

For areas accessible to residents the outcome of grassland enhancement is of lower confidence as access by dog walkers is likely to result in nutrient enrichment and compaction.

GWT's view that the mitigation and enhancements for the habitats and species recorded on site are adequate to achieve no net loss of biodiversity.

Heritage And Conservation

7th July 2020

The relevant legislative and policy context within which the proposal needs to be considered is set out below.

The cornerstone of heritage legislation is the Planning (Listed Buildings and Conservation Area) Act 1990, Section 16(2) which states, "In considering whether to grant listed building consent for any works the local planning authority... shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."

A core policy of the National Planning Policy Framework 2019 (NPPF) is heritage assets be conserved in a manner appropriate to their significance. Chapter 16, paragraphs 193-196 set out the framework for decision making for applications relating to heritage assets. This assessment takes account of the relevant considerations within these paragraphs.

Local planning authorities are required by paragraph 192 of the NPPF to identify and assess the particular significance of any heritage asset... taking into account the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation. When considering potential impacts of development on the significance of a designated heritage asset Paragraph 193 of the NPPF requires great weight be given to the asset's conservation. If harm to or loss of a heritage assets is identified Paragraph 194 of the NPPF requires clear and convincing justification for it. Paragraph 195 and Paragraph 196 of the NPPF go into detail over the level of clear and convincing justification required. Notably Paragraph 196 of the NPPF states where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.

Historic England's Historic Environment Good Practice Advice in Planning: Setting of Heritage Assets (GPA3) December 2017 is also of relevance. The GPA3 provides a framework for the assessment of proposed changes to the setting of a heritage asset. To assess the degree of potential harm to the significance of a heritage asset, it advises a stepped approach, which includes: Identifying which heritage assets and their setting are affected; Assessing of the degree to which these settings make a contribution to the significance of the heritage asset(s) or allow significance to be appreciated: Assessing the effect of the proposed development, whether beneficial or harmful, on that significance or on the ability to appreciate it; Exploring ways to maximise enhancement and avoid or minimise harm; Making and documenting the decision and monitoring outcomes.

The current application 20/00683/OUT is an outline application for 43 dwellings including access, layout and scale, with all other matters reserved for future consideration. This application is an amendment of application 18/02171/OUT an outline application for residential development of up to 69 dwellings including access, layout and scale, with all other matters reserved for future consideration which was dismissed at appeal, itself an amendment of application 17/00710/OUT, an outline application for residential development of 90 dwellings including access, layout and scale, with all other matters reserved for future consideration which was refused.

A number of heritage assets and their settings are potentially affected by the development proposal, both within and immediately adjacent to the proposal site. Most notable is Ashley Manor. This property has had a number of name changes but will be referred to as Ashley Manor within these comments.

Ashley Manor is a grade II* listed building and described in its list description as one of the finest Regency villas in the Cheltenham area. Its current use is an administration building associated with St. Edward's School. It is located within a planned parkland setting, with a rural setting comprised of open fields and trees to the north. Notably this northern rural setting is the application site.

Ashley Manor forms a group with a number of other heritage assets on the school site which include, the boundary walls and gate to Ashley Manor facing on to London Road, the summerhouse to the southwest of Ashley Manor, a pair of piers at the carriage sweep of the southwest of Ashley Manor, all of which are ancillary structures associated with Ashley Manor within its parkland setting. Each of these structures is separately grade II listed. A noteworthy curtilage listed building to the north of Ashley Manor, outside the planned parkland but within its rural setting, and within the application site, is a former icehouse.

Charlton Manor, Ashley Road is a notable heritage asset adjacent to the northeast corner of the site. It is a grade II listed Victorian house on the Battledown estate, whose rear boundary directly abuts the site. The rear of this property looks west over rural setting provided by Ashley Manor and has views of the wider landscape.

The heritage concerns previously raised over refused outline applications 17/00710/OUT and 18/02171/OUT have to an extent been addressed by the current application. It is considered there are still issues with the proposal in terms of its impact on the setting of the heritage assets, which result in it causing less than substantial harm. However, on balance, it is considered it should not be objected to in heritage terms due to the amendments made to the number and location of dwellings, the measures introduced to mitigate its visual impact and the associated public benefits. The advice below will address the impact of the development proposal on each affected heritage asset identified.

Concerning Ashley Manor, as stated, historically its curtilage included planned parkland within a wider rural setting, defined by open fields and trees and tree groups. This setting has been compromised by both the school use, which has resulted in a number of unsympathetic extensions and alterations within its parkland setting, and by significant suburban development around its boundary, diminishing its wider rural setting. Despite this the parkland setting, most notable to the south, and it's the rural setting to the north, has survived.

Due to their proximity to the development site, it is considered Ashley Manor, the summerhouse to the southwest of Ashley Manor and a pair of piers at the carriage sweep to the southwest of Ashley Manor, located around the driveway sweep and uppermost section of the driveway, along with the curtilage listed icehouse located to the north of Ashley Manor, are affected by the development proposal.

It is clear from the submitted supporting documents an attempt has been made to design the proposal to minimise its impact on Ashley Manor, it's associated listed and curtilage listed structures and its setting. It achieves this by limiting built form to the north-west of the proposal site and by preserving the existing rural setting to the north of Ashley Manor and a notable 'finger' of land to the southern section of the development site. It also introduces and reinforces extensive landscaping in the form of a 30 metre tree planting band, located between the development proposal and the remaining retained rural setting, in an effort to soften its impact. Notably the visual link between the north elevation of Ashley Manor and the icehouse is preserved within the development proposal, it being retained within its rural setting, with the tree planting serving to reinforce the vista without encroaching upon it.

However, the proposal does result in a loss of part of the wider rural setting and the character of the remaining setting is changed from large open fields to one where the open space is diminished and strong bands of trees become more prominent. It is also acknowledged in the short-term views of the development proposal will be possible from Ashley Manor and its immediate setting, although long-term, when the trees are more mature, a strong tree line will be created obscuring the built form. This impact is considered to cause a measure of less than substantial harm to the significance of a designated heritage assets. This harm will need to be weighed against the public benefits of the proposal.

Charlton Manor, Ashley Road is located to the northeast of the site within the Battledown estate. Battledown was laid out in 1858 with Charlton Manor the first property to be built there in 1864. The estate grew slowly into the late 20th century the area is typically characterised by large houses set back from the road on large plots. The rear boundaries of properties on the Battledown estate, including Charlton Manor, face onto the proposal site.

Charlton Manor has been designed to take advantage of views beyond its rear garden, over both the existing fields, to the icehouse and over the longer views of the wider landscape. As previously noted, the development proposal has attempted to address the concerns over the location of built form by limiting it to the north-west of the site, enclosing it with extensive landscaping in the form of tree planting and by retaining a notable section of the rural setting.

It is again acknowledged short-term views of the development proposal would be possible, although long-term a strong tree line would be created. The impact of the truncated views across the fields as a result of the reduction of the rural setting and the resultant change of character is considered to cause a measure of less than substantial harm to the significance of a designated heritage asset. This harm will need to be weighed against the public benefits of the proposal.

Paragraph 196 of the NPPF requires when less than substantial harm is identified a weighing exercise between the harm to the significance of a designated heritage asset and the public benefits of the proposal take place.

The steps in Historic England's Historic Environment Good Practice Advice in Planning: Setting of Heritage Assets have been demonstrated within the Heritage Impact Assessment by Grover Lewis Associates dated April 2020. The conclusions regarding the impact are similar to those identified within the above comments, where less than substantial harm is identified. The public benefits of the development proposal are identified and a balancing exercise is undertaken within the Planning Statement by Framptons dated April 2020. The public benefits, which are stated as outweighing the great weight that needs to be given to the asset's conservation, are identified as the delivery of market housing and affordable housing to which substantial weight should be given, net gains to biodiversity, the benefits from long term management of mature trees and hedges, the economic benefits arising from employment during the construction period and indirect employment following occupation of the dwellings, improvements to the Ice House and benefits to St Edward's School.

Where less than substantial harm has been identified it is considered to be caused to limited aspects of the heritage significance of the affected heritage assets and their settings. The proposal has been significantly amended since the previous proposals to address the reasons for refusal. Notable is the decrease in the number and location of dwellings, and the proposed extensive landscaping measures to reduce and mitigate the visual impact of the development proposal on the heritage assets and their settings. Cumulatively these measures, and the acceptance of the public benefits of the proposal, are considered to result in a proposal that, on balance, should not be objected to in heritage terms.

To accord with Paragraph 196 of the NPPF the case officer will need to carry out a separate exercise to weigh the public benefits of the proposal against the great weight that needs to be given to the conservation of the affected heritage assets.

Tree Officer

26th May 2020

The CBC Tree Section does not object to this application.

Whilst the nature of the part of the site proposed to be built upon will change forever and trees are to be removed as a part of the development process, it is proposed to retain most significant trees as well as trees protected by a Tree Preservation Order. There is also a proposal to plant what is planned to become a significant belt of trees to act as a buffer between the school and the proposed development as well as plant many other trees within this site.

All of the high quality category 'A' trees (as per BS5837 (2012)) within the site are shown as being retained and indeed only a 14 meter high ash and a similar sized sycamore are shown as being part of removal plans of 'moderate' or category 'B' trees leaving an overall 90% of total category B tree stock. There are trees of lesser 'low quality' 'C' grade trees to be removed. Such trees have been classified because they are unremarkable, are in

impaired condition or have a primary 'collective value'. Experience has shown on active development sites elsewhere that whilst trees are shown as being retained, situations can arise where trees previously marked for retention have to be removed (for whatever reason). However in this situation, a combination of a particularly robust described tree protection plan combined with arboricultural supervision at appropriate sensitive junctures as well as building development proposals generally being situated well away from trees, it is anticipated that such occasional unplanned collateral damage will be limited. However, much of the success of the development of the site will rely on the 'buy in' by the site supervisor and other site employees during the course of construction. To address this, procedures have been recommended within the submitted tree protection details so that not only site management but also all site operatives will be aware of the importance of trees to this site and the risks involved with non-compliance to all tree protection measures.

Whilst the planting mitigation strategy appears generous, it will take many years (decades) before maturity. However apart from some low quality boundary and mid site hedge self-sown trees, there are very few existing new trees currently succeeding into maturity. This may be as a result of wild deer or other animals eating/destroying all new growth. Proposed landscape strategy includes deer-proof fencing which must be maintained if such native tree planting is to succeed. Much of the area within the site is to be used by St Edward's School in the future and the tranquil nature of this south eastern area should remain. It appears as though this area is to be left undeveloped. This would be a good location to plant new potentially very large 'landmark' trees for the future. It is noted that there are several such trees close to the school-Sequoia, pine, beech etc. It is strongly recommended that similar trees are planted here for the future benefit of the school as well as landmarks for the proposed nearby residents. Please could planting plans be adjusted accordingly.

The majority of existing successfully established new trees are ash. Sadly they have a very uncertain future with the prospects of ash die-back likely to kill most ash trees. Any planning permission to be granted must include details of tree planting pit design for all large trees to be planted, species, size, location, root type, maintenance and watering regime etc to be submitted and agreed. Similarly, all hedgerow and woodland planting as well as succinct details of veteran tree 'buffer' planting must be submitted and agreed prior to the commencement of any on site works. Please note that the nature of the soil in this area is clay and that it is important the clay tolerant species are planted so as to minimise tree establishment difficulty.

The heads of terms for the landscape management plan are acceptable and such a detailed 10 year management plan should be conditioned as a part of any Reserve Matters. The hedge bisecting the site which is chiefly comprised of ash is likely to become somewhat thread-bare if/when the anticipated ash dieback kills such existing ash trees. The retention of the hedge and new planting briefly discussed as not being for amenity and as such selective planting will include deterrent planting (ie spiny/prickly) species. Whatever is planted, it is considered likely that children will find access and begin to play within this hedge line. Consequently it is likely that parts of it may suffer-however such outdoor play is a part of childhood in such a peri-urban situation and it is unrealistic to consider that the hedge line and growth within it will remain completely undisturbed. However the deterrent planting and proposed knee rails around and under the drip line of veteran trees must be successful. Such trees have an increased heritage and ecological value and their continued survival and prosperity is essential as they continue to mature. Succinct details of such deterrent tree and shrub planting must be submitted as a part of Reserve Matters. Such details must be assessed by CBC Trees and Landscape Design officers prior to discharge.

Tree VT3028 is especially vulnerable to damage and as such it is recommended that a permanent barrier preventing such access is erected around the tree. Such a barrier (metal fence) should not be possible to be climbed over. This will 'frame' the tree highlighting its importance to adjacent householders and users of the open space. Obviously, access

should be possible with padlock and key when absolutely necessary. Such a an appropriate and tasteful metal fence will make it's long term retention more certain.

Again the 'buy-in' by any new residents and owners of the soft landscaping within this site is essential if the overall landscape led design of the site is to succeed. Such activities to be described within a management plan will not likely be cheap to afford by residents (especially as it is noted that there are to be several 'affordable housing' plots). Nevertheless such a 'buy-in' is critical if the site is to successfully retain it's current primary natural features (the veteran trees) as well as the proposed new tree planting. The possibility of covenants enforcing such landscape features on owners should be explored. Similarly Retention of existing and proposed hedgerow' planning conditions should be issued along with any permission to be granted.

All tree planting near to proposed dwellings must be sympathetic in terms of proposed tree size (in maturity) and species. It is unrealistic the consider that new occupants will accept living adjacent to inappropriate trees (taking into account overall future size, tree 'litter', shade, propensity to shed limbs and branches, leaf, fruit and flower drop annually etc) and as such tree planting regimes must take account of this when planting.

The relationship between new properties and such existing retained veteran trees as well as new planting must be harmonious in terms of structural compatibility as well. The site appears to be comprised chiefly of shrinkable clay soil. It is imperative that new dwellings/structures' foundations are constructed in such a manner as to take account of this soil and not suffer from subsidence related damage as a result of tree root water extraction. Such successful subsidence claims inevitably lead to demands for tree removal or heavy pruning (removing much of the amenity of the trees) so as to reduce water demand. Such a situation must not arise in the first instance. Piled foundation structures are mentioned in the Tree Protection Plan but detailed foundation design which takes account of current, and future water demand must be submitted as a part of Reserve Matters.

The proposed 'no-dig' solution to parking adjacent to tree T3015 detailed within the Tree protection Plan is necessary and should be included in Reserve Matters. Drainage connection to the south of the site must not enter into the Root Protection Area of any tree or thrust bore drainage techniques must be a minimum 1 meter below the soil horizon so as to minimise damage to existing trees-all as detailed in the FLAC Tree Protection Plan of 17th April 2020.

Provision for pedestrian and vehicle access into the proposed open spaces is essential so as to facilitate maintenance to the meadow as well as trees. Details of how such access is facilitated should be submitted and agreed.

GCC Highways Planning Liaison Officer

1st July 2020

See **Appendix 3**

GCC Local Flood Authority (LLFA)

6th May 2020

Information provided with this application, in the document C21505 Oakhurst Rise, Charlton Kings / FRA Rev M April 2020, adequately describes a feasible strategy for the management of surface water on and from the development site.

The strategy described will require further detail before development commences including a description of the maintenance strategy during and following construction for the lifetime of the development and a schedule for the implementation of the drainage scheme relative to the rest of the development.

Should permission be granted for this development it should be conditioned as follows:

Condition:

No building works hereby permitted shall be commenced until surface water drainage works have been implemented in accordance with details that have been submitted to and approved in writing by the local planning authority. The information submitted shall be in accordance with the principles set out in the approved drainage strategy. Before these details are submitted an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system in accordance with the principles set out in The SuDS Manual, CIRIA C753 (or any subsequent version), and the results of the assessment provided to

- i. provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
- ii. include a timetable for its implementation; and
- iii. provide a the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall include a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

Reason:

To ensure that the development is provided with a satisfactory means of drainage as well as to reduce the risk of creating or exacerbating a flooding problem and to minimise the risk of pollution for the lifetime of the development.

NOTE 1 :The Lead Local Flood Authority (LLFA) will give consideration to how the proposed sustainable drainage system can incorporate measures to help protect water quality, however pollution control is the responsibility of the Environment Agency

NOTE 2 : Future management of Sustainable Drainage Systems is a matter that will be dealt with by the Local Planning Authority and has not, therefore, been considered by the LLFA.

NOTE 3: Any revised documentation will only be considered by the LLFA when resubmitted through suds@gloucestershire.gov.uk e-mail address. Please quote the planning application number in the subject field.

Severn Trent Water Ltd

5th May 2020

Thank you for the opportunity to comment on this planning application. Please find our response noted below:

With Reference to the above planning application the company's observations regarding sewerage are as follows.

I can confirm that we have no objections to the proposals subject to the inclusion of the following condition:

- o The development hereby permitted should not commence until drainage plans for the disposal of foul and surface water flows have been submitted to and approved by the Local Planning Authority, and
- o The scheme shall be implemented in accordance with the approved details before the development is first brought into use. This is to ensure that the development is provided with a satisfactory means of drainage as well as to prevent or to avoid exacerbating any flooding issues and to minimise the risk of pollution.

Charlton Kings Friends

8th June 2020

See **Appendix 4**

29th July 2020

Review of Submitted Ecological Appraisal on behalf of CK Friends

See **Appendix 5**

Sport England

1st May 2020

Thank you for consulting Sport England on the above application.

The proposed development does not fall within either our statutory remit (Statutory Instrument 2015/595), or non-statutory remit (National Planning Policy Guidance (PPG) Par. 003 Ref. ID: 37-003-20140306), therefore Sport England has not provided a detailed response in this case, but would wish to give the following advice to aid the assessment of this application.

General guidance and advice can however be found on our website:

https://www.sportengland.org/how-we-can-help/facilities-and-planning/planning-for-sport#planning_applications

If the proposal involves the loss of any sports facility then full consideration should be given to whether the proposal meets Par. 97 of National Planning Policy Framework (NPPF), link below, is in accordance with local policies to protect social infrastructure and any approved Playing Pitch Strategy or Built Sports Facility Strategy that the local authority has in place.

If the proposal involves the provision of a new sports facility, then consideration should be given to the recommendations and priorities set out in any approved Playing Pitch Strategy or Built Sports Facility Strategy that the local authority may have in place. In addition, to ensure they are fit for purpose, such facilities should be designed in accordance with Sport England, or the relevant National Governing Body, design guidance notes:

<http://sportengland.org/facilities-planning/tools-guidance/design-and-cost-guidance/>

If the proposal involves the provision of additional housing (then it will generate additional demand for sport. If existing sports facilities do not have the capacity to absorb the additional demand, then new and/or improved sports facilities should be secured and delivered in accordance with any approved local policy for social infrastructure, and priorities set out in any Playing Pitch Strategy or Built Sports Facility Strategy that the local authority has in place.

In line with the Government's NPPF (including Section 8) and PPG (Health and wellbeing section), consideration should also be given to how any new development, especially for

new housing, will provide opportunities for people to lead healthy lifestyles and create healthy communities. Sport England's Active Design guidance can be used to help with this when developing or assessing a proposal. Active Design provides ten principles to help ensure the design and layout of development encourages and promotes participation in sport and physical activity.

NPPF Section 8: <https://www.gov.uk/guidance/national-planning-policy-framework/8-promoting-healthy-communities>

PPG Health and wellbeing section: <https://www.gov.uk/guidance/health-and-wellbeing>

Sport England's Active Design Guidance: <https://www.sportengland.org/how-we-can-help/facilities-and-planning/design-and-cost-guidance/active-design>

Please note: this response relates to Sport England's planning function only. It is not associated with our funding role or any grant application/award that may relate to the site.

Historic England

13th May 2020

Thank you for your letter of 1st May 2020 regarding the above application for planning permission. On the basis of the information available to date, we offer the following advice to assist your authority in determining the application.

Summary

We consider the open green space of the application site to contribute significantly to the setting of the Grade II* listed Ashley Manor. Historic England objects to the proposed development and considers the quantum, location and screening of the development would result in harm to heritage significance, as defined by its setting.

Historic England Advice

While we have rehearsed the significance of Ashley Manor and its setting at the time of the 2017 and 2018 applications, we consider it appropriate, as a reminder, to repeat our own assessment of those aspects of setting that contribute to heritage significance.

The villa at St Edwards School, known most recently as Ashley Manor, was built for Nathaniel Hartland (the single most important lender of money to builders in the Pittville development in Cheltenham). Its list description describes it as 'One of the finest villas in the Cheltenham area, its internal plasterwork is a particular feature for its diversity, depth and quality of composition.' The original approach to the house is from London Road to the south; the sinuous tree-lined drive remains largely unaltered. The Grade II listed boundary walls and gate piers (marking the entrance from London Road), and further into the grounds, the Grade II summerhouse and drive piers to the surviving carriage sweep are all remnants of this high-status, grandiose villa-house ensconced within its generous parkland setting. Indeed, the topography of the site is significant; the land rises markedly from south to north, which would have been a conscious motive for siting this 'villa' style dwelling overlooking the town. This 19th century revisiting of ancient Classical-inspired villas was heavily influenced by Andrea Palladio's work of the 16th century. Palladio's villa suburbana (country houses purely for residential or leisure as opposed to agriculture), in particular the Villa Rotunda, gave rise to a vast tradition in villa architecture; these formative dwellings were conceived with a close relationship to their location. Of Villa Rotunda, Palladio wrote 'the site is as pleasant and delightful as can be found; because it is upon a small hill...it is encompassed by the most pleasant risings...and therefore...enjoys the most beautiful views from all sides'. The building rises out of the landscape and so does Ashley Manor in this very nature. So, whilst the principal elevation faces southwards, the siting of this villa, within its extensive, rising grounds is of, arguably, equal significance. Ashley Manor is

designated as Grade II*, and as such is in the top 8% of listed buildings. Therefore, greater weight should be given to its conservation. The National Planning Policy Framework (NPPF) defines 'conservation' as 'the process of maintaining and managing change to a heritage asset in a way that sustains and, where appropriate, enhances its significance'. We acknowledge that significant modern additions (large school-related buildings, as well as landscape features such as the blue-topped playing surfaces) have eroded the historically isolated setting of Ashley Manor. Notwithstanding, the house (and associated school buildings) remains positioned within the extent of its historical grounds and the application site forms a key green buffer between the villa and later development to the north. The application site is clearly associated, historically, with the villa and that grounds of this extent would be expected with a high-status property.

Following the refusal of applications in 2017 and 2018 for 90 and 69 units respectively, the revised outline application proposes a further reduction in dwelling numbers to 43 units on the site north of Ashley Manor. The area proposed for development is now pushed towards north-western corner of the site and would include a wide planted screen to the south of the proposed built development. This represents a less intensive form of development of the site than the previously schemes. However, we still consider that the severance of the setting of Ashley Manor and the encroachment of development and associated landscaping towards the Grade II* building is harmful and an unacceptable quantum and form of development.

The most recent refusal (18/02171/OUT) was dismissed at appeal during the period of examination of the Cheltenham Plan, with particular reference to allocation site HD4 (the application site). During inquiry, the Examination Inspector issued post- Hearing advice requiring an amendment to the development boundary in order to safeguard the setting of listed buildings. However, at this time, the Examination Inspector had not agreed the Main Modification for public consultation and the appeal against the refusal of the 2028 application was determined on that basis.

When considering the Planning Inspector's comments in the appeal decision in 2018, the importance of the application site to the setting of the Grade II* building was reached by taking a range of viewpoints, including those from principal rooms in Ashley Manor. The Inspector stated that there is 'an historic and visual association between the appeal site and Ashley Manor and a strong visual interrelationship between the site and Charlton Manor. In terms of the relevant guidance to which I refer above, I consider that the appeal site, with the Ice House it encompasses, contributes importantly to the historic and current visual setting of both these listed buildings, as designated heritage assets..... Moreover, the site, rising to the north, provides a green backdrop to the Manor in distant views (Viewpoint 1 in the Landscape and Visual Assessment.' This enforces our continued view that it is the entire application site which makes an important contribution to the setting of the Grade II* building and not just the areas closest to it.

In terms of proposed tree planting as means to screen the development and mitigate the visual impact, the Appeal Decision makes comment on the proposed screening along the southern boundary to the site. The Inspector comments that 'by avoiding built development in the southernmost part of the site, the amended layout mitigates to some extent the effect of the proposed development on the setting of the westfacing, former Ashley Manor House and its surrounding associated buildings and carriage drive. However, the proposed introduction of new landscape planting, screening that boundary, would obstruct the relationship of the Manor to this part of its setting.' The revised application has removed the new planting shown along the northern side of this boundary on the dismissed scheme.

However, a significant tree belt is proposed within a few metres of the boundary which would effectively divorce the visual connection between the carriageway approach to the west elevation of Ashley Manor and its open, green setting beyond. This impact may be demonstrated by some additional analysis of the view presented in Plate 7 (in addition to

others) in the Heritage Impact Assessment. We remain very concerned over the visual severance of the open land to the north of Ashley Manor.

We understand that subsequent to the Cheltenham Local Plan Inquiry, the Examination Inspector's report of 17th March 2020 approves the Main Modification for HD4: A minimum of 25 dwellings, subject to masterplanning (in accordance with Policy SD4 of the JCS) which demonstrates that development can be achieved whilst accommodating: A layout and form of development that respects the character, significance and setting of heritage assets that may be affected by the development. We understand that following the Inspector's Report, the council have yet to formally adopt the Cheltenham Plan at this time. While we acknowledge the emerging housing allocation for this site, it must respect the setting of heritage assets. We do not consider that the current proposals achieve an acceptable level of respect to the setting of heritage assets. We therefore advise that significant adjustments are made to demonstrate how allocation HD4 can be delivered in a way that the setting is not harmed to this extent.

Central to our consultation advice is the requirement of the Planning (Listed Buildings and Conservation Areas) Act 1990 in Section 66(1) for the local authority to "have special regard to the desirability of preserving the building or its setting or any features of architectural or historic interest which it possesses". When considering the current proposals, in line with Para 189 of the NPPF, the significance of the asset's setting requires consideration. Para 193 states that in considering the impact of proposed development on significance great weight should be given to the asset's conservation and that the more important the asset the greater the weight should be.

Para 194 goes on to say that clear and convincing justification is needed if there is loss or harm. When considering development that has been identified to affect setting, Historic England's guidance (Historic Environment Good Practice Advice in Planning - Note 3. The Setting of Heritage Assets) should be referred to.

Recommendation

Historic England objects to the application on heritage grounds. We consider that the application does not meet the requirements of the NPPF, in particular paragraph numbers 193 and 194. .

In determining this application you should bear in mind the statutory duty of section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess and section 38(6) of the Planning and Compulsory Purchase Act 2004 to determine planning applications in accordance with the development plan unless material considerations indicate otherwise. Your authority should take these representations into account in determining the application. If you propose to determine the application in its current form, please inform us of the date of the committee and send us a copy of your report at the earliest opportunity.

Battledown Trustees

6th June 2020

On 1st May 2020, you kindly advised that you would be pleased to receive comments concerning the above planning application from the Trustees of the Battledown Estate, having designated us as 'Consultees' on the matter.

This application is yet another attempt to build over a large proportion of the exceptional and irreplaceable meadow-land accessed via the top of Oakhurst Rise, which would bring a multitude of problems and disadvantages to Charlton Kings and the wider Cheltenham

community. The Land directly adjoins the Battledown Estate's southern boundary and so any development thereupon would directly affect a number of properties on the Estate. This application may well be for approximately one third fewer homes than the previous application but the arguments for refusing permission for the scheme remain for the greater part the same as those put forward at the time of the August 2017 application (rejected), the October 2018 scheme (rejected) and the appeal inquiry conducted by an Inspector from HM Planning Inspectorate in August 2019 (dismissed).

From the voluminous documentation produced relating to the previous applications and the already considerable documentation submitted for this new application, it is abundantly clear that none of the grounds on which the Trustees previously objected have been adequately addressed. Inaccurate statements contained within the documentation submitted for this application have already been highlighted by other professional and concerned consultees. Nevertheless, for good order's sake, we repeat the Trustees' observations and primary objections to the proposed development herewith :

a) Considerable loss of privacy would be suffered by a number of Estate properties and residents, owing to the proposed positioning and height of the dwellings on the Land immediately adjoining the Estate's southern boundary.

b) There would be noticeable degradation to the environment of the Estate owing to the significant increase in 'noise pollution' which would be generated by the proposed 43 dwellings, once completed.

c) There would be a material and dangerous increase in the risk of flooding for a number of Estate properties located in Birchley and Ashley Roads. In 2007, several Estate houses including some adjoining the proposed development Land, were badly flooded; this situation can only be exacerbated by the proposal to cover such a significant proportion of this Land with concrete, tarmac and buildings which would prejudice the delicate balance of springs, pools and flood-ameliorating water absorption on this land.

d) In common with many other residents in this area of Charlton Kings, all residents on the Battledown Estate would be affected by the material increase in traffic which would inevitably result from the building of these proposed 43 homes, as such a significant increase in traffic would affect many roads in the area, including Sixways Junction, Hales Road, London Road, King Alfred Way and Athelney Way, as well as those narrow roads immediately adjacent to the proposed development site --- and the 'knock-on' effects would severely affect and inconvenience many thousands of local residents in Charlton Kings and the eastern part of Cheltenham. In a nutshell, the local infrastructure and road system is already choked at peak periods and is simply inadequate for the existing traffic (as already acknowledged by Gloucestershire Highways), let alone the critical increase in traffic consequent upon the construction of these additional homes.

e) Furthermore, this proposed development would increase the dangers for both cyclists and pedestrians. Quite apart from the unacceptable gradients and road widths on the residential streets which are designated as Access to the Land, one should also appreciate that the application necessitates severe street gradients within the proposed development site itself. Nowhere in the Applicant's documentation is this defect highlighted as it should be and so we believe this important detrimental aspect, compromising safety, should once again be brought to the attention of the Planning Committee members. Importantly, it should be clear to both CBC Planning Officers and Planning Committee members, that this site and the access thereto is totally unsuitable for wheelchair users and those with some other physical disabilities; this would inevitably mean complete reliance on motor vehicles for any such putative residents.

f) We also object on the grounds that the views of this area of Battledown as seen from the nearby AONB will be permanently blighted, in contravention of national planning regulations

and, in this context, we support the strong objections made by Historic England on similar grounds.

g) It is also worth noting the remarks of HM Planning Inspector written at the time he made his decision to reject the Applicant's Appeal in September 2019, viz. :

83. Be that as it may, the presence of the new built development would still be visible from Charlton Manor and prominent in views available from its important west-facing windows. Distant views would be partly obstructed and, furthermore, the Ice House would be obscured by the intervening dwellings on plots 31-34. The appreciation of the Manor in views from within its setting to the west would be compromised, including for residents and members of the public living in or visiting the proposed dwellings.

84. As in the case of Ashley Manor, I consider that these effects on the visual relationship between the Grade II Charlton Manor and the appeal site would have a very significant adverse impact also upon the setting of this Listed Building. Having regard to the statutory duty under s66 of the PLBCA, the effect of the development on the setting of Charlton Manor also would be contrary to Policy CP3 of the CBLP and SD8 and SD10 of the JCS and result in less than substantial harm to the designated asset in terms of Framework paragraph 176.

This new proposal for development has moved housing back by some thirty metres and has increased screening but it is still visible and prominent in views from the important west-facing windows at Charlton Manor, a property located within the Battledown Estate.

h) From the very important perspective of Amenity, we object owing to the permanent and irretrievable degradation of a valuable outdoor sporting facility used regularly by children from all over Cheltenham and, indeed, Gloucestershire, together with the unacceptable additional strain that such a development would place on local GP surgeries and school places -- neither of which are able to meet the demand consequential upon such a noteworthy increase in local housing.

There are many reasons to approve different housing development schemes; however, the Trustees believe that it would be misguided for any Planning Committee to approve a scheme such as this proposal, which would do irreparable harm to the local community and blight the environment of the existing electorate.

A significant majority of Borough Councillors on the Planning Committee have rejected previous applications for building over this meadow-land for very good reasons. This latest application singularly fails to address in a convincing manner many of the grounds for refusing previous applications cited by both Borough Councillors and the Planning Inspectorate and, even worse, perpetuates much of the inaccurate information submitted at the time of those previous applications.

Exactly the same multitude of planning considerations apply to this new application and therefore the Trustees anticipate and request that the same judgements will be made once again, to the clear benefit of the existing local communities in both Charlton Kings and the wider borough of Cheltenham.

Natural England

8th June 2020

Thank you for your consultation on the above dated 01 May 2020 which was received by Natural England on the same day. We are sorry for the delay replying.

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

SUMMARY OF NATURAL ENGLAND'S ADVICE

NO OBJECTION - SUBJECT TO APPROPRIATE MITIGATION BEING SECURED

We consider that without appropriate mitigation the application would:

- have an adverse effect on the integrity of the Cotswold Beechwoods Special Area of Conservation <https://designatedsites.naturalengland.org.uk/>
- damage or destroy the interest features for which the Cotswolds and Commons and Beechwoods Site of Special Scientific Interest has been notified.

In order to mitigate these adverse effects and make the development acceptable, the following mitigation options should be secured:

Mitigation as set out in the Council's Habitats Regulations Assessment (HRA) Appropriate Assessment must be secured.

We advise that an appropriate planning condition or obligation is attached to any planning permission to secure these measures.

Natural England's further advice on designated sites/landscapes and advice on other natural environment issues is set out below.

Further advice on mitigation

Natural England concludes from the submitted ecological appraisal and comments from the County Ecologist that the Council intends to rely on the Habitats Regulations Assessment (Including stage 2 - Appropriate Assessment) produced in respect of a previous planning application for the application site - reference 18/02171/OUT. A copy of the HRA from this previous application should be attached to the submitted documents posted on the Council's website.

Natural England notes that your authority, as competent authority, has undertaken an appropriate assessment of the proposal in accordance with Regulation 63 of the Conservation of Species and Habitats Regulations 2017 (as amended). Natural England is a statutory consultee on the appropriate assessment stage of the Habitats Regulations Assessment process.

Your appropriate assessment concludes that your authority is able to ascertain that the proposal will not result in adverse effects on the integrity of any of the sites in question. Having considered the assessment, and the measures proposed to mitigate for all identified adverse effects that could potentially occur as a result of the proposal, Natural England advises that we concur with the assessment conclusions, providing that all mitigation measures are appropriately secured in any permission given.

The Homeowner Information Pack should present information describing informal recreation opportunities in the following sequence:

- Public space on your doorstep
- A short drive by car or bus
- Further afield – e.g. The Forest of Dean, the Severn Estuary

The proposed HIP leaflet for Hunts Grove, Quedgeley (produced by Crest Nicholson. Gloucester City Council and FPCR) provides a useful example.

Sites of Special Scientific Interest (SSSI)

SSSIs with public access also exist closer to the application site than the Cotswold Beechwoods SAC. These include:

- Leckhampton Hill and Charlton Kings Common
- Crickley Hill & Barrow Wake
- Cotswold Commons and Beechwoods

In addition, Cleeve Common lies 4.0Km to the north-west.

Education and awareness raising measures designed to address the recreation theme in relation to the European Site described above should be designed to help avoid disturbance to wildlife and encourage awareness of these sites' sensitivities. Provided this holistic approach is taken we do not anticipate adverse effects on these SSSI's notified features.

Please note that if your authority is minded to grant planning permission contrary to the advice in this letter, you are required under Section 28I (6) of the Wildlife and Countryside Act 1981 (as amended) to notify Natural England of the permission, the terms on which it is proposed to grant it and how, if at all, your authority has taken account of Natural England's advice. You must also allow a further period of 21 days before the operation can commence.

Other advice

Green infrastructure

Multi-functional green infrastructure can perform a range of functions including improved flood risk management, provision of accessible green space, climate change adaptation and biodiversity enhancement. Natural England would encourage the incorporation of GI into this development.

Adopted Joint Core Strategy policy INF3 and the JCS Councils' Green Infrastructure Strategy 2014 refer. Emerging Cheltenham Plan policy GI1 may also be relevant.

Consideration should be given to what opportunities exist to integrate green infrastructure delivery with measures that serve to offer alternative walking, running and cycling routes for new residents. Such measures may form part of a package that positively manages additional recreation pressure on local resources, as well as the SSSIs described above..

Further general advice on consideration of protected species and other natural environment issues is provided at Annex A.

Should the developer wish to discuss the detail of measures to mitigate the effects described above with Natural England, we recommend that they seek advice through our Discretionary Advice Service.

Cheltenham Flood And Drainage Panel

26th May 2020

See **Appendix 6**

Environmental Health

13th May 2020

After considering the documentation submitted as part of this proposal there are only very minor issues of concern from an Environmental Health perspective as per the previous revisions of this application. As such I would recommend approval subject to the following condition being attached to any approved permission:

'No development shall take place until a site specific Construction Environmental Management Plan has been submitted to and been approved in writing by the Council. The plan must demonstrate the adoption and use of the best practicable means to reduce the effects of noise, vibration, dust and site lighting. The plan should include, but not be limited to:

- Procedures for maintaining good public relations including complaint management, public consultation and liaison.
- Arrangements for liaison with the Council's Pollution Control Team.
- All works and ancillary operations which are audible at the site boundary, or at such other place as may be agreed with the Local Planning Authority, shall be carried out only between the following hours: 08 00 Hours and 18 00 Hours on Mondays to Fridays and 08 00 and 13 00 Hours on Saturdays and; at no time on Sundays and Bank Holidays.
- Deliveries to and removal of plant, equipment, machinery and waste from the site must only take place within the permitted hours detailed above.
- Mitigation measures as defined in BS 5528: Parts 1 and 2 : 2009 Noise and Vibration Control on Construction and Open Sites shall be used to minimise noise disturbance from construction works.
- Procedures for emergency deviation of the agreed working hours.
- Method of prevention of mud being carried onto highway.
- Waste and material storage.
- Control measures for dust and other air-borne pollutants. This must also take into account the need to protect any local resident who may have a particular susceptibility to air-borne pollutants.
- Measures for controlling the use of site lighting whether required for safe working or for security purposes.

Gloucestershire Badger Trust

27th May 2020

See **Appendix 7**

Section 106 Officer

5th June 2020

See **Appendix 8**

The Woodland Trust

15th June 2020

See **Appendix 9**

County Archaeology

7th May 2020

Thank you for consulting me concerning the above planning application. I wish to make the following observations regarding the archaeological implications of this scheme.

I advise that in connection with a previous development proposal on this site a programme of archaeological desk-based assessment, geophysical survey and trial-trenching was undertaken. Reports on the results of these investigations were submitted in support of application 18/02171/OUT.

No significant archaeological remains were observed during the investigations, and on that evidence it is my view that the application site has low potential to contain such remains.

In addition, I note from the current application details that the ice-house will be preserved within open ground, and will remain in situ and undisturbed should the development proceed.

Therefore, I confirm that in my view the proposed development will have no impact on archaeological remains, and I recommend that no further archaeological investigation or recording should be required in connection with this scheme.

Minerals And Waste Policy Gloucestershire

7th May 2020

All of the details set out within this section are made by officers on behalf of Gloucestershire County Council in its capacity as the Mineral and Waste Planning Authority (MWPA): -

All major planning applications (10 or more dwellings, residential sites of 0.5ha or more and other development in excess of 1,000m² or over 1ha) should be accompanied by an appropriately detailed Waste Minimisation Statement (WMS).

The production of a WMS is a specific requirement of the development plan for Gloucestershire as set out under WCS Core Policy 02 - Waste Reduction. It is needed to show how waste arising during the demolition (including site preparation), construction and occupation of development will be minimised and managed, and how recycling during the occupational life of the development will be provided for.

Recommended action

Not engaging or providing insufficient information in respect of waste minimisation matters could put at risk the acceptability of proposed development. The failure to address waste minimisation may be a reasonable ground for a decision maker to refuse planning permission. Therefore a Waste Minimisation Statement should be requested.

Conditions recommended by officers on behalf of the MWPA (if advised)

Condition:

No development shall commence until a detailed Site Waste Management Plan has been submitted to and approved in writing by the local planning authority. The Plan shall identify the main waste materials expected to be generated by the development during the construction phase and set out measures for dealing with such materials so as to minimise overall waste and to maximise re-use, recycling and recovery in line with the waste hierarchy. The detailed Site Waste Management Plan must include: -

- i) Information on the type and amount of waste likely to be generated prior to and during the construction phase;
- ii) Details of the practical arrangements for managing waste generated during construction in accordance with the principles of waste minimisation; and
- iii) Details of the measures for ensuring the delivery of waste minimisation during the construction phase.

The Site Waste Management Plan shall be fully implemented as approved unless the local planning authority gives prior written permission for any variation.

Reason: To ensure the effective implementation of waste minimisation in accordance with Gloucestershire Waste Core Strategy: Core Policy WCS2 - Waste Reduction.

County Ecologist

2nd June 2020

Original comments provided – updated on 2nd September 2020 - See **Appendix 10**

8th September 2020 - New Ecological Information

You have asked me to comment on new ecological information recently received by the Local Planning Authority in connection with application 20/00683/OUT. The new information is as follows:

- Bioscan letter to you dated 29/07/2020
- Bioscan prepared 'Gloucestershire Key* Wildlife Site Assessment Sheet'
- Aspect Ecology 'Botanical Survey 2020, Technical Briefing Note TN09: Results of Botanical and NVC Survey' dated 05/08/2020
- Aspect Ecology letter to you dated 10/08/2020
- Gloucestershire Wildlife Trust letter to you, Aspect Ecology and myself dated 07/08/2020 • Gloucestershire Wildlife Trust letter CBC Planning dated 01/09/2020

These documents are of a technical nature and I have considered these in detail. I have also had the opportunity to visit the site on 06/08/2020. I am familiar with Defra's draft Biodiversity Net Gain metric 2.0 and its use in a number of recent planning matters. I also have experience of the selection process for Local Wildlife Sites (I was a member of the Selection Panel when it was last active under the formerly named 'Key' Wildlife Site system).

I have come to the following conclusions.

1. The site was much as I had expected it to be and my advice to you in my memo dated 01/06/2020 does not require revising.
2. After reading all the recent submissions and visiting the site I am inclined to agree more with Aspect Ecology's assessments and assertions than those of Bioscan. Defra's Biodiversity Net Gain Metric 2.0 is not the finished product and has a number of shortcomings. The metric is only a rough guide and is no substitute for full assessment by

professional ecologists. Unfortunately Bioscan's use of the metric includes some errors and their conclusions undervalue the merits of allowing the development.

3. In my opinion there was no convincing ecological case for the meadow to be designated a new Local Wildlife Site. The meadow is poor quality MG1 grassland (Mesotrophic Grassland Type 1 of the National Vegetation Classification) and of low conservation value.
4. The Local Wildlife Site Selection Panel recent decision to designate the site on the basis of its Value for Learning which is most relevant given the location of the adjacent school. A Local Wildlife Site designation does not preclude appropriate development and the Wildlife Trust letters reflects this point. The development provides an opportunity to secure the long-term conservation and enhancement of local biodiversity. A large area of the site would become better managed and provide an improved educational resource for the adjoining school.
5. Compared to previous development schemes for this site (17/00710/OUT & 18/02171/OUT) there will be fewer units and greater retention of habitats and features. There is to be extensive tree/shrub planting, additional new habitat features and improved meadow management. Overall a biodiversity net gain can be secured with appropriate conditions and planning obligations in place as I have previously advised.
6. The development if consented would be compliant with NPPF paragraphs 8, 170, 175 or 180. The proposal avoids significant harm to biodiversity and protects veteran trees. It makes effective use of the land and also provides a mechanism to secure a better more resilient future for biodiversity. Biodiversity improvements have been designed into and around the development. Given policy HD4 of the newly adopted plan [see below], the type and scale of the development appears to me to be appropriate for the location.
7. The development if consented would be compliant with JCS policy SD9. The development provides appropriate mitigation for some unavoidable effects but importantly positively conserves and enhances biodiversity overall which are relevant to the location.
8. The development if consented would be compliant with policy HD4 in the recently adopted Cheltenham Local Plan. The development provides for long-term protection of mature trees and hedgerows on site, better commuting corridors and foraging areas for bats, and is an opportunity to enhance biodiversity overall.

*Renamed Local Wildlife Sites in January 2019

Contaminated Land Officer

20th May 2020

No adverse comments.

Ancient Trees Forum

15th June 2020

The Ancient Tree Forum (ATF) is a charity which has pioneered the conservation of ancient and veteran trees and their associated habitats such as ancient wood pasture and parkland. The ATF seeks to secure the long-term future of ancient and veteran trees and associated habitats through advocacy of no further avoidable loss, good management, the

development of a succession of future ancient and veteran trees, and seeking to raise awareness and understanding of their value and importance.

The ATF objects to this application because the way veteran trees have been identified means that trees, which should be protected by planning policy and meet the criteria set out by the guidance (National Planning Policy Framework glossary (2018), Standing Advice (2019) and Planning Policy Guidance (2019)), have been wrongly excluded. They are a significant factor in considering this application.

We set out our rationale for identification of ancient and veteran trees in relation to NPPF in Annex 1. In line with the government guidance, it is our view that for a tree to be categorised as a veteran, it should primarily have key decay features (including branch death or hollowing) and such features should be substantial by volume (in proportion to the size of the tree), long-lasting and/or significant (in terms of quality). NPPF glossary states that a veteran tree does not need to be old enough to be ancient but does not define any specific size or age criteria to be met. However, it is our interpretation of the guidance, that for the condition of the tree (decay features of branch death or hollowing) to be judged as irreplaceable habitat, a veteran tree will usually be in either a mature or ancient life-stage owing to the time taken and complexity of the habitat to develop.

The ATF therefore interprets the guidance to mean that trees which have the appropriate key decay features and are also mature or ancient should be considered as irreplaceable habitat and are the trees to which the policy in para 175c of the NPPF applies.

We strongly disagree with the categorisation methodology used in the tree survey. The first step of the applicant's tree consultant's methodology is to eliminate trees which do not have a "very large girth" before consideration of veteran characteristics. In our view this step is not justified by NPPF or other government guidance.

It is our view that at least two trees should be re-categorised as irreplaceable veterans and protected from harm by appropriate buffer zones. They are the mature trees numbered T3010 and T3014

The Tree Survey states that T3010 is mature tree and has "Fistulina hepatica fruiting body on root buttress at ground level east. Laetiporus sulphureus on old branch loss wound at 2 metres south. Numerous habitat holes within branch structure indicating heartwood fungal decay is well progressed." Decay or hollowing evidenced by heart-rot decay fungi is a clear criterion for veteran categorisation and the applicant's tree consultant accepts this too. Although it is the view expressed in the tree survey that this tree may not survive long term, there is no indication why it is judged not to be able to survive long-term nor what time period that might be. There is no reference to life expectancy/longevity of the tree in the NPPF and therefore this should be disregarded in categorising a tree as a veteran. The extra protection that a buffer zone would provide, and should be allocated to this tree, would mitigate the possibility of deterioration resulting from development pressures - the very purpose for which it is intended. According to Standing Advice the Buffer Zone should be "at least 15 times larger than the diameter of the tree. The buffer zone should be 5m from the edge of the tree's canopy if that area is larger than 15 times the tree's diameter." Due to the proximity of this tree to proposed buildings the Buffer Zone may need to be greater than the minimum to avoid future intervention on the grounds of risk.

Tree number 3014 is recorded as OM/over-mature in the survey. It is recorded as having a stem diameter of 930mms and in the Raven assessment as 148 years old and not of an 'age or size to merit veteran descriptor'. We assume the OM label is a error. However, it is recorded as mature and having "bark wounding after historic lightning strike seen as broad tongue of bark loss from ground level south extending into upper crown structure, exposed and desiccated non-functional heartwood within the affected stem section comprises large volume dead wood Scattered dead wood and smaller distal decline." It

is quite clear from this description and images on the Ancient Tree Inventory that the trunk of this tree is hollowing and has a large volume of deadwood in the trunk. This tree definitely has substantial and long-lasting veteran characteristics which accord with Standing Advice, it is mature and therefore is a veteran tree and should be given proper protection by an appropriate Buffer Zone.

Other mature trees on site may also be veteran trees but we do not have enough information on which to confirm their status but the LPA must be assured one way or another. The Ancient Tree Inventory is a citizen science project and has not required surveyors to assess trees according to NPPF as it started in 2005 which is well before the planning policy changes in 2018. The tree records on it however are good indicators of whether trees are ancient or veteran. For example, T3015 is listed as a veteran on the Ancient Tree Inventory and the record states that it has hollowing branches - substantial enough features on such a large tree to be good veteran characteristics. In addition, the Tree Survey, provided with the application, confirms that there are "large dead limbs scattered through the crown". Dead branches are given as a key veteran tree criterion in Standing Advice. It is very likely that this mature oak is a veteran for the purposes of NPPF and therefore should be given the protection of an appropriate buffer zone.

We would strongly recommend that the trees on site are resurveyed to identify whether other veteran trees have been overlooked.

Annex 1: The Ancient Tree Forum's interpretation of the application of National Planning Policy Framework's protection measures for ancient and veteran trees.

The National Planning Policy Framework (NPPF) in England refers to ancient and veteran trees in three places:

1) in Conserving and enhancing the natural environment document, para 175c:

development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists;

2) and in Annex 2: Glossary:

Ancient or veteran tree. A tree which, because of its age, size and condition, is of exceptional biodiversity, cultural or heritage value. All ancient trees are veteran trees. Not all veteran trees are old enough to be ancient, but are old relative to other trees of the same species. Very few trees of any species reach the ancient life-stage.

Irreplaceable habitat: Habitats which would be technically very difficult (or take a very significant time) to restore, recreate or replace once destroyed, taking into account their age, uniqueness, species diversity or rarity. They include ancient woodland, ancient and veteran trees,...

In terms of applying the NPPF to a development proposal and to relevant trees, the first step must be to identify if a tree is ancient or veteran. The glossary, to be used in this context, describes three characteristics i.e. age, size and condition, which contribute to the stated values of biodiversity, cultural and heritage value of both ancient and veteran trees. There is no guidance on the parameters of age (except that veterans can be younger than ancient trees), or size or the meaning of condition.

In relation to ancient trees, the ATF considers ancient is a life-stage indicated by the chronological age of the trunk, using trunk girth only as a guide. Trees in this ancient life-

stage usually also have well-developed key veteran decay features as a consequence of ageing. It is ATF's view that all ancient trees are exceptional and irreplaceable for their cultural and heritage values, but specifically, for the application of NPPF policy 175c, they all have irreplaceable habitat.

In relation to veteran trees, the NPPF glossary only distinguishes by age those trees that 'are not old enough to be ancient, but are old relative to trees of the same species.' Planning Policy Guidance (2019 and FC & NE Standing Advice (2018) give some further guidance in relation to age (see bold below) and also condition (see underlined below):

PPG: Ancient trees are trees in the ancient stage of their life. Veteran trees may not be very old but exhibit decay features such as branch death or hollowing. Trees become ancient or veteran because of their age, size or condition. Not all of these three characteristics are needed to make a tree ancient or veteran as the characteristics will vary from species to species.

Standing Advice: A veteran tree may not be very old, but it has decay features, such as branch death and hollowing. These features contribute to its biodiversity

Both of the above documents provide examples of relevant features relating to condition i.e branch death and hollowing. But, neither these nor the NPPF glossary, give guidance or information on the amount, volume or quality of these features. In line with the available guidance, the ATF consider, that a tree to be categorised as a veteran for the application of NPPF policy 175(c) should have key decay features (including branch death or hollowing) which should be substantial by volume (in proportion to the size of the tree), long-lasting and/or significant (in terms of quality).

For a tree to have developed decay features of branch death or hollowing which could be judged to be irreplaceable habitat, it will usually be in either a mature or ancient life-stage owing to the time taken and complexity of the habitat to develop. Threshold dimensions for veteran characteristics are recommended in the Veteran Trees Initiative: Specialist Survey Method but these may not be appropriate for all species of tree, especially those of a smaller stature (Fay, N. and de Berker, N. (1997): Veteran Trees Initiative: Specialist Survey Method. English Nature, Peterborough, UK). For example, in terms of dead wood in the crown of the tree the unit of value is "each 1m length over 15cm in diameter".

According to the glossary, a veteran tree does not need to be old enough to be ancient. However, it is likely that for the condition of the tree (decay features of branch death or hollowing) to be judged as irreplaceable habitat, a veteran tree will usually be in a mature life-stage.

In conclusion

All ancient trees of whatever species or size should receive the level of protection stated in para 175c.

Mature trees, where they have the appropriate key decay features, should be considered as irreplaceable habitat and therefore veterans to which the policy in para 175c of the NPPF applies.

5 PUBLICITY AND REPRESENTATIONS

- 5.1 On receipt of the application 383 letters were sent out to individual addresses site notices were posted at the entrance to Oakhurst Rise and on London Road, near the entrance to St Edwards School and an advert was published in the Gloucestershire Echo. In response to the

publicity, and at the time of writing, 248 representations have been received, 140 of which were objecting to the scheme and 108 of which are in support.

5.2 The main objections raised in the objections include, but are not limited to:

- Impact on wildlife/protected species
- Loss of trees and hedgerow
- Impact on local road network/inadequate access/gradient
- Access to public transport is not good
- Increased risk of flooding & surface water run-off/subsidence
- Impact on local infrastructure – doctors and schools
- Lack of access to local facilities
- Size and design of dwellings
- Noise and disturbance
- Impact on air quality
- Loss of recreation/school and community use of the site
- Loss of green space
- Impact on landscape
- No need for the development
- Impact on archaeological remains
- No significant change from dismissed appeal

5.3 The comments raised in support of the scheme include, but are not limited to:

- Need for homes
- Need for affordable housing
- Within built up area of Cheltenham
- Opportunity for school
- Biodiversity net gain
- Reduction in flood risk
- Benefit to the local economy
- Complies with planning policies
- Well-designed scheme with plenty of open space

It is worth of note that a number of the letters of support for this application are from properties outside of the District.

6 OFFICER COMMENTS

6.1 Determining Issues

6.1.1 The main considerations when determining this application are considered to be the principle of developing the site for housing; impact on the historic environment; impact on trees and hedgerows; wildlife and biodiversity; access and highway safety; landscape and visual impact; drainage and flooding; design and layout; impact on neighbour amenity; affordable housing and other planning obligations.

6.2 Policy background/principle of development

6.2.1 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 states that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. This is reiterated in paragraph 47 of the NPPF which also reiterates that decisions on planning applications should be made as quickly as possible.

- 6.2.2 Paragraph 11 of the NPPF sets out a “*presumption in favour of sustainable development*” which in decision taking means:
- “(c) *approving development proposals that accord with an up-to-date development plan without delay; or*
 - (d) *Where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting planning permission unless:*
 - i. *The application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*
 - ii. *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.*
- 6.2.3 The development plan comprises a small number of saved policies of the Cheltenham Borough Local Plan Second Review 2006, the Cheltenham Plan which was adopted in July 2020 and the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011 – 2031 (JCS).
- 6.2.4 Material considerations include the National Planning Policy Framework (NPPF) and Planning Practice Guide (PPG).
- 6.2.5 Policy HD4 of the newly adopted Cheltenham Plan allocates this site for housing development. The policy outlines the following site specific requirements:
- A minimum of 25 dwellings, subject to masterplanning (in accordance with policy SD4 of the JCS) which demonstrates that the development can be achieved whilst accommodating:
 - Safe, easy and convenient pedestrian and cycle links within the site and to key centres
 - A layout and form that respects the existing urban characteristics of the vicinity
 - A layout and form of development that respects the character, significance and setting of heritage assets that may be affected by the development
 - Protection to key biodiversity assets and mature trees
 - New housing should be located away from the setting of the west elevation of Ashley Manor. There should be no development south of a straight line westwards from the rear of the northernmost school building. In addition, to provide an undeveloped buffer between the rear garden boundary of Charlton Manor and the new development a landscaping buffer should be provided for 30 metres west of the rear boundary with Charlton Manor.
 - Long term protection of mature trees and hedges
 - Any development on the site should secure improvements to the Ice House.
- 6.2.6 By virtue of this policy, the development of the application site for housing must be considered acceptable in principle.

- 6.2.7 It is acknowledged that the policy states a minimum of 25 dwellings, whereas the proposal is for 43 dwellings. There is no conflict in policy given that the number of dwellings is stated as a minimum. There is no reason why the site could not accommodate more, provided the scheme is found to be acceptable, based on the policy framework as outlined above. In section 11 of the NPPF (Making Effective Use of Land), it states that planning policies and decisions should support development that makes efficient use of land. It goes on to say that where there is an existing shortage of land for meeting identified housing needs, it is especially important that planning policies and decisions avoid homes being built at low densities and ensure that developments make optimal use of the potential of each site. Given the constraints of the site, the developable area is limited and therefore the density overall is relatively low in any event. As such in the opinion of officers the proposed number of dwellings is acceptable in principle.
- 6.2.8 Also of relevance is the fact that the Council is currently unable to demonstrate a five year housing land supply. At the last calculation the figure stood at 3.7 years. At the time of the appeal for 18/02171/OUT the figure stood at 4.6 years. As such the shortage is more acute than it was in considering the previous application. The current proposal would make a valuable contribution of 43 dwellings and this is a significant benefit of the scheme.
- 6.2.9 In the appeal decision for 18/02171/OUT the Inspector stated that at the time the emerging policy HD4 could be accorded only little weight compared with the policies of the adopted development plan. He said that whilst there was no objection in principle to residential development on the appeal site, the proposal fell to be assessed and determined primarily with respect to the adopted development plan, subject to its consistency with the National Planning Policy Framework.
- 6.2.10 The situation with respect to the development plan has clearly changed in the intervening time period with the Cheltenham Plan having now been adopted. The presumption in favour of sustainable development in the Framework for decision making means: *“approving development proposals that accord with an up-to-date development plan without delay”* and in cases whereby the local planning authority cannot demonstrate a 5 year supply of deliverable housing sites, granting permission unless either paragraph 11(d)(i) or 11(d)(ii) of the Framework as set at 6.2.2 above apply.
- 6.2.11 As mentioned at 1.9 the Inspector dismissed the appeal primarily based on the adverse impact to the significance of designated heritage assets by way of less than substantial harm. He also identified harms in relation to trees, biodiversity and access although he acknowledged that these harms would not collectively or separately have outweighed the benefits of the scheme. Whilst this report will cover all relevant considerations, these are considered to be the most crucial in determining whether previous concerns have been overcome.

6.3 Impact on the historic environment

- 6.3.1 JCS policy SD8 requires both designated and undesignated heritage assets and their settings to be conserved and enhanced as appropriate to their significant, and is consistent with paragraph 192 of the NPPF that advises that in determining planning applications, local planning authorities should take into account:
- *the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;*
 - *the positive contribution that conservation or heritage assets can make to sustainable communities including their economic vitality; and*
 - *the desirability of new development making a positive contribution to local character and distinctiveness.*

- 6.3.2 Additionally, Section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990 requires the Local Planning Authority (LPA), in considering whether to grant planning permission to have special regard to the desirability of preserving the building or its setting, or any features of special architectural or historic interest which it possesses. In this case, it is the setting of the listed buildings that must be considered.
- 6.3.3 Framework paragraph 193 gives great weight to the conservation of designated heritage assets (the more important the asset, the greater the weight should be). Paragraph 194 provides that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Further paragraphs 194 – 6 consider harm to designated heritage assets in terms of whether it would be substantial or less than substantial. Paragraph 196 provides that, where development would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.
- 6.3.4 The significance of a heritage asset is defined to include its archaeological, architectural, artistic or historic interest, derived not only from its presence but its setting, in which it is experienced. The PPG refers to the extent and importance of the setting to the visual relationship between the asset and proposed development. Views of or from an asset will play an important part. The contribution a setting makes to the significance of an asset is not dependant upon public access.
- 6.3.5 There are two listed buildings in close proximity to the application site; Charlton Manor, a grade II listed building located to the northeast of the site within the Battledown estate, and Ashely Manor, a grade II* listed villa within the school grounds to the southeast. Additionally an historic Ice House is also located within the application site itself. Whilst the site is physically separated from these listed buildings, there are clear views into the site from these heritage assets.
- 6.3.6 Policy HD4 of the Cheltenham Plan contains specific requirements with regards to heritage assets:
- **A layout and form of development that respects the character, significant and setting of heritage assets that may be affected by the development** – This will be discussed further below.
 - **Securing improvements to the Ice House.** - The current proposal would see the Icehouse situated within an area of open land, as opposed to the appeal scheme which saw it surrounded on 3 sides by road and to the south by a footpath and pond. This will ensure it remains legible as a feature within the landscape and visually linked to Ashley Manor. Specific improvements to the Icehouse are proposed including the selective clearance of scrub, whilst retaining the mature trees in order to reveal the mound more clearly. It is also proposed to provide an interpretation board providing information as to the history of the Icehouse.
 - **New housing should be located away from the setting of the west elevation of Ashley Manor. There should be no development south of a straight line westwards from the rear of the northernmost school building.** – The plans clearly indicate that this has been achieved through the current layout.
 - **Provide an undeveloped buffer between the rear garden boundary of Charlton Manor and the new development a landscaping buffer should be provided for 30 metres west of the rear boundary with Charlton Manor** – To the rear boundary of Charlton Manor there is over 65m to the nearest part of the development and over 70m to the nearest dwelling. A landscaping belt is provided along the eastern edge of the development which varies in width between 8 – 30m. This is curved to leave an

undeveloped area around the Icehouse and is approximately 30 – 90m from the rear boundary of Charlton Manor.

- 6.3.7 In the appeal decision relating to 18/02171/OUT the Inspector concluded that the harm to the settings of Ashley Manor and Charlton Manor, whilst less than substantial in terms of Framework paragraph 196, was nonetheless significant. With regards to Ashley Manor the Inspector stated that the land has a functional relationship with the manor as farmland (as opposed to managed parkland) and as the site of the Ice House. He also observed that presently direct views are available from Ashley Manor onto the currently mainly open, eastern part of the site, including the Ice House. The site, rising to the north provides a green backdrop to the Manor in distant views. With regards to Charlton Manor, views are available across the site and beyond. He therefore recognised an historic and visual association between the application site and Ashley Manor and a strong visual interrelationship between the site and Charlton Manor. The application site, including the Ice House contribute to the historic and visual settings of both these designated heritage assets.
- 6.3.8 With regards to Ashley Manor the Inspector found that proposed landscape planting on the southern boundary would obstruct the relationship of the Manor to this part of its setting. Some of the plots of the previous application(27 – 30) would have intervened prominently in views to the north from the Manor House, impeding appreciation of the Ice House and rural backdrop. He concluded that these effects on the visual relationship between the Grade II* Ashley Manor and the application site would have a very significant adverse impact upon the setting of the Listed Building.
- 6.3.9 With regards to Charlton Manor the main effects identified were the partial obscuration of distant views and the obscuration of the Ice House by intervening dwellings (plots 31 – 34 of the previous application). The Inspectors concluded that views of the manor from within its setting to the west would also have been compromised. As with Ashley Manor it was considered that these effects on the visual relationship between the Grade II Charlton Manor and the application site would have a very significant adverse impact also upon the setting of this Listed Building.
- 6.3.10 The scheme now under consideration has made significant changes to the layout in an attempt to address the issues raised within the appeal decision. Further to the points outline in 6.3.8 above; the proposed landscape planting on the southern boundary has been removed. There are now no buildings proposed in the areas of plots 27 – 30 as previously proposed and a large area of open grassland would be retained north of Ashley Manor, continuing up the site. This has had the effect of vastly improving the visual relationship between Ashley Manor and the site.
- 6.3.11 Similarly with Charlton Manor, the plots mentioned have been removed and there would be a clear view from Charlton Manor towards the Ice House across the retained grassland.
- 6.3.12 The Conservation Officer has provided a thorough assessment of the proposals. The comments acknowledge the changes which have been made in order to address the concerns; limiting built form the north-west of the application site, preserving the existing rural setting to the north of Ashley Manor and a notable finger of land to the southern section of the site. The introduction and reinforcement of extensive landscaping between the development and retained rural setting softens the impact. The visual link to the Ice House is retained, as its rural setting.
- 6.3.13 However it is fully acknowledged that the proposal does result in a loss of part of the wider open backdrop and the character of the remaining setting is changed from large open fields to one where the open space is diminished and strong bands of trees become more prominent. Whilst the proposed landscaping scheme becomes established there may also be views of the proposed dwellings from the listed buildings. The views across the field

from Charlton Manor would be truncated and its open setting reduced. It is therefore considered that there is a measure of less than substantial harm which will need to be weighed against the public benefits of the proposal.

- 6.3.14 The overall planning balance will be considered below, however given the improvements which have been made to the scheme, and the benefits arising, the conservation officer does not object to the proposal.
- 6.3.15 Historic England (HE) has objected to the proposal. They acknowledge that the proposal represents a less intensive form of development than the previous scheme, however they still consider that the severance of the setting of Ashely Manor and the encroachment of development and associated landscaping towards the Grade II* building is harmful and an unacceptable quantum and form of development. They state that it is their continued view that it is the entire application site which makes an important contribution to the setting of the Grade II* listed building and not just the areas closest to it.
- 6.3.16 HE acknowledge the allocation of the site for housing through policy HD4 of the Cheltenham Plan but consider the proposal does not achieve an acceptable level of respect to the setting of heritage assets and that significant adjustments need to be made to demonstrate how allocation HD4 can be delivered in a way that the setting is not harmed to this extent.
- 6.3.17 Whilst the concerns of HE are understood, officers disagree with their conclusions. The site is the subject of a housing allocation and in delivering this it is inevitable that the setting of these listed buildings will be changed. The scheme has made some significant changes directly resulting from the specific concerns of the previous appeal inspector and complies with the measures outlined in policy HD4 which were designed to lessen the impact upon the setting of these buildings. Furthermore in the opinion of officers, HE do not acknowledge the public benefits of the scheme which include the delivery of market and affordable housing, net gains to biodiversity, benefits from long term management of mature trees and hedges, economic benefits from employment during construction and indirect employment following occupation and improvements to the ice house.

6.4 Impact on trees and landscaping

- 6.4.1 Cheltenham Plan policy G12 states that the Council will resist the unnecessary felling of trees on private land. For protected trees the Council require any tree which has to be felled to be replaced where practicable and pruning, where it is necessary to be undertaken so as to minimise harm to the health or appearance of the tree. Cheltenham Plan policy G13 states that development which would cause permanent damage to trees of high value will not be permitted. 'High Value' means a sound and healthy tree with at least 10 years of safe and useful life remaining, which makes a significant contribution to the character or appearance of the locality. These policies are consistent with the aims and objectives of JCS policy INF3 which provides additional advice in respect of green infrastructure.
- 6.4.2 Paragraph 175 (c) of the NPPF advises that planning permission should be refused for development resulting in the loss of ancient or veteran trees *"unless there are wholly exceptional reasons and a suitable compensation strategy exists."*
- 6.4.3 The current application with its revised layout has allowed more trees to be retained than were previously proposed. It was previously proposed that a TPO tree; tree 3014, a mature oak, would be removed. This tree would now be retained. The revised layout also removes all construction from veteran tree buffers and removes all gardens from within veteran tree buffer zones.
- 6.4.4 Some trees would be removed as part of the proposal however all of the high quality category 'A' trees would be retained. One Ash and One sycamore, both of approximately 14m in height would be the only trees within the moderate 'B' category to be removed. 90%

of category B trees would be retained. There are a number of 'low quality' or category C trees to be removed. These are considered to be unremarkable, in impaired condition or have a primary 'collective value'. The Tree Officer has raised no objection to the proposal subject to conditions including tree protection measures, provision of detailed planting plans, details of veteran tree buffer, landscape management plan, details of foundation design.

6.4.5 The tree officer suggested that a landmark tree could be provided within the eastern portion of the site. This request was considered in conjunction with the conservation officer, however it was considered that the planting of a large 'feature' tree might interfere with the visual link between the two listed buildings and the ice house and the remainder of the open land in this area.

6.4.6 The Woodland Trust (WT) and The Ancient Tree Forum (ATF) have both objected to the proposal on the grounds that some trees have been misclassified and should be classified as veteran trees and therefore given greater protection through increased buffer zones. The applicant's Arboriculturist has provided a response to the representations received. To summarise; they disagree that any tree has been wrongly excluded from the list of those identified as veterans. They use an ancient, veteran and notable tree recognition system known as RAVEN to assist in classifying trees. WT and ATF have questioned the validity of this system. However in the appeal decision for 18/02171/OUT, the Inspector considered that the assessment covered all the trees on the site in the light of the applicable definition of veteran and ancient trees in the glossary of the NPPF which is as follows:

"A tree which, because of its age, size and condition, is of exceptional biodiversity, cultural or heritage value. All ancient trees are veteran trees. Not all veteran trees are old enough to be ancient, but are old relative to other trees of the same species. Very few trees of any species reach the ancient life-stage."

6.4.7 The applicant's arborist considers that the ATF in their comments rely too heavily on the condition of the tree without considering the age and size, as required by the NPPF definition. Similar comments have been made in response to the WT comments which, they say, misidentifies a number of trees as veteran.

6.4.8 It is clear that this is an area in which there is a degree of subjectivity, however the classification system which has been used in this case is the same as that which was found to be appropriate by the Inspector at appeal. Officers are confident that the trees have been correctly classified, having regard for the definition within the NPPF.

6.4.9 Reason for Refusal number 2 on the previous refusal reads as follows:

The proposed development would result in the loss of a number of trees within the application site, including a significant TPO'd tree which has some valuable characteristics and features of a Veteran tree. The scale of the development on this valuable site would also be likely to result in the deterioration of the retained Veteran trees, which would fail to be outweighed by wholly exceptional reasons. The development would therefore be contrary to saved policies GE5 and GE6 of the Cheltenham Borough Local Plan (2006), adopted policy INF3 of the Joint Core Strategy (2017), and paragraph 175(c) of the National Planning Policy Framework (2019).

6.4.10 The Inspector did not dismiss the appeal on the grounds of the impact on trees. At para. 65 he confirmed that he was satisfied that the measures proposed to safeguard the long term welfare of the retained protected and veteran trees from the potential impacts of the proposed built development have a reasonable prospect of success. He did, however state that there was a degree of risk to the longevity of these trees, given the relative density of the proposed development and the additional access and activity in close proximity. This led him to conclude that there was an element of conflict with policies GE6, GE5 and INF3. These concerns added weight to his conclusion that the scheme should be refused

although he made clear that they would not, alone, have outweighed the benefits of the proposal.

- 6.4.11 As mentioned above the TPO tree that would have been removed in the previous application is now retained and the buffer zones for the veteran trees would be kept clear of any development, including being located within domestic curtilages and of any construction work. Therefore it is considered that the risk factors identified by the inspector have been largely overcome, subject to appropriate conditions being attached.
- 6.4.12 Although 'landscaping' is a reserved matter, the application is accompanied by a detailed Landscape Strategy which indicates the provision of high quality landscaping and new tree planting throughout the site.
- 6.4.13 Bearing in mind all of the above, officers are of the view that the proposal now accords with the relevant policy criteria in relation to trees and landscaping as identified above.

6.5 Wildlife and biodiversity

- 6.5.1 JCS policy SD9 and advice set out within the NPPF at Section 15 seeks to ensure that development contributes to, and enhances the natural and local environment; and that important habitats and species are protected. Where developers are unable to avoid harm to biodiversity, mitigation measures should be incorporated into the design of the development.

Cotswolds Commons and Beechwoods Site of Special Scientific Interest (SSSI) and Special Area of Conservation (SAC)

- 6.5.2 Policy BG1 of the Cheltenham Plan relates to the Cotswold Beechwood Special Area of Conservation Recreation Pressure. It states that development will not be permitted where it would be likely to lead directly or indirectly to an adverse effect upon the integrity of the European Site Network and the effects cannot be mitigated. All development within the borough that leads to a net increase in dwellings will be required to mitigate any adverse effects.
- 6.5.3 It is known that residential developments, alone or in combination with other development, have the potential to result in increased recreational pressures. Natural England (NE) advised that without appropriate mitigation the application would have an adverse effect on the integrity of the Cotswold Beechwoods Special Area of Conservation and damage or destroy the interest features for which the Cotswold and Commons Beechwoods Site of Special Scientific Interest has been notified.
- 6.5.4 To ensure these harms are not realised the LPA have prepared an 'Appropriate Assessment' (AA), a draft of which was agreed with Natural England. This AA has now been adopted by the LPA. It concluded that, either alone or in combination with other plans and projects, the proposed development would not adversely affect the integrity of the SAC subject to conditions requiring the implementation of further precautionary measures and the provision of a homeowner's information pack.

Trees and Hedgerows

- 6.5.5 The Hedgerows were resurveyed in April 2020. Hedge 1, to the west of the site is confirmed as still being important using the Hedgerow Regulations methodology. Hedge 2 is not considered to meet the importance test under the regulations. The hedgerows will suffer some degree of loss. The other hedgerows on the site are poorer quality and fragmented already. The proposed landscaping will improve the situation and the connectivity provided by hedgerows will be improved by significant new planting for a range of animal species. The residual impact of the modest tree and hedgerow loss will have little residual impact on biodiversity and a net gain overall.

Protected Species

6.5.6 Reason for refusal number 4 of the previous decision reads as follows:

The application site is host to a number of protected species which would be affected by the proposed development. Most notably, a large badger sett is located to the north of the site which the application proposes to be relocated as part of the development. Paragraph 175(a) of the NPPF and Natural England's standing advice sets out a three stage approach to addressing impacts on biodiversity, and that compensation measures such as replacing setts that would be destroyed should be employed as a last resort. Alternative measures to avoid or mitigate harm to the badger sett do not appear to have been fully explored. Additionally, insufficient information has been submitted to demonstrate the future success of the relocated sett. The development would have a negative impact upon this valuable habitat of hedgerows and pasture, and biodiversity across the site generally. The proposed development would therefore be contrary to adopted policy SD9 of the Joint Core Strategy (2017), paragraph 175(a) of the National Planning Policy Framework (2019) and Natural England's Standing Advice.

The Local Authority did not pursue this reason for refusal at the inquiry.

Badgers

6.5.7 Badgers and their setts are protected under the Protection of Badgers Act 1992, the purpose of which is to protect the species from persecution.

6.5.8 An updated survey was carried out in April 2020. A previous survey carried out in October 2018 recorded a total of 5 badger setts. The main sett (BS1) had 15 active entrances, a smaller sett (BS5) has two entrances and is also considered to be active. The remaining setts (BS2, 3 & 4) were found to be inactive at the time of the survey. BS3 is in the vicinity of the icehouse and is unaffected by the development, however the remainder; BS1, BS2, BS4 and BS5 are all located at least partly within the proposed development footprint and would therefore be directly impacted by construction. As such it is proposed that these setts be permanently closed to facilitate the proposals.

6.5.9 Sett BS1 would be of high importance to the local Badger population and without mitigation the loss of this sett would significantly negatively affect Badgers within the local area. It is therefore proposed to create an artificial sett within the north east of the site to compensate for the loss of BS1. This is closer to the existing sett than the previously proposed sett. The closure of the existing sett will require a licence from Natural England. Sett BS5 is considered to be of low importance and is not used for breeding activities.

6.5.10 The foraging area for Badgers would be reduced by way of the development however it is considered unlikely that this would have a significant impact on the local badger population.

6.5.11 The ecological report sets out a mitigation strategy along with measures to lessen the impact upon the Badger population. It concludes that these measures will result in the status of the Badger Clan being maintained.

6.5.12 The County Ecologist has reviewed the survey and proposals and state that the revised proposals for mitigating any effect upon and conserving local badgers are acceptable.

6.5.13 Badger Trust Gloucestershire has raised concerns that insufficient attention has been paid to the presence of badgers or to any mitigation strategy should consent be granted for this application.

6.5.14 Paragraph 175 of the NPPF provides that, where significant harm to biodiversity resulting from development cannot be avoided, or adequately mitigated, or as a last resort, compensated for, planning permission should be refused. Given the location of the main

badger sett it has not been possible to avoid it completely, especially bearing in mind the other constraints of the site. Therefore a combination of mitigation and compensation is proposed.

6.5.15 The process of moving the badgers is regulated by Natural England who issue licenses to interfere with setts for development purposes.

6.5.16 Officers are satisfied that the measures proposed are acceptable and given the retained area of grassland as part of this proposal represent an improvement upon previous proposals.

Bats

6.5.17 All bat species, their breeding sites and resting places are protected by law as they are European Protected Species. A variety of bat species have been recorded on site and within the wider area.

6.5.18 The proposals will result in a few gaps in existing hedgerows however there is significant reinforcement planting proposed, along with the proposed tree belt which means that the overall impact upon bats would be positive. Conditions will be necessary to ensure the mitigation and enhancement measures outlined in the Ecological Appraisal are provided and to ensure no inappropriate lighting is provided.

Birds

6.5.19 Nesting birds are protected by The Wildlife and Countryside Act 1981, and vegetation clearance should take place outside of the bird nesting season March to August, or the vegetation should be surveyed for nesting birds by a suitable qualified ecologist prior to works commencing.

6.5.20 The survey work demonstrates that a good variety of birds are present in the general area and on site mainly utilising the boundary trees and hedgerows. There are much potential nesting sites present but much of this will be retained. A number of mitigation and enhancement measures are proposed. The development would have a short term adverse impact but in the long-term there would be a positive overall outcome.

Reptiles

6.5.21 Grass snakes and slow worms are protected by UK law. The surveys which have been carried out on the site have found a low population of reptiles consisting of only very few individual slow worms and grass snakes. The proposed mitigation and enhancement measures in addition to the proposed new landscaping should have a neutral - positive impact overall.

Local Wildlife Site

6.5.22 In July 2020 Gloucestershire Wildlife Trust received a request to consider whether the application site might qualify as a local wildlife site (LWS).

6.5.23 Following a site visit and a subsequent meeting of the LWS selection panel on 1st September it was decided that the site passed the Gloucestershire Local Wildlife Site Selection Criteria 2015 under point 9. Value for learning – *“c. the site is exceptionally well-placed to offer educational opportunities either by its proximity to a school or other place of learning, or its easy accessibility for study of the species and habitats present without causing unacceptable damage or disturbance”*. The Panel also consider that the site may also pass the criteria for MG1 grassland plant species. Two sets of plant species data that were provided for the site by Aspect Ecology (applicants representative) and Bioscan

(Charlton Kings Friends representative) differ but between them provide a match for 22 species from table H5c of the LWS criteria.

- 6.5.24 Policy SD9 of the JCS states that development within local-designated sites will not be permitted where it would have an adverse impact on the registered interest features or criteria for which the site was listed, and harm cannot be avoided or satisfactorily mitigated.
- 6.5.25 Gloucestershire Wildlife Trust has provided comments on the biodiversity mitigation proposed as part of the application. The site is currently assessed as 'poor quality semi natural grassland.' However it would be possible to raise the quality to 'unimproved grassland' through more appropriate management of the site. There is an area of ladies bedstraw which the GWT suggest should be preserved. The applicant has committed to this. A significant area of grassland is retained through the proposals and this would not be accessible by the general public. There should be management plans in place to ensure that access is restricted, and to secure the proposed enhancements. Subject to these conditions GWT's view is that the mitigation and enhancements for the habitats and species recorded on site are adequate to achieve no net loss of biodiversity. The GWT and County Ecologist both suggest a covenant be placed on the remaining grassland preventing its development in perpetuity. Officers have sought legal advice on this suggestion and have been advised that such a clause would be unenforceable and is also unnecessary given that any development would require planning permission, bringing it into the control of the LPA.

Overall impact on Biodiversity

- 6.5.26 A letter submitted by Bioscan, Ecologists acting for Charlton Kings Friends, asserts that the development is not compliant with JCS policy SD9 as it would result in a loss of biodiversity of 31.90%. They offer the view that the revised scheme provides no greater protection of biodiversity on the site than the previous scheme. This is based on their use of the Natural England metric which is currently available in a beta version for consultation.
- 6.5.27 In the appeal decision the Inspector attached little weight to the results of conflicting metric assessments although he did conclude overall that the net effect of the appeal scheme on biodiversity was likely to be either neutral or negative to some degree. However this did not form the main basis of his dismissal of the appeal and states that it would not have outweighed the significant benefits to the supply of affordable and market housing.
- 6.5.28 The applicant's ecologist has responded to Bioscan's assertions. They point out that the revised scheme is considerably reduced with increased areas of greenspace along with improvements to the ecological proposals and therefore the conclusion the scheme provides no greater protection of biodiversity than the previous scheme is inherently flawed. With regards to the use of the matrix they point out that with the measurement of the baseline: a) a more accurate measuring of the site should be used, b) the existing pond has been omitted and should be included, c) scattered scrub has been coded as 'other mixed woodland' in 'moderate condition' whereas this should be assigned to 'scrub' in 'poor' condition. With regards to the post-development inputs to the matrix they point out that: a) it is assumed that all habitats will be lost and recreated whereas the grassland will be retained and enhanced, b) the proposed pond has been omitted and should be included, c) the central hedgerow is ascribed as 'poor' condition where as it should be considered 'good' as it will be controlled by way of a conservation management plan.
- 6.5.29 These changes to the parameters in the metric would result in a biodiversity net gain of 1.47%. The applicant's ecologists say that the metric is known to undervalue woodland creation and therefore they anticipate the net gain would be higher under the final version of the metric when it is released.
- 6.5.30 Officers have sought the advice of the County ecologist on this matter and he has stated that he is more inclined to agree with the applicant's ecologist. He points out that there are

a number of shortcomings in the metric and unfortunately Bioscan's use of the metric includes some errors and their conclusions undervalue the merits of allowing the development.

6.5.31 The County Ecologist offers the following conclusions:

- Compared to previous development schemes for this site (17/00710/OUT & 18/02171/OUT) there will be fewer units and greater retention of habitats and features. There is to be extensive tree/shrub planting, additional new habitat features and improved meadow management. Overall a biodiversity net gain can be secured with appropriate conditions and planning obligations in place as I have previously advised.
- The development if consented would be compliant with NPPF paragraphs 8, 170, 175 or 180. The proposal avoids significant harm to biodiversity and protects veteran trees. It makes effective use of the land and also provides a mechanism to secure a better more resilient future for biodiversity.
- Biodiversity improvements have been designed into and around the development. Given policy HD4 of the newly adopted plan [see below], the type and scale of the development appears to me to be appropriate for the location
- The development if consented would be compliant with JCS policy SD9. The development provides appropriate mitigation for some unavoidable effects but importantly positively conserves and enhances biodiversity overall which are relevant to the location.
- The development if consented would be compliant with policy HD4 in the recently adopted Cheltenham Local Plan. The development provides for long-term protection of mature trees and hedgerows on site, better commuting corridors and foraging areas for bats, and is an opportunity to enhance biodiversity overall.

6.5.32 Officers are therefore satisfied that the proposal has an acceptable impact upon wildlife and biodiversity.

6.6 Access and highway safety

6.6.1 The proposed access is one of the 'fixed' elements of this outline planning application

6.6.2 Adopted JCS policy INF1 advises that planning permission will be granted only where the impacts of the development are not severe. The policy also seeks to ensure that all new development proposals provide safe and efficient access to the highway network; and provide connections to existing walking, cycling and passenger transport networks; and provide connections to existing walking cycling and passenger transport networks, where appropriate. The policy reflects advice set out within Section 9 of the NPPF. It is repeated in Policy HD4 of the Cheltenham Plan which states "*safe, easy and convenient pedestrian and cycle links within the site and to key centres*" as a site specific requirement.

6.6.3 Planning application 17/00710/OUT (the scheme for 90 dwellings) was refused for the following reason (amongst others):

The proposed access via Oakhurst Rise would have an unacceptable impact on the local highway network, and the amenity of local residents. Additionally, the steep incline within the cul-de-sac would fail to encourage the use of sustainable modes of transport and would likely result in a reliance on the use of private motor vehicles. Alternative potential vehicular access routes do not appear to have been fully explored. The access would therefore be at odds with saved policy CP4 of the Cheltenham Borough Local Plan (2006), adopted policy INF1 of the Joint Core Strategy (2017), and paragraphs 108 - 110 of the National Planning Policy Framework (2018).

- 6.6.4 The subsequent application (18/02172/OUT – 69 dwellings) was not refused specifically on highway grounds. In the appeal decision the Inspector did consider access and traffic. He acknowledged that there were no technical objections to the route in traffic or highway safety terms, whether with regard to width, gradient or alignment of the carriageways, junction or forward visibility or existing traffic flows. He was satisfied that an increase in traffic flow would not have a significant impact on the wider highway network. He did however express a view that the access route was ‘tortuous’ and ‘far from ideal’. Whilst he did not dismiss the appeal on grounds of access and stated that this concern either alone, or in combination with some other issues would not outweigh the benefits of the scheme, he did find that they supported his overall conclusion that the appeal should be dismissed.
- 6.6.5 The proposal has been assessed by the Local Highways Authority who have provided detailed comments which are provided in full. To briefly summarise, they conclude that the access, via Oakhurst Rise, is acceptable, as is the internal layout within the site. They acknowledge the gradient of the site and that it will be necessary to consider this when formulating detailed road design, however there are earthwork techniques which can be adopted to adequately deal with this. The parking provision shown on the indicative drawing is acceptable and cycle parking can be secured via condition. A non-motorised user’s assessment was undertaken which identified deficiencies in the surroundings walking/cycling network and routes to destinations which should be improved for non-motorised user’s accessibility, safety, comfort and convenience. Some improvements to pedestrian crossings are required and a condition is suggested to secure these improvements. The trip generation and impact on surrounding networks is reduced from previous applications and is considered to be acceptable. A Travel Plan will be prepared with the aim of increasing the use of public transport, car sharing, walking and cycling. The Highway Authority conclude that no objection should be raised subject to conditions.
- 6.6.6 Officers are content that the highways and access arrangements are successful; whilst members did not refuse the most recent application on these grounds, it is clear that the reduction in number of dwellings proposed on the site will lessen the impact further and the indicative plans show a scheme which would achieve the aims of JCS policy INF1 and Cheltenham Plan policy HD4.

6.7 Landscape and visual impact

- 6.7.1 JCS policy SD6 advises that all development proposals must consider the landscape and visual sensitivity of the area in which they are located or which they may affect. As previously noted, the application site is not located within the Green Belt or Cotswold Area of Outstanding Natural Beauty, but does sit in an elevated position above the town.
- 6.7.2 As part of the consideration of previous applications and pre-application proposals, an independent landscape appraisal was undertaken by a chartered landscape architect at the request of the LPA. In their appraisal, the landscape architect identified the site’s topography and notable slope as a key landscape feature, and highlighted that, whilst it is not designated landscape, its elevated position affords views out across the town and provides the backdrop to a number of large properties within the Battledown Estate. Based on the information available to him at that time, the landscape consultant did not consider the site to be ‘valued landscape’ in terms of paragraph 170 of the NPPF which seeks to protect and enhance valued landscapes.
- 6.7.3 The NPPF does not define what is meant by ‘valued landscape’ but there is relevant case law on this subject. In this instance, officers do not consider that the site should be considered ‘valued landscape’ for the purposes of paragraph 170. Whilst the landscape clearly has a value attached to it, particularly by local residents, it is not considered to have any intrinsic features that specifically set it aside from other areas of non-designated landscape.

6.7.4 The previous application on this site (18/02171/OUT) was refused for the following reason:

The application site is located in an elevated position above the town, outside of, but in close proximity to, the Cotswolds Area of Outstanding Natural Beauty (AONB). The scale of the proposed development in this tranquil location would have a negative impact on existing landscape character, and on views into and out of the AONB. The proposal would therefore be contrary to saved policy CP3 of the Cheltenham Borough Local Plan (2006), and adopted policy SD6 of the Joint Core Strategy (2017).

6.7.5 The Local Authority did not pursue this reason for refusal at the inquiry. However the Inspector did comment on visual impact stating that he did not consider that the appeal proposal would cause harm to the appearance and character of the nearby Cotswold AONB.

6.7.6 The current proposal results in the retention of a large area of open grassland, additional landscaping and increased landscaping. As such officer are confident that the proposal has an acceptable visual impact within the landscape.

6.8 Drainage and flooding

6.8.1 Adopted JCS policy INF2 and Section 14 of the NPPF seeks to ensure that new development is not inappropriately located in areas at high risk of flooding, and to ensure that development does not increase flood risk elsewhere and, where possible, contributes to a reduction in existing flood risk.

6.8.2 The application site located in Flood Zone 1 and is therefore assessed as having a less than 1 in 1,000 annual probability of river or sea flooding (<0.1%). Additionally, the Environment Agency's Flood Risk Map below identifies the entire site as being at a 'very low' flood risk from surface water flooding, although it does identify some areas in close proximity to the site that are at a higher risk of surface water flooding. The LLFA also acknowledged in previous comments that there are significant surface water accumulations, and recorded incidents of flooding in the lower reaches of this catchment. It is therefore important to ensure that appropriate measures are provided to safely manage the flood risks arising from the increased run off from the development.

6.8.3 The application has been accompanied by a detailed Flood Risk Assessment (FRA) and drainage strategy which have been reviewed by the County Council, as the Lead Local Flood Authority (LLFA) responsible for managing the risk of flooding from surface water, groundwater and ordinary watercourses. The level of detail submitted to date is appropriate for an outline planning application.

6.8.4 The LLFA are satisfied that the information which accompanies this outline application "adequately describes a feasible strategy for the management of surface water on and from the development site" and raises no objection subject to a condition which requires additional detail, including a description of the maintenance strategy during and following construction for the lifetime of the development and a schedule for the implementation of the drainage scheme relative to the rest of the development, to be submitted and agreed at a later stage.

6.8.5 A representation has been received from the Cheltenham Flood and Drainage Panel which is critical of the submitted Flood Risk Assessment. This representation has been discussed with the LLFA who have provided the following response:

Planning application 20/00683/OUT is an outline planning application with all matters reserved, as such I believe that the information provided through the FRA and drainage strategy is adequate at this stage in the planning process. Detailed drainage design can be conditioned and as requested in my response.

The comments from the group referring to themselves as Cheltenham Flood and Drainage Panel are proposal that we would expect to see addressed in the application for discharge of the condition requested. Many of the points will not be able to be addressed at this stage and it would be unreasonable to expect them to be answered for an outline permission.

In fact the level of detail for an outline proposal is quite comprehensive and there is certainly enough information to indicate that the site can be safely developed and surface water managed without putting the site or areas outside the site at increased risk of flooding. The proposal includes detail of where surface water will go, at what rates and how it can be controlled within the space available in the developed site to achieve that objective.

- 6.8.6 None of the 2 preceding applications were refused on flooding and drainage grounds. The Inspector touched on it within the appeal decision stating there was insufficient evidence to show that a detailed scheme could not be satisfactorily drained.
- 6.8.7 Therefore officers are confident that the scheme is acceptable on flooding and drainage grounds.

6.9 Design and layout

- 6.9.1 Layout and scale, together with the proposed access arrangements are 'fixed' elements of the scheme; however appearance is reserved for future consideration (as is landscaping).
- 6.9.2 JCS policies SD3 and SD4 set out the design requirements for new development proposals. These policies seek to ensure that development proposals are designed and constructed so as to maximise the principles of sustainability, and to ensure that all new development responds positively to, and respects the character of, the site and its surroundings. The policies are consistent with advice set out within Section 12 of the NPPF which emphasizes at paragraph 124 that "Good design is a key aspect of sustainable development..."
- 6.9.3 Additionally, JCS policy SD11 highlights the need to ensure that new housing developments provide an appropriate mix of housing to meet the local needs.
- 6.9.4 Policy HD4 of the Cheltenham Plan includes as site specific requirements; a layout and form that respects the existing urban characteristics of the vicinity; and a layout and form of development that respects the character, significance and setting of heritage assets which may be affected by the development.
- 6.9.5 The appeal scheme was not refused on design and layout grounds and the Inspector did not specifically touch on them, other than in respect of how they relate to the main issues. However the form of development now proposed has changed significantly since the previous submission with the most obvious change being the retention of a large area of open grassland in the south and western parts of the site and the provision of a significant landscaped belt between this area and the proposed development. The main route through the site is similar to the appeal application however due to the reduced developed area there are now three cul-de-sacs leading off this, rather than linked roads.
- 6.9.6 The appeal scheme included a number of small apartment blocks with associated car parks. The current scheme proposes primarily houses, mostly detached, semi-detached or in short terraces of 3 dwellings, with a small number maisonettes. No parking courts are proposed with the parking all proposed on, or very near to the associated dwelling. This results in a layout which more closely reflects the grain and layout of the adjoining residential areas. It is regrettable that the scheme does not include a wider variety of housing types. In terms of urban design, cul-de-sacs are not always the most successful form of development as they do not encourage connectivity and permeability across the site, although the constraints of the site mean this is unavoidable. However it is considered

that overall the proposal would result in a high quality residential environment, benefitting from generous landscaping and providing well laid out, comfortable homes.

- 6.9.7 A building scale plan has been provided which shows that most of the dwelling (27) would be 2 storeys with the remainder (16) being 2.5 storeys. 'Appearance' is a reserved matter and as such the design of individual houses is not known at this stage. However indicative plans have been provided which give an idea of how the houses could look. The indicative drawings of the 2.5 storey dwellings show a room in the roof served by velux windows. The final design would be the subject of a reserved matters application. However officers are confident that the scale of buildings proposed is appropriate for the site.

6.10 Neighbour amenity

- 6.10.1 Policies SD14 of the JCS and SL1 of the Cheltenham Plan require that development does not cause unacceptable harm to the amenity of adjoining land users and living conditions in the locality.
- 6.10.2 Whilst it is acknowledged that outlook from some neighbouring properties would undoubtedly be altered by the development, officers are satisfied that the proposed layout would not result in any overbearing effect, nor loss of privacy or outlook; all properties achieve the minimum 10.5 metres distance to site boundaries. Additionally, the topography of the site, distances to boundaries, and general arrangement of the housing would not result in any significant impact on daylight or sunlight.

6.11 Affordable housing and other planning obligations

Affordable Housing

- 6.11.1 Cheltenham Borough Council, together with the other JCS authorities, adopted the Community Infrastructure Levy (CIL) in October 2018, and introduced charging on 1st January 2019. This development would be liable for CIL.
- 6.11.2 CIL is now the tool to help local authorities to deliver infrastructure to support new development in the area, and is a tariff-style charge which is calculated per square metre of new development. In Cheltenham, the CIL rate for residential developments of between 11 and 449 dwellings is £200 per m²; however, there are some exceptions, for example, those parts of a development which are to be used as social housing, and selfbuild housing.
- 6.11.3 CIL sits alongside S106 agreements, which are still used to secure site-specific obligations which are needed to make a development acceptable in planning terms, particularly affordable housing.
- 6.11.4 Adopted JCS policy SD12 is the relevant policy for the provision of affordable housing in new developments. In Cheltenham, outside of Strategic Allocation sites, a minimum of 40% affordable housing is sought on sites of 11 dwellings or more. Where possible, the policy requires the affordable housing to seamlessly integrated and distributed throughout the development. The proposed scheme is compliant with the requirements of the policy.
- 6.11.5 The proposal has been the subject of discussion with the Council's Housing Strategy and Enabling Officer and the affordable housing now proposed is as a result of these negotiations. The comments of the Officer are provided in full.
- 6.11.6 The scheme delivers 18 affordable housing units (42%) and is therefore considered to be policy compliant. The mix of affordable dwellings on this site would be as follows:

42%	Social Rent	Affordable Rent (Capped at LHA levels)	Shared Ownership	Total	%
1b2p Ground Floor Maisonette M4(2) Cat 2 (50m ²)-	2	0	0	2	28%
1b2p Upper Floor Maisonette (50m ²)	2	0	0	2	
1b2p House M4(2) Cat 2 (50m ²)	1	0	0	1	
2b4p GF Maisonette, M4(2) Cat 2, 71m ²	0	1	0	1	44%
2b4p Upper Floor Maisonette, 71m ²	0	1	0	1	
2b4p House, M4(2) Cat 2, 79m ²	0	3	0	3	
2b4p House (67m ²)	0	0	3	3	
3b5p House (82m ²)	0	1	2	3	22%
3b6p House (95m ²)	0	1	0	1	
4b7p House (108m ²)-	1	0	0	1	6%
Total:	13		5	18	100%
	72%		28%		

6.11.7 The mix of dwellings proposed here is more reflective of Cheltenham's affordable housing needs than previously proposed dwelling mixed. A number of flats were originally proposed and they have been replaced with maisonettes and a house which allowed tenants to have their own front door, fostering a sense of belonging and community that is fundamental to creating a strong and sustainable community.

6.11.8 The layout was amended to ensure the affordable housing was better distributed around the site and to ensure that every affordable home has access to private outdoor space.

6.11.9 The provision of these affordable homes is a significant benefit of the proposal. As of May 2020, Cheltenham Borough had 2,190 households waiting for affordable housing on the Council's housing register. The affordable dwellings proposed here would go some way to addressing this need.

6.11.10 The affordable housing provision would be secured through a s.106 agreement.

S.106 agreement.

6.11.11 A request for an education contribution has been received from the County Council for contributions towards education as follows:

- **Primary** – Holy Apostles C of E primary school and/or primary places in the Charlton Kings Primary Planning Area - **£241,305.09**
- **Secondary** – Cheltenham Secondary Planning Area – **£250,743.48**
- **Libraries** - **£38,428.00**

6.11.12 This has been agreed by the applicant and would be secured through a legal obligation, either by the County Council entering an agreement with the applicant or the applicant meeting the requirement through a unilateral undertaking.

6.11.13 In addition to the above a s.106 agreement with the Borough Council will secure the provision of a Landscape and Ecological Management Plan. It will also provide for the establishment of a management company and a management regime for the retained grassland, including limiting access, in line with the request from Gloucestershire Wildlife Trust. This s.106 agreement will also provide for the provision of the affordable housing as detailed above.

6.12 Other Matters

Environmental Impact Assessment (EIA)

6.12.1 The Local Planning Authority was originally requested, in August 2017, to adopt a screening opinion to determine whether the proposed development on this site would constitute 'EIA' development, under Part 2, Regulation 6 of The Town and Country Planning (Environmental Impact Assessment) Regulations 2017; i.e. determine whether the project is of a type listed in Schedule 1 or Schedule 2 of the Regulations.

6.12.2 The proposed development is not Schedule 1 development. Additionally, whilst the development is listed in column 1 of Schedule 2 of the 2017 Regulations (Part 10 Infrastructure Projects, (b) Urban development projects), the proposed development does not exceed the following thresholds set out in column 2 of the Schedule:

- (i) the development does not include more than 1 hectare of urban development which is not residential development;
- (ii) the development does not include more than 150 dwellings;
- (iii) the overall area of the development does not exceed 5 hectares.

6.12.3 Additionally, the site is not located within a "sensitive area" as defined by Regulation 2(1). Therefore, the proposed development is not Schedule 2 development and an EIA is not required.

7 Planning Balance

7.1 In planning applications such as this the Planning Authority must exercise its judgement and consider potentially conflicting issues to decide whether planning permission should be granted. This 'balancing exercise' is at the heart of the planning process.

7.2 The principle of the proposal is acceptable as the site is allocated for housing within the Cheltenham Plan. The consideration of the proposal above has identified harms and benefits of allowing the proposal which must be weighed up in the 'planning balance'. As explained at para. 6.2.10 above this balance must be 'tilted', due to the lack of a 5 year housing land supply.

7.3 The benefits of the scheme are considered to be:

- Provision of market housing

- Provision of affordable housing
- Net gain in biodiversity including management of retained grassland.
- Economic benefits including jobs during construction and benefits to local economy from future residents using local goods and services.
- Long term management of mature trees and hedgerows

Substantial weight should be given to the delivery of market and affordable housing. The remainder of the benefits identified should be given moderate weight in the balancing exercise.

7.4 The harms arising from the scheme are considered to be:

- The loss of 2 mature trees
- The impact on the setting of two designated heritage assets

Great weight should be given to the conservation of heritage assets. The proposal results in less than substantial harm to its significance, although as detailed above this harm is considered to be significantly reduced when compared to the appeal scheme. The loss of the mature trees is regrettable and this consideration carries moderate weight in the balancing exercise, however mitigation is proposed and no protected or category A trees are to be removed.

7.5 The other harms which were identified by the Inspector in the appeal decision are considered to have been overcome through amendments to the scheme or enhanced protection or mitigation.

7.6 In the appeal, the Inspector concluded that the harm to heritage assets outweighed the benefits of the scheme, identified by him as the provision of market and social housing. The harm to heritage assets has significantly reduced through the revised scheme and the shortfall in provision of affordable and market housing has worsened in the meantime to significantly below a 5 year supply (3.7 years at latest calculation). Therefore Officers conclude that in balancing the key issues, the benefits of the proposal outweigh the harms. Therefore, in accordance with para 11 (d) of the NPPF, planning permission should be approved.

8. Public Sector Equalities Duty (PSED)

8.1 As set out in the Equalities Act 2010, all public bodies, in discharging their functions must have “due regard” to this duty. There are three main aims:

- Removing or minimising disadvantages suffered by people due to their protected characteristics;
- Taking steps to meet the needs of people with certain protected characteristics where these are different from the needs of other people; and
- Encouraging people with certain protected characteristics to participate in public life or in other activities where participation is disproportionately low.

Whilst there is no absolute requirement to fully remove any disadvantage, the duty is to have “regard to” and remove OR minimise disadvantage and in considering the merits of this planning application the planning authority has taken into consideration the requirements of the PSED. In this instance the affordable homes specifically will be required to be accessible and adaptable, making it suitable for a range of potential occupants.

In the context of the above PSED duties, this proposal is considered to be acceptable.

9 CONCLUSION AND RECOMMENDATION

- 9.1 This site has a history of refused applications. The most recent application was the subject of an appeal and the Inspectors decision is a material consideration.
- 9.2 Since the appeal was determined the Cheltenham Plan has been adopted which allocates the site for housing. Members will be aware that decisions must be taken in accordance with the development plan unless there are material considerations that indicate otherwise.
- 9.3 The current scheme has sought to respond to the requirements of the newly adopted policy and to respond to the comments and observations made by the Inspector in his decision. This has led to a number of changes to the proposal as outlined above including the reduction in number of houses, reduction in developed area, retention of open space, introduction of additional landscaping in indicative plans, improvements to biodiversity protection and mitigation and greater retention and protection of trees.
- 9.4 As outlined above the Inspector's primary reason for dismissing the appeal was the impact on heritage assets. It is acknowledged that despite significant changes to the proposal, some harm has still been identified, although the heritage specialists differ as to how significant this harm is resulting in differing recommendations.
- 9.5 The Inspector identified other areas of concern although he stated that they would not, either alone, or collectively have outweighed the benefits of the scheme.
- **Loss of protected tree and risk to those retained** – The protected tree is now to be retained and protection measures improved
 - **Potential net loss of biodiversity** – The current scheme has been found to result in no net loss of biodiversity
 - **Nature of highway access** – The access is unchanged although the proposal would generate less traffic than previous applications.
- 9.6 Policy HD4 in the recently sets out a number of site specific requirements. The above analysis shows that these are all achieved through the current proposal. As such, according to the NPPF the proposal should be approved without delay. Further, as the Council is unable to demonstrate a five year supply of housing paragraph 11(d) of the NPPF remains relevant and permission is to be granted unless either paragraph 11(d)(i) or 11(d)(ii) applies. It is not considered that there are any clear reasons for refusing permission under paragraph 11(d)(i) or that there would be adverse impacts that would significantly and demonstrably outweigh the benefits. As such it is concluded that planning permission should be granted.
- 9.7 The recommendation is to permit the application subject to the signing of a s.106 agreement.

10 CONDITIONS / INFORMATIVES

- 1 The outline planning permission hereby granted shall be begun not later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.

Reason: To accord with the provisions of Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- 2 Application(s) for approval of the reserved matters (appearance and landscaping) must be made not later than the expiration of three years from the date of this decision.

Reason: To accord with the provisions of Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- 3 The outline planning permission hereby granted shall be carried out in accordance with the approved plans listed in Schedule 1 of this decision notice.

Reason: For the avoidance of doubt and in the interests of proper planning.

- 4 The application for approval of landscaping as a reserved matter shall include full details of the surface water drainage proposals; and the information submitted shall be in accordance with the principles set out in the approved drainage strategy. Before these details are submitted an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system in accordance with the principles set out in The SuDS Manual, CIRIA C753 (or any subsequent version), and the results of the assessment provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:

- i. provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
- ii. include a timetable for its implementation; and
- iii. provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

The surface water drainage works shall thereafter be implemented strictly in accordance with approved details, prior to the commencement of any building works above ground level.

Reason: To ensure the development is provided with a satisfactory means of drainage as well as to reduce the risk of creating or exacerbating a flooding problem, and to minimise the risk of pollution for the lifetime of the development, in accordance with adopted policy INF2 of the Joint Core Strategy (2017). The detailed surface water drainage proposals are required at reserved matters stage as they form an inherent part of the landscaping proposals.

- 5 No works shall commence on site on the development hereby permitted until details of highway improvements consisting of the installation of a connecting section of footway (2m wide) with tactile dropped crossing point between Beaufort Road and Ewens Road (north side), extension to the footway (2m wide) and dropped kerb tactile crossing point across Charlton Court Road, and a bus shelter to serve Bus Stop ID: glodtwmt located on Beaufort Road have been submitted to and approved in writing by the Local Planning Authority and no occupation/opening to the public shall occur until the approved works have been completed and are open to the public.

Reason: To ensure that safe and suitable access to the site can be achieved for all users and that the priority is first given to pedestrian and cycle movements, both within

the scheme and with neighbouring areas; and secondly, so far as possible, to facilitating access to high quality public transport, in accordance with adopted policy INF1 of the Joint Core Strategy (2017) and paragraphs 108 and 110 of the National Planning Policy Framework.

- 6 Prior to commencement of the development hereby permitted details of a construction management plan or construction method statement shall be submitted to and approved in writing by the Local Planning Authority. The approved plan/statement shall be adhered to throughout the demolition/construction period. The plan/statement shall include but not be restricted to:

- Parking of vehicle of site operatives and visitors (including measures taken to ensure satisfactory access and movement for existing occupiers of neighbouring properties during construction);
- Routes for construction traffic;
- Any temporary access to the site;
- Locations for loading/unloading and storage of plant, waste and construction materials;
- Method of preventing mud and dust being carried onto the highway;
- Arrangements for turning vehicles;
- Arrangements to receive abnormal loads or unusually large vehicles; and
- Methods of communicating the Construction Management Plan to staff, visitors and neighbouring residents and businesses.

Reason: To minimise disruption on the public highway and adjacent land users and to accommodate the efficient delivery of goods and supplies during the course of the construction works in accordance with adopted policy INF1 of the Joint Core Strategy (2017) and paragraph 110 of the National Planning Policy Framework. Approval is required upfront because without proper mitigation the construction works could have an unacceptable highway impact.

- 7 No development shall commence until a detailed Site Waste Management Plan has been submitted to and approved in writing by the local planning authority. The Plan shall identify the main waste materials expected to be generated by the development during the construction phase and set out measures for dealing with such materials so as to minimise overall waste and to maximise re-use, recycling and recovery in line with the waste hierarchy. The detailed Site Waste Management Plan must include: -

- i) Information on the type and amount of waste likely to be generated prior to and during the construction phase;
- ii) Details of the practical arrangements for managing waste generated during construction in accordance with the principles of waste minimisation; and
- iii) Details of the measures for ensuring the delivery of waste minimisation during the construction phase.

The Site Waste Management Plan shall be fully implemented as approved unless the local planning authority gives prior written permission for any variation.

Reason: To ensure the effective implementation of waste minimisation in accordance with Gloucestershire Waste Core Strategy: Core Policy WCS2 - Waste Reduction.

- 8 No building or use hereby permitted shall be occupied or use commenced until the means of access for vehicles, pedestrians and/or cyclists have been constructed and completed in accordance with the approved plans.

Reason: To ensure that safe, suitable and secure access is achieved and maintained for all people that minimises the scope for conflict between traffic and cyclists and

pedestrians, and to establish and maintain a strong sense of place to create attractive and comfortable places to live, work and visit in accordance with adopted policy INF1 of the Joint Core Strategy (2017) and paragraphs 108, 110 and 127 of the National Planning Policy Framework.

- 9 No building or use hereby permitted shall be occupied or use commenced until the car/vehicle parking area and turning space associated with each building within the development (including garages and car ports where proposed) shown on the approved plans PL005 Rev B and SK25 Revision: F has been completed and thereafter the area shall be kept free of obstruction and available for the parking of vehicles associated with the development.

Reason: To ensure that a safe, suitable and secure means of access for all people that minimises the scope for conflict between pedestrians, cyclists and vehicles is provided in accordance with policy INF1 of the Joint Core Strategy (2017) and paragraphs 108 and 110 of the National Planning Policy Framework.

- 10 The development hereby permitted shall not be occupied until cycle storage facilities for a minimum of 2 no. bicycles per dwelling have been made available for use and those facilities shall be maintained for the duration of the development.

Reason: To give priority to cycle movements by ensuring that adequate cycle parking is provided, to promote cycle use and to ensure that the opportunities for sustainable transport modes have been taken up in accordance with adopted policy INF1 of the Joint Core Strategy (2017) and paragraph 108 of the National Planning Policy Framework.

- 11 Prior to occupation or use commenced, evidence that the pre-occupation elements of the approved Travel Plan have been put in place shall be prepared, submitted to and approved in writing by the Local Planning Authority.

The approved Travel Plan shall then be implemented, monitored and reviewed in accordance with the agreed Travel Plan to the satisfaction of Local Planning Authority unless agreed in writing by the Local Planning Authority.

Reason: The development will generate a significant amount of movement; and to ensure that the appropriate opportunities to promote sustainable transport modes are taken up in accordance with adopted policy INF1 of the Joint Core Strategy (2017) and paragraphs 108 and 111 of the National Planning Policy Framework.

- 12 The individual vehicular accesses hereby permitted shall not be brought into use until the existing roadside frontage boundaries have been set back to provide visibility splays extending from a point 2 metres back along each edge of the access, measured from the carriageway edge, extending at an angle of 45 degrees to the footway, and the area between those splays and the footway shall be reduced in level and thereafter maintained so as to provide clear visibility at a height of 600mm above the adjacent footway level and shall be maintained as such for the duration of the development.

Reason: To reduce potential highway impact by ensuring that adequate visibility is provided and maintained and to ensure that a safe, secure and attractive layout which minimises the scope for conflicts between pedestrians, cyclists and vehicles is provided in accordance with adopted policy INF1 of the Joint Core Strategy (2017) and paragraphs 108 and 110 of the National Planning Policy Framework.

- 13 The development hereby permitted shall not be first occupied until the proposed dwellings have been fitted with an electric vehicle charging point. The charging points shall comply with BS EN 62196 Mode 3 or 4 charging and BS EN 61851. The electric

vehicle charging points shall be retained for the lifetime of the development unless they need to be replaced in which case the replacement charging point(s) shall be of the same specification or a higher specification in terms of charging performance.

Reason: To ensure that the development incorporates facilitates for charging plug-in and other ultra-low emission vehicles in accordance with paragraph 110 of the National Planning Policy Framework.

- 14 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and/or re-enacting that Order) the garage/car parking space(s) hereby permitted shall be retained as such and shall not be used for any purpose other than the garaging of private motor vehicles associated with the residential occupation of the property and ancillary domestic storage without the grant of further specific planning permission from the Local Planning Authority.

Reason: To ensure that a safe, suitable and secure means of access for all people that minimises the scope for conflict between pedestrians, cyclists and vehicles is provided in accordance with policy INF1 of the Joint Core Strategy (2017) and paragraphs 108 and 110 of the National Planning Policy Framework.

- 15 Prior to the commencement of the development hereby permitted including ground works and vegetation clearance a Construction Environmental Management Plan (CEMP) should be submitted to and approved in writing by the Planning Authority. The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details. Any modifications to the approved details for example as a result of requirements of a protected species license must be submitted to and agreed in writing by the Planning Authority. The CEMP shall include final details of the following items:

Ecology:

- (i) Outline Mitigation Strategy based on Section 4.6 of the Confidential Badger Appendix by Aspect Ecology dated April 2020.
- (ii) Other Mitigation Measures MM1 (Hedgerow & Tree Protection), MM2 (Veteran Trees), MM3 (update Preliminary [tree] Roost Assessment), MM4 (Bat Survey and Soft-felling of Trees), MM5 (Re-installation of any affected Retained Bat Boxes), MM7 (Wild Mammal Construction Safeguards), MM8 (Habitat Manipulation/Destructive Search for Reptiles & Amphibians) and MM9 (Timing of Works to avoid Nesting Birds) based on the Ecological Appraisal by Aspect Ecology dated April 2020.
- (iii) Adherence to the Tree Protection Plan incorporating arboricultural methods (iv) The role and responsibilities on site of an Ecological Clerk of Works (ECoW) and other responsible persons plus lines of communication

Other Items:

- (iv) Procedures for maintaining good public relations including complaint management, public consultation and liaison.
- (v) Arrangements for liaison with the Council's Pollution Control Team.
- (vi) Mitigation measures as defined in BS 5528: Parts 1 and 2: 2009 Noise and Vibration Control on Construction and Open Sites which shall be used to minimise noise disturbance from construction works.
- (vii) Procedures for emergency deviation of the agreed working hours.

- (viii) Waste and material storage.
- (ix) Control measures for dust and other air-borne pollutants. This must also take into account the need to protect any local resident who may have a particular susceptibility to air-borne pollutants.
- (x) Measures for controlling the use of site lighting whether required for safe working or for security purposes.

Reason: To protect the local environment including its landscape and biodiversity value, to ensure that adequate mitigation/compensation measures are provided in order to safeguard protected species, and to reduce any potential impact on local residents, in accordance with saved policy CP4 of the Cheltenham Borough Local Plan (2006), adopted policies SD9 and SD14 of the Joint Core Strategy (2017) and paragraphs 8, 170, 175 and 180 of the National Planning Policy Framework. This information is required up front because without proper mitigation the construction works could have an unacceptable impact on protected species and the amenity of adjoining land users at the beginning of construction.

- 16 Notwithstanding previously submitted details, prior to the commencement of development, drainage plans for the disposal of foul water shall be submitted to and approved in writing by the Local Planning Authority. The approved drainage shall be implemented in accordance with the approved details prior to first occupation of the development

Reason: To ensure that the development is provided with a satisfactory means of drainage as well as to prevent or to avoid exacerbating any flooding issues and to minimise the risk of pollution in accordance with adopted policy INF2 of the Joint Core Strategy (2017). Approval is required upfront as any works on site could have implications for drainage, flood risk and water quality in the locality.

- 17 Prior to the commencement of development, a Lighting Scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be based on mitigation measure MM6 (Sensitive Lighting) within the Ecological Appraisal by Aspect Ecology dated April 2020, and shall include the following details:

- (a) the position, height and type of all lighting;
- (b) the intensity of lighting and spread of light as a lux contour plan;
- (c) the measures proposed must demonstrate no significant effect of the lighting on the environment including preventing disturbance to bats so that light falling on vegetated areas and features used by bats will be below or not exceed 2.0 lux; and
- (d) the periods of day and night (throughout the year) when such lighting will be used and controlled for construction and operational needs.

The approved scheme shall be implemented for the duration of the development and thereafter maintained in accordance with the manufacturer's recommendations and scheme details.

Reason: To provide adequate safeguards for protected species on the site, and to ensure that foraging and commuting of bats is not discouraged at this location, in accordance with adopted policy SD9 of the Joint Core Strategy (2017), ODPM Circular 06/2005, paragraphs 109, 118 and 125 of the National Planning Policy Framework and Section 40 of the Natural Environment and Rural Communities Act 2006.

- 18 Prior to the commencement of development, plans showing the existing and proposed ground levels and slab levels of the proposed and adjacent buildings shall be submitted

to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented strictly in accordance with the agreed details.

Reason: To ensure a satisfactory relationship between the proposed development and adjacent buildings and land, having regard to saved policies SL1 and D1 of the Cheltenham Plan (2020) and adopted policies SD4 and SD14 of the Joint Core Strategy (2017). Approval is required upfront to allow the impact of the development to be accurately assessed.

- 19 Prior to the commencement of development, a method statement for the building foundation design, which takes account of existing soil types and adjacent trees so as to prevent future subsidence to new buildings and demands for the removal or heavy pruning of retained trees, shall be submitted to and approved in writing by the Local Planning Authority.

Reason: To safeguard the retained trees in accordance with saved policies GI2 and GI3 of the Cheltenham Plan (2020), adopted policy INF3 of the Joint Core Strategy (2017) and paragraph 175 of the National Planning Policy Framework. Approval is required upfront to ensure that important trees are not permanently damaged or lost.

- 20 Prior to the commencement of the development a Landscape and Ecological Management Scheme based on the Landscape Strategy drawing 19216.101 revision D dated 14-04-20, Proposed New Tree Planting Management Plan - Head of Terms and the Ecological Appraisal dated April 2020 (Ecological Enhancements EE1 to EE8 inclusive) shall be submitted to and approved by the Planning Authority. The scheme shall comprise of a drawing and document that covers:

- (a) Aims and objectives of the scheme including conservation of protected and priority species and a net gain for biodiversity appropriate green infrastructure;
- (b) A plan with annotations showing the soft landscape, hard landscape, habitat, vegetation and artificial features to be retained, created and/or managed;
- (c) Measures (including establishment, enhancement and after-care) for achieving the aims and objectives of management;
- (d) Provision for educational but not public access;
- (e) A work and maintenance schedule for 5 years and arrangements for beyond this time;
- (f) Monitoring and remedial or contingency measures;
- (g) Organisation or personnel responsible for implementation of the scheme;
- (h) Issue of a homeowner's information pack on local recreational opportunities and the sensitivity of the Cotswolds Beechwoods SAC.
- (i) Measures to achieve the retention and enhancement of the Ladies Bedstraw population within the site.

The Scheme shall also include details of the legal and funding mechanisms by which the long-term implementation of the scheme will be secured by the developer with the management body responsible for its delivery. The scheme shall be implemented as approved by the Planning Authority.

Reason: To conserve and enhance the landscape and biodiversity value of the land and in accordance with JCS policies SD6 and SD9, ODPM Circular 06/2005 plus National Planning Policy Framework paragraphs 8, 170 and 175. This is also in accordance with Section 40 of the Natural Environment and Rural Communities Act 2006, which confers a general biodiversity duty upon Local Authorities.

- 21 Prior to the commencement of any above ground works, a scheme for the provision of fire hydrants (served by mains water supply) shall submitted to and approved in writing

by the Local Planning Authority. No dwelling shall be occupied until the hydrant serving that property has been provided.

Reason: To ensure adequate water infrastructure provision is made on site for the local fire service to tackle any property fire in accordance with adopted policy INF6 of the Joint Core Strategy (2017) and paragraph 110 of the National Planning Policy Framework.

- 22 Notwithstanding the submitted details, prior to the commencement of any building works above ground level, details of a scheme for the provision and future maintenance of multi-functional green infrastructure to include areas of informal play shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented prior to first occupation of the development.

Reason: To ensure that the development makes a positive contribution towards green infrastructure and provides opportunities for play and recreation in accordance with adopted policies INF3 and INF6 of the Joint Core Strategy (2017) and paragraphs 69 and 109 of the National Planning Policy Framework.

- 23 Notwithstanding previously submitted details, prior to the commencement of any building works above ground level, full details of a hard and soft landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall identify the number and location of all new trees and hedges to be planted; their species, size, spacing/density of hedges, root types, tree pit details (including details of introduced soil amelioration plans); and protection from deer and other predators as well as protection for the street trees from vehicles etc. The scheme shall also include: a. a short, medium and long term management for all trees to be planted; b. details of the restoration and remedial surgery to parts of the existing hedge to be retained; c. details of the proposed pond to the south of the site; and d. wild flower strips in the public open spaces. All hard landscaping works shall be carried out in accordance with the approved details prior to first occupation of the development unless otherwise agreed in writing by the Local Planning Authority. All soft landscaping shall be carried out in the first planting and seeding season following completion of the development or first occupation of the development (whichever is sooner). Any trees which within a period of 5 years, die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of the same size or species unless otherwise first agreed in writing by the Local Planning Authority.

Reason: In the interests of the character and appearance of the area in accordance with saved policies D1, GI2 and GI3 of the Cheltenham Plan (2020), and adopted policies SD4 and INF3 of the Joint Core Strategy (2017). Approval is required upfront because the landscaping is an integral part of the development and its acceptability.

- 24 All works including paths, parking areas and other forms of hard landscaping that fall within Root Protection Areas (RPAs) of the retained trees shall be constructed using a no-dig method as per the submitted drawings. Prior to the commencement of development, full details of the proposed no-dig method shall be submitted to and approved in writing by the Local Planning Authority and the development shall thereafter be implemented strictly in accordance with the details so approved.

Reason: To safeguard the retained trees in accordance with saved policies GE5 and GE6 of the Cheltenham Borough Local Plan (2006), adopted policy INF3 of the Joint Core Strategy (2017) and paragraph 175 of the National Planning Policy Framework. Approval is required upfront to ensure that important trees are not permanently damaged or lost.

- 25 No trees, shrubs or hedges within the site which are shown to be retained on the approved plans shall be felled, uprooted, wilfully damaged or destroyed, cut back in any way or removed, without the prior written permission from the Local Planning Authority. Any retained trees, shrubs or hedges removed without such permission, or which die or become severely damaged or seriously diseased within 5 years from the completion of the development hereby permitted, shall be replaced with trees, shrubs or hedge plants of a similar size and species during the next planting season unless otherwise agreed in writing by the Local Planning Authority.

Reason: To safeguard the retained trees in accordance with saved policies GE5 and GE6 of the Cheltenham Borough Local Plan (2006), adopted policy INF3 of the Joint Core Strategy (2017) and paragraph 175 of the National Planning Policy Framework.

- 26 The development shall be implemented in accordance with the Tree Protection Plan drawing 38-1036.03-A dated 17.04.20 which incorporates arboricultural methods and supervision details. All protective structures installed shall be maintained until construction work has been completed. No materials, soils, or equipment shall be stored under the canopy of any retained tree or hedgerow within the application site.

Reason: To prevent unnecessary loss of amenity and biodiversity value of trees and shrubs to be retained in accordance with Policies GI2 and GI3 of the Cheltenham Plan (2020), ODPM Circular 06/2005 plus National Planning Policy Framework paragraphs 8, 170 and 175.

- 27 No tree and/or hedge clearance shall be carried out during bird nesting season (1st March to 31st August inclusive) unless the site has been surveyed in advance for breeding birds and a scheme to protect breeding birds has first been submitted to and approved in writing by the Local Planning Authority. Any such scheme shall be implemented in accordance with the approved details.

Reason: To provide adequate safeguards for protected species on the site in accordance with adopted policy SD9 of the Joint Core Strategy (2017) and paragraph 118 of the National Planning Policy Framework.

- 28 No construction works and/or ancillary operations which are audible at the site boundary shall be carried out on site outside the following hours:

Monday to Friday - 8am to 6pm
Saturday - 8am to 1pm

There shall be no working on Sundays or Public or Bank Holidays. Deliveries to, and removal of plant, equipment, machinery and waste from, the site shall only take place within the permitted hours detailed above.

Reason: To ensure that any impact on the amenity of the occupiers of adjacent dwellings is minimised and controlled in accordance with saved policy SL1 of the Cheltenham Plan (2020) and adopted policy SD14 of the Joint Core Strategy (2017).

- 29 No external facing or roofing materials shall be applied unless in accordance with: a) a detailed written specification of the materials; and b) physical samples of the materials. The details of which shall have first been submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that the external appearance of the development is appropriate to its surroundings in accordance with saved policy D1 of the Cheltenham Plan (2020),

adopted policy SD4 of the Joint Core Strategy (2017) and guidance set out within Section 12 of the National Planning Policy Framework.

- 30 No boundary treatments, including boundary walls, fences or other means of enclosure shall be constructed unless in accordance with details which shall have first been submitted to and approved in writing by the Local Planning Authority. The boundary treatments shall thereafter be implemented in accordance with the approved details prior to first occupation of the development hereby permitted.

Reason: To ensure that the external appearance of the development is appropriate to its surroundings in accordance with saved policy D1 of the Cheltenham Plan (2020), adopted policy SD4 of the Joint Core Strategy (2017) and guidance set out within Section 12 of the National Planning Policy Framework.

- 31 Prior to first occupation of the development, details of a Homeowner's Information Pack resource providing information on recreation resources in the locality shall be submitted to and approved in writing by the Local Planning Authority. The pack should reference:

- Alternative local recreation opportunities (off site), e.g. website information for Cotswolds AONB and recreation 'offer' <https://www.cotswoldsaonb.org.uk/visiting-and-exploring/>
- Relevant adopted Cheltenham, Gloucester and Tewkesbury JCS policy (e.g. INF3 green infrastructure) and supporting text (e.g. 5.4.6 re. Green Infrastructure strategy 'vision') and Policy BG1 of the Cheltenham Plan 2020.

Each dwelling shall be provided with an approved Homeowner Information Pack on occupation.

Reason: To ensure that appropriate measures to mitigate for any adverse effects to the Cotswold Beechwoods SAC that could potentially occur as a result of the proposal, are suitably addressed in accordance with adopted policy SD9 of the Joint Core Strategy (2017), policy BG1 of the Cheltenham Plan 2020 and paragraphs 175, 176 and 180 of the National Planning Policy Framework.

- 32 Prior to first occupation of the development, refuse and recycling storage facilities shall be provided in accordance with a scheme which shall have first been submitted to and approved in writing by the Local Planning Authority. The storage facilities shall thereafter be retained for that purpose.

Reason: In the interests of sustainable waste management and recycling, having regard to Policy W36 of the Gloucestershire Waste Local Plan.

- 33 Prior to first occupation of the development, leaf guards for the guttering and down pipes of the dwellings shall be installed in accordance with details which shall have first been submitted to and approved in writing by the Local Planning Authority, and shall be maintained as such thereafter.

Reason: To reduce levels of tree-related inconvenience experienced by residents during the occupancy of the development.

INFORMATIVES

- 1 In accordance with the requirements of The Town and Country Planning (Development Management Procedure) (England) Order 2015 and the provisions of the NPPF, the Local Planning Authority adopts a positive and proactive approach to dealing with planning applications and where possible, will seek solutions to any problems that arise

when dealing with a planning application with the aim of fostering the delivery of sustainable development.

At the heart of this positive and proactive approach is the authority's pre-application advice service for all types of development. Further to this however, the authority publishes guidance on the Council's website on how to submit planning applications and provides full and up-to-date information in relation to planning applications to enable the applicant, and other interested parties, to track progress.

In this instance, having had regard to all material considerations, the application constitutes sustainable development and has therefore been approved in a timely manner.

- 2 The development hereby approved includes the carrying out of work on the adopted highway. You are advised that before undertaking work on the adopted highway you must enter into a highway agreement under Section 278 of the Highways Act 1980 with the County Council, which would specify the works and the terms and conditions under which they are to be carried out.

Contact the Highway Authority's Legal Agreements Development Management Team at highwaylegalagreements@gloucestershire.gov.uk allowing sufficient time for the preparation and signing of the Agreement. You will be required to pay fees to cover the Council's costs in undertaking the following actions:

- i. Drafting the Agreement
- ii. A Monitoring Fee
- iii. Approving the highway details
- iv. Inspecting the highway works

Planning permission is not permission to work in the highway. A Highway Agreement under Section 278 of the Highways Act 1980 must be completed, the bond secured and the Highway Authority's technical approval and inspection fees paid before any drawings will be considered and approved.

- 3 The development hereby approved includes the construction of new highway. To be considered for adoption and ongoing maintenance at the public expense it must be constructed to the Highway Authority's standards and terms for the phasing of the development. You are advised that you must enter into a highway agreement under Section 38 of the Highways Act 1980. The development will be bound by Sections 219 to 225 (the Advance Payments Code) of the Highways Act 1980.

Contact the Highway Authority's Legal Agreements Development Management Team at highwaylegalagreements@gloucestershire.gov.uk. You will be required to pay fees to cover the Council's costs in undertaking the following actions:

- I. Drafting the Agreement
- II. Set up costs
- III. Approving the highway details
- IV. Inspecting the highway works

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You should enter into discussions with statutory undertakers as soon as possible to co-ordinate the laying of services under any new highways to be adopted by the Highway Authority.

The Highway Authority's technical approval inspection fees must be paid before any drawings will be considered and approved. Once technical approval has been granted a

Highway Agreement under Section 38 of the Highways Act 1980 must be completed and the bond secured.

- 4 The development hereby approved and any associated highway works required, is likely to impact on the operation of the highway network during its construction (and any demolition required). You are advised to contact the Highway Authorities Network Management Team at Network&TrafficManagement@gloucestershire.gov.uk before undertaking any work, to discuss any temporary traffic management measures required, such as footway, Public Right of Way, carriageway closures or temporary parking restrictions a minimum of eight weeks prior to any activity on site to enable Temporary Traffic Regulation Orders to be prepared and a programme of Temporary Traffic Management measures to be agreed.
- 5 The application will require Building Regulations approval. Please contact Cheltenham and Tewkesbury borough council on 01242 264321 for further information.

APPENDIX 5

20/00683/OUT Planning Officer's Supplementary Report to Committee

APPLICATION NO: 20/00683/OUT		OFFICER: Mrs Emma Pickernell
DATE REGISTERED: 29th April 2020		DATE OF EXPIRY: 29th July 2020
WARD: Battledown		PARISH: Charlton Kings
APPLICANT:	W Morrison (Chelt) Ltd & Trustees Carmelite Charitable Trust	
AGENT:	Mr Peter Frampton	
LOCATION:	Land Adjacent To Oakhurst Rise, Cheltenham	
PROPOSAL:	Outline application for 43 dwellings including access, layout and scale, with all other matters reserved for future consideration	

Update to Officer Report

1. OFFICER COMMENTS

1.1 Introduction

- 1.1.1 The purpose of this update is to provide members with correspondence which has been received since the report was written which includes:
- 1.1.2 (a) Document from the Applicant's Ecologist (Aspect) including a Framework Management Plan and a response to this from Gloucestershire Wildlife Trust
- (b) Response from Aspect to an objection received from a neighbour to the site
- (c) Letter from Ecologist acting for Charlton Kings Friends (Bioscan)
- (d) Letter from Arboricultural Consultant acting for Charlton Kings Friends (Barton Hyett)
- (e) Response from County Ecologist to Bioscan letter (marked up copy)
- (f) Letter and infographic sent to members by applicant
- (g) Letter on behalf of CK Friends sent to members
- (h) Email to Cllr Atherstone from Applicant
- (i) Response to Barton Hyett's letter from the CBC Tree Officer.
- (j) Response to Barton Hyett's letter from Applicants Arboricultural consultant (FLAC)
- (k) several representations

1.2 Ecology

- 1.2.1 Further to the recent designation of the site as a Local Wildlife Site (LWS) the applicant's ecologist has prepared a Framework Management Plan. This suggests an outline for a fuller plan (required by condition) which will include measures to ensure the retained grassland is restored and improved. Gloucestershire Wildlife Trust has confirmed that the prescriptions within this document should result in securing and enhancing the biodiversity interest of the retained areas of the Local Wildlife Site.
- 1.2.2 Further correspondence from Aspect confirms that it will be possible to retain the existing pond on site. An additional condition in this respect is proposed so that details of this can be agreed.

- 1.2.3 The letter submitted on behalf of Bioscan makes reference to the Defra biodiversity metric, as discussed in paras 6.5.26 – 6.5.30 of the Officer report. The County Ecologist has provided a commentary to this letter which highlights issues in using the metric and reiterates that the metric is not the finished product and is not a replacement for a proper assessment by qualified ecologists. He repeats his view that the scheme will result in no net loss of biodiversity.
- 1.2.4 The letter also makes reference to the recent designation of the site as a Local (Key) Wildlife Site (LWS). This makes reference to the recording and recognition of grassland species in relation to the designation, however GWT designated the LWS on the grounds of 'Value for Learning'. It was not stated that it qualifies on the ecological value of the grassland alone.
- 1.2.5 The conclusions of the Ecology section of the Officer report are unchanged. The County Ecologist will attend the Planning Committee meeting.

1.3 Trees

- 1.3.1 A report has been submitted on behalf of CK Friends in relation to the trees on site. A response has been provided from CBC Tree Officer. It is not considered that there is anything within these comments which would lead to a differing conclusion than already stated within the Officer report.
- 1.3.2 The Tree Officer will attend the Planning Committee meeting.

1.4 Conditions

- 1.4.1 The list of recommended conditions has been amended as follows:
 - Condition 20 – amended to include arboricultural considerations in the management plan and make reference to the Outline Arboricultural Management Plan. The time frame in criterion (e) changed to 10 years. A new criterion (j) added to include measures for the management of retained trees.
 - Condition 23 – amended to change the period for replacement of trees to 10 years
 - Condition 25 – amended to change the period for replacement of trees to 10 years
 - Condition 34 – New condition requiring the pond to be retained, in accordance with a scheme to be submitted.

2. CONCLUSION AND RECOMMENDATION

- 2.1 Subject to the changes to conditions outlined above the conclusion and recommendation is unchanged from the Officer Report. For completeness a full updated list of conditions is provided below.

3. CONDITIONS

- 1 The outline planning permission hereby granted shall be begun not later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.

Reason: To accord with the provisions of Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- 2 Application(s) for approval of the reserved matters (appearance and landscaping) must be made not later than the expiration of three years from the date of this decision.

Reason: To accord with the provisions of Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- 3 The outline planning permission hereby granted shall be carried out in accordance with the approved plans listed in Schedule 1 of this decision notice.

Reason: For the avoidance of doubt and in the interests of proper planning.

- 4 The application for approval of landscaping as a reserved matter shall include full details of the surface water drainage proposals; and the information submitted shall be in accordance with the principles set out in the approved drainage strategy. Before these details are submitted an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system in accordance with the principles set out in The SuDS Manual, CIRIA C753 (or any subsequent version), and the results of the assessment provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:

1.
 - i. provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - ii. include a timetable for its implementation; and
 - iii. provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

The surface water drainage works shall thereafter be implemented strictly in accordance with approved details, prior to the commencement of any building works above ground level.

Reason: To ensure the development is provided with a satisfactory means of drainage as well as to reduce the risk of creating or exacerbating a flooding problem, and to minimise the risk of pollution for the lifetime of the development, in accordance with adopted policy INF2 of the Joint Core Strategy (2017). The detailed surface water drainage proposals are required at reserved matters stage as they form an inherent part of the landscaping proposals.

- 5 No works shall commence on site on the development hereby permitted until details of highway improvements consisting of the installation of a connecting section of footway (2m wide) with tactile dropped crossing point between Beaufort Road and Ewens Road (north side), extension to the footway (2m wide) and dropped kerb tactile crossing point across Charlton Court Road, and a bus shelter to serve Bus Stop ID: glodtwmt located on Beaufort Road have been submitted to and approved in writing by the Local

Planning Authority and no occupation/opening to the public shall occur until the approved works have been completed and are open to the public.

Reason: To ensure that safe and suitable access to the site can be achieved for all users and that the priority is first given to pedestrian and cycle movements, both within the scheme and with neighbouring areas; and secondly, so far as possible, to facilitating access to high quality public transport, in accordance with adopted policy INF1 of the Joint Core Strategy (2017) and paragraphs 108 and 110 of the National Planning Policy Framework.

- 6 Prior to commencement of the development hereby permitted details of a construction management plan or construction method statement shall be submitted to and approved in writing by the Local Planning Authority. The approved plan/statement shall be adhered to throughout the demolition/construction period. The plan/statement shall include but not be restricted to:
- i. Parking of vehicle of site operatives and visitors (including measures taken to ensure satisfactory access and movement for existing occupiers of neighbouring properties during construction);
 - ii. Routes for construction traffic;
 - iii. Any temporary access to the site;
 - iv. Locations for loading/unloading and storage of plant, waste and construction materials;
 - v. Method of preventing mud and dust being carried onto the highway;
 - vi. Arrangements for turning vehicles;
 - vii. Arrangements to receive abnormal loads or unusually large vehicles; and
 - viii. Methods of communicating the Construction Management Plan to staff, visitors and neighbouring residents and businesses.

Reason: To minimise disruption on the public highway and adjacent land users and to accommodate the efficient delivery of goods and supplies during the course of the construction works in accordance with adopted policy INF1 of the Joint Core Strategy (2017) and paragraph 110 of the National Planning Policy Framework. Approval is required upfront because without proper mitigation the construction works could have an unacceptable highway impact.

- 7 No development shall commence until a detailed Site Waste Management Plan has been submitted to and approved in writing by the local planning authority. The Plan shall identify the main waste materials expected to be generated by the development during the construction phase and set out measures for dealing with such materials so as to minimise overall waste and to maximise re-use, recycling and recovery in line with the waste hierarchy. The detailed Site Waste Management Plan must include: -

- i. Information on the type and amount of waste likely to be generated prior to and during the construction phase;
- ii. Details of the practical arrangements for managing waste generated during construction in accordance with the principles of waste minimisation; and
- iii. Details of the measures for ensuring the delivery of waste minimisation during the construction phase.

The Site Waste Management Plan shall be fully implemented as approved unless the local planning authority gives prior written permission for any variation.

Reason: To ensure the effective implementation of waste minimisation in accordance with Gloucestershire Waste Core Strategy: Core Policy WCS2 - Waste Reduction.

- 8 No building or use hereby permitted shall be occupied or use commenced until the means of access for vehicles, pedestrians and/or cyclists have been constructed and completed in accordance with the approved plans.

Reason: To ensure that safe, suitable and secure access is achieved and maintained for all people that minimises the scope for conflict between traffic and cyclists and pedestrians, and to establish and maintain a strong sense of place to create attractive and comfortable places to live, work and visit in accordance with adopted policy INF1 of the Joint Core Strategy (2017) and paragraphs 108, 110 and 127 of the National Planning Policy Framework.

- 9 No building or use hereby permitted shall be occupied or use commenced until the car/vehicle parking area and turning space associated with each building within the development (including garages and car ports where proposed) shown on the approved plans PL005 Rev B and SK25 Revision: F has been completed and thereafter the area shall be kept free of obstruction and available for the parking of vehicles associated with the development.

Reason: To ensure that a safe, suitable and secure means of access for all people that minimises the scope for conflict between pedestrians, cyclists and vehicles is provided in accordance with policy INF1 of the Joint Core Strategy (2017) and paragraphs 108 and 110 of the National Planning Policy Framework.

- 10 The development hereby permitted shall not be occupied until cycle storage facilities for a minimum of 2 no. bicycles per dwelling have been made available for use and those facilities shall be maintained for the duration of the development.

Reason: To give priority to cycle movements by ensuring that adequate cycle parking is provided, to promote cycle use and to ensure that the opportunities for sustainable transport modes have been taken up in accordance with adopted policy INF1 of the Joint Core Strategy (2017) and paragraph 108 of the National Planning Policy Framework.

- 11 Prior to occupation or use commenced, evidence that the pre-occupation elements of the approved Travel Plan have been put in place shall be prepared, submitted to and approved in writing by the Local Planning Authority.

The approved Travel Plan shall then be implemented, monitored and reviewed in accordance with the agreed Travel Plan to the satisfaction of Local Planning Authority unless agreed in writing by the Local Planning Authority.

Reason: The development will generate a significant amount of movement; and to ensure that the appropriate opportunities to promote sustainable transport modes are taken up in accordance with adopted policy INF1 of the Joint Core Strategy (2017) and paragraphs 108 and 111 of the National Planning Policy Framework.

- 12 The individual vehicular accesses hereby permitted shall not be brought into use until the existing roadside frontage boundaries have been set back to provide visibility splays extending from a point 2 metres back along each edge of the access, measured from the carriageway edge, extending at an angle of 45 degrees to the footway, and the area between those splays and the footway shall be reduced in level and thereafter maintained so as to provide clear visibility at a height of 600mm above the adjacent footway level and shall be maintained as such for the duration of the development.

Reason: To reduce potential highway impact by ensuring that adequate visibility is provided and maintained and to ensure that a safe, secure and attractive layout which minimises the scope for conflicts between pedestrians, cyclists and vehicles is provided

in accordance with adopted policy INF1 of the Joint Core Strategy (2017) and paragraphs 108 and 110 of the National Planning Policy Framework.

- 13 The development hereby permitted shall not be first occupied until the proposed dwellings have been fitted with an electric vehicle charging point. The charging points shall comply with BS EN 62196 Mode 3 or 4 charging and BS EN 61851. The electric vehicle charging points shall be retained for the lifetime of the development unless they need to be replaced in which case the replacement charging point(s) shall be of the same specification or a higher specification in terms of charging performance.

Reason: To ensure that the development incorporates facilities for charging plug-in and other ultra-low emission vehicles in accordance with paragraph 110 of the National Planning Policy Framework.

- 14 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and/or re-enacting that Order) the garage/car parking space(s) hereby permitted shall be retained as such and shall not be used for any purpose other than the garaging of private motor vehicles associated with the residential occupation of the property and ancillary domestic storage without the grant of further specific planning permission from the Local Planning Authority.

Reason: To ensure that a safe, suitable and secure means of access for all people that minimises the scope for conflict between pedestrians, cyclists and vehicles is provided in accordance with policy INF1 of the Joint Core Strategy (2017) and paragraphs 108 and 110 of the National Planning Policy Framework.

- 15 Prior to the commencement of the development hereby permitted including ground works and vegetation clearance a Construction Environmental Management Plan (CEMP) should be submitted to and approved in writing by the Planning Authority. The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details. Any modifications to the approved details for example as a result of requirements of a protected species license must be submitted to and agreed in writing by the Planning Authority. The CEMP shall include final details of the following items:

Ecology:

- (i) Outline Mitigation Strategy based on Section 4.6 of the Confidential Badger Appendix by Aspect Ecology dated April 2020.
- (ii) Other Mitigation Measures MM1 (Hedgerow & Tree Protection), MM2 (Veteran Trees), MM3 (update Preliminary [tree] Roost Assessment), MM4 (Bat Survey and Soft-felling of Trees), MM5 (Re-installation of any affected Retained Bat Boxes), MM7 (Wild Mammal Construction Safeguards), MM8 (Habitat Manipulation/Destructive Search for Reptiles & Amphibians) and MM9 (Timing of Works to avoid Nesting Birds) based on the Ecological Appraisal by Aspect Ecology dated April 2020.
- (iii) Adherence to the Tree Protection Plan incorporating arboricultural methods (iv) The role and responsibilities on site of an Ecological Clerk of Works (ECOW) and other responsible persons plus lines of communication

Other Items:

- (iv) Procedures for maintaining good public relations including complaint management, public consultation and liaison.
- (v) Arrangements for liaison with the Council's Pollution Control Team.
- (vi) Mitigation measures as defined in BS 5528: Parts 1 and 2: 2009 Noise and Vibration Control on Construction and Open Sites which shall be used to minimise noise disturbance from construction works.

- (vii) Procedures for emergency deviation of the agreed working hours.
- (viii) Waste and material storage.
- (ix) Control measures for dust and other air-borne pollutants. This must also take into account the need to protect any local resident who may have a particular susceptibility to air-borne pollutants.
- (x) Measures for controlling the use of site lighting whether required for safe working or for security purposes.

Reason: To protect the local environment including its landscape and biodiversity value, to ensure that adequate mitigation/compensation measures are provided in order to safeguard protected species, and to reduce any potential impact on local residents, in accordance with saved policy CP4 of the Cheltenham Borough Local Plan (2006), adopted policies SD9 and SD14 of the Joint Core Strategy (2017) and paragraphs 8, 170, 175 and 180 of the National Planning Policy Framework. This information is required up front because without proper mitigation the construction works could have an unacceptable impact on protected species and the amenity of adjoining land users at the beginning of construction.

- 16 Notwithstanding previously submitted details, prior to the commencement of development, drainage plans for the disposal of foul water shall be submitted to and approved in writing by the Local Planning Authority. The approved drainage shall be implemented in accordance with the approved details prior to first occupation of the development

Reason: To ensure that the development is provided with a satisfactory means of drainage as well as to prevent or to avoid exacerbating any flooding issues and to minimise the risk of pollution in accordance with adopted policy INF2 of the Joint Core Strategy (2017). Approval is required upfront as any works on site could have implications for drainage, flood risk and water quality in the locality.

- 17 Prior to the commencement of development, a Lighting Scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be based on mitigation measure MM6 (Sensitive Lighting) within the Ecological Appraisal by Aspect Ecology dated April 2020, and shall include the following details:

- (a) the position, height and type of all lighting;
- (b) the intensity of lighting and spread of light as a lux contour plan;
- (c) the measures proposed must demonstrate no significant effect of the lighting on the environment including preventing disturbance to bats so that light falling on vegetated areas and features used by bats will be below or not exceed 2.0 lux; and
- (d) the periods of day and night (throughout the year) when such lighting will be used and controlled for construction and operational needs.

The approved scheme shall be implemented for the duration of the development and thereafter maintained in accordance with the manufacturer's recommendations and scheme details.

Reason: To provide adequate safeguards for protected species on the site, and to ensure that foraging and commuting of bats is not discouraged at this location, in accordance with adopted policy SD9 of the Joint Core Strategy (2017), ODPM Circular 06/2005, paragraphs 109, 118 and 125 of the National Planning Policy Framework and Section 40 of the Natural Environment and Rural Communities Act 2006.

- 18 Prior to the commencement of development, plans showing the existing and proposed ground levels and slab levels of the proposed and adjacent buildings shall be submitted

to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented strictly in accordance with the agreed details.

Reason: To ensure a satisfactory relationship between the proposed development and adjacent buildings and land, having regard to saved policies SL1 and D1 of the Cheltenham Plan (2020) and adopted policies SD4 and SD14 of the Joint Core Strategy (2017). Approval is required upfront to allow the impact of the development to be accurately assessed.

- 19 Prior to the commencement of development, a method statement for the building foundation design, which takes account of existing soil types and adjacent trees so as to prevent future subsidence to new buildings and demands for the removal or heavy pruning of retained trees, shall be submitted to and approved in writing by the Local Planning Authority.

Reason: To safeguard the retained trees in accordance with saved policies GI2 and GI3 of the Cheltenham Plan (2020), adopted policy INF3 of the Joint Core Strategy (2017) and paragraph 175 of the National Planning Policy Framework. Approval is required upfront to ensure that important trees are not permanently damaged or lost.

- 20 Prior to the commencement of the development a Landscape, Arboricultural and Ecological Management Scheme based on the Landscape Strategy drawing 19216.101 revision D dated 14-04-20, Proposed New Tree Planting Management Plan - Head of Terms, Outline Arboricultural Management Plan (included on Tree Protection Plan Dwg no. 38-1036.03-E) and the Ecological Appraisal dated April 2020 (Ecological Enhancements EE1 to EE8 inclusive) shall be submitted to and approved by the Planning Authority. The scheme shall comprise of a drawing and document that covers:

- (a) Aims and objectives of the scheme including conservation of protected and priority species and a net gain for biodiversity appropriate green infrastructure;
- (b) A plan with annotations showing the soft landscape, hard landscape, habitat, vegetation and artificial features to be retained, created and/or managed;
- (c) Measures (including establishment, enhancement and after-care) for achieving the aims and objectives of management;
- (d) Provision for educational but not public access;
- (e) A work and maintenance schedule for 10 years and arrangements for beyond this time;
- (f) Monitoring and remedial or contingency measures;
- (g) Organisation or personnel responsible for implementation of the scheme;
- (h) Issue of a homeowner's information pack on local recreational opportunities and the sensitivity of the Cotswolds Beechwoods SAC.
- (i) Measures to achieve the retention and enhancement of the Ladies Bedstraw population within the site.
- (j) Measures for the management of existing trees retained pursuant to Condition 25.

The Scheme shall also include details of the legal and funding mechanisms by which the long-term implementation of the scheme will be secured by the developer with the management body responsible for its delivery. The scheme shall be implemented as approved by the Planning Authority.

Reason: To conserve and enhance the landscape and biodiversity value of the land and in accordance with JCS policies SD6 and SD9, ODPM Circular 06/2005 plus National Planning Policy Framework paragraphs 8, 170 and 175. This is also in accordance with Section 40 of the Natural Environment and Rural Communities Act 2006, which confers a general biodiversity duty upon Local Authorities.

- 21 Prior to the commencement of any above ground works, a scheme for the provision of fire hydrants (served by mains water supply) shall be submitted to and approved in writing by the Local Planning Authority. No dwelling shall be occupied until the hydrant serving that property has been provided.

Reason: To ensure adequate water infrastructure provision is made on site for the local fire service to tackle any property fire in accordance with adopted policy INF6 of the Joint Core Strategy (2017) and paragraph 110 of the National Planning Policy Framework.

- 22 Notwithstanding the submitted details, prior to the commencement of any building works above ground level, details of a scheme for the provision and future maintenance of multi-functional green infrastructure to include areas of informal play shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented prior to first occupation of the development.

Reason: To ensure that the development makes a positive contribution towards green infrastructure and provides opportunities for play and recreation in accordance with adopted policies INF3 and INF6 of the Joint Core Strategy (2017) and paragraphs 69 and 109 of the National Planning Policy Framework.

- 23 Notwithstanding previously submitted details, prior to the commencement of any building works above ground level, full details of a hard and soft landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall identify the number and location of all new trees and hedges to be planted; their species, size, spacing/density of hedges, root types, tree pit details (including details of introduced soil amelioration plans); and protection from deer and other predators as well as protection for the street trees from vehicles etc. The scheme shall also include: a. a short, medium and long term management for all trees to be planted; b. details of the restoration and remedial surgery to parts of the existing hedge to be retained; c. details of the proposed pond to the south of the site; and d. wild flower strips in the public open spaces. All hard landscaping works shall be carried out in accordance with the approved details prior to first occupation of the development unless otherwise agreed in writing by the Local Planning Authority. All soft landscaping shall be carried out in the first planting and seeding season following completion of the development or first occupation of the development (whichever is sooner). Any trees which within a period of 10 years, die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of the same size or species unless otherwise first agreed in writing by the Local Planning Authority.

Reason: In the interests of the character and appearance of the area in accordance with saved policies D1, GI2 and GI3 of the Cheltenham Plan (2020), and adopted policies SD4 and INF3 of the Joint Core Strategy (2017). Approval is required upfront because the landscaping is an integral part of the development and its acceptability.

- 24 All works including paths, parking areas and other forms of hard landscaping that fall within Root Protection Areas (RPAs) of the retained trees shall be constructed using a no-dig method as per the submitted drawings. Prior to the commencement of development, full details of the proposed no-dig method shall be submitted to and approved in writing by the Local Planning Authority and the development shall thereafter be implemented strictly in accordance with the details so approved.

Reason: To safeguard the retained trees in accordance with saved policies GE5 and GE6 of the Cheltenham Borough Local Plan (2006), adopted policy INF3 of the Joint Core Strategy (2017) and paragraph 175 of the National Planning Policy Framework. Approval is required upfront to ensure that important trees are not permanently damaged or lost.

- 25 No trees, shrubs or hedges within the site which are shown to be retained on the approved plans shall be felled, uprooted, wilfully damaged or destroyed, cut back in any way or removed, without the prior written permission from the Local Planning Authority. Any retained trees, shrubs or hedges removed without such permission, or which die or become severely damaged or seriously diseased within 10 years from the completion of the development hereby permitted, shall be replaced with trees, shrubs or hedge plants of a similar size and species during the next planting season unless otherwise agreed in writing by the Local Planning Authority.

Reason: To safeguard the retained trees in accordance with saved policies GE5 and GE6 of the Cheltenham Borough Local Plan (2006), adopted policy INF3 of the Joint Core Strategy (2017) and paragraph 175 of the National Planning Policy Framework.

- 26 The development shall be implemented in accordance with the Tree Protection Plan drawing 38-1036.03-A dated 17.04.20 which incorporates arboricultural methods and supervision details. All protective structures installed shall be maintained until construction work has been completed. No materials, soils, or equipment shall be stored under the canopy of any retained tree or hedgerow within the application site.

Reason: To prevent unnecessary loss of amenity and biodiversity value of trees and shrubs to be retained in accordance with Policies GI2 and GI3 of the Cheltenham Plan (2020), ODPM Circular 06/2005 plus National Planning Policy Framework paragraphs 8, 170 and 175.

- 27 No tree and/or hedge clearance shall be carried out during bird nesting season (1st March to 31st August inclusive) unless the site has been surveyed in advance for breeding birds and a scheme to protect breeding birds has first been submitted to and approved in writing by the Local Planning Authority. Any such scheme shall be implemented in accordance with the approved details.

Reason: To provide adequate safeguards for protected species on the site in accordance with adopted policy SD9 of the Joint Core Strategy (2017) and paragraph 118 of the National Planning Policy Framework.

- 28 No construction works and/or ancillary operations which are audible at the site boundary shall be carried out on site outside the following hours:

Monday to Friday - 8am to 6pm
Saturday - 8am to 1pm

There shall be no working on Sundays or Public or Bank Holidays. Deliveries to, and removal of plant, equipment, machinery and waste from, the site shall only take place within the permitted hours detailed above.

Reason: To ensure that any impact on the amenity of the occupiers of adjacent dwellings is minimised and controlled in accordance with saved policy SL1 of the Cheltenham Plan (2020) and adopted policy SD14 of the Joint Core Strategy (2017).

- 29 No external facing or roofing materials shall be applied unless in accordance with: a) a detailed written specification of the materials; and b) physical samples of the materials. The details of which shall have first been submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that the external appearance of the development is appropriate to its surroundings in accordance with saved policy D1 of the Cheltenham Plan (2020),

adopted policy SD4 of the Joint Core Strategy (2017) and guidance set out within Section 12 of the National Planning Policy Framework.

- 30 No boundary treatments, including boundary walls, fences or other means of enclosure shall be constructed unless in accordance with details which shall have first been submitted to and approved in writing by the Local Planning Authority. The boundary treatments shall thereafter be implemented in accordance with the approved details prior to first occupation of the development hereby permitted.

Reason: To ensure that the external appearance of the development is appropriate to its surroundings in accordance with saved policy D1 of the Cheltenham Plan (2020), adopted policy SD4 of the Joint Core Strategy (2017) and guidance set out within Section 12 of the National Planning Policy Framework.

- 31 Prior to first occupation of the development, details of a Homeowner's Information Pack resource providing information on recreation resources in the locality shall be submitted to and approved in writing by the Local Planning Authority. The pack should reference:

- Alternative local recreation opportunities (off site), e.g. website information for Cotswolds AONB and recreation 'offer' <https://www.cotswoldsaonb.org.uk/visiting-and-exploring/>
- Relevant adopted Cheltenham, Gloucester and Tewkesbury JCS policy (e.g. INF3 green infrastructure) and supporting text (e.g. 5.4.6 re. Green Infrastructure strategy 'vision') and Policy BG1 of the Cheltenham Plan 2020.

Each dwelling shall be provided with an approved Homeowner Information Pack on occupation.

Reason: To ensure that appropriate measures to mitigate for any adverse effects to the Cotswold Beechwoods SAC that could potentially occur as a result of the proposal, are suitably addressed in accordance with adopted policy SD9 of the Joint Core Strategy (2017), policy BG1 of the Cheltenham Plan 2020 and paragraphs 175, 176 and 180 of the National Planning Policy Framework.

- 32 Prior to first occupation of the development, refuse and recycling storage facilities shall be provided in accordance with a scheme which shall have first been submitted to and approved in writing by the Local Planning Authority. The storage facilities shall thereafter be retained for that purpose.

Reason: In the interests of sustainable waste management and recycling, having regard to Policy W36 of the Gloucestershire Waste Local Plan.

- 33 Prior to first occupation of the development, leaf guards for the guttering and down pipes of the dwellings shall be installed in accordance with details which shall have first been submitted to and approved in writing by the Local Planning Authority, and shall be maintained as such thereafter.

Reason: To reduce levels of tree-related inconvenience experienced by residents during the occupancy of the development.

- 34 The existing pond to the north of the site, indicated on Aspect ecology drawing 5487/ECO3, shall be retained in accordance with details which shall have been submitted to the Local Planning Authority prior to the first occupation of the site.

Reason: To provide adequate safeguards for protected species on the site in accordance with adopted policy SD9 of the Joint Core Strategy (2017) and paragraph 118 of the National Planning Policy Framework.

INFORMATIVES :-

- 1 In accordance with the requirements of The Town and Country Planning (Development Management Procedure) (England) Order 2015 and the provisions of the NPPF, the Local Planning Authority adopts a positive and proactive approach to dealing with planning applications and where possible, will seek solutions to any problems that arise when dealing with a planning application with the aim of fostering the delivery of sustainable development.

At the heart of this positive and proactive approach is the authority's pre-application advice service for all types of development. Further to this however, the authority publishes guidance on the Council's website on how to submit planning applications and provides full and up-to-date information in relation to planning applications to enable the applicant, and other interested parties, to track progress.

In this instance, having had regard to all material considerations, the application constitutes sustainable development and has therefore been approved in a timely manner.

- 2 The development hereby approved includes the carrying out of work on the adopted highway. You are advised that before undertaking work on the adopted highway you must enter into a highway agreement under Section 278 of the Highways Act 1980 with the County Council, which would specify the works and the terms and conditions under which they are to be carried out.

Contact the Highway Authority's Legal Agreements Development Management Team at highwaylegalagreements@gloucestershire.gov.uk allowing sufficient time for the preparation and signing of the Agreement. You will be required to pay fees to cover the Council's costs in undertaking the following actions:

- i. Drafting the Agreement
- ii. A Monitoring Fee
- iii. Approving the highway details
- iv. Inspecting the highway works

Planning permission is not permission to work in the highway. A Highway Agreement under Section 278 of the Highways Act 1980 must be completed, the bond secured and the Highway Authority's technical approval and inspection fees paid before any drawings will be considered and approved.

- 3 The development hereby approved includes the construction of new highway. To be considered for adoption and ongoing maintenance at the public expense it must be constructed to the Highway Authority's standards and terms for the phasing of the development. You are advised that you must enter into a highway agreement under Section 38 of the Highways Act 1980. The development will be bound by Sections 219 to 225 (the Advance Payments Code) of the Highways Act 1980.

Contact the Highway Authority's Legal Agreements Development Management Team at highwaylegalagreements@gloucestershire.gov.uk. You will be required to pay fees to cover the Council's costs in undertaking the following actions:

- i. Drafting the Agreement
- ii. Set up costs
- iii. Approving the highway details
- iv. Inspecting the highway works

You should enter into discussions with statutory undertakers as soon as possible to co-ordinate the laying of services under any new highways to be adopted by the Highway Authority.

The Highway Authority's technical approval inspection fees must be paid before any drawings will be considered and approved. Once technical approval has been granted a Highway Agreement under Section 38 of the Highways Act 1980 must be completed and the bond secured.

- 4 The development hereby approved and any associated highway works required, is likely to impact on the operation of the highway network during its construction (and any demolition required). You are advised to contact the Highway Authorities Network Management Team at Network&TrafficManagement@gloucestershire.gov.uk before undertaking any work, to discuss any temporary traffic management measures required, such as footway, Public Right of Way, carriageway closures or temporary parking restrictions a minimum of eight weeks prior to any activity on site to enable Temporary Traffic Regulation Orders to be prepared and a programme of Temporary Traffic Management measures to be agreed.
- 5 The application will require Building Regulations approval. Please contact Cheltenham and Tewkesbury borough council on 01242 264321 for further information.

Framework Management Plan

Project: Oakhurst Rise, Cheltenham

Technical Briefing Note TN12: Framework Management Plan for Restoration of Retained Grassland and Associated Habitats

Date: 07 September 2020

1. Introduction and Background

- 1.1 Aspect Ecology is advising the applicant on ecological matters relating to the site at Land Adjacent to Oakhurst Rise, Cheltenham. The site is proposed for residential development and associated landscape enhancements (planning application ref: 20/00683/OUT). The site is subject to a recent LWS designation.
- 1.2 Under the proposals, which are to develop only part of the site, an opportunity is available to restore the retained area of existing grassland shown edged red on the accompanying plan to herb rich meadowland. The details of how this is to be carried out will be secured by way of a planning condition, to require the drafting and implementation of a Grassland Management Plan (or similar description). This will be attached to a grant of planning permission requiring the submission of the Management Plan for the approval of the LPA. The submission of the Management Plan pursuant to a planning condition will become available for public consultation. The Management Plan will also secure the management of the other associated habitats within the site.
- 1.3 The purpose of this note is to set out a framework for the Management Plan.

2. Structure for Management Plan

- 2.1. The management plan will be structured using a similar series of headings to the following:
 - 1) Introduction
 - 2) History to the site
 - 3) Existing ecological baseline
 - a. Botanical survey data
 - b. Faunal survey data
 - c. Fungi, lower plants and other groups
 - 4) Management overview
 - a. Aims and objectives
 - b. Areas covered by the management plan
 - c. Site tenure
 - d. Responsibility
 - e. Management structure
 - f. Ecological constraints

- 5) Soil testing
- 6) Meadow Restoration prescriptions (capital works)
- 7) Pond creation (capital works)
- 8) Ongoing conservation management of meadow
- 9) Ongoing conservation management of other habitats
 - a. Pond
 - b. Trees
 - c. Hedgerows and scrub
 - d. Refugia and hibernacula
- 10) Conservation management prescriptions for faunal species groups
 - a. Bats
 - b. Badgers
 - c. Reptiles
 - d. Amphibians
 - e. Birds
 - f. Invertebrates
- 11) Control of invasive species and weeds
- 12) Management to prevent public access (land edged red)
- 13) Funding arrangements

3. Considerations for inclusion in grassland restoration prescriptions

- 3.1. Soil testing will be undertaken to assess existing nutrient levels within the soil and levels of compaction. Assessment of phosphorous levels is particularly important for grassland restoration. This will inform future restoration management actions.
- 3.2. At the present time, a rank closed grassland sward dominates the meadow. In order to open the root mat, a close grassland cut will be undertaken followed by light to moderate scarification through harrowing to break up the thatch and root mat. It may be necessary to harrow a number of times.
- 3.3. Timings of grass cuts will consider the life cycles of resident invertebrate species (e.g. timing of caterpillar food plants). Of particular relevance, is the spring abundance of Pignut *Conopodium majus* at the site which acts as the food plant for Chimney Sweeper Moth *Odezia atrata*. Other species should also be considered such as Five-spot Burnet Moth *Zygaena trifolii* the foodplant for which is Bird's-foot Trefoil *Lotus corniculatus*.
- 3.4. Harrowing can be detrimental to grassland fungi, particularly waxcaps that are associated with a moss layer. The presence of any grassland fungal interest will be reviewed prior to harrowing.
- 3.5. Harrowing will have the effect of activating the existing seedbank which is present allowing any herbs which persist in the soil which have been suppressed by the thick root mat to germinate.
- 3.6. Post harrowing, natural germination of meadow forbs will be assessed and, if necessary, will be supplemented with an appropriate neutral grassland herb rich native seed mix. This will be preferentially sourced from a local meadow or should this not be available, from a commercial supplier and will be sown post harrowing. Yellow rattle will be included as a component in the mix to suppress subsequent vigorous regrowth by coarse grasses. Sowing will be timed so that germination is successful e.g. in spring, when subsequent rainfall is likely. Otherwise watering will be necessary.

-
- 3.7. Currently, some vestigial grassland interest is present, with a number of herb species reduced to just a single specimen or small numbers of individuals e.g. Ox-eye Daisy, while other herb species are patchy within the sward such as Ladies Bedstraw. Turfs and plug plants of Ladies Bedstraw from 2 patches to the north west of the ice-house will be translocated into the area of meadow (land edged red).
- 3.8. Aftercare will be undertaken involving regular grass cutting (with removal of the arisings) e.g. every 2 – 4 weeks, during the period the restored sward establishes. Regard to invertebrate food plants will be taken (as per section 3.3 above). In particular, invertebrate lifecycles will be considered and areas of uncut sward may be required to be retained. Supplementary weed suppression will be undertaken as necessary with details of the methods to be employed set out in the full Management Plan.
- 3.9. Long term conservation management will be based on a hay cut regime of a cut in mid-July post flowering and seeding with the hay bailed and removed. An additional early spring cut in late April or early May and/or an early autumn cut in mid to late September will control vigorous grasses. Alternatively, the meadow could be lightly grazed post the hay cut in July (but not before) until the end of October. Regard to invertebrate food plants will be taken (as per section 3.3 above). Climate change is driving changes in flowering dates. For long term management, the timing of hay cuts will be adjusted to align with climate driven changes to flowering dates.
- 3.10. As part of the above, consideration will be given to the faunal interests present including reptiles, Badger and invertebrates, with appropriate safeguards put in place.

4 Consultation


- 4.1. Gloucestershire Wildlife Trust has been consulted on the drafting of this Framework Management Plan and their comments have been fully incorporated into this final version (see Appendix 1).

5 Conclusion

- 5.1. A management plan based on the above framework will lead to the development of a botanically species rich meadow while its associated habitats e.g. hedgerows, scrub, pond and trees will also be managed to maximise their ecological potential. Benefits for faunal species will also be incorporated with funding for ongoing conservation management of the habitats secured as part of the development proposals. In conclusion, these prescriptions will provide a varied resource for wildlife that secure and enhance the interest of the Local Wildlife Site.

Plan 5487/RGR1

Location of Retained Grassland for Restoration

Key:  Retained Grassland for Restoration

aspect ecology

Aspect Ecology Limited - West Court - Hardwick Business Park
Noral Way - Banbury - Oxfordshire - OX16 2AF
01295 239721 - info@aspect-ecology.com - www.aspect-ecology.com

PROJECT

Land Adjacent to Oakhurst Rise,
Cheltenham

TITLE
Location of Retained Grassland
for Restoration

DRAWING
NO.
5487/RGR1

REV.
-
DATE
September 2020



Appendix 5487/1:

- a) Consultation response from Gloucestershire Wildlife Trust on the Framework Management Plan dated 07 September 2020; and
- b) subsequent follow up email correspondence of the same date



Gloucestershire Wildlife Trust
Robinswood Hill Country Park
Reservoir Road
Gloucester
GL4 6SX

William Morrison (Cheltenham) Ltd
113-115 Pillar House Bath Road
Cheltenham
GL53 7LS

info@gloucestershirowildlifetrust.co.uk
www.gloucestershirowildlifetrust.co.uk
Telephone: 01452 383333

Registered charity number: 232580
Registered in England number: 708575

7th Sept 2020

Dear Sir,

Advice on the content of Framework Management Plan for St Edwards Prep School Meadow Local Wildlife Site under planning application 20/00683/OUT.

This advice is limited to the Framework Management plan only and should not be taken as an endorsement of the planning application itself by GWT.

Comments on section 2 - Structure for Management Plan:

As an outline, the headings cover the range of management issues present at the site.

Comments on Section 3 - Considerations for inclusion in grassland restoration prescriptions:

3.1 Agree soil nutrient testing is required, assessment of phosphorous level is particularly important for grassland restoration.

3.2 Timing of grass cuts should consider the life cycles of resident invertebrate species (e.g. timing of caterpillar food plant) to avoid wiping out site population. If necessary, leave some areas uncut for invertebrates to complete their lifecycle. Harrowing can be detrimental to grassland fungi, particularly waxcaps that are associated with a moss layer. Be clear that there is not grassland fungal interest

before undertaking harrowing and if there is, adjust the management approach accordingly.





3.4 It is preferable to retain what is already on site. If the residual seed bank is not sufficient, seed sourced from a local meadow would be preferable to seed from a commercial supplier to maintain local genetic integrity.

3.6 As in 3.2 invertebrate life cycles need to be considered. Some areas of uncut grass may be required, though food plants need to be present in uncut areas. Details should be given on method of weed suppression.

3.7 Climate change is driving changes in flowering dates. For long term management, the timing of hay cut may need to move to align with climate driven changes to flowering dates.

Kind regards

[Redacted signature]

Dr Juliet Hynes

Nature Recovery Network Coordinator






Alistair Baxter

From: [REDACTED]
Sent: 07 September 2020 16:25
To: Alistair Baxter
Subject: RE: Oakhurst rise/St Edwards Prep School field

Dear Alistair, Thank you for the revised version of the Framework Management Plan (FMP) and the acknowledgment that these comments refer to the FMP only. Gloucestershire Wildlife Trust confirms that the prescriptions within the revised draft of the FMP should result in securing and enhancing the biodiversity interest of the retained areas of the Local Wildlife site.

Kind regards
Juliet

Dr Juliet Hynes
Nature Recovery Network Coordinator
Gloucestershire Wildlife Trust
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Call 01452 383333 or visit gloucestershirowildlifetrust.co.uk/covidappeal



From: Alistair Baxter <[REDACTED]>
Sent: 07 September 2020 16:01
To: Juliet Hynes <[REDACTED]>
Subject: RE: Oakhurst rise/St Edwards Prep School field

Dear Juliet,

Thank you for your response of today's date in regard to the draft Framework Management Plan (FMP). We have taken on board all of the Trust's points and incorporated these into an updated FMP. I would be grateful for confirmation that as a result GWT can now endorse the FMP and its conclusion that *"these prescriptions will provide a varied resource for wildlife that secure and enhance the interest of the Local Wildlife Site"*. We understand that this would not be taken as an endorsement of the planning application itself by GWT.

Regards

Alistair Baxter
Director
t: 01295 279721 | m: 0787 6232615 | e: alistair.baxter@aspect-ecology.com

⑥ Applicant's Ecology response to objection Page 25 aspect ecology

Technical Briefing Note

Project: Land at Oakhurst Rise, Cheltenham

Technical Briefing Note TN13: Response to Charlton Manor Comments dated 04 September 2020

Date: 09 September 2020

1 INTRODUCTION

- 1.1 Aspect Ecology has been appointed by William Morrison (Cheltenham) Ltd. to advise on ecological matters relating to the site at Land Adjacent to Oakhurst Rise, Cheltenham. The site is proposed for residential development and associated landscape enhancements.
- 1.2 A letter from Charlton Manor dated 04 September 2020 has been submitted to Cheltenham Borough Council with comments relating to the ecology at the site. Aspect Ecology has been asked to review and respond to this correspondence. The comments are addressed in the same sequence that they occur within the letter and have been reproduced below for ease of reference.

2 COMMENTS

- 2.1 Aspect Ecology has numbered the comments for ease of reference:

2.2 Comment 1:

"It is truly regrettable that the annual hay cut of the field has been cancelled (according to the contractor who was scheduled to cut it in early July, "the developers' ecologists need to do more work"). Such a delicate ecosystem is easy to undermine, and it is difficult to believe claims that the future of the site should be trusted to those wishing to profit from the land, when there is scant evidence the biodiversity that exists today is being protected under their stewardship".

- 2.3 A further botanical survey¹ of the grassland was undertaken by Aspect Ecology following a submission made to the Council by Friends of Charlton Kings, in order to ensure the Cheltenham Borough Council were provided with the most up to date information. To benefit the botanical survey, so as to aid in the identification of species and provide further confidence in the survey results, cutting of the grassland was held back. The cutting of the grassland was further placed on hold to benefit the Gloucestershire Wildlife Trust and the County Ecologist whilst undertaking their own walkover and assessment of the grassland.
- 2.4 With this survey and assessment work now complete, the annual hay cut of the grassland has been re-scheduled for the near future. A minor delay to the cutting of the grass poses no threat to the wellbeing of the grassland ecosystem.

¹ Technical Briefing Note TN09: Results of Botanical and NVC Survey

2.5 Comment 2:

"With respect to the repeated surveys of the site in July and August (reptiles and grassland), it is regrettable that nothing has been done at the appropriate time of year, since 2016 when this site was first proposed. Any such surveys might have captured its full ecological value. Their absence speaks volumes, as the planning inspector noted in 2019".

- 2.6 A botanical survey of the grassland was undertaken in July 2019, whilst other surveys of the grassland have been undertaken in September 2016, and August 2020 (see section 2.2 of Aspect Ecology's Ecological Appraisal dated April 2020). The optimal period for neutral grassland surveys is from June to July, with Aspect's 2019 survey falling within this window. Further surveys in differing months would capture species visible at different times of year. It should be borne in mind that the purpose of the surveys is not to conduct a research project on the grassland but simply to adequately define the value of the grassland to inform a planning decision. Hence, no more than an appropriate level of survey is required for this purpose.
- 2.7 In relation to reptiles, survey work was undertaken between July and August 2019. While these months may not be optimal in nature for standard survey visits, as temperatures can on occasion be too warm, if adjustments are made to the methodologies employed to take account of conditions e.g. timing of surveys visits to the early morning or to cooler days, then an effective survey can be undertaken. This approach accords with relevant guidance². Such adjustments were made for the 2019 reptile survey on site and as a result it was effective at recording and defining the reptile interest present. This approach employed is discussed in more detail at paragraph 2.4.4 of Aspect Ecology's Ecological Appraisal dated May 2020.
- 2.8 Accordingly, all survey work has been conducted within appropriate survey windows. The Planning Inspector in 2019 made reference that *"there is no countervailing evidence to indicate a greater presence of reptiles on the site"*. Accordingly, the surveys are of an appropriate level to inform a planning decision.

2.9 Comment 3:

"In particular, the Aspect survey in 2020 returned a similar count to the Bioscan survey done at the same time of year in support of CBC's case at appeal in 2019 (12 vs 14 grassland species, July /August). When the meadow is in flower, a very different result might have been evident; Bioscan's principal ecologist recorded 21 species and discounted a further 4-5 found, photographed and GPS recorded by non specialists, as unproven".

- 2.10 As discussed above, the level of survey carried out by Aspect Ecology is appropriate to inform a planning application. It is necessary to provide no more than an appropriate level of information to enable an informed planning decision to be made. This level of information has been provided.

2.11 Comment 4:

"The county ecologist states only 43% of the existing grassland will be retained, which sits uncomfortably with statements that 'new wildflower meadow' will be created. As is evident from photos that have already been submitted, the retained grassland is already a wildflower meadow so no 'new' creation is possible. The meadow flowers between April and June but has never been surveyed at that time (other than by Bioscan). Cowslips, vetches, woodrush, pignut, trefoils,

² Froglife Advice Sheet 10: Reptile Survey – An introduction to planning, conducting and interpreting surveys for snake and lizard conservation.

various buttercups and cuckoo flower predominate (The protected English bluebells, photos taken 3 May 2020, can be found across the field, including on the proposed site of the driveways for houses 22-28 and across the wider site of houses 11-21), not, as Aspect claim, in the hedgerows)".

2.12 We have clarified that the grassland on the site will be retained and enhanced (not created) within the submitted 'Technical Briefing Note TN10: Biodiversity Impact Assessment Using Defra Biodiversity Metric 2.0 Calculation Tool', and this is acknowledged by Gloucestershire Wildlife Trust in their correspondence dated 01 September 2020. The survey work has determined that the herb interest in the grassland is infrequent in nature comprising typically only 5 – 10% of the sward, with the sward dominated by grasses which make up 90 - 95% of the cover. Accordingly, the sward is in a significantly sub-optimal state. While grassland area will be lost to the proposal, the opportunity is present to restore the retained area of grassland to a herb rich sward. The Gloucestershire Wildlife Trust has confirmed the enhancement of the grassland habitat would benefit the ecological network³. A Framework Management Plan (see Technical Briefing Note TN12) of how this will be achieved has been agreed with Gloucestershire Wildlife Trust.

2.13 In particular, as Aspect Ecology's letter to Gloucestershire Wildlife Trust dated 07 August 2020 sets out, the proposals will:

- **Secure future:** The future of the grassland will be secured and protected such that the risk that its interest would be lost through inappropriate management e.g. application of herbicide, fertilizer or re-seeding would be removed;
- **Restoration:** Positive work would be carried out to restore the grassland interest to that of a meadow of high conservation value e.g. MG5. The detail of how this would be achieved would be the subject of a specific method statement, but could include the scarification of the sward to expose the underlying seedbank and soil and the import of green hay from a suitable local donor meadow if one is available or alternatively the spreading of an appropriate native wildflower seed mix with a large Yellow Rattle component to reduce the vigour of coarse grasses;
- **Conservation management:** Favourable grassland conservation management would be secured under the proposals which would be prescribed within a formal management plan. This would then be actioned to ensure the management of the grassland is optimal to maintain the restored botanical interest;
- **Long term funding:** Funding to manage the meadow would be secured under the proposals. This would most likely arise via a service charge on properties such that an assured source of funding for conservation management of the grassland would be available for the life of the development.

2.14 At the present there is no conservation management of the habitats on site. In the absence of the proposals, the prospects for restoration of the grassland are very low as are the prospects for securing the introduction of positive conservation management of the habitats. The proposed development provides an opportunity to protect the retained grassland and secure an appropriate management plan to maximise its biodiversity potential. Indeed, at the present time, there is the potential for the existing grassland interest to be lost, should for example the management of the grassland be altered, or herbicide or fertilizer applications be applied, or the sward re-seeded. By contrast, the proposed development provides the only opportunity to protect and secure the future of the retained grassland alongside an appropriate management plan to maximise its biodiversity potential.

³ Gloucestershire Wildlife Trust letter to Cheltenham Borough Council on 07 August 2020.

2.15 **Comment 5:**

"There are repeated statements that the meadow is mown but not baled (although Aspect's evidence to the 2019 planning appeal stated the soil had been compacted by extensive use of machinery - that was also untrue). The field was baled the day before the inspector visited last year (photo below), and has been cut annually for as long as residents can remember. Hay is used by St Edwards School for the school farm, and is of sufficient quality to be usable by the Riding for the Disabled charity (they struggle to source organic hay locally and the school donate their surplus). Plenty of photos are available on social media".

- 2.16 The grassland at the site was baled for the first time in 2019. Prior to this date arisings were left in situ. Although the hay may be of sufficient quality for the school farm, their requirement for hay is very low and accordingly we are informed that this is typically purchased each year. We are also informed that there is no intention in 2020 to bale the hay.

- 2.17 Such management where the arisings are left in situ is not beneficial to the grassland botanical interests and may be contributing to the currently sub-optimal nature (particularly low herb cover) of the meadow. By contrast, under the proposals an optimal management regime would be secured for the retained areas of grassland, which will include hay cuts with the arising hay baled and removed from site. This would be beneficial for the grassland botanical interest.

2.18 **Comment 6:**

"Various ecology statements now note that the grassland will be leased to the school for their future use. It is unclear how ecologists are qualified to make that assertion. As a primary school St Edwards does not allow children on uncut grass given the prevalence of deer ticks. In the 10 years our children have been pupils at the school, they have kept off the main wildflower area and used the walking paths cut elsewhere across the site for forest school, nature walks and more".

- 2.19 The retained grassland east of the development will be protected in perpetuity, whilst management will be sympathetic to its recent designation as a Gloucestershire Local Wildlife Site (LWS) on the grounds of 'Value to Learning'. An outline of the optimal management of the grassland has been set out in a Framework Management Plan that has been agreed with Gloucestershire Wildlife Trust. A full detailed management plan based on the agreed Framework will be secured by condition. Conservation management, enacted under the plan, will considerably enhance the grassland's ecological interests such that its biodiversity interest features will become of considerably more interest for learning, hence furthering the criterion for which the LWS is designated.

2.20 **Comment 7:**

"There is a conflict between school use and biodiversity protection (as well as child protection, given the claimed access for residents of the new estate) - which is going to take primacy? And why should the tax payer fund (through S106 payment or otherwise) the maintenance of land that is going to be retained for the sole use of a private school?"

- 2.21 Use for education/learning and protection for biodiversity are compatible, as long as managed in the appropriate way. How this will be achieved will be set out in the full Management Plan for the grassland which will be secured by way of a planning condition. When enhanced, the meadow will provide a more accessible (through increased botanical diversity being more obviously apparent) resource for biodiversity teaching e.g. practical classes in plant taxonomy, nature drawing, countryside management, moth trapping, beetle collecting etc.

2.22 In terms of child protection, there will be no access to the grassland by new residents. All ecological management costs will be financed from the development scheme. No costs will fall to the tax payer.

2.23 **Comment 8:**

Aspect state that the 'scrub' under the ice house is to be retained in their biodiversity metric, but elsewhere in the application it states that the scrub will be removed as part of the condition to improve the ice house. Which is it?

2.24 Tree Group 3003 on the ice house is shown as retained on the revised Tree Protection Plan Drawing no. 38-1036.03-F (19 May 2020). Accordingly, this tree group is recorded as retained within the biodiversity metric⁴. The retention of the tree group is acknowledged in the 'Heritage Impact Assessment' April 2020 which states at paragraph 4.7 that *"specifically, it is proposed to undertake selective clearance of scrub, but retaining the mature trees, thereby better revealing the icehouse mound"*. Accordingly, only minor tidying of the scrub around the ice house is proposed. It is not necessary to register such a small area of habitat change within the biodiversity metric as it has no material effect on biodiversity outcomes.

2.25 **Comment 9:**

"The most recent county ecology statement notes that mature trees will be removed above the badger sett, including ash and sycamore. This area of woodland is described as 'scrub' in the Aspect biodiversity metric rather than hedgerow or woodland, and the removal of the trees is not given comment in the FLAC tree report. Is the data is being used selectively to pass policy tests, rather than objectively to do the right thing by the site and the planning committee?"

2.26 The DEFRA calculation tool has been completed in accordance with the relevant user guide⁵ and technical supplement⁶, and rationale for category selections has been set out clearly within Aspect Ecology's Technical Note TN10 'Biodiversity Impact Assessment Using Defra Biodiversity Metric 2.0 Calculation tool'.

2.27 The FLAC tree report describes the trees under reference Tree Group 3004 as *"Cluster of slender upright principal trees comprising ash and sycamore with a scrubby understorey of other species. Quite dense, no management. Low arboricultural merit"*. They are graded as C category and their removal acknowledged in the tree schedule.

2.28 The data is therefore transparently presented and is objectively utilised in the relevant assessments.

2.29 **Comment 10:**

"The county ecologist states that mature ash "will be lost" in the next decade to ash dieback. This is unreasonable. Any mature tree could become diseased, but on that basis no tree merits protection, contrary to NPPF guidance. Natural England research indicates that hedgerow ash

⁴ it is coded as scrub in the metric as there is no category in the metric available for trees

⁵ Natural England (2019) The Biodiversity Metric 2.0L auditing and accounting for biodiversity: User Guide (Beta version)

⁶ Natural England (2019) The Biodiversity Metric 2.0L auditing and accounting for biodiversity: Technical Supplement (Beta version)

trees appear to have a level of immunity to ash dieback, and therefore have a particular biodiversity importance”.

- 2.30 The County Ecologist comments that *“there is a good chance that the ash will be lost to ash die-back disease in the coming decade even if the development does not go ahead”*. Hence, the comment from the County Ecologist is in fact qualified. Given progress of Ash dieback across the country at the present time, this comment appears reasoned in nature and hence is appropriate.

2.31 **Comment 11:**

“There appears to be conflict between the drainage strategy below ground and the tree planting above ground (namely there are claims to an unbroken new tree belt, without explanation as to how trees can be planted over a main drain). This affects the biodiversity metrics, the claimed screening for a Grade 2 listed building, and the claimed flood protection to the wider River Chelt flood plain”.*

- 2.32 The project engineer has advised that it is standard practice, practical and feasible to plant so that the drainage can be implemented directly below or just to the side of the trees, without causing any harm either to the trees or the drains. The proposed drainage within the tree belt will be installed in line with standard installation methods for this situation (as approved for use by Severn Trent Water), including but not limited to, the establishment of appropriate root barriers and the use of an enhanced pipework specification.

2.33 **Comment 12:**

“The county ecologist states that the pond at the top of the site will be lost to the development, counter to statements elsewhere in the proposal. Given the pond is spring fed (and has been on Ordnance Survey maps since at least 1836), where is that water going to go”?

- 2.34 Loss of the pond had been presumed as it is not shown as retained on the submission plans. However, it is noted that the location of the pond is not to be developed. Accordingly, retention would appear to be possible. Accordingly, further consideration has been given by the applicant to this comment and it is now confirmed that the existing pond can be retained and that this retention could be secured by way of a planning condition. As the pond has been confirmed for retention, this will be beneficial to the biodiversity metric and management of this feature will be included within the management plan secured by planning condition. The project engineer has confirmed that the retention of the pond would have no impact on the storm water drainage strategy.

2.35 **Comment 13:**

“Why is there no comment made on the loss of nearly 30% of an 150+ year old important hedgerow? It is inconceivable that this habitat could be restored or replaced within a 15 year window. Risks to any claimed new habitat include climate change affecting the survival of new planting (drought and floods have killed off any new planting across the Battledown Hill since 2017, other than non native species), the impact of the roe and muntjac deer population in residence, the steep terrain precluding water retention and the dense clay subsoil noted in the Simpson report on drainage”.

- 2.36 Loss of parts of the existing mature hedgerows are considered at section 4.5 of Aspect Ecology’s Ecological Appraisal dated May 2020. In respect of the dividing hedgerow within the site (H1),

the area of loss is in fact 23.%⁷ rather than the suggested 30%. The majority of the site hedgerows will be retained and protected, while losses will be compensated for by new native planting to bolster existing hedgerows alongside new native hedgerow planting, and the provision of a substantial woodland belt. The dividing hedgerow within the site is treated in the biodiversity metric as 'woodland' and accordingly its established value has been acknowledged.

- 2.37 The establishment of new habitat features will be monitored, with safeguards used as necessary to deter damage from deer, and any failures of planting will be replaced.

2.38 **Comment 14:**

"Comments from other sources seem to have been ignored across the ecology debate, whereas the claims of William Morrison's planning consultant have been repeated verbatim. Counter views include those of the county moth recorder on record ("lepidoptera assemblage would indicate high quality grassland", first recording of chimney sweep moth in the borough since the 1960s) and HMT's inspector of planning ("there will be a net biodiversity loss to the badger population", full reptile survey necessary before permission is granted) but these have not even been mentioned, let alone addressed. This is regrettable, particularly from supposedly neutral consultees".

- 2.39 As discussed above, the grassland is currently in significantly sub-optimal condition, with a very low herb cover of 5 – 10% which has been established from botanical survey work rather than inferred from moth records. The Chimney Sweeper moth has an acknowledged status as 'common'⁸.

- 2.40 The layout has been substantially revised from that considered by the appeal Inspector such that under the revised proposals Badger interests would be fully safeguarded. Notwithstanding this fact, it should be borne in mind that Badgers are a common species (and indeed almost 35,000 Badgers were culled in England in 2019⁹) and do not enjoy an elevated conservation status. The protection they are afforded in legislation is solely on welfare grounds and the legislation allows for licences to be granted for works on Badger setts to enable development proposals to proceed. The intention of the legislation is for Badgers not to represent an impediment to development.

- 2.41 There is no reference to a "full reptile survey necessary before permission is granted" in the 2019 Inspector's decision. However, the matter of reptiles is fully addressed by the County Ecologist in their response dated 02 September 2020 which states *"In addition to previous on site surveys Aspect Ecology carried out an artificial refugia survey for reptiles between July and August 2019. Reptiles and evidence of them being present was also directly searched in suitable places/features. I can accept that there is only a low population of reptiles present consisting of only very few individual slow worms and grass snakes. The mitigation and enhancement measures (MM8, EE2, EE3, EE6 & EE7) plus proposed new landscaping should have a neutral to positive impact overall"*.

⁷ See Technical Briefing Note TN10: Biodiversity Impact Assessment Using Defra Biodiversity Metric 2.0 Calculation Tool. 07 August 2020. Existing area of H1 is 0.3415ha of which 0.2626ha is retained.

⁸ <https://butterfly-conservation.org/moths/chimney-sweeper>

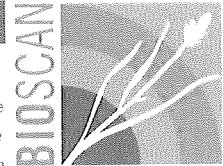
⁹ <https://www.gov.uk/government/publications/bovine-tb-summary-of-badger-control-monitoring-during-2019/summary-of-2019-badger-control-operations>

3 CONCLUSION

3.1 The points raised in correspondence from Charlton Manor have been considered. In summary:

- The cutting of the grassland on site was delayed to benefit the botanical survey and the site visit by the County Ecologist and Gloucestershire Wildlife Trust. It has now been re-scheduled for the near future;
- Botanical survey work has been carried out at the optimal time of year. The purpose of the surveys is not to conduct a research project on the grassland but simply to adequately define the value of the grassland to inform a planning decision;
- To adjust for the timing of the reptile survey, modifications were made the methodology employed to ensure a satisfactory survey could be conducted. The County Ecologist is satisfied that the findings are robust;
- The grassland on site will be retained and enhanced (not created). The survey work has determined that the herb interest in the grassland is infrequent in nature comprising typically only 5 – 10% of the sward. While grassland area will be lost to the proposal, the opportunity is present to restore the retained area of grassland to a herb rich sward;
- The Gloucestershire Wildlife Trust has confirmed the enhancement of the grassland habitat would benefit the ecological network. A Framework Management Plan of how this will be achieved has been agreed with Gloucestershire Wildlife Trust;
- The future of the grassland will be secured and protected such that the risk that its interest would be lost through inappropriate management e.g. application of herbicide, fertilizer, re-seeding or the leaving of grass cutting uncollected (absence of baling) would be removed;
- At the present there is no conservation management of the habitats on site. In the absence of the proposals, the prospects for restoration of the grassland are very low as are the prospects for securing the introduction of positive conservation management of the habitats;
- By contrast, the proposed development provides the only opportunity to protect and secure the future of the retained grassland alongside an appropriate management plan to maximise its biodiversity potential;
- Use for education/learning and protection of biodiversity are compatible, as long as managed in the appropriate way. How this will be achieved will be set out in the full Management Plan for the grassland which will be secured by way of a planning condition;
- The tree group on the ice house will be retained. Only minor tidying of the scrub around the ice house is proposed;
- The project engineer has confirmed that the proposed tree belt planting can be designed so that it would not affect the drainage pipes which run beneath it;
- The existing pond on the site will be retained;
- The majority of the site hedgerows will be retained and protected, while losses will be compensated for by new native planting;
- The Chimney Sweeper moth has an acknowledged status as 'common';
- Badger interests would be fully safeguarded. Notwithstanding this fact, it should be borne in mind that Badgers are a common species (and indeed almost 35,000 Badgers were culled in England in 2019) and do not enjoy an elevated conservation status.

3.2 In conclusion, a review of the points raised in the correspondence from Charlton Manor finds that these are all already addressed within the application documents. In addition, following the comment raised in respect of the existing pond on site, the applicant has confirmed that this will be retained.



Ms Emma Pickernell
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29th July 2020
Our ref: SW20/E1986/EPL1
Planning application ref: 20/00683/OUT

Dear Ms Pickernell,

Land off Oakhurst Rise, Cheltenham – Review of Submitted Ecological Appraisal

Following receipt of the ecological appraisal report produced by Aspect Ecology in support of the recently re-submitted planning application for the above site, I have been instructed by the Charlton Kings Friends (CKF) to comment on the likely ecological impacts of the revised scheme.

Biodiversity loss

You may be familiar with my involvement in this site as part of the 2019 planning appeal at which I presented evidence to the Inquiry that led, in part, to the Inspector's dismissal of the appeal. A particular focus of the Inspectors deliberations regarding ecology, was the assessment I undertook of the net effect of the proposal on biodiversity based on the application of a recognised biodiversity metric¹. Ultimately the Inspector in his decision found that *"the net effect of the proposed development on biodiversity is likely to be either neutral or negative to some degree and certainly not an enhancement as sought by the thrust of current national and local policy"*.

Shortly before the close of the Inquiry, Natural England published a beta version (i.e. consultation draft) of their new metric (Metric 2.0) for review by the industry. Despite reference to this being made in oral evidence at the Inquiry, the applicant's ecologists have once again elected not to apply any form of metric to the conclusions in their current ecological appraisal in respect of the revised scheme. Given the current direction of travel of Government policy (towards mandating use of such metrics to demonstrate delivery of at least 10% 'Net Gain'), and the prominence of this issue at the previous appeal, at best, this seems an oversight.

It has therefore fallen to us, on behalf of CKF, to repeat this exercise for the revised scheme now before you. The attached Figures 1 and 2 show the pre and post construction habitats which I have entered into the new metric. The output from inputting these data into the metric is provided in Tables 1 and 2 below. In summary, based on the Metric 2.0, the development would result in a loss of 10.95 biodiversity units (from 34.32 to 23.37), or a loss of 31.90%. By this measure the revised scheme provides no greater protection of biodiversity on the site than the previous scheme and, as the Inspector found previously, continues to fly in the face of national planning policy and guidance which requires development to not

¹ <https://www.warwickshire.gov.uk/biodiversityoffsetting>

only protect biodiversity but to go further and deliver “*net gains for biodiversity*”². It is similarly not compliant with local planning policies such as policy SD9 of the Joint Core Strategy³, which also require the protection and enhancement of biodiversity as part of development proposals. Relevant parts of this state (emphasis added):

- “1. The biodiversity and geological resource of the JCS area will be protected and enhanced in order to establish and reinforce ecological networks that are resilient to current and future pressures. Improved community access will be encouraged so far as is compatible with the conservation of special features and interests*
- ... ”*
- 5. Development within locally-designated sites will not be permitted where it would have an adverse impact on the registered interest features or criteria for which the site was listed, and harm cannot be avoided or satisfactorily mitigated*
- 6. Harm to the biodiversity or geodiversity of an undesignated site or asset should be avoided where possible. Where there is a risk of harm as a consequence of development, this should be mitigated by integrating enhancements into the scheme that are appropriate to the location and satisfactory to the Local Planning Authority. If harm cannot be mitigated”*

Habitat assessment

As part of my evidence to the Inquiry, reference was made to the Gloucestershire Key Wildlife Sites (KWS) selection criteria. At that time, 14 ‘key species’⁴ had been identified in the grassland, close to the threshold of 20 needed for the site to be of sufficient diversity to be designated as KWS. As part of my current appointment by CKF I have revisited the site in 2020 in order to continue to catalogue the ecological interest present, focusing in particular on the floral diversity of the grassland. A further seven species have been recorded in the grassland in 2020 (see table 3) bringing the total to a minimum of 21. On the basis of this, not only has the site recently been formally put forward to the KWS selection panel for designation as a KWS, but, moreover, it is clear that the appellants ecological consultants have once again failed to accurately represent the true ecological value of this site. Indeed, they have now failed in both 2019 and 2020 to record many of the floral species present, and as a direct consequence, have materially undervalued the diversity and therefore value of the grassland. On the facts, the site clearly has significant ecological value and certainly well above the “*site context*” frame of geographical reference that is suggested by Aspect in their report.

Conclusion

The revised scheme does not overcome the inescapable fact, as previously found by the appeal inspector, that the site is of higher valued than the appellant’s ecologists claim, and that as a consequence the proposed development would, notwithstanding the revisions made, still result in a demonstrable and significant loss of biodiversity, contrary to a raft of national and local planning policies. It has fallen to CKF, via ourselves, to document the value of the site in an accurate and properly representative manner and to expose omissions made by the appellant’s ecologists and on which flawed assessments have been made. In

² Paragraph 170 of the National Planning Policy Framework

³ Other polices include NE2 and NE3 of the adopted Local Plan (2006).

⁴ As listed on Table H5c of assessment criteria H5.2.

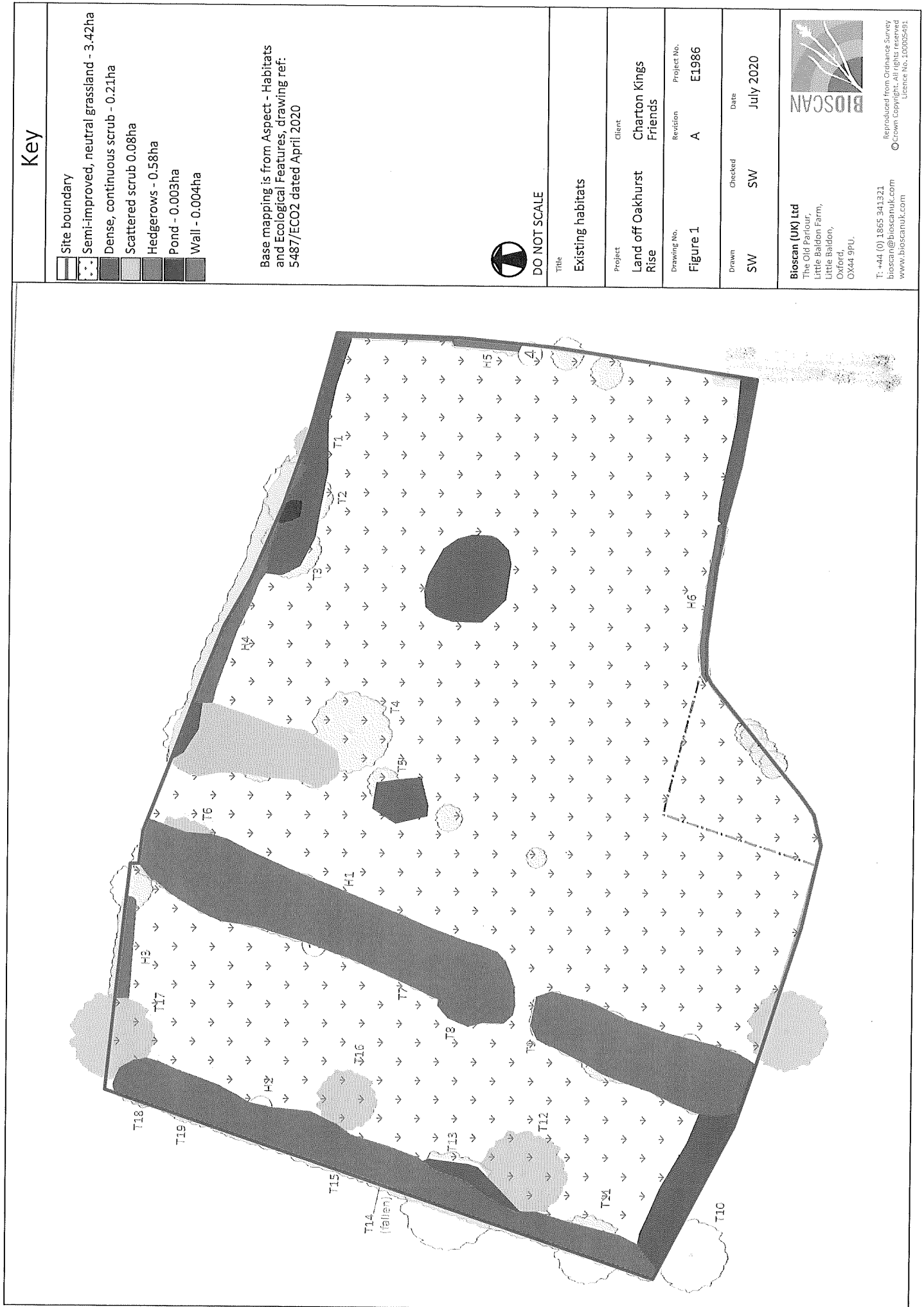
the process of doing so, it has become apparent that the site in fact exceeds the qualification criteria for designation as a Key Wildlife Site, underlining that the impact of the scheme should be assessed in the context of the site being of at least District and more likely County (i.e. Gloucestershire) value for biodiversity. In light of these matters, there can be no other conclusion than significant harm to biodiversity would occur due to the proposed development, and with the backdrop of the previous Inspectors comments, it is clear that this planning application should be refused.

Regards

FOR AND ON BEHALF OF BIOSCAN (UK) LTD

A black rectangular redaction box covering the signature of Samuel Watson.

Samuel Watson MCIEEM
Principal Ecologist



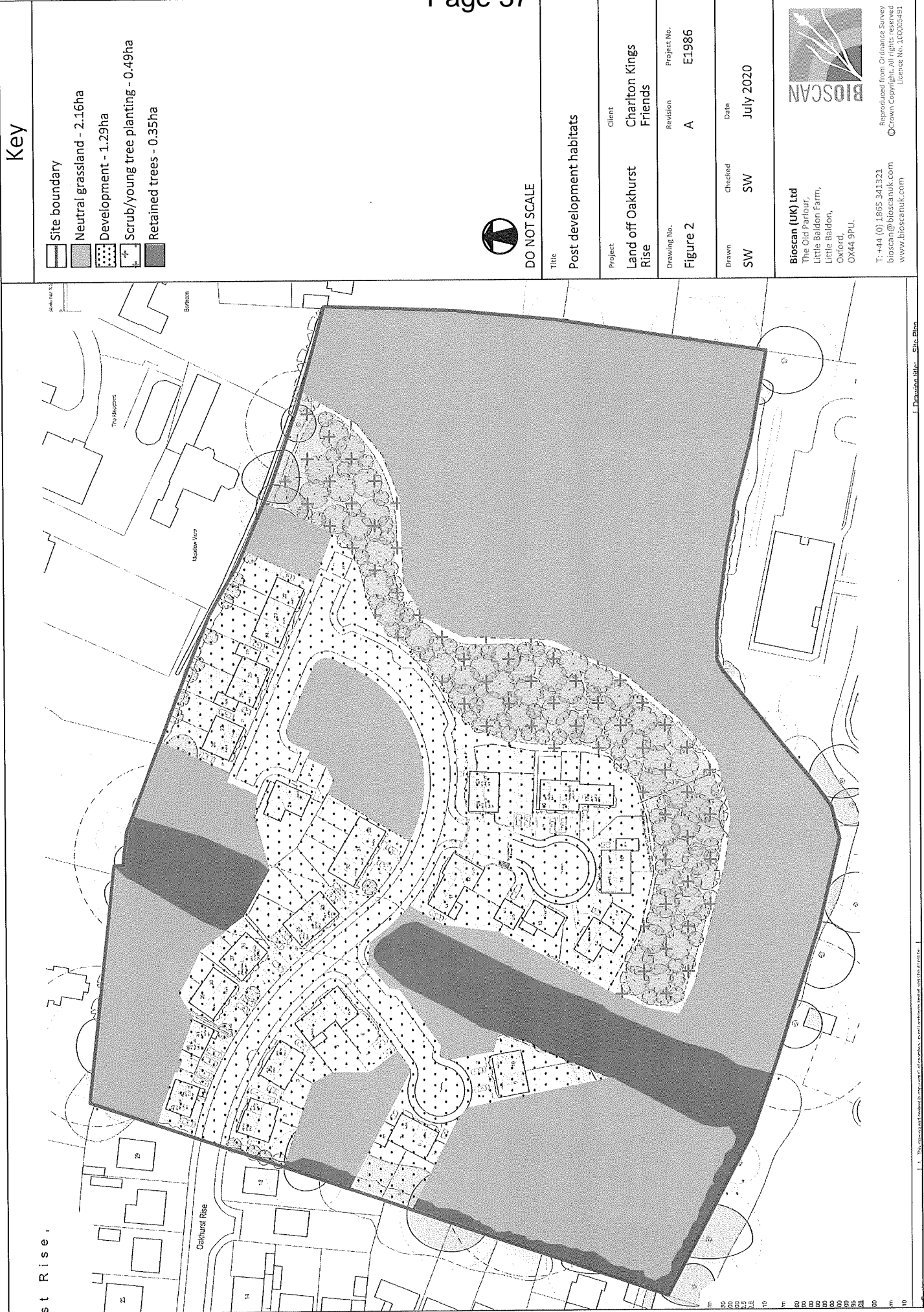


Table 1 - Pre-development baseline

Ref	Habitats and areas		Habitat distinctiveness		Habitat condition		Ecological connectivity			Strategic significance			Suggested action to address habitat losses		Ecological baseline	
	Broad Habitat	Habitat type	Area (hectares)	Distinctiveness	Score	Condition	Score	Ecological connectivity	Connectivity	Connectivity multiplier	Strategic significance	Strategic position multiplier			Total habitat units	
1	Grassland	Grassland - Other neutral grassland	3.42	Medium	4	Moderate	2	Low	Unconnected habitat	1	Area/compensation not in local strategy/ no local strategy	Low Strategic Significance	1	Same broad habitat or a higher distinctiveness habitat required	27.36	
2	Heathland and shrub	Heathland and shrub - Bramble scrub	0.21	Medium	4	Moderate	2	Low	Unconnected habitat	1	Area/compensation not in local strategy/ no local strategy	Low Strategic Significance	1	Same broad habitat or a higher distinctiveness habitat required	1.68	
3	Woodland and forest	Woodland and forest - Other woodland; mixed	0.08	Medium	4	Moderate	2	Low	Unconnected habitat	1	Area/compensation not in local strategy/ no local strategy	Low Strategic Significance	1	Same broad habitat or a higher distinctiveness habitat required	0.64	
4	Woodland and forest	Woodland and forest - Other woodland; broadleaved	0.58	Medium	4	Moderate	2	Low	Unconnected habitat	1	Area/compensation not in local strategy/ no local strategy	Low Strategic Significance	1	Same broad habitat or a higher distinctiveness habitat required	4.64	
Total site area ha			4.29	Total Site baseline												

Table 2 – Post-development baseline

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Post development/ post intervention habitats																
Proposed habitat	Area (hectares)	Distinctiveness	Score	Condition	Score	Ecological connectivity			Strategic significance			Temporal multiplier		Difficulty multipliers		Habitat units delivered
						Ecological connectivity	Connectivity	Connectivity multiplier	Strategic significance	Strategic position multiplier	Time to target condition /years	Time to target multiplier	Difficulty of creation category	Difficulty of creation multiplier		
Grassland - Other neutral grassland	2.16	Medium	4	Good	3	Low	Unconnected habitat	1	Area/compensation not in local strategy/ no local strategy	Low Strategic Significance	1	15	0.586	Low	1	15.19
Urban - Suburban/ mosaic of developed/ natural surface	1.29	Low	2	Good	3	Low	Unconnected habitat	1	Area/compensation not in local strategy/ no local strategy	Low Strategic Significance	1	5	0.837	Low	1	6.48
Woodland and forest - Other woodland; Young Trees planted	0.49	Medium	4	Poor	1	Low	Unconnected habitat	1	Area/compensation not in local strategy/ no local strategy	Low Strategic Significance	1	25	0.410	Low	1	0.80
Woodland and forest - Other woodland; broadleaved	0.35	Medium	4	Good	3	Low	Unconnected habitat	1	Area/compensation not in local strategy/ no local strategy	Low Strategic Significance	1	32+	0.320	Medium	0.67	0.90
Totals	4.29														Total Units	23.37

Table 3 – Cumulative KWS species list

Scientific name	Common name
Species recorded in 2019	
<i>Carex spicata</i>	Spiked sedge
<i>Centaurea nigra</i>	Lesser knapweed
<i>Conopodium majus</i>	Pignut
<i>Galium verum</i>	Lady's bedstraw
<i>Lathyrus pratensis</i>	Meadow vetchling
<i>Leontodon hispidus</i>	Rough hawkbit
<i>Leucanthemum vulgare</i>	Oxeye daisy
<i>Lotus corniculatus</i>	Common bird's-foot-trefoil
<i>Lotus pedunculatus</i>	Greater birds-foot-trefoil
<i>Luzula campestris</i>	Field wood-rush
<i>Potentilla sterilis</i>	Barren strawberry
<i>Primula veris</i>	Cowslip
<i>Tragopogon pratense</i>	Goat's beard
<i>Trisetum flavescens</i>	Yellow oat-grass
Species recorded in 2020	
<i>Carex flacca</i>	Glaucous sedge
<i>Hyacinthoides non-scripta</i>	Bluebell
<i>Hypochaeris radicata</i>	Cats-ear
<i>Primula vulgaris</i>	Primrose
<i>Ranunculus bulbosus</i>	Bulbous buttercup
<i>Rhinanthus minor</i>	Yellow rattle
<i>Viola riviniana</i>	Common dog violet



LAND ADJACENT TO OAKHURST RISE, CHELTENHAM



ARBORICULTURAL REVIEW

Prepared for: Charlton Kings Friends

Prepared by: Ian Monger

10 September 2020

Project reference: F.2622

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Instructions

Received from: Mrs Sally Walker, resident of Charlton Manor, Ashley Road, Cheltenham, on behalf of the community group 'Charlton Kings Friends' (CKF).

Terms of reference: to review the submitted outline planning application regarding land adjacent to Oakhurst Rise, Cheltenham (ref: 20/00683/OUT) and provide a statement commenting on the arboricultural elements of the development proposal. This follows a similar instruction for my colleague Paul Barton to comment on a previous application (ref: 18/00710/OUT), which was refused in March 2019.

Scope of work

The scope of my instructions are to:

- visit the application site to familiarise myself with the trees and site context
- review the arboricultural information submitted with the application
- prepare a report giving an independent view of the impacts of the development proposal on the trees at the site.

Documents used to prepare this report

In preparing this report, the following documents (amongst the full suite of submitted documents) have been obtained from the Cheltenham Borough Council website:

- Proposed site plan - drawing no: PL005 Rev B (April 2020)
- Arboricultural report - ref: SC38-1036 (April 2020)
- Landscape Strategy plan - drawing no: 19216.101 Rev F (April 2020)
- The Woodlands Trust consultee comment (June 2020)
- Ancient Tree Forum consultee comment (June 2020)

A copy of Tree Preservation Order (TPO) (No.1, 1981) was also obtained from the Cheltenham Borough Council tree officer.

Summary

The revised planning application for reduced number of dwellings proposed has clearly improved the development proposal in terms of the retention of veteran and protected trees, but the development proposal still has the potential to cause harm to significant trees. In

particular, hydrological changes due to obstruction of soil water flows by new structures may have an adverse impact. Despite protective measures that have been recommended, disturbance to the veteran tree habitats (including soil, ground flora and fungi) during construction and in the site's end-use is likely to occur. There remains a significant risk of permanent damage to high value trees, and of deterioration of the irreplaceable habitats of veteran trees.

1. Introduction

- 1.1. I am Ian Monger, senior arboricultural consultant at Barton Hyett Associates and a professional arboriculturist. I have 15 years experience working in the arboricultural sector including senior tree officer for a unitary local authority and as an independent consultant (which has included freelance tree officer work for a unitary authority). I am a professional member of the Arboricultural Association. I hold a BSc (Hons) in Environmental Science and Level 3 Technicians Certificate in Arboriculture. I am currently appointed by The Planning Inspectorate as a Non-Salaried Inspector for the determination of TPO appeals.
- 1.2. I have been asked to provide an independent review of the documents submitted to Cheltenham Borough Council (CBC) in relation to an outline planning application for development of an existing field to the north of St Edward's Preparatory School, to the east of Oakhurst Rise, Cheltenham. The outline planning application is for the construction of 43 dwellings consisting of a mixture of house types and flats. The application seeks approval for the proposal's access, layout and scale but appearance and landscaping are to be a reserved matter.
- 1.3. A previous outline planning application for 69 dwellings was refused in March 2019. Reasons for CBC's refusal can be summarised as:
 - Failure to address constraints and requirements of the land allocation policy within the emerging Cheltenham Plan
 - The loss of trees within the site including a significant TPO'd tree and likely deterioration of retained veteran trees
 - Impact on the setting of nearby listed buildings
- 1.4. CBC's additional reasons for refusal on ecology and visual impact grounds were later withdrawn.
- 1.5. An Appeal against the refusal was dismissed in September 2019. The balancing of planning considerations which led the Inspector to dismiss the Appeal stand on their own. In any case, this new planning application will be considered by CBC on the basis of the details of new proposal, current national and local planning policy and consultation responses. I make some reference to Forbes-Laird Arboricultural Consultancy's (FLAC)

Proof of Evidence to the Appeal where explanation of its tree assessment methodology is missing from the current submission.

- 1.6. An arboricultural report prepared by FLAC has been submitted with the new planning application. This includes a tree survey, proposed tree retention and removal plan and a tree protection plan.
- 1.7. This review seeks to provide an independent arboricultural viewpoint on the merits and potential impacts of the proposed development on the site's trees. It is not intended to investigate or question the professionalism or competence of the author of the submitted arboricultural reports. I acknowledge that many aspects of arboricultural consultancy are inherently subjective and that there are numerous interpretations of published guidance, recommendations and standards that can affect the conclusions made on a site.

2. Method of review

- 2.1. In order to review the planning application and its impact on trees, I began by obtaining the development proposal plans and arboricultural report.
- 2.2. Following a desktop review of these documents, I made a site visit on 3rd August 2020, where I met Mrs Walker (Charlton Manor) and walked over the site to discuss some particular matters pertinent to this planning application.
- 2.3. This review has been conducted as a desktop study having studied the amended proposal and the arboricultural report and submitted comments which are available for public viewing on the council's online planning application register.

3. Review of the submitted arboricultural report and objection responses

- 3.1. The FLAC arboricultural planning submission (ref: SC38-1036, April 2020) consists of a tree survey schedule with a key, 'RAVEN' tree assessment, tree retention and removal plan and an outline tree protection plan. The submission is brief and succinct, dealing with matters arising from the Appeal and how they have been addressed, how the proposal complies with national and local planning policy (including the Tree Preservation Order (TPO) and a matter for resolution by the Planning Committee relating to tree 3015.
- 3.2. The submission itself provides minimal site-specific description or commentary regarding the impacts of the proposed development. The tree schedule contains all the site-specific details of the trees, including a column labelled 'Proposal' which states whether each tree/group/hedge is to be retained, partially retained (groups and hedges) or removed in order to facilitate the development.

Veteran/ancient tree categorisation

- 3.3. The Woodland Trust (WT) and the Ancient Tree Forum (ATF) have submitted detailed objections to the proposal (June 2020), and refer to FLAC's submitted report and to the 'Ancient Woodland, ancient trees and veteran trees: protecting them from development' guidance ('Standing Advice') produced by the Forestry Commission and Natural England. The WT objects on the basis of damage and deterioration of seven veteran trees. The ATF

objects because they assert that the way veteran trees have been identified by FLAC means that trees which should be protected as such by national planning policy have been wrongfully excluded. FLAC has provided detailed responses to each objection (June 2020) which together add a significant degree of additional commentary to the submitted report.

3.4. The objections and subsequent responses focus on disagreements about: the definitions of what is a veteran tree within the national planning policy, policy guidance and published literature, the methodology for assessing veteran trees and the categorisation of the site's trees which follows from these. FLAC's submission uses its in-house 'RAVEN' methodology and identifies 7 veteran trees at the site. The 'RAVEN' methodology, while not as such 'endorsed' by the Appeal Inspector (in the usual sense of the word), was certainly accepted. In contrast, the WT use as their starting point the Ancient Tree Inventory (ATI) to identify veteran trees at the site (which is a source of information 'endorsed' within the Standing Advice (in the usual sense of the word), despite criticism of it from FLAC). The ATF focuses on the characteristics of veteran trees as the starting point. Both the WT and ATF disagree strongly with RAVEN's reliance on tree age/stem size as a starting point.

3.5. The result of the different approaches is that:

- The WT identify five additional trees (3010, 3014, 3015, 3022, 3027) which they believe should have been identified as veteran in the submission
- The ATF identify *at least* two additional trees (3010, 3014) as veteran, with insufficient information on others
- FLAC identify 4 trees (3021, 3026, 3028, 3031) which neither WT nor ATF highlight as veteran trees (albeit the ATF might include these with sufficient information).

3.6. Identifying veteran trees is not a straightforward or simple exercise when very old trees are in question, and there is demonstrably some inherent subjectivity involved which can include perceptions of age, rarity or special landscape context. Therefore, it is not my intention to muddy the waters for CBC with a fourth independent assessment. The FLAC report uses a consistent and transparent methodology in identifying the site's veteran and ancient trees, and so I do not find a sufficient reason to disagree with its findings in this regard.

Application of Veteran Tree Buffers (VTBs)

- 3.7. The FLAC report and plans include veteran tree buffers (VTBs) around all trees identified as veteran/ancient trees, which includes all those assigned the A3 quality category.
- 3.8. Three of the veteran/ancient trees 3007, 3021 and 3028 are identified as 'relic' veteran trees in the RAVEN assessment. RAVEN defines a 'relic' veteran tree as one bearing <75% of its former maximum crown volume. FLAC explained the concept of a 'relic' veteran tree within the arboricultural Proof of Evidence to the 2019 Appeal:

'3.3.8 Concerning Natural England's veteran tree buffer recommendation, this is clearly a precautionary, rather than evidence-based, protective distance. Whilst as a generality this might be suitable for some trees (albeit not justifiably applied as an absolute), it is the case that many veteran trees simply do not require a protective offset of the magnitude computed by the Natural England method (15 times stem diameter).

3.3.9 This is because many veteran trees with a large-diameter stem have lost the greater majority of their original crowns. Because there is an unbreakable, biologically-imperative link between roots and shoots (known as the root:shoot ratio), such trees have a correspondingly compact root system too. Logically, it follows that where a tree occupies a much smaller biological space as a result of significant crown loss, it can be safeguarded by a reduced protective buffer compared to where it does not.'

- 3.9. Instead of a VTB of 15 times the stem diameter recommended in the Standing Advice, the RAVEN methodology caps the VTB at 15 metres radius which results in a smaller area/volume of soil being afforded protection in the site design and construction methodology.
- 3.10. The concept of a 'relic' veteran tree is not recognised in the Standing Advice, nor in published veteran tree literature or the objections of the ATF and WT. Nor does it appear within the RAVEN methodology itself.
- 3.11. The 'relic' veteran tree concept focuses on the '*much smaller biological space*' that a veteran tree with a reduced crown and root system may take. But the Standing Advice VTB seeks not only to mitigate damage to a tree's roots (which might still exist beyond a

calculated root protection area (RPA) or VTB), but also to mitigate direct impacts to soil, ground flora and fungi, the water table and drainage, and from pollution and disturbance to wildlife.

- 3.12. The application of a VTB to a veteran tree in accordance with the Standing Advice is not a means to *avoid* impacts, but is a means to *reduce* (mitigate) impacts. In this way, a VTB is necessarily precautionary to reduce impacts to an irreplaceable habitat.
- 3.13. It should be noted that the RAVEN methodology recognises extensive decay, extensive hollowing, crown senescence and retrenchment as additional primary features of veteran trees, but the 'relic' concept then downgrades the degree of mitigation provided by a VTB based on these these very factors. This is akin to 'begging the question'.
- 3.14. Whereas the Standing Advice would afford trees 3007 and 3021 VTB diameters of 21.8m and 22.8m respectively, they are only provided with VTBs of 15m diameter in FLAC's submission.
- 3.15. It is of note that FLAC's definition of a VTB for a 'relic' tree on the tree survey and retention plan submitted for the 2018 planning application was '*...a maximum and fixed VTB... of 15m radius*'. FLAC did not adhere to its own definition in that submission. As before, the FLAC submission for the current proposal calculates the VTB of tree 3028 - on the basis of a smaller north-west fragment of the original stem which is alive measured as 740mm diameter - as 15 times the remaining stem diameter, giving a VTB radius of 11m. Any definition of a VTB for a 'relic' tree (whether at a fixed 15m radius or not) has been removed from the current submission.
- 3.16. I am unconvinced by the concept of 'relic' trees, of FLAC's application of VTBs to them and of how this relates to the Standing Advice on veteran trees.
- 3.17. While the application of the concept of 'relic' veteran trees has no consequences for tree 3007 in the submitted design, it has significant consequences for potential impacts to 3021. The Standing Advice VTB of 15 times the stem diameter would bring the buildings and gardens of Plots 10, 11 and 13 and the road leading to Plot 10 within the VTB.

Arboricultural Impacts Assessment (AIA).

- 3.18. The FLAC submission lacks detail on the anticipated impacts of the development proposal. The assessment of impacts to trees is confined to a column in the tree schedule that states whether the tree is to be retained or removed, as shown on the submitted tree removal and retention plan.
- 3.19. The report does not provide comment on potentially damaging construction activities relevant to the site such as alterations in ground levels. While FLAC provided observations on potential hydrological impacts on trees in its Proof of Evidence to the Appeal, no assessment has been provided for the current application. Longer-term end-use indirect impacts on the veteran tree habitats, such as increased light from dwellings is not assessed. Although this may be beyond the remit of an arboriculturist, at least some recognition of potential end-use impacts should be provided for further ecological assessment and design.

4. Review of the development proposal in relation to trees

- 4.1. The FLAC submission summarises that the design of the proposals allows the retention of tree 3014 and the removal of all construction and gardens from veteran tree buffer zones, which it says addresses the matters arising from the Appeal decision in full.
- 4.2. The reduced number of dwellings proposed has clearly improved the development proposal from an arboricultural point of view. Trees, including the significant notable and veteran trees, are afforded more open space around them which will reduce the potential for damage and decline. New surface and foul drains within the proposed residential area are accommodated within the new road layout and outside of the RPAs and VTBs of trees.
- 4.3. There are several aspects of the proposal which are of note:

Retention of protected and veteran/ancient trees

- 4.4. The new design proposal for the site retains English oak tree T3014. The design also retains all of the trees identified as veteran trees within FLAC's submitted RAVEN

assessment, as well as all trees identified as veteran on the ATI. All individually-protected trees within the TPO will be retained.

- 4.5. Protected trees (those trees within area A3 of the TPO and present when the TPO was made) within TG3008 at the north-west site boundary would be removed for the new site access and for Plots 1 and 42/43.

Potential impacts of the proposed development

Oaks 3014 & 3015

- 4.6. Oak tree 3014 has been categorised as a B3 quality tree and has an RPA of 11.76m radius. However, given that the tree as 40+ years remaining safe useful life expectancy and has some veteran characteristics with the potential to become a veteran the tree appears to be a 'high' value tree within the definition of policy GI3 Trees and Development of the Cheltenham Plan. Oak tree 3015 has been categorised as an A1 quality tree and has an RPA capped at 15m radius.
- 4.7. The proposal is to isolate the two trees together within an island of open space surrounded by new road to the north, east and south and Plots 29 and 32 to the west. New structural street tree planting will be provided along the road edges.
- 4.8. A small portion of the periphery of the RPA of 3014 is within the boundary of Plot 30 and meets the foundations of the dwelling. Although RPAs are the standard layout tool when considering trees and development, it is worth underlining that an RPA is the *minimum* area around a tree deemed to contain sufficient roots and rooting volume to maintain a tree's viability. Recent research in to the extent of tree roots of old trees has shown that roots extend well beyond the 'drip line' of the canopy, and beyond the capped 15 metre radial RPA as recommended in BS5837. Using a ground penetrating radar, the roots of a mature oak tree at Burghley Estate were found at 24 metres from the stem¹. It is therefore anticipated that the proximity of Plot 30 would result in some some root severance/loss, and soil disturbance within this area is inevitable.
- 4.9. A small portion of the north-west part of the notional RPA of 3015 (25m² or approx 3.5%) will be impacted by the proposed carriageway turning head, footway and car parking

¹ 'An examination by TreeRadar: <http://sharonhosegoodassociates.co.uk/wp-content/uploads/2017/01/Burghley-TreeRadar-report.pdf>

spaces for Plot 29. The FLAC report demonstrates that an additional 50m² of land contiguous with the RPA can be protected from construction activity. FLAC's assessment is that the incursion would not result in a material adverse impact on the tree, but suggest no-dig construction as an option to reduce the risk of adverse impact further. The feasibility of no-dig construction of highway proposed for adoption depends on whether the Highway Authority accept this construction method as meeting its standards.

- 4.10. The submitted tree protection plan shows the location of physical protective barriers and the area of road and parking which could be constructed using a no-dig cellular confinement system. A brief working method for installation of the surface is provided on the plan. I am concerned that the locations of the protective barriers leave very little working space for, for example, excavation to achieve levels and any grading that might be required and installation of kerbs and haunching. Additional working space might necessitate slightly greater incursions into RPAs than shown on-plan. But given that the application is for outline permission, more detailed information could be approved at a later stage.
- 4.11. The isolation of the trees within the open space island, surrounded by hard surfaces with associated drains on the sloping ground above T3015 may alter the local hydrology of the soil, reducing the availability of soil moisture to the trees.
- 4.12. Alteration of the shallow (max. 0.5m deep) topsoil by the construction of the carriageway to the south and east of the trees potentially could reduce the downward flow of water to the trees, or conversely could lead to containment of water within the RPAs. The shrinkable clay ground conditions might require deeper construction extents than is typical, and no detailed assessment of potential hydrological impacts on the trees has been provided for the current application.

Veteran oaks 3007, 3018, 3026, 3030 & 3031

- 4.13. The VTBs of veteran oaks 3007, 3018, 3026, 3030 & 3031 are fully respected within the layout in accordance with the Standing Advice. No structures, new surfaces or drains are located within the VTBs. This is a significant improvement on the previous proposal. The feasibility of protecting the VTBs from construction activity is demonstrated.

Veteran ash T3021

- 4.14. The application of the concept of 'relic' veteran, and the associated VTB which is capped at 15m by FLAC, has consequences for potential impacts to 3021. The capped VTB is respected by the layout except for a small part of the west periphery which is included within the garden of Plot 10. However, the Standing Advice VTB of 15 times the stem diameter (22.8m radius) would bring the buildings and gardens of Plots 10, 11 and 13 and the road leading to Plot 10 within the VTB.
- 4.15. If CBC accept the concept of a 'relic' veteran tree and the application of a 15m cap on its VTB, this would appear to be contrary to the Standing Advice.
- 4.16. Obstruction of the downward flow of water through the shallow (max. 0.5m deep) topsoil by structures to the north and north-east could lead to decreased availability of water within the VTB. The shrinkable clay ground conditions might require deeper building foundations than is typical, and no detailed assessment of potential hydrological impacts on the trees has been provided for the current application.

Veteran oak T3028

- 4.17. The layout design respects the VTB of oak 3028, although rear gardens and the garage of Plot 7 abut the edge of the VTB.
- 4.18. I am concerned that the location of the protective barrier adjacent to the garage of Plot 7 leaves very little working space. Additional working space, including scaffolding which straddles the protective barrier, might necessitate a slightly greater incursions into the RPA than shown on-plan. But given that the application is for outline permission, more detailed information could be approved at a later stage.
- 4.19. The tree would become partially isolated between new dwellings, and I am concerned that the fencing specification shown on the tree protection plan is inadequate to protect against ground and dust pollution during construction. A more appropriate specification (including screening barriers) could be approved at a later stage. I am also concerned about indirect impacts such as increased light from dwellings could degrade the habitat. It is not uncommon for isolated areas such as this to suffer from tipping of garden waste and informal access. The submitted landscape strategy identified that the area is not suitable for public access, and that appropriate deterrent planting can help to mitigate some of the

potential indirect impacts. Consideration should be given to securing more detailed information at a later stage.

- 4.20. Obstruction of the downward flow of water through the shallow (max. 0.5m deep) topsoil by structures to the north and north-east could lead to decreased availability of water within the VTB. The shrinkable clay ground conditions might require deeper building foundations than is typical, and no detailed assessment of potential hydrological impacts on the trees has been provided for the current application.

Protected oaks 3032 & 3033

- 4.21. The site's drainage outflow to existing off-site connections to the south and south-west is proposed to pass through the RPAs of protected oak trees 3032 and 3033. This is an improvement on the previous application, which proposed drainage through the VTB of veteran oak 3031. The tree protection plan notes that a trench-less technique should be used to minimise damage, and the arboricultural Proof of Evidence provided at the Appeal indicated that trench-less techniques are feasible.
- 4.22. It is reasonable to accept that more detailed specifications and working methods, which should include on-site arboricultural supervision, can be approved at a later stage.

Proposed Landscape Strategy

- 4.23. The proposed landscape strategy includes planting of a new native species woodland belt to the south-east of the residential area running from veteran oak 3007 to meet hedgerow group TG3005 at oak 3022. New open space, street and garden tree planting is also proposed. In the long-term, future mature canopies of new street tree and woodland belt planting may meet above the proposed carriageway and provide connectivity to the isolated oaks 3014 and 3015.
- 4.24. The proposed woodland belt contributes to compensating for the connectivity lost by the severance of the hedgerow group TG3005 for the proposed layout, and would eventually provide a visual screen. However, these benefits will take time to accrue, and the success of tree/woodland establishment depends on the adequate allocation of resources to, and implementation of, a new tree planting management plan. A new 10-year tree

management plan 'heads of terms' document has been submitted which aims to achieve 100% successful establishment of new tree and hedge planting.

- 4.25. The ground at the site has been shown to be a maximum of 0.5m deep slightly silty clay topsoil over firm to stiff clay. Obstruction of the downward flow of water through the shallow (max. 0.5m deep) topsoil by structures to the north and north-west could lead to decreased availability of water within the planting area.
- 4.26. The site's documented aspect and ground conditions and my observations on site suggest to me that successful tree establishment, to independence in the landscape, is likely to require a high level of resources over a long period of time. The usual landscape scheme tree replacement condition period of 5 years is likely to be insufficient to secure delivery of an approved detailed scheme in the long-term. A condition for the implementation of the new tree management plan over its full 10-year period would provide a stronger basis to ensure successful establishment of the new trees. If reliance is placed on planning condition(s) for the successful implementation of the detailed landscape scheme, the wording of such condition(s) should be carefully considered.
- 4.27. Although not a common practice, a Tree Preservation Order (TPO) can be made to protect trees to be planted pursuant to a condition imposed under paragraph (a) of section 197 of the TCPA (planning permission to include appropriate provision for preservation and planting of trees). That is to say, a TPO can be made to protect trees, groups of trees or woodlands *yet to be planted*, but which are specified within an approved detailed landscape scheme. Such an Order takes effect from the time the trees are planted.
- 4.28. For a tree protected by such as TPO as an individual or within a group of trees (but not woodlands) landowners have a duty to replace a tree which is removed, uprooted or destroyed because it is dead (or in contravention of the Order or because it presents an immediate risk of serious harm). The local planning authority can enforce this tree replacement duty by serving a tree replacement notice. (Enforcement by serving a tree replacement notice is discretionary, can be dispensed with and can be appealed).
- 4.29. The making of a new TPO to protect at least the new woodland belt as a group (or groups) of trees would provide CBC with a stronger basis on which to ensure the successful establishment of the new trees in the longer-term.

National and Local Planning Policy

- 4.30. Paragraph 175c of the National Planning Policy Framework (NPPF) states that
'development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists'.
- 4.31. In my opinion, while the current proposal is much-improved from the previous proposal, there remains a significant risk that the proposed development could have a negative impact on some of the veteran trees from construction pollution and end-use light pollution, and by changing the soil ecosystem and hydrology that would lead to their premature deterioration.
- 4.32. CBC's Cheltenham Plan was adopted in July 2020. It makes specific reference to the importance of trees in the local landscape, and contains four policies of relevance to trees at the site:

HD4: Land off Oakhurst Rise

This site-specific policy includes requirements for development proposals for Oakhurst Rise to demonstrate the protection of key biodiversity assets and mature trees and the long term protection of mature trees and hedges.

D3: Private green space

The policy requires that proposals for development within extensive grounds of large properties... where appropriate , will be required to: a) retain mature trees; b) retain and enhance existing landscaping; c) provide new landscaping; d) avoid disturbance of significant habitats.

GI3: Trees and development

Development which would cause permanent damage to trees of high value (Note 1) will not be permitted. (Note 1: 'High value' means a sound and healthy tree with at least 10 years of safe and useful life remaining which makes a significant contribution to the character or appearance of a site or locality).

The proposal includes the removal of mature trees, such common ash 3016, the protected trees within TG3008 and trees within TG3005. Hydrological changes due to obstruction of soil water flows by new structures may have an adverse impact on, in particular, high quality trees 3014 and 3015 and veteran trees 3021, 3028 and 3021. Despite protective measures, disturbance to the veteran tree habitats (including soil, ground flora and fungi) during construction and in the site's end-use is likely to occur. In my opinion, the proposal does not comply with policies HD4, D3 and GI3.

The proposed landscape strategy can provide a net gain in the overall canopy cover at the site and enhance the existing resource. In my opinion, the proposal complies with elements b) and c) of policy D3.

GI2: Protection and replacement of trees

In cases where trees are not protected by a Tree Preservation Order or by being in a Conservation Area, but contribute to the townscape and character of the town, the Council will consider including such trees in a Tree Preservation Order.

Given the difficult growing conditions at the site, the making of a new TPO to protect at least the new woodland belt as a group (or groups) of trees would provide CBC with a stronger basis on which to ensure the successful establishment of the new trees in the longer-term.

5. Conclusions


- 5.1. My review of the site and the submitted arboricultural report leads me to the following conclusions:
- 5.2. The application site contains numerous trees that are of high value from a conservation and historical point of view. Seven of these are considered to be veteran trees which provide an irreplaceable habitat and many are important landscape tree features. As such, a precautionary approach should be adopted when designing any development proposals at the site to in order to reduce negative impacts on the trees, their soil, ground flora and fungi, the water table and drainage, and from pollution and disturbance to wildlife. This approach is clearly set out at both the national and local level planning policy.
- 5.3. The arboricultural information submitted with the planning application is succinct. The FLAC report uses a consistent and transparent methodology in identifying the site's veteran and ancient trees, and so I do not find a sufficient reason to disagree with its findings in this regard. However, it lacks a detailed assessment of the the development impacts to trees and conversely from trees to the development in future years. While FLAC provided observations on potential hydrological impacts on trees in its Proof of Evidence to the Appeal, no assessment has been provided for the current application.
- 5.4. The concept of a 'relic' veteran tree is not recognised in the Standing Advice, nor in published veteran tree literature or the objections of ATF and WT. Nor does it appear within the RAVEN methodology itself. The application of the 'relic' veteran tree VTB has significant consequences for potential impacts to 3021. If CBC accept the concept of a 'relic' veteran tree and the application of a 15m cap on its VTB, this would appear to be contrary to the Standing Advice.
- 5.5. The reduced number of dwellings proposed has clearly improved the development proposal in terms of the retention of veteran and protected trees, but the development proposal still has the potential to cause harm to significant trees. In particular, hydrological changes due to obstruction of soil water flows by new structures may have an adverse impact on, in particular, high quality trees 3014 and 3015 and veteran trees 3021, 3028 and 3021. Despite protective measures, disturbance to the veteran tree habitats (including

soil, ground flora and fungi) during construction and in the site's end-use is likely to occur. In my opinion, the proposal does not comply with policies HD4, D3 and GI3.

- 5.6. Site conditions suggest to me that successful new tree establishment, to independence in the landscape, is likely to require a high level of resources over a long period of time. The usual 5 year landscape scheme tree replacement condition period is likely to be insufficient to secure delivery of an approved detailed scheme in the long-term. If reliance is placed on planning condition(s) to achieve this, the wording of such condition(s) should be carefully considered. The making of a new TPO to protect at least the new woodland belt as a group (or groups) of trees once planted would provide CBC with a stronger basis on which to ensure the successful establishment of the new trees in the longer-term.

6. Recommendations

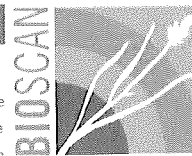
- 6.1. I have concluded through my review of the site and the proposed development that there remains a significant risk of permanent damage to high value trees, and of deterioration of the irreplaceable habitats of veteran trees.
- 6.2. I recommend that a detailed soil analysis and hydrological assessment is carried out in order to understand the soil hydrology and how the proposal would impact the high quality and veteran trees.


Ian Monger
BSc (hons), MArborA.
Senior Arboriculturist

References:

- 1) British Standards Institution (2012). BS5837:2012 'Trees in relation to design, demolition and construction - recommendations'.
- 2) Cheltenham Borough Council (2006). 'Cheltenham Borough Local Plan - Second Review 1991-2011'.
- 3) Department for Communities and Local Government (2012). 'National Planning Policy Framework'
- 4) Forestry Commission & Natural England (2018). 'Guidance: Ancient woodland and veteran trees: protecting them from development". Viewed online at: <https://www.gov.uk/guidance/ancient-woodland-and-veteran-trees-protection-surveys-licences#veteran-trees>.
- 5) Hosegood, S., Lee, I. (2016). An unpublished report of the examination of tree roots of an oak tree at Burghley Estate. Viewed online at: <http://sharonhosegoodassociates.co.uk/wp-content/uploads/2017/01/Burghley-TreeRadar-report.pdf>.

Ecological surveys Environmental Impact Assessment Protected Species Expert Witness Appropriate Assessment Legal and Policy Compliance
Management Planning Environmental Planning Guidance Habitat Creation and Restoration Biodiversity Audit Strategic Ecological Advice
Wetland Conservation Sustainable Drainage Systems Integrated Constructed Wetlands Ecosystem Services Species Conservation



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11th September 2020
Our ref: SW20/E1986/EPL2
Planning application ref: 20/00683/OUT

Dear Ms Pickernell,

Land off Oakhurst Rise, Cheltenham – Addendum Ecological Response

Following the submission of my previous report in respect of the above site and planning application (ref: SW20/E1986/EOL1, dated 29th July 2020), I am aware that two further submissions have been made by the applicants ecologist's dated 10th and 17th August 2020, and an online comment has also been submitted by the county ecologist, Gary Kennison, dated 14th August 2020. I have also been made aware of a more recent submission by the Gloucestershire Wildlife Trust (GWT), dated 1st September.

I have been instructed by Charlton King Friends (CKF) to comment on these new submissions, which I do below.

Metric-based assessment of biodiversity loss

Assessment of biodiversity loss using Defra Metric 2.0

I thank the applicant's ecologists Aspect for providing accurate measurements for each habitat type on the site, which CKF were, of course, unable to obtain from the submitted drawings due to their PDF format, although it is noted that the estimates were nevertheless within an acceptable error margin of the actual totals. I see no reason to disagree with the figures that have now been provided, although I note there is a discrepancy between the site area on the application form of 4.29ha and the total reached by Aspect of 4.12ha.

In the light of these area measurements, I have updated the Metric 2.0 assessment and discuss the results below. Several important points of clarification need to be made about the input parameters first, however.

- i) I note the comment by Aspect Ecology that in Bioscan's Metric 2.0 assessment "*It is assumed that all habitats will be lost and re-created*". I have not been party to discussions regarding the development of the landscape strategy or the proposals for enhancement. In keeping with parties that are outside of the application team, I have had to rely upon the information submitted as part of the application, in this instance the ecological mitigation and enhancements drawing (ref: 5487/EC04) included in the submitted ecological appraisal report (ref: 5487 EcoAp2020 vf /DW). In respect of the two largest blocks of grassland on the site, this drawing

states "Creation of new grassland habitats" [underline added]. I concluded (not entirely surprisingly) from this that the existing grassland would be removed and replaced. I thank Aspect Ecology for clarifying the position and note that any suggestion therein that the development would deliver 'new' grassland, cannot, therefore, be correct and any apparent 'benefit' of grassland creation from the scheme should be discounted in the planning balance as a result.

However, in light of the need to create an artificial badger sett in the grassland in the southwest corner of the site, I do question whether in this area any retention of extant resource would be practically achievable, given the ground disturbance required. This means that the only block of grassland that could in reality be retained (rather than recreated) is that on the east side of the development. The result of this is that approximately a quarter (1.06ha) of the existing grassland would actually be retained under the proposals, with some 0.85ha of grassland removed and recreated. I have factored this correction into the revised metric assessment detailed below.

- ii) With regard to the suggested re-categorisation of the habitats in the baseline metric assessment, there is little need to debate this point in terms of metric outputs as there is no change in the distinctiveness score between 'other mixed woodland' (Bioscan categorisation) and 'scrub' (Aspect categorisation). In other words, the proposed re-categorisation results in no (zero) change to the assessed unit score. I am content to use either category, noting at the same time that the description in the Ecological Appraisal report¹ refers to scattered scrub (together with 'scrub') as being 'bramble'. The proposed re-categorisation therefore fails to reflect the fact that this area of 'scattered scrub' is in fact a small copse of trees (see Photo 1) and I maintain that 'other mixed woodland' would therefore be more appropriate.

Given the absence of an accurate description of this habitat in the ecological appraisal, I have based my assessment of the parameter 'condition' on my own visits to the site. It is clear that the condition of this habitat is being hampered by the extensive badger activity in this area which is restricting the development of the ground flora. As such, based on the combination of these two factors, i.e. the poor ground flora but presence of mature trees, I consider a condition assessment of 'moderate' to be justified.

Even if the 'condition' of this habitat in the Metric is reduced to 'poor' (as Aspect suggest), the result is to only reduce the biodiversity unit value of this area from 0.64 to 0.32 a change of 0.32 units. The need to argue for such a small change is a symptom of the desire by Aspect to achieve every possible fraction of a unit out of disputed tweaks to the input parameters to engineer an output figure that approaches the threshold of acceptability in policy terms. This itself reflects that this is a development proposal that is innately damaging to the on-site biodiversity resource and that inadequate compensation is proposed for such damage. Even if the suggested tweaks are accepted, they have the result of no more than scraping the site's performance over the 'zero' line: the metric calculation Aspect have submitted shows an overall 0.48 unit increase on the site. However the clear direction of travel of national and local planning policy is towards biodiversity net gain being measured as a policy compliant material consideration only where a 10% net increase is demonstrated – indeed this is set to become a national mandatory requirement in the Environment Bill and, pre-empting this, has already been adopted by many

¹ Aspect Ecology ref: 5487 EcoAp2020 vf /DW, dated April 2020

Summary of Comments on Cheltenham Borough Council L2 11-09-20 - final GK comments.pdf

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- T** Number: 1 Author: gkenniso Subject: Highlight Date: 11/09/2020 11:12:30
This is disingenuous as Aspect Ecology have corrected use of creation in recent correspondence. In any case we are talking about through better management etc. establishing wildflower rich grassland from existing and this is a significant gain and in no way can be discounted. The metric should not be slavishly followed in the way set out here as it will give perverse results as I have previously intimated.
- T** Number: 2 Author: gkenniso Subject: Highlight Date: 11/09/2020 11:15:11
Extremely negative conclusion and ignores the fact that disturbance by badgers can enhance vegetation particularly the dense species-poor grassland currently present. Revised metric results presented here should be disregarded.
- T** Number: 3 Author: gkenniso Subject: Highlight Date: 11/09/2020 11:19:53
if you are going to use the metric you must record habitats as they are in the existing valuation calculation. What they could be e.g. due to a different pattern and impact by badgers is something to consider as part of the post development assessment. Again this just shows the weakness of the use of the metric which does not consider species issues.. The consensus of ecological professionals is the best approach as the metric can always only be a rough guide in my view.
- T** Number: 4 Author: gkenniso Subject: Highlight Date: 11/09/2020 11:22:20
The technical debate and disagreements between Aspect Ecology and Bioscan just prove one cannot solely rely on the metric which is not a finished product and does not consider all ecological issues in any case.
- T** Number: 5 Author: gkenniso Subject: Highlight Date: 11/09/2020 11:25:18
This is incorrect no such policy exists yet. The metric is an unfinished product it has various flaws and is not being used consistently by ecologists yet. I am sure (and so is the Wildlife Trust) that with the conditions and S106 I have recommended there will be no net loss and very likely a net gain if one considers all the species particularly enhancing the site for bats etc.. The development can pass the policy test there is no figure to pass.

local authorities². At its highest, Aspect Ecology's own assessment shows that the proposed development falls far-short of this target and in fact delivers no meaningful net gain³.

- iii) There has been no error in the assessment by Bioscan of the condition of the hedgerows H1 and H2 – both are assigned a value of 'moderate' in the pre-development (0.58ha) assessment and 'good' in the post-development (0.35ha) assessment.
- iv) The inclusion by Aspect of hedgerows H3 to H6 as 'Native hedgerow' in the metric is patently incorrect and should be amended. These are ornamental hedgerows which have 0 (zero) biodiversity units. Inclusion of these as native hedgerows introduces a 0.338 unit bias that should be discounted. Correcting the overall output for this further exposes the claim of net gain as a fallacy.
- v) There is no native hedgerow planting proposed by the landscape strategy or shown on the ecological enhancement drawing, and thus the inclusion of 0.461km of native hedgerow creation in the Metric should be removed.

A further element of the Metric assessment undertaken by Aspect that requires more detailed scrutiny is the justification for their application of strategic multipliers.

Strategic multipliers

In their assessment, Aspect Ecology have assigned some habitats a 'strategic location' multiplier, the suggestion being, it is assumed, that these habitats are located in an area that has been formally identified as being strategically important for that habitat. The two 'woodland' habitats (i.e. hedgerows H1 and H2), are noted to be assigned the 'within area formally identified in local strategy' assessment. The suggested rationale for this is outlined at 2.8 of Aspects submission⁴, which states –

"Hedgerows H1 and H2 are considered to qualify as Priority Habitat and the local BAP, as such these habitats are considered to be within an area formally identified in local strategy such that they are of high strategic significance."

This appears to be a wilful misconception of the function and purpose of strategic multipliers within the Defra metric. The suggestion being made is that simply because the hedgerows meet the criterion for status as a national priority habitat that they are automatically strategically located. A priority hedgerow is a hedgerow that contains 80% or greater native species, a criterion met by most hedgerows in Britain. Conversely 'strategically located' is a function of the location of the hedgerow, for example as part of a wider network or connecting two designated sites. It is entirely possible, as is the case here, for a hedgerow to be a priority habitat but outside of a strategic location, or indeed in an ecologically isolated setting.

² See for example <https://www.cherwell.gov.uk/news/article/624/council-ramps-up-biodiversity-target>

³ This is also demonstrably below the 10% currently required by several planning authorities and which is the amount likely to be required under the upcoming Environment Bill.

⁴ Aspect Ecology ref: 1005487/012.let.CBC.ep, dated 10th August 2020. Technical Briefing Note TN10, dated 7th August 2020.

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- T** Number: 1 Author: gkenniso Subject: Highlight Date: 11/09/2020 11:27:05
Disagree strongly the development can secure long term biodiversity value at the location.
-
- T** Number: 2 Author: gkenniso Subject: Highlight Date: 11/09/2020 11:27:28
More technical arguments - see above comments.
-
- T** Number: 3 Author: gkenniso Subject: Highlight Date: 11/09/2020 11:36:33
Incorrect there will be much gap/reinforcement planting in several places to give an increase in native hedgerow and is depicted on the landscape strategy drawing.
-
- T** Number: 4 Author: gkenniso Subject: Highlight Date: 11/09/2020 11:49:07
Disagree but again shows the arguments that can be generated by the imperfect draft Defra metric. In Gloucestershire priority habitats can certainly be seen to be strategically important particularly as the site is situated in a area identified as part of strategic green infrastructure by the Local Nature Partnership <https://www.gloucestershirenature.org.uk/green-infrastructure-framework> . Also CBC have signed up to the LNP's GI Pledge and so this gives added weight to the strategic importance of the hedgerow features being added to/strengthened.

If additional evidence of this was required, the Metric 2.0 user guide⁵, published by Natural England (extract included at Appendix 1) states -

"5.30. The idea of strategic significance works at a landscape scale. It gives additional unit value to habitats that are located in preferred locations for biodiversity and other environmental objectives...Strategic significance utilises published local plans and objectives to identify local priorities for targeting biodiversity and nature improvement, such as Nature Recovery Areas, local biodiversity plans, National Character Area¹⁴ objectives and green infrastructure strategies".

The guide goes on to state –

"In the absence of a locally or nationally relevant strategic documentation indicating areas of significance for biodiversity, the value of 1 should be used in pre and post development calculations".

Aspect provide no evidence for the site being within an area formally identified as strategically important for hedgerows or woodland and a score of 1 (i.e. no multiplier) should therefore have been applied.

There is similarly no evidence provided by Aspect for the existing or proposed ponds being located within a strategically significant location.

Conversely, the comments by the Gloucestershire Wildlife Trust (GWT) (see Appendix 2) confirm that the grassland is in fact strategically located. GWT state *"The site lies within a gap in grassland ecological network connectivity"*. Is it therefore appropriate to assign to the neutral grassland on site a strategic significance of at least 1.1 (i.e. location ecologically desirable but not in local strategy).

Metric outcome

Having corrected the above errors, the metric assessment undertaken by Aspect should show a 4.21 loss of biodiversity units, equivalent to a 11.98% reduction (output included at Appendix 3). This is patently in conflict with national and local policy on the avoidance of net loss of biodiversity.

Published metric assessment

It is noted that both Aspect Ecology and the County Ecologist raise a query as to the benefit of the metric assessment because it is in the process of beta testing. This fact is highlighted in my original submission⁶ and is not disputed. It is though noted in Aspects submission of 10th August⁷ at 1.3 it states *"It is considered that the most appropriate metric to use for the site is the Defra Biodiversity Metric 2.0 Calculation Tool"*. Any suggestion then that this metric is not a recognised and acceptable assessment tool is incorrect. The Defra 2.0 metric is widely and increasingly used to guide planning decisions throughout England and to assess the performance of proposals against the framework of national and local policies that seek to avoid net biodiversity loss and deliver net gain, and is on course to be mandated for such use upon the passing of the Environment Bill into law.

⁵ Ian Crosher, Susannah Gold, Max Heaver, Matt Heydon, Lauren Moore, Stephen Panks, Sarah Scott, Dave Stone & Nick White. 2019. *The Biodiversity Metric 2.0: auditing and accounting for biodiversity value. User guide* (Beta Version, July 2019). Natural England

⁶ Bioscan letter ref: SW20/E1986/EPL1, dated 20th July 2020

⁷ Aspect Ecology ref: 1005487/012.let.CBC.ep, dated 10th August 2020. Technical Briefing Note TN10, dated 7th August 2020

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- T** Number: 1 Author: gkenniso Subject: Highlight Date: 11/09/2020 11:50:17
Incorrect and although Aspect Ecology have provided no evidence I have of strategic importance - see above comment
-
- T** Number: 2 Author: gkenniso Subject: Highlight Date: 11/09/2020 11:53:46
Content to accept this but it must also be the case for the hedgerows - see above comment. Again shows the issues with using the draft Defra metric.
-
- T** Number: 3 Author: gkenniso Subject: Highlight Date: 11/09/2020 11:56:56
Cannot support the figure derived here and ignores various biodiversity issues. draft Defra metric is imperfect, only covers habitats and is not mandatory. There is no policy conflict and in any case I believe there would be a net biodiversity gain from allowing the development with the conditions and S106 in place as I have recommended.
-
- T** Number: 4 Author: gkenniso Subject: Highlight Date: 11/09/2020 11:57:58
Key word is 'guide' and a rough on eat that. See above comments.
-

Neither Aspect nor the County Ecologist have evidenced their assertion that use of the Defra 2.0 metric might give rise to error. One means of testing this might be through the application of an alternative published metric, such as those that preceded the general and widespread adoption of the more recent Defra 2.0 model. For the avoidance of doubt on this point, Bioscan have also, therefore, undertaken this exercise utilising the metric published by Warwickshire County Council⁸ and which was employed as part of the 2019 appeal evidence.

The output from this exercise is attached at Appendix 4 and this shows a 7.33 loss of biodiversity, equivalent to -22.9%. This does not suggest an inconsistent result would be obtained by any other metric and again underlines that the proposals are patently in conflict with national and local policy on the avoidance of net loss of biodiversity.

Conclusion

Having applied two established metrics to the proposed development, one of which is planned by Government to form the official and mandated tool for measuring biodiversity net gain in future planning decisions, ¹ it is clear that, by either measure, significant and demonstrable net loss of biodiversity would occur on this site. Aspect seek to rebut such conclusions by little more than bland repetition of a wholly subjective and unevidenced position shown to be untenable on the facts. Their case is not to engage with the facts but to sow uncertainty by advising that allowances be made for differences in subjective expert opinion and 'gut feeling' and seeking to discredit the application of what are now well-established quantitative methods.

There are of course cases where subjective opinion and quantitative metric outputs will be at odds with each other, and Bioscan are in the vanguard of advocating that care should be used when applying metric-based systems. In this case, however, the veracity of Aspect's competing assessment has to be viewed in the context of the many errors and inconsistencies that have been exposed in their assessments since the commencement of the planning debates over this site, including before the current application. I can confirm that the metric outputs discussed above align with the expert professional subjective opinion of not just myself, but of other highly experienced ecologists within Bioscan, and those views have consistently been found to be on the right side of the facts. ² Aspect's efforts to disregard any assessment technique that does not give them the answer they seek falls short of the requirements for rigorous and robust assessment of the impact of development proposals on biodiversity - requirements that are not only required by industry best practice in general but that form the thrust of national planning policy demands. ³ Any suggestion that application of established metrics is not valid for the purposes of assessment of compliance with biodiversity net gain policies runs flat contrary to the direction of travel of government and local planning policy and in that context alone should be rejected if a legally safe planning decision is to be made.

KWS assessment

I have reviewed the submission by Aspect Ecology (dated 17th August 2020) in which they attempt to critique the basis on which the site has been put forward for designation as a Key Wildlife Site (now called Local

⁸ <https://www.warwickshire.gov.uk/biodiversityoffsetting>

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- T** Number: 1 Author: gkenniso Subject: Highlight Date: 11/09/2020 12:06:53
No as there are issues with the metric and it is implicitly designed as a Habitat only tool for professional ecologists to use. It does not include important species population matters for example and there is a lot of latitude in assessment of hedgerows and woodlands/scrub as the dialogue between Aspect Ecology and Bioscan proves. The metric is only a rough guide and does not cover many biodiversity aspects it should not replace the considered views of a professional ecologist and the consensus is that there would not be a net loss of biodiversity from allowing the development.
-
- T** Number: 2 Author: gkenniso Subject: Highlight Date: 11/09/2020 12:08:40
This argument can be applied to Bioscan too in disregarding the consensus of ecological representations including Natural England, Gloucestershire Wildlife Trust and my own views. The proposals are clearly compliant with current national and local policy contrary to the assertion here.
-
- T** Number: 3 Author: gkenniso Subject: Highlight Date: 11/09/2020 12:09:06
As above comment

Wildlife Sites LWS). I am also now in receipt of the submission from GWT dated 1st September 2020 which confirms the site was formally designated a LWS at a meeting of the selection panel on 1st September 2020. There can be no further question that the site does meet the criteria for this status, and the attribution of LWS status also puts beyond any doubt that Aspect's assertion that the grassland is of no more than 'site' value is wrong.

The designation of the site as a LWS is welcome confirmation by an independent panel of third parties of what the facts on the ground have consistently pointed towards throughout my involvement in this site, and brings into play an additional raft of policy considerations that are failed to be met by the current proposals. In the event that Aspect continue to dispute the award of LWS status, I make the following points on their claims that the appropriate criteria were exceeded:

Minimum species threshold

To meet one of the criteria for KWS designation, the grassland needs to contain at least 20 species from those listed in the KWS handbook as being representative of semi-natural grassland. To date 22 species have been recorded. In their submission of 17th August 2020, Aspect attempt to discount the inclusion of four of these species in their letter to Dr Juliet Hynes; bluebell, barren strawberry, primrose and common dog violet. The basis for this is that, in their option, these are "*likely closely associated with the hedgerows and marginal woody vegetation...Accordingly, these should be discounted from the list such that number of relevant KWS grassland species*". Such a statement is erroneous, as Aspect would know if they had spent their time onsite analysing the grasslands in the correct manner, and the very basis for it flawed.

In the first instance, the KWS handbook, published by the GWT, specifically includes these four species in the list of those representative of a semi-natural grassland.

Secondly, and in the event further evidence of the grassland (as well as woodland) affiliation of these species was needed, I need do no more than pick one of a number of sources that confirm this association. The Natural England (formerly English Nature) research report published on the assessment of the condition of lowland grassland Sites of Special Scientific Interest⁹ also lists all but barren strawberry as being indicators of higher quality mesotrophic grassland (extract provided at Appendix 5).

There can be no argument that these species can and should be included in the list of indicator species that confirm that the site meets, indeed, exceeds the threshold for KWS-level interest. Any attempt to discount them artificially and erroneously skews the assessment. The bald fact is that Aspect failed to record these species yet now attempt to present a case for them to somehow be set aside as not valid as grassland species. This cherry picking of the facts and data is indefensible and should be rejected.

Other matters

In addition to several other factual inaccuracies in their correspondence to the GWT regarding the LWS assessment, Aspect also assert that "*there is no realistic mechanism*", to secure the future and management of the site other than through development. I do not agree with this position. Aspect have not identified any

⁹ Robertson, H & Jefferson, R (2000) *Monitoring the condition of lowland grassland SSSIs* England Nature Research Reports No 315 Part 2.

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T Number: 1 Author: gkenniso Subject: Highlight Date: 11/09/2020 12:12:15

The GWT letter actually says the site has meet the LWS criteria "on the grounds of Value for Learning, being a good selection of habitats and species exceptionally well-placed to offer educational opportunities by its proximity to a school." There is no mention of qualifying purely on the ecological value of the grassland alone.

T Number: 2 Author: gkenniso Subject: Highlight Date: 11/09/2020 12:13:16

Even with LWS status as I have already advised the proposals are acceptable and compliant with local/national policy.

credible risk to the continued management of the grassland in the absence of development. The land has been in its current form since the early 1800s and there is no record of it having ever been subject to agricultural improvement or chemical treatment. LiDAR imagery also shows relic ridge and furrow through the meadow supporting the case that it has also never been mechanically cultivated. Moreover, and most significantly of all, CKF are fully committed to this site, seeking to secure it as a resource for residents. Crucially, they have ample capability to undertake any necessary targeted management.

Comments by Gary Kennison

Much of the content of the correspondence submitted by the county ecology officer, Gary Kennison, takes a lead from the reports submitted by Aspect Ecology and can therefore be viewed in tandem with the responses above. It is, though, unclear why Mr Kennison, even in his most recent submission disagrees with GWT in respect of the site meeting the criteria for designation as a KWS. He appears to have decided this from a single site visit of unknown duration and thoroughness at a somewhat less than optimal time of year (August). This stands against the clear case on the facts, as confirmed by GWT and their decision to formally designate the site, that the site has significant ecological value and that the impact of the development should be measured against this.

Conclusion

Throughout this and previous applications, Bioscan has acted on behalf of CKF to ensure that the ecological interest of the site is properly and accurately recorded. The process has consistently exposed factual errors and inaccuracies in the work undertaken by the applicant's ecologists, Aspect Ecology. The fund of knowledge now collected by Bioscan (and which ought to have been properly documented by Aspect) has been sufficient to lead to the formal designation of the site as a Local Wildlife Site. Yet, Aspect Ecology seek to undermine this fact by discounting relevant facts on the basis of flawed assumptions.

What is placed beyond dispute by the cumulative evidence is that the current proposal would result in the significant and demonstrable net loss of biodiversity on the site. It would accordingly fail the relevant tests of local and national planning policy and should be rejected.

Regards

FOR AND ON BEHALF OF BIOSCAN (UK) LTD



Samuel Watson MCIEEM
Principal Ecologist

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T Number: 1 Author: gkenniso Subject: Highlight Date: 11/09/2020 12:21:06

One can have a view of a grassland from a single visit. A botanist can determine whether a high quality grassland is present or not from a single visit. It is not necessary to see every species that might occur to categorise a vegetation community type. Species abundance and distribution is important too not just mere presence and species counts.
See comment above GWT do not mention qualification as a LWS by grassland quality alone. The GWT letter received focuses on educational value of a variety of habitat present and potential for enhancement which is possible through allowing the development.

T Number: 2 Author: gkenniso Subject: Highlight Date: 11/09/2020 12:21:50

Strongly disagree for various reasons above.

Photo 1



Appendix 1

Natural England Joint Publication JP029

The Biodiversity Metric 2.0

auditing and accounting for biodiversity

USER GUIDE

Beta Version

First published 29th July 2019

www.gov.uk/natural-england

NATURAL
ENGLAND

The spatial component

- 5.29. In biodiversity metric 2.0 there are two core spatial components. First, the **strategic significance** of a place for biodiversity, its geography. Second, ecological **connectivity**, the relationship of a habitat in a defined place to its immediate surroundings in respect of biological and ecosystem flows. While these concepts are not completely independent of each other they do represent different qualities of a habitat.

Strategic significance

- 5.30. The idea of strategic significance works at a landscape scale. It gives additional unit value to habitats that are located in preferred locations for biodiversity and other environmental objectives. Ideally these aspirations will have been summarised in a local strategic planning document which articulates where biodiversity is of high priority and the places where it is less so. Strategic significance utilises published local plans and objectives to identify local priorities for targeting biodiversity and nature improvement, such as Nature Recovery Areas, local biodiversity plans, National Character Area¹⁴ objectives and green infrastructure strategies. Table 5-5 shows the multiplier scores for both impact and compensation sites based on its place in a strategic plan.
- 5.31. In the absence of a locally or nationally relevant strategic documentation indicating areas of significance for biodiversity, the value of 1 should be used in pre and post development calculations. Use of a score of 1 does not penalise a proposal.

TABLE 5-5: Strategic significance categories and scores

Strategic Significance categories			
Category	Score	Point applied to calculation	
		Pre-impact	Post-impact
High strategic significance High potential & within area formally identified in local policy	1.15	Yes	Yes
Medium strategic significance Good potential but not in area defined in local policy	1.1	Yes	Yes
Low Strategic Significance Low potential and not in area defined in local policy	1	Yes	Yes

Connectivity

- 5.32. The focus of connectivity in biodiversity metric 2.0 is the relationship of a particular habitat patch to other surrounding **similar** or **related** semi-natural habitats. These help facilitate flows of species and ecosystem services increases habitat resilience.

¹⁴ For more details of National Character Areas see:
<https://www.gov.uk/government/publications/national-character-area-profiles-data-for-local-decision-making/national-character-area-profiles>

Appendix 2

Gloucestershire Wildlife Trust



Gloucestershire Wildlife Trust
Robinswood Hill Country Park
Reservoir Road
Gloucester
GL4 6SX

By email to:
Emma Pickernell, Cheltenham BC

Gary Kennison, Gloucestershire CC

Alistair Baxter, Aspect Ecology

info@gloucestershirowildlifetrust.co.uk

www.gloucestershirowildlifetrust.co.uk

Telephone: 01452 383333

Registered charity number: 232580

Registered in England number: 708575

07 Aug 2020

Proposed Local Wildlife Site at St Edwards Prep School, Charlton Kings (Site under planning application 20/00683/OUT)

Dear Sir/Madam

Regarding the proposal for Local Wildlife Site status on land at St Edwards Prep School, Charlton Kings (Site under planning application 20/00683/OUT).

In order to achieve the goal of a balanced and useful Local Sites system, the Gloucestershire Wildlife Sites Partnership uses minimum habitat and species thresholds that fit the unique biodiversity of the county into a wider context, and a set of general criteria based on the DEFRA-recommended version of the Ratcliffe criteria.

The proposed site does meet the criteria set out in the Key Wildlife Sites (now referred to as Local Wildlife Sites [LWS]) handbook (2015), being greater than 0.5 ha (site is approximately 3.5 ha), confirmed as MG1 grassland habitat by NVC survey carried out by Aspect Ecology in July 2019 and Aug 2020 and by Bioscan in July 2019 and recording, through combination of all of the above surveys 22 species from the grassland list. However, MG1 can cover a wide range of grassland condition, from very high grass cover and few herbs through to much lower grass density and significant herb cover. As it stands at the moment, the proposed site is of borderline LWS quality and the LWS process requires it to be examined by the LWS selection panel to determine whether it should be adopted as a LWS or not. The panel may be unable to convene before the planning application goes to committee.



Gloucestershire Wildlife Trust



The site lies within a gap in grassland ecological network connectivity. Enhancement to grassland habitat within this area would benefit the ecological network and with appropriate management the quality of the grassland on this site could be enhanced within a relatively short time. Irrespective of the LWS selection panel decision, it is Gloucestershire Wildlife Trusts view that any development on this site should provide a strong commitment to biodiversity net gain and a strong management and maintenance plan for both the grassland and veteran tree features on the site.

Kind regards

Dr Juliet Hynes

Gloucestershire Nature Recovery Network Coordinator



Appendix 3

Headline result

On-site baseline	<i>Habitat units</i>	35.15
	<i>Hedgerow units</i>	0.00
	<i>River units</i>	0.00
On-site post-intervention (including habitat retention, creation, enhancement & succession)	<i>Habitat units</i>	31.26
	<i>Hedgerow units</i>	0.00
	<i>River units</i>	0.00
Off-site baseline	<i>Habitat units</i>	0.00
	<i>Hedgerow units</i>	0.00
	<i>River units</i>	0.00
Off-site post-intervention (including habitat retention, creation, enhancement & succession)	<i>Habitat units</i>	0.00
	<i>Hedgerow units</i>	0.00
	<i>River units</i>	0.00
Total net unit change (including all on-site & off-site habitat retention/creation)	<i>Habitat units</i>	-3.89
	<i>Hedgerow units</i>	0.00
	<i>River units</i>	0.00
Total net % change (including all on-site & off-site habitat creation + retained habitats)	<i>Habitat units</i>	-11.07%
	<i>Hedgerow units</i>	0.00%
	<i>River units</i>	0.00%

Appendix 3 -- Metrix 2.0 output

A-1 Site habitat baseline

Habitats and areas			Habitat distinctiveness	Habitat condition	Ecological connectivity	Strategic significance	Ecological baseline	Retention category biodiversity value						
Broad Habitat	Habitat type	Area (ha)	Distinctiveness	Condition	Ecological connectivity	Strategic significance	Total habitat units	Area retained	Area enhanced	Baseline units retained	Baseline units enhanced	Baseline units succession	Area lost	Units lost
Grassland	Grassland - Other neutral grassland	3.3967	Medium	Moderate	Low	Location ecologically desirable but not in local strategy	29.89		1.06	0.00	9.33	0.00	2.34	20.56
Heathland and shrub	Heathland and shrub - Mixed scrub	0.15	Medium	Poor	Low	Area/compensation not in local strategy/ no local strategy	0.60	0.09		0.36	0.00	0.00	0.06	0.24
Woodland and forest	Woodland and forest - Other woodland; broadleaved	0.34	Medium	Moderate	Low	Area/compensation not in local strategy/ no local strategy	2.72		0.26	0.00	2.08	0.00	0.08	0.64
Woodland and forest	Woodland and forest - Other woodland; broadleaved	0.16	Medium	Moderate	Low	Area/compensation not in local strategy/ no local strategy	1.28		0.11	0.00	0.88	0.00	0.05	0.40
Lakes	Lakes - Ponds (Non- Priority Habitat)	0.003	High	Poor	Medium	Area/compensation not in local strategy/ no local strategy	0.02			0.00	0.00	0.00	0.00	0.02
Heathland and shrub	Heathland and shrub - Mixed scrub	0.08	Medium	Moderate	Low	Area/compensation not in local strategy/ no local strategy	0.64			0.00	0.00	0.00	0.08	0.64
Total site area ha		4.13					35.15	0.09	1.43	0.36	12.29	0.00	2.61	22.50

A-2 Site habitat creation

Proposed habitat	Area (hectares)	Distinctiveness	Condition	Ecological connectivity	Strategic significance	Temporal multiplier	Difficulty multipliers	Habitat units delivered
				Ecological connectivity	Strategic significance	Time to target condition/years	Difficulty of creation category	
Heathland and shrub - Mixed scrub	0.06	Medium	Good	Low	Area/compensation not in local strategy/ no local strategy	7	Low	0.56
Urban - Woodland	0.41	Medium	Good	Low	Area/compensation not in local strategy/ no local strategy	32+	Low	1.57
Urban - Suburban/ mosaic of developed/ natural surface	1.28	Low	Good	Low	Area/compensation not in local strategy/ no local strategy	5	Low	6.43
Grassland - Other neutral grassland	0.85	Medium	Good	Low	Location ecologically desirable but not in local strategy	15	Low	6.58
Lakes - Ponds (Non- Priority Habitat)	0.0097	High	Good	Medium	Area/compensation not in local strategy/ no local strategy	5	Low	0.16
Totals	2.61							15.30

A-3 - Site habitat enhancement

Baseline habitats		Change in distinctiveness and condition		Area (hectares)	Distinctiveness	Condition	Ecological connectivity	Strategic significance	Temporal multiplier	Difficulty multipliers	Habitat units delivered
Baseline habitat	Proposed habitat (Pre-populated but can be overridden)	Distinctiveness change	Condition change								
Grassland - Other neutral grassland	Grassland - Other neutral grassland	Medium - Medium	Moderate - Good	1.05	Medium	Good	Low	Location ecologically desirable but not in local strategy	15	Low	12.06
Woodland and forest - Other woodland; broadleaved	Woodland and forest - Other woodland; broadleaved	Medium - Medium	Moderate - Good	0.26	Medium	Good	Low	Area/compensation not in local strategy/ no local strategy	15	Medium	2.49
Woodland and forest - Other woodland; broadleaved	Woodland and forest - Other woodland; broadleaved	Medium - Medium	Moderate - Good	0.11	Medium	Good	Low	Area/compensation not in local strategy/ no local strategy	15	Medium	1.05
			Total area	1.43						Enhancement total	15.60

Appendix 4

Appendix 4 – Warwickshire Metric output

Pre-development assessment

Existing habitats on site Please enter <u>all</u> habitats within the site boundary			Habitat distinctiveness		Habitat condition		Habitats to be <u>retained</u> with no change within development		Habitats to be retained and <u>enhanced</u> within development		Habitats to be <u>lost</u> within development		
code	Phase 1 habitat description	Habitat area (ha)	Distinctiveness	Score	Condition	Score	Area (ha)	Existing value	Area (ha)	Existing value	Area (ha)	Existing value	
Direct impacts and retained habitats			A	A	B	B	C	A x B x C = D	E	A x B x E = F	G	A x B x G = H	
B22	Grassland: Semi-improved neutral grassland	3.39	Medium	4	Moderate	2			1.06	8.48	2.33	18.64	
A131	Woodland: Mixed semi-natural woodland	0.34	Medium	4	Moderate	2			0.26	2.08	0.08	0.64	
A131	Woodland: Mixed semi-natural woodland	0.16	Medium	4	Moderate	2			0.11	0.88	0.05	0.40	
A22	Woodland: Scattered scrub	0.23	Medium	4	Poor	1	0.09	0.36			0.14	0.56	
Total		4.12				Total	0.09	0.36	1.43	11.44	2.60	20.24	
											ΣD + ΣF + ΣH		
											Site habitat biodiversity value		32.04

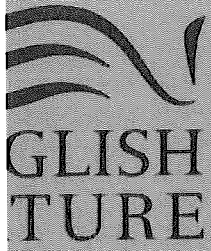
Post-development assessment

Post-development assessment												
Proposed habitats on site (Onsite mitigation)			Target habitats distinctiveness		Target habitat condition		Time till target condition		Difficulty of creation / restoration		Habitat biodiversity value	
code	Phase 1 habitat description	Area (ha)	Distinctiveness	Score	Condition	Score	Time (years)	Score	Difficulty	Score	(N x O x P) / R	
Habitat Creation												
	N			O		P		Q		R		
A21	Woodland: Dense continuous scrub	0.06	Medium-Low	3	Good	3	3 Years	1.1	Low	1	0.49	
A112	Woodland: Broad-leaved plantation	0.41	Medium	4	Good	3	10 years	1.4	Medium	1.5	2.34	
n/a	Built Environment: Gardens (lawn and planting)	1.28	Low	2	Good	3	3 Years	1.1	Low	1	6.98	
B22	Grassland: Semi- improved neutral grassland	0.85	Medium	4	Good	3	5 years	1.2	Medium	1.5	5.67	
Total		2.60										
Habitat Enhancement						Existing value S (= F)	(N x O x P - S) / Q x R					
B22	Grassland: Semi- improved neutral grassland	1.05	Medium	4	Good	3	6.48	3 Years	1.1	Low	1	3.85
A131	Woodland: Mixed semi- natural woodland	0.26	Medium	4	Good	3	2.08	10 years	1.4	Low	1	0.74
A131	Woodland: Mixed semi- natural woodland	0.11	Medium	4	Good	3	0.88	10 years	1.4	Low	1	0.31
Total		1.43										
										Trading down correction value	-7.47	
										Habitat Mitigation Score (HMS)	12.91	
HBIS = HMS - HIS												
Habitat Biodiversity Impact												

HBIS = HMS -
HIS

Habitat Biodiversity Impact				
Score				-7.33
Percentage of biodiversity impact loss				36.22
		Loss	Gain	Impact
Woodland Habitat		1.60	3.88	2.28
Grassland Habitat		18.64	9.52	9.12
Wetland Habitat		0.00	0.00	0.00
Other Habitat (including Built Environment)		0.00	6.98	6.98
Total		20.24	20.38	0.14
Trading down				-7.47
				-7.33

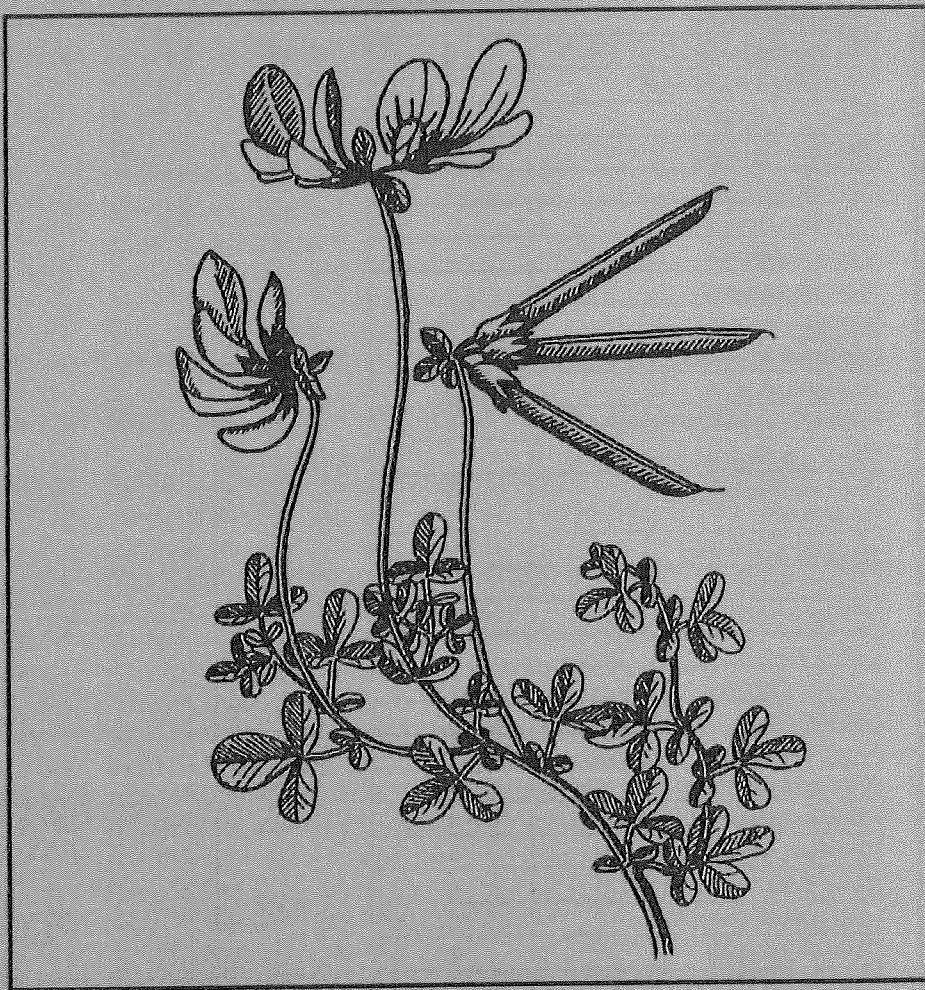
Appendix 5



Monitoring the condition of lowland grassland SSSIs

Part 2 - A test of the rapid assessment approach

No. 315 - English Nature Research Reports



working today
for nature tomorrow

Mesotrophic Grassland Indicator Species

Species name	Mesotrophic Indicator score
<i>Asperula ptarmica</i>	1
<i>Asperula eupatoria</i>	1
<i>Asperula procera</i>	1
<i>Asperula septentrionalis</i>	1
<i>Asperula filicaulis</i>	4
<i>Asperula glabra</i>	4
<i>Asperula monticola</i>	8
<i>Asperula xanthochlora</i>	4
<i>Asperula vineale</i>	1
<i>Asperula bulbosus</i>	4
<i>Asperula nemorosa</i>	2
<i>Asperula pubescens</i>	1
<i>Asperula compressus</i>	2
<i>Asperula lunaria</i>	2
<i>Asperula sylvaticum</i>	1
<i>Asperula media</i>	2
<i>Asperula commutatus</i>	4
<i>Asperula racemosus</i>	4
<i>Asperula palustris</i>	1
<i>Asperula rotundifolia</i>	2
<i>Asperula pratensis</i>	1
<i>Asperula cutiformis</i>	1
<i>Asperula aryophyllea</i>	2
<i>Asperula lemissa</i>	2
<i>Asperula liandra</i>	2
<i>Asperula listans</i>	2
<i>Asperula listicha</i>	2
<i>Asperula livida</i>	4
<i>Asperula chinata</i>	2
<i>Asperula lacca</i>	2
<i>Asperula ostiana</i>	2
<i>Asperula muricata</i>	4
<i>Asperula nigra</i>	2
<i>Asperula valis</i>	2
<i>Asperula allescens</i>	2
<i>Asperula anicea</i>	2
<i>Asperula ululifera</i>	2
<i>Asperula ulicaris</i>	2
<i>Asperula picata</i>	2
<i>Asperula omentosa</i>	8
<i>Asperula esicaria</i>	2
<i>Asperula verticillatum</i>	2
<i>Asperula ea nigra</i>	1
<i>Asperula rium erythraea</i>	1
<i>Asperula dissectum</i>	4

Species name	Mesotrophic Indicator score
<i>Cirsium heterophyllum</i>	4
<i>Coeloglossum viride</i>	1
<i>Colchicum autumnale</i>	4
<i>Conopodium majus</i>	1
<i>Crepis paludosa</i>	2
<i>Dactylorhiza fuchsii</i>	1
<i>Dactylorhiza incarnata</i>	2
<i>Dactylorhiza maculata</i>	2
<i>Dactylorhiza maculata x D. fuchsii</i>	2
<i>Dactylorhiza majalis</i>	4
<i>Dactylorhiza purpurella</i>	4
<i>Dactylorhiza traunsteineri</i>	2
<i>Danthonia decumbens</i>	2
<i>Eleocharis palustris</i>	1
<i>Epilobium palustre</i>	1
<i>Epilobium parviflorum</i>	1
<i>Epipactis palustris</i>	2
<i>Equisetum palustre</i>	1
<i>Equisetum pratense</i>	2
<i>Equisetum sylvaticum</i>	1
<i>Euphrasia anglica</i>	2
<i>Euphrasia arctica ssp borealis</i>	8
<i>Euphrasia nemorosa (incl E. curta)</i>	2
<i>Euphrasia rostkoviana ssp rostkoviana</i>	8
<i>Festulolium loliaceum</i>	1
<i>Filipendula vulgaris</i>	2
<i>Fritillaria meleagris</i>	8
<i>Galium palustre</i>	1
<i>Galium uliginosum</i>	1
<i>Galium verum</i>	1
<i>Genista tinctoria</i>	2
<i>Gentianella campestris</i>	1
<i>Geranium pratense</i>	2
<i>Geranium sylvaticum</i>	4
<i>Geum rivale</i>	4
<i>Gymnadenia conopsea</i>	2
<i>Hordeum secalinum</i>	1
<i>Hyacinthoides non-scripta</i>	1
<i>Hydrocotyle vulgaris</i>	1
<i>Hypericum maculatum</i>	1
<i>Hypericum tetrapterum</i>	1
<i>Isolepis setacea</i>	2
<i>Juncus compressus</i>	4

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Species name	Mesotrophic Indicator score
<i>subnodulosus</i>	1
<i>arvensis</i>	1
<i>a macrantha</i>	2
<i>s montanus</i>	1
<i>s nissolia</i>	4
<i>s pratensis</i>	1
<i>lon hispidus</i>	2
<i>lon saxatilis</i>	2
<i>themum vulgare</i>	1
<i>zatharticum</i>	1
<i>ovata</i>	2
<i>orniculatus</i>	1
<i>enuis</i>	1
<i>liginosus</i>	1
<i>campestris</i>	1
<i>multiflora</i>	1
<i>s flos-cuculi</i>	1
<i>chia nummularia</i>	1
<i>athamanticum</i>	4
<i>i caerulea</i>	1
<i>is discolor</i>	1
<i>is secunda</i>	1
<i>us pseudonarcissus</i>	1
<i>he fistulosa</i>	1
<i>he pimpinelloides</i>	8
<i>he silaifolia</i>	8
<i>repens</i>	1
<i>spinosa</i>	2
<i>lossum vulgatum</i>	2
<i>mascula</i>	2
<i>morio</i>	4
<i>acetosella</i>	1
<i>ucillia viscosa</i>	4
<i>sia palustris</i>	2
<i>laris palustris</i>	1
<i>la officinarum</i>	1
<i>vella saxifraga</i>	2
<i>go media</i>	1
<i>thera bifolia</i>	2
<i>thera chlorantha</i>	2
<i>la serpyllifolia</i>	2
<i>la vulgaris</i>	2
<i>num bistorta</i>	8
<i>num viviparum</i>	2
<i>illa anglica</i>	1
<i>illa erecta</i>	1
<i>illa palustris</i>	2

Species name	Mesotrophic Indicator score
<i>Primula farinosa</i>	2
<i>Primula veris</i>	2
<i>Primula veris x P. vulgaris</i>	2
<i>Primula vulgaris</i>	2
<i>Pulicaria dysenterica</i>	1
<i>Ranunculus auricomus</i>	2
<i>Ranunculus bulbosus</i>	1
<i>Ranunculus ficaria</i>	1
<i>Ranunculus flammula</i>	1
<i>Rhinanthus minor</i>	1
<i>Sagina nodosa</i>	1
<i>Sanguisorba minor</i>	1
<i>Sanguisorba officinalis</i>	8
<i>Saxifraga granulata</i>	2
<i>Senecio aquaticus</i>	1
<i>Senecio erucifolius</i>	1
<i>Serratula tinctoria</i>	2
<i>Silaum silaus</i>	8
<i>Stachys officinalis</i>	2
<i>Stellaria graminea</i>	1
<i>Stellaria palustris</i>	1
<i>Succisa pratensis</i>	2
<i>Thalictrum flavum</i>	2
<i>Thymus polytrichus</i>	2
<i>Trifolium fragiferum</i>	8
<i>Trifolium medium</i>	1
<i>Trifolium ochroleucon</i>	8
<i>Triglochin palustris</i>	4
<i>Trisetum flavescens</i>	1
<i>Trollius europaeus</i>	4
<i>Valeriana dioica</i>	4
<i>Valeriana officinalis</i>	1
<i>Veronica officinalis</i>	1
<i>Veronica scutellata</i>	2
<i>Vicia orobus</i>	4
<i>Vicia tenuissima</i>	1
<i>Vicia tetrasperma</i>	1
<i>Viola canina</i>	2
<i>Viola hirta</i>	2
<i>Viola riviniana</i>	2

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<input type="checkbox"/> Number: 2	Author: sam	Subject: Rectangle	Date: 10/09/2020 16:52:18
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14 September 2020

Councillor David Willingham
c/o Municipal Offices
The Promenade
Cheltenham
Gloucestershire
GL50 9SA

Dear Councillor Willingham

OAKHURST RISE – A SITE ALLOCATED IN YOUR LOCAL PLAN

Later this week your Planning Committee will be asked to consider our application for 43 new homes at Land off Oakhurst Rise, Cheltenham. Oakhurst Rise is a site allocated for development in the Cheltenham Local Plan which you adopted on 20 July. The principle of development on this site is clearly and firmly established. We have worked closely with your officers to create a scheme that comprehensively addresses the site-specific requirements set out in the Local Plan and which considers the issues raised by the Inspector when considering a larger scale proposal.

You may be aware that we the applicant, facilitated an inspection of the site by the Gloucestershire Wildlife Trust (GWT), who subsequently designated the site as a Local Wildlife Site on the grounds of value for learning. We welcome this swift decision and the certainty it provides. The Trust clearly concludes that the proposed development of this site affords an important opportunity to both enhance and protect the ecology of this site in perpetuity and the County Ecologist concurs.

The status of the site as a Local Wildlife Site is now settled and Policy SD9 of the Joint Core Strategy is engaged. We are firmly of the view that the relevant policy criteria are satisfied by this scheme and this is supported by the County Ecologist. A Framework Land Management Plan has been prepared and submitted to GWT, which has commented '*Gloucestershire Wildlife Trust confirms that the prescriptions within the revised draft of the FMP should result in securing and enhancing the biodiversity interest of the retained areas of the Local Wildlife Site*'. It is in the interests of the whole of Cheltenham to bring forward this allocated site with a scheme that satisfies the various planning requirements.

In addition to this backing, there are strong reasons to actively support this scheme.

- It will provide a cross-section of new market dwellings.
- It will deliver 18 affordable homes in an area that desperately needs them but will not get them in this plan period without our scheme.
- By carefully siting new homes to the west of the site and creating new landscape features, we consider the scheme satisfactorily meets all the criteria attached to Policy HD4. Your Senior Conservation and Heritage Officer has no objections to the scheme which has been designed in consultation with him.
- We are protecting the key biodiversity assets and mature trees. We have both a long-term plan for management of the retained trees and importantly we have agreed a Framework Management Plan with GWT for the retained grassland. Our approach is fully supported by CBC's Senior Trees Officer and backed by the County Ecologist. Our proposals, which include extensive new planting, represent an overall biodiversity gain.
- The development will lower the risk of flooding in vulnerable areas of the town – our attached infographic clearly explains how.
- Gloucestershire County Highways has no objection to our scheme and nor have they for previous larger applications on this site
- It is fully supported by your social housing provider Cheltenham Borough Homes alongside other registered providers.
- If planning permission is granted it is ready to deliver new homes straight away

WILLIAM MORRISON

(CHELTENHAM) LTD

Since our previous application, the urgent need for new homes has only intensified. Cheltenham does not have a five-year land supply and there is a huge shortfall of affordable homes. Our policy compliant proposals ought to be part of the solution to this challenge.

Oakhurst Rise has clearly been identified by the Borough Council as an appropriate location for development. We believe this clear policy statement plus the significant changes we have made to the scheme warrant support at Committee.

We are strongly urging the Committee to support these proposals. In the meantime if you have any questions please, do not hesitate to contact us on info@williammorrison.com.

Yours sincerely

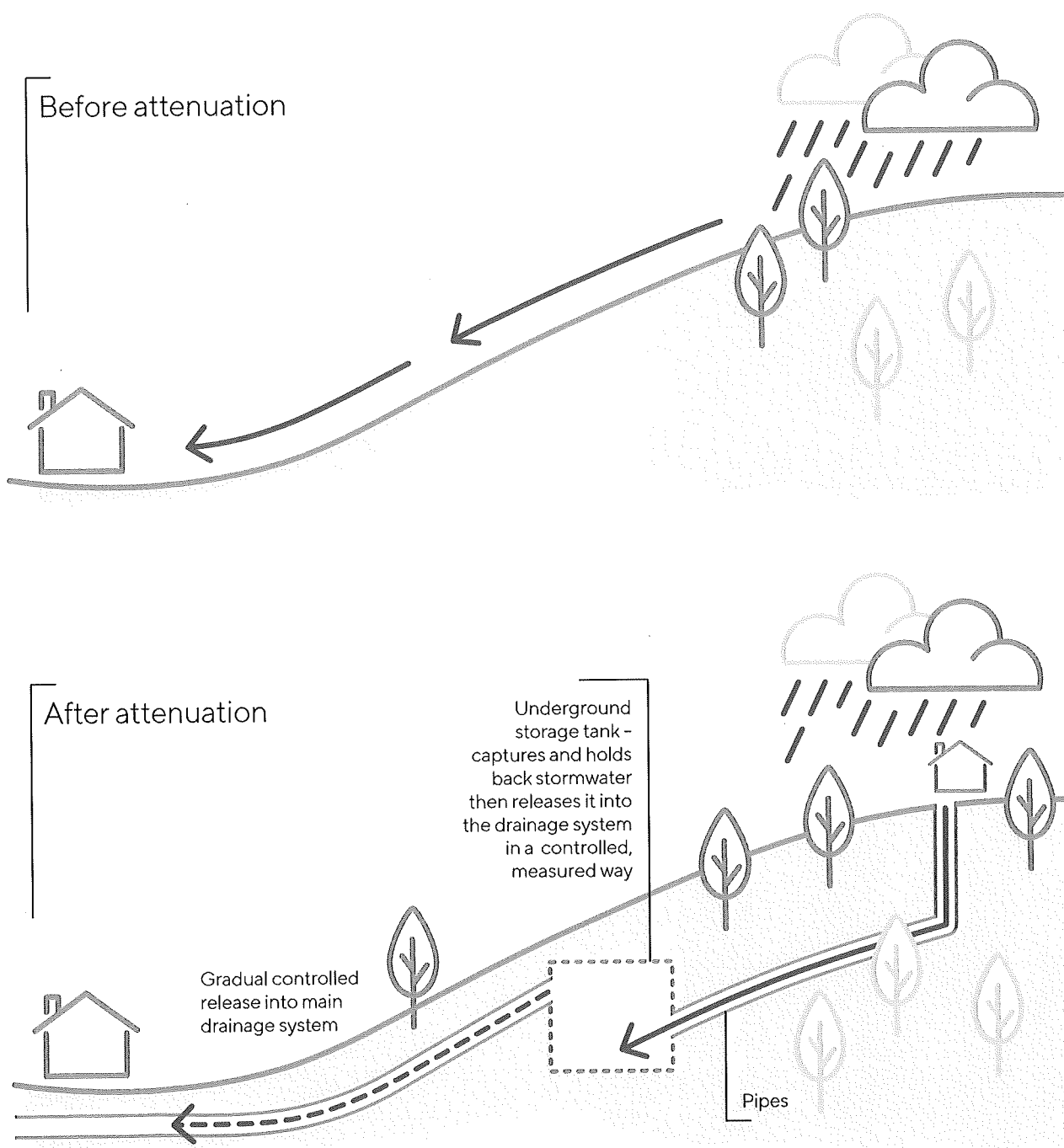
Directors of William Morrison (Cheltenham Ltd)

Oakhurst Rise – Flood risk betterment

Helping to manage flood risk in Cheltenham

- The Oakhurst Rise development will lower the risk of flooding in vulnerable areas of the town
- At the moment water runs freely off this site into the Cheltenham drainage system
- This runoff is set to increase by up to 40 per cent over the coming years as a result of climate change
- Our attenuation system will reduce flood risk to lower lying areas of Cheltenham by:
 - The holding back of runoff water from the hill
 - Its storage in attenuation tanks
 - Its gradual controlled release

In simple terms, Oakhurst Rise is a positive step in managing flood risk in Cheltenham.



20/00683/OUT

This application was submitted during lockdown, following a failure to appeal the rejection of a previous application in October 2019. In June 2020, the site was identified as meeting the qualifying criteria for Local Wildlife Site (LWS) Status. The Cheltenham Plan was adopted with site specific (HD4) policies in July. And Gloucestershire Wildlife Trust (GWT) designated the application site as an LWS on 1 September 2020.

The LWS baseline data of May 2020 was not presented at the appeal, did not feature in Local Plan consultations, nor was it a design consideration for this outline application.

While LWS status does not preclude development, it clearly influences the balance of "sustainable" development.

The Officer's Report (OR) at para 7.6 summarises harms and benefits of 20/00683/OUT based on appeal findings for 18/02171/OUT. However, the appeal inspector was presented with a greater amount of social housing, ruled prior to HD4 adoption, and did not have to consider the LWS status of the site or the new species data for the grassland under threat.

In determining this new application, councillors are asked to consider whether the obligation to review and protect assets of particular importance (uniquely, a local wildlife site, a Grade II* heritage asset and a Grade II asset) invokes para 11di of the NPPF.

The committee will wish to take a view on the soundness of housing supply data, following a national lockdown, not least because this is an outline application and the draft planning conditions alone mitigate against the prospect of timely delivery.

Policy HD4 requires "A minimum of 25 dwellings, subject to master planning"

The application is **72% above a policy compliant minimum of 25 units**. The additional harm to biodiversity and heritage, and pressure on overstretched infrastructure, is **discretionary**.

The absence of a 'master plan' results in a raft of contradictions within the application over the future use of the site, access to the land and land management responsibilities, with a proposal for S106 funds and council time to be assigned over the next decade, managing the ecology of a site that is leased to a private school and inaccessible to taxpayers.¹

¹ The applicants are selling the land on receipt of planning permission. The officer report (OR) at 6.11.13 states that S106 payments will be used to maintain the site and a management company will be set up for that purpose; other officers assume residents will pay the "not cheap" bill. The design statement states "the site enables a significant amount of open green space to be available to the residents" yet there is zero residential access to protect the ecology of the remaining grassland, available to private school students under lease. The ecological, residential and educational uses of the land are in conflict without a master plan, to the detriment of all.

National and local policy requires protection of biodiversity assets; policy SD9 requires improved community access (to biodiversity assets). This application **guarantees** the loss of circa 30% of an important hedgerow, 57% of strategically important grassland, 2 mature trees, a spring fed pond and a badger sett. What is promised as replacement is inadequate and unenforceable². While the site is currently in charitable ownership with considerable (managed) community access, in future, the meadow will be fenced off for exclusive use by the private school under commercial arrangements.

Policy HD4 requires safe and convenient pedestrian and cycle links. The access is described by the appeal inspector as ‘tortuous’; there is no cycleway provision in the application. Oakhurst Rise (14% gradient) is at the upper limits of e-bike performance.

Gloucestershire’s strategic plan on cycling offers no upgrade to CK cycling routes before 2031. The London Road is a category 4 route suitable for experienced cyclists only. At the last planning committee Highways commented that, contrary to the Highway Code, cyclists on Oakhurst Rise should rely on motorists flashing their headlights, as it was too narrow for an inbound HGV and an outbound cycle to navigate the hill simultaneously.

For information when considering **Public Sector Equalities Duty**, the site cannot be accessed safely by wheelchair and will be shut off completely in bad weather, as Oakhurst Rise is documented to be impassable after heavy frost or snowfall.

Policy HD4 requires protection of mature trees, in addition to national policy protection for ancient and veteran trees. The appeal inspector stated “It is first appropriate to note the evidence of the Woodland Trust that a significant number of veteran and ancient trees on the appeal site have **not** been identified as such in the assessment submitted by the arboricultural consultants to the Appellants...”.

The committee is now asked to accept that the inspectors concerns are “largely overcome” (6.4.11), despite a strengthening of policy under HD4, and that the loss of mature trees is ‘regrettable (7.4)’ rather than a policy failure that is explicitly at odds with the direction from the local plan inspector in her final report (“I have made a minor change to the modified policy HD4 to **require the protection of mature trees**”).

Policy HD4 requires a layout and form of development that **respects the character, significance and setting of heritage assets** that may be affected by the development

Historic England [HE], a statutory consultee, are also the national technical authority on heritage harm; they continue to object in detail, supported by:

- The appeal inspector’s comments, following a full day of heritage evidence.

² The county ecologist and GWT (para 6.5.25) requested a legal covenant to protect the grassland but conclude it is not possible. It is unclear what enforcement action or council priority would be assigned to something as routine as grass cutting regimes.

- A total dependence on screening. HE standing advice says screens should be a feature of last resort to reduce harm; the tree officer notes it will be decades before the trees reach maturity, with considerable risk from clay soil and from resident deer (he also notes residents will not tolerate large trees).
- CBC's evidence at appeal, that screening would **not** mitigate harm to heritage assets.

Given the OR admits there is real harm and HE's authoritative position, CKF encourages councillors to **take their own view on whether this harm, to which they must attach significant weight, is acceptable**

Finally, we contend there is significant biodiversity harm from this application (6.5.28).

The case at appeal was based on 14 of 20 grassland species having been identified as present in the meadow. Even then, the inspector stated "the net effect of the proposed development on biodiversity is likely to be either neutral or negative to some degree".

Since submission of this new application, the grassland species count has been confirmed to exceed the LWS qualifying criteria (22 out of 20 species present). Legally protected wildflower species have been photographed in the grassland to be lost, in contravention of **policy SD9 provisions for nationally protected species to be safeguarded in accordance with the law**. GWT have given the site LWS designation.

Badgers are highlighted as being of borough interest, but despite focus in the local plan, this application chooses not to avoid the main sett, by developing the site above 25 units.

Ecology input to the site design (from Aspect) was as follows: "Features of ecological importance include hedgerows and the mature/veteran trees, which are of at least local level value... The remaining habitats within the site are **not** considered to form important ecological features and their loss to the proposals is of minor significance." The design statement says the site is "unkempt grass and a few trees".

In the last few weeks acknowledgement of ecological value of this site has changed beyond all recognition, but without any obvious impact on the design or the harms being acknowledged. Aspect's input to the biodiversity DEFRA metrics is in contradiction of their own evidence to the committee earlier in the process (e.g. hedgerow is now classified as being of strategic vice local importance); as a result they claim marginal biodiversity net gains. Bioscan's calculations of net loss (absent from the planning portal) are attached.

The committee is being asked to take assurance that the site will be managed effectively by all future landowners, and that this will **guarantee** future biodiversity gains. We do not see the plan as credible. Or, as the most recent RSPB report on biodiversity noted this week, there is a gulf between rhetoric and reality, resulting in a catastrophic failure of governmental policy on biodiversity.

h) Email from Page 105 ut to Clk. Atherstone.

From: Ian Kirby
Sent: 15 September 2020 19:03
To: Emma Pickernell
Subject: FW: FOR THE ATTENTION OF CLLR VICTORIA ATHERSTONE PLEASE
Attachments: Victoria Atherstone.docx; Oakhurst Attenuation Infographic v.7.pdf

Good evening Emma

Copy correspondence for your information and records

Kindest regards

Ian

From: Ian Kirby
Sent: 15 September 2020 18:58
To: 'cllr.victoria.atherstone@cheltenham.gov.uk' <cllr.victoria.atherstone@cheltenham.gov.uk>
Subject: FOR THE ATTENTION OF CLLR VICTORIA ATHERSTONE PLEASE

Sent from the office of Huw Evans; William Morrison (Cheltenham) Limited

Dear Councillor Atherstone,

I hope will forgive me making direct contact with you. My name is Huw Evans; I am a director of local company, William Morrison (Cheltenham) Limited.

Firstly, I would like to offer my warmest congratulations on your new role and appointment to the CBC Cabinet. This is an exciting period for Cheltenham at a time when there is a real opportunity to drive investment into our town, secure new infrastructure, and deliver on the Council's vision.

The recently approved Local Plan is an important part of this and a chance to show local business and wider investors that the town is serious about boosting the economy. One of the first opportunities to put this into practice will be on Thursday (17th) when our proposed development at Oakhurst Rise goes to planning committee. The site will deliver 43 new properties including 18 much-needed affordable homes. This is probably the only site in the plan period that will deliver a significant number of affordable properties in Charlton Kings in the near future.

Generally, there is a serious shortage of new homes in Cheltenham. Levels of demand are too high, driving up the price of housing stock, denying many of the opportunity to buy or even rent at a reasonable and affordable price. This is a deterrent to existing employers expanding and to new potential employers setting up in, or relocating to the area. The vibrancy within our local economy is not being adequately stimulated.

The Oakhurst Rise development affords other strong advantages;

The undeveloped area of the site will be a wildlife habitat in line with the wishes of the Gloucestershire Wildlife Trust

Flood risk from storm water which currently runs unabated off the hill will be lessened

The trees and ecology on the site will be the subject of long-term management and protection.

The site is in your Local Plan and backed by your officers. Nevertheless, we remain concerned that some councillors are actively campaigning against it.

Would you please consider offering balance to the debate led by local objectors, by introducing the counter arguments related to your new post and the responsibilities that accompany it?

I would be delighted to have an opportunity to discuss further with you and happy to speak on the phone or meet with you at any time and location convenient to you. My mobile number is 07767 236756 and my email is huw@hdevans.co.uk . In the meantime, thank you very much for taking the time to consider my email.

With kind regards

Sincerely

Huw Evans

① Response to B Page 107 Hyett from
CBC Trees officer

File note/response to 10/9/20 Barton Hyett (BH)-Ian Monger report

regarding trees at land adjacent to Oakhurst Rise

20/00683/OUT

A FLAC (applicants arb consultant) response to BH report is being created but as yet, Trees Officers/CBC have not received the final version.

Barton Hyett notes the divergence of opinion by Ancient Tree Forum, Woodland Trust and FLAC Arb consulting as to identifying veteran trees. His report does not identify what he considers are the veteran trees on site.

BH states that the FLAC identified veteran trees have not been afforded the increased root protection area now required under NPPF requirements and goes on to explain the reasons why this is the case (due to their being "relic" trees and have less than 75% of their former crown) and so require less rooting area from which to take water. However BH report that the reduced area will also impact the, soil, ground flora, fungi, water table and drainage, pollution and disturbance to wildlife and does not agree with this reasoning. There is no concept of a "relic" veteran in the NPPF. However, in CBC trees officer opinion, the trees to which this has been applied would have sufficient soil, buffer planting and other measures to protect them should this development proceed and reserved matters be agreed. FLAC would not have used this "relic" tree initiative unless he was confident that he could argue it at any appeal following any refusal.

Para 3.19 BH states that the end use impact on veteran trees has not been assessed (eg increased artificial light from dwellings and changes in hydrology). The nature of converting much of this site to dwellings, roads and open spaces will have an impact on the site. However the site has been designated as suitable for development and I consider that the current proposed design does respect, in the main, tree protection guidance. Assuming successful establishment of new trees in the proposed planting outline plan, there should (in the long term) be a net gain in canopy cover.

Para 4.1-5 BH States that the current design is an improvement on previous designs (from an arb perspective) and reduces the potential for damage and decline of all veteran trees (identified by FLAC) , as well as trees identified as veteran on the Ancient Tree Inventory and all trees with a TPO.

4.6-8-BH states that a small portion of the Root Protection Area (RPA) of T3014 is within the boundary of plot 30 and meets the foundations of the dwelling Plot 30. I consider this incursion to be marginal and indeed there is an equivalent (increased) rooting area for this tree elsewhere adjacent around its periphery. This tree is not shown as a veteran tree in the design- whilst it has many characteristics of a veteran, this argument has been rehearsed elsewhere.

4.9-the incursion into the RPA of T3015 with a no-dig road solution is a matter for the Highways authority regarding the acceptability of design. Such a no-dig road solution has been seen elsewhere outside this site (eg the entrance to the former police station on the A40).

4.10-BH states that tree protective fencing is very tight to the RPAs and there will be little scope for the insertion of haunchings, kerb stones etc. In my experience of large scale sites, there is often collateral and unexpected negative impact and damage to trees during the build phase of a site. However as BH states, as this is an outline application, a method statement can be agreed by condition.

4.12-BH states that construction of carriageway and deeper than normal foundations could have an impact on water flow/retention around retained trees. However, water availability as a result of rainfall will not be affected by this proposal as no significant construction is to take place under canopies of retained trees. Adaption of eg kerbside design can be altered so as to encourage/discourage water flow as appropriate as a planning condition.

4.13 The Veteran Tree buffers (VTB's) on T's 3007, 3018, 3026,3030 and 3031 are respected in according with the formal Standing Advice and is an improvement on previous applications

4.14-16a 15M radius circle to protect the RPA of veteran ash T3021 due to it being a “relic” tree would bring a small part of its western periphery into plot 10. However, if the standing Advice is taken at face value, then plots 10, 11 and 13 as well as a portion of road leading to plot 10 would be within the Standing Advice protected zone. This “relic” reasoning makes logical sense but is not strictly in line with the official formal guidance.

4.17-19-concerns regarding T3028 and the protection afforded to it post development. This is mirrored by my own comments and agreement could be reached via planning condition

4.21-22 Recommends drainage method statement close to Trees 3032 + 3033 can be agreed via planning condition but should include on-site arb supervision. I concur.

4.26-29 Describes concerns that the proposed extensive new planting will take much time money and resource over the longer term. A less than usual 10 Year Replacement Planning Condition is recommended. I concur.

It is also suggested to create a new TPO for trees/woodlands yet to be planted is suggested. This would give this council further leverage to enforce replacement trees as necessary and to achieve establishment and growth to maturity of the proposed planting. I concur. This TPO could also include the “tidying up” of the existing TPO (ie serve a new TPO on the existing retained TPO’d trees so that the site as a whole could be protected. A separate TPO could be created for all off site trees (within St Edwards School) which are subject to this same TPO.

4.30-32 Describes concerns regarding contravention of the NPPF and the Cheltenham Local Plan as a result of damage to veteran trees during and after the course of construction from construction pollution, end-use light pollution, changing the soil ecosystem and hydrology. In my opinion, development of the land will cause changes to the above, but my experience is that if the conditions and reserved matters can be agreed and protection is put into place as described in the Tree Protection Plan, that such change should be minimal and not significant.

C.Chavasse 15.9.20



① Response to B-Page 111 yett from
applicant's arboriculturalist

FLAC Instruction ref. SC38-1036

OAKHURST RISE

Cheltenham Borough Council Planning Application ref. 20/00683/OUT:

Barton Hyett Associates' *Arboricultural Review*, 10.09.20

Project Arboriculturist's Response

Introduction

1. I note that there is widespread common ground between us on arboricultural matters, including on the identification of ancient and other veteran trees, and on tree retention/ and removal outcomes arising from the proposals.

2. In light of this, BHA's concerns can be distilled to two matters:

- i) The concept of 'relic' trees; and
- ii) How the identified veteran trees would be safeguarded.

I discuss these matters in turn below.

Relic trees

3. The concept of the relic tree is a response to the simple fact that the size of a tree's stem is driven by the maximum size of its crown: the protection afforded by any multiplier of stem size must, therefore, relate to safeguarding the tree at its peak size and, it follows, peak biological activity.

4. To some extent, maintaining a maximum safeguarding distance for a tree that is only marginally smaller than its peak size is reasonable. But at some lesser size this ceases to make sense due to the progressive reduction of the biologically active space that accompanies a diminishing tree.

5. Thus, if a tree is a *relic* of its former self, it is reasonable and proportionate to adjust the safeguarding requirement to reflect the reduction in biologically-active space that accompanies this. The estimate of crown loss threshold is set at 75% such that where a tree bears 25% or less of its estimated former maximum crown size, it passes the threshold for relic status.

6. The best example of a relic tree on this site is the ash tree numbered 3021, a photograph of which helpfully appears on the front cover of BHA's *Arboricultural Review*. Looking at this image objectively, it is clear that this is a tree missing the vast majority of its crown, and which bears a stem subject to massive vascular dysfunction. As a greatly diminished specimen it would plainly be irrational to treat it as if it were at its full size.

7. Where a relic tree is present (in this case with trees 3007, 3021 and 3028), I recommend applying protection via the RPA principle, calculated from the maximum continuity of vascular function in the stem, out to a cap of 15m.

8. Whilst the *Standing Advice* does not refer to the relic approach, equally it is clear that it does not address situations, such as tree 3021, where large-stemmed trees bear minimal residual crowns: simply, this is a matter on which it is silent. As such, practical, professional judgment is both required and desirable.

9. This was the approach taken with the appeal scheme and was accepted by the Inspector:

At the Inquiry, it was equally established that there was no substantive dispute among the parties to the appeal that the root protection areas (RPAs) and veteran tree buffers (VTBs) of the trees proposed to be retained in the development have also been correctly defined in terms of BS5837 and Natural England Standing Advice

(Appeal Decision 20 September 2019 para 59, page 8).

Safeguarding measures for veteran trees

10. The BHA reviewer identifies a number of areas where he considers veteran trees could be adversely affected by the proposed development. Planning conditions are proposed to ensure protection of existing trees during construction, the ground water arrangements associated with the development, and the future management of all trees.

11. Thus working space, hydrology and light pollution - raised as issues by BHA - are all subject to Conditions, within the compass of which further safeguarding details can be sought by the Council in due course. These details will be submitted to the LPA for their approval, which accordingly retains full control over both process and outcome.

Julian Forbes-Laird

BA(Hons), Dip.GR.Stud, MICFor, MRICS, MEWI, Dip.Arb(RFS)

15 September 2020

APPLICATION NO: 20/00683/OUT		OFFICER: Mrs Emma Pickernell	
DATE REGISTERED: 29th April 2020		DATE OF EXPIRY: 29th July 2020	
DATE VALIDATED: 29th April 2020		DATE OF SITE VISIT:	
WARD: Battledown		PARISH: Charlton Kings	
APPLICANT:	W Morrison (Chelt) Ltd & Trustees Carmelite Charitable Trust		
AGENT:	Frampton Town Planning Ltd		
LOCATION:	Land Adjacent To Oakhurst Rise, Cheltenham		
PROPOSAL:	Outline application for 43 dwellings including access, layout and scale, with all other matters reserved for future consideration		

ADDITIONAL REPRESENTATIONS

16th September

Coversdown
Birchley Road
Cheltenham
GL52 6NY

Comments: 14th September

In the light of the fact that Gloucestershire Wildlife Trust has designated the meadow as a local wildlife site, I would like this point added to my objection.

The local plan was agreed before the full biodiversity of the site was recognised. So 25 is at the upper limits of viability. 43 is unnecessary overdevelopment.

Losing grassland to trees (with dubious survival rates for the latter on steep clay hills) would be regrettable

HD4 requires protection of the biodiversity features not replacement, or mitigation for loss. We are losing important hedgerow, mature trees, an enormous badger sett and strategically important grassland (county ecologist says at least 57% will be lost).

How can this development proposal be considered to be "protection of the Biodiversity" ?

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How can this development proposal be considered to be "protection of the Biodiversity" ?

27 Oakhurst Rise
Cheltenham
Gloucestershire
GL52 6JU

Comments: 15th September

Letter ~~available to view in Documents tab.~~ attached.

The Old Hay Barn
Bentham
Cheltenham
GL51 4TZ

Comments: 15th September

I support this application. at a time when we require new houses of all types to hold up this scheme further when it appears to have met planning policy and spending money that should have been spent on the scheme itself rather than fighting "not in my backyard" objectors.

Charlton Manor
Ashley Road
Cheltenham
Gloucestershire
GL52 6NS

Comments: 16th September

A couple of features of this new application have only just come to light.

1. The badger sett has apparently been moved to the north east corner of the site (although given it is a confidential annex residents are unable to offer proper opinion). Is moving 7+ adult badgers into the proximity of a listed building really advisable, given the subsidence and other problems that their digging causes in other parts of the borough? The current sett is advised to extend for nearly an acre under ground. HD4 requires the design to avoid heritage harm?

2. The site risks looking like Colditz for the next decade. The latest last minute revisions (none of which are included in the landscaping or design statements), and cause increased heritage

harm to both Manor Houses, now include fencing of the grassland (GWT request), fencing around the retention pond (presumably deer proof to prevent wildlife from getting trapped inside) to protect primary school children from drowning, fencing off the important hedgerow (tree officer), fencing off with deer proof fencing of all new planting (tree officer), and fencing to protect the veteran trees.

How can this be compliant with policy SD9 which requires biodiversity assets to have increased access wherever possible? The site has been community accessible for decades, with the right permissions from the school. All of this because there is no coherent master plan as required under HD4.

3. Given the Battledown fees for estate maintenance are high per household, and that is volunteer run (and to the mutual benefit of all), how are 'affordable homes' going to be able to pay for a commercial management company to run ecological management of a site to which they have no access?

Charlton Manor
Ashley Road
Cheltenham
GL52 6NS

Comments: 16th September
Letter attached.

27 Oakhurst Rise
Cheltenham
GL52 6JU

14 September 2020

Dear Ms Pickernell

Ref: 20/00683/OUT

Regarding the issue of access to the proposed site, it is important to highlight the appeal Inspector's comments made in September 2019 when he upheld the refusal of 18/02171/OUT:

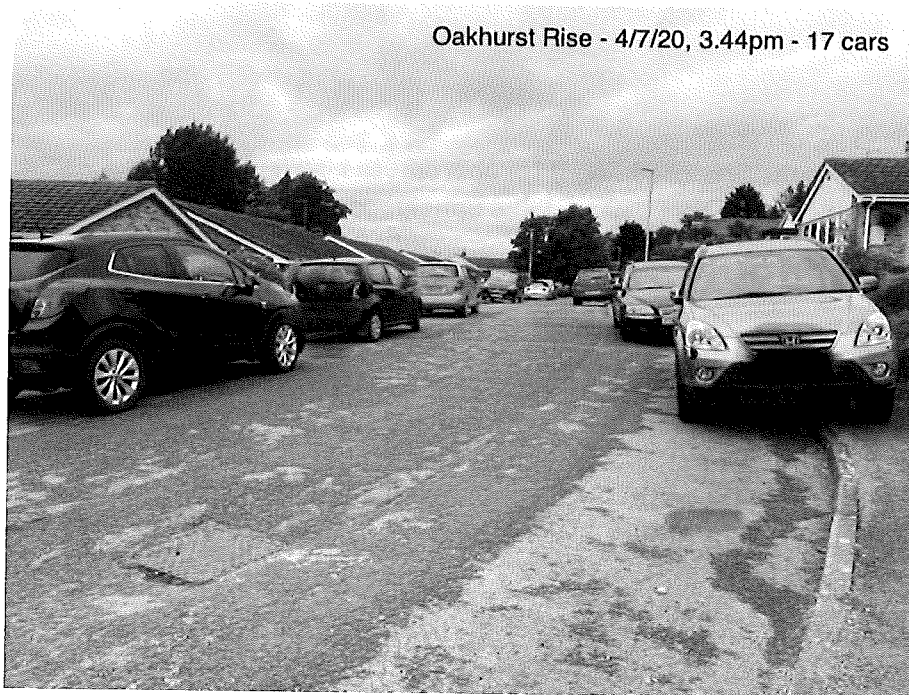
Access and Traffic

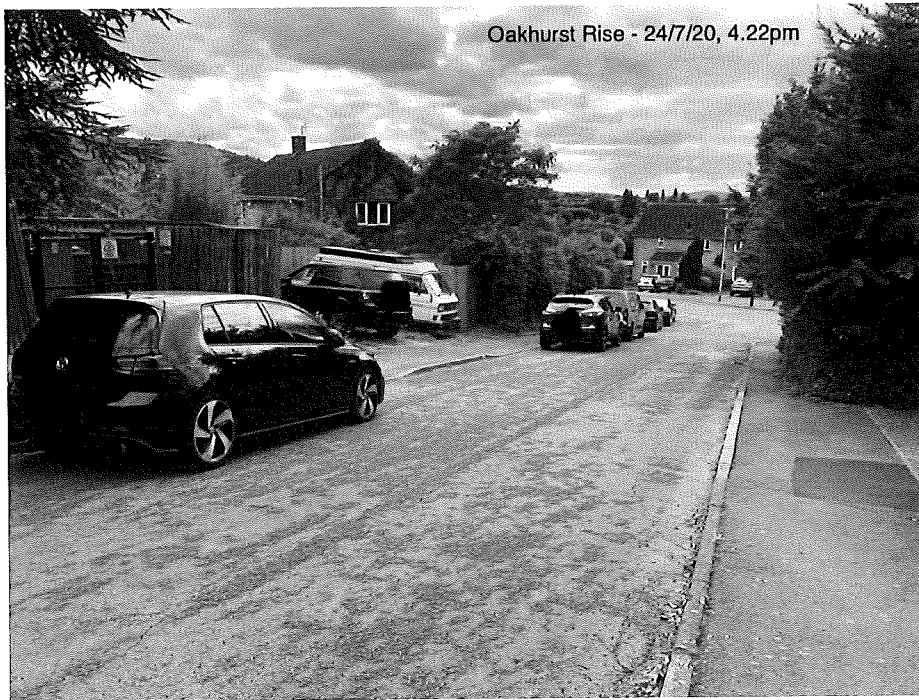
103. The route to the sole access point to the appeal site is over a network of residential access roads via an established housing area, with much on-street parking in place for much of the time. The cul de sac of Oakhurst Rise, which would be extended to form the on-site access roads to the proposed development, has a steep gradient.
104. I acknowledge that there are no technical objections to the route in traffic or highway safety terms, whether with regard to width, gradient or alignment of the carriageways, junction or forward visibility, or existing traffic flows.
105. However, such technical issues are not the only consideration in the assessment of the suitability of the access arrangements for new development. In this case, there are genuine local concerns that the additional traffic from the proposed development, amounting to a likely 30 or so vehicle movements in any peak period, would add to congestion and inconvenience to existing frontage residents.
106. I am satisfied that such an increase in traffic flow would not have a significant impact on the wider highway network.
107. However, it is telling that one resident of Oakhurst Rise has been officially advised that an ambulance required to transport a person with mobility difficulties on a regular basis would no longer attend due to difficulty in parking at the frontage once the road was extended. That is a transient personal matter of relatively little planning weight and might be at least assisted by the provision of an additional turning head proposed within the site. However, it helps to illustrate that the access route, as a whole, is tortuous and far from ideal.
108. Notwithstanding the lack of any objection from the highway authority, this factor militates to some degree against the grant of permission for built development of the scale now proposed for the appeal site.

The following photographs demonstrate the high level of on-street parking in place for much of the time. As the Inspector noted, this access route, given the congestion together with a steep gradient (14%) is tortuous and far from ideal.

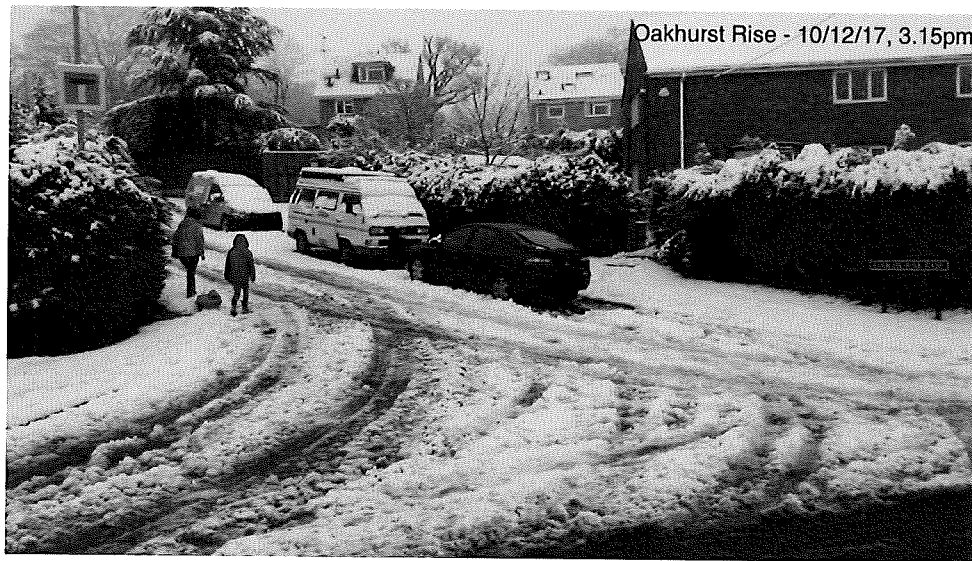
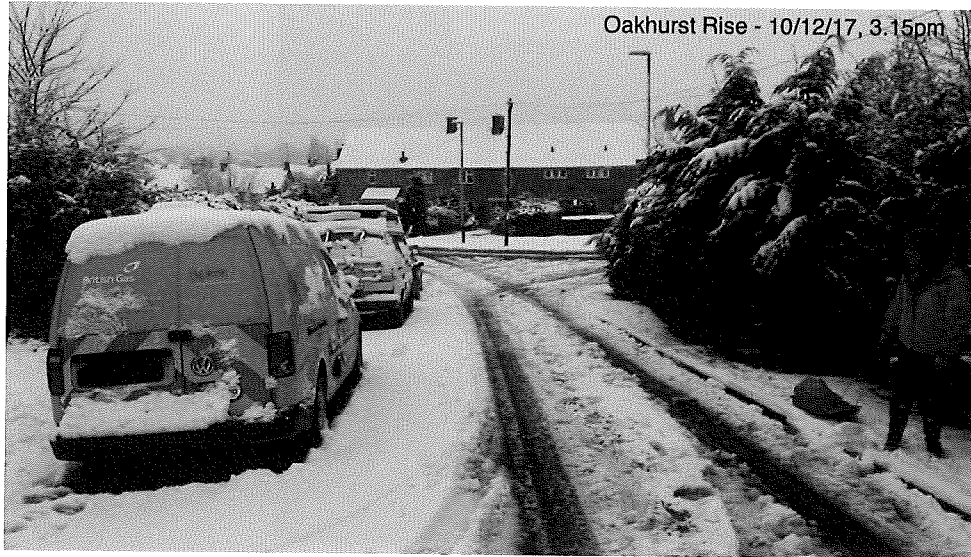
The photograph taken on 4/7/20 by a local resident is a good representation of normal on-street parking levels experienced each day on Oakhurst Rise. On this particular day, a total of 17 parked cars were noted on-street.

The photographs taken on 24 & 25/7/20 show the congested parking approaching the junction of Oakhurst Rise and Beaufort Road. Residents have reported many near misses when attempting to navigate this junction.





The last two photographs were taken following heavy snowfall in December 2017. Only four-wheel drive vehicles are able to access Oakhurst Rise in these conditions – residents resort to parking their cars in neighbouring roads, further down the hill.



Kind regards,



27 Oakhurst Rise

16 September 2020

20/00683/OUT

Dear Emma,

In reviewing the application with a heritage adviser, a point of detail has been identified which our less expert group had missed.

Any engineering operation counts as development. The attenuation pond (and associated boundary protection) is clearly development. You will want to take advice on whether the earthworks for drainage are also development.

Given this is in breach of the local plan inspector's direction on prevention of heritage harm (which prohibits development above Ashley Manor south of the line west from the school boundary), we will argue tomorrow that this is certainly in breach of policy HD4, and the resultant harm is counter to JCS and national policy.

You may want to take advice – and I can only apologise for the last minute input.

Kind regards,

A black rectangular redaction box covering the signature of the sender.

Charlton Manor

APPENDIX 6

Policy HD4 from Adopted Cheltenham Local Plan

CHELTENHAM PLAN

ADOPTED JULY 2020



CHELTENHAM
BOROUGH COUNCIL

POLICY HD4: LAND OFF OAKHURST RISE

Site description	This site is a greenfield site within the existing urban area. However, the site is subject to a number of constraints and therefore the allocation of dwellings on the site has been adjusted to accommodate these.
Site area	4ha
Constraints	<ul style="list-style-type: none"> • Steep gradients across the site • Mature trees and hedges • Adjacent listed buildings • Biodiversity • Heritage assets • Ice House
Site specific requirements	<ul style="list-style-type: none"> • A minimum of 25 dwellings, subject to masterplanning (in accordance with Policy SD4 of the JCS) which demonstrates that the development can be achieved whilst accommodating: • Safe, easy and convenient pedestrian and cycle links within the site and to key centres • A layout and form that respects the existing urban characteristics of the vicinity • A layout and form of development that respects the character, significance and setting of heritage assets that may be affected by the development • Protection to key biodiversity assets and mature trees • New housing should be located away from the setting of the west elevation of Ashley Manor. There should be no development south of a straight line westwards from the rear of the northernmost school building. In addition, to provide an undeveloped buffer between the rear garden boundary of Charlton Manor and the new development a landscaping buffer should be provided for 30 metres west of the rear boundary with Charlton Manor. • Long term protection of mature trees and hedges • Any development on the site should secure improvements to the Ice House

APPENDIX 7

Extracts from Gloucestershire, Cheltenham & Tewkesbury Joint Core Strategy

- SD9: Biodiversity and Geodiversity
- SD10: Residential Development
- SD12: Affordable Housing

Gloucester, Cheltenham and Tewkesbury Joint Core Strategy

**Adoption Version
November 2017**

SD9 – BIODIVERSITY AND GEODIVERSITY

Background

- 4.10.1 The natural environment within the JCS area includes a wide range of geological and farmed landscapes, green open spaces, wildlife habitats and ecosystems such as the Severn catchment and Cotswold escarpment, which are recognised for their importance locally, nationally and internationally.
- 4.10.2 It is intended that all development should, wherever possible, make a positive contribution to biodiversity and geodiversity in the JCS area, helping to establish and reinforce networks for wildlife and protect and enhance geological assets, whilst being co-ordinated with the development of multi-purpose green infrastructure.
- 4.10.3 The purpose of the biodiversity and geodiversity policy is to ensure that individual assets and the quality of the natural environment in the future is planned, protected and enhanced at a strategic scale, recognising that networks extend across local authority boundaries. This requires the planning system to respect landscape features of importance for biodiversity and geodiversity, such as hills and floodplains, supporting a wide variety of rock exposures, grasslands, woodlands, rivers and streams. It also means ensuring that important habitats and species are protected and where possible restored.

Policy SD9: Biodiversity and Geodiversity

- 1. The biodiversity and geological resource of the JCS area will be protected and enhanced in order to establish and reinforce ecological networks that are resilient to current and future pressures. Improved community access will be encouraged so far as is compatible with the conservation of special features and interests.***
- 2. This will be achieved by:***
 - i. Ensuring that European Protected Species and National Protected Species are safeguarded in accordance with the law***
 - ii. Conserving and enhancing biodiversity and geodiversity on internationally, nationally and locally designated sites, and other assets of demonstrable value where these make a contribution to the wider network, thus ensuring that new development both within and surrounding such sites has no unacceptable adverse impacts***
 - iii. Encouraging new development to contribute positively to biodiversity and geodiversity whilst linking with wider networks of green infrastructure. For example, by incorporating habitat features into the design to assist in the creation and enhancement of wildlife corridors and ecological stepping stones between sites***
 - iv. Encouraging the creation, restoration and beneficial management of priority landscapes, priority habitats and populations of priority species. For example, by securing improvements to Strategic Nature Areas (as set out on the Gloucestershire Nature Map) and Nature Improvement Areas.***
- 3. Any development that has the potential to have a likely significant effect on an international site will be subject to a Habitats Regulations Assessment.***
- 4. Within nationally designated sites, development will not be permitted unless it is necessary for appropriate on-site management measures, and proposals can demonstrate that there will be no adverse impacts on the notified special interest features of the site.***
- 5. Development within locally-designated sites will not be permitted where it would have an adverse impact on the registered interest features or criteria for which the site was listed, and harm cannot be avoided or satisfactorily mitigated.***
- 6. Harm to the biodiversity or geodiversity of an undesignated site or asset should be avoided where possible. Where there is a risk of harm as a consequence of development, this should be mitigated by integrating enhancements into the scheme that are appropriate to the location and satisfactory to the local planning authority. If harm cannot be mitigated on-site then, exceptionally, compensatory enhancements off-site may be acceptable.***

This policy contributes towards achieving Objective 4.

Explanation

- 4.10.4 The conservation and enhancement of biodiversity has been an international, national and local priority since the Rio Convention in 1992. National priorities were set out in the UK Biodiversity Action Plan (UKBAP), first published in 1994, and more recently replaced by the UK post-2010 Biodiversity Framework (2012). The government has also published Biodiversity 2020, a strategy for England's wildlife and ecosystem services (2011).

SD10 – RESIDENTIAL DEVELOPMENT

Background

- 4.11.1 The JCS guides new housing development to sustainable and accessible locations as set out in Policy SP2. Policy SD10 provides further detail around the appropriate locations for residential development in the JCS area. Some of these locations will be sites that are allocated for residential development through district plans and neighbourhood plans, while other ‘windfall’ sites will come forward unexpectedly.
- 4.11.2 Throughout the plan period, local authorities are required to maintain a supply of specific deliverable sites sufficient to provide five years’ worth of housing against their housing requirements. If the authorities fail to do this then it may be difficult to prevent ad hoc development occurring on greenfield land. This policy therefore sets an approach to residential development to assist in delivering the scale and distribution of development set out in Policies SP1 and SP2. The policy approach directs residential development to previously-developed (brownfield) land. However, the previously-developed sites available in the JCS area are not sufficient to maintain a five-year supply so some greenfield sites will be allocated for development through the JCS, district and neighbourhood plans.

Policy SD10: Residential Development

- 1. Within the JCS area, new housing will be planned in order to deliver the scale and distribution of housing development set out in Policies SP1 and SP2.***
- 2. Housing development will be permitted at sites allocated for housing through the development plan, including Strategic Allocations and allocations in district and neighbourhood plans.***
- 3. On sites that are not allocated, housing development and conversions to dwellings will be permitted on previously-developed land in the existing built-up areas of Gloucester City, the Principal Urban Area of Cheltenham and Tewkesbury Town, rural service centres and service villages except where otherwise restricted by policies within district plans.***
- 4. Housing development on other sites will only be permitted where:***
 - i. It is for affordable housing on a rural exception site in accordance with Policy SD12, or***
 - ii. It is infilling within the existing built up areas of the City of Gloucester, the Principal Urban Area of Cheltenham or Tewkesbury Borough's towns and villages except where otherwise restricted by policies within district plans, or***
 - iii. It is brought forward through Community Right to Build Orders, or***
 - iv. There are other specific exceptions/circumstances defined in district or neighbourhood plans.***
- 5. Proposals involving the sensitive, adaptive re-use of vacant or redundant buildings will be encouraged, subject to the requirements of other policies including Policies SD1, INF4 and SD8. Proposals that will bring empty housing back into residential use will also be encouraged.***
- 6. Residential development should seek to achieve the maximum density compatible with good design, the protection of heritage assets, local amenity, the character and quality of the local environment, and the safety and convenience of the local and strategic road network.***

This policy contributes towards achieving Objectives 6, 7, 8 and 9.

Explanation

- 4.11.3 The agreed DCLG definition of a dwelling, based on that used by the census, is 'a self-contained unit of accommodation'. Self-containment is where all the rooms (including kitchen, bathroom and toilet) in a household's accommodation are behind a single door which only that household can use.
- 4.11.4 In accordance with Policy SP2, new housing will be delivered within the two main urban centres of Cheltenham and Gloucester and through urban extensions to those centres to meet needs where they arise. Development is directed to Tewkesbury town in accordance with its role as a market town and to rural service centres and service villages. This will include sites allocated in district or neighbourhood plans and additional windfall sites. Windfall development on previously-developed land within cities, towns, rural service

SD12 – AFFORDABLE HOUSING

Background

4.13.1 Local authorities are required to identify whether there is a need for affordable housing in their area and then plan to meet this need. The NPPF defines affordable housing as: social rented, affordable rented and intermediate housing, provided to eligible households whose needs are not met by the market. Eligibility is determined with regard to local incomes and local house prices.

4.13.2 There are three main classifications of affordable housing as set out in Annex 2 of the NPPF:

- Social rented housing is owned by local authorities and private registered providers (as defined in Section 80 of the Housing and Regeneration Act 2008), for which guideline target rents are determined through the national rent regime.
- Affordable rented housing is let by local authorities or private registered providers of social housing to households who are eligible for social rented housing. Affordable rent is subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges, where applicable).
- Intermediate housing is housing for sale and rent provided at a cost above social rent, but below market levels subject to the criteria in the affordable housing definition above. These can include shared equity (shared ownership and equity loans), other low-cost housing for sale and intermediate rent, but not affordable rented housing.

Housing that does not meet the above definition of affordable housing, such as ‘low cost market housing’, is not defined as affordable housing for the purpose of this policy.

4.13.3 The Government, through the Housing & Planning Act 2016, has also set out a duty for Local Authorities to promote the supply of Starter Homes. The Starter Homes initiative is aimed at increasing opportunities for home ownership and therefore this particular tenure of housing is to be offered for at least 20% below their market value for people who have not previously been a home buyer and want to own and occupy their own home. The Housing and Planning Act 2016 includes Starter Homes within the definition of affordable housing, however, the mechanism for introducing the wider definition is to be subject to further legislation. Therefore, currently the definition provided within Annex 2 of the NPPF remains the most relevant.

Policy SD12: Affordable Housing

1. The JCS authorities will seek, through negotiation, for new development to deliver new affordable housing on a sliding scale approach as set out below:

- i. Within the Strategic Allocation sites a minimum of 35% affordable housing will be sought.**
- ii. Outside of the Strategic Allocation sites, on sites of 11 dwellings or more, or sites with a maximum combined gross floor space of greater than 1000 sqm; a minimum of 20% affordable housing will be sought on developments within the Gloucester City administrative area and a minimum of 40% will be sought within the Cheltenham Borough and Tewkesbury Borough administrative areas.**
- iii. On sites of 10 dwellings or less, which have a maximum combined floorspace of no more than 1,000 sq m, no contribution towards affordable housing will be sought.**
- iv. Notwithstanding the above, affordable housing policy for sites of 10 dwellings or less may be applied under policies set out within district plans.**

2. This policy applies to dwellings (as defined by use class C3) and also any self-contained units of accommodation within a residential institution (use class C2). Where a development site has been divided into parts, or is being delivered in phases, the site will be considered as a whole for the purpose of determining the appropriate affordable housing requirement

3. Where possible, affordable housing should be provided on-site and should be seamlessly integrated and distributed throughout the development scheme. On sites where it is not possible to deliver all affordable housing as on-site provision, the residual requirement should be provided through acceptable alternative mechanisms (such as off-site provision or financial contributions). Further guidance on acceptable mechanisms may be provided in district plans.

4. Affordable housing must also have regard to meeting the requirements of Policy SD11 concerning type, mix, size and tenure of residential development

5. The design of affordable housing should meet required standards and be equal to that of market housing in terms of appearance, build quality and materials

6. Provision should be made, where possible, to ensure that housing will remain at an affordable price for future eligible households, or that subsidy will be recycled for alternative affordable housing provision.

Rural exception sites

7. In certain circumstances, where there is clear evidence of a local housing need that cannot be met elsewhere, affordable housing will be permitted on rural exception sites. A rural exception site must be within, or on the edge of, a rural settlement. It should be of a scale well related to the settlement both functionally and in terms of design.

Viability

8. Where there is an issue relating to the viability of development that impacts on delivery of the full affordable housing requirement, developers should consider:

- i. Varying the housing mix and design of the scheme in order to reduce costs whilst having regard to the requirements of other policies in the plan, particularly Policy SD4, and the objective of creating a balanced housing market**
- ii. Securing public subsidy or other commuted sums to assist delivery of affordable housing**

9. If a development cannot deliver the full affordable housing requirement, a viability assessment, conforming to an agreed methodology, in accordance with Policy INF6 will be required. Viability assessments will be published in full prior to determination for all non-policy compliant schemes except in exceptional circumstances when it can be proven that publication of certain specific information would harm the commercial confidentiality of the developer to no public benefit. Where necessary the JCS authorities will arrange for them to be independently appraised at the expense of the applicant.

The councils consider that information submitted as a part of, and in support of a viability assessment should be treated transparently and be available for wider scrutiny. In submitting information, applicants should do so in the knowledge that this will be made publicly available alongside other application documents.

The councils will allow for exceptions to this in very limited circumstances and only in the event that there is a convincing case that disclosure of an element of a viability assessment would cause harm to the public interest to an extent that is not outweighed by the benefits of disclosure. Given the significant benefits associated with the availability of information to the public as a part of the decision making process, and the other factors identified above, the councils anticipate that there would be very few exceptions.

If an applicant wishes to make a case for an exceptional circumstance in relation to an element of their assessment, they should provide a full justification as to the extent to which disclosure of a specific piece of information would cause an 'adverse effect' and harm to the public interest that is not outweighed by the benefits of disclosure. The council will consider this carefully, with reference to the 'adverse effect' and overriding 'public interest' tests in the EIR, as well as the specific circumstances of the case.

10. The viability of a site may enable additional levels of affordable housing to be delivered above the requirements set out in this policy. The JCS authorities will negotiate with developers to find an appropriate balance to deliver affordable housing and infrastructure needs.

This policy contributes towards achieving Objectives 8 and 9.

Explanation

- 4.13.4 The need for affordable housing extends to specialist accommodation including housing for older people. Where these types of accommodation create self-contained units, they are expected to contribute to the provision of appropriate affordable housing to help meet the wider housing need of the district. Self-containment is where all the rooms (including

APPENDIX 8

Extracts from Cheltenham Local Plan

- HE1: Buildings of Local Importance and Non-Designated Heritage Assets
- H1: Land Allocated for housing Development
- GI2: Protection and Replacement of Trees
- GI3: Trees and Development
- CI1: Securing Community Infrastructure benefits

CHELTENHAM PLAN

ADOPTED JULY 2020



CHELTENHAM
BOROUGH COUNCIL

POLICY HE1: BUILDINGS OF LOCAL IMPORTANCE AND NON-DESIGNATED HERITAGE ASSETS

Planning permission will only be granted where it would involve the demolition of, or substantial alteration to, the external appearance of:

- a) any building designated as being of local importance on the Local List, and
- b) any non-designated heritage assets

when it can be demonstrated that:

- a) all reasonable steps have been taken to retain the building, including examination of alternative uses compatible with its local importance; and
- b) retention of the building, even with alterations, would be demonstrably impracticable; and
- c) the public benefits of the redevelopment scheme outweigh the retention of the building.

Development proposals that would affect a locally important or non-designated heritage asset, including its setting, will be required to have regard to the scale of any harm or loss to the significance of the heritage asset.

This policy contributes towards achieving the Cheltenham Plan Vision: Theme A - objective a; Theme C - objective a.

BUILDINGS OF LOCAL INTEREST

- 9.15. In addition to buildings of local importance and non-designated heritage assets, there are other buildings and structures in the Borough which are of particular local importance for their distinctiveness or contribution to the visual or historic character of the area. Frequently, such buildings are within conservation areas, which provide protection from precipitate demolition. However, the demolition of non-residential buildings outside conservation areas is not subject to planning control. An Index of Buildings of Local Importance has been published and will be periodically reviewed. Where continuation of the original use is no longer feasible, the Council will support a change of use or, where appropriate, the inclusion of the building in a wider scheme of development.

NATIONAL AND LOCAL ARCHAEOLOGICAL REMAINS OF IMPORTANCE

- 9.16. Development affecting the Borough's important archaeological heritage must, wherever possible, preserve remains in situ and protect their settings. In instances where development affects sites of local archaeological importance and preservation in situ is not feasible, it will be important that these finite, non-renewable resources are appropriately recorded.

Table 1: Housing to be delivered in Cheltenham between 2011-2031 (as of June 2019)	
Completions (2011 to 1 st April 2018)	2318
Dwellings already with planning permission	1540
Strategic allocations being made through the JCS	5385
Cheltenham Plan residential allocations through Policy H1	430
Cheltenham Plan mixed-use allocations including residential through Policy H2	493
Urban Capacity Permissions (previously intending to allocate, but since received permission and development has begun)	329
Contributions arising from planning consent granted at Farm Lane (Tewkesbury)	377
Windfall allowance (less than five units)	760
Total supply 2011-2031	11632
Objectively Assessed Need 2011-2031	10917

LAND ALLOCATED FOR HOUSING DEVELOPMENT

POLICY H1: LAND ALLOCATED FOR HOUSING DEVELOPMENT

The sites listed in Table 3, and which are shown on the Cheltenham Plan Proposals Map, are allocated for residential development and are delineated on Plans HD1 – HD9 below. The red lines on Plans HD1 – HD9 mark the boundaries of the allocations and are separately and collectively part of this policy.

Each allocation is supported by site-specific policies HD1 – HD9 below to provide further detailed guidance on the development of these sites. These site-specific policies also form part of this policy.

In addition, at application stage, a robust Transport Assessment will be required for all sites, identifying traffic impact and determining the highway requirements in line with the JCS and its evidence base.

Sites where specific flood risk concerns have been identified have appropriate considerations identified within the site specific policy. All sites have potential sewerage infrastructure constraints. The necessary infrastructure should be provided prior to occupation to avoid local exceedance of the sewer networks.

The contents of Policy H1 reflect the evidence bases of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy and the Cheltenham Plan.

This policy contributes towards achieving the Cheltenham Plan Vision: Theme A – objective b; Theme C – objectives a and b.

Table 2: Land allocated for Housing Development

planting which has sought to perpetuate the Regency style. In addition to being a pleasant feature in the townscape and providing valuable wildlife habitats, trees have other environmental benefits. They help to reduce the effects of climate change, by absorbing carbon dioxide and other airborne pollutants. On a local scale, trees provide shade and shelter, reduce noise and stress, encourage inward investment and add economic value.

PROTECTION, REPLACEMENT AND MANAGEMENT OF TREES

- 16.17. Conservation Area status and Tree Preservation Orders (TPO) are the Borough Council's only sources of legal protection for trees on private land. No work can be carried out to protected trees without first notifying the local planning authority, and in the case of trees subject of a Preservation Order, express consent is required. Violation of protected status can be liable to legal action and a fine. Felling licences, issued by the Forestry Commission, may also be needed for felling specific volumes of trees.

POLICY GI2: PROTECTION AND REPLACEMENT OF TREES

The Borough Council will resist the unnecessary (Note 1) felling of trees on private land, and will make Tree Preservation Orders in appropriate cases.

For protected trees (Note 2), the Council will require:

- a) any tree which has to be felled to be replaced, where practicable (Note 3); and
- b) pruning, where it is necessary, to be undertaken so as to minimise harm to the health or general appearance of a tree and to be in conformity with British Standard for Tree Work (BS3998, 2010).

In cases where trees are not protected by a Tree Preservation Order or by being in a Conservation Area, but contribute to the townscape and character of the town, the Council will consider including such trees in a Tree Preservation Order.

This policy contributes towards achieving the Cheltenham Plan Vision: Theme C – objectives a, b, e and f.

Note 1: The felling of a tree will be necessary only where it is dead, unsafe, or causing unacceptable harm to buildings or infrastructure. The Borough Council will seek to retain trees that are dead or dying where they contribute to the conservation of biodiversity and where they pose no significant harm to public safety or property.

Note 2: Protected trees are those within Conservation Areas or subject to Tree Preservation Orders.

Note 3: The legitimate felling of protected trees with TPOs will require replacement planting. The Council will determine the location, size and species of the replacement.

TREES AND DEVELOPMENT

- 16.18. Trees enhance development by softening the appearance of built structures and creating a sense of maturity.

POLICY GI3: TREES AND DEVELOPMENT

Development which would cause permanent damage to trees of high value (Note 1) will not be permitted.

The following may be required in conjunction with development:

- a) the retention of existing trees (Note 2); and
- b) the planting of new trees (Note 3); and
- c) measures adequate to ensure the protection of trees during construction works.

This policy contributes towards achieving the Cheltenham Plan Vision: Theme C – objectives a, b and e

Note 1: 'High value' means a sound and healthy tree with at least 10 years of safe and useful life remaining, which makes a significant contribution to the character or appearance of a site or locality.

Note 2: The preservation and planting of trees in conjunction with development should take account of the guidance in British Standard 5837 (2012).

Note 3: Where appropriate, the Council will seek agreement from developers for the planting of new trees offsite.

POLICY CI1: SECURING COMMUNITY INFRASTRUCTURE BENEFITS

Development proposals will only be permitted where adequate community infrastructure capacity exists, or where additional capacity is capable of being provided as part of the development without unacceptable impacts on people or the environment. In order to secure community infrastructure improvements, the Council will employ planning obligations as necessary and appropriate. Obligations may relate to:

- a) affordable housing
- b) green infrastructure, including open space
- c) suitably designed and located play, recreation, sport and leisure facilities
- d) education provision
- e) broadband infrastructure provision
- f) highway works, traffic management measures, pedestrian and cycling improvements, public transport enhancements and improved access for the disabled
- g) improvements to the public realm
- h) health and well-being facilities
- i) safety and security measures
- j) flood risk management measures
- k) environmental protection and enhancement
- l) climate change mitigation / adaption
- m) cultural and heritage protection and enhancement
- n) public art

This policy contributes towards achieving the Cheltenham Plan Vision: Theme A - all objectives; Theme B – objectives d, f and h; Theme C – all objectives.

- 17.5. For the purposes of the Cheltenham Plan, community infrastructure is considered to be the structural elements that provide the framework for supporting the activities of society. It can be represented by any of the categories stipulated in Policy CI1 above but may also extend into other topic areas.

EXISTING INFRASTRUCTURE PROVISION

- 17.6. The implications of infrastructure capacity were considered as part of the early stages of the plan preparation process and led to the emergence of a preferred option from a number of alternatives. In taking forward the spatial elements of the preferred option, the Cheltenham Plan has made land allocations in accord with the level of existing infrastructure provision or, where additional capacity can realistically be provided, as part of new development.

APPENDIX 9

Draft Section 106 Agreement with Cheltenham Borough Council

DATED

2020

(1) THE TRUSTEES OF THE CARMELITE CHARITABLE TRUST

(2) ST EDWARDS SCHOOL CHELTENHAM TRUST

(3) WILLIAM MORRISON (CHELTENHAM) LIMITED

-and-

(4) CHELTENHAM BOROUGH COUNCIL

AGREEMENT

**pursuant to s.106 Town and Country Planning Act 1990
in relation to Land Adjacent to Oakhurst Rise, Charlton Kings,
Cheltenham**

App Ref: 20/00683/OUT

**G S Legal Service for
One Legal
Tewkesbury Borough Council
Council Offices
Gloucester Road
Tewkesbury**

THIS DEED is made the _____ day of _____ Two Thousand and Twenty

BETWEEN:

- (1) **THE TRUSTEES OF THE CARMELITE CHARITABLE TRUST**, a trust body incorporated under Part 12 of the Charities Act 2011, on trust for **THE CARMELITE CHARITABLE TRUST** of Churchill House, Suite 320/321, 120 Bunns Lane, Mill Hill, London, a non-exempt charity (charity registration number 1061342) ("**the Trust**")
- (2) **ST EDWARDS SCHOOL CHELTENHAM TRUST** (Company Registration Number 1961978) of Cirencester Road Charlton Kings Cheltenham GL53 8EY (charity registration number 293360) ("**the Owner**");
- (3) **WILLIAM MORRISON (CHELTENHAM) LIMITED** (Company Registration Number 09900099) of Pillar House, 113/115 Bath Road, Cheltenham, Gloucestershire, United Kingdom, GL53 7LS ("**the Developer**")
- (4) **CHELTENHAM BOROUGH COUNCIL** of Municipal Offices Promenade, Cheltenham GL50 9SA ("**the Council**")

INTRODUCTION

1. The words and phrases used in this Agreement are defined in Clause 1
2. The Council is the Local Planning Authority for the purposes of the Act and is also the Housing Authority for the purposes of the Housing Act 1996 and is entitled to enforce the planning obligations contained in this Agreement
3. The Trust is registered as the proprietor of the freehold of the Site with absolute title at the Land Registry under title number GR416470
4. The Owner is registered as the proprietor of the leasehold of the Site with absolute title at the Land Registry under title number GR194071
5. The Developer and the Trust have submitted the Application to the Council which was refused on the 16th September

6. The Owner the Trust and the Developer have agreed to enter into this Agreement in accordance with s.106 of the Act in order to facilitate the Development and deliver the necessary planning obligations as set out in this Agreement if the Application is allowed by the Secretary of State on Appeal

NOW THIS DEED WITNESSES AS FOLLOWS:

1. DEFINITIONS

For the purposes of this Agreement the following expressions shall have the following meanings:

- 1.1. "Act" means the Town and Country Planning Act 1990 or any re-enactment or modification thereof for the time being in force
- 1.2. "Affordable Housing" means affordable housing as that term is defined in Annex 2 of the National Planning Policy Framework dated February 2019 as updated from time to time or as defined in any government documentation that shall supersede it
- 1.3. "Affordable Housing Contribution" means the sum of money calculated in accordance with Schedule 2(4) hereof as is the difference between the whole number of Affordable Housing Units to be provided on the Site and the financial contribution that would take the overall contribution (the Affordable Housing Units and financial payment) to 40% of the Dwellings being Affordable Dwellings and payable upon completion of 90% of the Market Dwellings

- 1.4.** "Affordable Housing Land" means the land upon which the Affordable Housing is to be constructed including all curtilages and communal areas associated with it
- 1.5.** "Affordable Housing Provider" means any one of the following:
- (a) a body that meets the definition of 'Housing Association' in section 1(1a) of the Housing Associations Act 1985; or
 - (b) a private registered provider as defined in Section 80 of the Housing and Regeneration Act 2008, or body registered with the Homes and Communities Agency; or
 - (c) a body approved or accredited by the Homes and Communities Agency or equivalent successor body whose terms of approval or accreditation have been evidenced to the satisfaction of the Council in writing; or
 - (d) any other body previously agreed in writing by the Council
- 1.6.** "Affordable Housing Scheme" means a scheme to provide the Affordable Housing Units on the Site to be submitted to the Council pursuant to paragraph 1 of Schedule 2 (which may be amended by written agreement between the Owners and the Council provided that such scheme remains in accordance with the approval of relevant Reserved Matters) and such scheme or amended scheme shall detail the general location design in accordance with

the Partnership Design Standard property type size and tenure of each of the Affordable Housing Units within the Site which shall be identified on a plan of the Site and shall accord with the table within paragraph 6.1 of Schedule 2 (subject to any amendments agreed to that table at the Reserved Matters Stage by the Owners and the Council); and shall be in accordance with the Clustering Strategy

1.7. "Affordable Housing Units" means those Dwellings provided/to be provided as Affordable Housing comprising the Affordable Rented Units Social Rented Units and the Shared Ownership Units together with:

- associated parking
- soft landscaped areas
- landscaping to private areas

designed to meet the minimum gross internal floor area size measurements space design and quality standards described by Homes England and "Affordable Housing Unit" shall be construed accordingly

1.8. "Affordable Rent" means rented housing provided by an Affordable Housing Provider subject to rent controls other than the national rent scheme that requires housing to be offered at a rent (inclusive of Service Charge where applicable) of up to 80% of local Open Market Rents or the Local Housing Allowance whichever is lower and using the Royal Institution of Chartered Surveyors

approved valuation methods and not to exceed the Local Housing Allowance levels or the equivalent replacement assessment and shall include those properties identified as Social Rented in Schedule 2 Para 6

- 1.9.** "Affordable Rented Units" means Dwellings that are to be rented by the Affordable Housing Provider at an Affordable Rent or Social Rent to Eligible Persons and "Affordable Rented Unit" is to be construed accordingly
- 1.10.** "Appeal" means any appeal under the Act by the Owners and/or Developers to the Secretary of State against the refusal of the Application by the Council
- 1.11.** "Application" means the application for outline planning permission submitted to the Council for the Development and allocated reference number 20/00683/OUT for 43 Dwellings
- 1.12.** "Approved Purchaser(s)" means a person or persons in need of a Shared Ownership Unit and who are registered with the Help to Buy Agent and whose needs are not met by the market (or as otherwise approved in writing by the Council) and who shall occupy the Shared Ownership Unit as their principal or main home and who have a Local Connection
- 1.13.** "Biodiversity Management Plan" means a plan to be agreed between the Council and the Owners/Developers for the management of the Local Wildlife Area under Schedule 2 Part II Paragraph

3 which for the avoidance of doubt means that no public access shall be permitted and the Owner/Developer shall preserve and enhance the biodiversity of the site in particular the species "Lady's Bedstraw" and provide for an educational role

- 1.14.** "Building Regulations" means the approved documents that are used to approve the standards of buildings in England and Wales
- 1.15.** "Category 2 Housing" means housing that complies with the discretionary Building Regulations as set out in Approved Document M (access to and use of buildings) of the Building Regulations 2010 as amended or subsequent revision or replacement standard current at the time of submission of the relevant application for Building Regulations approval
- 1.16.** "Category 3 Housing" means housing that complies with the discretionary Building Regulations standard for wheelchair user dwellings as set out in Approved Document M (access to and use of buildings) of the Building Regulations 2010 as amended or subsequent revision or replacement standard current at the time of submission of the relevant application for Building Regulations approval
- 1.17.** "Clustering Strategy" means in relation to the Affordable Housing Units the location of the said Units in dispersed locations across the Development with each cluster of Affordable

Housing Units not exceeding eight (8) units unless otherwise agreed in writing by the Council and the Clustering Strategy shall also ensure that no group of Affordable Housing Units will be located contiguously to any other group of Affordable Housing Units (unless otherwise agreed in writing between the Owners and the Council)

1.18. "Commencement of Development" means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance (including vegetation) demolition work investigations for the purpose of assessing ground conditions archaeological investigations remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services erection of any temporary means of enclosure the temporary display of site notices or advertisements, construction of temporary accesses or temporary works erection of hoardings and fencing and other site security measures during construction including the provision of site compounds and "Commence Development" shall be construed accordingly

1.18. "Development" means the outline application for residential development of up to 43 dwellings based upon Drawing No. [REDACTED] including access layout and scale as set out

Commented [A1]: Which drawing are we using here?

in the Application

- 1.19.** "Dwelling" means a dwelling to be constructed pursuant to the Planning Permission and for the avoidance of doubt includes the Affordable Housing Units and the Open Market Units and "Dwellings" is to be construed accordingly
- 1.20.** "Eligible Person(s)" means a person or persons who:
either are
- i) in need of an Affordable Rented Unit and are registered on the Homeseeker Plus Scheme and meet the criteria set out within the allocations policy of the Homeseeker Plus Policy; and have a Local Connection; or
 - ii) approved in writing by the Council as someone otherwise in need of Affordable Housing
- 1.21.** "Expert" means the independent expert appointed for the purposes of clause 16
- 1.22.** "Fully Serviced" means that the Affordable Housing Units shall be provided with full service provision as are the Open Market Units which shall include as appropriate vehicular access and parking foul and surface water drainage mains water electricity and telecommunications access to allow the Occupation of the Affordable Housing Units which shall be connected to the appropriate services constructed for the

remainder of the Development

- 1.23.** "Help to Buy Agent" means the Government appointed Help to Buy Agent from time to time or anybody exercising the functions that are now the duty of the Help to Buy Agent that holds the register for the occupation of (inter alia) Shared Ownership Units
- 1.24.** "Homes England" means Homes England of 110 Buckingham Palace Road London SW1W 9SA or such successor body for the time being having or being entitled to exercise the power to regulate registered providers now conferred on such organisation under the Housing and Regeneration Act 2008 or any legislation amending or replacing the same and the national government agency for the administration of affordable housing subsidy and that funds new Affordable Housing and means any successor agency/organisation taking over such functions
- 1.25** "Homeseeker Plus Policy" means the document so called and prepared and published and amended from time to time jointly by the local housing authorities in Gloucestershire and West Oxfordshire and available at www.homeseekerplus.co.uk which governs the housing allocation procedure
- 1.26.** "Homeseeker Plus Scheme" means a letting scheme set out in the Homeseeker Plus Policy where applicants are invited to express interest in an available home in accordance with the procedure

detailed in the Homeseeker Plus Policy

- 1.27.** "Housing Mix" means the proportion of Affordable Housing Units to Open Market Units
- 1.28.** "Index" means the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation
- 1.29.** "Interest" means interest at three per cent (3%) above the base lending rate of the Barclays Bank Plc from time to time
- 1.30** "LEMP" means the Landscape and Ecological Management Plan drawn up and agreed with the Council prior to the Commencement of Development to maintain enhance protect and improve the areas of the Site contained within the application documents to ensure the protection of the biodiversity on the Site as required by the Natural Environment and Rural Communities Act 2006
- 1.30.** "Lender" means any mortgagee or chargee of an Affordable Housing Provider or any housing administrator fixed charge receiver including any receiver appointed under the Law of Property Act 1925 administrative receiver or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security
- 1.31.** "Lettings Plan" means a plan produced by the Council and agreed in writing with the Owners/Affordable Housing Provider

setting specific lettings requirements in accordance with the Homeseeker Plus Policy in respect of the Affordable Rented Units

1.32. "Local Connection" means a local connection (as defined in section 199 of the Housing Act 1996 and in accordance with any timescales contained in the Homelessness Code of Guidance for Local Authorities or any replacement therefor), in the following order of priority and with a local connection to:

- i) the administrative area of the Council, or if agreed with the Council in writing, the administrative areas of the Council Tewkesbury Borough Council and/or Gloucester City Council
- ii) the Gloucestershire administrative area

But, if no persons qualify pursuant to i) or ii) above the occupation must be to a person or persons ordinarily resident in the United Kingdom and who is approved in writing by the Council in five (5) Working Days from receipt of their application on to the Homeseeker Plus Scheme or with the Help to Buy Agent as being in need of Affordable Housing and such consent shall not be unreasonably withheld or delayed

1.33. "Local Housing Allowance" means the rent rate set annually by the Valuation Office (or any successor body thereof) for the area within which the Affordable Rented Housing Units are located and which is used to calculate the maximum housing

benefit entitlement for each tenant thereof or any scheme which supersedes it

- 1.34** "LWA" means the area shown coloured green on the Plan attached hereto is an identified area as a Local Wildlife Area forming part of the Site which is identified in the Gloucestershire Local Wildlife Site Selection Criteria 2015 as a key wildlife site and worthy of preservation and appropriate management due to its condition and range of habitats and species thereon
- 1.35** "Monitoring Fee" means the sum of £1,000 payable to the Council upon the Commencement of Development to allow the Council to monitor the compliance of the Owners with their obligations hereunder
- 1.36.** "Occupation(s)" and "Occupied" means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction fitting out or decoration or occupation for marketing or display or occupation in relation to security operations during construction and "Occupied" and "Occupier(s)" shall be construed accordingly
- 1.37.** "Open Market Rent" means the rent charged for comparable properties rented on the open market (inclusive of service charges where applicable) within the same local area or such rent as valued by a qualified valuer (who is a member of the Royal Institute of Chartered Surveyors) as being the

open market rent using the Royal Institute of Chartered Surveyors approved valuation methods and "Open Market Rents" shall be construed accordingly

1.38. "Open Market Units" means the Dwellings forming part of the Development (and assuming no restriction on use as Affordable Housing) on the Site that are not Affordable Housing Units and "Open Market Unit" is to be construed accordingly

1.39. "Open Market Valuation" means the valuation of the price properly obtainable for the Dwelling (and assuming no restriction on use as Affordable Housing) on a sale at arms' length of the freehold or a long leasehold interest (as applicable) of it as would be achieved if on the open market (without restrictions on price or occupation) between a willing vendor/lessor and willing purchaser/lessee with vacant possession and free of any subleases or other encumbrances after proper marketing wherein the parties had acted knowledgeably prudently and without compulsion

1.40 "the Option Agreement" means the option agreement relating to the Site dated 19 August 2016 made between (1) The Trustees of the Carmelite Charitable Trust and (2) William Morrison (Cheltenham) Ltd as varied by deeds of variation dated 24 January 2018 and 17 January 2019 both made between (1) The Trustees of the Carmelite Charitable Trust and (2) William Morrison (Cheltenham) Ltd

- 1.41** "the Owners" means the Owner the Trust and the Developer whether together or separately
- 1.42.** "Partnership Design Standard" means the design standards and minimum space standards to be agreed by the Council as set out in Gloucester, Cheltenham and Tewkesbury JCS Partnership Guidance Note to support the application of affordable housing policies which can be accessed on the Joint Core Strategy website
- 1.43.** "Plan 1" means the plan attached to this Agreement marked 'Plan 1'
- 1.44.** "Planning Permission" means any planning permission granted by the Secretary of State pursuant to the Appeal in respect of the Application and includes the approved plans thereto and any duly authorised non-material amendments thereto
- 1.45.** "Reserved Matters Stage" means the stage of the planning process following grant of outline planning permission that deals with some or all of the outstanding details of the outline application proposal and "Reserved Matters" and "Reserved Matters Approval" shall be construed accordingly
- 1.46.** "Sales Plan" means for the Shared Ownership Units a plan produced by the Developer/Affordable Housing Provider and agreed in writing by the Council setting out the price of each Shared Ownership Unit and the method of marketing the Shared Ownership Units to Approved Purchasers

- 1.47.** "Service Charge" means a charge made to the Occupiers of individual Dwellings or in the case of the Affordable Rented Units and the Shared Ownership Units a charge made to the Affordable Housing Provider to cover the reasonable cost of the yearly maintenance and management of common parts communal gardens or landscaping areas of the Development that directly benefit the Affordable Housing Units to a standard reasonably required but for the avoidance of doubt shall not include any charge made in respect of the provision of health care services and utilities supplied to or used by Occupiers of an individual Dwelling
- 1.48.** "Shared Ownership" means subsidised housing provided by an Affordable Housing Provider for sale by way of a standard Homes England model Shared Ownership Lease applicable to shared ownership accommodation granted on a premium payable on completion or raised by mortgage or charge under which the initial purchaser acquires an initial share of the equity in that Affordable Housing Unit and pays a rent element if required
- 1.49.** "Shared Ownership Lease" means a shared ownership lease granted at a premium to be paid by the lessee or sub lessee upon completion or raised by mortgage or charge and under which the initial purchaser or lessee acquires an initial share of the equity in that Affordable Housing Unit and pays a rental element if required by the Affordable Housing

Provider and which permits staircasing

- 1.50.** "Shared Ownership Unit" means Affordable Housing Units which are to be provided by way of Shared Ownership on the Affordable Housing Land
- 1.51.** "Site" means the land against which this Deed may be enforced as shown edged red on Plan 1 for identification purposes only and as more particularly described in Schedule 1
- 1.52.** "Social Rented" means those properties required by Schedule 2 para 6 and let at a rent below the Affordable Rent and determined in accordance with the Target Rents
- 1.53.** "Target Rents" means rents and service charges to be set by the Affordable Housing Provider calculated using the formula and data set out in the Ministry of Housing, Communities and Local Governments Guidance on Rent for Social Housing or any successor bodies guidance on the same
- 1.54.** "the Tripartite Agreement" means the agreement dated 17 January 2019 made between (1) the Trustees of the Carmelite Charitable Trust and (2) William Morrison (Cheltenham) Ltd and (3) St Edward's School Cheltenham Trust
- 1.55.** "Working Day(s)" means any day except Saturday and Sunday or a bank holiday or any days which in England and Wales are public holidays

2. CONSTRUCTION OF THIS DEED

- 2.1.** Where in this Agreement reference is made to any clause paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause paragraph or schedule or recital in this Agreement
- 2.2.** Words importing the singular meaning where the context so admits include the plural and vice versa
- 2.3.** Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies corporations and firms and all such words shall be construed interchangeable in that manner
- 2.4.** Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise
- 2.5.** Any reference to an Act of Parliament shall include any modification extension or re-enactment of that Act for the time being in force and shall include all instruments orders plans regulations permissions and directions for the time being made issued or given under that Act or deriving validity from it
- 2.6.** References to any party to this Agreement shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to its respective statutory functions
- 2.7.** "including" means including without limitation.
- 2.8.** References to "the Site" include each and every part thereof
- 2.9.** The clause headings herein do not form part of this Agreement and shall have

no effect upon the meaning or construction of the provisions of this Agreement

- 2.10.** Except where expressly stated to the contrary where agreement approval consent or expression of satisfaction is required from the Council under the terms of this Agreement such agreement approval consent or expression of satisfaction shall not be unreasonably withheld or delayed
- 2.11.** Any covenant by the Owners not to do any act or thing shall be deemed to include a covenant not to cause permit or suffer the doing of that act or thing

3. LEGAL BASIS

- 3.1.** This Agreement is entered into as a Deed pursuant to section 106 of the Act. To the extent that the obligations fall within the terms of section 106 of the Act the obligations contained in this Agreement are planning obligations for the purposes of section 106 of the Act and are enforceable by the Council SUBJECT TO clauses 3.4 and 3.5 below
- 3.2.** To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the Act they are entered into pursuant to powers contained in section 111 of the Local Government Act 1972 section 1 of the Localism Act 2011 Section 40 Natural Environment and Rural Communities Act 2006 and all other enabling powers
- 3.3** The covenants restrictions and requirements imposed upon the Owners under this Agreement create planning obligations pursuant to section 106 of the Act and are enforceable by the Council as local planning authority SUBJECT TO clauses 3.4 and 3.5 below
- 3.4** Notwithstanding any other clause or proviso in this Agreement, the covenants, restrictions, obligations and requirements imposed on the Trust (including in its

capacity as one of the Owners) under this Agreement shall only take effect on the grant and implementation of the Planning Permission.

- 3.5** Notwithstanding any other clause or proviso in this Agreement, the Trust (including in its capacity as one of the Owners) shall not be liable for compliance with or any breach of a covenant, restriction, obligation or requirement contained in this Agreement after it has parted with its interest in the Site except in so far as compliance with or the breach of relates to a period of time when the Trust (including in its capacity as one of the Owners) had an interest in the Site.

4. CONDITIONALITY

- 4.1.** This Agreement shall be (save for Clauses 2.1 to 2.11, 6.1, 6.2, 6.3, 6.5, 7, 8, 9, 12 13 14.1 15 and 16 which shall be of immediate effect) (and subject to Clause 4.2) conditional on and shall only take effect on the grant of the Planning Permission
- 4.2.** The covenants within Clause 5 of this Agreement are conditional upon the Commencement of Development

5. THE OWNER'S COVENANTS

- 5.1** The Owners covenant with the Council as set out in Schedule 2 not to develop or cause or permit the Site or any part or parts of the Site to be developed pursuant to the Planning Permission otherwise than in strict conformity with the terms of this Agreement
- 5.2** The Owners agree to pay the Council's reasonable legal fees in connection herewith upon the Completion of this Agreement

6. THE COUNCIL'S COVENANTS

- 6.1.** No provisions of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 6.2.** The Owners hereby consent to the registration of the Agreement as a local land charge
- 6.3.** Any notices required to be given under this Agreement shall be in writing and shall be delivered personally or sent by pre-paid recorded delivery post to the principal address or registered office or last known address of an individual (as appropriate) of the relevant party and shall be deemed to have been served as follows:
- 6.3.1 if personally delivered at the time of delivery; and
- 6.3.2 if sent by recorded delivery post 48 hours after the envelope was delivered into the custody of the postal authority within the United Kingdom
- 6.4.** Insofar as any clause or clauses of this Agreement are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Agreement
- 6.5** This Agreement shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed revoked or otherwise withdrawn or expires prior to the Commencement of Development
- 6.6** Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission or any other one relating to the Development) granted (whether or not on appeal) after the date of this Agreement
- 6.7** The Council hereby agrees that the Owners shall have the have the choice of

whether to set up a Management Company (as a Limited Company or such other body as may be agreed with the Council) specifically for the purpose of ensuring the Owners compliance with the duties and responsibilities under the LEMP and as specified in Schedule 2 hereof or for the Owners themselves to carry out such duties and responsibilities therein contained so long as the information as to how the LEMP is to be complied with is passed to the Council (the "Management Body")

7. WAIVER

No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default

8. CHANGE IN OWNERSHIP

The Developer will give to the Council immediate written notice of any change in ownership of the Site occurring before all the obligations under this Agreement have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan PROVIDED THAT this obligation shall not apply to any transfers of individual Dwellings nor any transfer to a statutory undertaker or service or utility company

9. INDEXATION

Any Contribution referred to in this Agreement shall be increased or decreased by an amount equivalent to the increase or decrease in the Index from the date

hereof until the date on which such Contribution is payable

10. INTEREST

If any payment due under this Agreement is paid late Interest will be payable from the date payment is due to the date of payment

11. VAT

All consideration given in accordance with the terms of this Agreement shall be exclusive of any value added tax properly payable

12. JURISDICTION

This Agreement is governed by and interpreted in accordance with the law of England and Wales

13. DELIVERY

The provisions of this Agreement (save this clause) shall be of no effect until it has been dated

14. EXCLUSIONS/LIABILITY FOR BREACH OF COVENANTS

14.1 No person shall be liable for any breach of any of the planning obligations or other provisions of this Agreement after they shall have parted with their entire interest in the Site or that part of the Site to which the breach relates but without prejudice to liability for any subsisting breach arising prior to parting with such interest PROVIDED THAT the benefit of any exception and reservation and/or covenant including for any rights of access and/or to lay or maintain equipment shall not constitute an interest in the Site for the purpose of this Clause 14.1

14.2. This Agreement shall not be enforceable against:

14.2.1. any owner or occupier or tenant of the Open Market Units nor any mortgagee or chargee (including their receiver) nor any successor in title of any of the foregoing (save for those provisions of this Agreement that prohibit Occupation of a specified number of Dwellings until specific planning obligations have been discharged);

14.2.2. save for the obligations in Schedule 2 and those provisions of this Agreement that prohibit Occupation of a specified number of Dwellings until specific planning obligations have been discharged any owner or occupier or tenant of the Affordable Housing Units nor any mortgagee or chargee (including their receiver) nor any successor in title of any of the foregoing

14.2.3. any statutory undertaker or service company who acquires an interest in the Site for the purposes of its undertaking; or

14.2.4. save for the obligations in Schedule 2 and those provisions of this Agreement that prohibit Occupation of a specified number of Dwellings until specific planning obligations have been discharged any Affordable Housing Provider so far as the obligations attach to those parts of the Site that do not comprise Affordable Housing Land nor any mortgagee or chargee (including their receiver) nor any successor in title of any of the foregoing

15. WARRANTY

15.1 The Trust warrants to the Council that as at the date hereof it has not leased mortgaged or charged the Site other than the Option Agreement the Tripartite Agreement and those contained mentioned or referred to in Title Number GR416470 as at 13 February 2019 at 16:05:34

15.2 The Owner warrants to the Council that as at the date hereof it has not leased mortgaged or charged the Site other than those contained mentioned or referred to in Title Number GR194071 as at 24 July 2018 at 17:22:26

15.3 The Developer warrants to the Council that as at the date hereof it has not leased mortgaged or charged the Site other than the Option Agreement and the Tripartite Agreement.

16. DISPUTE RESOLUTION

16.1. In the event of any dispute or difference relating to any matter contained in this Agreement any party to the dispute (including successors in title to the parties to this Agreement) may (by serving notice of the same on the other party or parties) require it to be referred for determination by an Expert (who will act as an expert not an arbitrator) appointed under clause 16.2 below acting in accordance with clauses 16.3 to 16.9

16.2. If the parties do not make the appointment of the Expert by agreement within 14 days of service requiring reference of the dispute the Expert shall be nominated upon the application of either party by the President (or other officer to whom the making of such appointment is for the time being delegated) of the Law Society and the Expert shall be an independent person who has been professionally qualified in respect of the subject matter of the dispute or difference for not less than 10 years

16.3. Unless the Expert shall direct to the contrary not more than 28 days after his appointment the parties shall exchange and copy to the Expert written summaries of their cases together with a bundle of key documents relied upon

16.4. The Expert shall be at liberty to visit the Site relevant to the dispute unaccompanied and to call for such written evidence from the parties as he may require

- 16.5.** The Expert shall not (unless he directs to the contrary) hear oral representations from any party to the dispute
- 16.6.** The Expert shall fully consider all submissions and evidence when making his decision
- 16.7.** The Expert shall give his decision in writing and shall give reasons
- 16.8.** The Expert shall use reasonable endeavours to give his decision and the reason for it as speedily as possible and in any event within 42 days of his appointment.
- 16.9.** The Expert's decision (save in the case of manifest or legal error) including his decision as to costs shall be final and binding. The Expert's fees shall be payable by the parties in such proportions as he shall determine and in default of such determination equally between them

17. SECTION 73 VARIATION

In the event that the Council shall at any time hereafter grant a planning permission pursuant to an application made under section 73 of the Act in respect of the conditions relating to the Planning Permission, save and in so far as the Agreement has been amended by way of a deed of variation prior to the grant of such planning permission, references in this Agreement to the Application or Amended Scheme shall (save for the purposes of the definition of Planning Permission in relation to clauses 4.1, 6.5 and 6.6) be deemed to include any such subsequent planning applications as aforesaid and this Agreement shall henceforth take effect and be read and construed accordingly

18. EVIDENCE OF COMPLIANCE

In addition and without prejudice to the proper exercise at any time by the Council of any of its statutory powers functions or discretions in relation to the Site or otherwise the Owners shall if and when required by the Council from time

to time provide the Council (without charge and within ten Working Days) with such information including any copies of any documents as the Council may reasonably request for the purpose of ascertaining whether there has been compliance with or any breach of the requirements of this Agreement and the Schedules hereto

19. INDEMNITY

The Developer hereby indemnifies the Trust and the Owner against all liabilities, expenses, costs (including but not limited to any solicitors', surveyors' or other professionals' costs and expenses, and any VAT on them, assessed on a full indemnity basis) suffered or incurred by the Trust arising out of or in connection with this Agreement (including but not limited to in relation to or arising out of or in connection with the compliance with or any breach of any covenants, conditions, obligations or restrictions contained in this Agreement)

20. TRUST'S COSTS

The Developer shall pay to the Trust on or before the date of this Agreement the Trust's reasonable and proper legal and surveyor's costs together with all disbursements incurred in connection with the negotiation, completion and registration of this Agreement.

IN WITNESS whereof the parties hereto have executed and delivered this Deed on the day and year first before written

SCHEDULE 1

The land shown edged red on Plan 1 being part of the land known as land at St Edward's School, Charlton Kings, Cheltenham, GL52 6NR and forming part of the freehold title registered at HM Land Registry under title number GR416470 and part of the leasehold title registered at HM Land Registry under title number GR194071.

SCHEDULE 2

The Owner's Covenants with the Council

PART I

AFFORDABLE HOUSING OBLIGATIONS

The Owners covenant that they shall;

- 1 Prior to any Reserved Matters Application submit to the Council for approval the proposed Affordable Housing Scheme and the Owners may submit as many as they choose until one is approved
- 2 Provide the Affordable Housing Units in accordance with the relevant approved Affordable Housing Scheme and approved Reserved Matters and Fully Serviced
- 3 Construct Forty per cent (40%) of the Dwellings on the Development as Affordable Housing Units but for the avoidance of doubt if the Planning Permission is amended or modified with the result that the overall number of Dwellings is increased or decreased the number of Affordable Housing Units shall be recalculated but the number shall be not be less than Forty per cent (40%) of the total number of Dwellings rounded to the nearest whole number PROVIDED FURTHER that at each and every application for Reserved Matters the Owners shall ensure that Forty per cent (40%) of the Dwellings contained within such an application at the Reserved Matters Stage are Affordable Housing Units
- 4 If the number of Dwellings on the Development does not equate to a whole number of Affordable Dwellings so that the total percentage of Affordable Dwellings reaches the Forty per cent (40%) then the Affordable Housing Contribution shall be paid which together with the Affordable Dwellings shall equate to Forty Percent (40%) provision provided that is any Affordable Housing Contribution is payable hereunder the same shall be liable to Indexation from the date hereof and to Interest if it shall be paid late

5. Not Occupy or permit to be Occupied the Affordable Housing Units until the Affordable Rented Units Social Rented Units and the Shared Ownership Units that are ready to be Occupied are transferred to an Affordable Housing Provider in accordance with paragraph 13 below
6. Unless otherwise agreed at the Reserved Matters Stage (or at any other time between the Owners and the Council) provide the Affordable Housing Units as follows:

6.1 in the following proportions:

Tenure type/bedroom size (42% AH)	Social Rent:	Affordable Rent: (Capped at LHA)	Shared Ownership:	Total:	% for each bedroom size:
1b2p GF Maisonette, M4(2) Cat 2, 50m ²	2	0	0	2	28%
1b2p Upper Floor Maisonette, M4(2) 50m ²	2	0	0	2	
1b2p House, M4(2) Cat 2, 50m ²	1	0	0	1	
2b4p GF Maisonette, M4(2) Cat 2, 71m ²	0	1	0	1	44%
2b4p Upper Floor Maisonette, M4(2), 71m ²	0	1	0	1	
2b4p House, M4(2) Cat 2, 79m ²	0	3	0	3	
2b4p House, 67m ²	0	0	3	3	
3b5p House, 82m ²	0	1	2	3	22%
3b6p House, 95m ²	0	1	0	1	
4b7p House, 108m ²	1	0	0	1	6%
	6	7	5	18	
		72%	28%		100%

Category 2 – 39%

Social Rent – 33%

- 6.2 in the locations and of the size and design agreed in the Affordable Housing Scheme and Occupied only in accordance with the tenures therein contained unless otherwise agreed in writing with the Council and the Shared Ownership Units will only be Occupied via a Shared Ownership Lease the Social Rented only let on a Social Rent and the Affordable Rented Units

shall only be let at an Affordable Rent

7. Ensure that the Shared Ownership Units will be delivered at a level that is affordable with regard to local income and house prices; the Open Market Valuation of the Open Market Units and the Shared Ownership Units shall be submitted in writing to the Council 28 days prior to being advertised to prospective purchasers

8. Not use or permit the Affordable Housing Units to be used for any other purpose than as Affordable Housing in accordance with this Agreement

9. Clustering Strategy

9.1 provide the Affordable Housing Units on the Site in accordance with the Clustering Strategy provided pursuant to paragraph 9.2 below as approved by the Council

9.2 No development shall take place on the Site unless and until a Clustering Strategy has been submitted to and approved in writing by the Council for the Development

10. Design and Construction

10.1 To ensure integration of the Affordable Housing Units with the Open Market Units to the extent that the Affordable Housing Units shall be indistinguishable in appearance from the Open Market Units

10.2 All ground floor apartments and bungalows of the Affordable Housing Units shall be built in accordance with Category 2 Housing standards and a minimum of 2% of Affordable Housing Units shall be wheelchair user dwellings and shall be built in accordance with Category 3 Housing standards

10.3 All other Dwellings to be designed to meet the Building Regulations 2010 M4(1) as amended

11. Affordable Housing Providers

11.1 the Owners shall use reasonable endeavours to conclude an agreement with an Affordable Housing Provider for the transfer of the Affordable Housing Units (such endeavours being evidenced in writing to the reasonable satisfaction of the Council) with the Affordable Housing Units being sold to that Registered Provider for letting or disposal as appropriate to Eligible Persons and Approved Purchasers in accordance with the terms of this Agreement

11.2 pursuant to paragraph 11.1 above should it become necessary for the Owners to seek an alternative Affordable Housing Provider(s) the Owners shall give written notice to the Council specifying the reasons therefore and supplying appropriate evidence the Owners shall consult with the Council on the selection of any such alternative Affordable Housing Provider(s) and the Council's decision on selection shall be given in writing with both parties acting reasonably in the matter and will be abided to by the Owners

11.3 prior to Commencement of Development the Owners shall submit to the Council a plan for the marketing of the Affordable Rented Units Social Rented Units and the Shared Ownership Units to Affordable Housing Providers and such marketing shall include marketing the Affordable Rented Units Social Rented units and the Shared Ownership Units to the Affordable Housing Provider

11.4 not to permit Occupation of the Development unless and until the Owners have submitted a plan for the marketing of the Affordable Rented Units and Social Rented Units and agreed a Lettings Plan in writing with the Council in accordance with paragraphs 11.3 above and 12.1 below

12. Lettings Plan and Sales Plan

12.1 Prior to the commencement of advertising any of the Social Rented units or Affordable Rented Units the Owners will agree the Lettings Plan in writing with the Council for the Social

Rented units and Affordable Rented Units

12.2 Within 28 days of the Shared Ownership Units being transferred to the Affordable Housing Provider and prior to the Shared Ownership Units being advertised or marketed in any way the Affordable Housing Provider agree the Sales Plan in writing with the Council for the Shared Ownership Units

13. Restrictions on Occupation; Lettings and Management

13.1 Not cause or permit the Occupation of more than Fifty percent (50%) of the Open Market Units until Fifty percent (50%) of the Affordable Housing Units have been completed and made available for Occupation and Fifty percent (50%) of the Affordable Rented Units Social Rented Units and the Shared Ownership Units have been transferred on the terms set out in this paragraph 13 and not to cause or permit the Occupation of more than Ninety percent (90%) of the Open Market Units until all of the Affordable Housing Units have been completed and made available for Occupation and all of the Affordable Rented Units Social Rented Units and the Shared Ownership Units in that Phase have been transferred on the terms set out in paragraph 13.2 below unless otherwise agreed in writing by the Council

13.2 Not Occupy or allow the Occupation of the Affordable Housing Units unless and until:

13.2.1 the Affordable Housing Land on which the Affordable Housing Unit that is ready to be Occupied has been transferred to an Affordable Housing Provider:

- i) at a cost that will ensure that the Affordable Rented Units will be let at Affordable Rents (and for the avoidance of doubt this includes the reference to the Local Housing Allowance) the Social Rented units at a Social Rent and that the Shared Ownership Units will be let or sold as Affordable Housing
- ii) with a good and marketable freehold title having been deduced and the Affordable Housing Land having been transferred with full title guarantee (save that the

transferor shall not be liable under the covenants implied by section 2 and 3 of the Law of Property (Miscellaneous Provisions) Act 1994 by reason of the Affordable Housing Land being transferred subject to disclosed subjections and all matters imposed and rights conferred by or under any statute and for the purposes of such Act all matters then recorded in registers open to public inspection shall be considered within the actual knowledge of the transferee) or in any case where the transferor only holds the legal interest to be transferred as a trustee or trustees with limited title guarantee and with vacant possession free of any registered charges (save for this Agreement)

- iii) on the Standard Conditions of Sale (current at time of transfer) which shall apply insofar as the same are not inconsistent with the expressed terms in this Agreement with such amendments as a reasonable seller and buyer would incorporate

13.2.2 Provision has been made for vehicular access foul and surface water sewers and water electricity and telecommunications services and all other services necessary for the occupation of each Affordable Housing Unit linking in each case to estate roads sewers and services systems to be constructed and laid as part of the remainder of the Site and connected ultimately to highways and sewers maintainable at public expense (where required) and the transfer shall include all necessary easements to be in place to use and maintain the same

13.3 Not permit the letting and management of the Affordable Rented Units or Social Rent units and the Shared Ownership Units otherwise than by an Affordable Housing Provider

13.4 Not permit the letting and/or Occupation of any Affordable Housing Unit otherwise than in accordance with paragraph 13(5) below and:

13.4.1 in respect of the Shared Ownership Units other than by Approved Purchasers

13.4.2 in respect of the Social Rent or Affordable Rented Units other than by an Eligible Person

13.5 Not permit the letting of each of the Social Rent or Affordable Rented Units to an Eligible Person unless:

13.5.1 on the first letting of each of the Affordable Rented Units and Social Rented Units the Council shall at all times be entitled to nominate the Eligible Person for one hundred per cent (100%) of the same; and

13.5.2 on subsequent re-lettings of the Affordable Rented Units and/or Social Rented Units the Council shall at all times be entitled to nominate the Eligible Person for seventy five per cent (75%) of the Affordable Rented Units/Social Rented Units subsequently rented (unless otherwise agreed in writing between the Council and the Affordable Housing Provider) with the remainder lettings made by the Affordable Housing Provider in accordance with the requirements of this Agreement and details to be provided in writing annually to the Council and IN ADDITION details of the lettings for the remaining twenty five per cent (25%) shall also be reported in writing annually to the Council

13.6 If at any time prior to the entering into a contract with the Affordable Housing Provider the originally agreed Affordable Housing Provider shall no longer wish to be or is not capable for any reason of so being the Affordable Housing Provider for the relevant Affordable Rented Units Social Rented Units and the Shared Ownership Units the Owners shall immediately they are so aware arrange for an alternative Affordable Housing Provider to be appointed in their place and as so soon as is reasonably practical arrange for them to take a novation of any development agreement (or enter into new contracts if applicable) and all other relevant rights and duties of the original Affordable Housing Provider

13.7 No Service Charge will apply to the Affordable Housing Units unless all elements of the Service Charge are eligible for Local Housing Allowance or equivalent subsequent scheme

14. Mortgagee in Possession & Exclusions

14.1 The covenants contained in Schedule 2 of this Agreement shall not be binding or enforceable against a Lender with security over the whole or any part of the Affordable Housing Land/Unit(s) ("the Mortgage Land") nor a receiver or housing administrator appointed by such Lender to the intent that such Lender exercising a security may sell and dispose of the Affordable Housing Land/Unit(s) over which it has exercised its security free from the provisions of this Schedule 2 and that such provisions shall not bind any successors in title to or those deriving title from such Lender PROVIDED THAT: -

- i) a Lender seeking to dispose of any Affordable Housing Land/Unit(s) in pursuance of any default under the terms of their mortgage or charge notifies the Council in writing that it has taken possession of or intends to dispose thereof under the security documentation the Affordable Housing Land/Unit(s) or has appointed a receiver and either the Lender or the receiver is seeking a purchaser thereof; and
- ii) the Lender (or the Lender procures that the receiver(s) appointed by the Lender) uses reasonable endeavours to sell or transfer the Affordable Housing Land/Unit(s) to an approved Affordable Housing Provider subject to the terms of this Deed at a price equal to its market value as Affordable Housing and covering any outstanding monies due or accrued including principal monies interests and reasonable costs and expenses under the mortgage or security documentation taking into account this Deed; and
- iii) if the Council within two (2) months following such notice pursuant to paragraph 14.1(i) indicates in writing that arrangements can be made for the transfer of the Affordable Housing Land/Unit(s) at a price equal to its market value as Affordable Housing taking into account this Deed and covering any outstanding monies due or accrued including principal monies interests and reasonable costs and expenses under the mortgage or security documentation

so as to safeguard them as Affordable Housing the Lender (or the Lender shall procure that the receiver or housing administrator) shall co-operate with such arrangements and use its reasonable endeavours to secure such transfer; and

- iv) if the Council does not indicate as referred to in paragraph 14.1(iii) above within the two (2) months therein specified then the Lender (or the receiver or housing administrator) shall be entitled to dispose of the relevant Affordable Housing Land/Unit(s) in accordance with Paragraph (v) below; and
- v) if the Council the Lender or any receiver or housing administrator appointed or any other person cannot within three (3) months following the service of the indication referred to in paragraph 14.1(i) secure the transfer or exchange of contracts of the relevant Affordable Housing Land/Unit(s) with all parties acting reasonably (or otherwise consents to a transfer secured by the Lender or the receiver in accordance with paragraph 14.1(ii)) then so long as the Lender has complied with this paragraph 14.1 it shall be fully and freely entitled to dispose of the relevant Affordable Housing Land/Unit(s) free from the restrictions of this Schedule 2.

14.2 The covenants in this Schedule shall not be binding on:

14.2.1 any person exercising a statutory right to acquire any of the Affordable Rented Units;

14.2.2 any person or occupier who staircases out to one hundred per cent (100%) ownership of any Shared Ownership Unit;

14.2.3 any person exercising a statutory right to buy introduced in favour of the occupiers of the Affordable Rented Units or similar statutory right introduced in favour of occupiers of them; and

14.2.4 any successor in title to the persons in 14.2.1 to 14.2.3

PART II

Other Obligations to the Council

The Owners shall

- 1) in regard to the LWA
 - a. The Owners agree that the area shown coloured green on the Plan is designated as a LWA a site that can preserve and enhance the study and understanding of biodiversity and should be fenced off from public access and managed by a Biodiversity Management Plan
 - b. The Biodiversity Management Plan shall be submitted by the Owners/Developers to the Council for approval prior to the first application for Reserved Matters and shall deal inter alia with the following matters in relation to the LWA;
 - i. the intentions for long term ownership and protection
 - ii. protection prior to and during nearby construction work
 - iii. enhancement of the flora and fauna
 - iv. short and long term management
 - v. the enhancement of the educational potential
 - vi. the funding of the above in both the short, medium and long term
- 2) pay the Monitoring Fee to the Council upon the Commencement of Development which for the avoidance of doubt shall be **Indexed**
- 3) agree the LEMP with the Council prior to the Commencement of Development and ensure that

Commented [A2]: Given the date for the Commencement of Development is currently unknown the Council needs to "inflation proof" the fee

- a) the LEMP shall contain (inter alia) the details of the future funding for the maintenance and improvement of all the works and matters referred to therein by the Management Body
- b) all necessary and fully adequate funding is and shall be provided to the Management Body to ensure it shall have the finance capacity and ability to carry out all the works of maintenance replacement improvement and other requirements placed upon it by the LEMP for the duration of the LEMP
- c) if at any time the Management Body shall not carry out or be capable of carrying out its roles and responsibilities or be wound up or become bankrupt arrange for a replacement body to be set up to take on the roles and responsibilities thereof or undertake the role themselves
- d) provide to every Occupier on the Site an explanation of what the LEMP is and how it will work and be paid for either as part on any homeowner's pack or as a separate document the contents of which shall be agreed with the Council

IN WITNESS whereof the parties hereto have caused this Agreement to be executed as a Deed the day and year first before written

**Executed as a Deed by
THE COMMON SEAL of
CHELTENHAM BOROUGH**

COUNCIL being affixed

hereunto and authenticated

by undermentioned person

authorised by the Council to

act for that purpose:

.....

Authorised Signatory

SIGNED as a Deed by ST EDWARDS

SCHOOL CHELTENHAM TRUST

acting by two Directors

Executed as a Deed by
THE TRUSTEES OF THE

**CARMELITE CHARITABLE
TRUST**

Under an authority under s261 of
the Charities Act 2011

.....
Trustee

.....
Trustee

SIGNED as a **Deed** by **WILLIAM**

MORRISON (CHELTENHAM)

LTD in the presence of

APPENDIX 10

Draft Section 106 Unilateral Undertaking with Gloucestershire County Council

Date:

2020

UNILATERAL UNDERTAKING

GIVEN BY

THE TRUSTEES OF THE CARMELITE CHRITABLE TRUST

ST EDWARDS SCHOOL CHARITABLE TRUST

WILLIAM MORRISON (CHELTENHAM) LIMITED

TO

GLOUCESTERSHIRE COUNTY COUNCIL

Pursuant to Section 106 of the
Town and Country Planning Act 1990 (as amended)

IN RESPECT OF

Land Adjacent to Oakhurst Rise,
Charlton Kings, Cheltenham
in the County of Gloucestershire

THIS DEED is made on the day of 2020

BY

(1) **THE TRUSTEES OF THE CARMELITE CHARITABLE TRUST**, a trust body incorporated under Part 12 of the Charities Act 2011, on trust for **THE CARMELITE CHARITABLE TRUST** of Churchill House, Suite 320/321, 120 Bunns Lane, Mill Hill, London, a non-exempt charity (charity registration number 1061342) ("**the Trust**")

(2) **ST EDWARDS SCHOOL CHELTENHAM TRUST** (Company Registration Number 1961978) of Cirencester Road Charlton Kings Cheltenham GL53 8EY (charity registration number 293360) ("**the Owner**")

(3) **WILLIAM MORRISON (CHELTENHAM) LIMITED** (Company Registration Number 099000099) of Pillar House, 113/115 Bath Road, Cheltenham, Gloucestershire, United Kingdom, GL53 7LS ("**the Developer**")

WHEREAS

1. Gloucestershire County Council (**the "County Council"**) is a Local Planning Authority for the purposes of the Act and is also the Education and Library authority for the purposes of the Education Act.....and is entitled to enforce the obligations in relation to the obligations contained in this Agreement
2. The Trust is registered as the proprietor of the freehold of the Site with absolute title at the Land Registry under title number GR416470
3. The Owner is registered as the proprietor of the leasehold of the Site with absolute title at the Land Registry under title number GR194071
4. The Developer and the Trust have submitted the Application to Cheltenham Borough Council (**the "Council"**)

5. The Owner the Trust and the Developer have determined to enter into unilateral planning obligations by way of this Deed as hereinafter set out with the intent that the covenants by the Owner contained in Schedule 2 hereto shall be Planning Obligations for the purposes of Section 106 of the Act

NOW THIS DEED WITNESSES as follows:

1. DEFINITIONS AND INTERPRETATION

In this Deed:

- 1.1. “the Act” means the Town and Country Planning Act 1990 (as amended)
- 1.2. “the Application” means the application for outline planning permission submitted to the Council for the Development and allocated reference number 20/00683/OUT for 43 Dwellings
- 1.3. “the Planning Obligations” means the covenant or covenants by the Owner contained in the Second Schedule hereto
- 1.4. “the Planning Permission” means a planning permission granted (whether by the Council or otherwise) in respect of the application
- 1.5. Words importing one gender shall be construed as importing any other gender
- 1.6. Words importing the singular shall be construed as importing the plural and vice versa
- 1.7. The clause and paragraph headings in the body of this Deed and in the Schedules hereto do not form part of this Deed and shall not be taken into account in its construction or interpretation

- 1.8. This Undertaking will be registered as a Local Land Charge and is entered into pursuant to Section 106 of the Act
- 1.9. None of the terms of this Deed will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it even if the terms are expressed to be for their or their successors benefit and nor shall any third party have a right of veto over any future variations of this Deed.
- 1.10. The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated
- 1.11. This Deed is governed by and interpreted in accordance with the law of England and Wales

2. PLANNING OBLIGATIONS

- 2.1. The Planning Obligations are planning obligations for the purposes of Section 106 of the Act
- 2.2. The County Council is a Local Planning Authority by whom the Planning Obligations are enforceable
- 2.3. Any person deriving title from the Owner shall not be bound by the Planning Obligations during any period in which he no longer has an interest in any part of the land
- 2.4. The obligations in this Deed shall not be binding upon any plot holder or mortgagee of any plot holder of any Dwelling constructed on the Land nor a receiver appointed by such mortgagee of any one or more

of the Dwellings nor successors in title to those deriving title from such mortgagee or receiver

3. LIABILITY

- 3.1 No person shall be liable for a breach of covenant contained in this Deed after he shall have parted with his entire interest in the Land but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest
- 3.2 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development

4. WAIVER

- 4.1. Failure by the County Council at any time to enforce the provisions of this Deed or to require performance strictly or otherwise by the Owner of any of the conditions, covenants, agreements, or obligations of this Deed or any failure or delay by the County Council to exercise any act right or remedy shall not:
 - (a) be construed as a waiver of or as creating an estoppel in connection with any such condition covenant agreement or obligation; nor
 - (b) affect the validity of this Deed or any part thereof or the right of the County Council to enforce any provision

- 4.2. and any variation of this Deed agreed between the Owner and the County Council shall not vitiate the remainder of the Deed which shall remain in full force and effect subject to such agreed amendments

5. CONSENT TO REGISTRATION

The Owner hereby consents to the registration of this Deed by the County Council as a Local Land Charge and if the County Council so requires with the Land Registry

6. CHANGE IN OWNERSHIP

The Owner shall give the County Council immediate written notice of any change in ownership of any of its interests in the Land (save for any transfer or lease in respect of any Dwelling) such notice to give details of the transferee's or lessee's full name and registered office (if a company or usual address if not) together with the area of the Land or unit of occupation purchased by reference to a plan

7. WARRANTY

The Owner hereby warrants to the County Council that it has not leased mortgaged charges or otherwise created any interest in the Land other than already stated above at the date of this Deed

THE FIRST SCHEDULE

The Land

The land shown edged red on the plan annexed hereto being part of the land known as land at St Edward's School, Charlton Kings, Cheltenham, GL52 6NR and forming part of the freehold title registered at the Land Registry under title number GR416470 and part of the leasehold title registered at the Land Registry under title number GR194071.

THE SECOND SCHEDULE

Covenants by the Owner – the Planning Obligations

The Owner hereby covenants with the County Council to pay the following financial contributions to the County Council with appropriate indexation (Education Index – means the cost multiplier issued by the DfE being the cost per pupil for the construction of accommodation to provide additional pupil places and supplemented by the BCIS Public Sector Tender Price Index (BCIS PSTPI) issues the RICS in the years when the DfE cost multiplier is not published or in the event that the DfE ceases to compile or publish the cost multiplier and/or RICS cease to compile or publish the BCIS PSTPI such indices as the parties shall agree or in default of agreement such indices as shall be determined for the purposes of this Deed as being an index or indices which gives an accurate indication of the rate of inflation of prices in the UK from month to month - with a base year of 2020/21 and Library Index – RPI) and late payment interest (means a rate calculated on a daily basis and compounded quarterly from the due date until payment at 5% p.a. over HSBC Bank plc base rate from time to time in force) at the times set in this Schedule namely:

- 1) The Primary Education Contribution in the sum of **Two Hundred and Forty One Thousand Three Hundred and Five Pounds and Nine Pence (£241,305.09)** towards Holy Apostles C of E Primary School and/or primary places in the Charlton Kings Primary Planning Area and further the Secondary Education Contribution in the sum of **Two Hundred and Fifty Thousand Seven Hundred and Forty Three**

Pounds and Forty Eight Pence (£250,743.48) towards Cheltenham Secondary Planning Area with the first instalment of fifty per cent (50%) of the Primary Education Contribution and the Secondary Education Contribution to be paid to the County Council prior to the occupation of 1st Dwelling and the second instalment of fifty per cent (50%) prior to the occupation of 20th Dwelling

- 2) The Libraries Contribution in the sum of **Thirty Eight Thousand Four Hundred and Twenty Eight Pounds (£38,428.00)** towards Charlton Kings Library with the first instalment of fifty per cent (50%) to be paid to the County Council prior to the occupation of 1st Dwelling and the second instalment of fifty per cent (50%) prior to the occupation of 20th Dwelling

IN WITNESS whereof this instrument has been executed as a Deed by the Owner the Trustee and the Developer the day and year first before written

**SIGNED as a Deed by ST EDWARDS
SCHOOL CHELTENHAM TRUST**

acting by two Trustees

.....

Trustee

.....

Trustee

Executed as a Deed by

**THE TRUSTEES OF THE
CARMELITE CHARITABLE
TRUST**

.....

Trustee

Under an authority under s261
of the Charities Act 2011

.....

Trustee

SIGNED as a **Deed** by **WILLIAM
MORRISON (CHELTENHAM)
LIMITED** acting by two Directors

.....
Director

.....
Director