



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

STATEMENT OF COMMON GROUND

DECEMBER 2020

1.0 INTRODUCTION

- 1.1 On 24th April 2020 an outline planning application was submitted to Cheltenham Borough Council for:

'residential development of 43 dwellings – access, layout and scale not reserved for subsequent approval'

on land adjacent to Oakhurst Rise, Cheltenham.

- 1.2 All matters of detail were reserved for subsequent approval other than access, layout and scale.
- 1.3 The application proposal was amended during the course of the period for determination. The amendments include:

1st May 2020

- Revised Arboriculture Planning Submission

5th May 2020

- Photos of Site Notices in situ

21st May 2020

- Letter to CBC
- Revised CIL Form 1
- Arboriculture Addendum Note

- Design & Access Statement Rev A
- Ecology Addendum Note
- Flood Risk Addendum Note
- Heritage Addendum Note
- Highways Addendum Note
- Landscape & Visual Addendum Note
- Dwg No. 38-1036.03-F Tree Protection Plan
- Dwg No. 19216.101 Rev E Landscape Strategy
- Dwg No. PL004 Rev A Proposed Block Plan
- Dwg No. PL005 Rev A Site Plan
- Dwg No. PL006 Rev A Building Scale Plan
- Dwg No. PL007 Rev B Affordable Housing Distribution
- Dwg No. PL010 Rev A Plan and Site Section
- Dwg No. PL011 Rev A Boundary Treatment
- Dwg No. PL014 Rev A Nolli Plan

8th June 2020

- Email correspondence between MHP and CBC Heritage re Landmark Trees, including marked up plan for proposed siting

10th June 2020

- Letter to CBC
- Arboriculture Addendum Note 2
- Design & Access Statement Rev B
- Ecology Addendum Note 2

- Flood Risk Addendum Note 2
- Heritage Addendum Note 2
- Highways Addendum Note 2
- Landscape & Visual Addendum Note 2
- Dwg No. PL004 Rev B Proposed Block Plan
- Dwg No. PL005 Rev B Site Plan
- Dwg No. PL006 Rev B Building Scale Plan
- Dwg No. PL007 Rev C Affordable Housing Distribution
- Dwg No. PL010 Rev B Plan and Site Section
- Dwg No. PL011 Rev B Boundary Treatment
- Dwg No. PL014 Rev B Nolli Plan

26th June 2020

- Letter to LPA – Response to Consultations
- Aspect Response to Badger Trust consultation
- Aspect Response to FoCK consultation
- CTP Response to FoCK consultation
- FLAC Response to Ancient Tree Forum consultation
- FLAC Response to Woodland Trust consultation
- MHP Response to FoCK consultation
- Simpson Engineering Response to FoCK consultation
- Villa Rotunda Commentary

29th June 2020

- CIL Form 2 – Assumption of Liability

1st July 2020 (1)

- Dwg No. 19216.101 Rev F Landscape Strategy
- Dwg No. 19216.201 Rev A Methods of Enclosure

1st July 2020 (2)

- Letter to Councillors from William Morrison (Cheltenham) Ltd

4th August 2020

- Executive Summary for County Highways (submitted directly to Highways by CTP)

5th August 2020

- Executive Summary for County Highways (submitted to CBC for information)

7th August 2020

- Submission to CBC by Aspect – Aspect Technical Notes TN09 & TN10
- Letter to Gloucestershire Wildlife Trust from Aspect – Aspect Technical Notes TN08 & TN09

20th August 2020

- Aspect Technical Note TN11

26th August 2020

- Submission to CBC & Gloucestershire County Council – Draft Heads of Terms for S106 Planning Obligations

4th September 2020

- Submission to Gloucestershire Wildlife Trust by Aspect – Aspect Technical Note TN12

7th September 2020

- Submission to Gloucestershire Wildlife Trust by Aspect – revised Aspect Technical Note TN12

8th September 2020

- Submission to CBC – revised Aspect Technical Note TN12

10th September 2020

- Aspect Technical Note TN13

11th September 2020

- Email to Cheltenham Borough Council confirming pond can be retained within current proposals

19th September 2020

- FLAC response to FoCK (Barton Hyett Associates) Tree Report

1.4 The application was reported to the Planning Committee on 17th September 2020 with the professional Planning Officers recommending the grant of planning permission, subject to the Applicants entering, prior thereto, planning obligations under Section 106 of the Act, and the grant of planning permission being subject to planning conditions.

1.5 The plans and documents which formed the basis of the determination of the planning application include:

Formal Plans

- Dwg No. PL001 Site Location Plan
- Dwg No. PL002 Topographical Site Survey
- Dwg No. PL003 Existing Block Plan
- Dwg No. PL004 Rev B Proposed Block Plan
- Dwg No. PL005 Rev B Site Plan
- Dwg No. PL006 Rev B Building Scale Plan
- Dwg No. PL010 Rev B Plan and Site Section
- Dwg No. PL011 Rev A Boundary Treatment
- Dwg No. 38-1036.02 Rev B Tree Survey and Retention Plan
- Dwg No. 38-1036.03 Rev F Tree Protection Plan
- Dwg No. 19216.101 Rev F Landscape Strategy
- Dwg No. C21505 - SK01C Drainage Strategy Sheet 1
- Dwg No. C21505 - SK02C Drainage Strategy Sheet 2
- Dwg No. CTP-16-332-SK01-T Proposed Site Road Layout
- Dwg No. CTP-16-332-SK09-W Preliminary Site Assessment
- Dwg No. CTP-16-332-SP01-V Swept Path Analysis - Refuse Vehicle
- Dwg No. CTP-16-332-SP02-S Swept Path Analysis - Estate Car
- Dwg No. CTP-16-332-SP07-D Swept Path Analysis - Fire Tender

Illustrative Plans

- Dwg No. PL007 Affordable Housing Distribution
- Dwg No. PL008 Indicative Potential House Types Dy & Te
- Dwg No. PL009 Indicative Potential House Type Hi & Pa
- Dwg No. PL011 Boundary Treatment Plan
- Dwg No. PL014 Nolli Plan
- Dwg No. 19216.201 Rev A Methods of Enclosure
- Dwg No. CTP-16-332-LA01-M Indicative Adoption Plan
- Dwg No. CTP-16-332-SK25-E Assessment of Driveway Visibility Splays

Documents

- Planning Statement
- Design & Access Statement Rev B
- Planning Submission – Arboriculture (01/05/20)
- Ecological Appraisal (including separate Confidential Badger Appendix)
- Flood Risk Assessment
- Proposed Tree Planting Management Plan
- Heritage Impact Assessment
- Landscape & Visual Statement
- Non-Motorised User (NMU) Context Report
- Transport Assessment
- Travel Plan

1.6 The Planning Committee resolved to refuse planning permission for the following reason:

'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).'

2.0 MATTERS AGREED WITH THE LOCAL PLANNING AUTHORITY

Recent Planning History

- 2.1 It is accepted that this proposal is different to the development proposal for 68 dwellings on the site – which was refused on appeal for reasoning relating to harm at a ‘*very significant level*’ to the settings and significance of Charlton Manor and Ashley Manor (Appeal Ref: APP/B1605/W/19/3227293).
- 2.2 It is agreed that the Appeal Inspector’s planning judgement was reached at a time when:
- The Cheltenham Local Plan comprised emerging planning policy, and the Examining Inspector’s Report as to the ‘soundness’ of the Local Plan had not been received by the LPA.
 - The land supply was, at the date of the appeal, acknowledged to be 4.6 years supply. At the present time the housing land supply is acknowledged to be 3.7 years supply.

Planning Policy

- 2.3 It is agreed that the dominant planning policy from the development plan is Policy HD4 from the recently adopted Cheltenham Local Plan July 2020. This policy is especially important as the policy allocates the application site for housing development subject to compliance with a range of criteria.
- 2.4 It is agreed that, in considering compliance with the criteria attached to Policy HD4, it is necessary to have regard to other specific policies from the development plan that touch upon the particular criterion, and national planning policy provided by the Framework.
- 2.5 During the period the application was under consideration by Cheltenham Borough Council, the Gloucestershire Wildlife Trust (GWT) designated the site as a Local Wildlife Site (LWS) for its *'Value for Learning, being a good selection of habitats and species exceptionally well-placed to offer educational opportunities by its proximity to a school'* (Letter from GWT, dated 1st September 2020). In response, the Appellants have prepared a Framework Management Plan (FMP). The GWT, in email correspondence dated 7th September 2020, has confirmed 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'***.
- 2.6 It is agreed that the proposals for biodiversity management and the achievement of a net biodiversity gain satisfy the requirements of Policy SD9 in the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy November 2017 (GCTJCS).

Policy HD4 Criteria

2.7 The position of the Appellants and the LPA on each of the criteria attached to Policy HD4 of the Local Plan is as follows.

- ***'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 ...'***

2.8 It is agreed that the capacity of the site to accommodate new homes is to be derived from the development management process that allows detailed consideration of the constraints on the site. It is agreed that, within the development plan process, the capacity of the site has been adjusted to accommodate the constraints and refers to a *'minimum of 25 dwellings'*.

2.9 It is agreed the fact that Table 2 in the Local Plan (pp. 47 – 48) refers to 25 new homes, Table 2 simply identifies the baseline provision of new homes from this site, not the maximum.

2.10 It is agreed that the site lies within the Principal Urban Area as defined by the GCTJCS, and is the main focus for the accommodating of new development.

2.11 It is agreed that the urban periphery of Cheltenham is partly bounded by Green Belt or the Area of Outstanding Natural Beauty (AONB). As such, there is a land use imperative to develop land within the urban area to accommodate development needs in an efficient and effective manner.

- ***'Safe, easy and convenient pedestrian and cycle links within the site and to key centres'***

2.12 It is agreed that the site is situated in a sustainable location. While it is acknowledged that Oakhurst Rise, which provides the means of access to the site, has a gradient, the gradient is not of such severity as to preclude a genuine choice in the means of access and links to other urban facilities.

- ***'A layout and form that respects the existing urban characteristics of the vicinity'***

2.13 It is accepted that, other than in the particular context of the impact of the development on the heritage assets (see below), the layout and form of development respects the existing urban characteristics of the vicinity.

- ***'A layout and form of development that respects the character, setting and significance of heritage assets that may be affected by the development'***

2.14 It is accepted that compliance with this criterion is the substance of the objection of the LPA to the development.

- ***'Protection to key biodiversity assets and mature trees'***

2.15 It is accepted that the Appellants' scheme and proposals for a Framework Management Plan for Restoration of Retained Grassland and Associated habitats will provide protection to key biodiversity interests on the site comprising flora and fauna.

- 2.16 It is accepted that the proposed Outline Arboricultural Management Plan (as provided on Dwg No. 38-1036.03 Rev F Tree Protection Plan) will provide protection to the mature trees on the site.
- 2.17 It is agreed that the report issued by the Woodland Trust as a 'Planners Manual for Ancient Trees and Veteran Trees' is not a specification, but is to be treated as practical guidance.
- 2.18 It is accepted that the guidance is silent upon the circumstances of '*relic veteran trees*' as identified in the Arboriculture Planning Submission by FLAC. As such, competent professional judgement is required when assessing the impact of development proposals. The expert Arboricultural Officer at the LPA is in entire agreement with the Appellants' expert arboriculturist.
- 2.19 It is accepted that the scheme would result in the following loss of trees, as shown on Dwg No. 38-1036.02 Rev B Tree Survey and Retention Plan:

Trees removed to facilitate development

- T3012, Ash (Cat C1);
- T3013, Ash (Cat C1);
- T3016, Ash (Cat B1); and
- T3017, Sycamore (Cat B1)
- TG3004 (25 no.)
- TG3005 (partial removal est.25% = 20 no.)
- TG3008 (20 no.)

Trees for removal for arboricultural reasons (category U specimens, unretainable due to their condition)

- T3004, Ash (Cat U);
- T3011, Ash (Cat U);

2.20 Tree 3004 is subject to a TPO. The physiological condition of this tree requires its removal for sound arboricultural reasons, and its removal is not directly required as a consequence of the development.

2.21 It is agreed that, presently, there is no secure arrangement for the management of mature trees and hedges on the site. It is similarly agreed that there is no secured arrangement for the management of the grassland interest on the site.

- ***‘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.’***

2.22 It is similarly agreed that the reference to ‘development’ in the context of this criterion is directed to above ground built development. The fact that underground drains, underground storm water attenuation tanks and the formation of a pond for biodiversity interests amount to development within the meaning of Section 55 of the Act is not prejudicial to the underlying planning objective of this criterion – which was recommended by the Examining inspector when testing the soundness of the Cheltenham Local Plan.

- ***'Long term protection of mature trees and hedges'***

2.23 It is accepted that the Appellants' proposals for an Outline Arboricultural Management Plan will secure long term protection of mature trees and hedges.

- ***'Any development on the site should secure improvements to the Ice House'***

2.24 It is agreed that the Appellants' proposals for the enhancement of the former ice house, as set out in the Heritage Impact Assessment (paragraph 4.7), satisfactorily meet the objectives of this criterion.

Planning Benefits

2.25 It is agreed that the planning benefits and the weight to be given to the planning benefits should be as follows:

- (i) The provision of market housing – **substantial weight**
- (ii) The provision of affordable housing – **substantial weight**
- (iii) The provision on employment during construction and as a consequence of new homes being occupied – **moderate weight**
- (iv) The provision for long term management of veteran trees and grassland management – Appellants: substantial weight; LPA: moderate weight. [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). The LPA has suggested moderate weight.]

- (v) The achievement of a net biodiversity gain through the provisions of the scheme –
moderate weight

2.26 The Appellants consider that moderate weight should be given to the public benefits to be derived from a positive surface water drainage system which includes surface water attenuation. This scheme will reduce surface water run off beyond the site. This benefit has not been considered in the Officer's Report to the Planning Committee.

3.0 MATTERS NOT AGREED

- 3.1 The LPA and the Appellants' disagreement as to compliance of this development with Policy HD4 and compliance with the development plan is confined to the judgement whether the residual harm to the significance of the two listed buildings, given considerable importance and weight, is outweighed by the public benefits.
- 3.2 The LPA considers that the proposed development is in conflict with Policy HD4 of the Cheltenham Local Plan and Policy SD8 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy on the basis the '*significant harm on the setting of nearby listed buildings*' outweighs the benefits.
- 3.3 The Appellants position is that the proposal is compliant with Policy HD4.

4.0 PLANNING OBLIGATIONS

4.1 The LPA and the Appellants are in agreement that the following planning obligations are compliant with Regulation 122 of the CIL Regulations 2010 and provide for:

- Affordable Housing
- Biodiversity Management Plan

4.2 The parties intend to complete an Agreement under Section 106 of the Act early in the appeal process.

4.3 Since the preparation of the Planning Officer's Report to the Planning Committee, the Appellants' specialist adviser on education believes the financial contributions sought by Gloucestershire County Council in respect of primary education and libraries are not reasonable in scale and kind to the development for which planning permission is sought. The Appellants intend to present evidence at the Inquiry to substantiate these claims.

4.4 The LPA accepts that this disagreement is a matter between the Appellants and the County Council and the LPA fully accepts that all planning obligations must satisfy the statutory tests provided by Regulation 122 of the CIL Regulations 2010.

4.5 The LPA has no issue with the Appellants addressing the provision for education facilities and a library contribution being dealt with by way of a Unilateral Undertaking, with the inclusion of a 'blue pencil clause' in respect of the matters under dispute.

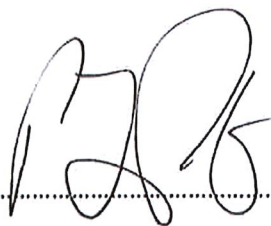
5.0 CONDITIONS

5.1 The LPA and the Appellants will prepare an agreed list of planning conditions which may be varied from the list of conditions presented to the Planning Committee, including:

- (i) the necessity for conditions requiring discharge by the submission of further details to the LPA prior to commencement of development;
- (ii) omissions where conditions provided duplication;
- (iii) amalgamation of wording to reduce the number of conditions; and
- (iv) the provision of additional conditions where satisfying the tests of validity.

5.2 The list of conditions will refer to any disagreements between the LPA and the Appellants, with suggested alternative wording as appropriate.

Signed:



Name:Mr P Frampton..... Date:.. 21/12/2020

For and on behalf of William Morrison (Cheltenham Limited) and The Trustees of the Carmelite Charitable Trust

Signed:



Name:Mr R Williams..... Date:..21/12/2020

For and on behalf of Cheltenham Borough Council

