

## **STATEMENT OF CASE**

### **PLANNING APPEAL UNDER SECTION 78 of the TOWN AND COUNTRY PLANNING ACT 1990**



## **CHELTENHAM BOROUGH COUNCIL**

- Appeal Site:** Land adjacent to Oakhurst Rise, Cheltenham GL52 6NR
- Appeal by:** William Morrison (Cheltenham) Ltd and the Trustees of the Carmelite Charitable Trust
- Against:** Refusal to grant planning permission
- Proposal:** Outline application for 43 dwellings including access, layout and scale, with all other matters reserved for future consideration
- LPA Ref:** 20/00683/OUT
- PINS Ref:** APP/B1605/W/20/3261154

## 1.0 Introduction

- 1.1 The appeal relates to the decision by Cheltenham Borough Council to refuse the outline planning application for residential development of for 43 dwellings including access, layout and scale, with all other matters reserved for future consideration on land adjacent to Oakhurst Rise, Cheltenham (20/00683/OUT).
- 1.2 The planning application was reported to the Council's Planning Committee on 17th September 2020. The officer report considered the proposals and recommended in favour of granting planning permission, subject to a signed S106 agreement and a schedule of 33 conditions.
- 1.3 The Committee members however disagreed with the planning balance arrived at by the Officers and subsequently resolved that the application be refused. A decision notice was issued on 25<sup>th</sup> September 2020 which cited a single reason for refusal, i.e.

*'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, significance 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).'*

- 1.4 This Statement of Case is structured under the following headings;
1. Introduction
  2. The Appeal Site and Surrounding Area
  3. The Planning Application
  4. Planning History

5. Relevant Planning Policies
6. The Council's Statement of Case
7. Comments on the Appellants Statement of Case
8. Summary and Conclusions

## **2.0 The Appeal Site and Surrounding Area**

- 2.1 The Appeal Site comprises an undeveloped area of land, which extends to 4.29 hectares. It is located in the eastern part of the Principal Urban Area (PUA) of Cheltenham, some 2 kilometres to the south-east of the Town Centre, in an elevated position above the town. The local area is known as Charlton Kings.
- 2.2 The site comprises two parcels of grassland separated by a mature hedge and trees, and is largely bound by the rear gardens of residential properties (Birchley Road and Ashley Road are located to the north and east of the site, and Oakhurst Rise to the west), and the functional grounds of St Edward's Preparatory (formerly Whitefriars) School to the south. Currently, the site forms part of the wider St Edward's Preparatory School site but is owned by The Carmelite Charitable Trust who lease the land to the school.
- 2.3 The eastern field parcel has a south facing slope, with the smaller, western field parcel having a steep gradient to the west, where it bounds residential properties along Oakhurst Rise. The site lacks any existing road frontage with a single road access proposed from a turning head at Oakhurst Rise.
- 2.4 The school buildings lie directly to the south-east of the site, and include a Grade II\* Listed Building known as Ashley Manor. A further listed building, Charlton Manor (Grade II), occupies one of three large residential curtilages which bound the site to the east. An ice house mound, which occupies a central position in the eastern field parcel, represents an archaeological feature associated with the setting of Ashley Manor.
- 2.5 A significant proportion of trees on the site are covered by a Tree Preservation Order, which protects 18 individual trees, and 8 groupings/areas of trees.

### **3.0 The Planning Application**

3.1 The planning application subject to this Appeal was submitted to the Local Planning Authority on 24<sup>th</sup> April 2020. The reference number 20/00683/OUT was given. The description of development was worded as follows:

*'Residential development of 43 dwellings – access, layout and scale not reserved for subsequent approval'* on land adjacent to Oakhurst Rise, Cheltenham.

3.2 All matters of detail were reserved for subsequent approval other than access, layout and scale.

3.3 The scheme proposes the erection of 43 dwellings (40% affordable). The proposed housing mix comprises:

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

3.4 The principal changes between the 2018 planning application that was dismissed at appeal on 20<sup>th</sup> September 2019, and the proposal subject to this Appeal are:

- Revised layout of the site
- Number of dwellings reduced from 69 to 43
- Revised indicative landscaping and tree planting proposals
- Revised arrangements for relocating badgers

3.5 The detailed nature of submissions in respect of the planning application will be subject to discussion at the Inquiry, including supporting information submitted at the application stage.

3.6 The plans and supporting documents which accompanied the planning application, including a timescale referring to the dates when amended documents were submitted during the course of the period for determination, are listed in the **Statement of Common Ground** agreed with the Appellants.

3.7 The planning application was reported to the Council's Planning Committee on 17<sup>th</sup> September 2020. The officer report considered the proposals and recommended in favour of granting planning permission, subject to a signed S106 agreement to secure the affordable housing provision and other contributions and a schedule of 33 conditions.

3.8 The Committee members however disagreed with the planning balance arrived at by the Officers and subsequently resolved that the application be refused. A decision notice was issued on 25<sup>th</sup> September 2020 which cited a single reason for refusal. The reason for refusal is reproduced as part of the Council's Statement of Case in Section 6 of this Statement.

## **4.0 Planning History**

4.1 The following planning applications are of relevance:

### **CB15568/00**

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

**WITHDRAWN 28th August 1981**

### **CB15568/01**

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

**REFUSED 29th October 1981**

### **CB16992/00**

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 trees; surface water drainage; and highway/traffic implications.

**REFUSED 25th October 1984**

### **17/01736/SCREEN**

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

**SCREENING OPINION ISSUED 8th September 2017**

### **17/00710/OUT**

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

**REFUSED 30th July 2018**

### **18/0217/OUT**

Outline planning 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) on land adjacent to Oakhurst Rise, Cheltenham.

**Refused 22<sup>nd</sup> March 2019**

**Appeal Dismissed 20<sup>th</sup> September 2019 (APP/B1605/W/19/3227293)**



## 5.0 Relevant Planning Policies

- 5.1 The development plan comprises the adopted Cheltenham Plan; and adopted policies of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011-2031 (JCS).
- 5.2 Adopted JCS Policy SD10: Residential Development states that in Cheltenham housing development will be permitted at sites allocated for housing through the development plan; and on previously developed land within the Principal Urban Area (PUA). Elsewhere, housing development will only be permitted where it is infilling within the PUA. In this case, the site is allocated for housing within the development plan and wholly located within the PUA of Cheltenham, outside of the Green Belt and Cotswolds Area of Outstanding Natural Beauty (AONB). The site is not the subject of any other designation that would rule out residential development in principle. Criterion 6 of the Policy does however state that the maximum density should be achieved which is 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.*
- 5.3 JCS Policy SD8: Historic Environment states that development should make a positive contribution to local character and distinctiveness, having regard to valued and distinctive elements of the historic environment, and that designated and undesignated heritage assets and their settings will be conserved and enhanced as appropriate to their significance, and for their important contribution to local character, distinctiveness and sense of place.
- 5.4 Cheltenham Plan Policy HD4: Land off Oakhurst Rise allocates the site for a minimum of 25 dwellings, subject to master planning (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 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 of the site should secure improvements to the Ice House.*

5.5 Other relevant adopted development plan policies which may be referred to are:

Cheltenham Plan (Adopted July 2020)

D1: Design

D3: Private Green Space

L1: Landscape and Setting

H1: Land Allocated for Housing Development

SL1: Safe and Sustainable Living

GI2: Protection and Replacement of Trees

GI3: Trees and Development

CI1: Securing Community Infrastructure Benefits

Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011-2031 (JCS).

SP1: The Need for New Development

SP2: Distribution of New Development

SD3: Sustainable Design and Construction

SD4: Design Requirements

SD6: Landscape

SD9: Biodiversity and Geodiversity

SD11: Housing Mix and Standards

SD12: Affordable Housing

SD14: Health and Environmental Quality

INF 1: Transport Network

INF 2: Flood Risk Management

INF3: Green Infrastructure

- 5.6 Material considerations also include S16(2) and 66(1) of the Planning (Listed building and Conservation area) Act 1990, the Planning (Listed Buildings and Conservation Areas) (Amendment) (England) regulations 2015, the National Planning Policy Framework (NPPF), and Planning Practice Guidance (PPG). The following NPPF extracts and PPGs may be referred to

NPPF

Paragraph 11 – The Presumption in Favour of Sustainable Development

Paragraph 122 – Achieving appropriate densities

Paragraph 127 – Achieving well designed places

Paragraph 185 to 196 – Historic Environment

PPG

Appeals (March 2014)

Historical environment (July 2019)

Design Process and Tools (October 2019)

Use of Planning Conditions (July 2019)

- 5.7 In addition, the following document is also material in the determination of this Appeal:

The Setting of Heritage Assets : Historic Environment Good Practice Advice in Planning Note 3 (Second Edition) – Historic England (December 2017)

## **6.0 Council's Statement of Case**

- 6.1 The Council's case is embodied in the Reason for Refusal cited below, with additional comments as appropriate.

### **Reason for Refusal**

- 6.2 The application was 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, significance 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).'*

- 6.3 In view of the adopted development plan policies referred to in the previous section, the Council are not disputing the principle of residential development on the site. However the site is constrained in terms of its capacity to accommodate the development as proposed, particularly due to the presence of the listed buildings Ashley Manor (Grade II\*) and Charlton Manor (Grade II).
- 6.4 Due to this restricted nature, a proper planning balance has to be reached in determining the scale and nature of future housing development in accordance with S16(2) and 66(1) of the Planning (Listed building and Conservation area) Act 1990. Section 66(1) in particular sets a duty on the decision maker in relation to listed buildings or its setting to *'have special regard to the desirability of preserving the*

*building or its setting or any feature of special architectural or historic interest which it possesses’.*

- 6.5 In this instance NPPF Paragraph 11d applies in that the Council cannot currently demonstrate a 5 year housing land supply. However it is the Council's case that Paragraph 11d(i) and Footnote 6 are applicable and the tilted balance should not apply. Relevant policies contained within the development plan and NPPF provide clear reasons for refusing the proposed development as summarised below.
- 6.6 Following due consideration of the officer report by members of the Planning Committee, it was found that, notwithstanding the reduction in numbers of dwellings from the previous proposal, the excessive numbers and form of layout proposed continued to be inappropriate to the site and the planning balance consequently weighed against approving the planning application.
- 6.7 Further specialist evidence with the aim of substantiating this reason for refusal will be referred to. This will give particular regard to the comments by Historic England, which state 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.’*
- 6.8 The evidence will demonstrate that the proposal does not have special regard to preserving the affected listed buildings as required by Section 66(1) of the Planning (Listed Buildings and Conservation Area) Act 1990 and the proposal would neither sustain nor enhance these heritage assets, as required by paragraphs 192 to 196 of the NPPF.
- 6.9 It is therefore considered that the proposed development would cause less than substantial harm to the significance of the affected designated heritage assets. The adverse impact by way of the less than substantial harm to the significance of designated heritage assets in this case would outweigh associated benefits emerging from the proposals in the context of the overall planning balance.

## **7.0 Comments on Appellants Statement of Case**

7.1 The Council will comment on the Statement of Case put forward by the Appellants in favour of the Appeal being allowed. These are:

### Acceptability of the Proposed Layout

7.2 The Council considers that the layout submitted continues to have an adverse impact on heritage assets. As such the form of development proposed cannot be considered to comply with the policies of the development plan (in particular Cheltenham Plan Policy HD 4 and Joint Core Strategy Policy SD8) and sustainability principles and objectives set out in NPPF.

### Respect for the Setting of Heritage Assets

7.3 The Council will call on additional evidence on Heritage impacts which will seek to demonstrate the degree to which the form of development proposed is inappropriate to the site and its setting.

### Benefits of the Proposals

7.4 The Council will contend, in addition to its case in respect of Paragraph 11d (i) of the NPPF referred to within paragraph 6.4 above, that the current 5 year housing land supply shortfall in Cheltenham, together with the deliverability of affordable housing and other benefits outlined by the Appellants, does not support the Appellants case that permission should be granted. As stated by the Inspector with regard to the previous appeal (paragraph 124) *"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 developed in line with an emerging local plan allocation, albeit for a lesser scheme."*

## **8.0 Summary and Conclusions**

- 8.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. Section 70 (2) of the Town and Country Planning Act 1990 provides that the Local Planning Authority shall have regard to the provisions of the Development Plan, so far as material to the application, and to any other material considerations.
- 8.2 The development plan comprises the adopted Cheltenham Plan; and adopted policies of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011-2031 (JCS). The Appeal site is allocated for housing within the Cheltenham Plan and located within the Principal Urban Area of Cheltenham. As such, the Council are not disputing the principle of residential development on the site.
- 8.3 As the settings of two Grade II Listed Buildings are affected (one being Grade II\* and the other Grade II), regard has to be made, however, to the protection of heritage assets under JCS Policies SD8 (Historic Environment) and SD10 (Residential Development). Under Policy HD4 in the Cheltenham Plan the Council accepts that the appeal site can potentially accommodate a minimum of 25 dwellings, subject to the site constraints being accounted for and protected within the layout and an acceptable planning balance being reached on this basis.
- 8.4 The previous appeal decision in September 2019 dismissed the proposal for 69 dwellings, with the Inspector having accorded considerable weight to the 'less than substantial harm' caused to the designated heritage assets. The Council considers that the layout associated with the current Appeal continues to have less than substantial harm and is therefore contrary to Policy HD4 of the adopted Cheltenham Plan, Policy SD8 of the Joint Core Strategy (2017), and paragraphs 193, 194 and 196 of the National Planning Policy Framework (2019). Evidence will show that the development would also be in conflict with Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990,
- 8.5 NPPF Paragraph 196 states that 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. Whilst the proposal would contribute to the delivery of much needed houses in the Borough, any benefits arising

from additional numbers are not considered to outweigh the harm that has been identified in this Statement of Case.

**The Inspector is therefore respectfully requested to dismiss this Appeal.**