

(CD K4)

PROOF OF EVIDENCE OF ROBIN WILLIAMS

**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

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Preamble

My name is Robin Williams, I am chartered Town Planner and a Chartered Surveyor and a member of both The Royal Town Planning Institute and The Royal Institute of Chartered Surveyors. I hold a Bachelor in Town Planning from the former Bristol Polytechnic and a diploma in Surveying from the College of Estate Management, Reading. I have been professionally employed in Town and Country Planning for 34 years, with experience both in local government and in private practice. I am the Managing Director of Asbri Planning Limited Environmental, Planning and Development Consultants having formed the Company in 2007. Asbri Planning operates throughout England and Wales with offices in Cardiff and Swansea.

I have 36 years' experience in the promotion of major development proposals in both Wales and England. I have appraised and promoted a wide range of schemes through the development plan and development management processes, acting for developers and house builders, public sector, statutory undertakers, local authorities, residents' groups and private individuals.

I have been involved in an extensive range of residential developments across Wales and the West of England, a number of which have been subject to Environmental Impact Assessment.

I have appeared as an expert witness in over forty S78 Public Inquiries and Hearings. Several have involved representing local authorities, including Merthyr Tydfil County Borough Council, and the Forest of Dean District Council. I also appeared on behalf of Cheltenham Borough Council at the previous Public Inquiry following the refusal of planning permission on the Appeal Site.

The evidence which I have provided for this appeal to my knowledge is accurate and I confirm that the opinions expressed are my professional views. I confirm that I have no conflict of interest.

Introduction

- 1.1 This Proof of Evidence has been prepared on behalf of Cheltenham Borough Council. It concerns the Appeal against the decision of the 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. 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 25th September 2020 which cited a single reason for refusal
- 1.3 A separate proof of evidence is being prepared in respect of Built Heritage by. Will Holborow, Senior Heritage Consultant, Purcell – Heritage **(CD K4)**
- 1.4 I will address the key material planning considerations relevant to the determination of the appeal in subsequent chapters under the following headings:
 2. Consideration of the Planning Application by the Council
 3. The Council's Case
 - 3.1 Layout Considerations
 - 3.2 Impact on the Setting of the Listed Buildings
 - 3.3 The Planning Balance
 4. Conclusions
- 1.5 For the purpose of preparing this proof of evidence I will not replicate information in the Council's Statement of Case, or the Statement of Common Ground agreed with the Appellants, but will concentrate on those matters subject to dispute.

2.0 Consideration of the Planning Application by the Council

- 2.1 The planning application 20/00683/OUT was reported to the Council's Planning Committee on 17th September 2020. The officer report considered the proposals, with particular regard given to comparisons with the layout submitted for the previously refused planning application 18/02171/OUT, which was subsequently dismissed at Appeal in September 2019 (A/B1605/W/19/3227293).
- 2.2 Whilst the Officer Report (**CD B2**) acknowledged that the extent of built development had been reduced in order to address previous concerns it nevertheless confirmed that the proposal does result in a loss of part of the wider open backdrop. The character of the remaining setting is thus changed from large open fields to one where the open space is diminished and strong bands of trees become more prominent. As such the views across the field from Charlton Manor would be truncated and its open setting reduced.
- 2.3 The Report confirmed that the proposals would continue to result in less than substantial harm to the settings of the heritage assets. This reflected the views of the Council's Conservation Officer, comments received from Historic England and the views of the Appellants' heritage consultants. It was stated that this would need to be weighed against the public benefits of the proposal.
- 2.4 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, contrary to advice given by officers, the planning balance consequently weighed against approving the planning application.
- 2.5 The planning application was refused on 25th September 2020 where the Decision Notice cited a single reason for refusal (**CD B1**).
- 2.6 The Statement of Common Ground agreed with the Appellants (**CD C4**) has established that the remaining issues of dispute with the Council consist of considerations relating to the impact the layout and form of the proposed development will have on the character, significance and settings of heritage assets, and the

resultant need to consider the overall planning balance. These matters are addressed in the subsequent chapters of this proof.

3.0 The Case for the Council

3.1 Layout Considerations

- 3.1.1 For the purpose of S 36(8) of the Planning and Compulsory Purchase Act 2004, the Appeal Site lies within the Principal Urban Area of Cheltenham, and is identified as a housing land allocation under Policy HD4 in the adopted Cheltenham Borough Council Local Plan 2011-2031 **(CD D4)**. As such the Council accepts the principle of residential development on the site.
- 3.1.2 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) and a list of criteria being met **(CD L1)**.
- 3.1.3 In the appeal decision relating to the previous proposal for 68 dwellings (September 2019) **(CD B6)** the Inspector recognised an historic and visual association between the application site and Ashley Manor and a strong visual interrelationship between the site and Charlton Manor, along with the site of the former Ice House which contribute to the historic and visual settings of both these designated heritage assets. He concluded that the harm to the settings of Ashley Manor and Charlton Manor, whilst less than substantial in terms of Framework (NPPF) **(CD D1)** Paragraph 196, was nonetheless significant.
- 3.1.4 The built element proposed in the layout subject to the current Appeal, unlike the previous schemes, concentrates the development in the northern and western parts of the site. This includes Plots 11-21, served by a turning head off the main access road in the south-eastern part of the layout. Plots 14-17 would be visible at an elevated position above the frontage of Ashley Manor and the listed features along its access drive, at a distance of some 40 metres. The properties are proposed to be bounded at the rear by palisade fencing.
- 3.1.5 The proposed access road through the site forms part of the boundary of the built

area some 15 metres west of the Ice House mound. It is proposed to accommodate bays for visitor parking at this point, which along with housing along the northern site boundary would be visible from the eastern elevation of Charlton Manor, at a distance of some 45 metres. The rather unconventional solution in accommodating visitor car parking requirements, in my view, hints at an element of overdevelopment in the masterplanning approach.

- 3.1.6 In order to reduce this visual impact it is proposed to introduce a belt of native woodland to the south of plots 14-17, extending east of the access road to the northern site boundary. This belt narrows directly to the north-west of the Ice House. The trees would take some 10 years to mature, and as broadleaved species would allow visibility through the wooded belt during winter months.
- 3.1.7 While the layout is generally in accordance with bullet point 6 (Site Specific Requirements) of Policy HD4 in terms of alignment and distance, the proposal continues to result in a diminished open setting for the heritage features. The character of the remaining setting is changed from large open fields to one where the open space is reduced and where strong bands of trees will become more prominent. The impact of the truncated views across the fields as a result of the reduction of the rural setting would effectively divorce the visual connection between the carriageway approach to the west elevation of Ashley Manor and its open, green setting beyond.
- 3.1.8 The Council considers that the layout submitted is poor in its failure to respect the heritage features. This is borne out by Mr Holborow's evidence which questions the masterplanning of the proposed housing development in relation to its impact on the setting of heritage assets and the extent to which it relates positively to the history and heritage of the site, or to surrounding heritage assets on the Battledown estate.
- 3.1.9 In the above context I agree with Mr Holborow's assertion that the submitted Design and Access Statement (DAS) does not demonstrate a holistic approach to masterplanning, as defined in the National Design Guide (**CD J31**) and that a less intensive form of development, closer to 25 houses, would permit a layout whose built form could have a more satisfactory relationship to the setting of the heritage assets

3.1.10 As such the form of development proposed does not understand or relate well to its historic context and 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 **(CD H13)**) and sustainability principles and objectives set out in NPPF.

3.2 Impact on the Setting of Listed Buildings

3.2.1 This section complements evidence prepared by **(CDs H4 and H5)** Will Holborow in relation to Built Heritage. Mr Holborow demonstrates the degree to which the layout proposed is unacceptable in that it fails to respect the character, significance and setting of the heritage assets and consequently does not take into account the harm caused to them by the proposed development.

3.2.2 Mr Holborow's evidence considers the impact of the proposed layout and refers to Historic England's Good Practice Advice Note 3: The Setting of Heritage Assets 2nd Edition 2017 **(CD H17)**. He quotes Paragraph 40 of the guidance which states that screening, as proposed by the tree belt described above, can only mitigate negative impacts, but should not be regarded as a substitute for well-designed developments within the setting of heritage assets.

3.2.3 With regard to Ashley Manor Mr Holborow confirms that the Grade II* Listed Building has retained the original relationship to the carriage drive on its south and western sides, including entrance gates (listed at Grade II) and summerhouse (listed at Grade II). While views of the site from the Manor itself and from the carriage drive are partially obscured by intervening mature trees. The impact of the proposed development, including the curving belt of tree screening, will be to further diminish the formerly open setting and sense of openness to the north-west of the Manor.

3.2.4 The setting of Charlton Manor includes the appeal site and, to some extent, the wider landscape beyond. The impact of the proposed development, including the curving belt of tree screening, in Mr Holborow's view, will be to diminish the formerly open setting and sense of openness to the west of the Manor.

3.2.5 Mr Holborow considers that overall the form and layout of the proposed development, as described within the DAS **(CD A7)** submitted in support of the application, reflect the urban post war nature of housing to the west of the site in

Ewens Farm. There is a failure to consider and reflect the settings of the Heritage assets and the Battledown area within the layout which contributes to the less than substantial harm which is caused to Ashleigh Manor, Charlton Manor and Glen Whittan.

3.2.6 Overall Mr Holborow's statement is summarised as follows:

- The central issue is the impact of the proposed development on the setting of two designated heritage assets: the Grade II* listed Ashley Manor and Grade II listed Charlton Manor;
- The open and outward looking character of the existing setting of these heritage assets will be compromised by the proposed development including the new belt of tree screening and boundary fences;
- The masterplanning of the new housing development is a relevant consideration in considering the impact on the setting of heritage assets, irrespective of whether it is directly visible from these assets;
- The proposed development, including the street layout, built form and disposition of housing, does not relate positively to the history and heritage of the site, or to surrounding heritage assets on the Battledown estate;
- A less intensive form of development, closer to 25 houses, would permit a layout where the houses could be less crowded together and whose built form could have a more satisfactory relationship to the setting of the heritage assets;
- The overall impact is to extend a form of post-1945 suburban development from Oakhurst Rise into the distinctly different character area of the Battledown Estate and the setting of the designated heritage assets;
- The overall effect is to cause a significant degree of less than substantial harm to the setting of the designated heritage assets, one of them being listed in one of the highest categories at Grade II*;
- The impact on heritage value is deemed to be Moderate to Large in the case of Ashley Manor and Slight to Moderate in the case of Charlton Manor. Taking these impacts as a whole, I conclude that the overall impact on heritage value is Moderate.
- Considerable importance and great weight must be given to the desirability of preserving the setting of a heritage asset.

- 3.2.7 The Appellants' Heritage Impact Assessment undertaken by Grover Lewis Associates limited concludes that the level of harm caused to the setting of Ashley Manor and its associated features '*would be at the low end of less than substantial harm in the terms of the NPPF*'. A similar conclusion is reached in respect of Charlton Manor.
- 3.2.8 The approach taken by Grover Lewis Associates, in seeking to ascribe levels of 'less than substantial harm' is questionable. Case law has established that in terms of heritage assets there are only three categories of harm; Substantial harm, less than substantial harm and no harm. Purported categorisations such as minimal harm, slight harm or de minimis harm will be less than substantial harm.
- 3.2.9 Mr Holborow has referred to recognised methodology for assessing the impact on the heritage values as contained in the *Guide to the Conservation of Historic Buildings* (British Standards Institute, 2013). He concludes that the impact on heritage value is deemed to be Moderate to Large in the case of Ashley Manor and Slight to Moderate in the case of Charlton Manor. Taking these impacts as a whole, he concludes that the overall impact on heritage value is Moderate.
- 3.2.10 The applicant in the current planning application has sought to address the heritage concerns previously raised over refused outline applications with an amended layout. However I consider that issues remain with the proposal in terms of its impact on the setting of the heritage assets, as established by evidence presented by Mr Holborow. These concerns result in the layout of the proposed development causing less than substantial harm, which, should be accorded significant weight under the provisions of Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
- 3.2.11 In accordance with paragraph 196 of the NPPF, the less than substantial harm identified in respect of the significance of the grade II* Ashley Manor, the grade II listed Charlton Manor and the former icehouse must be weighed against the public benefits of the proposal. In the context of planning policy, considerable importance and great weight must be given to the desirability of preserving the setting of a heritage asset and this is the starting point for a decision maker in assessing the planning balance.
- 3.2.12 The following section therefore discusses the 'Planning Balance' in the context of the

benefits which will accrue, against the negative impacts identified above.

3.3 The Planning Balance

- 3.3.1 It is accepted that Cheltenham Borough cannot demonstrate a 5 year supply of housing land. The latest Council position statement shows a supply of 3.7 years (August 2020). It is agreed that this represents a significant shortfall.
- 3.3.2 Consequently planning applications should be granted unless one of the grounds contained within Paragraph 11d(i) and (ii) of the NPPF provides a clear reason for refusing the development proposed. The planning benefits of the proposals as material considerations should be assessed against this less than substantial harm to the heritage assets where considerable importance and great weight should be attached to it.
- 3.3.3 The site will eventually deliver an appropriate number of dwellings through its allocation in the Cheltenham Plan. It is acknowledged in this context that additional numbers over the 25 dwellings identified could be acceptable if harm to the character, significance and setting to the heritage assets could be avoided.
- 3.3.4 The Council does not support the Appellants case that permission should be granted on the basis of the housing shortfall as the adverse impact of the less than substantial harm inflicted by the development on heritage assets clearly outweighs the benefit of delivering housing in the manner proposed even during a period of a shortfall in numbers.
- 3.3.5 Similarly the Council accept that there will be benefits from the delivery of 40% affordable housing on the site. A 'minimum' level of development of 25 dwellings would continue to deliver at least 10 affordable units. Thus in planning terms the site will deliver affordable housing commensurate to the density acceptable to address the heritage constraints.
- 3.3.6 The above is borne out by the Inspector with regard to the previous appeal (CD..) who stated (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.”

3.3.7 Based on the Table in the Statement of Common Ground for 43 dwellings, if a scheme were to be submitted at the lower end (minimum of 25 units) of the Cheltenham Local Plan Policy HD4 allocation, with similar provisions on a less dense form of layout, the weight given to ‘*public benefits*’ within the meaning of Paragraph 196 of the Framework would be accorded similar weight as that agreed with the Appellant. The Table below demonstrates this.

Figure 1

Table showing comparative benefits of 25 dwelling scheme

	Benefit	Weight Accorded by CBC
i)	Provision of Market Housing	Substantial
ii)	Provision of Affordable Housing	Substantial
iii)	Provision of Self-Build Housing (4 units)	Moderate *
iv)	Employment Opportunities (during construction and as a consequence of new homes being occupied)	Moderate

* It is acknowledged that from October 2021 the outstanding units on the Council’s Self Build Register will rise from 2 to 16, when those registered for 3 years will be added. The weight may then be considered ‘Substantial’

3.3.8 Ecological and Drainage benefits are excluded from the above table, as in a different scheme the local authority would ensure that such benefits would emerge through best practice.

3.3.9 Accordingly in the event that the Appeal scheme is dismissed, the Appellants will be able to promote a more sensitive scheme in due course, that will be able to deliver affordable housing at 40%. Furthermore a scheme which incorporates 4 self-build units could also be achieved on a more acceptable site layout which respects the heritage features.

3.3.10 I conclude therefore 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, for 43 dwellings, when assessed against the minimum number of 25 specified in Cheltenham Plan Policy HD4, does not support the Appellants case that permission should be granted.

4.0 Summary and Conclusions

- 4.1 The Appeal site is allocated in the adopted Cheltenham Plan under policy HD4 for a minimum of 25 units subject to a masterplan being prepared that takes account of several constraints, including built heritage. Consequently the Local Planning Authority accepts the principle of development on the site for an appropriate number of dwellings.
- 4.2 NPPF Paragraph 11d makes it clear that if a local authority cannot demonstrate that a 5 year housing land supply exists, then housing policies in the development plan are out of date. This is currently the case in Cheltenham, where a 3.7 year housing land supply exists.
- 4.3 Consequently planning applications should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework as a whole.
- 4.4 However in the case of this Appeal, the need to protect assets of particular importance clearly applies and this factor carries great weight. It is also clear from evidence in that the proposed layout(s) have detrimental impact on the settings of designated heritage assets.
- 4.5 Mr Holborow's evidence on Heritage confirms that the development would cause less than substantial harm to the significance of the affected designated heritage assets. In doing so it is recognised that less than substantial harm should continue to be accorded significant weight.
- 4.6 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.
- 4.7 Thus the planning balance from a sustainable development perspective and in accordance with Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 carries with it a presumption that favours the need to protect the heritage assets, rather than compromise them by seeking to provide the additional housing numbers in the scheme promoted via this Appeal.

4.8 The benefits arising from the Appeal scheme in terms of the additional numbers of dwellings, (market, affordable and self build), beyond the minimum allocation of 25 dwellings would not outweigh the less than substantial harm caused to heritage assets within and adjoining the Appeal site.

4.9 I consider that the Reason for Refusal is appropriate as the proposal is in conflict with Policy HD4 of the adopted Cheltenham Plan as it fails to achieve a layout and form that respects the character, significance and setting of heritage assets. 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).'

It is on the above basis that the Inspector is respectfully requested to dismiss the Appeal.