

## **Section 78 Town and Country Planning Act 1990**

**Appeal by W. Morrison (Cheltenham) Ltd and the Trustees of the Carmelite Charitable Trust**

**LPA Reference: 20/00683/OUT**

**Planning Inspectorate Reference: App/B1605/W/20/3261154**

**Land adjacent to Oakhurst Rise, Cheltenham**

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

### **Opening on behalf of Cheltenham Borough Council (the LPA)**

#### **Introduction**

1. Permission for this application was refused by the LPA's planning committee at its meeting on 17<sup>th</sup> September 2020. There was one substantive reason for refusal consisting of three component parts:
  - a. 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.
  - b. 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.
  - c. 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. The development plan consists of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011 – 2031 (December 2017) (the JCS) and the Cheltenham Plan (July 2020) (the local plan) and supporting supplementary planning guidance and documents.
3. In respect of the LPAs case at this appeal the most important policies of the development plan for determining the matter are JCS policies SD8 and local plan policy HD4. Also of direct relevance are section 70(3) of the Town and Country

Planning Act 1990, Section 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 66(1) of the Planning (Listed Buildings and Conservations areas) Act 1990 together with paragraphs 8, 11 and Chapter 16 “Conserving and enhancing the historic environment” within the National Policy Planning Framework (2019).

4. Although it is the LPAs case that the proposed development is in conflict with policy HD4 the principle of some form of development on the site is not disputed by the LPA. Policy HD4 of the local plan provides for a minimum of 25 dwellings on the site, provided that, subject to masterplanning, it can be demonstrated that the development can be achieved whilst accommodating a number of stipulations. Therefore, this site will deliver an amount of market and affordable housing; this is not a case of development or no development.
5. The relevant stipulation within policy HD4 in respect of the LPA’s case is that masterplanning produces “A layout and form of development that respects the character, significance and setting of heritage assets that may be affected by the development. This is the basis of the LPAs refusal of the appellant’s scheme.
6. This is not the first planning application made in respect of this site and it is clear from the appellant’s statement of case and evidence that the previous unsuccessful application and appeal weighs heavily upon the current proposed form and layout of development in that the appellant believes that the concerns expressed by inspector Simms have been addressed.
7. The question of whether or not the current proposals deal with the concerns of the previous scheme does not mean, that if they do, they are automatically acceptable. The question before the Inquiry is whether the appeal proposal is acceptable on its own merits, not solely with reference to a previous planning application and appeal decision. That being so, it is the LPAs case that the current proposal is ill-judged and fails to satisfy policy HD4 and the wider policy context for heritage assets. Given the history of the site the LPA believes the current proposal represents a missed opportunity to sustain and enhance and thus respect the heritage assets as envisaged by policy HD4.

### **Heritage Assets**

8. It is agreed between the appellant and the LPA that the proposed development will cause less than substantial harm to the heritage assets. There are a number of designated and non-designated heritage assets which stand to be affected by the proposed development. The LPAs concerns in respect of less than substantial harm relates to Ashley Manor Grade II\*, Charlton Manor Grade II and the non-designated

Glen Whittan. As a grade II\* listed building Ashley Manor is within the top 8%, in terms of significance, of listed buildings with England and Wales.

9. It is the LPAs case that the proposed development has failed to respect the character, significance and setting of heritage assets and in so doing is causing a degree of less than substantial harm that would have been avoidable if the layout and form of development were more sympathetic and accommodating of the affected heritage assets.
10. The LPAs evidence from Mr William Holborow and Mr Robin Williams will show that the appellants in designing and masterplanning the proposed development have failed to have proper regard to national guidance in respect of developments within the settings of heritage assets. As such they are promoting a suburban layout of closely-spaced houses which, according to the DAS, is reflective of the post-war housing estate of Ewens Farm. The layout therefore fails respond to the context of the surrounding Battledown area or to respect the setting of the surrounding heritage assets.
11. It is clear that the appellants approach to the presence of the heritage assets is to screen them from view. Unfortunately, the only means of doing this is to create a thick continuous barrier of planting which has the effect of diminishing the current open setting and sense of openness which contributes to the setting of the heritage assets. This goes against guidance from Historic England which stipulates that screening can only mitigate negative aspects whereas good design may reduce or remove harm, or provide enhancement.

### **The Planning Balance**

12. Although the LPA cannot demonstrate a 5 year housing land supply it is submitted that the planning balance is not tilted by virtue of paragraph 11(d) of the NPPF. It is submitted by the LPA that in this case the tilted balance is excluded by the operation of paragraph 11(d)(i) of the NPPF, on the basis that the policies within the NPPF relating to heritage assets provide a clear reason for refusing the proposed development.
13. The LPA acknowledge the public benefits which the proposed development can bring in terms of market housing, affordable housing and self-build plots. However, the NPPF is clear that when considering the impact of a proposed development on the significance of a designated heritage asset great weight should be given to the asset's conservation – and the more important the asset the greater the weight should be. Any harm requires clear and convincing justification and, in this case, the public benefits of the proposal must be balanced against this harm.

14. The appeal proposal does not pass this test. The heritage benefits arising from the proposed development are minimal and do not relate to the designated heritage assets. The significant benefits of delivering market and affordable housing together with the opportunity for self-build units under the proposed layout, as distinct from a layout which does not cause less than substantial harm to the setting of the heritage assets or better respects those assets in terms of setting, does not outweigh the harm arising.
15. Even if the tilted balance were to apply (and in the LPAs view it does not) it is submitted that the harm of the proposals significantly and demonstrably outweighs the benefits (NPPF Paragraph 11(d)(ii)).
16. In this case the LPA submit that those public benefits of the proposed development cannot justify accepting a development that does not meet the requirements of policy HD4 in respect of heritage assets. HD4 provides for a minimum number of 25 dwellings, the appellant has not sought to advance a viability argument in respect of any particular number of dwellings. As indicated above, the LPA's position is that the weight to be given to the public benefits of the development in the planning balance should be assessed in the context of 43 dwellings against 25 rather than the balance between 43 dwellings and no dwellings. An alternative proposal that respects the heritage assets will also bring substantial planning benefits and this is what is required.
17. The Appellant seeks to contend that it has met the constraints of development on this site as identified by policy HD4; the LPA contend they have not in respect of heritage assets. The planning balance is against them in that the public benefits of the proposed development do not outweigh the less than substantial harm which the proposed development will cause to the designated heritage assets and as such, the LPA, respectfully submits that the appeal should be dismissed and the application refused.

Jeremy Patterson

One Legal

Tewkesbury

23<sup>rd</sup> March 2021