

IN THE MATTER OF

**LAND ADJACENT TO OAKHURST RISE,
CHELTENHAM**

**OPENING STATEMENT
ON BEHALF OF
THE APPELLANT**

**William Morrison (Cheltenham) Limited and The
Trustees of the Carmelite Charitable Trust**



Introduction

1. This is an Appeal by William Morrison (Cheltenham) Ltd and the Trustees of the Carmelite Charitable Trust (LPA Ref: 20/00683/OUT) against the decision of Cheltenham Borough Council (“the Council”) to refuse outline permission for a scheme on an allocated site for 43 dwellings, including access, layout and scale, with all other matters reserved for future consideration on land adjacent to Oakhurst Rise, Cheltenham.
2. The application site, in its entirety, is allocated for residential development in the recently adopted Cheltenham Plan (July 2020). This is for a minimum of 25 dwellings. Throughout the plan-making process, there was every opportunity for the Council and the Local Plan Inspector to recognise the heritage constraints on the site and to reduce the specific number of dwellings to a maximum – they did not.
3. This scheme has been sensitively designed to recognize the heritage constraints. The final Appeal scheme was influenced by the recommendations of the Local Plan Inspector, the previous appeal Inspector and the Council’s own Senior Conservation Officer. Inspector Sims at DL124 (CDB6) recognised the potential for a lesser scheme on the site and this proposal represents a substantial reduction from that scheme.
4. The focus of this appeal is on the NPPF paragraph 196 balancing exercise: where a development proposal will lead to less than substantial harm to a designated heritage asset, this harm should be weighed against the public benefits of the proposal. This scheme strikes the right balance: the scheme has been crafted to minimise the heritage harm, and to maximise public benefits. Those benefits are abundant and should weigh heavily in favour of permission being granted.

Heritage

5. The appeal proposals represent the logical culmination of a succession of interrelated stages (applications and allocations) that have ultimately shaped the development proposal. These are designed to address the concerns of the Inspector Sims and in consultation with the Council’s Senior Conservation Officer (which were supported by him at application stage).

6. Moreover, the Appeal proposals are heritage-led – designed expressly to minimise harm to the setting and significance of designated heritage assets, and to allow continued intervisibility between the grade II* Ashley Manor, the grade II Charlton Manor and the former ice house.
7. The appeal proposals address the site-specific heritage related criteria set out in Cheltenham Plan Policy HC4. In particular, the appeal proposals fully conform to the requirement that:

‘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’.
8. The appeal proposals keep the eastern portion of the allocated site entirely free from built development. In fact, less than 30% of this allocated site will be subject to built form – i.e., houses, roads, parking and hardstanding areas. Put another way, over 70% of the site will remain undeveloped, and will be managed as grassland or woodland. By any measure, this represents a very high proportion of undeveloped land for an allocated site.
9. The appeal proposals will have limited impact on the setting of designated heritage assets. All parties represented at this appeal agree that the level of harm to significance of designated heritage assets is ‘less than substantial’ in the terms of the NPPF. Mr Grover, in his evidence considers that the harm caused to the significance of heritage assets is at the low end of the spectrum of less than substantial harm. The photomontages submitted as part of the Appellants’ evidence demonstrate the limited impact of the appeal scheme, and the effectiveness of mitigation proposals in key views looking west from the direction of Charlton Manor.

Ecology

10. There is no ecology reason for refusal. Officers are satisfied with the scheme and no objection has been received from the County Ecologist or Gloucestershire Wildlife Trust. However, the proposal, despite being an allocated site, has being strongly resisted by the R6 party throughout

the planning application. They have sought to challenge the process at every turn, but their criticisms do not stand scrutiny and should not carry significant weight.

11. Following petitioning by the R6 party, the Appeal site was designated a Local Wildlife Site (LWS). This is a non-statutory designation of the lowest available tier (below national and international) and reflects the local status of the site. The R6 had requested that it was designated on the basis of its grassland interest but this was rejected and it has in fact been designated on the basis of its 'value for learning' due to its location adjacent to St Edwards School.
12. LWS receive local policy protection under Policy SD9 of the Joint Core Strategy (CDD3), however, the policy does not place a bar on development within LWS. Rather, for new development within an LWS, SD9 sets out the tests (at SD9 2ii and 5) that must be met for this to be acceptable. These tests require an adverse impact on the registered interest features to be satisfactorily mitigated such that no unacceptable adverse impacts remain. Mr Baxter sets out in detail at section 4 of his evidence how the appeal scheme fully meets these tests with the retained habitats to be significantly enhanced with a particular focus on grassland restoration to a herb rich meadow.
13. The Framework Management Plan has been brought forward to set the parameters for how this will be achieved and on which Gloucestershire Wildlife Trust have been consulted and have contributed. Accordingly, the Trust conclude that the Plan "*should result in securing and enhancing the biodiversity interest of the retained areas of the LWS*" and the retained land will continue to carry a LWS designation post development, a fact agreed with the R6 in the Ecology SoCG (at point 5).
14. Other wildlife interests on the appeal site are also accommodated within the proposals. Losses to hedgerows are compensated by new planting; the loss of a main badger sett will be re-provided in the form of an artificial sett in an appropriate location; reptiles (slow worms and grass snake) will be fully safeguarded and enhanced habitat conditions provided; and the low status bat roost in tree T3018, occupied by a single bat, will be retained.
15. Moreover, the appeal proposals afford the opportunity to bring forward significant ecological enhancements, with a range of benefits to flora and fauna. These include the restoration of the grassland to a herb rich high conservation status meadow, the provision of a new pond and

retention of the existing pond of particular benefit to amphibians and dragonflies, stocking up of hedgerows, creation of a large woodland belt, provision of increased opportunities for roosting bats and nesting boxes. In addition, there will be a veteran tree management plan to ensure these icons of our past are provided the best opportunity in the future. Further, the habitats will all benefit from a future conservation management plan which will be funded for the lifetime of the development. By contrast if the appeal proposals do not go ahead, the currently unfavourable management of the grassland and veteran trees is likely to continue such that declines to these habitats will be experienced.

16. An analysis of the enhancements proposed using the Defra 2.0 metric shows the appeal proposal will lead to a net gain for biodiversity, which will be in excess of 12%, therefore exceeding even the proposed target of 10% in the draft Environment Bill.

Benefits of Providing Affordable Housing & Self Build

17. This application is not made in a vacuum. It is made against the context of a very well-established national housing crisis. Maximising development on allocated sites like this are needed to address the housing crisis in this country and support the instruction to significantly boost the supply of housing.
18. The housing crisis has major impacts. It affects young people and young families who do not own their own home, in particular in Cheltenham. The Appeal Scheme will deliver vital and much needed affordable housing on site: 42% affordable housing, 18 dwellings on site. This marginally exceeds the requirements in Policy SD12 of the Joint Core Strategy and will be secured via the submitted planning obligation.
19. The mix of affordable housing is 6 social rented units, 7 affordable rented units and 5 shared ownership. On face value there appears to be little or no difference between the parties, with the council accepting that the benefit of affordable housing should be prescribed substantial weight in the planning balance. While the Council accept this level of weight (Affordable housing SoCG, p28, [8.9]), it is not always about the destination, but the journey you take to get there. In this respect Mr Stacey sets out a series of facts, figures and trends to demonstrate that there is

an acute need for affordable housing not only nationally, but also within Cheltenham itself. A matter that is not in dispute (Affordable Housing SoCG, p8 [8.7 and 8.8]).

20. This lack of dispute really points to the Council accepting that not only is there a substantial need for affordable housing, but that it also weighs heavily in favour of the appeal being allowed. In the context of Mr Stacey's evidence, the benefits of affordable housing must be substantial given:

(a) the shortfall in delivery against net annual needs in the 2015 Strategic Housing Market Assessment, of over 1000 (1015) affordable homes in just 5 years;

(b) a decline in the affordable housing stock in Charlton Kings;

(c) a rise in the use of temporary accommodation to house people in need;

(d) rising house prices and an average affordability ratio higher than the national average along with;

(e) almost 2,500 (2418) households on the housing register with almost 25% of the entire register (598 households) advising that they seek a home in Charlton Kings.

21. We should not forget the recipients of new affordable homes are real people, in real need now. See Pulley Lane, DL23 and IR8.122 and 8.124 (CD J5.7)

22. The Council is clearly letting these people down. Due to these circumstances the Appellant contends that substantial weight should be afforded to the affordable housing benefits of this proposal.

23. Central Government have also made it increasingly clear since the 2011 National Housing Strategy a decade ago that it strongly supports self-build and custom housebuilding and is targeting a significant increase in the delivery of this particular housing product. It is common ground between that parties that the provision of self-build and custom housebuilding plots is a key part of the planning system (Self-Build SoCG, p4, [4.1]).

24. The PPG requires a robust assessment of demand for selfbuild and custom housebuilding, including through secondary resources such as through building plot search websites (Self-Build SoCG, p5, [4.14]). The Council’s 2020 Local Housing Needs Assessment has not undertaken a robust assessment of demand for self-build and custom housebuilding in line with the recommendations of the PPG. Mr Moger’s evidence demonstrates (Moger PoE, p39-40 [4.22-4.29]) that when secondary data sources are examined in line with the requirements of the PPG then latent demand for self-build and custom housebuilding plots within Cheltenham Borough is substantially higher than the numbers recorded on the Council’s Self-build Register.
25. It is common ground (Self-Build SoCG, p5, [4.9]) that the legislative requirements of the 2015 Self-Build and Custom Housebuilding Act (as amended) state that, in respect of the Statutory Duty to meet demand,

“The demand for self-build and custom housebuilding arising in an authority’s area in a base period is the demand as evidenced by the number of entries added during that period to the register”.

26. When the primary legislative framework is properly applied (**Moger PoE, p44, [4.53]**) the Council has indisputably failed to adhere to its Statutory Duty to meet demand arising in Base Period 1 and Base Period 2 as it has sought to apply its performance against the Statutory Duty to artificially reduced register numbers through retrospectively applied amendments to remove entries.
27. The Appellants’ position is that given the scale of unmet need within Cheltenham Borough, coupled with the lack of future supply and the absence of any apparent strategy from the Council to address demand arising within the Borough anytime soon, nothing less than substantial weight should be afforded to the 4 self-build and custom housebuilding serviced plots that would be provided by the appeal proposals.

Highways

28. Access to the site is safe and suitable, which has been agreed by the highway authority through various applications, and by the residing Local Plan Examination Inspector. Gloucestershire

County Council, in their statutory role as the highway authority, did not object to the planning application.

29. The site, in highways and transportation terms, is sustainable – accessible by walking, cycling and public transport, and close to the Charlton Kings local centre, as well as Cheltenham town centre. The Local Plan examining inspector reviewing Policy HD4 acknowledges the “site has good transport links.”
30. The site layout has been designed to take account of the topography and satisfactorily checked in safety terms via a Stage 1 Road Safety Audit. Robust conclusion that the development will not result in a severe detrimental impact to the operation of the local highway network.

Arboriculture

31. Arboricultural aspects of the Appeal Scheme are not considered to be objectionable by the LPA and specifically there is a large degree of agreement with the Council including:
 - (a) the removal of a few trees, including two that are mature;
 - (b) which trees fall under NPPF 175c “irreplaceable habitat”, identified using the RAVEN method;
 - (c) all aspects of the layout in relation to retained trees, including drainage & measures for tree protection during construction;
 - (d) land use in relation to retained trees, including the ancient and veteran cohort;
 - (e) post-construction tree management arrangements.
32. There is also considerable agreement on the identification of ancient and veteran trees from all interested professionals to date regarding the list which is compiled by FLAC, specifically from Julian Forbes-Laird, a leading authority in this area, the Council’s Tree Officer, who is one of the most senior and respected such Officers in England, the Rule 6 party advisors, Barton Heyett Associated and Inspector Sims (DL56-58).
33. The approach taken by the R6 party, specifically regarding the “relic tree” does not have a scientific underpinning, and similarly, other concerns raised by them including soil hydrological impacts on retained trees have been allowed for as part of the design – with any outstanding

matters capable of being resolved by Condition (which Barton Hyett Associates accept). Current site management site management arrangements run counter to the interests of irreplaceable habitat. If this Appeal is allowed, the management regime will be changed to one that secures significant, long-term benefit for the ancient and veteran trees and their habitat features. It must be right that this strongly positive outcome is afforded very substantial weight.

Education & Library

34. The contributions are currently contained within the UU. This is because as Mr. Kinsman sets out in his evidence, the demands of Gloucestershire County Council (“GCC”) are unreasonable. The pressure on primary school places is easing and the additional demand from the development can be met within existing schools. The Leckhampton High School is opening to pupils this September, providing 900 more places.
35. Taking account of reduced activity levels, the contributions which are required by GCC in respect of library contributions are also unreasonable. Considerable efforts have been made by Mr Kinsman to engage with GCC, especially on education matters, however these attempts have, so far, not been successful.

Overall Balance

36. The Site is within the Principal Urban Area (PUA) which is highly constrained by Green Belt and AONB – this intensifies the need to use underused land effectively. Cheltenham Borough has an existing “shortage of land for meeting identified housing need”. This engages paragraph 123 of the Framework, with the objective of optimizing the land for housing (and not wasting scarce resources).
37. Optimisation does not mean “maximise” or “minimise” – however, this scheme has a density of 10.36 dwellings per hectare. The local plan recognised the need to ensure that the housing requirement of the Local Plan is met by the allocations – this is not determinative of the capacity. It is clear that the site can provide for more than 25 dwellings, indeed the Inspector’s report at paragraph 59 stated that *“In view of the location of the site within the built-up area and the need for residential development*

within Cheltenham” and that issues on layout and form could be addressed within the criteria of HD4.

38. The proposed development strikes an appropriate balance between maximizing development potential and minimizing heritage harm. The proposals take account of the sensitivities of the heritage assets and bring an array of benefits which can only be realised through permission being granted for the appeal scheme.

Conclusion

39. For the reasons set out in the evidence of the appellant’s witnesses, the Appellant will in due course request that the Inspector grants planning permission.

22 March 2021

**CHRISTOPHER YOUNG QC
SIONED DAVIES**

No5 Chambers

Birmingham – Bristol – East Midlands - London



BIRMINGHAM • LONDON • BRISTOL

IN THE MATTER OF

**LAND ADJACENT TO OAKHURST RISE,
CHELTENHAM**

**OPENING STATEMENT
ON BEHALF OF THE APPELLANT**

Frampton Town Planning Ltd