

## Appeal Decision

Inquiry held on 20, 21 and 22 February 2018

Site visit made on 22 February 2018

**by Jameson Bridgwater PGDipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 04 April 2018**

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### **Appeal Ref: APP/B1605/W/17/3178952 At land off Kidnappers Lane, Cheltenham**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Robert Hitchins Limited against the decision of Cheltenham Borough Council.
  - The application Ref 16/00202/OUT, dated 4 February 2016, was refused by notice dated 20 April 2017.
  - The development proposed is described as 'Residential development of up to 45 dwellings, associated infrastructure, open space and landscaping, with creation of new vehicular access from Kidnappers Lane, demolition of existing buildings'.
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### **Decision**

1. The appeal is dismissed.

### **Preliminary matters**

2. The Inquiry sat for 3 days. I held an accompanied site visit on 22 February 2018.
  3. The planning application to which the appeal relates was submitted in outline form with all matters reserved. An illustrative master plan was submitted with the planning application, this plan was for illustrative purposes only.
  4. A Statement of Common Ground (SoCG) was submitted which sets out the policy context along with matters of agreement and those in dispute. It was confirmed in the SoCG that the Council were no longer seeking to defend their reasons for refusal numbered 1 and 3 in light of changed circumstances relevant to the proposal and the submission of three planning obligations under section 106 of the Town and Country Planning Act 1990. Furthermore, no substantive or technical evidence that was contrary to the view of the Council was advanced by any other party. I have determined the appeal on this basis.
  5. Three planning obligations relating to the provision of affordable housing, open space, education, libraries and public transport (bus services) were submitted during the Inquiry under section 106 of the Town and Country Planning Act 1990. I deal with the contents of these below.
  6. Since the original decision was made the Gloucester, Cheltenham and Tewksbury Joint Core Strategy (JCS) was adopted by the Council on the 11
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December 2017. In light of the advanced stage of its preparation, this document was referred to in the reasons for refusal along with policies from the Cheltenham Borough Local Plan (CLP). As indicated in the SoCG, the appellant was clearly aware of the preparation of this document and the Inquiry procedure gave all parties the opportunity to address any implications arising from the adoption of this document. Accordingly the JCS, whose policies have been found to be sound, along with the CLP, form the statutory development plan for the area. I have considered the appeal on this basis.

### **Main issues**

7. The main issues in the appeal are:

- the effect of the proposal on the character and appearance of the area with particular regard to landscape and visual impact; and
- whether there are any other material considerations which would justify the development being determined other than in accordance with the development plan.

### **Reasons**

8. The appeal site is located to the south east of Cheltenham, beyond the existing built up area, approximately 1.2 miles to the south west of the Leckhampton District Centre. The appeal site itself extends to approximately 1.3ha and comprises an irregular shaped area of flat land formerly used as a commercial plant nursery. Access to the site is gained directly from Kidnappers Lane to the south which in turn provides access to the principal county highway of the A46 Shurdington Road to the north and the associated services and facilities of the local areas of Up Hatherley and Warden Hill.

#### *Planning policy*

9. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires decisions to be made in accordance with the development plan unless material considerations indicate otherwise. The Development Plan comprises the JCS and the CLP.
10. Policy SP1 of the JCS establishes the housing requirement across the JCS authorities (Cheltenham, Gloucester and Tewkesbury) of 35,175 for the plan period of 2011-2031. The plans sets out that Cheltenham Borough are required to provide for a minimum of 10,917 new homes over the plan period. Policy SP2 of the JCS seeks amongst other things to concentrate new development in and around the existing urban areas of Cheltenham and Gloucester.
11. Policy SD8 of the JCS seeks amongst other things to ensure that development enhances the appearance, character and distinctiveness of the historic environment.
12. Policy SD10 seeks to direct residential development to appropriate locations within the JCS area. It further sets out that *'some of these locations will be sites that are allocated for residential development through district plans and neighbourhood plans, while other 'windfall' sites will come forward unexpectedly'*.

13. Policy CO 1 of the CLP seeks amongst other things to prevent harm to distinctiveness, quality and amenity value of the landscape. Policy CO 2 of the CLP seeks to prevent development which would harm the natural beauty of the landscape within the Cotswolds Area of Outstanding Natural Beauty (AONB). Policy CP 7 of the CLP seeks amongst other things to ensure that development complements and respects neighbouring development and the character of the locality and/or landscape.
14. It is common ground that the appeal site is located beyond the built up area of the Principal Urban Area of Cheltenham and therefore the appeal site is not allocated for development purposes. The proposal would therefore be in conflict with Policy SD10 of the JCS.

#### *Character and appearance*

15. The area of the appeal site is approximately 1.3ha and comprises an irregular shaped area of flat land that was formerly a commercial plant nursery. There are some low level structures and areas of hardstanding still evident within the site; however, the site is predominantly open. The site is bounded by established hedgerows on its western and southern boundaries with an open field boundary to the north abutting agricultural land beyond. To the eastern boundary is an adjacent plant nursery complex that contains a number of horticultural structures.
16. Whilst the original application was submitted in outline form with all matters reserved. The SoCG confirms that the appellant's *'Illustrative Master Plan was submitted to demonstrate how the appeal site can deliver the scale of development proposed. It demonstrates how the development could be laid out to respond to the constraints and opportunities of the site'*. I have therefore used it as a broad guide in relation to assessing the landscape and visual impact effects of the proposal. In doing so I accept that there is potential for an alternative site layout and arrangement, although the access to the site is largely fixed.
17. The appeal site is not within or immediately adjacent to any Landscape designation in the adopted Development Plan. It is however located in proximity to the AONB. Whilst the site has not been identified as a valued landscape, it is however within an area identified as valued having regard to Paragraph 109 of the Framework.
18. Kidnappers Lane and the area in the vicinity of the appeal site are semi-rural in character. As such, the appeal site is a component part of a mosaic of rural and settled features at the edge of the main settlement area of Cheltenham that includes old orchards, nurseries and small holdings. Consequently, the built form in the area is low density and dispersed in nature, having its own distinct landscape character and is a valued landscape. Like large parts of Cheltenham the site and its surroundings are experienced in the context of the rising Cotswold escarpment. Therefore, despite its semi-derelict condition, the appeal site due to its openness does have a local aesthetic value, and this has been evidenced by the representations both in writing and during the Inquiry from local residents.

19. I confirmed by way of my site visits that the appeal site in its existing condition is generally contained by existing screening boundary vegetation/hedgerows and trees within and around the site. The key exception to this is from the public footpath to the north of the site which allows extensive views into and across the site, which was not significantly reduced by the layering effect of the intervening landscape and vegetation. The site is also visible from Leckhampton Hill as part of the Cotswold escarpment.
20. Even taking into account the visual containment I have identified, the proposed introduction of up to 45 dwellings would have a significantly greater visual impact than the former commercial plant nursery, which in its existing condition is largely open and punctuated by generally low level and lightweight structures. Therefore, whilst views from Lotts Meadow into the site would be filtered by a combination of increased boundary planting and layers of established vegetation, the upper storeys and roofscapes of the development would be highly visible due the cumulative effect of the height and overall scale of the proposal.
21. With regard to views from Kidnappers Lane, based on the evidence before me and my on-site observations, I consider that the upper floors and roofscape of the proposal would not be adequately contained visually. This is due to a combination of the proposed height and density of the development and the lack of screening around the entrance to the adjoining site that lies between the appeal site and Kidnappers Lane. The visual effects of the proposal would be particularly stark when travelling south towards the site entrance along Kidnappers Lane, meaning that built form along the western boundary of the appeal site would appear dominant, with screening difficult to achieve due to the intervening land being outside the appellant's control. This harmful visual effect is further accentuated by views into the site opening up due to the bend in Kidnappers Lane close to the site entrance. Moreover, the existing coniferous hedge which provides the most effective visual containment when travelling north along Kidnappers Lane is not in the appellant's control. Therefore, its continued retention for screening/containment purposes could not be guaranteed by the appellant should the development proceed. In reaching this conclusion I accept the appellant's argument that the proposed dwellings around the site entrance could be architecturally designed to reflect the appeal site's semi-rural setting. However, this would not mitigate the overall visual harm that I have found when viewing the site from Kidnappers Lane.
22. With regard to the northern site boundary, I have carefully considered the appellant's proposed structural planting/landscaping within the appeal site boundary. However, it is highly likely given the constraints of the site that the proposed planting would be in close proximity to the proposed built form. This would be likely to diminish the effectiveness of the screen planting when viewed from the public footpath to the north. Furthermore, the paddocks/fields that separate the appeal site from the public footpath to the north are not in the appellant's control and therefore the limited layered screening function that they currently provide cannot be relied upon to supplement the on-site boundary planting. Therefore, I am not persuaded that the proposed structural planting/landscaping would adequately mitigate the urbanising visual effects of the proposal. Consequently, the proposal would have its most significant and

- harmful effect when viewed from the public footpath to the north of the appeal site.
23. Having reached the conclusions above the cumulative visual effects of the proposal would result in an incongruous and permanently harmful visual effect, which would materially harm the character and appearance of the area.
24. With regard to landscape character, I have carefully considered the detailed submissions of the appellant<sup>1</sup>. However, I consider that the proposed development (up to 45 dwellings) would appear as an island of dense development, visually divorced from the urban edge of Cheltenham. This would be in stark contrast to the dispersed semi-rural settlement pattern of the locality. Furthermore, the likely introduction of an engineered vehicular access and footways would increase the presence of an incongruous suburban type development in a semi-rural area. Moreover, this effect would be particularly prominent when viewed from Leckhampton Hill where the semi-rural landscape can be fully appreciated. As such, the proposal would result in material harm to the landscape character of the area.
25. I accept that the proposal would be a dominant feature in the foreground of views up to Leckhampton Hill when viewed from the public footpath to the north of the appeal site. However, the Cotswolds escarpment is a dominant feature for the majority of Cheltenham and it is experienced in varying contexts, with views constantly evolving as you travel through the town. As such, the introduction of the proposal would mean that views to Leckhampton Hill would change, albeit such a change would be consistent with views experienced elsewhere in the town. Moreover, views out to the AONB would vary as one travels along the public footpaths and roads that surround the appeal site. Therefore, whilst the view to Leckhampton Hill would change from the northern footpath, the proposal would not materially harm views of the AONB as a whole.
26. Having reached the conclusions above, the proposal would result in material harm to the character and appearance of the area by way of the introduction of suburban built form that is unsympathetic to the prevailing semi-rural character of the area. The proposal would therefore conflict with Policy SD8 of the JCS and Policies CO 1 and CP7 of the CLP. However, I consider that the proposal would not conflict with Policy CO 2 of the CLP as this specifically relates to development within the Cotswolds AONB.

*Other material considerations*

27. It was common ground between the parties that the Council is able to demonstrate 5.6 years of deliverable land for housing supply. However, the appellants advocate that until the emerging Cheltenham Local Plan (eCLP), which will provide the implementation strategy through reviewing current settlement boundaries, is adopted there exists a policy vacuum (arguing that the development plan is silent) which could lead to housing delivery in the Borough being placed at risk. Such a situation they advocate would be at odds

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<sup>1</sup> Mr Paul Harris – Proof of Evidence

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with the requirement of the Framework for Councils to boost significantly the supply of housing.

28. However, based on the evidence before me I am satisfied that the adoption of the JCS provides a robust evidential basis that a five year supply of deliverable housing land for this area has been demonstrated. As a result concerns about any policy vacuum resulting from the lack of the eCLP are unfounded since the qualified need for the Borough can be met. Consequently, there is no adequate justification for reducing the weight that should be given to Policy SD 10 of the JCS.
29. The proposed 45 homes, including a policy compliant 40% affordable housing provision would make a moderate contribution to the supply of housing in the Borough. Furthermore, improvements to biodiversity, green infrastructure, street lighting and footpaths and economic activity associated with the development and occupation of the homes should be afforded limited weight. Consequently, these are benefits derived from the proposal.
30. The appeal site is located within the Leckhampton with Warden Hill Area which was designated in September 2015 for Neighbourhood Plan (NP) purposes. However, it is confirmed in the SoCG that the NP is still at a very early stage and draft policies have yet to be published for consultation. Therefore taking account of Paragraph 216 of the Framework I cannot afford the emerging NP any weight.

#### *Planning obligations*

31. At the time the Council made their decision the appellant had not provided planning obligations in relation to affordable housing, open space, education, libraries and public transport (bus services). However, the appellant has as part of their appeal submitted 3 planning obligations pursuant to Section 106 of the Act, which addressed the issues outlined above.
32. None of the planning obligations contained within the agreement appear to be in dispute. However, Gloucestershire County Council (GCC) has required the provision of monitoring fees (£4500 in total) which is disputed by the appellant. Notwithstanding this, both Cheltenham Borough Council and GCC have provided statements of CIL regulation compliance. However, I have considered the obligations against the tests in Regulation 122 of the CIL Regulations 2010 and the Framework nonetheless.
33. The first obligation deals with affordable housing provision. The Council has identified a need for affordable homes in the Borough. The 40% affordable housing sought in the appeal scheme amounts to 18 units of the 45 proposed on the site, which was confirmed at the Inquiry as consistent with the requirements of Policy SD12 of the JCS and Policy HS4 of the CLP. The second obligation deals with on-site open space provision. The Council has identified a need for open space within residential development sites in the Borough. Furthermore, the provision within the obligation of on-site open space is consistent with the requirements of Policies INF4, INF6 and INF7 of the JCS and Policies CP8 and RC6 of the CLP.
34. The third obligation deals with libraries, education and public transport (bus services). GCC has identified a need for the expansion of library services at Up

Hatherley Library to provide additional capacity to meet the needs of the proposed development. With regard to education, GCC has identified a need for pre-school, primary and secondary school places in the local area to provide additional capacity to meet the needs of the proposed development. Furthermore, GCC has identified a need to divert public transport (bus services) to meet the needs of the proposed development and are consistent with the requirements of Policies INF1, INF4 and INF5 of the JCS and Policies TP1 and RC6 of the CLP.

35. In relation to the monitoring fees I have carefully considered the appellant's representations including the submitted High Court Judgment<sup>2</sup>. However, given that the contributions would be subject to specified trigger points, with some made in staged payments it would be necessary for the Council to monitor the progress of the development during its construction. Moreover, given the level of need that would be generated by the proposed development, it is important that the contributions are utilised in full for the provision of libraries, education and public transport. Therefore, the contributions towards the provision of libraries, education and public transport (bus services) are reasonably related in scale and kind to the needs generated by the proposed development.
36. I therefore consider that the three obligations meet the necessary tests in law and I have taken account of them in reaching my decision.

#### *Other matters*

37. There was local concern raised in relation to the potential cumulative effect of the proposed development and other developments on the capacity of the local road network, in particular on the A46 Shurdington Road. However, based on all of the evidence before me and the observations during my site visits, I am satisfied that any increase in traffic from the proposed development would not result in severe harm to highway safety. Moreover, this is consistent with the Highways Authority who raised no objection in relation to capacity or highway safety.
38. I have been referred to a number of other appeal decisions and these have been cited as setting a precedent either for or against the appeal proposal. However, I have limited information about their histories, but inevitably their contexts would differ to that of the scheme before me, and so they do not lead me to a different view in this case.
39. A number of additional issues were raised by local residents, including flooding and the effect of the proposal on the capacity of local services. However, as I am dismissing the appeal for other reasons my decision does not turn on these matters.

#### **Planning Balance and Conclusion**

40. In conclusion, a number of benefits would flow from this development. The proposed 45 homes, including a policy compliant 40% affordable housing

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<sup>2</sup> Oxfordshire County Council v Secretary of State for Communities And Local Government & Ors, Court of Appeal - Administrative Court, February 03, 2015, [2015] EWHC 186 (Admin)

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provision would make a moderate contribution to the overall supply of housing. Additionally, the proposal would be likely to result in a limited increase to economic activity in Cheltenham. There would also be benefits associated with the improvements to biodiversity, green infrastructure, street lighting and footpaths. However, the provision of off-site infrastructure to support the provision of libraries, education and public transport are neutral matters.

41. In acknowledging these benefits, I do not consider that they would outweigh the harm identified to both the character and appearance of the area, nor do they provide an adequate justification for reducing the weight that should be given to Policy SD 10 of the JCS. To do so would allow residential development without regard to the quantified need for it and would be in direct conflict with the core planning principle of the Framework that planning should genuinely be plan-led (paragraph 17).
42. For the above reasons, and having regard to all other matters raised I conclude that the appeal should be dismissed.

*Jameson Bridgwater*

INSPECTOR

#### **DOCUMENTS SUBMITTED AT THE INQUIRY**

1. Transcript of the opening statement of Mr Paul Cairnes QC
2. Transcript of the opening statement of Miss Sarah Clover of Counsel
3. Transcript of the opening statement of Dr Adrian Mears
4. Addendum to Statement of Common Ground
5. Draft Planning Obligation for the provision of Affordable Housing
6. Draft Planning Obligation for the provision of On-site open space
7. Draft Planning Obligation for the provision of Education, Libraries, Highways and Transportation
8. Copy of High Court Judgment – Case No. CO/4757/2014 – Monitoring Fees
9. CIL Compliance Statements – Cheltenham Borough Council and Gloucestershire County Council
10. Draft Planning Conditions (Revised) – Agreed by parties
11. Transcript of the statement of Kenneth Pollock
12. Environment Impact Assessment (Miller Homes) 27 April 2017
13. Crystal Property (London) Ltd v Secretary of State for Communities and Local Government & Anor, [2016] EWCA Civ 1265
14. Transcript of the closing statement of Dr Adrian Mears



15. Transcript of the closing statement of Miss Sarah Clover of Counsel

16. Transcript of the closing statement of Mr Paul Cairnes QC

## **APPEARANCES**

### FOR THE APPELLANT:

Mr Paul Cairnes QC

Instructed by Pegasus Planning

He Called

Paul Harris

MHP Design Ltd (Landscape)

P L S Findlayson

PFA Consulting (Highways)

David Hutchison

Pegasus Planning (Planning)

### FOR THE LOCAL PLANNING AUTHORITY:

Miss Sarah Clover of Counsel

Instructed by Cheltenham Borough Council

She Called

Stuart Ryder

Cheltenham Borough Council (Landscape)

Paul Smith

Cheltenham Borough Council (Planning)

### Rule 6 Parties:

Chris Nelson of Leckhampton with Warden Hill PC

He called

Dr Adrian Mears

Leckhampton with Warden Hill PC

### INTERESTED PERSONS:

Kenneth Pollock

Local resident