

PRE-INQUIRY STATEMENT OF CASE SECTION 78 APPEAL

ON BEHALF OF ROBERT HITCHINS LTD

LAND OFF KIDNAPPERS LANE, CHELTENHAM

PROPOSAL:

RESIDENTIAL DEVELOPMENT OF UP TO 25 DWELLINGS, ASSOCIATED INFRASTRUCTURE, OPEN SPACE AND LANDSCAPING, WITH THE CREATION OF NEW VEHICULAR ACCESS FROM KIDNAPPERS LANE. DEMOLITION OF EXISTING BUILDINGS.

**TOWN & COUNTRY PLANNING ACT 1990 (AS AMENDED)
PLANNING AND COMPULSORY PURCHASE ACT 2004**

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1. INTRODUCTION

1.1 This Statement of Case has been prepared on behalf of Robert Hitchins Ltd (the Appellant). It relates to a planning appeal made pursuant to Section 78 of the Town and Country Planning Act 1990, in respect of Land off Kidnappers Lane, Cheltenham, Gloucestershire (the appeal site).

1.2 The appeal has been lodged on the grounds of "non-determination." It follows the failure of Cheltenham Borough Council (the Local Planning Authority) to determine an outline planning application (LPA ref: 19/00334/OUT) within the statutory week period, for a proposed development comprising:-

"Residential development of up to 25 dwellings, associated infrastructure, open space and landscaping, with the creation of new vehicular access from Kidnappers Lane. Demolition of existing buildings."

1.3 Given that no decision notice was issued on the planning application, it is anticipated that the LPA will take a report to its Planning Committee to request that Members consider whether or not they would have granted planning permission, had the LPA still been the determining authority.

1.4 In the event that Members conclude that they would have refused the planning application, then they will be asked to confirm what the reasons for refusal would have been. These "putative reasons for refusal" can then be used to identify the main issues that need to be debated at the Public Inquiry.

1.5 In view of the above, this Statement of Case seeks to address the main issues that the Appellant anticipates could remain in dispute between the principal parties.

1.6 However, the Appellant reserves the right to add to and/or amend their case once the LPA's position has been clarified and confirmed. The Appellant will seek to engage with the LPA and other interested parties to narrow down the issues that remain in dispute through Statements of Common Ground (SoCG).

2. SITE LOCATION AND DESCRIPTION

- 2.1 The appeal site is located on the south eastern edge of Cheltenham. The town is identified along with the city of Gloucester in the adopted Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (JCS) as a key urban area.
- 2.2 As one of the highest order settlements in the JCS area, Cheltenham possesses a wide range of services, facilities and employment opportunities which when combined with the existing access to public transport and links to surrounding settlements, including Gloucester and Cheltenham, has the ability to support sustainable patterns of living in Gloucestershire.
- 2.3 The appeal site is located in the Leckhampton area of Cheltenham, approximately 2km to the south west of the Leckhampton district centre. The appeal site itself comprises approximately 1.3 hectares of former market garden land to the north of Kidnappers Lane.
- 2.4 The site is an irregular shaped area of flat land formerly used as a commercial plant nursery (with some remnants of the nursery still evident on-site i.e. the hardstanding). It is bounded by established native hedgerows on its western and southern boundaries with an open field boundary to the north abutting agricultural land beyond.
- 2.5 To the eastern boundary is an adjacent plant nursery complex and this contains a number of horticultural structures of varying designs and construction. Access to the site is gained directly from Kidnappers Lane to the south which in turn provides access to the principle 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.
- 2.6 There are no statutory designations within the appeal site with the site lying outside of both the Cotswold Area of Outstanding Natural Beauty (AONB) and the Greenbelt. It is also wholly located within Flood Zone 1, the zone with the lowest probability of flood risk.
- 2.7 The appeal site is not within or adjacent to a Conservation Area and does not contain any heritage assets. The nearest listed building is the Grade II listed Olde England property approximately 120m to the south, on the far side of Kidnappers Lane.

3. THE APPEAL PROPOSAL

3.1 The planning application that is now the subject of this appeal was submitted to Cheltenham Borough Council on 19th February 2019 (LPA ref: 19/00334/OUT).

3.2 The description of development, is as follows:-

“Residential development of up to 25 dwellings, associated infrastructure, open space and landscaping, with the creation of new vehicular access from Kidnappers Lane. Demolition of existing buildings.”

3.3 The application was submitted with all matters of detail reserved for subsequent determination.

Housing

3.4 The proposals would deliver up to 25 dwellings at a net density of circa 19.2 dwellings per hectare. The proposal could include a mix of house types, sizes and tenures which can be determined at the Reserved Matters stage.

3.5 The new dwellings would be predominately 2 storeys in height with single storey garaging.

Affordable Housing

3.6 The Appellant intends to deliver a “policy compliant” level of affordable housing (40%).

Layout

3.7 Although the application was submitted in outline, an Illustrative Masterplan was submitted to demonstrate how the appeal site could 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.

Access

3.8 Whilst access is reserved for subsequent determination, the Illustrative Masterplan shows that access can be gained directly from Kidnappers Lane to the south. The Appellant has also submitted details of the junction arrangement and this can be secured by condition at the outline stage if considered appropriate.

3.9 There are no public rights of way which cross the site or which are immediately adjacent to the site.

4. PLANNING HISTORY

- 4.1 The planning history that is of most relevance to this appeal will be identified in the Statement of Common Ground.

5. PLANNING POLICY

5.1 The planning policies and guidance that are of most relevance to this appeal are set out in the draft Statement of Common Ground. It is anticipated that the main planning policies will be agreed with the LPA prior to the start of the Public Inquiry.

National Guidance

5.2 The Appellant will refer to relevant national guidance set out in the National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG).

The Development Plan

5.3 The Appellant will explain that the Development Plan for the area currently comprises the following:-

- Gloucester, Cheltenham and Tewkesbury Joint Core Strategy; and
- Cheltenham Borough Local Plan Second Review "saved policies"

Emerging Development Plan Policies

5.4 The Appellant will also refer the following emerging Development Plan Documents

- Cheltenham Plan Part 1 2011-2031

Neighbourhood Planning

5.5 The Appellant will refer to the fact that Leckhampton with Warden Hill was designated as a Neighbourhood Plan Area in September 2015. However, it will be explained that the NP is still at a very early stage.

5.6 Accordingly, the NP should only be afforded very little if any weight, in the decision-making process.

6. APPEAL PROCEDURE AND PRESENTATION OF EVIDENCE

- 6.1 The Appellant considers that a Public Inquiry would be the most appropriate appeal procedure in this case.
- 6.2 It is hoped that the issues in dispute can be narrowed down through Statements of Common Ground (SoCG). However, there are complex issues that will no doubt remain in dispute.
- 6.3 These issues can only be properly tested through formal questioning of expert witnesses by an advocate as was the case with the previous appeal, which would not be permissible under the Informal Hearing procedure. It is also anticipated that there will be a need to make legal submissions, which are again best dealt with through the Inquiry procedure.
- 6.4 It is likely that this appeal will take more than two days to be heard (which exceeds normal practice for an Informal Hearing). The Appellant considers that three to four days would be required, depending upon what can be agreed with the LPA in the SoCG (including housing land supply and agreement about the tilted balance being engaged, for example).
- 6.5 As was the case previously, it is also to be expected that the Parish Council will wish to participate.

Proofs of Evidence

- 6.6 On the basis that the Planning Inspectorate agrees to this appeal being dealt with under the Public Inquiry procedure, the Appellant will prepare written evidence in advance of the Public Inquiry to address the putative reasons for refusal.
- 6.7 The evidence will also consider any other valid issues raised by Third Party objectors and/or statutory consultees.
- 6.8 At this stage, it is anticipated that evidence will need to be presented as follows: -

Planning

- David Hutchison BSc (Hons) Dip TP MRTPI

Landscape and Visual Impact

- Paul Harris BA Dip LA CMLI

Housing Land Supply (if required)

- Neil Tiley BSc (Hons) Assoc RTPI

6.9 The Appellant reserves the right to introduce additional witnesses as necessary to address any other issues that may be raised by the Local Planning Authority and/or any other parties.

7. CASE FOR THE APPELLANT

7.1 A draft Statement of Common Ground has been submitted as part of the appeal in order to help narrow down the issues that are likely to remain in dispute.

7.2 It is anticipated that the final SoCG will record that the Appellant and LPA are in agreement on the following headline issues:-

- Format of Planning Application and Supporting Material
- Environmental Impact Assessment
- Five Year Housing Land Supply (5YRHLS)
- The Principle of Development
- Prematurity
- Development Plan Designations
- Settlement Boundaries
- Access and Highways
- Facilities and Accessibility
- Landscape and Visual Impact
- Master Planning
- Impact on Residential Amenity
- Housing Mix
- Affordable Housing
- Public Open Space
- Trees
- Ecology
- Contamination
- Built Heritage

- Archaeology
- Agricultural Land Classification
- Infrastructure
- Noise and Air Quality
- Flood Risk and Drainage
- Public Benefits

The Main Issues

7.3 The Appellant anticipates that the main issues for this appeal will be as follows (some of which are capable of being agreed before the public inquiry opens):-

Issue 1 Housing Land Supply

Issue 2 The Principle of Residential Development

Issue 3 The impact of the development on the character and appearance of the area

The Overall Planning Balance

7.4 The Appellant will present evidence which addresses each of the main issues. The Appellant will explain why the LPA's objections cannot be supported, or, why any residual adverse effects (if there are any found to arise) would not justify this appeal being dismissed.

7.5 The Appellant will demonstrate that the proposals do represent sustainable development as defined by the NPPF and will set out the reasons why permission can and should be granted in this case.

Issue 1 Housing Land Supply

7.6 It is anticipated that matters relating to housing land supply can be agreed ahead of the public inquiry.

7.7 The housing land supply position was considered as part of a recent appeal concerning Land at Oakhurst Rise, Charlton Kings, Cheltenham, GL52 6NR (PINS ref. Appeal Ref: APP/B1605/W/19/3227293). For the purposes of that inquiry it

was common ground that the LPA was unable to demonstrate a 5YRHLS. At paragraph 111 of the decision it is stated that:-

“111 It is common ground that, for the purposes of this appeal, the Cheltenham Borough housing land supply amounts to 4.6 years, calculated with reference to the requirement of the currently adopted development plan in relation to available sites. That is as compared with the minimum five year supply sought by Framework paragraph 73. Accordingly, the proposed development would make a significant, beneficial, 68-unit contribution to the overall housing supply.”

- 7.8 The housing supply shortfall would engage NPPF Footnote 7 which makes it clear that for housing proposals, as in this case, the lack of a five year housing land supply renders development plan housing provisions out of date and causes the balance set down by paragraph 11d(i), now commonly termed the tilted balance, to be engaged.
- 7.9 The Appellant will seek to agree that the housing land supply position continues to be less than 5 years and that the tilted balance is engaged in this case. If this can be agreed, then it should not be necessary to spend time and resources presenting evidence on housing land supply or the various potential routes into the tilted balance.
- 7.10 This will be a material change in circumstances since the previous appeal decision on this site.

Issue 2 The Principle of Residential Development

- 7.11 Again, it is anticipated that there will be agreement that the principle of development is acceptable insofar as locational sustainability and accessibility are concerned. Cheltenham is a focus for development in the JCS and the site is well related to the facilities and services (including public transport).
- 7.12 Whilst the Appellant expects that the LPA will continue to oppose the principle of development, the areas of dispute are likely to be confined to landscape and visual considerations and the impact of the development on the character and appearance of the area. These matters will be addressed under Issue 3.

Issue 3 The impact of the development on the character and appearance of the area

- 7.13 This is expected to be the principal issue for this appeal.

7.14 The Appellant will explain that the scheme is materially different from the 45 dwelling scheme that was the subject of the previous appeal. It will be explained that the Appellant has sought to address the concerns of the previous Inspector and that there are other changes in circumstances which now alter the baseline position for this site.

7.15 In particular, the Appellant will draw attention to the following changes to the scheme itself:

- A significant reduction in the number of dwellings (44% reduction) and a corresponding reduction in the overall density of the development.
- A reduction in the quantum of development visible from the site entrance
- Whilst only illustrative at this stage, the proposed layout has internal roads that are lower key to better reflect the character of the area and to create a sense of place.
- Increased tree planting and enlargement of the open space by 46%
- A change in hedge types to replace non native with native
- Less immediacy to seeing upper storeys and roofs immediately behind the hedge when viewed from Lotts Meadow on south east boundary
- A more varied building line facing the view to the PRow on north west boundary

7.16 It will be explained that the LPA's complaint that the development would be isolated fails to take into account significant proposed changes in the area.

7.17 It will be shown that the Farm Lane development to the south has progressed significantly and has in effect redefined the urban edge of Cheltenham. The proposals also have to be considered in the context of the draft allocation for 250 dwellings. The allocation also includes a new school which taken together with the new housing will change the character, appearance and function of the area and its surrounding roads.

7.18 The school buildings themselves will have a significant urbanising effect on the character of Kidnappers Lane where presently there is field. This will physically link the settlement features of Kidnappers Lane with the extensive settlement off

Shurdington Road. As such this substantially changes the landscape character of the lane and diminishes any isolation argument.

- 7.19 The proposal for a school entrance for pupils on Kidnappers Lane suggests that Kidnappers Lane will form part of the school route for children walking or cycling from the wider Cheltenham area. This is likely to require extensive new footpaths in due course and is likely to change the landscape character of Kidnappers Lane and in the vicinity of the entrance to the appeal site.
- 7.20 The Appellant will show that the amended proposals for the site including the proposed scheme of landscaping would enable the proposed development to assimilate appropriately with the site and its surroundings.
- 7.21 The overall conclusion will be that the proposals are materially different from the previous scheme and that they would not have an unacceptable impact in landscape or visual terms.

The Planning Balance and Overall Conclusions

- 7.22 The Appellant expects the LPA to agree that the tilted balance is engaged and will explain that this is an important material consideration in this case.
- 7.23 The Appellant will identify the benefits of the proposed development and will attribute weight to each of these for the purposes of the overall planning balance.
- 7.24 It will be for the LPA to demonstrate with evidence that the adverse effects of granting planning permission would significantly and demonstrably outweigh those benefits. The Appellant will demonstrate that the proposals pass the NPPF paragraph 11d test and that the overall planning balance rests in favour of this appeal being allowed.

8. DOCUMENTATION

8.1 A set of Core Documents will be agreed with the Local Planning Authority in advance of the Public Inquiry.

8.2 In addition to the application documents, planning history documents and consultation responses, it is anticipated that the following documents will be referred to:-

National Documents

- National Planning Policy Framework (NPPF 2)
- National Planning Policy Guidance (NPPG)
- CIL Regulations

Local Documents

- Cheltenham Borough Local Plan (Adopted 2006)
- Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (JCS)
- JCS Evidence Base and Inspectors' Reports.
- The Emerging Cheltenham Plan
- JCS Review documentation

Case Law and Appeal Decisions

8.3 The Appellant will refer to various appeal decisions including amongst others, the previous appeal decision for this site and land at Oakhurst Rise, Charlton Kings, Cheltenham (Appeal Ref: APP/B1605/W/19/3227293) which have already been referred to in this Statement of Case. The Appellant will also refer to relevant case law where appropriate.

8.4 The Appellant reserves the right to refer to additional documents to those outlined above in preparation of its case in support of the proposals.

9. PLANNING CONDITIONS AND OBLIGATIONS

- 9.1 The Appellant will present deeds pursuant to Section 106 of the Town and Country Planning Act 1990 to ensure that financial contributions towards necessary off-site infrastructure can be secured. It will also deal with affordable housing to secure policy compliant levels of affordable housing and to include provision for any future management arrangements that are required.
- 9.2 The Appellant will seek to ensure that any contributions that are sought are restricted to those which are necessary to allow the development to proceed and to comply with CIL Regulations 122 and 123.
- 9.3 The Appellant will enter into early discussions with the LPA, well in advance of the exchange of Proofs of Evidence to agree a package of Section 106 Contributions.
- 9.4 An agreed set of Conditions will also be provided to the Inspector before the start of the Public Inquiry.