

**PLANNING APPEAL, UNDER Section 78 of the
TOWN AND COUNTRY PLANNING ACT 1990**



CHELTENHAM
BOROUGH COUNCIL

Appeal Site: Land off Kidnappers Lane, Cheltenham

Appeal by: Robert Hitchens Ltd.

Against: Non-Determination of Planning Application

Appeal Proposal: Residential Development of Up to 25 dwellings, Associated Infrastructure, Open Spaces and Landscaping with Creation of New Vehicular Access from Kidnappers Lane. Demolition of Existing Buildings

Council Ref: 19/00334/OUT

PINS Ref: APP/B1605/A/19/3238462

**STATEMENT OF CASE
Of THE LOCAL PLANNING AUTHORITY**

Rule 6 Town and Country Planning (Inquiries Procedure) Rules 2000 Written Statement of the Planning Authority

INTRODUCTION

- 1.1 This Statement of Case is prepared by Cheltenham Borough Council (“the Council”). It relates to an appeal by Robert Hitchens Limited (“the Appellant”) pursuant to section 78 of the Town and Country Planning Act 1990 (as amended). This appeal is against the Council’s non determination of outline planning application 19/00334/OUT for the erection of up to 25 dwellings and associated development on land off Kidnappers Lane, Cheltenham (PINS reference: APP/B1605/W/19/2328462).
- 1.2 This Statement of Case should be read in conjunction with the Officers Delegated Report. A copy of this report is attached at **Appendix 1**.

2.0 THE APPEAL SITE, ITS SURROUNDINGS AND RELEVANT PLANNING HISTORY

- 2.1 The appeal site is a relatively level area of land measuring 1.3 hectares. The site comprises a semi-rectangular area of former plant nursery with established hedgerows on its western and southern site boundaries and an open field boundary to the north abutting meadow land beyond. The eastern site boundary is formed by an adjacent plant nursery complex which contains several horticultural structures of varying construction.
- 2.2 The appeal site is located beyond the built-up area of the Principal Urban Area of Cheltenham.

- 2.3 The only access to the site is via a vehicular access off Kidnappers Lane to the south which links the site indirectly to the A46 Shurdington Road to the north of the site and Church Road to the south.
- 2.3 Further to the south of the site beyond Church Road, is the escarpment of the Cotswolds Area of Outstanding Natural Beauty, with land designated as part of the Green Belt to the west beyond The Lanes and Brizen Lane residential areas. The appeal site is located beyond areas so designated. The site is not allocated for any planning purpose in the development plan or emerging development plan. The Council will submit evidence that provides a full description of the appeal site and its wider surroundings. The Council will make reference to its location and its spatial relationship with the extent of the existing and proposed Principal Urban Areas and the nearest designated areas.
- 2.4 An outline planning application for the erection of up to 650 dwelling on land adjacent to and including the appeal site was refused planning permission (Council reference:13/01605/OUT). That application was the subject of planning appeal (PINS reference APP/B1605/W/14/3001717) which was 'called in' by the Secretary of State and subsequently dismissed on the 5th May 2016. Prior to the determination of that appeal, the proposal was amended with the omission of the current appeal site.
- 2.5 In April 2017, outline planning permission was refused by the Council for the erection of up to 45 dwellings and associated development (Council reference: 16/00202/OUT). A subsequent planning appeal against this decision was dismissed (PINS reference: APP/B1605/W/17/3178952).
- 2.6 The Council will refer to these appeal decisions where relevant to the determination of the current planning appeal.

3. PLANNING POLICY DOCUMENTS

3.1 The Council's case will be based on the following planning policy documents.

3.2 As set in the Council's Putative Reasons for Refusal and the Officers' Delegated Report considerations the Council will refer to are as follows:

3.3 Government Policy and Guidance

Reference will be made, where relevant, to the following policy and guidance:

- the National Planning Policy Framework (NPPF);
- the National Planning Policy Guidance (NPPG); and
- Community Infrastructure Regulations (CIL).

3.4 Development Plan

The Cheltenham Borough Local Plan was adopted in June 2006. The policies of the adopted Local Plan have been saved as set out in the Schedule of 'saved' local plan policies direction letter dated June 2009 (see **Appendix 2**). Particular reference will be made to the Cheltenham Borough Council Local Plan Policy CP7 a copy of which has been forwarded attached to the appeal questionnaire.

3.5 The Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (JCS) was adopted by the three local planning authorities in December 2017. Reference will be made to JCS Policies SP1, SP2, INF1, INF4, INF5, INF7 and SD10 copies of which have been forwarded attached to the appeal questionnaire. Additionally, reference may be made to JCS Policies SD5, SD11, SD13 and INF3. Copies of these policies are also attached at **Appendix 2**.

3.6 Emerging Development Plan

The Cheltenham Plan (CP) is at a very advanced stage towards its adoption.

3.7 In October 2019, the Cheltenham Plan Main Modifications were published. This document is currently under consultation between 4 November and 16 December 2019. This consultation will only cover the Proposed Modifications and changes to the policy maps not other aspects of the CP or 'omission' sites.

3.8 The Council will provide the Inquiry with an update to the progress of this emerging development Plan. Given the very advanced stage towards its adoption, the Council will refer and attribute considerable weight to its policies where relevant to this appeal. These policies are L1: Landscape and Setting, H1 : Land Allocated for Housing Development, H2 and MD5: Land Allocated for Mixed-Use Development at Leckhampton and G11: Local Green Spaces. Copies of these policies are attached as **Appendix 2**.

3.9 In particular, the Council will refer to the appeal site not being allocated for housing or mixed-use development under the CP Main Modifications. Proposed Policy MD5 allocates land to the north and west of the appeal for 350 dwellings and a secondary school respectively. Further, Proposed Policy G11 would designate land in an arc around the appeal site from the north to the east and south-west as the Leckhampton Local Green Space.

3.10 The Council will also refer to the representations made on behalf of the Appellants to the emerging Cheltenham Plan in relation to the appeal site. Reference will also be made to the Local Plan Inspector's Post Hearing Advice.

3.11 Other Policy Documents

The Council may refer to the following adopted supplementary planning documents where relevant to the appeal proposal:

Landscaping in New Development (2004)

Sustainable buildings (2003)

Sustainable developments (2003)

4.0 THE CASE FOR THE COUNCIL

4.1 The Council will oppose the appeal proposal on the basis of the information submitted to the Council at the time of its determination of the appeal proposal. The Putative Reasons for Refusal are advanced on that basis. Discussions with the Appellant will be held to seek to resolve as many issues as possible prior to the Public Inquiry.

4.2 Having regard to the planning policies referred to in Section 3 of this Statement, the Council will demonstrate that:

1. Principle of Development:

The Council's considerations on the principle of development are set out in the officers' Delegated report at section 6.2 (see **Appendix 1**). Part of Putative Reason for Refusal 1 is as follows:

“The appeal site is located beyond the built-up area of the Principal Urban Area of Cheltenham and therefore not allocated for any development purposes in the development plan or emerging development plan.

The proposal therefore fails to comply with JCS Policy SD10.

In support of this assertion, the Council will refer to the 2017 appeal decision relating to the proposed erection of up to 45 dwellings on the appeal site (PINS reference: APP/B1605/W/17/3178952) in which the Planning Inspector reached that conclusion.

2. Landscape and Visual Impact

The Council's considerations on the landscape and visual impact of development and its spatial relationship with a designated landscape is set

out in the officers' Delegated Report at section 6.3 (see **Appendix 1**). Part of Putative Reason for Refusal 1 advanced by the Council is as follows:

“The proposed erection of up to 25 dwellings on the appeal site would appear as a separate enclave of development with no links to nearby residential development, visually separate from the edge of Cheltenham, out of keeping with the semi-rural settlement form, density and pattern of the locality. Further, the proposed vehicular access would remain an incongruous suburban type feature in the semi-rural area. It would reduce the landscape quality of adjoining Lotts Meadow, a key component of the valued landscape at Leckhampton.”

The proposal therefore fails to comply with Local Plan Policy CP7 and JCS Policy SD8.

These conclusions are consistent with the 2017 appeal decision with regard to the effect of the proposed erection of up to 45 dwellings on the appeal site upon the character and appearance of the area.

3. Developer Contributions to Provision of Affordable Housing

Putative Reason for Refusal 2 advanced by the Council is as follows:

“The proposal will lead to a need under the development plan for the appellant to provide for an element of affordable housing. No agreement has been completed to secure this affordable housing”.

The proposal therefore fails to comply with JCS Policies INF4, INF6, INF7 and SD10.

Nevertheless, the Council anticipates that the appeal parties will agree a Section 106 planning agreement or, alternatively, the appellant will complete a Unilateral Undertaking to secure affordable housing as part of the proposal.

4. Housing Land Supply

The Council acknowledges that it cannot demonstrate a five year supply of deliverable housing sites. The Council will concede, as a consequence, that policies which are most important for determining the application are 'out of date' under Footnote 7 of the NPPF. The Council is currently reviewing the shortfall through the preparation of the Annual Monitoring Report. The Council's position on this will be issued to all parties as a priority once it is available.

5. The Relevant Planning Balance

The Council's considerations on the appropriate Planning Balance are set out in Section 7 of the Officers' Delegated Report (**Appendix 1**).

The Council will attribute weight to the adverse effects and benefits of the appeal proposal. The Council will conclude that the adverse effects of the appeal proposal would significantly and demonstrably outweigh the benefits. Consequently, the proposal would not constitute sustainable development and would not accord with the development plan, the emerging development plan and the NPPF.

6 Other Matters

The Council will respond to the Appellant's Grounds of Appeal and will conclude upon the appeal proposal.

The Council will endeavour to agree and resolve as many issues as possible with the Appellants prior to the commencement of the Inquiry. All points of agreement between the appeal parties will be memorialised in an agreed Statement of Common Ground. This statement will include a list of reasonable planning conditions the parties agree could be imposed should this appeal succeed.

The Council will request that the Inspector dismiss this appeal.

5.0 DOCUMENTS

5.1 Core Documents: The Council will liaise with the Appellant to compile a list of Core Documents for the Inquiry.

5.2 The Council will refer to the following documents:

- The National Planning Policy Framework (NPPF);
- The National Planning Policy Guidance (NPPG); and
- The CIL Regulations.

5.3 In addition, the Council will refer to:

- the saved policies of Cheltenham Borough Local Plan (adopted 2006) (CLP);
- the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (JCS);
- the JCS evidence base and other documents associated with the formulation of the JCS;
- The Cheltenham Plan Proposed Main Modifications (MM);
- the evidence base and other documents associated with the formulation of the emerging Cheltenham Plan including representations made by the Appellants.

5.4 Relevant Background Documents:

- Planning Appeal Decision: APP/B1605/W/14/3001717 – land at Kidnappers Lane, Cheltenham

- Planning Appeal Decision: APP/B1605/W/17/3178952 – land off Kidnappers Lane, Cheltenham.

5.5 The Council reserves the right to refer to additional documents which shall be added to the evolving Core Documents list.

6.0 PRESENTATION OF EVIDENCE AT THE INQUIRY

6.1 the Council anticipates that it will rely on the evidence of three witnesses on the following topics:

- Planning Policy and the Planning Balance;
- Landscape and Visual Impact; and
- Five Year Supply of Deliverable Housing Sites.

