

## **Planning Committee**

**6.00 pm, 18 September 2014**

### **Present at the meeting**

Councillor Garth Barnes (Chair)	Councillor Klara Sudbury
Councillor Paul Baker	Councillor Pat Thornton
Councillor Andrew Chard	Councillor Malcolm Stennett
Councillor Diggory Seacome	Councillor Andrew McKinlay
Councillor Flo Clucas	Councillor Rowena Hay (Reserve)
Councillor Bernard Fisher	Councillor Chris Mason (Reserve)
Councillor Helena McCloskey	Councillor Chris Nelson (Reserve)

### **Present as observers:**

Councillor Adam Lillywhite  
Councillor Chris Coleman

### **Officers in attendance**

Tracey Crews, Head of Planning (TC)  
Martin Chandler, Team Leader, Development Management (MC)  
Emma Pickernell, Planning Officer (EP)  
Cheryl Lester, Legal Officer (CL)

### **35. Apologies**

Councillors Babbage, Fletcher and Colin Hay.

### **36. Declarations of Interest**

#### **14/00505/FUL Avenue Lodge, Chargrove Lane**

Councillor Mason – is a member of Up Hatherley Parish Council, but is not a member of the development group and has had no input into any comments made regarding the proposal at Avenue Lodge. Has been advised by the Borough Solicitor that there is no conflict of interest here.

### **37. Declarations of Independent Site Visits**

- Councillor Baker has visited 21 The Avenue
- Councillor Sudbury was not on Planning View, but has visited both 21 The Avenue and Avenue Lodge on previous Planning Views when applications at those sites were being considered
- Councillor McCloskey was not on Planning View, but visited Avenue Lodge when the application was previously at committee.

**Members present on Planning View:** Councillors Barnes, Seacome, Stennett, Thornton, Lillywhite, Mason and Nelson.

### **38. Public Questions**

There were none.

### **39. Minutes of last meeting**

Resolved, that the minutes of the meeting held on 21<sup>st</sup> August 2014 be approved and signed as a correct record without corrections

#### **40. Planning/Listed Building/Conservation Area Consent/Advertisement Applications and Tree-related applications**

##### **41. 14/00505/FUL Avenue Lodge**

Application Number:	<b>14/00505/FUL</b>
Location:	<b>Avenue Lodge, Chargrove Lane, Up Hatherley</b>
Proposal:	<b>Garden Landscaping</b>
View:	<b>Yes</b>
Officer Recommendation:	<b>Permit</b>
Committee Decision:	<b>Refuse</b>
Letters of Rep:	<b>11</b>
Update Report:	<b>Additional representation</b>

**MJC** introduced the application, which is back at Committee following deferral at the May meeting to allow for additional information to be presented to Members, essentially a hydrologist's report which would allow Members to fully understand how the pond functions and the potential impact of filling it in. Reminded Members this is an application for garden landscaping, and needs planning permission because infilling part of the pond is involved. The application was originally brought to Committee because of Parish Council objections. The recommendation remains to permit.

#### **Public Speaking:**

##### **Mr Bacon, neighbour, in objection**

Members will be aware of letters between the officer and the applicant, and that the officer's sound advice was ignored – the consultants engaged did not seek the views from any neighbouring properties. The applicant states that the hydrologist's report provides irrefutable information to prove that infilling 50% of the pond won't exacerbate the flood situation in the area, but is it irrefutable? The answer is emphatically no. There is no evidence of practical fieldwork at the pond site. At paragraph 1.7, the report makes clear that it has examined the situation from a theoretical point of view, and it has provided no real reason to go away from this approach. At paragraph 3.7, it is clear that practical work at the site has not been undertaken – the report states that core sampling would have been useful yet was not done, when it easily could have been. There are a number of contradictions in the report, where the hydrologist appears to be sitting on the fence. For example, paragraph 3.3 rules out springs, though also states that the geology of the site does not rule springs out but make them 'unlikely'; Page 1 of the report talks about infilling approximately 40% of the pond, while paragraph 5.2 refers to infilling *half* the existing pond area; this is a very significant difference in a pond with the capacity to hold 1.8 million litres. There are no recommendations on how the reduction can be achieved, how the impact can be effectively monitored, or the long-term effect of the work. The officer has laid out certain stipulations but the whole issue remains haunted with risk. Remains opposed to the application.

##### **Mr Limbrick, applicant, in support**

Reminds Members that the report states that there is no reason why this application should not be permitted. Its progress has been marred by uninformed speculation – comments which should be set aside. With all the facts at their disposal, Members should permit the application and allow the applicant to improve his garden without further delay.

##### **Councillor Whyborn, local ward member**

Like all councillors, wants to be fair to all his constituents – has been approached by the applicant and by objectors concerning this proposal. The Committee should ignore emotional comments and objections which are not made in planning terms, and also reminds Members that planning permission for landscaping of gardens is not normally needed – it is required in this case as the proposed work goes beyond normal gardening into the realms of hydrology. Neighbours have the right to be assured that the flood risk to their homes will not be increased, hence the requirement for the hydrologist's report. Neighbours have also expressed concern about the loss of amenity. Unlike the Parish Council and some residents of Up Hatherley, cannot see that this pond has high amenity value – it can't be seen from outside the garden, and was personally unaware of its existence for many years. However, we have to consider the Planning Inspector's comments in 2010, which described the site as 'highly-valued' locally, a 'tranquil green open space', a 'valuable oasis' in this suburban area, and a 'long-standing historical feature', adding that 'its essential character should be protected', and development would disturb and displace much of the wildlife (although it should be remembered that these statements were made in reference to a different application). Members have to decide whether an Inspector presented with this different proposal on the same site is likely to reach the same conclusions. A hydrologist's report has now been produced; the borough engineer's comments in the officer report are clear and have been endorsed by the hydrologist's report, although it includes an important caveat on the risk of flooding, particularly at Brambles. It states that the increase in frequency of flooding is unlikely to be significant, but provision of compensatory storage volume is recommended. Members should take the report on board but note that the compensatory storage volume is a lot less than the volume of the pond which is to be removed.

#### **Member debate:**

**HM:** welcomes the hydrologist's report, and is pleased that its findings suggest the Committee was right to ask for one to be done, but it has also opened a whole new set of questions. We need to know what the secondary storage solution would be and where it would be situated – a tank big enough to hold 83 cubic metres of water will be a significant feature and Members ought to have some views on where it will be sited. We know nothing about how water from the reduced pond would enter or leave the tank. It may be that a depressional tank could alter the number of trees included in the application – currently stated as 50 – but there is no further comment from the trees officer. Maybe he could suggest particular varieties of tree depending on which solution is chosen. This is a rather a vague application – like someone asking permission to build a dwelling on a site but not saying whether it will be a one-bedroomed house or a six-bedroomed executive dwelling. It is not acceptable to not know more details about the storage solution.

**CN:** like HM, has some nervousness about this application. On the one hand, it is clear that the applicant has made quite a few attempts to improve his property, which is to be commended. Having seen the pond, can see that what is suggested is a good idea and has something of merit to support it, but having read the hydrologist's report, with its qualitative not quantitative, theoretical not practical, approach, remains nervous about the flood risk. Notes the mitigation measures suggested in Condition 6, but how will we check the right amount of infill is installed? As mentioned in the Brambles letter, the physical size of the tank will need to be very large, and there is no indication about getting this into the ground, so how can we be sure we are getting it right? If it were a building, the building extension would be able to be seen, if not checked before it goes in – how is the size of the tank going to be checked? Is this a practical solution or not? Has questions in his mind – can officers provide reassurance?

**FC:** finds paragraph 1.1 on the first page of the hydrologist's report interesting – the consultant was not asked to do an assessment of the pond as it is, but to demonstrate that partial infilling will not have a significant effect on flooding elsewhere. The report has therefore been designed to give a positive impression of what the change to the pond it likely to do. Secondly, if reading the objections correctly, the pond contains about 2 million litres of water, and would therefore wish to be completely satisfied, given what has been said, that

the mitigation measures are going to do the job and not cause severe flooding of the area and the neighbours' gardens - is not convinced about this. We need a less biased report, as is obviously the current case.

**PT:** agrees with all the previous speakers. One of the letters of objection refers to building at Witley Lodge – a small development on the other side of Avenue Lodge – where the builders were hindered by flooding when laying the foundations, and came across a bell chamber in the ground, large enough for a man to stand up in. This should be easy enough to find, and if it is there, it shows that there must have been a problem with flooding in previous years; Witley Lodge (the original old house) was constructed in 1837. We are being told that the idea is to infill the pond with a clay soil mix. Clay holds water; it is used to line swimming pools. It fits in with the idea of holding water in a depression, but doesn't make sense to use it in this way. Last time, suggested a sunken tank to hold the excess water, but the bell chamber ought to be investigated before doing anything else at all.

**MS:** was concerned about this application last time and remains so. Councillor Whyborn mentioned that the Inspector's report was related to a different application which would have meant disturbing local wildlife by creating a new building. The current proposal will also disturb wildlife, so the Inspector's statements are still valid. He described the area as a 'valuable oasis', and to fill in more of the pond will disturb and displace much of the wildlife that uses it. The application should be refused on the basis of the Inspector's report, on paragraphs 109 and 123 of the NPPF, Local Policies GE2(c) with reference to paragraph 6.12, and CP4(a). The report accepts that the pond does in fact hold run-off water and surface water and that something has to be done with this at times of high rainfall. Is nervous for the bungalows at the bottom of the garden and the adverse effect the proposal would have on their amenity. There must be a way of re-landscaping the garden but keeping the pond as it is. Moves to refuse on the above grounds.

**BF:** last time this application was at Committee, at the suggestion of ex-Councillor Garnham, the applicant was requested to provide a hydrologist's report. He has now done this; whether Members accept it or not is up to them, but it would be foolish to ignore it altogether. A lot of objectors have complained about putting the storage tank in the ground, but there have been many applications at Committee where flood potential is mitigated by the installation of a tank to hold excess water and release it slowly – this is a SUDS scheme. The water won't be displaced; it will be held in the soil, and the percentage of water will vary with the time of year - the water from the pond won't instantly be flowing through the garden. The hydrologist's report has nailed the red herring that the pond is fed by a stream or spring – it is not. It has also suggested that there is an issue with another pond in someone else's garden; this is not the applicant's problem. Nowhere was safe from flooding in the extreme conditions of 2007 – in places there was even 4ft of water 800ft above sea level – and nothing can be completely failsafe. When the hydrologist's report was requested, Members asked who would pay for it? The applicant has paid for it, the report has been done, a tank to mitigate some of the water has been proposed as an effective way to do the job, and the pond will be filled in with absorbent material which will absorb some of the water. Does not see how we cannot approve the proposal, which only requires planning permission because of the significant amount of soil which will have to be brought onto the site. We have the hydrologist's report and cannot argue with it – Members are not hydrologists. On balance, what is proposed will do the job, but won't prevent flooding in other gardens for other reasons. Lots of places flood for lots of reasons. It happens, and this proposal won't alter that fact. The applicant wants to landscape his garden. A significant amount of the pond will be left for wildlife. The proposal is OK to approve.

**CM:** has a major concern about how we get to the figure of 83 cubic metres for the loss of pond volume. Paragraph 4.3 of the hydrologist's report calculates this as half the surface area of the pond x 0.3m, but acknowledges at paragraph 3.14 that in a very heavy summer storm, the pond level could rise by 0.5m in an hour. The storage tank will have to have a capacity of 137.5 cubic metres – this is massive – where will it go? The Trees Officer's comments that tree roots cannot live in water must be taken into consideration here.

Regarding the possible impact on wildlife, ponds are the natural habitat of many insects – this is where they start their life cycle – and a reduction in their habitat will have a knock-on effect on birds and other species of wildlife. Paragraph 7.1 of the officer report concludes that a reduced pond will continue to support wildlife albeit a different type of wildlife, but this could well be less than at present. Concerned about where the storage tank will go, damage to trees, and potential loss of wildlife. Wants to know how the loss of pond is will be mitigated – this should be before Members to decide, not simply included in a condition.

**MJC, in response:**

- the discussion so far has been very similar to the last time the application was at Committee;
- BF has summed a lot of the issues very well. Members should not lose sight of the reason for this planning application – fears that they are over-thinking the issues. The application is required essentially because of the amount of material being brought onto the site – it is an engineering operation - but ultimately the applicant is simply landscaping his garden, as we are all allowed to do; the Committee has to strike a balance;
- some Members consider that the introduction of clay soil to the site will increase the flood risk, but this is erring into the area of micro-management – a balance has to be struck, and we can only go so far with this application;
- to HM's point, officers also welcome the hydrologist's report which clarifies a number of issues and explains why the pond is there. It explores the possible consequences of the proposal with the suggestion of a storage tank or depression. This is a standard way of mitigating surface water run-off, used in SUDS schemes as mentioned by BF – developers are encouraged to introduce this kind of scheme to their sites;
- it has been established that the pond is fed by rainwater, and at times of peak rainfall, it acts as a balancing pond. A tank to mitigate the loss of capacity in the pond is an appropriate suggestion;
- the report is clear that the water table will not be affected long term, and that it will level out over time. Water will always be there; the soil which replaces the pond water will absorb it;
- to PT, clay soil does have absorbent qualities; the compacted clay used for swimming pools etc differs from the clay soil in the ground;
- the proposed storage solution is appropriate; it is not for Members to exert control over how it is done. The number of trees on the site is not relevant to the proposal and not part of the planning permission. It is the soil being brought into the site that needs planning permission;
- the suggested condition is evolved from a standard condition relating to drainage systems. The applicant is required to provide a scheme, and officers will consult with the team, building control officers, and the borough engineer to make sure it is fit for purpose;
- once it is agreed, the condition will need to be implemented as written, as with all conditions;
- to FC, it's true that the brief for a report can set the tone for what the report goes on to say, but this hydrologist's report does a good job in explaining the situation at the site, how the pond functions, and the impact of the proposed work at the site. This is what the Committee wanted. The applicant was not obliged to provide it and could have gone straight to appeal. It is helpful to have it, and it should carry a lot of weight;
- to PT on storage solutions, mitigation measures have been suggested via condition and we have to accept that this is what they are for. If the applicant wants to implement the work, he will have to comply with the conditions; if he doesn't want to, he will either not do the work or go to appeal regarding the condition. The hydrologist's report suggests that he is happy to do the mitigation work required;
- to MS's move to refuse, some of the suggested policies were discussed at the last committee meeting and gave cause for concern;
- Policy GE2 refers to sites which make a significant environmental contribution to the town – this site does not. The policy is concerned with premier parks and gardens.

When this policy has been used in relation to sites of this nature in the past, we have never had any joy at appeals; it is not relevant here;

- we talked the last time about policy CP4 – JF suggested it. If MS wants to move to refuse, CP3 would be better as it directly refers to flood risk; CP4 is about protecting the amenity of occupants;
- the two NPPF quotes are not entirely relevant; the chapter refers to the natural environment and this pond is man-made, with no public benefit;
- officers' advice to Members is that they deferred the application in May for a hydrologist's report; this has been provided and it clarifies various issues, and goes beyond regarding surface water run-off, providing a strong body of evidence to suggest that there will be no increased flood risk;
- neither the borough engineer nor the Environment Agency consider the flood risk will increase with the development. The agreement of these three professional bodies would put the council in a very difficult position at appeal;
- to CM's question about where the 83 cubic metres capacity comes from, the report at Paragraph 3.14 talks about a 500mm difference in water level, but it is important to bear in mind that this is referring to a 1/170 year flood event. National advice is to cater for a 1/100 year flood event; the hydrologist has described a worst case scenario and it would be unreasonable to expect the applicant to plan for that.

**CN:** without wishing to overthink things or concentrate on detail, still remains nervous. The calculations in the report show a formula which includes 300mm in the equation, yet the report elsewhere talks about the possibility of a 500mm rise in the level of the pond. Also, the photographs submitted with the Brambles letter demonstrate a difference greater than 300mm. Again, MJC has referred to a 1/100 year flood event, yet the Brambles letter suggests that it is far more frequent than this. Is nervous and concerned we should get it right. What is the correct size for the storage tank? In addition, have we talked to the enforcement team to ensure that when the tank gets into the ground, all will be as it should be?

**DS:** there is no mention of where the overflow tank will be situated; it would be nice to know.

**MS:** thanks to MJC for his comments on the suggested refusal reasons. Is prepared to add CP3, but would like to retain the other suggested refusal reasons – thinks these do have a chance at appeal, taking into account the previous Inspector's comments.

**KS:** regarding the risk of flooding, if the scheme is approved and flooding is worse, would CBC be liable for any type of account re. duty of care to residents, or would the professional body which produced the hydrology report be liable? It is important to know. Does not want to agree to something which could be harmful to peoples' homes; we are the guardians of the town and should not behave in a rash way. It should be remembered that three experts advised on Cox's Meadow improvements but this did not stop the town from flooding badly in 2007. Experts are not always right. Members are right to be cautious.

**PB:** what is Policy CP3 – has forgotten to bring his copy of the Local Plan. Can Members put in additional conditions? If so, there should perhaps be one concerning the significant amount of movement by lorries in and out of the site. Regarding the protection of wildlife and local amenity, would suggest that the scheme could actually be used to enhance local wildlife rather than detract from it.

**MJC, in response:**

- to DS, where the storage depression/tank will go is not an issue at this point. In line with the suggested condition, if the proposal is permitted, this will be approved in consultation with building control and the council's drainage officer. This is standard practice with any kind of drainage condition. We would not expect to see details of where it would go, as long as it is fit for purpose and doesn't compromise protected trees;

- to MS, notes that he is happy to add CP3 to his refusal reasons, but points out that the Inspector in the previous case made no reference to GE2 and that policy was not included in the refusal reasons for the proposal to build a house over the pond. Consistency is important here; to use it now implies that the site is more important now than it was in 2010;

**MS:** appreciates this and is therefore prepared to withdraw GE2 as a refusal reason.

**MJC, in response:**

- would refer KS's comments about liability in the event of a future flood to CL;
- regarding Cox's Meadow, it didn't protect the town from flooding in 2007 – this was a 1/200 year event, and the requirement was for protection against a 1/100 year event – but it did rectify earlier failings and the 2007 floods would undoubtedly have been worse for Cheltenham without it.

**CL, in response:**

- KS's question came up at the last committee;
- the council is a statutory body making a decision, but this does not prevent it from being liable for a breach of duty of care;
- the claimant would have to demonstrate that the extra flooding was due to the new development, and CBC breached its duty of care, for example, if it acted against the advice of the expert consultees;
- regarding neighbour to neighbour liability, there could be a possible claim here, but again it would have to be proved that the additional flooding was caused by the new development.

**MJC, in response:**

- PB has now been provided with a copy of the Local Plan and understands CP3;
- his comment and suggestion about traffic movement in and out of the site is a good one, and Condition 4 regarding trees can be strengthened to include traffic to and from the site. This could be agreed through the Chair (the Vice-Chair is not present at the meeting);
- regarding biodiversity and how it can be enhanced, would suggest that this is straying beyond the Committee's remit – it is a decision for the applicant;
- Members need to concentrate on the impact of the introduction of the clay soil; the site is not being built on. Habitats will be lost, but different ones will be created. The site will remain a spacious, open and bio-diverse garden.

**CN:** MJC has not answered his point regarding the formula used to calculate the required size of the storage tank. He has said it needs to be fit for purpose; this must mean it has to be the right size. Is he dismissing the evidence provided in the Brambles letter, including the photographs which demonstrate a difference in the levels of the pond greater than 300mm?

**MJC, in response:**

- no, he isn't dismissing it. The photos show that the garden gets flooded, but experts have stated that if the proposal is approved, it won't make this situation worse. Both the hydrologist's report and the borough engineer say the water table will compensate for the loss of capacity – this is what the water table does – and the storage tank is being introduced to mitigate for the loss of capacity in the pond in periods of very heavy rainfall. There is no reason to dispute the calculations of a professional hydrologist;
- the key thing to remember is that the proposal won't make the situation worse; the photographic evidence is not being dismissed, but officers are confident that the proposal will adequately mitigate the loss of pond capacity.

**CN:** MJC is misunderstanding his question. The Brambles letter of 18<sup>th</sup> September refers to more than the summer and winter levels of the lake and the difference of 300mm referred to by the hydrologist. The writer is not only concerned with flooding on his property. Are we to dismiss the evidence he has provided?

**AM:** MJC has stated that the reason the application has been made is due to the amount of soil and volume of groundwork needed to complete the landscaping work – nothing to do with hydrology – but there is nothing in the report about the volume of material expected to be used on the site, the number of vehicle movements required to bring it in, or the impact this might have on the traffic. Would have expected some comment from highways officers, even if simply to say there would not be a problem. Is worried about the argument around the previous deferral of the application pending a hydrologist's report to be provided by the applicant; the report cannot now be dismissed because it has been provided by the applicant. Members should either accept it or not. The lack of information was the reason why the application was deferred in the first place.

**PT:** following on from PB's comments, is there a wheel-washing condition?

**MJC, in response:**

- to CN, regarding the Brambles letter, this refers to periods of sustained wet weather. The hydrologist's report acknowledges the situation, accepts that Brambles has flooded on occasion, and talks about the reason why. The different ground levels are also a factor here, but the depression will act as a wet weather pond, a balancing pond when the existing pond spills its banks. We cannot get away from this happening, but the proposal seeks to ensure that the situation will not get any worse. The excess rainwater will be held in the tank/depression, as the pond holds it now – this is how the scheme is designed;
- the tank is necessary during periods of sustained wet weather, and will compensate for the loss of pond capacity at other times;
- to AM, it is a matter of judgement when engineering work crosses the line from being permitted development to requiring planning permission. There is no guidance based on X tons of soil; a judgement needs to be made, and the reason why it was felt planning permission should be required in this case was to do with the potential flood risk; if there was no pond on the site and the applicant wanted to bring large amounts of soil into his garden, it might not be required. Officers felt that in view of the large amounts of the soil being imported, it was right to consider the flood issue;
- regarding traffic to and from the site, it's agreed that the proposed works need permission but there was no need to consult with Highways officers on the matter – the amount of traffic resulting from the proposal will be no greater than from any other large household application. The current agreement is not to consult with Highways on applications such as this, as they do not have the resources to deal with them;
- to PT, if Members are concerned about wheel washing etc, we have in the past required a construction management scheme to be submitted, setting out how the site will be managed, where the vehicles will go in and out etc. If this would give Members comfort, it can be agreed with the Chair, but any more than this would be going beyond our remit;
- we don't have a figure for the actual amount of soil going into the site – we don't need it in order to understand the implications of the work – but Members do need to make a decision today.

**GB:** MS has moved to refuse, based on the Inspector's report, NPPF paragraphs 109 and 123, and Local Plan policies CP4(a) and CP3. If this move is lost, the application will be approved with the additional conditions suggested by MJC.

**Vote on MS's move to refuse on the Inspector's report, NPPF paragraphs 109 and 123, and Local Plan policies CP4(a) and CP3.**

8 in support

6 in objection

**REFUSE**



Application Number:	<b>14/01003/FUL</b>
Location:	<b>21 The Avenue, Charlton Kings, Cheltenham</b>
Proposal:	<b>Proposed two storey side extension, single storey side and rear extensions</b>
View:	<b>Yes</b>
Officer Recommendation:	<b>Permit</b>
Committee Decision:	<b>Permit</b>
Letters of Rep: 7	Update Report: <b>Officer comments; amended conditions; additional representation</b>

**EP** introduced the application as above, which was deferred at the August meeting to allow for amendments to the single-storey side extension to be made – this was the only issue for consideration. The applicant has now removed the double gable and replaced it with a single pitch roof. Officer recommendation is to permit.

### **Public Speaking:**

#### **Mr Richardson, on behalf of neighbours, in objection**

Represents the interests of the residents of No 20, who object to this proposal because of its impact on the character of the area and on their property. The proposal is not in keeping with SPD guidance, which states that the space between houses contributes to the character of the neighbourhood and highlights that a proposal which is too large for the site which may result in loss of light for neighbours, also stating that an extension shouldn't dominate or detract from the original building. The proposal will reduce the space between Nos 20 and 21 at second storey level, compounded because the proposal will extend beyond No 20 to the rear. It is excessive, overbearing and will have a seriously detrimental impact on the residential amenity of No 20. In addition, the proposed windows will look directly into the garden and back door of No 20, representing an unacceptable intrusion and loss of privacy. All those who have responded have objected to the application: No 22 refers to the overbearing nature of the proposal, invading the privacy of the neighbouring property, reducing their sunlight, and removing the separation between the houses. Does not consider the proposal has an acceptable relationship to the neighbouring property, as stated in the officer report, and notes that the officer goes on to confirm that the proposal will be overbearing and result in loss of direct sunlight to No 20. The Building Research Establishment guidelines, on which the SPD is based, state that overshadowing of gardens and patios is a valid reason to refuse an application; the applicant hasn't undertaken a BRE assessment, and the proposal should be refused, due to the overbearing nature of the two-storey extension and the resultant loss of sunlight to the neighbouring property. The SPD is only guidance and the decision rests on the facts of the case. As No 20 is over 20 years old, it has a legal Right to Light, which would be breached if this application is approved. The application should be refused, and any future applications should exclude two-storey extensions to the western side.

#### **Mr Sperring, applicant, in support**

Purchased 21 The Avenue earlier this year with the intention of making a home for his young family in the parish where he and his wife were married and where his wife grew up. The house was built in 1972 and has been little changed since then; it has three bedrooms and one bathroom, and needs an upgrade. Has revised his plans twice, following neighbour objections to the new garage on the east side of the property and on advice from planning officers who wanted the two-storey extension to be more subservient. These issues were addressed, and the case officer spoke with colleagues, and said she would recommend the new drawings for approval, as she has done. Has made major changes to the original plans to take account of concerns: removed new double garage, altered two-storey extension in a number of ways, set upstairs back from ground floor, set roofline down from the main house, removed the gable, and moved the extension back to make it subservient. Residents at Nos 20 and 22 have raised concerns about loss of light; No 22 is 20 metres away and will suffer no loss of light, and the proposal complies with the 45 degree light test with regard to No 20. The garden of No 20 is in its own shadow most of the day, and the proposed two-storey

extension at No 21 will in fact cast a shadow over its own garden, not the neighbour's. Following the last planning meeting, the plans have been revised again, and the roofline which was concerning Members has been replaced with a simple hipped roofline with a small window in the side elevation. The Avenue is characterised by large individual houses, which have had the chance to develop over many years, while No 21 has remained unchanged for more than 40 years. The proposals have been redesigned in consideration of neighbours' objections, will use matching brick and materials to the front and sides, and will improve the appearance of the house in keeping with others in the road. Having compromised twice, and with the planning officer's acceptance, strongly hopes the proposal will be approved today.

**Member debate:**

**GB:** reminded Members that it was the side elevation and double room extension that caused them concern last month.

**KS:** feels caught between a rock and a hard place here. Appreciates that the applicant has made changes to the elevation which most concerned Members last time – the scheme looks better for it and it is not as jarring as it was before – but still feels that the two-storey extension will have an adverse impact on neighbours, and is worried that we cannot pursue this, as the applicant has done what he was asked to do to address Members' worries. There are no planning reasons to refuse the scheme, but is still concerned about its design. It is difficult for councillors – they want to give a balanced view and always hope that issues such as this can be resolved before applications come to Planning Committee. Welcomes the changes.

**MS:** was happy with the scheme last time, and it happy with it this time.

**CN:** like KS, has outstanding concerns about the west elevation. Sorting the east side was the main concern at the last meeting, but not the only concern. Both KS and PB commented on the scheme at the previous meeting, raising issues including concern about the elevations, loss of space, impact on the view, and the different impression it will give to that side of The Avenue. Several issues of concern at the last meeting have not been addressed at all. Appreciates that the applicant needs to make changes, but this house has considerable impact, as the first house in The Avenue. Remains concerned and would like to see another change: the removal of the two levels on the west side and retention of just a garage there.

**PB:** finds this increasingly difficult. Members consider a scheme for 650 houses one month, and this proposal the next, which will have just as much impact on the neighbour. Has sympathy with the applicant – he has worked hard with the planning officers and changed his plans – but remains concerned as last time about the design and the impact on the neighbouring property. Realises that once the house is improved, two or three years down the line we may wonder what the fuss was about, and is not sure that there are any planning grounds on which to refuse the proposal. Would like an officer comment on the objector's reference to the 'right to light' in the SPD, but will struggle to refuse this application. However, notes that it is very close to the neighbouring property, and although it is only a comparatively small extension, the hours of operation in respect of building works could be critical here. The applicant will understandably want to get on with the work if permission is given, so would it be possible to condition the hours of building operations via a condition?

**EP, in response:**

- the point that must be remembered here is that the application was deferred for amendments to be made on the side extension, not because of concerns with the two-storey extension;
- to PB, the right to light is separate from planning legislation. The SPD has provision to assess the impact of a proposal on neighbouring property – this proposal complies with

the light test and will have no significant impact. This can therefore not be used as a refusal reason;

- to PB's suggestion of a condition to regulate hours of work, this is not normally needed on household applications of this type, although an informative is sometimes included – usually setting out working hours as 7.30am-6.00pm Monday to Friday, 8.00am-1.00pm Saturdays, and no work at all on Sundays and Bank Holidays. An informative such as this can be included with this proposal if Members wish.

**BF:** the officer has made it clear that the proposal complies with the SPD regarding light. The scheme wouldn't win a painting competition, but neither would the 1970s house as it stands. It is no 'grand design', but will support the application.

**PB:** informatives are only advisory and are worthless. CBC has huge problems with enforcing, due to lack of resources, but if we can make hours of operation a condition, why not do it? Proposes that we do.

**EP, in response:**

- officer advice is that this proposal doesn't require such a condition, and that such requirements would be onerous to the scale of the development proposed.

**PB:** it will have a significant impact on the neighbours, and a condition would be minor compensation for the neighbours, allowing them to enjoy their gardens in peace on Saturday afternoons and Sundays.

**GB:** notes there have been no moves to refuse, so proposes that Members first vote on PB's move to include a condition regulating hours of operation, if the proposal is permitted.

**Vote on PB's move to include a condition regulating hours of building operations, as hours detailed by EP (above)**

12 in support

1 in objection

1 abstention

**MOVE CARRIED**

**Vote on officer recommendation to permit with the additional condition regulating hours of building operations**

12 in support

1 in objection

1 abstention

**PERMIT with additional condition**

#### **43. 14/01374/FUL 1 Folly Lane**

Application Number: **14/01374/FUL**

Location: **1 Folly Lane, Cheltenham**

Proposal: **External works to existing dwelling frontages at numbers 1-13 and 15-52 Folly Lane and 121 St Paul's Road to include installation of bay windows, replacement windows, front garden and boundary wall alterations (varies across properties); installation of new concrete ball features, public art, tree planting and re-surfacing works at junction of Folly Lane and St Paul's Road**

View: **Yes**

Officer Recommendation: **Permit**

Committee Decision: **Permit**

Letters of Rep: **0** Update Report: **Officer comments; amendment to Condition 6**

**MJC** told Members that this application will build on work which has already taken place in St Paul's at Hudson and Manser Streets and Crabtree Place, where the frontages were remodelled, with bay windows and porches added. This proposal will continue in the same vane, to the junction with St Paul's Road. The officer recommendation is for approval, and the application is at Committee because the land is owned by the council.

**Public Speaking:**

None.

**Member debate:**

**PT:** has a quick question – the condition on the blue update seems to say that the houses will have to have open-plan fronts – is that right? The new houses in the area have railings and bins outside the front, which look horrible.

**KS:** will the next phase of this work be at Margaret Road? Why has it not been included?

**HM:** The scheme includes 18 concrete balls which are totally the wrong idea. The original application had planters; there were objections to these, due to the amount of maintenance required, and it was suggested these be replaced with groups of trees to soften the landscape. Concrete balls have the opposite effect, and will invite graffiti.

**PB:** used to represent this area 20 years ago, and AM has also been its councillor, so welcomes the significant improvements now being implemented. If trees are introduced, these should be semi-mature specimens – young saplings will struggle. Would also like to know if the hardstanding is permeable?

**BF:** agrees with PB that this is a great improvement to St Paul's as part of its regeneration scheme. To HM, pointed out that the concrete balls have a rough surface which will not be suitable for graffiti, but agrees that semi-mature trees would be a good idea if they could be introduced. This proposal will be a great improvement to St Paul's – it is good to see it coming to fruition.

**AM:** as mentioned by PB, has knowledge of this area, and welcomes the proposal which will be a big improvement. Suggests semi-mature trees would improve the arboreal attrition rate.

**MJC, in response:**

- to PT, explained that the condition is not suggesting an open-plan layout, but trying to prevent incremental changes to the scene, and ensure that the integrity of the proposal is not diluted with the addition of trellises, walls being replaced with railings etc, which would undo the good work the scheme seeks to achieve;
- to KS, doesn't know when or whether this scheme will extend to Margaret Road – that would be the logic, but that is up to CBH;
- to HM, the landscape architect certainly considered that groups of trees would be preferable, but trees and planters require maintenance, and trees in pavements can cause problems. The Highways Department would not support that option, hence the introduction of the balls;
- the concept of this scheme is to build a high-quality gateway, and although planting would be the preferred option, the County Council would remain resistant to this;
- the condition talks about understanding the size of the trees being planted; semi-mature trees cost a lot of money. Trees being used here would be comparable to Hudson and Manser Streets – not whips, but semi-mature, enough to have immediate impact. Beyond this is not necessary and wouldn't be imposed elsewhere. The cost would have an impact – the trees used on the ASDA site cost £20,000 each.

**BF:** has spoken to the County Council about trees in his ward and asked to use Highways local money to pay for their care and maintenance after new ones have been planted. Will use this scheme as a test case to see how it progresses.

**PT:** is in a similar position in her ward. Why can't the County Council allow CBC to include trees in this development? It is discriminatory – trees are put into private developments, but are needed even more in schemes such as this one.

**MJC, in response:**

- officers welcome the fact that trees are being proposed at all – the development should be commended for this. Feels we are getting bogged down on the tree issue, and should not lose sight of the overall improvement of the area;
- the County Council can influence what does or doesn't go into the scheme as it owns and maintains the road and will be required to maintain any trees or planting. In view of local government budget issues, it is not surprising that they want to keep their maintenance budget as low as possible;
- Members should remember that this scheme will be a significant improvement to the area, building on the award-winning work in Hudson and Manser Streets.

**RH:** asked how many trees are to be planted?

**MJC, in response:**

- confirmed that there will be five street trees.

**Vote on officer recommendation to permit**

14 in support – unanimous

**PERMIT**

**44. Any other items the Chairman determines urgent and requires a decision**

There were none.

Chairman

The meeting concluded at 7.50 pm