



## **Notice of a meeting of Planning Committee**

**Thursday, 18 September 2014  
6.00 pm**

<b>Membership</b>	
<b>Councillors:</b>	Garth Barnes (Chair), Jacky Fletcher (Vice-Chair), Paul Baker, Andrew Chard, Matt Babbage, Diggory Seacome, Flo Clucas, Bernard Fisher, Colin Hay, Helena McCloskey, Andrew McKinlay, Klara Sudbury, Pat Thornton and Malcolm Stennett

The Council has a substitution process and any substitutions will be announced at the meeting

## **Agenda**

- 1. APOLOGIES**
- 2. DECLARATIONS OF INTEREST**
- 3. PUBLIC QUESTIONS**
- 4. MINUTES OF LAST MEETING** (Pages 1 - 26)
- 5. PLANNING/LISTED BUILDING/CONSERVATION AREA  
CONSENT/ADVERTISEMENT APPLICATIONS AND TREE-  
RELATED APPLICATIONS**
  - a) **14/00505/FUL Avenue Lodge** (Pages 27 - 128)
  - b) **14/01003/FUL 21 The Avenue** (Pages 129 - 156)
  - c) **14/01374/FUL 1 Folly Lane** (Pages 157 - 164)
- 6. ANY OTHER ITEMS THE CHAIRMAN DETERMINES  
URGENT AND REQUIRES A DECISION**

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## Planning Committee

21<sup>st</sup> August 2014

### Present:

#### Members (14)

Councillors Barnes, Chair (GB); Fletcher, Vice-Chair (JF); Baker (PB); Babbage (MB); Chard (AC); Clucas (FC); Fisher (BF); McCloskey (HM); McKinlay (AM); Stennett (MS); Sudbury (KS); Thornton (PT).

**Substitutes:** Councillor Chris Coleman (CC)  
Councillor Chris Nelson (CN)

**Present as observer:** Councillor Whyborn.

#### Officers

Tracey Crews, Head of Planning (TC)  
Martin Chandler, Team Leader, Development Management (MJC)  
Michelle Payne, Planning Officer (MP)  
Chloe Smart, Planning Officer (CS)  
Wendy Tomlinson, Heritage and Conservation Officer (WT)  
Cheryl Lester, Legal Officer (CL)

### 1. Apologies

Councillors Colin Hay and Seacombe.

### 2. Declarations of interest

#### 14/01166/FUL 12 Everest Road

- (i) Councillor Coleman – personal and prejudicial – he is the applicant and will leave the Chamber for this debate. Attended Planning View on Tuesday but left the bus before the start of any discussion of this application, was not on site when Members visited, and rejoined the bus when the visit to this site was complete.
- (ii) Councillor McKinlay – personal but not prejudicial – knows the applicant.\*

\* Councillor Barnes noted that he and all Liberal Democrat Members would feel they have the same personal interest in this application.

#### 14/01270/CONDIT Unit 3, Maida Vale Business Centre

- (i) Councillor Sudbury – personal and prejudicial – used to live adjacent to the site, in the house now occupied by the main objector and public speaker tonight. Will speak in objection to the scheme and then leave the Chamber.
- (ii) Councillor Chard – personal but not prejudicial – is a customer of Cotswold Linen Care, the applicant.

### 3. Public Questions

There were none.

#### 4. Minutes of last meeting

- (i) Resolved, that the minutes of the meeting held on 17<sup>th</sup> July 2014 be approved and signed as a correct record *without* corrections.
- (ii) Resolved, that the minutes of the meeting held on 31<sup>st</sup> July 2014 be approved and signed as a correct record *without* corrections.

#### 5. Planning applications

Application Number: **14/01003/FUL**  
 Location: **21 The Avenue, Cheltenham**  
 Proposal: **Proposed two-storey side extension, single-storey side and rear extensions**  
 View: **Yes**  
 Officer Recommendation: **Permit**  
 Committee Decision: **Defer**  
 Letters of Rep: **7**      Update Report: **None**

**MJC** introduced the application as above. The application is at Committee at the request of Councillor Baker, in view of the proposed alterations to the property and its prominence in the road. The recommendation is to permit.

#### Public Speaking:

##### **Mr Stephen Clarke, neighbour, in objection**

Lives at No 22 The Avenue, and is also speaking on behalf of the residents at No 20 and other neighbours concerned about the gradual erosion of the character of The Avenue. Cheltenham's sense of place is created by its avenues of fine houses set amongst trees and gardens, with a rhythm and balance giving a sense of confidence and pride. The Avenue is one such, a mid-twentieth century planned estate, and entitled to the same protection given to 19<sup>th</sup> century estates, for future generations to enjoy. Has two objections to the proposal: the first is the poor design of the ground floor east elevation replacing the front door, disrespectful of its prominent central position in The Avenue. The Planning Officer called it 'idiosyncratic' which is usually a euphemism. The applicant says it could be screened with a hedge, but it is not a question of style as much as one of good design which planning polices aspire to. The design should be worthy of its position and reflect its surroundings. The second objection is to the two-storey extension on the west side adjacent to No. 20. The character, rhythm and balance of these detached houses must be taken into consideration, and in this part of The Avenue, houses are separated from their boundaries at second storey level by at least 3 metres. This proposal leaves no room to screen the wall and interrupts the rhythm and balance of separation. The recent extension at No 33 on the other corner was a smaller and better design, and Cheltenham's Local Plan refers to the town's spaciousness, derived from spaces at the front, back and sides of buildings. The residents of No 20 are distressed at the prospect of a featureless two-storey brick wall shading their terrace, and negotiation with the planning officer made this worse – the wall now proposed is about a third of the depth of their back garden. There has been no negotiation or compromise here, and the planning officer does not appear to have paid due regard to the impact of the development, including the ground floor study window overlooking the garden of No 20.

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

Purchased 21 The Avenue earlier this year with the intention of making a home for his family in the parish where his wife grew up. Sought pre-app advice on the draft plans from the planning office; the indication was that plans would be approved. 21 The Avenue was built in 1972 and has been little changed since then; it has three bedrooms and one bathroom, and needs upgrading for modern family

life. The original proposal was for a new double garage, conversion of current garage to a two-storey extension, and creation of single-storey extension across the rear of the property. There were neighbour objections, mostly to the new garage of the east side of the property, and from planning officers who wanted 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 has been 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 20metres 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. 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 plans are sympathetic to the current style of the house, 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.

**Member debate:**

**PB:** asked for this application to come to Planning Committee as some councillors have never been down this quiet cul-de-sac and do not realise what a special road it is – beautifully spaced, open, with houses set back from the road. Has sympathy with the applicant, as something clearly needs to be done with the house, but it is a hugely prominent corner plot, and he cannot understand the design of the extension from the east side. Can this be classified as good design? If so, doesn't know what the objective is. Is concerned by the massing and scale of the side elevations, and the gaps between the houses – these are a feature of the road; how would we consider an application to make other garages into a two-storey side extension, which would surely detract from the attractiveness of the road? Has big concerns about the design and is tempted to move to refuse on design grounds, but if the scheme is permitted, there are two windows which overlook the neighbouring garden, and these would be better if opaque.

**MS:** agrees with PB inasmuch that this area is a unique place, characterised by houses of different design. This proposal offers another different design and, as such, enhances the house. It is a little bit unusual with its up and down elevation, but can see nothing wrong with this – there are lots of different houses in The Avenue. Supports the officer recommendation to permit.

**CN:** has a question: a couple of the objectors talked about the extension being two times the size of the house – is this mathematically correct? Agrees with PB – knows the area well, and considers it beautiful and unique. Has sympathy with the applicant because this house is at such a critical point of the street – on the corner, in the centre of the development, forming a fundamental part of The Avenue – but has problems with both sides of the extension. The east side is a strange design and will look very odd to anyone walking along The Avenue. The two-storey extension on the other side is going to obscure the view, and undermine the continuity of the design of The Avenue. Found the site visit invaluable, and is uncomfortable with what is being proposed.

**MJC, in response:**

- the issues boil down to the prominence of the site – which is why this application is at Committee;
- the east elevation has a double gable roof pitch; officers thought long and hard about whether this is appropriate, bearing in mind that the drawings don't always help or offer oblique views of the proposal;

- the projection of the side extension is narrow - only 1.4m – and this will be dominated by the two-storey mass behind it. Officers feel this will be an acceptable addition to the property – prominent but not harmful;
- it's true to say that the area has special characteristics, but the proposal is subservient and respectful and the gap between properties is maintained;
- as MS said, the road has special qualities, one of which is variety of properties, and the different widths of the spaces between them;
- PB asked about future applications to build over garages, but the common scenario in built-up areas is a first come, first served policy – although this is normally relevant in more built-up areas than this. Could the neighbour on the other side explore the idea of extending – this would be for future consideration, and is the approach used throughout the borough;
- regarding the windows on the side – it is a fair comment that these should be fitted with obscure glass. The windows serve a bathroom and a study. Would support a condition to stipulate obscure glazing if they committee wants to add it.

**BF:** how much of this proposed extension would be allowed under permitted development rights? The house has a massive garden and doesn't front to the road. Wonders if the double pitch roof has Velux windows? Agrees that the design is slightly strange, but as MS says, all the houses in the road are different, and different doesn't equal wrong. As this is the biggest plot on The Avenue, is quite glad that the applicant didn't want to build a second house in the garden. With regard to the house opposite, notes that houses are much closer together along from there, and also that house design and the gaps between vary, because people want more space, more bathrooms and so on. The design is not bad, even if it would not be his choice; the front door is acceptable where it is – not in the middle but that's OK. On balance, the proposal is not too bad.

**PT:** knows The Avenue extremely well, having been a regular visitor to a friend there, and thinks that one of the big problems here is that the house looks rather stark, with not much in the way of trees. On the left-hand side of The Avenue, there are big old houses masked by trees, offering shade and shadow all the way down; this house does not have the biggest garden. However, doesn't think there is anything wrong with this, and will be supporting it.

**CN:** would like an answer to his question, regarding whether the extension actually in doubling the size of the house. Also, adding to issues raised by BF, has been studying the plan, and notes that only a small extension on the back of No 33 is shown – noted on Planning View that work on the new extension there is in progress. This property is in a prime location, which is unfortunate for the applicant. Has the impression that planning officers expressed a preference for a softer look for the sloped roof on the east side of the design – is this correct?

**MJC, in response:**

- apologies for missing the question earlier. It is not correct to consider extensions mathematically. Officers ask whether a proposed extension is respectful, and whether it is subservient to the existing building. This extension is large but does not double the size of the property;
- the proposal has been assessed against policy and the relevant SPD on residential extensions, and is considered acceptable. It is not a mathematical calculation, but taking into account the buildings, the locality, and whether it is respectful, officers consider that it is OK;
- regarding the extension at 33 The Avenue, there a two-storey extension being built there which couldn't see from garden of application site;
- regarding the different treatment of the eastern elevation, when negotiating with the applicant, officers suggested an alternative treatment but this was not the only way to do it – if the applicant does not agree, this is not a reason to refuse planning permission. As Rob Garnham used to say – deciding planning applications is not a question of personal preference – we must consider everything against policy;

- to BF's comments about PD rights, in this location, the applicant couldn't extend to the side without planning permission. As it is a detached house, it could be extended by 4 metres to the rear, but not at two storeys – so not much of what is proposed could be done without planning permission;
- finally, in response to BF's question, there are no roof lights in the double pitch roof – this is the applicant's preference.

**CN:** is MJC saying the size of the extension is not important? Is bemused. The original proposal was rejected as being too big so the size is clearly an issue. Has been looking at the regulations, including Policy CP7, and understands that size can be an issue when considering planning applications.

**MJC, in response:**

- is not going to say that size doesn't matter, but policy is concerned with ensuring that what is proposed is truly subservient to the existing building;
- officers felt that the initial proposal was too much and not in line with policy, and therefore asked the applicant to scale it down.

**GB:** does PB want to move to refuse?

**PB:** considers poor design a suitable reason, bearing in mind the prominence of this site in the street scene. Appreciates that difference is OK, but the design has to have some merit too. Being different is one thing, but this proposal is horrible and could be better. Moves to refuse on design grounds.

**GB:** reiterated that a condition for obscure glass in the side windows should be included if the proposal is permitted.

**KS:** wasn't sure if she was going to speak, but has a few comments to make after listening to other Members. There are two issues. Has great sympathy with the applicants - a nice family looking to develop this house to suit their needs - but we need to get all applications right and this one isn't quite at that stage yet. Its unusual appearance on the side elevation will alter the look of the street. The house at the moment is no oil painting but at least it fits in. This solution is very complicated and will harm the appearance and character of the area. Is also concerned about the impact the two-storey extension will have on the next-door-neighbour's property. Understands that a light test has been done but can see that the extension will be overbearing – can officers add to this? Has sympathy for the applicants and hopes that they can come forward with something which will work better on this large plot, but it would be wrong for the Committee to approve this scheme. The design is too complicated. If it was not a corner plot, may be able to grin and bear it, but in this prominent position, will support the move to refuse.

**JF:** as the design seems to be the problem, how about a deferral – go back to the applicants to see if they can come up with something more sympathetic. Would hate to refuse the scheme which has some good points and some awful – all in the eye of the beholder – before going back to the applicants and giving them the chance to come back to the Committee with something it can accept.

**MJC, in response:**

- regarding JF's suggestion, officers have had discussions with the applicants already and made suggestions; the proposal being considered tonight is what the applicants want to build. They have already made concessions, and a deferral won't achieve a great deal. Members should make a decision on what is before them;
- regarding loss of amenity, the report states that the proposal passes the light test comfortably and won't have an unacceptable impact on the neighbouring amenity space. In relatively built-up areas, this type of scenario is normal;

- this week, to officers' surprise, an appeal has been allowed elsewhere for a two-storey flank wall extension with a much greater impact on neighbouring amenity. Cannot recommend that Members defer this proposal.

**AC:** thinks deferral would be a good idea. Also has sympathy with the applicant – the house is too small for the plot but the side elevation is ugly. This will not only be viewed obliquely – it is a junction – and any alterations should be characterful and add to the house. What is proposed does not.

**CN:** if that decision is deferred, would that avoid the danger of an appeal?

**MJC, in response:**

- not necessarily – this would be up to the applicants. They may choose to do nothing and come back to committee next month with the same application.

**GB:** does PB still want to move to refuse on design grounds? Anything else?

**PB:** no, just design grounds. Is not against the idea of deferral; the applicant is here and has heard what Members have to say – could come back with a different design next month. Isn't sure what to do.

**CL, in response:**

- planning committee protocol states that if Members vote on the move to refuse and it is lost, permission is automatically granted. Therefore, if Members want to consider deferring their decision, they should vote on a move to defer first; if this is lost, they can then vote on a move to refuse if still wished.

**PB:** will agree to move to defer first.

**Vote on PB's move to defer**

8 in support

6 in objection

**DEFER**

Application Number:	<b>14/01032/FUL</b>
Location:	<b>281 Hatherley Road, Cheltenham</b>
Proposal:	<b>Erection of two storey side extension</b>
View:	<b>Yes</b>
Officer Recommendation:	<b>Permit</b>
Committee Decision:	<b>Permit</b>
Letters of Rep:	<b>4</b>
Update Report:	<b>None</b>

**CS** introduced the application as above, and said there have been four letters of objection. The recommendation is to permit subject to the conditions listed in the report.

**Public Speaking:**

None.

**Member debate:**

None.

**Vote on officer recommendation to permit**

13 in support

1 abstention

**PERMIT**

Application Number:	<b>14/01070/FUL</b>
Location:	<b>10 Lilac Close, Up Hatherley, Cheltenham</b>
Proposal:	<b>Erection of single storey rear extension</b>
View:	<b>Yes</b>
Officer Recommendation:	<b>Permit</b>
Committee Decision:	<b>Permit</b>
Letters of Rep:	<b>2</b>
Update Report:	<b>None</b>

**MJC** introduced the application, which is at Committee at the request of Councillor Regan, due to concerns that it may be potentially overbearing on neighbouring property, impact on drainage, and cause loss of light. The recommendation is to approve.

**Public Speaking:**

None.

**Member debate:**

None.

**Vote on officer recommendation to permit**

12 in support

2 abstentions

**PERMIT**

Application Number:	<b>14/01099/COU</b>
Location:	<b>Five Oaks, 81A New Barn Lane, Cheltenham</b>
Proposal:	<b>Retrospective change of use from ancillary garage to use as holiday let accommodation for not more than 42 weeks in any calendar year</b>
View:	<b>Yes</b>
Officer Recommendation:	<b>Permit</b>
Committee Decision:	<b>Permit</b>
Letters of Rep:	<b>2</b>
Update Report:	<b>Officer comments and conditions</b>

**CS** explained that this garage building is used in conjunction with 81A New Barn Lane, and this is a retrospective planning application to allow the first floor to be used as holiday accommodation as described above. There have been two representations from neighbours, objecting to the potential for increased noise and disturbance; the parish council has also objected on the grounds of inappropriate development. Officer recommendation is to permit.

**GB:** checked that Members have read the blue update.

**Public Speaking:**

**Mr Harrison, agent, in support**

Considers this application being brought to Committee an unusual situation – the officer recommends that permission be granted, but the application is here because the Parish Council has objected to the ‘inappropriate’ development, without giving any specific reason; in his opinion, not an appropriate way to object. If it were not for this objection, the application would have been decided under delegated powers. The greenbelt boundary in this part of New Barn Lane ebbs and flows, and the openness of the greenbelt will not be affected by this proposal – the building already has planning permission, and using it as a holiday let doesn’t affect the features of the site. Openness is not an issue, and the proposal falls in with guidance in the Local Plan and the NPPF. On practical issues, the potential disturbance of an occasional vehicle will be insignificant; there will be no additional visual impact on the amenity of neighbours, and no alterations to the building itself. The windows will allow daylight into the space and are appropriate. The proposed use is sustainable - the site is close to the Park and Ride, which is intended for visitors and in line with policy, and will boost the local economy, with most visitors attending race meetings at Cheltenham Racecourse and using the Park and Ride to go to town. The property will be let for 42 weeks a year, and a condition sets out that it cannot be let to any one occupant for more than one month in any 12-month period. The proposal is modest and will have no impact on the neighbour.

**Member debate:**

**MS:** the report is a little on the light side. Members who were on Planning Committee when the original application to build a garage was approved in 2005 – PT, BF, GB, MS – will remember a lengthy discussion about amenity issues arising from putting up a building in this location, and the concerns of the neighbour. After the application was approved, the neighbour went to the Ombudsman, claiming that his amenity had suffered as a result of this application, and the Ombudsman agreed. It cost CBC £10k in compensation for the neighbour’s loss of amenity. The conclusion was that the garage shouldn’t be used for anything else apart from storage, but it obviously has been used as holiday accommodation – this is a going concern, advertised on the internet. If this is now given approval, the neighbour’s amenity is likely to be further disturbed, with cars coming back at night, loud voices etc, and he could go to the Ombudsman again and incur more costs for the ratepayers’ money. On this basis, moves to refuse the application – it doesn’t comply with the conditions of the 2005 application and is contrary to CP4 in that it will harm the amenity of the neighbour.

**PT:** if the Ombudsman instructed CBC to pay compensation, why is the garage still there? Why was it not taken down?

**BF:** MS, PT and BF – long-serving planning committee members – remember this case. It doesn’t say in the report that the previous case was looked at by the Ombudsman but it should do – it is relevant to what is being considered tonight.

**CS, in response:**

- paragraph 6.20 of the report refers to ‘other considerations’ which includes the Ombudsman case;
- the Ombudsman looks at the process by which a decision is arrived at, not at the decision itself. It is therefore not relevant to consideration of this application. Current local plan policies and the NPPF are the relevant considerations here. The Ombudsman case is mentioned in the report at Paragraph 6.21.

**AC:** it isn’t up to officers to decide what Members should know or not know. This information should have been revealed, and finds it objectionable that it was not.



**PT:** agrees. Members should also know about the £10k, otherwise they will be working blind – they cannot all remember all the applications they have considered.

**HM:** notes that this is a retrospective planning application. Was not on planning view, but wonders how long this building has been used as a holiday let? The neighbour doesn't talk about noise, cars etc in reference to the recent unauthorised use of the garage.

**MJC, in response:**

- Members should not get distracted by the Ombudsman issue – it is historic and the reasons behind it are no longer relevant;
- in the 1997 greenbelt boundary review, the line was drawn incorrectly and this site was shown as being outside the greenbelt;
- two planning applications were submitted at that time, one for a house and one for a garage. The neighbour complained, and pointed out that the greenbelt change had been carried out incorrectly – a genuine mistake – but during that window of opportunity planning permission was granted for the house and garage. The site was, erroneously, not shown as being in the greenbelt. This is why the Ombudsman was involved;
- the garage has planning permission, and the Ombudsman was not looking at the merits of the case but at how the decision was reached. The garage is therefore an authorised structure, and was not required to be removed;
- if planning permission is granted, the objector will need to go through the 3-stage process of internal complaints before going to the Ombudsman. Procedurally, the application has been handled correctly, and Members should determine it on its merits;
- the Ombudsman case is part of the history of this site but not relevant to the determination of this application – it is important to stress this.

**CS, in response:**

- the holiday let use was brought to the attention of the enforcement team about a year ago, but until then, its use was sporadic;
- it is at Planning Committee now to regularise that use as a holiday let, not as a permanent let.

**GB:** are Members ready to vote on MS's move to refuse on CP4(a) and breach of earlier condition to use the area only for storage?

**PT:** if we agree this as the officer recommends, are we putting ourselves at risk of having to pay more compensation of any kind for any reason?

**CL, in response:**

- obviously, the reasons why a case would be taken to the Ombudsman are varied, and if there was some other reason why the decision-making was considered procedurally unsound, then it could be;
- for example, not taking into account the amenity of the neighbour, but provided members bear this in mind when making their decision so that it has been taken into consideration, this then would not be a ground
- .

**Vote on MS's move to refuse on CP4(a)**

5 in support

9 in objection

**PERMIT**

Application Number:	14/01166/FUL
Location:	12 Everest Road, Cheltenham
Proposal:	Erection of first floor rear extension and part two storey/single storey side extension
View:	Yes
Officer Recommendation:	Permit
Committee Decision:	Permit
Letters of Rep:	0
Update Report:	None

**Councillor Coleman left the Chamber for the duration of this item.**

**CS** introduced this application to extend a semi-detached property in Everest Road. There have been no objections from neighbours, and it is at Committee because the applicant is Councillor Coleman.

**Public Speaking:**

None.

**Member debate:**

None.

**Vote on officer recommendation to permit**

13 in support - unanimous

**PERMIT**

Application Number:	14/01171/FUL
Location:	Roundabout, Bath Road, Cheltenham
Proposal:	Proposed decoration of 19 utility boxes within the Bath Road area and decoration of existing roundabout (junction of Bath Road, Leckhampton Road and Shurdington Road).
View:	Yes
Officer Recommendation:	Permit
Committee Decision:	Permit
Letters of Rep:	4
Update Report:	None

**CS** introduced the application, which has been made by Connect Streets, a community scheme set up to improve Bath Road. Officers have been involved with the scheme. There have been four letters of support, and the officer recommendation is to permit, subject to conditions.

**Public Speaking:**

None.

**Member debate:**

**JF:** this will brighten up Bath Road – it would be wonderful if it could be extended into the town centre, if shop owners get together it could really make a difference.

**AC:** agrees with JF – this is a brilliant idea. Would love to see it extended, and if it doesn't work out, the boxes can always be painted dark green again. We should give it a bash.

**BF:** the boxes will look good for a while, but is thinking about the Charlie Chaplin artwork on the railway bridge. The boxes are green for a reason – we're not supposed to notice them – but when painted they will stand out like a sore thumb. This is OK when they're newly painted but in five years' time?

**CN:** agrees with JF and AC. The scheme is excellent, innovative and well thought through, and the applicants have worked closely with local communities. Believes the artwork will be painted with anti-graffiti paint to protect it. Agrees it would be nice to extend the idea across town.

**Vote on officer recommendation to permit**

12 in support

2 abstentions

**PERMIT**

Application Number:	<b>14/01203/COU</b>
Location:	<b>40 Newton Road, Cheltenham</b>
Proposal:	<b>Change of use from residential dwelling to House in Multiple Occupation (HMO) comprising 8 letting rooms</b>
View:	<b>Yes</b>
Officer Recommendation:	<b>Permit</b>
Committee Decision:	<b>Permit</b>
Letters of Rep:	<b>3</b>
Update Report:	<b>Officer comments</b>

**MJC** introduced this change of use application. The house is currently occupied by four tenants. Planning permission would not be needed to increase this to six. The application is at Committee at the request of Councillor Wheeler who is concerned about the intensity of use and additional cars in the area. The officer recommendation is to permit

**GB:** checked that Members have read the blue update.

**Public Speaking:**

[See below]

**Member debate:**

**BF:** if eight people live in this house, all going to work in different directions with cars, bikes, pushbikes etc, there is going to be very little space outside for parking. These are average-sized terraced houses and with eight adults living together, it's going to be very crowded. The rooms are small, the sitting room is very small. Tenants are likely to be students, working men, professionals, civil servants – the size of the rooms is very small to accommodate eight people. Realises this is not necessarily something that should be considered from a planning point of view, but has safety concerns about the cramped space.

**CN:** also has concerns, which were not apparent on reading the report but became so on planning view. Agrees with BF's comments. The report seems to indicate that five people will share one bathroom – is this realistic, especially if they are all working people needing to leave the house at a

similar time? Understands this type of issue is addressed in the HMO side of things after planning applications have been granted, but with no sinks in the bedrooms, there is going to be a lot of pressure on the bathrooms. The applicants have built two rooms on top of the house and then applied for planning permission. Why did they not apply for planning permission first? Comments from Environmental Health officers have been included in the report, but does the proposal deal adequately with the EH officer's concerns? Also notes that the report states that the road is wide. There were not many parked cars on planning view, but imagines that parking is probably quite a problem at night. The property is also close to a sharp bend, giving rise to safety issues. There are four people living in the house now and this application seeks to double the number of occupants.

**AC:** shares BF's concerns about safety, particularly in relation to the fire escape. Raised this question on planning view, and how easily people could get from the top floor to the ground floor. Realises this is part of the HMO process, but MJC said he would look at this and come back to Members. Remains concerned about safety.

**JF:** there are currently four parking spaces on the site – feels this is adequate and that parking will not be a problem. However, is worried about the two bathrooms serving eight people. There are not even any washbasins in the rooms. Will this issue be dealt with through the HMO process after planning permission is granted if Members have highlighted it? Also raised the question of safety on planning view – how would people get down if there were a fire? This is a problem. MJC was going to look into it.

**FC:** can officers clarify the size of the smaller rooms as shown on the plan? Are they just bedrooms or are they bed-sitting rooms with kitchen facilities? If so, they are extraordinarily small.

**MJC, in response:**

- has spoken to colleagues in the housing standards team, and they have confirmed that they are in discussion with the applicants to grant a licence. They have indicated that there are no concerns with the property regarding space standards and the number of people;
- to FC, the small rooms are 3.9m x 2.5m, and are bedrooms, not bed-sitting rooms;
- in an HMO, people share communal living space - kitchen, bathroom and living rooms – this is normal;
- regarding space, Members need to be careful how they approach this as there is separate legislation to set out what is appropriate and what not;
- Members need to consider the use – does the building meet the new needs with regard to bin and cycle storage, car parking, how it sits in the locality?;
- bin storage is enclosed and adequate;
- the applicants have had a parking survey carried out and the County Council is satisfied with this; there were spaces in the street at 4.45pm and 7.30pm, within a short distance of the house;
- regarding wash-basins in bedrooms, this is not a planning issue – there is separate legislation to deal with this. Two bathrooms for eight people is OK – Members should not impose their own standards on other people;
- regarding the fire escape and dormer windows, these were discussed with the housing team, and also comes under separate legislation – feels uncomfortable when Planning Committee stray into discussion of this sort of issue;
- the dormer windows come under permitted development and do not need planning permission.

**PT:** with one kitchen between eight residents, and the bedrooms at the top some distance away, imagines residents might be persuaded to have a picnic stove or something similar in their rooms. Realises that this is straying into other territory but Members want to be reassured about their concerns and are not being.

**MS:** wouldn't want to live in this house but is sure that many people would find it suitable and useful. We always talk about the need for affordable places to live and this provides eight affordable places. We are straying into territory outside planning regulations, and have already been told that six people can live there without planning permission. The application is only asking for two more. Members should support it.

**GB:** reiterates officer's comments, and reminds Members to be careful they are not chasing hares.

**CN:** the EH officer is an expert on noise etc, and in his report, queries whether new windows are to be installed to mitigate potential noise issues, but later in the report, this advice is dismissed by officers without adequate consideration.

**MJC, in response:**

- planning permission would not be needed for six people to occupy this house, so the additional impact of two extra people is what needs to be taken into consideration tonight;
- the EH officer did not request that the applicant made the suggested changes before being permitted to go forward. Considering that two additional tenants could live in the house without planning permission, it would be difficult to justify a requirement of additional windows;
- to PT, MS has more or less answered her question. Issues she raised come under building control and HMO legislation – Members must consider the application on its merits and assess it against planning policy.

**KS:** this is a difficult application, and an example of problem which isn't going to go away around the town or the country, due to changes in the welfare system and young people being unable to afford a home of their own. This puts us in a difficult position - there will be eight people living in a family home, with two bathrooms, and there could be substantial impact on neighbouring amenity, and yet this sort of accommodation is clearly needed. We are between a rock and a hard place; these are not the living conditions she would like for the people of Cheltenham, but if there are people who can only afford this, it is difficult to refuse.

*[Mr Sawers asking when he would get to speak]*

**GB:** will allow Mr Sawers, the applicant, to speak at this stage as, due to a misunderstanding, although he had made contact to be registered, this had not been recorded.

**Public Speaker**

**Mr Sawers, applicant, in support**

Would like to clarify a couple of points of fact. There are four bathrooms in the property, not two as has been discussed. The top floor was converted many years ago, and complies with building regulations. There have been no external changes. In two weeks of marketing, there have been seven of the eight rooms have been let, demonstrating a clear demand for this kind of accommodation. The property meets HMO safety standards – the applicant has been working closely with the HMO licensing team on matters of fire regulations, size of room, number of bathrooms etc. There are two shower rooms on the top floor, one on the first floor, and one on the ground floor. There are four toilets and wash basins. The property was previously a six-bedroomed house – four double and two single – and therefore capable of housing 10 adults.

**JF:** are the plans on show not the present ones? Cannot see the four shower rooms on the drawings.

**BF:** the drawings on the wall show them, can see shower room on the top floor, if you look very closely.

**MJC, in response:**

- apologies to the applicant for not being in possession of all the facts. Unfortunately the case officer is unable to be present at the meeting tonight – she has visited the site and could have answered Members’ questions more fully. There was no access to the building on Planning View, and MJC has not been in the building;
- having examined the plans more strenuously, can see two en suite shower rooms – apologies to the applicant for overlooking these previously;
- so the property has two main bathrooms and two en suite facilities on the top floor. This is a better situation than he had anticipated.

**Vote on officer recommendation to permit**

9 in support

1 in objection

4 abstentions

**PERMIT**

Application Number:	<b>14/01226/FUL</b>
Location:	<b>16 Greenhills Road, Charlton Kings, Cheltenham</b>
Proposal:	<b>Erection of a single dwelling to the rear of 16 Greenhills Road and associated access drive, following demolition of existing attached garage and re-instatement of integral garage within existing dwelling (revised scheme following refusal of planning permission ref. 14/00660/FUL)</b>
View:	<b>Yes</b>
Officer Recommendation:	<b>Permit</b>
Committee Decision:	<b>Permit</b>
Letters of Rep:	<b>9</b>
Update Report:	<b>None</b>

**MP** introduced the application as above. It is a revised application, the previous scheme being refused on design grounds. The current proposal is exactly the same as the dwelling built to the rear of 17 Greenhills Road. It is at Planning Committee due to objection from Parish Council as over-development of the site, and also at the request of Councillors Baker and Smith, due to residents’ concerns. Officer recommendation is to permit.

**Public Speaking:**

**Mr Borrie, neighbour, in objection**

The previous application was rejected as its scale, form and massing would constitute over development, fail to complement or respect the neighbouring development, and fail to be subservient to the existing dwelling. None of these issues have been addressed with this new application. The NPPF discourages inappropriate development of residential gardens, which this is. Cheltenham’s SPD on garden land developments gives clear guidance as to what is or isn’t acceptable, stating that single tandem development will not normally be accepted, and a rear garden development should be of a reduced scale compared to the frontage houses – yet the proposed house has 2,400 sq feet, comparable to existing houses on that side of Greenhills Road. Local Plan policy CP7 requires development to complement and respect neighbouring development and the character of the locality, but the proposed house will result in significant loss of green space, totally out of character with the street scene and at odds with the urban grain. It will have a significant effect on neighbouring properties, leading the loss of privacy, a compromise on security due to the new driveway providing

access to rear gardens, and visual impact on a number of surrounding homes. If every property in the road undertook tandem development, it would totally change the character of the neighbourhood and quality of life and amenities of residents. There would be no large gardens, less green space, and more flood risk. Permission has been granted for a similar development at No 17 Greenhills Road, despite it not meeting planning guidelines, but there is not requirement to grant permission for this more intrusive one, with only one parking space and 3 metres closer to the northern boundary. It seems odd that No 16 should be allowed to build at the extreme north end of its property because the owners of 7/8 The Avenue have not built in their back gardens.

**Mr David Jones, of Evans Jones, in support**

This application follows the Committee's decision to refuse planning permission for a dwelling on the site in June, on the grounds that the contemporary design did not complement or respect the neighbouring development and was not subservient. The revised proposal is identical to that approved at 17 Greenhills Road last October. Policies have not changed since then, so that consent provides a compelling recent precedent – as Members know, planning authorities have a duty to be consistent. In response to the refusal reasons and Members' comments, the revised proposal seeks consent for a single dwelling of traditional design, identical to the one approved at No 17 and similar to those approved at Haymans Close and Charlton Gardens. It has the same floor area as the dwelling approved next door, and is approximately one third smaller than the dwelling fronting Greenhills Road. In response to neighbours' objection that this is an over development, garden developments have been permitted close to the site, and the principle of developing in rear gardens has been clearly established; this proposal compares in massing, height and urban grain with that previously consented by the authority. Regarding impact on privacy, the proposal is identical to that approved at 17 Greenhills Road, and the officer, having noted residents' concerns, considers it to be in accordance with policy CP4. No highway objection has been raised, and the proposed access has been designed to match that previously approved at No 17. In summary, the revised proposal has addressed Members' concerns, reduced the physical bulk of the proposal, and reverted to traditional design. It is subservient to the houses fronting Greenhills Road, and takes design references from new houses in Haymans Close and Charlton Gardens. National and local policy does not seek to prevent appropriate development on garden sites, and this is a sustainable development, which complies with both local and national planning policy.

**Member debate:**

**KS:** we are being told that this is an identical site to the one next door at No. 17. Is the boundary to the same level as the site next door? Was No. 17 on the same size garden as this, or was it smaller?

**CN:** has problems with this application. It seemed reasonable at first, but thinking about the report, the site, planning view, and the discussions about 21 The Avenue, is not so sure. The area is rather unique, and although Planning Committee agreed to the dwelling next door at No.17 which could be seen as creating a precedent, was brought up to believe that two wrongs don't make a right – and wonders if the previous decision was correct. If what was agreed for No 17 is agreed for No 16, what will happen in the future? Looking at the size of Greenhills Road gardens on the plans, it is clear that the lines converge from west to east. If each house made a similar application, at what point would it be decided that the garden is not big enough for a house such as this? Questions the wisdom of this precedent. The Architects' Panel raised the issue of the roof; we are told that the proposals at No 17 and No 16 are exactly the same, but are the roofs the same? It seems like a big building with a big roof. The report talks about the 2002 recommendation for the preparation of a development brief for this area, which was not progressed – why not? There is a comment in the report that CBC currently cannot demonstrate a 5-year housing land supply, but is this still the case, bearing in mind the proposed housing provision in the JCS? This proposal is a tandem development which is not

permissible, according to the SPD on garden land development. Why have these rules not been applied at No17? There are some unusual conditions relating to parking and turning – are these included to justify going against policy? There is mention in one of the objections of a covenant – what is the legal position on this? Regarding traffic, knows this road well, and that traffic along it can be busy. If a whole load of houses is added over the years, this will increase the number of cars. With the width of pavements, cyclists etc, this is an accident waiting to happen, and the more houses, the greater the risk that this will happen.

**MP, in response:**

- the proposed dwelling is identical in every way to the one permitted next door at No 17 – there have been no changes;
- regarding the proposed development brief in 2002, Members decided they did not want to take the idea any further;
- to CN's question about why the dwelling was permitted at No 17 against advice in the SPD – the SPD is not intended to preclude all development, as explained at 6.5.6 of the report. In this case, because backland development has already taken place, the character of the area has altered and this will not be a stand-alone tandem dwelling;
- highway safety is also dealt with in the report. Highways officers have not commented on this proposal, but it is covered by standard highways advice; the revised plan shows that access will be in line with the comments made for No 17;
- covenants are not a material consideration to planning applications;
- the sites – No 16 and No 17 – are not exactly the same size, but are certainly comparable.

**KS:** when the application was at Committee the last time, had a problem with its bulk, scale and mass regarding the size of the site. This is better – but how does it compare to the other side, in case this makes a difference?

**PB:** is looking at the location of the building within the plot. The proposed new house is substantial yet appears to have no amenity space and no garden. It is also North facing – is this good design? Is opposed to this scheme on principle, and has difficulty with the existing permissions. It would be useful to know where the new dwelling at No 17 will be in relation to this.

**MP, in response:**

- regarding amenity space – this compares with amenity space of similar properties in Haymans Close and at No 17. It is only slightly smaller. There are no set standards to regulate this.

**PB:** the properties in Haymans Close are smaller – there will be four or five people living here. Asks again, is this good design?

**Vote on officer recommendation to permit**

9 in support

5 in objection

**PERMIT**

Application Number: **14/01270/CONDIT**  
 Location: **Unit 3, Maida Vale Business Centre, Maida Vale Road**  
 Proposal: **Variation of condition 2 (hours of business) and condition 3 (hours of loading/unloading) on planning permission ref. 02/00813/CONDIT granted 25th July 2002 to allow the premises to be used between the hours of 7.00am and 7.00pm Monday to Friday, and 7.00am and 3.00pm on Saturday, Sunday and Bank Holidays**



View:	<b>Yes</b>
Officer Recommendation:	<b>Permit</b>
Committee Decision:	<b>Refuse</b>
Letters of Rep:	<b>10</b>
Update Report:	<b>Officer comments; additional representation</b>

**MP** introduced this application to vary two conditions on this business unit which has been used as a commercial laundry for a number of years. The applicant is seeking to increase the hours of operation. The application is at Planning Committee at the request of Councillor Sudbury, who is concerned about loss of amenity. The recommendation is to permit, subject to revised conditions.

### **Public Speaking:**

#### **Ms Wiseman, neighbour, in objection**

With every fibre of her body, urges Members to refuse this application. This is a mixed residential and business area. Nothing has changed since the site was developed in 2000 in terms of residents requiring less amenity, or since 2002 when this unit's working hours were increased by 11%. If anything, amenity should be more valued now than it was 14 years ago, with the pace of life as it is. Neighbours simply want to keep things as they are – no increase in noise due to increased hours; peace and quiet on summers' evenings, Saturday afternoons, Sundays and Bank Holidays. Is not a complainer without good reason. Members on Planning View did not experience the full noise from the unit on their site visit, as it would not be in the unit's best interest to show that. From time to time, all the unit occupiers are on their premises outside their contractual hours - this is challenged by residents but maybe overlooked if there is no noise – but with CLC, it is not about giving an inch and taking a mile – they just take, take, take. They worked on Easter weekend and the 26<sup>th</sup> May Bank Holiday, as well as regular Easters, Christmases and New Years – even the Queen's Jubilee. Has video evidence to prove it which was offered to CBC but not accepted. Other people look forward to Bank Holidays, but she braces herself, knowing that CLC will steal her peace and relaxation – it is very stressful and frustrating. Has exhausted every avenue to reason with CLC and get the council to enforce the current terms. Nothing happens to resolve this, only an application for more working hours. It is exhausting to have to repeatedly confront this Groundhog Day situation. There are eight objections, five of which refer to lack of enforcement; has submitted complaints about this recently. The 2002 conditions have not been respected by CLC or enforced by the council when residents have raised concerns over the last 12 years. If the scenario is that the two parties do not stick to the agreement and residents' concerns are repeatedly ignored, what is the purpose of all this? It makes mockery of the whole planning process. The area should not have to become 24/7 because one business wants to double its turnover and profit; it needs to maintain a balance – residents' amenity is not elastic and has reached breaking point. CLC could have made improvements long before now, but have only done so now at the 11<sup>th</sup> hour in an attempt to win this application – no doubt the silencers will be on eBay soon. Asks Members to imagine this was their home in the balance.

#### **Mr Korant, applicant, in support**

Has been the owner of Cotswold Linen Care since October 2004, and understands the main objection to the application is to do with noise disturbance. As a company, CLC respects neighbours' concerns regarding noise, and has liaised with and acted upon recommendations from the council's enforcement officers to minimise the impact from operations. Members have now visited the site and council officers have monitored and recorded noise levels; therefore respectfully asks that a fair and reasonable decision be made purely on the facts and findings relevant to this application. CLC's intention has never been to extend operational hours on a permanent basis, but to have flexibility to cover exceptionally busy periods which have resulted for changes in trading practices over the years. As with all seasonal businesses, they have quiet periods when working days are shortened, staff members finish early, and there are no washing machines or dryers operating. If this application is

permitted, there would be a maximum of three members of staff on site on Sundays or Bank Holidays, with entry to the unit via the office door at the front – there would be no use of the roller shutter door. For the record, has never worked on Christmas Day, Boxing Day or Good Fridays.

**Councillor Sudbury, in objection**

Has not prepared a speech, so will speak from the heart. Is amazed at the last comment from the previous speaker, when she lived there in 2001 remembers how much the business got on her nerves – recalls a Christmas dinner when the family could feel the rumble and heat coming out of the machines. This happened most Christmases – she is not lying. Ms Wiseman spoke from the heart, and it is difficult to explain the impact of this noise 11 hours a day – it cannot be ignored. It's true that when she moved in, she knew there was a laundry nearby. The introduction of new machinery in 2002 made it quieter, but it is still a loud noise to put up with several hours every day, and a great relief when the machinery is turned off. It is difficult to explain to Members the impact this has, but the complaints speak for themselves.

When she lived at No 6, she was very busy – too busy to fight the case – and this is also the case with Ms Wiseman, but it is just so annoying to have to live with this noise. It varies a lot – sometimes it can be quite peaceful, sometimes it affects every room in the house. If this application is permitted, it is like saying to the residents they are not entitled to Bank Holidays, not entitled to use their gardens for barbecues etc. Now lives in Brizen Lane, which isn't exactly quiet – there is background noise and noise from the road – but it is an altogether different type of noise from the vibrating noise emanating from the laundrette. Got the impression the owners didn't give a monkey's about local residents.

This isn't the right site to further expand a business of this kind. The report refers to the refused application in 2002, which sought to increase working hours but was felt by Planning Committee to give rise to intensification of activity which would have a harmful effect on the amenities enjoyed by local residents. The laundrette is even busier now, and the noise greater than it would have been back then. Asks Members to be consistent and refuse the application tonight.

**Councillor Sudbury left the Chamber for the rest of the meeting.**

**Member debate:**

**GB:** checked that all Members had read the blue update.

**AC:** is very confused. Could not object to the noise that Members heard on Planning View, which wouldn't cause any problems, but is hearing at the meeting that what they heard was not the truth. Someone isn't telling the truth. Would move that the decision should be deferred, allowing spot checks to be carried out to establish the true situation before making a decision.

**BF:** the laundry has been operating for a number of years, and residents have been complaining for a number of years and yet there is no record of what has happened as a result, what enforcement officers have done, what measures have been put in place. The neighbours say the laundry operates on Christmas Day. There should be a track record, but it is the age-old story – we talk about enforcement a lot but don't actually do it.

**PT:** on Planning View, asked officers to provide details about the complaints that have been made, when etc. It is easier to comprehend if this is in written form, and not very good that this has not been provided. Will go along with deferral if she has to - someone is not telling the truth.

**CN:** similar to AC, BF and PT, believes there is a problem of honesty here. Attaches great weight to what KS has said – she lived in the house for six years and has spoken very eloquently about the

issue, and has submitted very comprehensive and detailed letters. Has a strong impression that the noise heard by Members on Planning View is not the same as that experienced by Mrs Wiseman. Is minded to refuse. Residents aren't saying they want the business to close down, and it's true to say that they knew when they moved in that a laundrette business operated on the site – it is the extra hours which are the issue. The applicant had originally wanted 11 extra hours per week; this has been reduced to nine, spread out over evenings and Saturdays. It is a huge affront to extend the working hours and run the risk of additional noise – not the noise as heard by Members on planning view but the noise experienced by residents over the years. The noise Members heard on Tuesday wasn't bad but suspects that at various times of work, the volume of noise is significantly greater. Members should refuse the scheme.

**AM:** agrees with AC. At the very least, there is a significant divergence in interpretation of the facts. Listened to the speakers and appreciates that there is a long-standing problem with noise nuisance here. The applicant says these comments are not true and that he is respectful of his neighbours. The environmental health officer sits on the fence – says maybe there is a bit of an issue with noise here. Other Members are right in saying there is a dispute of fact and that information should be available to them – such as a log of complaints to environmental health about the noise nuisance from this and other activities on site. If it is true that the applicant minimised the noise for Planning View, a few spot checks would clarify the situation and could be reported back at the next meeting. The nub of the issue is the extent to which neighbours are disturbed, and Members have not been provided with enough information to make a judgement. Supports AC's deferment for more information.

**FC:** is confused. Page 122 of the officer report states that an application was approved in 2002 which set out hours of operation and loading, to include no Sundays or Bank Holidays, to ensure the amenity of neighbours. The blue update relates to enforcement of those conditions, stating at 1.2 that there was no mechanism in place for enforcing when the laundry should not be operative. It states that the conditions were not enforceable which led to inaction – this is not acceptable. Residents have endured unacceptable noise at times when children are in bed, on Sundays and Bank Holidays, and not been able to enjoy peace and quiet in their homes, in line with local policy CP4. We need to look at this in depth, not just in relation to this planning application. Conditions attached to the premises should have been enforced but this was not done, and if the current application does not receive a plain refusal today, it's quite possible that these conditions won't be enforced either. What conditions currently pertain to the premises? Are they enforceable? If not, how can we make them enforceable?

**PB:** would move refusal on this, the laundrette is a growing and successful local business, but it shouldn't increase its hours and profits at the expense of local people – it should move elsewhere. The neighbour's speech to Committee was impassioned and genuine. What is being asked for by the applicants amounts to an extra day. It is unacceptable and should be refused.

**CN:** AM's suggestion of a deferral sounds reasonable in view of the conflict of evidence – had thought about suggesting this himself - but what period of time would be put on this – one month, two months, three months? There is evidence of the existing hours of work agreed in 2002 not being followed, with Councillor Sudbury and Ms Wiseman giving examples of the business working outside those hours. If the applicant has not been following the rules and the decision is deferred for a few months for spot checks etc, what is to stop the applicant from sticking to the specified hours for those few months? It is not only Councillor Sudbury and Ms Wiseman who have spoken tonight – other local businesses are also against the proposal, and other neighbours to the back of the building have also objected. The weight of evidence is very strong. The application should be refused.

**MP, in response:**

- would first point out that the Christmas Day working referred to by a speaker to dates back to 2001; applicant himself set out that he did not take over the business until 2004, and his

comment about not working on Christmas Day could be true as could the other speakers – referring to different times;

- the nature of complaints has been sporadic, the first being in 2001, and all complaints have come from one neighbour. There have been no complaints from other properties. There are no dates available to check;
- Councillor Clucas has referred to the nature of the condition, as set out in the blue update. Officers consider this to be ambiguous, as it refers to use of the premises as a whole and precludes the applicant from other activities such as paperwork etc – this would be very difficult to enforce, and is the reason for any previous inaction;
- the application being considered tonight has come about as a result of an enforcement requirement to regularise what has been occurring on the site;
- regarding the noise levels on site, this is not as bad as the objections state. Environmental Health officers have made regular checks when all the machinery is working at full capacity, and Members on Planning View walked through the laundry when every machine was on;
- the noise level has been further reduced in the last few days – on the advice on the EH officer, the applicant has extended duct work and fitted silencers to the dryers. These can be conditioned if Members suspect the applicant could remove them in the future.

**AM:** in response to CN's point, does not think refusing at this stage is the right thing to do – it would be empty posturing. The complaints are a result of the current work of the applicants, and show that existing controls are ineffective. If this application is refused, the existing position – which is unacceptable to neighbours - will continue. Regarding the length of time of the deferral, hopefully the application can be brought back sooner rather than later. Sees two options here: on the one hand, we can leave things as they are, which we know is clearly unacceptable to neighbours; on the other, we can approve the application, with evidence under serious challenge. Neither of these options is comfortable for Planning Committee. There is also the possibility of CBC being challenged for non-determination, but if we turn the application down and do nothing to improve matters, the current position will not have changed.

**PT:** is disappointed – had asked officers on Planning View for a list of complaints and when they were made, and this has not been produced. Not satisfied with the officer's explanation.

**FC:** regarding the current conditions – if these are being breached, as both KS and the objector say they have been – they should be enforced. The current permitted hours of work are 7.00am to 6.00pm Monday to Friday, 7.00am to 1.00pm Saturday, and no time on Sundays or Bank Holidays. This has got to be enforceable – is flummoxed to know why these conditions have not been enforced, and would like a proper written answer as to why this is the case; otherwise residents' lives are being put through hell. Now the applicant is seeking to increase the working hours and if Members are minded to refuse, they should have this evidence to justify their refusal. It doesn't matter if it's one household or 50 being affected. The business has been operating on Bank Holidays and outside the stated hours – why has no action been taken?

**MS:** has a lot of sympathy with what has been said, and agrees whole-heartedly with AM – to refuse the application would be dangerous at this time. It would be helpful if a temporary approval could be granted, for six months. Members have been hearing from local residents what is going on, but enforcement officers have not been involved. The residents could keep a log, we could see what action enforcement officers would take, and see what happens over six months.

**MJC, in response:**

- the enforcement issue is an important point. The original condition was not worded in the most helpful way - the word 'premises' was used to safeguard the amenity of residents, but if the building was being used outside the stated hours for paperwork, office activity etc more related to

B1 use, this would be OK in a residential area; it would not be expedient to enforce the condition if the machines are switched off but someone is working in the office at 6.00am;

- this is why the condition has been amended to refer to machinery, and if the amenity of the neighbours is compromised by noise of machinery outside the stated hours, this would not be acceptable;
- MS's suggestion is a sensible one to test if the additional hours of work, and more suitable than a deferral;
- it is important to remind Members of the EH officer's comments on the orange update – he recommended extending ductwork and fitting attenuators to the ducts, and the applicant undertook this work immediately. On further inspection, the EH officer considers the impact of the noise is not unacceptable – this is the clear comment of CBC's professional adviser on these matters.

**GB:** notes that five Members have indicated to speak. Requests they do not repeat comments which have already been made, and that they keep their comments brief.

**CN:** notes that Members are being told they should follow the advice of the EH officer on this application whereas they were told to dismiss professional advice for the previous one - it seems to be decided according to the mood of the moment. As AM has said, a refusal of this application would lead us right back to where we were, which wouldn't be right. There are a lot of complaints about the applicant breaching hours, and Members are here to see if this should be legitimised. If the application is refused, at least that refusal will deliver justice.

**BF:** regarding MS's suggestion for a six-month temporary permission, there is only one Bank Holiday between now and Christmas, and based on the previous track record, it's possible that the conditions will be broken. FC has referred to the conditions, and the officer has stated that the applicant may be doing paperwork after the machines have stopped, but the current conditions states that business should shut down at 6.00pm and not start again until 8.00am. The applicant understands this, and it doesn't matter what the reason for being in the building is – he should stick to the planning permission – the law is the law. Officers have said that some conditions are unenforceable, but Members should remember that all conditions are appealable. From comments and letters, it's clear that people in the area have had their peace and quiet disturbed and are in turmoil. His daughter had trouble when living in Hove, with neighbours in the flat above playing loud music at 3.00am in the morning – it was only when she found the landlord's home phone number and rang him at 3.00am to complain that something was done. CBC doesn't give out environmental health officers' numbers so any incident is likely to be reported some days later – this is no good. There is no track record; enforcement is abysmal. The owners of the Banksy house will get away with a caution; the vast majority of enforcement work is not done because we do not have the personnel to do it. These conditions should have been enforced and business carried out within the conditions of the planning permission. Why can't people work to the planning permission as given?

**PB:** enforcement is a side issue. The current planning application is asking that local residents accept the business opening from 7.00am to 8.00pm on weekdays, 7.00am to 3.00pm on Saturdays and Sundays, with all the vibration and noise it brings. This is not reasonable or acceptable, and we should not be supporting it. End of story.

**JF:** if the application is approved with suggested conditions, couldn't something be included to make them stronger – so the applicant and the residents know exactly when the laundry won't be working? It's not feasible that the laundry should be working those hours.

**FC:** the officer's explanation about enforcement was unacceptable. Would like to suggest that Condition 2, as set out at para 1.3 of the blue update, be amended, with stated hours of operation as

7.00am to 6.00pm Monday to Friday, 7.00am to 1.00pm Saturday, and not at all on Sundays and Bank Holidays. The unenforceable conditions are precisely those currently set out in Condition 2, and by changing the hours, we can achieve all we want to achieve and protect the residents by setting finite hours for laundry to work, which enforcement officers can enforce.

**GB:** does AC still want to move to defer?

**AC:** has listened to the debate and is no longer certain that deferral is the right thing to do. Had been working on the evidence of his own experience on Planning View, where the noise and disturbance could not be considered unreasonable, even on a Sunday. After being told that what Members heard is actually not what goes on, suggested spot checks to find the truth. Is beginning to think we will never get the truth, and is increasingly minded to refuse, even though from the evidence of his ears, the noise seemed reasonable. Will withdraw move to defer.

**AM:** moves to defer.

**MJC, in response:**

- to FC, would advise against amending the condition as suggested – this approach would be unreasonable. The application is to vary the condition on the applicant's terms; after discussion with the EH team, the suggested opening hours were reduced. FC is suggesting the hours remain the same. The committee cannot unilaterally decide how the applicant uses his premises. It would be better to refuse;
- regarding deferral, after listening to the debate, this is a better option. AC is quite right – the noise Members heard on Planning View seemed acceptable – and suggested deferral to allow spot checks to take place. The applicant is present tonight, and has heard the strength of opinion from Members regarding this;
- a deferral would be an opportunity to give a better planning application for residents and the applicant, and a better scenario than if permission is refused and goes to appeal;
- if the decision is deferred, we can monitor the situation, speak with the applicant, objectors and EH officers, and come back with a better body of evidence in two months;
- if the application is refused tonight and goes to appeal, the Planning Inspector will make a decision and CBC will lose a degree of influence.

**AC:** can we be assured that, if deferred, the spot checks would happen and the applicant would not be warned in advance, in order to provide sufficient evidence to make a decision? Has his doubts, but could be slightly more comfortable if this can be assured.

**MJC, in response:**

- is inclined to suggest that, if the application is deferred, officers meet with Chair and Vice-Chair to decide on a plan of action, with EH officers and enforcement colleagues;
- one month would not be long enough to get the necessary information up together; two or three months would be better to give officers a chance to formulate a plan of action, discuss issues with the applicant and objectors, and provide a better body of evidence.

**GB:** feels we are going round in ever-decreasing circles here, with several Members still wishing to speak.

**HM:** MJC's suggestion is sensible, but if we defer, would like to hear from an EH officer what are the long-term effects on people's health of living in the vicinity of constant noise and vibration.

**MS:** to CL, if the application is deferred, can the applicant claim non-determination if the application isn't decided in the set time-scale?

**CL, in response:**

- the determination date is 9<sup>th</sup> September, so yes, the option for a non-determination appeal would be there – this would be in the hands of the applicant.

**GB:** can Members give clarification about deferment?

**AC:** likes the idea of three months, but is now being told that there would be a non-determination appeal so withdraws move to defer.

**CL, in response:**

- a non-determination appeal is not automatic – it is up to the applicant to decide whether or not to follow this course of action.

**FC:** has a proposal. Does not feel we are doing the residents justice. Repeated her proposed amendment to Condition 2 as given earlier, to ensure no machinery is used outside those hours, in keeping with Policy CP4, but understanding office work should not be precluded – so that residents can live in peace and harmony.

**AM:** will move to defer. We are on the verge of maladministration.

**GB:** is concerned about how the debate is going. Asks MJC to comment.

**MJC, in response:**

- officer advice remains that deferral is the sensible option;
- is struggling with FC's suggestion, for the reason that we agree to vary the condition, we will be giving the application two options: to implement the new permission or continue working in keeping with the still-valid extant permission;
- deferral is a much tidier option, with new evidence produced for Members to consider. If they are still unhappy with the recommendation, they can refuse. This is a much clearer way to proceed – to defer and monitor the situation for three months.

**FC:** is using Officers' words for the suggested new Condition 2 – not making anything up or giving any additional planning consent. The condition will allow 7.00am to 7.00pm Monday to Friday, restricted working on Saturdays, and none of Sundays and Bank Holidays. This doesn't limit the applicant – can still use the premises for office work. Has taken the wording the officers have given and applying a sensible way forward to residents suffering from the noise and vibration.

**GB:** can CL comment on the best way to proceed.

**CL, in response:**

- the officer recommendation is to permit;
- PB has said he would move to refuse; there has also been a move to defer, a suggestion to amend Condition 2, and a suggestion of voting on a temporary six-month permission;
- due to the protocol, a move to defer would need to be taken first to be an option, but AC has now withdrawn it; AM has said he will move to defer instead; but PB has already previously said he would move to refuse
- ; under the protocol if a move to refuse is lost, the application will be permitted as on the papers
- FC has moved to make an amendment to the substantive recommendation on papers; if Members want this to be put forward, there would need to be an opportunity for this to be voted on as an amendment before then any vote on the substantive recommendation were taken

- similar considerations would apply as regards any move for permitting only a six month permission
- the Committee needs to bear all this in mind

**CC:** one Member has moved to defer, another has moved to refuse. These should be taken in order – we do not want a bloodbath about who should go first. If AC has withdrawn his move to defer, we should take the other moves in order – so PB's move to refuse should be next.

**GB:** this seems sensible. Is PB still of a mind to move to refuse?

**PB:** yes, on the grounds of loss of amenity.

**AC:** if Members vote against the refusal, is the application automatically approved?

**CL, in response:**

- yes. Has been trying to explain the various scenarios in relation to CBC protocol;
- if a move to refuse is lost, permission is automatically granted as on the papers;
- if Members are not happy for that to happen, they may for example want to be able to vote on the amendment to Condition 2 first;
- it is up to PB and others who spoke before the amendment proposals as to whether they want to enable any change to the conditions to be put forward; but it maybe they are secure in their minds that it isn't necessary;
- if protocol was different, it would be a case of asking for a new proposal when a move is lost, but instead we have to work within CBC protocol as it stands.

**FC:** on a point of order: if we vote on a refusal and the vote is carried, the current unenforceable planning conditions remain as they are, with no mechanism to enforce.

**CC:** doesn't understand why the current conditions are not enforceable. Doesn't see any risk in voting on the move to refuse. The condition on the paper is well-drafted and enforceable. Is this the correct position?

**CL, in response:**

- looking at the wording of the condition on Page 123 as it originally stands, with the hours as stated. MJC has said that it would not be expedient to enforce this if the premises are being used for paperwork etc outside the hours stated. If machinery is being used outside those hours, we would need to look to see why this is not enforceable.

**CC:** what is the risk in refusing, if the condition should be enforced to protect residents? If the condition achieves what we want it to achieve, there is no danger in refusing.

**MJC, in response:**

- the existing condition lacks precision. However, Planning Committee has sent a clear message regarding enforcement to officers, who will pass this on to their enforcement colleagues.

**GB:** would like to start the voting now. Does PB still want to move to refuse?

**PB:** yes.

**Vote on PB's move to refuse on CP4 – loss of amenity**

12 in support

1 abstention



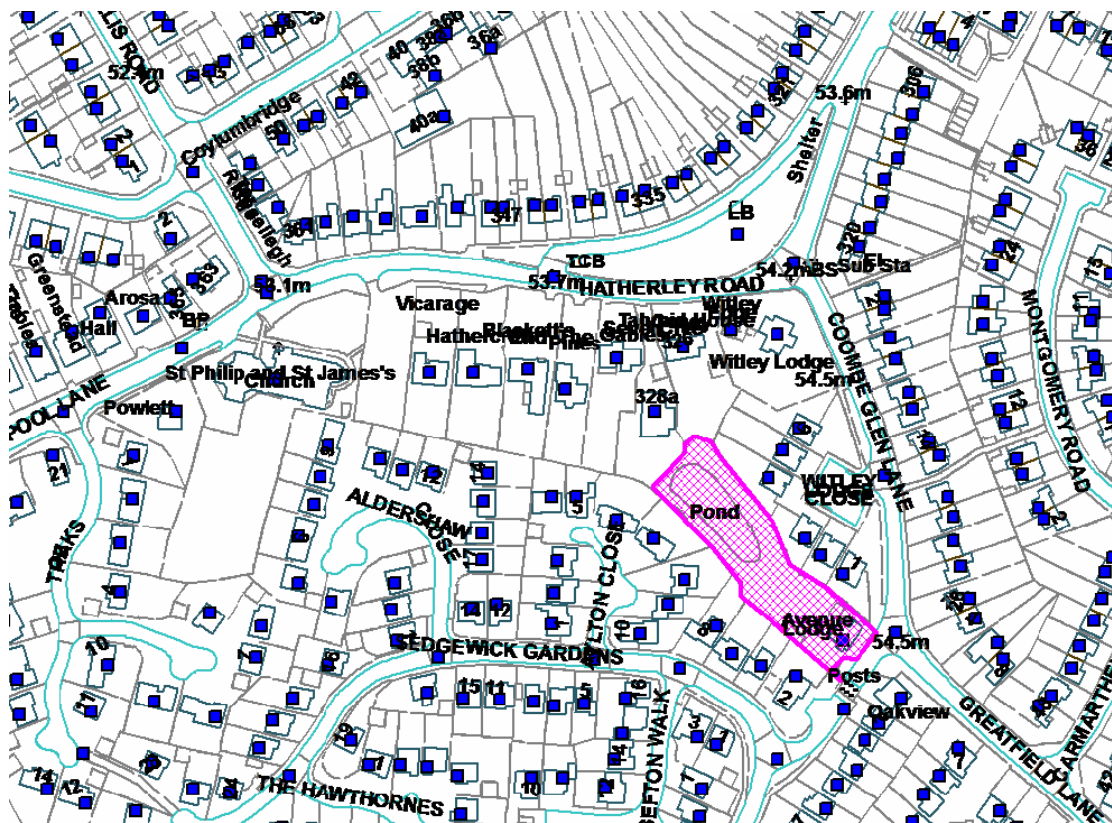
REFUSE

*The meeting ended at 9.05pm.*

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APPLICATION NO: 14/00505/FUL		OFFICER: Mr Ian Crohill
DATE REGISTERED: 22nd March 2014		DATE OF EXPIRY: 17th May 2014
WARD: Up Hatherley		PARISH: Up Hatherley
APPLICANT:	Mr Jeremy Limbrick	
AGENT:	n/a	
LOCATION:	Avenue Lodge, Chargrove Lane, Up Hatherley	
PROPOSAL:	Garden landscaping	

**RECOMMENDATION:** Permit



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## 1. DESCRIPTION OF SITE AND PROPOSAL

- 1.1 The application simply relates to the landscaping of part of the garden to the rear of Avenue Lodge. The application site has been the subject of several applications in the recent past (see planning history below) most of which have related to either the trees surrounding the pond located in this part of the garden or the pond itself.
- 1.2 The landscaping involves filling in of part of the pond and it is this element that requires planning permission, as an engineering operation. Normally landscaping of a private garden would not in itself require planning permission and even limited earth moving or remodelling would also not require the benefit of specific planning permission. It is a question of scale and degree and in this instance it is considered that the amount of infilling proposed is such that it is considered that planning permission is required.
- 1.3 The proposal entails the importing of inert clay and soil and extensive planting including, according to the submitted Design and Access Statement in excess of 50 new trees.
- 1.4 The application was the subject of a report to Planning Committee in May having been brought to Committee for consideration following a request from Councillor Whyborn and the objection of the Parish Council. At the meeting in May, Members, after a lengthy debate, deferred consideration of the application with a request that the applicant commission a hydrologist's report to assist with Members' understanding of the application.
- 1.5 That report was received on 29<sup>th</sup> July and local residents and the Parish Council were notified of its receipt and invited to comment. The report is attached in full as an appendix to this report.
- 1.6 This report is basically the same as that presented to Committee in May with additional commentary added relating to the hydrology report and further representations received.

## 2. CONSTRAINTS AND RELEVANT PLANNING HISTORY

**Constraints: None**

**Relevant Planning History:**

**05/00725/FUL 24th October 2005 WDN**  
Erection of 2 no. dwellings

**05/01150/CONF 15th September 2005 CONFIR**  
Confirmation of Tree Preservation Order number TPO618: all trees of whatever species within the area shown as A1 on the accompanying plan

**05/01491/TPO 14th November 2005 SPLIT**  
Various tree works in accordance with recommendations made in arboricultural report by Mr B J Unwin dated August 2005, including: 1. re-pollarding willows 2. reduction in height to ash 3. fell suppressed trees (mainly ash) 4. (this item does not require consent) remove dead wood, dead and dangerous trees. 5. fell oak tree by pond (tree numbered 50 in Mr Unwins report)

**05/01514/TPO 21st November 2005 PER**  
Remove all branches overhanging 4 Witley Lodge Close

**06/01291/FUL 18th October 2006 WDN**  
Erection of 2 no. dwellings

**07/00040/CLPUD 30th March 2007 REF**

Filling in of pond within domestic curtilage

**08/00037/FUL 6th May 2009 REF**

Erection of single storey flat roof, 4 bedroom detached dwelling in rear garden of Avenue Lodge

**08/00592/TPO 22nd May 2008 PER**

Eucalyptus - cut back branches to boundary of 2 Sedgewick Gardens

**09/01740/FUL 2nd February 2010 REF**

Erection of single storey dwelling in rear garden of Avenue Lodge, Chargrove Lane

**11/01217/TPO 3rd October 2011 PER**

Trees along boundary with 3 Witley Lodge Close: cut back to boundary

**12/01486/FUL 4th February 2013 WDN**

Cutting back overhanging branches of Ash Tree, Damson and Sycamore trees to boundary  
Safety works around pond incorporating limited infilling along one side and re-landscaping

**13/01573/TPO 8th October 2013 PER**

1) Eucalyptus - Fell due to damage to boundary wall. 2) Ash - Fell due to damage to boundary wall.

### **3. POLICIES AND GUIDANCE**

#### Adopted Local Plan Policies

CP 1 Sustainable development

CP 3 Sustainable environment

CP 4 Safe and sustainable living

GE 2 Private green space

GE 5 Protection and replacement of trees

GE 6 Trees and development

GE 7 Accommodation and protection of natural features

NE 1 Habitats of legally protected species

UI 1 Development in flood zones

UI 2 Development and flooding

National Planning Policy Framework 2012

### **4. CONSULTATIONS**

#### **Parish Council**

*26th March 2014*

This appears to be yet another application to reduce this important historic balancing pond in size, to which we are implacably opposed for all the reasons given in our objections to the many previous proposals. We have no objection to sensitive landscaping but the pond must NOT be reduced in size! This is an area liable to flooding as all the neighbours will readily testify, with flooding even reaching the churchyard on occasions. We therefore respectfully request that you refuse any application to reduce the pond in size, shape or depth

**Parish Council** (following receipt of hydrology report)

*29th July 2014*

## Page 30

We do NOT support this application and request that a site visit be made as soon as possible. The applicant has tried several times to reduce the size of this iconic lake and we believe has acted independently in the past without authority. We are concerned that change by stealth has occurred and visual observations suggest it may again be taking place at the present time. We are opposed to any reduction in size of the lake which may be brought about under the term "landscaping".

### **Land Drainage Officer**

*24th April 2014*

There is no evidence to suggest that the pond within the grounds of Avenue Lodge serves any flood risk management purpose. There is no formal inlet to, or outlet from the pond and water levels within it are determined by the normal variations of groundwater. Such variations being associated with seasonal changes and the prevailing weather conditions.

Infilling the pond (partial or complete) will have no long term effect upon ground water levels as they will balance out with time. However, if permitted, infilling operations would displace the water impounded within the pond at the time. Such displacement would need to be managed to ensure that the surrounding land and property was not adversely affected.

In my view (subject to the appropriate management of displaced water during infilling operations), in the long term, the proposal will not increase flood risk upon the site or the surrounding land.

I do not comment upon the possible historic or ecological interest of the site.

### **Tree Officer**

*6th May 2014*

Theoretically tree roots cannot live within water and as such the infilling of the pond will not have an impact on the TPO protected trees within this garden. Similarly the application states that no trees are to be removed as a result of this proposed development. However it may be that damage could be incurred during the in-fill process and as such retained trees need to be protected during any operations. Therefore a Tree Protection Plan (to BS 5837 (2012)) needs to be submitted and agreed.

Where construction/infill traffic does need access within the Root Protection Zone, suitable ground protection measures need to be submitted and agreed to this council so as to avoid damage to roots.

The Design & Access Statement states that 'inert clay + soil backfill' is to be used as the infill. It is important that such soil used is to the British Standard for soil 3882 (2007) so as to ensure it is capable of supporting new roots of suggested plantings as well as ensuring that pollutants/toxins etc will not leech out into the local environment (or pond). It is anticipated that such infilling if undertaken with care will provide a new rooting environment for existing trees.

Regarding the proposed landscaping of the garden, providing that no protected trees are to be removed or are to be pruned, the Tree Section does not object and indeed such planting details could be beyond the remit of this council to control.

### **Gloucestershire Centre For Environmental Records**

*2nd April 2014*

Report can be viewed on line.

## 5. PUBLICITY AND REPRESENTATIONS

Number of letters sent	27
Total comments received	9
Number of objections	7
Number of supporting	2
General comment	0

### 5.1 Comments Received

Copies of representations are attached to this report.

## 6. OFFICER COMMENTS

### 6.1 Determining Issues

**6.1.1** The application is described as garden landscaping and the application site is clearly part of the applicant's rear garden. Landscaping one's garden does not in itself normally require the benefit of planning permission, however, in this case the partial infilling of the pond forms a significant part of the initial ground works involved in the landscaping proposed. Due to scale of this infilling operation it is considered that planning permission is required for that element as it constitutes an engineering operation for which planning permission is required.

**6.1.2** The main issues relevant to consideration of this application relate to the impact on neighbouring property and possible flooding issues.

### 6.2 Impact on neighbouring property

**6.2.1** Policy CP4 in the Local Plan requires that development should respect the amenity of adjoining users/ occupiers. The current pond and its surrounding trees and vegetation is, in the main, screened from neighbours when viewed from their gardens by boundary fences, however, there are views over the pond and its 'natural' aspect from first floor windows.

**6.2.2** In the 2010 appeal decision in respect of the proposal to construct a dwelling on stilts over the pond the Inspector had the following to say about the site: "*Although this is a private garden, it is highly valued locally as a tranquil green open space in the midst of the surrounding moderately high density residential development and for the wildlife it attracts..... The principal value of the garden in the wider surroundings derives from the mature trees which are visible from many viewpoints*". Several of the trees surrounding the pond are the subject of a Tree Preservation Order and the applicant has confirmed his intention to retain and manage the trees along with further planting as part of his garden landscaping project.

**6.2.3** It is proposed to reduce the size of the pond as currently existing to approximately half its area and to landscape the surrounding land in a more formal way. It is not proposed to infill the whole of the pond and remove the feature entirely. Thus the comments made by the Inspector in 2010, whilst being of direct relevance to a redevelopment scheme, are not necessarily entirely of relevance in relation to the current application. He did, however, note that the area provides an important environment for a variety of wildlife and he considered that this essential character should be protected. He expressed the view that there was a potential risk that the building (at that time proposed), especially during its construction and subsequently its associated domestic paraphernalia and activities, would disturb and displace much of the wildlife. The current application, however, does not involve the construction of any building; it proposes landscaping of the pond, albeit in a different form

from that exiting, but it should still support the general benefits for common and garden species that the pond currently brings to the biodiversity of the area.

**6.2.4** It is fundamental to the consideration of this application to realise that the site (and thus the pond) is not afforded any statutory form of protection. It is the private rear garden of a long established house; the application site may impact beneficially, albeit perhaps by default, on the amenity of those occupiers of the limited number of residential properties surrounding the site but it is of no public benefit. It is also important to bear in mind that the Council's Tree Officer raises no objection to the proposal subject to certain conditions being imposed if permission is granted.

### 6.3 Possible Flooding Issues

**6.3.1** The vast majority of the letters of objection received refer to the issue of possible flooding resulting from the in-filling of the pond and thus the loss of available flood storage capacity and the objection received from the Parish Council stems from their claim that infilling the pond will exacerbate flooding experienced in recent years.

**6.3.2** The applicant had a flood risk assessment prepared in connection with his previous application for a dwelling over the pond and this has been resubmitted as an appendix to the current application which is accompanied by a Flood Risk Statement submitted as an update to that earlier Flood Risk Assessment. The 2009 FRA concluded that *"In accordance with the requirements of Planning Policy Statement 25 - Development and Flood Risk, the development may proceed without being subject to significant flood risk and without adversely affecting flood risk throughout the wider catchment"*.

**6.3.3** The update report submitted with the current application concludes: *"based on the likely flood risk posed to and from the site, the fact that there are to be no changes to the impermeable areas, it is considered the proposed landscaping can be operated with up to the same level of risk as the existing operation at the site in flood risk terms"*.

**6.3.4** In addition the comments of the Council's Senior Drainage Engineer have been sought. He comments as follows:

*"There is no evidence to suggest that the pond within the grounds of Avenue Lodge serves any flood risk management purpose. There is no formal inlet to, or outlet from the pond and water levels within it are determined by the normal variations of groundwater. Such variations being associated with seasonal changes and the prevailing weather conditions.*

*Infilling the pond (partial or complete) will have no long term effect upon ground water levels as they will balance out with time. However, if permitted, infilling operations would displace the water impounded within the pond at the time. Such displacement would need to be managed to ensure that the surrounding land and property was not adversely affected.*

*In my view (subject to the appropriate management of displaced water during infilling operations), in the long term, the proposal will not increase flood risk upon the site or the surrounding land."*

**6.3.5** In addition to the above the informal views of the Environment Agency have been sought. The normal practice of the Agency would not be to comment on the application as it falls outside their checklist for consultation, however, following a specific request the following comments have been received:

*".....the development is not one that would fall within our checklist for consultation, but I have double checked this and can elaborate as follows:*



*With regards to flood risk, the site is in Flood Zone 1 and of a small scale. There are also no main rivers, or any other watercourses, in the vicinity. I've had look at the Land drainage officer's comments and having looked at the matter I completely agree with his comments and advice. The points about managing the removal of water and the settling of any groundwater present also appear to be mentioned within the submitted FRA.*

*With regards to ground water and water quality, I note the applicant has submitted a Geo-Environmental Desk Study Report, but again we would not review the application for impacts on groundwater as, primarily, the site is not located upon an aquifer, and also it is less than the 2ha size threshold for our checklist and there is no indicative or suspected land contamination.*

*.....with regards to the actual infilling and deposit of material, the application has been validated as a District matter and not a County matter. As such I would not consider it as falling within our checklist as a 'waste' matter. I note the applicant has confirmed in the Design and Access Statement that the material to be deposited would be inert which is important. Any deposit of contaminated material would not be acceptable*

*So to conclude, the development is of a relatively low risk nature in terms of the environmental matters within our remit. As such it does not feature in our checklist for bespoke comments....."*

**6.3.6** Professional advice received before the Committee meeting in May was clear that the pond plays little or no flood storage capacity role and its infilling would not exacerbate any existing flooding issues which are in fact unrelated to the pond.

**6.3.7** However, as has already been stated no decision in respect of the application was taken at the May committee meeting and Members requested the applicant to commission an independent hydrology report in order to help understand the divergent claims linking the existence of the pond and recent incidents of flooding.

**6.3.8** The report prepared by Waterco Consultants was received on 29<sup>th</sup> July 2014. The consultant company comment that "a qualitative approach has been adopted for this report which examines water flows in theory, constrained by hydrological science, to suggest the most probable effect of part-filling of Avenue Lodge pond".

**6.3.9** **The report is attached to this report. Members are urged to read the report in full as it does help to understand both the origins of the pond, the nature of the pond and in particular considerations relating to localised flooding. There follows a very brief summary of the report.**

**6.3.10** The report examines the origin of Avenue Lodge pond reviewing the various claims, comments and reports that have been received and concludes in respect of the origin of the pond that it is most likely an excavated pond where peat or even a suitable patch of gravel or higher quality clay was removed for local use.

**6.3.11** It is pointed out that no stream channels enter or exit the pond and rules out springs (groundwater issuing within the pond or nearby) as being a possible supply point(s) for the water in the pond for 6 reasons. In addition the report considers both winter and summer flooding scenarios and impact assessment is also reflected upon.

**6.3.12** The author of the report draws the following conclusions:

***"In conclusion, as to the origin of the Avenue Lodge pond, it was probably an excavated pond where peat or even a suitable patch of gravel or higher quality clay was removed for local use.***

***The water level in the pond is principally a reflection of the local water table and the operation of infilling half the existing pond area with clay will therefore have an insignificant effect in relation to groundwater flooding at the surrounding properties, including the most affected property, Brambles.***

***However, some increased risk of surface water flood frequency could result from the loss of pond area and it is recommended that a scheme of compensatory storage be designed and implemented to mitigate this risk. The compensatory storage volume would be around 80 m3.***

***The mitigation measures could take the form of underground storage, as suggested in support of previous planning applications for the site. Another option is to design the landscaping such that there is a lower lying area, with appropriate planting, which would flood temporarily during an extreme rainfall event and then soak away, without damage."***

## **7. CONCLUSION AND RECOMMENDATION**

- 7.1** Despite the volume of letters of objection received it should be borne in mind that the pond is not afforded any statutory protection. It forms part of a private rear garden and is not part of the public realm. Thus, whilst neighbours adjoining the site may be able to enjoy the benefits it offers in terms of attracting wildlife and providing a pleasant view, in reality those benefits are directly enjoyed by only a small number of individuals. The site has no significance from the broader public perspective. There is no question that the area provides for 'a relatively undisturbed environment for a variety of wildlife', however, it must be borne in mind that the proposal is not to completely remove the pond but to reduce its size and re-landscape it as part of the applicant's private garden amenity space. It should still support a variety of wildlife albeit possibly of a different type.
- 7.2** Professional advice expressed by both the Council's Drainage Engineer and informally by the Environment Agency indicated that despite what is alleged by local residents, the infilling of the pond in the long term, would not increase flood risk upon the site or the surrounding land. This view is supported in the conclusions to the hydrology report submitted at Members' request; "the operation of infilling half the existing pond area with clay will therefore have an insignificant effect in relation to groundwater flooding at the surrounding properties, including the most affected property, Brambles".
- 7.3** The hydrologist does, however, highlight the fact that there may be some increased risk of water flood frequency arising from a reduction in the size of the pond. He recommends that compensatory storage volume of around 80m<sup>3</sup> should be provided. It is considered that this requirement could be secured by way of condition.
- 7.4** It is recommended therefore that permission be granted subject to the following conditions.

## **8. CONDITIONS / INFORMATIVES**

- 1** The development hereby permitted shall be begun before the expiration of five years from the date of this permission.  
Reason: To accord with the provisions of Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- 2 The development hereby permitted shall be carried out in accordance with drawing numbers 505.01 Location plan; 505.02 Site sections and Garden Visuals received 21 March 2014.  
Reason: To ensure the development is carried out in strict accordance with the approved drawings.
- 3 Prior to the commencement of any works on site (including demolition and site clearance) a Tree Protection Plan (TPP) to BS5837:2012 shall be submitted to and approved in writing by the Local Planning Authority. The TPP shall detail the methods of tree/hedge protection and clearly detail the positioning and specifications for the erection of tree protective fencing. The development shall be implemented strictly in accordance with the details so approved.  
Reason: In the interests of local amenity in accordance with Local Plan Policies GE5 and GE6 relating to the retention, protection and replacement of trees.
- 4 Where construction/infill traffic does need access within the Root Protection Zone of retained trees details of suitable ground protection measures to avoid damage to roots shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of any works on site and the ground protection measures so approved shall remain in place until the completion of the infill of the pond hereby approved as part of the landscaping.  
Reason: In the interests of local amenity, in accordance with Local Plan Policies GE5 and GE6 relating to the retention, protection and replacement of trees.
- 5 The 'inert clay + soil backfill' referred to in the submitted Design and Access statement accompanying the application to be used as the infill soil shall be of a standard to comply with British Standard for soil 3882 (2007) so as to ensure that it is capable of supporting new roots of the suggested planting as well as ensuring that pollutants/toxins etc will not leech out into the local environment (or pond)  
Reason: To safeguard the retained/protected tree(s) in accordance with Local Plan Policies GE5 and GE6 relating to the retention, protection and replacement of trees and help promote new planting and avoid possible pollution.
- 6 No work on site shall commence until such time as details of a scheme for compensatory storage of water during times of extreme rainfall has been submitted to and approved by the Local Planning Authority. The scheme shall provide for compensatory storage volume of around 80m<sup>3</sup> and shall be designed to take the form of underground storage or the creation of a depression in the landscape (with appropriate planting) either of which would flood temporarily and then soak away. The measures approved in compliance with this condition shall be implemented in full and otherwise be available for use before any work in compliance with this planning permission is commenced.  
Reason: Reason: To ensure the development does not result in an increased risk of surface water flooding.

### INFORMATIVES

- 1 In accordance with the requirements of The Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2012 and the provisions of the NPPF, the Local Planning Authority adopts a positive and proactive approach to dealing with planning applications and where possible, will seek solutions to any problems that arise when dealing with a planning application with the aim of fostering the delivery of sustainable development.

At the heart of this positive and proactive approach is the authority's pre-application advice service for all types of development. Further to this however, the authority publishes guidance on the Council's website on how to submit planning applications

and provides full and up-to-date information in relation to planning applications to enable the applicant, and other interested parties, to track progress.

In this instance, having had regard to all material considerations, the application constitutes sustainable development and has therefore been approved in a timely manner.

# Chargrove Lane, Cheltenham

## Hydrology Report

July 2014



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**DOCUMENT VERIFICATION RECORD**

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**CLIENT:**

Mr Jeremy Limbrick

**INSTRUCTION:**

The instruction to undertake these works was received from the client, Jeremy Limbrick of Avenue Lodge, Chargrove Lane, Cheltenham.

**SCHEME:**

Avenue Lodge, Chargrove Lane, Cheltenham GL51 3LD.

Hydrologist report investigating the effect of reducing the volume of a garden pond by 40%.

Pond location: 391836E 220714N

**ISSUE HISTORY:**

Issue Date	Comment
11/07/2014	First issue

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**DOCUMENT REVIEW & APPROVAL**

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**Prepared by** Steve Conway BSc (Hons)

**Reviewed by** Bethan Young BSc (Hons)

**Approved by** Peter Jones BSc (Hons) CEng C.WEM MICE MCIWEM

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**Document and Software Reference List**

- Flood Estimation Guidelines, Operational Instruction 197\_08, *Environment Agency* (2012)
- Delivering benefits through evidence, Estimating Flood Peaks and hydrographs for small catchments: Phase 1, *Environment Agency* (2012)
- British Geological Society (BGS) – The physical properties of minor aquifers in England and Wales (2000)
- Institute of Hydrology Report No.126 Hydrology of soil types: a hydrologically based classification of the soils of the United Kingdom, *D.B. Boorman, J.M Hollis & A. Lilly* (1995)
- Soil Survey of England and Wales, *Lawes Agricultural Trust* (1983)
- Cheltenham Borough Council – Planning Application Documents, 14/00505/FUL
- Improving FEH statistical procedures for flood frequency estimation, Science Report: SC050050, *Environment Agency and DEFRA* (2008)
- The Revitalised FSR/FEH rainfall-runoff method, *Centre for Hydrology and Ecology* (2005)
- Flood Estimation Handbook, *Institute of Hydrology* (1999)
- FEH CD ROM 3



## 1 Introduction

- 1.1 Waterco Consultants have received an instruction from Mr Jeremy Limbrick on 24/06/14 to undertake a brief hydrologists report to demonstrate that partial infilling of an existing pond in the grounds of Avenue Lodge, Chargrove Lane, Cheltenham (NGR: 391836,220714) will not have a significant effect on flooding elsewhere relative to the existing pond arrangement. A location plan and aerial photograph of the existing site is provided in Appendix A for information.
- 1.2 The existing pond in the grounds of Avenue Lodge has an approximate area of 550 m<sup>2</sup> and an approximate maximum depth of 1.2m (4 ft.). The pond in its current form takes up about one third of the Avenue Lodge garden.
- 1.3 The proposed landscaping involves filling in approximately 40% of the existing pond with imported inert clay and soil and the extensive planting of 50 new trees. The proposals require planning approval as they are considered by the local planning authority, namely Cheltenham Borough Council (CBC), to be an engineering operation due to the amount of infilling required. Details of the development proposals are included in Appendix B.
- 1.4 There is no formal inlet to, or outlet from, the pond and water levels within it appear to be determined by variations of groundwater. Such variations being associated with seasonal changes and the prevailing weather conditions.
- 1.5 A planning application for the proposed earthworks was submitted in March 2014.
- 1.6 The application was recommended for approval by the planning officer but has been deferred at committee with a request that the applicant supplies a hydrologists report to assist with their understanding of the proposal.
- 1.7 A qualitative approach has been adopted for this report, which examines water flows in theory, constrained by hydrological science, to suggest the most probable effect of part-filling of Avenue Lodge pond. A quantitative report is not justified by the type of project i.e. garden landscaping, albeit on a larger scale; and there is no readily available, or existing data, currently available to make quantitative assessment viable.

## 2 Origin of Avenue Lodge Pond

- 2.1 The various comments and reports have been reviewed. There appears to be some confusion on the origin of this pond and on the hydrology of ponds in general. This section examines the theory in order to provide some content for logical deductions and conclusions to be drawn.
- 2.2 Lakes and ponds by their nature are ephemeral. In the UK some large lakes have disappeared within a few thousand years from continual sediment input, yet temporary ponds that dry out in summer can persist for much longer.
- 2.3 Permanent ponds, with sediment input from a stream, can have short lives of a few hundred years without continual maintenance. Such ponds, surrounded by trees and a healthy growth of pond vegetation, can slowly fill-in until a marsh is their last remnant. The pond at Avenue Lodge is permanent, as it does not dry out every summer. Its size and position in a lowland environment also suggests it would have filled in long ago without intervention, if it was a hollow persisting from the last glacial period.
- 2.4 Although the origins of the Avenue Lodge pond can only be speculated on without coring the sediments, that speculation can be useful in understanding the hydrology. Assuming it was present as a hollow shortly after the last glacial period (10,000 years before present), it is likely to have been peat filled early on and much later possibly excavated to burn the peat. (Extensive peat diggings in lowland areas produced the Norfolk Broads and smaller patches of peat were often removed during colder centuries).
- 2.5 The Avenue Lodge pond appears too large to have been excavated for a farm stock watering source. Hand-excavated ancient ponds, specifically removing worthless fill are often small and rounded to maximise water volume against the effort in removing soil. The waste soil was usually spread around the pond banks creating a higher lip. The 'dew ponds' of chalk areas are frequently rounded, lipped and clay-lined, collecting their water not from dew but from rainfall in the bowl-shaped catchment created. Hand-excavated ponds for retting in flax manufacturing or for fish farming are less likely possibilities.
- 2.6 The second smaller pond visible on early maps, where the garden of the present house 'Brambles' is now laid out, could have been an extension of the main Avenue Lodge pond or a separately excavated pond in an attempt to drain water away from the earlier 19<sup>th</sup> Century house. In conclusion, as to the origin, it is most likely an excavated pond where peat, or even a suitable patch of gravel or higher quality clay was removed for local use.

### 3 Pond Drainage Mechanisms

#### Streams

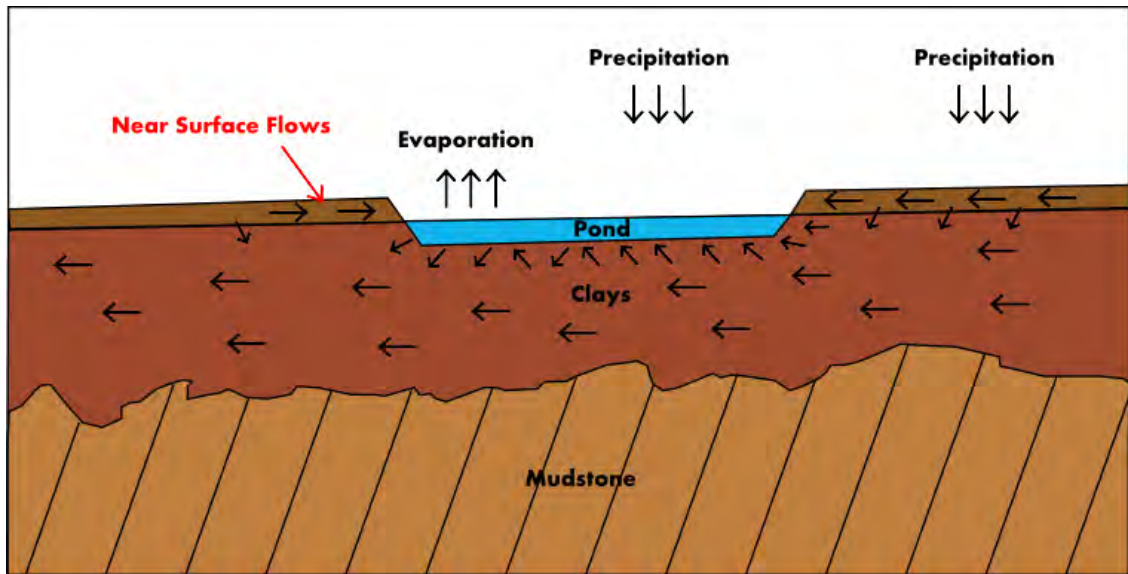
- 3.1 No stream channels enter or exit the pond. The pond itself is in a catchment of Hatherley Brook using a coarse resolution of the Flood Estimation Handbook CD ROM, but a watershed analysis indicates it belongs to Ham Brook that then flows into Hatherley Brook. There are few defined channels in most of the catchment due to: a) clay sediments being very cohesive, b) the low gradient, c) the small size of the catchment and d) from small unmapped natural channels being removed by development and being converted to general piped drainage.
- 3.2 The area, including Cheltenham, drains by streams and rivers trending north-west. No aquifers are present as the geology precludes them but groundwater will be present and is likely to drain towards those existing streams and rivers.

#### Springs and artificial inputs to Avenue Lodge pond

- 3.3 Springs, defined here as noticeable flows of groundwater issuing within the pond or nearby, are ruled out for the following reasons:
- a) The pond level at times is low and there are no visible springs.
  - b) The word 'issues' or 'spring' is not present on historical or modern maps.
  - c) The geology and topography of the site do not rule out a spring but make it unlikely.
  - d) In winter the pond freezes over uniformly without holes or thinned ice which are often present above active springs.
  - e) The pond water quality is described as 'murky' in the summer. Spring-fed ponds can have extensive algae but the water is often fairly clear.
  - f) Springs with any easily visible flow of a few litres per second or more will normally create an outlet stream from any pond in clays.
- 3.4 Having ruled out springs and artificial inputs, (i.e. drainage pipes and septic tank overflows) we are left with slowly flowing groundwater and rainwater as the pond input sources.

#### Rainwater and groundwater

- 3.5 If the pond had no interaction with groundwater and collected only rainwater on its surface, the loss from evaporation would leave the pond empty in most summers. This assumes a mean rainfall of about 650mm/year and an evaporation rate of about 500mm/year. However, the pond rarely dries out. This indicates a localised catchment or depression surrounding the pond that channels near surface rainwater and/or an active, somewhat deeper, slow groundwater flow that passes into and out of the pond. It is likely that both mechanisms apply, as shown in Figure 1 and as discussed below.



**Figure 1** – Diagram of Groundwater flows in and around Avenue Lodge pond

- 3.6 The geology of the area is one of deep clays mixed with variable proportions of silt and sand. Below this, often 2-6m below, are mudstones whose weathering has created the clays. The mudstone has a very low permeability for water, i.e. very small amounts flow through compared to the upper layers of clay and hence the mudstone will not be discussed further.
- 3.7 Soil maps and a low BFIHOST of 0.2 (a hydrologist's measure of the ability of the rock and superficial deposits to absorb and transport rainwater) indicate the area has significant potential to flood in intense or prolonged rainfalls. The clays, in which the pond is situated, allow groundwater to slowly pass into and out of the pond perimeter (walls and floor). The direction is most likely north-west, downhill, roughly along the line from Avenue Lodge through the pond towards a neighbouring house, 'Brambles', at the far end. However, this 'water table' can be disturbed locally by changes in the permeability of the clay, which, without core sampling, makes groundwater routes less certain. The key point is: the situation is dynamic, in that water flows in and water flows out through the ground, trying to keep the pond surface in line with the groundwater level.
- 3.8 In clays the rate of water flow is low and it is known that the pond responds slowly to rainfall, a sign of groundwater influence. For slowly permeable clays there is often a mismatch between groundwater and pond water levels if there is a storm. During such times water flowing rapidly through the topsoil layer can deliver significant amounts of water to the pond that takes many days to drain/mix into the groundwater before levels are once again nearly balanced. Although this near surface water is actually flowing in the ground, it is from a hydrology standpoint rainfall runoff.

Winter flooding

- 3.9 Following a series of heavy rains the pond will be at a high level and groundwater will be flowing into the pond and then away down the slope of the water table, possibly to the north-west. Such groundwater may take weeks to months to reach the nearest brook.
- 3.10 The country drainage engineer used the phrase 'balance out' and in this case the pond in a winter flood is in a temporary balance where most of the water leaving via the clay (and a small amount by evaporation) balances the incoming groundwater and the near surface water to keep the flood level at Brambles near their decking for a short period. As the run-off rainfall recedes, the outgoing groundwater flow now exceeds the reduced incoming rainfall runoff flowing near the surface and the incoming deeper groundwater. The level of flood water in their garden then begins to fall. The owners of Brambles stated that the flooding can last for weeks. The extended duration of flooding may be explained by the direction of groundwater movement out of Avenue Lodge pond towards the Brambles. Until the level of Avenue Lodge pond falls it is available to drive groundwater through the narrow low bank on the boundary, continually replenishing the garden flooding.
- 3.11 The submission from the owners of Brambles indicating that their garden has flooded in 2008, 2009, 2012, 2013 and 2014 shows that the pond-groundwater interaction has passed through a series of wet periods that are noted as having several above average winter rainfalls. The fact that their house has not been flooded in these periods indicates an outflow of groundwater that increases as the flood level increases. It may be due to a 'spillover' below ground into near surface flows as the level exceeds the local depression in which the group of houses around the pond all lie. Superficial and deeper geology is often stratified or layered with upper levels being more permeable allowing larger flows of water to pass.
- 3.12 The measured levels of the pond and Avenue Lodge's surrounding garden show a clear fall from the house towards Brambles with a minimum at the boundary fence. Any increase in the level of the pond will transmit water flows through the near surface, and perhaps in storm conditions on the surface, filling the depression between Brambles decking and the Avenue Lodge pond. Two other sources will also be present in the Brambles flooding, near surface flows into the local depression from directions other than Avenue Lodge and roof drainage from the Brambles, which has a direct path through a drainage system.
- 3.13 True groundwater flooding, as in the Bournes of chalklands, where flooding happens much later after the rainfall, is very unlikely in Cheltenham's clay on mudstone geology.

Summer flooding

- 3.14 In summer flooding the low water level in Avenue Lodge pond is acting as flood storage and reducing its storage capacity by 40% is significant. However, in a summer flood, a 'cloudburst' from a convective event has to track across or form within a few kilometres or less from the pond. Such an event would have to have a very high rainfall to overtop the pond and run into the neighbouring gardens as the local depression for delivering rainfall runoff is not large, probably less than ten-times the pond surface area. In summer, groundwater supplies the pond's low level and any water increase from a cloudburst must come from near surface and surface runoff. With soils and rock having a BFIHOST of 0.20 and a very heavy summer storm of 50 mm (2 inches) rainfall in an hour, the pond may rise in level by roughly half-a-metre. This rise would still be held within the pond at typical summer levels and the storm would have 170 year return period for this area. Consequently, the reduced effect of summer storage will be minimal due to the rarity of the storm.

Urbanisation surrounding the pond

- 3.15 Over 150 years the pond surroundings have changed from open land to suburban surroundings. Assuming that road drainage is piped away, then the near surface ground water input to the pond has been reduced, with the likely outcome of less frequent flooding. Damaged or leaking highway drainage can be a source of groundwater into cellars, basements and more rarely garden depressions, but in this area of heavy clays it is probable that any leak would be confined to the pipe trench-line.
- 3.16 There may be some rapid near-surface groundwater flow paths following highway sub-base materials but any connection into the pond or neighbouring garden is unlikely.

#### 4 Impact assessment

- 4.1 In order to consider the impact on the water table we will use an analogy. Imagine removing a block of water equal to half the volume of the Avenue lodge pond and replacing it with an equal size block of clay - the level remains the same. (Obviously, the actual filling of the pond would be carried out by pumping away water while replacing it with clay fill). From the analogy we can see that reducing the pond by half will not affect the level of the water table; and if the maximum level during any particularly wet period was to the decking in the Brambles' garden, then any similar wet period will produce a flood of the same level with the smaller size pond.
- 4.2 The above argument covers the 'in balance' situation and the Local Drainage Engineer's statement (included in the Planning Officer's report) appears to have it exactly right in relation to groundwater when stating that:
- "Infilling the pond (partial or complete) will have no long term effect upon ground water levels as they will balance out with time. However, if permitted, infilling operations would displace the water impounded within the pond at the time. Such displacement would need to be managed to ensure that the surrounding land and property was not adversely affected. In my view (subject to the appropriate management of displaced water during infilling operations), in the long term, the proposal will not increase flood risk upon the site or the surrounding land."*
- 4.3 However, from the review, surface water inflows are also considered to be a factor here; and with the pond volume reduced, incoming surface water flows, during storm conditions will fill the remaining pond area more rapidly than before. The capacity reduction will not equate to the loss of pond volume. It will be much less, being the product of the plan area 'lost' (by infilling half the pond  $\sim 275 \text{ m}^2$ ) and the difference between the minimum winter level and maximum winter level in the pond (300 mm at most). The volume is therefore estimated as:
- $$275 \text{ m}^2 \times 0.3 \text{ m} = 83 \text{ m}^3$$
- 4.4 The increase in frequency of any flooding to the Brambles is unlikely to be significant. Nevertheless, provision of the above compensatory storage volume is recommended, so as not to increase the frequency of flooding, in accordance with NPPF.

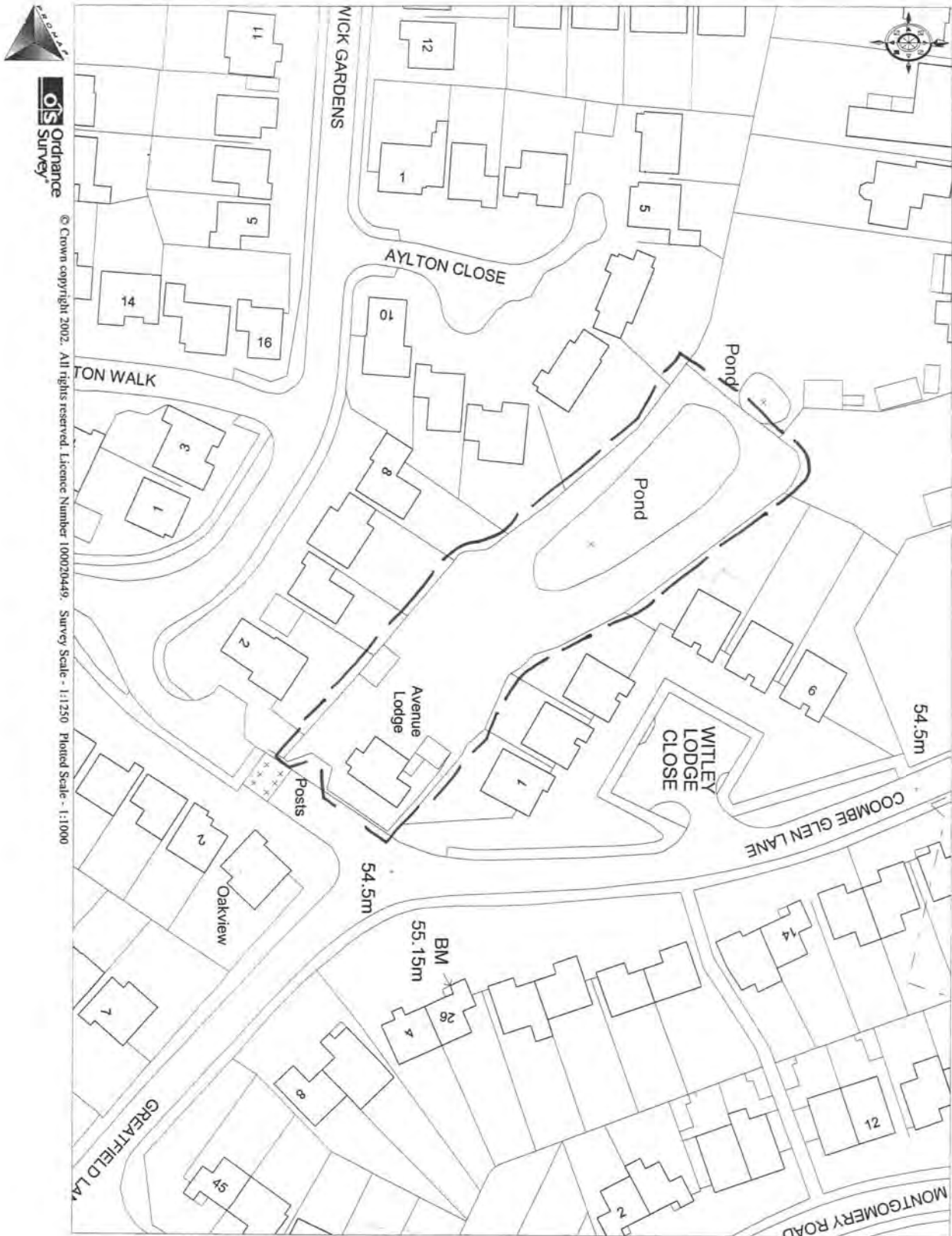
## 5 Conclusions and Recommendations

- 5.1 In conclusion, as to the origin of the Avenue Lodge pond, it was probably an excavated pond where peat or even a suitable patch of gravel or higher quality clay was removed for local use.
- 5.2 The water level in the pond is principally a reflection of the local water table and the operation of infilling half the existing pond area with clay will therefore have an insignificant effect in relation to groundwater flooding at the surrounding properties, including the most affected property, Brambles.
- 5.3 However, some increased risk of surface water flood frequency could result from the loss of pond area and it is recommended that a scheme of compensatory storage be designed and implemented to mitigate this risk. The compensatory storage volume would be around 80 m<sup>3</sup>.
- 5.4 The mitigation measures could take the form of underground storage, as suggested in support of previous planning applications for the site. Another option is to design the landscaping such that there is a lower lying area, with appropriate planting, which would flood temporarily during an extreme rainfall event and then soak away, without damage.



**Appendix A** – Location Plan and Aerial Image





**Appendix B – Development Details**



## Garden Plan - Top View

## Visualisations

Woodland walk, utilising existing trees, with a curved path between composed of bark mulch. Informal arrangement of *Athyrium niponicum*, *Dicentra eximia*, *Dryopteris atrata*, *Lamium maculatum*, *Liriope muscari*, *Pulmonaria saccharata*, *geranium macrorrhizum*, *lathyrus vernus*, *anemone sylvestris* and *arum italicum*.

Secondary pond, at level of patio area to encourage water movement and allow planting of marginal plants, to include an informal arrangement of: *Veronica spicata*, *Phlox subulata*, *iris ensata*, *iris sibirica*, *Lythrum salicaria*, *Mentha aquatica* and *Mazus reptans*.

Steps down to pond with small paved seating area with bench, straddled by terracotta pots planted with *Acer palmatum*.

1) Banks planted with wildflower mix suitable for watersides, to consist of: *agrimonia eupatoria*, *Angelica sylvestris*, *lycopus europus*, *ranunculus acris*, *Flipendula Ulmaria*, *Lythrum salicaria*, *Geum rivale* and *iris pseudocorus*. Highest water level to be interspersed with *Gunnera manicata*, *Ligularia przewalskii* 'The Rocket' and *Rodgersia podophylla*. Duck Island to consist of the same, with the addition of *Persicaria amplexicaulis* 'Taurus'.

Selection of fruit trees - *Prunus avium* (mixed cultivars) and *Pyrus communis* (mixed cultivars), underplanted with a commercial seed mix of native wildflowers and grasses suitable for meadow creation.

Pathways of chipped sandstone. Edges defined by *Lavandula angustifolia* 'Hidcote', with trimmed balls of *Buxus sempervirens* as per illustration. Vista leading to central Armillary sundial, underplanted with *Hosta 'Dorset Blue'*.

Crab apple Hedge (*Malus Sylvestris*)

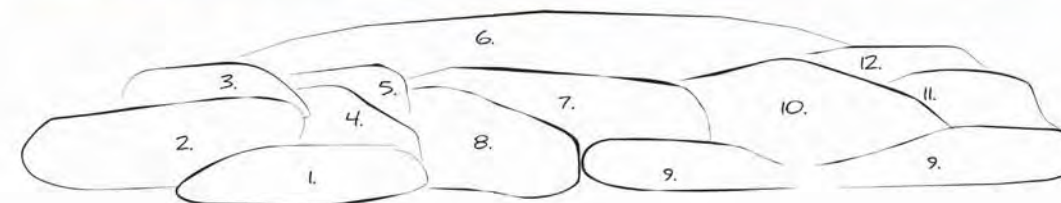


Woodland Walk



Patio Area / Flower Beds

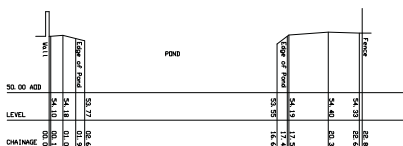
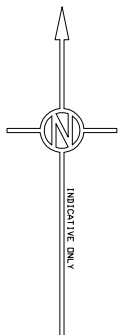
## Planting Plan



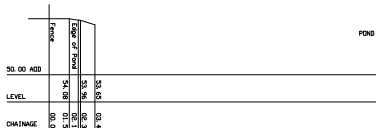
1. Heuchera 'Chocolate Ruffles'
2. Nepeta - Six Hills Giant
3. Fuchsia 'Riccartonii'
4. Datisca cannabina
5. Miscanthus Sinesis 'Gracillimus'
6. Verbena Bonariensis

7. Aster x Frikartii 'Monch'
8. Hemerocallis 'Beloved Returns'
9. Sedum 'Herbstfreude'
10. Echinacea Purpurea
11. Crocosmia x Crocosmiflora 'Norwich Canary'
12. Lespedeza Thunbergii

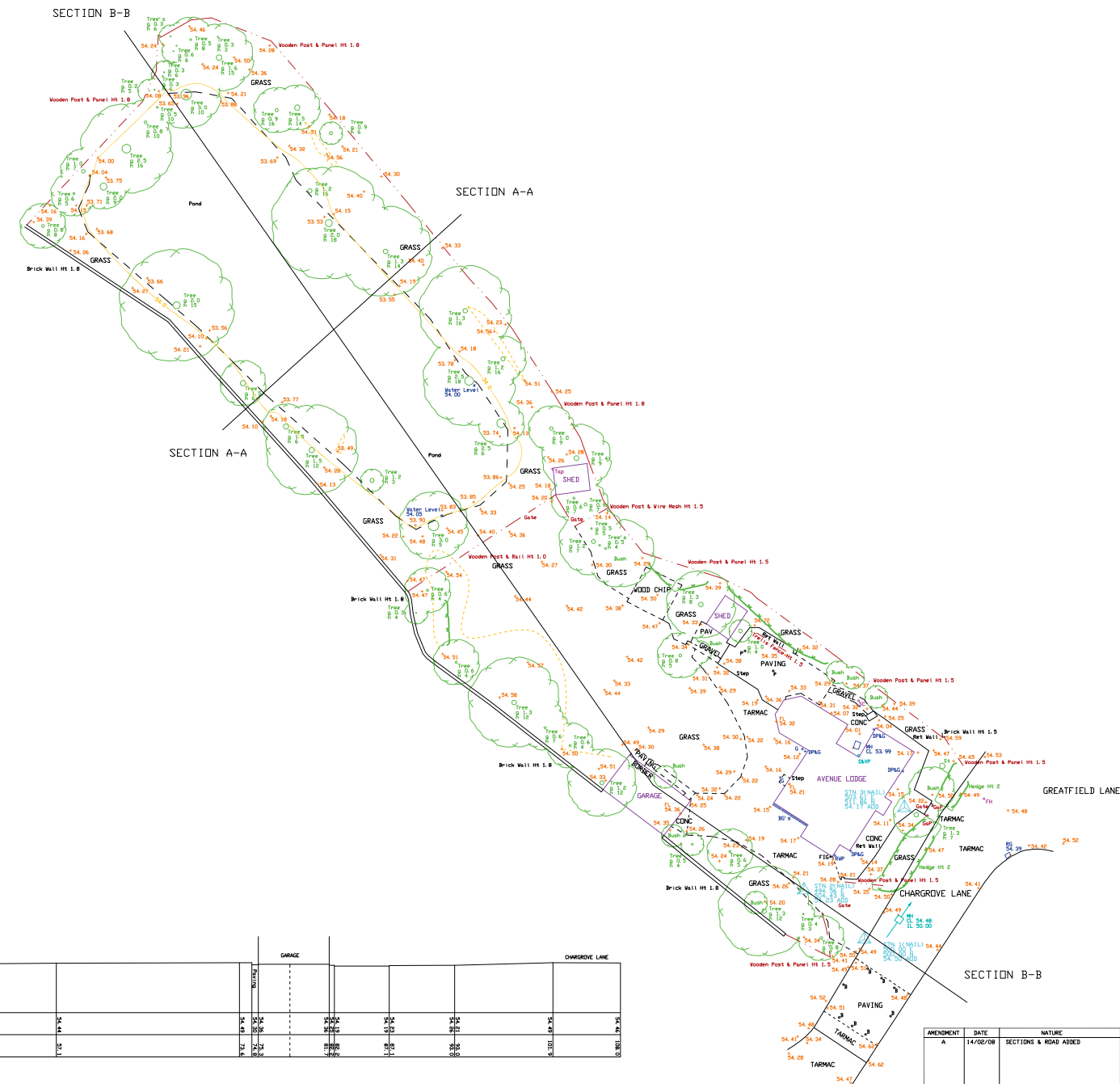
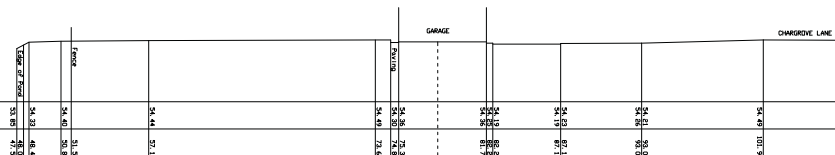




SECTION A-A



SECTION B-B



STANDARD REFERENCE  
DATUM USED - ORDNANCE DATUM, NEWLYN  
BENCH MARKS USED - CUT MARK ON 26 GREATFIELD LANE, VALUE 55.15  
SITE BENCH MARKS ESTABLISHED - SURVEY STATIONS (SEE PLAN)  
SURVEY STATIONS INDICATED THIS  
PROJECTION - ARBITRARY

CL COVER LEVEL  
D18 DISBURSED  
EP EARTH POINT  
EP ELECTRICITY CABLE PIT  
EP ELECTRICITY POLE  
FH FIRE HYDRANT  
FL FLOOR LEVEL  
G GULLY  
GC GAS COCK  
GV GAS VALVE  
IC INSPECTION COVER  
IL INVERT LEVEL

VD VENT OUTLET  
L LIGHT  
LA LAMPPOST  
MH MANHOLE  
MH SERVICE MANHOLE  
NB NO FURTHER INFORMATION  
NZ NO FURTHER INFORMATION  
OZ ORDNANCE SURVEY BENCH MARK  
P POST OR PILLAR  
R RISING EYE  
RS ROAD GULLY  
RS ROAD SIGN

RRP RAIN WATER PIPE  
SC STOP COCK  
SL SUMP LEVEL  
SP SOIL PIPE  
SV SLUICE VALVE  
TCB TELEPHONE CALL BOX  
TIC TELEPHONE INSPECTION COVER  
TIP TELEPHONE POLE  
UL UNLIDED LIFT  
UP UP  
VP VENT PIPE  
WD WASH OUT  
WM WATER METER

TITLE  
**AVENUE LODGE, UPPER HATHERLEY**  
CLIENT  
**JOHN T. LADLEY**

SHEET DIAGRAM

**SITECH**  
SURVEYING  
SERVICES  
OFFICE: 15, METEC BUSINESS PARK,  
LIME LANE, CHICHESTER, PO19 1ST  
MOBILE: 07700 181177  
www.sitechsurveying.co.uk  
OFFICE: 4, 10 LINDEN ROAD,  
SITTINGBOURNE, LIN. NN16 9JG  
MOBILE: 07700 181177  
www.sitechsurveying.co.uk

AMENDMENT	DATE	NATURE
A	14/02/08	SECTIONS & ROAD ADDED

SHEET 1 OF 1  
DRAWN: AutoCAD  
SEE ALSO:  
SCALE 1:200  
SURVEY JOB No. 3497  
SURVEYED - FEB 2008  
4707  
08  
A  
A MEMBER OF  
THE SURVEY ASSOCIATION

<b>APPLICATION NO: 14/00505/FUL</b>		<b>OFFICER: Mr Ian Crohill</b>
<b>DATE REGISTERED:</b> 22nd March 2014		<b>DATE OF EXPIRY :</b> 17th May 2014
<b>WARD:</b> Up Hatherley		<b>PARISH:</b> UPHATH
<b>APPLICANT:</b>	Mr Jeremy Limbrick	
<b>LOCATION:</b>	Avenue Lodge, Chargrove Lane, Up Hatherley	
<b>PROPOSAL:</b>	Garden landscaping	

## REPRESENTATIONS

Number of contributors	<b>9</b>
Number of objections	<b>7</b>
Number of representations	<b>0</b>
Number of supporting	<b>2</b>

4 Melbourne Close  
Cheltenham  
Gloucestershire  
GL53 0JP

### Comments: 27th March 2014

A really excellent and thorough plan to improve waste ground by landscaping. The neighbours are very fortunate that the applicant seeks to improve the visual impact of the waste ground. The landscaping will not only have aesthetic benefits but also attract garden birds and other wildlife. No doubt it will improve drainage and be a safer environment for young children, in particular. Clearly, the landscaping will also allow proper access to the ground for maintenance purposes. It is to the huge credit of the applicant that he is seeking to improve the environment and make use of waste ground that currently hosts a redundant cesspool with all the hazards associated with the cesspit.

### Comments: 13th August 2014

Unsurprisingly, the hydrology report confirms the specialist advice already provided by the Council Drainage Engineer and the Environmental Agency that landscaping would not increase the risk of local flooding as the water level in the pond reflects the water table. The report goes on to explain that any local flooding is a natural process of water following water courses to brooks and streams and ground levels that would occur regardless of the existence of the pond.

Frankly, it was surprising that professional advice proffered by Council technical experts was challenged and, in view of the outcome, it would be equitable to reimburse the applicant the cost incurred commissioning the hydrology report which largely goes over ground already thoroughly covered by Council Officers.

For whatever reason, the application has attracted many subjective and ill-informed comments. For example, the hydrology report explains that the pond is an example of open cast mining that many modern planning committees would have required filled in and landscaped once minerals were extracted. Therefore, in all seriousness, the pond cannot be described as being of 'historic interest/importance'.

Further, to wrongly describe the pond/pit as a 'Lake' is worrying as it infers a poor understanding and familiarity of the application and the ground adjacent to Avenue Lodge.

Additionally, landscaping, to the extent described in the application, is hardly going to have a dramatic impact on biodiversity and the environment as some would claim! The property is close to open countryside and parks etc.

The applicant has hugely improved Avenue Lodge as a dwelling and this young family have worked hard to improve the grounds in the immediate vicinity of the house.

As the pond/pit has no lasting impact on the risk of local flooding and negligible practical adverse effect on the environment, the applicant should be given every encouragement to continue to sympathetically improve the grounds of Avenue Lodge by landscaping the area around the pond/pit to achieve the extremely attractive enlarged grounds depicted in the drawing that accompany the application.

9 St Lukes Place  
Cheltenham  
Gloucestershire  
GL53 7HS

### **Comments:** 2nd April 2014

Before making my opinion on the subject clear I should first declare an interest: The home-owner contacted me to assist with the drawing of the garden/planting plans. Since meeting the family I have been a keen advocate of what they are trying to achieve, given the sorry state of their land presently.

I must say that in this instance I am appalled at the dismissive stance taken by the parish council in their comments.

I appreciate that locals have previously had genuine concerns regarding an increased risk of flooding in the past, but was a risk assessment not carried out for the purpose of clarifying this issue? The report attached to this application clearly states that 'The proposed development will not increase the risk of groundwater flooding'. Does this not categorically disprove the original concerns, and therefore the parish council's overriding objection? If professional surveys are requested for the purpose of gathering evidence, should the decisions not be based on the evidence they derive? It would appear wholly inappropriate to use/discard this information solely to fit one's initial bias.

I would also question why flood water reaching the churchyard has been explicitly mentioned. The pond has not been reduced by the home-owner, so if flooding has indeed reached the churchyard previously it would bear no relevance on the current application. It must also be considered that if the home-owner believed the proposed work presented an increased flood-risk, his own house would be in the firing line!

The plans submitted should be considered on their own merits, without prejudice garnered from previous interactions between conflicting parties. They will improve the visual amenity beyond recognition, whilst also improving the safety of the pond for the children who regularly have access to it. The planting plans (at the behest of the home-owner) are designed specifically to encourage an even greater biodiversity on the premises by encouraging pollinators and beneficial insects.

This is an opportunity for the home-owner to create an environment that will have a substantial impact on their quality of life, with negligible effect on any others. For this reason the application should be wholeheartedly approved.



8 Aylton Close  
Up Hatherley  
Cheltenham  
Gloucestershire  
GL51 3QE

**Comments:** 14th April 2014

1. The key issue is the size of the pond, which we overlook. We have lived here for 10 years and during this time the applicant has gradually reduced the length of the pond by 3 to 4 metres, by tipping in the material excavated when building a house extension and also material brought from off site. The depth was also reduced at the side adjacent to our property before the work was stopped by council officials. A retrospective planning application was rejected but, regretfully, the council did not require the tipped-in material to be removed.
2. Our greatest concern is that the applicant might further reduce the length of the pond, and then make a new application to build a house on the land created.
3. We have found it very difficult to understand the plan. We assume that the continuous orange line is intended to indicate the present boundary of the pond and the dashed black line is the proposed new outline of the pond. However, because we are unsure about this, we consider that this application should be rejected and resubmitted so that only the proposal for the size and depth of the pond is shown. The proposal for landscaping the existing garden is irrelevant.
4. If our interpretation of the lines on the plan is correct, then we wish to point out that the orange line does not correctly show the pond as it currently exists. Rather, it shows the outline as it was 10 years ago before the unauthorised infilling that has been carried out.
5. If our interpretation of the dashed line is correct, we are very pleased to see that the applicant now proposes to reinstate the end of the pond nearest the house back to the position where it was 10 years ago. (We assume that the applicant checked and approved the plan before submitting it.)
6. Providing that the end of the pond nearest the house is reinstated to its former position, as we think is shown, we would have no objection to the proposed widening of the bank along the length. Our interpretation of the plan is that the proposed overall size of the pond would be about the same as at present.
7. We have seen that two objectors have interpreted the plan as showing that the pond will be reduced to half its present size. The fact that there is such uncertainty about what is proposed brings into question the ability of anyone to make an informed judgement about it. However, if it is correct that the proposal is to reduce the size to half, then we would object strongly.
8. We note reference to small feeder ponds in the application, but we cannot find them on the plan.
9. We note the comment from someone who is not a resident of Up Hatherley that the site is at present a 'waste land'. This is simply not true. About half the site is an existing garden and most of the other half is a pond. The banks of the pond provided an excellent natural wildlife area until all the undergrowth was cleared by the applicant a few years ago. Now the banks are mostly grass, but this is not waste land.
10. So far as we are aware, the planting scheme for a private garden is of no concern to the council. However, we are pleased to note the intent to re-create a wildlife habit, although we do not want to have a wall of trees along the border with our property, taking our light.

11. The issue of safety for young children is irrelevant. The applicant's children are not young and they play unsupervised around the pond. He has tied a rope to a high branch of the oak tree so that the children can swing out over the pond. If any young children were to visit the house, the existing fence prevents unsupervised access to the pond.

1 Witley Lodge Close  
Up Hatherley  
Cheltenham  
Gloucestershire  
GL51 3LW

**Comments:** 14th April 2014  
Letter attached.

**Comments:** 20th August 2014  
Letter attached.

2 Witley Lodge Close  
Up Hatherley  
Cheltenham  
Gloucestershire  
GL51 3LW

**Comments:** 14th April 2014  
Letter attached.

3 Witley Lodge Close  
Up Hatherley  
Cheltenham  
Gloucestershire  
GL51 3LW

**Comments:** 15th April 2014

We find it strange that the owner has thought it necessary to apply for planning permission in this regard as the majority of the plans do not require any consent.

It is a concern that, once again, the owner of Avenue Lodge is attempting to reduce the size of the pond - this pond is widely believed to be a natural spring, providing a natural balance and, therefore, will be impervious to attempts to change it's natural state.

The pond was emptied some years ago by the current owner in pursuit of a previous unsuccessful planning application - left to its own devices, and with no excessive rainfall, the pond refilled in a matter of weeks!

The natural ecological balance and biodiversity of the area will be affected by any attempt to reduce the size of the pond - especially the beautiful bat population, which rely on the pond insects for their survival.

The conservation of bats in their natural home is reliant on the provision of roosting opportunities together with the availability of foraging and commuting habitat. The planning authorities surely have an obligation to consider whether the bats are likely to be affected by this application.

This area is absolutely not a wasteland!! It is a naturally beautiful area that needs to be protected from over enthusiastic landscaping and, on that basis, we object to the application.

4 Witley Lodge Close  
Up Hatherley  
Cheltenham  
Gloucestershire  
GL51 3LW

**Comments:** 10th April 2014

We have lived next to this pond for 30 years now and we fear that, since it has already been reduced in size, that further reduction on such a scale proposed will have a serious effect on the surrounding properties. If this is allowed I have no doubt we shall see another application to build on this site.

Furthermore, if it goes ahead, the planting of so many extra trees should cause a rethink on the TPO that already exists. I have the longest border with Avenue Lodge and for years had problems with light and overhangs until they were thinned out. I do not want another high wall of trees which will come within 10 ft of my property.

Witley Edge  
324A Hatherley Road  
Cheltenham  
Gloucestershire  
GL51 6HX

**Comments:** 28th March 2014

I have witnessed at first hand two things:

1. The systematic destruction of trees and this area - driven principally in an attempt to gain planning permission for houses.
2. Increased flooding (most likely) as a consequence of this

Strongly against on the bases of increased likelihood of flooding

**Comments:** 1st August 2014

With regard to the hydrology report - I make two observations

1. Waterco Consultants have received an instruction from Mr Jeremy Limbrick on 24/06/14 to undertake a brief hydrologist's report to demonstrate that partial infilling of an existing pond in the grounds of Avenue Lodge, Chargrove Lane, Cheltenham (NGR: 391836, 220714) will not have a significant effect on flooding elsewhere relative to the existing pond arrangement

How independent is this report?

2. The second - that the applicant plans to add c50 trees to this space. Really - I have watched over the last 10 years as the applicant has systematically removed trees?

On a final point - and this is a great question to understand the intentions of the applicant

Would he be prepared to add a covenant to the land that prohibits ALL future house building on this land?

I ask as this will reveal the true intention here.

Brambles

328A Hatherley Road  
Cheltenham  
Gloucestershire  
GL51 6HX

**Comments:** 15th April 2014

I live adjacent to the property in question, Avenue Lodge, and am extremely concerned re the current application - there have probably been five applications relating to the property over the last ten years.

This latest application is so vague that I am not sure it can be taken seriously - because of the vagueness how can it be monitored? We need to start from a level playing field - how will you know what is happening?

I will not bore you with all the details of my objections over the years as these are all on file.

HOWEVER, I must take issue with the Flood Report, which comments that there is no issue regarding flooding in the area.

Where were they looking?

If you advise to whom I should address my envelope, I will deliver to the Council Offices, photographs showing my garden flooded up to the edge of my decking - this takes place every winter and it very disturbing.

Should the applicant reduce the size of the pond in any way (which he has already done over the years) where will the water go? Into my garden even more so.

I have not objected prior to today as I have been away and only returned yesterday.

I did send Mr. Ian Crohill an email last night but up to this moment in time have not received a reply.

I understand the deadline for the objections is Wednesday the 16th.

If you let me know re. the envelope I will leave the photos before Wednesday.

**Comments:** 15th May 2014

Letter attached.

**Comments:** 17th June 2014

May I refer to the proposed Garden Landscaping at Avenue Lodge, Chargrove Lane. Up Hatherley covered by the above application. This also covers filling in all or part of the lake.

Could you let me know please when this application will next be considered by the Planning Committee - it was deferred at the last meeting and a request for a report from an Hydrologist was requested.

I am considering appointing my own Hydrologist and wish to know the time scale available to me.

My address is Brambles, 328a Hatherley Road and my garden is frequently flooded from the lake at Avenue Lodge which the applicant wishes to fill in. I share a boundary with Avenue Lodge.

I have sent Mr. Crohill emails on this matter but have not received a reply - maybe he is away on holiday?

Extremely concerned re. this application.

**Comments:** 4th August 2014

Thank you for your letter dated the 29th July regarding a revised plan for the development of the lake at Avenue Lodge.

To date (now Sunday morning) I have been frustrated in my attempts to view these new plans by the applicant. The site is either "down" or when I have just accessed the relevant page there is no mention of new plans.

Could you either email the plans to me or advise how I can access them on line.

**Comments:** 9th September 2014

This is the 10th anniversary of the occasion when in September 2004, I stood in the Council Chamber and spoke to the Planning Committee of the day objecting to the first of many applications regarding the lake at Avenue Lodge - I believe there have been seven since that date. This application was to build two detached houses on the property. All the Committee voted against the application.

There are two matters I wish to bring to the attention of the Committee.

In 2004 a property was built in the grounds of Witley Lodge. This property is adjacent to Avenue Lodge. Whilst digging the foundations the builders were hampered considerably by rising ground water, so much so that a special soakaway had to be constructed. The builders then discovered a Bell Chamber, big enough for a man to stand in apparently. It is thought this is part of an original plan to prevent flooding in the area. It is assumed this Bell Chamber was built in 1837 when Witley Lodge was being constructed.

All my previous letters are on the website connected with this connected with this current application. I would draw your attention to my letter of 12th May 2014 with photos. I included a quote from Inspector Penelope Metcalfe's report in 2010 in which she stated she wished the area to remain untouched.

When the houses were built on the land at Manor Farm in 1984, these properties had to be built on "stilts" due to the problem with the foundations flooding continually.

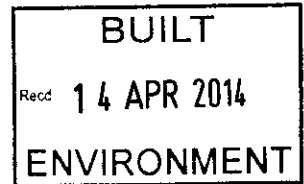
One would conclude from the foregoing that there has always been a flooding problem in this area and that is why the lake at Avenue Lodge is so vital as a ground surface water repository for the surrounding properties.

2. I take issue with section 5.3 of the Hydrologist's Report which states:

However, some increased risk of surface water flood frequency could result from the loss of pond area and it is recommended that a scheme of compensatory storage be designed and implemented to mitigate this risk.

Could anyone explain why one would fill in/partially fill in the lake/pond and then create another area in which to collect the surface water which is overflowing from the original lake/pond?!!! Does that make any sense?

1 Witley Lodge Close  
Up Hatherley  
CHELTENHAM  
GL51 3LW



Dear Ms Crews

REF: 14/00505/FUL

Proposal: Garden Landscaping at Avenue Lodge, Chargrove Lane, Up Hatherley

With reference to your letter dated 26<sup>th</sup> March 2014 we wish to **oppose** the above planning application.

Once again the applicant is seeking to reduce the area of the pond.

The applicant has been trying to reduce the size of the pond for some considerable time and has applied for planning permission five previous times.

The pond currently covers an area of approximately 540 square metres and holds just under 2million litres of water. There is no mention of the limit of the reduction but from the pictures it would appear that half the pond is to be filled in.

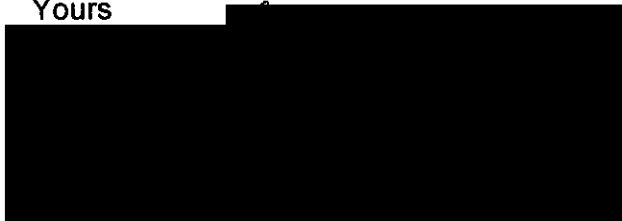
There was substantial flooding to neighbouring properties during 2007, 2008 and this last winter. Further reduction in the size of the pond will exacerbate this flooding as the plans clearly show that the water is being driven towards the neighbouring properties and away from Avenue Lodge.

The enclosed photographs show that there was a previous attempt to fill the pond using hardcore and other matters brought in by the lorry load. This attempt was stopped by Mr P Barnett of the Planning Enforcement office but the applicant was not made to remove the infill already dumped, therefore he has already reduced the size of the pond!

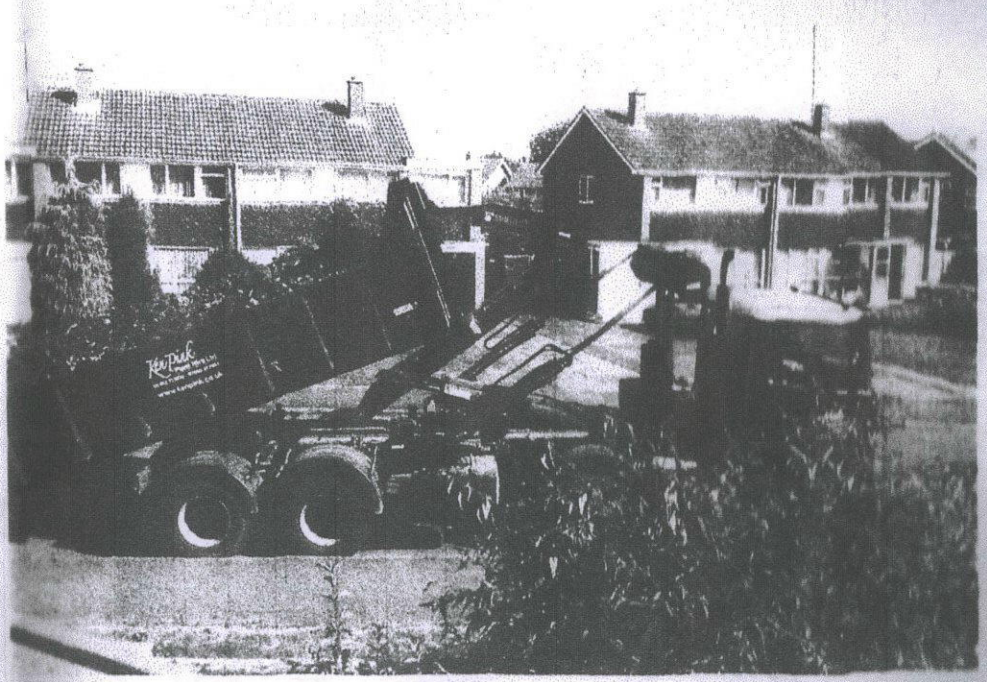
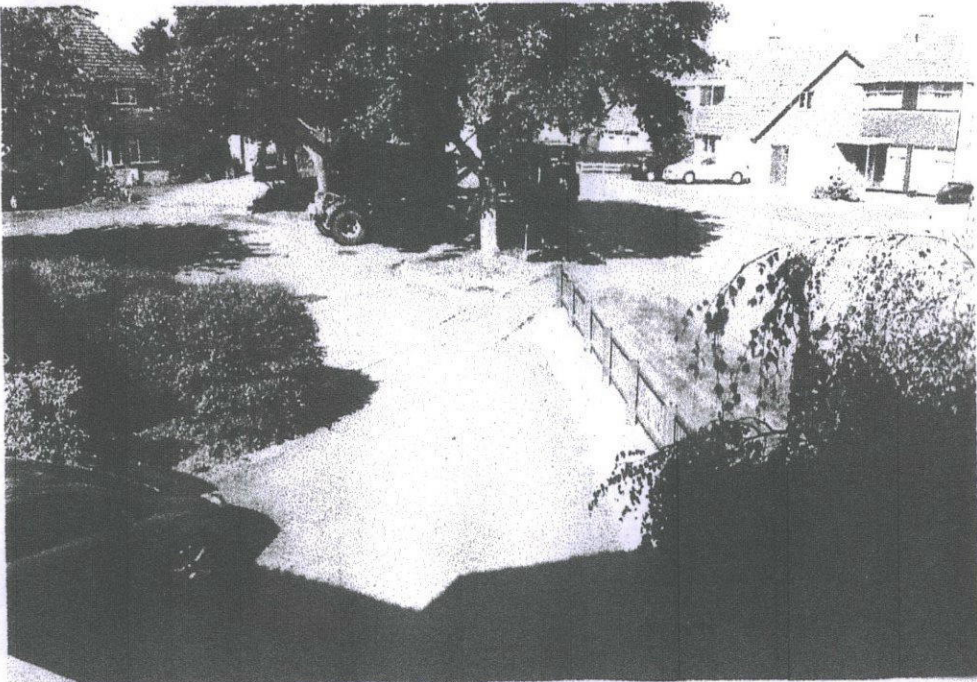
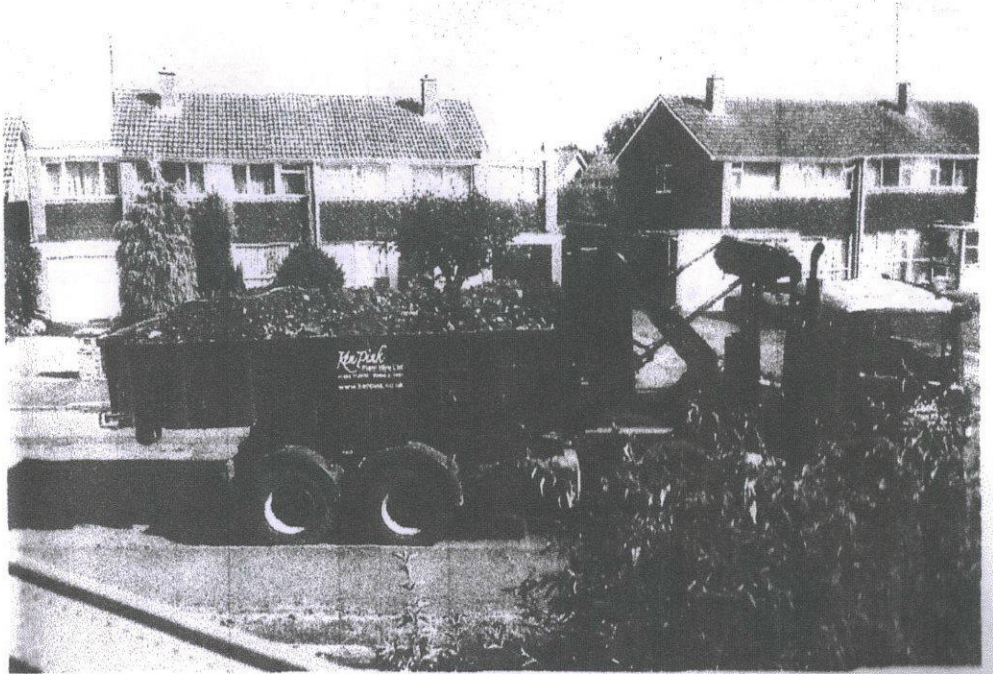
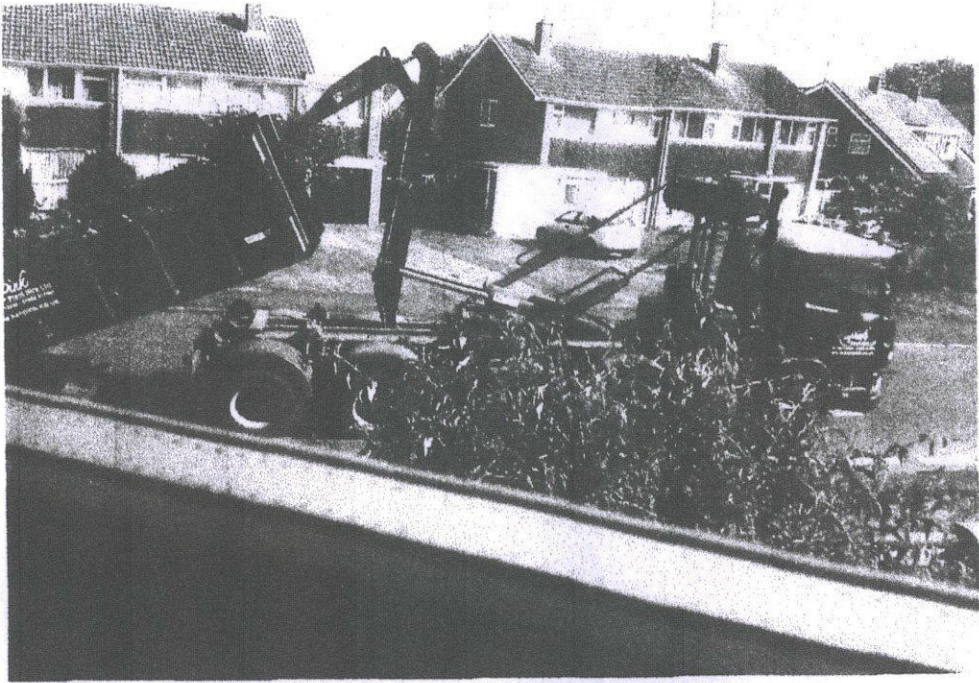
The Planning Authority has consistently refused the many applications for the reduction of the pond size and the Government's Planning Inspector (09/01740/FUL 19.11.2009) stated of the pond "It is evidently a long-standing historical feature which was left alone when the area was developed and now provides a natural, relatively undisturbed environment for a variety of wildlife."

We wholeheartedly oppose this application.

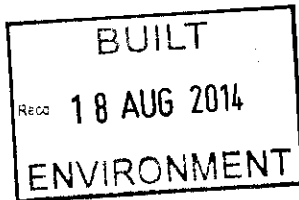
Yours











Page 64

1 Witley Lodge Close  
Up Hatherley  
CHELTENHAM  
GL51 3LW



Ms Tracey Crews  
Head of Planning  
Cheltenham Borough Council  
Municipal Offices  
Promenade  
Cheltenham  
GL50 1PP

18<sup>th</sup> August 2014

Planning Application: 14/00505/FUL

Dear Ms Crews

We wish to oppose the above planning application.

We wrote to the planning inspectorate 4<sup>th</sup> June 2014 following the council's decision to defer planning application 14/00505/FUL in order that an independent hydrology report be undertaken by Mr Limbrick with regard to the reduction in size of a pond in the grounds of his property namely Avenue Lodge, Chargrove Lane.

The quality assurance officer in his reply dated 31<sup>st</sup> July 2014 made it clear Mr Limbrick's right to make further planning applications regarding this matter were perfectly permissible. However, it was for the council to judge if any alternative application overcame the objections identified in any previous applications. In such circumstances there would be an opportunity for local people and other interested parties to put views and concerns forward relating to any new planning application and for the council's planning officer to review them in the light of the previous history concerning the site.

In reviewing the past history of planning applications to develop this site, all of which required a reduction in the size of the pond, the council has consistently refused permission.

In addition, during September 2012, when Mr Limbrick attempted to start infilling the pond, and the council's attention was drawn to his actions, Mr P Barnett (Cheltenham Planning Enforcement) stated to Mr Limbrick that, "further infilling of the pond was to cease immediately".

In dismissing Mr Limbrick's planning application 09/01740/FUL (Pond House-19<sup>th</sup> November 2009) it was the inspector's view that the pond's "essential character should be protected".

To reduce the pond area by half (50%) surely destroys the "essential character" of the pond!



We feel the landscaping proposals (excluding any reduction of the size of the pond) can be readily achieved without destroying the essential character of the pond.

We would appreciate answers to the following:

- How does one control the infilling of 50% of the pond?
- Is it the responsibility of the council, or Mr Limbrick, to ensure that ONLY the correct amount of infilling is achieved?
- Any material deposited at the side will NATURALLY flow across the base of the pond reducing the depth. It may be simple to state that the edges of the pond will be strengthened, but how do you prevent loss of depth throughout the rest of the pond when you are pouring material in from the sides?
- Whose responsibility is it to assess the affect of all that material within the pond itself since the ecosystem, especially at the bottom, will surely be destroyed by suffocation?

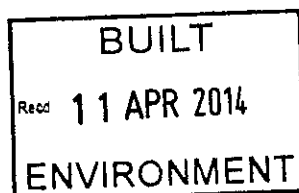
We are at a loss to understand why Mr Limbrick would embark on a scheme that no one has proved will NOT bring the misery of flooding to more residents beyond those already affected.

If further flooding occurs should those affected take legal action against Mr Limbrick or the council?

Yours sincerely



Ms Crews  
Chief Planning Officer  
Cheltenham Borough Council  
Municipal Offices  
The Promenade  
CHELTENHAM  
GL50 1PP



2 Witley Lodge Close  
Up Hatherley  
CHELTENHAM  
GL51 3LW

11<sup>th</sup> April 2014

Dear Ms Crews

**REF: 14/00505/FUL**

**Proposal: Garden Landscaping at Avenue Lodge, Chargrove Lane, Up Hatherley**

With reference to your letter dated 26<sup>th</sup> March 2014 we set out below our reasons for **opposing** the above Planning Application.

1. In making this Planning Application the Applicant is first and foremost seeking approval to **reduce the area of the pond**. The inclusion of details appertaining to a sun-dial, patio area, pathways, planting of trees and shrubs (up to 50) and flowers surely are matters that do not require Planning Approval.
2. The applicant has on **FIVE** previous occasions sought Planning Permission for projects that necessitated **the area of the pond to be reduced**. Those applications were **refused** and details should be on file at the Council Offices.
3. The pond covers an area of 538 square metres representing 40.3% of the 1335 square metres of land within the boundary of the area to be landscaped. The pond has a capacity to hold 1.8 million litres of water. The current Application gives **no details as to the total area to be infilled but it appears to be in excess of 50%**. How will this reduction allow the pond to contain the 1.8 million litres of water within its banks without further exacerbating the flooding to neighbouring gardens which occurred in 2007, 2008 and the winter of 2013/14?
4. In September 2012 the Planning Authority were made aware of the Applicant dumping ..... "a couple of loads of subsoil into the pond" (the applicant's own words). **\*SEE PHOTOGRAPHS ATTACHED**.

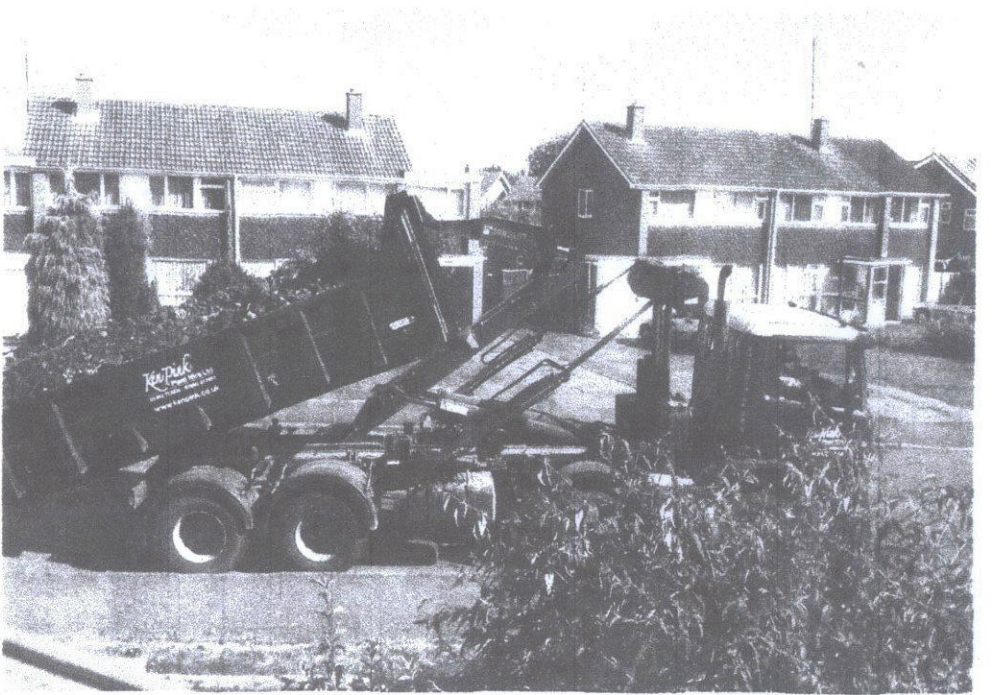
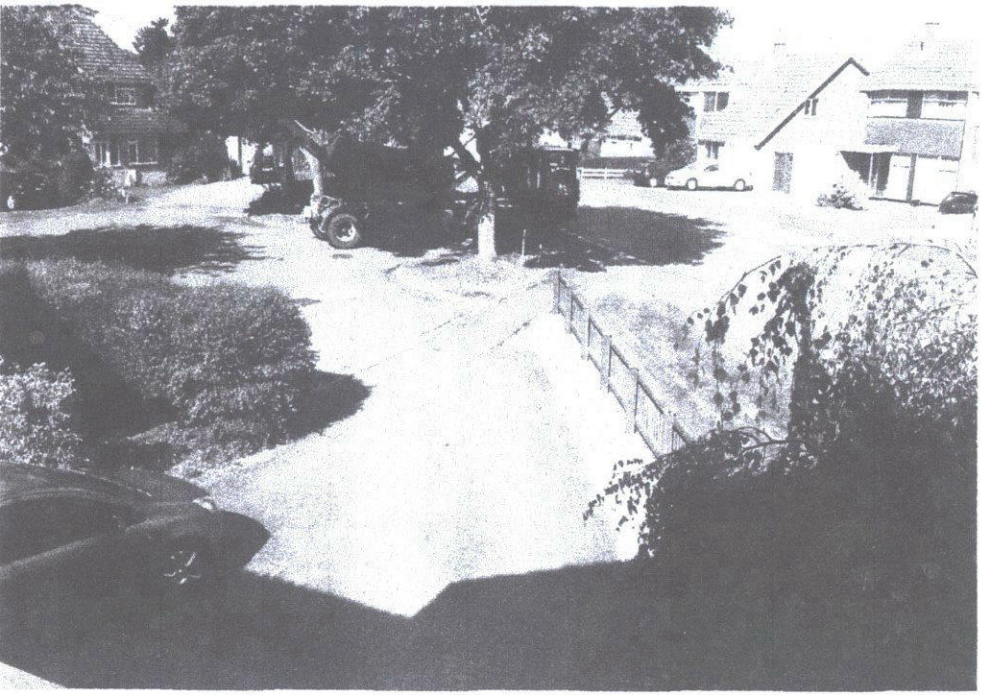
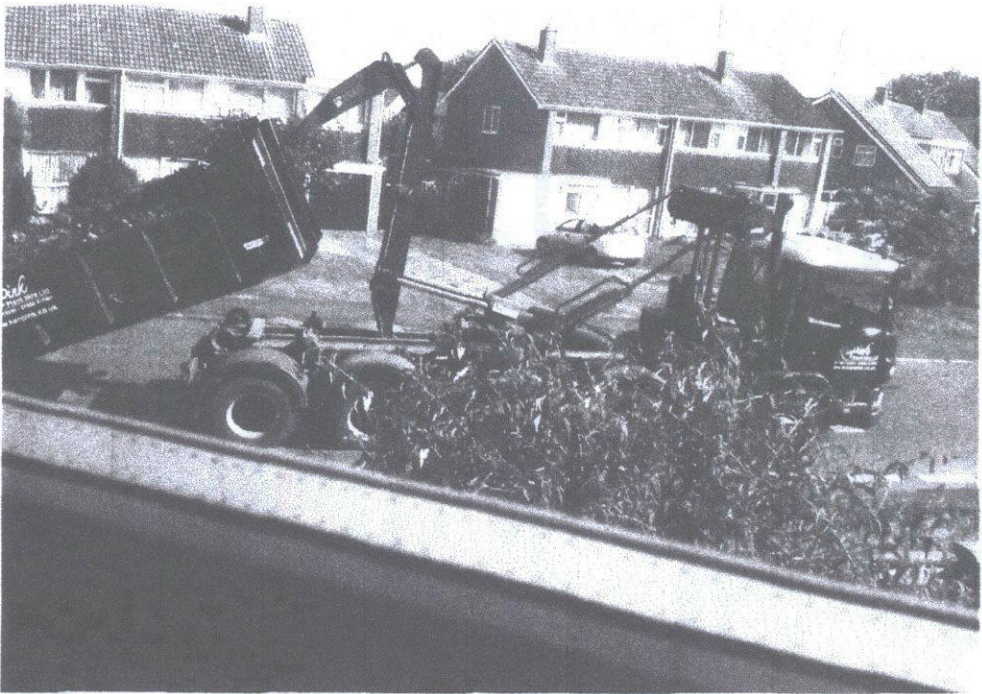
Mr P Barnett (Cheltenham Planning Enforcement) visited the site and further infilling of the pond ceased but there was no removal of the already dumped material.

5. The above history shows Cheltenham Borough's Planning Authority has consistently resisted the Applicant's request to interfere with the pond. In addition, the Government's Planning Inspector in her reasons for dismissing an Appeal by the Applicant over the refusal to agree Planning Application (ref: 09/01740/FUL) dated 19<sup>th</sup> November 2009 stated ..... "The pond provides a valuable oasis in this suburban area. **It is evidently a long-standing historical feature which was LEFT ALONE when the area was developed** and now provides a natural, relatively undisturbed environment for a variety of wildlife." (POINT NO 10) also ..... "the general benefits for common and garden species that the pond brings to the biodiversity of the site itself and, in respect of airborne species, to the wider environment" (POINT NO 11).

We feel many of the **attractive features/suggestions** proposed by the Applicant can be achieved without the need to reduce the pond and would still greatly enhance his domestic garden.

Yours faithfully

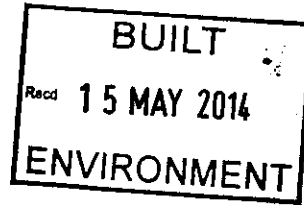






Mr. Crohill,  
Planning Department  
Cheltenham Borough Council  
Municipal Offices  
Promenade  
Cheltenham

14/00505/FUL Avenue Lodge



Brambles  
328A Hatherley Road  
Up Hatherley  
Cheltenham  
GL51 6HX

12<sup>th</sup> May 2014

Dear Mr. Crohill and Planning Councillors,

**Re: Planning Application no. 14/00505/FUL – "Garden Landscaping"**

I strongly object to this application for the following reasons.

In addition, the description given for this application states – "Comprehensive landscaping and planting scheme to improve and enhance existing domestic garden and amenity"

This description fails to mention the key element of this application, which is to **infill a large portion of the lake**.

**(1)**

This application proposes to reduce **the lake by much more than 50% in surface area**, plus an inevitable reduction in depth/capacity due to the distribution of the tipped material. This infilling will exacerbate the risks and the incidence of flooding, which extends into adjacent gardens, notably my own.

My garden was badly flooded in February of this year when the lake overflowed, as it did in 2008, 2009, 2012 and 2013. The frequency of this flooding has increased, reflecting the more frequent and longer periods of rain, now recognised as climate change. See the impacts of the flooding in the photos at the end of this letter.

**(2)**

In addition to the issue of floodwater retention, **this lake's history and its environmental/wildlife value and the "character of the area"** are the principal grounds on which this lake-infilling can continue to be refused, (not minimised/dismissed as the planning officer does in his report, and did for previous applications on this site, which the committee correctly refused, subsequently confirmed at appeal).

CBC's Land Drainage Officer notes: "*I do not comment upon the possible historic or ecological interest of the site*". However comments ought to have been obtained from CBC's **Landscape Officer** and **Green Infrastructure planners**, because this site is a **major link in a 'green corridor'** extending through large gardens to the nearby churchyard and graveyard, and from there into open countryside. See Local Plan Policies GE2 and GE3, and Para. 8.29 'green corridors'.

**(3)**

If the applicant chooses to appeal against a refusal, then the following extracts from the previous Inspector's decision letter on this site are very encouraging:

**"The principal value of the garden in the wider surroundings derives from the mature trees which are visible from many viewpoints."**

**"Although this is a private garden, it is highly valued locally as a tranquil green open space in the midst of the surrounding moderately high density residential development and for the wildlife it attracts."**

**"The pond provides a valuable oasis in this suburban area. It is evidently a long-standing historical feature which was left alone when the area was developed and now provides a natural, relatively undisturbed environment for a variety of wildlife."**

**"In my view, it's essential character should be protected against [development which]"**

would disturb and **displace much of the wildlife.**"

"Overall, however, I consider that the absence of evidence of protected species does not diminish the general benefits for common and garden species that the pond brings to the biodiversity of the site itself and, in respect of airborne species, to the wider environment."

**Appeal Inspector P.A.G. Metcalf, 25 August 2010.**

(4)

The lake and Avenue Lodge are two historical remnants from the former **Up Hatherley Manor Farm**, which provided the fields for the surrounding estate of houses. When those fields were developed, the lake was assigned to the Lodge as an extension to its garden, circa 1980.

The lake, shaped like a medieval fish pond (and may even have such early origins), predates the Lodge by being present (shaped exactly as now) on the 1847 Map of the Grovefield Estate. Avenue Lodge (at the main entrance drive to Manor Farm) is dated 1857, and is one of a triangle of three historic lodges around Manor Farm.

Avenue Lodge is on Cheltenham's register of Buildings of Local Interest. Although not a 'building', the Lake is of sufficient historic interest for it to be considered part of that 'local listing' of Avenue Lodge (to which it is now attached). Both the Lodge and the Lake served Up Hatherley Manor Farm.

(5)

The lake is proposed to be reduced by much more than half its present extent and capacity, i.e. to 40% of its current extent, and probably to no more than 25% of its capacity depending on how the infill is distributed. This applicant has made several attempts to drain and infill the lake completely in order to create a building plot.

Such a reduction will **dramatically alter the "character" of the lake, and the avian and terrestrial wildlife visitors which it can attract** and sustain. The planning officer should not dismiss this impact on character and quality, by stating: "it should still support a variety of wildlife **albeit possibly of a different type**". The proposed layout plan clearly shows a formalised small pond instead of the "natural" wildlife environment which the Inspector commended. Water birds will no longer reside/visit a lake so much reduced in size.

The planning officer is also wrong to imply (in his Update paragraph 2.1) that the **wildlife value** relies on merely "a small number of individuals" who overlook the lake from surrounding residences. Wildlife value does not depend on how many people can see into the site; and even the valuable tree views **extend to a much wider area** in this older part of Up Hatherley.

The Inspector noted that the "mature trees" are "visible from many viewpoints".

Yet the planning officer, Ian Crohill baldly states in his Update paragraph 1.2.4: "*the application site ... is of no public benefit*". This is gross insensitivity, unfairly biased towards 'permit'. Mr. Crohill has handled this site throughout its history, and has recommended 'permit' for buildings on/over this lake, all of which was subsequently refused by councillors, and then upheld at appeal.

These massive 'engineering works' should be refused on grounds of **adverse environmental and wildlife impact**.

(6)

Earlier this year there was again persistent flooding extending outward from this lake .

This flooding can last for several weeks, covering most of my lawn up to the decking at the rear of my house.

It is dismissive and over-confident of CBC's Drainage Engineer (who may not have viewed the photographic evidence submitted against this applicant's **many** previous attempts to shrink/eliminate the lake), to pronounce that: "*Infilling the pond (partial or complete) will have no long term effect upon ground water levels as they will **balance out with time***." This is a meaningless phrase, based on no site-specific evidence.

Any flooding anywhere can be said to 'balance out with time'.

Therefore, the planning officer has no certain evidence for his concluding pronouncement that: "*Professional advice [from just two consultees] is clear that the pond plays no flood storage capacity role*".

This large historic lake is not adjacent to an obvious stream or river. It is ground-water fed, which collects and persists naturally at this location. This former agricultural (and 'manor fish pond') **water collection point** must rely on some peculiar thickness or dip in the layering of the district's Blue Lias clay at this spot.

The lake is too big to be a typical upland dew-pond (man-made by puddling), nor does it have any of the usual 'dew pond' characteristics.

Therefore, heavy engineering (barriers and pumping) might prove to be required to suppress this lake permanently, destroying the "character" of our environment both during and after the works.

Neither CBC nor local residents should be asked to venture into this needless 'experiment' with all its litigation risks from any adverse outcomes.

Yours sincerely,

[Redacted signature]

#### FLOODING PHOTOS



Photo 1

Flooded lake has come under the garden fence to the right, right up to my decking.



Photo 2  
Flooding up to my decking in 2008



Photo 3  
Flooding again up to my decking in 2009 (plus Mallard ducks.)



Photo 4

The lake has extended through into my garden in 2009, with the ducks enjoying their extended habitat.



Photo 5

The flooded lake viewed from over my fence .





Photo 6

View from over my fence, with the Lake flooded to almost fill its plot.

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<b>APPLICATION NO:</b> 14/00505/FUL		<b>OFFICER:</b> Mr Ian Crohill
<b>DATE REGISTERED:</b> 22nd March 2014		<b>DATE OF EXPIRY:</b> 17th May 2014
<b>WARD:</b> Up Hatherley		<b>PARISH:</b> Up Hatherley
<b>APPLICANT:</b>	Mr Jeremy Limbrick	
<b>AGENT:</b>	No agent used	
<b>LOCATION:</b>	Avenue Lodge, Chargrove Lane, Up Hatherley	
<b>PROPOSAL:</b>	Garden landscaping	

## Update to Officer Report

Since preparing the report to Planning Committee a further letter dated 9<sup>th</sup> September 2014 has been received from the Up Hatherley Parish Council.

Enclosed with that letter was a CD containing historical documentation and photographs relating to Avenue Lodge and in particular to the pond.

The Parish Council has requested that these be made available to all members of the Planning Committee. The CD contains the attached information.

The recommendation remains to permit.

Karakorum  
Sunnyfield Lane  
Up Hatherley  
Cheltenham  
GL51 6JE



9th September 2014

Ian Crohill, Senior Planning Officer  
Municipal Offices  
Promenade  
Cheltenham  
GL50 9SA

Dear Mr Crohill,

Avenue Lodge, Up Hatherley PA 14/00505/FUL

Following my return from holiday, I am writing to you on behalf of Up Hatherley Parish Council, as at our recent meeting concern was expressed that many new members of the Planning Committee would be unaware of the long history surrounding repeated applications to reduce the size of the iconic lake at the above property.

To that effect please find enclosed a CD with relevant documentation relating to photos and previous decisions. We would be MOST grateful if these were made available to all members of the Committee.

In December 2012 we wrote "Our Development Group remains unanimously and implacably opposed to any alteration of the hugely important balancing pond at Avenue Lodge! Apart from being a valued part of our history and heritage it has a massively important role in the drainage of Up Hatherley, witness previous flooding in neighbours' gardens and the churchyard. The reasons given for reducing it are complete nonsense and in any event it is unclear just how much infill is being requested. We are also extremely disturbed to hear that diggers have been seen on site since last February. Nothing has changed from our original objections which still stand as strongly as ever."

Nothing has changed since then!

Thank you in anticipation of your assistance ion this matter.

Yours faith fully,

Peter Worsley  
(Vice Chairman, Up Hatherley Parish Council & Chairman of Planning Group)

## PLANNING COMMITTEE 21 JANUARY 2010 AVENUE LODGE AND GROUNDS

---

Avenue Lodge is an important feature of Up Hatherley's Heritage. It was only one of six buildings and grounds to feature on the principal list of Buildings of Local Interest drawn up by the Parish Council. The others were The Church, Manor Farm, Greenwode Leigh, West Lodge, and Witley Lodge.

It was built in 1857, it is an example of mid Victorian Architecture, and the Avenue Lodge Lake has been there for ever.

The proposal before you to develop this site, is an example of tandem development or back land development.

In the Council's SPD tandem development is addressed on page 36. It states:

**"On a rear garden site, single 'tandem' development will not normally be accepted"**

I would like, here, to focus on this get out clause, **"will not normally be accepted"**. And it is the reason for me wishing to address the committee to-day

My understanding is this.

1. That if the land has no merit, say, regarding the presence of wild life
2. No neighbours who could be adversely affected by development
3. That the frontage building and the grounds have no merit or special status

Then the land in question could, justifiably, be recommended for development under the get out clause.

Could such a description be applied to the land at Avenue Lodge. This is the question you have to ask yourselves to-night.

1. The land by common consent is a haven of wild life - it could quite easily qualify as a "Nature Reserve".
2. The land is surrounded by neighbours on all sides, 8 or 9 of them, and I am not aware of any of them being in support of the proposal.
3. The Avenue Lodge building and the grounds is, as mentioned above, of iconic importance to the heritage of Up Hatherley.

How on earth the 'get out clause' could be applied to this site is beyond belief. I trust that the committee, will uphold the guidance contained in the SPD regarding back land development, having due regard to the special status of the land in question, and refuse the application.

**QUESTION ONE:**

**In the unlikely event of this development being allowed, by this committee or on appeal, to whom should neighbours who may have suffered flood damage as a result of the development make a claim for damages?**

**Against the authority or the developer?**

**Is this authority carrying a risk if it authorises the proposal?**

**QUESTION TWO:**

**In the unlikely event of this development being allowed, by this committee or on appeal, and the building being occupied. How would this authority respond to a request by the householder at some future date, to drain the lake because of its perceived danger to the inhabitants under Health and Safety legislation?**

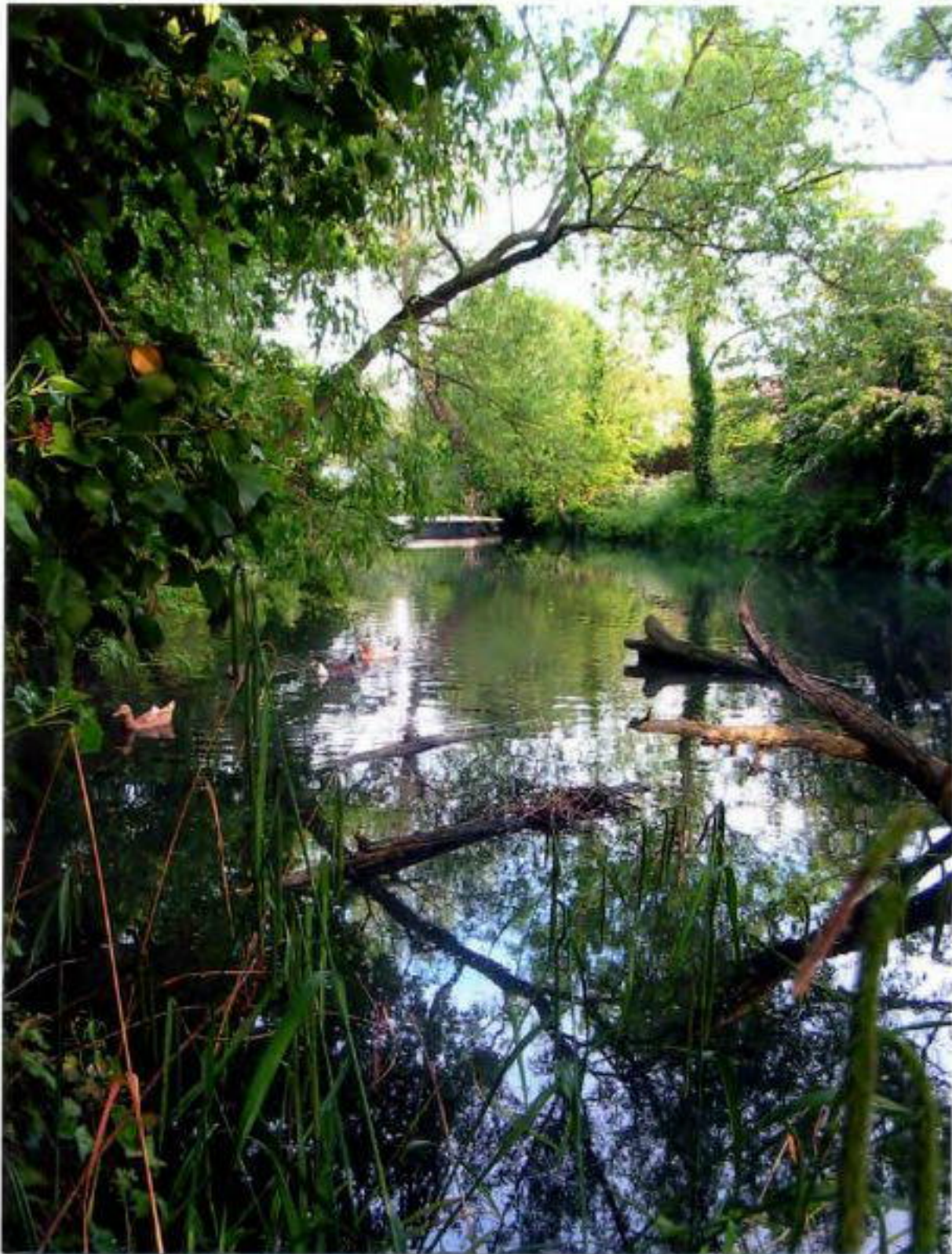
**Could I have answers to these two questions Madam Chairman**



## AVENUE LODGE LAKE

Up Hatherley, Cheltenham

Photos taken at various water levels and seasons  
2005 to 2010



**26<sup>th</sup> May 2005** - Avenue Lodge Lake surrounded with lush vegetation. Three ducks can be seen on the water and a moorhens nest – the pile of sticks on the floating log (just below centre)





**18<sup>th</sup> May 2005** - Avenue Lodge Lake surrounded by lush vegetation with bright green spring growth. The lake was around average or just below average level and the boat can be seen at the far end and a moorhen's nest in foreground.



**31<sup>st</sup> December 2005** - Avenue Lodge Lake in the process of being pumped out. A group TPO was in place on the trees but work to the trees had not begun.





**28<sup>th</sup> January 2006** - The water level can be seen to be very low, the lake having been pumped out (with pumping possibly still in progress), and work to the trees having been undertaken.



**28<sup>th</sup> January 2006** - The north east side of the lake with upturned small boat and numerous log piles from the tree work.





**28<sup>th</sup> January 2006** - Looking east across the drained lake with the larger boat beached on the bank and the oak tree just left of centre.



**28<sup>th</sup> January 2006** - Looking north-east across the drained lake with oak tree to the right of centre and a pair of moorhens in silhouette on the edge of the west bank.





**16<sup>th</sup> January 2008** - Lake in flood viewed from the garden of Brambles looking across to Witley Lodge Close and Avenue Lodge.



**16<sup>th</sup> January 2008** - Closer view (taken from Brambles garden) of the east bank of the lake in flood.





**16<sup>th</sup> January 2008** - Closer view (taken from the garden of Brambles) of the west bank of the lake in flood with the water level almost reaching the west boundary wall.



**16<sup>th</sup> January 2008** - Closer view (taken from the garden of Brambles) of the east bank of the lake in flood.





16<sup>th</sup> January 2008 - Avenue Lodge lake in flood as viewed from Brambles garden.







**16<sup>th</sup> January 2008** - The lake flooding through into the garden of Brambles. The water reaching to the top of wellington boots at the deepest part.



**16<sup>th</sup> January 2008** - Looking north in Brambles garden showing the lake flooding through and covering a large part of the garden. The fence dividing Avenue Lodge and Brambles is on the right.





**16<sup>th</sup> January 2008** - A closer view of the water in Brambles garden from the overflowing lake.



**16<sup>th</sup> January 2008** - View looking south from the deck of Brambles over the floodwater from the lake.





**11<sup>th</sup> May 2008** - View looking along the east bank of the lake from Brambles garden. The lake is about average level and the vegetation is starting to grow again on the banks.

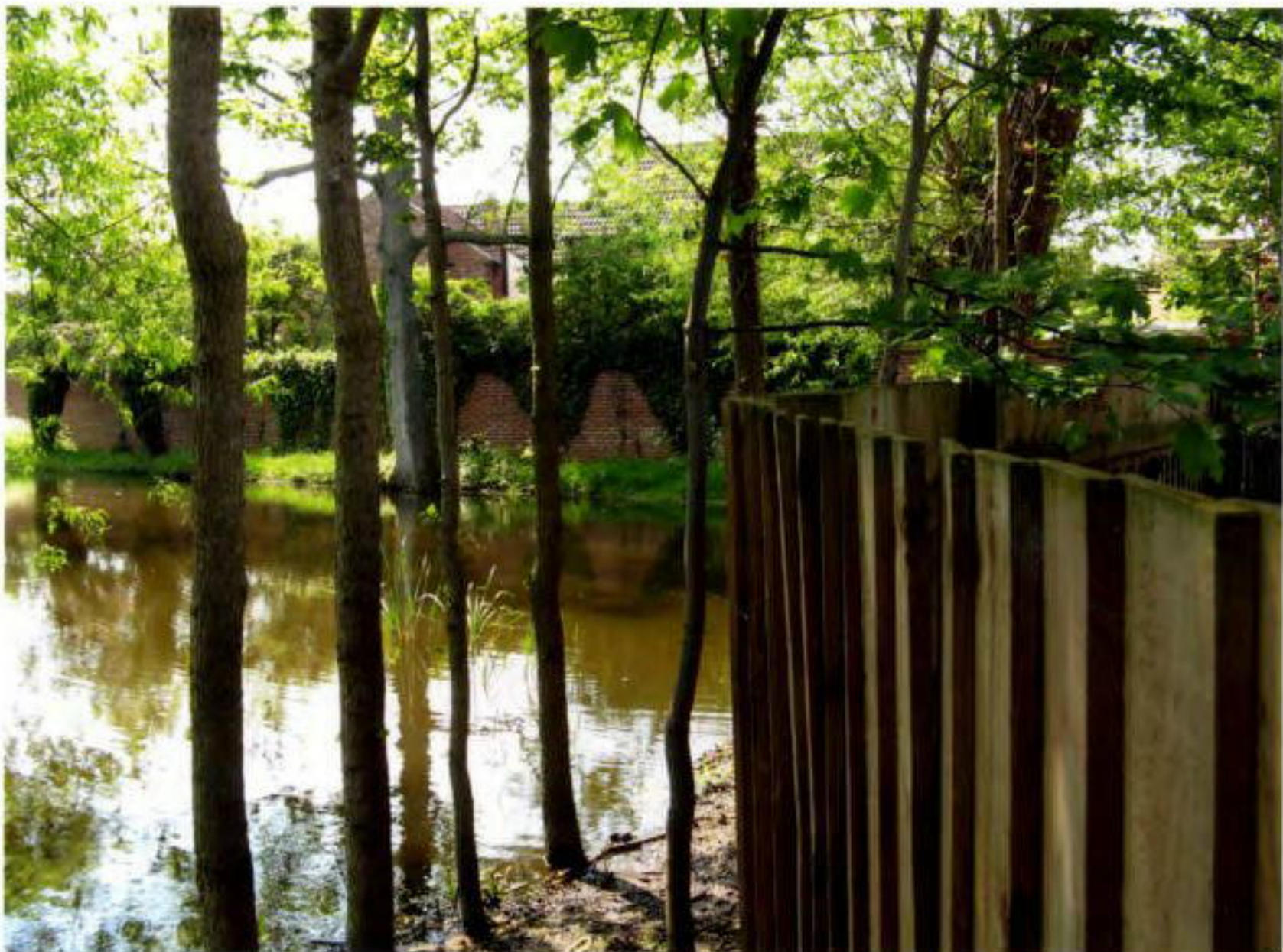


**11<sup>th</sup> May 2008** - View looking over the lake from Brambles garden.





**11<sup>th</sup> May 2008** - View from Brambles looking towards the east bank. Two ducks are swimming across.



**11<sup>th</sup> May 2008** - Looking towards the west bank, showing the north west edge of the lake bordering Brambles fence. The muddy ground indicates the lake level had recently been higher.





**26<sup>th</sup> January 2006** - View from Coombe Glen Lane of the oak tree in Avenue Lodge garden.



**6<sup>th</sup> January 2010** - Avenue Lodge Lake covered in ice and snow with two ducks scuttling across. The water level a little above average.



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

**Appeal Site:** Avenue Lodge, Chargrove Lane,  
Up Hatherley. Cheltenham. Gloucestershire.

**Appeal by:** Mr. Jeremy Limbrick

**Against:** Refusal of Planning Permission

**Appeal Proposal:** Erection of Single Storey Dwelling  
in Rear Garden of Avenue Lodge,  
Chargrove Lane, Up Hatherley.  
Cheltenham. Gloucestershire.

**LPA Ref:** 09/01740/FUL.

**PINS Ref:** APP/B1605/A/10/2124068.

**STATEMENT OF CASE**

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## 1.0 Introduction

- 1.1 This appeal is lodged by Mr. Jeremy Limbrick ("the Appellant") against decision of Cheltenham Borough Council ("the Council") to refuse planning permission for the 'Erection of a Single Storey Dwelling in Rear Garden of Avenue Lodge, Chargrove Lane' ("the Site").
- 1.2 The Planning Committee of the Council considered the planning application at its meeting 15<sup>th</sup> January 2010 (see submitted Questionnaire for copy of committee Report).
- 1.3 The officers' recommendation was that, on balance, conditional planning permission be granted. However, the committee resolved to refuse planning permission for the following reason:

*"The proposal to build a single storey flat-roofed dwelling, partly over the existing pond at this site would fail to respect the provisions of Local Plan Policies CP3 (c and d), CP4 (a and b) and CP7 and the provisions of the Supplementary Planning Document: Development on Garden Land and Infill Sites in Cheltenham adopted in June 2009. The design fails to complement and respect neighbouring development and the character of the locality. The proposed dwelling being located in close proximity to boundaries with adjacent housing would have a harmful impact on the amenities enjoyed by the occupiers of those houses as a result of its bulk and proximity to neighbouring dwellings, in addition the inclusion of a new access driveway sharing the same access point off Chargrove Lane and running along the rear gardens of neighbouring houses in Sedgewick Gardens will have an adverse impact on neighbouring amenity (all contrary to Policy CP4(a) and (b) and the SPD referred to above).*

*Furthermore, the proposal would involve development of a garden space and pond which makes a significant contribution to the established character of the area again contrary to the provisions of the June 2009 SPD and Policy CP3(c).*

*Finally, it is considered that the proposal fails to pay proper regard to the provisions of Local Plan Policy CP3 (d) and PPS9 (Biodiversity and Geological Conservation) since it has not been adequately demonstrated that the proposed development has taken account of the role and value of biodiversity in contributing to a high quality environment."*

1.4 The Appellant lodged an appeal against this decision on 2<sup>nd</sup> March 2010. His Grounds of Appeal asserts, the following:

- The proposal accords with Policies CP3 and CP4 and was supported by the Council's Conservation and Planning Officers.
- No highway objections have been raised and therefore, by implication, no harm would be caused to the amenities of the locality.
- The proposal constitutes a high standard of architectural design and adheres to the Council's SPD.
- the proposal meets the provisions of PPS9.
- the proposal would not adversely affect flood risk in the wider catchment and;
- the Council 's reference to some reasons for refusal in the absence of evidence is unreasonable.

## **2.0 APPEAL SITE AND SURROUNDS**

2.1 1.1 The appeal site comprises the rearmost section of the lengthy residential curtilage to 'Avenue Lodge' an early nineteenth century property and a slither of land between the Lodge and its southern site boundary. The lodge is an unlisted building, however, the Council has included this property as one of only six properties on the index of

buildings of local importance.

- 2.2 The main body of the appeal site comprises mainly a sizeable dew pond accompanied by mature natural vegetation including trees protected under a Tree Preservation Order (see **Appendix 1** for copy of TPO). There exist narrow bands of ground between the pond and the site boundaries. A larger area of land lies between the pond the rear garden to Avenue Lodge.
- 2.3 The appeal lies within the context of modern housing estates; the 1960's housing estate of Witley Lodge Close and Poole Lane to the north and the 1970's/1980's housing estate of Alton Close and Sedgewick Gardens. The historic development of the locality is well documented in a series of Ordnance Surveys included in the Appellant's Geo-technical Desk Study by E J Wilson and Associates (Report No. 2830) following its 'Conclusions and Recommendations'.
- 2.4 From this collection of OS Extracts, the appeal site and dew pond are shown to be have been retained within the curtilage of Avenue Lodge throughout the evolution of development in the locality. As a result, the pond has not been integrated into the estates layouts and the neighbouring properties have their rear boundaries backing onto the appeal site.
- 2.5 The locality lies within the southern margins of Cheltenham. The locality is not designated a conservation area nor part of the Cotswolds Area of Outstanding Natural Beauty nor does the appeal site lie in the setting of a listed building. However, Avenue Lodge is on the index of locally important buildings.

### **3.0 DESCRIPTION OF PROPOSAL**

- 3.1 The appeal proposal entails the erection of a flat-roofed, three bedroomed dwelling with a 'jagged-tooth' footprint positioned mainly



over the pond with its rear elements sited upon ground. The dwelling would stand upon piled foundations. Pedestrian access would be by means of a gantry from the southern edge of the pond which would extend from the proposed vehicular access and turning area.

- 3.2 The new dwelling would be accompanied by a flat roofed double garage with pyramidal rooflights sited upon the largest area of ground between the pond and the rear garden of Avenue Lodge. The garage and new garage of Avenue Lodge would be served by a shared vehicular access along the southern site boundary along the rear of several neighbours' gardens requiring the demolition of the existing garage to Avenue Lodge.
- 3.3 The Appellant's Design and Access Statement submitted with the planning application explains on page two that the proposal "*..takes its aesthetic from the Modern Movement begun in the 1920's...*" which was "*...usually expressed in white stucco walls and flat roofs and cantilevers and was always based on new means of construction disciplined by the need of function, using geometric line and form to provide an elegant unadorned simplicity.*"
- 3.4 The Statement goes on to explain that the proposed dwelling would be "*...rendered finished lightweight pre-fabricated timber panel construction on a timber piled platform with a flat roof planted with a Biodiversity Green Roof Planting System all projecting over the pond with a timber deck to the pond side accessed over a floating timber bridge guarded by stainless steel balustrades and yacht rigging wires.*"
- 3.5 The scheme also entails the loss of three trees protected under the Tree Preservation Order for which permission has previously been granted for their removal and the filling of the northern sector of the pond (about 10% of the overall pond area) to create the only garden to the dwelling.



- 3.6 In addition to these proposed works, the Highway Officers requires further work to the vehicular access and car parking for Avenue Lodge as part of any planning permission (see recommended conditions 16 and 18 of the officer's committee report).

#### **4.0 PLANNING HISTORY OF THE APPEAL SITE**

- 4.1 The historic development of the site and locality is well documented in submitted Geo-technical Desk top Study.
- 4.2 The appeal site has been the subject of several planning applications in recent years (see the officer's committee report for details). Most recently, planning permission was refused by the Council for a larger dwelling to that now proposed (Council reference: 08/00037/FUL).

#### **5.0 THE PLANNING APPLICATION.**

- 5.1 In accordance with normal procedure the Local Planning Authority wrote to statutory / non-statutory consultees and neighbouring occupiers inviting comments. Copies of the response to this consultation are included in the submitted Questionnaire and summarised in the officer's committee report.

#### **6.0 RELEVANT PLANNING POLICIES AND EXPLANATORY COMMENTS.**

- 6.1 Development Plan Policies are set out in the Regional Spatial Strategy for the South-West (RPG10), the Gloucestershire Structure Plan 2<sup>nd</sup> Review (1996-2011), approved November 1999, and the Cheltenham Borough Local Plan Second Review adopted July 2006. National policies relevant to this appeal are found in Planning Policy Guidance and Statements (PPG's and PPS's. This advice is detailed below:
- 6.2 **'The Planning System: General Principles'** explains that planning

applications must be determined in accordance with the statutory Development Plan, unless material considerations indicate otherwise (paragraph 10 refers). With regard to 'private interests', it is clarified that the planning system does not exist to protect the private interests of one person against those of another although private interests may coincide with the public interest in some cases (paragraph 29 refers). The basic question is whether the proposal would unacceptably affect amenities and the existing use of land and buildings which ought to be protected in the public interest.

6.3 **PPS1: Delivering Sustainable Development** identifies the principles of the planning system. Paragraph 4 establishes four aims for sustainable development including social progress which recognises the needs of every one, the effective protection of the environment and prudent use of natural resources. These aims should be pursued in an integrated way through, amongst other things, the creation of a just society that promotes social inclusion, sustainable communities and personal well-being. Planning should facilitate and promote sustainable and inclusive patterns of urban development by, amongst other things, the protection and enhancement of the natural and historic environment and the quality and character of existing communities.

6.4 Paragraph 13 outlines those key principles to be applied in planning decisions including:

*"(iv) Planning policies should promote high quality inclusive design in the layout of new developments and individual buildings in terms of function and impact, not just for the short term but over the lifetime of the development. Design which fails to take the opportunities available for improving the character and quality of an area should not be accepted".*

6.5 The Government is committed to protecting and enhancing the quality of the natural and historic environment and policies should seek to protect

and enhance the quality, character and amenity value of the urban areas as a whole (paragraph 17 refers). Planning should seek to maintain and improve the local environment (paragraph 18). Planning decisions should be based on the potential direct, indirect, cumulative, long- or short-term impacts on the environment (paragraph 19 refers). Resources should be used prudently in a way that respects the needs of future generations; the broad aim should be to ensure that outputs are maximised whilst resources used are minimised (paragraph 21).

- 6.6 Planning authorities should seek to, amongst other things, promote high quality and safe development, to promote more efficient use of land and to enhance and protect biodiversity, natural habitats and townscape character (paragraph 27). Adverse environmental, social and economic impacts should be avoided, mitigated or compensated for (paragraph 29).
- 6.7 Paragraphs 33 to 39 of PPS1 address specifically design. Good design is seen as indivisible from good planning and should ensure attractive, usable, durable, and adaptive places. (paragraph 33). It should contribute positively to making places better for people and “ *Design which is inappropriate in its context, or which fails to take the opportunities available for improving the character and quality of an area and the way it functions should not be accepted.*” (paragraph 34).
- 6.8 Significantly, paragraph 38 states that innovative design should not be stifled but it is proper to seek to promote or reinforce local distinctiveness.
- 6.9 Good design should, amongst other things, create an environment where everyone can access and benefit from the full range of opportunities available to members of society and consider the direct and indirect impacts on the natural environment (paragraph 35). Key objectives of policy would include ensuring that development “...respond to their local context and create or reinforce local



*distinctiveness.*" (paragraph 36).

- 6.10 These themes and definitions of 'good design' are perpetuated in **PPS3 'Housing'**. Paragraph 12 clarifies that good design is fundamental to the development of high quality new housing and that it should contribute positively to making places better for people (paragraph 13). Design which is inappropriate in its context, or fails to take the opportunities available for improving the character and of an area and the way it functions should not be accepted (paragraph 13 refers). Planning authorities should aim at creating places which meet the needs of people and are visually attractive, accessible, functional and inclusive have their own distinctive identity and maintain and improve local character (paragraph 14).
- 6.11 Matters to consider when assessing design quality include well laid out development so that all the space is used efficiently and creates, or enhances, a distinctive character that relates well to the surroundings and supports a sense of local pride and civic identity (paragraph 16). Particularly where family housing is proposed, it is important to ensure that the needs of children are taken into account that are well designed, safe, secure and stimulating (paragraph 17).
- 6.12 Planning authorities should continue to make effective use of land by re-using land that has been previously developed (paragraph 40) and the efficient use of land is a key consideration in planning for housing (paragraph 45). Housing density policies should have regard to, amongst other things, using land efficiently and achieving high quality, well-designed housing (paragraph 46). The density of existing development should not dictate that of new housing by stifling change; *"...if done well, imaginative design and layout of new development can lead to a more efficient use of land without compromising the quality of the local environment"* (paragraph 50). Good design is fundamental to using land efficiently and good design should be facilitated by identifying the distinctive features that define the character of a particular local area

(paragraph 48).

- 6.13 PPS1 and PPS3 advocate the efficient and effective use of development sites. However, of no less importance is the need to ensure that the development exhibits 'good' design which is expressed in both functional and visual terms. Indeed, planning authorities are urged to reject proposals that are inappropriate to their context and that fail to take the opportunity of improving the character and quality of an area particularly where that area displays a distinctive character and appearance.
- 6.14 **'Better Places to Live By Design: A Companion Guide to PPG3'** was published in 2001. It identifies the fundamental principles of good design and how they might be applied to create successful residential environments.
- 6.15 Chapter 7 of this guide entitled 'The Importance of Thoroughness' establishes as fundamentally important the coherent and integrated approach to the detailed design of a place requiring a fusion of all elements; the building, landscape and the interface between them. Good schemes form a place where the elements belong seamlessly to each other. Landscape design needs to complement the buildings and vice versa.
- 6.16 Planning Policy Statements combine to emphasise the efficient use of development land in sustainable locations subject to the development displaying good design that, amongst other things, is appropriate to its context. These design considerations are no less important than this efficiency of land use.
- 6.17 A second import strand of this national planning policy relevant to this appeal is the principle that the decision as to whether or not a design is 'appropriate' is determined by the context of a site. This entails a comparative or relative judgement not an absolute one as to the quality of a design; a design found to be acceptable in one context might

constitute an inappropriate design in a different context.

6.18 To this end **Circular 01/2006 ‘Guidance on Changes to the Development Control System’**, explains in paragraph 56 that Section 42 of the Planning and Compulsory Purchase Act 2004 requires the provision of a statement covering design concepts and principles and access issues to enable the applicant to demonstrate an integrated approach that will deliver inclusive design and address a full range of access requirements (paragraph 58).

6.19 Paragraphs 60 and 63 of 01/2006 explain that the Design and Access Statement should illustrate the process by which the design was reached and to explain and justify the proposal to allow assessors of the scheme to understand the rationale that underpins the design. A major important part of the statement is the explanation of how local context has influenced the design (paragraph 64) and ease the involvement of local communities in the decision-making process (paragraph 66). Significantly, paragraph 64 recognises that proposals not based upon a good understanding of local physical, economic and social context are:

*“...often unsympathetic and poorly designed and can lead to the exclusion of particular communities.”*

6.20 Paragraph 81 requires a statement to explain the principles of the ‘amount’ of development proposed, its layout, scale in relation to its surroundings (paragraph 88), landscaping and appearance. Further, a statement must demonstrate the steps taken to appraise the context of the proposal including the design of the scheme using this appraisal (paragraph 97). Significantly, it is reaffirmed that:

*“Understanding a development’s context is vital to producing good design and inclusive access and applicants should avoid working retrospectively, trying to justify a pre-determined design through subsequent site assessment and evaluation.”*



- 6.21 With regard to the development plan, section 38(6) of the Planning and Compulsory Act 2004 states that:

*"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise".*

- 6.22 **PPS9 'Biodiversity and Geological Conservation'** addresses the government's national policy on the protection of biodiversity. The government aims to promote sustainable development by ensuring that biological diversity are conserved and enhanced and by contributing to urban renaissance by *"...enhancing biodiversity in green spaces and among developments so that they are used by wildlife and valued by people, recognising that healthy functional ecosystems can contribute to a better quality of life and to people's sense of well-being.."*

- 6.23 It is important to note that PPS9 seeks to protect and enhance biodiversity as a whole and not only that found on designated sites although appropriate weight is to be attached to such designated sites (paragraph 1 (ii) refers). Where significant harm to biodiversity cannot be prevented, mitigated against or compensated for planning permission should be refused (paragraph 1 (vi)). Planning authorities should maximise opportunities for building-in beneficial biodiversity as part of good design of development (paragraph 14).

- 6.24 Paragraph 12 of PPS9 identifies the value of a network of natural habitats to provide routes or stepping stones for the migration and dispersal of species in the wider environment. Such networks should be protected from development and where possible strengthened by or integrated within it.

6.25 Regional Spatial Strategy for the South West (RPG10).

RPG10 was published in September 2001 and provides broad strategic policy for the region. One aim of RGP10 is the prudent use of resources reducing the consumption of irreplaceable natural resources (page 13).

**Policy VIS 2: Principles for Future Development** requires policies that, amongst other things, ensure the efficient use of land with well designed development taking place at as high a density as possible commensurate with a good living and working environment and to conserve and enhance environmental assets and promote good quality design.

6.26 **Policy EN 3: The Historic Environment** requires that, amongst other things, account is taken on the landscape context and setting of buildings and settlements that distinguish one area from another.

**Policy EN 4; Quality in the Built Environment** states that the aim should be, amongst other things, to achieve high quality urban design and improvements to the environment in cities recognising and maximising the positive contribution that *"...trees, other planting and open spaces can make to urban areas in terms of their recreational, nature conservation and wider environmental and social benefits..."*. Further, the aim should be to achieve schemes that *"...protect and enhance distinctive features and settings of the locality and make use of local character to created identity and a sense of place that reflects their context."*



6.27 The Gloucestershire Structure Plan

The Gloucestershire Structure Plan Second Review (GSPSR) was adopted in November 1999, with a plan period 1991-2011. Although the plan is currently under review, Gloucestershire County Council has not accepted the Direction of the First Secretary of State to increase levels of housing growth at the Cheltenham Principal Urban Area up to 2016 or amend the plan to remove the reference to 'post 2016' in the Green Belt policy. The Structure Plan will therefore not be progressed to adoption. The Gloucestershire Structure Plan Second Review therefore remains part of the statutory development plan for Cheltenham with the Structure Plan Third Alteration forming only a material consideration in the consideration of planning applications.

6.28 **Policy S3** of the GSPSR encourages housing development on previously developed, well-located sites' *'where this would not be detrimental to the urban environment'* and that *'these areas should be utilised to their maximum efficiency, consistent with the character and appearance of the wider location and the quality of life of those living and working in the locality'* The inspector will note that a pre-requisite of redeveloping land efficiently is that the character and appearance of the locality is not detrimentally affected.

6.29 **Structure Plan Policy S.6** requires that, amongst other things, aspects of the environment should be safeguarded including the quality of the built environment. **Structure Plan Policy S.7** requires that high

standards of design are adopted to maintain the quality of the County's environment. **Structure Plan Policy NHE.2** requires protection of and, wherever possible, enhance the biodiversity of the County. Paragraph 14.2.12 of the accompanying text states that nature conservation cannot be effectively sustained only on managed designated sites. Development should, where possible, *"...be met through integrating it into the natural environment, not displacing it."*

( for extracts of Structure Plan – see **Appendix 2**).

### 6.30 The Cheltenham Borough Local Plan

The Cheltenham Borough Local Plan Second Review was adopted in July 2006. The policies and their supporting text have already been submitted to the Planning Inspectorate with the Council's questionnaire.

6.31 **Local Plan Policy CP.3 Sustainable Environment**, criterion (c) states that development will be permitted only where it would conserve or enhance the best of the built environment. The term 'best' is explained in accompanying note 4 as meaning a feature which makes a significant contribution to the character, appearance, amenity or conservation of a site or locality. Criterion (d) requires that biodiversity is safeguarded and promoted.

6.32 **Local Plan Policy CP4: Safe and Sustainable Living**, criterion (a) states that development will only be permitted where it would not, amongst other things, cause unacceptable harm to the amenity of adjoining land users and the locality. Note 1 accompanying this policy states that regard is paid to loss of outlook and potential disturbance from noise, and glare from artificial lights. Criterion (b) of Policy CP4 rejects levels of traffic to and from a site attaining an environmentally unacceptable level.

6.33 **Local Plan Policy CP 7** addresses design matters and like Policy CP3



is a restrictive not permissive policy. It states that development will only be permitted where, amongst other things, it is of a high architectural design (criterion (a)) and it complements and respects neighbouring development and the character of the locality (criterion (c)).

6.34 Policies CP3 and CP7 require development to conserve or enhance or to complement and respect the character and appearance of the locality and Policy CP4 attempts to protect the amenities of neighbours from harm.

6.35 Table 2 of the Local Plan (page 15) identifies the principles of sustainable development as including the effective protection of the environment (including the conserving of green space and protection/creation of wildlife habitats), the prudent use of natural resources (including the highest density of development consistent with high quality design and amenity and character of the locality) and the promotion and enhancement of the quality of life. Tables 3 and 4 identify the principles of urban design and architectural design including 'character' of the area (creating the sense of place with its own distinctive identity, historical context), the 'quality of the public realm' (creation of attractive spaces which provide a variety of interest and experience), 'landscape' (the integration of buildings and landscape), 'diversity' (a mix of building forms and uses) and the 'layout', urban grain or pattern of a locality, the scale and appearance of buildings.

6.36 Other Material Documents.

The Council has adopted '**Development on Garden Land and Infill Sites in Cheltenham**' **Supplementary Planning Document** (SPD) in June 2009 (see **Appendix 3**) which carries weight in the determination of this appeal (see paragraph 1.12). Paragraph 1.2 identifies the value of garden land and that development upon it can be a sensitive issue which should be of the highest design quality. The primary aim should

be to raise standards and promote high quality places (paragraph 1.3).

- 6.37 Section 3 of the SPD addresses 'Character and Amenity'. Paragraph 3.1 is clear that proposals for the development on garden land should be based upon a thorough understanding of the character of the neighbourhood. This reflects the requirements of Circular 01/2009 (see above). The character of area can comprise a number of elements including landscape features (paragraph 3.2). A place must be allowed to evolve in a way appropriate in the context of that place seeking always to enhance a place; change that is harmful to the character or amenity of an area will normally be unacceptable (paragraph 3.5). The index of buildings of local importance should be taken into account (paragraph 3.15).
- 6.38 In terms of 'amenity', the SPD explains that disturbance from vibration, noise, light glare would be considered (Box.6, page 18). Before the submission of a planning application, applicants are required to undertake a two-stage process; to undertake an analysis of the character of an area including it within a Design and Access Statement and; design a scheme which responds to that character (page 22).
- 6.39 To assist in the identification of a characteristic of a locality, Appendix 3 to the SPD provides a broad indication of identifiable character areas of Cheltenham (page 50). The appeal site lies within an area comprising "...large scale private sector housing estates mainly built post 1945. Most are unplanned, and developed in a more incremental way than the social housing areas, with fewer large open spaces and not generally benefitting from large back gardens". (page 51). The locality to the appeal site is typical of this broad character type.



## **7.0 THE BOROUGH COUNCIL'S CASE**

7.1 The Council's objections to the appeal proposal are explained clearly in its reason for refusal.

7.2 No objection is raised to the broad principle of developing upon an area of land that lies within an area comprising extensive modern housing estates. The site lies within the built up limits of Cheltenham in a relatively sustainable location and the proposal, on the face of it, seeks to make more efficient use of land. Despite its very naturalised character and appearance, it could be construed as 'previously developed' land in accordance with Appendix B of PPS3 or a potential infill plot. However, it is important to note that Annex B states that:

*"...there is no presumption that land that is previously-developed is necessarily suitable for housing development nor that the whole of the curtilage should be developed."*

7.3 Subject to compliance with other more detailed planning policy criteria and the detailed characteristics of the site and neighbourhood, the broad principle of new residential development on this site is acceptable subject to the full guidance set out in national and development plan policy.

7.5 However, the Government's requirement for the efficient use of development is afforded no greater weight in decision making than the need to ensure that development causes no visual harm to the character and appearance of a specific site and location. PPS3, Structure Plan Policy S.3 and Local Plan Policy HS2 advocate the efficient use of development land. However, a pre-requisite of these policies is that it development occurs in a way that is consistent with the locality; efficiency is not to take place at the expense of amenity. A higher

density of development is no more a manifestation of sustainable development than the protection of the amenities of a host environment.

7.6 The Council's case is therefore addressed under the following questions:

- What is the character and appearance of the site and locality?
- Would the proposed development respect, conserve or enhance that character and appearance?
- Are there any special circumstances that would justify any harm caused to this character and appearance and the consequent breach of the Development Plan?

7.7 What is the Character and Appearance of Site and Locality?

The locality is characterised by modern housing estates comprising house designs and layouts typical of their years of construction.

7.8 Avenue Lodge, its extensive curtilage including the dew pond, is a historic property that has remained relatively unchanged but it has been subsumed by this modern development. The submitted Geo-technical Desk Study demonstrates this process and that the dew pond is an important and historic component of Avenue Lodge, a building of local importance, and of the locality.

7.9 However, the dew pond has not been integrated into the design and layout of the subsequent housing estates. As a result it has assumed the character and appearance of a green 'oasis' to the rear of all neighbouring properties more apparent when the trees are in leaf (see Appendix 1 of the submitted Geo-Environmental Desk Study for photographs). This character is markedly at odds with the surrounding form and layout of the surrounding built environment resulting in it possessing a distinctive character and appearance in which nature is pre-dominant.

- 7.10 Notwithstanding the presence of a variety of means of enclosure around the appeal site perimeter, the appeal site also provides an undeveloped, green backcloth to the surrounding properties and an informal, natural context to an otherwise unremitting suburban environment.
- 7.11 This oasis provides a naturalistic environment engendering a sense of calm and tranquillity enjoyed and valued by those occupying adjoining properties particularly when the trees are in leaf. It also provides a significant visual and aural barrier helping to create a sense of relative isolation between these residential properties.
- 7.12 Both the character and appearance of the appeal site and its influence upon the living environment of neighbours combine to create a distinctively naturalistic environment. The fact that the public has no access to the appeal site does not prevent it from having a positive impact upon local living conditions; neighbours are aware of and benefit from the current undeveloped status of the site.
- 7.13 Allied to these visual, aural and ambient characteristics of the appeal site and its distinctive pond environment, it provides a naturalised environment to wildlife.
- 7.14 The Appellant submitted a survey, 'Protected Species Survey, Assessment and Protection Measures' produced by SLR Consulting in September 2005. This survey, however, was primarily concerned with protected species and concluded that:
- it was unlikely that great crested newt is present at the site.
  - that a single entrance outlier badger sett was not active at the time of the survey.
  - that there are two potential roosts for bats, however, Avenue Lodge is unaffected by the proposed development and two relevant mature trees are of insufficient quality to support a winter hibernation roost or summer



maternity roost.

- the site provides some limited opportunities for grass snake habitats although there appeared a lack of suitable prey species and the isolation of the site results it being largely sub-optimal.
- the habitat around the pond is too small and isolated to support slow worms, common lizard or adder.
- the site provides some potential for breeding birds and works including the provision of nesting boxes or the restriction of construction works to beyond the bird nesting season.

7.15 The authors of the report, published in 2005, stated no survey can predict with absolute certainty that the animals will occur in suitable habitats or that they will not or do not occur in apparent unsuitable habitats. It concluded, however, that there exist no overriding ecological constraints to the development of the site. There is no suggestion in the report that this site has no value as a resource for biodiversity or does not possess the potential to add to the biodiversity of the area.

7.16 Would the Proposed Development Respect, Conserve or Enhance that Character and Appearance?

PPS1, paragraph 34 is categorical that design inappropriate to its context or fails to take opportunities available for improving the character and quality of an area should not be accepted. Paragraph 36 requires that design 'responds' to a local context and creates or reinforces local distinctiveness. PPS3, Circular 01/2006 and the Council's SPD require that applicants undertake a detailed analysis of a site and locality to ensure that a design is informed by, and appropriate to a particular host environment. It is conceivable that following such an analysis, it might be concluded that a site cannot be developed without harm being caused to its intrinsic character and quality or to protect such qualities

development should be excluded from an element of a site.

- 7.17 The Appellant submitted a Design and Access Statement which concluded that the proposed distinctive design is "highly imaginative and very unusual", that it "complements" and respects neighbouring development but only by being subservient and adds an unusual building type to the area. The statement, however, lacks a full, detailed analysis of site and the locality. In terms of site use, the Design and Access Statement considers that the residential use is the best use of the site, that its distinctive footprint minimises harm to trees and that its modest scale reduces its visual impact.
- 7.18 The Design and Access Statement explains how the design was arrived at to address the physical constraints of the site; the pond, the trees and close proximity of to neighbouring properties. However, the statement offers no detailed analysis of the quality and characteristics of the appeal site, of the pond as a single entity and as an important and near unique natural feature, the significant contribution it makes to the locality and how the house design responds to and complements those qualities.
- 7.19 As a result, rather than the proposed development complementing the presence of the pond, the pond is accommodated and subsumed by the house. This process is demonstrated by the proposal requiring the filling-in the northern end of the pond to create the only garden area and for much of the remainder of the pond to be covered by the house itself. The pond would become a subservient landscape feature of the proposed development not the house respecting the pond and trees as a single entity. Rather than the development being integrated into the natural environment, it would displace that natural environment.
- 7.20 As a result, the sense of relative isolation in visual and aural terms would be displaced by the new dwelling, the glow of lighting and the disturbance and noise normally associated with a household in close

proximity to common boundaries with their neighbours. If the valued, historic naturalistic qualities of the appeal site, in particular the pond, are to be retained, it should be protected from significant development such as that proposed. The Council accepts that the appeal site is part of the Appellant's residential curtilage. However, the increased incidence of vehicle movements along the southern site boundary and the rear of neighbours' modest rear gardens, the passage of pedestrians across the gantry to the house, the use of the new garden area in addition to domestic activities within the building would be a material and harmful intensification of the use of the appeal site in close proximity to neighbours to their dis-benefit.

- 7.21 The proposed design and layout of the development appears to be only a response to the physical constraints of the site as there is no evidence that the Appellant's design responds to the intrinsic and distinctive qualities of the site and its positive contribution to the locality. The usurping of the pond as the primary natural and informal feature by the proposed dwelling would not complement, respect, conserve or enhance its current character as required under national and development plan policy.
- 7.22 Allied to this, Local Plan Policy CP3(d) states that development will be permitted only where it would safeguard and promote biodiversity. This policy requires protective measures being employed and direct action to enhance a resource. PPS9 identifies the protection and enhancement of bio-diversity as important considerations to enhance the quality of life and individuals' well-being and that development should build-in beneficial bio-diversity (paragraph 14).
- 7.23 Policy CP3(d) is a restrictive policy which allows development *only* where all its criteria is satisfied fully. The onus is therefore upon the Appellant to demonstrate his proposal accords fully with Policy CP3. It is worthy of note that PPS9 places weight on the interests of biodiversity as a whole and does not restrict itself solely to protected species.



- 7.24 The submitted wildlife report, in contrast, restricts itself to protected species although it states that the presence of other species, other than nesting birds, appears limited. The report concludes there exists no overriding ecological constraint to the development of this site. This criterion implies some impact upon biodiversity but not to the degree that the proposed development should be prevented given the scope to mitigate and compensate for this impact.
- 7.25 However this criterion, to which the report restricts itself, does not address the only relevant criterion of Policy CP3 (d) that the proposed development must safeguard *and* promote biodiversity. This policy requires not the lesser test that harm to biodiversity is reduced to an acceptable degree but that it is both protected from harm and that action is taken to enhance it.
- 7.26 There is an absence in the report as to how, or whether, the proposed development will promote diversity, as required by Policy CP3(d). Given that two trees are to be felled, the northern section of the pond is to be filled-in and the proposed intensive presence of human activity would mark a fundamental change to this naturalistic and relatively isolated area it is imperative for the Appellant's evidence to be explicit in this respect. The fact that the appeal site does not enjoy a specific wildlife designation does not weaken the requirement for Policy CP3(d) to be fully met; this policy does not restrict itself to protected species or designated sites. In the absence of such an analysis, the Appellant has failed to prove that his proposal would promote biodiversity and that Policy CP3(d) is satisfied. It is worthy of note that paragraph 13 of PPS1 states that "*...Design which fails to take the opportunities available for improving the character and quality of an area should not be accepted*".
- 7.27 Are there any Special Circumstances that would Justify any Harm Caused to this Character and Appearance and the Consequent Breach

of the Development Plan?

No special circumstances have been promoted by the Appellant, to date, to justify the harmful impact of the proposed development contrary to the provisions and objectives of the Development Plan and national planning policy.

7.28 The Council acknowledges that PPS, PPS3 and the Structure Plan emphasise the development of infill plot within built-up areas over that of Greenfield sites. The Structure Plan advocates increased density of development but only where consistent with the character of an area. Further, Annex B of PPS3 is most explicit that there exists no presumption that such plots are necessarily suitable for housing. The fact that such an emphasis exists renders it the more important to protect undeveloped, yet valued, areas of land in the face of the gradual consolidation of the urban areas. The Council's wish to strike an appropriate balance between the efficient use of urban land and protection of amenity gave rise to its adoption of its SPD (see above).

7.29 The Council does not accept, in this instance, that the harm arising from the allowance of this appeal proposal is justified by any special circumstances surrounding this site. The appeal site in its current form adds significantly to the area and does not detract from it.

7.30 Other Material Considerations.

The Appellant has relied upon the fact that the Council's Planning and Conservation Officers raised no objection to the proposed development. The Conservation Officer addressed the proposal in the context of its impact on Avenue Lodge, a building of local interest and not specifically the dew pond or its non-historic environs.

7.31 The Planning Officers' recommendation was one made 'on balance' reflecting the balance that applied between the use of the site as a

potential housing plot and its impact upon the host environment.

- 7.32 The fact that Members of the Planning Committee struck a marginally different balance between 'utility' and 'amenity' to their officers does not, it itself, render their decision unreasonable. The determination of this appeal turns upon an informed judgement concerning subjective matters such as impact upon amenity and visual impact. Members of the committee are empowered to express their collective view as to the acceptability, or not, of the appeal proposal.

## **8.0 Conclusions.**

- 8.1 The Council accepts, as a broad principle, that the consolidation of built-up areas is acceptable under national and development plan policy. However, such development is not to occur at the expense of the amenity of the host environment.
- 8.2 The Council has also demonstrated that the appeal proposal does not respect, conserve or enhance the appeal site or its environs which has a distinctive, naturalistic character and appearance in stark contrast with that of the surrounding modern housing estates.
- 8.3 The appeal proposal would impose itself upon the appeal site displacing this valued character rendering the site subordinate to the development and not vice versa. The close proximity of the proposal to neighbouring properties would replace the sense of relative seclusion and tranquillity enjoyed by neighbours with the visual and aural impact of activities and development normally associated with a single household including the passage for more vehicles along the rear of modest-sized neighbours' gardens.
- 8.4 In all, the appeal proposal appears a design response only to the *physical* constraints of the site. The equally important *aesthetic* qualities of the site have not been analysed by the Appellant and as a result,



the design has not responded to the intrinsic character and appearance of the site and its context. The design results in the pond becoming a sub-ordinate landscape feature of the overall scheme and not being retained as a single, dominant and natural entity. Consequently, the design is not appropriate to this appeal site and is not integrated with the natural environment of the site.

- 8.5 Allied to this, the Appellant has satisfied himself with satisfying the lesser test that the appeal proposal is not constrained by biodiversity interests. Rather, the Appellant should have addressed the correct Local Plan criterion, that biodiversity is both safeguarded and promoted. PPS9 requires that new development should 'build-in beneficial biodiversity which the appeal proposal has failed to address.
- 8.6 It is for these reasons that the Inspector is respectfully requested to dismiss this appeal.
- 8.7 In the event of this appeal being allowed, the Council requests that those conditions included in the Council's committee report be considered by the Inspector.



# Appeal Decision

Site visit made on 25 August 2010

by **Penelope Metcalfe** BA(Hons) MSc  
DipUP DipDBE MRTPI IHBC

an Inspector appointed by the Secretary of State  
for Communities and Local Government

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Decision date:  
6 September 2010

## Appeal Ref: APP/B1605/A/10/2124068

### Avenue Lodge, Chargrove Lane, Up Hatherley, Cheltenham, Glos, GL51 3LD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Jeremy Limbrick against the decision of Cheltenham Borough Council.
- The application (Ref 09/01740/FUL), dated 19 November 2009, was refused by notice dated 21 January 2010.
- The development proposed is erection of single storey dwelling in rear garden of Avenue Lodge, Chargrove Lane, Up Hatherley, Cheltenham, Glos.

### Application for costs

1. An application for costs was made by Mr Jeremy Limbrick against Cheltenham Borough Council. This application is the subject of a separate Decision.

### Decision

2. I dismiss the appeal.

### Main issues

3. The main issues concern the effect of the proposal on the character and appearance of the area and on the living conditions of residents in terms of noise, disturbance and outlook.

### Reasons

4. The appeal site comprises the large rear garden of Avenue Lodge, a substantial two storey detached house. Most of it is taken up by a large pond which is surrounded by several mature, mainly deciduous trees, which are subject to a Tree Preservation Order. Although this is a private garden, it is highly valued locally as a tranquil green open space in the midst of the surrounding moderately high density residential development and for the wildlife it attracts.
5. Since the application the subject of this appeal was determined by the Council, Planning Policy Statement 3 (PPS3) *Housing* has been altered to exclude garden land from the definition of previously developed land. The Council's Supplementary Planning Document *Development on Garden Land and Infill Sites in Cheltenham*, adopted in June 2009 (the SPD) seeks to improve the quality of all applications for development on garden land. This aim is now supported by the amendment to PPS3 which seeks to reduce the detrimental effect of garden land development which arises from pressure to meet the national target for focusing development on 'brownfield' land. The SPD carries substantial weight in the determination of this appeal.



- 
6. Avenue House is on the Council's Index of Buildings of Local Importance, but the proposed building would be far enough from the main house that it would not affect the setting of the latter. However, although the low profile and the proposed green roof of the single storey dwelling would render it relatively unobtrusive when viewed from neighbouring properties to the northeast, it would appear as an alien feature when viewed from the southwest, particularly in contrast to the semi-rural oasis of the present garden.
  7. It would have a large, sprawling footprint with a somewhat contrived plan form designed to avoid tree roots and accommodate the pond, and it would leave a disproportionately small area of usable amenity space around it. It would be constructed on piled foundations and extend over a sizeable proportion of the pond. I consider that the adverse effect of this on the character of the garden area as a whole and the pond itself would be severe and unacceptable.
  8. The design of the dwelling is radically different from that of the surrounding, predominantly 1970s, housing and from the main house itself. This is not necessarily unacceptable in itself, but although I find it innovative and imaginative, it is not appropriate in this context. I conclude that the proposal would not respect the character of the locality and that it is contrary to policy CP 7 of the Cheltenham Borough Local Plan Second Review (the local plan).
  9. The principal value of the garden in the wider surroundings derives from the mature trees which are visible from many viewpoints. I do not doubt the appellant's intention to retain and manage the trees. I am less convinced that future occupiers of the dwelling would not want to reduce the trees in some way to gain more light or reduce leaf fall, but I accept that pressure to prune them can readily be controlled as they are subject to a Tree Preservation Order.
  10. The pond provides a valuable oasis in this suburban area. It is evidently a long-standing historical feature which was left alone when the area was developed and now provides a natural, relatively undisturbed environment for a variety of wildlife. Although it is not accessible or visible to the general public, it is clearly valued by the local residents for its tranquillity and wildlife and makes an important contribution to their quality of life. In my view, its essential character should be protected against the potential risk that the building itself, especially during its construction, and subsequently, its associated domestic paraphernalia and activities, would disturb and displace much of the wildlife.
  11. I have taken full account of the surveys put forward by the appellant. I note the limitations of the timing of the field work and the difficulties this gave rise to in assessing the biodiversity of the pond, and also that that survey was carried out 5 years ago and was mainly concerned with protected species. It is unclear to me from the various views put forward by both the appellant and the Council whether the pond would benefit from more light following pruning of the trees or from more shading as a result of the building oversailing it. Overall, however, I consider that the absence of evidence of protected species does not diminish the general benefits for common and garden species that the pond brings to the biodiversity of the site itself and, in respect of airborne species, to the wider environment.
-



12. On balance, I conclude that the proposal would dominate the pond, thereby failing to conserve or enhance the best of the natural environment both in visual terms and in its potential effect on biodiversity. It would therefore be contrary to local plan policies CP 3 and CP 4.
13. I consider that the proposed dwelling would have an unacceptable impact on the living conditions of neighbouring residents, principally in terms of noise, disturbance and outlook.
14. The creation of a new drive along the rear of the properties in Sedgewick Gardens and a new garage close to the boundary with Nos. 2 and 3 Witley Lodge Close would generate vehicle movements potentially at all hours. This would produce noise from engines and doors shutting and light from headlights at night which would diminish the quiet character of the rear rooms and gardens of those properties.
15. There would also be some increase in the noise and disturbance experienced by the residents of Aylton Close, particularly from the use of the hard decking over the pond in front of the living and dining rooms, although this would be less intrusive due to the greater distance between the buildings.
16. Although the dwelling would be single storey, the built form visible as a result of the large floor plan would diminish the quality of the neighbour's outlook to an unacceptable degree. I have seen during my site visit and from the information before me that the outlook from the gardens and ground floor rooms of the neighbouring houses is restricted by their boundary fences. However, the outlook from their upper floor windows overlooking the site is of the quiet, natural feature of the pond and the surrounding trees. Although this would not necessarily be sufficient on its own to warrant dismissing the appeal, it adds weight to my view regarding the adverse effect of the overall increase in the amount of noise and disturbance.
17. In addition to my concerns about the living conditions of existing residents, I am not persuaded that those of future residents would be satisfactory. The amount of convenient and usable amenity space about the dwelling would be limited, as evidenced by the need to fill part of the pond to provide a safe area for children to play. Much of it would be overshadowed by the large trees and overlooked by the upper windows of neighbouring properties.
18. I conclude that the proposal would adversely affect the quality of the living conditions of neighbouring residents and result in unsatisfactory conditions for future residents. In this respect it would be contrary to local plan policy CP 4.
19. In determining this appeal, I have taken account of all matters raised, including the previous planning history of the site and the supporting documents submitted by the appellant. I find no material considerations to outweigh my conclusions that the proposal would harm the character and appearance of the area and the living conditions of existing and future residents. For the reasons given above, I dismiss the appeal.

  
INSPECTOR



P L A N  
OF THE  
**GROVEFIELD ESTATE,**  
In the Parishes of  
**CHELtenham, UP. HATHERLEY & BADGWORTH,**  
IN THE COUNTY OF  
**GLOUCESTER.**

*Which will be Sold by Auction by*  
**M<sup>R</sup>. ROBINS.**

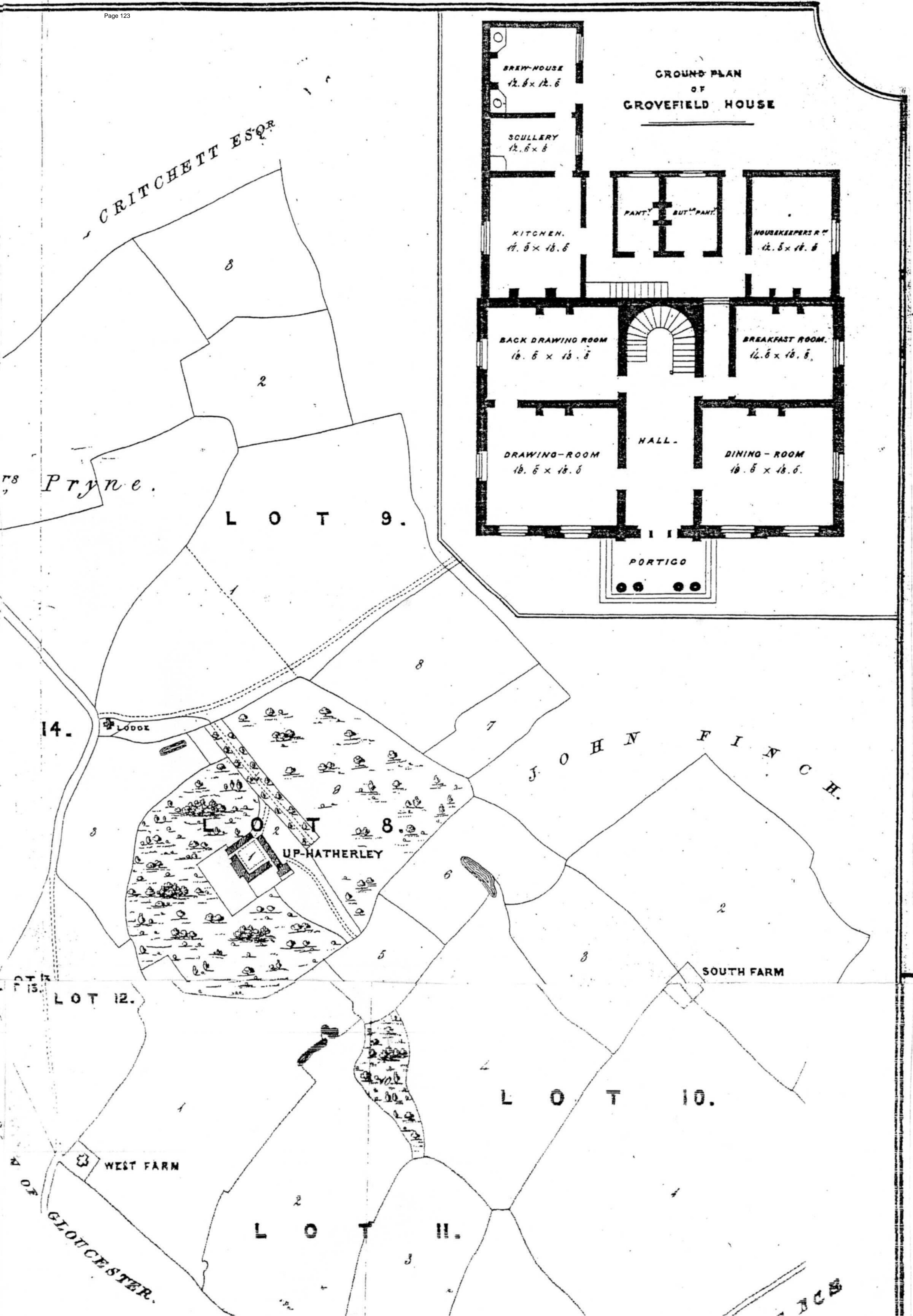
*At the Queen's Hotel, Cheltenham,*

**ON TUESDAY & WEDNESDAY, OCT<sup>R</sup>. 19<sup>TH</sup> & 20<sup>TH</sup> 1847.**

At 12 for One o'Clock,  
**IN 15 LOTS.**









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Further Objection to Planning Application No. 1400505/FUL – Avenue Lodge Lake.

The statement (and reasoning) by the **Land Drainage Officer of 24th April 2014** has merely been repeated, rather than being modified to take account of the Hydrology Report submitted in July 2014. The LD Officer states that:

***“There is no evidence to suggest that the pond within the grounds of Avenue Lodge serves any flood risk management purpose. There is no formal inlet to, or outlet from the pond and water levels within it are determined by the normal variations of groundwater. Such variations being associated with seasonal changes and the prevailing weather conditions.***

***Infilling the pond (partial or complete) will have no long term effect upon ground water levels as they will balance out with time. However, if permitted, infilling operations would displace the water impounded within the pond at the time. Such displacement would need to be managed to ensure that the surrounding land and property was not adversely affected.***

***In my view (subject to the appropriate management of displaced water during infilling operations), in the long term, the proposal will not increase flood risk upon the site or the surrounding land.”***

With regard to his first paragraph, he states that the Avenue Lodge pond serves no flood risk management purpose, and that the overflowing from groundwater rising, is associated with seasonal changes and prevailing weather conditions.

Flooding in my adjoining garden has occurred in both summer and winter, disproving his simplification that it is seasonal. July 2007 is an example of an extreme mid summer rainfall event. Such events are becoming more common with climate change.

The LD Officer’s sole concern is with the water that is displaced **at the time of the infilling**, rather than with the permanent loss of half the lake’s capacity to hold rising ground water in severely wet periods, and thereby he dismisses any flood risk at all upon the site or surrounding land. There is, however, plenty of photographic evidence to show flooding of my neighbouring garden with the lake as it is, so it would be impossible for this flooding not to be exacerbated once half the lake had been filled in.

The previously submitted flood photos will be made available for the committee to view. Special note should be taken of all the photos dated the **16<sup>th</sup> January 2008** which show the hugely expanded lake during a wet period.

The Hydrologist states that the difference between the summer and winter level of the lake is 300 mm i.e. just under 12 inches. The photos demonstrate that the difference is much greater in wet periods. The Hydrologist also states that the depth of the lake is 4 feet, but the previous owner who kept a boat on the lake, stated that it could go down to 6 feet deep in the centre.

Infilling half the lake with clay soil, as recommended by the Hydrologist, means that not only will the holding capacity of the lake be much reduced, but also water cannot flow through clay easily – a well known fact. Hence water rises up in clay soil, as everyone living in this area well knows from their gardens. Therefore it cannot be correct to say that the lake does not serve any flood risk management purpose, and that infilling half of it will have no long term effect upon ground water levels. If the water can only rise up and flow (slowly in a north-west direction the hydrologist states) through the reduced half of the lake, then the surplus will rise up somewhere else nearby.

The concluding paragraphs 7.2 and 7.3 of the **Planning Officer’s Report** are inconsistent. At 7.2 he states:

***“Professional advice expressed by both the Council’s Drainage Engineer and informally by the Environment Agency indicated that despite what is alleged by local residents, the infilling of the pond in the long term, would not increase flood risk upon the site or the surrounding land.***

***This view is supported in the conclusions to the Hydrology report submitted at Members’ request: “the operation of infilling half the existing pond area with clay will therefore have an insignificant effect in***

***relation to groundwater flooding at the surrounding properties, including the most affected property, Brambles."***

Having concluded that both the LD Officer and the Hydrology Report state that the infilling of half the lake would have an insignificant effect in relation to groundwater flooding at the surrounding properties, the Planning Officer then says in the next paragraph (7.3):

***"The Hydrologist does, however highlight the fact that there may be some increased risk of water flood frequency arising from a reduction in the size of the pond. He recommends that compensatory storage volume of around 80m<sup>3</sup> should be provided. It is considered that this requirement could be secured by way of condition."***

The Planning Officer's conclusions are confusing, but he does admit that ***"there may be some increased risk of water flood frequency arising from a reduction in the size of the pond"***.

The recommendation to "permit" relies upon the provision of a significant capacity for further water storage being provided, via a planning Condition, but no details are provided as to the reality of what this entails or how it would work in practice.

Condition 6 of the "Permit" recommendation states the following:

***"No work on site shall commence until such time as details of a scheme for compensatory storage of water during times of extreme rainfall has been submitted to and approved by the Local Planning Authority. The scheme shall provide for compensatory storage volume of around 80m<sup>3</sup> and shall be designed to take the form of underground storage or the creation of a depression in the landscape (with appropriate planting) either of which would flood temporarily and then soak away. The measures approved in compliance with this condition shall be implemented in full and otherwise be available for use before any work in compliance with this planning permission is commenced."***

***Reason: To ensure the development does not result in an increased risk of surface water flooding. "***

The implications of **Condition 6** require serious consideration in order to understand just what it entails.

If an underground storage tank is chosen, which is required to store 80 cubic metres of water, the tank size would need to be enormous, as 80 cubic metres equates to 80,000 litres. It is not possible to find any on-line supplier providing a storage tank of this size. The largest tank found would hold 75,000 litres and the dimensions of it are 16.5 feet wide by 16.5 feet long by 10 feet deep. Therefore an **80,000 litre tank would be approx. 18 feet long by 18 feet wide by 10 feet deep**. This would equate to excavating and installing an underground room of this size!

Another supplier showed their largest size tank to hold 62,000 litres and this was a cylindrical shape, measuring 22 feet long with a diameter of 11.5 feet. To increase the capacity of a cylindrical tank to take 80,000 litres it would need to be even longer - 28.4 feet long by 11.5 feet diameter, assuming that the diameter could not be increased due to the depth required to be excavated, and also that such a large cylindrical size is actually made.

The underground water storage tanks provided for domestic garden use are on a significantly smaller scale – up to a maximum of 10,000 litres capacity, so installing an underground tank of this size i.e. 8 times larger than the largest domestic size, is something that would normally only be undertaken on a large scale development, or on a commercial or industrial site.

The siting of such a massive underground tank would also need to be well away from any neighbouring garden boundaries, otherwise the required constant water release, as required by Condition 6, could cause their gardens to become either permanently or intermittently waterlogged, or even flooded.



The level of the water table also has to be taken into account when an underground storage tank is installed. This area has a known high water table so it could be problematic to excavate an area measuring 12 feet deep and 20 feet square. A tank must be able to resist the soil and soil water pressure from outside when the tank is empty. An empty tank can rise up when the ground water level rises. Backfilling with concrete may be required. The tank must be correctly sized to discourage stagnant water becoming a breeding ground for bacteria (which can include Legionnaires Disease), and needs to overflow at least twice a year to flush out, avoid stagnation and remove floating debris. The overflow must be the same size or larger than the inlet to permit this.

Condition 6 also states that instead of an underground storage tank, a 'depression' in the landscape could be excavated with appropriate planting. In order to have the capacity to hold 80,000 litres of water, this depression would need to be 29 feet long by 29 feet wide and one metre deep. It may not be effective to dig the depression deeper than one metre, otherwise it might retain some water permanently, due to the high water table, and in the event of a period of sudden, prolonged rainfall, there would be insufficient capacity to take the floodwater inflow. The "appropriate planting" for this depression, as mentioned in the Condition, would likely be affected by frequent periods of water logging, so may be severely limited or even prevented from growing at all. The stated planting of 50 trees may be possible only around the boundary of the garden.

A new depression of these dimensions amounts to filling in half the existing lake just to create another lake of a similar size, in close enough proximity to be able to take the overflow water. It is illogical and self defeating!

This historic lake (as shown on an 1847 map, but likely of much earlier origin), was only annexed into the garden of Avenue Lodge in the 1980's, when the surrounding residential development took place. The lake and its setting, as a wildlife area, were much valued by the Inspector in her Appeal Decision in 2010. The building of Avenue Lodge itself is also on the Local List of Buildings of Special or Historic Interest.

It is clear that the **Tree Officer** has not been able to take account of either the installation of a massive underground storage tank, or the alternative requirement to excavate a new "depression", effectively creating another 'pond', as his Comments were made in **May 2014**, before the Hydrology Report was submitted, and therefore without any knowledge of the implications of Condition 6.

Excavating to accommodate an underground storage tank of the measurements given above would likely result in the loss of some trees and/or damage roots (some trees are TPO'd).

Whether an underground tank or a new depression is chosen, both systems need to release the water taken in during wet periods into the surrounding land.

Both would need to be sited adjacent to the existing lake, but away from neighbouring gardens in order not to cause water logging or flooding of their land. How the overflow water gets into either the tank or the new depression is also not known, but must require piping and a submersible pump of some kind.

The tank method would need pro-active pumping, to keep it normally empty and available to receive overflow from the remaining pond. Depending on the depth of a new "depression", this might also require a submersible pump.

If, as is most likely, the creation of a new "depression" is chosen, how can the Council ensure or enforce the following:

1. That it is excavated to the correct capacity in the first place. Does the council have the required expertise to be able to do this?
2. Ensure that the new pond is not reduced in size or infilled in the future, (becoming the location of another application for a dwelling).
3. The new depression may require long term monitoring by the council, and risks a scenario of constant vigil and worry for neighbours. It is also extremely doubtful that the council can be relied upon to monitor, control or enforce the required storage capacity in the future. Neighbours should not be left to police this matter themselves, but essentially this would be the reality.

4. If the new depression is not created to the correct capacity, or is reduced or infilled in the future, and flooding of neighbouring land is exacerbated, what responsibility does the council have regarding this planning decision, and for enforcing remedial action?

This application should be therefore be **refused** because of the implications arising from Condition 6. Once the application is granted there would be no certainty of ensuring that the required 80,000 litres of additional water storage capacity is retained in the future.

In addition the application contravenes much of the Inspector's previous Appeal Decision of 2010, whereby she valued the environmental benefits provided by this historic lake and ruled that its "essential character" should be protected.

Yours sincerely,

A solid black rectangular box used to redact the signature of the sender.

Brambles  
328A Hatherley Road  
Cheltenham

<b>APPLICATION NO:</b> 14/01003/FUL		<b>OFFICER:</b> Mrs Emma Pickernell
<b>DATE REGISTERED:</b> 4th June 2014		<b>DATE OF EXPIRY:</b> 30th July 2014
<b>WARD:</b> Charlton Park		<b>PARISH:</b>
<b>APPLICANT:</b>	Mr And Mrs L Sperring	
<b>AGENT:</b>	Mr Paul Karlsson	
<b>LOCATION:</b>	21 The Avenue, Cheltenham	
<b>PROPOSAL:</b>	Proposed two-storey side extension, single-storey side and rear extensions	

## Update to Officer Report

### 1. OFFICER COMMENTS

- 1.1. Members will recall that this application was deferred at the August meeting due to members' concerns regarding the design of the single-storey side extension proposed as part of this application. Members requested that this element be redesigned with specific reference to the double pitch gable design.
- 1.2. Revised plans have now been received which involve the redesign of the side extension to provide a hipped roof which runs back towards the main house. This is considered to represent a much more low-key way of extending the property which will result in an extension which is less prominent in the street scene.
- 1.3. The revisions also include an additional high level window on the side elevation which would provide light to a store room. This helps to further break up the elevation and make the extension look less imposing.
- 1.4. It is considered that these revisions address the points raised by Members at the August committee meeting.
- 1.5. The Officer Report which was considered by members in August is appended to this report.

### 2. CONCLUSION AND RECOMMENDATION

- 2.1. The application is recommended for approval with the same conditions as outlined on the previous report. Condition 2 has been updated to relate to the revised drawings received.

### 3. CONDITIONS

- 1 The development hereby permitted shall be begun before the expiration of five years from the date of this permission.  
Reason: To accord with the provisions of Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.
- 2 The development hereby permitted shall be carried out in accordance with drawing numbers 1445/4B and 1445/5B received 8/9/14, 1445/6A received 14/7/14 and 1003.02A received 4/8/14.  
Reason: To ensure the development is carried out in strict accordance with the approved drawings.



- 3 Prior to the commencement of development, annotated elevations with a detailed specification of all external materials and finishes (including all windows and external doors) shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented strictly in accordance with the details so approved and maintained as such thereafter.  
Reason: To ensure a satisfactory form of development in accordance with Local Plan Policy CP7 relating to design.

INFORMATIVES:-

- 1 In accordance with the requirements of The Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2012 and the provisions of the NPPF, the Local Planning Authority adopts a positive and proactive approach to dealing with planning applications and where possible, will seek solutions to any problems that arise when dealing with a planning application with the aim of fostering the delivery of sustainable development.

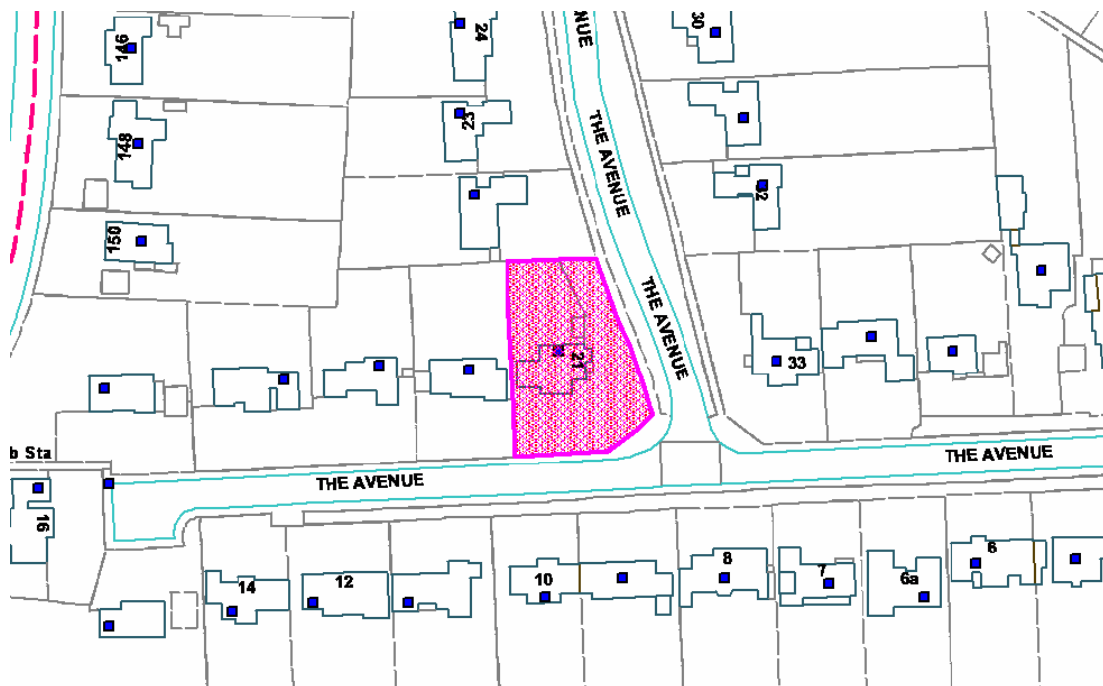
At the heart of this positive and proactive approach is the authority's pre-application advice service for all types of development. Further to this however, the authority publishes guidance on the Council's website on how to submit planning applications and provides full and up-to-date information in relation to planning applications to enable the applicant, and other interested parties, to track progress.

In this instance, the authority sought amendments to overcome the concerns which were raised to the initial plans.

Following these negotiations, the application now constitutes sustainable development and has therefore been approved in a timely manner.

<b>APPLICATION NO:</b> 14/01003/FUL		<b>OFFICER:</b> Mrs Emma Pickernell
<b>DATE REGISTERED:</b> 4th June 2014		<b>DATE OF EXPIRY:</b> 30th July 2014
<b>WARD:</b> Charlton Park		<b>PARISH:</b>
<b>APPLICANT:</b>	Mr And Mrs L Sperring	
<b>AGENT:</b>	PSK Architect	
<b>LOCATION:</b>	21 The Avenue, Cheltenham	
<b>PROPOSAL:</b>	Proposed two-storey side extension, single storey side and rear extensions	

**RECOMMENDATION:** Permit



## 1. DESCRIPTION OF SITE AND PROPOSAL

- 1.1 The application site is a detached, two storey pitched roof dwelling which is brick and tile hanging under a tiled roof. There is an attached flat roof garage.
- 1.2 The Avenue is laid out in a T shape and the property in question is located on a corner plot at the junction with the spur road.
- 1.3 This application proposes the demolition of the existing garage and the erection of a two storey side extension. The first floor would be set back 2.7m from the existing front gable of the property and 0.3m from the main frontage of the property. It would also project 2.5m from the rear face of the building. This would provide two bedrooms and an en-suite on the upper floor and a garage, study and family room on the ground floor.
- 1.4 The application also includes the remodelling of the existing single storey side extension to move the front door onto the front of the existing property, provide a porch and WC. To the rear it is proposed to extend at single storey across the rear of the property at a depth ranging from 3.4m to 2.5m, this would provide an enlarged kitchen and a utility room.
- 1.5 The plans also indicate that the driveway would be reconfigured and that planting would occur to the side of the property, however these works do not require planning permission provided the hard surfacing is permeable.
- 1.6 The application has been revised since its original submission. The original drawings included a double garage on the eastern side of the property and the two storey extension was further forward on the site with a gabled front elevation.
- 1.7 The application is before committee at the request of Cllr Baker who has requested it to be determined by Planning Committee due to its prominence in the street scene.

## 2. CONSTRAINTS AND RELEVANT PLANNING HISTORY

### **Constraints:**

Smoke Control Order

### **Relevant Planning History:**

None

## 3. POLICIES AND GUIDANCE

### Adopted Local Plan Policies

CP 4 Safe and sustainable living

CP 7 Design

### Supplementary Planning Guidance/Documents

Residential Alterations and Extensions (2008)

### National Guidance

National Planning Policy Framework



## 4. CONSULTATIONS

### Gloucestershire Centre for Environmental Records

12th June 2014

Report available to view on line.

## 5. PUBLICITY AND REPRESENTATIONS

Number of letters sent	6
Total comments received	7
Number of objections	7
Number of supporting	0
General comment	0

**5.1** The application was publicised by way of letters to neighbouring properties. Re-consultation letters were sent upon the receipt of revised plans. 7 objections have been received. The main issues raised can be summarised as follows:

- Object to the design of the extensions
- Overdevelopment of the site
- Object to the two storey extension in terms of neighbour amenity including overbearing impact, invasion of privacy, reduction in sunlight
- Concerns about the loss of the separation between the houses through the two storey element coming closer to the boundary
- Concerns about the impact on the character of The Avenue
- Concerns were raised about the proposed garage, however this element has been omitted from the plans.

## 6. OFFICER COMMENTS

### 6.1 Determining Issues

The key issues in determining this application are considered to be (i) design and appearance, (ii) impact on neighbouring properties.

### 6.2 The site and its context

As mentioned above the site is on a corner plot within The Avenue. The Avenue is characterised by large detached dwellings in good sized plots. The two corner properties at this junction are set back from the road, as are the properties continuing down the spur road which gives the area a spacious character.

### 6.3 Design and layout

The proposal involves a two storey side extension. This has been redesigned since the application was originally submitted in order to increase the subservience of the extension and to simplify the design. This element of the proposals is now considered to be in line with advice contained in the Residential Alterations and Extensions SPD.

Concerns have been raised by neighbours that this element of the proposal will result in the loss of a sense of space between the buildings. Officers agree with the neighbours that the spaces between buildings are important to the character of the area, however the neighbouring property has a flat roof, single storey garage adjacent to the boundary and as such views are still afforded between the properties at a first floor level. Whilst it is accepted that this will result in an erosion of the space, it is not to an unacceptable degree which would be sufficiently harmful to warrant the refusal of the application.

The single storey elements of the proposal are now considered to be relatively modest, following the removal of a garage on the east side of the dwelling. Concerns have been expressed in relation to the side elevation which has a double pitched roof design, tying in to the lean to extension at the rear and the pitched roof over the porch at the front. Whilst the design of this element is somewhat idiosyncratic, it is not considered that it will result in a harmful visual impact, as it projects only 1.4m from the main side elevation and replaces an existing flat roof side extension which adds nothing to the side elevation. Members will be aware that the NPPF states that planning decisions should not attempt to impose architectural styles or particular tastes.

The proposed facing materials are a combination of brick and render with roof tiles to match the existing. There are rendered houses in the vicinity and as such this would not be out of character, however a condition is attached requesting further details of the proposed materials, via annotated elevations, to ensure the blend of materials is appropriate.

For these reasons the visual impact and design is considered to be acceptable and as such the proposal is in accordance with policy CP7 of the Adopted Local Plan, the SPD and the NPPF.

### **6.4 Impact on neighbouring property**

The site has two immediate neighbours; 22 The Avenue to the rear and 20 The Avenue to the side.

22 The Avenue is 20m away and is off-set from the application property. There are no windows to habitable rooms on the first floor of the side elevation and as such no window-to-window overlooking would occur and neither would any adverse loss of light.

20 The Avenue is directly adjacent to the application site. The two storey element of the proposal would project beyond the rear of this property and as such it is important to ensure that it has an acceptable relationship. The proposed extension complies with the 45 degree light tests which are explained within the Residential Alterations and Extensions SPD. As such there would be no significant loss of light to the rear windows of this property. The portion of the neighbouring property closest to the boundary contains a garage and utility room.

Concerns have been expressed that the proposal would result in a loss of sun light to the neighbouring garden and would have an overbearing impact when viewed from the garden. Whilst the extension will certainly be visible from within the garden, it is not considered to be of sufficient size and length to represent an unacceptably overbearing structure. Whilst there may be some loss of direct sun light to certain parts of the garden at certain times of the day, this is not considered to be sufficiently harmful to warrant the refusal of the application, especially given that the proposal complies with the tests set out in the SPD.

As such the proposal is considered to have an acceptable impact upon neighbour amenity and is therefore in accordance with policy CP4 of the Local Plan, advice contained in the SPD and the NPPF.

## **6.5 Other considerations**

Concerns have been raised regarding the proposed planting shown on the plan to the eastern boundary of the site however planting does not constitute development and as such is outside of the control of the Local Planning Authority.

Concerns have also been raised in relation to the alterations to the driveway and the formation of a new access. Provided the hard surface is permeable, or drains to a permeable area planning permission would not be required for these works as they constitute 'permitted development'. As such it is not appropriate to seek to remove these aspects of the proposal. The size of the driveway has, however been reduced since the original submission, following the removal of the new garage from the scheme.

## **7. CONCLUSION AND RECOMMENDATION**

- 7.1** When tested against the key considerations i.e. visual impact and neighbour amenity, the proposal is considered to be acceptable in both regards. The proposal is therefore recommended for approval

## **8. CONDITIONS / INFORMATIVES**

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Following these negotiations, the application now constitutes sustainable development and has therefore been approved in a timely manner.

<b>APPLICATION NO:</b> 14/01003/FUL		<b>OFFICER:</b> Mrs Emma Pickernell	
<b>DATE REGISTERED:</b> 4th June 2014		<b>DATE OF EXPIRY :</b> 30th July 2014	
<b>WARD:</b> Charlton Park		<b>PARISH:</b>	
<b>APPLICANT:</b>	Mr and Mrs L Sperring		
<b>LOCATION:</b>	21 The Avenue, Cheltenham		
<b>PROPOSAL:</b>	Proposed two storey side extension, single storey side and rear extensions		

## REPRESENTATIONS

Number of contributors	<b>7</b>
Number of objections	<b>7</b>
Number of representations	<b>0</b>
Number of supporting	<b>0</b>

22 The Avenue  
Cheltenham  
Gloucestershire  
GL53 9BL

**Comments:** 25th June 2014  
Letter attached.

**Comments:** 4th August 2014

As the next door neighbours to No 21 we have reviewed the revised planning application to which we have 2 basic objections.

1. The east side elevation where there was previously the front door is now replaced by a single storey largely blank wall with a zigzag roof line and retains an existing window that has no relation to the rest of the wall. Given the prominence of this facade on a corner site, highly visible in this otherwise attractive road, we consider this to be poor design lacking any respect for its location.

Surely we should expect good design encompassing unity, harmony, form and attention to detail. None of these are obvious within the proposed design, rather the minimum needed to fill the space.

PPS1 states that:

"Good design ensures attractive usable, durable and adaptable places and is a key element in achieving sustainable development. Good design is indivisible from good planning.

The Supplementary Planning Document - Residential Alterations and Extensions states that "Development will only be permitted where it:

- (a) is of a high standard of architectural design; and
- (b) adequately reflects principles of urban design; and
- (c) complements and respects neighbouring development and the character of the locality and/or landscape."

2. The first floor extension on the west side of the property over the garage and extending out beyond the back wall of the existing house will not only be overbearing on the neighbouring property, invading their privacy, significantly reducing their sunlight, but also removes the separation between the houses, particularly when viewed on the northern branch of the Avenue.

The character of the Western Estates houses of which this is one has been to maintain relatively wide gaps at first floor level, this second storey not coming within 3 metres of the boundary, avoiding invasions of privacy and maintaining separation of houses, a principle recognised in previous planning refusals and by other property owners.

The Supplementary Planning Document - Residential Alterations and Extensions states

"The spaces between the houses, the greenery and the nature of the front boundary fences, walls, hedges (or the lack of them) all contribute to this character."

It also states that

"The guide's purpose is to ensure that the character of each of the residential areas within the Borough is not eroded through un-neighbourly, poorly - designed extensions and alterations to residential properties."

Finally, The Avenue is a road with a great sense of place, having largely retained its mid-twentieth century high quality residential status with complementary individual houses set in a green open environment. Surely this is a fine twentieth century interpretation of what makes Cheltenham special and it should be respected and defended for future generations.

We urge refusal of this planning application in its current form.

Claire Cottage  
32 The Avenue  
Cheltenham  
Gloucestershire  
GL53 9BL

**Comments:** 19th June 2014

We object strongly to this application. This house (21) is connected between two roads of The Avenue. There is a rhythm in The Avenue of houses connected with their own garage, which leaves a gap between each house, to give an openness, and feeling of space and airiness. This is the essence of The Avenue, a tree lined open planned area of well designed and well aligned homes. It is for this reason the garage must remain in the same place.

Secondly, the houses are in alignment with the road on both sides. This line is parallel to the road and should be considered. His garage and playroom come completely out of the housing boundary and alignment of any other house, and secondly destroy a large piece of green garden which is essential to keep as his plan takes up this grass and is well over the housing boundary. You do not finish on the alignment line with two buildings that look like factory storerooms, spreading over a whole front garden. The proposed trees will remove the feeling of open plan and are proposed on the alignment line of the house. Also, this house, being a corner plot must consider that it is connected with two roads in The Avenue, and as such the garage should stay in situ where it is, to keep the rhythm of what is already established.

**Comments:** 26th July 2014



REVISED PLAN 14TH JULY 2014

The alignment with the road has been respected. However, building above the garage does not respect the rhythm of the buildings that are already present. i.e. each house has a flat roof in between the garages of each house, leaving an airy , light feel and country views , which is what the concept of The Avenue was. By building above the garage, the space between the two houses has been lost and the gap and view lost. If you look at the damage and devastation caused by allowing this to happen at number 33, with it's overlooking windows, which compromise the privacy of property number 32, and worst of all the lack of any gap now between number 33 and number 34, making it lose it's special ambience of space, light and hillside views. Houses number 21 and 33 have the smallest number of bedrooms because they make the junction between two lines of buildings look at 18,19,20,21,22,23,24. Also on the opposite side between houses 32, 31, 30, 34 and 35.

Finally the two large sheds on the side elevation present the wrong incline of roof. It would be more appropriate to have the same angle as above the entrance to have continuity. This however, is still totally unacceptable, and it's about time the committee LISTENED to the people who live in The Avenue, and want it kept to the beautiful way it once was.

20 The Avenue  
Cheltenham  
Gloucestershire  
GL53 9BL

**Comments:** 27th June 2014  
Letter attached.

**Comments:** 30th July 2014  
Letter attached.

23 The Avenue  
Cheltenham  
Gloucestershire  
GL53 9BL

**Comments:** 23rd June 2014

As close neighbours of this proposed development at No 21 the Avenue, we wish to object to the building of a garage on the open space on the east side of this property. When The Avenue was developed the late 60s the remit was ensure an open plan aspect for the whole estate, was maintained. No 21 is a corner plot and the area upon which this garage is to be built is a significant open space, and the essence of the original plan.

The proposal to place an unattractive double garage, in this prominent position, would destroy the original concept of the designers. In our opinion this is an unnecessary overdevelopment of the site.

Brown Gables  
8 The Avenue  
Cheltenham  
Gloucestershire  
GL53 9BJ

**Comments:** 18th June 2014

Letter attached.

24 The Avenue  
Cheltenham  
Gloucestershire  
GL53 9BL

**Comments:** 25th June 2014

The Avenue is an important example of the successful integration of 1930's and 1960's/70's quality housing.

The T junction within The Avenue is central to the blending of the old with the new. This junction forms a natural focal point within The Avenue and it is set within an open vista defined by building lines, their facades and by gardens. The proposal appears to require inappropriate changes to the building line/position and facade/appearance as viewed from the junction.

This planning application as presented will significantly compromise the 'open vista' intentions and values that the 1960's designers and planners were able to achieve.

I/We object to this application.

## **Planning Application 14/01003/FUL Proposed extensions to 21 The Avenue**

### **Comments of owners of 22 The Avenue**

We live and own 22 The Avenue and thus we are next door neighbours to No 21. We are concerned that the planning application for extensions to No 21 does not pay sufficient attention to the distinct and important character of The Avenue and is out of scale with the existing house. Hence we object to the current application.

### **The Context: The character of The Avenue**

1. The Avenue is a high value road with a consistency and rhythm of layout rarely found in the town. As such it is a fine example of its time and whilst not currently a conservation area, it could well become one in the future if it retains its current character. This, we suggest, is an important factor in a town renowned for its nineteenth century architecture and sense of place whereas good quality twentieth century examples are in short supply. Indeed it is one of few Cheltenham suburban roads referred to by David Verey in "The Buildings of England".
2. No 21 is one of the Western Estates development of the late 1960s/early 1970s which is particularly characterised by wide separation between the houses, often by single story garages and rooms, allowing light and views between the houses and with each house set back from the road.
3. The current Local Plan (Paragraph 3.23) does place emphasis "on the promotion of good design, both for individual buildings and urban design, which it considers can help promote sustainable development, improve the quality of the existing environment, attract business and investment, and reinforce civic pride and sense of place".
4. Similarly Policy CP 7 states that "Extensions or alterations to existing buildings will be required to avoid (d) causing harm to the architectural integrity of the building and (e) the unacceptable erosion of open space around the existing building".
5. Cheltenham Local Development Plan: Supplementary Planning Guidance on Residential Alterations and Extensions adopted in 2008 states "The spaces between the houses, the greenery and the nature of the front boundary, fences, walls, hedges (or the lack of them) all contribute to this character."
6. No 21 stands on a prominent site mid-way down The Avenue on a corner of a spur of the Avenue at the centre of the whole development. Hence it is very important in its impact on the whole character, attractiveness and openness of the road.

### **The Objections**

This is the context in which we raise a number of objections to the application 14/01003/FUL for 21 The Avenue.

1. The proposed garage extension is unacceptable being built in the front garden on this prominent open corner site, taking approximately half the width of the garden. It erodes the



open nature of The Avenue and contravenes a number of the covenants that were aimed at protecting the open nature of the road.

2. The blank wall of the side of the garage in itself is unacceptable facing on to the road in such a prominent site.
3. The full height side extension over the existing garage erodes the separation of the houses No 20 and 21. It removes the view between the houses of the hills and the trees.
4. The design of the elevation of the full height extension over the garage is of poor quality with a gable and frontage offset from the existing gable. It results in 3 different building lines along the front of the house and erodes the integrity of the original design of the house.
5. The hedge along the eastern edge of the property will erode the open nature of the estate. We would welcome the addition of some individual specimen trees and shrubs similar to those found elsewhere within the Avenue but a hedge changes the open nature of the road.
6. The proposed design and layout does not respect its position on a corner, seeming to attempt to take the house from the corner and put it on to the main stretch of the Avenue, narrowing the openness to the spur road which then becomes almost a lesser side road rather than an integral component of The Avenue, dramatically eroding the "sense of place".
7. In general we find the proposed extensions too large and out of proportion to the existing house. Indeed the proposed extensions are far larger in proportion to any previously carried out elsewhere within The Avenue.

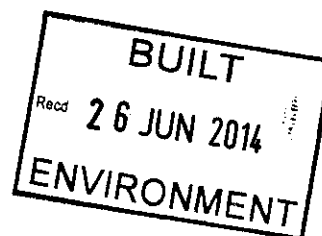
### **Our Recommendations**

We believe that the application should be refused on the grounds that it erodes the open nature of The Avenue and the spacing of houses, and erodes the architectural integrity of the existing house and its size is out of proportion to the existing buildings, and contravenes a number of the Council's Planning Policies. The Avenue is a fine example of its age and its character should be protected from inappropriate and poorly designed alterations to existing buildings.

[REDACTED]

22 The Avenue, Charlton Kings, Cheltenham GL53 9BL

[REDACTED]



20 The Avenue  
Charlton Kings  
Cheltenham  
Gloucestershire  
GL53 9BL

Mrs Emma Pickernell  
Planning Officer  
Cheltenham Borough Council  
Built Environment  
Municipal Office  
The Promenade  
Cheltenham  
GL50 1PP

16 June 2014

Dear Mrs Pickernell

**Reference: Planning application 14/01003/FUL**

**OBJECTION to proposed two storey side extension, single storey side and rear extensions at No.21 The Avenue, Cheltenham, Gloucestershire.**

The scheme proposes to extend the property on all four sides with a two storey extension near the western boundary with No.20. In effect the proposed extensions almost doubles the size of the house. The two storey extension extends forward of the front of the existing garage and continues back from the existing garage to be level with the existing rear wall of the house.

**We live next door to the proposed extension site and are writing to ask that CBC refuse this planning application on the following grounds.**

**Application form**

The application, which has been submitted as a full application, is incomplete.

There is no indication of the brick type or colour.

The applicant has indicated that there will be NO new or altered vehicle access proposed to or from the public highway. However the block plan clearly shows a new access to the public highway. It is also questioned whether the proximity of this new access is a hazard to the nearby road junction. This proposed vehicular access should have been included within the description of development. The County Highway Officer must be consulted on this application and no determination made on the application before his/her comments on the suitability or otherwise of the proposed access are considered.

No pre-application advice was sought.

### **Relevant Policy**

The Cheltenham Local Plan Second Review (adopted July 2006) constitutes the adopted plan for the Borough. Policy CP7 of the Cheltenham Local Plan relates to design and states that: *"Development will only be permitted where it: (a) is of a high standard of architectural design; and (b) adequately reflects principles of urban design; and (c) complements and respects neighbouring development and the character of the locality and/or landscape. Extensions or alterations of existing buildings will be required to avoid: (d) causing harm to the architectural integrity of the building or group of buildings; and (e) the unacceptable erosion of open space around the existing building"*.

The Cheltenham Local Development Framework - Supplementary Planning Document: Residential Alterations and Extensions (adopted February 2008) states *"Cheltenham has an image of an elegant, spacious town with groups of well-proportioned buildings set in generous gardens, with open space extending into the heart of the town. The spaces between the houses, the greenery and the nature of the front boundary fences, walls, hedges (or the lack of them) all contribute to this character"*.

We believe that the application is not in keeping with the character of the neighbourhood or the guidance in the Local Development Framework.

### **Character of the Area**

The Avenue is a pleasant tree lined road with large houses set in large plots with space between the dwellings at two storey level. The houses have a feeling of space between each one allowing glimpses of greenery and the hills in the distance. The houses built as part of the development approximately forty years ago were required to be set thirty feet back from the road. This gives a feeling of spaciousness to the road as a whole. Any extensions built in the area have blended in with the original house materials and design and retained the character of the area.

The proposed two storey extension would bring the property close to No.20 reducing the space at two storey level between the dwellings. This would appear cramped and would give rise to the potential for visual coalescence with No.20. It has the effect of closing the space between the houses and having a detrimental effect on the character of the area.

Further, No.21 is in a very prominent position on a corner within The Avenue. This open space constitutes an important feature which helps to create the open and spacious nature of the street scene. The single storey eastern side extension would extend the built form of the property into this open space on a prominent corner plot. The proposed alterations would not, therefore, be in keeping with the street scene to the detriment of the character and appearance of the area.

The proposed development would clearly be contrary to Local Plan Policy CP7 and the guidance set out with the Residential Alterations and Extensions SPD.



### **Design and Materials**

The proposed extension would almost double the size of the house as well as encroaching, with a new garage, on open space.

It is intended to render the whole of the existing house and build the extensions in an unspecified brick which may not match the existing houses. It also gives the impression of being semi-detached and dominant, not subservient to the original building.

### **Shading and Overlooking**

The proposed two storey extension adjacent to No.20 has a considerably bigger footprint than the existing garage and will result in a very large wall reaching up to ridge height to the western side of No.21. The effect is compounded because the rear of No.21 extends far beyond that of our property at the moment.

The bulk of this will be totally overbearing and cast shade over a pleasant seating and planting area even in the height of summer.

The rear-bedroom window would result in total loss of privacy for the occupants of No.20 in the garden due to its close proximity to the boundary fence.

### **Overdevelopment**

The sheer bulk of the proposal seems to be overdevelopment of this site.

### **Concerns**

It may not be regarded as relevant to the planning application but we are also concerned about any demolition and excavations involved. The close proximity to our foundations and main drains, which are sited under the side path and down the garden, mean we are concerned about damage caused by the development works. We believe the Party Wall Act 1996 may apply.

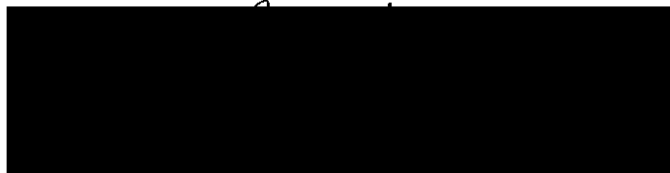
### **Conclusion**

The planned extensions to No.21 are excessive, overbearing and have a seriously detrimental impact on our residential amenity.

As they also seem to go against local and national development policy we feel there is no justification to allow them.

**We would ask the Council to refuse this application.**

Yours faithfully

A large black rectangular redaction box covering the signature and any accompanying text.

20 The Avenue  
Charlton Kings  
Cheltenham  
GL53 9BL

Mrs Emma Pickernell  
Planning Officer  
Cheltenham Borough Council  
Built Environment  
Municipal Offices  
The Promenade  
Cheltenham  
GL50 1PP

30th July 2014

Dear Mrs Pickernell

**Reference: Planning application 14/01003/FUL**

**OBJECTION to revised plans for No.21 The Avenue, Cheltenham, Gloucestershire.**

The revised plans have removed the garage on the East side but have retained the very large extension on the West side. The two storey extension has been set back slightly at the front, over the garage but has now been moved even further back from being level with the existing back wall of the house to the level of the proposed rear single storey extension.

#### **Relevant Policy**

The Cheltenham Local Development Framework - Supplementary Planning Document : Residential Alterations and Extensions (adopted February 2008) states " *a proposed extension may simply be too large for the site, or it may deprive neighbours of daylight.* "

This extension is too large for this site as it is still almost doubling the size of the house and presenting a massive wall close to the boundary with No.20 and a blank wall on the eastern elevation. " *An extension should not dominate or detract from the original building, but play a 'supporting role'.* "

It must be emphasised that the impact of the wall on the western side is far greater, as No.21 is set much further back in the plot than No.20 and the altered plan has now moved it level with the single storey rear extension.

#### **Shading**

Any two storey extension on this site is going to have a major impact on the light and sunlight to No.20 as the gardens are on the north side of the houses.

No. 20 has enjoyed the Right to Light and Sunlight to the back rooms and garden , uninterrupted, for well over 20 years. The proposed two storey extension will cut out the sunlight to the kitchen and dining room as well as sunlight coming through the back door into the kitchen. The garden will also be very badly shaded, affecting the vegetable and fruit growing area as well as the whole

of the rear of the house. The extra shading outside the back door will encourage damp on the paving leading to unsafe, slippery conditions.

### **Overlooking**

The bedroom window of the extension is very close to the boundary and will look right down into the garden of No.20.

The study window is set on the side of the extension and will look right across the back garden of No.20, taking into account the floor height of the house.

These windows take away privacy from the whole garden of No.20 and give the feeling of being under constant surveillance.

An application for No.5 was rejected on the grounds of shading and overlooking where the garden was on the south.

### **Maintaining Character**

The proposed extensions are shown as brick and the existing house rendered with no mention of colour of either. *"The materials should either match or complement the existing building"*.

Covenants state *"the elevation and design of each dwellinghouse and of any outbuildings shall be in conformity with the character of the dwellinghouses already erected on the Avenue Estate"*.

The local plan states *"Cheltenham has a reputation as a spacious town. This spaciousness derives from the spaces at the front, back and at the sides of buildings. Glimpses of trees, gardens and surrounding hills are essential if the spacious character of the town is to be maintained"*.

It is becoming apparent that creeping infill, regardless of size, is having a detrimental effect on the spacious character of the surroundings. The decision to allow the extension to No.33 is an unfortunate example.

### **Conclusion**

It is accepted that the sight of natural greenery and space has a beneficial effect on people generally. Anyone who strolls around The Avenue can enjoy this feeling, not just the residents. Any blocking of the gaps, or even narrowing, is a permanent mistaken legacy for the future. It is a decision not to be made lightly as everyone has to live with the results.

As stated in my previous objection, I believe the extension proposed is excessive, dominant and would have a very serious impact on our light, privacy and ability to use and enjoy our garden.

They also appear to go against the Residential Alterations and Extensions guidance.

**I would ask the Council to refuse this application.**

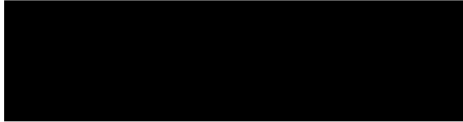
Yours faithfully

A solid black rectangular box used to redact the signature of the author.



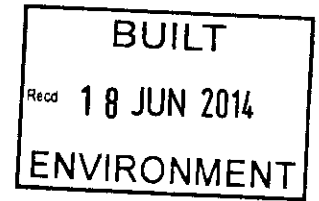


Brown Gables  
8 The Avenue Cheltenham Glos. GL53 9BJ



18 June 2014

Tracey Crews  
Head of Planning  
Cheltenham Borough Council  
PO Box 12  
Municipal Offices  
Promenade  
Cheltenham  
Glos.  
GL50 1PP



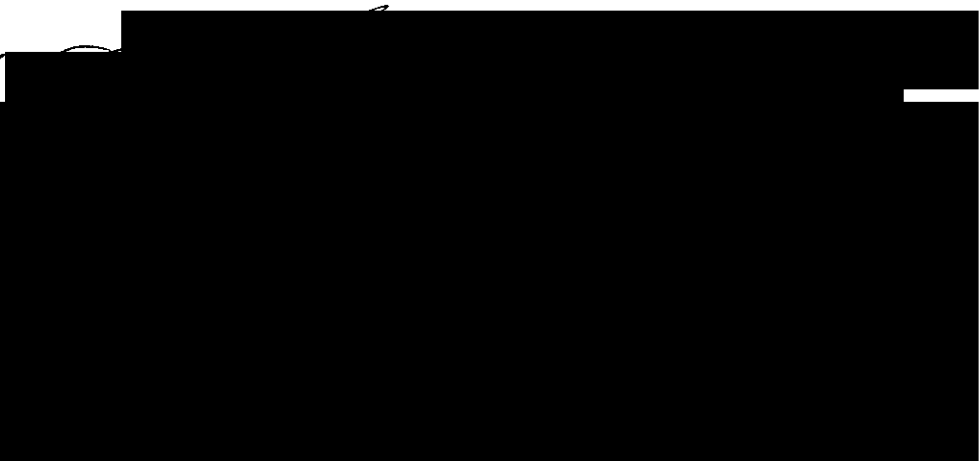
Ref: 14/01003/FUL

Dear Ms Crews

**Proposal: PROPOSED EXTENSION AT 21 THE AVENUE, CHARLTON KINGS, CHELTENHAM**

We object to one aspect of the proposed extension – the proposed garage encroaching onto the existing greensward. It would stick out like a sore thumb because it extends well beyond the building line of the other houses behind it which is visually important particularly given the property's prominent position on the corner.

Yours sincerely



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<b>APPLICATION NO:</b> 14/01003/FUL		<b>OFFICER:</b> Mrs Emma Pickernell	
<b>DATE REGISTERED:</b> 4th June 2014		<b>DATE OF EXPIRY:</b> 30th July 2014	
<b>WARD:</b> Charlton Park		<b>PARISH:</b>	
<b>APPLICANT:</b>	Mr And Mrs L Sperring		
<b>AGENT:</b>	Mr Paul Karlsson		
<b>LOCATION:</b>	21 The Avenue, Cheltenham		
<b>PROPOSAL:</b>	Proposed two storey side extension, single storey side and rear extensions		

## Update to Officer Report

### 1. OFFICER COMMENTS

- 1.1. Further to the previous report, this update is to provide an updated list of conditions. This includes Condition 4 which was requested by members at the August meeting. This secures the fitting of obscure glazed windows within the en-suite and study windows which are proposed within the side elevation of the two-storey extension.

### 2. CONCLUSION AND RECOMMENDATION

- 2.1 The recommendation remains to permit the application subject to the conditions listed below.

### 3. CONDITIONS

- 1 The development hereby permitted shall be begun before the expiration of five years from the date of this permission.  
Reason: To accord with the provisions of Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.
- 2 The development hereby permitted shall be carried out in accordance with drawing numbers 1445/4B and 1445/5B received 8/9/14, 1445/6A received 14/7/14 and 1003.02A received 4/8/14.  
Reason: To ensure the development is carried out in strict accordance with the approved drawings.
- 3 Prior to the commencement of development, annotated elevations with a detailed specification of all external materials and finishes (including all windows and external doors) shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented strictly in accordance with the details so approved and maintained as such thereafter.  
Reason: To ensure a satisfactory form of development in accordance with Local Plan Policy CP7 relating to design.
- 4 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and/or re-enacting that order) the en-

suite and study windows on the side elevation of the two storey side extension shall be glazed with obscure glass and shall be maintained as such thereafter.

Reason: To safeguard the amenities of the adjoining properties in accordance with Local Plan Policy CP4 relating to safe and sustainable living.

#### INFORMATIVES :-

- 1 In accordance with the requirements of The Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2012 and the provisions of the NPPF, the Local Planning Authority adopts a positive and proactive approach to dealing with planning applications and where possible, will seek solutions to any problems that arise when dealing with a planning application with the aim of fostering the delivery of sustainable development.

At the heart of this positive and proactive approach is the authority's pre-application advice service for all types of development. Further to this however, the authority publishes guidance on the Council's website on how to submit planning applications and provides full and up-to-date information in relation to planning applications to enable the applicant, and other interested parties, to track progress.

In this instance, the authority sought amendments to overcome the concerns which were raised to the initial plans.

Following these negotiations, the application now constitutes sustainable development and has therefore been approved in a timely manner.

<b>APPLICATION NO:</b> 14/01003/FUL		<b>OFFICER:</b> Mrs Emma Pickernell
<b>DATE REGISTERED:</b> 4th June 2014		<b>DATE OF EXPIRY:</b> 30th July 2014
<b>WARD:</b> Charlton Park		<b>PARISH:</b>
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<b>LOCATION:</b>	21 The Avenue, Cheltenham	
<b>PROPOSAL:</b>	Proposed two storey side extension, single storey side and rear extensions	

## Update to Officer Report

### 1. OFFICER COMMENTS

- 1.1 This update is provided further to previous updates following the receipt of amended plans.
- 1.2 Amended plans have been submitted by the applicant subsequently to planning view. These show relatively minor alterations to the proposal, primarily involving the removal of an 'upstand' which had been included above the pitched roof.
- 1.3 These subtle revisions are considered to be positive refinements to the proposal.
- 1.4 Given the limited implications of this change upon neighbouring properties no further consultation is required.
- 1.5 The drawings also provide clarity on the proposed materials.

### 2. CONCLUSION AND RECOMMENDATION

- 2.1 The recommendation remains to permit the application. Condition 2 has been amended to reflect the revised drawings received and condition 3 has been amended to ensure that the bricks match the existing building. The annotated elevation previously requested by condition 3 is no longer required following receipt of revised plans.

### 3. CONDITIONS/REFUSAL REASONS

- 1 The development hereby permitted shall be begun before the expiration of five years from the date of this permission.  
Reason: To accord with the provisions of Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.
- 2 The development hereby permitted shall be carried out in accordance with drawing numbers 1445/4C and 1445/5C received 8/9/14, 1445/6B received 17/9/14 and 1003.02A received 4/8/14.  
Reason: To ensure the development is carried out in strict accordance with the approved drawings.
- 3 The bricks to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.

Reason: To ensure a satisfactory form of development in accordance with Local Plan Policy CP7 relating to design.

- 4 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and/or re-enacting that order) the en-suite and study windows on the side elevation of the two storey side extension shall be glazed with obscure glass and shall be maintained as such thereafter.

Reason: To safeguard the amenities of the adjoining properties in accordance with Local Plan Policy CP4 relating to safe and sustainable living.

### INFORMATIVES:-

- 1 In accordance with the requirements of The Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2012 and the provisions of the NPPF, the Local Planning Authority adopts a positive and proactive approach to dealing with planning applications and where possible, will seek solutions to any problems that arise when dealing with a planning application with the aim of fostering the delivery of sustainable development.

At the heart of this positive and proactive approach is the authority's pre-application advice service for all types of development. Further to this however, the authority publishes guidance on the Council's website on how to submit planning applications and provides full and up-to-date information in relation to planning applications to enable the applicant, and other interested parties, to track progress.

In this instance, the authority sought amendments to overcome the concerns which were raised to the initial plans.

Following these negotiations, the application now constitutes sustainable development and has therefore been approved in a timely manner.



Dear Mrs Crews

Reference: Planning application 14/01003/FUL

Objection to plan for No.21 The Avenue, Charlton Kings, Cheltenham

The revised drawings show alterations to the roof on the Eastern elevation but no change to the overbearing two storey extension on the West which is set further back than the original plan.

The planning officer regards the very large wall as acceptable and that the loss of sunlight ticks the light box test. This wall will fill the space in the photo being closer to the fence.

As the ground slopes down away from the house the height will be emphasised even more. It is certainly not subservient.



The applicant, who has never lived in No.21, will enjoy the morning sunlight across the whole of the back of his house whilst denying this to the family living in No.20 for ever.





How can anyone consider that losing all of this is in any way “acceptable”?

The reduction in space between the houses is very important as these gardens are on the north side. Reference has been made to the older houses on the the opposite side of the road which all have their gardens and main living rooms on the South side and are not affected in the same way by extensions and light although they are rather cramped in places.

When No.20 was sold we were told the intention was to build a single storey extension at the back of the house which was not a problem. This application is both unwelcome and unneighbourly as the applicant clearly shows no desire for any compromise whatsoever.

I would ask the council to refuse this application.

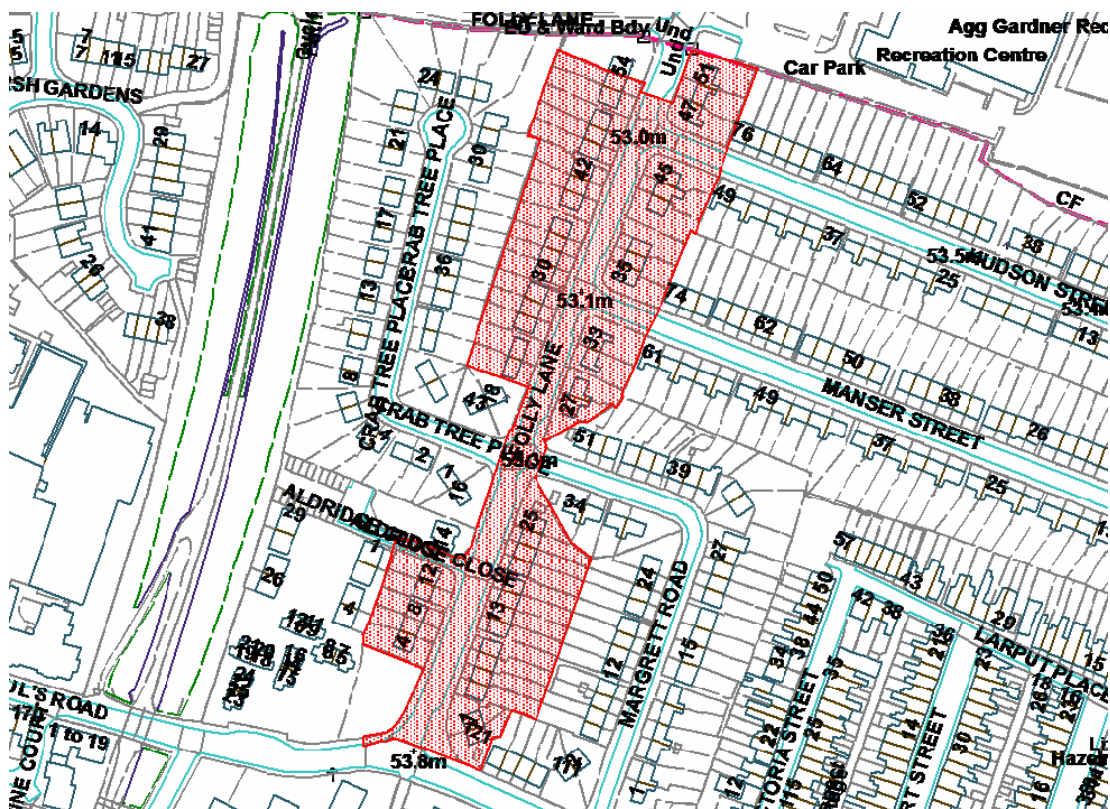
Yours sincerely

[Redacted signature]

20 The Avenue  
Charlton Kings  
GL53 9BL

<b>APPLICATION NO:</b> 14/01374/FUL	<b>OFFICER:</b> Miss Michelle Payne
<b>DATE REGISTERED:</b> 31st July 2014	<b>DATE OF EXPIRY:</b> 30th October 2014
<b>WARD:</b> St Pauls	<b>PARISH:</b> None
<b>APPLICANT:</b>	Ms Alison Salter
<b>AGENT:</b>	Nash Partnership
<b>LOCATION:</b>	1 Folly Lane, Cheltenham
<b>PROPOSAL:</b>	External works to existing dwelling frontages at numbers 1-13 and 15-52 Folly Lane and 121 St Pauls 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 Pauls Road

**RECOMMENDATION:** Permit



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## 1. DESCRIPTION OF SITE AND PROPOSAL

- 1.1 This is an application for a series of external improvement works to 49 existing dwellings along Folly Lane, to include no.121 St Pauls Road.
- 1.2 The proposed works include the installation of bay windows, replacement windows, front garden and boundary wall alterations, and the installation of new concrete ball features, public art, tree planting and re-surfacing works at junction of Folly Lane and St Pauls Road. 13 of the 49 dwellings are privately owned with the remaining 36 dwellings owned by Cheltenham Borough Council and managed by Cheltenham Borough Homes.
- 1.3 The proposals form part of the wider St Pauls Regeneration Project and have been derived from the transformational works which have been carried out on a number of properties in Hudson Street, Manser Street and Hanover Street as part of Phase One.
- 1.4 The application is before planning committee as much of the land is owned by Cheltenham Borough Council; Members will visit the site on planning view.

## 2. CONSTRAINTS AND RELEVANT PLANNING HISTORY

### **Constraints:**

Flood Zone 2  
Honeybourne Line  
Landfill Site boundary  
Smoke Control Order

### **Relevant Planning History:**

**07/01720/DEMCON**

**NO OBJECTION**

**22nd January 2008**

Demolition of 2-42 (consecutive) Crabtree Place, 29-51 (odd) and 34-56 (even) Manser Street, 17-35 (odd) and 34-52 (even) Hudson Street as part of the St Pauls Regeneration Project

**09/01495/FUL**

**PERMIT**

**20th January 2010**

Erection of 48no. dwellings and a community centre, provision of an area of public open space and associated works and alterations to the street facades of the existing houses along Hudson Street, Manser Street and nos. 52,54,56,58,60 and 62 Hanover Street.

**13/00800/FUL**

**PERMIT**

**23rd August 2013**

Construction of 56 residential units including 24 affordable units and associated works

## 3. POLICIES AND GUIDANCE

### Adopted Local Plan Policies

CP 1 Sustainable development  
CP 3 Sustainable environment  
CP 4 Safe and sustainable living  
CP 7 Design  
GE 5 Protection and replacement of trees  
GE 6 Trees and development  
TP 1 Development and highway safety

### National Guidance

National Planning Policy Framework



#### 4. CONSULTATION RESPONSES

**Contaminated Land Officer**

*31st July 2014*

No comment.

**Cheltenham Tree Group**

*1st August 2014*

We are happy that the existing trees are being retained and are keen that they are properly protected during the work.

**Tree Officer**

*7th August 2014*

The Tree Section welcomes the proposals along Folly Lane as described.

New Street Tree Planting should considerably soften the landscape in this area and the proposed Ginko biloba and Liriodendron tulipifera, whilst they may match planting adjacent, may become out of proportion with this road at maturity. However both species seem to grow well in Cheltenham and should provide relatively maintenance-free amenity for many years to come. However Ginko can take several years to establish and as such it is strongly recommended that a generous planting spec is used for such tree planting.

Please could details of specific tree size, tree pit details, (incorporating the use of fresh top soil, irrigation tubes and underground guying) as well as suitable landscaping finish offering suitable physical protection be submitted and agreed.

Similarly the retention of the birch trees at the southerly end of Folly Lane is also welcome. However I recommend that a suitable method statement is submitted so as describe the safe retention of feeding roots under the existing hard surface which is to be removed. It is important that such feeding roots are not damaged during the construction process. Similarly it is also recommended that existing (or new) tree protective grilles and guards remain around these trees so as to prevent damage into the future.

Many of the gardens are due to have much of the existing soft landscaping removed and replaced with a combination of slabs only (predominantly), lavender, rosemary and roses. Within short periods of time such lavender and rosemary can become tatty and unkempt. It would be good if such soft landscaping could be reinforced with considerably longer lived small trees as well. Such small front garden tree planting has worked well on properties facing onto the Bath Road using Amelanchier lamarckii. Similarly Amelanchier canadensis or ballerina may also be suitable. These do not cast dense shade and will not grow so as to cause nuisance to property. They respond well to pruning if required and provide much colour when in flower and also during the autumn. They should provide some height to the proposed landscaping.

**Gloucestershire Centre for Environmental Records**

*8th August 2014*

The data search for this site is based on the grid reference supplied by CBC, which is assumed to be located at the centre of the planning application site. GCER searches for all data within 250m of the grid reference. The provision of this data shows that important species or habitats are present on or near the proposed development site; however it does not show that important species or habitats are not present or not affected by the development.

## **Local Highway Manager**

*14th August 2014*

I have no objection to the removal of the guard rails however the planters should be arranged in such a way to prevent parking and overrunning of the corners and to guide pedestrians to use the dropped kerbs. The current layout shows partial obstruction of the dropped kerbs – this needs amending.

The surface of the new paved area should contrast the surrounding area but I am not happy with blocks being used. Experience tells me that, in areas of low footfall, weeds and moss can cause an additional maintenance problem. I don't think it will be an issue on the main footway but will be a problem in the wider non/lightly trafficked areas.

As we are not set up to deal with the cosmetic maintenance of the either the contents of planters or the planters themselves we will need to approved details of who will be responsible for them. If this is anyone other than CBC then a licence will be required.

## **Landscape Architect**

*26th August 2014*

### Paving & Drainage

- Most residents have opted for 'Garden Option 3' i.e. paving. This will have the unfortunate effect of removing areas of grass and gravel and replacing them with impermeable paving slabs.
- Cheltenham Borough Council requires that all hard surfacing be permeable or drain to a permeable area.
- Details of proposed permeable paving for front gardens and parking spaces should be submitted and include: supplier/manufacturer, colour, constructions details.
- Alternatively, the area of paving in front gardens could be reduced and replaced with soft landscape to which the paved areas could drain. This would have the advantage of providing space for small trees and other planting which would soften the street scene, contribute to green infrastructure and be beneficial for wildlife.
- Consider installing 'rain gardens' in the front gardens. A rain garden is an area of soft landscape which utilises special, engineered soil which can retain a greater quantity of water than ordinary garden soil. A rain garden can therefore attenuate surface water run-off more than a normal garden border.
- CBC has been involved with an Environment Agency led project to retro-fit Sustainable Urban Drainage (SuDS), including rain gardens, in the Priors Park area of Cheltenham, where a number of the properties are owned by Cheltenham Borough Homes. For further information, please contact CBC's Townscape team.
- Revised drawings should be submitted for the preferred drainage option.

### Trees

CBC's Tree Officer's comments regarding planting small trees in front gardens are noted and agreed with. The frontage of the dwellings and the street scene in general would be enhanced by the inclusion of suitable species of small trees in front gardens.

### Wheelie Bins

Where boundaries are open to the highway, what provision has been made to screen wheelie bins, bikes and other household paraphernalia?

### Public Realm

Junction of Folly Lane and St Pauls Road (Drawing No. 14032(L)203 Rev: P1)

Neighbourhood problems caused by people gathering on the corners of the street may be exacerbated when the corners are widened, especially if raised planters are installed as these could also be used as seats. Consider replacing the planters with a group of small trees which would have more impact in softening the street scene, contribute towards green infrastructure, be more beneficial for wildlife and require less maintenance.

## Drawing No. 14032(L)012 Rev. P2 Proposed Boundary, fence and front garden details plan sheet 1

### Plot 20

Why are there two pedestrian gates?

### Plots 24, 26, 32, 34, 49, 50

The boundaries are open to the highway - see note about wheelie bins etc above. Suggest including a length of 1100 mm high brickwork wall across the boundary with the footpath to provide screening for wheelie bins.

### Plot 33

Suggest replacing 1800mm close board fence abutting Manser Street with a combination of a wall surmounted with fence panels e.g. continue the 1100 mm high brickwork wall proposed for the corner boundary and fix 700mm high fence/trellis panels on top to provide privacy for rear garden. This combination will provide a more robust boundary and better continuity for the street scene than 1800mm high fence panels.

### Plot 35

Suggest replacing the section of 1800mm high brickwork wall abutting Manser Street with a combination of a wall surmounted with fence panels, as suggested for Plot 33. The combination of a wall and fence panels will appear less intimidating in a residential street than an 1800mm high wall.

If it is decided to keep the 1800mm high wall then consider replacing the close boarded fence panels between the wall and the house with a further section of 1800mm wall to provide continuity of boundary treatment.

### Plots 45, 47

Suggest replacing the section of 1800mm high brickwork wall abutting Hudson Street with a combination of a wall surmounted with fence panels, as suggested for Plots 33 & 35.

## Drawing No. 14032(L)013 Rev. P1 Proposed Boundary, fence and front garden details plan sheet 2

### Plots 1 & 121

Replace section of 1800mm high close boarded fence panels to rear garden with 1800mm high brickwork wall. Replacing the fence with a wall will provide greater continuity with built form.

### Plot 12

The gate in the boundary wall opens across the gate to the rear garden. Consider moving the gate in the boundary wall to a new position, so that it lines up with the entrance of No. 12, with sections of 1100mm high galvanised mild steel vertical railing to either side.

### Plot 15

Suggest planting the proposed small tree slightly off to one side, towards Plot 17, to allow for informal surveillance of the street and reduce potential shading.

## **5. PUBLICITY AND REPRESENTATIONS**

- 5.1 53 letters of notification were sent out to local residents; and in addition, 4 site notices were posted at intervals along Folly Lane. No representations have been received in response to the publicity.

## 6. OFFICER COMMENTS

- 6.1 The proposed improvement works follow the same design principles as those recently completed as part of Phase One of the regeneration project. These completed works have been well received by local residents and, as the Design and Access Statement sets out, have been deemed “a huge success in terms of improving the character, streetscape and architectural quality of the existing dwellings”.
- 6.2 Local residents have been fully consulted on the proposals prior to the submission of the application, through a series of public consultations, and have been closely involved in the proposals for their individual properties, being able to choose one of three alternative landscaping options for their front gardens.
- 6.3 In response to the comments received from the Landscape Architect and Local Highway Manager, the applicant has submitted revised plans during the course of the application to address some of the issues raised. Namely, the planters proposed to the St. Pauls junction have been replaced by concrete ball features, and a new surfacing material has been proposed; and additional gate has been proposed to Plot 12; and the second gate to Plot 20 has been omitted.
- 6.4 Whilst it is acknowledged that the revised plans do not address all of the issues highlighted, officers consider the revisions to be a wholly reasonable compromise, particularly given the significant benefits the scheme would bring to the area.

## 7. RECOMMENDATION AND CONCLUSION

- 7.1 Officers consider that the proposals would result in a significant and much needed enhancement to the locality. The scheme has been directly influenced by the very successful improvement works recently carried out during phase one of the regeneration project and as such will ensure a high quality finish is achieved.
- 7.2 The recommendation therefore is to grant planning permission subject to the following conditions:

## 8. CONDITIONS

- 1 The development hereby permitted shall be begun before the expiration of five years from the date of this permission.  
Reason: To accord with the provisions of Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.
- 2 The development hereby permitted shall be carried out in accordance with Drawing Nos. 14032(L)012 REV P2, 14032(L)013 REV P1, 14032(L)120 REV P3, 14032(L)123 REV P2, 14032(L)124 REV P2, 14032(L)126 REV P3, 14032(L)127 REV P, 14032(L)129 REV P3, 14032(L)131 REV P3, 14032(L)133 REV P2, 14032(L)135 REV P2, 14032(L)137 REV P2, 14032(L)139 REV P1, 14032(L)141 REV P2, 14032(L)143 REV P3, 14032(L)145 REV P2, 14032(L)147 REV P2, 14032(L)149 REV P2, 14032(L)151 REV P2, 14032(L)153 REV P3, 14032(L)153 REV P3, 14032(L)155 REV P4, 14032(L)156 REV P1, 14032(L)200 REV P1, 14032(L)201 REV P2, 14032(L)202, 14032(L)203 REV P2.  
Reason: To ensure the development is carried out in accordance with the approved drawings.



- 3 Notwithstanding the submitted details, prior to their installation, full details of the proposed concrete ball features to the St. Pauls Road/Folly Lane junction (including the number and position of each ball) shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented strictly in accordance with the details so approved, and maintained thereafter as such.  
Reason: To ensure a high quality of development in accordance with Local Plan Policies CP7 and TP1 relating to design, and development and highway safety.
- 4 Prior to planting, a scheme for the provision of street trees shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of specific tree sizes, tree pits, tree protective grilles and guards, and suitable landscaping finishes, and shall be implemented strictly in accordance with the agreed details unless otherwise agreed in writing.  
Reason: To ensure a satisfactory form of development in accordance with Local Plan Policies CP7 and GE6 relating to design, and trees and development.
- 5 Prior to the commencement of any works on the highway at the St. Pauls Road/Folly Lane junction, a method statement for the retention of the existing birch trees shall be submitted to and approved in writing by the Local Planning Authority. The method statement shall detail the safe retention of feeding roots under the existing hard surface, and any proposed tree protective grilles or guards. The development shall be implemented strictly in accordance with the agreed details.  
Reason: In the interests of local amenity in accordance with Local Plan Policies GE5 and GE6 relating to the retention, protection and replacement of trees.
- 6 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and/or re-enacting that order with or without modification), no fences, gates, or walls shall be erected or other external alteration made to the front of the dwellings identified within the red line on Drawing No.14032(L)003 REV P1 without the prior granting planning permission.  
Reason: Any further boundary enclosures requires detailed consideration to safeguard the amenities of the locality in accordance with Local Plan Policies CP4 and CP7 relating to safe and sustainable living, and design.

### **INFORMATIVES**

- 1 In accordance with the requirements of The Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2012 and the provisions of the NPPF, the Local Planning Authority adopts a positive and proactive approach to dealing with planning applications and where possible, will seek solutions to any problems that arise when dealing with a planning application with the aim of fostering the delivery of sustainable development.

At the heart of this positive and proactive approach is the authority's pre-application advice service for all types of development. Further to this however, the authority publishes guidance on the Council's website on how to submit planning applications and provides full and up-to-date information in relation to planning applications to enable the applicant, and other interested parties, to track progress.

In this instance, having had regard to all material considerations, the application constitutes sustainable development and has therefore been approved in a timely manner.

- 2 The new Community Artwork will require the submission of a separate application for planning permission.

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