

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:	No agent used	
LOCATION:	Avenue Lodge, Chargrove Lane, Up Hatherley	
PROPOSAL:	Garden landscaping	

Update to Officer Report

Since preparing the report to Planning Committee a further letter dated 9th 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:

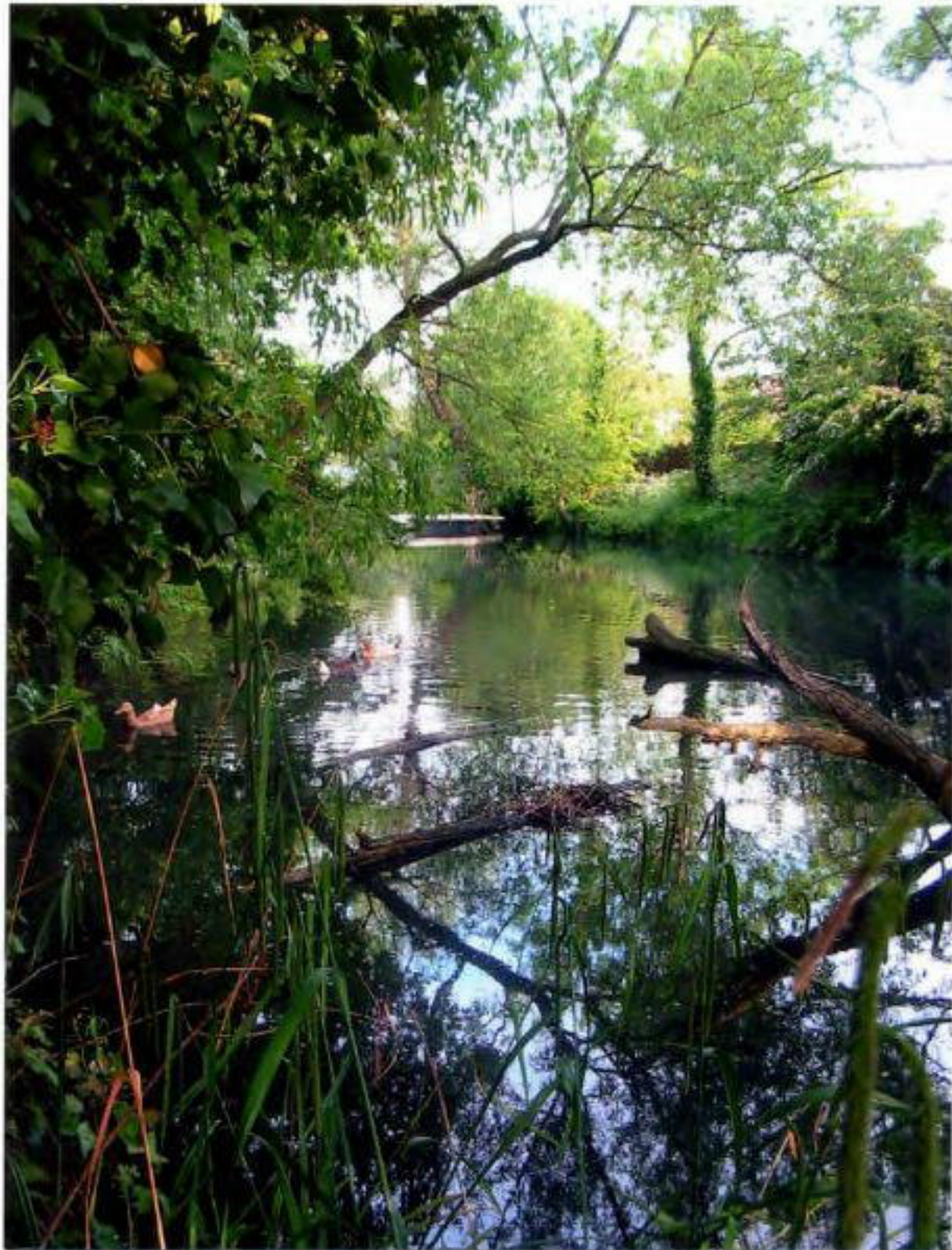
In the unlikely event of this development being allowed, by this committee or on appeal, and the building being occupied. How would this authority respond to a request by the householder at some future date, to drain the lake because of its perceived danger to the inhabitants under Health and Safety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



26th 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)



18th 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.



31st 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.



28th 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.



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



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



28th 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.



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



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



16th 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.



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



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





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



16th 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.



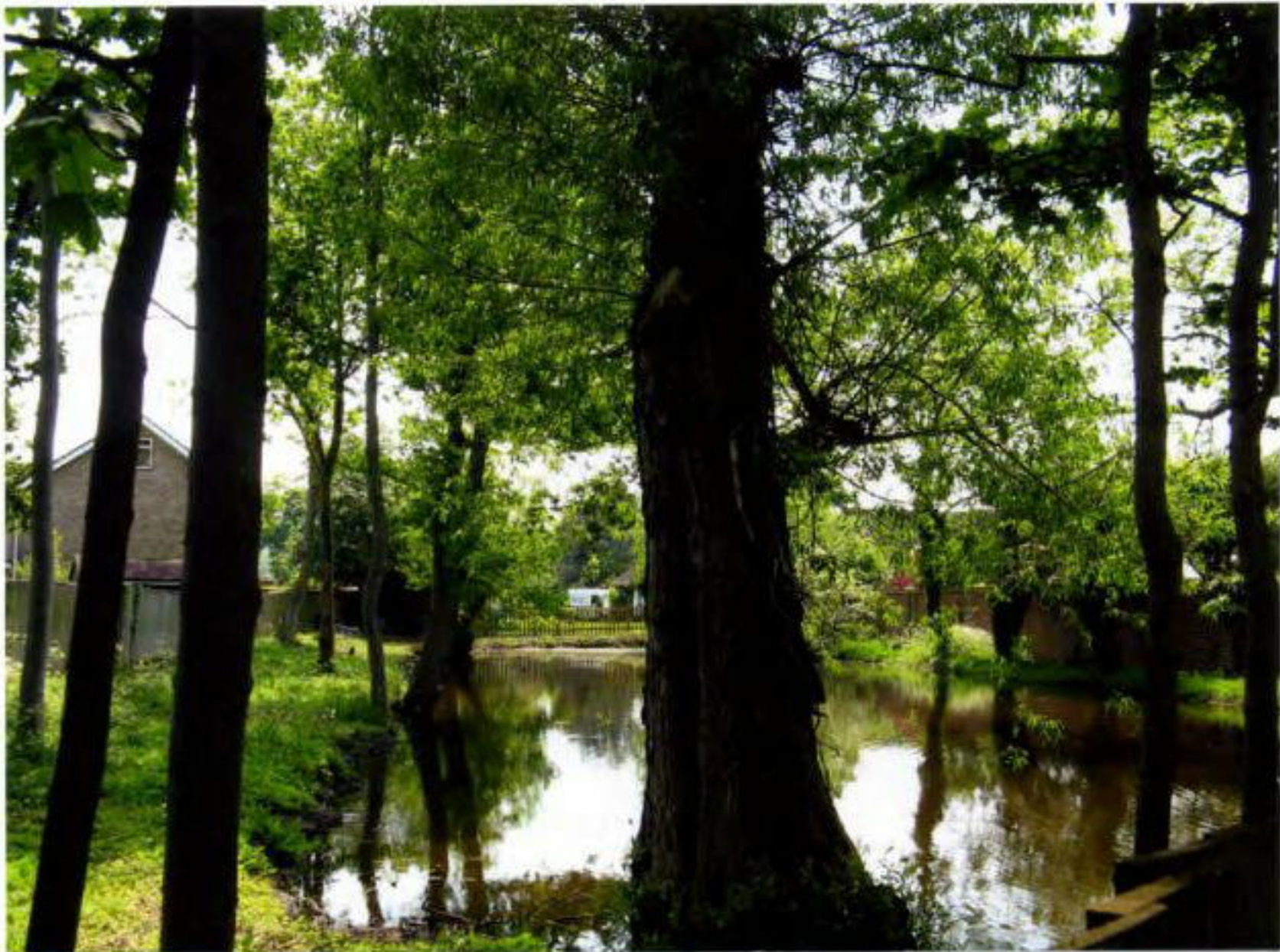
16th January 2008 - A closer view of the water in Brambles garden from the overflowing lake.



16th January 2008 - View looking south from the deck of Brambles over the floodwater from the lake.



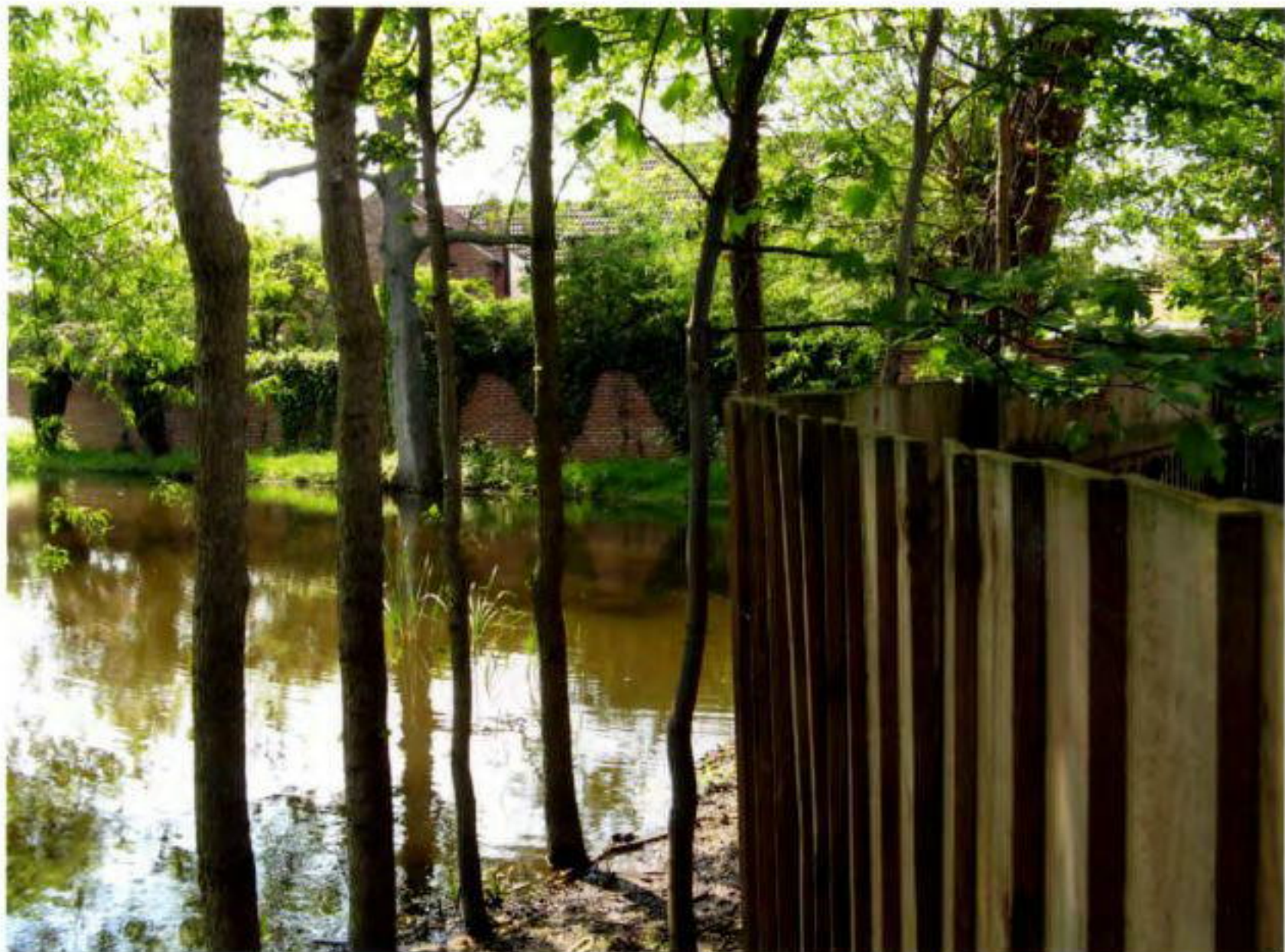
11th May 2008 - View looking along the east bank of the lake from Brambles garden. The lake is about average level and the vegetation is starting to grow again on the banks.



11th May 2008 - View looking over the lake from Brambles garden.



11th May 2008 - View from Brambles looking towards the east bank. Two ducks are swimming across.



11th 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.



26th January 2006 - View from Coombe Glen Lane of the oak tree in Avenue Lodge garden.



6th 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

CONTENTS

Page No:

Introduction

Appeal Site and Surrounds

Description of Proposal

**Planning History Considered Relevant To The
Appeal Site.**

The Planning Application

**Relevant Planning Policies and Explanatory
Comments.**

The Borough Council's Case

Conclusions

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 15th 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 2nd 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 2nd 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 important 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

The Planning Inspectorate
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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

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