

## **CK Friends Objection (health warning – contains photographs of reptiles)**

This outline application offers clear cut choice between two value propositions:

1. the commercial book value of the land being increased (with the promise of future housing, including a policy compliant level of social / affordable housing).
2. the inherent ecological, heritage, educational and social value of the land being protected (as benefits all Gloucestershire county primary school pupils, thousands of residents of Charlton Kings, and the wider Cheltenham community).

Those supporting this application will claim both the above can be true. National experience of land banking strategies provides a rather gloomier perspective. This site has intrinsic community value that would be impossible to influence further, if outline planning permission is granted and the land passes from charitable to private ownership.

Our objection comes on the back of a clear cut appeal just 7 months ago where residents invested considerable time and money in supporting CBC's position, objecting to 68 houses.

Residents remain implacably opposed to the unsustainable development of this special site; we welcome the application for a similar number of houses in Bouncers Lane (also with policy compliant social housing) and supported the development of a nearby brownfield site currently occupied by Tim Fry Landrover (application refused).

Our objection runs deeper, due to profound unease over the case presented. **The baseline data associated with this application has been unsound from the outset, in almost every area**, despite detailed evidence submitted to clarify or more often correct. If the data is wrong, modelling and desk based studies by county authorities produce flawed results. This impacts sustainability, trees, transport, flood risk and ecology.

Not one of the county consultees has referred to evidence from residents (including our detailed Rule 6 submissions to the inspector during the appeal, which are no longer available through the planning portal). Residents voices are the only challenge to inaccurate data and outright misdirection, and they are being ignored – that is not reasonable.

On every area of contention associated with this new application, new or different data has been generated to claim policy compliance. For example, the applicants are on their 4<sup>th</sup> heritage consultant, each of whom has taken a different position. The tree report (version 2 associated with the new application post lockdown) contradicts itself on the felling of TPO'ed trees. The drainage strategy has changed again, but without further comment or risk assessment. The transport data is demonstrably wrong.

Conversely, the objections have been consistent. An experienced planning inspector made his views extremely clear in October 2019. Historic England remain implacably opposed to this latest iteration. Friends have said the same things in commentary on 3 applications and one appeal.

**We, like HE, see the same site and flaws and we ask CBC planning department to assess the evidence, not the history**, in advising the planning committee. **The case now presented in opposition, particularly on ecology, is significantly stronger than that represented to the inspector in August.**

In particular, new research informs:

- the importance of hedgerow ash trees without dieback<sup>1</sup>; they **appear to be more disease resistant than woodland trees** and therefore are **increasing valuable; assertions they have a limited lifespan are unfounded.**
- the badger population; minimum **5 adults plus cubs**, not a single breeding pair as represented to the inspector. Only a single artificial sett is provided for.
- the importance of nature connectedness in urban communities; **Natural England's research** published 16 March 2020 reinforces the critical benefits of access to nature sites such as these for both mental health and personal benefit, but also to influence long term behaviours around sustainable living and climate change.
- the unique biodiversity of the existing wildflower meadow; including **legally protected species not mentioned in the applicants' assessment of biodiversity harm**, records of the chimney sweeper moth not recorded in the borough since 1964 (itself an indicator species of high value grassland), and presence of a range of protected species.
- The level of importance of the biodiversity of the site; it qualifies for consideration as a key wildlife site. Since the appeal in only August 2019, a further 6 sedge and wildflower species have been identified, meeting the criteria of 20 grassland species required to make a case for a KWS. Being next to a school strengthens the case.
- The extreme limitations of the transport plan (on top of repeated challenge to inaccurate baseline data) **Allowing this data to stand in a Covid world risks negligence claims.** [Gloucestershire Highways commentary on peak capacity excess should have informed the local plan].

We contend that the original arguments stand as a backdrop:

- Increased flood risk, from surface water flooding, springs and inadequate sewerage capacity
- Lack of school places, particularly at primary level, and of any GP capacity (noting the problems we will face as a community post Covid)
- Impact on the AONB and the CK conservation area (exacerbated by the new roof profile at the top of the site)
- Loss of amenity to local residents

More detailed analysis is attached. To assist, quotes from the inspectors report on the planning inquiry are in **green**. Quotes from the developer's consultancy reports are in **red**.

And finally, the timing of this application is regrettable; a number of affected residents are in shielded households, some without internet. They remain disenfranchised and with heightened anxiety at an already difficult time. While the Covid crisis is unprecedented, any consideration of the impact on existing residents might have given rise to a different approach and timing. This community engagement is mandated in the NPPF, and its absence here is notable, although sadly predictable.

CK Friends  
3 June 2020

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<sup>1</sup> Landscape epidemiology of ash dieback, Journal of Ecology, published 15 April 2020

## Detailed objections

### A. This is not plan led

1. It is contrary to the development plan which is now awaiting adoption, exceeding the (albeit approximate) planned site allocation of 25 by 72%. This excess affects every area of strategic planning; the local road infrastructure that Gloucestershire Highways admit is already over capacity, overstretched GP services, and unavailable (particularly primary) school places.

36. "Policy HD4 of the draft Cheltenham Plan, **for approximately 25 dwellings, to a layout that respects the existing urban characteristics of the vicinity and the character, significance and setting of heritage assets that may be affected by the development, subject also to protection of key biodiversity assets**"

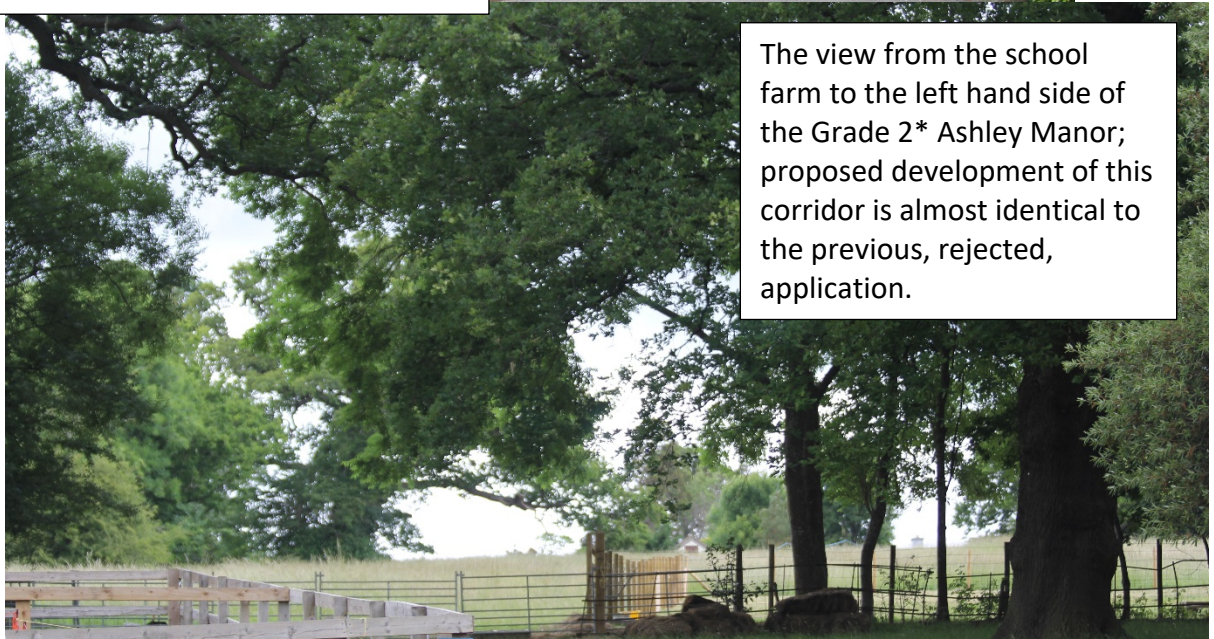
2. We have an application for 43 dwellings, which does not respect the character, significance and setting of heritage assets, particularly the Grade 2\* Ashley manor, and that ignores, let alone fails to protect, key biodiversity assets from wildflower meadow to important hedgerow to legally protected and nationally declining species. This is not plan led – and plan led decisions are at the heart of the NPPF.

**B. It causes unnecessary heritage harm, in contravention of CBC's statutory duties<sup>2</sup>**

3. This application causes harm to the setting of a Grade II\* listed building, and to the setting of a Grade II listed building. National policy (NPPF para 184 and 193) requires any harm to a heritage asset or its setting to have a clear and convincing justification; none is presented above the delivery of affordable housing **at the level required by local policy**. A tilted balance cannot be invoked where heritage assets are involved.
4. The impact on the setting of Ashley Manor (Grade II\* listed) was clearly identified as unacceptable by the inspector in August 2019; this application is very similar **in its domination of the setting of Ashley Manor, as seen from the grounds and entrance of the Manor itself, and from Charlton Kings village and the AONB**.



Grade 2\* Ashley Manor, proposed development site visible through the trees

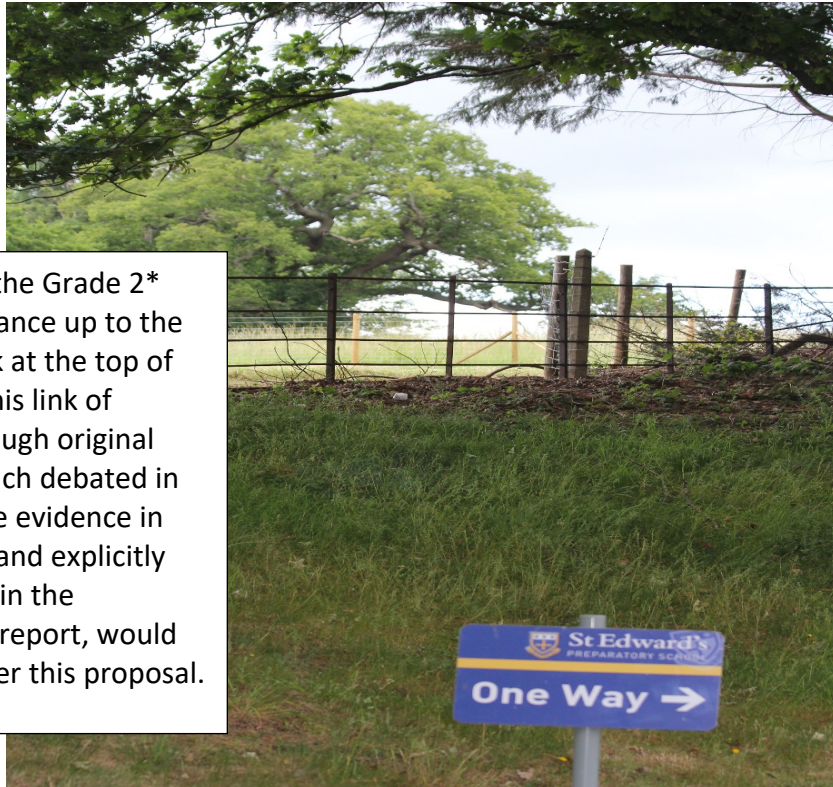


The view from the school farm to the left hand side of the Grade 2\* Ashley Manor; proposed development of this corridor is almost identical to the previous, rejected, application.

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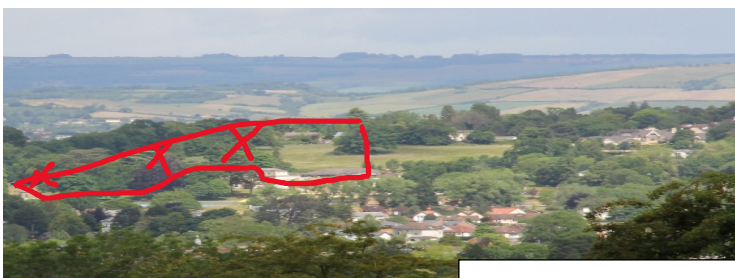
<sup>2</sup> The full Inspector's ruling on harm to Ashley Manor at annex 1





View from the Grade 2\* school entrance up to the veteran oak at the top of the field. This link of setting through original fencing, much debated in the heritage evidence in the appeal and explicitly referenced in the inspector's report, would be lost under this proposal.

- The issue, accepted by the inquiry, of night time urban street lighting framing what is currently a dark and rural setting, has not been addressed. Heavy screening will to break the relationship between Ashley Manor and its setting. Heritage planning guidance is explicit that screening is not in itself, sufficient. Perversely, this new design puts the highest ridge lines (9.7m) at the top of the site, thereby **increasing the impact** on the setting of the two adjacent listed properties as compared with previous applications. The impact will be clearly visible from both the AONB and from the Charlton Kings conservation area. The Inspector only 9 months ago reinforced that position – **“Moreover, the site, rising to the north, provides a green backdrop to the Manor in distant views”**



X = felled trees and hedgerow, build area (approximated)

View from A435 (AONB) entering Cheltenham



View from Charlton Kings common (AONB)

6. The inspector also noted the harm to the setting of Charlton Manor, “the presence of the new built development would still be visible from Charlton Manor and prominent in views available from its important west-facing windows... The appreciation of the Manor in views from within its setting to the west would be compromised, including for residents and members of the public living in or visiting the proposed dwellings.” This application moves the build line back just 30 metres and proposes a dense screen of trees which would take decades to mature.
7. Historic England are categorical in their continued objection to the harm from this development, in language that is consistent with the inspector’s findings 9 months ago. Authorising the over development of the grounds of a Grade II\* asset (the top 10% of heritage assets in the country), against the position of the statutory consultee on heritage, is in clear contravention of NPPF para 11di and para 192, and of SD8.
8. Loss of the setting of the grade II\* building will impact on the public ability to experience, often in a formative way, a key Cheltenham heritage asset. Objections have been raised by Whitefriars old boys from the 1960s who still recall their cross country runs past the Grade II\* manor house and up and around the ice house. Hundreds of children and their families get that opportunity each year, from all backgrounds. Although the cross-country competitions are held at a private preparatory school, they are open to primary and senior school children from across the county. Thousands of locals also get to appreciate the asset during the annual fireworks event, with the bonfire taking place on the proposed development site. Para 184 of the NPPF notes that heritage assets are “an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations”. **This heritage asset and its setting would not be enjoyed in the same way, or used in the same memorable way, nor be open to the public in the same way, if the land were to transfer from charitable to private ownership on approval of the outline permission.**

**C. Biodiversity is permanently and significantly reduced, including unacceptable impact on protected species.**

Policy SD9 of the JCS encourages biodiversity enhancement and Policy NE2 of the CBLP seeks to safeguard protected species. These aims are consistent with Framework paragraph 170, which states that planning decisions should contribute to and enhance the natural environment, including by protecting and enhancing valued sites of biodiversity, minimising impacts on and providing net gains for biodiversity. Paragraph 175 also encourages net gains in biodiversity. Paragraph 175 further provides that, where significant harm to biodiversity resulting from development cannot be avoided, or adequately mitigated or, as a last resort, compensated for, permission should be refused.

9. The ecology reports have repeatedly under-reported the biodiversity of the site, yet still claim harm to biodiversity is both possible and policy compliant. “In summary, the proposals have sought to minimise impacts on biodiversity, and subject to the implementation of appropriate avoidance, mitigation and compensation measures, it is considered unlikely that the proposals will result in significant harm to biodiversity.” CP3 relates to sustainable development and states: *Development will be permitted only where it would: (c) conserve or enhance the best of the.. natural environments; (d) safeguard and promote biodiversity.* The CBC policy is not to “consider it unlikely to cause significant harm”. It is to safeguard and promote, conserve and enhance.

10. The site design statement records that “**the open spaces within the site comprise unkempt grass**”. They fail to mention the minimum 65 different grasses, rushes and wildflowers present; the Lidar imagery showing historical ridge and furrow (evidencing this site having not affected by modern farming techniques). Or that the meadow meets the **qualification standard for consideration as a Gloucestershire key wildlife site**, being covered through the spring and summer with wildflowers, **including the legally protected English bluebell and 20 species from the KWS listings for grassland**. Arguments that ‘wildflower meadow / parkland will be created’ are specious – it is already in existence.
11. Failing to mention clearly visible and identifiable legally protected species is a considerable oversight in three years of notional ecological study. Other limitations in the ecology work include denying the presence of amphibians, downgrading the grassland, failing to mention the existing species range in the wildflower meadow, and avoiding any industry standard reptile surveys. The ‘avoid – mitigate – compensate’ hierarchy cannot be met when protected species already present have not been properly surveyed or accounted for. Residents’ reporting through lockdown has been lodged with GCER (Gloucestershire Centre for Environmental Records), based on recordings of birdsong, video and photographs, GPS records to geo-locate the sightings, and has been validated by various expert county recorders. **Amongst the legally protected species on the site there are English bluebells, common toad, grass snake and slow worms, at least 8 protected or conservation listed birds, the badgers, smooth newts and at least 5 different bats of conservation concern (all invoking policy SD9 2i).**

Policy NE1 relates to habitats and legally protected species and states: *‘Objective O18: Development which would materially harm, either directly or indirectly, a site supporting any legally protected species **will not be permitted unless safeguarding measures can be provided through conditions or planning obligations to secure its protection.**’*

It is impossible to safeguard species that have as yet not been acknowledged in the design. **The failure to contemplate safeguarding of 16 legally protected species** is sufficient grounds to refuse permission for this scheme outright.

**Policy NE3 relates to biodiversity and geodiversity of local importance and states:** *Development which would harm, either directly or indirectly, a habitat, species or geological site of local importance (note 1) will only be permitted where: the features of interest can be maintained within the development, or suitable measures of mitigation or compensation can be provided.*

The claims of mitigation across the site are in competition with one another; and the mitigation for removal of the important hedgerow (in and of itself an ecologically significant habitat) involves the destruction of bluebell populated wildflower meadow, reptile habitats and badger foraging, to offset with tree planting.

12. The badger sett that is on the field occupies an estimated 1 acre of subterranean space, according to the Badger Trust. They have 4 hectares of foraging and are rarely in conflict with people or traffic. A constrained artificial sett, recognised as rarely effective, a constrained foraging area (with stock proof fencing to protect the school land and primary school pupils) and the close proximity of traffic, according to the planning inspector, “**implies a reduction in the biodiversity of the site in respect of its current badger population**”. Video demonstrates the minimum population is now 5 badgers, plus any offspring, vice the 2 plus offspring reported to the inspector.

**Warning – reptile pictures on next page. All residents' sightings were recorded of photographed on 2 weekends in May 2020, and therefore can be assumed to be a fraction of the total ecology of the site.**

**Birds identified by sight or by sound** using the Android Birdnet app during a single May weekend (plus Aspect data). Sound recordings have GPS data attached if required. All were situated within the 10 acres of fields off Oakhurst Rise, Cheltenham. GR SO9621

<b>Species</b>	<b>Date</b>	<b>Sight</b>	<b>Sound</b>	<b>conservation status</b>
Treecreeper	02/05/2020	x		
Chiffchaff	02/05/2020		x	
Dunnock	03/05/2020	x	x	amber
Magpie	03/05/2020	x	x	
Green woodpecker	03/05/2020	x	x	
Great tit	03/05/2020	x	x	
Yellowhammer	03/05/2020		x	red
European Blackcap	03/05/2020	x	x	
Blue tit	03/05/2020	x	x	
Woodpigeon	04/05/2020	x	x	
Blackbird	04/05/2020	x	x	
Eurasian Wren	04/05/2020	x	x	
Song thrush	04/05/2020	x	x	red
European Robin	04/05/2020	x	x	
Long tailed tit	04/05/2020	x	x	
		x		legally protected
Red kite	04/05/2020			
Buzzard	04/05/2020	x		
Tawny Owl	04/05/2020		x	amber
Lesser Woodpecker	Aspect report			red
Cuckoo	04/05/2020		x	Red
House Sparrow	Aspect report			red



1 of many grass snakes routinely seen by residents north of the ice house, this one snapped by an Oakhurst Rise resident, basking by the pond



Slow worm and common toad (both NERC priority species) – daily features of locals' lockdown exercise



**D. This application requires the removal of mature TPO'ed trees and important hedgerow**

13. The tree report states that the concerns of the Woodland Trust, the inspector and local residents about the ancient and veteran trees have been noted. "Given the Inspector's endorsement of the RAVEN method for identification of ancient, veteran and notable trees, the list of which trees qualify under these headings remains unchanged."
14. This is somewhat at odds with the inspector's report which states:

"It is first appropriate to note the evidence of the Woodland Trust that a significant number of veteran and ancient trees on the appeal site have not been identified as such in the assessment submitted by the arboricultural consultants to the Appellants, including Tree 3014. That assessment is based upon the in-house identification system of the consultants, known as RAVEN. Criticism is based upon the Ancient Tree Inventory of the Ancient Tree Forum and Natural England standing advice for ancient woodland. It turns, in part, on alleged over-reliance by RAVEN, upon the mere size of the tree in assessing its veteran or ancient status."
15. As an example in the table on page 6 (of 13) in the tree report, tree 3015 (oak classified by the Woodland Trust as veteran, but not assigned a tree root buffer appropriate to a veteran tree) is explained away as *not veteran* saying it: "qualifies by size and age [268 years old] but lacks sufficient features for descriptor to apply". The RAVEN methodology to qualify veteran trees is unique to this consultant.
16. Page 4 of the arboriculturist report states "...Tree Preservation Order protects a number of the existing trees on the site. All such trees would be retained". And the design statement says "in developing the revised layout, we have sought to ensure that the scheme doesn't require the loss of any protected trees." However, in the table (line 4) it states that tree under **TPO 6 is to be felled**.
17. The tree report states that "JCS Policy SD9 seeks inter alia to avoid harm to biodiversity through on-site mitigation where possible. In the present case, there is a theoretical risk of harm to biodiversity from adverse impacts on ancient and other veteran trees and accordingly SD9 is engaged". It fails to mention that 40m of important hedgerow is removed and some mature trees have been denied their proper veteran status. It is an actual risk of harm to biodiversity. The application is silent on how this would be avoided, and is therefore **not** compliant with the policy.
18. Policy **HD4 requires all mature trees and hedges to be protected and maintained**. There are two notable ash trees (not yet affected by ash dieback, one under TPO already) and about 40 metres of important hedgerow that will be taken out to facilitate the development. All the mature trees over the badger sett are slated for removal; these form a significant feature in local views and can be clearly seen from the AONB (photos above and below), in contravention of policy **GE12 and GE13**.
19. Recent scientific research notes that hedgerow ash are less vulnerable to ash dieback and are therefore **more important for conservation**, not less (this new scientific research will presumably change the CBC view that ash trees are by definition of limited lifespan).

**Theoretical risk:**

- a. Gloucester Highways refuse to consider future risk of road injury or death in debating the safety concerns on the roads, saying there has to be evidence within the local area.**
- b. The tree officer is happy to consider future risk of infection in trees to validate the fell list associated with the application, despite there being no sign of ash dieback in these trees.**

**These two positions are in complete conflict.**

**E. This application increases flood risk and has not addressed surface water flooding, the presence of springs, or sewerage limitations,**

Friends endorse the expert submission of the Cheltenham Flood and Drainage panel, and have not repeated those points here. In general terms, for completeness:

- 20. Flood risk from surface water run off and constrained sewerage capacity has not been properly addressed despite the evidence of Charlton Court Road residents on the their already inadequate sewerage provision. There were significant concerns over two rejected applications, but this proposal has **further reduced the flood risk management measures** as compared with previous applications.
- 21. Springs are unmentioned despite previous assertions in front of the planning committee that mitigation would be put in place. As in other areas, this application has **reduced** protection compared with previous attempts, despite residents' concerns and challenges to the desk based assessments of risk. The application fails to meet para 155 of the NPPF.

**F. Development of the site at this level is the definition of unsustainable development. It cannot be accessed other than by car. In a Covid-19 world, that makes it unsafe – for our community and for residents. It is a car only development and runs completely counter to the CBC commitment to become carbon neutral.**

- 22. The travel plan claims '**excellent walking, cycle routes and public transport**'. However, the distances to local shops have been underestimated by 20-40%, walking times ignore gradient, and the transport plan cites the 2018 version of the bus timetable for the now radically changed local 'route B' service. The travel plan bears no relation to reality or local experience. There are no cycle routes within a mile, and the only access point is steeper than the hardest part of the Tour de France circuit. It is a car only development, completely inaccessible to anyone who is very young, elderly, infirm or disabled in the event of car journeys being impossible (this is not theoretical – it is every ice or snow event, every COVID lockdown). Gross errors in the data underpinning the transport plan include:

- The transport plan states there are 2 local buses, both running every two hours. This is the most recent timetable (Monday to Saturday only) for the only service to Ewens Farm:



Cheltenham, Pittville Street 08:30 11:30 14:30

Ewens Farm, Oakhurst Rise 08:55 11:55 14:55

Cheltenham, Pittville Street 09:27 12:27 15:27

- “Within the local context of the site, this can be assessed against the proximity to local services and amenities, which residents and/or visitors may require access to on a day-to-day basis”. The ‘transport plan’ then cites travel distances and times (Table 3.1). **These are not factual.** The walking distances to the town centre (2.5km), and to Balcarras (1.9km) are at the outer reaches or in excess of DfT maxima.
- Based on google maps, it is 1000m walk from 29 Oakhurst Rise (the entrance to this new development) to Holy Apostles School; not **760m**. St Edwards prep school is 1200m, not **680m**. These are journeys that residents will undertake by car – putting every other conclusion drawn at risk.

If the baseline data is wrong, the conclusions are wrong. Given we have evidenced this from the outset, one has to question why there is so much resistance to putting the right data in. **The transport plan is unsound.**

23. Paras 5.17 and 5.19 of the transport assessment states that **each property will have space for two cars, and one bike**, in contradiction with the design statement “**each dwelling will have adequate space for secure cycle storage commensurate with the anticipated number of occupants within the dwellings**”. This is a car led development, not a sustainable development.
24. A refuse vehicle or emergency vehicle cannot pass a normal sized estate car on the slope of Oakhurst Rise. Highways stated that it was financially not viable for Oakhurst Rise to be re-graded despite the 14% gradient and that cyclists would need to look out for ‘motorists flashing their headlights’ before proceeding down the hill. That position is in clear violation of the highway code, but still the access is deemed ‘technically’ satisfactory and safe. It is not. Legal precedent transfers any future negligence liability to the planning committee – we presume CBC has taken legal advice on this point?
25. **The access route is not safe, particularly for wheelchair users, cyclists and pedestrians.** NPPF para 108b cannot be met, nor can policy SD4(vi / vii). **Safe and suitable access to the site CANNOT be achieved for all users. In a COVID world, that is unacceptable.**
26. The statements from Gloucestershire Highways on junction performance explain the consternation of both planning committee members and the Charlton Kings parish council at the position claimed in previous applications. For the first time the data published reveals that the London Road and Sixways junctions are operating “**well over absolute capacity in all scenarios**” but then says “**the introduction of development traffic does not result in an unacceptable or severe impact**”. **If the roads in Charlton**



**Kings are not adequate, any increase is unacceptable and in breach of national planning policy.** The line being taken is not a viable position.

27. On risk, the transport assessment states “**There has been no personal injury collisions recorded on Oakhurst Rise and therefore nothing to suggest that this highway is unsafe nor anything to suggest that the traffic generated by additional dwellings would make this section of highway unsafe. Overall it is reasonable to conclude that there is not an excessive amount of personal injury collisions on the wider network and those collisions that do occur are spread. Therefore it is reasonable to conclude that the additional traffic generated by the development will not have a material impact on general road safety in the area.**” **Oakhurst Rise is a cul de sac, and the steepest road in the area by some margin. Increasing traffic from zero cars to the traffic (residential and industrial) associated with 43 homes will materially change the risk profile – that is basic statistics.**

#### **G. Concern over S106 conflicts in the current climate**

28. Previous applications argued that anything less than 69 homes could not be made financially viable given the constraints of the site. This reduced application fails to explain how the shortfall will be met by building only 43 properties including 40% affordable housing, but once again no financial viability assessment is provided. Given the site is only viable with significant S106 payments towards schooling and ecological offsets, and still claims affordable housing commitments, all of which are in potential conflict, we would ask that the council challenge these assertions before losing a local asset from public benefit through a successful outline application.

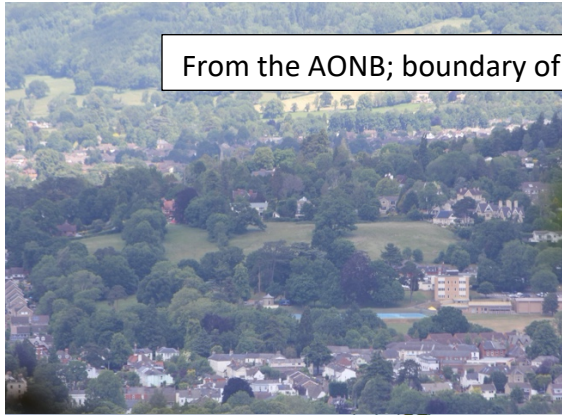
#### **H. Contradictions inherent in the design**

29. The site design statement says ‘**the development of the site enables a significant amount of open green space to be available to the residents**’. Elsewhere the green space is assigned to use by St Edwards School (which would preclude residential access, on child safety grounds). Elsewhere it is assigned as wildflower meadow to offset biodiversity losses elsewhere. Elsewhere it is assigned as badger foraging, or for reptiles. It would be helpful to clarify which land use is going to be primary, given the inherent conflicts between different land users.

#### **I. Visual impact**

30. As presented to the inspector, the site is clearly visible from the local area; photos attached at annex show the view from the CK conservation area including St Mary’s church, from Greenway Lane, on the approach to Cheltenham, and from the Leckhampton AONB. The site design statement claims “**Due to its elevated position, the site can be seen from a few public vantage points around the town, but because of the density of residential development around the site it is not very visible from public vantage points within the town itself or the roads within the immediate vicinity of the site**”. The site is above the build line in Cheltenham therefore stands out, and is clearly visible from a range of entry points into Charlton Kings (photographs below). It is also the framing of the view down the St Mary’s conservation area in Charlton Kings village, the central point of the view

from Charlton Kings Common, and clearly visible from Ashley Road and Greenway Lane.



From the AONB; boundary of CK common



From the A 435



From Charlton Kings common



From Old Bath Road





St Marys Church and the CK conservation area, visually leading to the St Eds meadow and ice house. This view would be dominated by the high rooflines of new development above the existing tree line and proposed 'screening'. The mature trees to the top left of the picture would be removed, to be replaced with houses..

#### J. Loss of local amenity and impact on health inequality

31. At appeal, the inspector noted that “ it is telling that one resident of Oakhurst Rise has been officially advised that an ambulance required to transport a person with mobility difficulties on a regular basis would no longer attend due to difficulty in parking at the frontage once the road was extended”. Now policy SD14 has been adopted, we note it states that new development must “cause no unacceptable harm to local amenity, including the amenity of neighbouring occupants” (this being specific to health inequality). It is difficult to consider a stronger personal case than the loss of community care to someone who otherwise is housebound. The turning circle promised at appeal by Mr. Frampton to mitigate this loss of amenity has been removed from the current application. Other aspects of SD14 would also be invoked on development of this site, given the total quietness and dark of the site in its current form.

## Annex 1: Inspector's ruling on harm to Ashley Manor

Policy CP3 of the CBLP and SD8 and SD10 of the JCS together provide that development should protect, conserve, sustain and enhance designated heritage assets and their settings and avoid harm to views into and out of areas of acknowledged importance, including with respect to listed buildings.

Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCA) contains a statutory duty to have special regard to the desirability of preserving the setting of listed buildings.

Framework paragraph 193 gives great weight to the conservation of designated heritage assets and paragraphs 195-6 consider harm to heritage assets in terms of whether it would be substantial or less than substantial. Paragraph 196 provides that, where development would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. The significance of a heritage asset is defined to include its archaeological, architectural, artistic or historic interest, derived not only from its presence but its setting, in which it is experienced. National Planning Practice Guidance (PPG) refers to the extent and importance of the setting to the visual relationship between the asset and proposed development, including that views of or from an asset will play an important part. **The PPG also notes that the contribution a setting makes to the significance of an asset is not dependent upon public access.**

It is now trite law<sup>3</sup> that this **less than substantial harm must be accorded considerable weight in the overall planning balance.** However, the judgment in the case of *Shimbles*<sup>4</sup>, with reference also to the earlier *Palmer*<sup>5</sup> case, makes clear that, whilst there is no allowance for any sub-categories of harm within the Framework definition, planning judgement must be exercised. **That is with regard to the level of the less than substantial harm, the great weight accorded to the conservation of the asset and the extent of the public benefits.**

### *Contribution of the Site and the Ice House to the Settings of Listed Buildings*

"The appeal site was historically and remains in the same ownership as Ashley Manor. Although **the land evidently was never part of the managed parkland of the Manor, it had a functional relationship with the Manor as farmland,** and as the location of its Ice House, which survives as an historic feature."

"The present circumstances are that the **Manor and the site are intervisible through the current boundary vegetation** and direct views are available from at least one north-facing window onto the currently mainly open, eastern part of the site, including the tree-covered mound of the Ice House. I observed this for myself, unlike the Inspector dealing merely with the draft allocation Policy HD4. **Moreover, the site, rising to the north, provides a green backdrop to the Manor in distant views.**"

"I recognise an historic and visual association between the appeal site and Ashley Manor and a strong visual interrelationship between the site and Charlton Manor. In terms of the relevant guidance to which I refer above, I consider that **the appeal site, with the Ice House it encompasses, contributes importantly to the historic and current visual setting of both these listed buildings, as designated heritage assets.**"

### *Effect on the Setting of Ashley Manor*



**“the proposed introduction of new landscape planting, screening that boundary, would obstruct the relationship of the Manor to this part of its setting.”**

**“I recognise that the main front of the Ashley Manor House does not face directly towards the appeal site and that the character of its immediate surroundings has been altered by the addition of modern school buildings, including that closest to the appeal site boundary and north of the Manor itself. Nevertheless, I consider that these effects on the visual relationship between the Grade II\* Ashley Manor and the appeal site would have a very significant adverse impact upon the setting of the Listed Building.”**

**“Having regard to the statutory duty under s66 of the PLBCA, this would be contrary to the protective aims of Policy CP3 of the CBLP and SD8 and SD10 of the JCS and result in less than substantial harm to the designated asset in terms of Framework paragraph 176.”**

## Annex 2: Inspector's report with respect to biodiversity harm

Policy SD9 of the JCS encourages biodiversity enhancement and Policy NE2 of the CBLP seeks to safeguard protected species. These aims are consistent with Framework paragraph 170, which states that planning decisions should contribute to and enhance the natural environment, including by protecting and enhancing valued sites of biodiversity, minimising impacts on and providing net gains for biodiversity. Paragraph 175 also encourages net gains in biodiversity. Paragraph 175 further provides that, where significant harm to biodiversity resulting from development cannot be avoided, or adequately mitigated or, as a last resort, compensated for, permission should be refused.

### *Badgers*

90. The amended development layout proposed would require the removal of the major, central badger sett, Ref BS1, and its replacement with an artificial sett of detailed design for future approval. On the evidence, I am satisfied that this is tried and tested methodology in common use and that the artificial sett could be provided with sufficient chambers to accommodate displaced badgers choosing to use it and constructed to floor and entrance levels high enough to avoid any local flooding.
91. The badger population currently resident and breeding in BS1 would be removed under licence. Badgers are common, subject even to official culling and legislative protection mainly for their welfare and against illegal and cruel persecution. That is not to say that any harm to them would not give rise to a planning objection, just as in the case of any other protected species.
92. Moreover, from the standpoint of CKF, as objectors to the housing scheme as a whole, it is understandable that they submit that the layout ignores the 'avoid-mitigate-compensate' sequence of Framework paragraph 175, in placing built development and access roads so close to BS1 in the first place. However, if the layout is necessary to the development of the site for other reasons, the question becomes whether the mitigation and compensation measures would be effective.
93. In practice, the evidence is that badgers displaced under licence are as likely to remove to outlying setts or create new ones as they are to inhabit the artificial one provided; also, if they inhabit the artificial sett, that they would potentially extend it and add more chambers themselves.
94. Even though this level of compensation is not strictly necessary and direct harm to the protected badgers could be avoided, the remaining badger population would potentially be subject to more human pressure and interference and their present foraging area would be substantially reduced by the presence of the proposed housing. **This implies a reduction in the biodiversity value of the site in respect of its currently resident badger population.**

### *Reptiles*

95. In response to local concern, the Appellants undertook a reptile survey shortly before the Inquiry. This, visual observation and local information provides little evidence of the presence of protected reptiles, other than a family of slowworms and a single grass snake.
96. The survey is criticised by CKF in terms of its seasonal timing, the hours and number of survey visits made and the size of the 'refugia' used to attract and count any reptiles present. The Appellants pointed out that a greater number of smaller 'refugia' were used to increase the likely count and that the number of visits accorded with accepted practice. At the same time, the Appellants agreed, at the Inquiry, that the

timing of the survey **had been sub-optimal in comparison with established guidance**. However, there is no countervailing evidence to indicate a greater presence of reptiles on the site. [Photographs and residents' evidence of slow worms and grass snakes have now been provided to GCER].

“It is further evident that only 14 key wildlife species have been recorded on the site, compared with the 20 required for its consideration of a Key Wildlife Site.” **[A further 6 sedge and wildflower species have been identified in just one morning of study; therefore the site now meets the criteria for consideration as a grassland key wildlife site, in addition to the important hedgerow, protected herptiles and bats, and red list birds.** Sites close to education facilities can be qualify as “key” when they are just short of the criteria – but this site meets the criteria outright. **Oakhurst Rise has reached the threshold to be considered as a Key Wildlife Site.**]

“On balance, I do not consider it likely that protected reptiles are present on the appeal site to justify objection to the amended outline scheme on grounds of harm to such species. I consider that it would be sufficient to require, by planning condition, a full ecological survey and assessment to be submitted, with measures for the protection and management of any protected species found, and its submission to the Council for approval before any development could commence.” **[Protected reptiles have been repeatedly identified during lockdown in some numbers; amphibians are also present** despite statements that the site is not suitable for them’.]

#### *Overall Effect on Biodiversity*

“Overall, **I consider that the net effect of the proposed development on biodiversity is likely to be either neutral or negative to some degree and certainly not an enhancement as sought by the thrust of current national and local policy.** This factor militates to a degree against the appeal proposal.” [This before the most recent ecological records had been provided by Bioscan and residents, and Key Wildlife Status criteria had been met].

### **Annex 3: Inspector's report on access**

The route to the sole access point to the appeal site is over a network of residential access roads via an established housing area, with much on-street parking in place for much of the time. The cul de sac of Oakhurst Rise, which would be extended to form the on-site access roads to the proposed development, **has a steep gradient.**

I acknowledge that there are no technical objections to the route in traffic or highway safety terms, whether with regard to width, gradient or alignment of the carriageways, junction or forward visibility, or existing traffic flows.

**However, such technical issues are not the only consideration in the assessment of the suitability of the access arrangements for new development.** In this case, there are genuine local concerns that the additional traffic from the proposed development, amounting to a likely 30 or so vehicle movements in any peak period, would add to congestion and inconvenience to existing frontage residents.

I am satisfied that such an increase in traffic flow would not have a significant impact on the wider highway network.

However, it is telling that one resident of Oakhurst Rise has been officially advised that an ambulance required to transport a person with mobility difficulties on a regular basis would no longer attend due to difficulty in parking at the frontage once the road was extended. That is a transient personal matter of relatively little planning weight and *might be at least assisted by the provision of an additional turning head proposed within the site [this has been removed in the new application]*. However, **it helps to illustrate that the access route, as a whole, is tortuous and far from ideal.**

Notwithstanding the lack of any objection from the highway authority, this factor militates to some degree against the grant of permission for built development of the scale now proposed for the appeal site.